



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 145/2012

Gerald Cassar

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Gerald Cassar tal-11 ta' Ottubru 2012 kontra r-rifjut tal-applikazzjoni PA 0917/10 Renewal of PA 3279/04 deciz mit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar fis-27 ta' Settembru 2012;

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;

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Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

B'applikazzjoni tat-8 ta' Marzu 2010 - Sch'd prop. (LB)/Conservation area consent – PA/0917/10 fejn l-appellant, f'Site at St. George's Road c/w, St. George's Junction, Qormi, talab:

"Renewal of PA 3279/04. (Demolition of existing building and re-construct of ground floor garages and overlying residential unit.)."

Illi l-Awtorita cahdet it-talba ghall-hrug tal-permess relattiv ghar-raguni segwenti:

"1. Proposal conflicts with Central Malta Local Plan policy CG06 Building Height Limitations and Qormi Building Height Limitations Map Q0M3."

Illi l-Perit Samuel Formosa pprezenta l-aggravji tal-appellant inter alia kif gej:

"1. Existing building height to date:

The existing building is already 3 floors high on both sides of the streets in question. The approved permit - PA 3279/04 was granted with the proposed corner development being receded on one side of the two streets only. Consequently, if my client had to retain the existing building with its present height, its massing would have a greater impact upon the existing streetscape rather than that of the approved development. In fact, the approved permit shall extend the existing building at second floor level solely by the addition of a single room overlooking St George's street.

A glance at the existing streetscape confirms that the proposed development shall practically not exceed the existing height of the adjacent properties and thus shall NOT disrupt the street skyline. Moreover, the approved receded floor itself is proposed to be constructed in masonry and includes a cornice to enhance the

surrounding built environment by creating a side elevation - a consideration / request which was given significant attention by the previous DCC Board in the granting of the previous application - PA 3279/04.

2. DCC Board suggestion:

Following a DCC Board sitting suggestion, the applicant was requested to amend the plans accordingly as per communication. This request was submitted and the proposed plans conform with the verbal discussions and communications instructed during this DCC meeting. This request involved retaining the facade of the existing premises which my client accepted, and proposed instead a new development on two floors and an overlying recessed floor within practically the same building envelope as that existing to date. Thus, the genre of the previously approved development was being retained with the latest submitted proposed plans. One must point out again to the Appeals Tribunal that the previous permit included three floors (with the topmost floor being recessed from one side only), whilst the recent submissions involves 2 floors and a recessed floor.

Moreover, the DCC Board's communication, had requested the applicant to retain the facade as well as to quote the PA number of another application which had been approved by the same DCC Board which had been approved on similar planning grounds and reasons, which I happened to be an architect of in this similar application, the existing facade was also being retained (PA 2059/05), with the DCC Board eventually approving the demolition of the existing premises whilst retaining the facade, notwithstanding the fact that the proposed development was two storeys higher than the approved local plan (decision date 30/05/08), in view of the existing commitment on site to date."

Illi permezz ta' rapport l-Awtorita ressqet il-kummenti taghha inter alia kif gej:

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"5.1.3 Reference is made to the assessment as carried out in the DPAR and which included:

Local Plans Interpretation Document

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

In this case, as per photos submitted by the architect no works appear to have been carried out on site, therefore the provisions of the Local Plan should prevail.

Retail unit

Policy CG07 Residential Areas within the approved South Malta Local Plan allows for Class 4 shops of any types, subject to this not exceeding 50m' in floor area. In this regard, the proposed retail outlet at ground floor level, which has a floor area of approximately 12m², is considered to be in line with Local Plan policy CG07 Residential Areas and therefore acceptable.

Height limitation

The site falls within an area where a building height limitation of two floors as per Qormi Building Height Limitations Map Q0M3 within the approved local plan is applicable. In this regard, the proposal is in conflict with such limitation and therefore the request for renewal cannot be considered as acceptable.

5.14 As regards to the arguments of the appeal itself, the Authority disagrees with appellant's statement on various accounts and will be explained below.

5.1.5 Reference is made to latest plans Red 30A which was submitted by applicant after meeting of DCC on 7.7.10 in which the Board stated:

DCC Meeting no. 5002210 held on 7th July, 2010
To architect: As is, the application cannot be viewed favourably You may wish to address the issue accordingly

Subsequent meeting as held on 6.10.10 the Board asked the Directorate to comment on this now amended proposal.

The Directorate commented in NTC 34 where it reiterated that since the area is a UCA area with a height limitation of 2 floors and latest proposal is still proposing rooms on both facade at 2nd floor level, the Directorate cannot recommend a positive recommendation.

Another meeting of the DCC as held on 10.11.10 concluded that:

To architect without prejudice: The proposal as is differs from the existing situation. Notwithstanding you are to comply with local plan policy

To case officer: Please attach any files as requested by architect.

The Directorate updated DPAR through NTC 3.5 but retained its original objections.

Last meeting of the now EPC as held on 2.2.11 voted Refusal 5-0

5.1.6 As regard to the merits themselves, while this application under appeal was submitted just prior to the expiry of Permit PA 3279/04, in view that NO demolition or any other works had been carried out on site, the renewal

application has thus to also be assessed vis-a-vis the provisions of the Local Plan which has designated this area as UCA with a maximum height of 2 floors.

5.1.7 Latest plan Red 30A is proposing to demolish all of the internal structures as well as the corner facade. Furthermore, part of the facade at both the 1st floor and the 2nd floor is being proposed and which would result in a 3 storey building. This is important to note since the latest plans as per Red 30A which actually modified the plans as approved in PA 3279/04 in order to address the Local Plan constraints and hence, these latest plans HAS to be assessed vis-a-vis the Local Plan and one cannot continue to argue that this is a Renewal Application and so, the development already permitted should be renewed. In fact, since the Board had acceded to proposing and accepting latest plans so as 'to address Local Plan' (Red 30A) then, this plan has to be assessed vis-a-vis the Local Plan.

5.1.8 In this respect, latest plan Red 30A does in fact propose rooms (abutting the facade) at 20d floor level on both elevations (site is a corner plot) whilst the official height limitation of this area is UCA - 2 floors.

5.1.9 As regards to the cited permit PA 2059/05 (file attached) the Authority has noted this permit and stated that its merit are not identical to the case under appeal since the whole facade of the cited permit is fully retained and the permit also includes a condition that the existing facade is to be fully safeguarded. In the case under appeal, the previous permit had granted total demolition of the facade whilst the latest plans Red 30A propose a new facade in the corner part on both streets as well as a new facade on St George's Road which extends to both the first floor and the secondfloor.

5.1.10 Additionally and without prejudice to the above, reference is made to Act 10 of 2010 and in particular to Section 69(2) i proviso and which now states that existing commitments regarding height and number of floors cannot be anymore cited to justify a departure from the

present approved plans and policies, such as those of the Local Plan height limitations."

Illi l-Perit Formosa ressaq il-kummenti tieghu inter alia kif gej:

"Primarily it should be pointed out that notwithstanding the fact that this application is titled as 'Renewal of permit 3279/04' it may not be termed as such and the title may be misleading due to the manner in which events progressed. It must be submitted at this stage that the applicant was called upon to submit fresh plans by the DCC Board whereby the original facade is retained. Applicant was guided by the previous board prior to MEPA restructuring that the development should be amended accordingly in order to be considered favourably by the EPC Board. Thus in view of the fact that a substantial part of the facade is being retained, an assessment of this present appeal in line with Local Plans interpretation document would be fallacious and seriously prejudicial to my client, particularly when the plans submitted recently should satisfy the policy guidelines and thus should be considered favourably.

1. Existing building height to date:

As explained before in the previous submissions, the existing corner building is already 3 floors high on both sides of the streets. Consequently the proposed latest plans submitted during the processing of the application incorporate a development which is 2 floors high and includes a recessed floor. Moreover, this request involves the retaining of the facade of the existing premises, whilst the overlying proposed recessed floor covers practically the same building envelope as the existing building. Furthermore, one must point out again to the Appeals Tribunal that the previous permit included three floors (with the topmost floor being recessed from one side only), whilst the last proposal involves 2 floors and an overlying recessed floor. Although it is a truism that the local plan has zoned this area for 2 floors, however, one must consider the height of the actual building itself -

particularly when the facade is being retained. Thus the actual height of the existing building shall not be demolished but shall be retained instead.

In fact, the approved permit - PA 3279 104 was granted by the DCC Board and considered that a corner development of two floors and an overlying receded floor from one side of the two streets was considered acceptable in view of the existing commitment within the building itself.

2. Exiting Streetscape:

Moreover, a glance at the existing streetscape confirms that the proposed development shall practically not exceed the existing height of the adjacent properties and thus shall NOT disrupt the street skyline. Moreover, the approved receded floor itself as well as the application in question has been proposed to be constructed in masonry and includes a cornice to enhance the surrounding built environment by creating a side elevation - a consideration 1 request which was given significant attention by the previous DCC Board in the granting of the previous application - PA 32791 04. (during the DCC Board deliberation)

3. Similar permit:

The DCC Board had suggested to the applicant to retain the facade in order to maintain the existing building height on site - as well as to quote the PA number of another application which had been approved by the same DCC Board which had been approved on similar *raison d'etre*. In this application, which was similar in principle, the existing facade was retained (PA 2059/05), with the DCC Board eventually approving the demolition of the existing premises whilst retaining the facade, and approved a development which was substantially higher (two storeys and a roof structure) than the approved local plan (decision date 30105/08), in view of the commitment and height of the existing building prior to the application."

Illi permezz tat-Tieni statement taghha l-Awtorita wiegbet inter alia kif gej:

"The Authority disagrees that the latest plan as submitted by architect following DCC suggestion to address reasons for refusal are in line with the height limitation of this area (and this without prejudice to the fact that this is a renewal application where no fresh plans could be accepted as will be discussed further on).

[...]

It is also important to state that the last decision as taken by the EPC was correct in that the only official proposal as officially published and stated in the refusal notice states that:

Renewal of PA 3279/04. [Demolition of existing building and re-construct of groundfloor garages and overlying residential unit.]

Hence, while the DCC might have suggested to architect to submit fresh plans to address reasons for refusal (ie proposed height exceeds the 2 floors as permitted), no formal vote had been taken and hence one cannot state that the proposal was officially changed from one of 'Renewal' to one of a normal application in which one can 'discuss' or 'negotiate' an acceptable solution so that a permit could be issued. In fact, subsequent to latest plans Red 30, case was discussed by the DCC on 6.10.10 where the Directorate was asked to comment on these fresh plans. DCC met again on 10.11.10 where again the DCC commented that the proposed development still is not in line with the Local Plan.

Subsequently, when case was again discussed by the EPC (the DCC had been replaced by the EPC as part of the recent MEPA reform) and clearly stated that in spite that architect had attempted to submit fresh plans to modify the requested development to be in line with the Local Plan (although these fresh plans did not propose

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two floors as per the Local Plan's official height limitation for this area) the EPC clearly stated that:

EPC A held on 02nd February 2011

Refused 5-0

O. N. In view that this is a renewal application the board has considered the approved plans of PA 3279/04 as submitted with this application.

Hence, the Authority reiterates that:

a) Both the already approved elevation and the one shown in latest plans Red 30 all show a development which is more than the now permitted 2 floors as per Local Plan.

b) Being submitted as a Renewal Application and the proposal was never officially changed or a new application form was never submitted, this application remained as a Renewal Application and hence, only the previously approved plans can be considered. This is also objectionable since the development is not one of 2 floors but one of 3 full floors (on St. Georges Road).

Furthermore, as regards to the cited permit 2059/05, the Authority has noted this permit and states that:

The official DCC minutes of the meeting in which the Board granted the requested development states –

DCC 4702207 held on 03 May 07

Upheld since the existing facade height is being retained-
plans at red 86

Proposal Demolition of existing premises retaining facade,
and construct residential units.

Hence, the cited permit did not have identical planning issues to the one under appeal since the 'existing facade height' was retained, this differs from the case under appeal since additions to the existing facade are being proposed in this appeal (in both the previous permit as well as in latest plans Red 30).

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning polices and states that the EPC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Illi permezz ta' nota l-perit Formosa wiegeb inter alia kif gej:

"1. Existing building height:

As explained previously, one must emphasise that the existing building height is already 3 floors high on both sides of the streets in question. The approved permit itself - PA 3279/04 was granted with the proposed comer development being receded on one side of the two streets only. However, following a direction by the DCC Board during reconsideration stage, which was attended by the applicant, myself and a representative from the Planning Directorate amended plans to the proposed development were submitted to Mepa in view of the DCC Board advise to retain the existing building with its present height, and incorporate the proposed development within the exiting building envelope. In fact, the DCC Board had argued that the approved and existing massing would have a greater impact upon the existing streetscape rather than that of the present proposed development. Moreover, the previous DCC Board itself had instructed the case officer to review the submitted plans (ie the plans retaining the existing facades) and requested the case officer to review these plans and update the notes to committee accordingly. Even further, it did not request any change in the proposed development since it considered that this minor change in the application was not a significant material change to the application since the genre of the approved permit and the present plans are practically the same. Unfortunately, the recently appointed EPC Board ignored this direction instructed by the previous DCC Board and refused the application.

One must point out again to the Appeals Tribunal that the previous permit included three floors (with the topmost floor being recessed from one side only), whilst the recent submissions involves 2 floors and a recessed floor which practically covers the same area as the existing structure at roof level albeit for an insignificant extension at roof level (as pointed out clearly in the last communication of the Planning Directorate)

2. Existing streetscape:

A site inspection or glance at the existing streetscape confirms that the proposed development shall not exceed the existing height of the adjacent properties and hence shall NOT disrupt the street skyline. The elevation treatment of the recessed floor (dressed masonry and a cornice) should enhance the surrounding built environment since a side elevation was created to screen the existing adjacent properties - a consideration 1 request which was suggested by the previous DCC Board.

3. Similar application:

As explained in my previous communication, in an identical situation which I happened to be the architect of, a similar application (PA 2059/05) was approved by the DCC Board which was approved in view of the same argument. In this application (PA 2059/05), the existing facade was retained, with the DCC Board approving the demolition of the existing premises whilst retaining the facade, notwithstanding the fact that the proposed development was two storeys higher than the approved local plan (decision date 30/05/08), in view of the existing commitment on site to date. In this particular development, both elevation are being retained except for a small part in the corner which has no architectural importance in order to have access for heavy plant and machinery during the construction of the building. If the Appeal Tribunal considers this retention of the facade fundamental, the applicant is willing to abide with this condition and just allow for a temporary opening in the

elevation to permit the heavy plant to accede to the site during construction works.

4. Serious illness:

Finally, my client would like to explain that the project was not developed within the stipulated time period due to a long standing serious illness of one of the applicants and ensuing family problems which had effected my clients considerably."

Illi permezz tat-Tielet statement taghha l-Awtorita wiegbet inter alia kif gej:

"1.0 COMMENTS ON APPELLANT'S ARGUMENTS

The Authority has noted all the submitted arguments but disagrees with the statements on various accounts and will be explained below.

1.1 The appellant submitted on 10 November 2011 a reply to the Authority second report to the Tribunal. In a DCC meeting no. 7002210 held on 6th October, 2010 (minute 31) the Board requested to defer case in view of fresh plans submitted (minute 30) and requested Directorate to assess fresh submission and to update NTC Although it is not the normal procedure that fresh plans could be accepted at the renewal stage, however fresh drawings were received by architect and without prejudice, the DCC Board referred to Directorate to access (minute 31).

1.2 The Authority may wish to note that from Board minutes it does not indicate that the DCC requested these drawings. Although latest drawings red 30A were accepted by the DCC, these still do not address reason for refusal regarding the height limitation. In this regard the Board suggested applicant to comply with local plan policy (reason for refusal). Thus the Authority does not agree that the Board advise applicant to retain the existing building with its present height, and incorporate the proposed development within the existing building envelope.

1.3 The Authority to note that it is not correct that the EPC Board ignored the direction instructed by the previous DCC Board, but in minute 47, the EPC took the right decision on the proposal/approved plans of the original permit PA 3279/04 as submitted with this application. Since this is a renewal application the EPC Board had to decide only on the previously proposal/approved plans.

1.4 With regards to latest drawings, the official height limitation of this area in UCA is 2 floors. Since this remained as a renewal application, the plans previously approved in the original application were assess and were objectionable since the development on St. Georges Road shown with a height of 3 floors and not 2 floors. The Tribunal may wish to note that the already approved elevation and the latest drawings indicate that the height is more than that designated in the Local Plan. Thus the EPC Board refused the application on these merits.

1.5 With regards to the quoted permit PA 2059/05 Demolition of existing premises retaining facade, and construct residential units (file attached). Permit issued on 27th May 2008 - To note that the facade of this quoted permit is fully retained and a condition has been includes so as safeguarding the existing facade,

The above case was cited in this appeal by appellant to justify the proposed development. However the Tribunal has to note that this permit differs from the case under appeal since additions to the existing facade are being proposed in this appeal. Hence this cited case cannot be cited as having identical planning considerations to the case under appeal.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning polices and states that the EPC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Ikkunsidra ulterjorment:

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Il-mertu ta' dan l-appell jirrigwarda talba ghat-tigdid ta' PA 3279/04 li kien ghat-twaqqieh ta' bini ezistenti u l-izvilupp ta' bini gdid fuq tliet sulari li jinkludi garages u hanut fil-livell tat-triq u residenzi fiz-zewg sulari sovvrastanti.

Skond il-pjan lokali, s-sit mertu ta' dan l-appell jinsab fil-UCA f'St. George 's Road c/w, St. George's Junction, Qormi.

Skond l-Awtorita l-height limitation fl-area hija ta' two floors. Il-bini ezistenti huwa ta' karattru vernaculari u jinsab f' zona li ghandha l-karatteristici ta' UCA.

Din l-applikazzjoni giet rifjutata peress li l-proposta mhijiex konsistenti mas-Central Malta Local Plan, policy CG06 u il-Qormi Building Height Limitations Map Q0M3.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smigh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellant jissottometti li:

- Il-bini ezistenti huwa ta' tlett sulari fuq iz-zewg nahat tat-triq;
- L-izvilupp propost ma jeccedix l-gholi tal-bini adjacenti u ghalhekk m'ghandux ihassar l-istreetscape;
- L-appellant kien gie mitlub mid-DCC biex ibiddel il-pjanti. B' dawn il-pjanti l-appellant ottempora ruhu mas-suggerimenti tad-DCC, fosthom li tinzamm il-faccata tal-binja ezistenti;
- Il-permess li ghalih qed jintalab ir-renewal kien ghal tlett sulari; u
- L-Awtorita harget il-permess PA 2059/05 fejn gie approvat it-twaqqiegh tal-bini ezistenti billi tinzamm il-faccata nonostante li l-izvilupp propost kien zewg sulari gholi minn dak il-permess ai termini tal-pjan lokali in vista tal-commitment fuq is-sit.

L-Awtorita tissottometti li:

- Skond il-Local Plans Interpretation Document, peress li jidher li ma sar ebda xoghol fuq is-sit in ezami, ghandhom japplikaw il-policies vigenti;

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- Ghaldaqstant peress li lahaq dahal fis-sehh il-pjan lokali ghandhom japplikaw il-policies ta' dan il-pjan;
- L-izvilupp imur kontra l-height limitation impost li jidher fil-Qormi Building Height Limitations Map Q0M3 u dan peress li dan huwa ta' two floors f'dan il-kaz;
- Mill-premess ghalhekk jirrizulta li l-proposta tista tigi biss ezaminata fl-ambitu tal-kundizzjonijiet tal-pjan lokali li jimponi limitazzjoni ta' gholi ta' zewg sulari;
- Hemm ukoll il-fatt li l-appellant dahhal pjanti godda met a dan ma jsirx normalment f' applikazzjoni ghal renewal;
- Il-merti tal-permess PA 2059/05 kif citat mill-appellant mhumieq l-istess;
- Permezz tal-Att 10 tal-2010, partikolarment l-artikolu 69(2), commitment ezistenti dwar l-gholi u n-numru ta' sulari ma jistax jigi citat sabiex jigi ggustifikat l-iskartar pjani u policies vigenti fosthom l-limitazzjonijiet tal-pjan lokali.

F'sottomissjoni sussegwenti l-appellant jispjega li peress li iddahhlu pjanti godda fuq talba tad-DCC issa din m'ghandhiex tibqa' tigi meqjusa bhala renewal application. Ghalhekk m'ghandhux jintuza il-Local Plans Interpretation Document f'dan il-kaz. Issa li qed jigi suggerit li tigi preservata kwazi l-faccata kollha u li t-tielet sular huwa issa recessed, m'ghandux ikun hemm problema biex jinhareg il-permess.

Fir-risposta ghal din is-sottomissjoni l-Awtorita tghid li l-pjanti l-godda ma josservawx il-height limitation u ghalhekk mhmiex accettabbli.

L-Awtorita zzid li ma' jirrizultax mir-records tad-DCC li din il-proposta giet mibdula minn renewal ghal applikazzjoni normali. Fi kwalunkwe kaz meta d-DCC ezamina dawn il-pjanti godda xorta ikkummenta li l-pjanti mhux skond il-pjan lokali. Meta imbaghad il-kaz gie quddiem l-EPC dan iddecieda li ghandu jkompli jipprocessa l-kaz skond il-pjanti tal-permess originali u dan peress li l-applikazzjoni kienet ghal renewal.

Il-punti li jridu jigu decizi minn dan it-Tribunal f'dan il-kaz huma:

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- Jekk din l-applikazzjoni ghandhiex titqies bhala renewal application jew applikazzjoni normali;
- Jekk din hija renewal application irrid jigi deciz jekk, meta l-appellant ghamel l-applikazzjoni ghar-renewal, ix-xoghol li kien lahaq sar fuq is-sit kienx tali li ma jaghmiliex possibbli li jsir it-tibdil necessarju biex it-talba tigi konformi mal-policies vigenti; u
- Minn naha l-ohra, jekk din titqies bhala applikazzjoni normali taht liema kriterji ghandha tigi evalwata.

Kif jirrizulta anke mill-isem ta' din l-applikazzjoni mhemmx dubju li din l-applikazzjoni bdiet bhala renewal application ghal permess PA 3279/04. F' xi stadju waqt li kienet qed tinstema quddiem id-DCC gew ipprezentati pjanti godda li hija haga li normalment ma ssirx waqt l-ipprocessar ta' applikazzjoni ghar-renewal u dan ghaliex, by definition, din it-tip ta' applikazzjoni ssir semplicement biex, skond l-artikolu 33(3) tal Kap. 356, permess li jkun skadilu t-terminu (normalment ta' hames snin) irid jiggedded jekk ikun ghadu ma ssarrafx. Huwa car li mhemmx bzonn ta' pjanti godda biex isir dan. Ir-raguni ghaliex f'dan il-kaz xi hadd iddecieda li kien hemm bzonn ta' pjanti godda ma hargitx b'mod car fil-kors tas-smigh ta' dan l-appell u ma tohrogx mill-process. Ghalhekk dan it-Tribunal mhux f'pozizzjoni li jiddetermina ezatt x'gara fuq dan il-punt. Pero li hu zgur hu li meta dahal l-EPC fuq ix-xena, dan, b' mod l-izjed kategoriku iddikjara li la din hija applikazzjoni ghar-renewal ghandhom jigu kkonsidrati l-pjanti originali tal-permess li kien qed jigi imgedded. It-Tribunal jaqbel ma' din il-pozizzjoni ghax hi l-izjed wahda li taghmel sens. Kieku l-appellant ried ibiddel is-sustanza tal-permess originali kien imissu segwa il-procedura normali billi jaghmel applikazzjoni gdida mil-bidu.

Ghalhekk bhala applikazzjoni ta' renewal irid issa jigi kkunsidrat jekk l-applikazzjoni PA 3279/04 kelliex tigi imgedda anke fid-dawl tal-fatt li fil-frattemp dahal fis-sehh il-pjan lokali.

F'dan il-kuntest il-frazi 'is-site hija committed' li tintuza f'kazi ta' renewal tfisser li l-bini propost mill-permess

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originali lahaq fazi li jkun diffiċli li tapplika i-policies vigenti llum u f'dan il-kaz jibqgħu japplikaw il-policies originali.

Jrid jigi pprecizat li l-kelma 'committed' uzata f'dan is-sens ma tfissirx l-istess haga bħal meta tintuza l-istess kelma fis-sens ta' koncentrazzjoni jew propensita' ta' zvilupp f'certa zona li jkun imur kontra l-policies applikabbli f'dik iz-zona.

Għalhekk f'dan il-kuntest il-kelma 'committed' jista jkollha biss l-ewwel tifsira u mhux it-tieni.

Skond il-Local Plans Interpretation Document, meta hemm commitment car fuq is-sit tali li jista jinholoq konflitt bejn il-policies li kienu japplikaw meta hareg il-permess originali u l-policies il-godda allura għandhom japplikaw il-policies li kienu applikabbli fiz-zrniem li hareg il-permess originali u għalhekk għandu jggedded il-permess originali. Fejn l-izvilupp jista jsir skond il-policies il-godda mingħajr il-bzonn li jitregga lura xi parti mill-izvilupp allura għandhom japplikaw is-policies vigenti u għalhekk l-izvilupp għandu jinbidel kif indikat skond dawn il-policies.

L-izvilupp in ezami jikkoncerna it-twaqqieh ta' bini ezistenti u l-bini ta' zvilupp gdid. Skond l-Awtorita kien għadu ma' sar ebda xogħol fuq din il-proposta li kienet koperta bil-permess PA 3279/04 meta skada t-terminu ta' hames snin. Din id-dikjarazzjoni mhix kontestata mill-appellant.

Peress li fil-fratternp lahaq dahal fis-sehh il-pjan lokali li impona height limitation ta' zewg sulari fuq is-sit in ezami, jirrizulta li l-permess PA 3279/04 jikser si-policy CG06 tas-Central Malta Local Plan li tispecifika i-height limitation f' dan il-kas. Peress li m'hemm xejn fis-sit in ezami li jtellef li l-izvilupp isir skond il-policies vigenti, u partikolarment il-policy CG06, jirrizulta li skond il-Local Plans Interpretation Document dan il-permess ma jstax jggedded.

Għalhekk fil-fehma kunsidrata ta' dan it-Tribunal l-Awtorita kienet korretta fl-interpretazzjoni tal-Local Plans Interpretation Document peress li ma kienx hemm commitment fis-sens spjegat hawn fuq.

Ghas-sahha tal-argument, anke kieku kellhom jigu kkonsidrati l-pjanti godda li ssottometta l-appellant, jigifieri kieku l-applikazzjoni kellha tigi ikkunsidrata bhala applikazzjoni normali, xorta hemm il-problema tal-height limitation li ma jidhirx li giet solvuta lanqas meta l-appellant haseb li kien qed jinneozja mad-DCC fuq dan, u dan ghaliex il-proposta l-gdida ukoll kienet tikser il-height limitation.

Kif jirrizulta car mill-premess, il-pozizzjoni tal-Awtorita f'dan il-kaz hija wahda soda u li hija pjenament sostnuta mill-policies vigenti, speċjaliment mill- artikolu 69(2), tal-Att 10 tal-2010. Ikun perikoluz hafna li wiehed jipprova igebbed izjed dawn il-policies ghaliex b'hekk ikun qed jinfetah il-bieb ghal numru kbir ta' talbiet simili li jistghu jwasslu ghad-distruzzjoni totali tal-UCA f'numru ta' villaggi f'dawn il-gzejjer u dan kontra wiehed mill-principji fondmantali tal-iStructure Plan.

L-Awtorita kienet konvincenti fl-ispjegazzjoni li tat ghall-kaz li jsemmi l-appellant (PA 2059/05) bhala ezempji ta' dak li huwa allega li kienu precedenti favur li jinhareg dan il-permess. Anki kieku kien jirrizulta li kien gustifikat li jissemma' xi permess simili ghal din it-talba, dan it-Tribunal ihoss li dan m'ghandux jitqies bhala precedent sufficienti ghas-sempli raguni li fi kwalunkwe kaz l-Awtorita tista' iggib nurnru kbir ta' ezempji ta' applikazzjonijiet biex isir zvilupp simili li gew rifjutati u kull wiehed minn dawn jikkostitwixxi precedent il-kontra.

Jidher car mill-premess li peress li fis-sena 2006 dahal fis-sehh il-pjan lokali u peress li meta saret it-talba ghar-renewal fis-sit in ezami l-izvilupp skond il-permess originali ma kienx lahaq ipprogressa b'mod li kien jikkomprometti li jsiru t-tibdiliet necessarji biex it-talba tkun konformi mal-policy CG06 tal-pjan lokali, dan l-appell ma jistax jigi milqugh.

It- Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA 0917/10 , "Renewal of PA 3279/04. (Demolition of existing building

and re-construct of groundfloor garages and overlying residential unit.). "

Ikkunsidrat

L-appellant ressaq erba' aggravji kontra din id-decizjoni.

1. It-Tribunal applika hazin l-artikolu 33(3) tal-Kap. 356 illum artikolu 69 meta sostna li la darba din kienet 'renewal application' kellhom jigu kunsidrati l-pjanti tal-permess originali li kien qed jigi mgedded u mhux dawk godda. L-artikolu 33 illum artikolu 69 tal-Kap. 504 imkien ma jeskludi li jigu prezentati pjanti godda, pjanti li f'dan il-kaz gew mitluba mill-Awtorita stess, pero l-appellant isostni li l-applikazzjoni ghandha tigi approvata fuq il-pjanti originali tal-permess;

2. It-Tribunal iddecieda hazin meta qal li ghandhom japplikaw il-policies vigenti llum u mhux dawk meta nhareg il-permess ghax kien hemm nuqqas ta' commitment, fis-sens li skond il-Local Plans Interpretation Document ma kienx ghadu nbeda x-xoghol fuq is-sit meta ntalab ir-renewal. L-appellant isostni li t-Tribunal injora li kien hemm tlett sulari ezistenti legalment u mhux tnejn kif iridu l-policies il-godda, u dan l-gholi seta' biss jigi salvagwardat kieku l-bini kien gia twaqqa' li skond l-appellant ma jaghmilx sens;

3. Il-kwistjoni ta' bini ta' tlett sulari ezistenti kellu jittiehed kont ai termini tal-artikolu 69(2) tal-Kap. 504 bhala materja ohra ta' sustanza li kellha titqies mentri t-Tribunal ta biss kont tal-pjanijiet u policies ezistenti skond l-artikolu 69(1) tal-Kap. 504;

4. It-Tribunal applika l-artikolu 69(2) tal-Kap. 504 meta f'dan il-kaz dan l-artikolu ma kienx applikabbli ghax ma jistax jimpingi fuq bini ezistenti li hu gholi minn dak li jinghad fil-pjan lokali.

L-ewwel aggravju

L-appellant isostni illi d-decizjoni tat-Tribunal dwar liema pjanti ghandhom jittiehdu in konsiderazzjoni f'renewal application hi kwistjoni ta' dritt u illi t-Tribunal applika hazin dan l-artikolu meta sostna li huma l-pjanti originali li jridu jittiehdu in konsiderazzjoni u mhux dawk riveduti. Din il-

Kopja Informali ta' Sentenza

Qorti hi tal-fehma illi aktar milli applikazzjoni hazina ta' ligi li hu punt appellabli, din kienet kwistjoni ta' interpretazzjoni ta' artikolu partikolari cioe l-artikolu 33(3) tal-Kap. 356 liema artikolu kien dak vigenti meta saret l-applikazzjoni ghar-renewal.

It-Tribunal ikkonsidra l-fatti li taw lok ghal prezentazzjoni mill-appellant ta' dawn il-pjanti u kkonkluda illi qari tal-ligi u speċjalment tal-kelma 'renewal' kellha titiehed fis-sens logiku taghha cioe t-tigdid ta' dak ezistenti. Altriment bl-introduzzjoni ta' pjanti godda dak li jkun qed jintalab hu approvazzjoni ta' zvilupp gdid u mhux tigdid.

Il-Qorti taghmilha cara illi ma ghandhiex tintrometti ruhha fi kwistjonijiet ta' interpretazzjoni sakemm ma jkunx qed jigi kommess xi ingustizzja manifesta jew zball tant grossolan li fuq u giet deciza l-vertenza. Il-limiti tal-Qorti ghal dritt ta' appell fuq punti ta' ligi determinati hu cirkostritt hafna u ma hemmx lok li dan jitwessa'.

F'dan il-kaz, apparti li l-Qorti tikkondividi l-interpretazzjoni tat-Tribunal dwar il-kwistjoni ta' dak li ghandhom jkun l-parametri ta' renewal application id-decizjoni kontra r-renewal ma ttehdix fuq il-kwistjoni tal-pjanti kemm jekk godda jew dawk ezistenti jew fuq talba ta' min intalbu pjanti godda izda fuq kwistjonijiet ohra u l-kwistjoni tal-pjanti saret referenza ghalihom billi l-partijiet iddibattew il-kwistjoni. Pero t-Tribunal ma skartax l-applikazzjoni minhabba l-pjanti izda biss ikkonsidra l-kwistjoni mill-punt tekniku legali biex jinterpreta t-tifsira tal-kelma 'renewal' fl-ambitu ta' applikazzjoni bhal din il-kwistjoni.

Kwinda l-Qorti tqis li dan mhux aggravju li fuqu l-appellant seta' jappella skond il-ligi.

It-tieni aggravju

Dan l-aggravju jikkoncerna punt ta' ligi. L-appellant isostni li t-Tribunal applika inkorrettament il-policies vigenti illum mentri kellu japplika dawk vigenti meta nhareg il-permess. In oltre applika l-Local Plans Interpretation Document hazin ghax injora l-'commitment' ezistenti ta' tlett sulari fuq

Kopja Informali ta' Sentenza

I-istess sit li bl-approvazzjoni tal-ewwel applikazzjoni baqghet tal-istess gholi kuntrarjament ghal dak li jipprovdu l-policies ezistenti illum.

Il-Qorti tqis illi l-appellant f'dan l-aggravju kkonfonda l-argumenti tat-Tribunal biex wasal ghad-decizjoni tieghu u silet partijiet minnhom minghajr ma rrelathom flimkien.

Jibda biex jinghad illi t-Tribunal ghamilha cara li l-punt kardinali li minnu jinstiltu l-kunsiderazzjonijiet kollha kien jistrieħ fuq jekk f'renewal ghandux jittiehed kont ta' bdil ta' policies. It-Tribunal ikkonsidra l-kwistjoni mill-punto di vista tal-applikazzjoni li saret cioe wahda ta' renewal u f'dan il-kaz ried jikkonsidra jekk ir-renewal setax isir fl-ambitu tal-pjanijiet u policies li kienu jezistu fiz-zmien tar-renewal. F'dan il-kaz hu rrifera ghal Local Plans Interpretation Document li pogga zewg alternattivi li kellu jikkonsidra t-Tribunal cioe jekk il-binja tkunx waslet fi stadju li difficili tapplika l-policies vigenti allura jridu jigu applikati l-policies fi zmien il-permess biex il-progett jigi terminat. Jekk il-binja mhix f'dak l-istadju allura jridu japplikaw il-policies vigenti biex ir-renewal ikun konformi ma' dak provdut. Il-commitment li ghalih hemm referenza mill-partijiet kient qed tirreferi ghal dan l-istat ta' fatt mhux ghal binjiet oħra ezistenti fl-akkwati u lanqas għall-istat originali tal-binja tal-applikant. Dan l-istat fattwali u interpretazzjoni ta' document intiz għall-interpretazzjoni li għandha tinghata tar-'renewal' gew applikati korrettement mit-Tribunal u għalhekk ma jistax jinghad li kien hemm applikazzjoni hazina ta' policy jew pian, jew li applika hazin il-kuncett ta' 'commitment' fl-ambitu ta' renewal notice, liema 'commitment' hu car li jirreferi għal progress ta' zvilupp li jkun sar fuq is-sit. Il-kwistjoni dwar l-istat ta' progress tal-binja meta saret l-applikazzjoni għal renewal hu stat ta' fatt li fuqha ma hemmx dritt ta' appell. Il-Qorti zzid li l-istat fattwali tal-binja kif inhu illum bl-ebda mod ma giet mittiefa bid-decizjoni tat-Tribunal.

Għalhekk anki dan l-aggravju qed jigi michud.

It-tielet u r-raba' aggravji

Il-Qorti tqis illi l-appellant qed juza l-artikolu 69 b'mod kontradittorju billi jsostni li t-Tribunal kellu jqis il-binja ezistenti ta' tlett sulari li tikkostitwixxi commitment fuq is-sit u imbaghad isostni illi t-Tribunal ma setax japplikah ghal kaz in ezami billi hu kien qed jitlob li jirrimpjazza sular b'iehor gia ezistenti u ghalhekk dan l-artikolu ma kienx applikabbli.

It-Tribunal fil-parti decisiva tieghu ikkonkluda illi din ir-renewal application ma setghetx tigi meqjusa mill-ottika tal-permess originali minhabba n-nuqqas ta' zvilupp fi zmien il-hajja tal-permess skond il-Policy Interpretation Document u ghalhekk setghu japplikaw policies vigenti fi zmien meta saret din l-applikazzjoni. It-Tribunal messu waqaf hemm u rrifjuta li jirrinova l-permess originali qua renewal ai termini tal-artikolu 33(3) tal-Kap. 356 b'applikazzjoni tal-interpretazzjoni fid-dokument ta' interpretazzjoni dwar il-Local Plans.

Il-Qorti tqis illi l-osservazzjonijiet rigward l-artikolu 69 b'referenza ghal height limitations jew commitment fit-termini tal-artikolu 69(2) kienu barra minn posthom u huma legalment insostenibbli fl-ambitu ta' din l-applikazzjoni partikolari qua wahda ta' 'renewal' u mhux ta' zvilupp gdid u kwindi dawn iz-zewg aggravji tal-appellant huma gustifikati mhux ghax qed jinghad li ghandu ragun jekk u kif japplika l-artikolu 69 rigward il-height limitations jew commitment fuq is-sit izda ghaliex dan ma kienx l-iskop tal-applikazzjoni sottoezami kif irrileva l-istess Tribunal izda jekk renewal jinghatax jekk kien hemm bdil ta' policies bejn l-approvazzjoni u l-gheluq taz-zmien biex is-sit jigi zviluppat u jekk tali renewal tenut kont tal-istat ta' progress ta' zvilupp kienx ser jimpingi jew le fuq il-policies ezistenti fiz-zmien tar-renewal. Billi sab li dan kien il-kaz it-Tribunal kellu jieqaf hemm u mhux jidhol fi kwistjonijiet ohra li huma aktar mertu ta' applikazzjoni ghal zvilupp gdid.

Ghalhekk dawn l-aggravji qed jigu milqugha.

Decide

Kopja Informali ta' Sentenza

Ghalhekk il-Qorti qed tichad l-ewwel zewg aggravji tal-appellant pero tilqa' t-tielet u r-raba' aggravju tieghu billi ma kienux jiformaw parti mill-mertu li kellu jiddeciedi t-Tribunal. B'danakollu billi l-ewwel zewg aggravji qed jigu michuda, id-decizjoni tar-rifjut hi sostanzjatament korretta u ghalhekk qed tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tas-27 ta' Settembru 2012 dwar ir-rifjut tar-renewal application PA 0917/10 ghal renewal ta' PA 3279/04. L-ispejjez jibqghu bla taxxa fic-cirkostanzi.

< Sentenza Finali >

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