



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 131/2012

**Charles Schembri f'isem u in rapprezentanza
tas-socjeta C & F Enterprises Limited**

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Charles Schembri f'isem u in rapprezentanza tas-socjeta C & F Enterprises Limited kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012 ghall-izvilupp ta' penthouse u kmamar tal-bejt;

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tat-Tribunal ghandha tigi konferma;

Rat l-atti u semghet lid-difensuri tal-partijiet;

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

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp fil-5 ta' Lulju 2006, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 6798/05, "Site at, Gonna Court, Hali Street, Zebbug (Malta): Proposed penthouses over existing residential block and washrooms at roof level."

L-erba' ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed penthouses are unacceptable since they do not comply with policy 10.6 of Development Control Policy & Design Guidance 2005 which states that penthouses within UCA's may only be permitted on buildings of 4 floors or more.

2. The proposal runs counter to Paragraph 11 of Part A of the Adopted Design Guidance: Development Control within Urban Conservation Areas since the predominant height of the buildings in the vicinity of site in question are erected on three floors. In these circumstances, any building on site which is proposed to be higher than three floors is not permitted by the Malta Environment & Planning Authority.

3. The proposed development runs counter to Structure Plan policy UCO 10 in that it would adversely affect views of the Urban Conservation Area and detract from the traditional urban skyline.

4. The proposal does not comply with Structure Plan policy UCO 8 which only permits development in Urban Conservation Areas which is compatible with the existing character and urban design of the area. The proposal is not sympathetic with adjoining buildings in terms of height"

B. In-nota tal-Perit Joseph Attard ghall-Appellant nomine, ipprezentata fl-21 ta' Dicembru 2006, senjatament il-punti segwenti:

"1. [...] According to the South Local Plan, my client's site lies just within the UCA, but opposite buildings are just outside UCA. Thus, it is our opinion that in this case the Local Plan itself has created an anomaly in terms of structure Plan policy UCO 10, since opposite buildings can be high as much as a semi basement, three floors and a penthouse, as indicated in Local Plan ZG 3. Thus our development would surely not detract from the traditional urban skyline, within this context.

One should also note the fact that the Local Plan earmarked this part of the so called village core area with a maximum height of two floors, whilst most of the buildings within this area have a height of three floors. From a site visit one can easily conclude the fact that the Local Plan does not even reflect the existing situation on site.

2. Furthermore, [...] even though the area is classified as UCA, it mostly consists of buildings built in the late eighties and nineties, thus with no specific UCA feature, [...]. Thus such developments would surely be sympathetic within the surroundings in terms of height and thus in no way it does not comply to Structure Plan Policy UCO 8."

C. In-nota responsiva ta' Mario Scicluna ghall-Awtorita, pprezentata fil-5 ta' Frar 2007, inter alia l-erba' punti segwenti:

"5.2.2 The first and most important issue relates to the zoning of the area. During the processing of the application, the case was referred to HAC, who in meeting held on 5th December 2005, stated that the proposed development would breach DC 2005 policies since site lies within the UCA boundaries.

5.2.3 Furthermore, the approved SMLP has affirmed that the site in question falls within the UCA boundaries of Zebbug. Map ZG 3 clearly designates the site as having a height limitation of 2 floors (and is within the UCA boundaries).

5.2.4 In this respect, the height of the building as previously permitted (3 floors) already exceeds the present permissible height limitation of the area (2 floors), and hence, any additions to the present height would further exceed the permitted height of this area as designated by the Approved Local Plan.

5.2.5 As regards the arguments presented by Appellant, the Authority disagrees that one should decide whether penthouses could be allowed in this site on the sole merits of the fact that other buildings within the vicinity of the site were constructed on 3 floors. [... It] is evident that the predominant height of this stretch of road is that of 2 floors and not of 3 floors. Furthermore, the Authority is bound to respect and abide with approved planning documents and policies, in this case, the relevant ones being the Approved South Malta Local Plan and PDG 2005."

D. In-nota tal-Perit Joseph Attard ghall-Appellant nomine, ipprezentata fl-1 ta' Marzu 2007, precizament is-segwenti:

"1. The bone of contention is whether the site should lie with a so-called Urban Conservation Area or not As pointed out in comment 5.2.4, the approved building height on site is already three floors. In fact. DCC has already approved three floors within this Urban Conservation Area, since the surrounding buildings are of the same height, and opposite properties could be as high as three floors. [...]

2. With regards, to comment 5.2.5 [...] the Local Plan earmarked this part of the so called village core area with a maximum height of two floors, whilst most of the buildings within this area have a height of three floors. Furthermore, one of the buildings adjacent to my clients property is even finished to a higher level by some eight (8) course, thus implying that the proposed penthouses roof would be in line with the existing skyline, thus further enhancing the surrounding urban environment."

E. In-nota second statement ta' Mario Scicluna ghall-Awtorita, pprezentata fit-18 t'April 2007, inter alia l-punt segwenti:

"The Authority notes that Appellant is acknowledging the fact that the area falls within the UCA boundaries of Zebbug, and hence, UCA policies have to apply. As already stated [...] such policies do not permit the addition of penthouses above the permissible maximum height limitation when these are located within UCA zones. In this particular case, since the building was previously approved with three floors, that permit had stipulated the maximum number of floors for this particular site."

F. In-noti ta' sottomissjonijiet tal-Avukat Dott. Richard Sladden ghall-Appellant nomine, ipprezentati fis-6 u fid-9 t'Ottubru 2007, inter alia s-sitt punti segwenti:

"3. Illi l-Awtorita qed tibqa' fuq interpretazzjoni dejqa tal-Pjan Lokali li jidher car li min ghamlu sempliciment ghadda linja u ma tax kaz tal-karatteristici li ghandhom ikunu kurnplimentari specjalment fl-istess triq;

4. Illi s-sit in kwistjoni kif ukoll it-triq kollha kif jidher mir-ritratti pprezentati, ma tistax tigi kkunsidrata bhala UCA u mhemmx ghalfejn tkun espert biex tinduna li s-sit u t-triq kollha in kwistjoni m'ghandha ebda karatteristika ta' UCA;

5. Illi l-Pjan Lokali jrid jittiehed b'mod holistiku bil-karatteristici tal-'area' fuq fuq naha tat-triq u mhux naha ta' triq mod u n-naha l-ohra mod iehor;

6. Illi kif gja sehh f'diversi kazijiet decizi minn dan il-Bord inkluz kif diversament presedut, trid tittiehed in kunsiderazzjoni l-'commitments' prezenti fl-istess triq;

7. Illi kieku t-tezi tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tigi accettata minn dan l-Onorabbli Bord, dan ikun ifisser zbilanc fl-estetika tal-istess triq fejn fuq naha ghandek "semi-basement, 3 sulari u penthouse" filwaqt li fuq in-naha l-ohra tal-istess triq ikollok 2 sulari biss;

8. Illi kif dan il-Bord accetta li certu zvilupp anki barra z-zoni ta' zvilupp hu permessibbli, anki f'dan il-kaz, tenut kont tac-cirkostanzi kollha, ikun ahjar kemm vizwalment kif ukoll fuq bazi ta' ppjanar li din l-applikazzjoni tigi accettata;"

Fin-nota ulterjuri gew ipprezentati d-dettalji tal-permess PA 4780/07 fejn skond l-Appellant nomine gew allegatament "ikkunsidrati kunsiderazzjonijiet anki li ma jaqblux mal-Pjan Lokali."

G. In-nota third statement ta' Mario Scicluna ghall-Awtorita, pprezentata fit-22 t'Ottubru 2008, inter alia l-punt segwenti:

"[...] the official height limitation as designated by the approved South Malta Local plan is 2 floors. Any attempt to discredit the lawfulness of this Local Plan or its official designation of particular areas has to be addressed through other proceedings and not through an appeal against a specific refusal in front of the Planning Appeals Board.

It is therefore lawful for the Authority to assess and the DCC to decide applications in accordance with the provisions of the Local Plan and not on other arbitrary / subjective considerations. In this particular case, Map ZG3 clearly defines Triq Hali with a height limitation of both 2 floors and 3 floors plus semi-basement [... The] site under appeal is located within an area which is clearly designated for 2 storey development and hence no penthouses could be permitted once the existing building exceeds the permitted height limitation of the area. This is also included in Policy 10.6 of PDG 2005 and PDG 2007 where penthouses are acceptable only where the existing building is in line with the official height limitation of a particular area."

H. In-nota ta' sottomissjonijiet tal-Avukat Dott. Richard Sladden ghall-Appellant nomine, ipprezentata fis-26 ta' Frar 2009, senjatament il-punti segwenti:

Kopja Informali ta' Sentenza

"Jesponi bir-rispett is-segwentu referenzi ta' appelli u applikazzjonijiet decizi anki jekk dawn imorru kontra l-Pjanijiet Lokali u il-Pjan ta' Struttura fuq xi bazi li s-sit hu wiehed gja 'committed':

PA 1980/06 deciz mid-DCC fit-3 ta' Frar, 2009 fuq il-bazi li s-sit hu gja 'committed' bi zvilupp industrijali;

PA 3031/06 103, Demajo House, Triq l-Arcisqof, Valletta accettati alterazzjonijiet u zieda ta' sular. Gew approvati sulari zejda minhabba li jikkumplimentaw 'part wall commitments';

PA 7582/07 8, Triq il-Batterija, Valletta - Approvat 'since proposed roof structures are not considered to impinge negatively within the context in view of existing commitments';

PA 2414/93 (Appell nru. 267/96) il-Bord tal-Appell kien accetta l-appell minhabba li s-sit kien gja kommess;

PA 4780/07 Iddipartixxa minn dak stipulat mill-Pjan Lokali ghax is-sit hu fi triq bi 3 sulari;

PA 3680/05 deciz mill-Bord tal-Appell dwar l-Ippjanar (PAB 290/06 ISB) J. Formosa Gauci obo Trident Development Ltd vs Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar fid-29 ta' Frar, 2008 post gja "committed" u konsegwentement l-appell gie milqugh."

J. In-nota fourth statement ta' Mario Scicluna ghall-Awtorita, pprezentata fit-12 ta' Mejju 2009, precizament il-punti segwenti:

"Outline development permit PA 1980/06 - Lija
To provide access from Triq Labour, addition of external storage area as an extension to existing marble factory. Development is located adjacent to several industrial activities and the DCC's decision included:

Kopja Informali ta' Sentenza

The site lies adjacent to a permitted factory. The proposal lies in favour with the Policy Guidance Areas of Open Storage no 6, 7 and 8.

- there is a no objection from the Department of Agricultural.
- proposal is in line with the Policy of Open Storage (as mentioned above).
- Site is committed with industrial development and is a passage and open storage.

Hence, in this case, the decision of the DCC was based on that the development as requested was in fact in line with the Policy of Open Storage.

Full development permit PA 3031/06 - Valletta
Proposed alterations and addition of one floor. The DCC's decision included:

'Upheld 4-0 (plans red 68) since proposal is set-back from facade at roof level, and is retained within the existing party wall commitments. Therefore it conforms to policies UC06 UC010 and BEN2.'

The DCC thus decided that this request was in fact in accordance with the relevant policies.

Full development permit PA 7582/07 - Valletta
Alterations and additions to existing dwelling, maintenance of facade, to include another dwelling. In this case, the DPA had stated that:

'The additional floor will replace an existing 16m² roof structure setback 1.5m from the facade.'

Furthermore, it is to be noted that there is no established building height for Valletta, so every request regarding additional structures at roof level has to be assessed on its own merit.

Outline development permit PA 2414/93 - B'Kara
To use land for parking of Farson's vehicles by local sub-agents. Case was refused by the DCC and an appeal

against refusal had been confirmed by the PAB No. 267/96. In fact the Board concluded:

'Il-Bord huwa tal-fehma illi l-pjani sabiex isir l-istudju huwa pass fid-direzzjoni t-tajba peress illi qieghed jittratta din iz-zona b'mod shih u ghalhekk, jidhirlu illi m'ghandux jikkomprometti jew jippregudika b'xi mod il-pjanijiet ghall-Tal-Balal Development Brief u jidhirlu illi, skond il-policies tal-ippjanar vigenti llum, dan l-izvilupp kif impost m'ghandux jigi permess.

Ghal dawn il-motivi, il-Bord jichad l-appellu jikkonferma r-rifjut tal-permess ghall-izvilupp.'

Full development permit PA 4780/07 - Birzebbugia

To carry out alterations to existing dwelling and construct additional room at second floor level and washroom at roof level. In its decision the DCC noted that:

'Approved 5-0 in view that adjacent building is 3 floors in height (built when TPS height limitation was 3 floors) and height limitations for other blocks outside UCA are all three floors. Board took into account this context and also Executive Committee's recommendation.'

According to the DPA, This is an application requesting the construction of an additional room at the second floor and a washroom at roof level of an existing terraced house. The DCC had also asked for guidance from the Executive Committee since site is located in a street which is almost exclusively designated for 3 storeys and site is located outside the village core. Hence, in this particular case, the request was limited to an additional room abutting a 3 floor building in an area which contains many more 3 storey buildings (area is not UCA as the case under appeal).

Full development permit PA 3680/05 - Iklin

To sanction existing distribution depot and structures with alterations (retail by distribution only). However, in its decision, the PAB decided that:

'Li fl-inhawi tas-sit in kwistjoni hemm diversi commitments ta' zviluppi li gew approvati mill-MEPA li l-operat ta' dan l-impjant jigifieri 'Distribution Depot' ma jistax jizvolgi f'zona residenzjali. Innota li tali attivita tirrikjedi spazju ta' certu skala u li tkun sitwitata f'zona li ma tkunx ta' inkonvenjent ghar-residenti,'

This clearly shows that this particular development posed a particular necessity to be located away from a residential zone due to its particular nature of activity. On the other hand, the case under appeal is requesting the construction of 2 new units at penthouse level and there are no real justifications why these 2 new dwellings cannot be constructed either at full floor level in this same area or else, at penthouse level in any other permitted area either within Zebbug or any other locality in Malta. In fact, in this appeal there has not yet been any justification in this regard. This is clearly a different scenario to this cited case where one of the crucial issue was the necessity to be located in such an area due to its specific nature of operation and its potential (negative) impact if located within a schemed residential area.

Conclusion

In view of the above comments, the Authority reiterates that none of the cited permits contained similar planning issues (new two units at penthouse level over an existing building which already exceeds the permitted height limitation of the area) but contain totally different planning issues both due to the nature of the development itself and also to their location.”

K. Il-verbal tal-access fuq il-post tas-Seduta numru 32, mizmuma fis-6 ta' Mejju 2011, precizament il-punti segwenti:

"It- Tribunal gie muri zvilupp li huwa fuq tlett sulari u l-perit Attard indika lit-Tribunal dak li qed jipproponi l-Appellant u cjoe, li fuq il-bini li diga ghandu, isiru penthouses naturalment receded mill-faccata."

L. In-nota ta' sottomissjonijiet ulterjuri tal-Avukat Dott. Richard Sladden ghall-Appellant nomine, ipprezentata fis-16 ta' Meju 2011, inter alia l-hames punti segwenti:

"6. Illi wiehed irid ikun veru kreattiv biex il-periferija ta' Zebbug (Malta) b'bini modern fuq kull naha tat-triq, ipoggi naha tal-istess triq f'UCA u n-naha l-oħra le;

7. Illi kull naha tat-triq karatteristici kumplimentari ma jaghmilx sens; in kwistjoni irid ikollha ghax inkella vizwalment

8. Illi f'dan ix-xenarju jrid jiehu dan it-Tribunal wara li jiehu decizjoni kunsiderazzjoni l-'commitments' fl-istess triq;

9. Illi jinghad ukoll li, sal-llum ebda wiehed mill-permessi msemmija f'noti precedenti, ma gew ikkontestati a bazi ta' xi allegat ksur tal-artikolu 77 tal-Att tas-sena 2010 dwar l-Ambjent u l-lppjanar tal-lzvilupp (jew kif kien qabel l-artikolu 39A) rizultanti minn xi 'zball f'dokument li jidher minn ezami tal-istess dokument' jew allegat ksur ta' punt ta' ligi ghaliex il-Bord ma ddecidiex skont il-provvedimenti tal-'policies' u ligijiet vigenti kif titlob l-istess ligi u ghalhekk dak li gie deciz jikkostitwixxi stat fil-ligi;

10. Illi tenut kont tas-suespost, dawn il-kunsiderazzjonijiet jikkonfermaw li m'ghandu jkun hemm ebda diffikulta biex din l-applikazzjoni tigi approvata u dan anki a bazi tal-principju legali ben stabbilit li l-kunsiderazzjonijiet li jwasslu ghal decizjonijiet ta' ppjanar iridu jkunu konsistenti kif sostnut mill-Qorti tal-Appell; (ara sentenza flismijiet 'Grace Borg vs Awtorita ta' Malta dwar l-Ambjent u l-lppjanar' moghtija fid-29 t' Ottubru, 2009 (RCP) fejn inghad illi 'fil-fatt gie ritenut gudizzjarment li applikazzjonijiet simili jirrikjedu trattament identiku. Id-decizjonijiet f'dan ir-rigward u l-kunsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necessarjament jinhtieg li jkunu konsistenti. L-inkonsistenza ghandha bhala konsegwenza l-kontestazzjoni gustifikata, id-diskriminazzjoni, l-inugwaljanza u mill-aspett soggettiv ta' l-applikant l-ingustizzja"

M. In-nota fifth statement ta' Mario Scicluna ghall-Awtorita, pprezentata fil-21 ta' Gunju 2011, inter alia l-punt segwenti:

"Appellant is not correct in stating that that whole area around [...] site is UCA. Map ZG3 clearly defines that UCA boundary of Zebbug [...] This map shows that whilst the site under appeal is UCA, the streetscape opposite Appellant's site is in fact designated as Outside UCA with a totally building height of 3 floors plus semi-basement.

Re the issue of commitments, reference is made to Section 69 (2) (i) proviso of the new act where the law now states that any possible existing buildings with a height greater than what is permitted by the Local Plans, can no longer be considered as justification to grant additional height (ie floors or penthouses) and so clearly breach the official height limitation as established in August 2006 through the Local Plans.

Reference was made to Court Sentence 'Grace Borg vs MEPA' however, such a decision did not in fact grant any permit but had re-sent case to be reconsidered in front of the EPRT since the Court stated that the sentence as delivered by the previous PAB did not give adequate substance to all arguments as raised by Appellant in that case. In fact, this case is still pending in front of the EPRT and a decision has not yet been delivered.

The Authority concludes that the Tribunal is invited to assess all previous reports vis-a-vis the official and legal status of the South Malta Local Plan as well as PDG 2007 re penthouses and would confirm the Authority stand that such penthouses over and above the legal height limitation would constitute a clear breach of the legal plans and would only constitute an undesirable precedent which would be used by others in order to construct penthouses in buildings which already exceed the maximum permitted height limitation. This would inevitably lead to heights of building which exceed the Local Plan's planned skyline as well contribute to higher density over and above that stipulated by the Local Plans."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ta' kostruzzjoni ta' penthouses fuq blokk residenzjali gja ezistenti u bini ta' washrooms fuq s-saqaf, f'fond li jinsab f'Gonna Court, Hali Street, f'Haz Zebbug (Malta).

Din l-applikazzjoni giet rifjutata peress li l-proposta hi in kontravenzjoni tal-policies UCO 8 u UCO 10 tal-Pjan ta' Struttura ghax inter alia se tgharraq l-iskyline u l-karattru tal-urban conservation area (UCA); il-policy 10.6 tal-Policy and Design Guidance li fil-UCA jistghu jigu permessi biss penthouses fuq bini ta' erba sulari (hawn si tratta minn zvilupp prezentement fuq tlett sulari); u li skond il-paragrafu 11 ta' Part A - Adopted Design Guidance: Development Control within Urban Conservation Areas, zvilupp m'ghandux jissupera l-gholi predominanti fiz-zona.

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

- L-Appellant nomine jissottometti li ghalkemm skond l-Awtorita l-proposta odjema tmur kontra i-policy 10.6 tal-Policy and Design Guidance, madankollu jallega li skond il-Mappa ZG 3 tal-Pjan Lokali, peress li s-sit tieghu jinsab fil-limiti tal-UCA u filwaqt li l-bini oppost (fuq in-naha l-ohra tat-triq) jinsab il-barra mill-istess konfini, dan jikkrea anomalija mal-policy UCO 10 tal-Pjan ta' Struttura; ghax mentre fil-bini fuq in-naha opposta jista' jkun hemm semi-basement, tlett sulari u penthouse, fuq il-font tieghu huma permessi li jinbnew zewg sulari biss.

- In oltre, l-Appellant jirrileva wkoll li hafna mill-bini fil-vicinanze ghandu tlett sulari, u li l-maggoranza tal-bini gie mibni minghajr l-kriterji li jirregolw l-gholi fil-UCA; u ghalhekk din il-proposta ma tmur bl-ebda mod kontra i-policy UCO 8 tal-Pjan ta' Struttura.

- L-Aworita tissottometti li skond l-istess mappa tal-Pjan Lokali, fuq is-sit mertu tal-appell odjem jistghu jinbnew

biss sa zewg sulari (massimu), mentre fuq in-nahha l-ohra ta' triq jistghu jinbnew sa' tlett sulari u semi-basement.

Jigi rilevat li tabilhaqq, il-linja tal-UCA li tifred l-izvilupp f'din iz-zona tghaddi u taqta minn gewwa t-triq in ezami. Jidher car li l-area li jaghmel minnha l-fond in ezami tirrizulta fil-periferija tal-UCA, metre fuq in-nahha l-ohra tibda l-parti kkunsidrata bhala barra l-UCA.

Wiehed jifhem li fic-cirkostanzi, x'imkien il-linja li tifred zona tal-izvilupp minn ohra trid bilfors taqta' u tghaddi minn x'imkien. Kien ikun kaz aktar ambigwu u anomalu li kieku per ezempju, il-linja li tifred iz-zona tal-UCA minn dik ta' barra kienet nettament taqta' minn gewwa s-sit in ezami - izda fil-kaz, il-qasma tgahddi minn nofs it-triq.

Tajjed li jigi nutat ukoll li l-font in ezami diga jgawdi minn zvilupp fuq tlett sulari – cjoe gja sular aktar mill-massimu permessibbli mill-policies; u jekk ghall-grazzja tal-argument jista' jigi sorvolat dan il-punt (cjoe li l-izvilupp prezenti diga jeccedi l-limitu ndikat mill-Pjan Lokali), il-policy 10.6 et seq. tal-Policy and Design Guidance taghmila tassativa li fil-UCAs, penthouses huma permessibbli biss fuq zvilupp ta' erba sulari jew iktar. Il-paragrafu B ta' din il-policy jaqra kif gej:

"Urban Conservation Areas; penthouses may be permitted on buildings of 4 or more floors in height and particular regard will be had [sic.] to the impact of a penthouse on

- (a) the character of the area, including the streetscape and the skyline;
- (b) significant long range into, and short range views within, the UCA;
- (c) the building on which it is to be situated.

Accordingly, more restrictive criteria than those set out in [outside UCAs] may be applied to protect a UCA."

Permezz tas-sottomissjonjiet tal-konsulenti tieghu, l-Appellant nomine argumenta fit-tul fuq il-fatt li l-bini f'din it-triq tela' pjuttost recentment, u li ghalhekk meta kkunparat ma' per ezempju, bini storiku jew tradizzjonali li jimmerita

kunsiderazzjonijiet ta' preservazzjoni, etc., (kif normalment jigi assocjat ma' bini fil-UCA), estetikament, dak li hemm illum hu tassew fqir. Madankollu irid jigi osservat li l-policy 10.6 tratta wkoll fuq streetscapes, skylines, kif ukoll long and short range views. Ma tiegafx specifikament fuq in-natura, zmien ta' meta nbenajew il-karattru tal-bini fit-triq per se.

Kien ikun ferm aktar xieraq li kieku gew tentati per eżempju, argumenti li juru li l-vistas ma kienux ser jigu affettwati negattivament, etc. Minflok l-argumenti tal-Appellant nomine strahu biss fuq l-allegat anomalija fil-konfini tal-UCA u fuq kazistika li titratta precedent ghat-talba in ezami.

Tajjeb li jigi osservat li dan mhux il-forum adatt sabiex tigi attakkata 'anomalija' fil-konfini tal-UCA.

In fine, fir-rigward ta' permessi fejn allegatament il-Kummissjoni, u l-Bord tal-Appell dwar l-ippjanar jew qalbu rikmandazzjoni tad-Direttorat jew id-decizjoni tal-istess Kummissjoni, rispettivament, anke jekk seta' kien il-kaz, l-artikolu 69 tal-Att X tal-2010 Kap. 504 jaghmila cara li illum ma jistghux jigu kkunsidrati commitments fir-rigward ta' height limitation. Il-partijiet ta' dan l-Artikolu rilevanti ghal kaz in ezami huma s-segwenti:

"2. Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorita ghandha ukoll tqis:

a. kull haga ohra ta' sustanza, komprizi konsiderazzjonijiet ambjentali, estetici u sanitarji li l-Awtorita tista' tikkunsidra rilevanti:

Izda ebda konsiderazzjoni materjali inkluza konsiderazzjoni bbazata fuq l-ezistenza ta' binjiet fil-madwar ma tista' tigi interpretata jew tintuza sabiex izzid il-limitazzjoni tal-gholi stabbilita fil-pjan;"

Ghalhekk, in vista tal-konsiderazzjonijiet 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 jichad l-istess u jikkonferma r-rifjut ghall-PA 6798/05 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-5 ta' Lulju 2006.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal applika l-ligi hazin fis-sens illi applika l-artikolu 69 tal-Kap. 504 mentri kellu japplika l-artikolu 33 tal-Kap. 356;
2. Interpreta hazin il-kwistjoni tal-commitment ghax dan mhux marbut ma' zona partikoli izda la darba jigi applikat f'xi applikazzjoni ghandu japplika f'Malta u Ghawdex;
3. It-Tribunal ma dahalx fil-fond f'kazijiet simili msemmija mill-appellant u ma tax importanza ghal principju ta' cerimus paribus anki jekk id-decizjoni setghet marret lil hinn minn dak li jippermetti l-pjan lokali billi z-zieda fl-gholi mhix ser tkun ta' impatt negattiv kif jikkonfermaw decizionijiet ohra tal-Bord.
4. It-Tribunal naqas li jikkunsidra s-sottomissjoni li s-sit ma ghandux karatteristici ta' Urban Conservation Area u ghalhekk ma hux ser ikun impatt negattiv jekk l-applikazzjoni tigi milqugha, u dan peress illi fil-faccata l-ohra tat-triq japplikaw principji differenti.

Il-Qorti ma taqbilx mall-appellant bil-mod kif imposta l-appell tieghu.

L-appellant isostni li ma setghax jigi applikat l-artikolu 69 tal-Kap. 504 izda l-artikolu 33 tal-Kap. 356.

Fl-ewwel lok il-gurisprudenza hi fis-sens illi l-policies u ligijiet applikabbli fi zmien id-decizjoni li ghandhom jigu applikat (ara bhala ezempju **Ivan Grima Hammett vs Kummissjoni ghall-Kontroll tal-Izvilupp**, App Civ 24/02/2003). Il-ligi applikabbli fi zmien din id-decizjoni cioe fil-31 ta' Lulju 2012 kienet il-Kap. 504. L-artikolu 33 tal-Kap. 356 kien gie abrogat bl-Avviz Legali 512 tal-2010 u gie sostitwit bl-artikolu 69. Dan l-Avviz dahal fis-sehh fil-31 ta' Dicembru 2010.

Mhux hekk izda anki l-Bord tal-Appell gie sostitwit bit-Tribunal ta' Revizjoni skond Avviz Legali 27 tal-2011 li zied li l-appelli li kienu differiti ghas-sentenza qabel il-31 ta' Dicembru 2010 kellhom jibqghu differiti ghas-sentenza quddiem il-Bord. Dawk lil ma kienux ghadhom differiti ghas-sentenza f'dik id-data kellhom jinstemghu mit-Tribunal kif inhu dan il-kaz li ntbaghat ghad-decizjoni fl-4 ta' Novembru 2011.

Kwindi l-ligi hi cara u fiz-zmien li din l-applikazzjoni giet differita ghad-decizjoni kien japplika l-Kap. 504 u l-artikolu 69 fl-intier tieghu.

L-artikolu 69 bhall-artikolu 33 fil-Kap. 356 ma biddel xejn minn dak li hu l-principju regolatur li fuqhom ghandu jiddeciedi l-Awtorita u bl-applikazzjoni tal-artikolu 41(13) tal-Kap. 504 anki t-Tribunal. It-Tribunal ghandu japplika l-policies u pjanijiet u jiehu qies ta' kwistjonijiet ohra ta' sustanza. Hu car li fejn policy jew pjan hu car u ma jaghti ebda lok ghal interpretazzjoni jew diskrezzjoni, dan ghandu jitqies fid-dawl u safejn jippermetti l-pjan u policy u mhux vice versa kif donnu qed jissottometti l-appellant.

It-Tribunal fil-kostatazzjonijiet tieghu bbaza ruhu gustament, ghax il-pjan lokali ma jippermettix mod iehor u l-pjan lokali hu ligi, fuq il-fatt illi s-sit in kwistjoni jaqa' f'Urban Conservation Area, ghalkemm fil-periferija tieghu. Il-policy rilevanti cioe Development Control Policy and Design Guidance 2005 artikolu 10.6 tippermetti penthouses f'UCA's biss fejn il-bini hu ta' erba' sulari jew izjed. F'dan il-kaz il-binja hi ta' tlett sulari u gia tmur lil hinn mis-South Malta Local Plan fejn f'mappa ZG3 jaghti lis-sit gholi massimu ta' zew sulari.

Lanqas ma hu minnu dak li jallega l-appellant illi ma gietx trattata l-anomaliya tal-konfini bejn is-sit mertu tal-applikazzjoni u dawk fuq il-facata l-ohra tat-triq pero t-Tribunal ikkunsidra gustament li dan ma kienx il-forum addattat biex tigi trattata din il-kwistjoni u fil-fatt it-Tribunal qieghed hemm biex japplika l-ligijiet u policies u mhux jinjarahom ghax anomali. In kwantu ghal kwistjoni ta' commitment, it-Tribunal gustament applika dik li jstipula

b'mod car l-artikolu 69(2) illi ebda konsiderazzjoni materjali inkluz dawk ibbazati fuq ezistenza tal-binjiet fil-madwar ma tista' tintuza biex izzid limitazzjoni ta' gholi stabbilita fi pjan.

It-Tribunal mexa rigorozament ma' dak li tghid il-ligi u ghalhekk kull konsiderazzjoni ohra bbazata fuq permessi ohra simili u anki permessi ohra fl-istess akkwata ma setghux jigu konsiderati. Il-fatt illi hafna mill-binjiet vicin is-sit in kwistjoni li huma gia ta' tlett sulari bhas-sit in kwistjoni avolja f'UCA ma jistax jintuza bhala argument mill-appellant ghal dan l-argument li ghandu jew jista' jigi skartat il-policy u jkompli jizdied l-gholi kontra dak li trid il-ligi u l-pjan.

Il-Qorti tqis ukoll illi l-principju ta' trattament ugwali ma fihx applikazzjoni f'dan il-kaz billi fl-ewwel lok ma ntwerja ebda permess mill-applikant fejn fl-istess cirkostanzi u a bazi tal-istess policies u pjan lokali giet approvata applikazzjoni ohra pero anki kieku dan hu il-kaz, it-Tribunal mhux marbut bi precedent speċjalment dawk li jmorru kontra policies u pjanijiet cari li t-Tribunal ghandu josserva. Il-precedent hu sors ta' informazzjoni utili u cara biex jara l-linja ta' hsieb addottata f'decizjonijiet anterjuri pero ma jorbtux lit-Tribunal ghalkemm ghandu jaghtihom l-importanza misthoqqa biex ikun hemm ic-certezza u l-uniformita tal gudikat safejn hu possibli u fejn ic-cirkostanzi fattwali u legali huma identici.

Il-Qorti tqis li kwistjonijiet ohra mqajma mill-appellant bhal kwistjonijiet ta' estetika u impatt negattiv o meno fuq l-area, anki kieku rilevanti ghall-iskop tal-applikazzjoni quddiem l-Awtorita, mhumieq punti ta' ligi izda ta' planning u ta' natura teknika fattwali li fuqhom ma hemm ebda dritt ta' appell u kull referenza ghalihom f'dan l-appell ma hix ser titqies.

Decide

Ghal dawn ir-ragunijiet l-appell ta' Charles Schembri f'isem u in rappresentanza tas-socjeta C & F Enterprises Limited qed jigi michud u d-decizjoni tat-Tribunal ta'

Kopja Informali ta' Sentenza

Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012 qed tigi konfermata. Bl-ispejjez għall-appellant.

< Sentenza Finali >

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