



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 143/2012

Anthony Attard

vs

L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Attard tal-10 ta' Ottubru 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 fejn cahad l-applikazzjoni PA 2689/10;

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fis-17 ta' Frar 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 2689/10 - Sovereign Building, No. 32, Triq iz-Zaghfran, Attard: To sanction change of use of lower basement from car parking store and archives and server room, upper basement from car park to store and archives and kitchenette, ground floor drive-in and shop to reception area and meeting rooms

L-erba' ragunijiet ghar-rifjut kienu s-segwenti:

"1 The total floorspace of the class 5 offices exceeds the maximum allowable area of 75m² permitted in a Residential area and therefore the proposal runs counter to policy CG 07 of the Central Malta Local Plan which seeks to protect the amenity of the residential areas.

2 The extension to the class 5 offices would lead to an over development of the site. This would not be in the interests of the amenity of the area as a whole and it would exacerbate the problems of over development in the area. The proposal is therefore unacceptable and runs counter to Structure Plan policy BEN 1.

3 The proposed development will remove the existing parking spaces for the building and so it would conflict with Structure Plan policy TRA 4 and PA circular 3/93 which seek to ensure that appropriate provision is made for off- street parking.

4 The existing ramp encroaching onto the public pavement obstructs the free flow of the pedestrians on the pavement, and therefore runs counter to Structure Plan policy BEN 1."

B. In-nota tal-Perit Philip Azzopardi ghall-Appellant, ipprezentata fit-18 ta' Marzu 2011, senjatament il-punti segwenti:

"1. Policy CG 07 of the CMLP

A development permit for the commercial use of the site was granted in PA 1338/99, which was prior to the issuing of the Local Plans. Therefore there is no point now in saying the CMLP designates the area as residential when ground floor had been permitted for class four use and first and second floors for class five use. In fact the commercial use of third floor (PA 3444/06) was granted in view that the site was already committed for commercial use, should also be pointed out that this particular road is predominantly commercial and also the recent permits were granted to further intensify the commercial use.

2. Structure plan Policy BEN 1 [...]

By converting a showroom into offices would not constitute bad neighbourliness, firstly because the original permit had already granted three floors of showrooms and offices and secondly a reception area and two meeting rooms are much less intensive than a large showroom.

The distance given in this policy is a minimum which will be appropriate within built up area where traffic speeds are generally low. On arterial and distributor roads or where traffic is likely to be moving at high speeds, the distance should be greater and an access locate further away from a junction, bend, corner etc.

3. DC Policy 4.1 states that:

It is important that all access points used by vehicles are safe and easy and convenient to use. The policy specifies a number of performance criteria to be fulfilled to ensure that this requirement is met. Some of these criteria are detailed further in subsequent policies.

4. Policy 4.2 states that:

Access from Arterial Roads

Structure Plan policy RDS 5 precludes direct access from arterial roads in order that their function as a major traffic artery is maintained and safeguarded from development

which might disrupt traffic flows or give rise to highway danger.

5. Policy 4.7 states that:

Accesses in Proximity to Junctions

Accesses that are too close to road junctions, bends or corners are likely to be dangerous and unsafe. Vehicles emerging from them will often have poor visibility of oncoming vehicle and similarly drivers turning round a corner will have very limited forward visibility to vehicles leaving or waiting to enter the access.

Vehicular accesses in the vicinity of junctions should be safe to use and not pose a danger to other road users, and so should be at least 4m from junctions, corners, bends etc. [...]

Applicant is aware that the shortfall of parking spaces has to be compensated by law contribution towards the Urban Improvement Fund that will cost him €5,823.43 over the hefty expenses he had already incurred for the excavation and construction of the parking facilities he had originally provided in the basement that are now unusable for the reasons as already explained above.

6. PA circular 3/93 that seeks to ensure that appropriate provision is made for off-street parking is in direct conflict with the above mentioned DC Policies 4.1, 4.2 and 4.7.

7. Policy TRA 4 states that:

Where a development is not required to meet full standards, the cost of providing the shortfall of spaces in public parking facilities shall be a requirement of the development.

8. The existing ramp in front of the entrance to the building is also being objected to as it is being alleged that it obstructs the free flow of the pedestrians. Applicant had submitted an application to the Local Council to construct this ramp and a permit was granted [...]. Moreover the

pavement in front of the premises is very wide and ramp will not obstruct the pedestrians flow."

C. In-nota responsiva ta' Jonathan Borg għall-Awtorita, ipprezentata fl-20 ta' Gunju 2011, inter alia l-punti segwenti:

"5.2.2 Principle of Development vis-a-vis Local Plan and the issue of commitment

The Authority notes that the area has been designated by the local plan as a Residential Area as per Map ATM 1. Therefore any uses other than residential in such areas are being limited in size due to their impact on the residential neighborhoods. Policy CG 07 of the CMLP designates that office spaces in Residential Areas are limited to a maximum permissible area of 75sq.m, whereas the proposal plans to extend the existing office space from about 250sq.m to circa 550sq.m of office space and storage. This area exceeds by far the maximum permissible area for Class 5 use in Residential Areas, and therefore an extension to the existing development clearly runs counter to the principle of uses permitted in Residential Areas.

Therefore, in reply to the appellant's argument in this regard, whilst the approved commercial space is not objectionable even if it exceeds the thresholds established by the local plan since it is covered by permit, further commercial space is clearly not permissible as this would defeat the aims of the local plan for the area. [...] MEPA would also like to highlight the importance of respecting the zoning designations in the local plan in order to ensure comprehensive planning. [...]

5.2.3 Parking Requirement

[...] policy 4.18 of DC 2007 clearly states that this policy does not apply where the proposed development will result in the removal of parking available on site. As a result, the request to contribute towards the UIF for the loss of existing parking spaces cannot be considered.

5.24 Ramp

Notwithstanding the clearance from Attard Local Council regarding the existing ramp encroaching on the pavement level, the ramp is still making private use out of a public pavement. Since ramp could have been provided with the site profile, the recommended reason for refusal still stands."

D. In-nota ta' sottomissjonijiet tal-Avukat Dott. Ian Spiteri Bailey għall-Appellant, ipprezentata waqt is-Seduta nurnru 65, mizmuma fl-20 ta' Settembru 2011, senjatament il-punti segwenti:

"• Policy CG 07 - Central Malta Local Plan (CMLP)

As acknowledged by the Authority itself, the office space at first, second and penthouse levels which covers a total floors pace of 260sqm, had already been approved by permit PA/1338/99 issued prior to the publication of the CMLP, and is therefore not objectionable. The extension at lower and upper basement levels, as well as the ground floor level covers a total area of 288sqm, of which the proposed staff canteen constitutes 96sqm.

The Authority rightly notes in this respect PAB 161/07, where the Appeals Board highlights the importance of ensuring that Local Plans are respected. This being said however, it is hereby humbly submitted that the provisions of CG 07 ought not to be considered in a vacuum [...]

The [...] conversion of the [...] three lower levels into storage space, a canteen and a board room cannot be equated with an increase in the number of offices and an increase consequently in the number of people working within the building or- increase in the commercial activity on the present situation. In addition, [...] the presence on the ground floor of a reception area and a board room is much less intensive than the presence of a large showroom, which according to the original permit was deemed acceptable. [...] What is being requested now is

the elimination of the heavy traffic which can be generated, with all the related difficulties and traffic hazards (which will be dealt with in further detail hereunder), as well as the drive way and shop/showroom at the ground floor level, which, if utilized as permitted to date, will definitely imply more commercial activity, traffic etc. [...] Should [...] be more conceivable, plausible and feasible to have a meeting room and reception for the same employees already in practice in the upper three floors, rather than a showroom with a new commercial activity engaged and further employees as well as customers [...] and] to have a storage for files, archives, server room and small staff kitchette, which will in themselves create absolutely no commercial activity, rather than two levels of parking with cars coming in and out on such a main road?

It is perfectly correct to say that Policy CG 07 defines the floorspace at a limit of 75sqm, but it is also true that Class 5 includes and specifically deals with Financial and Professional Offices.

To this effect one must point out that such offices have today proliferated. [...] What today has become a must for a well organized office to have a server room in order that the computerized system functions well and efficiently might not have been thought of way back ten or 15 years back.

The same applies with archiving and storage systems [...]

All this is being said without prejudice to the issue of the area being "allegedly" a residential area as well as the issue that premises, in truth and effect, is already covered by a valid permit for commercial use [...]. In view of the above therefore the assertion that the proposed conversion contradicts the provisions of the CMLP would once again seem to be unfounded and unacceptable.

- Structural Plan Policy BEN 1 - Overdevelopment (Reason 2) & Existing Ramp (Reason 4)

The [...] notion of 'overdevelopment' ought not even to be considered an issue in the circumstances which surround this particular case. As previously noted [...] the site concerned is located in a road which is predominantly of a commercial nature. [...] At] least 50% of the block of buildings of which the site in question forms part is evidently constituted of commercial buildings. [...] Reference must here be made to the Structure Plan Policy BEN 1 which prohibits development which is likely to have 'a deleterious impact on existing or planned adjacent uses [...] and] which would constitute bad neighbourliness.'

Taking into consideration the fact that [...] the proposal in question merely seeks the conversion of the use of an already existing space intended for a car park and a showroom, into a storage space, reception area, server room and board room, it is difficult to perceive how this application would have any of the above-mentioned adverse effects thereby running contrary to Structural Plan Policy BEN 1 [... The] present proposal is more compliant with Policy BEN 1 than the present state of affairs, and in this respect, the Authority's assertions to this effect are therefore clearly unfounded in fact and at law.

The Authority also submits [...] that the 'existing ramp encroaching onto the public pavement obstructs the free flow of pedestrians on the pavement' [... The] relevant application as regards this particular ramp had already been made and approved by the Attard Local Council which consequently issued the permit required in this respect. Furthermore, it must be noted that the pavement in front of the site concerned is very wide and therefore in actual fact, the presence of this ramp does not cause any hindrance at all and whatsoever to passing pedestrians and cannot therefore realistically be considered a breach of Structural Plan Policy BEN 1. [...]

- Structure Plan Policy TRA 4 and PA Circular 3/93

Perhaps the most crucial consideration in this regard relates to the precise location in which the building concerned is situated [... on] a corner on a very busy road, at a point where cars emerge from another road junction situated approximately 110m away. The hazard thereby posed to vehicles entering and exiting the car park located on the upper and lower basement levels of the said premises is indisputable [... It] is hardly surprising that visitors refused to utilize the said car park, leaving the appellant with no choice but to devise a way of utilizing the otherwise useless space. [... The] provisions of DC Policies 4.1, 4.2 and 4.7 must be taken into consideration in this respect. The said policies respectively seek to ensure that access points used by vehicles are safe, not directly situated upon major traffic arteries, and not too close to road junctions, bends or corners. [...]

This being said, the appellant is aware of the provisions of Structure Plan Policy TRA 4 and PA Circular 3/93, as well as that stipulated by the Policy and Design Guidance (2007) Policy 4.18 which establishes the concept of the Urban Improvement Fund. [...] The Authority rightly points out by virtue of its submissions to this Tribunal, that the above-mentioned Policy 4.18 is inapplicable, 'where the proposed development will result in the removal of parking available on site'. The appellant nevertheless humbly submits in this regard, that taking into consideration the fact that a car park on the site in question is not practical and could not even be utilized as such for the abovementioned reasons, the proposed conversion will not in actual fact have the effect of reducing parking available on site, precisely because such parking was not being made use of in the first place. [...]"

E. In-nota second statement ta' Jonathan Borg ghall-Awtorita, datata fit-2 ta' Frar 2012, inter alia s-sitt punti segwenti:

"2.1 The Authority would like to highlight that the application is for sanctioning an existing illegal development albeit the appellant's submission seems to imply that the proposal is yet to take place.

2.2 The assertion that the elimination of the showroom/shop and underlying parking spaces and their change of use into ancillary office space will lead to less traffic is simply unfounded in planning terms. It is important to note that the elimination of the shop that the appellant gave so much attention to, and upon which rests much of his argument is just about 65sq.m (commercial space) and qualifies as a local shop. Indeed a local shop is considered to generate minimal vehicular traffic to the point that no associated parking on site is required according to current policies.

The appellant is arguing that the elimination of the parking areas and their change of use into ancillary office space will only mean better facilities to the existing facilities. The Authority disagrees. These underground ancillary facilities simply means that they liberated space at the upper levels which may now cater for even more employees.

2.3 Local Plan designation

[... The] local plan is not stating that the area is a residential area but that it is designated as such, meaning that the intention of the local plan is that any developments in this area must be predominantly residential in character.

The appellant's comment that the local plan is also not realistic to limit offices to 75sq.m is misleading. The local plan limits such offices in a residential area. Other areas have been identified by the local plan where larger offices are permissible. If the needs of a small office has outgrown the limits imposed by the local plan then it needs to shift its premises to more suitable areas in order not to impact negatively on the amenity of its present surroundings.

Furthermore, and of equal importance, the Tribunal is not the correct forum to debate the merits of specific policies. Therefore the argument of whether the quoted policies are correct or fair is simply beside the point.

2.4 Over-development

The Authority was most correct to refuse the application on grounds of over development. The proposal consists of removing existing parking on two levels and convert them into further office space. The loss of such an intrinsic amenity to a development as is a parking area simply to generate more office space cannot but be termed as over development. [...]

2.5 Parking

The loss of parking is simply not justified. First of all, loss of 'parking cannot be compensated via the UIF mechanism as is explicitly explained by policy 4.18 of the DC2007. The UIF mechanism is only to be used for newly created shortfall in parking provision or where it is not desirable to have parking on site.

The argument that the approved car parking area is not suitable is also not sustained from a planning point of view. As the appellant himself admitted, the vehicular entrance is 110m away from the nearest junction. This makes it very safe to use, especially in view that the street is a two-lane one-way road. The fact that the parking was found inconvenient by the visitors and this is understandable, does not render such parking unsuitable to the employees who work fixed hours as stated by the appellant.

The elimination of this parking does not generate less atmospheric pollution as claimed by the appellant. Actually it generates more as employees and visitors alike stay on the road for lengthier periods (probably on lower gears) in search of on-street parking spaces.

2.6 Ramp

The Authority notes that ago-ahead from the local council does not render the ramp legal. Any development requires a development permit from the Authority.

The fact that the pavement is wide does not mean that the ramp it is not obstructing the public pedestrian passageway. Also, the problem would be further exacerbated should the street be widened."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jigu ssanati l-bdil fl-uzu ta' zewg livelli sottinterrati ta' blokk kummercjali li tinsab f'H'Attard. Fid-dettal, il-proposta tirrigwarda l-bdil tal-lower basement minn garaxx ghal-mahzen u arkivji t'ufficini, kif ukoll tal-upper basement f'mahzen u arkivju iehor, hanut, reception area, meeting rooms, kitchenette, u drive-in.

Precedentement kienu diga' nhargu zewg permessi fuq is-sit: PA 1338/99 sabiex ikunu jistghu jinbnew zewg basement grages u tlett showrooms u ufficini sovrastanti, u PA 3444/06 biex tinbena estensjoni ghall-ufficini.

Ir-raguni ghar-rifjut jistrieħu fuq il-fatti li; l-floorspace kompressiv tal-ufficini class 5, kif jirrizulta li jinsabu l-lum gewwa arja residenzjali, jaqzbu l-limitu ta' 75 metri kwadri stabbiliti permezz tal-policy CG 07 tal-Pjan Lokali (CMLP); kif ukoll ghax ir-rampa proposta toħrog il-barra għall-fuq il-bankina u għalhekk ser tkun ta' perikolu għall-pedoni li jkunu qed jirnxu f'dik il-parti tat-triq. Jirrizulta għalhekk li l-izvilupp propost hu wkoll f'kunflitt mal-policy BEN I tal-Pjan ta' Struttura li għandha bħal għan il-harsien tal-amenities tal-area. Giet citata wkoll policy TRA 4 u c-ciolari P A 3/93 ghax di konsegwenza l-izvilupp propost mhux ser ikun jista' jakkomodha bizzegjed parkeggi.

L-aggravji tal-Appellant jistrieħu fuq il-premessa li z-zona fejn jinsab dan il-font, għalkemm indikata bħala residential area mill-Pjan Lokali, l-lum għandha uzu predominantement kummercjali, u li r-rampa li għandu fuq il-bankina saret bil-kunsens tal-Kunsill Lokali.

L-Appellant jiddikjara li dakinhar li ntavola l-applikazzjoni għall-ewwel zvilupp kummercjali fuq il-font in ezami, kien kostrett jipprovdi wkoll garaxxijiet taħt l-art - kostrett ghax

dak kien l-unika mod sabiex il-proposta tieghu setghet tigi approvata mill-Awtorita, anke jekk id-dahla tal-garaxxijiet kif giet approvata u nbriet (il-font jinsab fuq kantuniera), tikkostitwixxi perikolu ghat-traffiku li jkun ghaddej minn hemmhekk. Jirrileva li fil-fatt, meta l-bini beda jopera, l-klijenti kienu bhal jirrifjutaw li juzaw il-garaxxijiet provduti, tant li bdew jipparkjaw barra t-triq. Jistqarr li minhabba f'hekk, gie (ulterjorment) kostrett sabiex jaqleb l-uzu tal-hanut, showroom u drive-in kif approvati fil-permess, f'meeting rooms ghall-ufficini li hemm sorvrastanti kif u kolli jibda' juza l-garaxxijiet bhala rnhazen ii filing areas ghall-istess ufficini - ilkoll minghajr permess. Jargumenta li fic-cirkostanzi, billi l-font kien munit b'permess ghal uzu kummercjali - u billi jirrizulta li t-triq ghandha commitment t'attivitja kummercjali - allura l-proposta tieghu ma kelliex tigi rrifjutata ghax inter alia, rnhix ser izzid l-impatt (kummercjali) fuq din iz-zona.

In oltre, skond l-Appellant, billi l-permess precedent kien ghal tlett sulari ta' showrooms u ufficini, ir-reception area u zewg meeting rooms li hemm illum ghandhom jirrizultaw f'impatt li hu hafna izghar milli dak li kien gie originarjament approvat.

Ikun tajjeb li jigi nutat li kif ben osservat l-Awtorita, l-Appellant jiddiskrivi l-izvilupp bhallikieku ghadu jrid isehh, u mhux li diga sar (u li qed jigi ttentat is-samar tieghu). Dan hu punt li jimmerita kunsiderazzjoni partikolari, speċjalment fid-dawl ta' certa stqarrijiet li saru mill-istess Appellant bhal per eżempju; li l-klijenti jirrifjutaw li jipparkjaw gewwa l-garaxxijiet provduti minhabba l-fatt li d-dahla hi perikolanti. Wiehed jistaqsi; jekk il-garaxxijiet tnehew (illegalment), allura kif jista' qatt l-Appellant jippretendi li l-klijenti tieghu jibqu juzawhom, meta illum saru stores, arkivji, etc.? Kif jidher, bilfors li huwa minnu li l-garaxxijiet ma jintuzawx mill-klijenti izda r-raguni hi forsi aktar semplici - u cjoe ghax il-garaxxijiet ma' baqawx jezistu.

L-Awtorita tirribarti l-argumenti mressqa mill-Appellant billi qabel xejn tispjega li l-permess PA 1338/99 ghall-attivitja kummercjali li kien inhareg fuq is-sit odjern, gie approvat

ferm qabel ma dahal fis-sebh il-Pjan Lokali vigenti u li ghalhekk ma hemm l-ebda oggezzjoni ghalih. Fil-fatt, meta kienet giet approvata l-applikazzjoni PA 3444/06, kien propju minhabba l-fatt li s-sit kien diga committed b'dan it-tip ta' uzu. Madankollu, l-Pjan Lokali llum ghandu l-ghan li jrazzan kwalsiasi attivita kummercjali gdida (jew ulterjuri) - u peress li t-talba in ezami tirrizulta f'zieda ta' spazju kummercjali (terga tghid ghas-skaptu ta' parking spaces), m'ghandiex tigi milqugha.

Fir-rigward tal-parkegg, l-Appellant jargumenta li bl-eliminazzjoni tal-garaxxijiet, ser jigi evitat kwalsiasi perikolu li seta' jigi kkawzat minhabba l-problema li hemm bl-access, kif diga gie suespost. Jispjega wkoll li llum il-gurnata, minhabba l-avvanz fit-teknologija, hemm aktar bzonn ta' spazju ghal-filing u arkivji, server rooms, etc., fl-ufficini, u l-ispazju tal-garaxx jista' facilment jigi konvertiti f'spazju bhal dan. Mill-band l-ohra l-ohra wiehed jifhem ukoll li jeziti argument perfettament kuntrarju ghall dan - u cjoe li llum il-gurnata t-teknologija tant avvanzat li naqas il-bzonn ta' hafna karti - u ghalhekk il-bzonn ta' hafna spazju ghal filing naqas ukoll.

In oltre, l-Appellant jargumenta li ufficini bhal dawn (ta' financial services) jirrikjedu spazji hafna ikbar mill-75 metri kwadri li tipprovdi l-policy. Semmai dan l-argument hu minnu, allura wiehed jistqasi jekk a priori, ufficini bhal dan in ezami ghandhomx jigu permessi f'zoni li ma jifiluhomx. Anke jekk ghall-grazzja tal-argument, l-Appellant ghandu ragun, allura jfisser li din it-tip t'attivita m'ghandiex postha f'din iz-zona (residenzjali), ghax johrog car li l-font jirrizulta li ghandu qisien u kunfigurazzjoni ferm differenti minn dak li ghandu jkollu sabiex jaqdi tali funzjoni. Dan ifisser li kif giet ipprezentata l-proposta odjerna, wiehed jissuspetta li l-Appellant qieghed bhalli kieku jara kif jaghmel sabiex jimponi uzu fuqfont li ma jiflahx ghalih – cjoe imposing a use on an existing site u mhux finding the right use for the existing site.

Ghar-rigward tal-access allegatament skomdu tal-garaxxijiet u tar-rampa, irid jigi osservat li tali access qatt ma kien b'xi mod impost fuq l-Appellant - anzi, id-disinn

tal-garaxxijiet kien integru ghall-istess proposta (originali) tieghu. Ma jistax issa jippretendi li l-Awtorita taccetta li dan id-disinn huwa wiehed skadenti. In oltre, kif tajjeb gie rilevat mill-Awtorita, il-fatt li l-Kunsill Lokali hariglu koncessjoni sabiex jestendi l-bankina per se mhux argument validu. Semmai, bil-mod kif ir-rampa giet estizja fuq il-bankina hi kwistjoni ta' (out of) alignment, u kwistjoni bhal din ma taqax fil-kompetenza ta' dan it-Tribunal.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan it-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonfenna r-rifjut ghall-PA 2689/10 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fis-17 ta' Frar 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra sew il-kwistjoni tal- 'commitment' ezistenti fuq is-sit li ghandha tigi meqjusa skond l-artikolu 69(2) tal-Kap. 504 u li hi 'kawza ohra ta' sustanza' li t-Tribunal hu obligat legalment li josserva;
2. It-Tribunal ghamel zball ta' ligi meta jidher li ha l-pozizzjoni li l-pjan lokali tal-2006 kellu l-ghan li jrazzan attivita kummercjali fiz-zona u ghalhekk applikazzjoni li tirrizulta f'zieda ta' spazju kummercjali ghandha tigi michuda. Dan hu kuntrarju ghal linja ta' hsieb addottat mill-Qorti, li hu fis-sens li jrid isir ezami serju jekk l-area hix kommissa u jekk hu hekk, dan il-kuncett ghandu jigi applikat anke fid-dawl ta' dak provdut fil-pjan lokali.

Iz-zewg aggravji tal-appellant huma fil-fatt wiehed kongunt cioe li t-Tribunal kellu jaghti konsiderazzjonijiet ghal commitment tas-sit anke fid-dawl ta' dak provdut fil-pjan lokali.

Din il-Qorti hi tal-fehma illi l-legislatur bl-emendi li dahlu in vigore fl-2001 u li gew riprodotti fl-emendi u l-introduzzjoni tal-Kap. 504 fl-2010, l-enfasi li kienet tinghata lil 'konsiderazzjonijiet ohra' fosthom kwistjonijiet ta' commitment u ugwaljanza, ghalkemm huma ta' relevanza

pero huma subordinati ghad-dover tal-Awtorita u Tribunal li l-ewwel u qabel xejn ghandu japplika u mhux biss iqis, il-pjanijiet u policies fl-ipprocessar ta' applikazzjoni. Il-Qorti tqis li l-element dikrezzjonali tat-Tribunal meta fid-determinazzjoni ta' applikazzjoni iqis kwistjonijiet ohra hu lllum mrazzan u ghandu jigi ezercitat barra l-parametri tal-ligi pjanijiet u policies fejn l-istess ligi pjan jew policy tippermetti eccezzjoni jew tippermetti l-uzu ta' diskrezzjoni fl-interpretazzjoni jew fil-generalita tal-applikazzjoni taghhom meta dawn jipprovdu biss gwida jew ghajnuna. F'dan is-sens ghandha tinqara l-ligi u tigi interpretata fid-dawl ta' applikazzjonijiet pendenti jew decizi wara d-dhul in vigore tal-artikolu 69 tal-Kap. 504 bhala parti mill-ligijiet ta' Malta li baqghet fidila ghal dak li kien jipprovdi l-artikolu 33 tal-Kap. 356.

Il-Qorti hi konsapevoli li jezistu sentenzi li ssubordinaw l-applikazzjoni tal-pjanijiet u policies billi dawn kellhom jigu addatti biex jintegraw ruhhom ma' konsiderazzjonijiet fattwali ta' commitment fuq is-sit. Pero din il-Qorti tqis li l-legislatur kien car fl-ghazla tad-dicitura bejn l-artikolu 69(1) u 69(2) tal-Kap. 504 (kif inghad replikat mill-artikolu 33 tal-Kap. 356) u ghalhekk l-interpretazzjoni li ghandha tinghata u tigi addottata hi dik hawn enuncjata.

Applikat dan il-principju ghal kaz in ezami, t-Tribunal ghandu jikkonsidra kwistjonijiet ta' commitment u ta' ugwaljanza jekk jitqajmu pero a bazi ta' dak li trid il-ligi kif inhi u mhux oltre u sakemm it-Tribunal izomm mal-parametri ffissati mill-legislatur li anki din il-Qorti hi marbuta bihom, ma hemmx lok ghal revizjoni ta' decizjoni tat-Tribunal.

Maghdud dan il-Qorti pero trid tara jekk it-Tribunal fl-ewwel lok ikkunsidrax il-kwistjoni tal-commitment mqajma mill-appellant ghax jekk giet debitament kunsidrata, trattata u deciza, allura din il-Qorti ma ghandhiex id-diskrezzjoni li tissindaka l-fatti li necessarjament jkun ha konjizzjoni taghhom it-Tribunal biex jasal jichad l-kwistjoni tal-commitment bhala r-raguni determinanti ghaliex ghandu jinhareg il-permess.

Il-Qorti tirraviza illi hu car illi t-Tribunal ikkunsidra l-ilmenti tal-appellant kemm ghal dak li jirrigwarda l-uzu tal-garages taht l-art, u shop/showroom fil-ground floor, ir-rampa, it-kobor tal-ufficini proposta ghas-sanzjoni pero qies ukoll illi din hi applikazzjoni ghal sanzjonar ta' zvilupp mhux applikazzjoni gdida ghal zvilupp. In oltre t-Tribunal ghamel kostatazzjonijiet purament ta' fatt, ta' planning u ta' natura teknika rigward l-argumenti mressqa mill-appellant li din il-Qorti ma ghandhiex dritt tissindaka.

Dak li pero jirrizulta car mid-decizjoni tat-Tribunal ili l-applikazzjoni tal-appellant tikser policies vigenti tal-ippjanar u ried jassikura li ghoti ta' permess ikun konformi magghom li fil-fehma konsiderata tieghu ma kienux, kif fil-fatt jidher mill-qari tal-istess decizjoni.

It-Tribunal ghalhekk ikkunsidra li anki jekk iz-zona kien fiha stabbilimenti kummercjali, illum il-pjan lokali kien jistabilixxi certi kriterji li kellhom jigu applikat u osservati mit-Tribunal ad unguem.

Il-Qorti tqis li dan hu konformi ma' dak li jipprovdi l-artikolu 69 u billi t-Tribunal qies l-ilmenti tal-appellant mill-punto di vista ta' commitment u ragunijiet ohra li jirrizultaw mill-istess decizjoni u cahadhom biex jaghti predominanza lil pian lokali u policies rilevanti, mhux komputu ta' din il-Qorti li terga tissindaka mill-gdid kwistjonijiet li gew kunsidrati, debattuti u decizi u ma hemm xejn fl-atti li juru li t-Tribunal ghamel xi zball grossolan ta' fatt li kien il-fattur determinanti ghad-decizjoni tieghu f'liema kaz id-decizjoni kienet tkun 'unsound' u kwindi revokabbli. Pero dan ma jirrizultax.

Jirrizulta illi t-Tribunal applika l-local plan u policies rilevanti u qies bhala importanti f'dan il-kaz il-fatt li dak li kien qed jigi mitlub kien sanzjonar ta' uzu mhux kopert b'permess liema uzu jmur kontra dak li jrid il-local plan ghall-area in kwistjoni, liema local plan ghandha tigi applikata.

Jista' jkun li l-appellant ma jaqbilx mal-konsiderazzjonijiet tat-Tribunal u l-piz li ta lil policies tenut kont tal-fatti

Kopja Informali ta' Sentenza

pprovati pero din il-Qorti ma ghandha ebda jedd tindahal fl-interpretazzjoni ta' policie u pjanijiet sakemm ma jirrizultax li tali interpretazzjoni tmur kontra l-kliem car li hemm fil-pjan u policy. Daqstant iehor din il-Qorti ma tistax tissindaka hi fatti teknici u ta' ippjanar li jkun dahal fihom it-Tribunal u ddecieda dwarhom billi dawn ma jikkostitwux punti ta' ligi appellabli.

Decide

Il-Qorti ghalhekk tichad l-appell ta' Anthony Attard u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012. Bl-ispejjez ghall-appellant.

< Sentenza Finali >

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