



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tas-27 ta' Novembru, 2014

Appell Civili Numru. 13/2014

**Paul Farrugia**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Paul Farrugia tal-25 ta' Marzu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Frar 2014 dwar PA 1929/11;

## Kopja Informali ta' Sentenza

Rat ir-risposta tal-Awtorita li preliminarjament sostniet li l-appell gie prezentat fil-25 ta' Marzu 2014 u ghalhekk hu fuori termine;

Rat l-atti kollha;

Rat li l-vertenza giet differita ghal decizjoni fuq l-ewwel eccezzjoni;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi l-appellant applika sabiex ibaxxi s-saqaf fuq l-ewwel sular sabiex jizdied sular addizzjonali fit-tieni sular, li huwa possibli jinbena wara l-faccata ezistenti tal-fond li jinsab fi Triq Palma, Rabat, Ghawdex. Il-bini ezistenti jikkonsisti minn dar residenzjali fuq still klassiku, fi triq gewwa l-konfini taz-zona ta' konservazzjoni urbana tar-Rabat. Id-dar tikkonsisti minn uzu ta' stores domestici fil-livell terran, hall u living space fil-pjan terran u tlett kmamar tas-sodda fl-ewwel sular. Fit-tieni sular propost ser jizdiedu zewgt ikmamar tas-sodda ohra, u kamra ta' l-ikel u kcina fuq in-naha ta' wara. Il-faccata existenti mibnija fuq zewg sulari b'gholi ta' madwar 9.5 metri mhux ser titmiss.

Illi l-Kummissjoni ta' l-Ambjent u l-Ippjanar irrifjutat l-proposta ghal dawn ir-ragunijiet segwenti:

1. The height of the proposed building exceeds the maximum height limitation for Rabat (Gozo). It is therefore incompatible with the characteristics of the area and with the Local Plan for the area, which seeks to limit height in order to safeguard the general amenity of the area.
2. The proposed development would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within Urban Conservation Areas and so does not comply with Structure Plan policy UCO6.;

Ra l-appell tal-Perit Edward Scerri f'isem l-appellant li jaqra' kif gej :-

"I kindly request that this development which was refused by the EPC be considered by the EPRT and that the Tribunal kindly revoke this refusal decision. I am submitting this request for the following reasons.

#### First reason of refusal

The first reason of refusal states that the height of the proposed building exceeds the maximum height limitation for Victoria. In reality, this is not the case since the proposed additional second floor is being concealed behind the existing two floor facade. It must also be noted that MEPA only recently approved the complete redevelopment of a site on the same side of the same street only a few buildings away. The outline permit PA5563/08 for this development was approved on the 9<sup>th</sup> February 2010, while the full development permit PA4114/10 was approved on the 3<sup>rd</sup> April 2012. The said development approved the demolition of a 2 storey building and the construction of a new 3 floor building which reads as a two floor building. In our case, instead of proposing total demolition, we are only proposing to remove the existing high first floor roof and accommodating an extra floor behind the existing facade.

Furthermore, the street in question has a large number of 3 floor buildings and my client would therefore be discriminated against if he is not granted this permit while other permits for 3 floor buildings (full 3 floor buildings) have been granted, even recently.

For the above reasons, it is not true that we are not respecting the height limitation of Victoria and reason 1 of refusal therefore does not hold.

#### Second reason of refusal

I cannot understand why the removal of the first floor roof is being interpreted by MEPA as detracting from the overall objectives of the Structure Plan when the typology of this roof does not require any preservation. This roof consists of steel beams and steel beams are not usually considered as worthy of preservation by MEPA. Indeed, numerous substitutions of such roofs or full demolition of buildings having such roofs have been approved by MEPA.";

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fl-10 ta' Lulju 2012 u li jaqraw kif gej :-

### “5.2.1 Introduction

The Authority is addressing each argument raised by the appellant specifically in this report; and will clarify to the Tribunal why the decision taken by the EPC Board in April 2012 was correct; and that all information present in the case had been revised.

### 5.2.2 Principle of Development vis-à-vis Height Limitation

In an attempt to justify the proposed additional second floor, the appellant is stating two main arguments. The first argument is that the proposed additional floor is concealed behind the existing two floor façade. (1) The Authority would like to note that the proposed additional floor extends above the existing façade by 2 courses and hence it is not completely screened by the existing facade. (2) The fact that the second floor is partly concealed does not address the issue that the Local Plan sets a height limitation not only due to visual impact but also to contain the density within urban conservation areas.

The other argument which the appellant is putting forward is that another similar development (PA 4114/10) has been approved in the vicinity. In this regard, the Authority notes that only one permit has been quoted by the appellant even though the appellant claimed that the street is full of developments which are 3-storey high and have been granted by the Authority.

In this regard, the Authority highlights the importance of respecting the height limitations in floors designated for Urban Conservation Areas in the local plan in order to ensure the conservation and enhancement of the character of such urban setting. The Authority maintains that with the coming into force of Act X of 2010, buildings that legally exceed the height limitation do not constitute commitment in planning terms any longer as per the proviso in Article 69 (2) (i) of the aforementioned legislation. Moreover, a single permit cannot be considered to constitute commitment and such permit should not prejudice the height limitation and density of the whole length of the street.

### 5.2.3 Principle of Development vis-à-vis Structure Plan

The appellant is seeking to justify the demolition of the roof of the first floor by stating that such removal would not detract from the overall objectives of the

## Kopja Informali ta' Sentenza

Structure Plan since the typology of this roof does not require any preservation. However, the Authority would like to clarify that the proposed lowering of the ceiling is objectionable since it would affect the original volume of the rooms. High ceiling is a vernacular element found in buildings within our local urban fabric which are merit preservation as per Structure Plan Policy UCO 6.

### 6.0 REQUEST

6.1 For the above-mentioned reasons, the Malta Environment & Planning Authority respectfully requests the Environmental and Planning Review Tribunal to confirm the decision of the EPC and to refuse this appeal for development permission.”;

Ra s-sottomissjoni ulterjuri ta' l-appellanta li giet prezentat fl-14 t'Ottubru, 2013, rigward bini u permessi ta' tlett sulari fi Triq Palma;

Ra l-Policy UCO 6 tal-Pjan ta' Struttura;

Ra l-mappa numru 14.9-C u 14.9-D fil-Gozo and Comino Local Plan;

Ra ukoll il-PA files bin-numri 1929/11, 5563/08 u 4114/10;

Ra l-verbal ta' l-access li sar fuq is-sit minn dan it -Tribunal fl-1 t'Ottubru, 2013;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment;

Illi l-mertu ta' dan l-appell jirrigwarda l-proposta ta' zieda ta' sular fuq il-bini ezistenti fi Triq Palma, Rabat, Ghawdex. Filwaqt li l-faccata li hija mibnija fuq zewg sulari li ser tinzamm, is-sular addizzjonali ser ikun possibli billi jitbaxxa l-ewwel sular li prezentament huwa msaqqaf fuq 15-il filata, billi jigi msaqqaf fuq ghaxar (10) filati, l-istess bhas-sular addizzjonali sovrastanti.

## Kopja Informali ta' Sentenza

Illi l-appellant qed jinsisti li l-proposta ta' zieda ta' sular mhux ser teccedi l-gholi massimu permessibli fir-Rabat Ghawdex, peress li dan is-sular ser jinbena wara l-faccata ezistenti li hija fuq zewg sulari. L-appellant ghamel referenza ghal-kaz li jinsab ftit metri 'l boghad fl-istess triq fejn inhareg permess simili ghal dak li qed jitlob l-appellant, cioe, tlett sulari b'faccata fuq it-triq li tidher li fuq zewg sulari, skont PA 5563/08 (outline permit) u PA 4114/10 (full development). L-appellant indika wkoll li t-triq fejn jinsab il-fond mertu ta' dan l-appell hemm numru sostanzjali ta' bini fuq tlett sulari, u ghaldaqstant ihoss li jkun qed jigi diskriminat jekk ma jigiex koncess il-permess kif mitlub.

L-Awtorita' irribatiet li filwaqt li tippreciza li fil-fatt l-gholi propost qed jabez bi ftit l-gholi tal-faccata tal-bini ezistenti, iz-zieda ta' sular xorta qed tikser il-pjan lokali li stabilixxa gholi massimu ghal din il-part ta' triq, cioe, dik ta' zewg (2) sulari. Rigward bini simili fuq tlett sulari li hemm fl-istess triq, l-Awtorita' qed tinsisti li skont il-providiment tal-artikolu 69 subinciz (2), tal-Kap 504, dan it-Tribunal ma jistax jikkonsidra 'commitments' fejn jidhlu l-gholi kontra l-height limitation.

Illi l-aggravju principli f'dan l-appell jirrigwardja l-commitments ta' bini ezistenti fuq tlett sulari li hemm fi Triq Palma, fejn jinsab il-fond mertu ta' dan l-appell, u partikolarment il-permess mahrug ricenti citat f'dan l-appell fejn skont l-appellant huwa identiku ghal proposta odjerna.

Skont l-appellant, l-gholi massimu permessibli fil-pjan lokali mhux qed jigi maqbus bil-proposta f'din l-applikazzjoni, prezentament mertu ta' dan l-appell, u dan ghar-raguni li l-gholi tal-bini ezistenti mhux ser jinbidel. Dan it-Tribunal jidhirlu li filwaqt li ghajr ghal xi differenza ta' filata jew tnejn, l-gholi tal-bini propost ser jinzamm daqs l-gholi tal-faccata hekk kif tidher mit-triq, il-proposta hija ntiza biex minn zewg sulari, il-bini ezistenti jinbidel ghal-gholi ta' tlett sulari. Dan effettivament ikun ifisser li jinbidel l-gholi massimu stipulat fil-pjan lokali ghas-sit in kwistjoni minn dak ta' zewg (2) sulari ghal dak ta' tlieta (3) sulari. Dan certament imur oltre l-kompetenza ta' dan it-Tribunal.

F'dan l-istadju, jigi rilevat li dan it-Tribunal huwa marbut bid-dispost tal-Artiklu 69 tal-Kap 504, kif ukoll b'mod tassattiv huwa fid-dover li japplika l-pjanijiet u l-policies li jkunu in vigore. Jekk ma jaghmilx hekk, dan it-Tribunal ikun qieghed jagixxi ultra vires mill-poteri tieghu sanzjonati mil-ligi. Illum il-gurnata dan il-principju huwa ormai ben stabbilit u pacifiku fil-gurisprudenza nostrana (ara f'dan is-sens il-kawza fl-ismijiet Jimmy Vella kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, deciza fl-4 ta' Dicembru 2013; dik fl-ismijiet George Mifsud kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, deciza fl-4 ta' Dicembru 2013; u dik fl-ismijiet Stephen Seychell kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, deciza fis-27 ta' Gunju 2013).

## Kopja Informali ta' Sentenza

Dawn il-konsiderazzjonijiet tat-Tribunal huma konfortati f'dan il-bran mehud minn sentenza tal-Qorti tal-Appell (Stephen Seychell kontra l-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar, deciza fis-27 ta' Gunju 2013), fejn gie osservat illi:

“[...] Hu minnu li fi kwistjonijiet ta' ippjanar l-Awtorita u l-Bord huma fdati b'hafna diskrezzjoni, diskrezzjoni li tirrizulta mill-applikazzjoni ta' varji policies, pjanijiet lokali u strutturali u interpretation documents u l-korrelazzjoni taghhom mehud kont tal-fattispecie ta' kull kaz. Il-ligi stess taghti lil Awtorita u Tribunal il-mansjoni li filwaqt li ghandu japplika l-pjanijiet u policies, irid ukoll iqis kwistjonijiet ohra ta' sustanza bhal ma huma kwistjonijiet ta' commitment, ta' ugwaljanza fit-trattament ta' applikazzjonijiet identici, ta' konsistenza fil-principji li fuqhom jiddeciedi t-Tribunal ghalkemm mhux marbut bil-precedent. Pero kif ighid l- istess ligi fl-artikolu 69 tal-Kap. 504 gia artikolu 33 tal-Kap. 356, jipprevalu l-ewwel il-policies u pjanijiet fejn dawn ma jhallux lok ta' diskrezzjoni afdana lit-Tribunal.

Hekk sehh f'dan il-kaz fejn it-Tribunal ma kellux fakolta afdana lilu mill-ligi hlief li japplika dak li l-policy tassativament obligatu li japplika. Altrimenti jekk it- Tribunal ghogbu jinjora dak li l-policy qeghda tipprojbih li jaghmel, ikun qed imur kontra d-dmir ewlieni afdana lilu, cioe li japplika l-pjanijiet u policies b'imparzjalita u korrettezza ghal kelma espress tal-ligi.”

Dwar bini ezistenti ta' tlett sulari li hemm fit-triq, filwaqt li dan it-Tribunal seta' wkoll jikkonstata waqt l-access li sar fl-istess triq, il-providiment tal-artikolu 69 subinciz (2), tal-Kap 504, jeskludi il-commitments fejn jidhlu l-gholi kontra l-height limitation, bhala konsiderazzjoni materjali li l-Awtorita' kif ukoll dan it-Tribunal jista jikkunsidra fid-determinazzjoni ta' applikazzjoni jekk kemm il-darba dan il-konsiderazzjoni ser twassal biex izzid l-limitazzjoni tal-gholi stabbilita fil-pjan, kif inhu l-kaz mertu ta' dan l-appell.

Dan it-Tribunal jidhirlu li l-argument ta' commitment ghandu aktar relevanza fil-kuntest ta' bdil jew revizjoni tal-policies u pjan lokali. Dan huwa provdut skont id-dispost ta' l-artikolu 59 tal-Kap 504. Huwa ghalhekk importanti li bdil fl-gholi massimu tal-bini ma jstax jigi accettat f'applikazzjoni ta' zvilupp, imma jista' jigi approvat biss jekk jigi rivedut il-Pjan Lokali f'kaz li jkun wiehed li jippermetti zieda fl-gholi. Indubbjament, dan wara li jittiehdu l-konsidrazzjonijiet kollha necessarji relatati mal-ippjanar.

Indubbjament, il-kaz citat mill-appellant, cioe, il-permess PA 5563/08 fi stadju ta' outline, li jsegwi bil-permess full development, PA 4114/10, jikkonsisti f'sitwazzjoni

## Kopja Informali ta' Sentenza

simili ghal dak li qed jitlob l-appellant. Certament dan it-Tribunal ma jistax jinjora din is-sitwazzjoni u b'referenza ghal diversi decizzjonijiet ta' l-appell, dan it-Tribunal jesigi il-bzonn ta' konsistenza fid-decizzjonijiet. Jidher li f'dan il-kaz citat, il-Kummissjoni tal-Kontroll ta' l-Izvilupp tat aktar importanza ghal fatt li l-bini esistenti li ma kellhu ebda pregju arkitettoniku, kien ser jitwaqqgħa biex minflok jinbena bini b'faccata li hija kompatibbli mal-karatteristici tat-triq, u komplimentari mal-faccata antika biswit l-istess sit. Il-bini ta' tlett sulari kien rizultat ta' l-gholi tal-faccata gdida tal-bini, fejn gie impost disinn simili ghal faccata biswit l-istess sit, ghalkemm l-istess Kummissjoni ma tat ebda raguni skont il-ligi biex din tiggustifika tali numru ta' sulari.

Rigward l-argument li l-appellant qed jigi diskriminat, dan it-Tribunal ma jistax jikkonsidra din il-kwistjoni ghax mhix raguni valida ta' ippanar, kif illum huwa ben stabbilit skont il-gurisprudenza nostrana (ara f'dan is-sens il-kawza fl-ismijiet Henry Cassar et. kontra l-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar, deciza fl-14 ta' Novembru 2013).

Illi dan it-Tribunal jinnota li l-proposta fl-applikazzjoni odjerna qed tigi limitata biex tkun simili ghal dak il-permess citat, imsemmi supra, fejn huwa evidenti li s-sulari qed jigu kwazi m'raffa fuq xulxin biex jinkwadraw fl-gholi esistenti tal-faccata, bil-konsegwenza li hemm nuqqas ta' 'outlook' u access ghal-livell tal-bejt. Hawnhekk dan it-Tribunal qed jara li huwa mportanti li l-appellant jitlob lil Awtorita' ghal-revizjoni tal-pjan lokali sabiex ikun possibli, gja la darba jkun concess li t-triq tkun b'gholi massimu ta' tlett sulari minflok tlieta, li l-bini jkun pjanat u mqassam bhal binjiet ohra simili li jgawdu outlook dirett ghal-fuq it-triq u access ghal-livell tal-bejt bl-amenities kollha necessarji.

Ghal dawn il-motivi, il-Bord jichad l-appell u jikkonferma r-rifjut tal-permess għall-izvilupp.

### Ikkunsidrat

L-artikolu 41(6) tal-Kap. 504 jiddisponi li appelli quddiem din il-Qorti minn decizzjonijiet tat-Tribunal għandhom isiru fi zmien ghoxrin jum mid-data tal-ghoti tad-decizjoni. Dan l-artikolu hu ta' ordni pubbliku u t-termini legali huma perentorji u ma jippermettux eccezzjoni.

L-atti juru li d-decizjoni inghatat fis-27 ta' Frar 2014. It-terminu ta' ghoxrin jum għall-appell kienu jagħlqu fid-19 ta' Marzu 2014 mentri l-appell gie intavolat fil-25 ta' Marzu 2014.



Kopja Informali ta' Sentenza

Kwindi l-appell hu kjarament fuori termini.

**Decide**

Il-Qorti ghalhekk taqta' u tiddeciedi billi tilqa' l-eccezzjoni tal-Awtorita li l-appell ta' Paul Farrugia gie prezentat fuori termine u kwindi l-appell hu irritu u null. Spejjez ghall-appellant.

**< Sentenza Finali >**

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