

Kopja Informali ta' Sentenza



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 8/2013

Anthony Falzon

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Falzon tal-20 ta' Frar 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Jannar 2013 fejn gie michuda l-applikazzjoni 'extension to rural room (to make it habitable);

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

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

Kopja Informali ta' Sentenza

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

B'applikazzjoni tad-29 ta' Lulju 2008 – Full Development Permission – PA/3779/08 fejn l-appellant, f'site at Il-Ponta, limiti tar-Rabat, Malta, talab:

“extension to rural room (to make it habitable)”

Permezz ta' rifjut mahrug fl-24 t'Ottubru 2011 l-Kummissjoni dwar l-Ambjent u l-Ippjanar cahdet it-talba għall-hrug tal-permess relattiv għar-ragunijiet segwenti:

“1 The site lies in a Rural Conservation Area and in a Special Area of Conservation where activities not forming part of the objectives of rural conservation are prohibited by Legal Notice 311 of 2006. Also, the proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

2 The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation' Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

3 The site is located in an Area of Ecological Importance as per G.N. 400 of 1996 and thus Structure Plan Explanatory Memorandum, Paragraph 15.38 applies, which states that human intervention, particularly in the form proposed, is not desirable. The proposal would adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan.

4 The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside the development zone. The development does not fall into a category of non urban development which may

be permitted outside the development zone in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

5 There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

6 The proposal goes beyond the sensitive rehabilitation of a rural structure and runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, in that it would affect fresh land, change the configuration of the original building, and would lead to urbanisation outside those areas specifically designated for urban uses in the Structure Plan. ”

Permezz tal-appell tieghu l-perit Stephen Farrugia ressaq l-aggravji tal-appellant kif gej:

“The reasons for refusal dwell on the Structure Plan's approach in controlling further urbanisation outside the committed areas for development and the area around the site is sensitive and is designated for its ecological significance(reasons for refusal 1-5). Indeed my client is in possession of documents which have already been submitted which clearly proof that the existing building has been lived in up to the recent past and actually possesses water and electricity meter which has been duly paid up to June 2005. A letter by the Electoral Office dated 6th September also confirms that Mr Carmel Micallef, from whom my client bought the said property, resided there for periods of time between September 1988 and December 2004. Excerpts submitted from the Electoral register indicate clearly the use of the building as a residential unit. It is thus extremely clear that the proposal is not increasing the number of dwellings ODZ however is rehabilitating the existing structure and extending up to the statutory limit of 150 sq meters allowed for ODZ dwellings.

Reason for refusal NO.6 dwells on the fact that the proposal is not sensitive to the rural context of the area in question. From a purely design point of view a minimalistic approach has been adopted which includes an area of landscaping which affords both privacy and mitigating features to the proposal. The remainder of the site in question is to be left in its natural state thus encouraging the regeneration of the garigue area. ”

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

“Further Considerations

8. The Environment and Planning Review Tribunal may wish to note that the site under appeal is scheduled as per Government Notice 400 of 1996 with a degree of protection set at Level 2 as an Area of High Landscape Value of the Coastal Cliffs and an Area of Ecological Importance. Site under appeal is also scheduled as a Special Area of Conservation of International Importance as per Legal Notice 257 of 2003 and Government Notice 223 of 2005.

9. In his appeal request, the appellant contends that-

(a) the existing structures had been used for habitation up to the recent past and electrical bills had been paid up to June 2005;

(b) the Electoral Office has declared that the building was habitable between September 1988 and December 2004;

(c) this clearly shows that the proposal will not create additional dwellings in ODZ but rather the rehabilitation of an existing structure which is limited to the permitted 150 m2 allowed for ODZ dwellings;

(d) the proposal includes an area to be landscaped whilst the remaining of the site is to be left in its natural state thus encouraging the regeneration of the garigue area;

10. This application for development permission involves the erection of an extension to an existing structure and the use for habitation. Two other applications on this same site were submitted in PA 5308/00 and PA 2575/05 which requested extension to make rural rooms habitable. Both applications were refused by DCC on the following grounds:

- loss of agricultural land;
- creation of a precedent to other similar requests in the vicinity;
- area is a scheduled as a Level 2 of Ecological Importance and Area of High Landscape Value;
- Structure Plan Policy SET 11 does not permit urban development in outside development zones;
- there is no real need for this development for the agricultural purposes.

11. Additionally, the Authority wishes the Tribunal to note that the appellant's claims that since the existing structure was served by water and electrical services proves that it was used for habitation is not a valid planning argument since the provision of such services in ODZ buildings is not limited to those used for habitation only but could be provided to other agricultural related structures.

12. As regards to the Electoral Office's documents presented by appellant, the Malta Environment and Planning Authority states that it cannot be concluded that the addresses quoted in this document specifically relates to the site under this appeal.

13. The Malta Environment and Planning Authority thus states that the same issues as per PA 2575/05 (PAB 137/06) are still relevant and applicable to this appeal and therefore there are no valid reasons and justifications why this request for development should be now accepted.

Conclusions and Reservations

14. Consequently, the appeal as presented should be dismissed as per reasons illustrated in the refusal letter dated 24 October 2011.

15. Without prejudice to the above, the Malta Environment and Planning Authority reserves its right to reply further on the merits of the appeal, if it would become necessary.”

Zamm access fuq is-sit de quo fit-30 ta' Mejju 2012 fejn l-perit Stephen Farrugia wera lit-Tribunal il-kmamar rurali antiki ezistenti fuq is-sit u li hu qed jipproponi li jaghmel estensjoni maghhom. Huwa spjega li originarjament il-proposta kienet ta' certu daqs pero' sussegwentement, billi l-appellant irnexxielu jixtri parti mill-propjeta' adjacenti, emenda l-pjanti biex b'hekk saret it-tieni applikazzjoni. Il-proposta hija tal- estenzjoni ta' dawn il-kmamar rurali kif ukoll li jinbena swimming pool. L-Awtorita' qed toggezzjona ghall-proposta billi s-sit jinsab f'Rural Conservation Area u fi Special Area of Conservation u allura skond il-policy Set 11, m'huwiex permess illi jsir zvilupp urbanizzanti f'dawn l-areas li huma barra z-zona tal-izvilupp.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba, full development application, biex karma rurali tigi estieza biex din isir abitabbli [extension to rural room (to make it habitable)].

L-Awtorita' tispjega li s-sit, li huwa ODZ, jikkonsisti kamra agrikola fuq sular wiehed li tiffirma parti minn kumpless antik ta' bini rurali li ghandu access minn Triq l-Imtahleb u jinsab gewwa l-konfini tal-Kunsill Lokali tar-Rabat.

L-Awtorita' zzid li is-sit jinsab gewwa:

- Area of Ecological Importance;
- Area of High Landscape Value;
- Special Area of Conservation.

Kopja Informali ta' Sentenza

Din l-applikazzjoni giet rifjutata peress li:

- Is-sit jinsab f'Rural Conservation Area u Special Area of Conservation fejn attivitajiet li mhumiex objettivi ta' konservazzjoni rurali huma projbiti mill-avviz legali 311 tal-2006;
- Il-proposta tmur kontra l-policy RCO 2 tal-pjan ta' struttura;
- Il-proposta ma tinkwadrax fil-kategoriji ta' zvilupp permessa ai termini tal-policy RCO 4 tal-pjan ta' struttura
- Is-sit jinsab f'zona ta' importanza ekologika ai termini tal-avviz tal-Gvern 400 tal-1996 u l-iStructure Plan Explanatory Memorandum, para 15.38;
- Il-proposta tmur kontra l-policy SET 11 tal-pjan ta' struttura u l-paragrafu 7.6 tal-pjan ta' struttura kif ukoll il-policy Ben 5; u
- Il-izvilupp mhuwiex gustifikat skond il-policy SET 12 tal-pjan ta' struttura u l-policy Development Control Guidance - Developments Outside Built up Areas.

Fit-30 ta' Mejju, 2012, it-Tribunal ghamel access fuq is-sit in ezami fejn l-perit Stephen Farrugia wera lit-Tribunal il-kmamar rurali antiki ezistenti fuq is-sit u li hu qed jipproponi li jaghmel estenzjoni magghom. Huwa spjega li:

- Originarjament il-proposta kienet ta' certu daqs pero' sussegwentement, billi l-appellant irnexxielu jixtri parti mill-propjeta' adjacenti, emenda l-pjanti biex b'hekk saret it-tieni applikazzjoni; u
- Il-proposta hija ghall-estenzjoni ta' dawn il-kmamar rurali kif ukoll li jinbena swimming pool.

Il-Perit Denise Martin spjegat li l-Awtorita' qed toggezzjona ghall-proposta billi s-sit jinsab f'Rural Conservation Area u fi Special Area of Conservation u allura skond il-policy Set 11, m'huwiex permess illi jsir zvilupp urbanizzat f'dawn l-areas li huma barra z-zona tal-izvilupp.

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:

- Il-bini ezistenti kien qieghed jintuza bhala residenza;

Kopja Informali ta' Sentenza

- Il-bini huwa munit b'sistemi tal-elettriku u l-provvista tal-ilma liema servizzi huma mhallsa sa Gunju tal-2005;
- Carmel Micallef kien jirresjedi fil-bini mill-1998 sal-2004;
- Mir-registru elettorali jidher li l-bini kien jintuza bhala residenza u ghalhekk qed issir talba biex l-istruttura tigi riabilitata biex finalment l-area totali ma' teccediex 150 metru qwadru;
- Id-disinn huwa wiehed minimalist b'zona ta' landscaping li tipprovdi privatezza; u
- Il-kumpliment tas-sit ser jithalla fl-istat naturali li huwa 'garigue'.

L-Awtorita' tissottometti li:

- Qabel ma' saret l-applikazzjoni in ezami, permezz ta' PA 5308/00 u PA 2575/05, l-appellant talab li l-kmamar rurali jsiru abitabbli;
- L-Kummissjoni dwar il-Kontroll tal-Izvilupp cahdet dawn it-talbiet;
- Bil-proposta ser tintilef art agrikola;
- Ser jigi kkreat precedent;
- Iz-zona hija Level 2 of Ecological Importance u Area of High Landscape Value,
- Il-policy SET 11 tal-pjan ta' struttura ma tippermettix zvilupp urbanizzat f'zona ODZ
- L-izvilupp mhuwiex bzonnjuz ghal skopijiet agrikoli;
- Il-pretest li l-bini huwa mghammar bis-servizzi tad-dawl u l-ilma mhuwiex argument tal-ippjanar rilevanti;
- Mhuwiex konklussiv li l-indirizzi citati mill-appellant skond l-Ufficcju Elettorali huma direttament reatati mas-sit;
- Dak kollu relattiv ghal PA 2575/05 (PAB 137/06) jibqa rilevanti fil-proceduri ta' dan l-appell u li l-izvilupp mhuwiex gustifikat; u
- Skond l-Appropriate Assessment li sar mill-Environmental Planning Directorate, din il-proposta hija oggezzjonabbli minhabba in-natura delikata tas-sit li jipperikola l-integrita tal-SAC u johloq precedent perikoluz.

Il-punt centrali li jrid jigi deciz f' dan l-appell huwa jekk l-Awtorita' kelliex ragun meta iddecidiet li l-proposta tal-appellant mhiex fl-ispirtu ta' dawk l-oggettivi li kienu intenzjonati li jintlahqu permezz tal-PLP 20. Punt iehor li jrid jigi deciz huwa jekk huwiex gustifikat li, fl-ispirtu tal-

policies rilevanti, tinholqu residenza fuq dan is-sit li huwa ODZ u li jiffirma parti minn kumpless antik ta' bini rurali.

L-ewwel kjarifikazzjoni li qed ssir hija li 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 kollu anki jekk il-floor area totali tal-proposta tibqa taht il-150 metru kwadru.

L-ispirtu veru tal-PLP 20 huwa li, purché 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 jintlahaq ghax din hija l-ligi suprema tal-ippjanar.

Apparti dan hemm l-issue ta' kemm huwa gustifikat, f'termini ta' ppjanar, li tinghata residenza f' parti biss minn dan il-kumpless ta' bini antik minghajr ma' jsir holistic plan ghall-preservazzjoni tal-kumpless kollu. In fatti l-ewwel haga li jkun irid jiddetermina tali holistic plan huwa jekk dan il-kumpless kienx iservi ta' residenza wahda jew izjed. Fuq dan it-Tribunal huwa tal-fehma li l-PLP 20 ma' tistax tintuza biex tiggustifika r-ristrutturazzjoni u l-uzu ta' parti zghira minn kumpless organiku ta' bini rurali antik li huwa

ODZ permezz tal-kreazzjoni ta' semi-detached bungalow bil-pool u thalli l-kumplement fi stat ta' abbandun biex ftit taz-zmien wara jigi xi haddiehor biex jaghmel l-istess f' parti ohra minn dan il-kumplex biex b' hekk ftit ftit nispiaw b' settlement modern ta' bungalows u villet bil-pool.

Ghalhekk, f' dan il-kas partikolari u kieku l-affarijiet kellhom isiru verament fl-ispirtu spjegat hawn fuq, il-konversjoni u l-preservazzjoni tal-bini in ezami li jifforma parti minn kumplex ta' bini rurali antik, tista ssir bhala parti minn pjan li jinkludi l-kumplex kollu fejn kwalunkwe addizzjoni ssir kemm jista jkun kompletament gewwa l-envelope originali minghajr ma' jinbnew partijiet zejda u swimming pools. Mhux il-kas li bil-fors trid tinbena three bedroomed semi-detached villa bil-pool ghall-kull sid li jkollu bicca zghira minn dan il-kumplex.

Dan it-Tribunal jifhem li biex isir dan hemm bzonn li l-Awtorita' tkun pro-attiva billi tindividwa kumplexi ta' bini rurali bhal dawn u tghin fil-preservazzjoni taghhom billi tiffacilita' il-procetti necessarji biex jigi determinat l-ownership tal-bicciet kollha tal-kumplex u billi taghmel policies u skema partikolari biex tinkoraggixxi lis-sidien biex jinghaqdu flimkien biex isir ir-riabilitazzjoni b' mod holistiku bil-ghan li ir-rizultat finali jkun ta' beneficcju ghas-sidien u fl-istess hin ghall-ambjent in generali.

Ghalhekk kif johrog mill-premess ikun perikoluz hafna li wiehed jilqa din it-talba billi jgebbed izjed il-policy PLP 20 ghaliex b' hekk ikun qed jinfetah il-bieb ghal numru kbir ta' talbiet simili li jistghu jwasslu ghad-distruzzjoni totali ta' kumplexi rurali bhal dawn 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 ikkonfermata mill-PLP 20.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, peress li l-proposta in ezami tikser il-policies ta' l-Pjan Strutturali SET 11, SET 12, BEN 5, RCO

2 u RCO 4, u l-policy PLP 20 jirrizulta li dan l-appell ma jistax jigi milqugh.

It-Tribunal, ghalhekk, qiegħed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA/3779/08, “extension to rural room (to make it habitable)”, tal-24 t'Ottubru 2011

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkunsidra l-aggravju tal-appellant li l-izvilupp kien permissibbli taht policies 8.1 u 8.2 tal-Policy and Design Guidance 1995 Development Outside Built Up Areas, għal bini ġia ezistenti u minflok ikkunsidra policies generali għal zvilupp għid;
2. It-Tribunal ikkunsidra zvilupp li hu deħrlu kien oggezzjonabbli pero li ma kienx mertu ta' dan l-appell, izda ta' appell iehor u minflok qieshom bhala haga wahda.

L-ewwel aggravju

Dan l-aggravju biex ikun punt ta' ligi appellabbli irid jitqies fis-sens illi t-Tribunal naqas li jikkonsidra aggravju dwar applikabilita ta' policy partikolari li t-Tribunal injora u minflok ha in konsiderazzjoni policies generici applikabbli għal zviluppi godda.

Hi l-fehma tal-Qorti illi t-Tribunal ikkonsidra l-aggravju tal-appellant fit-termini magħmula fl-appell cioe l-kontenzjoni tal-appellant illi s-sit mertu tal-applikazzjoni kien residenza sa almenu sena qabel l-applikazzjoni u għalhekk it-Tribunal messu kkonsidra l-policy li tirrigwarda siti ODZ f'zoni rurali. It-Tribunal ikkonstata illi dan is-sit ma setgħax jigi nkwadrat biss fl-isfond tal-kelma tal-policy PLP 20 izda l-ispirtu tal-istess policy cioe li mhux kull tibdil għandu jkun accettabbli għax certi kundizjonijiet tal-policy ikunu sodisfatti. It-Tribunal ikkonsidra illi s-sit kien jinsab 'f'area of ecological importance', 'area of high landscape value' u 'special area of conservation' u mill-punti di vista ta' konsiderazzjonijiet ta' ippjanar l-izvilupp kien imur kontra l-objettivi ta' konservazzjoni rurali skond policies msemmija

mill-istess Tribunal fil-parti decisiva. It-Tribunal zied li dan ma kienx jikkostitwixxi arrangament minimu li jsir fl-envelope ta' bini ezistenti b'koncessjonijiet minimi ghall-inkoraggiment ta' preservazzjoni ta' bini original izda zvilupp li jmur lil hinn anki minn applikazzjoni flessibbli ta' policies. Kienet il-fehma tat-Tribunal illi l-flessibilita ta' policies partikolari ghandha tigi applikata fis-sens li jintlahqu l-oggettivi tal-pjan ta' struttura li fil-fehma tat-Tribunal ma kienx ser jintlaqa' b'din l-applikazzjoni.

Kwindi meta taqra d-decizjoni tat-Tribunal mhux minnu li l-aggravju tal-appellant ma giex kunsidrat izda fil-fatt gie kunsidrat u saret interpretazzjoni ta' policies ta' ippjanar u l-applikabilita taghom fil-kuntest tal-obiettivi primarji tal-pjan ta' struttura. L-ezercizzju tat-Tribunal kien wiehed komparattiv mhux esklussiv u kien accettabbli billi l-istess policy PLP 20 f'paragrafu 8(1) jibda biex ighid illi

8.1 Notwithstanding the blanket prohibition against development outside areas designated for urban uses in the Structure Plan, certain changes of use and minor extensions to existing buildings in the countryside may be acceptable, provided planning and environmental criteria are met. This form of development will require very careful consideration to ensure that the basic Structure Plan strategy is not compromised. Such proposals will only be acceptable if the following criteria are met:

Conversion of Buildings in Rural Areas

Eligibility

(i) The building to be converted must be of architectural or historic interest and worthy of retention; or it must comprise part of a group of traditional buildings which are worthy of preservation as a whole. Normally such buildings will be Listed Buildings or buildings which would warrant Listing. This criteria may be relaxed if the proposal involves the rehabilitation and suitable change of use of existing buildings and farmhouses and as a whole would lead to the overall improvement of the rural environment, perhaps through the removal of other

buildings and structures which adversely affect the rural character of the area.

(ii) The building must be genuinely redundant and no longer required for its former use. The applicant must furnish sufficient information to establish this fact to the satisfaction of the Planning Authority and, in the case of an agricultural building, give a clear indication of the effect of the proposal on the farm unit as a whole.

(iii) The building must be in a sound structural condition and be capable of conversion without substantial rebuilding. The rebuilding of large sections of walls will not be acceptable unless the remainder of the building is of outstanding importance. In each case the Planning Authority will require a structural survey of the building with a clear indication of any section of the buildings which require demolition and rebuilding.

Acceptable Uses

(iv) Preference will be given to recreational uses or new uses which provide for public access, in accordance with Structure Plan policies AHF 5, RCO 2 and UCO 11.

(v) The new use of the building must not adversely affect the amenities of neighbouring properties or cause interference with the management of surrounding land, by reason of noise, vibration, pollution or traffic generation. Development will not be permitted where adjacent development could adversely affect the amenities of the new occupants.

Design and Visual Impact.

(vi) The details of the conversion scheme must reflect the character of the building and its setting and must retain any features of architectural or historic interest. New openings (doors and windows) must be kept to a minimum and existing openings should be fully utilised.

(vii) The new use of the building must not adversely affect the visual character of the site and its surroundings or the wider landscape setting of the area in which it is situated. The Planning Authority may require the suspension of permitted developments under Schedule 1 of the General Development Order, 1993 to protect the character of the building and area.

Traffic and Infrastructure

(viii) The local road network must be capable of accommodating the traffic generated by any new uses (particularly commercial) without harm to the safety of road users and pedestrians or detriment to the amenity of the area.

Any road widening or junction improvements required to provide improved access to the site must be funded by the developer and be acceptable in environmental terms. Adequate parking must be provided on site.

(ix) Adequate provision must be made for services, including the disposal of sewage, to the satisfaction of the Planning Authority. The provision of services must not have unacceptable environmental implications, for example damage caused by trenching or overhead cables.

Kwinda t-Tribunal ma hux marbut b'din il-policy izda seta' jaghmel apprezzament tad-diversi policies u pjanijiet ta' struttura u jevalwa l-izvilupp in linea magghom kif fil-fatt ghamel. Wara li wizen il-proposta ta' zvilupp allaccjati ma' policies specifiki wasal ghal konkluzjoni li kien hemm policies ohra rilevanti ghall-zvilupp illi kellhom jigu kunsidrati u f'termini ta' ippjanar il-proposta kienet tmur oltre dak intiz fil-policy PLP 20 msemmija mill-appellant u kwinda tmur kontra l-pjan ta' zvilupp RCO 2 li ebda forma ta' zvilupp urbanizzanti ma ghandu jigi permess f'rural conservation area; kontra l-pjan ta' zvilupp RCO 4 billi l-izvilupp ma kienx ser jimmilorja l-agrikoltura; l-ekologija jew ix-xenarju fiz-zona; kontra policy SET 11 u BEN 1 li ma jippermettix zvilupp urbanistiku f'ODZ u mhux wiehed

Kopja Informali ta' Sentenza

mill-izviluppi permessi f'ODZ skond paragrafu 7.6 tal-structure plan; u jmur kontra policy SET 12 billi mill-punto di vista ta' ipplanar ma kienx necessarju fejn propost.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Hu minnu illi meta t-Tribunal kien qed jaghmel riassunt tal-fatti u sottomissjonijiet u semma' l-access li nzamm it-Tribunal qal li wara li saret proposta originali, l-applikant xtara parti mill-proprjeta adjacenti u emenda l-pjanti biex il-proposta illum hi ghal estensjoni ta' kmamar rurali u bini ta' swimming pool. Ma jidhirx illi f'din l-applikazzjoni tissemma' bini ta' swimming pool ghalkemm l-appellant jirriveva li din tiffirma parti minn aplikazzjoni ohra.

Il-Qorti tqis illi l-kwistjoni tal-iswimming pool ma kellhiex tissemma' mit-Tribunal pero b'daqshekk id-decizjoni la hi monka u anqas bbazata fuq fatti mhux parti minn dan il-process. Meta wasal ghal konsiderazzjonijiet fil-fatt it-Tribunal ghamilha cara li l-izvilupp propost f'din l-applikazzjoni kien biss ghal extension to rural room (to make it habitable) u fuq din l-applikazzjoni kif mitluba ghamel l-apprezzament tieghu ghalkemm uza l-bini ta' swimming pool bhala prova ohra li l-ispirtu tal-policy PLP 20 ma kienx li jigu krejati zviluppi ta' bungalows jew vilel minn kmamar rurali. Hu minnu illi t-Tribunal seta' qaghad lura milli jsemmi swimming pools, kemm jekk jiformaw parti jew le minn aplikazzjoni ohra fuq l-istess sit, pero d-decizjoni ma kinitx ibbazata fuq jekk l-izvilupp kienx ser ikollu swimming pool izda fuq dak li kien accettabbli fis-sit mertu tal-applikazzjoni qua zvilupp propost, u kkonkluda illi l-estensjoni rikjesta mill-appellant ma kienx gustifikat minhabba li dan kien in vjolazzjoni ta' pjanijiet ta' struttura specifici u ma jirrispekkjax l-obbjettiv u spirtu wara l-policy PLP 20 mill-punto di vista ta' pplanar tenut kont tar-restrizzjonijiet tas-sit innifsu.

Ghalhekk anki dan l-aggravju qed jigi michud.

Decide

Kopja Informali ta' Sentenza

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Anthony Falzon u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Jannar 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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