



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 34/2014

Joe Sammut

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joe Sammut 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 PA 3835/10 'to demolish existing building and to construct garages, flats and a penthouse';

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:

Illi l-appellant applika fi stadju ta' outline sabiex jitwaqqa' l-bini ezistenti li jikkonsisti min fond konsistenti minn town-house numru 112/113 li tinsab fi Triq Spinola, gewwa San Giljan, u minflok jinbena blokk ta' apartamenti residenzjali fuq hames sulari, sovrastanti parkegg fil-livell sotterran.

Illi l-Kummissjoni tal-Ambjent u l-Ippjanar, irrifjutat l-applikazzjoni ghal din ir-raguni segwenti :-

1. The proposed demolition is not considered as a good example in urban conservation and would lead to the loss of a historical building. The proposal would therefore detract from the overall objectives of the Structure Plan policies UCO 6 and UCO 13, which seeks to preserve and enhance buildings having historic and architectural significance both within and outside the Urban Conservation Area.

Ra l-appell tal-Perit Brian Ebejer f'isem l-appellant li jaqra' kif gej:-

"On behalf of the applicant Mr. Joe Sammut, I hereby submit an appeal against refusal of PA 3835/10.

I am attaching a copy of my letter dated 21 April 2011 addressed to MEPA which explains the applicant's position with regards to this application.

The applicant strongly believes that the treatment his application should be similar to the treatment given to other similar applications in the same street, however he is

Kopja Informali ta' Sentenza

willing to change the proposal so that besides retaining the boathouses on his site, the façade on Triq Spinola is also retained.

In view that is an outline application, the Tribunal is requested to view the existing building in order to assess its true architectural and historic value and to add any condition it may deem necessary for the approval of the eventual full development application.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lill-Tribunal fil-14 ta' Settembru 2011, u li jaqraw kif gej:

“5.2 The Directorate has the following comments to make:

The proposal is proposing the demolition of a building which is earmarked for grade 2 scheduling in view of its architectural importance. The building will be totally demolished from the side fronting Triq Spinola as well as the part containing the castle-like turrets and the gothic style windows, which are by far the most unique elements of the existing building. The proposal will not demolish the lower two floors on the Spinola foreshore.

The proposal would result in the creation of five residential floors and overlying penthouse together with two floors of underground parking.

5.2.1 The issue relating to the proposed scheduling of the site.

The appellant's argument that if scheduling was really merited this would have been already granted is nonsensical. Scheduling a property is not and should not be limited by a time frame. Should redevelopment of any sites earmarked for scheduling be allowed would create a dangerous precedent which would run counter to good planning guidelines for the protection of traditional urban and architectural characteristics.

5.2.2 The issue relating to PA4885/07 and comments and recommendations by the HAC and HPU

Kopja Informali ta' Sentenza

The importance of the building in question has been established without any hint of doubt by the HAC and HPA – who are recognised experts in the field of historical architecture. The Authority might in view of particular and exceptional circumstances approve developments which the HAC and HPU have objected to.

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. Thus it felt that there was no statutory protection that mitigated against the proposed demolition. On the other hand, however, the same board during the same decision of PA 4885/07 recognised the importance of the building being considered in this appeal and specifically requested that the new party wall to be created by way of PA 4885/07 was to be treated and designed to lessen the impact on this historic building. In fact, a specific drawing was submitted and endorsed to this end – PA 4885/07/48C

5.2.3 The issue relating to the demolition of buildings as old and in the same street and to the loss of architectural importance due to the demolition of similar buildings.

This argument, based on the fact that the Authority has given consent to the demolition of the adjacent sites does not add weight to the argument requesting the demolition of the existing building. In the DPAR report, it has been made clear that the authority's refusal is based on the fact that this building is the oldest remaining building in Triq Spinola and demolition is not desired particularly due to the particular design elements and features on both facades.”;

Ra s-sottomissjoni ulterjuri tal-Avukat Dottor Ian Spiteri Bailey għall-appellant tal-4 ta' Jannar 2012, li taqra' kif gej:

“Reference is made to the acts of this case, including the DPA Report prepared by the Directorate, the submissions made by the Authority to this Tribunal on the 9th September 2011, as well as the appeal submitted by Architect Brian Ebejer dated the 6th June 2011, on behalf of the appellant.

This note will reply and comment upon the position adopted by the Authority, in order to aid the Tribunal in reaching a just and equitable decision with regard to this application.

Kopja Informali ta' Sentenza

The Authority's decision, subject to appeal and decided during the EPC meeting of the 27th April 2011 refuses the above-stated proposal based upon the claim that - the proposed demolition is not considered as a good example in urban conservation and would lead to the loss of a historical building.

The Authority further claims that the application therefore contradicts Structure Plan Policies UCO 6 and UCO 13.

Structure Plan Policies UCO 6 and UCO 13

The above-mentioned policies apply to so-called Urban Conservation Areas and are concerned with the preservation of architecturally and historically significant buildings and landscapes.

Policy UCO 6 therefore provides that within such areas, 'the basic objective will be to preserve and enhance all buildings, spaces, townscape and landscape which are of architectural or historical interest. . .', whilst

Policy UCO 13 stipulates that wherever possible, 'buildings of architectural, historical and townscape importance, gardens, and other areas of architectural or historical interest will be conserved'.

Rejection of the development proposed under PA/3835/10 is therefore clearly based entirely upon the premise that the application in question concerns a site of architectural or historical interest which merits conservation. The following observations must be made in this regard:

Architectural and Historical Value

The DPA Report prepared by the Directorate with regard to this particular application makes reference to the consultations which took place with the Heritage Management Unit, as well as the Heritage Advisory Committee, both of which registered their opposition to the project based on the fact that the building in question is 'the oldest remaining building in Spinola Bay and it contains particular design features on both facades, whilst its internal parts also have significant architectural importance'.

In this regard, the attention of this Tribunal must primarily be drawn to the conclusions reached by Architect and Restoration Consultant Dr. Claude Busuttill, in his appraisal report dated September 2011 (attached and marked as Doc. A). The

Kopja Informali ta' Sentenza

said report acknowledges the fact that the building concerned is one of the oldest surviving buildings in Spinola Bay. It simultaneously however points out, that the said building has in truth undergone a number of alterations over the years, and also presently demonstrates various accretions 'some of which mar the aesthetics of the same building'. One such accretion has recently been added to the facade of the building which overlooks Spinola Bay, thereby concealing part of the original facade and creating a discrepancy with the adjacent facade which is still intact, despite being in a bad state of conservation. In addition to this, much of the original timber structures have been removed and replaced by gold-finished aluminium apertures 'which detract from the aesthetic appeal of the facade'. It is thereby evident that despite its status as one of the oldest buildings in the area, the building in question has not been maintained in its pristine state and has undergone various changes both from a structural as well as from an aesthetic perspective, thus undermining the conclusions of the HMU and HAC.

In addition to the above observations the report also highlights the fact that the particular setting of which the said building previously formed part, 'has been severely compromised by modern construction which has taken place during the past two decades'. The Spinola Bay landscape is now characterized by the construction of several blocks of flats, as well as the Portomaso development and the Cavalieri Hotel which lie a couple of metres away from the site of the proposed development. The extension of the Portomaso Complex has also had the effect of providing the background to the site in question when looked at from across Spinola Bay. According to the said report therefore, 'without its context and its landscape value this building has no aesthetic value and as a matter of fact is now itself an eyesore within a heavily developed foreshore'.

In his appeal submitted on behalf of the appellant, Architect Ebejer noted that the building in question is located in a street which was developed within a span of a few years in the twentieth century. This implies therefore that 'all the buildings in the street were of approximately the same historical importance' and despite this 'the demolition of most of the other buildings has been allowed'.

In view of the present circumstances therefore, it is evident that contrary to the claims made by the Authority, the building which forms the subject-matter of the development proposed under PA/3835/10 is not in fact of any particular historical or architectural value. The current proposal does not in any manner fall within the ambit of Policy UCA 6 and UCA 13, and therefore the refusal to grant development permission on this basis is completely unfounded.

Scheduled Property

Kopja Informali ta' Sentenza

Both the DPA Report, as well as the submissions made by the Authority to this Tribunal emphasize the fact that the site of the proposed development 'is earmarked for Grade 2 scheduling'.

In truth, as noted by Architect Ebejer in his appeal submitted on behalf of the appellant, the issue of scheduling the property in question was originally raised prior to the 16th July 2002 and is still under consideration nine years later. a state of affairs which inevitably gives rise to doubts as to whether the Authority itself considers the building worthy of scheduling. In its submissions to this Tribunal, the Authority argues that 'scheduling a property is not and should not be limited by a time frame' because this would 'create a dangerous precedent'. In this regard one must necessarily observe that contrary to that surmised by the Authority, the mere fact that a property is proposed for scheduling cannot automatically create a valid justification for the refusal of any related development permission over an indefinite period of time. Allowing such a manifestly unjust situation to subsist would itself create a dangerous precedent. whereby any site or property albeit not yet scheduled property. but simply proposed as such would be excluded from any form of potential development.

This situation violates to very important principles of justice - and given the nature of this Tribunal as a quasi-judicial body, then such principles ought to be adhered to and be respected.

(a) the principle of certainty - no person or person's property should be left in uncertainty as to the legal status and rights thereon, and

(b) the principle of legitimate expectation - in that once the Authority has for such a long time refrained from Scheduling, then it is the appellant's legitimate expectation to pre-suppose that there should not be an issue for his application.

The Authority's assertions to this effect are entirely UNJUST and UNFOUNDED at law and in fact and ought in no way to be considered valid either in fact or at law.

Other Development in the Area

One of the most pertinent arguments in favour of approval of the proposed development is precisely the significant amount of development surrounding the site in question, which has previously been deemed acceptable by the Authority and which has subsequently been approved. Particular reference must be made in this regard to PA/4885/07 which concerned the demolition of the building adjacent to the one currently under consideration and its replacement with a five-storey apartment

block. The Heritage Advisory Committee had actually recommended that permission be refused in this case, however this was overridden by the Authority which granted the development permission requested.

In its submissions made to this Tribunal the Authority justifies itself in approving the above application in spite of the Committee's recommendation simply, 'because it was not proposed for scheduling'. The Authority further states, as previously mentioned, that its refusal of the present proposal 'is based on the fact that this building is the oldest remaining building in Triq Spinola and demolition is not desired particularly due to the particular design elements and features on both facades'.

It is somewhat difficult to comprehend how the Authority is attempting to validly justify its refusal in this case by pointing out that the building in question is the oldest remaining building, whilst simultaneously admitting that it actually approved the demolition of similar buildings in the same road all of which (as explained above by Architect Ebejer) were constructed approximately around the same period of time. How can the Authority be justified in first approving the demolition of several of such old buildings and the construction of apartments in their stead. then subsequently refusing permission for the demolition of one such building on the ground that this is the oldest one remaining?

As noted by Architect Busuttil in the above-mentioned report, any architectural and historical value which the building in question may have enjoyed is inextricably linked with the landscape which it formed part of. The said landscape has been irreversibly and entirely altered due to the construction of modern apartments on either side of the site of the proposed development, as approved by the Authority itself. As Architect Ebejer points out in his appeal, 'the overall visual impression from across the bay is that there is a gap in the row of buildings and any architectural merits which the two buildings may once have had, have now been obliterated'.

Architect Ebejer also makes reference to the Local Plan for the area in question which specifically permits a building height of five floors. This serves to reinforce the fact that the building in question was not deemed to merit special consideration and therefore refusal of the proposed development on this basis is unwarranted.

In view of all of the above, there is no doubt that in the circumstances prevalent today, there is absolutely no reason why the proposed development should be refused. The Authority's assertions to the effect that the property is proposed as scheduled (and has in fact been proposed as such for the past nine years) cannot

Kopja Informali ta' Sentenza

be allowed to subsist as a valid basis for the refusal of the present application, without committing a grave injustice to the detriment of the appellant.

The application de quo should not be read, studied and decided upon within the context of 60 or 70 years back - but within the context of today's surroundings, development, context and architectural developments on site and the surroundings. Nor should consideration be taken as to who might be objecting to this proposal for his or her personal reasons - as justice should not only be done, but also be seen to be done.

Development Permission Application PA2134/02

The above-mentioned application is of particular relevance with respect to PA/3835/10 due to the fact that the latter proposal is comprised within the development proposed under the said PA/2134/02, namely the demolition of the existing building at No. 109-113 Triq Spinola, San Giljan, and the substitution of the same with apartments and garages.

It must be primarily be noted in this regard, that following submissions made to the Authority by several objectors in relation to PA/2134/02, amendments were made to the original development plans in order to ensure that:

The existing two-storey facade that adjoins the foreshore will be retained in order to guarantee adherence to the policy regulating the Urban Conservation Area of St. Julians.

The proposed development will be receded, in order to ensure that the said apartments do not create a discrepancy within the landscape as viewed from the Spinola Promenade.

The decision to refuse permission for the proposed development under PA/2134/02 was taken by the Authority on the 27th October 2005, and later confirmed on the 4th May 2010, following a request for reconsideration. It must be noted that the appeal concerning this application is still pending and therefore no final decision has as yet been taken in its regard. Without prejudice to any of the arguments previously submitted in opposition to the decision to refuse permission for PA/3835/10, the following observations ought to be made also with regard to PA/2134/02:

Kopja Informali ta' Sentenza

The said application PA/2134/02 was refused by the Authority due to the fact that the proposed development would not 'maintain the visual integrity a/the area' thereby contradicting Policy BEN 2, and furthermore that the proposal does not comply with the provisions of Policies UCO 6, UCO 7, UCO 8 and UCO 13, all of which seek to regulate development in Urban Conservation Areas (UCA).

Perhaps the most pertinent argument to be made in this regard, is precisely that put forward by Architect Dr. Edwin Mintoff in his request for reconsideration submitted on behalf of the applicant dated the 22nd November 2005, and also referred to by Dr. Peter Borg Costanzi in his appeal of the 8th June 2010 submitted on behalf of the said appellant. The said submissions both seek to highlight the fact that the Authority's "attempt to justify refusal of the development based upon the above-mentioned policies which relate to Urban Conservation Areas is entirely unfounded as in reality, the development does not lie within such areas and therefore Policies UCO 6, UCO 7, UCO 8 and UCO 13 do not apply to the proposal in question.

Maps SJ4 and SJ6 of the North Harbours Local Plan illustrate the borders of the UCA and clearly indicate that the said Area is in fact limited to the foreshore below Spinola Road. In truth, the part of the development which does in fact fall within the ambit of the said policies, namely the two-storey facade which adjoins the foreshore, is to be retained in order to ensure full compliance with the applicable policies, including with Policy BEN 2 as the 'visual integrity' of the protected area will therefore be maintained.

In its submissions made to this Tribunal on the 22nd July 2010 in relation to PA/2134/02, the Authority makes reference to Structure Plan Paragraph 15.10 in an effort to argue that 'even if the site is not located in an Urban Conservation Area' the said clause states that UCA policies are nevertheless relevant to such buildings as are worthy of preservation. The attention of the Tribunal must be drawn to the fact that whilst Paragraph 15.10 does indeed state the above as cited by the Authority, this same clause continues to provide:

'The Planning Services Division, in collaboration with other agencies, has compiled a list of such buildings and spaces in the National Protective Inventory, and it is the intention to designate such buildings and spaces as Buildings of Architectural and Historical Interest and to extend to them the protection afforded to Urban Conservation Areas.'

It cannot be more evident that the above-cited clause does allow for the situation where certain buildings are afforded the special protection generally applicable to Urban Conservation Areas, however such exceptional situation clearly applies only

Kopja Informali ta' Sentenza

to the list of such buildings and spaces as enumerated in the National Protective Inventory. The buildings which fall under PA/2134/02 and therefore also PA/383S/10 do not form part of the above-mentioned list and therefore Paragraph 15.10 cited by the Authority is completely irrelevant in their regard.

The Authority also seeks to legitimize its refusal of PA/2134/02 by reference to the fact that the property is proposed for scheduling, and by claiming that that the arguments made by the appellant to the effect that several other permits have in fact been issued approving development in the area (even development adjacent to the property in question - PA/488S/07) are not sufficient cause to justify approval of this application. The various arguments put forward above in relation to PA/3835/10 are applicable in this respect, are evidently concrete and valid considerations and need not therefore be reiterated at this juncture.

One particular observation ought to be made however, with reference to the letter of objection submitted by Dr. Mario de Marco on the 15th September 2005, where it is stated with regard to PA/2134/02 that 'it is noted that the proposed development constitutes an extreme overdevelopment to the site in question'.

A mere cursory glance at the Spinola Bay foreshore undoubtedly confirms the fact that this particular area has been the subject of development. It must be noted however that this development has all been carried out with the approval of the Authority itself. It would be completely nonsensical to argue that the development of the property in question would constitute extreme overdevelopment, considering the fact that the Authority has approved the demolition of buildings and the construction of apartments on either side adjacent to the site in question and much much more in the area. This being said therefore any attempt to object to the proposed development both under PA/2134/02 as well as under PA/3835/10 upon this basis is entirely unfounded and without valid basis.

Final Considerations

Taking all the above into consideration both in relation to PA/2134/02 and PA/3835/10, this Tribunal ought to come to the conclusion that the appellant rightly feels aggrieved by the decision taken with respect to his application and proposal.

The Authority's refusal to grant permission for the proposed development is evidently unjust and unreasonable in the circumstances previously elaborated upon, especially when considering that in truth the property in question does not enjoy any particular architectural or historical interest, due to the fact that any such value previously attributed to the said property was inseparably linked with the landscape

Kopja Informali ta' Sentenza

of which it formed part, which landscape has been the subject of substantial development carried out with full approval of the Authority.

The Tribunal is being kindly asked to consider all the arguments brought forward by the appellant, and to take into account the fact that the said appellant provided both the Authority, as well as this Tribunal with substantial, well-founded, valid arguments with regard to each of the justifications which the Authority has put forward in an attempt to back its decision to refuse the granting of development permission.

It is in view of all of the above considerations that, on behalf of the applicant, I humbly ask this Tribunal to overturn the decision of the 27th April 2011 taken with regard to this proposal, and consequently to proceed to approve the proposal under those terms and conditions which the Tribunal might deem fit to impose.”;

Ra r-risposta tal-Awtorita' li giet prezentata lil dan it-Tribunal fil-15 ta' Mejju 2012, li taqra' hekk kif gej:

“The appellant submitted on the 4th January 2012 a reply to the Authority's initial report to the Tribunal. The appellant's main arguments are the following:

The existing building has no architectural or historical interest since it has sustained throughout the years significant alterations and accretions. Moreover its setting has 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 policies UCO 6 and UCO 13 (and also UCO 7, UCO 8, and UCO 13 in the case of PA2134/02) since these policies apply either in case of properties within UCAs and those listed in the National Protective Inventory.

The Authority had over 9 years 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 allowed in their place.

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 was 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 the scheduling process has been taking 9 years. 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

Kopja Informali ta' Sentenza

The appellant takes the Authority to task because it refused the application on the grounds of the Structure Plan UCO policies since these are applicable only in case that the property is within UCA, it is scheduled and it is listed in the National Protective Inventory and according to the appellant, the property in question is neither of these.

Without going fully into the merits of the appellant's argument, 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 Paragraph 15.10 of the Structure Plan, the UCO policies are fully applicable to the property subject of this appeal.

2.4 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 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.”;

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 3835/10, 2134/02, u 4885/07 u GF file 4030/03;

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

Ikkunsidra ulterjorment;

Kopja Informali ta' Sentenza

Illi l-proposta fl-applikazzjoni fi stadju ta' outline hija ntiza sabiex jitwaqqa' l-bini ezistenti li jikkonsisti min dar residenzjali kunsidrata bhala town-house tradizzjonali fil-fond numru 112/113 fi Triq Spinola, gewwa San Giljan, u minflok jinbena blokk ta' apartamenti residenzjali fuq hames sulari, sovrastanti parkegg fil-livell sotterran.

Illi ghaldaqstant, il-kwistjoni principali li jirrigwarda dan l-appell hija it-twaqqiegh tal-bini ezistenti li l-Awtorita' qieghda toggezzjona principalment ghal-fatt li s-sit, li jaghmel parti minn kumpless ta' zewgt-id djar identici, ghandu valur storiku u 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 qieghed joggezzjoni ghal dan ir-rifjut, u ressaq tlett ragunijiet principali f'dan ir-rigward, (i) li s-sit ma jinsabx fiz-zona ta' Konservazzjoni Urbana, u fil-fatt it-triq fejn jinsab hija kkaraterrizata minn bini simili ghal dak li qieghed jigi propost fl-applikazzjoni, u ghaldaqstant ma jezistix il-kuntest biex jiggustifika l-protezzjoni tal-bini ezistenti fuq is-sit; (ii) li l-bini huwa simili ghal binjiet ohra li kienu ezistenti fl-istess triq u dawn twaqqghu bil-permess, u ghaldaqstant m'ghandux jitqies bhala bini ta' valur eccezzjonali minn dawk ezistenti fl-istess triq; u (iii) b'mod konsistenti qieghed jaghmel referenza ghal-permessi li hargu ghal-zvilupp simili, fosthom fuq is-sit adjacents bil-permess numru PA 4885/07, u ghaldaqstant l-appellant qieghed 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-añhar hija speċjalment prominenti mill-promenade mad-dawra tal-bajja ta' San Giljan, u tispikka bhala bini antik b'arkitettura nteressanti fost żvilupp modern u massic.

Din id-dar tiffirma parti minn kumpless akbar li jikkonsisti minn żewġ residenzi bl-istess stil ta' arkitektura (mirror image), ghaldaqstant ghandhom tqassim, għoli u stil arkitettoniku ugwali. L-abitazzjoni tikkonsisti f'kantina, pjan terran u l-ewwel sular, u fiha wkoll gnien 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-gnien quddiem il-dar, b' zewg turretti li jesporgu 'l fuq mill-livell tal-bejt b'disinn simili ghal 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 tweqi kbar bi stil Neo-Gotiku, u anke

Kopja Informali ta' Sentenza

gallerija tal-injam fil-livell ta' fuq il-gnien (din tinsab fis-sit adjacenti mertu tal-appell numru 148/10).

Illi l-Awtorita' baqghet ferma fil-pozzizzjoni taghha dwar il-harsien tal-bini ezistenti, u prezentament l-Awtorita' ghadha qieghda tikkunsidra dan is-sit bhala wiehed b'potenzjal ghall-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 ghall-protezzjoni.

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 bizzejjed 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-att arkitettoniku bi stili ta' disinn varji li jirrifletu l-epoka ta' meta nbeda dan il-bini.

Illi mill-banda l-ohra 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 jikkatterizza Triq Spinola. Prezentament is-sit flimkien mad-dar adjacenti mertu tal-appell 148/10 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 irreparabli 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 applikazzjoni 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 148/10, 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

Kopja Informali ta' Sentenza

Importanti 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 zgurati 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 necessarji, sabiex filwaqt li tizgura l-harsien tal-bini minn zvilupp eccessiv, inkuz il-protezzjoni ta' elementi arkitettonici esterni kif ukoll interni, ikun possibli li jsiru dawki l-alterazzjonijiet li jkunu utli, inkluz it-tnehhija ta' accretions, sabiex il-bini ezistenti kif ukoll dak addizzjonali ikunu adegwati u skont standards li jirrifteu l-htigijiet tal-illum.

Ghal dawn il-motivi, u wara li qies il-fattispeci tal-kaz, dan it-Tribunal qed jilqa' 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 standard 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 2134/02, 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)."

Kopja Informali ta' Sentenza

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. L-ewwel kundizzjoni imposta mit-Tribunal fl-approvazzjoni tal-outline permit hi neboluza billi ma tippermetti ebda tidbil intern u estern fil-binja ezistenti u b'hekk effettivament qed tostakola fl-intier l-izvilupp propost;
2. B'din il-kundizzjoni, it-Tribunal daqs li kieku skeda l-proprjeta u b'hekk arroga ghalih poteri legislattivi li ma ghandux, peress illi skedar hu fil-mansjonijiet afdati lil Awtorita biss. In oltre ebda avviz fil-Gazzetta tal-Gvern jew gazzetti lokali ma saru jew giet registrata fir-Registru tal-Artijiet li juri li l-proprjeta hi soggetta ghal kundizzjonijiet ta' konservazzjoni;
3. Biex art tigi skedata jew kif qed jissottometti l-appellant tigi indirettament soggetta ghal effetti ta' ordni ta' konservazzjoni trid tiffirma parti minn art li tigi skedata u l-art in kwistjoni ma hijiex hekk skedata tant li l-binja ma ghandha ebda sinifikat storiku u soggetta ghal bosta modifiki u strutturi moderni, li jidhru minn naha tal-bajja ta' San Giljan u biswieta inghata permess ghal binja li tispikka u tistona mas-sit tal-appellant;
4. It-Tribunal kien kontradittorju meta awtorizza l-permess outline bl-istandard conditions, cioe b'riserva tal-external appearance, landscaping u parking meta mill-banda l-ohra hu stess ostakola l-izvilupp a priori bil-kundizzjoni imposta dwar kwalsiasi alterazzjoni fis-sit mertu tal-izvilupp;
5. Billi s-sit ma giex skedat u saret il-kundizzjoni li tammonta ghal skedar gie michud id-dritt tal-appellant li jitlob konsiderazzjoni mill-gdid tal-iskedar u appell minn decizjoni ta' rikonsiderazzjoni ai termini tal-artikolu 81 tal-Kap. 504.

L-aggravji

L-aggravji tal-appellant mehudin flimkien ghandhom tema wahda. L-appellant qed jilmenta li ghalkemm it-Tribunal irrevoka r-rifjut ghall-izvilupp propost, pero bl-impozizzjoni tal-kundizzjoni (a) fl-approvazzjoni tal-izvilupp, innewtralizza l-effett tal-izvilupp propost billi daqs li kieku skeda l-proprjeta ezistenti. Il-konsegwenza ta' dan l-argument hu illi t-Tribunal ecceda l-poteri moghtija lillu bil-ligi billi skedar jew ordni ta' konservazzjoni tista' ssir biss mill-Awtorita u f'dan il-kaz ma hemmx tali ordni.

Kopja Informali ta' Sentenza

Hu tajjeb illi din il-Qorti ma tistrapolax l-kundizzjoni (a) imposta mit-Tribunal bhala parti mill-permess izda taqrah flimkien mad-decide tal-istess li jghid hekk:

Ghal dawn il-motivi, u wara li qies il-fattispeci tal-kaz, dan it-Tribunal qed jilqa' 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 standard 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 2134/02, 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)."

Jigi rilevat illi l-applikazzjoni tal-appellant kienet titlob id-demolizzjoni tal-binja ezistenti.

Jirrizulta lil din il-Qorti illi t-Tribunal ai termini tal-artikolu 41(14) ghandu s-setgha li jisma' u jiddeciedi appelli u jimmodifika decizjoni moghtija mill-Awtorita u jimponi kondizzjonijiet. In oltre fit-Tieni Skeda riferibbilment ghal artikolu 41 dwar is-setghat tat-Tribunal jinghad fil-paragrafu 5 li t-Tribunal ghandu s-setgha jikkonferma, ihassar jew ibiddel decizjoni li kontra taghha jkun sar appell u jaghti dawk l-ordnijiet li jidhirlu xierqa.

Kopja Informali ta' Sentenza

F'dan il-kaz it-Tribunal uza l-poteri moghtija lilu skond il-ligi. Il-kwistjoni hi biss jekk oltrepassax dak il-poter. Hu car li s-sit u binja in kwistjoni mhumiex skedati u hi l-fehma tal-Qorti minn qari tal-atti illi l-hsieb tal-Awtorita li forsi tiskeda l-proprjeta qatt ma seta' jkun ta' ostakolu biex it-Tribunal jikkunsidra jekk jinharigx jew le l-permess. Huma l-ligijiet, pjanijiet u policies vigenti fiz-zmien tad-decizjoni li ghandhom jorbtu lil Awtorita u t-Tribunal. Semplici hsieb jew intenzjoni futura ma ghandhomx ikunu ta' xkiel fil-konsiderazzjonijiet. Fil-fatt it-Tribunal ma bbazax id-decizjoni tieghu fuq dan il-hsieb jew intenzjoni futura tal-Awtorita. Jirrizulta b'mod car mill-atti tal-process illi kienet il-policy UCO 13 li kienet il-bazi ta' parti mid-decizjoni tat-Tribunal fejn kien qed jikkonsidra n-natura tal-binja li dwarha kien qed jintalab zvilupp soggett ghad-demolizzjoni tal-binja skond il-proposta tal-applikant.

Il-policy UCO 13 tghid illi 'wherever possible, buildings of architectural, historical and townscape importance, gardens and other areas of architectural or historical interest will be conserved'. Ghalkemm is-sit ma jinsabx f'urban conservation area pero t-Tribunal wasal ghal applikabilita ta' din il-policy. L-applikabilita legali tal-policy hi korretta fil-fehma tal-Qorti peress li l-structure plan paragrafu 15.10 ighid li avolja sit ma jkunx f'urban conservation area l-UCA policies huma xorta applikabbli ghal binjiet li jimmeritaw preservazzjoni. Il-Planning Services Division flimkien ma' agenziji ohra ghamlu lista ta' tali binjiet u spazji fin-National Protective Inventory biex ikollhom il-protezzjoni mehtiega. Jidher mill-atti u dan mhux kontradett illi din il-proprjeta ddahlet fl-inventarji bhala STJ 113 fil-31 ta' Lulju 2006.

Kunsidrat dan, mhux il-kompitu tal-Qorti li tqis jekk fil-fatt il-binja hix ta' importanza arkitettonika jew storika, pero dan hu punt ta' fatt u kwistjoni teknika li johrog il-barra mill-kompitu ta' din il-Qorti, ghalkemm ghandu jinghad li mill-atti jidher li din il-binja hi wahda minn tal-ewwel u ta' certa importanza li nbriet fiz-zona, apparti li l-atti fihom argumenti ampji dwar dan u l-istess Tribunal wara li kkonsidra dawn il-fatti wasal ghal konkluzzjoni li l-binja kien jimmerita tigi preservata ghax anki bl-alterazzjonijiet li sarilha ghadha fi stat relattivament originali. Pero l-istess Tribunal ma waqafx hemm ghax meta qies l-izvilupp kbir tal-ambjent ta' madwar il-binja hass illi ghandu jkun hemm gustizzja fil-konfront tal-applikant u l-permess ma ghandux jigi rifjutat semplicement minhabba n-natura tal-binja izda li l-izvilupp ghandu jsehh skond il-policies rilevanti ghal zvilupp simili pero b'certi limitazzjonijiet biex jigi preservat il-fond f'dak li t-Tribunal hass li kien jimmerita preservazzjoni.

Kopja Informali ta' Sentenza

Il-Qorti ma tqis b'daqshekk illi t-Tribunal issorpassa l-limiti tieghu u tali konsiderazzjonijiet ghandhom b'xi mod jiftehmu bhala skedar jew ordni ta' konservazzjoni tal-binja kif qed jimplika l-appellant fi sforz biex l-izvilupp ikun jista' jsehh kif jixtieq hu. In fatti, kuntrarjament ghall-implikazzjoni tal-appellant, it-Tribunal ighid car fil-paragrafu tal-ahhar qabel id-decide illi fil-fazi tal-full development, l-Awtorita tista' tikkunsidra alterazzjonijiet jew zidiet li huma necessarji sabiex fil-waqt li tizgura l-harsien tal-bini minn zvilupp eccessiv, inkluz il-protezzjoni ta' elementi arkitettonici esterni u interni jsiru l-alterazzjonijiet utili sabiex il-bini ezistenti u dak addizzjonali ikun skond l-istandards li jiriflettu l-htigijiet tal-lum. Dan hu l-ispirtu wara l-kundizzjonijiet imposti mit-Tribunal li bl-ebda mod ma rabat il-binja biex ma jsirx zvilupp konsiderevoli fuqha. Din hi asserzjoni li pprova jaghmel l-appellant minghajr ebda bazi ghaliha biex jekwipara din il-kundizzjoni ma skedar jew ordni ta' konservazzjoni implicita li mhux il-kaz. Fil-fatt sta ghal applikant biex jirrevedi l-applikazzjoni tieghu u mal-Awtorita u jasal ghal soluzjoni teknika kif jista' jigi salvagwardat in-natura importanti tal-binja fil-kuntest tal-izvilupp li jixtieq jaghmel. Dan zgur mhux kaz ta' skedar, fejn ma jista' jsir xejn fi proprjeta skedata minghajr il-permess tal-Awtorita (ara artikolu 80(6)) u anki hemm, dawn ikunu ta' natura limitatissima. Il-kaz quddiem din il-Qorti hu differenti fejn it-Tribunal hareg permess ta' binja b'hames sulari skond il-policy rilevanti basta li l-binja ma tnehhix mill-fatturi importanti arkitettonici tal-binja ezistenti. Din hi kwistjoni li trid tigi diskussa u mgharbla fl-istadju tal-full development pero kuntrarjament ghal ordni ta' skedar, bl-outline development approvat mit-Tribunal l-applikant akkwista gia d-dritt ta' zvilupp u alterazzjonijiet interni u esterni bil-limitazzjonijiet li s-sit ghandu tenut kont tal-importanza tal-konservabilita tal-fatturi arkitettonici primarji tal-binja ezistenti.

Il-Qorti ma tqis kontradittorjeta kif qed jilmenta l-appellant rigward ir-reserved matters meqjus il-kundizzjoni (a) sotto skrutinju. Ir-reserved matters jirrigwardaw l-external appearance tal-izvilupp, landscaping u parking li dwarhom it-Tribunal ma qal xejn pero meta jitqiesu dawn ir-reserved matters irid jittiehed in kunsiderazzjoni n-natura tal-binja li ghandha tigi inkorporata fl-izvilupp senjatament fejn jidhlu l-main architectural fractures tal-binja ezistenti bla pregudizzju ghal tibdil intern u estern biex ikun jista' jsir l-izvilupp propost.

Decide

Kopja Informali ta' Sentenza

Ghal dawn ir-ragunijiet, il-Qorti qed tichad l-appell ta' Joe Sammut u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta' Gunju 2014. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----