



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 15/2013

**Marie Claire Zammit gia Camilleri**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Marie Claire Zammit gia Camilleri tal-4 ta' April 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013 li cahad it-talba sabiex isir 'extension of an existing residence and construction of gate at residence B Triq ta' Zejfa, limits of Mosta PA 64/08';

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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 ghall-Kontroll ta' l-Izvilupp fit-13 ta' Mejju 2010, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 64/08 – Residence B, Triq ta' Zejfa, l/o Mosta: Extension of an existing residence and construction of a gate.

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

“1 The proposed development runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, in particular to Section 8 paragraph 8.2 (iii). The extensions envisaged to be added at ground and first floor level will lead to a floor space, 192sq.m, that exceeds significantly the allowable total floor space of 150sq.m and that as approved by PA 8092/05. Thus, the proposed extensions will intensify a development of an urban nature outside the development zone.

2 The proposed development runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, in particular to Section 8 paragraphs 8.2 (v) and (vi). The proposed extensions will disrupt the massing and scale of the existing building. Thus, the vernacular character of the existing building is not being respected. Therefore the proposal also runs counter with the overall aim of Structure Plan policies RCO 2 and RCO 4 since it will visually impinge of the surrounding open landscaped area.”

B. In-nota tal-Perit Robert Musumeci ghall-Appellanti, ipprezentata fit-28 ta' Mejju 2010, senjatament il-punti segwenti:

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### “Re Reason 1

The Directorate dismissed any reference to paragraph 7.8 contained in Further Guidance on Policy PLP20 which states:

"Existing dwellings, or buildings proposed to be converted to dwellings, as extended must not exceed a groundfloor area (footprint) of 150 square metres and a total floorspace of 200 square metres (the footprint/floorspace should be calculated by reference to the dimensions of external walls and should include any internal yards, shafts, courtyard, terraces etc. totally enclosed or surrounded by the building."

[...] It is very pertinent to note that the pertinent policies regulating extensions to ODZ have not been amended or modified since time of the above decisions.

Without prejudice to the aforesaid, according to Policy 2.3.11 in MEPA's document titled Policy and Design Guidance – Agriculture, Farm Diversification and Stables (dated December 2007), the change of use of an existing disused or building in ODZ to a dwelling which does not exceed a height of 7 metres measured externally from existing ground level and has a footprint which does not exceed 150 square metres (measured externally, including any internal courtyards) and a total floorspace of not more than 200 square meters, is permitted provided such building is located within 183 metres of the development zone.

In the case under appeal, the existing building under review falls within the 183 metre range from the development zone - that is the range where the conversion of buildings to 200 square metre dwellings is acceptable in principle according to Policy 2.3.11 [...]

### Re Reason 2

The form and scale of the resultant building does not represent an 'urban' style solution as alleged in DPAR. The proposal still allows for limited vertical relief supported by an informal, broken and less regimented massing. The design of the resultant elevations features an adequately proportioned solid to void relationship. Moreover, the extension shall not result in inappropriate large scale openings. The vernacular character of the building is therefore certainly being retained. The above assertion is therefore totally unfounded. ”

Ma din in-nota gew citati il-permessi PA 3908/06, PA 2722/05, PA 2447/04, PA 100/04, u PA 376/03, kif ukoll id-decizjoni tal-Bord ta' l-Appell dwar L-ippjanar, PAB 40/01 – PA 4770/00, in sostenn tal-aggravji mressqa mill-Appellant.

C. In-nota risponsiva ta' Lorinda Vella ghall-Awtorita', ipprezentata fil-15 ta' Lulju 2010, senjatament il-punt segwenti:

“On a preliminary point, during the sitting of 9th July 2010, instead of the applicant, the architect was accompanied by another individual who claimed to be the owner of this site and referred to the applicant as his client. The declaration on the previous application on the same site PA 8092/05, stated that Mr. Charles Attard was the owner of this site on behalf of Raymond Auto Dealer. Consequently the Authority requests that the present applicant who declared that she is the sole owner submits proof of her declaration under penalty of nullity of the above application.”

D. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellanti, ipprezentata fl-4 t' Awissu 2010, precizament il-punti segwenti:

“3. Applicant Ms Marie Claire Camilleri (ID 278384(m)) submits that she is the wife of James Camilleri (ID 535884(m)) [...].

4. James Camilleri (ID 535884(m)) is co-owner of the said land together with Raymond Auto Dealer Ltd [...].

5. Co owners of the said land declare that they find no objection to the proposal under review, namely PA 64/08 [...].

6. Case law clearly suggests that an incorrect declaration of ownership does not provide enough grounds to nullify a permit. This assertion finds comfort in a number of landmark decisions [PAB 133/03 – PA 5224/00, and PAB 221/94 - PA 2867/94]

7. It clearly follows from the above case law that certification of ownership bears little relevance in the planning process due to the fact that all permits stipulate that development can only take place if the respective land owner's consent is obtained prior to commencement of works.

8. It clearly results that in those cases where the respective land owner/s submit their consent to the proposed development in writing during the course of the

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application proceedings, such as the case under review, the proceedings can certainly remain activated.

9. Indeed, in this case, applicant has already obtained consent to carry out the proposed works prior to her obtaining the permit (Document C) - this may not be the case when an applicant submits a certificate of ownership B at the onset of an application, where such registered notification may occasionally fail to reach the respective land owners.”

Ma din in-nota gew sottomessi kopja ta' Formula K tar-Registru Pubbliku, kuntratt ta' bejgh tad-19 ta' meju 1995 ppubblikat min-Nutar Dott. Mario Bugeja, Memorandum and Articles of Association tas-socjeta' Raymond Auto Dealer Ltd. (C 9850) u dokumenti ohra li jirrigwardaw l-istess socjeta', in sostenn tal-argumenti mressqa mill-Appellant.

E. In-nota tal-Avukat Dott. Anthony DeGaetano ghall-Awtorita', ipprezentata fit-23 t' Awissu 2010, senjatament il-punti segwenti:

“Illi l-istess Marie Claire Camilleri fin-nota w dokumenti li ngiebu, ikkonfermat li hi mhix sid tal-post - fis-sottomissjonijiet jinghad li hi mart James Camilleri w hemm dikjarazzjoni li James Zammit (?) ghandu percentwali mill-kumpanija w hi b'hekk co-owner. Izda fil-fatt mid-dokumenti ezebiti l-ownership qeghda fil-kumpanija w ma hemmx co-ownership;

Oltre dan anki kieku kien hemm co-ownership, l-istess appellant ikkwotat minn decizjonijiet tal-Bord li gew sorpassati b'decizjonijiet tal-Qorti ta' l-Appell, li ddeterminaw finalment (anki kontra decizjoni tal-Bord stess appellata mill-Awtorita' stess, li la darba hemm dikjarazzjoni hazina ta' ownership (ghax wiehed mhux sid jew mhux l-uniku sid), fl-istadju ta' l-Appell, anki bil-kunsens ta' l-istess sidien, l-istess dikjarazzjoni ma tistax tigi f' dan l-istadju la korretta u lanqas issanata, per konsegwenza li ggib in-nullita' ta' l-applikazzjoni w konsegwentement in-nullita' ta' l-istess appell ta' l-istess appellant [...].

Ghaldaqstant ex admissis l-istess applikazzjoni ta' l-appellanta kienet hazina w konsegwentement nulla u bla effett u l-istess appell ghandu ghalhekk jigi ddikjarat li l-appell hu null ukoll.”

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Ma din in-nota giet annessa kopja tas-sentenza tal-Qorti tal I-Appell (appell numru 389/00), Emmanuel Grima vs il-Kummissjoni ghall-Kontroll tal-Izvilupp, tal-15 ta' Lulju 2002.

F. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellanti, pprezentata fit-30 ta' Settembru 2010, inter alia z-zewg punti segwenti:

"3. It has been made very clear (vide Document C in our letter dated July 20th, 2010) that the co owners (or rather partners in company owning the said land) declared that they find no objection to the proposal under review, namely PA64/08.

4. At this point, the landowners have not only be formally advised about the processing of this application, but have clearly given their 'consent' which strictly is not required by the current Development Planning Act."

G. In-nota b' risposta tal-Avukat Dott. Anthony DeGaetano ghall-Awtorita', ipprezentata fid-19 t' April 2011, precizament il-punti segwenti:

"Illi ghar-rigward in-nota li giet sottomessa mill-appellant, fil-fatt taqbel ezatt ma' dak li kien gara fil-kaz ta' Emanuel Grima kontra I-Kummissjoni deciza mill-Qorti tal-Appell fil-15107/02 fejn il-Qorti tal-Appell iddikjarat tassattivament li f'dawn il-proceduri l-istess dikjarazzjoni li kienet saret hazina ma tistax tigi irrangata anki bil-kunsens tas-sid. Fuq insenjament precedenti tal-Qorti tal-Appell stess vide Saviour Falzon vs Chairman tal-Awtorita tal-Ippjanar datata 31105/96 u Michael Abela vs il-Kummissjoni ghall-Kontroll tal-Izvilupp datata 11/05/98, din mhix kwistjoni procedurali pero' li tolqot il-mertu tal-applikazzjoni innifisha. Fil-kaz imsemmi ta' Grima, il-Bord tal-Appell fis-06/11/00 kien iddecieda li ladarba l-applikant kien issa ta l-kunsens tieghu, il-Bord seta' ikompli jisma l-appell qisu kollox illum kien issanat. Izda l-Awtorita' appellat minn tali decizjoni u fil-15/07/02 [...].

Illi ghalhekk f'dana l-istadju inoltrat tal-proceduri, l-imsemmi difett fl-applikazzjoni ghall-permess tal-izvilupp intavolata mill-appellant quddiem l-Awtorita' tal-Ippjanar ma jistax jigi sanat bil-konsegwenza inevitabli li l-applikazzjoni qieghda tigi ddikjarata f'dana l-istadju bhala wahda nulla."

Illi dan l-insenjament illum ghadu jghodd stante f'din l-applikazzjoni l-appellant ghamel dikjarazzjoni hazina li sad-data meta inghatat id-decizjoni tal-Awtorita' l-istess dikjarazzjoni kienet ghadha hazina. Ghall-argument li kieku illum saret l-istess

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applikazzjoni, illum apparti ir-rekwizit illi l-applikant irid bilfors jikkonsenti ghal tali applikazzjoni bhala rekwizit iehor fl-applikazzjonijiet il-godda (u mhux f'din l-applikazzjoni), ir-rekwizit ta' dikjarazzjoni korretta ghadha hemm xorta wahda illum u l-istess insenjament tal-Qorti tal-Appell illum kieku jippersisti;

Ghaldaqstant l-istess appell ghandu jigi michud a bazi tan-nullita' tal-istess applikazzjoni li tirrendi kollox li sar sussegwenti null u bla effett.”

H. Id-decizjoni preliminari tal-Bord ta' l-Appell dwar l-Ippjanar, moghtija fit-30 ta' Gunju 2011. Dakinhar, il-Bord ma laqax l-eccezzjoni sollevata mill-Awtorita u pproceda bit-trattazzjoni ta' l-appell odjern fuq mertu tal-ippjanar.

J. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fl-4 t' Awissu 2011, inter alia l-punti segwenti:

“5.2.1 The existing structure (as seen in the application photos in the PA file) consists of a two-storey building made up of two overlying maisonettes. Permit PA 8092/05 approved the conversion of these two maisonettes into two separate terrace houses (see PA 8092/05/29C/30B). According to this permit the total floor space of the terraced house subject to the present application was limited to 138sq.m.

5.2.2 The proposed development in this application consists of extensions at ground and first floors to one of the terraced houses approved in PA 8092/05. These extensions will increase the current total floor space to 192sq.m.

5.2.3 Policy RCO 2 of the Structure Plan aims to protect and improve the environmental quality of the rural areas by allowing the sensitive rehabilitation and suitable conversions of buildings/structures that are located within the countryside.

5.2.4 Paragraph 8.2 of the PLP 20 ensures that this aim is not compromised by providing the necessary parameters that regulate the requests that are related to the construction of extensions to existing buildings. Criterion iii of this paragraph stipulates that any proposed extensions to existing buildings should not create a total floor space that exceeds 150sq.m.

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5.2.5 Therefore the request to increase further the total habitable floor space of the two-storey residence is not justified - the end result total floor space exceeds significantly the total floor space of 150sq.m permitted by PLP 20 and that approved by PA 8092/05. Thus, the proposed extensions will intensify a development of an urban nature outside the development zone.

5.2.6 Furthermore, in order to minimise visual impact of the proposed extensions, PLP 20 requires also that the extensions proposed respect the original vernacular character of the rural buildings [...]. The proposed extensions at ground and first floor levels conflict with the objective of PLP 20 [8.2 (v) & (vi)] since the extensions will disrupt the massing and scale of the existing building. Therefore, the vernacular character of the existing building is not being respected. The proposal also runs counter with the overall aim of Structure Plan policies RCO 2 and RCO 4 since it will visually impinge of the surrounding open landscaped area.

5.2.7 The 'policy document' referred to by the appellant The appellant made reference to Further Guidance on Policy PLP20 stating the Authority actually permits footprints of up to 200sq.m for residences in ODZ. The appellant has also made reference to a number of permits that have been granted on this basis.

However, this document which is actually titled as 'Draft Report' and addressed to the Chairman DCC was never officially endorsed by MEPA and the proposed replacement paragraph of para 8.2 (iii) was never actually effected. Unfortunately, this draft report was understood by some as an official report and was quoted as such even for some time by members of the DCC board. In fact, the Director General had communicated to all that the official, correct, and only approved para 8.2 (iii) was that as issued in the approved Policy Document dated 5<sup>th</sup> January 1995 in which 'the 150 sq.m limitation applies to both the footprint and the total floorspace of the extended building'."

K. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellanti, pprezentata fit-28 ta' Novembru 2011, precizament il-punti segwenti:

"1. Illi fir-rikors promotur, l-appellant incita numru ta' permessi, fosthom PA4770/00, PA2722/05, PA100/04, PA2447/04, PA3763/03, PA3908/08, liema permessi jikkoncernaw estensjonijiet ta' farmhouses sa 200 metri kwadri.

2. Illi tajjeb li jigi ipprecizat li fil- kaz tal- permess PA4770/00, kien proprju il- Bord ta' l- Appell dwar l- Ippjanar li hareg dan il- permess, filwaqt li l- permessi PA2722/05,



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PA100/04, PA2447/04, PA3763/03, PA3908/08 inhargu mill- Kummissjoni ghall-Kontroll ta' Zvilupp.

3. Illi molto piu, jinghad li proprju f'dawn l-ahhar jiem, u cioe' nhar it- 22 ta' Settembru 2011, il- Bord ta' l-Appell dwar l-Ippjanar permezz taddecizjoni fl- ismijiet Noel Mallia vs Awtorita ta' l- Abmjent u l-Ippjanar (PAB 71/06 RT. PA 7071/03.) hareg permess to sanction Pool and Ancillary Facilities to farmhouse approved in permit 1269/84, b'liema permess giet approvata estensjoni ta' zvilupp residenzjali fl-ODZ li fl-assjem taghha teccedi 350 metri kwadri. Dan il- permess inghata minkejja li l- Awtorita insistiet li tali permess ma kellux jigi milqugh a bazi tal-policy PLP 20 (l-istess ragunament li qed jintuza fil- kaz odjern). L-Insenjament ta' din id-decizjoni ikompli jafferma t-tezi ta' l-appellant li dak li qed inghad mill- Awtorita fl- ittra taghha tat- 2 ta' Awwissu 2011 ma jsib ebda sostenn illum. Molto piu, l- Awtorita' ma tistax targumenta li l-Bord ta' l-Appell dwar l-Ippjanar hareg il-permess PA 7071/03 taht xi regim ta' policies li huma differenti minn dawk in vigore - appropositu, dak li qed jintalab mill-appellant fil- kaz meritu ta' dan l-appell huwa ta' skala ferm izghar minn dak li effettivament gie approvat fil- permess PA 7071/03 a favur ta' Noel Mallia.

4. Illi percio, si segue li fil- kaz odjern, l-appellant ma ghandux jigi trattat b' kejl differenti. Dak li jigi deciz mill- Kummissjoni u mill-Bord ta' l-Appell dwar l- Ippjanar ma jistax jigi injorat u skartat bhalli kieku qatt ma gara xejn. Di fatti, u dan dejjem minghajr pregudizzju ghas-suespost, l- insenjament fil- qasam ta' l- ippjanar kien dejjem fis-sens li l-procedura li taddotta il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, anke jekk mhix ibbazata fuq fuq xi policy approvata, trid tigi addotata ghal kazijiet b' merti simili. Di piu', mhux il-kompitu ta' Bord ta' Appell jew Tribunal ta' revizjoni li jidhol f' kif dawn il-kriterii jigu stabbiliti - li hu zgur, hu li Bord ta' Appell jew Tribunal ma jistax jiskarta l-fatt illi l-kriteriji li kienu qed jintuzaw fuq applikazzjonijiet ghal-kazi simili ghandhom jigu applikati mutatis mutandi ghal kazijiet ohrajn u dan a bazi tal-principju li 'l- gustizzja mhux biss trid issir izda trid tidher li qed issir.' Dan kollu huwa abbracjat f' numru ta' sentenzi ta' l- ippjanar fosthom bizzjedjied issir riferenza ghad-decizjoni fl-ismijiet Carmel Micallef kontra l-Awtorita' ta' Malta dwar l- Ambjent u l- Ippjanardeciza nhar it- 22 ta' Gunju 2011. (PAB 299/05 RT. PA 0881/04)

5. Illi in vista ta' dak citat supra, huwa inutli li l- Awtorita tibqa' tinsisti li l-policy Further Guidance on Policy PLP 20 [was misunderstood] bhallikieku li l- Kummissjoni harget il-permessi PA 2722/05, PA 100/04, PA 2447/04, PA 3763/03, PA 3908/08 sucitati kontra xi policy. Semaj, kieku kien jissussisti il-kaz li dawn il-permessi inhargu kontra l-policy (haga li l-ligi ma tippermettix), ma hemmx dubju li l- Awtorita kienet debitamnet tagixxi u tirrevoka tali permessi a bazi ta' allegat ksur ta' l- Artikolu 77 ta' l- Att tal- 2010 dwar l- Ambjent u l- Ippjanar ta' l- Izvilupp (precedentement l- Artiklu 39 A ta' l- Att dwar l-Ambjent u l- Ippjanar) li allura f'dak il-kaz ikun rizultanti minn xi zball f'dokument li jidher minn ezami ta' l-istess dokument

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jew inkella allegat ksur ta' punt ta' ligi ghaliex il- Bord ma jkunx iddecieda skond il-provedimenti tal- policies u ligijiet vigenti kif titlob l-istess ligi.

6. Illi di piu, jinghad il- guriprudenza nostrana stabbiliet illi meta ghandek l-esistenza ta' permess ta' l- izvilupp b'mertu identiku, ma hemm ebda raguni il-ghaliex iz-zewq kazijiet ma ghandhomx jiqu kkunsidrati bl-istess mod. B' hekk ma ghandu jkun hemm ebda diffikulta sabiex il-proposta odjerna tigi milqugha, u dan anke a bazi tal- principju legali ben stabbilit li l-konsiderazzjonijiet li jwasslu ghal decizjonijiet ta' ippjanar necessarjament jinhtieg li jkunu konsistenti u dan kif gie sostnut diversi drabi mill-Qorti ta' l-Appell (ara decizjoni fl-ismijiet Grace Borg vs. l-Awtorita' ta' Malta dwar l-Ambient u l-Ippjanar AIC - IRCP) 29th October 2009) [...]. Dan il-principju isib sostenn fi skorta ta' decizjonijiet ohrajn [cjoé, PAB 9/00 (PA 2378/99) - Adrian Stivala kontra l-Kummissjoni Ghall-Kontroll ta' l-Izvilupp; PAB 50/00 (PA 3874/99) - Coronato Portelli vs MEPA; kif ukoll PAB 872/98 (PA 4854/97) - Simon Scerri kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp].

L. In-nota third statement ta' Jonathan Borg ghall-Awtorita', ipprezentata waqt is-Seduta numru 35, mizmuma fil-25 t' April 2012, senjatament it-tlett punti segwenti:

“2. The Authority maintains that the only approved policy document regulating development in ODZ is PLP 20. Paragraph B.2 of this policy documents limits residential development to a total floorspace of 150sq. m.

3. The appellant has quoted a number of permits issued for dwellings in ODZ larger than 150sq.m. On the other hand the Authority can likewise quote a substantial number of refusals issued by the Authority for similar applications. Also, the following are a series of recent PAB and EPRT decisions that have refused applications for dwellings in ODZ that are larger than 150sq.m - PAB 280/05 (PA 2601/04), PAB 231/07 (PA 3912/06), PAB 200/04 (PA 2444/03) and PAB 50/11 (PA 1205/10).

4. In a recent decision (PAB 247/0B – PA 4978/07), which admittedly refers to a new dwelling in ODZ rather than addition/extension to an existing one, the Tribunal made it clear that notwithstanding the fact that other permits have been issued in the past, the proposal was still unacceptable because it manifestly goes against the policies in PLP 20 and that the concept of precedent should not play an overly part in such a decision.”

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M. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellanti, pprezentata fit-30 t' April 2012, inter alia z-zewg punti segwenti:

“4. Ghal kull buon fini tajjed jinghad li imkien ma jirrizulta li tali policy [paragrafu 7.8 tal-Further Guidance on Policy PLP20] kienet 'draft' bhal ma donnu qed ikun allegat fil- verbal tal- 25 ta' April 2012. Ghallgrazzja ta' l-argument, kieku dan kien il- kaz, il-Bord ta' l- Appell ma kienx se japprova il- permess PA 4770/00 minghajr ma l-Awtorita tappella minn dik id-decizjoni fuq punt ta' dritt rizultanti minn ksur manifest tal-ligi (in bazi ta' ligi li ma tesistix.)

5. Del resto, u dan kif inghad fl- istess rikors promotur, l-istess Awtorita baqghet tohrog permessi simili gahl dak in ezami (cioe' fejn l-erja kumplessiva approvata tammonta ghal 200 metri kwadri) in bazi ta' din l- istess policy.”

N. In-nota forth statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fis-7 ta' Mejju 2012. Ma din in-nota gew ipprezentati kopji tal-imsemmi draft report tas-17 ta' Novembru 1999 imhejji mid-Direttorat tal-Ippjanar . kif ukoll kopja ta' korrisondenza elettronika tal-24 ta' Jannar 2011, bejn id-Direttur Generali u l-impjegati tal-Awtorita' bhala kjarifika fl-interpretazzjoni tal-istess policy paper PLP 20.

P. Ir-rikors tal-Perit Robert Musumeci ghall-Appellant, ipprezentat fit-12 t'Ottubru 2012, senjatament iz-zewg punti segwenti:

“1. Illi riferibilment ghall- verbal tas-seduta ta' nhar it- 2 ta' Ottubru 2012, l-appellant jirriveva li waqt din l-istess seduta, huwa kien issottolineja b' riferenza ghall-applikazzjoni PA 4770/00 is-segwenti punti: (i) mhuwiex minnu li l- paragrafu 7.8 tal-Further Guidance kien biss draft ghaliex kieku il- Bord ta' l- Appell ma kienx ikun f'posizzjoni li japprova din l-istess applikazzjoni PA 4770/00 appuntu fuq din il-premess a, liema decizjoni sussegwentement ma gietx appellate mill-istess Awtorita. (ii) il- permessi imsemmi mill-appellant fil- mori tal- proceduri ikomplu jsahhu t-tezi tieghu li din il- policy hi ufficjali u qatt ma giet irtirata u (ii) il- prova li semaj din il- policy kienet 'draft', kif allegat l- Awtorita' fil- mori ta' l- appell, qatt ma giet ikkomunikata lill- appellant u kwalsijasi riferenza ghal xi internal memo ma tikkostitwixxi ebda prova f'dan ir-rigward ;

2. Illi in vista tal-premess, l-appellant jitlob bir-rispett li l- punti hawn fuq citati, li del resto kienu verbalizzati waqt is-seduta izda bi zvista ma gewx inkluzi fil- verbal, jigu allura inkluzi fl-imsemmi verbal tat- 2 ta' Ottubru 2012.”

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Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghall-estensjoni ta' residenza ezistenti u l-kostruzzjoni ta' kancell. Is-sit mertu ta' dan l-appell jinsab f' Residence B, Triq Ta' Zejfa, limiti tal-Mosta.

Din l-applikazzjoni giet rifjutata peress li l-proposta tmur kontra l-policy Development Control Guidance - Developments Outside Built up Areas, partikolarment l-artikolu 8 paragrafu 8.2 (iii), peress li l-footprint jeccedi l-massimu ta' 150 metri kwadri. In oltre, l-izvilupp jintensifika dak urban barra z-zona ta' zvilupp (ODZ), u di konsegwenza l-izvilupp propost imur kontra d-Development Control Guidance sucitat, partikolarment l-artikolu 8 paragrafi 8.2 (v) u (vi) kif ukoll l-policies RCO 2 u RCO 4 tal-Pjan ta' Struttura.

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

L-Appellant jissottometti li fid-decizjoni taghha, l-Awtorita' ma kkunsidratx il-paragrafu 7.8 tal-Further Guidance on Policy PLP20, fejn l-istess kriterji gew affermati f' diversi decizjonijiet tal-Bord Tal-Appell Dwar l-Ippjanar (fosthom PAB 40/01 - PA 4770/00 Albert Gauci vs l-Kummissjoni ghall-Kontroll ta' l-Izvilupp). Ghalhekk it-talba odjerna kien imissha intlaqghet peress li ser jigi kkreat pjan terran ta' 150 metri kwadri u floorspace ta' 200 metru kwadru (allegatament in linja mal-policy PLP 20). Targumenta li l-estensjoni proposta (fil-livell terren) hi tassew minima li anke semmaj ser tittiehed bicca art agrikola zghira, m' hu ser ikun hemm l-ebda' effett negattiv fuq il-valur agrikolu tal-arja.

Tissokta l-argumenti taghha sabiex tjispjega li l-policies li jirregolaw estensjonijiet fl-ODZ ma gewx emendati jew modifikati minn meta nghataw id-decizjonijiet relatati mal-kaz de quo, u li fil-kaz in ezami l-applikazzjoni hija in linea mal-policy 2.3.11 tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables.

In oltre, l-Appellanti tiddikjara li d-disinn tal-faccati huma ben proporzjonati u li l-estensjoni ma tohloqx ftuh li mhuwix xieraq u li mhux kompatibbli mal-karattru vernakolari tal-bini ser jigi protett u prezervat, ghalhekk, il-volumetrija, skala u l-proporzjon tal-estensjoni tal-binja meta titlesta, ser tkun jaqbel ferm mal-karattru vernakolari li diga jezisti fuq is-sit in ezami.

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L-Awtorita' tissottometti li in linea mal-policy PLP 20 l-estensjoni proposta mhijiex accettabbli peress li l-footprint massimu permessibbli ser jigi eccess; kif ukoll li l-karattru vernakolari tal-bini mhux qed jigi rispettati. Tirrileva wkoll li fil-konfront tat-tieni subinciz tal-paragrafu 8.2 sucitat, il-font in ezami ma jikkwalifikax bhala bini li kien jezisti sa' minn qabel is-sena 1967, peress li gja' bil-permess PA 1100/03, kien intalab ir-riabilitazzjoni ta' binja mitluqa u semmaj, dik l-applikazzjoni kienet ammissjoni netta li l-bini kien abbandunat.

Qabel xejn, tajjeb li jigi nutat li l-policy PLP 20 tillimita l-zvilupp bhal dan in ezami ghal 150 metri kwadri. Fil-fatt, l-Awtorita' tirrileva li l-permess ghal PA 1100/03 kien inhareg, propju minhabba l-fatt li l-bini propost (fuq zewg sulari) ma kienx jaqbez il-150 metru kwadru. Tirrimarka wkoll li l-150 metru kwadru fil-policy jirreferu ghall-floorspace u mhux footprint; cjoe' 150 metru kwadri in kwantu spazju utili tal-izvilupp, mhux ta' wicc ta' art li ttiehdet ghall-izvilupp (disturbed ground surface).

L-Awtorita' tirrileva wkoll li bhalissa, l-izvilupp ghandu footprint ta' 102 metri kwadri u floorspace ta' 125 metri kwadri, u li b' din il-proposta, ser jitilghu ghal 152 u circa 200 metri kwadri rispettivament. Tinnota ukoll li rampa li twassal ghal-livell sottinterrat kif proposta, ma' tidhirx fl-ebda' ritratt mill-ajru sa' almenu s-sena 2004; u ghalhekk ma' setghetx kienet tezisti minn qabel is-sena 1967, kif dikjarat mill-Appellanti.

F' ir-rigward tal-ghaxar permessi citati mill-Appellanti, bl-eccezzjoni ta' tnejn, ilkoll kemm huma nhargu taht regime t' ippanjar qadim (sebbene gja' meta l-policy PLP 20 kienet fis-sehh). Fl-unika zewg permessi citati mill-Appellanti li hargu wara li dahal fis-sehh il-Pjan Lokali; wiehed kien talab floor space ta' 159 metri kwadri, cjoe' disa' metri kwadri aktar minn dak permess mill-policy u l-iehor kien sit fejn diga' kienet tezisti fabbrika.

Giet citata wkoll decizjoni tal-Bord ta' l-Appell fil-konfront ta' l-argument ta' 200 metru kwadru floorspace, (PAB 40/01 – PA 4700/00), izda din ser tigi trattata akter il-quddiem.

Mill-banda l-ohra, l-Awtorita' tirribatti l-kazistika pprezentat mill-Appellanti u ticcita zewg sentenzi tal-Bord tal-Appell dawr l-ippjanar (PAB 197/99 – PA 7346/98 u PAB 231/07 – PA 3912/06), li gew decizi wara dik citata mill-Appellanti kif indikat supra; wahda fejn appell gie milqugh propju ghax il-proposta ma kienitx taqbez il-150 metri kwadri u l-ohra michuda ghaliex kien jinqabez dan l-ammont. In kwantu l-allegazzjoni tal-Appellanti fir-rigward tad-DPAR, l-Awtorita' tirrileva wkoll li gja' f' dak l-istadju, kienet intalbet pjanta b' floorspace li ma' taqbizx il-150 metri kwadri – u li l-Appellanti qablet li tirridimensjona l-proposta' taghha. L-Awtorita' targumenta li wara

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li dakinhar l-Appellanti accettat li tottempera ruhha mal-policies u rridimensjonat l-izvilupp propost, m' ghandiex issa - galadarba li sarfet il-permess - tittenta tirribatti dak l-istess principju li kienet accettat dakinhar.

Fir-rigward tad-dokument 'Further Guidance on Policy PLP 20', kif citat mill-Appellanti, l-Awtorita' tirrileva li dan hu biss draft report li kien qed jikkontempla bidla fil-policy sabiex bini bhal dan in ezami galadarba ma' jaqbix footprint ta' 150 metru kwadru, jista' jkollu floorspace ta' mhux aktar minn 200 metru kwadru. (Jigifieri, supponendo li binja jkollha footprint massimu ta' 150 metru kwadru jista' jkoll fl-ewwel sular, jew fil-basement, kmamar li jammontaw sa' 50 metri kwadri ohra.)

Fil-fatt, jigi rilevat li l-paragrafu 7.8 tal-abbozz indikat mill-Appellanti, jibda bil-frazi segwenti:

“As appropriate replacement criterion for the current criterion (iii) would be ...”

Dan ifisser li galadarba il-paragrafu 7.8 tal-‘Further Guidance on Policy PLP 20’ qatt ma dahal fis-sehh, illum jibqa japplika l-paragrafu 8.2 tal-PLP 20 kif citat fir-raguni tar-rifjut. Fil-kaz in ezami, japplika b' mod partikolari it-tielet subinciz ta' dan il-paragrafu, kif gej:

“Site Area

(iii.) Extensions to existing buildings must not create a total floorspace which exceeds 150 sq. m. (ground floor area of existing building plus extension).”

F' ir-rigward tad-decizjoni PAB 40/01 - PA 4700/00 etc. citata mill-Appellanti, minghajr ma' joqod jissindika l-mod kif il-Bord ta' l-Appell dwar l-Ippjanar wasal ghal certa konkluzjonijiet f' kazijiet fejn intlaqghu appelli li jippermettu floorspace ta' 200 metru kwadru; dan it-Tribunal jinnota li propju dik id-decizjoniji strahet fuq memo interna tal-Awtorita' li kienet taghmel riferenza ghall-abbozz tal-PLP 20, liema memo kien jinsab fl-inkartament ta' dik l-applikazzjoni (red 9 fil-file PA 4770/00); u mhux ghal xi dokument 'rivedut' per se.

Fl-ahharnett, irid jigi nutat li l-policy applikabbli fil-kaz in ezami hi l-policy PLP 20. Ikun opportun pero' li jigi osservat li ma hemm xejn fil-policy li jsostni l-argument wara' l-150 metri kwadri u ghalfejn per ezempju, mhux izjed jew inqas. Bl-istess argument, jekk il-policy tirrizulta inkonklussiva, l-emenda proposta (li tikkontempla

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floorspace ta' 200 metri kwadri) hi daqstant konfuza – ghax biex wiehed jargumenta favur emenda irid almenu jghid kif wasal ghaliha. A meno che ma jkunx hemm kjarifikazzjoni ulterjuri; bhal gie mpost valur purament arbitrarju. F' ic-cirkostanzi pero' il-policy hi cara u ghaldaqstant l-appell de quo ma jimmeritax kunsiderazzjoni favorevoli.

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 64/08 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-lzvilupp, fit-13 ta' Mejju 2010.

### Ikkunsidrat

L-aggravju tal-appellant hu fis-sens illi t-Tribunal ma trattax l-applikazzjoni kif gew trattati applikazzjonijiet simili cioe fejn il-floor space kien jecedi l-150 metri kwadri skond policy paper PLP 20 u xorta inhareg permess.

Ma jidhirx li hemm kontestazzjoni dwar il-portata tal-artikolu 8(2)(iii) tal-PLP 20 fejn jinghad b'mod car illi l-floor space fil-kaz ta' estensjonijiet ta' binjiet ODZ ma ghandhiex teccedi l-150 metri kwadri li jigi mkejje bil billi jinghaqdu flimkien il-footprint tal-ground floor u maghha l-estensjonijiet kollha sa massimu ta' 150 metri kwadri b'kollox. Din hi l-interpretazzjoni tat-Tribunal li din il-Qorti f'sentenza recenti fl-ismijiet **Ray Bugeja vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** accennat ghalih minhabba li l-aggravju f'dik il-vertenza kienet rigward it-tifsira tal-artikolu u jekk il-Qorti kellhiex il-poter li tissindaka l-gudikat tat-Tribunal ghax kien qed jigi allegat li din kienet tikkonsisti f'applikazzjoni hazina tal-artikolu in kwistjoni.

Maghdud dan jinghad ukoll illi l-PLP 20 hi policy document intiza biex taffacilita, tassisti, taghmel uniformi u cert l-ipprocessar ta' applikazzjonijiet simili. Hu d-dover tal-Awtorita u t-Tribunal li jsegwi dawn il-linji gwida b'ieq ma jigrix dak li wiehed jista' jara bhala ingustizzja jew diskriminazzjoni bejn approvazzjoni ta' zvilupp u cahda ta' iehor meta si tratta ta' applikazzjoni tal-artikolu 8(2)(iii).

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Ma jfissirx b'daqshekk illi la darba inhargu permessi in vjolazzjoni, jew dak li jaghti l-percezzjoni, ta' vjolazzjoni ta' dak li jrid l-artikolu in kwistjoni, allura dan jikkreja xi dritt ghal applikant li jigi stmat bl-istess mod. L-Awtorita u t-Tribunal huma marbutin fl-ewwel lok li japplikaw skrupolozament il-pjanijiet u policies u fejn hemm linji gwida cari ghall-applikazzjoni ta' tali pjanijiet u policies, multo magis ghandhom jigu segwiti. Ma jistax jintuza ghalhekk l-argument illi jekk l-Awtorita jew it-Tribunal mxiet kontra r-regoli u l-linji gwida dan jista jintuza bl-istess mod ma kull applikant. Dan ikun ifisser komplicita mill-Awtorita li qeghda hemm biex timxi dritt u bl-istess riga ma kulhadd, sabiex tagixxi bil-kontra u timxi mgħawweg u b'riga li titkejjel skond il-kaz jew l-applikant. Dan l-agir mhux tollerabbli u din il-Qorti zgur mhix ser taccettah u taghtih l-approvazzjoni taghha.

It-Tribunal ghamel sew li mexa skond il-kliem u l-ispirtu tal-policy PLP 20 u jekk l-applikant ihoss li gie diskriminat ghandu juza l-mezzi kollha li taghtih il-ligi biex jindirizza l-abbuz, l-ingustizzja jew id-diskriminazzjoni izda ma jistax jitlob lit-Tribunal jew lil Qorti li tindirizza lanjanzi li mhux fil-poter taghha billi hi stess tghawweg jew tinjora regoli ta' ppjanar intizi biex jigu applikati ghal kulhadd b'mod indiskriminat.

L-appellant jista' ghandu ragun ikun urtat b'kejl differenti uzat ma' applikanti ohra, kif perceptit minnu, izda dan mhux bid-decizjoni tat-Tribunal li kienet korretta u skond il-ligi.

### **Decide**

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Marie Claire Zammit gia Camilleri u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013. Spejjez kontra l-appellanta.

## **< Sentenza Finali >**



-----TMIEM-----