



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tas-27 ta' Novembru, 2014

Appell Civili Numru. 28/2014

**Godwin Scicluna**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Godwin Scicluna tad-19 ta' Mejju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' April 2014 dwar PA 409/10 'proposed change of use from an agricultural store (approved in PA 2695/04) to a residential unit, site lies within a rural settlement';

## Kopja Informali ta' Sentenza

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni pprezentata fit-2 ta' Frar 2010, Outline Development Permission PA 409/10 l-appellant f'sit f'Raba Nemel, limiti tar-Rabat, Malta talab:

"Proposed change of use from an agricultural store (approved in PA 2695/04) to a residential unit, site lies within a rural settlement."

L-applikazzjoni giet michuda b'decizjoni b'decizjoni tat-22 ta' Gunju 2010; saret talba ghal reconsideration izda r-rifjut gie kkonfermat fis-6 ta' Mejju 2011, u jgib id-data 16 ta' Mejju 2011.

L-applikazzjoni giet michuda ghar-raguni segwenti:

"1. The proposed development is unacceptable since it does not comply with Policy NWRS 3 of the North West Local Plan, which states that an existing building eligible for dwelling use does not include greenhouses, agricultural buildings, abandoned and dilapidated structures."

Fl-appell tieghu, l-Perit Philip Mifsud ghall-appellant issottometta kif gej:-

"Reference is made to a letter received from MEPA dated is" May 2011 informing us that the MEPA has refused our proposal.

## Kopja Informali ta' Sentenza

We are respectfully submitting an appeal for this application. Attached please find a copy of bank form showing that fee has been paid, a copy of the decision notice issued by MEPA and a copy of the site plan of the concerned site.

Regarding the only reason for this refusal we submit that this reason is not quoting the policy in its entirety. We have drawn the attention of MEPA regarding this fact on a couple of occasions (refer to my letters dated 24th may 2010 and 21st January 2011). However MEPA is insisting in omitting the crucial part of the policy.

In fact, Policy NWRS3 of the North West local Plan (the policy on which the reason for refusal is based) reads as follows: -

Quote:

"An existing building does not include greenhouses, agricultural buildings which are essential for the operation of an agricultural holding, abandoned and dilapidated structures which are isolated from the main settlement"

Unquote.

MEPA has omitted the words "which are essential for the operation of an agricultural holding" giving a complete twist to the situation.

As can be verified from the previous submitted information; (Le. in the previous approved application PA 2695/04 and the current application, both the IACS certificates and the information forwarded from the Department of Agriculture, the applicant is a farmer tilling a holding which lies between the 10 and 20 tumoli). Approximately 12 tumoli and definitely less than 20 tumoli. According to Policy 2.4A of the Policy and Design Guidance - Agriculture Farm Diversification and Stables (AFDS) "A storage building with a total floor space of not more than 20 sq. mtrs. (measured externally) may be permitted on an arable farm (see criterion 1c of this policy) of between 10 and 20 tumoli". Thus current MEPA policies specify that the essential area of an agricultural building to support an agricultural holding of between 10 and 20 tumoli is 20 sq. mtrs.

In addition to the above criterion (4) of policy 2.4A states that "all of this land is located within a radius of not more than 1 kilometre for the footprint area of the proposed building .. ." Not all the client's holdings fall within this 1 kilometre radius. In fact all the land tilled by the applicant at Tal-Kunfettier l/o Dingli is approximately

## Kopja Informali ta' Sentenza

2km away for the site. The total area of the land tilled by applicant at Tal-Kunfettier is 5T 2S 7K. Therefore the total area of land cultivated by the applicant within a 1km radius from the site is approximately 7 Tumoli, Le. less than 10 tumoli and as such (adopting MEPA's yardstick as per criterion (3) of policy 2.4 A of the AFDS the essential area of agricultural building for storage for arable farming on the site under consideration should not exceed 15 sq. Mtrs. In any case, even if the 1km radius was not taken into account, as shown above the essential area of an agricultural building to support an agricultural holding of between 10 and 20 tumoli according to MEPA policies should never exceed 20 sq. Mtrs.

The current area of the building (pre 1967 structure, reinstated by virtue of MEPA Permit PA 02695/04) is 80 sq. mtrs. However according to current MEPA policies quoted above only between 15 to 20 sq. mtrs. of agricultural building are essential for the operation of the applicant's agricultural holding. Considering the least favourable option for the sake of this application (i.e. a 20 sq. Mtrs agricultural building) still gives a surplus area of 60 sq. mtrs.

This area (60 sq. mtrs.) is in excess by 10 sq. mtrs. Of the threshold of 50 sq. mtrs. established by Policy NWRS3 of the NWLP which states that: -

Quote:

"For the purpose of this policy an existing building includes only any building with an external footprint of not less than 50 sq. mtrs. which is covered by a valid development permission or else has been existing prior to 1968 and can be identified in the MEPA 1967 aerial photographs".

Unquote

The above makes our proposal perfectly eligible under policy NWRSJ subject to all the other criteria as specified in Policy NWRS3 A which are: -

- i. Do not create a building with more than 150 sq. mtrs. footprint measured externally ... - proposed foot print is 80 sq. mtrs.
  
- ii. Floor space between 120 sq. mtrs. and 200 sq. mtrs. - proposed floor space is 150 sq. mtrs. (80 sq. mtrs. at ground floor and 70 sq. mtrs. at first floor) excluding basement.

## Kopja Informali ta' Sentenza

iii. Have an independent access from other residential units - proposal complies with this requirement.

iv. Do not create a building which is higher than two floors without basement.. .. - proposal complies with this requirement.

v. Structures at roof level do not have a floorspace of more than 20 sq. mtrs. at roof level - no structures at roof level are being proposed.

vi. Have a high quality design aimed at retaining and enhancing the existing character of the settlement.. .. - The proposed development has a design which is compatible with the rural area, details of which can be treated as a reserved matter for the Full Development Application.

vii. Provide on site parking for not more than two car-spaces. - Proposal complies with this requirement.

Points (a) and (b) in same policy which relate to the complete redevelopment of an existing building have been resolved by Permit PA 02695/04.

The above proves that the proposal as per amended drawings submitted to MEPA on the 24th May 2010 is fully compliant with requirements of Policies NWRS3 of the NWLP.

In addition, and without prejudice to the above, we respectfully submit that MEPA is omitting another crucial part of the policy. The only reason for this recommended refusal states that "an existing building eligible for dwelling use does not include ... abandoned and dilapidated structures.

In actual facts, Policy NWRS 3 makes reference to abandoned and dilapidated structures but specifies that these should be "isolated from the main settlement".

The site under consideration is surrounded and abuts a number of residential building, one of which is covered by MEPA permits PA 00472/03 and PA 00053/06.

## Kopja Informali ta' Sentenza

As such it is definitely not isolated. One may argue that the building under consideration is not dilapidated, which is really the case, but it is definitely not in use and therefore in an abandoned state.

In view of the above, we respectfully request the Environment and Planning Review Tribunal to favourably consider this proposal and request MEPA to issue permit accordingly.”

L-Awtorita' fir-rapport taghha kkummentat kif gej:-

“5.1 The Authority has noted the arguments as brought forward in appellant’s request for appeal and shall address these issues hereunder:

5.1.1 In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies.

5.1.2 However, after noting all of appellant’s arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breach the relevant policies as will be discussed below.

5.1.3 Reference is made to the assessment carried out in the DPAR. This included the following:

### Overview

In accordance with plans submitted (Red 1C - 1E), the development proposes the change of use from an agricultural store as approved in PA 2695/04 to a residential unit. Currently, the existing agricultural store has an area of approximately 80m<sup>2</sup> over one storey whilst the proposed development proposes two floors plus basement (circa 230m<sup>2</sup> in total).

### Development in Category 3 Small Rural Settlements

Category 3 Settlements are characterized by low densities and can only be considered as small clusters of buildings. This is their most significant feature, and therefore developments within Small Rural Settlements within the NWLP are

## Kopja Informali ta' Sentenza

subject to the limitations of policy NWRS 3, which clearly states that no new developments are permitted in the area.

As shown in photos Red 1A and plan Red 1D, the site is presently holds an agricultural store (circa 80m<sup>2</sup>) and an adjacent uncommitted yard (circa 135m<sup>2</sup>). The proposed development seeks to change the use of the existing structure to residential, including the addition of an additional level above street level and a basement. The total area of the proposed development is circa 230m<sup>2</sup> (but includes the basement store).

The creation of new dwelling units is not permitted in Category 3 Rural Settlements; however a structure is present on site in the form of an agricultural store. In accordance with policy NWRS 3 of the NWLP, an existing building eligible for dwelling use does not include greenhouses, agricultural buildings, abandoned and dilapidated structures. Therefore, the proposed structure does not qualify for adapting a dwelling use, and hence runs counter to NWLP policy NWRS 3.

5.1.4 As regards to the arguments of the appeal itself, the Authority disagrees with appellants' statement on various accounts and will be explained below.

5.1.5 The Reason for which this development under appeal was refused was, that the existing building, which is an approved agricultural store as per approved permit PA 2695/04 is being proposed to have its use changed to a dwelling. The reason for refusal stated the following:

The proposed development is unacceptable since it does not comply with policy NWRS 3 of the North West Local Plan, which states that an existing building eligible for dwelling use does not include greenhouses, agricultural buildings, abandoned and dilapidated structures.

This reason for refusal was based wholly on Policy NWRS 3 which states that a new dwelling unit can be approved, namely the rehabilitation and redevelopment of an existing building can be approved, subject to a list of criteria listed in this policy namely (A) to (E). This policy states the following:

For the purposes of this policy an existing building includes only any building with an external footprint of not less than 50sqm which is covered by a valid development permission or else has been existing prior to 1968 and can be identified in the

## Kopja Informali ta' Sentenza

MEPA 1967 aerial photographs. An existing building does not include greenhouses, agricultural buildings which are essential for the operation of an agricultural holding, abandoned and dilapidated structures which are isolated from the main settlement.

5.1.6 The Structure Plan Policies clearly state that in the Outside Development Zone, no form of urban development which is not essential to agriculture will be allowed, so as to minimize unnecessary urban sprawl within a rural context. This development would have a detrimental effect on the rural character of the area due to its proposed use and its proposed massing. Such a change of use would create different movement patterns within the area which are not agricultural related thus urbanizing the area and create unnecessary urban sprawl.

Furthermore, the proposed massing and the overall development is excessive.

The development under appeal proposes

- a basement,
- a 230sqm dwelling and
- the construction of a first floor which would create blank party walls within the ODZ which punctures the idyllic characteristics of this rural settlement thus causing disharmony to the solid to void ratio of this settlement in terms of massing.

Structure Plan Policies SET 11 and RCO 2 state that there should be no development within the ODZ which is not essential to agriculture. These policies state the following:

- RCO 2: no form of urban development will be allowed.
- SET 11: No form of urban development will be permitted outside existing and committed built-up areas, and primary development areas as designated in the Structure Plan even where roads and public utilities are available. Permitted forms of non-urban development outside such areas are restricted to the categories referred to in Paragraph 7.6



## Kopja Informali ta' Sentenza

- Paragraph 7.6: The term 'urbanisation' means the creation of new built-up areas containing all or most urban uses: houses, shops, offices, factories and all the built support facilities, which these accumulate. In seeking to prohibit urbanisation of existing non-urban areas it is not the intention to prohibit built structures of various kinds which are normal and legitimate inclusions in the non-urban scene - farmhouses and other genuine agricultural buildings, reservoirs, picnic area toilets and car parks, and control buildings and walls/fences at archaeological and ecological sites. Nevertheless, the provision of such structures must be controlled in order to preserve and enhance the environmental quality of the countryside.

5.1.7 Additional residential units within the ODZ runs counter to Policy PLP 20 due to intensification of urban uses within a rural context. Section 8.2: Residential Development of the Policy PLP 20 states the following:

(viii) Extensions to a residential property which create a new unit of accommodation will not be acceptable

As was clearly stated in the DPAR (extract from the DPAR):

5.2 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies.

Hence, reference is made to the reports as presented by the Directorate and to the EPC's decision which dismissed this request for development since the EPC Board had based their decision on the valid relevant policies applicable to this area. Reference is also made to the detailed reports as included in the file and to the submissions (verbal and written) which will be presented during the appeals sittings.

5.3 MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all the relevant facts, planning policies, legislation and submissions and thus, respectfully requests that the Environment & Planning Review Tribunal to confirm the decision as issued with the refusal notice and to refuse this appeal.

The Authority reserves the right to forward further submissions during the appeals process as necessary."

## Kopja Informali ta' Sentenza

Fir-risposta tieghu pprezentata fis-26 ta' Ottubru 2011, l-Perit Philip Mifsud ghall-appellant ssottometta s-segwenti:-

"This office is in receipt of MEPA's report submitted to the EPRT in relation to the above referred appeal. In response to the same we would like to respectfully refer you to our well explained report which was presented as a request for appeal dated 2nd June 2011. In addition to the same we respectfully submit the following:-

1.0. The report prepared by MEPA in insisting in repeating the same cardinal mistake.

1.1 We found three different parts of MEPA's report in which it is being stated that according to policy NWRS 3 of the NWCP "an existing building eligible for develling does not include ..... , agricultural buildings, ..... (Section 3.1, section 5.1.3 and section 5.1.5.) This is not correct. In fact in the same MEPA's report, section 5.1.5 policy NWRS 3 is for once being quoted correctly by MEPA:- The buildings that do not qualify are agricultural buildings which are essential for the operation of an agricultural holding.

2.0 The report prepared by MEPA also quotes irrelevant documents and policies which should not in any way feature in this application.

2.1 For example, section 2.2 of MEPA's report refers to the part of NWRS 3 which deals with new development, something which is not relevant in this case.

3.0 The report also mixes up the proposed areas, enters into irrelevant detail and diverts from the main issue.

3.1 The report repeatedly states that the proposed development constitutes 230 m<sup>2</sup>. Although the report mentions the proposed basement, it is not clear enough in distinguishing the proposed area above ground and the proposed area below ground level.

3.2 We feel the duty to clarify this matter and state that the proposed area above ground level is 150 m<sup>2</sup>, 80 m<sup>2</sup> of which are already approved. In any case this is an outline application and the detail related to area can surely be tackled at full development stage.

## Kopja Informali ta' Sentenza

3.3 The same can be said about the massing and the party wall. In mentioning such issues in an Outline Development Permit MEPA is departing from the main issue. We feel that this is being done purposely.

### 4.0 Application's Rationale.

4.1 The rationale behind this application is to combine two MEPA policies together - Policy 2.4A of the Agricultural Farm Diversification and Stables document and Policy NWRS 3 of the North West Local Plan.

4.2 The existing situation comprising a legal (pre 1967) 80 square meter structure. Legality of same was reinforced through Approved Permit PA 02695/04. However PA 02695/04 was approved in October 2004, i.e. about 3 years prior to the change in policies through the approval of the Agricultural, Farm Diversifications and stables document. This document changed the scenario as it has established the area of agricultural buildings which are essentials for agricultural holdings.

5.0 MEPA has the responsibility to acknowledge this fact and apply its policies across the board, even in cases similar to the one under consideration. MEPA should not be selective and should not have the possibility to decide in which cases MEPA can apply its policies and in which cases it opts to ignore them.”

L-Awtorita' rrispondiet permezz tas-second statement fejn ikkummentat kif gej:-

"The Authority has noted all the arguments as presented in the last submissions and states that:

Re para 1.1 of latest submission.

It is to be reminded that the 'existing' building is not an abundant or 'old' building without any official use but a building which was granted a permit as per PA 2695/04 for To reinstate existing agricultural store including replacement of roofs, same applicant and same architect. It is to be noted that inspite of a negative recommendation by the Directorate, the DCC upheld the negative recommendation on the bases that it believed that there was a genuine need for this 'agricultural

## Kopja Informali ta' Sentenza

store' and its use was essential to applicant. Hence, there is no planning justification to minimise the agricultural storage area to a small area at ground floor area and instead, create a new dwelling in ODZ (it is actually a Category 3 rural settlement where no take up of fresh land would have been permissible). The submitted plan Red 12A shows also a proposed basement level underneath the whole existing footprint for a 'Cellar / Store' accessible only from the Dining / Living area as well as a parking area with formal landscaping throughout the adjacent 'Yard pertaining to owner'.

Re para 3.1

As regards to the total floor area of the proposed development, it is to be clarified that in line with architect's declaration in the application form section 7, the total floorspace of the resultant development is 230 sq.m.

Re para 4.2

While it is acknowledged that the existing agricultural store has been acknowledged as such through permit PA 2695/04, the Authority disagrees with appellant that such a legal store could automatically qualify to be changed into a dwelling with an additional (total) floorspace of 160 sq.m. to the existing 80 sq.m. without any planning justification for the creation of a dwelling outside the normal scheme boundary.

Additionally, reference is made to the first paragraph of Policy 2.4B of the PDG – Agriculture, Farm Diversification and Stables, December 2007 where it is clearly stated that:

**POLICY 2.4B: CHANGE OF USE OF BUILDINGS FOR STORAGE FOR ARABLE FARMING.**

The Authority will NOT grant permission for the change of use or for the conversion of a storage building to a non agricultural use, unless otherwise stated in the policies in this document.

## Kopja Informali ta' Sentenza

As regards to the policies governing Category 3 Settlement, ie NWRS 4, this policy makes reference to NWRS 3 for the details of permitted development. It is thus important to note that any new dwelling in such settlements have to abide with:

A. Dwelling units (new units on uncommitted land, redevelopment of existing buildings, rehabilitation of existing buildings, and extensions to existing buildings used for residential purposes) provided the units:

- i. do not create a building with more than 150m<sup>2</sup> footprint measured externally at ground floor including any internal courtyards;
- ii. have not less than 120m<sup>2</sup> and not more than 200m<sup>2</sup> total floorspace measured externally;

In this case under appeal, however, the 'total floorspace measured externally' amounts to:

Existing floorspace 80 sq.m. (as declared in section 7 of the application form)

An additional basement with same footprint of 80 sq.m.

A proposed 1st floor level with same footprint of 80 sq.m.

Hence, the total floorspace is actually proposed at  $80 \times 3 = 240$  sq.m. which is greater than what have could be permissible if all other planning criteria and justification were in full conformity with the relevant policy.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning polices and states that the EPC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Fir-risposta tieghu, pprezentata fis-7 ta' Mejju 2012, l-Perit Philip Mifsud ghall-appellant iddikjara li gej:-

## Kopja Informali ta' Sentenza

“1.0 In its reply MEPA is now departing from the only reason for its refusal and shifting its arguments to the detail of the proposal. To a certain extent, this is understandable as through the above quoted submissions we have amply manifested that, contrary to what MEPA has decided, the proposal is perfectly in line with policy NWRS3 of the North West Local Plans.

1.1 However, while concentrating on the detail of the proposal, MEPA is not considering that this is an Outline Application intended to establish the principles of the proposal. The details will be tackled in the Full Development stage. As we all know there will be conditions in outline permits which need to be adhered to in the Full Development stage. Landscaping and Area of Development can easily be treated in these conditions.

1.2 With respect to the total proposed area we insist that this is 150 m<sup>2</sup> and not 230 (or 240) m<sup>2</sup> as MEPA is insisting. MEPA is always insisting in including the underground area and this should not be the case. In a similar application on the adjacent site PA 03414/10, MEPA has omitted the basement area when it came to calculate the total area. (Refer to section 4.8 (iii) in DPAR of PA 03414/10, in which it was stated that the total area 'amounts to approx innately 192m<sup>2</sup>• Taking a look to the approved plans in PA 3414/10, one can very easily conclude that it was only the ground and the first floors that were considered. The basement was not.

2.0 During the processing of this application MEPA has approved a permit on an almost abutting site (PA 03414/10). The DPA Report of the same (already referred to) make interesting reading and we kindly request the EPRT to examine PA 03414/10 in its totality prior to reach a conclusion on the above referred case.

2.1 As can be proved in the aerial photo above, the site under consideration is sandwiched between the residence approved by virtue of the above quoted PA 03414/10, another recently approved residence and some other old residences

3.0 The fact that the applicant has benefited from a MEPA application way back in 2004 should not prejudice his current rights. The 2004 application was assessed against the policies and regulations which were in force during that period. Both the Local Plan and the Policy and Design Guidelines came into force after the approval of the same. Both documents have changed the 2004 scenario and this application is being submitted in line with this new scenario.”

## Kopja Informali ta' Sentenza

L-Awtorita' fit-third statement taghha kkummentat dwar l-permessi citati mill-Perit tal-appellanti; u ddikjarat s-segwenti:

"With reference to Appellant's letter dated 30th May 2012, and Site Inspection carried out on the 22nd February 2013, the Authority wishes to note the following:

- Reference is being made to the two dwellings, one on the left and the other to the right of the site under appeal, together with other residences in the immediate neighbourhood. It is to be noted that the 1968 Survey Sheet indicates that these structures already existed, as shown below.

- The Appellant makes reference to the following approved Permits, namely, PA 3414/10, PA 472/03 & PA 53/06.

PA 3414/10: To demolish existing dilapidated structure and construct a dwelling. The following are extracts from the DPAR:

"This planning application is seeking development permission to demolish existing structure and construct a residential unit. The site is located within a Category 3 Rural Settlement to which North West Local Plan policy NWRS 4 – Small Rural Settlements (Category 3 Settlements ODZ) applies. This policy allows the redevelopment of an existing building. In terms of North West Local Plan policy NWRS 3 - Large Rural Settlements (Category3 Settlements ODZ) an existing building is defined as a structure which is covered by a valid permit/its construction dates back before such periods were necessary and has a minimum footprint of 50 sq metres.

The existing building is visible in the 1967 survey sheet (Document 28) and has an approximate footprint of 120 sq metres. Therefore the building on site qualifies for redevelopment as per North West Local Plan policy NWRS 4 – Small Rural Settlements (Category 3 Settlements ODZ). Proposal is therefore acceptable in principle."

As regards to the basement level:

"...The proposed building has a height of two floors plus an underlying basement. In this case the basement level is being considered acceptable partly above ground since the existing old structure already includes a basement roofed over four

## Kopja Informali ta' Sentenza

courses above road level and also includes high level windows overlooking the public road."

PA 472/03: Alterations and additions to an existing farmhouse. This was approved on the 11th March 2004, pre-2006 therefore pre- the issuing of the Local Plan.

PA 53/06: Construction of swimming pool to an approved dwelling.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the EPC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Fl-okkazzjoni tal-access l-Perit Philip Mifsud għall-appellant indika lill-membri tat-Tribunal żvilupp fil-vicin, li għadu fil-fazi ta' kostruzzjoni u li hu definittivament residenza mibnija fuq żewg sulari u ta' certu skala.

Ikkunsidra ulterjorment:

L-appellant qed jipproponi, permezz ta' applikazzjoni outline, change of use ta' agricultural store, kif approvat bil-permess PA 2695/04 għal residenza.

L-istore ezistenti, b'sular wiehed għandu area ta' 80m<sup>2</sup>, mentri qed jigi propost żvilupp ta' żewg sulari, u basement b'area totali ta' 230m<sup>2</sup> circa.

Skond n-North West Local Plan s-sit li jinsab fl-area ta' Raba Nemel, limiti tar-Rabat, hu f'zona disinjata bhala Category 3 Small Rural Settlements (Category 3 Settlement ODZ); fejn żvilupp permissibbli skond il-Policies hu limitat, billi l-area hi barra z-zona tal-iżvilupp, pero' riabilitazzjoni ta' bini ezistenti, u żvilupp limitat u kondizzjonat, hu permissibbli. Żvilupp gdid, li jutilizza art virgin mhux permissibbli.

Bl-applikazzjoni PA 2695/04 l-istess appellant talab li jsiru xogholijiet bhal bdil ta' soqfa, biex jigi ripristinat store agrikolu ezistenti u l-applikazzjoni kienet rakkommandata għal rifjut, billi in kontravvenzjoni tal-PLP 20; AHF 5 u SET 11, pero' finalment, l-applikazzjoni giet approvata mid-DCC fit-23 ta' Awwissu 2004.



## Kopja Informali ta' Sentenza

L-areas identifikati bhala Category 3 Settlements huma karatterizzati minn zoni modesti ta' bini (clusters). L-applikazzjoni PA 2695/04 giet eventwalment approvata mill-Awtorita' billi gie ritenut li l-istore agrikolu kien rekwiżit essenzjali ghax-xoghol fir-raba'. L-appellant qed jipproponi li jirriduci sostanzjalment l-area ta' dan l-istore approvat, biex mal-istore hekk ridott jibni residenza gdida f'area li effettivament hi barra z-zona tal-izvilupp (ODZ).

Kif ikkonfermat mill-pjanti, l-iskala tar-residenza proposta hi indikativa ta' zvilupp kbir billi qed jigi propost cellar/store fil-basement li jokkupa l-footprint kollu tas-sit, dan hu accessibbli mid-Dining/living area, kif wkoll parking area u landscaping fl-art adjacenti.

Kif gie korrettement rilevati mill-Awtorita', fis-second statement taghha, skond l-Policy 2.4B tal-Policy and Design Guidance Agriculture, Farm Diversification and Stables ta' Dicembru 2007, l-Awtorita' ma taghtix permess ghal change of use minn agricultural store ghal residenza, sakemm dan ma jkunx possibbli skond l-Policies tal-istess Dokument. Il-Policy rilevanti cjoe Policy NWRS 4 dwar Category 3 Settlement, tindika l-areas accettabbli ghal zvilupp gdid residenzjali, u li dan ma jistax jeccedi 200m<sup>2</sup> floorspace mkejje minn barra

Billi l-izvilupp propost ikollu area ta' 240m<sup>2</sup>, l-proposta hi in kontravvenzjoni tal-Policy fuq citata.

L-appellant ilmenta wkoll minn zviluppi residenzjali vicin is-sit 'de quo'.

L-Awtorita' kkummentat dwar dawn il-permessi fit-Third Statement taghha.

Gie rilevati f'dan l-istatement li l-istrutturi li ghalihom irrefera l-appellant kienu jidhru fis-Survey Sheet tal-1968.

Dwar l-permess PA 3414/10 l-Awtorita' ddikjarat li l-applikazzjoni kienet biex tigi demolita' struttura ezistenti u tinbena residenza – li hu permissibbli skond l-Local Plan Policy NWLS-3.

## Kopja Informali ta' Sentenza

Il-permess PA 472/03 – Alterations and Additions to existing farmhouse; billi l-applikazzjoni giet approvata fil-11 ta' Marzu 2004 – dan kien qabel il-Pjan Lokali li gie ppubblikat f'Lulju 2006.

It-Tribunal acceda fuq is-sit in kwistjoni fit-22 ta' Frar 2013. Ghalkemm iz-zona hi indikata bhala Category 3 Rural Settlement ODZ, fil-Pjan Lokali fuq il-post wiehed jiehu l-impressjoni li numru ta' zviluppi ezistenti fil-vicinanze tas-sit 'de quo' ma jirriflettux dik id-disinjazzjoni.

Hi l-fehma konsiderata ta' dan it-Tribunal, li l-Awtorita' ghandha fil-futur immedjat taghmel ezercizzju/studju tekniku,akkurat u dettaljat tal-izviluppi kollha li jezistu f'din il-lokalita', u jikkumentaw jekk hux il-kaz li d-disinjazzjoni prezenti taz-zona fil-Pjan Lokali tigi modifikata; b'dan li possibilment jittiehdu l-proceduri necessarji biex jigi assikurat li l-karattru rurali preponderanti jigi ppreservat.

Fil-mertu pero', billi l-proposta prezenti hi in kontravvenzjoni ta' diversi policies kif rilevat 'supra', l-appell ma jistax jinghata konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess, u jikkonferma r-rifjut tas-16 ta' Mejju 2011 ghall-applikazzjoni PA 409/10; pero' jidderiegi lill-Awtorita', li kemm jista' jkun malajr, tipprocedi bl-ezercizzju/studju hawn fuq imsemmi.

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. L-izvilupp kien konsistenti ma policy 2.4B tal-Policy and Design Guidance Agriculture, Farm Diversification and Stables 2007 peress li l-area proposta hi ta' 150 metru kwadru mhux 230/240 metru kwadru kif argumenta t-Tribunal li inkluda l-area li tinsab taht l-art, u dan imur kontra l-konsiderazzjoni tal-area mit-Tribunal ghas-sit adjacenti bil-PA 3414/10;
2. Is-sit jinsab bejn zewg zviluppi ta' residenzi PA 3414/10, PA 472/03 u PA 53/06 li ghandhom zvilupp simili ghal dawk proposti u gew approvati. In oltre billi l-appellant kellu gia zvilupp precedenti (PA 2695/05) fejn giet approvata struttura pre ezistenti l-1967 ta' 80 metru

## Kopja Informali ta' Sentenza

kwadru, dan ma jistax jkun ta' pregudizzju ghall-area li qed jigi propost u l-konsiderazzjonijiet iridu jsiru fuq l-area proposta u mhux dik gia approvata;

3. It-Tribunal naqas li jaghti decizjoni motivata ghaliex ghalkemm hemm zviluppi adjacenti simili ghal dak propost ma kkonsidrax ghaliex dan l-izvilupp ma setax jigi milqugh a bazi tal-permessi gia moghtija ghal zviluppi u binjiet simili. Il-kwistjoni tal-bidla fil-pjan lokali u l-introduzzjoni tal-artikolu 69 tal-Kap. 504, huma irrelevanti meta wiehed iqis il-binjiet simili fil-vicinanze u l-konsiderazzjonijiet tat-Tribunal kellhom imorru lil hinn mill-evalwazzjoni tal-bidliet fil-pjan lokali.

### **L-ewwel aggravju**

Dan l-aggravju jisthoqqlu jigi milqugh mhux ghax kif qed jissottometti l-appellant illi t-total floor space ma jecedix il-200 metru kwadru floor space peress li ma ghandux jittiehed kont tal-floor space okkupat mill-basement kif sehh f'permess PA 3414/10 izda ghaliex it-Tribunal ma dahalx fil-mertu tal-aggravju u kkonsidra kif semmai dan l-aggravju mhux applikabbli ghal kaz. Din il-kwistjoni tqajmet f'dettal waqt l-appell quddiem it-Tribunal pero din il-Qorti mhix ser tikkummenta fuq l-argumenti mressqa mill-partijiet ghax dan kien kompitu tat-Tribunal li jinterpreta l-NWRS 3 li jipprovdi d-dettalji dwar il-kobor permissibli tal-izvilupp. Sfortunatament it-Tribunal qabad u ddecieda illi l-floor space komplessiv hu ta' 230 metru kwadru u kwindi l-izvilupp mhux accettabbli pero ma ddeliberax fuq kif ghandu jigi mkejjel il-floor space u kif gie fil-fatt kalkolat f'permess esplicitament imsemmi mill-appellant li t-Tribunal kien obligat jikkummenta dwaru biex l-appellant ikollu risposta cara u motivata ghaliex l-aggravju tieghu ma setax jigi milqugh. It-Tribunal naqas li jimmotiva l-gustifikazzjoni kontra l-aggravju interpost u dan hu punt ta' ligi li kellu jigi ezaminat mit-Tribunal.

Ghalhekk l-aggravju qed jigi milqugh fit-termini deciz.

### **It-tieni aggravju**

L-ahhar parti tal-aggravju ma jistax ikollu risposta affermattiva billi l-izvilupp permissibli skond il-policies rilevanti ma jeskludux ghal fini ta' kejl dak l-izvilupp gia ezistenti qisu ma

## Kopja Informali ta' Sentenza

jeziti. Dan irid bilfors jittiehed in konsiderazzjoni billi hu parti mill-izvilupp propost, liema zvilupp irid jottempera ruhu mal-pjanijiet u policies ezistenti fiz-zmien tad-decizjoni. In kwantu ghall-ewwel parti tal-aggravju li gie trattat b'mod aktar car fit-tielet aggravju, din il-Qorti tqis illi zviluppi simili fil-vicin ma jaghtux xi dritt awtomatiku ghal permess ghal proposta sub iudice. Dan ghaliex iridu jittiehdu kont tal-fattispecie partikolari ta' kull kaz u tal-pjanijiet u policies ezistenti fiz-zmien tad-decizjoni li jistghu jkunu differenti minn dawk ezistenti fiz-zmien li nghataw permess ghall-zviluppi simili.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tielet aggravju**

Dan l-aggravju wkoll ghandu mis-sewwa. It-Tribunal irrepeta dak li qalet l-Awtorita fuq il-permessi ta' siti fuq kull naha tal-izvilupp propost. Jidher illi kwantu l-izvilupp PA 472/03 gie approvat qabel il-bdil tal-pjan lokali, dan ma jistax jitkejjel mal-izvilupp propost. Fuq dan taqbel il-Qorti u hu inutili ghall-appellant li jinsisti li jitkejjel zvilupp ma' iehor meta l-ligijiet li rabtu l-izvilupp hu differenti. Il-principju kien u jibqa' li applikazzjoni tigi evaluata fuq il-pjanijiet, ligijiet u policies ezistenti fil-hin tad-decizjoni. F'dan il-kuntest l-argument tal-appellant rigward l-artikolu 69 tal-Kap. 504 hu ghal kollox irrelevanti u superflu peress illi t-Tribunal ma semmiex dan l-artikolu.

In kwantu pero ghal permess PA 3414/10 din il-Qorti gia esprimiet l-opinjoni illi t-Tribunal naqas li jipparaguna dan il-permess mal-applikazzjoni pendenti u a bazi tal-argumenti prodotti jaghti raguni studjata u sodisfacenti ghaliex iz-zewg zviluppi ma jimmeritawx l-istess trattament. Il-Qorti hi tal-fehma li lanqas l-Awtorita ma indirizzat sew dan l-argument u kien jispetta lit-Tribunal japprofondih. Dan jinghad b'aktar enfasi ghaliex l-istess Tribunal jammetti illi ghalkemm iz-zona ghandha dezinjazzjoni ta' Category 3 Rural Settlement ODZ fil-pjan lokali, dak li osserva fl-access hu li l-izviluppi ezistenti fiz-zona ma jirriflettix dan. Ghalkemm ovvjament xorta wahda t-Tribunal hu marbut mad-dezinjazzjoni taz-zona, pero kellu jara ghalfejn l-izvilupp ma hux permissibli. Ghalkemm it-Tribunal fid-decide cahad l-appell ghax l-izvilupp kien in kontravvenzjoni ta' diversi policies 'kif rilevat supra' (kliem tat-Tribunal) din il-Qorti ma setghet tirriskontra ebda wahda minn dawn il-policies hlief dik rigwardanti l-qies tal-

## Kopja Informali ta' Sentenza

izvilupp li maghha rabat it-Tribunal u li din il-Qorti gia ghamlet ir-riservi taghha fl-ewwel aggravju.

Il-Qorti ma tistax ma tikkumentax ukoll illi t-Tribunal kellu jara l-parametri tac-cahda tal-izvilupp mill-Awtorita li kien wiehed specifiku mentri waqt l-appell infethu diversi spunti u argumenti li t-Tribunal kellu jara kienux jaqghu fil-parametri tad-decizjoni tac-cahda. Wara kollox it-Tribunal mhux marbut biss bl-aggravji kif inhu marbut l-appellant izda irid ukoll jara jekk ic-cahda tal-Awtorita ibbazata fuq decizjoni b'parametri cari kinitx timmerita li jintlaqghu l-aggravji. Ma jfissirx li t-Tribunal ma jqis kwistjonijiet ta' pjanijiet, ligijiet u policies ohra rilevanti izda irid joqghod attent li jekk ser jitqajmu minnu, irid jinghata l-opportunita lil partijiet sabiex jikkontrollawhom u jekk it-Tribunal iqis li l-kwistjonijiet imqajma minnu jimmeritaw evalwazzjoni dettaljata jibghat l-atti lura lil Awtorita biex jevalwa mill-gdid l-appikazzjoni fid-dawl tal-aspetti mqajma mill-istess Tribunal. Dan kollu qed jinghad mhix ghax f'dan il-kaz ghandu jsir hekk izda sabiex it-Tribunal ma jhalliex li l-parametri tad-decizjoni tal-Awtorita tigi mibdula mill-istess Awtorita b'argumenti godda b'dak li ma tkunx iddecidiet hi stess biex cahdet l-applikazzjoni.

Ghalhekk dan l-aggravju qed jigi milqugh fil-qies deciz.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Godwin Scicluna u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' April 2014, u tirrimetti l-atti lura lit-Tribunal biex l-appell jigi deciz mill-gdid. Spejjez ghall-Awtorita.

## **< Sentenza Finali >**

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