



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 2/2012

Joseph Tanti

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Tanti tat-3 ta' Jannar 2012 kontra cahda mill-Bord tal-Appell dwar l-Ippjanar ghall-ghoti ta' permess 4862/06 deciz fid-19 ta' Dicembru 2011;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tal-Bord tigi konfermata;

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

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Rat id-decizjoni tal-Bord tal-Appell dwar l-ippjanar li ddecieda hekk:

Ikkunsidra:-

Illi l-appellant issottometta "Full Development Application" fejn talab permess ta' l-izvilupp "To utilise under stairs as store with nearby kiosk." Is-sit jinsab fil-ponta tal-Qawra, San Pawl il-Bahar. Din it-talba giet michuda mill-Kummissjoni għall-Kontroll ta' l-Izvilupp għas-segweni ragunijiet:-

"1. The proposed change of use would prejudice the holistic development of this site as a marine aquarium, as set out in the Qawra Coast Development Brief, and thus runs counter to Policy NWSP 14 of the North West Local Plan.

2. The use of the area underneath the public stairs would conflict with the pedestrian flow between the Qawra promenade and the fore shore and thus runs counter Policy NWSP 15 of the North West Local Plan which seeks to protect access to the shore line. The proposal also conflicts with Structure Plan policy BEN 1, which seeks to protect the amenity of existing uses.";

Ra l-appell ipprezentat mill-Perit Stephen Farrugia għall-appellant li jaqra kif gej:-

"With reference to the above refusal, I the undersigned, on behalf of my client, would like to state that the new draft of the Qawra Coat Development Brief Excludes the site from the provisions of the Brief, thus the reason for refusal No. 1, is not relevant in this case.

With regards to reason No. 2, the storage use will be used exclusively for drink crates to eliminate the unsightliness associated with these crates.";

Ra r-risposta ta' l-Awtorita prezentata fis-26 ta' Ottubru 2007 li taqra:

"1.0 THE PROPOSAL

1.1 This is a full development permission request to use the void area below an existing staircase and access ramp for storage purposes. The proposal includes the opening of two 0.8m wide doors for access to this void area.

1.2 The application indicates that this storage area is intended to serve a nearby kiosk operated by the same applicant.

2.0 THE SITE & SITE HISTORY

2.1 The site for development is located at Qawra Point, and consists of an existing staircase providing access between the public promenade and the foreshore. The site is located within vicinity of the Grade 1 Listed Qawra Tower. The North West Local Plan designates the site within an area which is to be subject to the Qawra Coast Development Brief.

3.0 GROUNDS FOR REFUSAL & REFUSAL NOTICE

3.1 The proposed development was refused by the DCC on 27th November 2006, and this refusal was confirmed on 17th July 2007 for a subsequent reconsideration request. The proposed development was refused for the following reasons:

a. The proposed change of use would prejudice the holistic development of this site as a marine aquarium, as set out in the Qawra Coast Development Brief, and thus runs counter to Policy NWSP 14 of the North West Local Plan.

b. The use of the area underneath the public stairs would conflict with the pedestrian flow between the Qawra promenade and the fore shore and thus runs counter Policy NWSP 15 of the North West Local Plan which seeks to protect access to the shore line. The proposal also conflicts with Structure Policy BEN 1, which seeks to protect the amenity of existing uses.

4.0 POLICY CONTEXT

4.1. Structure Plan for the Maltese Islands (December 1990)

Policy BEN 1 seeks to ensure that all developments are compatible with its neighbouring land-uses by not creating any deleterious impact through visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times, or any other characteristic which in the opinion of the Authority could constitute bad neighbourliness.

4.2 North West Local Plan, Approved Draft - July 2006

Policy NWSP 14 - requires that all new development within the area identified for the Qawra Coast Development Brief should be compatible and in line with the holistic development of this site, as set out in the development brief.

Policy NWSP 15 - indicates that efforts will be diverted towards re-establishing public access along the whole stretch of foreshore of St. Paul's Bay/Bugibba/Qawra. In achieving this, the policy states that no new structures, which hinder public access to the foreshore will be allowed, while vehicle access to the foreshore shall be restricted.

4.3 Qawra Coast Development Brief - May 2007

The development brief identifies the site within Zone 2, where a comprehensive development scheme is promoted for the provision of further recreational facilities. Notwithstanding this, the plan insists that free public access along the shoreline is not hindered by any development.

5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The first objection to the proposed development is related to the fact that the proposed use of this area as promoted through the Qawra Coast Development Brief. Although the appellant states that the site is located outside the Qawra Coast Development Brief area, MEPA is attaching a copy of Map 1 of the Development Brief, whereby when compared to the site plan submitted for this application, it may be clearly noted that the site is within the brief area. Hence the provisions of the development brief are applicable to this proposed development.

5.2 The appellant also states that the use of this area would be for the storage of drink crates to eliminate the unsightliness associated with these crates. It is in particular the proposed use of the area for storage purposes, that MEPA objects to this application. The openings to the store are just in front of an access ramp that is frequented by pedestrians who seek to enjoy and recreate along the coast. Therefore, the flow of goods between the store and the nearby kiosk would be of an inconvenience to the general public. The proposed storage space would therefore conflict with the provisions of the North West Local Plan and the Qawra Coast Development Brief, which both seek to optimise, rather than deter, opportunities for improved pedestrian access along the Qawra Coast shoreline. The local plan, in particular, prohibits any vehicular access to the shoreline in policy NWSP 15, and the proposed storage of drink crates would definitely necessitate vehicular access to the site, which would continue to conflict with the aim of optimising pedestrian mobility along the coast. The proposed development is therefore also considered to constitute of bad neighbourliness in conflict with SP policy BEN 1.

6.0 RECOMMENDATION

6.1 For the above-mentioned reasons, the Malta Environment & Planning Authority respectfully requests the Planning Appeals Board to confirm the decision of the

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DCC and to refuse this appeal for development permission.";

Il-Bord:-

Ra il-file PA 4862/06 kif ukoll il-file PA 3338/03.

Ra il-Policy tal-Pjan ta' Struttura BEN 1, il-Pjan Lokali ghal-Majjestrat ta' Malta kifukoll il-Qawra Coast Development Brief.

Il-Perit Farrugia ghall-Appellant spjega illi r-ragunijiet ghar-rifjut kienu tnejn u cioe illi l-proposta ta' l-appellant kienet ser tippregudika l-izvilupp tas-sit bhala Aquarium kif stabbilit fil-Qawra Development Brief u li l-uzu propost kien ser jikkrea kunflitt mal-pedestrian flow bejn il-promenade u x-xatt. Huwa spjega illi s-sit ma jinsabx fdik il-parti tal-Qawra milquta mid-Development Brief u li l-ispazju taht it-tarag kien ser jintuza biss bhala store ghal kaxxex tal-fliexken tal-luminata.

L-Awtorita spjegat illi fil-fatt, is-sit jinsab gewwa Zone 2 kif definit f'Mappa 1 tal-Qawra Development Brief. Oltre dan hija spjegat illi biex l-ispazju jintuza bhala store jrid jkun jigi kreat access ghal vetturi kummercjali biex jwasslu u jiehdur lura l-kaxxex involuti. Hija komplet biex qalet illi l-kreazzjoni ta' dan l-access imur kontra NWSP 15 u oltre dan ixekkell-izvilupp ta' din iz-zona bhala pedestrian area.

Il-Bord ra l-Mappa pprezentata mill-Awtorita u cioe Mappa Numru 1 fil-Qawra Development Brief u qabel din il-pjanta mas-Site Plan ipprezentata ma' l-applikazzjoni. Minn dan l-istudju deher car illi s-sit in kwistjoni fil-fatt tinsab gewwa z-zona illi d-Development Brief jidentifikaha bhala "is-Sit". Mappa 3 ta' l-istess Development Brief turi illi s-sit jinsab f'dik li hija indikata bhala Zone 2. Fil-Pjan Lokali hemm Policy specifika ghal din iz-zona u cioe il-Policy NWSP 14. Din taqra:-

Development proposals on the site indicated on Map 40 -- (ta' minn jinnota illi s-sit ta' l-Appellant tinsab gewwa din is-sit) -- must be in line with the approved Qawra Coast

Development Brief. Proposals, which prejudice the holistic development of this site, as set out in the policy document, will not be allowed.

Id-Development Brief huwa attentat kkommendabbli sabiex l-izvilupp fil-Ponta tal-Qawra jsir b'mod holistiku. Il-Bord jikkunsidra illi l-approvazzjoni tat-talba ta' l-Appellant tkun tfigher zvilupp "piecemeal" li ma jghin xejn sabiex l-ghanijiet tad-Development Brief jintlahqu. Il-Bord ghalhekk jaqbel perfettament mar-raguni ghar-rifjut numru 1.

Ghal dawn il-motivi, il-Bord jichad l-appell u jikkonferma r-rifjut tal-permess ghall-izvilupp.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. Illi l-applikazzjoni tal-Qawra Coast Road Development Brief li gie approvat fl-2007 ippregudika lill-appellant li kien applika fl-2006 u ghalhekk ma kellux jigi applikat pjan li dahal fis-sehh wara l-applikazzjoni.

Il-kwistjoni hi wahda ta' natura legali u cioe jekk kienx korrett il-Bord tal-Appell li japplika policy li dahlet fis-sehh wara li kienet gia saret l-applikazzjoni ghall-izvilupp fl-2006. Il-gurisprudenza kostanti f'dan ir-rigward hi illi l-ligijiet u policies li ghandhom jigu applikati huma dawk vigenti fil-mument meta tittiehed id-decizjoni tal-Bord. Ara f'dan is-sens **Angelo Farrugia vs Awtorita tal-Ippjanar**, App 24/04/1996, u **Philip Micallef vs Awtorita ta' Malta dwar l-Ambjent u l-Izvilupp**, App Inf 24/04/2007, u **Stella Buttigieg et vs Awtorita ta' Malta dwar l-Ippjanar**, App Inf 29/01/2009 fost ohrajn.

L-appellant ma ghandux ragun legali fl-aggravju mressaq.

Decide

Ghalhekk din il-Qorti qed tichad l-appell ta' Joseph Tanti. Bl-ispejjez kontrih.

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