



MALTA

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

Seduta tad-9 ta' April, 2014  
Appell Civili Numru. 19/2012

**Patrick Rausi ghan-nom ta' RMF Ltd  
gja RMF Towing & Services Ltd**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' RMF Ltd tal-24 ta' Frar 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012 li cahad PA 3226/09 'miscellaneous alterations to approved plans and sanctioning of other alterations in existing office buildings and change of use of penthouse and third floor level from office to tuition centre';

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:

A. Il-Kummissjoni ta' l-Ambjent u l-Ippjanar, fl-4 ta' Marzu 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 3226/09 "RMF Towing & Services Ltd, Telghat Gwardamanga, Pieta': Miscellaneous alterations to

approved plans and sanctioning of other alterations in existing office building, and change of use of penthouse and third floor level from office to tuition centre.”

Iz-zewg ragunijiet ghar-rifjut kienu s-segwenti:

“1. The proposed change of use from office to tuition centre 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 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 proposal runs counter to Structure Plan policy TRA 4, MEPA Circular 3/93 and the car parking standards set out in Table A2.5 in the Structure Plan Explanatory Memorandum and that it fails to provide the required car parking spaces. It will give rise to unacceptable additional on-street car parking which would not be in the interest of the amenity of the area and which would exacerbate existing problems of congestion, potential highway danger and vehicular and pedestrian conflict.”

B. In-nota tal-Perit Paul Camilleri ghall-Appellant nomine, ipprezentata fil-11 ta' Marzu 2011, senjatament il-punti segwenti:

“The issue of [recte with] this particular area/zone has been extensively tackled during the processing of the previous permit PA 3205/07 when the change of use of two maisonettes into offices and construction of a mezzanine floor, three full floors and a penthouse floor, all as offices was granted. [sic.] The issue of residential intensity of the area was carefully looked into and MEPA accepted the fact that effectively the area is not a residential area, despite it being designated as such in the Local Plan. It is pertinent to point out that adjacent to this building is the ambulance depot, opposite is the morgue of St. Luke's Hospital, as well as the RMF garage with an overlying shirt factory which has now been converted into a dance school (for adults) by virtue of a very recent permit, PA 4807/09 (applicant Mrs. Theresa Stafrace).

[The parking] issue was addressed by the Planning Directorate during the process of the application and in the DPA Report. Since MEPA's inception the car parking requirements for such tuition centres (language schools, secretarial schools, etc.) has been the same as that which was interpreted by the Planning Directorate in this application. As such the EPC's different interpretation of required car parking standards is in conflict with a long list of permits issued by various DCC and MEPA boards over a long number of years; and this with no change in policy since then.

It is pertinent to point out that prior to the submission of this application the undersigned had pre-consultation meetings with the Planning Directorate to ensure that this change of use could be approved; and in fact, as attested by

## Kopja Informali ta' Sentenza

the DPA report, the Planning Directorate did not have any concern whatsoever about such a change of use.”

C. In-nota risposta ta' Mario Scicluna ghall-Awtorita', ipprezentata fl-20 ta' Gunju 2011, inter alia il-punti segwenti:

“5.1.8 The ... decision by the EPC was justified since this application relates to a change of use from an approved office ... The new area proposed for tuition purposes amount to a total of circa 375 sq.m. Such an extent of tuition space would inevitably attract a substantial amount of adult students which ... is considered to be of a greater impact than regular employees working in the already approved offices [thereby creating] ... additional traffic, parking and other impacts on this area which is designated by the local plan as a Residential Area.

5.1.9 Reference is made to Blue 14 in file which refers to letter from the Ministry of Education dated 17th November 2009 and which stated that the standard size of classrooms is to be 64 sq.m. and are to accommodate more than 30 pupils. This clearly shows that a class of 64sq.m. can accommodate at least 30 pupils and when one considers that the total tuition space is proposed to be 375sq.m., one can understand the EPC's concern that such an intense tuition use would cause undesirable impact to the Residential designation of this area. Furthermore, ... whilst the top floors would intensify their commercial use, no proposal is being forwarded to address the fact that the basement garage floor as approved in previous permit, had only provided for 8 unobstructed car spaces. On this account also, reason for refusal number 2 is fully justified.”

D. In-nota ta' sottomissjonijiet tal-Perit Paul Camilleri ghall-Appellant nomine, ipprezentata fit-22 ta' Gunju 2011, precizament il-punt segwenti:

“I refer to the Ministry of Education's letter of the 17th November 2009 (blue 14 in file) where it is stated that the standard size of classrooms assessed at 64 sq.metres should not accommodate more than 30 pupils. The EPC, in my opinion, erroneously adopted this proportion of student/area ratio and extended it to the area of the whole facility. This is erroneous, insofar as if such a direction has to be adopted, i.e. that the maximum theoretical occupancy is to be adopted, then the parking requirement for any development would be prohibitive. For example, for hotels the provision is of one space per two rooms; for three bedroom apartments it is either one car or two car spaces, depending on the area but not six spaces for the full occupancy of the flat. This reasoning has been adopted by the Planning Directorate since MEPA's inception; as the DPA report attests. This line of argumentation is further borne out by the fact that this gross 375 sq.metres of premises would require around 2300 sq.metres of parking area, if EPC's direction is to be followed.”

E. In-nota second statement ta' Mario Scicluna ghall-Awtorita', ipprezentata fl-20 ta' Lulju 2011, senjatament il-punti segwenti:

“The submitted plans show that the ‘Tuition’ spaces area large, open space areas (plan Red 41c refers) so as to accommodate a large number of students which would otherwise not have been possible if smaller rooms were proposed.

Appellant chose to cite residential occupancy as an example, but the same argument could also be used for, example, residential apartments which contain, one – two – or three bedroom flats and penthouses. The implementation of the necessary parking provision is always calculated on the maximum potential of (in this case bedrooms) so that a three bedroom flat in the Sliema or St. Julians Area, 2 spaces are necessary. Thus, applicants cannot argue that although the plans show a three bedroom apartment, only one bedroom will be used and hence the parking provision should be calculated at a lesser rate. ... if a permit shows three bedrooms, then, all three bedrooms could be used for such a purpose and hence the maximum parking provision is calculated. The same applies to this appeal in which the total ‘tuition’ area could be used (if a permit is issued as requested) for that use and hence, in the assessment and permitting process, the maximum potential (number of students) has to be used in the calculation of the necessary parking provision.

Re this notion, the Tribunal is invited to make reference to EPC minute 49 and minute 55 in which the EPC clarified the parking requirements for the proposed use.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex: jigu sanzjonati tibdiliet f' bini; isiru xi modifiki zghar fil-pjanti approvati b' permess tal-izvilupp; kif ukoll sabiex it-tielet sular u l-livell tal-penthouse jinqalbu minn ufficini ghall-centru ta' taghlim (tuition centre).

Il-font jinsab mibni fuq erba' livelli fiz-zona tal-izvilupp tal-Pieta', f' arja li sserve ta' buffer zone ghal-bini (iehor) skedat, u fejn minhabba ragunijiet ta' telekomunikazzjoni (cjoe', Telemalta PBS constraint no. 12, tal-1996), kwalsiasi zvilupp ma jistax jissupera t-tmax il-metru gholi.

Is-sit hu kopert minn hames permessi ghall-izvilupp: PA 2980/95, PA 2893/97, PA 3970/02, PA 5353/05 u PA 3205/07; rispettivament ghal-estensjoni minn garage kummercjali ghal-showroom; addizjonijiet ulterjuri ghall-istess permess; outline permit segwit minn full permit sabiex maisonette fl-ewwel sular jinqaleb f' ufficini u jinbnew zewg sulari sovrastanti; u fl-ahharnett ghall-bini ta' aktar ufficini fil-livell tal-penthouse.

L-argumenti kollha mressqa mill-Awtorita' jistrieu fuq il-fatt li il-proposta in ezami ser tiggenera impatt ta' traffiku ulterjuri. Iz-zewg partijiet pero', jaqblu li anke jekk skond il-Pjan Lokali iz-zona hija ndikata ghall-uzu residenzjali, jeziti numru kunsiderevoli ta' commitments ta' natura kummercjali – punt li anke l-Awtorita' qablet fuqu, tant li ir-rapport tad-Direttorat fil-fazi tar-rikonsiderazzjoni (blue 23 fil-file PA3205/07), jghid hekk:

“The Directorate notes that the revised drawings addressed the second reason for refusal [i.e. setback 1.5m from the back of building], however the proposal still runs counter to the Local Plan’s designation for the area”.

Nonostante dan, il-Kummissjoni ghal-Kontrol tal-Izvilupp, approvat il-permess “4-0 in view of existing commitments in same block”. (blue 29 fil-file PA3205/07)

L-Appellant nomine fil-fatt jargumenta abbazi ta' dawn l-istess commitments, kif ukoll b' il-mod li l-Awtorita' waslet ghall-konkluzzjoni li din il-proposta' setghet tiggenera aktar traffiku. Jispjega li ghakemm tkopri spazji kunsiderevoli, t-tuition centre fil-fatt mhix ser tiggenera daqs tant traffiku daqs kemm wiehed jahseb. Igib bhala ezempju dak tal-parking generat minn residenzi u lukandi – li l-Awtorita' qatt ma tikkunsidra dawn bhallikieku il-kmamr tas-sodda ghandhom full occupancy; ghax kieku is-siti jridu jipprovdu numru ezorbitanti ta' parking spaces. Ghalhekk, skond l-Appellant nomine, l-Awtorita' kellha tkun aktar kunsiderevoli fil-kalkoli taghha tal-bzonnijiet ta' parkegg li din il-proposta tista' tiggenera.

Kif diga' rilevat supra, il-punt ta' commitments fiz-zona, mhux qed jigi kkontestat mill-Awtorita, u ghalhekk, jekk ghall-grazzja tal-argument jigi sorvolat l-ostakolu li dan it-Tribunal ma jistax jaqbel ma argument bhal dan (cjoe', li galadarba hemm commitments fl-arja allura l-uzu residenzjali kif indikat mill-Pjan Lokali jista' jigi injorat); jibqa' l-punt li dan l-istess Tribunal, lanqas ma jista' jaqbad u jiddeciedi kuntrarju ghall-Pjan Lokali – anke jekk fic-cirkostanzi, l-istat ta' fatt jindika palesament l-oppoist ta' dak li hu mixtieq mill-istess Pjan Lokali.

L-ammissjoni u l-argument tal-Awtorita' li l-arja fil-verita m' ghandix uzu strettamanet residenzjali hi asserzjoni nfondata ghax kif diga' gie muri permezz ta' numru ta' decizjonijiet moghtijja mill-Bords ta' l-Appell dwar l-ippjanar diversament komposti (u li pprecedew lil dan it-Tribunal), u sahansitra dawk moghtijja minn dan l-istess Tribunal – johrog car li kul meta l-Awtorita' hasset il-bzonn li trazzan jew tillimita zvilupp inkompattibli ma xi zona, kienet tnieghdi Pjan Lokali propju sabiex trazzan dan it-tip ta' zvilupp – u mhux il-kuntrarju.

Ghalhekk, kull meta l-partijiet appellati argumentaw fir-rigward ta' commitments fl-arja, l-Awtorita' kienet dejjem pronta li tirribatti dawk l-argumenti billi tressaq provi li dawk l-istess commitments huma r-rizultat ta' regime t' ippjanar precedenti - u li sahansitra kienu ttiehdu in kunsiderazzjopni meta tfassal il-Pjan Lokali, u li kien propju ghalhekk li ma jistax jigi permess zvilupp simili w ulterjuri.

F' ic-cirkostanzi jidher li bhallikienku illum l-Awtorita' intebhet bl-inkonsistenza taghha fl-ghotja tal-permessi ghall-izvilupp precedenti (cjoe', PA 3205/07 ghall-ufficini) u illum qeda thalli f' idejn dan it-Tribunal sabiex jirregola dak li suppost kienet irregolat hi meta minflok accettat tohrog permess li jmur kontra l-Pjan Lokali.

Fil-fatt, dan it-tribunal hu tal-fehma kkunsidrata li l-Kummissjoni ta' l-Ambjent u l-Ippjanar kien korrett meta hasset il-htiega li zvilupp li jista' jikkawza mpatt addizzjonali (cjoe', kemm min aspekk ta' traffiku kif ukoll ta' parkegg), ghandu jigu rifjutat. Sit li orignarjament kellhu tahlita ta' uzu residenzjali u kummercjali (maisonette u showroom, rispettivamente), fi-zmien hmistax il-sena nbidel ghal-wiehed marbut mal-operat ta' towing service tal-karozzi (cjoe', garaxxijiet u ufficini).

Il-Pjan Lokali hu dak li hu, u anke jekk talvolta uzu bhal dan li mhux normalment permess mill-Pjan Lokali jista' b' xi mod jigu gustifikat, zgur li zvilupp li jkompli jgharraq l-arja ma jimmeritax kunsiderazzjoni favorevoli. Semmaj, jezistu rimedji aktar felici ta' kif wiehed jista'; l-ewwel jattakka l-Pjan Lokali; imbaghad jekk dik l-applikazzjoni jkollha ezitu positiv, jitlob permess ghall-tip ta' zviluppi jkunu idoneju mal-Pjan Lokali kif ikun gie rivedut.

Ikun inutili li jigi nutat li in kwantu l-operat tat-tuition centre, il-proposta in ezami kienet xotta. Ma hemm xejn li jindika kif ser jitqassmu l-klassijiet, jew ghall-grazzja tal-argument ghalfejn hemm bzonn spazji daqshekk kbar. (Jidhru biss spazji massicci indikati bhala tuition centres u archives) Jista' jaghti l-kaz li l-maggor parti tal-klassijiet ser ikun fihom makkinarju u equipment rilatat ma' t-tagħlim awtomotiv (tal-karozzi), izda fl-assenza ta' provi dan it-Tribunal jista' jaqta' w jiddeciedi biss fuq dak li gie pprezentat.

Fil-fatt, la fil-mori tal-appell u lanqas fil-file PA 3226/09 ma jirrizulta li l-Appellant issottometta provi konkreti u pjanijiet cari ta' kif dan l-ispazju kien ser jintuza. In pessima ipotesi allura, l-Awtorita' kienet korretta li tassumi li l-klassijiet kienu ser jintuzaw bhala lecture rooms, cjoe' li tapplika l-istandards in vigore ghal-klassijiet ta' kobor simili u cjoe', skond il-Legislazzjoni Sussidjarja 327.12 tal-Avviz Legali 150 tal-1990, National Minimum Conditions Regulations for all Schools. (blue 14 fil-file PA 3226/09)

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 3226/09 mahrug mill- Kummissjoni ta' l-Ambjent u l-Ippjanar, fl-4 ta' Marzu 2011.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal zbalja fuq punt ta' ligi meta ssoferma ruhu fuq il-policy u ma qies ic-cirkostanzi tal-post u taz-zona kif kien obligat li jagħmel. Anzi ma applikax tajjeb il-kuncett ta' commitment meta nsista li ma setghax jiddeciedi kontu l-pjan lokali anke meta l-istess Awtorita ma kinitx qed tikkontesta l-commitment, li gie ppruvat b'binjiet ohra fil-vicinanze bhad-depot tal-ambulanzi, il-garages ta' RMF Limited, u skola taz-

## Kopja Informali ta' Sentenza

zfin ghal adulti liema zvilupp gie approvat fl-1 ta' Frar 2010 u fejn ma sar ebda provvediment ta' parkegg ghall-istudenti kif sar f'dan il-kaz. It-Tribunal naqas li jinnota li l-Kunsill Lokali tal-Pieta kien awtorizza bil-miktub li car park fil-vicinanze seta' jintuza mic-centru ta' taghlim in kwistjoni pero dan id-dokument gie esebit pero ma jinsabx in atti. Tali fatturi kienu importanti ghad-determinazzjoni tal-applikazzjoni;

2. It-Tribunal meta qal li l-izvilupp ser ikompli jgharraq l-arja u b'hekk ma sthoqqlux ezitu favorevoli ma kkunsidrax ic-cirkostanzi taz-zona ftit ta' snin ilu meta l-isptar San Luqa kien ghadu jopera bi problemi kbar ta' traffiku u parkegg u kellu jinbena l-car park tal-Pieta. It-Tribunal ma setghax iqabbel dan l-impatt ta' traffiku ma' dak li kien ser jiggenera dan ic-centru ta' taghlim;

3. It-Tribunal naqas li jikkonsidra l-mod kif l-Awtorita applikat circular 3/93 dwar traffic generation implications ghal dan l-izvilupp fiz-zona u meta l-istess circolari f'punt 2.2 tghid li biex jigi deciz x'tip ta' parking standard jintuza, iridu jittiehdu in konsiderazzjoni, iz-zona tas-sit, l-izvilupp propost, u accessibilita ta' parking fil-vicinanze. It-Tribunal injora li hemm car park fil-vicinanze li jindirizza din il-kwistjoni.

### **L-ewwel u t-tieni aggravji**

Dak li t-Tribunal kien mitlub jikkunsidra f'dan l-appell kien wiehed semplici cioe jekk l-uzu mitlub f'zona residenzjali kienx ser ikollu effett negattiv stante n-natura u l-uzu ta' binjiet ohra fiz-zona u l-generazzjoni ta' traffiku u parkegg addizzjonali krejat b'dan l-izvilupp.

Ma hemmx dubju u dan ma hu michud minn hadd illi z-zona hi indikata fil-pjan lokali bhala wahda residenzjali li pero fl-istess zona hemm diversi binjiet ta' uzu kummercjali kif del resto hu l-istess binja fejn qed jintalab bdil ta' uzu ta' parti minnu u li fil-permess li nhareg lf-2007 inghata permess ulterjuri fuq zvilupp kummercjali gia ezistenti b'permessi precedenti minhabba 'existing commitments in same block', nonostante d-desinjazzjoni taz-zona fil-pjan lokali.

Hi l-kontenzjoni tal-appellant li t-Tribunal qies biss id-desinjazzjoni taz-zona u cioe l-policy applikabbli ghaz-zona u injora l-commitment ezistenti bhala stat ta' fatt.

## Kopja Informali ta' Sentenza

Hi l-fehma tal-Qorti illi t-Tribunal kien korrett illi policy ma tistax tigi injorata jew jiddeciedi b'mod assolutament kuntrarju ghal dak li tghid policy. B'dankollu l-Qorti tqis illi jridu jittiehdu in konsiderazzjoni kwistjonijiet ta' sustanza li jistghu jiddeterminaw ezitu ta' applikazzjoni jekk il-policy tippermettuh kif fil-fatt gie dibattut mill-partijiet. F'dan il-kaz il-kwistjoni kienet effettivament jekk l-izvilupp addizzjonali rikjest f'zona residenzjali kienx gustifikat cioe jekk kienx ser ikollu impatt negattiv u generazzjoni ta' traffiku ulterjuri li jmur kontra policy BEN 1 u kwindi ma jaghtix ezitu favorevoli lil applikazzjoni.

It-Tribunal iddecieda li l-izvilupp ma setghax jigi gustifikat u jghid hekk:

Il-Pjan Lokali hu dak li hu, u anke jekk talvolta uzu bhal dan li mhux normalment permess mill-Pjan Lokali jista' b' xi mod jigu gustifikat, zgur li zvilupp li jkompli jgharraq l-arja ma jimmeritax kunsiderazzjoni favorevoli.

Din il-kunsiderazzjoni determinanti ma tistax tittiehed b'mod izolat qisu t-Tribunal ma qies xejn aktar izda jrid jittiehed fil-kuntest tal-paragrafu precedenti meta t-Tribunal qies illi l-izvilupp kien ser jikkawza impatt addizzjonali mill-aspett ta' traffiku u parkegg u illi dan is-sit li originarjament kellu tahlita ta' uzu residenzjali u kummercjali fi zmien hmistax-il sena inbidel ma' wiehed marbut ma' operat ta' garaxxijiet u ufficini.

F'paragrafu sussegwenti t-Tribunal ma waqafx hemm izda mill-lat fattwali zied illi l-applikant ma lahamx il-proposta tieghu b'mod illi juri li l-impatt ma kienx ser ikun wiehed ta' detriment ghaz-zona. It-Tribunal qies illi l-applikant kien xott u generiku fil-mod li kien ser juza l-ispazji kbar indikati bhala tuition centre u kemm minn dawn l-ispazji kienu effettivament ser ikunu okkupati bhala klassijiet. Dan intqal ghax it-Tribunal seta' jevalwa jekk il-kwistjoni ta' sustanza mqajma dwar commitment taz-zona kinitx ser tkompli, bhala kwistjoni fattwali, teffettwa negattivament d-desinjazzjoni tas-sit bl-izvilupp propost jew jekk nonostante l-policy dwar id-desinjazzjoni taz-zona, tali zvilupp ma kien ser ikollu ebda impatt sostanzjali jew effettiv fuq il-kwistjoni tal-parkegg u traffic generation.

Hu ghalhekk zbaljat meta l-appellant fl-aggravju jikkontendi li t-Tribunal skarta kull kwistjoni ohra oltre d-desinjazzjoni taz-zona bhala wahda residenzjali u illi t-Tribunal wasal ghad-decizjoni tieghu b'bazat biss fuq il-pjan lokali, ghax jirrizulta illi t-Tribunal



## Kopja Informali ta' Sentenza

ikkunsidra għalkemm b'mod sfavoreoli għall-appellant il-kwistjoni dwar l-uzu taz-zona.

Pero saru certi referenzi mill-appellant in konnessjoni ma' dan l-aggravju u senjatament dwar l-impatt negattiv tal-izvilupp u jirrizulta lil Qorti li gie esebit il-kunsens bil-miktub da parti tal-Kunsill Lokali tal-Pieta li min ser juza t-tuition centre jista' juza l-parkegg tal-Kunsill. Dan id-dokument gie esebit b'ittra lit-Tribunal fit-23 ta' Jannar 2012 qabel ma nghatat id-decizjoni liema dokument jinsab in atti. Dan ukoll wara li jirrizulta mill-atti ittra tal-perit tal-appellant datata 25 ta' Lulju 2011 fejn gie sottomess li l-Pieta Local Council indikaw li kienu lesti jakkomodaw il-parking requirements tat-tuition centre. In oltre saret referenza għal fatt illi l-isptar San Luqa kien magħluq u dan wahdu kien jiggenera traffiku kbir meta kien għadu miftuh. Saret referenza wkoll għal skola ta' zfin faccata tal-izvilupp li nghata permess fl-2010 u ma jidhirx li kien hemm xi problemi mqajjma dwar parkegg u traffic management. Saret ukoll referenza għal case officer report fejn gie sottomess illi din il-facilita edukattiva taqa' taht class 8 fid-Development Uses Classes Order 1994 u hi kompatibbli mad-desinjazzjoni taz-zona u ma tirrikjedix additional car parking. Dan gie sottommess in linea ma' decizionijet ohra tal-Bord tal-MEPA.

L-apprezzament tal-provi huma fil-prerogattiva tat-Tribunal u din il-Qorti ma tindahalx f'din id-diskrezzjoni sakemm ma jirrizultax zball grossolan tat-Tribunal fil-mertu tal-prova jew li tali provi jew sottomissjonijiet bazati fuq allegati provi fattwali gew injorati jew ma nghataw ebda attenzjoni mit-Tribunal meta huma pertinenti għad-determinazzjoni tal-vertenza.

F'dan il-kaz it-Tribunal naqas għal kollox li jikkonsidra dawn il-kwistjonijiet ta' sustanza fil-qalba tad-determinazzjoni dwar il-piz ta' traffic generation addizzjonali u car parking li jinholoq bl-izvilupp propost. It-Tribunal, la darba ikkunsidra li l-izvilupp kien jikkonsisti fi klassijiet ta' tagħlim kellu jikkonsidra dawn il-kwistjonijiet imqajma u jekk kellhomx impatt negattiv jew le fuq l-applikazzjoni izda mhux jinjarahom għax it-Tribunal kkonkluda li l-proposta kienet generika. La darba t-Tribunal assumu l-uzu u l-ammont ta' studenti li setghu jigu akkomodati kellu għalhekk jevalwa jekk dawn l-allegazzjonijiet, jekk jikkostitwixxu prova valida kienux determinanti għall-approvazzjoni tal-permess, jew jekk fin-negattiv, ir-ragunijiet għaliex ma kienux

## Kopja Informali ta' Sentenza

jimmilitaw favur l-applikant. It-Tribunal naqas f'dan id-dmir u ghalhekk dan l-aggraju qed jintlaqa' limitament ghal-din ir-raguni, cioe li ma kkunsidrax sew il-kwistjonijiet fattwali pertinenti ghall-aggraju mressaq u dan ipoggi f'dubju l-gudikat. Dan qed jinghad minghajr ma din il-Qorti qed tinswinwa li l-aggraju jew ragunijiet fattwali mressqa huma b'xi mod gusitfikati. Sta ghat-Tribunal li jiddeciedi dwar dan.

Ghalhekk dan l-aggraju qed jigi milqugh fis-sens deciz.

### **It-tielet aggraju**

Dan l-aggraju wkoll jimmeritah konsiderazzjoni favorevoli peress illi t-Tribunal ma ddeciediex il-mertu tal-aggravi fuq l-applikabilita tal-policy TRA 4 u senjatament ic-circular 3/93 dwar car parking standards izda pjuttost fuq in-nuqqas tal-applikant li jissostanzja b'mod konkret l-implikazzjonijiet fattwali naxxenti mill-uzu tal-ispazju rikjest bhala klassijiet ta' taghlim. It-Tribunal accetta l-argument tal-Awtorita illi l-klassijiet kienu ser jintuzaw bhala lecture rooms u mhux ghal storage jew in parti ghal equipment u ghalhekk japplikaw standards ta' klassijiet tal-kobor tal-izvilupp propost skond Avviz Legali 150 tal-1990 National Minimum Conditions Regulations for All Schools. Billi l-applikant ma gabx provi kuntrarji ghall-uzu tal-ispazju milqut bit-talba ta' zvilupp u bdil ta' uzu, it-Tribunal wasal ghal konkluzjoni implicita illi l-ammont ta' studenti li kienu jifilhu l-klassijiet kien ser jiggera piz zejzed fuq id-desinjazzjoni taz-zona qua residential area tenut kont tat-traffiku u spazju ta' parkegg necessarju biex jakkomodahom in linea generali. Dan inghad pero minghajr mat-Tribunal ikkunsidra l-applikabilita tac-cirkolari 3/93 ghal kaz in kwistjoni fl-isfond ta' dak li kien qed jigi arugmentat mill-appellant, senjatament bl-ewwel zewg aggravi kif imressqa f'dan l-appell u anki l-istess kontenut tac cirkolari 3/93.

Il-Qorti mhix qed tghid li l-appellant ghandu ragun ghax din hi kwistjoni li trid tigi deciza mit-Tribunal pero t-Tribunal kellu l-obbligu li jikkonsidra l-izvilupp mill-lenti ta' dak li hu permess f'zona residenzjali u jekk il-fatti jew arugmenti prodotti u gustifikazzjoni tal-izvilupp anki jekk meqjus mill-ottika ta' klassijiet ta' taghlim b'ammont ta' studenti fihom kien jimmerita jigi kunsidrat mhux mill-lenti tal-policy TRA 4 izda mill-lenti sottomess mill-appellant.

Kopja Informali ta' Sentenza

Ghalhekk l-aggravju qed jigi milqugh.

### **Decide**

Ghal dawn ir-ragunijiet il-Qorti qed tilqa' l-appell ta' RMF Limited, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012, u turrinvija l-atti lura lit-Tribunal biex jerga' jisma' l-appell in linea ma' dak deciz. Bl-ispejjez kontra l-Awtorita.

### **< Sentenza Finali >**

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