



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 161/2012

**Andrew Camilleri**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Andrew Camilleri tas-17 ta' Ottubru 2012 mid-decisjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 limitatament ghar-rifjut tal-applikazzjoni PA 4042/09 in kwantu tikkoncerna biss il-penthouse floor;

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

Rat l-atti kollha u semghet id-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll tal-Ambjent u l-Ippjanar, fid-9 ta' Marzu 2011, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 4042/09 - Liland Buildings, Triq l-Imdina, Attard: Sanctioning of existing basement level -2 alteration to existing level 2 and proposed additional penthouse floor and to sanction signs on facade.

Iz-zewg ragunijiet għar-rifjut kienu s-segwenti:

"1. The proposed additional showroom at penthouse level will result in the intensification of Class 4 retail use within the existing building which is located in an area designated for residential developments and therefore runs counter to Policy CG 07 of the Central Malta Local Plan and to Structure Plan Policy BEN 1 which seeks to safeguard the neighbouring properties and uses.

2. The proposed development is unacceptable since it does not comply with policies 4.13 and 4.15 of the MEPA's Policy and Design Guidance 2007 in that:

- shared driveways/ramps longer than 15 metres, where the ends are not intervisible, or those serving more than 16 parking spaces should be at least 4.1 metres.
- a car lift is not acceptable as a means of access for off-street parking provision in commercial developments which will attract a large number of frequent visitors."

B. In-nota tal-Perit Darren Sciberras għall-Appellant, ipprezentata fit-8 t'April 2011, senjatament il-punti segwenti:

"1. With reference to reason for refusal no. 1 it should be noted that the property in question is located in an area which is predominately made up of commercial premises including showrooms, shops, banks, etc., even though the present Local Plan designates the area for residential use. It is clear and unequivocal to note that when taking into account the present commercial commitment of such location at Mdina Road, the present Local designation for

such area is not reflecting a realist approach as regards to the present property usage especially when considering the fact that such location has always served a commercial purpose. Attention should be also brought to the fact that numerous permits for commercial use of property as well as change of use to commercial have been recently approved in such area, which further emphasizes the present local commercial commitment.

2. a) with reference to reason for refusal no. 2a, it should be noted that the ramp in question has already been approved in PA 2786/00 and PA 2729/03.

b) with reference to reason for refusal no 2b, the car lift in question in the above mentioned commercial development shall not be used for visitors as stated in the reason for refusal. This is due to the fact that it is just the existing basement level -1 that shall be allowed for visitors use (which is not accessible by the car lift) while the basement level -2 which is being sanctioned, shall be used by staff and employees only. Opposite to what has been stated in the reason for reason (2b), such car lift will not attract a large number of frequent visitors since it will be limited to just employees."

In-nota responsiva ta' Jonathan Borg ghall-Awtorita, ipprezentata fl-10 t'Awwissu 2011, inter alia l-punti segwenti:

"5.2.2 Change of use from office to retail at second floor  
The request to sanction the change of use from office to retail at second floor is not objectionable in view that the activity proposed to be sanctioning has the same impact as the approved offices.

5.2.3 Proposed office at penthouse level  
The proposed penthouse level consists of circa 50sq.m of office space and 210sqm of commercial area. The proposal is not acceptable because it will intensify Class 4 and Class 5 uses in an area designated for residential developments. Therefore it runs counter to Structure Plan Policy BEN 1 (which seeks to safeguard the neighbouring

properties and uses) and policy CG 07 of the local plan which regulate the land uses in residential areas.

The appellant is arguing that the area is committed with such uses. The Authority would like to highlight a decision by the Planning Appeals Board which elucidates the need to respect the zonings as designated by the local plan;

Furthermore the appellant is arguing that the designation of the area does not reflect reality. The Authority would like to point out that the Tribunal is not the right forum to discuss the zonings as designated by the local plan. The Planning Appeals Board noted in PAB46/06 (PA 6039/05) that the appellant's claims were based on land use zoning issues. The Board decided that such issues are established in the Local Plan and that they have no jurisdiction over reviewing the Local Plan.

#### 5.2.4 Sanctioning of Existing Basement Level -2

The proposal includes the sanctioning of the existing basement level -2. This basement level consists of 9 car parking spaces and a store. The lower basement level is accessed through a staircase and a car lift which provides vehicular movement from basement level -1 (upper basement) to basement level -1 (lower basement).

The Authority has no objection in principle to sanction the lower basement. However the car lift at this level which is the sole vehicular access mode to the lower basement is objectionable.

The policy that regulates car lifts - policy 4.15 of the DC2007 - states that car lifts should not be utilised in places that attracts a significant amount of visitors. The existing building in this case consists of circa 500sq.m of office/commercial space which is quite significant. It cannot be doubted that such a building complex attracts a considerable amount of visitors.

The explanatory text of this policy explains further why car lifts in such scenarios are not acceptable;

#### 5.2.5 Regarding Reason for Refusal No. 2a

The appellant is arguing that reason for refusal 2a is not valid because the ramp is already covered by the original permits. The Authority recognizes the validity of the appellant's argument in this regard and is thus no longer stressing this reason for refusal."

D. In-nota ta' sottomissionijiet tal-Perit Darren Sciberras ghall-Appellant, ipprezentata fil-31 t'Ottubru 2011, precizament il-punti segwenti:

#### "Reason for refusal 2a

Recognition was given to the validity of my argument on reason for refusal no. 2a whereby I noted that the ramp in question has already been approved in PA 2786/00 and PA 2729/03, and in this regard such reason for refusal was no longer applicable.

#### Reason for refusal 2b

During the processing of our application, the case officer has requested a revision of the car lift dimensions to meet Policy 4.15 of the Policy and Design Guidance 2007. In fact, in his report the case officer never rejected to the introduction of a car lift to serve the lower basement level (which is proposed to be use just by the employees). A proof of this is the fact that, following the revision of the car lift dimensions, the case officer noted that "the dimensions of the car lift have been amended to 2.4 m by 4.8 m. Therefore the proposed car lift is now according to Policy 4.15 of the Policy and Design Guidance 2007"

In principle, such a complex employs a number of employees which, with the proposed development will require additional parking provision for the new employees. It was always my client's intention to having separate visitor's parking from employees parking.

Thus the sanctioning of level -2 was proposed to provide an extra 9 parking spaces which shall be reserved for the parking spaces of employees, which will use the car lift to access the basement and which will be key-controlled.

This will minimize the problem of on street parking for employees, as well as utilising the basement Level -2 which is being sanctioned. It shall also be noted that the proposed car lift is located at the end of the main complex ramp, which makes it simple in terms of accessibility and manoeuvring.

#### Reason for refusal 1

It is significant to point out that the above mentioned refused case PA 5727/05 - PAB 161/07 lies partially in the @urban Conservation area in Attard, and is not located in a stretch of road which his predominantly made up of commercial premises as in the case of PA 4042109.

Mr. Borg's reference about the Local Plan commitment is very much contradictory when it comes to analyse the type of issued permits in areas which are a already committed as commercial. A closer look at such approved permits reveals significant decisions taken by the DCC Boards in areas with existing commercial commitments, in locations like Mdina Road, which is predominantly commercial. Triq Burmarrad, San Pawl il-Bahar, Triq San, Tumas, Tarxien, Wesghat u l-Vittmi tal-Gwerra, Luqa Triq A. Cuschieri, B 'Kara, Triq l-Esperanto clw, Triq Imhallel Debono, Msida Triq L-Imhallel Paolo Debono, Msida etc. At least 12 individual permits were approved in the same stretch of Mdina Road in in the last 8 years, all close to my client's site and all carrying out commercial development or other activities related to such uses, the latest being approved very recently in December 2010 while most of the remaining were approved in the last 2 years. Numerous permits have also been approved in other localities, all related to the above site commitments. Such approved permits will be mentioned and discussed later on this report.

I would also like to draw the attention of the Board about a recent decision on judgement 'Appell Civil Numru 5/2010' which was decided by Judge Raymond C. Pace on case Leonard Cassar vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar. Such decision which comes after the promulgation of the revised planning laws, refers to PA

Kopja Informali ta' Sentenza

1540/06 whereby the applicant requested a change of use from class 5 to class 4. However MEPA ruled out that "The proposed Class 4 shop is not one of the acceptable uses that can be located within a Residential Priority area according to the North Harbour Local plan Policy 02." And his application was eventually refused."

Din in-nota taghmel ukoll riferenza ghal ben tnax il-permess li nhargu ghall-zvilupp allegatament simili ta' dan fiz-zona, kif gej:

PA 2575/09, PA 1551/09, PA 1262/09, PA 926/09, PA 5768/08, PA 1199/08, PA 845/08, PA 6253/07, PA 5859/07, PA 7851/05, PA 4761/05, u PA 478/03.

E. In-nota second statement ta' Jonathan Borg ghall-Awtorita, datata fil-21 ta' Dicembru 2011, inter alia l-punti segwenti:

"a. Re reason for refusal 2b

(i) The appellant continues to justify the car lift by stating that the lower basement will cater only for the employees.

The reason for refusal is likewise self-explanatory: - a car lift is not acceptable as a means of access for off-street parking provision in commercial developments which will attract a large number of frequent visitors.

What the Authority has stated was not that a car-lift will attract more visitors but that car-lifts are not acceptable in developments that attract a lot of visitors. This is obviously different than that implied by the appellant.

(ii) The appellant is arguing that the Authority did not reply to his comment that the car lift will be limited solely to employees. The Authority on the other hand notes that the appellant never addressed the fact that the car-lift as proposed is against policy 4.15 of the DC2007 but simply tries to justify it by stating that it will be limited in use.

Policy 4.15 of the DC2007 does not state that a car-lift will be permissible in large commercial developments if its use is limited to employees. Actually it is very clear; no

car-lifts are acceptable in large commercial establishments - no ifs or buts. Therefore it is superfluous and useless for the appellant by stating the use of the car-lift will be limited. What the appellant should do is demonstrating how his proposal is in line with the policy. If it is not in line with policy then the Authority was correct in refusing the development.

b. Re reason for refusal 1

The appellant is mainly justifying the proposal by making reference to other permits issued in the vicinity and making a case for commitment.

The appellant quoted 12 permits. However the Authority notes that not all permits quoted are relevant or valid.

PA 4761/05 and PA 478/03 have been granted before the coming into force of the local plan.

PA 1262/09 - a request for storage - was granted because it was determined that the proposal would improve the current situation.

PA 1551/09 - a request for vulcaniser - was granted because the vulcaniser already existed on site and there would be no increase of the current impact on the area.

PA 845/08 and PA 5859/07 were granted since the proposed commercial spaces complied with the local shops criteria.

PA 5768/08 regarded the change of use from class 4 to class 6 and thus there was no increase in impact.

On the other hand the Authority recognises that permits PA 1262/09, PA 2575/09, PA 6253/07, and PA 1199/09 (PA 926/09 is for the same site) are for commercial establishments along the same stretch of road. Nevertheless these permits do not negate the fact that the Authority was correct in refusing the current application as the proposed extension exceeds the thresholds established in the local plan policy."



F. In-nota ta' sottomissjonijiet tal-Perit Darren Sciberras ghall-Appellant, ipprezentata fis-6 ta' Frar 2012, inter alia l-punti segwenti:

"Re refusal 1

In part (2b) Mr. Borg acknowledged and recognised 5 permits mentioned by the appellant with similar commercial use to that of the appellant and which were granted in the same stretch of road (Mdina Road). However he added that not all permits were relevant or valid.

The undersigned strongly disagrees with Mr. Borg's statement and subsequently is listing Mr. Borg's comments followed by an additional reply for every stated permit. [...] It is vital to point out that although PA 4761/05 was granted before the coming into force of the local plans, however Mr. Borg failed to mention the fact that during such permit grant, the Temporary Provisions Scheme as well as the Development Control Policy and Design Guidance 2005 did not allow the provision of such proposed development.

The appellant further believes that Mr. Borg's argument is not a valid one especially when considering the fact that, on the same site and since April 2003, the Planning Authority has been granting permits on the same stretch on road in view of the heavy commercial commitment, thus showing that such commitment reason has always been recognized by the Authority. In fact a former application PA 5732/01 which was submitted on the same site was overturned at reconsideration stage (reconsideration submitted on February 27, 2002). The recommended for refusal, however the DCC overturned the decision since the DCC commented that the commercial use for the area is established and the commitment is already heavy. Subsequently, a permit was granted on April 22, 2003.

On the other hand, the appellant would also like to point out that when PA 478/03 was granted, the Central Malta

Local Plan for such zone was Residential Area. [...] In spite of the above reasons pointed out by the case officer in the DPA report, MEPA approved PA 1262/09 which happens to be neighbouring property to the appellant. [...] The appellant obviously recognises the fact that a vulcaniser existed on site, however in the DPA report the reasons for refusal on PA 1551/09 were not contesting the existence of the vulcaniser but the fact that "it would not be in the interests of the amenity of the residential area and also to the fact that 'it runs counter to Policy CG 07 of the Central Malta Local Plan and Structure Plan Policy BEN 1. [...] Mr. Borg repetitively fails to acknowledge the fact that, similar to the above mentioned permits, such application was recommended for refusal by the case officer due to the fact that (quote reason for refusal no. 1.)

The proposed class 6 shop is unacceptable in a Residential area in terms of Policy CG 07 of the Central Malta Local Plan. It would have a deleterious impact on the amenity of the area and of existing adjoining uses by virtue of noise, smells and operating times and therefore runs counter to Structure Plan Policy BEN 1 which seeks to protect the amenity of the existing uses which is very contradictory to what Mr. Borg noted when he said that such permit was granted since there was no increase in impact. May I also remind Mr. Borg that the DCC held on 14th December 2009 approved PA 5768/08 since the stretch of road in question is very heavily committed with commercial uses. Thus, contrary to what Mr. Borg noted, my reference of such permit is fully relevant as a case for commitment. [...] Mr. Borg failed to comment to acknowledge PA 940/08 which although does not lie in Mdina Road, however such permit grant was a determining decision for applications with lower floors which are committed for commercial use and separate access cannot be provided, which is the exact case as the appellant's.

May I also remind the appeals board that for PA 940/08, a meeting was held between the DC unit Manager, Dc/DCC Liason Officer and DCC-B chairperson, whereby it was decided that since the lower floors are committed for

commercial use, and separate access cannot be provided, the DCC wished to consider the proposal favourably.

Re refusal 2b

[...] It is clear and unequivocal to point out that the main scope after Policy 4.15 is to limit excessive and continuous use of car lift, as rightly noted above, which 'would give rise to queuing in those situations where vehicle movements are considerable ...' and in fact the policy quotes the latter as inappropriate.

In addition to the above, the appellant want to further emphasize the fact that, in his report the case officer never rejected the introduction of a car lift to serve the lower basement level. A proof of this was the fact that, following the revision of the car lift dimensions, the case officer noted that the "the dimensions of the car lift have been amended to 2.4m by 4.8m. Therefore the proposed car lift is now according to Policy 4.15 of the Policy and Design Guidance 2007."

G. In-nota third statement ta' Jonathan Borg ghall-Awtorita, ipprezentata wagt is-Seduta numru 14 mizmuma fl-14 ta' Frar 2012, precizament il-punti segwenti:

"[...] the DPAR is not an executive action but a recommendation to the DCC/EPC; the Authority's delegated executive branch. When one needs to compare an application and/or permit, reason stands that it is the decision (and its justification) which needs to be compared.

Therefore the Authority maintains that it is useless for the appellant to quote the reasons for refusal in PA 1262/09 and PA 5768/08, and then state that these are not the same as the justification used by the Authority in its second statement, when the justification used by the Authority is based on the justification used by the DCC in its decision; i.e. the executive action from which one may compare.

Furthermore the Authority has already explained how permits that have been granted before the local plan should not constitute a commitment, even if the TPS at the time precluded commercial activities in the area as it is designated as residential area (and therefore there is no change in the situation). Actually this argument strengthens the Authority's position, in that notwithstanding the past commitments in the area, the local plan still envisaged the area to be residential in nature. This means that the scope of the local plan is that whatever the commercial activities in the area (i) do not constitute the predominant use in the area and (ii) any such uses are not to proliferate and (iii) thus type of activity is to be naturally phased out from the area by promoting other uses and activities.

The Authority would like to highlight a number of decisions by the Planning Appeals Board which elucidates the need to respect the zonings as designated by the local plan; [PA 5727/05 (PAB 161/07), PA 1367/05 (PAB 321/06), and PA 4290/04 (PAB 61/06).]

It is when considering the above arguments, when it transpires clearly that PA 4761/05 and PA 5732/01 are not valid examples of commitment. [...] PA 940/08 was not considered a valid permit (and therefore not commented upon) because a permit granted in a different town which is naturally subject to a different context and scenario obviously cannot constitute a commitment. By its nature, a commitment refers something in the vicinity. How is it ever possible for a particular street in Attard be considered committed to a type of development because of a permit in Burmarrad? It is simply nonsensical.

In regards to the car-lift, policy 4.15 of the DC2007 does not state that a car-lift will be permissible in large commercial developments if its use is limited to employees. Actually it is very clear; no car-lifts are acceptable in large commercial establishments - no ifs or buts. Therefore it is superfluous and useless for the appellant by stating the use of the car-lift will be limited by a key-control system. What the appellant should do is

demonstrating how his proposal is in line with the policy. If it is not in line with policy then the Authority was correct in refusing the development."

H. In-nota fourth statement ta' Jonathan Borg ghall-Awtorita, ipprezentata fil-25 ta' Frar 2012, precizament il-punti segwenti:

"The Authority is presenting this statement in order to clarify the issue of the vulcaniser/tyre service that was permitted in the vicinity of the application being considered in this appeal.

Two permits are relevant in this case, PA 1262/09 and PA 1551/09, which are located adjacent to each other. The site in PA 1551/09 consisted of a store covered by an old permit. The site in PA 1262/09 consisted of a vulcaniser and a large store on three floors at its back. The store in this case was accessed by an open private alley running parallel to the vulcaniser; all covered by old permits.

PA 1262/09 was granted to remove the existing vulcaniser and develop the site for storage purposes. On the other hand PA1551/09 was granted to demolish the existing (and legally established) store to accommodate the vulcaniser that has been removed from the adjacent site by way of PA 1262/09 and to construct residential apartments above it.

As already explained above, the site in PA 1262/09 was already legally committed with storage space. This storage area was only slightly increased in PA 1262/09 since this permit included the partial removal of existing storage at the back of the ground floor to make space for loading/unloading and the parking of vehicles. Also it included the removal of the storage at first floor in order to create a double height ground floor. The storage lost in this new configuration was compensated for by new storage located to the front of the site.

The high garage door pointed out by the appellant refers to the new access that has been created instead of the

existing old open private alley. In a sense, the situation has been ameliorated since the new access is now limited in terms of height whilst before it was not given that it was an open alley.

These two permits have not in reality granted anything new that was not present before. Rather they consisted of the demolition of two adjacent old buildings which were in danger of collapsing and rationalised the existing space. It is important to note that the existing Class 11 activities (vulcaniser + stores) were only slightly increased in terms of area and no further commercial activities were permitted on site. In fact, the new floors that were created in PA 1551/09 were granted for residential apartments."

Ikkunsidra ulterjonnet:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex gewwa font kummercjali f'H'Attard; jigi ssanat t-tieni sottinterrat li nbena nterament minghajr permess (u li prezentement jintuza ghal-parkegg ta' vetturi); sabiex isiru xi modifiki fit-tieni sular b' dana li jkun jista' jingaliblu l-uzu minn ufficini ghal spazju kummercjali; u biex jinbena s-sular tal-penthouse ghall-uzu ta' ufficini u jsir spazju kummercjali ulterjuri.

Precedentement kienu nhargu zewg pennessi fuq is-sit; l-ewwel wiehed (PA 2786/00) kien jirrigwarda s-sostituzzjoni ta' bini b' showrooms, ufficini u basement garage; imbaghad inhareg penness iehor (PA 2729/03) sabiex ikunu jistghu isiru xi tibdiliet fis-sulari kollha, nkluzi modifiki mal-faccata.

Ir-raguni ghar-rifjut huma bbazat fuq il-fatt li t-talba ghal class 4 retail use fil-livell tal-penthouse ser tirrizulta f'intensifikazzjoni ulterjuri tal-izvilupp, u ghalhekk hi in kontravvenzjoni tal-policies BEN 1 u CG 07 tal-Pjan ta' Struttura u tal-Pjan Lokali rispettivament. In oltre, il-car lift kif propost imur kontra l-policies 4.13 u 4.15 tal-Policy and Design Guidance, kemm mill-aspett ta' rampa kif ukoll bhala access mit-triq.

L-aggravji tal-Appellant jistrieħu fuq il-premessa li anke jekk il-Pjan Lokali jindika l-arja bhala wahda residenzjali, iz-zona hi wahda li ghandha uzu predominantement kummercjali (cjoe, l-Awtorita harget hafna permessi għal hwienet, showrooms, banek, etc.) u allura jezisti tip ta' commitment partikolari li kellu jigi kkunsidrat meta l-Awtorita hadet id-decizjoni tagħha. Jispjega li minn dejjem kien hemm attivita ta' natura kummercjali f'din it-triq u li l-Awtorita kemm il-darba approvat permessi għal change of use għal uzu kummercjali.

Fir-rigward tar-ramp a u l-car lift, l-Appellant jissottometti li r-rampa hi diga koperta b' zewg permessi (PA 2786/00 u PA 2729/03), u li l-car lift ser jintuza esklussivament mill-impjegati tal-istabbiliment - u mhux mill-klijenti. Jargumenta li galadarba t-tieni basement (li ged jigi ttentat is-samar tiegħu) jibda jintuza bhala parkegg għall-impjegati, la ser ikun ta' nkonvenjent jew perikolu għal-klijenti (ghax in ogni caso mhux ser ikunu jistgħu juzawh); u kemm il-darba l-impjegati juzaw dan it-tieni basement, ikun ged jigi liberat spazju għall-parkegg addizzjonali fil-garaxx li diga hu kopert bil-permess. B'hekk, ser jittnehhew aktar karozzi mit-triq u l-klijenti tal-istabbiliment ser ikollhom aktar spazju fejn jipparkjaw.

L-Awtorita ma ssibx oggezzjoni li t-tieni sular jinqaliblu l-uzu minn ufficju għal retail outlet - ghax it-tnejn li huma għandhom previst l-istess tip ta' mpatt fuq iz-zona - izda ssib oggezzjoni għat-talba ta' 50 u 210 metri kwadri rispettivament ta' ufficini u commercial area fil-livell tal-penthouse. In oltre, fir-rigward ta' l-argument tal-uzi kummercjali li prezentement hemm fiz-zona (kif allegat mill-Appellant), l-Awtorita tirribatti li l-Pjan Lokali hu dak li hu, u li dan it-Tribunal m'għandux is-seta' jibdel il-Pjan Lokali - u di konsegwenza m'għandux jikkonsidra talba li tikser tali Pjan.

Għar-rigward tat-tieni raguni għar-rifjut, l-Awtorita irtirat l-eccezzjoni fuq r-rampa u ddikjarat li ma ssibx oggezzjoni li jigi ssanat dan l-ispażju li nbena mingħajr permess. Madankollu toggezzjona għal-fatt li l-car lift ser ikun l-unika tip ta' access veikolari għal dan il-livell. L-Awtorita

targumenta li l-access ghas-second basement, ghandu jibqa' minn tarag izda u li l-car lift m'ghandux jigi permess f'bini li jattira hafna klijenti jew visitaturi.

Il-policy 4.15 tal-Policy and Design Guidance titratta car lifts gewwa zvilupp ta' qisien kunsiderevoli u li jattira hafna visitaturi, kif fuq kollox diga gie suespost u argumentat mill-partijiet. Qabel xejn pero, tajjeb li jigi nutat li l-partijiet ta' din il-policy rilevanti ghal-kaz in ezami huma s-segwenti:

"they are inappropriate where the off-street parking area is to serve large number of visitors, as customers of shops or callers to offices.

[...] They may also be acceptable in those office uses where there would be no or few visitors, and use of the lift can be controlled. [...]"

Bl-istess argumenti mressqa mill-Awtorita, il-font in ezami diga jattira numru (stabbilit) ta' klijenti. Huwa pacifiku wkoll li l-Awtorita ma ssibx oggezzjoni li l-parti tal-bini prezentement koperta bil-permess ghal-ufficini tinqalbilha l-uzu ghal retail space - ghax l-impatt hu pressappoco l-istess. Ghahekk, jekk ghal mument tigi sorvolata t-talba ghal-spazju kummercjali fil-livell tal-penthouse u l-kwistjoni tal-car lift, allura ghandu jirrizulta li kemm il-darba l-intensifikazzjoni tal-operat jibqa' l-istess (cjoen-numru ta' klijenti jibqa' l-istess), ghandu jsegwi li semmai jigi sanat it-tieni basement bhala mahzen u parkegg, m'ghandux jizdied l-impatt addizzjonali fuq din iz-zona ghax il-qisien tal-commercial area baqghet l-istess.

In oltre, it-talba in ezami tispecificali l-parkegg f'dan it-tieni basement ser jintuza esklussivament mid-dipendenti li jahdmu f'dan il-font kummercjali - talba li tirrizulta gustifikata, anke jekk l-unika access ghall-karozzi ser ikun biss permezz ta' car lift. Tajjeb li jigi nutat ukoll li l-Awtorita' ma kkumentatx fir-rigward tal-possibilita li l-car lift jistax jintuza wkoll bhala goods lift (din il-parti tal-binja ser tintuza in parte bhala mahzen), u allura jekk tali prassi hix accettabbli (anke minn aspekk ta' safety) jew le.



Madankollu, tenut kont tal-policy SET 1 tal-Pjan ta' Struttura, dan it-Tribunal hu tal-fehma kkunsidrata li kemm il-darba jigi garantit li;

- dan il-lift ser jintuza biss ghal-parkegg tal-karozzi tad-dipendenti ta' l-istabbiliment koncemat, qabel u wara l-hinjiet tal-ftuh (ghall-pubbliku) - u allura li l-visitaturi qatt ma jkollhom access ghalih; u
- tenut kont tal-fatt li l-lift jista' jintuza wkoll bhala goods lift, wara li jigi certifikat u zgurat li kif ged jigu proposti l-means of access ghal dan is-sottinterrat huma skond in-norma u m'humiex ta' perikolu, allura din il-parti tal-proposta timmerita kunsiderazzjoni favorevoli.

Ghal dak li jirrigwarda s-sular addizzjonali, fis-sottomissjonijiet tieghu, l-Appellant iccita ben tnax il-permess li nhargu ghall-zvilupp allegatament simili ta' dan fiz-zona, kif fuq kollox diga' gie rilevati supra. Dawn jinkludu PA 2575/09, PA 1551/09, PA 1262/09, PA 926/09, PA 5768/08, PA 1199/08, PA 845/08, PA 6253/07, PA 5859/07, PA 7851/05, PA 4761/05, u PA 478/03.

- Minn dawn, PA 4761/05 u PA 478/03 inhargu qabel ma dahal fis-sehh il-Pjan Lokali, mentre PA 2575/09 kien ghal-zvilupp f'Haz-Zabbar. Mill-bqijja, PA 7851/05, PA 5859/07 u PA 845/08 kienu talbiet sabiex apparti l-parti kummercjali, jinbnew wkoll sensiela t'appartament sovrastanti.

- PA 1199/08 u PA 926/09 jirrigwardaw zvilupp fuq l-istess font; l-ewwel sabiex jinbena t-tieni sular ta' commercial establishment, imbaghad sabiex jinbena t-tielet sular. Ma jirrizultax li kien hemm xi talba ulterjuri sabiex jinbena wkoll il-livell tal-penthouse - kif qed jintalab fl-appell de quo. Bl-istess mod, PA 1262/09 u PA 1551/09 kienu talbiet li jirrelataw ma' attivita' wahda; l-ewwel, sabiex font adjacenti ma iehor kopert b'permess ghall-attivita' kummercjali, jinqaliblu l-uzu ghall-mahzen, imbaghad sabiex taqa' l-binja originali u tinbena mill-gdid, bl-addizzjoni t'appartament sovrastanti u basement.

- PA 5768/08 kienet talba sabiex jinqaleb uzu kummercjali ghal iehor daqstant kummercjali (minn class 4 ghall class 6), mentri PA 6253/07 kienet talba ghall-bini ta' ufficini.

Dan ifisser li mill-permessi kollha citati mill-appellant, l-ebda wiehed minnhom ma kien jirrigwarda inter alia l-bini tar-raba' sular, cjoe ta' penthouse. Anzi, fil-parti l-kbira tal-kazijiet, kien hemm tahlita ta' zvilupp kummercjali ma' wiehed residenzjali (i.e. appartamenti sovrastanti showrooms, etc.), u kull meta l-font kellu uzu strettament kummercjali, l-attivitá giet limitata ghat-tielet sular (cjoe kif fuq kollox jirrizulta li hemm bhalissa fuq il-font in ezami).

Fic-cirkostanzi jirrizulta, ma jistax isir paragun bejn il-permessi citati mill-Appellant u dak in ezami, u di konsegwenza t-talba ghal sular addizzjonali ma timmeritax kunsiderazzjoni favorevoli.

Ghalhekk, in vista tal-kunsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan it-Tribunal qed jiddisponi minn dan l-appell billi jilqa' l-istess limitatament u jirrevoka ir-rifjut ghall-applikazzjoni PA 4042/09 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-ippjanar, fid-9 ta' Marzu 2011, u jordna lill-Appellant li fi zmien tletin (30) gurnata, jipprezenta pjanti w dokumenti godda (inkluzi clearances mill-awtoritajiet koncernati, safety audit, etc., fir-rigward tal-car lift u l-access ghat-tieni basement) in linja ma' dak li qed jigi deciz supra. L-Awtorita, wara li f'terminu ta' zmien xieraq, tkun ezaminat dawn il-pjanti u method statement, ghandha tibghathom ghall-approvazzjoni finali ta' dan it-Tribunal, b'dana li fi zmien tletin gurnata (30) minn meta tkun ircieviet lura l-pjanti u d-dokumenti kollha, ghandha tohrog lill-Appellant il-permess kif minnu mitlub.

### **Ikkunsidrat**

L-aggravju tal-appellant hu wiehed cioe illi t-Tribunal skarta b'mod superficjali l-kwistjoni tal-'commitment' li hemm fl-inhawi tal-izvilupp li fuqu saret l-applikazzjoni u ma ghamilx ezami serju jekk il-permessi kkwotati kienux

rilevanti ghal kaz u li l-permessi li nghataw jiksru l-principju tal-'ugwaljanza' meta dan il-permess gie michud.

Il-Qorti taghmel distinzjoni bejn kwistjoni li tigi trattata mit-Tribunal u skartata ghal ragunijiet minnha enuncjati u kwistjoni li ma tigix trattata mit-Tribunal ghalkemm imqajma jew li tigi trattata b'mod tant superficiali illi titqies qisha mhix trattata.

Il-kwistjoni tal-'commitment' f'dan il-kaz ma jistax jitqies li ma giex indirizzat mit-Tribunal. Jinghad illi l-atti juru illi kemm l-Awtorita u l-appellant dahlu f'hafna dettall fuq il-permessi li nhargu fl-akkwata tal-izvilupp propost b'botta u risposta ghal kull argument. Jigi precizat illi dan l-appell hu lilimitat biss ghat-tielet sular cioe l-penthouse u l-uzu propost ghalih u fuq dan biss din il-Qorti trid tikkonsidra jekk it-Tribunal ikkonduciex l-indagini tieghu b'mod illi l-kwistjoni tal-'commitment' mqajma mill-appellant giet mistharrga fl-isfond ta' dak eventwalment deciz.

Din il-Qorti ssib diffikulta tirrikoncilja l-konsiderazzjonijiet li ghamel it-Tribunal rigward il-kwistjoni tal-commitment li mill-lat ta' prova ta' fatti teknici mhix tissindaka u tafda fil-poter diskrezzjonali tat-Tribunal li jiddeduci hu r-rilevanza o meno ta' permessi ohra li jigu dibattuti. Pero mill-banda l-ohra ghalkemm il-Qorti fliet id-decizjoni tat-Tribunal, il-Qorti ma setghetx tasal ghal konkluzjoni x'kienet il-konsiderazzjoni principali biex wassal lit-Tribunal biex jichad l-applikazzjoni wara li kkonkluda li l-penthouse proposta ma kinitx simili ghal permessi ohra fl-akkwata cioe bini ta' raba sular. Il-kwistjoni tal-commitment hu fattur rilevanti ai fini tal-artikolu 69(2) tal-Kap. 504 subordinat biss ghal dak li jrid l-artikolu 69(1). Pero t-Tribunal elimina l-kwistjoni ta' zviluppi ohra fl-akkwata minghajr ma ta raguni ghalfejn giet michuda l-binja ta' sular iehor f'zona in parti kummercjali u dan nonostante li saru argumenti fuq din il-kwistjoni mill-Awtorita. Kwindi l-eliminazzjoni ta' kwistjonijiet ta' 'commitment' u 'ugwaljanza' minghajr ma gew abbracjati ma' argumenti legali ghal rifjut ihalli d-decizjoni nieqsa minn dak rikjest ghac-certezza tal-gudikat.

## Kopja Informali ta' Sentenza

F'dan is-sens ghalhekk l-aggravju tal-appellant hu gustifikat mhux ghax ma giex trattat il-kwistjoni tal-commitment izda ghax it-Tribunal naqas fid-decide tieghu jaghti raguni legali ghaliex applikazzjoni ghal sular iehor f'dawk l-inhawi ma setax jigi milqugh.

### **Decide**

Ghalhekk il-Qorti qed tilqa' l-appell ta' Andrew Camilleri fis-sens hawn fuq deliberat u ghalhekk qed tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tas-27 ta' Settembru 2012, u tibghat l-atti lura lit-Tribunal biex jiddeciedi l-appell skond il-ligi. Bl-ispejjez ghall-appellat.

### **< Sentenza Finali >**

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