



**QORTI TAL-APPELL**

**(KOMPETENZA INFERJURI)**

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

**ONOR. IMHALLEF MARK CHETCUTI LL.D.**

**Illum L-Erbgha, 22 ta' Gunju, 2016**

Numru 5

**Appell Nru. 6/2016**

**Maurice Formosa f'ismu proprju u ghan-nom u  
in rappreżentanza ta' JMA Ltd., lan Zammit ghan-nom  
ta' Mortar Investments Ltd., u Joseph Grech**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell tal-appellanti tat-12 ta' April 2016 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016 li kkonfermat il-kondizzjonijiet imposti fuq l-applikazzjoni ta' zvilupp PA 4557/10 'construction of residential units' fil-Mellieha;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Ra l-aggravji tal-appell hekk kif gejj:

“Further to the issue of development permit application in caption dated 30th November 2012 by the Environment and Planning Commission (copy attached), as applicants consider that the conditions of this development permission are unreasonable and/or amount to the quasi-refusal of this application, on behalf of said applicants and for the reasons listed here below, I am appealing to the Environment and Planning Review Tribunal and request the revision of the conditions of this permit in order to allow the development of the site into a greater number of units than the number which is possible in terms of the conditions imposed by the Environment and Planning Commission.

1. This site is bounded on one side by sui-generis single family homes with a two storey height limitation and on the remaining three sides by extensive maisonette development two-storeys high, (some of which also include underlying semi-basements).

The site subject to application in caption is classified as "Vacant Land" in Map 27 of the approved Local Plan and the relevant policy NWML 4 provides that "The currently vacant land at the centre of the site as shown in Map 27, can be developed into residential units on a maximum height of two floors provided that 260sqm are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30%. The M.E.P.A. will impose a bond to ensure that the public open space is actually implemented". During the processing of this application the Planning Directorate adopted a peculiar theory that the North West Local Plan limits the number of units on the site subject to this application to only two units. The E.P.C. agreed that this recommendation by the Directorate was based on factual error but did not agree that the site was zoned for terraced development, (which had never been questioned or contested before). It reasoned that, irrespective of the actual context of the site and the fact that it was zoned for two storey development, it was to be considered as regulated by the same conditions that govern the Santa Maria Estate and Tal-Qortin bungalow sites, with the exceptions of the two storey height limitation and the requirement of a public open space of 260s.m. which are clearly stipulated by the Local Plan. To underscore that the E.P.C. had disagreed with the Planning Directorate's recommendation that this application be refused because the site was already covered by full development permits for two units (i.e. P.A.3393/91 and P.A.3394/91), it included Condition 3 that states that policy 3.2 of the Development and Planning Guidance 2007 applies so sites with an area of one tumolo may be

developed into two semi-detached units that provided that "the design of the dwellings maintains and enhances the character of the area by ensuring that semi-detached units appear as a single dwelling"(!?). This site has an area of 2,510 square metres, so after deducting the prescribed 260s.m. public open space, two tumoli remain and therefore the maximum number of units permitted by the E.P.C.'s decision is four units. In order to avoid any doubt regarding the actual intention of the Commission, during the relative sitting I requested that the number of units that it had agreed to (i.e. four), be specifically noted in the permit conditions but the Commission held that its decision was clear enough. When I replied that I was sure that some spark in the Directorate would take advantage of this omission to claim that the E.P.C. had only approved two units, the Commission members advised that I immediately lodge a full development permit application for the development of the site as four units so that they would approve it during their remaining one year term of office.

2. While reserving the right to lodge such an application concurrently with this appeal, applicants consider the effect of the Environment Planning Commission's decision to restrict the number of units that may be constructed on this site to only four, is contrary to sensible and objective planning policy for the following reasons:

a) To compensate for the change in zoning of part of High Ridge from villas to bungalows as well as the precluding of separate dwelling units at basement level, Paragraph 17.1.14 of- NWML 3 provides that "an increase in density is envisaged on another site within the area of Tal-Qortin (Refer to NWML 4) and this should accommodate any demand for dwelling units in this area". This provision had not been made in Draft Local Plan policy NWML 19, that covered the same area which was eventually regulated by approved policy NWML 3. It is therefore clear that latter policy refers to the "Vacant Land" which the Local Plan specifically zoned for development. Furthermore, paragraph 17.1.16 of NWML 4, provides that the areas classified as Tal-Qortin Villas and Tal-Qortin Terrace Houses in Map 27, "should not be allowed to expand". Hence it results that the Local Plan envisages that all the demand for additional housing in the approximately 100 hectare area situated to the east of the older part of the town is to be accommodated on the site subject to this outline application. The M.E.P.A. is required to give effect to the decisions of the Legislator by encouraging the efficient use of the site subject to application in caption and not to subvert the Legislator's intention by doing the very opposite.

b) This site is not included among the Residential Priority Areas identified in the Local Plan, clearly marked as "Vacant Land" in NWLP Map 27 and regulated solely by the above quoted Local Plan policy NWML 4. In full conformity with the provisions of said Local Plan policy, applicants applied for the "Construction of Nine Residential Units" (each occupying a plot with an area of 250 square metres), and also allocated 260 square metres as a public open space on the remainder of the site. The site-coverage proposed for these terrace houses is appreciably lower than that usually imposed on villa sites. From Table 3.2 of the Development and Design Guidance 2007, it

results that, with the exception of the very exclusive areas of San Gwann Evangelista, L-Iklin, Tal-Ibragg and Madliena, practically all land zoned for villa development has a maximum site coverage of 40% going up to 45% and 50% at Ta' Xbiex and Marsaxlokk respectively. The overall residential density of development on this site proposed by applicants in this application is only 35.8 units per hectare.

It should be evident that the nine units indicated in the drawings presented are hardly enough to satisfy the demand for additional housing envisaged in paragraph 17.1.14 of the Local Plan and that that the M.E.P.A. should not be requiring that this relatively small number be reduced even further.

c) The area surrounding the site mainly consists of two-storey maisonettes (some with underlying semi-basement), as well as a restricted number of terrace houses with a two-storey height limitation. The Development Control Commission had approved application P.A.298/06 for the redevelopment of the only villa in this area into four units even though it has an area of only 1,236 square metres. The whole of the developed annulus surrounding the site has an area of approximately 15,000 square metres and the Planning Directorate established that it currently consists of 62 dwelling units. Hence, the existing residential density of the surrounding area is 41.3 units per hectare, which is appreciably higher than the density proposed in this outline development application.

d) Draft Local Plan Policy NWML 20 issued in June 2001 had classified the site as forming an integral part of the ring of development that immediately surrounds it and proposed that "the development of this area should not increase the existing residential densities and should not have an adverse impact on the existing residential character. No further extensions to existing buildings beyond their footprint or on the open spaces and no increase in the height of the existing buildings will be allowed", Following the representations made during in the Public Consultation process, the approved Local Plan issued in August 2006 provided that the developed area, which surrounds the site subject to application in caption, is regulated by a very similar policy NWML 4 that pointedly excludes the text shown underlined above and provides that, "the development of this area should not increase the existing residential densities and should not have an adverse impact on the existing residential character. No further extensions to existing buildings beyond their footprint will be allowed. The height of the buildings on the site shall conform to the building heights on the Building Heights Map 29". The site subject to application in caption was however separately classified in Map 27 of the approved Local Plan as "Vacant Land" and the relevant policy NWML 4 provides that "the currently vacant land at the centre of the site as shown in Map 27, can be developed into residential units on a maximum height of two floors provided that 260sqm are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30%. The M. E.P.A. will impose a bond to ensure that the public open space is actually implemented". The fact that Map 29 does not specifically indicate the height limitation of the site subject to this application demonstrates that the three

sentences which appear prior to the specific policy regulating this site refer only to the surrounding area defined on Map 27 as the "Tal-Qortin Comprehensive Scheme".

e) Page 86 of the Public Submissions appendix to the North West Local Plan refers to my letter dated 10th August 2001 requesting that this site be specifically zoned for three-storey residential development. The M.E.P.A. had recommended the partial acceptance of this request but, in order to protect residential amenity, imposed a two-storey height limitation, the requirement of a usable public open space as well as a 30% site coverage on the remainder. This reply made no mention of a restriction on the number of units on this site. The Mellieha Local Council also wrote on the 1st October 2001 complaining that the Draft Local Plan was "rather sketchy about the area of Tal-Qortin and should go into more detail about the central part of this site".

The M.E.P.A. replied on Page 85 of this appendix by stating that it had established the development criteria in NWML 4, (which replaced draft policy NWML 20). Hence, it is clear that the M.E.P.A. did not impose any further unusual limitations on the development of the site subject to application. Practically none of the thousands of blocks zoned for development throughout the whole of the Maltese Islands is limited to a specific maximum number of units as such control is exercised by the minimum development standards established by the Development and Design Guidance.

f) The E.P.C.'s decision for the land to be developed as only four residential units restricts the residential density of 15.9 units per hectare). It implies plot sizes of 562.5s.m. each so at 30% coverage, the built-up area of each unit will be 168.75 s.m. per floor. Hence, two floors and a semi-basement will comprise over 500 square metres of floor space. This floor space is in unduly lavish and is not in conformity with the main goal of the Structure Plan, which is "to use land and buildings efficiently".

The M.E.P.A. should be encouraging the development of this site at a residential density similar to that of the development immediately surrounding it, and not perverting its mission and ensuring waste. It is unlikely that when approving the Local Plan both the M.E.P.A. and the Legislator had intended to act contrary to the major goal of the Structure Plan by restricting the development of this particular 2,510 square metre site to four very large units, (to be disguised as only two units so as to be completely out of scale with the surrounding streetscape). Had such a decision been taken, this restriction would have certainly have been specified in the list of onerous conditions listed in NWML 4. My notes of the discussions with the Planning Directorate staff made prior to the approval of the Local Plan demonstrate that it was not proposing any artificial restriction on the number of units that could be built on this site.

g) While the M.E.P.A. needs to ensure the reasonable availability of a lavish housing for the elite ready to pay for it, it should be clear that such land should be in high quality areas where said elite will be ready to establish

their residences. It flies in the face of common sense to require land completely surrounded by maisonettes to be developed as four very large semi-detached villas.

3. It is understood that Planning Directorate staff were intimidated by some of the objectors. As a result, the officials processing application in caption (that were arriving to the conclusion that it was appropriate that the residential density on this site be similar to that of the immediately surrounding development), received orders to appease the objectors, even though they had not presented any valid planning grounds for the refusal of this application. For example, the objectors hold that the M.E.P.A. should not have adopted a policy to regulate this site because, although it was within scheme the Temporary Planning Schemes published in 1989 neglected to indicate specific zoning conditions. The objectors make various statements such as "the proposed development increases the risks of the health of residents", which are self-evidently ridiculous. Lacking genuine planning reasons, some objectors resort to falsehoods such as "the proposed plans indicate only circa 200 sq.m. as public open space". It is interesting to note that not one of these objections claims that the Local Plan should be interpreted as restricting the number of units on this site to only two or four. While the objectors are very exigent as to what applicants can or cannot build on their site, they do not seem at all worried about the legality or otherwise of their own developments. A casual examination of the permits covering the surrounding development demonstrates that nearly all the units built in the 1980's are not in accordance with an array of permit conditions such as "having a 4.5m front garden", "minimum floor area of 1,500 square feet", "each block to be at least 15 feet away from the road" etc. Although I have been making this allegation for years, it does not seem to have been investigated.

4. As a result of the negative impact resulting from the Tas-Sellum development, the Local Plan converted part of the Santa Maria Bungalows into a new zone labeled "St. Maria Estate Villa Site" increasing the height limitation from one to two floors and its residential density from 17.8 units per hectare to 40 dwellings per hectare, even though it is surrounded on the other three sides by bungalow development. It is therefore incongruous that the E.P.C. requires that, although it is surrounded by maisonettes and terrace houses, the relatively small site subject to application in caption must be developed as lavish semi-detached villas.

5. One cannot help contrasting the torturous process that the owners of the site subject to application in caption have been put through by the Planning Directorate with the generosity that regaled the owners of the Tas-Sellum development, (which was built on the strip of land that had been purposely left outside the planning scheme approved in the early nineteen eighties to provide a suitable buffer to Santa Maria Estate). Both the site subject to application in caption and the Tas-Sellum site were white areas in the Temporary Planning Scheme for Mellieha.

Despite the fact that the Tas-Sellum site is bounded by the sea, a very large residential priority area zoned for bungalow development and a stretch of pristine garigue, the owners of this 13,500 square metre site benefitted from the rapid issue of planning permits for five residential storeys, a density of 85 units per hectare, a 45% site coverage as well as no requirement for providing a public open space in this much-frequented area.

The owners of the Tas-Sellum development benefitted further by being exempted from having to wait for the approval of the Local Plan before planning permits were issued. Outline development permit P.A.3540/00 on the Tas-Sellum site provided for 117 extremely spacious dwelling units. The site subject to application in caption is situated in a far less environmentally sensitive location than that of the Tas-Sellum development, and its superficial area is about 18% of the Tas-Sellum site. Hence, on a pro-rata basis, it would qualify to be developed as 21 spacious units. Not content with the far more onerous conditions that were imposed on this site after a fifteen year planning process, the M.E.P.A. has persisted in obstructing its development by a far-fetched interpretation of the Local Plan, which is diametrically opposed to the intended policy for this site. A request for an explanation of the reason for the incredible contrast between the two cases has been made, but it has not been forthcoming.

Furthermore, Draft Local Plan policy NWiV1L 31 which proposed the planning policy for the white area today developed into the Tas-Sellum complex includes Paragraph 2.2.17 that augurs that the developer will accept "a more appropriate gain, such as public open space". In fact, the planning permission was granted to this developer prior to the approval of the Local Plan and without the requirement of a public open space. On the other hand, despite the fact that article 37 of the Constitution of Malta clearly states that "no property of any description shall be compulsorily taken possession of .... Except where provision is made by a law .... for the payment of adequate compensation", quite exceptionally, not only does the North West Malta Local Plan require the owners of the site subject to this application to allocate 260 square metres of their land as a public open space, but it also obliges them to carry out the necessary works for its enjoyment by the public, at their own expense.

In view of the above it should be clear that, not only is the development proposed in this application in line with the North West Malta Local Plan, but that it is the M.E.P.A.'s requirement that the area intended by the NWLP to "accommodate any demand for new dwellings in the area" be used inefficiently by requiring it to be occupied by only four very large units that is) incompatible with the both Local Plan as well as the Structure Plan.

6. According to the Development Planning Act permits are to be issued for a period of five years. Article 69(4) of the Environment and Planning Act provides that development permission may be granted for a limited period or in perpetuity, and in fact all Full Development Permits currently being issued by the M.E.P.A. are valid for a period of five years. Hence, there is no justification for the restriction in Condition la) of the period of validity of

Outline Development Permits to only one year. Even though it has been established that it is not lawful for a board to seek to tie the hands of future board members, this condition also seeks to preclude the M.E.P.A. from renewing this permit.

7. There is no justification for Condition id) which proposes that future changes in policy take precedence over the principles established by this Outline Development Permit. The rest of this condition is unnecessary because all applications are to be considered in the light of the Structure Plan and the Local Plan.

In view of the above, it is requested, that as well as reinstating the original proposal description (i.e. Construction of Nine Residential Units), which was amended by the E.P.C., the Tribunal also amends the conditions of the development permission issued by the Environment and Planning Commission as it deems fit and proper or as follows:

la) The full development permission application shall be submitted for the approval of MEPA within FIVE YEARS of the publication of the decision in the press. This outline permission shall expire within five years from the date of issue of this permission. (and the last five words of this condition deleted).  
ld) Completely deleted

3. After the deduction of the 260 s.m. which are to be developed as a public open space as per Condition 2 above, the remaining part of this site, which has an area of approximately 2,250 square metres, - may be developed into as many terrace house units as can be accommodated on the site, provided that the 30% maximum site coverage imposed by NWML 4 as well as the minimum dwelling size established by DC2007 policy 3.7 are observed, the maximum height limitation shall be two storeys and an underlying semi-basement and that no buildings above ground level are to be constructed on the north portion of the site which is shown in yellow on Map 27 of the North West Local Plan.

4. Subject to the same provisos listed in Condition 3 above, this site may also be developed in whole or in part as flats or maisonettes.

The right is reserved to present further planning justifications in support of this appeal during the relative sittings. The white copy of the Appeal Payment fee voucher number 2861 duly stamped by the receiving bank as proof of payment of the relative appeal fee is herewith enclosed. A copy of the relative application form, site plan as well as the plans submitted on the 7th October 2011 are also herewith attached.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fit-28 ta' Mejju 2013 u li jaqraw kif gej:

“5.1.3 Re-condition No.1a, 1d - specifies that the full development application shall be submitted for MEPA approval within one year from the date of the outline permission and that it will expire within 1 year from the

date of issue of permission and it will not be renewable. Appellant is claiming that there is no justification for the restriction of the period of validity of Outline Development Permits to only one year and that this precludes the MEPA from renewing this permit. With regards to condition 1d, the appellant is suggesting that this condition is completely deleted. The Authority disagrees as these paragraphs are part of a standard condition used generally for all outline applications.

5.1.4 Re-condition No. 2 - The DPAR concluded by stating that “the proposed nine units increase the existing residential density of the area and thus runs counter to Policy NWML 4 of the North West Local Plan”. This report also stated that when considering the actual area of the site that actually is covered by the same policy, it transpires that the proposal does not fully satisfy the requirement for a 260 square metres public open space. The Directorate noted that if this requirement be addressed without reducing the proposed building foot print, the site coverage would exceed the allowable 30%. In view of this reason for refusal, a condition was included in the permit after the EPC Board requested consultation from the Local Planning Unit (min 59). The LPU forwarded the following comments: The development parameters for this site are set out in policy NWML 4 ie residential use with 30% site coverage on two floors and a public open space of 260sqm, provided the development does not increase the existing residential densities and does not adversely affect the residential character. The DPAR, prepared in consultation with FP, aptly describes the interpretation of these parameters and I see no reason to counter them (min.63). Thus the Board overturned the decision in this outline application which in principle the EPC considers that density typical of the residential priority are being respected through the above parameters in terms of policies 3.2 of DC 2007 and NWML4 of the Local Plan.

5.1.5 Re-condition No. 3 – The appellant is stating that the site may also be developed in whole or in part as flats or maisonettes. This condition relates to NWML 4 and Policy 3.2 of DC 2007. NWML 4 specifies that this land can be developed into residential units on a maximum height of 2 floors provided that 260m<sup>2</sup> are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30% (policy 3.2 of DC 2007). Policy 3.2 General conditions for the area of Santa Maria Estate and tal-Qortin. of DC 2007 states that Dwellings to be constructed in the areas zoned for detached/semidetached dwellings in the Local Plans shall comply with the requirements for dwelling type, minimum site area, maximum site coverage, minimum site cartilage, and maximum number of habitable floors set out in Table 3.2 or as otherwise specified in the relative approved Local Plan. Hence since this area is affected by these policies the EPC has made the right decision to impose this specific condition in this outline permit. With regards to contents of this condition, this was already achieved through an approval of a previous permit PA 3393/91 and PA 3394/91 each of which permitted the construction of a bungalow.

In these circumstances, the Authority reiterates that in view that this permit is an Outline Permit and only a site plan is approved, the above conditions are necessary so that the conditional approval is adhered to in the subsequent Full Development Application, hence, the Authority requests the Tribunal to confirm the DCC's decision which included conditions 1a, 1d, 2, and 3 forming part of the permit as issued on 30th November 2012.”;

Ra l-ittra tal-Perit Joseph Attard ghan-nom tal-Kunsill Lokali Mellieha u residenzi tal-madwar bhala persuni nteressati prezentata fis-16 t'Awissu 2013;

Ra s-sottomissjoni ulterjuri tal-appellant prezentata fit-18 t'April 2014 u r-risposta tal-Awtorita' prezentata fis-26 ta' Mejju 2014;

Ra l-verbal tal-access fuq is-sit mizmum minn dan it-Tribunal fit-30 ta' Jannar 2014;

Ra s-sentenza ta' dan it-Tribunal fl-ismijiet Maurice Formosa ghan-nom u in raprezentanza ta' JMA Ltd., Ian Zammit ghan-nom ta' Mortar Investments Ltd., u Joseph Grech kontra l-Awtorita' tal-4 ta' Novembru 2014;

Ra s-sentenza tal-Qorti tal-Appell tat-22 t'April 2015 li laqghet l-appell u annullat id-decizjoni ta' dan it-Tribunal ghar-raguni li l-appellant Maurice Formosa thalla barra fl-okkju tad-decizjoni tat-Tribunal tal-4 ta' Novembru 2014.

Ra il-PA file bin-numru 4557/10;

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

Preamblu:

Illi dan l-appell rega gie rimess lura mill-Qorti tal-Appell fejn id-decizjoni tal-Qorti kienet unikament bbazata fuq zball fl-okkju, li l-Onor. Qorti tal-Appell hassett li ma kienx tali li setghet tirrangah jew tissanah hi. Dana naturalment iwassal ghall-konkluzzjoni li tali zball seta jigi biss sanat mit-Tribunal. Il-mertu ma ntmisx mill-Onor. Qorti tal-Appell.

Ghaldaqstant dan it-Tribunal, wara li kkoregga l-okkju skont dak mitlub mill-Qorti tal-Appell, qieghed jerga jikkonferma d-decizjoni moghtija minn dan it-Tribunal tal-4 ta' Novembru 2014, fejn gie konsiderat dan li gej:

“Ikkunsidra ulterjorment:

Illi s-sit jinsab fiz-zona ta' Residential Priority Area tal-Mellieha, f'erja li hija specifikament identifikata bhala 'Residential Zoning in the Residential Priority Area' f'dik il-parti ndikata bhala 'Tal-Qortin Comprehensive Scheme' skont il-Mappa 27 fil-North West Local Plan, hawn iktar l-isfel fid-decizjoni ser ikun referut bhala l-pjan lokali.

Illi l-maggor parti tas-sit inezami jinsab f'dik il-parti tal-'Qortin Comprehensive Scheme' li hija mmarkata bhala 'vacant land' fl-istess mappa 27 fil-pjan lokali.

Illi l-policy NWML 4 tipprovdi dan li gej fir-rigward tal-Qortin Comprehensive Scheme:

“The development of this area should not increase the existing residential densities and should not have an adverse impact on the existing residential character. No further extensions to existing buildings beyond their footprint will be allowed. The height of buildings on the site shall conform to the building heights on the Building Heights Map 29. The currently vacant land at the centre of the site, as shown on Map 27, can be developed into residential units on a maximum height of two floors provided that 260sqm are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30%. MEPA will impose a bond to ensure that the public open space is actually implemented.”

#### Aggravji 1-5

Illi l-ewwel hames aggravji f'dan l-appell huma ndirizzati lejn iz-zewg kundizzjonijiet fil-permess odjern, cioe: dik numru 3, fejn qed tinkludi limitazzjonijiet tal-izvilupp billi qed jigu applikati l-policies ta' bungalows skont il-policy 3.2 tal-linja gwida dwar il-kontroll tal-izvilupp tas-sena 2007; u dik numru 4 li qed teskludi flatted dwellings.

Illi l-appellant qiegħed jilmenta li b'dawn il-kundizzjonijiet, il-Kummissjoni qed tillimita l-izvilupp għal-erba' (4) t'idjar biss (hekk kif finalment gie approvat fil-permess full development PA 705/14), filwaqt li dawn l-istess kundizzjonijiet huma bbazati fuq policies u parametri tal-izvilupp li mhumiex parti mill-policy specifika li hemm fil-pjan lokali.

Fl-ewwel lok, dan it-Tribunal jinnota li l-izvilupp fuq din is-sit, indikat bhala 'vacant land' fil-pjan lokali, għandu jkun ta' natura strettament residenzjali u jsegwi dawn il-kriterji specifici:

1. Bini sa massimu ta' zewg sulari;
2. 260 metru kwadru għandhom jigu allokati bhala 'public open space'; u
3. Footprint tal-bini li m'għandux jeccedi 30% tal-art identifikata għall-izvilupp (cioe' teskludi l-260 metru kwadru għall-uzu ta' public open space).

F'dan ir-rigward it-tqassim, disinn u numru ta' djar ma giex specifikat f'din il-policy fil-pjan lokali u għaldaqstant thalla element ta' diskrezzjoni f'idejn l-Awtorita' sabiex tiddetermina hi l-izvilupp finali ta' din is-sit, fil-kuntest tal-parametri tal-izvilupp kif elenkati f'din il-policy sucitata.

Illi f'dan il-kaz, il-Kummissjoni qieset li l-applikazzjoni tal-policy 3.2, inkluz il-limitazzjoni ta' tomna bhala minimum site area, u l-eskluzzjoni ta' 'flatted dwellings', bhala mizuri sabiex jikkontrollaw l-izvilupp hekk gew kunsidrati fil-kuntest tar-Residential Priority Area fejn jinsab is-sit inezami.

Illi f'dan ir-rigward, dan it-Tribunal jidhirlu li filwaqt li l-policy thalli certu diskrezzjoni fejn jidhol it-tqassim u d-densita tal-izvilupp fuq is-sit, l-Kummissjoni kienet korretta li tikkunsidra l-kuntest fejn jinsab is-sit inezami u ghaldaqstant timponi dawk il-kundizzjonijiet li jidrilha xierqa skont id-dispost tal-Artikolu 69 subinciz (3) tal-Kap 504.

Illi l-pjan lokali huwa car, partikolarment fil-paragrafu numru 17.1.17, fejn gie spjegat illi dan is-sit immarkat bhala 'vacant land' kien parti minn skema tal-izvilupp f'tal Qortin biex jintuza bhala 'communal open space as part of a specific development permissions but this open space was never implemented.' Dan il-paragrafu jkompli jispjega li zvilupp fuq dan is-sit qieghed jigi kunsidrat wara li nhargu permessi ta' zvilupp fuq is-sit mill-Kummissjoni tal-Kontroll tal-Izvilupp, u din il-policy fil-pjan lokali hija intiza biex tizgura li jigi akkomodat public open space, filwaqt li jikkonkludi li 'the development permitted on the remaining part of the site does not prejudice the residential amenity of the neighbourhood of tal-Qortin.'

Ghaldaqstant dan it-Tribunal huwa tal-fehma li l-kundizzjonijiet imposti mill-Kummissjoni sabiex jikkontrollaw id-daqs u d-densita' tal-izvilupp, kienu f'waqthom u ragenevoli fil-kuntest tal-policy fil-pjan lokali sabiex jigi protett l-karattru residenzjali tal-Qortin. F'dan ir-rigward dan it-Tribunal qieghed jichad l-ewwel hames aggravji ta' dan l-appell.

Aggravju numru 6:

Illi s-sitt (6) aggravju jittratta z-zmien ta' validita' tal-permess kif indikat fl-ewwel kundizzjoni ossia 1(a) tal-permess, fejn qed tillimita l-permess ghal perjodu ta' sena. L-appellant qieghed jitlob li dan il-permess outline jigi estiz ghal hames snin simili ghal permess full development li generalment huma validi ghal hames snin.

Dan it-Tribunal jidhirlu li dan l-aggravju m'ghandu l-ebda bazi legali meta kif indikat mill-appellant stess, l-Artikolu 69 subinciz 4 tal-Kap 504 jippermetti lill-Awtorita' li tohrog licenzja jew permess ghall-izvilupp ghal zmien limitat sa massimu ta' hames snin, u ghaldaqstant ma jipprekludi xejn lill-Awtorita' milli timponi zmien limitat bhal fil-kaz odjern. Jidher fil-kaz ta' permessi outline, l-Awtorita' addottat il-prassi li tillimita dan il-permess ghal sena, u dan sabiex tigi prezentata l-applikazzjoni full development fi zmien immedjat kemm jista jkun wara l-hrug tal-permess outline. F'dan ir-rigward dan it-Tribunal ma jara xejn censurabbli f'din il-kundizzjoni u ghaldaqstant qieghed jichad dan l-aggravju ukoll;

Aggravju numru 7:

Illi fis-seba' (7) aggravju l-appellant qieghed jilmenta li l-kundizzjoni numru 1(d) mhix gustifikata, fejn skont l-appellant din il-kundizzjoni qed tipproponi li 'future changes in policy take precedence over the principles established by this Outline Development Permit.' Hawnhekk dan it-Tribunal jidhirlu li l-appellant qieghed jinterpreta hazin din il-kundizzjoni meta din tipprovdi b'mod car illi "Unless otherwise specified, the proposal in the full development application shall be in conformity with the provisions of the

Structure Plan, the Local Plan and any other policy documents applicable at the time of submission and determination of the application.”

Illi fuq insenjament ta' diversi decizjonijiet tal-Qorti tal-Appell, huma daww il-policies vigenti li ghandhom jigu applikati waqt id-decizjoni ta' kull applikazzjoni ta' zvilupp. Hawnhekk il-kundizzjoni qeghda tikkonferma dan, imma bil-frazi 'unless otherwise specified' fl-istess kundizzjoni, huwa car li l-parametri u kundizzjonijiet elenkati fl-istess permess outline, qed jiehdw precedenza fid-determinazzjoni tal-applikazzjoni full development, dment li din tal-ahhar tkun qed isegwi l-kundizzjonijiet elenkati fl-istess permess outline. Ghaldaqstant, anke f'dan il-kaz dan l-aggravju mhux sostnut u qed jigi michud.

Fl-istess aggravju, l-appellant ghamel referenza ghal fatt li l-Kummissjoni bidlet id-deskrizzjoni tal-proposta u qed jitlob sabiex dan it-Tribunal iregga lura d-deskrizzjoni originali ossia: "Construction of 9 residential units" minflok dik emendata mill-Kummissjoni li taqra: "Construction of residential units".

F'dan il-kaz jidher illi l-Kummissjoni segwiet ir-regolament numru 9(5) tal-Avviz Legali numru 514 tas-sena 2010, fejn jipprovdi illi:

"L-Awtorità, il-Kummissjoni jew id-Direttur tal-lppjanar, hekk kif ikun il-każ, għandhom ikunu awtorizzati jemendaw il-proposta ta' zvilupp wara id-decizjoni tal-applikazzjoni sabiex din tkun tirrifletti aħjar il-prinċipju tal-zvilupp li jkun qed jiġi approvat mingħajr il-ħtieġa ta' konformità mad-dispożizzjonijiet tar-regolament 6(1) sa (5)."

Ghaldaqstant huwa evidenti li l-Kummissjoni kienet korretta fl-ezekuzzjoni ta' din l-emenda dwar il-proposta tal-izvilupp, u certament bl-ebda mod ma bidlet il-prinċipju tal-izvilupp kif approvat, u f'dan ir-rigward dan it-Tribunal qed jichad din it-talba tal-appellant."

Ghal dawn il-motivi u wara li kkunsidra l-fattispeci tal-kaz, dan it-Tribunal qieghed jichad l-appell.

## **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwent:

1. L-appellanti qed jappellaw fl-ewwel lok mid-digriet ta' cahda ta' rikuzza maghmula lit-Tribunal kif kompost billi kien għa ddecieda l-istess appell fl-4 ta' Novembru 2014 liema decizjoni giet annullata mill-Qorti tal-Appell. Fid-decizjoni tieghu fil-mertu tat-30 ta' Marzu 2016 kull ma ghamel it-Tribunal hu li rega' tenna l-istess decizjoni tal-4 ta' Novembru 2014 meta l-appellanti jsostnu li l-obbligu tat-Tribunal diversament kompost kien ikun obligat jerga' jisma' l-appell mill-gdid biex jaghti d-dritt tad-doppio esame lil partijiet;

2. It-Tribunal applika hazin il-policies rilevanti. Il-policies iridu jinqraw b'mod komprensiv u t-Tribunal naqas li jaghti d-debita importanza lil policy NWML3 para 17.1.14 'furthermore an increase in density is envisaged on another site within the area of Tal-Qortin (refer to NWML4), and this should accomodate any demand for new dwelling units in the area', cioe din in kwistjoni. Ghalkemm l-appellanti ghamlu sottomissjonijiet fuq dan il-punt, it-Tribunal ma tax konsiderazzjoni ghal policy li fil-fehma tal-appellanti kienet fundamentali ghad-decizjoni fis-sens li l-applikanti jridu jibnu aktar units milli gia permess mill-Awtorita. Din il-policy kellha tingara flimkien mal-policy NWML4 u ma setghetx tigi injorata ghax tbiddel il-portata tal-kliem fl-istess policy 'Tal-Qortin Comprehensive Scheme'. Ma nghatatx spjegazzjoni ghaliex art cirkondata minn terraced houses kellha tigi zviluppata bhala vilel kbar. Kwindi c-cahda tal-ewwel hames aggravji quddiem it-Tribunal kienet zbaljata ghal dan in-nuqqas;

3. It-Tribunal zbalja meta qis li t-tqassim, disinn u numru ta' djar, billi mhux specifikat fil-policy NWML4, jaghti diskrezzjoni f'idejn l-Awtorita kemm jippermetti fondi fuq is-sit. Apparti l-fatt li hu biss f'numru zghir ta' siti li pjan lokali jiddetermina a priori in-numru ta' djar li jistghu jinbnew, qed jigi sottomess mill-appellanti illi sakemm l-izviluppaturi jottemperaw ruhhom mal-gholi stabbilit, ir-rekwiziti tad-DC 2005 u l-kondizzjonijiet stabbiliti mill-pjan lokali, l-izviluppatur ghandu jkun liberu li jaghzel kemm units jibni iktar u iktar meta madwar is-sit hemm densita kbira ta' bini. It-Tribunal ma spjegax ghaliex l-izvilupp kellu jigi limitat ghall-erbat idjar. L-istess NWML3 para 17.1.14 kif gia inghad jistabilixxi l-principju li s-sit in kwistjoni kien tajjeb biex fih jakkomoda talbiet ghal binjiet b'zieda fid-densita. It-Tribunal ma spjegax ghaliex din il-policy kellha tigi rimpjazzata b'diskrezzjoni ai termini tal-artikolu 69(3) tal-Kap. 504.

### **L-ewwel aggravju**

Din il-Qorti ma taqbilx mal-appellanti illi l-membri tat-Tribunal kellhom jirrikuzaw ruhhom. Is-sentenza tal-appell ta' din il-Qorti li annullat id-decizjoni tat-Tribunal tal-4 ta' Novembru 2014 kien limitat biss ghal fatt li wiehed mill-appellanti quddiem it-Tribunal ma giex inkluz fl-okkju tal-istess decizjoni u dan seta' jaghti lok ghal problemi dwar il-validita ta' sentenza ta' din il-Qorti fil-konfront tieghu. Billi din il-Qorti

qieset li ma setghetx tordna korrezzjoni tal-okkju tad-decizjoni tat-Tribunal hi stess, l-unika opzjoni kienet li tannulla d-decizjoni u tibghatha lura lit-Tribunal biex l-izball jigi korrett. Hekk ghamel it-Tribunal u rega' rrepetata l-istess decizjoni. It-Tribunal ma kellux ghalfejn jerga' jqanal il-mertu tal-appell trattat in extenso mill-partijiet u deciz meta l-uniku skop li l-atti regghu gew quddiemu kien biex jikkoregi zball formali procedurali fin-natura ta' lapsus calami. Kienet tkun ingustizzja li fuq formalita zejzed, parti li tilfet, tавvantaggja ruhha u terga' tiftah l-appell quddiem it-Tribunal mill-gdid forsi jkollha decizjoni differenti minn Tribunal diversament kompost. Id-dritt tal-appellant li jappella mid-decizjoni tat-Tribunal baqa' mhux mittiefes u l-istat ta' fatt baqa' dak li kien hemm meta t-Tribunal ta d-decizjoni tieghu fl-4 ta' Novembru 2014. Id-dritt tad-doppio esame qatt ma tnaffar ghax l-appellanti kienu gia ghamlu l-provi u sottomissjonijiet li waslu ghad-decizjoni tal-4 ta' Novembru 2014 ripetuta kwazi verbatim fid-decizjoni tat-30 ta' Marzu 2016 u issa l-appellanti regghu qeghdin fl-istess pozizzjoni li kienu wara l-ewwel decizjoni bla ebda pregudizzju ghalihom. Ara fl-istess sens **Michael Farrugia vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar et**, App Inf 05/11/2015.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

Dan l-aggravju jitratta punt ta' ligi mhux ta' fatt u ghandu jigi kunsidrat. L-appellanti ghamlu l-istess sottomissjoni bhala aggravju principali ghaliex policy NWML4 senjatament para. 17.1.17 kellha tinqara flimkien ma' policy NWML3 para 17.1.4 ghax din fil-fehma taghom kienet taghti dawl fuq l-interpretazzjoni u l-estent tal-izvilupp propost. Dan kien aggravju principali li seta' iddetermina l-ezitu tal-appell u kwindi t-Tribunal kellu jikkunsidrah u jew jaddottah, jew jirrigettah jew jinterpretah fl-isfond ta' kriterji ohra applikabbli ghal kaz. Sfortunatament qari tad-decizjoni imkien ma t-Tribunal dahal f'din il-kwistjoni. It-Tribunal ikkonsidra x'kien jitlob il-policy NWML4 bhala zvilupp permissibli fuq is-sit u mbaghad wara li ra para. 17.1.17 wasal ghal konkluzjoni li darba li ma kienx hemm l-ammont ta' units specifika fil-policy, l-Awtorita setghet tuza d-diskrezzjoni taghha fil-kuntest tal-izvilupp kif elenkat fil-policy u taghmel il-kundizzjonijiet li jdhrilha xierqa ai termini tal-artikolu 69(3) tal-Kap. 504.

It-Tribunal dahal f'dak li jghid il-pjan lokali NWML4 para. 17.1.17 cioe li s-sit immarkat bhala vacant land kellu inizjalment ikun public open space izda l-pjan qatt ma gie implimentat u minflok gie permiss zvilupp fejn parti tibqa' open space u l-bqija tinbena b'mod li ma tippregudikax 'the residential amenity of the neighbourhood of Tal-Qortin'.

Dan l-argument jista' jkun meritevoli ghall-ahhar pero ma jindirizzax l-aggravju tal-appellanti u specifikament jekk il-policy NWML3 li tikkoncerna zona ohra f'Malta pero taghmel referenza ghal vacant land f'Qortin f'para. 17.1.14 u kif din ser taghmel tajjeb ghal domanda ghal akkomodazzjoni, minnhom kwotata, hiex valida ghall-izvilupp propost u jekk fl-affermattiv, timpingix fuq ir-ragunament milhuq mit-Tribunal fuq l-iskorta ta' dak li qalet l-Awtorita rigward l-estent ta' zvilupp fuq is-sit. Il-Qorti tqis li t-Tribunal ma setghax jinjora dan l-aggravju ghax hu l-qalba tal-kwistjoni fil-fehma tal-appellanti u kellu jigi indirizzat u deciz.

Din ma kinitx semplicement interpretazzjoni ta' policy li dwarha l-Qorti ma kinitx tinterferixxi hlief f'cirkostanzi gravi u serji izda l-izvilupp fl-isfond tal-policies kif argumentatat mill-appellanti, u jqis jekk l-argumenti tal-appellanti kellhomx siwi o meno. Is-sottomissjonijiet eruditi tal-Awtorita fuq din il-kwistjoni fir-risposta tal-appell ma tistax tissostitwixxi dan in-nuqqas tat-Tribunal. L-Awtorita fil-fatt fin-nota ta' sottomissjonijiet targumenta illi l-paragrafu 17.1.14 f'policy NWML13 mhix planning policy izda gustifikazzjoni jew spjegazzjoni (ara para. 1.3.1 NWML4) li timponi l-kriterju tal-izvilupp ta' din l-art, id-disinn u tqassim u ghalhekk dan jaqa' fil-poteri diskrezzjonali tal-Awtorita. Ghalkemm hu minnu li ma jitqies bhala nuqqas jekk it-Tribunal ma jikkonsidrax kull argument imressaq mill-appellanti izda lanjanza li hi sostanzjali ghal kwistjoni fil-mertu kif jaraha l-appellanti u kif jaraha b'mod differenti l-Awtorita trid tigi epurata u deciza b'mod li taghti sodisfazzjon lil appellant anki jekk mhux necessarjament qua ezitu pozittiv ghalih.

Ghalhekk l-aggravju qed jigi milqugh fis-sens deciz.

### **It-tielet aggravju**

Dan l-aggravju wkoll hu dwar punt ta' ligi u hu konsegwenzjali ghat-tieni aggravju. Il-Qorti tqis illi l-kwistjoni hi kemm l-izviluppatur ghandu jigi permiss jibni units fuq is-

sit. Din il-Qorti tqis li bhala punt ta' partenza, sakemm il-policy ma tillimitax il-units, allura applikant hu fid-dritt li jitfa' applikazzjoni b'dawk il-units li jidhirlu permissibbli fl-izvilupp tenut kont tal-kondizzjonijiet imposti fil-policy, f'dan il-kaz, iz-zamma ta' open space u gholi determinat tal-units, u z-zona fejn ser isiru l-units. Huma biss ghal ragunijiet ta' natura ta' ippjanar ibbazata fuq konsiderazzjonijiet konvincenti li la darba ma hemmx limitazzjoni fil-policy, l-Awtorita tista' tillimita n-numru ta' units li zviluppatur ikun jixtieq jibni. Tali ragunijiet iridu jkunu attribwiti ghal pjanijiet, ligijiet jew policies li jolqtu b'mod generiku jew specifiku liz-zona u konsiderazzjonijiet ohra teknici jew ambjentali li jistghu jillimitaw in-numru ta' units li ghalihom wiehed jista' jitolb permess. Il-Qorti tifhem u taccetta li l-Awtorita hi munita b'diskrezzjoni f'dan ir-rigward, pero tali diskrezzjoni trid tintuza bil-qies, bil-ghaqal u bilanc bejn id-drittijiet tal-izviluppatur u z-zona fejn qed jintalab tali zvilupp. Ebda diskrezzjoni arbitrarja jew irragonevoli ma ghandha tippermetti trazzin ta' zvilupp. Dak hu l-iskop tar-revizjoni ta' decizjoni tal-Awtorita quddiem it-Tribunal munit bil-membri teknici tieghu li ghandu jivvaluta jekk diskrezzjoni gietx uzata b'mod tajjeb u fl-interess tal-ambjent u zvilupp sostenibbli tenut kont taz-zona u konsiderazzjonijiet ohra ta' natura ta' ippjanar li jqis gustifikat li jittiehdu kont tagghom.

Il-Qorti mhix ticcensura lit-Tribunal a priori ghax qablet li l-izvilupp jigi limitat ghal erba' units kbar u dan tenut kont li s-sit jinsab f'residential priority area u l-paragrafu 17.1.17 hemm indikat illi s-sit kellu jkun communal open space li ma giex implimentat izda floku thalla li jsir zvilupp bil-kondizzjoni li ma jippregudikax 'residential amenity of the neighbourhood of Tal-Qortin'. Pero f'tali decizjoni kellu jittiehed kont ta' dak gia deciz fit-tieni aggravju u jispjega b'mod car ghaliex f'dan il-kaz, jekk iqis li l-policy NWML3 para. 17.1.14 ta' relevanza ghal kaz, l-izvilupp kellu jigi limitat b'dan il-mod tenut kont tal-bini l-iehor fiz-zona u meta l-istess zvilupp propost jobdi l-kondizzjonijiet tal-gholi u li parti mis-sit kellha tibqa' 'open public space'.

Bhala punt ta' principju pero l-Qorti taqbel mal-Awtorita illi l-Awtorita bhala l-gwardjan tal-ippjanar, ghandha certa diskrezzjoni li tiddeciedi fl-isfond tal-policies applikabbli dak it-tip ta' zvilupp l-aktar addatat ghal sit u dment li ma jmurx kontra pjan jew policy specifika dik id-diskrezzjoni ma ghandhiex tigi sindikata jekk mhux f'kazijiet serji ta' abbuz jew malafede jew ingustizzja manifesta.

Ghalhekk dan l-aggravju fit-terminu deciz ukoll qed jigi milqugh.

## **Decide**

Ghal dawn ir-ragunijiet il-Qorti qed tichad l-ewwel aggravju tal-appellanti, u tilqa' t-tieni u t-tielet aggravji in linea u fil-limiti ta' dak deciz, u ghalhekk qed tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016, u tibghat l-atti lit-Tribunal biex l-appell jerga' jigi deciz mill-gdid, bl-ispejjez ghall-Awtorita.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur