

QORTI TA' L-APPELL

IMHALLFIN

**S.T.O. NOEL V. ARRIGO LL.D. - PRESIDENT
ONOR. JOSEPH D. CAMILLERI B.A., LL.D.
ONOR. JOSEPH A. FILLETTI B.A. LL.D., A.R.HIST.S.**

Seduta ta' nhar il-Gimgha, 28 ta' Gunju, 2002.

Numru

Appell numru 226/98

Filomena Attard

vs

**Alfred Fabri fil-kwalita' tieghu ta'
Chairman ghan-nom u in
rapprezentanza tal-Awtorita' tal-
Ippjanar**

u

**Godwin Cassar fil-kwalita' tieghu ta'
Direttur tal-Ippjanar ghan-nom u in
rapprezentanza tal-Kummissjoni
ghall-Kontroll tal-Izvilupp.**

Il-Qorti;

I. PRELIMINARI

1. Filomena Attard ("l-appellanti") kienet applikat fl-14 ta' Awissu 1988 lill-Planning Area Permits Board biex tinghata permess "to effect additions to existing hotel" ezattament fir-Ritz Hotel, Xaghra Road,

Marsalforn Ghawdex. Fil-15 ta' Jannar 1993 saret talba biex din l-applikazzjoni tkun meqjusa li saret lill-Awtorita' ta' l-Ippjanar. Fit-3 ta' Marzu 1993 il-Kummissjoni ghall-Kontroll tal-Izvilupp irrifjutat li tohrog il-permess mitlub ghaliex il-proposta kienet teccedi l-gholi massimu tal-bini ghal-lokalita'. Sussegwentement, l-appellanti talbet li l-applikazzjoni taghha tigi rikonsidrata, u l-Kummissjoni ghall-Kontroll tal-Izvilupp, fit-28 ta' Frar 1996, cahdet it-talba ghar-rikonsiderazzjoni ghall-istess raguni li nghatat qabel, u cioe:-

“1. The height of the proposed building exceeds the maximum height limitation for Marsalforn area. It is therefore incompatible with the characteristics of the area and with the Temporary Provisions Scheme for the area, which seeks to limit height in order to safeguard amenity of the area.

2. The proposal runs counter to Structure Plan Policy TRA 4 and the car parking standards set out in Table A 2.5 in the Structure Plan Explanatory Memorandum in that it fails to provide the required car parking spaces. It will give rise to unacceptable additional on-street parking which would exacerbate existing problems of congestion, potential highway danger and vehicular and pedestrian conflict.”

2. Fit-22 ta' April 1996 l-appellanti resqet appell minn din id-decizjoni tal-Kummissjoni ghall-Kontroll tal-Izvilupp quddiem il-Bord tal-Appell dwar l-Ippjanar (“il-Bord”) fuq is-segweni motivi:-

“1. The height of the proposed building does not in effect exceed the maximum height limitation of the Marsalforn area. There are, in the same vicinity, as and as may be duly ascertained through a relative on the spot inquiry, buildings which are of the same height as that proposed and even higher.

2. Furthermore, the exact situation of the building in question, lying as it does on the effective outskirts of Marsalforn, with the side of high ground looming behind it, renders the area ideal for any height increase.

3. The reference to the characteristics of the area contained in the first reason for refusal is in itself effectively a reason for the type of limited development which is currently being proposed. Marsalforn has, over the years, been allowed to develop in a haphazard manner and even a cursory glance at the sprawling development which has taken place right in the picturesque valley edge of the village rightfully exemplifies the unacceptable type of development which has been allowed to carry or unchecked in many picturesque spots both in Malta and in Gozo. This is however not the nature of the proposal outlined in the above captioned permit. This pilferage as the present real characteristics of Marsalforn evidences so sadly, and which by the very nature of the proposed works and given the particular situation of the building on which it is proposed to carry out such works, is effectively the only type of development still acceptable in Marsalforn today.

4. The Ritz Hotel is a small family run concern which has been operating in the area for the past thirty years, well before the haphazard “run for the Marsalforn development” syndrome, which has scarred the area irreparably. The owners and operators have been now greatly encouraged by the relative authorities to embark on an exercise of upgrading of facilities and amenities and on actual accommodation offered – and this in line with the stated official policies governing the administration of the tourist industry in Malta and Gozo. This current application forms an intrinsic and inextricable part of this extricable part of this exercise. It is also to be noted that Marsalforn is one of the areas of Gozo which is today prominently committed to tourism and such upgrading and improvement is therefore to be encouraged and sought after.

5. It is furthermore respectfully submitted that the strict application of the provisions of Structure Plan Policy TRA 4 and the car parking standards set out in Table A 2.5, given the very limited nature and extent of the proposed development, is highly inappropriate and uncalled for. The proposed additions will only minimally, if not negligibly, give rise to any additional on-car street parking and surely not even remotely such as to cause any problems of congestion, potential highway danger or vehicular and pedestrian conflict. Furthermore, the immediate proximity of the Ritz to the large parking area at Marsalforn will more than

neutralize any effect which two to three cars at most may even indirectly cause.

In the light of the above, and of further grounds which may be submitted at a later stage in the course of the appeal proceedings.”

3. Quddiem il-Bord, l-Awtorita' ta' l-Ippjanar ikkontestat l-appell, b'ragunijiet dettaljati, li l-parti konkludenti taghhom jaqraw hekk:-

“The proposed development by reason of its size, sitting and design would cause demonstrable harm to the character and appearance of the street scene by introducing an additional floor in the built frontage which currently and appearance of the street scene. The result would be disruption to the rhythm of development in the locality and the cumulative effect of similar proposals, which would all be difficult to resist. The additional floor would be unduly prominent and adversely affect the amenities of the locality.

RECOMMENDATION:

The proposal is not acceptable in policy terms, would have an adverse impact in an urban location and should be refused as per decision dated 28 March 1996 by the Development Control Commission.”

4. Il-Bord sema' debitament lill-partijiet u d-difensuri taghhom u zamm access fis-sit meritu tal-appell fit-12 ta' Settembru 1997. Inoltre, l-Bord ha konjizzjoni ta' nota ta' sottomissjonijiet tal-appellanti li taqra hekk:-

“We refer to the above-captioned matter and request you to kindly pass on the following considerations to the Appeals Board by way of appellant's submissions.

1. With regard to the submission made in the sense that the proposal would exceed the height limitation for the area, the Board's attention is kindly drawn to the fact that four storey buildings already exist in the vicinity of the proposed

development. In fact as could be evidently seen in the course of the on site inquiry held by to the Board, tenements at Qbajjar Road and nearby apartments situated opposite Triton's (no road name available even in PA records) as can be seen in photographs marked Dok 1 and Dok 2 are in fact four storeys high. It will furthermore be noted that even six storey apartments have been permitted in the area and therefore the assertion that the Board has to abide by the height limitation of the area does not hold ground. The overall and inevitable consequence of the general development sanctioned over the years both by the previous as well as by the present development regulatory bodies, brings about a result of an area which is effectively fully committed to the nature of the existing buildings, with their heights, nature and usages – a type of commitment to which the development fully conforms and adheres. It is thus respectfully submitted that the Board take stock and cognizance of the type of development to which the area is committed and treat the present application in the light of the same.

In this context the DCC also asserted that the various buildings having the same height or even exceeding the same height of the proposed addition requested in this application had no permit. Our clients hereby submit all the details including names and references of all the buildings in the vicinity which unmistakably show that in fact such buildings are in fact covered by the Planning Authority Permits. This fact itself, apart from effectively refuting the allegations of the DCC in this regard further strengthen the commitment of the area by official sanction.

Name	Area	File No.	Approved
Victor Portelli	Plajja	4477/87	1990
Frank Azzopardi	behind Victoria Rest.	3310/97	1990
Winston M. Gauci	Republic Rest.	2191/89	1990
George Sacco	behind Ritz Hotel	4372/86	1990
Francis Micallef	Triq il-Forn	3245/89	1991
Joseph Bugeja	opp. M'Forn Hotel	4376/91	1992
Marsovin (Trieste)	Qbajjar Road	4203/87	1989/91/93/95
Alfred Grech	behind St. Mary Str.		1997

It is also respectfully pointed out therefore that the Board should focus its decision firstly in the light of the various approved applications mentioned above and secondly upon the visual impact of the proposed application which may further be noted by a careful analysis of the several photos being submitted to the Board enclosed herewith. These should be ample and satisfactory to answer conclusively as to the impact on this urban location.

2. With reference to the Directorate Report submitted to the Board by Mr. V. Sladden reference is made to page 5 of the said

report, that states clearly that the principal issue in deciding this application is the impact that the proposal would have upon the character and appearance of the street scene. In this regard our clients cannot but firmly disagree and to this effect humbly ask the Board to inspect the photos enclosed.

The visual impact is definitely within the height of already existing buildings, even so because the building in question is located in an infill site and lies in a sort of depression with higher buildings on all sides, even on the opposite side of the street and thus renders the site ideal for any increase in height with no impact whatsoever as can clearly be seen in Dok 1. Reference is also being made to Policy BEN 2 that makes reference to the visual integrity of the area and binds the Planning Authority to examine the characteristics and uses of the structures existing and adjacent to the proposed additional structure. It is submitted without any particular doubt, this policy, applied to this particular case operates definitely in favour of our client's development. BEN 4 also applies and is being referred to as favouring the said development since it states that the Planning Authority shall have regard to the location giving more favourable consideration to development close to developed areas as is the present proposed development.

3. The Board should respectfully also take into consideration discussions being held by the Zebbug Local Council and the Planning Authority regarding the future Development of Marsalforn. Since practically all the areas allocated for building have been developed, the only way to increase the number of dwellings is to allow more floors (see also Dok 4 submitted). It is to be noted that Marsalforn has, over the years, been allowed to develop in a haphazard manner and even a cursory glance at the sprawling development which has taken place right in the picturesque valley edge of this village rightfully exemplifies the unacceptable type of development which has been allowed to carry on unchecked in many picturesque spots both in Malta and Gozo. This is however not the nature of the proposal outlined in the above application. This is a case of a very limited development upwards, which should not cause further land pilferage as the present real characteristics of Marsalforn evidences so sadly, and by which by the very nature of the proposed works and given the particular situation of the building on which it is proposed to carry on works, is effectively the only type of development still acceptable in Marsalforn today.

4. Finally, it is furthermore respectfully submitted that the strict application of the provisions of Structure Plan Policy TRA 4 and the parking standards set out in Table A 2.5, given the very

limited nature and extent of the proposed development, is highly inappropriate and uncalled for.

The proposed additions will only minimally if not negligibly, give rise to any additional on street car parking and surely not remotely such as to cause any problems of congestion, potential highway danger or vehicular or pedestrian conflict.

Furthermore, the immediate vicinity of the Ritz Hotel to the large parking area at Marsalforn will more than neutralize any effect two or three cars at most may even indirectly cause.

In the light of the above submissions and particularly to the documents presented my client strongly submits that such development be approved and permission granted to such limited development.”

5. Il-Bord ta d-decizjoni tieghu fil-11 ta' Settembru 1998. Biha huwa cahad l-appell u kkonferma r-rifjut tal-permess tal-izvilupp mahrug mill-Kummissjoni ghall-Kontroll tal-Izvilupp fuq dawn il-motivi:-

“Illi dan il-Bord irid japplika l-*policies* kif ikunu vigenti minn zmien ghal zmien. Il-Bord jinnota li t-*Temporary Provisions Schemes* ma kienux jipprovdu ghal *height limitation* f'Marsalforn, Ghawdex, u li l-prassi kienet li jinghataw permessi ghal gholi ta' erba' sulari ghal dik il-parti ta' Marsalforn li tkun fuq is-*seafront*. Mill-banda l-ohra seta' kien hemm xi kazijiet eccezzjonali fejn tali *policy* setghet, minhabba c-cirkostanzi partikolari tal-kaz, inbidlet. Madankollu, illum-il gurnata d-diskrezzjoni li seta' kellu l-P.A.P.B. u warajh l-Awtorita' ta' l-Ippjanar tnehhiet meta f'Jannar 1998 il-Ministru ta' l-Affarijiet Barranin u tal-Ambjent ipprova l-*Height Limitation Guidance* li jipprovdi li fir-rigward ta' Marsalforn, Ghawdex, huwa biss fis-*seafront* fejn jista' jinghata permess ghal erba' sulari gholi. Is-sit mertu ta' dan l-appell mhux sitwat fis-*seafront* u, ghalhekk, ma jistax jibbenifika minn gholi ta' erba' sulari.”

II. L-APPELL

6. L-appellanti hassitha aggravata minn din id-decizjoni tal-Bord u interponiet appell minnha quddiem din il-Qorti fil-25 ta' Settembru 1998. Hija talbet li din il-Qorti joghgobha thassar u tirrevoka l-imsemmija decizjoni tal-Bord u tilqa' l-appell li hija kienet interponiet quddiem l-istess Bord, u dan ghas-segweni motivi:-

“1. L-unika ratio decidendi effettiva applikata mill-Bord tal-Appell dwar l-Ippjanar tikkonsisti fl-applikazzjoni retroattiva tal-Height Limitation Guidance mahrug mill-Ministru tal-Affarijiet Barranin u l-Ambjent mahruġa f'Jannar 1998 – u cioe' bejn ghaxar snin wara li saret l-applikazzjoni originali (14 ta' Awissu 1988) u ben sitt snin wara li giet ipprezentata l-applikazzjoni rinnovata (11 ta' Novembru 1992);

2. Illi ma huwiex korrett legalment illi l-provvediment amministrattiv mehud f'Jannar 1998 jigi applikat hekk retroattivament, b'mod illi jtellef lill-appellanti dritt u beneficċju li kellha qabel Jannar 1998 u li ghalhekk kellha sia fil-mument illi pprezentat orignarjament l-applikazzjoni taghha (14 ta' Awissu 1998 u 11 ta' Novembru 1992); sia' fil-mument li giet maghmula r-Rikonsiderazzjoni ghal-Kontroll tal-Izvilupp (28 ta' Frar 1996) u sia wkoll fil-mument illi hija pprezentat l-appell taghha (18 ta' April 1996);

3. Illi l-interpretazzjoni moghtija mill-Bord ta' l-Appell dwar l-Ippjanar tikkonsisti fl-applikazzjoni retroattiva tal-Height Limitation Guidance mahrug mill-Ministru tal-Affarijiet Barranin u l-Ambjent mahruġa f'Jannar 1998 – fis-sens illi l-Height Limitation Guidance mahrug mill-Ministru tal-Affarijiet Barranin u l-Ambjent mahruġa f'Jannar 1998 kienet tinvestiha mid-diskrezzjoni li kellha fil-konfront ta' applikazzjonijiet maghmula qabel Jannar 1998, hija skorretta u ma tirrispekkjax la n-norma ta' applikabilita ta' decizjoni amministrattiva – illi minnha nnifisha ma ghandhiex in-natura ta' provvediment retroattiv, u lanqas il-linja ta' interpretazzjoni gurisprudenzjali kostantement segwita, fis-sens illi kull aspekt ta' retroattivita ghandu jigi applikat bl-aktar mod ristrett possibbli;

4. Illi differentement minn dak deciz mill-Bord ta' l-Appell dwar l-Ippjanar, id-diskrezzjoni tal-Awtorita' tal-Ippjanar illi tippermetti zvilupp ta' erba' sulari f'kazijiet partikolari f'Marsalforn, Ghawdex, anke fejn is-sit partikolari ma jkunx fuq is-seafront (diskrezzjoni illi l-istess Bord accetta li kienet tezisti pienament u liberament), ma

gietx effettwata jew imnehhija (bl-effett tal-Height Limitation Guidance mahrug mill-Ministru tal-Affarijiet Barranin u l-Ambjent mahruġa f'Jannar 1998) għal dak li jirrigwarda kazijiet li kellha quddiemha għal kunsiderazzjoni qabel Jannar 1998 – u dan, aktar u aktar meta dak li kellha quddiemha qabel l-istess Awtorita' mhux semplicement applikazzjoni mhix deciza, izda applikazzjoni li kienet diga' għaddiet l-iter kollu tagħha u li dwarha kien hemm diga' appell formalizzat;

5. Illi għaldaqstant, il-Bord tal-Appell dwar l-Ippjanar għad għandu s-setgħa illi jordna l-esercizzju ta' diskrezzjoni favur l-għotja tal-permess relattiv għar-raba' sular tal-fond de quo, in kwantu din ma tirreferix għall-applikazzjoni ta' żvilupp magħmula wara Jannar 1998, imma tirreferi għal applikazzjoni li dwarha sar il-process kollu, magħmula fi żmien meta n-normi kienu jippermettu tali diskrezzjoni, u meta fil-fatt tali diskrezzjoni kienet giet u tigi ripetutament uzata biex jigi permess żvilupp tar-raba' sular anke mhux fuq is-seafront.

6. L-applikazzjoni retroattiva tal-Height Limitation Guidance mahrug mill-Ministru tal-Affarijiet Barranin u l-Ambjent mahruġa f'Jannar 1998 hija l-unika raġuni illi għaliha l-appell interpost mill-appellanti ma giex akkolt u konsegwentement il-permess għall-izvilupp mitlub mill-appellanti ma giex ordnat li jinhareg. Ma ngiebet ebda raġuni, kunsiderazzjoni jew kostatazzjoni teknika jew fattwali ulterjuri kontra l-akkoljiment tal-appell relattiv. Huwa car għalhekk, illi kieku ma kienitx għal din l-applikazzjoni retroattiva, tali permess kien jinhareg, bħal ma nhareg f'kazijiet oħra debitament citati.”

7. Fir-risposta tal-appell tagħha l-Awtorita' ta' l-Ippjanar u l-Kummissjoni għall-Kontroll tal-Iżvilupp eccepew fl-ewwel lok li n-nullita' tal-appell billi dan sar fuq interpretazzjoni ta' policies u mhux fuq xi punt ta' ligi deciz mill-Bord. Inoltre huma ssottomettew li s-sentenza kienet gusta u timmerita li tigi kkonfermata u li għalhekk kien hemm lok li l-appell jigi michud. Fir-risposta tagħhom l-Awtorita' ta' l-Ippjanar u l-Kummissjoni għall-Kontroll tal-Iżvilupp, inoltre, ssottomettew hekk:-

“Illi l-Qorti ta’ l-Appell f’diversi kazi mill-appelli ta’ l-Ippjanar diga’ rrikonoxxiet li mhux ser tiehu d-diskrezzjoni tal-Bord biex japplika o meno l-*height limitations* kif interpretati minnu;

Illi l-*Height Limitation Guidance* li tissemma’ fid-decizjoni mhux hliel replika tad-diversi *policies* dwar il-*height limitation* ta’ kull area f’Malta li illum giet approvata mill-Gvern bhala *legislated policy* u kif ser jirrizulta mit-trattazzjoni ta’ l-appell, l-istess *height limitation* ta’ erba’ sulari ghas-*seafront* ta’ Marsalforn biss, giet diversi drabi applikata b’decizjonijiet ta’ l-istess Bord ta’ l-Appell dwar l-Ippjanar ferm qabel l-istess *Height Limitation Guidance*;

Illi del resto, anki kieku wiehed kellu jaccetta l-argument ta’ l-appellant, li ntuzat policy retroattivament ghall-applikazzjoni, l-istess Qorti ta’ l-Appell diversi drabi enunzjat li kemm l-Awtorita’ kif ukoll il-Bord ghandhom japplikaw ghall-applikazzjonijiet jew appelli quddiemhom, il-pjanijiet u policies vigenti meta effettivament johorgu l-permess jew jaghti r-rifjut u mhux meta ssir l-applikazzjoni.”

III. KONSIDERAZZJONIJIET TA’ DIN IL-QORTI

8. L-aggravju principali tal-appellanti huwa li l-Bord applika retroattivament il-“Height Limitation Guidance” mahrug mill-Ministru tal-Affarijiet Barranin u l-Ambjent f’Jannar 1998 ghall-applikazzjoni li kienet ilha pendenti minn 1988. L-appellanti qieghda ssostni wkoll li l-Bord iddecieda hazin li ma kienx ghad baqaghlu diskrezzjoni meta dahlet in vigore l-imsemmija “Height Limitation Guidance” fir-rigward ta’ Marsalforn Ghawdex.

9. Fil-fehma tal-Qorti, dan l-aggravju tal-appellanti jikkostitwixxi punt legali li gie deciz mill-Bord u ghalhekk l-eccezzjoni preliminari tal-Awtorita' ta' l-Ippjanar mhijiex fondata u qieghda tigi michuda.

10. Illi dwar il-meritu tal-appell, din il-Qorti jidhrilha li l-Bord kien korrett li applika l-imsemmija "Height Limitation Guidance" tan-1998. Dana mhux biss ghaliex meta ghamel dan, il-Bord kien konkordi mad-diversi decizjonijiet ricenti li tat din il-Qorti, izda wkoll ghaliex fl-"introductory note" li tipprecedi l-istess "Height Limitation Guidance" insibu hekk :-

"This list of height limitations has been in use as a quick reference for establishing height limitations even before the Planning Authority was constituted."

Minn din in-nota johrog car illi l-"height limitations" li tispecifica l-istess policy kienu effettivament fis-sehh anke qabel ma giet kostitwita Awtorita' ta' l-Ippjanar u ghalhekk il-kontenut tal-istess policy ma jistax jinghad li gie applikat retroattivament.

11. L-appellanti qieghda tikkontesta wkoll il-punt legali deciz mill-Bord li johrog minn din is-silta mill-istess decizjoni appellata:-

"Madankollu, illum-il gurnata d-diskrezzjoni li seta' kellu l-P.A.P.B. u warajh l-Awtorita' ta' l-Ippjanar tnehhiet meta f'Jannar 1998, il-Ministru ta' l-Affarijiet Barranin u tal-Ambjent approva l-"Height Limitation Guidance" li jipprovdi li fir-rigward ta' Marsalforn, Ghawdex, huwa biss fis-"seafront" fejn jista' jinghata permess ghal erba' sulari gholi."

12. Fil-fehma konsiderata ta' din il-Qorti, din l-annunzjazzjoni tal-ligi ma tidhirx wahda korretta. Infatti fl-istess "introductory note" għall-policy in kwistjoni nsibu dan li gej:-

"The provisions of the Interim Review Of Building Heights Pending Local Plan Completion, adopted in December 1993, shall also apply."

13. Illi għalhekk, il-Bord ma kellux japplika biss "il-Height Limitation Guidance policy" tan-1998 izda kellu japplika wkoll l-"Interim Review Of Building Heights Pending Local Plan Completion", policy din li giet in vigore f'Dicembru 1993. L-ahhar imsemmija policy taghti lill-Awtorita' ta' l-Ippjanar, u allura anke lill-Bord, id-diskrezzjoni li fil-kazijiet kongruwi, ma tosservax ir-restrizzjonijiet rigwardanti l-gholi massimu permess ta' bini jekk ikunu jirrikorru c-cirkostanzi specjali msemmija fl-istess policy. Din il-policy taghmilha cara illi l-applikant ghandu fuq spallejh l-onus li jissoddisfa l-Awtorita' ta' l-Ippjanar (u għalhekk, fil-kazi kongruwi, anke lill-Bord tal-Appell dwar l-Ippjanar) li fil-kaz partikolari tieghu, verament jezistu dawn ic-cirkostanzi specjali, li, jimmeritaw li r-restrizzjoni tal-gholi massimu tal-bini ma jkunx segwit.

14. Appuntu, wiehed mill-kazijiet fejn din il-policy tippermetti rilassament tal-gholi massimu tal-bini huwa dan:-

"Where the cumulative result of the granting of a number of P.A.P.B. permits has been to signify an effective change in

policy, with reference to a specific area and it can be demonstrated that:-

(1) This has been achieved without adverse effect on the particular character and amenity of the area;

(2) Increase in storey heights of other properties would not prejudice the particular character and amenity of the area.”

15. Kif jirrizulta anke mis-sottomissjonijiet tal-appellanti riportati fid-decizjoni appellata, l-istess appellanti kienet qieghda tinsisti li s-sit in kwistjoni kien “committed” minhabba l-gholi tal-bini vicin, li jaghmel il-proposta tal-appellanti accettabbli minn dan il-punto di vista. Infatti, f’parti mis-sottomissjonijiet li ghamlet l-appellanti quddiem il-Bord intqal precizament hekk:-

“The overall and the inevitable consequence of the general development sanctioned over the years both by the previous as well as by the present development regulatory bodies, brings about a result of an area which is effectively fully committed to the nature of the existent buildings, with their heights, nature and usages – a type of commitment to which the development fully conforms adheres. It is thus respectfully submitted that the Board take stock and cognizance of the type of development to which the area is committed and treat the present application in the light of the same.”

L-appellanti anke ssottomettiet dettalji ta’ bini iehor fil-vicin li jsahhu t-tezi taghha. L-appellanti tat ir-riferenzi kollha bin-numru tal-file rispettiv u dawn fil-fatt gew a konjizzjoni tal-Bord.

16. Fil-fehma konsiderata tal-Qorti, il-Bord inkorra fiz-zball tal-ligi meta huwa injora l-policy dwar l-“Interim Review Of Building Heights

Pending Local Plan Completion”. Hu naqas li jiehu konjizzjoni tad-diskrezzjoni li din il-policy kienet qiegħda tinkoforixxi fuqu. Fil-fehma tal-Qorti, il-Bord mexa, bir-rispett kollu, b’mod pjuttost skorrett, mal-appellanti ghaliex ghalkemm hija ma nvokatx espressament din il-policy fis-sottomissjonijiet tagħha, pero’ s-sustanza tas-sottomissjonijiet tagħha kienu kkoncentrati fuq l-allegazzjoni li l-area in kwistjoni kienet “fully committed” biex taccetta l-proposta tal-appellanti. Din is-sottomissjoni tal-appellanti giet injorata mill-Bord minhabba li huwa rritjena, fil-fehma ta’ din il-Qorti skorrettement, li ma kellux id-diskrezzjoni li jikkonsidra l-kaz tal-appellanti fuq il-fatti speci u l-meriti tieghu proprju u cioe’ indipendentement mill-“Height Limitation Guidance” cioe’ l-policy tan-1998.

17. Certament, din il-Qorti m’ghandhiex is-setgha gurisdizzjonali li tara hija stess jekk hemmx cirkostanzi specjali li jiggustifikaw applikazzjoni tal-“Interim Review Of Building Heights Pending Local Plan Completion Policy”. Huwa precizament il-kompitu tal-Bord tal-Appell dwar l-lppjanar li jara jekk, fic-cirkostanzi partikolari tal-kaz, hemmx lok għall-applikazzjoni ta’ din il-policy u allura jekk l-appellanti tissodisfax il-piz tal-prova li jissemma’ fl-istess policy. Għalhekk, l-appell sejjer jigi milqugh u l-atti sejrin jintbagħtu lura lill-Bord biex, fid-dawl ta’ din id-decizjoni, jkompli jisma’ u jiddeciedi l-kaz skond il-ligi.

18. Ghal dawn il-motivi tilqa' l-appell, tirrevoka d-decizjoni appellata tal-Bord u tibghat lura l-atti lill-istess Bord ghad-decizjoni skond il-ligi. L-ispejjez jithallsu mill-appellati l-Awtorita' ta' l-Ippjanar u okkorrendo l-Kummissjoni ghall-Kontroll tal-Izvilupp.

Dep/Reg

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