



**QORTI TAL-APPELL**

**(KOMPETENZA INFERJURI)**

**(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)**

**ONOR. IMHALLEF MARK CHETCUTI LL.D.**

**Illum L-Erbgha, 7 ta' Dicembru, 2016**

Numru 4

**Appell Nru. 16/2016**

**Nutar Emanuel George Cefai**

**vs**

**L-Awtorita tal-Ippjanar gia  
I-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**

**Il-Qorti,**

Rat ir-rikors tal-appell tan-Nutar Emanuel George Cefai tat-22 ta' Lulju 2016 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-5 ta' Lulju 2016 li cahdet l-izvilupp propost fi stadju ta' outline permit PA 2382/00 'additions and alterations as per attached drawings to block of building fil-fond 305 Triq San Pawl kantuniera ma' Triq San Gwann, Valletta;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semgħet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi l-applikazzjoni odjerna giet rifjutata mill-Kummissjoni tal-Kontroll tal-Izvilupp għal dawn ir-ragunijiet segwenti:

"1. The proposed development would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within Urban Conservation Areas and so does not comply with Structure Plan policy UCO 6.

2. The proposed development runs counter to Structure Plan policy UCO 10 in that it would adversely affect views of the Urban Conservation Areas and detract from the traditional urban skyline.";

Ra s-sottomissjoni ulterjuri tal-appellant prezentati fl-4 ta' Marzu 2009, fid-29 ta' Mejju 2009, fit-12 ta' Marzu 2010, fit-8 ta' Lulju 2010 u fit-3 t'Awissu 2015;

Ra r-risposti tal-Awtorita' prezentati fis-27 ta' Marzu 2009, fid-29 ta' Lulju 2009, u fis-6 t'April 2010,

Ra l-verbal tal-access mizmum fuq is-sit minn dan it-Tribunal fit-28 t'April 2015;

Ra l-PA file numru 2382/00;

Ra l-atti kollha ta' dan l-appell;

Sema t-trattazzjoni tal-partijiet.

Ikkunsidra:

Illi dan l-appell rega gie rimess lura mill-Qorti tal-Appell b'sentenza tat-30 ta' Marzu 2006, fejn laqgħet l-appell u konsegwentament hassret id-decizjoni tal-Bord tal-Appell dwar l-ippjnar tal-15 ta' Settembru 2004, wara li osservat dan li gej:

"Illi mill-provi li kellha quddiemha din il-Qorti setgħet tikkonstata li huwa minnu li l-appellanti tul il-process kollu semma diversi permessi li nhargu u skond huwa rragunijiet għalfejn is-sit fejn jinsab il-bini indikat għandu jitqies bħala wiehed committed għal zvilupp rikjest minnu kemm dwar uzu u kemm dwar għoli ta' bini.

Illi f'dan il-kuntest jirrizulta lil din il-Qorti li l-Bord fiddecizjoni tiegħu pratikament injora għal kollox dawn issottomissjonijiet magħmula mill-istess appellanti, tant li fissentenza ma hemm riferenza ta' xejn għall-permessi kollha ndikati mill-appellanti, anke permezz tan-nota fuq indikata u dan minkejja li l-appellati stess kienu pprezentaw nota wkoll fejn huma stess irreferew għal diversi permessi u allegati precedenti ohra fl-istess area, sit u Belt. Hawn qed issir riferenza partikolari għaddokument sottomess mill-appellanti quddiem l-istess Bord ta' l-Appell dwar l-

Ippjanar datat 2 ta' Dicembru 2003 fejn hemm numru konsiderevoli ta' permessi li gew indikati lillistess Bord ghall-konsiderazzjoni tieghu, konsiderazzjoni li din il-Qorti thoss li l-Bord ta' l-Appell dwar l-Ippjanar ma kkonsidra fl-ebda parti tas-sentenza tieghu. Dan kif jidher mill-istess decizjoni nfisha fejn il-punt ta' commitment ma gie bl-ebda mod trattat, anzi din il-Qorti thoss li dan kien injorat ghal kollox.

Illi din il-Qorti thoss li din hija mankanza serja fl-istess decizjoni ta' l-istess Bord ta' l-Appell dwar l-Ippjanar u li a bazi tal-premess dan l-aggravju ghandu jintlaqa' a bazi tal-principju *cerimus paribus* affermat fl-istess decizjonijiet fuq citati u msemmija mill-appellanti fir-rikors taghom. Dan ghaliex l-istess Bord ta' l-Appell dwar l-Ippjanar kellu jezamina tali aggravju u jiddeciedi dwaru b'motivazzjoni debita u mhux sempliciment jiskartah ghal kollox, ghaliex dan irendi l-istess decizjoni priva minn motivazzjoni essenzjali ghall-validita' ta' l-istess. Fuq din il-bazi biss l'appell ta' l-appellanti Emmanuel G. Cefai et ghandu u qed jigi milqugh."

Illi f'dan il-kaz dan it-Tribunal huwa fid-dover illi jikkunsidra l-aggravju ewlieni tal-appellant illi z-zona fejn jinsab is-sit inezami hija committed b'bini fejn gie permess zieda ta' sulari simili ghal dak li qed jitlob l-appellant. F'dan ir-rigward l-appellant qed jesigi trattament ugwali billi jinhareg il-permess tal-izvilupp rigward it-talba ta' zieda ta' sulari fis-sit indezami.

Illi fl-ewwel lok ghandu jigi pprecizat illi fir-rigward l-uzu kummercjali fuq is-sit de quo li huwa parti mill-proposta mertu ta' dan l-appell, l-Awtorita' kienet ikkunsidrat mill-gdid tali talba fl-applikazzjoni separata simili (minghajr il-proposta ghal-zieda ta' sulari) fl-applikazzjoni fi stadju ta' outline bin-numru 2192/10 ghall-izvilupp ta' shopping complex li giet approvata mill-Kummissjoni ghall-Ambjent u l-Ippjanar fit-13 ta' Lulju 2011. Ghaldaqstant l-oggezzjoni li seta' kien hemm dwar l-uzu kummercjali illum jinsab ezawrit. F'dan ir-rigward, dan it-Tribunal ser jillimita l-konsiderazzjonijiet tieghu fir-rigward l-aggravji dwar ir-rifjut taz-zieda ta' sulari.

Is-sit jikkonsisti f'binja li tinsab kantuniera bejn Triq San Gwann u Triq San Pawl, il-Belt Valletta, mibnija fuq tlett sulari mill-livell ta' Triq San Pawl, u sular iehor konsistenti minn xi kmamar u terrazzin, liema kmamar jinsabu mohbija mit-triq permess ta' arkati li jinsabu mal-faccata tal-binja. L-entratura principali tal-binja tinsab fi Triq San Pawl, b'faccata tipika ta' townhouse, b'karakteristici arkitettonici pjuttost semplici u nieqsa minn lavur elaborat (b'differenza ghaz-zewg binjiet adjacenti mal-konfini tal-Griegal, fl-istess Triq San Pawl), ghajr ghat-tieqa centrali fit-tieni sular u l-gwarnicun u pilastru ornamentali fil-kantuniera bejn iz-zewg toroq. Interessanti li l-galleriji fl-ewwel t-tieni sular qed jolternaw, minn wahda ghal tnejn fi Triq San Pawl, u minn zewg galleriji ghal wahda fi Triq San Gwann fl-ewwel u t-tieni sular rispettivament. Il-livell tal-bejt jinsab imdawwar b'numru ta' arkati baxxi li jinsabu fuq il-faccata tal-bini, b'gholi ta' madwar 10 filati. Fuq in-naha retrostanti tinsab it-tromba u karma mdaqqa b'faccata fuq Triq San Gwann, filwaqt li hemm access estern ghal fuq is-saqaf tal-istess kmamar. Il-proposta mertu ta' dan l-appell hija ntiza sabiex jigi estiz il-bini ezistenti fil-livell tal-bejt sal-linja tal-faccata u zieda ta' sular addizzjonali.

Illi l-appellant prezenta lista' estensiva ta' kazijiet fil-Belt Valletta fejn gie permess zieda ta' sulari fuq bini ezistenti fis-sottomissjoni prezentata fl-4 ta' Marzu 2009 fejn gie spjegat dan li gej:

"1. Illi dan il-kaz ilu ghaddej mis-sena 2000, bl-ikbar tul ta' zmien jinhela quddiem il-Bord ta' l-Appelli precedenti li minkejja li ingiebu quddiemu provi fuq provi ta' commitment rilevanti ghall-kaz odjem, skarta dan il-principju u cahad l-applikazzjoni ta' l-esponenti. B'rizultat ta' dan l-esponenti kellhom iressqu dan il-kaz odjem quddiem il-Qorti ta' l-Appell (Inferjuri) li b'referenza ghall commitment rilevanti ghall-kaz odjem innotat:

Illi mill-provi li kellha quddiemha din il-Qorti setghet tikkonstata ti huwa minnu li l-appellanti tul il-process kollu semma diversi permessi li nhargu u skond huwa r-ragunijiet ghatfejn is-sit fejn jinsab il-bini indikat ghandu jitqies bhala wiehed committed ghat zvilupp rikjest minnu kemm dwar uzu u kemm dwar gholi ta' bini.

Illi f'dan il-kuntest jirrizulta lit din il-Qorti li l-Bord fid-decizjoni tieghu pratikament injora ghal kollox dawn is-sottomissjonijiet maghmuta mill-istess appellanti, tant li fis-sentenza ma hemm riferenza ta' xejn ghall-permessi kollha ndikati mill-appellanti, anke permezz tan-nota fuq indikata u dan minkejja li l-appellati stess kienu pprezentaw nota wkoll fejn huma stess irreferew ghal diversi permessi u allegati precedenti ohra fl-istess area, sit u Belt. Hawn qed issir riferenza partikolari ghad-dokument sottomess mill-appellanti quddiem l-istess Bord ta' l-Appell dwar l-ippjanar datat 2 ta' Dicembru 2003 fejn hemm numru konsiderevoli ta' permessi li gew indikati lill-istess Bord ghall konsiderazzjoni tieghu, .." Appell 6/2004/RCP tat-30 /03/2006

2. Illi l-Qorti tal-Appell kellha quddiemha numru kunsiderevoli ta' kazi fejn terzi inghataw l-permessi drabi ukoll fi flit xhur u sahansitra minkejja l-parir kuntrarju tal-Heritage Advisory Committee u/jew tal Case Officer u/jew tal-Valletta Rehabilitation Committee. Illi l-Qorti tal-Appell hassret id-decizjoni precedenti li kienet ittiehdet min dan il -Bord diversament presjedut ghaliex rat illi l-appellanti ma kienux gew moghtija d-drittijiet taghhom u rrimettiet il-kaz lura lil dan il-Bord tal -Appelli dwar l-ippjanar sabiex dan jiddiciedi fid-dawl tal-istess sentenza.

3. Illi minkejja li din is-sentenza tal-Qorti ta' l-Appell annullat id- decizjoni ta' l- Appeals Board precedenti, u dan proprju biex is sa jittiehdu in konsiderazzjoni dawk il-kazijiet kollha gia' imsemmija, sal-lum id-drittijiet ta' l-esponenti baqghu jigu mkasbra. B'din is sitwazzjoni, il-konsegwenza naturali hi li jinhela hafna izjed hin. Anzi tul dawn is-snin baqghu johorgu aktar permessi lil terzi, u ghalhekk l-esponenti talbu li jaghmlu din in-nota ulterjuri ta' referenzi.

#### Kazijiet

A) ---- PA 1431/03 ---- Applikant Karl Farrugia Wismayer ----- permiss moghti li kien jinkludi ' ... part change of use from offices to language school 2nd/3rd floor levels) ...'

B)----- PA 4515/04---Applikant : Byron W Jeong --- fi Triq San Pawl Valletta, metri '1 boghod mis-sit tal-appellanti - gew approvati 'alterations and additions of a mezzanine floor and third floor..' approvat fi ftit xhur fl-10 ta' Jannar 2005 minkejja 'enforcement' u illegalitajiet u anki ukoll opposizzjoni mil- Valletta Rehabilitation Committee.

C) ----PA 6821/2006---- Triq San Pawl Valletta Malta --- Applikant : Dr John Refalo--- outline permit mahrug 'inter alia' ghal 'addition of two receded floors at third and fourth floor levels .. ' kif ukoll' ... the change of use of the second floor apartment into office use ... '

Ukoll 'the proposal will include an additional office floor space of 236 m2 at second, third and fourth floor levels .. ' [Ara Case Officer Report relativ]

D)---PA 192/02 --- Chinese Embassy- f'173/175 u 176 Melita Street c/w 17 Triq San Pawl Valletta Malta ---- 'Change of use ... to a Chinese Cultural Centre including ... the construction of an extra floor ... ' Il permess gie applikat fl-10 ta' Jannar 2002 u proprju ftit granet wara fit-28 ta' Jannar 2002 nhareg mill- Kummissjoni ghall-Kontroll tal-Izvilupp

E) PA 1582/2008 ----- fi Triq San Pawl Valletta, Malta - minkejja illi HAC fit- 2 ta' Lulju 2008 irrelata li : 't-tibdil propost huwa drastiku hafna u ghalhekk zieda ta' sular mhux accttabbli ... ' xorta nhareg il permess relativ fi124 ta' Settembru 2008 ghall istess.

F) PA 588/08---Applikant : Francis J Vassallo ---- Fi Triq San Pawl Valletta Malta Minkejja l-'Case Officer' sahsitra irrakomanda 'refusal' il-permess nhareg xorta wahda 4-0 fill0 ta' Settembru 2008

G)---PA 1107/07 - Applikant - David Crewe Read ---- Minkejja r 'refusal' tal-Case Officer gie approvat il-bini fuq il-bejt fl-14 ta' Jannar 2008 f'DCC meeting No 402208 'in view of the existing high party walls ... Skyline will therefore not be affected ... '

H)---PA 4172/05---- Applikant : Vincent Buhagiar ---- ghall post f'numri 4,5,6,7,8 u 9 Triq San Pawl Valletta Malta li kien jinkludi , ... reconstruction of floors to be used as office space ... ' Permess moghti - u dan minkejja il-valur tal-bini [hdejn Palazzo Parisio] f'Marzu 2008.

I)----- PA 669/2004 - Roof structures flivell ferm oghola minn ta' 1 esponenti f'318 Triq San Pawl Valletta Malta bl-applikant Dr Norman Shaw; ukoll ara sussegwentment P A 660/05 li - minkejja illi kien hemm opposizzjoni mill HAC u anki enforcement' - il-permess inhareg u gie indikat lil dan il-Bord fl-access.

J)---PA 5909/94---- fi Triq San Pawl Valletta Malta proprju hdejn il Knisja monumentali ta' San Pawl Nawfragu Valletta Malta --- Applikant Joe Grima --- Change of use to offices and additions at fourth floor to use as studios - dan il-permess hareg wara rikonsiderazzjoni fid-19 ta' Frar 1996.

K)---PA 3113/94--- Applikant: Zahra: fi Triq San Pawl Valletta Malta:- 'Renewal to carry out alterations and additions' qasma ma' qasma mal-proprjeta tal-applikanti izda cirka 33 filata oghola, indikat ukollil dan il-Bord fl-access.

L)----- PA 2902/95 - Permess ghall kumpless 'Clamus' f'Melita Street Valletta Malta b'6 sulari - ara Condition No.1 tal-permesss li inter alia tghid: "oo. height of building should not exceed 6 floors."

M)----- PA 5796/06 jittrata kaz f286 Triq San Pawl Valletta Malta proprju flit bibien '1 boghod mill-proprjeta tal-a pp ell anti. Skond ir rapport tal 'Case Officer' dan il fond huwa 'an existing four storey building' u kien qed jintalab bini 'l fuq min dan l-livell. Meta mqabbel mal-gholi tal-fondi adjacenti skond ir-rapport tal-Case Officer:

' ..... it was noted that on one side of the roof level, the building is 0.8 metres less than that being proposed while on the other side the building height is 1.5 floors lower. The only higher structures are situated at the back (0.3m higher) ... '

Mela dan il-bini propost (PA 5796/06) kien (i) iktar gholi mill-bini ta' madwaru fnaha minnhom sular u nofs u (ii) inqas gholi mill-bini ta' hdejh minn wara biss fl-gholi ta' 0.3 metri u (iii) fuq diversi nahat izjed gholi (anke b'sular u nofs iktar) u kien inqas gholi fuq wara biss b'ammont minimu ta' 0.3 metri.

Hemmhekk il-Case Officer qal ukoll fir-rappost tieghu illi:

' ... the proposal also runs counter to Grand Harbour Local Policy G V 15 since the proposal would disrupt the skyline, roofline, and long distance views .. '

Minkejja dan kollu il Bord tad DCC f'meeting mizmum fis 7 ta' Mejju 2007 iddecieda illi jaghti l-permessi mehtiega in view of adjacent commitment.

Meta tqabbel l-gholi tal-bini tal-appellanti (kif anke huwa muri fir rapport ta' l-arkitett ta' l-appellant ipprezentat kontestwalment ma' din in-nota) vis-a-vis dak adjacenti fuq in-nahha tal-punent dan hu ta' prattikament tlitt sulari inqas meta fil-fatt fl-applikazzjoni PA 5796/06 il-bini bazikament fuq nahha minnhom hu sular u nofs ghola u izjed mill-bini adjacenti. Minkejja dan il-permess PA 5796/06 nhareg 'in view of adjacent commitment' Illi ghandu jigi rilevat illi d-decizjoni tal-Qorti tal-Appell gia' msemija hija mandatorja u ghalhekk l-applikanti jinsistu illi l-hrug tal-permessi kif mitluba minnhom hu issa obligatorju bil-ligi: il pro vi prodotti fdan l-istadju u l-permessi citati f'din in-Nota qed jitressqu bla pregudizzju ghal dak li kien prodott fl-istadji precedenti; di fatti l-kazijiet hawn citati huma addizzjonali ghall kazijiet l-ohra li kienu diga' gew deskritti fid-dokumenti relattivi annessi mal-atti ta' dan il-process; u jikkonfermaw:

a) Illi terzi inghataw permessi ghall sulari extra anki sal-livell ta' hames sulari : ara kaz Refalo PA 6821/06 et supra; kif ukoll ghall seba' sulari: ara kaz Clamus PA 2902/05 supra.

b) Illi terzi inghataw permessi ghall ufficini anki meta qabel dawn ma kienux jezistu : ara il-kazijiet Buhagiar (PA. 4172/05 supra), Refalo (in parti), u Grima (PA.5909/94 supra).

c) Illi l-istess terzi ukoll inghataw permessi ghall hwienet u/jew biex ibieghu prodotti anki ('sulari differenti u anki sahansitra fir raba sular u oltre, ara:

Clamus, fuq imsemijin. Dan minbarra tant kumplessi ohra maghrufin fil-Belt Valletta bhal 'Tal-Lira', shopping arcades fuq diversi sulari u simili.

d) Illi mhux minnu illi d-dar ta' l-applikanti ghandha xi karatteristici partikolari: anzi djar ohrajn li kellhom karatteristici ferm iktar partikolari inghataw permess relattiv: ara l-kazijiet Shaw, Buhagiar, Grima [fejn il-Knisja San Pawl Nawfragu tal-Belt] supra.

e) Illi terzi inghataw permessi ghall sulari extra anki meta il-bini ta' hdejh kien iktar gholi min nahha wahda biss : ara Buhagiar; kif ukoll il-kaz PA 5796/06 precitat hawn fuq, meta l-bini ta' hdejh kien sahansitra inqas gholi fiktar minn naha wahda.

Fid-dawl tas-sentenza tal-Qorti ta' l-Appell li tindika li din 1- applikazzjoni ghandha tintlaqa' fl-intier taghha a bazi ta' commitment gia' ezistenti dakinhar, meta jitqies li f'kazijiet ta' terzi, (bhalma hi 1- applikazzjoni PA 192/02) l-permessi relattiv nhargu fperijodu ta' ftit granet biss, iktar u iktar l-applikazzjoni odjema ghandha tintlaqa' minnufih.

L-Awtorita' wiegbet hekk kif gej:

"In these submissions, appellant has stated that other similar development had been approved and hence, this request for appeal should also be accepted.

PA 1431/03: Minor internal alterations, part change of use from offices to language school (2nd /3rd floor levels). Directorate's recommendation: Gtd  
Decision date: 10.06.03

PA 4515/04: Alterations and addition of a mezzanine floor and third floor. Directorate's recommendation: Gtd  
Decision date: 10.01.05

PA 6821/06: Miscellaneous additions and alterations to existing offices/flat including change of use from flat to offices.  
Directorate's recommendation: Gtd  
Decision date: 03.03.08

PA 192/02: Change of existing offices and residence to a Chinese Cultural Centre including residences and the construction of an extra floor.  
Directorate's recommendation: Gtd  
Decision date: 28.01.02

PA 1582/08: Miscellaneous additions and alterations to existing office/flat including change of use of flat to offices.  
Directorate's recommendation: Gtd  
Decision date: 24.09.08

PA 588/08: Proposed change of use from shop to garage including minor internal & external alterations also to existing interconnected overlying offices.  
Directorate's recommendation: Refused since the garage door is less than 2.4m wide  
Decision date: 24.09.08 The DCC however decided that retention of existing archway is considered as an over-riding reason to safeguard UCO policies and a small car can be accommodated.

PA 1107/07: To construct two rooms at roof level and to change condition II of approved permit 1750/04. Minor internal alterations.  
Directorate's recommendation: Refused since The proposed development runs counter to Condition (11) of PA 1750/04 which states: 'No access to the roof of the proposed extension at roof level shall be provided.'  
Decision date: 14.01.08 The DCC however decided that in this particular case, the existing surrounds would be completely wrap around the proposed development and the skyline would not be affected.

PA 4172/05: Restoration of facade, demolition of dangerous internal walls and ceilings and reconstruction of floors to be used as office space.  
Case is still being assessed by the Directorate and no formal recommendation / decision has been taken to date.

PA 669/04: Site located in Fgura.

PA 5909/94: Change of use to offices and additions of rooms at fourth floor touse as studios.

Directorate's recommendation: Refusal

Decision date: 19.02.96 The DCC however decided favorably since in this particular case, the proposed additional rooms at fourth floor could be acceptable.

PA 3113/94: Renewal to carry out alterations and additions Directorate's recommendation: Gtd Decision date: 03.10.94

PA 2902/95: Refurbishing of existing Haro retail outlet including demolition of part of building.

Directorate's recommendation: Gtd

Decision date: 19.02.96

PA 5796/06: Internal alterations & extension to dwelling.

Directorate's recommendation: Refusal

Decision date: 07.05.07 The DCC however decided favorably in view of adjacent commitment, and HAC and VRC on objection.

PA 2902/05: Site located in Naxxar.

In view of the above, the Authority states that none of the above cited cases had substantial identical planning considerations to the case under appeal mainly due to their different locations, nature of proposed development, different assessment by the Directorate / VRC / HAC and in view of the planning policies applicable at the time of the decision.

It is thus important to reiterate that in this particular case, the proposed additions at 3rd floor and the new floor at 4th floor (both levels to be used as shops) were objected to by the:

Heritage Advisory Committee in sitting held on 23rd August 2000 when latest plans were assessed (red 16 in file).

Valletta Rehabilitation Committee (red 17) which, in letter dated 4th July 2000 stated that:

The Committee highly objects to this application. This building is a 'palazzo', one of a series of important buildings adjacent to each other in this part of the street. This proposal would seriously effect the skyline of this group of buildings. Furthermore this is the only building in Valletta that has an original 'patio' at the uppermost level: this element in itself is enough to ensure that this building should not have additions made to it.

The Planning Directorate (red 32) report assessed this request for development vis-à-vis the planning policies relevant to this site and recommended that it is to be refused since it breached Structure Plan Policy UCO6 and Structure Plan Policy UCO10.

Development Control Commission, in sitting held on 2nd May 2001 discussed this application and decided that it breaches both Structure Plan Policies cited by the Directorate. The DCC further noted that further to a site inspection by the Board on



30th March 2001' the Board noted that the corners on either side of St.Paul's Street were equal in height. A refusal was thus issued on 11th May 2001.

In this regard, the Authority reiterates that in line with its previous reports, the requested development goes against the present planning policies relevant to this area and states that the DCC's decision to dismiss this request for development was justified and hence respectfully requests the Planning Appeals Board to dismiss this request for appeal."

Minn naha l-ohra, l-Appellant rribatta u spjega f'ikatar dettal il-portata legali tal-commitment fil-permessi citati ghall-kaz odjern fis-sottomissjoni prezentata fid-29 ta' Mejju 2009, li taqra hekk kif gej:

"l Dwar Kazijiet

Il-kontro-parti rreferiet ghall-kazijiet imsemmija mill-appellanti, liema kazijiet effettivament jikkonfermaw l-esistenza commitment mahluq mill-kazijiet ikkwotati mill-appellanti. Izda l-kontro-parti ghogobha taghti stamp storta ta' l-kazijiet b'dawn il-metodi u cioe':-

(i) Meta l-kazijiet kienu jirreferu ghal zvi'uppi ingentissimi, anke ferm u ferm akbar minn dawk ta' l-appellanti, u ghal iktar su'ari (ara l-kaz Refalo PA 6821/2006) l-kontroparti kellha bil-fors tammetti li inhareg il-permess izda ghogobha ma titkellem xejn dwar il-kobor u l-gho'li ta' l-izvi'upp rikjest, bha' biex tipprova tnessihu'na.

(ii) Meta l-kazijiet ta' l-permessi mahruqa kienu jirreferu gha' l-strutturi inqas kbar giet addotata strategija differenti jigifieri illi b'certu dettal jkun deskritt il-progett biex dan jidher ckejken, anzi icken milli fil-fatt hu.

(iii) Wiehed jassumi li dawn l-affarijiet saru biex il-kontroparti tipprova b'moc' fin tiggustifika l-posizzjoni diskriminatorja taghha, u tnaqqas u timminimizza l-kobor ta' l-ingustizzji sofferti mill-appellanti, kif wara kollox jixhdu l-permessi ikkwotati u ammessi mill-istess kontroparti.

Fis-'Second Statement' ukoll il-kontro-parti ghogobha ssemmi illi l-permess bin numru PA 2902/05 jirreferi ghall Naxxar, mentri l-appellanti riedu jirreferu ghall permess mahrug lill-istabiliment 'Clamus' li ghandu n-numru PA2902/95; di piu' ghall kull buon fini l-esponenti qed jiehdun din l-opportunita' sabiex jigbdu l-attenzjoni tal-Bord ghall permessi ohrain mahruqin lil terzi li huma :-

(i) Applikazzjoni mill APS Bank Malta kwazi quddiem il knisja ta' San Frangisk jithalla jitle bini ta' sitt sulari jew aktar (Ara applikazzjoni deciza mid DCC fil 21 t'Ottubru 1996)

(ii) Applikazzjoni ohra li permezz taghha zdienu il-livelli fil-Qorti ta' Malti (Triq ir-Repubblika - Ara PA3814/08)

(iii) In rigward tal Casa Rocca Piccola zdienu sulari fl-gholi (ara PA 1007/06).

(iv) Applikazzjoni minn Sterling Jewellers PA 4840/00 li 'inter alia' jinkludi 'construction of fourth floor level' 'granted' fit 30 ta' Mejju 2001

(v) "Change of use of stores to retail facilities" P A 3994/08 mahrug fit-28 ta' Jannar 2009

(vi) Ritz Shopping Centre (ara PA 3512/08) Triq ir-Repubblika Valletta: 'alterations at first floor, addition of shops at second floor, and administrative office space at third floor' 'granted' fl-10 ta' Marzu 2009

(viii) PA1967/06: South Street clw Republic Street Valletta fejn l-izvilupp kien Development of offices and retail units. Alterations to existing premises and change of use to offices mahruqa fis-16 t'Ottubru 2007.

## (ix) PA 7051/07: Addition of floors in place of existing steel roof

Dawn l-applikazzjonijiet qed jizdiedu mal-kazijiet citati precedentement ghaliex il-kontro parti farsi hasbet li billi bi zball gie citat permess li jirreferi ghan-Naxxar, l-esponenti ma kellhiex commitments ohra lejn xiex tipponta. Dawn l-applikazzjonijiet huma lkoll fil-Belt Valletta u juru kif lill-terzi jinhargulhom permessi ta' entita', anki fi zmien qasir bla wisq tahbit filwaqt illi lill-applikanti ma nhargulhomx il-permessi lilhom dovuti snin kbar ilu, anzi l-kontroparti ghadha taghmel kull sforz biex izzomm lura lill-esponenti milli jiehdu l-permess, bi hsara kontinwa lilhom u lill-proprijeta taghhom.

## II Dwar l-Aplikabilita' tal-Kazijiet

Xott xott u minghajr ma tat ragunijiet ghalhekk il-kontroparti allegat illi l-kazijiet citati mill-esponenti mhumiex applikabbli. Tipprova tohloq id-dubju bla ma tissostanzja li tghid. Fil-kaz prezenti l-commitment huwa favur l-esponenti mill-aspetti kollha ta' dan il-principju:

(a)-----Il-kazijiet jirreferu ghall permessi ta' bini fuq bini diga' ezistenti. Hekk hu il kaz odjem u ghalhekk certament l-kazijiet huma applikabbli.

(b)-----Il-kazijiet jirreferu ghall ghoti ta' strutturi tal-gebel fuq bini ezistenti - kif inhu il-kaz in kwistjoni; u

(c)----Il kazijietjirreferu ghall ghoti ta' 'quantum' ta' bini li l-volum tieghu hafna drabi huwa daqs jew izjed minn dak tal-applikanti

(d)-----Ir-ragunijiet principali ghaliex il-permessi tat terzi inhargu kien ghaliex tal-inqas fuq nahha wahda tat-triq kien hemm bini izjed gholi – fil kaz tal-applikanti hemm bini gholi qasma ma qasma mal-beni tal-applikanti li huma ekwivalenti prattikament ghal tlitt sulari, kif ukoll per ezempju il-kaz 'Azzopardi' PA5976/06 fejn gie akkordat il-permess tal-bini b'sulari extra, u dan gie spjegat li inhareg ghaliex fuq wara tal-binja l-izvilupp kien ser ikun circa filata wahda biss zejda - mentri l-applikazzjoni ta' l-esponenti mhux ser tkun xejn oghla minn tal-fond adjacenti (li prezentement huwa circa 33 filata oghla minn ta' l-esponenti - ara rapport tal-Perit Johann Farrugia gia esebit).

Ghall-finijiet ta' commitment jissemma l-kaz 'Vanni Ganado f'isem Gasan Properties Limited vs DCC' [deciza fil21 ta' Marzu 1994] [Decizjonijiet tal Ippjanar Vol III p.586] id DCC kienet rrifjutat applikazzjoni ghaliex sostniet illi tezisti height limitation ta' erba sulari fiz-zona in kwistjoni. Il Bard tal-Appell kien laqa' l-appell ghaliex sostna illi : 'skond il Pjan ta' Struttura kellu jsir l-ahjar uzu tal-art u peress illi fli stess triq kien jezisti bini gholi hames sulari, il Bord ikkontenda illi l-izvilupp propost ma kienx ser jkollu impatt negattiv fuq il-bini cirkostanti wil-karattru tal-lokal.'

## III Dwar il-Post

L-appellata dehrilha illi anki dwar is-sit jittfghu allegazzjoni billi jghidu illi l-kazijiet citati huma irrelevanti. Izda ghall allegazzjoni taghhom ma gabux imqar raguni wahda u dan ghas semplici raguni ghaliex tali raguni ma tezistix. Ma hemm l-ebda policy illi tapplika ghall 305 Saint Paul Street Valletta Malta biss u mhux ghall kumplement tal-Belt.

Izda bhallikieku dan mhux bizzzejjed, dawn jghidu li mhumiex relevant anke permessi rtoroq vicini fl-istess nahha tal-Belt, u sahansitra wkoll ghall istess Triq San Pawl

Valletta, fejn inghataw ammont kbir ta' permessi matul is-snin 1il terzi, generalment fil pront u minghajr il-martirju u terturi li Qed jsiru mal-applikanti.

Izda bhallikieku dan mhux bizzejjed hemm parti mill-permessi li huma mhux biss fi Triq San Pawl Valletta Malta imma sahsitra ftit metri 'l boghod mis-sit tal applikanti. Izjed minn hekk ukoll qasma ma' qasma mal-propieta' tal-applikanti.

#### IV Dwar il Policies

Diga' giet accennat illi l-policies tal Belt japplikaw ghall Belt kollha. Il-kazijiet ikkwotati juru bla dubju ta' xejn illi dawn il policies riferenti ghall Belt Valletta huma identici ghall dawk in rigward tas-sit in kwistjoni ghaliex (i) jirreferu ghall postijiet fil Belt Valletta u ghalhekk ghal policies dwar l-istess; (ii) jirreferu ghall 'building height limitation' u 'extra floors' kif inhu dan il-kaz ukoll; u (iii) l-interpretazzjoni favorevoli tal-istess policies fil-kazijiet ta' terzi jikkonferma ukoll kif bl-istess mod u maniera favorevoli dawn il-policies kellhom ikunu applikati mal-applikanti fil kaz odiern u fissit odiern bil-hrug tal-permessi relattivi.

Hekk isiru l-argumenti; hekk trid is-serjeta wil-gustizzja; mhux kif ghamlet il-kontroparti li b'mod skorrett tefghet allegazzjoni illi l-policies ma japplikawx minghajr l-anqas biss semmiet policy wahda u iktar minn hekk minghajr ma inghatat biss raguni wahda ghaliex dawn il-policies majapplikawx. Veru il kaz ta' quod gratis asseritur gratis negatur

L-appellata ghogobha issemmi il Planning Directorate u d-DCC li mhuma xejn hliet strutturi fi hdan il-MEPA. Li ma ssemmix ukoll il-kontroparti hu li fil-kaz partikolari li hija ssemmi, dak li gie ritenut minn dawn il Entitajiet minnha msemmija ma ghex kondiviz jew ritenut mill Qrati taghna izda mhassar u annullat ghall kollox.

B ----- Jissemmew ukoll il HAC u VRC. Apparti l-fatt li anki hawn mhux dak kollu li ntqal hu korrett xejn ma jissemmew il-kazijiet ta' fejn l-istess kontroparti minkejja il-pariri kuntrarji tal HAC u/jew il- VRC xorta wahda harget il-permessi ghall bini fil Belt Valletta anki sahsitra ftit metri l-boghod mill-applikanti fi triq San Pawl Valletta stess.

C----- Imma ghall grazzja tal-argument anki fir-riferenza ghall HAC l-kontro-parti inqabdet f'inezattezza. Hi tghid u tallega, ossija timplika, illi l-HAC irrifjuta u ma qabilx mal-hrug tal-permessi odjemi meta fil-fatt dan il-Kumitat ma oggezzionax ghal dawn il-pemessi izda tal ab revizjoni ta' xi affarijiet fil-pjanti daqstant ghall kredibilita' tal-kontroparti u dak li kitbet.

#### IV Dwar ir Rapport tal-Perit

Imma kemm tiswa il-kredibilita' tal-kontroparti u tas Second Statement taghha jidher minn dak li qal wara fir Rapport meta qalet illi fuq zewg kantunieri il-bini huwa indaqs mal-bini ta' hdejh. Apparti li dan mhuwix ezatt ghaliex hemm fejn hu izjed gholi, il-kontroparti konvenjentement insiet dawn il-fatti:-

- 1- Insiet ir-rapport tal-Perit Johann Farrugia li jaghmilha cara li hemm differenza ta' prattikament tlitt sulari mal-fond adjacenti; u
- 2- Insiet taghmel riferenza ghar-ritratti annessi mal-rapport tal-istess Perit Farrugia li juru b'mod viziv dan kollu. Imkien ma l-kontroparti ma iproduciat xi materjal viziv

ritratt jew simili li bi xi mod jichad dan kollu. Ghaliex is sewwa maghruf ma jista jichdu hadd.

3- Dan juri illi mhux talli l-fond in kwistjoni hu indaq il-fondi ta' hdejh fuqa iz-zewg kantunieri imma hu sahsitra baxx prattikament tlitt sulari qasma ma' qasma mad-dar immedjatament adjacenti. Ben differenti mill kaz Azzopardi PA 5796/06 fejn permess inghata ghaliex fuq nahha wahda biss fuq wara kien hemm filata izjed gholi imma kien hemm 1.5 sulari inqas fuq nahha ohra u fil kaz Refalo fejn inghataw zewg sulari li flimkien mal-bini ezistenti hdbu sitt sulari

Inoltri qed tingieb l-iskuza tal -patio - u biex tkompli 'tpingi' b'mod kulurit dan kollu qed ssir il kwotazzjoni relattiva.

Tajjeb illi wiehedjippreciza dwar din r-referenza ghall 'patio' u cioe':-

a----L-ewwelnett il 'patio' mhuwiex xi struttura monumentali jew ta' storja; u mhu marbut ma' l-ebda grajja storika jew sinjifikanti; ghalhekk hu struttura prattikament minghajr l-ebda importanza; u

b---- Tajjeb illi wiehed jfakkar illi dak li ghandu jkun protett l-iktar fil-Belt Valletta hu strutturi monumentali u in rigward ta' dawn hargu bizibilju ta' permessi f'landmarks marbutin ma valur monumentali, storiku jew ta' posizzjoni kif gia imsemmija u ohrain.

c----Dan apparti l-fatt illi jekk u talvolta il 'patio' hu tant ghall qalb u ta' importanza ghall- kontroparti, allura ma messix harget il-permessi tal-bini ghall binja qasma ma' qasma mal-istess patio (Permessi Zahra).

d----Apparti dan kollu mhuwiex minnu illi l-istess patio, hu l-uniku wiehed fil-prezent fil Belt u apparti dan kollu m'ghandu l-ebda valur partikolari bhal kazijiet l-ohra imsemmijin fuq fejn il-kontroparti harget il-permessi lill terzi u hekk tkompli tiddiskrimina b'mod sfaccat mal-applikanti.

Bhallikieku illi l-Belt Valletta tikkonsisti biss tl-istoricita' taghha mid-dar tal-applikanti! Dan mhu xejn hlief attentat tal-kontroparti biex tipprova tghatti d-diskriminazzjoni li trid u li qed twettaq mal-proprjeta tal-applikanti.

#### VII Dwar Dwar l-Obbligu Mandatorju

Imma dawn il-kunsiderazzjonijiet huma lkoll suggetti ghall fatt prevalent illi b'decizjoni tal -Qorti tal-Appell mehuda fit-30 ta' Marzu 2006. Dan il-Bord tal Appell dwar l-Ippjanar huwa tenut illi johrog il-permess relattiv u dan fid-dawl tal-hafna permessi fil Belt mahrugin lill terzi biex b 'hekk jinghata permess lill applikanti skond il-principju ta 'cerimus paribus '.

Dan l-obbligu mandatorju jaghmilha cara u obligatorju fuq dan il Bord biex johrog il permessi relattivi.

L-obbligu mandatorju johrog ukoll u fuq kollox mis-sentenza moghtija mill Qorti tal -Appell fil-kaz Trident Properties Limited versus Awtorita' ta' l-Ippjanar fejn l-istess Qorti ghamlitha cara illi meta ikunu nhar u permessi simili ghas-sit in applikazzjoni l-permessighandhom johorgu minkejja kull policy, Local Plan jew dokument iehor simili in rigward. Dan kollu jaghmel mandatorju il-kors li ghandu jiehu dan il-Bord tal Appell dwar l-Ippjanar - jigifieri dak illi dan l-istess Bord - kif inhu d-dover tieghu u kif wara kollox tirrikjedi u tesigi il-gustizzja - johrog il-permessi relattivi.

VIII Il-kaz J.Formosa Gauci f'isem Trident Development Limited vs L-Awtorit.tda' Malta dwar l-Ambjent u l-Ippjanar, deciza 26 ta' April2009

L-appellanti jaghmlu referenza ghal dan il-kaz fundamentali ghall-kaz formanti oggett ta' dan l-appell.

1. Fil-qosor il-fatti dwar il-kawza 'de quo' kienu illi kienet inghatat decizjoni fl-ismijiet fuq imsemmija mill-Bord tal-Appelli dwar l-Ippjanar, liema decizjoni akkordat permess ta' zvilupp lill-applikant/appellant (i) minkeiia d-dettami diversi tal-policies u Pian ta' Struttura, Local Plans u simili u (ii) peress illi kien hemm 'commitment'

2. Sar appell minn din id-decizjoni mill-Awtorita' lill Qorti tal-Appelliema appell gie deciz fis 26 ta' Marzu 2009.

3. Illi fis-sentenza taghha if-Qorti tal-Appell cahdet l-appell tal-Awtorita' appellanti u fl istess sentenza 'inter alia' il-Qorti ikkwotat il-kaz Consiglio d' Amato versus il Kummissjoni ghall Kontroll tal-Izvilupp u qalet:

"..... Din il-Qorti jidhrilha li kemm l-Awtorita tal-Ippjanar kif ukoll il-Bord tal-Appell dwar l-Ippjanar, it-tnejn ghandhom is-setgħa, minghair ma ibiddu t-Temporarv Provisions Schemes li jevalwaw kull kaz fuq il-mertu u fuq il-fatti sped proprji tieghu. Inltre, fejn ikun jirrizulta car li hemm cirkostanzi specjali ta' commitment, kemm l-Awtorita' kif ukoll il-Bord ghandhom is-setgħa guridizzjonali li johorgu permess ta' zvilupp li jkun jiddapartixxi, per ezempju mill-maximum height limitation impost fit-temporary provision schemes ... '

In oltre il-Qorti ta' l-Appell fis-sentenza tat-Trident, ghamlitha cara illi jesistu kazijiet fejn ic -cirkostanzi partikolari taghhom jesigu, meta hekk jokkorri, li l-Bord jiddipartixxi mid -dettami imposti fl-iskemi, Local Plans u Policies ufficjali, partikolarment fil-kaz ta' commitments (li fdan il-kaz odjern il-commitment gia' gie stabbilit u res giudicata) u ghalhekk il-permessi relattivi ghandhomjinhargu minn dan il-Bord.

4. Illi minn dan kollu jirrizulta car illi (A) dan il-Bord tal-Appelli dwar l-Ippjanar ma jistax jinjora l-'commitment', u dan anki (B) meta il-policies il-Pjani Lokali u l-Pjan ta' Struttura huma f'sens kuntrarju, u minkejja dak lijinghad fl-istess; u li ghalhekk (C) meta jkun hem commitment (kif gia' dikjarat mill-Qorti ta' l-Appell) dan il-Bord huwa obbligat illi johrog il-permess tal-izvilupp merament fuq dik il-bazi u minkejja kull kunsiderazzjoni kuntrarja ohra.

Illi l-Awtorita' rrispondiet billi baqghet ferma fl-oggezzjoni u spjegat dwar l-importanza tal-kuntest fejn jinsab is-sit u l-importanza tal-preservazzjoni tal-iskyline tal-Belt Valletta. L-Awtorita' qed tinsisti li kull kaz ghandu jigi ezaminat fil-kuntest u l-fattispeci tieghu. Dan gie spjegat fis-sottomissjoni prezentata fis-seduta tad-29 ta' Lulju 2009 u li taqra hekk kif gej:

"The Authority had forwarded its comments to the submissions received on 11th March 2009 and had commented on all the cited cases as necessary as per standard procedure in such circumstances. The Authority sustains that these comments were faithful to the information as gathered from its data base system and this report was prepared only as a reaction to appellant's submission wherein it was claimed that similar permits were actually issued.

It is to be stated that Valletta is quite a unique and exceptional city where buildings have a long history of tradition, culture and contribution to their particular

surroundings in which these are located. This particular area is so unique that contrary to many other places in the Island, there are no fixed (and detailed) land use maps which show the height and uses which every part of the street could be developed. In this sense, it is important to underline that even though certain permits have been issued to intensify existing buildings (as cited by appellant and confirmed by the Authority in its response statements) it is very important that one understands that what was granted in a certain area in Valletta does not create an automatic precedent to anywhere else in Valletta and which entails all other owners to be granted the same height / use as others which are located in other parts of Valletta.

Existing building heights do vary from area to area and these are also effected by nearby iconic buildings such as churches or scheduled buildings which prohibit taller buildings in their vicinity which could lessen their architectural and contextual importance in a particular streetscape. In this particular case, the proposed alterations on the existing 3rd floor and the addition of a new floor above are not considered acceptable in this particular location. It is futile for one to argue that the total height of the building (in metres) would be similar to nearby buildings since the acceptable topography of such an important city is not to create a 'square box' where buildings would reach the tallest building in a particular street, but rather, the total height of buildings is to follow the natural topography of Valletta where buildings located on a higher level would 'overlook' over other buildings located on lower ground.

In this particular case, from the site inspection carried out on 3<sup>rd</sup> September 2008, it was noted that nearby buildings were in fact located on higher ground than the case under appeal. Hence, the total height of buildings should also respect the difference in the natural ground level. Additionally, being such an important and historical city, the same importance is to be given to the typical difference in the height of buildings which contribute to Valletta's unique character. Existing rare façade features are also important to be safeguarded from development which while providing additional floorspace, would also eliminate particular features which depict the real character of Valletta.

The same applies to non-residential uses. While residential uses are the most common and acceptable form of use in Valletta, when one considers commercial uses such as shops (especially being of a certain magnitude), one must consider their effect on the neighbourhood and its collateral effect on nearby users. In this particular case, the case under appeal is proposing a change of use of the upper floor (3rd floor) as well as the construction of a new floor which is also to be used for retail. The resultant development would be two complete floors of retail which, according to the submitted plans would share the same stairs and lift as the floors below (from the site inspection it was found to be residential). The issue of use is also objectionable since the addition of two retail floors in this part of Valletta is not considered to be ideal when considering the actual neighbourhood of this particular area which is predominantly that for residential purposes. The relevant Structure Plan policies strive to safeguard residential neighbourhoods from commercial activities which would not contribute to the neighbours themselves but rather exploit the economic potential of the town / city in which these are located and attract clientele from outside the city, thus creating unsympathetic cumulative effects to their particular nationhood.

As regards to the additional cited cases, the Authority states that:

PA 2902/95: Refurbishing of existing Haro retail outlet including demolition of part of building.

Directorate's recommendation: Gtd

Decision date: 19.02.96

PA 3814/08: Proposed extension of basement levels -1 and -2 into the existing loggia in Strait Street and internal alterations to basement levels -3, -2 and -1, ground, first, second and third floors. - Courts of Justice Building Directorate's recommendation: Gtd

Decision date: 21.10.08 Lm 9000 paid for CPPS.

PA 1007/06: Alterations and extension at roof level of 74 Republic Street and 53 St. Dominic Street.

Case upheld at reconsideration stage: DCC's comments: Approved 6-0 since roof structures are now being constructed around the existing structures and along the area where several other adjoining party walls exist. Proposal therefore conforms to UCO policies (DCC also noted the no objection from HAC in min. 90).

Decision date: 25.03.09

PA 4840/00: Structural alterations to convert two class 4 shops into one Jeweller's shop; change of use from upper floors storage area into Artisans Centre; construction of fourth floor level; internal and external alterations; fixing of advert sign Directorate's recommendation: Gtd

Decision date: 30.05.01 Lm 1800 paid for CPPS and Lm 3000 paid as Bank Guarantee to ensure that the existing ornate staircase is conserved in its totality.

PA 3994/08: Change of use from stores to retail facilities, including internal alterations, restoration of facade and fixing of sign.

Directorate's recommendation: Gtd

Decision date: 28.01.09

PA 3512/08: Alterations at first floor, addition of shops at second floor, and administrative office space at third floor. - Renewal of PA 5706/00 Whilst the Directorate had recommended a refusal due to nearby scheduled building, the DCC decided that: Approved 4-0 since DCC considered that plans as approved on the original permit do not compromise the Grade 1 scheduling of the building, since works are to be carried out in the new part of the building. (DCC noted contents of min. 32).

Decision date: 10.03.09

PA 1967/06: Outline Development of offices and retail units.

Alterations to existing premises and change of use to offices.

The Directorate noted: Outline development permit application seeking permission for the proposed change of use from a residence into office (an area of 190m<sup>2</sup>). Works also include internal alterations to the existing building and the addition of a room at roof level.

While this was refused at first decision stage, at reconsideration stage it was noted that the Cultural Heritage Advisory Committee, the Integrated Heritage Management Unit and the Valletta Rehabilitation Committee all stated that there are no objection to the proposed development and since the main issue was the creation of further offices in Valletta, the Board eventually decided that a permit could be issued.

Decision date: 16.10.07

PA 7051/07: Addition of floors in place of existing steel roof, alterations to stairs and toilets, relocation of sub-station within building Case is still pending at case officer and no report has yet been prepared.

As regards to appellant's comment that the Authority's second report did not cite faithfully the HAC's objections, the Authority is producing the exact comments by the HAC of meeting of 23rd August 2000:

Tibdil u zidiet. Il-kumitat rega' ikkunsidra l-applikazzjoni u wara li ra l-ittra u l-pjanti godda sottomessi mil-perit (red 15/15A) iddecida li billi l-arkati fuq it-triq tal-gemb (Triq San Gwann) mhux qed jintwerew li se jibqghu miftuhin, il-kumitat ma jistax jilqa't-talba.

As regards to appellant's claim that: Dan l-obbligu mandatorju jaghmilha cara u obligatorju fuq dan il Bord biex johrog il-permessi relativi, the Authority disagrees that the Board is somehow obliged to decide either way at this point since the Board is actually constituted by law to analyse / evaluate and decide as an independent body according to the evidence and arguments brought forward on a case by case bases and the Board will eventually decide basing its decision on ALL the issues related to a case and is in no way 'compelled' to decide in favour of either party as stated by appellant.

Furthermore, as regards the Planning Appeals Board's eventual decision, the Authority also makes reference to a recent decision by the PAB re Proposed extension at second floor to match predominant building height, at Palazzo Marina, St. Christopher Street, Valletta – PAB 4/07. Sentence delivered on 6th March 2009.

In this case, MEPA had refused the proposed extension for two main reasons, that the additional floor would negatively impact on the existing building and its surrounding urban context, and that the intensification of commercial use on this site goes counter to the zoning of the area as a residential area. In its decision, the Planning Appeals Board emphasised the need for careful consideration in such development in Valletta and the decision included:

“Dan il-Bord kien ferm aktar imhasseb fuq l-impatt fiziku u vizwali li tali estenzjoni proposta ikollha fuq il-bini innifsu u il-vista tat-triq San Kristofnu. Huwa fatt li l-proporzjonijiet u id-disinn tal-palazz kienu a bazi tal-gholi ezistenti. Ghalkemm fil-binja biswit kienet saret estenzjoni ta' sular iehor xi mitt sena ilu dan il-fatt m'ghandux jiggustifika li ghalhekk wiehed jista' jghola b'sular iehor li certament jkollu impatt vizwali negattiv fuq il-binja ezistenti. Jekk jinghata permess jinholoq precedent fejn kull bini fil-belt jista' jaspira li jghola a bazi tal-bini biswit li jkun aktar gholi. Il-proposta tal-estenzjoni kif giet sottomessa lill-Awtorita' certament li tibdel totalment il-karatteristici vizwali ta' dan il-palazz storiku u dan b'mod negattiv.



Il-proporzjonijiet tal-faccata jinbidlu ghal kollox, il-gwarnica originali tigi spustjata b'aktar minn ghoxrin filata u dan wkoll b'dannu ghal vista tat-triq minn San Kristofnu u impatt fuq l-iskyline tal-Belt.

Tenut kont li il-Belt bhalha 'World Heritage City' ghandha jkollha zvilupp sostenibbli li jrispetta l-arkitettura storika u kuntest urban tali proposta ta' estenzjoni ta' sular iehor tmur kontra il-principji ta' konservazzjoni. Anke il-'Heritage Advisory Committe' (HAC) kien oggezzjona bil-qawwi kontra tali proposta. Dan il-Bord ghandu l-obbligu u id-dmir li jassigura li tali proposta ma jkollha l-ebda effett negattiv kemm mil-lat ta' Heritage' u li il-policies kif stabiliti fil-pjan lokali jigu mharsa u rispettati.

Ghal dawn il-motivi, dan il-Bord qieghed jikkonferma ir-rifjut mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp u jirrifjuta dan l-appell.”

This clearly shows that although permits could have been issued for additions at roof level (as cited by appellant) in Valletta, the main focus in each decision is the projected resultant scenario which each new development would create on its particular surroundings in which it is located. Contrary to appellant's arguments that since other permits were issued in the past in Valletta, then, this appeal should automatically follow suite, in fact, there is no blanket consent in Valletta that justifies additional floors so that every building could be granted additional floors so as to be in line with the highest existing building in Valletta. On the contrary, each and every request for development in Valletta has to be analysed on its particular circumstances and subject to the recommendations of expert bodies such as the HAC, the VRC (HAC objected in meeting held on 23<sup>rd</sup> August 2000, whilst the VRC Technical Committee, in letter dated 4th July 2000 stated that “The Committee highly objects to this application”) the Directorate as well as the Development Control Commission itself.

In this particular case, all the above independent committees have to date objected / refused such an intensification of this particular site and the Authority is still considering the proposed new retail complex on two floors to be objectionable. The main reasons being; the change in the existing character of the façade, such a retail over existing residence, the resultant change in the skyline, and the resultant negative impacts of the proposed retail complex in this particular area in Valletta. The site under appeal is considered to be located in a predominantly residential part of Valletta which would not have a positive contribution from the new proposed retail complex.

This is surely not in line with good planning practice which should be adopted in conserving this World Heritage City.

In this regard, the Authority reiterates that in line with its previous reports, the requested development goes against the present planning polices relevant to this area and states that the DCC's decision to dismiss this request for development was justified and hence respectfully requests the Planning Appeals Board to dismiss this request for appeal.

L-appellant qed jinsisti f'diversi sottomissjonijiet ulterjuri illi l-bini ghandu jkun estiz sal-faccata bi dritt (emfazi tal-appellant) bhal 'Theuma House' (li jigi l-bini adjacenti fi

Triq San Pawl) u jkun l-istess gholi tal-imsemmija 'Theuma House' bhala l-iktar bini gholi li jmiss mal-fond mertu ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi dan it-Tribunal wara li ezamina fid-dettal id-diversi sottomissjoniet estensivi prezentata mill-partijiet fil-kors ta' dan l-appell, jista jisset zewg konsiderazzjonijiet principali, li huma s-segwenti;

1. Illi fil-Belt Valletta hemm diversi xenarji ta' bini u zoni differenti u distinti, b'karatteristici artikotonici, storici, u kulturali unici u differenti. It-toroq fil-Belt Valletta huma mizghuda b'binjiet unici, b'grammatika ta' arkittura u karatteristici differenti biswit xulxin, u dan jinkludu l-gholi u numru ta' sulari li mhux necessarjament huma omogeniji bejn binja u ohra jew bejn blokka ta' bini jew ohra. Certament dan tal-ahhar jiddeskrivi sewwa l-karatteristici ta' din il-parti ta' Triq San Pawl, kif ukoll dik ta' Triq San Gwann fejn jinsab is-sit inezami.

Din il-mixxela differenti ta' bini u karatteristici differenti fl-arkitettura, komposta minn elementi ta' barokk, klassiku, u forom ohra t'arkitettura, fejn sahsitra f'certu kazijiet jistghu jinstabu f'armonja flimkien f'binja wahda (bhal fil-kaz il-bini adjacenti is-sit inezami, bl-isem ta' 'Theuma House') u li dan jirrfletti l-izvilupp urban tal-Belt Valletta mal-mixja taz-zmien mill-ahhar tas-seklu sittax (16) ghal zmienijiet aktar ricenti. Dan wara kollox jirrifletti fl-importanza tal-Belt Valletta bl-istatus ta' World Heritage Site.

2. Minn naha l-ohra, huwa evidenti illi zieda ta' sulari gew permessi mill-Awtorita' kif gie sottolinjat b'diversi referenzi ta' permessi prezentati mill-appellant fil-kors ta' dan l-appell, fejn ghaldaqstant iz-zieda ta' sulari addizzjonali fil-Belt Valletta mhux ghal kollox eskluż.

Illi dan it-Tribunal kemm-il darba gie rijinfaccat b'aggrvji dwar commitment u ezamina fid-dettal permessi ta' zvilupp u decizjonijiet li jkun relevanti ghal kaz mertu tal-appell rispettiv. Fl-applikazzjoni ta' permessi simili bhala konsiderazzjoni ta' commitment, dan it-Tribunal huwa ukoll gwidad b'decizjoni ricenti tal-Qorti tal-Appell, fl-ismijiet Raymond Cassar kontra l-Awtorita' tal-10 ta' Dicembru 2015, fejn il-Qorti ghamlet dawn l-osservazzjonijiet:

"Din il-Qorti diversi drabi f'diversi sentenzi gia esprimiet l-opinjoni taghha illi t-Tribunal ghandu jikkonsidra l-element ta' ugwaljanza bejn applikant u iehor fuq applikazzjonijiet simili meta u safejn il-policies jippermettu li jsir dan. Ebda raguni ta' similitudni ma tista' treggi jekk l-applikazzjoni tmur kontra l-kliem espress ta' ligi jew policy. Konsiderazzjonijiet ohra li jinsorgu minn tali applikazzjoni ta' dan il-kuncett jistghu fil-kazijiet kongrui jaghtu lok ghal proceduri ta' natura legali ohra mill-applikant fil-konfront ta' min seta' gie perceptit li naqas fil-konfront tieghu pero fl-ambitu ta' appell ta' ippanar iridu jigu applikati di rigore l-ligijiet, pjanijiet u policies konnessi mal-ippjanar.

F'dan il-kaz it-Tribunal ikkonsidra l-permessi kwotati mill-appellant li l-istess appellant issottometta li kienu simili ghall-applikazzjoni tieghu. It-Tribunal qies illi kellu jiddeciedi l-kwistjoni fuq il-parametri u konsiderazzjonijiet ta' ppanar u l-karatteristici taz-zona fejn hu propost l-izvilupp li jfisser li kull kaz irid jigi deciz fuq il-mertu tieghu. Ghalkemm qies li t-Tribunal ma kellux jiddiskrimina u jkun konsistenti fl-applikazzjoni

u interpretazzjoni tal-policies, fejn l-izvilupp f'ODZ hu varju u spars, mhux semplicement il-kaz li applikazzjoni titqabbel ma' ohra. It-Tribunal ikkonsidra il-permessi u wasal ghal konkluzzjoni illi l-kaz prezenti kellu konsiderazzjonijiet differenti mill-permessi kwotati u b'mod partikolari meta titqies il-vicinanza tas-sit ghal zona residenzjali u l-limitazzjoni tal-izvilupp kif intiz fil-policy rilevanti applikabbli ghal kaz."

Illi ghalhekk dan it-Tribunal, huwa tal-fehma li fil-kaz ta' zvilupp gewwa l-Belt Valletta, b'mod partikolari fejn hemm propost zieda ta' sulari, jirrikjedi konsiderazzjonijiet ta' ppjanar, kif ukoll konsiderazzjonijiet dwar il-kuntest u l-karaterristici tat-triq u z-zona fejn jinsab l-izvilupp. Dan ghalhekk iwassal ghal fatt li kull kaz ghandu jigi ezaminat fuq il-merti u l-fattispeci tieghu. Huwa tajjeb kif issottometa l-appellant li l-Awtorita ghandha timxi bi principji ta' ekwita u konsistenza fl-applikazzjoni u fl-interpretazzjoni tal-policies, imma jiqba l-fatt li kif gja gie deskritt aktar 'il fuq f'din id-decizjoni, il-Belt Valletta toffri diversi xenarji b'karaterristici unici u differenti minn binja ghall-ohra, minn triq ghall-ohra, u minn zona ghall-ohra li mhux la kemm wiehed jista jqabbel kas ma iehor.

Ghalhekk l-argument ta' commitment m'ghandux ikun il-gustifikazzjoni ewlenija li twassal ghal hrug ta' permess ta' zvilupp b'mod awtomatiku, jew bi dritt, kif qed jinsisti l-appellant.

Illi dan it-Tribunal ezamina bir-reqqa d-diversi permessi citati mill-appellant fis-sottomissjoni tad-29 ta' Mejju 2009, kif ukoll f'dawk prezentati fis-sottomissjoni tat-8 ta' Lulju 2010, fejn huwa evidenti l-fatt li kull kaz gie kunsidrat skont il-fattispeci partikolari tieghu, b'mod partikolari fir-rigward tal-kuntest fl-immedjat ta' kull sit rispettivament.

Illi minn ezami tal-inkartament tal-files rispettivi, dan it-Tribunal seta' jikkonstata numru ta' permessi PA 4515/04, PA 6821/06 (outline, u permess full development PA 1582/08), PA 192/02, PA 1107/07, PA 4172/05, PA 5909/94, PA 1007/06, PA 4840/00, fejn iz-zieda ta' sulari gie gustifikat minhabba l-prezenza ta' appoggi mikxufa tal-bini adjacenti. Prima face jidher illi hemm sitwazzjoni simili ghal kaz odjern, peress illi s-sit inkwistjoni jinsab ukoll ma appogg mikxuf.

It-Tribunal seta' jinnota ukoll li f'certu kazijiet bhal permessi PA 4515/04, PA 192/02, PA 699/04, PA 3814/08 (dan tal-ahhar il-bini tal-Qorti fejn iz-zieda ta' sular gie approvat fil-permess PA 4276/01), u PA 3512/08 (bhala renewal tal-permess PA 5706/00), iz-zieda ta' sulari huma rtirati mill-faccata principali, u fil-kaz ta' Casa Rocca Piccola skon il-permess numru PA 1007/06, l-estensjoni giet ridotta u limitata ghal fejn kien gja hemm hitan gholjin mad-dawra tad-dar. Fil-kaz kwotat bin-numru PA 7051/07 relatat mal-kumpless kummercjali ma kienx hemm zieda ta' sulari hekk il-proposta approvata hija limitata ghal bdil intern u tibdil ta' "roof sheet with incorporated PV panels".

Mhux f'kull kaz intwera sensitivita ghal kuntest u l-iskyline tal-Belt Valletta, u dan it-Tribunal ma jistax jifhem kif zvilupp li gie gustifikat mill-Awtorita' a bazi ta' commitments u bini gholi adjacenti, meta minn naha l-ohra gie krejat appoggi mikxufa godda bhal fil-kaz ta' PA 192/02, PA 5796/06, PA 6821/06 u PA 4731/04 mil-lista ta' permessi citati.

Fil-kaz odjern, is-sit jinsab appogg ma hajt gholi ta' madwar 28 filata 'l fuq mill-livell tal-bejt, ghalkemm l-gholi ta' dan il-hajt minn kif jidher mit-triq huwa mitigat kemm minhabba l-faccata ghola tal-bini mertu ta' dan l-appell, kif ukoll il-wesa' tat-triq ta' San Pawl li ma tippermettix vizwal fit-tul, ghalkemm l-istess hajt huwa wiehed sostanzjali.

Minn naha l-ohra dan it-Tribunal mhux tal-fehema illi konsiderazzjoni ta' zieda ta' sulari fuq dan is-sit ghandha tiddependi biss fuq l-ezistenza ta' dan il-hajt t'appogg fuq naha wahda tas-sit indezamina. L-istess konsiderazzjonijiet ghandha tigi applikata ukoll ghas-sit odjern, meta l-istess bini inkwistoni gja jinsab b'madwar zewg sular 'il fuq mill-bini adjacenti tas-sit fi Triq San Gwann.

Illi f'dan il-kaz, dan it-Tribunal huwa ukoll imhasseb fuq l-impatt vizwali, b'mod partikolari l-istopping effect tal-bini li jinsab fi Triq San Gwann fit-tul kollu taghha li certament biz-zieda tal-estensjoni vertikali tal-bini kif propost ser jiddisturba. Ta' minn isemmi ukoll illi l-istess bini huwa espost ukoll ghal veduti tal-Port il-Kbir fejn ghaldaqstant iz-zieda ta' sulari addizzjonali ser ihalli effett mhux mixtieq mill-veduti tal-Belt Valletta hekk kif tidher minn naha tal-Port il-Kbir.

Illi b'mod simili, anke l-vizwal ta' Triq San Pawl hekk kif wiehed ihares lejn id-direzzjoni tal-Lbic, ser ikun hemm diskrepanza fl-gholi tal-bini, b'mod partikolari hekk kif dan jitqabbel mal-kantuniera opposta li ghandha karatteristici simili. Illi anke l-ftuh tal-arkati fil-livell tal-bejt li gew replikati fil-bini oppost, qed jaghtu dehra unika u partikolari ghal din il-parti ta' Triq San Pawl hekk kif din tinghaqad ma Triq San Gwann, u ghaldaqstant dan it-Tribunal ma jarax lok a bazi ta' konsiderazzjonijiet ta' ippjanar, u estetici li jiddisturba l-karatteristici tal-bini ezistenti, anke tenut kont tal-fatt illi dan jinsab f'kantuniera, li bhala konsegwenza huwa sensitiv ghal kunstest fejn jinsab u ben espost kemm minn Triq San Pawl, kif ukol minn Triq San Gwann.

F'dan il-kaz, dan it-Tribunal qed jikkonkludi illi l-gwadan li l-appellant qed jinsisti li ser ikun jirrizulta bit-tnehhija tal-appogg mikxuf ezistenti mhux tali meta mqabbel mal-impatt sostanzjali fuq il-karatteristici arkitettonici tal-bini ezistenti li ser jintilfu, kif ukoll ghall-impatt vizwali sostanzjali fuq il-karattru tat-toroq fejn jinsab is-sit de quo. F'dan ir-rigward, dan it-Tribunal qed jichad l-aggravji tal-appellant u jikkoferma r-ragunijiet ta' rifjut a bazi tal-Policies UCO 6 u UCO 10 li jimmilitaw favur il-konservazzjoni taz-zoni urbani ta' valur storiku u arkitettoniku bhal fil-kaz tal-Belt Valletta.

Osservazzjoni finali hija rigward il-Policy 16.5 tal-linja gwida dwar il-kontroll tal-izvilupp tas-sena 2007 li l-appellant qed jindika li tapplika ghal kaz odjern fis-sottomissjoni prezentata fit-12 ta' Marzu 2010 (part E). Illi din tipprovdi gharrilassiment tal-maximum building height sabiex tkopri hitan t'appogg mikxufa. Illi dan it-Tribunla jinnota illi tali policy ma tapplikax ghal kaz odjern meta l-linja gwida tas-sena 2007, inkluz il-part 16 tal-istess dokument, japplika biss fir-rigward tal-applikazzjoni validati wara (enfazi tat-Tribunal) id-data tas-16 t'April 2007, filwaqt li l-parti 16 ta' dan il-linja gwida tapplika biss ghal dawk l-applikazzjonijiet pendent li kienu ghadhom ma gewx decizi mill-Awtorita' fid-data tas-16 t'April 2007. Fit-tieni lok, il-policy msemmija tirreferi ghal bini li qed jeccedi l-gholi massimu tat-triq fejn jinsab, li fil-kaz tal-Belt Valletta dan certament ma japplikax ghar-raguni li ma hemm ebda

maximum building height ghal bini fil-Belt Valletta skont il-Pjan Lokali tal-Grand Harbour. Ghal dawn ir-ragunijiet, dan l-aggravju qed jigi michud ukoll.

Ghal dawn il-mottivi dan it-Tribunal wara li kkunsidra l-fattispeci kollha tal-kaz, qed jichad l-appel u jikkonferma d-decizjoni ta' rifjut.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal fetah l-appell mill-gdid qisu ma kien hemm ebda sentenza tal-Qorti tal-Appell tal-2006. Il-provi li tressqu kienu biex jissostanzjaw it-tezi tal-commitment mressqa mill-appellanti rigward zieda ta' sulari. It-Tribunal flok strada l-appell fuq dak il-binarju biss u ddiferixxa ghas-sentenza, l-appell iggebbed ghal diversi snin;
2. It-Tribunal ma tax importanza ghal commitment tant li mar kontra l-gurisprudenza stabbilita mit-Tribunal precedenti, u li b'tali nuqqas jista' jwassal ghal diskriminazzjoni;
3. It-Tribunal zbalja meta ma applikax il-height relaxation policy billi fil-fatt din il-policy kienet tapplika ghall-applikazzjonijiet in vigore qabel l-2006 kif inhi l-applikazzjoni prezenti;
4. Il-policies UCO 10 fil-pjan ta' struttura ikkwotati mit-Tribunal huma illum estinti u sorvolati bl-SPED, u ghalhekk id-decizjoni tat-Tribunal hi bla bazi fil-ligi;
5. Gew applikati kriterji mal-applikant li kieku gew applikati ma' terzi, certi permessi ma kienux jinhargu. It-Tribunal ikkunsidra policies u argumenti negattivi bhal gholi li jmur kontra l-iskyline u l-veduti li ma ssemwewx f'kazijiet ohra u dan hu diskriminatorju ghax Belt Valletta hi kollha UCA u World Heritage Site u kollox ghandu jigi trattat bl-istess mod. Kwindi d-decizjoni ghandha tigi revokata ghal metodu diskriminatorju u selettiv tal-mottivi ghad-decizjoni;
6. It-Tribunal ma segwiex id-direttiva tal-Qorti tal-Appell fis-sentenza taghha tat-30 ta' Marzu 2006 li implicitament kienet tfisser li l-permess kellu jinhareg fuq il-bazi ta' commitment ezistenti, mhux jigi michud. Id-decizjoni tat-Tribunal ukoll tilledi d-dritt tal-applikant ghal proprjeta.

### **L-ewwel aggravju**

Dan l-aggravju ma hu xejn hlief lanjanza fuq it-tul li ha l-appell quddiem it-Tribunal. Ma fih ebda punt ta' ligi deciz mit-Tribunal li minnu skatta dan l-aggravju. L-appellant

donnu qed isostni illi s-sentenza tal-Qorti tal-Appell tat-30 ta' Marzu 2006 stabbiliet xi terminu jew procedura kif kellu jinstema l-appell mill-gdid quddiem it-Tribunal. Il-Qorti laqgħet l-appell tal-applikant ghax l-aggravju tal-commitment ma giex kunsidrat u deciz mill-Bord tal-Appelli llum it-Tribunal u b'hekk annullat id-decizjoni tal-Bord tal-Appell biex il-Bord, illum it-Tribunal jiddisponi mill-kaz skond il-liqi anke fid-dawl ta' dak deciz u fil-kuntest tas-sottomissjonijiet kollha li saru mill-partijiet. Il-Qorti tal-Appell kwindi reggħet bagħtet l-atti lura biex jerga' jigi deciz mill-gdid l-appell bla ebda limitazzjoni la ta' possibilta li jingiebu provi u anqas b'xi parametri ta' zmien li fih kellu jdm jinstema l-appell. Madankollu jrid jigi rilevat illi l-inkartament ma jurix xi dewmien ingustifikat. Fl-ewwel lok saru diversi differimenti fuq talba tal-appellant. In oltre saru zewg accessi wiehed fuq talba tal-Awtorita u iehor ftit qabel id-decizjoni fuq talba tal-appellant. Saru diversi sottomissjonijiet bil-miktub mill-partijiet fuq il-vertenza. Għalhekk ma jistax jingħad li t-tul tal-appell kien ingustifikat.

Dan l-aggravju għalhekk ma fih ebda mertu legali.

### **It-tieni aggravju**

Dan l-aggravju ma fih xejn mis-sewwa. It-Tribunal ikkonsidra kwazi esklussivament il-kwistjoni tal-commitment b'mod generali fil-kaz tal-Belt Valletta u in partikolari meta kkunsidra l-kaz in kwistjoni komparat ukoll ma permessi ohra mahruġa mqajma mill-appellanti. It-Tribunal anzi rrefera għal kazijiet fejn wera n-nuqqas ta' qbil għal mod kif inhargu. Il-Qorti tagħmilha cara li fuq kwistjonijiet strettament ta' ippjanar ma tindahax fl-operat tat-Tribunal speċjalment meta dawn il-kwistjonijiet jitrattaw zona sensitiva u delikata bħal ma hi l-Belt kapitali. It-Tribunal ikkonsidra l-kwistjoni tal-'commitment' imqajma mill-appellant u wasal għal konkluzzjonijiet tiegħu kif f'dan il-kaz tali 'ilment' ma kienx daqstant validu li seta' jegħleb principji ohra ta' ippjanar kif minnu esplicitament dettaljati fid-decizjoni tiegħu. Ma jfissirx li t-Tribunal injora l-kwistjoni jew immitiga l-effetti ta' commitment izda applika din il-kunsiderazzjoni bħala wiehed mid-diversi elementi li kellhom jintiznu fl-ambitu tal-ippjanar biex jasal għad-decizjoni jekk l-izvilupp kienx permissibbli u dan dejjem subordinat għal principju li l-Awtorita u t-Tribunal huma marbutin li japplikaw il-ligijiet, pjanijiet u policies qabel kollox. It-Tribunal mhux marbut bil-principju tal-precedent għalkemm

hu xieraq li ma jinghatawx decizjonijiet konfliggenti. Pero l-Qorti tifhem ukoll li kull kaz ikollu l-fattispecie partikolari tieghu li jridu jittiehdu in konsiderazzjoni.

Ghalhekk dan l-aggravju ma fihx mertu.

### **It-tielet aggravju**

Dan l-aggravju wkoll ma fihx mertu ghal fatt wahdu li din il-policy cioe l-provvedimenti tas-sezzjoni 16 tal-Policy and Design Guidance tal-2007 jaghmluha cara illi l-‘height relaxation’ ser japplika ghal applikazzjonijiet li kienu ghadhom mhux determinati mill-Awtorita sas-16 ta’ April 2007 meta l-applikazzjoni in kwistjoni ilha deciza mill-Awtorita mit-2 ta’ Mejju 2001.

### **Ir-raba’ aggravju**

Dan l-aggravju wkoll ma fihx mertu ghaliex dawn kienu r-ragunijiet ta’ rifjut originali moghtija mill-Awtorita fuq l-applikazzjoni u l-appelli li saru jirreferu ghal din id-decizjoni appellata. Ma saret ebda lanjanza jew aggravju quddiem it-Tribunal li kellhom jigu applikati policies ohra u ghalhekk il-lanjanza tikkostitwixxi aggravju gdid li ma jirrizultax bhala kwistjoni li dwarha saret lanjanza f’xi stadju quddiem it-Tribunal.

### **Il-hames aggravju**

L-appellant jilmenta li r-ragunament tat-Tribunal kien diskriminatorju fil-konfront tieghu ghax kieku l-istess ragunament gie applikat f’applikazzjonijiet ohra, zviluppi ohra ma kienux jigu permessi. L-appellant fil-fehma tal-Qorti naqas li jissustanzja dan l-argument ipotetiku u spekulattiv. Pero fi kwalunkwe kaz, it-Tribunal ikkonsidra materja valida ta’ ippjanar fil-konfront tal-applikazzjoni quddiemu. It-Tribunal mhux marbut ma precedent ghalkemm hu dejjem tajjeb li l-Awtorita u t-Tribunal ikunu konsistenti fid-decizjonijiet taghhom. Madankollu f’dan il-kaz it-Tribunal ikkonsidra l-fattispecie ta’ dan il-kaz u wasal ghall-konkluzjoni li fuq fatturi ta’ ippjanar li gew spjegati b’mod car fid-decizjoni u anki wara li kkonsidra d-diversi permessi msemija mill-appellant, il-permess ma kellux jinhareg. It-Tribunal ukoll semma permessi li fil-

fehma teighu kienu inspjegabbli. Dan ma jfissirx li l-appellant gie diskriminat izda li t-Tribunal kellu fehma cara li ghal ragunijiet kjament esposti u li huma allaccjabbli ma oggezzonijiet tal-ippjanar, permess f'dan il-kaz ma setax jinhareg. Jekk l-appellant iqis li l-Awtorita naqset bl-atteggjament taghha fil-konfront teighu meta jitqiesu permessi ohra, ghandu l-possibilita li jipprova jfittex rimedju alternattiv izda zgur mhux dak li jinghata permess meta permess mhux misthoqq.

### **Is-sitt aggravju**

Dan l-aggravju jsegwi l-ewwel aggravju. It-Tribunal mexa fl-ewwel lok mad-direttiva tal-Qorti tal-Appell li jikkonsidra l-kwistjoni tal-commitment bhala aggravju u in oltre qies ukoll il-mertu kollu tal-appell billi l-ewwel decizjoni tal-Bord tal-Appell illum it-Tribunal, giet annullata mill-Qorti tal-Appell fis-sentenza tat-30 ta' Marzu 2006. L-istess appell rega' infetah fit-totalita tieghu. Mhux minnu illi s-sentenza tal-Qorti tal-Appell implicitament rabtet idejn it-Tribunal li l-permess kellu jinhareg. Is-sentenza la tghidha u lanqas timplikaha.

Ghalhekk l-aggravju qed jigi michud.

### **Decide**

Ghal dawn ir-ragunijiet il-Qorti qed tichad l-appell tan-Nutar Emanuel George Cefai u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tal-5 ta' Lulju 2016, bl-ispejjez kontra l-appellant.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur