



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 42/2013

Alfred Manduca

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Alfred Manduca tat-22 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 li cahdet l-applikazzjoni PA 1966/06 'to sanction construction of residential unit as built';

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 tat-28 ta' Marzu 2006 – Full Development Permission – PA/1966/06 fejn l-appellant, f'Farmhouse, Triq il-Madonna Tal-Abbandunati, L/O St. Paul's Bay talab:

“to sanction construction of residential unit as built ”

Permezz ta' rifjut mahrug fil-11 ta' Lulju 2007 l-Kummissjoni dwar il-Kontroll tal-Izvilupp cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

“1. The proposed works involves an extension to a building that already exceeds the allowable total floor space of 150 square metres, and thus contributes to the further spread of urban development outside the limits of development, since the works are not proposed to be confined to the existing curtilage of the building. considerably exceeding the permissible floor space of 150 square metres. There is no sufficient justification for the proposed development, and the proposal therefore runs counter to section 8.2 (i), 8.2 (iii), and 8.2(iv), of the policy Development Control Guidance – Developments Outside Built up Areas which allows for the conversion of an existing building provided that works are retained within the existing curtilage, and the requested works are not extensive.

2. The proposed development contributes to the further intensification of urban development outside the limits of development. The proposed development thus conflicts with, Structure Plan Policy SET 11, which does not permit urban development outside the Rationalized Development Boundary. The development is thus also not in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5 and to the North-West Local Plan.

3. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key

Diagram). 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.

4. Structure Plan policy RCO 4 provides that particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced.

Permezz t'appell il-Perit Edwin Mintoff ressaq l-aggravji tal-appellant kif gej:

“The old building was already occupying the footprint that the existing building was built on. There is no extension to the old building. Only alterations are being proposed. The actual footprint is to remain the same. This means that no more land is to be occupied.

In view of this the reasons for refusal will all be eliminated. Since the original building is old (before 1992) and therefore these alterations to the building should be approved.”

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

“5.2.1 This application is proposing the extension to the approved footprint of 150 square metres, to that of 258 square metres. The total floor space is also being requesting to be increased from the approved 280 square metres to that of 328 square metres. Additionally, the use of an existing basement is being requested which has a floorspace of approximately 256 square metres.

5.2.2 The last permit on site, PA 47/94 had already approved additions to an existing building and approved a floorspace of 280 sq.m, thus already exceeding the limit of 150 square metres as stipulated in paragraph 8.2 (iii) of policy PLP 20. The proposed works will result in the further increase of the total floor space, thus contributing to a total floor space that exceeds the stipulated floor space of 150 square metres by approximately 200 per

cent (excluding the proposed basement). There is thus no justification for this further increase in the footprint and size of the property, beyond the limits of the approved curtilage, running counter to paragraph 8.2 (iv) of policy PLP 20 which requires that extensions are confined to the existing curtilage. The proposal thus also runs counter to paragraph 8.2 (i) which requires the provision of sufficient justification for the proposed development from a planning perspective.

5.2.3 The proposed extension is thus considered as further urbanization in an area not designated for such development and contrary to Structure Plan policies SET 11 and RCO 2 which aim to protect rural conservation area from unnecessary urban sprawl. The spread of the building contributes to the further massing of the building in an area that is relatively open and pristine, would detract from the visual integrity of the area, and is thus not considered acceptable in terms of Structure Plan policy RCO 4, which does not allow for development that will negatively impinge on the visual setting of the surroundings.

5.2.4 Furthermore, a similar application was submitted in PA 3042/96, and was refused by DCC on the 20'h September 1996 since the proposal contributed to the further urbanization of the site in question, running counter to Structure Plan policies SET 11, SET 12, RCO 2, RCO 4, and Policy PLP 20. There have been no changes to these policies and the North-West Local Plan has reinforced the rural status of the area, and thus the proposed development is still considered unacceptable in this regards.

5.2.5 Conclusively, the proposed works are of an urban nature, and there is no apparent justification for the development in view of the size of the existing property. This proposal is not considered acceptable in terms of paragraphs 8.2 (i), 8.2 (iii), and 8.2 (iv) of policy PLP 20, which requires sufficient justification for the development from a planning point of view; limits the size of dwellings

outside the development zone, to a total floor space of 150 square metres.”

Zamm access fuq is-sit de quo fl-4 ta' Gunju 2008 fejn il-Bord kkonstata li l-propjeta' tikkonsisti f'bini gdid fl-ambjent ta' gnien. Il-Binja qed tigi allegata li mibnijja fuq footprint ta' binja ezistenti u li tmiss ma' bini qadim hafna.

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

“In these submissions, appellant has stated that a geological report is being presented and which justifies why the building as built differs from the latest permit.

On the other hand, the Authority has noted all the submitted arguments but the Authority disagrees with this statement on various accounts.

The report dated March 2009 gives a chronological sequence of events but it is not clear whether the author was in fact the architect in charge during the alleged findings of the unstable ground or whether this report is based on information forwarded by others for the formulation of this report. In this regard, if this reasons presented in this report were the 'factual' reasons why the existing building was built in such a different manner to that approved, then, such an important document should have been presented to the Authority for its consideration from the first day of the assessment of this application to sanction and not at such a late stage in the appeals proceedings. In fact, no such detailed arguments were ever brought to the attention of the Directorate and the DCC in this application and this is why it is important to first establish if its author could declare that what is written in this report (as regards to this particular site) could be backed by his personal presence 1 instructions during the excavations 1 construction phase of the basement level. In fact, the architect responsible for the issued permit PA 47/94 (and who was legally responsible for the construction works as signed by architect himself in section 9 of the application form) is not the same person as that who has submitted this application under appeal

nor is he the one who conducted this detailed report of the alleged 'special' circumstances which arose on site during construction works in the mid-nineties.

This issue is important since in page 9 of this report a paragraph commences by: "It has been stated that when excavations works started being carried out for the foundations of the proposed extensions, rock was not met". This is clearly not a factual declaration of the 'actual' sequence of events of one who conducted and managed the necessary structural alterations personally in order to reach solid ground but rather seems to put forward a scenario which was acquired through an information gathering process for the primary purpose of building up this report. It is also unclear why such an event (the finding of unstable ground) did not undergo a proper procedure wherein the necessary clearance / permit were first acquired prior to the actual works being conducted.

This is being said since the permit for the first interventions was issued on 18th January 1995 when the Planning Authority was already established and one could have initiated remedial alterations / additions prior to the actual construction of such a large basement with the overlying structure which have created such an increase in massing which is more than twice that approved by the Planning Authority in 1995. Furthermore, even if, for the sake of the argument, the excavated rock created a dangerous situation to the nearby old building, one could have still constructed the basement level with a certain degree of urgency so as to safeguard the nearby building, but, there is still no plausible reason why a) no communications were forwarded to the Planning Authority when the ground floor and first floor structures were being built and b) there was no real structural necessities for further construction works for the ground floor level (258 sq.m.) and the first floor structure (70 sq.m.) as a reaction to the unforeseen unstable situation. Hence, the facts remain that appellant, even after removing the claimed dangerous situation due to unstable rock (ie. through the construction of the basement level), he still continued constructing a residential unit with a 328 sq.m. area

instead of the approved 280 sq.m. without any concern to first acquire the necessary clearances from the Authority once the basement level was erected prior to any further works above ground floor level.

The same paragraph on page 9 states that: "Since there was this lower ground floor it was decided to extend the existing one storey building without having to build the approved first floor. So the end result was an extension with a ground floor and a lower ground floor instead of the approved ground floor with a first floor". As regards to this statement, the Authority states that this statement does not reflect the actual situation on site as well as the submitted drawings in this application. This is because that apart from a new basement level which was constructed without any documented permit / clearance by the Authority at the time of construction, submitted plan Red 1 G clearly shows a structure at 'roof level', ie. at 1st floor level which has its footprint measuring 70 sq.m. This proves that it is not correct that a compensation for the new basement level was included in the new building through the elimination of the approved structure at first floor. The measurements below further explain the chronology of this particular building with its relative massing."

Permezz ta' nota l-Avukat Adrian Delia u l-Perit Edwin Mintoff ressu s-sottomissjonijet ulterjuri taghhom ghall-appellant kif gej:

"In its second statement to the Planning Appeals Board, MEPA expressed its disagreement with Appellant on the following points:

1. That the author of the report submitted by Appellant dated March 2009 is not the same architect who was physically present on site when the said construction works were taking place during the mid nineties. The Authority requested that what is written in the report be backed by architect's personal presence - This is simply incorrect. The report was carried out by the most

renowned Maltese expert in geology and he carried out a study to see what happened under the case in question.

2. The Authority held that the report does not represent a factual declaration of the actual sequence of events but a gathering of information for the purpose of building this report - This is also an incorrect statement from MEP A since the report tends to assess in a constructive manner the interventions of the architect at the time as a consequence of the geological conditions which determined this type of construction which has to be employed.

3. With regards to the finding of unstable ground, the proper procedure was not observed and no permit was acquired prior to actual works ~ since the circumstances which arose were unforeseen, there wasn't enough time to ask for a permit, indeed this is why the sanctioning of the same works is being requested. Urgent remedial measures were necessary, The mitigation measures taken were those available at the time. One has to keep in mind that this was a situation of peril even towards the adjacent building which was in danger due to the excavation works which were taking place.

4. Increase in massing is more than twice than that approved by the Planning Authority - This statement is technically wrong since MEPA is including in the total floor area the basement area which according to law cannot be added to the total floor area, thus the total floor area is not 586sq.m but 328sq.m since the basement area of 258sq.m has to be deducted from the total sum. Furthermore one cannot equate area and massing. Massing above ground floor level has been reduced drastically from that which was approved in PA 47/94.

5. There was no plausible reason why no communications were forwarded to the Planning Authority when the ground floor and first floor structures were being built – Contrary to what is being here stated by MEPA, both the client and the architect had informed MEPA of what was discovered on site prior to the continuation of the works. In fact it

transpires that at that stage a high ranking official, Mr. Chris Stratford on behalf of MEPA visited the site and was given an explanation of the state of affairs. The official reiterated, that in the circumstances, there should be no problem in having a permit approved and indeed stated in very clear and unequivocal terms that the proposed substitute building, which in fact reflected the present building envelope, was a definite improvement over the structure outlined in the permit, as a consequence of the reduced massing, particularly at first floor level.

6. There were no real structural necessities for further construction works for ground floor level and first floor level up to 328sq.m instead of the approved 280sq.m. - To the contrary there were structural necessities since the building was in a dangerous situation.

7. Apart from a new basement level which was constructed without a permit at the time of construction, there is a structure at roof level measuring 70sq.m therefore it is not correct that a compensation for the new basement level was included in the new building through the elimination of the approved structure at first floor - In spite of the fact that there was an approved permit to develop not less than 130sq.m the only construction which was carried out was a stairwell which substituted an existing room thus retaining the same area of the original building.

8. The last figures on the table are referred to as being Total Massing - the term Total Massing which is being used here is wrong, and it should be Total Floor Area.”

Permezz tat-Tielet Statement taghha l-Awtorita' irrilevat:

“The Authority has noted all the arguments as presented in the last submissions and states that:

Re point 1 & 2. The Authority clarifies that it has no intention to discredit the author of report dated March 2009 but is highlighting the fact that the report was not based on the author's first hand experience of what actual

happened during the time of the excavations but includes a technical description of the area's geological aspect. In fact, this was confirmed by his own testimony of 10th March 2010 where he stated that he was not the architect in charge of the works.

Re point 3. The Authority still disagrees that the existing works (on three levels) were limited to shoring works and reiterates that any 'unforeseen' and 'emergency' works should have been really limited to the strengthening of the foundations of the adjacent building and not continued into a new >dwelling not according to permit with an increase in its floor area.

Re point 4. There is agreement that the total floor area of the ground floor plus that of the 1st floor amounts to 328sq.m. However, one cannot exclude the fact that the approved footprint of PA 47/94 was limited to 150 sq.m. whereas the footprint of its foundations as carried out amount to 258 sq.m .. There is no justification for this increase in footprint since even if one was to accept that immediate remedial (foundation) works had to be carried out, such works should not have been on an area greater than 150 sq.m.

Re point 5. Re submitted Doc A, this refers to a letter dated 29th April 1996 requesting an appeal against a stop order. However, from the computer database, no official appeal was lodged against ECF 488/96 and this enforcement is still active. Re submitted Doc B, letter dated 25th April 1997 had requested a reconsideration of refusal of PA 3042/96 but this request was still refused by the DCC and no appeal was lodged by applicant to challenge this decision.

Re point 6. The Authority reiterates the lack of justification for the increase in footprint from the approved 150 sq.m. to the existing 258 sq.m. Any necessary 'structural necessities' should have been carried out within the approved footprint. The last reply of Architect Anthony Cassar as per verbal dated 10th March 2010 acknowledges this notion.

Re point 7. The Authority agrees that the 1st floor level had approved 130 sq.m. (and 150 sq.m. at ground floor level) , however the existing building did not respect the:

- Approved total floor area of 130 sq.m. + 150 sq.m. (total 280 sq.m.), but actual:
- Actual total floor area of 70 sq.m. + 258 sq.m (total 328 sq.m.)

Re point 8. The above should clarify the difference between the 'planned' and 'actual' floor areas. However, the massing of the building as existing has inevitably to include the 258 sq.m. basement which is claimed to have been created as structural foundations but was developed into a new large store.

In this regard, the Authority reiterates that in line with its previous reports, the requested development goes against the present planning policies relevant to this area and states that the DCC's decision to dismiss this request for development was justified and hence respectfully requests the Planning Appeals Board to dismiss this request for appeal.”

Zamm access fuq is-sit de quo fis-16 ta' Mejju 2012 fejn l-appellant wera il-basement garage li jintuza' fil-prezent bhala mahzen li l-qisien tieghu, ghall-Awtorita' huma oggezzjonabbli. L-appellant u l-periti tieghu spjegaw, illi li gara kien, li l-qisien kibru minhabba l-fatt li kien hemm problema geo-teknika fil-blat billi l-blat ma kienx b'sahthu bizzejjed u b'hekk kellu jsir xoghol rimedjali li jidher fil-mahzen, biex tinzamm l-istruttura u ma ssirx il-hsara. L-appellant ddikjara li ghalkemm minhabba din id-diffikulta' il-floor area tal-mahzen kibret, fil-fatt kellu l-permess biex jibni t-tieni sular u dan m'ghamlux u allura qed jargumenta illi l-fatt illi ma nbniex dak li kien awtorizzat jaghmel fit-tieni sular, huwa kompensat bl-area li gie kostrett izid skond hu minhabba d-diffikultajiet fil-blat. Gie deciz illi ghandu jsir studju fuq il-geologija tal-lokalita' u l-perit Dr. Edwin Mintoff ghamel referenza ghar-rapport gia minnu

prezentat li jinsab fil-file tal-applikazzjoni u ddikjara in oltre li ghandu jzid xi informazzjoni fuqu kif ukoll li jiltaqa' mal-perit Denise Martin biex ikun hemm qbil fuq in-numri ta' l-areas tal-izvilupp in kwistjoni.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda t-talba segwenti "to sanction construction of residential unit as built."

Is-sit mertu ta' dan l-appell jinsab fl-indirizz ta' Farmhouse, Triq il-Madonna Tal-Abbandunati, limiti ta' San Pawl il-Bahar.

Din l-applikazzjoni giet rifjutata peress li:

- Is-sit in ezami jinsab ODZ u l-floor space ser jeccedi 150 m.k. li huwa l-massimu li normalment jista jigi approvat f' siti li jkunu ODZ;
- Il-proposta mhijiex gustifikata;
- Il-proposta tmur kontra l-artikoli 8.2 (i), 8.2 (iii), u 8.2 (iv) tal-policy Development Control Guidance - Developments Outside Built up Areas;
- Il-proposta tkompli tintensifika l-izvilupp urban barra l-limiti tal-izvilupp li jmur kontra l-policy SET 11 tal-pjan ta' struttura;
- L-izvilupp propost imur kontra l-paragrafu 7.6 tal-pjan ta' struttura u l-policy BEN 5 u n-North-West Local Plan;
- Is-sit jinsab f'zona ta' konservazzjoni rurali;
- Il-proposta mhijiex in linea mal-policy RCO 2 tal-pjan ta' struttura peress li ma jistax isir zvilupp urban f'zona ta' konservazzjoni rurali; u
- Il-policy RCO 4 tipprovdi li zoni ta' konservazzjoni rurali ghandhom jkunu protetti.

L-appellant kellu permess (PA 47/94) biex jibni estensjoni bi floor space ta' 280 m.k. fuq zewg sulari li diga kienet teccedi l-150 m.k. permissibbli skond l-paragrafu 8.2 (iii) tal-policy PLP 20 u minflok huwa bena l-extension fuq sular wiehed izda bi floor space ta' 328m.k.. In oltre, il-permess kien fis-sens li l-extension kellha jkollha footprint ta' 150m.k. mentri l-appellant issa qed jitlob biex jigi sanzjonat bini b'footprint ta' 258m.k. Izjed minn hekk l-

appellant qed jitlob ukoll biex jigi sanzjonat spazju ta' 256m.k. fil-livell tal-basement. Il-permess PA 47/94 ma kienx jinkludi basement.

L-appellant qed jghid li dawn il-varjazzjonijiet kollha jirrizultaw billi meta kien qed issir ix-xoghol ta' kostruzzjoni instab li fuq is-sit ma' kienx hemm blat ta' kwalita' tajba bizzzejjed biex isiru pedamenti konvenzjonali u ghalhekk is-sit kellu jithaffer kollu sakemm instab blat tajjeb. Fil-process kellhom jinbnew diversi hitan biex iservu bhala buttresses biex ma' jaqax il-bini ezistenti. Peress li kien sar dan l-iskavar kollu l-appellant hass li kienet tkun hasra li kieku l-ispazju li rrizulta fil-livell tal-basement ma' utilizzax. Bhala rikumpens huwa kien iddecieda li jibni biss sular wiehed.

Fix-xieghda tieghu il-perit u engineer Tony Cassar jghid li x-xoghol ta' buttressing kellu jsir peress li l-blat fl-area in ezami kellu formazzjoni geologika partikolari li tirrendi l-blat dgħajjaf. Huwa għamel ukoll rapport tekniku f' dan is-sens. Mix-xhieda tieghu jirrizulta car pero li l-perit Cassar dahal fil-progett hafna wara li kienu saru id-decizjonijiet krucjali li irrizultaw varjazzjonijiet mill-permess fit-tibdiliet fil-permess u fi kwalunkwe kas wara li sar ix-xoghol fuq il-pedamenti u ghalhekk huwa ma' kienx strettament responsabbli professjonalment għal li gara.

Fix-xhieda tieghu il perit Demicoli, li kien il-perit tal-progett, jghid bl-izjed mod car li meta huwa induna bil-problemi strutturali li kienu ser jirrizultaw kawza tal-formazzjoni geologika tal-blat fis-sit in ezami huwa qal lill-appellant li għandhom jinfurmaw lill-Awtorita' qabel ma' jkomplu bix-xogholijiet. Il-perit Demicoli jikkonferma li kellu xi diskussjonijiet ma' ufficjali tal-Awtorita' imma jidher li xejn formali ma' gie deciz. Punt importanti li għamel il-perit Demicoli kien li meta gie mistoqsi jekk dak l-ispazju kollu kienx necessarju strutturalment jew inkella kiex gie mizjud u modifikat fuq struzzjonijiet tal-appellant biex ikun jista jintuza bhala store huwa wiegeb li kien zdieg biex jintuza bhala store u li huma assumew li jekk jibnu sular wiehed fuq ma' jkunx hemm problema bl-istore fil-livell tal-

basement. Jidher li l-perit Demicoli f' xi stadju tal-progett ma' kienx baqa' l-konsulent tal-appellant.

Meta t-Tribunal zamm access fuq is-sit fis-16 ta' Mejju 2012, innota li fil-basement, li fir-realta' huwa garage kbir li jintlahaq permezz ta' rampa kbira u wieqfa fil-gnien ta' quddiem, kien hemm ingeni, boat, statwi tal-festa, trailer taz-zwiemel u apparat iehor. It-Tribunal innota wkoll li bieb kbir ezistenti kien gie imblokkat.

Bhala punt ta' principju jrrid jinghad li l-Awtorita' ma' tidholx f' issues strutturali jew ta' engineering. Tant hu hekk li l-pjanti li normalment tipprocessa l-Awtorita' ikunu general arrangement u layout drawings li ma' jkollhom ebda dettal tekniku muri fihom. Waqt li f' pajjizi zviluppati ohra jezistu regimes ta' building regulations, engineering standards u Codes of Practice li jkunu joperaw over and above r-regime ta' planning control, f' Malta il-perit jassumi r-responsabbilita' kollha ghall-materji bhal building regulations u civil/structural engineering, ecc. bl-eccezzjoni ta' sanitary regulations. Ghalhekk kull argument strettament ta' natura teknika ma' jistax jintuza biex jiggustifika l-fatt li dan l-izvilupp f' sit sensitiv u ODZ spicca it-tripplu ta' dak li kien permess. Fuq il-formazzjonijiet geologici li jezistu f' dawn il-gzejjer u speccjalment fl-gholijiet fejn johrog l-upper coroline limestone ilhna nafu mijiet ta' snin. L-appellant u l-konsulenti tieghu kellhom l-obbligu li jaghmlu assessment tekniku tas-sit qabel ma' ghamlu l-applikazzjoni u fi kwalunkwe kas kellhom jinfurmaw lill-Awtorita' immedjatamnet meta indunaw li ser ikun hemm problemi ta' natura strutturali fil-progett. Irid jinghad ukoll li mill-punto di vista ta' engineering f'dan il-kas qed nitkellmu fuq struttura zghira hafna u mhux l-Empire State Building (li ghandu il-fuq minn mitt sena) u li l-problemi teknici f' dan il-kas huma zghar u kieku kien hemm ir-rieda mill-bidu nett kienet tinstab soluzzjoni ferm inqas invasiva minn dik li ntuzat attwalment. Wara kollox l-bini kollu prezenti illum fuq is-sit, u li partijiet minnu ghandhom il-fuq minn mitt sena, hemm ghadhom u ma' jidher li nbena ebda basement biex izommhom milli jaqghu. Ftit hawn postijiet fid-dinja li ghandhom il-kumdita' li kwazi dejjem pedamenti

jkunu jistghu isiru direttament fuq il-blat bhal f' pajjizna u xorta jsir zvilupp kbir u sofistikat minghajr il-htiega ta' kostruzzjoni massiva u invasiva bhal f' dan il-kas.

Kieku kellu jigi accettat l-argument li cirkostanzi ta' natura teknika jistghu jintuzaw biex jiggustifikaw tkabbir massiv ta' zvilupp bil-permess ODZ, ikun qed jinholoq precedent perikoluz peress li, kif inhu maghruf, tezisti pressjoni biex isir zvilupp f'zoni ta' certu tip li jkunu ODZ u dan b' dannu kbir għall-pajjizna kemm mill-lat ta' agrikultura imma ukoll mill-lat ambjentali u ta' landscape.

Jidher car mill-premess li l-appellant ma jaghti ebda gustifikazzjoni għat-talba tiegħu f' termini ta' pjanar u li tista' minimament tissodisfa l-policies imsemmija. Għalhekk it-Tribunal jaqbel ma' l-Awtorita' li din it-talba ma gietx issostanzjata jew gustifikata mill-appellanti skond il-pjanijiet u l-policies vigenti.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li l-proposta tal-izvilupp in ezami jikser numru ta' policies ta' l-Pjan Strutturali, tan-North West Local Plan u tal- Development Control Guidance - Developments Outside Built up Areas(PLP20), dan l-appell ma jistax jigi milqugh.

It-Tribunal, għalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA/1966/06 , "to sanction construction of residential unit as built", tal-11 ta' Lulju 2007.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal iddecieda hazin meta sostna li l-Awtorita ma tidholx f'argumenti ta' natura teknika cioe strutturali u ta' inginerija liema argumenti u ma jistghux jiggustifikaw tkabbir massiv f'sit ODZ peress. Dan peress li hu rwol l-Awtorita skond l-artikolu 51 tal-ligi illi l-pjanijiet, policies u programmi jkunu holistici u jiehdu in konsiderazzjoni l-fatturi kollha dwar rizorsi ta' art u bahar u konservazzjoni tal-ambjent f'bilanc għal talbiet ta' zvilupp. Trid issir

distinzjoni bejn ragunijiet teknici migjuba ghal konvenjenza tal-applikant u oħrajn essenzjali għall-izvilupp fejn il-gustifikazzjoni teknika temergi minn 'unsolicited danger' u mhux 'self induced danger'.

Dan l-appell kif argumentat għalkemm interessanti kemm tridu bhala punt legali akkademiku dwar kif u safejn, jekk xejn, l-Awtorita għandha u tista' tindaga fuq kwistjonijiet ta' struttura u inginerija, id-decizjoni tat-Tribunal li jichad l-applikazzjoni ma kinitx fondata fuq il-kunsiderazzjoni illi dawn il-kwistjonijiet mhux ta' rilevanza jew li kieku ttiehdu in konsiderazzjoni, l-izvilupp kien jigi approvat. L-argument tal-appellant ittiehed barra mill-kuntest tad-decizjoni.

Il-kwistjoni quddiem it-Tribunal kienet wahda semplici. L-applikant kien qed jiggustifika l-binja li saret b'mod kontravvenzjonali bhala forma u daqs mill-permess mogħti lilu billi qal li n-natura geologika tas-sit innecessita li jsir l-izvilup kif fil-fatt sar u mhux kif approvat.

Il-Qorti mhix ser tidhol fuq id-differenzi pjuttost cari, estensivi u differenti minn dak approvat għal dak li sar għax mhux il-kompitu tagħha f'dan l-appell izda ser tissoferma ruhha fuq id-decizjoni tat-Tribunal. It-Tribunal sostna illi kienu x'kienu l-problemi strutturali riskontrati, dan ma kienx il-kompitu tal-Awtorita li jiddeterminah qabel l-approvazzjoni tal-permess għax il-permess jinhareg fuq general arrangement u layout drawings bla dettalji teknici, u dan peres li f'Malta ma għandhiex regimes ta' building regulations, engineering standards u Codes of Practice li jmorru oħtre l-planning control. Kwistjonijiet ta' struttura u engineering huma l-obbligu tal-applikant permezz tal-esperti mqabbda minnu li jivverifikaw, jekk irid, qabel issir l-applikazzjoni x'inhu fattibli li jsir fis-sit. F'dan il-kaz jekk wara l-hrug tal-permess gew riskontrati problemi li seta' nnecessita alterazzjoni fil-bini permess li jigi zviluppat, l-obbligu tal-persuna li lilha nhareg il-permess kien li titlob tidbil jew modifiki fil-permess tenut kont ta' dak li rrizulta u mhux isir ix-xogħol kollu, fejn zvilupp jizdied konsiderevolment bi strutturi u lanqas kienu approvati

f'zona ODZ fejn il-limitu ta' zvilupp bhala qies hu limitat, u mbaghad jitlob sanzjoni ta' dak li jkun sar.

It-Tribunal qies li tali modus operandi hu in vjolazzjoni tal-ligijiet, pjanijiet u policies senjatament PLP 20 u wkoll abusiv ghax jaghti lok ghal precedent perikoluz fuq zviluppi approvati.

It-Tribunal pero ma waqafx hemm ghax ikkunsidra l-izvilupp li sar u wasal ghal konklużjoni fuq bazi teknika li l-problemi teknici kienu zghar u setghet intalbet soluzjoni lil Awtorita ferm inqas invasiva minn dak li sehh attwalment b'dannu ghal ambjent, landscape, u agrikoltura.

Kwindi hi l-fehma tal-Qorti illi l-bazi tad-decizjoni tat-Tribunal kienet wahda bbazata fuq il-policies vigenti, tenut in konsiderazzjoni illi l-appellant ha l-ligi f'idejh u vvjola permess moghti lilu bla ma qabel fittex u ottjena l-modifika tieghu ghal ragunijiet teknici li allegatament ghamluha impossibli ghalih li jaffettwa l-izvilupp kif permess. Din hi l-bazi kollha tad-decizjoni u l-aggravju tal-appellant ittiehed il-barra mill-kuntest li fih sar. It-Tribunal beda bil-premessa illi l-kwistjonijiet ta' engineering u strutturi jiformaw parti mill-obbligi tal-akkwrent tal-permess, skond dak mitlub minnu li jsir u dak li fil-fatt jigi permess lilu li jaghmel. Darba li hemm permess, u t-titolari tal-permess jirriskontra problemi teknici li skond hu huma insormontabbli, waqt l-izvilupp, li jibni skond il-permess, ghandu jitlob tibdil u modifiki. F'dan l-istadju l-Awtorita tikkonsidra x'inhu fattibli tenut kont tal-policies u ligijiet applikabbli. Pero mhux accettabbli li permess jigi injorat u jsir bini mhux konformi mal-permess u li jivvjola l-policies ezistenti u jippretendi sanzjoni ghalih.

Decide

Ghalhekk dan l-appell ma fih ebda raguni valida legali ghaliex din il-Qorti ghandha tiddisturba d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-2 ta' Mejju 2013 u kwindi qed tikkonferma l-istess decizjoni u tichad l-appell. Bl-ispejjez ghall-appellant.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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