



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 118/2012

**Rita Carachi**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Rita Carachi tal-10 ta' Lulju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 li cahdet l-applikazzjoni ghal zvilupp ta' terraced house f'end of site;

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:

A. Il-Kummissjoni għall-Kontroll ta' l-Izvilupp, fis-6 ta' Frar 2009, irrifjutat l-applikazzjoni outline development permission PA 231/07 "Site at Sqaq Nru. 4, Triq il-Karmnu, Luqa: Outline development to construct a terraced house at the end of site. (Unsightly blank wall to be eliminated by way of this proposal.)"

Il-hames ragunijiet għar-rifjut kienu s-segwenti:

"1. The site of the proposed the development of a residential unit is located on the extended centerline of Runway 24 and within the Critical Public Safety Zone, specifically the Red zone, in which building development should not be permitted. The proposed development compromises Structure Plan policy AVN 3 which specifies the establishment of Public Safety Zones and building height restrictions. As specified in paragraph 14.23, these zones are established to regulate safety impacts outside the airport boundaries.

2. The terraced house being proposed would be located in a Strategic Open Gap as Specified by the South Malta Local Plan and therefore the development would run counter to policy SMCO 10 which does not permit urban development in such areas in order to limit urban sprawl in areas outside the development zone.

3. The proposed residential unit would conflict with Structure Plan Policy SET 11, 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 policy BEN 5.

4. There is no justification for the development of a residential unit as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a

planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

5. The proposed terrace house is located Outside the Development Boundary and thus runs counter to Structure Plan Policy AHF 5 since only structures which are essential to agriculture are permitted outside the development boundary. Furthermore the new development is not permitted by Policy PLP 20 Development Control Guidance - Developments Outside Built-up Areas (January 1995), Paragraph 8.1 since development of an urban nature is not permitted, only certain change of use and minor extensions may be permitted in areas outside the development zone."

B. In-nota tal-Perit Robert Musumeci ghall-Appellanti, ipprezentata fis-27 ta' Frar 2009, inter alia l-punti segwenti:

"One may safely conclude that the DCC places a positive presumption in favour of end of development solutions, when it is established that a proposed design solution would mitigate an unsightly blank wall in ODZ which forms the end of an existing boundary commitment. [... Despite these] planning material considerations, the Directorate has ignored our request, citing that the development lies in a public safety zone. [... On the other hand] MEPA has not cited any objection to the same effect in the cases PA 4472/06 and DN 371/07, which relate to the construction of a supermarket close to the runway and the 5 storey Lufthansa Teknik hangar facilities which are located in the runway itself?

During the DCC Reconsideration sitting we have also drawn the attention of the Board that MEPA has also approved a rationalized boundary close to the site under appeal.

Against the above background, it is only reasonable that the proposal in question, consisting of ONE residence which will visually seal the committed schemed boundary

of development, is without any doubt considered to be acceptable from a planning point of view, since it will cordon any potential future ribbon development in the area."

Ma' l-istess nota gew citati tlett permessi, cjoe PA 4384/04, PA 996/05 u PA 6366/06 in sostenn tal-aggravji mressqa mill-istess Appellanti.

C. In-nota risposta ta' Lorinda Vella ghall-Awtorita, ipprezentata fl-14 ta' Mejju 2010, inter alia t-tlett punti segwenti:

"5.3 [...] each development is to be considered in its own context. [...] A case in point, consists of one of the cited applications which is located within a Category 2 Rural Settlement, where such development is in compliance with the Local Plan. In the case subject to appeal, it may be noted that the blank party that is present adjacent to the site is not visually intrusive as it consists of a weathered stone blank party wall. In view of such circumstances and other considerations, the DCC has decided that this particular case is not justified on sound planning grounds, as was the case for the other cited applications.

5.4 Other considerations which also led the DCC to refuse this application included the fact that the site is located within a Strategic Open Gap, where there is a presumption against any new development to secure that the open character between villages and towns is preserved and protected from urban sprawl. Furthermore, the site is also located within a Public Safety Zone, and through consultation with the Malta International Airport and the Civil Aviation Department it was clear that the development would conflict with the contingency plans adopted by these entities to safeguard public safety. The comments from these two entities clearly indicate an objection to the proposed development, as follows:

Civil Aviation Department (consultation letter at red 16)

This Department indicated that the site lies within a 'Red Zone', which is recognised as an exclusion zone and no building development should be permitted for the safe conduct of aircraft operations.

Malta International Airport (consultation letter at red 17)  
This agency stated that the development is located within an area that is considered to carry notable risk from exposure to potential aircraft accidents, and where there is a presumption against any form of new urban development. This agency also noted that consideration must be given to the fact that (if approved) the current application will extend the established building zone further in the Public Safety Zone, creating a precedent for further development and thereby incrementing the risk to public safety.

5.5 On the issue of the site being located within the Public Safety Zone, the appellant cites two permits issued by MEPA within this area, being PA 4472/06 and DN 3 71/07. In the case of PA 4472/06 it is pointed out that this was a site already committed with building development. The case of DN 371/07 concerns the construction of a structure for use as an aircraft hangar, and which was permitted by the respective Authorities (namely the Civil Aviation Department and Malta International Airport) as a facility and amenity to the airport as a whole, with it being located on the airport grounds. Contrary to these two cases, the case subject to appeal concerns the construction of a private residence on uncommitted land, and hence bears no resemblance to the applications cited as precedents by the appellant.”

D. Ix-xhieda tal-Ing. Martin Dalmas, Head of Operations fi hdan il-Malta International Airport, prodott mill-Appellanti, moghtija bil-gurament waqt is-Seduta numru 4 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fil-5 ta' Frar 2010.

"Ir-riserva ta' l-MIA fuq dan il-progett hija dik li ghamilna fil-bidu ossia illi, dak il-bini jinsab f'zona li nsejhulha critical area, li hija zona li l-iktar li tista' tkun prone ghal aircraft accidents u biex nilqghu ghal public safety, ahna ghamilna

recommendations bhala ajruport, li huma ibbazati fuq qbil mad-Dipartiment ta' l-Avjazzjoni Civili, u r-rakkomandazzjoni taghna hija illi, ma nirrakkomandax zvilupp f'dawn it-tip ta' critical areas. Jiena hawnhekk, qed nitkellem fuq riskju ghall-individwi, mhux riskju ghal ajruplani. Irrid nghid illi, kull zvilupp li jsir inkluz l-izvilupp propost, jaqa' fir-risk zone. Mistoqsi kif gie allura approvat il-permess ta' Lidl Supermarket, jiena nghid illi, fi zmien ta' meta giet iprocessata dik l-applikazzjoni, l-MIA, ma kienitx gietx ikkonsultata. Il-pozizzjoni ta' l-MIA f'dak il-kaz, kienet tkun kieku kienet konsultata, kif kienet anke qabel ossia illi, nopponu ghall-izvilupp. Jiena irrid nghid illi, fil-kaz ta' Lidl Supermarket majidhirlix illi, kien hemm ebda ligi miksura pero, l-applikazzjoni u l-permess, jmorru kontra ir-rakkomandazzjoni li konna naghtu ahna kieku gejna kkonsultati. Qed issirli referenza ghall-izvilupp ta' Lufthansa Teknik. Il-Lufthansa Teknik nghid illi, huwa parti mill-infrastruttura normali ta' l-ajruport. Irrid nghid illi, l-haddiema illi qeghdin jahdmu fil-Lufthansa Teknik, qeghdin f'riskju manigabbli. Jiena nghid ukoll illi, l-persuni li jzuru l-kumpless tal-Lidl Supermarket, ukoll qeghdin f'riskju, Tant hu hekk illi, wara li ntlaga' il-permess, u ahna dehrilna illi, ma kellniex kontroll fuqha ulterjorment, konna tlabna li jsiru signage, u fil-fatt dak is-signage sar. Fil-fatt naf illi, fil-Lidl Supermarket, hemm signage illi jghid illi, dak huwa sit ta' periklu minhabba l-attivita ta' avjazzjoni.

Irrid nispjega qabel xejn illi, s-sit li fuqha inbena il-Lufthansa Teknik, m'ghandux l-istess riskju illi ghandu s-sit mertu ta' din l-applikazzjoni. Dan ghaliex, il-location tal-hanger huwa lejn il-genb ta' runway, qieghda f'zona fejn l-ajruplan prattikament ikun gia miss ma' l-art, u allura l-unika hag a li jibqa' huwa illi, huwa jekk l-ajruplan jaghmel a boarded take off [recte, aborted take off]. Irrid nispjega illi, din is-site tigi lejn il-bidu ta' runway u l-istatistika turi li meta ajruplan ikun ser jinzel u jkollu diffikultajiet, iz-zona tal-madwar il-bidu tar-runway dejjem tigi meqjusa bhala zona ta' riskju. Nghid ukoll illi, l-post tal-Lufthansa Teknik, sar f'post fejn strategikament kien l-iktar post idejonu li seta' jsir, ghaliex il-hangers iridu access permezz ta' taxiways lejn ir-runway, u lejn facilitajiet ohrajn illi jinsabu appuntu mar-runway u konnessi mar-runway"

Xehed ukoll bil-gurament Carmel Caruana Triccas, ufficjal fi' hdan id-Direttorat tal-Avjazzjoni Civili, prodott mill-Appellanti, kif gej:

"Irrid nispjega illi, hemm area li tissejjah public safety zone illi fiha, ahna, dejjem nixtiequ illi, ma jsirx aktar zvilupp. Dan minhabba illi, hemm rizultati li juru illi f'zoni bhal dawn dejjem, hemm riskju akbar ta' incident. Din l-applikazzjoni taqa' propju fin-nofs taz-zona simili ghal dan li qed nghid. Dwar il-Lidl Supermarket, id-Dipartiment tieghi kien kkonsultat fil-process ta' dik l-applikazzjoni. Il-pozizzjoni taghna f'dak il-kaz, kienet preciz bhal pozizzjoni taghna f'dak il-kaz. Il-pozizzjoni taghna illum, ukoll ghadha l-istess kif kienet dakinhar illi ghamilna s-sottomissjonijiet taghna fil-Lidl Supermarket. Irrid nghid illi, meta bedajinbena il-Lidl, ahna konna ktibna lill-MEPA, fejn gharrafniha li ahna ma konniex naqblu ma' dawn it-tip ta' permessi. Sa fejn naf jiena, anke dwar il-parti li giet inkluzza bhala zona ta' zvilupp, ahna, fl-istadju tar-rationalisation, konna oggezzjonajna illi dik tigi inkluzza, pero, l-Awtorita, xorta wahda inkludietha.

Qed nigi muri l-ittra Red 16 fil-PA file, jiena naghrif din l-ittra bhala iffirmata minni. Dik l-ittra hija bbazata fuq il-policy taghna, u l-policy taghna, hemm hekk ghadha sal-lum, Ghalhekk, wara li jiena smajt id-deskrizzjoni kif maghmula lili, mill-perit ta' l-applikant, jiena nzomm ferm mal-kontenut ta' dik l-ittra tieghi. Irrid nghid illi illum, m'ghadtx hemm distinzjoni bejn il-blue zone u red zone ghaliex illum saret kollha blue zone. Nikkonferma illi, kemm iz-zona li giet inkluzza mill-Awtorita ghall-bini, kemm iz-zona fejn hemm mibni il-Lidl u kif ukoll is-sit mertu ta' din l-applikazzjoni, hum a kollha taht l-istess umbrella ta' zona kif nidentifikawhom ahna. Tal-Lidl, kienet tigi parti fil-blue zone u parti fir-red zone u dik il-parti ta' l-izvilupp li ngheatat ghall-bini, hija fil-blue zone.";

E. Kopji ta' dokumenti prodotti minn Carmel Caruana Triccas, ufficjal fi' hdan id-Direttorat tal-Avjazzjoni Civili, in sostenn tax-xhieda tieghu moghtija bil-gurament waqt is-

Seduta numru 4 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fil-5 ta' Frar 2010.

Dawn id-dokumenti jikkonsistu f'korrispondenza bejn id-Dipartiment tal-Avjazzoni Civili u l-Awtorita fir-rigward tal-bini tal-istess supermarket imsemmi fix-xhieda tieghu (bid-dati tat-8 ta' Novembru 2006, tat-18 ta' Gunju 2007 u tas-7 t'April 2008).

F. In-nota ta' sottomissjoni tal-Perit Robert Musumeci ghall-Appellanti, ipprezentata fid-9 ta' Frar 2011, inter alia t-tlett punti segwenti:

"2. Illi fl-ahhar seduta li nzammet quddiem dan it-Tribunal (diversament kompost) nhar id-19 ta' Novembru 2011, il-Bord ordna sabiex permezz ta' nota, il-partijiet izidu dak li ghandhom xi jghidu ma' dak minnhom gia sottomess waqt is-seduta u dan sabiex l-Bord ikun jista' jiddegreta dwar it-talba maghmula mill-esponenti seduta stante, u cjoe li jixhdu Sylvana Debono, Segretarja tal-MEPA, il-perit Sylvio Farrugia, u l-perit Frans Mallia ghan-nom tad-Direttorat u dan sabiex jispjegaw kif is-sustanza tax-xhieda prodotta minn Martin Dalmas (Head of Operations fl-MIA) u Carmel Caruana Triccas ghan-nom tas-Civil Aviation Directorate waqt il-mori ta' dan l-appell tintercetta ma' numru ta' decizionijiet li hadet l-Awtorita fosthom dik illi fil-perjodu ricenti iddecidiet li tinkludi z-zona immedjata ghas-sit odjern f'dan l-appell biex tiffurma parti mill-ezercizzju ta' rationalisation.

6. Illi di piu l-esponenti qed jinsisti li x-xhieda elenkati mill-esponenti jispjegaw jekk l-Awtorita' ghandhiex il-hsieb li tnehhi mill-iskema ta' l-izvilupp l-imsemmija zona fl-akwati adjacenti.

7. Illi fl-ahhamett l-esponenti qedjinsisti li x-xhieda elenkati mill-esponenti jispjegaw jekk l-Awtorita ghandhiex il-hsieb li tirrevoka PA 4472/96 (Lidl Supermarket) u dan a tenur ta' l-Artikolu 77 ta' l-Att tal-2010 dwar l-Ambjent u l-Ippjanar ta' l-Izvilupp rizultanti minn xi 'zball f'dokument li jidher minn ezami ta' l-istess dokument' jew allegat ksur ta' punt ta' ligi ghaliex il-Bord ma ddecidiex skond il-



provedimenti tal-policies u ligijiet vigenti kiftitlob l-istess ligi u dan in vista tal-fatt li dak li rrakommandat l-MIA kien injorat."

G. Ix-xhieda tal-Perit Silvio Farrugia, assistent direttur (Development Control) fi hdan l-Awtorita prodott mill-Appellanti, moghtija bil-gurament waqt is-Seduta numru 65 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-20 ta' Settembru 2011.

"Jiena ma kontx preparat li ser nitkellem fuq is-safety zone etc. Fil-kaz tal-Lidl parti mis-site kienet tinqabad fil-blue zone area u mhux fir-red zone. Il-parti fejn hemm is-supermarket per se, kien hemm diga permess tal-warehousing u ufficini. Li niftakar li kellna meetings ukoll mal-MIA fuq l-critical obstacle path minhabba l-gholi u gie cleared mill-issue tal-obstacle

Xehed ukoll bil-gurament il-Perit Frans Mallia, assistent direttur (Forward Planning) fi hdan l-Awtorita, prodott mill-Appellanti, kif gej:

"Domanda: Meta din iz-zona qabel giet inkluzja fil-process li wassal ghal inkluzjoni taghha, l-MIA u Traffic Control gew kkonsultati?

Risposta: Fil-fatt dak l-ezercizzju tar-rationalisation kif taf tajjeb inti kien espost ghal perjodu ta' konsultazzjoni u tant kien hemm awareness taghha, li kien hemm kundizzjoni specifika illi dawn il-kunsiderazzjonijiet ta' airline traffic, jittiehdu into account f'dik is-site partikolari.

Domanda: Dawk gew formalizzati fl-2006 u ghaddew hames snin. Fil-kors tal-hames snin kien hemm xi istant fejn it-Traffic Control gibdulkom l-attenzjoni jew le dwar il-mertu jekk ghandkomx tiehdu eccezzjoni fuq ir-rationalisation fl-area?

Risposta: Sa fejn naf jiena kien hemm komunikazzjoni fejn id-Department of Civil Aviation kien kkonferma l-oggezzjoni ghal dik is-site.

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Domanda: X'inhom l-posizzjoni tal-Awtorita illum?

Risposta: Li tiegħu konjizzjoni ta' dik il-posizzjoni.

Domanda: Ir-rationalisation kif approvat illum nista' ngħid li għadu in vigore fil-qafas tal-Ligi?

Risposta: Il-linja għadha in vigore.

Kontro-eżami: Ir-rationalisation tal-area diga ftehmna li mhux qegħda fuq is-site tal-appellanti, tmiss magħha, vicin tagħha jew fejn hi?

Risposta: Fil-vicinanze u ma jidher li tmiss magħha.";

H. In-nota ulterjuri tal-Perit Robert Musumeci għall-Appellanti, ipprezentata fis-6 t'Ottubru 2011, inter alia l-punti segwenti:

"Dwar jekk zvilupp ta' residenza li jmiss ma' appogg fit-tarf ta' l-iskema ta' l-izvilupp jistax jigi akkolt

- Illi kif ingħad fil-permess, il-plot mertu ta' dan l-appell jikkonfina mal-hajt ta' l-appogg ta' l-ahhar residenza fl-iskema ta' l-izvilupp. Huwa principju ben risaput li meta bini propost jinsab barra l-iskema ta' l-izvilupp u se jigi jmiss ma' hajt ta' appogg konfinanti mal-linja ta' l-iskema ta' l-izvilupp, il-proposta għall-izvilupp il-gdid tigi akkolta, u dan basta li l-izvilupp permess se jgħatti l-appogg ezistenti billi jinholq disinn permanenti permezz ta' aperturi li jigu kkrejati fl-appogg lijemani mill-izvilupp il-gdid. Fil-kwadru ta' l-ippjanar dan il-kuncett jissejjah end of development solution. Una volta jinbena l-izvilupp il-gdid, il-commitment ikun ingħalaq darba għal dejjem stante li wiehed ma jistax inbagħad jappoggja ma' hajt bit-twieqi u allura ikun evitat dak li fl-ippjanar jissejjah ribbon development. Molto piu, il-policies ta' l-ippjanar jimmilitaw kontra l-eżistenza ta' blank party walls u jesigu li dawn għandhom jigu indirizzati.

- Illi in effetti, dan il-kuncett huwa applikat b'mod konsistenti mill-Awtorita kull meta zvilupp propost se

jaghlaq l-ahhar appogg (blank party wall) f'commitment ezistenti, u dan anke jekk tali commitment, in pessima ipotesi, ikun jikkonsisti saħansitra minn abitazzjoni wahda. Dan il-kuncett isib sostenn fid-decizjonijiet ta' l-lppjanar irrispettivament jekk il-commitment ezistenti jinsabx fl-iskema ta' l-izviupp (bhal fil-kaz odjern) jew f'xi wahda mill-Category Settlements definit fil-Pjanijiet Lokali.

Dwar jekk zvilupp hux permissibbli fred zone

- Illi in primis, irid jigi enfasizzat li illum ma tezisti ebda distinzjoni bejn red zone u blue zone. Dan jirrizulta mix-xhieda ta' Carmel Caruana Triccas, Head of Operations fl-MIA.

Illi minn ezami ta' din ix-xhieda, jirrizulta ampjament li s-sit mertu ta' dan l-appell huwa ikkarretrizzat mill-istess mertu li jefetwaw is-sit tal-Lidl Supermarket. L-istess jinghad fil-kaz tal-medda ta' art sitwata vicin is-sit odjern, li illum hija sancita bir-regolamenti li japplikaw għal rationalised areas.

Illi da parti tieghu, il-perit Frans Mallia, Assistenti Direttur Forward Planning Unit, iddikjara bil-gurament li r-rationalised area sitwata fil-vicin tas-sit kienet approvata bl-intiza cara li din tista' tigi eventwalment zviluppata. Fil-fatt, Mallia ikkonferma li l-Awtorita approvat dan il-pjan anke jekk din kienet konsapevoli rnill-oggezzjonijiet impressqa mid-Dipartiment ta' l-Avvjazzjoni Civili. Molto piu, il-Perit Mallia izid jikkonferma li dan il-pjan għadu in vigore u allura ma jistax jinghad li l-MEPA biddlet il-pozizzjoni tagħha.

Illi mis-sustanza tax-xhieda tal-Perit Frans Mallia, jirrizulta manifestament li l-Awtorita tikkoncedi, u dan naturalment għax il-ligi tippermetti li jsir bini f'zoni li hma identifikati bhala safety zones. Fil-fatt, il-perit Silvio Farrugia, fid-depozizzjoni tieghu ta' nhar l-20 ta' Settembru 2011, spjega li f'tali cirkostanzi, il-MEPA tesigi li jittiehdu certu salvagwardji.

Fil-kaz odjern, l-Awtorita qed tinsisti li ma jistax jsir zvilupp stante li s-sit jinsab f' red zone - kontestwalment, l-Awtorita tiggustifika l-hrug tal-permess tal-Lidl supermarket fil-vicin u in oltre approvat medda ta' art fil-vicinanze (ukoll tinsab fis-safety zone) ghall-izvilupp bhala rationalised zone, u fejn allura jistghu jinbnew mijiet ta' appartmanti. Fiz-zewg kazijiet, l-Awtorita kienet ben intiza li s-siti rispettivi, similmement ghal dak odjern, jinsabu fis-safety zone."

F'din in-nota gew anke ccitati sitt applikazzjonijiet; cjoe PA 795/06, PA 2799/05, PA 1938/05, PA 996/05, PA 4384/04 u PA 2505/03 in sostenn tal-argumenti ta' end of development kifukoll ta' commitments, kif imressqa mill-Appellanti.

J. In-nota second statement ta' Jonathan Borg ghall-Awtorita, ipprezentata fil-5 ta' Dicembru 2011, precizament il-punti segwenti:

"2.1 The Authority still makes a distinction between the Blue and Red Zones of the Critical Public Safety Zone since these are still extant in the local plan which is yet in vigore.

2.2 The permit for supermarket and the approved Rationalisation Area fall within the Blue Zone, whilst the proposal subject to this appeal is within a Red Zone. These two areas are subject to different policies, wherein the latter zoning more restrictive parameters apply. The appellant also failed to mention that there were already commitments for offices on part of the site of the supermarket.

2.3 The end-of-scheme development solution does not apply in this case because the site is located within a Strategic Open Gap. Policy SMCO 10 of the local plan prohibits any urban development within such designated sites."

Ikkunsidra ulterjorment:

## Kopja Informali ta' Sentenza

Il-mertu ta' dan l-appell ghal outline development permit jirrigwarda proposta sabiex tinbena dar (terraced house), f'fond li jinsab f'sqaq f'strategic open gap, ezattament barra z-zona tal-izvilupp ta' Hal Luqa. Fid-dettall, il-proposta tikkonsisti f'residenza b'zewg kmamar tas-sodda, mahzen domestiku sottinterrat u garaxx fil-pjan terren. L-izvilupp ser isservi wkoll sabiex jitghatta hajt t'appogg mikxuf (blank party wall).

Precedentement, fuq dan il-fond kienu gew intavolati zewg applikazzjonijiet simili ghal din in ezami: PA 3524/93 u PA 7545/94, izda fiz-zewg kazijiet, il-permess gie michud u kkonfermat mill-Bord ta' l-Appell dwar l-ippjanar.

Ir-raguni ghar-rifjut huma bbazat fuq tlett premessi:

- Peress li s-sit jinsab fil-critical public safety zone (red zone) ta' runway 24 tal-ajruport u f'zona indikata bhala strategic open gap, il-proposta hi in kontravenzjoni tal-policies AVN 3 u l-paragrafu 14.23 tal-Pjan ta' Struttura, u
- Peress li din l-arja hi ukoll strategic open gap, il-proposta tmur kontra s-policies SET 11, SET 12, RCO 2 u BEN 5 tal-Pjan ta' Struttura, kif ukoll il-policy SMCO 10 tal-Pjan Lokali li ma jippermettux zvilupp urbanizzanti barra z-zona tal-izvilupp, u di konsegwenza
- Peress li l-proposta mhix intiza ghall-uzu argrikolu jew rilatat ma' attivita agrikola, jirrizulta wkollli qed tikser il-policy AHF 5 tal-Pjan ta' Struttura u s-policy PLP 20 li majippermettux zvilupp bhal dan fil-kampanja.

L-aggravji ta' - Appellanti jistrihu fuq il-punt ta' precedent; li kienu diga gew approvati almenu tlett applikazzjonijiet simili ghal dan in ezami (cjoe PA 4384/04, PA 996/05 u PA 6366/06), fejn kienu gew permessi end of scheme developments.

L-Awtorita pero tikkontendi li zvilupp bhal dan (cjoe end of development li jghatti blank party wall) mhux applikabbli f'kwalsiasi cirkostanza; anzi, li huma sui generis u li ghalhekk jista' anke jaghti l-kaz li proposti bhal dawn ma jigux milqugha (minhabba ragunijiet specifici).

Jirrizulta fil-fatt li l-argumenti rnessqa fis-sottomissjonijiet ulterjuri taz-zewg partijiet, jiffukaw fuq il-punt li s-sit jinsab fil-critical public safety zone (red zone) tal-ajruport.

Ghal dan il-ghan, xehed ufficjal mill-Malta International Airport (MIA) li kkonferma li l-iskop tar-red zone hi sabiex tissalvagwardja l-pubbliku in generali (mhux daqstant l-istess ajruplani), izda li pero r-rakkomandazzjonijiet taghhom mhux dejjem intalbet. Ghawnhekk gie citat bhala ezempju l-kaz tal-Lidl Supermarket, fejn l-MIA ma kienitx giet ikkonsultata. Gie kkonfermat pero li retrospectivament twahhlet bhal tabella fis-supermarket li 'tavza lill-klijenti li qeghdin gewwa zona ta' sogru, cjoe li jinsabu gewwa critical obstacle path. L-istess xhud ikkonferma wkoll li fil-kaz ta' l-Lufthansa Teknik citat mill-Appellanti; dak il-bini jinsab gewwa l-aktar zona idoneja tal-ajruport, u li l-izvilupp hu fuq kollox integru ghall-operat tal-istess ajruport.

Xehedu wkoll ufficjali tal-Protezzjoni Civili u tal-Awtorita li kkonfermaw li m'ghandux isir zvilupp gewwa r-red zone minhabba r-riskju ta' incidenti. Gie kkonfermat ukoll li precedentement il-critical public safety zone kienet maqsuma fi tnejn; blue u red zone. Johrog ukolli s-supermarket indikat supra kellu partijiet li jaqaw fil-blue zone, izda li l-istess partijiet kienu nbnew bhala ufficini u mhazen b'permessi antiki.

Jirrizulta wkoll li illum, wara li gie attwat u-rationalisation exercise, parti mill-blue zone inghatat ghall-izvilupp. Fil-fatt, dik il-parti tas-supermarket li nbriet illum taqa' fil-blue zone. Sussegwentement iz-zewg zoni ma baqawx jinqraw bhala red u blue zones izda saru jinqraw bhala zona wahda.

Jigi rilevat li anke jekk kif tajjed uriet l-Appellanti, l-izvilupp, kemm tas-supermarket citat bhala precedent, kif ukoll dak li ghadu jrid jitla' (fir-rationalisation scheme) jaqaw fl-istess critical public safety zone fejn jinsab il-fond mertu tal-appell odjern. Il-Mappa LU 3 tal-Pjan Lokali pero ghada tiddistingwi bejn zewg zoni; ahmar u ikhal. U anke jekk ghal fini tal-operat tad-Dipartiment tal-Protezzjoni

Civili, dawn illum jinterpretaw iz-zewg zoni bhala zona wahda, il-mertu ta' l-Appell minn rifjut ghal-permess tal-izvilupp jirrigwarda kunsiderazzjonijiet ambjentali u tal-ippjanar u di konsegwneza l-Pjan Lokali ghandu jkollu s-sopravvent.

Dan ifisser li s-sit mertu tal-appell odjern jinsab kemm f'strategic open gap, f'DCA critical public safety zone, kif ukoll fil-flight path approach surface, u fic-cirkostanzi l-Awtorita imxiet tajjeb meta ddecidiet li tichad din l-applikazzjoni; u bl-istess mod, dan l-appell ma jimmeritax li jigi milqugh.

Ghalhekk, in vista tal-kunsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut ghall-PA 231/07 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fis-6 ta' Frar 2009.

### **Ikkunsidrat**

L-aggravji tal-appellanta huma s-segwenti:

1. It-Tribunal naqas li jaghti ebda piz lil element ta' commitment li hemm fuq is-sit;
2. It-Tribunal injora argument legali tal-appellanta li l-izvilupp propost kien ser iservi biex ighatti blank party wall f'tarf ta' skema ta' zvilupp fejn hu permissibbli li tintlaqa' applikazzjoni ghal zvilupp.

### **L-ewwel aggravju**

Il-kwistjoni mqajma mill-appellanta kienet indirizzata lejn il-fatt illi fiz-zona li fiha intalab permess ghal zvilupp hemm gia zewg permessi cioe l-Lidl Supermarket u l-hangar tal-Lufthansa Teknik.

It-Tribunal ikkunsidra bhala l-punti principali f'din l-applikazzjoni l-fatti inkontestati illi s-sit jinsab fi strategic open gap, fi critical public safety zone u fi flight path approach surface. Dawn huma fatturi li jmorru kontra l-policies rispettivi applikabbli cioe AVN3 u paragrafu 14.23

tal-Pjan ta' Struttura, policies SET 11, SET 12, RCO 2 u BEN 5 tal-pjani ta' struttura u policy.

Kuntrarjament ghal dak allegat mill-appellanta it-Tribunal ikkunsidra illi z-zona fil-mappa LU3 tal-pjan lokali ghadha tindika zewg zoni wahda blu u ohra hamra. Ghalkemm it-tnejn huma indikati bhala critical public safety zones, il-mappa LU3 tiddistingwi bejn blue zone u red zone. Fil-kaz tas-sit in kwistjoni dan jaqa' fir-red zone mentri s-sit tal-Lidl kellu partijiet li nbnew li jaqghu fil-blue zone u l-parti mibnija kien gia kellha permessi antiki. In kwantu ghal mahzen tal-Lufthansa t-Tribunal rrefera ghax-xiehda tal-Malta International Airport li jinsab fl-aktar parti idonea tal-ajruport u jikkonsisti f'parti integrali ghall-operat tal-istess ajruport.

It-Tribunal wasal ghal konkluzzjoni li l-policies u pjanijiet in vigore kienu jipprevalu fuq kull kwistjoni ohra inkluz il-bini tal-Lidl u tal-hangar li gie zviluppat.

Ma jistax jinghad min din il-Qorti illi t-Tribunal naqas li jikkunsidra l-permessi ezistenti paragun mat-talba tal-applikant u wasal ghal fehma, li fil-fehma tal-Qorti ma ghandhiex tigi disturbata, illi l-pjanijiet u policies kellhom jigu osservati f'dan il-kaz ghar-ragunijiet li dahal fihom l-istess Tribunal. Din id-diskrezzjoni tat-Tribunal mhix sindakabbli minn din il-Qorti meta t-Tribunal ikun wizen il-fatti u l-argumenti mressqa u ta d-decizjoni tieghu ghalihom. Kif gia inghad minn din il-Qorti kwistjonijiet ta' valutazzjoni ta' permessi ohra fiz-zona ghandhom jigu kunsidrati mit-Tribunal jekk jitqajmu pero t-Tribunal irid ukoll japplika l-pjanijiet u l-policies ghal kaz partikolari. Il-fatt li nhargu permessi ohra fiz-zona mhix garanzija ghal hrug ta' ebda permess u sakemm it-Tribunal jikkunsidra l-argumenti a rigward u jiddeciedi b'mod ragonat mill-lat tekniku u legali x'ghandu jipprevali u x'ghandu jigi applikat qua policies u pjanijiet fil-limiti tal-ligi, din il-Qorti ma ghandhiex tiddisturba l-konkluzzjonijiet tat-Tribunal, ghax dak ma jibqghax punt ta' ligi deciz mit-Tribunal izda rikonsiderazzjoni tal-fatti minn din il-Qorti u qbil o meno dwar il-konkluzzjonijiet.



Kopja Informali ta' Sentenza

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

It-Tribunal ma injorax l-argument tal-appellanta dwar 'end of scheme development application' permess f'certu cirkostanzi biex ighatti blank party wall. Dak li pero ikkonluda illi fic-cirkostanzi tal-kaz din il-policy ma setghetx tipprevali fuq dawk li fuqhom sab li l-applikazzjoni ma setghetx tigi milqugha cioe l-bini ta' sit fi critical public safety zone, fi strategic open gap u fi flight path approach surface u li dan is-sit ma jaqghax fil-blue zone jew fir-rationalisation scheme ghal binjiet ohra wkoll fil-blue zone. Hu minnu illi t-Tribunal ma ghamilx direttament dan il-paragun, izda s-sustanza tal-konsiderazzjonijiet tat-Tribunal wasslu ghal din il-konkluzzjoni cara. Del resto l-Qorti tqis illi la darba s-sustanza tal-aggravji jigu trattati ma tistax tigi invokata ebda nullilta jekk kull argument ma jinghatax konsiderazzjoni dettaljata ghal ahhar sakemm ikun jidher li fl-assiem it-Tribunal ikun ikkonsidra l-punti saljenti u pertinenti tal-appell.

Ghalhekk dan l-aggravju qed jigi michud.

### **Decide**

Il-Qorti ghalhekk qed tichad l-appell ta' Rita Carachi u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tal-21 ta' Gunju 2012. Bl-ispejjez kontra l-appellant.

**< Sentenza Finali >**

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