



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-10 ta' Lulju, 2013

Appell Civili Numru. 120/2012

**Clyde Gauci**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Clyde Gauci tal-10 ta' Lulju 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 mill-applikazzjoni PA 2127/09 li kienet tikkonsisti 'change of use from garage to class 6 cafeteria and sign' fi Triq Gost, San Giljan;

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

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Rat l-atti kollha, in-noti ta' sottomissjonijiet u semghet id-difensuri tal-partijiet;

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

A. B'applikazzjoni tat-3 ta' Mejju 2010 - Full Development Permission – PA/02127/09 fejn l-appellant, f'Clyde Garage', Triq Gort, San Giljan talab:  
"Change of use from garage to class 6 cafeteria and sign."

Illi l-Awtorita cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"1. The proposed cafeteria is not considered of a small scale and of low impact, and thus not acceptable in this area identified as a Residential Area where only low impact uses are allowed. Proposal would have a deleterious impact on the amenity of the area and of existing adjoining uses by virtue of noise, vibration, additional traffic generation and operating times. It therefore constitutes bad neighbour development and so conflicts with North Harbours Local Plan Policy NHPV 14 and to Structure Plan policy BEN 1 which seeks to protect the amenity of existing uses.

2. The proposal runs counter to Structure Plan policy TRA 4 and the car parking standards set out in Table A2.5 in the Structure Plan Explanatory Memorandum in that it fails to provide the required car parking spaces. Moreover the proposed cafeteria would be removing the only parking spaces available for the overlying dwellings. It will give rise to unacceptable additional on-street car parking in the area which already has an acute under provision of car space. This would not be in the interests of the amenity of the area and which would exacerbate existing problems of congestion, potential highway danger and vehicular and pedestrian conflict."

B. Illi l-perit Robert Musumeci ressaq l-aggravji tal-appellant inter alia kif gej:

"a. Illi l-esponenti jaghmel referenza ghall-ewwel raguni ghar-rifjut, [...] u jghid li ghal kuntrarju ta' dak li qed jinghad mill-Awtorita fid-decizjoni appellata, L-istess Awtorita taf ben tajjeb li "cafeterias" f'din iz-zona jinkwadraw ruhhom mal-provedimenti ta' policy NHP14 tal-Pjan Lokali, u dan kif jirrizulta f'numru ta' decizjonijiet taghha stess. (vide applikazzjoni PA3984/06 Proposed change of use from garage to class 6 establishment - Garage No. 1, Triq Dobbie. San Giljan deciza nhar il-15 ta' Ottubru 2007 fejn l-Awtorita kienet approvat il-bdil ta' uzu minn garaxx sottostanti kumpless ta' appartamenti ghal cafeteria wara li l-Kummissjoni qieset li:

'Board considers cafeteria to be low - impact and therefore qualifies under policy NHPV 14.'

Illi in oltre jrid jigi rilevat li s-sit fl-applikazzjoni odjerna (PA2127/09) diga tinsab cirkondot min-numru ta' stabilimenti ta' l-ikel ta' skala ferm akbar, u dan ma hemmx dubju li jirrizulta f'legal commitment li ma jistax ikun injorat, (minkejja li l-applikazzjoni odjerna mhux qed titlob li jkun hemm tisjir fuq is-sit. (Dokument RM2).)

b. Illi dwar it-tieni raguni ghar-rifjut, [...] l-appellant jissottometti li t-triq in kwistjoni (Triq Gort) tikkwalifika bhala "distributor road" peress li din tghaqqad zewg toroq ewlenin f'Paceville u cioe Triq Paceville ma Triq il-Knisja. L-Awtorita konsistentement ribadiet il-principju li ma ghandux ikun hemm garaxxijiet b' access dirett li jaghti ghal "distributor roads" u dan minhabba periklu li jista jirrizulta kawza ta' l-influss tat-traffiku fin-nuqqas ta' "service road". Fil-fatt, l-Awtorita affermat dan il- principju fil-kaz PA3984/06, meta hi stess approvat l-imsemmija applikazzjoni PA3984/06 minkejja l-fatt li d-Direttorat baqa' jsostni li l-izvilupp propost kien se jirrizulta fin-nuqqas ta' parkegg fuq is-sit. Fil- fatt il-file PA3984/06 jikkoncerna bdil ta' uzu ta' garaxx sottostanti numru ta' appartamenti fil-livell ta' Triq Dobbie li tinsab kantuniera 'il boghod minn Triq Gort, u cioe t-triq mertu ta' l-applikazzjoni odjerna. [...]

c. Illi in oltre, l-appellant jzid jghid u jenfasizza li fil-kaz odjern (PA 2127/09) ma kien hemm ebda oggezzjoni rielvata minn terzi persuni u dan ghal kuntrarju ta' dak li gara fil-kaz PA3984/06, li cioe nonnostante l-oggezzjonijiet rilevati mill-girien waqt il-mori ta' l-applikazzjoni, il-permess kien gie approvat."

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

### 5.2 Introduction

A similar application (PA 3275/03 - PAB 30105) on the same site has been already been dismissed by the Planning Appeals Board after that it has been refused by the DCC in April 2004 and again at Reconsideration stage in December 2004.

The appellant in the preceding appeal case is different from the current appellant, however the Authority note that the issues in these two appeals are similar and thus the same principles should apply.

### The proposed Class 6 Cafeteria

The proposed cafeteria is located within a Residential Area where Low Impact Uses are acceptable in line with NHLP NHPV 14. To counter the first reason for refusal, the appellant is arguing that since a similar development was approved in PA 3984/06, the development at hand should likewise also be approved. Notwithstanding this, the permit quoted by appellant regarded the creation of a 60m<sup>2</sup> Class 6 use, whilst the development in concern regards a total floor area of 134m<sup>2</sup>, which is not considered small-scale and of low impact. Proposal is therefore clearly counter to NHLP Policy NHPV 14 and to Structure Plan Policy BEN 1, which seeks to safeguard the existing and proposed uses.

### Loss of Existing Parking Space

As stated in DPAR, the proposal not only fails to provide the required car parking spaces for the development in accordance with Structure Plan policy TRA 4, but would further exacerbate congestion and vehicular/pedestrian

conflict whilst intensifying off-street parking in the area by removing the existing spaces which cater for the overlying dwellings.

The appellant is claiming that the street (Triq Gort) is a distributor road which links Triq Paceville with Triq il-Knisja and that the Authority does not usually permit garages with direct access to distributor roads. Therefore, likewise, the Authority should not in this promote a garage in this location. The Authority disagrees completely with this statement; NHLP Map TR 1 (General Transport Strategy) clearly indicates that the road network around this area of Paceville are "Local Access Roads" and not "Distributor Roads". Therefore, not only are the appellant's arguments in this regards not valid as they do not reflect the official designations, but are also deemed frivolous to the main concerns at hand - i.e. the proposed development exceeds the thresholds designated in the Local Plan."

D. Illi permezz ta' nota il-Perit Robert Musumeci wiegeb inter alia kif gej:

"1. Illi b'riferenza ghar-risposta ta' l-Awtorita datata 28 ta' April 2011, l-esponenti jirrileva s-segwenti kunsiderazzjonijiet:

Illi in linea preliminari, l-Awtorita appellata issottomettiet li fuq is-sit mertu ta' l-appell odjern diga kien hemm applikazzjoni PA 3275/03 deciza b'mod finali f'Dicembru 2004. B'hekk, l-Awtorita issollevat li l-istess principji japplikaw fil- kaz odjern. Bir-rispett kollu, dan ir-ragunament huwa ghal kollox zbaljat stante li illum il-gurnata, l-uzu ta' cafeteria gie definit bhala "low impact activity" fil-kuntest ta' Policy NHPV 14 tal-Pjan Lokali li gie promulgat f'Awwissu 2006. Fil-fatt, kif diga kien ritenut mill-esponenti fir-rikors promotur, l-Awtorita harget permess PA 3984/06 fi Triq Dobbie fil- vicin fl-2007 u dan minkejja li fuq dan is-sit kien hemm zewg applikazzjonijiet antecedenti li gew rifjutati qabel is-sehh tal-imsemmi Pjan Lokali fl-2006. (ara PA1868/94 u PA 785/96.) Ghal kull buon fini, irid jigi ipprecizat li fil-kors tal-process ta' l-

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imsemmi file PA3984/06 (ara minute 15), Carmel Caruana, Area Team Manager, ta direzzjoni lli case officer Etienne Callus f'dan is-sens:

'pl[ease] proceed in line with LP Poliy NHH001 class 6 uses are excluded. See also PAB's decision (red 90) where it was concluded that residential amenity of Debbie Street should be protected unless its zoning is changed by the Local Plan.'

Nonostante cio, il-Kummissjoni approvat l-izvilupp fid-dawl ta' policy HPV 14 suindikata. Fil-fatt, skont minute 48 ta' l-istess file, gie sostnut mill- Kummissjoni:

'Upheld 4-0 in view that Bd considers cafeterias to be low impact and therefore qualifies under NHPV 14. CPPS to apply.'

Illi di piu, l-Awtorita qed tinsisti li fil-kaz PA3984/06, l-erja kummercjali approvata tekwalixxi ghal 60 metri kwadri. Illi bir-rispett kollu, mill-file PA 3984/06 relattiv (li gie ghall-konjizzjoni ta' l-esponenti wara digriet moghti minn dan it-Tribunal nhar id-29 ta' Settembru 2011) dan ma jirrizultax. In effetti li l-erja kummercjali approvata f PA3984/06 tammonta ghal total ta' 86 metri kwadri. u dan meta wiehed jghodd il-firxa kumplessiva tal-ground floor (60 sq metres) u l-intermediate floor (26 square metres) (a fol 18 fil-file PA3984/06). In ogni kaz, l-esponenti ghall-kull buon fini jirriveva li fil-kaz mertu ta' dan l-appell, il-basement inzerta kien hemm u mhux se jintuza. Fil-fatt, kif diga sostna fil-mori tal-process, huwa propens li jimbarra l-access fil-parti retroposta b'mod permanenti, biex b'hekk l-erja uzabbli tkompli titnaqqas u dan minkejja li l-erja tal-madwar hi karettterizzata b'kumplessi kummercjali ta' skala ferm akbar.

Illi dwar l-allegat nuqqas ta' parkegg (stante il-bdil ta' uzu minn garaxx), l-esponenti jenfasizza li, b'mod ghal kollox incidental, fil-kaz PA3984/06, l-Awtorita sabet soluzzjoni billi l-applikant f'dak il-kaz intalab ihallas kontribuzzjoni ekwivalenti ghal 9 vetturi. Di piu, fil-vicinanzi jesitu numru ta' car parks li jistghu jipprovdu parkegg alternattiv . (ara

PA 6123/01 f'dan is-sens). In ogni kaz, ir-residenti tas-sular sovrastanti huma inevitabilmente kostretti li jfittxu parking altemattiv peress li ma ghandhomx access ghall-garaxx odjern stante li dan il-garaxx jappartjeni lill-appellant. Molto piu, ta' min wiehed ifakkar li una volta jinhareg il-permess odjern, se jinholoq parkegg quddiem is-sit u dan peress li l-access quddiem il-fond jista' jithalla liberu stante li mhux se jintuza. Punt iehor illi l-esponenti jixtieq josserva huwa l-fatt illi l-garaxx de quo, anke jekk ghall- grazzja ta' l-argument kien intiz ghall-parkegg tal-karrozzi tar-residenzi sovrastanti, irid jigi sottolinejat li wiehed ma jistax jobbliga lir-residenti tal-blokk sabiex jakkwistaw jew jaghmlu uzu propju minn dan il-garage. (ara PA 5117/05 f'dan is-sens).

Illi in fine, jinghad li l-Awtorita qed tinsisti li dan il-permess ma ghandux jinghata sempliciment a bazi ta' commitment, ghax jekk jigri hekk, il-Pjan Lokali jkunu saru ghal xejn. Bir-rispett kollu, (u dan anke jekk minghajr pregudizzju jinghad li l-izvilupp de quo jinkwadra mal-provedimenti tal-Pjan Lokali stante li l-uzu ta' cafeteria huwa meqjus bhala "low impact activity" fil-kuntest ta' Policy NHPV 14) huwa ritenut li dan ir-ragunament huwa legalment zbaljat. Hawnhekk issir riferenza ghal dak deciz mill-Qorti ta' l-Appell ricentement 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 il-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 kkunsidrat dan, anke fid-dawl ta' decizjonijiet 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 jfisser 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)

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li jirreferi specifikatament ghall-pjan lokali; izda din ir-riferenza qatt ma waqfet l-applikazzjoni tal-kuncett ta' commitment'."

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

"2. The Authority has re-checked the approved drawings in PA3984/06 and can confirm that unlike what the appellant has claimed, the commercial area in PA3984/06 is 64sq.m. This means that the cafeteria in PA3984/06 is really a small-scale, low-impact activity in line with the provisions of policy NHPV 14 of the local plan.

On the other hand the proposal being considered in this appeal has a commercial area of 134sq.m; i.e. more than double that approved in PA3984/06. It is for this reason that the proposed Class 6 activity cannot be deemed to be small-scale and low-impact and therefore it is not acceptable in the proposed location in accordance to the parameters set by policy NHPV 14 of the local plan. This permit clearly does not constitute commitment.

The appellant is claiming that the basement will be blocked off. Apart from the fact, that this is not shown in the drawings, the Authority does not consider this to be a plausible or enforceable solution and thus the basement is still considered ancillary to the proposed cafeteria. Furthermore no revised drawings may be permitted at this stage as per Schedule 2 of Act X of 2010, that change the merits of the proposal as presented to the Authority at decision stage."

F. Illi l-Perit Robert Musumeci ressaq il-kummenti tieghu inter alia kif gej:

"2. Illi b' kuntrast ma dak li qed jinghad mill-Awtorita, l-appellant ippropona li l-access ghall-basement sottostanti jigi mbarrat b' mod permanenti fl-istadju inizjali tal-process ta' l-applikazzjoni, u mhux issa, fil-mori ta' dawn il-proceduri. Fil-fatt, permezz tal-pjanti proposti fl-applikazzjoni meritu ta' l-appell odjern (u li effettivament



kienu ikkunsidrati mill-Kummissjoni), senjatament Drawing No 03 01 datata 20/08/09, hemm muri li l-bieb fuq il-hajt ta' wara fuq in-naha tal-lemin tal-plot se jigi imbarat b' mod permanenti u infatti gie indikat bhala 'access to be blocked'.

3. Illi ghall-kuntrarju ta' dak li qed jinghad mill-Awtorita, l-esponenti jissottometti mill-gdid li l-erja kummercjali approvata fil-kaz PA3984/06, tammonta ghal total ta' 86 metri kwadri, u dan meta wiehed jghodd il-firxa kumplessiva tal-ground floor (60 sq metres) u l-intermediate floor (26 square metres). u dan kif ben indikat a fol 8 fil-file PA3984/06.

4. Illi tenut kont li permezz ta' l-ahhar nota, l-Awtorita irrilevat li l-erja kummercjali approvata fil-file PA3984/06 (u cioe 86 metri kwadri) hi meqjusa bhala

'really a small scale, low impact activity in line with the provisions of policy NHPV 14 of the local plan"

multo magis irid jinghad li l-erja proposta fil-kaz PA 2127/09 mertu ta' l-appell odjern, u cioe 70 metri kwadri, tissodisfa bl-istess mod l-ispirtu ta' din l-imsemmija policy."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghat-tibdil tal-uzu minn garaxx ghal Class 6 - cafeteria u tabella. Is-sit mertu ta' dan l-appell jinsab fl-indirizz ta' 'Clyde Garage', Triq Gort, San Giljan. Precedentement kienet diga giet intavolata applikazzjoni simili ghal din in ezami u fuq l-istess sit (PA 3275/03), izda din kienet giet irrifjutata u kkonfermata mill-Bord ta' l-Appell dwar l-ippjanar.

Ir-raguni ghar-rfjut odjern, jistrieu fuq il-fatt li cafeteria ma ssibx postha gewwa arja residenzjali; dan minhabba l-fatt li tista' sservi ta' detriment ghall-ameneities taz-zona, inkluz in-nuqqas ta' parkegg. Ghalhekk il-proposta in ezami hi in kontravvenzjoni tal-policies BEN 1 u TRA 4 tal-Pjan ta' Struttura kif ukoll tal-policy NHPV 14 tal-Pjan

Lokali, li ghandhom bhala mira l-bonvicinat. In oltre, bil-proposta ser tintilef il-fakulta li karozzi jkunu jistghu jipparkjaw gewwa l-garaxx prezenti u di konsegwenza ser jizdied il-bzonn tal-parkegg fit-triq.

L-aggravji tal-Appellant huma bbazati fuq l-argument li mhux minnu li cafeteria ghandha mpatt negattiv fuq residential areas, ghax propju l-Bord ta' l-Awtorita stess, permezz ta' l-applikazzjoni PA3984/06, ikkonferma li cafeterias huma low impact u li jaqghu taht il-policy NHPV 14 tal-Pjan Lokali. In oltre jispjega li t-triq fejn jinsab dan l-izvilupp tikkwalifika bhala distributor road u li l-Awtorita kemm il darba rribadiet li m'hemx lok ta' garaxxijiet li jaghtu direttament fuq distributor roads; cjoé kuntrarju ghal-dak qed tinsisti ghalieh fil-kaz in ezami. Gie anke citat il-perrness PA 3984/06 li propju skond l-Appellant, jinsab fuq distributor road.

L-Awtorita tirribatti l-argumenti mressqa mill-Appellant u tirrileva li l-permess citat minnhu bhala kazistika hu ferm differenti minn dan in ezami. Il-Class 6 - cafeteria koperta bil-permess PA 3984/06 kienet tammonta ghal spazju ta' 60 metri kwadri, mentre din ta' llum tkopri area ferm akbar, cjoé 134 metri kwadri. Tirrileva wkoll li t-triq ta' quddiem is-sit, indikata (erronjament) mill-Appellant bhala distributor road, fil fatt tissejjah local access road u li ghalhekk il-principju citat mill-appellant ma japplikax fil-kaz in ezami.

Fir-rigward tal-applikazzjoni precedenti fuq is-sit li kienet giet irrifjutata, l-Appellant isostni li galadarba tip ta' applikazzjoni tigi rifjutata m'ghandux isegwi li dawk kollha li jigi ntavolati warajha, ghandhom bilfors jigi rrifjutati wkoll. Bhala ezempju jerga jiccita l-applikazzjoni PA 3984/06 li giet accettata mill-Awtorita allavolja iz-zewg applikazzjoniet ta' qabilha u fuq l-istess sit, cjoé PA 1868/94 u PA 785/96 kienu gew michuda.

In oltre, l-Appellant jargumenta li l-arja kummercjali approvata perrnezz ta' PA3984/06 tammonta ghal 86 metri kwadri (60 u 26 metri kwadri ghal ground u intermediate floors rispettivament) u mhux 64 metri kwadri

kif qed issostni l-Awtorita. L-Awtorita pero zzomm ferm l-argument taghha.

Fir-rigward tal-parkegg, l-Appellant jirrileva li l-garaxx jappartjeni nterament lilu, u allura l-Awtorita ma tistax tobbliga l-bqijja tar-residenti tal-blokka li jaghmlu uzu minn dan il-garaxx. Ghalhekk l-argument li ser jintilef il-parkegg tal-blokka ma jreggix. Li hu zgur pero, hu li meta dan il-garaxx ser jinbidel f'cafeteria ser jigi liberat almenu parkegg wiehed fit-triq; cjoe dak ta' quddiem l-istess garaxx. Fl-ahharnett, jiddikjara li hu kien dejjem lest itella' hajt divisorju li jaqsam il-fond, anke fil-fazi tal-iprocessar ta' l-applikazzjoni.

Fic-cirkostanzi tajjeb li ssir osservazzjoni fuq il-policies NHHO 01 - Residential Areas u NHPV 14 Residential Areas with Low Impact Uses, b'mod partikolari din ta' l-ahhar; citata fir-raguni ghar-rifjut u trattata pjenament fil-kors tas-smigh ta' dan l-appell. Il-partijiet ta' din il-policy rilevanti ghall-kaz in ezami huma s-segwenti:

"MEPA designates Residential Areas with Low Impact Uses within Paceville as indicated in Map PV 1. Apart from uses allowed in General Policy NHHO 01, MEP A may consider proposals for additional uses which are of a small-scale and that have a low impact. These uses should complement the nearby tourism activities, and should be located only at ground floor level. MEPA will ensure that these uses will fully safeguard the amenity of adjacent residential units by imposing strict conditions. Uses which inherently entail unacceptable impacts will not be favourably considered.

15.4.27 Paceville is an established tourism and entertainment area. Therefore, the provisions of Policy NHHO 01 may not always fully satisfy the particular situation of this locality. There is therefore scope for MEPA to consider additional small scale, low impact uses that complement the nearby activities. However, special attention should be given to ensure that the amenity of the relevant residential area is not adversely affected by the operation of such small-scale uses."

Kif suespost, il-policy NHPV 14 tal-Pjan Lokali mhix tassattiva u ghalkemm tispecifica li 'unacceptable impacts will not be favourably considered', madankollu lanqas teskludi a priori li jista' jaghti l-kaz li l-istess unacceptable uses jistghu jigu kkunsidrati. Din il-policy hi marbuta wkoll mal-policy NHHO 01, li titratta prattikament il-Uses Classes kollha permissibbli f'Residential Areas. Hawnhekk huma elenkati il-Uses Classes kollha minn Class 1 sa Class 12, bl-eccezzjoni pero tal-Class 6. Izda anke jekk Class 6 hi uzu 'inaccettabbli', is-subinciz 15.4.27 tal-polciy NHPV 14 indikat supra jaghmel eccezzjoni ghal-kazijiet fejn l-uzu jkun komplimentari ghall-attivitajiet l-ohra adjacenti.

Fil-kaz in ezami, anke jekk ghall-grazzja tal-argument din it-talba setghet tigi kkunsidrata, madankollu kif diga gie rilevat supra, fil-pjanti sottomessi hemm indikat bhal mahzen li anke l-Awtorita sabet oggezzjoni ghalih u li l-Appellant iddikjara li gja fil-fazi tal-ipprocessar tal-applikazzjoni kien lest li jintrabat li jimbarrah u jeskludieh mil-proposta tieghu. Madankollu jigi rilevat li fil-pjanti sottomessi, dan l-ispazju qed jigi ndikat bhala 'Underutilised Space' (Pjanti 03-01 u 04-01) u fic-cirkostanzi dan it-Tribunal ma jistax jara kif wiehed jista' qatt jitlob permess sabiex ikun jista' jzomm spazju sottutilizzat. Fic-cirkostanzi ghalhekk dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

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 2127/09 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fl-20 ta' Jannar 2011.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal zbalja meta cahad l-appell ghax ma dehlux li sid ta' fond jista' jhalli spazju mhux utilizzat. It-Tribunal naqas li jikkonsidra:

- a. Li l-izvilupp hux small scale jew le billi hu simili ghal permess PA 3984/06;
  - b. Il-parking policy TRA 4 li tista' tigi sorvolata bi hlas ta' urban improvements contribution PA 3273/10;
  - c. Il-commitment massiv fiz-zona;
  - d. Jekk il-qies tas-sit PA 3984/06 hux 60 jew 86 metri kwadri;
  - e. Jekk Triq Gort hi distributor road jew access road;
  - f. Ic-cahda tal-applikazzjoni ghax l-appellant in buona fede ddecieda li ma juzax parti mill-fond u f'kazijiet ohra bhal PA 2590/09 u PA 3613/10 l-Awtorita ppreferit li tikser il-policy tal-area biex l-ispazju ma jinhelix;
2. It-Tribunal naqas li jikkonsidra l-kumplessi kummercjali kbar fiz-zona avolja l-appellant kien lest ma jutilizzax l-ispazju kollu utilizabbli.

### **Konsiderazzjoni tal-Qorti**

Harsa lejn l-atti ta' dan il-process ta' applikazzjoni juru illi l-partijiet dahlu fl-argumenti pro u kontra b'mod dettaljat u serju hafna. It-Tribunal strieh fuq ic-cahda tal-applikazzjoni fuq kunsiderazzjoni wahda, cioe li ma setghax jifhem kif l-applikant seta' jiddikjara spazju bhala 'underutilised' biex jigustifika l-hrug tal-permess ibbazat fuq l-area li kellu jintuza ghal cafeteria propost.

Mill-ewwel din il-Qorti thossha perplessa b'dan l-argument li fattwalment hu zbaljat. It-Tribunal jikkwota in sostenn tal-argument tieghu l-pjanta pprezentata mill-applikant 03, 01 li oltre l-kliem 'underutilised space' b'referenza ghal basement sottopost ghal parti tal-pjan terran li fuqu intalab il-permess, tnizzlu l-kliem "will not form part of this application") u fl-istess pjanta fil-parti tal-ground floor fejn hemm it-tarag li mill-ground floor jaghti ghal basement hemm il-kliem "access to be blocked".

It-Tribunal ghalhekk strah fuq fatti selettivi mill-atti minghajr ma kkonsidra dak li kien qed jipproponi l-appellant u fit-termini ta' dak li kien qed jintalab u propost, kienux fattibbli u setghux jigu impost kundizzjonijiet biex jissalvagwardaw dak propost.

Mill-punto di vista legali, it-Tribunal ikkonsidra sew il-policies rilevanti u l-applikazzjoni taghhom pero naqas li jivvaluta l-kaz quddiemu fuq il-fattispecie tieghu fit-totalita tieghu kif ukoll naqas li jitratta ulterjorment il-fatturi l-ohra rilevanti bhal ma huma l-permess 3984/06 u x'effett seta' kellu fuq din l-applikazzjoni, u rimedju jekk ser ikun hemm xi impatt ta' parkegg, u fatturi ohra li ssemew miz-zewg partijiet biex jippruvaw il-pozizzjoni taghhom, bhad-daqs tal-izvilupp, jekk fil-fatt kien possibbli li s-sit jigi segregat b'mod sikur, u l-ilment ta' storbju u rwejjah.

Id-decizjoni tat-Tribunal naqset li tittratta l-kwistjoni minn kull aspekt taghha u ghalhekk ma jistax jinghad li l-appellant inghata smigh xieraq fis-sens ta' gustifikazzjoni cara bbazata fuq principju legali jew teknici validi u kostruttivi. Meta tqis l-argumentazzjoni tal-partijiet, id-decizjoni tat-Tribunal hi nieqsa mill-motivazzjoni cara li fuqha giet michuda l-applikazzjoni tenut kont tal-argumenti fis-sustanza imressqa.

Il-Qorti hi ferm kawta li ma tindahalx fid-diskrezzjoni tat-Tribunal meta jevalwa u jaghmel apprezzament ta' fatti speċjalment dawk teknici pero f'dan il-kaz ma jistax jinghad li t-Tribunal applika diskrezzjoni fil-limiti permessi izda naqas li jittratta l-kwistjoni mill-punto di vista ta' dak mitlub u dak argumentat mill-partijiet in sostenn jew kontra l-izvilupp, u rrenda d-decizjoni tat-Tribunal nieqsa mic-certezza li ghandu jkollu gudikat tal-partijiet saljenti tal-vertenza mressqa quddiemu. Dan jikkostitwixxi mankanza tali li ghandu jigi kunsidrat kwistjoni ta' dritt appellabbli quddiem din il-Qorti.

## **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi ghar-ragunijiet kollha msemmija u safejn kompatibbli mill-aggravji tal-appellant, tilqa' l-appell ta' Clyde Gauci, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 u tirrimetti l-atti lura lit-Tribunal biex jerga' jiddeciedi l-kaz skond il-ligi. Bl-ispejjez ghall-Awtorita.

Kopja Informali ta' Sentenza

**< Sentenza Finali >**

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