



**QORTI TA' L-APPELL
ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tas-26 ta' Marzu, 2014
Appell Civili Numru. 36/2013

June **Laferla**

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' June Laferla tal-21 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 li cahdet l-applikazzjoni PA 3047/09 'proposal penthouse over approved permission PA 2419/07';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tat-8 ta' Lulju 2009 – Full Development Permission – PA/3047/09 fejn l-appellanti, f' 'The Hollies', Rabat Road c/w Triq il-Qroll, Xlendi, Ghawdex, talbet:

“ proposed penthouse over approved permission PA 2419/07 ”

Permezz ta' rifjut mahrug fis-7 t'Ottubru 2010 l-Kummissjoni dwar il-Kontroll tal-Izvilupp cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"The proposed development is unacceptable since it does not comply with Policies 10.6 and 11.7 of Development Control Policy & Design Guidance 2007, in that the penthouse is not setback by at least 4.25 metres from Triq il-Qroll, and the cantilever at roof level appears too flimsy and it is not permissible in setbacks less than 4.25 metres."

Permezz t'appell il-Perit Edwin Mintoff ressaq l-aggravji tal-appellanti kif gej:
"During the sitting, I would like to submit cases as to where the DCC approved similar applications to ours due to the fact that the site is restricted in nature. These approvals were for applications where the recess from the façade was not 4.25m but less.

Moreover one of these sites lies in the immediate vicinity of that applicant."

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

"...

5.2.1 The appellant submitted no references of permits granting similar requests. The Authority maintains that what the appellant is requesting is not according to policy, as elucidated further in the subsequent paragraph, and therefore it is not acceptable.

5.2.2 Policy 10.6(A)(c) of DC2007 requires that when a penthouse has a frontage on two streets, it shall be set back by at least 4.25 metres from each frontage. The proposed penthouse is only set back from the side street i.e Triq il-Qroll by 2.5 metres from the facade.

Condition 3 in outline permission PA2419/07 clearly identified that "the penthouse shall be setback from Triq ir-Rabat and Triq il-Qroll by 4.25 metres; and by 1.5 metres from the back elevation on the third floor ... "

Policy 10.6(C) permits penthouses to be recessed by 2.5m when they are at a corner (which is the case in this appeal) and restricted. By 'restricted' it is construed that if a 4.25m setback is respected throughout there would not be enough space for a 45sq.m apartment.

The roof area is large enough to permit the LHS penthouse (when viewed from Triq ir-Rabat), which has been approved by way of PA3005/09, to be developed larger and with a different layout providing two 1-bedroom penthouses in the processes whilst respecting the 4.25m setback requirements from both streets. There is a total roof space of 108sq.m that may be developed; more than enough space to construct two 1-bedroom penthouses with the necessary setbacks and without creating unnecessary negative visual impacts. Therefore it is clear that the site is not restricted at all, especially because the proposed penthouse forms part of a larger block which has a frontage of 13 metres.

5.2.3 The cantilever at the edge of the proposed penthouse along the restricted setback is not permissible according to Policy 10.6C which states 'there are no canopies within the setback'."

L-Avukat Maria Micallef ressqet is-sottomissjonijiet taghha ghall-appellanti kif gej:

“ ...

Policy 10.6(A)(c) requires that when a penthouse has a frontage on two streets, it shall be set back by at least 4.25 meters from each frontage. In its report, the MEPA noted that such policy would not apply in the event that the proposed site is to be considered as a 'restricted site', in which case it is within Policy 10.6(C) to have a penthouse recessed by 2.5 meters. The MEPA also noted that "by 'restricted' it is construed that if a 4.25m setback is respected throughout there would not be enough space for a 45sq.m apartment". Notwithstanding having noted that, should our client respect Policy 10.6(A)(c), the proposed penthouse would not meet the minimum area of 45 square meters, instead of applying such policy, the MEPA disregarded same and argued that the proposed site did not fall within the scope of Policy 10.6 (C) in view that "the roof area is large enough to permit the LHS penthouse

which has been approved by way of PA3005/09, to be developed larger and with a different layout providing two 1-bedroom penthouses in the processes whilst respecting the 4.25m setback requirements from both streets".

The MEPA has failed to appreciate that our client does not own such other property approved by way of PA 3005/09. The MEPA has wrongly considered that the site over which the penthouse is being proposed is not a restricted site "because the proposed penthouse forms part of a larger block which has a frontage of 13 meters" and consequently decided not to apply Policy 10.6(C). Our client is the owner of the site over which the penthouse has been proposed and is not the owner of the "block which has a frontage of 13 meters" as mentioned by MEPA in their report, which property is owned by third parties. It is clear that the proposed penthouse is a restricted site as defined above and Policy 10.6(C) should be applied.

It is also pertinent to note that the DCC has approved and granted permission to similar applications, as can be seen hereunder.

Similar Applications

PA 04493/07 - penthouse proposed was set back from the front elevations by only 2.5 meters. The DCC approved such proposal and granted permission on the basis that such setback was "in accordance with Policy 10.6 of DC 2007 in that if a setback of 4.25 meters were imposed, the penthouse would be less than 45 sq. m in floors pace. "

PA 00811/01 - penthouse built with a 2.5 meters setback has been sanctioned.

DN 00183/09 - rooms at roof level approved with a 2.5 meter frontage recess.

In view of the above outlined considerations it is clear that our client's application had to be favourably considered and that the DCC had to

proceed with granting the relative permission. For the abovementioned reasons, our client kindly requests the Environment and Planning Review Tribunal to reconsider the decision of the DCC and to proceed with granting the permit.”

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

“1. The appellant submitted a reply on 6th June 2011 to the Authority's initial report to the Tribunal.

2. The appellant is arguing that she is willing to remove the cantilever along the penthouse edge and thus the reason for refusal based on Policy 11.7 of DC2007 is not valid. The appellant is also arguing that the site is restricted because she is not the owner of the LHS half of the roof of the building block and the area of the RHS half of the roof space that she owns is not large enough to permit a penthouse of at least 45sq.m with 4.25m setback on both sides. A number of permits have been quoted by the appellant stating that these granted a similar development to the one she is requesting.

3. The Authority maintains that the appellant cannot simply state that she is willing to modify the proposal and pretend that the relative reason for refusal is discarded. The reasons for refusal reflect the proposal description and the official drawings. The appellant had every chance to provide revised drawings during the processing of the application to amend this deficiency but failed to do so. Moreover no such drawings are permitted at this stage. Therefore the reason for refusal based on Policy 11.7 of DC2007 (design of cantilevers) remain valid.

Also, the Authority already explained in the initial report to the Tribunal that the concept of restricted site for penthouses is not based on ownership status but on the extent of the underlying building block. If the underlying building block in its entirety is large enough to permit one penthouse of at least 45sq.m with setback of 4.25m then it is not considered as restricted.

It makes no planning sense in stating that since the appellant does not own the entire roof space of the building block than the area that is owned is to be considered as restricted.

Should this be the case it would give rise to a situation where proposals for developing apartment blocks at a corner would be limited to the upper floor levels. Subsequently two separate applications to develop a penthouse on different part of the roof would be submitted (as in this case) with the intention of having the second penthouse be declared as restricted. This is unacceptable because first it results in a piecemeal approach which is never good practice in planning development and second it would defeat the very purpose in having a policy that requires penthouses receded to a substantial amount in order to limit their visibility and end up with penthouses at every corner built almost along the building line.

The Authority notes that two of the permits quoted by the appellant - PA4493/07 and DN 183/09 - regard corner building blocks with a very

narrow frontage and thus qualified as restricted sites, contrary to the site in this appeal which has a wide frontage along both streets.

The other permit - PA 811/01 - referred to by the appellant belongs to a different type of policy context. The building block in PA811/01 is located at a corner, where the height limitation is different from one street to another; i.e. the height limitation along one street is higher than that of the other street. In this case the policy requirements at the time (policy 2.4 of the OC2000) required that in this case, the penthouse is only receded by 2.5m from the main building alignment along the lower street (as it would form a full floor from the other street). It is important to add, that today a different policy regime applies in such cases (policy 2.5 of OC2007) which requires much further staggering and the setbacks are much more onerous.”

Permezz ta' ittra l-Avukat Deborah Chappell ghall-appellanti ressqet il-kummenti taghha kif gej:

“ ...

In the aforementioned case officer's report it has been stated that (in relation to the removal of the cantilever) ' ... the appellant cannot simply state that she is willing to modify the proposal and pretend that the relative reason for refusal is discarded' In this regard the Tribunal should appreciate that the removal of such cantilever at the edge of the proposed penthouse was proposed by the applicant's architect during the processing of the application PA 3047/09 and also at reconsideration stage, copies of which are hereby attached for ease of reference and marked 'Doc A' and 'Doc B'. It is therefore evidently clear that the removal of the said cantilever was not raised at appeal's stage as erroneously stated in the case officer's second statement. Consequently the case officer's second statement is wrong in saying that 'The appellant had every chance to provide revised drawings during the processing of the application to amend this deficiency but failed to do so.' For these -reasons it is evident that the proposed development does not run counter to Policy 11.7 of the Development Control Policy & Design Guidance 2007.

The case officer's second statement delves also into the interpretation granted to Policy 10.6 of the Development Control Policy & Design Guidance 2007 which was also a ground for the appellant's refusal of his application for development.

The case officer states that '... the concept of restricted site for penthouses is not based on ownership status but on the extent of the underlying building block. ' and that 'It makes no planning sense in stating that since the appellant does not own the entire roof space of the building block than the area that is owned is to be considered as restricted'

However the case officer's statements make no logical sense since the appellant cannot propose to develop over the property owned by third parties. The reasoning given in the case officer's second statement is unreasonable in that it is trying to insinuate that the owners of the airspace, whereby the construction of the penthouse is being proposed, should have a

state of forced co-ownership in that the whole surface area of the entire roof space ought to be evaluated as a whole and not in accordance with each singular part owned by each owner.

As a matter of fact the Policy CDC 2007) makes no reference to any of the concepts quoted by the case officer in his second statement. The interpretation granted to a 'restricted penthouse' is that 'if a 4.25m setback is respected throughout there would not be enough space for a 45 sq.m apartment' the penthouse should be considered a restricted penthouse; a definition which clearly applies to the applicant's case at hand.

The case officer makes reference to the permits previously quoted by the appellant in the initial submissions particularly PA4493/07 where the case officer stated that the site qualified as a restricted site due to its 'very narrow frontage'. However the reasoning given in the case officer's report of the said application (PA4493/07) makes no reference to such and states the following;

'Penthouses are permitted in this area as per Policy 10.6 of DC 2007. Drawing 1 D shows that the proposed penthouse is setback from the front elevations by only 2.5 metres. However, this is in accordance with Policy 10.6 of DC 2007 in that if a setback of 4.25 metres were imposed, the penthouse would be less than 45m² in floorspace.'

Certainly a penthouse ought to be considered as 'restricted' when evaluated in respect to the applicant's air space on which such development should take place and not on the basis of the entire block including third parties airspaces. If the latter was the case then there would be no such thing as a restricted penthouse.

The case officer's second statement states that 'Subsequently two separate applications to develop a penthouse on different part of the roof would be submitted (as in this case) with the intention of having the second penthouse be declared as restricted' However, without prejudice to the above, this is certainly not the appellant's case since at the time when the building block was erected, that is after original permit was issued in 1986, penthouses were still not being catered for in terms of Policy 10.6 of DC 2007.

Conclusively the applicant's proposal to have the penthouse set back by 2.5 metres is in fact in line with the requirements stated in Policy 10.6 c) since the penthouse proposed by the appellant is a 'restricted' penthouse in nature also in light of the fact that in case that the 4.5 metre set back is respected in this development the proposed penthouse will not meet the minimum area of 45 square metres."

Permezz tat-Tielet statement taghha l-Awtorita' rrelevantat:

" ...

The appellant is submitting further arguments to justify the that the proposed development is in line with policy 10.6 of DC 2007 (penthouses) by addressing that the penthouse should be allowed as a 'restricted penthouse'

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since the site has a very narrow frontage. Notwithstanding this and as explained in further detail in para. 5.2.2 of the initial report and para. 2 of the second statement; the penthouse can only be considered as 'restricted' if an area of 45m² is not allowable once the level provides 4.25m setbacks. Since the site is large enough to permit such setback whilst retaining an area of 45m² (equivalent to permissible habitable area for one-bedroom in accordance with policy 2.1 of DC 2007) there is no planning justification to necessitate a setback of only 2.5m.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba biex jinbena one bedroomed penthouse fuq parti minn third floor ta' block bini residenzjali bill-permess, PA 2419/07, li jinsab f'kantuniera bejn zewg triqat u li ghadu ma' inbeniex.

Is-sit mertu ta' dan l-appell jinsab gewwa z-zona tal-izvilupp f' area li hija ikkaratterizzata minn blokki residenzjali, fl-indirizz 'The Hollies', Rabat Road c/w Triq il-Qroll, Xlendi, Ghawdex.

Din l-applikazzjoni giet rifjutata peress li l-izvilupp propost imur kontra l-policies 10.6 u 11.7 tal-Development Control Policy & Design Guidance 2007 peress li l-penthouse mhijiex irtirata b'minimu ta' 4.25 m minn Triq il-Qrollu li l-“cantilever at roof level appears too flimsy and it is not permissible in setbacks less than 4.25 metres.”

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

L-appellanti tissottometti li:

- Kif gja rilevat il-cantilever jista jitnehha;
- Jekk l-appellanti tonora l-policy 10.6(A)(c), il-penthouse ma tkunx tal-qies minimu ta' 45 m.k.;
- L-Awtorita' naqset milli tikkunsidra li l-penthouse sejra tinbena fuq propjeta' tal-istess applikanti; u
- Id-DCC harget permessi simili ghal dak mitlub fosthom PA 04493/07, PA 00811/01 u DN 00183/09.

L-Awtorita' tissottometti li:

- B' din il-proposta l-penthouse tkun irtirata biss minn triq wahda;
- Il-penthouse trid tkun irtirata b'4.25 m fuq Triq ir-Rabat u kif ukoll fuq Triq il-Qroll;
- Is-sit ma' jistax jitqies bhala wiehed restritt in linea mal-policy 10.6(C) partikolarment peress li l-penthouse proposta tiffirma parti minn block ikbar b'faccata ta' 13 il-metru;
- Il-permessi li-jsemmi l-appellant bhala ezempji ta' kazi simili li nghataw fil-passat mhumix l-istess bhal kas in ezami f' termini ta' ippjanar; u
- Il-cantilever mhuwiex permissibbli in linea mal-policy relattiva li tipprovdi li 'there are no canopies within the setback'.

Kif jirrizulta mill-premess, l-appellanti qed tikkontendi li peress li hija s-sid ta' appartament wiehed fuq it-third floor, hija qed tapplika biss fuq dik il-parti tal-bejt ezistenti li tahtha jinsab l-appartament taghha u mhux il-bejt kollu.

Ghalhekk l-Awtorita' ghandha tikkunsidra biss il-footprint ta' dan l-appartament u ghalhekk is-sit ghandu jigi kkunsidrat bhala wiehed ristrett u ghalhekk ghandhom japplikaw il-polices relattivi speċjalment il-policy 10.6 C tal- Development Control Policy & Design Guidance 2007.

Il-punt li jrid jigi deciz minn dan it-Tribunal f'dan l-appell huwa jekk il-policy 10.6 C tal-Development Control Policy & Design Guidance 2007, tistax tigi applikata ghas-sit li fuqu qed issir din l-applikazzjoni li tkopri parti (sub-set) mis-sit kollu kopert mill-permess PA 2419/07.

F' dan is-sens hemm zewg possibilitajiet dwar liema ghandu jkun is-sit li jrid jigi kkunsidrat ghal fini tal-applikabilita' tal-policy 10.6 C; jew dak indikat fis-site plan li kienet tapplika ghal-permess PA 2419/07 jew inkella dik il-parti ta' dan is-sit (sub-set) li tkopri biss il-footprint tal-appartament li ghandha l-appellanti fil-block appartamenti kopert bil-permess PA 2419/07.

L-ewwel haga li ghandha tigi kkonstatata hi li in generali d-decizjoni dwar jekk ghandhux jigi approvat il-bini ta' penthouse f' kazi meta jezisti bini bil-permess li huwa fuq tliet-sulari jew izjed, f' kull kas, hija dejjem fid-diskrizzjoni tal-Awtorita' u ghalhekk l-approvazzjoni mhix awtomatika.

It-tieni punt huwa li jekk l-applikazzjoni ghal penthouse issir wara li jkun hareg il-permess originali, il-konsiderazzjonijiet f' termini ta' ppjanar dwar jekk il-penthouse ghandhiex tinghata jew le jsiru a bazi ta' permess ezistenti u mhux ta' parti minn dan il-permess u dan ghal ragunijiet ovvjji. F' dan il-kas il-permess huwa dak tal-block ta' appartamenti kopert bil-permess, PA 2419/07. Ghalhekk, biex ma' jinbidilx il-kuntest f' termini ta' ppjanar, is-sit applikabbli ghandu jkun dak kopert mill-permess u mhux parti minnu.

Kieku ma' jsirx hekk, u kull sid ta' appartament fl-ghola sular ta' kull block ta' appartamenti li jkun ukoll is-sit tal-arja ta' fuqu, jkun jista jaghmel l-istess argument ta' restricted site u b'dan il-mod, il-penthouse level isir livell bhall-ohrajn, jigifieri bla set-back fuq kull naha fejn il-block jiffacca triq, li jfisser li l-kuncett ta' penthouse f'termini ta' ippjanar f' dawn il-kazi jintilef. Il-konkluzjoni f' termini ta' ippjanar li issegwi logikament hija li jekk jigu approvati, dan it-tip ta' 'penthouses' jkunu dejjem jidhru mit-triq, li jmur kontra il-kuncett fundamentali ta' penthouse level.

Huwa car ghalhekk li waqt li f' termini ta' ownership il-block ta' appartamenti inqasam bejn numru ta' sidien, il-kuncetti applikabbli ta' ippjanar jibqghu dawk li kienu applikabbli meta hareg il-permess originali li kien ikopri il-block kollu.

Dwar il-permessi li kkwota l-appellant, l-Awtorita' taghti spjegazzjoni konvincenti ghaliex dawn m' humiex simili ghal kas in ezami f' termini ta' ippjanar.

Dwar il-parti l-ohra tar-reason for refusal, jidher li l-appellanti hija lesta li tirrinunzja ghall-pizz u ghalhekk din l-issue m'hemmx bzonn li tigi ttratat f' din id-decizjoni.

Kopja Informali ta' Sentenza

In-konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li l-applikazzjoni in ezami tikser il-policies 10.6 u 11.7 tad-Development Control Policy and Design Guidance, 2007, dan l-appell ma' jirrizultax fondat u ghalhekk ma' jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut tal-applikazzjoni PA/3047/09, " proposed penthouse over approved permission PA 2419/07 ", tas-7 t'Ottubru 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal zbalja meta qies illi sit ta' zvilupp ghandu jinqara bhala s-sit originali li fuqu tkun saret l-applikazzjoni originali peress illi t-Tribunal kellu jqis is-sit bhala dak li fuqu qed issir l-applikazzjoni odjerna u jigu applikati l-policies ghal dak is-sit;
2. It-Tribunal naqas li jikkonsidra b'mod serju l-aggravju ta' trattament ugwali f'cirkostanzi simili.

L-ewwel aggravju

Din il-Qorti ma taqbilx mal-appellant mhux ghax l-aggravju hu maghmul b'mod zbaljat izda peress illi d-decizjoni tat-Tribunal ma kinitix ibbazata fuq is-sit originali kif qed issostni l-appellant izda kienet ibbazata fuq il-permess PA 2419/07 li permezz tieghu kienet qed issir l-applikazzjoni odjerna. Il-policy in kwistjoni li tat lok ghall-aggravju hu s-segwenti:

Policy 10.6: Penthouses

A. Except in UCAs penthouses will be permitted on the roof of buildings provided that:

(c) the penthouse should be set back at least 4.25m from the façade of the building and set back 1.5m from the back of the building, except that where the site is a corner site or does not include a back yard, the penthouse should be set back 4.25m from the façade of the building only. When the penthouse is to be erected on the roof of a building which has a frontage on 2 or more streets, the penthouse shall be set back at least 4.25m from each frontage. The penthouse shall also be setback 4.25m from the internal facades in the case of internal developments;

C. On restricted corner sites penthouses which do not meet criterion (c) in A above may be permitted provided that special urban design treatment is proposed; the penthouse is set back by at least 2.5m and there are no canopies within the setback.

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It-Tribunal iddecideda illi l-applikazzjoni odjerna kellha tittiehed fil-perspettiva u intenzjoni wara l-hrug tal-permess originali li kien jirrigwarda blokk ta' appartamenti bl-arja fuqhom, u mhux dik li seta' segwa l-hrug tal-permess cioe l-bejgh lil terzi tal-appartamenti bil-parti tal-arja sovrastanti tal-istess appartamenti tinbiegh mal-istess appartement. Dak li effettivament ghamel it-Tribunal hu li kkunsidra l-policy rigwardanti l-penthouses cioe policy (10.6(A)(C) tad-DC 2007 a bazi tal-permess mahrug ghall-blokk in kwistjoni approvat fil-permess originali. Dan ma hu xejn ghajr apprezzament tekniku ta' fatturi ta' planning meta johrog permess ghal zvilupp ta' blokk ta' appartamenti u dak li jista' jsir fuq l-arja teighu li jekk wiehed irid ikun precis lanqas hu punt ta' ligi li minnu jista' jsir appell.

It-Tribunal ikkunsidra b'mod tekniku u dettaljat l-aspett ta' spezzettar ta' arja ta' blokka bini biex jigi skonfitt l-iskop tal-policy li jinzammu setbacks sodisfacenti biex l-izvilupp ma jidhrix mit-triq. La darba l-blokka originali kolpita bil-permess inkluz ghalhekk l-arja kienet tali li setghet giet zviluppata in linea mal-policy 10.6(A)(C) tad-DC 2007 cioe setback ta' 4.25 metri meta l-binja taffaccja zewg toroq li ghandha l-kobor mehtieg ma kienx hemm raguni mill-punto di vista ta' planning li tintuza l-eccezzjoni ghar-regola ghax l-arja giet spezzettata bejn diversi sidien u l-parti in kwistjoni mhix tali li tista' ssegwi r-regola tal-policy izda l-eccezzjoni ghaliha. Kull zvilupp wara l-hrug tal-permess originali skond it-Tribunal kellu jibqa' jigi segwit f'applikazzjonijiet futuri, ghal zviluppi gia koperti bil-permess originali. Jista' jkun wiehed ma jaqbilx ma kif gie interpretat dan l-aspett ta' planning pero mhux kaz fejn gie applikat hazin il-policy izda biss wahda ta' divergenza fuq interpretazjoni wara l-iskop u spirtu tal-policy.

L-aggravju tal-appellant ghalhekk mhux korrett u qed jigi michud.

It-tieni aggravju

L-appellant hu korrett li l-aggravju tieghu gie trattat sommarjament mit-Tribunal meta ghamel tieghu r-ragunijiet tal-Awtorita li ma kienx hemm similitudni bejn il-premessi kwotati mill-appellant u dan in kwistjoni. Din il-Qorti ser taghti s-sanzjoni ta' revoka tad-decizjoni ghal raguni illi l-Awtorita spjegat id-differenzi li kien hemm fil-permessi

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kwotati mill-appellant ma' dak prezenti fejn irrizulta li kienu permessi in linea mal-eccezzjoni ghal policy dwar setback mill-faccata tal-blokka. Wara din l-ispjegazzjoni, l-appellant ressaq argument kuntrarju ghal wiehed mill-istess premessi li jittfa' f'dubju r-ragunament tal-Awtorita. It-Tribunal kellu ghalhekk jidhol fil-mertu tal-aggravju u jispjega b'mod konkret ghalfejn dan l-aggravju ma setghax jintlaqa'. Il-fatt biss li jghid li l-Awtorita tat spjegazzjoni konvincenti ghalfejn il-premessi mhux simili mhux bizzzejjed speċjalment ikkonsidrat dak li ntqal speċifikament rigward permess PA 4493/07 li kien jitlob mit-Tribunal li jiddeciedi ghaliex l-argument tal-appellant kien fallaci.

Ghalhekk dan l-aggravju qed jigi milqugh fis-sens illi t-Tribunal ma kkunsidrax b'mod sodisfacenti u konvincenti l-aggravju tal-appellant.

Decide

Ghalhekk in linea ma' dak deciz, il-Qorti qed tilqa' l-appell ta' June Laferla u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013, u turrinvija l-atti lura lit-Tribunal biex jerga' jisma' l-appell mill-gdid. Spejjez jibghu bla taxxa.

< Sentenza Finali >

-----TMIEM-----