



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 4/2013

**Adrian Zammit u Ian Zammit f'isem u in
rappresentanza tas-socjeta'
MAPA Holdings Ltd
VS**

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

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita tat-18 ta' Frar 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Jannar 2013 fejn laqghet l-appell tal-applikant u approvat l-applikazzjoni PA 8221/06 'demolition of existing building and constuction of residence' wara li imponiet varji kondizzjonijiet;

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

Kopja Informali ta' Sentenza

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

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fid-9 ta' Lulju 2009, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 8221/06 – Site at alley off Mistra Road, San Pawl il-Bahar: Demolition of existing building and construction of residence.

Is-sitt ragunijiet ghar-rifjut kienu s-segwentanti:

“1. The proposed residential unit does not have a frontage onto a public road.

2. The site is only accessible through an alley which is approximately 3 meters wide. The proposed development runs counter to Policy 3.8 of DC 2005 - Internal Residential Development, which requires a minimum access width of 4.1 metres.

3. Parking is likely to take place in the main road (as a result of lack of parking provision on site) thus generating more traffic and parking problems on the arterial road. Therefore the proposed redevelopment of existing building into residence is running counter to Structure Plan Policy TEM4.

4. The proposal runs counter to Structure Plan Policy TRA 4 and the car parking standards set out in Table A2.5 in the Structure Plan Explanatory Memorandum in that it fails to provide the required car parking spaces. It will give rise to unacceptable additional on-street car parking which would not be in the interests of the amenity of the area and which would exacerbate existing problems of congestion, potential highway danger and vehicular and pedestrian conflict.

5. The proposed development cannot provide on-site parking and therefore runs counter to Structure Plan Policy TRA 4 and North West Local Plan Policy NWRS 3

paragraph (vii) which states that on site parking for at least two-car spaces should be provided.

6. The proposed development is creating a blank party wall and therefore runs counter to Structure Plan Policy RCO 4 which aims at preventing negative visual impacts which detract the character of rural areas. The blank party wall is also not in accordance with paragraph (vi) of the North West Local Plan Policy NWRS 3 which states that the developments in rural settlements should have a high quality design and should retain and enhance the existing character of the settlement and which demonstrates that due attention has been given to the impact of the new building on the character of the settlement and its surrounding rural environment.”

B. In-nota tal-Perit Ian Zammit ghall-Appellanti nomine, ipprezentata fil-11 t'Awissu 2009, senjatament it-tlett punti segwenti:

“a. The existing building was already in existence in 1956 and is clearly indicated in the relative survey sheet. It is situated within an old rural settlement classified as Category 3 in the North West Malta Local Plan. The relevant policies permit its redevelopment as a dwelling unit. The first and second reasons for refusal are not relevant because the alley that gives access to the existing building, predates the advent of both the PAPB and the MEPA and also gives access to another much larger dwelling and used to be the access to another residence that was recently combined with another having a door onto the main road, (works covered by PA 4625/06).

b. The existing building has no car-parking provision so reasons for refusal three to five that concern the unavailability of two car-parking spaces on the site of the proposed one-bedroomed maisonette are also irrelevant. North West Local Plan Policy NWRS 3 is clearly intended to limit the extent of development in Category 3 Rural Settlements by limiting the number of car-parking spaces that can be permitted to a maximum of two per residence.

It should be clear that this policy does not make the provision of said car-parking spaces mandatory. The site is located very close to the large car-park in front of the Fire Station. Except during Sunday mass, this car-park is invariably practically completely deserted. Furthermore, the MEPA frequently directs developers not to provide on-site car-parking where development is accessible from an arterial road. PA 2188/04 covering the development of four flats and a penthouse in a busy area at Msida is a typical example.

c. The sixth reason for refusal fudges [sic.] over the fact that the proposal actually represents an environmental improvement over the current situation. The existing building was constructed using concrete blocks, which are clearly inappropriate in a rural setting. Only one storey with underlying basement completely below the level of the alley is proposed, and the side elevation is indented in order to minimize visual impact. There are no structures at the roof level and no parapet wall is proposed. The proposal will not be visible from the East side as there is a visually dominating two storey building in the immediate vicinity. In view of its limited height, the existing vegetation on the West side of the site will conceal most of the proposed building but any part that is visible will help to screen the aforementioned large building. From viewpoints to the North, the site can barely be made out against the mass of building that surrounds it. No hard landscaping whatsoever is proposed beyond the confines of the existing building.

C. In-nota responsiva ta' Lorinda Vella ghall-Awtorita', ipprezentata fil-5 ta' Novembru 2009, inter alia it-tlett punti segwenti:

"5.2 Access to residential development

The proposed residence does not have a frontage onto a public schemed road, and is therefore considered as internal residential development. The alley providing access to the site is approximately 3 metres wide, which is less than the minimum 4.1 metres required by DC 2007 Policy 3.8. In view of this, a new dwelling unit on this site

is not acceptable as proper access to the site is not being provided.

The appellant argues that the alley has been in existence pre-PAPB and pre-MEPA policies. Notwithstanding this, all new developments are required to comply with plans and policies that are in force at the present time, which include DC2007 Policy 3.8 - This line of thought is in concordance with the Court of Appeal sentence of Angelo Farrugia dated 24th April 1996, and several other subsequent appeal decisions. Hence, as the present situation, albeit being in existence for several years, does not comply with present policy, the proposed development is deemed as unacceptable.

The appellant also points out that this same alley serves another existing residence covered by permit PA 4625/06. However, it is pointed out that this application permitted alterations and extensions to an existing residence, which residence existed prior to the coming in force of the DC Guidelines and the respective policy on internal residential development. In the case subject to appeal, a collection of existing rooms are proposed for demolition and their replacement with a new residential building, which raises different considerations to those that were applicable in the case of PA 4625/06.

5.3 Traffic Management

The proposed new building will not have on-site car parking provision, which is in clear conflict with the provisions of Structure Plan policy TRA 4 and Local Plan Policy NWRS 4 - Both these policies require that all new development is equipped with appropriate on-site car parking provision, to ensure that no traffic congestion is created in the area due to the need for street parking

When it is not possible to provide for on-site car parking provision, MEPA normally imposes the requirement for the development to contribute towards the Urban Improvement Fund (UIF) to compensate for the non-provision of on-site parking. However, imposing such a condition in this case would not bring any benefits to this

particular situation - This is being stated on the grounds that the lack of on-site parking provision cannot be absorbed within this particular context

When considering the context of the site, two facts are instantly noted [...]:

- a. the alley leading to the site is of a restricted width, where vehicular passage and parking along this same alley cannot co-exist; and
- b. the alley is accessed from a busy arterial road, which links traffic from Mellieha to the rest of the island.

As it is clearly impossible for any car parking to take place on the alley, due to its restricted width, car parking would potentially take place on the arterial road Triq il-Mistra. ... Hence, the lack of on-site car parking provision will also conflict with Structure Plan policy TEM 4, as the proposed development would be of a hazard to the safe flow of traffic along the arterial road.

Although the appellant indicates that parking would be carried out within the CPD car park located further up the road from the site, MEPA does not consider this as an acceptable alternative. In the first instance, this car parking area is located at a distance of approximately 150m², and secondly there is no pedestrian access present between this car park and the site. These circumstances make it unlikely that this arrangement would actually be a practicable alternative.

5.4 Visual Impact

The appellant argues that the proposed redevelopment would ameliorate the present situation in terms of visual impact. This, the appellant states is due to the fact that the materials and design of the existing building is not appropriate within a rural setting. MEPA on the other hand is contending that while the proposed redevelopment would have the same visual impact above the alley, the underlying basement will result in the building appearing as a two storey structure when viewed from Mistra Valley. Hence, in terms of massing, the proposal will not ameliorate the present situation but would create a more

visually intrusive structure on site and within its surrounding rural context.

Moreover, the two storey high party walls will also create a visual impact on the surrounding rural context, especially when considering that the building is free standing and not adjacent to any existing building on either of its sides. The false facade on the side party walls (as illustrated on drawing red 12B) is not considered to be an adequate design treatment which would effectively ameliorate the visual impact.”

D. In-nota ta' sottomissjonijiet tal-Perit Ian Zammit ghall-Appellanti nomine, ipprezentata waqt is-Seduta numru 5 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fid-19 ta' Frar 2010, precizament il-punti segwenti:

“c. With regard to the Directorate's comments in paragraph 5.2 regarding access to the proposed development, the alley, that gives access to the existing building is over one hundred years old. For about fifty years it has been the sole access to the large house of the family of Joseph and -Maria Teresa Sammut and up to a few years ago it also gave access both portions of the house of Lorenzo and Katerina Zammit, of which the building on this site formed a part. Due to the difference in level between the level of the street and that of the terrain, this alley also gives access to the house that used to belong to Joseph and Carmela Sammut which is about one hundred and forty years old. The Directorate is arguing that, as this alley is less than 4.1 metres wide, its policies do not allow this site's redevelopment. If this were true, substantial portions of the Urban Conservation Areas, Mdina, Valletta and The Three Cities, which all have streets and alleys less than 4.1 metres wide, should be left to rot, unless they can be given the Haussmann treatment. It should therefore be clear that the rehabilitation and redevelopment of degraded old buildings is not against MEPA policy.

d. In paragraph 5.3, the Directorate accepts that it is not possible or desirable for the developers to provide parking

within the site [...] However, in this case, as the alley is directly off the busy road that leads to Mellieha, and vehicles that exit and enter the main road from this rural settlement constitute a danger, there is scope for better road signage as well as a couple of strategically placed mirrors. This will not be of direct benefit to the occupants of the proposed development, who will be parking in the carpark in front of the Civil Protection Department, but it will enhance the safety of the three households in this Rural Settlement that park within their developments. UIF funds could also be employed to provide car-parking spaces near the block of apartments on the ex-Ambiente site, which is further up the hill.

e. In the last paragraph of section 5.3 of its report, the Directorate states that there is no pedestrian access from the car-park in front of the Civil Protection Department to the site subject of this appeal. This statement is manifestly false and is further illustration of the fact that the Directorate has not bothered to inspect the site. The Directorate also claims that, as this public car-park is about 150 metres away from site subject in caption, it will not be found acceptable to park there and walk to the Rural Settlement. In view of the restricted width of the main road (about seven metres), and the high traffic speed, it is foolhardy and practically impossible to park on the main road. ...

f. With regard to the section 5.4 of the Directorate's report, in paragraph a) above I already have pointed out that the site is not visible from Mistra Valley. The site can however be seen (with binoculars), from one of the hair-pin bends in the Mellieha road as well as from the area below the Selmun Castle. However, even when examined with a telescope, the proposed building will not constitute a 'visually intrusive structure' for the following reasons:

- i. it is quite small and has no staircase to the roof level or a parapet wall around the roof,
- ii. the ground floor is setback from the basement,
- iii. the basement will be shrouded by existing vegetation,
- iv) the external walls will be in weathered stone

v. it will be seen against the background of much larger and multi-storey development, (even if the eleven storey development known as Xemxija Heights which was recently approved by the MEPA on a site only fifty metres away never gets off the ground).

g. An important point that the Directorate fails to examine is whether there is a better alternative to this-application. If this appeal is not accepted by the Planning Appeals Board, and appellants are constrained to retain the existing building which is inappropriate in a rural setting, as its layout is today considered unacceptable for residential purposes, wouldn't its use for storage for agricultural products, rabbit breeding, keeping horses etc cause nuisance to its neighbours and generate inappropriate vehicular traffic in and out of the alley [? ... The] second major goal of the Structure Plan is 'to use land and buildings efficiently' while the third major goal is 'to radically improve the quality of all aspects of the environment of both urban and rural areas'.

E. Il-verbal tal-access fuq il-post tas-Seduta numru 29, mizmuma fid-29 ta' April 2011, precizament il-punti segwenti:

"It-Tribunal acceda ghal fuq is-sit in kwistjoni fejn hemm xi kmamar zghar antiki fi stat ta' dilapidazzjoni li l-Perit Zammit indika li huma mibnijja bi bricks antiki u li huwa xtaq iwaqqagghom. Dawn jidhru fl-aerial photos tal-1956 u li qed jipproponi li jwaqqa' u jibni residenza.

Wahda mir-ragunijiet ghar-rifjut hija l-access ghas-sit. It-Tribunal acceda ghal dan is-sit minn passagg wiesa qisu 2.8 metri u twil tletin metru. Meta wiehed jghaddi mill-passagg jigi fi pjazza zghira fejn fuq ix-xellug issib dawn iz-zewgt ikmamar li huma mertu tal-appell.

Gie kkostatat mit-Tribunal ukoll illi hemm bankina mill-car park pubbliku sakemm wiehed jibda jghaddi mill-passagg imsemmi."

F. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fis-16 ta' Mejju 2011, inter alia t-tlett punti segwenti:

“2.2 The fact that the existing building is pre-1957 has no planning material bearing on the proposal. It only means that the existing building is legal. This does not mean that it can be developed any further. Should this be the case, then any agricultural room that can be proved to be pre-1967 can be developed into a dwelling. This is obviously not the case. Any proposed dwelling in the ODZ or Rural Settlement is to abide to the current planning policy.

2.3 The appellant is misleading when comparing the site under consideration in this appeal to any other site in UCA contexts in regards to the width of the access alley. First of all the site in this appeal is located within a Category 3 Settlement and not UCA. Thus it is obvious that different policies applies between the two scenarios. Secondly it is important to highlight once again that the 4.1 m benchmark is applicable in this case because the alley that provides access to the site is not a schemed road and thus can be developed at any time. This means that the site being considered in this appeal falls within that type of development labelled internal residential development since it has no frontage onto a schemed road. Policy 3.8 of the DC2007 is very clear in these cases; i.e. a 4.1 m access is to be ensured to the site and that such sites are to be provided with vehicular parking. If these two conditions cannot be met (apart from other criteria) than the proposal cannot be accepted. Thus the issue of the UCA has no bearing in this scenario unless the appellant can quote internal residential developments in UCAs with less than 4.1 m access into the site.

2.4 The appellant asks whether it is better for the site to be developed as a dwelling or to be used for agricultural purposes, implying in the process that any agricultural use would be of nuisance to the neighbourhood. The Authority notes that the site is located in a Category 3 Settlement and therefore agricultural uses are normal and expected

in such environments and thus they would be of no nuisance.”

G. In-nota ulterjuri tal-Perit Ian Zammit ghall-Appellanti nomine, ipprezentata fil-11 t' Ottubru 2011, precizament il-punti segwenti:

“At the site inspection of the 29th April 2011, the Environment and Planning Review Tribunal had the occasion to establish that;

- i. there is a public footpath from the public carpark to the site
- ii. there are two dwellings numbered 6 and 7 that are exclusively accessible from the same alley that leads to the site and there had been another dwelling with a door to the alley, but this door has now been barred because that dwelling was amalgamated with another residence
- iii. the site is screened from the road that leads to Mistra Valley by a dense row of very tall reeds - anyone forcing his way through this thicket and looking in the direction of the site would view it against a background of the nearby three storey buildings, (soon to be overshadowed in their turn by the ten storey buildings approved by the M.E.P.A. on the site of the Mistra Village)
- iv. though already existing in 1956 (as evidenced by the relative survey sheet), the existing building is built with materials inappropriate in a rural context and is in need of redevelopment
- v. pedestrian access to the property is appropriate in order to avoid conflict with the traffic on the busy road that leads to Mellieha
- vi. possible alternative uses, such as a store for agricultural implements or stables, are inappropriate because of the site's close proximity to about ten residences and a guesthouse with restaurant as well as because of conflict with the traffic on the main road
- vii. practically all the small gap between the scheme boundary and the rural settlement consists of hard landscaping, (comprising the public road and footpath, the public carpark and fire station, a parking area which used to be used by British Petroleum and a sub-station), so

effectively this 'rural settlement' is effectively an integral part of the large built-up area of Xemxija,

[...] the issue is not whether Mistra valley is visible from the site but whether the proposed development would result in unacceptable visual impact. It should be evident that replacing an existing old building made from concrete blocks with another of the same height, but built with natural finish limestone ashlar masonry is a great improvement that should be encouraged. ... The Planning Directorate had recommended the approval of Xemxija Towers, so it is amazing that it now implies that this miniscule urban improvement constitutes unacceptable visual impact. On the contrary, by virtue of its small size, its limited height, the setback at the ground floor level and the surrounding existing vegetation, the proposed small residence will enhance its context and its use is in line with the established uses of this committed built-up area.

In paragraph 2.3 of its second statement, the Directorate implies that 'it is obvious' that access narrower than 4.1m results in excellent living conditions in UCAs (and in fact road widening in UCAs is strictly prohibited), but the very opposite applies in rural settlements. [...] The alley leading to the site has existed for at least one hundred year [...] It should be evident that DC 2007 policy 3.8 is not intended to be applied to the redevelopment of a small single unit in an existing alley . Incidentally [...] PA 6416/00, covering a large internal residential development located partly outside the scheme boundary [...] is accessible through a pedestrian passage 1.5 metres wide from the Urban Conservation Area of Haz-Zebbug.

In paragraph 2.4 of its report, the Directorate proceeds to contradict itself by implying that although the alley it considers the alley too narrow to permit pedestrians to access a dwelling, the use of the premises as an agricultural store (with the consequent coming and going of vans laden with produce and entering and exiting on the main road), is an excellent alternative use.

Kopja Informali ta' Sentenza

H. Ir-rikors tal-Avukat Dott.ssa Joanne Vella Cuschieri ghall-objector Joseph Sammut, ipprezentat fl-10 ta' Novembru 2011.

J. Ix-xhieda ta' Joseph Sammut, objector, moghtija bil-gurament waqt is-Seduta numru 55, mizmuma fl-4 ta' Settembru 2012.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex font konsistenti minn zewgt ikmamar dilapidati u li jinsab gewwa category 3 rural settlement f' San Pawl il-Bahar, jitwaqqa u minflok tinbena residenza zghira.

Ir-raguni ghar-rifjut jistrieħu fuq il-premessa li r-residenza kif proposta, mhix ser ikollha faccata fuq it-triq. L-access prezenti hu permezz ta' sqaq wiesgha madwar tlett metri, cjoē ferm inqas mill-mimimu ta' 4.1 metri stipilati permezz tal-policy 3.8 tal-Development Control Policy and Design Guidance (DC 2007). Dan ifiser li l-proposta hi wkoll f' kunflitt mal-policy TEM 4 tal-Pjan ta' Struttura, ghax il-karozzi li jservu r-residenza ser ikollhom bilfors jipparkjaw barra l-isqaq; bil-konsegwneza li ser ikunu ta' impatt addizzjonali fuq il-traffiku veikolari li jkun ghaddej mit-triq principali li tmiss ma' l-istess sqaq.

In oltre, in-nuqqas ta' provista ta' parkegg fuq is-sit (irid jinghad li l-izvilupp ser johloq il-bzonn ta' zewg parking spaces addizzjonali), hu wkoll in kontravvenzjoni tal-policy TRA 4 tal-istess Pjan kif ukoll tat-table A2.5 tal-iStructure Plan Explanatory Memorandum, u tas-subinciz VII tal-policy NWRS 7 tal-Pjan Lokali (NWLP).

Fl-ahharnett, il-proposta ser tikkreja blank party wall in kontravvenzjoni tal-policy RCO 4 tal-Pjan ta' Struttura. F' cirkostanzi bhal dawn, ikun xieraq li kieku ma' jkunx hemm hitan lixxi tal-appogg, u dan in linja mal-policy NWRS 3 tal-Pjan Lokali

Mill-banda l-oħra, l-Appellanti nomine jirrilevaw li l-binja gja' kienet tezisti sa' almenu s-sena 1956. Dan johrog

mis-survey sheets ta' dakinhar. In oltre jispjegaw kif apparti l-font in ezami, l-isqaq iservi wkoll t' access ghar-residenzi ohra li hemm, ta' terzi, fosthom dik approvata bil-permess PA 4625/06.

L-Aggravji tal-Appellanti nomine jistrieu fuq il-premessa li l-Pjan Lokali ma' jorbotx kwalsiasi zvilupp f' category 3 rural settlemt li jkollhu bilfors zewg parkeggi. Madankollu jirrilevaw, li s-sit jinsab biswit fire station, u li apparti nhar ta' hadd (waqt il-hin tal-quddies) il-parkegg tal-istess fire station ikun vojt. Ghalhekk, wiehed ikun jista' facilmente jaghmel uzu minn dan l-ispazju ghall-parking. Wara kollox l-imsemmi pparkegg hu biss ftiti passi l-bogħod mill-font in ezami.

Jargumentaw ukoll li lanqas ma jsegwi il-linja ta' ragunar tal-Awotirta' li kemm il-darba ma jistax jigi provdut parking on site, ir-residenti tal-font in ezami sejrjn jiksru l-ligi u jiparkjaw f' triq arterjali, minlok jimxu u jiparkjaw kif u fejn suppost (gewwa per ezempju l-parkegg tal-fire station suindikati). u jimxu ftit.

In kwantu d-dehra tal-binja, l-Appellanti nomine jisostnu li prezentement, il-kostruzzjoni hi wahda skadenti ferm – u li tagmel uzu minn bricks tal-konkos. Ghalhekk, kemm il-darba tigi permessa r-residenza mitluba, ser tintuza gebla tal-franka li hi ferm aktar idoneja mat-tessut ta' bini rurali. In oltre, l-izvilupp propost jikkonsisti f' sular wiehed u basement (mibni interment taht il-livell tat-triq). Lanqas ma' huma qed jitolbu li tinbena, per ezempju, opra morta jew strutturi ohra ancillary fuq il-bejt. In oltre, billi l-binja ser tkun imtarrga sew minn quddiem (faccata li thares fuq l-isqaq), mhix ser tkun tidher tant mill-isqaq, u s-sigar li hemm prezentement fuq in-nahha tal-punent tas-sit, ser jghinu sabiex jahbu l-binja ulterjorment. Jirrilevaw li fil-fatt minn nahha tat-tramuntana kwazi xejn mill-binja mhu ser ikun jidher, u in ogni caso mhux qed jigi propost l-ebda hard landscaping oltre l-linja tal-bini.

L-Awtorita zzomm ferm l-oggezzjoni tagħha għall-izvilupp u targument li minhabba l-fatt li l-isqaq hu dejjaq ferm, l-izvilupp hu għal kul effetti wiehed ta' t-tip internal

development. In oltre, targumenta li huwa rrilevanti kemm ilha mibnijja l-istruttura prezenti, ghax l-izvilupp li qed jintalab hu wiehed gdid u ghalhekk la ser jinbena llum, ghandu jirrispetta l-policies tal-Pjan Lokali in vigore.

Ghar-rigward tal-permess citiat mill-Appellanti (PA 4625/06), l-Awtorita' tiddikjara li dak kien jirrigwarda estensjoni ta' residenza ezistenti, mentri il-kaz in ezami jirrigwarda kmamar mitluqa li qed jintalbu li jiggjarfu sabiex tinebna residenza.

Fir-rigward ta' parking, l-Awtorita' tirrileva li l-parkegg citat mill-Appellanti nomine jinsab madwar 150 metru mill-font, u li ma jezistix access dirett benjiethom. Ghalhekk, wiehed jiddubita jekk ikun il-kaz, kemm ir-residenti ser joqodu jiparkjaw f' dan il-parkegg sabiex imbaghad jimxuha - speċjalment meta lanqas ma tezisti bankina. L-Appellanti nomine mill-banda l-ohra jargumentaw li dan mhux minnu – u li fil-fatt hemm bankina. Dan l-istat ta' fatt seta anke jikkostatah dan it-ribunal meta accede fuq il-font.

In kwantu d-dehra tal-izvilupp minn faccata (cjoe' minn nahha l-ohra tal-Wied), l-Awtorita' tiddikjara li l-izvilupp ser ikun jidher tassew – u li l-livell tal-basement li ma jidhirx mill-isqaq ser ikun kompletament espost meta wiehed ihares lejha minn nahha l-ohra. L-Appellanti nomine pero' jiddikjaraw li qabel xejn, j din il-binja ser tkun ferm zghira u li l-maggir parti taghha ser tkun moghttija sew bis-sigar. Ghalhekk dak li qed tiddikjara l-Awtorita' hu ferm improbabbli, u caso mai insinifikanti.

L-Appellanti nomine issottomettew li jekk kemm il-darba l-argukent tal-Awtorita' li din il-binja ma tistax tintuza bhala residenza, allura skans li tigi abbandunata u tithalla tiggarraf, wiehed irid isibilha uzu li jkun kompatibbli ma' struttura fil-kampanja – bhal per ezempju mahzen agrikolu. Izda anke jekk dan ikun il-kaz, galadarba skond il-policies citati, l-isqaq hu dejjaq wisq ghall-karozzi - ahseb u ara kemm il-darba l-kmamar jinqelbu per ezempju f' imhazen agrikoli u jkollhom jidhlu xi ingenji (tractors, etc.) gewwa l-istess sqaq.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, dan it-Tribunal hu tal-fehma kkunsidrata li peress li t-talba odjerna hi ndirizzata sabiex jigi rigenerat bini mitluq (u li jinsab f' category 3 rural settlement), il-proposta in ezami timmerita kunsiderazzjoni favorevoli. Ikun ferm hasra li kieku binjiet zghar bhal dawn jithallew jigu abbandunati.

Ghaldaqstant, dan it-Tribunal hu propens li jilqa' din it-talba kemm il-darba jigi garantit li din ma tkunx qed tirrizulta: f' intensifikazzjoni tal-kostruwit (cjoe' li ma d-daqqa t' ghajn, mill-livell tat-triq il-fuq ma jirrizultax li hemm aktar bini milli hemm prezentement); u li ssir kontribuzzjoni ghan-nuqqas ta' parking, dovut ghal-fatt li l-isqaq li hemm prezentement hu dejjaq wisq.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess limitament u jhassar ir-rifjut ghall-PA 8221/06 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-izvilupp, fid-9 ta' Lulju 2009. In oltre jordna lill-Appellant sabiex fi zmien tletin (30) gurnata, jipprezenta pjanti godda u dokumenti in linja ma' dawn is-segweni kundizzjonijiet:

1. Dan il-permess qed jinhareg bl-intiza cara li jigi riabilitat il-font prezenti. F' ic-cirkostanzi pero, sakemm jigu rispettati l-qisien minimi u l-istandards vigenti ghal-residenzi, l-izvilupp il-gdid m'ghandux jissupera; la l-footprint prezenti, u lanqas l-ammont ta' spazju intern kif generalment hu permess f'residenzi fiz-zona in ezami.

2. Kif dikjarat permezz tas-sottomissjonijiet tal-Appellanti nomine, m'ghandhom jigu permessi l-ebda tip ta' strutturi fuq is-saqaf/bejt tar-residenza odjerna. Tankijiet tal-ilma u s-servizzi l-ohra kollha (kif normalment huma stallati f'residenzi kontemporanji), ghandhom jigi adegwatamant mohbijja (screened) jew imqeghda f' bnadi ohra tas-sit.

3. Ghar-rigward tal-kwistjoni tal-hitan tal-appogg mikxufin, etc., il-proposta ghandha tikkunsidra tip ta' disinn li jimmitiga u preferibilmment jxejjen tali impatti b' mod xieraq.

4. Fil-kaz li jigi propost xi tip ta' hard landscaping, dan mgħandux imur oltre l-wesgha ta' passagg bir-rigel madwar il-footprint prezenti. Il-bqijja tal-font għandu jigi adegwament iddisinjat b' soft landscaping, etc.

5. Għal dak li għandu x' jaqsam ma' shortfall fil-parkegg, etc., għandha ssir kontribuzzjoni kif normalment hi mposta f' kazijiet simili bħal dan.

L-Awtorita', wara li tkun ezaminat dawn il-pjanti u dokumenti, għandha f' terminu ta' zmien xieraq tibghathom għall-approvazzjoni ta' dan it-Tribunal, b' dana li fi zmien tletin gurnata (30) minn meta tkun ircieviet lura l-pjanti u d-dokumenti kollha, tohrog lill-Applikanti nomine il-permess kif minnhom mitlub.

Ikkunsidrat

Dan hu appell fuq punt ta' ligi. Il-principju regolatur in materja hu illi l-aggravji ta' sustanza li jimpingu fuq il-mertu tal-kwistjoni għandhom jigu kunsidrati mit-Tribunal u decizjoni mogħtija dwarhom kemm biex il-gudizzju jkun cert u car u kemm għaliex il-parti jkollha risposta għall-ilmenti tagħha, kemm jekk din ir-risposta tkun fl-affirmattiv jew fin-negattiv. Wara kollox l-iskop ewlieni tat-Tribunal hu r-revizjoni ta' decizjonijiet tal-Awtorita, revizjoni li tista ssir biss in linea mal-aggravji mressqa quddiemha. Daqs kemm it-Tribunal m għandux setgha jmur oltre dak mitlub jirrevedi daqstant iehor għandu l-obbligu jirrevedi dak mitlub jirrevedi.

Enuncjat dan il-principju, jidher illi d-decizjoni tat-Tribunal hi mfassla fuq kriterji prattici dwar dak li hu aktar accettabbli f'sens ta' ppjanar cioe thallix sit fi stat dilapidat jew taccetta zvilupp basta li ma jikbrix oltre dak gia ezistenti u ma jkunx ta' impatt negattiv fuq il-madwar.

L-Awtorita kellha diversi oggezzjonijiet għall-izvilupp kollha bbazati fuq policies specifici. It-Tribunal ma kkunsidrax dawn l-aggravji f'forma logika u diretta izda wara li fil-qosor għamel riassunt car tal-aggravji kollha mressqa mill-applikant fl-appell li sar quddiemu u l-

oggezzjonijiet fuq bazi ta' policies ta' ppjanar da parti tal-Awtorita li inizjalment irrifjutat il-hrug tal-permessi, wasal in riassunt ghal konkluzjoni kif gej:

it-Tribunal hu propens li jilqa' din it-talba kemm-il darba jigi garantit li din ma tkunx qed tirrizulta: f'intensifikazzjoni tal-konstruwit (cjoe' li ma d-daqqa t'ghajn, mill-livell tat-triq il-fuq ma jirrizultax li hemm aktar bini milli hemm prezentement); u li ssir kontribuzzjoni ghan-nuqqas ta' parking, dovut ghal-fatt li l-isqaq li hemm prezentement hu dejjaq wisq.

Din il-konkluzjoni mhix sorretta minn ebda konsiderazzjoni fuq bazi ta' policies msemmija mill-partijiet ghajr li t-Tribunal ighid li l-iskop hu r-rigenerazzjoni ta' bini mittluq.

L-appellat jargumenta illi t-Tribunal ikkunsidra u ddecieda dwar l-aggravji fil-kundizzjonijiet li l-istess Tribunal impona ghal hrug tal-permess.

Harsa lejn il-kundizzjonijiet fil-fatt juri illi t-Tribunal fost il-kundizzjonijiet semma' li l-footprint tas-sit ghandu jibqa' l-istess u ma ghandu jitqieghed ebda servizz fuq is-saqaf jew bejt ghal preservazzjoni tal-ambjent tal-madwar; il-hitan mikxufin ghandhom isir ilhom disinni li jimmitiga jew ixejjen il-problema tal-blank party wall; u jsir kontribuzzjoni applikabbli normalment ghal shorfall fil-parkegg.

Dawn il-kundizzjonijiet li huma fid-diskrezzjoni tat-Tribunal li jimponihom pero ma jissodisfawx l-aggravju ta' natura sostanzjali illi l-izvilupp imur kontra l-policy 3.8 tad-DC 2005 Policy and Design Guidance li jkopri internal development kif inhu dan il-kaz in kwantu l-access rikjest ghas-sit billi l-isqaq li jwassal ghas-sit hu wiesa' biss 3 metri mentri suppost ikun 4.1 metri u dan biex il-vetturi jkunu jistghu jduru u johorgu ghal fuq triq principali bil-quddiem. Hu minnu li t-Tribunal indirizza l-kwistjoni ta' onstreet parking u nuqqas ta' parking spaces fis-sit billi qal li hemm parkegg vicin is-sit accessibbli minn pedestrian walkway u ghandu jsir kontribuzzjoni finanzjarja ghal fatt li mhux ser tikun hemm spazju ghal parkegg ta' zewg vetturi mas-sit u b'hekk irrisponda ghal aggravji dwar il-policy TRA4 dwar onsite car parking u TEM4 dwar parking on an

arterial road, kif ukoll irrisponda għall-aspett ambjentali u vizwali li l-izvilupp ser jikkreja u kif dan jista' jigi mitigat u mxejjen billi flok bini zdingat ikollok bini accettabli fl-ambjent li qed jigi propost l-izvilupp. Madankollu t-Tribunal naqas li jindirizza l-policy 3.8 tal-Policy and Design Guidance 2005 li fuqha sahaq l-Awtorita u li hi in kuntrast mal-izvilupp propost.

Il-Qorti mhix qeghda bl-ebda mod tissuggerixxi jew timplika li l-applikazzjoni kellha tigi michuda izda li t-Tribunal naqas li jindirizza dan l-aggravju specifiku u li prima facie juri li l-izvilupp propost u in kontravvenzjoni tal-imsemmija policy. Dan in-nuqqas jikkreja dubbju gustifikat li t-Tribunal ma kkonsidrax sew fit-totalita tieghu l-izvilupp propost u jaghmel għalhekk il-gudikat wiehed incert u inkonklussiv.

F'dan is-sens għalhekk l-appell qed jigi milqugh.

Decide

Għalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-Awtorita limitatament kif deciz u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tal-31 ta' Jannar 2013 u tibghat lura l-atti lit-Tribunal biex jerga' jiddeciedi l-imsemmi appell fuq l-atti li għandu quddiemu. Spejjez għall-appellat.

< Sentenza Finali >

-----TMIEM-----