



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 153/2012

Lorraine Micallef

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Lorraine Micallef tal-15 ta' Ottubru 2012 mir-rifjut tal-applikazzjoni PA 7614/07 mit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012;

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;

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

B'applikazzjoni tas-17 ta' Dicembru 2007 - Outline Development Permission – PA/7614/07 l-appellanti, f' 'Sunrise', Hal-Tartarini, l/o Dingli talbet:

"Construction of a dwelling."

L-Awtorita cahdet it-talba għall-hrug tal-permess relattiv għar-ragunijiet segwenti:

“1. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

2 The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

3 The proposal also runs counter to Structure Plan Policy AHF 5 which only accepts the development of structures essential to agriculture outside the development zone.

4 The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

5 The proposed dwelling unit within the site in question would lead to intensification of buildings within the

respective rural area; hence creating a visual impact outside the development zone. The proposed development is therefore in conflict with Structure Plan policy RCO 4 which seeks the protection of the scenic value of rural areas.

6 The site lies outside the limits for development defined in the Temporary Provisions scheme for *insert name of locality/town* and so it is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside."

Illi l-Perit Joe Cassar fl-appell tieghu ssottometta s-segwenti:

"i. This application requests the construction of a dwelling adjacent to an existing blank party wall and thus may be considered as an end of development application intended primarily to present a better presentable facade than the blank party wall.

ii. Only a couple of metres away from this particular site the Appeals board granted a similar application (PA 02717/04) for the construction of a dwelling adjacent to a blank party wall."

L-Awtorita fir-rapport taghha kkummentat kif gej:

"5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The proposed development is objectionable as it is not considered as legitimate development that may be accepted outside the development zone boundary. There appears to be no justification on sound planning grounds for accepting the proposed development, as required by Structure Plan policy SET 12. Accepting the proposed residential unit would only encourage the further dispersal of sporadic development in the countryside, which is clearly against the aim of policies SET 11 & RCO 2, which

seek to safeguard the countryside from urban development.

5.2 The appellant claims that the fact that site abuts a blank party wall merits favourable consideration to this application. Whilst acknowledging that the site is adjacent to a blank party wall, the Local Plan only allows rural residences on sites located adjacent to blank party walls of existing buildings or as infill developments within the designated Category 1 & 2 Rural Settlements, and subject to compliance with other criteria as listed in North West Local Plan policies NWRS 2 & NWRS 3. In the case of rural areas outside the designated Rural Settlements, new residential units are not allowed.

5.3 The Authority does not consider that there are any overriding reasons for going against the Local Plan's rural settlement designations and policy framework. Favourable consideration to this proposal would only go against the scope of the Local Plan, which aims at containing existing clusters of development located outside the development zone boundaries, to ensure that rural areas are safeguarded from further sporadic urban development. For this reason the Local Plan has consolidated the most committed rural settlements for limited expansion, while prohibiting any new residential uses outside those consolidated areas.

5.4 The appellant also points out that within vicinity of the site, the Planning Appeals Board has even approved a similar proposal in PA 2717/04. In the case of PA 2717/04, the Planning Appeals Board consented the construction of a new residential unit adjacent to a blank party wall of an existing residential building in their decision of 14th October 2005. The Board's decision was based on the fact that the site was located within the proposed rural settlement boundary of Hal-Tartarini in the Local Plan Public Consultation draft, where the proposed local plan indicated that such development could be accepted. This decision was however taken prior to the coming in force of the final Local Plan, with the latter now reducing the rural settlement boundary of Hal-Tartarini.

5.5 Pressure for residential development within rural areas has been on the increase over the last years, and there have been several requests for end of development solutions (i.e. residential development adjacent to blank party walls). As in the case of the permit cited by the appellant, several of these end of development requests have been favourably considered by MEPA and the Appeals Board in an ad hoc and case-by-case manner.

5.6 The detrimental impact of such ad hoc practices on the countryside instigated the need for the Local Plans to introduce measures to contain these pressures, by limiting the development adjacent to blank party walls solely within the various designated Category 1 & 2 Rural Settlements. Moreover, the 2006 Scheme Rationalisation exercise allowed for the release of further rural land for residential development within extended development zone boundaries. Hence, accepting further residential development outside these designated areas would undermine the provisions for the release of residential land within rural areas, as already carried out by MEPA in the Local Plans and Rationalisation exercise. MEPA's concerns against allowing any further residential development outside these released areas are validated in the principle expressed by the Planning Appeal Board in PA 0617/95, whereby the Board stated that:

"Il-Bord ma jaqbilx li wiehed jista' jestendi l-linja ta' l-izvilupp lil hinn minn dik stabbilita fl-ischeme altrimenti Malta u Ghawdex kollha jispicca fiz-zona permessa ghall-izvilupp." (Renato Camilleri vs. DCC, 9th September 1997, PAB 160/96, PA 0617/95)

5.7 The Planning Appeals Board has expressed its objections towards allowing such end of development proposals, especially now that the Local Plans are approved and such development is limited within those areas specifically designated as Category 1 & 2 Rural Settlements. Cases in point are:

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- Antoine Cutajar vs. MEPA, 30th November 2007, PAB 72/05, PA 5328/03;
- Carmel Micallef vs. MEPA, 25th April 2008, PAB 238/05, PA 6467/03;
- Twanny Falzon vs. MEPA, 6th March 2009, PAB 125/04, PA 5391/02.

MEPA contemplates that the same consideration given to these two cases are similarly applicable to this application subject to appeal."

Il-perit Joe Cassar fir-risposta tieghu wiegeb kif gej:

"I am in receipt of the directorate's response to this appeal. The directorate states that this appeal should be refused as the site does not fall within the area designated as Category 1 & 2 Rural settlements. It also confirms that a permit PA 2717/04 was issued granting a new residential unit in close vicinity of the site subject to this application. The directorate contends that this decision was taken prior to the coming into force of the local plan. However the point remains that in this hamlet a permit was issued a couple of metres away from this site based on the same reasons now being stated by applicant why this appeal should be upheld. The board has on several occasions granted an appeal due to the existence of other commitments in the area. I believe that this is one such similar case.

I suggest that the board should visit the site to have a clearer picture of the situation prior to arriving at a decision."

Illi fl-access tas-6 ta' Mejju 2011 il-perit Cassar wera lit-Tribunal ghalqa li hija adjacenti zvilupp ezistenti fejn huwa qed jipproponi li jibni dar residenzjali. Il-proposta hija construction of a dwelling. Is-sit jinsab barra z-zona tal-izvilupp u l-area kollha hija proprjeta privata. Fl-istess area jidher li nbnew tlieta jew erbgha residenzi.

Ikkunsidra ulterjorment:

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L-appellanti qed tipproponi li tibni residenza f'lokalita f'Had-Dingli, li hi barra z-zona tal-Izvilupp, (ODZ).

Din l-applikazzjoni giet rifjutata peress li l-izvilupp mhuwiex gustifikat skond l-policy SET 12, mhuwiex konsistenti mal-policy SET 11 u l-policy BEN 5, kif ukoll il-policy AHF 5 li tippermetti zvilupp ta' strutturi essenzjali ghall-agrikoltura barra miz-zona tal-izvilupp tmur kontra l-policy RCO 4, u li s-sit jinsab barra l-limiti tal-izvilupp.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smigh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellanti tissottometti li l-izvilupp propost ghandhu jigi kkunsidrat bhala end of development, li qed jigi propost partikolarment ghall-izvilupp ta' faccata iktar prezentabbli, u li biss zewg metri l-boghod mis-sit nghata permess PA 02717/04 ghall-izvilupp ta' residenza adjacenti ma hajt blank party wall.

L-Awtorita tissottometti li l-izvilupp propost rnhuwiex gustifikat ai termini tal-policy SET 12 u jikkontribwixxi ghal zvilupp fil-kampanja li jmur kontra l-policies SET 11 u RCO 2, li skond il-pjan lokali huma permessi biss residenzi rurali f'siti adjacenti ma blank party walls elenkati bhala Category 1 & 2 Rural Settlements, u huma soggetti ghal kriterji ohrain bhall-policies North West Local Plan policies NWRS 2 & NWRS 3, li l-permess PA 2717/04 citat mill-appellant inhareg qabel ma gie ppubblikat il-pjan lokali finali, u li l-izvilupp propost ghandhu jigi michud ukoll in vista ta' dak li gie deciz fl-Appell PAB 160/96, PA 0617/95 tad-9 ta' Settembru 1997, "Renato Camilleri vs. Kummissjoni ghall-Kontroll ta' l-Izvilupp." Citat mill-Awtorita fir-rapport taghha.

Il-konsiderazzjoni l-aktar rilevanti, u determinant f'dan l-appell hi certament z-'zoning' tal-area.

Din l-area partikolari skond l-Pjan Lokali ppubblikat f'Lulju 2006 hi indikata bhala area barra z-zona ta' l-izvilupp; u ghalhekk fil-principju, strutturi urbanizzanti u residenzali m'humiex permesi. Eccezzjonalment, f'tali lokalitajiet

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huma permessi biss strutturi essenzjali ghall-agrikoltrua; dan 'ex admissis' mhux il-kaz, billi l-proposta hi ghall-izvilupp residenzjali.

Kif konfermat mir-rapport tal-Awtorita, f'dawn l-lokalitajiet huwa wkoll eccezzjonalment permessi certi strutturi ta' natura residenzjali, bhal zvilupp adjacenti, bhal party wall, bhal kaz in ezami, jew infill-development, pero f'areas li ghalkemm barra z-zona ta' l-izvilupp huma klassifikati bhala Category 1 jew Category 2 Rural Settlements.

Il-lokalita ta' l-izvilupp propost ma gietx klassifikata bhala Rural Settlement - in fatti lejn it-Tramuntana taghha hemm xi numru limitat ta' binjiet li gew klassifikati bhala Category 3 Rural Settlements; pero s-sit 'de quo' ma jiformax parti min dan s-settlement billi hu 'l barra minnu.

Kif anke gie kostatat fl-access, s-sit illum hu art agrikola fertili, u hi cirkondata b'art agrikola ikkultivata billi l-lokalita hi principalment wahda rurali.

Indubbjament tali zvilupp, fl-eventwalita li jigi approvat, jkompli jnaqqas mir-raba ta' kwalita tajba li jinhadem ghall-agrikoltura; cirkostanza li ghandha tigi kkontrollata b'responsabilita, billi l-konsegwenzi ta' tali zviluppi huma irriversibbli. Proposta ghall-zvilupp residenzjali ghandha ssir f'area li hi hekk disinjata fil- Pjan Lokali, u l-Pjan ta' Struttura.

L-appellanti, in sostenn tal-pretenzjoni taghha, ghamlet referenza ghall-kaz deciz favorevolment mill-Bord ta' l-Appell dwar l-Ippjanar fl-applikazzjoni PA 2717/04, tal-14 ta' Ottubru 2005.

Kif korrettement irrilevat l-Awtorita f'dak iz-zmien hareg d-draft ghall-konsultazzjoni pubblika tal-Pjan Lokali fejn din il-lokalita, kien qed jigi propost, li tkun inkluzo fir-rural settlement ta' Hal Tartarni. Dan pero ma giex ikkonfermat bil-pubblikazzjoni tal-Pjan Lokali li saret f'Lulju 2006; u din l-lokalita partikolari baqghet barra z-zona tal-izvilupp, u mhux inkluzo f'Rural Settlement.

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Ghalhekk l-kaz citat ma jistax jikkostitwixxi precedent ghal kaz in ezami, billi c-cirkostanzi, mill-lat ta' ppjanar, inbiddu.

Ezaminata l-proposta prezenti fil-kuntest tal-Policies ta' lppjanar u tal-Pjan Lokali, billi irrizulta li hi in kontravenzjoni ta' diversi Policies fuq citati, l-applikazzjoni ma timmeritax konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess, u jikkonferma r-rifjut tat-8 ta' Lulju 2009 ghall-applikazzjoni tal-Appellanti PA 7614/07.

Ikkunsidrat

L-aggravju tal-appellant hu li t-Tribunal naqas li jikkonsidra sew il-kwistjoni tal-commitment tal-area u ta' importanza tal-pjan lokali u strah fuqu minghajr ma kkonsidra l-element tal-commitment u kif dan jista' jigi applikat fid-dawl tal-provi u pjanijiet.

Dan hu l-uniku aggravju tal-appellant. Jibda biex jinghad illi din il-Qorti ma ghandhiex setgha tissindaka aggravju bhal dak tal-'commitment' mressaq mill-appellant meta din il-kwistjoni tkun giet kkunsidrata mit-Tribunal innifsu wara l-argumenti favur u kontra mill-applikant u l-Awtorita. La darba gew kunsidrati u skartati ghar-ragunijiet motivati moghtija mit-Tribunal mhux lecit u ghal din il-Qorti li terga' tikkonsidrahom mill-gdid. Hu minnu kif qalet il-Qorti fil-kawza **Michael Gatt vs Awtorita tal-lppjanar** (App 19/11/2001) meta l-enuncjazzjoni tal-ligi li ghamel il-Bord ma tkoprix sew il-kwistjoni ewlenija bejn il-kontendent dan jikkwalifika bhala punt ta' ligi appellabbli izda f'dan il-kaz it-Tribunal ikkunsidra dan il-punt ta' ligi in kwistjoni cioe dak ta' zoning u applika ghalih dak li jipprovi l-pjanijiet u policies relevanti fiz-zmien tad-decizjoni. Dawn il-pjanijiet u policies kienu jeskludu zvilupp kif propost u b'hekk it-Tribunal applika gustament fl-intier tieghu u bir-ragun l-artikolu 69(1) tal-Kap. 504. It-Tribunal xorta pero ikkunsidra l-kwistjonijiet ta' permess iehor fil-vicinanze u ta

r-ragunijiet tieghu ghaliex dan il-permess ma jistax jigi mqabbel ma' din l-applikazzjoni principalment ghaliex il-pjanijiet applikabbli llum jeskludu tali zvilupp u t-Tribunal hu marbut b'dak li jipprovdi l-artikolu 69(1) u ghalkemm kwistjonijiet ohra ta' sustanza li jsemmi b'mod generiku l-artikolu 69(2) ghandhom jitqiesu fid-determinazzjoni ta' applikazzjoni, dawn ma jistghax jipprovdu fuq dak jew kontra dak li jipprovdi l-artikolu 69(1) cioe l-applikazzjoni mandatorja tal-pjanijiet u policies fejn dawn ma jhallu ebda diskrezzjoni residwa lill-Awtorita u kwindi lit-Tribunal.

Pero a prescindere mill-applikazzjoni koretta tat-Tribunal tal-artikolu 69 tal-Kap. 504 ghall-fatti in ezami l-Qorti tqis illi la darba t-Tribunal ikkunsidra l-ilmenti tal-appellant, dan ma jikkostitwix aktar punt ta' ligi appellabli sakemm it-Tribunal ma jkunx ikkommetta ingustizzja gravi u lampanti minn xi nuqqas jew zball grosslan ta' deliberazzjoni fuq il-fatti jew ligi liema zball kien l-element determinanti li wassal ghad-decizjoni, li mhux il-kaz.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' Lorraine Micallef u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012. L-ispejjez jithallsu mill-appellant.

< Sentenza Finali >

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