



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum L-Erbgha, 26 ta' Marzu, 2025

Numru 16

Appell Nru. 83/2024

Ryan Farrugia

vs

L-Awtorita' tal-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell ta' Ryan Farrugia tad-19 ta' Dicembru 2024 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta' Dicembru 2024 li biha laqa' in parti l-appell tal-applikant izda ikkkonferma r-rifjut ta' PA2716/19 'construction of six stables and ancillary facilities including paddocks, manure clamp, reservoir, cesspit, boundary walls, gate and landscaping scheme', f'Haz Zebbug;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk fil-parti rilevanti ghal dan l-appell :

L-access ghas-sit

Din hija l-kwistjoni ewlenija li tirrigwarda l-principju tal-izvilupp tal-istall tal-fuq is-sit odjern. Dwar din il kwistjoni l-appellant jisottolinea li l-passagg formanti parti mill-applikazzjoni huwa dak approvat bil-permess PA 9004/17 u li t-Tribunal kien diga esprima ruhu fuq dan il-passagg.

Illi fl-ewwel lok huwa pertinenti dak indikat fid-decizjoni tal-appell precedenti numru 54/20 li giet moghtija mit-Tribunal kif diversament kompost, fejn ghal dak li jirrigwarda l-access gie meqjus is-segwenti:

"Illi ghal-kemm fl-evalwazzjoni tagħha l-Awtorita qajmet thassib fir-rigward tal-passagg li jipprovdi access ghas-sit li huwa necessarju skont ir-rekwiziti tal-Policy 5.2, hekk kif gie ndikat u argumentat mill-appellant, fil-hrug tal-permess PA09004/17 fuq is-sit adjacenti pozizzjonat man-naha tal-Grigal tas-sit odjern l-Awtorita ma' sabet l-ebda oggezzjoni ghal dan l-istess passagg li jghaddi min quddiem is-sit tieghu. Fl-imsemmi kaz l-Awtorita ndikat li "The Architect sent correspondence of promise of sale for site in question, wherein it was stated that right of passage shall be granted to access the site in question through fields belonging to third parties who signed the said document, and such passage shall be left free and not impeded by any gate." u l-passagg gie ndikat fuq il-pjanta approvata a fol 50B flinkartament tal-PA09004/17. It-Tribunal ghaldaqstant huwa tal-fehma l-Awtorita ghandha tikkunsidra mill-gdid il-kwistjoni tal-passagg fl-isfond ta' dak ikkunsidrat u approvat fil-PA09004/17, dan sabiex jigi assigurat li jkun hemm trattament ugwali.

[...]

Illi gialadarba l-emendi sottomessi jindirizzaw it-thassib imqajjem fir-rigward tal-iskala tal-istrutturi tal-istall, u l-kwistjoni tal-passagg li jipprovdi access ghas-sit odjern ghandha tigi misharrga ulterjorment in vista tal-hrug tal-permess PA09004/17 fuq is-sit adjacenti, dan it-Tribunal qed jilqa b'mod limitat l-appell imressqa billi jirrimanda l-applikazzjoni lura quddiem l-Awtorita tal-lppjanar. Dan sabiex ikun hemm kunsidrazzjoni ulterjuri ta' dan il-passagg u jsiru l-konsultazzjonijiet necessarji mal-AAC. Barra min hekk, gialadarba l-applikazzjoni qed tigi rimandata lura quddiem l-Awtorita sabiex tigi kkunsidrata mill-gdid il-proposta emendata, it-twaqqiegh tal-hajt tas-sejjeigh jigi kkunsidrat ulterjorment u jintalbu u jsiru tibdiliet meqjusin necessarji sabiex thassib jigi ndirizzat."

Illi mis-suespost jirrizulta li dak li gie meqjus fid-decizjoni precedenti (appell numru 54/20) huwa li fil-hrug tal-permess PA 9004/17, l-Awtorita ma sabet ebda oggezzjoni ghal passagg li jghaddi minn quddiem is-sit tal-appellant, u b'hekk gie deciz li l-Awtorita ghandha tikkunsidra mill-gdid il-kwistjoni tal-passagg fl-isfond ta' dak ikkunsidrat u approvat fl-imsemmi permess PA9004/17.

Illi sussegwenti ghal din id-decizjoni tal-appell precedenti 54/20, jirrizulta li l-Awtorita pprocessat mill-gdid l-applikazzjoni odjerna, u evalwat il-proposta mill-gdid permezz tal-case officer report a fol 140a. Illi f'dan ir-rapport saret l-analizi segwenti fuq il-kwistjoni tal-access:

"The Directorate notes that permission PA9004/17 approved the construction of greenhouses on the adjacent site located due north of the site in question. Section 4.8.4 of the DPA report in PA9004/17 makes reference to the site access, stating that as per a promise of sale submitted by architect, a right of passage shall be granted through third party fields to access the site in question.

In this regard, the Directorate wishes to point out that the current proposal and that relative to PA9004/17 are different since the former proposes the construction of stables while the latter approved the installation of greenhouses. Policy 5.2 of the RPDG, 2014 specifically states that the site where the stables are being proposed should be served by an existing road network and that the vehicular access to the site is appropriately located. Policy 2.6 regulating greenhouses does not stipulate such a requirement. The reference to a 'right of passage' in PA9004/17 signifies an informal track passing through arable fields to provide access to farmers who have no direct access to their land from the country road. In this case, having a right of access through third party fields satisfy the requirement of policy 5.2 for a vehicular access.

Additionally, comparison of site aerial photos indicates that this access was created after the year 2018 without a development permission. In minute 43, the Enforcement Officer confirmed that this temporary passageway was created in order to ease access for construction vehicles to pass through. Although the passageway was shown in approved drawing PA9004/17/50B, this was not part of the approved development.

In light of the above issues, reason for refusal 1 is still valid."

Illi mis-suespost jirrizulta li l-Awtorita tishaq li d-dritt ta' passagg indikat fil-permess PA 9004/17 ifisser passagg informali li jghaddi mir-raba, u li l-ufficjal tal-infurzar fi hdan l-Awtorita kkonferma li l-passagg temporanju li gie kkrejat huwa sabiex jigi ffacilitat l-access ghal vetturi ta' kostruzzjoni, u li dan ma' jiffurmax parti mill-permess approvat.

It-Tribunal ha konjizzjoni tal-permess PA 9004/17 fejn setgha josserva li filwaqt li l-passagg gie ndikat fuq il-pjanta approvata a fol 50B, dan mhux inkluz bhala parti mis-sit kif indikat fuq is-site plan approvata a fol 1a. B'hekk filwaqt li fir-ritratti esebiti fir-rapport tekniku tal-Perit Ellul huwa evidenti li jezisti passagg tal-konkos li jwassal ghas-sit adjacenti kopert bil-permess PA 9004/17, huwa daqstant iehor evidenti li l-imsemmi passagg ma' jiffurmax parti minn dan il-permess,

It-Tribunal dwar in-natura temporanja tal-access li dwar titkellem l-Awtorita, josserva li huma wkoll ta' relevanza t-tipi diversi ta' passaggi elenkati fil-paragrafu 1.2.7 tal-RPDG2014, fejn hemm indikat is-segwenti:

"The countryside is characterised by various types of country pathways. In the context of Policy 1.2I, the term 'country pathway' must be interpreted in a very broad sense to include:

rights of way: these are informal tracks, normally unsurfaced, passing through arable fields and provide access to farmers or land managers having no direct access to their land from country roads/lanes;"

Illi huwa wkoll ta' relevanza dak li hemm indikat fil-Policy 2.10 tal-istess linja gwida, fejn din il-policy tirrigwarda fuq Access to arable farm holdings u titkellem fuq "Temporary vehicular access for tillage of soil by agricultural machinery, does not require the creation of a dedicated access route.". Illi filwaqt li l-passagg li jidher fir-ritratti esebiti fir-rapport tekniku tal-Perit Ennio Ellul juru li l-passagg ezistenti m'huwiex it-tip ta' passaggi imsemmija fis-suespost, jibqa l-fatt li l-imsemmi passagg mhux formanti mill-permess PA 9004/17 ghalix dan ma jiffurmax parti mis-sit indikat fuq is-site plan approvata a fol 1a.

Barra minn hekk, bid-dikjarazzjoni tal-ufficjal tal-infurzar, li gie riaffermata fir-risposta tal-Awtorita, l-imsemmi passagg huwa temporanju u b'hekk ma' jistax jitqies bhala adekwat sabiex iservi l-istalel proposti fl-applikazzjoni odjerna. In konsegwenza jirrizulta li s-sit odjern m'ghandux access adekwat mit-triq hekk kif mitlub bil-Policy 5.2.

Ghal dawn il-motivi, it-Tribunal jichad il-parti tal-aggravju rigwardanti l-access ghas-sit.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ghamel zball ta' ligi meta fid-decizjoni precedenti ghal din (Appell 54/20) baghat l-atti lura lill-Kummissjoni biex terga' tiddeciedi l-kaz minhabba l-kwistjoni tal-passagg fl-isfond tal-permess approvat PA9004/17 sabiex jigi assigurat trattament ugwali meta f'din id-decizjoni issa qed ighid li l-passagg ma jiffurmax parti mill-permess PA9004/17. Il-pjanta 10a fil-permess PA9004/14 turi l-passagg bhala 'approved development' u mkien ma jghid li hu passagg temporanju;
2. Id-decide mhix cara ghax filwaqt li t-Tribunal laqa' limitatament l-appell minghajr ma jghid liema aggravji qed jintlaqghu fl-istess waqt cahad l-appell ghax 'the proposed stable complex runs counter to the provisions of policy 5.2 of RPDG2014 since there is no direct vehicular access to the site' meta ma kellux vires jirrifjuta permess ghal ragunijiet differenti.

It-tieni aggravju

Dan l-aggravju mhux fejjiedi. Hu car mill-kunsiderazzjonijiet tat-Tribunal li wassluh ghad-decide kif maghmula illi t-Tribunal laqa' l-aggravju tal-appell dwar il-kobor u l-materjal uzat ghall-izvilupp u cahad l-aggravju dwar l-access ghas-sit u billi dan kien punt sostanzjali ghall-approvazzjoni tal-izvilupp cahad l-appell u ikkonferma l-ewwel parti tar-raguni ta' rifjut tal-Kummissjoni li kienet tghid testwalment dak riprodott fid-decide tat-Tribunal. Ma hemm xejn illogiku, inkonsistenti jew mhux car fid-decide tat-Tribunal.

L-aggravju hu michud.

L-ewwel aggravju

L-argument principali tal-appellant hu illi fl-ewwel decizjoni tieghu t-Tribunal ikkonferma li l-passagg li jaghti access ghas-sit mertu tal-izvilupp kien wiehed approvat fil-permess 9004/17 ghas-sit adjacenti u ghalhekk dan kien jifforma fatt maghruf u accertat fil-konfront ta' din l-applikazzjoni u ma setax ibiddel fehmtu, tant li l-applikazzjoni kienet intbaghtet lura lil Kummissjoni biex jitqies dan u jkun hemm trattament ugwali fiz-zewg kazijiet.

L-appellant mhux preciz f'dak li jissottometti. Fl-ewwel decizjoni saret referenza ghal konvenju fuq is-sit mertu tal-applikazzjoni 9004/17 fejn kull ma intqal kien li kien ser jinghata access ghas-sit mertu ta' dik l-applikazzjoni minn ghelieqi ta' terzi u tali passagg ser jithalla liberu. Id-decizjoni tat-Tribunal b'referenza ghas-sit mertu ta' dan l-appell kienet biex issir kunsiderazzjoni ulterjuri dwar dan il-passagg wara konsultazzjoni mal-AAC fl-isfond ta' trattament ugwali imma bl-ebda mod u anqas mill-pjanta approvata ma gie indikat xi passagg bhala parti mill-permess ta' zvilupp.

Ovvjament it-trattament ugwali jigi applikat ghal sitwazzjoni simili. Fil-fatt is-sitwazzjonijiet mhux simili ghax filwaqt li l-permess 9004/17 kien ghal greenhouses fejn il-policy 2.6 ma taghmel ebda accenn ghat-tip ta' access li ghandu jkun hemm bzonn ghal ghoti tal-permess, fil-kaz tal-applikazzjoni prezenti il-policy 5.2 tal-RPDG2014 tesigi 'an existing road network and that vehicular access to the site is appropriately located'. Ir-referenza ghal 'right of passage' fil-permess tal-2017 kienet

ghal wiehed miftiehem biex ighaddi minn go ghelieqi bhala access ghall-greenhouses. F'dan is-sens ghandu jitqies dak li qal id-Diretorat li l-passagg kien wiehed informali bhala access ghal bdiewa fuq art li ma ghandhomx access ghaliha jekk mhux minn dan il-passagg. It-Tribunal fil-fatt isemmi li tali passagg hu dak kif indikat fil-paragrafu 1.2.7 tal-RPDG2014 li jaghti bhala interpretazzjoni ta' dritt ta' passagg fil-kampanja bhala 'informal tracks, normally unsurfaced, passing through arable fields and provide access to farmers having no direct access to the lane from country roads or lanes' u li l-policy 2.1 tghid li tali accessi ma ghandhomx bzonn li jkollhom 'a dedicated access route' ghax huma wzati temporanjament ghal makkinarju agrikolu biex ighaddu minnhom ghal bzonnijiet agrikoli.

It-Tribunal filwaqt li qies li l-pjanta approvata a fol 1a ma jinkludix il-passagg bhala approvat fil-permess PA9004/17 qies ukoll li z-zewg zviluppi mhumieq simili u ghal dan l-izvilupp kien jehtieg konsiderazzjoni specifika dwar l-access kif trid il-policy liema access ma jirrizultax.

Ghalhekk l-aggravju ma jistax jigi milqugh.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Ryan Farrugia u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta' Dicembru 2024. Spejjez kontra l-appellanti.

Mark Chetcuti

Prim Imhallef

Anne Xuereb

Deputat Registratur