



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum il-Hamis, 25 ta' Frar, 2021

Numru 6

Appell Nru. 19/2020

Karl Micallef

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Karl Micallef tal-11 ta' Novembru 2020 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-22 ta' Ottubru 2020 li cahad il-hrug tal-permess ghal applikazzjoni PA7658/17 'proposed extension to approved permit PA2199/08. Proposal includes extension at third floor for class 4B (extension not reaching facade line) and additional receded fourth and fifth floors proposed as class 4D restaurant) fi Triq ir-Repubblika, 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-decizzjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi dan l-appell jikkoncerna talba sabiex issir estensjoni ma' bini kopert bil-permezz tal-izvilupp PA02199/08. L-estensjonijiet huma proposti fil-livell tat-tielet sular, bir-raba` u l-hames sulari proposti bhala sulari rtirati mill-faccata. L-uzu tal-livell tat-tielet sular huwa propost għal uzu ta' Klassi 4B, u r-raba` u l-hames sulari huma proposti għal uzu Klassi 4D. Is-sit tal-izvilupp propost jinsab fuq Triq ir-Republika, fil-lokalita` tal-Belt Valletta. Din il-lokalita` hija denominata bhala Zona ta' Konservazzjoni Urbana [Skont policy GV13 tal-Pjan Lokali tal-Port il-Kbira], u Area of High Landscape Value of Harbour Fortifications [Skont in-Notifika tal-Gvern 133 tal-2001].

Illi l-izvilupp in mertu gie rrifjutat għar-raguni li l-proposta tkom kontra Urban Objectives 2.3 u 2.4 tal –iSPED li jesprimu kontroll tal-għoli tal-bini fiz-zoni ta' konservazzjoni urbana xprunat mill-kuntest, dan sabiex tipprotegi l-l-iskyline tradizzjonali urban. Il-proposta tmur ukoll kontra policy P39 tal-linja gwida DC2015 li jesigu li l-għoli tal-bini għandu jkun ibbażat fuq analiżi tal-streetscape sabiex ma jinholoqx impatt vizwal inaccettabbli.

Illi permezz tal-appell odjern, l-appellant jirribatti fuq ir-rifjut tal-Awtorita' b'zewg (2) aggravji hekk kif gej:

1. Urban Objective 2.3 ma tissostitwixxiex l-għoli massimu pprogettat, u li l-izvilupp propost jaqa` fil-parametri tal-għoli massimu accettabbli;
2. L-impatt tal-izvilupp partikolarment f'dak li jirrigwarda l-iskyline ser ikun jekk xejn wiehed minimu minhabba l-irtirar tarraba` u l-hames sulari;

Illi l-Awtorita' wiegħbet għall-appell odjern bis-segħenti:

The Authority took note of the appellant's submitted arguments; however it is clear that none of the mentioned arguments justify the development as proposed.

The appellant appears to focus on general building height principles and fails to consider the site context in an Urban Conservation Areas, particularly since in this case, the site is adjoining St. Barbara church.

In terms of applicable building heights, the appellant erroneously remarks that proposal is in line with acceptable height limitations. This argument however does not hold since in view of the site's location within an Urban Conservation Area, the proposed building height runs counter to SPED Urban Objectives 2.3 and 2.4 of the Strategic Plan for Environment and Development, 2015 which promotes a context driven approach for the control of building heights within Urban Conservation Areas in order to protect the traditional urban skyline. Streetscape elevation doc 17g clearly shows that the proposed development will have a height that exceeds the height of all the buildings that are located within its vicinity. In this regard it is unequivocally clear that the proposed development is flagrantly counter to Policy P39 of DC2015. Over and above, this argument is even more strengthened through the fact that the site is in Valletta, scheduled as an Area of High Landscape Value on the context of the Harbour fortifications as per Government Notice 133 of 2001.

Furthermore the Authority would like to stress the feedback provided by the Superintendence of the Cultural Heritage and Cultural Heritage Advisory Committee in this regard; "The Superintendence and the Cultural Heritage Advisory Committee (CHAC) have reviewed this application which proposes a considerable increase in overall height and rooftop volume. The property is located on Republic Street, within the Urban Conservation Area of Valletta and in the immediate vicinity of St Barbara's Church". Moreover, specific reference was made to CHAC' reservations as had already been expressed in connection to a previous application on part of the site PA2199/08; "the addition at roof level will overwhelm the dome and belfry of the adjacent church". Both the SCH and CHAC expressed their objection to the proposed development – see doc 55a.

With regards to possible adverse visual impact, and besides the overriding heritage issues as mentioned above, the Design Advisory Committee specifically requested further amendments to the proposed setback floors (see min 54a). In any case, in view of the abovementioned circumstances, the proposal was correctly considered counter to DC15 Policy P39 Setback Floors which requires that building heights are based on a streetscape analysis in order not to create an unacceptable visual impact.

Considering the above, the appellant's argument that the projected impact on the skyline is minimal is flagrantly frivolous; while the presented arguments in relation to height limitations clearly do not hold since they are without basis. It is therefore evident that proposal was correctly refused based on current applicable policies.

The appellant further argued in relation to accessible issues noting in particular that given that the building is old, there has never been a lift installed. In this regard, the honourable Tribunal may wish to be reminded that clearance from the Commission for the rights of Persons with Disability, which remains the responsible entity with regards to accessibility, has not been obtained.

Illi dan it-Tribunal ha konjizzjoni tal-inkartament tal-applikazzjoni odjerna u tas-sottomissjonijiet maghmula mill-Partijiet;

Ikkunsidra;

Illi bl-ewwel aggravju l-appellant jargumenta li l-proposta hija konformi ma' l-gholi massimu accettabli f'din iz-zona, liema gholi huwa marbut mal-gholi tal-bini ezistenti. It-Tribunal ha konjizzjoni ta' policy GV15 fil-Pjan Lokali tal-Port il-Kbira li tirrigwarda l-gholi tal-bini fil-lokalita` tal-Belt Valletta li tiddisponi hekk kif gej:

"In the consideration of applications which include changes to existing building heights, the Planning Authority will adopt a flexible approach which will take account of the following criteria:

- the Urban Conservation Area status;
- the streetscape through a consideration of the buildings on the same facade and those on facades on the opposite side of the street/s concerned;
- the general massing of the building;
- the roofscape;
- the skyline when seen from outside the site area;
- the topographical features and consideration of the sloping nature (including buildings in the background);
- any other relevant planning consideration."

Illi mill-policy supra-citata johrog bic-car li f'kaz ta' proposti li jinkludu tibdil fl-gholi tal-bini ghandu jkun hemm kunsiderazzjoni ta' diversi aspetti tal-proposta, inkluz l-istreetscape u r-roofscape tal-madwar. It-Tribunal ha konjizzjoni tal-kunsiderazzjonijiet li saru mic-Chairperson Ezekuttiv fl-evalwazzjoni tal-gholi u d-disinn tal-bini propost, fejn intqal hekk kif gej:

"Building Height and Design

According to the submitted photos (document 1d), the site is adjoining a church and a building with a similar facade height. Additionally, the adjoining building has two-storey high roof structures whilst the building under consideration has a one-storey high roof structures. The proposed reduction in the setback distance of the existing/approved roof (third floor level) structures and the additional fourth and fifth floor levels will overwhelm the dome and belfry of the adjacent church whilst also disproportionately rising above all the adjacent setback floors in the immediate streetscape. (refer to proposed streetscape 17g) This concern was also raised by the SCH in a previous application (PA2199/08) as quoted in their correspondence on this application (doc 55a) where they are objecting to the proposed increase in the rooftop height and volumes of this proposal.

In view of the above concerns the proposed building height runs counter to SPED Urban Objectives 2.3 and 2.4 of the Strategic Plan for Environment and Development, 2015 which promotes a context driven approach for the control of building heights within Urban Conservation Areas in order to protect the traditional urban skyline. Furthermore, the proposal also runs counter to DC15 Policy P39 Setback Floors which requires that building heights are based on a streetscape analysis in order not to create an unacceptable visual impact."

Illi fl-isfond ta' dawn il-kunsiderazzjonijiet, it-Tribunal jinnota li hekk kif gie spjegat mill-Awtorita`, l-gholi massimu ta' bini ghandu jiehu kunsiderazzjoni tal-kuntest tal-madwar. Illi s-sit odjern huwa pozizzjonat ezattament biswit il-Knisja ta' Santa Barbara pozizzjonata man-naha tal-Grigal tas-sit, bl-gholi tal-bini propost sahansitra jaqbez l-gholi parti tal-koppla ta' din il-knisja storika [Skont pjanta a fol 81D fl-inkartament tal-PA07658/17], liema knisja hija wkoll skedata fl-ghola livell skont in-Notifika tal-Gvern 276 tal-2008.

It-Tribunal jinnota li ghalkemm hemm bini ezistenti man-naha l-ohra tas-sit li ghandu gholi konsiderevoli, xorta wahda l-pozizzjoni ta' dan il-bini m'hijiex sensitiva daqs dik tas-sit odjern, u dan ghas-semplici raguni li s-sit odjern jinsab precizament biswit din il-knisja storika. It-Tribunal huwahekk jinnota li fil-mori ta' dan l-appell saret referenza ghall-permess tal-izvilupp bin-numru PA06780/18 li jikkoncerna s-sit odjern. Din l-applikazzjoni giet intavolata u l-permess relattiv inhareg waqt li dan l-appell kien pendent. It-Tribunal ha konjizzjoni tal-izvilupp approvat fil-permess ikkwotat, fejn minghajr ma jidhol fil-mertu ta' dan il-permess, jinnota li l-izvilupp approvat huwa ferm ridott fl-gholi u l-estent min dak propost fl-applikazzjoni mertu ta' dan l-appell.

L-appellant jaghmel ukoll referenza ghall-kummenti maghmula mill-Kumitat ta' Konsulenza dwar id-Disinn. It-Tribunal hawnhekk jinnota li ghalkemm il-kummenti moghtija minn dan il-Kumitat ghandhom jiformaw parti mill-kunsiderazzjonijiet kumplessivi tal-applikazzjoni, fil-kaz odjern l-aspett ta' mportanza magguri huwa l-pozizzjoni tas-sit ezattament biswit il-Knisja ta' Santa Barbara, u li ghalih is-Sovrintendenza tal-Wirt Kulturali ghamlet il-segwenti rakkomandazzjonijiet:

“The Superintendence and the Cultural Heritage Advisory Committee (CHAC) have reviewed this application which proposes a considerable increase in overall height and rooftop volume. The property is located on Republic Street, within the Urban Conservation Area of Valletta and in the immediate vicinity of St Barbara's Church. The CHAC noted its reservations as had already been expressed in connection with earlier application PA 02199/08” [Skont dok a fol 55A fl-inkartament tal-PA07658/17].

Illi ghaldaqstant jidher car li l-kuntest tal-madwar tas-sit odjern huwa fattur materjali importanti hafna, u li fil-fehma ta' dan it-Tribunal ghandu jigi ppreservat. Illi l-istess jinghad ghall-impatt tal-izvilupp fuq l-iskyline tal-madwar, fejn ghalkemm fit-tieni aggravju jinghad li dan ser ikun minimu minhabba l-irtirar tar-raba` u l-hames sulari, fl-opinjoni tat-Tribunal dan m'huwiex minnu ghaliex kif gie rilevati izjed kmieni f'dan l-appell, l-gholi propost qed sahasitra jaqbez l-gholi massimu tal-koppla tal-knisja storika pozizzjonata immedjatament biswit is-sit odjern.

Ghal dawn il-motivi, u wara li t-Tribunal ha konjizzjoni tal-fatti speci kollha tal-kaz, dan it-Tribunal qiegħed jichad l-appell, u jikkonferma d-decizjoni tar-rifjut tal-PA07658/17.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenți:

1. L-applikazzjoni kienet konformi mal-building height regulations fil-pjan lokali applikabbli għal belt Valletta. L-applikazzjoni ma tatx bizzejjed piz għal dan u minflok caħdet l-applikazzjoni fuq konsiderazzjonijiet tal-iSPED. L-appellant isostni li ladarba l-pjan lokali haseb specificament għal għoli fil-belt Valletta ifisser li hu konformi mal-linji gwida tal-iSPED;
2. Minn ezami tan-natura u karatteristici tal-izvilupp propost u d-dinamika u kuntest intier taz-zona immedjata jidher lampanti li l-izvilupp propost hu sensitiv għal madwar, kuntrarjament għal commitments oħra ġia ezistenti. It-Tribunal applika hazin ir-rekwizit tal-policy GV15 u apparti li diversi elementi fattwali tal-proposti jaqgħu fil-parametri tal-policy, naqas li jikkonsidra li l-appellant ġia għandu permess (2199/08) li jzarma u jerga' jibni kamra fl-oghla parti li hi ferm eqreb tal-faccata milli dak propost; li l-izvilupp mhux ser jeccedi l-oghli tal-bini tal-madwar jew jintralcja l-koppla u kampnar tal-knisja adjacenti għax l-estensjoni tinsab fuq wara; fuq in-naha l-oħra tal-knisja hemm bini li jeccedi l-oghli tal-izvilupp propost fuq il-parti ta' quddiem u jgħatti l-knisja mid-direzzjoni ta' Bieb il-belt. Hemm 'commitment' ezistenti li gie injorat u n-nuqqas ta' trattament ugħwali jikkostitwixxi diskriminazzjoni.

L-ewwel aggravju

Kif ġia kellha okkazzjoni itteni din il-Qorti, il-fatt illi applikazzjoni tkun konformi ma' building height limitations għaz-zona, ma jaġtix dritt awtomatiku għal hrug ta' permess. L-Awtorita għandha l-poter u l-obbligu li tqis kull kwistjoni oħra relatata mal-lijiet u policies ta' ippjanar li jistgħu jassoggettaw żvilupp għalihom. Magħdud dan, l-Awtorita u aktar it-Tribunal, billi dan hu appell mid-decizjoni tat-Tribunal, enfasizza fuq il-policy GV15 tal-pjan lokali tal-Port il-Kbir rigward l-gholi tal-bini u kif fatturi oħra bħal streetscape u roovescape jistgħu jaffettwaw jekk żvilupp hux idoneju għas-sit. Ma jistax jingħad għalhekk li l-ewwel aggravju b'xi mod jsib xi konfort f'dak li ikkunsidra primarjament it-Tribunal b'mod korrett mill-punto di vista legali meta hu ikkunsidra l-proposta in linea mal-policy GV15 fil-pjan lokali stess tal-Port il-Kbir li tirrigwarda għoli ta' bini fil-belt Valletta. Kwistjonijiet purament teknici u ta' ippjanar jaqgħu fid-diskrezzjoni tat-Tribunal mhux tal-Qorti. Il-fatt li l-appellant ġia għandu permess rigward il-kamra fuq il-bejt ma jbidel xejn minn dak li ikkunsidra t-Tribunal li gustament ma dahalx f'din il-kwistjoni jekk fil-fatt hemmx permess ezistenti rigward din il-kamra.

Għalhekk l-aggravju qed jiġi miċud.

It-tieni aggravju

Dan l-aggravju, għalkemm hu sottomess bħala konsiderazzjonijiet zbaljati tat-Tribunal fuq l-applikazzjoni tal-policy GV15 strettament pero hu biss invit biex din il-Qorti tqis fatturi purament teknici u ta' ippjanar biex jinduci lil Qorti tasal għal konkluzjoni differenti minn dik li wasal għaliha t-Tribunal. Għalkemm l-appellant semma diversi fatturi, kollha ta' natura teknika li jimmitaw favur l-ghoti tal-permess u li fil-fehma tiegħu, it-Tribunal naqas li jikkonsidra jew ikkunsidra hazin, fil-fatt dan mhux minnu. It-Tribunal qies fuq kollox li s-sit jinsab ezatt biswit knisja storika skedata fl-oghla livell u l-proposta fejn jirrigwarda l-gholi tal-bini taqbez l-oghla parti tal-koppla. It-Tribunal qies li l-binja fuq in-naha l-oħra tal-knisja hi wkoll għolja pero fil-fehma tat-Tribunal il-pozizzjoni tagħha mhix sensittiva daqs dik mertu ta' din il-proposta. Oltre dan it-Tribunal ha konjizzjoni tal-oggezzjonijiet tas-Sovrintendenza tal-Wirt Kulturali li għandha piz konsiderevoli speċjalment meta si tratta ta' żvilupp li jista' jaffettwa bini storiku jew ta' importanza rilevanti. F'dan il-kuntest it-Tribunal applika fil-limiti tad-diskrezzjoni tiegħu kwistjonijiet ta' ippjanar li johorgu mill-policy

GV15 u wasal ghal konkluzjonijiet tieghu li dwarhom din il-Qorti ma ghandhiex setgha tintrometti ruhha.

Ghalhekk il-Qorti qed tichad dan l-aggravju.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Karl Micallef u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-22 ta' Ottubru 2020, bl-ispejjez kontra l-appellant.

Mark Chetcuti

Prim Imhalled

Anne Xuereb

Deputat Registratur