



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 32/2013

Michael Ellul Vincenti

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Michael Ellul Vincenti tas-17 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 kontra l-applikazzjoni PA 1607/11 ghal 'construction of additional floor and one receded floor, comprising 3 residential units, addition of lift and minor internal alterations';

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, fil-21 ta' Mejju 2012, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 1607/11 – 66A, Dingli Street c/w Windsor Street c/w Sir George Borg Street, Sliema: Construction of additional floor and one receded floor, comprising three residential units, addition of lift and minor internal alterations.

“1. The proposed development does not conform with policy NHSE 04 and the Height Limitation Map SJ 3 of the North Harbour Local Plan, which indicate the site for a three storey development plus one receded floor.

2. The proposed development is incompatible with the urban design and environmental characteristics of the Urban Conservation Area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2.

3. The proposed development would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within Urban Conservation Areas and so does not comply with Structure Plan policy UC06.

4. The proposal does not comply with Structure Plan policy UC08 which only permits development in Urban Conservation Areas which is compatible with the existing character and urban design of the area. The proposal is not sympathetic with adjoining buildings in terms of its building line and height.

5. The proposed development runs counter to Structure Plan policy UC010 in that it would adversely affect views of the Urban Conservation Area and detract from the traditional urban skyline. ”

B. In-nota tal-Perit Joseph Sapienza ghall-Appellant, ipprezentata fl-1 ta' Gunju 2012, senjatament il-punti segwenti:

“Notwithstanding what is said in the five reasons for refusal, the issue regarding the granting or not of this permit hinges on policy NHSJ06 where this relates to ‘Blank Party walls in the Sliema Urban Conservation Area’. This was, in fact, the only issue discussed during the EPC meeting.

During meetings with Directorate officers and in the DPAR itself the issue was always related to how many floors this policy could actually allow. When we appeared before the EPC Mr Ellul Vincenti and myself were very surprised to be faced with a new interpretation that dismissed Policy NHSJ06 outright. Some committee members argued that one should first add the allowable floor to the existing number of floors (on the lower side) and then see if two or more floors of blank wall remain.

Nowhere in the policy does one find a statement of this nature. [...]

[There is ...] a difference in height between the existing building and the adjacent block of flats of two floors, of course, if one does not add the yet virtual (receded) additional floor allowed by the Local Plan Map SJ3. The policy takes into account what is found on site at the time of the application and one can only interpret the policy in the light of what is actually now on site.

It is fair to contend that if a virtual floor can be added to the existing three floors of the lower site, a virtual penthouse level can be added over the adjacent six floor block, thus maintaining the two floor visual disparity.

It is pertinent to remark that the site is a Category 'C' site, also flanked by Category 'C' buildings.

The photographs being submitted, for the time being in lieu of a site visit that the Tribunal is invited to make, show

how the reasons for refusal do not find substance in reality. We reserve the right to elaborate on each of these reasons for refusal should this become necessary.”

C. In-nota responsiva ta' Darren Fava għall-Awtorita', ipprezentata waqt is-Seduta numru 52, mizmuma fl-10 ta' Lulju 2012, inter alia l-punti segwenti:

“5.2.1 Introduction:

In comments submitted, the appellant is stating that the crux of the refusal for proposed additions to the existing building rests on the issue of the blank party wall as according to policy NHSJ 06 of the Local Plan; and that therefore the concerns behind the five reasons for refusal are deemed superfluous to the matter of whether this permit is refused or not.

In spite of this claim, the Authority wishes to clarify to the Tribunal that the arguments raised in the reasons for refusal dictate how the proposed increase in building height is counter to the Local Plan designation for the area. These arguments are further validated in the comments against the creation of the blank party wall, however the proposal remains primarily in breach of multiple policies of the Structure Plan ranging from visual integrity to the objectives of development control for UCAs in view of preservation, enhancement, compatibility and urban skyline.

The Authority is addressing the quarrels raised by the appellant specifically in this report; and will clarify to the Tribunal why the decision taken by the EPC Board in May 2012 was correct; and that all information present in the case had been revised.

5.2.2 Proposed Building Height:

This application is requesting to raise the existing building height from three (3) floors to five (5) floors whereas the designated height limitation for the area in accordance with Local Plan Map SJ 3 is three floors plus one receded floor to be setback by two metres from the facade, as per policy NHSE 04.

With regards to building height amendments, height envelopes and frontage width as stipulated in policy NHSJ 06, the Local Plan stipulates that in situations where visually intrusive blank party walls exist, MEPA may consider the construction of additional floors over the lower property so as to break down the visual mass of the existing blank party walls.

Site:

On the notion of this argument, the Planning Directorate carried out consultation with the Local Planning Unit during the processing stages of the application (Doc 10) to establish whether consideration of such policy may be applied to the proposal at hand. In reply, the LPU acknowledged that the site in concern is situated adjacent to blank party walls; however the side party wall to adjacent property is only one (1) floor high.

Since the provisions of policy NHSJ 06 specify that such measures only apply when neighbouring blank party walls are two or more floors high, the policy cannot be interpreted for the proposed development. Therefore, since there is no planning justification towards the proposed development, this application is counter to the height limitations as defined in the North Harbours Local Plan.

5.2.3 Other Comments

The site in concern is situated within the Urban Conservation Area of Sliema, where although the building is classified as Category C as per Maps SJ 1 and SJ5 of the NHLP; the streets in the immediate vicinity are predominantly Category B street. The existing building on three floors is described as a typical townhouse having three facades fronting three streets. The particular architectural features noted around the site include a colonnaded main facade on Dingli Street, ornate door and window openings, timber apertures and other symbolic features noted for in the Sliema UCA.

The building also features a more recent additional floor, respecting the character of the underlying building, but with no particular features except for a coat of arms located on the main vertical axis of the main facade. The site is considered noteworthy due to its location, which is a focal point both in itself from various viewpoints and also in conjunction with the other buildings within UCA, which form a rhythmic view typical of our traditional streetscapes.”

D. In-nota ta' sottomissjonijiet tal-Perit Joseph Sapienza ghall-Appellant, ipprezentata fis-26 ta' Settembru 2012, precizament il-punti segwenti:

“The grounds of applicant's appeal is that the development he is requesting is permitted in terms of policy NHSJ 06 of the North Harbours Local Plan. This policy relates to ‘Blank Party walls in the Sliema Urban Conservation Area’ [...]

There is no contestation about the fact that the site in question is indeed within the Sliema Urban Conservation Area or that the building is adjacent to a side blank party wall. Indeed, this was confirmed by the Local Planning Unit when it was consulted regarding this matter.

The issue which is being contested on the part of the Authority is the height of the side blank party wall. Appellant contends that it exceeds the minimum height of two or more blank party wall, whereas the Authority is contending that this is not so. [...]

It is submitted that the EPC came to the erroneous conclusion that there is only one floor height of blank wall by adopting a novel but mistaken approach of considering the washrooms at roof level within the site as a full floor but failing to consider the washrooms at the higher level as a full floor. In taking this wrong interpretation, the EPC reached the erroneous conclusion that the difference between the two sites is not "two floors or more" within the terms of the plan but only one floor, rendering the policy inapplicable to the case in question.

It is submitted that this interpretation given by the EPC does not make sense. We contend that one has to assess the distance between the existing roof level of the lower building and the existing roof level of the adjacent flats. The stairwells and the washrooms at both these levels have to be ignored as these are not habitable floors. If a virtual floor is added to the existing three floors of the lower site (as the EPC did), then a virtual penthouse level has to be considered over the adjacent six-floor block. One cannot simply consider the washrooms at the lower level to be a full floor but fail to consider the washrooms at the higher level.

It is very poignant to refer the Tribunal to a minute of the Cultural Heritage Advisory Committee (Meeting 699 dated 14.11.11) as documented in the DPAR: 'The committee found no objection from a heritage point of view, however pointed out that with reference to min. 10 from the Local Planning Unit in view that the difference between the adjacent properties is not one floor as is being stated. Hence a revision has been asked'.

During our preliminary meetings with senior Directorate officers never was there a doubt as to the existence of two floors of blank wall. Discussions mainly concerned the issue of interpretation of the way of calculating the number of allowable floors.

The Report to the Appeals Tribunal goes on to mention that the site in question is a Category "C" building. It fails to inform the Tribunal that the building is flanked by Category "C" buildings. That "the streets in the vicinity are predominantly Category "B" is also somewhat misleading as only Windsor Terrace and one side of Dingli Street are Category "B". The features mentioned in the report are also exaggerated (ie the "colonnaded main facade" is actually a main door flanked by single columns), and these will not be touched by the proposed additional floors.

The last two paragraphs of the report do not prove that the additional floors will create havoc to Sliema's traditional streetscapes. We contend that, on the contrary, the full floor and the receded floor as proposed will soften the transition from the lower floors on Windsor Terrace and one side of Dingli Street to the existing adjacent higher building (six floors plus washrooms) and on to the eight floors at the corner with Tower Road. This is precisely what the Local Plan intended to achieve when Policy NHSJ 06 was introduced.”

E. In-nota second statement ta' Darren Fava ghall-Awtorita', ipprezentata fil-5 ta' Novembru 2012, inter alia l-punti segwenti:

1.2.1 [...] Although the appellant is arguing that the structures at current roof level are used as washroom and adjacent stairwell and is not a full level, the fact remains that the blank party wall with adjacent property does not fulfil the requirement of a minimum two blank levels. In fact, since the designated height limitation for the area is three (3) floors plus one receded floor, there is no justification from a planning point of view as to why the proposed development should be accepted.

Further to this, the appellant is claiming that prior to decision preliminary meetings were held with the Planning Directorate where interpretation of the existing situation resulted in confirmation that two blank levels in fact existed. This statement is misleading and incorrect. In fact, during early stages of the process (April 2011), the Local Planning Unit were consulted regarding this dispute. In their reply (Doc 10 in PA File) the LPU confirmed that given that the side blank party wall that exists between the property on site and the adjacent property is only 1 floor high, the provisions of policy NHSJ 06 are not applicable to this case. Although consultation with CHAC (Doc 33 in File) raised question over this ruling by LPU, the file was re-sent to LPU where their previous position was once again confirmed (Doc 36 in PA File). Hence, the impression given by the appellant in his comments at Second Statement are false and misleading and the

Authority retains the comments it expressed in the initial report on the matter.”

F. In-nota ulterjuri tal-Perit Joseph Sapienza ghall-Appellant, ipprezentata fil-11 ta' Dicembru 2012. Ma din in-nota gie pprezentat fotomontagg tal-proposta mertu tal-appell de quo.

G. In-nota third statement ta' Darren Fava ghall-Awtorita', ipprezentata fid-19 t' April 2013. Din in-nota tirrepeti l-argumenti mressqa mill-istess Awtorita' fis-sottomissjonijiet precedenti.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex fl-arja ta' font li jinsab fl-urban conservation area (UCA) ta' tas-Sliema u f' kantuniera maqbud bejn tlett toroq , jinbnew zewg sulari, wiehed minnhom irtirat (receded floor), kif ukoll biex isiru xi modifiki minuri fuq gewwa sabiex ikun jista' jigi stallat lift, etc.

Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li l-proposta taqbez l-gholi limitu ghaz-zona kif stabbilit permezz tal-policy NHSE 04 u l-mappa SJ 3 tal-Pjan Lokali (NHLP). Di konsegwenza l-izvilupp ser jgharraq l-integrita visiva u l-karattru ambjentali (fir-rigward ta' townscape, height limitation, u skyline) tal-UCA u ghalhekk hu in kontravenzjoni tal-policies BEN 2, UCO 6, UCO 8 u UCO 10 tal-Pjan ta' Struttura.

L-aggravji ta'-Appellant huma bbazati fuq il-fatt li t-talba hi fis-sens li jitghatta l-hajt lixx tal-appogg (blank party wall), kawza tal-izvilupp li hemm fuq il-font adjacenti u li jirrizulta oghla minn dak li hemm prezentement fuq is-sit in ezami. Jargumenta li fil-fatt, il-policy rilevanti ghal-kaz odjern (NHSJ 06) giet interpretata hazin mill-Awtorita'. Peress li l-font adjacenti jirrizulta gholi sitt sulari – mentri dan in ezami hu konsistenti minn tlieta - allura billi hemm diskrepanza ta' aktar minn zewg sulari, l-Awtorita' kien imissha laqghet il-proposta tieghu.

Jigi rilevat li skond il-mappa SJ 3 sucitata, il-font in ezami jaqa' "within UCA - NHSE 04" u jikkwalifika ghal "three floors plus one receded floor". Il-policy NHSE 04 rilevanti tghid is-segwenti:

"For sites located within designated Urban Conservation Areas, where Receded Floors are permitted in accordance with the relevant Building Heights and Urban Design Maps, each Receded Floor is to be setback by 2m from the building alignment of the underlying floor notwithstanding that this may not be in accordance with the provisions of the DC2005. Penthouses above the Receded Floors will not be allowed. [...]"

Ghalhekk, skond il-mappa SJ 3 sucitata, l-gholi tal-izvilupp li jista' jigi permess fuq il-font in ezami huwa sa tlett sulari b' receded floor (u minghajr penthouse). It-talba odjerna hi ghal erba' sulari u receded floor – cjoe' sular aktar minn dak li jippermetti l-Pjan Lokali.

Fil-Pjan Lokali pero' hemm policy ohra - NHSJ 06 - li taghmel riferenza ghal blank party walls li jaqghu fuq il-linja ta' konfini tal-UCA, jew blank party walls li jista' jkun hemm bejn zewg siti li jinsabu fl-istess izolat fil-UCA. Skond din il-policy, f' dawn ic-cirkostanzi, jistghu jigu permessi receded floors li jeccedu l-oghli limitu stabbilit mil-Pjan Lokali – principju bazi tal-argumenti mressqa mill-Appellant.

Tajjeb li jigi osservat ukoll, li skond il-mappa SJ 3 il-linja konfini tal-UCA tghaddi ezattament mal-appogg bejn il-font in ezami u dak oghla minnu. Ghalhekk, filwaqt li l-font in ezami jinsab fil-UCA, dak biswit (gholi sitt sulari), jinsab barra l-UCA. F'ic-cirkostanzi ghalhekk, peress li hawn si tratta minn blank party wall li jaqa' precizament fuq il-linja tal-konfini tal-UCA tista' tigi kkunsidrata l-imsemmijja policy NHSJ 06.

Mil-qari tal-policy, jidher car li dan il-principju ta' stepping down huwa ntiz sabiex f' kaz li tirrizulta differenza qawwija bejn zewg siti adjacents, partikolarment fl-istess izolat – bhalma hu l-kaz odjern - l-izvilupp jigi mttarrag.

Madankollu, din il-policy mhix tassattiva (fil-fatt tintuza l-frazi “MEPA may consider”) u ghalhekk mhux awtomatiku li kemm il-darba jirrizulta differenza bejn zewg siti li bejniethom jghaddi l-konfini tal-UCA, ghandu jiskatta l-principju ta’ receded floor addizzjonali.

Fl-ahharnett, jigi rilevat ukoll li mhemx qbil bejn il-partijiet fuq kif ghandhom jigu kkunsidrati n-numru ta’ sulari fuq il-font in ezami u dak adjacenti. Sabiex jigi evitat kull ekwivoku, irid jinghad li l-font adjacenti ghandu sitt sulari u penthouse, mentre dak in ezami ghandu tlett sulari u washroom bit-tromba tat-tarag li jwassal ghal-istess washroom mibnija mal-faccata. Ghalhekk, anke semmaj b’ il-mod kif inbniet it-tromba (mhux irtirata jew b’ saqaf talut) wiehed jista jargumenta li l-binja llum hi percepit bhala mibnija fuq erba’ sulari, madankollu r-raba’ ‘sular’ jkopri biss parti zghira tal-bejt. Ghalhekk ghal-fini tal-ippjanar, jekk wiehed iqis il-font adjacenti bhala midni fuq sitt sulari allura dan in ezami jista’ jitqies bhala mibni fuq tlett sulari.

Dan ifisser li f’ ic-cirkostanzi, li kieku giet intavolata proposta biex is-sular tal-washroom prezenti jigi estiz sabiex isir receded floor veru w propju (u allura minghajr ma tinbena penthouse, etc. sovrastanti), tali talba kienet tkun perfettament ammissibbli skond il-policy NHSE 04. In oltre, minhabba li l-linja tal-UCA tghaddi ezattament mal-hajt tal-appogg, allura skond il-policy NHSJ 06 seta’ gie kkunsidrat li jinbena receded floor addizzjonali. Madankollu, it-talba odjerna hi fis-sens ghal full floor u receded floor, cjoe’ b’ setback ta’ darba, u ghalhekk taqbez l-gholi limitu stabbilit bl-istess policy NHSE 04, b’ sular shih. Barra minn hekk, it-talba odjerna lanqas ma tirispekkja l-isteppeing down effect mixtieq bir-receded floors permessi skond il-policy NHSJ 06.

Ezaminati is-sottomissjonijiet tal-partijiet, jidher car li l-kwistjoni tar-receded floors hi kawza ta’ ekwivoku li johrog mill-interpretazzjoni tal-istess policy NHSJ 06, li tidher li hi intiza specifikament ghal-siti li jharsu fuq triq wahda – kif normalment ikun il-kaz – u cjoe’ ghal siti maqbuda bejn zewg hitan tal-appogg. Il-kaz de quo jirrigwarda font fuq

kantuniera, b' tlett faccati (fuq tlett toroq), u ghalhekk, li kieku l-principju ta' receded floor kellu jigi applikat, l-izvilupp ikun irid jirtira minn tlett faccati – mhux minn faccata wahda (guarda caso fuq l-izghar faccata), bhalma qed jigi propost. Dan ifisser li anke fir-rigward ta' receded floors, il-proposta mhix konformi mal-policies in kwantu li l-irtirar irid isir dawramejt, cjoe' fuq tlett faccati.

Il-kwistjoni tkompli taggrava peress li bil-mod kif inbniet it-tromba tat-tarag li tmiss mal-faccata. Ghalhekk, ser ikun impossibbli li l-faccata kollha li thares fuq Triq Sir Adrian Dingli tigi irtirata. Mill-banda l-ohra, jigi nutat li l-faccata originali ghandha certa bilanc fid-disinn (sa certu punt hi wahda simetrika), u kemm il-darba jsir tip ta' disinn li jittenta 'jikkopja' jew 'jirrepeti' dak originali, allura minhabba din l-istess tromba ser tintilef din is-simetrija.

F' ic-cirkostanzi dan it-Tribunal hu tal-fehma kkunsidrata li l-Awtorita' setghet – u kien imissha - innegojzat tip ta' disinn li minn banda jirrisolvi l-kwistjoni tal-blank party wall (u ghalhekk jippermetti li jinbena receded floor iehor), u mill-banda l-ohra tippermetti tip ta' zvilupp li jkun jixraq il-kuntest urban in ezami. Minhabba l-kwistjoni tat-tromba tat-tarag (u prevja li l-access ghal-fuq il-bejt prezenti jinbidel jew jigi irtirat fil-qalba tal-font), mhux eskluż li jsir tip ta' disinn li ma jippruvax jikkopja indolentement id-disinn simetliku tas-sulari ta' tahtu. Zgur li d-disinn tal-faccati l-godda kif propost huwa wiehed skadenti u li ma jixraqx l-ebda kuntest urban. (Ma hemmx raguni ghalfejn per eżempju, ghandhom jigu ddesinjati blank windows fit-tromba tat-tarag, jew li l-bqijja tal-faccati, inkuzi it-twieqi l-godda jkunu privi minn kwalsiasi artikolazzjoni arkitettonika, modanaturi jew gwarnicjuni propji.)

Anzi, irid jinghad li kuntrarju ghal dak li sa ftit ilu gie permess fl-istess triq, ftit li xejn iregi l-principju li disinn ta' faccata, originarjament intiz sabiex jinqara fuq (p. ez.) zewg sulari 'jiggebbid' ghal-tlett sulari jew izjed, minghajr ma tittiehed kunsiderazzjoni tal-principji fundamentali li illum jirregolaw il-harsien u l-preservazzjoni tal-insedjament storiku. Lanqas ma jregi li ghandu bilfors isegwi li sabiex estensjoni tirrispekkja l-istruttura

precedenti, ghandhom bilfors jintuzaw l-istess tipi ta' materjali, u jigu eskluzi kwalsiasi materjal gdid jew differenti minn dak originarjament uzat.

Mill-banda l-oħra pero', w in vista tal-policies indikati supra, it-talba odjerna tirrizulta eccessiva u di konsegwenza ma timmeritax li tigi milqugha.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut għall-PA 1607/11 kif mahrug mill-Kummissjoni għall-Kontroll tal-Ambjent u l-Ippjanar, fil-21 ta' Mejju 2012.

Ikkunsidrat

L-aggravju tal-appellant huwa s-segweni:

1. It-Tribunal naqas li jezamina sew l-applikazzjoni o meno tal-policy NHSJ 06 tal-plan lokali li jittratta tas-Sliema 'Blank Party Walls in the Sliema Urban Conversation Area', billi għalkemm wasal għal konkluzjoni li hi applikabbli għal kaz pero l-interpretazzjoni tal-policy sar b'mod li ma jirriflettix id-dicitura tal-istess policy. Dan jinghad senjatament meta qal li skond din il-policy hu permess li jinbnew 'receded' floors li jeccedu l-limitu stabbilit fil-pjan lokali. Hi l-kontenzjoni tal-appellant li din il-policy ma tispecifikax 'receded floors' u t-Tribunal hallat din il-policy ma' policy NHSJ 04 li tagħmel referenza għal receded floors. Dan kien zball fl-applikazzjoni ta' policy li waslet it-Tribunal għal konkluzjoni zbaljata u jikkostitwixxi punt ta' ligi appellabbli.

Dan l-aggravju fih il-mertu tiegħu. Il-Qorti mhix ser tissindaka kif u għaliex it-Tribunal wasal għal konkluzjoni illi f'dan il-kaz kien applikabbli l-policy NHSJ 06. Dak li jikkoncerna lil din il-Qorti hu jekk l-applikazzjoni ta' din policy kinitx wahda korretta fil-ligi u mhux semplicement kwistjoni ta' interpretazzjoni ta' policy legitimament maghmula mit-Tribunal.

Hu fatt illi t-Tribunal wasal ghal konkluzzjoni li mill-fatti esposti l-kaz seta' jigi kunsidrat a bazi tal-imsemmija policy. It-Tribunal afferma wkoll illi din il-policy tikkwalifika s-sulari kollha zejda bhala receded. Ma' dan l-appellant ma jaqbilx ghax ighid illi fil-parti tal-NHSJ 06 intitolata Blank Party Wall in the Sliema Urban Conversation Area fl-ewwel zewg paragrafi taghha l-Awtorita trid tikkonsidra sulari addizzjonali fejn hemm distakk ta' aktar minn zewg sulari bejn il-proprijeta sottoezami u dik adjacenti. Hi l-pretensjoni tal-appellant li din il-policy specifika ma taghmilx distinzjoni bejn 'receded' u 'full' floor u t-Tribunal ma setax jipprezumiha. In oltre l-paragrafu 17.4.22 tal-istess policy tiribadixxi l-istess principju minghajr ma taghmel distinzjoni bejn full u receded floor.

Il-Qorti tirraviza illi l-policy NHSJ 06 taghmel din l-istess policy rigward sulari addizzjonali bhala soggetta ghal policy NHSE 04 fost ohrajn u zzid id-distanzi mill-fondi vicini li huma necessari li jigu osservati f'kaz li jigu permessi 'receded floors'.

Harsa in oltre lejn il-policy NHSJ 06 f'paragrafi 17.4.18 u 17.4.19 l-istess policy tghid kif gej:

17.4.18 Where additional floors are allowed above existing vernacular buildings whose facades positively contribute to the streetscape, the Local Plan has adopted either of two solutions as described below:

a. The first solution is to allow the construction of additional floors with a suitable setback from the existing facades of typically two storey high townhouses. This option allows for the retention of the original proportions and human scale of the vernacular buildings in question, especially as seen by the pedestrian at street level. Another advantage is that when a vernacular building already exhibits an interesting architectural feature at roof level in the form of a heavily decorated cornice or a 'frontispizju', then any additional setback floors would retain these features. Furthermore, individual interventions are not as visually conspicuous as when undertaken directly over the existing street facade. This is relevant when considering that streets capes are very

rarely developed comprehensively. In cases where the setback solution is reverted to, the extra floors may be either designed in an appropriate and compatible modern architectural style, or alternatively using the same architectural treatment as the existing facades. The setback floor solution would need to be applied along a whole stretch of street in order to ensure its effectiveness. This first solution has been applied to those streets that have long terraces of two storey high townhouses punctuated by a small number of high buildings (typically of about 5 or 6 floors high) since the additional floors would bridge the building height gap between the townhouses and the higher buildings whilst not adversely effecting the roofline of the townhouses.

b. The second solution (applied to those cases not covered by the first solution) is to allow the construction of additional floors on the building alignment of the existing vernacular buildings. The design of such additional floors must be strictly dictated by the height, proportions and the architectural style of the existing and surrounding buildings. Therefore, for example, a proposed second floor should be built in a similar proportion to the underlying floors and not simply eleven courses because that is the usual practice. It is also important that the levels of string and roof cornices follow those of adjacent buildings.

17.4.19 Penthouses within UCA's are not considered to be an automatic right for buildings constructed above four floors due to the fact that these may create intrusive blank party walls. Due to the highly varying contexts that are found within the Sliema UCA, each case will be treated on its own merits by MEPA but with the primary aim of ensuring that no new obtrusive blank party walls are created.

Il-Qorti tqis illi t-Tribunal kellu jinvestiga sew dak li hu permissibli jew le fil-kaz in ezami u kif il-policy NHSE 06 kienet tiggustifika li qed titkellem fuq 'receded floors' biss billi dan bl-ebda mod ma gie dibattut u deciz mit-Tribunal u dak li ntqal aktar il-fuq jimmerita konsiderazzjoni matura

u dettaljata li hi l-kompitu tat-Tribunal stante li hawn si tratta ta' planning issues fil-parametri tal-ligi minghajr ma tintuza deskrizzjoni arbitrara. Dan il-kaz u senjatament l-affermazzjoni tat-Tribunal li l-policy NHSJ 06 tirreferi biss ghal 'receded floors' ma ssibx konfort fl-argumentazzjoni jew konsiderazzjoni tieghu u ghalhekk il-Qorti qed tilqa' l-appell tal-appellant limitatament ghax it-Tribunal ma spjegax b'mod approfondit kwistjoni ta' sustanza ewlenija li fuqha giet ibbazata d-decizjoni tieghu, minghajr f'dan l-istadju l-Qorti ma hi qed tesprimi ruhha li t-tezi tal-appellant hix gustifikata jew le u dan biex il-partijiet ikollhom opportunita ugwali li jittrattaw il-kwistjoni mill-gdid tenut kont ta' dak sollevat mit-Tribunal u mill-Qorti.

Billi dan kien l-aggravju tal-appellant il-Qorti ser tissoferma ruhha hawn u ma tidholx fi kwistjonijiet ohra li tqajmu mit-Tribunal.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Michael Ellul Vincenti limitatament sabiex it-Tribunal jikkunsidra mill-gdid il-policies rilevanti minnu in linea ma' dak deciz, u kwindi tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-2 ta' Mejju 2013, u tirrinviya l-atti lura lit-Tribunal biex l-appell jinstema' mill-gdid. Spejjez ghall-appellat.

< Sentenza Finali >

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