



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 184/2012

David Youngman

VS

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-applikant Francis X. Tabone ghal Baron Group
Limited**

Il-Qorti,

Rat ir-rikors tal-appell ta' Francis Xavier Tabone ghan-nom u in rapprezentanza ta; Baron Group Limited tas-27 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 li laqa' l-appell ta' David Youngman in parte u impona kondizzjonijiet godda mal-permess mahrug mill-Awtorita PA 2924/04 cioe 'to erect 4 houses and 4 pools' fi Triq ta' Ghammar, Ghasri, Ghawdex;

Kopja Informali ta' Sentenza

Rat ir-risposta tal-appellat David Youngman li ssottometta li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat ir-risposta tal-Awtorita li ssottomettiet li hi taqbel mad-decizjoni tat-Tribunal li tat hi dwar l-ghoti tal-permess;

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

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

B'applikazzjoni tas-17 ta' Mejju 2004 – Full Development Permission – PA 2924/04 l-appellant Francis X. Tabone ghal Baron Group Limited, f'Ta' Ghammar Street, Ghasri, Gozo, talab:

“To erect 4 houses and 4 pools”

L-applikazzjoni giet michuda fis-6 ta' Gunju 2005, Red 59; saret talba ghall-reconsideration fit-30 ta' Gunju 2005, Red 64. Id-DCC fil-laqgħa tas-17 ta' Novembru 2005, ddecidiet li zzomm access; fil-laqgħa tat-2 ta' Frar 2006, id-DCC ddecidiet li tirreferi l-applikazzjoni lill-MEPA Board għad-decizjoni; u l-MEPA Boad approva l-applikazzjoni fil-laqgħa tat-2 ta' Marzu 2006, Red 88. Il-permess igib id-data 30 ta' Marzu 2006, Red 95.

Fl-appell tieghu l-perit Edward Bencini ressaq l-aggravji tal-appellant kif gej:

“1 Temporary Provisions Scheme

1.1 Applicants' site is located within the 'Limit of Development' of TPS 4 for Ghasri Gozo.

1.2 Applicants' proposal does not comply with TPS 4, and this point was also highlighted by the Planning Directorate case officer in his report to the DCC, both at first instance when the application was refused by the DCC, and also at reconsideration, when the MEPA Board approved the application. Approval of the proposals contained in PA 2924/04 by the MEPA Board is therefore in contravention of Structure Plan Policy SET 8.

2. Gozo and Comino Local Plan (Public Consultation)

The GCLP proposed at Figure 2.4.1a to introduce a new road joining two existing lanes, north and south of the site of the proposed development by a new street passing at the Western boundary of the site.

The approved drawing compromises the GCLP draft proposals in their present publicly known format. Any other Local Plan proposals, not yet public, cannot be taken into account in the evaluation of development proposals by the MEPA Board.

Therefore the MEPA Board decision to approve this proposal is either going against publicly announced Draft Local Plans policy, or else is illegally based on unpublished documents.

MEPA's approval of PA 2924/04 is in contravention of Structure Plan Policy BEN 4.

3. Policy & Design Guidance

Policy & Design Guidance 2000 & 2005 defines criteria for Vehicular Access to All New Developments'.

Thus, 2.4m is defined as the minimum access width for one car not passing other vehicles; 3.4m for access by a fire tender; and 4.1 m for 2 cars to pass each other.

The proposals under PA 2924/04 fail on all counts as the lane is 2.3m wide at the narrowest, and the proposal is for 4 houses with pools which will generate at least eight vehicles over and above existing users of the lane.

The MEPA Board decision also ignores precedents where the DCC refused applications for development permits on other sites due to lack of vehicular access to the sites and we refer here to PA 6652/04 and PA 2798/05.”

Il-Perit Saviour Micallef għall-applikant wiegħeb inter alia kif gejj:

“1) Appellant has first to proof that he has submitted an objection in writing within the period stipulated by law in order to justify his right for appeal.

2) Secondly the interest of the 3rd party appellant has to be established and demonstrated. This is being said because the 3rd party appellant has to demonstrate that he is being affected by the approved development, since we feel that proposal is not affecting him adversely in any way.

3) Temporary provisions Scheme. The site of the proposed houses is located within the development zone and is further zoned for residential development in the current scheme for the area (TPS N04). Hence proposal is according to this scheme. In fact a number of permits have been approved and built right in front of site, namely:
PA5791/94 and PA 791/92 house and garage
PA 795/92 garage
PA6352/00 house

4) Gozo and Comino Local Plan

The Gozo and Comino Local plan is not an approved document and hence the TPS is the legal document regulating the issue of permits. It is however relevant to note that the development as approved has been recommended by the local Planning unit since it is of a very low intensity, and very positively addresses the site constraints.

5) Policy and Design Guidance.

The development has been issued under Policy & Design Guidance 2000. The Street in front is approved in the TPS as 20 feet (6m) wide (vide attached alignment plan set out by MEPA). This satisfies the design guidance requirements. Furthermore a space has been left to provide the much-needed turning space for the small amount of vehicles serving the dwellings along this short alley.”

Zamm access fuq s-sit relattiv fil-25 ta' Mejju 2007 fejn il-Bord ikkostata li s-sit qed tigi zviluppata u tigi fit-tarf tal-villagg, overlooking il-wied, filwaqt illi t-third party ha l-Bord vicin s-sit tieghu illi rigward taghha ukol qed jaghmel ilmenti. L-appellant dahhal lil Bord fis-sit tieghu u mal-gnien tieghu, fejn ghandu il-pool fil-fatt jinstab il-bini illi jmiss issa mieghu. Bejn il-gnien tal-appellant u l-bini kostruwit hemm imbaghad passagg illi huwa private access pathway.

Il-Planning Consultant Bjorn Bonello ghall-applikant ssottometta kif gej:

“We emphasis that my client, Mr. David Youngman, contests, amongst others, the fact that at the time the decision was taken, this was premature as it was relied on aspects that had not been yet approved in the pending Local Plan for the area.

It is also important to note that the development has resulted in a material (adverse) increase in traffic and given the context access roads (less than 3m wide) are not safe and convenient. This document also reconfirms that the turning circle was pivotal for the approval of the application (under the proviso that the turning circle would enable cars to enter and exit the alley in a forward gear), but this is not being used as such (used for parking) and was ultimately compromised when Board approved two parking spaces within such space rendering useless and geometrically unsound. Such an aspect is proof enough that this application was not assessed in detail, given that the Directorate had rested on the fact that the application was unacceptable in principle and did not consider that MEPA could act outside its legal limits and approve a development without giving specific planning reasons for its overturning. Indeed the approval runs counter to the provisions of the DPA Act and the DC 2000.

Another glaring mistake that undermines the credibility of the whole report prepared by EMPD is the fact that EMPD does not believe the development is an internal

development, despite the fact that it is clear that only one of four 'villas' has a frontage onto a public road.

We have shown in our original submissions and in the foregoing rebuttals that EMPD attempts to discredit our arguments by often false and irrelevant comments that not based on approved planning policy.”

Ra n-Nota ta' l-appellant fejn ta riassunt tal-appelli in kwistjoni kif gej:

“PA00911/01 NO APPEAL

An application by a person not party to these proceedings to renew, with alterations, a previously granted application to build one villa and a pool on part only of the site now under discussion. Permission was refused mainly because the application was deemed to prejudice the implementation of the Local Plan.

The Board may wish to consider whether or not this was a valid precedent for later applications. It was the view of the case officers involved in PA02924 that it constituted such a precedent.

PA02924/04 APPEAL NO. 114/06

An application to build four terraced houses with pools. Case officers for the original DCC board hearing, the reconsideration hearing and the meeting of the main board of Mepa, all stated that the application was 'objectionable in principle as well as listing numerous Mepa policies, mostly but not all, concerning internal developments in UCA's, which would be violated by the application.

All three case officers recommended rejection. The DCC Board rejected the application.

At the reconsideration hearing the DCC Board asked for clarification from the Directorate as it was receiving conflicting advice from within Mepa concerning, specifically, the Local Plan.

The application was effectively decide by the Main Board of Mepa at a perfunctory hearing which failed to address many of the case officers' concerns and did not discuss the very subject that had caused the DCC Board to ask for further advice.

The Main Board of Mepa did decide that the question of illegal access widths could be addressed by the provision of a public turning circle at the street frontage of the development.

The Main Board of Mepa failed to give written reasons, as it was bound to do, for the many policy infringements that it was effectively approving.

You are asked to consider the appeal by third party neighbour David Youngman against the decision to grant this permit."

Appellant maintains that the permit was wrongly granted and should be revoked and further that such a decision be based on the situation at the time that the permit was granted and should take no cognisance of subsequent events except for the discovery of evidence.

PA6464/06 APPEAL 152/08

This was an application to add a fifth unit to the existing terrace of 4 houses. The case officer recommended refusal for a number of reasons many of them being the same as for PA02924/04 but the main reason was that DC2005 prohibited internal developments within UCA's and previous decisions had found that additional units and extensions were included in this ban. The DCC rejected the application and again rejected it unanimously upon reconsideration.

The appeal is by Baron Group 1 Gozo Club Developments Ltd. against this refusal.

D.K.Youngman appears as an objector to the original application and supports Mepa in defending the decision to reject.

Despite the date of the appeal, the Board has not yet held any meaningful discussions.

PA03945/08 APPEAL 57/09

The application was to sanction a raft of illegalities in the building of PA02924. For the most part these were not major issues although the building of the original fireplace chimneys in new stone was unsightly and extremely ugly stainless steel chimneys for the boilers had been added without prior application.

This is a third party appeal by D.K. Youngman as above but more importantly against the way in which this appeal was allowed to proceed. This despite the fact that the case officer should and probably did know that more important illegalities had not been included in the application and the enforcement officer knowingly allowed the application to proceed when he was well aware of these illegalities.

Perhaps because of the above it is believed that Mepa went to considerable lengths to prevent Mr. Youngman becoming aware of the application. Although Mr. Youngman was an objector to the original application and should have been advised of this application, no such advice was received by Mr. Youngman, his lawyer or his planning advisor. The application was not published in a timely manner on the Mepa web site and when it was published there was at first no photograph of the site notice.

Subsequently a site notice photograph was added but it can be proved that this was not taken on site. Mepa refused to insist on republication.

Despite the date of the appeal, the Board has not yet held any meaningful discussions.

PA6077/07 APPEAL 58/09

An application to build an extension to the fourth house approved under PA02924/04. The case officer recommended acceptance.

The footprint is as for PA06464 above but the mass at first floor level was reduced during DCC board hearing.

The case officer argued that an extension gave rise to no more traffic and no additional parking requirements. Further all matters appertaining to PA029/24 could be taken as approved in this instance as well.

The design is unusual in that both the 'TV Room' and the 'Billiard Room' have en suite bathroom facilities.

Approval was granted by the DCC board.

Third party appeal by D.K. Youngman on the grounds that all of the objections to PA02924/04 (except Local Plan) apply. That application is a cynical ploy to subvert the decision on PA06464/04 and most importantly that it is contra to DC2007 that bans such internal developments in UCA's.

PA 00763/11

An application by Baron Group 1 Gozo Club Developments Ltd. to split the house and extension approved in PA02924/04 and PA06077/07 to make two separate residences.

It was decided this week that the application would be decided at a public hearing before the Main Board of Mepa on a date yet to be decided."

Permezz ta' Nota l-Perit Mariello Spiteri wiegeb inter alia kif gej:

"The main contention of Mr. David Youngman lies in the fact that PA 2924/04 was approved by MEPA and consists of 4 terraced houses with pools. No proof against the DCC board in coming to its decision has been given in the submissions submitted by third party appellant Mr. Youngman. Decision cancelling this application was taken on 2nd March 2006. This implies that decision by DCC conformed with the then legal framework in vigore and consequently failed to include the need to give reasons in writing when making a decision. Third party appellant and his counsels are trying to shed the DCC in bad light and consequently imply that planning procedures existing at that time were not followed. This is not the case and it is deplorable that third party appeal counsels are playing for the public rather than calling a spade a spade. If the DCC's decision were to be revoked and, even if this is remotely considered to be plausible, a precedent would have been created whereby all the decisions taken by the DCC prior to the date in question whereby the DCC overturned the Directorate's view would have to be revoked and re-assessed by the Appeals board since what is sauce for the goose should be sauce for the gander.

The second issue of concern to Mr. Youngman is the approval by MEPA of PA 3945/08 which concerns the sanctioning of minor divergences from PA 2924/04. This application had also been approved by MEPA. In the correspondence sent by Mr. Youngman he is claiming numerous illegalities without actually going through the necessary process of proving his case. As it stands all claims raised by Mr. Youngman and his representatives verge on the libellous are unfounded and definitely contravene all logic. When MEPA case officers pull at the ropes in his warped egoistical concept of reasonableness, then such officers can be deemed to be on the verge of sainthood. When, on the other hand, like in the case of PA 3945/08, the same officers go against Mr. Youngman's opinion they transcend to evolve into demonic figures (sic). It is believed that Mr. Youngman has only one concept of fairness - that which revolves around the "fact" that his "truth" is the one and only real truth.

The same, arguments apply when a fourth unit was extended when MEPA approved PA 6077/07. Given that the original approval for 4 units was granted on 11th April 2006 extension of the same proved plausible. It is important to note that the original application PA 2924/04 had actually been reviewed by the MEPA executive committee. DCC had actually asked their guidance and MEPA board had seen fit to recommend application.

It is believed that the development of this site was given the scrutiny of not only the DCC but also that of the full MEPA board. Stating that the development was not considered in detail is, to say the least, unwarranted. In fact detailed analysis was actually made and, given the level of scrutiny given by the board, no stone was left unturned when making the decision. I believe that this application has been thoroughly assessed and the land committed in accordance to local plan requirements. We therefore believe that the board should refuse the third party appeal made by Mr. Youngman and allow the existing permits indicated in caption particularly PA 02924/04, PA 03945/08 and PA 06077/07."

Permezz tat-tieni rapport taghha l-Awtorita' kkummentat inter alia kif gej:

"5.0 AUTHORITY'S COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 On 03/05/06, Perit Edward Bencini obo David Youngman submitted a third party appeal claiming that the approved development did not comply with the TPS no. 4, nor with the draft Local Plan. In addition, the DC2000 policies regarding "vehicular access to all new developments" had also been infringed.

5.2 Authority's comments

The application was assessed in terms of Policy 3.8 (Internal developments) of DC2000, the TPS and the draft Local Plan. Initially the Planning Directorate

recommended refusal in view of conflict with the draft Local Plan (in view of the projected new road circling the site), non compliance with the criteria of policy 3.8 of DC2000; lack of car parking and the resultant traffic problems, and the negative impact on the UCA. The application was refused by the DCC on 31/05/05 and the decision notice dated 06/06/05.

A request for reconsideration (dated 25/06/05) was submitted on the 30/06/05. The Planning Directorate recommended that the application is dismissed. The architect/applicant and the objectors (now the appellant) were notified of the DCC meeting to be held on 01/11/05. The DCC referred the application to the Executive Committee for advice in view of the concerns raised by the proposed changes to the Local Plan particularly during the processing of the application. The Executive Committee agreed (on 15/11/05) that the development is not likely to prejudice the Local Plan since the road as proposed in the draft Local Plan in this location is out of place.

The DCC inspected the site on 01/12/05 and noted that the north side of the site was not accessible from a public road. On the 05/12/05, the Executive Committee "directed that development in the south side of the site could be considered positively by providing a turning circle to access the south of the site which can be imposed as a condition of the permit. Development in the north side of the site could be considered by regularising access through third party property, or by providing access through applicant's property."

In view of the Executive Committee's comments, the architect submitted revised drawings on 11/01/06, after consultations with the Planning Control Unit of the Authority, providing a turning circle in the form of a three-point manoeuvring system (also known as hammerhead). On 31/01/06, the DCC referred the application for determination by the MEPA Board. The MEPA Board upheld the request for reconsideration on 02/03/06 since the site is within scheme; DC2000 allows internal

developments in UCAs; the proposal does not prejudice the local plan; and the original reasons for refusal had been addressed. The MEPA Board discussed the case again on the 16/03/06 so as to approve the conditions. The permission was issued on the 30/03/06. All registered objectors were notified of the decision.

The Authority notes that the turning circle provided by the applicant and which was confirmed in the Gozo and Comino Local Plan provides adequate manoeuvring in and out of the alley. This system addressed suitably the emphasis in policy 3.8 of the DC2000 that any internal development is not to impinge negatively on the free flow of vehicles along the approach road.

The permit has been issued with a small parking area (permitting two vehicles) in front of the common entrance. This parking area which has also been integrated in the scheme of the area in the local plan does not interfere with the manoeuvring of vehicles making use of the turning circle.

The Tribunal has requested the Authority during the sitting held on 6th October 2011 to submit information whether the approach road is a schemed road or not.

The Authority is in a position to confirm that the approach road is a schemed road as per the alignment plan found in attachment of this document (Document 1).

At the time when the application was decided the official scheme was that shown as current in the draft local plan which was based on the TPS (1988). However in the early 1990s, the part of the street fronting the appellant's dwelling till the end of the applicant's site (the subject of this appeal) was schemed to be widened to 20 feet, i.e. more than 4.1 m. Setting outs to this effect has been issued as demonstrated by the applicant (Document 2).

Therefore in conclusion, the site is located within the limits to development and internal development was acceptable within UCAs when the application was decided as per

Policy 3.8 of DC2000. In addition, the approach road had an established alignment with a road of 20 feet; i.e. more than 4.1 m as required by policy 3.8 of DC2000. Since the MEPA Board still had to approve the draft local plan, considered that the proposed road in the draft local plan was out of place and the proposal –the current application provided a suitable solution on this site considering the circumstances of the case. The local plan as finally approved accords with the development as approved in the current application. ”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda permess li awtorizza l-kostruzzjoni ta' erba residenzi, u erba swimming pools.

Is-sit mertu ta' dan l-appell jinsab f'Triq Ta' Ghammar, Ghasri, Ghawdex.

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

It-terz appellant jissottometti li l-proposta tal-applikant tmur kontra TPS 4 u li l-approvazzjoni tal-proposti fil-PA 2924/04 imorru kontra l-policy SET 8 tal-pjan ta' struttura, li l-proposti imorru kontra il-GCLP draft proposals, li d-decizjoni tal-Bord tal-Awtorita' jew tmur kontra d-draft local plans policy jew hija msejsa fuq dokumenti li mhumex ippubblikati, li l-approvazzjoni ta' PA 2924/04 tmur kontra l-policy BEN 4 tal-pjan ta' struttura, li l-proposti imorru kontra l-policy Policy & Design Guidance 2000 & 2005 billi l-access huwa wiesgha 2.3m u li l-proposta hija ghal 4 djar bil-pixxini taghhom li jiggeneraw tal-inqas 8 vetturi zejda, u li l-Bord tal-Awtorita' injorat precedent fejn il-Kummissjoni dwar il-Kontroll ghall-Izvilupp cahdet il-hrug ta' permessi fuq siti ohra in vista ta' access insufficjenti ghal vetturi partikolarment PA 6652/04 u PA 2798/05.

L-applikant jissottometti li l-appellant irid jipprova li pprezenta oggezzjoni bil-miktub fit-terminu koncess lilu skond il-ligi, li jrid jigi gustifikat l-interess tat-terz appellant, li l-proposta hija skond it temporary provision scheme TPS N04 u li fiz-zona gew mahruga l-permessi PA5791/94, PA

791/92, PA 795/92 u PA6352/00, li l-pjan lokali ghal Ghawdex u Kemmuna mhuwiex dokument approvat u li t-TPS huwa d-dokument ufficjali li jirregola l-hrug ta' permessi, li l-proposta giet ritentua favorevoli mill-local planning unit peress li l-izvilupp huwa ta' intensita' baxxa u jindirizza l-limitazzjonijiet tas-sit b'mod pozittiv, u li l-izvilupp gie awtorizzat taht il-Policy & Design Guidance 2000.

L-Awtorita' tissottometti li t-turning circle ikkonfermata fil-pjan lokali tippermetti l-immanuvrar fl-access, li s-sistema hija in linea tal-policy 3.8 ta' DC 2000 billi zvilupp intern ma jaffettwax it-traffiku b'mod negattiv, li l-parkegg ma jaffettwax l-immanuvrar tal-vetturi, li l-approach road hija schemed skond l-alignment plan, u li l-izvilupp huwa accettabbli fil-UCAs skond il-policy 3.8 ta' DC2000 u li l-applikazzjoni kienet accettabbli in vista tac-cirkostanzi kollha anki in vista li meta l-pjan lokali gie approvat l-progett baqa accettabbli.

I) L-ewwel oggezzjoni tal-applikant ghall-appell tal-appellant, hi fis-sens li l-appellant ghandu jipprova li oggezzjona fiz-zmien impost mill-ligi, biex jikkwalifika bhala appellant.

Minn ezami tal-file tal-applikazzjoni PA 2924/04 jirrizulta li s-site notice (Blue 8) iggib id-data 21 ta' Gunju 2003, u infurmat lill kull minn irid joggezzjona, li dan kellu jaghmlu mhux aktar tard mit-18 ta' Lulju 2004. Fit-2 ta' Lulju 2004, giet registrata l-oggezzjoni tal-Avukat Dottor Grazio Mercieca li kiteb ghan-nom ta' diversi kopropjetarji tas-sit.

Saret ukoll oggezzjoni minn Nature Trust, li oggezzjonat ghal diversi applikazzjonijiet, fosthom din in kwistjoni, li waslet ghand l-Awtorita' fl-14 ta' Lulju 2004 u giet registrata fis-16 ta' Lulju 2004. Dawn pero' ma appellawx.

L-oggezzjoni tal-appellant David Youngman giet registrata mal-Awtorita' fil-15 ta' Lulju 2004, Red 22, cjoe qabel it-18 ta' Lulju 2004, cjoe li d-data tal-iskadenza tat-terminu skond is-Site Notice.

Billi sar bdil fl-isem tal-applikant harget site notice ohra, Blue 34 datata 13 ta' Awwissu 2004, fejn gie avvzat li l-oggezzjonijiet kellhom jaslu ghand l-Awtorita' sal-5 ta' Settembru 2004.

L-Artikolu 15(1)(d) tal-Kap. 356 jikkoncedi d-dritt ta' appell lill-terz interessat purche' skond is-subincis (i) ikun oggezzjona bil-miktub fit-termini tal-Artikolu 32(5) tal-Kap. 356, cjoé li jghati bil-miktub ragunijiet ta' ppjanar in sostenn tal-oggezzjoni tieghu u li dawn iridu jaslu ghand l-Awtorita' fi zmien 15-il gurnata mill-pubblikazzjoni tas-Site Notice, skond l-Artikolu 32(4). Billi skond s-site notice l-oggezzjonijiet ghall-izvilupp kellhom jaslu ghand l-Awtorita' qabel it-18 ta' Lulju 2004, u billi l-oggezzjoni motivata fuq r-ragunijiet ta' ipplanar tal-appellant waslet ghand l-Awtorita' fil-15 ta' Lulju 2004, jirrizulta li l-appellant ssoddisfa l-vot tal-ligi u ghalhekk jikkwalifika bhala appellant kontra l-ghoti ta' dan il-permess.

Ir-rizervi tal-applikant dwar l-'locus standi' tal-appellant ghalhekk in vista tal-verifiki hawn fuq riferiti ma jirrizultawx fondati.

II) Ghalkemm l-appell originali, dak tal-Perit Edward Bencini gie segwit mill-Affidavit tal-appellant, u mir-rapport tal-Konsulent tal-appellant Bjorn Bonello, li prattikament ziedu l-aggravji tal-appell, proceduralment it-Tribunal hu obbligat li jikkonsidra u jittratta dawk l-aggravji dedotti fl-appell originali, cjoé dak tal-Perit Edward Bencini; aggravji li fi kwalunkwe kaz gew ezawrjentement indirizzata kemm mill-appellant kif ukoll mill-Konsulent Bjorn Bonello.

L-ewwel ilment tal-appellant hu li l-permess inghata in kontravenzjoni ta' Structure Plan Policy SET 8 li tghid hekk:

SET 8 Development will be permitted in the areas designated for Temporary Provisions Schemes in conformity with Policy SET 7. The present layouts and other provisions of all such schemes will however be reviewed as part of the Local Plans to be prepared for areas in which these schemes are located (see para 4.5).

The boundaries of the Temporary Provisions Schemes 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. Temporary Planning Scheme boundaries will not be reviewed piecemeal during preparation of a local plan. The Local Plan will however, identify any matters including boundary review motives to be taken into account in the Structure Plan review.

Lis-Structure Plan Policy BEN 4 tghid hekk:

BEN 4 During the interim period between the commencement date of the Structure Plan and the adoption of any particular Local Plan, permission for development in Temporary Provisions area will be subject to Policies BEN 1, 2 and 3. Additionally, permission will not normally be given unless the Planning Authority is satisfied that such a permission would be unlikely to compromise the objectives of the review forming part of Local Plan preparation. Within this overriding concern the Authority will also have regard to the location of the proposed development, with more favourable consideration being given to development close to developed areas and already provided with roads and services, and less favorable consideration to development relatively remote from existing buildings and infrastructure.

Skond dawn il-Policies, il-konfini taz-zoni tal-izvilupp jinbidlu skond u wara li jigi approvat l-Pjan Lokali u mhux jinbidlu 'piecemeal' b'konsegwenza ta' xi permess partikolari. Applikazzjonijiet li jistghu b'xi mod jikkompromettu dan l-ezercizzju tal-Pjan lokali, cjoé' li jigu stabbiliti l-konfini taz-zoni tal-izvilupp, normalment jew jigu michuda bhala prematuri jew jibqghu pendent, u jigu determinati wara l-pubblikazzjoni tal-Pjan Lokali.

Fil-kaz in ezami, l-applikazzjoni kienet qed tigi pprocessata qabel l-pubblikazzjoni tal-Pjan Lokali li sar f'Lulju 2006. Kif jirrizulta mill-pjanta "Recommended change to Scheme 4, Ghasri, Figure 2.4.1 paragonata

mal-Current Scheme Layout, annessa mal-Appendix C tar-rapport tal-Konsulent tal-applikant ipprezentat fid-19 ta' Frar 2009, keinu saru proposti ta' emendi fuq is-sit u fil-vicinanze tiegħu, li ma gewx kkonfermati fil-Pjan Lokali kif approvat; il-proposta 'inter alia' pproponiet front garden fuq in-naha tax-xellug tas-sit mmarkata bl-ahdar kif ukoll area li kellha tinzamm libera għall-manuvrar tal-vetturi, indikata bl-isfar.

Irrizulta mill-minuti 38, 39, 44 u 45 li kien hemm qbil bejn il-Planning Control Section u l-Local Plan Unit li tigi proposta emenda fis-sens li l-area indikata bl-ahmar fil-pjanta 42A għandha tibqa bħala area miftuha għall-pubbliku, u li għall-vetturi ikun hemm spazzju sufficjenti biex wiehed idawwar il-vettura;

L-appellant jilmenta mill-fatt, li f'dawn ic-cirkostanzi partikolari, l-applikazzjoni ma kellhiex tigi determinata, izda tali decizjoni kellha tittiehed wara li jigi ppubblikat il-Pjan Lokali; billi dak li gie propost biss kien a konoxxjenza tal-pubbliku u soggett għall-'public consultation' mentri dak propost, kien għadu biss propost, li ma gietx soggetta għall-iskrutinju pubbliku.

F'dawn ic-cirkostanzi partikolari, l-Awtorita' kienet tkun gustifikata li tissospendi d-determinazzjoni tal-applikazzjoni sakemm jigi ppubblikat il-Pjan Lokali; pero' l-fatt li dan ma sarx jiggustifika r-revoka tal-permess?

Skond it-TPS (Temporary Provisions Schemes) s-sit hu disinjat għall-'terraced houses'.

Billi l-izvilupp hu konformi kemm mad-disinjazzjoni tat-TPS kif ukoll ta dik tal-Pjan Lokali, il-fatt biss li d-decizjoni setgħat kienet prematura, ma jiggustifikax r-revoka tal-permess.

III) L-ACCESS

Aggravju iehor tal-appellant hu li l-Permess ngħata in kontravvenzjoni tal-Policy 3.8 tal-Policy and Design Guidance 2000, li titratta dwar Internal Residential Development; li inter alia tghid hekk:

3.8 Internal residential Development may be permitted where:

(a) the highway network in the area, and in particular the approach road(s) to the site, is capable of accommodating the traffic likely to be generated by the development, safely and conveniently. In particular, approach road should not be less than 4.1 metres wide.

(b) on adequate means of vehicular and pedestrian access to the site can be provided from an adjoining street, with a minimum access of 4.1 metres, and a turning space is provided to enable vehicles to enter and leave the site in a forward gear.

(g) satisfactory access arrangements for service (refuse collection etc) and emergency vehicles can be achieved.

Il-paragrafu (c) jghid li l-izvilupp propost ghandu jkun 'in keeping with the character of the area', (d) li l-izvilupp irid ikun kompatibbli mal-bini adjacenti u (f) li l-izvilupp ma jkollux 'adverse impact on the amenity of buildings adjoining the site'.

M'hemmx dubbju li l-isqaq li jaghti ghall-izvilupp in kwistjoni mhux wiesa' 4.1 metri. F'certi bnadi l-wisgha hu ta' 2.3 jew 2.4 metri. Din ic-cirkostanza partikolari kienet tiggustifika rifjut; pero' l-Executive Committee ta' direttiva fis-sens li l-proposta tista' tigi kkonsiderata favorevolment kemm il-darba minn naha ta' nofs in-nhar tas-sit 'turning circle' (biex il-vetturi jkunu jistghu jidhlu, u jduru mat-turning circle u johorgu bil-quddiem minnghajr il-htiega ta' reversing li mhux accettabbli billi skomdu, u perikoluz), u li din tista' tigi imposta fil-permess.

Pero' irrizulta minn diversi sottomissjonijiet li saru, u mid-diversi ritratti esebiti, li billi gew approvati zewg parking spaces; u billi fi kwalunkwe kaz kif konfermat mir-ritratti, jipparkjaw aktar minn zewg karożzi fuq is-sit, fil-prattika dan l-ispazju ghall-manuvra tal-vetturi mhux qed jinzamm liberu biex ikun jista jintuza ghal dan l-iskop specifiku. Il-

Policy 3.8 (b) tesigi 'turning space' pero tesigi wkoll wisgha ta' 4.1 metri.

L-Awtorita' fis-second statement taghh kkonfermat li l-approach road hi schemed skond l-alignment plan annessa u mmarkata Document 1, u li fil-bidu tas-snin disghajn (1990's) dik il-parti partikoalri kellha titwessa sa 20 pied cjoe aktar minn 4.1 metri (Document 2)

Pero bhal fatt jirrizulta li l-access ghadu ma twessax; u ghalhekk din ic-cirkostanza timmerita l-impozizzjoni ta' kondizzjoni specifika biex tindirizza din il-kwistjoni.

Dwar il-parking, l-izvilupp mertu ta' dan l-appell, kostruzzjoni ta' erba' residenzi u erba' swimming pools jirrikjedi 8 postijiet ghall-parkegg. Il-permess jawtorizza parking ta' zewg vetturi 'on site'; pero' l-prezenza ta' zewg vetturi fuq is-sit ma tippermettix lill-vetturi ohra, minhabba l-limitazzjoni ta' spazzju, li jduru mat-turning circle, u jistghu johorgu; din ic-cirkostanza wkoll tirrikjedi kondizzjoni 'ad hoc'.

L-'iter' travaljat ta' din l-applikazzjoni gie determinat bid-decizjoni tal-MEPA Board, li ttiehdet fil-laqgha tat-2 ta' Marzu 2006; meta ghalkemm ir-rakkommandazzjoni kienet li l-applikazzjoni tigi michuda, l-Bord approva l-applikazzjoni Red 88 et seq tal-file PA 2924/04.

Kontrarjament ghal dak dikjarat mill-appellant, l-Bord innota r-ragunijiet ghalhiex gie deciz li l-applikazzjoni giet milqugha.

Ghalkemm indubbjament l-applikazzjoni setghet tigi michuda partikolarment in vista tal-access inadegwat u insufficjenti; kif ukoll in-nuqqas ta' parking, l-applikazzjoni giet milqugha ghar-raguni li s-sit mertu tal-appell jinsab f'area disinjata ghall-izvilupp.

Saret ukoll emenda fil-pjanti Red 42A biex jigi facilitat l-access permezz ta' 'turning point', tal-vetturi li jkun jistghu jidhlu sas-sit u jergghu johorgu liberalment minghajr il-htiega ta' reversing; u finalment irrizulta li l-

alignment tal-access hu schemed fil-wisgha ta' 20 pied, li hu sufficjenti skond il-Policy 2.8 tal-Policy and Design Guidance 2000.

Tenut kont tac-cirkostanzi partikolari li rrizultaw fil-kors ta' smiegh ta' dan l-appell, hi l-opinjoni konsidrata ta' dan it-Tribunal, li ghalkemm ma jixraqx li l-permess jigi revokat, jinhtieg li fil-kuntest tal-policies ta' ipplanar rilevanti jizdiedu certi kondizzjonijiet.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell, billi jilqghu in parti, jikkonferma l-permess PA 2924/04 tat-30 ta' Marzu 2006, b'zieda tal-kondizzjonijiet segwenati ma dawk gia' impost fil-permess:

1. Ma jistax isir parking fuq is-sit. Il-vetturi jistghu jidhlu, ghal finijiet ta' loading/unloading u jergghu johorgu billi jduru mat-turning circle kif indikat fil-pjanati approvati.
2. L-applikant ghandu a spejjes tieghu jinstalla sistema kontrollata bid-dwal kuluriti, biex jigi regolat it-traffiku li jkun diehel u dak li jkun hiereg mis-sit; sistema li ghandha tigi approvata mill-Awtorita'.
3. Tigi imposta garanzija bankarja fl-ammont ta' €23,000, bhala garanzija tal-osservazzjoni tal-kondizzjonijiet imposti f'dan il-permess.
4. Jithallas l-ammont ta' €11,200 bhala kontribuzzjoni fil-(UIF) Urban Improvement Fund ghall-tmien vetturi, billi l-permess hu ta' erba' residenzi; tnejn ghal kull residenza.
5. Li l-izvilupp qed jitqies bhala wiehed unitarju; prezentement utilizzat ghal kiri, attivita' gestita mis-socjeta' applikanti, kemm il-darba ma jibqghax isir dan l-uzu, jew tinbiegh wahda jew izjed mill-propjetajiet, dan il-permess PA 2924/04 ma jibqax validu.
6. Fl-eventwalita' li l-access jitwessa, l-Awtorita' fuq talba tal-applikant tista' tikkonsidra modifika ta' dawn il-kondizzjonijiet.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal agixxa ultra vires il-poteri tieghu meta impona kondizzjonijiet li qatt ma gew diskussi qabel u

b'hekk il-partijiet ma nghatawx id-dritt li jittrattaw il-punti decizi u b'hekk iccahdu mid-dritt tad-doppio esame;

2. Anki jekk ghal grazzja tal-argument it-Tribunal jista' jimponi kondizzjonijiet godda mhux trattati, il-kondizzjonijiet 1, 4 u 5 imposti mit-Tribunal imorru kontra ligijiet u policies applikabbli.

L-ewwel aggravju

Din hi purament kwistjoni legali li timmerita li tigi kunsidrata. Il-poteri tat-Tribunal johorgu mill-artikoli 41(13) u (14) tal-Kap. 504 u artikolu 5 tat-Tieni Skeda tal-istess Kapitolu.

Il-Qorti tirreferi ghal regolament 5 tat- Tieni Skeda tal-Kap. 504 li jghid li "It-Tribunal ghandu jkollu s-segha li jikkonferma, ihassar, jew ibiddel decizjoni li kontra taghha jkun sar appell u jaghti dawk l-ordnijiet li jidhirlu xierqa".

In oltre l-artikolu 41 tal-Kap. 504 li jitkellem dwar il-gurisdizzjoni tat-Tribunal ighid illi "It-Tribunal, jekk jiddeciedi li jaghti permess jew licenzja, jista' jimponi penali, hlas ta' drittijiet jew kontribuzzjonijiet u kondizzjonijiet ohra, li l-Awtorita tista' timponi meta jaghtu permess jew licenzja; it-Tribunal ghandu jizgura li jkun konformi mad-dispozizzjonijiet tal-artikolu 69 (cioe l-artikolu li jirregola x'ghandu jhares u jqis l-Awtorita fl-ghoti ta' permess u kondizzjonijiet annessi mieghu) meta tirrevedi d-decizjonijiet tal-Awtorita.

In oltre meta t-Tribunal jimmodifika decizjoni tal-Awtorita u jordna l-hrug tal-permess jew licenzja, jew b'kull mod iehor ibiddel decizjoni tal-Awtorita, l-Awtorita ghandha, sakemm ma jkunx sar appell quddiem il-Qorti tal-Appell, tohrog il-permess jew licenzja jew tikkonforma ruhha mad-decizjoni tat-Tribunal fi zmien xahar mid-decizjoni.

Dawn l-artikoli jindikaw b'mod car illi t-Tribunal ghandu l-jedd ibiddel jew jimmodifika decizjoni tal-Awtorita in konformita mal-ligijiet tal-ippjanar.

Dawn l-artikoli jaghtu lit-Tribunal poteri u diskrezzjoni ampja anki fil-kaz bhal dan in kwistjoni fejn il-Qorti qed timmodifika decizjoni tal-Awtorita u fiha jimponi kundizzjonijiet ulterjuri ma' dawk mahruga mill-Awtorita.

Pero din id-diskrezzjoni ampja moghtija mill-ligi trid tingara fl-isfond tal-kompetenza li biha hu moghni t-Tribunal. Dan hu Tribunal ta' Revizjoni ta' decizjonijiet mehuda mill-Awtorita. Is-setgha tat-Tribunal tinsorgi ghalix parti diretta jew interessata jinvokaw il-gurisdizzjoni tieghu biex jisma' u jiddeciedi appelli maghmula lilu. F'dan l-isfond il-parametri tat-Tribunal huma cirkoskritti biex jiddeciedi fuq l-aggravji mressqa. It-Tribunal ma ghandux joltrepassa l-limitu li minn Tribunal revizur isir Awtorita li tezamina applikazzjoni mill-gdid minn rajha jekk dak li tezamina u tiddeciedi dwaru ma jkunx ingieb a konjizzjoni u attenzjoni taghha b'aggravju specifiku, kemm jekk ikun kontra rifjut jew approvazzjoni ta' permess.

Maghdud dan il-Qorti hi tal-fehma illi l-aggravju mqajjem mill-appellant dwar il-kundizzjonijiet imposti mit-Tribunal iridu jiftehmu f'dan is-sens. Din mhix kwistjoni fejn qed jigi sindakat l-opportunita li wiehed jitratta kundizzjonijiet u doppio esame meta l-istess ligi taghti d-dritt lit-Tribunal jaghmel kundizzjonijiet. Semmai tali lanjanzi tal-appellant iridu jsiru f'forum iehor aktar idoneu biex jissindaka l-poteri tat-Tribunal per se izda mhix f'din is-sede. Dak li pero ghandha tqis il-Qorti hu jekk il-kundizzjonijiet imposti johorgux mill-aggravji mressqa mill-appellant u li allura jiggustifika lit-Tribunal jimponi tali kundizzjonijiet fl-approvazzjoni tal-permess moghti mill-Awtorita biz-zidiet imposti mit-Tribunal u dejjem bil-caveat li dawn il-kundizzjonijiet johorgu mill-ligijiet ta' ppjanar li t-Tribunal hu obligat jirreferi ghalihom.

L-aggravji tal-appellant kif riprodotti mit-Tribunal kienu jirrigwardaw l-idoneita tal-izvilupp ghas-sit skond policy SET 8 u Structure Plan Policy BEN 4 u l-access ghas-sit in kwantu wesghet tal-access ghad-dhul u hrug mis-sit qua internal development, u l-impatt tal-izvilupp fuq il-bini adjacenti.

Dawn kienu l-aggravji, liema aggravji gew indirizzati mit-Tribunal u fil-fatt l-ewwel, it-tieni, it-tielet, ir-raba u s-sitt kundizzjonijiet huma direttament relatati mal-hrug tal-permess u intizi biex it-Tribunal jikkonferma l-hrug tal-permess flok li jigi rifjutat bis-shih. Pero l-hames kundizzjoni li torbot il-hrug tal-permess ma uzu partikolari jew li l-proprietajiet mertu ta' dan l-izvilupp jibqghu ghand sid wiehed ma ssibx rifless f'ebda aggravju jew argument imqajjem quddiem it-Tribunal ghal konsiderazzjoni tieghu.

Huwa perikoluz hafna illi t-Tribunal johrog il-barra mill-limiti ta' dak lilu mitlub peress illi jkun qed jaghti lilu nnifsu poteri li ma ghandux qua Tribunal Revizjonali u jdahhal mertu fl-applikazzjoni diskussa li l-partijiet qatt ma gew mgharfa biha jew li setghet tkun konsegwenza decizjonali dezumibbli mill-aggravji mqajma quddiem it-Tribunal.

Il-Qorti fil-fatt tqis illi t-Tribunal dahal fi kwistjonijiet purament civili li jmorru kontra d-dritt tal-uzu liberu tal-propjeta mis-sid u jista wkoll jkollhom konsegwenzi fuq id-dritt fundamentali ta' libera tgawdija tal-propjeta.

F'dan is-sens l-aggravju tal-appellant qed jigi milqugh limitament ghal hames kundizzjoni imposta mit-Tribunal li hu oltre dak mitlub jissindaka u jiddeciedi dwaru.

It-tieni aggravju

Dan l-aggravju wkoll jolqot punti ta' ligi peress li qed jigi allegat illi l-kundizzjonijiet 1, 4 u 5 imorru kontra ligijiet u policies vigenti.

In kwantu ghal hames kondizzjoni l-Qorti tqis li ma ghandhiex x'tikkumenta billi gia gie deciz illi tali kundizzjoni kienet oltre dak li kien mitlub jiddeciedi dwaru t-Tribunal u konsegwentement jimponu kundizzjonijiet ghall-approvazzjoni tal-permess.

L-ewwel u r-raba kundizzjoni gew imposti mit-Tribunal fuq planning considerations minghajr raguni specifika bbazata fuq pjan jew policy partikolari ghalfejn qed jigu imposti specjalment meta l-Awtorita kienet gia kkoncediet li l-pjan

lokali kien integra zewg parking spaces bhala parti mill-izvilupp. L-appellant fl-aggravju tieghu isostni illi l-pjan lokali approvat fit-3 ta' Awwissu 2006 imkorpora tali zona ta' parkegg fil-pjanti 2.4.1 u ghalhekk it-Tribunal ma setghax jelimina l-parkegg u jmur kontra pjan approvat.

In kwantu ghal kontribuzzjoni finanzjarja ghan-nuqqas ta' spazju ta' parkegg ghal tmien vetturi (tnejn ghal kull villa fl-izvilupp propost) l-appellant isostni illi din ma setghetx tigi imposta skond l-policy 3.8(m) tad-D.C. 2005 billi c-cirkolari 2/05 mahruga mill-Awtorita illimitat l-applikazzjoni ta' dan il-provvediment ghal zviluppi approvati wara t-18 ta' April 2005 mertu ta' dan l-izvilupp gie approvat fl-2004.

L-appellat Youngman ma jaqbilx ma'dawn is-sottomissjonijiet u qal li in kwantu ghal parking spaces ma gietx pruvata ebda policy fejn gie integrat il-parkegg allegat u fil-fatt l-appellat esebixxa policy map u trasport map ghal Ghawdex.

In kwantu ghal kontribuzzjoni finanzjarja jghid li l-appellant ikkwota biss minn cirkolari u t-Tribunal indirizza l-problema u sab soluzzjoni ghaliha skond il-policies vigenti.

Din il-Qorti tqis illi t-Tribunal messu u kellu jiggustifika l-hrug ta' dawn il-kundizzjonijiet billi abinnahom mal-pjan jew policy rilevanti. Rinfaccat b'din is-sitwazzjoni anomala fejn tqajjmu kwistjonijiet dwar policies jew pjaniet applikabbli u fejn din il-Qorti ma ghandhiex il-konfort ta' gustifikazzjoni legali ghall-impozizzjoni ta' dawn il-kundizzjonijiet biex taghmel paragun ta' dak li hu l-pjan jew policy applikabbli ghal kaz u ghalhekk tichad jew takkolji l-aggravji mressqa, tqis li decizjoni ta' din il-Qorti tkun prematura meta t-Tribunal ma ggustifikax mill-punto di vista ta' ppjanar regolat minn pjan jew policy ghaliex gew imposti kondizzjoni 1 jew 4.

Ghalhekk il-Qorti tqis li fic-cirkostanzi u biex ma tesprimix ruhha minghajr ma jkollha quddiemha gustifikazzjoni motivata tat-Tribunal ghall-impozizzjoni ta' dawn il-kundizzjonijiet partikolari, qeghda tilqa' l-appell fis-sens illi l-aggravji mressqa mill-appellant ghandhom jigu ventilati

quddiem it-Tribunal biex dan jzomm ferm jew ibiddel il-kundizzjonijiet 1 u 4 b'ragunijiet motivati mill-punto di vista ta' ligijiet ta' ppjanar qabel ma din il-Qorti tigi mistiedna tirrevedi punti ta' ligi sollevabbli mid-decizjoni tat-Tribunal, u fl-istess waqt taghti l-fakolta lil partijiet li jivventilaw planning issues rilevanti quddiem Tribunal kompost min persuni mharrga appozitament minnhom.

Decide

Ghalhekk ghar-ragunijiet fuq immsemmija, il-Qorti tilqa' l-appell ta' Francis X. Tabone nomine in kwantu tilqa' l-ewwel aggravju fis-sens li tiddikjara l-impozzizzjoni tal-kundizzjoni 5 impost mit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar fid-decizjoni tat-8 ta' Novembru 2012 bhala nulla u kwindi minghajr effett; tilqa' t-tieni aggravju fis-sens biss illi kundizzjonijiet wiehed u erbgha imposti fid-decizjoni tat-Tribunal tat-8 ta' Novembru 2012 mhumex ben motivati b'indikazzjoni ta' pjan jew policy applikabbli ghalhom tenut kont tal-aggravji fil-konfront taghhom u f'dan is-sens qed timmodifika d-decizjoni tat-Tribunal, u tirrimetti l-atti lura lit-Tribunal biex terga' tikkonsidra l-impozzizzjoni tal-kundizzjonijiet 1 u 4 fid-dawl tal-aggravji mressqa, filwaqt li tikkonferma d-decizjoni in kwantu l-impozzizzjoni tal-kundizzjonijiet ulterjuri 2, 3 u 6 fil-permess PA 2924/04.

Spejjez fic-cirkostanzi jibqghu bla taxxa.

< Sentenza Finali >

-----TMIEM-----