



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 107/2012

Redento Bonnici

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Redento Bonnici tal-4 ta' Gunju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Mejju 2012 li cahdet l-applikazzjoni PA 4464/10;

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-Ambjent u l-Ippjanar, fit-12 t' April 2011, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 4464/10 "Reno Snack Bar, Vjal il-Haddiem, Rabat, Malta: Alterations to existing, change in use from garage to Class 6 retail outlet and fixing of sign."

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

"1. The existing garage is located within an area zoned in the approved North West Local Plan (map 63) as a residential area. The proposed Class 6 snack bar is counter to Policy NWUS 03 of the Local Plan which prohibits Class 6 uses in residential areas, irrespective of scale. It will have a negative impact on the residential amenity of the area, and is therefore not acceptable.

2. The proposed development will remove the existing parking spaces for the building and so it would conflict with Structure Plan policy TRA 4 and PA circular 3/93 which seek to ensure that appropriate provision is made for off-street parking.

3. The proposed Perspex sign has a projection of 0.46m from the façade. This appears bulky and dominant, and does not respect the proportions of the building and façade, and is therefore counter to the Policy and Design Guidance for Shopfronts."

B. In-nota tal-Perit Robert Musumeci għall-Appellant, ipprezentata fil-25 t'April 2011, inter alia l-punti segwenti:

"Illi dwar l-ewwel raguni tar-rifjut [...] l-applikant jissottometti illi d-Direttorat semplicement ikkwota l-Local Plan minghajr ma dahal fil-kwistjoni ta' commitment u wisq anqas ha kunsiderazzjoni ta' l-engineers report. [...] Hawnhekk issir referenza għal dak deciz mill-Qorti tal-Appell ricentement fis-sentenza fl-ismijiet Joseph Tonna vs. MEPA (Appell Civili Numru 6/2010 deciz 24 ta' Frar 2011).

Irid jinghad li sal-lum il-Kummissjoni dejjem applikat dawn il-principji sollevati mill-Qorti ta' l-Appell, u dan meta l-istess Kummissjoni approvat class 6 outlets f'zoni simili ghal dik odjerna fuq il-pretest li kien jezisti commitment ta' natura kummercjali fil-vicinanze.

Illi dwar it-tieni raguni tar-rifjut [...] l-applikant jirrileva li tali policy ma ssibx konfront meta applikazzjoni ta' bdil ta' uzu si tratta garaxx zghir ta' vettura wahda u dan stante li f'tali kazizjiet ikun kkrejat off street parking quddiem il-garaxx una volta l-uzu tal-garaxx jispicca.

Illi dwar it-tielet raguni tar-rifjut [...] l-esponenti jissottometti bir-rispett kollu li l-policy 8.1 Fascias (Policy & Design Guidance for Shopfronts), tistipula massimu ta' '50 cm depth' bhala gwida.

Illi permezz ta' risposta ta' l-esponenti bid-data tas-7 ta' Frar 2011, l-appellant kien talab lill-Kummissjoni 'sabiex qabel tipprocedi bid-determinazzjoni ta' din l-applikazzjoni, [...] u dan aktar w aktar meta f'kull okkazzjoni, d-Direttorat irrakomanda li tali permessi ma ghandhomx jinhargu ghal kunsiderazzjonijiet verosimili ghal dawk citati fil-kaz odjern. Evidentement, pero' jidher li l-Kummissjoni naqset li tiehu kunsiderazzjoni ta' dan, kif jirrizulta mill-minuti [...] fil-file PA 4464/10, [...]”

In-nota taghmel riferenza inter alia ghall-permessi PA 7007/03, PA 771/06, PA 5129/06, PA 5427/06, PA 6333/06, PA 6530/06, PA 7347/06, PA 7516/07, PA 5768/08, PA 2405/09; l-appelli PAB 872/98, PAB 9/00, u PAB 50/00; kif ukoll l-appelli civili 2/2007 u 6/2010, in sostenn tal-aggravji mressqa mill-appellant, kif rilevat supra.

Ma l-istess nota gew ukoll ipprezentati inter alia; kopji ta' Fire and Safety, Ventilation Report, Noise Mitigation Report, u Fume and Odour Extraction Report, imhejjija mill-Ing. Mark Attard fil-25 ta' Novembru 2010; kif ukoll kopja ta' Tourism Policy Compliance Certificate, rilaxxat mill-Malta Tourism Authority fis-27 ta' Settembru 2010.

C. In-nota risposta ta' Darren Fava ghall-Awtorita', ipprezentata fit-30 ta' Settembru 2011, inter alia l-punti segwenti:

"5.2.1 Permit applications quoted by Appellant

In arguments against the first reason for refusal, the appellant is quoting case vs Joseph Tonna and the issue of commitment. The appellant stated that several similar commitments are present in the area. Permit cases were quoted as follows:

These four cases relate to developments which were issued in view of similar commitments to the area.

PA 6333/06

change of use from Class 4 to Class 6 (Triq ix-Xatt Sliema). Case approved since areas is already established with Class 6 units.

PA 5427/06

change of use from garage to restaurant (Triq Qrejten, Msida). Case approved since Class 6 is already existing in the area and garage located on busy road.

PA 2645/09

change of use from Class 5 office to Class 6 snack bar (Triq il-Kbira, Zebbug). Case approved in view of the immediate vicinity of the commercial area of other Class 6 uses and that this is located in a small square abutting the main square.

PA 5768/08

change of use from Class 4 to Class 6 with alterations (Triq l-Imdina, Attard). Case approved for restaurant only and no other Class 6 use since the stretch of road is heavily committed for commercial use.

In this regard, MEPA highlights the importance of respecting the zoning designations in the local plan in order to ensure comprehensive planning. This position finds comfort in a recent decision given by the Planning Appeals Board (PA 5727/05; PAB 161/07) which stated that 'Il-Pjan Lokali kien specificament mahsub sabiex jaghti direzzjoni ta' kif z-zoni differenti ghandhom jkomplu jiggu zviluppati. Kieku wiehed kellu jinjora l-pjan lokali u

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johrog permessi abbazi biss ta' xi tip ta' kommittment dan jkun jfisser illi l-ghannijiet tal-Pjan Lokali ma jkunu jistghu qatt jintlahqu u l-ezercizzju kollu tal-pjanijiet lokali jkun sar ghall-xejn.'

The next three cases relate to development of Class 6 use in areas where such development is permitted according to the Local Plan. Hence these cases cannot be used in comparison to the case in concern since the development at hand is not permitted according to Local Plan.

PA 5129/06

to use approved commercial property as a stationary/computer and snack bar with cooking on site (Triq il-Punent, Msida). Case approved since site falls within area designated for student related shops and Class 6 is not excluded from policy NHMP 10.

PA 6530/06

change of use from Class 4 to Class 6 bar selling hot snacks (Triq l-Imhalled Paolo Debono, Msida). Case approved since site falls within an area designated for student related shops and Class 6 is not excluded from policy NHMP 10.

PA 7347/06

change of use from bar to snack bar (Ix-Xatt, Sliema). Case approved since site is within Town Centre and Class 6 use permissible as per policy NHRE 01.

Finally, the last case mentioned does not even regard change of use to Class 6 – therefore comparison to the case in concern cannot be made:

PA 0771/06

to sanction canvas awning, wide screen, light poles and menu frame as built (Ix-Xatt, Sliema). Permit issued in view of similar approvals and commitments in the area. Nonetheless, this case does not involve change of use and is therefore superfluous to the appellant's arguments vis-à-vis case in concern.

[...] the appellant is seeking to justify the proposed development by stating that the area is already committed for such uses. Notwithstanding this, when the appellant made reference to approved permits to justify his cause, none of the cases quoted are situated in the same village let alone in proximity to site. It appears that the appellant has no true arguments vis-à-vis commitments since the quoted cases are situated Sliema, Attard and Msida, not Rabat.

5.2.2 Loss of Parking

The appellant is commenting that the development does not create a loss of parking since the parking space from the one car garage will be replaced by on-street parking in front of the proposed Class 6 use. Appellant quoted the following permits:

PA 7516/07

Change of use from garage to Class 4 shop (site at Triq Wied Babu, Zurrieq) - permit approved by DCC Board in view that off-street parking will be replaced with on-street parking in view that proposal was local in nature and would not generate need for parking

PA 7007/03

Extension of existing bar and change of use of part of flat to bar (site at Triq Gilju, San Pawl il-Bahar) – permit approved by Reconsideration Board in view of previous commitments in PA 4564/02 and since one car parking can now increase on street.

Although these two cases were approved as stated by appellant (replacement of off-street parking with on-street parking), the Authority was still consistent in its approach towards the requested development, and recommended a refusal in view that the off-street parking space would be lost and hence runs counter to PA Circular 3/93 and SP TRA 4. No UIF is possible in view of policy 4.18 since the development would result in the loss of an existing parking space.

5.2.3 Shop Sign

The requested shop sign is to have a projection of 0.46m from the façade. The appellant is stating that the shop sign is in line with the Policy and Design Guidance for Shopfronts, since policy 8.1 states that a maximum 50cm is permissible. Notwithstanding this, the shop sign was not refused due to its projection from the façade, but since the perspex sign as proposed appears bulky and dominant, and does not respect the proportions of the building and façade. Hence the shop sign runs counter to policy 3.1 of the Guidance since it is poorly designed."

D. In-nota finali tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fid-19 ta' Dicembru 2011, inter alia t-tmien punti segwenti:

"3. f'kull kaz imsemmi, 1-Awtroita iggustifikat il-hrug ta' tali permessi fuq il-premessa li kien jesisti commitment ta' zvilupp kummercjali fil-vicinanze ts-siti rispettivi.

4. Illi f'kull wiehed minn dwn il-kazijiet, 1-Awtorita ikkunsidrat il-commitment fil-kuntest ta' 1- Artikolu 69 tal-Kap 504 tal- Ligijiet ta' Malta, u dan anke jekk tali commitment gie promulgat qabel il-hrug tal-Pani Lokali rispettivi. Dak li qalet l-Awtorita huwa in lineja ma dak li gie ritenut mill-onorabbli Qorti ta' l-Appell diversi drabi, fejn il- Bord ghandu primarjament jistharreg jekk jesistix commitment fl- ekwati, u dan gabel ma jiddeciedi fid-dawl tal-policies vigenti. Ara f'dan is-sens is-sentenza fl- ismijiet Joseph Tonna vs MEPA (Appell Civili Numru. 6/2010 deciz 24 ta' Frar 2011)

5. Fil-kaz ta' PA6530/06 u PA5129/06, 1-Awtorita tghid li tali permessi inhargu stante li l-policy NHMP 10 ma teskludix ghal kollox l-uzu ta' class 6 outlets. Bir-rispett kollu, wisq anqas il-policies li jirregolaw l-uzu f'residential areas (fosthom policy NWUS 03 li issemmiet fir-rifjut odjern) ma teskludi tali uzu, ghaliex kieku kien hekk, il-permessi PA6333/06, PA5427/06, PA2645/09, PA5768/08 qatt ma kienu jinhargu!

6. Detto cio', l-Awtorita qed issostni li jekk l-Awtorita tohrog permessi abbazi ta' commitment, il-Pjani Lokali

ikunu saru ghall-xejn. Bid-dovut, rispett, u senjatement dwar dan il-punt, 1-esponenti jaghmel riferenza ghal dak li huwa issoleva f' punt 4 fis-suespost.

7. Illi tenendo kont tac-cirkostanzi hawn succepiti, l-esponenti jfakkar li fil-kaz tas-sit in disamina, il-commitment vicin is-sit huwa massicc u ghalhekk ma jistax jigi injorat. Irid jigi enfasizzat, li s-sit de quo jinsab faccata ta' Hotel u Night club. Fl-istess linja tal-bini meritu ta' dan l-appell, jesisti ristoranti, fabbrica ta' l-inbid u take away outlet.

8. A propositu, ta' min ifakkar li l-commitment fattwali, a bazi ta' liema gew moghtija il-permessi PA6333/06, PA5427/06, PA2645/09, PA5768/08 (kontra l-parir tad-Direttorat), huwa addirittura anqas intensiv, meta wiehed iqabbel mac-cirkostanzi odjerni.

9. Illi dwar it-tieni raguni tar-rifjut [...] l-applikant diga kellu opportunita jirrileva permezz tar-rikors promotur li tali policy ma ssibx comfort meta applikazzjoni ta' bdil ta' uzu si tratta garaxx zghir ta' vettura wahda u dan stante li f'tali kazijiet ikun krejat parkegg fit-triq quddiem il-garaxx una volta l-uzu tal-garaxx jispicca. Ara decizjoniet f' dan is-sens: PA 7516/07; PA7007/03. Ta' min jinnota, li fir-risposta taghha, l-Awtroita tirrileva ex admissis: 'Although cases were approved as stated by appellant [...] the Authority (recte Directorate) [...] recommended a refusal'. Illi bl- kbar rispett, jinghad li wiehed ma jistax jibbaza l-argument difensjonali fuq dak li jirrakomanda d-Direttorat, izda fuq dak li in effetti tiddeciedi l- Awtorita jew il-Kummissjoni. Huwa pacifiku, li fil- kaz in disamina, il-garage jista' jakkomoda sa vettura wahda u allura tali vettura tista tigi akkomodata quddiem il-bieb tal-garaxx, kif kien spjegat aktar 'il fuq, u allura in effetti xorta wahda se jigi provdut parkegg. In ogni kaz, l-appellant dejjem jista' jigi mitlub jikkontribwixxi f' Urban Improvement Fund kemm-il darba ma jistax jipprovdi parkegg. Ara f'dan is-sens decizjoni moghtija minn dan it- Tribunal fl-ismijiet Jimmy Aquilina kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar. (Appell Numru 232/10 CF.PA 5275/08)

10. Illi riferibilment ghal punt 5.2.3 rilevati fir-risposta ta' l-Awtorita, l-istess Awtorita qed tinsisti li l-hxuna tat-tabella (46 cm) huwa accettabli, u dan wara li fir-rikors promotur saret riferenza ghal policy 8.1 tal- Policy and Design Guidance for Shopfronts. Issa pero', l-Awtorita issa qed issostni li l- proporzjonijiet tat- tabella mhumiex accettabli. Jinghad li din il-vertenza ma ghandiex tigi indirizzata f' dan l-istadju ghaliex hija haga gdida u ma giet diskussa qatt qabel u l-appellant ifakkar lil dan it- Tribunal li l-uniku vertenza li l-Awtorita issolvat (qua t-tabella) kienet tirrigwardja l-hxuna tat-tabella biss sic et simplicitate."

E. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fil-5 ta' Marzu 2011, precizament il-punti segwenti:

"2.1.1 Issue of commitment

The appellant continue to make reference to PA6333/06, PA5427/06, PA2645/09 and PA5768/08. These permits refer to Class 6 establishments permitted in residential areas. The Authority already explained the merits of each case and does not need to repeat them at this stage.

However the Authority wishes to reiterate that none of these permits are in Rabat let alone in the vicinity and thus they are subject to a totally different context. Therefore they cannot constitute a commitment for the case in this appeal. How can a permit in Sliema, Msida, Zebbug and Attard ever commit the Authority to issue a particular permit in Rabat? The appellant himself states that 'il-Board ghandu primarjament jistharreg jekk jezistix commitment fl-ekwati, u dan qabel ma jiddeciedi fid-dawl tal-policies vigenti". It is obvious that none of these case are 'fl-ekwati'.

Furthermore a careful reading of Article 69 of Act X of 2010 indicates that commitment refers to buildings/activities in the vicinity of the proposal.

2.1.2 The appellant also makes reference to PA6530/06 and PA5129/06. However these permits for Class 6 establishments are not located in residential areas but in a

Student Housing Priority Area which is subject to a different policy than that regulating residential areas.

2.1.3 Contrary to the opinion expressed by the appellant, the policies regulating residential development completely exclude Class 6 uses.

2.1.4 [...] having a few commercial establishments in the area does not constitute a commitment. A commitment refers, by definition, to a predominance of a certain use over another. Without doubt the commitment in the area is for residential development and not commercial activities. Moreover the hotel and the winery do not fall under Class 6 uses as per the Use Classes Order (1994) and therefore any comparison is futile. Moreover the winery and the nightclub are covered by PB 2567/69.

The other activities mentioned by the appellant are indeed Class 6 uses. However no permit numbers could be traced for these establishments (except for the nightclub - see above) and are therefore pre-1994 establishments covered by a trading licence. Such establishments at the time did not require a development permit in order to operate. [...]

2.2 Parking

[...] the policy has always been that any on-street parking is not to justify any loss of existing on-site/off-street parking provision. This in itself runs counter to Structure Plan policy TRA 4.

Furthermore policy 4.18 of the DC2007 makes its amply clear that the UIF mechanism should not be used to mitigate loss of existing parking but only to mitigate any creation of acceptable shortfall in parking by way of new development.

2.3 Signage

The Authority cannot understand why the appellant is claiming that the arguments brought forward by the Authority in relation to the signage did not constitute part of the original reasons for refusal and therefore should not be taken into consideration. This is just not the case.

In reality the Authority's arguments in this regard are an explanation for that particular reason for refusal. [...] The Authority simply did not quote any new policy or give any new reason for refusal.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex font, prezentement uzat bhala garaxx, u li jinsab fiz-zona residenzjali tar-Rabat, isirulu xi modifiki, titwahhal tabella mal-faccata u jibda jintuza bhala hanut ta' t-tip class 6.

Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li skond il-policy NWUS 03 tal-Pjan Lokali (NWLP), kwalsiasi svilup ta' t-tip class 6 mhux permessibbli f' residential areas. In oltre, press li l-font bhalissa qed jintuza bhala garaxx, ser jintilef il-parkegg prezenti u jizdied dak fit-triq. Skond l-Awtorita' dan il-fatt jirrizulta wkoll in kunflitt mal-policies TRA 4 tal-Pjan ta' Struttura kif ukoll ic-cirkolari PA3/93 li tirrigwarda off-street parking.

L-Awtorita' sabet ukoll oggezzjoni fid-disinn ta' t-tabella fuq il-faccata; ghax il-proporzjon tagħha ser ikun goff u ngombranti.

L-aggravji tal-Appellant jistrieħu fuq il-fatt li l-Awtorita' fid-decizjoni tagħha ma kkunsidratx l-ebda' commitments li jezistu fiz-zona, wisq inqas ir-rapport tal-inginjier, izda semplicement ikkwotat il-Pjan Lokali. Fir-rigward tal-parkegg, jargumenta li galadarba l-garaxx jinqaleb f' hanut, il-parkegg li jintilef jigi sostitwit minn iehor precizament quddiem is-sit, u li għalhekk, l-izvilupp mhux ser jikkaguna loss of parking.

Bhala kazistika in sostenn ta' dawn l-argumenti gew citati ben ghaxar permessi, tlett decizionijiet tal-Bord ta' l-Appell dwar l-lppjanar, kif ukoll zewg sentenzi civili.

L-Awtorita' tirribatti l-argumenti mressqa mill-Appellant billi tirrileva inter alia, li apparti permess wiehed li ma' kienx jikkonsisti f' bdil fl-uzu, sitta' mill-permessi citati huma; jew bdil fl-uzu minn hanut class 4 jew class 5, għal hanut

class 6; jew addirittura talbiet ghal hwienet class 6 propju fejn huma permissibbli skond il-Pjan Lokali.

Jigi rilevat li f' zewg kazijiet biss, l-izvilupp kien gie permess nonostante l-fatt li kien qed jizdjet il-parkegg fuq it-triq u li wiehed biss minn dawn kien jikkonsisti f'ic-change of use minn garaxx ghal hanut class 4 (sebbene mhux ghal class 6). Irid jinghad ukoll li kull cirkostanza il-permess inhareg fuq sit f' postijiet differenti ta' Malta, u li l-ebda wiehed minn dawn il-permessi ma' jirrizulta li nhareg fil-lokalita' in ezami.

Fil-fatt, tajjeb li jigi nutat li mill-kazistika numeruza pprezentata mill-Appellant, permess wiehed biss kien jixbah l-argumenti bhal ta' dan in ezami (PA 5427/06) cjoe', li kien jitlob il-bdil fl-uzu minn garaxx ghal-hanut class 6. Anke f' dak il-kaz pero', is-sit kien jinsab fl-lmsida u l-Awtorita' kienet approvatu in vista tal-fatt li l-garaxx kien jinsab f' triq traffikuza u ghax kienu jezistu diversi commitments tat-tip class 6 f' dik l-arja.

Gie anke argumentat mill-partijiet jekk il-hotel u n-night club li hemm propju quddiem is-sit in ezami, jikkostitwux xi tip ta' commitment; dan ghax kif tajjeb irrilevat l-Awtorita' huma koperti b' permessi li hargu qabel ma' dahal fis-sehh il-Pjan Lokali u in ogni caso, ma' jaqawx taht tip ta' zvilupp permissibbli bhala class 6.

Ezaminati s-sottomissjonijiet taz-zewg partijiet, johrog li din il-proposta hi kjarament in kontravenzjoni tal-Pjan Lokali, u anke jekk semmaj l-uzi elenkati bhala class 6 jinkludu hwienet jew attivitajiet li jisthu jigu kkunsidrati of a lesser impact fuq zona residenzjali, l-Awtorita', iprocediet tajjeb meta sahansitra eskludiet li tikkonsidra kwalsiasi uzu minn dawk indikat bhala class 6.

F' ic-cirkostanzi irid jigi nutat ukoll li f' is-sottomissjonijiet taghha, l-Awtorita', fil-konfront tal-uzu propost, ripetutanment taghmel riferenza ghal 'snack bar'. Irid jigi osservat li l-class 6 tal-Avviz Legali 53 tal-1994 et seq. tidistingwi bejn erba' tipi ta' uzi, inter alia bars u restaurants. M' hemm xejn f' din il-klassi li tippermetti

specifikament snack bars; ghalkemm fis-subinciz (a) huma nkluzi l-attivitá ta' snack bar. Wiehed jista' jagħraf differenza fl-operat bejn bar u restaurant; izda id-differenza bejn dawn u snack bar tista' tkun vaga tassew.

Il-kaz in ezami hu aktar car għax qed jintalab semplicement class 6 kif definit bl-istess Avviz Legali; u peress li dan it-tip ta' uzu jmorru kontra diversi policies tal-Pjan Lokali, dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

Għalhekk, in vista tal-kunsiderazzjonijiet kollha hawn fuq magħmula, 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 ir-rifjut għall-PA 4464/10 mahrug mill-Kummissjoni għall-Kontroll tal-Ambjent u l-Ippjanar, fit-12 t' April 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwent:

1. It-Tribunal naqas li jqis il-kwistjoni tal-commitment mqajjem mill-appellant u strah biss fuq dak li jipprovdi l-pjan lokali;
2. It-Tribunal ma għamel ebda analizi fir-rigward tal-loss of parking issollewat mill-Awtorita u ribattut mill-appellant, u fejn anki f'decizjonijiet tal-istess Tribunal addotta soluzzjonijiet biex tigi skavalkata l-problema;
3. It-Tribunal zbalja meta qal li t-talba tal-appellant hi semplicement għal bdil ta' uzu għal class 6 peress li t-talba tispecifika class 6 'retail outlet'.

L-ewwel aggravju

Dan l-aggravju hu dak li jagħti hajja jew joqtol iz-zewg aggravji l-oħra tal-appellant billi jekk il-Qorti ssib li l-ewwel aggravju ma għandux jigi milqugh, allura jfisser li t-talba tal-applikant hi inammissibbli u l-aggravji l-oħra huma biss supplimentari u jiformaw dettalji li johorgu biss minn konkluzjoni favorevoli għall-appellant fuq l-ewwel aggravju.

Dan l-aggravju jolqot kwistjoni sollevata ripetutamente cioe jekk kwistjonijiet ta' commitment jipprevalux fuq pjanijiet jew policies ezistenti. Din il-Qorti gia ppronunzjat ruhha fis-sens illi l-artikolu 69 tal-Kap. 504 gia artikolu 33 tal-Kap. 356 huma cari bizzzejjed u jimponu fuq l-Awtorita u t-Tribunal li japplikaw il-pjanijiet u policies filwaqt li jqisu kull kwistjoni ta' sustanza, inkluz kwistjonijiet ta' commitment. Hi l-fehma tal-Qorti pero li d-dicitura uzata hi wahda preciza. Meta l-Awtorita u t-Tribunal iqisu kwistjonijiet ta' sustanza , ma jistghux jaghtu soppravent ghal ebda kwistjoni li tmur kontra dak li l-pjan jew policy tkun trid sakemm ma jithallix diskrezzjoni li trid tohrog cara mill-pjan jew policy jew fejn hemm diversi pjanijiet u policies rilevanti li allura l-Awtorita u t-Tribunal ghandhom il-fakolta li jwiesnu bhala dik l-aktar applikabbli tenut kont il-kwistjonijiet ta' sustanza mqajma fil-kors tad-dibattitu fuq l-applikazzjoni.

Maghdud dan l-appellant isostni illi t-Tribunal naqas li jqis il-kwistjoni ta' commitment sollevat. Dan mhux minnu peress illi t-Tribunal wara li ha in konsiderazzjoni l-permessi msemmija mill-appellant biex jiggustifika l-commitment u r-risposti tal-Awtorita, esprima ruhu fis-sens illi permess wiehed biss kien jikkonsisti minn bdil ta' uzu minn garage ghal hanut, u dan f'sit differenti f'Malta u l-permessi l-ohra ma nhargux fil-lokalita li qed jintalab dan il-permess. Fil-kaz tal-permess simili ghal din l-applikazzjoni t-Tribunal esprima ruhu fis-sens li l-fond jinsab fl-imsida u gie approvat ghax kien hemm diversi commitment tat-tip class 6 f'dik iz-zona.

It-Tribunal in oltre dahal ukoll fl-izviluppi ohra vicin din il-kwistjoni soto appell u qal illi dawn l-izviluppi konsistenti f'hotel u night club inhargu qabel ma sar il-pjan lokali ghaz-zona u lanqas jikkonsistu f'permessi taht class 6 bhal dan in ezami.

B'din l-argumentazzjoni din il-Qorti tista' tieqaf hawn peress li l-aggravju tal-appellant, cioe li t-Tribunal ma qies il-kwistjoni tal-commitment mhix pruvata u la darba t-Tribunal ikun ittratta l-aggravju, din il-Qorti ma ghandhiex tissindaka ghax ma jikkwalifikawx aktar bhala punt ta' ligi

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izda biss aggravju fuq nuqqas ta' qbil ma' dak li ddecieda t-Tribunal.

Madankollu ghal kompletezza l-Qorti tqis illi t-Tribunal iggustifika d-decizjoni tieghu bbazata fuq dak li jipprovdi l-Kap. 504 fl-artikolu 69 cioe meta policy hi cara ma hemmx lok ghal diskrezzjoni. It-Tribunal ighid li skond il-policy NWUS 03 tal-pjan lokali NWLP kull zvilupp tat-tip class 6 mhux permissibbli f'residential area. Jirrizulta li l-garage jinsab f'zona residenzjali r-Rabat (punt mhux dibattut) u ghalhekk idejn it-Tribunal huma marbuta mall-ligi u ebda eccezzjoni ma hi permessa, avolja kif qal it-Tribunal bhala klassi huma zviluppi ta' lesser impact fuq id-dintorni.

Ghalhekk dan l-aggravju qed jigi michud u konsegwentement iz-zewg aggravji l-ohra mibnijin fuq dan l-ewwel aggravju ma jistghux ibiddu l-ezitu tad-decizjoni tat-Tribunal, u ghalhekk qed tiskartahom.

Decide

Il-Qorti ghalhekk taqta' u tiddeciedi billi tichad l-appell ta' Redento Bonnici 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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