



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 44/2012

**Roderick Cutajar**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Roderick Cutajar tas-16 ta' April 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni ghall-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 fejn giet michuda l-applikazzjoni PA 2761/07 ghal sanzjonar ta' 'extension to approved dwelling and alterations';

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:-

Ir-ragunijiet li ghalihom l-Awtorita irrifjutat l-applikazzjoni PA 5691/06, "To sanction extension to approved dwelling and alterations", fil-5 ta' Dicembru, 2008, wara reconsideration, kienu s-segwenti:

"1. The proposed bedroom extension cannot be sanctioned since it runs counter to policy 6.9 - Garage for Detached and Semi-detached Dwellings of Development Control Policy & Design Guidance 2007 in view that only a garage is permitted in the side curtilage to retain the character of the area developed for detached and semi-detached villas. Moreover the proposal cannot be sanctioned since it does not comply with Policy 3.2 - Detached and Semi-detached Dwellings of the DC07.

2. The proposed bedroom extension is incompatible with the urban design and environmental characteristics of the area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2.

3. The proposed garage has a height of 3.2m above ground level of the building. Thus the proposal is unacceptable since it does not comply with policy 6.9 - Garage for Detached and Semi-detached Dwellings of Development Control Policy & Design Guidance 2007 which permits the construction of a garage not higher than 3.0m above ground level of the building.

4. The proposed stairwell cannot be sanctioned since it runs counter to policy 10.2 - Stairwells and Washrooms on Semi-detached and Detached Dwellings of Development Control Policy & Design Guidance 2007 in view that the stairwell was constructed by less than 1.5m from the side elevation.

5. The proposed terrace overlooking the garage in the side curtilage cannot be sanctioned since it does not comply with policy 6.9 - Garage for Detached and Semi-

detached Dwellings of Development Control Policy & Design Guidance 2007 since there is overlooking between the site in question and the adjoining villas.

6. Part of the wall located in the front garden is higher than 1.4m above pavement level. In view of this, the proposed development is unacceptable since it does not comply with policy 9.3 - Front Garden Boundary Wall of Development Control Policy & Design Guidance 2007."

Fl-appell tieghu, l-appellant, permezz tal-Perit Formosa, jaghti r-ragunijiet tieghu ghal dan l-appell bill jghid:

#### "1. COMMITMENT/STRUCTURES ABOVE GROUND LEVEL:

The site is surrounded with areas zoned for terraced houses and apartments. In fact the local plan has just earmarked the area further down the street and on the other side of the road as an area zoned for apartments. One must bear in mind that a transition zone should be considered between the terraced house zoning and the villa area zoning. Consequently, the infringements created by my client have to be considered in the light of the above and hence could be considered acceptable. Moreover my client is claiming that the locality is committed with similar developments and thus the proposed development should not be considered negatively. Furthermore regards to the structures above garage level, my client is claiming that the area is committed with similar development apart from the terraced houses situated in the vicinity as explained above. Consequently in view of such developments, my client is claiming that the proposed development should not be considered negatively.

#### 2. STAIR WELL:

The stairwell has been recessed by 1.5m as requested by the Planning Directorate. The fresh plans have been submitted in the previous communication dated 7th September 2007."

Fir-risposta ticghu Mario Scicluna, ghall-Awtorita, jaghti r-ragunijiet ghaliex fl-opinjoni ta' l-Awtorita clan l-appell ghandu jigi michud. Is-seguenti huma siltiet minn dan ir-rapport li t-Tribunal jhoss ghandhom jigu ssottolineati:

## "2. SITE DESCRIPTION & SITE HISTORY

PA 1525/05 was approved for the construction of a semi-basement garage with a semi-detached dwelling unit. Minor amendments were approved on 19/10/06 as indicated on approved drawings PA 1525/05/MA/51C/51E.

EC265/07 was submitted to Mr. Roderick Cutajar due to works carried out not in accordance to permit PA 1525/05. These works include:

- extension at first floor level over structure in the side curtilage.
- opening of an access over same structure.
- construction of stairs instead of ramp in the same side curtilage leading to the garage.
- modification in the internal layout of the villa.”

## "5.0 COMMENTS ON APPELLANT'S ARGUMENTS

5.1 The Authority has noted the arguments as brought forward in appellant's request for appeal and shall address these issues hereunder:

5.1.1. In this request for appeal, appellant is stating that the area is surrounded with terraced houses and apartments as can be verified from the approved Local Plan. Furthermore, the area is committed with similar development and the issue of the stairwell has been resolved in the latest plans.

5.1.2. However, the Authority disagrees with this statement on various accounts. The main issues will be detailed hereunder:

5.1.2.1. As regards to the proposed bedroom extension, this cannot be sanctioned since it runs counter to policy

6.9 – Garage for Detached and Semi-detached Dwellings of Development Control Policy & Design Guidance 2007 in view that only a garage is permitted in the side curtilage so as to retain the character of the area which is to be developed for detached and semi-detached villas. Moreover the proposal cannot be sanctioned since it does not comply with Policy 3.2 - Detached and Semi-detached Dwellings of the DC2007.

5.1.2.2. The proposed bedroom extension is incompatible with the urban design and environmental characteristics of the area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2.

5.1.2.3. The proposed garage has an external height of 3.2m above ground level of the building. Thus the proposal is unacceptable since it does not comply with policy 6.9 - Garage for Detached and Semi-detached Dwellings of Development Control Policy & Design Guidance 2007 which permits the construction of a garage not higher than 3.0m above ground level of the building.

5.1.2.4. The proposed stairwell cannot be sanctioned since it runs counter to policy 10.2 - Stairwells and Washrooms on Semi-detached and Detached Dwellings of Development Control Policy & Design Guidance 2007 in view that the stairwell was constructed with a setback of less than 1.5m from the side elevation. The latest plans as submitted are still not showing the necessary 1.5m setback from the side elevations and are thus still unacceptable.

5.1.2.5. The proposed terrace overlooking the garage in the side curtilage cannot be sanctioned since it does not comply with policy 6.9 - Garage for Detached and Semi-detached Dwellings of Development Control Policy & Design Guidance 2007 since there is no appropriate safeguard regarding the issue of overlooking between the site in question and the adjoining villas.

5.1.2.6. Part of the wall located in the front garden (ie in the 3m front garden setback) is higher than 1.4m above pavement level. In view of this, the proposed development is unacceptable since it does not comply with policy 9.3 - Front Garden Boundary Wall of Development Control

Policy & Design Guidance 2007. This is evident in the longitudinal section drawing where the party wall which is part of the ground floor structure protrudes onto the 3m front garden by 0.3m.

5.1.2.7. Additionally, the Authority also states that the approved Central Malta Local Plan, in Map BZM1 clearly shows that the site under appeal falls within an area designated as "Residential Priority Area" and the site is not even located on the fringe of this land use designation since all sites which abut (on both sides) and on the aft side of the site under appeal are designated as a villa area. Additionally, appellant's claim that this site should be treated differently is unfounded and unjustified since it is only lawful for the Authority and the Boards to assess and decide upon approved plans and policies which have undergone the necessary planning process and were eventually legally approved. The term 'transition zone' is not included in any planning policy related to this area and hence, any arbitrary departure from the approved plans and policies could result in a precedence which could lead to further requests which are not in line with the approved plans. This is surely an undesirable situation and not 'good planning practice' which the Authority and the DCC has sustained to date in this request for sanctioning.

5.1.3. The Authority has thus assessed all the arguments brought forward by appellant and concludes that the proposed sanctioning cannot be accepted since:

- only terrace development could be permitted on the garage within the side curtilage and thus the bedroom cannot be sanctioned since it runs counter to Policy 6.9 and 3.2 of the DC2007.
- the bedroom to be sanctioned cannot be accepted since it will visually disturb the character for villa area.
- the height of the garage constructed in the side curtilage is higher than 3.0m and thus proposal runs counter to Policy 6.9 of the DC2007 in terms of garage height.
- the stairwell cannot be sanctioned since it is located by less than 1.5m from the side elevation.
- there is a problem in terms of overlooking in view that the wall of the terrace is less than 7 courses high.

Kopja Informali ta' Sentenza

- parts of the front garden wall is higher than 1.4m above pavement level and thus the proposal runs counter to Policy 9.3 of the DC2007."

Skond il-verbal tas-scduta li saret fil-11 ta' Marzu, 2011 meta sar access fuq is-sit in ezami:

"It-Tribunal ra l-izvilupp in kwistjoni li huwa konsistenti minn zewg vilel semi-detached. Fin-nofs taghhom taht ghandhom zewg garages wiehed kull wiehed u fuq is-site cartilage on the left, jekk thares mill-faccata ma nbena xejn u fis-site cartilage on the right id-dar mertu ta' l-appell minflok garage jidher li hemm karma u karma ohra receded."

Ikkunsidra ulterjorment:

Wara li kkonsidra il-premess u minn ezami tal-pjanti, ritratti u dokumenti li hemm fil-files PAB 305/08 u PA 2761/07, it-Tribunal jikkumenta kif gej:

Il-mertu ta' dan l-Appell jirrigwarda talba ghas-sanzjonar ta' alterations li saru mill-permess approvat PA 1525/05 u li jinkludu tibdil fl-internal layout fil-ground u l-first floor, tibdil fil-layout tas-swimming pool, il-kostruzzjoni ta' bieb u tieqa, zieda fl-gholi tal-garage minn 3.0 metri ghal 3.2 metri, estensjoni ta' bedroom fuq is-saqaf tal-garage li jinsab fis-side curtilidge, estensjoni tal-washroom u t-tromba tat-tarag b'total ta' 22 metri kwadri, u tibdil fil-faccati.

Is-sit huwa kopert b'enforcement notice ECF265/07 minhabba parti mit-tibdiliet li saru mhux skond il-permess PA 1525/05.

L-appellant qed jikkontendi li, kif jidher car mill-pjan lokali, z-zona in ezami hija imdawwra minn terraced housing u appartamenti li ghalhekk il-bini zejjed fil-curtilidge ghandu jigi approval. Apparti minn hekk, l-area madwar is-sit in ezami hija mimlija b'zvilupp irregolari ta' dan it-tip.

Fil-plans u policies tal-Awtorita ma jezistix il-kuncett ta' "transition zone" kif qed jissugerixxi l-appellant. Huwa jghid li dan ghandu japplika fis-sit in ezami u dan, skond l-appellant, peress li s-sit jinsab gewwa zona fejn il-villel qeghdin vicin hafna ta' zvilupp terraced u blokki ta' appartamenti. Fil-fehma kunsidrata ta' dan it-Tribunal, kellu jigi accettat dan il-kuncett jinholoq precedent perikoluz fejn kull minn jidhirlu li jrid ibiddel xi haga fil-villa tieghu billi jmur kontra l-policies li japplikaw illum ghal dawn iz-zoni, jinvoka dan il-kuncett.

Fuq dan l-Awtorita tirrileva li s-Central Malta Local Plan (Map BZM1), juri bic-car li s-sit in ezami jinsab gewwa "Residential Priority Area" u in oltre is-sit mhux kif qed jghid l-appellant, fit-tarf ta' din iz-zona izda fil-qalba peress li s-sit huwa imdawwar bil-villel,

Oltre minn dan l-Awtorita telenka fid-dettal kif din il-proposta tikser numru ta' policies tal-ippjanar billi tirrileva li:

- Il-bedroom extension ma tistax tigi sanzjonata peress li tikser il-policies 3.3 u 6.9 tal-Policy and Design Guidance, 2007, u dan ghaliex garage biss jista' jigi permess fis-side curtilage ta' villa jew semi-detached villa. Izjed minn hekk, skond l-Awtorita, il-bedroom extension hija inkompatibbli mal-ambjent tal-madwar u ghalhekk din tikser u-policy BEN 2 tal-Pjan ta' Struttura.
- L-gholi tal-garage huwa 3.2 metri minflok 3.0 metri kif titlob il-policy 6.9 tal-Policy and Design Guidance 2007.
- It-tarag ma jistax jigi sanzjonat peress li jikser il-policy 6.9 tal-Policy and Design Guidance 2007 u dan peress li dan ihares dirett fuq il-villel adjacenti; u
- Parti mill-hajt tal-front garden huwa oghla minn 1.4 metri u dan bi ksur tal-policy 9.3 tal-Policy and Design Guidance 2007.

Dawn il-kontravvenzjonijiet gew ikkonfermati mil-Tribunal meta ghamel access fuq is-sit in ezami fil-11 ta Marzu 2011.



Hlief għall-kumment li għamel fl-appell tiegħu li l-issue ta' l-istaircase giet rizzata (u anki hawn l-Awtorita ma taqbilx), l-appellant ma għamel ebda kumment fuq dawn il-kontravvenzjonijiet ta' policies, la permezz ta' sottomissjonijiet ulterjuri u lanqas permess ta' interventi waqt is-seduti li nżammu fil-kors ta' smigh ta' dan l-appell.

Dan it-Tribunal għalhekk jikkonkludi li dan l-appell ma jirrizultax fondat u għalhekk ma jimmeritax kunsiderazzjoni favorevoli.

Għalhekk dan it-Tribunal qiegħed jichad dan l-appell u jikkonferriha d-decizjoni tal-Kummissjoni għall-Kummissjoni ta' l-Iżvilupp dwar l-applikazzjoni PA 5691/06, "To sanction extension to approved dwelling and alterations", fil-5 ta' Dicembru 2008, wara reconsideration.

### **Ikkunsidrat**

L-aggravji tal-appellant hu s-segwenti:

1. It-Tribunal naqas li jikkonsidra l-aggravju tal-commitment mqajjem mill-appellant u minflok iddecieda biss fuq dak li jiddisponi l-Plan Lokali.

Il-Qorti tqis li dan l-aggravju ma jimmeritax li jigi akkolt. Fl-ewwel lok ma hu minnu xejn li t-Tribunal ma kkonfidrax l-ilment tal-'commitment'. It-Tribunal ikkonsidra s-sottomissjoni tat-'transition zone' mressqa mill-appellant u ddecieda dwarha, ikkonsidra wkoll il-pozizzjoni ezatta tas-sit li taqa' f'Residential Priority Area skond l-Awtorita. Aktar minn hekk pero ikkonsidra li hemm diversi kontravvenzjonijiet ta' policies kif elenkati mill-istess Tribunal liema kontravvenzjonijiet, ikkonkluda t-Tribunal ma gewx megluba b'sottomissjonijiet tal-appellant li setgħu jikkonvincu lil Bord mod iehor.

Kwindi t-Tribunal, la darba sab li jezistu kontravvenzjonijiet cari ta' policies in vigore applika l-artikolu 69(1) fejn l-istess Tribunal, bħal Awtorita hu obbligat li japplika, avolja fit-tieni subartikolu tal-istess artikolu l-ligi tagħti d-dritt lil Awtorita u kwindi lit-Tribunal bl-

applikazzjoni tal-artikolu 41(13) li jqis kwistjonijiet ohra rilevanti, pero dan subordinat ghal dak li jipprovdi l-ewwel subartikolu fejn il-ligi tpoggi l-obbligu mandatarju li ghandhom jigu applikati l-pjanijiet u l-policies u in linea ma' dawn il-pjanijiet u policies tqis ukoll dak kollu li jista' jkun ta' sustanza inkluz kwistjojnijiet ta' commitment, izda kif taraha din il-Qorti, bl-impostament tal-kliem tal-legislatur, skond ma jiddisponu l-policies u l-pjanijiet li la l-Awtorita u anqas it-Tribunal ma ghandu diskrezzjoni jmur lil hinn minnhom jew addirittura jinjorahom.

F'dan il-kaz it-Tribunal mexa preciz ma' dak li trid il-ligi u kwindi l-aggravju tal-appellant mhux fondat la fil-fatt billi t-Tribunal ikkonsidra l-aggravji tieghu pero aktar fid-dritt billi a prescindere minn kwistjonijiet ohra inkluz ta' allegat 'commitment' it-Tribunal hu marbut bil-ligi li japplika l-policies u pjanijiet. Hekk ghamel u ma rrizulta xejn mill-atti li dawn gew applikat hazin u ghalhekk l-appellant seta' jistrieħ fuq kwistjonijiet ohra biex isahhah l-argumenti tieghu ghal hrug tal-permess ghal sanzjonar.

### **Decide**

Ghalhekk il-Qorti qed tichad l-appell ta' Roderick Cutajar u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012. Bl-ispejjez ghall-appellant.

**< Sentenza Finali >**

-----TMIEM-----