

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

### **IMHALLFIN**

**S.T.O. JOSEPH SAID PULLICINO, B.A.(HONS), LL.D. - PRESIDENT  
ONOR. CARMEL A. AGIUS, B.A., LL.D.  
ONOR. JOSEPH D. CAMILLERI, B.A., LL.D.**

**Seduta ta' nhar il-Gimgha 30 ta' Marzu, 2001**

**Numru 24**

**Appell numru 322A/99**

**Carmel Camilleri**

**vs**

**Il-Kummissjoni għall-Kontroll  
ta' I-zvilupp**

**Il-Qorti,**

### **I. Preliminari**

1. Carmel Camilleri ("l-appellant") kien applika lill-Awtorita' ta' l-Ippjanar biex taghtih permess ta' l-izvilupp konsistenti fit-twaqqiegh ta' bini ezistenti u l-bini minflok ta' "Car showroom and stores" fi Triq San Leonardu, ir-Rabat, Ghawdex.

2. Il-Kummissjoni għall-Kontroll ta' l-Izvilupp kienet irrifjutat li tohrog il-permess mitlub, għar-ragunijiet kontenuti fid-decizjoni tagħha ta' l-21 ta' Otturbru, 1997.

3. L-appellant ressaq appell minn dik id-decizjoni quddiem il-Bord ta' l-Appell Dwar l-Ippjanar ("il-Bord"). Dan il-Bord, bid-decizjoni tiegħu ta' l-24 ta' Novembru, 1999, caħad l-appell u kkonferma id-decizjoni ta' l-imsemmija Kummissjoni.

4. Id-decizjoni tal-Bord tista' tigi konsidrata li tikkonsisti fi tlett taqsimiet – fl-ewwel parti u fit-tieni parti gew riprodotti rispettivament partijiet mis-sottomissjonijiet bil-miktub tal-kontendenti, waqt li fl-aħħar parti, cioe' il-paragrafu konkludenti, tnizzlu il-konkluzzjonijiet tal-Bord li wassluh biex jirrifjuta l-appell.

5. Għall-aħjar intendiment tal-kawza, il-Qorti sejra tirriproduci din id-decizjoni fil-Bord testwalment:-

“L-appellant issottometta:

“The first two paragraphs of the “discussion” by the case officer are dedicated to the argument that the proposed development cannot be justified in an area outside development zone, because it is not directly related to agriculture. With all due respect to the case officer we find his remarks entirely cynical: his arguments might be justified where the development to relate to a virgin

piece of territory. However, as the case officer himself admits in page 2 of his submissions in the section “Officer’s Report”; this application intends to replace an existing dwelling. Certainly the fact that the site is already built up, and that the original building is covered by the necessary permits renders all arguments based on the site being outside development zone as wholly immaterial and irrelevant to the case at issue. Indeed policy SET 11 itself makes it clear that the prohibition of urban development is limited to sites ‘outside existing and committed built-up areas’. Certainly by no stretch of the imagination can a development which proposes the demolition and reconstruction of an already existing development be described as a development outside an already existing and committed built-up area!

Accordingly this development cannot in any way be described as a ‘piecemeal decision infringing the policy framework which can open the flood gates’ or which is ‘tantamount to change in scheme boundary’. All these phrases used in the case officer’s report are extremely spurious and in no way do they relate to the facts of the case at issue.

Paragraph 3 of the discussion cites the decision of the Court of Appeal in re: “A. Farrugia vs Planning Authority’. Here again the case officer intentionally quotes this case out of context and applies an entirely incorrect interpretation to the Court’s decision. The Court of Appeal was in that case examining a situation where the site had originally been the object of a permit in 1970 but which had never been developed. The Court therefore correctly stated that one had to examine the new application in the light of today’s legislation and not that obtaining in 1970. The facts of this present case are entirely different. In our case, the original permit had been utilized and the site had effectively been developed in terms of that permit. This fact by itself renders the site an existing and committed built-up area’ and the consequences therefore render the decision quoted as entirely immaterial and irrelevant.

The case officer then submits that the development would ‘attract vehicles to and from the site’ and would ‘attract on-street parking’. The case officer may not be aware that the site is situated on an arterial road linking Victoria to the two largest villages in Gozo namely Xaghra and Nadur; and also on a loop off the main road between Victoria and the third largest village – Xewkija. The amount of traffic flowing between these four large centres will not in any way be substantially affected by the number of vehicles which can imaginably be attracted to the

development. One has to consider that the proposed size of the development is not so huge as to render it capable of catering to an unlimited number of customers. The design submitted by the architect in charge moreover caters for adequate offstreet parking both for the employees and for the expected number of customers. The Planning Authority would indeed be applying double standards were it to refuse this present application solely because of alleged lack of parking standards when during the last two days it has just announced the green light to an immense development in Paceville which only caters for employee parking. In the Paceville case no provision has been made for the customer parking so much so that the developers have been requested to pay the sum of Lm140,000 fee to the Planning Authority because of this failing. One must bear in mind the frequent complaints being made by Paceville residents about lack of parking facilities in the area; and yet the DCC has its absolute wisdom thought fit to authorize another grandiose project which will generate a lot of additional parking problems in the area. Compared to that, the present development is a mere drop in the ocean; it caters for off-street parking; and even if for argument's sake there might occasionally be a car or two parked on the street this will not create such a huge problem given the width of the road in the vicinity".

L-Awtorita' ssottomettiet:

"Reference is made to the appellant's submissions of the 16th August, 1998. The major issue is whether the proposed development is acceptable on the proposed site. The Directorate re-iterates that the site lies outside the limits of development and the proposed development is alien in a rural area, both in terms of Structure Plan Policies and as a matter of fact. The Appeals Board should therefore note that if permission is granted, a dangerous precedent would be created and the Authority's approved policies would be undermined.

The appellant makes reference to outline permission PA 3917/94/AP02, for the construction of a showroom and store. The application was refused by the Development Control Commission on the 6th May, 1995, since the site lies outside the limits to development and since a new access onto the arterial road would be created. An appeal against refusal PAB295/95/RR was submitted on the 29<sup>th</sup> May, 1995.

Following an inspection, the Appeals Board noted that the site is occupied by unattractive old structure which need to be replaced;

it is adjacent to existing car showrooms; and, more importantly, the appellant owns a garage on the site used for the sale and repair of cars. The Board remarked that the proposal is not a new development outside development zone, but it is an extension of an existing development. The Board therefore decided that an outline permission should be granted provided that an existing garage with the alignment on the arterial road is demolished; access should be from Xaghra Road only; and a full application is submitted where additional conditions could be imposed.

Therefore the Appeals should note that the current appeal PAB560/97 is not similar to that quoted by the appellant. The proposed site is currently occupied by a residence and the existing building, which has a rural character, does not need to be replaced. The proposed showroom is a new commercial activity in an area in which development of the type proposed is not permitted”.

Il-Bord jaqbel mas-sottomissjonijiet migjuba mill-Awtorita'. It-talba hija essenzjalment li jkun hemm tibdil minn residenza ghal “car showroom”. Din it-tip ta' talba hija, per se, accettabbli, izda, bhal kwalunkwe talba oħra trid tkun konformi mar-regoli applikabbli u in linea generali tali li tirrispetta kemm jista' jkun l-ambjent tal-lokalita'. Is-sit huwa f'inhawi strettament ODZ u hlief għad-dar residenzjali in kwistjoni, il-fuq lejn ix-Xaghra si tratta ta' inhawi rurali. L-isfel lejn ir-Rabat, hemm tahlit ta' residenzi u zviluppi kummercjali zghar għalkemm l-aktar li hemm huma residenzi. Dawk kummercjali huma hafna izghar minn l-izvilupp odjern mitlub.

Għal dawn il-motivi l-appell huwa michud u r-rifjut relattiv konfermat”.

## **II. L-Appell**

6. L-appellant hassu aggravat minn din id-decizjoni u fl-appell tiegħu quddiem din il-Qorti issottometta testwalment, interalia, hekk:-

“Fuq iz-zewg nahat tieghu dan il-bini huwa imdawwar b’bini iehor – zewg djar residenzjali fuq in-naha tal-lvant, u diversi negozji aktar lejn il-punent – ghalkemm strettament l-area per se hija outside development zone;

Is-sit ta’ l-esponenti huwa gia sit committed peress illi ghandu il-maggjor parti tieghu gia okkupata bil-bini antik ezistenti. L-izvilupp illi l-esponenti kien qed jipproponi ma kienx sejjer ibiddel b’xi mod sostanzjali mill-persentagg tas-superficje ta’ l-art tieghu illi hija okkupata bil-bini. Sostanzjalment l-esponenti kien qed jitleb illi jwaqqa il-bini ezistenti, u jibni bini iehor minfloku press a poco ta’ l-istess kobor izda li jkun intiz ghal uzu kummercjali pjuttost milli ghal uzu residenzjali.

L-aggravju huwa car u manifest u jikkonsisti fis-segwenti:

Il-Bord ta’ l-Appell interpreta il-ligi hazin, u applika l-ligi hazin meta iddecieda illi s-sit ta’ l-esponenti huwa outside development zone. Huwa sottomess bir-rispett illi kuntrarjament ghal dak li irritjena l-Bord, galadarba is-sit de quo huwa gia mibni billi ghandu l-faccata tieghu kollha okkupata bil-bini, liema bini jestendi lura sal-linja tal-bini fil-vicinanze immedjati, dan is-sit ghandu jigi kwalifikat bhala wiehed ‘committed’ bil-bini.

Ghaldaqstant huwa kontro-sens, illogiku u llegali illi jigu applikati policies dwar siti outside development zone ghal dan is-sit. Huwa dan il-pern tal-kwistjoni kollha, u huwa hawnhekk illi, bir-rispett kollu, il-Bord inkorra skorrettezza legali grossolana. Jekk ghall-kuntrarju gew applikati l-policies rigwardanti siti gia committed bl-izvilupp ghas-sit ta’ l-esponenti, l-oggezzjonijiet kollha ghall-izvilupp minnu propost kienu joghsfru u jispicaw fix-xejn, u l-applikazzjoni odjerna kellha tigi milqugha minghajr ezitazzjoni.

Anke fil-gurisprudenza tal-Bord innifsu insibu diversi kazi fejn gie ritenut illi sit illi huwa nnifsu committed bl-izvilupp ma jistax jigi kunsidrat bhala art vergini u ghalhekk ma humiex applikabbli ghal siti simili l-policies applikabbli ghal siti outside development zone. F’kazijiet ohra insibu lill-Bord jirritjeni illi anke fejn is-sit fih innifsu jkun ghadu ma giex zviluppat, izda s-siti fil-vicinanze immedjati jkunu gew zviluppati, dak is-sit ma jistax aktar jigi kunsidrat bhala outside development zone u l-izvilupp ta’ sit simili ghandu jigi permess”.

7. Wara li accenna ghal diversi decizjonijiet tal-Bord, l-appellant talab li din il-Qorti joghgobha tirrevoka s-sentenza moghtija mill-Bord ta' l-Appell dwar l-ippjanar fl-24 ta' Novembru, 1999, fl-applikazzjoni numru PA 2732/96, PAB 560/97SMS, u tordna illi l-applikazzjoni ta' l-appellant sabiex jiddemolixxi l-bini ezistenti u minflok jibni car showroom u stores, tigi approvata.

8. Fir-risposta taghha, l-Awtorita' ta' l-ippjanar ssottomettiet, bhala eccezzjoni preliminari, li l-appell kien null billi ma kienx bazat fuq xi punt ta' ligi deciz mill-Bord. Dwar din l-eccezzjoni, l-Awtorita' appellata issottomettiet inter alia hekk:-

“Illi hu carissimu li kemm minn qari tad-decizjoni tal-Bord ta' l-Appell dwar l-ippjanar moghtija fl-24 ta' Novembru, 1999, li minnu qed isir dan l-appell, kif ukoll mill-kontenut ta' l-appell odjern maghmul mill-appellant, li l-istess Bord ma ddecieda l-ebda punt ta' ligi li fuqu gie intavolat l-appell in kwistjoni.

Illi jekk wiehed jifli sew il-parti decide tad-decizjoni tal-Bord ta' l-Appell hu car li l-istess decizjoni tal-Bord kienet motivata unikament fuq ragunijiet ta' apprezzament fattwali u ta' ippjanat ta' l-izvilupp propost mill-appellant – cioe' li dar residenzjali ssir “car showroom u stores”. Difatti l-Bord meta gie biex jimmotiva d-decizjoni tieghu u kkonferma r-rifjut diga moghti, qal li “Is-sit huwa f'inhawi strettament ODZ u hlief ghad-dar residenzjali in kwistjoni, il-fuq lejn ix-Xaghra si tratta ta' inhawi rurali. L-isfel lejn ir-Rabat hemm tahlit ta' residenzi u zvilupp kummercjali zghar ghalkemm l-aktar li hemm huma residenzi. Dawk kummercjali huma hafna izghar minn l-izvilupp odjern mitlub.

Illi l-appellant f'tentattiv biex jiggustifika l-appell tieghu iccita xi decizjonijiet moghtija mill-Bord ta' l-Appell fejn skond hu, l-istess Bord kien ta permess li jsir l-izvilupp minkejja li tali zvilupp kien ODZ – outside development zone (cioe' barra miz-zona li fiha

jista' zvilupp). Jekk wiehed jfli sew id-decizjoni citati mill-istess appellant isib li kull kaz hu differenti mill-iehor u li f'kull kaz citat ma kien hemm l-ebda punt ta' ligi imma strettament biss apprezzament fattwali u ta' ippjanar dwar jekk per ezempju is-sit kienx "committed" jew le.

Il-punt li donnu sfugga lill-appellant hu li kull kaz hu differenti mill-iehor proprju ghaliex l-ebda zvilupp ma hu simili u jrid jigi apprezzata u kunsidrat biss fuq ic-cirkostanzi partikolari ghal dak l-izvilupp. Hu sottomess li daqskemm gew citati decizjonijiet tal-Bord fejn seta' gew moghtija permessi ghal zvilupp li sar ODZ, jistghu jigu citati lista ferm itwal ta' decizjonijiet ta' l-istess Bord fejn l-istess Bord cahad appell ghall-izvilupp propost li kien ODZ.

Illi kuntrarju ghal dak li gie sottomess mill-appellant, ma hemm l-ebda punt ta' ligi semplicement ghaliex is-sit fejn gie propost l-izvilupp in kwistjoni jinsab f'zona li hi OXZ. Il-punt hawn hu li ser isir zvilupp gdid konsistenti fi bdil fl-uzu minn dar residenzjali ghal car showroom, liema zvilupp ser isir f'sit li jinsab f'area li essenzjalment hi wahda rurali. Hu sottomess li l-Bord kien korrett meta kkonferma ir-rifjut moghti mill-Kummissjoni ghall-Kontroll ta' l-izvilupp u ddecieda li ma ghandux ikun hemm zvilupp ta' natura kummercjali fis-sit li jinsab ODZ. B'daqshekk certament ma hemm xejn li hu llogiku u lanqas illegali.

Illi fis-sustanza kif jirrizulta mill-istess decizjoni tal-Bord, il-motiv ghac-cahda ta' l-appell maghmul quddiem l-istess Bord kien li l-izvilupp propost li jsir showroom minflok dar residenzjali, hi attivita' ta' natura kummercjali f'zona rurali fejn zvilupp ta' din ix-xorta mhux permissibbli. Bir-rispett hu sottomess li certament b'daqshekk ma hemm l-ebda "skorrettezza legali grossolana" kif l-appellant ghogbu jiddeskrivi d-decizjoni tal-Bord. Anzi ghal kuntrarju d-decizjoni tal-Bord kienet wahda logika u applikazzjoni gusta tal-policies rilevanti tenut kont tal-fatt li primarjament l-appellant irid jaghmel zvilupp ta' natura kummercjali sustanzjali f'area li essenzjalment hi wahda rurali.

Illi di piu' is-sit in kwistjoni certament ma jistax jitqies li kien 'committed' bi zvilupp kummercjali ta' l-istess entita' u natura bhal dak li ried jaghmel l-appellant u dan anke kif jirrizulta mill-apprezzament fattwali u viziv li hamel il-Bord".



9. L-Awtorita' appellata ikkonkludiet billi talbet illi din il-Qorti joghgobha tichad l-appell u tikkonferma d-decizjoni in kwistjoni tal-Bord.

### **III. Konsiderazzjonijiet ta' din il-Qorti**

10. Biex appell minn decizjoni tal-Bord ikun ammissibbli, l-istess appell, skond il-ligi, irid, ikun bazat fuq xi punt ta' ligi deciz mill-Bord. Issa, jidher car, minn ezami anke superficiali tad-decizjoni appellata, li l-Bord, fid-decizjoni tieghu ma kienx affaccjat minn xi kontroversja ta' natura legali, u, nfatti, huwa ma ddecieda l-ebda punt ta' dritt. Il-Ligi ta' l-ippjanar ma tatx lil din il-Qorti il-gurisdizzjoni li tissindika decizjonijiet tal-Bord li jinvolvu kwistjonijiet ta' fatt, jew apprezzamenti ta' natura ta' l-ippjanar. U meta appell lil din il-Qorti jkun bazat fuq kwistjonijiet fattwali bhal dawn jew semplici konsiderazzjonijiet ta' l-ippjanar, dak l-appell ma jkunx ammissibbli.

11. Issa l-appell odjern jaqa' precizament that din l-ahbar imsemmija kategorija. Il-partijiet jaqblu li s-sit jinsab f'zona 'l barra mill-lzvilupp (O.D.Z). Jaqblu wkoll li fuq is-sit kien hemm binja antika ta' natura residenzjali. Inoltre, l-Bord seta' jikkonstata waqt l-access li zamm fl-14 ta' April, 1999 li

“inti u thares lejn ix-xellug tas-sit hemm ammont sostanzjali ta' ghelieqi, fuq il-lemin hemm sular nofsu mibni, showroom....., zewg binjiet residenzjali u wara hanut kummercjali”.

Meta l-Bord dahal fil-fond in kwistjoni huwa osserva li partijiet mill-binja kellhom “features” vernikulari bhal kileb u hnejjiet u hitan li kienu prezervati tajjeb.

12. Il-Bord, wara li kkunsidra c-cirkostanzi kollha tal-kaz, ddecieda li jikkonferma d-decizjoni tal-Kummissjoni tal-Kontroll ta' l-Izvilupp ghaliex deherlu li l-proposta ta' l-appellant (li jiddemolixxi l-bini ezistenti u minflok jikkostitwixxi “car showroom u stores”) ma kienetx adatta ghaz-zona in kwistjoni. Dana billi il-Bord wasal ghall-konkluzzjoni li s-sit kien strettament f'zona 'l barra mill-izvilupp u

“hlief ghad-dar residenzjali in kwistjoni, 'il fuq lejn ix-Xaghra si tratta ta' inhawi rurali. L-isfel lejn ir-Rabat hemm tahlit ta' residenzi u zviluppi kummercjali zghar, ghalkemm l-aktar li hemm huma residenzi. Dawk kummercjali huma hafna izghar minn l-izvilupp odjern mitlub”.

13. Huwa evidenti li d-decizjoni tal-Bord hija bazata strettament fuq konsiderazzjonijiet ta' natura fattwali u konsiderazzjonijiet ta' dak li hu xieraq mill-aspett ta' l-lppjanar. Il-partijiet taw interpretazzjonijiet divergenti dwar dawn l-istess konsiderazzjonijiet, izda din il-Qorti ma tistax tiddisturba il-konkluzzjonijiet relattivi li wasal ghalihom il-Bord billi l-Bord, evidentement, ma ddecieda l-ebda punt ta' ligi biex wasal ghad-decizjoni tieghu.

14. Ghal dawn il-motivi, l-eccezzjoni ta' l-Awtorita' appellata hija gustifikata u ghalhekk tichad l-apell interpost. L-ispejjez jibqghu a kariku ta' l-appellant.

Dep/Reg

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