



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum Il-Hamis, 10 ta' Dicembru, 2015

Numru 3

Appell Nru. 43/2015

**Tanya Formosa, Pierre De Bono,
Cynthia Scerri De Bono, John Attard,
John Chetcuti, Alfred Cassar,
George Saguna, Maureen Saguna, Paul Saguna,
Paul Herman, Victoria Herman, Noel Galea,
Carmen Galea, u Julie Anne Portelli**

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza Tarcisio Galea**

Il-Qorti,

Rat ir-rikors tal-appell tal-applikant Tarcisio Galea tat-12 ta' Awwissu 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2015 'to construct terraced house';

Rat ir-risposti tal-Awtorita u l-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:

Ra r-ragunijiet ta' l-appell hekk kif gej:

"I have been instructed to lodge an appeal against the decision taken in favour of the granting of a permit, namely PA 2349/13 in the names of John De Bono I.D. No. 227934(M), John Attard I.D. No. John Chetchuti I.D. No. Alfred Cassar I.D. No. 248061(M), George Saguna I.D. No. 336991 (M), Maureen Saguna I.D. No. 14876(M), Paul Saguna I.D. No. 54342(M), Paul Herman I.D. No. MT9767655, Victoria Hermand I.D. No. 0690341(M), Noel Galea I.D. No. 0525392(M), Carmen Galea I.D. 553752(M) and JulieAnne Portelli I.D. No. 2176(G).

On the 26 November, 2013, The Environment & Planning Commission (Board B) approved an application with reference number PA 2349/13, for the development of a residence with a frontage of less than 4.2 m on a schemed road, and with an access to the residence through a passage which lies completely outside development zone (in view of its limited frontage).

Throughout the proceedings, The Commission requested the advice of the Forward Planning Unit, The Planning Control Unit and the Legal Consultant on the interpretation of policy 3.6 of the Policy and Design Guidance 2007, on whether the plot in question qualifies as an end of scheme in view of minutes 48 and 46 in the previous application bearing number PA 2159/10; whether a site curtilage within the ODZ part of the site can be considered as proposed in this application, and on the legal status of the local plans interpretation document.

The Commission, notwithstanding the advice granted by the above three entities within MEPA, which advice recommended favourably the appellant's plea that such a development is not permissible in view of the current policies, opted to put aside the guidance given and granted the application instead.

The Appellant's wish to point out that Application P A 2349113 is a second attempt filed by the applicants, following a refusal granted by the Environment and Planning Commission (Board A) to application PA 2159/10. For reasons which the appellant's cannot apprehend, the Directorate in the first application before Board A was all against this development and this recommendation was confirmed by the Commission, whilst in the current

application put for hearing before Board B, the Directorate made a U- Turn and recommended a grant whilst the Commission upheld the recommendation.

During the processing of the application, the undersigned had pointed out why there was a change in the team which was to assess the application, which request was ignored. In fact, this decision led to another Commission to adjudicate this application rather than the previous one.

The appellants are registered objectors and have objected heavily in both applications in view of the vested interest which they have should the current application be upheld: each of the appellants own an apartment abutting the site in question with access from Triq Karkar. The appellant's apartments abuts on a very narrow piece of land which lies within scheme (less than 3 metres in frontage), with the remaining land lying outside development zone. Applicants in the current application, have made use of the land which lies outside development zone, to enhance the land which lies within scheme and thus develop their land.

The appellant's main contention is that a plot of land with a developable site frontage of less than 3 metres was approved by the Environment Planning Commission (Board B) notwithstanding that such development runs counter to the current DC guidance policy (2007), the advices specifically requested by the Environment Planning Commission (Board B), and the shift in recommendation by the Directorate.

In the humble opinion of the appellants, the proposed development in this second application, is not permissible for the following reasons:

1. Res Judicata

The current application is in principle similar to the previous application (the planning issues have remained the same), namely PA 2159/10. PA 2349 / 13 is no more than another attempt by the applicants to obtain a permit to develop their land, notwithstanding the previous Planning Directorate's recommendation for refusal and the Environment and Planning Commission decision (Board A) of last April 2013.

The application has been 'res judicata' by MEP A and as such should be outrightly refused once more.

2. Narrow Building Width Frontage:

In the current application, the Directorate comments that the site includes the agricultural land adjacent to the proposed dwelling which lies outside the development zone, and has a frontage of 8.5 m on the schemed road.

The Directorate failed to indicate the actual frontage pertaining to the part of the site which lies within scheme, which frontage is actually less than 3:0m.

This clearly conflicts with Policy 3.6 which holds:

" ... MEPA may permit residential development provided that tile site frontage is not less than 4.2 metres"

The appellants fail to understand how the Directorate has misinterpreted this policy and applied the second part of Policy 3.6 which is applicable to the redevelopment of existing buildings only, when the current application refers to a vacant site.

Thus the first part of the policy which clearly refers to this development permits development only in so far as the site frontage is no less than 4.2 metres. It is understood that a frontage should lie on a schemed and the part of the frontage in this proposed development which lies on such schemed road is not even 3 m.

This clearly infringes Policy 3.6 and on the basis of this policy alone, such application should be dismissed.

Furthermore, during the sitting, one of the Architects representing one of the objectors, rightly pointed out that the alignment line stops abruptly in the alley and does not continue along the width of the road, fronting the site in question and terminates with the alignment on the other side of the road. In other words, the alignment is not in a U shaped fashion but follows two parallel lines which stops short creating a 3.0 metre site frontage to the development in question.

3. ODZ Area:

The proposed development as defined in the MEPA's Gozo and Comino Local Plan has been described to lie within an ODZ Area as per local plan Policy GZENCL-I. The policy within these enclaves clearly outlines that there is a blanket prohibition of residential units within this area.

..

The only acceptable development is a greenhouse or a small scale agricultural store for agricultural purposes. In this respect reference is made to GZ- ENCL-I which holds:

GZ-ENCL-I: Tile Enclaves ODZ indicated on MAPS 14.8-A and 14.12-A shall be considered adequate for tile development of greenhouses.

Requests for tile construction of agricultural storage/agricultural processing facilities in these enclaves may be also considered provided that:

- a) the proposed built-footprint shall not exceed 50 m²;
- b) at least 20 tumoli (2.248 hectares) of good quality agricultural land (registered on tile applicant's name) will be retained for cultivation as a condition for development permission. Tile geographic extent of tile cultivated land shall be indicated with tile request for development permission for tile proposed building. The same agricultural land shall lie within a radius of 2 km from tile built footprint of tile store; and
- c) no point along tile edge of tile proposed building footprint shall be closer than 50 m. from tile nearest inhabited building or 25 m. from a nearby agricultural store.

Proposals for horse stables may also be considered in these enclaves, provided that adequate measures are taken to safeguard neighbour compatibility.

In view of the above, the development is short of being acceptable for the following reasons:

- (i) The access to the dwelling is only through a passage which lies completely outside development zone;
- (ii) The side garden I passage cannot form part of the ODZ enclave since the Gozo and Cominom Local plan clearly restringes this area for agricultural use only.
- (iii) The apertures overlook the ODZ site and this is unacceptable since as in any ordinary residence and other MEP A applicatons, the apertures must be set back at least 3 metres from the development boundary;
- (iv) The site and its surrounding environment is good quality agricultural land which is presently being tilled. The subsequent removal of the soil would contradict Structure Plan policies, cause uprooting of trees and the removal of good arable land.

4. Previous PDAT consultations:

Apart from lying within this protected ODZ area, the development also contradicts Policy GZ Edge 1 of the GCLP - as confirmed by the PDAT comments presented in the previous DP A report of P A 2159/10. In fact, in all the consultations carried out, the site was not considered to qualify as an end plot since the adjacent property has a rear elevation and a backyard, whilst the development boundary itself is not deeper than 30 m from the main road, that is Triq Karkar.

The PDAT based this decision on the practice used in Gozo, namely to limit building depths to a maximum depth of 25 metres, 3 metres back garden and 2 metres room at the back (il-mandra). It was never the intention to include another plot parallel to the development boundary instead of the last remaining 3 metres back yard and room which would create a dangerous precedent on planning grounds for similar situations in other villages in Gozo. The approval of the current application has in fact created a precedent to similar applications in Gozo.

The appellants wish to bring to the attention of the Tribunal that no such comment was made by the Directorate in the current DP A report.

5. Part of site still lies ODZ :

Part of the proposed site still lies ODZ, and contradicts Policy Set 11, 12 – which was one of the reasons for refusing the previous application.

In fact, the paved area between the existing rubble wall and the proposed side elevation, lies ODZ and thus contradicts this policy. As stated above, the apertures are being proposed overlooking this paved area and thus this space must be considered to pertain to the whole site since it is necessary

and vital to satisfy the sanitary regulations concerning the proposed development.

Moreover, the proposed development with its side elevation and side garden does not overlook a schemed road, but an ODZ Area instead, which must form part of the development that lies within the scheme / development boundary. Access to the site is through this side garden, apart from the necessary apertures overlooking this area. In other words, the front and side garden cannot form part of the ODZ Area since as stated above, the Gozo and Comino Local plan clearly restrings this area for agricultural use only.

6. Different interpretations by the same Directorate

The appellants wish to bring to the attention of the Board the fact that two altogether different interpretations have been given to the same policies by the Directorate concerning the same site in so far as:

- (i) The interpretation of minimum frontage;
- (ii) The negative impact on the surrounding environment;
- (iii) The development runs counter to GZ-ENCL-1;
- (iv) The site does not qualify as an edge plot;
- (v) The existing adjacent building is not a party wall but an adjacent backyard.

However, when the Forward Planning Unit, The Planning Control Unit and the Legal Consultant were specifically requested by the Environment and Planning Commission (Board B) to advice on the interpretation of policy 3.6, on whether the plot in question qualifies as an end of scheme in view of mins 48 and 46 in PA 2159110; whether a site curtilage within the ODZ part of the site can be considered as proposed in this application, and on the legal status of the local plans interpretation document, all units in the current application upheld the interpretations given in the previous application PA 2159110, which application was recommended for refusal by the Directorate and outrightly refused by the previous Environment and Planning Commission (Board A).

7. The local Plans Interpretation Document:

The Directorate based their interpretation on the basis of the Local Plans Interpretation Document. With all due respect, such document is only to be used for guidance purposes and in no way is it legally binding. Consequently it has no relevant to the current application. This was confirmed by the Legal Advisor following a request by the Environment and Planning Commission (Board B).

However, without prejudice to the above, the interpretation given by the Directorate to the minimum frontage and alignment and inclusion of a side garden does not explain and outline which part of this interpretation document it is referring to.

In view of the above the appellants sincerely hope that the appeal would be upheld and the application be refused once again as per original decision by The Environment Planning Tribunal (Board A)."

Ra r-risposta tal-Awtorita' li giet prezentata fis-6 ta' Mejju 2014 li taqra hekk kif gej:

4.0 COMMENTS ON APPELLANT'S ARGUMENTS

4.1 The Authority has noted all the submitted arguments but the Authority disagrees with these statements on various accounts.

4.1.1 Res Judicata and GZ-Encl-1

The Appellant claims that Res Judicata should be applied in this appeal. The Authority however wishes to note that Res Judicata cannot be applied since the development proposed and refused in PA 2159/10 is not the same as the development proposed in PA 2349/13 which case is the case under appeal. If one were to compare the drawings in PA 2159/10 and PA 2349/13, one concludes that the proposed drawings as presented in PA 2159/10 indicate a development which makes use of a larger stretch of land than the ones in PA 2349/13, thus making use of land which is within the Outside Development Zone hence resulting in unnecessary and unjustified urban sprawl. The Authority wishes to note that contrary to what the Appellant is stating, the development under appeal does not lie within an Enclave; therefore GZ-ENCL-1 does not apply. In fact the approved Site plan 1C only indicates the area which lies within the development zone and not within the Open Space Enclave. The proposed built structure is completely within scheme and does not overlap in the area which lies outside the area of development.

4.1.2 Change in Team

The Authority wishes to point out that during the processing of PA 2349/13 there was never a change in the team which is responsible for the processing of and the drafting of the DPAR and consequently the recommended decision which is finally presented in front of the EPC. The team responsible for the processing of this case was Area Team B2.

4.1.3 Frontage

The comments put forward by the Authority which were taken into consideration by the EPC where the following: Policy 3.6 of the Policy and Design Guidance 2007 requires that the site frontage of a development should be at least 4.2m. The site, which includes the agricultural land adjacent to the proposed dwelling which lies outside the development zone, has a frontage of 8.5m on the schemed road. In addition, the proposal satisfies the aim of the policy which seeks to ensure adequate natural light and ventilation since it overlooks statutory open space. Moreover, the size of the proposed single dwelling respects Policy 3.7 of Policy and Design Guidance (2007) in that the minimum gross floor area for three-bedroom residential units has been exceeded. Hence the proposal conforms to Policy 3.6 of the Policy and Design Guidance 2007.

In addition, the site lies on the end of the development zone and in accordance with the Local Plans Interpretation Document, the proposal should include a lateral side garden. In this case, a 1.5m paved side

passage is being proposed to accommodate the access to the dwelling and an elevation overlooking the enclave outside the development zone is being proposed.

4.2 In view of the above arguments the Authority states that the decision as taken by the EPC was taken in conformity with the relative policies and hence, respectfully requests the Environment and Planning Review Tribunal to confirm the decision as issued by the EPC, whereby an approval for development permission was issued. The Authority reserves the right to forward further submissions during the appeals process as necessary.”

Ra r-risposta tal-Perit Samuel Formosa għall-appellanti prezentata fil-11 ta' Gunju 2014 li taqra hekk kif gej:

“Further to the Appeal dated 20th December 2013 and to the submissions filed by the Directorate dated 2 May 2014, the appellants wish to comment the following:

1. Narrow Frontage

The Directorate in its submissions simply reiterated the arguments of the EPC and at no point did it address the concerns raised by the Appellants in their appeal of the 20th December 2013. In other words the frontage of 8.5 metres on the schemed road has not been explained. The appellants wish to point out once more that the frontage of the site in question is not even 3.0m and thus can never qualify for the 4.2 m requirement as requested in Policy 3.6 of the DC Guidelines 2007. This is the one of the main reasons which led the appellants to lodge this appeal namely, the misinterpretation by EPC of the policies of the Policy and Design Guidance 2007.

Furthermore, the appellants fail to understand how the Directorate has misunderstood Policy 3.6 and applied the second part of Policy 3.6 only to this proposal. This Policy allows buildings with a 3.0 m frontage only for the redevelopment of existing buildings, when the current application clearly refers to a vacant site. Hence this policy is not applicable.

In addition, the alignment line stops abruptly in the alley and does not continue along the width of the road, fronting the site in question and terminates with the alignment on the other side of the road. In other words, the alignment is not in a U shaped fashion but follows two parallel lines which stops short creating a 3.0 metre site frontage to the development in question - this reinforces the argument put forward by the appellants that the frontage is not 4.2m or greater as has been argued by the applicant.

In the last communication, the Directorate did not explain why the EPC ignored the advice of the Forward Planning Unit, The Planning Control Unit and the Legal Consultant on the interpretation of policy 3.6 of the Policy and Design Guidance 2007, on whether the plot in question qualifies as an end of scheme as outlined in minutes 48 and 46 of the previous application bearing number PA 2159/10, or whether a site curtilage within the ODZ part of the site can be considered as an entrance to the approved dwelling

through a passage which lies completely outside development zone (in view of its limited frontage).

2. Change in Direction and Team

The Appellant's wishes to point out that in the first application before Board A, the DPA report was not in favour of this development, which was confirmed by the Commission, whilst in the current application put for hearing before Board B, the Directorate made a U- Turn and recommended a grant which was approved by the EPC Commission. The first application was assessed by the ODZ section within the Directorate and finally determined by Board A, whilst the second application was assessed by another section (not ODZ) within the Directorate and assessed by Board B. This led to two different interpretations by the Directorate of the same policies and two different conflicting decisions.

The appellants wish to bring the above and the detailed previous submissions to the attention of the Tribunal, and sincerely hope that the appeal would be upheld and the application be refused once again as per original decision by the EPC (Board A)."

Ra s-sottomissjoni tal-Avukat Dottor Mario Scerri ghall-applikant prezentata fit-8 ta' Lulju 2014 u li taqra hekk kif gej:

"Nota ta' sottomissjonijiet ta' l-applikant Tarcisio Galea li ghandu l-karta ta' l-identita' numru 89749(G) ta' Mountain Lodge, Triq Il-Ghejjun, Xaghra, Ghawdex.

Jesponi bir-rispett :-

Dan huwa appell tat-terz mill-permess PA/02349/13 ;

Illi l-aggravji tal-appellanti huma nfondati u ghandhom jigu michuda u dan it-Tribunal ghandu jikkonferma l-ghoti tal-permess favur l-applikant ;

Illi l-esponenti ser jirribatti aggravju b'aggravju li qajmu l-appellanti fir- rikors tal-appell taghhom u fin-nota ta' sottomissjonijiet taghhom li bazikament huma tlieta : (i) jekk ghal dan il-kaz japplikax il-principju tar-res judicata; (ii) dwar l-interpretazzjoni tal-Policy 3.6 tal-Policy & Design Guidance; (iii) dwar jekk jidhlux f'din il-kwistjoni issues jew policies dwar ODZ :-

DWAR IR-RES JUDICATA

L-appellanti bdew biex qajmu fl-ewwel lok l-aggravju tal-gudikat billi skont huma, dak li ntab mill-applikant bl-applikazzjoni ghall-permess mertu ta' dan l-appell huwa identiku anzi' l-istess bhalma kienet l-applikazzjoni PA 2159/10 li kienet saret mill-istess applikant u l-permess taghha kien gie rifjutat. Illi apparti li dan il-principju huwa ferm u ferm dubitat kemm japplika fi kwistjonijiet ta' aplikazzjonijiet ta' permessi quddiem il-MEPA billi m'hemm xejn x'izomm applikant milli jipproponi mill-gdid l-istess talba ghall-hrug ta' permess f'kaz ta' bdil ta' policies jew fuq policies ohrajn jew differenti, dan l-aggravju huwa f'kull kaz wiehed infondat ghal kollox billi r-ratio petendi fil-permess li minnu sar dan l-appell hija diversa min dik ta' PA 2159/10. Wara li dan it-Tribunal jezamina l-applikazzjoni u l-pjanta/i sottomessi rna' PA

2159/10 u jgabbel l-istess pjanti ma' dawk ta' PA 2349/13 isib minnufih li filwaqt li tal-ewwel l-applikazzjoni kienet tikkonsisti fi proposta ta' zvilupp fuq skala ikbar u li l-izvilupp propost sa kien johrog il-barra miz-zona tal-izvilupp kif jixhdu tajjeb il-pjanti li gew sottomessi ma' dik l-applikazzjoni, bl-applikazzjoni PA 2349/13 l-izvilupp propost gie lokalizzat kollu fiz-zona tal-izvilupp ;

Illi l-applikazzjoni PA 2159/10 giet kunsidrata minn Bord A proprju l-ghaliex l-izvilupp li kien propost b'dik l-ewwel applikazzjoni kellu parti minnu taqa' l-barra miz-zona tal-izvilupp, u ghalhekk dak l-izvilupp ried jigi kunsidrat bhala wiehed li kien sa jsir f'area ODZ minn Bord A filwaqt li l-izvilupp li ntalab li jigi u li effettivament gie approvat bin-numru PA 2349/13 jaqa' kompletament fl-iskema tal-bini ossia fiz-zona tal-izvilupp, u kien proprju ghal din ir-raguni li l-kaz gie kunsidrat minn Bord B cjoe' Bord differenti minn dak ta' l-ewwel. Kuntrarjament ghall-impresjoni skorretta li l-appellanti qeghdin jippruvaw jaghtu lil dan it-Tribunal ta' forum shopping, iz-zewg kazijiet jiddistingwu ruhhom minn xulxin billi f'ta' l-ewwel kien jikkontempla zvilupp li kien jigi in parti l-barra miz-zona tal-izvilupp filwaqt li f'tat-tieni mhuwiex il-kaz u jirrigwarda zvilupp limitat u li jaqa' kollu kemm hu fiz-zona tal-izvilupp, u kien proprju ghal din ir-raguni li l-kazijiet gew ezaminati u decizi minn Bordijiet differenti. Dan ikompli johrog id-distinzjoni li tezisti bejn l-ewwel mit-tieni applikazzjonijiet li kellhom ezitu differenti biss billi ghall-ewwel kaz kienu japplikaw policies u regolamenti differenti mill-kaz tat-tieni ;

Ghaldaqstant huwa car li dan l-aggravju mhuwiex fondat u ghandu jigi michud.

PJAN LOKALI

Ghalhekk bid-dovut rispett lejn dak li gie sottomess mill-appellanti l-policy GZ-ENCL-1 u policy GZ Edge 1 tal-Pjan Lokali ghal Ghawdex u Kemmuna citati minnhom ma japplikawx f'dan il-kaz. Kellhom rilevanza fil-kaz tal-applikazzjoni PA2159/10 billi l-bini li kien gie propost b'dik l-applikazzjoni kien jestendi oltre z-zona tal-izvilupp meta fil-kaz taht ezami l-izvilupp jinsab kollu kemm hu lokalizzat fiz-zona tal-izvilupp. Din hi d-distinzjoni fundamentali li tiddistingwi l-applikazzjoni taht ezami mill-applikazzjoni l-ohra PA 2159/10. Kuntrarjament ghal dak li qed isostnu l-appellanti f'aggravju iehor tagghom, bl-ebda tigbid tal-immaginazzjoni l-parti tas-sit li fuqha huwa propost li jsir il-bini ma tikkwalifika ruhha bhala 'enclave ODZ' li tipprospetta kazijiet ta' zvilupp eccezzjonalment u b'mod ristrett hafna, billi l-bini pro post li sa jsir mill-applikant jinsab biss f'dik il-parti li taqa' kollha kemm hi fiz-zona tal-izvilupp u fl-iskema tal-bini. Ser tigi zviluppata biss l-art li taqa' fl-iskema tal-bini u l-izvilupp sa jkollu faccata li tkun thares mhux biss fuq it-triq izda wkoll sa jkollha faccata ohra fronteggjanti l-kumplament tal-art mill-istess sit li ser tithalla ghall-uzu ta' crop garden, u mhu sa jsir l-ebda zvilupp fil-parti li taqa' l-barra miz-zona tal-izvilupp, u ghalhekk l-izvilupp approvat ghandu zewg faccati minn fejn jiehu l-arja u d-dawl naturali (li huwa rekwizit ewlieni taht il-Policy 3.6), li kif ser jigi spjegat f'aktar dettal meta l-esponenti jigi biex jitratta l-aggravju l-iehor tal-appellanti dwar 1- interpretazzjoni ta' Policy 3.6 tal-Policy & Design Guidance 2007, cjoe faccata tal-bini ta' tliet (3) metri ghal fuq l-isqaq li tibqa' testendi ruhha bir-recint tal-gnien b'hamsa punt sebgha

erbgha metri (5.74m) ohra ghal fuq l-isqaq ukoll, u faccata ohra tal-izvilupp ta' tnejn u ghoxrin punt wiehed erbgha metri (22.14m) li tkun thares ghal fuq il-crop garden li mill-pjanti approvati ghandhom aperturi bizzzejjed biex minnhom jidhlu l-arja u d-dawl bizzzejjed biex il-binja jkollha ventilazzjoni ta' arja u dawl adegwati bizzzejjed miz-zewg faccati. Dak li gie sotto mess mill-appellanti li l-bini approvat jinsab imdawwar bil-hitan ta' terzi m'huwiex assolutament il-kaz kif jidher car mill-pjanti approvati u mir-ritratti esibiti billi minn genb hem m l-isqaq, minn genb iehor hemm l-art tal-istess applikant li, ghalkemm tiffirma parti mill-istess sit, ser tithalla bhala crop garden fl-istat li hi u kif tinsab imdawra bil-hitan tas-sejjiiegh, u miz-zewg ghub l-ohra hemm fuq naha l-bitha tal-blokka tal-flats tal-appellanti li, kemm -il darba hija mibnija skont ir-regolamentari sanitarji l-izvilupp propost mhu sa jkun ta' ebda dannu ghall-appellanti mill-lat ta' sanita', u fuq il-genb l-iehor hemm ghalqa. L-appellanti m'ghandhom l-ebda jedd li jirrezistu l-applikazzjoni ghall-izvilupp milli jigi konfermat l-permess fuq il-premessa libl-izvilupp propost ser titghatta parti mill-veduta li whud mill-applikanti jgawdu sallum mill-flats taghhom. Fil-fatt dwar dan ma tezisti l-ebda policy ta' l-ippjanar u l-appellanti qeghdin jirrikorru ghal policies li huma bir-rispett kollu rrilevanti semplicement u ghal xejn aktar hlief biex jassiguraw ghal uhud minnhom li jkomplu jgawdu l-veduta ghalihom ;

Ghalhekk dan l-aggravju tal-appellanti huwa nfondat u ghandu jigi michud ukoll.

DWAR IL-FACCATA TAL-IZVILUPP

Illi aggravju iehor tal-appellanti huwa dwar l-interpretazzjoni li huma qeghdin jaghtu tat-terminologija wzata f'policy 3.6 tal- Policy & Design Guidance 2007 ta' 'site frontage', u x'irid jissoddisfa l-vot ta' din il-policy. Bid-dovut rispett lejn l-appellanti l-esponenti ma jaqbilx mal-mod kif 1-appellanti qeghdin jipprovaw jinterpretaw din il-policy u kif qeghdin jipprovaw isibu spalla jew forcina ghal din l-interpretazzjoni taghhom billi jirreferu ghall-interpretazzjoni li stranament kien ta l-ufficcju legali tal-Awtorita' meta qatt ma kien gie mitlub jaghti ebda interpretazzjoni ta' din il-policy. Huwa car li l-ghan ewlieni u primarju ta' Policy 3.6 huwa li jigi assigurat li l-izvilupp pro post ikollu ventilazzjoni ta' arja u dhul ta' dawl bizzzejjed kif korrettement qata' l-kaz l-EPE billi sab li l-izvilupp li qed jigi propost mill-applikant jissoddisfa dan il-vot tal-policy. Il-policy citata taghmel riferenza ghal tliet terminologiji differenti : (i) site frontage, (ii) facade length, u (iii) dwelling frontage. Fl-umili fehma tal-esponenti t-terminologija 'site frontage' wzata fl-ewwel paragrafu tal-policy a kuntrarju tat-terminologiji l-ohra 'facade length' u 'dwelling frontage' li jissemmew fil-paragrafi l-ohra li jsegwu tal-istess policy, tirreferi ghas-sit kollu kemm hu nkluz l-izvilupp propost fuq parti minnu mehud b'mod holistiku u mhux biss ghal dik il-parti li fuqha sa jsir materjalment il-bini. Fl-umili fehma tal-esponenti din hi interpretazzjoni logika u korretta tat-terminologija 'site frontage'. Mehud f'dan is-sens is-sit kollu kemm hu (bini u gnien) ghandu faccata fuq l-isqaq ta' kejl totali ta' tmienja punt sebgha erbgha metri (8.74m) cjoe' tliet metri (3m) huwa l-kejl tal-hajt tal-faccata tal-bini (dwelling frontage) li jestendi ghal hamsa punt sebgha erbgha metri (5.74m) ohra bir-recint tal-gnien (li huwa parti mis-sit ukoll kif dan it-Tribunal jista' facilment jikkonstata minn ezami tal-pjanti li gew sottomessi mal-applikazzjoni). Bid-dovut rispett lejn l-appellanti dak li

gie dikjarat minnhom li l-faccata tas-sit ghat-triq hija biss ta' tliet metri (3m) dan mhuwiex korrett u mhix l-interpretazzjoni logika u korretta ta' 'site frontage' billi l-hajt tal-gnien ta' 5.74m li jiffirma parti mis-sit ukoll, ghandu wkoll faccata ghall-isqaq. L-appellanti qeghdin b'mod deliberat jiskartaw id-distinzjoni cara u netta li taghmel il-policy 3.6 fit-terminologija wzata bejn site frontage u dwelling frontage jew facade length u hija din id-distinzjoni fit-terminologija wzata minn min fassal il-policy li fl-umili fehma tal-esponenti ghandha taghmel id-differenza kollha, u li tirrendi l-argument tal-appellanti f'wiehed irrizorju. B'kull rispett huwa rrizorju wkoll l-argument tal-appellanti li l-alignment line jieqaf f'tarf l-isqaq f'linja parallela meta tarf l-sqaq u tarf iz-zona tal-bini huwa definit b'mod car ukoll bil-faccata tal-gnien ta' 5.74m ghal fuq 1-isqaq. Il-parti tas-sit li ser tithalla bhala gnien ossia crop garden mhu sa jnaqqas xejn mill-uzu tal-art ghall-istess skop agrikolu li ghandha sallum billi l-art ser tibqa' tinhadem user tigi utilizzata ghat-kabbir ta' prodotti agrikoli li normalment jitkabbru fi gnien residenzjali bhal tadam, ful, u pizelli, basal, u patata, zucchini, bzar, frawli, hass, fejgel, karrotti, pitravi, u prodotti simili, u b'dan il-mod l-art tal-gnien mhu ser titlef xejn mill-kategorija ta' art bhala wahda agrikola la darba l-ambjent tal-pajsagg 1-barra miz-zona tal-izvilupp mhuwiex ser jinbidel user jibqa' prattikament l-istess li hem m ilium. Barra minn hekk id-dokument ta' interpretazzjoni dwar il-Pjani Lokali pubblikat fit-3 ta' Mejju 2007, jaghmlha cara dwar siti li jaqghu f'tarf zona tal-izvilupp li l-policies vigenti jippermettu l-inkluzjoni ta' art l-barra miz-zona tal-izvilupp ghall-uzu ta' gnien lateralment mal-izvilupp propost meta dan ma jkun sa jhalli ebda effetti negattivi fuq l-ambjent tal-bqija tal-pajsagg tal-madwar. Imkien fl-aggravi taghhom l-appellanti ma jindikaw x'inhuma, kif, u b'liema mod l-inkluzjoni tal-art agrikola fis-sit meritu tal-applikazzjoni quddiem dan it-Tribunal biex tintuza bhala crop garden ser tolqot negattivament l-ambjent tal-pajsagg billi l-art intiza ghall-gnien sa jibqa' jsir uzu minnha bl-istess mod u ghall-istess skop li sar uzu minnha sallum;

Illi l-fatt ukoll li fil-gnien hem m propost li jsir passagg pavimentat li sa jservi ta' access ghall-gnien matulu kollu u bhala access alternattiv ghad-dar ukoll, dan mhuwiex u m'ghandux ikun ta' l-ebda xkiel billi 1-passagg propost ma jikkostitwixxi l-ebda zvilupp, izda huwa biss mezz ta' access. Irid jigi ccarat ukoll li dan il-passagg mhuwiex l-uniku mezz ta' access ghall-gol bini, izda huwa access alternattiv billi kif jirrizulta mill-pjanti sottomessi d-dar ghandha access ukoll direttament mill-isqaq mill-bieb tal-garage li huwa interkomunikat mad-dar. Apparti dan kollu, 1-appellanti bl-ebda mod ma wrew kif dan il-passagg pavimentat ser jolqot negattivament l-ambjent tal-bqija tal-pajsagg, li pjuttost ghandu jitqies li huwa kumplimentari mal-izvilupp propost mehud b'mod holistiku ;

Illi anke' jekk ghall-grazzja tal-argument, din l-interpretazzjoni tat-terminologija 'site frontage' wzata fil-policy relattiva jkollha tigi nterpretata li tirreferi ghall-faccata tal-bini f'sens materjali u strett tal-kelma, interpretazzjoni logika u korretta ta' din it-terminologija wzata fil-policy 3.6 m'ghandhiex tirreferi ghall-faccata li thares biss ghat-triq kemm -il darba l-binja ghandha faccata ohra li thares ghal fuq spazju miftuh li jiffirma parti mill-istess sit li minnha tista' tiehu ventilazzjoni tal-arja u dawl bizzejjed biex tissoddisfa l-vot tal-policy relattiva bhalma hu 1-kaz taht ezami fejn jirrizulta li

I-binja sa jkollha faccata ohra li thares ghal fuq il-gnien li mill-pjanti sottomessi ghandha l-kejl ta' tnejn u ghoxrin punt wiehed erbgha metri (22.14m). Il-gnien jikkonfina mbaghad ma' raba' iehor li jaqa' kollu barra miz-zona tal-izvilupp, u ghalhekk hemm bla dubbju u sa jigi assigurat ftuh bizejjed biex anke' minn din il-faccata 1-binja jkompli jkollha dhul adegwat ta' dawl u arja. Il-policy tippermetti xorta wahda li l-faccata tal-bini ghat-triq tista' tkun ta' inqas minn sitt metri (6m) kemm -il darba jkun hemm fatturi ohra li jaghmlu l-izvilupp tas-sit ghal skop residenzjali wiehed adattat u komdu tali li jassigura ambjent intern ragonevolment adattat li wiehed jghix fih. Hija l-ferma konvinzjoni tal-esponenti li l-izvilupp propost mehuda dawn l-fatturi kollha li jaghmluh wiehed adattat mill-lat ta' policies ohra tal-izvilupp, fosthom policy 3.7 tal-Policy & Design Guidance, jissoddisfa dan l-iskop ewlieni tal-policy 3.6 u kien korrett u gustifikat il-Bord li vvota favur il-hrug tal-permess li minnu sar dan l-appell tat-terz.

PERMESSI APPROVATI RILEVANTI GHALL-KAZ PREZENTI

In sostenn tas-sottomissjonijiet tieghu l-applikant jirreferi lil dan it-Tribunal ghal .permess PAI06083/08 approvat mill-EPC fit-2 ta' Marzu 2011, fejn il-Bord ta il-permess ghall-izvilupp ta' dar residenzjali meta 1-faccata kienet inqas mill-wisa' preskitta bil-policy 3.6, u ghall-permessi PAI05463/10 approvat fis-6 ta' Jannar 2012, PAI08249/05 approvat fit-30 ta' Settembru 2008, PAI06569/01 approvat fil-25 ta' Marzu 2006, u ghall-permess PAI021 05/1 0 li approva l-hrug tieghu dan it-Tribunal kif presedut (Appell Numru PAB/0247/12), fejn fl-ahhar erbgha kazijiet imsemmija giet inkorporata bhala gnien art agrikola li taqa' f'ODZ ma' zvilupp propost jew ma' zvilupp li kien gia' ezistenti li pero' jaqa' fiz-zona tal-izvilupp.

Ghar-ragunijiet imsemmija l-aggravji kollha tal-appellanti huma fl-umili fehma tal-esponenti, insostenibbli, u ghandhom ghaldaqstant jigu michuda u l-hrug tal-permess lill-applikant jigi konfermat.

Daqstant l-esponenti ghandu x'jissottometti a savju u superjuri gudizzju ta'dan it-Tribunal.”

Ra x-xiehda tas-Sur Victor Borg Fiorentino, Principal Officer, fi hdan id-Direttorat tal-lppjanar, MEPA, mehuda fis-seduta tal-5 ta' Marzu 2015, u 23 t'April 2015;

Ra l-PA files 2349/13 u 2159/10;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi l-ilment principali tal-appellanti bhala terzi persuni nteressati kontra l-hrug tal-permess PA 2349/13 huma fir-rigward il-kwistjoni dwar il-wesa' tal-faccata tal-fond mertu ta' dan l-appell fuq it-triq progettata skont kif indikat fil-Pjan Lokali (Gozo and Comino Local Plan), u ghall-fatt li parti mis-sit jinsab barra l-konfini tal-izvilupp skont kif indikat fl-istess Pjan Lokali.

Illi l-appellanti ressu ukoll aggravju ta' natura preliminari fuq il-principju ta' res judicata ghar-raguni li fuq l-istess sit kien hemm gja decizjoni ta' rifjut mill-Kummissjoni tal-Ambjent u l-Ippjanar ghall-propoposta ta' zvilupp simili fl-applikazzjoni precedenti PA 2159/10.

Illi dan it-Tribunal wara li ezamina l-applikazzjoni PA 2159/10 kif ukoll l-applikazzjoni mertu ta' dan l-appell, ossia PA 2349/13, jista jikkonkludi li dawn iz-zewg applikazzjonijiet m'humix identici ghal xulxin. L-izvilupp propost huma totalment differenti, hekk kif fl-ewwel applikazzjoni l-bini propost kien jesporgi 'il barra mill-konfini tal-izvilupp mentri fil-kaz odjern l-izvilupp gie ristrett fil-parti li taqa' 'il gewwa mill-konfini tal-izvilupp. Konsegwentament il-konsiderazzjoni u l-policies applikabli ghaz-zewg applikazzjonijiet kienu ukoll differenti li fil-fatt wasslu ghall-ezitu differnti ukoll.

F'dan il-kaz, certament ma jezistux, dawk ir-rekwiziti necessarji, b'mod partikolari dak li ghandu jkun hemm ezistenti l-istess fatti tal-kawza f'dik in dizamina kif ukoll f'dik precedenti li tkun ghaddiet in gudikat, u ghaldaqstant dan l-aggravju qed jigi michud.

Illi l-aggravju rigward jekk l-izvilupp kif gie approvat jissodisfax il-kriterji elenkati fil-policy 3.6 tal-linja gwida dwar il-kontroll tal-izvilupp gie diskuss b'certu dettal fil-process ta' dan l-appell.

Illi f'dan il-kaz il-punt kardinali jirrigwardja l-estent tal-faccata tal-bini fuq din it-triq li ghada mhux miftuha ghalkemm hija progetta li tasal sal-konfini tal-izvilupp skont kif indikat fil-Pjan Lokali mappa numru 14.12-A.

Illi d-dar residenzjali kif approvat fil-permess odjern, hija limita fil-parti tas-sit li jinsab gewwa l-konfini tal-izvilupp u l-kumplement hija ndikata bhala ghalqa barra z-zona tal-izvilupp skont kif il-pjanta a fol 15B fl-inkartament tal-PA 2349/13. L-access ghall-istess dar huwa permezz ta' passagg fil-parti tal-ghalqa msemmija, li tinsab barra 'il konfini tal-izvilupp. Il-faccata fuq it-triq progetta hija biss tlett (3) metri wisa' bil-kumplement tar-residenza thares fuq l-ghalqa mal-gebn tad-dar.

Illi f'dan il-kaz, l-appellanti qed jinsistu li skont l-interpretazzjoni tal-konfini tal-izvilupp, is-sit ghandu biss tlett (3) metri bhala frontage fuq it-triq, filwaqt li minn naha l-ohra, kemm l-Awtorita' kif ukoll l-applikant, qed jinsistu li s-sit ghandu fil-fatt madwar 8.5 metri faccata fuq it-triq progettata.

Illi l-Policy 3.6 fil-linja gwida tipprovdi illi:

"The minimum permissible site frontage shall normally be 6 metres, although, where the size or shape of the site is such that this cannot be attained, MEPA may permit residential development provided that the site frontage is not less than 4.2 metres and the size of dwelling unit(s) is not less than that specified in policy 3.7.

In the case of the redevelopment of existing buildings where a number of dwellings are proposed and an individual vehicular access to each dwelling is not to be provided, then the Authority may permit a dwelling frontage of

less than 4.2 metres but at least 3 metres, provided the requirements of policy 3.7 are met and the dwellings are of a form and so designed that each has adequate natural light and ventilation and the design and treatment of the façades is such that they do not appear narrow, cramped or inappropriate in their context.”

Illi f'dan il-kaz dan it-Tribunal ghandu quddiemu zewg interpretazzjonijiet dijagonalment opposti ta' kif wiehed ghandu jkejjel is-site frontage – l-appellanti qed jinsistu li dan huwa limitata ghal dawn it-tlett metri fejn gie ndikat l-allinjament tat-triq skont kif gie indikat fis-survey prezentat mill-officcjal tal-MEPA, Victor Borg Fiorentino fix-xiehda tieghu, dokument VBF2; filwaqt li l-Awtorita' u l-applikant qed jinsistu li s-site frontage jinkludi din il-parti tas-sit li fil-fatt qieghed imiss mat-triq progetta, u mhux limitata biss ghad-developable part tas-sit.

Illi f'dan il-kaz, dan it-Tribunal wara li ezami l-argumenti prezentati u l-fattispeci tal-kaz, kif ukoll il-policy 3.6 tal-linja gwida, huwa propens li jilqa l-aggravju tal-appellanti ghal dawn ir-ragunijiet segwenti:

1. Illi s-site frontage kif indikat fil-policy huwa marbut mad-developable site frontage hekk din il-istess policy qed tirregola d-daqs u l-kobor minimu tal-bini fejn jista jigi akkomodat uzu residenzjali. B'mod oggettiv, ikun inutli ghal din il-policy li sit igawdi minn erja sostanzjali, jekk minn naha l-ohra l-izvilupp li jista jigi permess ikun ristrett u limitat minhabba konfini ta' zvilupp jew restrizzjonijiet ohra li ma jkunx possibli li jintlahqu l-parametri ta' zvilupp elenkati f'din il-policy;

2. Illi s-site frontage fuq it-triq li gie meqjus mill-Kummissjoni jinkludi l-ghalqa li hija barra l-konfini tal-izvilupp li parti minnha tinsab f'tarf tat-triq, ghalkemm ma tistax tigi zviluppata. Skont il-Pjan Lokali, l-istess triq hija progetta li tasal sal-konfini tal-izvilupp. Hareg car mix-xiehda ta' Victor Borg Fiorentino li fuq din in-naha tas-sit m'hemmx building alignment, imma sempliciment li t-triq tittermina sal-konfini tal-izvilupp, b'linja ta' bini fuq kull naha tat-triq, imma mhux f'tarf tat-triq;

3. Illi l-applikant ghamel referenza ghall-kaz simili fejn il-Kummissjoni approvat zvilupp f'sit fejn il-faccata fuq it-triq kienet limitat sa madwar tlett (3) metri skont l-applikazzjoni PA 6083/08. F'dan il-kaz il-Kummissjoni qalbet ir-rakomaddazzjoni ta' rifjut li kienet ibbazata fuq il-policy 3.6 tal-linja gwida, billi gie applikat il-providiment dwar il-flessibilita' fl-applikazzjoni tal-policies tal-linja gwida dwar il-kontroll tal-izvilupp skont kif elenkat fil-paragrafu E.5, f'pagna tlieta (3) tal-istess linja gwida, b'dan illi l-istess Kummissjoni spjegat illi kkunsidrat il-konfigurazzjoni tas-sit fejn “the objectives of policy 3.6 are fully met in that there is adequate light ad ventilation as well as adequate access”.

4. F'dan il-kaz odjern, il-Kummissjoni hadet in konsiderazzjoni li s-sit ghandu faccata b'wesa' ta' aktar minn 8 metri, meta effettivament il-faccata tal-bini kienet ristretta hafna u limitata ghal 3 metri, ossia fil-parti tas-sit 'il gewwa mill-konfini tal-izvilupp, u ghaldaqstant gie injorat il-parametri tal-policy 3.6 fil-linja gwida.

Ghal dawn il-motivi, dan it-Tribunal qieghed jilqa dan l-appell, u konsegwentament qed ihassar il-permess tal-izvilupp PA 2349/13.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwent:

1. Nullita tad-decizjoni ghax it-Tribunal ma dahalx fil-kwistjoni u ma esprimiex ruhu jekk is-sit jitqiesx bhala 'end of scheme' development, kif ukoll il-policies rilevanti fosthom GZ-Edge-1 tal-pjan lokali u l-Local Plans Rationalisation of Development Zone Boundaries Approved Document. Minflok it-Tribunal illimita ruhu biss ghal policy 3.6 tal-linji gwida;
2. It-Tribunal ta interpretazzjoni legali skorretta tal-kelma 'site frontage' fl-interpretazzjoni tal-policy 3.6 tal-linji gwida meta hadha li tirreferi ghal 'developable site frontage' billi din la tirrispekkja l-kelma u anqas l-ispirtu tal-ligi. Il-legislatur ghamel distinzjoni fejn ried fil-policy bejn s'site frontage' u 'dwelling frontage' jew 'facade frontage'. Li kieku l-legislatur ried jillimita l-faccata ghal developable site frontage u mhux ghal faccata tas-sit kollu, kemm dik li ser jinbena u dik li ser jibqa' gnien bhal ma ghamel fil-kaz ta' redevelopment of existing buildings, dan kien ighidu. Meta l-legislatur irrefera ghal site frontage, irrefera ghas-sit mehud b'mod shih u mhux ghal parti li fuqu ser isir il-bini. La darba tarf it-triq jispicca mal-konfini tas-sit huwa s-sit kollu li ghandu faccata fuq it-triq li ghandu jitqies ghal fini tal-interpretazzjoni ta' site frontage.

L-ewwel aggravju

Dan l-aggravju ma ghandux mertu. Ghalkemm kien hemm diversi aggravji li tressqu mill-appellati Tanya Formosa et, it-Tribunal osserva li wiehed mill-aggravji principali li seta' jfixkel l-otteniment tal-permess kien il-policy 3.6 tal-Policy and Design Guidance tal-2007, rigward il-wisa minima tal-faccata li ghalih seta' jinghata permess ghal bini. Mir-rizultanzi tat-Tribunal din il-policy kienet ser tigi miksura jekk jinhareg il-permess skond il-pjanti sottomessi ghall-approvazzjoni tal-izvilupp. La darba t-Tribunal sab li

dan l-iskoll ma giex superat, ma kellu ebda raguni ghalfejn jidhol fi kwistjonijiet ohra ghalkemm pertinenti izda li xorta ma kienux ser iwasslu ghall-approvazzjoni tal-izvilupp la darba r-rekwizit tal-Policy and Design Guidance tal-2007 ma giex osservat.

L-appellant kien ikollu ragun fl-aggravju tieghu kieku l-kwistjoni tal-wisa applikabbli tal-faccata ghal approvazzjoni tal-izvilupp kien kriterju li seta' gie superat minn policies ohra izda l-istess appellant fis-sottomissjonijiet tieghu quddiem it-Tribunal jirrelewa illi l-policy GZ-ENCL-1 u GZ-Edge-1 tal-pjan lokali ghal Ghawdex u Kemmuna ma kienux applikabbli ghal kaz, u fil-fatt is-sottomissjonijiet tieghu kienu diretti kwazi esklussivament ghal Policy and Design Guidance tal-2007. Ghalhekk l-appellant ma jistax issostni li t-Tribunal kellu jiehu in konsiderazzjoni aggravji ohra tal-appellati meta l-aggravju principali hu dak li gie determinat mit-Tribunal.

It-tieni aggravju

Dan l-aggravju wkoll ma fihx mertu. Dak li l-appellant qed jitlob lil din il-Qorti hu li tissostitwixxi d-diskrezzjoni tat-Tribunal ma' dik tieghu fuq dak li hu kaz car ta' interpretazzjoni pjuttost teknika ta' dak li jiddisponi policy dwar site frontage.

Din mhix kwistjoni ta' zball ta' ligi jew zball car ta' applikazzjoni ta' policy izda interpretazzjoni ta' dak li jfisser wisa ta' zvilupp propost fuq triq. It-Tribunal, wara li argumenta l-kwistjoni tenut kont tas-sottomissjonijiet tal-partijiet wasal ghal konkluzjoni li l-policy ma kinitx tkopri l-izvilupp propost.

Din il-Qorti ma ghandhiex tintrometti ruhha fuq dik l-interpretazzjoni tal-policy kif maghmula. Jista' jinghad li t-Tribunal ta interpretazzjoni stretta tal-policy flok wahda wiesa pero dan ma jwassalx ghal zball ta' ligi li fuqu jista' jsir appell ghax l-interpretazzjoni ta' policy sakemm taqa' fil-parametri ta' dak li hu ragonevoli u ma jmurx kontra l-kliem espress tal-istess policy hi prerogativa tat-Tribunal.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Tarcisio Galea u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2015, bl-ispejjez kontra l-appellant.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur