



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum L-Erbgha, 16 ta' Marzu, 2022

Numru 7

Appell Nru. 45/2021

Anthony Camilleri

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Camilleri tas-16 ta' Novembru 2021 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-28 ta' Ottubru 2021 li biha cahad l-applikazzjoni PA7041/19 'widening of the existing stairs leading to the roof level, and internal refurbishment of the habitable area ' f'Birzebbuga;

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 l-appell jikkoncerna talba sabiex isir twessigh ta' tarag ezistenti u rinnovament tal-parti interna tal-bini li tintuza ghal skopijiet t'abitazzjoni. L-izvilupp propost jinsab f'zona rurali maghrufa fi Triq tal-Gebel, Hal-Far, Birzebbuga.

L-izvilupp propost gie rifjutat minn l-Awtorita' tal-Ippjanar fuq il-bazi ta' raguni wahda tar-rifjut, fejn gie ndikat li ma' hemmx prova sufficjenti li l-uzu residenzjali gie stabbilit qabel l-1978 kif jesigu Policies 6.2C u 6.3 tal-linja gwida rurali tal-2014, u ghaldaqstant ma' hemmx gustifikazzjoni ghal uzu residenzjali gdid barra z-zona tal-izvilupp.

L-appellant dahhal appell kontra din id-decizjoni, u jirribatti fuq ir-rifjut tal-Awtorita' b'aggravju wiehed li fieh jaghmel referenza ghal diversi dokumentazzjoni intiza bhala prova residenzjali tal-fond, b'dawn jinkludi registru elettorali tal-1962, pagamenti tal-qbiela bejn l-1932 u l-2006, certifikati tat-twelid u l-maghmudija, kuntratt tal-akkwist tal-propjeta, kif ukoll affidavit.

Illi fir-risposta taghha l-Awtorita' tal-Ippjanar tosserva li l-proposta originarjament kienet tinkludi estensjonijiet tal-binja ezistenti inkluz kostruzzjoni ta' mahzen aggrarju, izda l-proposta eventwalment giet emendata minhabba li l-case officer assenjat ghal-kaz kien infurmat lil applikant li l-izvilupp m'huwiex wiehed ggustifikat anke ghaliex l-applikant m'huwiex rregistrat mad-Dipartiment tal-Agrikoltura. Madankollu, waqt l-ewwel smiegh, il-Kummissjoni tal-Ippjanar qajjem thassib fir-rigward tal-uzu residenzjali minhabba li l-pjanti jindikaw kamra wahda biss li tintuza ghal skopijiet residenzjali, u ghalkemm giet pprezentat ittra mill-Address Management Unit, xorta wahda il-Kummissjoni ma' kkunsidratx li hemm prova sufficjenti li l-uzu residenzjali gie stabbilit qabel l-1978.

Illi fl-ewwel lok it-Tribunal ha konjizzjoni tal-evalwazzjoni min-naha tac-Chairperson Ezekuttiv, fejn intqal hekk kif gej firrigward tal-provi residenzjali mressqa fil-kors tal-applikazzjoni odjerna:

“Part 6 of the Rural Policy and Design Guidance (RPDG) 2014 regulates proposal related to rural buildings located outside the development zone (ODZ), with policy 6.3 specifically regulating extensions to existing dwellings ODZ.

Criterion (1) in RPDG policy 6.3 specifies that in the case of buildings of architectural, historical, vernacular or other significance shall be assessed on the basis of policy 6.2A, whilst criterion (2) in RPDG policy 6.2C specifies that the building/s can only be re-developed when the structures are not of historical, architectural, vernacular or other significance.

The existing structures present on site all date pre-1967 (refer to aerial photos in doc. 55a), with photos in doc. 1n suggesting that parts of the building are considerably old, however appear to have been altered through time since building include steel supporting beams. The Superintendence of Cultural Heritage (SCH) did not provide any specific comments on the cultural value of these existing building, presumably since no interventions to these structures are being proposed. Assessment regarding the residential use of the property is hence being based in terms of provisions in policy 6.3.

In architect letter doc. 46a, reference is made to electoral register showing that a former tenant and ancestor of applicant used to live in the said farmhouse (doc. 46b). Reference is also made to private owner's lease register showing the payment of the agricultural lease for the property between 1932 and 2006 (doc. 46c).

Copy of the 1962 electoral in doc. 46b indicates that Joseph Camilleri was registered at 'Tal-Bejgekk Farmhouse', Tal-Gebel Road, Birzebbugia. Given that the name and address for this application do not tally with this address, further clarification was requested to confirm

the connection between applicant and former resident, and in letter by architect doc. 51a reference is made to the following documentation:

- copy of contract of acquisition of property by applicant (doc. 51b);
- copy of public registry birth certificates of applicant (Anthony Camilleri) and of his father (Paolo Camilleri) – doc. 51c p1
- copy of baptismal records held at Zurrieq Parish Church re applicant's paternal grandfather (Antonio Camilleri) and Antonio's brother (Joseph Camilleri) – doc. 51c pp 2/3

It is noted by architect that Joseph and Antonio Camilleri (together with other brothers) are the first tenants indicated on the agricultural lease register as Fratelli Camilleri, and that Joseph is indicated as a resident of Tal-Bejgekk Farmhouse as per Electoral Register issued in April 1962. The contract of acquisition of property indicates that the applicant acquired field measuring 9065 sq.m. including 'razzett' number 10 and 11 with access from Triq il-Gebel. The submitted documents indicate that this farmhouse is the same listed in the electoral register as 'Tal-Bejgekk Farmhouse', thus confirming that the property includes an official pre-1992 residence, hence in compliance with criterion 3(a) in policy 6.3 of the RPDG 2014." [Skont il-case officer report a fol 73A fl-inkartament tal-PA07041/19]

Illi skont l-estratti supra-cittati, jirrizulta li l-binja in kwistjoni hija wahda ta' qabel l-1962 li possibilment giet alterata matuli iz-zmienijiet, u abbazi ta' dan l-Awtorita evalwat l-applikazzjoni ai termini ta' Policy 6.3 tal-linja gwida rurali tal-2014. Illi ghalkemm irakomandazzjoni da parti tac-Chairperson Ezekuttiv kienet wahda favorevoli abbazi ta' sottomissjoni ta' provi fir-rigward tal-uzu residenzjali tal-fond, fl-ewwel smiegh tal-Kummissjoni tal-Ippjanar gie ndikat li "The Planning Commission has concern on the proof of residence submitted. Given that the existing plans (PA 7041/19/1D/1N) show only agricultural stores except for a single room, additional information is requested to proof the residential use of this development prior to 1992." [Seduta datata 21 ta' Mejju tal-2020] u segwentament irrifjut l-applikazzjoni ghar-raguni li "The Planning Commission noted that there is no sufficient evidence that the residential use of the premises was established in 1978 as required by policy 6.2C and 6.3 of the RPDG policies 2014." [Seduta datata 7 ta' Awwissu tal-2020]

It-Tribunal josserva li filwaqt li l-evalwazzjoni da parti tac-Chairperson Ezekuttiv hija msejsa fuq id-dispozizzjonijiet ta' Policy 6.3, fid-decizjoni taghha il-Kummissjoni taghmel referenza kemm ghal policy 6.3 kif ukoll ghal policy 6.2C.

Illi Policy 6.2C tirregola "Redevelopment and change of use of existing buildings ODZ" filwaqt li Policy 6.3 tirregola "Extensions to Existing dwellings ODZ", u ghaldaqstant id-distinzjoni ewlenija bejn dawn iz-zewg policies hija li Policy 6.3 hija intiza ghal estensjonijiet ta' residenzi ezistenti ODZ, filwaqt li Policy 6.2C hija ntiza ghal redevelopment u bdil fl-uzu ta' binjiet ezistenti fl-ODZ, izda mhux limitata ghal binjiet residenzjali. Illi fil-fehma ta' dan it-Tribunal, l-Awtorita tal-Ippjanar kienet skorretta fl-applikazzjoni taghha ta' Policy 6.2C, propju ghaliex il-proposta ma' tinkludi ebda redevelopment jew bdil fl-uzu tal-binja ezistenti [Skont il-pjanti elenkati mal-case officer report a fol 73A fl-inkartament tal-PA07041/19]. Illi madankollu, gialadarba l-proposta tinkludi "internal refurbishment of the habitable area", iddispozizzjonijiet f'Policy 6.3 tal-linja gwida rurali tal-2014 huma applikabli, bi kriterju 3 ta' din il-policy jezigi li:

"(3) the applicant can sufficiently proof that:

- a) the property in question has been used as a residence prior to 1992
- b) the dwelling is covered by a development permission, or dates back to pre-1978;"

Illi kif gie ndikat min dan it-Tribunal f'diversi decizjonijiet, il-prova ta' residenza skont kif mitlub fir-rekwiziti tal-policies fillinja gwida rurali tal-2014 huwa obbligu ferm importanti sabiex jigi kkunsidrat zvilupp residenzjali f'zoni rurali. Illi fil-kaz odjern, it-Tribunal seta josserva li t-thassib imqajjem mill-Awtorita ma' kienx fir-rigward ta' nuqqas ta' evidenza li l-provi

residenzjali propju jirrigwardaw il-fond in kwistjoni, izda li dawn il-provi jonqsu milli jikkonfermaw li l-uzu residenzjali tkompla sal-1978. Di fatti, anke l-affidavit ta' David Paul Formosa sottomess fil-kors tal-applikazzjoni odjerna [Skont dok a fol 204B fl-inkartament tal-PA07041/19] jonqos milli jindika jekk tali uzu tkompliex sal-1978, b'dan jindika biss li kienu n-nanniet tal-appellant li propju kienu jabitaw fil-fond in metru, izda minghajr ma' jipprovdi xi perjodu specifiku ta' meta dan kien isehh.

Illi r-ritratti sottomessi jindikaw li l-fond in mertu ma' jikkonstax min residenza maghmra b'xi kumditajiet abbinati ma' abitazzjoni ordinarja, u li l-maggjore parti tal-bini jintuza ghal attivita relatata mas-settur agrikolu [Skont ritratti f'dok a fol 1N fl-inkartament tal-PA07041/19]. Illi gialadarba l-unika prova residenzjali mressqa hija permezz ta' registru elettorali tal-1962, u ma' ngabet l-ebda prova addizzjonali sabiex jigi ccarat jekk l-uzu residenzjali tkompliex sal-1978, jirrizulta li dan ma' huwiex sufficjenti sabiex il-fond jigi kkunsidrat bhala "Existing dwelling", u ghaldaqstant it-Tribunal huwa tal-fehma li l-Awtorita kienet korretta fir-rifjut taghha tal-applikazzjoni odjerna abbazi tad-dispozizzjonijiet f'Policy 6.3.

Finalment it-Tribunal josserva li fil-mori ta' dan l-appell, l-Awtorita' tal-Ippjanar rrilevat li giet sottomessa applikazzjoni ohra fuq l-istess sit b'referenza PA8333/20 u li fuq il-pjanta 'Existing' hemm indikat uzu ta' kmamar differenti min dak propost fuq din l-applikazzjoni odjerna. It-Tribunal ha konjizzjoni tal-pjanti sottomessi fl-applikazzjoni pendenti PA8333/20, u josserva li d-differenza principali fl-uzu ezistenti hija li l-applikazzjoni pendenti tindika zewgt' ikmamar f'uzu differenti, ossia kamra tas-sodda u garaxx minflok zewgt' imhazen aggrarji. Illi dan it-Tribunal huwa tal-fehma li dan il-varjazzjoni huwa wahda ta' natura kosmetika, ghaliex finalment l-Awtorita ghandha tikkonsidra u tanalizzzi l-provi migjuba bir-rigward ta' dak l-uzu indikat, u tiddecidi abbazi ta' dawn il-fatti. Illi ghaldaqstant, hija l-fehma ta' dan it-Tribunal li s-sottomissjoni tal-applikazzjoni PA8333/20 ma' tinfluenzax ir-ragunament applikat min dan it-Tribunal f'dak li ghandu x'jaqsma mal-uzu residenzjali tal-fond. Dan minghajr pregudizzju ta' xi provi ohra li jista jitressqu mill-applikant sabiex jigi ccarat jekk l-uzu residenzjali tkompliex matul iz-zmienijiet sabiex il-fond ikun jistax jigi rrikonnoxxut bhala 'Existing dwelling' f'termini ta' Policy 6.3.

Ghal dawn il-motivi, it-Tribunal jikkonsidra li l-Awtorita kienet korretta fir-rifjut tal-applikazzjoni odjerna, u ghaldaqstant it-Tribunal qed jichad l-aggravju imressaq.

Decide:

Ghal dawn il-motivi, it-Tribunal qieghed jichad dan l-appell u jikkonferma d-decizjoni tar-rifjut tal-applikazzjoni PA07041/19.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwent:

1. It-Tribunal zbalja l-interpretazzjoni tal-policy 6.3(3) tar-Rural Policy and Design Guidance 2014 meta qies li ghalkemm ingiebet il-prova li l-fond intuza bhala residenza fil-1962 ma ngibitx prova li l-fond intuza bhala residenza fl-1978. L-artikolu in kwistjoni ma jispecificax li l-fond kellu jintuza bhala residenza fil-1978 izda biss li l-fond kien jintuza bhala residenza qabel l-1992 jew li l-binja kienet tezisti qabel l-1978. L-appellant issodisfa l-ligi u ghalhekk it-Tribunal ma setax jiskarta l-provi migjuba.

Il-Qorti tosserva li minn ezami akkurat tad-decizjoni t-Tribunal qies li għall-izvilupp in kwistjoni tapplika l-policy 6.3 tal-RPDG2014 'extension to existing dwelling ODZ'. Dan mhux qed jig kontestat mill-appellant.

Din il-policy tipprovdi hekk:

the applicant can sufficiently prove that:

- a) the property in question has been used as a residence prior to 1992 or
- b) the dwelling is covered by a development permission, or dates back to pre-1978;

Ir-rekwiziti skont dan l-artikolu huma 3 wiehed alternattiv għall iehor mhux kumulattivi. L-applikant irid jipprova jew li l-fond kien jintuza bhala residenza qabel l-1982 jew li l-binja intiza għall-abitazzjoni hi koperta b'permess ta' zvilupp jew li hi binja intiza għall-abitazzjoni (skont id-definizzjoni ta' dwelling fil-glossarju) li tmur lura għal qabel l-1978.

Rigward l-ewwel rekwizit il-policy imkien ma ssemmi li trid tigi stabbilita l-uzu bhala residenza sal-1978 kif ikkonkluda t-Tribunal u li kienet ir-raguni ewlenija tar-rifjut. Il-policy tghid biss li l-fond kien jintuza bhala residenza qabel l-1992 bla ebda data specifika ohra jew kemm dam l-uzu tal-fond bhala residenza.

It-Tribunal filwaqt li jirreferi għal provi dwar l-uzu tal-fond bhala residenza fl-1962 pero imbagħad izid li ma hemmx prova li tali uzu tkompla sal-1978. Il-policy 6.3(3) ma torbotx l-uzu residenzjali mal-1978 izda tghid biss li bhala wiehed mir-rekwiziti alternattivi li l-binja intiza għall-abitazzjoni kienet hekk qabel l-1978. Lanqas ma issemmi 'existing dwelling' bhala rekwizit kif isemmi l-istess Tribunal.

Għalhekk l-appellant għandu ragun jilmenta fuq l-applikazzjoni korretta tal-policy 6.3(3) u l-appell qed jintlaqa'.

Decide

Għal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Anthony Camilleri u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-28 ta' Ottubru 2021, u tibghat l-atti lura lit-Tribunal biex jiddeciedi l-appell fil-mertu in linea ma' dak deciz.

Spejjez għall-Awtorita.

Mark Chetcuti

Prim Imhalled

Anne Xuereb

Deputat Registratur