



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 100/2012

Joseph Ellul ghan-nom ta' EMV Ltd.

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Ellul ghan-nom ta' EMV Ltd. tat-30 ta' Meju 2012 minn rifjut tal-applikazzjoni PA 2756/05 b'decisjoni moghtija mit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Meju 2012 rigward 'outline development permission for proposed extension to existing residential block';

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

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

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

B'applikazzjoni Outline Development Permission - PA 2756/05, l-appellant, f'Villa Scicluna, Triq Sant' Andrija, Swieqi, talab:

"Proposed extension to existing residential block."

L-applikazzjoni giet michuda mid-DCC fil-25 ta' Ottubru 2006 ghar-ragunijiet segwenti:-

"1. The site lies outside the limits for development defined in the Temporary Provisions scheme for Swieqi 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.

2. The proposed development conflicts with Structure Plan Policy SET11, which does not permit urban development outside the development zone. 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 does not comply with Structure Plan policies RCO 28 and RCO 29 which clearly states that no new physical development will normally be allowed on the sides of valleys and that valleys will continue to be protected as important water catchment areas.

4. The proposed development will run counter to Structure Plan policy SET 8 which states that:- development will be permitted in the areas designated for Temporary Provisions schemes, and that the development boundaries will only be changed, if necessary, as the

result of a comprehensive Structure Plan review which takes place after approval of the related Local Plan.

5. The proposed development runs counter to Policy PLP 20 :- Development Outside Built-up areas which states that existing and committed built-up areas in the Structure Plan do not refer to land outside the limits of development which contain sporadic development and that any further urbanisation outside the limits of development is prohibited by the Structure Plan.";

Illi l-Perit Camilleri ressaq l-aggravji tas-socjeta appellant kif gej:

- The land on which the application has been made forms part of the same land on which a block of flats has been constructed and is, therefore, an intrinsic part of this development.
- Therefore, this application is an extension to permits already granted.
- The same yardstick was used for the issuing of a substantial number of permits on the other side of the valley (one of these permits is PA 06113/04 issued on the 24th. August 2005) which is much more sensitive since it entails buildings of five floors within the valley.
- On the other hand this application concerns the rational continuation of a three-storey block.
- My clients are also prepared to contribute a 'community gain' aspect to this application by providing a proper pedestrian link in the form of stepsl ramp which would be landscaped in the amenity of the residence in the area.
- It is to be noted that at present, this access does not exist and, therefore, the residents of San Andrea Court can only go to the Ibragg Church area by going round Jessie's bar and vice versa for residents on the rear parts."

Illi fl-imsemmi appell l-Perit Camilleri rrilleva wkoll illi l-Kunsill Lokali tas-Swieqi kien propens li jsib l-izvilupp relativ bhala accettabbli.

Illi permezz tar-rapport taghha, l-Awtorita kkummentat inter alia kif gej:

"5.0 Comments on Appellant's Arguments & refusal Notice

5.1 The proposed development has been refused on the grounds that it constitutes of illegitimate urban development in the countryside. The proposed garage would only lead to the dispersal and proliferation of further urban development in this rural area, which would not be in the interest of Structure Plan policies SET 11 & RCO 2. Furthermore, the proposed development would also contradict with Structure Plan policies RCO 28 & 29 which prohibit any form of development within water catchment and watercourse areas. There appears to be no justification on sound planning grounds for the proposal as required by Structure Plan policy SET 12.

5.2 The appellant claims that the proposed development should be considered as justified on the grounds that the proposal only consists of an extension to an existing residential complex. The appellant is also stating that if this proposal is favourably considered, the applicant is willing to contribute towards a planning gain consisting of the formation of a pedestrian link connecting the site to Ibragg centre.

5.3 The Planning Appeals Board had already permitted an extension to the existing residential complex in their decision of 23rd January 2002 in PAB 43/00 (PA 3471/99). However this extension was permitted on the grounds that it would be carried out on already committed land, while the rest of the site would be landscaped and act as a suitable buffer between the valley system and the existing development. In fact the Board ordered that other existing buildings within the landscaped area should be demolished and the area kept free from building development. However, in this present application, further residential development is being proposed instead of the landscaped area. Apart from the fact that further residential development in an area outside the

development zone boundary is not justified on sound planning grounds, accepting the proposed development would also result in a contradiction with the objectives achieved through the Planning Appeal Board's decision as a transitional solution between the built-up area and the valley system.

5.4 The appellant also states that other permits have been issued on the other side of the valley, and cites PA 6113/04 as a case in point. However, these permits referred to by the appellant are located along Triq il-Pedidawett, which has now been classified as a rural settlement through the Local Plan. The classification of this row of terraced buildings as a rural settlement has enabled the containment of this pocket of development to safeguard Wied Mejxu from any further encroachments onto the valley system. In the case of the site subject to appeal, the whole site has been kept as outside the development zone boundary, and hence any additional development rights to those already permitted on this site are not justified on sound planning grounds. Accepting further development on this site would also contradict with the Local Plan's designation of the valley system as a Site of Scientific & Ecological Importance. "

Illi fl-access mizmum fit-12 ta' Mejju 2008 gie rilevat illi l-permess illi hemm fuq is-sit in kwistjoni ghal bini ta' pool u landscaping ghadhu mhux utilizzat.

Illi l-Perit Camilleri ssottometta ulterjorment illi:

"I would like to inform you that a permit No. PA 05568/08 in the vicinity of my client's site has just been issued by MEPA.

This permit effectively contradicts the Planning Directorate's assertion that there is no public road bounding the proposed extension to the existing building owned by my clients.

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Furthermore, this permit was granted on the basis that the development does not constitute additional urban development outside the already committed site.

The proposed development, the subject of this appeal, is also an already committed site, as attested by MEPA permits PA 3959/95, PA 6544/98, PA 3471/99, PA 4627/00 and PA 2312/02 granted for the site."

Illi waqt l-access tal-11 ta' Marzu 2011 l-Perit Camilleri indika is-sit li originarjament skond hu kienet parti minn gnien ta' villa li kienet hemmhekk qabel l-izvilupp li sar. L-izvilupp adjacenti il-San Andrea Court huwa bini fuq tlett sulari, pero l-konfini tieghu skond Jonathan Borg u Mario Scicluna, hija l-linja ta' demarkazzjoni tal-linja tal-izvilupp. Dan ifisser li fejn qed isir il-proposta tal-izvilupp, jinsab outside scheme. Il-perit Camilleri indika illi fit-trejqa fuq il-lemin hemm xi garages u xi bini li ghalkemm originarjament kienu ODZ, illum gew approvati.

Fis-seduta tad-19 ta' Lulju 2011, id-difensuri trattaw l-appell u gew prezentati PAs 3471/99 u 2756/05;

Ikkunsidra ulterjorment:

Kif jirrizulta mill-pjanta annessa mal-appell, u kif seta' jigi kkostatat mit- Tribunal waqt l-access, qed jigi propost zvilupp, adjacenti zvilupp ezistenti f'St. Andrews. Dan jikkonsisti f'basement car parking area b'access mill-kumpless residenzjali adjacenti u appartamenti fil-pjan terran, fl-ewwel - fit-tieni sular u reseeded tielet sular. Originarjament l-istess area kienet giet approvata bhala li tinludi 'swimming pool'.

Is-sit jinsab barra z-zona tal-izvilupp b'access minn St. Andrews Road. Is-sit jinsab fit-tarf tal-vallata ta' Wied Mejxu u hu sit ta' importanza xjentifika - protezzjoni Level 2.

Is-sit 'de quo' jiforma parti minn sit akbar li dwaru saru diversi applikazzjonijiet ta' zvilupp li gie citat fir-rapport tal-

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Awtorita u cioe PA 3959/95 u PA 6544/98; PA 4627/00; PA 3471/99 u PA 2312/02; PA 6315/03 u PA 6485/02.

Skond il-Policies SET11; SET 12 u RC02 tal-Pjan ta' Struttura, wiehed mill-ghanijiet principali tal-iStructure Plan hu propju li ghandha tinzamm d-distinzjoni bejn areas urbani minn dawk rurali, billi tigi limitata l-estenzjoni sporadika tal-izvilupp.

Zvilupp fil-vallati u water catchment areas hu in kontravenzjoni tal-Policies RCO 28 u RCO 29.

Skond in-North Harbour Local Plan approvat f'Lulju 2006, l-area in kwistjoni giet klassifikata bhala wahda ta' importanza xjentifika, level 2, bi kwalitajiet geologici importanti u barra z-zona tal-izvilupp.

Il-proposta prezenti ghalhekk li hi fuq skala kunsiderevoli ma tistax tigi approvata f'area li hi barra z-zona tal-izvilupp, billi skond l-Pjan Lokali din l-area jinhtieg li tibqa' miftuha u mhux zviluppata.

Il-fatt li l-istess proposta hi ntiza biex tkun estenzjoni ta' bini ezistenti u approvat, ma jammontax ghal gustifikazzjoni sufficjenti biex jigi awtorizzat zvilupp f'area li hi barra z-zona tal-izvilupp.

F'dawn ic-cirkostanzi partikolari, l-appell ma jistax jigi kkunsidrat favorevolment.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut tal-25 ta' Ottubru 2006 ghall-applikazzjoni PA 2756/05.

Ikkunsidrat

L-aggravju tal-appellant kien fis-sens illi ghalkemm it-Tribunal ikkonsidra l-kwistjoni bhala talba ghal zvilupp l-appellant isostni li dan ma jikkostitwix zvilupp izda estenzjoni ta' bini ossia zvilupp gia ezistenti konsistenti minn recintar tal-istess sit li ilu hemm ghal diversi snin. Izid ukoll illi ghalkemm it-Tribunal sostna li s-sit jinsab

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f'tarf wied, jezistu zviluppi ohra fuq in-naha l-ohra tal-wied u oghola minn dak propost mill-applikant.

L-appellant isostni wkoll illi ghalkemm it-Tribunal ghamel argument li d-distinzjoni bejn areas rurali u urbani trid tinzamm biex ma jkunx hemm estensjoni ta' zvilupp sporadiku, f'dan il-kaz hemm biss estenzjoni ta' bini ezistenti. In oltre zied li ghalkemm it-Tribunal wera li din hi area ta' importanza xjentifika – level 2, hemm binjiet ohra indikati waqt l-access fl-istess akkwati li gew sanzjonati nonostante li kienu ODZ.

Il-Qorti tqis li ma hemm gustifikazzjoni f'dan l-appell.

L-appellant jibda biex isostni li din mhix applikazzjoni ghal zvilupp izda estensjoni ta' zvilupp ezistenti. Dan hu loghob bil-kliem u ma jirrispekkjax il-fatti. L-appellant qed jipproponi binja konsistenti f'basement car parking area u appartamenti fil-pjan terran, fl-ewwel u tieni sular u receded tielet sular. Hu minnu illi l-proposta ta' zvilupp tinsab adjacent ghal binja gia ezistenti u illi l-area li qed tintalab tigi zviluppata hi landscaped area b'permess li jsir pool pero dan ma jfissirx li l-entita tal-proposta ma tikkostitwix zvilupp u ghalhekk soggetta bhal kull zvilupp iehor ghal pjanijiet u policies ezistenti fi zmien id-decizjoni liema pjanijiet u policies huma ta' natura mandatorja u jridu jigu osservati u applikati mill-Awtorita u t-Tribunal fit-termini ta' dak lli jiddisponi l-artikolu 69 tal-Kap. 504. Il-Qorti taghmel referenza wkoll ghal artikolu 67(2) tal-Kap. 504 fejn zvilupp ifisser fost affarijiet 'ghemil ta' xoghol ta' bini' u ghalhekk dan l-aggravju mhux misthoqq.

In kwantu ghas-sottomissjoni tal-appellant li kien jisthoqq li jinhareg permess peress illi kien hemm bini iehor fil-vicinanzi li nghata permess, u ghalhekk qed jimplika jew li l-area hi committed jew li kellu jircievi l-istess trattament ghalkemm dan ma jirrizultax car mill-mod kif inhu ridatt l-appell, il-Qorti tqis li din il-kwistjoni giet trattata bhala aggravju b'mod dettaljat mit-Tribunal u giet skartata fuq ragunijiet ta' ligi u planning. It-Tribunal sostna principalment illi fl-ewwel lok il-punt kardinali kien illi l-izvilupp propost kien jaqa f'ODZ u kienet ukoll klasifikata

bhala area ta' importanza xjentifika, level 2 bi kwalitajiet geologici importanti u tmur kontra l-ispirtu tal-istruttura plan fejn l-iskop kien li tinzamm demarkazzjoni cara fejn tezisti bhal f'dan il-kaz, bejn areas urbani li jinsabu f'ODZ kif kostatat mit-Tribunal u li dwar kwistjoni jew ta' planning u oħra teknika l-Qorti ma tissindakax l-operat tat-Tribunal, u dawk rurali u li ma jithallix bini f'areas li mhumiex intizi għal bini. In oltre b'referenza specifika għal siti mibnija fl-akkwati jirrizulta anki mill-mod kif inhu redatt l-aggravju illi l-appellant qed jammetti implicitament illi l-bini li qed jirreferi għaliha hu dak fiz-zona maghrufa bhala Triq il-Pedidawett li giet klassifikata bhala 'rural settlement' fil-pjan lokali u giet kontenuta biex ma jsirx zvilupp iehor fil-wied. Kwindi l-Qorti hi tal-fehma illi la darba dawn l-izviluppi huma klassifikati b'mod differenti mis-sit mertu tal-appell ma hemm ebda punt ta' ligi li qed jigi mitlub jigi deciz billi l-binjiet l-oħra għandhom klassifikazzjoni oħra mis-sit in kwistjoni li hu 'ODZ'. F'dan is-sens li t-Tribunal għamel referenza għal kliem 'limitazzjoni ta' estensjoni sporadika tal-izvilupp' li l-appellant hargu barra mill-kuntest ta' dak li kien qed jesponi t-Tribunal qua argumentazzjoni għal binjiet f'ODZ li jekk jithallew ikunu qed imorru kontra l-policies ezistenti.

Decide

Għal dawn ir-ragunijiet il-Qorti qed tichad l-appell ta' Joseph Ellul għan-nom ta' EMV Ltd u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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