



## **QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 33/2013

**Saviour Camilleri  
vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Saviour Camilleri tas-17 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 li biha cahdet applikazzjoni PA 7970/05 'to sanction change of use from ironmongery to auto mechanic and proposed alterations and additions to basement';

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-19 ta' Dicembru 2005, Full Development Permission PA 7970/05, l-appellant f'Mater Dolorosa Garage, Triq Pawlu Debono, Zebbug (Malta) talab:

“To sanction change of use from ironmongery to auto mechanic and proposed alterations and additions of basement.”

L-applikazzjoni giet michuda b'rifjut tal-1 ta' Frar 2007 Red 35 ghar-ragunijiet segwenti:

“1.The existing auto mechanic is unacceptable in a residential area as it would have a deleterious impact on the amenity of the area and of existing adjoining uses by virtue of noise, vibration, operating times and additional traffic generation. It therefore constitutes bad neighbour development and so conflicts with Structure Plan policy BEN 1 which seeks to protect the amenity of existing uses.

2. The proposed development will remove the existing parking space for the building and so it would conflict with Structure Plan policy TRA 4 and PA circular 3/93 which seek to ensure that appropriate provision is made for off-street parking.

3. The proposed development is unacceptable since it does not comply with policy SMHO 02 of South Malta Local Plan since auto mechanic is included under the unacceptable uses in this policy.”

Permezz t'appell il-Perit Tancred Mifsud ressaq l-aggravji tal-appellant kif gej:

“On behalf of my client, Mr. Saviour Camilleri, I would like to object to the decision taken by the DCC regarding the above application. I have submitted revised plans in the reconsideration stage with the following changes:

- Height of external garage door is reduced to 2.80mts
- Internal height is reduced to 3.15mts
- Headroom of parking space is increased to 2.47mts
- Proposed internal garage door to segregate mechanic with rest of garage
- Proposed internal garage door to segregate parking for residence above with rest of garage

Kindly note that the mechanic area is the upper part of the garage (ground floor level) and the parking space proposed for the residence above the garage is totally segregated from the repair area with a steel door (internal).

With reference to the activity of a mechanic in a residential area, kindly note that with the proposed changes, there will be no affect on the area since the mechanic activities will now be internally and in a confined space.

Kindly note that the activities carried out by my client are only limited to minor repair works and minor maintenance works. As you know, today all major works on today's vehicles include the assistance of computer machinery and specialized persons. My client only limits himself to minor maintenance since he is also physically disabled (amputated leg) and this is a proof that works are limited to minor maintenance only. My client is not able to work away from home since he needs regular therapy and cleansing (leg therapy) more than five times a day.

Please note that my client can opt to register for social assistance and stay at home, but he is capable of sustaining himself and his family with the little work he is capable of doing.

I think that the MEPA should consider this application on a social basis since this is a genuine social case.

I personally inspected the premises in question and I can certify that the site is clean and when one views the

Kopja Informali ta' Sentenza

exterior of the building, no one can deduct that the site is used as a repair garage.

Finally please note that the site is covered with a MEPA permit to operate as an ironmongery.”

Trusting that with the above changes, the proposed development will be favorably considered.”

Permezz ta' ittra l-objector George Farrugia iddikjara kif gej:

“I am writing this letter to bring to your attention the appeal of Mr. S Camilleri at Mater Dolorosa in Paul Debono Street which is going to be held on the 15th May 2007. Appeal reference no 66/2007. The alleged although he holds an ironmongery permit still works as a mechanic. In fact he has been working so, for the past ten years without a MEPA permit. The permit, the alleged holds is a question mark as to how it was issued. It is worth pointing out too that the garage is not built to proposed specifications but changed according to his needs, refer to P A 2617-93-1 e .

If case no 07970/05 at the above location is granted approval that is issued with a permit from ironmongery to auto mechanic shop etc, this would create further deteriorous impact on the amenity of the area and to the residents as this garage is in a residential area.

I request that you further check all the files and applications submitted by Mr. S. Camilleri that they all have been refused and although the alleged keeps ignoring all instructions, you take the necessary action to finalize this case. ”

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

**“5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE**

5.1 The proposed development was refused on the grounds that the development would consist of bad neighbour development in a residential area (reason for refusal 1); due to the removal of on-site car parking provision for the overlying residential unit (reason for refusal 2); and on the grounds that the proposed change of use does not comply with the provisions of policy SMHO 02 which does not classify auto mechanics as an acceptable light industrial activity within residential areas (reason for refusal 3).

5.2 The appellant claims that the proposal should be accepted as the auto repair works shall consist of minor interventions, and shall all be carried out from within the premises which should not result in a nuisance to this residential area. Furthermore, the appellant is also indicating that the applicant needs to work from home due to his disability, which requires regular therapy during the day.

5.3 Notwithstanding these arguments, Local Plan policy SMHO 02 clearly indicates that Class 11 light industrial uses similar to auto mechanics may not be permitted within the designated Residential Areas. Although the appellant indicates that the operations shall be of a minor scale as the applicant is limited due to his disability, once the permit is issued, the site shall be committed for use as a vehicle mechanic. The noise, traffic and other impacts related to such activities would be of a detriment to the residential amenity of this area, and hence such a use would be better located within a designated SME area. The proposal is therefore considered to consist of bad neighbour development, and accepting this proposal would result in a clear conflict with Local Plan policy SMHO 02. Furthermore, approving this proposed development would result in a clear precedent for further similar changes of use within this residential area which is not jeopardised by any activities that are not of a residential nature.

5.4 With regard to the amendments referred to by the appellant, these revisions were presented during reconsideration stage and due consideration was given to these amendments. In fact the reasons for refusal related to design issues were omitted at reconsideration stage, and were limited to the principle of the proposal and the impact of the development on its adjacent land-uses, which is characterized solely with residential uses.”

Permezz t'ittra ohra l-objector George Farrugia irrileva kif gej:

“Ir-residenti ta' Triq Pawlu Debono, Zebbug qeghdin jiktbulek din l-ittra rigward l-kas ezziztenti dwar il-garaxx imsemmi u li Saviour Camilleri jaghmel xoghol ta' mekkanik bla permess gewwa dan il-garaxx li jinsab f'zona residenzjali. Saiour Camilleri ghadu sal-gurnata tal-lum, 3 ta' Jannar 2008.

Ahna ilna nilmentaw u niktbulkomm dwar din l-attivitá u ghalkemm Saviour Camilleri nstab hati f'diversi okkazzjonijiet u anke immultat mill-qorti, dan xorta baqa jisfida l-awtoritajiet u 'interferred' mas-sigilli fuq xi ghoddod li gew issigillati bl'ordni ta' l-Enforcement Officer mill-MEPA skond xhida li nghatat mill-Qorti.

Ghaldaqstant ahna qeghdin nergaw niktbulkomm biex il-MEPA tiehu decizjoni dwar dan il-kas u filwaqt li ebda permess ma jinhareg f'isem dan il-garaxx, Saviour Camilleri jigi mwaqqaf mill-attivitá ta' mekkanik immedjatament.

Qed niktiblek xi referenzi ta' dokumenti rigward dan il-kas li tista ssibhom ta' ghajnuna.

Dawn huma:

PA05299/03

ECF00037/01- Appeal Board hearing date 18th

January 2008 PA01022/01

PA2617/93/1e”

Kopja Informali ta' Sentenza

Zamm access fuq is-sit de quo fejn l-Awtorita' gibdet l-attenzjoni tal-Bord illi l-area hija kompletament residential area u ma hemm ebda commitment qualsiasi ta' natura industrijali jew kummercjali. Dr. Noel Camilleri minn naha l-oħra rrileva li round the corner hemm numru ta' attivitajiet kummercjali fosthom printing press, food processing plant, kif ukoll mini market. Il-Bord acceda anke għewwa l-garaxx in kwistjoni fejn sab hafna għodda pero' l-avukat ta' l-appellant irrileva li kien hemm direct action u l-appellant twaqqaf milli jahdem fuq il-post. Gie rilevat ukoll li l-makkinarji għandhom is-sigilli tal-MEPA. Dr. Noel Camilleri rrileva wkoll illi quddiem il-garaxx in kwistjoni hemm spazju ampju għall-parkegg.

Permezz t'ittra l-objector George Farrugia rrileva kif gej:

"We the undersigned appeal to the Officials of the Board of the Planning Authority to refrain from issuing any permits at the above-mentioned premises to work as an auto mechanic.

Saviour Camilleri has been working as an auto mechanic for the past fifteen years inspite of law enforcements imposed upon him as well as interfering with tools that were sealed by the order of the Enforcement Officer from MEPA.

As residents at Paul Debono Street we urge the Officials of Mepa that such an activity in a residential zone is an injustice and against human rights towards the residents as well as to the environment. Residents who own property in this area were to believe that a residential area would remain free from such similar activities. The activity of an auto mechanic would generate excessive fumes and noise which is detterant both to human health as well as the environment. Therefore whilst we thank you for your support in the past we request that you inform us of the next Appeal Board hearing date. We trust in your good faith and that the best decision is decided upon for the good benefit of all the residents."

Permezz t'ittra l-objector George Farrugia rrileva kif gej:

“B'referenza ghall-kopja tal-emails li ghaddew bejn il-KNPD u l-appellant, Saviour Camilleri, nixtieq nigbidlek l-attenzjoni ghall-fatt li bhala residenti fit-triq Pawlu Debono, ahna wkoll ghandna drittijiet li l-MEPA ghandha tas-sigura li jigu mharsa u protetti.

Il-fabriki li semma l-appellant bhal Country Products, Marcon Fashion Maze, Carmel Brand Products u ohrain ma humiex fi triq Pawlu Debono u l-anqas ma jiggeraw dhahen, storbju u zgamburu fit-triq bi trakkijiet li jdumu xhur ipparkjati u li jistaw jkunu kagun ta xi incident ta traffiku. Garage ta mekkanek f'zona residenzjali huwa detriment ghas-sahha tar-residenti ghax ihammeg l-ambjent bi dhahen, storbju u vetturi kbar ipparkjati bla sens ghal tul taz-zmien. Ta min isemmi li Saviour Camilleri jahdem fuq vetturi kbar bhal ma tista tara fuq il-kopja tar-ritratt kuntrarju ghal dak li qal fl'email li jaghmel 'bhal-light work minhabba d-dizabilita'.

Ghalhekk, jekk il-MEPA ghandha l-obligu li tipprovdi akkommodazzjoni ragonevoli skond kif titlob il-Ligi Oppurtanijiet Indaq, dan ghandha taghmlu f'zona industrijali u mhux f'zona residenzjali. Ta min isemmi lli Tower Aluminium, Steve's Cylinders u ohrain kellhom jitolqu minn triq Pawlu Debono u marru f'zona industrijali ghaliex hekk titlob il-ligi.

Barra minn hekk, Saviour Camilleri ghandu Enforcement Notice No ECF00037-01 dated 23-01-01 ghall 'direct action structure to be removed 26-2-04' kif ukoll PA2617-93/1e fejn id-DCC qed jghid 'will not consider a development permit application relating to new development on that site unless the development is regularised'.

Filwaqt li ahna ghandna fiducja kbira fic-Chairman u l-membri tal-bord, ir-residenti ta triq Pawlu Debono nixtiequ niringrazzjakom ta' l-attenzjoni li qeghdin taghtu din l-ittra u nitlobukom tikkonsideraw dak kollu li fiha din l-ittra. D-decizjoni taghkom ghanda tkun ghall-ahjar tar-residenti u favur l-ambjent. Ta min jghid ukoll li barra li qed nigu



Kopja Informali ta' Sentenza

mhedda bl'ambjent dan l-ahhar gejna mhedda wkoll fizikament.”

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Ukoll il-pulizija hadu passi kontra Saviour Camilleri li kien qed jahdem fil-garage bla permess u anke barra fit-triq

quddiem il-garage tieghu. Huwa ghandu xi tmien akkuzi ohra li ghad irid jidher quddiem i1-qorti li kien qed jahdem bla permess. Il-permess li ghandu huwa ta 'Hardware Store' izda dan il-garage qatt ma intuza bhala hardware store imma bhala mekkanik. Il-garage ilu jintuza bhala mekkanik minn qabel 30 ta' Marzu 1998. Biex nikkonferma dan ma din l-ittra ghandek koppja ta' l-agenda tal-Kunsill Lokali Zebbug. Ukoll ghandek isib koppja tal-akkuzi u multi li whel fit-27.6.2006 quddiem il-magistrat Anton Mizzi. Ma din l-ittra ukoll ghandek isib xi ritratti kif ukoll C.D. fejn jidher li qed jahdem fuq vetturi kif ukoll qed idahhal vetturi kbar fil-garage tieghu. Ma din l-ittra ghandek isib ukoll kopja ta 'petition' iffirmata mir-residenti ta' triq Pawlu Debono.

Ta min jghid ukol li s-Sur Saviour Camilleri ghadu sal-gurnata tal-lum jahdem bhala mekkanek go dan il-garage.

Ghalhekk ahna qeghdin inresqu dan lilment ghaliex bhal ma kullhadd jaf garage ta' mekkanik jiggenera hafna storbru u zgombu ta karrozzi ipparkjati fit-triq ghal hafna tul ta zmien.

Ahna r-residenti ta' Triq Pawlu Debono minhabba dan il-garage ghadejjna minn hafna sofferanzi ghaliex barra l-istorbru ta vetturi kbar bhal gaffef, trakkijiet taz-zibel, trakkijiet tal-gebel u ohrajn dawn jiggeneraw ukoll hafna dhahen u tixrid taz-zejt ma l-art. Dan kollu u detriment ghas-sahha taghna r-residenti kif ukoll hsara ghal ambjent. Ta min jghid ukoll li s-Sur Camilleri jahdem sighat twal, sa tard fl-ghaxija jibaq ghaddej bl'istorbru ta rezjar ta karozzi u rwejjah ta spray ta' karozzi. Minhabba dan kollu ahna r-residenti ma nistawx nghixu f'ambjent kif inhu xieraq ghalina u ghat-tfal taghna.

Filwaqt li ahna ghandna fiducja kbira fie-Chairman u l-membri tal-bord, ir-residenti ta triq Pawlu Debono nixtiequ niringrazzjakom ta' l-attenzjoni li qeghdin taghtu din l-ittra u nitolbukom tikkunsideraw dak kollu li fiha din l-ittra. D-decizjoni taghkom ghandha tkun ghall-ahjar tar-residenti u favur l-ambjent. Ta min jghid ukoll li barra li qed nigu mhedda bl'ambjent dan l-ahhar gejna mhedda wkoll fizikament.”

Permezz ta' nota l-Avukat Noel Camilleri ghall-appellant ressaq is-sottomissjonijiet tieghu kif gej:

“1. Illi permezz tal-applikazzjoni bin-numru 7970/05, l-appellant kien talab lill-Awtorita ta' Malta Dwar l-Ambjent u l-Ippjanar sabiex jigi sanzjonat tibdil ta' uzu minn ironmongery ghal auto mechanic fil-garaxx tieghu illi huwa sottostanti id-dar residenzjali tieghu f'Mater Dolorosa, Triq Pawlu Debono, Zebbug (Malta), liema garaxx kien diga qiegħed jigi uzat bhala auto mechanic, u għalhekk l-appellant kien xtaq jirregolarizza tali uzu.

2. Illi permezz ta' decizjoni mogħtija mill-Awtorita fit-tnax (12) ta' Lulju 2006, l-applikazzjoni tal-appellant giet irrifjutata, għaliex, auto mechanic huwa inaccettabli f'zona residenzjali stante illi jkollhu "deleterious impact" minhabba rwejjah, hsejjes, hinijiet tal-operazzjoni u generazzjoni ta' traffiku addizzjonali u għalhekk tmur kontra Structure Plan policy Ben 1 u għaliex tali uzu jnehhi spazi għal parkegg ezistenti u għalhekk imur kontra Structure Plan policy TRA 4 u PA circular 3/93. Għaldaqstant l-appellant intavola l-appell odjern.

3. Illi kien hemm ukoll oggezzjoni għal tali sanzjonament minn George Farrugia, li huwa wiehed mir-residenti tat-triq fejn hemm il-garaxx tal-appellant illi argumenta li r-residenti tat- Triq Pawlu Debono qiegħdin issofru minhabba storbu ta' vetturi kbar, dhahen, u tixrid ta' zejt mal-art u minhabba illi l-appellant jahdem anke sa tard fil-għaxija. Dan nonostante il-fatt illi għalkemm is-Sur Farrugia ivvanta illi qiegħed jittellem għar-residenti kollha, il-firem migjuba minnu ta' residenti li skond hu joggezzjonaw ukoll għal tali permess huma kollha familariji tieghu u inoltre, hadd minnhom hliefu rna tela jikkonferma l-oggezzjoni bil-gurament, haga li facilment setghu jagħmlu. Dan minbarra l-fatt illi Gaetano Caruana, missier is-Sinjura Farrugia huwa mejjet u Tania Farrugia, bint is-Sur Farrugia izzewwget u lanqas biss għada toqghod fi Triq Pawlu Debono, Zebbug izda qiegħdha issa toqghod f'Nru. 8, Alley 1, Triq il-Parocca, Siggiewi. Għalhekk, fid-dawl ta' dawn kollu, l-ittra prezentata minn George

Farrugia m' ghandiex tigi konsiderata bhala oggezzjoni li saret minn hafna nies.

4. Illi anzi, l-girien immedjati tal-appellant, u cioe Peter Paul Aguis (485658M) u Donald Mario Bezzina (413770M), prezentaw affidavit fejn spjegaw illi l-uzu tal-garaxx tal-appellant bhala auto mechanic qatt ma kkawza l-ebda inkonvenjent lilhom jew lill-familja taghhom minhabba illi li l-appellant ma jaghmilx storbu, irwejjah jew hmieg. Barra minn hekk is-Sur Aguis us-Sur Bezzina iddikjaraw illi huma qatt ma kellhom xi problem rigward parking minhabba l-garaxx tal-appellant. Fil-fatt l-Ispettur Jesmond Borg xehed illi minhabba illi is-Sur Farrugia kien jaghmel rapporti kostanti fuq l-appellant, kien hemm okkazzjonijiet fejn hu stess kien ha l-intrigu li jitkellem mal-girien rigward l-allegazzjonijiet tas-Sur Farrugia u ma' kull min jitkellem hadd ma kien jilmenta u li anzi kienu jghidulu li ma kienux jsimghu hoss l-appellant.

5. Illi inoltre ix-xhieda moghtija mill-Ispettur Jesmond Borg turi bic-car illi loggezzjoni illi ghandu is-Sur Farrugia hija aktar minhabba problemi personali illu huwa ghandu mal-appellant milli minhabba problemi li allegatament tikkawza l- attivita kummercjali tieghi. Fil-fatt l-Ispettur qal illi fl-erbgħa snin li ghamel l- għassa ta' Haz Zebbug is-Sur Farrugia kien il-hin kollhu jaghmel rapporti fuq l-appellant, u kien hu biss li kien jaghmel rapporti fuq ix-xogħol tal-appellant u hadd aktar mill-girien. Inoltre, ghalkemm is-Sur Farrugia kien jallega li l- appellant kien jahdem fuq vetturi kbar u li kien ikun tixrid ta' zejt mal-art, mid-diversi spezzjonijiet illi saru mill-pulizija dawn qatt ma rrizultaw,

6. Illi inoltre l-appellant ibati minn dizabilita, u dan kif jirrizulta mic-certifikat mediku tat-tabiba Dr. Mary Rose Cassar MD tal-hamsa (5) ta' Dicembru elfejn u sitta (2006) minhabba liema huwa ma jistax jahdem il-bogħod mid-dar u jista' jaghmel biss xogħol ta' natura hafifa. Minhabba in-natura tad-dizabilita tieghi l-appellant ikollu bzonn medikazzjoni (treatments) kuljum, f'hinijiet differenti tal-gurnata, liema medikazzjoni taghmilhomlu martu Mary u għalhekk hemm bzonn li l- appellant ikun jahdem mid-dar stess sabiex hija tkun tista' taghmillu din il-

medikazzjoni u fl-istess hin tkun tista' tiehu hsieb iz-zewgt itfal minuri illi huma ghadhom. Ghalhekk huwa indispensabbli illi l-appellant ikun jista' jahdem mil-garaxx sottostanti d-dar tieghu, ghaliex kif jirrizulta mic-certifikat mediku imsemmi u mill-affidavits tal-appellant u martu huwa jinsab fl-impossibilita illi jahdem x'imkien iehor u x-xoghol tieghu huwa l-uniku mezz t'ghajxien tal-familja tieghu. F'dan ir-rigward issir referenza ghall-Kapitolu 413 tal-Ligijiet ta' Malta rigward Opportunitajiet Indaqs (Persuni b'Diazbilta), skond liema l-Awtorita ghandha l-obbligu li ttipprovi "akkomodazzjoni ragonevoli" u li ghalhekk fid-decizjoni finali taghha ghandha tiehu in konsiderazzjoni c-cirkostanzi partikolari tad-dizabilita tal-applikant u tkun flessibli fid-decizjoni taghha.

7. Illi, fir-rigward ta' Structure Policy BEN 1, skond id-decizjoni tal-Bord tal-Appell Dwar l-Ippjanar fl-ismijiet Tony Attard vs Il-Kummizzjoni ghall-Kontroll tal-Izvilupp', "l-Awtorita trid izzomm f'mohha planning issues biss. Kwistjonijiet ohra ta' dwejjaq li jista jew ma jistax isehh huma kwistjoni ta' natura ta' dritt civili jew azzjoni kriminali fejn tidhol il-kompetenza tal-Qorti skond il-kaz .... Jigifieri possibilita ta' dwejjaq wahedha mhix raguni li ghandha twassal ghar-rifjut ta' xi zvilupp. Dan ghaliex il-kuncett ta' bad neighbourliness li huwa l-pern tal-policy BEN 1 huwa kuncett suggettiv - jiddependi minn kaz ghal kaz - minn zvilupp ghal iehor - minn entita' ta' zvilupp ghal iehor - minn kwalita ta' zvilupp ghal iehor. Ifisser li mhux bizejjed li nikkwotaw il-BEN 1 minghajr ma naghmlu referenza ghas-sit in kwistjoni u l-effetti diretti tal-BEN 1 fuq dan is-sit." Ghal din ir-raguni dan il-Bord kif diversament presedut kien ordna sabiex jinhargu l-permessi relattivi ghal bidla ta' uzu minn private car garaxx ghal mechanic garaxx fi Triq il-Lunzjata, San Gwann. F'dan is-sens l-appellant umilment jissottometti illi meta rrifjutat l-applikazzjoni tieghu, l-Awtorita ma kienetx ikkunsidrat il-fatti kollha tal-kaz, liema fatt fl-ewwel lok hu in vjolazzjoni tal-Kap 413 kif hawn fuq imsemmi u kif ukoll wassal ghal interpretazzjoni hazina tal-effett ta' BEN 1 fuq l-applikazzjoni tal-appellant. Kif diga intqal hawn fuq, il-girien tal-appellant, anke dawk immedjati ma jsibu l-ebda oggezzjoni ghal tali uzu tal-garaxx bhala auto mechanic.

Wiehed hawnhekk irid jiftakar illi hawnhekk qed nitkellmu fuq casa bottega stante illi l-garaxx in kwistjoni jinsab sottostanti ir-residenza tal-appellant stess u ghalhekk huwa fl-interess tieghu u tal-familja tieghu stess illi ma jikkawzax storbu, rwejjah, hmieg jew xi tip ta' inkonvenjent iehor. Inoltre, fl-istess zona hemm diversi attivitajiet kummercjali kbar, ossia PA 1959/93, PA 1263/00, PA 4082/98, PA 4536/02, PA 3048/99, PA 6351/07, PA 4864/01, PA 4779/03 u PA 2973/99 (vide Dok B) u ghalhekk zgur mhux ser tkun dina l-attivitazghira tal-appellant illi tmur kontra Structure Plan Policy BEN 1.

8. Illi fir-rigward ta' Structure Plan policy TRA 4 u PA circular 3/93, l-appellant umilment jissottometti illi il-garaxx tieghu kien diga intuza bhala auto mechanic ghal certu zmien u ghalhekk l-ebda spazju ghal parkegg prezenti ma huwa ser jintilef jekk tigi approvata l-applikazzjoni tieghu u ghaldaqstant tali applikazzjoni ma tmurx kontra Structure Plan Policy TRA 4 u PA circular 3/39. Fil-fatt il-girien tal-appellant stess qalu fl-affidavits taghhom hawn fuq imsemmija hija huma qatt ma kellhom l-ebda problem rigward parkegg fi Triq Pawlu Debono minhabba l-attivitazkummercjali tal-appellant. Meta wiehed jezamina l-pjanta taz-zona (li qed tigi annessa u mmarkata Dok B), jidher car illi t-triq kif inhi minna nfisha tagevola l-parkegg.

9. Ghaldaqstant, tenut kont tac-cirkostanzi hawn fuq spjegati, kif ukoll ghall-kazistika kwotata, l-appellant ihoss illi l-appell tieghu ghandu jigi milqugh sabiex bhekk l-Awtorita tohrog il-permessi relattivi halli huwa jkun jista jahdem bla xkiel u jaqla ghejxien ghalih u ghall-familja tieghu.”

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

“1. The appellant submitted a letter on 18th April 2011 in reply to the Authority's initial report to the Tribunal and to what has been argued during the appeal's sittings.

2. The appellant's main arguments are (in brief):

Kopja Informali ta' Sentenza

- i. The majority of the residents in the vicinity have not objected to the proposal;
- ii. The reason for refusal based on BEN1 is subjective as per Planning Appeals Board decision in PAB142/97;
- iii. There are other permits in the vicinity for commercial activities;
- iv. The proposal does not lead to loss of parking since the mechanic has been in use for quite a while.

3. The Authority has the following comments to make:

(a) The PAB decision quoted by the appellant relates to a file prior to the enactment of the local plan. Furthermore the decision quoted states *Ifisser li mhux bizejjed li nikkwotaw il-BEN1 minghajr ma naghmlu referenza ghas-sit in kwistjoni u l-effetti diretti tal-BEN1 fuq is-sit*. This means that if the nuisance can be qualified then it does not remain a subjective matter. It has been already argued by the Authority how a auto-mechanic in a residential area creates nuisance to the neighbourhood in terms of noise, additional traffic generation and vibration. Moreover the appellant is conveniently forgetting to mention that in this case the reason for refusal based on BEN1 was given in the context of the zoning of the area as a Residential Area and to the fact that the local plan specifically excludes such activities from such areas. This means that the reason for refusal based on BEN 1 was substantiated on strong planning policy grounds;

(b) All the permits referred to by the appellant are pre local plan except for PA 6351/07. Various Planning Appeals Board decision refer to how permits before the local plan should not be used to justify developments that run counter to the established zoning. Special reference is given to PA1367/05 - PAB321/06RT: *Il-Bord ikkunsidra wkoll it-tieni argument tal-appellant u cioe' illi kienu jezistu numru ta' permessi fil-vicinanze, (mahruga mill-Awtorita' stess), ghal Ground Floors ta' natura kummercjali. Il-Perit ta' l-appellant ikkwota 7 permessi fl-istess triq. Il-Bord*

innota illi l-permessi kollha iccitati kienu gew decizi qabel ma gie approvat il-Pjan Lokali. Dan iffisser illi d-decizjoni ta' l-Awtorita " kienet korretta meta wiehed jikkunsidra l-Policies rilevanti. Il-Bord wasal ghal konkluzjoni illi, l-approvazzjoni ta' din l-applikazzjoni, fil-forma li giet ipprezentata, tkun tfisser precedent qawwi li jgib fix-xejn iz-zoning li qed jipprova johloq bil-Pjan Lokali.

Moreover the appellant did not plot either the permits on a block plan nor explained their merit. PA6351/07 refers to a public service garage in a residential area. This is not against the zoning of a residential area if it respects the criteria set in policy 6.15 of the DC2007. Clearly this case has nothing to do with the case under appeal since the development in PA6351/07 referred specifically to the garaging of a particular vehicle and not to a mechanic; i.e. different class of activity and different planning merits involved.

(c) The fact that the garage has been used for a long time as a mechanic does not detract from the argument that the proposal leads to loss of parking because the mechanic activity on site has been illegal and thus it does not render any rights to the appellant.”

Permezz ta' replica l-Avukat Noel Camilleri ghall-appellant wiegeb kif gej:

“1. Illi din ir-replika qeghdha tigi prezentata in vista tas-'Second Statement' tal-Awtorita tat-23 ta Gunju 2011.

2. Illi f'din in-nota gie sottomess mill-Awtorita illi decizjoni kwotata mill-Appellant, u cioe dik fl-ismijiet Tony Attard vs Il-Kummissjoni ghall-Kontroll tal-Izvilupp tirrefefi ghal file ta' qabel ma gie in sehh il-pjan lokali. Pero dan ma jfissirx illi din id-decizjoni m'hijiex rilevanti, proprju ghaliex din id-decizjoni tat lista ta' principji u element: illi fuqhom ghandha tigi bbazata decizjoni fuq jekk tigix accettata applikazzjoni ghall-Izvilupp jew le, liema principji huma ogettivi u jezistu indipendentement tal-Pjan Lokali.



3. Illi barra minn hekk l-Awtorita targument illi stante illi din id-decizjoni tghid illi mhux bizzejjed li tigi kwotata BEN 1 minghajr ma ssir referenza ghas-sit dan ifisser illi jekk id-dwejjaq illi jlkawza l-izviiupp propost jista' jigi kwalifikat allura ma jibqax iktar kwistjoni suggettiva. Ghalhekk l-Awtorita tghid illi galadarba hija diga argumentat fuq kif auto-mechanic jikkreja dwejjaq f'zona residenzjali allura jista' jkun hemm rifjut tal-applikazzjoni bbazat fuq BEN 1. L-esponenti jissottometti bir-rispett illi mhuwiex bizzejjed illi l-Awtorita tuza argument illi diga uzat qabel in vacuo izda l-argumentazzjoni taghha fir-rigward tal-applikazzjoni ta' BEN 1 trid issir b'referenza specifika ghall-lok in kwistjoni. F'dan ir-rigward l-esponenti umilment jenfasizza iili huwa ilu juza il-garaxx tieghu bhala auto-mechanic ghal hafna snin u tant ma krejx dwejjaq jew fastidju illi l-girien illi joqoghd u ezatt biswit dan il-garaxx iddikjaraw b'gurament illi l-uzu tal-garaxx tal-appellant bhala auto mechanic qatt ma kkawza l-ebda inkonvenjent lilhom jew lill-famijja taghhom minhabba illi li l-appellant ma jaghmilx storbju, irwejjah jew hmieg, jew xi problemi ta' parking. Inoltre, ma kien hemm l-ebda oggezzjoni da parti tal-girien hlief lil persuna wahda, u cioe certu George Farrugia, illi mix-xhieda tal-Ispettur Jesmond Borg deher bic-car illi l-oggezzjoni li ghandu hija aktar minhabba kwistjonijiet ta' natura personali milli minhabba problemi allegatament kkawzati mill-attivita kummercjali tal-appellant. Ghalhekk ma hemmx 'strong planning policy grounds' skond liema tista' tigi rifjutata l-applikazzjoni tal-appellant.

4. Illi l-Awtorita injorat ghal kollox il-provvedimenti ta' Kapitolu 413 tal-Ligijiet ta' Malta rigward Opportunitajiet Indaqs (Persuni b'Diazbilta), skond liema l-Awtorita ghandha l-obbligu li ttiprovdi "akkomodazzjoru ragonevoli", in vista ta- cirkostanzi partikolari tad-dizabilita tal-applikant u tkun flessibli fid-decizjoni taghha. Ghalhekk tenut kant tal-fatt illi l-appellant ilu jopera ghal snin twal minghajr qatt ma kkawza l-ebda inkonvenjent ghal girien jew naqqas l-ispazju ghall-parking, u dan fid-dawl tal-Kapitolu 413, dan il-Bord m'ghandux jirrifjuta l-applikazzjoni tal-appellant, ghaliex tali decizjoni ma tkunx konformi ma din il-ligi.

Dan speċjalment meta, kif diga ntqal aktar il-fuq, m'hemm l-ebda 'strong planning policy grounds' sabiex l-applikazzjoni tal-appellant tigi rrifjutata.

5. Illi fir-rigward tas-sottomissjoni (c) tal-Awtorita, l-esponenti jissottometti bir-rispett illi m'huwiex il-fatt li ilu juza l-garaxx bhala automechanic illi jnehhi mill-argument li l-proposta għall-izvilupp tiegħu tfisser tnaqqis fl-ispazju għall-parking, izda huma dikjarazzjonijiet guramentanti ta' girien li kien cari fl-affermazzjoni tagħhom illi qatt ma kien hemm xi problema ta' parking minhabba l-attività kummerċjali tal-appellant illi tnaqqas min dan l-argument dan id-dikjarazzjonijiet juru carent illi dan l-argument m'huwiex applikabbli fis-sitwazzjoni odjerna. M'għandux jintnesa illi l-attività kummerċjali tal-esponenti hija wahda zghira, minhabba d-dizabilita' tiegħu, u għalhekk l-impatt tal-attività tiegħu fuq kwistjonijiet bhal m'huma tal-parking semmai hija hafna iżgħar.

6. Illi ma' din ir-replika qegħda tigi annessa site plan bil-permessi msemmija finnota ta' sottomissjonijiet tal-esponenti mmarkati fuqha (Dok SC1), li turi bic-car illi z-zona fejn qieghed jigi propost it-tibdil fl-uzu in kwistjoni hija diga wahda committed u hemm diversi attivitajiet kummerċjali.

7. Illi l-fatt li z-zona in kwistjoni hija għalhekk diga' committed, ifisser illi l-Awtorita kellha timxi fuq l-istess binarju mall-appellant, u dan skond is-sentenza tal-Onorabbli Qorti tal-Appell tat-18 ta' Mejju 2005 fl-ismijiet Joseph Muscat vs l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar, f'liema sentenza inghad li "Din il-Qorti jidhirlha li kemm l-Awtorita' tal-Ippjanar kif ukoll il-Bord tal-Appell dwar l-Ippjanar, it-tnejn għandhom is-seta, minghajr ma jbiddu t-Temporary Provision Schemes li jevalwaw kull kaz fuq il-mertu u fuq il-fattispece proprji tiegħu. Inoltre, fejn ikun jirrizulta car li hemm cirkostanzi speċjali ta' commitment, kemm l-Awtorita u kif ukoll l-Bord għandhom is-seta' gurisdizzjonali li johorgu permess ta' zvilupp li jkun jiddipartixxi, per eżempju mill-maximum height limitation imposti fir-temporary provision schemes .... Il-Bord għandu dover li jinvestiga l-allegazzjoni dwar

commitment tal-area biex jistabilixxi jekk din hijiex verament fondata u jekk issib li hemm il-karatteristika ta' commitment, din il-gustifikazzjoni kienet tintitolah jiddipartixxi mill-gholi impost fl-iskema relattiva (enfazi u sottolinear tal-esponenti) u dan peress li jekk ikun hekk stabbiit ifisser li huwa permess rilassament."

8. Illi f'dan ir-rigward ukoll ta' min jissottlinea d-decizjoni moghtija mill-Onorabbli Qorti tal-Apell fid-29 ta' Ottubru 2009 fl-ismijiet Grace Borg vs l-Awtorita ta' Malta dwar l-Ambjent u l-ippjanar, fejn gie enfasizzat illi l-commitment hu relevanti ghad-determinazzjoni ta' applikazzjoni anki jekk dak li qed jigi mitlub imur kontra l-provedimenti tal-Pjan Lokali (enfazi u sottolinear tal-esponenti).

9. Illi ghalhekk huwa car li, a kuntrarju ta' dak li qed tallega l-Awtorita ma hemmx raguni vallda skont il-ligi a bazi ta' liema l-applikazzjoni tieghu ghandha tigi rrifjutata u ghalhekk d-decizjoni tas-12 ta' Lulju 2006 ghandha tigi revokata u l-applikazzjoni tal-appellant ghandha tigi approvata anke b'dawk il-kundizzjonijiet illi dan il-Bord jista' jissugerixxi.

10. Illi l-esponenti jirriserva d-dritt ii jipprezenta sottomissjonijiet ulterjuri, kemm bil-miktub kif ukoll verbalment. "

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

"1. In his latest submission, dated 27th September 2011, the appellant is arguing (in brief) that

- the Authority did not substantiate its reason for refusal based on Structure Plan policy BEN1;
- the Authority is not following the provisions of the Equal Opportunities Act;
- the proposal does not lead to actual loss of parking; and
- the area is committed with commercial activities.

2. The Authority notes that all the arguments brought forward by the appellant have been replied to in previous submissions or during the appeal sittings. Nevertheless the Authority would like to make the following comments:

An auto-mechanic in a residential area creates nuisance to the neighbourhood in terms of noise, additional traffic generation and vibration. The reason for refusal based on BEN1 was given in the context of the zoning of the area as a Residential Area and to the fact that the local plan specifically excludes such activities from such areas. This means that the reason for refusal based on BEN 1 was substantiated on strong planning policy grounds. The fact that a number of neighbours does not mind having a mechanic next to them, does not mean that it is not a nuisance to others.

Contrary to what the appellant has stated, the Authority took into consideration the Equal Opportunities Act in its decision. This was confirmed by the Chairperson of the National Commission Persons with Disability who stated, in his letter dated 5h November 2009 (document 52 in PA file), that "[...] Wara li l-KNPD kienet indagat il-kas harget sodisfatti li fil-fatt il-MEPA dan ghamlitu w ghalhekk ma kien jidher li kien hemm diskriminazzjoni abbazi tad-dizabilita' fid-decizjoni finali tal-istess MEPA rigward is-Sur Camilleri."

Parking provision is regulated by specific policies and planning regulation. Loss of off-street parking (i.e. parking in a garage) is never accepted in a residential area. The proposed development will result in the elimination of a one parking space required by the overlying residential unit (even if it is not used by the occupier of the overlying dwelling), which runs counter to Structure Plan policy TRA 4.

The Authority note that permits quoted by the appellant refer to commercial enterprises (Class 4 Uses) most of which are of local nature (i.e. small shops). The Authority cannot understand the relevance of these permits when the proposal regards an Industrial Use (Class 11). Furthermore the Authority does not agree that by having a few shops in a residential area, such area is committed for any type of development other than residential."

Ikkunsidra ulterjorment:

Kopja Informali ta' Sentenza

Il-mertu ta' dan l-appell jirrigwarda talba ghat-tibdil fl-użu ta' garage minn ironmongery għal garage ta' mechanic.

Is-sit mertu ta' dan l-appell jinsab f'Haz-Zebbug (Malta); Mater Dolorosa Garage, Triq Pawlu Debono.

Din l-applikazzjoni giet rifjutata peress li l-garaxx propost mhux permissibbli f'area residenzjali, u billi l-bini ma sarx skond il-pjanta PA 2617/93/1e tapplika għall-kaz ic-Cirkolari PA 2/96.

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

L-applikant jissottometti li permezz ta' zvilupp propost z-zona mhijiex sejra tkun affetwata b'mod negattiv peress li l-attivitajiet ta' mechanic ser ikun fuq gewwa u fi spazju konfinat, li l-operat tal-appellant jikkonsisti f'minor repair works u maintenance works, li major works isiru bl-assistenza ta' computer machinery u jigu operati minn persuni speċjalizzati, li l-appellant jillimita ruħhu li jagħmel biss minor maintenance peress li jbgħati minn dizabilita' permanenti, li l-appellant ma jistax jahdem il-bogħod mid-dar peress li għandu bżonn terapijja regolari iżjed minn hames darbiet kuljum, li l-appellant għandhu l-fakolta' jirregistra għal assistenza soċjali u joqgħod id-dar izda huwa kapaci jzomm lilu nnifshu u l-familja tiegħu bix-xogħol li jagħmel, li dan l-appell għandhu jigi ezaminat anki minn aspeċt soċjali, li l-perit tal-appellant ezamina s-sit in kwistjoni u ccertifika s-sit bħala wiehed nadif u li ma jidhirx li s-sit qiegħed jintuza bħala repair garage, u li l-garage huwa kopert b'permess mahrug mill-Awtorita' sabiex jintuza bħala ironmongery.

L-objector George Farrugia ssottometta li l-applikant jahdem bħala mechanic, li ilu jahdem bħala mechanic għal l-aħhar għaxar snin mingħajr permess għal dan il-ghan, li mhuwiex car kif il-permess li għandhu inhareg, li l-garage ma giex zviluppat skond kif awtorizzat u li inbidel skond il-bżonnijiet tal-applikant kif jidher fil PA 2617-93-1e, li jekk jinhareg il-permess mitlub sejra ssir hsara fiz-

zona u lir-residenti taz-zona peress li l-garage jinsab f'zona residenzjali, u li t-talbiet precedenti tal-applikant kollha gew michuda mill-Awtorita' u li hu jibqa jinjora l-ordnijiet tal-istess Awtorita'.

L-Awtorita' tissottometti li l-attivitá' mitluba mill-applikant mhijiex permessa in linea mal-policy SMHO 02 tal-pjan lokali, li l-hrug tal-permess mitlub isarraf f'precedent mhux mixtieq, li l-istorbju, traffiku u effetti oħrajn sejrín jippregudikaw l-karattru taz-zona, li l-proposta f'dan is-sens tammonta f'bad neighbour development, u li l-modifiki proposti mill-applikant gew prezentati fl-istadju ta' rikonsiderazzjoni u li r-ragunijiet tar-rifjut konnessi ma kwistjonijiet ta' disinn gew skartati u gew limitati għall-principju tal-proposta u l-impatt ta' l-izvilupp fuq l-użi tal-art adjacenti li huma kollha tat-tip residenzjali.

Fil-kors ta' smiegh ta' dan l-appell, gew ipprezentati mill-appellant, apparti l-Affidavit tieghu u ta' martu, dawk tal-girien Peter Paul Agius, u Donald Mario Bezzina, li ddikjaraw li ma joggezzjonawx għall-proposta tal-appellant, billi x-xogħol tieghu ma jikkostitwixxi l-ebda inkonvenjent; Affidavits ikkonfermati fit-3 ta' Ottubru 2007. Fis-seduta tas-7 ta' Novembru 2008, xehed l-Ispettur tal-Pulizija Jesmond Borg li kkonferma li saru diversi rapporti minn George Farrugia, li rrizultawlu bhala infondati, partikolarment dwar l-allegat zejt fit-triq, mill-vetturi, u li diversi girien ma kienux joggezzjonaw għal din l-attivitá'. Irrizulta inoltre, li ttiehdu proceduri kriminali kontra l-appellant fil-Qorti Kriminali tal-Magistrati billi kienet qed issir attività' ta' Mechanic mingħajr licenzja mahruġa mill-Awtorita' kompetenti.

Sar enfasi partikolari mill-appellant, dwar l-kondizzjoni medika tieghu, u ta' membru tal-familja tieghu, kondizzjoni partikolari, li tirrikjedi certu trattament f'diversi hinijiet fl-istess gurnata, u li għalhekk kien kostrett li jahdem mid-dar tieghu.

L-appellant jikkunsidra l-applikazzjoni principalment fil-kuntest tal-htigijiet u l-esigenzi personali tieghu; applikazzjonijiet għall-izvilupp, pero', ma jigux kkunsidrati

skond l-ezigenzi soggettivi tal-appellant; izda billi jistgħu jincidu fuq l-karattru, u l-uzu partikolari fil-vicinanze; jigu determinati skond l-Artikolu 69 tal-Att X ta' l-2010 Kap. 504 cjoe l-plans and policies approvati. Jittiehed kont ukoll, jekk l-Awtorita' jidhrilha rilevanti, ta' konsiderazzjonijiet materjali fosthom dawk ambjentali, estetici u sanitarji.

L-appellant qed jipproponi sanctioning ta' bdil fl-uzu minn ironmongery shop għall-auto mechanic, b'alterazzjonijiet u zidiet fil-basement. Is-sit jinsab f'area residenzjali ta' Haz-Zebbug; ghalehkk l-proposta hi inkontravvenzjoni tal-Policy BEN 1 tal-Pjan ta' Struttura, u ta' TRA 4 minhabba n-nuqqas ta' parking provision.

Il-Policy SMHO 02 ta' Central Malta Local Plan, approvat f'Lulju 2006, telenka l-uzi accettabbli f'areas residenzjali. Dawk li m'humiex accettabbli jinkludi 'carpentry, panel beating, mechanic, mechanical plant servicing, spray painting and bakery'.

Saru diversi tentattivi mill-appellant biex l-ironmongery approvat wara reconsideration fil-permess PA 5940/01, jinbidel f'mechanic; dawn l-applikazzjonijiet gew konsistentement rifjutati.

Bl-applikazzjoni PA 6300/99 talba simili giet michuda mid-DCC fit-22 ta' Marzu 2000. Ma sarx appell minn dan ir-rifjut.

Bl-applikazzjoni PA 1022/01, applikazzjoni ta' change of use għall-hanut għall-bejgh ta' auto parts u għall-maintenance tal-vetturi giet michuda mid-DCC fit-22 ta' Awwissu 2001. Ma sarx appell minn dan ir-rifjut.

Bl-applikazzjoni PA 5295/03 – change of use għal auto electrician giet michuda mid-DCC fis-16 ta' Dicembru 2003; saret reconsideration u r-rifjut gie kkonfermat fit-2 ta' Dicembru 2004.

Billi kien qed isir uzu ta' mechanic bla permess, harget l-Enforcement Notice ECF 37/01; segwita b'direct action fis-26 ta' Frar 2004, billi sar 'breach of the enforcement'.

Il-premess, jikkostitwixxi konferma ulterjuri li din il-proposta ma tistax tigi approvata, l-motivazzjonijiet tar-rifjut huma korretti u jimmeritaw konferma.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichda l-istess, u jikkonferma r-rifjut tal-1 ta' Frar 2007 ghall-applikazzjoni PA 7970/05.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jaghmel apprezzament tal-policy CG07 li ghandha hames rekviziti biex jigi approvat zvilupp class II u billi l-applikant kien jissodisfahom, dan kellu jigi kunsidrat mit-Tribunal. Hu rilevanti li dan mhux kaz ta' mechanic kwalsiasi izda garage business ta' persuna b'dizabilita ghall-skop ta' maintenance ta' vetturi. Fil-fatt il-policy CG07 klawsola 3.3.19 tispecifika li hu ammissibbli garage business u mixed uses skond il-lokalita u l-lokalita li qed jintalab l-izvilupp mhux wiehed minn daww eskluzi bil-policy;

2. Ghalkemm it-Tribunal osserva li jekk jigi permess l-izvilupp ser jigi krejat precedent mhux mixtieq, it-Tribunal naqas li jhares lejn l-izvilupp f'sens ta' gustizzja u precedent ghalkemm il-permess ikun inhareg qabel il-bdil fil-pjan lokali. In oltre gie approvat permess 10/11 fejn gie approvat zvilupp simili ghal persuna b'dizabilita avolja dan kien jinsab f'lokalita li l-policy teskludi ghal ghanijiet ta' zvilupp simili. L-appellant jikkontendi li dan imur kontra l-Kapitolu 413 cioe li persuni b'dizabilita jinghataw opportunitajiet indaqs;

3. It-Tribunal naqas li jikkonsidra li s-sit gia ghandu permess ta' ironmongery u b'hekk argumenti dwar parking u inkonvenjent ghat-traffikar skond policy BEN 1 huma aktar gravi f'kaz ta' ironmongery milli garage limitat kif qed jigi propost u kien anki lest li jaccetta kondizzjoni li l-uzu permess jispicca jekk hu jistrasferixxi r-residenza tieghu li hu parti mis-sit tal-applikazzjoni.



## **L-ewwel aggravju**

Din il-Qorti hi perplessa b'dan l-aggravju ghaliex il-policy CG07 qatt ma tqajmet bhala raguni ghaliex l-izvilupp ghandu jigi permess mill-applikant. Dan l-aggravju qed jitqajjem issa quddiem il-Qorti tal-Appell u din il-Qorti ma ghandhiex jedd tissindaka hi aggravji, li qatt ma tqajmu quddiem it-Tribunal billi s-setgha ta' din il-Qorti hi limitata ghal dak deciz mit-Tribunal mehud in konsiderazzjoni dak mitlub mill-partijiet li jigi kkunsidrat bhala aggravji quddiem l-istess Tribunal.

L-appellant qed jistieden lil Qorti sabiex hi tassumi r-rwol tat-Tribunal biex jaghmel paragon dwar dak li messu applika t-Tribunal qua policies rilevanti ghal kaz in kwistjoni meta din il-kwistjoni specifika cioe l-policy CG07 qatt ma ssemmiet fil-kors kollu tal-appell. Il-partijiet kellhom l-opportunitajiet kollha li jqajmu l-argumenti kollha in sostenn tal-tezi taghom u t-Tribunal ukoll kellu d-dritt li jidhol fi kwistjonijiet ta' policy jew policies applikabbli anki jekk ma jissemmewx mill-partijiet, pero din il-Qorti ma tistax tissostitwixxi ruhha ghat-Tribunal u tiddeciedi hi dwar applikabilita ta' policy li ma ssemmiet fl-ebda hin fil-kors tal-proceduri quddiem it-Tribunal. Anqas hu gust li din il-Qorti terga' tebghat l-atti quddiem it-Tribunal biex jikkunsidra dan l-ilment billi dan l-ilment qatt ma fforma parti mill-argumentazzjonijiet tal-partijiet.

Maghdud dan kollu jinghad illi t-Tribunal ikkunsidra l-aggravji mressqa mill-appellant fl-isfond tar-rifjut tal-Awtorita u kkunsidra illi nonostante l-argumenti tal-appellant fil-mertu, it-Tribunal kellu l-obbligu li jikkunsidra principalment kull zvilupp mill-ottika ta' dak li l-policies kienu jiddettaw u jekk dawn imorru kontra l-izvilupp propost, kellha tigi applikata l-policy nonostante ragunijiet jew esigenze tal-applikant. Fil-fatt il-Qorti tqis li dan ir-ragunament ghandu l-bazi tieghu fl-istess artikolu 69 tal-Kap. 504 li jesigi konformita mal-policies minghajr ma jonqos li jittiehdu in konsiderazzjoni kwistjonijiet ta' sustanza bhal dawk ambjentali, estetici u sanitarji. Kien ghal din ir-raguni illi t-Tribunal ikkunsidra li l-policy SMHO

02 tal-Central Malta Local Plan 2006 teskludi a priori l-izvilupp propost bhala accettabbli f'zona residenzjali kif inhi din, u kwindi in kontravvenzjoni tal-policy BEN 1 tal-Pjan ta' Struttura u TRA 4 minhabba nuqqas ta' parking provision. L-ahhar zewg policies ma kienux ir-ragunijiet principali tar-rifjut izda konferma ulterjuri ta' dak li hi l-ispirtu tal-policy SMHO 02.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

Dan l-aggravju ma hu xejn hlief talba ghall-apprezzament mill-gdid tal-fatti tal-kaz liema fatti gew kunsidrati mit-Tribunal fil-gabra dettaljata tas-sottomissjonijiet kollha li saru mill-partijiet. Pero nonostante l-ilmenti mressqa dwar permess iehor approvat ghal persuna b'dizabilita, il-Qorti tqis illi t-Tribunal ma hux marbut bi precedent, u kull kaz irid jigi kkunsidrat fuq il-mertu tieghu u jekk it-Tribunal kien korrett f'applikazzjoni tal-policies ghal kaz allura l-applikant ma jistax jiccensura l-operat u d-decizjoni tat-Tribunal izda semmai jiccensura l-operat tal-Awtorita jekk din tkun hadet linji differenti ghal kazijiet identici, pero dan mhux il-forum idoneju ghal kwistjonijiet simili.

Ghalkemm mhux strettament mressqa, ghalkemm l-appellant jirrileva illi d-decizjoni kienet tmur kontra l-Kapitolu 413 dwar opportunitajiet indaqs, jigi rilevat illi fl-atti jirrizulta illi l-Awtorita ikkumentat illi l-istess Kummissjoni dwar il-Persuni b'Disabilita kienet iddikjarat li l-pozizzjoni li hadet l-Awtorita ghal dan l-izvilupp ma kienx jikkostitwixxi diskriminazzjoni a bazi tal-ligi u in oltre l-Qorti izzid illi ghalkemm tissimpatizza u tikkompalixxi lil persuna involuta f'dan l-appell pero dan wahdu ma jistax jintuza biex tigi injorata, jew mghawwga l-ligi la darba l-kwistjoni tkun ingiebet a konjizzjoni tal-Awtoritajiet biex jiddeciedi dwarha.

Dan l-aggravju wkoll qed jigi michud.

### **It-tielet aggravju**

Kopja Informali ta' Sentenza

Dan l-aggravju ma jimmeritax konsiderazzjoni peress li ma hemm ebda punt ta' ligi involut izda talba biex din il-Qorti tirrevedi l-fatti li mhux permess.

Ghalhekk dan l-aggravju wkoll qed jigi michud.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Saviour Camilleri u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013. Bl-ispejjez kontra l-appellant.

**< Sentenza Finali >**

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