



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum L-Erbgha, 26 ta' April, 2017

Numru 1

Appell Nru. 1/2017

Anthony Sammut

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Awtorita tas-6 ta' Jannar 2017 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-20 ta' Dicembru 2016 rigward PA 4797/15 'to sanction differences from approved development permission PA 829/08 and to include use of public service garage with existing garage';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi l-appellant qed jikkontendi illi l-Policy P24 fil-linja gwida dwar il-kontroll tal-izvilupp ma teskludix l-uzu ta' public service garage f'zoni ta' residential priority areas, ossia zoni ta' viljel.

Illi l-Awtorita' qed tinsisti illi l-Policy P 24 tapplika ghal zoni residenzjali tat-tipologija terraced, skont kif indikat fl-istess policy. Dan johrog mill-fatt illi l-policy qed tghamel referenza permezz ta' simbolu immarkat A3a.

Illi l-linja gwida tghamel referenza ghal-zoni specifici hekk kif gej:

"A1 – for development located within Urban Conservation Areas

A2 – for development located within Local Centres, or any corresponding designation within the Local Plans that may replace this typology.

A3 – for Residential areas, both within designated Residential Areas and Residential Priority Areas, with an inherent distinction as to whether such development is:

- Terraced (A3a), including seafront developments (any block having at least one frontage facing the sea),
- Fully or semi-detached villas/bungalows (A3b), or
- Located in sensitive environmental locations, notably edges and ridges (A3c).

A4a – for Mixed-Use Areas that are predominantly residential.

A4b – for Commercial areas, including development found within Business Hubs, Commercial Areas, Industrial Areas and Mixed-Use Areas that are predominantly commercial/industrial."

Illi l-applikazzjoni ta' dawn it-tipi ta' zoni huwa spjegat hekk kif gej:

"Each provision within DC 15 also includes reference to the specific Area Typologies that are applicable.

This is particularly relevant in the case of non-residential uses (for instance, a shop front), which will normally have specific design considerations applicable in non-residential enclaves or zones (such as commercial or industrial enclaves, Entertainment Priority Areas, Tourism Areas/Zones and Resort Zones). If such non-residential uses are however present in a UCA, Local Centre or Residential Area, the provisions that are applicable to these Areas will apply and take precedence over any possible conflicting consideration.

In general, if an area falls within more than one Area Typology, the provisions related to the more onerous Area Typology are to prevail. Specifically, if the area is also designated as A1 (Urban Conservation Area) these considerations will prevail over those related to other Area Typologies."

Illi l-Policy P24 tirrigwarjda l-izvilupp ta' 'garages for heavy goods vehicles and public service vehicles' fejn it-tip ta' zoni applikabbli huma 'A3a', 'A4a' u 'A4b', ossia, f'zoni residenzjali tip 'Terraced', 'Mixed Use Areas' u 'Commercial' rispettivament.

Illi din il-policy tghid hekk:

"No garage(s) for the garaging/parking of heavy goods vehicles and buses/coaches will be permissible in Urban Conservation Areas, Local Centres, Residential Areas including seafront locations), Residential Priority Areas, or Residential Areas located in environmentally sensitive locations, as they would have an adverse impact on the character and appearance of these areas.

In non-residential areas, the Authority may allow garage(s) for the garaging/parking of heavy goods vehicles and buses/coaches so as to provide for the off-street garaging of heavy goods and public service vehicles that would otherwise be unsightly to the streetscape and could furthermore be dangerous due to the space required for their manoeuvring. Garaging these larger vehicles can therefore increase the general amenity of these areas.

Specifically:

a) The proposed development would not have an adverse impact on the residential amenity of the occupiers of dwellings in the area or on the character of the area because of noise, disturbance and reduced air quality or traffic generation.

b) The road network serving the site is capable of safely and conveniently accommodating the volume of heavy vehicle movements generated by the development.

c) The type and size of heavy vehicle(s) will have to be specified and the turning circle(s) will need to be calculated specifically according to the typology of such heavy vehicle(s), to ensure that the vehicle can enter and exit the garage without the need to make traffic management changes.

In Residential Areas public service vehicles may be garaged within parking areas dedicated to residential parking only if:

- the residential parking will be left unencumbered and will be allowed priority to enter and exit the garage; and
- there will be a maximum capping of 5 parking spaces allocated for such vehicles.

The design of the garage(s) shall meet the following criteria:

i) the overall internal height of the garage(s) should not exceed 4.3 metres to the underside of the structural slab, measured from lower pavement level and no ramps down are allowed;

ii) the maximum height of the doorway will be 4 metres and the maximum width will be 4 metres; and

iii) the garage(s) will be used only for the parking/garaging of vehicles and will not be used for any commercial or industrial purposes.

Where garages for heavy good vehicles are being proposed, a scaled block plan will be required, showing the entire width of the street, including any on-street parking spaces. If acceptable, the permit will include a condition which will specify that no heavy goods vehicles bigger than the size indicated in the plans will be allowed in the garage. The clearance from the competent authority will be required to ensure that the width of the street in

front of the garage, including any parking spaces which are on the street, will allow the specified size of heavy vehicle to enter and exit the garage safely.”

Illi f'dan il-kaz, l-Awtorita' qed taghmel referenza ghal dawk iz-zoni applikabli ghal din il-policy skont is-simboli indikati fil-policy, filwaqt li l-appellant jinnota li fil-policy text hemm referenza ghal 'Residential Areas' ghall-uzu ta' public service, fejn minn naha l-ohra fejn l-istess il-policy riedet teskudi specifikament uzu bhal heavy goods vehicles miz-zoni ta' villel gie specifikat fil-policy text.

Dan it-Tribunal josserva dan li gej:

Illi d-DC 15 jaghmel uzu minn simboli sabiex jindika fejn policies specifici japplikaw f'zoni diversi. Dawn iz-zoni ghalkemm huwa bbazati fuq id-designazzjoni tal-Pjan Lokali, huma distinti minn dawk iz-zoni referuti fil-pjan lokali.

Minn naha l-ohra, fejn il-policy trid teskludi zvilupp minn zoni partikolari, dan huwa ndikat b'mod car fil-policy text. Dan huwa evidenti fid-dicetura tal-istess policy applikata fil-kaz odjern, P24, fejn fil-kaz ta' heavy goods vehicles gie specifikat illi “No garage(s) for the garaging/parking of heavy goods vehicles and buses/coaches will be permissible in Urban Conservation Areas, Local Centres, Residential Areas including seafront locations), Residential Priority Areas, or Residential Areas located in environmentally sensitive locations, as they would have an adverse impact on the character and appearance of these areas.”

Fil-kaz ta' public service vehicles ma giex specifikat l-ezkluzzjoni ta' xi zoni, imma tindika biss li vetturi ghal-public service jistghu jigu 'garaged within parking areas dedicated to residential parking' gewwa 'Residential Areas'.

Illi dan it-Tribunal huwa tal-fehma illi l-uzu ta' simboli fil-policy huwa biss mezz ta' gwida fejn tista tigi applikata l-policy imma m'ghandhomx jigu interpretati daqs li kieku dawn huma parti mit-test tal-policy. Fil-fatt l-ispjegazi tal-uzu ta' dawn is-simboli, f'pagna 52 tad-DC15, jindika illi dawn huma mezz ta' referenza ta' zoni li japplikaw fil-policy, imma mhux li l-policy hija applikabli f'tali zoni b'eskluzzjoni ta' zoni ohrajn. Il-limitazzjoni ta' policy f'zoni partikolari huwa fil-fatt spjegat fit-test tal-policy, u ghaldaqstant fejn jirrizulta li hemm dubju jew kunflitt fl-applikazzjoni ta' policy, huwa t-test u d-dicetura tal-policy li ghandu japplika.

Jidher illi hawnhekk il-policy fid-DC15 mhux qed tkun cara bizzejjed ghall-liema terminologija ta' 'Residential Areas' qed jigi applikat, ossia jekk hux it-tipologija ta' zoni li johrog mil-linja gwida jew iz-zona kif identifikat fil-Pjan Lokali. Dan peress illi filwaqt li l-Pjan Lokali jaghmel distinzjoni bejn 'Residential Area' u 'Residential Priority Area', iz-zona tipika ta' 'Residential Areas' kif applikat fid-DC15, jinkudi z-zewg tipi ta' zoni resdenzjali ndikati fil-Pjan Lokali.

Jidher illi l-policy qed tghamel uzu miz-zewg termini b'mod konkorrenti, filwaqt li fil-kaz tal-Policy P24 hemm nieqes ir-referenza ghat-tipologija applikat fil-linja gwida mad-designazzjoni fil-Pjan Lokali bhal ma huwa ndikat f'policies ohra, fosthom P37 fejn 'Residential Areas' fejn huwa ndikat b'mod car it-tipologija 'A3a' li jikkorrispondi mar-'Residential Areas' fil-Pjan Lokali.

Madankollu, jidher illi l-policies fid-DC15 qed jaghtu sostenn lit-tezi tal-appellant, billi d-dubju dwar jekk vetturi kummercjali humiex accettabli f'zoni ta' villel qed tigi sorvolata bil-policy P21 fl-istess linja gwida.

Il-Policy P21 hija din li gej:

“The Authority will ensure that garages and communal parking spaces intended to provide public or (particularly) private off street parking will only be used for the short-term garaging of private vehicles and not for the garaging of heavy goods vehicles, as defined in the Glossary of this document, other than those intended for servicing the development in specific instances. The parking of commercial vehicles that fall outside said definition will be acceptable.

The Authority will impose a condition to this effect on all development permissions which include provision for public or private off street vehicle parking”.

Dan it-Tribunal jinnota li l-parkegg ta' vetturi kummercjali ghajr ghal vettur kbar (heavy goods vehicles) huwa accettabbli f'kull zona residenzjali skont il-Policy P21, u ghaldaqstant ma jirrizultax li hemm kunflitt ghall-uzu ta' public service f'zoni ta' villel kif kunsidrat fil-Policy P24.

F'dan il-kaz, l-parkegg ta' vettura ghall-uzu ta' public service huwa kunsidrat idoneju f'villa development, salv li jigu osservati l-kondizzjonijiet elenkati fil-policy P24, b'mod partikolarli l-prijorita' ta' parkegg ghall-vetturi privati. F'dan il-kaz l-izvilupp propost huwa ukoll konformi ma tali kondizzjonijiet kif muri fil-pjanta a fol 14 fl-inkartament tal-applikazzjoni odjerna.

Iktar importanti, kif gja osservat f'decizjoni precedenti ghal kazijiet simili, l-uzu tal-garaxx ser jibqa' dak ta' parkegg ghall-vettur zghar, filwaqt li l-parkegg ta' vettur kummercjali mhux ser ibiddel in-natura tal-uzu tal-garaxx, dment illi mhux ser jirrizulta ebda impatt addizzjonali minn parkegg ta' vetturi privati ghal dak kummercjali.

Peress li sar xoghol minghajr permess, dan it-Tribunal qed jimponi multa ta' Eur 600.

Ghal dawn il-mottivi, dan it-Tribunal qed jilqa' l-appell, ihassar id-decizjoni ta' rifjut u jordna lill-appellant sabiex ihallas il-multa ta' Eur 600 fi zmien tletin (30) gurnata mid-data ta' din id-decizjoni, u jordna lis-Segretarju tal-Awtorita' tal-lppjanar sabiex fi zmien tletin (30) mill-hlas ta' tali multa, johrog il-permess tal-izvilupp skont il-pjanti u kondizzjonijiet elenkati fid-dokument a fol 49 tal-PA 4797/15.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwent:

1. It-Tribunal interpeta u applika hazin l-provvediment tad-Development Control Design Policy, Guidance and Standards 2015 (DC15) u dan peress illi t-Tribunal kkonkluda li (i) l-area typologies huma biss mezz ta' gwida fejn tista' tigi applikata l-policy imma ma ghandhomx jigu applikati qishom parti mill-istess test jew policy, u (ii) is-simboli uzati huma biss mezz ta' referenza ta' zoni li japplikaw fil-policy imma mhix li l-policy hija applikabbli f'tali zoni b'eskluzjoni ta' zoni ohra.

Il-kwistjoni li tqajmet hi wahda tal-applikazzjoni korretta mill-lat legali ta' policy cioe f'dan il-kaz tad-DC15. Il-Qorti f'diversi okkazzjonijiet gia tenniet li ma tindahalx fl-interpretazzjoni ta' policy moghtija mit-Tribunal meta tali interpretazzjoni hi wahda ragonevoli meta tinqara l-policy u l-applikabilita taghha fit-termini u skopjiet maghmula. Hu biss meta l-interpretazzjoni hi tant assurda u irragonevoli li tipperikola l-applikazzjoni tal-policy fil-kuntest tal-iskop generiku u specifiku taghha li din il-Qorti bi dmir ghandha tintervjeni. Il-Qorti tqis ukoll li jqum lok ghal interpretazzjoni meta l-policy infisha thalli dubju, lacuna jew ma tipprospettax il-kaz specifiku jew altrimenti tali policy trid tigi applikata flimkien ma ' jew fl-isfond ta' policies jew pjanijiet ohra. Fejn il-policy taghti pero hjiel car tal-qies u skop tal-applikazzjoni taghha ma ghandu jkun hemm ebda tigbid ghall-applikazzjoni taghha jew interpretazzjoni li tmur lil hinn minn dak prospettat bil-policy.

Maghdud dan, din il-Qorti tqis li l-ilment tal-Awtorita hu gustifikat. L-artikolu 1.3.1. tad-DC15 fil-parti konklussiva tieghu jghid:

Furthermore, in order to frame the document's provisions within the particularities of context, seven predominant 'Area Types' have been established, in accordance with broader Local Plan provisions. This will help to identify where the specific provisions will apply and are particularly useful for design considerations in relation to uses that could be located in very different contexts. For instance, the design of commercial outlets will be bound by different considerations if such outlets are located within a Residential Area as opposed to an Entertainment Priority Area. This is explained in Part 2 of this document.

Inoltre l-artikolu 2.1.1. tat-tieni parti tad-DC15 iqis l-applikazzjoni tal-policy u policies hemm inkluzi fil-kuntest ta' seba' tipografiji ta' siti identifikati b'ikoni. L-iskop hu l-facilitazzjoni ta' sitwazzjonijiet ta' zvilupp differenti kif applikat jew kif ghandu jigi applikat skond it-tipografija tas-sit ossia d-denominazzjoni tas-sit. Huma identifikati

sebgha tipi ta' siti u b'mod car jinghad 'Each provision within DC15 also includes reference to the specific area typologies that are applicable'. Din id-dicitura hi cara bizzejjed biex turi li l-iskop wara d-DC15 hi biex certi zviluppi hemm immnizzla fid-DC15 jigu attwati fejn l-ikona tas-sit tidentifika bhala permissibli. Il-parti rilevanti li timmerita l-konsiderazzjoni ta' din il-Qorti hi dik enumerata 2.6.11 fid-DC15 fejn hu indikat car illi garages for heavy goods vehicles and public service vehicles huma dawk hemm elenkati bin-numri A3a, A4a, a4b. Zvilupp fis-sens ta' garaging ta' heavy goods vehicles u public service vehicles hu permissibli fis-siti b'dawk l-ikoni u di piu jaghti linji gwida kif ghandu jigi jew ma jigix indirzzat zvilupp simili f'certi sitwazzjonijiet specifici. L-izvilupp in kwistjoni ma jaqax f'wiehed minn dawn is-siti tipologici izda qieghed f'villa area cioe fl-ikona tipologika A3b. Din il-Qorti ghalhekk tqis illi d-DC15 qed teskludi public service garaging f'sit simili bla ebda kompromess jew eccezzjoni. Applikazzjoni differenti tal-policy ifisser illi din il-policy ma fihix ebda sahha jekk kull kaz jigi interpretat u analizzat minn lenti purament soggettiva. L-iskop ta' policy hi li jaghti linja cara ta' applikazzjoni mhux wahda li iktar tikkreja dubju milli ssolvi kweziti.

Il-Qorti ma taqbilx mat-Tribunal meta qies li l-ikoni huma mezz ta' gwida. Li kieku kien hekk ma kienx ikun hemm il-bzonn li jaghmilhom billi l-ikoni kollha jkunu applikabbli jew le, skond ma jidhrilha l-Awtorita/Tribunal bla ebda xkiel jew razan. Il-fatt li l-policy tidentifika l-ikoni specifici skond l-izvilupp kunsidrat fil-policy partikolari elenkat fid-DC15, l-istess DC15 riedet tkun cara liema zviluppi jistghu jsiru f'certi siti hemm identifikati, b'eskluzjoni tal-izvilupp fis-siti mhux identifikati. F'kull zvilupp l-istess policy tillimita, teskludi jew tikkoncedi certa diskrezzjoni imma dejjem fl-ambitu tas-sit fejn hu indikat permissibli l-izvilupp.

It-Tribunal qies li meta fil-paragrafu 2.6.11 tad-DC15 il-policy P24 tirrigwarda specifikament garages for heavy goods vehicles and public service vehicles titkellem fuq 'residential area' b'referenza ghall-parkegg ta' public service vehicles, il-ligi mhix cara x'tip ta' residential area qed tinkludi. Il-Qorti tqis illi t-tip ta' 'residential area' hi specifikata fl-ikoni topografici applikabbli f'dan l-izvilupp u xejn aktar, cioe A3a (residential areas – terraced) u A4a (mixed uses areas predominantly residential).

It-Tribunal ukoll ipprova jaghmel analogija dwar il-permisibilita tal-izvilupp b'referenza ghal paragrafu 2.6.8. cioe policy P21 li titkellem dwar garages for private vehicles. Il-Qorti tqis li t-Tribunal zbalja meta kkompara din il-policy mal-P24 billi l-applikazzjoni ta' zvilupp tirtigwarda public service vehicle mhux private vehicle. Il-glossary tad-DC15 jiddefenixxi public service garage bhala garage for vehicles used for hire or for the provision of a private or public transport service (including buses, mini-buses, taxis and self-drive hire cars). Mentri jiddefenixxi 'private vehicle' bhala a car, van, motorcycle or other vehicle used by a private individual for personal transport but not for a trade, business or occupation.

Iz-zewg sitwazzjonijiet huma kompletament differenti u ghalhekk japplikaw regoli diversi kif del resto hu indikat fit-tipologiji differenti elenkati fiz-zewg policies.

Decide

Ghal dawn ir-ragunijiet il-Qorti qed taqta' u tiddeciedi billi thassar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-20 ta' Dicembru 2016, u tilqa' l-appell tal-Awtorita fil-waqt li tibghat l-atti lura lit-Tribunal biex jiddeciedi l-appell konformement ma' dak deciz min din il-Qorti. Spejjez ghall-appellat.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur