MALTA

# QORTI TA' L-APPELL

## ONOR. IMHALLEF

## MARK CHETCUTI

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 22/2014

**Davina Anne Borg**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta’ Davina Anne Borg tal-21 ta’ April 2014 mid-decizjoni tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta’ April 2014 rigward PA 2650/12 dwar bdil ta’ uzu ta’ garage ghal hanut class 4;

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:

Illi l-appellanta applikat sabiex tbiddel l-uzu ta' garage li jinsab fi Triq Hookham Frere, fi Guardamangia, Pieta', ghal-hanut. Il-Kummissjoni ta' l-Ambjent u l-Ippjanar rrifjutat l-proposta ghal din ir-raguni segwenti :-

1. The proposed development will remove the existing parking spaces 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.

Ra l-appell tal-Avukat Dottor Anthony Piscopo f'isem l-appellanta li jaqra kif gej:-

"Following refusal by the Malta Environment and Planning Authority (MEPA) for the proposal in question, my client would like to object to the decision taken, on the following grounds :-

In PAB 70/09 ISB (PA 0366/08) Point 3.2 - John Giordmaina versus MEPA, for the proposed alterations to existing and a proposed overlying dwelling (outline PA 7994/06 approved), it was noted that:

"….. the appellant seems to indicate that the existing garage should be considered as surplus on-site car parking provision, and should be accepted as the required car parking for the new residential unit. MEPA does not agree with this stand, and accepting such a notion would only set a precedent against the requirement of Structure Plan Policy TRA 4. All new developments are required to provide adequate on-site car parking for new and additional uses, and this is required for the new uses over-and-above those already present on site."

The above affirmation by MEPA should also hold for the case under review, in which the existing garage to which the proposal in question refers to should not make good for the loss of on-site car parking resulting from new uses granted to third parties i.e. PA 05230/10.

The proposed Class 4 shop is located on the same site on which the overlying development was granted full development permit by way of PA 05230/10. Therefore, with respect to PA 05230/10, a correct and truthful declaration of the applicant's title over the whole site should have been submitted in accordance with Section 32 (3) of the Development Planning Act 1992. In addition, a Certificate of Ownership B should have also been completed and submitted to MEPA accompanied with the registration number/slip indicating that the applicant notified via a registered letter both my client and the rest of the owners of the site in question of his intension. Considering that none of the above mentioned requirements were handed over it follows that no formal consent was obtained from all the respective parties for the development granted by way of PA 05230/10.

Therefore, on which basis was my client's garage included in the equation for the calculation of the number of parking spaces required in the proposed development which belongs to third party and thus limiting the use of the property in caption to a garage?

Structure Plan Policy TRA 4 states that all new developments, including changes of use, require on-site parking provision, according to the type of development being proposed. But on-site parking provision cannot often be made in existing buildings. On 3 February 2005, the MEPA board considered two interpretations of TRA4, accepting the one where the parking requirements of a proposed building would be calculated by deducting the parking provision already provided for. Considering that:

my client's property was constructed prior to when this second interpretation of TRA 4 came in force; if such an interpretation of TRA 4 was going to be adapted in application PA 05230/10, which interpretation would have had an effect on my client's right to change the use of the garage in question, prior to processing of PA 05230/10, MEPA should have instructed the applicant to formally notify and obtain a consent from my client in order to include the property in caption as part of the on-site parking provision for the proposed overlying development.

What about the first interpretation of TRA 4 in which the parking requirements of a proposed building would not be calculated by deducting third party parking provision already existing on site? Is there a need to legally lodge another complaint as was the case for the developer of the old Promenade Hotel in Tower Road, Sliema, for which reason this second interpretation of TRA 4 was brought in force!

The garage in question was constructed at a time when on-site car parking provision was not obligatory (pre-1992 construction) i.e. the garage was constructed

prior to the coming in force of the Structure Plan, and in effect Policy TRA 4. Hence this implies that the existing garage space within the site cannot be assumed to be interrelated to the overlying apartments and/or Class 4 shops granted by way of PA 05230/10.

How come in drawing number 31b of PA 05230/10 (vide attached copy of plan), approved by the EPC Board, the existing ground floor plan indicates the existing third party corner property as a garage and in the proposed ground floor plan it was revised to a store? Was this included in the application proposal? Was the third party owner notified of this change? Did the owner give his consent to this change of use? Were all the necessary documents requested in Section 32 (3) of the Development Planning Act 1992 (vide point 2 above) regarding this change of use of a third party property submitted to MEPA prior to granting of PA 05230/10?

Please note that this change of use was not included in the proposal for PA 5230/10, and that the necessary registered notification including Certificate of Ownership B werenever submitted. Therefore the property for which the existing use is a third party garage and which has been listed as a store in the proposed ground floor plan, is legally still a garage. In such a case my client's garage, which, according to DPA report issued on the 12 December 2012, has been included as forming part of the parking spaces required in the development granted by way of PA 05230/10 can easily be changed to a Class 4 shop due to this existing additional car parking space which was omitted in the equation for the calculation of the number of parking spaces required with respect to PA 05230/10.

In those occasions where parking cannot be physically accommodated on site due to the existing commitments, new development should not be halted limitedly on these grounds. As a matter of principle, MEPA's own policy documents already specify that development applications may be approved where car parking cannot be provided on site, because it is either physically impossible or considered undesirable, and the site is not within the area covered by a Commuted Parking Payment Scheme, provided a contribution to the Urban Improvement Fund of €1,164 for each space which is not provided is effected.'';

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fid-9 t' April, 2013, u li jaqraw kif gej:

"5.2.1 Merits of the Refusal

The proposed Class 4 shop covers an area of 24sq.m and is thus considered as a local shop. Therefore the proposed use per se is not required to provide any on-site

car parking provision. Nevertheless, MEPA refused the application because it would lead to the loss of existing on-site car parking provision. Hence, the proposal runs counter to Structure Plan policy TRA 4 and PA Circular 3/93 which seek to ensure that appropriate provision is made for off-street parking.

5.2.2 Re: Appellant's Point 1

The appellant is arguing that the overlying dwellings approved by way of PA 5230/10 belong to third parties and that his garage is not related in any way to this development. Therefore his garage should not have been considered as an existing car parking space in the calculation of the car parking provision in PA 5230/10. Hence, the Authority should stop refusing the proposal arguing that it would lead to the loss of existing on-site parking required for the above dwellings. The appellant is arguing that this principle was affirmed by MEPA in PAB 70/09 ISB.

The appellant is wrong on this issue on various counts.

A. This is not an appeal from PA 5230/10. Any attempt by the appellant to attack this permit is fuori termine. Furthermore, the appellant cannot seek to revoke or amend PA 5230/10 in this appeal but has to start the appropriate procedures prescribed by law.

B. Without prejudice to the preceding argument, the Authority wishes to remark that on-site parking requirements is always calculated on the number of apartments (or any other uses for that matter) existing or proposed in that particular block, irrespective of the ownership. Parking provision is not intended to be used necessarily exclusively by the overlying apartments; rather its calculation is intended to provide the immediate urban area a suitable amount of off-street car parking spaces that is proportionate to the needs of the number and sizes of activities carried within the particular site. This methodology ensures that the area in which the particular site is located is furnished with an acceptable amount of off-street parking which provides an essential amenity to the area.

In view of the above argument and in view that the proposed development will eliminate the existing private parking provision associated with (although not necessarily used by) the overlying development, the proposal is deemed unacceptable as it reduces an important residential amenity and thus runs counter to Structure Plan policy TRA 4.

C. The Authority cannot understand fully the appellant's argument in his citation of PAB 70/09 ISB.

The appeal referred to by the appellant regards a totally different situation. In PAB 70/09 ISB, a development involving new dwellings was not making adequate provision for on-site car parking spaces. Therefore the Authority requested a contribution towards the UIF to make up for this shortfall. The appellant in that case argued that there was no need to pay the UIF because (i) the site is located in the ODZ (Category 3 Settlement) and thus by definition there is no particular traffic pressure to park on the street and (ii) he was in possession of a 6-car garage just opposite the site on the other side of the street. The Planning Appeals Board decided that no UIF was required in view of the context of the area (ODZ; Category 3 Settlement) and the fact that the appellant was in possession of a large garage.

It is clear that the above scenario is totally different from the case of the appeal de quo. For a start, the case in PAB 70/09 did not refer to loss of existing parking (as is the appeal under consideration) but to the creation of a shortfall in parking needs. Moreover the site is not located in the ODZ and the appellant is not providing a suitable alternative place for off-street parking. The two cases simply cannot be compared.

The part quoted by the appellant in this section, is a direct reference of an argument made by the Authority during the course of appeal PAB 70/09. That argument was solely referring to the need that every new development is to provide the necessary car parking spaces on site. The argument proceeded by stating that existing garages not forming part of the proposed development site cannot be considered when calculating the car parking provision even if owned by the same appellant and is located nearby because that garage is required to service the needs of the existing and potential (if it does not exist yet) overlying development.

The appellant has simply lifted the Authority's argument in PAB 70/09 and quoted it out of context. As explained above, that argument was made in relation to the concept of shortfall in parking and not when existing parking spaces are lost. The two scenarios are different and the policy requirements are not the same.

5.2.3 Re: Appellant's Points 2 and 3

5.2.3.1 The appellant is arguing that permit PA 5230/10 is faulty because the applicant in that application failed to state that he is not the owner of the whole site and should have, but did not, notify the rest of the owners.

Therefore, given that there was no consent from the rest of the owners (including the appellant) than the Authority could not include the garage subject of this appeal in the calculation of the parking requirements for the development in PA 5230/10.

The Authority has already commented that it is futile to try to attack permit PA5230/10 since this is fuori termine at this stage. And, if the appellant is seeking the revocation or amendment of PA 5230/10, then he requires utilising the appropriate procedure and not using this appeal regarding the refusal for PA 2650/12 for that scope.

Nevertheless, and without prejudice, the Authority notes that the application for PA5230/10 was correct because the applicant clearly indicated which parts belong to the third parties. Moreover no part of the development involved the third party property. Thus the Certificate of Ownership was correct and consent from the third party owners was not required because their property was not affected (according to the submitted drawings).

The Authority has already explained how third party garages are taken into consideration in the calculation of parking requirements. There is no need to repeat it here.

5.2.3.2 According to the appellant, the MEPA Board has considered, on the 3rd February 2005, two interpretations of the TRA 4 accepting the one that where parking requirements of a proposed building would be calculated by deducting the parking provision already provided for.

According to the appellant, the approach of including third party parking provision in the calculation of the parking requirements for new development has been discarded by the MEPA Board after a similar complaint in the re-development of the old Promenade Hotel.

The Authority cannot reply to this claim since the appellant did not provide any references. Moreover the Authority is in a quandary on this issue because the appellant did not provide the context for such a claim.

As already explained above, there was no need for any consent from the appellant in PA 5230/10, for the Authority to take into consideration his garage in the calculation of the parking spaces.

Nonetheless, the appellant's argument that the garage in question cannot be considered to be related to the overlying dwellings because the said garage precedes the Structure Plan and this interpretation (allegedly in 2005), is not valid because it has no basis in planning policy. Several decisions of the Planning Appeals Board, the Environmental and Planning Review Tribunal and the Court of Appeal state that the policies applicable are those in vigore at the time of the decision and not those that regulated the construction of the original building.

5.2.4 Re: Appellant's Point 4

The appellant is arguing also that the drawings in PA 5230/10 portraying the existing situation showed a garage at the corner as belonging to third parties. However in the drawing indicating the proposal, this third party garage was shown as being a store.

The appellant is claiming that this is not acceptable because the necessary documents regarding ownership of third party property was not submitted (as required by law), the owner of this garage was not notified that his property had its use changed, and this change of use was not included in the proposal description.

The Authority has already commented that this is not an appeal PA 5230/10 and anyway it would be fuori termine. Moreover, the Authority notes that the appellant has no interest in discussing property that does not form part of PA 5230/10 and belongs to a further third party.

Nevertheless, and without prejudice to this position, the appellant is factually incorrect. The 'garage' referred to by the appellant is indicated as third party property and does not form part of the proposal. Therefore as already explained above, the applicant in PA 5230/10 was correct in the Certificate of Ownership submitted with the application.

Furthermore, the appellant is criticizing the fact that this corner 'garage' is indicated as garage in the Existing drawings but then shown as store in the Proposed drawings without a change of use having been requested. On the other hand, the Authority notes that:

(i) A change-of-use request could not have been requested because this corner property does not form part of the development and was shown as belonging to third parties;

(ii) The corner property is clearly labelled as existing store in the drawings portraying the proposed development. Obviously showing something as existing in a plan showing what the proposal is going to be means that particular use is not going to change even if the rest of the site is going to be developed;

(iii) The Authority could have never considered the corner property as a garage even if it was labelled as such in the proposed drawings for the simple reason that it is too small to permit the parking of a vehicle.

5.2.5 Re: Appellant's Point 5

Structure Plan policy TRA 4 requires that each and every development is suitably catered for in terms of off-street parking provision. It does contemplate the possibility of mitigating shortfall in off-street parking in those projects where it is not essential to meet the full car parking standards by making a monetary contribution.

This contribution mechanism is explained in policy 4.18 of the DC2007 which however makes it most clear that [t]his policy does not apply where the proposed development will result in the removal of parking available on site.

Thus, given that in this case the proposal consists of change of use from an existing garage to a shop and therefore it involves loss of parking, the shortfall in parking created in this application cannot be compensated for by a contribution towards the UIF as per policy 4.18 of the DC 2007.'';

Ra s-sottomisjoni ulterjuri tal-appellanta tas-6 ta' Gunju, 2013, u r-replika ta' l-Awtorita' permezz ta' zewg noti prezentati fid-9 ta' Settembru, 2013 u fis-17 ta' Marzu, 2014.

Ra l-Policy TRA 4 tal-Pjan ta' Struttura;

Ra l-PA circular 3/93, u s-Supplimentary Guidance, Parking for Local Shops, 1997.

Ra ukoll il-PA files bin-numri 2650/12, 2650/12, 1753/12 u 1832/11;

Ra l-atti kollha ta’ dan l-appell.

Ikkunsidra ulterjorment:

Illi l-ilment principali mressaq mill-appellanta rigward ir-raguni tar-rifjut huwa marbut mal-kalkolu ta’ parkegg fil-permess ghall-izvlupp fuq is-sit, bin-numru PA 5230/10, li jikkonsisti fi zvilupp mill-gdid ta’ hanut u garages fil-pjan terran u numru ta’ apartamenti sovrastanti. Illi l-garage mertu ta’ dan l-appell jinsab fil-livell terran sottostanti l-apartamenti approvati b’dan il-permess PA 5230/10, fejn ghalkemm il-garage odjern kien qed jigi ndikat bhala ‘thrid party property’ xorta gie kalkolat bhala garage biex jaghmel tajjeb ghal-parkegg mitlub f’dan l-izvilupp approvat. L-appellanta qed toggezzjona ghal dan il-kaloku fejn l-istess garage mertu ta’ dan l-appell kien gie ndikat fil-pjanti u kunsidrat mill-Awtorita’ minghajr il-kunsens tal-appellanta bhala is-sid ta’ l-istess garage.

L-Awtorita’ rribattiet billi ssollevat li dan l-appell huwa kontra decizjoni ta’ rifjut tal-proposta fl-applikazzjoni PA 2650/12, u f’dan ir-rigward, dan l-appell ma jistax jintuza sabiex l-appellant iressaq l-ilmenti u jattakka l-permess PA5230/10 kif mahrug. Fil-kaz mertu ta’ dan l-appell, l-Awtorita’ qed tinsisti li l-proposta ta’ bdil fl-uzu tal-garage ser tnaqqas il-parkegg ghall-izvilupp li hemm fuq is-sit, li jinkludi l-izvilupp permess PA5230/10.

Illi rigward il-permess PA 5230/10, dan it-Tribunal qed jaghmel dawn iz-zewg osservazzjonijiet :-

1. Illi l-applikazzjoni kienet tinkludi erba’ garages ezistenti fil-pjan terran skont pjanta ‘1v’, filwaqt li kien lejn l-ahhar tal-process ta’ l-applikazzjoni li dawn l-erba’ garages gew indikati bhala ‘third party’;

2. Illi dawn l-istess garages kienu suggett ghal-talba ta’ minor amendment fejn skont kif gie ndikat fil-pjanti ‘61a’ saru emendi ghal-istess garages bil-kunsens tal-partijiet koncernati;

Illi wara dawn l-osservazzjonijiet, dan it-Tribunal seta’ jinnota li dawn il-garages kienu parti mill-permess PA 5230/10, u kuntrarju ghal dak li qed tindika l-appellanta, jidher li hemm kunsens ghal-tibdil kemm fil-konfigurazzjoni u l-faccata ta’ l-istess garages.

Illi dan it-Tribunal jinnota li jista jkun hemm dubju ukoll kemm il-garage mertu ta’ dan l-appell huwa wiehed minn dawk indikati fil-permess PA 5230/10, meta l-ebda

garage ma jaqbel ma dak li gie prezentat fl-applikazzjoni odjerna. Il-posizzjoni tal-garage skont kif indikat fil-process tal-applikazzjoni jikkorrispondi mal-garage numru 2 fil-permess PA 5230/10, ghalkemm dawn, kemm bhala daqs u konfigurazzjoni, ma jaqblu xejn ma xulxin.

Illi fil-kaz inezami, l-Awtorita' bbazat r-raguni tar-rifjut a bazi tal-principju li ser ikun hemm tnaqqis ta' parkegg (off-street), ghal-izvilupp li hemm fuq l-istess sit. Il-kuncett ta' ppjanar baziku li johrog mill-Pjan ta' Struttura, Policy TRA 4 u gwidi supplimentari (PA circular 3/93, u l-linja gwida Parking Provision for Local Shops, Offices and Catering Etablishments, tas-sena 1997) jirrigwarda l-bzonn li kull zvilupp jipprovdi l-parkegg fuq is-sit biex jilqa ghal-impatt ta' traffiku li ser jiggenera, u ghaldaqstant ghandu jigi mhares dan il-parkegg milli jitnaqqas bi zvilupp ghal bdil fl-uzu.

F'diversi decizzjonijiet dan it-Tribunal esprima l-bzonn ta' prova ta' permess li juri l-parkegg, jew garage, marbut mal-kumplament ta' l-izvilupp li hemm fuq is-sit, qabel ma jigi rifjutat il-proposta ghal-tibdil fl-uzu ta' l-istess garage. F'dan il-kaz huwa evidenti li fuq is-sit kien okkupat b'garages ezistenti li qed jipprovdu l-parkegg minimu necessarju ghal zvilupp gdid li sar fuq l-istess sit. Huwa krucjali li kull zvilupp gdid ma johloqx impatti addizzjonali fiz-zona, li f'dan il-kaz ser ikun in-nuqqas ta' parkegg f'zona residenzjali. Ghaldaqstant, il-kwistjoni f'dan il-kaz hija dwar il-bzonn li jigi protett l-garages ezistenti fis-sit, u mhux jizdied l-uzu kummercjali jew uzu iehor li per konsegwenza ser inaqqas il-parkegg.

Illi dan it-Tribunal ma jarax li hemm relevanza mal-permessi citati mill-appellanta, meta fil-kaz tal-PA 1753/12, l-Awtorita' qieset li l-garage kif gie permess originaljament ma kienx jilhaq l-istandards adegwati ghal-funzjoni ta' garage, li kien jinsab f'kantuniera u b'diffikultajiet ghad-dhul u hrug tal-vettura. Fil-kaz tal-garage inezami mertu ta' dan l-appell, dan jista jakkomoda parkegg ta' karozza bla xkiel. Fil-kaz deciz mit-Tribunal diversament kompost, bl-ismijiet Emanuel Buttigieg vs MEPA, tat-30 ta' Lulju, 2013 (app. 63/12, PA 1832/11), it-Tribunal ikkunsidra l-fatt li l-parkegg fi triq, quddiem il-hanut propost, ser ikun iktar utli mill-parkegg fil-garage. Dan wara kollox kien possibli billi l-wesa' tal-garage ta' madwar 4.8 metri li kien bizzejjed biex jakkomoda parkegg ta' karozza li jilhaq l-istandards applikabbli. Certament dan mhux il-kaz tal-garage mertu ta' dan l-appell, b'wesa ta' madwar 3.58 metri, ghaldaqstnat ma jistawx jigu applikati l-istess kunsiderazzjonijiet li ghamel t-Tribunal diversament kompost.

Ghal dawn il-mottivi premessi, u wara li gew ikkunsidrat bir-reqqa l-fattispeci tal-kaz, dan it-Tribunal qieghed jichad l-appell u jikkonferma r-rifjut.

**Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ta d-decizjoni tieghu granet wara li l-Awtorita dahlet nota ta' sottomissjonijiet tardivament u meta l-appellant ma setghetx tirribattihom. Dawn is-sottomissjonijiet ma kienux biss ta' natura legali u intlaqghu mit-Tribunal fid-decizjoni tieghu. Fid-decizjoni tieghu fil-fatt irrefera ghal permess PA 1832/11 li skond it-Tribunal gie milqugh minhabba l-qies tal-faccata u fatturi ohra mentri fil-fatt ma kienx hekk u t-Tribunal ma kellux dritt jaghmel assunzjonijiet li ma jirrizultawx minn qari ta' gudikat;

2. It-Tribunal naqas li jqis l-aggravju tal-appellant li l-garage in kwistjoni qatt ma kellu jservi ta' parking ghal zvilupp li sar minn terzi meta l-appellant kienet gia proprjetarja tal-garage u qatt ma tat kunsens biex il-garage taghha jintuza minn terzi biex jaghmel tajjeb ghal parkegg addizjonali mehtieg mill-izvilupp. B'dan il-mod l-appellant giet pregudikata meta applikat ghal bdil ta' uzu u bic-cahda tat-talba ghar-raguni fuq citata giet privata minn dritt ta' sid minhabba azzjoni ta' terz u aspettativa legittima li tinghata permess;

3. It-Tribunal zbalja meta qies li l-appellant tat il-permess taghha ghall-izvilupp meta accettat minor amendment mitlub min terz. Dan il-minor amendment kien ghat-tibdil tas-saqaf tal-fond tal-appellanti biex jiflah ghal piz tal-izvilupp fuqu izda zgur ma jistax jitqies kunsens ghall-izvilupp u l-uzu tal-garage ghall-finijiet tal-istess zvilupp.

**L-ewwel aggravju**

L-appellant hu zbaljat li l-fatt li nota tal-Awtorita gie prezentata tardivament tinkorri l-isfilz. Din hi pregorattiva tat-Tribunal specjalment f'kaz bhal dan fejn fil-verbal qabel ma dahlet in-nota jintqal illi l-appell kien qed jithalla ghad-decizjoni wara li l-appellant ghamel referenza ghal zewg applikazzjonijiet, b'dan li l-Awtorita inghatat zmien tikkummenta fuq il-kazijiet citati. Dan il-verbal qed jaghti fakulta lil Awtorita biss biex tikkummenta fuq l-applikazzjonijiet minghajr referenza ghal xi dritt ta' replica tal-appellanti, bl-intiza li d-decizjoni kellha tinghata wara gheluq it-terminu tal-prezentata tas-sottomissjoni. Is-sottomissjoni, li kuntrarjament ghal dak li qalet l-appellant ma tiddistingwix bejn sottomissjonijiet legali jew/u fattwali fuq l-applikazzjonijiet citati, iddahlet qabel inghatat id-decizjoni u t-Tribunal kellu l-fakolta jisfilzaha ghax tardiva jew ihalliha, fid-diskrezzjoni tieghu. In kwantu ghall-osservazzjonijiet li ghamel

it-Tribunal fuq il-permessi citati, sab li ma kienx simili. Il-Qorti ma tistax taghmel hi kostatazzjonijiet fattwali rizultanti minn permess ohra sakemm il-kostatazzjoni hi wahda fattwalment fallaci u hi l-unika jew l-aktar fattur determinant li wassal lit-Tribunal ghad-decizjoni tieghu. F'dan il-kaz zgur ma kienx il-kaz li dan il-fattur ta' similitudni o meno ta' permessi kien ir-raguni principali jew determinanti tal-applikazzjoni. It-Tribunal irrefera ghal permessi ohra biss ghal finijiet ta' rilevanza mhux il-mertu proprju tal-aggravju tal-appell.

Kwindi dan l-aggravju qed jigi michud.

**It-tieni u t-tielet aggravji**

Dawn l-aggravji mehudin flimkien huma l-pern tal-kwistjoni. Fil-premessi tal-kunsiderazzjonijiet ulterjuri tieghu t-Tribunal jidher li fehem l-aggravju tal-appellant cioe li inhareg permess ta' zvilupp billi iddahhal fil-keffa l-garage tal-appellant qua garage biex jaghmel tajjeb ghal parkegg necessarju ghall-izvilupp ta' terz minghajr mal-istess appellant tat il-kunsens taghha biex dan isir.

Qari pero tal-kunsiderazzjonijiet l-ohra tat-Tribunal ihallu lil din il-Qorti perplessa. It-Tribunal ikkonstata illi l-applikazzjoni tat-terz kienet tindika erba' garages li fl-ahhar tal-ipprocessar tal-applikazzjoni gew indikati li huma ta' terzi. L-istess garages kienu suggetti ghal minor amendments bil-permess tal-partijiet. (Il-Qorti tifhem sidien tal-garages.) It-Tribunal naqas li jindirizza zewg punti cioe x'kienu ezatt il-minor amendments ghalkemm ighid f'hin minnhom li 'jidher lil kien hemm il-kunsens ghat-tibdil fil-konfigurazzjoni u l-faccata tal-garages'.

Dan ir-ragunament skeletriku ma indirizzax il-problema. Il-kwezit mressaq bl-aggravju kien fl-ewwel lok jekk qatt irrizulta l-kunsens tal-appellant li l-garage taghha jintuzaw minn terz biex johrog permess ghal zvilupp sovrastanti, fejn l-istess garages ikunu qed jigu indikati li jintuzaw bhala parking spaces biex jaghmlu tajjeb ghall-izvilupp ikkrejat. Din hi kwistjoni li trid tigi mistharga l-ewwel nett billi jigu esposti l-fatti kollha rilevanti b'mod dettaljat li minn qari tad-decizjoni dan ma jirrizultax. Fit-tieni lok, darba esposti l-fatti t-Tribunal kellu jevaluwa l-kwistjoni purament legali jekk il-fatti jwasslux lit-Tribunal jiddeciedi li l-appellant tat il-kunsens

esplicitu taghha biex il-garage jintuza ghal finijiet ta’ permess ta’ zvilupp ta’ terzi biex jinhareg il-permess, jew jekk dan il-kunsens esplicitu ma jezistix, hemmx ir-rekwiziti gurisprudenzjali stabbiliti ghal prova tal-kunsens implicitu tal-appellant li tfisser rinunzja ta’ drittijiet tal-proprjetarju li juza l-proprjeta tieghu kif irid u jixtieq, bid-dritt li japplika ghal kull zvilupp permissibbli skond il-ligijiet ta’ ippjanar vigenti. F’kaz li l-Qorti ma ssibx il-kunsens moghti esplicitament jew implicitament allura tinsorgi l-konsiderazzjoni dwar id-dritt tal-appellant li tinghata permess ghal dak mitlub skond il-ligijiet ta’ ippjanar vigenti minghajr ebda referenza jew rabta ma’ permessi gia moghtija lil terzi. It-Tribunal naqas li jindirizza l-problema anki minn dan l-aspett. Il-Qorti mhix ser tindirizza l-kwistjoni hi peress li l-ewwel irid isir l-apprezzament ta’ dan kollu mit-Tribunal biex ma jintilifx id-dritt tad-doppioezami.

Punt iehor ta’ perplessita hu illi t-Tribunal donnu gieh dubju dwar liema garage kien dak tal-appellant allegatament imdahhal fil-permess tat-terz PA 5230/10. Fuq hekk biss, it-Tribunal messu issospenda l-prolazzjoni tad-decizjoni ghal kjarifika ghax ikun inutili li wiehed jidhol fil-mertu ta’ aggravju meta l-aggravju mhux rilevanti ghal fattispecie in kwistjoni. Il-Qorti tawgura li t-Tribunal jindaga b’aktar profondita dan l-asspett tal-vertenza biex ikun hemm ic-certezza dwar l-oggett mertu tal-applikazzjoni b’referenza ghal dak imdahhal bhala proprjetajiet fil-permess PA 5230/10.

Ghal dawn ir-ragunijiet huma gustifikati l-aggravji tal-appellant fis-sens hawn fuq deciz.

**Decide**

Ghalhekk il-Qorti taqta’ u tiddeciedi billi tilqa l-appell ta’ Davina Anne Borg, u tirrevoka d-decizjoni tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta’ April 2014, u tirrimetti l-atti lura lit-Tribunal biex jerga’ jiddeciedi l-appell skond il-ligi. Spejjez ghall-Awtorita.

## < Sentenza Finali >