



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 33/2014

**Maria Victoria Coppini u David Coppini**

**fil-kwalita taghhom ta' eredi legittimi ta' Albert Coppini u**

**b'digriet tal-24 ta' Gunju 2014**

**I-okkju gie konfermat kif mitlub skond ir-rikors tat-23 ta' Gunju 2014**

**vs**

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

**Il-Qorti,**

## Kopja Informali ta' Sentenza

Rat ir-rikors tal-appell ta' Maria Victoria Coppini u David Coppini tat-23 ta' Gunju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta' Gunju 2014 dwar l-outline development permit PA 2134/02 'demolition of existing building and substitution with apartments and garage for private use';

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:

Illi l-appellant applika fi stadju ta' outline sabiex jitwaqqa' l-bini ezistenti li jikkonsisti min fond konsistenti minn town-house numru 109/113 li tinsab fi Triq Spinola, gewwa San Giljan, u minflok jinbena blokk ta' appartamenti residenzjali fuq hames sulari, sovrastanti parkegg fil-livell sotterran.

Illi l-Kummissjoni tal-Kontroll tal-Izvilupp, irrifjutat l-applikazzjoni fi stadju ta' rikonsiderazzjoni ghal dawn ir-ragunijiet segwenti :-

1. "The proposed development is incompatible with the urban design and environmental characteristics of the Urban Conservation Area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2.

2. The proposal does not comply with Structure Plan policy UCO8 which only permits development in Urban Conservation Areas which is compatible with the existing character and urban design of the area. The proposal development will not be sympathetic.

3. The proposed development would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and

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townscapes within Urban Conservation Areas and so does not comply with Structure Plan policy UCO6.

4. The proposed demolition of the existing building and the erection of an apartment block is unacceptable since the existing building has an architectural and historical value as one of a group of houses typical of the traditional St. Julian's townscape. Its demolition and the erection of an apartment block is, therefore contrary to Structure Plan policy UCO 6, UCO 7 and UCO 13.”;

Ra l-appell tal-Avukat Dottor Peter Borg Costanzi f'isem l-appellant li jaqra' kif gej :-

“I am writing on behalf of Albert Coppini of 217 Manoel Dimech. Street, Slierna in order to appeal from the decision delivered by the Development Control Commission on the 6th of May 2010.

The application in question was refused for four reasons which all of which are based on UCA Policies. The grounds for refusal seem to deem the site as an area falling within an urban conservation area. Whilst the site may have been so when the application was filed in 2002, it was subsequently removed from the UCA and consequently the grounds for refusal no longer applied.

This is highlighted by the fact that the adjoining property has been demolished and rebuilt on the strength of PA 4885/07. This consists in a full development application which was filed five years subsequent to my client's application and was granted on the 4th of July 2008 without 'any conditions whatsoever.

On the other side of my client's property there' is another block of apartments which was developed a number of years ago and consequently, the area in question is sandwiched between two new set of blocks of apartments and therefore the assertion that the proposed development is incompatible with urban design and environmental characteristics or that it does not maintain the visual integrity in the area, is totally unfounded.

In this particular regard we would like to add that during the consultation process concerning this application, my client and his architect had a number of meetings with the Planning Directorate and at one point in time my client was asked to submit a detailed elevation of all the buildings in the area and when this was, examined by the directorate they seem to have been satisfied with my client's proposal and it came as a-total surprise that the DCC Board in fact held otherwise.

Another ground for refusal, again based on Urban Conservation Area Policies which in actual fact should not apply in this present instance, was because it was held that the development in question is not compatible with existing character and urban design. It was also stated, again falling on UCA Policies, that it was necessary to preserve and enhance buildings and spaces and townscapes in the area and that the existing building had architectural and historical value.

In this respect it is submitted that in actual fact were this argument to hold any water, then all the development on the seafront in question would have been refused outright. The buildings that my client is seeking to develop is in line with all the development that has taken place and is still taking place in the area and a number of permits have been issued even more recently than the one aforementioned.

This line of thinking may have been relevant twenty-five years ago when St Julians was still in a relatively pristine state. The alleged "houses typical of St Julian's townscape" just do not exist anymore and the PRESENT typical townscape consists in precisely the type of property which my client is seeking to construct. Besides there being no objective justification as to why my client's should be discriminated against, particularly in view of PA 4885/07 aforementioned, today the seafront in the area is totally developed and the application is totally in line with the present existing character and urban design.

Consequently, on the basis of the above and on grounds which will be further elaborated at a later stage during the course of the hearing before the board, it is respectfully submitted that the decision of the DCC should be reversed and that my client's request should be granted.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fit-28 ta' Lulju 2010, u li taqra' kif gej :-

### “5.0 COMMENTS ON APPELLANT’S ARGUMENTS & REFUSAL NOTICE

5.1 The proposed development has been refused by MEPA on the grounds that the demolition of the existing building is objectionable, as it is considered to be a building of architectural importance that is worthy of preservation. In fact, the existing building is presently being considered by MEPA for listing as a Grade 2 Scheduled Building, and hence by accepting the complete demolition of this building would result in conflicting with Urban Conservation Area policies, which

dictate that any building that is of architectural importance is to be preserved and conserved.

5.2 The main argument presented by the appellant to support this appeal is the fact that MEPA has given consent to the development of the adjacent sites on either side to be demolished and rebuilt with apartment blocks. The appellant claims that on the basis of this, the Authority is incorrect to state that the proposal is incompatible with the urban design and environmental characteristics or that it does not maintain the visual integrity of this area. The appellant continues to state that the present state of developments that have been permitted along Spinola Bay is now compromised by apartment blocks, as is being proposed in this application. The appellant concludes that on the basis of this, not allowing this development is an act of discrimination.

5.3 The Authority notes that while the appellant seeks to address the reasons for refusal by comparing the proposed redevelopment of this site to the site's context which has been compromised by apartment block development, the appellant however fails to justify why the existing building merits demolition. As already indicated in this report, the Authority has refused this application on the grounds that the demolition of the existing building is not desired, due to it being the oldest remaining building in Spinola Bay and due to its particular design features that adorn both of its facades. The manner in which the building context along the foreshore of Spinola Bay has been compromised by several redevelopment projects is reflected in the fact that this area is no longer zoned as an Urban Conservation Area. However, the presence of these redevelopment projects, even if directly adjacent to the site, does not justify the demolition of the existing building. Furthermore, even if the site is not located within an Urban Conservation Area, Structure Plan paragraph 15.10 clearly states that UCA policies are also applicable to such buildings which are worthy of preservation.

5.4 The Authority considers that by accepting the redevelopment of this site, rather than its rehabilitation, would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings of historic and architectural importance. This was also supported by the Heritage Advisory Committee (black 10 & 18), whereby it was recommended that the existing building is be retained, and is to be considered for scheduling. MEPA's Integrated Heritage Planning Unit also evaluated the site noting that the architectural and historic interest of the building exists on both the external and internal parts of the building, hence making the building worthy of preservation in its entirety or whereby development on the existing building fabric could be limited only to minimal interventions.

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5.5 The proposed complete demolition is not considered to portray good practice in urban conservation and would lead to the loss of a historical building. This would go against urban conservation policies, and in particular Structure Plan Policies UCO6, UCO 7, UCO 8 & UCO 13.”;

Ra s-sottomissjoni ulterjuri tal-Avukat Dottor Joanne Vella Cuschieri ghall-appellant tal-15 ta' Gunju 2012, li taqra' kif gej :-

“Illi b'referenza ghall-ahhar verbal fl-atti ta' dan l-appell, b'zieda mas-sottomissjonijiet u l-aggravji gia mressqa fl-appell originali, ninsab diretta sabiex naghmel il-punti segwenti:

Illi l-appellant jixtieq jaghmel enfasi fuq il-fatt li t-tlett ragunijiet ta' rifjut ghall-applikazzjoni hawn fuq imsemmija kienu kollha bbazati fuq il-fatt li dak iz-zmien is-sit kien jinsab fl-'Urban Conservation Area' u fost il-'policies' imsemmija li kienu qed jinghataw bhala raguni ta' rifjut kien il-BEN 2 tal-Pjan ta' Struttura b'referenza ghall-'visual integrity' taz-zona, il-UCO 8 li tippermetti biss bini kompatibbli maz-zona fil-UCA u l-Policy UCO 6 bl-iskuza li l-izvilupp propost jekk approvat 'would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within the Urban Conservation Areas.'

(1) Illi punt ta' principju jigi emfasizzat li s-sit in kwistjoni llum il-gurnata ma jinsabx fil-UCA. Per konsegwenza jirrizulta li t-tlett ragunijiet ta' rifjut llum ma ghandhom l-ebda bazi legali. Fil-fatt jirrizulta li fis-sena 2006 meta gie ppubblikat il-Pjan Lokali l-Awtorita' rrikonoxxiet li t-triq in kwistjoni ma timmeritax aktar li tkun fil-UCA u dan in vista ta' bosta zviluppi li saru fl-istess triq.

(2) Illi b'referenza ghal policy BEN 2 tal-Pjan ta' Struttura jirrizulta mir-ritratti annessi markati bhala ritratti A sa F li z-zona in kwistjoni tul dawn l-ahhar snin, bil-barka tal-MEPA giet zviluppata u mhux bi ftit. Jigi spjegat li r-ritratt A jirrapresenta s-sitwazzjoni kif kienet fl-2005 filwaqt li r-ritratt B juri sitwazzjoni tal-bini cirkondati kif inhu llum. Ritratti C sa E jinkludu 'photo montage' ta dak li qed jigi propost mill-applikant fuq is-sit. Ritratt F juri fid-dettal il-medda tat-triq kollha kif llum tidher minn naha ta' Spinola bil-bini kollu gdid approvat mill-Awtorita'. Jider car mill-istess ritratti li Prattikament kull sit adgacenti ghal dak involut f'din l-applikazzjoni sat-tarf tal-istess triq gie zviluppat f'bini gholi u li m'ghandu xejn mill-karatteristici ta' UCA. Sahansitra s-sit hajt ma' hajt ma' dak proprjeta' tal-appellant llum il-gurnata gie zviluppat fi blokk gholja ta' appartamenti filwaqt li n-naha l-ohra tas-sit hemm ukoll applikazzjoni pendenti ghall-izvilupp.

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Illi apparti minn hekk kif jirrizulta wkoll mir-ritratti esebiti, anki z-zona ta' wara dan is-sit giet zviluppata b'tali mod li tista' tghid li illum il-gurnata l-bini fuq is-sit involut huwa irrikonoxxibbli qalb il-blokok ta' appartamenti fil-genb tieghu u dawk ta' warajh. Wiehed ghalhekk jistaqsi x'baqa illum il-gurnata li l-Awtorita' qed tittanta ssalva mill-'visual integrity' taz-zona.

Jirrizulta bic-car illi kieku l-Awtorita' riedet verament ssalva d-dehera taz-zona kif forsi kienet tlettax-il sena ilu jew qabel, l-istess Awtorita' ma kinitx tohrog ghexieren ta' permessi fl-istess triq u f'dawk ta' warajja in kontradizzjoni ma dak li hija stess kienet qed tipriedka f'din l-applikazzjoni. Qed tigi annessa wkoll ma' din l-ittra lista ta' ghexieren ta' permessi ta' zvilupp mahruga fl-istess triq (dokument G), liema permessi lkoll jikkontradixxu bi shih ir-raguni ta' rifjut moghtija f'dan il-kaz partikolari.

(3) Illi b'referenza ghall-uzu tal-'policy' UCO 8 bhala raguni ta' rifjut jigi spjegat li din il-'policy' tirrikjedi li zvilupp propost ikun kompatibbli mal-bini tal-madwar u dan f'zona UCA. Fl-ewwel lok allura jerga jigi emfasizzat li din il-'policy' m'ghadhiex applikabbli stante li s-sit m'ghadux fiz-zona UCA. Izda li kieku kellu wiehed jimxi mal-principji enuncjati mill-istess UCO 8, kif jidher evidenti mir-ritratti ezebiti ma' din in-nota u in vista tan-numru mhux zghir ta' zvilupp gdid fil-madwar, anki f'dak adjacenti, bl-applikazzjoni tal-istess UCO 8 sabiex il-bini jkun kompatibbli mal-madwar ghandu fil-fatt jinghata dan il-permess ta' zvilupp u mhux jigi rifjutat. Kif jidher mir-ritratti l-bini ezistenti fuq is-sit illum jidher ferm ikrah u ma jaghmel l-ebda sens mill-lat ta' ppjanar meta kkomparat mal-bini ta' hdejh, tal-bqija tat-triq u ta' warajh. Ghal dawn ir-ragunijiet ukoll din ir-raguni ta' rifjut ma ghadiex aktar tissussisti.

(4) Illi l-ahhar raguni ohra ta' rifjut taghmel referenza ghall-'Policy UCO 6' liem 'policy' tiggustifika rifjut f'kaz li l-zvilupp propost 'would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within the Urban Conservation Areas.' Huwa car u ovvju li din ir-raguni ta' rifjut giet applikata biss ghal dan is-sit u mhux ghall-bqija tas-siti fl-istess triq u dawk ta' wara dan is-sit. Jekk wiehed jeskludi dan is-sit, jidher car li l-obiettivi tal-Pjan ta' Struttura kienu li jigu fil-fatt approvati binjiet gholjin fiz-zona kif fil-fatt gara bin-numru imdaqqs mhux hazing ta' permessi mahruga mill-istess Awtorita'. In oltre bil-bini ezistenti illum fuq is-sit u minghajru huwa car li ma hu ser ikun hemm ebda differenza sinjifikanti fit-'townscape' ntiza sabiex tigi protetta permezz tal-'Policy' UCO 6. Ghalhekk in vista ta' dan jirrizulta wkoll bic-car li lanqas din ir-raguni ta' rifjut illum ma ghad ghandha validita' kemm legali kif ukoll fattwali.

(5) Illi ssir referenza ghar-raba' raguni ta' rifjut li taqra kif isegwi:

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'4. The proposed demolition of the existing building and the erection of an apartment block is unacceptable since the existing building has an architectural and historical value as one of a group of houses typical of the traditional St. Julian's townscape. Its demolition and the erection of an apartment block is, therefore contrary to Structure Plan policy UCO 6, UCO 7 and UCO 13.'

Illi jidher li din ir-raguni ta' rifjut hija bbazata primarjament fuq l-allegat fatt li l-bini fuq dan is-sit jiffirma parti minn 'group of houses typical of the tradition St. Julian's townscape'. Jigi sottomess li filwaqt li din ir-raguni forsi kienet taghmel xi ftit sens ghoxrin sena' ilu, llum il-gurnata din ma ghandha l-ebda bazi fattwali stante li l-allegati 'group of houses' tipici llum il-gurnata tista tghid kwazi kollha twaqqghu u gew rimpjazzati bi blokko ta' appartamenti, nkluz fis-sit ezatt adjacenti ghal dak tal-appellanti. Llum-il gurnata ma tezisti l-ebda raguni valida fil-ligi ghalfejn l-Awtorita' qed tibqa tinsiti li tidistingwi bejn dan is-sit u siti ohra fejn b'mod diskriminatorju ghall-ahhar hija harget il-permessi ghal zvilupp minghajr ebda ezitazzjoni. Apparti minn hekk, ix-xenarju tipiku fi Triq Spinola llum il-gurnata m'ghadux wiehed tradizzjoni izda huwa wiehed ta' blokko ta' appartamenti enormi, ghaxierien minnhom u ghalhekk l-appellanti jistaqsu x'differenza ser taghmel blokko ohra. Sfortunatament llum-il gurnata huma l-binjiet fuq dan is-sit li jistonaw mal-bqija tal-ambjent u mhux bil-kontra. Ghalhekk din ukoll ma tikostitwixxix raguni valida sabiex l-appellant jigi diksriminat u ma jinghatax permess ta' zvilupp mitlub.

Ghaldaqstant l-appellant filwaqt li jaghmel referenza ghas-sottomissjonijiet kollha precedenti tieghu u tal-abbli Perit Dr. Edwin Mintoff kemm fl-atti tal-appell kif ukoll fl-atti tal-applikazzjoni, jitlob li dan it-tribunal jirrevoka r-rifjut u jordna l-hrug tal-permess ta' zvilupp bin-numru PA 2134/02."

Ghaldaqstant l-appellant filwaqt li jaghmel referenza ghas-sottomissjonijiet kollha precedenti tieghu u tal-abbli Perit Dr. Edwin Mintoff fosthom dawk kontenuti fit-talba ghar-rikonsiderazzjoni ta' din l-applikazzjoni, jitlob li dan it-Tribunal jirrevoka r-rifjut u jordna l-hrug tal-permess ta' zvilupp bin-numru PA 2134/02.";

Ra r-risposta tal-Awtorita' li giet prezentata lil dan it-Tribunal fl-24 t'Awissu 2012, li taqra' hekk kif gej :

"The appellant has submitted his comments on the 15th June 2012 (received by the Authority on the 20th June, 2012) in reply to the Authority's initial report to the Tribunal. The main arguments raised by the appellant are:

The existing building has no architectural or historical interest since it has sustained throughout the years significant alterations and accretions. Moreover its setting has



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been severely compromised by modern constructions. Therefore it lost any value it may have had since its significance was inseparably linked with the landscape it formed part, which landscape has now been altered beyond recognition.

Given that the existing building has no particular value, the Authority was not correct to refuse the application on the basis of Structure Plan UCO policies since these policies apply either in case of properties within UCAs and those listed in the National Protective Inventory. In this case the existing property is located mainly outside the UCA and the part of the existing property that is within the UCA is going to be retained. Furthermore the property is not listed in the National Protective Inventory.

The proposal seeks to conserve part of the historic facade and integrate it within the new development as requested by MEPA's Integrated Heritage Management unit ([IHM] now the Heritage Planning Unit). Therefore Reason for Refusal no. 4 which is based on the issue of demolition is not correct. IHM have also expressed themselves in favour to the proposed development.

The Authority had every chance to schedule the property. The fact that it did not schedule the property during this time is indicative that the Authority itself doubts whether the building is worthy of conservation.

Other old buildings of the same period were permitted to be demolished and new extensive developments on five and more floors were allowed in their place. The property in concern is the odd one out. Also the Authority's comment that this is the last old building in the neighbourhood and thus it should be conserved is fallacious since it was the Authority in the first place that created the present situation.

A report commissioned by the appellants indicate that the building sustained various alterations that impacted negatively on the original building including gold colour aluminium apertures. Moreover due to the other more recent buildings adjacent to it, the old building, whose historical value was never proved by the Authority and which the appellants are contesting, is actually an eyesore.

The local plan is clear that the site can be developed up to five floors and thus the appellant has a right to develop up to this height.

The Authority has the following comments to make:

### 2.1 The historical and architectural significance of the existing building

The fact that the building sustained alterations and accretions is not reason enough to merit demolition. On the contrary it can easily be restored to its former condition.

The Authority cannot comment on the appraisal report mentioned by the appellant since no copy was forwarded to her attention. Nevertheless, the Authority is attaching various documentation prepared and compiled by the Heritage Planning Unit within MEPA that testifies and elaborates on the significance of this building.

The existing building is not only the oldest building that remains in the area, it is actually the first building of significance to be constructed in the area - already visible in the 1898 survey sheets as a solitary stately home as documented in the attached reports. Period photographs also exist that show this building with only few other constructions in the vicinity.

Other buildings were permitted to be demolished in the area, because they did not enjoy the same qualities of this building as amply illustrated in the attached documents.

### 2.2 Re: The issue of proposed scheduling

The appellant is not correct to state that MEPA is not serious about scheduling the property as otherwise this would have taken place by now. The first time the proposed scheduling was presented to the MEPA Board was on the 22nd May 2008 - that is about 4 years ago. The MEPA Board did not refuse the proposed scheduling; they only requested further information from the owner's (now the appellant) architect (see attached copy of memo dated 11th June 2008). This information was never submitted. It is manifestly clear that this process is thus still ongoing.

### 2.3 Re: Applicability of Structure Plan UCO policies

Contrary to what the appellant has stated, the property subject to this appeal is indeed listed in the National Protective Inventory. It is listed as STJ 113 and has been listed since 31st July 2006 (copy attached). This means that in line with

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Paragraph 15.10 of the Structure Plan, the UCO policies are fully applicable to the property subject of this appeal.

### 2.4 Re: Issue of demolition and IHM's alleged approval

The appellant is not correct when he argues that no demolition is involved since the latest proposal will integrate the historic facade within the new development and that the IHM approved these latest drawings because

(i) the proposal involves the demolition of the entire building. The latest drawings and photomontages show that even the part within the UCA is to be demolished and built anew without having any relationship with the existing building. The only part of the existing development which is to be 'conserved' (after demolition) is the tower element that is to be integrated as a 'memory screen' rather than as a structural element in its own right (see documents at Red 113 in PA file).

(ii) at no point did the IHM approved the latest drawings. The IHM were very clear what can be considered as acceptable in memo at Blue 55 in PA file. The latest proposal has nothing to do with the IHM's recommendation.

In fact the IHM stated in minute 102 of the PA file that "a meeting was held with MEPA chairman and applicants on 28 August 2008. Previous minutes & insertions referred to minute 75 from DCC for refusal. Attempts with architect to submit fresh proposals as per previous minutes failed. Case is at status quo and applicants are to re-ask architect to comply with MEPA's request for fresh plans. Case is awaiting applicants'/architect's feedback".

Subsequently the IHM stated (minute 113) that further meetings took place and that other drawings and photomontages have been submitted at Red 113 in the PA file and the file can be referred for decision as it is. The IHM did not approve anything especially since the drawings at Red 113 even eliminated the setback above the tower structures.

### 2.5 Re: The case of PA4885/07

In PA 4885/07, the Authority approved the demolition of the adjacent building in spite of the HAC's comments because it was not proposed for scheduling and

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therefore there was no statutory protection that mitigated against the proposed demolition. However the Authority approved PA 4855/07 on condition that the impact on the adjacent historic building (i.e. the property which is the subject of this appeal) is mitigated by having the party wall suitably treated. A specific drawing was subsequently submitted and endorsed to this end – PA 4885/07/48C. This shows that the Authority even in PA 4855/07 recognised the importance of this historic property and strived to protect it. The Authority was always consistent in its protection of this historic property - it refused twice an application to demolish it and sought to mitigate the impacts caused by the adjacent development.

### 2.6 Re: Issue of height limitation of the local plan

The Authority did not refuse the application on height limitation. The Authority refused the application because it is detrimental to the existing historic building and not within the parameters set by the IHM in its memo at Blue 55 in the PA file.

The appellant is arguing that the development respects the height limitation of the local plan and therefore it should be approved. However the Authority notes that respect for the height limitation is only one of several criteria which a proposed development should achieve and this criterion must not be seen in isolation and as absolute but in a holistic manner taking into consideration in this case the value of the existing building.

This principle which has been adopted other times by the Authority was also confirmed by the Tribunal in the decision of PAB274/09 CF – PA 2610/07 where it stated:

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

"L-pjani lokali ma' jistghux jigu uzati wehedhom u b'mod totalment awtonomu fl-ippocessar tal-applikazzjonijiet. Huwa veru li l-pjanijiet lokali ghandhom kemm jista jkun jintuzaw fl-assessment tal-applikazzjonijiet ta' zvilupp ghaliex huma hafna izjed dettaljati, imma meta jinholoq xi dubju fuq principji ta' ippjanar, wiehed ghandu

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dejjem jirreferi lura għall-Pjan Strutturali bhala l-fond li fih hemm dikjarati il-valuri ta' ippjanar ta' pajjizna".

and

"Għalkemm il-Pjani Lokali huma dettaljati, wiehed ma jistax jippretendi li dawn jiehdu in konsiderazzjoni l-issues partikolari kollha li jirrizultaw minn kull triq, pjazza, bini, veduta, sit arkeologia, neighbourhood, eccetra f'kull lokalita' ta' pajjizna. [...] Għalhekk kull meta jinholq xi dubbju għandu jkun l-iStructure Plan li juri t-triq it-tajba".";

Ra n-nota ulterjuri tal-appellant li giet prezentata fil-20 ta' Frar 2014, u r-risposta tal-Awtorita' tad-29 ta' Frar, 2014;

Ra l-policies UCO 6 u UCO 13 tal-Pjan ta' Struttura;

Ra l-Protective Inventory of the Maltese Cultural Heritage, referenza STJ113;

Ra ukoll il-PA files bin-numru 2134/02, 3835/10 u 4885/07 u GF file 4030/03;

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

Ikkunsidra ulterjorment;

Illi l-proposta fl-applikazzjoni fi stadju ta' outline hija ntiza sabiex jitwaqqa' l-bini ezistenti li jikkonsisti min dar residenzjali antika kunsidrata bhala town-house tradizzjonali fil-fond numru 109/113 fi Triq Spinola, gewwa San Giljan, u minflok jinbena blokk ta' appartamenti residenzjali fuq hames sulari, sovrastanti parkegg fil-livell sotterran.

Illi għaldaqstant, il-kwistjoni principali li jirrigwarda dan l-appell hija it-twaqqiegħ tal-bini ezistenti li l-Awtorita' qieghda toggezzjona principalment għal-fatt li s-sit, li jagħmel parti minn kumpless ta' zewgt-id djar identici, għandu valur storiku u

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arkitettoniku li jimmerita li jigi presevat fl-intier kollu tieghu, skont il-policies fil-Pjan ta' Struttura, partikolarment UCO 6 u UCO 13.

Illi l-appellant qiegħed joggezzjoni għal dan ir-rifjut, u ressaq diversi ragunijiet, b'mod principali hekk kif gej: (i) li s-sit ma jinsabx fiz-zona ta' Konservazzjoni Urbana, u għaldaqstant kull referenza għal-din iz-zona fir-ragunijiet ta' rifjut huma għal kollox infondati; (ii) illi fil-fatt it-triq fejn jinsab hija kkaraterrizzata minn bini simili għal dak li qiegħed jigi propost fl-applikazzjoni, u għaldaqstant ma jezistix il-kuntest biex jiggustifika l-protezzjoni tal-bini ezistenti fuq is-sit; (iii) li l-bini huwa simili għal binjiet ohra li kienu ezistenti fl-istess triq u dawn twaqqghu bil-permess, u għaldaqstant m'għandux jitqies bhala bini ta' valur eccezzjonali minn dawk ezistenti fl-istess triq; u (iv) b'mod konsistenti qiegħed jagħmel referenza għal-permessi li hargu għal-zvilupp simili, fosthom fuq is-sit adjacenti bil-permess numru PA 4885/07, u għaldaqstant l-appellant qiegħed jitlob trattament simili.

Illi dan it-Tribunal seta' jinnota li l-fond mertu ta' dan l-appell jikkonsisti minn bini ta' town-house tradizzjonali, mibnija fuq zewg sulari mill-livell ta' Triq Spinola, b'zewg faccata be stili pjuttust differenti, cioe', dik fuq Triq Spinola u l-ohra x-Xatt tal-Bajja ta' San Giljan. Din ta' l-añħar hija speċjalment prominenti mill-promenade mad-dawra tal-bajja ta' San Giljan, u tispikka b'hala bini antik b'arkitettura nteressanti fost żvilupp modern u massic.

Din id-dar tiffirma parti minn kumpless akbar li jikkonsisti minn żewġ residenzi bil-istess stil ta' arkitektura (mirror image), għaldaqstant għandhom tqassim, għoli u stil arkitettoniku ugwali. L-abitazzjoni tikkonsisti f'kantina, pjan terran u l-ewwel sular, u fiha wkoll ġnien fuq in-naha ta' wara li jasal tax-xatt, b'boathouses sottostanti mall-livell tal-bahar.

Il-faccata ta' wara ta' dawn iz-żewġ residenzi flimkien jiffurmaw il-blokk ta' boathouses, li jiffurmaw terrazin u l-livell tal-ġnien quddiem il-dar, b'zewg turretti li jesporgu 'l fuq mill-livell tal-bejt b'disinn simili għal dak ta' kastell, bil-quccata mdawra bil-'crenellations'. Dawn it-turretti huma l-iktar fattur arkitettoniku li jisipkka fil-faccata ta' wara, u li fihom inkorporati twieqi kbar bi stil Neo-Gotiku, u anke gallerija tal-injam fil-livell ta' fuq il-ġnien.

Illi l-Awtorita' baqghet ferma fil-pozizzjoni tagħha dwar il-harsien tal-bini ezistenti, u prezentament l-Awtorita' għada qiegħda tikkunsidra dan is-sit bhala wiehed b'potenzjal għall-iskedar b'livell ta' protezzjoni fi Grad 2 skont il-policy UCO 7 fil-Pjan ta' Struttura. Fil-fatt is-sit huwa wiehed mill-proprietajiet imnizzla fil-lista ta' nventarju nazzjonali għall-protezzjoni.

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Illi dan it-Tribunal qieghed jaqbel ma' l-Awtorita' dwar il-protezzjoni tal-bini ezistenti. Dan it-Tribunal huwa tal-fehma li l-Awtorita' resqet bizzzejjed provi dwar l-importanza tal-bini, kemm minhabba l-istorja ta' l-istess bini fejn jirrizulta li huwa wiehed mill-ewwel bini f'din it-Triq Spinola, u li ghadu fi stat relattivament originali, kif ukoll mill-art arkitettoniku bi stili ta' disinn varji li jirrifletu l-epoka ta' meta nbeda dan il-bini.

Illi mill-banda l-oħra dan it-Tribunal ma jistax jinjora il-kuntest tal-erja tal-madwar fejn jinsab is-sit, li huwa kkaratterizzat minn bini modern, massic u xejn sensitiv ghal-karattru u l-bini li xi darba kien jikkarakterizza Triq Spinola. Prezentament is-sit flimkien mad-dar adjacenti mertu tal-appell 440/11 li qieghed jigi deciz kontestwalment ma dan l-appell, jinsab bejn zewg blokki ta' appartamenti, b'appogg gholi mikxuf li mhux facli jigi mitigat, u ghaldaqstant qieghed inaqqas b'mod irreparabbli l-valur kontestwali li xi darba dan il-bini kien igwadi. F'dan ir-rigward dan it-Tribunal qieghed jaqbel mas-sottomissjoni tal-appellant li l-erja, li fill-fatt ma taghmilx parti miz-zona ta' Konservazzjoni Urbana ta' San Giljan, ma hemmx streetscape uniformi li tista tigi kunsidrata bhala konsiderazzjoni materjali li twassal ghar-rifjut.

Illi huwa nuqqas serju li l-Awtorita' baqghet lura milli tiprotegi dan il-bini bi skedar hekk kif sar ghal bini iehor lejn in-naha tal-punent tas-sit (grupp ta' djar), u dan il-fatt seta' wassal ghal dewmien zejjed u ncertezza dwar il-potenzjal ta' zvilupp li l-applikanti f'dawn iz-zewg aplikazzjoni kienu qieghdin jipprovaw jottjenu. Madankollu, in-nuqqas ta' skedar m'ghandiex tkun raguni sabiex bini b'valur intrinsiku fih innifsu (u mhux ta' valur kontestwali biss) jigi mhares, u ghaldaqstant dan it-Tribunal, anke fil-kuntest tal-Policy UCO 13 tal-Pjan ta' Struttura, huwa tal-fehma li l-bini ezistenti m'ghandux jitwaqqa', u dan qieghed jigi kunsidrat l-istess fil-kaz tal-appell 440/11, fid-decizjoni li qieghda tinghata llum flimkien ma din id-decizjoni.

Dan it-Tribunal huwa propens li jikkunsidra zvilupp addizzjonali fuq il-bini ezistenti u dan sabiex fil-waqt li l-bini jigi restawrat, ikun possibli li jinbnew sulari addizzjonali simili ghal bini adjacenti, bi stil, volum u trattament simili ghal dak ezistenti. Huwa mportanti li fil-process tal-full development application, l-Awtorita' ghandha tevalwa l-proposta taz-zewg siti b'mod illi jigu kunsidrati flimkien, u trattari b'mod l-istess sabiex jigi zgurat li z-zewg siti jkollhom l-istess still, gholi, volum u arkitettura li jkun jidher bhala kumpless wiehed.

Illi dan it-Tribunal ser ihalli l-possibilita' lill-Awtorita' sabiex fl-istadju tal-full development application tkun tista' tikkunsidra alterazzjonijiet jew zidiet li jidrilha li huma necessarij, sabiex filwaqt li tizgura l-harsien tal-bini minn zvilupp eccessiv,

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inkuz il-protezzjoni ta' elementi arkitettonici esterni kif ukoll interni, ikun possibli li jsiru dawk l-alterazzjonijiet li jkunu utli, inkluz it-tnehhija ta' accretions, sabiex il-bini ezistenti kif ukoll dak addizzjonali ikunu adegwati u skont standards li jirriflettu l-htigijiet tal-llum.

Ghal dawn il-motivi, u wara li qies il-fattispeci tal-kaz, dan it-Tribunal qieghed jilqa' limitatament dan l-appell, ihassar ir-rifjut tal-permess ghall-izvilupp u jordna lis-Segretarju ta' l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar biex johrog il-permess fi zmien tletin gurnata bil-kondizzjonijiet li normalment japplikaw ghal permess outline, bir-reserved matters fir-rigward tal-'external appearance', 'landscaping' u 'parking', u biz-zieda ta' dawn il-kundizzjonijiet hekk kif gej:

"The proposal to be submitted in the full development application shall be subject to the following conditions:

- a. The existing building shall be retained in full and incorporated in the new development proposal, subject to the submission of a Restoration Method Statement. Alterations (external and internal) and extensions to the existing building, can be permitted but shall not interfere with the main architectural features of the existing building, subject to the satisfaction of the Authority;
- b. The new development on this site subject to this development permit together with the development on the adjacent site subject to permit PA 3835/10, should be part of a comprehensive design scheme, and shall be subject to the same development planning conditions. In this regard the proposal in the full development applications shall include the design treatment of the adjacent site to be considered and approved by the Authority;
- c. The design of the new development shall respect the architectural and symmetrical design features of the existing building, both on the main façade overlooking Triq Spinola and the back façade overlooking the waterfront;
- d. Building height shall not exceed 5 floors from Triq Spinola in accordance with the North Harbour Local Plan (map SJ4)."

## Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ma mmotivax id-decizjoni tieghu ghax ghalkemm ghamel apprezzament tal-fatti u evalwa jekk il-bini jikkwalifikax bhala bini ta' valur storiku u arkitettoniku, ma ghamilx apprezzament tal-policies u regolamenti biex jindirizza l-aggravji tal-appellant;



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2. It-Tribunal ghamel zball ta' ligi meta ibbaza d-decizjoni tiegħu fuq suppozzjonijiet u mhux fatti konkreti. It-Tribunal jagħmel diversi referenzi għal fatt li l-Awtorita kienet qed tikkunsidra li tiskeda l-binja pero dan qatt ma sehh u d-decizjoni hi bazata fuq il-potenzjal tal-iskedar u kwindi policies zbaljati, u impona kondizzjonijiet fil-permess a bazi ta' tali potenzjal tant li kkwota policy UCO 13 li hi policy li tapplika għal zoni ta' konservazzjoni meta s-sit jinsab barra minn tali zona u kkonkluda li l-bini hu ta' valur storiku u/jew arkitettoniku bla prova jew rapporti tangibbli;

3. Id-decizjoni kienet ultra petita bl-impozizzjoni ta' kondizzjonijiet billi qatt ma sar aggravju fuq xi kondizzjoni stante li l-Awtorita kienet cahdet il-permess, u għalhekk issostitwixxa ruħu għal Awtorita;

4. L-impozizzjoni tal-kondizzjoni (b) fid-decizjoni tmur oltre l-margini tal-poteri tat-Tribunal għax l-effett tagħha hu l-limitazzjoni tal-izvilupp permissibbli, billi rabtu ma zvilupp adjacenti cioe PA 3835/10 li hu estraneju għal appellant, għalkemm din l-applikazzjoni tkopri parti mis-sit fil-permess PA 3835/10. It-Tribunal għandu d-dritt jikkonsidra zviluppi adjacenti izda mhux jorbothom flimkien meta l-applikanti huma differenti u partijiet mis-siti huma differenti;

5. It-Tribunal ikkommetta zball meta ikkonferma li fiz-zona hemm commitment massici pero cahad it-talba tal-appellant għal zvilupp simili fiz-zona. Dan jikkostitwixxi diskriminazzjoni fit-trattament inugwali li l-appellant irceva. It-Tribunal applika policies in vaccum qisu ma jezisti ebda forma ta' commitment. L-istess Tribunal jirrikonoxxi illi s-sit jinsab bejn zewg blokki ta' appartamenti b'appogg għoli mikxuf li mhux facli jigi mitigat u għaldaqstant qed inaqqas b'mod irriparabbli l-valur kontestwali li xi darba dan il-bini kien igawdi.

### **L-ewwel aggravju**

Dan l-aggravju ma għandux mis-sewwa. It-Tribunal mhux biss ghamel apprezzament tal-fatti izda wkoll ikkonsidra n-natura taz-zona u l-binja cioe illi l-binja tinsab fl-inventarju nazzjonali għal protezzjoni liema sottomissjoni tal-Awtorita mhix kontradetta u għalhekk implicitament it-Tribunal irrikonoxxa li japplikaw għaliha l-policies ta' urban conservation areas billi l-artikolu 15.10 tal-pjan ta' struttura jghid illi UCA policies japplikaw għal binjiet li jisthoqqilhom preservazzjoni. In oltre t-Tribunal ikkonsidra l-izvilupp fil-kuntest tal-policies UCO 6 u UCO 13 cioe dak għal preservazzjoni ta' certi binjiet u demolizzjoni ta' valur storiku jew arkitettoniku. F'dan il-kuntest it-Tribunal wasal għal konkluzzjoni illi din il-binja li tagħmel parti minn kumpless bin-numri 109 sa 113 kienet ta' valur arkitettoniku minhabba l-istil tagħha u

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storiku fis-sens illi l-istorja taghha skond kif deskritt mill-Awtorita, u t-Tribunal qabel maghha, turi illi kienet gia vizibbli fis-survey sheets tal-1898 u tidher bhala dar ta' importanza sinifikanti solitarja fiz-zona. Ghalhekk zgur li l-appellant ma ghandux ragun jissottometti illi d-decizjoni tat-Tribunal kienet bazata fuq apprezzament tal-fatti bla ma indirizza l-aggravji. Tant indirizza l-aggravji illi r-rifjut tal-Awtorita biddlu f'approvazzjoni minhabba fatturi ohra ezistenti fiz-zona fosthom li z-zona per se hi karatterizzata minn bini modern u mhux zona UCA.

### **It-tieni aggravju**

In kwantu ghal parti tal-aggravju marbut mal-iskedar, il-Qorti ma taqbilx mal-appellant illi t-Tribunal gie indott fid-decizjoni peress illi l-Awtorita kienet qed tikkonsidra l-iskedar. It-Tribunal sostna biss bhala argument u mhux bhala xi bazi sostanzjali ghad-decizjoni illi l-Awtorita ma messitx kaxkret saqajha ghal diversi snin jekk kellha intenzjoni tiskeda l-binja fejn allura din il-Qorti tirrimarka t-Tribunal kien jasal ghal konkluzzjoni ferm diversa minn dik raggunta meta jitqies xi zvilupp jew ahjar nuqqas ta' zvilupp jista' jsehh f'sit skedat. Ebda policies relattivi ghal skedar kwindi ma ntuzaw mit-Tribunal izda argumenti sensittivi ghan-natura tal-binja qua binja imnizzla fl-inventarju nazzjonali li jimmeritah protezzjoni pero fl-ambitu ta' dak ezistenti fiz-zona illum minghajr ma xxekkel ghal kollox l-izvilupp. Il-kundizzjonijiet imposti ghal hrug tal-permess huma kompatibbli ghan-natura tal-binja mhux kif sottomess mill-appellant ghax it-Tribunal zbalja li qies iz-zona bhala wahda ta' konservazzjoni. In kwantu l-mod kif qies il-binja, il-fatt li qieghed fl-inventarju nazzjonali hi prova per se tan-natura tal-binja u mhux korrett l-appellant li jghid li t-Tribunal ta importanza lil binja bla bazi ta' rapport li jsostni dan.

### **It-tielet aggravju**

Dan l-aggravju wkoll hu bla bazi. It-Tribunal ghandu d-dritt meta jilqa' appell ghal zvilupp li jimponi kondizzjonijiet u dan kif jitlob l-attikolu 41(13) tal-Kap. 504. L-appellant isostni li t-Tribunal hu marbut biss li jiddeciedi l-aggravju u fil-fatt hi l-fehma tal-Qorti li dan hu precizament dak li ghamel it-Tribunal cioe ikkonsidra l-aggravju principali tal-appellant illi l-izvilupp propost kellu jigi approvat mhux michud. Hu wasal ghal konkluzzjoni illi fil-fatt l-appellant kellu ragun pero mhux f'kollox u ghamel kondizzjonijiet sabiex l-Awtorita, meta tigi

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biex tevalwa full development permit, tiehu in konsiderazzjoni l-kondizzjonijiet li t-Tribunal dehrlu idoneji għac-cirkostanzi tal-kaz. Ir-referenza tal-appellant għas-sentenza fl-appell 151/2012 kienet barra mill-kuntest tal-fattispecie ta' dan il-kaz u għalhekk kwotata hazin. Il-principju imsemmi f'dak l-appell gie applikat f'dan il-kaz minghajr mat-Tribunal ikkommetta zball billi mar oltre dak mitlub jew barra dak mitlub.

### **Ir-raba aggravju**

Din il-kundizzjoni li skond l-appellant tmur lil hinn mill-poteri tat-Tribunal għax rabat zewg applikazzjonijiet u zviluppi flimkien meta l-applikanti huma differenti u parti mill-binja hi differenti fiz-zewg applikazzjonijiet, ma hix kif qed ipingiha l-appellant. It-Tribunal fil-kundizzjoni (b) qal illi meta l-Awtorita tivvaluta z-zewg applikazzjonijiet għandha tiehu hsieb li ikun wiehed li jinkorpora kompressivament il-binjiet bin-numri 109 sa 113 u jigu imposti l-istess kondizzjonijiet. It-Tribunal qal hekk għaliex id-dar in kwistjoni tiffirma parti minn kumpless akbar li jikkonsisti minn zewg residenzi bl-istess stil ta' arkitettura (minor image). B'dan kostatat, dak li obbliga lil Awtorita hu illi fl-evalwazzjoni individwali tal-applikazzjonijiet irid jigi kunsidrat u mizmun ferm li d-disinn fiz-zewg applikazzjonijiet jibqa' jirrispekkja l-aspett viziv u arkitettoniku tal-binjiet ezistenti. Madankollu ma rabatx l-izviluppi li għandhom isiru flimkien tant li l-ewwel kondizzjoni tirreferi għal permess ta' zvilupp fuq il-bini ezistenti minghajr referenza għall-izvilupp li jista' jigi propost fil-bini adjacenti. Ir-rabta tinsab biss fejn jidhol il-preservazzjoni tal-binja ezistenti kif inhu. Li kieku ma sarx hekk, kien ikollu ragun l-appellant li jallega li ma kienx qed jintuza l-istess kejl għal zviluppi simili, biswit xulxin. It-Tribunal ikkunsidra mhux l-izvilupp adjacent kif jallega l-appellant għax l-izvilupp jista' jkun differenti peress illi mhux marbut wiehed mal-iehor. It-Tribunal sahaq biss illi l-preservazzjoni tal-binjiet ezistenti identici fiz-zewg kazi għandha tircevi l-istess trattament fiz-zewg kazijiet.

### **Il-hames aggravju**

Dan l-aggravju ma fihx mertu. It-Tribunal kif inghad ha nota b'serjeta dwar l-izvilupp massiv fiz-zona tant li kontra d-decizjoni tal-Awtorita, it-Tribunal approva li jsir zvilupp konformi mal-izvilupp fiz-zona. Pero l-fatt li parti mill-izvilupp kien ser isir fi proprjeta fl-inventarju nazzjonali, dan il-fattur sostanzjali għall-ezitu tal-applikazzjoni kellha tittiehed in

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konsiderazzjoni u tinstab soluzzjoni li tissodisfa l-importanza tal-binja ezistenti u d-dritt tal-applikant li jizviluppa sa fejn possibli skond in-natura taz-zona. Ma saret ebda diskriminazzjoni fit-trattament ghax ebda similitudni ma hi riskontrabbli ghal binjiet ohra li twaqqghu. It-Tribunal kien mhux biss konformi mal-pjanijiet u policies izda sensittiv ghan-natura taz-zona u d-drittijiet u aspettativi tal-applikant safejn permissibbli u sostenibbli fic-cirkostanzi.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Maria Victoria Coppini u David Coppini u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-3 ta' Gunju 2014. BI-ispejjez kontra l-appellanti.

## **< Sentenza Finali >**

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