



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum it-Tnejn, 20 ta' Novembru, 2017

Numru 12

Appell Nru. 20/2017

**Adrian Zammit u Ian Zammit f'isem u
in rapprezentanza tas-socjeta Mapa Holdings Limited**

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Adrian Zammit et noe tas-7 ta' Awwissu 2017 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-20 ta' Lulju 2017 li cahdet l-applikazzjoni PA 8221/06 'demolition of existing building and construction of residence', f'San Pawl il-Bahar;

Rat ir-risposta tal-Awtorita li ssottomettiet 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 dan it-Tribunal ser jezamina limitatament il-mertu tal-aggravju in linea ma' dak stipulat fil-policy 3.8 tad-DC2005, Policy and Design Guidance, senjatament dik il-parti li tincidi fuq il-mertu ta' dan l-appell u cioe' dik dwar internal development.

Lil hinn mill-kundizzjonijiet li jista' jimponi dan it-Tribunal, kif fil-fatt diga' gew impost fl-ewwel decizjoni mertu ta' dan l-appell, id-decizjoni odjerna ser tkun ibbazata biss fuq il-kontenut ta' din il-policy, li tghid:

"Outside Urban Conservation Areas, internal residential development may be permitted where:

(a) the highway network in the area, and in particular the approach road(s) to the site, is capable of accommodating the traffic likely to be generated by the development safely and conveniently. In particular, approach roads should not be less than 4.1 metres wide;

(b) an adequate means of vehicular and pedestrian access to the site can be provided from an adjoining street, with a minimum access width of 4.1 metres, and a turning space is provided to enable vehicles to enter and leave the site in a forward gear;

(c) the proposed development is in keeping with the character of the area and in accordance with the zoning of the site (where applicable) in terms of the type of dwelling unit permitted, the height and the other applicable criteria;

(d) the development would be compatible in height, scale, design and form with adjoining property;

(e) a satisfactory layout and building form can be provided such that adequate outlook is provided for the windows of the main habitable rooms and there is adequate separation between buildings to provide privacy.

i. where buildings front internal spaces or access ways there should be at least 6 metres separation between buildings; ii. at least 3m separation where buildings adjoin the backyards of adjacent buildings;

(f) where there is an existing party wall adjoining the site, such a party wall should not remain exposed, i.e. part of the new development must about the party wall to cover it up. Conversely, the new development should not give rise to party walls, which are unlikely to be covered up by developments on adjoining sites. (In particular, the height of party walls of the new development should not exceed the height limitation for the area).

(g) the development would not have an adverse impact on the amenity of buildings adjoining the site because of overlooking or a reduction in privacy or other residential amenity;

(h) satisfactory access arrangements for service (refuse collection etc.) and emergency vehicles can be achieved;

(i) at least 20% of the site is public open space in the form of open space between buildings, including piazzas or other public spaces and/or play areas;

- (j) adequate provision is made for the landscaping of this open space and for refuse collection areas;
 - (k) the site can be adequately provided with the necessary infrastructure services;
 - (l) a satisfactory proposal for the maintenance of common areas, landscaping and utility services is submitted;
 - (m) all parking provision should be underground and the open space at ground floor level should be a pedestrian space.
- Parking provision should be calculated at the medium standard according to the Explanatory Memorandum.”

Ikkunsidra Ulterjorment:

Dan il-kaz jitratta applikazzjoni ta' binja residenzjali gdida minflok strutturi dilapidati, liema zvilupp qiegħed jigi kunsidrat bhala internal development. L-access għal dan l-izvilupp propost huwa ta' tlett metri. Il-policy in dizamina, hawn fuq citata, tghamilha cara li access għal zviluppi simili għandu jkun ta' mill-anqas ta' 4.1 metri biex jikkwalifika bhala internal development.

Dan it-Tribunal jinnota li kif qiegħed jigi propost tali l-izvilupp ma jissodisfax ir-rekwiziti sine qua non li tistipula din il-policy. Minkejja kwalunkwe kundizzjonijiet li jistghu jigu mposti mit-Tribunal, jekk b'tali kundizzjonijiet jibqgħu ma jigux sodisfatti r-rekwiziti stipulati fil-policy in dizamina, il-permess għal tali zvilupp mghandux jigi koncess.

Għalhekk, dan it-Tribunal jaqta' u jiddecidi billi jichad l-appell, u jikkonferma d-decizzjoni tal-Awtorita' fir-rigward ir-rifjut tal-hrug tal-permess PA 8221/06.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal applika policy hazina cioe policy 3.8 tal-DC 2005 Policy and Design Guidance fejn tirrigwarda internal development peress li skont it-Tribunal l-izvilupp propost jirrigwarda binja residenzjali gdida flok strutturi dilapidati li għandha faccata minn sqaq fuq triq b'wisa ta' inqas ma' dak li tippermetti l-policy u għalhekk mhix permissibbli skont il-policy;
2. It-Tribunal naqas li jikkunsidra l-aggravju tal-commitment u diskriminazzjoni mressqa mill-appellant fis-sens illi l-binja kienet già ezistenti u għalhekk is-sit kien già kommess u in oltre fl-istess inhawi kien hemm bini iehor u għalhekk is-sit hu kommess. Fit-tieni lok l-appellant ressaq provi ta' internal developments ohra fejn l-access kien anqas minn 4.1 metru rikjesti fil-policy u xorta gew approvati. Billi t-Tribunal ma ikkonsidrax dawn il-kwistjonijiet, il-gudikat hu monk.

L-ewwel aggravju

Dan l-aggravju jista' jigi kunsidrat bhala kwistjoni ta' ligi u mhux biss bhala kwistjoni ta' fatt u ta' ippjanar. L-appellant qed jikkontendi illi l-izvilupp mhux ta' binja gdida kif trid il-policy izda zvilupp ta' dak gia ezistenti fuq triq ossia sqaq gia ezistenti u ghalhekk ma japplikax il-policy 3.8 tad-DC 2015 ghal binjiet godda. Dawn il-kunsiderazzjonijiet huma ta' natura legali u ta' ippjanar u t-Tribunal ikkonkluda li l-izvilupp jikkostitwixxi binja gdida flok strutturi u li hu wkoll internal development. Billi l-access ghal triq f'dan il-kaz hi ta' tlett metri u mhux ta' 4.1 metri kif irid f'kaz ta' internal development l-izvilupp ma jissodisfax il-policy 3.8. Dawn il-fatti pero mhux sorretti minn ebda konsiderazzjoni da parti tat-Tribunal ghaliex wasal ghal din il-konkluzjoni meta tqis is-sottomissjonijiet fil-fatt u ligi tal-partijiet fuq din il-kwistjoni.

Ghalhekk il-Qorti tqis li l-aggravju hu gustifikat fis-sens limitat li t-Tribunal kellu jgustifika li l-izvilupp hu tali li jaqa' fix-xibka tal-policy 3.8 tad-DC 2015 u dan ma ghamlux.

It-tieni aggravju

Dan l-aggravju ghandu jitqies fis-sens limitat tal-aggravju li tqajjem fl-ittra tal-appell quddiem it-Tribunal tal-11 ta' Awwissu 2009. F'dik l-ittra l-appellant illimita l-aggravju fuq il-bazi li l-binja proposta ghal zvilupp kien gia ezistenti qabel il-PAPB u MEPA u mill-istess sqaq gia hemm access ghal binja ohra. Kien biss f'dan is-sens li l-aggravju ta' commitment jew diskriminazzjoni ghandu jigi deciz u xejn aktar. Sfortunatament it-Tribunal naqas li jindirizza din il-kwistjoni u ghalhekk ghandu jigi milqugh. Madankollu l-Qorti taghmilha cara illi sottomissjonijiet da parti tal-appellant fil-mori tal-appell f'forma ta' sottomissjoni dwar permess iehor senjatament PA 6416/00 u dan biex iressaq aggravju ulterjuri ta' commitment f'sens differenti mill-aggravju originali interpost ma ghandhomx jigu kunsidrati. Dan peress illi hija l-ittra tal-appell li tikkompreni l-qies li t-Tribunal ghandu jiehu fid-determinazzjoni tal-appell.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-appellanti kif deciz u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-20

ta' Lulju 2017, u tibghat l-atti lura lit-Tribunal biex l-appell jigi deciz mill-gdid . Spejjez għall-appellat.

Onor. Mark Chetcuti LL.D.
Imhallef

Anne Xuereb
Deputat Registratur