



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 106/2012

Ruth Borg Galea

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Ruth Borg Galea tal-4 ta' Gunju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Mejju 2012 fejn gie rifjutat l-applikazzjoni PA 7069/07 'extension to farmhouse';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll tal-Izvilupp, fit-30 t' April 2010, irrifjutat l-applikazzjoni għal-permess tal-izvilupp PA 7069/07: "Dell l-Imdina off, Triq l-Imtarfa, Mtarfa - Extension to farmhouse".

It-tlett ragunijiet għar-rifjut kienu s-segwenti:

"1. The proposed development runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, in particular to Section 8 paragraph 8.2 (iii). The extensions at ground and first floor level will lead to a floor space, 204sq.m., that exceeds significantly the allowable total floor space of 150sq.m and that as approved by PA 1100/03. Thus, the proposed extensions will intensify a development of an urban nature outside the development zone.

2. The proposed development runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, in particular to Section 8 paragraphs 8.2 (v) and (vi). The proposed extensions will disrupt the massing and scale of the existing building. Thus, the vernacular character of the existing building is not being respected. Therefore the proposal also runs counter with the overall aim of Structure Plan policies RCO 2 and RCO 4 since it will visually impinge of the surrounding open landscaped area.

3. The site is located in an Area of Ecological Value as indicated on the Structure Plan Key Diagram, where further human intervention, particularly in the form proposed, is not desirable. The proposal fails to conserve and protect the ecological value of the relevant site and also of the surrounding environment since it will lead to a new physical development. The proposal would therefore adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan. Therefore the proposed development conflicts with the aim of Structure Plan policy RCO 12, North West Malta Local Plan (policy NWCO 6)

and Policy and Design Guidance for agricultural buildings (policies 1.3D, 1.3G and 1.3H) which prohibits activities that will disturb and damage Areas of Ecological Importance.”.

B. L-appell tal-Perit Robert Musumeci ghall-Appellanti fejn l-aggravji ghar-rifjut hawn fuq imsemmija gew immotivati kif segwenti:

“[Re first reason for refusal:]

On reading DPAR, it is immediately noted that the Directorate dismissed any reference to paragraph 7.8 contained in ‘Further Guidance on Policy PLP20’ [...] The above planning rationale is in fact embraced in various DCC decisions as can be attested below.

PA 2722/05: To demolish existing industrial garages. [mechanic] alterations and conversion to a residential unit - Tal-Velenuz, Triq Misrah Suffara, Dingli.

Reasons for Deferral: DCC 82-01 A/06 held on 19th July 2006 Architect to submit fresh drawings limiting development to 150sqm at ground floor and 50 sqm at first floor. DCC54-01A/07 held on 15 May 2007 Board intends to approve.

PA 100/04: Extension and alteration to existing farmhouse - ‘Old Windsor’, Triq il-Brolli, Birzebbugia.

Board comments: DCC 116-01A/04 held on 21st December 2004 approved in view of site inspection note and in view of total area not exceeding 200 sqm.

PA 2447/04: Minor extension to habitation and construction of swimming pool - Site at, Triq tal-Kilba, Siggiewi.

Board decision: granted permission.

PA 376/03: Minor extension to residential habitation - Site at, Sant’ Andrija L/O, Siggiewi.

Board decision: granted permission.

PA 3908/06: Alterations and extensions to dwelling (farmhouse) - Vertraun, Triq Tal-Balal, Naxxar.

Board comments: DCC 97-01A/07 held on 29 August 2007 approved in view that the property is already an approved development with an existing access to distributor road. Area of extension is acceptable.

This rationale has also been reinforced by the Planning Appeals Board in various planning decisions as can be attested [in] PAB 40/01 TSC, PA 4770/00: Albert Gauci vs I-Kummissjoni għall-Kontroll ta' I-Izvilupp. [...] It is very pertinent to note that the pertinent policies regulating extensions to ODZ have not been amended or modified since time of the above decisions.

[Re second reason for refusal:]

The form and scale of the resultant building does not represent an 'urban' style solution as alleged in DPAR. The proposal still allows for limited vertical relief supported by an informal, broken and less regimented massing. The design of the resultant elevations features an adequately proportioned solid to void relationship. Moreover, the extension shall not result in inappropriate large scale openings. The vernacular character of the building is therefore certainly being retained. The above assertion is therefore totally unfounded.

[Re third reason for refusal:]

The proposed extension at ground floor level is minimal and will not encroach on agricultural land, which in turn 'would potentially adversely affect the area and hinder its protection' as alleged in DPAR."

C. Ikkunsidra r-rapport tal-Awtorita', inter alia fir-rigward tal-argumenti mressqa mill-appellant kif segwenti:

"The Structure Plan (policy RCO 2) aims to protect and improve the environmental quality of the rural areas by allowing the sensitive rehabilitation and suitable conversions of buildings/structures that are located within the countryside. PLP 20 [section 8 (paragraph 8.2)], ensures that this aim is not compromised by providing the necessary parameters that regulate the requests that are

related to the construction of extensions to existing buildings.

PLP 20 [paragraph] 8.2 (ii) requires that the original building and its use are covered by a valid development permit and/or existed prior to 1967. The existing building was subject to development permission application PA 1100/03 [...] which granted the rehabilitation of a disused rural building together with the erection of an extension. The rehabilitated building was to be used for habitation purposes (PA 1100/03/40B).

However, PLP 20 [...] necessitates that any proposed extensions to existing buildings should not create a total floor space that exceeds 150sq.m. Development permit PA 1100/03 [...] limited the total habitable floor space of the existing two-storey building to 150sq.m. Document 1F is showing that the extensions proposed to be developed at ground and first floor levels will respectively increase the existing total habitable floor space to 204sq.m. Therefore the request to increase further the total floor space of the two-storey residence is not justified.

Furthermore, in order to minimize the visual impact of the proposed extensions, PLP 20 requires also that the extensions proposed respect the original vernacular character of the rural buildings. [...] The proposed extension will increase the existing footprint from 102sq.m. to 125sq.m. and the total habitable floor space from 152sq.m. to 204sq.m. [...] Thus, the proposal conflicts with the objective of PLP 20 [paragraphs] 8.2 (v) & (vi) since the extensions at ground and first floor level will disrupt the massing and scale of the existing building. Therefore, the vernacular character of the existing building is not being respected. The proposal also runs counter with the overall aim of Structure Plan policies RCO 2 and RCO 4 since it will visually impinge of the surrounding open landscaped area.

Location: It was noted that the relevant site falls within an unscheduled Area of Ecological Importance [...]. Structure Plan policy RCO 12 in conjunction with the provisions of

North West Malta Local Plan (policy NWCO 6) and Policy and Design Guidance for agricultural buildings (policies 1.3D, 1.3G and 1.3H) aim to conserve and protect the landscape features, natural habitats and integrity of the character of this environmental sensitive area.

Document 1E is showing that the proposal is also aiming to create a ramp that will lead and provide direct access to the proposed basement level – details of the proposed ramp were not submitted, that is, sections and a landscaping plan showing its exact location. The architect stated that the ramp has been in existence prior to 1967 and thus, there is no uprooting of trees or fresh land being taken (document 10). Document 14 – Aerial photographs 1998 and 2004 – is clearly showing that the relevant site prior 2004 did not accommodate any ramps. Thus, the proposal fails to conserve and protect the ecological value of the relevant site and also of the surrounding environment since it will lead to a new physical development (minute 11).

Therefore the development of the proposed ramp conflicts with the aim of Structure Plan policy RCO 12, North West Malta Local Plan (policy NWCO 6) and Policy and Design Guidance for agricultural buildings (policies 1.3D, 1.3G and 1.3H) which prohibits activities that will disturb and damage Areas of Ecological Importance.

As regards to the quoted permits the Authority has prepared some notes for the Board's consideration of their particular circumstances.

PA 2722/05 did not propose an extension in ODZ as in this application. In fact, the DPA included: Proposal: To demolish existing industrial garages [mechanic] alterations and conversion to a residential unit. This is a full development application proposing the part demolition of an existing 1-storey building, indicated on submitted drawings as being used for industrial purposes (Red 1E), and its reconstruction as a two-storey residential unit. Hence, this particular application was more of a redevelopment of existing building rather than take up of

new land and this particular area is not an "Area of Ecological Value" as is the area under appeal.

PA 100/04 Proposal: Extension and alteration to existing farmhouse. Site is located in Birzebbugia. Decision date 21.12.04.

This particular case was recommended for refusal by the Directorate since the requested extensions were beyond those acceptable by Policy PLP 20. However at that time and in that particular circumstance, the DCC decided otherwise.

PA 2447/04 Proposal: Minor extension to habitation and construction of swimming pool. Location: Siggiewi. Decision taken on 26.10.04

PA 376/03 Proposal: Minor extension to residential habitation. Location: Siggiewi. Decision taken on 09.09.03.

Condition No. 1 includes: This permission is being approved in relation to the construction of a bedroom at 1st floor.

PA 3908/06 Proposal: Alterations and extension to dwelling (farmhouse). Location: Naxxar. Decision taken on 29.08.07

The DPA includes The proposed extension to be constructed at ground floor level will provide the existing building with a total floor space of 159sq.m. Hence, the proposed extension exceeded the 150 sq.m. limit by a very minimal amount.

PA 4770/00 Proposal: Rehabilitation of stores to dwelling. Location: St. Paul's Bay. PAB decision date: 23.10.02

The Authority has noted these quoted cases which were decided upon through an interpretation of Policy PLP 20 8.2 (iii) which was not totally in line with the actual wording of this policy [...] In fact, the correct interpretation was eventually conveyed to all the Boards so as to create a

coherent approach to the correct interpretation of this policy.

To sustain this argument the following are some of the Planning Appeals Decisions in which the PAB clearly stated the importance that the 150 sq.m. limit (total floorspace) be complied with so as to be really in conformity with the provisions of PLP 20 policy. The following are citations of the relevant parts of PAB decisions which refer to the 150sq.m. issue.

[Appeal 197/99] - PA 7346/98 [decided on] 20.06.08, - Cassar Joe, San Lawrenz (Gozo), ODZ:

'Illi l-applikazzjoni tittenta tissanzjona 'additions and alterations to existing farmhouse' – sabiex jigi regolarizzat boundary wall u bini mizjud ma' farmhouse li gia kienet ezistenti – principally internal development.

Illi mill-atti processwali jidher:

(a) Illi l-izvilupp ma jeccidix il-150 sq.m.

Ghaldaqstant, il-Bord, wara li qies ic-cirkostanzi kollha tal-kas, qed jaqta' u jiddeciedi billi jilqa' l-appell, ihassar ir-rifjut ta' l-Awtorita' tal-11 ta' Gunju 1999 u jordna illi l-appellant jinghata l-permess.'

[Appeal 231/07] - PA 3912/06 [decided on 22.04.09], - Borg Tony, Rabat, ODZ:

'Il-Bord jinnota illi dubju illi l-izvilupp jaqbez sew il-150 metru kwadru. Dan il-Bord ghalhekk, wara li qies bir-reqqa il-proposta ta' l-appellant, ma jistax ma jaqbilx mar-ragunijiet ghar-rifjut moghtija mill-Kummissjoni ghall-Kontrol ta' l-Izvilupp.

Ghal dawn il-motivi, il-Bord jichad l-appell u jikkonferma r-rifjut tal-permess ghall-izvilupp.'

The above clearly show that Policy PLP 20 8.2 (iii) clearly limits extensions to existing dwellings in ODZ to a maximum floorspace of 150 sq.m. and the two PAB decisions cited above clearly emphasised this notion in their decision. The first decision approved a permit which was in fact limited to 150 sq.m. and the latter which

dismissed the appeal on various accounts but which included that it exceeded the 150 sq.m. limit.

This notion was also an important issue in previous permit PA 1100/03 which the Directorate had noted in the DPA:

'This planning application seeks full development permission to rehabilitate a disused rural building, and to carry out an extension. The proposal also includes a landscaping scheme. The existing building has a footprint of 48m² and a floor area of 73m². The original drawings proposed a total footprint of 113m² and a total floor area of 174m². Amended drawings were requested to reduce the footprint to 100m² and the total floor area to 150m² (reds 14, submitted on 2/5/2003).'

Even in this first application for extensions, the Directorate had objected to the initial plans which had proposed a total floorspace in excess of 150 sq.m. and applicant had agreed with the Directorate's initial objections and submitted fresh plans which were in fact in line with the 150 sq.m. total floorspace limit so that this application was positively recommended by the Directorate and eventually approved by the DCC. If appellant truly believed that her initial proposal was in fact according to policy, then those initial plans could have been retained and case could have been challenged even at appeals stage. However, knowing that the extensions could have only been accepted up to a 150 sq.m., fresh plans were submitted and a permit was issued.

This appeal is thus an attempt to acquire further extensions which clearly breach the relevant policy which clearly limits such extensions to a total floorspace of 150 sq.m. Furthermore, in this appeal, appellant failed to quote the relevant (approved) policy through which this application should have been approved by the DCC. The only reference made by appellant is to 'Further Guidance on Policy PLP 20' document. However, the Authority has noted the full content of this document (which is not titled as 'Further Guidance on Policy PLP 20') and states that:

The cited 'DRAFT' report dated 17th November 1999 was an internal report which discussed PLP 20 para 8.2 (iii) in which the cited para 7.8 by appellant states:

'7.8 An appropriate replacement criterion for the current criterion (iii) would be existing dwellings, or buildings proposed to be converted to dwellings, as extended must not exceed a ground floor area (footprint) of 150 sq.m. and a total floorspace of 200 sq.m. (the footprint / floorspace should be calculated by reference to the dimensions of external walls and should include any internal yards, shafts, courtyard, terraces etc. totally enclosed or surrounded by the building).'

However, this document which is titled as 'Draft Report' and addressed to the Chairman DCC was never officially endorsed by MEPA and the proposed replacement paragraph of para 8.2 (iii) was never actually effected. Unfortunately, this draft report was understood by some as an official report and was quoted as such even for some time by members of the DCC board. In fact, the Director General had communicated to all that the official, correct, and only approved para 8.2 (iii) was that as issued in the approved Policy Document dated 5th January 1995 in which 'the 150 sq.m. limitation applies to both the footprint and the total floorspace of the extended building'.

The Planning Appeals Board is thus reminded that appellant is quoting a Draft Report which was never endorsed as official by the MEPA Board and was never intended to be a final document."

D. In-nota finali tal-Perit Musumeci ghall-Appellanti, ipprezentata fid-19 t'April 2011, b'risposta ghar-rapport tal-Awtorita' kif indikat supra, inter alia l-punti s-segwenti:

"5. Illi bid-dovut rispett, l-appellant qed jaghmel dawn il-finali osservazzjonijiet:

Illi kif kien diga spjegat mill- esponenti fl-inkartament precedenti, din l-applikazzjoni si tratta ta' estensjoni ta'

farmhouse li tinsab mibnija legalment skont il- permessi mahruqa mill- Awtorita. Din l-estensjoni tammonta ghal floorspace ta' 200 metri kwadri (u mhux 204 metri kwadri kif qed tallega eronjament l- Awtorita) (ara Drawing 02/01 datata 10/03/2010 annessa mar-rikors ta' dan l-appell datat 16 ta' Meju 2010).

Illi ghal fini ta' kjarezza, irid jinghad li 1-floorspace (ghal skop ta' policy) titkejjel ghal dawq is-sulari li jinsabu 'il fuq mit-triq, u allura l-area tal- basement li jinsab taht il- livell tat- triq qed tkun eskluza ghal dan l- iskop. Dan l-istess ragunament huwa adottat mill- Awtorita fin-noti responsivi taghha stess.

Illi kif diga inghad, il- basement garage jinsab taht il-livell tat- triq u ghandu access minn rampa.

Illi l-estensjoni proposta tinkorpora wkoll zewg kmamar sovrastanti dik il- parti tal-basement li qed tkun proposta li tigi estiza. Il- footprint ta' l-estensjoni hi allura wahda zghira u tikkorrisponi ghal porzjon zghir ta' art mitluqa biswit il-bini ezistenti.

Illi hawnhekk bizzejjed issir riferenza ghad-decizjoni fl-ismijiet Albert Gauci kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp (PAB 40/01 TSC. PA 4770/00), fejn il- Bord ta' l- Appell issottolineja dan li gej:

"Il-Bord wara li kkunsidra s-sottomissjonijiet tal-partijiet fuq dan il-punt ta' floorspace, ra paragraph 7.8 tal-'Further Guidance on Policy PLP20' li tinsab proprju fil-PA 4770/00 (red 9), li tghid:

'Existing dwellings, or buildings proposed to be converted to dwellings, as extended must not exceed a ground floor area (footprint) of 150 square metres and a total floorspace of 200 square metres (the footprint/floorspace should be calculated by reference to the dimensions of external walls and should include any internal yards, shafts, courtyard, terraces etc. totally enclosed or surrounded by the building).'

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Il-Bord ra li l-policy hija cara u ghalhekk it-footprint ta' l-izvilupp mitlub ghandu jkun limitat ghall-150 sq.m., u ghall-total floorspace ta' 200 sq.m., kif argumentat l-Awtorita' fid-DPA report. Il-Bord ra l-basement garage m' huwiex propjament bini totalment taht t-art izda huwa ground floor mill-Front jew North -West Elevation u ghalhekk l-floorspace tieghu ghandha tigi kkunsidrata.

Ghal dawn il-motivi, l-Bord ser jilqa' l-appell u jordna lis-Segretarja tal-Kummissjoni ghall-Kontroll ta' l-Izvilupp sabiex tohrog il-permessi relattivi bissegwenti kundizzjonijiet:-

Ground floor of 150 sq.m. and a total floorspace of 200 sq.m. to create an interesting massing of the proposed development.'

Illi di piu jrid jinghad li l- Awtorita konsistentement applikat dawn l-istess principji, u dan if jirrizulta fis-segwenti decizjonijiet mehuda mill-Kummissjoni stess:

PA 2722/05: To demolish existing industrial garages (mechanic) alterations and conversion to a residential unit. Fi stadju preliminari il-Kummissjoni ordnat lill- perit ta' l-applikant jillimita l- proposta ghal footprint area li ma teccedix 150 metri kwadri. (DCC 130-01A/05 held on 20th December 2005 Architect to submit proof of residence on area indicated as per 1968. Plan of building of pre 1968 showing the uses and fresh drawings showing area not exceeding 150 sq.m). Sussegwentement meta l-Kummissjoni waslet biex tiddeciedi l- kaz, u hadet konjizzjoni tal-policies vigenti, tat struzzjonijiet lill-perit sabiex jemenda l-pjanti b' tali mod li l- footprint area proposta ma teccedix il-200 metri kwadri.(DCC 82-01A/06 held on 19th July 2006 - Architect to submit fresh drawings limiting development to 150 sq.m at ground floor and 50 sq.m at first floor)

PA100/04: Extension and alteration to existing farmhouse. Illi f'dan il- kaz, il- Kummissjoni approvat l-estensjoni tal-farmhouse stante li 'total area not exceeding 200sqm.'

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PA2447/04: Minor extension to habitation and construction of swimming pool.

Illi hawnhekk ukoll, l- Awtorita approvat dan il-permess stante dawn ir-ragunijiet: 'Approved with proposal retaining original small court yard - in view that area is within 200sqm.'

PA3908/06: Alterations and extensions to dwelling (farmhouse).

F'dan il- kaz l- Awtorita approvat peress li l-area proposta, u cioe' dik ta' 200 metri kwadri, hi acceptable: 'Approved in view that the property is already an approved development with an existing access to distributor road. Area of extension is acceptable.'

[...]

Illi kieku il- Bord ta' l-Appell fil- kaz ta' Albert Gauci agixxa ultra vires, ma kienx hemm dubju li l-Awtorita kienet tappella dik iddecizjoni fuq punt ta' dritt minnufih. Il-fatt li l-Awtorita ma pproceditx quddiem il- Qorti ta' l-Appell jimplika b'mod car li l-policy hi dik kwotata mill- Bord ta' l-Appell fil- kaz ta' Albert Gauci u addottata mill-Kummissjoni fid-decizjonijiet hawn sucitati, u cioe' li 'Existing dwellings, or buildings proposed to be converted to dwellings, as extended must not exceed a ground floor area (footprint) of 150 square metres and a total floorspace of 200 square metres (the footprint/floorspace should be calculated by reference to the dimensions of external walls and should include any internal yards, shafts, courtyard, terraces etc. totally enclosed or surrounded by the building)."

E. In-nota second statement ipprezentat minn Mario Scicluna ghall-Awtorita' fil-31 ta' Mejju 2011, senjatament il-punti segwenti:

"PA 4770/00: Appellant cited this case and also cited the part of this sentence which made reference to 'the policy' which could grant a 200sq.m. floorspace of a dwelling in ODZ. [... The] cited 'Red 9 in file' is in fact a page of an internal memo from the DOP to the DCC Chairman dated

17th November 1999 with a clear heading of 'Draft Report' in which the contents of the official PLP 20 Policy as legally approved in 5th January 1995 were 'proposed' to be amended. Hence, this 'Draft Report' was never approved by the MEPA Board or Minister and hence, its contents cannot be cited by appellant as having any legal bearing on decisions yet to be taken in 2011.

In fact, internal memos and meetings were held to clarify to all that this Draft Report was not to be taken as an official document by the Directorate or by the DCC and all decisions should only be taken on approved documents, in this case, the only approved version of PLP 20 is that as issued on 5.1.95.

PA 2722/05: The 'previous' situation on which this case was assess is significantly different from the case under appeal since the Directorate's assessment in that case included; the existing structure (industrial garages, marble factory and reservoir) has a footprint of approximately 655 sq.m. The proposed development has an approximately identical footprint but an increased floor area to approximately 825 sq.m., due to the introduction of the first floor level as part of the residential unit.

PA 100/04: The [...] approved development is still less than the requested 200 sq.m. as requested in this appeal.

PA 2447/04: The Authority has noted the Directorate's comments in this file and which included NTC that fresh drawings did in fact limit the development to less than the 200 sq.m. as is being requested in this appeal.

PA 3908/06: [...] this permit was issued by the DCC on 29/08/07 and not by the Planning Appeals Board as cited by appellant in the subsequent paragraphs of the latest submissions.

[...] none of the above decisions had identical planning considerations to the case under appeal as regards to the actual development as requested, its massing, location, surroundings and most of all, none was approved by the

Appeals Board which clear and direct reference to the approved Policy PLP 20 as approved on 5th January 1995 (it is imperative to state that the only cited case approved by the PAB, the cited 'policy' which refers to a 200sq.m. floorspace was in fact a Draft Report which has never been used again since

Furthermore, [...] appellant incorrectly states that if the Authority felt that at one stage the DCC was applying policies incorrectly, once it did not appeal from such decisions, it was agreeing with them. What appellant fails to mention is that (while appellant is agreeing that these decisions are not correct since they were ultra vires the limits of the policies) the Authority cannot itself appeal from decisions of the DCC and moreover appeals to the Court of Appeal are limited only to appeals from points of law: and interpretations of policies have always been interpreted by the Court of Appeal as not being points of law."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex ma' farmhouse (residenzjali) ezistenti li tinsab barra z-zona tal-izvilupp fil-limiti tal-lmtarfa, jinbnew estensjonijiet li jikkonsistu minn rampa, garaxx taht l-art, kif ukoll zdie diet fil-ground floor u fl-ewwel sular. Ir-residenza u l-pixxina ezistenti huma koperti bil-permessi PA 1100/03 u PA 6095/05.

Ir-raguni ghar-rifjut jistrie hu fuq il-fatt li l-proposta hi in kunflitt mal-policies RCO 2 u RCO 4 tal-Pjan ta' Struttura li ghandha bhala ghan il-harsien tal-ambjent rurali u l-paragrafu 8.2 tal-policy PLP20. In oltre, peress li s-sit jinsab gewwa area of ecological value, il-proposta tirrizulta wkoll in kontravvenzjoni tal-policy RCO 12 tal-Pjan ta' Struttura, il-policy CO 6 tal-Pjan Lokali (NWLP), kif ukoll il-policies 1.3D, 1.3G, u 1.3H tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables.

L-aggravji ta' l-Appellanti huma bazati fuq il-fatt li l-Awtorita', fid-decizjoni taghha (sahansitra anke meta

nhareg id-DPAR), naqset illi tikkunsidra l-paragrafu 7.8 tal-Further Guidance on Policy PLP 20. In oltre, targumenta li l-estensjoni proposta (fil-livell terren) hi tassew minima li anke semmaj ser tittiehed bicca art agrikola zghira, m' hu ser ikun hemm l-ebda' effett negattiv fuq il-valur agrikolu tal-arja; u li f'ir-rigward tal-adattabilita' ta' d-disinn tal-proposta jew meno, l-Appellanti tiddikjara li l-volumetrija, skala u l-proporzjon tal-estensjoni tal-binja meta titlesta, ser tkun jaqbel ferm mal-karattru vernakolari li diga jezisti fuq is-sit in ezami.

In kwantu l-policy PLP 20, l-Awtorita' tirrileva li fil-konfront tat-tieni subinciz tal-paragrafu 8.2 sucitat, il-font in ezami ma jikkwalifikax bhala bini li kien jezisti sa' minn qabel is-sena 1967, peress li gja' bil-permess PA 1100/03, kien intalab ir-riabilitazzjoni ta' binja mitluqa u semmaj, dik l-applikazzjoni kienet ammissjoni netta li l-bini kien abbandunat.

Tajjed li jigi nutat li l-policy PLP 20 tillimita l-zvilupp bhal dan in ezami ghal 150 metri kwadri. Fil-fatt, l-Awtorita' tirrileva li l-permess ghal PA 1100/03 kien inhareg, propju minhabba l-fatt li l-bini propost (fuq zewg sulari) ma kienx jaqbez il-150 metru kwadru. Tirrimarka wkoll li l-150 metru kwadru fil-policy jirreferu ghall-floorspace u mhux footprint; cjo' 150 metru kwadri in kwantu spazju utili tal-izvilupp, mhux ta' wicc ta' art li ttiehdet ghall-izvilupp (disturbed ground surface).

L-Awtorita' tirrileva wkoll li bhalissa, l-izvilupp ghandu footprint ta' 102 metri kwadri u floorspace ta' 125 metri kwadri, u li b' din il-proposta, ser jtilghu ghal 152 u circa 200 metri kwadri rispettivament. In oltre, l-Awtorita' tinnota ukoll li rampa li twassal ghal-livell sottinterrat kif proposta, ma' tidhirx fl-ebda' ritratt mill-ajru sa' almenu s-sena 2004; u ghalhekk ma' setghetx kienet tezisti minn qabel is-sena 1967, kif dikjarat mill-Appellanti.

F' ir-rigward tal-ghaxar permessi citati mill-Appellanti, bl-eccezzjoni ta' tnejn, ilkoll kemm huma nhargu taht regime t' ippjanar qadim (sebbene gja' meta l-policy PLP 20 kienet fis-sehh). Fl-unika zewg permessi citati mill-

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Appellanti li hargu wara li dahal fis-sehh il-Pjan Lokali; wiehed kien talab floor space ta' 159 metri kwadri, cjoe' disa' metri kwadri aktar minn dak permess mill-policy u l-iehor kien sit fejn diga' kienet tezisti fabbrika.

Giet citata wkoll decizjoni tal-Bord ta' l-Appell fil-konfront ta' 200 metru kwadru floorspace, (PAB 40/01 – PA 4700/00), izda din ser tigi trattata akter il-quddiem.

Mill-banda l-ohra, l-Awtorita' tirribatti l-kazistika pprezentat mill-Appellanti u ticcita zewg sentenzi tal-Bord tal-Appell dawr l-Ippjanar (PAB 197/99 – PA 7346/98 u PAB 231/07 – PA 3912/06), li gew decizi wara dik citata mill-Appellanti kif indikat supra; wahda fejn appell gie milqugh propju ghax il-proposta ma kienitx taqbez il-150 metri kwadri u l-ohra michuda ghaliex kien jinqabez dan l-ammont. In kwantu l-allegazzjoni tal-Appellanti fir-rigward tad-DPAR, l-Awtorita' tirrileva wkoll li gja' f' dak l-istadju, kienet intalbet pjanta b' floorspace li ma' taqbix il-150 metri kwadri – u li l-Appellanti qablet li tirridimensjona l-proposta' taghha. L-Awtorita' targumenta li wara li dakinhar l-Appellanti accettat li tottempera ruhha mal-policies u rridimensjonat l-izvilupp propost, m' ghandiex issa - galadarba li sarfet il-permess - tittenta tirribatti dak l-istess principju li kienet accettat dakinhar.

Fir-rigward tad-dokument 'Further Guidance on Policy PLP 20', kif citat mill-Appellant, l-Awtorita' tirrileva li dan hu biss draft report li kien qed jikkontempla bidla fil-policy sabiex bini bhal dan in ezami galadarba ma' jaqbix footprint ta' 150 metru kwadru, jista jkollu floorspace ta' mhux aktar minn 200 metru kwadru. (Jigifieri, supponendo li binja jkollha footprint massimu ta' 150 metru kwadru jista' jkoll fl-ewwel sular, jew fil-basement, kmamar li jammontaw sa' 50 metri kwadri ohra.) Fil-fatt, jigi rilevat li l-paragrafu 7.8 tal-abbozz indikat mill-Appellanti, jibda bil-frazi segwenti:

“As appropriate replacement criterion for the current criterion (iii) would be ...”

Dan ifisser li galadarba il-paragrafu 7.8 tal-‘Further Guidance on Policy PLP 20’ qatt ma dahal fis-sehh, illum jibqa japplika l-paragrafu 8.2 tal-PLP 20 kif citat fir-raguni tar-rifjut. Fil-kaz in ezami, japplika b’ mod partikolari it-tielet subinciz ta’ dan il-paragrafu, kif gej:

“Site Area

(iii.) Extensions to existing buildings must not create a total floorspace which exceeds 150 sq. m. (ground floor area of existing building plus extension).”

F’ ir-rigward tad-decizjoni PAB 40/01 - PA 4700/00 citata mill-Appellant, minghajr ma’ joqod jissindika l-mod kif il-Bord ta’ l-Appell dwar l-ippjanar wasal ghal certa konkluzjonijiet f’ kazijiet fejn intlaqghu appelli li jippermettu floorspace ta’ 200 metru kwadru; dan it-Tribunal jinnota li propju dik id-decizjoni strahet fuq memo interna tal-Awtorita’ li kienet taghmel riferenza ghall-abbozz tal-PLP 20, liema memo kien jinsab fl-inkartament ta’ dik l-applikazzjoni (red 9 fil-file PA 4770/00); u mhux ghal xi dokument ‘rivedut’ per se.

Fl-ahharnett, irid jigi nutat li l-policy applikabbli fil-kaz in ezami hi l-policy PLP 20. Ikun opportun pero’ li jigi osservat li ma hemm xejn fil-policy li jsostni l-argument wara’ l-150 metri kwadri u ghalfejn per ezempju, mhux izjed jew inqas. Bl-istess argument, jekk il-policy tirrizulta inkonklussiva, l-emenda proposta (li tikkontempla floorspace ta’ 200 metri kwadri) hi daqstant konfuza – ghax biex wiehed jargumenta favur emenda irid almenu jghid kif wasal ghaliha. A meno che ma jkunx hemm kjarifikazzjoni ulterjuri; bhal gie mpost valur purament arbitrarju. F’ ic-cirkostanzi pero’ il-policy hi cara u ghaldaqstant l-appell de quo ma jimmeritax kunsiderazzjoni favorevoli.

Ghalhekk, in vista tal-kunsiderazzjonijiet 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 7069/07 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-ippjanar, fit-30 t’ April 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Hemm diversi decizjonijiet fejn gie applikat policy 7.8 intitolat Further Guidance on Policy PLP 20, li tippermetti total floorspace ta' 200 metri kwadri u ground floor area ta' 150 metri kwadri, mentri f'dan il-kaz it-Tribunal ghazel li ma japplikax din il-policy a skapitu tal-appellant li ghalhekk ma rceviex l-istess trattament bhal ohrajn u fejn kellu aspettativa legittima li jinghata permess a bazi ta' din il-policy;
2. It-Tribunal donnu skarta uhud mill-permessi li nghataw ghax dawn inghataw taht regim antik pero policy PLP 20 dejjem baqghet l-istess, kif ukoll ma spjegax ghalfejn inghata permess meta gie approvat permess bi floorspace ta' 159 metri kwadri.

Dawn l-aggravji ser jigu tratti flimkien. Jirrizulta bhala fatt illi t-total floorspace f'dan il-kaz propost hu ta' 200 jew 204 metri kwadri billi ma hemmx qbil bejn il-partijiet dwar il-kejl preciz.

L-ilment tal-appellant hu illi bazikament it-Tribunal applika hazin il-policy PLP 20 u dan ghax permessi ohra nghataw bi floorspace ta' 200 metri kwadri skond policy 7.8 tal-Further Guidance on Policy PLP 20.

Dak li ma jghidx l-appellant hu illi l-Awtorita wkoll ikkwotat diversi decizjonijiet fejn floorspace li jissupera l-150 metri kwadri gew rifjutati.

Dak li wkoll ma jghidx l-appellant li fil-fehma tal-Qorti hi l-pern tal-kwistjoni hu illi policy 7.8 ma hi policy xejn izda hi biss abbozz kontenenti proposta bil-kliem introduttiv 'an appropriate replacement criterion for the current criterion 'iii' would be'. Fil-kliem tat-Tribunal, li applika korrettement il-ligi, dan hu biss abbozz u qatt ma dahal fis-sehh u qatt ma biddel il-policy PLP 20 li tghid testwalment:

110. Extension to existing buildngs must not crete a total floorspace which exceeds 150 sq.m. (general floor area of existing building plus extension).

Dan hu kliem car li ma jaghtix lok ghal interpretazzjoni jew diskrezzjoni kif enuncja tajjeb it-Tribunal. Hu minnu kif qall l-appellant illi f'xi kazijiet din il-policy ma gietx applikata ad unguem pero dan ma jfissirx illi giet applikata tajjeb. Il-policy hi cara u abboz jibqa dak li hu. Ma hemm ebda aspettativa legittima minn dan l-istat ta' fatt kif qed jippretendi l-appellant, lanqas trattament differenti minn haddiehor billi fil-konfront tieghu gie applikat il-policy kif imiss. Jekk jidhirlu li l-Awtorita qed tabbuza mill-poteri taghha r-rimedju tieghu hu band'ohra mhux quddiem din il-Qorti.

Ghalhekk it-Tribunal ma kellux bzonn jiggustifika decizjonijiet ohra kemm ghax mhux marbut bil-precedent, kemm ghax hemm diversi decizjonijiet bil-kontra u kemm ghaliex it-Tribunal applika l-policy bla ma pprezuma oltre.

Maghdud ma' dan il-Qorti tirrileva illi l-floorspace ma kinitx l-unika raguni ta' rifjut ghax it-Tribunal ukoll semma' illi r-rifjut kien inghata ghaliex il-proposta kienet in konflitt ma policies RCO 2 u RCO 4 tal-pjan ta' struttura li ghadhom l-ghan il-harsien tal-ambjent, policy RCO 12 tal-istess pian billi s-sit jinsab f'area of ecological value, policy CO6 tal-pjan lokali u policies 1.3D, 1.3G u 1.3H tal Policy and Design Guidance – Agriculture, Farm Diversification and Stables. Dwar dawn ir-ragunijiet ta' rifjut, l-appellant ma ppropona ebda aggravju.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Ruth Borg Galea u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tal-15 ta' Mejju 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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