



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 22/2013

Adrian Coppini

vs

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

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tal-4 ta' April 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013 li laqghet l-appell tal-appellat fuq kwistjoni purament legali u procedurali naxxenti minn qari tal-artikolu 9(4) tal-Avviz Legali 514 tal-2010;

Rat ir-risposta tal-appellat li ssottometta li d-decizjoni tat-Tribunal ghandha tigi konfermata 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 prezentata fit-18 ta' Jannar 2012, Full Development Permission, PA0755/12, l-appellant nomine fil-fond Orchidea Vjal il-Labour/Triq in-Nissieg, Naxxar ippropona :- "to shift generator from roof level to washroom level and minor internal alterations to washrooms approved by PA 260/09."

L-applikazzjoni giet michuda b'rifjut tal-11 ta' Gunju 2012 ghar-ragunijiet segwenti:-

- "1. Proposal runs counter to policy 13.5 of PDG 2007.
2. Proposal runs counter to policy BEN 1 with regards to the generation of excessive noise and vibration."

Fl-appell tieghu, il-Perit Mark Camilleri ghall-appellant nomine ssottometta kif gej:-

Reference is being made to MEPA correspondence Dated 11th June 2012 informing of decision by EPC to refuse permission for our proposal: To shift generator from roof level to washroom level and minor internal alterations to washrooms approved by PA 260/09. The following is to be noted.

1. On a procedural and preliminary note, reference is made to to LN 514 of 2010, as amended by LN116 2012 9.(4) stating that "If the Authority or the Commission intends to overturn the recommendation of the Directorate, the Authority or the Commission, as the case may be, they shall request, in addition to the requirements of the Act, the Director of Planning to update the report on the application and to include a list of conditions, and defer the determination of the application in accordance with the provisions of paragraph 11 of the First Schedule to the Act, and the perit shall be informed of the updated report prior to the date of the deferred sitting." This obligation has not been adhered to and the EPC

overturned bluntly the decision with reasons for refusals clearly contradicting the recommendations by the Directorate. The EPC did not follow the required procedure and consequently the decision in question is null and void.

2. Mepa recommended this application for approval with UNDERSTANDING and EVALUATION of Policy 13.5 of the DC2007 guidance. Dc13.5 deals with the visual intrusion of generators on the roofs of buildings. The proposed generator is being contained in a plant room at a level below the new approved roof level replacing one of the approved washrooms and therefore apart from being completely out of sight It is more than clear in the DPA report that while - "Design DC 2007 policy 13.5 is against the location of roof level services, and specifically mentions commercial generators, which will be visually intrusive. However the generator is proposed to be located at penthouse level and screened by a masonry wall and therefore will not be visible. Thus DC 2007 policy 13.5 is not infringed."

3. With regards/to the unsubstantiated claim in relation to assumed noise generation, the client has commissioned a warranted engineer to determine the values of noise emissions and to recommend any mitigation matters etc. The engineer prepared the report and the design was altered in order to meet these requirements. This fact is also described in the OPAR - "During the processing of this application, fresh drawings were requested conforming with the engineer's report with regards to the roof of the generator room. Revised drawings were submitted as per documents 30a/30b.

4.10 CONCLUSION

In view of the above comments, the application is being recommended for approval. 11

It is for the above reasons therefore that my client and myself find it inconceivable how the EPC board decided to overturn the MEPA recommendation. To add insult to injury the reasons for overturning quoted have been

clearly treated by MEPA. Note is to be taken that the Reasons for Refusal are, therefore, an outstanding contradiction of what was stated in the OPAR and the recommendations by MEPA. Apart from this fact it is our firm belief that Design DC 2007 policy 13.5 is being completely misinterpreted since this guideline specifically speaks about commercial generators which is not the case in our application and also states that that commercial generators are not allowed on roofs. In this particular application the stand-by generator is being housed one floor below the approved roof level of the building in a specially designed room.

On a final note it is our opinion that the generator room and installation has been properly designed and in strict accordance to OC2007 policies in particular to policy 1.9 - Whereby the generator is concealed through the construction of the plant room and policy 13.5 "For 01/ buildings, the placing of commercial generators, chillers or any other bulky equipment on the roof of washrooms, penthouse or any other part of the roofs will not be allowed." Whereby the placing of generators within the "washroom" one floor below roof level is allowed unlike what has been discussed at EPC."

Fir-rapport taghha l-Awtorita' kkumentat kif gej :-

"5.2.1 Preliminary Plea - Dismissal

An enforcement notice (ECF 134/11) has been issued on the stand-by generator located above the stairwell block. The proposal description states that this application is to shift this generator down to a level below. This means that the illegality is still extant as admitted by the appellant in the proposal description. Moreover the enforcement officer reported on the 4/5/07 that the generator was found to be operational in breach of an active stop and enforcement notice (see minute 22).

The Authority therefore respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal since this application should be dismissed under

the provisions of now Article 86 (10) of the Act X of 2010, in view that it has been proven that illegal works have continued on a site in breach of an enforcement notice.

Consequently, this appeal should be dismissed for the above reasons.

5.2.2 Preliminary Plea – Illegalities on site

On a preliminary point, the Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal due to illegal development on site, and hence the provisions of Article 14 of LN 514/10 are applicable. Article 14 (1) of LN 514/10 clearly states that where illegal development is present on a site, new development on that same site will not be considered unless it is regularized or removed.

The illegality consists of the stand-by generator above the stairwell block at roof level which is in operation and subject to enforcement notice ECF 134/11.

5.2.3 Preliminary Plea – Misleading proposal description

The Authority notes that the proposal description is misleading in that it makes reference to the shifting of a generator from 'roof' level to the washrooms giving the impression that this is an application for relocation. However the existing generator is illegally fixed and one cannot request the relocation of something that is illegal as by definition that should not even exist. The Authority maintains that the proposal description should have made it clear that the proposal is for a new development – i.e. the placing of a generator at penthouse/receded floor level.

5.2.4 Policy 13.5 of the DC2007

The appellant is not correct to state that policy 13.5 of the DC2007 does not apply.

First of all, the generator of the type being proposed in this application cannot be classified other than commercial and therefore one of the elements regularised by policy 13.5.

Moreover, this policy applies because the proposal regards the placing of a generator above the main roof of the building at penthouse level. The penthouse level has always been termed as being a structure over and above the height limitation and above the roof of the main building – see the definition of penthouse in policy 10.6 of the DC2007. Therefore policy 13.5 of the DC2007 is fully applicable given that the generator is to be placed above the roof of the main building. Policy 13.5 states that for all buildings the placing of commercial generators or any bulky equipment on the roof of washrooms, penthouses or any other part of the roof would not be allowed; the proposed location of the generator does form part of any other part of the roof.

5.2.5 Noise generation

The appellant is arguing that he presented a noise report prepared by a warranted engineer that states that the noise generated by the stand-by generator will be within the acceptable thresholds. However an analysis of this report shows clearly that whilst the standards and benchmarks have been set and that mitigation measures expounded, no reference to the actual noise emitted by the generator (in dBA) has been made.

Furthermore, attention must surely be paid to the noise report prepared by the perit tekniku for the Court of Laws in which it is explained that the noise emitted by the generator in its existing location, i.e. above the stairwell block is excessive. It should be noted that the current position of the generator is actually higher than that proposed and is not directly above the existing dwellings. On the other hand the position of the proposed generator is directly above the existing dwellings and is going to be surrounded by two penthouse dwellings. This surely does not make the proposed location for the generator suitable

for the residential amenity of the block and thus it runs counter to Structure Plan policy BEN 2."

L-Avukat Dr. Frank Testa għall-appellant nomine.

"The report makes reference to an email received from third parties (dated 30.04.12) which in turn refers Court proceedings and to an alleged proof of the fact that noise and vibration levels are more than what is acceptable at law. Our clients humbly submit that this representation is false and unfortunately based on the information provided by third parties whose intention was merely to mislead the Authority and this Board. In fact, that email refers to Criminal proceedings currently pending before Magistrate Apap Bologna that are adjourned for the 20th November 2012. These proceedings are still pending and as such there has been no definite judgement delivered by the Court on any evidence submitted before it.

The same email also makes a further allegation in the sense that these third parties are claiming that the building in question cannot withstand the load of the generator. There is no evidence in the acts of the present proceedings that corroborate this and there is no architectural report addressing this issue.

In the said Report, the Authority also makes reference to a 'contract' indicating the use of the whole area. While no details in relation to the relative clause has been provided, my clients are in a position to comfortably declare that even such declaration is false and is completely inconsistent with the conditions contained in their purchase deed.

Reference is also made to an alleged depreciation of the property in question. My clients humbly submit that it is not within this honourable Board's competence and remit to consider such factors.

In point 3.2 of page two of the said Report, the Authority makes reference to the fact that the site is subject to enforcement number ECF 134/11. Unfortunately, the

Authority failed to also print out such enforcement notice is also 'sub judice' since it has been appealed before the ordinary Courts, which appeals has been adjourned by Judge Ray Pace for the 25th of October, 2012."

Il-Perit Lino Bianco għall-objectors ssottometta kif gejj :-

"The Appeal

1.0 Development planning application PA 755/12 was refused by the Malta Environment and Planning Authority (MEPA) for the following two reasons, namely that the development proposal runs counter Policy 13.5 of Development Control Policy & Design Guidance 2007 (DC2007) and Policy BEN 12 with respect to the generation of excessive noise and vibration.

Considering that

2.0 Development planning application PA 0755/12 is to shift generator from roof to washroom level and for minor internal alterations to washrooms approved by PA 260/09 at 'Orchidea', Vjal il-Labour fi Triq In-Nissieg, Naxxar;

3.0 The site is located on the roof of a habitable block of residential apartments within the development zone of Naxxar.

¹ Policy 13.5 of DC 2007, which relates to services on roof structures, states that, with the exception of certain cases listed in same policy:

... For all buildings, the placing of commercial generators, chillers or any other bulky equipment on the roof of washrooms, penthouses or any other part of the roofs will not be allowed.

²Structure Plan Policy BEN 1 states:

Development will not normally be permitted if the proposal is likely to have a deleterious impact on existing or planned adjacent uses because of visual intrusion, noise, vibration, ... , unusual operating times, or any other characteristic which in the opinion of the Planning Authority would constitute bad neighbourliness.

Noting that

4.0 Planning permit PA 260109 is for the erection of penthouses and washrooms over roof level over existing apartments and garages. The proposed generator is not required for the effective operation(s) relative to this development but is related to commercial development not of local but of a regional dimension;

5.0 The drawings submitted with planning application PA 755/12 do not tally with what is present of site. The proposed development will block the entrance to the lift room (see Photo 1);

6.0 The impact of this generator on the residences in terms of noise and vibration was experienced over a number of nights. The relocation of the generator to the proposed location renders the problem more acute; and

7.0 The installation of this generator, the entity of which may be appreciated from Photo 2, runs counter a number of policies, notably Structure Plan Policies BEN 1 and BEN 23. Furthermore, annoyance can be easily verified through a technical examination and assessment of both airborne noise and noise transmitted through vibrations.

Recalling that

8.0 The generator was illegally installed on the washroom to the block of apartments at 46, 'Orchid Apartments' at Vjal il-Labour, Naxxar (Photo 2). An enforcement was subsequently issued by the Malta Environment and Planning Authority, bearing reference number ECF 134/11;

9.0 An appeal against this enforcement action, bearing reference PAB 266/11, was dismissed by the Environment and Planning Review Tribunal on 13 October 2011. This decision was appealed at the Court of Appeal (47/11/RCP). The case was deferred sine die on 19

January 2012 pending decision of planning application PA 755/12; and

10.0 Development planning application PA 755/12 is in actual fact calling for the relocation of the present illegal location at roof level of stairwell to part of roof which is directly over existing habitable apartments of the objectors, which part of said roof, as per approved drawings attached to PA 260/09, was reserved for washrooms to the underlying tenements. The description of the proposed development covered by PA 755/12, namely calling for the relocation of the existing generator, is thus misleading.

³ Structure Plan Policy BEN 2 states:

Development will not normally be permitted if, in the opinion of the Planning Authority, it is incompatible with the good urban design, ... and environmental characteristics of existing or planned adjacent uses, and is unlikely to maintain the good visual integrity of the area in which it is located. There will be a presumption against development which does not generally observe the design guidelines issued by the Planning Authority for built-up areas.

Concluding that

11.0 The description of the proposed development is misleading. The proposal is not "to shift generator from roof level to washroom level ... ", a description which reads as if the present location of the generator is legal, but to shift an illegal placed generator at roof level to washroom level. In fact this development is subject to enforcement notice ECF 134/11.

12.0 Thus, the appellant is requesting the Environment and Planning Review Tribunal to confirm the refusal of development planning permission PA 755/12 issued by the Malta Environment and Planning Authority."

Il-Perit Mark Camilleri għall-appellant nomine rrisponda kif gej :-

"Officer's Report - Report to the environment and Planning review Tribunal

"On a preliminary point, the Authority respectfully asserts that the Tribunal cannot hear and decide on the merits of this appeal due to the illegal development on site, and hence the provisions of Article 14 of LN514/10 re applicable. Article 14(1) of LN514/10 clearly states that where illegal development is present on site, new development on that same site will not be considered unless it is regularized or removed"

Comments:

The above is an interpretation of what Article 14(1) of LN514/10 states. The said article states" when existing development on a site is wholly or partly illegal, the Authority shall refuse a development application relating to a new development on that site, unless the illegal development is included for sanctioning" It is evident in the application submitted that the outcome of the application will be removing all illegalities and thereby sanctioning the enforcement on site.

Furthermore with reference to the description note should be taken of the fact that no request was made by MEPA for the changing of the description at vetting stage and therefore the application was accepted in terms of project description and content. Also reference is being made to Article 14 of LN514j10 {4} which states that 11 The proposal description of a development application and the drawings submitted shall not propose the removal of illegal development from the site." In this instance the proposal description for a shifting of the existing generator clearly implies that the enforcement will be cleared once the generator is removed to its new location and as per Article 14 of LN514j10 (4) the indication both in plans and in description of the removal of the generator is irrelevant and unnecessary.

It is also being noted that both the objectors in Document 34 "the proposed development involves the relocation of the present illegal generator located on the roof of the stairwell to part of the roof which is directly over existing objectors' apartment" as well as the case officer" 4.2 Proposal - This is a full development application to divide an existing washroom into two smaller washrooms, to convert two washrooms into a room without any roof and to shift an illegal generator from roof level to penthouse level within the same enclosure" clearly understood what is being proposed and therefore the description is in no way, as is being suggested, misleading.

Policy 13.5 OC2007

DPAR

"DC2007 policy 13.5 is against the location of roof level services, and specifically mentions commercial generators, which will be visually intrusive. However the generator is proposed to be located at penthouse level and screened by a masonry wall and therefore will not be visible. Thus DC2007 Policy 13.5 is not infringed."

Officer's Report - Report to the environment and Planning review Tribunal

"The appellant is not correct to state that Policy 13.5 of the DC 2007 does not apply"

"for all buildings the placing of commercial generators or any bulky equipment on the roof of washrooms, penthouses or any other part of the roof would not be allowed, the proposed location of the generator does form part of any other part of the roof"

Comments:

The proposal is not to install the generator on the rooftop as is being suggested by the Officer's report but to contain this service within the permitted building envelope. Policy 13:5 clearly addresses what is and what is not visually acceptable. The proposal is for the installation of the generator within the building envelope. The interpretation of what is to be understood as a roof and what not in the

policy document is in the first instance an attempt to misguide the Tribunal in that Policy 13.5 is to be understood within context and in the second instance the policy is clearly identifying that bulky equipment including generators are not to be installed external to the building envelope in view of visual impact. The arguments that the generator as proposed forms part of any other part of the roof does not hold ground as the proposal is to have the generator within the building envelope itself and clearly within two washrooms which are being identified. Furthermore both the case officer in the original DPAR states "4.2 Proposal - This is a full development application to divide an existing washroom into two smaller washrooms, to convert two washrooms into a room without any roof and to shift an illegal generator from roof level to penthouse level within the same enclosure" and the senior planning officer in his Report to the Environment and Planning Tribunal review states that "5.2.3 -i.e. the placing of a generator at penthouse/receded floor level" clearly refer to the new location as an enclosure at penthouse/receded floor level and not at roof level.

Furthermore it should be noted that Policy 13.5 OC2007 is intended to safeguard buildings against installation of haphazard and visually intrusive services at roof level. In no way can this proposal affect visual integrity when all services will be located within the building envelope.

Noise Generation

The proposal was endorsed by a qualified engineer certifying that through mitigation measures the generator will be installed in accordance with noise pollution legislation and therefore the installation will be in adherence to existing regulations and standards. The said report was accepted by the directorate and no clarifications or alterations to the content were requested. It should be noted that on the other hand the senior planning officer in his Report to the Environment and Planning Tribunal review raises doubt to the integrity of the author and the content of our engineers report. The Report to the Environment and Planning Tribunal review

is making a comparison between a report prepared by the objector's engineer in relation to the existing illegal generator placed openly on the stairwell without the installation of sound damping equipment and mountings to the proposed installation. The note that "this surely does not make the proposed location for the generator suitable" needs to be analysed as it is contradicting the recommendation and the certification which the client's qualified and warranted engineer is proposing. It stands without doubt that the proposal as prepared is ensuring and noting that the installation will be within regulations and standards and any infringement of the above will form part and parcel of the compliance certification by MEPA. The comments made by the senior technical officer are in our opinion both inadequate as the client's engineer is guaranteeing compliance and misleading as the reassurance that the installation "surely does not make the proposed location for the generator suitable" if any needs to be prepared by a qualified engineer and substantiated.

Procedure

On a procedural and preliminary note, reference is made to to LN 514 of 2010, as amended by LN116 2012 9.(4) stating that "If the Authority or the Commission intends to overturn the recommendation of the Directorate, the Authority or the Commission, as the case may be, they shall request, in addition to the requirements of the Act, the Director of Planning to update the report on the application and to include a list of conditions, and defer the determination of the application in accordance with the provisions of paragraph 11 of the First Schedule to the Act, and the perit shall be informed of the updated report prior to the date of the deferred sitting." This obligation has not been adhered to and the EPC overturned bluntly the decision with reasons for refusals clearly contradicting the recommendations by the Directorate. The EPC did not follow the required procedure and consequently the decision in question is null and void."

L-Awtorita' fis-second statement taghha kkumentat kif gej :-

"1.0 COMMENTS ON APPELLANT'S ARGUMENTS

1.1. Following the submission of the initial report by the Authority, the appellant submitted correspondence at doc 84 (dated 10/10/2012) drawing the attention of the Tribunal on a number of points brought forward by third party objectors.

1.2 The Authority has the following comments to make:
The report submitted by appellant at doc 84 seeks to address/reply the issues brought forward by third parties which are affected by the proposal. No comments were submitted in relation to why the decision taken by the EPC to refuse the proposal should be upheld. Although appellant stated that the objectors did not submit proof where they claimed that the structure cannot withstand the load of the generator, the same appellant did not submit any proof or evidence to substantiate their claim that to place the generator on the roof of the building would not cause bad neighbourliness (the main reason for refusal).

Furthermore, the Tribunal may wish to note that the issue relating to the dismissal of application (breach of notice) and illegalities on site mentioned in the initial report at paras 5.2.1, 5.2.2 and 5.2.3 still apply."

Ikkunsidra ulterjorament :-

Il-proposta prezenti hi applikazzjoni biex zvilupp approvat ta' zewg washrooms li ghad ma nbnewx, jinbnew bhala kamra wahda bla saqaf biex fiha jitpogga stand by generator li prezentement jinsab fuq is-saqaf tat-tromba tat-tarag.

Is-sit jinsab f'zona ta' zvilupp fin-Naxxar. Il-penthouses u l-washrooms approvati huma fuq is-saqaf ta' bini ta' tlett sulari li jhares fuq vjal il-Labour u Triq in-Nissieg.

Hareg l-enforcement notice 134/11 billi tpogga generator industrijali bla permess fuq i-ssqaf tat-tromba tat-tarag.

Sar appell mill-Avviz li gie michud minn dan it-Tribunal b'sentenza tat-13 ta' Ottubru 2011. Sar appell quddiem il-Qorti tal-Appell Sede Inferjuri 47/11RCP li gie differit sine die fid-29 ta' Jannar 2012, pendenti l-ezitu finali tal-applikazzjoni PA 755/12; cioe' l-applikazzjoni mertu ta' dan l-appell.

L-ewwel aggravju tal-appell hu wiehed procedurali, cioe' li skond l-appellant il-procedura korretta ma gietx osservata. Dan ghar-raguni li d-DPAR kien qed jirrakomanda li l-applikazzjoni tigi milqugha.

Minn ezami tal-file tal-applikazzjoni PA 0755/12 jirrizulta, Blue 37 li r-rapport gie iffirmit fis-7 ta' Mejju 2012 u l-laqgha tal-EPC li rrifjutat l-applikazzjoni b'hames voti kontra u l-ebda vot favur, saret fit-8 ta' Gunju 2012. Inghataw il-motivazzjonijiet ibbazati fuq ragunijiet ta' ippjanar biex jiggustifikaw id-decizjoni, izda skond l-appellant il-procedura korretta ma gietx segwita.

Ir-regolament 9 (4) tal-Avviz Legali 514 tal-2010 jghid hekk :-

“Jekk l-Awtorita' jew il-Kummissjoni jkunu bi hsiebhom jiddeciedu xortta ohra mar-rakkomandazzjoni tad-Direttorat tal-Awtorita' jew tal-Kummissjoni, hekk ikun il-kas, huma ghandhom jitolbu, flimkien mar-rekwiziti tal-Att, lid-Direttur tal-Ippjanar biex jaggorna r-rapport dwar l-applikazzjoni u jinkudi lista ta' kundizzjonijiet u jiddiferixxi d-decizjoni dwar l-applikazzjoni skond id-disposizzjonijiet tal-paragrafu 11 tal-Ewwel skeda li tinsab mal-Att u l-perit ghandu jigi nfurmat bir-rapport aggornat qabel id-data tas-seduta differita”.

M'hemmx dubbju li l-Kummissjoni tista' tbiddel ir-rakkomandazzjoni ghar-raginijiet ta' ippjanar, izda skond r-regolament fuq citat meta dan isir id-Direttur tal-Ippjanar ghandu jaggorna r-rapport, id-decizjoni ma ttehditx dik

inhar izda tigi differita għall-gurnata ohra u nel frattemp il-perit tal-applikant jigi nfurmat bir-rapport kif aggornat.

Ma jirrizultax li f'dan il-kas din il-procedura giet segwita, billi d-decizjoni ttiehdet fit-8 ta' Gunju 2012 meta kellha tigi differita għall-gurnata ohra in vista tal-fatt li l-Kummissjoni ma qablitx mar-rakkomandazzjoni tad-Direttorat.

Billi ma jirrizultax li giet segwita l-procedura korretta, mhux il-kas li f'dan l-istadju t-Tribunal jitratta l-mertu tal-appell.

It-Tribunal għalhekk qed jiddisponi minn dan l-appell billi jilqa' l-istess, jirrevoka r-rifjut tal-11 ta' Gunju 2012 għall-applikazzjoni PA 755/12 u jordna li l-kas jigi rimess lill-EPC li qabel tiddeciedi l-applikazzjoni għandha tassikura li dan isir skond il-procedura stabbilita bir-regolament fuq citat 9 (4) tal-Avviz legali 514 tal-2010.

Ikkunsidrat

L-aggravju tal-Awtorità hu mibni fuq applikazzjoni hazina tal-artikolu 9(4) tal-Avviz Legali 514 tal-2010 li jaqra:

Jekk l-Awtorità jew il-Kummissjoni jkunu bi ħsiebhom jiddeciedu xort'oħra mir-rakkomandazzjoni tad-Direttorat, ta' l-Awtorità jew tal-Kummissjoni, hekk kif ikun ilkaż, huma għandhom jitolbu, flimkien mar-rekwiżiti tal-Att, lid-Direttur ta' l-Ippjanar biex jaġġorna r-rapport dwar l-applikazzjoni u jinkludi lista ta' kundizzjonijiet, u jiddifferixxi d-decizjoni dwar l-applikazzjoni skond id-dispożizzjonijiet tal-paragrafu 11 ta' l-Ewwel Skeda li tinsab ma' l-Att, u l-perit għandu jigi infurmat bir-rapport aġġornat qabel id-data tas-seduta differita.

Il-fatti li taw lok għal dan l-appell kienu hekk fil-qosor. L-applikant talab permezz ta' PA 755/12 sabiex 'to shift generator from roof level to washroom level and minor internal alterations to washrooms approved by PA 260/09.

Din it-talba giet rakkomandata għall-approvazzjoni mid-Direttorat (DPAR) fis-7 ta' Mejju 2012 pero fil-laqgħa quddiem il-Kummissjoni (EPC) fit-8 ta' Gunju 2012 l-applikazzjoni giet rifjutata. Sar appell quddiem it-Tribunal

mill-appellat fuq diversi kwistjonijiet relatati mal-mertu tal-kwistjoni u preliminarjament tqajmet il-kwistjoni li l-Kummissjoni kellha taddotta l-procedura skond l-artikolu 9(4) tal-Avviz Legali 514/2010 qabel tiddeciedi finalment l-applikazzjoni. L-Awtorita wkoll qajmet punti procedurali fir-risposta u rrispondiet fil-mertu.

It-Tribunal pero ssofferma ruhu fuq l-ewwel aggravju ta' natura preliminari mressqa mill-appellant Adrian Coppini rigward it-tifsira tal-artikolu 9(4) tal-Avviz Legali 514/2010 u f'paragrafu wiehed ikkonkluda illi r-regolament jaghti lil Kummissjoni d-dritt li tbiddel rakkomandazzjoni tad-Direttorat pero d-decizjoni finali ma tittiehidx dakinhar izda tigi differita ghal gurnata ohra u nel frattemp il-perit tal-applikant jigi nfurmat bir-rapport kif aggornat.

Din il-Qorti taghmilha cara illi ghandha s-setgha tintervjeni meta t-Tribunal japplika hazin policy jew regolarment, u mhux meta jinterpreta policy jew regolarment fuq kwistjonijiet ta' ippjanar.

Dan hu kaz ta' applikazzjoni ta' policy mill-punto di vista legali u kwindi sindakabbli mill-Qorti.

Il-Qorti ma taqbilx mat-Tribunal kif applika l-imsemmi regolarment. Artikolu tal-ligi jigi interpretat fl-isfond tal-kontenut kollu tieghu. F'dan il-kaz l-ewwel parti tar-regolament hu ffit incert billi kull ma jghid hu fejn "l-Awtorita jew il-Kummissjoni jkunu bi hsiebhom jiddeciedu xorta ohra mir-rakkomandazzjoni tad-Direttorat jew il-Kummissjoni". Tifsira klinika tal-kliem jaghtu wiehed x'jifhem illi t-tibdil jista' jfisser rifjut jew accettazzjoni kontra dak deciz mid-Direttorat. Pero jekk wiehed ikompli jaqra r-regolament, il-kelma 'ibiddel' tiehu xejra aktar cara. Dan jinghad ghax f'kaz ta' tibdil l-Awtorita jew il-Kummissjoni ghandu jitlob lid-Direttur tal-lppjanar jaggorna r-rapport dwar l-applikazzjoni u jinkludi lista ta' kundizzjonijiet u jiddiferixxi d-decizjoni dwar l-applikazzjoni u l-perit ghandu jigi nfurmat bir-rapport aggornat qabel id-differiment. Din l-ahhar parti tar-regolament tpoggi f'perspettiva cara l-iskop tar-regolament. Jekk id-Direttorat ikun irrakomanda rifjut u l-Awtorita tbiddu f'approvazzjoni hi ghandha l-obbligu li

tibghat l-applikazzjoni lid-Direttorat biex johrog il-permess bil-kundizzjonijiet normali li taddotta solitament l-Awtorita jew bi dritt titlob lid-Direttorat li jdahhal kundizzjonijiet ohra li t-Tribunal jidhirlu jimmeritaw biex l-izvilupp jigi approvat. Ghalhekk il-kaz ma jinghalaqx . L-ewwel isir it-tibdil minn rifjut ghal approvazzjoni skond il-kundizzjonijiet ordnati mill-Awtorita u l-partijiet notifikati bit-tibdil ikollhom l-opportunita li jkunu jafu kif ser jigi approvat finalment l-izvilupp u wara tittiehed decizjoni finali mill-Awtorita jew il-Kummissjoni biex minn hemm jiskatta d-dritt tal-appell ghal partijiet.

Jekk invece l-Awtorita jew il-Kummissjoni tbiddel rakkomandazzjoni ghall-approvazzjoni f'wahda ta' rifjut, dik fiha nfisha hi decizjoni finali u d-Direttorat ma ghandux komputu ulterjuri billi ma hemm ebda kundizzjonijiet soliti jew imposti mit-Tribunal xi jsiru. Il-partijiet, fil-mument ta' decizjoni ta' rifjut huma konsapeveoli tal-ezitu finali tal-applikazzjoni biex b'hekk jiskatta d-dritt tal-appell kontra r-rifjut.

Dan hu l-uniku sens logiku u legali moghti lil regolarment 9(4) tal-Avviz Legali 514/2010 u l-applikazzjoni tat-Tribunal tal-imsemmi regolament li anki fejn l-Awtorita tirrifjuta applikazzjoni trid tibaghtu lura lid-Direttorat la jaghmel sens logiku u anqas jirrispekkja dak li jghid l-istes regolament meta jinqara shih u mhux spezzettat.

Decide

Ghalhekk il-Qorti qed tilqa' l-appell tal-Awtorita, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tal-15 ta' Marzu 2013 billi bazata fuq applikazzjoni hazina tar-regolament 9(4) tal-Avviz Legali 514/2010 u in linea ma' dak deciz terga' tisma' l-appell fuq il-kwistjonijiet l-ohra kollha mqajma fl-appell quddiemhu. Spejjez ghall-appellat.

< Sentenza Finali >

Kopja Informali ta' Sentenza

-----TMIEM-----