



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 34/2013

Marcon Abela

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Marcon Abela tal-20 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 fejn laqa' l-appell tal-istess Marcon Abela bl-eccezzjoni tal-aperturi tal-aluminium, li kellhom isiru tal-injam mahduma skond is-sengha tradizzjonali u mizbugha b'kulu preferibilmment naturali;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell kellu jigi michud u d-decizjoni tat-Tribunal konfermata principalment ghax l-appell qed jitlob li l-Qorti tissindaka l-interpretazzjoni tal-policies li saret mit-Tribunal u dan mhux ammissibli bhala appell fuq punt ta' ligi ghax mhux qed jigi attakkat l-applikazzjoni tal-istess ligi;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fil-31 ta' Mejju 2012, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 614/12 – Site at ta' Gormos, Dingli: To amend approved permit PA 4819/06 (to erect a one-storey farmhouse over existing reservoir. Application also includes the construction of an underground basement garage / store. Applicant is a full-time farmer.) Amendments include the change in material of apertures, additions of fascia to parapet wall at roof level and opening of window in washroom.

L-unika raguni ghar-rifjut kienet is-segwent:

“1. The proposed aluminium apertures in a scheduled Area of Ecological Importance, Area of High Landscape Value, a Special Protection Area and a Special Area of Conservation are in conflict with the provisions of Structure Plan Policy RCO 4, Policy 1.3A: Rural Character and Landscape and to Part 5(5.5) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables in that aluminium is not considered appropriate within rural areas and would adversely affect the character and scenic value of the scheduled site.”

B. In-nota tal-Perit Philip Mifsud ghall-Appellant, ipprezentata fid-9 ta' Lulju 2012, inter alia l-punti segwenti: “2.1 Qabel xejn, l-appellant jinnota li RCO 4 titkellem fuq Stuttura u Attivita u mhux fuq aperture.

2.2 Bla pregudizzju ghal punt 2.1, il-punt 1 sa 5 ta' RCO 4 huma indubjament irrelevanti.

2.3 Wiehed jista' jargumenta li Punt Nru 6 hu relevanti. Biss minkejja li wiehed jista' jaghmel dan l-argument, il-Kummissjoni ghall-Ambjent u l-Ippjanar (KAI) kellha l-konfront ta' dak li qal l-EPD fuq din il-proposta.

2.4 Fil-fatt f'Parti 4.7 tar-Rapport I-EPD gie kkwotat li qal li 'there are no particular concerns from an environment point of view and that no significant impacts are expected on the Natura 2000 site'.

3.0 B'referenza ghal Policy 1.3A ta' I-AFDS, l-appellant jissottometti li din il-policy bl-ebda mod ma teskludi l-uzu ta' aluminium f'binjiet barra miz-zona ta' l-izvilupp.

3.1 Kull ma tghid Policy 1.3A hu li 'where permitted, the proposed development shall be of a scale, design, form, mass, material, colour and texture, in accordance with the guidelines in Part 5, that it is consistent with the rural character of the area, it is integrated in the landscape and it does not have an adverse visual impact on the rural area'.

3.2 Ghaldaqstant, Policy 1.3A tirreferi ghal parti 5 ta' l-istess document. Tghid ukoll li l-izvilupp irid ikun konsistenti mal-karattru rurali taz-zona.

4.0 Parti 5 ta' I-AFDS tghid li 'openings should be hard wearing timber or metal, pointed to suitable colour.'

4.1 Dan juri bic-car li l-uzu ta' metal ma hux eskruz f'binjiet rurali. L-anqas ma hu eskruz xi tip partikolari ta' metal (ez: aluminjum).

5.0 L-appellant ihoss li bis-suespost, hu espona bic-car li l-proposta tieghu ma tikser l-ebda wahda mill-policies li gew ikkwotati fir-raguni li l-Awtorita' tat ghar-rifjut taghha.

5.1 In oltre, l-appellant jistieden lill-Awtorita' sabiex tikwota xi parti ohra ta' xi document iehor ippubblikat minnha u li hu fis-sehh li jeskludi l-uzu tal-materjal propost f'zona rurali.

6.0 L-appellant jissottometti wkoll li hekk kif ga gie relevant f'parti 3.2 ta' dan id-dokument Policy 1.3A ta' I-AFDS tghid li l-izvilupp irid ikun konsistenti mal-karattru rurali taz-zona u li ma jkollux impatt viziv qawwi fuq l-istess zona rurali.

6.1 F'dan il-kuntest, l-appellant jagħmel referenza għal permessi mahruġa lil fuq is-sit in kwistjoni fir-rigward ta' strutturi għat-trobbija ta' l-annimali f'jen l-Awtorita', korrettement, ma eskcludietx l-uzu ta' metal f'dawn l-istrutturi.

6.2 L-Appellant jagħmel ukoll referenza għal villa li hemm mibnija ezatt biswit is-sit li hu jokkupa (u li ma tiffirma parti mill-ebda razzett) u li fuqha hareġ permess ricenti – PA 00470/09). F'dan il-permess ma kien hemm l-ebda kundizzjoni fuq il-materjal ta' l-aperturi tant li ricentement gew installati numru ta' aperture ta' l-aluminju f'din l-istess binja.”

C. In-nota responsiva ta' Darren Fava għall-Awtorita', ipprezentata fl-4 t' Ottubru 2012, inter alia l-punti segwenti:

“5.2.2 [...] In the previous development permission PA 4819/06, issued for the construction of a farmer's dwelling following an outline permit, the proposed apertures were marked on the approved drawings as 'timber apertures'. In the DPA, the external appearance of the then proposed building was found to be 'in accordance to paragraph 2.6.2 of Section 2.6 of Policy and Design Guidance 3- Farmhouses and Agricultural Buildings (1994) which states that "materials for openings should be hard wearing timber, painted in suitable colors. Highly reflective materials should also be avoided.'

It is therefore evident that the issue of design and external appearance was already a major issue in the assessment of the proposal and was also one of the reserved matters in condition 2 of the Outline permit PA 3444/04. Furthermore, condition 10(p) of permission PA 4819/06 specified that the apertures of the proposed dwelling shall be constructed in timber. The appellant was made aware from the early stages of the application that the proposal is objectionable in principle due to the proposed aluminium apertures through a Screening letter dated 28th October, 2011 (Doc 13A):

'Site falls within an Area of Ecological Importance and an Area of High landscape Value as per G.N.403/96 and Special Area of Conservation as per L.N.257/03 and G.N.223/05. Aluminum apertures are not considered appropriate within protected rural areas, and are not in conformity with the provisions of Structure Plan policy RCO 4 (6) and of Part Five (5.5) of the Policy & Design for rural areas.

For complete assessment of your proposed development and in order to validate the application the following submissions are required by the Authority: Revised drawings which address the above issue (materials on elevations).'

The appellant was given a further chance to address this matter following screening since the aluminium apertures were also found objectionable by the Environment Protection Directorate (EPD) and the Natural Heritage Advisory Committee – see request for further information dated 9th April 2012. The EPD recommended timber as a more appropriate aperture material within a rural context (minutes 11 & 31 in PA file).

One of the standard permit conditions that are imposed on developments within ODZ that concern the construction of building relates to external apertures. This condition states that:

'Except where otherwise specified on the approved drawings, all external apertures, closed balconies and gates shall be constructed in timber. Open balcony railings and all other metalwork shall be in wrought iron. No apertures or railings shall be constructed of gold, silver or bronze aluminium.'

Paragraph 5.5 of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables, 2007, similar to the above quoted paragraph 2.6.2 of Section 2.6 of Policy and Design Guidance stipulates [... the same].

Policy 1.3A of the Policy and Design Guidance on Agriculture Farm Diversification and Stables rests on the

parameters of paragraph 5.5 of the same policy document by ensuring the protection of the landscape, the rural character and the scenic value of the countryside from impacts arising from new or existing development. The policy requires that 'development is consistent with the rural character of the area, it is integrated in the landscape and it does not have an adverse visual impact on the rural area.'

Although the proposed amendments in this case are restricted to minor changes on the front and side elevations of the approved dwelling, the proposed aluminum apertures do not feature as one of the permitted materials in paragraph 5.5 of the Policy Guidance and would constitute an adverse visual amenity within a scheduled Area of High Landscape Value. This statement has also been sustained by the appellant himself in paragraph 4 of his arguments presented to the Tribunal.

In addition, contrary to what is being alleged by the appellant Structure Plan policy RCO 4 is relevant to this case since it regularizes development within Rural Conservation Areas. In fact this policy was consistently used in all of the preceding applications submitted on the site subject to appeal – see site planning history in the DPAr. This policy specifies that the development of any structure or activity which would adversely affect the scenic value of a particular area in view of the introduction of alien forms, materials, textures or colours will not be permitted. Apertures are considered an integral part of the overall design of a building as outlined in the various excerpts from policies and standard conditions quoted in the preceding paragraphs. The introduction of aluminum apertures within such areas would degrade the scenic value of the areas and thus the proposal goes against the spirit of policy RCO 4. Moreover, the visual effect of aluminum apertures within an area becomes more magnified if the area is scheduled for its landscape and ecological value such as in this case.

The appellant's argument that 'a detached development (subject to PA 0470/09) in the immediate vicinity of the

site was approved without any conditions on materials used for the facade', and which had recently fixed white aluminum apertures, should not act as a precedent to allow the introduction of non-suitable materials and urban elements within areas which are designated as ODZ and Rural Conservation Areas. Nevertheless, the Authority has noted this application and its contents which sought 'to carry out landscaping works, internal and external alterations, sanctioning of alterations to footprint, construction of pool and reconstruction of external boundary wall.'

This development application is not considered comparable with that subject to appeal since it did not seek the construction of a new building but modification to an existing one and addition of ancillary facilities consisting of a swimming pool. The original permit for the construction of a dwelling PB 0242/85 was issued on 23rd April 1985 with subsequent renewal permits under a different planning regime. Hence, the conditions imposed in PA 470/09 relate solely to standard conditions for alterations and other details which are however not directly related to the external appearance of the building."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' font konsistenti minn residenza ghal-bidwi, tizzied faxxa fuq l-opramorta tal-bejt, tinfetah aperture fil-washroom u jinbidel il-materjal tal-aperturi minn injam ghal aluminju.

Is-sit jinsab gewwa special protection area (bird sanctuary) u special area of conservation (international importance) f' Had-Dingli, skedata bhala zona t'importanza ekologika (level 3) u ta' valur xenografiku.

Precedentement kienu nhargu sensiela ta' permessi (inkluz emendi u tigdid) – kemm f-isem l-Appellant odjern kif ukoll f' isem missieru – sabiex tigi konsolidata u mkabbra l-attivitá agrikola u tat-trobbija tal-annimali li dawn jiggestixxu fuq din il-bicca art. Dawn il-permessi jinkludu: l-bini u estenzjoni ta' razzett ghall-majjal kif ukoll xi biddliet (PAPB 1315/85, PA 497/93, PA 6641/95 u

sussegwentement PA 4406/95 u PA 6815/06); il-bini ta' giebja u estensjonijiet ghal-serrer (PA 5512/04); kif ukoll il-bini ta' residenza ghal bidwi full-time u modifiki (PA 721/01 u PA 3444/04 segwit minn PA 4819/06).

Ir-raguni ghar-rifjut hi bbazata fuq il-fatt li peress li hawn si tratta minn arja rurali u skedata, il-parti tal-proposta li tirrigwarda l-bdil tal-materjal tal-aperturi minn injam ghall-aluminju, hi f' kunflitt mal-policy RCO 4 tal-Pjan ta' Struttura; kif ukoll tal-policy 1.3A u Part 5.5 tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables.

L-aggravji ta'-Appellant huma bbazati fuq il-premessa li l-policy RCO 4 sucitata, tirreferi biss ghal-strutturi fil-kuntest ta' veduti, skyline, massing ,etc., u ghalhekk qed tigi interpretata hazin mill-Awtorita'. Jirrileva li fil-fatt, l-Environment Protection Directorate (EPD) ma sabet l-ebda oggezzjoni ghat-talba tieghu, partikolarment in vista tal-fatt li bl-ebda mod m' hi ser tincidi fuq l-arja skedata (Natura 2000 Site).

In oltre jispjega li l-policy 13A u l-Part 5.5 tal-policy document sucitat, tippermetti tip ta' zvilupp li jkun kompatibbli mal-karattru rurali taz-zona, u li kemm il-darba jkunu mizbugha, jistghu jigu permessi aperturi tal-injam jew tal-metall. Fl-ahharnett, jiccita permess (PA 470/09) ghal-residenza li nhareg biswit il-font in ezami, fejn ma saret l-ebda kundizzjoni sabiex l-aperturi jsiru tal-injam, etc. Jispjega wkoll li anke mil punto di vista ta' rziezet u mkejjen fejn jinzammu jew jitrabbew l-annimali, l-Awtorita' qatt ma' eskludiet li jsiru aperturi tal-metall.

L-Awtorita' zammet ferm l-oggezzjoni taghha ghal-proposta u rilevat kif fil-hrug tal-permessi precedenti ghal-residenzi fuq dan is-sit, kienu espressament approvati disinnji fejn l-aperturi kienu tal-injam mizbugh. Gew citati kemm id-DPA report kif ukoll il-kundizzjoni 10(p) fil-permess PA 4819/06, fejn hu specifikat li l-aperturi kellhom ikunu tal-injam. Anke permezz tal-iscreening letter li nbaghtet lill-Appellant meta giet intavolata l-applikazzjoni mertu tal-apell de quo, l-Awtorita' kienet

kategorikament esprimiet l-oggezzjoni taghha ghal-bdil tal-aperturi ghal dawk tal-aluminju.

Kif gja' rilevat, il-policy 1.3A taghmel riferenza ghal Part 5 tal-istess dokument sucitat. Peress li skond l-Appellant dawn qed jigu interpretati hazin mill-Awtorita', sabiex jigi evitat kwalsiasi ekwivoku, dan it-Tribunal sejjer qabel xejn jexamina id-dicitura ta' dawn il-policies, u wara, jaqta' w jiddeciedi abbazi ta' dak indikat permezz ta' dan id-dokument. Il-partijiet rilevanti ghal-kaz in ezami qed jigu riprodotti hawn taht kif gej:

“Policy 1.3A Rural character and Landscape:

Where permitted, the proposed development shall be [...] of a [...] material, colour and texture, in accordance with the guidelines in Part 5, that it is consistent with the rural character of the area, it is integrated in the landscape and it does not have an adverse visual impact on the rural area.

[Part] 5.5 Materials, textures and colour:

5.5.2 It is important also to consider the choice of colours and materials for detailing: Neutral colours and matt finishes are most suitable for rural areas [...]; Openings should be hard wearing timber or metal, painted in suitable colours; Highly reflective materials should be avoided [...].”

Il-kliem bl-emfasi hu tat-Tribunal u qed jirreferi ghal dak li gie rilevat mill-Appellant fis-sottomissjonijiet tieghu, cjoé' li skond il-policies huma permessi aperturi kemm tal-injam kif ukoll tal-metall. Skond hu, peress li l-aluminju hu metal, allura ghandu jsegwi li tali materjal jista' jintuza wkoll. Madankollu, tajjeb li jigi osservat li l-Part 5.7 – Design Considerations tal-istess policy document tirriproduci serje ta' artistic impressions ta' sitwazzjonijiet fittizji (pencil drawings u sketches) sabiex tispjega kuncetti partikolari li jitqajjmu fl-istess policies. Hawnhekk issir riferenza ghal-zewg ezempji partikolari:

“5.7Q Bad example of a converted traditional farmhouse, showing unacceptable design, apertures, alterations and extension”

F' din l-isketch jidhru xi aperturi tal-aluminju, indikati bhala: "inappropriate use of aluminium apertures", kif ukoll:

"5.7R A good example of restoration and rehabilitation of an old traditional rural building for projects related to agriculture and farm diversification"

Fejn bl-istess mod hemm aperturi tal-injam, murija bhala: "use of timber apertures throughout."

Dan ifisser li jekk bil-Part 5.5 tal-policy document inholqo xi ekwivoku bil-frazi "timber or metal", madankollu jidher car li permezz ta' Part 5.7Q, b' metall qed jinftiehem, kwalsiasi tip ta' metall eskluż l-aluminju.

Huwa ammess li pero' mhux car x' riedet tfisser l-Awtorita' b' metal, u jekk kienitx qed tirreferi ghal tip t' aperturi tal-metall bhalma huma per ezempju, dawk tal-ferrobattuto galvanizzati (jew meno); jew inkella jekk kienitx qed tirreferi ghall-aperturi tal-injam mahdumin skond is-sengha tradizzjonali - u allura jekk minflok riedet tfisser "timber and metal", cjoe' tal-injam b' cappetti, spanjuletti, ferrolli, etc. tal-azzar.

Li hu zgur pero' hu, li fir-rigward tat-talba in ezami, il-policies ma jippermettux li jigu stallati aperturi tal-aluminju, u di konsegwenza t-talba odjerna ma timmeritax kunsiderazzjoni favorevoli.

Madankollu, jigi osservat li terga' tghid, it-talba odjerna hi ghal timber-like aluminium finish, cjoe' aperturi mahdumin minn sections tal-aluminju li jigu lesti mill-fabbrika b'tip ta' finish li taparsi jixbah l-injam fuq il-vina - bhallikieku huma tal-injam bil-vernici (mhux mizbugh). Tajjeb li jinghad li anke f' dan ir-rigward, il-policy taghmilgha cara li anke meta jsiru aperturi tal-injam, dawn iridu jinzebghu, preferibilmnt b' zebgha matta ta' kulur naturali (ara Part 5.5.2 sucitata). Dan ifisser li anke li kieju ghal grazzja tal-argument, gew proposti per ezempju, clear varnished timber apertures, dawn ukoll ma setghux jigu accettati, allavolja huma tal-injam.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess limitament u jhassar ir-rifjut ghall-PA 614/12 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fil-31 ta' Mejju 2012.

In oltre, jordna lill-Applikanti sabiex fi zmien tletin (30) gurnata jipprezenta pjanti riveduti li jirriflettu it-talbiet proposti b' eccezzjoni tal-aperturi tal-aluminju. Dawn ghandhom jigu indikati bhala aperturi tal-injam, mahduma skond is-sengha tradizzjonali u mizbugha b' kulur preferibilmment naturali.

Wara li l-Awtorita' tkun soddisfatta li l-pjanti sottomessi jirrispekkjaw din il-kundizzjoni, ghandha f' zmien ragjonevoli tibghathom ghall-approvazzjoni tat-Tribunal, b' dana li wara li l-pjanti jintbghatu lura bl-approvazzjoni, ghandha fi zmien tletin (30) gurnata tohrog il-permess mitlub mill-Applikant, bl-addizzjoni tal-kundizzjonijiet normalment imposti f' permessi simili.

Ikkunsidrat

L-aggravji tal-appellant migburin flimkien huma s-segwenti:

It-Tribunal applika hazin policy 1.3A u r-regolarment 5.5 tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables, meta ddikjara li din teskludi l-uzu ta' aperturi tal-aluminium u impona minflok li jsiru tal-injam. In oltre f'permess ta' sit adjacenti PA 470/09 l-aperturi huma tal-aluminium li kellu jkun ezempju car li l-policies u regolamenti in kwistjoni kienu jippermettu l-uzu tal-aluminium mhix jeskluduh kif qal it-Tribunal, li injora dan l-argument tal-appellant. In oltre t-Tribunal ma setax juza l-argument li aluminium mhux accettabli ghax il-policy tghid li l-aperturi kellhom ikunu mizbugha ghaliex jezisti aluminium kulur l-injam u kuluri ohra kif jista' jordna t-Tribunal bl-impozizzjoni ta' kulur partikolari.

Harsa lejn dawn l-aggravju wiehed irid l-ewwel jaqra l-policy 1.3A u l-guidelines f'part 5 senjatament ir-regolarment 5.5.

Il-policy u r-regolament ighidu hekk:

Policy 1.3A Rural character and Landscape:

Where permitted, the proposed development shall be [...] of a [...] material, colour and texture, in accordance with the guidelines in Part 5, that it is consistent with the rural character of the area, it is integrated in the lanscape and it does not have an adverse visual impact on the rural area.

Part 5.5 Material, textures and colour:

5.5.2 It is important also to consider the choice of colours and materials for detailing: Neutral colours and matt finishes are most suitable for rural areas [...]; Openings should be hard wearing timber or metal, painted in suitable colours; Highly reflective materials should be avoided [...].

It-Tribunal kategorikament wasal ghal konkluzjoni illi l-imsemmija regoli kienu jeskludu l-uzu ta' aluminium u b'konferma ma' dan irrefera ghal drawings ezemplikativi fir-regolarment 5.5 cioe dawk enumerati 5.7Q li jikkonfermaw li aluminium apertures kienu eskluzi mill-policy u regolament in kwistjoni.

Din il-Qorti trid toqghod ferm attenta kif argumenta l-appellat li ma tintromettix ruhha fejn it-Tribunal ikun ghamel interpretazzjoni ta' policies u regolamenti rigwardanti kwistjonijiet ta' ippjanar ghax dan hu prerogativa tal-istess Tribunal. Il-Qorti tirraviza illi indhil minnha irid isir b'kawtela kbria billi kif intqal, il-Qorti ma tissindakax interpretazzjoni ta' policies u regolamenti specjalment meta dawn jirreferu ghal kwistjonijiet teknici u ta' ippjanar fejn it-Tribunal ta' Revizjoni hu attrezzat mill-istess kompozizzjoni tieghu biex jitratta u jiddeciedi dwarhom.

Madankollu d-diskrezzjoni tat-Tribunal mhix assoluta. Fejn il-kelma tal-pjan, policy jew regolament huma cari din il-Qorti tista' u ghandha tissindaka t-Tribunal jekk dan imur

kontra dak li jghid il-pjan, policy jew regolament. Bl-istess mod jekk l-interpretazzjoni tat-Tribunal hi manifestament assurda minn qari ghal dik li jghid il-pjan, policy jew regolament, jew applikata b'mod ingust u manifestament pregudizjevoli ghall fattispecie tal-kaz, din il-Qorti tqis li l-kwistjoni ssir wahda ta' punt ta' ligi ghaliex hu principju sagrosant li parti ghandha dritt li tinghata gustizzja dejjem fil-parametri tal-ligi.

Il-problema hafna drabi pero tkun wahda neboluza cioe jekk dak li qed jigi avvanzat bhala aggravju fuq punt ta' ligi cioe applikazzjoni hazina ta' ligi tkunx biss mod biex il-Qorti tissindaka nuqqas ta' qbil tal-appellant mill-interpretazzjoni li jkun segwa ghal aggravju mressaq quddiemu. Dan hu dak li ghandha tiddeciedi l-ewwel din il-Qorti.

It-Tribunal fid-decizjoni tieghu rrefera ghal policy u regolament partikolari bhala l-bazi tad-decizjoni tieghu. Hu sostna illi policy 1.3A u regolament 5.5 kif abbinat ma' ezempju ta' 'inappropriate use of aluminium apertures' fi produzzjoni grafika markat 5.7Q fl-istess regolament eskludew l-uzu ta' aluminium.

Il-Qorti qrat il-policy 1.3A li ma taghtix hjiel ta' tip ta' materjal jew kulur tal-aperturi hlief li tghid li s-sit ghandu jintegra ruhu fl-isfond taz-zona li fih ikun qed jintuza. Isemmi pero illi ghandha tintuza bhala parametri ta' linji gwidi dak li jghid part 5 tal-istess. Il-pern tal-kwistjoni tibda minn hawn. Ir-regolarment 5.5.2 isemmi zewg kriterji rilevanti essenzjali fid-determinazzjoni tad-dettalji specifici tas-sit, ighid li l-aktar kuluri idonei ghal siti simili huma dawk natural u matti. Izid imbaggad specifkament illi l-aperturi ghandhom ikunu jew tal-injam li jiflah jew metall mizbugh b'kuluri idonei. Materjali li jirriflettu hafna ghandhom jigu evitati.

Qari ta' dan ir-regolament ma jaghtix lok ghal interpretazzjoni. Aperturi jistghu jkunu tal-injam jew metall. It-Tribunal pero eskluda li aperturi tal-aluminium mhux permessi ghax l-ezempju moghti fid-disinn 5.7Q juri li dan mhux accettabli. Harsa lejn id-disinn pero juri illi l-istess

disinn hu dikjarat bhala ezempju ta' disinn, aperturi, alterazzjonijet u estensjoni inaccettabli. Pero harsa lejn id-dettalji fid-disinn juri illi meta gew spesifikati, kwalita ta' struttura fil-binja, u accessorji mal-binja ma hemm ebda kumment magghom izda biss kjarifika tal-ezempju mentri fejn hemm l-aperturi l-kliem uzat hu 'inappropriate use of aluminium' cioe kwalifika ghal ezempji ohra fl-istess disinn li jikkwalifikaw b'mod generiku kif ighid in nomenklatura tad-disinn cioe ezempju hazin ta' razzett konvertit b'fatturi inaccettabli. Fir-rigward tal-aperturi jikkwalifika dan il-kuncett bhala 'inappropriate' biss.

Il-Qorti tqis l-ezempji fid-disinji huma dawk li huma cioe ezempji u sakemm l-ezempju mhux kategoriku kif f'dan il-kaz jirrizulta li mhuwiex ghal raguni li nghad fil-paragrafu precedenti, it-Tribunal kellu jerga' jirrikorri ghar-regolament li jghid li aperturi jistghu jkunu ta' hard wearing wood or metal. Aluminium hu metall. It-Tribunal ma setax, kif ghamel, jiffa' dubju fuq il-kelma cara tar-regolament u jghid li x'aktarx r-regolament kellu jaqra wood and metal fejn l-apertura tkun tal-injam u c-cappetti, spanjuletti, firolli jkunu tal-azzar. Apparti li din il-konkluzjoni ma tirispekkjax ir-regolament, anki ghal min ma jifhimx l-aperturi tal-injam ikollhom per forza partijiet tal-metall kif qal it-Tribunal u dawn ma jaghmlux b'daqshekk l-apertura tal-metall izda tibqa' tal-injam.

La darba r-regolament hu car u d-disinn 5.7Q hu biss ezemplikattiv u mhux ezawrjenti, ma jiskludix dak li jghid l-istess regolament u din il-Qorti tqis li t-Tribunal applika hazin regolament 5.5.

Il-Qorti taghmlha cara illi dan ma jfissirx illi l-aperturi proposti mill-appellant huma accettabbli. Dik hi kwistjoni ohra u wahda ta' planning li hi biss il-mansjoni tal-Awtorita u t-Tribunal li jiddeciedha u dan fl-isfond tal-policy infisha 1.3A u l-iskop warajha. Dak li kellu jaghmel it-Tribunal hu illi jekk l-aperturi proposti humiex idoneji ghas-sit kif disinjati pero mhix in kwantu eskluzjoni a priori minhabba t-tip ta' materjal li l-policy u regolament ma jiskluduhx. Il-kwistjoni tirsolvi ruhha ghalhekk fid-disinn u kulur u jekk dawn f'termini ta' ppjanar u konservazzjoni tas-sit u taz-

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zona fejn ser isiru humiex accettabbli jew le, u jekk mhix accettabbli r-raguni ghaliex mhix accettabbli.

It-Tribunal ukoll naqas li jikkonsidra l-aggravju li l-fond biswit dan in kwistjoni ghandu aperturi tal-aluminium. Ghalkemm trattata mill-Awtorita u l-appellant, it-Tribunal naqas li jikkonsidraha fl-isfond tad-determinazzjoni tal-kwistjoni kollha. Mhux qed jinghad li l-fond ta' biswit jifforma xi rabta ghat-Tribunal izda t-Tribunal ghandu jikkonsidra aggravju ta' natura serja li titqajjem mill-parti speċjalment meta r-raguni ta' rifjut tirrigwarda fatt li ghandu rilevanza sostanzjali ghal tali rifjut.

Decide

Ghalhekk il-Qorti qed tilqa' l-appell ta' Marcon Abela, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013, u in linea ma' dak deciz, tibghat l-atti lit-Tribunal biex jerga' jitratta l-kaz. Spejjez ghal-Awtorita.

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