



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 149/2012

Etienne Dalli

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Etienne Dalli tal-15 ta' Ottubru 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li rrifjutat l-applikazzjoni PA 3305/10;

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tat-Tribunal kienet gusta u l-appell kellu jigi michud;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll tal-Ambjent u l-Ippjanar, fil-25 ta' Lulju 2011, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 3305/10 "Hilltop, limiti tax-Xoqqa, Triq San Anard, Zabbar: Additions and alterations to existing dwelling."

It-tlett ragunijiet għar-rifjut kienu s-segwenti:

"1. The proposed extension of 132m² at first floor, the floorspace will amount to 403m². In this regard, the proposal addition to the existing building runs counter to Section 8.2(iii) of Policy PLP 20, which specifically requires that the extensions to existing buildings must not create a total floorspace which exceeds 150sq.m.

2. This development permit application is not favorably considered since the scale and massing of the proposed building is considered excessive and will have a visual impact on the surrounding environment, therefore running counter to Policy PLP 20 Section 8.2(vi).

3. Structure Plan Policy AHF 1 quotes that the countryside must be safeguarded for the benefit of future generations. In this regard, the proposed residential unit is not acceptable since an agricultural site used for the productivity of cultivation will be reduced since part of the site is to be converted into a dwelling. This also runs counter to Policy SET 11 which requires that no form of urban development will be permitted outside the existing and committed built up areas."

B. In-nota tal-Perit Samuel Formosa għall-Appellant, ipprezentata fit-18 t'Awwissu 2011, senjatament it-tlett punti segwenti:

"1. Existing permit

[...] it is important to clarify that inadvertently, prior to the previous application, (PA 5556/05), I was not aware that the premises in question concerned both a panel beater and a sprayer garage as well as my client's residence.

This misconception was obviously reflected in the submitted plans of the previously approved permit, PA 5556/05, so much so that the structures at first floor were erroneously marked as an office, WC and archives. Proof of this residence has been sufficiently sent - copies of the electoral register, the licence of the applicant's mother's address and the ID card of the applicant himself. Moreover, the applicant himself and his family (parents and brother) have resided in this dwelling for at least twelve years. Consequently the above statements (and if necessary any other affidavits by the applicant himself and his family to confirm that he actually resided there) confirm that this premises consisted both of a residence and a panel beater/spray painting both. Thus the submitted application involves solely the extension of an existing residence and not the creation of a new residence as argued in the DPA report.

2. Footprint area

The proposed residence shall have a total area of 150 sq.m. and thus conforms with the requirements of Policy PLP 20. The floorspace of the underlying and approved panel beater and spray painter cannot be included in the calculation of this area since these are two separate properties and their total areas should not be added together since they are two entirely different properties and their total areas should not be added together since they are two entirely different entities. Thus the total area of 150 sq.m. for a residence is considered acceptable in the relevant Policy Paper.

3. Scale and massing

The existing site is a two story building and thus the extension of the existing dwelling at first floor level should not effect the visual impact of the surroundings. Moreover, the area is adequately landscaped and thus shall sufficiently screen the existing structure. The proposed extension and addition to the existing dwelling shall not involve the taking up of unbuilt land, but has been designed to extend only on the built-up area, at first floor level which is the roof space of the underlying structure and the adjoining terrace of the existing dwelling"

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C. In-nota responsiva ta' Mario Scicluna ghall-Awtorita, ipprezentata waqt is-Seduta numru 72, mizmuma fil-11 t'Ottubru 2011, kif ukoll il-verbal tal-istess seduta, precizament kif gej:

"Il-Perit Formosa qed jinghata l-fakulta li jirrispondi ghar-rapport tal-Awtorita, fi zmien xahrejn mil-lum; ma' din in-nota ghandu jannetti xi affidavits biex jipprova illi s-sit in kwistjoni kien uzat bhala residenza; l-Awtorita jkollha l-fakulta li fl-istess terminu tirrispondi."

D. In-nota ulterjuri tal-Perit Samuel Formosa ghall-Appellant, ipprezentata fl-20 ta' Dicembru 2011, inter alia l-punti segwenti:

"The [... attached] affidavits and documentation are sufficient evidence to prove that the property was a casa bottega premises - with the ground floor being used as a sprayer/panel beater and the first floor the residence of the Dalli family throughout the different periods of time"

Mal-istess nota gew annessi; affidavit tal-Appellant; kopja tal-karta tal-identita u ta' dokument tal-vot tieghu; affidavits ta' Alfred u Mary Grace Dalli, missier u omm l-istess Appellant; kopja tal-licenzja tas-sewqan taghha; u kopja ta' estratt mir-registru elettorali, ilkoll in sostenn tal-argument li l-familja Dalli ghexghet f'dan il-fond sa mis-sena 1971 u li l-istess Appellant tweled u trabba hemmhekk sa almenu s-sena 2007.

E. Il-verbal tas-Seduta numru 17, mizmuma fit-23 ta' Frar 2012, senjatament il-punti segwenti:

"Ghall-Awtorita dehru [l-Avukat Dott.] Anthony De Gaetano u Mario Scicluna li ddikjaraw li mill-provi prodotti jirrizulta li l-ewwel sular kien minn dejjem jintuza' u ghadu jintuza' ghal skopijiet residenzjali. Il-parti li trid tigi kkunsidrata bhala footprint [recte floorspace] tar-residenza ghalhekk hija l-ewwel sular u dik il-parti tal-ground floor li kienet indikata bhala offices b'dana illi komplessivament ma jeccedux il-150 metru."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex isiru xi modifiki u tibena estensjoni ghal fond konsistenti minn dar u garaxx, li jinsab barra z-zona tal-izvilupp (ODZ) ta' Haz-Zabbar.

Precedentement u fuq l-istess sit, kienet giet intavolata applikazzjoni (PA 5556/05) sabiex jinbidel saqaf u jizdied l-gholi ta' garaxx li jintuza ghax-xoghol ta' tellar (sprayer and panel beater). Din kienet originarjarnet giet irrifjutata, izda r-rifjut gie revokat b'decizjoni tal-Bord ta' l-Appell dwar l-ippjanar (PAB 204/06).

Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li l-proposta in ezami hi f'kunflitt mas-Section 8.2 tal-policy paper PLP 20, li; tillimita l-zvilupp fl-ODZ ghal wiehed ta' skala u disinn li jkun kumpatibbli mal-madwar (u ghalhekk ma jservix t'impatt viziv), u li jkollu spazju utili li ma jaqbizx il-150 metri kwadri. Gew ukoll citati l-policies AHF 1 u SET 11 tal-Pjan ta' Struttura li jipprekludu kwalsiasi zvilupp gdid ta' natura esklussivament residenzjali fil-kampanja.

L-aggravji tal-Appellant huma bbazati fuq il-premessa li skont il-policy paper PLP 20, kemm il-darba tkun permessibbli 'residenza' fil-kampanja, din irid ikollha floorspace ta' 150 metri kwadri; u li fic-cirkostanzi, il-garaxx (tat-tellar) m'ghandux jigi kkunsidrat fil-kalkolu ta' spazju utili - ghax garaxx mhux residenza. In oltre, jispjega li t-talba tieghu hi sabiex tigi estiza residenza gja ezistenti u mhux sabiex tinbena t-tieni wahda. Jargumenta wkoll li peress li l-estensjoni li qed tintalab tirrizulta fuq il-parti tal-fond li diga nbriet, allura l-izvilupp propost mhux ser iharbat art vergni (fresh take up of land) u ghalhekk hu idoneju mal-ispirtu, kemm tal-Pjan ta' Struttura kif ukoll tal-policy paper PLP 20.

Skond ammissjoni tal-istess Appellant, meta kienet giet intavolata l-applikazzjoni PA 5556/05, bi zball, l-ewwel sular gie ndikat bhala ufficju rilatat mal-attivitá tat-tellar, u mhux bhala residenza. In sostenn ta' dan gew anke

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pprezentati kopji ta' diversi dokumenti bhala prova li din il-proprjeta fil-fatt, ilha tintuza bhala residenza ghal bosta decenni.

Tajjeb li jigi nutat li dan l-argument mhux qed jigi kkontestat mill-Awtorita. Din pero zammet ferm fuq il-punt ta' kif ghandu jitkejjel l-ispzju utili ta' 150 metru kwadru.

Ghal dan ir-rigward, jigi rilevat li l-partijiet tas-Section 8 - Changes of use and extensions in rural areas tal-policy paper PLP 20 - Development outside built up areas, rilevanti ghal-kaz in ezami huma s-segwenti:

"8.1 Notwithstanding the blanket prohibition against development outside areas designated for urban uses in the Structure Plan, certain changes of use and minor extensions to existing buildings in the countryside may be acceptable, provided planning and environmental criteria are met. This form of development will require very careful consideration to ensure that the basic Structure Plan strategy is not compromised. Such proposals will only be acceptable if the following criteria are met: [...]

8.2 Minor extensions to buildings and uses in rural areas may be acceptable provided the following criteria are met:

Extensions to buildings in rural areas

In addition to satisfying the requirements in paragraph 8.1 [...], proposals for extensions to buildings or uses outside the limits of development will only be acceptable if the following criteria are met:

Site Area

(iii) Extensions to existing buildings must not create a total floorspace which exceeds 150 sq.m. (groundfloor area of existing building plus extension).

Visual Impact

(vi) The visual impact of the new development, particularly its scale and massing, must be acceptable in the wider landscape setting of the site. If new development would be prominent in attractive or important views and cannot

be adequately screened by landscaping it will not be acceptable."

Dan ifisser jekk ghall grazzja tal-argument jigi sorvolat il-punt ta' disinn xieraq, cjoe disinn ta' bini li jkun perfettament idoneju u kompatibbli mal-ambjent li fih ser jitla', jibqa' l-argument tal-ispazju utili.

Is-subinciz (iii) tas-Section 8.2 tal-policy paper PLP 20 hu car fuq dan: il-150 metri kwadri ta' floorspace jinkludu kemm il-firxa tal-bini fil-livell terran (i.e. footprint) kif ukoll kwalsiasi spazju li jirrizulta fil-livell sovrastanti. Il-policy paper ma taghrafx jew ma taghmilx distinzjoni fl-uzu tal-ispazju, cjoe jekk u kemm per ezempju mill-floorspace ser jintuza bhala mahzen, garaxx, jew zona abitabbli, etc. Fil-fatt, dan kollu hu fl-ispirtu ta' zvilupp permesibbli fil-kampanja, cjoe fl-ODZ; ghax residenza fil-kampanja ghandha sservi attivita marbuta mal-kampanja, bhal per ezempju razzett etc., fejn ir-residenti minbarra li joqodu hemmhekk, jahdmu l-art fil-madwar jew irabbu l-animali fuq l-istess fond. Minn dan johrog li meta zvilupp bhal dan jigi permess, ghandu jinkorpora fih, kemm il-part residenzjali kif ukoll l-ispazji kollha fejn is sir il-hazna tal-prodotti jew tal-bhejjem, ghodda, ingenji, etc. Ghalhekk f'kwalsiasi kaz, il-150 metri kwadri ghandhom jitqiesu bhala l-ispazju utili massimu li huwa permessibbli - cjoe residenza w imhazen.

Fic-cirkostanzi billi it-talba odjema hi ghall-estensjoni ta' 132 metri kwadri fl-ewwel sular, ser jirrizulta zvilupp ta' ben 403 metri kwadri; cjoe kwazi tlett darbiet izjed minn dak li tippermetti l-policy paper.

Mill-banda l-ohra irid jigi nutat, li bl-istess argument monk tal-Appellant, wiehed jista' jibni numru ta' residenzi kemm irid fl-istess font fl-ODZ; basta dawn jitilghu fuq xulxin u li kull wahda minnhom ma taqbix il-floorspace ta' 150 metri kwadri. Dan ifisser li kieku bl-istess ragunament, jistghu jinbnew ferm aktar sulari milli hu permessibbli mill-aktar Pjan Lokali laxk li jezisti - ghax jekk il-Pjanijiet Lokali jistabilixxi inter alia, height limitations, fl-ODZ dan ma' japplikawx: u ma japplikawx ghax ikun kontrosens li

jinhareg development permit propju outside (the) development zone.

Dan li qed jinghad jista' mad-daqqa t'ghajn jinstema' stramb; ghax l-Awtorita gieli harget permessi fl-ODZ. Izda lanqas ma hi xi anomalja jew loophole fis-sistema tal-ippjanar, li fl-istess ODZ m'hemmx height limitation. Di natura, permess ghal-residenza li jinhareg fl-ODZ hu pjuttost ekwivalenti ghal koncessjoni Prattika, fejn jigi tollerati li galadarba persuni jkunu genwinament jahdmu fil-kampanja, jkunu jistghu jirrisjedu vicin il-post tax-xoghol taghhom, kemm il-darba tali attivita agrikola tibqa' fis-sehh.

Oltre minn hekk, l-argumenti u l-pretensjonijiet bhal dawn tal-Appellant odjem iwaqqghu ghar-redikolu l-process tal-ippjanar u tali agir jirrazzenta l-imposizzjoni tas-sanzjoni fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' l-2010, Kap. 504.

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 jikkonferma r-rifjut ghall-PA 3305/10 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fil-25 ta' Lulju 2011.

Ikkunsidrat

L-aggravji tal-appellant kontra din id-decizjoni huma essenzjalment tnejn:

1. Li t-Tribunal naqas li jindirizza u jiddeciedi l-aggravji kollha tal-appellant kontra d-decizjoni tal-Awtorita u anki fuq dak li ddecieda ma kienx car fuq dak li kien qed jigi sottomess mill-appellant. Ghalhekk gie miksuri id-dritt tal-appellant ghal smigh xieraq;
2. It-Tribunal zbalja legalment l-interpretazzjoni tal-floorspace skond il-Policy PLP 20 artikolu 8.2(vi).

Il-Qorti ma tqis li l-appellant ghandu ragun f'dan l-appell. Jibda biex jinghad li l-principju hu ili l-punti mqajma mill-appellant bhala aggravji kontra decizjoni tal-Awtorita

ghandhom jigi debitament indirizzati u decizi mit-Tribunal biex jigi assikurat smigh xieraq u certezza fil-gudizzju. Pero dan ma jfissirx illi jekk it-Tribunal ikun ikkoncentra fuq aggravju li dehrlu kien wiehed mill-fatturi determinanti ghal hrug tal-permess tieghu u wara li sab li l-aggravju ma hux validu u kwindi l-applikazzjoni kellha tigi rigettata, b'daqshekk awtomatikament l-appellant naqaslu d-dritt ghal smigh xieraq jew li d-decizjoni tiflew il-validita taghha. Ovvjament kull kaz irid jittiehed skond il-fattispecie tieghu u ma jfissirx li t-Tribunal jista' jabbuza milli jonqos li jittratta l-aggravji tal-appellant jew jittratta biss xi aggravji li wahedhom anki jekk michudin ma kienux jikkostitwixxu l-fatti jew fatturi determinati ghal hrug jew cahda ta' permess.

F'dan il-kaz partikolari t-Tribunal ssofferma ruhu fuq il-Policy PLP 20 dwar il-massimu ta' floorspace permissibli fis-sit u darba li sab li l-applikazzjoni ghall-estensjoni kienet teccedi dak li trid il-ligi, allura awtomatikament l-applikazzjoni kellha tigi rigettata nonostante ragunijiet ohra li fuqhom l-Awtorita kellha ragunijiet ohra oltre tal-kejl ghalfejn l-applikazzjoni ma setghetx tigi milqugha.

Dan ma jfissirx b'daqshekk illi jekk it-Tribunal ma kellux raguni tajba li fuqha bena d-decizjoni tieghu u li gabet fix-xejn kull konsiderazzjoni ohra li ngiebet fl-appell, allura l-appellant soffra xi zvantagg ghaliex jekk jinstab li d-decizjoni hi hazina fuq punt ta' ligi appellabbli, allura l-process jigi rimess lura lit-Tribunal biex jerga' jiddeciedi l-asperti kollha mqajma skond il-ligi.

Hu minnu illi l-Qorti kienet tkun ferm aktar sodisfatta li kieku t-Tribunal ezamina anki l-aggravji l-ohra kontra d-decizjoni tal-Awtorita biex l-atti jkunu aktar kompleti mill-punto di vista ta' sodisfazzjon tal-appellant dwar ir-ragunijiet kollha ghalfejn ma kienx qed jinhariglu l-permess, pero kif inghad, dan in-nuqqas mehud wahdu ma jwassalx necessarjament jew awtomatikament ghan-nullita tad-decizjoni jew nuqqas ta' smigh xieraq. Dal resto f'dan il-kaz ir-raguni tat-Tribunal li waslitu biex jasal ghad-decizjoni tieghu kienet cara u bbazata fuq dak li t-Tribunal

ikkonsidra bhala l-interpretazzjoni tal-artikolu 8.2(iii) tal-Policy PLP 20.

Il-Qorti ma taqbilx mal-appellant illi t-Tribunal ma ddecidiex espressament il-kwistjoni li l-applikazzjoni tal-esponenti kienet titratta biss estenzjoni ghal residenza ezistenti u mhux tibdel jew zvilupp gdid. It-Tribunal fl-ewwel lok semma' illi dak li kien qed jigi sottomess mill-appellant li parti mill-fond ma kienx ghall-uzu ta' residenza izda ta' garage ghal tellar ma giex kontestat mill-Awtorita, u illi l-kwistjoni kienet ben deliniata cioe jekk dak li jird l-artikolu 8.2(iii) tal-Policy PLP 20 bhala area ta' bini kinitx permissibbli tirreferi ghal parti residenzjali jew anki ghal partijiet ohra mhux adebiti ghal residenza. Altru milli ma kienx car. Tant hu hekk illi mbaghad t-Tribunal dahal fil-konsiderazzjoni principali jekk l-artikolu 8.2(iii) ghamilx distinzjoni dwar l-uzu tas-sit fil-kejl permess tas-sit. Li kieku ma kienx car fuq dak li hu ried jigi dibattut, it-Tribunal ma kienx jaccenna ghal kwistjoni mentre fil-fatt it-Tribunal dahal fiha esplicitament.

Dak li ghamel it-Tribunal hu li interpreta l-artikolu in kwistjoni applikabbli indiskriminatament ghal dan it-tip ta' applikazzjoni ta' estenzjoni u qies illi l-kliem tal-policy hu car u ma jaghmilx distinzjoni bejn l-area uzata ghar-residenza u dik ghal affarijiet ohra konnessi u ghalhekk l-interpretazzjoni kellha tkun wahda restrittiva.

Il-Qorti ma ghandhiex jedd tassindika interpretazzjoni ta' policy li jkun dahal fiha t-Tribunal. Kif qalet il-Qorti tal-Appell f'**Joseph Mifsud vs Kummissjoni ghall-Kontroll tal-Izvilupp** (App Inf 30/05/1999):

Tali nterpretazzjoni u applikazzjoni jispettaw, skond il-ligi, lill-Bord ta' l-Appell u din il-Qorti, m'ghandhiex il-gurisdizzjoni li tissindikahom jew tiddisturbahom, sakemm ma jkunx jidher car illi d-decizjoni hija manifestament ingusta minhabba applikazzjoni hazina tal-ligi, kif enuncjata fl-istess decizjoni."

F'dan il-kaz ma jidhirx minn qari tal-artikolu rilevanti tal-PLP 20 li t-Tribunal applika hazing il-policy jew l-interpretazzjoni tieghu tal-istess policy hi manifestament

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erroneja u ma tirrizultax mill-istess ligi kkwotata mit-Tribunal. Hu f'dan il-kaz illi l-Qorti tista' tintrometti ruhha qua appell fuq punt ta' ligi trattat u deciz mit-Tribunal. Pero kif inghad dan ma jirrizultax u ghalhekk it-Tribunal kien gustifikat li darba li sab li l-appellant ma setax jinhariglu permess a bazi tal-kejl komplessiv tas-sit inkluz l-estensjoni anki jekk ghal grazzja tal-argument seta' kellu ragun fuq l-aggravji l-ohra, seta' jissoferma ruhu kif ghamel fuq dan l-aggravju biss.

Decide

Ghalhekk il-Qorti ghar-ragunijiet imsemmija qed tichad l-appell ta' Etienne Dalli u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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