



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-27 ta' Novembru, 2014

Appell Civili Numru. 41/2013

Marquis Dott. Anthony Cremona Barbaro u

Chief Justice Emeritus Prof. John J. Cremona

vs

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

kjamat in kawza Martin Camilleri

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tat-22 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 li rrevoka

Kopja Informali ta' Sentenza

I-permess mahrug mill-Awtorita rigward PA 4609/09 'alterations and additions as an extension to existing dwelling';

Rat ir-risposta tat-third party objectors Cremona Barbaro;

Rat li Martin Camilleri ma ipprezentax risposta izda aderixxa ruhu mall-appell tal-Awtorita;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l-Ambjent u l-Ippjanar, fl-20 ta' Jannar 2010, laqghet u approvat il-permess tal-izvilupp PA 4609/09 – 112, Aurora, Triq iz-Zejtun, Tarxien: Alterations and additions as an extension to existing dwelling.

Fost il-kundizzjonijiet fil-permess kien hemm is-segwenti:

“2. The overall height of the building shall not exceed the permitted number of three floors and receded washroom/stairhood as indicated on the approved drawings.

3. Air-conditioning units shall not be located on the facades of the building which are visible from a public space. Any such units shall be located at roof level and shall be set back from the elevations by at least 1 metre.

6. All services located on the roof of the building shall be clustered together and surrounded by a 1.5 metre high non-solid screen. The services shall not exceed the height of this screen, which shall be set back by at least 2 metres from the front and back edges of the roof of the underlying stairwell/washroom structures.”

Kopja Informali ta' Sentenza

B. In-nota tal-Perit Ian Zammit ghall-Appellanti, ipprezentata fid-19 ta' Frar 2010, inter alia l-punti segwenti:

"a. The site of application in caption is opposite the street from Villa Barbaro, which is located within the Urban Conservation Area and is scheduled Grade 1 in view of its historic and cultural importance. On the 25th February 2009, the MEPA scheduled a buffer zone "around villa Barbaro and its grounds" by means of notice No. 158 in order "to conserve the vistas of the Villa including its gardens". This notice was a reaction to development applications PA 5253/08 and PA 5254/08 that were to seriously compromise the vistas from the Villa and its gardens towards the south east but did it nothing to protect the vistas to the north east. If this development and others like it are permitted directly opposite the facade and main entrance of the Villa, its setting will be completely ruined. It would therefore be appropriate for the M.E.P.A. to reduce the current height limitation on the part of Triq iz-Zejtun located between Triq il-Kbira and Triq L-Abela to two storeys with full basement. My clients have therefore appealed to the Planning Appeals Board (P.A.B.232/09) for this notice to be revised and for the scheduling of a buffer zone with an appropriate maximum height limitation on the North East side of Villa Barbaro. Said appeal has not yet been determined and the development permission subject to this appeal could be in conflict with the decision that will be taken by the Planning Appeals Board.

b. Applicant has argued that the development proposed by him is in line with the South Malta Local Plan however there are cases in which the M.E.P.A. held that, where the development indicated in the relative Local Plan will be of substantial prejudice to outstanding cultural monuments, the curtailment of said development was necessary. Hence, the M.E.P.A. revised the Central Zone Local Plan in the vicinity of the back wall of Villa Bologna, Attard in order to change the zoning of developable land at Triq Lorenzo Manche into a buffer zone and also intervened to protect the setting of the Gourgion Tower in Transfiguration Avenue, Lija, even though a development permit had already been issued. Villa Barbaro is a monument of appreciably greater antiquity than Villa Bologna or the garden folly of Villa Gourgion and therefore similar action would be appropriate in this case.

c. DC 2007 policy 1.3 requires that "new development should be compatible with the existing urban fabric". DC 2007 policy 1.8 "seeks to safeguard the settings of UCAs by ensuring that there is a transition from newer development to the UCA", and therefore "shall not be higher than the predominant height of the surrounding buildings".

Kopja Informali ta' Sentenza

d. With regard to matters of detail, the height of the proposed rooms at the second floor is not in line with the sanitary regulations since they are larger than 60 square feet while the height and size of the washrooms is excessive.”

C. In-nota ta' l-Applikant, Martin Camilleri, ipprezentata fit-22 ta' Marzu 2010, precizament il-punti segwenti:

“Nixtieq nibda bili nghid li l-applikazzjoni tieghi biex naghmel estensjoni mal-propjeta' tieghi fuq it-tielet sular u l-bejt, giet irrakomandata kemm mid-Direttorat tal-Ippjanar, mis-Sanitary Engineering Officer u konsegwentament approvata unament mill-Bord ta' DCC minhabba l-fatt li l-proposta taqbel mal-gholi ta' tlett sulari u semi-basement stabbiliti bis-South Malta Local Plan u f'zona li penthouses fuq tlett sulari huma permissibbli. Nixtieq inqid ukoll li minhabba li d-dar tieghi tinsab faccata ta' Villa Barbaro' u l-gnien taghha li huma skedati Grad 1, intalab il-parir tal-Heritage Planning Unit matul l-ipprocessar tal-applikazzjoni dejn dan qal li sit in kwisjtoni huwa barra l-buffer zone ta' 'Villa Barbaro' approvat mill-EMPA, u ghalhekk mhux qed isib oggezzjoni ghall-izvilupp propost.

Il-perit tal-appellant ghamel referenza ghall-policies 1.3 u 1.8 ta' DC 2007 fejn l-oggettiv ta' dawn il-polvcies hu li jigi mhares l-kuntest tal-UCA u li jkun hemm transizzjoni bejn zviluppi godda u l-UCA. Ta' min jghid li fil-kaz tal-izvilupp tieghi, policy 1.8 mhijiex applikazzblli ghax din tirreferi ghal siti li jinsabu adjacenti u ma genb gonna fil-UCA's. il-policy isemmi wkoll li f'dawn il-kazi, buffer zone ta' 3 metri bejn l-izvilupp u l-hajt tal-gonna ghandu jigi assigurat biex l-overshadowing jigi evitat. Il-propjeta' tieghi ma tmissx jew tinsab adjacenti mal-hajt tal-gnien ta' Villa Barbaro u hem mil-wiesgha konsiderevoli ta' triq litifred l-izvilupp tieghi minn mal-gnien ta' din il-villa. Barra minn hekk qieghed nehmez ritratt ta' Triq iz-zJetun u tal-bjet tieghi biex nuri li l-izvilupp tieghi huwa screened u mhux ser jidher mill-gnien ta' din il-villa minhabba wkoll ta' sewg sigriet kbar li jinsabu quddiem il-hajt tal-gnien.

Nixtieq insemmi wkoll li permess ricenti iehor (PA 4356/08) kien inhareg mill-MEPA fil-5 ta' JAnnar 2009, biex jinbena parti mit-tielet sular fuq s-sit li jinsab adjacenti mal-propjeta' tieghi. Nitlob lid an il-permess jigi mehumuz mall-applikazzjoni ghall-konsiderazzjonit al-Bord.

Nirreferi wkoll ghall-policy 12.3 ta' DC 2007 fejn din titratta assigurazzjoni ta' privatezza u tuspecifika illi ghandu jkun hemm 6 metri distanza bejn twieqi ta' kmamar abitabbli ta' propjetajiet differenti li jharsu fuq xulxin. L-izvilupp tieghi jissodisfa bil-wisq din il-policy u l-kritejri taghha.

Kopja Informali ta' Sentenza

Minghajr ma nnaqsu xejn mill-valur arkittetoniku, storiku u ambjentali ta din il-villa u l-gnien taghha (Grade 1 Scheduled Property) , jiena bhala wiehed mir-residenti fi Triq iz-Zejtun ma naqblix li jigi estiz il-buffer zone esistenti madwar din il-villa u wisq iktar ma naqbel li jonqos l-gholi tal-bini permess fdawn it-toroq (Triq iz-Zejtun u Triq il-Knisja) ghal dawn ir-ragunijiet

- Triq iz-Zejtun u Triq il-Knisja huma toroq mill-iktar wesghin li jinsabu fHal-Tarxien u ghalhekk diga iservu bhala buffer zone u jistakkaw l-izvilupp tal- bini li jinsab fuq in-naha opposta ta dawn it-toroq mill-villa u l-gnien taghna. Ghalhekk l-gholi permess bhalissa (tlett sulari, semi- basement u penthouse/roof structures) fis-South Malta Local Plan mhux se jnaqqas xejn mill- veduti u kuntest ta' din il-propjeta u wisq aktar mhux se jkun overshadowing fuq il-villa msemmija.

- L-gholi permess bhalissa mhux se johnoq il-gnien u l-villa minhabba l-propjeta in kwistjoni tokkupa firxa ta art konsiderovoli u mhux spazju ristrett li se jigi enclosed. Fil-fatt jekk wiehed izur dawn it-toroq jinduna li l-gholi tal-bini, li ftit minnu dig a huma bi tlett sulari mhux qed jaffettwa id-dehra pittoreska ta dan il-wirt storiku. L-gholi tal-bini fdawn it-toroq propost li ghandu jonqos fdin it-talba tal-appell mhuwiex adjacenti jew imissu mal-hitan tal-Villa jew il-gnien izda hemm il-wisghat tat-toroq li huma konsiderevoli u li diga qed isservu ta' buffer zone.

- Il-kuntest originali ta din il-Villa u l-gnien taghha ilium inbidel. Originjarment, din il-villa u l- gnien kienu jgawdu veduti konsiderevoli minhabba l-fatt li kienu jinsabu fit-tarf tar-rahall ta Hal- Tarxien fi triq primarja li twasslek ghar-rahall taz-Zejtun u imdawwra bi ftit bini jew kwazi xejn fzoni pjuttost rurali u izolata. Dawn iz-zmenijiet ghaddew u bl-izvilupp, l-irhula kibru u ilium il-gurnata, 'Villa Barbaro' u l-gnien taghha jinsabu fkuntest ta' villagg imdawwra bil-bini. Ghalhekk wiehed ghandu jkun realistiku u jammetti li dawn il-views li qed jigu propost li ghandhom jigu mharsa permezz ta estenzjoni tal-buffer zone u revisjoni fl-gholi tal-bini ma huma xejn, ghax irrelevanti mill-gholi tal-bini permess , il-Villa u l-gnien ilium jifformaw parti minn villagg f'zona urbana u dawn imsemmija veduti diga gew kompromessi bl-ischemes ghall-bini tal-madwar.

Biex ingib ezempju fejn dari , mill-area tal-Bypass ta' Bulebel kont tista tara din il-Villa u l-gnien fil-kuntest rurali taghhom, ilium anke b'zewg sulari bini ma tistax tirikkonoxi din il-propjeta jekk ma tmurx fil-vicinanza taghha.

- Amendi fl-gholi permess tal-bini jistghu jsiru permezz tar-revizjoni tal-Pjan Lokali. L-gholi tal-bini prezentament permess gie rivedut u accettat fit-tfassil tas-South Malta Local Plan meta l-Villa u l-gnien taghha kienu ga skedati. Ghalhekk ma nhossx li ghandha ssir revizzjoni ohra fl-gholi tal- bini permessibli fdawn it-toroq.

Kopja Informali ta' Sentenza

- Rigward il-koncessjoni tal-penthouses fdawn it-toroq, nixtieq nigbed l-attenzjoni li permessi għall-penthouses fdawn it-toroq mhux se jaffetwaw hazin il-veduti tal-Villa u l-gnien għar-ragunijiet diga imsemmija hawn fuq u minhabba l-fatt ukoll li dawn jehtiegu li jkunu ritirati mill-faccati tal-bini. Ta' min jgħid ukoll li l-policies prezenti tal-MEPA diga jippermettu roof structures (li mhumiex concession) bħall- washroom, stairwell fuq il-bjut tal-bini fdawn it-toroq over and above the height limitation u setback mill-facatta rikjest għal dawn l-istrutturi huwa l-istess bħal dak tal-penthouses, anzi inqas fil-kaz ta stairwells.

- Ta' min jgħid ukoll li l-approvazzjoni ta' din il-proposta huwa precedent qawwi għall-talbiet simili f'zoni oħra fejn jezisti skedar tad- dan it-tip li l-konsegwenzi tiegħu mill-għadd tal-valuri tal-propjeta, soċjali u ukoll ta' ippjanar huma konsiderevoli uti' min jixtarrhom.

- Nixtieq nikkonkludi billi ngħid li din il-proposta għall-estenzjoni tal-buffer zone u talba għar- revizjoni fl-għoli tal-bini biex jitharsu l-hekk imsejha veduti ta din il-propjeta ma huma xejn hliet skuza biex wiehed jevita 'overlooking' ta propjetajiet f'dawn it -toroq imsemmija fuq dan il-gnien u l-propjeta inkwistjoni. F'kuntest ta' zona urbana b'open space bħal gnien inkwistjoni mdawwar bil-bini ikun għoli kemm ikun, l-'overlooking' huwa inevitabili. Dan l-punt mhuwiex heritage concern għall-propjeta inkwistjoni u l-wesghat tat-toroq imsemmija diga jissodifaw bizzejjed il-policies tal-MEPA u ligijiet sanitarji f'dan ir-rigward. Inhoss wkoll li 'Villa Barbaro' u l-gnien tagħha digu għandhom l-protezzjoni adekwata permezz ta l-iskedar u l-buffer zone mad-dawra tagħha approvat mill-MEPA u estenzjoni tal-buffer zone u revizjoni fl-għoli tal-bini fi Triq iz- Zejtun u Triq il-Knisja diga ma giex accettat mill-MEPA fis-seduta li saret fis-16 ta Settembru, 2009. F'dan ir-rigward għalhekk nirrakomandaw li l-Bord tal-Appell biex jikkonferma id-decizjoni li ttiehdet diga mill-MEPA biex il-buffer zone ta' 'Villa Barbaro' jibqgħu kif inhu u ma jigix estiz u li l-Bord tal-Appell jikkonfermal-approvazzjoni ta OCC tal-permess tiegħi (PA4609/09).

Nitlob l-MEPA li nigu infurmati għas-smiegh ta' dan l-appell biex flimkien mal-perit tiegħi inkun nista nipprezenta verbalment l-osservazzjonijiet tiegħi msemmja hawn fuq. Qed nehmez kopja tal-petizzjoni u l-oggezzjonijiet li bħala residenti ta Triq iz- Zejtun Tarxien, konna għamilna rigward l-proposta tal-estenzjoni tal-'buffer zone' ta' 'Villa Barbaro'."

D. In-nota risponsiva ta' Mario Scicluna għall-Awtorita', ipprezentata fid-29 ta' Marzu 2010, inter alia l-punti segwenti:

Kopja Informali ta' Sentenza

“2.4 It is to be clarified that the only development approved in this full development application consists of two rooms (a sitting room and a bedroom) at second floor level and a washroom and stairway at roof level. Five rooms already exist at second floor level.

2.5 Scheduling. The Authority reiterates that the assessment and recommendation as carried out by the Directorate was fully in line with the provisions of Government Notice No. 158 of 2009 as published in Government Gazette dated 27th February 2009. While appellant is contesting that the approved boundary of the buffer zone should have been extended on the North Easter side (also subject to a separate appeal as per PAB 232/09), this request has not yet been acceded to, and hence, the Directorate and also the DCC acted in full conformity with the present (approved) limits of the scheduling of Villa Barbaro and its official buffer zone. Furthermore, when the Integrated Heritage Management Team (IHM) were consulted, they forwarded a ‘no objection’ to the requested additions since the site is officially outside the scheduled area (and also the relative buffer zone) of Villa Barbaro.

2.6 SMLP. The area in which this application is located is identified in Map TA 2 of the SMLP as having a height limitation of 3 floors plus semi-basement. In this respect, the approved additions would not infringe this height limitation since its height would consist of 3 full floors (without semi-basement) with a washroom and stairway at roof level. It is also important to note that the north east side of Triq iz-Zejtun is not designated as UCA and hence, there are no specific constraints related to new development which is relevant to urban conservation areas.

2.7 PDG 2007. Reference to policy 1.3 of PDG 2007, the Authority states that this policy seeks to safeguard existing characters through appropriate assessment of proposed development vis-à-vis UCA constraints. In this particular case, the façade is only being altered by a new room at 2nd floor level having a width of 5.2m while the new rooms at roof level are receded by 4.5m. In this regard, the approved additions can only be considered as a minor addition to the existing three storey dwelling which would still be fully in line (in fact it is less than the permissible maximum height of the area since the semi-basement level is not included in this building) with the official height limitation of SMLP and there is no valid planning consideration which could have justified a refusal by the DCC on this account.

2.8 Reference to policy 1.8 of PDG 2007, it is to be stated that this particular policy concerns development which “adjoins” (ie next to or adjacent to) UCA, but is not considered to be relevant to this particular site. This is because this site is on the north east side of Triq iz-Zejtun whereas the UCA boundary extends to only the other side of this street (the south east side of the street). Hence, if this policy was

Kopja Informali ta' Sentenza

to be interpreted as applying also to whole areas which are on the opposite sides of roads which separate UCA areas from non UCA areas, such an argument could create an undesirable precedent which could significantly impinge on the provisions of the approved Local Plans and their legal standing.

2.9 Size and height of rooms and washroom. The Authority disagrees that the approved rooms are excessive and in breach of the sanitary regulations since the approved plans were in fact duly endorsed by the SEO and so respect all the necessary sanitary rules and regulations. As regards the approved washroom and stairway, it is to be noted that these are setback by 4.5m from the façade and hence, are adequately setback according to policy. Furthermore, policy 10.6 of PDG 2007 also allows for a penthouse at this level and hence the approved rooms at roof level are still less than the permissible massing at this floor level.”

E. Il-verbal tal-access fuq il-post tas-Seduta numru 47, mizmuma fl-24 ta' Gunju 2011, precizament il-punti segwenti:

“It-Tribunal gie muri mill-Appellanti il-gnien fil-villa li huwa retropost ghal ‘Villa Barbaro’. Huwa gnien ta’ qisien konsiderevoli u l-Appellanti spjega lit-Tribunal illi il-buffer zone li tikkoncerna l-propjeta’ fl-opinjoni tieghu m’ hijjex sufficjenti billi l-bini nghata permess ghalieh, se jkollu introspezzjoni ghal gnien tal-villa u ghalhekk, ikun qed jintilef l-iskop tal-buffer [zone].”

F. Il-verbal tas-Seduta numru 87, mizmuma fis-17 ta' Novembru 2011. Jigi osservat li minn din is-Seduta l-quddiem, l-appell odjern kif ukoll l-appelli 228/09, 230/09, 232/09 u 736/11 bdew jinstemghu ukoll kontestwalment.

G. In-noti ta' sottomissjonijiet tal-Perit Ian Zammit ghall-Appellanti, ipprezentata fid-9 u fis-17 ta' Jannar 2012, inter alia l-punti segwenti:

“c. [...] I refer to an e-mail dated 15th January 2009 from the Superintendence of Cultural Heritage to the MEPA (attached in file PA 5254/08) that strongly recommends that ‘the cultural heritage values of Villa Barbaro and its gardens should be given their due importance in any development in the vicinity’. This e-mail concludes by the Superintendence asking ‘to be consulted on any development in the immediate vicinity of the villa and its gardens’. What actually happened was that the CHAC was aksed whether it agreed that a buffer zone was necessary. From that point on, the MEPA failed to consult the Cultural Heritage Advisory Committee or the Superintendence of Cultural Heritage with the result that

Kopja Informali ta' Sentenza

decisions that will seriously damage cultural patrimony were taken without even going through the motions of obtaining the necessary advice.

d. The MEPA seems to be content with the current outcome because the approved development is in line with the maximum building height within the buffer zone but does not appreciate that in providing for a wide buffer zone to the East the legislator allowed for latitude up to a fixed maximum within which the height of development is to graduate in line with the protective exigencies of the specific case. As the site subject of this appeal is adjacent to the Grade 1 Monument, it should be obvious this development should be lower than those located further away.”

H. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fil-21 ta' Marzu 2012, inter alia l-punti segwenti:

2.3 (a) The appellant's main argument is that any development for 3 story buildings (plus basement and penthouse) across the street would be inappropriate given the proximity to a Grade 1 building. Moreover since the opposite streetscape is not within the UCA the design of any proposed building along this street may not reflect or respect the historical architecture of the scheduled building.

The Authority notes that the appellant's position regarding this case is not based on grounds that the permit granted is not according policy but simply that in his opinion any development along this streetscape would prejudice the his property. It is important to note that the appellant is not appealing from the permit per se but from any development that may ensue along this streetscape.

The Authority thus maintains that this appeal is null because the appellant is actually appealing from the contents and merits of the local plan for which the Tribunal is not the correct forum. The Tribunal's role is to determine whether the Authority decided correctly on the basis of the policies established at the time of the decision and not whether those policies are suitable or not.

(b) The appellant is also arguing that the Authority should have consulted the CHAC in this case. However the Authority contests this assertion and argues that it acted correctly when it did not consult the CHAC in this case because the site is outside the scheduled area and the buffer zone of Villa Barbaro.”

Ikkunsidra ulterjorment:

Kopja Informali ta' Sentenza

Il-mertu ta' dan l-appell jirrigwarda talba minn terzi sabiex l-izvilupp approvat fil-permess PA 35/10, jigi revokat in vista tal-fatt li sejjer jgharraq l-ambjent viziv tal-propjeta taghhom, skedata bhala Grade 1 building.

Is-sit mertu ta' l-appell de quo jinsab fl-urban conservation area (UCA) ta' Hal Tarxien, fil-Lvant, f' Triq iz-Zejtun, faccata tar-residenza li tiffirma parti mill-kumpless maghruf bhala Villa Barbaro. Din tikkonsisti minn residenza u gnien retrostanti ta' qisien konsiderevoli u hi skedata bhala Grade 1. Is-sit in ezami jaqa' propju fil-buffer zone taghha. Originarjament, il-parti residenzjali kienet giet skedata permezz tal-Avviz tal-Gvern 199 tal-1996 (GF 427/95, Scheduled Buildings – Tarxien, Map 4). Sussegwentement, permezz tal-Avviz tal-Gvern 158 tal-2009, gie skedat ukoll il-gnien u kkrejat buffer zone li jillimita l-gholi tal-izvilupp fl-izolat tal-villa ghal zewg sulari. Mill-bqijja, faccata fuq in-nahha l-ohra tat-triq, il-Pjan Lokali baqa l-istess. Ghalhekk fuq il-font in ezami huwa permess li jinbnew sa' tlett sulari u semi-basement.

L-aggravji ta'-Appellanti jistrieu fuq il-fatt li l-buffer zone kif ricentment gie rivvedut, xorta wahda mhux sufficjenti sabiex jipprovdi protezzjoni lill-veduti (vistas) mill-Villa. Ghal dan ir-rigward, gie ntavolat appell separat (232/09) li nstema kontestwalment ma' dan in ezami u li wkoll qed jigi deciz illum. F' dak l-appell mill-iskedar qed jintalab li jsir two-tier buffer zone billi l-buffer zone li hemm illum, jigi estiz fuq tlett nahat tal-Villa. L-Appellanti jirrivevaw li fil-fatt, il-Cultural Heritage Advisory Committee (CHAC) f'Jannar 2010, kienet irrikmandat li jsir buffer zone madwar il-Villa "fil-kuntest tal-bini skedat u l-gnien retrostanti". Madankollu l-konsultazzjonijiet mal-Awtorita' waqfu hemmhekk. Lanqas ma gie kkonsultat is-Soprantendent tal-Wirt Culturali (SCH).

It-talba tal-Appellanti hi fis-sens li anke hawnhekk, kien imissu l-izvilupp gie ridott ulterjorment ghall-gholi ta' semi-basement u sular; minflok zewg sulari. Ir-raguni li nghatat hi li mhemx bizzejjed distanza bejn dan is-sit u r-recint tal-Villa, u kemm il-darba l-izvilupp joghla sa' tlett sulari u semi-basement, ser ikun jidher sew mill-gnien tal-Villa. Di konsegwenza ser ikun ta' sfregju ghall-veduti (vistas) mill-gnien taghhom. L-Appellanti jirrivevaw li sa' illum – ghajr tlett kazijiet - l-izvilupp fit-toroq tal-madwar huwa konsistenti minn zewg sulari.

Mill-banda l-ohra l-Applikant jirrivevaw li l-proposta tieghu hi perfettament in linja mal-policies tal-Pjan Lokali, u li s-sit in ezami ma jiffurmax parti mill-buffer zone tal-imsemmija Villa. Jirrivevaw li fil-fatt, l-izvilupp fuq dan is-sit lanqas qatt ma jsita jservi ta' overshadowing ghal Villa. Anzi jargumenta li l-proposta tieghu ser isservi ta'

Kopja Informali ta' Sentenza

transizzjoni bejn il-UCA u l-izvilupp gdid, kif ukoll li fil-vicin inhareg permess identiku ghat-talba tieghu (PA 4356/08).

Jidher car li originarjament, meta sar l-iskedar permezz tal-Avviz tal-Gvern 199 tal-1996, il-parametri ta' salvagwardja kienu limitati biss ghal preservazzjoni tal-binja tal-Villa per se: bhallikieku l-bini u l-gnien retrostanti huma zewg elementi li jistghu jinfatmu minn xulxin. Illum, kibret is-sensibilita' ghal-harsien ta' binjiet b' valuri storici-artistici, u ghalhekk, l-Awtorita' gharfet imxiet tajjeb meta ddecidiet li tirrevedi l-iskedar u tinkludi wkoll l-imsemmi gnien tal-Villa. Madankollu anke hawnhekk, jidher car li dan l-ahhar skedar, hu limitat sabiex jippreserva l-kumpless ta' Villa Barbaro fl-intir tieghu (cjoe' id-dar u l-gnien). Anke caso mai huma citati l-visti tal-Villa, id-dicitura tal-avviz tal-iskedar bhal donnu jaghti x' jiftiehem li kemm il-darba l-gholi tal-bini fil-madwar qed jigi limitat ghal zewg sulari, tali protezzjoni qed issir semplicement sabiex (minn barra) l-Villa ma tinhanaqx bl-izvilupp ta' terzi – mhux sabiex jigu salvagwardati l-veduti mill-gnien.

Konferma ta' dan huma z-zewg policies UCO 6 u UCO 13 tal-Pjan ta' Struttura, citati fl-avviz ta' skedar bhala raguni ghalfejn qed issir tali salvagwardja. M' hemm xejn f'dawn il-policies li taghmel riferenza esplicita ghal-veduti, etc. - anke jekk wiehed jifhem li dawn huma essenzjali sabiex is-salvagwardaja tkun verament wahda olistika. Il-partijiet rilevanti ta' dawn il-polcies jinqraw kif gej:

“POLICY UCO 6:

Within Urban Conservation Areas, the basic objective will be to preserve and enhance all buildings, spaces, townscape, and landscape which are of Architectural or Historical Interest, and generally to safeguard areas of high environmental quality and improve areas of low quality.

POLICY UCO 13:

Wherever possible, by control or positive intervention, buildings of architectural, historical, and townscape importance, gardens, and other areas of architectural or historical interest will be conserved.”

Madankollu, irid jinghad ukoll li l-unika policy tal-Pjan ta' Struttura li ta' b' xi mod titratta l-veduti hi l-policy UCO 10. Izda anke hawnhekk, ir-riferenza hi limitata ghal veduti ta', kif ukoll mill-UCAs. Din il-policy qed tigi riprodotta hawn taht:

“POLICY UCO 10:

Kopja Informali ta' Sentenza

Developments will not be permitted which adversely affect views of or from Urban Conservation Areas, or which detract from the traditional urban skyline. Particularly important views will be identified in detail in Local Plans.”

Tajjeb li jigi nutat ukoll li din il-policy tuza l-frazi; “views of or from”. Minn harsa hafifa lejn id-dicitura tal-avviz ta' skedar in ezami, jigi rilevat li ssir riferenza biss ghal “vistas of”. Din hi konferma tal-punt li qed jigi kkunsidrat hawnhekk; cjoe' li mhux car li l-iskedar kien intiz sabiex specifikatament jigu ppreservati l-vistas mill-gnien tal-Villa. Dan qed jinghad ukoll fir-rigward tal-argumenti li ressuq l-Appellanti, cjoe' li l-Awtorita' ma hejjiet l-ebda studju sabiex jigi identifikat l-gholi limitu tal-izvilupp fil-madwar sabiex jigu ppreservati l-veduti mill-gnien. (Ghal kul bon fine, irid jinghad li din id-dikjarazzjoni m' ghandha tinftiehem bhallikieku dan it-Tribunal ma jhossx il-bzonn li jigu skedati wkoll il-veduti mill-gnien, izda semplicement li jekk din kienet l-intenzjoni tal-Awtorita' meta skedat Villa Barbaro, dan ma johrogx mill-qari tal-imsemmi Avviz tal-Gvern.)

Mhux kontestat mill-partijiet li Villa Barbaro ghandha valur storiku-artistiku important ghal-gzejjer taghha, madankollu l-Awtorita' wara li kkunsidrat il-talba tal-estensjoni tal-buffer zone, hasset li l-protezzjoni prezentement offruta kienet sufficjenti. In oltre, l-Awtorita' tirrileva, li l-Pjan Lokali kien gja' jillimita l-izvilupp fl-istess izolat tal-Villa ghal zewg sulari u semi-basement. Bil-hrug tal-Avviz tal-Gvern 158 tal-2009, dan gie ridott ulterjorment sa' zewg sulari minghajr kmamar fuq il-bejt (izda b' full basement level).

Jidher li t-tfassil tal-buffer zone sar b' mod kemm xejn arbitrarju, cjoe' billi ittiehdet biss kunsiderazzjoni tal-qies tat-toroq per se, u mhux per ezempju tal-linji tal-vista (sightlines) minn go l-Villa l-barra. Dan jikkonferma l-argument li l-iskedar kien imissu sar fuq almenu tlett livelli: li ttiehed kunsiderazzjoni tal-bini ta' valur storiku-arkitettoniku (cjoe' tal-kumpless ta' Villa Barbaro per se); tal-veduti minn gewwa l-gnien; u tal-arkitettura minuri li tiffirma parti mill-insedjament urban tal-madwar u li jikkostitwixxi s-setting tal-Villa (cjoe' tal-bini l-iehor fil-UCA).

Johrog car li ghalkemm l-intiza tal-Appellanti hi li jigu ppreservati l-veduti mill-gnien, irid jittiehed ukoll kont tal-kuntest urban fejn hemm dawn iz-zewg propjeta' (cjoe' il-Villa u l-font in ezami). Wiehd jifhem li f' ic-cirkostanzi kellu jsir tip ta' kompromess billi qabel xejn gew identifikati l-aktar vistas importanti. Kull zvilupp li mbaghad jirrizulta li jidher mill-gnien ghandu jigi ddesinjat tali mod li ma jgharraqx l-aspett viziv mill-gnien storiku.

F' ic-cirkostanzi irid jinghad ukoll, li ghalkemm l-Appellanti sahqu fuq l-argument li l-buffer zone prezenti mhux sufficjenti sabiex jigu protetti l-vistas mill-Villa,

Kopja Informali ta' Sentenza

madankollu qatt ma gew ipprezentati studji mhejjija abbazi ta' surveys akkurati (sections, etc.) tal-gnien tal-Villa u fil-kuntest tat-toroq li jiccirkondawha - sabiex jigi stabbilit kif minn certi viewpoints gewwa l-istess Villa jista jidher l-izvilupp in ezami. Anke meta nghataw opportunita' li jaghmlu dan, illimitaw is-sottomissjonijiet taghhom ghal semplici fotomontaggi ta' kif jista jidher il-bini ta' terzi. B' kull dovut rispettt, fotomontagg huwa arbitrarju u facilment kontestat. Jsegwi ghalhekk, li kien ikun ferm aktar utili li kieku per ezempju gew ikkomissjonati surveys ta' viewpoints u sightlines mehuda at eye-level minn punti strategici fil-gnien tal-Villa (cjo' mhux semplici indikazzjoni fuq pjanta minn fejn ittiehdu r-ritratti).

Prezentement, l-gholi predomanti tal-izvilupp kollhu li hemm f' Triq iz-Zejtun huwa ta' zewg sulari (ta' kostruzzjoni u gholi tradizzjonali). Peress li l-font in ezami huwa ta' kostruzzjoni ftit aktar ricenti, gja' nbena bhal-parti mit-tielet sular. Madankollu, kompleksivament, l-gholi tal-izvilupp ma jqabix dak ta' ma genbu - izda dan xejn ma jnaqqas mill-fatt li nholqot anomalija fid-dehra tal-faccati li hemm f' din it-triq. Kemm il-darba jigi introdott zvilupp fuq tlett sulari u semi-basement, sejjer jgharraq ulterjorment kemm l-istreetscape kif ukoll il-kuntest urban - li guarda caso, tiffirma parti minnu Villa Barbaro.

Ghar-rigward tal-permess citat mill-Applikant, allegatament simili ghal-tieghu (PA 4356/08), jigi rilevat li dan jirrigwarda talba sabiex isiru xi modifiki fuq gewwa, tinfetah tieqa u jinbnew xi kmamar fuq il-bejt. It-talba odjerna hi sabiex jitkompla it-tielet sular u jinbnew kmamar sovrastanti dan il-livell.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess u jirrevoka l-permess ghall-PA 4609/09 mahrug mill-Kummissjoni ghall-Kontroll ta' l-izvilupp, fl-20 ta' Jannar 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkunsidra li l-izvilupp hu konformi mal-policies u agixxa ultra vires meta cahad il-permess. It-Tribunal hu marbut bil-policies u ma jistax imur kontrihom. Ghalhekk l-argument tat-Tribunal li l-buffer zone sar b'mod arbitrarju mhux rilevanti u anki din l-istess osservazzjoni tmur kontra l-policies;

Kopja Informali ta' Sentenza

2. L-oggezzjoni tat-third party ma kinitx dwar il-mertu tal-appell izda d-dezinjazzjoni tas-sit fil-pjan lokali li jista' jigi attackat biss skond ma jipprovdi l-artikolu 59(3) ghal bdil tal-istess pian. L-appell maghmul mit-third party quddiem it-Tribunal ma kellux jintlaqa' anzi jigi dikjarat null.

L-aggravji mehudin flimkien

Din il-Qorti kif preseduta ormai hi tal-konvinzjoni illi l-Awtorita u t-Tribunal huma marbutin l-ewwel u qabel kollox illi josservaw il-ligijiet, pjanijiet u policies rilevanti ghall-izvilupp in kwistjoni. Ghandhom ukoll, jekk l-istess pjanijiet, ligijiet jew policies jippermettu illi jikkonsidraw kwistjonijiet ta' sustanza li jistghu jinfluixxu fuq l-izvilupp. Dan jaghti certu liberta ta' diskrezzjoni lil Awtorita u t-Tribunal li fejn hemm diversi pjanijiet jew policies rilevanti ghal kaz, jisiltu dawk li huma l-aktar addattati ghal kaz in ezami. Pero tali diskrezzjoni trid tintuza bi prudenza u cirkospezzjoni kbira u b'maturita u rispettt lejn il-kelma tal-ligi. Ebda diskrezzjoni ma hi mhollija meta hemm pian, ligi jew policy li tirregola esplicitament zvilupp rikjest ghaliex fil-fehma tal-legislatur tali pian jew policy ghandu jirregola zvilupp fiz-zona concernata u dan fl-interess generali tal-izvilupp edifikabbli tal-pajjiz b'rispettt lejn l-ambjent naturali jew storiku tal-istess pajjiz.

F'dan il-kaz il-Qorti tqis illi t-Tribunal ippekka serjament minn dan id-dover. Jidher bla ombra ta' dubju li l-izvilupp propost hu permissibbli skond SMLP MapTA, tant li l-istess Awtorita tikkontendi illi l-izvilupp lanqas iwassal sal-massimu tal-izvilupp permissibbli fiz-zona. Ma jidhirx li hemm kontestazzjoni dwar dan min ebda parti u anqas mill-istess Tribunal.

Il-kwistjoni li tqajjmet quddiem it-Tribunal kienet biss jekk l-izvilupp hux ser igharraq il-vista minn u lejn il-bini storiku u gnien skedati Grade 1 maghrufa bhala Villa Barbaro. Jirrizulta ex admissis mill-appellati Barbaro illi fejn qed jintalab li jsir l-izvilupp ma jaqax fil-buffer zone ikkrejat f'partijiet ohra vicin Villa Barbaro u l-gnien taghha. Il-kontenzjoni taghhom hi illi l-buffer zone ikkrejata li illimitat l-gholi ta' zvilupp fid-dintorni ma kinitx bizzejjed peress li l-parti fejn qed jintalab l-izvilupp mhux kopert u jiddividi l-izvilupp u Villa Barbaro hemm biss Triq Tarxien li hi triq principali. It-Tribunal stess jammetti li dan hu l-bazi ta-appell tal-appellati Barbaro. Pero b'kull dovut rispettt lejn it-Tribunal, tali aggravju ma kellu qatt jigi investigat mit-Tribunal ghax kif issottomettiet tajjeb l-Awtorita, pian lokali jew skedar jigu attackati mhux

Kopja Informali ta' Sentenza

b'appell f'applikazzjoni ta' zvilupp izda bi proceduri appoziti. F'dan il-kaz ma jidhirx li kien hemm xi kambjament fil-pjan lokali u t-Tribunal hu marbut bih, u r-regoli li jgib mieghu.

Ma jfissirx b'daqshekk li ma jistax ikun hemm policies ohra specifici ghaz-zona jew siti li jaghti dik id-diskrezzjoni fakoltativa lit-Tribunal li jizen bejniethom u jiddeciedi liema policy kienet l-aktar idoneja u applikabbli ghall-izvilupp in kwistjoni u jekk tenut kont tal-policies rilevanti jiddeciedi jekk l-izvilupp kellux jigi milqugh jew michud kollu jew in parti. Hekk fil-fatt ipprova jaghmel it-Tribunal biex jikkunsidra jekk kienx hemm policy li setghet b'xi mod tghin ghas-soluzjoni tal-vertenza fis-sens li jigi milqugh l-aggravju tal-kontendenti Barbaro li l-aspett viziv tal-villa u l-gnien kienu ser jigu pregudikati bl-izvilupp propost minhabba xi policy specifika li tirrendi dak kontenut fil-pjan lokali mhix tassattiv. It-Tribunal irrefera fil-fatt ghal policies UCO 6 u UCO 13 u anki UCO 10 pero qari tal-konsiderazzjonijiet tat-Tribunal iwasslu lil Qorti sabiex jikkonkludi li t-Tribunal sab diffikulta jirrikoncilja dawn il-policies bhala eccezzjoni ghal dak li jippermetti s-SMLP ghall-izvilupp in ezami. Harsa lejn l-ewel paragrafu ta' pagna 11 tad-decizjoni tat-Tribunal hi konferma ta' dan.

It-Tribunal minflok ikkonsidra b'mod obiter l-arbitrarjeta kif sar il-buffer zone u li ma jestendix ghas-sit mertu tal-izvilupp, pero hawn ukoll it-Tribunal wasal ghal konkluzjoni li l-kontendenti Barbaro ma gabux prova studjata kif dan il-buffer zone mhix sufficjenti ghall-iskop tal-protezzjoni tal-vista minn u lejn il-villa u l-gonna taghha.

F'daqqa wahda pero u bla gustifikazzjoni ibbazata fuq ebda policy partikolari, ikkonkluda li l-izvilupp ma ghandux isehh ghax l-gholi predominanti fi Triq iz-Zejtun fejn qed jintalab l-izvilupp hu ta' zewg sulari tradizzjonali u s-sit in kwistjoni gia jidher li ghandu parti mit-tielet sular mibni ghax hu binja aktar ricenti ghalkemm ma jaqbix l-gholi ta' ma' genbu pero bl-izvilupp propost ser johloq anomaliji mal-faccati l-ohra fit-triq u l-kuntest urban li tiffirma parti minnu Villa Barbaro.

Din il-Qorti tqis li tali arugment ma giex sostnut minn xi policy partikolari li xxejjen dak li jipprovdni esplicitament il-pjan lokali fejn l-izvilupp hu permess kif mitlub u in oltre fejn l-aggravju li kellu quddiemu it-Tribunal ma hux kif l-izvilupp ser jaffettwa l-bqija tal-binjet fit-triq fejn qed jintalab l-izvilupp izda kif l-izvilupp ser igharraq il-vista minn u lejn Villa Barbaro u d-

Kopja Informali ta' Sentenza

dintorni, li kif gia intqal ma gewx protetti f'dak li hu gholi kif gew protetti partijiet ohra fid-dintorni.

Il-Qorti tqis li t-Tribunal ma zammx mal-limiti tal-kontestazzjoni billi naqas li jindirizza sew l-aggravju principali quddiemu tal-appellant Barbaro rigward l-izvilupp vis a vis il-vista minn u lejn Villa Barbaro u l-gnien taghha u wara li jidher li wasal ghal konkluzjoni li ma kien hemm xejn x'jivvjeta l-izvilupp isehh skond il-pjan lokali tenut kont tal-aggravju kif maghmul ha linja argumentativa differenti u wasal ghal decizjoni mhix sorretta minn ebda policy li xxejjen jew taghmel eccezzjoni ghal dak li jippermetti l-pjan lokali ghaz-zona.

Decide

Kwindi l-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013, u tirrinviija l-atti lura lit-Tribunal biex jerga' jisma' l-appell in linea ma' dak deciz. Spejjez jibqghu bla taxxa.

< Sentenza Finali >

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