



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 21/2014

**Paul Scicluna**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Paul Scicluna tal-1 ta' April 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Marzu 2014 ghal PA 2002/02 'sanzjonar ta' alterazzjonijiet minn permess approvat';

## Kopja Informali ta' Sentenza

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tat-8 ta' April, 2002 – Full Development Permission – PA 02002/02 fejn l-appellant, f' Triq Il-Kanun, Ghasri, talab:

“ To sanction alterations to approved permit ”

Permezz ta' rifjut mahrug fit-8 ta' Lulju, 2003, l-Awtorita' dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"1. The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to paragraph 8.2(iii). It would lead to urbanisation outside those areas specifically designated for urban uses in the Structure Plan - i.e. : existing and committed built up areas and primary development areas, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land.

2. The proposal runs counter to the Development Control Policy – Swimming Pools Outside Development Zone (January 2000), in particular to paragraph 5.1. Accepting this development would prejudice the main objective of this Development Control Policy which aims at containing the spatial spread of development, minimising the take-up of land, and limiting the extent of visual intrusion ODZ.

3. Structure Plan Policy RCO4 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 RCO4.

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4. The proposal runs counter to Circular PA 2/96 which states that "when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised."

Permezz tal-appell tieghu l-Perit Mintoff ressaq l-aggravji tal-appellant kif gej:

"I am writing on behalf of my client, Mr Paul Scicluna, to request the Appeals Board to reconsider their refusal of the above mentioned application.

Please note that my client, his lawyer and myself would like to be present during the deliberation of this reconsideration.

The purpose of the application is to sanction alterations to existing permits given for the reconstruction of a farmhouse and for the construction of a swimming pool.

Planning permit PB 5089/92/30/92 was issued for the reconstruction of a farmhouse on a building footprint of 270m<sup>2</sup> and a total floorspace of 460m<sup>2</sup>. The reconstructed farmhouse has retained the building footprint of 270m<sup>2</sup> but includes a further 47m<sup>2</sup> floorspace on the first floor not covered by permit. In addition permit PA 8478//94 was issued for the construction of a swimming pool of 50m<sup>2</sup> whereby the existing pool measures 140m<sup>2</sup>.

Referring to the points outlined in the refusal report please note:

The farmhouse was abandoned prior to the works carried out towards its conversion. The aim of the works was that of rehabilitating this farmhouse residence and a valid permit PB 5089/92/30/92. The footprint of the farmhouse as per permit PB 5089/92/30/92 stands at 270m<sup>2</sup>, and this remains unchanged following reconstruction. The construction to sanction involves 47m<sup>2</sup> of roofed rooms on the first floor that is not covered by permit. This is a minor addition and it is unreasonable to argue that this will negatively affect the scenic value of the surrounding area or make the farmhouse be perceived to be less rustic or organic.

Considering that a permit was issued for this dwelling outside the development boundaries, the policy PLP 20: Development outside Built up Areas is not applicable, not least because the said policy document was approved well after the issue of the planning permit.

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It should be well noted that the swimming pool does not include a tangible structure and therefore does not detract from any scenic value or disturb any skyline. Although it is clear from the submitted drawings and attached photos that the pool area is well landscaped, the applicant is proposing to reinstate soil along all the existing paved areas retaining only narrow masonry flagstone pathways. The paved area around the pool will be restricted to 50% of the pool area, as per Development Control Policy for Swimming Pools ODZ. This paved area will be clustered around the BBQ area on the north side of the pool. This will greatly increase the amount of landscaping implemented on site.

It should be noted that the farmhouse has existed for many years prior to its reconstruction, making the site well committed to this sort of development. The reconstructed farmhouse was approved by permit PB 5089/92/30/92 to be non-intrusive to the scenery of the area and to be compatible with the rustic surroundings in massing and scale. The 47m<sup>2</sup> of first floor floorspace that is not covered by a permit is truly minimal and does not increase the perception of massing of the farmhouse, nor does not alter the architectural of the building. It is unreasonable to argue that this very minor addition will negatively affect the scenic value of the surrounding area or make the farmhouse be perceived to be less rustic or organic. Policy RCO4 is not detracted from.

It is our opinion that the drawings submitted show adequate information regarding the pool, its surrounding paved areas and the landscaping present. Please find attached photos bearing reference P1 and P2 showing different views of the same. Therefore the implementation of PA 296 is not correct as all irregular development is being attempted to sanction in this permit application.”

Permezz tar-rapport taghha l-Awtorita' ressqet il-kummenti taghha kif gej:

### “DIRECTORATE'S COMMENTS ON GROUNDS FOR APPEAL

The proposed development is larger than that approved as shown below:

	Approved areas (m <sup>2</sup> )	Proposed areas (m <sup>2</sup> )
Building footprint	270	270
Built up floorspace	460	514
Pool	50	140

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The proposal thus conflicts with Policy and Design Guidance 'Development Outside Built-up Areas' para. 8.2(iii) which states that extensions to existing buildings ODZ must not create a total floorspace which exceeds 150m<sup>2</sup>. It also runs counter to Policy and Design Guidance – Swimming Pools ODZ para. 5.1(4) which sets out that the area of a swimming pool for a single residential unit shall not to exceed 50m<sup>2</sup>. Indeed this application is to be assessed against the policies in force at present, not those in force when the development was carried out, and therefore all policies mentioned in this report are relevant to the case.

The proposal also conflicts with other provisions of the Policy and Design Guidance – Swimming Pools ODZ and SP Policy BEN17 in view of the excessive amount of paving / hard surfacing proposed, the inadequate and insufficient landscaping and the location of the pump room above ground level - see photos at red 13A. The Appeals Board is to note that no drawings were submitted giving specifications of the architect's claim of the possibility of reducing paved areas and increasing landscaping.

Moreover, the proposed design lacks any elements characteristic of traditional farmhouses and jars with its surroundings. Indeed the addition at first floor level exacerbates the issue of the lack of use of massing as a design technique to reduce the impact of the development. The proposed development therefore has an adverse impact on the scenic value of the rural conservation area in which it is located and is therefore in conflict with SP Policy RCO4.

In contrast with the architect's claim in relation to the use of Circular PA2/96, no details were submitted regarding works relative to:

- the pump room;
- the pool;
- the paved areas and structures round the pool;
- the underground caves;
- the 9crs walls on the alley; and
- the landscaping.

The application, therefore is not seeking to regularise the whole development and thus conflicts with Circular PA 2/96 which states that "when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised."."

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Permezz ta' ittra, il-Perit Mintoff jghid is-segwenti:

“Reference is made to the above mentioned application, and in particular to the copy of MEPA’s report to the Planning Appeals Board dated 26th September 2003.

This report has highlighted the fact that certain structures on site do not feature on the submitted application which seeks to regularize the ‘illegal development’.

“In contrast with the architect’s claim in relation to the use of Circular PA 2/96, no details were submitted regarding works relative to:

1. Pump room;
2. Pool
3. The paved areas and structures round the pool;
4. The underground caves
5. The 9crs wall on the alley; and
6. The landscaping.”

We confirm that some of these are not featured on our plans and we therefore kindly request the Appeals Board some time to either include another application which seeks to regularize all works in a comprehensive manner, or to reveal that these works may be sanctioned through a DNO, possible with some alterations on site.”

Ikkunsidra ulterjorment:

Il-mertu ta’ dan l-appell jirrigwarda talba, full development application, ghas-sanzjonar ta’ alterazzjonijiet minn permess diga approvat.

Skond l-Awtorita’, is-sit mertu ta’ dan l-appell jinsab ODZ, fl’ Ghasri. Is-sit ghandu area ta’ 2000 m.k. u qieghed ‘in open countryside’.

Din l-applikazzjoni giet rifjutata peress li:

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- Il-proposta tikser il-paragrafu (iii) ta' Section 8.2 tal-policy PLP 20;
- Il-proposta tikser il-paragrafu 5.1 tad-Development Control Policy – Swimming Pools Outside Development Zone (Jan. 2000);
- L-izvilupp propost imur kontra l-policies RCO 4 tal-pjan ta' struttura; u
- Il-proposta tikser il-PA Circular 2/96.

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

Fl-appell tieghu l-appellant jissottometti li:

- Jezisti permess (PB5089/92/30/92) ghar-rikostruzzjoni ta' farmhouse b' footprint ta' 270 m.k. u floor space ta' 460 m.k. Ghalhekk il-farmhouse kienet ilha tezisti ghal hafna snin qabel ma regghet giet ristrutturata u ghalhekk is-sit kien diga kommess. Din ir-rikostruzzjoni zammet il-footprint originali imam ziedet il-floor space b' 47 m.k. fl-ewwel sular. Din hija zieda minima u mhux ragonevoli li wiehed jargumenta li din ser ikolla impatt negattiv fuq is-scenic value taz-zona;
- Kien hareg permess (PA8478/94) ghal swimming pool b' area ta' 50 m.k. waqt li iswimming pool attwali ghandha area ta' 140 m.k. Peress li ma' tezistix xi struttura tangibbli mal-pool, din ma' taffettwax is-scenic value taz-zona. Ser jitnaqqsu il-paved areas biex l-area tigi ekwivalenti ghal 50% tal-area tal-pool u dan konformi mal-policy Development Control Policy – Swimming Pools Outside Development Zone (Jan. 2000). Il-landscaping ser jizjed b' mod drastiku;
- Il-policy PLP 20 ma' tapplikax ghal dan il-kas peress li l-izvilupp inbena qabel ma' dahlet fis-sehh din il-policy;
- Ma hux il-kas li dan l-izvilupp sejjer itellef mis-scenic value tas-sit u dan. Dan l-izvilupp mhux qed izid il-footprint izda qed izid minimament il-volum tal-bini kif approvat; u
- Il-pjanti sottomessi juru d-dettalji kollha tal-bini li jezisti fuq is-sit u li qed jintalab is-sanzjonar tieghu u ghalhekk il-PA Circular 2/96 mhix qed tigi miksur.

Fir-rapport taghha l-Awtorita' tikkonferma ir-reasons for refusal u zzid inter alia li:

- Din l-applikazzjoni, bhal kull applikazzjoni ohra, ghandha tigi pprocessata skond il-policies vigenti illum u ghalhekk il-policies kollha li qed jissemew huma relevanti;
- L-appellant mas-sottomettiex pjanti li juru kif ser jitnaqqas il-paving u jizjed il-landscaping;
- Id-disinn propost mhux qed juza elementi karatteristici ta' bini rurali u tradizzjonali u z-zieda fl-ewwel sular tkompli tgharraq is-sitwazzjoni;

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- Id-diskrepanzi li jezistu bejn il-pjanti li gew sottomessi u dak li jezisti fuq is-sit huma s-segwenti:
  - Pump room;
  - Il-pool li minn 50 m.k. skond il-permess illum tkopri 140 m.k.;
  - Il-paved areas u l-istrutturi madwar il-pool;
  - Il-caves;
  - Il-landscaping; u
  - Il-hajt ta' 9 filati fl-isqaq.

Fl-ittra tieghu tal-11 ta' Frar, 2004, l-appellant jammetti li, kif rilevat mill-Awtorita', dak l-izvilupp illegali li ma' jidhirx fil-pjanti fil-fatt jezisti fuq is-sit u ghalhekk kellha ssir applikazzjoni tat-tip DNO biex dan jigi sanzjonat.

Fil-kors tas-smieh ta' dan l-appell saru mhux inqas minn 18 il-seduta li fil-bicca l-kbira taghhom kienu gew differiti fil-pendenza ta' informazzjoni li kellu jgib l-appellant dwar kif ser jissanzjona l-illegalitajiet li ma' kienux koperti bl-applikazzjoni in ezami. Fis-seduta tal-15 ta' Gunju, 2005 l-appellant informa lit-Tribunal li kien pprezenta applikazzjoni gdida (PA 3611/06) peress li kien hemm numru ta' irregolaritajiet fl-izvilupp li ma' gewx koperti fl-applikazzjoni in ezami u li ma' kienux jistghu jigu ssanati permezz ta' DNO.

Fis-seduta tat-30 ta' Settembru, 2009 gie deciz li dan l-appell jkompli jinstema' mal-appell PAB 132/09 li kien sar kontra l-applikazzjoni PA 3611/06 li kienet saret biex tissanzjona l-kumpliment tal-izvilupp illegali fuq is-sit in ezami u li kienet giet michuda mid-DCC. Fil-kas tat-tieni applikazzjoni din kienet giet michuda mid-DCC ghal ragunijiet simili ghal dawk tal-ewwel wahda u partikolarment ghaliex l-irregolaritajiet ezistenti fuq is-sit ma' kienux tnehew u t-talba ma' kienitx tinkludi l-irregolaritajiet kollha.

Kif jirrizulta mill-premess, mhux kontestrat mill-partijiet li fuq is-sit in exami jezistu irregolaritajiet li mhumiex koperti minn applikazzjoni ghas-sanzjonar taghhom. Tant hu hekk li kwazi kull seduta li nzammat fuq dan l-appell kienet dedikata ghal diskussjona dwar kif ser ssir it-talba ghas-sanzjonar tal-irregolaritajiet kollha. Dan it-Tribunal ihoss li dan l-appell kien imissu ilu li gie deciz specjalment meta wiehed jikkunsidra li fl-ittra tieghu tal-11 ta' Frar, 2004, l-appellant qed jammetta li ghandu numru ta' irregolaritajiet li ma' kienux inkluzi fl-applikazzjoni originali.



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F'dawn il-kazi jigifieri meta jkunu jezistu irregolaritajiet fuq is-sit in kwistjoni, l-applikant, skond il-PA Circulars 2/96 (illum l-Artikolu 14(1) tal-LN 514/10), huwa obligat li jew inehhi l-istess qabel ma' japplika jew inkella jinkludi talba ghas-sanzjonar taghhom fl-applikazzjoni.

L-applikant naqas ghal snin shah milli jittratta b'mod konvincenti din il-problema dwar l-illegalitajiet fuq is-sit in ezami.

Jirrizulta in oltre li fis-seduta tat-12 ta' Lulju, 2011, l-Awtorita' infurmat lit-Tribunal li kienet saret applikazzjoni gdida fuq is-sit in ezami (PA 2999/10) li kienet tkopri l-izvilupp kollu.

Dan baqa' jintqal mill-Awtorita' wkoll fit-tliet seduti ta' wara. L-appellant qatt ma' ikkumenta fuq dan, il-partijiet qatt m'ghamlu sottomissjonijiet dwar l-applikazzjoni citata.

Kif jirrizulta mill-fatti li hargu fil-kors tas-smiegh ta' dan l-appell, il-proposta in ezami tikser numru ta' policies tal-Pjan Strutturali kif ukoll tal-Artikolu 14(1) tal-LN 514/10, u ghalhekk dan l-appell ma jirrizultax fondat.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut mahrug mill-Awtorita' tal-applikazzjoni PA 02002/02, "To sanction alterations to approved permit", tat-8 ta' Lulju, 2003.

### **Ikkunsidrat**

L-aggravji tal-appellant li huma kollha fuq kwistjonijiet ta' ligi deciza mit-Tribunal huma s-segwenti:

1. Ghalkemm it-Tribunal qal li l-proposta tmur kontra numru ta' policies tal-pjan strutturali, ma identifkax dawn il-policies li ma jippermettiex tali zvilupp;
2. Id-decijjoni hi bbazata fuq applikazzjoni hazina tal- PA circular 2/96 li japplika biss ghal kazi li jikkoncernaw zvilupp gid u mhux bhal kaz in ezami ghal sanzjoni ta' irregolaritajiet biss.

### **It-tieni aggravju**

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Hu car illi din l-applikazzjoni kienet tirrigwarda biss sanzjoni ta' xogholijiet addizzjonali. Apparti kull konsiderazzjoni ohra, harsa lejn id-decizjoni turi illi t-Tribunal fil-parti decisiva irrefera ghal artikolu 14(1) tal-Avviz Legal ital-514/2010 liema artikolu mhux applikabbli ghal kaz kemm ghax ma kienx in vigore meta saret l-applikazzjoni ta' sanar u essendo kwistjoni ta' procedura, il-procedura applikabbli hi dik in vigore meta saret l-applikazzjoni cioe l-PA circular 2/96.

Jekk pero kif jidher li ghamel it-Tribunal qed jekwipara l-artikolu 14(1) tal-Avviz Legali 514/2010 mal-PA circular 2/96 dan ipoggi l-kwistjoni f'dawl iehor. Il-Qorti zzid f'dan il-kuntest li hi marbuta mal-aggravju migjub quddiemha li f'dan il-kaz hu car u jghid biss li PA circular 2/96 mhix applikabbli ghax issemmi zvilupp gdid mentri dan mhux kaz ta' zvilupp gdid.

Il-Qorti tirreferi ghal dak li ntqal fuq l-istess aggravju rigward l-artikolu 14 tal-Avviz Legali 514/2010 fl-appell 20/2014 PA 5455/09 fl-istess ismijiet u billi dan l-artikolu hu replika tal-artikolu 3(1) tac-cirkolari PA 2/96, l-istess ragunament kwindi japplika mutatis mutandis u ghal din ir-raguni l-aggravju mhux misthoqq. L-artikolu 3 tac-cirkolari 2/96 ighid hekk:

### 3 REGULARISING UNAUTHORISED DEVELOPMENT

3.1 When existing development on a site is wholly or partly illegal (that is, it is not covered by a development permit), the DCC will not consider a development permit application relating to new development on that site, unless the illegal development is regularised.

3.2 The illegal development may either be regularised through a specific application solely for that purpose or through an application which includes it as well as new development. However, in the latter case, it must be made clear in the application what development is covered (both in the description on the application form and in the drawings and plans), in order that the Planning Authority is sure that the unauthorised development does form part of the application.

Dan l-artikolu hu kwazi identiku ghal-artikolu 14(1) u 14(2) tal-Avviz Legali 514/2010 billi f'dan il-kaz ex admissis jirrizultaw irregolaritajiet mhux inkluzi fit-talba hu gustifikat l-applikazzjoni tal-PA circular 2/96.

**L-ewwel aggravju**

Dan l-aggravju jolqot il-mertu u din il-Qorti ma tistax tidhol fih minhabba li ma intlaqax it-tieni aggravju. Hu minnu illi t-Tribunal ikkunsidra l-mertu pero fic-cirkostanzi la darba t-Tribunal ikkonstata illi l-applikazzjoni ma kinitx tolqot l-irregolaritajiet kollha u ghalhekk l-applikazzjoni ma setghetx kollha tigi michuda fuq bazi procedurali, messu waqaf hemm kif qed taghmel din il-Qorti. Jista' jkun illi l-appellant ghandu ragun li jilmenta mill-manjiera kif gie deciz il-mertu izda la darba l-appell gie stronkat fuq procedura, l-aggravju fuq il-mertu ma jistax jigi kunsidrat min din il-Qorti.

**Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Paul Scicluna, tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-13 ta' Marzu 2014. Spejjez ghall-appellant.

**< Sentenza Finali >**

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