



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 14/2013

Roseann Gafa'

VS

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
b'digriet tad-9 ta' Mejju 2013
Joseph Debono u martu Mary Debono intervjenew fil-
proceduri**

Il-Qorti,

Rat ir-rikors tal-appell ta' Roseann Gafa' tat-3 ta' April 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013 fejn it-Tribunal cahad l-applikazzjoni ta' renova PA 2422/08 ghal permess mahrug PA 5048/97 kif imgedded b'permess PA 4192/02 ghal bini ta' zewg bungalows fuq sit wiehed;

Rat ir-risposta tal-Awtorita li ssottomettiet illi d-decizjoni tat-Tribunal ghandha tigi konfirmata u l-appell michud;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tal-14 ta' Mejju 2008 – Renewal of Development Permission – PA/2422/08 fejn l-appellanti, f'site at Triq il-Wied, l-Iklin, talbet:

“ to retain villa on plot B as approved in PA 5048/97 and change plans and elevations on plot A for the construction of detached villa.”

Permezz ta' rifjut mahrug fit-13 ta' Jannar 2009 l-Awtorita' dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

“1 The proposal cannot be considered under the renewal application criteria as set by provisions 33(3) of the Development Planning Act since there is no firm physical commitment on site for the lower bungalow development, as required in Paragraph (iii) of the Local Plans Interpretation Document (2007).

2 The proposed development is unacceptable since it does not comply with policy 3.2 of Development Control Policy & Design Guidance 2007 which requires a minimum side curtilage of 6m. The proposal therefore does not comply with the Central Malta Local Plan for the area nor with the conditions that apply to that scheme and so it is counter to CMLP policy EG08 which requires development in detailed in the Development Control Policy & Design Guidance. ”

Il-Perit Mario Grech ressaq l-aggravji tal-appellanti kif gej:

“Prior to going through my reasons for appeal, I would like to explain the sequence of facts which to date governed this application:

a. When the current applicant purchased the land in question on the 22/06/99, it was already covered by a Permit namely PA 5048/97 issued on 15/09/98 for the construction of two back to back bungalows, one accessible from Triq il-Wied, the other from Triq l-Awrekarja, which was a schemed road.

b. On the 15/09/2003, Permit PA 4192/02 was approved covering both bungalows. In this approved permit, the same plan for the bungalow accessible from Triq il-Wied was retained, whilst changes to the elevation of the upper bungalow were made. The same footprint as originally approved in PA 5048/97 was retained.

c. Works were initiated on the upper bungalow, that is the one accessible from Triq l-Awrekarja in October 2003. In October 2004, an enforcement notice ECF 905/04 was issued. The reasons constituting the irregularities were the following:

- i. A basement without a permit
- ii. Side curtilage less than as approved
- iii. An unopened schemed road

d. An application PA 5860/05 was filed in the meantime to sanction basement and to create a temporary access from Triq il-Wied until the upper schemed road would be opened up. This application was refused in June 2008

e. These irregularities were positively addressed by the applicant and wavered off as declared by Enforcement Officers Charles Gafa and Anthony Baldacchino. Although the upper road was removed as a schemed road in the 2006 Local Plan without holding any consultations, the Directorate was legally advised that "id-Drittijiet li jinghataw fil permess qabel il-local plans jibqghu validi sad-data ta' l-iskadenza tal-permess ghax huma vested rights u ghalhekk kellha tinfetah it-triq". The road was therefore formed, all irregularities positively addressed and wavered off as declared by Enforcement Officers Charles Gafa and Anthony Baldacchino. ECF 905/04 was therefore revoked on the 1/09/2008

f. Works were resumed and the objectors filed in an injunction order requesting the Court not to allow the works to proceed. On the 15/10/2008, after scrutinizing all the documents presented, and hearing all the relevant evidence from MEPA officials, the Court revoked the injunction order.

With reference to the refusal of the above mentioned Development permission dated 13th January 2009 I would like to appeal for the following reasons:

1. With reference to the reasons given in paragraph 1 of the letter of refusal, it was stated that the renewal proposal cannot be considered since there is no firm physical commitment on site for the lower bungalow development. At this point I would like to quote what has been commented in this regard by the case officer in the DPA Report (copy of which is being attached and marked as Doc 'A'):

"The site is already considered to be committed to the development permitted in PA 4192/02 since the upper lying dwelling is almost fully developed. Although the lower lying bungalow (the dwelling unit fronting Triq il-Wied) has not yet been developed, it cannot be considered that there is yet no commitment for the building of this unit because both permits PA 5048/97 and PA4192/02 considered the development of the site in a holistic manner, taking into consideration both units."

2. With reference to the reasons given in paragraph 2 of the refusal letter, it is stated that the proposed development is unacceptable since it does not comply with the minimum side curtilage requirement of 6meters. It is to be noted that the construction works as carried out on site strictly abide with the width of the side curtilage as approved in PA 4192/02. What is expected by MEPA from me as Architect directing works on site is to abide as faithfully as is possible to the approved plans.

Up to the expiry date of the permit which was on the 15th September 2008, construction works were ongoing on site without any objections from MEPA. There were less than 5% remaining construction works (about two weeks work) to be carried out to finish the whole project. When the works were stopped, this was due to the expiry of the permit and not for any other technical reasons.

A renewal application (PA 02422/08) was placed with MEPA with a recommendation to grant. A copy of the

DPA Report is attached as Doc 'A'. Up to the date when we ran out of time, the applicant had spent more than 170,000 Euro doing what was approved to be carried out.

It is felt that after considering

- The amount of financial input on this site
- And the fact that works to date follow an approved permit, the application to renew this application should be favorably considered.”

Permezz ta' ittra l-Perit Martin De Bono pprezenta l-oggezzjoni tal-appellanti terzi Debono hekk kif ipprezentata precedentement lill-Awtorita' kif gej:

“The application is not valid as the application type is being designated as a renewal of development permission while the proposal is for the construction of a detached villa. The application is also implying the changing of elevations and plans which are normally not allowed in an application for the renewal of the development permission.

- The plans seem to be similar or identical to the plans submitted in a previous application PA 05860/05 which was refused by the DCC.
- The objections that were presented in the previous application by various residents that were objecting to the building of a four story structure in an area designated for bungalows.
- The plans violate the site cartilage conditions of the area, in fact the building that is mainly already built abbutts directly on the boundary wall that is common with the objectors that I am representing.
- The area is designated for bungalows with one habitable floor and not for four story villas.
- There was an enforcement order issued on the site regarding the existing illegal works and it seems that the sanctioning was not approved. (ECF 905/04)

There is also an audit officer report that justifies the concerns of the objectors. (Audit Report 2004/062).

The following are the usual MEPA procedures that also seem to be in non accordance with the proposed plans.

- The project comprises of a huge overdevelopment of the area. The proposal is going to have a deleterious impact on the area. In accordance with BEN 1 from the Structure Plan for the Maltese Islands, policy BEN I specifies that development will not normally be permitted if the proposal is likely to have a deleterious impact on the existing or planned adjacent uses because of visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times, or any characteristic which in the opinion of the Planning Authority constitute bad neighborliness.
- The proposal is incompatible with the adjacent planning uses. In accordance with Policy BEN 2 of the Structure Plan, Development not permitted if this is incompatible with the good urban design, natural heritage, and environmental characteristics of existing or planned adjacent uses, and it is unlikely to maintain the good visual integrity of the area in which it is located,
- This would not be in the interest of the amenity of the area as a whole and it would exacerbate the problems of overdevelopment in the area, The proposal is therefore unacceptable and runs counter to structure plan policy BEN1
- The proposal constitutes what one could describe as unacceptable in that it lacks coordination, contains a variety of disparate styles and fails to respect or reflect the local context. It is therefore incompatible with the principles of good urban design and with the characteristics of the area, as it is unlikely to maintain the visual integrity of the area in which it is to be located. It is therefore counter to the structure plan for the Maltese Islands.

The development is clearly out of context and should be again refused.

The objectors would like to request that they be present in all the respective Development Control Commission meetings and to be informed about any progress of the application in question.”

Permezz ta' rapport l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

“5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 As outlined in the previous sections of this report, this application concerns the renewal of a development that was approved in PA 4192/02. From the date of the issuing of this permit and the present renewal application there have been material changes in the zoning conditions of the area through the adoption of the Local Plan. This mainly consists in the removal of the schemed road along the west bound site frontage, and from which the approved bungalow 'A' would acquire access.

5.2 Notwithstanding the scheme and policy amendments affecting this site, the Planning Directorate recommended an approval of development permission in- the case of this renewal application. The Planning Directorate concluded with such a recommendation in view of the extent of commitment that was present on site as the development approved in PA 4192/02 was in an advanced stage of construction. In addition, the conditions of the previous permit PA 4192/02 obliged the applicant to open the road in front of his site and ensure that access is provided, and this condition was complied with as explained in paragraph 2.3 of this report.

5.3 The Planning Directorate considered that the extent of commitment created by the works carried out under the validity period of PA 4192/02 resulted in the applicant having a vested right on the previous permit, and hence

merited a favourable recommendation to its renewal. This line of thought followed the provisions of Article 33 of the Development Planning Act, where sub-paragraph (1) states that:

In its determination upon an application the Authority shall: (a) apply the following -

(i) development plans, including the height limitations show in the Temporary provisions Schemes or in local plans, unless the limitation may be modified by applying a planning policy which deals specifically with the maximum building height which may be permitted on a site, which policy shall take into consideration both the site coverage and the building volume which may be permitted on site,

(ii) planning policies:

Provided that subsidiary plans and planning policies shall not be applied retroactively so as to adversely affect vested rights arising from a valid development permission; and

(b) have regard to-

(i) any other material consideration, including aesthetic and sanitary considerations, which the Authority may deem relevant;

(ii) representations made in response to the publication of the development proposal.

5.4 Notwithstanding the arguments presented by the Planning Directorate to justify the stand expressed for its favourable recommendation, the MEPA Board decided that this application could not be acceded to. Of the Board members present no members voted in favour of the proposed renewal, while seven members voted against the Planning Directorate's favourable recommendation. The Board's justification for this overturning is as follows: "the application is not considered to conform to the policies applicable for the area, the original reasons for

refusal recommended by the Directorate are to stand, and the conclusions arrived at by the Audit Officer in his report should have been taken in consideration" (extracted from the MEPA Board minutes of 30th October 2008, paragraph 2901).

5.5 It is to be pointed out that the refusal recommendations by the Planning Directorate referred to in the MEPA Board's decision concern the Directorate's refusal recommendations made for the two previous applications on site in PA 5048/97 & PA 4192/02 due to the proposed development not being in conformity with the provisions of the DC 1/88 which regulated such development at the time. In both applications, the DCC Board had however overturned the Planning Directorate's recommendations and ordered that the respective permits are issued."

Permezz ta' nota l-Professur Ian Refalo ressaq is-sottomissjonijiet ulterjuri inter alia kif gej:

"It must be highlighted that the document LOCAL PLANS INTERPRETATION DOCUMENT, which was issued in support of the Local Plans, specifically provides that where the applicant requests a renewal of the development permit within the validity period in accordance with the provisions 33(3) of the DPA and there is a firm commitment on site in that part of the development which may give rise to a conflict between the existing policies and the previous policies governing the original development permit the principle of the previous permit shall prevail. On the other, if the development has not reached this stage, the provisions of the Local Plan shall prevail.

In the case under appeal, it transpires that circa half of the development, which in effect was covered by the previous permit, is constructed. It therefore follows that site has been "committed" and the principle of the previous permit shall prevail in consistence with the provisions of the LOCAL PLANS INTERPRETATION DOCUMENT.

Case law in fact suggests that a "semi basement" forming part of less than one fourth of a development constitutes a "commitment" in terms of the provisions of the LOCAL PLANS INTERPRETATION DOCUMENT. This principle has been embraced in case PA 1693/09 - Renewal of PA 3538/04. Demolition of existing garage and dwellings and construction of garage and 5 dwellings, where the DCC approved the application in view that the objection in relation to the local plan is in view of the semi basement, and the existing commitment is that the semi basement is already constructed. The DCC reasoned out that a "semi basement" forming part of less than one fourth of a development constitutes a "commitment" and proceeded with the approval of the permit

In the case under appeal, it transpires that circa half of the development covered by the previous permit is already constructed (in the case of PA3538/04, only one fourth of the previously approved development was constructed). The case under appeal certainly constitutes a "committed site", and the principle of the previous permit shall prevail in line with the guiding provisions of the LOCAL PLANS INTERPRETATION DOCUMENT

2. With reference to the reasons given in paragraph 2 of the refusal letter, it is stated that the proposed development is unacceptable since it does not comply with the minimum side curtilage requirement. It is to be noted that the construction works as carried out on site strictly abide with the width of the side curtilage as approved in PA 4192/02. What is expected by MEPA from me as Architect directing works on site is to abide as faithfully as possible to the approved plans. The fact that the enforcement action was wavered is proof enough that there was nothing wrong with the way this building has been constructed.

Up to the expiry date of the permit which was on the 15th September 2008, construction works were ongoing on site without any objections from MEPA. There were less than 5% remaining construction works (about two weeks work) to be carried out to finish the whole project. When the

works were - stopped, this was due to the expiry of the permit and not for any other technical reasons.

This appeal concerns a refusal to a renewal application (PA 02422/08) which the MEPA Directorate had recommended to grant and which project was already 95% done."

Permezz ta' risposta l-perit Michael Falzon ghall-appellanti Gatt wiegeb kif gej:

"1. Illi huma registered objectors li qed joggezzjonaw qhall-hrug tal-permess PA 2422/08. L-oggezzjoni tal-esponenti ghal hrug ta' dan il-permess hija unikament motivata mill-fatt li l-permess li qed jintalab li jiggedded (PA 5048/97) kif ukoll permessi ohra mahruga fuq l-istess sit jindikaw pjanti approvati bi zvilupp li ma jirrispettax iz-zoning conditions tal-area in kwestjoni li hi 'bungalow area'. Kieku ma kienx hekk, l-esponenti ma kien ikollhom ebda interess jew raguni ghaliex joggezzjanaw ghal dan il-permess.

2. Illi rizultat tal-hrug abbuziv ta' dawn il-permessi, l-esponenti qed ibatu Danni minhabba li l-valur tal-proprjeta' taghhom jonqos drastikament meta tmiss mas-sit tal-bungalow taghhom (mibnija skont iz-zoning conditions ta' bungalow area) ikun approvat zvilupp li ma josservax l-istess zoning conditions u li jesponi l-proprejta' taghhom ghal overlooking mill-proprjeta' adjacenti - sitwazzjoni li suppost hi evitata permezz taz-zoning conditions ta' bungalow area.

3. Illi fil-fatt il-permessi mahruga ghal dan is-sit u li huma imsemmija fin-nota tal-appellant japprovaw zvilupp li ma josservax tnejn minn dawn iz-zoning conditions, cioe':

- Is-side curtilage suppost huwa strettament wiehed ta' sitt (6) metri izda din il-kondizzjoni mhix osservata.
- Il-limitu ta' l-gholi ta' zewg sulari mhux osservat.

Dawn in-nuqqasijiet kienu jezistu fil-permess originali ghal zvilupp fuq is-sit (PA 5048/97) u sussegwentement anki fil-permess PA 4192/02.

4. Dawn in-nuqqasijiet kienu wkoll ikkonfermati mir-rapport tal-Awditur ta' l-Awtorita' (ref: 2004/062) li kopja tieghu qed tigi mehmuzza ma' din is-sottomissjoni. Dan ifisser illi l-permessi PA 5048/97 kif ukoll il-permess PA 4192/02 huma t-tnejn ivvizjati u ghadaqstant m'ghandhomx ikunu imgedda.

5. Ir-referenzi li saru fin-nota ta' l-appellant dwar il-policy tal-MEPA f'kazi ta' renewals ta' permessi jirreferu ghal permessi debitament mahruqa skond il-provedimenti tal-ligi u l-policies vigenti meta nharqu izda hu logiku u ragonevoli li l-policy normali dwar renewals ma jghandhix tkun applikata ghal-renewal ta' permess li ma messu qatt kien approvat ghax hareg bi ksur sfaccat taz-zoning conditions vigenti meta kien approvat.

6. Ghadaqstant t-talba tal-appellanti ma ghandiex tintlaqa u l-appell ghandu jkun michud.”

Fl-access mizmum fid-29 t'April 2011 fuq is-sit de quo l-Awtorita' rrilevat li l-bini ezistenti jikkonsisti fi tlett sulari fuq basement sottostanti minn naha tat-triq principali li hija triq wiesa u principali. Gie spjegat li kieku kellu jigi utilizzat il-permess kollu hemm daqs 50% mill-izvilupp li diga nbena. It-Tribunal izjed tard acceda minn naha ta' wara fejn hemmhekk Jonathan Borg spjega li originarjament kien hemm schemed road progettata pero wara din giet revokata.

Permezz tar-risposta finali tieghu l-Perit Robert Musumeci ressaq il-kummenti tieghu kif gej:

“1. Illi in linea preliminari irid jinghad li l-applikazzjoni meritu ta' dan l-appell (u cioe PA 2422/08) si tratta ta' renewal tal-permess PA 4192/02 gja mahrug.

2. L-applikazzjoni PA 2422/08 meritu ta' dan l-appell giet debitament intavolata sabiex jigi rinovat il-permess

PA4192/02 biex b'hekk il-bini, (li sal-lum inbena aktar min-nofsu) jitkompla skont il-pjanti gja approvati fil-permess PA2422/08.

3. Illi si segue li s-sit in kwestjoni huwa kompromess u dan kif addirittura kien ikkonfermat mid-Direttorat fid-DPA relatv koncernanti l-applikazzjoni PA2422/08 odjerna, fejn ex admissis jinghad: "the site is considered to be already committed to the development permitted in PA4192/02 since the upper dwelling is almost fully developed ... therefore as the site is already committed to this development (approved as such by way of PA4192/02) since the construction is midway.. "

4. Illi qed jinghad li l-pjanti gja approvati fil-permess PA4192/02 ma jottemporawx mal-policies vigenti u dan stante li fil-frattemp, il-policies inbidlu. Cio nonostante, irid jigi enfasizzat li d-disposizzjonijiet tal-Local Plans Interpretation Document jipprovdu inter alia is-segwenti:

"WHAT IS THE STATUS OF OUTLINE PERMITS AND FULL DEVELOPMENT PERMITS IN RELATION TO CHANGES IN THE LOCAL PLAN?: [...]Where the applicant requests a renewal of the development permit within the validity period in accordance with the provisions 33(3)of the DPA and there is a firm commitment on site in that part of the development which may give rise to a conflict between the existing policies and the previous policies governing the original development permit the principle of the previous permit shall prevail. [...]."

5. Illi minn dan il-provediment, jirrizulta car li meta applikant jitlob renewal ta' permess waqt li l-permess originali ghadu pendenti, id-disposizzjonijiet ta' dak il-permess jibqghu in vigore purché jigi ipprovat li hemm "firm commitment".

6. Issa fil- kaz in disamino, huwa pacifiku li (i) l-applikazzjoni PA2422/08 odjerna kienet intavolata waqt li l-permess PA4192/02 kien ghadu validu, (ii) is-sit in kwestjoni huwa kompromess u dan kif addirittura ikkonfermat mill-Awtorita stess meta ex admissis stqarret

permezz tad- DPAr koncernanti PA2422/08: "the site is considered to be already committed to the development permiettd in PA4192/02 since the upper dwelling is almost fully developed ... therefore as the site is already committed to this development (approved as such by way of PA4192/02) since the construction is midway" - ghalhekk ma hemm ebda kontestazzjoni li s-sit huwa committed; u (iii) ma jesisti ebda enforcement fuq is-sit u dan kif ikkonfermat l-istess Awtorita fil-mori ta' dawn il-proceduri.

7. Illi di piu', fl-istess DPAr koncernanti PA2422/08 odjerna, id- Direttorat insista inter alia is-segweni: "from a planning point of view it is important to develop the lower lying dwelling unit (u cioe il- kumplament rimanenti tas-sit) since this would create a stepping effect that reflects and follows the topography of the valley slope" L- Awtorita izzid tikkonferma li "the absence of the lower lying dwelling unit would result in the upper , dwelling to be perceived as a building on 3 floors plus semi basement when viewed from Triq il- Wied to the detriment of the visual amenity of the neighbourhood which is designated for bungalow development." Isegwi ghalhekk li l-commitment irid jittihed fil- kuntest ta' binja WAHDA, li giet iddisinjata bhala entita shiha u vizwalment integrata. tant li tali binja giet approvata PERMEZZ TA' PERMESS WIEHED. cioe' PA2422/08. Illum din il- binja inbniet nofsa u allura ma hemmx dubju li fuq is-sit de quo jesisti "firm commitment" kif wara kollox osserva d- Direttorat stess fid- DPAr koncernanti din k- applikazzjoni. 'Bir-ragun ghalhekk li d- Direttorat stess (permezz tad- DPAr koncernanti PA2422/08 odjerna) esprima ruhhu is-sens li l- bini ghandu jitkompla kif in effetti kien originarjament approvat biex jinholoq l- "isteping effect".

8. Illi subordinament ghas-suespost, u b' riferenza ghal li dak li allegaw l-objectors in kwantu li l- pemess PA 4192/02 hareg b' mod illegali, irid jinghad li tali asserzjoni hi ghal kollox infondata. Difatti, kieku ipotetikament kien il-kaz, l- Awtorita kienet f'dan il- perijodu tirrevoka tali permess a bazi ta' allegat ksur ta' l- Artikolu 77 ta' l- Att tal- 2010 dwar l- Ambjent u l-Ippjanar ta' l- Izvilupp

(precedentement l- Artiklu 39 A ta' l- Att dwar l-Ambjent u l- Ippjanar) rizzultanti minn xi "zball f'dokument li jidher minn ezami ta' l-istess dokument" jew allegat ksur ta' punt ta' ligi ghaliex il-Bord ma ddecidiex skond il- provvedimenti tal- policies u ligijiet vigenti kif titlob l-istess ligi.

9. Illi ta' min ifakkar li permezz ta' decizjoni ricenti fl- ismijiet Emmanuel Peresso vs MEPA moghtija mill- Bord ta' l- Appell dwar l- Ippjanar (PAB 170/08 ISB. PA 2267/07), liema decizjoni tirrigwardja proprju is-sit fuq in- naha l- ohra tat-triq, inghad is-segwenti:

"Mill-access li nzamm fuq is-sit, il-Bord seta' jinnota li jezitu hafna vilel flistess naha ta' triq li huma fil-fatt mibnija zewg sulari 'l fuq mill-livell tat-triq. In oltre' is-sit huwa karatterizzat min dizlivell notevoli bejn il-parti ta' wara u l- parti ta' quddiem li tmiss ma' triq. Infatti, il-Bod innota zvilupp approvat mill-MEPA fil-vicinanze fejn saret eskavazzjoni totali tas-sit li turi dislivell li jeccedi 10 metri f'terminu tal-gholi. Il-propost zvilupp huwa wiehed li jikkunsidra il-kuntest tas-sit u jaddatta ruhu fit-termini li jutilizza lparti ta' sit li tigi skavata. In oltre zvilupp to' zewg semi-detached villas b'footprint limitat certament ma jistax jigi konsidrat bhala overdevelopment. Mis-section Red 1C ipprezentat, il-bini propost huwa certament kompatibbli mal-karattru tal-vilel fil-vicinanza u lima jeccedix l- gholi tal-binjiet ezistenti. Wiehed ma jistax jinjora l-fatt li diga jezistu diversi binjiet li huma fuq zewg sulari u fatt iehor huwa d-dizlivell konsiderevoli ta' l-art fis-sit in kwistjoni li wiehed ghandu certament jikkunsidra. Id-disinn propost huwa wiehed mahsub u li jiehu akkont tal-kuntest tas-sit. Dan il-Bord huwa ta' l-opinjoni li wiehed ghandu jaghmel assessment tal-progett kif propost fil-kuntest tas-sit kif jinsab prezentament. Ghal dawn il-motivi dan il-Bord qieghed jilqa' b'mod favorevoli l-izvilupp propost." Din id- decizjoni giet citata mill- esponenti bil-ghan li dan it- Tribunal ikun f'posizzjoni ahjar li japprezza ilkunsiderazzjonijiet partikolari ta' dawn l- inhawi fl- Iklin, fejn kif sostna il-Bord ta' l- Appell ex admissis, "jezistu diversi binjiet li huma fuq zewg sulari u [...] d-dizlivell konsiderevoli ta' l-art fis-sit in kwistjoni li wiehed ghandu certament jikkunsidra." Mill- banda l- ohra, anke kieku in

pessima ipotesi, il-Bord ta' l- Appell irraguna b' mod differenti, id-drittijiet ta' l-appellant odjern naxxenti mill-permess PA 4192/02 xorta wahda ma setghux jigu pregudikati, u dan ghar-ragunijiet moghtija aktar 'il fuq. Detto cio, linsenjament tal- Bord ta' l- Appell fil- kaz ta' PA 2267/07 ikompli jimmilita favur l-appellant odjern.

10. Illi in konkluzjoni jigi affermat li tenut kont tal-kunsiderazzjonijiet sopracitati, senjatement : (i) l-applikazzjoni PA2422/08 odjerna kienet intavolata waqt li l- permess PA4192/02 kien ghadu vigenti, (ii) is-sit odjern huwa committed (iii) il-pjanti aprovati fil-permess PA4192/02 antecedenti jipprevalu fuq id-disposizzjonijiet tal-Pjan Lokali, (iv) is-sit mhuwiex kolpit b' ebda enforcement, u allura kwalsijasi allegazzjonijiet qua zvilupp illegali huma infondati u (v) kienet l- Awtorita stess li insistiet li huwa importanti li l-bini jitkompla u jigi integrat kif in effetti gie propost fil- permess PA 4192/02 precedenti, biex b' hekk jissussisti l- "stepping down effect" li jirrispekkja t-topografija ta' l- intorni, l- esponenti jitlob lil dan it- Tribunal sabiex jirrevoka d-decizjoni tal-Kummissjoni u jordna t-tigdid tal-permess PA4192/02."

Permezz ta' nota l-Avukat Anna Mallia ghall-konjugi Debono wiwgbet kif gej:

"a. In-nota responsiva mibghuta ghan-nom taghhom mill-Perit Mario Cassar liema nota l-avukat sottoskritt tikkondividi pjenament maghha.

b. Oltre n-nota, l-esponenti jissollevaw li din hija applikazzjoni biex jigi rinovat l-permess PA4192/02 biex skond l-appellanti "l-bini li sal-lum inbena aktar min nofsu, jitkompla skond l-pjanti gia approvati fil-peremzz PA 2422/08.

Bini illegali

c. Li t-Tribunal ma jistghax jinjora li hemm zvilupp illegali fuq is-sit u l-bini li sar ma sarx skond P A 2422/08 tant li hemm zewg sulari basements li huma mibnija bla permess kif ukoll hemm dikjarazzjoni falza mill-appellanti li

qed tghid li ghandha access ghat-triq minn fejn fl-applikazzjoni taghha ghamlet l-entrata tal-bini.

d. Illi PA2/96 hija cara dwar kif wiehed ghandu jirregola zvilupp mhux awtorizzat liema procedura l-appellanti injorat kompletament u ma ghamlet ebda applikazzjoni biex tissana l-bini illegali li ghandha. L-artikolu 52 tal-Kap 356 jispecifika dan u jaghmel din il-procedura tassativa biex min japplika ghal zvilupp jehtieg li fl-applikazzjoni tieghu jinkludi li l-izvilupp attwali jigi ssannat.

Kif dejjem irritenew il-Qrati taghna fosthom sentenza tal-Qorti tal-Appell Inferjuri per RCP deciza fis-27 ta' Novembru 2008 fl-ismijiet John Spiteri vs l-Awtorita ta' Malta Dwar l-Ambjent u l-Ippjanar li PA 2/96 fil-paragrafu 3 "johrog car kemm mill-kliem uzat fl-istess cirkolari fil-paragrafu gia citat fejn qed tikkonternpla l-issanar ta' zvilupp illegali qabel ma jigi kkunsidrat zvilupp gdid u kif ukoll mill-introduzzjoni tal-istess cirkolari li tipprovdi f'paragrafu 1 li l-iskop tal-istess cirkolari kien sabiex jirrabadixxi "the need for the regularizing of illegal or unauthorized development before new development can be considered ...".

Dikjarazzjoni Falza

e. l-appellanti ddikjarat li hija sit l-art u li ghandha access ghat-triq li tiehu ghal fejn trid li jigi l-bieb principali fl-applikazzjoni taghha.

f. Illi rrizulta li dan mhu minnu xejn stante li kif l-esponenti ppruvaw permezz tad-dokumenti annessi mal-ittra taghhom tal-25 ta' Mejju 2011 l-art mhix propjeta tal-appellanti u s-sidien ezistenti qatt ma taw l-kunsens taghhom biex l-appellanti jkollha access minn fuq il-propjeta taghhom.

g. Li ghalhekk triq u cioe access ghal dan l-izvilupp l-appellanti ma ghandhiex.

h. Li l-artikolu 32(3) tal-kap 356 huwa car u l-appellanti ma kkonformatx ruhha ma' din id-dizpozizzjoni tassativa tal-

ligi u cioe li tavza lis-sid bl'intenzjoni li tapplika b'ittra registrata li l-Awtorita tkun irceviet kopja taghha. Kien hemm difatti diversi decizjanijiet tad-DCC u tal-Qorti tal-Appell sede Inferjuri li gew michuda proprjament fuq dan l-punt fosthom Gordon Ascak vs L-Awtorita tal-ippjanar deciza 28/2/1997 Appell nru 2A/96 u Michael Abela vs Kummissjoni ghal Kontroll ta' l-Izvilupp deciza 11/5/1998 Appell nru 121/97.

i. Li tali talba tal-appellanti ghalhekk ghandha tigi dikjarata nulla ai termini tal-artikolu 32(3) tal-Kap 356 stante li jidher car li l-istess rikorrenti fl-ebda stadju tal-appell quddiem dan it-Tribunal ma kkonformat mal-istess disposizzjoni .

j. L-esponenti jaghmlu referenza wkoll ghas-sentenza Saviour Falzon vs l-Awtorita tal-Ippjanar (A.C 3115/1996) fejn inghad li:

"mill-banda l-ohra pero ligi car u espress m 'ghandhiex tigi injorata impunement. Mhux biss, Elementi konsidrati bhala essenzjali fl-applikazzjoni tal-permess sottomess lill-Awtorita ghandhom jigu sewwa osservati anke that piena ta' nullita ghaliex il-ligi meta tistipula dawn l-elementi u tesigihom tkun qed taghmel hekk mhux biss biex tipprotegi s-serjeta tal-proceduri imma wkoll l-interessi kemm tal-applikant kif ukall ta' terzi interessati. ".

Issir ukoll referenza ghall-artikolu 2 tal-Kap 356 li jaghti defmizzjoni ta' sid u jidher car li d-definizzjoni ta' sid ma tapplikax ghar-rikorrenti stante li mhix sid tal-art kollha mertu tal-applikazzjoni. (vide Jane Cini vs Kummissjoni ghal Kontroll tal-Izvilupp deciza 27/3/2003 Appell Civili Nru 2/2001.)

Ghaldaqstant in vista tal-premess, tan-nota tal-osservazzjonijiet tal-Perit Mario Cassar u tal-objectors l-ohra, l-appell ghandu jigi michud."

Permezz ta' nota l-Perit Mario Cassar ressaq il-kummenti tieghu kif gej:

“1. Rigward li din l-applikazzjoni mertu ta' dan l-appell tittratta renewal tal-permess PA 4192/02, l-esponent jirreferi lit-Tribunal ghar raguni ghar-rifjut tal-Bord li kkundidra l-applikazzjoni fejn kien car li r-raguni principali ghar-rifjut bhalta;

"The proposal cannot be considered under the renewal application criteria as set by provisions 33(3) of the Development Planning Act since there is no firm physical commitment on site for the lower bungalow development, as required in Paragraph (iii) of the Local Plans Interpretation Document (2007). 2 – The proposed development is unacceptable since it does not comply with policy 3.2 of Development Control Policy & Design Guidance 2007 which requires a minimum side curtilage of 6m. The proposal, therefore does not comply with the Central Malta Local Plan for the area nor with the conditions that apply to that scheme and so it is counter to CMLP policy CGOS which requires development in the residential priority area to be compliant with the relevant conditions as detailed in the Development Control Policy & Design Guidance.

2) Dwar it-tieni punt ittrattat mill-Perit Musumeci, dawn il-fatti kollha kienu ghal-kunsiderazzjoni quddiem id-DCC, li ddecidiet, wara li kellha l-fatti kollha ghad- dispozizzjoni tieghu.

3) The DPA report that is-sezzjoni 3i) " Where the street bordering the site is unopened, it shall be opened up prior to the commencement of the building operations hereby permitted."

Dwar dan il-punt krucjali fl-approvazzjoni tal-permess o meno, il-Perit Musumeci ghazel illi ma jikkummentax. Dan ghalix kif spjegajt fir-rapport precedenti tieghi u ta' Dr. Anna Mallia, l-applicant qatt ma jista jiftah it- triq biex ikollu access ghall-izvilupp tieghu ghalix il-propjeta' fuq in-naha ta' wara hija ta' terzi- is-Sinjuri Attard u l-konjugi Formosa (Cit. Ref.3147/1996-Qrati ta' Malta).

4) Dwar dan il-punt, sa fejn jaf l-esponent il-policies vigenti dwar is-site curtilage u l-height limitation kienu l-istess fil-perjodu li gew ikkunsidrati iz-zewg applikazzjonijiet ta' zvilupp jigifieri PA4192/02 u PA2422/08.

Dwar il-punt numru 7) li ndirizza il-Perit Musumeci u li qieghed jirrepeti x'hemm fid-DPA report dwar illi l-istess Case Officer Report li huwa tal-opinjoni illi ghandha tinbena il-lower lying unit biex l-upper lying dwelling to be perceived as a building on three floors plus semi-basement when viewed from Triq il-Wied ... B'dan il-Case Officer qieghed jissuggerixxi illi tinbena il-villa li taghti fuq Triq il-Wied biex tghatti d-dnub tal-villa that kunsiderazzjoni.

Dwar punt 8) l-argument jibqa illi l-permess ma jistax jigi approvat minhabba n-nuqqas ta' ' access minn triq iffurmata ghal-propjeta' taht kunsiderazzjoni.

KONKLUZJONI

Illi l-esponent huwa tal-opinjoni illi inutli noqghodu nduru mal-lewza, u nghazlu illi ninjoraw il-punt kardinali illi kull raguni, valida o meno ma' tistax tigi kkunsidrara sakemm il-kwistjoni tal-access minn Triq miftuha jigi rizolta, u dan qatt ma jista jkun fil-kundizzjonijiet prezenti, meta l-art hija propjeta' ta' terzi.

Kif gie ppruvat, din ma hix opinjoni tal-esponent izda il-kaz huwa mertu ta' sentenzi tal-Prim Awla tal-Oorti Civili.”

Permezz tat-tieni statement taghha l-Awtorita' rrilevat kif gej:

“1. The appellant submitted his comments on the 19th December 2011 in reply to the Authority's initial report to the Tribunal. The thrust of the appellant's main argument is that since there is firm commitment on site of the development approved in PA4192/02 then the renewal application (PA2422/08) should be granted as provided for in the Local Plan Interpretation Document.

2. The Authority does not agree with the appellant. The approved development in PA4192/02 consists of two bungalow dwellings independent and separate from each other. Of these, only one dwelling has been constructed. The dwelling that has already been built does not depend in any way in order to function on the dwelling that has not been constructed. The proposal cannot be considered under the renewal application criteria as set by provisions 33(3) of the Development Planning Act since there is no firm physical commitment on site for the lower bungalow development, as required in Para. (iii) of the Local Plans Interpretation Document (2007).

3. In view of the above, the appellant's argument that the proposal should be accepted, even if it runs counter to current policies, on the grounds of firm commitment is not considered valid. This means that the current policies have to apply in this case since there is no commitment on site for the proposed development.

4. The proposed development is unacceptable since it does not comply with policy 3.2 of Development Control Policy & Design Guidance 2007 in relation to minimum side curtilage which requires a minimum side curtilage of 6m. The proposal therefore does not comply with the Central Malta Local Plan for the area nor with the conditions that apply to that scheme and so it is counter to CMLP policy CG08 which requires development in the residential priority area to be compliant with the relevant conditions as detailed in the Development Control Policy & Design Guidance 2007

5. The PAB decision referred to by the appellant is not comparable because it refers to a refusal by the Authority for the construction of two semi-detached dwellings forming a single bungalow in the vicinity on the basis of consisting of two full floors in an area of one floor height limitation and overdevelopment. The case in this appeal refers to a bungalow development that has been refused since it does not respect the necessary site curtilages as set in the DC2007."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghar-renewal tal-permess, full development permission PA 4192/02, li kien jemenda il-permess PA 5048/97 originali li kien ghat-twaqqieh ta' villa li kienet ezistenti u l-kostruzzjoni ta' zewg semi-detached villas (Bungalow 'A' u Bungalow 'B') b' basements sottostanti u swimming pools. Il-permess PA 4192/02 kien hareg fil-15 ta' Settembru, 2003 biex isiru emendi f'Bungalow 'A' u kellu skadenza ta' hames snin. Waqt li l-permess kien hareg specifikament biex isiru xi emendi f' Bungalow 'A', l-izvilupp kopert bil-permess kien xorta jkopri iz-zewg semi-detached villas.

It-talba in ezami, li saret fl-14 ta' Mejju, 2008, kienet saret peress li x-xoghol kopert bil-permess PA 4192/02 kien ghadu ma' tlestiex. F' din l-applikazzjoni, l-applikant, illum l-appellant, ma' kien qed jipproponi ebda tibdil mill-permess PA 4192/02.

Meta saret l-applikazzjoni in ezami kien jirrizulta li Bungalow 'A' kienet fi stat avanzat ta' kostruzzjoni waqt li, skond l-Awtorita', ma' kien sar ebda xoghol ta' kostruzzjoni fuq Bungalow 'B'.

Is-sit mertu ta' dan l-appell jinsab gewwa 'Residential Priority Area for bungalow development' fi Triq il-Wied, l-Iklin.

Din l-applikazzjoni giet rifjutata peress li:

- Il-proposta ma tistax tigi kkunsidrata taht il-kriterji ghat-tigdid ta' applicazzjoni skond id-dispost 33(3) tad-Development Planning Act peress li ma jezistix commitment ghall-izvilupp tal-lower bungalow kif rikjest fil-paragrafu (iii) tal-Local Plans Interpretation Document (2007); u
- L-izvilupp propost mhuwiex accettabbli peress li mhuwiex in linea mal-policy 3.2 tad-Development Control Policy & Design Guidance 2007 li jirrekjedi side curtilage minimu ta' 6 metri, u li ghalhekk il-proposta mhijjex in linea ma Central Malta Local Plan ghaz-zona u tmur kontra l-policy CG08 tas-Central Malta Local Plan.

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

L-appellant jissottometti, inter alia, li:

- Skond id-DPA report jezisti commitment peress li l-permessi PA 5048/97 u PA4192/02 qiesu l-izvilupp tas-sit b'mod olistiku mehud kont tas-zewg units;
- Ix-xoghljiet ezegwiti fuq is-sit huwa perfettament in linea mal-kundizzjonijiet tal-PA 4192/02 ghal dak li jirrigwarda s-side curtilage;
- Sal-gurnata li fiha skada l-permess u cioe fil-15 ta' Settembru 2008 ix-xoghljiet baqghu ghaddejjin minghajr oggezzjoni mill-Awtorita' u li kien jonqos biss 5% tax-xoghljiet ghall-iffinalizzar tal-progett;
- Ix-xoghljiet twaqqfu biss in vista tal-iskadenza tal-permess; li giet prezentata applikazzjoni PA 2422/08 b'rakkomandazzjoni sabiex jinhareg il-permess u li sal-iskadenza tal-permess l-appellant kien nefaq izjed minn €170,000 f'xoghljiet ta' kostruzzjoni approvati.

L-objectors jissottomettu, inter alia, li:

- Il-proposta hija fil-fatt ghall-izvilupp ta' detached villa;
- L-applikazzjoni hija wkoll ghal tibdil fl-elevations u pjanti li mhuwiex permissibbli f'applikazzjoni ghal tigidid ta' permess gja mahrug;
- Jidher li l-pjanti huma simili jew identici ghal dawk prezentati fl-applikazzjoni PA 05860/05 li giet michuda mid-DCC;
- Gja gew mressqa diversi oggezzjonijiet ghal zvilupp ta' bini ta' erba sulari f'zona mmarkata ghal bungalows;
- L-izvilupp propost ma jirrispettax il-kundizzjonijiet dwar side cartilage ghaz-zona;
- Jidher li l-ordni ghall-infurzar ECF 905/04 ma giex sanzjonat;
- Jezisti rapport numru 2004/062 tal-Audit Officer li jirrispekkja l-oggezzjonijiet tat-terzi;
- Jidher li diversi policies mhumix qieghdin jigu onorati fosthom l-policies BEN 1 u BEN 2; u
- L-izvilupp propost huwa inaccettabbli peress li mhuwiex ikkordinat, ghandu stili wisq differenti u ma jirrispettax il-kuntest lokali.

Fiz-zewg rapporti taghha l-Awtorita' tissottometti, inter alia, li:

- Il-Bord tal-Awtorita' cahad it-talba tal-appellant peress li: "the application is not considered to conform to the policies applicable for the area, the original reasons for refusal recommended by the Directorate are to stand, and the conclusions arrived at by the Audit Officer in his report should have been taken in consideration" (estratt mill-minuti tal-Bord tal-Awtorita' tat-30 t'Ottubru 2008, paragrafu 2901);
- Ir-rifjut huwa rifless fir-rakkomandazzjonijiet li kienu saru ghar-rifjut fl-applikazzjonijiet PA 5048/97 u PA 4192/02 in vista li l-izvilupp propost ma kienx konformi ma DC 1/88;
- Il-permess PA 4192/02 jikkonsisti f' zewg bungalows indipendenti minn xulxin u separati. Minn dawn wahda biss giet mibnija. Il-bungalow li lahqet inbniet ma' tiddependi bl-ebda mod mill-bungalow li ma' nbniex. Ghalhekk, peress li m' hemm ebda forma ta' commitment fil-parti tas-sit fejn kellha tinbena t-tieni bungalow ma' japplikawx il-provvedimenti 33(3) tad-Development Planning Act f' din il-parti tas-sit;
- Ghalhekk f' din il-parti tas-sit ghandhom japplikaw il-plans and policies vigenti;
- Il-proposta tat-tieni bungalow mhix accettabbli peress li m'hix konformi mal-policy 3.2 tad-DC 2007 fir-rigward tal-minimum side curtilage ghalhekk il-proposta mhix konformi mal-policy CG08 tal-pjan lokali; u
- L-ezempju li gab l-appellant mhux komparabbli mal-kas in ezami.

Ezaminati fid-dettal il-dokumenti fil-file tal-appell u anke dak tal-applikazzjoni jirrizulta li l-punti li jridu jigu decizi minn dan it-Tribunal f' dan il-kas huma:

- Jekk il-fatt li jkollok permess ta' zvilupp fuq sit ifissirx li ghandek vested right li tizviluppa s-sit; u
- Peress li din hija renewal application irrid jigi deciz jekk, meta l-appellant ghamel l-applikazzjoni ghar-renewal, ix-xoghol li kien lahaq sar fuq is-sit kienx tali li ma' jaghmilhiex possibbli li jsir it-tibdil necessarju fil-bqijja tal-progett biex l-izvilupp li baqa' jsir jigi konformi mal-policies vigenti.

Fuq l-ewwel punt il-pozizzjoni tat-Tribunal hija cara hafna. Permess jinghata b'validita' ghal zmien fiss li generalment ikun ta' hames snin. Fil-perjodu li jkun ghadu validu l-permess certament li jezisti vested right. Meta jiskadi it-terminu ta' hames snin u l-permess ikun ghadu ma' ssarrafx allura hija haga logika li l-vested right jintilef. Din hija s-sitwazzjoni f' dan il-kas.

Bhala applikazzjoni ta' renewal irid issa jigi kkunsidrat jekk l-applikazzjoni PA 4192/02 kelliex tigi imgedda anke fid-dawl tal-fatt li fil-frattemp dahal fis-sehh il-pjan lokali.

F'dan il-kuntest il-frazi 'is-site hija committed' li tintuza f' kazi ta' renewal tfisser li l-bini propost mill-permess originali lahaq fazi li jkun diffici li tapplika l-policies vigenti illum fil-parti tal-izvilupp li ghad trid tinbena' u f'kazi bhal dawn jibqghu japplikaw il-policies originali.

Jrid jigi pprecizat li l-kelma 'committed' uzata f' dan is-sens ma' tfissirx l-istess haga bhal meta tintuza l-istess kelma fis-sens ta' koncentrazzjoni jew propensita' ta' zvilupp f' certa zona li jkun imur kontra l-policies applikabbli f' dik iz-zona.

Ghalhekk f' dan il-kuntest il-kelma 'committed' jista jkolla biss l-ewwel tifsira u mhux it-tieni.

Skond il-Local Plans Interpretation Document, meta hemm commitment car fuq is-sit tali li jista jinhloq konflitt bejn il-policies li kienu japplikaw meta hareg il-permess originali u l-policies il-godda allura ghandhom japplikaw il-policies li kienu applikabbli fiz-zmien li hareg il-permess originali u ghalhekk ghandu jiggedded il-permess originali. Fejn l-izvilupp jew parti minnu jista' jsir skond il-policies il-godda minghajr il-bzonn li jitregga lura xi parti mill-izvilupp allura ghandhom japplikaw il-policies vigenti u ghalhekk l-izvilupp ghandu jinbidel kif indikat skond dawn il-policies.

L-izvilupp in ezami jikkoncerna l-bini ta' zewg villel, wahda indipendenti mill-ohra. Skond l-Awtorita' waqt li Bungalow 'A' inbniet, kien ghadu ma' sar ebda xoghol ta'

kostruzzjoni fuq Bungalow 'B' meta skada t-terminu ta' hames snin. Din id-dikjarazzjoni mhix kontestata mill-appellant.

Ghalhekk fil-fehma kunsidrata ta' dan it-Tribunal l-Awtorita' kienet korretta fl-interpretazzjoni tal-Local Plans Interpretation Document peress li ma' kienx hemm commitment fuq il-parti tas-sit li fuqha kellha tinbena Bungalow 'B' fis-sens spjegat hawn fuq.

Peress li fil-frattemp lahaq dahal fis-sehh il-pjan lokali, jirrizulta li issa l-permess PA 4192/02 jikser il-policy CG 08 tas-Central Malta Local Plan. Peress li m' hemm xejn f' din il-parti tas-sit in ezami li jtellf li l-izvilupp isir skond il-policies vigenti, u partikolarment il-policy CG 08, jirrizulta li skond il-Local Plans Interpretation Document dan il-permess ma' jistax jiggedded.

Jidher car mill-premess li peress li fis-sena 2006 dahal fis-sehh il-pjan lokali u peress li meta saret it-talba ghar-renewal fil-parti tas-sit in ezami li fuqha kellha tinbena Bungalow 'B', l-izvilupp skond il-permess originali ma' kienx lahaq ipprograssa b'mod li kien jikkomprometti li jsiru t-tibdiliet necessarji biex it-talba tkun konformi mal-policy CG08 tal-pjan lokali, dan l-appell ma jistax jigi milquh.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA/2422/08, " to retain villa on plot B as approved in PA 5048/97 and change plans and elevations on plot A for the construction of detached villa.", tat-13 ta' Jannar 2009.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal fl-applikazzjoni tal-artikolu 69(1) tal-Kap. 504 u l-interpretation document rigwardanti permessi ta' renova u tifsira ta' 'firm commitment on site', applika hazin il-principji peress li applikant ghandu dritt vestit naxxenti minn permess u illi t-Tribunal kellu jiehu konjizzjoni tad-dritt vestit naxxenti mill-permess bhala zvilupp holistiku u

mbaghad interpreta l-kwistjoni ta' 'firm commitment' f'dan l-isfond;

2. Konness mal-ewwel aggravju t-Tribunal naqas li jikkonsidra li l-izvilupp gie ppjanat b'tali mod illi z-zewg bungalows kien ser ikollhom stepping effect u ghalhekk l-izvilupp mill-bidu kien kunsidrat bhala wiehed u ma ghandux jinqasam. F'dan l-isfond it-Tribunal naqas li jikkonsidra kwistjonijiet ta' sustanza kif irid l-artikolu 69(2) tal-Kap. 504.

L-ewwel aggravju

Tajjeb li l-ewwel issir referenza ghal ligi.

L-artikolu 69 tal-Kap. 504 (gia 33 tal-Kap. 356) ighid hekk:

(1) Meta l-Awtorita tiddeciedi dwar applikazzjoni li ssirilha:

(a) fir-rigward ta' applikazzjoni ghal permess ta' zvilupp ghandha tapplika dan li gej:

(ii) il-policies:

Izda l-pjanijiet sussidjarji u l-policies m'ghandhomx ikunu applikati retroattivamente b'mod li jkunu jolqtu b'mod kuntrarju drittijiet akkwiziti li jirrizultaw minn permess ta' zvilupp validu;

L-artikolu 69(4) tal-Kap. 504 imbaghad ighid hekk:

Licenza jew permess ghall-izvilupp jista' jinghata ghal zmien limitat jew ghal dejjem, izda ghandu f'kull kaz jispicca milli jkun operattiv jekk l-attivitá jew l-izvilupp ma jkunx tlesta fi zmien hames snin mid-data tal-hrug tieghu, izda l-Awtorita tista', wara li ssir applikazzjoni mill-persuna li tkun detentur tal-licenza jew permess ghall-izvilupp, ittawwal il-licenza jew il-permess ghall-izvilupp ghal dak il-perijodu jew perijodi ulterjuri hekk kif tista' tqis li jkun ragonevoli.

Hemm imbaghad interpretation document mahrug mill-Awtorita biex jaghti linji gwida ta' kif u meta ghandu jew ma ghandiex tintlaqa' talba ghal renova senjatament meta jkunu inbidlu l-policies fil-frattemp. Il-parti rilevanti ghall-iskop tal-appell tghid hekk:

Where the applicant requests a renewal of the development permit within the validity period in accordance with the provisions 33(3) (illum 69) of the DPA and there is a firm commitment on site in that part of the development which may give rise to a conflict between the existing policies and the previous policies governing the original development permit the principle of the previous permit shall prevail. On the other, if the development has not reached this stage, the provisions of the Local Plan shall prevail.

This obviously applies if the applicant requests MEPA to assess his pending application in the light of the vested rights acquired by him through the previous permit.

Ma hemmx dubju f'dan il-kaz illi t-talba ghal renova saret qabel ma skada l-permess PA 4192/02 u ma jirrizultax li ntalab tibdil fir-renova in konnessjoni mal-permess ezistenti.

Ma ghandux ikun hemm dubbju anqas illi fiz-zmien tal-validita tal-permess l-appellant kellu dritt vestit jizviluppa skond il-permess anki jekk il-pjanijiet jew policies ikunu inbidlu fil-perjodu ta' validita tal-permess. Dan hu dak li jipprovdi l-artikolu 69(1) tal-Kap. 504 u xejn aktar.

L-artikolu 69(4) in fatti jaghmilha cara illi permess jispicca li jkun operattiv jekk l-izvilupp ma jkunx gie terminat sal-iskadenza tat-terminu moghti ghall-izvilupp. F'dan il-kaz l-applikant jista' jitlob u jista' jinghata renova tal-permess. L-applikant ma ghandux dritt awtomatiku ghal renova. Mill-banda l-ohra l-Awtorita ma tistax tuza d-diskrezzjoni moghtija b'dan l-artikolu b'mod arbitrarju biex tichad jew takkorda talba ghal renova. Il-kwistjoni generalment tqum meta jkun hemm tibdil fil-pjanijiet jew policies u l-permess li tieghu qed jintalab ir-renova ma jibqghax konformi mal-pjanijiet u policies ezistenti fiz-zmien tar-renova.

Ghalhekk l-Awtorita harget b'interpretation document fejn tat linji gwida sa fejn talba ghal renova ghandha tigi milqugha fejn fost il-gwidi hemm zewg elementi saljenti cioe li jekk l-izvilupp li lahaq sar johloq 'a firm commitment

on site' li jaffettwa avversament l-izvilupp jekk jigu applikati l-pjanijiet u policies kif mibdula, u allura ghandhom jibqghu jipprevalu fil-kaz ta' dan l-izvilupp partikolari il-policies u pjanijet li tahtom inhareg il-permess. Dan johloq gustizzja mal-applikant li ma ghandux jigi pregudikat avversament semplicement ghax l-izvilupp ma gie x kompletat fiz-zmien stabbilit. It-tifsira ta' 'firm commitment on site' hi kwistjoni ta' apprezzament tal-fatti tal-kaz u hi kwistjoni ta' interpretazzjoni tal-istess fatti dwar kemm hu pregudizjevoli ghall-applikant fl-istadju li wasal l-izvilupp li jregga' lura minnu jew parti minnu ghax il-policies jew pjanijet laqu inbidlu. Dan mhux il-mertu ta' dan l-appell ghax kieku kien hekk din il-Qorti kienet tiddeklina milli tiehu konjizzjoni tal-aggravju peress li ma kienx jikkostitwixxi punt ta' ligi izda punt ta' fatt li l-interpretazzjoni u l-apprezzament tieghu hu fatt f'idejn it-Tribunal.

Dak li qed jilmenta minnu l-appellant invece hu illi t-Tribunal flok hares lejn l-izvilupp bhala wiehed unitarju tenut kont ta' dak li jghid l-interpretation document cioe li l-applikazzjoni ta' renova in kwistjoni trid tittiehed fil-perspettiva tad-dritt akkwizit tal-permess originali, it-Tribunal spezzetta l-izvilupp u matura l-permess originali billi qassam l-izvilupp f'partijiet u ikkunsidra l-kwistjoni tal-firm commitment fuq is-sit minn dik l-ottika.

Bhala principju l-appellant ghandu ragun li t-Tribunal bhal l-Awtorita huma fid-dmir li jaraw l-izvilupp fl-isfond tal-permess gia mahrug u r-raguni u dettalji ghaliex ikun inhareg permess kif inhareg. Din hi kwistjoni fattwali u ta' planning li mhix komputu ta' din il-Qorti li tintrometti ruhha fiha. Darba kostatat l-izvilupp fin-natura tieghu, imbaghad it-Tribunal irid jidhol fil-kwistjoni tal-'firm commitment' krejat bl-izvilupp li jkun lahaq sehh.

L-appell jissoferma ruhu fuq l-ewwel ezercizju li kellu jikkonduci t-Tribunal qabel jikkonsidra l-estent ta' zvilupp maghmul.

Il-Qorti mhix ser tipprezumi taghti check list ta' dak li t-Tribunal messu ha in konsiderazzjoni biex jevalwa n-

natura tal-izvilupp u kif bdil fil-policies kienu ser jaffettwah tenut kont tal-izvilupp li lahaq sehh. Kull ma hu l-obbligu tal-Qorti hu illi tezamina d-decizjoni tat-Tribunal u jekk hax in konsiderazzjoni n-natura tal-izvilupp emanenti mill-permess li qed jintalab tigidid kif mitlub jaghmel fl-aggravji mressqa mill-appellant. L-appellant isostni li l-izvilupp ma setghax jigi kunsidrat bhala zvilupp ta' zewg bungalows separati u distinti izda zvilupp ta' sit b'mod omogeneju kif jidher mill-pjanti u approvazzjoni tal-izvilupp u illi tenut kont li l-izvilupp hu wiehed mhux tnejn, allura t-Tribunal irid imbaghad jara kemm l-izvilupp kien gia kommess u l-effett fuq l-izvilupp gia kommess kieku kellhom jigu applikati l-policies li nbidlu fiz-zmien li l-permess kien ghadu in vigore.

Harsa lejn id-decizjoni jidher li t-Tribunal ma kkunsidrax dan l-aggravju minn din il-perspettiva mitluba izda pprezuma bla ma spjega ghaliex illi l-izvilupp kien jikkoncerna bini ta' zewg vilel, wahda indipendenti mill-ohra, u billi wahda biss mill-vilel kienet lahqet inbniet, allura l-polilcies il-godda kellhom jiggvernaw il-possibilita tal-bini tat-tieni villa. It-Tribunal injora li japprezza l-aggravju fit-termini maghmula u jiskartah jew jaccettah ghal ragunijiet spjegati minnu. Pero f'dan il-kaz li jmur lil hinn mis-sempliци dubbju, it-Tribunal ma hax konjizzjoni tal-ligi u l-interpretation document bid-dovuta diligenza u kien simplicistiku wisq fid-determinazzjoni tal-appell.

Ghalhekk il-Qorti qed tilqa' dan l-aggravju fis-sens biss illi t-Tribunal, la mitlub, kellu jevalwa l-izvilupp u jqis jekk ghandux jittiehed bhala entita wahda jew kif qalet l-Awtorita bhala zvilupp maqsum f'diversi partijiet wahda indipendenti mill-ohra. Mir-rizultat tad-deliberazzjoni kunsidrata u mhux superficjali fuq dan il-punt, imbaghad it-Tribunal kellu jikkostata jekk l-izvilupp kienx wasal fi stadju li sar 'firm commitment'.

It-tieni aggravju

Il-Qorti tqis li dan l-aggravju jirrigwarda l-kwistjoni purament teknika u ta' natura ta' ppjanar li fuqha hu msejjes l-ewwel aggravju u hu wiehed mill-elementi li jrid

jikkonsidra t-Tribunal meta jasal biex jiddeciedi jekk l-izvilupp hux wiehed unitarju li ma ghandux jigi spezzettat jew invece li l-izvilupp hu wiehed b'diversi bicciet indipendenti minn xulxin. Il-Qorti qed tastjeni milli tiehu konjizzjoni ta' dan l-aggravju billi hu prematur f'dan l-istadju tenut kont li l-ewwel aggravju qed jigi milqugh ghax ma rrizulta ebda ezercizzju kritiku da parti tat-Tribunal in konnessjoni mit-tip tal-izvilupp propost u kif kellu jigi indirizzat ghal finijiet ta' renova.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Roseann Gafa', tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013, u tibghat lura l-atti lit-Tribunal biex jerga' jiddeciedi dan l-appell fuq l-atti quddiemu in linea ma' dak deciz illum. Spejjez ghall-Awtorita.

< Sentenza Finali >

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