



**QORTI TAL-APPELL**

**(KOMPETENZA INFERJURI)**

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

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

**Illum it-Tnejn, 30 ta' April, 2018**

Numru 7

**Appell Nru. 14/2018**

**John Cordina**

**vs**

**L-Awtorita tal-Ippjanar  
(gia l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar) u  
kjamat in kawza Carmen Farrugia**

**Il-Qorti,**

Rat ir-rikors tal-appell tat-terz John Cordina tal-20 ta' Marzu 2018 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-1 ta' Marzu 2018 'to sanction property as built, including supermarket extension stores, car parks and signs' fil-fond Pirella Supermarket, Triq Hompesch, Zabbar ;

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

Rat ir-risposta tal-applikant 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 l-aggravju huwa s-segwenti:-

Illi r-Rural Policy and Design Guidance 2014 (part 6) giet applikata b'mod erroneju ghall-izvilupp mertu ta' dan l-appell, b'dan illi tali policy giet kunsidrata ghall-gustifikazzjoni ta' sanzjonar tal-izvilupp odjern li jinsab barra z-zona tal-izvilupp.

Illi l-appellant spjegat li l-permess odjern gie kunsidrat flimkien mal-permess PA 6600/16 tal-istess applikant li tikkoncerna tnehhija ta' zvilupp u rijabilitazzjoni tal-art lura ghall-agrikoltura, f'sit li jinsab barra z-zona tal-izvilupp tas-Siggiewi.

L-appellant qed jinsisti li tali permess, ossia PA 6600/16 ma setghax jigi kunsidrat bhala parti mill-permess odjern ossia PA 350/09 li jikkoncerna sanzjonar ta' zieda ta' supermarket u parkegg barra z-zona tal-izvilupp ta' Haz Zabbar. Dawn iz-zewg permessi huma distinti u m'ghandhem ebda relazzjoni bejniethom. L-appellant zied jghid illi filwaqt li l-permess PA 6600/16 seta' kien accettabbli a bazi tal-policy sucitata, mhux l-istess jista' jinghad ghall-izvilupp fil-permess odjern li kien gja mertu ta' decizjoni ta' rifjut tal-permess PA 3529/91, liema decizjoni kienet konfermata mit-Tribunal diversament kompost u l-Qorti tal-Appell, u ghaldaqstant anke f'dan il-kaz odjern l-Awtorita' kellha tasal ghall-istess ezitu. Fil-fatt ma jirrizulta ebda bdil fil-Policy tal-Pjan Lokali tan-Nofsinhar li jiddelinija s-sit barra z-zona tal-izvilupp u bhala Strategic Open Gap.

Illi kemm l-Awtorita' kif ukoll il-permit holder sostnew illi l-izvilupp kif approvat fiz-zewg permessi huma ta' gwadan ambjentali fis-sens illi bis-sahha tal-permess 6600/16 qed jigi eliminat zvilupp sostazjonali ezistenti li ghalkemm huwa wiehed legali jinsab f'zona ta' valur xenografiku u f'genb ta' wied Skedat. Dan serva bhala gwadan ghall-ippjanar billi gie konsolidat il-bini tassupermaket li kien gja ezistenti fuq is-sit ghalkemm saru zidiet minghajr permess li qed jigi ssanati bis-sahha ta' dan il-permess odjern. Obbligi ta' ippjanar gew ukoll impost f'forma ta' hlas favur il-Kunsill Lokali ta' Haz Zabbar sabiex jintuzaw ghal zvilupp ghall-komuninta tal-lokal.

Illi l-Awtorita' permezz tal-case officer report [A fol 119A fl-inkartament tal-PA 350/09] gie spjegat dan li gej:

"During the assessment of this application, it was communicated to the architect and the applicant that since the whole site falls outside the limits to development, it was unacceptable in principle as there was no apparent justification for the sanctioning of the additional illegal development at the back of the supermarket building and surface parking area.

However, considering the Rural Policy and Design Guidance approved in 2014, the applicant brought forward the idea of a planning and environment compensation, by proposing the total demolition and the withdrawal of any vested rights of a legally

established farm in area of a high landscape value in Siggiewi and restore the site in question back to agricultural land.

The structures to be demolished in this legal farm had been approved through the following permits:

PA 4980/02 – “To sanction construction of stables and additional pig sties/stores”

Issued on 6th September 2005 Applicant – Mr Joseph Cardona

PA 7629/06 – “To relocate existing stables and construct a breeder`s/farmer`s residence”

Issued on 29th October 2008 Applicant – Mr Christian Cardona

PA 1918/09 – “To relocate stables and construct a breeder`s/farmer`s residence”

Issued on 20th July 2011 Applicant – Mr Christian Cardona

A renewal of the latest permit in PA 1918/09 has been submitted by Mr. Christian Cardona on 8th August 2016 in PA 6478/16 (Renewal of PA 1918/09; 'to relocate stables and construct a breeder's/farmer's residence). This application is being processed by the Planning Directorate.

The application for the planning compensation mentioned above was submitted by the same applicant of this application (PA 350/09), Ms. Carmen Sammut on 9th September 2016 in PA 6600/16 (removal of existing structures and rehabilitation of agricultural land, including planting of trees on land at Triq Salvu Borg Olivier, Siggiewi).

The proposal in PA 6600/16 indicates that the existing and permitted farm related buildings are to be demolished (pigs sheds, poultry sheds, paddocks, stables, cesspit, over ground reservoir, manure clamps and tool shed). The coverage of the existing buildings within this site is approximately 2,020m<sup>2</sup> (see document 55A in PA 6600/16). Subsequently, the vacated site, which will have an area of approximately 3,475m<sup>2</sup>, will be used for agriculture purposes only (see document 55B in PA 6600/16). An existing over ground reservoir, which will be demolished, will be replaced by an underground reservoir, for irrigation purposes. The previous approval of the farmer residence and stables obtained in PA 1918/09 will not avail off as these will not be constructed.

The planning compensation proposal in PA 6600/16 for PA 350/09, together with the planning history was referred and explained to the Agriculture Advisory Committee (AAC). In this regard, they stated that “the Committee will favourably consider this proposal provided that all existing structures in document 45A including tool room are demolished and the area is reinstated to agricultural land” (see document 54A in PA 6600/16).”

Illi fil-kaz odjern, l-Awtorita' qieset il-proposta ta' planning compensation fid-dawl ta' dak li tippovdi l-Policy 6.2C tal-linja gwida li tikkunsidra re-development mill-gdid ta' bini li jinsab barra z-zona tal-izvilupp. L-Awtorita' applikat il-krterji tal-izvilupp elenkati fl-istess Policy, b'mod partikolari fejn jirrigwardjaw il-kriterji u limitazzjonijiet dwar 'replancement building' hekk kif gej [Ibid.]:

“Criteria (a): The major part of the supermarket customer floor-space, vehicular access and open areas were already approved and functional. The proposed sanctioning applied for in PA 350/09 implies an extension to the supermarket sales area and ancillary storage and car parking area at the back of the site.

Criteria (d): This criteria applies albeit the sites are in different locations. Although the development in this application, falling ODZ and located within a 'Strategic Open Gap' in Zabbar, will be sanctioned, the planning benefit of having an area located in

a Valley Protection Zone and outlined as an Area of High Landscape Value, in Siggiewi, cleared from a farm building and given back to agricultural purposes only, would result in a wider environmental benefit.

Additionally, it is to note that although the site in this application (PA 350/09) was completely outlined as a 'Strategic Open Gap' in the SMLP, the major part of the commercial and residential buildings and the open area at the back had already been approved through permits prior to the enactment of the SMLP (3rd August 2006). In this regard, the supermarket over ground car parking area to be sanctioned will still provide the sense of openness, thus not affecting negatively on the 'Strategic Open Gap'."

Illi dan it-Tribunal seta' jinnota li b'differenza ghar-rijfut tal-permess tal-izvilupp PA 3529/91 fejn l-Awtorita' kellha tapplika l-pjannijiet u policies u tikkunsidra materji ohra ta' sustanza, a bazi ta' dak li kien jipprovdni l-Kap 504 fl-Artikolu 69, fil-kaz odjern odjern l-Awtorita' fid-determinazzjoni tal-applikazzjoni kellha tqis flimkien ma pjannijiet u policies, "kull haga ta' sustanza, kompriz commitments legali fil-vicin, konsiderazzjonijiet ambjentali, estetici u sanitarji, li l-Bord tal-Ippjanar jista' jqis bhala rilevanti" skont id-dispost tal-Artikolu 72(2) tal-Kap 552.

F'dan ir-rigward l-Awtorita' kellha quddiema proposta ta' zieda ta' zvilupp ma supermarket ezistenti barra z-zona tal-izvilupp fejn gie kunsidrat gwadan ambjentali billi tali zieda qed jigi kumpensat bi tnehhija ta' zvilupp gewwa sit li jinsab ukoll barra l-konfini tal-izvilupp imam ta' sensitivita akbar f'dak li jirrigwardja mpatt ambjentali. L-Awtorita' stess rabtett il-permess odjern malpermess PA 6600/16 dwar it-twaqqiegh bhala konsegwenza diretta u kondizzjoni specifika ghal hrug tal-permess de quo.

Illi fil-fehma ta' dan it-Tribunal, filwaqt li jista' jifhem illi tali konsiderazzjoni dwar kumpens ambjentali u ta' ppjanar ghandhom jigu applikati b'mod rigoruz u b'attenzjoni, ma jarax lok ta' abbuz ta' diskrezzjoni fid-decizjoni tal-Awtorita' li ghamlet konsiderazzjonijiet ambjentali skont id-dispost tal-Kap 552 u applikat principji li johorgu mill-Policy ta' Ippjanar, f'dan il-kaz ir-Rural Policy, u kkunsidrat b'mod faverevoli l-kumpens ta' ambjent u ppjanar sabiex seta johrog il-permess ta' sanzjonar.

Ghal dawn il-motivi dan it-Tribunal qieghed jichad l-appell u jikkonferma l-permess PA 350/09.

## **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. Dan l-izvilupp kien gia mertu ta' applikazzjoni PA3529/91 michuda u hu sit li jinsab f'outside development zone. L-unika differenza fil-ligijiet mindu giet michuda l-applikazzjoni fuq riferita hi ir-Rural Policy and Design Guidance 2014. L-unika parti taht il-policy li jista' jkollha referenza ghall-izvilupp in kwistjoni hu l-parti sitta pero ebda wahda mill-kazijiet hemm imsemmija hi applikabbli ghal kaz in ezami. Il-binja in

kwistjoni tirrigwarda bini ta' supermarket oltre stores u ftuh ta' trejqa u car park minflok u b'zieda eccessiva ghal dak li qabel kienet sala tal-tigijiet mibnija bil-premessi. It-Tribunal ma kellu ebda raguni ghaliex ibiddel ir-rifjut originali fl-applikazzjoni precedenti meta baqa kollox kif kien;

2. Ir-Rural Policy tressqet bhala argument mill-case officer billi l-applikant f'applikazzjoni ohra PA 6600/16 resqet talba biex tnehhi struttura legali fl-art agrikola fis-Siggiewi u terga tirrendi l-istess art bhala wahda agrikola. Il-case officer sejjah din l-applikazzjoni bhala application for planning compensation ghal hrug tal-permess fuq is-sit in kwistjoni f'Haz-Zabbar. It-Tribunal qies li din il-proposta kellha titqies taht policy 6.2C u zied li l-Awtorita applikat il-kriterji tal-izvilupp elenkati fl-istess policy partikolarment il-kriterji u limitazzjonijiet dwar replacement building. L-appellant jishaq li l-policy u partikolarment dik imsemmija 6.2C ma huwiex applikabbli ghal kaz ghax ir-replacement building irid ikun fl-istess zona;

3. It-Tribunal ukoll qies li l-izvilupp kellu jigi approvat ghax l-artikolu 72(2) tal-Kap. 552 kien applikabbli. Dan l-artikolu (qabel artikolu 69 tal-Kap. 504) jipprovdi illi fid-determinazzjoni tal-applikazzjoni l-Awtorita u ghalhekk it-Tribunal kellu jqis ukoll kull haga ta' sustanza inkluz commitments legali fil-vicin, kunsiderazzjonijiet ambjentali, estetici u sanitarji. It-Tribunal qies li l-Awtorita kellha proposta ta' zieda ta' zvilupp ma' supermarket ezistenti barra z-zona ta' zvilupp fejn gie kunsidrat gwadann ambjentali bi tnehhija ta' zvilupp ukoll f'ODZ imma ta' sensitivita akbar f'dik li jirrigwarda impatt ambjentali tant li z-zewg applikazzjonijiet gew marbuta ma' xulxin. Madankollu l-appellant jishaq li t-Tribunal naqas li jqis dak li qal id-Direttorat tal-Ambjent f'memo tat-18 ta' Ottubru 2011 fejn gie dikjarat li l-izvilupp ta' supermarket u bini iehor ghal uzu kummercjali f'zona agrikola disinjata bhala strategic open space kien inaccettabbli. In oltre meta l-artikolu 72 jitkellem dwar 'commitment' dan qed jirreferi ghal zvilupp fl-istess zona mhux bhal dan il-kaz.

### **L-aggravji mehudin flimkien**

Din il-Qorti hi perplessa bid-decizjoni tat-Tribunal li donnu skarta l-kwistjonijiet legali imqajma mill-appellant dwar l-applikazzjoni tal-Rural Policy 2014 senjatament il-parti 6.2C taghha ghal vertenza f'it anomala mressqa quddiemu fejn l-applikant lest li jirrinunzja ghal zvilupp li hu legali cioe s-sit li jinsab fis-Siggiewi u jirripristinah ghal dak li kien qabel l-izvilupp u b'kambju jinhareg il-permess ta' sanzjoni tas-

supermarket u addizzjonijiet ohra f'Haz-Zabbar. Ta' min jinnota li z-zewg siti huma t-tnejn barra z-zona ta' zvilupp. Minflok, it-Tribunal qabad ma' argument legali iehor cioe dik a bazi tal-artikolu 72(2) tal-Kap. 552 gia artikolu 69 tal-Kap. 504. Hu ikkunsidra li l-applikazzjoni odjerna cioe dik li tirrigwarda s-supermarket kienet differenti minn dik li kienet giet michuda originarjament cioe PA 3529/91 ghax f'dan il-kaz bil-bidla fil-ligi t-Tribunal ghandu jqis kull haga ta' sustanza kompriz commitment legali fil-vicin mentri qabel kif kienet il-ligi l-Awtorita kellha tapplika l-polilcies u pjanijiet u tikkonsidra materji ohra ta' sustanza. It-Tribunal wasal ghal konkluzjoni li l-proposti ta' zieda ta' zvilupp ma' supermarket gia ezistenti barra iz-zona ta' zvilupp fejn gie kunsidrat gwadann ambjentali billi tali zieda qed jigi kumpensat bi tnehhija ta' zvilupp gewwa sit ta' sensitivita akbar kien wiehed accettabbli. Spicca billi qal li ma jarax abbuz fid-decizjoni tal-Awtorita li ghamlet konsiderazzjonijiet ambjentali skont il-Kap. 552 u applikat principji li jinhargu mir-Rural Policy.

Fil-fehma tal-Qorti t-Tribunal mhux talli zbalja fl-applikazzjoni korretta tal-ligi imma abdika milli jikkunsidra l-kwistjoni principali ta' portata konsiderevoli fuq applikazzjonijiet ohra futuri.

Fl-ewwel lok din il-Qorti ma taqbilx mat-Tribunal fil-mod kif applika l-artikolu 72 tal-Kap. 552. Anki harsa superficjali lejn l-element tal-commitment imsemmi mit-Tribunal, tali commitment kien u baqa' jirreferi ghal zvilupp simili fil-istess vicinanzi tal-izvilupp propost u mhux bhal dan il-kaz fejn iz-zewg zviluppi, ghalkemm it-tnejn barra z-zona tal-izvilupp pero qeghdin ferm il-boghod minn xulxin, anzi f'irhula differenti. Dan mhux l-ispirtu ta' 'kull haga ta' sustanza inkluz commitments legali fil-vicin'. B'zieda ma' dan meta l-istess parti tal-artikolu 72(2) jirreferi ghal 'kunsiderazzjonijiet ambjentali, estetici u sanitarji' bhala 'kull haga ta' sustanza' qed jirreferi ghall-izvilupp propost fih innifsu anki jekk komparat ma' zviluppi ohra fil-vicinanzi imma mhux qed jirreferi ghal izvilupp b'paragun ma' xi zvilupp iehor f'rahal iehor. L-Awtorita fil-kunsiderazzjonijiet taghha semmiet zviluppi ohra ta' natura differenti lil hinn mill-izvilupp in kwistjoni pero t-Tribunal ma dahalx f'dan il-mertu.

It-Tribunal imbaghad qaghad lura milli jqis b'mod korrett jekk fil-fatt ir-Rural Policy, kif applikata setghetx tigi applikata kif giet applikata. F'kumment wiehed xott jghid

biss illi ma ra ebda abbuz ta' diskrezzjoni da parti tal-Awtorita fil-mod kif applikat ir-Rural Policy. Dan mhux bizzejjed biex jitqies li d-decizjoni giet motivata kif imiss. Din il-Qorti tqis illi r-Rural Policy, kuntrarjament ghal dak li qal it-Tribunal giet applikata hazin fejn jirrigwarda l-parti li fuqha donnu giet ibbazata d-decizjoni tal-Awtorita konfermata mit-Tribunal cioe policy 6.2C tal-Rural Policy. Din il-policy tghid hekk:

Permission may be granted for the total redevelopment of an existing building, or the consolidation of buildings, located outside development zone, provided that all of the following criteria are satisfied:

(1) the applicant can sufficiently prove that the building/s is covered by development permission (other than those specifically permitted for agricultural use after the coming into force of this policy document), or that it is/are/was a pre-1978 building/s;

(2) the building/s does not merit inclusion in the list of scheduled property and/or is not of historical, architectural, vernacular or other significance;

(3) the replacement building does not exceed the total floor area of the previous building/s;

(4) the replacement building is of a high quality rural design and shall full respect the wider context in which it is located;

(5) the replacement building shall be limited to:

a) a use already legally established and/or covered by a development permission; or

b) new uses permitted by this policy document subject to the respective criteria. Except for dwellings referred to in Policy 2.2B, this policy excludes dwellings which dwellings can only be permitted in terms of policies 6.2A and 6.2B;

c) disused livestock farms which have ceased operation for at least 10 years (prior to the coming into force of this policy document) and which are creating a negative environmental impact on the site and its surroundings. These may be redeveloped into 1 single elling unit which is not to exceed 200m<sup>2</sup> floor space;

d) any other use that would result in a wider environmental benefit, provided the site is already serviced by a road network that would adequately cater for the proposed new use;

(6) the use of the building shall be subject to prior consultation with the Departments/Authorities responsible for regulating such use; and

(7) any existing trees and shrubs within and around the site shall be fully cared for and retained, and if no such vegetation exists, soft landscaping around the redeveloped building shall contain a number of trees and shrubs of at least three different indigenous species, planted in clusters.

A full basement may be permitted and is limited to the footprint of the building (the basement will not count as part of the total floor area).

Where no legally-established peripheral boundary walls exist around the building to be redeveloped, the Authority may allow the construction of walls built in random-sized irregularly shaped rough dressed stones (recycled from demolition) using the same traditional construction methodology of rubble walling to define the curtilage of the building, provided this does not lead to

visual or environmental impacts (including the demolition of existing rubble walls).

Huma diversi l-kundizzjonijiet li jridu jigu sodisfatti biex tali policy issib applikazzjoni korretta. L-Awtorita minflok li qabdet il-policy u indirizzata limitatament fil-konfront tal-izvilupp mertu tal-applikazzjoni, halltet zewg applikazzjonijiet flimkien imressqa mill-istess applikant biex iggustifikat l-uzu tal-policy 6.2C. Dan fil-fehma tal-Qorti hu zbaljat ghalix anke harsa lejn il-kunsiderazzjonijiet maghmula mill-Awtorita l-policy giet applikata fil-konfront tal-applikazzjoni 6600/16 u mbaghad fl-istess nifs daret ghall-applikazzjoni in kwistjoni u qalet li r-replacement building (cioe s-supermarket f'Haz-Zabbar) skont il-kriterji (a) fil-policy 6.2C u l-kriterju (d) cioe kull uzu iehor li ser jirrizulta f'beneficju akbar ambjentali huma accettabbli mehudin fil-kuntest ta' dak li kien qed jigi propost li jitnehha fis-sit mertu tal-applikazzjoni 6600/16 cioe s-sit fis-Siggiewi. Bir-rispett kollu lejn l-Awtorita, dan l-uzu ta' policy fejn hemm tahlit ta' kriterji biex jigu sodisfatti zewg applikazzjonijeit distinti minn xulxin, f'irhula differenti, b'fattispeci differenti hlief ghal fatt li l-applikant hu l-istess, imur ferm oltre mill-ispirtu u realta fattwali tal-policy. Imkien fil-policy ma hemm l-icken referenza li tali policy tista' tigi mgebbda biex takkomoda zewg applikazzjonijiet b'mertu differenti. Il-policy qed titkellem fuq zvilupp totali jew konsolidazzjoni ta' binja barra z-zona ta' zvilupp. Tali policy ghalhekk ghandha tkun limitata ghall-izvilupp fih innifsu mhux imqabbla jew bi tpartit ma' dak propost f'applikazzjoni ohra fuq sit differenti f'zona kompletament differenti minn dak propost. Jekk applikant lest li ghall-beneficju tas-socjeta jirrinunzja ghal zvilupp ghall-ahjar interess tal-ambjent hu meqjus lodevoli minn din il-Qorti u gest filantropiku li ghandu jigi approvat pero ma ghandux jitqies bhala pedina biex isib gustifikazzjoni ghall-applikazzjoni ohra li ghandha titqies fuq il-mertu taghha wahedha fil-konfini ta' dak li jridu l-pjanijiet u l-policies u b'referenza anki ghall-artikolu 72 tal-Kap. 552.

Il-Qorti ghalhekk issib il-gudikat tat-Tribunal nieqes minn dan l-apprezzament li kellu jsir u tqis l-aggravji tal-appellant gustifikati.

### **Decide**

Ghal dawn ir-ragunijiet il-Qorti qed tilqa' l-appell tal-appellant terz oggezzjonant fil-limit ta' dak decizi, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-



Ippjanar tal-1 ta' Marzu 2018, u tirtirivija l-atti lura lit-Tribunal biex jerga' jqis l-appell mill-gdid. Spejjez ghall-appellati in solidum.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur