



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 9/2014

Carmelo Calleja

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Carmelo Calleja tad-19 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014 mill-applikazzjoni PA 2468/01 'to sanction residential and agricultural building';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll ta' l-Izvilupp, fit-3 ta' Gunju 2008, ikkonfermat ir-rifjut tal-applikazzjoni għall-permess tal-izvilupp PA 2468/01 – 'Joseph Farmhouse', Ta' Zgamardi, Siggiewi: To sanction residential and agricultural building.

L-ghaxar ragunijiet għar-rifjut huma s-segwenti:

"1. The site lies outside the limits for development defined in the Temporary Provisions Schemes and so it is located in an area in which development is permitted only if it is essential to agricultural, ecological, or scenic interests. The proposed development is not considered to be essential to these interests and therefore it would run counter to these schemes as it would represent unacceptable development in the countryside. The Temporary Provisions Schemes are endorsed by Structure Plan Policy SET 8 and therefore the proposed development is in conflict with this policy.

2. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non-urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

3. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located in an area designated for development or in an existing built up area.

4. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

5. The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

6. Structure Plan policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RCO 4.

7. The proposal is not essential to the needs of agriculture in that the applicant does not till at least 20 tumoli of dry agricultural land or its equivalent in the vicinity of the site for at least two years prior to this application. The applicant does not therefore satisfy the criteria set out in paragraph 11.2 (a) of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF 5 and SET 11 and to the Planning Authority's Policy and Design Guidance - Farmhouses and Agricultural Buildings.

8. The proposal does not satisfy the criteria set out in Paragraph 11.4 of the Structure Plan Explanatory Memorandum in that it exceeds the allowable 15m² area. It also detracts from the rural characteristics of the area due to the materials which have been used. The proposal therefore runs counter to Structure Plan Policy AHF 5 and to Paragraph 11.4 of the Explanatory Memorandum.

9. The proposal infringes Paragraph 1.10.1 of the Policy and Design Guidance 'Farmhouses and Agricultural Buildings' (February 1994) which clearly states that agricultural stores shall only be permitted if the room is not greater than 15m² and does not exceed 9 courses in height.

10. The proposed dwelling does not conform to policies 2.2.1, 2.4.1 and 2.5.1 of the Policy and Design Guidance for Farmhouses and Agricultural Buildings, in that the building introduces alien forms to the countryside through the use of balusters and rendered facades and it does not give the appearance of having grown organically over time. It is not a typical agricultural development in both scale and massing and has nothing in common with the traditional rural buildings found in the countryside. It would consequently negatively affect the scenic value of the area."

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B. In-nota tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fis-7 ta' Lulju 2008, senjatament il-punti segwenti:

"It must be stated that a request for reconsideration was submitted on Monday, July 22, 2002, that is almost six years ago.

During this phase we have negotiated at length with the Commission, concluding that applicant was eligible to a residential dwelling and agricultural storage on the basis of active Structure Plan policies.

To that end, we have been specifically requested by the DCC to amend drawings as per communication shown in Document A, to which effect we have submitted modified drawings in accordance with the said request.

Since we have undertook to address the concerns raised by the DCC and submitted fresh plans in due time, way before the introduction of the recent approved Agriculture, Farm Diversification and Stables which were published in January 2008, we fail to understand why the DCC ignored the contents of our amended submissions which were modified according to the DCC's own request."

Din in-nota taghmel riferenza ghall-ittra tal-Kummissjoni bid-data tat-23 ta' Marzu 2007.

C. In-nota responsiva ta' Lorinda Vella ghall-Awtorita', ipprezentata fid-29 t'Awissu 2008, inter alia l-punti segwenti:

"5.3 Notwithstanding the arguments presented by the appellant, it is pointed out in the first instance that while drawings were submitted on the applicant's behalf complying with the DCC's request, the DCC Board still refused this application. In the second instance, the MEPA would like to point out that a re-assessment of this application against the new and adopted Policy & Design Guidance 'Agriculture, Farm Diversification & Stables' is appropriate and legally applicable in view that all decisions for development permission applications are to be based on plans and policies in force at the time of decision.

5.4 This principle has been confirmed on several occasions by both the Planning Appeals Board and the Court of Appeal. A case in point is the Court of Appeal decision of 24th April 1996 for Angelo Farrugia vs. Planning Authority, whereby the Court of Appeal stated that all applications are to be considered according to present plans and policies, irrespective of the date of submission of the application.

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This was also supported in several other subsequent decisions including those of: Pater Holding Company Ltd. vs. DCC (11th September 1998), John Scerri vs. Planning Authority (28th May 1997), Emmanuel Mifsud vs. DCC (31st May 1996), and Michael Axisa vs. MEPA (20th August 2003).

5.5 Hence, in the course of this appeal, MEPA's assessment shall be carried out against the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables'. The drawings that shall be assessed are those attached at red 78B, 78C & 79A in the PA file, as these drawings portray the proposal that was decided upon by the DCC in their last decision at reconsideration stage. As this application involves several differing components, the assessment shall be carried out in subsections as follows:

Buildings to be demolished:

MEPA finds no objection to the proposed demolition works as it has been proved during the course of this application that these structures were illegally constructed.

Sanctioning of Residential Building:

The reasons for refusal partly indicate that the residential building was not favourably considered as its design was not compatible and sympathetic with rural characteristics. The drawing at red 78B indicates an improvement to the external appearance of the building as the use of timber apertures are identified to be fixed, the external walls are to be unrendered and left to weather naturally, and ivy creepers are proposed to be landscaped around the external walls of the residence. While these interventions are considered to be a considerable improvement on the external appearance of the existing residential building, these ameliorations alone do not justify the sanctioning of this residence.

This is being said, as the principle of the proposal is still not acceptable. It is acknowledged that the applicant is a full-time farmer with almost 30 tumoli of land, as confirmed by the Department of Agriculture in their correspondence at red 18. Notwithstanding the knowledge of this, MEPA had considered that the sanctioning of a residence for a full-time farmer was not justified on the grounds that only 16 tumoli of the applicant's land holding is situated within vicinity of the site, and the applicant has only been registered as a full-time farmer for six months prior to the submission of this application. The MEPA had considered that on these two issues alone, the proposed residence is not justified on sound planning grounds.

The new agricultural policy confirms these assertions in that the applicant is required to be registered as a full-time farmer for at least three years prior to the submission of the application [policy 2.2B(2)]. In addition, the new policy also

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confirms that the location of the applicant's holding has a direct bearing on determining whether a proposal is justified on sound planning grounds, as it is clearly stated in policy 2.2B(1) that the applicant's land holding should be at least 1 kilometer away from a designated urban area or a rural settlement. According to the information provided by the Department of Agriculture at red 18A, the applicant's land holding within which the proposed developments are located, is situated less than 200m from the Siggiewi development zone boundary. Accepting the sanctioning of the proposed residence would clearly infringe policy 2.2B(1).

Furthermore, only 16 tumoli of the applicant's land holding is located within close vicinity to the area proposed for development, while the applicant's other arable land holding is located more than 1 kilometre away from the site. This also contradicts with policy 2.2B(6), which requires that any residential farmhouse is located within the applicant's arable land holding and within a radius of 1 kilometre from the applicant's 30 tumoli of arable land.

While the proposal was not acceptable under the previous agricultural policy, the new Policy & Design Guidance 'Agriculture, Farm Diversification & Stables' confirms that the proposed residence is not justified on sound planning grounds and hence does not merit favourable consideration.

Sanctioning of Structure to be used as a Rabbitry:

On drawing red 79A, it is indicated that one of the corrugated roofed sheds shall be demolished, while the other shall be retained for use as a rabbitry. The sanctioning of this structure for use as a rabbitry is not acceptable, on the grounds of the following:

- The use of this structure for rabbit rearing does not comply with the provisions of policy 2.3C of the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables', in that:
- Official statements that the applicant is a registered animal breeder, that this enterprise would be viable in the interest of agriculture, and that the livestock unit would comply with the official standards on waste management, animal welfare, hygiene, health and protection of water resources, have not been presented, as required by criteria 1, 2 & 6;
- The site of the proposed livestock unit is located less than 200 metres from a water source – the Wied Xkora valley system, which is also an Area of Ecological Importance and where developments that would affect the quality of water of this valley system are prohibited, and hence in conflict with criterion 3(c).
- The materials used for this structure, in particular the corrugated roofing, are not sympathetic with rural materials and designs. Accepting such a structure would

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therefore conflict with SP Policy RCO 4 & AHF 5, which require that sympathetic materials and design are adopted for any rural development related to the agricultural industry, to ensure that any such structure blends in with the site's rural context. It is also pointed out that drawings of the rabbitry structure that is to be retained, as identified on the block plan at red 79A, were not presented in this application.

Use of Old Structures as a Sheep Pen & Hay Store:

The structure identified as a sheep pen and hay store existed on site before 1968, and hence the legal standing of this building was not contested by MEPA. The legal use of this building is also questionable. As the photographs at red 66B & 66C indicate that the rearing of sheep and hay storage appears to be of a domestic nature, MEPA finds no contention against the continuance of this use within the old structure.

Proposed Landscaping:

The block plan at red 79A indicates that landscaping is limited to the planting of two olive trees. This is not considered to be sufficient in mitigating the visual impact of the proposed developments. Hence, Structure Plan policy RCO 4 is further being infringed."

D. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fit-22 ta' Frar 2011, precizament il-punti segwenti:

"4. Illi bid-dovut rispet, l-appellant jissottometti bil-qawwa kollha li dak citat fir-rapport ta' l-Awtorita' hu ghal kollox bla bazi u infondat, u dan ghar-ragunijiet segwenti:

a) Illi dwar l-ewwel osservazzjoni ta' l-Awtorita', u cjoe' 'All decisions for development permission applications are to be based on plans and policies in force at the time of decision', l-appellant jaghmel referenza ghad-digriet moghti fl-Atti tal-mandat ta' inibizzjoni fl-ismijiet Malcolm Mallia et versus l-Awtorita' dwar l-Ambjent u l-Ippjanar (Mandat ta' Inibizzjoni Numru 713/2010) nhar is-sbatax ta' Mejju 2010 fejn il-Qorti kienet 'sodisfatta illi r-rikorrenti ghandhom dritt prima facie li jitolbu l-hrug ta' mandate peress illi jstghu isofru hsara irrimedjabbli jekk l-azzjonijiet li qed jitolbu li jwaqqfu jitkomplew" u dan billi l-azzjonijiet kienu jikkonsistu filli r-rikorrent Mallia hassu aggravate peress li kien se jsfri danni irrimedjabbli stante li l-Awtorita' intimate bdiet process sabiex tbiddel il-policies b'mod li kienu se jippegudikaw applikazzjoni ghall-izvilupp li l-istess rikorrent kien diga intavola u li dwarha il-mertu kien ghadu sub judge.

b) Illi dwar it-tieni osservazzjoni ta' l-Awtorita', fis-sens li 'The interventions on the farmhouse are considered to be a considerable improvement – yet these interventions alone do not justify the sanctioning of this residence', l-appellant jissottometti li huwa ilu registrat bhala full time farmer u ghandu fil-pussess tieghu 30 tomna raba. Fil-fatt, ir-raba ilha registrata fuq ismu ghal aktar minn ghaxar snin. L-appellant ma jifhimx kif l-Awtorita' qed tallega li l-applikant ma jikkwalifikax ghal residenza meta l-policy in vigour dak in-nhar ta' l-ewwel decizjoni tal-Kummissjoni li ggib id-data tat-tnejn (02) ta' Lulju 2002, kienet tippermetti li l-appellant jikkwalifika ghal permess ta' farmhouse a tenur tal- Planning and Design Guidance: Farmhouses and Agricultural Buildings [il- policies applikabbli), u dan stante li applikant ikun full time farmer, ghandu fil-pussess tieghu 20 tomna raba u ma jkollu ebda residenza ohra fil-pussess tieghu. (ara Dokument RM01). Dawn ir-rekwiziti, ghalkemm kienu bla dubju sodisfatti mill-appellant, gew injorati mill- Kummissjoni dak in- nhar tat- (02) ta' Lulju 2002 u kien ghalhekk li l-appellant kien hassu aggravat u talab rikunsiderazzjoni ta' dik id-decizjoni. Illum, disgha snin wara, l-Awtorita appellata qed tallega li dawk il-policies ma ghadomx applikabbli u allura t-talba ghar-residenza ma tistax tintlaqa skond il-polciies in vigore. Kif diga' inghad f'punt (i) aktar lil fuq, din il-posizzjoni kienet kontradetta mill- Qorti tal- Gustizzja, u dan fl- Atti tal- mandat ta' inibizzjoni fl-ismijiet Malcolm Mallia et versus l-Awtorita dwar l- Ambjent u l-Ippjanar (Mandat ta' Inibizzjoni Numru 713/2010) nhar is-sbatax ta' Mejju 2010 fejn il- Qorti kienet "sodisfotto illi r-rikorrenti ghandhom dritt prima facie li jitolbu l-hrug ta' mandate peress illi jistghu isofru hsara irrimedjabbli jekk l-azzjonijiet li qed jitolbu li jwaqqfu jitkomplew" u dan billi l-azzjonijiet kienu jikkonsistu fil- r-rikorrent Mallia hassu aggravat peress li kien se jsoffri Danni irrimedjabbli stante li l-Awtorita intimata bdiet process sabiex tbiddel il-policies b'mod li kienu se jppregudikaw applikazzjoni ghall-izvilupp li l-istess rikorrent kien diga intavola u li dwarha il- mertu kien ghadu sub iudice.

Di piu' l-appellant ma jistax jifhem kif l-Awtorita qed issib diffikulta fil-konfront ta' l-appellant, anke jekk ir-residenza odjerna tinsab imdawra bl- izvilupp kif muri f' Dokument RM02. In oltre, l-appellant jibqa ma jifhimx kif l-Awtorita qed toggezzjona li hu ikollu residenza, meta l-istess Awtorita appellata approvat l-applikazzjonijiet citati hawn taht sabiex jinbnew residenzi fil-kampanja, anke jekk fl-ebda kas l-applikant ma kienx jissodisfa r-rekwiziti tal-Planning and Design Guidance: Farmhouses and Agricultural Buildings.

PA01800/01, PA00682/04, PA03315/04, PA03524/02, PA00695/02, PA0463/04, PA01376/01, PA00882/03, PA06154/00, PA01584/04, PA02240/03, PA01865/01, PA03453/03, PA2971/98, PA02539/93, PA01995/00, PA03178/00, PA06149/01, PA00639/98, PA05756/02, PA04610/02, PA01114/99, PA04797/95, PA02514/97, PA06675/98, PA03098/98, PA02963/01, PA00472/03, PA02028/04, PA01890/02, PA06017/97, PA03887/04, PA05036/02, PA5534/99, PA307/97, PA5682/97

(c) Illi dwar dak li qed jinghad mill- Awtorita fis-sens li 'The use of structure as rabbit rearing is not acceptable ... The rearing of sheep and hay storage appears to be of a domestic nature and MEPA finds no contention of this use within the old structure', qed ikun kjarifikat li ir-'rabbit rearing' bhal fil-kaz tar-"rearing of sheep" hu intiz ghal "domestic use" u b'hekk iz-zamma tal- friek ma tistax titqies bhala livestock unit u allura oggezzjonabbli. Fil-fatt l-appellant mhuwiex animal breeder, izda 'full time farmer' kif jirrizulta mix-xhieda prodotta. Ghaldaqstant, galadarba l-Awtorita mhux qed issib oggezzjoni in kwantu tar-rearing of sheep" stante li tall attivita hi deskritta mill- istess Awtorita' bhala "domestic use", l-istess ghandu jingahd fil- kaz tar-'rabbit rearing'.

(d) Illi dwar l-ahhar osservazzjoni ta' l-Awtorita fis-sens li 'The block plan at red 79 A indicates that landscaping is limited to the planting of two olive trees and this is not considered to be sufficient in mitigating the visual impact of the proposed landscaping' l-istess appellant ma jsib ebda oggezzjoni li izid aktar landscaping kif jidhirlu xieraq dan it-Tribunal jekk ikun il-kaz.

5. Illi tajjeb jinghad li sal-lum, 1-ebda wiehed mill-permessi susecceptiti ma gie ikkontestat a bazi ta' allegat ksur ta' Artiklu 77 ta' l-Att tal-2010 dwar l- Ambjent u l-Ippjanar ta' 1- Izvilupp (jew inkella l-artiklu 39 A ta' 1- Att dwar l-Ambjent u l-Ippjanar precedenti) rizultanti minn xi 'iball /dokument li jidher minn eiami to' l-istess dokument' jew allegat ksur ta' punt ta' ligi ghaliex il- Bord ma ddecidiex skond il-provedimenti tal- policies u ligijiet vigenti kif titlob l-istess ligi u ghalhekk dak li gie deciz jikkostitwixxi stat fil-konfront tal-ligi.

6. Illi applikati dawn il- kunsiderazzjonijiet ghal-kaz de quo, jirrizulta li ma ghandu jkun hem m ebda diffikulta sabiex il-proposta odjerna tigi milqugha billi d-decizjoni odjerna tigi revokata, u dan anke a bazi tal-principju legali ben stabbilit mill- Qorti ta' l-Appell, fejn inghad kemm il-darba li l-konsiderazzjonijiet li jwasslu ghal decizjonijiet ta' ippjanar necessarjament jinhtieg li jkunu konsistenti ghaliex, fin-nuqqas, 1-inkonsistenza ghandha bhala konsegwenza l-kontestazzjoni gustifikata, iddiskriminazzjoni, l-inugwaljanza, u mill-aspett soggettiv ta' l-applikant l-ingustizzja. (Ara decizjoni fl-ismijet Grace Borg vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (AIC - (RCP) zs" October 2009) fejn ut sic inghad: 'Fil-fatt gie ritentut gudizzjarjment li applikazzjonijiet simili jirrikjedu trattament identiku. Id-decizjonijiet f'dan ir-rigward, u l-konsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necessarjament jinhtieg li jkunu konsistenti. L-inkonsistenza ghandha bhala konsegwenza l-kontestazzjoni gustifikata, iddiskriminazzjoni, l-inugwaljanza, u mill-aspett soggettiv ta' l-applikant l-ingustizzja.,

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7. Il-mittenti jikkonkludi billi jaghmel referenza ghal dak li gie enuncjat fis-sentenza li giet deciza nhar is-27 ta' Ottubr 2004 fl-ismijiet Austin Gonzi vs Malta Drydocks Corporation mill-Qorti ta' l-Appelli sede Inferjuri fejn inghad li:- "Fl-ordinament guridiku bhal taghna it-tutela tal-jeddijiet fundamentali bazat ukoll fuq il-principji ta' gustizzja naturali tantecedi l-Kostituzzjoni u l-Konvenzjoni b'hafna u hafna decennia u spiss taghti kopertura aktar u aktar komprensia lil dawn il-jeddijiet. Hekk jinsab assodat fi skorta ta' decizjonijiet illi bordijiet u tribunal li jkollhom attribuzzjonijiet u funzjonijiet decizjonali ma jistghux, fl-espletament ta' dawk l-istess attribuzzjonijiet u funzjonijiet, jinjoraw il-principji bazici ta' gustizzja naturali. Ghall-kuntrarju, hu anzi mistenni minnhom li jirrispettaw dawn l-istess principji li, propju ghax fundamentali, jintitolaw lil kull parti fil-procediment li jkollha l-opportunita' li tiddefendi l-kaz taghha u taghmel is-sottomissjonijiet kollha taghha."

Ma din in-nota gew annessi inter alia ben dstatax-il dikjarazzjoni ta' diversi gheliqi li l-Appellant iddikjara li jahdem, in sostenn tal-argumenti mressqa supra.

E. Il-verbal tal-access fuq il-post tas-Seduta numru 88, mizmuma fit-18 ta' Novembru 2011, precizament il-punti segwenti:

"L-appellant wera lit-Tribunal kostruzzjoni li tidher li hija residenza li skond l-ufficjali tal-Awtortia' inbriet bla permess u fuq il-lemin inti u diehel hemm tlett ikmamar, tnejn minnhom li jintuzaw ghal storage qishom garages li qed jintalab sanctioning taghhom u iehor adjacent mieghu b'saqaf corrugated sheeting qed jigi propost li jitnehha. Hemm kamra antika ohra li ser tigi preservata u hemm ohra zghira li huwa propost illi ghandha ' ma' genb l-entrata.

Ir-rapprezentanti tal-Awtorita' iddikjaraw li l-area hija ODZ. Gie maqbul minnhom illi l-appellant ghandu area ta' raba li jahdem sufficjenti pero', m'humiex within the one kilometre radius."

F. Il-verbal tas-Seduta numru 46, mizmuma fid-29 ta' Mejju 2012, senjatament il-punti segwenti:

"Il-perit Robert Musumeci ghamel referenza ghad-decizjoni tal-Qorti tal-Appell f'ismijiet Joseph Tonna vs MEPA u rrileva, illi l-applikazzjonijiet skond l-Artiklu 33 tal-Kap 356, illum Artiklu 69 tal-Kap 504, ghandhom jigu kunsidrati fil-kuntest mhux biss tal-Pjan Lokali, izda wkoll tal-commitment materjali fil-lokalita' apparti kunsiderazzjonijiet ohra bhal dawk estetici u sanitarji u li fil-Kap 504, il-limitazzjoni dwar il-commitment tirreferi biss ghal gholi meta dan ikun in excess ta' dak indikat fil-Pjan Lokali.

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Dr. De Gaetano jirrileva illi dak ddikajrat mill-konsulent tal-appellant, ma japplikax ghal kaz in ezami billi l-izvilupp li saret referenza ghalih bhala commitment, huwa fil-fatt illegali u dwaru hemm enforcement notice."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' sit li jinsab f' rural conservation area barra z-zona tal-izvilupp (ODZ) tas-Siggiewi, jigi ssanat bini b' uzu residenzjali w agrikolu.

Ir-raguni ghar-rifjut jistghu jigu riassunti kif gej:

- Tip ta' uzu i-kompatibbli maz-zona in ezami:

Peress li s-sit jinsab fl-ODZ gewwa rural conservation area, u billi l-izvilupp in ezami mhux essenzjali ghall-agrikoltura (jew mhux intiz sabiex jameljora l-valur ekologiku u xenografiku tal-post), u minhabba l-fatt li mhux xi tip ta' zvilupp li preferiblament ghandu jigi akkomodat fl-ODZ izda jista' facilment isir gewwa zoni urbani li huma idoneji ghal-residenzi; it-talba de quo mhix gjustifikata u tirrizulta in kontravvenzjoni tal-policies SET 8, SET 11, SET 12, BEN 5, RCO 2, u RCO 4 tal-Pjan ta' Struttura.

- Qisien tal-izvilupp:

Peress li l-Appellant mhux registrat li ilu jahdem bizzejjed raba', it-talba hi in f' kunflitt mal-policy AHF 5 tal-Pjan ta' Struttura u l-paragrafi 11.2(a) u 11.4 tal-explanatory memorandum tal-istess Pjan ta' Struttura. In oltre, skond il-policies li jirrigwardaw imhazen fil-kampanja (illum sostitwiti mill Policy and Design Guidance – Agriculture, Farm Diversification and Stables) l-izvilupp huwa inaccettabbli peress li jeccedi l-hmistax il-metru kwadru.

- Disinn w estetika tal-binja minn barra:

Il-mod kif inbniet ir-residenza, cjoe' bl-uzu ta' balavostri, faccati miksija u l-fatt li minn barra l-binja mgandiex dehra organika u volumetrija (massing) tipika ta' zvilupp rurali, it-talba hi in kontravvenzjoni tal-policies sucitati.

L-aggravji ta'-Appellant jistrieu fuq il-premessa li din l-applikazzjoni giet intavolata ferm qabel is-sena 2007, meta dahlu fis-sehh il-Policy and Design Guidance – Agriculture, Farm Diversification and Stables, u li dejjem ottempera ruhhu mar-rekwiziti tal-Kummissjoni in kwantu irrieda l-pjanti kif kien gie mitlub. Madankollu, l-applikazzjoni damet zmien twil sabiex tigi pprocessata, tant li illum dahlu fis-sehh il-policies sucitati u allura fejn qabel it-talba tieghu setghet facilment giet milqugha,

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illum mhix aktar accettabbli. Jissokta l-argumenti tieghu billi jaghmel riferenza ghall-ittra tat-23 ta' Marzu 2007 mibghuta mill-istess Kummissjoni fejn (bla pregiudizzju) intalab jirrive di l-proposta u jimmitiga l-izvilupp skond ma jirrizulta li kien inbena sa s-sena 1967.

L-Awtorita' zammet ferm l-oggezzjoni taghha u rilevat li nonstante l-fatt li fil-kors tal-ipprocessar tal-applikazzjoni dahhlu fis-sehh policies (godda), il-Kummissjoni xorta wahda kellha l-obbligu li tikkunsidra t-talba fid-dawl tal-policies vigenti. Tisskota b' dan l-argument billi taghmel riferenza ghal skorta sentenzi tal-Qorti ta' l-Appell fejn kien gie deciz li kull applikazzjoni ghandha tigi kkunsidrata skond il-pjanijiet u l-policies li jkunu in vigore.

Ghar-rigward tal-attivitá' agrikola li jiggestixxi l-Appellant, l-Awtorita' tirrileva li in principju, ghalkemm hu ddikjarat li jahdem tletin tomna raba', sittax biss minn dawn jirrizultaw vicin is-sit in ezami. Barra minn hekk, is-sit in ezami jinsab biss mitejn metru boghod mill-konfini tal-izvilupp – mentri l-policies sucitati jistipulaw almenu kilometru. Fl-ahharnett, l-Appellant kien ilu registrat bhala bidwi (full-time) sitt xhur biss qabel ma giet intavolata l-applikazzjoni. In oltre, fir-rigward tal-istrutturi intizi ghat-trobbija tal-fniek (rabbitry), l-Awtorita' tirrileva li ma gewx ipprezentati dokumenti li jikkonfermaw sufficjentement li l-Applikant hu registrat li jrabbu dawn l-annimali u li din l-attivitá' hi kompatibbli mal-ekologija taz-zona. Fil-fatt, is-sit in ezami jinsab f' distanza ta' inqas minn mitejn metru minn ghajn tal-ilma – Wied Xkora – u ghalhekk, dan it-tip t' attivita' tista' tippregjudika l-kwalita' tan-nixiegha tal-ilma f' dan il-wied. Dan kollu apparti l-fatt li l-istruttura tal-fdewwex (corrugated sheeting) hi nkompatibbli ma zona rurali. Fl-ahharnett, ghar-rigward tal-landscaping, l-Awtorita' tirrileva li l-disinn pajsaggistiku propost – cjoe' zewg sigar taz-zebbug bilghad - huwa nsufficjenti.

L-Appellant jiddikjara li mhux minnu li m' ilhux jahdem ir-raba' kif gie dikjarat. Fil-fatt ilhu jahdem almenu ghoxrin tomniet raba' ghall dawn l-ahhar ghaxar snin stante li originarjament l-Awtorita' kienet propensa li tilqa' t-talba tieghu propju minhabba dan il-fatt (izda imbaghad inbiddu l-policies). In oltre, bl-istess mod li t-trobbija tan-naghag mhux qed tigi kkontestata mill-istess Awtorita', ghandu jsegwi li mghandux ikun hem oggezzjoni ghall-rabbitry.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, jirrizulta li l-kwistjoni principali li wasslet ghar-rifjut odjern hi dik li tirrigwarda l-uzu tas-sit u l-qisien tal-izvilupp per se, mhux tant id-disinn tal-faccati u l-landscaping, li jistghu jigi indirizzat diversament. Tajjeb li jigi osservat li d-dstatax il-bicca art li l-Appellant iddikjara li jahdem (kopji tac-certifikati pprezentati wkoll fl-ahhar sottomissjoni tieghu tat-22 ta' Frar 2011) gew registrati fit-30 t' April 2003, u l-bicca l-kbira fil-21 ta' Frar 2005. In oltre, ittra mill-Ministeru tal-Agricoltura u Sajd, ipprezentata lill-Awtorita' fid-9

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t'Awissu 2001 (red 18 fil-file tal-applikazzjoni) tikkonferma li l-Appellant ghandu registrati f' isemu 29.4.5 tumoli raba' u li minnhom, 28.4.5 huma art baghli u 1.0.0 huma sigar tal-frott.

Madankollu, tibqa' l-kwistjoni li s-sit jinsab vicin il-konfini tal-izvilupp u li l-ghelieqi li jahdem l-Appellant mhumieq f' ragg ta' kilometru boghod. Li kieku l-ghelieqi in ezami kienu jisabu vicin xulxin, f' post remot jew imwarrab - allura wiehed jifhem li kien ikun xieraq li l-Awtorita' tikkoncedi li ssir residenza sabiex l-Appellant ikun jista jghix vicin ir-raba li huwa jahdem. Madankollu skond il-policies, l-Appellant mgmandux bizzejjed raba' madwar is-sit de quo sabiex jikkwalifika ghal tali zvilupp, u terga' tghid, peress li s-sit jinsab vicin il-konfini tal-izvilupp, ir-residenza li qed jitlob setghet facilment giet akkomodata gewwa z-zona urbana – b' hekk jigi mrazzan il-proliferazzjoni tal-izvilupp fil-kampanja.

Fir-rigward tal-kazistika ta' sitta w tletin permess citati mill-Appellant bhala precedent ghall-kaz in ezami, qabel xejn jigi nutat li lkoll inhargu taht regime tal-ippjanar differenti – cjo'e' ferm qabel ma dahlu fis-sehh il-Pjanijiet Lokali u wisq inqas il-Policy and Design Guidance – Agriculture, Farm Diversificaton and Stables. In oltre, l-ebda wiehed mis-siti ma jinsab fiz-zona in ezami. Ghalhekk, ma jistax isir paragon bejniethom u l-kaz odjern.

Ghal kull buon fine jigi rilevat li tmienja minnhom huma outline development permissions (PA 639/98, PA 2971/98, PA 1865/01, PA 1890/02, PA 3524/02, PA 682/04, PA 3315/04, u PA 3887/04). Mill-bqijja, ghoxrin jirrigwardaw conversions, change of use jew alterazzjonijiet u estensjonijiet ta' bini gja' munit bil-permess, fejn il-maggor parti taghom gja' jintuzaw bhala razzett u/jew residenza (PA 2539/93, PA 4797/95, PA 307/97, PA 2514/97, PA 5682/97, PA 3098/98, PA 1114/99, PA 5534/99, PA 1995/00, PA 3178/00, PA 6154/00, PA 1800/01, PA 695/02, PA 4610/02, PA 472/03, PA 882/03, PA 2240/03, PA 3453/03, PA 463/04, u PA 2028/04). Tlieta jirrigwardaw it-twaqqieh u rikostruzzjoni ta' bini (PA 6675/98, PA 6149/01, u PA 5036/02). Fl-ahharnett, hamsa biss jirrigwardaw sanar u anke f' dawk il-kazijiet, is-sanar hu limitat biss ghal kmamar u addizzjonijiet, mhux ta' residenza in toto (PA 6017/97, PA 1376/01, PA 2963/01, PA 5756/02, PA 1584/04), izda kif gja' rilevat supra, ebda wiehed mill-kazijiet citati jinsab fiz-zona in ezami jew il-permess inhareg wara d-dhul fis-sehh tal-Pjanijiet Lokali w il-policies in ezami.

Fl-ahharnett, fil-konfront tal-applikabilita' tal-policies, l-insenjament tal-Qorti ta' l-Appell - li beda mill-Qorti tal-Appell Superjuri u baqa' jigi segwit sal-lum (vide Angelo Farrugia vs PA tal-24 t' April 1996, u Emmanuel Mifsud vs DCC tal-31 ta' Mejju 1996) - hu li l-pjanijiet, il-policies u l-ligi li ghandhom jigu ikkunsidrati, huma dawk meta tigi finalment determinata l-applikazzjoni; kemm jekk id-decizjoni finali tkun dik tal-Awtorita', jew tal-Bord ta' l-Appell dwar l-ippjanar (illum dan it-Tribunal). Issir

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ukoll riferenza ghall-ittra tal-Kunsill Lokali tas-Siggiewi bid-data tal-4 ta' Gunju 2001 (red 15 fil-file odjern) fejn jinghad dan li gej:

“Kull applikazzjoni ta' zvilupp [...] li titressaq quddiem l-Awtorita' ta' [Malta dwar] l-ippjanar tkun ezaminata fid-dawl tal-policies ezistenti [...]. Dan ma japplikax jekk il-policies jew ligijiet konnessi ikunu gew mibdula matul il-perjodu stipulat.”

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 2468/01 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fit-3 ta' Gunju 2008.

Ikkunsidrat

L-aggravji tal-appellant huma s-segweni:

1. L-applikazzjoni tal-pjanijiet u policies fi zmien tad-decizjoni mhux principju assolut speċjalment meta l-istess Awtorita tkun talbet lil applikant jibdel pjanti u b'hekk tkun intrabtet bir-regoli applikabbli ghal dak iz-zmien. It-tul ta' zmien ghad-decizjoni bis-sopravent ta' policies godda aktar restrittivi ma ghandux jippregudika lil appellant li jkun akkwista dritt kwezit;
2. It-Tribunal injora l-permessi citati mill-appellant kemm minhabba bdil ta' policy u kemm minhabba li ma jirreferux ghall-istess zona. L-appellant isostni li policy ghandha tigi applikata irrispettivament taz-zona minhabba c-certezza tad-dritt u l-permessi icitati ma gewx imsemmija bhala precedent izda ghall-applikazzjoni uniformi tal-istess principju;
3. It-Tribunal ma iggustifikax ir-raguni ghar-rifjut tal-applikazzjoni izda accetta bla konsiderazzjoni ulterjuri l-argumenti tal-Awtorita.

L-ewwel aggravju

Jidba biex jinghad illi c-certezza tad-dritt titlob uniformita fl-applikazzjoni tal-ligijiet, pjanijiet u policies li jirregolaw kull haga li ghandha x'taqsam ma zvilupp. Il-principju li minn dejjem kien u ghadu applikabbli ghal materji ta' zvilupp hu illi applikazzjoni, li fiha infisha ma tikkostitwixxi ebda jedd izda biss xewqa ta' zvilupp, ghandha tigi valutata u deciza skond il-ligijiet

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applikabbli fiz-zmien tad-decizjoni. Sadakinhar l-applikant ma jistax ighid li kellu xi drittijiet kweziti. Hu minnu illi jekk applikazzjoni titwal biex tigi deciza jistghu jinbidlu l-pjanijiet u l-policies kemm favur jew kontra l-applikant pero essendo ta' natura ta' ordni pubbliku, il-ligijiet li jirregolaw l-ippjanar isiru ghal ahjar uzu u amministrazzjoni tat-territorju Malti fl-interess kollettiv tas-socjeta li bil-fors ghandu jipprevali fuq l-interess singolari tal-applikant. L-ilment tal-appellant jista' jkun wiehed ta' indolu amministrattiv pero dan mhux il-lok fejn jigu ventilati tali ilmenti.

L-appellant jilmenta illi fil-fazi tal-iprocessar l-applikant intalab jibdel xi pjanti u skond hu dan ikkostitwixxa rabta mal-Awtorita biex tiddeciedi a bazi tal-policies f'dak iz-zmien. Il-Qorti ma taqbilx. Il-fatt illi l-Awtorita tablet lil aplikant ibiddel xi pjanti bl-ebda mod ma jikkostitwixxi xi rabta jew xi obligazzjoni li taccetta l-applikazzjoni. Fl-atti ma gie indikat xejn illi l-Awtorita kienet qed taccetta l-hrug tal-permess a bazi ta' dawn il-pjanti. It-talba ghal pjanti tista' titqies fl-ahjar ipotesi bhala pass biex l-Awtorita tkun f'pozizzjoni li tikkonsidra ahjar l-applikazzjoni izda zgur ma jfissirx accettazzjoni tal-applikazzjoni li jwassal ghal permess.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni u t-tielet aggravji

Dawn l-aggravji huma marbutin flimkien. Jibda biex inghad li t-Tribunal ikkonstata li s-sit jinsab f'rural conservation area u barra z-zona ta' zvilupp. Mhux minnu li t-Tribunal injora l-permessi citati, anzi ta spjegazzjoni dwar iz-zmien u l-fattispecie li fihom inghataw il-permessi. It-Tribunal ma laqax l-applikazzjoni tal-applikant ghax fiz-zmien tad-decizjoni l-applikazzjoni ma kinitx konformi mal-policies ezistenti f'dak li hu distanzi tal-binja mill-art f'idejn l-applikant u fi kwalunkwe kaz essendo r-raba hi prossima ghal zona ta' zvilupp, residenza setghet issir f'din iz-zona mhux fejn mhux permess. In oltre t-Tribunal ta importanza ghal fatt illi mid-29 tomna raba registrati fuq isem l-applikant, tmienja u ghoxrin tomna huma art baghli u tomna biss hi sigar tal-frott. It-Tribunal qal ukoll illi l-appellant ma jikkwalifikax ghall-izvilupp peress illi l-ammont ta' raba vicin is-sit hu anqas minn dak rekwizit skond il-policies.

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Kwindi hi l-fehma tal-Qorti li ladarba l-applikazzjoni tippekka minn adezzjoni ghal policies applikabbli, din l-applikazzjoni kellha tigi michuda. Il-kwistjoni ta' permessi ohra fil-fehma tal-Qorti mhix daqshekk important billi huma l-pjanijiet u policies li jridu jigu rispettati l-ewwel u kull kwistjoni ohra anki jekk ta' sustanza qatt ma tista' tintuza biex tinnewtralizza l-applikazzjoni tal-policies meta dawn ikunu cari u ma jhallux diskrezzjoni lil Awtorita jew lit-Tribunal jiddipartixxi minnhom.

In kwantu ghall-aggravju li t-Tribunal ma iggustifikax ir-rifjut tal-applikazzjoni izda strah fuq l-argumenti tal-Awtorita, kif jidher minn dak li gia inghad, it-Tribunal wara li ghamel riassunt tal-argumenti tal-partijiet ikkonsidra l-kwistjonijiet saljenti ta' natura ta' ippjanar li minhabba fihom l-applikazzjoni ma setghetx tigi accettata. Ma accettax ir-ragunament tal-Awtorita bla spjegazzjoni, anzi dahal f'aspetti specifici li skond it-Tribunal kienu jimmilitaw kontra l-approvazzjoni tal-applikazzjoni. Wiehed jista' jaqbel jew ma jaqbilx mal-apprezzament tal-fatti li waslu lit-Tribunal ghad-decizjoni tieghu pero ma jistax jinghad kif allegat, illi t-Tribunal ma kkunsidrax hu l-kwistjoni izda semplicement accetta l-verzjoni tal-Awtorita.

Ghalhekk dawn l-aggravji qed jigu michuda.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Carmelo Calleja u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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