



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 185/2012

David Youngman

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-applikant Francis X. Tabone ghal Gozo Club
Developments Limited**

Il-Qorti,

Rat ir-rikors tal-appell ta' Francis Xavier Tabone ghan-nom u in rappreżentanza ta; Gozo Club Development Limited tas-27 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 li cahdet it-talba ghal additions and alterations to dwelling ghal site at Triq ta' Ghammar, Ghasri, Ghawdex;

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Rat ir-risposta tal-appellat Youngman li ssottometta li d-decizjoni tat-Tribunal ghandha tigi konfermata u l-appell michud;

Rat ir-risposta tal-Awtorita li zammet ferm mal-premess originarjament mahrug minnha;

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

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

B'applikazzjoni tat-3 ta' Ottubru 2007 Amended Development Permission – PA 06077/07 l-applikant F.X. Tabone ghall-Gozo Club Development Limited f' Site at, Triq ta' Ghammar, Ghasri, Ghawdex, talab:

“Additions and alterations to dwelling”

Id-DCC approvat l-applikazzjoni fil-laqgħa tal-10 ta' Marzu 2009, u l-permess jgib id-data 8 ta' Mejju 2009, Red 129, fil-file PA 6077/07.

L-applikazzjoni relattiva giet milqugħa u nġhata l-permess bil-kondizzjonijiet segwenti:

“1a) This development permission is valid for a period of FIVE YEARS from the date of this notice but will cease to be valid if the development is not completed by the end of this five year period.

b) It should be noted that a third party may have the right of appeal against this permission. Any development which is carried out when such an appeal has been made, or until the time limit for the submission of such an appeal has expired. is undertaken at the risk that this permission may be revoked by the Planning Appeals Board or quashed by the Court of Appeal.

c) This development permission does not remove or replace the need to obtain the consent of the land/building owner to this development before it is carried out.

Furthermore, it does not imply that consent will necessarily be forthcoming nor does it bind the land/building owner to agree to this development. Where the land/building is owned or administered by the Government of Malta a specific clearance and agreement must be obtained for this development from the Land and/or Estate Management Departments.

d) All works' shall be carried out strictly in accordance with the approved plans and the conditions of this permission. Where a matter is not specified on the plans then the conditions of this permission and of Development Control Policy and Design Guidance shall take precedence and modify the plans accordingly.

e) All building works shall be erected in accordance with the official alignment and proposed/existing finished road levels as set out on site by the Malta Environment & Planning Authority's Land Surveyor. The Setting Out Request Notice must be returned to the Land Survey Unit of the Malta Environment & Planning Authority when the setting out of the alignment and levels is required.

f) Before any part of the development hereby permitted commences, the enclosed green copy of the Development Permit shall be displayed on the site. This must be mounted on a notice board, suitably protected from the weather and located not more than 2 metres above ground level at a point on the site boundary where it is clearly visible and can be easily read from the street. The copy of the permit must be maintained in a good condition and it shall remain displayed on the site until the works are complete.

g) The enclosed Commencement Notice shall be returned to the Malta Environment & Planning Authority so that it is received at least five days prior to the commencement of the development hereby permitted.

h) Copies of all approved plans and elevations shall be available for inspection on site by Malta Environment & Planning Authority staff at all reasonable times.

i) Where the street bordering the site is unopened, it shall be opened up prior to the commencement of the building operations hereby permitted.

j) Where applicable hoarding should be erected in accordance with Schedule 2 of the Environmental Management Construction Site Regulations, LN 295 of 2007

k) No building material, waste material, machinery or plant shall obstruct the pavement or the smooth flow of traffic on the road in the vicinity of the site. The deposit of materials or the placing of equipment in the street must be authorised.

l) Any soil on the site shall not be built over but shall be collected for reuse. A permit from the Director of Agriculture is required to remove the soil from the site. All soil shall be deposited at the place indicated by the Director of Agriculture.

m) Rock spoil, boulders and other waste materials resulting from excavations or from demolition on this site shall be deposited at an official waste disposal site or used as fill material. If waste materials from the development are not to be reused, they shall not be disposed of other than at an official waste disposal site. A permit from the Environmental Protection Directorate is required to this effect.

n) The height of the building shall not exceed the permitted number of two floors as indicated on the approved drawings.

o) The whole exterior of the building, including all roof structures, shall be retained/constructed in local weathered stone. The stone shall remain un rendered and unpainted and it shall be allowed to weather naturally.

p) All external apertures shall be constructed in timber. All metalwork shall be in wrought iron.

q) A water cistern with a volume in cubic metres of 30% of the total roof area (in square metres) of the building(s) shall be constructed to store rainwater run-off from the built-up area of the development. This cistern shall be completed and available for use prior to the development hereby permitted being first brought into use.

r) The development hereby permitted shall not be brought into use until the Final Compliance (Completion) Certificate, certifying that the development has been carried out in full accordance with the plans approved by this permission and with the other conditions imposed in this permission, has been issued by the Malta Environment & Planning Authority.

s) The permit is issued on condition that, where applicable, any excavation shall be subject to the requirements of the Civil Code regarding neighbouring tenements.

t) Where applicable, the development, hereby permitted, shall be carried out in accordance with the provisions of the Environmental Management Construction Site Regulations, LN 295 of 2007.

2 This permission relates only to the additions and alterations specifically indicated on the approved drawings. This permission does not sanction any illegal development that may exist on the site.

3 This development permission is subject to a bank guarantee to the value of €5,823.43 to ensure that the development is an extension to the previously approved dwelling and not a separate dwelling unit. The total amount of the bank guarantee shall be released to the applicant only upon the completion of the whole of the development hereby approved including the finishing of all interiors and the fitting of apertures of the whole building; upon confirmation by the Malta Environment and Planning Authority that the development is an extension to the previously approved dwelling and not a separate dwelling

unit; and subsequent to the issue of a Full Compliance Certificate for the whole development. If the development is not an extension to the previously approved dwelling and a separate dwelling unit is created, then the total amount of the bank guarantee shall be forfeited. Forfeiture of the bank guarantee will not preclude the applicant from the obligation of conforming to the approved drawings and conditions contained in this permission.

4 All conditions, except conditions 1 and 19, imposed in permission PA2924/04 dated 30th March 2006 are still valid and applicable to this permission.

Fl-appell tagħha l-avukat Tanya Sciberras Camilleri għall-appellant resqet l-aggravji tal-appellant kif gejj:

“1. It is pertinent to point out that the original permit (PA 2924/04) is still subject to a third-party appeal filed by our client (PAB 114/06) and therefore, the approval of this permit may severely compromise his appeal and the Planning Appeal Board's right to overturn the issue of the permit, given that our client contends that the development approved is objectionable in principle and is counter to planning policies.

2. Although our client is a registered objector to this appeal, he was not notified of the hearing during which the Commission called on the applicant to present fresh plans. Therefore, it is submitted that the procedure adopted by the Commission is definitely flawed since our client was not given the opportunity of making his submissions on the suggestion of the Commission.

3. The original permit was filed by Baron Group Limited, whereas this application has been filed by Gozo Club Dev. Limited. In view of this change, one questions whether the ownership of the site has changed and if so, whether the correct application was filed and whether the applicant was correct in declaring that he is the owner of the site in question. If this is not the case, then the permit is to be withdrawn in terms of law since the applicant would have declared himself wrongly to be the owner in

the application. Such an erroneous assertion would be tantamount to a false declaration and would entitle both the Authority and the Board to withdraw the permit.

4. This last proposal which was approved consists of an "extension" to one of the existing dwellings, when any reasonable person who examines the approved plans may reach the conclusion that what is really being proposed is a separate dwelling under the guise of an extension to an existing one.

This argument is further strengthened by the fact that applicant has already applied for the addition of a separate dwelling on the same footprint (PA 6464/06) which was refused by the DCC and which is the subject of an appeal. In our client's view, the approval of an "extension" to an existing residence, following a refusal of a separate unit on the same footprint, simply makes a mockery of the planning system since, if the proposal made in PA 6464/06 was considered unacceptable by the DCC on the basis of massing, amongst other things, it is questionable how the same footprint was later considered acceptable by the same DCC.

It is pertinent to point out that the "extension" is almost larger than the unit it is extending and this unit has now been approved with 5 bedrooms, 4 of which have ensuite facilities.

The massing of the extension is unacceptable since it does not respect the context, character, appearance and scale of the development which can already be described as an "overdevelopment" of the site, in violation of policies 1.3 and 3.8 of Policy & Design Guidance 2007. The already existing building cannot but be described as a massive overdevelopment of an existing site, affecting long-views of the area as can be seen from photos which will be presented to the Board in due course.

Loss of amenity

5. The extension, which is at the end of a ridge will now tower over the surrounding properties and will result in loss of amenity to our client's residence. This is in violation of policy 2.7 of Policy & Design Guidance 2007 which states that the development should be stepped down as the site is situated at the end of a ridge. Contrary to this, the resulting development is now at least 7 courses higher than the adjacent building increasingly overlooking my client's property.

The "extension" simply signifies a further intensification of an internal development within an urban conservation area, and is objectionable in principle since it is prohibited in terms of Policy & Design Guidance 2007.

This permit was approved after fresh plans were submitted creating two terraces. These terraces, rather than representing an improvement, will certainly result in loss of amenity and privacy to our client's residence, which can now be totally overlooked from the said terraces. This problem is exacerbated by the fact that the policy regarding ridges was not applied in this case and the development was not stepped down, with the consequence that there a difference of seven courses will result between the development and our client's property.

BEN 1

The "extension" will certainly have a deleterious effect on our client's residence and will create a nuisance in terms of added traffic generation, operating times (given that this is essentially a tourist development), and loss of privacy, resulting in bad neighbourliness to my client's property. Consequently, it is submitted that this proposal violates policy BEN 1 and therefore should never have been accepted.

Development not in accordance with approved plans (Circular PA 2/96)

6. The original application (PA 2924/04) was approved with a turning circle at the front of the development. This

turning circle, which was imposed presumably owing to the increased generation of traffic in this very narrow alley, was not built as originally approved and therefore, the permit should never have been approved before it was ensured that applicant had conformed with the original permit, and this in line with Circular PA 2/96. Furthermore, this permit has resulted in a further intensification of use but without the provision of the turning circle imposed by the DCC in the original permit.

This means that vehicles driving down the alley would not be able to turn in order to exit but would have to reverse back out, a very dangerous manoeuvre indeed, given that the alley is no more than 3 metres wide in most areas.

Urban Conservation Area policies

7. The approval of the permit for the "extension" only serves to further detract from the scenic value of the area, greatly undermining the long-distant views from the surrounding areas, and in violation of policies UCO 6, UCO 8 and UCO10. A site inspection would clearly confirm this together with photographs which our client will be exhibiting in due course."

Fir-rapport taghha l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

"The Appeals Board may wish to note that the current permission does not compromise any contestation from the original permission relative to Third Party Appeal PAB114/06. Permission PA6077/07 refers to an addition to the existing building and thus the development subject of this permission relates directly to the development relative to the original permission PA2924/04. In addition, all the appeals relative to the development in question, i.e. the third party appeal from permission PA2924/04 (PAB114/06), the third party appeal against the sanctioning of the variations on site in permission PA3945/08 (PAB57/09) and the appeal against the refusal for an additional dwelling PA6464/06 (PAB152/08); are linked and appointed to be heard concurrently.

Notification for DCC hearing

It results that the objection regarding the notification for the DCC hearing is not correct. The Appeals Board may wish to note that the objector has been registered when he was represented by Buttigieg & Refalo Advocates in February 2008 - see document 30. Thus all the correspondence to the objector was sent to his registered representative. The notification for the DCC hearing (of the 11th November 2008) has been issued to Buttigieg & Refalo Advocates - see document 84. Actually, Buttigieg & Refalo Advocates informed MEPA that their office is no longer representing the objector by letter dated 11 December 2008 - see document 96. Thus the process of notification was carried out according to the proper procedures.

Applicant's name

There is no evidence that the difference in names between the original application and the current application constitute a false declaration.

Details of the drawings

The proposed additions subject of the current permission has been assessed in terms of the committed internal development and the relevant policies of the Design Guidance 2007 and the Local Plan. There is no violation of Policy 3.8 of the DC 2007 since the internal development is committed and the proposal meets the conditions of the Policy in question. In addition, Policy 1.3 of the DC 2007 regards the general principles for new development. The proposal is in line with the existing internal development in both in the form and also in the style. Thus the provisions of Policy 1.3 of DC 2007 are complied with. The Appeals Board may wish to note that the Planning Directorate is consistent in not allowing a separate dwelling of the site. The application for the separate dwelling PA6464/06 was refused and the current permission makes specific provisions through condition

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number three, which is also tied with a Bank Guarantee, to ensure that the proposal is actually an extension to the existing dwelling and not a separate dwelling.

Loss of Amenity

The argument raised by the appellant that the site falls on the ridge is not correct. Maps 14.4-C&D of the Gozo and Comino Local Plan clearly indicate that the site falls within an area designated as the edge of the development zone. The relative Local Plan policy for sites within the edge of the development zone is Policy GZ-EDGE-1. In addition, Policy 2.7 of the DC 2007 mentioned by the appellant is not relative to the site since the site does not fall on a ridge. As regards the terraces at the back of the site, the Appeals Board may wish to note that these overlook an area outside the limits to development and not over third parties. The necessary provisions (through side gardens, height limitation and setbacks) have been taken to ensure that the amenity of the area is respected.

Illegalities on site

It results that the variations from the previous permission have been sanctioned by permission PA3945/08. There are no records of illegalities on site and therefore Circular PA2/96 does not apply.

UCA characteristics

The design and form of the proposed development subject of permission PA6077/07 is similar and on the same lines as the design and form approved in permission PA2924/04. Thus, all the policies relating to safeguard the UCA characteristics of the area are being respected.”

Fis-6 t'Ottubru 2011 inzamm access fuq s-sit relattiv fejn intwera lit-Tribunal passagg intern li jissepara l-izvilupp recenti mill-projeta' tal-appellant David Youngman u indikaw tieqa zghira li taghti ghal fuq dan il-passagg. Sussegwentement it-Tribunal accedda mill-intern tal-

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propjeta' ta' David Youngman u seta' jikkonferma li din kienet kamra tas-sodda. It-Tribunal acceda wkoll fuq area zghira li tintuza' fuq quddiem allegatament ghal parkegg u t-Tribunal ra il-parti l'izjed isfel li qed tidher li giet mharbta ricientement.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghal alterazzjonijiet u zidiet ghal residenza.

Is-sit mertu ta' dan l-appell jinsab fi Triq ta' Ghammar, Ghasri, Ghawdex

Din l-applikazzjoni giet milqugha bil-permess datat 8 ta' Mejju 2009.

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

L-appellant jissottometti li l-permess originali PA 2924/04 ghadhu soggett ghall-proceduri tal-appell u li f'dan is-sens l-ezitu ta' din l-applikazzjoni timpingi fuq l-appell tal-appellant, li l-appellant ma giex notifikat bl-udjenza fejn l-applikant gie mitlub jippresenta pjanti godda, li ghandhu jigi kkjarifikat min huma l-propjetarji tas-sit in kwistjoni in vista li l-permess originali gie mahrug f'isem Baron Group Ltd. u li l-applikazzjoni relattiva giet pprezentata minn Gozo Club Dev. Ltd., li giet awtorizzata estensjoni fejn jidher li fil-verita' qeghda tigi proposta residenza separata taht il-vesti t'estensjoni, li l-estensjoni mhijiex accettabbli u tikkostitwixxi 'overdevelopment', li l-estensjoni tmur kontra l-policy 2.7 tal-Policy & Design Guidance 2007 u li l-izvilupp ser ikun tal-inqas 7 filati oghla mill-bini adjacenti, li l-estensjoni sejra tikkrea inkonvenjent f'zieda ta' traffiku, hinjiyet tal-operat, nuqqas ta' privatezza u ghalhekk tmur kontra l-policy BEN 1, li t-turning circle imposta fl-izvilupp ma gietx onorata; li twassal ghal intensifikazzjoni t'uzu, u li l-izvilupp inaqqas mill-valur xeniku taz-zona li imur kontra l-policies UCO 6, 8 u 10.

L-Awtorita' tissottometti li l-appelli relattivi huma konnessi u ghandhom jinstemghu flimkien, li l-korrispondenza kollha relattiva ghall-kaz giet trasmessa direttament lill-konsulenti legali tat-terz appellant, li ma hemm l-ebda prova li tikkostitwixxi dikjarazzjoni falza ghal dak li jirrigwarda id-differenza bejn l-applikant originali u l-applikant prezenti, li l-addizzjonijiet proposti huma in linea mal-policies vigenti, li l-Awtorita' ma taqbilx li qed jigi kkreat telf ta' uzu, li l-varjazzjonijiet mill-permess originali gew sanati permezz ta' PA3945/08, u li l-policies konnessi mal-karatteristci UCA gew rispettati.

Is-sit jinsab fil-limiti taz-zona tal-izvilup skond l-Mappa 14.4 tal-Gozo and Comino Local Plan ippubblikat f'Lulju 2006, u jinsab f'Urban Conservation Area (UCA) tal-Ghasri.

Is-sit hu accessibbli minn passagg dejjaq, u l-proposta prezenti hi estensjoni ghall ghal dak ga approvat bil-permess PA 2924/04 (PAB 114/06) fejn inghatat l-awtorizzazzjoni ghal kostruzzjoni ta' erba residenzi adjacenti u erba' swimming pools.

Is-sit mertu ta' dan l-appell u dak tal-applikazzjoni PA 2924/04 huma mmarkati bl-ahmar fis-site plan 1B annessa mal-applikazzjoni; l-parti ta' fuq tas-sit, mmarkata b'cirku blue, hi s-sit mertu ta' din l-applikazzjoni PA 6077/07.

Hu importanti li jigi rilevat li fuq l-istess sit mertu ta' dan l-appell, l-applikant bl-applikazzjoni PA 6464/06 ippropona "To construct house with pool". Din l-applikazzjoni giet michuda fid-9 ta' Lulju 2008, ghar-raguni li l-izvilupp propost kien in kontravvenzjoni tal-Policy 3.8 tal-Policy and Design Guidance 2005 li ma jippermettix internal development f'Urban Conservation Area; kif ukoll billi l-proposta ma tissoddisfax u tmur kontra l-Policies tal-Pjan ta' Struttura TRA 4 u BEN 1. Minn dan r-rifjut, sar appell Numru 152/08 li gie differit 'sine die' fis-seduta tal-15 ta' Marzu 2012, pendent l-ezitu ta' dan l-appell, u l-Appell Numru 114/06 PA 2924/04.

l) L-appellant jilmenta mill-fatt li l-Awtorita' ghazlet li tipprocessa u tiddetermina din l-applikazzjoni għall-estenzjoni għall-izvilupp originali approvat tal-permess PA 2924/04, meta din l-istess applikazzjoni sar appell minnha numru 114/06, li għadu pendent. L-appellant jilmenta wkoll mill-fatt li bhala 'registered objector' kellu d-dritt li jigi notifikat bil-laqghat quddiem il-Kummissjoni għall-Kontroll ta' l-Izvilupp, fejn kellu d-dritt li jattendi.

Jilmenta wkoll mill-fatt li l-applikazzjoni originali saret mis-Socjeta' Baron Group Limited; mentri din l-applikazzjoni saret mis-socjeta Gozo Club Dev. Limited, u għalhekk jista' jkun lid-dikjarazzjoni dwar l-propjeta' tas-sit tista' ma tkunx korretta, cirkostanzi li tista twassal għal irtirar tal-permess.

Għalkemm hu veru li l-Awtorita' setghet issosspendiet id-decizjoni tagħha, sakemm jigi finalment deciz l-appell dwar l-applikazzjoni originali, dan ghazlet li ma tghamlux billi l-permessi jingħataw bla pregudizzju għad-drittijiet ta' terzi u fil-permess jigi specificatament indikat, li jista' jsir appell quddiem dan it-Tribunal, u l-Qorti tal-Appell, u li l-permess jista' jigi revokat b'rizultat ta' dawn id-decizjonijiet.

Fi kwalunkwe kaz l-erba' appelli konnessi cjoe 114/06; 57/09, 58/09 u 55/12 qed jinstemghu kontestwalment, u ser jigu kollha decizi fl-istess gurnata. Il-kwistjonijiet kollha dwar din l-area qed jigu decizi flimkien propju biex jigi evitat li d-decizjoni ta' appell wiehed tippregudika decizjonijiet ohra ta' appelli li jkunu hadd ma gew decizi.

Dwar l-preavviz ta' laqghat minn ezami tal-file tal-applikazzjoni jirrizulta li l-oggezzjoni tal-appellant saret mill-konsulent legali tieghu fi Frar 2008; u għall-laqgha tad-DCC tal-11 ta' Novembru 2008, l-konsulenti legali tal-appellant gewdebitament avvzati – Minute 84. L-istess konsulenti informaw l-Awtorita' li ma kienux aktar qed jippatrocinaw l-appellant b'ittra tal-11 ta' Dicembru 2008, Minute 96.

F'dawn ic-cirkostanzi ma jistghax jinghad li l-permess ghandu jigi revokat, ghax ma gietx segweita l-procedura tan-notifika tal-appellant bil-laqghat tal-Kummissjoni ghall-Kontroll ta' l-izvilupp. Anke l-allegazzjoni dwar l-implikazzjonijiet tal-bdil fl-isem tas-socjeta' applikanti ma twassal ghan-nullita' tal-proceduri. Ma rrizultax, infatti, li saret xi dikjarazzjoni falza dwar l-propjeta tal-art mertu ta' dan l-appell.

II) Dwar l-mertu l-Awtorita' tiddikajra li kienet konsistenti fid-decizjonijiet taghha billi meta' saret talba ghal residenza separata giet michuda, mentri din qed tigi approvata billi hi estensjoni ghal dak ga approvat; u dwar dan giet imposta garanzija bankarja biex jigi assikurat li din l-estensjoni ma tkunx zvilupp separata.

Dan pero' hu kontradett mill-applikazzjoni tal-istess applikant PA 763/11, fejn talab "To split house approved in permissions PA 2924/04 and PA 6077/07 into two, and to carry out minor alterations and external alterations on all floors". Din l-applikazzjoni giet milqugha fis-6 ta' Jannar 2012, u l-appellant prezenti appella minnha wkoll Appell Numru 55/12.

Dan it-Tribunal diga ezamina d-dettalji u c-cirkostanzi partikolari relattivi ghall-applikazzjoni originali PA 2924/04, fl-Appell Numru 114/06 li ghalih qed issir refrenza. Irrizulta f'dak il-kaz, li gie approvat internal development f'Urban Conservation Area meta l-access ghas-sit ma kienx wiesa' kemm indikat fil-policies; izda aktar dejjaq b'mod li l-access ghas-sit hu skomdu u insufficjenti; b'nuqqas ta' provvista ta' parking, tant li gew impost certi kondizzjonijiet b'zieda ma daww impost fil-permess originali biex jindirizzaw dan in-nuqqas.

Il-proposta prezenti indubbjament ser taccentwa sitwazzjoni li hi ga prekarja billi l-estensjoni aprovata ghandha bhala konsegwenza zieda ta' nies dehlin u hergien mis-sit, zieda ta' vetturi, minn access insufficjenti anke ghall-izvilupp originarjament approvat. Dan apparti l-konsiderazzjoni ta' 'overdevelopment' billi dak approvat fl-applikazzjoni originali f'din il-lokalita' partikolari, 'internal

development' hu diga estensiv; u ghalhekk estenjonijiet ulterjuri jkomplu jzidu ma zvilupp diga prattikament eccessiv.

Il-fatt li applikazzjoni ohra tal-istess applikant fuq l-istess sit PA 6464/06 giet michuda, billi in kontravvenzjoni ta' diversi policies ta' lppjanar, ma tistax tigi traskurata. Dik l-applikazzjonijiet giet michuda billi l-proposta hi in kontravvenzjoni tal-Policy 3.8 tal-Policy and Design Guidance 2005; ta' Structure Plan Policy TRA 4, billi m'hemmx provvista ta' parking, u BEN 1 billi jkollha impatt negattiv fuq l-izvilupp f'dik il-lokalita'.

Dawn l-motivazzjonijiet huma indubbjament ukoll applikabbli ghal din l-applikazzjoni, li hi fuq l-istess sit, fejn japplikaw l-istess policies, bid-differenza biss fil-proposta cjo'e' dik michuda l-kostruzzjoni ta' residenza, mentri din prezenti, ziediet u alterazzjonijiet ghal residenza ezistenti.

III) L-appellant jinvoka wkoll l-applikazzjoni tac-Cirkolari PA 2/96 billi fil-permess originali PA 2924/04 gie impost turning circle biex jiffacilita' d-dekors tat-traffiku mill-access dejjaq, li skond l-appellant baqa' ma sarx, u ghalhekk dan il-permess ma kellux johrog qabel isiru d-debiti verifiki tal-osservazzjoni tal-kondizzjonijiet kollha impost fil-permess originali.

L-access u t-traffic management dwar l-applikazzjoni PA 2924/04 gia gie trattat fl-Appell 114/06, fejn gew impost kondizzjonijiet addizzjonali biex jindirizzaw din is-sitwazzjoni partikolari.

Ezaminati fid-dettal ic-cirkostanzi partikolari ghal din l-applikazzjoni, fil-kuntest tal-Policies tal-lppjanar rilevanti, t-Tribunal qed jasal ghal konkluzjoni li din l-applikazzjoni kellha tigi michuda ghall-istess ragunijiet li giet michuda l-Aplikazzjoni PA 6464/06.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell, billi jilqa' l-istess u jirrevoka l-permess tat-8 ta' Mejju 2009 ghall-applikazzjoni PA 6077/07.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal injora ghal kollox is-sottomissjoni tal-appellant li dan mhux 'new development' izda zidiet fi zvilupp gia approvat u allura kommess u kwindi mhux in vjolazzjoni tal-policy 3.8 tad-DC 2007.

Din il-Qorti tqis li dan l-appell hu gustifikat fit-termini li fih gie maghmul. It-Tribunal qal car u tond fil-parti decisiva tieghu illi din l-applikazzjoni qed tigi michuda ghall-istess ragunijiet li giet michuda applikazzjoni PA 6464/06. Dawn ir-ragunijiet f'dik l-applikazzjoni kienu jikkonsistu fis-segwenti cioe li l-izvilupp kien in kontravvenjoni tal-policy 3.8 tal-Policy and Design Guidance 2007 li ma jippermettix internal development f'urban Conservation Area; kif ukoll billi l-proposta tmur kontra Pjan ta' Struttura TRA 4 u BEN 1 cioe inkonvenjent b'ziieda ta' traffiku, nuqqas ta' privatezza u ghalhekk impatt negattiv fuq l-izvilupp fil-lokalita u nuqqas ta' provvista ta' parkegg.

Dik l-applikazzjoni cioe PA 6464/06 pero kienet tirrigwarda l-krejjazzjoni ta' unit gdid mhux kif inhu dan il-kaz cioe zieda fil-kobor ta' unit ezistenti approvat mill-Awtorita u mill-istess Tribunal fl-applikazzjoni PA 2924/04.

Dak li kien obligat jkkonsidra t-Tribunal hu jekk iz-zewg applikazzjonijiet kienux jimmeritaw l-istess konsiderazzjoni fl-isfond ta' dak li jfisser internal development u jekk zidiet bhal dawn mitluba jikkwalifikawx ghal zvilupp iehor. Hu minnu biex ikun inghad kollox illi t-Tribunal ikkostata illi permezz ta' applikazzjoni ohra cioe PA 763/11 l-istess applikant talab li jiddividi dan il-unit li tieghu intalbet u ntlaghet l-estenzjoni mill-Awtorita permezz ta' din l-applikazzjoni pero t-Tribunal ma svolgiex l-argument oltre u anqas iggustifika, ghalkemm semma jekk policies ohra kienux ta' rilevanza jew additura applikabbli flok jew flimkien mal-policy dwar internal development biex ixejjen l-argument tal-appellant dwar il-commitment ezistenti bl-erba' units approvati fil-permess PA 2924/04 u kif estensjoni ta' wiehed mill-units ma kienx ser imur kontra ebda policy rigwardanti internal development. Il-parti

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decisiva tieghu li jallacja d-decizjoni tieghu ma' ragunijiet moghtija fid-decizjoni PA 6464/06 li kienet tirrigwarda bini ta' unit gdid, tiffa' f'dubju l-argumentazzjoni kollha li ghamel it-Tribunal fil-paragrafi precedenti kontra l-approvazzjoni tal-izvilupp.

Aktar minn hekk pero l-appellant hu gustifkat illi t-Tribunal ma kkonsidrax aggravju ta' sustanza li seta' influixxa fuq id-decizjoni u li ghalhekk kellha tigi epurata mit-Tribunal u deciza. Sfortunatament dan ma sarx u ghalhekk il-Qorti hi kostretta tilqa' l-appell, biex it-Tribunal jiddeciedi fuq il-mertu tieghu b'referenza ghal fattispecie tal-izvilupp propost.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Francis X. Tabone nomine u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-8 ta' Novembru 2012, u tibghat l-atti lit-Tribunal biex jerga' jiddeciedi l-appell mehud in konsiderazzjoni l-aggravju tal-appellant li ma giex indirizzat mit-Tribunal. Spejjez fic-cirkostanzi jibqghu bla taxxa.

< Sentenza Finali >

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