



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 24/2012

**Joseph Cascun**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2012 kontra d-decizjoni tal-Bord tal-Appell dwar l-Ippjanar tas-16 ta' Marzu 2012 fejn gie approvat il-permess PA 3477/00;

Rat ir-risposta tal-appellat li ssottometta illi d-decizjoni kellha tigi konfermata;

Rat l-atti kollha;

Rat id-decizjoni tal-Bord tal-Appell li tghid hekk:

Ra illi l-aggravji tal-appell huma:

"The proposed development is to sanction the construction of a garage/store for agricultural use. This store is being shared by three farmers (brothers) who together work a total of 87 tumoli of agricultural land. The garage is built from 7 courses to 11 courses above soil level and is surrounded by a number of trees for screening purposes as can be seen on the attached photos A and B.

#### Discussion

The Directorate in its first paragraphs under the heading Discussion started that "... the allowance for agricultural development are limited to only those which are required for genuine agricultural needs ... which is essential to agricultural ... needs."

When one considers the amount of agricultural land (over 87 tumoli), the fact that the income of the three farmers depends on the farming activity and, the intensity by which the farmers work their fields, there will remain no doubt about the genuity of the agricultural need for this store.

To give further information about how important this storage space is for the farmers I am enclosing the following list of equipment and vehicles and giving an indication of size.

Quantity	Equipment/Vehicle	Size
6	Tractors (Massey Ferguson)	12'0" x 6'6"
1	Combine Harvester (volvo)	22'0" x 8'6"
1	Carrier spreader	18'0" x 8'6"
3	Rollers (attached to tractors)	7'0" x 4'0"
3	Blades (attached to tractors)	5'0" x 4'0"
2	Shovels for manure	10'0" x 6'0"

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2	'sikek' (attached to tractor)	6'0" x 4'0"
2	Other tractor equipment	7'0" x 4'0"
1	Round Baler (attached to tractor)	12'0" x 8'6"
4	Balers (attached to tractor)	15'0" x 9'0"

The total area occupied by this equipment and vehicles alone would be approximately 168m<sup>2</sup> and unless the farmers do not pile some equipment on top of each other they will be unable to store everything inside.

Together with the above the farmers have to store the agricultural produce, some of which has to be stored indoors for some months. Such products include onions, garlic and wheat that have to be stored four months, in addition other products and pitkalija boxes have to be - periodically stored depending on season.

I hope that the above information clarifies the farmers' needs for such a store. The recommended 15m<sup>2</sup>, 9 courses high tool-shed would not even fit the combine harvester and therefore it is clear that these farmers require a much larger store."

Ra ir-risposta tal-Awtorita appellata pprezentata waqt is-seduta tal-4 ta' Lulju, 2003 li biha ssottomettiet:

"1. This is an appeal against refusal issued by DCC for the development planning consent to sanction the construction of garage for agriculture use, of approximately 160 sq mts. footprint with an internal height of 13 courses. The main reasons for refusal are based on the notion that the proposed building is not essential to agriculture and thus contrary to Structure Plan policies AHF 5 and SET 12, on the fact that the proposed structure exceeds the allowable dimensions according to the Policy Design Guidance for farm buildings set out in para. 11.4. Moreover the building is located in a Rural Conservation area and thus its construction runs counter to Structure Plan policies RCO 2 and RCO 4.

2. In the reasons for appeal, it is being stated that the garage is related to farming activity of three farmers which together work more than 87 tumoli of land and that the storage space is intended to keep farm equipment and vehicles as well as agriculture produce.

3. The main issue governing this application subject to appeal is whether or not the development seeking permit consent can be considered as an agricultural building, and therefore can be allowed outside the development zone boundary. The Policy and Design Guidance for farmhouses and Agricultural Buildings identifies three farm buildings which are residential farmhouses, buildings for animal breeding and small rooms for storage. The proposal is being described as an agricultural store, but fails to satisfy the design criteria set out in the above mentioned policy.

4. One of the basic requirements to consider the building for agricultural purpose is its need in relation to the agricultural activity and its essential need to be located on the proposed site. In fact the basic assumption in allowing small agricultural stores in the countryside is the fact that these are specifically required to be located in the close proximity of the farm holdings, for the storage of pesticides, small tools, and for the general needs related with the day-to-day activity in the fields.

5. The main use of this garage/store subject to this appeal is intended for the parking of large vehicles used in the agricultural industry, as evident from the submitted list and photographs. However, as will be shown below, there is no justification for the garage to be located ODZ but can as well be accommodated within the development zone or within a built-up area.

6. It may be noted that the large tractors and other machinery are not intended for frequent use in the fields but their utility is more seasonal. More importantly however, is that these machinery still need to be transported for long distances from the site subject to appeal since the majority of the fields (65 tumoli) are

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located more than a kilometre distance from the site subject to appeal. It is therefore evident that there is no justification for the garage to be located on this site. The garage is located just opposite the development zone of Burmarrad and its access is from a schemed road.

7. In this regard there is no justification for the need of the garage/store to be located outside the development zone boundary, while from a planning point of view, the need for garages to keep such large machinery can be still be located within the development zone or in areas where their impact can be better mitigated."

Ra d-digriet tal-21 ta' Marzu, 2007 li bih l-appell gie differit ghal decizjoni

Ra l-atti tal-appell kifukoll-inkartament ta' l-applikazzjoni.

Ra l-verbali tal-partijiet tas-seduti tas-26 ta' Jannar, 2007 u tal-21 ta' Marzu, 2007;

Ikkunsidra:

Illi l-kwistjoni waqt li kien qed jinstema' l-appell irriduciet ruhha ghall-kwistjoni li l-appellant u hutu Philip u Felix Cascun, li jahdmu l-art fejn qed jintalab l-izvilupp, ma juzawx il-htiega ghal store agrikolu li l-appellant qed jaghmel riferenza ghaliha hu fil-kuntest tal-proposta odjema tieghu f'applikazzjonijiet ohra f'isimhom biex jibbenefikaw minnha huma ukoll. Hi l-partijiet qablu dwar dan.

Illi peress illi Philip u Felic Cascun m'humiex parti f'dan l-appell u hadd ma talab li jidhlu parti fill dan il-Bord ma jistax jaghmel kundizzjoni fil-permess sabiex dawn, biex jottjenu permess smili ghal dak de quo, jigu prekluzi milli jaghmlu riferenza ghall-kobor tal-art li huma qed jahdmu, art li ggustifikat l-ghoti tal-permess de quo. Minflok dan il-Bord qieghed jidderiegi lill-Kummissjoni tal-Ambjent u l-lppjanar sabiex jekk ikun hemm talba simili ghall-applikazzjoni maghmula mill-appellant jew minn hutu

Philip u Felic Cascun, huwa ghandu jikkunsidra tali applikazzjoni fid-dawl ta' dak li nghad qabel.

Ghaldaqstant, dan il-Bord jilqa' l-appell, jirrevoka d-decizjoni u jordna lis-Segretarja tal-Kummissjoni tal-Ambjent u l-Ippjanar tohrog il-permess mitlub mill-appellant skond l-Applikazzjoni u l-pjanti 1A, 1B, 1C u 1d, bis-soliti kundizzjonijiet applikabbli ghal applikazzjonijiet simili.

### **Ikkunsidrat**

L-aggravji tal-Awtorita huma s-segwenti:

1. Il-Bord naqas li jikkonsidra l-aggravji tal-Awtorita ibbazati fuq structure plans u policies specifici msemmija minnha fl-appell quddiem il-Bord;
2. Il-Bord ghamel zball ta' ligi meta injora u naqas li josserva policies vigenti kif irid l-artikolu 69 tal-Kap. 504.

### **L-ewwel aggravju**

Hu pacifiku fil-gurisprudenza tal-Qorti illi decizjoni trid tkun motivata fejn jittiehdu in konsiderazzjoni l-kwistjoni saljenti u pertinenti ghal kaz in ezami. Dan hu punt ta' ligi appellabbli quddiem il-Qorti tal-Appell. Il-Qorti ssib ta' relevanza partikolari dak li nghad fis-sentenza **Michael Gatt vs L-Awtorita ta' l-Ippjanar** (App Civ 19/11/2011 fejn inghad:

Allura biex issir gustizzja mal-partijiet, dik it-tezi kellha tigi nvestigata sewwa u l-kwistjoni dibattuta bejn il-partijiet kellha tigi epurata u deciza b'motivazzjoni debitament studjata biex taghti sodisfazzjon anke lill-parti telliefa, u mhux tigi dik it-tezi semplicement skartata b'zewg kelmiet. Naturalment il-Qorti tifhem li l-Bord huwa, bhal din il-Qorti, mgħobbi b'numru kbir ta' kawzi li wiehed ikun irid jaqtagħhom fi zmien ragonevoli. Pero', il-process tal-gustizzja huwa fin u delikat, li rament ikollu success meta wiehed jagħzel li jimxi fit-triq il-qasira biex jasal malajr. Min hu mgħobbi bir-responsabilita' tal-gudizzju ma jistax jiehu "short cut" fejn il-gustizzja ma tkunx tippermettilu li jagħmel dan. Diversament l-effett kumulattiv jista' jkun li tintilef il-kredibilita', b'gudikati li ma

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jkunux motivati sewwa u b'hekk issir hsara kbira lill-amministrazzjoni tal-gustizzja.

F'dan il-kaz tqajmu kwistjonijiet mill-Awtorita mhux semplicement ta' fatt jew ta' nuqqas ta' relevanza ghal fattispecie tal-kaz izda kwistjonijiet dwar dak li kellu jigi applikat skond il-ligijiet u policies vigenti ghal kaz in ezami. Il-Bord qisu lanqas ra dawn l-aggravji. Il-Bord lanqas biss jiggustifika ghalfejn il-permess kellu jinhareg. Din il-Qorti taghmilha cara li hi ma tindahalx b'mod legger fl-operat tal-Bord tal-Appell pero hu fl-interess tal-gustizzja li din tidher li qed issir u din issir meta l-Bord jiggustifika b'mod legali u coerenti d-decizjoni tieghu billi fost affarijiet ohra jirreferi ghal dak li hu l-bazi fattwali u legali li waslitu biex jilqa' jew jichad applikazzjoni.

Sfortunatament din id-decizjoni hi nieqsa minn kull fonti ta' informazzjoni fattwali u legali biex il-Bord wasal ghad-decizjoni tieghu, li jrendiha nulla.

Il-Qorti ma ghandhiex ghalfejn tidhol fit-tieni aggravju billi l-ewwel wiehed kien gustifikat.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi thassar u tannulla d-decizjoni tal-Bord tal-Appell dwar l-Ippjanar tas-16 ta' Marzu 2012 rigward l-applikazzjoni numru 3477/00 u tibghatha lura quddiem it-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar biex tigi deciza skond il-ligi. Bl-ispejjez kontra l-appellat.

**< Sentenza Finali >**

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