QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum L-Erbgha, 7 ta' Dicembru, 2022

Numru 7

Appell Nru. 39/2022

Paul Bugeja

vs

L-Awtorita tal-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell ta' Paul Bugeja, tal-4 ta' Lulju 2022 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-14 ta' Gunju 2022 li biha tichad l-applikazzjoni RG1712/19 'to regularise bar, confectionery, pizzeria, bakery and preparation and sale of pizza and fast food' f'Hal Qormi;

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 ghal rregolarizazzjoni ta' bar, confectionery, pizzeria, bakery, u preparazzjoni u bejgh ta' pizza u ikel fast food. Is-sit in mertu jinsab fi Triq Guze' Muscat Azzopardi, Hal-Qormi.

L-izvilupp propost gie rifjutat mill-Awtorita' tal-Ippjanar ghar-raguni li hemm apparat fil-front garden tal-propjeta, konsistenti min A/C units u kumpressuri, li jistaw jirrizulaw fi storbju kontinwu u vibrazzjonijiet, u konsegwement ikollhom impatt fuq l-amenita taz-zona residenzjali, bi ksur ta' regolament 4 (5) (a) tal-Avviz Legali 285 tal-2016.

L-appellant dahhal appell kontra din id-decizjoni, u jirribatti fuq ir-rifjut tal-Awtorita' b'aggravju wiehed, fejn jindika l-unika thassib imqajjem mill-Awtorita huwa fir-rigward tal-apparat fil-front garden, u li huwa propens jindirizza tali thassib darba ghal dejjem billi jirregola l-pozizzjoni tieghu fl-ambitu tar-Regolament 5(3) tal-Avviz Legali 285 tal-2016, dan billi jnehhi l-imsemmi apparat.

Illi l-Awtorita' baqghet ferma fl-oggezzjoni taghha, u rrilevat illi l-permess PA02062/95 kien jinkludi hanut b'kejl ta' 19 m.k. u facilitajiet fil-parti retrostanti konsistenti min kcina u WC b'kejl kumplessiv ta' 26 m.k. L-Awtorita targumenta li ghalkemm l-appellant qed jindika li l-uzu tal-propjeta baqa prattikament kif approvat, dan mhuwiex il-kaz ghaliex il-pjanti fl-applikazzjoni odjerna jindikaw zieda fil-livell sotterran li jinkludi kcina u cold room, filwaqt li l-pjan terran jinkludi bar, confectionery, pizzeria, bakery, u preparazzjoni u bejgh ta' pizza u ikel fast food. L-Awtorita tirrivela wkoll li t-thassib inizzjali mqajjem mill-Awtorita kien permezz tal-case officer report a fol 25a, u konsegwentament il-Kummissjoni tal-Ippjanar kien talbet is-sottomissjoni ta' pjanti reveduti sabiex jigi ndirizzat tali thassib u tali pjanti gew sottomessi li jindikaw it-tnehhija u rilokazzjoni tal-appart ghal bitha ta' wara. Illi madankollu, in vista ta' ittra t'oggezzjoni, saret konsultazzjoni mad-Direttorat tal-Infurzar u waqt l-ispezzjoni gie osservat li l-appart in kwistjoni ghandu prezenti fil-front garden, filwaqt li waqt it-tieni seduta quddiem il-Kummissjoni sar intervent mill-objectors li ghamlu accenn ghal uzu abbuziv tal-propjeta minhabba li l-operat jibda min kmien fil-ghodu fit-03:30am, konsegwement l-Awtorita ma' taqbilx li l-appellant jista jsib soluzzjoni finali.

Illi partecipi f'dan l-appell hemm terza persuna nteressata li fil-mori tal-appell pprezenta affidavit minnu stess, li fieh jiddikjara li huwa ilu jghix flimkien mal-familja tieghu fuq il-confectionary in kwistjoni ghal dawn l-ahhar erba (4) snin u li l-appellant ikkonverta l-fond min confectionary ghal fabbrika ta' produzzjoni ta' diversi prodotti sabiex jitqassmu f'diversi outlets ohrajn. Jindika li l-fond tal-appellant m'ghandu l-ebda permess ta' 'bakery', b'referenza specifika ssir ghal kundizzjonijiet 6 u 7 tal-permess PA02062/95, u jargumenta li gialadarba l-confectionary tinsab f'zona residenzjali, dak li qed jintalab fl-applikazzjoni odjern huwa kontra l-policies taz-zona. Jindika wkoll li l-amenita residenzjali hija abbuzata b'mod regolari, b'dawn jinkludu tpoggija ta' materjal fil-parapett tal-objector, ostakolar u inkonvenjenza fit-triq u l-pedestrians minhabba l-vetturi tal-garr, hmiegu konnessjoni ta' trakkijiet mat-3 Phase. Finalment jindika li l-inkonvenjent jinkludi hsejjes, u b'referenza ghal Noise Assessment ikkummisjunat minghand AIS Environment Limited li minnu johrog li fuq bazi regolari jkun hemm storbju li jammonta min 38 sa 66 decibles, u jikkonkludi li dan kollu huwa bi ksur tad-Direttivi Ewropej. Anness ma' dan l-affidavit hemm ritratti, pen drive bil-hsejjes, u kopja tar-rapport kkummisjunat minghand AIS Environment Limited.

Ikkunsidra
Illi fl-ewwel lok it-Tribunal josserva li d-deskrizzjoni tal-proposta moghtija fil-permess originali PA02062/95 huwa ghal "Change of use to bar, confectionery and pizzeria. Preparation and

sale of pizza and fast foods. Advertisement.”, filwaqt li d-deskrizzjoni tal-proposta fl-applikazzjoni odjerna hija “To regularise bar, confectionery, pizzeria, bakery and preparation and sale of pizza and fast food.”. Illi a prima facie dawn id-deskrizzjonijiet simili tal-proposti prezenti fl-applikazzjoni PA02062/95 u dik odjerna jaghtu l-impressjoni li l-uzu stabbilit tal-fond odjern huwa gia stabbilit bil-permess originali, u fil-fatt fl-evalwazzjoni tal-proposta odjerna, l-Awtorita stess ndikat li “Previous permit PA 2062/95 was issued for bar/confectionery/pizzeria (with no seating) and therefore the use is legally-established.” [Skont id-Directorate’s comments f’sezzjoni 2 tal-case officer report a fol 27A fl-inkartament tal-RG01712/19]

Illi madankollu hekk kif gie rrivelat mill-istess Awtorita kif ukoll mit-terza persuna nteressata, il-varjazzjonijiet mill-permess originali PA02062/95 ma’ humiex limitati ghal appart tal-A/C units u kumpressuri prezenti fil-front garden, izda jinkludu zieda fl-intensifikazzjoni tal-operat fuq dan is-sit, u dan minhabba li zdied livell sotterran li jinkludi kcina u cold room, u l-livell terran li kien approvat fil-permess originali li jinkludi biss kcina fuq wara u hanut fuq quddiem, fl-applikazzjoni odjerna dan il-livell kollu huwa ndikat bhala bar, confectionery, pizzeria, bakery, and preparation and sale of pizza and fast food [Skont pjanti a fol 1B fl-inkartament tal-PA02062/95 u pjanta a fol 39B fl-inkartament tal-RG01712/19]. It-Tribunal josserva ulterjorment li l-permess originali PA02062/95 kien jinkludi kundizzjonijiet specifici sabiex jirregola l-operat fuq dan is-sit sabiex ma’ jkunx hemm impatt negattiv fuq l-ammenita residenzjali taz-zona, principarjement kundizzjonijiet 6 u 7 li jesigu kif gej:
“The use of the premises hereby approved shall at all times be conducted in such a manner so as not to unreasonable prejudice the residential amenities of the locality/adjoining property.
The proposed development shall not cause any inconvenience to neighbours or adjacent dwellings due to smells, noise, etc.”

Illi fl-ambitu ta’ dak provdut fl-Artikolu 5(3) tal-Avviz Legali 285 tal-2016, waqt l-ewwel seduta il-Kummissjoni tal-Ippanar talbet lill-perit rapprezentant tal-applikant sabiex jigu sottomessi pjanti reveduti li jindirizzaw r-ragunijiet tar-rifjut [Seduta mizmuma fis-27 t’Ottubru tal-2020], u segwentament gew sottomessi tali pjanti [Skont dokumenti a fol 39A-39E fl-inkartament tal-RG01712/19] u gie aggornat il-case officer report, b’dan jinkludi l-osservazzjonijiet segwenti:
“The latest drawings uploaded by the architect marked Doc 39B/39C/39D/39E seeks to remove the a/c and compressor units from the front garden, these shall be shifted to the backyard, the chimney flue has been indicated but the oven not mentioned, although labelled as a bakery at ground floor level, the oven was not referred in the approved drawings.
There is no documentary proof that the existing use of the premises entailed a bakery and that such activity has been in use before 2016, this activity is being objected at Doc 24A. The applicant is required to submit proof regards the use of the bakery prior to 2016 and a copy of the trading license for the years 2013/2014/2015/2016.
Observations
The regularization of the kitchen / preparation area at the basement level lacks light, air and ventilation and requires mitigation measures for the kitchen attendants working for 8 or more hours at basement level, especially as the backyard has been roofed over with perspex.
The chimney flue which is indicated on plan marked Doc 39B but not on section drawing to verify the length ofthe flue has been omitted and if the architect needs to declare if this was installed before or after 2016?
The complainant declared that a truck is parked to connect the 3phase from the confectionery shop to the truckbut this activity does not form part of this application and is to be referred to the enforcement directorate orother responsible authorities.
The noise, vibration and smells cause injury to amenity but the noise and vibration shall be eliminated once both the a/c and compressor are to be shifted at the back of the site.

The hours of operation mentioned and the allegation that, 'the place is being used (abusively) as a bakery/confectionery and that the applicant or his employees opens such establishment to start working for the baking of bread and cakes at 3.30am', this activity cannot be monitored by the authority but shall be investigated and monitored by other responsible authorities.
Require further submissions
A copy of the yearly trading license is important to be uploaded before the year 2016. An engineer's report is to be prepared to resolve the issue at basement level and at ground floor level, no seating is allowed on site and a fire, health & safety report is required, Revised section drawing is to be prepared by the architect for the chimney flue to indicate the height of the flue and when this was installed, and in operation. An aerial photo for the year 2012 and 2016 is to be also uploaded.
Enforcement Directorate (minute 42)
Site was inspected today 12.11.2020 While inspecting the site in question, I noted that the place is being used tobake and sell pastries. The aircondition outside unit and a compressor were also noted on site. (Photos attached).
The previous documents submitted by the case officer marked Doc 11A and 13A to applicant refer to the use of a bakery but the reason for refusal refers to noise and vibrations which cause injury to amenity, the use of a bakery has been included in the proposal while the noise and vibration are being shifted to the rear of the site.
The remaining issues listed above are to be addressed and require further submissions and assessment." [Skont Additional Notes tal-case officer report aggornat a fol 44A fl-inkartament tal-RG01712/19]

Illi mill-estratti supra cittat jirrizulta li t-thassib imqajjem mill-Awtorita ma' kienx limitat ghall-appart fil-front garden li fil-pjanti reveduti kien qed jigi ndikat li ser jigi rilokat fil-bitha ta' wara, izda t-thassib kien jinkludi nuqqas ta' prova li l-uzu ta' bakery beda qabel l-2016, nuqqas ta' dawl, arja u ventilazzjoni fil-livell sotterran, kif ukoll il-bzonn ta' kjarifika dwar l-gholi tac-cumnija u meta din giet installata. Dan filwaqt li d-Direttorat tal-Infurzar ikkonferma li l-appart kien ghadu prezenti fil-front garden.

Illi l-Artikolu 5(3) tal-Avviz Legali 285 tal-2016, li qed jaghmel accenn ghalieh l-appellant, jipprovdi hekk kif gej:
"F'każ li l-Awtorità tiddeċiedi li tapprova applikazzjoni sottomessa skont id-dispożizzjonijiet tar-regolament 4, l-istess Awtorità jkollha s-setgħa li timpani kwalunkwe kundizzjoni li tqis neċessarja, inkluż, iżda mhux biss, l-eżekuzzjoni ta' xogħlijiet speċifiċi fi żmien stipulate li ma jkunx aktar minn sentejn. In-nuqqas ta' osservanza, fiż-żmien stipulat, ta' xi waħda jew aktar mill-kundizzjonijiet imposti mill-Awtorità fid-deċizjoni tagħha jwassal għaċ-ċaħda awtomatika tal-applikazzjoni."

Illi l-Artikolu supra-cittat jipprovdi ammont ta' flessibilta lil Awtorita li meta tkun qed tiddecidi li tapprova applikazzjoni, din tista timponi emendi tal-izvilupp mitlub ghal regolarizazzjoni. Izda dan l-Artikolu ma' jorbotx lil Awtorita li tapprova l-izvilupp f'kaz li xogholijiet kkunsidrati mhux accettabli jigu ndikati ghat-tnehhija.

Illi huwa fatt inkontestat li fil-mument tad-decizjoni l-apparat fil-front garden tal-propjeta, konsistenti min A/C units u kumpressuri, kien ghandu prezenti hekk kif kkonfermat mid-Direttorat ghall-Infurzar fi hdan l-Awtorita. Ghaldaqstant l-Awtorita kienet korretta meta din cahdet it-talba ghal regolarizazzjoni ta' zvilupp ezistenti, liema zvilupp kien ghadu jinkludi l-imsemmi apparat.

Barra min hekk, filwaqt li l-appellant qed jattenta li jindirizza t-thassib imqajjem fir-rigward tal-injury to amenity billi jaghmel referenza ghal pjanti reveduti li jindikaw ir-rilokazzjoni tal-appart ghal bitha ta' wara fl-ambitu ta' dak provdut fl-Artikolu 5(3) tal-Avviz Legali 285 tal-

2016, huwa car li t-thassib imqajjem mill-Awtorita u mit-terz interessat m'humiex limitati ghal dan l-appart, filwaqt li l-appellant naqas milli jirribatti tali thassib imqajjem. Ghal dawn il-motivi, it-Tribunal m'huwiex propens li jilqa l-aggravju mressaq abbazi ta' dak provdut fl-Artikolu 5(3) tal-Avviz Legali 285 tal-2016. Inoltre t-Tribunal josserva li l-pjanti riveduti li jinkludu c-caqlieq ta' l-appart ghal-bitha ta' wara ma jindikawx kif kien se jkun mitigat b'mod effettiv l-istorbju w l-vibrazzjoni ndikati fir-raguni tar-rifjut li tirigwarda l-inkonvenjent.

Ghal dawn il-motivi, it-Tribunal jichad l-aggravju mressaq.

Decide:
Ghal dawn il-motivi, it-Tribunal qieghed jichad dan l-appell u jikkonferma d-decizjoni tar-rifjut tal-applikazzjoni RG01712/19

Ikkunsidrat

L-aggravju tal-appellant hu wiehed. It-Tribunal iddecieda fuq kwistjonijiet li ma kienux parti mir-raguni tar-rifjut, cioe li l-a/c units u l-cold room compressors fil-front garden tal-istabiliment setghu jkunu ta' inkonvenjent minhabba storbju u vibrazzjonijiet u ghalhekk bi ksur tal-regolament 4(5a) tal-Avviz Legali 285/16.

Il-Qorti tqis f'parti mid-decizjoni tat-Tribunal saru konsiderazzjonijiet dwar ilmenti jew nuqqasijiet ohra fl-izvilupp li qed jintalab regolarizazzjoni tieghu li qamu fil-mori tal-proceduri. Fil-fatt ghalkemm it-Tribunal indirizza dawn il-kwistjonijiet ghax qamu waqt il-mori tal-proceduri, dan seta' ma ghamlux u minflok indirizza biss l-aggravju quddiemu, cioe l-offerta tal-applikant dwar l-ispostament tal-a/c u kompressuri mill-bitha ta' quddiem ghal ta' wara biex jindirizza r-raguni ta' rifjut tal-Awtorita. Il-kwistjoni hi jekk it-Tribunal indirrizax dan l-aggravju u mhux jekk inoltrax fuq kwistjonijiet ohra ghalkemm relatati izda mhux imsemmija fir-raguni ta' rifjut.

Ir-risposta ghal tali domanda hi fl-affermattiv. It-Tribunal ikkonstata li nonostante l-aggravju tal-appellant, il-units kienu ghadhom prezenti fil-front garden fl-access li sar fit-12 ta' Novembru 2020, ftit jiem qabel id-decizjoni tal-Kummissjoni, ghalkemm ghal precizjoni f'Ottubru tal-2020 l-applikant baghat pjanti riveduti biex jindirizza t-thassib tal-Kummissjoni dwar dawn il-units. It-Tribunal qies li t-thassib imqajjem dwar l-istorbju u l-vibrazzjonijiet ma gewx spjanati mill-appellanti billi semplicement sposta l-istess units minn quddiem tal-binja ghal wara l-binja bi pjanta riveduta. Ghalhekk it-Tribunal qies li l-applikant ma gabx prova tal-mitigazzjoni li hu stess kien qed jipproponi bl-ispostament tal-units. Din hi kwistjoni ta' fatt u ta' natura teknika li din il-Qorti mhix ser tissindika apparti li kif inferixxa sew it-Tribunal, tali prova semmai

kellha issir mill-applikant mhux biss billi tinbidel il-pozizzjoni tal-apparat fis-sit f'semplici pjanta, liema apparat gie dikjarat jmur kontra dak li jrid l-artikolu 5(3) tal-Avviz Legali 205/2016. Il-Qorti ma tistax ukoll ma turix il-perplessita taghha kif jista' jsir regolarizazzjoni ta' stat ta' fatt 'as is' ma' proposta differenti fil-mori tal-istess proceduri.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Paul Bugeja u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-14 ta' Gunju 2022. Spejjez ghall-appellant.

Mark Chetcuti
Prim Imhallef

Anne Xuereb
Deputat Registratur