



**QORTI TA' L-APPELL
ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tas-26 ta' Marzu, 2014
Appell Civili Numru. 195/2012

**Gino Cutajar f'isem u in rapprezentanza
tas-socjeta Cutrico Services Ltd**

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Cutrico Services Limited tat-28 ta' Dicembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-11 ta' Dicembru 2012 fejn giet michuda l-applikazzjoni PA 4224/08 'to construct additional floor (3rd floor) and rooms at roof level (4th floor);

Rat ir-risposta tal-Awtorita li sottomettiet 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. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-30 ta' Marzu 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 4224/08 - Cutrico

Building, Old Railway Road, Santa Venera: To construct additional floor (3rd floor) and rooms at roof level (4th floor).

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

“1 The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non-urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

2 There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located in an area designated for development or in an existing built up area.

3 The proposal runs counter to the adopted policy Development Control Guidance Developments Outside Built up Areas, Circular PLP 20. It would lead to urbanisation outside those areas specifically designated for urban uses in the Structure Plan - i.e. existing and committed built up areas and primary development areas, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land.”

B. In-nota tal-Avukat Dott.ssa Tanya Sciberras Camilleri ghall-Appellant nomine, ipprezentata fit-28 t' April 2011, senjatament il-punti segwenti:

“It is submitted with respect that the Directorate is persisting in insisting that no development should take place on the site in question, notwithstanding the fact that a number of permits have already been granted on site, with the first permit being granted following a decision by the Planning Appeals Board of 13th May 1994 and the second permit granted on 22nd April 2008.

The policies quoted in the decision relate to development outside the development zone. However, such reasons give a very misleading impression of the current state of affairs, since various permits have consistently been granted over the years both in favour of the site in question and in the immediate vicinity, with the consequence that the area can only be termed "outside the development zone" on paper, since a visual glance at the area will certainly prove otherwise. Indeed, it is argued that this state of affairs has even been acknowledged by MEPA itself over the years, with the grant of a number of permits.

One may make reference to various permits issued on the site which are the following:

- PA 2002/93
- PA 4486/94
- PA 900/97

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- PA 6940/06 (Subject to appeal which is still pending)
- PA 5600/07

Apart from this, one may also make reference to various other permits issued in identical circumstances in the immediate vicinity of the site which are the following:

- PA 1928/99 following the previous approval on the same site of PA 6930/02
- PA 70/08 following the previous approval on the same sit of PA 525/02
- PA 6154/08 following the previous approval of PA 1628/99
- PA 410/99, PA 2490/97, PA 5269/97, PA 555/93, PA 2122/93

These are all permits issued in respect of St Philip's Hospital which adjoins the site in question

Furthermore, the most persuasive argument is that the Authority has, in previous correspondence, itself described the site as "committed". Reference is made to the following:

(a) a letter dated 10th November 2000 wherein the Planning Authority had accepted to renew the permit PA 900/97 since it stated that "the site has been committed"

(b) the DPA report regarding a previous application on site (PA 5600/07) wherein it was stated on more than one occasion that lithe site is currently committed ..."

Therefore it is clear that the site can only be described as "outside the development zone" in name since, for all intents and purposes, it is surrounded by existing development which is covered by a valid permits and various permits have been issued with regard to my client's site, in line with MEPA's previous acknowledgement that the site is effectively "committed".

Turning to the proposal in question, applicant is requesting an additional floor and rooms at roof level. In this particular case, the site has been left in "policy limbo" since, strangely enough, it has not been included within the development zone notwithstanding the fact that, in practical terms, it is well and truly developed. Therefore failing policies applicable to the area, and given therefore that MEPA itself has not placed a height limitation over the area, one must refer to permits issued in the vicinity. The permits which are in line with what our client is proposing and which are in the immediate vicinity of the site are the following:

PA 743/06 - This relates to an extension to offices which are built on four floors and a penthouse level following the approval of previous permits regarding the same site - PA 5386/05,4960/02 and 4451/94

PA 4970/07 - This relates to a massive residential development consisting of four floors plus a penthouse which is just across the Regional Road

PA 3112/08 - This relates to a showroom fronting Psaila Street and just across from our client's site which is built on three floors, including a mezzanine floor so that the elevation reads as four floors.”

C. In-nota responsiva tal-Perit Denise Martin għall-Awtorita', ipprezentata waqt is-Seduta numru 68 mizmuma fit-28 ta' Settembru 2011, inter alia l-punti segwenti:

“5.1.4 The site under appeal lies Outside the Development Zone. The Appellant quotes a number of Planning Applications all of which are either within the development zone boundary, or Planning Applications relating to St Philip's Hospital or else Planning Applications relating to the site under appeal. These quoted files are the following:

- PA 2002/93, PA 4486/94, PA 900197, PA 6940/06 (which is subject to appeal which is still pending, PAB 243107) and PA 5600/07 - ALL of these files relate to the site under appeal.

- PA 410199, PA 2490/97, PA 5269/97, PA 555/93 and PA 2122/93 – all 01 these file relate to St Philip's Hospital;

- PA 743/06, PA 5386/05, PA 4960/02, PA 4451/94, PA 4970/07 and PA 3112/08 - are all Planning Applications within the development zone boundary.

5.1.5 The site under appeal cannot be assessed in the same way as these quoted Planning Applications, since this site does NOT form part of the development zone. Therefore, clearly enough, since site does not fall within such an area, then policies relating to building height limitation cannot be applied.

5.1.6 The development under appeal lies within the Outside Development Zone as stated above. The development under appeal comprises of the construction of an additional floor, and the construction of stores at roof level. As stated in the DPAR: the proposed development would result in a building height of 4 floors plus rooms at roof level (Red 1 F). It should be noted that drawing Red 1 F shows the proposed 4th floors as being approved by past permits, it is being emphasized that past permits allowed the construction of store rooms at roof level and not of a complete floor as indicated in Red 1 F. In fact the last permit issued on site PA5600/07 allowed the construction of 3 floors and rooms at roof level. This is excessive development for a building lying within the ODZ. The Structure Plan Policies clearly state that within the Outside Development Zone, no form of urban development, which is not justifiable, will be allowed, so as to minimize unnecessary urban sprawl within the rural context. Structure Plan Policies SET 11 and RCO 2 state that there should be no development within the ODZ. These policies state the following:

RCO 2: no form of urban development will be allowed.

SET 11: No form of urban development will be permitted outside existing and committed built-up areas, and primary development areas as designated in the Structure Plan even where roads and public utilities are available. Permitted forms of non-urban development outside such areas are restricted to the categories referred to in Paragraph 7.6

Paragraph 7.6: The term 'urbanisation' means the creation of new built-up areas containing all or most urban uses: houses, shops, offices, factories and all the built support facilities, which these accumulate. In seeking to prohibit urbanisation of existing non-urban areas it is not the intention to prohibit built structures of various kinds which are normal and legitimate inclusions in the non-urban scene - farmhouses and other genuine agricultural buildings, reservoirs, picnic area toilets and car parks, and control buildings and walls/fences at archaeological and ecological sites. Nevertheless, the provision of such structures must be controlled in order to preserve and enhance the environmental quality of the countryside.

5.1.7 As stated in the DPAR: The proposed development contributes to urban intensification within an area that is located Outside the Development Zone. Such development is not permitted as per Structure Plan Policy SET 11 since this policy aims at minimizing urban sprawl which is a characteristic problem of urban fringes. This development is not justified since the site has been left out of the Rationalization Process and therefore counters Structure PLAN SET 12. Moreover buildings ODZ are permitted an area of maximum 150m² (Policy Circular, PLP 20), in this case this has already been exceeded through the issuance of past permits. Past permits have permitted a total floorspace of approximately 1720m² (excluding lower and upper basement). The proposed development seeks to increase the total floorspace to 2230m² (excluding lower and upper basement).

It should be noted that the site is located near the development zone where the maximum allowable height of buildings is of 3 floors. The proposal seeks to construct an additional floor resulting in 4 floors and additional rooms at roof level. This is further considered unacceptable when one considers that ODZ should limit development and not go beyond what is permitted within the development zone as is being proposed in this application.

D. In-nota ta' sottomissjonijiet tal-Avukat Dott.ssa Tanya Sciberras Camilleri u l-Perit Joseph Cassar għall-Appellant nomine, ipprezentata fit-28 ta' Novembru 2011, precizament il-punti segwenti:

“The Authority cannot continue to persist in ignoring the existence of the various developments granted along Old Railway Road, Santa Venera in the vicinity of appellant's site and insisting that the site is outside the development zone. This is indeed a fiction and it is submitted that the reasons for refusal which all refer to polices applicable Outside the Development Zone are not applicable to the application in question. This is borne by the fact that a consistent no of permits were granted on the site in question, the first one relating to 1993. Indeed, a request was made by appellant to renew permit PA 900/07 by one (1) year following its expiry, and

this request was acceded by the Authority which stated that this was being granted in view of the fact site was committed. In fact, in its letter to applicant dated 10th November 2000, the Authority stated the following:

"In view that the site has been committed, and in accordance with Act I of 1992, Development Planning Act, section 33(3) (b), PA 900/97 dated 16th September 1997, is hereby extended for a further period of twelve months."

[...] Given that there is no height limitation established for the site in terms of the Local Plan, and therefore no applicable policy, it is submitted that, in accordance with Article 69 of the Environment and Development Planning Act, commitment is the material consideration to be applied in assessing this application and our client has produced sufficient evidence in favour of the development being proposed, in view of similar developments in the area."

E. In-nota second statement tal-Perit Denise Martin għall-Awtorita', ipprezentata waqt is-Seduta numru 5, mizmuma fid-19 ta' Jannar 2012, inter alia l-punti segwenti:

"1.1 The appellant states that "policies applicable to Outside the Development Zone are not applicable to the application in question". The local plan is very clear on the designation of the site under appeal. It lies Outside the Development Zone as shown below. Furthermore, appellant has yet failed to cite any approved policies related to ODZ development which actually permits such massing, proposed uses and above all number of floors which, on its aft side, are highly visible from long distance views stretching even from the Swatar area.

The comments stated by the appellant imply that the appellant hints at opening a discussion on the designation of the location of the site in question. It is not within the remit of this Tribunal to either discuss or change the designations set out by the Local Plan. The Local Plan designates the site under appeal as lying outside the development zone and not within the limits of development. Due to commitments on site one does not possess the right to extend the development horizontally and/or vertically. The development under appeal is excessive. The appellant proposes a 7 storey structure in the ODZ which is unacceptable as shown in Figure 2 and Photos below. The site in question has no building height limitation designated to it, since it lies in the ODZ; this therefore does not mean that one can build as one pleases ignoring the rural context within which the site lies, keeping in mind that the site is situated at the top of a valley. In terms of building height, the appellant is erroneously misquoting Article 69 of the Environment and Planning Act [...]

1.2 The appellant quotes a number of Planning Applications, some of which have already been submitted and discussed in the first sitting. The Planning Applications which have not yet been discussed are the following:

PA 70/08: this is a renewal application of an already approved PA 525/02 which was approved prior to the issuing of the Local Plan. The total amount

of this cited permit (including basement) is 4 and not 7 (including basement levels which are highly visible from the valley side) as is being requested in this appeal.

PA 6154/08: is an Outline application proposing the demolition of the existing structures and constructing; one of the conditions imposed is the following: The eventual submission of the Full Development Application is subject to further consultations as may be deemed required other than those already consulted in this Outline Development Application. Therefore development has not yet been finalized. The proposal consists of the replacement of an already existing structure. Additionally, the DPA report had described the requested development as:

Proposal

This outline development permission application proposes the demolition of existing structures, and construction of one level of basement and a ground floor showroom - see drawings 21A - 21E. The proposed building is organized on one floor plus a basement [...] Hence, this cited permit differs substantially from the case under appeal since only 2 floors (including basement level) were approved (as opposed to the resultant 7 floors as is being requested in this appeal)."

F. In-nota ta' sottomissjonijiet ulterjuri tal-Avukat Dott.ssa Tanya Sciberras Camilleri u l-Perit Joseph Cassar ghall-Appellant nomine, ipprezentata fl-14 ta' Frar 2012, precizament il-punti segwenti:

"It is pertinent to point out that the site is situated in Old Railway Road, Santa Venera, just off the Sta Venera Bypass. On the opposite side of the road, there are the new MITA offices, and behind it, there is St Philip's Hospital. Therefore, one questions what "rural context" the Authority is referring to, in describing the site.

The Authority is also misleading the Board in describing the proposed structure as having "a total of 7 floors" in Fig 2 on page 2, without also pointing out that 2 of such floors are in fact basement levels.

Applicant reiterates that, in terms of Article 69, commitment is the material consideration to be applied in assessing this application. According to Article 69 of Chapter 504, the issue of commitment cannot be considered in order to review the height limitation established in a plan. However, in this particular case, there is no such height limitation established for this site notwithstanding the grant of several permits over the years and therefore the only guide available to the Tribunal at this stage is the application of the rule of commitment."

G. In-nota third statement tal-Perit Denise Martin ghall-Awtorita', ipprezentata waqt is-Seduta numru 40, mizmuma fl-10 ta' Mejju 2012, inter alia l-punti segwenti:

“1.1 The Appellant fails to understand the Local Plan designation related to the site under appeal, and also, the context within which this site lies, that is, agricultural land as shown below. One can easily understand the context within which the site lies by referring to the Aerial Photo shown below. The MITA offices which are quoted by the Appellant lie directly opposite the development under appeal. It is pertinent to point out that MITA development lies within the development boundary. The development under appeal however does NOT. The development under appeal lies OUTSIDE the development boundary, as shown in the diagram below. The Authority wishes to point out that this has already been discussed in the Second Statement dated 20th December 2011.

1.2 It is important to point out that the site under appeal is a slewing site, and forms part of the Msida Valley. The proposed development lies at the top of the valley and can easily be seen from as far as Msida Circus. The additional floors would be of a detriment to the valley as it is excessive, unjustifiable and would lead to further vertical urban sprawl thus creating a negative visual impact.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jinbena t-tielet sular u kmamar fir-raba' sular ta' blokka li ghandha uzu kummercjali u li tinsab l-barra miz-zona tal-izvilupp (ODZ) ta' Santa Venera.

Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li proposta bhal din mhix gjustifikata fl-ODZ u li tista' faciment tigi akkomodata gewwa zoni edifikabbli. Ma hemm xejn fil-proposta li mhux konsistenti minn zvilupp urbanizzanti u li ghalhekk ghandu jigi permess partikolarment fl-ODZ. Il-proposta hi di konsegwenza in kontravenzjoni talk-policies SET 11, SET 12, BEN 5 u l-paragrafu 7.6 tal-Pjan ta' Struttura, kif ukoll il-PA Circular PLP 20 Development Control guidance – Developments outside built up areas.

L-Appellant nomine jirrileva li s-sit diga' hu kopert b' permessi għall-izvilupp, u li għalhekk mhux il-kaz li wiehed jikkonsidra dan is-sit bhala wiehed fl-ODZ. Jispjega wkoll li fl-istess triq inhargu bosta permessi simili għal dan odjern, u li għalhekk kemm is-sit, kif ukoll l-arja huma kompromessi bl-izvilupp. Irrileva li in oltre, nonostante l-commitments serji li hemm fiz-zona, l-Awtorita' xorta wahda ddesinjat dan is-sit (u oħrajn biswitu - li gew zviluppanti b'mod analogu) bhala ODZ. Johrog għalhekk li galadarba ma' jezistix height limitation għall-zvilupp fl-ODZ, kien ikun xieraq li f' ic-cirkostanzi jigi permess zvilupp li hu konsistenti bhal dak ta' ma genbu, ukoll fl-ODZ u fejn gew permessi erba' sulari (PA 743/06, PA 4970/07 u PA 3112/08), u in linja mar-rekwiziti tal-Artikolu 69 tal-Att X tal-2010.

Jigi rilevat li l-Appellant nomine qed jibbaza l-argumenti tieghu fuq commitment in kwantu dikjarazzjoni li kienet għamlet l-Awtorita' dakinhar li kienet irrinovat il-permess PA 900/07, li kien wasal biex jiskadi. Irrileva li fil-fatt, l-Awtorita', tenut kont tal-fatt li 'the site has been committed', kienet

ikkoncedietlu permess ghal sena ohra, in linja mal-Artikolu 33 (3)b tal-Att I tal-1992.

L-Awtorita' tissottometti li s-sit relattiv jinsab barra z-zona ta' zvilupp, li l-permessi citati mill-applikant huma kollha dwar permessi li jinsabu fiz-zona ta' zvilupp jew permessi konnessi mal-Isptar St. Philp's jew applikazzjonijiet konnessi mas-sit mertu ta' dawn il-proceduri. Tispjega in oltre, li s-sit ma jistax jigi kkunsidrat bl-istess kejl tal-permessi citati mill-Appellant nomine, u li l-izvilupp propost huwa eccessiv ghal bini li jinsab barra miz-zona ta' zvilupp,

Fil-fatt, kif tajjeb rilevat l-Awtorita', skond il-policies tal-Pjan ta' Struttura citati supra, l-ebda forma ta' zvilupp li jista' jigi permess fl-ODZ ma ghandu jeccedi l-150 metri kwadri. Il-bini in ezami gja' jammonta ghal 170 metri kwadri.

Fir-rigward tal-allegati commitments rilevati mill-Appellant nomine, tajjeb li qabel xejn jigu pprecizati zewg principji li spiss jintuzaw fis-sistema tal-ippjanar u li erronjament huma interskambjati. Qed issir riferenza ghal zewg principji li bil-lingwa Ingliza, it-tnejn jissejhu 'commitment', u li disgrazzjament jintuzaw b' dannu mhux ftit ghar-regime tal-ippjanar li hemm fis-sehh illum.

Ghalhekk, irid jigi kjarifikat li dakinhar li l-Awtorita' rrinovat permess li kien wasal biex jiskadi - in vista tal-commitments fuq is-sit - kienet qedha taghmel dan minhabba l-fatt li l-font kien diga' gie' kompromess bl-izvilupp, u li ghalhekk kien ikun aktar Prattiku li kieku l-izvilupp li beda, seta jitkompla fil-qofol tieghu. F' dan il-kaz, meta jinghad li s-sit kien committed, l-intiza hi li hu gja' kompromess bl-izvilupp.

It-terminu ta' 'commitment' l-iehor u li l-Appellant nomine qed juza sabiex jispejega li l-bini ta' ma genbhu diga' nhariglu permess simili ghal dak li hu qed jitlob, jirrigwarda 'precedent' - cjoe' precedent fl-izvilupp, bil-pretensjoni li galadarba dan gie permess, allura bhalliekieku hu wkoll jista' juzufruwixxu minn din is-sitwazzjoni u jithalla jaghmel zvilupp bhalu. F' din ic-cirkostanza, il-kelma 'commitment' tfisser precedent u tirreferi ghal irregolarita' jew nuqqas ta' harsien fit-twettieq tar-regime tal-ippjanar.

Ghalhekk johrog li galadarba illum gie mplementtat regime tal-ippjanar ampju (viz. il-Pjan ta' Struttura b' mod generali u fid-dettal, il-Pjanijiet Lokali) m'ghadx baqa' lok ghal argumenti ta' commitments bhal dawn; u semmaj wiehed jista' b' xi mod jikkunsidra jew jiggustifika li johrog permess abbazi ta' dawn il-mankanzi fl-iskema tal-ippjanar, ikun qed jippermetti zvilupp ad hoc li per se hu ntinsikament il-kuntrarju t' ippjanar sistematiku. B' ippjanar, wiehed jifhem planning regime mahsub f' termini ta' long u short terms u li jsib il-qofol tieghu fuq medda ta' zmien predeterminata. Kwalsiasi dirottament jew devjazzjoni minn dan il-pjan - tkun kemm tkun kbira l-eccezzjoni - ser tirrizulta f' imperfezzjoni fl-intir tal-pjan regolatorju (u di konsegwenza fit-tessut urban u dak intiz li jibqa rurali jew mittiefes).

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Fl-ahharnett irid jigi osservat ukoll li jista jaghti l-kaz li f' xi zmien seta gie permess xi tip ta' zvilupp li illum jikkuntrasta sew mal-ambjent ta' madwaru; u hu propju ghalhekk li kwalsiasi regime tal-ippjanar ghandu jikkunsidra zvilupp antik bhal dan bhallikieku eccezzjoni ghan-norma, u jfassal pjan regolatorju gdid li jrazzan jew ftit, ftit jizradika dak it-tip ta' zvilupp indesiderabbli. Ghalhekk isegwi li galadara jigi permess zvilupp ulterjuri li jixbah lill l-eccezzjoni - cjoe' kull darba li tigi invokata l-karta tal-commitment - allura tkun qed tigi ostakolata l-implimentazzjoni tal-pjan regolatorju; u galadarba jigi permess zvilupp skond principji ad hoc, allura tispicca r-regola tal-ippjanar u tiehu s-sopravvent l-anarkija tal-commitment.

Jigi rilevat pero' li terga tghid, anke jekk ghall-grazzja tal-argument jista' jigi sorvolat il-punti li l-izvilupp propost gja' jaqbez gmielu l-ammont ta' spazju utili li jista' jigi permess fl-ODZ, fil-kaz in ezami qed jigi invokat l-argument ta' commitment in kwantu gholi tal-bini – u anke jekk jigi injorat il-fatt li kif indikat supra, it-terminologija qed tintuza zbaljatament – skond l-ewwel subinciz tal-Artikolu 69(2) tal-Att X tal-2010, kwistjonijiet ta' commitment fir-rigward ta' gholi ma jistgax illum jigi kkunsidrati. Il-parti ta' dan l-Att rilevanti ghal kaz in ezami hi kif gej:

“2. Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorita' ghandha ukoll tqis:

(a) kull haga ohra ta' sustanza, komprizi konsiderazzjonijiet ambjentali, estetici u sanitarji li l-Awtorita' tista' tikkunsidra rilevanti:

Izda ebda konsiderazzjoni materjali inkluza konsiderazzjoni bbazata fuq l-ezistenza ta' binjiet fil-madwar ma tista' tigi interpretata jew tintuza sabiex izzid l-limitazzjoni tal-gholi stabbilita fil-pjan.”

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 jichad l-istess u jikkonferma ir-rifjut ghall-PA 4224/08 mahrug mill-Kummissjoni ghall-Kontroll ta' l-izvilupp fit-30 ta' Marzu 2011

Ikkunsidrat

L-aggravju tal-appellant huwa s-segwenti:

1. It-Tribunal ma kkunsidrax sew il-fattispecie tal-kaz ghax ghalkemm is-sit jinsab f'ODZ pero z-zona hi kommessa b'diversi binjiet li nhargilhom permess tant li immedjatament wara l-bini in kwistjoni inhareg il-permess ghal St. Philip Hospital b'erba' sulari. L-istess Bord tal-Appell fid-decizjoni Gino Cutajar vs Kummissjoni ghall-Kontroll tal-izvilupp (13/05/2004) harget permess fuq sit vicin a bazi ta' dak li kien jezisti bhala stat ta' fatt fiz-zona cioe li z-zona hi committed built up area. It-Tribunal naqas li jikkonsidra dak li jezisti fattwalemnt u anzi kkonsidra l-kwistjoni tal-commitment taht l-artikolu 69(2) tal-Kap. 504 li gie introdott wara li giet intavolata l-

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applikazzjoni. Billi ma hemmx klawsola transitorja mhix applikabbli ghal kaz in kwisjtoni. Mhux hekk biss izda applika l-istess artikolu b'mod hazin billi ma gie stabbilit ebda gholi massimu fil-local plan rilevanti. In oltre l-istess Awtorita ggustifikat it-tigdid tal-permess PA 900/97 b'sena rigward l-istess sit b'ittra tal-10 ta' Novembru 2000 fejn jinghad esplicitament li 'the site has been committed'. Il-lanjanzi tal-appellant lanqas gew trattati mit-Tribunal taht l-aspett promoss.

Din il-Qorti filwaqt li tissimpatizza mad-dilemma li l-appellant sab ruhu fiha issib illi dak li effettivament qed jitlob lil Qorti hu li jaghti interpretazzjoni differenti minn dik tat-Tribunal dwar l-effetti tal-artikolu 69 cioe bejn id-dover tal-Awtorita u t-Tribunal li japplikaw il-policies u pjanijiet u li fil-konsiderazzjonijiet u evalwazzjonijiet maghmula iqisu wkoll kwistjonijiet ta' sustanza.

Qabel xejn din il-Qorti taqbel mal-argument tal-appellant illi l-proviso tal-artikolu 69(2)(a) mhux applikabbli ghal kaz in kwistjoni kuntrarjament ghal dak deciz mit-Tribunal. Dan mhux ghaliex kif arugmenta l-appellant illi dan il-proviso ddahhal fil-ligi wara li giet intavolata l-applikazzjoni. Il-Qorti hi tal-hsieb illi applikazzjoni ma tikkreja ebda dritt jew pretensjoni ghall-applikant izda biss aspettativa legittima li sakemm il-pjanijiet u policies jibqghu l-istess sal-mument ta' decizjoni finali, dik l-applikazzjoni tigi kunsidrata a bazi tagghom. Pero billi ligijiet ta' ppjanar huma intizi primarjament ghal gid komuni u fl-interess tal-pajiz taht diversi aspetti, l-applikant irid jaddata ruhu jekk fil-mori ta' applikazzjoni l-pjanijiet jew policies jinbidlu sabiex ikun in linea magghom jekk irid li l-izvilupp ikollu l-possibilita ta' approvazzjoni. Mill-banda l-ohra t-Tribunal applika hazin dan l-artikolu fil-kaz in kwistjoni billi l-artikolu 69(2)(a) li jghid hekk:

Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorità ghandha ukoll tqis:

(i) kull haga ohra ta' sustanza, komprizi konsiderazzjonijiet ambjentali, estetici u sanitarji li l-Awtorità tista' tikkunsidra rilevanti:

Izda ebda kunsiderazzjoni materjali inkluza konsiderazzjoni bbazata fuq l-ezistenza ta' binjiet fil-madwar ma tista' tigi interpretata jew tintuza sabiex izzid l-limitazzjoni ta' l-gholi stabbilita fil-pjan;

qed jirreferi ghal arugmenti ta' zona kommessa fejn l-argument tal-gholi jitqies biex jiggustifika zieda oltre dak stabbilit fil-pjan. F'dan il-kaz ma hemm ebda limitazzjoni ta' gholi stabbilit f'ebda pjan ghaz-zona. Iz-zona hi deliniata fil-pjan bhala ODZ u kwindi japplikaw principji differenti ghal dan l-istat legali.

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Maghdud dan pero jekk wiehed jaghsar l-argumenti dettaljati tal-partijiet, il-kwistjoni tirisolvi ruhha dwar l-effett ta' dezinjazzjoni ta' zona bhala ODZ. L-argumenti tal-partijiet mhux ser jigu ripetuti ghax huma ezawrjenti u studjati pero t-Tribunal li ghamel riassunt ta' dawn l-argumenti qies il-kwistjoni ta' commitment kif qed jigi propost mill-appellant bhala inapplicabbli ghal kaz. Il-pern tal-kwistjoni hi illi s-sit jinsab f'zona ODZ fejn l-izvilupp hu kwazi eskluż ghal kollox. It-Tribunal applika l-principju rilevanti ghal rifjut ta' zviluppi f'ODZ u l-eccezzjonijiet zghar li jista' jsir ghalihom u wasal ghal konkluzzjoni li zona fi pjan lokali ma tistax tigi kompromessa la billi jigu kwotati eccezzjonijiet ghar-regola b'permessi ohra li jitghu jkunu fil-fehma tal-Qorti bazi ta' azzjoni differenti, u lanqas billi jintuza bhala ezempju l-izvilupp gia permess fuq is-sit innifsu.

Hi l-fehma tal-Qorti li t-Tribunal la injora l-portata tal-argumenti tal-appell u lanqas naqas li jikkunsidrahom u jaghti decizjoni argumentata ghaliex l-argumenti tal-appellant ma jistghux isibu frott. It-Tribunal mexa fuq interpretazzjoni litterali tal-artikolu 69 cioe li darba li pjan jew policy jiddizinja z-zona dan irid jigi applikat. Kwistjonijiet ta' sustanza ghandhom jitqiesu kif fil-fatt qieshom pero wasal ghal konkluzzjoni illi kull eccezzjoni li setghet saret ma ghandux ifisser li t-Tribunal ghandu jaccetta l-eccezzjoni bhala n-norma jew li implimentazzjoni ta' pjan regolatroju jista' jigi ostakolat b'argumenti ta' permessi ohra li fil-fehma tal-istess Tribunal setghu ivvjolaw l-istess implimentazzjoni.

Wiehed jista' jaqbel jew le ma'din l-interpretazzjoni u wiehed jista' jsemmi sentenzi li jghidu mod jew iehor pero dak li zgur ma jistax jinghad hu li t-Tribunal applika hazin il-ligi ghal fattispecie tal-kaz mill-lenti ta'dak li l-pjan lokali iqis iz-zona fejn qed jigi propost l-izvilupp u dawk l-eccezzjonijiet fejn zvilupp jista' jigi permess f'ODZ.

It-Tribunal mhux marbut bi precedenti ohra tat-Tribunal jew il-Bord tal-Appell kif kien qabel u sakemm il-ligi ma tghidx mox iehor, il-konsiderazzjonijiet u konkluzzjonijiet minnu raggunti jidhlu fil-parametri tal-ligi u fid-diskrezzjoni akkordati lit-Tribunal.

It-Tribunal, kuntrarjament ghal dak sottomess mill-appellant ikkonsidra l-fattispecie tal-kaz b'referenza mhux biss ghal permessi ohra fiz-zona izda b'referenza specifika

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ghall-izvilupp propost u n-nuqqas tieghu li jikkwalifika bhala wiehed mill-eccezzjonijiet kontra zvilupp f'ODZ. Mhux hekk biss izda iddistingwa b'mod gust fil-fehma tal-Qorti t-tifsira ta' commitment meta ikkunsidra l-ittra tal-Awtorita meta ggedded b'sena l-permess ezistenti fuq l-istess sit u t-tifsira ta' commitment b'mod aktar ampju meta si tratta ta' commitment ta' zona.

Billi hi l-fehma tal-Qorti li d-decizjoni tat-Tribunal ma tistax titqies bhala fallaci mill-punto di vista legali u mill-applikazzjoni tal-ligijiet ta' ippjanar u billi l-istess decizjoni ikkunsidrat b'mod serju u ampju l-vertenza u l-aggravju, l-appell ma jistax jigi milqugh.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Cutrico Services Limited u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-11 ta' Dicembru 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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