



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tat-12 ta' Novembru, 2014

Appell Civili Numru. 144/2012

**Michael Tabone, Lorraine Tabone, Joe Bonnett, Katrina Bonnett,  
Alan Markham, Liz Markham, Paul Gatt, Daniella Zerafa, Carmelo Gatt,  
Carmen Gatt, Carlos Zerafa, Melanie Zerafa, Sylvan Micallef, Romina Micallef, John  
Mary Garnisi, Pauline Garnisi, Daniela Garnisi, Angelina Spiteri,  
Jesmond Spiteri, Kevin Muscat, Michelle Mangion, Jason Mangion,  
Irene Bonavia, Mark Bonavia, Vincent Bonnici, Carmen Bonnici,  
Carmelo Magro, Jane Magro, Hon. Joseph Muscat, Michelle Muscat,  
Saviour Muscat, Grace Muscat**

**vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u  
l-kjamat in kawza Tony Gauci**

## Kopja Informali ta' Sentenza

### **Il-Qorti,**

Rat ir-rikors tal-appell tat-terzi Saviour u Maria Grazia ahjar maghrufa bhala Grace konjugi Muscat, l-Onorevoli Dott. Joseph Muscat u martu Michelle Muscat, Michael u Lorraine konjugi Tabone, Mark u Irene konjugi Bonavia, Michelle u Jason konjugi Mangion, John Mary Garnisi, Pauline Garnisi, Daniela Garnisi, Vincent u Carmen Bonnici, Carlos u Melanie konjugi Zerafa, Carmelo u Carmen konjugi Gatt, Paul Gatt u Daniela Zerafa, Joe u Katrina Bonnett tal-10 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 in konnessjoni ma' PA 2610/07;

Ghall-korrettezza l-Qorti tirrileva illi l-okkju qed isir fil-forma shiha tieghu billi fid-decizjoni tat-Tribunal ta' Revizjoni whud mill-partijiet gew indikati bil-kelma generika 'et'. Ghalkemm ma hemm ebda lment jew aggravju fuq dan il-punt il-Qorti hasset li l-okkju komplet ghandu jigi indikat f'din is-sentenza ghal kjarazza;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appellanti messhom avvanzaw l-oggezzjonijiet taghhom fl-istadju opportune mhux zmien wara u fil-mertu irrelevant illi l-kwistjoni avvanzata hi wahda ta' fatt mhux ta' ligi;

Rat ir-risposta ta' Tony Gauci li ssottometta li d-decizjoni moghtija keinet wahda finali u kwindi l-appell hu tardiv u illi l-f-mertu l-aggravju hu dwar kwistjoni ta' ippjanar mhux punt ta' ligi;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

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B'applikazzjoni taz-17 t'April 2007 PA 02610/07, l-appellat Tony Gauci, f'sit fi Triq Gebel Ghazzara, Burmarrad, talab:

“To construct maisonettes and flats with underlying garages.”

L-applikazzjoni giet milqugha mill-Awtorita' permezz ta' permess tal-1 ta' Dicembru 2009.

Illi permezz tal-appell pprezentat mill-Perit Robert Sarsero, l-appellanti oggezzjonaw għall-hrug tal-permess relattiv u rrilevaw 'inter alia' illi:

“The approved development runs counter to the recommendations of the Executive Board, which Board was consulted by the DCC for guidance. The Executive Board's negative recommendations were then ignored at decision stage.

The approved development runs counter to policy 3.8 of the Development Control Policy and Design Guidance 2007 in respect of almost all requirements of an internal residential development, The approved development is not compatible in height, scale, design and form of adjoining property.

It will have an adverse impact on the amenity of the adjoining buildings because of overlooking and subsequently reduction in privacy.

The width of the access road is less than the minimum required.

As approved, the development will constitute over development of the site.

The proposed excavations do not respect the minimum distance of 76cm from the common party wall, and as such the proposed number of basement garages/parking spaces cannot be accommodated. This implies a higher shortage of on-site parking provision.”

Illi l-Perit Censu Galea ressaq il-kummenti tieghu inter alia kif gej:

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"I would firstly like to draw your attention to the fact that the application payment form is attested to Mr Tony Gauci, who has no intention of submitting an appeal against the permit PA02610/07 which was issued on his name with the date 01 December, 2009, Mr Gauci on whose name the payment was supposedly affected does not in any way want to submit an appeal.

For this reason I indicate that the supposed applicant as declared on the payment form is not in any way responsible for the payment of the amount declared on the application, Besides that Mr Gauci declares that no one contacted him in so far as the use of his name for this application was concerned.

At the same time, I would like to counter the arguments put forward for the appeal as communicated to him by MEPA.

The perit who submitted the appeal in question put the following arguments forward for his justification as to why application as approved should not be permitted, and for which reason he has asked the appeals board to revoke the permit which was approved by DCC and issued by MEPA.

As far as I am informed the body within MEPA that is responsible for the issue of building permits is the DCC, the so called Executive Board is not in any way part of the deciding process, and if this 'board' has actually discussed this application, neither the applicant nor his architect were asked for any explanation, which in turn means that those on this board could not analyse and fully understand what the proposal in question entailed, Besides that this board did not in any way or at any time ask for the clarifications that would have been required.

If a negative recommendation was put forward by the said board applicant was never given the relative information, and could not, therefore rebut the reasons upon which the alleged recommendation would be based.

For this reason, any recommendation put forward by this board could never be based on the full knowledge of the factors that could possibly influence their decision.

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Perit Sarsero is alleging that the approved development runs counter to policy 3,8 of the Development Control Policy and Design Guidance 2007, 'in almost all the requirements of an internal residential development'.

This allegation and assertion is first and foremost incorrect. It is also an allegation that does not in any way result from all the communications that were put forward by the responsible case officer, who when recommending the refusal of the said application had stated that the application should be refused because there was 'no satisfactory access arrangement for the service and emergency vehicles'.

This is a far cry from what the architect submitting the appeal is alleging.

Even though a large number of buildings around Malta were issued the necessary permits without any consideration for the detailed requests that were asked from the applicant in question, and apart from the fact that similar applications were approved even round the corner from applicant's site, it has to be noted that Mr. Gauci has in fact altered his plans in such a way that would accommodate a ramp that could take in emergency services, in the meantime losing a number of garages which would have been provided for on site perking underneath the proposed buildings.

In no way does it result that the said application would be counter to the provision of service vehicles, let alone how could one allege that the application in question was counter to all the requirements of policy 3,8 as quoted by appellants.

The architect's assumption that the approved plans are not compatible in height, scale, design and form of adjoining property is simply incomprehensible, The final shape and height are all in line with the conditions of the area in which development is being proposed.

The rules which regulate such development are not simply invented for a particular application, They are there to be observed by all, and these particular rules were in line with the conditions that were catered for on the plans as originally submitted, and were even more taken care of when the plans were amended to take into consideration the requirements of policy 3,8.

In the case of most of the appellants in question, the approved plan cannot in anyway be considered to be affecting them as stated by the perit in question since

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the proposed development lies in a plot that is one plot away from their property, where applicant will be building a wall which will serve the other plot owner as a dividing wall, Besides that, on the plot that separates appellants from site of approved application, application PA7453/05 is itself being recommended for approval. This application concerns a government housing project.

In so far as the point of overlooking is concerned, the point which I consider to be the real reason why this present appeal was presented, with all due respects to appellants, Mr. Gauci is only proposing to build a construction which is totally in line with the sanitary laws of this country.

Mr. Gauci has actually done his utmost to ensure that his proposal will be in line with the local legislation, and his plans, as approved by DCC are actually in line, While one could prefer not to have any being at the back of his building, something which I fully understand, applicant is observing our laws, and as such could not possibly be penalized - proposing to construct a building on his own property.

As for the point which concerns the appellant's claim that the proposed building would constitute development, I believe this assertion is unfounded since the proposed buildings is leaving a lot of space which is un built around the said proposed buildings, ensuring that the necessary space (open space) is actually left around the building.

Appellant asserts that the proposed building will not be respecting the minimum 76cm distance from the common party line. This assertion is totally unfounded since the plans - approved already indicate a width which is in law with our local legislation, On the other hand, however, even if this width was not indicated on the plans it is obvious that - required legal width from the party line would be observed.

This will not be the case. At the same time, appellant is trying to use this argument to imply that there would be a further reduction in the number of garages that are proposed if the required 76cm width is left as obliged by law. This argument is unfounded, and Mr. Gauci obliges himself to abide by the laws and regulations of this country, as applied by MEPA and other legal institutions in this country.

From what was stated above, it is obvious that the appeal (wrongly applied for by a payment affected on Mr. Gauci's behalf, which he never authorised), is only intended to stop Mr. Gauci from building a construction to which he is fully entitled, I

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hope that this appeal will be concluded as soon as possible, because Mr. Gauci is the only one who will be suffering from this appeal. ”

Illi l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

### “4.0 Comments on Appellant's Arguments

4.1 The principle of developing this site as internal development has been established in the outline permit PA 2114/05, and for which the application form only identified landscaping as a reserved matter for consideration in the course of a full development permission application. Although the same third party presented objections against this outline application, this decision was not appealed against in front of the Planning Appeals Board. Hence, through the outline permit issued for PA 2114/05 the applicant has obtained an acquired right to develop this site, in accordance with Section 33 of the Development Planning Act.

4.2 In this appeal, the appellant lists various issues as the grounds for appeal, and which shall be discussed separately, as follows (with the sub-titles referring to the statements made by the appellant):

#### i. The DCC did not follow the recommendations of the Executive Board

As the appellant rightly points out, prior to their final decision, the DCC consulted MEPA's Executive Board. The only outstanding issue was with regards to the 3 metre headroom to the basement garages, which the Planning Directorate indicated should be at least 3.5 metres (as per DC 2007 Policy 4.10). The Executive Committee agreed with the Planning Directorate's recommendation and hence guided the DCC to not accept the proposal with such a headroom. Notwithstanding this, the DCC decided that the proposed 3 metre headroom to the basement level was sufficient, even for emergency vehicles (minute 185 in PA file).

The Development Planning Act recognizes the DCC Board as the competent body to decide and determine a development permission application, and which final decision may not be in line with the recommendations of the Executive Committee or the Planning Directorate. Hence, the decision issued by the DCC is valid and in line with Article 13 of the Act. Moreover, as stated in the previous paragraph the issue discussed by the Executive Committee was not related to third party interests but to internal matters relevant to the building in question.

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ii. The approved development runs counter to Policy 3.8 of the DC 2007 in respect of almost all requirements of an internal residential development

The appellant fails to substantiate this statement, as he fails to specify how the requirements of DC 2007 Policy 3.8 are not being respected by the approved development. The Planning Directorate had assessed the proposed development and determined that the proposal complied with the policy provisions of Policy 3.8, with the exception of the 3m high headroom to the basement level. This requirement, which however falls under a different policy (Policy 4.10), was waived by the DCC after it was demonstrated that emergency vehicles may adequately access the basement levels.

iii. The approved development is not compatible in height, scale, design and form of adjoining property

The approved development complies with the height limitation designated for this area, and hence a height of 3 floors, and where an overlying penthouse level may be permitted under the provisions of DC2007 Policy 10.6. The fact that the buildings located in the site's context may be of a lesser height does not preclude the applicant from developing this site according to the height limitation established in the Local Plan. This principle has already been emphasized by the Planning Appeals Board in the case of Mario Sammut vs. MEPA (15th May 2009), whereby the Board decided that although a development higher than its adjacent existing buildings would be developed, the fact that it complied with the height limitation entailed that the development could be permitted. The Board concluded that it is the height limitation established in the Local Plan that shall establish the context and visual composition of an area.

iv. It will have an adverse impact on the amenity of the adjoining building because of overlooking and subsequently reduction in privacy

DC 2007 Policy 3.8 sets out the parameters for internal development, and amongst other considerations this policy establishes the minimum separation required between the proposed development and any adjacent buildings to ensure that adequate privacy is obtained (criterion e). The provisions of this policy have been respected in the approved development, and hence MEPA considers the appellant's argument on this issue to be unfounded.

v. The width of the access road is less than the minimum required

DC 2007 Policy 3.8 requires that the approach road to the site is not less than 4.1 metres wide, while the access to the site is at least 4.1 metres wide (criteria a and b respectively). Both these requirements were fulfilled in the approved development, and hence again the appellant's contestation on this is unfounded.



vi. As approved, the development will constitute over development of the site

The development complies with the provisions of DC 2007 Policy 3.8 and with the height limitation established for this area. Hence, the development is within the planned and designated zoning that is applicable to this site, and therefore does not consist of overdevelopment.

vii. The proposed excavations do not respect the minimum distance of 76cm from the common party wall, and as such the proposed number of basement garages/parking spaces cannot be accommodated. This implies a higher shortage of on-site parking provision

The 76cm distance requirement from the common party wall is a requirement of the civil law and not a planning issue. Therefore, it is the onus of the applicant/architect to ensure that this minimum distance is retained during the construction phase of the development. Otherwise, any contestation against the provision of this distance is a civil matter that falls under the jurisdiction of the Court and not the Planning Appeals Board. Furthermore, if the third parties would, through civil proceedings, impose the 76cm minimum distance required by law, the area left in the basement would still be sufficient to accommodate the parking requirement of this development.

## 5.0 Conclusion

5.1 This report confirms that, notwithstanding the arguments raised by the appellant, the permission issued in this application respects policies and zoning designations applicable to this site. In view of this, the Malta Environment & Planning Authority respectfully requests the Planning Appeals Board to confirm the DCC's decision of 5th October 2009, and hence the approval of development permission of this application PA 2610107. "

Illu permezz t'ittra tat-23 ta' Mejju 2010 l-Perit Censu Galea irrileva ulterjorment illi:

"From my end I would like to acknowledge the receipt of the said report and that there is no objection for it from my side;

I would also like to add from this end, that site had already been covered with an outline permit with PA2114/05."

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Illi l-appellanti ressqu s-sottomissjonijiet konklussivi taghhom inter alia kif gej:

### “Introduzzjoni

Illi l-esponenti jaghmlu riferenza ghal dawn il-proceduri li huma gew ammessi qua 'objectors' sa minn quddiem il-Kummissjoni Għall-Kontroll tal-Izvilupp (DCC).

Illi l-esponenti gew awtorizzati minn dan il-Bord halli jressqu s-sottomissjonijiet taghhom bil-miktub.

L-izvilupp propost huwa totalment inkompatibbli mal-kumplament tal-bini li jdawwar is-sit li fuqu ser isir l-izvilupp propost. Dan kien sottolineat ukoll mill-Executive Committee li irrakkomanda li l-permess għall-izvilupp imsemmi ma jinghatax u li d-DCC ghogbu jinjora meta wasal għad-decizjoni tieghu.

Għalkemm m'hemmx dubbju li l-Executive Committee tirrakomanda biss lid-DCC u hu d-DCC li jiddeciedi, f dan il-kaz ma kien hemm ebda raguni valida fil-Ligi għalfejn id-DCC kellu jiddipartixxi mir-rapport tal-Executive Committee u johrog il-permess, anzi bil-kontra, kien hemm kull ragun għalfejn tali permess ma kellux jinhareg. L-esponenti certament jaqblu mal-pozizzjoni mehuda mill-Executive Committee u jaghmlu tali pozizzjoni bhala taghhom.

Oltre il-fatt li d-disinn tal-imsemmija binja huwa kompletament differenti u kontrastanti ma' dak tal-bini l-iehor li jinsab fiz-zona, fattur importanti iehor huwa dak relatat mad-dimensjonijiet tal-binja proposta, li huma konsiderevoli meta tqis il-limitazzjonijiet prezenti fiz-zona u dan certament imur kontra Structure Plan Policy BEN 1 fejn huwa stipulat illi għandu jigi zgurat illi binja bhal dik proposta m'għandhiex tkun "of an excessive scale leading to overdevelopment of site, and therefore would not be in the interest of the amenity of the area as a whole."

### Parkegg

Minkejja l-fatt li l-izvilupp propost jidher li ha hsieb li jkun hemm numru ta' garages bizzejjed biex jakkomoda il-vetturi tar-residenti prospettivi, wiehed għandu jqis li ma inghatat ebda garanzija li kull resident prospettiv ser ikun kostrett illi jakkwista wkoll garage meta jakkwista unit fl-imsemmija binja. Anke jekk dan ikun il-kaz, wiehed irid iqis ukoll illi jekk l-akkwrent ta' unit jixtri wkoll garage ta' karozza wahda mal-akkwist ta' unit, dan rma jfissirx li l-problema tkun risolta għaliex huwa wkoll minnu li hafna

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familji illum ghandhom aktar minn vettura wahda speċjalment meta tali familji ikollhom tfa' maggorenni li jkollhom vettura kull wiehed ukoll. Ghaldaqstant dan ifisser ukoll illi n-numru tal-karozzi li ser jipparkeggaw fi Triq Gebel Ghazzara ser jizdied konsiderevolment.

### Accessibilita' Ristretta

Peress illi l-access ghall-binja proposta kemm bir-rigel kif ukoll bil-vettura huwa tramite passagg dejjaq li minnu tista' tghaddi biss vettura wahda (Ara Dok. 'A' u 'B'), dan ser ikun certament ta' inkonvenjent ghall-dawk ir-residenti kollha taz-zona, b'mod speċjali dawk li joqogħdu, jew li jagħmlu uzu minn Triq Gebel Ghazzara. Dan għaliex wiehed irid iqis il-fatt illi peress li dan il-passagg ser ikun l-uniku wiehed li jagħti access ghall-binja proposta, dan ifisser li ser ikun passagg traffikuz immens, u dana billi minnu jridu jghaddu l-vetturi kollha tar-residenti kif ukoll ta' dawk li jagħtu s-servizzi fl-imsemmija binja.

Dan ifisser ukoll illi l-bankina fl-istess triq ser tkun ostakolata kontinwament peress li l-imsemmija vetturi irid u jghadd u minn fuqha biex jidhlu jew johorgu minn tali passagg.

Ta' min wiehed isemmi illi f'kaz t' emergenza l-imsemmija restrizzjonijiet marbuta man-nuqqas t' accesibilita' ser jigu rinfaccjati minn vetturi bhal dawk uzati għat-tifi tan-nar u ambulanzi fost oħrajn.

### Zieda fit-Traffiku u kongestjonijiet fi Triq Gebel Ghazzara

Allaccjat mal-fatt illi l-accessibilita' ghall-binja proposta hija wahda biss, oltre l-fatt li din hija tramite passagg dejjaq u twil, huwa l-fatt illi ser jinholoq inkonvenjent inevitabli ghall-vetturi l-oħra li jghaddu mill-imsemmija triq. Dan għaliex wiehed għandu jzomm f'moħħu li l-imsemmi passagg rna jippermettix illi zewg vetturi jghaddu flimkien u għalhekk huwa faċli li vettura li tkun ser tidhol fl-imsemmi passagg ikollha tirreversja lura għat-triq principali u tistenna wieqfa fl-istess triq biex tippermetti li vettura oħra toħrog mill-istess passagg.

Xenarju iehor huwa dak fejn aktar minn vettura wahda tkun trid tidhol fl-imsemmi passagg u dawn ikollhom jistennu f'nofs ta' triq sakemm vettura jew numru ta' vetturi oħra johorgu mill-imsemmi passagg. Huwa għalhekk inevitabli illi dawn is-sitwazzjonijiet ser joholqu inkonvenjent fl-imsemmija triq mingħajr rna wiehed jikkunsidra l-fatt li dan id-dhul u hrug kontinwu ta' numru ta' vetturi minn passagg tant dejjaq jista' jikkostitwixxi wkoll zieda fil-periklu fit-triq.

Inoltre, u bi ksur tal-kundizzjoni 11 (k) tal-Full Development Permission ser ikun inevitabli illi sabiex jittella l-imsemmi bini ser ikun hemm ostakolu tal-"pavement or

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the smooth flow of traffic on the road in the vicinity of the site;" liema ostakoli ser ikunu aggravati u aktar persistenti waqt il-process ta' kostruzzjoni fejn mhux vetturi biss iridu jghaddu mill-imsemmi passagg izda wkoll makkinarji, trakkijiet, gafef u vetturi kbar u storbjuzi ohra li certament ser joholqu 1- inkonvenjenti fuq deskritti izda b'mod aktar gravi.

### Tnaqqis fil-Privatezza tar-residenti taz-Zona

L-izvilupp propost li mhux ser ikun jaghti ghal ebda triq u li ser ikun kompletament iccircondat minn kull naha minn residenzi privati u b'rnod specjali l-btiehi ta' hafna minnhom, ser inaqqqas il-privatezza li sal-lum igawdu l-imsemmija residenzi. L-oghli tal-binja proposta u l-fatt li ser ikun hemm penthouses f1-ahhar sular b'terrazzini mad war il-perimetru kollu tal-ahhar sular ikompli jikkonferma l-fatt illi l-privatezza tar-residenti l-ohra fil-bini tal-madwar ser tkun irnxekkla (Ara Dok.' A'). Dan certament illi jmur kontra Policy 3.8A (g) ta' Development Control Policy and Design Guidance 2007.

Is-semplici fatt illi mad war il-binja ser ikun hemm spazju li mhux ser jinbena rna jfissirx illi dan ser isolvi kompletament din il-kwistjoni, speċjalment meta wiehed iqis illi ser ikun hemm units u cioe' perdwuse5 fir-raba' sular li jaghti ghall-fuq i1-kumplament tal-bini tal-mad war li l-kumplament tieghu ma jaqbix iz-zewg sulari.

Hitan tal-Appogg mhux konformi mad- Development Control Policy and Design Guidance 2007

Skont Policy 3.8A IfJ tad- Development Control Policy and Design Guidance 2007 fejn huwa stipulat illi "a party wall should not remain exposed" jidher car illi party walls li m'hux ser jappoggjaw bini iehor u/jew li huwa improbabbli li qatt jigu appoggjati b'bini iehor m' ghandhornx jittellghu. Huwa ghalhekk car illi il-binja proposta trnur kompletament kontra l-linji gwida ta' Policy 3.8A IfJ il-ghaliex l-izvilupp jinkludi shansitra zewg party walls li huma totalment inkompatibbli mal-imsemmija Policy peress illi m'humiex ser jappoggjaw l-ebda bini iehor (Ara Dok.'B) u li ghal din ir-raguni wkoll-imsemmi 'zvilupp' m'ghandux jithalla jsehh.

Illi ghar-ragunijiet suesposti l-esponenti jinsistu li jkun opportun li qabel rna' dan il-Bord jghaddi ghad-decizjoni tieghu isir access minn dawn il-membri godda tal-Bord halli japprezzaw il-punti sollevati mill-esponenti aktar 'il fuq.

Ghaldaqstant ghar-ragunijiet suindikati l-esponent jhossu li dan l-Onorabbli Bord ghandu jilqa' l-appell taghhom 'in toto'.

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Daqstant l-esponenti ghandhom l-unur li jissottornettu u jhalli ghas-savju u superjuri gudizzju tal-Bord Ta' L-Appell Dwar l-Ippjanar. “

Illi l-Perit Censu Galea ressaq il-kummenti tieghu inter alia kif gej:

1. I have never seen the minutes of the executive committee which are mentioned in the submissions. However, if I remember well the subject of the committee's comments were related to the access ramps. These comments were addressed, and the plans were amended to cater for the requirements of emergency vehicles. Besides that, I would like to point out that a few metres away from the applicant's proposed development there is a development whose configuration is much more difficult than applicant's and the permit was also approved, issued, and building built. This block of apartments is also much larger than that of applicant's.

2. I would like to draw your attention to the fact that applicant's plans were changed from those originally approved (in principle) in the outline application, precisely to ensure that any policies enforced by MEPA be taken into consideration.

3. In so far as access is concerned it has to be noted that in real terms applicant's site is much wider than the width of a car. It is in line with the requirements of the standards imposed by MEPA, so much so that applicant, has years ago acquired a piece of land from the Housing Authority to make sure that the required width is available. The width of the passage in question is much wider than that required for the passage of any car, or emergency vehicle. I would like to point out that documents A and B, mentioned in the report are totally misleading, both in terms of the configuration of the applicant's plot and also in terms of the proposed development. It is also misleading in so far as the back yards of the surrounding building is concerned. I may state that the only side where the documents A and B are correct are in relation to the proposed buildings by the Housing Authority. This building covered by permit PA74S3/0S, in reality further enhances our argument that the proposed building by applicant will not in anyway affect the rights of most of the appellants, because the proposed building covered by PA 7453/05 will completely separate applicant's building from that of the appellants, with the exception of, perhaps, two or three who have their property at the back of the permit covering PA2610/07.

4. Appellants are claiming that the pavement and street will be congested because of incoming and outgoing traffic. This is simply not the case, as may be verified by inspecting other areas where many more parking spaces are available.

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5. The cases (scenarios) mentioned in the appellants' report is far from realistic. It purposely defines extreme cases which will not take place.

6. In this case applicant was 'forced' to propose a development which covers the required number of garages that are required for the development. He did so voluntarily, in order to accommodate the needs of the proposed development. In fact he had proposed more spaces than those that have been approved, but was forced to eliminate some of the garages to make sure that the emergency vehicles would have the required turning circle. He did this in spite of the fact that he is probably the only person in Malta who was asked to provide such a turning circle because much larger developments do not have it. In this case applicant has abided with all the conditions applied in similar developments. He is providing the garages, and garages are there to serve for the parking of cars.

7. The argument that during the time of construction, construction trucks will be using the site does not merit an answer. If this argument were to be used than no construction, anywhere will be allowed.

8. In so far as privacy is concerned, I have already noted that the building in question will be covered by the building permitted under PA7453/05, and this will make it impossible for the applicant's building to interfere with the privacy of most appellants. In so far as all appellants is concerned I have to note that the legal requirements for such development are being observed. I see no reason why this should be changed.

9. In so far as the argument about the party walls are concerned I would draw your attention to the fact that with this argument neither building covered by permits PA7453/05 nor those covered by buildings under permit PA2017/10. This is of course not the case."

Illi l-Awtorita' ressqet il-kummenti taghha inter alia permezz tas-Second Statement kif gej:

"1. The appellants have presented a note of submissions on 3rd June 2011 to conclude their arguments and in reply to the Authority's position.

2. The appellants' arguments are (in brief):

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(a) The Executive Committee stated that the proposal is not acceptable because it is completely incompatible with the surroundings and that the DCC had no valid reason to overturn such a recommendation;

(b) The design and massing of the proposed development jars with the surroundings and thus it runs counter to Structure Plan policy BEN 1 ;

(c) The proposed parking provision is not enough because there is no guarantee that each dwelling occupier will also buy a garage. Moreover the proposal does not take into account future demand for parking spaces;

(d) The access route to the site is restricted and narrow. It will create inconvenience to pedestrians who make use of Triq Gebel Ghazzara because this private lane (which links to the schemed road) will generate a lot of vehicular movement in and out from the site. Moreover such an access is not adequate for emergency type of vehicles;

(e) The access route does not permit the passing of two vehicles by each other and this would lead to traffic jams at the junction with the schemed road as vehicles manoeuvring into the site will stop on the carriage-way waiting for the outbound vehicle;

(f) The proposed development whilst being built will cause inconvenience to the neighbourhood in terms of obstacle to the pedestrian pavement and carriage-way. This will be in contrast to condition 11 (k) of the permit;

(g) The proposal leads to loss of privacy due to the penthouses and their terraces, and the height of the proposed development in relation to the surroundings;

(h) The proposal creates exposed party walls as shown in an attached document;

3. The Authority notes that the majority of these arguments have already been addressed and refuted in the initial report to the Tribunal. Nevertheless the Authority would like to clarify some of the points highlighted by the appellants.

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### (1) The issue of the Executive Committee

The comments made by the appellants regarding the Executive Committee are deemed to be misleading.

The Executive Committee had expressed various concerns when it reviewed the application for the first time as per minute 122 in PA file (dated 1st November 2008).

Subsequently the applicant was requested to submit revised drawings; a request to which the applicant complied with. The Executive Committee reviewed the latest drawings on 28th July 2009 and concluded as per minute 179 in PA file (dated 10th September 2009) that the only point of deficiency that remained was in regards to accessibility due to the height of headroom and turning circle for emergency vehicles.

The issue of the turning circle for emergency vehicles was solved with the submission of further revised drawings (see document 145A in PA file). Hence the only outstanding issue that remained was in regards to the 3 metre headroom to the basement garages, which the Planning Directorate indicated should be at least 3.5 metres (as per DC 2007 Policy 4.10). The Executive Committee agreed with the Planning Directorate's recommendation and hence guided the DCC to not accept the proposal with such a headroom.

Notwithstanding this, the DCC determined that the proposed 3 metre headroom to the basement level was sufficient, even for emergency vehicles (minute 185 in PA file). The now superseded Development Planning Act recognized the DCC Board as the competent body to decide and determine a development permission application, and which final decision may not be in line with the recommendations of the Executive Committee or the Planning Directorate.

### (2) Design and Massing

The Authority cannot understand why the design of the proposal is incompatible with the surroundings. The appellants did not present any reasons to substantiate this assertion.

On the matter regarding the massing, the Authority notes that the approved development is fully compliant with the height limitation of the area. This means that any existing development in the vicinity which are lower than the approved building may be developed further and reach similar heights. The Authority has already elaborate don this issue in the initial report to the Tribunal.



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### (3) Parking

The proposal provides for almost all the required parking provision stipulated by the relevant policies. The shortfall of three car parking spaces is being mitigated by a contribution towards the UIF of the area.

The appellants' arguments that the parking provision does not take into account future demand is rather speculative in nature and not based on any study.

The issue that there is no guarantee that the dwelling occupiers will buy a garage is understandable. However it is important to keep in mind that parking provision calculation is not based on the transport needs of the individual user but on the density and comprehensive demand created by a whole development. If a singular dwelling occupier does not make use of a garage, it does not mean that one of the garages will remain empty or vacant. It simply means that it can provide parking space to somebody else who otherwise would still park on the street.

### (4) Access route to the site

The Authority does not agree with the appellant that the access route to the site is not sufficient. It is 4.1 m wide and therefore according to policy 4.1 of the DC2007 it permits the two vehicles passing each other. Therefore it will not create jams at the junction with the schemed road. The approved traffic management measures will also mitigate in favour of the pedestrians crossing the lane along the schemed road.

### (5) Ongoing works will create an obstacle to the pavement and traffic along the schemed road

This issue is safeguarded by condition 11 (k) of the permit. If the applicant does not abide to any of the conditions stipulated in the permit then the applicant is liable to enforcement action.

### (6) Privacy

The fact that the penthouses would be higher than the surroundings (pending their redevelopment) does not mean that the surroundings are deprived of their privacy. Privacy is regulated by various policies and the proposal has been deemed to be compliant. The proposal respects the necessary setbacks stipulated in policy 3.8 and 10.6 of the Dc2007. The appellants need to substantiate much further such an assertion in order to be considered by the Authority. Essentially, the appellants require to prove that there is less than 6m separating the windows or balconies

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between those proposed and those belonging to third parties. Such evidence has not been provided at any point of the application process.

### (7) Party walls

The Authority cannot understand to what party walls is the appellant referring to. Document B submitted by the appellant show mainly party walls created by other developments but not that by the case under appeal. Any exposed party walls created by the approved development are adjoining party walls and will be screened by future development. Nevertheless should the Tribunal feels necessary a condition may be included to oblige the applicant to treat the party walls in such a way that they are no longer left exposed until they are screened by future development. “

Illi l-applikant issottometta l-kummenti tieghu kif gej:

“Illi l-appellanti f'dan l-appell qed isostnu li hemm xi inkompatibbli mal bini ta' madwaru. Jirreferi ghall-gudizzju tal-Executive Committee. Tilmenta li id-DCC ma mxietx fuq dan il-parir. Jigi sottomess bir-rispett li dan mhux l-istorja kollha. Ghax id-DCC mponiet tibdil estensiv fuq l-applikant Anthony Gauci biex jizviluppa l-propjeta tieghu. Hekk per ezempju l-applikant kellu jnaqqas il-kwantita ta' zvilupp fuq t-art tieghu biex jottjeni l-permess ghall-bini. Dan sar propju biex ikun konformi mal-Structure Plan Policy BEN1.

Illi jinghad mill-appellanti li l-pjanti tal-applikant ma jahsbux bizzzejjed sabiex jakkomoda vetturi li ser juzaw l-izvilupp propost. Lanqas dan ma hu lment validu il-ghaliex biex inhareq il-permess odjern ttiehied kont anki ta' dan l-ilment u l-permess hareg wara r-rattifiki mehtiega.

Illi l-appellanti jilmentaw ukoll minn dak li jsejhulu accessibilita' ristretta. Jinghad bir-rispett li dwar dan il-punt l-esponenti ga hadu hsieb jipprovdi ghas-sodisfazzjon tal-MEPA. L-izvilupp minn propost huwa mfassal biex waqt li r-residenti futuri fli-izvilupp propost jkollhom l-access mehtieg hekk ukoll ma jkunx ta' mpediment ghal terzi li juzaw l-istess arja u l-vicinanze. Dana huwa mahsub propju biex tigi evitata kongestjoni tat-traffiku.

Illi qed isir ilment ukoll ghall-makkinarju li ser ikun involut fl-izvilup ipprogettat. Jinghad li dan ser ikun mehtieg kull darba li jsir xi forma ta' zvilupp. Ghaldaqstant ikun raqonevoli li konsiderazzjonijiet bhal dawn jinghataw importanza projbittiva. Dana ghax kieku l-ebda zvilupp ma jkun jista jsir fil-pajjiz.

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Illi l-appellanti jqajjmu wkoll il-punt tal-privatezza li skond huma ser tonqos lis-sidien madwar s-sit fejn ser isir l-izvilupp pro post. Jinghad bir-rispett li l-izvilupp li huwa propost u li dwaru hareg il-permess huwa skond il-pjan tal-MEPA. Jiqifieri li ladarba qed jinghata l-permess dan huwa ghax l-gholi tal-istruttura mhux ser tkun aktar minn dak permess mil-pjan ta' zvilupp. Dan kif dal-resto sar l-izvilupp ga ezistenti fl-inhawi skond l-istess pian ta' zvilupp.

Ghaldaqstant dan l-appell ghandu jigi michud u l-permess jigi kkonfermat biex l-izvilupp jibda jsehh.”

Ikkunsidra ulterjorment:

Wara li kkonsidra il-premess u minn ezami tal-pjanti, ritratti u dokumenti li hemm fil-files PAB 274/09 , PA 2610/07 u PA2114/05, it-Tribunal jikkumenta kif gej:

Il-mertu ta' dan l-appell jirrigwarda third party appeal kontra full development permission ghall-bini ta' maisonettes (3 fil-livell tal-ground floor), appartamenti (3 fil-first floor, 3 fis-second floor u 2 fil-livell tal-penthouse) u garages (10 fil-livell ta' lower basement u 7 fil-livell ta' upper basement). L-izvilupp jikkonsisti f' internal development b'access minn Triq Gebel Ghawzara, Burmarrad. Is-sit in ezami jinsab fiz-zona tal-izvilupp ta' Burmarrad. Is-sit huwa bicca art interna ta' madwar 900 metri kwadri li tintlahaq permezz ta' passag minn fuq it-triq li huwa 34 metri twil.

Is-sit mertu ta' dan l-appell bhalissa huwa kopert b'outline permit PA2114/05 fejn zvilupp tat-tip internal development u li jikkonsisti f'garages fil-livell tal-basement u residential units sovrastanti gie approvat. Jigi nnotat li din id-decizjoni ma' giet appellata meta hareg il-permess. Normalment f'outline permit jigi approvat l-envelope tal bini jigifieri il-volum li ghandu jikkupa u ghalhekk kemm il-footprint u kif ukoll l-gholi jigu stabbiliti fi stadju ta' outline permit. Applikazzjoni ghal-zvilupp simili fis-sit adjacenti (PA 7453/05) bhalissa qiegheda tigi pprocessata mill-Awtorita'. Ma' kien hemm ebda oggezzjoni ghall-dan l-izvilupp.

Fil-kors tas-smiegh ta' dan l-appell irrizultaw numru ta' issues ta' natura determinanti.

L-Outline Permit PA2114/05

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Jirrizulta li outline permit ghal dan l-izvilupp diga jezisti (PA2114/05). Peress li d-decizjoni li jigi approvat il-permess PA2114/05 ma' gietx appellata f'dak l-istadju, skond l-Awtorita', is-sid issa ghandu dritt kwezit li jibni dan l-izvilupp skond il-kondizjonijiet imposti fil-permess. Jigi nnotat li normalment f'outline permit jigi approvat l-envelope tal bini jigifieri il-volum li ghandu jokkupa u ghalhekk f'kasi bhal dawn, kemm il-footprint u kif ukoll l-gholi normalment jigu stabbiliti fi stadju ta' outline application. Normalment ikun f'dak l-istadju li l-appellanti ikollhom jaghmlu l-oggezzjonijiet taghhom fuq massing, l-gholi tal-izvilupp, over development, etc peress li dawn l-issues normalment jigu iffissati f'dan l-istadju. Anke l-issue tal-access ghas-sit normalment tigi issollewata f'dak l-istadju peress li l-principju li l-izvilupp kellu jkun internal development ikun gie iffissat permezz ta' dik l-applikazzjoni. Ghalhekk normalment dawn l-issues m'humiex appellabli f'stadju ta' full development meta jkun diga jezisti outline permit peress li jkunu diga iffissati fl-istadju tal-outline. Jigi notat li meta dan il-fatt gie irrilevat mill-Awtorita' fl-ewwel nota taghha ghal-dan l-appell, l-appellanti ma' ghamlu ebda kumment fuq dan fis-sottomissjonijiet sussegwenti taghhom.

Ta' min isemmi wkoll li l-appellanti ma' ghamlux oggezzjoni ghall-izvilupp tas-sit adjacenti is-sit in ezami li huwa kopert bl-applikazzjoni PA 7453/05 u li huwa zvilupp tal-istess tip fis-sens ta'kobar u massing. Dan il-fatt juri certa inkonsistenza minn naha tal-appellanti.

### Il-Pjan Strutturali vs. Il-Pjani Lokali u policies ohra

Fis-sottomissjonijiet taghha l-Awtorita' tiddikjara numru ta' drabi li l-gholi finali tal-izvilupp gie determinat mill-height limitation taz-zona li gie stabbilit fil-pjan lokali u mill-policy 10.6 tal-Policy and Design Guidance, 2007, li tippermetti penthouse level f'dan il-kas. Biex tirribatti l-argument tal-appellanti li, fl-opinjoni taghhom f'dan il kas ghandha tapplika l-policy BEN 1 tal-iStructure Plan, l-Awtorita' tghid li gej fl-nota taghha:

“The approved development complies with the height limitation designated for this area, and hence a height of 3 floors, and where an overlying penthouse level may be permitted under the provisions of DC2007 Policy 10.6. The fact that the buildings located in the site's context may be of a lesser height does not preclude the applicant from developing this site according to the height limitation established in the Local Plan. This principle has already been emphasized by the Planning Appeals Board in the case of Mario Sammut vs. MEPA (15th May 2009), whereby the Board decided that although a development higher than its adjacent existing buildings would be developed, the fact that it complied with the height limitation entailed that the development could be permitted. The Board concluded that it is the height limitation established in the Local Plan that shall establish the context and visual composition of an area. “

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L-Awtorita' qiesha qed taghti l-impressjoni li f' dan il-kas ma' tistax tigi uzata l-policy BEN 1 jew policies ohra tal-Pjan Strutturali ghax il-pjan lokali u d-DC2007 jiehdu is-sopravent f'dan il-kas.

Fil-fehma kunsidrata ta' dan it-Tribunal din hija pozizzjoni ghal kollox sbaljata. L-height limitation muri fil-pjan lokali huwa biss indikazzjoni tal-gholi massimu li hu permissibli u li jekk jirrizulta li, f'xi kas partikolari, hemm bzonn li l-gholi tal-izvilupp in kwistjoni ghandhu jkun inqas biex jigi salvagwardat xi principju stabbilit fil-Pjan Strutturali, allura l-Awtorita' ghandha tapprova gholi inqas mil-height limitation imsemmi fil-pjan lokali. F'kull kaz, cirkostanzi li jirrizultaw minn konsiderazzjonijiet fil-Pjan ta' Struttura ghandhom jiehu precedenza fuq il-Pjan Lokali.

Id-dokument baziku tas-sistema ta' ipplanar ta' pajjizna huwa l-Structure Plan. Il-policies ta' ipplanar iddettalja li jintuzaw ta' kuljum fl-ippocessar ta' applikazzjonijiet ghall-izvilupp kollha jirrizultaw mill-policies generici u ta' principju li hemm fil-Pjan Strutturali. L-ebda pjan lokali ma' seta' jinkiteb kieku ma' kienx jezisti l-Pjan Strutturali. Il-Policy and Design Guidance ma setax jinkiteb minghajr il-Pjan Strutturali.

L-pjani lokali ma' jistghux jigu uzati wehedhom u b'mod totalment awtonomu fl-ippocessar tal-applikazzjonijiet. Huwa veru li l-pjanijiet lokali ghandhom kemm jista jkun jintuzaw fl-assessment tal-applikazzjonijiet ta' zvilupp ghaliex huma hafna izjed dettalja, imma meta jinholq xi dubju fuq principji ta' ipplanar, wiehed ghandu dejjem jirreferi lura ghall-Pjan Strutturali bhala l-fond li fih hemm dikjarati il-valuri ta' ipplanar ta' pajjizna.

Ghalkemm il-Pjani Lokali huma dettalja, wiehed ma' jistax jippretendi li dawn jiehdu in konsiderazzjoni l-issues partikolari kollha li jirrizultaw minn kull triq, pjazza, bini, veduta, sit arkeologia, neighbourhood, eccetra f'kull lokalita' ta' pajjizna. Fil-kuntest ta' issues specifici u partikolari li jistaw jinholqu f'lokalita' specifika, il-pjan lokali ghadu xi ftit generiku u ghalhekk, per ezempju, tintuza il-kelma "sa" u mhux ghar-raguni li jgib l-appellant. Is-sistema ta' policies imsejha Policy and Design Guidance tittenta timla din il-lakuna imma mhux dejjem jirnexxiela taghmel dan minghajr problemi. Ghalhekk kull meta' jinholq xi dubju ghandu jkun l-Structure Plan li juri t-triq it-tajba.

Il-punt fundamentali huwa li meta jkun qed jipprocessa applikazzjoni il-case officer ma' jistax semplicement jiftah il-pjan lokali fuq il-mappa fejn jidher is-sit in ezami u japplika l-height limitation massimu bl-ament u wara jara x'ghid id-DC2007 fuq

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jekk hux permissibbli li jigi ikkunsidrat penthouse u jekk hija permissibbli jaccetta li tizdied fl-ghama. Il-case officer ghandu juza l-gudizzju tieghu bhala planner u wara li jzur is-sit jaghmel ir-rakkomandazzjoni skond il-professional judgement tieghu u dejjem bil-principji li jhaddan il-Pjan Strutturali f'mohhu.

L-organi li jiehdud-decizjonijiet fl-Awtorita'

Issue ohra li dan it-Tribunal ihoss li ghandha tigi rrilevata hija il-konfuzjoni li inholqot dwar numru ta' organi ta' l-Awtorita' li jissemmew fil-kors tas-smieh ta' dan l-appell u min minn dawn jaghmel id-decizjoni finali.

Fis-sottomissjonijiet jissemmew Executive Committee, Executive Board, MEPA's Executive Board, Planning Directorate, DCC u DCC Board. Ta' min jinnota li qatt ma' jissemma il-MEPA Board.

Jidher li fost in-nies li juzaw is-servizzi tal-Awtorita' hemm nuqqas ta' certezza fuq min huwa finalment risponsabbli ghad-decizjonijiet li jittiehdu mill-Awtorita'. Il-verita' hija li kull decizjoni li tittiehed fuq applikazzjonijiet ghal zvilupp tittiehed f'isem il-Board tal-Awtorita' u dan ghandu jkun car ghal kullhad. Ta' min jinghad ukoll li dak li kien id-DCC (u illum l-EPC) ma' kien xejn hlief sotto-kumitat tal-Board tal-Awtorita' li kellu id-delega li jiehu certi decizjonijiet f'isem il-Board. Ir-rwol tal-Executive Committee jew Executive Board mhux car pero ta' min jinnota li r-rwol tad-DCC kif spjegat hawn fuq jaghmlu kumitat esekuttiv tal-Board.

Is-siltiet li gejjin mis-sottomissjonijiet li ghamlu l-partijiet juru il-konfuzjoni serja u inkwetanti li tezisti dwar kif jittiehdu id-decizjonijiet fl-Awtorita':

“Ghalkemm m'hemmx dubbju li l-Executive Committee tirrakomanda biss lid-DCC u hu d-DCC li jiddeciedi, f dan il-kaz ma kien hemm ebda raguni valida fil-Ligi ghalfejn id-DCC kellu jiddipartixxi mir-rapport tal-Executive Committee u johrog il-permess, anzi bil-kontra, kien hemm kull ragun ghalfejn tali permess ma kellux jinhareg. L-esponenti certament jaqblu mal-pozizzjoni mehuda mill-Executive Committee u jaghmlu tali pozizzjoni bhala taghhom.”

“...Executive Board, which Board was consulted by the DCC for guidance. The Executive Board's. MEPA's Executive Board. The Development Planning Act recognizes the DCC Board as the competent body to decide and determine a development permission application, and which final decision may not be in line with the recommendations of the Executive Committee or the Planning Directorate. Hence, the decision issued by the DCC is valid and in line with Article 13 of the Act.

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Moreover, as stated in the previous paragraph the issue discussed by the Executive Committee was not related to third party interests but to internal matters relevant to the building in question.”

Ikkonsidra ulterjorment:

Nonostante dak kollu li intqal fil-premess dwar il-fatt li, permezz tal-outline permit, l-applikant issa ghandu dritt kwezit li jaghmel l-izvilupp, jirrizulta li l-permess PA2114/05 hareg bil-kundizzjoni li l-izvilupp ghandu jkun konformi mal-policy 3.8 tad-DC2005 (illum DC2007) u din il-policy tirregola kwazi l-issues kolla li suppost gew decizi fl-outline permit.

In fatti il-parti tal-policy 3.8 tad-DC2007 li hija relevanti f'dan il-kas tghid li gej:

“A Outside Urban Conservation Areas, internal residential development may be permitted where:

(a) the highway network in the area, and in particular the approach road(s) to the site, is capable of accommodating the traffic likely to be generated by the development safely and conveniently. In particular, approach roads should not be less than 4.1 metres wide.

(b) An adequate means of vehicular and pedestrian access to the site can be provided from an adjoining street, with a minimum access width of 4.1 metres, and a turning space is provided to enable vehicles to enter and leave the site in forward gear.

(c) The proposed development is in keeping with the character of the area and in accordance with the zoning of the site (where applicable) in terms of the type of dwelling unit permitted, the height and the other applicable criteria.

(d) The development would be compatible in height, scale, design and form with adjoining property.

(e) A satisfactory layout and building form can be provided such that adequate outlook is provided for the windows of the main habitable rooms and there is adequate separation between buildings to provide privacy.

i. where buildings front internal spaces or access ways there should be at least 6 metres separation between buildings.

ii. at least 3m separation where buildings adjoin the backyards of adjacent buildings.

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(f) where there is an existing party wall adjoining the site, such a party wall should not remain exposed, i.e. part of the new development must abut the party wall to cover it up. Conversely, the new development should not give rise to party walls, which are unlikely to be covered up by developments on adjoining sites. (In particular, the height of party walls of the new development should not exceed the height limitation for the area).

(g) The development would not have an adverse impact on the amenity of buildings adjoining the site because of overlooking or reduction in privacy or other residential amenity.

(h) Satisfactory access arrangements for service (refuse collection etc.) and emergency vehicles can be achieved.

(i) At least 20% of the site is public open space in the form of open space between buildings, including pizzas or other public spaces and/or play areas.

(j) Adequate provision is made for the landscaping of this open space and for refuse collection areas.

(k) the site can be adequately provided with the necessary infrastructure services.

(l) A satisfactory proposal for the maintenance of common areas, landscaping and utility services is submitted.

(m) all parking provision should be underground and the open space at ground floor level should be a pedestrian space.

Parking provision should be calculated at the medium standard according to the Explanatory Memorandum.

Where internal development is sited immediately adjacent to an Urban Conservation Area, it shall not be higher than the predominant height of the surrounding buildings, and where adjacent to gardens there shall be an open space of at least 3 metres between the development and the garden walls.”

Meta wiehed jaqra din il-parti tal-policy ikollu jistaqsi x' kien kopert fl-outline meta skond il-kundizzjoni f' dan l-istess permess, il-full application kellha tkun vinkolata b'dawn ir-riservi kollha? Irid jizdied ma' dan il-fatt li l-pjanti li fuqu inghata l-outline permit huma kollha zbaljati peress li f' numru minnhom id-distanzi huma hzienu waqt li f'ohrajn l-iskala imnizzla fil-pjanti hija hazina.

Li jista jinghad b' certezza fuq x'qed japprova l-outline permit huwa li jistabbilixxi li ghall-Awtorita', internal development f'dan is-sit u li jkollu il-forma generali kif jidher



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fil-pjanti huwa accettabbli. Ta' min jirrepeti f'dan l-istadju li dan is-sit huwa imdawwar bil-hitan tal-appogg fuq kull naha.

La jezisti stat ta' fatt li l-outline permit, PA2114/05, jistabbilixxi li f' dan is-sit jista jsir internal development u wara li ezamina l-pjanti tal-permess, it-Tribunal huwa tal-fehma li waqt li dan l-izvilupp m'huwiex xi wiehed xempju tal-arkitettura kontemporanja peress li ser ikun blokka bini imdawwra bl-appoggi tal-binjiet tal-madwar, jidher li l-gholi huwa accettabbli ghaz-zona in ezami speċjalment in vista tal-fatt li fuq zewg nahat il-bini (ezistenti jew li ghad irid jinbena u li ghalih jezisti permess) huwa gholi daqs jew kwazi daqs il-bini in-ezami waqt li fuq iz-zewg nahat l-ohra fejn il-bini huwa ta' zewg sulari hemm distanza konsiderevoli tissepara l-bini propost minn dawn il-binjiet ezistenti. Dwar id-disinn u l-massing jidher li saru numru ta' tibdiliet fil-proposta fil-kors tal-iprocessar biex jitjieb id-disinn u jitnaqqas kemm jista' jkun l-impatt tal-progett. Fuq il-parking ukoll jidher li l-problemi kollha gew risolti.

Fl-opinjoni konsiderata ta' dan it-Tribunal, fic-cirkostanzi partikolari ta' dan il-kas kif spjegat hawn fuq, il-problemi li ma' gewx indirizzati b'mod sodisfacenti huma dawk tal-access. Bhalissa l-access ghall-izvilupp in ezami huwa minn spazju vojti bejn zewg appoggi. Spazji bhal dawn m'ghadhomx jezistu ghax huma bhal gerha fl-istreetscape. Din il-problema ghandha tissolva billi jigi ikkreat xi tip ta' gateway building. Il-problema l-ohra hija li, kif jidher car mill-pjanti, l-access huwa dejjaq wisq ghad-dhul u l-hrug kontemporanju tal-karozzi bi spazju ghal bankina ta' 1.2 metru wiesa'. Fil-pjanti jidher ukoll li m'hemmx distinzjoni bejn il-passag ghal pedoni u dak ghall-karozzi. Tant hu hekk li fil-punt fejn jibda it-tarag li jaghti ghall-appartamenti, ir-rampa ghall-garagijiet tkun diga bdiet. Is-soluzzjoni ghandha tkun li tigi installata traffic management system li tirregola il-dhul u l-hrug b' tali mod li karozza wahda biss tkun tista tuza l-access f'kull hin. Dan imbaghad ikun jippermetti li tinbena bankina ghall-pedoni.

It-Tribunal ghalhekk in vista tal-kunsiderazzjonijiet hawn fuq maghmula, qiegheed jilqa' dan l-appell limitatament, u jordna li l-applikant wara li jsir process ta' konsultazzjoni mal-ufficjali rispettivi tal-Awtorita', jissottometti pjanti godda li jirriflettu din id-decizjoni. L-Awtorita' ghandha, sa 30 gurnata wara, tohrog il-permess mitlub mill-applikant b'dana li l-izvilupp jigi approvat bil-kundizzjonijiet normalment impost f'applikazzjoniet simili u f'dan il-kaz partikolari billi jittiehed kont ukoll tal-kundizzjonijiet speċjali li ghandhom jigu ppreparati mill-Awtorita' biex ikun zgurat li l-access ghall-izvilupp in ezami ikun jikkonformi ma' din id-decizjoni. Wara li l-Awtorita' tkun sodisfatta b'dawn il-pjanti ghandha tibghathom ghall-approvazzjoni finali ta' dan it-Tribunal.

## Kopja Informali ta' Sentenza

L-aggravji tal-appellant huma s-segwenti:

1. Id-decizjoni tad-29 ta' Marzu 2012 ma kinitx wahda finali ghax it-Tribunal ordna li jsiru pjanti godda u jinhareg permess bil-kundizzjonijiet appoziti li jirriflettu d-decizjoni 30 jum wara bl-approvazzjoni tat-Tribunal. L-appellanti ma gewx a konoxxenza tal-pjanti u kien biss fl-24 ta' Settembru 2012 li l-perit tal-appellanti gie infurmat li nhareg permess. Billi l-kwistjoni, fid-decizjoni mertu ta' dan l-appell, kien rigward l-access ghal zvilupp, ic-certezza tad-decizjoni seta' jigi individwat biss wara l-hrug tal-permess mhux mid-decizjoni tad-29 ta' Marzu 2012 li ghalhekk hi wahda incerta u semmai wahda parzjali fejn appell jista' jigi pprezentat mad-decizjoni finali;
2. Hemm ksur tal-audi alteram partem billi l-appellanti notifikati in segwitu ghad-decizjoni parzjali biss ma setghux issemmgħu lehinhom għal dak li sehh wara;
3. Fil-mertu d-decizjoni finali ma segwietx policy 3.8 tad-DC 2007 billi l-bibien approvati għal garage u għal persuni ma jindirizzax il-problema tal-appoggi ezistenti.

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

Dawn l-aggravji huma marbuta flimkien peress illi bihom l-appellant qed jipprova jiskavalka l-eccezzjoni preliminari illi l-appell sar fuori termine. L-appellanti jsostnu illi d-decizjoni tat-Tribunal hi wahda parzjali u mhux deciziva anzi incerta ghax soggetta għal kondizzjonijiet u tibdil ta' pjanti li fuqhom l-appellanti ma kellhom ebda kontroll jew inghataw opportunita li jikkontrollaw.

Din il-Qorti tqis illi dan l-aggravju ma jistax jintlaqa'. Fl-ewwel lok hu principju illi d-dritt ta' appell jinsogi mill-ghoti ta' decizjoni tat-Tribunal mhux mill-hrug tal-permess (ara artikolu 41(6) tal-Kap. 504). Id-decizjoni tat-Tribunal inghatat fid-29 ta' Marzu 2012 minn appell imressaq min terzi interessati. L-appellanti jilmentaw li d-decizjoni kienet wahda parzjali ghax iddahhlu kondizzjonijiet u tibdil ta' pjanti soggetti għal approvazzjoni tat-Tribunal.

## Kopja Informali ta' Sentenza

Din il-Qorti ma tqis li tali sottomissjoni tikkwalifika d-decizjoni bhala wahda parzjali. Fl-ewwel lok l-artikolu 41(14) tal-Kap. 504 jaghti d-dritt lit-Tribunal li jimmodifika decizjoni mehuda mill-Awtorita, l-Awtorita ghandha tohrog il-permess u tikkonforma ruhha mad-decizjoni tat-Tribunal fi zmien xahar jekk it-Tribunal ikun impona kundizzjoni. Jinghad fl-istess artikolu li dan kollu hu mrazzan biss jekk ma jkunx sar appell quddiem il-Qorti tal-Appell mid-decizjoni tat-Tribunal. Kwindi il-ligi stess qed turi kif it-Tribunal jista' jimponi li jsiru kundizzjonijiet u b'hekk jimmodifika decizjoni tal-Awtorita, kif inhu dan il-kaz, u din id-decizjoni xorta tissejjah finali minhabba l-kliem espress sottolineat mill-Qorti fl-istess artikolu.

Ma' dan l-artikolu ghandu jinqara r-regolament 5 tat-Tieni Skeda tal-Kap. 504 fejn it-Tribunal ghandu s-setgha li fost affarijiet ohra ibiddel decizjoni li kontra taghha jkun sar appell, li jaghti dawk l-ordnijiet li jidhirlu xierqa, u fl-istess waqt jitlob il-prezentazzjoni ta' dokumenti u pjanti godda basta jaghti ragunijiet ghat-talba u ma jbidilx is-sustanza tal-kwistjoni kif ipprezentata quddiem l-Awtorita. Din hi l-kwistjoni fundamentali li tiddetermina l-finalita tad-decizjoni. Hu pacifiku mill-kliem tal-ligi li f'decizjoni finali t-Tribunal jista' jbidel decizjoni tal-Awtorita, jaghti ordnijiet ohra inkluz tibdil ta' pjanti u dokumenti. Tali ordnijiet ma jbidlux il-finalita tad-decizjoni izda huma fatturi accessorji ghad-decizjoni, basta li t-Tribunal fl-ghoti tal-ordnijiet ma jmurx oltre s-sustanza tat-talba quddiem l-Awtorita.

Harsa lejn l-atti ta' dan il-process jirrizulta illi d-decizjoni tat-Tribunal kienet l-approvazzjoni tal-permess gia moghti mit-Tribunal b'tibdil biss f'dak li jirrigwarda l-access ghall-izvilupp. Din il-kwistjoni tal-access mhix talli kienet maghrufa ghal partijiet, talli kienet pjenament dibattuta minnhom u punt ta' kontezjoni. It-Tribunal kien car fil-kundizzjoni li ried li tigi imposta f'dak li jirrigwarda access. Id-dettalji dwaru thallew f'idejn l-Awtorita bl-approvazzjoni tat-Tribunal in linea mad-decizjoni tal-istess Tribunal. Kwindi l-appellant la jista' jghid li l-gudikat kien incert u wisq inqas parzjali. L-appellanti, rinfaccjat b'decizjoni fuq il-mertu kollu tal-izvilupp setghu liberament mid-decizjoni tat-Tribunal, inkluz il-kondizzjoni dwar l-access, jappellaw fuq punt ta' ligi fit-terminu mill-ghoti tad-decizjoni. Dan kien il-punctum temporis meta d-decizjoni fl-aspett legali taghha (cioe dak li minnu seta' jsir appell) gie deciz in konformita mal-izvilupp propost u l-kontestazzjonijiet maghrufa bejn il-partijiet. Jekk l-appellanti naqsu li juzufriuxxu ruhhom fl-istadju opportun biex jipprezentaw appell fuq xi aspekt legali skond il-ligi mhux lecitu li jivvantaw dritt ta' appell li l-ligi ma tipprospettahx minn qari ta' dawn l-atti.

Kopja Informali ta' Sentenza

**Decide**

Ghalhekk l-eccezzjoni tal-prezentata fuori termine tal-appell maghmul mill-appellanti qed jigi milqugh u l-Qorti tiddikjara l-appell iritu u null billi pprezentat oltre t-terminu previst mill-ligi u l-aggravji maghmula biex jirribattu tali eccezzjoni infondati. Spejjez ghall-appellanti.

**< Sentenza Finali >**

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