



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 167/2012

Sharon Al-Gededi

vs

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

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita dwar l-Ambjent u l-Ippjanar tas-17 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li laqghet l-applikazzjoni PA 2308/09 ta' Sharon Al-Gededi biex hanut class 4 ezistenti jigi diviz f'hanut izghar class 4 u l-parti l-ohra class 6 u dan ghal perjodu temporanju;

Rat ir-risposta tal-appellata li ssottomettiet li d-decizjoni tat-Tribunal ghandha tigi konfermata u l-appell michud;

Kopja Informali ta' Sentenza

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

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

Dan huwa appell minn rifjut tal-Awtorita tal-applikazzjoni PA 2308/09 Conversion of existing Class 4 shop into a smaller Class 4 shop and a Class 6 shop', b'decizjoni tal-15 ta' Settembru, 2010.

Ir-raguni li ghalha l-Awtorita' irrifjutat l-applikazzjoni PA 2308/09 kienet s-segwenti:

“The proposed development does not comply with policy 15.3 of Development Control Policy & Design Guidance 2007, which does not allow change of use to commercial uses in areas zoned for detached or semi-detached residential development. The proposal also runs counter to North West Local Plan Policy NWSP 11, which states that in the absence of an approved master plan, the development of individual plots is to comply with the conditions set out in Development Control Policy & Design Guidance 2007 for villas.”

Fil-appell tieghu tal-1 ta' Gunju, 2011, l-appellanta, permezz tal-Perit Farrugia, taghti r-ragunijiet tieghu ghal dan l-appell billi jghid:

“ The report of the Directorate once again fails to react to our stance that within this area various similar applications have been approved for commercial outlets and one therefore fails to understand why this should be an exception.”

Fir-risposta tieghu tal-11 ta' Marzu, 2011, Jonathan Borg ghall-Awtorita janetti kopja tad-DPA report li kien sar mid-Direttorat waqt l-ipprocessar tal-applikazzjoni fil-waqt li fil-covering letter tieghu huwa jghid inter alia dan li gej:

“Ir-riferenza li ghamel l-appellant ghall-zviluppi simili fil-madwar tas-sit koncernat f'dan l-appell m'humix sostenuti la b'referenza ghall-PA number tagghom u

lanqas b'site plan u ritratti. Ghaldaqstant l-Awtorita' m'hijiex f'posizzjoni li tikkumenta dwar dan. L-Awtortia' tirrileva wkoll li din l-istqarrija tal-appellant diga saret matul il-process tal-applikazzjoni pero' anki dakinhar l-applikant ma sostniex l-argument b'referenzi xierqa."

Fid-DPA report li kien anness ma' l-ittra l-Awtorita' taghti r-ragunijiet ghaliex fl-opinjoni ta' l-Awtorita' dan l-appell ghandu jigi michud. Is-segwenti huma siltiet minn dan ir-rapport li t-Tribunal jhoss ghandhom jigu ssottolineati:

"4.7 DISCUSSION

-- Proposed use

The proposal seeks consent for the division of an existing class 4 shop into a smaller class 4 shop and class 6 shop, and to transform one of the existing stores at first floor level into an office. Map 40 of the North West Local Plan indicates that the premises in question forms part of a cluster of buildings (developed as villas) identified in the Local Plan as SITE A, which are intended for a comprehensive re-development. Policy NWSP 11 of the North West Local Plan specifically deals with the re-development schemes for these villa sites. Once this master plan is approved the Local Plan intends to comprehensively re-zone SITE A as an entertainment priority area. Although in principle the proposed change of use could be permitted in an entertainment priority area under policy NWCM 3, no comprehensive master plan for the area has been approved. Policy NWSP 11 of the North West Local Plan states that in the absence of an approved master plan, development of individual plots should follow the conditions set out in the Development Control Policy and Design Guidance 2007.

According to policy 15.3 of the Policy and Design Guidance 2007 the construction of, or change of use to, commercial development will not be permitted within those areas zoned in the Local Plan for detached or semi-detached residential development. In these regards the proposal runs counter to policy 15.3 of the Policy and

Design Guidance 2007 and policy NWSP 11 of the North West Local Plan.

-- Design

The design of the elevation is considered to be acceptable and in context with the streetscape within which the site is located. The proposal thus complies with SP Policy BEN 2.

-- Car parking

The proposed development consists of class 6 development and therefore requires 2 car parking spaces (1 off-street parking space per 10 square metres). In view that the floor space of the proposed office is 20 square metres, and considering that the parking requirements of Class 5 development are calculated at a rate of 1 off-street parking space per 50 square metres, no additional off-street parking spaces is required for the proposed office. The proposal includes 1 car parking spaces designed according to the required standards. The lack of sufficient car parking spaces could be compensated through CPPS contribution. The proposal satisfies the car parking requirements specified by SP Policy TRA 4.

4.8 COMMUNICATION WITH ARCHITECT/APPLICANT

The issues raised above, i.e. proposal does not conform to the zoning of the area, have been communicated to architect in letter dated 13th October 2009 (document 11). No reply has been received from architect to date.

4.9 CONCLUSION

In view of the above comments, the application is being recommended for refusal since the proposed development does not conform to the zoning of the area and thus runs counter to policy 15.3 of the Policy and Design Guidance 2007."

Ikkunsidra ulteriorment:

Kopja Informali ta' Sentenza

Il-mertu ta' dan l-appell jirrigwarda talba biex hanut Class 4, li huwa ezistenti, jinqassam f' hanut izghar Class 4 u stabbiliment Class 6.

Skond l-Awtorita', is-sit, li jinsab gewwa z-zona tal-izvilupp fi Triq it-Trunciera, Bugibba, jikkonsisti f' bini ezistenti fuq zewg sulari li jokkupa area ta' 327 metri kwadri u faccata ta' 14 il-metru. Il-vicinanzi tas-sit huma ikkaratterizzati minn bini residenzjali.

Fir-rifjut taghha, l-Awtorita' tghid li l-proposta tmur kontra l-policy 15.3 tal-Policy and Design Guidance. 2007 u dan peress li, skond il-policy NWSP101 tan-North Harbours Local Plan fl-assenza ta' approved master plan l-izvilupp ta' plots individwali ghandha tkun konformi mal-kondizzjonijiet ghall-villas stipulati fil- Policy and Design Guidance. 2007.

L-argumenti fil-mertu li ingiebu mill-partijiet fil-kors tas-smieh ta' dan l-appell jistghu jingabru fil-qosor kif gej.

L-appellanta qed tinsisti li fir-rapport taghha l-Awtorita' ma' tiehux in konsiderazzjoni l-fatt li f' din iz-zona numru ta' applikazzjonijiet simili gew approvati ghal stabbilimenti kummercjali bhal dak in ezami.

Fir-riposta taghha l-Awtorita', tibda biex tiddikjara li waqt li l-appellanta ghamlet dikjarazzjoni li madwar is-sit kienu hargu numru ta' permessi simili ghal dak in-ezami, l-appellanta u l-kunsulenti taghha ma sostnewx dawn l-allegazzjonijiet b' riferenza ghall-PA numbers jew site plans jew ritratti relattivi. Ghal din ir-raguni l-Awtorita' mhix f' pozizzjoni li tikkumenta dwar dawn. L-istess argument kien sar waqt l-ipprocessar tal-applikazzjoni izda l-appellanta baqghet qatt ma' qabet provi jew informazzjoni ulterjuri biex din l-allegazzjoni tkun tista tigi verifikata.

Il-punt centrali f' dan il-kas hu li l-Awtorita' qed tapplika il-policy NWSP101 tan-North Harbours Local Plan fl-assenza ta' approved master plan l-izvilupp ta' plots individwali ghandha tkun konformi mal-kondizzjonijiet ghall-villas stipulati fil- Policy and Design Guidance. 2007.

Kopja Informali ta' Sentenza

Ghalhekk dan jimplika li kull min ghandu xi bicca art jew bini f' dawn l-areas huwa limitat hafna kif jista jzviluppa is-sit tieghu qabel ma' jsir dan il-pjan holistiku li jinkorpora l-area kollha. L-Awtorita' tispjega x' inhu l-hsieb f'termini ta' ippjanar wara din il-policy.

Waqf li l-ideja li-dawn l-areas jigu zviluppati b'mod holistiku hija tajba fuq il-karta, firrealta' ma' tidhirx li hija xi haga fattibbli in the short to medium term peress li diffici wiehed jifhem kif is-sidien kollha li ghandhom propjetajiet f'dawn l-areas jistghu jigu flimkien u jaqblu fuq kif dan jista jsir ghall-beneficcju ta' kullhadd.

Ma' jirrizulta ebda mudell jew strategija jew indikazzjonijiet ohra fil-plans u policies tal-Awtorita' ta' kif pjani ta' dan it-tip jistghu jigu implimentati u gestiti fil-prattika.

Hawnhekk irid jinghad ghalhekk li l-appellant ghandu ragun li jinsisti bl-applikazzjoni tieghu ghaliex il-kriterji ta' fuq kif jista jsir dak li qed titlob din il-policy b' mod prattiku mhux cari ghas-sidien. Dawn id-dubji jikbru meta l-Awtorita' tafferma li l-proposta ta' zvilupp odjerna tista anki jkun konformi ma' l-idejat f'termini ta' ippjanar tal-Awtorita' ghal din iz-zona peress li l-area in exami huwa ippjanat li tinbidel f'entertainment priority area. Fil-fatt l-Awtorita' fuq dan li gej:

“Although in principle the proposed change of use could be permitted in an entertainment priority area under policy NWCM 3, no comprehensive master plan for the area has been approved. Policy NWSP 11 of the North West Local Plan states that in the absence of an approved master plan, development of individual plots should follow the conditions set out in the Development Control Policy and Design Guidance 2007.”

Min-naha l-ohra, 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

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.

Dan izerta li huwa kas partikolari peress li fis-sit in ezami diga jezisti Class 4 shop bil-permess. F'cirkostanzi bhal dawn li jista jaghmel dan it-Tribunal biex itaffi xi ftit din il-problema li hija serja hafna ghal-dawk is-sidien li inzertaw ghandhom propjetajiet gewwa dawn l-areas huwa li jaccetta li jinhareg permess temporanju fis-sens li tali permess ikun validu ghal perjodu li ghandu jkun l-inqas miz-zmien mehtieg biex ikun lest il-comprehensive plan li tipprevedi l-policy jew minn perjodu fiss, per eżempju ta' 10 snin. Jekk il-pjan komprensiv previst mill-policy ma' jkunx lest sakemm jghaddi dan il-perjodu jew jekk ikun hemm xi tibdil f'din il-policy allura l-applikant jkun jista japplika biex jiggedded il-permess ghal perjodu iehor. It-tul ta' tali perjodu ghandu jkun dak determinat mill-Awtorita'. Il-permess ghandu ukoll jinkludi kundizzjoni li l-applikant jaqbel li ghal fini tan-negozjati eventwali fil-kors tal-preparazzjoni tal-pjan komprensiv, il-permess li qed jinghata b'din id-decizjoni ma' johloq ebda commitment jew dritt li jista jinciedi fuq in-negozjati.

Minn naha taghha, peress li l-oggettiv principali ta' kullhadd ghal dawn l-areas urbani ghandu jkun li dawn ghandhom jigu ippjanati ahjar fl-interess publiku, l-Awtorita' ghandha taghmel dak kollu possibbli biex, fi zmien qasir, tizviluppa kriteri cari, fattibbli u sostenibbli ta' kif jista verament isir dan il-'Comprehensive planning'.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li l-proposta tal-izvilupp, ikkondizzjonata b' mod tali li l-permess ikun temporanju u applikabbli biss ghal dak il-perjodu sakemm jigi finalizzat il-pjan komprensiv previst mill-pjan lokali tista tkun konformi ma l-oggettivi ta'l-iStructure Plan u l-pjanijiet u

policies l-oħra li johorgu minnu, dan l-appell ghandu jigi milqugh limitatament.

It-Tribunal ghalhekk in vista tal-kunsiderazzjonijiet hawn fuq maghmula, qieghed jilqa dan l-appell limitatament u jhassar ir-rifjut tal-applikazzjoni, PA 2308/09 division of existing Class 4 shop into a smaller Class 4 shop and a Class 6 shop, u jordna li l-Awtorita ghandha, sa 30 gurnata mill-lum, tohrog il-permess mitlub mill-appellant b'dana li l-izvilupp jigi approvat bil-kundizzjonijiet normalment imposti f'applikazzjoniet simili u f'dan il-kaz partikolari billi jittiehed kont ukoll tal-kundizzjonijiet specjali li ghandhom jigu ppreparati mill-Awtorita' biex jintlahqu l-ghanijiet specifickati hawn fuq u specjalment li dan ghandu jkun permess temporanju u kif ukoll biex il-parking spaces necessarji jew jigu pprovduki jew issir il-kintribuzzjoni rrellattiva għall-iskema tas-CPPS. Wara li l-Awtorita' tkun sodisfatta b'dawn il-pjanti ghandha tibghathom għall-approvazzjoni finali ta' dan it-Tribunal.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal applika hazin il-ligi ghax policy 15.3 tal-Policy and Design Guidance 2007 tghid specifickatament li 'the construction of/or change of use to commercial development will not be permitted within those areas zoned in local plan for detached or semi detached residential development' kif inhi din iz-zona;
2. It-Tribunal agixxa ultra vires ghaliex ghalkemm il-pjanti tan-North West Local Plan identifickat redevelopment schemes għal din iz-zona pero dan hu soggett għal master plan li ghandu ma sarx u li fin-nuqqas policy NWSP 11 tan-North West Local Plan tghid li ghandu jibqa' japplika d-Development Control Policy and Design Guidance 2007. Kwindi t-Tribunal qatt ma kellu poter johrog permess temporanju sakemm isir il-master plan minghajr ma kellu din il-fakolta mogħtija bil-ligi.

Din il-Qorti tikkunsidra li t-Tribunal gustament dahal f'dilemma peress illi kif qal hu fid-decizjoni tieghu l-oġgettiv principali kien li dawn iz-zoni urbani ghandhom

jigu ppjanati ahjar fl-interess pubbliku u l-Awtorita kellha d-dmir li taghmel comprehensive planning fi zmien qasir biex tipprovdi kriterji cari u fattibbli kif jistghu jigu zviluppatis-siti fiz-zona b'mod konkrett, pero fl-istess waqt, it-Tribunal ghandu l-obbligu primarju li japplika l-pjanijiet u policies kif inhuma ezistenti llum u mhux kif ghad iridu jsiru. L-istadju tal-ippjanar mhix il-mansjoni tat-Tribunal li ma jistax jilwi jdejn l-Awtorita biex taghmel fi zmien qasir dak li hu biss proposta. Individwu jista' jkollu rimedji ohra kontra l-agir jew in-nuqqas ta' agir tal-Awtorita pero t-Tribunal ma jistax jissostitwixxi l-Awtorita u l-ligijiet, pjanijiet u policies b'impozizzjonijiet li ma jirrizultawx li huma moghtija lit-Tribunal biex jimponihom.

It-Tribunal kellu quddiemu l-pjanta tan-North West Local Plan li tindividwa z-zona ghal redevelopment pero b'mod konkrett kellu quddiemu policy applikabbli ghal kaz li hu l-policy and Design Guidance tal-2007 li fi kliem il-policy NWSP 11 hi applikabbli sakemm isir il-pjan komprensiv jew master plan taz-zona.

Dan kien l-isfond li fiha seta' jiddeciedi t-Tribunal. It-Tribunal kellu jara l-policies relevanti u jiddeciedi jekk l-applikazzjoni tistax tigi kunsidrata favorevolment fl-ambitu tal-policy relevanti tenut kont tal-fattispecie tal-kaz. Il-Qorti mhix qed teskludi li l-applikazzjoni ma tistax tintlaqa' taht il-policies vigenti. Din hi kwistjoni li jrid jaraha t-Tribunal, izda t-Tribunal ma jistax jabdika minn dan id-dmir u jdahhal kuncetti ta' permessi temporanji ghax ghadu ma sarx master plan biex jisforza lil Awtorita taghmel il-master plan, minghajr ma imkien fil-policies relevanti dan id-dritt qed jinghata lit-Tribunal. It-Tribunal jista' jagixxi biss fil-parametri tal-ghodda li inghata bil-pjanijiet u policies li bihom hu marbut u jiddeciedi l-kaz per konsegwenza skond l-istess.

It-Tribunal mar ultre vires il-poteri tieghu bid-decizjoni kif mehuda pero l-Qorti mhix propensa f'dan l-istadju tiddeciedi jekk it-Tribunal applikax hazin il-policy 15.3 tal-Policy and Design Guidance 2007 billi t-Tribunal ma indirizzax il-problema quddiemu minn dak l-aspett.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-Awtorita in kwantu t-Tribunal agixxa b'mod ultra vires il-poteri li ghandu skond il-policies rilevanti ghal kaz u tastjeni milli tiddeciedi jekk fil-fatt applikatx hazin policy 15.3 tal-Policy and Design Guidance 2007 billi l-kwistjoni ma gietx indirizzata kif imis, u ghalhekk qed tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012, u tirrimetti l-atti lura lit-Tribunal biex in linea ma' dak deciz, il-kaz jerga' jigi trattat u deciz. Spejjez jibqghu bla taxxa.

< Sentenza Finali >

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