



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tas-27 ta' Gunju, 2013

Appell Civili Numru. 78/2011

**Stephen Seychell**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Stephen Seychell tat-28 ta' Dicembru 2011 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-14 ta' Dicembru 2011 mill-applikazzjoni PA 7761/2006 ghal outline development permit ghal zvilupp ta' residenza u garage fuq sular wiehed il-fuq mill-livell tat-triq;

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

Kopja Informali ta' Sentenza

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:-

Il-Kummissjoni għall-Kontroll tal-Izvilupp irrifjutat l-applikazzjoni, PA 7761/06 f'sit, Tal-Krawla off, Triq il-Latmija, Marsascale - "to construct a garage and an apartment", fil-31 ta' Lulju 2007 (red 26 fil-file PA 7761/06 – saret talba għal reconsideration u rifjut gie kkonfermat fis-27 ta' Gunju 2008 (Red 48)). Ir-ragunijiet kienu s-segwenti :-

"1. The principle behind the proposed outline development is not acceptable since it would run counter to South Malta Local Plan Policy SMSE 08, since no new development is allowed on uncommitted land.

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 development does not fall into a category of nonurban development which may be permitted outside the development zone in accordance with Paragraph 7. 6 of the Structure Plan. The proposed development therefore runs counter to policy BEN 5.

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

Fl-Appell tieghu l-perit Robert Musumeci ssottometta s-segwenti:-

"The Directorate's Comments for Reconsideration in reaction to our request (see 9.2) for reconsideration hinge on the presumption that our request relating to end of development scheme are no longer applicable following approval of the Local Plans combined with the fact that no new development is allowed in Category 3 settlements.

To this end, we strongly retain that this is a completely false pretext on which the Directorate stated its recommendation (and subsequently confirmed by the DCC), since we have produced evidence that during the same week when the Directorate recommended negatively our application (and the Local Plans were already active), a number of decisions were taken by the DCC justifying end of development solutions, notwithstanding the locations under consideration were not categorised as Category 1 or Category 2 Settlements.

These decisions being reproduced below for ease of reference:-

PA -1384/04 and PA 0996/05.

In our various communications, we also specifically asked the Directorate to highlight what justified the issuance of these permits. The Directorate however failed to offer any reactions.";

Ra r-rapport tal-Awtorita datat 30 ta' Lulju 2008, partikolarment il-kummenti taghha dwar l-argumenti tal-appellant cjoe s-segwentanti:-

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

5.1.1 Appellant has argued that the proposed development would act as an end of scheme so as to mitigate the existing blank party wall and is also acceptable through the relevant policies. Appellant has also quoted PA 4384/04 and PA 996/05 and which are

claimed to have similar planning considerations to the case under appeal.

5.1.2 The Authority has noted the reasons for appeal and the quoted cases and states that as regards the relevant policies to the case under appeal, the facts are that the site is located within a Category 3 Rural Settlement (Map RS7) within the South Malta Local Plan and the relevant policy SMSE 08 states that:

In the areas classified as Category 3 Rural Settlements by policy SMSE 05, as identified in Inset RS 8 - RS 9, only rehabilitation and re-development for the land-uses identified in policy SMSE 07 (A) to (E) and tourist accommodation will be permitted, provided the criteria stipulated in policy SMSE 07 for each land-use are complied with.

New development, which takes up fresh land, notwithstanding the location of the site in relation to existing buildings, will not be permitted. The definition of uncommitted land, which is available for development in Category 2 Large Rural Settlements, is not applicable to Category 3 Small Rural Settlements.

5.1.3 The policy above clearly states that no land take up is permitted in uncommitted land in Category 3 settlements and since the proposed development would in fact take up agricultural land (circa 210 sq.m.), the proposed new dwelling is clearly not permissible by this Local Plan policy. This policy makes no exception to 'end of scheme' solutions but set clear criteria for new developments in Category 3 Settlements and which specifically excludes land take up of uncommitted land.

5.1.4 As regards the cited cases, PA 4384/04 (Outline) granted a dwelling abutting a 2 storey blank party wall and which also abuts Zebbug scheme development area. The site is not within a Rural Settlement and the adjacent unsightly blank wall was visible through extensive long distance views. The approved building was limited to a 1 storey dwelling.

5.1.2 Regarding PA 996/05 (Outline) had granted a dwelling abutting a 2 storey blank party wall and which was granted after the proposed development was significantly reduced. This particular site is within a Category 2 Rural Settlement.

5.1. 6 In view of the above, the Authority states that both quoted cases were located in areas which are not designated as Category 3 Rural Settlement as the case under appeal and hence cannot be cited as having similar planning consideration to the case in question. Furthermore, the proposed development abuts a 1 storey blank party wall which is screened by a 2m rubble wall which abuts the main road and is also not so visible from other areas due to other scattered buildings and mature trees (photos red 1A). This further minimises appellant's arguments that the new development is justified since it would close off the existing blank party wall since in this particular case, the visual negative effect of this wall is very limited and does not justify a clear breach to the relevant Local Plan Policy as cited above.

5.1. 7 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.

5.2 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 n-nota tal-Perit Robert Musumeci ipprezentata fid-19 ta' Awwissu 2008 fejn irrileva s- segwenti:-

"In reaction to our request for appeal, citing approved PA4384/04 with a view to corroborate the end of development principle adopted by planning decision bodies, the Directorate has counter argued stating that PA4384/04 relates to a location which is NOT a categorized settlement. further underlining that the development to grant a one storey dwelling as an end of development scheme was driven by the fact that the unsightly blank wall was visible through extensive long distance views ... (see 5.1.4)

It therefore transpires that.

There is no rigid policy which permits end of development solutions in ODZ limitedly to Category 1 or Category 2 settlements. As a matter of fact, PA4384/04 relates to a site in ODZ which does not classify as a settlement and where the DCC granted a dwelling as an end of development solution with a view to improve the visual setting.

It is therefore clear that the planning onus is ALWAYS placed on whether the proposed end of development solution would result in an improved visual setting or otherwise In fact the Directorate is confirming that PA4384/04 is justified on the pretext that the unsightly blank wall was visible through extensive long distance views ... Although not specifically stated by the Directorate, this rationale derives from the Structure Plan itself which aims TO RADICALLY IMPROVE THE QUALITY OF ALL ASPECTS OF THE ENVIRONMENT OF BOTH URBAN AND RURAL AREAS (Structure Plan Goals)

Against this background, and contrary to what is being purported in DPAR, it must be underlined that the site under appeal also features an unsightly blank parry wall which incidentally is visible from distant views (Document A). The proposed one storey dwelling will therefore

rendered the unsightly waif inconspicuous in consistence with the rationale governing decision tied to PA4384/04.

In consistence with the above, it remains uncontested that the proposed one store)' dll'elling under appeal constitutes an acceptable planning solution which will address the negative visual considerations currently invoked by the unsightly blank wall.

There is therefore no justification as to why the same planning principles cannot be carried forward in the case under appeal.";

Ra n-nota finali u d-dokumenti u r-ritratti annessi, prezentati mill-perit Musumeci ghall-appellant fid-19 ta' April 2011 fejn ssottometta:-

"1. Illi l-mittenti appellant applikant Stephen Seychell issottometta rikors ta' appell datat 17 ta' Lulju 2008, fejn indika fid-dettall ir-ragunijiet ghaliex dan l-appell ghandu jintlaqa'.

2. Illi sussegwentement. l-Awtorita pprezentat risposta bid-data ta' l-4 ta' Awwissu 2008. L-esponenti wiegeb minnufih permezz ta' ittra li ggib id-data ta' l-14 ta' Awwissu 2008.

3. Illi fl-ahhar seduta li nzammet quddiem dan it-Tribunal nhar id-29 ta' Marzu 2011, il-partijiet trattaw dan l-appell u l-esponenti inghata xahar zmien sabiex jhejji nota ta' sottomissjonijiet finali, fejn l-Awtorita imbaghad ikollha l-fakulta li tirrispondi fi zmien xahar minn meta tigi hekk notifikata.

4. Illi bid-dovut rispettt, l-appellant qed jaghmel dawn il-finali osservazzjonijiet:

- Illi din l-applikazzjoni si tratta ta' outline development application, bl-intiza li fis-sit mertu ta' dan l-appell ikun stabbilit il-principju li tista' tinbena residenza u garaxx fug sular wiehed il-fuq mill-livell tat- triq. Is-sit jinsab qalb bini ezistenti. (ara Drawing 01 datata 20/11/2006 u Drawing

02 datata 20/11/2006 fil-file PA 7761/06, kopja ta' liema qed ikunu annessi bhala Dokument 55020411-01 kifukoll ritratt ras-sit market Dokument 55020411-02 tlimkien ma' dan id-dokument)

- Illi minn analizi ta' Dokument 55020411-01 u Dokument 55020411-02, jirrizulta li l-plot tinsab mat-triq, fit-tarf ta' blokka bini ezistenti li tinsab f'Category Settlement. Fil-fatt, il-bini propost se jkun imiss ma' hajt ta' appogg ezistenti minghajr twieqi jew aperturi. Di piu l-izvilupp kif propost jinkorpora sensiela ta' aperturi fl-appogg li se jkun krejat u li se jkun ihares fug il-kumplament ta' l-art li qed tkun indikata "Area owned by Applicant" fi Drawing 02 datata 20/11/2006 hawn surriferita (kopja annessa ma' dan id-dokument bhala parti minn Dokument 55020411-01). B'hekk l-izvilupp se jghatti hajt ta' appogg minghajr twieqi filwaqt li dak propost jikkostitwixxi "end of development" stante li qed ikunu proposti sensiela ta' aperturi fl- appogg rizultanti.

- Illi il-principju ta' "end of development" hu ben stabbilit lid-decizjonijiet ta' l-ippjanar nostrani. Dan il- kuncett jirrizulta meta zvilupp propost se jaghlaq l-ahhar appogg f'commitment ezistenti, anke jekk tali commitment jikkonsisti sahansitra minn abitazzjoni wahda. Dan il-principju huwa applikat indipendentement jekk il-commitment ezistenti jinsabx fl-iskema ta' l-izvilupp jew f'xi wahda mill-Category Settlements. (fil-kaz odjern, is-sit jinsab f'category settlement), u dan anke jekk il-commitment ezistenti huwa sahansitra ta' abitazzjoni wahda kif jirrizulta fid-decizjonijiet segwenti:

- PA 996/05 To erect a basement garage with an overlying two storey residential unit as an end or scheme development - Dan il-permess kien approvat stante li skond il- Kummissjoni, L-izvilupp propost kien se jirrizulta f'"end of development", anke jekk il-kumplament tal-commitment ma jinsabx fl-iskema ta' l- izvilupp u. wisq anqas f'xi wahda mill-"category settlements" fil-Pjani Lokali.

- PA 4384/04 - To construct a basement garage and overlying residential unit - Dan il-permess kien approvat stante li skond il-Kummissjoni, l-izvilupp propost kien se jirrizulta f'"end of development". anke jekk il-kumplament tal-commitment ma jinsabx fl-iskema ta' l- izvilupp u wisq



anqas f'xi wahda mill-"category settlements" u fil-Pjani Lokali.

- PA 795/06 - Outline application to construct residential development in infill site - Dan il-permess kien approvat stante li skond il-Kummissjoni, l-izvilupp pro post kien se jirrizulta f'"end of development", anke jekk il-kumpliment tal-commitment jikkonsisti f'dar wahda li ma tinasabx fl-iskema ta' l-izvilupp u wisq anqas f'xi wahda mill-"category settlements" fil-Pjani Lokali
- PA2799/05 - To construct basement garages and residential units - Dan il-permess kien approvat stante li skont il-Kummissjoni, l-izvilupp propost kien se jirrizulta f'"end of development"
- PA01938/05 - Construction of terraced house - Dan il-permess kien approvat stante li skont il-Kummissjoni, l-izvilupp propost kien se jirrizulta f'"end of development" u anke jekk il-commitment ezistenti kien jikkonsisti f'abitazzjoni wahda
- PA02505/03 - Construction of terraced house - Dan il-permess kien approvat stante li skont il-Kummissjoni, l-izvilupp propost kien se jirrizulta f'"end of development" u anke jekk il-commitment ezistenti kien jikkonsisti f'abitazzjoni wahda.
- Illi mid-decizjonijiet sucitati, jirrizulta li l-principju ta' "end of development" huwa wiehed wiesgha u japplika stante li l-bini propost se jmiss ma' appogg ezistenti minghajr twieqi, filwaqt li jkun assigurat li l-appogg naxxenti mill-bini propost ikun mghammar bl-aperturi u b'hekk il-commitment jinghalaq darba ghal dejjem. Jirrizulta wkoll minn dawn id-decizjonijiet li l-principju ta' "end of development" japplika wkoll indipendentement minn dak li jipprovdu il-Pjani Lokali.

5. Illi jekk kemm il-darba l-Awtorita se titlob lil dan it-Tribunal jinjora il-commitment fiz-zona peress li gie fis-sehh qabel l-introduzzjoni tal-Pjani Lokali rispettiv, l-esponenti ifakkar li dan hu ragunament ghal kolox zbaljat peress li din hija appliakzzjoni hazina tal-ligi. Hawnhekk issir riferenza ghal dak deciz mill-Qorti ta' l-Appell ricientement fis-sentenza fl-ismijiet Joseph Tonna vs MEPA (Appell Civili Numru. 6/2010 deciz 24 ta' Frar 2011) fejn din il-Qorti enuncjat is-segwenti:

"peress li dak li l-Bord kellu jaghmel kien fl-ewwel lok jara jekk kienx hemm commitment ghal tali tip ta' zvilupp, u dan fil-mument li kienet ser tittiehed id-decizjoni, u dan isir b'riferenza ghall-izviluppp attwali li hemm fl-istess zona, inkluz li jiehu konjizzjoni ta' l-izviluppi koperti bil-permessi stess tal-Awtorita appellata, u wara li jigi kkonsidrat dan, anke fid-dawl ta' decizionijiet li l-istess Awtorita hadet, mhux l-inqas l-istess Bord innifsu, jara x'effett ghandu l-istess commitment fid-dawl tal-izvilupp propost u fid-dawl ta' policies applikabbli. inkluz il-Pjan Lokali, dan bl-ebda mod ma ifisser li l-Pjan Lokali elimina l-applikazzjoni tal-kuncett ta' commitment, tant li l-applikazzjoni ta' dan il-principju kienet dejjem sostnuta fid-dawl anke ta' dak li jipprovdi l-artikolu 33 tal-Kap. 356 (illum Art. 69 Kap. 504) li jirreferi specifikament ghall-pjan lokali; izda din ir-riferenza qatt ma waqfet l-applikazzjoni tal-kuncett ta' commitment"

Ghalhekk, kif enuncjat il-Qorti fid-decisjoni ta' "Joseph Tonna", dan it-Tribunal ma jistax jinjora l-commitment billi sempliciment jistrieħ fuq dak li qed jghid il-Pjan Lokali.

6. Illi in oltre huwa principju ben risaput li l-kuncett ta' "commitment" ifisser ukoll li una volta ikun applikat principju f'xi applikazzjoni, dan l-istess principju ghandu jkun applikat fil-kumplament ta' Malta u Ghawdex, u mhux limitament fl-akwati fejn ikun hareg ġia permess. Hawnhekk issir riferenza ghad-decizjoni tal-Qorti ta' l-Appell fl-ismijiet Leisure & Theme Park Limited vs. L-Awtorita ta' Malta dwar L-Ambient u L-Ippianar (Appell Civili Numru. 2/2007) fejn il-Qorti qalet dan li gej: "Illi l-appell odjern huwa bbazat fuq l-aggravju li l-Bord ma applikax il-principju tal-cerimus paribus u tal-commitment ghall-kaz in ezami u dan peress li minkejja li l-appellant kien irrefera ghall-diversi permessi li nhargu ghal numru ta' tined f'Malta (sottolinejat mis-sottoskritt) b'nota datata 14 tal Lulju 2006 dawn ma gewx trattati mill-Bord tal-Appell dwar l-Ippjanar ..." B'hekk qed jinghad bil-forza kollha "commitment" mhuwiex necessarjament marbut ma' zona wahda partikulari.

Illi applikati dawn il-kunsiderazzjonijiet ghall-kaz de quo, jirrizulta li ma ghandu jkun hemm ebda diffikulta sabiex il-proposta odjerna tigi milqugha, u dan anke a bazi tal-principju legali ben stabbilit li l-kunsiderazzjonijiet li jwasslu ghal decizjonijiet ta' ippjanar necessarjament jinhtieg li jkunu konsistenti u dan kif gie sostnut diversi drabi mill-Qorti ta' l-Appell. (Ara decizjoni fl-ismijiet Grace Borg vs. l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar (AIC - (RCP) 29th October 2009) fejn ut sic inghad: "fil-fatt gie ritentut gudizzjarjment li applikazzjonijiet simili jirrikjedu trattament identiku. Id-decizjonijiet f'dan ir-rigward, u l-kunsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necessarjament jinhtieg li jkunu konsistenti. L-inkonsistenza ghandha bhala konsegwenza l-kontestazzjoni gustifikata, id-diskriminazzjoni, l-unugwaljanza, u mill-aspett soggettiv ta' l-applikant l-ingustizzja." Dan il-principju isib sostenn fi skorta ta' decizjonijiet ohrain, fejn, l-Awtorita espressament intalbet "timxi fuq principji ta' gustizzja naturali u ta' ekwita" u "ghal fini ta' konsistenza, timxi ma' l-applikanti bl-istess mod bhalma timxi mal-applikanti l-ohra" (PAB 9/00SMS, PA 2378/99 Adrian Stivala kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp). L-istess intqal fid-decizjoni fl-ismijiet Coronato Portelli vs MEPA (PAB 50/00 KA PA 3874/99 fejn inghad li "Ghall-fini ta' konsistenza tezercita uniformita fl-applikazzjoni u fl-interpretazzjoni tal-policies. Dan ir-ragunament kien ukoll sollevat fid-decizjoni fl-ismijiet Simon Scerri kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp CPAB 872/98 KAPA 4854/97) fejn intqal bla tlaqliq li "Ghall-fini ta' konsistenza, il-Kummissjoni ghandha timxi bl-istess mod li mxiet ma' haddiehor".

8. Illi in vista tal- principji legali sueccepiti, it-Tribunal hu mistieden sabiex jevalwa il-principji applikati fil-kazijiet suriferiti (in linea mad-decizjoni tal-Qorti ta' l- Appell fl-ismijiet Grace Borg vs. l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar (Appell Civili Numru. 6/2010), u dan anke jekk whud mill-permessi sucitati kienu approvati qabel ma dahal fis-sehh il- Pjan Lokali (in linea mad-decizjoni tal-Qorti ta' l-Appell fl-ismijiet Joseph Tonna vs MEPA (Appell Civili Numru. 6/2010), u in oltre anke jekk il-permessi sucitati ma jinsabux fil-vicinanze taz-zona de quo (in linea

Kopja Informali ta' Sentenza

mad-decizjoni tal-Qorti ta' l-Appell fl-ismijiet Leisure & Theme Park Limited vs. l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar (Appell Civili Numru. 2/2007)).

9. Illi finalment it-Tribunal hu mistieden jikkonferma li l-principji sollevati fil-kazijiet sucitati huma applikabli fil- kaz de quo u dan peress li meta wiehed jevalwa il-kunsiderazzjonijiet applikati fil-permessi sucitati fid-dawl tal-principji legali hawnhekk sollevati, isib li jissustixxu dawk l-elementi "materjali" necessarij sabiex il- permess de quo jkun approvat kif l-esponenti kellu l-opportunita josserva fid-dettal aktar il-fuq.

10. Illi in konkluzjoni jinghad li l-ebda wiehed mill-permessi succepiti ma gie ikkontestat a bazi ta' allegat ksur ta' l- Artiklu 77 ta' l-Att tal- 2010 dwar l-Ambjent u l-Ippjanar ta' l-Izvilupp (jew inkella l-artiklu 39A ta' l-Att dwar l-Ambjent u l-Ippjanar precedenti) rizultanti minn xi "zball f'dokument li jidher minn ezami ta' l-istess dokument" jew allegat ksur ta' punt ta' ligi ghaliex il-Bord ma ddecidiex skond il-provedimenti tal-policies u ligijiet vigenti kif titlob l-istess ligi jew agixxa ultra vires u ghalhekk dak li gie deciz jikkostitwixxi stat fil-konfront tal-ligi.(sottolinejat mill-esponenti)

11. Illi ghalhekk il-files li rrefera ghalhom l-appellant ghandhom jigu verifikati mill-Bord u dan billi l-istess Awtorita ghandha tigi ordnata li tipprezenta il-files msemmija minnu sabiex it-Tribunal ikun jista' jiehu konjizzjoni ta' l-istess u dan fl-interess tal-gustizzja a bazi tal-principju naturali li l-gustizzja mhux biss trid issir izda trid tidher li qed issir ukoll.";

Ra s-second statement ipprezentata min Mario Scicluna ghall-Awtorita irribatta illi:-

"The Authority has noted all the arguments as presented in the last submissions and states that:

The plans and photos as submitted with these submission clearly show that the proposed garage and apartment are mlaact located on 'uncommilled land' which is so prohibited

Kopja Informali ta' Sentenza

in the relevant Local Plan Policy SMSE 08 (already cited in the Authority first appeal report para 5.1.2)

As regards the alleged identical permits the Authority took note of each cited case and states that none had identical planning considerations to this appeal since:

Re PA 996/05 - Already commented in the Authority's first report plus IS NOT in a Category 3 Rural Settlement.

Re PA 4384/04 - This development screened a very unsightly blank party 'wall (the blank party wall under this appeal is barely visible as per photos in file). This site is also NOT in a Category 3 Rural Settlement.

Re PA 795/06 - Decision taken by the DCC prior to August 2006 when the Local Plans were issued and which included policies such as those relating to Category 3 settlement on which this appeal in hand is being refused.

Re PA 2799/05 - This site is NOT within a Category 3 Rural Settlement, is located in Triq Kercem, Rabat (Ghawdex) and abuts a two storey building.

Re PA 1938/05 - Site at Bidnija. Decision taken by the DCC prior to August 2006 when the Local Plans were issued and which included policies such as those relating to Category 3 settlement on which this appeal in hand is being refused.

Re PA 2505/03 - Site at Bidnija. Decision taken by the DCC prior to August 2006 when the Local Plans were issued and which included policies such as those relating to Category 3 settlement on which this appeal in hand is being refused.

Furthermore, appellant has not produced the relevant policy on which this appeal should be accepted and the PA numbers cited had all different planning considerations to the case under appeal due to their location, nature of proposal and the land designation at the time of their decision by the DCC.

As regards the alleged relevance of the cited Court of Appeal cases, the Authority states that the issue of commitment as regards construction of residences is no longer applicable through the new law as per Section 69 (2) (i) proviso.

The Authority further states that that the alleged 'concept of commitment' and that of the "principle of end of development" are not backed by any Structure Plan or Local Plan policy and has been decided upon by several Appeals Board decisions which clearly denied such statements and emphasised the need for decisions to be taken in full conformity and in line with "the specific" plans and policies applicable to 'particular sites'. In this case, if 'end of development' construction was to be acceptable as being part of the present policies (which is not) then, ALL blank party walls in all Category Settlements (be it Category 1, Category 2 or Category 3) and also, ALL blank party walls in ODZ (since some of the cited permits in these last submissions were ODZ) and whether being visible or not from roads, by appellant's arguments, new residential units should be allowed (even if clearly objectionable by the relevant policies) on the basis of the above cited permits. The Authority reiterates that this is not good planning practice and if certain permits as cited above were deemed acceptable by the DCC on specific and unique reasons, such few decisions cannot be extrapolated as a change in policy. The Authority is citing just a few Appeals decisions which clearly denied development outside the permissible boundary (as is the case under this appeal) and declared clear reasoning for its decision.

"Il-Pjan Lokali kien specifkament mahsub sabiex jaghti direzzjoni ta' kif zoni differenti ghandhom ikomplu jigu zviluppati. Kieku wiehed kellu jinjora l-pjan lokali u johrog permessi abbazi bissta' xi tip ta' commitment dan ikun ifisser illi l-ghanijiet tal-Pjan Lokali ma jkun jistu qatt jintlahqu u l-ezercizzju kollu tal-pjanijiet lokali jkun sar ghal xejn". PA 5727/05 - RT 04.02.09 - PAB 161/07- Fenech Victor - Attard - Scheme.

"... gew identifikati 'settlements' fejn jista' jsir zvilupp kontrollat biex l-izvilupp ezistenti jista' jigi konsolidat u fl-istess hin konfinat ghax hu car li f'dawn iz-zoni wkoll l-izvilupp ma jistax jithalla jkompli jinfirex ...

... Jidher li ghal xi zmien il-Kummissjoni ghall-Kontrol ta' l-Izvilupp ikkunsidrat l-possibilita ta' zvilupp ridott Mala 'end of scheme' ... Il-Bord ma jaqbilx ma dak li jinghad fl-appell, li l-Pjan Lokali ma gab ebda bidla fil-policy ghax kien fil-Pjan Lokali li dahlu l-policies dwar Rural Settlements msemmija aktar 'l fuq. Fil-fatt, il-Bord hu tal-fehma li decizjonijiet fil-passat li kienu bazati fuq il-prezenza ta' bini adjacenti u 'blank walls' ma jistghux jitqiesu Mala precedent ghal dan il-kas minhabba li ttiehdu qabel ma gie fis-sehh il-Pjan Lokali" PA 4037/05 - ISB 6.3.09 - PAB 136/07 - Muscat Anthony -/o Mgarr - ODZ

"Dan il-Bord ma ghandux gurdizzjoni Jew poteri li tippermettilu li jissindika l-kontenut tal-pjanijiet lokali. Iz-zona inkwistjoni hija stabbilita fil-Pjan Lokali bhala Industrial zone, kif inhuma ukoll iz-zoni fl-inhawi ta' madwar ... Ghaldaqstant dan il-Bord huwa tal-fehma li stante li l-Bord m'ghandux gurdizzjoni u fuq 'decizjonijiet dwar Kontroll ta' Zvilupp, u dwar xi zvilupp li jkun specifkament awtorizzat fi Pjan ta' zvilupp'. Skond l-Artiklu 15(l)(D)(ii) tal-Att dwar l-Ippjanar ghall-Izvilupp, dan l-appell huwa null." PA 6039/05 - ISB 24.07.09 - PAB 46/06 - Bondin Malcolm- Mqabba - ODZ

"Il-permess PA 0511/05 inhareg qabel ma gie fis-sehh il-Pjan Lokali u ghalhekk ma jistax jitqies bhala precedent; il-permess PA 0056/05 ukoll inhareg qabel ma gie fis-sehh il-Pjan Lokali u ghalhekk ma jistax jitqies bhala precedent". PA 4290/04 - RT 14.04.10 - PAB 61/06 - Vella Clint - Mosta - UCA

"Il-Bord ikkunsidra l-argumenti kollha mqajjma miz-zewg partijiet u jinnota illi

hemm numru ta' decizjonijiet tal-Qorti ta' l-Appell li jistabilixu illi, decizjonijiet fuq applikazzjonijiet ghal permessi tal-bini, ghandhom jittiehdu mhux fuq il-policies fiz-zmien meta tkun saret l-applikazzjoni izda fuq il-policies in vigore meta tkun qed tittiehed id-decizjoni". PA

Kopja Informali ta' Sentenza

1597/05 - RT 14.04.10 - PAB 77/07 - Cassar Mark - Siggiewi - ODZ

"Jidher car mid-dokumenti pprezentati illi skond il-Pjan Lokali ta' Ghawdex, parti mis-sit tinsab fiz-zona tal-izvilupp u li ghalhekk ma hemm ebda oggezzjoni li jigi kkunsidrat zvilupp fuq din il-parti. Il-Bord jinsab marbut bil-limiti kif definiti mill l-istess pjan lokali u ma jara ebda raguni valida sabiex jigi permess zvilupp fuq il- parti (tas-sit li tinsab il-barra miz-zona ta' l-izvilupp. PA -1608/01 - RT 9.1.08 - Charlie Farrugia - Ghajnsielem

"Minn naha l-ohra t-Tribunal iqies illi huwa ta' importanza krucjali illi xejn m'ghandu jsir li jista' jaghmel hsara l-ftit kampanja illi baqa' f'dawn il-gzejjer.". PA 950/02 - EPRT 8.3.11 - Calleja Bros. - Naxxar - ODZ

The above clearly shows that there is no principle of 'end of scheme' in the approved policies 'which relate to Category 3 Rural Settlement (each and every case is to be decided in full knowledge and conformity to the relevant polices - in this case to those relating to Category 3 Settlements) and if this appeal was to be accepted, such an undesirable precedent would surely lead to further 'similar' request for new residences in 'uncommitted land' which would so change the character of our countryside and against all relevant polices which seek to direct residential development to appropriate schemed areas and not into our countryside.

The Tribunal is thus reminded that THIS development is located in a Category 3 Rural Settlement and any new development within such areas are to abide Policy SMSE 08 which clearly state:

SMSE 08 Small Rural Settlements - (Category 3 Settlements ODZ)

In the areas classified as Category 3 Rural Settlements by policy SMSE 05, as identified in Inset RS 8 - RS 9, only rehabilitation and re-development for the land-uses identified in policy SMSE 07 (A) to (E) and tourist



accommodation will be permitted, provided the criteria stipulated in policy SMSE 07 for each land-use are complied with.

New development, which takes up fresh land, notwithstanding the location of the site in relation to existing buildings, will not be permitted. The definition of uncommitted land, which is available for development in Category 2 Large Rural Settlements, is not applicable to Category 3 Small Rural Settlements.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the DCC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal.";

Ikkunsidra ulterjorament:-

L-appellant qed jipproponi li jibni garaxx u appartament f'sit f'Tal-Kawla, off Triq il-Latmija Marsascula. Is-sit jinsab f'Category 3 Rural Settlement.

L-appellant jiggustifika l-proposta tieghu, billi jekk tigi approvata jkun qed jitghatta blank party wall li ghandu impatt negattiv; u l-izvilupp propost iservi biex jinnewtralizza dan l-impatt. Mhux kontestat, li fil-prezent, fejn qed jigi propost l-izvilupp hi ghalqa. Kif tajjeb gie rilevat mir-rapporti tal-Awtorita s-sit jinsab, skond l-Pjan Lokali, barra z-zona tal-izvilupp (ODZ) Category 3 Rural Settlement.

Il-Policy li tirregola l-izvilupp f'din l-area hi i-Policy SMSE05 - li tistabilixxi li f'Category 3 Rural Settlement jista' jsir biss rihabilitazzjoni ta' bini ezistenti; zvilupp gid, li b'konsegwenza tieghu tigi utilizzata art vergni ma jigix accettat. Dan hu divjet assolut, billi anke jekk l-izvilupp propost jinsab vicin ta' bini ezistenti, xorta wahda, skond il-Policy ma jinghatax permess. Dan iffisser, li l-fatt li l-izvilupp propost, adjacenti blank party wall jista' jimitiga l-impatt negattiv - din m'hijiex gustifikazzjoni sufficjenti, skond l-imsemmija Policy, biex jinghata l-permess.

Billi l-proposta prezenti hi inkontravvenzjoni tal-Policy fuq citata, l-appell ma jistax jinghata konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi min dan l-appell billi jichad l-istess u jikkonferma r-rifjut tas-27 ta' Gunju 2008 fl-applikazzjoni PA 7761/06.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ghamel interpretazzjoni hazina tat-tifsira ta' zvilupp 'end of development'. Dan il-kuncett jirrizulta meta bhal f'dan il-kaz l-izvilupp ikun ser jaghlaq l-ahhar appogg f'zona kommissa, liema kuncett ghandu jigi applikat anki jekk l-izvilupp jaqa' barra minn skema ta' zvilupp;
2. It-Tribunal injora l-commitment fiz-zona u strah fuq il-pjan lokali ji gie fis-sehh wara;
3. Il-principju tal-commitment u cerimus paribus la darba applikat f'xi applikazzjoni ghandu jigi applikat irrISPETTIVAMENT miz-zona fejn ikun gie applikat;
4. It-Tribunal naqas fil-principju tal-konsistenza fil-konsiderazzjonijiet li jwasslu ghal decizjonijiet tal-istess Tribunal u ghalhekk naqas li japplika l-principju tal-gustizzja naturali u ekwita;
5. It-Tribunal applika l-policies vigenti fil-mument tad-decizjoni u mhux dawk fil-mument tal-applikazzjoni.

### **L-ewwel aggravju**

Il-Qorti innotat b'approvazzjoni l-argumentazzjoni li saret fuq il-kaz mill-partijiet quddiem it-Tribunal fejn l-argumenti legali u ta' planning gew trattati b'mod dettaljat u erudit kemm mill-appellant u l-Awtorita. It-Tribunal ghalhekk kellu minjiera ta' argument u precedent legali li fuqhom seta' jifrex l-argumentazzjoni tieghu pero t-Tribunal strah, kif premess mill-appellant, fuq il-kontenut tal-Pjan Lokali u specifkament il-policy SMSE 05. Kien ikun aktar apprezzat li kieku t-Tribunal iddedika aktar hin ghall-argumentazzjoni tal-partijiet pero fic-cirkostanzi tal-kaz ma jistax jinghad li t-Tribunal zbalja l-interpretazzjoni tal-

izvilupp end of development. It-Tribunal ma ghamilx paraguni bejn diversi zviluppi ta' end of development u kif din giet applikata fid-decizjonijiet tal-Awtorita jew DCC jew il-Bord stess u dan peress illi t-Tribunal dehrlu li l-policy kienet cara u skjetta fid-divjet impost ghal end of scheme development f'Category 3 Small Rural Settlement bhal ma hu dan il-kaz, li idejh kienu marbutin u ebda argumentazzjoni ma setghet tipprevali fuq dak li timponi tassativament il-policy.

L-appellant mhix jilmenta li giet applikata policy hazina izda li t-Tribunal ma interpretax sew kuncett ta' ppjanar bhal ma hu end of development. Il-Qorti tqis li hawn ma kien hemm ebda lok ta' interpretazzjoni izda applikazzjoni ta' policy li hi ligi u li torbot lil Awtorita u lit-Tribunal fl-applikazzjoni taghha speċjalment meta din hi cara u mandatorja kif jidher li hi l-policy SMSE 05.

Kwindi dan l-aggravju ma jistax jigi milqugh.

### **It-tieni aggravju**

Dan l-aggravju hu komplimentari ghall-ewwel wiehed. It-Tribunal ma injorax il-kwistjoni tal-commitment izda gharaf li f'dan il-kaz ebda kwistjoni ta' commitment ma tistax tipprevali fuq dak li l-policy tipprojbixxi. Il-Qorti tqis li dan mhux ghajr applikazzjoni koretta tal-poteri fdati f'idejn it-Tribunal. Hu minnu li fi kwistjonijiet ta' ippjanar l-Awtorita u l-Bord huma fdati b'hafna diskrezzjoni, diskrezzjoni li tirrizulta mill-applikazzjoni ta' varji policies, pjanijiet lokali u strutturali u interpretation documents u l-korrelazzjoni taghhom mehud kont tal-fattispecie ta' kull kaz. Il-ligi stess taghti lil Awtorita u Tribunal il-mansjoni li filwaqt li ghandu japplika l-pjanijiet u policies, irid ukoll iqis kwistjonijiet ohra ta' sustanza bhal ma huma kwistjonijiet ta' commitment, ta' ugwaljanza fit-trattament ta' applikazzjonijiet identici, ta' konsistenza fil-principji li fuqhom jiddeciedi t-Tribunal ghalkemm mhux marbut bil-precedent. Pero kif ighid l-istess ligi fl-artikolu 69 tal-Kap. 504 gia artikolu 33 tal-Kap. 356, jipprevalu l-ewwel il-policies u pjanijiet fejn dawn ma jhallux lok ta' diskrezzjoni afdati lit-Tribunal.

Kopja Informali ta' Sentenza

Hekk sehh f'dan il-kaz fejn it-Tribunal ma kellux fakolta afdata lilu mill-ligi hlief li japplika dak li l-policy tassativament obligatu li japplika. Altrimenti jekk it-Tribunal ghogbu jinjora dak li l-policy qeghda tipprojbih li jaghmel, ikun qed imur kontra d-dmir ewlieni afdat lilu, cioe li japplika l-pjanijiet u policies b'imparzjalita u korrettezza ghal kelma espress tal-ligi.

Ghalhekk dan l-aggravju ma jistax jintlaqa'.

### **It-tielet aggravju**

Dan l-aggravju ghalkemm meritevoli in linja ta' principju generali ma fihx mertu billi fl-ewwel lok mar rrizultax mill-atti li l-istess cirkostanzi ezatti ta' dan il-kaz gew applikati ghal applikazzjoni ohra u l-Qorti zzid li anki kieku dan kien il-kaz, ma ghandux in-nuqqas ta' applikazzjoni korretta ta' pjan jew policy f'talba ghal hrug ta' permess jintuza bhala precedent biex jigi uzat ghal talba ghal hrug ta' permess iehor.

Ghalhekk dan l-aggravju qed jigi michud.

### **Ir-raba u l-hames aggravji**

Dan l-aggravju wkoll ma fihx mertu ghall-istess ragunijiet tat-tielet aggravju billi l-kunsiderazzjonijiet li wasslu lit-Tribunal ghad-decizjoni kienu bazati fuq l-applikazzjoni korretta ta' policy partikolari relatata direttament u specifikament ghal kaz li t-Tribunal kien qed jezamina. Il-Qorti mhix qed tghid jew tikkundanna xi nuqqas fl-applikazzjoni tal-principji ta' gustizzja naturali u ekwita pero kull kaz irid jittiehed skond il-fattispecie tieghu partikolari, u ghandhom jigu applikati ghalih il-policies u pjanijiet vigenti fil-mument tad-decizjoni tenut kont fejn il-pjanijiet u policies jippermettu illi jitqisu kull kwistjoni ta' sustanza li tista' tkun importanti ghas-soluzzjoni tal-vertenza minghajr pero ma qatt tigi abdikata l-funzjoni primarja tat-Tribunal li tezisti diskrezzjoni biss fejn tidher li tezisti.

## Kopja Informali ta' Sentenza

Il-Qorti tqis illi ghandhom jigu applikati l-pjanijiet u policies ezistenti fil-mument tad-decizjoni peress illi dawn huma l-parametri li fuqhom tista' legalment tiddeciedi. Applikazzjoni ghal hrug ta' permess ma tikkreja ebda dritt awtomatiku ghal approvazzjoni izda taghti fakolta lill-applikant, possessor ta' bini li jizviluppa l-proprjeta tieghu kif jixtieq pero subordinat ghal dak li s-sistema ta' ppjanar tippermetti li jsir, u dan jista' jittiehed biss fil-perspettiva gusta tieghu billi jigu applikati l-pjanijiet u policies fil-mument li jkun qed tigi rifjutata jew approvata t-talba ghax hekk biss tista' tigi mizmuma uniformita fir-regoli ta' ppjanar li fl-ahhar mill-ahhar huma intizi ghall-interess pubbliku u socjali tal-pajjiz u kwindi ghandhom ikunu uniformement applikati fil-mument li jkun qed tigi decizja t-talba. Hu minnu illi kultant it-trapass taz-zmien sakemm tinghata decizjoni jista' jaghti lok ghal bdil fil-pjanijiet u policies u dan tenut kont tal-esigenzi nazzjonali tal-izvilupp permissibbli pero dan ma jistax jintuza bhala argument favur jew kontra billi bdil jista' jeffettwa kemm avversament jew favorevolment applikazzjoni pendent.

Ghalhekk dawn l-aggravji qed jigu michuda.

### **Decide**

Il-Qorti ghalhekk qed tichad l-appell ta' Stephen Seychell u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ppjanar tal-14 ta' Dicembru 2011. Bl-ispejjez kontra l-appellant.

### **< Sentenza Finali >**

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