



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 4

Appell Nru. 44/2015

**Paul Sant f'isem u in rapprezentanza tas-socjeta'
Sant Bros Comm. Ltd**

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Charles u Francis konjugi Camilleri, terzi interessati, tat-12 ta' Awwissu 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2015 li approvat il-permess PA 1101/05 'proposed alterations to facade and change of use from garage to mechanic, panel beater and sprayer workshop/garage';

Rat ir-risposti tal-Awtorita u l-appellat 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:

Ra l-appell ipprezentat fl-24 ta' Gunju, 2010 mill- Perit Martin Farrugia f'isem l-appellant kontra decizjoni ta' rifjut tal-izvilupp ghar-rigward il-proposta fl-applikazzjoni PA 1101/05, ossia: "Proposed alterations to façade and change of use from garage to mechanic, panel beater and sprayer workshop/garage" fil-fond li jinsab fil Wardija, limiti ta' San Pawl il-Bahar.

Ra n-nota tal-Perit Charles Buhagiar ghan-nom tal-objectors, Carmelo u Frances Camilleri, ipprezentata fit-18 ta' Novembru, 2010.

Ra r-risposta ta' l-Awtorita' ipprezentata fil-21 ta' Dicembru, 2010 minn Jonathan Borg.

Ra n-nota tal-Perit Farrugia u l-Avv. Dr Raphael Fenech Adami ghan-nom tal-appellant ipprezentata fl-1 ta' Marzu, 2011, u l-affidavit anness ma' n-nota.

Ra n-nota tal-Prof. Dr Ian Refalo ghan-nom tal-objectors, Carmelo u Frances Camilleri, ipprezentata fit-30 ta' Marzu, 2011.

Ra t-tieni nota tal-Avv. Dr. Raphael Fenech Adami ghan-nom tal-appellant ipprezentata fl-3 ta' Mejju, 2011, u z-zewg kopji ta' ittri annessi ma' n-nota.

Ra t-tielet nota tal-Avv. Dr Raphael Fenech Adami ghan-nom tal-appellant ipprezentata fis-7 ta' Lulju, 2011, u d-dokumenti annessi ma' n-nota.

Ra t-tieni nota tal-Prof. Dr Ian Refalo ghan-nom tal-objectors, Carmelo u Frances Camilleri, ipprezentata fiz-19 ta' Ottubru, 2011.

Ra l-verbali tas-seduti mizmuma fil-kors tas-smiegh ta' dan l-appell.

Ra l-file PA 1101/05, PA 4358/96, PA 5593/99;

Ra s-sentenza tat-Tribunal ta' Revizjoni ta' l-Ambjent u l-Ippjanar diversament kompost tat-10 ta' Mejju 2012, li cahad l-appell;

Ra s-sentenza tal-Qorti tal-Appell (Kompetenza Inferjuri), hawn aktar 'l isfel f'din id-decizjoni referita bhala l-Qorti tal-Appell, tal-14 ta' Novembru, 2013, li laqghet l-appell. Il-Qorti tal-Appell ikkonkludiet li t-Tribunal affretta fid-decizjoni tieghu li japplika il-Policies vigenti fil-mument tad-decizjoni minghajr ma qies il-portata tal-Local Plans interpretataion Document u l-applikazzjoni taghhom f'certu cirkostanzi partikolari ghalkemm fil-fehma tal-Qorti huwa car bizzejjed.. Il-Qorti tal-Appell ikkonkludiet ukoll li t-Tribunal mhux lecitu li jvarja dak li jirrizulta car mid-decizjoni tal-Bord tal-Appell, b' referenza ghad-decizjoni PAB 412/98 TSC.

Ra s-sottomissjonijiet ulterjuri tal-appellant prezentati fit-13 ta' Gunju 2014;

Sema' lill-Avukat Dottor Raphel Fenech Adami u l-perit Martin Farrugia ghall-appellant;

Sema' lill-Avukat Prof.Ian Refalo ghall-objector;

Sema' lil Darren Fava, il-perit Stephan Vancell, il-perit Denise Martin u lill-Avukat Dottor Anthony DeGaetano LL.D. ghall-Awtorita`;

Ikkunsidra ulterjorment:

Illi b'direzzjoni moghtija mill-Qorti tal-Appell fid-decizjoni tal-14 ta'Novembru, 2013, dan it-Tribunal ser jinvestiga l-applikazzjoni tal-Local Plans Interpretation Document 2007 bhala linja gwida ghal kaz mertu ta' dan l-appell.

Illi l-Local Plans Interpretation Document 2007 jipprovdi dan li gej:

“i. WHAT IS THE STATUS OF THE LOCAL PLAN IN RELATION TO PREVIOUSLY APPROVED POLICIES, PLANS AND OTHER INSTRUMENTS?:

As a general rule, the Local Plan automatically supersedes all previously approved policies, plans and other planning instruments which are in conflict with the Local Plan. Nonetheless, MEPA is in the process of identifying these policies, plans and other instruments with a view of publicizing their repeal, in full or in part. Kopja Informali ta' Sentenza

Furthermore, as a result of the Local Plan, all development applications must be assessed in the light of the respective policy applicable to the site in question, and not in relation to other commitments (use or height) in the vicinity, unless this is allowed in the specific policy in the Local Plan itself or in another policy document in force.

As such the discretion of the decision making bodies is to be applied in relation to application and interpretation of the policies contained in the Local Plans and in other plans in relation to the application in question.

ii. WHAT IS THE STATUS OF PENDING AND PREDECISION DEVELOPMENT APPLICATIONS?:

All planning applications which were still pending as on Thursday 3rd August 2006, the date of formal approval by the Hon. Minister of the Local Plan, or which having been referred to the relative decision making body (MEPA, DCC or Appeals' Board) prior to such date, but no decision (minuted) has been taken prior to such a date, are to be assessed and determined with the current policies, i.e. including the Local Plan.

All planning applications which have been decided prior to such a date, or where the decision making body (DCC, MEPA or PAB), has taken a decision in principle in favour of the application or a particular aspect of the

application (minuted) shall be considered as prevailing over the provisions of the Local Plan. These cases would normally refer to those cases where the formal permit would not have been issued since it is either awaiting typing, or alternatively if the file is still pending since after the decision has been taken, it has been referred to the Directorate for amended conditions, or to the applicant for the payment of a fine or of a planning gain or for the submission of a bank guarantee or other information.

Those applications where no formal decision has been taken but a decision in principle in favour of the application has been taken or a strong commitment has been given and minuted, are to be referred to the MEPA Board.

iii. WHAT IS THE STATUS OF OUTLINE PERMITS AND FULL DEVELOPMENT PERMITS IN RELATION TO CHANGES IN THE LOCAL PLAN?:

In accordance with the provision of S.33 of the DPA no change in a local Plan may adversely affect the vested right arising from a valid development permit. The DPA does not distinguish between an outline and a full development permit and as such the assumption is that this provision applies to both.

Therefore, the principle approved in an outline development permit, as determined and approved in the decision in accordance with the description, shall prevail over the provisions of the Local Plan, provided that the said outline permit is still valid. This means that a full development application submitted within the validity of the outline development permit, must be assessed in the light of the principle/s approved by the outline permit.

Likewise, an approved full development permit, if still valid, prevails over the Local Plan provisions. As such, if the applicant requests an amendment to the full development permit, it is only this amendment that must be assessed in the light of the Local Plan and not the whole permit afresh.

The same applies if the applicant requests a reconsideration or an appeal from a condition/s of an approved permit. Only the respective condition/s must be assessed in the light of the Local Plan.

Where the applicant requests a renewal of the development permit within the validity period in accordance with the provisions 33(3) of the DPA and there is a firm commitment on site in that part of the development which may give rise to a conflict between the existing policies and the previous policies governing the original development permit the principle of the previous permit shall prevail. On the other, if the development has not reached this stage, the provisions of the Local Plan shall prevail.

This obviously applies if the applicant requests MEPA to assess his pending application in the light of the vested rights acquired by him through the previous permit.”;

Illi t-Tribunal ikkonstata dan li gej:

Dan id-dokument qed jiccara sitwazzjoni fejn ittiehdu decizzjonijiet fuq applikazzjonijiet qabel ma gew fis-sehh il-pjanijiet lokali.

Fit-tielet parti ('iii' – 'What is the status of outline permits and full development permits in relation to changes in the Local Plans') fl-isfond tal-artiklu tal-ligi li jissalvagwardja drittijiet akkwiziti li jirrizultaw minn permess ta' zvilupp validu, dan id-dokument qed jirrikonnoxxi permessi ta' 'Outline' u 'Full development' li jkunu ghadhom validi u ghaldaqstant jipprevalu fuq l-provizjonijiet tal-local plan, hekk kif gej:-

"...the principle in an outline development permit, as determined and approved in the decision in accordance with the description, shall prevail over the provisions of the local plan, provided that the said outline permit is still valid. This means that a full development application submitted within the validity of the outline development permit, must be assessed in the light of the principle's approved by the outline permit.

Likewise, an approved full development permit, if still valid, prevails over the Local Plan provisions. As such, if the applicant requests an amendment to the full development permit, it is only this amendment that must be assessed in the light of the Local Plan and not the whole permit afresh."

Dan l-appell jittratta applikazzjoni Full Development Application li dahlet qabel li gie fis-sehh il-pjan lokali u li qed issegwi permess outline PA 4358/96 validu b'decizzjoni tal-Bord tal-Appell PAB 412/98 TSC. L-outline permit kien ghadu validu fiz-zmien li gie sottomess il-Full Development Application PA 1101/05.

It-Tribunal huwa tal-fehma li sabiex ikun hemm trasparenza, uniformita u ugwaljanza ghall-applikanti, l-Awtorita hi obbligata li timxi mal linji gwida mahruqa minna stess fid-determinazzjoni ta' applikazzjonijiet. Fil-kaz odjern, it-tribunal jidhirlu li l-Outline Development Permit kellu jipprevali fuq bdil fil-pjan lokali hekk kif spjegat car fil-linji gwida.

Ghal dawn il-motivi, u wara li qies il-fattispeci partikolari ta' dan il-kaz, dan it-Tribunal qed jilqa' dan l-appell, ihassar ir-rifjut tal-permess ghall-izvilupp u jordna lis-Segretarju ta' l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar biex johrog il-permess skont il-pjanti u d-dokumenti 1C, 1D, 26A li jinsabu fl-inkartament tal-PA 1101/05 fi zmien tletin gurnata bil-kondizzjonijiet standard li normalment japplikaw ghal dan l-izvilupp, b' dana illi, oltre l-"istandard conditions" tigi nkluza wkoll kundizzjoni li:

L-"executable permit" jinhareg wara l-Awtorita tivverifika li is-siti li jinsabu fil-limiti tal-Wardija u li attwalment l-applikant qed jopera minnhom u li taghhom ser jirrinunzja ghall-licenzji tal-kummerc jiefqu joperaw.

Ikkunsidrat

L-aggravji tal-appellanti huma s-segwenti:

1. Nullita tad-decizjoni ghax l-appellanti qua terzi interessati thallex barra mill-okkju tal-kawza;
2. Hemm zball ta' ligi ghax id-decizjoni turi li mxiet fuq il-premessa li l-linji gwida fil-Local Plans Interpretation Document 2007 fil-hrug ta' outline development permit jintitola wiehed awtomatikament ghal hrug ta' full development permit. B'hekk il-Bord naqas li jikkonsidra jekk il-permess hux konformi mal-policies vigenti meta inhareg l-outline development permit. Jghid li outline development permit kellu jipprevali fuq bdil fil-pjan lokali hekk kif spjegat car fil-linji gwida. Jghid ukoll li drittijiet akkwiziti li jirrizultaw minn permess ta' zvilupp validu jirrikonoxxi outline u full development li jkunu validi u jipprevalu fuq il-provizjonijiet tal-local plan pero dan bla ma ikkonsidra fid-dettal il-policies vigenti meta inhareg l-outline development permit biex jevalwa t-talba sew ghal full development permit.

L-ewwel aggravju

Hu minnu illi l-appellati qua interessati u bhala intervenuti kif jirrizultaw mill-atti tas-sentenza tal-Qorti tal-Appell tal-14 ta' Novembru 2013 thallex barra mill-okkju pero l-Qorti tqis li f'dan il-kaz ma hemmx l-estremi tan-nullita mitluba ghaliex huma l-istess terzi interessati li qed jappellaw u ma hemm ebda oggezzjoni da parti tal-partijiet l-ohra. In oltre d-decizjoni ser taffettwa l-partijiet kollha interessati billi dak li l-appellanti qed jaghmlu hu li jinvokaw lil Qorti titratta l-aggravji taghhom kontra d-decizjoni tat-Tribunal.

Ghalhekk fic-cirkostanzi, billi ebda pregudizzju reali jew perceptit ma qed jigi riskontrat, il-Qorti qed tichad dan l-aggravju.

It-tieni aggravju

Hu car illi l-appellanti qed jilmentaw mid-decizjoni tat-Tribunal fuq punt ta' ligi. Jigi premess illi din il-Qorti fis-sentenza taghha tal-14 ta' Novembru 2013 kienet ezortat lit-Tribunal sabiex jiehu in konsiderazzjoni b'mod serju u kritiku l-linji gwida fil-Local Plans Interpretation Document 2007 li fihom l-Awtorita kienet tat direzzjoni dwar kif ghandhom jigu evalwati u decizi applikazzjonijiet li huma fi stadju ta' outline u/jew full development u c-cirkostanzi hemm marbut maghhom.

Il-Qorti rat b'apprezzament li t-Tribunal segwa d-decizjoni tal-Qorti u qua principju iddikjara li dawn il-linji gwida kellhom jigu segwiti biex ikun hemm konformita, ugwaljanza u trasparenza fl-evalwazzjoni ta' applikazzjonijiet li jintlaqtu bl-istess interpretation document.

Pero l-Qorti hi surpriza li wara li t-Tribunal iddikjara li ser jaddotta l-interpretation document fis-sens li fl-evalwazzjoni tal-full development application soggett ghal dan l-appell kien ser jimxi fuq il-policies u ligijiet vigenti fil-mument tal-hrug tal-outline development permit, naqas b'mod komplet li jevalwa l-appell quddiemu fil-kaz tal-full development permit tenut kont u fid-dawl ta' dak li kienu jipprovdu l-pjanijiet, policies u ligijiet adatti ghal kaz fiz-zmien tal-outline development permit. Il-Qorti ma ghandha ebda hjiel, ghax ma hemm xejn fid-decizjoni, ta' x'seta' wassal lit-Tribunal jqis li l-applikazzjoni full development kellha tinghata l-permess nonostante l-aggravji fl-appell quddiemha. Dan in-nuqqas jwassal lil din il-Qorti sabiex tilqa' l-appell in kwantu ghalkemm it-Tribunal ghamel id-dikjarazzjoni appozita dwar liema kienu l-policies pjanijiet jew ligijiet li kellhom japplikaw, naqas li jevalwa l-appell a bazi ta' dik id-dikjarazzjoni b'mod li d-decizjoni hi nieqsa minn kull motivazzjoni ghajr dik li jissottomettu l-appellanti cioe li t-Tribunal qies outline development u full development bhala haga wahda u la darba inhareg l-outline development ma kien hemm ebda raguni li tigi investigata kwalsiasi oggezzjoni rigward il-full development.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Charles u Francis Camilleri, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ppjanar tal-31 ta' Lulju 2015, u terga tibghat lura l-atti lit-Tribunal biex jerga' jiddeciedi l-appell a bazi tal-aggravji imressqa. Spejjez jithallsu mill-appellati in solidum.

Onor. Mark Chetcuti LL.D.
Imhalled

Anne Xuereb
Deputat Registratur