



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-10 ta' Lulju, 2013

Appell Civili Numru. 138/2012

Ray Aquilina

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Ray Aquilina tal-20 ta' Awwissu 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012 li biha cahad li jsir zvilupp konsistenti 'construction of recessed floor over approved residential block and underlying basement garages PA 2820/09';

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

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

Kopja Informali ta' Sentenza

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

B'applikazzjoni tal-24 ta' Gunju 2009 - Full Development Permission – PA/02820/09 fejn l-appellant, f'Site at Triq Ta' Giorni, San Giljan, talab:

"Construction of recessed floor over approved residential block and underlying basement garages (PA 1236/04)."

Illi permezz ta' rifjut tad-19 ta' Novembru 2010 l-Kummissjoni Ghall-Kontroll Tal-Izvilupp cahdet it-talba ghall-hrug tal-permess relattiv ghar-raguni segwenti:

"1. The proposed development does not comply with policy 10.6 of Development Control Policy & Design Guidance 2007 since penthouses are only permitted on buildings of three or more floors in height, whereas the approved building has a maximum height of two floors."

Illi l-Perit Formosa ressaq l-aggravji tal-appellant inter alia kif gej:

"1. Recessed Floor

The proposed structure is basically a recessed floor overlying an approved development, namely PA 1236/04. The relevant Local Plan Policy is NHSJ12 which argues that the building heights of the locality should not disrupt local and long distance views. One must point out that the approved permit already includes wash-rooms which are practically the same height as the approved development. Consequently the acceptance of a penthouse should not disrupt any long distance or local views in view of the approved washrooms. Moreover, the site is surrounded with buildings zoned for three floors and overlying penthouses and thus the proposed development shall not effect the streetscape and surrounding built environment.

My client reserves the right to add further submissions during the processing of the appeal.

In view of the above, my client sincerely hopes that the Appeals Board grants this permit."

Illi permezz ta' rapport l-Awtorita ressqet il-kummenti taghha inter alia kif gej:

"5.2.1 Local plan and past site history/commitments

The site is located within a larger area regulated by Policy NHSJ 12 of the North Harbours Local Plan. This policy identifies the area of Ta' Giorni as an Opportunity Site, meaning that it has been earmarked for mixed uses.

Proposals are to be comprehensive and future applications are to include the whole site. Permitted uses in the area are educational, institutional or residential, or an appropriate mix of these uses.

Moreover the building heights of buildings in this area must not disrupt important local and long distance views. In order not to disrupt such views and limit the visual impact, the Authority, in Outline Permit PA 3954/98, specifically limited the building volume to a maximum of two floors (plus washrooms) above road level. The angle of rake at the rear of the building was also limited to 60 degrees.

Furthermore full development permit PA 1236/04, was explicitly recommended to be approved because it does not exceed the building height approved in the outline permit.

Similarly, the adjacent development, covered by permit PA 6846/00, was also approved with a height of 2 floors and overlying washrooms.

5.2.2 Site Context

The appellant is arguing that the surrounding area is zoned with a height limitation of 3 floors and a penthouse level.

The Authority notes that the surrounding area outside the identified Opportunity Area is designated partly with a height limitation of 3 floors and in part limited to 2 floors. The intention is to create a terraced development that steps down in respect of the topography that is essentially composed of a hillock and a valley side.

This topographical element is nowhere more pronounced than the site itself. Photos 1 and 2 show the location of the site. A whole school complex at the rear of the site is simply not visible because of the significant drop in topographical level.

This clearly indicate that the Authority was more than justified in planning terms to limit permits in this area to 2 floors.

5.2.3 Policy Context

It has thus been established that the height limitation permitted on site is that of two (2) floors. DC 2007 policy 10.6 permits penthouses only on buildings of 3 or more floors in height. Therefore the proposed penthouse runs counter to this policy since the underlying building is limited to 2 floors.

In this case only washrooms are allowed, in line with Policy 10.1(d) of the DC2007.

The appellant is arguing that since washrooms have been permitted on this site, than so should the penthouse be permitted because it would not increase the impact the washrooms have over the long distance views.

The Authority notes that this is clearly not the case because the massing of the proposed penthouse with an area of circa 190sq.m is definitely much heavier than that of 9 washrooms spread around at roof level with an average area of 11 sq. m each.”

Illi responsivament, l-perit Samuel Formosa ssottometta kif gej:

"1. The site and its topography

The site is located at the upper part of the area earmarked as the Ta' Giorni Opportunity site in the North Harbours Local Plan. It is already covered with permits PA 1236/05, 5561/10 and 2103/05. Although the site has been included within the Ta' Giorni Opportunity site policy, it is clear that it does not form part of the educational institution and thus should not be considered as part of the Opportunity area. First of all, the property in question belongs to a different owner from the Ta' Giorni Opportunity site owners and secondly, even the topographical nature of the terrain is such that the site in caption is located on the upper part of Triq Ta Giorni as opposed to the educational premises which is situated far below, and is located outside its physical boundary since it does not form part of it.

2. Local Plan:

One of the main considerations of this application concerns the height limitation of the site in question. A glance at the approved North Harbours Local Plan policy confirms that the local plan does not restrict the height limitation of the locality. In fact, the only condition regarding the height limitation addressing the proposed development concerns the proposition that the proposed development does not "disrupt local and long distance views". A site inspection and a glance at the height limitation at the surrounding blocks in the local plan height limitation map - SJ4 (attached) reveals that the heights earmarked in the site plan surrounding the site are all 3 floors, not as argued by the Planning Directorate. The attached photographs are being submitted to reflect the heights and character of the existing streetscape. The photos also illustrate the heights of the existing blocks and streetscape, although one must note that the local plan itself has in fact approved a height limitation which is higher than that the existing heights to date in some parts of the surrounding streetscapes. To date, there are even existing housing blocks with a height of 4 floors, even higher than the proposed development. The site I

basically a continuation of an adjacent block which has a height limitation of 3 floors and an overlying penthouse (depicted in green in the relevant map), which is less than the proposed development. In fact, the applicant has applied solely for a recessed floor and not a full floor as opposed to the approved height limitation of the adjacent buildings. Finally, the only blocks which are 2 floors are situated much further down the site in question and thus one can fairly argue that the surrounding commitment (also considering the areas as approved in the local plan) are 3 floors and not 2 floors as outlined by the Planning Directorate in their DPA report.

3. Recessed Floor:

As mentioned in my previous communication, the DPA report arguments that the proposed development is not acceptable do not address this particular application, since the development concerns an additional recessed floor and not a penthouse. Thus, Policy 10.6 of the relevant DC 2007 is not applicable for this application.

4. Washrooms:

In conclusion, the approved permit already includes washrooms which have practically the same height and massing similar to the proposed development, which are approved practically all along the entire extent/length of the roof of the property. Thus, the replacement of these washrooms by the proposed recessed floor should not effect any long distance or local views any further due to the approved structures at roof level. The actual size and footprint of the recessed floor is irrelevant since the visual impact (mentioned in the Local Plan) of the approved washrooms when compared to the proposed additional recessed unit shall have the same bearing on an onlooker - that is the configuration and extent of the approved washrooms are already elongated all along the extent of the roof of the site, and thus shall have the same impression. Moreover, the site is surrounded with buildings which are zoned for three floors with overlying

penthouses and thus the proposed development cannot effect the visual integrity of the streetscape."

Illi permezz tat-Tieni Statement taghha l-Awtorita kkummentat ulterjorment inter alia kif gej:

"2.1 Re: Ta' Giorni Opportunity Site

The appellant is arguing that the site should not form part of the Ta' Giorni Opportunity Site.

The Authority notes that the Tribunal is not the correct forum where one can disputes whether the local plan (or any other policy for that matter) is appropriate or not. The role of the Tribunal is to determine whether the Authority was correct or not in light of the policies existing at the time of the decision.

Nevertheless, contrary to what has been implied by the appellant, the Ta' Giorni Opportunity Site was not identified as such due to the educational institution that occupies part of this larger area. In fact, there are other parcels of land within the Ta' Giorni Opportunity Site that do not form part of the educational institution. This means that the identification of this opportunity site was not dictated by the existing educational facility per se but by the characteristics of the area that merit comprehensive planning.

The permitted uses in this area are of mixed nature and may include educational, institutional or residential. The main limitation in this regard is that according to Policy NHSJ 12 of the North Harbours Local Plan, proposals are to be comprehensive and future applications are to include the whole site.

2.2 Re: Issue of height limitation

The appellant is also arguing that the local plan does not limit the height of buildings on this site except that it requires that the local and long distance views are protected.

The need that this area requires such planning and careful consideration of the local and distance views has long been felt, even before the coming into act of the local plan. In fact, in order not to disrupt such views and limit the visual impact, the Authority, in Outline Permit PA 3954/98, specifically limited the building volume to a maximum of two floors (plus washrooms) above road level with the angle of rake at the rear of the building limited to 60 degrees.

The appellant is arguing that the surrounding area is zoned with a height limitation of 3 and 4 floors.

The Authority does not agree - the surrounding area outside the identified Opportunity Area is designated partly with a height limitation of 3 floors and in part limited to 2 floors. The intention is to create a terraced development that steps down in respect of the topography that is essentially composed of a hillock and a valley side.

This topographical element is nowhere more pronounced than the site itself. Photos 2 and 3 show the location of the site. A whole school complex at the rear of the site is simply not visible because of the significant drop in topographical level.

2.3 Re: Recessed loor vs Penthouse

The appellant is claiming that the Authority was not correct to assess the application as a penthouse in accordance to the criteria set in policy 10.6 of the DC2007 since according to the appellant the proposal concerns a recessed floor.

The Authority, on the other hand, maintains that it assessed correctly the proposal when it deemed the proposed level as a penthouse given that it is a construction over and above the height limitation."

Ikkunsidra ulterjorment:

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Il-mertu ta' dan l-appell jirrigwarda talba ghall-kostruzzjoni ta' recessed floor minflok washrooms fuq il-bejt ta' bini approvat li ghadu ma inbeniex.

Is-sit mertu ta' dan l-appell jinsab gewwa l-limiti tal-izvilupp, fi Triq Ta' Giomi, San Giljan.

Il-bini li hu diga approvat (PA 1236/04) imma mhux mibni huwa fuq gholi ta' zewg sulari u semi-basement. Il-bini jinkludi wkoll basement u washrooms.

Din l-applikazzjoni giet michuda peress li l-proposta tikser il-policy 10.6 tad-DC 2007 peress li penthouses huma pernessi biss f'bini ta' tliet sulari jew aktar. Il-bini in ezami huwa ta' zewg sulari.

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

L-appellant jissottometti li:

- Il-policy li ghandha tapplika fl-area in ezami hija Policy NHSJ 12 tas-North Harbours Local Plan li tghid li l-gholi tal-bini fl-area m'ghandux itellef il-veduti kemm local u kifukollong distance;
- Peress li fuq dan il-bini diga huma approvati washrooms, il-proposta in ezami mhix ser taffettwa hazin il-veduti peress li din ser tiehu post il-washrooms; u
- Is-sit huwa imdawwar b' bini ta' tliet sulari bil-penthouses.

L-Awtorita tissottometti li:

- Il-policy li tapplika f'dan il-kaz hija Policy NHSJ 12 tas-North Harbours Local Plan li tidentifika l-area bhala opportunity area li hija earmarked ghal mixed uses;
- L-Outline Permit PA 3954/98 kien hareg specificament b'gholi ta' two floors plus washrooms. Xi zmien wara il-full development permit, PA 1236/04 kien gie rakkomandat pozittivament appuntu ghaliex ma kienx jeccedi l-gholi li kien approvat fl-outline permit. Il-bini adjacenti wkoll kien gie approvat bl-istess gholi (PA 6846/00);

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- Fuq il-punt li jaghrnel l-appellant li is-sit in ezami huwa imdawwar b'bini ghali 3 sulari u penthouse, l-Awtorita tissottometti li l-height limitation barra l-opportunity area huwa ta' tliet sulari. Dan sar apposta biex jigi ikkreat terracing fil-bini;
- Fuq il-punt li jaghmel l-appellant li peress li gew approvati il-washrooms, mhux ser jaghmel differenza jekk il-penthouse tiehu posthom. L-Awtorita tirrileva li l-area tal-penthouse proposta hija ta' madwar id-doppju tal-area tal-washrooms kollha flimkien li jikkonsistu fi kmamar zghar bi spazji bejniethom u ghalhekk din il-bidla taghmel differenza kbira;
- Skond il-policy 10.1(d) tad-DC 2007, f'dan il-kaz washrooms biss huma permessi.

F'sottomissjonijeit sussegwenti l-appellant jghid inter alia li

- Is-sit in ezami m' ghandux jiformax parti mit-Ta' Giorni Opportunity Area peress li dan is-sit huwa izjed baxx u jappartjeni ghal sidien differenti; u
- Il-policy 10.6 tad-DC 2007 ma tapplikax peress li s-sular li qed jintalab huwa recessed floor u mhux penthouse.

L-Awtorita tirrispondi inter alia li:

- It-tribunal m'ghandux gurizzjoni biex jiddeciedi jekk is-sit ghandux ikun parti mit-Ta' Giorni Opportunity Area jew le u fi kwalunkwe kas ir-raguni ghaliex iz-zona kolla giet maghzula biex tiffirma parti minn din i-opportunity area hija minhabba l-karatteristici taghha li skond l-Awtorita timmerita comprehensive planning.

Il-punti li johorgu mill-premess huma li:

- Is-sit in ezami jaqa gewwa it-Ta' Giorni Opportunity Area u ghalhekk wiehed jifhem illi kieku ma' kienx jezisti l-permess PA 1236/04, dan is-sit kien jigi inkluz fil-comprehensive development tal-area kollha;
- Sa miz-zmien li hareg l-ewwel permess fuq is-sit, li kien outline permit (PA 3954/98), l-idea jidher li dejjem kienet li l-ghali li hu applikabbli ghal dan is-sit huwa ta' zewg sulari tant hu hekk li l-kondizzjoni 2(b) tghid specifikatament li l-bini ma jistax ikun ghola minn zewg sulari mit-triq. In-fatti din il-kondizzjoni terga tidher fil-permess PA 1236/04. Dan

hu wkoll sostnut mill-fatt li anke il-permess fuq is-sit adjacenti hareg bl-istess gholi (PA 6846/00);

- L-appellant joqghod attent biex fil-project description tal-applikazzjoni in exami ma juzax il-kelma 'penthouse' imma 'recessed floor' ghalkemm imbaghad fl-appell tieghu huwa jghid li issa li hemm washrooms approvati mhux ser jaghmel differenza li tibni 'penthouse' minflok;
- It-terminologia f'dan il-kaz tista tghid li hija double edged sword ghax jekk tuza il-kelma penthouse tigi qed tikser il-policy 10.6 tad-DC 2007 mentri jekk tuza il-kelma 'recessed floor' terga tehel ghax sular addizzjonali jimplika li tista' tibni washrooms fuqu u dan imur kontra l-ispirtu tal-policy NHSJ 12 tan-North Harbours Local Plan.

Il-punt centrali f'dan il-kaz ghalhekk hu li l-height limitation ghal dan is-sit gie stabbilit permezz ta' kundizzjoni fil-permess originali tant li tali permess ma' kienx johrog minghajr din il-kundizzjoni. L-appellant m'appellax minn din il-kundizzjoni fiz-zmien preskritt mill-ligi u ghalhekk il-kundizzjoni ghada tghodd.

Fil-kors tas-smigh ta' dan l-appell, l-appellant ma' giebx argumenti li huma konvincenti f' terminu ta' ippjanar biex jirribatti jew jikkontradixxi dan il-punt.

Oltre minn dan jekk is-sular addizzjonali li qed jitlob l-appellant jigi mehud bhala penthouse, il-proposta tigi tikser il-policy 10.6 tad-DC 2007 peress li din il-policy tghid li penthouse huwa permess meta l-bini jkun ta' tliet sualri jew iktar waqt li jekk tiehu s-sular mitlub bhala recessed floor tigi bil-proplema li fil-futur l-appellant jkun jista japplika ghal washrooms fuq dan is-sular bi ksur tal-oggettivi li ghalihom saret il-policy NHSJ 12 tan-North Harbours Local Plan.

Apparti minn dan kollu, fil-fehma kunsidrata ta' dan it-Tribunal, jista jkun perikoluz hafna jekk tigi accettata din il-proposta, jew kwalunkwe proposta ohra f'dawn l-areas, ghaliex b' hekk ikunu qed jigu ippregudikati l-idejat wara din il-policy li wara kollox jsostnu uhud mill-oggettivi fundamentali fil-Pjan ta' Struttura. Barra minn hekk mhux

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fil-gurisdizzjoni ta' dan it-Tribunal li jbidel jew inehhi xi pjan jew policy tal-ippjanar.

Jekk l-appellant jew ma jaqbilx ma' din il-policy jew inkella ma jemminx li din hija fattibbli, huwa ghandu jibda l-process biex jew permezz ta' PC Application jew billi jitlob biex isir Local Plan Review jibda l-process biex din tinbidel.

Ghalhekk jirrizulta mill-premess li peress li l-proposta ta' l-appellant tikser il-policy 10.6 tad-DC 2007, dan l-appell ma jirrizultax fondat u ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni, PA/02820/09, "Construction of recessed floor over approved residential block and underlying basement garages (PA 1236/04). ", tad-19 ta' Novembru, 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Illi ghandha tapplika policy NMSJ 12 tan-North Harbour Local Plans li dahlet fis-sehh wara li giet approvata l-applikazzjoni u billi din il-policy ma timponi ebda height limitations izda biss li l-ghola tal-bini ma ghandux jostakola 'important local and long distance views'. It-Tribunal ma setghax jintrabat mal-kondizzjoni imposta ta' zewg sulari u washroom fil-permessi tal-2004 li ppreceda l-policy. In oltre l-applikant ipprezenta provi li juru diversi binjiet fl-istess triq b'gholi akbar minn tal-applikant anki inkluz l-izvilupp odjern mitlub minnu.

2. Il-policy 10.6 tad-Development Control Policy and Design Guidance 2007 giet applikata hazin peress illi l-applikant ma talabx li jibni penthouse kif trid l-istess policy izda recessed floor u in oltre dan ir-recessed floor kien ser jiehu post washrooms gia ezistenti. In oltre kull konisderazzjoni tat-Tribunal dwar applikazzjoni fil-futur ghal washrooms hi rrelevanti ghal kaz ghax mhux qed jigi mitlub, u jekk jintalab jigu applikati l-policies vigenti f'dan iz-zmien apparti li anki ghall-grazzja tal-argument il-bini ta'

tali washrooms mhux eskluż jew ifisser ksur tal-policy NHSJ 12.

L-ewwel aggravju

L-ewwel parti tal-ewwel aggravju mhux strettament punt ta' ligi deciz mit-Tribunal izda argument maghmul f'dan l-appell li l-permess mahrug ma jeskludix l-applikazzjoni tal-NHSJ 12 li ma timponi ebda height limitation. It-Tribunal ma ddeciedix li qed jeskludi l-applikazzjoni minhabba li mhux kompatibbli mal-policy NHSJ 12 izda fuq konsiderazzjonijiet purament ta' planning ibbazati fuq il-fatt li s-sit jaqa' f'Ta' Gorni Opportunity Area li minghajr il-hrug tal-permess is-sit kien ikun inkluz fil-comprehensive development tal-area kollha u illi sa mill-outline permit fl-1998 l-intenzjoni kienet li fejn qieghed is-sit ma jinghatawx permess ta' gholi ta' aktar minn zewg sulari u washrooms kif inhu l-permess tas-sid adjacenti ma kienx hemm ragunijiet ta' planning li kienu jimmeritaw li jinhareg permess ta' zvilupp li jinbena 'recessed floor' flok il-washrooms li jmur kontra l-kundizzjoni cara imposta fil-permess tal-2004 billi altrimenti tmur kontra l-ispirtu tal-policy NHSJ 12.

Il-Qorti ma tqis li ghandha xi dritt tissindaka l-interpretazzjoni ta' planning li jaghti t-Tribunal billi dawn huma kwistjonijiet ta' natura teknika u li t-Tribunal uza d-diskrezzjoni tieghu dwar dak li ghandu jithalla jigi zviluppat fiz-zona in kwistjoni. Ma rrizultax illi l-policy NHSJ 12 timponi fuq l-Awtorita li takkorda bini b'gholi kif mitlub izda biss taghmel osservazzjoni generali ta' kif ghandha tigi ppjanta z-zona. Il-fatt li l-appellant ma jaqbilx mat-Tribunal dwar l-interpretazzjoni taghha rigward iz-zoning tas-sit u l-inferenzi mill-kundizzjoni specifika imposta fil-permess ta' zvilupp lil applicant bil-permessi PA 3954/98 u PA 1236/04 ma jfissirx li t-Tribunal applika hazin xi policy.

L-appellant isostni illi t-Tribunal naqas li jaghti kont ghal zviluppi ohra fiz-zona li ghandhom gholi ta' aktar minn tlett sulari. Dan mhux minnu ghax fir-rigward tal-argumenti li saru mill-Awtorita u l-appellant riprodotti succintement mit-Tribunal fid-decizjoni tieghu, l-Awtorita tirrimarka illi hu

barra l-opportunity area li hemm zviluppi ta' tlett sulari mentri t-Tribunal wasal ghal konkluzjoni li oltre l-impozizzjoni tal-kundizzjoni tal-gholi fil-permess, is-sit qiegħed f'opportunity area u l-uniku bini adjacenti hu kolpit bl-istess limitazzjoni bhala ma hu s-sit in kwistjoni. Kwindi l-kwistjoni ta' commitment rilevata mill-appellant ma fihix sostenn fil-fattispecie tal-kaz u dan hu dezunt mill-kunsiderazzjoni tat-Tribunal senjatament meta semma' l-periklu li tali proposta tmur kontra l-oggettivi tal-istruktura plan.

Għalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

L-appellant jilmenta illi l-policy 10.6 tad-Development Control Policy and Design Guidance 2007 ma tapplikax għal kaz billi din tirrigwarda 'penthouses' u mhux 'recessed floor' kif inhi l-applikazzjoni għal zvilupp. It-Tribunal dahal f'din il-kwistjoni u qal li hi applikabbli billi kkonsidra l-oggett tal-talba ta' zvilupp avolja kienet imsemmija bhala 'recessed floor' fil-project description pero l-appellant stess jirreferi għaliha bhala 'penthouse' fl-appell u li din ma tagħmilx differenza billi qed tiehu post washrooms ġa approvati.

It-Tribunal hares lejn din it-talba bhala talba għal penthouse li tikser il-policy 10.6 tad-Development Plan 2007 billi l-b ini li għandu permess ma għandux l-gholi rikjest biex ikollu penthouse. Din hi interpretazzjoni legittima ta' talba li mill-mod kif saret u speċjalment kif ammess mill-appellant fl-appell tieghu kienet effettivament talba biex flok washrooms isir penthouse. Fil-fatt l-appellant fl-appell tieghu jgħid hekk:

One must point out that the approved permit already includes wash-rooms which are practically the same height as the approved development. Consequently the acceptance of a penthouse should not disrupt any long distance or local views in view of the approved wash-rooms.

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Din l-interpretazzjoni ta' natura purament teknika ta' dak propost mhix sindakabbli mill-Qorti fuq bazi purament ta' fatt, liema fatt kien dezunibbli mic-cirkostanzi tal-kaz.

Hu minnu kif issottometta l-appellant illi t-Tribunal meta kkonsidra l-izvilupp mill-ottika ta' 'recessed floor' dahal fi kwistjonijiet ipotetici mhux sorretti minn ebda provi jew fatti billi ma saret ebda applikazzjoni ghal washrooms fuq is-sular li ghalih intalab permess pero din il-Qorti tqis li ma ghandhiex ticcensura l-agir tat-Tribunal f'din l-istanza billi d-decizjoni taghha kienet ibbazata biss fuq il-fatt illi l-applikazzjoni kienet tiftiehem bhala zvilupp ghal penthouse li tmur kontra policy 10.6 tad-Development Plan 2007 u dan kif konfermat mill-istess permess innifsu li ghalkemm inhareg qabel il-policy kien intiz biex tigi salvagwardata z-zona fejn is-sit kien qed jigi zviluppat u dan in konformita mal-ispirtu ta' policy NHSJ 12 tan-North Harbour Local Plan.

Ghalhekk dan l-aggravju wkoll qed jigi michud.

Decide

Ghalhekk il-Qorti tiddeciedi billi tichad l-appell ta' Ray Aquilina u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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