



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 67/2012

Jimmy Vella

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Jimmy Vella tat-18 ta' April 2012 mid-decizjoni tal-Tribunal ta' Revizjoni tal- Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 li rrifjutat l-applikazzjoni ta' zvilupp PA 6370/05;

Rat ir-risposta tal-appell tal-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar li sostna li din id-decizjoni ghandha tibqa' fis-sehh;

Rat l-atti kollha tal-kawza u semghet id-difensuri tal-partijiet.

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

B'applikazzjoni tat-13 ta' Ottubru, 2005 - Full Development Permission - PA/06370/05, l-appellant, f'1, Carmel Street c/w, Triq Hal Far, l/o Birzebuggia talab:

"To carry out internal and external alterations to rehabilitate an existing farmhouse, and construct a pool as per PA 6039/03".

L-applikazzjoni giet michuda permezz ta' rifjut tad-Development Control Commission fis-26 t'Ottubru, 2009, ghar-ragunijiet segwenti:

"1. The existing structure already exceeds the permissible area of 150 sq.m. as laid out in Policy Paper PLP 20 Development Control Guidance for Developments Outside Built-up Areas and hence a further extension is unacceptable. The need for the new development is therefore not justified from a planning point of view and the proposal runs counter to Section 8.2(i) and Section 8.2(iii) of Policy Paper PLP 20, which require a valid planning justification for development and limits the total floorspace of the building, including any proposed extension, to 150 square metres.

2. The proposal runs counter to the adopted policy Development Control Guidance Developments Outside Built up Areas, and in particular to paragraph (s) 8.2(v) & (vi) which state that:

- scale and design of the extensions to the existing building must respect the character of the original building
- scale and massing of the development must be acceptable in the wider landscape setting of the site

The excessive development (including high boundary wall around site), would negatively impinge the building's visual appearance and will consequently affect the scenic-value of the area.

3. Particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure-Plan policy RCO 4 and Marsaxlokk Bay Local Plan policy MS09.

4. The high boundary wall enclosing the site, which is constructed in cladded rubble, had resulted in the demolition of a rubble wall and so proposal runs counter to Legal Notice 160 of 1997 - Rubble Walls and Rural Structures (Conservation and Maintenance) Regulations and, Legal Notice 169 of 2004 - Rubble Walls and Rural Structures, Conservation and Maintenance Regulations (Amendment). Both regulations declare rubble walls and non-habitable structures as protected, in view of their historical and architectural importance, their contribution to the character of rural areas, their affording a habitat for flora and fauna, and their vital importance in the conservation of the soil and of water.

5. The proposal does not comply with sanitary laws and regulations in that the proposed sitting/dining requires a 10 foot yard.

II-Perit Farrugia u l-Avukat Dottor Kenneth Grima ssottomettew kif gej:

"1. This application is for exactly the same works as those permitted by PA 06039/03.

2. It is the applicant's intention to rehabilitate the existing farmhouse, greatly reducing the built up area.

3. The dwelling forms part of a complex of two farmhouses. Policy PLP 20 seeks the conservation of typical rural settlements. Conservation commences with building uses. The proposal involves continuation of use and is therefore in line with conservation policy paper 'Conservation Philosophy and a new approach to Conservation Issues'.

4. Furthermore it may also be note that to date policy papers issued by the MEPA provide a more definite and up to date guidance to planning applications in respect to conversion and/or alterations to rural buildings than the somewhat blanket provision referred to for refusal PLP 20. Local Plans and Farmhouses and Agricultural Building documents, look into the manner how such buildings should be rehabilitated in a manner that such should not fall into abandonment due to the fact that they are not suitable for todays needs as the building lacks the basic amenities.

5. The proposal allows for conservation of all features that are worth retaining.

6. The perimeter wall is of full rubble construction (not in cladded rubble as is stated in the refusal). We wish to explain that the full rubble perimeter wall was developed by the Roads Department with the development of the adjacent roads. At the time land appertaining to the site was taken over by the road and the wall was erected by the road development as a consequence. The main reason for refusal has been based on the wrong assumption that the high rubble wall was illegally developed (of cladded masonry). This wrong statement (despite our many attempts to correct MEPA's position) greatly jeopardised the process of the application.

7. The proposed sitting/dining has a 10 foot yard and therefore reason for refusal number 5 is erroneous.

8. A clear precedent exist in view of PA 06039/03.

Consequently the applicant is appealing against the decision."

L-Awtorita fir-rapport taghha kkummentat kif gej:

"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 this request for development is justified in view that: this application is very similar to PA 6039/03, is in line with Policy PLP 20 and the boundary wall was constructed by the Roads Department and consists of a full rubble dry wall.

5.1.2 However, the Authority disagrees with this justification and states that as regards the boundary wall, reference is made to photo Red 21B in file of the wall as actually built when road was widened (a 4 crs full rubble wall is clearly seen). The actual wall as built as can be seen in photos Red 1 B as submitted with this application and which show that it was actually built in 3 tiers totalling a total height of circa 9 crs.

5.1.2 Furthermore, fresh inspections by the enforcement unit (detailed photos available revealed that the methodology used in the construction of this wall is not in line LN 160/98 and LN 169/04 since it was clearly built in 3 phases, with each phase being topped with cemented concrete which at places has also seeped into the internal areas of the wall. This is objectionable both in principle and the fact that up to 3 concrete toppings were used with the consequence that the wall is clearly visible as 3 independent tiers and not as one homogenous rubble wall. Photos of the wall as existing would be available during the Appeals sitting and in the PA file. This issue is an important issue since the submitted drawings do not identify the methodology used in this wall but request "to sanction existing dry rubble wall". However, in view that no detailed section drawing of the request to sanction the existing wall (with concrete layers) was submitted, the Authority states that the provisions of PA Circular 2/96 apply. This circular states that any illegal development on site has to either be removed from site or requested to be sanctioned (through clear, detailed and factual drawings) prior to any further considerations of any works on a

particular site. In this particular case, in view that a recent site inspection by the enforcement officers revealed the real methodology used in this wall and in view that the request for sanctioning is not clearly indicating a detailed sanctioning section drawing, no further considerations could be considered, unless this wall is either dismantled or applied for sanctioning through a separate application.

5.1.4 As regards to reference to PA 6039/03, it is to be noted that a permit was never issued since the requested payment of a bank guarantee was not paid and the case was dismissed. Hence, one can only cite legitimate permits (fully issued) and these have had to be issued in identical planning circumstances to the one under consideration. The cited application was recommended for refusal by the Directorate but was initially overturned by the DCC in meeting held on 26th July 2004. This shows that the DCC intended to grant a permit, its final decision as taken on 25th February 2005 was that of a Dismissal.

5.1.5 In this appeal, it was emphasised that the requested development is still in line with the applicable Policy PLP 20 since the extension requested at ground floor level is not so extensive. However, the pre-1967 structure had an area of approximately 220 m², and therefore already exceeds the permissible area stipulated by policy PLP 20. Hence a further extension of 40 m² is not deemed acceptable as per section 8.2(iii) of this policy paper. The need for the new development is therefore not justified from a planning point of view and the proposal runs counter to Section 8.2(i) of Policy Paper PLP 20, which require a valid planning justification for development outside the development zone.

5.1.6 The scenic value of Rural Hinterland which is recognized as an important resource and, as such, only appropriate interventions are permissible, as per Structure Plan policy AHF 5. Through the proposed excessive development (which includes the high boundary around the site's perimeter), it would negatively impinge the building's visual appearance and will consequently affect

the scenic value of the area. This negative visual impact is even more exacerbated by the fact that the building is located in a corner site, and hence it is even more visible and exposed. The proposal therefore runs counter to Sections 8.2(v) and (vi) of PLP 20, Policy MS09 of the Marsaxlokk Bay Local Plan and to Structure Plan policies AHF 5, RCO 2 and RCO 4, which prohibit development that adversely affects the scenic value of an area.

5.1.7 For the above reasons, the requested extension clearly exceeds the maximum footprint and floor space as specified by Policy PLP 20 and hence, the reasons for refusal No. 1 & 2 are fully justified.

5.1.8 As regards the visual impact of the resulting development, the Authority also reiterates that both the resultant massing as well as the existing high wall do create a development which is not in line with the traditional rural character of the area and cannot be accepted unless the proposal is modified (through a separate application) to propose alterations / additions to be fully in line with Policy PLP 20 and an external rubble wall not higher than 1.2m and made in full rubble material in line with LN 160/97 & LN169/04.

5.1.9 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify, a breach to the above cited policies. Hence, reference is made to the reports as presented by the Directorate and to the DCC's decision which dismissed this request for development since the DCC Board had based their decision on the valid relevant policies applicable to this area.

5.2 MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all the relevant facts, planning policies, legislation and submissions as required by article 33/1 of Chapter 356 of the Laws of Malta, and thus, respectfully requests the Planning Appeals Board to confirm the

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decision of the Development Control Commission and to refuse this appeal. The Authority reserves the right to forward further submissions during the appeals process as necessary."

Ikkunsidra ulterjorment:

Illi s-sit mertu tal-appell jinsab fir-Rural Conservation Area fil-limiti ta' Birzebbugia, barra z-zone tal-izvilupp. Skond I-Maxsaxlokk Bay Local Plan Policy Diagram hu inkluz fil-Benghisa Settlement Boundary.

Illi l-izvilupp propost sar izid l-floor area ta' dak li kien jezisti qabel l-1967 minn 220m² ghal cirka 260m². In oltre, il-hajt li jikkonfina s-sit hu llegali u jiccirconda area ta' cirka 500m².

L-appellant issottometta li l-proposta odjerna hi simili ghall-applikazzjoni PA 6039/03, li kienet giet approvata, izda sussegwentement 'dismissed' billi ma thallsitx il-garanzija bankarja; hi konformi mal-Policy PLP 20 u l-boundary wall inbena mir-Roads Department, u hu hajt tas-sejjieh.

Dan hu kontestat mill-Awtorita, li pprezentat ritratti li juru li l-hajt tas-sejjiegh inbena fit-tlett sezzjonijiet u hu gholi cirka 9 filati. In oltre l-kostruzzjoni tieghu mhux konformi mal-Avviz Legali 160/98 u 169/94 billi kull sezzjoni tghattiet bil-concrete.

L-applikazzjoni inter alia qed titlob "to sanction existing dry rubble wall", pero billi ma gietx pprezentata bl-ebda 'detached section drawing' tal-hajt prezenti, skond l-Awtorita japplikaw l-provvedimenti tac-Cirkolari PA 2/96; fis-sens li zvilupp illegali jew ghandu jitnehha, jew jintalab li jigi sanzjonat, pero jenhtieg li jigu sottomessi pjanti dettaljati dwaru.

Apparti l-oggezzjoni dwar l-hajt tas-sejjieh, l-Awtorita tikkontendi li l-izvilupp propost hu in kontravvenzjoni tal-Policies PLP 20. In fatti skond din il-Policy (Section 8.2(iii)) estenzjonijiet ghal bini ezistenti ma jistghax

ikollhom floorspace totali ta' aktar minn 150 sq.m. Fil-kaz in ezami jirrizulta li l-floorspace tal-bini ta' qabel l-1967, kien cirka 220m², cioe diga in excess ta' dak indikat fil-policy, u billi l-proposta qed tipproponi zieda ulterjuri ta' 40m², ma tistax tigi approvata.

Oggezzjoni ohra ghall-proposta prezenti, hi li l-area in kwistjoni hi wahda ta' 'scenic value' u l-izvilupp eccessiv propost ikollu impatt negattiv f'din l-area sensittiva, partikolarment in vista tal-fatt li s-sit jinsab f'kantuniera, u ghalhekk ghandu impatt negattiv akbar.

Ezaminata fid-dettal il-proposta prezenti, fil-kuntest tal-Policies fuq imsemmija, r-ragunijiet ta' rifjut jirrizultaw gustifikati.

Il-propost tista' tigi kkonsidrata favorevolment, kemm-il darba fost konsiderazzjonijiet ohra, l-alterazzjonijiet u z-zidiet mitluba jkunu konformi mal-Policy PLP 20, u l-hajt tas-sejjieh konfinanti ma jkunx ghola minn 1.2 metri u dry rubble minghajr concrete skond l-Avviz Legali 160/97 u 169/04.

It-Tribunal ghalhekk iddispona mill-Appell billi cahad l-istess u kkonferma r-rifjut tas-26 ta' Ottubru ghall-applikazzjoni PA 6370/05.

Ikkunsidrat

L-aggravji tal-appellant huma bazikament tnejn:

1. Gie vjolat lilu d-dritt tal-*audi alteram partem* u *cerimus paribus*. In sostenn ta' dawn il-principji hu sostna illi t-Tribunal naqas li jaghti konsiderazzjoni akkurata ghal applikazzjoni identika numru 6039/03 (kwotata erronjament 6030/03 mill-appellant) fejn din giet michuda ghax l-applikant ma kienx hallas il-garanzija, u cioe fuq ragunijiet amministrattivi mhux dwar ta' policies u kwistjonijiet ta' ippjanar. Zied illi kien hemm zewg permessi ohra li nhargu cioe 5752/2000 u 5774/2000 u li dwarhom it-Tribunal ma kkummentax.

2. Fuq il-principju ta' *cerimus paribus* naqas li jimmotiva l-lanjanza li l-boundary wall li fuqu instabet vjolazzjoni ma nbeniex mill-appellant izda min Roads Department.

Il-Qorti taghmilha cara illi appelli mid-decizjonijiet tat-Tribunal huma limitati biss ghal kwistjonijiet ta' ligi mqajma jew rizultanti mill-atti quddiem it-Tribunal.

It-tieni kwistjoni mqajma mill-appellant cioe rigward il-boundary wall, cioe min effettivament bnieh hi kwistjoni ta' fatt li dwaru l-Qorti ma ghandhiex tikkummenta. Pero t-Tribunal qies il-lanjanza meta fl-osservazzjonijiet tieghu semma' li l-ilment dwar min bena l-boundary wall hu kontestat mill-Awtorita u inoltre l-kwistjoni rilevanti mill-lat legali skond it-Tribunal hu illi It-talba tal-appellant 'to sanction existing dry rubble wall' kienet risolvibbli billi jkun konformi ma' dak li trid il-ligi cioe li ma jkunx oghla minn 1.2 metri u jkun dry rubble minghajr concrete, kuntrarju ghal dak li kien hemm fil-prezent, bnieh min bnieh. Kwindi t-Tribunal ittratta l-kwistjoni tal-hajt u ma jstax jinghad li kien hemm xi punt legali li ma giex meqjus mit-Tribunal f'dan ir-rigward.

In kwantu ghall-ewwel aggravju mressaq mill-appellant, jinghad illi minn qari tal-atti processwali mkien ma jissemmew il-permessi 5752/2000 u 5774/2000 li ghalihom jirrefru l-appellant bhala punti mqajmin minnu biex it-Tribunal jikkunsidra bhala simili ghall-applikazzjoni in kwistjoni. Kwindi din il-Qorti mhix ser tikkonsidra dak li ma tqajjimx quddiem it-Tribunal.

L-appellant jilmenta wkoll illi din l-applikazzjoni hi simili bhal aplikazzjoni precedenti 6039/03 li waqghet biss ghax ma thallsitx garanzija. Din il-Qorti ma tistax tifhem xi principju legali japplika ghal dan l-ilment billi l-istess appellant jammetti li ma hemmx permess iehor validu mahrug li jista' jigi paragunat ma' din l-applikazzjoni u li t-Tribunal naqas li jikkonsidra. Inoltre kif ukoll kkonkluda t-Tribunal l-izvilupp propost imur kontra l-policies PLP 20 li jirregola l-floorspace permissibbli u f'dan il-kaz il-floorspace propost hu oltre l-limitu permess mill-istess policy u dan appartu konsiderazzjonijiet legali ohra fl-istess

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decisjoni tat-Tribunal li jaghtu lok ghal rifjut tal-applikazzjoni li l-appellant mhux jilmenta dwarhom.

Decide

Ghal dawn ir-ragunijiet il-Qorti qed tiddisponi mill-appell billi tichdu u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 fl-istess ismijiet. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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