



## **QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tat-22 ta' Jannar, 2014

Appell Civili Numru. 154/2012

**Perit Chris Briffa  
vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar, u  
l-kjamat in kawza Avv. Damien Degiorgio**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Avv. Damien Degiorgio tas-16 ta' Ottubru 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li imponit kondizzjonijiet fuq il-permess in kwistjoni PA 115/11 li jirigwarda 'alterations and extension to existing townhouse';

Rat ir-risposti tal-appellati li ssottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. B'applikazzjoni tat-3 ta' Frar 2011 – Full Development Permission – PA/00115/11 fejn l-applikant, f' Nru. 194, Triq San Pawl, Valletta, talab: Alterations and extension to existing townhouse.”

L-Awtorita' laqghet it-talba għall-hrug tal-permess relattiv prevja l- ottemporanza ma diversi kundizzjonijiet.

B. Il-Perit Chris Briffa ressaq l-appell tiegħu f'ismhu propju bl-aggravji segwenti:

“I am hereby submitting a third party appeal against the approved MEPA permit in caption with particular reference to the approved extension on the roof. Our reasons, very much in line with the arguments by the CHAC issued in the DPAR, are as follows:

#### 1. Façade proportions and streetscape

The facade's very restrained ornamentation, restricted only to the main doors and balconies, indicate that the dwelling in question dates to the late 16th or early 17th century. The omission of a crowning cornice is a hallmark of this austere style as are the shadow paneling and plain fascia opening surrounds which can be described as Maltese Mannerist – few examples of which survive in Valletta today. This particular example represents one of the most intact facades in the neighbourhood. The addition of a third floor rising 3.71m flush with the existing facade from the top of the existing parapet wall will disrupt the overall geometry, uniqueness, and homogeneity of the Mannerist facade which will be irreversibly distorted after being untouched for possibly 400 years [...]. Also, the absence of the crowning cornice, an important feature in itself in this style, will no longer be read as such, and may actually give the impression in future that there was once such a cornice which was removed when the third floor was added.

The CHAC appear to share our concern, as when consulted by the MEPA Directorate prior to the preparation of the DPAR, they stated that:

'the additional floor should not be constructed since it will have a negative impact on the aesthetics of the façade.'

Although the MEPA Directorate acknowledged the CHAC's advice, they did not give this any weight whatsoever, stating that 'although the CHAC are objecting to the additional floor since it would ruin the aesthetics of the facade, the Planning Directorate is of the opinion that the proposed design of the additional floor is considered acceptable since it respects the urban characteristics of the building in question and the streetscape in question, in line with SP policy UCO 6 and BEN2' [...]

## 2. General street environment

If this 3,71m extension from the parapet wall is allowed, it will have a negative impact on the natural lighting in the street. The photo attached [...] shows the shadow on the street in the summertime. During wintertime the shadow will be deeper and will further darken the entire neighbourhood across the road. The approval of the PA in caption implies that now, even in the summertime, most of the street will be cast in shadow.

In our original objection letter sent to the Authority, we suggested that if any extension is to be allowed, this should be recessed from the existing facade and should not be any higher than the existing party wall at roof level, as we believed that this would have brought the development in line with the policies being stated by the MEPA Directorate, and would have nullified the arguments being brought up in this report. Our suggestion was ignored. [...]

## 3. Precedent for future development

Although the adjacent building on the right of the facade is much higher than the building in question, the ones on the left are not, and if the extension is allowed, the owners of these buildings may eventually also apply for similar extensions that will have a direct and irreversible impact on the entire streetscape."

Kopja Informali ta' Sentenza

C. Illi permezz ta' risposta l-Avukat Damien Degiorgio ressaq l-osservazzjonijiet tieghu inter alia kif gej:

“[...] dan l-appell huwa infondat u nsostenibbli kemm fil-fatt u fid-dritt, u jirrazenta l-frivolu u l-vessatorju, u ghaldaqstant ma jisthoqqlux li jintlaqa';

Illi l-appell huwa mibni fuq tlett argumenti li ssejrin jigu ndirizzati individwalment:

Facade proportions and streetscape:

Fir-ritratti tieghu, [...] li suppost juru t-triq, l-appellant konvenjentement ihalli barra l-binja li tinsab ezattament magenb il-proprjeta mertu ta' dan il-permess (194) li, kif juru r-ritratti sottomessi mall-permess, hija tlett sulari shah ghola mill-proprjeta in kwistjoni. Filwaqt illi l-bini li jinsab aktar l-isfel fit-triq kemm fuq l-istess naha kif ukoll faccata, huma ukoll ghola mill-194. Dan huwa ukoll evidenti fl-approved streetscape elevation 28c.

Ghalhekk il-bini tas-sular fuq il-proprjeta 194, mhux talli mhuwiex ta' detriment ghat-triq, izda ser ikollu l-effett pozittiv li jghatti parzjalment il-hajt divizorju li jsorgi mikxuf ghall-tlett sulari. Dan inaqas ukoll mill-bidla kbira ta' tlett sulari bejn bini u iehor, ghall-effett aktar edagwat ta' terracing. Illi ghalhekk is-sular il-gdid kif propost huma konformi mall-Grand Harbour Local Plan Policies GV 13, 14, u 15, partikolarment mall-policy GV 15 - Building Heights [...]

Ghar-rigward tal-proporzjon tal-faccata, kif indikat fid-drawings 28c u 23a, l-estensjoni ser tkun migbuda b'50mm mill-hajt tal-faccata sabiex ikun hemm indikazzjoni permanenti tal-gholi originali tal-bini ezistenti.

General street environment

L-argument li l-estensjoni ta' sular wiehed ser ikollha influwenza drammatika fuq id-dawl naturali tat-triq hija ukoll ridikola, b'dan illi 'most of the street will be cast in shadow' billi l-effett tas-sular propost huwa negligibbli meta paragunat mall-effett tal-binja li tinsab magenbu u li fiha sitt sulari. Fil-fatt din l-estensjoni moderata fl-gholi tal-

bini imissha titqies li ser tipprovdi ftit aktar kenn mis-shana tax-xmx fis-sajf kif ukoll mill-hsara kawzata mir-raggi UV;

Precedent for future development

Illi dan il-precedent gia jezisti f'din it-triq u f'toroq ohra fil-Belt Valletta. Ezempju wiehed fost l-ohrajn huwa PA 4345/04 fejn inghata l-permess ghal bini ta' sular shih. [...] Ghandu jinghad illi l-bini [...] probabilmnt huwa ta' l-istess epoka tal-bini mertu ta' dan l-appell u ghandu l-istess mertu storici u arkittetonici. [...]

Illi ghandu jinghad ukoll li tenut kont l-istat ta' hafna proprjetajiet fil-Belt Valletta, li dalwaqt ser jiggarrfu rrimedjabilment, l-estensjoni permezz ta' sular huwa prezz verament zghir jekk wiehed iqis li din l-estensjoni tkun parti minn pjan shih ta' restawr li ssalva dawn id-djar u ssebbah lill-Kapital taghna;

Illi fil-fatt dan l-argument xejn ma jissemma mill-appellant, li jonqos milli jghid illi r-residenza in kwistjoni (194) ilha disabitata diversi snin, qeghda fi stat ta' riparazzjoni hazina hafna, kif jidher mir-ritratti sottomessi mall-permess originali, u li bis-sahha ta' dan il-permess din id-dar ghandha c-cans li tigi restawratha u ssebbah aktar c-cirkondat taghha;

L-appellant jonqos ukoll milli jghid, hlief ghall-accenn furtiv fl-ittra tieghu ta' oggezzjoni, li fiha jsemmi biss li huwa resident fl-akkwati, li r-residenza tieghu tinsab quddiem ir-residenza in kwistjoni u li l-bini tal-kamra m'hijjex favorevoli ghall-interessi tieghu;

Illi mill-banda l-ohra, l-appellant jinkwieta ghal diversi fatturi frivoli filwaqt li ma jesprimiex inkwiet ghall-fatt li l-proprieta in kwistjoni tinsab fi stat dekrepitu ta' riparazzjoni u li jekk ma jinghatax dan il-permess ser tibqa hekk ghal diversi snin ohra, probabilmnt ghal dejjem, b'riskju li tiggarraf totalment ghax hadd ma ghandu interess li jiehu hsiebha. Apparentement f'ghajnejn l-appellant ir-restawr tal-proprieta mill-istat kurrenti taghha m'huwiex fattur li jolqot l-estetika u l-'general street environment'.

Illi jidher ghalhekk car li minn verament ghandu l-interessi tal-Belt Valletta u ta' din ir-residenza ghal qalbu jmissu jkun favur dawn il-miljoramenti billi jsebh u jsalvaw id-djar tal-Belt. Huwa ghalhekk ukoll car li dan l-appell m'ghandu ebda intenzjoni ohra ghajr li johloq servitu fuq id-djar li jinsabu quddiem id-dar tal-appellant sabiex dawn ma jinbnewx f'gholi superjuri minn dik tad-dar tieghu, anke jekk dan ifisser li jibqaw fi stat disastruz ta' riparazzjoni ghal dejjem.”

D. Illi permezz ta' risposta l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

“The Authority is presenting a copy of the DPA Reconsideration Report and reiterates the contents within. [...]

The Authority disagrees with the appellant. This historic property is one in a series of three, sharing similar heights, which are in turn wedged between two buildings of comparatively excessive height. One of these 'high rise' buildings, consisting of 6 floors, is immediately adjacent to it creating an unsightly party wall of two and a half floors. The proposed floor level will cover part of the blank party wall, whilst creating a stepping down affect from the high building to the lower building. This is in itself will mitigate and lessen the unsightly disparity caused by the 'high rise' building on the rest of the streetscape and skyline.

Furthermore this stepping down affect also serves as 'bridging' over to the other high building that flanks the other side of the series of the three historic properties mentioned above, which likewise create a second blank party wall of disproportionate excess in relation to the surroundings.

Although the CHAC are objecting to the additional floor since it would ruin the aesthetics of the facade. On the other hand, in view that the facade details such as apertures follows the same proportions and alignment of the historic property the Authority considers the proposed design of the additional floor acceptable and respectful of

the urban characteristics of the building and streetscape in question. The absence of ornamental details in the proposed facade as well as the integration of the parapet features within the facade is also considered favourably.”

E. Illi fl-udjenza tal-15 ta' Meju 2012 gie pprezentat PA 0115/11

Ikkunsidra ulterjorment

Il-mertu ta' dan l-appell minninterzijirrigwarda talba ghal alterazzjonijiet u estensjoni ghal townhouse ezistenti li tinsab f' Triq San Pawl, il-Belt Valletta. Is-sit mertu ta' l-appell de quo jikkonsisti minn binja fuq tlett sulari u li prezentement tinsab f'stat t' abbandun.

Il-proposta hi sabiex jinbenasularsovrastanti l-istrutturastorika, biex din tigi rigenerata u terga' tibdatintuzabhalaresidenza. L-Awtorita' laqghet it-talba ghall-hrug tal-permess relattiv prevja l-ottemporanza ma diversi kundizzjonijiet.

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

- L-Appellant jissottometti li l-faccata tal-bini relattiv ser tigi sfregjata; li l-izvilupp propost ser jikkrea precedent ghal zvilupp iehor fiz-zona; u li l-izvilupp sejjer jaffetwa id-dawl tax-xemx, tant li se jwassal sabiex it-triq tiddallam.
- L-Applikant jissottometti li l-bini tas-sular sovrastanti l-proprijeta in ezami, mhux talli mhuwiex ta' detriment ghat-triq, izda ser ikollu l-effett pozittiv li jghatti parzjalment il-hajt divizorju li jsorgi mikxuf ghall-tlett sulari fuq nahha wahda; li l-argument li l-estensjoni ta' sular wiehed ser ikollha influwenza drammatika fuq id-dawl naturali tat-triq mhuxminnu, billi l-effett tas-sular propost huwa negligibbli meta paragunat mall-effett tal-binja li tinsab magenbu u li fiha sitt sulari; u li precedent bhaldangja' jezisti f'din it-triq u f'toroq ohra fil-Belt Valletta. F'dan ir-rigward giet citata l-applikazzjoni PA 4345/04 fejn inghata l-permess ghal bini ta' sular shih addizzjonali.

- L-Awtorita' tissottometti li l-izvilupp sejjer jimminimizza disparita' fl-gholi tal-bini tal-madwar; li l-izvilupp iservi wkoll f'bridging tal-istreetscape, u li d-disinn propost tas-sular addizzjonali jirrispetta l-karatteristici urbani taz-zona.

Ezaminati fid-dettal is-sottomissjonijiet jigi rilevat li fil-fazital-iprocessar ta' din l-applikazzjoni, l-Cultural Heritage Advisory Committee (CHAC) fi hdan l-Awtorita' oggezzjonat ghas-sular zejjed u dan ghaliex skond hi kien kien ser ikollu mpatt negattiv fuq l-estetika tal-faccata. Madankollu l-merti tal-faccata ma' gewx elenkati, izda skond studju li ghamel l-Appellant, jidher li l-bini in ezami hu ta' epoka Manjerista, tant li l-karatteristici predominanti tal-faccata jikkonsistu f' disinn xott u ridott, priv minn hafna xoghol ta' lavur u moda nature kif normalment wiehed jassocja ma' bini antic f' pajjizna.

Jispijega wkoll li karatteristika mportanti ta' bini ta' dak iz-zmien kien propju n-nuqqas ta' gwarnicjun – tant li kemm-il darba l-estensjoni tal-faccata l-gdida ser tkompli flush ma' dik originali u sottostanti, ser tinghata l-impressjoni bhallikieku l-gwarnicjun originali ntilef. Dan kollhu qed jinghad fil-konfront tal-policy UCO 6 tal-Pjan ta' Struttura li jirrigwarda l-harsien tal-istreetscape.

In oltre, l-Appellant jispijega wkoll kif ga la darba ser titla' l-bicca l-gdida tal-faccata ser tidallam it-triq u ghalhekk il-proposta ser tkun ukoll in kontravvenzjoni tal-policy BEN 2 tal-Pjan ta' Struttura li ghandha l-ghan li jigi mhares il-bon vicinat.

Di pju', jigi rilevat li originarjament kien hemm anke oggezzjoni da parte tas-Sanita', minhabba l-fatt li l-bitha kienet ser tissaqqaf, izda jidher li tali oggezzjoni giet sorvolata fil-fazi tal-iprocessar tal-applikazzjoni.

L-Applikant jirrileva li diga' kienu nhargu xi permessi simili ghal dan in ezami, u li ghalhekk zgur li tali proposta mhix ser isservi ta' xi precedent. Jissokta billi jispijega li propju biswit il-font tieghu giet permessa estensjoni hafna oghla minn dik li qed issir it-talba ghaliha (fuq sitt sulari), tant li



gie kkrejat blank party wall. Jispjega li fil-fatt, wiehed mill-merti tal-proposta tieghu hu li dan il-hajt ta' terzi ser jitghatta. Minn dan l-aspett, l-Appellant jirrileva li l-proposta hi perfettament konformi mal-policies GV 13 et seq. tal-Pjan Lokali, partikolarment il-policy GV 15 li titratta building heights.

L-Awtorita' zzomm ferm ma dan l-ahhar punt rilevat mill-Appellant, u cjoe' li l-proposta ser isservi ta' bridging bejn serje ta' tlett binjiet storici, ukoll li l-proposta hi idoneja mal-karatteristici urbani taz-zona.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, irid jinghad li kwalsiasi proposta generika sabiex tigi rigenerata propjeta' abbandunata f' zona bhal din in ezami, hi wahda li timmerita kunsiderazzjoni favorevoli; u wiehed jifhem li sabiex tigi ppreservata dar antika u biex din tigi adattata ghal-uzu u l-istandard of living kontemporajnu iridu bil-fors isiru xi modifichi essenzjali kif ukoll addizjonijiet sabiex il-kunfigurazzjoni ta-binja tkun tista' tigi ameljorata. Madankollu dan ix-xoghol ghadu jigi studjat sew u bir-reqqasa biex jigu evitati sfregju kemm fl-istruttura storika kif ukoll fl-istreetscape.

Mill-banda l-ohra pero' jidher li l-proposta in ezami ftit li xejn taghti kaz tal-kunfigurazzjoni tal-faccata ezistenti, u bhal donnu qed jigi propost is-semplici estensjoni ta' faccata li jidher ghandha l-fuq minn erba' mitt sena, u dan bhalli kieku inbniet il-bierah u minghajr l-ebda kunsiderazzjoni ghall-layers storici.

Hawnhekk, il-kummenti tas-CHAC ftit li xejn huma ta' solljev, ghax aparti dikjarazzjoni xotta li 'the additional floor should not be constructed since it will have a negative impact on the aesthetics of the façade', ma toffri l-ebda' hjiel, imqar wiehed zghir, ta' kif tista' tigi meghluba din l-issue.

F' ic-cirkostanzi dan it-Tribunal jifhem l-ezasperazzjoni kemm tal-Appellant kif ukoll tal-Applikant; u l-Awtorita' kien imissa nterveniet sabiex issib soluzzjoni ghall-argumenti validi li tresqu miz-zewg partijiet. Zgur li sular

addizzjonali bhala principju mghandux jigi eskluż a priori, izda ghandu jigi permess kemm il-darba jigu salvagwardati l-argumenti li ressaq l-Appellant, cjoe' li hawn sitratta minn faccati antika hafna li jixraqilha trattament ahjar; u li l-istreetscape ghandha tigi protetta minn kwalsiasi intruzjonijiet visivi li huma sgradevoli.

Dan it-tip ta' ragunar huwa centrali ghall-ispritu ta' riabilitazzjoni fejn ghandha ssir distinzjoni bejn id-diversi layers storici tal-bini; u jekk il-faccata hi mportanti sabiex tkun tista' tinqara l-istreetscape, daqstant huma mportanti li kwalsiasi addizzjonijiet li jsirulha jkunu kumpatibbli w idoneji mal-fabbrikat ezistenti; b'hekk filwaqt li binja antika terga tibda' tintuza, fl-istess hin jigu wkoll preservati (u ameljorati) l-amenities tat-triq fejn din tinsab. Fl-ahhar mill-ahhar, kulhadd jista' jibbenefika minn kunsiderazzjoni bhal din.

Ghalhekk, in vista tal-kunsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa' l-istess limitament u jordna lill-Applikant fi zmien tletin (30) gurnata, jipprezenta pjanti godda in linja mal-kundizzjonijiet segwenti:

1. L-intiza tal-applikazzjoni de quo hi sabiex il-font jigi rigenerat, ghalhekk is-sular addizzjonali ghandu jinqara differenti minn dawk sovrastanti u b' tali mod li ma jinterferixxix mal-istreetscape u l-iskyline kif jidhru mill-immedjat tat-triq de quo. Ghalhekk, il-faccata l-gdida ghandha tigi rtiratant li tkun tinqara distinta mill-faccata ezistenti, meta ppercepita mit-triq. Billi f'ic-cirkostanzi il-font li diga' jmiss ma dan in ezami ghandu estensjoni ta' gholi kunsiderevoli, l-Awtorita' tista tikkunsidra disinn fejn per ezempju jibqa jidher ix-xifer tal-facca tal-gdida, basta din il-partita l-binja tkun trattata b' mod li jkun xieraq u mhux dissonanti meta mqabbla mal-opramorta prezenti.

1. Ghandha wkoll tittiehed kunsiderazzjoni ta' vistas u long range views, u ghalhekk, servizzi bhalma huma pannelli fotovoltajici, tankijiet tal-ilma, outdoor units ta' air-conditioners, etc., ma jistawx jitqeghdu fuq il-bejt tal-ahhar

sular li qed jigi permess. Lanqas ma ghandu jigi propost xi tip ta' screening jew opramorta f' dan il-livell.

L-Awtorita', wara li tkun ezaminat dawn il-pjanti ghandha, f' zmien tletin (30) gurnata tibghathom ghall-approvazzjoni ta' dan it-Tribunal, b' dana li fi zmien tletin gurnata (30) ohra minn meta tkun ircieviet lura l-pjanti u d-dokumenti kollha, tohrog lill-Applikant il-permess kif minnu mitlub.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jaghti piz ghas-sottomissjonijiet dettaljati rigward trattament ugwali bhal zviluppi ohra simili li ddispona minnu b'mod sommarju bla raguni oggettiva, u dan irendi d-decizjoni nulla, billi l-argumenti mressqa ma gewx indirizzati mit-Tribunal;
2. It-Tribunal wasal ghal konkluzjoni tieghu fuq provi inattendibbli u inaccettabbli bhal konkluzjonijiet tal-Cultural Heritage Advisory Committee li l-ewwel ma sabx oggezzjoni ghall-izvilupp u wara kellu ripensament bla ma dahal f'dettal. In oltre t-Tribunal ghazel li jaghti piz lir-ricerka mhix sostanzjata tal-perit Briffa kontra l-konkluzjonijiet tal-Awtorita u sid id-dar. Minghajr dawn il-provi li strah fuqhom it-Tribunal kellu jqis biss li din hi dar fil-Belt Valletta li qed jintalab restawr taghha u li fi zmien qasir jekk dan ma jsehxx ser tigi demolita u tigi konvertita f'appartamenti.

### **L-ewwel aggravju**

L-appellant jikkontendi illi t-Tribunal ddispona mill-argument tieghu dwar zviluppi ohra simili fil-Belt b'mod sommarju minghajr ma ta' piz ghall-argumenti dettaljati tal-appellant.

Il-Qorti tqis li ghandha ssir distinzjoni bejn argumenti ta' sustanza li jitqajmu fil-kors tas-smigh ta' appell li jistghu jinfluixxu fuq l-ezitu ta' vertenza u li jigu injorati mit-Tribunal u argumenti tal-istess portata li jigu trattati mit-Tribunal, indirizzati u diskussi u ghal ragunijiet ta' ippjanar jigu skartati. Fl-ewwel kaz biss jezisti dritt ta' appell

quddiem din il-Qorti u fit-tieni kaz dan id-dritt ikun limitat jekk it-Tribunal ikun inkorra zball ta' fatt jew ligi li kien l-element principali li wassal ghad-decizjoni.

L-appellant fl-aggravju tieghu isemmi tlett premessi li skond hu huma simili ghal dak in ezami u li t-Tribunal naqas li jaghmel referenza ghalihom. Pero minn qari tal-atti, dawn il-premessi qatt ma ssemew mill-appellant u kwindi ma jistax issa l-appellant jinvokahom in sostenn tat-tezi tieghu ghalkemm fis-seduta quddiem il-Qorti fl-4 ta' Dicembru 2013 id-difensur tal-appellant sostna li ssemew waqt it-trattazzjoni verbali quddiem it-Tribunal. Fil-kors tal-proceduri quddiem it-Tribunal saret referenza cara ghal permess 4345/04 pero il-fatt li t-Tribunal ma ghamilx paragun bejnu u l-applikazzjoni in ezami ma jfissirx li inkorra f'nullita tal-gudizzju. Dan jinghad peress illi t-Tribunal ha in konsiderazzjoni zviluppi fil-vicinanzi ta' dak in kwistjoni u esprima l-opinjoni tieghu rigward il-protezzjoni u preservazzjoni ta' bini ta' certu importanza mill-aspett arkitettoniku u ta' antikita filwaqt li dan irid jigi bbilancjat ma esigenzi moderni ta' kumdata biex dawn il-proprjetajiet ikunu jistghu jigu rigenerati u utilizzati fil-hajja tallum. It-Tribunal qies dawn il-kwistjonijiet u wasal ghal konkluzjonijiet tieghu fuq dak li fid-diskrezjoni afdana lillu kellu jkun il-bilanc gust in linea mal-policies rilevanti. Dan mhux sindikabli mill-Qorti. It-Tribunal fil-fatt ha in konsiderazzjoni zviluppi ohra fil-vicinanzi u pprova johloq bilanc bejn dak li kien mitlub u dak accettabbli ghan-natura tal-binja fl-isfond ta' dak ezistenti illum fit-triq in kwistjoni. It-Tribunal mhux marbut b'ebda precedent ghalkemm hu konsiljabli li jkun hemm 'proper guidance' fid-decizjonijiet tat-Tribunal biex jinholoq certezza tad-dritt u applikant ma jhossux li qieghed fl-ghama kull meta jitlob permess billi l-gudikati huma konfliggenti. F'dan il-kaz pero il-fattispecie tal-kaz kienu tali li t-Tribunal hass li kellu jasal ghal konkluzjonijiet ta' natura purament teknika biex jaghti spazju sabiex il-proprjeta fil-Belt kapitali tkun tista' tigi utilizzata komodament minghajr ma jithassar irremedjabilment dak li fadal x'jigi salvat minn din il-Belt storika.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

Dan l-aggravju hu apprezzament ta' fatti li t-Tribunal kellu quddiemu u l-attendibilita li ghogbu jaghtihom, kwistjoni li din il-Qorti ma tissindakax jekk mhux ghal ragunijiet gravi. L-appellant jirreferi ghal bdil ta' opinjoni tal-Cultural Heritage Advisory Committee u l-opinjoni mhux sostanzjata (skond l-appellant) dwar l-isfond storiku arkitettoniku tas-sit.

Il-Qorti tirrileva illil t-Tribunal kellu quddiemu provi li kellu kull dritt jikkunsidra u fejn jidhiru jiskarta jew izomm. In kwantu ghal parir tal-CHAC it-Tribunal ma jidhirx li din kienet ta' xi import ghal dak deciz minnu, u l-isfond storiku tas-sit kif mressaq mill-appellat perit Briffa ma jidhirx li gie f'xi hin oppost mill-appellant. Del resto t-Tribunal kien maghmul minn esperti teknici li kien il-kompitu taghhom li jevalwaw is-sottomissjonijiet teknici u l-konkluzzjonijiet li waslu ghalihom rigward l-isfond storiku tal-bini ma jidhirx li f'xi hin kien michud mill-appellant.

Ghalhekk dan l-aggravju qed jigi michud.

### **Decide**

Ghalhekk il-Qorti qed tichad l-appell tal-appellant u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012. Bl-ispejjez kontra l-appellant.

**< Sentenza Finali >**

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