



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 156/2012

Anthony Cauchi

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Cauchi tas-16 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li cahdet l-applikazzjoni PA 1473/09 'to sanction pool, additions and alterations to layout of existing house';

Rat ir-risposta tal-Awtorita appellata li sottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

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

B'applikazzjoni tad-9 t'April 2009 – Full Development Permission – PA 1473/09 fejn l-appellant, f'Mouncey, Triq Grunju, Qala, Ghawdex, talab:

“to sanction pool, additions and alterations to layout of existing house”

Permezz ta' rifjut taz-17 ta' Marzu 2011 l-Kummissjoni dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

“1 The proposal runs counter to the adopted Development Control Guidance - Developments Outside Built up Areas (1995), and in particular to paragraphs 8.1 (i), (ii) and (iii) in that there is no justification for the subdivision of the approved building on site. It would lead to intensification of building outside those areas specifically designated for urban uses in the Structure Plan, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land.

2 The site lies outside the limits for development defined in Map 14.8-A&C of the Gozo and Comino Local Plan and so it is located in an area where development is only permitted when it is in accordance with Structure Plan Policies SET 11 and SET 12; and where the site is essential for the development proposed. The proposal would represent unacceptable urban development in the countryside and goes against Local Plan Policy GZ-LMDZ-1.

3 The proposed development conflicts with Structure Plan Policy SET11 and Gozo and Comino Local Plan Policy GZ-LMDZ-1, which do not permit urban development outside existing and committed built-up areas. The site is already committed by development of a dwelling unit with

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a swimming pool and therefore no further development shall be permitted on site.

4 There is no justification for the development of this site as required by Structure Plan Policy SET12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located within development zone.

5 Structure Plan Policy RC04 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan Policy RC04.”

L-Perit Saviour Micallef ressaq l-aggravji tal-appellant kif gej:

“1) The proposal consists of alterations to an existing house including an additional swimming pool. The footprint / floorspace are acceptable as they measure 135/185 sq.m. respectively, that is less than the 150/200 sq.m. permitted in policy PLP 20.

2) The house was in fact approved as a separate unit in permit PA 3852/92 and was not joined with the adjacent eastern site. MEPA is claiming that a unit was created on the adjacent eastern site. However and in any case this is subject to a separate enforcement and sanctioning application and cannot be used to justify a refusal for this already approved house.”

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

“5.0 COMMENTS ON APPELLANT'S ARGUMENTS

5.1 The Authority has noted the arguments as brought forward in appellant's request for appeal and shall address these issues hereunder:

5.1.1 In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies.

5.1.2 However, after noting all of appellant's arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breach the relevant policies as will be discussed below.

5.1.3 Reference is made to the assessment as carried out in the DPAR and which included:

--Principle of the development

The proposed development is related directly to application for the adjacent site PA1474/09. Sketch at document 13 shows that the proposal, together with proposal in PA 1474/09, consists in the subdivision of the site. The subdivision results through the retention of the major part of the approved dwelling to form the site relative to the current application, while the adjacent application (i.e. PA 1474/09) is retaining a room and the swimming pool from the approved dwelling and additional development to create a new dwelling unit.

Although drawings 1C, 1D and 1E indicate minor changes to the existing building approved in permission PA784/07, the modifications are not acceptable in principle because it is evident that the proposal is aimed to create a new dwelling ODZ on the adjacent site. The proposal therefore runs counter to the provisions of SP Policies SET11 & SET12; and Local Plan Policy GZ-LMDZ-1. For the same reason, the proposal cannot be considered in terms of paragraphs 8.1 and 8.2 of Policy PLP 20.

-- Swimming pool .

Considering that the dwelling approved in permission PA784/07 included a swimming pool, and that the adjacent site cannot be developed into a separate dwelling unit; there is no justification for the construction

of a second swimming pool in the area. The proposal goes against the provisions of paragraph 5.1 of the Policy for Swimming Pools ODZ 2000 in that a single dwelling unit is only allowed a swimming pool that does not exceed 50m².

-- Details of proposal

The assessment of the application does not include assessment of the details of the proposal, such as access and design, since the proposal is not acceptable in principle. A full assessment of the application would require details about the side elevations, in view of the creation of blank party walls in an area ODZ, landscaping, and details of the rubble wall. The massive extension (i.e. including also the proposals on the adjacent sites relative to PA 1474/09, together with the proposed sanctioning of the stables on the eastern side relative to PA 1473/09 and PA 1615/09) in an area which should remain unbuilt and open, is still considered to create an unacceptable visual impact, in conflict with SP Policy RC04, particularly within an area designated as an Intensive Agricultural Zone.

5.1.4 As regards to the arguments of the appeal itself, the Authority disagrees with appellant's statement on various accounts and will be explained below.

5.1.5 While it is correct that Policy PLP 20 permits extensions to existing dwellings up to a maximum total floorspace of 150 sq.m., the case under appeal cannot simply be assessed as an extension to an existing dwelling in view of a genuine need to upgrade 1 modernize as per current norms. The fact is that this dwelling had been granted permits for additions and alterations as per PA 3852/92 and PA 784107 and later, without any permit being granted, undergone further internal and external alterations and additions which transformed the original ONE dwelling into TWO.

5.1.6 The LHS (This appeal) was served with ECF 443/09 and this application under appeal was submitted to sanction the works (and inevitably the fact that the original

house was subdivided) whilst the RHS (new dwelling) which consist of rooms previously appertaining to the original dwelling as well as new rooms with pool was served with ECF 503/09 and an application to sanction as per PA 1474/09 and is currently pending appeal in front of the Tribunal (as per PAB 355/10). Additionally, it is relevant to state the on the next adjacent site (RHS), the same applicant of these two applications was served with ECF 504/09 for construction of stables without permit. An application was submitted as per PA 1615/09 which is also pending appeal in front of the Tribunal as per PAB 357/10. In such circumstances, these three appeals should be heard simultaneously in view of all being adjacent to each other, all three sites have the same appellant and same architect.

5.1.7 In the second argument of this appeal, appellant is confirming that original permit PA 3852/92 had granted one unit and is also confirming that there is an adjacent appeal to sanction a new dwelling. It is claimed that these two appeals should be treated separately. The Authority disagrees with this notion since these are not separate sites but are in fact one site as originally approved in PA 3852/92 but have been separated without permit with the result that two units in ODZ have been created and no policy which could permit such intensification of a single unit into two in ODZ has been cited in this appeal.

5.1.8 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies. Hence, reference is made to the reports as presented by the Directorate and to the EPC's decision which dismissed this request for development since the EPC Board had based their decision on the valid relevant policies applicable to this area. Reference is also made to the detailed reports as included in the file and to the submissions (verbal and written) which will be presented during the appeals sittings.

5.2 MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all the relevant facts, planning policies, legislation and submissions and thus, respectfully requests that the Environment & Planning Review Tribunal to confirm the decision as issued with the refusal notice and to refuse this appeal. The Authority reserves the right to forward further submissions during the appeals process as necessary. ”

Il-Perit Saviour Micallef wiegeb responsivament kif gej:

“ SITE HISTORY

The site was committed with an old dwelling since a very long time and in fact much before 1968.

Indeed attached contract dated 9th Nov 1967 shows that this original old dwelling was subdivided into two, one on the West that is the merit of this application and another one on the East. The subdivision is legal from a planning point of view as it is pre 1968.

At a later stage a building permit was granted for additions and alterations to convert the original western dwelling (this site) into a two storey house – vide permission PA 536/93/3852/92 dated 5th May 1993.

It is hence clear that the site under consideration has existed as a distinct dwelling, separated from the eastern building before 1968.

PA 784/07 issued 22nd October 2007 tempted to re-unite this Western house with the eastern parcel. This development was however not carried out as approved and this Western house remained as a separate dwelling, distinct from the eastern part.

The illegal extension on the Eastern parcel, (which MEPA is claiming that it constitutes a new dwelling), is the subject of a separate application (PA 1474/09) which has

to be considered on its own merits and cannot be additionally used to justify a refusal against this current application.

The current application consists of minor alterations and additions to an existing dwelling in line with permitted policies as explained below.

PROPOSED DEVELOPMENT

The proposed development consists of the sanctioning of:

a) Internal alterations and small extension at the ground floor level to an existing dwelling together with the creation of a pool.

The ground floor level has a total footprint of 131 sq.m. (total approved plus extension). Hence the proposed total footprint is less than the 150 sq.m. permitted in policy PLP 20. The extension is moreover located at the back, screened from views, and is very small when compared to the original building and surely does not dominate it.

Again the swimming pool has an area of 44 sq.m. , ie less than the permitted 50 sq.m. for ODZ pools.

b) Minor alterations at first floor.

At first floor, proposal consists of sanctioning of minor alterations with the floor space being retained at 49 sq.m. as approved and as in fact permitted in policy PLP 20.

The directorate is arguing that the proposal is aimed at creating a new dwelling on the adjacent eastern site and hence objectionable. However, we again insist that this dwelling has existed as a separate unit since 1967 and proposal is not creating any new dwelling or subdivision. The development on the adjacent eastern site including the swimming pool is the subject of separate application PA 1474/09. MEPA has all the space to argue against this adjacent development in PA 1474/09 but cannot at the same time use the eastern separate application to justify a

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refusal against these legitimate alterations and minor additions.

For these reasons we respectfully ask the Appeals Board to approve the proposed development. ”

Permezz tat-Tieni Statment taghha l-Awtorita' irrilevat:

“[...]”

The above chronology shows that the 'old' plan had constituted of only 3 rural rooms at ground floor level overlooking a common internal yard (typical of rural structures of that era) wherein only on small door had allowed access of these 3 rooms to the main road. Hence, although these rooms could have been subdivided into two owners, the one marked in '8' surely cannot be considered as a genuine 'ODZ dwelling' but could only be considered as a rural room serving the neighbouring fields.

It is to be reiterated that the last permit PA 784/07 had granted alterations and additions to 'one' dwelling and its illegal subdivision has led to two appeals which seek to sanction the subdivision and the fact that a new dwelling is in fact being created. In fact, the proposal under appeal itself does not portray all the resultant fact since the approved one dwelling as per PA 784/07 is now in fact being requested to be subdivided into TWO dwellings, and hence, both proposals (both of this appeal and that of the adjacent appeal) needs to clearly describe this fact. The official proposal of this appeal is not mentioning the resultant two dwellings and is limited to:

To sanction pool, additions and alterations to layout of existing house.

Hence, if now, at appeals stage, appellant intends to change this proposal and limit this application to additions to an established and legal dwelling, then, a new application has to be submitted in this sense.

In these submissions, reference was made to Policy PLP 20 in that such a policy allows extensions to existing (fully legal) dwellings in ODZ up to a maximum of 150 sq.m. However, one must also note that the same policy, para 8.2 (IV) states that

Extensions should be confined to the area already included within the curtilage of the property.

Hence, when one considers the site under appeal, ie marked as room (B) on the 'old' plan vis-a-vis the proposed sanctioning plan above, it is clearly evident that the transformation of only 1 room into a fully fledged dwelling in aDZ plus a pool, is surely 'new development outside the original committed curtilage of the old structure'. Hence, while it is correct for one to state that PLP 20 Policy exists and is used by the Authority in cases of extensions to existing dwellings, the above plans show that Room B is only one room and a dwelling, even in 1967 was not made up of just one room. Furthermore, appellant argument that since a room (which could have been part of an old dwelling) was in 1967 transferred to a new owner, then, this one rooms qualifies as a separate dwelling, then, on the same bases, if all the rooms were transferred to separate owners, then, each and every room would now qualify for a new dwelling on the same appellant's latest arguments !!!.

The Authority has noted points a) and b) of appellant's latest submission (pg 2 of submission) and notes that:

The 'proposed' development is not actually "Internal alterations and small extensions at the ground floor level to an existing dwelling". These alterations are only a part of the proposal. The main issue of this application is that through this application, appellant is in fact creating a 'new' (ie an independent) dwelling unit on the adjacent site which formed part of ONE unit (now its adjacent part is also being requested to be subdivided into an independent unit through a parallel appeal in PA 1474/09.

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In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the Board's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba, full development application, għall-issanzjonar ta' pool minflok reservoir, alterazzjonijiet u estensjoni fuq wara tal-bini.

Il-bini propost huwa ta' zewg sulari.

Skond l-Awtorita' is-sit mertu ta' dan l-appell jinsab ODZ f' zona mmarkata bhala Intensive Agricultural Zone fil-pjan lokali. Il-bini fuq is-sit huwa residenza li hija ezistenti peress li l-izvilupp diga sar. Originarjament is-sit kien jiffirma parti minn sit akbar (PA 3852/92, PA 784/07) li wara xi zmien kien inqasam f' zewg zviluppi separate li huma koperti b' din l-applikazzjoni u bl-applikazzjoni PA 1474/09 li tinsab ukoll fli-istadju tal-appell.

Inhareg enforcement kontra l-izvilupp kopert bl-applikazzjoni in ezami u enforcements oħra kontra l-izvilupp kopert bl-applikazzjoni PA 1474/09.

Din l-applikazzjoni giet rifjutata peress li:

- Is-sit jinsab ODZ ai termini tal-mappa 14.8-A&C tal-Gozo and Comino Local Plan u għalhekk jikser il-policy GZ-LMDZ-1 tal-pjan lokali;
- L-izvilupp imur kontra paras 8.1 (i), (ii) u (iii) tal-policy PLP 20;
- L-alterazzjonijiet u addizzjonijiet mhuwiex gustifikati, u għalhekk l-izvilupp propost imur kontra l-policies SET 11, SET 12, RC04 tal-Pjan ta' Struttura u l-policy GZ-LMDZ-1 tal-pjan lokali.

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:

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- L-izvilupp b' footprint ta' 135 u floor space ta' 185 metri kwadri propost huwa accettabbli skond il-policy PLP 20;
- Id-dar ezistenti kienet approvata permezz tal-permess PA 3852/92 u ma kienetx maghquda mas-sit adjacenti. Anki jekk skond l-Awtorita' gie stabbilit unit iehor fuq is-sit adjacenti dan ghandhu jkun soggett ghall-applikazzjoni sanatorja separata u ma jistax jintuza ghall-iggustifikar ta' rifjut tad-dar gja approvata.

L-Awtorita' tissottometti li:

- Il-proposta tmur kontra l-policies SET11, SET12, GZ-LMDZ-1, u l-paragrafi 8.1 u 8.2 ta' PLP 20;
- Pool ohra mhijiex permissibbli skond l-paragrafu 5.1 tal-Policy for Swimming Pools ODZ 2000;
- L-izvilupp imur kontra l-policy RC04 peress li jwassal ghal impatt vizwali negattiv; u
- Il-proposta ghandha tigi ezaminata b'mod li s-sit huwa wiehed u li fuqu gew zviluppati zewgt idjar u dan peress li s-sit li fuqu hareg il-permess originali (PA 3852/92) gie maqsum f' zewg siti bla permess.

Fir-risposti taghha l-Awtorita' tispjega li l-izvilupp tas-sit kollu inkluz l-izvilupp adjacenti u l-istables jikkrea impatt vizwali negattiv konsiderevoli u ghalhekk jikser il-policy RC04 tal-Pjan ta' Struttura. Il-fatt li qed tigi kkrea residenza ohra fl-ODZ mhux accettabbli. Izjed minn dan, skond l-ispirtu li fih inkitbet il-policy PLP 20, biex konversjoni ta' bini rurali antik ghal abitazzjoni tkun accettabbli din ghandha tirrispetta il-kuntest tal-bini originali u l-izvilupp in ezami dan mhux qed jaghmlu.

L-Awtorita' tispjega l-istorja tal-bini originali li kien jezisti qabel is-sena 1968 u li kien jikkonsisti minn tliet ti kmamar u bitha fil-kampanja u kif dan, permezz ta' zewg permessi (PA 3852/92 u PA 784/07) kien gie zviluppat f' residenza moderna bil-pool u li issa inqaleb f' zewg residenzi moderni, it-tnejn bil-pool u li taghom qed jintalab is-sanzjonar.

Il-punt centrali li jrid jigi deciz f' dan l-appell huwa jekk l-Awtorita' kelliex ragun meta iddecidiet li s-sit in ezami ghandu jigi ikkunsidrat flimkien mas-sit adjacenti peress li

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I-qasma tas-sit originali li kien kopert mill permess PA 3852/92 u wara bil-permess PA 784/07 fil-fatt inqasam bla permess. Punt iehor li jrid jigi deciz huwa jekk huwiex gustifikat li, fl-ispirtu tal-policies rilevanti, jinholqu zewg residenzi u mhux wahda fuq dan is-sit li huwa ODZ. Punti ohra li jirrizultaw minn din it-talba huma jekk hux gustifikabbli li jinbena' pool iehor fuq is-sit u jekk il-footprint u l-habitable area humiex skond il-policy PLP 20.

Permess tal-ippjanar jinghata fuq sit specifiku. Il-konfini geografici ta' dan is-sit jkunu murija f' pjanta specjali imsejha site plan li, biex johrog il-permess tkun trid tigi approvata bhal pjanti l-ohra kollha fil-proposta ta' zvilupp u hija parti mill-permess. Huwa ovvju li biex jinbidlu l-konfini ta' dan is-sit trid issir applikazzjoni specifika biex din il-pjanta tkun tista tinbidel. La fit-talba li saret fl-applikazzjoni mertu ta' dan l-appell u lanqas fl-applikazzjoni li tkopri s-sit adjacenti ma' kien hemm referenza ghal dan il-punt jigifieri biex is-sit originali kopert bil-permess PA 784/07 jinqasam f' zewg siti. Dan huwa punt kardinali f' termini ta' ippjanar. In fatti wiehed jiskanta kif l-Awtorita' ma' hargitx enforcement notice specifikament fuq din l-illegalita' li jidher li kienet izjed fundamentali mill-illegalitajiet l-ohra li kien hemm fuq is-sit.

Ghalhekk dan it-Tribunal ma' jaqbilx mat-tieni aggravju tal-appellant u huwa tal-fehma li l-Awtorita' kienet korretta meta argumentat fl-istadju tal-appell li z-zewg l-applikazzjonijiet sanatorji fuq dan is-sit huma marbutin flimkien.

Apparti dan hemm l-issue ta' kemm huwa gustifikat li jinghataw zewg residenzi fuq dan is-sit u dan biex skond il-policy PLP 20 jkun ta' inkoraggiment biex jigu ppreservati it-tliet ti kmamar imdawwra ma' bitha originali. Fuq dan it-Tribunal huwa tal-fehma li biex tippreserva tliet ti kmamar zghar imdawrin ma' bitha ma' tistax tuza dak li tghid il-PLP 20 biex tiggustifika il-kreazzjoni ta' zewg semi-detached bungalows kull wahda bil-pool.

F'dan il-kas partikolari u kieku l-affarijiet saru verament fl-ispirtu spjegat hawn fuq, il-konversjoni u l-preservazzjoni

tat-tliet ti kmamar imdawwrin ma' bitha originali setghet saret kompletament gewwa l-envelope originali minghajr ma' nbnew il-kmamar zejda u l-pool li finalment inghataw bil-permess PA 784/07. Mhux il-kas li bil-fors trid tinbena three bedroomed semi-detached villa bil-pool; ahseb u ara tnejn.

Il-PLP 20, jekk tapplika' fl-ispirtu li ghalha inkitbet ,ma' thallikx taghmel dan ghax fil-process jintilef il-kuntest tal-bini li propju qed tipprova tippriserva.

Dwar l-ewwel aggravju, fil-fehma kunsidrata ta' dan it-Tribunal, l-enfasi tal-PLP 20 mhux li t-tibdil li jista jsir f' kull struttura rurali jista jigi accettat basta li l-floor area tibqa taht il-150 metru kwadru.

L-ispirtu veru tal-PLP 20 huwa li, purche li l-bini jisthoqqlu, dan ghandu jigi konvertit b'mod tali li kemm jista jkun il-bini jibqa jinqara bhala bini rurali fil-kuntest originali tieghu. L-oggettiv principali tal-policy hu li jinghata incentiv biex il-bini originali jigi ppreservat. Huwa cruciali li meta wiehed jitkellem fuq il-kuncett ta' residenza accettabbli f' dawn il-kazi, m'ghandux jimmagina three-bedroomed terraced house, jew semi-detached villa jew fully detached villa bil-pool imma pjuttost arrangement minimu li kemm jkun jista' issir fl-envelope tal-bini ezistenti b' koncessjonijiet minimi biex jinkoraggixxu lill-applikant biex jippriserva l-bini.

Bhal ma' intqal f' numru ta' decizjonijiet ohra ta' dan it-Tribunal, il-policies tal-ippjanar ghandhom jigu applikati b' mod flessibbli u dan biex dejjem jintlahaq l-ispirtu ahhari li jkun hemm warajhom. Irrid jigi enfasizzat il-punt li l-flessibilita' tal-policies tal-ippjanar ma' tfissirx li iggebbidhom b' tali mod li l-applikant jiehu dak li jrid a kost ta' kollox anki jekk dan ikun imur kontra l-ispirtu tal-policy in kwistjoni. Il-flessibilita' ghandha dejjem tigi applikata fis-sens li l-oggettivi tal-Pjan ta' Struttura jintlahqu ghax din hija l-ligi suprema tal-ippjanar.

L-izvilupp li qed tintalab jigi ssanat f' dan is-sit huwa esagerat u jiznatura kompletament it-tliet ti kmamar

imdawrin ma' bitha li suppost qed jigu ppriservati. Ikun perikoluz hafna li wiehed jiprova igebbed izjed din il-policy ghalix b' hekk ikun qed jinfetah il-bieb ghal numru kbir ta' talbiet simili li jistghu jwasslu ghad-distruzzjoni totali tal-kampanja f' numru ta' zoni f' dawn il-gzejjer u dan kontra wiehed mill-principji fondmantali tal-iStructure Plan. Ghalhekk, fil-fehma kunsidrata ta' dan it-Tribunal, il-pozizzjoni tal-Awtorita' f' dan il-kas hija wahda korretta u li hija pjenament sostnuta mill-PLP 20.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smiegh ta' dan l-appell, peress li s-sit originali li kien kopert bil-permess PA 784/07 inqasam f' zewg siti illegalment u anki peress li l-proposta in ezami tikser il-policies ta' l-Pjan Strutturali SET 11, SET 12 u RCO 4, il-policies GZ-LMDZ-1 tal-pjan lokali u l-policy PLP 20 jirrizulta li dan l-appell ma jistax jigi milqugh.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA 1473/09, " to sanction pool, additions and alterations to layout of existing house", taz-17 ta' Marzu 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal zbalja fatt krucjali li waslu ghal decizjoni zbaljata fil-ligi. Dan peress illi kkunsidra l-fondi koperti f'PA 3852/92 u PA 784/07 bhala sit wiehed u li nqasmu bla permess. It-Tribunal naqas li jikkonsidra li s-sit in ezami kien sa minn qabel l-1968 distint u separat mis-sid adjacenti u li s-sit in ezami li jinsab fuq il-punent kien gie approvat bhala sit separat fl-1993 fil-hrug tal-permess PA 3852/92 skond il-kuntratt tal-1967 li juri li kien hemm zewg siti separati u distinti. In oltre l-izvilupp kif propost fil-permess PA 784/07 li kien intiz li jghaqqad il-parti fuq il-lvant ma' dak tal-punent qatt ma sehhet u ghalhekk is-siti baqghu zewg fondi distinti minn xulxin u mhux binja wahda;

2. L-appellant talab li jaghmel nota ta' sottomissjonijiet wara li saret trattazzjoni orali u dan gie michud b'digriet tat-Tribunal bla ma gie motivat u b'hekk gie lez lilu d-dritt li

jkollu raguni cara u motivata ghal dan ir-rifjut, u b'konsegwenza ta' dan l-argumenti orali tad-difensur tal-appellant ma gewx riflessi fid-decizjoni.

It-tieni aggravju

Dan l-aggravju ma fihx mertu. Jirrizulta mill-atti illi l-partijiet inghataw l-opportunita li jressqu l-argumenti taghhom bil-miktub waqt is-smigh tal-appell u in oltre inghataw l-opportunita u fil-fatt trattaw l-appell quddiem it-Tribunal u l-kaz gie differit ghas-sentenza minghajr ebda riserva, kondizzjoni jew oggezzjoni. Ma jistax l-appellant jivvanta xi nuqqas ta' smigh xieraq ghax hass li wara li l-kaz gie differit ghas-sentenza irid jerga' jiftah il-kaz biex jaghmel sottomissjonijiet bil-miktub. La darba vertenza tkun giet differita ghad-decizjoni huma eccezzjonalment ic-cirkostanzi li jistghu jaghtu lok ghal ftuh mill-gdid tal-proceduri anki jekk hu biss biex jigu prezentati sottomissjonijiet ulterjuri, din id-darba bil-miktub. L-accettazzjoni tal-partijiet li kaz jmur ghad-decizjoni jfisser li l-atti huma konkluzi u maghluqa definittivament hlief kif intqal ghal cirkostanzi eccezzjonali, li bl-ebda mod ma rrizultaw minn qari ta' dan l-aggravju. Il-fatt li t-Tribunal ma ggustifikax ic-cahda tat-talba mhix ta' rimproveru ghat-Tribunal billi l-gustifikazzjoni hi implicita mill-fatt innifsu li l-partijiet qablu li l-appell jigi differit ghad-decizjoni u ma ngieb xejn gdid fir-rikors li jimmeritaw il-ftuh mill-gdid tal-proceduri. Ix-xewqa tal-appellant, kif jidher mir-rikors tieghu tal-10 ta' April 2012, li jixtieq jaghmel sottomissjonijiet bil-miktub wara li saret it-trattazzjoni orali setghet saret seduta stante u mhux wara l-qbil li l-kaz jigi differit ghad-decizjoni.

Kwindi l-Qorti tqis li ma hemmx gustifikazzjoni f'dan l-aggravju.

L-ewwel aggravju

Dan l-aggravju jaghti impressjoni li hu punt ta' dritt pero fil-fatt ma hu punt ta' dritt xejn izda applikazzjoni u interpretazzjoni tal-ligijiet ta' ippjanar tenut kont ta' dak ezistenti fis-sit, u l-permessi mahruqa fuq is-sit. It-Tribunal

infatti jirreferi ghal pjanti fuq is-sit u l-permessi li nhargu in konnessjoni mal-imsemmija pjanti. It-Tribunal ikkonstata li l-permess PA 784/07 kien ghaqqad is-sit bhala wiehed u dak li rrizulta hu illi l-applikant qasam is-sit fi tnejn kontra l-permess mahrug minghajr ma ntab li jerga' jinqasam biex jigu sanzjonati l-alterazzjonijiet li saru bla permess inkluz z-zieda ta' pool ohra ma' dik approvata bil-permess PA 784/07. Dan kien il-qofol tal-kwsitjoni fattwali mill-lat ta' ippjanar. Pero t-Tribunal ma waqafx hemm izda dahal fuq il-policies rilevanti li jirrigwardaw bini fl-ODZ u l-ispirtu wara tali policies u kif dawn ghandhom jigu applikati fil-konfront ta' binjiet ezistenti u l-izvilupp sostenibbli u accettabbli ghalihom.

It-Tribunal ukoll ikkunsidra illi fic-cirkostanzi l-applikazzjonijiet sanitarji fuq il-qasma taz-zewg siti ma setghux jigu indirizzati separatament meta kienu intrinsikament konnessi permezz tal-permess PA 784/07 liema permess gie vjolat u issa qed jintalab sanzjoni ta' zewg siti mentri s-sit kellu jkun wiehed u b'hekk jigi aggravat dak li hu permissibbli fuq zona skond policy PLP 20.

Il-Qorti ma tqis li t-Tribunal zbalja fatt izda apprezza u interpreta fatti stabbiliti u applika ligijiet ta' ippjanar biex jiddeciedi dwarhom, liema apprezzament ta' fatti mhux sindakabbli mill-Qorti kif mhux sindakabbli interpretazzjoni ta' ligijiet ta' ippjanar sakemm ma jmur kontra l-kelma cara tal-ligi li mhux il-kaz f'din l-istanza.

Il-Qorti ma tqis li l-kuntratt ta' qasma hu ta' relevanza f'termini ta' ippjanar billi dak li sehh wara l-qasma senjatament mill-permessi ta' ippjanar juru illi fl-2007 zgur li s-sit kollu kellu jingharaf bhala wiehed u illi vjolazzjoni ta' permess billi jsiru xogholijiet mhux permessi ma jfissirx li l-permess mahrug ghandu jintesa qisu ma jezistix. Il-Qorti mhix qed tqis din l-applikazzjoni bhala wahda gdida wara li permess ezistenti jkun skada u ghalhekk iridu jittiehdu in konsiderazzjoni l-pjanijiet u policies fiz-zmien tad-decizjoni, izda bhala talba biex jigi sanzjonat dak li sar kontra permess PA 784/07 wara l-hrug ta' enforcement notice ghall-irregolaritajiet ta' bini kontra l-imsemmi

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permess ezistenti u fejn l-applikant fil-permess li wassal ghal din l-applikazzjoni kien iddikjara s-sit bhala binja wahda u mhux tnejn.

Din l-Qorti tqis illi dan l-aggravju ma jistax jigi milqugh ghax mhux gustifikat bhala punt ta' ligi appellabbli u anqas fuq bazi ta' applikazzjoni hazina tal-ligi ta' ippjanar.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Anthony Cauchi, u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tas-27 ta' Settembru 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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