



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 135/2012

Jane Vella

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Jane Vella tal-20 ta' Awwissu 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012 mill-applikazzjoni PA 618/05 biex 'isir vineyard, jinbena gibjun ghall-ilma tax-xita u tissanzjona l-kamra li nbriet bla permess';

Rat ir-risposta tal-Awtorita li ssottomettiet illi l-appell kellu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet id-difensuri tal-partijiet;

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

B'applikazzjoni tat-3 ta' Frar 2005, Full Development Permission, PA 0618/05, f'sit fix-Xatt l-Ahmar, Ghajnsielem, l-appellanti pproponiet li "jsir vineyard; jinbena gibjun ghall-ilma tax-xita; u tissanzjona l-kamra li nbriet bla permess".

L-applikazzjoni giet michuda, saret talba ghal reconsideration, izda r-rifjut gie kkonfermat fit-3 ta' Jannar 2007 (Red 44 fil-file) ghar-ragunijiet segwenti:-

"1. The site lies outside the limits for development defined in the Temporary Provisions scheme for Ghajnsielem and so it is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

2. The proposed development conflicts with Structure Plan Policy SET11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to Structure Plan Policy BEN5.

3. There is no justification for the development of this site as required by Structure Plan Policy SET12.

4. The proposal is not essential to the needs of agriculture in that the applicant is not a registered full-time arable farmer tilling a substantial stretch of land in the vicinity of the site. The applicant does not therefore satisfy the criteria set out in paragraph 11.4 of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF5 and SET 11 and to the Malta Environment & Planning Authority's Policy and Design Guidance - Farmhouses and Agricultural Buildings.

5. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan Policy RC02 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

6. The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan Policy RC04. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

7. Structure Plan Policy RC04 provides that, 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 RC04.

8. The proposal makes no provision for soft landscaping on the site. It would therefore detract from the visual amenity of the area and would not comply with Structure Plan Policy BEN17 which requires the landscaping of development.

9. The site is located in Proposed Level 3 Area of Ecological Value as indicated on Gozo and Comino Local Plan Map 13.1-A and Map 14.2-E the, where further human intervention, particularly in the form proposes, is not desirable. The proposal would therefore adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Local Plan and Structure Plan.

10. Gozo and Comino Local Plan Policy GZ-AGR1 sets out that "MEPA will safeguard areas of Agricultural Value". The proposed development is located within such an area and thus conflicts with the abovementioned policy.

11. Gozo and Comino Local Plan Policy Gz-'RECR-3 encourages the upgrading of walkways identified as Circular Walking routes would not be in the interests of the recreational potential of the area, and thus conflicts with such policy and Policy GZ-RECR-1.

12. Gozo and Comino Local Plan Policy GZ-COAS-1 sets out that within Coastal Viewshed Protection Zones, development "shall be restricted to the maintenance of existing traditional coastal features with no lateral increase in built footprint or vertical increase in height of the built structures". The proposed development is not a traditional coastal features and thus conflicts with the above mentioned policy.",

Fl-appell tieghu, il-Perit Karmenu Borg ghall-appellanti sottometta s-segwenti:-

"1. Ix-xoghol hu marbut kollu kemm hu ma ghanijiet agrikoli.

2. Il-klijent ma naghatax l-opportunita li jirringa, jbidel u jadatta l-pjanti mibghuta ma' l-applikazzjoni biex ikunu ntegrati aktar fl-ambjent ta' madwar is-sit u jikkonformaw ahjar mal-Linji ta' Gwida 2005.

Ix-xoghljiet proposti huma l-parti l-kbira mohbija jew that il-hamrija jew mistura mal-hitan tar-raba ta' fuq ir-rih.";

Fir-rapport taghha, l-Awtorita kkumentat kif gej:-

"Principle of Development

Structure Plan Explanatory Memorandum paragraph 11.4 states that stores for agricultural implements may be considered only if the applicant is a bona fide registered full time farmer. The applicant is only registered as a part-time farmer tilling 4 tumoli of land. There is no genuine need for the room, as required by paragraph 1.10.1 of Policy and Design Guidance - Farmhouses and Agricultural Buildings, 1994. The proposed development therefore, is not essential to the needs of agriculture and

is regarded as a form of urban development and not one of the categories of development permitted outside the development boundaries. The site lies wholly outside the limits to development as defined by the Gozo and Comino Local Plan. The Structure Plan strategy comprises a blanket prohibition of any form of urbanisation outside areas specifically designated for urban uses in the Plan. Any form of urbanisation outside these designated areas is prohibited. Thus this proposal runs counter to Structure Plan Policies AHF5, SET11, RC02, and SET12 as there is no justification to depart from the Structure Plan provisions to prohibit this kind of development ODZ.

Extent of Proposal

Furthermore, Policy and Design Guidance - Farmhouses and Agricultural Buildings, 1994, paragraph 1.10.1 specifies that rural rooms should not exceed 9 courses in height and 15m² in size. The existing room covers an area of 27m², nearly twice the permissible area, and measures 10 courses externally. The proposal suggests that this room would be altered to cover an area of 19m² and will be lowered to a height of 9 courses. Even with the proposed modifications, the room would still exceed the size permissible to full-time farmers tilling a greater extent of land.

Ecology

The Gozo and Comino Local Plan also proposes the area within which the site is located as a level 3 Area of Ecological Importance. The proposed development is undesirable in such a location and conflicts with Policy GZ-RLCN-1.

Visual Impact and Landscaping

Moreover the site is also designated as an Area of High Landscape Sensitivity. Policy GZ-RLCN-1 sets out that "apart from the normal restrictions on development in rural areas, there shall be a strong presumption against the creation of new built structures (including cultivation and animal husbandry related structures) in AHLs". Additionally, no landscaping is being proposed, to minimise any impacts on the rural environment, as required by

Policy and Design Guidance - Farmhouses and Agricultural Buildings, 1994, paragraph 1.10.1. The proposed development, especially due to the grey rendering applied to its walls, would therefore have an adverse impact on the scenic value of the area and it is therefore in conflict with the above mentioned policy and Structure Plan Policies RC04 and BEN17, which requires landscaping of development. Views should be especially safeguarded in view of the site's proximity to a Linear Country Parkway and Circular Walking Route.

Coastal Viewshed Protection

Additionally the Gozo and Comino Local Plan also designates the site within the Coastal Viewshed Protection Zone. Policy GZ-COAS-1 sets out that "development in these areas shall be restricted to the maintenance of existing traditional coastal features with no lateral increase in built footprint or vertical increase in height of the built structures". The proposed development does not fall within this category of development and thus also conflicts with Policy GZ-COAS-1.

Illegal Development

Finally, the proposal only seeks to sanction 19m² out of a total 27m² existing footprint, and seeks to sanction a height of 9 courses out of the existing 10 course height. The provisions of Circular PA2/96 apply in relation to that part of the store indicated in yellow on latest drawings."

Il-perit Karmenu Borg ghall-appellanti, fin-nota tieghu, prezentata fit-13 ta' Gunju 2007 ssottometta s-segwenti:-

"1. Ix-xoghol kif propost, huwa fil-massimu tieghu t-thawwil ta' ammont sostanzjali ta' zragen tad-dwieli ghall-produzzjoni ta' l-gheneb u sigar taz-zebbug. Bhala sosten ghal dan ix-xoghol jinhtieg gibjun ghall-hazna tal-ilma; liema gibjun ser ikun kompletament that il-livell tal-hamrija. L-ilma tax-xita ghal dan il-gibjun ser jingabar mill-wied li jinsab biswit l-istess gibjun. Apparti dan, tinhtieg karma fejn tinzamm l-ghodda u apparat iehor marbut mal-kultivazzjoni tad-dwieli. Minn naha wahda, din il-kamra tinsab kompletament that il-livell tal-hamrija. Barra minn

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hekk, diga thawwlu ammont ta' sigar madwar l-imsemmija karma biex ikomplu jostruha.

2. Dwar il-policies msemmija, b'mod specjali GZ-RLCN-1, dawn ma jinkoraggux izda lanqas jeskludux il-possibilita ta' xi xoghol limitat bhal fil-kaz koncernat. Infatti gew approvati diversi progetti simili f'postijiet ta' natura identika; ara PA 2853/00, PA 2854/00, PA 3554/00, PA 6975/00 u PA 2849/06".

L-A wtorita, fis-second statement taghha ssottomettiet is-segwenti:-

"Reference is made to appellant's architect's submission dated 6th June 2007. The Planning Appeals Board may wish to note that all applications quoted by architect, except one, do not refer to applications for agricultural storage or water reservoirs. Application PA2854/00 in turn, whilst permitting agricultural stores, an underground water reservoir and pump room, relates to the Marsovin Ramla Valley Estate which measures over 43,000m² (over 38 tumoli). This permission, clearly, cannot be used to justify the proposed development located on just 1230m² (just over 1 tumolo). The remaining 3 tumoli of land registered on applicant do not form part of the site.

The recently approved Policy and Design Guidance - Agriculture, Farm Diversification and Stables, 2007, Policy 2.4A (3) clearly sets out that:

"no building for storage purposes will be permitted on arable farms (see criterion 1c of this policy) of less than 5 tumoli. A storage building with a total floors pace of not more than 15 square metres (measured externally) may be permitted on an arable farm (see criterion 1c of this policy) of between 5 and 10 tumoli; a storage building of not more than 20 square metres (measured externally) may be permitted on an arable farm (see criterion 1c of this policy) of between 10 and 20 tumoli; and a storage building of not more than 40 square metres total floorspace, measured externally, may be permitted on an

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arable farm (see criterion 1c of this policy) larger than 20 tumoli;"

It is, thus, evermore clear that the proposed development conflicts with current approved policy. As for the reasons mentioned above, the Malta Environment & Planning Authority respectfully requests the Planning Appeals Board to confirm the decision of the DCC and to refuse this appeal."

Irrizulta li s-sit jinsab barra z-zona tal-izvilupp - kif konfermat mis-site plan Red 1A, l-art fiha kejl ta' 1230 mtrs.sq. - skond ma gie dikjarat mill-perit u tinsab fil-kampanja kif konfermat mir-ritratti Red 1G u Red 1H.

FI-2003 kien hareg Avviz biex Tieqaf uta' Twettieq ECF 468/03 li ghid "ghandek zvilupp minghajr permess u li jikkonsisti f'kostruzzjoni ta' kamra go ghalqa".

Gie rilevat in oltre li skond para. 11.4 tal-iStructure Plan Explanatory Memorandum, stores ghall-ingenji tal-agrikoltura jigu permessi jekk l-applikant:-

- a. ikun bona fede full-time fir-raba;
- b. l-bini ma jeccedhiex area ta' 15 mts.sq.;
- c. jinsab fir-raba mahdum mill-applikant;
- d. ma jnaqqasx mill-karattru rurali tal-area.

Skond il-Policy and Design Guidance - Farmhouses and Agricultural Buildings, 1994, para. 1.10.1 dawn it-tip ta' kmamar jigu awtorizzati fil-kaz tar-rahhala li ghandhom bzonn genwin ghal dawn il-facilitajiet, b'dan li l-kamra ma teccedhiex 9 filati fl-gholi u sa 15 mtrs.sq. fid-daqs u landscaped biex jigi minimizzat l-impatt negattiv fuq l-ambjent rurali.

Skond l-Gozo and Comino Local Plan, is-sit hu vicin nixxija tal-ilma; hu ta' valur agrikolu; area ta' importanza ekologika u area ta' high landscape sensitivity.

Ikkunsidra ulterjorament:-

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L-appellanti qed tipproponi vineyard; gibjun ghall-ilma tax-xita u tissanzjona kamra li nbriet bla permess.

L-applikazzjoni giet michuda u nghataw tmax (12)-il raguni ghar-rifjut. Principalment l-oggezzjonijiet jirreferu ghall-lokalita tas-sit 'de quo' li jinsab barra z-zona tal-izvilupp, f'area partikolarment sensittiva u ta' valur ekologiku.

Diffikulta ohra hi l-fatt li l-appellanti ma tahdimx r-raba full-time u tahdem biss circa 4 tumoli ta' raba u ghalhekk ma tikkwalifikax skond il-policies ghall-agricultural store fid-daqs tal-kamra li qed titlob li tigi sanzjonata.

Oggettivament, progett li jinvolti t-tkabbir ta' dwieli ghall-gheneb li jintuza fl-industrija tal-inbid, ghandu jinghata kull appogg, inkoraggament u assistenza kemm teknika kif ukoll finanzjarja. Dan hu tip ta' progett li jabelixxi l-ambjent, jaghmel l-ahjar uzu tal-art kif propost fil-Pjan ta' Struttura u mil-lat ekonomiku, jikkrea l-imjiegi.

Mill-file tal-applikazzjoni PA 0618/05 - Red 33A, jirrizulta li fit-3 ta' Gunju 2005 sar ftehim bejn l-appellanti u kumpanija li tipproduci l-inbid, dwar kif setghu jikkoperaw biex jipproducu l-inbid. Il-ftehim kellu validita ta' (10) ghaxar snin.

Dan il-ftehim kien anness ma' ittra tal-Perit Karmenu Borg tal-5 ta' Awwissu 2006 - Red 33 - li maghha annetta ukoll pjanti godda - Red 33F u 33G fejn ippropona li jirriduci d-daqs tal-kamra.

Pero ghalkemm skond dawn il-pjanti parti mill-istore kellha tigi demolita, dan baqa' ma sarx u ghalhekk skond l-Awtorita billi hemm illegalita' fuq is-sit, japplikaw il-provvedimenti tac-Cirkolari PA 2/96, illum Artikolu 14 tal-Avviz Legali 415 tal-2010 u l-applikazzjoni ma tistax tigi approvata.

Billi l-applikanti tahdem biss 4 tumoli raba, m'hemmx gustifikazzjoni skond il-policies ghall-istess kamra li hi meqjusa bhala zvilupp urbanizzanti ta' ingenji tar-raba; lokalita fejn m'hu permess l-ebda zvilupp; lokalita li

rizultat partikolarment sensittiva. Kmamar rurali għall-istorage inghataw biss lill-full-time farmers li għandhom bzonn genwin, pero dawn ma jistghux ikunu aktar minn 9 filati għoli u 15 mtrs.sq. fl-area, skond il-Policies (para 1.10.1 Policy and Design Guidance - Farmhouses and Agricultural Buildings 1994). Dan gie kkonfermat bil-Policy 2.4A(3) tal-Policy and Design Guidance - Agriculture, Farm Diversification and Stables 2007 li stabbilit li min jahdem anqas minn 5 tumoli ma jikkwalifikax għall-istore. F'dawn ic-cirkostanzi partikolari, billi l-kamra f'dawk il-qisien ma tistax tigi sanzjonata, l-appell ma jistax jigi kkunsidrat favorevolment.

It-Tribunal għalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut tat-3 ta' Jannar 2007 indirizzat mill-appellanti dwar l-applikazzjoni PA 0618/05.

Ikkunsidrat

L-aggravji tal-appellanta huma s-segwenti:

1. It-Tribunal naqas li jevalwa l-committment ezistenti tal-permessi simili msemmija;
2. It-Tribunal ikkwota l-Avviz Legali 415/2010 artikolu 14 bhala li ssostitwixxa c-cirkolari 2/96 pero din titkellem fuq degrees universitarji u mhux rilevanti għal osservazzjonijiet tat-Tribunal dwar nuqqas ta' approvazzjoni ta' applikazzjoni jekk bini illegali ma jkunx gie demolit qabel;
3. It-Tribunal zbalja jekk applika l-Avviz Legali 415/2010 artikolu 14(2) u kkonkluda li l-bini illegali kellu jitwaqqa' qabel issir applikazzjoni meta l-artikolu 14(2) jikkontempla applikazzjoni għal zvilupp u sanzjonar ta' bini illegali.

It-tieni u tielet aggravji

Dawn l-aggravji ma fihom ebda mertu, u jirrigwardaw paragrafu partikolari tad-decizjoni li mhux miktub b'mod felici pero xorta ma jaghtix lok għal xi nullita jew appellabilita valida mid-decizjoni. Dan il-paragrafu hu paragrafu 6 ta' pagna 7 tad-decizjoni. It-Tribunal ikkwota hazin l-Avviz Legali bhala 415/2010 mentri kellu jikkwota 514/2010. Dan jidher car li hu zball dattalografiku u r-

referenza li ghalih gie maghmul hi cara tant li l-appellant oltre l-aggravju mbaghad jirreferi ghal Avviz Legali 514/2010 u jelabora fuqu fit-tielet aggravju konness mal-istess paragrafu fid-decizjoni.

L-appellanta ssostni li t-Tribunal applika hazin il-ligi ghax l-artikolu 14(2) tal-Avviz Legali 514/2010 tippermetti li ssir applikazzjoni ghal zvilupp u sanzjonar fl-istess hin minghajr ma l-ewwel jigi demolit il-bini li tieghu qed jintalab is-sanzjonar. Din il-Qorti taqbel li dan l-artikolu jaqra precizament hekk. L-appellanta ssostni li t-Tribunal ikkunsidra li l-ewwel kellu jitwaqqa' l-bini illegali kolpit b'enforcement notice qabel issir applikazzjoni. Dan mhux il-kaz billi t-Tribunal kien qed jikkwota biss x'argumentat l-Awtorita. It-Tribunal ma mexiex ma' dan l-argument billi l-paragrafi sussegwenti juru illi t-Tribunal iddecieda kontra l-applikant ghax il-kamra li kienet qed tintalab tigi sanzjonata ma kinitx konformi mal-policies Farmhouses and Agricultural Buildings 1994 u Policy and Design Guidance – Agriculture, Farm Diversification and Stables 2007 in kwantu kienet oghla u ikbar milli jippermettu l-policies kif ukoll l-applikant kien jahdem inqas art milli dak rikjest biex ikun eligibbli biex japplika, anki kieku d-daqs kien konformi mal-policies.

Kwindi dawn l-aggravji qed jigu michuda.

L-ewwel aggravju

Dan l-aggravju kien jirrigwarda permessi specifici simili msemmija mill-applikant biex jiggustifika l-hrug tal-permess f'dan il-kaz. Sfortunatament it-Tribunal injora dan l-aggravju totalment u ma ddeciedix jekk dan l-aggravju kienx fih mertu jew le fil-kuntest tal-applikazzjoni in kwistjoni. Hu minnu li fir-rassunt tal-fatti, it-Tribunal semma' l-osservazzjonijiet li ghamlet l-Awtorita fuq il-permessi kkwotati mill-appellant, pero t-Tribunal naqas li jikkunsidra x'validita kellhom is-sottomissjonijiet tal-partijiet fuq il-mertu tal-aggravju ta' permessi ohra simili li setghu influixxu fuq l-ghoti ta' dan il-permess.

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Dan in-nuqqas ma jsib ebda skuza jew gustifikazzjoni fl-atti u t-Tribunal kellu jaghti debita konsiderazzjoni ghal dan l-aggravju u r-ragunijiet ghaliex kellu jew ma kellux jintlaqa' fl-isfond tal-applikazzjoni, u jekk fil-fatt setghax kien ta' influwenza fuq il-konkluzzjonijiet li wasal ghalihom it-Tribunal. Hu dmir ta' awtorita gudikant li tistma' lil kulhadd bl-istess mod cioe li jinghata smigh xieraq lil applikant u ragunijiet kunsidrati jekk applikant ma jinghatax raguni fl-applikazzjoni. Li aggravju bhal dan jigi injorat jista' jaghti messagg hazin li ghalkemm maghmul in buona fede ma jkunx qed jaghti certezza tal-gudikat fil-konfront ta' min ikun inghata.

Ghalhekk f'dan il-kaz l-aggravju qed jigi milqugh mhux ghax il-Qorti qed taghti ragun fil-mertu lil applikanta izda ghax it-Tribunal naqas li jikkunsidrah.

Decide

Ghalhekk in vista ta' dak kunsidrat, il-Qorti qed tilqa' l-ewwel aggravju tal-appellant, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tal-31 ta' Lulju 2012 u tirrinvija l-atti lura quddiem it-Tribunal sabiex jiehu konjizzjoni ta' dan l-aggravju u jerga' jiddeciedi l-appell skond il-ligi. Spejjez jibqghu bla taxxa fic-cirkostanzi.

< Sentenza Finali >

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