



## **QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 114/2012

**Sebastian Briffa**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Sebastian Briffa tas-6 ta' Lulju 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 mill-applikazzjoni PA 4275/06 'to demolish existing building and construct two dwellings over semi basement garage as per outline permit PA 999/04';

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

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

Kopja Informali ta' Sentenza

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

A. B'applikazzjoni tas-6 ta' Lulju 2006 - Full Development Permission – PA/04275/06 fejn l-appellant, f'2, Triq ic-Cawqli, Qormi, talab: "To demolish existing building and construct two dwellings over semi-basement garage as per outline permit PA 999/04. "

Illi permezz ta' rifjut taz-17 ta' Frar 2010 l-Awtorita cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"1. The proposed development runs counter to the conditions imposed in Outline Development Permission PA 999/04. Outline development permission PA 999/04 approved the principle of the redevelopment of the relevant site into a development that should have a height of two floor plus semi-basement. The proposal will result in the development of a four-storey building.

2 The proposed development conflicts with the aim of the Structure Plan (RCO 2 and RCO 4). The proposal will result in a four-storey development which will visually encroach on the landscaped environment. The high building will overlook the valley system of Wied il-Kbir and thus run counters to Structure Plan Policy RCO 4."

B. Illi l-Perit Anthoy Fenech Vella ressaq l-aggravji tal-appellant inter alia kif gej:

"Iz-zewg ragunijiet riferuti mill-Bord tad-DCC ghal din id-decizjoni humafilfatt l-istess, cioe l-interpretazzjoni tal-Bord li ser issir binja ta 4 sulari gholi u mhux ta 2 sulari fuq semibasement.

Ahna ma naqblux ma din l-interpretazzjoni, peress li ma gewx ikkunsidrati zewg punti fondamentali li wassal ghal approvazzjoni tal-permess PA 999/04 cioe li

1. Il-limitazzjoni ta' gholi massimu ma huwiex wiehed generiku izda gie marbut specificament mal-livell tat-triq, l-unika wahda li hemm, cioe Triq ic Cawsli.

Kundizzjoni No 2: 'The height of the building shall not exceed the number of permitted number of two (2) floors plus semi basement level with an overall height of not more than 9.5m above road level'.

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2. Dan l-gholi gie marbut ma dak li gie approvat u nbena fis-sit immedjatament hdejna (PA 3393/94) [...]. Il-Bord li approva PA 999/04 kien jaf ukoll li dawn iz-zewg siti kellhom darhom iharsu lejn il-wied, tant li ma rabatx l-gholi taghhom ma dak li hemm in-naha l-ohra tat-triq, cioe 3 sulari + semi-basement izda naqqas sular (-1) u llimitana ghal 2 sulari + semi-basement.

Irid anke jittiehed in konsiderazzjoni l-fatt li l-bini li hemm ezistenti illum ga jaqbez iz-zewg (2) sulari sew ghax, apparti li hu mgholli l-fuq mit-triq bi 3 filati [...], jerga' ghandu sulari gholjin aktar minn dawk moderni; barra minnhekk, il parti ta' wara tieghu hu mgholli aktar il-fuq peress li hemm forma ta' 'split level' intern, hek kif muri fis-Section komparrativ anness ma dan l-Appell. Ghaldaqstant, hu anke esagerat l-impressjoni li kwazi jaghti l-argument tad-Direttorat, rifless mill-istess DCC, li ser jifaccaw qishom xi 4 sulari mix-xejn. Il-'commitment' ta' dak li hemm ezistenti ma jistax jithalla barra.

Irridu ukoll nigbdu l-attenzjoni tal-Bord illi s-sit hu qasir hafna u, ghaldaqstant, anke kamra wahda mtella fuq il-faccata ma' Triq ic-Cawsli, minn naha tal-Wied ser tidher u taghmel effett daqs sular shih.

Meta tittiehed, allura, vizjoni shiha ta' dawn ic-cirkostanzi kollha flimkien u mhux separatament, l-entita tal-bini ezistenti, dak tal vicinat, it-tnaqqis ta' sular vis a vis dawk tal Jaccata, l-effett rejali ta' kif jidher verament mill kampanja tali zvilupp kif propost, ir-rizultat ikun wiehed ta' ftit differenza minn dak li hemm illum u lijkun kompatibbli. Ghaldaqstant, meta dan jigi abbinat mar-rabta tal-

permess PA 999/04, ahna jidhrilna li l-Bord ghandu jilqa' dan l-appell."

C. Illi permezz tar-rapport taghha l-Awtorita rressqet il-kummenti taghha inter alia kif gej:

"5.3 The Authority's negative position on this proposed development results from the misleading information that was presented with the outline permit application. At no point in PA 0999/04 did the applicant/architect ever reveal the actual situation on site, and hence the presence of the lowermost level belonging to third parties, and the fact that there is a change in level of approximately one floor between the higher and lower road levels. The section drawing red 10 in PA 0999/04 had indicated that there is no change in level between the front and back facades of the site. When the actual situation was revealed, the Authority's perspective on the proposal was also altered. In the case of the outline permit, the Authority's decision was based on there being a building of only 2 floors and a semi-basement height overlooking the valley system. In the case of the present actual state of the site, the Authority deemed that the creation of four floors above the lower street level cannot be accepted, as this would be detrimental to the rural area and valley system that the back facade overlooks.

5.4 With regards to the building height above Triq ic-Cawsli, the appellant's statement that the facade would be 9.5 metres high is also misleading. This is due to the fact that the height of 9.5 metres is the height above the highest pavement level. [...] The actual height above the street level is 10.1 metres, while the overall permitted height in metres in condition 2 of permit PA 0999/04 ties this height as measured from the road level. Hence, the last revised building height as presented in drawing red 39B exceeds that permitted by the outline permit PA 0999/04.

5.5 Moreover, when noting the site's context of existing buildings above Triq ic-Cawsli, as advised by the appellant, the existing two storey building is already the

highest building along its streetscape. The proposed increased height would further dominate this streetscape and negatively affect the visual composition of this area which serves as a buffer zone between the urban development boundary and Qormi's rural area."

D. Illi ghan-nom tal-appellant, I-Perit Fenech Vella ressaq il-kummenti tieghu responsive inter alia kif gej:

"We refer to MEPA's report dated 16th September 2010 and to which is based on what we consider erroneous evaluations of the proposal and the site as explained below:

Para 1.2 MEPA claims that the development shall result in having 3 full floors. Our plans clearly show just 2 floors over an underlying semibasement level, as that approved with the Outline permit PA 999/04, the only difference being that the height of the semi-basement was initially indicated at 7 courses in line with DCG 2007 as that would have been the Policy at the time of the decision and it, therefore, cannot be interpreted as 1 fully fledged floor as this would be a distortion of fact.

Para 1.2 also states that the site's back elevation faces onto a street on the back and which, as a result of the previous definition, reads as being four floors high. There is, first of all, the Canal from which there is no hard and clear distinction as one would normally expect in a street and the whole width of the land including the trees form the water channel; it is only during the drier seasons that a temporary passage is formed along the side of the buildings. A similar situation exists next to the PAVI supermarket with the only difference being that the whole watercourse which drains and connects to this same valley is now lined in concrete and from which the exit road from PAVI is clearly separated, [...]; certainly one can never define this as a street. So it is not a surprise that this so-called street is still 'Unnamed'

Even where the Valley is given the name of a street like Triq il Wied, on the other side of Qormi, where the surface

is asphalted and there are 2 side roads at times, this does not rule out its function as a water channel and MEPA has issued there several permits with back elevations having blank basement levels abutting onto it without being particularly finicky about the resulting heights. [...]

A set of photographs, taken years ago, showing the debris brought down by heavy downpours and deposited next to the Applicant's site proving quite clearly that, to all intents and purposes this is a valley to all intents and purposes, especially during the rainy season. [...].

In para 5.3 the Directorate's argument that the section presented in the Outline application's drawings misleads the assessment cannot hold water, first of all, because an Outline permit does not approve any drawings, nor was this a material consideration during that process as the only one discussed and considered was the matching of this site with that next door and which had been approved in PA 3393/94, to ensure similar characteristics by containing the height to 2 floors instead of the 3 normally granted in the surroundings.

It is pertinent here to draw attention to the fact that, apart from all this, that the DCCs have taken on a standard approach that any basement level which appears above ground but has no apertures is considered as a non floor height, So the Directorate's arguments of having 4 floors also falters on this count, although we insist that this is a back elevation which does not abut onto a street and will not, in any way, effect the skyline of the block as seen from the green zone, ie, the basis for the Outline approval.

Furthermore, in view of the para 5.5 of the MEPA report, because of the fact that the existing building is higher than normal and even steps up at the back with raised internal floors, the proposed building will hardly exceed it, despite having an additional semibasement. It will be about 3 courses higher on the front elevation on Triq ic-Cawsli and only 2 courses on the valley side at the back; there is a visual solution possible by replacing them with open railings.

Moreover, now that the end part of the street which was retained in the development zone is now built with 3+1 floors and with a back elevation giving directly onto the valley as well [...], our proposal can safely claim to be compatible with its urban surroundings (it is one floor lower) and will not exacerbate the visual impact on the valley side.

With regards to the other issues of the maximum height and the interpretation of the drawings approved with the outline permit, for the sake of avoiding repetition, we refer to the arguments submitted with our appeal on the 18th March 2010, but draw attention to the interpretation given by a MEPA senior Case Officer in Report of PA 834/05.

'Extract from DPAR PA 834/05

Further to the above, the approved back elevation on Valley Road (Approved Drawing Number PA 843/05/43E) indicates a height of 2 metres from the 'pavement' level to the underneath of the slab (i.e. 7 courses).'

E. Illi permezz tat-Tieni Statement taghha l-Awtorita irrilevat inter alia kif gej:

It is important to keep in mind that the site is located Outside the Development Zone adjacent to an area considered as a Strategic Open Gap. All the examples highlighted by the appellant are within the limits of development with an established height limitation.

The developments referred to by the appellant located along Triq il-Wied consists of 3 floors plus penthouse within the limits of development. This means that the top most level is recessed from the elevation fronting the ODZ. In this case the proposed development which consists of four full floors fronting the ODZ; with no recess at the top most level.

On the other hand the developments along Triq ic-Cawli also referred to by the appellant are also located within the limits of development; and contrary to the proposal in

this application they are separated from the ODZ by a fully-fledged road. Moreover the penthouse on top is recessed by 4.25m from the front elevation. This means that there is the total width of the road and the recess depth separating the top most level from the ODZ unlike the proposal in this application which abuts the ODZ directly with no recesses.

#### Height Limitation

The elevation drawings show that the proposed building is perceived to be 3 storeys high when viewed from Triq ic-Cawli mainly because the semi-basement is visually perceived as a normal groundfloor.

Moreover the back elevation is clearly that belonging to a building on 4 floors. The section drawing submitted in the Outline permit is that of 3 floors. The appellant is stating that this is irrelevant because such drawings are not approved in the Outline permit. However any decision taken during the Outline process is based upon the drawings submitted even if at the end these are not stamped. Thus the Authority was never in a position to realise that the difference in height between the schemed road and the canal is so significant that it is in reality approving a further floor.

#### The Canal is not a schemed road

The fact that the canal is not a schemed road and that it is not accessible for a period of time during the year does not alter the fact that the proposed development is read as a four storey building when viewed from the open spaces to its back. This is obviously an unnecessary visual intrusion on the surrounding spaces and thus it is not acceptable.

#### Basement levels without apertures above ground level

The statement that basement levels which appears above ground level and without apertures is considered as a non-floor height is not supported by policy. The Directorate is also not aware of any such decisions taken within similar contexts."



Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghat-twaqqiegh ta' bini ezistenti u l-izvilupp ta' zewg propjetajiet sovrastanti garaxx semi-basement, ai termini tal-outline permit 999/04. Is-sit mertu ta' dan l-appell jinsab f'2, Triq ic-Cawsli, Qormi.

Din l-applikazzjoni giet rifjutata peress li l-izvilupp koncept mhuwiex in linea mal-kundizjonijiet imposti fl-Outline Development Permission PA 999/04. L-izvilupp awtorizzat kellu jkun ta' zewg sulari pju semi-basement. L-izvilupp se jwassal ghal bini ta' erba' sulari; u mhuwiex in lineja mal-policies RCO 2 u RCO 4 tal-Pjan ta' Strutura ghax il-binja ser taghti fuq Wied il-Kbir.

Is-sit mertu ta' l-appell odjern jinsab fuq dizlivell, maqbud bejn Triq ic-Cawsli (l-oghla parti) u kanal tal-wied fuq in-nahha l-ohra. Bejn id-dizlivell hemm il-proprjeta ta' terzi li minn nahha ta' t-triq tirrizulta prattikament taht l-art izda f'faccata li thares fuq il-wied.

Precedentement kien diga nhariglu outline permit fuq l-istess sit; PA 999/04 - "To demolish existing building and construct two dwellings over semi-basement garage."

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

- L-appellant jissottometti li l-limitazzjoni ta' gholi massimu ma huwiex wiehed generiku izda gie marbut specifikament mal-livell tat-triq, l-unika wahda li hemm, cioe Triq ic Cawsli, u l-gholi gie marbut ma' dak li gie approvat u nbena fis-sit immedjatament hdejn il-proprjeta tal-appellant;

- L-Awtorita tissottometti li l-gholi tal-binja sejra teccedi dak permissibbli u li r-realta fuq is-sit ma gietx esposta mill-Perit;

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet johroq li kif dikjarat mill-Appellant, il-bini li hemm ezistenti diga

## Kopja Informali ta' Sentenza

"jaqbez iz-zewg sulari sew ghax, apparti li hu mgholli l-fuq mit-triq bi tlett filati, jerga' ghandu sulari oghla minn kif normalment jinbnew illum", kif ukoll peress li hemm bhal speci ta' dizlivell iehor internament tas-sit (cjoe imtarrag il-fuq mil-livell ta' t-triq).

L-argumenti principali li ssottometta l-appellant huma bbazati fuq il-premessa li l-outline permit jippermetti zewg sulari residenzjali fuq garaxx semi-basement, kif imkejla mill-livell ta' t-triq. Billi jirrizulta li effettivament hemm biss triq wahda (Triq ic-Cawsli) - ghax il-faccata l-ohra thares fuq il-wied (u ghalhekk mhux fuq triq) - l-Awtorita ma tistax issa tobligah 'jirrispetta' wkoll il-height limitation minn naha tal-wied.

L-Awtorita zzomm ferm kontra dan l-argument u tinsisti li l-outline permit inhareg fuq pjanti u nformazzjoni qarrieqa li ma kienux jirriflettu l-verita ta' dak li kien hemm fuq is-sit, u cjoe li s-sit kien fuq dizlivell, tant li jirrizulta li hemm anke proprjeta ta' terzi sottostanti l-izvilupp propost. Tissokta targumenta wkoll li allavolja l-wied mhux triq skedata, xorta wahda trid tigi rispettata l-vista u li ghalhekk l-izvilupp kif propost kien ser jgharraq ukoll id-dehra xenografika ta' dan il-wied.

Minghajr ma joqghod jidhol fl-agir oggezzjonabbli jew meno taz-zewg partijiet (cjoe li l-Appellant seta' kien aktar car meta ssottometta l-applikazzjoni tieghu ghall-outline permit, u li l-Awtorita setghet kienet aktar konsapevoli ta' x'kien fil-fatt qed jigri on site), madankollu irid jigi nutat li huwa punt ben fondat li outline permit jistabbilixxi principju - bhal speci ta' framework; li kemm il-darba l-outline permit jigi segwit minnfull development application, dan tal-ahhar irid isegwi l-principju stabbiliti permezz tal-outline permit. Lanqas pero ma hu dritt kwezit assolut, ghax fil-fatt full development application li ssegwi outline permit gieli giet michuda mill-Awtorita; izda anke minhabba l-fatt li kwazi f'kull cirkostanza outline permit jinhareg abbazi ta' reserved matters. (Li kiekun ma kienx hekk, ma kienx jissejjah 'outline'.)

Fl-outline permit tal-kaz in ezami, ir-reserved matters kienu jinkludu inter alia; 'the location of the building(s) within the site' u 'means of access'. Dan iffisser li anke jekk permezz tal-outline development permit gie stabbilit il-principju li l-lokazzjoni tal-bini jew l-izvilupp fuq is-sit ghada ma gietx iffissata, u galadarba tigi sottomessa l-applikazzjoni ghal-permess tal-izvilupp, jista' jaghti l-kaz li l-bini jista' jigi spustjat. F'termini t'ippjanar, 'spustament' ifisser traslokazzjoni f'tlett dimensjonijiet; cjoe la genba kif ukoll il-fuq u l-isfel.

Minghajr ma jigi ssindikat kif svolga l-process li wassal ghal-hrug ta' l-outline permit, dan it-Tribunal hu tal-fehma kkunsidrata li meta l-Awtorita approvat il-principju li jistghu jinbnew zewg residenzi u garaxx semi-basement, ghamlet dan in bonafede; u jekk l-appellant ghal xi raguni jew ohra seta' naqas li jaghti l-informazzjoni kollha kif normalment mitluba sabiex tista' tigi pprocessata l-applikazzjoni tieghu (cjoe, jew ghax kien hemm xi diskrepanza fis-survey, jew ghax ma hasibx li l-fatt li taht il-proprjeta tieghu kien hemm l-izvilupp ta' terzi li ma jistax jintmess), allura fic-cirkostanzi nhareg outline permit monk li ma jistax jissarraf - jew inkella li ma jistax jigi esegwit minghajr ma jigu riveduti l-parametri li kkundizzjonaw dak il-permess.

Ghalhekk fic-cirkostanzi jibqa' l-argument li l-proposta in ezami ma tirrispekkjax l-gholi ta' zewg sulari u semi-basement. Thares kif thares lejha, il-proposta ma timmeritax kunsiderazzjoni favorevoli ghax a prescindere mill-argumenti kollha mressqa fil-kors tas-smigh ta' dan l-appell:

- Jekk iz-zewg sulari u s-semi-basement jigu kkunsidrati minn naha ta' t-triq allura ser jirrizulta basement addizzjonali (li jappartjeni lill-terzi), u
- Jekk iz-zewg sulari u s-semi-basement jigi kkunsidrati bhala numru ta' livelli (cjoe tlieta), l-izvilupp ser jirrizulta b'erba' livelli.

Fl-ahharnett, irird jigi osservat ukolli permezz tal-pjanti ssottomessi fil-mori tal-appell, apparti l-pjanti li juru l-proposta, indikati bhala 'Plans and elevations' u 'Sections',

hemm ohra indikata bhala 'Existing plans, sections and elevations'. Jirrizulta li fil-pjanta 'Sections' hemm zewg linji indikati bhala 'envelope of existing dwelling' u 'profile of floor level of existing [sic.]'. Dan tal-ahhar juri l-limiti tal-bini ta' terzi u li allura suppost isegwi li f'kull wahda mill-pjanti sottomessi ghandu jidher l-istess - cjoe l-fatt li qed jiddelinja l-proprijeta ta' terzi, ghandu jibqa' kostanti u mmutabbli – izda jidher li per ezempju fis-'Section 01' hemm avarija bejn il-profili 'existing' u 'proposed' ta' kwazi nofs sular.

Lanqas ghawnhekk il-proposta ma hi cara: jekk dan huwiex zball ta' interpretazzjoni jew jekk kienx hemm xi ftehim bejn l-Appellant u t-terzi sabiex jitbaxxa s-saqaf tal-proprijeta ta' t-terzi, galadarba jinhareg il-permess ghall-izvilupp.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut ghall-PA 4275/10 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fis-17 ta' Frar 2010.

### **Ikkunsidrat**

L-aggravji tal-appellant mill-qari tal-appell huma s-segwenti:

1. It-Tribunal zbalja meta qal li l-izvilupp fih erba' sulari u mhux tnejn u semi-basement mit-triq kif trid il-policy applikabbli u dan peress illil fuq war tas-sit ma hemmx triq izda wied u ghalhekk il-policy mhix qed tigi applikata sew;
2. In oltre nghataw permessi ohra simili ta' zvilupp ta' basements f'livelli li jaffaccjaw fuq wied, b'access minn triq kuntrarjament ghas-sit in kwistjoni, u ghalhekk it-Tribunal naqas li jottempera ruhu mal-principju ta' trattament ugwali li l-appellant fil-fatt irrefera ghal permessi partikolari fuq din il-kwistjoni li lanqas gew trattati mit-Tribunal;
3. It-Tribunal zbalja meta qal li l-izvilupp jeccedi l-gholi permess ta' 9.5 metru skond il-policy applikabbli;

4. Li l-Awtorita kienet skorretta meta qalet li l-applikant kien ipprezenta informazzjoni qarrieqa fl-outline permit approvat.

### **L-ewwel u t-tielet aggravji**

Dan l-aggravju ma jistax jigi milqugh ghaliex dak li qed jitlob l-appellant hu li l-Qorti tal-Appell tidhol fil-mertu tal-fatti in kwistjoni, fatti ta' natura teknika mill-ottika ta' planning, u terga' tiftah il-mertu. Dan mhux possibbli ghaliex kwistjonijiet ta' ppjanar u ta' fatti li huma purament teknici bhal ma gew migjuba f'dan l-aggravju konsistenti fl-gholi ta' bini u kif ghandu jigi kalkulati jew dak li jikkostitwixxi faccata fuq triq huma purament ta' natura teknika li mhux kompitu ta' din il-Qorti li tissindaka billi mhux prettament punt ta' ligi.

Ghalhekk dan l-aggravju qed jigi michud.

### **Ir-raba aggravju**

Dan l-aggravju wkoll ma jimmertax konsiderazzjonji billi fl-ewwel lok l-appellant dikjaratament qed jaghmel allegazzjoni fuq l-operat tal-Awtorita mhux tat-Tribunal. Fit-tieni lok anki jekk ghal grazzja tal-argument kellha tigi injorata din l-osservazzjoni tal-Qorti, fl-ebda hin it-Tribunal ma kkondivida xi allegazzjoni simili jew ibbaza d-decizjoni tieghu fuq xi fatt li t-Tribunal iddikjara bhala qarrieq da parti tal-appellant. Dak li gustament kellu dritt jaghmel it-Tribunal u fil-fatt ghamlu hu li rrimarka fuq il-mod kif tmexxew il-proceduri quddiem it-Tribunal u ta' interpretazzjoni, li maghha taqbel din il-Qorti, dwar il-portata ta' outline permit b'referenza partikolari ghal din l-applikazzjoni.

Ghalhekk dan l-aggravju wkoll qed jigi michud.

### **It-tieni aggravju**

Dan l-aggravju li hu wkoll l-aktar serju fih il-mertu tieghu u din il-Qorti ssib illi t-Tribunal naqas f'zewg aspetti fid-decizjoni tieghu.

Fl-ewwel lok it-Tribunal bbaza d-decizjoni tieghu fuq l-livelli ta' bini proposti mill appellant u jghid hekk Ghalhekk fic-cirkostanzi jibqa' l-argument li l-proposta in ezami ma tirispekkjax l-gholi ta' zewg sulari u semi-basement. Thares kif thares lejha, il-proposta ma timmeritax kunsiderazzjoni favorevoli ghax a prescindere mill-argumenti kollha mressqa fil-kors tas-smigh ta' dan l-appell:

- Jekk iz-zewg sulari u s-semi-basement jigu kkunsidrati minn naha ta' t-triq allura ser jirrizulta basement addizzjonali (li jappartjeni lill-terzi), u
- Jekk iz-zewg sulari u s-semi-basement jigi kkunsidrati bhala numru ta' livelli (cjoe tlieta), l-izvilupp ser jirrizulta b'erba' livelli.

Pero mbaghad it-Tribunal ma jurix kif dawn il-fatti ma jimmeritawx lli l-applikazzjoni tigi milqugh. Ma allaccja ebda pjan jew policy applikabbli ghal dan il-fatt li jwassal ghac-cahda tal-applikazzjoni. Hu minnu illi l-Awtorita tat il-veduti taghha ta' dak li japplika qua ligijiet u policies u l-appellant ukoll ikkontrobatta ghalfejn l-Awtorita kellha argument fallaci. Pero hu l-kompitu tat-Tribunal li ghas-sodisfazzjon tal-partijiet interessati u biex il-gustizzja tidher li qed issir, jaghti ragunijiet ibbazati fuq pjanijiet u policies ghaliex l-izvilupp ma setghax ikollu approvazzjoni. Dan ma jidher imkien mill-atti u ghalhekk id-decizjoni hi nieqsa minn motivazzjoni legali bbazata fuq il-fatti kostatati mit-Tribunal. Il-Qorti taghmilha cara li mhix tissindaka l-konkluzzjonijiet fattwali tat-Tribunal pero qed ticcensura lit-Tribunal li ma rabatx il-konsiderazzjoni fattwali ma' trasgressjonijiet ta' pjan jew policy partikolari applikabbli ghal kaz. Il-konkluzzjoni tat-Tribunal li l-applikazzjoni mhix konformi mal-policies tal-ippjanar vigenti minghajr ma hemm indikazzjoni fil-konsiderazzjonijiet tieghu dwar liema huma l-pjanijiet u l-policies irendu din id-decizjoni 'unsound' u ghalhekk mhix affidabbli.

Bl-istess mod il-Qorti tqis illi t-Tribunal naqas serjament meta l-appellant issottometta diversi permessi mahruqa, uhud fil-vicinanze stretti tas-sit in kwistjoni biex juri

commitment taz-zona jew sitwazzjoni simili ghall-applikazzjoni in kwistjoni li fil-fehma tieghu kellha timmerita l-istess trattament cioe approvazzjoni, u t-Tribunal lanqas biss accenna ghalihom ahseb u ara kemm ta ragunijiet ghaliex ma kienx hemm la commitment u anqas ragunijiet ghalfejn dan is-sit kellu jinghata permess kif inghataw zviluppi ohra fil-vicinanze. Huwa punt ta' ligi meta aggravju ta' certa natura u portata u li jista, jekk jinstab ppruvat, jaghti lok ghall-akkoljiment tal-appell, ma jigix trattat. Hawn ukoll il-Qorti mhix qed tinsinwa illi dan l-aggravju kellu xi mertu fih izda biss li kien il-kompitu tat-Tribunal li jinvestigah kemm il-darba ma tinghatax raguni mill-istess Tribunal ghaliex aggravju simili fic-cirkostanzi tal-kaz ma kien ser ibiddel xejn mill-kwistjonijiet li l-istess Tribunal jidhirlu li ma jistghux jigu evitati jew skuzati.

Sfortunatament l-appellant ma nghata ebda raguni ghalfejn dan l-aggravju ma giex trattat mit-Tribunal u din il-Qorti tqis illi n-natura tal-aggravju fic-cirkostanzi tal-kaz kellu jigi trattat u jinghata d-debita konsiderazzjoni mit-Tribunal.

Ghalhekk dan l-aggravju qed jigi milqugh.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Sebastian Briffa u konsistenti ma' dak deciz mill-Qorti, qed thassar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 u tirrinvoja l-atti lura lit-Tribunal biex jerga' jiddeciedi l-kwistjoni. L-ispejjez ghall-appellat.

### **< Sentenza Finali >**

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