



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 8/2012

Edwin Borg

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Edwin Borg tal-5 ta' Jannar 2012 mir-rifjut tal-Bord tal-Appell dwar l-Ippjanar tad-19 ta' Dicembru 2011 ghal hrug ta' permess PA 208/07;

Rat ir-risposta tal-Awtorita li preliminarjament eccepixxa illi l-appell sar wara t-terminu impost mill-ligi skond l-artikolu 15 tal-Kap. 356 u illi fil-mertu l-appell kellu jigi respint ghar-ragunijiet minnu moghtija;

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

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

Illi l-appellant issottometta applikazzjoni tat-tip 'full' sabiex jissanzjona tibdil fl-uzu ghar-residenzjali kif ukoll jaghrnel zidiet u alterazzjoni (razzett) fi "Ghajj Virdilja" Wied il-Busbies, Rabat, Malta. Din it-talba giet michuda mill-Kummissjoni għall-Kontroll tal-Izvilupp għas-segwenti ragunijiet :-

"1. 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.

2. 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.

3. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

4. The proposed development runs counter to Structure Plan policy AHF 5 which accepts the development of structures essential to agriculture outside the development zone, however subject that the materials and design of the development are compatible and compliment the environment in which it is located. The building in PA 208/07 is a residence and has an urban design which makes it out of context in a rural environment.

5. The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to Section 8.1 paragraphs (i), (iii), (iv), (vi) and (vii).

6. The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to Section 8.2 paragraphs (v) and (vii).

7. The area is identified by the NWLP as an Area of Agricultural Value. The building is being used as a residence and even if it was considered as a structure essential for agriculture, its urban design is creating a visual impact on the rural landscape. The residential unit, therefore runs counter NWLP policy NW AG 1 - Protection of Agricultural Land which states that within "Areas of Agricultural Value" only buildings, structures and uses essential to the needs of agriculture will be permitted and then only if it can be demonstrated to the satisfaction of MEPA that they will not adversely affect water supplies, soil and landscape.";

Ra l-appell ipprezentat mill-Perit Edgar Caruana Montaldo f'isem l-appellant fis-7 ta' Ottubru 2008 li jaqra kif gej :-

" With reference to the refusal of the above mentioned application, I would like to apply for an appeal against the refusal of the application for the following reasons:

1. My client is a part-time farmer.
2. The sanctioning of the of use of the existing building (already a residence) and carrying out alterations to the existing building that is covered by permit PAPB 904/73 will be providing my client a building without effecting any virgin agricultural land. Therefore there will be no negative effect on the adjacent areas to the building in question.
3. The application is for sanctioning and carrying out alterations to the existing building (not total demolition) so that the building will comply to Planning Policies.
4. The building is being used as a residence by my client since 1997.

5. ECF 673/97 should be closed due to the fact that all works carried out were brought back to their original state. Therefore this enforcement should not be taken into consideration.

6. Application PA 03000/03 - "To Sanction change of Use from Agricultural Farmshed into Residence, varies alterations, sanction as built bungalow" that is similar to my client's application was approved by the DCC Board on 28th February, 2007.

7. Application PA 02240/03 - "To Demolish and rebuild part of dilapidated structure and carry out internal and external modifications to existing building and change of use from a farm to habitation" that is similar to my client's application was approved by the DCC Board on 2th February, 2005.";

Ra r-risposta ta' Mario Scicluna f'isem l-Awtorita datata 20 ta' Novembru 2008:-

"1.0 THE PROPOSAL

This request for development is proposing the sanctioning of the change of use of an agricultural store to a residence including additions and alterations. The original structure which is indicated in submitted drawings Red 1E and 1F consisted of an agricultural store having a ground floor structure and a room at first floor. The footprint of the agricultural store was approximately 48 sq meters and the approved room at first floor level was 17 sq meters.

The existing building being requested to be sanctioned includes a basement consisting of a garage having an area of approximately 67 sq metres and a domestic store having an area of 8 sq meters approximately (refer to Red 1H). The building has a footprint of approximately 132 sq metres. Red 1I indicates the ground floor as consisting of a dining / living, kitchen, sitting, bath and bedroom. Red 1J indicates the washroom having an area of approximately 14 sq meters, at roof level.

The front garden terrace has an approximate area of 109 sq metres and is paved. The residence is constructed in Franka stone and apertures are made of timber.

The proposed alterations include roofing of the internal yard to form part of the sitting room (Red 1N) and the removal of structures at roof level.

SITE DESCRIPTION & SITE HISTORY

Site is located outside the development zone and includes archeological features consisting of Rock-cut features.

PA 6089/03 - full development application proposing the sanctioning of change of use of an agricultural store to residence, including additions and alterations. This development was not favorably recommended and notification of refusal was sent to Mr Edwin Borg on May 30th, 2005.

PA 5294/96 - full development permission proposing the alterations and additions to an existing farmhouse. This development was not favorably recommended and notification of refusal was sent to Mr Edwin Borg on June 2nd, 2003.

ECF 114/99 - enforcement notification issued on 8th February 1999 to Mr Edwin Borg indicating extensions and alterations indicated in PA 5294/96.

ECF 673/97 - enforcement notification issued on 9th July 1997 to Mr Edwin Borg indicating the removal of top soil, rock excavation and construction of swimming pool without permit. Action was taken.

3.0 REASONS FOR REFUSAL

A refusal was issued on the 3rd October 2007, and a request for reconsideration was refused on the 25th September 2008 for the following reasons:

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.

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.

The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

The proposed development runs counter to Structure Plan policy AHF 5 which accepts the development of structures essential to agriculture outside the development zone, however subject that the materials and design of the development are compatible and compliment the environment in which it is located. The building in PA 208/07 is a residence and has an urban design which makes it out of context in a rural environment.

The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to Section 8.1 paragraphs (i), (iii), (iv), (vi) and (vii).

The proposal runs counter to the adopted policy Development Control Guidance – Developments Outside Built up Areas, and in particular to Section 8.2 paragraphs (v) and (vii).

The area is identified by the NWLP as an Area of Agricultural Value. The building is being used as a residence and even if it was considered as a structure essential for agriculture, its urban design is creating a visual impact on the rural landscape. The residential unit, therefore runs counter NWLP policy NWAG 1 - Protection of Agricultural Land which states that within "Areas of Agricultural Value" only buildings, structures and uses essential to the needs of agriculture will be permitted and then only if it can be demonstrated to the satisfaction of MEPA that they will not adversely affect water supplies, soil and landscape.

4.0 POLICY CONTEXT

4.1 Structure Plan for the Maltese Islands (December 1990)

Paragraph 7.6 - normal and legitimate inclusions of development outside the development zone and farmhouses and other genuine agricultural buildings, reservoirs, picnic area toilets and car parks, and control buildings and walls/fences at archeological and ecological sites.

SET 11 - prohibits urban development within rural areas, except for legitimate agricultural, archeological or ecological purposes.

SET 12 - provides that applications may be considered outside the built up areas provided the applicant can justify, on sound planning grounds, why the proposed use cannot be located in areas designated for development.

AHF 4 - Soil conservation and soil saving measures will continue to be mandatory on all occasions. Soil replenishment measures will be adopted where there are suitable opportunities.

AHF 5 - accepts the development of structures essential to agriculture outside the development zone, however

subject that the materials and design of the development are compatible and compliment the environment in which it is located.

BEN 5 - applications for development permits outside urban areas will be judged against the policies and design guidelines of the Local Plans for Rural Conservation Areas, and in the interim period, to Structure Plan policies and the guidelines contained in the Explanatory Memorandum.

RCO 2 - within rural conservation areas no form of urban development will be allowed, with the exceptions to developments that are of agricultural, ecological and scenic interest.

RCO 4 - prohibits development in rural areas that will adversely affect the scenic value of an area.

4.2 North West Local Plan (July 2006)

The site lies under Areas of Agricultural Value and the following policy applies:

NWAG 1 - Protection of Agricultural Land

MEPA will continue to protect agricultural land from all types of inappropriate development. Within "Areas of Agricultural Value" as indicated on Map 4 only buildings, structures and uses essential to the needs of agriculture will be permitted and then only if it can be demonstrated to the satisfaction of MEPA that they will not adversely affect water supplies, soil and landscape, and accord with all other policies within this Local Plan. Applications for development permission for agricultural related developments, which will result in the subdivision of land holdings, will not be permitted. This will apply to other land being cultivated for agricultural use and which in the opinion of MEPA (after consultation with the Department of Agriculture) has a realistic potential to be upgraded and sustainably improve its productivity. (This policy will not apply to such land where it is designated for other purposes in the Local Plan).

Improvements to existing agricultural land and buildings aimed at increased productivity will be favorably considered by MEPA providing they are well designed, efficient and contribute to rather than detract from the quality of the local and surrounding environment.

5.0 COMMENTS ON APPELLANT'S ARGUMENTS

The Authority has noted the arguments as brought forward in appellant's request for appeal and shall address these issues hereunder:

The main reasons as brought forward in this request for sanctioning of a dwelling in this ODZ area is that appellant is a part time farmer, the existing building did not result in loss of agricultural land, the sanctioning is not requesting total demolition and that ECF 673/97 can be closed off.

The Authority has noted these arguments but disagrees that the existing building could be sanctioned due to a number of reasons, mainly due to the location, eligibility of applicant and massing of the building vis-a-vis the present relative policies governing requests for new (including sanctioning) dwellings in ODZ. Furthermore, while the sanctioning is limited to the main building, other illegal interventions have been carried out on site and which their sanctioning is not be requested.

The structure as being requested for sanctioning in PA 208/07 is not agricultural, historical or of ecological interest but it consists of a residence having an urban design (refer to Photos at Red 1B and submitted plan at Red 1P). The proposed development runs counter Structure Plan policy paragraph 7.6 and SET 11 which both state that in outside development zones the development permitted has to be either agricultural or of historical or ecological interest. It also runs counter to Structure Plan policy AHF 5 which states that development outside development zone has to be essential to agriculture. The proposed development is therefore unacceptable in principle. Furthermore, the area is designated as outside the development zone of Rabat

where agricultural land is safeguarded against any development which would not be beneficial to the agricultural activity to the area. In this particular case, part of the area is scheduled due to archeological reasons and hence, such unmonitored interventions are not acceptable.

According to the approved policy document PDG - Agriculture, Farm Diversification and Stables, December 2007, Policy 2.2B: Farm Dwellings for Arable Farmers sets clear and definite criteria for the establishment of new dwellings in ODZ areas. This policy includes that applicants must be Full Time Farmers with a holding of a least 30 Tumoli producing at least €23,294 worth of produce for 3 consecutive years and that the site must not be located within a scheduled 1 archaeology sensitive area. Other additional criteria as included in Policy 2.2B must also be adhered to but these are the major ones which applicant must first be eligible for before further assessment could proceed. In this regard, since applicant is only a part time farmer tilling 2.5.1 tumoli of land and the area is officially scheduled for its archaeological importance, applicant is not eligible for the sanctioning of a new dwelling in this ODZ area and the building is to be reinstated to its former approved use and size of that as an agricultural store of 48 sq.m. footprint.

The building as build also exceeds the permissible dwelling size of eligible farmers requesting a residential unit in ODZ areas. In fact the existing building includes a 67 sq.m. garage and 8 sq.m. store at basement level, 132 sq.m. ground floor building with 109 sq.m. paved area at ground floor as well as two stairways which all add up to a massing in excess of that permitted in PDG Agri. 2007 policy.

Furthermore, photos of the site as submitted in consecutive applications show that a large area in front of the building has been converted from a field into an access path with a turning circle at basement level which inevitably led to loss of good agricultural land. In this respect, since these areas are not shown in the submitted

plans for sanctioning, this appeal cannot proceed further either the whole area is brought back to its original state or these are regularized through a separate application to sanction all landscaping / pathways carried out without permit. The drawings as presently submitted do not show how the basement garage is accessed by vehicles from the nearby road, so this application cannot be assessed holistically.

As regards to the cited permit PA 2240/03, it is to be stated that this permit as issued on 24th January 2005 did not involve the extensive additions as that of the case under appeal, but on the contrary, only approved the reuse of an old and large farm building into a residential use to ensure its upkeep and restoration. In fact, this permit included a full blown method statement detailing its accurate restoration with minimal intervention and a bank guarantee of LM15,000 was also imposed to ensure its full implementation once the permit is issued.

Regarding cited permit PA 3000/03 this permit granted the change of use of an existing agricultural farmshed into a residence. Permit issued on 11th July 2007. In this particular case, during the processing of this application, the North West Local Plan was approved and designated this area as a Category 2 Rural Settlement. In this regard, both the Directorate and the DCC acknowledged that in view of this approved document, the requested development could be acceptable since the requested development was in line with the provisions of the Local Plan and the permit was issued.

In view of the two cited permits, the Authority states that these differed substantially from the case under appeal and hence cannot be cited as having similar planning considerations to this case.

Conclusively, the Authority states that whilst taking note of appellant's arguments in his request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies. Hence, reference is made to the reports as

presented by the Directorate and to the DCC's decision which dismissed this request for development since the DCC Board had based their decision on the valid relevant policies applicable to this area.

MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all the relevant facts, planning policies, legislation and submissions as required by article 33/1 of Chapter 356 of the Laws of Malta, and thus, respectfully requests the Planning Appeals Board to confirm the decision of the Development Control Commission and to refuse this appeal.";

Ra s-sottomissjonijiet ulterjuri mill-Perit Edgar Caruana Montaldo bid-dokumenti datat 4 ta' Gunju 2009 u mill-Avukat Dr. Joanne Vella Cuschieri datata 16 ta' Frar 2010 :-

"With reference to MEPA's Report to the Planning Appeal's Board, I would like to point out the following:

The basis of this application is for the Change of Use from an Agricultural Store to a Residence (Agricultural store covered by permit PAPB 904/73).

The original building on site that my client is asking to asking to sanction in this application is a building covered by Permit PAPB 904/73 that consisted of a large agricultural store with an adjacent room, a we and a large open terrace with a arches and an external staircase at elevated ground floor level with a large terrace and another room at first floor level. Therefore the approved building (refer to submitted drawings RED 1E & 1F) was a committed 2 storey building with a permit for an agricultural store. The approved areas at elevated ground floor level was 94 s.m. (rooms 48 s.m and arched colonnade terrace with stairs 46 s.m) and the approved areas at first floor was 48s.m (rooms 17 s.m and walled up terrace 31 s.m). My client is asking for the Sanctioning of the change of use as he has already carried out some

additions and alterations (and not total demolition as mentioned in the report) to make the previous Agricultural Store into a Residence. The application is so that the building will comply to Planning Policies since the building has been used as a residence by my client since 1997.

The proposed Change of Use to the existing building is providing my client a building without effecting any virgin agricultural land. Therefore there will be no negative effect on the adjacent areas to the building in question. The disturbed area My client is a part-time farmer registered with the agricultural department. In this application the Planning Directorate never carried out any Consultations with the Agricultural Department.

ECF 673/97 should be closed due to the fact that all works carried out were brought back to their original state. Therefore this enforcement should not be taken into consideration.

Contrary to the Directorate's Report, Application PA 03000/03 - "To Sanction change of Use from Agricultural Farmshed into Residence, vanes alterations, sanction as built bungalow" is similar to my client's application and was approved by the DCC Board on 28th February, 2007.

Contrary to the Directorate's Report Application PA 02240/03 - "To Demolish and rebuild part of dilapidated structure and carry out internal and external modifications to existing building and change of use from a farm to habitation" is similar to my client's application and was approved by the DCC Board on February, 2005. My client has no objection that the application is subject to Bank Guarantees as was PA 02240/03.

I would also like to point of Application PA 6060/05 - "Change of Use from agricultural Store to Residential Unit" that is similar to my client's application. This application was approved on 12th January, 2009.

I would also like to point of Application PA 2971/98 - "To Change Use of Store surrounded by boundary wall into

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Residential Unit" that is similar to my client's application. This application was approved on 14th September, 2000.

I would also like to point of Application PA 1865/01 - "Change of Use from Store to Residential Unit" that is similar to my client's application. This application was approved on 9th June, 2003. In this case a fine was imposed as change of use was already carried out. My client has no objection if a fine is issued since the building has been used as a residence by my client since 1997.

With reference to the above files (PA 03000/03, PA 02240/03, PA 6060/05, PA 2971/98 & PA 1865/01). I would like to ask that the files be attached so that the Appeal's Board can see them.";

"Nikteb ghan-nom ta' l-appellant Edwin Borg u filwaqt li naghmel referenza ghall-applikazzjonijiet li ntalbu stabiex jigu annessi ma' dan l-appell, wara li l-Avukat sotto-firmata kellha l-opportunita li tara l-istess applikazzjoni, nissottometti l-kummenti segwenti:

(1) Applikazzjoni numro 01865/01: Jigi sottomess illi din l-applikazzjoni tista tghid hija identika ghal dik pendenti. L-applikazzjoni kienet taqra 'Change of use from store to residential unit. Fil-fatt jirrizulta li originarjament fuq is-sit kien hemm permess ghal 'store' bhal ma hu l-kaz odjern. Ghalkemm din l-applikazzjoni kienet rakomandata sabiex tigi rifjutata, t-talba giet milqugha fl-appell. Qed jigi anness ma' din l-ittra kopja ta' l-istess decizjoni (Dokument A). L-appellant ghalhekk jissottometti li fil-kaz tieghu ghandhom japplikaw l-istess kriterji uzati mill-Bord ta' l-Appell fil-kaz indikat u b'hekk jinhareg il-permess ta' zvilupp mitlub.

(2) Applikazzjoni numru 02971/09 jigi wkoll sottomess li din l-applikazzjoni kienet tikkoncema 'change of use' simili ghal dak odjem cioe 'To change use of a store surrounded by boundary wall into a residential unit.' Anki f'dan il-kaz ghalkemm l-applikazzjoni kienet rakomandata sabiex tigi rifjutata, kien il-Bord ta' l-Appelli ddecieda li l-applikazzjoni kellha tigi milqugha. Qed jigi anness ma' din l-ittra kopja tad-decizjoni (Dokument B);

(3) Applikazzjoni numru 06060/05: Jirrizulta li anki f'dan il-kaz l-applikazzjoni kienet ghal 'change of use from agricultural store to residential unit' u ghalkemm din l-applikazzjoni kienet rakomandata sabiex tigi rifjutata, m-fatt kienet l-istess Kummissjoni ghall-Kontroll ta' l-Izvilupp fl stadju ta' rikonsiderazzjoni li harget il-permess ta' zvilupp mitlub.

4) Applikazzjoni numru 3000/03: Din l-applikazzjoni hija ta' mportanza wkoll stante li l-permess kien f'sit gewwa Had Dingli cioe fil-vicinanze ta' l-applikazzjoni de quo. Fil-fatt din l-applikazzjoni kienet taqra 'To sanction change of use of agricultural farmshed into residence, various alternations sanction as built-residential bungalow' u ghalhekk bhal kazijiet l-ohra kienet rakomandata sabiex tigi rifjutata, giet milqugha mill-Kummissjoni ghall- Kontroll ta' l-Izvilupp.

Jigi emfasizzat illi primarjament iz-zewg appelli hawn fuq ikwotati gew milqugha stante li la darba gia kien hemm permess fuq is-siti ghal 'store' allura billi jkun hemm ic-'change of use' ma kienx ser ikun hemm ebda tibdil fl-impatt vizwali'. L-appellant umilment jissottometti li l-istess principju ghandu jigi applikat ghal dan il-kaz. F'kaz li dan ma jsirx hija l-umli opinjoni ta' l-appellant li tkun qed tigi kommessa ingustizzja manifesta u diskriminazzjoni fil-konfront tieghu la darba l-kriterji ta' l-applikazzjonijiet ikwotati huma identici ghall-dawk ta' l-applikazzjoni odjern.";

Ra s-second statement b'risposta ghal dawn is-sottomissjonijiet minn Mario Scicluna f'isem l-Awtorita datat:-

"The Authority has noted all the submitted arguments but the Authority disagrees with this statement on various accounts.

Cited PA 1865/01 - site at Santa Lucia, floor area floor area of approx. 140sqm. (appeal site is in Rabat with a total roofed area of circa 207 sq.m.

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This permit was granted by decision taken on 14th May 2003, ie. much prior to the issuing of the Local Plans and the PDG - Agriculture, Farm Diversification and Stables, December 2007. Furthermore a closer analysis of the issues which led to a positive decision reveal:

Illi meta acceda filq is-sit in kwistjoni ra li si tratta ta' bini residenzjali ga mibnija, u li jezistu diversi binjiet fl-inhawi ta' l-istess triq.

illi ma' gemb is-sit in kwisjtoni, il-Bord diversament kompost kien accetta appell simili PAB 93/99 deciz fid-19 ta' Lulju 2000.

illi fl-inhawi ta' madwar is-sit, jezistu xi bini. L-applikazzjoni kif proposta mhux ser taffettwa l-visual integrity tat-trejqa in kwistjoni.

L-applikazzjoni kif proposta ma kienitx qed tipproponi li jsir xi bdil fil-faccata izda kienet tikkoncerna bdil ta' uzu biss.

Cited PA 2971/98 - site at Santa Lucia in the vicinity to the case cited above. According to the DPA report: The proposed development consists in the change of use of an existing building (store) to a dwelling. No structural alterations shall be made to the existing fabric. The area occupied by the approved store is approx. 30 sq.m. The existing plans indicate a store which has an area of approx 90 sq.

This permit was decided on 19th July 2000 and the PAB also considered that:

Is-sit jinsab ma' genb u vicin xi binjiet/stores ohra zghar.

Dak li qed tipproponi li taghmel l-appellant bhala sanctioning qed jirrispetta l-ambjent tal-madwar.

Photo 1G in this file shows that this particular building is engulfed by buildings in the vicinity and no visual impact was sustained through the change of use of the garage

and store into a dwelling. Furthermore, at the time of this decision, both the Local Plan and the Agri Policy 2007 were not yet approved.

Cited PA 6060/05 - site at Siggiewi. Request was limited to the change of use of an old building into a residential unit. This permit did not sanction any new additions or alterations and was an outline permit. Site is located circa 120m away from the development boundary of Siggiewi.

Furthermore, the relevant issues in this permit differ substantially from the case under appeal since one of the main issues of contention was whether there was enough proof if the existing building was in fact previously used as a residence. However, from all the evidence as produced by applicant during the processing of this application, the Board eventually decided that this outline permit could be approved. However, the case under appeal differs in many aspects and which include: the visual aspect of the existing massing being located in this particular location which is visible from long distances, the approved 'old' stores had a total floorspace of circa 67 sq.m. whereas the building as constructed amounts to circa 207 sq.m. floorspace and finally, this cited outline permit is located just off the scheme boundary of Siggiewi whereas the case under appeal is not no near any scheme boundary but in a very sensitive ODZ area which is characterized by long distance views.

Cited PA 3000/03 - site at Dingli, Misrah Suffara. This site also engulfed with similar 'old' residences so much so that this particular area is designated as a Category 2 Rural Settlement by the Local Plan. Hence, when permit was issued on 11th July 2007 (well after the issuing of the Local Plans and the establishment of the rural settlement) this particular area was officially recognized for its residential commitment by the Local Plan (as issued in August 2006).

Furthermore it is to be noted that although this application was initially refused, after the issuing of the Local Plan, the Directorate had reassessed this application and

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concluded that the principle of development could now be favorably recommended (except for the issue of on-site parking). However, the DCC also concluded that applicant could park his car within the site boundaries and hence, all the necessary requirements were adhered to (NTC 4 & 5 refer) and the permit could be issued.

The above clearly show that none of the cited permits were in fact similar to the case under appeal and the Authority still reiterates that this request to sanction such a dwelling (ie. the particular design & massing in this particular sensitive location) should not be accepted since there are no sound planning grounds for its approval in line with the relevant policies.

In this regard, the Authority reiterates that in line with its previous reports, the requested development goes against the present planning policies relevant to this area and states that the DCC's decision to dismiss this request for development was justified and hence respectfully requests the Planning Appeals Board to dismiss this request for appeal.";

Il-Bord ra l-file PA 208/07 u PAPB 3043/72.

Ra l-Pjan Lokali.

Ra d-dokumenti esebiti u r-ritratti.

Ikkunsidra:-

Illi din l-applikazzjoni sabiex tigi ssanzjonata l-binja de quo kien inhareg qabel permess PAPB 904173 ghal bini ta' 'store' agrikolu kif ukoll ta' hitan bl-arkati li jduru ma spazju li ma kellux ikun imsaqqaf u tarag ghall-apert fil-pjan terran kif ukoll permess ghal karnra ohra zghira uzabbli bhala 'store' fl-ewwel sular.

Illum saret binja li fiha l-ispażju li ma kellux ikun msaqqaf gie msaqqaf barra milli gie ukoll mibdul u estiz il-parti li kien iservi ta' 'store' agrikolu, inbniet opramorta bil-balavostri barra minn 'washroom' fl-ewwel sular kif ukoll

garaxx u 'store' zghira fl-livell taht is-sular principali. Access ghas-sular principali gie ottenut minn zewgt branki ta' tarag fit-tond mikxufb' 'railing' bil-balavostri.

Illi l-Bord jara li din it-tip ta' binja urbana tistona ferm ma ambjenti agrikoli f'zona barra mill-izvilupp u tmur kontra dak permess jekk qatt, f'zona barra mill-izvilupp.

Illi l-Bord ra li l-applikant mhuhix "full-time" bidwi u bl-agir tieghu fit-tibdil minn 'stores' agrikoli ghal residenza kiser b'mod esagerat dak li kienu l-kundizzjonijiet meta nhareg inizjalment il-permess fi PAPB 904/73 billi biddel l-istess f'residenza minn 1997 kif qal il-perit tieghu. It-tibdil minn 'store' agrikolu ghal residenza kienet qabel xejn tirrikjedi li certu kriterji jigu sodisfatti bhal per ezempju inter alia certu ammont ta' bejgh ta' prodotti agrikoli, li jippossjedi ammont konsiderevoli ta' tmiem ta' raba agrikoli kif ukolli j kunu full-time farmer. Ta' dan ma ngibitx l-ebda prova mill-appellant li juri li kien jissodisfa dawn il-kriterji. Lanqas ma jregi l-argument li l-binja ma kienitx tinvolvi xi art vergni agrikola.

Illi l-permessi msemija mill-appellant ma humiex konsistenti ma kif qed jintalab li jigi sanzjonat il-fond kifstrutturat u ghaldaqstant ma saritx l-ebda diskriminazzjoni.

Il-Bord jaqbel mar-ragunijiet ghar-rifjut kif moghtija mill-Kummissjoni ghall-Kontroll tal-Izvilupp u ghal motivi msemija hawn fuq, il-Bord jichad l-appell u jikkonferma r-rifjut tal-permess ghall-issanzjonar tal-izvilupp ezistenti.

Ikkunsidrat

Eccezzjoni preliminari

Bhala fatt jirrizulta li d-decizjoni in kwistjoni nghatat fid-19 ta' Dicembru 2011 u illi l-appell gie intervolat fil-5 ta' Jannar 2012 cioe 17-il gurnata wara.

Kopja Informali ta' Sentenza

Dak li wasal ghal din il-kwistjoni specifika hu l-iter tal-emendi li saru fil-ligi tal-Ambjent u l-Ippjanar, kif kienet fil-Kapitolu 356 u kif sar fil-Kapitolu 504.

L-Att tal-2010 dahhal fis-sehh il-Kapitolu 504 u t-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar flok il-Bord tal-Appell u l-Ippjanar u bl-Avviz Legali 511 tal-2010 dahlu fi-sehh certi provvedimenti tal-imsemmi Kapitolu fosthom l-artikolu 41 tal-Kap. 504 li dahal fis-sehh fil-31 ta' Dicembru 2010.

Mehud wahdu, dan il-fatt seta' fisser li t-terminu tal-appell minn decizjonijiet tal-Bord tal-Appell ghal quddiem il-Qorti tal-Appell hu ta' ghoxrin jum u s-sentenza mertu ta' dan irrikors tal-appell kienet tkun wahda valida qua validata tal-prezentata tieghu fit-terminu quddiem din il-Qorti.

Pero bl-Avviz Legali 512 tal-2010, mhux l-artikoli kollha tal-Kap. 356 gew abrogati tant illi l-artikolu 15 cioe t-terminu tal-appell quddiem il-Qorti tal-Appell Inferjuri minn decizjonijiet tal-Bord tal-Appelli cioe t-terminu ta' 15-il jum mid-decizjoni, baqa' mhux mittiefes, u hekk ghadu sallum.

Prima facie dan ifisser illi l-ligi naqset milli ticcara l-pozizzjoni legali tat-termini ta' appell liema termini huma ta' ordni pubbliku u ma jistghux ghalhekk jigu injorati u jaghtu lok ghal kwalsiasi interpretazzjoni legali fis-sens li ma ghadhomx fis-sehh. Il-Qorti ssibha ferm difficli li fic-cirkostanzi meta gew specifikati f'zewg avvizi legali, wiehed wara l-iehor kronologikament, li jittrattaw id-dhul fis-sehh ta' artikoli specifici tal-Kap. 504 u l-abrogazzjoni ta' artikoli specifici tal-Kap. 356, il-legislatur kellu lapsus rigward it-terminu ta' appell, cioe wiehed mill-aktar elementi importanti fl-iter processwali ta' applikazzjonijiet ta' ippjanar.

L-appellant jista' jargomenta illi bid-dhul fis-sehh tal-artikolu 97(5) tal-Kap. 504 fit-30 ta' Novembru 2010 il-kwistjoni kienet cara billi l-funzjonijiet, atti, jeddijiet, passiv u obligazzjonijiet li kellu l-Bord tal-Appell ghadda f'idejn it-Tribunal tal-Appell u kwindi ghalhekk l-proceduri tal-

appell quddiem il-Qorti tal-Appell kellhom jigu regolati skond dak li jipprovdi l-Kapitolu 504.

Din il-Qorti ma taqbilx ghal zewg ragunijiet. Fl-ewwel lok dan l-artikolu jtkellem biss dwar il-funzjonijiet tat-Tribunal u mhux dak li jigri wara d-decizjonijiet tat-Tribunal, cioe proceduri li t-Tribunal ma ghandu ebda kontroll jew drittijiet fuqhom jew dwarhom.

Fit-tieni lok l-Avviz Legali 27 tal-2011 irrendiet il-pozizzjoni bejn decizjonijiet tal-Bord tal-Appell u t-Tribunal ta' Revizjoni wahda cara. Dan l-Avviz Legali ghamel distinzjoni netta bejn decizjonijiet li kellhom jinghataw mill-Bord tal-Appell hekk kif kien kostitwit bil-Kapitolu 356 u dak mit-Tribunal ta-Revizjoni kostitwit bil-Kapitolu 504. Dan l-Avviz Legali halla lil partijiet kollha involuti fil-vertenzi minghajr dubbju dwar il-pozizzjoni legali vis-à-vis l-applikazzjoni tal-Kapitoli 356 u 504 fl-artikoli applikabbli ghalihom. Dan l-Avviz Legali ghamilha cara illi l-Bord tal-Appell li kien gie sostitwit mit-Tribunal ta' Revizjoni fil-Kap. 504 ma spiccax kompletament bl-introduzzjoni tar-regim il-gdid tat-Tribunal ta' Revizjoni. Dawk il-pendenzi kollha quddiem il-Bord tal-Appell differiti ghas-sentenza qabel il-31 ta' Dicembru 2010 kellhom jinghataw mill-istess Bord kif kien kostitwit skond artikoli 2(1) tal-Avviz Legali 27 tal-2011. Ghalhekk dawn id-decizjonijiet ma kienux qed jinghataw mit-Tribunal ta' Revizjoni izda mill-Bord tal-Appell taht ir-regim tal-Kap. 356 u hawn ghalhekk tispjega ruhha z-zamma fis-sehh tal-artikolu 15 tal-Kap. 356 ghaliex huma d-decizjonijiet mill-Bord tal-Appelli li ghandhom terminu ta' appell kif impost bl-artikolu 15. It-Tribunal ta' Revizjoni gie mgħobbi biex jisma' u jiddeciedi l-appelli l-oħra hekk kif elenkati specifikament bl-artikoli 2(2) tal-Avviz Legali 27 tal-2011, u ghal liema japplikaw it-termini ta' appell specifikat fl-artikolu 41(6) tal-Kap. 504.

Dan jidher li kien il-hsieb tal-legislatur u mhux il-kompitu ta' din il-Qorti li tidhol fi kwistjonijiet ohra li anki jekk validi minn aspetti legali diversi ma jaqghux fil-gurisdizzjoni tagħha f'din is-sede.

Kopja Informali ta' Sentenza

Hu car li l-vertenza in kwistjoni kienet ghas-sentenza quddiem il-Bord tal-Appell sa mit-2 ta' Gunju 2010 skond l-inkartament tal-proceduri quddiem il-Bord tal-Appell dwar l-lppjanar u fil-fatt id-decizjoni ittiehdet mill-istess Bord skond it-termini tal-Avviz Legali 27 tal-2011. Kwindi kien japplika ghal dik id-decizjoni t-terminu tal-appell skond l-artikolu 15 tal-Kap. 356 li kienet tkopri l-appelli mis-sentenzi tal-Bord, artikolu li kien u ghadu in vigore sallum.

Jidher mill-atti illi l-appell sar fil-5 ta' Jannar 2012 wara d-decizjoni tal-Bord tal-Appel dwar l-lppjanar tad-19 ta' Dicembru 2011 u kwindi sbatax-il jum wara li nghatat id-decizjoni u kwindi fuori termine dak li jrid l-artikolu 15 tal-Kap. 356.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-eccezzjoni tal-Awtorita u tiddikjara illi l-appell maghmul minn Edwin Borg hu inammissibli u kwindi null biex gie prezentat fuori termine. Bl-ispejjez ghall-appellant.

< Sentenza Finali >

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