



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 177/2012

Frankie Tonna

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Frankie Tonna tas-26 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 li cahdet l-applikazzjoni PA 354/04 'to sanction construction of a bungalow with swimming pool';

Kopja Informali ta' Sentenza

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tat-22 ta' Jananar 2004 – Full Development Permission – PA 0354/04 l-appellant, f' Frankit, Triq Had Dingli, Dingli, talab:

“To sanction construction of a bungalow with swimming pool”

B'rifjut mahrug fis-26 ta' Frar 2007 l-Awtorita' cahdet it-talba ghall-hrug tal-permessrelattiv ghar-ragunijiet segwenti:

“1. The dwelling is not acceptable in principle since the site lies within a Level 3 Area of Ecological Importance, within an Area of High Landscape Value and a Special Area of Conservation of International Importance. The proposal therefore runs counter to paragraph 15.39 of the Structure Plan Explanatory Memorandum, which prohibits residential development within a Level 3 Area of Ecological Importance. The proposal is not directly connected with or necessary to the management of the Special Area of Conservation as per Article 13.1(a) and (b) of LN 257 of 2003. Approval of this proposal would undermine former Planning Appeals Board and Court of Appeals decisions, and runs counter to the rural conservation and ecological objectives of the Structure Plan, particularly Policies RCO 10 and RCO 12 and, to the provisions of the Flora, Fauna and Natural Habitats Regulations L.N. 257/03.

2. The site lies outside the limits for development defined in the Temporary Provisions scheme for Dingli and so it is located in an area which should remain undeveloped. The proposed development would lead to urban sprawl, would run counter to this scheme and represents unacceptable urban development, counter to Structure Plan policies SET 11, SET 12, RCO 2 and BEN 5.

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3. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside designated settlement boundaries. The development does not fall into a category of non urban development which may be permitted outside designated areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policies BEN 5 and

4. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located in an area designated for development within urban settlement boundaries.

5. The proposal is not essential to the needs of agriculture in view that the applicant is not a registered full-time breeder running an animal farm in the vicinity of the site for at least two years prior to this application. The applicant does not therefore satisfy the criteria set out in paragraph 11.2(b) of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF 5 and SET 11 and to the Malta Environment & Planning Authority's Policy and Design Guidance Farmhouses and Agricultural Buildings.

6. The dwelling by virtue of its urban characteristics, and conspicuous scale, design and massing creates adverse negative visual impacts onto the surrounding Area of High Landscape Value. These impacts cannot be mitigated through landscaping or other interventional works and run counter to Structure Plan policy RCO 4.

7. The proposed floor space exceeds the maximum limit of 150m² set out in paragraph 8.2(iii) of Policy PLP 20 - Development Control Guidance: Developments Outside Built-up Areas. The proposed footprint also exceeds the maximum limit of 100m² set out in the adopted Policy and Design Guidance: Farmhouses and Agricultural Buildings (paragraph 1.7.1, p. 7).

8. The pool lies is located within a Level 3 Area of Ecological Importance, running counter to section 5.1 (1) of the adopted Development Control Policy: Swimming Pools Outside Development Zone. The paving also exceeds the maximum permitted limit of 25m², running counter to section 5.1 (3) of the adopted Development Control Policy: Swimming Pools Outside Development Zone. "

Fl-appell tieghu l-avukat Michael Sciriha ressaq l-aggravji tal-applikant kif gej:

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“1. Illi l-Kummissjoni għall-Kontroll ta' l-Izvilupp hija hatja ta' diskriminazzjoni fil-konfront ta' l-appellant u dan stante illi flit jiem biss qabel ir-rifjut f'dan il-kaz, l-istess Kummissjoni approvat permess bin-numru 04742/05 f'isem Marco Milli liema permess kien jikkoncerna sit prattikament faccata tas-sit involut f'dan l-appell u li għalih kienu japplikaw l-istess policies identici għal dawk applikabbli fil-kaz odjern. Għalhekk għandu jirrizulta li l-Bord li la darba l- Kummissjoni approvat il-permess bin-numru 04742/05 hija ma kellhiex alternattiva sabiex taghmel gustizzja ma' l-appellant illi tapprova wkoll l- applikazzjoni tieghu. Bir-rispett kollu jigi sottomess illi huwa inutli li fir-ragunijiet tagħha l-Kummissjoni pruvat tiggustifika l-agir tagħha fl-applikazzjoni bin-numru 04742/05 billi qalet li s-sit in kwistjoni kien infill site u dan stante li ragunament bhal dan kien ikun validu biss li kieku l-binjiet adjacenti kienu bil-permess meta fil-fatt mhumiex;

2. Illi minghajr pregudizzju għas-suespost, l-Kummissjoni għall-Kontroll ta' l-Izvilupp kif ukoll l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar ma kienux gjustifikati li fl-istess triq fejn jinsab is-sit ta' l-appellant japprovaw diversi permessi ohra apparti dak hawn fuq imsemmi u minghajr ebda raguni valida ma japprovawx is-sit ta' l-appellant, liema sit ilu mibni sa mill-bidu tas-snin tmenin. Mhux biss izda l-istess Kummissjoni approvat diversi permessi ohra ikoll barra miz-zona ta' zvilupp, f'zoni li jistgħu jigu deskritti li għandhom 'scenic value' hafna aktar mis-sit in kwistjoni. Dan kollu jirrendi r-rifjut tal-Kummissjoni hafna aktar ingustifikabbli;

3. Illi minghajr pregudizzju għas-suespost, b'referenza għall-ewwel raguni ta' rifjut mogħtija mill-Kummissjoni appellata, l-appellant jissottometti li din ir-raguni mhiex valida għal diversi ragunijiet fosthom:

a) Illi kieku din iz-zona hija daqshekk ta' importanza allura l-Kummissjoni ma setgħet bl-ebda mod tapprova permessi ohra kif fil-fatt għamlet;

b) Illi s-sit in kwistjoni huwa kommess b'diversi binjiet ohra u ilu hekk sa mill-bidu tas-snin tmenin u għaldaqstant l-uniku ezitu li jista' jkollu rifjut hija li jitwaqqa dan il-bini u minflok tidhalla herba kif fil-fatt gara f'sit aktar l-isfel li l-Awtorita' għogobha twaqqa u thalli tharbit liema bhalu. Certament b'dan kollu kemm l-Awtorita' kif ukoll il-Kummissjoni ma jkunux qed jissalvagwardjaw il-policies ikkowitzati fl-ewwel raguni ta' rifjut;

4. Illi minghajr pregudizzju għas-suespost, t-tieni, t-tielet, r-raba' u l-hames raguni ta' rifjut qed jigu kontestati da' parti ta' l-appellant stante li dawn għalkemm gew applikati fil-konfront tieghu ma gewx applikati fil-konfront ta' applikanti ohra li ingħatalhom il-permess, Jigi sottomess li l-Kummissjoni hija obligata li titratta lil kulhadd l-istess u f'dan il-kaz huwa evidenti li dan ma għamlitux. Jidher car li l-uniku

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mezz kif il-Kummissjoni tigbor gieha u tkun kunsidrata li agixxiet fit-termini tal-Ligi kien illi bhal ma ghamlet f'kazijiet ohra, tapprova l-applikazzjoni ta' l-appellant. In vista li ma ghamlitx hekk, l-Kummissjoni hija hatja ta' ingustizzja manifesta fil-konfront ta' l-appellant. In oltre jigi sottomess li dawn ir-ragunijiet ta' rifjut qed jigu wkoll kontestati in vista li huwa evidenti li l-applikant mhux qed jittanta jitlob permess ghal store agrikolu izda qed jitlob li jissanzjona r-residenza tieghu u tal-familja tieghu u li ilha hekk ghal dawn l-ahhar seba' u ghoxrin (27) sena mill-anqas;

5. Illi minghajr pregudizzju ghas-suepost, s-sitt, seba' u tmien ragunijiet ta' rifjut huma wkoll kontestati stante li l-appellant sa minn dejjem kien lest li jaghmel dawk l-alterazzjonijiet li l-Kummissjoni setghet thoss li kienu bzonnjuzi sabiex jigi minimizzat l-impatt ta' dan il-bini fuq l-Ambjent tal-madwar fosthom billi jsiru tibdiliel fil-faccata u jitnaqqas il-pavimentar madwar il-pool. Jigi sottomess li izda, ghal kuntrarju tal-procedura applikata mill-Kummissjoni f'kazijiet ohra, il-Kummissjoni f'dan il-kaz lanqas biss tat l-opportunita' li l-appellant jissottometti pjanti emendati. L-appellant f'dan l-istadju jerga jsostni li huwa lest li jaghmel dawk il-modifiki li dan il-Bord jhoss li huma necessarji sabiex l-izvilupp jkun accettabbli.”

Bir-rapport taghha l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

“5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The proposed development is objectionable as it does not constitute of legitimate development that may be considered outside the development zone boundary. There appears to be no justification on sound planning grounds for accepting the establishment of a residential use on this site, as required by Structure Plan policy SET 12. Accepting the sanctioning of this residential unit would only encourage the further dispersal of sporadic development in the countryside, which is clearly against the aim of policies SET 11 & RCO 2, which seek to safeguard the countryside from urban development. Furthermore, the site is located within a highly sensitive area with several designations of protection. Accepting this proposal would therefore also conflict with the rural conservation and ecological objectives of the Structure Plan, including policies RCO 10 & 12 and the provisions of the Flora, Fauna and Natural Habitats Regulations L.N. 257/03.

5.2 The appellant is arguing that the issued refusal is discriminatory on the grounds that the DCC has approved several applications for residential development on sites similarly located outside the development zone. The appellant even cites PA 4742/05 as a case in point, where it is claimed that this development is located opposite from the site in question, and was permitted on the grounds of being an infill plot. The appellant claims that the adjoining buildings to this infill development

are similarly illegal constructions, and on the grounds of this commitment, the appellant argues that permission should have likewise been issued.

5.3 The cited case PA 4742/05 has been reviewed to verify the appellant's claim. However, it is to be pointed out that the site of PA 4742/05 did in fact qualify as an infill plot, as valid and existing buildings were present on either side of the site. Even though the building on one side of the site is subject to enforcement action, this enforcement action concerns extensions and the change of use of a previously existing building. Therefore, valid and legitimate building constructions were present on either side of this site. Furthermore, the DCC permitted a building depth for this infill site similar to that legally built for the adjacent sites.

5.4 To the contrary, the case subject to appeal concerns the sanctioning of an existing residential development, which is not adjacent to any valid and legally constructed buildings. Although the site for development is located at the end of a row of other existing buildings, all these buildings are subject to enforcement action, as outlined in the attached DOC 1. In view of this, MEPA does not consider PA 4742/05 to serve as a precedent for issuing development permission on this site, and hence it may be derived that MEPA acted appropriately and not discriminatorily.

5.5 The appellant confirms that the adjacent buildings are illegal constructions. However, the appellant further claims that by demolishing the existing illegal buildings, an eyesore would be created in this area, as the sites would become derelict and abandoned land. The appellant justifies this claim on the grounds of direct action works carried out within vicinity of the site, and states that these sites were left in an abandoned and derelict state, negatively impinging on the surrounding landscape. Notwithstanding this, such arguments should not justify the sanctioning of illegal development in the countryside, even more so within areas of high sensitivity as is the case under consideration. As already indicated, the extent of scheduling and protection afforded to the site and its immediate surroundings do not allow for favourable consideration to sanctioning the proposed development. Accepting this proposal would only encourage further illegal developments within areas of ecological and visual sensitivity.

5.6 The Planning Appeals Board has already acknowledged the sensitivity of this area in their decision of 23rd July 2003 for the sanctioning of other illegal developments within vicinity of the site through PAB 323/02 & PAB 325/02 (site H on the attached DOC 1). The same principles applied by the Planning Appeals Board for site H are also applicable to this application presently subject to appeal, as follows:

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"Is-sit in kwistjoni jinsab 'l barra miz-zona ghall-izvilupp u 'l barra mill-Buskett...is-sit jinsab fit-tarf taz-zona skedata tal-Buskett gewwa l-"buffer zone".

Fl-appell tieghu, l-appellant jikkontendi illi s-sit in kwistjoni jifforma parti minn "hamlet" ezistenti li nbena xi sittax-il sena ilu u li ghandu s-servizz tad-dawl u l-ilma. Huwa qal illi l-garaxx in kwistjoni gie kostruwit ferm qabel ma s-sit gie skedat bhala zona ta' importanza ekologika u ta'"high landscape value" u ma setax jifhem kif l-izvilupp kien qieghed b'xi mod ihassar jew inaqqas minn din l-importanza.

L-Awtorita qed tissottometti illi l-izvilupp illi l-appellant qieghed jittenta jirregolarizza mhux accettabbli 'l barra miz-zona ghall-izvilupp u mhux inkluz bhala tip ta' zvilupp accettabbli fil-paragrafu 7.6 tal-policy BEN 5, Oltre dan, s-sit mhux qieghed jigi rakkomandat sabiex jigi inkluz bhala "rural settlement", F'sottomissjoni ulterjuri, l-Awtorita pprezentat pjanta li tindika illi kien hemm numru ta' binjiet vicin is-sit illi kienu gew rifjutati.

Il-policies tal-Pjan ta' Struttura jimmilitaw kontra l-izvilupp barra miz-zona tal-bini u 'l barra minn zoni kommessi u mibnija, partikolarment meta si tratta ta' zvilupp urban bhalma huwa dak propost, u i-policies SET 11 u SET 12 huma carissimi f'dan ir-rigward. Minn ezami tal-pjanta esibita mill-Awtorita, jidher illi saru numru ta' binjiet u kien sar tentattiv biex jigu sanzjonati izda kienu gew rifjutati u bicciet minnhom gew imnehija permezz ta' "direct action", Ghaldaqstant, ma jistax jinghad illi hemm xi "commitment" vicin is-sit li jista' b'xi mod jiggustifika l-izvilupp mertu ta' dan l-appell.

Oltre dan, il-fatt illi s-sit ilium jinsab gewwa zona skedata, anke jekk semplicement gewwa l-"buffer zone" ifisser illi ghandu jsir kull tentattiv sabiex l-izvilupp f'din iz-zona ssir b'certa sensitivita. Il-fatt illi dan l-iskedar sar wara illi nbena l-izvilupp bl-ebda mod jiggustifikah u dan l-izvilupp l-appellant ghamlu a riskju unikament tieghu meta bena minghajr ma ghamel id-debita applikazzjoni lill-awtoritajiet ta' dak iz-zmien vestiti bil-funzjoni tal-hrug tal-permessi u beda jopera l-attivitajiet ta' mechanic/sprayer. Din it-tip ta' attivita hija wahda essenzjalment ta' natura urbana:

Il-policies RCO 2 u RCO 4 li jitrattaw il-konservazzjoni ta' zoni rurali, bhalma huwa s-sit in ezami, huma cari meta jipprovdu illi l-ebda zvilupp ta' natura urbana m'ghandu jigi permess f' dawn iz-zoni u illi ghandhom jigu kkunsidrati favorevolment biss dawk l-istrutturi jew facilitajiet li jkunu essenzjali ghall-interessi agricoli, ekologici jew mil-lat xeniku, u li ma jiksrux il-principji enuncjati til-policy RCO 4. Dan il-Bord jidhrilu illi l-izvilupp illi l-appellant qieghed jittenta jissanzjona ma jinkwadrx ruhu that ebda minn dawk il-kriterji stipulati f'dawn il-policies, peress illi l-uzu

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propost huwa essenzjalment urban u xejn iktar. Oltre dan jaffettwa l-integrita vizwali taz-zona peress illi jiddomina vizwalment din il-parti tal-Buskett u jhassar il-veduta ta' dan il-post li jimmerita kull mizura ta' konservazzjoni, filwaqt illi l-attivitá proposta tista' tkun ta' dannu ambjentali f'post tant sensitiv.

Ghaldaqstant, dan il-Bord, wara li qies bir-reqqa l-applikazzjoni in kwistjoni, ma jsib l-ebda gustifikazzjoni sabiex l-izvilupp propost jigi permess f'zona klassifikata bhala ODZ;

Ghal dawn il-motivi, il-Bord jichad l-appell u jikkonferma r-rifjut tal-permess ghall-izvilupp," Antoine Borg vs. DCC, 23rd July 2003, PAB 323/02, PA 4975/98.

5.7 With regard to conditions 6, 7 & 8, the appellant also claims that he was not given the opportunity to amend the proposed drawings to comply with these technical issues, These conditions refuse the proposal on the grounds that:

- The development is visually intrusive in terms of massing, scale and design & therefore counter to SP policy RCO 4 (reason 6);
- The building footprint exceeds the 150m² limit permitted for development outside the development zone boundary in accordance with para 8.2(iii) of the Policy & Design Guidance 'Development Outside Built-up areas' (reason 7); and
- The pool area exceeds the maximum permitted limit of 25m² in accordance with section 5,1 (3) of the DC Policy 'Swimming Pools ODZ' (reason 8),

The Authority considers that as the development has already been carried out and the appellant is requesting the sanctioning of these works, there is no scope in requesting amended drawings which do not reflect what is actually present on site, Furthermore, as the principle of establishing a dwelling on this site is not acceptable, this further sustains the fact that amended drawings would not result in approving the development of this site for residential purposes."

L-Avukat Joanne Vella Cuschieri wiegbet kif gej:

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“1) Illi l-Awtorita' pruvat tiggustifika dan l-appell billi tenniet li ghal darb'ohra li dan is-sit kien jikkwalifika bhala infill site u pruvat tiggustifika dan il-fatt minhabba li fuq naha wahda ta' dan is-sit hemm binja li skond l-Awtorita' ghandha permess;

2) Illi effettivament biex tikkwalifika bhala 'infill site' iz-zewg nahat tas-sit ghandhom jkun koperti bil-permess, izda huwa evidenti li fdan il-kaz il-fatti juru mod iehor;

3) Illi ssir referenza ghal-dokument 1 esebit mill-Awtorita' u jigi sottomess li permezz ta' l-istess dokument l-Awtorita' qed tipprova tqarraq b'dan il-Bord stante li filwaqt li turi l-informazzjoni dwar il-binjiet fuq in-naha fejn jinsab is-sit ta' l-appellant, naqset illi taghti informazzjoni fuq il-bini adjacenti ghal dak koncernat fl-applikazzjoni 4742/05;

4) Illi ghal dan il-ghan qed jigi anness Dokument FT 1 fejn jirrizulta li adjacent ghas-sit li fuqu hareg il-permess bin-numru 4742/05, hemm diversi binjiet li huma bla permess, filwaqt li fuq naha minnhom kienet l-Awtorita' stess li harget permess nonostante li r-ragunijiet ta' rifjut kienu identici ghal dawk ta' l-appellant odjern.

5) Illi ghalhekk jirrizulta b'mod car li l-Awtorita' qed tiddiskrimina bejn min jinghata permess ta' zvilupp fdin iz-zona u min le. Dan certament jilledi bi shih id-drittijiet ta' l-appellant.”

Permezz tat-tieni rapport taghha l-Awtorita' kkummentat inter alia kif gej:

“2. Comments on Appellant's Submissions

The appellant's submissions mainly state that the Authority is not presenting the whole situation relevant to the appellant's cited precedent of PA 4742/05, which concerns a permit issued on the opposite side of the road from the site subject to appeal. The appellant claims that although MEPA is contending that the permit for PA 4742/05 was justified on the account of it being an 'infill' site, the appellant states that MEPA is not revealing to the Board the fact that it is surrounding by illegal development.

In reply to the appellant's arguments, reference is made to the attached DOC LV1 & LV2. As can be noted, the pocket of development adjacent to the site subject to

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appeal (Site M) all consists of illegal development (Sites E-M). On some sites, direct action was also carried out by MEPA to remove the illegal development.

In the case of the precedent cited by the appellant (Site C), MEPA confirms that permission on this site was appropriately issued as it was located between valid and legally existing residential development. Although enforcement action has been initiated on sites A & B through ECF 362/06 and ECF 364/06, these illegalities consist of additional development over-and-above the original permits issued on these sites. In the case of Site A, permission was issued through PB 3126/71 for the construction of a residence, while Site B is committed with the construction of a 150sq. feet store through PB 4710/84. In the case of Site D, which adjoins the other side of Site C, the permits issued for the construction of a dwelling were approved as the development would replace an existing residential building that was also dully covered by permit.

The details listed on the attached DOC LV1 & LV2 clearly illustrate the context under which permission was issued on sites C & D, and the different context which is applicable to the site under consideration (Site M).”

L-avukat Joanne Vella Cuschieri wiegbet kif gej:

“1. Illi bir-rispett kollu lejn l-Awtorita' li qed tipprowa tghatti l-izbalji taghha stess, jigi sottomess li z-zewg siti adjacenti ghal dak tal-permess kkwotat mill-appellant li jgib in-numru PA 4742/05, cioe dawk indikati bl-ittra A u B, qatt ma kellhom permess bhala residenzi izda unikament bhala stores. Dan kollu huwa pruvat anki mis-semplici fatt li l-istess Awtorita' harget anki Avvizi ta' nfunzar fuq dawn is-siti konsegwenza tal-bdil ta' uzu. Huwa ghalhekk li lappellant umilment ma jistax jifhem ghalfejn l-Awtorita' qed tibqa tinsisti li lpermess bin-numru 4742/05 inhareg fuq il-bazi tal-precedent taz-zewg siti l-ohra. L-appellant umilment jistaqsi kif jistghu zewg permessi ghal stores jiggustifikaw l-hrug ta' permess ghal residenza kif gara fil-permess 4742/05. L-Awtorita' se mai kien ikollha ragun kieku approvat store izda zgur ma ghandhiex ragun la darba approvat residenza. Huwa ghal din ir-raguni li l-appellant isostni li bil-permess 4742/05 ghandu jservi bhala precedent a favur l-ghoti tal-permessi hawn appellati stante li huwa evidenti li l-Awtorita' ma ghandha l-ebda raguni valida fil-ligi sabiex tiggustifika l-permess 4742/05 ghir illi la darba taghtu allura trid timxi b'rnod ugwali ma kulhadd inkluz l-appellant;

2. Illi l-appellant jissorprendi ruhhu kif fl-istatement taghha l-Awtorita' zzomm lura milli temfasizza li l-avvizi ta' nfunzar in kwistjoni jikkoncemaw bdil ta' uzu minn stores ghal residenzi, izda dan certament sar bi hsieb da parti ta' l-Awtorita' li huwa evidenti li qed tipprowa tghatti l-precedent li kkreat permezz tal-permess 4742/05;

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3. Illi jigi wkoll sottomess li l-azzjonijiet ta' nfużar 'direct action' li ttiehdu fuq iz-zona partikolari u li tant qed jigu kkwotati b'fervur mill-Awtorita', ikoll ittiehdu qabel qabel ma nhareg il-permess 4742/05. L-appellant jissottometti li l-hrug tal-permess 4742/05 jindika b'mod car u inekwivoku tibdil fid-direzzjoni ta' l-Awtorita' koncernanti dan is-sit u la darba l-Awtorita' ghogobha taghti permess ghal residenza wara l-azzjonijiet li qed tikkwota, dawn ta' l-ahhar llurn ma jistghux iservu bhala bazi ghall-argumenti ta' l-istess Awtorita';

4. Illi l-appellant ma jistax jaqbel mas-sottomissjonijiet li ghamlet l-Awtorita' fejn intqal illi dwar is-siti mmarkati C u D il-permess inhareg ghaliex kien hemm bini residenzjali gia ezistenti. Bir-rispett kollu, din is-sottomissjoni ma tirrizulta' minn ebda prova, anzi pjuttost jirrizulta bil-kontra mill-applikazzjonijiet kkwotati mill-istess awtorita' bin-numri PA 95/04 u 2321/00 fejn huwa evidenti li ezistenti kien herm 'agricultural stores' u mhux residenzi;”

Zamm access fuq is-sit relattiv fl-20 ta' Novembru 2008 fejn il-Bord seta' jara illi madwar 100-130 metru l' boghod hemm Villa Oriana li hija mibnija bil-permess.

B'nota ta' sottomissjonijiet l-Avukat Joanne Vella Cuschieri ddkjarat kif gej:

“1. Illi fl-ewwel lok naghmel referenza ghall-fatt li dan l-appell kien qed jinstema kontestwalment ma' l-appell bin-numru 262/04 f'isem Antoine Borg u dan stante li l-appelli jikkoncemaw siti vicini ta' xulxin fl-istess zona u ghalhekk jaqghu that l-istess kriterji u l-appellant odjern jissottometti li jaghmel tieghu is-sottomissjonijiet kollha kontenuti fl-appell bin-numru 262/04 bhala sottomissjonijiet ukoll fi hdan dan l-appell u ghalhekk ghandhom jittellghu ghall-konsiderazzjoni u skrutinju tat-Tribunal anki fid-decizjoni ta' l-appell odjem;

2. Illi fit-tieni lok l-appellant jaghmel referenza ghas-sottomissjonijiet kollha kontenuti fil-korrispondenza- precedenti bejn il-partijiet kemm quddiem il-Kummissjoni qabel ir-rifjut, kif ukoll quddiem il-Bord u t- Tribunal nkluz:

A) L-ittri ta' l-appell;

B) B'mod specifiku ssir referenza ghall-ittri kontenuti fl-atti tal-applikazzjonijiet appellati u ndirizzati lie-Chairman ta' l-Awtorita' datati 28 ta' Gunju, 2004 li filhom

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gew ikkwotati ghadd ta' permessi ta' zvilupp li jaqghu taht l-istess kriterji talapplikazzjoni tal-appellant;

C) L-ittra ta' l-appellant datata 15 ta' Marzu, 2007 fejn gew indikati permessi ohra ta' zvilupp li kienu nhargu aktar recenti fiz-zona;

D) Ir-risposta ulterjuri ta' l-appellant datata 17 ta' Ottubru, 2007;

E) L-ittra tat-28 ta' Frar, 2008;

u l-appellant jaghmel tieghu dak kollu kontenut fl-istess u jitlob li dan it-Tribunal jiehu konjizzjoni taghhom fl-analizi ta' dawn l-appell kontestwalment u ddecizionijiet;

2. Illi fit-tieni lok l-appellant jaghmel ukoll referenza ghall-verbali taz-zewg accessi li saru fuq il-post minn zewg Bordijiet diversi minn fejn irrizulta li dan il-bini huwa r-residenza ordinarja tal-appellant u l-familja tieghu u dan sa mill-bidu tas-snin tmenin (80), li huwa l-uniku residenza li ghandu fejn huwa jirrisjedi flimkien mal-familja tieghu, li dan il-bini jifforma parti minn bosta blokok ohra ta' bini (parcel of properties) li ghalkemm kienu originarjament proposti sabiex jigu rikonoxxuti bhala 'small rural settlement' jew 'hamlet' ghal xi raguni dan ma sarx b'rizultat li r-residenzi li jnsabu f'din iz-zona u li ilhom ezitenti sa mill-bidu tas-snin 80 ma nghatatilhomx il-protezzjoni li kien jixiriqilhom;

3. Illi fit-tielet lok l-appellant jaghmel referenza wkoll ghad-dokumenti prezentati li juru li sahsitra l-appellant ilu ghexieren ta' snin ihallas lill-istess Gvern ta' Malta licenzja ghall-uzu tal-'pool' imsemmija f'dawn il-procedura. Ghalhekk minn naha ghandek Dipartiment tal-Gvern li ilu li accetta il-legalita ta' din il-'pool' tant illi qed jippretendi hlas ta' licenzja fuqha, minn naha l-ohra ghandh l-istess Gvern tramite l-Awtorita' li qed tibqa insisti fuq l-illegalita ta' din il-'pool'. Dan certament jilledi bi shih id-drittijiet ta' l-appellant u ghandu jittiehed in konsiderazzjoni minn dan it-Tribunal;

4. Illi fir-raba' lok l-appellant ifakkar ukoll anki b'referenza ghall-verbali tal-accessi li fil-vicinanze tas-sit inhargu bosta permessi ta' zvilupp lil terzi anki recenti izda ghal xi raguni l-Awtorita' b'rnod diskriminatorju ghall-ahhar baqghet ma ssanzjonatx irresidenza tal-appellant b'detriment ghad-drittijiet tieghu u tal-familja tieghu li jigu trattati b'mod ugwali bhal applikanti ohra.

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Illi apparti l-kwistjoni tad-diskriminazzjoni l-istess permessi ta' zvilupp iwasslu wkoll għall-kwistjoni tal-'commitment' li hemm fiz-zona għall-permessi ta' zvilupp simili u oħrajn anki diversi izda lkoll għal skopijiet ta' residenza jew saħansitra 'stores', liema 'commitment' għandu jimmilita favur li jigu milqugħa l-applikazzjonijiet tal-esponent.

Illi mill-lat ta' guriprudenza ssir referenza għad-decizjoni fl-ismijiet Joseph Gauci vs. Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza mill-Qorti ta' l-Appell nhar il-25 ta' Frar, 2010 fejn f'dik id-decizjoni l-Qorti ddikjarat li applikazzjonijiet simili jirrikjeddu trattament identiku u jirrikedju li jkunu konsistenti sabiex ma tigix krea ta diskriminazzjoni u inegwaljanza ma' l-appellant altrimenti l-Awtorita' jew it-Tribunal ikunu hatja ta' diskriminazzjoni ingjustifikata fil-konfront ta' l-appellant. Fil-fatt f'dak il-kaz il-Qorti annullat id-decizjoni u bagħtet lura l-atti quddiem il-Bord.

Issir ukoll referenza għad-decizjoni fl-ismijiet Joseph Muscat vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar datata 15 ta' Mejju 2005 fejn ikkonfermat decizjoni ta' l-istess Bord ta' l-Appell li ddikjarat kif isegwi:

'Illi peress li l-izvilupp fis-sit adjacenti gie approvat, hu diffiċli għal dan il-Bord li jasal għall-konkluzjoni differenti.'

Sentenzi oħra fuq l-istess linja huma Anna D' Amato vs. Kummissjoni għall-Kontroll tal-Izvilupp deciza nhar it-28 ta' Gunju, 2006 mill-Onorabbli Qorti ta' l-Appell, Dr. Garhan Busuttil vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza fit-28 ta' Frar, 2008 ukoll mill-Qorti ta' l-Appell, Marco Farrugia vs. Kummissjoni għall-Kontroll ta' l-Izvilupp (10 ta' Dicembru, 2008, Appell), Christine Steege vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (26 ta' Novembru, 2009, Appell), Kevin Azzopardi vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (26 ta' Novembru, 2009, Appell).

Jigi sottomess li sa minn quddiem il-Kummissjoni għall-Kontroll ta' l-Izvilupp l-appellant dak iz-zmien l-applikant kie ġia qed iħossu li qed jigi diskriminat tant illi qajjem dan il-punt fl-ittri tiegħu fl-atti ta' kull applikazzjoni indirizzati lill-Kummissjoni u datati 28 ta' Gunju, 2004. Fl-istess ittri gew elenkati mill-anqas sittin (60) permess ta' zvilupp fl-akkwati tas-sit koncernat kif ukoll f'irhula fil-vicinanze u oħrajn le li lkoll kellhom l-istess kriterji, fosthom li kienu jinsabu barra z-zona ta' zvilupp IZDA LKOLL INHARGILHOM PERMESS MILL-AWTORITA'. Dawn il-permessi ta' zvilupp saħansitra ma kienux biss jikkoncemaw zvilupp residenzjali izda wkoll zvilupp kummerċjali.

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Illi l-istess preokkupazzjoni li kienet qed tigi mwettqa diskriminazzjoni fil-konfront ta' l-appellant tressqet bhala aggravji fl-appell tieghu u fl-ittri u sottomissjonijiet ulterjuri. Fil-mori tal-appelli regghu gew ikwotati permessi ta' zvilupp ohra li nonostante li kellhom l-istessi kriterji, u nonostante li l-applikazzjonijiet ta' l-applikant kienu gew rifjutati u kienu pendent i l-appell, dawn xorta wahda nghataw il-permess ta' zvilupp mill-Awtorita'. Jehtieg li l-Awtorita' u rapprezentanti taghha japplikaw il-'policies' u r-regolamenti applikabbli b'mod ugwali ghal kulhadd u mhux f'certu kazijiet jimxu b'mod rigidu magghom u jirrifjutaw l-applikazzjonijiet filwaqt li f'kazijiet ohra jinjorawhom b'mod assolut u jinhargu l-permessi. Jigi emfasizzat li la darba l-Awtorita' anki f'kaz wiehed biss (ghall-grazzja ta' l-argument) tinjora dawn il-'policies' u regolamenti u taghmel eccezzjoni ghall-istess, din l-eccezzjoni ghandha ssir fl-applikazzjonijiet kollba ohra simili altrimenti ma jkunx hemm trattament ugwali u tkun qed tigi kommissa diskriminazzjoni.

Illi fl-appelli odjerni tqajjmet ukoll il-kwistjoni tal-'commitment'. L-appellant jinsisti li dan il-'commitment' ma jstax jigi injorat mill-Awtorita' wisq anqas mit-Tribunal. Ma jstax ikun, kif seta jigi verifikat mill-access, li kwazi faccata tas-sit talappellant inhargu permessi ta' zvilupp ghal residenzi filwaqt li gew michuda l-applikazzjonijiet tal-appellant u dan ghal bini li ilu ezistenti ghal aktar minn tletin sena. Dawn il-permessi ta' zvilupp huma pjuttost recenti u saret referenza ghalihom, kemm fl-appelli kif ukoll f'sottomissjonijiet ulterjuri. Sahansitra ssir referenza permess ta' zvilupp iehor faccata tas-sit involut f'dan l-appell bin-numru 04742/05 f'isem certu Marco Milli nonostante li kien jaqa taht ezattament l-istess kriterji ta' skrutinju bhal applikazzjoni odjema. Jirrizulta li f'korrispondenza ulterjuri li ghaddiet bejn l-Awtorita' u l-appellant quddiem dan it-Tribunal l-Awtorita' pruvat tahbi l- izbalji taghha billi ssottomettiet li dan il-permess partikolari inghata fuq sit fejn gia kien hemm residenza. Irrizulta izda li dan ma kienx minnu ghaliex l-uniku permess li kien hemm kien ghal 'store' (li xorta jikkostitwixxi precedent favur l-applikant stante li wahda mill-applikazzjonijiet tikkoncema s-sanzjonar ta' store) u meta saret ir-residenza l-Awtorita' l-ewwel harget Avviz ta' Nfuzzar u konsegwentement harget il-permess ghar-residenza. Fil-fatt jekk wiehed jara t-tieni 'statement' tal-Awtorita' datat 17 ta' Jannar, 2008 dan jikkonsisti biss fi skuza wara l-ohra ghalfejn fis-siti adjacenti nhargu l-permessi ta' zvilupp filwaqt li dawn ma nhargux lill-appellant. Attentat iddisprat biex l-Awtorita' tahbi li qieghda tagixxi b'kejl divers fuq applikazzjonijiet ugwali.

5. Illi dwar il-kwistjoni li z-zona kienet indikata sabiex tigi rikonoxxuta bhala 'small rural settlement' jigi sottomess li ghalkemm huwa minnu li finalment dan ma sehxx (ghalkemm wiehed ma jstax jifhem ghalfejn dan ma sarx in vista tan-numru kbir ta' bini, residenzi, stores fiz-zona u permessi ta' zvilupp) dan ma jfissirx li t-Tribunal ghandu jinjora ghal kollox dan il-fattur daqshekk importanti speccjalment in vista tattrap ass taz-zmien minn meta nbdeu dawn l-istrutturi. Ssir fdan l-istadju referenza ghall-artiklu 41 sub-artiklu 13 tal-Kap. 504 tal-Ligijiet ta' Malta fejn jinghad li f'kull appell minn decizjoni tal-Awtorita', it-Tribunal huwa obligat ukoll li jhares id-

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disposizzjoni tal-artiklu 69 tal-istess Kap. 504. Fil-fatt is-sub-artiklu 13 tal-Artiklu 41 jaqra kif isegwi:

'u t- Tribunal ghandu jizgura li jkun konformi mad-disposizzjonijiet tal-artiklu 69 meta jirrevedi d-decizjoni tal-Awtorita' .

Illi l-artiklu 69 sub-artiklu (2) jaqra kif isegwi:

'Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorita' ghandha ukoll tqis:

(a) kull haga ohra ta' sustanza komprizi konsiderazzjoni ambjentali, estetici u sanitari li l-Awtorita tikkunsidra rilevanti;'

L-appellant isostni li dan l-aggravju u l-fatti relatati mieghu fil-fatt jikwalifikaw bhala materja ohra ta' sustanza li ghandha tinghata d-debita konsiderazzjoni minn dan it-Tribunal u ghandha timmilita favur l-ghoti ta' dawn il-permessi ta' zvilupp.

6. Illi finalment issir referenza ghal dak li l-Awtorita' qieghda tinsisti fuq bhal raguni ta' rifjut cioe' li jekk jigi approvat dan l-izvilupp ser ikun hemm impatt vizwali u ekologiku fuq is-sit u d-dintorni. Jigi sottomess li dan assolutament mhux minnu kemm minhabba n-numru konsideravoli ta' binjiet ezistenti f'din iz-zona kif ukoll minhabba li fl-uniku kaz fejn l-Awtorita' f'din iz-zona waqqghet binja illegali is-sit partikolari thalla zdingat u ghadu hekk sal-lum. Dan seta jigi vverifikat mill-istess Bord ta' l-Appell waqt l-accessi.

Jigi wkoll emfasizzat il-punt li l-appellant ma jistax' jifhem kif fil-kaz ta' l-applikazzjonijiet tieghu l-Awtorita' qed tinsisti li z-zona hija ta' importanza vizwali u ekologika filwaqt li fil-kazijiet fejn inhargu l-pennessi ta' zvilupp adjacenti u faccata s-sit ta' l-appellant dawn il-konsiderazzjoni lanqas biss issemew. Ma tridx tghid l-Awtorita' li l-valur ekologiku jieqaf mas-sit tal-appellant li fuq kollox huwa mibni u ilu hekk ghal aktar minn tletin sena! Anki minn dan il-lat johrog car id-diskriminazzjoni li qed tigi kommissa fil-konfront ta' l-appellent bir-rifjut ta' l-applikazzjoni de quo. ”

Permezz tat-tielet rapport taghha l-Awtorita' kkummentat inter alia kif gej:

“1.0 COMMENTS ON APPELLANT'S ARGUMENTS

1.1 Following the submission of the second report by the Authority; the appellant replied in letter dated 30th May, 2012 by arguing (mainly) the following:

- The appellant has been residing in the same residence which is his only residence since 1980 and the building forms part of other clusters of dwellings which were previously recognized as a 'small rural settlement' which eventually was not established.

- The appellant has been paying his licence for the use of a 'pool'. This means that the Government has long since established the legality of the 'pool'.

- Several permits have been issued in the vicinity of the site to third parties. Hence, the appellant should have the same identical treatment.

- The nearby dwellings and stores imply that the area is committed with developments similar to the appellant's.

- Reference to examples of appeal decisions.

- The appellant had previously outlined a number of permits which were issued in the vicinity which are located outside the development zone.

- Permission PA4742/05 was issued on a site facing the appellant's residence which was assessed against the same criteria of the appellant's case.

- The appellant is referring to reasons for refusal concerning the impact on the environment to which he is stating that the area is already committed by development and the Authority had removed an illegal development and the site was left to the deteriorate.

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- The discrimination is also apparent in the reason for refusals concerning the visual impact since the property adjacent to the appellant's and that in front were not assessed on their impacts on the environment.

1.2 The Authority has the following comments to make:

1.2.1 Repeat of Earlier Comments

At third statement most of the appellant's arguments are identical to the response to the Reconsideration report dated 9th June 2005, and to the first and second statements. Hence, the Authority retains the arguments made in para.5.2 - 5.7 of the initial report of PB 82/07.

1.2.2 Re: Issue of illegality

The appellant is trying to justify the construction of a new dwelling and its ancillary facilities through its long-term use as a residence. However, this fact alone does not present sound planning justification to regularize the building or entitle the proprietor to any rights on the use of his land. As long as the activity and development on site was carried out illegally, the enforcement actions taken on site are still active. This was confirmed in the Court of Appeal decision of 31st May 1996: Francis Mugliett vs. the Planning Authority, which confirmed the presence of illegal development on a site notwithstanding that the illegal development existed on site for more than 40 years, even if with the knowledge of the authorities and no action was taken by these authorities during these 40 years

The appellant is alleging that the Authority has issued permits for residential dwellings in the vicinity of the site. As already remarked in the previous statements, the street along which the development is located is characterized by a number of illegal developments all of which have either been refused or are currently being heard at appeals. The only permit cited by the appellant as applicable to this case is PA 4742/05. The Authority has already commented on this application in the initial report" points 5.3 and 5.4 of the original report to the Tribunal in PB 82/07. The permit issued in the case mentioned by the appellant was warranted since the site was an infill site between legally existing residential development which although these sites were subject to development, the illegalities consisted of development which followed after the issuance of the original permits for the construction of dwellings.

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In addition to the site's location (infill site) of PB 4742/05, the original permit issued on this site for residential development was granted prior to the enactment of the Local Plans. At the time of these permits, ODZ applications were determined on their own merits. In several instances, as in the case of the two permits cited by the appellant, residential development would be favourably considered on committed sites, sites adjacent to blank party walls, and/or on infill sites.

However the Local Plans recognized that further policy guidance was required to control development in such areas. The Local Plans recognized that some areas were more committed than others, and some merited greater environmental sensitivity. This exercise led to the designation of Rural Settlements (Category 1, 2 & 3), where only within these designated areas could a certain extent of residential development be considered as provided for in Policies NWRS 2 & NWRS 3. Within the areas falling outside the designated rural settlements, new residential development is no longer permitted, with the implementation of the Local Plan.

The site subject to appeal does not fall within a recognized rural settlement, and whether this area should have qualified as such cannot be contested in this development permission application. As already outlined in previous reports, the site falls within an earmarked Natura 2000 site within which no new dwellings are permissible. Therefore, the area cannot be termed a de facto hamlet just because the site is committed by dwellings, the majority of which have been illegally built as testified by the number of applications to sanction.

With regard to the legality of the swimming pool, this issue was raised in previous appeal applications lodged on site which are also being tackled in this report as a single appeal. The construction of the swimming pool was initially mentioned in PA 1266/00 also currently subject to appeal PB 85/04. In this application, the swimming pool was not yet constructed since it was assessed against Circular 1/100 for the construction of new swimming pools in ODZ. Therefore this appeal is null since the swimming pool was eventually constructed illegally and is now being sought for sanctioning through PA1847/02 which is currently subject to PB 144/09.

Nevertheless, in this appeal PB 82/07, the appellant is stating that he is in possession of a license issued by the Water Services Corporation on 22nd February 1999, to contest his entitlement for the swimming pool. The license in question concerns solely the use and operation of a fresh water swimming pool (doc.1 B in PA 1266/00) and by previous appeals the swimming pool is illegal and Circular PA 2/96 is still applicable.

1.2.3 Re: Issue of site sensitivity

The appellant is alleging that the scheduling of the surrounding area was not an issue in applications filed for development adjacent and facing his site. On the contrary, the planning history of these buildings indicates that the development has been carried out without a valid permit. The Buskett Roadhouse facing the appellant's site was subject to two appeals PB339/01 and PB 181/05 lodged against the refusal of PA 1098/01 both of which were eventually withdrawn by the applicant. PA 1098/01 and the preceding application PA 1408/94 were both refused solely on the incompatibility of the proposal with the area in view of its ecological value. On the same note, the building immediately adjacent to the appellant's site subject to application PA 5656/98 was also refused by the DCC since 'the construction of garages outside development zone is not considered as development essential for the need of agriculture, scenic or ecological interests.'

It is also telling to note that even had the site not been scheduled and assessed as a pre-local plan application it would have also been found to run counter to the established policy. It would have had to be assessed according to the provisions of the PLP 20 which does not permit new dwellings in the ODZ except under the most stringent criteria which the proposal does not satisfy.

Nevertheless, it is established policy that applications are always decided according to policies and legislation in vigore at the time of the decision. ”

L-perit Charles Buhagiar ghall-appellant wiegeb kif gej:

“It is to be noted that PAB 85/04, PAB 144/09 and PAB 82/07 all relate to the same site and to the same building and therefore should be considered together.

The main application is PA 354/04 (PAB 82/07) to construct a bungalow with a pool whilst the other two applications relate to this application i.e. PA1266/00 (PAB 85/04) to carry out minor alterations at ground floor level and construct a swimming pool and PA 1847/02 (PAB 144/09) to sanction construction of a pool.

Whilst refraining from repeating the same arguments which have been made in previous correspondence I would like to point out that these works were originally applied for in April 1984 (PB 1760/84). At that time this site qualified as a building site as per BDA Act and hence these works could have been carried out. It was only the undue long period taken to process this application which hampered its approval - refusal was issued seven years later after the application was submitted

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on the 13th February, 1991. Had this application been processed with a reasonable time period it would have been approved.

The argument that application needs to be assessed as per current planning policies is unfair because a 28 year old application is being subject to today's policies.

I would therefore like to request that this argument be given due consideration during your adjudication.

Furthermore I have once again to reiterate that the swimming pool is covered with a permit issued by the Water Services Corporation at the time it was constructed - which was the only permit required for pools. ”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghall-issanzjonar tal-izvilupp ta' bungalow u pixxina.

Is-sit mertu ta' dan l-appell jinsab fl-indirizz ta' Frankit, Triq Had-Dingli, Dingli.

Din l-applikazzjoni giet rifjutata peress li s-sit jinsab f'Level 3 Area of Ecological Importance, f'zona High Landscape Value u Special Area of Conservation of International Importance, li l-proposta tmur kontr l-paragrafu 15.39 tal-Structure Plan Explanatory Memorandum li jipprojbixxi zvilupp residenzjali, li jekk il-proposta tigi approvata tigi skartata l-gurisprudenza ezistenti, li l-proposta tmur kontra l-objettivi tal-pjan ta' struttura, partikolarment l-policy RCO 10, RCO 12 u l-provvedimenti ta' Flora, Fauna and Natural Habitats Regulations Avviz Legali 257/03, is-sit jinsab barra miz-zona tal-izvilupp, l-proposta tmur kontra l-policies tal-pjan ta' struttura SET 11, SET 12, RCO 2, RCO 4 u BEN 5, l-paragrafu 7.6 tal-istess pian ta' struttura, li l-izvilupp mhuwiex gustifikat, li l-izvilupp mhuwiex essenzjali ghall-iskopijiet tal-agrikoltura, li l-binja tikkrea impatt vizwali negattiv fuq iz-zona ta' High Landscape Value, li l-floor space propost jeccedi l-limitu massimu ta' 150m² ai termini tal-paragrafu 8.2(iii) tal-Policy PLP 20 - Development Control Guidance: Developments Outside Built-up Areas, li l-footprint propost jeccedi l-limitu ta' 100m² ai termini tal-Policy and Design Guidance: Farmhouses and Agricultural Buildings (paragrafu 1.7.1, p. 7), u li l-pixxina tinsab f'Level 3 Area of Ecological Importance li jmur kontra l-artikolu 5.1 (1) tad-Development Control Policy:

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Swimming Pools Outside Development Zone, u li l-ippavimentar jeccedi l-limitu massimu ta' 25m2 li jmur kontra l-artikolu 5.1 (3) tad-Development Control Policy: Swimming Pools Outside Development Zone.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellant jissottometti li l-Kummissjoni ghall-Kontroll ta' l-Izvilupp kif ukoll l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar ma kienux gjustifikati li fl-istess triq fejn jinsab is-sit ta' l-appellant japprovaw diversi permessi ohra apparti dak hawn fuq imsemmi u minghajr ebda raguni valida ma japprovawx is-sit ta' l-appellant, liema sit ilu mibni sa mill-bidu tas-snin tmenin, li l-Kummissjoni approvat permessi ohra barra miz-zona tal-izvilupp, f'zoni li jistghu jigu deskritti li ghandhom 'scenic value' hafna aktar mis-sit in kwistjoni, li s-sit huwa kommess b'diversi binjiet ohra u ilu hekk sa mill-bidu tas-snin tmenin, li t-tieni, t-tielet, r-raba' u l-hames raguni ta' rifjut qed jigu kontestati da' parti ta' l-appellant stante li dawn ghalkemm gew applikati fil-konfront tieghu ma gewx applikati fil-konfront ta' applikanti ohra li inghatalhom il-permess, li l-applikant mhux qed jitlob permess ghal store agrikolu izda qed jitlob li jissanzjona r-residenza tieghu u tal-familja tieghu u li ilha hekk ghal dawn l-ahhar 27 sena mill-anqas, li s-sitt, seba' u tmien ragunijiet ta' rifjut huma wkoll kontestati stante li l-appellant sa minn dejjem kien lest li jaghmel dawk l-alterazzjonijiet li l-Kummissjoni setghet thoss li kienu bzonnjuzi sabiex jigi minimizzat l-impatt ta' dan il-bini fuq l-Ambjent tal-madwar fosthom billi jsiru tibdiliet fil-faccata u jitnaqqas l-ippavimentar madwar il-pixxina, li l-Kummissjoni f'dan il-kaz lanqas biss tat l-opportunita' lill-appellant jissottometti pjanti emendati u li l-appellant huwa lest li jaghmel dawk il-modifiki li t-Tribunal iqis neccessarji sabiex l-izvilupp jkun accettabbli.

L-Awtorita' tissottometti li l-izvilupp propost ma jikkostitwix zvilupp legali barra miz-zona tal-izvilupp, li l-uzu residenzjali mhuwiex gustifikat skond il-policy SET 12 tal-pjan ta' struttura, li jmur kontra objettivi tal-pjan ta' struttura fosthom il-policies RCO 10, RCO 12 u l-provvedimenti tal-Flora, Fauna and Natural Habitats Regulations Avviz Legali 257/03, li dwar il-permess PA 4742/05 citat mill-appellant jezisti zvilupp fuq il-gnub tas-sit u l-Kummissjoni dwar il-Kontroll tal-Izvilupp approvat fond simili ghal dak mibni ghas-siti adjacenti, li l-permess PA 4742/05 ma jikkostitwix precedent ghal zvilupp fuq is-sit mertu ta' dawn il-proceduri, li l-issanzjonar mitlub mhuwiex gustifikat, li l-izvilupp imur kontra l-policy RCO 4, li l-footprint tal-binja teccedi il-150m2 permess skond il-paragrafu 8.2(iii) tal-Policy & Design Guidance 'Development Outside Built-up areas', l-area tal-pixxina teccedi l-limitu ta' 25m2 ai termini tal-artikolu 5.1 (3) tad-DC Policy 'Swimming Pools ODZ' , u li peress li l-appellant qieghed jitlob l-issanzjonar tal-izvilupp ma hemm ebda skop li jigu pprezentati pjanti emendati li ma jirreflettux dak ezistenti.

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l) L-ewwel aggravju tal-appellant hu fis-sens li hu vitma ta' diskriminazzjoni; u dan billi giet approvata applikazzjoni PA 4742/05 f'isem Marco Millo ta' sit li jinsab vicin s-sit mertu ta' dan l-appell.

Dan is-sit hu mmarkat 'A' fuq l-pjanta Dok 1 annessa mar-rapport tal-Awtrita' pprezentat fil-11 ta' Gunju 2007, ghalkemm l-appellant irrefera ghl dan is-sit li hu prattikament faccata tas-sit de quo l-pjanta imsemmija tikkonferma li apparti mill-fatt li jinsab fuq in-naha l-ohra tat-triq, hemm distanza konsiderevoli bejn iz-zewg siti.

L-Awtorita' spjegat x'kienu c-cirkostanzi partikolari ghalhiex nghata l-permess citat; u cjoe li dan is-sit kien 'infill site' bejn zewg residenzi legittimi ezistenti.

Is-sit mertu ta' din l-applikazzjoni mhux 'infill site' bejn zviluppi legittimi; hu struttura 'detached' vicina ghal numru ta' zviluppi mmarkati B,C,D,E, F, G, H u I fuq l-istess pjanta, li kollha nbnew bla permess; u soggetti ghall-enforcement.

Iz-zewg kazijiet ghalhekk m'humieq identici u ghalhekk l-permess citat ma jikkostitwix precedent ghall-appellant; li fic-cirkostanzi mhux gustifikat li jilmenta minn diskriminazzjoni.

Jigi rilevat li l-applikant jinghata permess, mhux ghax xi hadd qablu nghata l-permess; izda ghax skond il-ligi obligat li japplika qabel jibni, u jkun awtorizzat jibni jekk jinghata l-permess, u l-izvilup jinhtieg li jsir skond l-kondizzjonijiet u l-pjanti approvati bil-permess. Mill-elenku tal-applikazzjoni indikati fil-parti Site History tar-rapport tal-Awtorita' jirrizulta li bl-applikazzjoni PB 1760/84, l-appellant talab permess ghall-kostruzzjoni ta' residenza u garage. Din l-applikazzjoni giet michuda mill-PAPB.

Bl-applikazzjoni PA 7747/94, l-appellant talab permess ghal ziediet zgħar fil-ground floor u l-bini ta' swimming pool. L-applikazzjoni giet michuda mid-DCC fis-16 ta' Frar 1996.

Bl-applikazzjoni PA 1266/00, l-appellant ippropona 'to sanction additions at ground floor and construction of a swimming pool'. L-applikazzjoni giet michuda mid-DCC fit-8 ta' April 2002. Saret reconsideration u r-rifjut gie kkonfermat fit-2 ta' Mejju 2004. Sar appell PAB 85/04.

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Bl-applikazzjoni PA 2289/00, l-appellant talab 'To sanction store'. L-applikazzjoni giet michuda mid-DCC fit-8 ta' April 2002; Saret reconsideration u r-rifjut gie kkonfermat fis-16 ta' Settembru 2002.

Bl-applikazzjoni PA 1847/02 l-appellant talab "To sanction swimming pool". L-applikazzjoni giet michuda mid-DCC fl-24 ta' Lulju 2002.

Bl-applikazzjoni PA 0513/04 talab "To sanction store for agricultural storage purposes". L-applikazzjoni giet michuda mid-DCC fl-24 ta' Awwissu 2004. Saret reconsideration u r-rifjut gie kkonfermat fit-13 ta' Settembru 2005. Sar appell PAB 315/05.

Fuq is-sit saru l-enforcement segwenti:

ECF 447/97 Construction of swimming pool without permit. Sar appell PAB 279/97 li gie michud mill-Bord ta' l-Appell fis-26 ta' Gunju 2002.

ECF 634/03 Construction of Villa without Permit. Sar appell PAB 20/04 li gie michud fl-4 ta' Frar 2005.

ECF 631/03 Construction of store without Permit. Sar appell PAB 18/04 li gie michud fl-10 ta' Marzu 2006.

Il-permess jikkonferma li l-appellant applika biex jibni residenza u garage fin-1984. Ghalkemm l-applikazzjoni giet michuda, bena bungalow, swimming pool u store bla permess, u llum jippretendi li dan l-izvilupp urbanistiku estensiv, f'zona sensitiva fejn mhux permess zvilupp jigi sanzjonat.

Dwar is-sensitivita tas-sit in kwistjoni, l-Awtorita' ccitat d-decizjoni tal-Bord ta' l-Appell dwar l-Ippjanar tat-23 ta' Lulju 2003, fl-ismijiet "Antoine Borg vs Kummissjoni ghall-Kontroll ta' l-Izvilupp", li jirreferi ghas-sit mmarkat H fuq l-pjanta Dok 1 annessa mar-rapport tal-Awtorita'; li hu prattikament adjacenti ghas-sit mertu ta' dan l-appell. Din d-decizjoni kkonsidrat l-proposta ta' zvilupp f'din il-lokalita' inaccettabbli billi hi in kontravvenzjoni ta' diversi Policies tal-Pjan ta' Struttura.

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II) It-Tieni aggravju tal-appellant hu li l-Awtorita' approvat diversi permessi ohra fl-istess triq, apparti l-permess PA 4742/05 gia' citat; kif ukoll approvat permessi barra z-zona tal-izvilupp f'lokalitajiet li wkoll ghandhom 'scenic value'. Din l-allegazzjoni baqghet wahda generika, u l-appellant naqas li jispecifica kazijiet partikolari, ghalkemm saret referenza ghall-ittra indirizzata ta' Chairman tal-Awtorita' fit-28 ta' Gunju 2003, u tal-15 ta' Marzu 2007 fejn saret referenza ghall-permessi, barra z-zona tal-izvilupp.

Dwar l-allegati permessi fl-istess Triq, l-Awtorita' ikkonfermat li l-izviluppi kollha vicin is-sit in kwistjoni mmarkati B, C, D, E, F, G, H u I, fuq l-pjanta mmarkata Dok 1 annessa mar-rapport tal-Awtorita' pprezentata fil-11 ta' Gunju 2007, nbnew bla permess, u huma soggetti ghall-proceduri ta' enforcement. Dwar permessi ohra barra z-zona ta' l-izvilupp jigi rilevat li certi areas partikolari ghalkemm barra z-zona tal-izvilupp nghataw d-disinjazzjoni ta' Rural Settlement (Category 1, 2 u 3) fejn certu zvilupp limitat, b'certi kondizzjonijiet specifici jista' jigi approvat.

Dan pero ma japplikax ghas-sit mertu ta' dan l-appell billi z-zona ma gietx disinjata bhala Rural Settlement fil-Pjan Lokali ppubblikat f'Lulju 2006, izda bhal zona sensitiva ta' importanza ekologika, area ta' High Landscape Value tal-Buskett; u Area Specjali ta' Konservazzjoni ta' Importanza Internazzjonali, Area ta' Konservazzjoni Rurali, fejn l-izvilupp urbanistiku propost ma jigix awtorizzat.

II) L-appellant jilmenta mill-fatt li jekk z-zona hi ta' tali importanza l-Awtorita' ma kellhiex tapporva permessi f'din il-lokalita'; u li hemm diversi binjiet ohra li ilhom jezistu mis-snin tmenin.

Dwar dan jinghad li kontrarjament ghal dak dikjarat mill-appellant ghalkemm jezistu binjiet ohra f'din il-lokalita' irrizulta li dawn inbnew bla permess. L-allegazzjoni li nghataw permessi, f'din il-lokalita' ghalhekk mhix korretta. Billi ma nghataw permessi, l-allegazzjoni ta' trattament deskriminatorju fil-konfront tal-appellant tirrizulta manifestament infondata.

IV) L-appellant jilmenta' wkoll mill-fatt li ma nghataw l-opportunita' li jaghmel alterazzjonijiet biex inaqqas l-impatt negattiv. L-appellant jghid li lest jipprezenta pjanti emendati; pero' l-applikazzjoni hi 'to sanction' bungalow u swimming pool li 'ex admissis' ilha r-residenza tieghu ghal dan l-ahhar 30 sena; l-appellant mhux qed jipproponi 'sanctioning' ta' zvilupp izghar izda ta' dak ezistenti. L-appell gie ipprezentat fit-22 ta' Marzu 2007. Fil-para 4 gie ddikjarat li qed jitlob jissanzjona r-residenza tieghu u tal-familja tieghu ghal dawn l-ahhar 27 sena mill-anqas: Fi kwalunkwe kaz billi fil-principju, proposta ta' residenza f'din il-lokalita' sensitiva mhix permissibbli, hu irrilevanti li jgi propost zvilupp izghar minn dak ezistenti.

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Dwar iz-zona mertu ta' dan l-appell, kif ukoll dwar is-sottomissjonijiet ulterjuri tal-konsulenti tal-appellant, issir referenza ghall-appell 85/04 fejn ntqal is-segwenti:

“Il-premess jikkonferma, mhux li l-appellant f'xi zmien kellu permess, izda li ilu ghall snin shah igawdi mill-illegalita'impurement. L-appellant kellu l-obbligu li japplika qabel jibni, u jibda jibni kemm-il darba jinghata l-permess. L-appellant applika ghall-permess fin-1984, ma nghatax permess u bena zvilupp urban estensiv f'area sensitiva daqs li kieku inghatalu l-permess.

L-appellant ghazel li jibni bla permess, u billi ilu snin jirrisjedi hemm jippretendi li l-izvilupp illegali jigi sanzjonat u l-area issir Rural Settlement. Il-process ta' ippjanar, partikolarment l-kontroll ta' l-izvilupp, issir b'mod tekniku u oggettiv biex jigi assigurat li certi areas li jimmeritaw protezzjoni jigu ppriservati a beneficju tal-komunita in generali, partikolarment ghall-generazzjonijiet futuri. Dan l-ezercizju idealment m'ghandux jigi influwenzat kondizzjonat jew addirittura dettat minn min jabbuza. B'dan il-mod dak kollu kkonsidrat u ippjanat li jimmerita preservazzjoni, jigi stultifikat, u fejn kien intiz li jibqa mhux zviluppat, jigi zviluppat. In-nuqqas ta' kontroll, u l-assoggettazzjoni ghall-abbuz tannulla kull tentattiv u ezercizju intiz biex jorganizza l-izvilupp biex dan ikun dejjiemi u sostenibbli.”

“Fin-nota, ipprezentata fit-13 ta' April 2012, l-konsulent legali tal-appellant ssottomettiet li qed issir diskriminazzjoni kontra l-appellant, li nghataw diversi permessi ghar-residneza barra z-zona tal-izvilupp; li l-Awtorita' mhix konsistenti fid-decizjonijiet taghha billi applikazzjonijiet simili, barra z-zona tal-izvilupp gew approvati; li l-appellant ilu mis-snin tmenin juza l-fond ghar-residenzja; li fil-lokalita'hemm diversi binjiet ohra, u ghalhekk l-lokalita' kienet timmerita' li tigi disinjata bhala Rural Settlement fejn certu zvilupp limitat jista' jigi approvat. Inter alia fl-imsemmija nota jinghad s-segwenti:

“Jigi enfasizzat li la darba l-Awtorita' anki f'kaz wiehed biss (ghall-grazzja tal-argument) tinjora dawn l-policies u regolamenti u taghmel eccezzjoni ghall-istess, din l-eccezzjoni ghandha ssir fl-applikazzjonijiet kollha ohra simili altriment ma jkunx hemm trattament ugwali u tkun qed tigi kommessa diskriminazzjoni.”

Il-premess jimmerita approfondiment fil-kuntest ta' konsiderazzjonijiet ta' ippjanar.

Dwar permessi fil-vicinanze tas-sit de quo, irrizulta fil-kors ta' smiegh ta' dan l-appell, li prattikament l-izviluppi kollha f'din il-lokalita' nbnew bla permess. Mhux sufficjenti li

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wiehed jirreferi ghall-izvilupp fil-lokalita', jinhtieg li dawn ikunu legittimi cjoe nbnew bil-permess. Kif irrizulta mill-pjanta pprezentata mill-Awtorita', l-lokalita' in kwistjoni hi karatterizzata bil-bini illegali.

Hemm permess fil-vicinanze, PA 4742/05, izda dan skond l-Awtorita' nghata billi kien infill site bejn zewg residenzi legittimi. Dan hu mmarkat 'C' fil-pjanta annessa mas-second statement tal-Awtorita' Dok LV1. Is-sit mertu ta' dan l-appell la hu infill site u l-anqas adjacenti blank party wall, li huma l-eccezzjonijiet li jiggustifikaw permess f'Rural Settlement.

Saret in fatti sottomissjonijiet fis-sens li dan il-'parcel of properties' kien jimmerita li jigi rikonoxxjuti bhala rural settlement. Izda jibqa' fatt, li bil-Pjan Lokali ppubblikat f'Lulju 2006, din il-lokaltia' ma gietx disinjata bhala Rural Settlement izda Area sensitiva ta' mportanza ekologika, u High Landscape Value of Buskett, u area ta' konservazzjoni rurali."

"Hi sottomissjoni tal-appellant li jekk l-Awtorita' taghti permess kontra l-Policies, u taghmel eccezzjoni, din l-eccezzjoni ghandha tigi applikata fl-applikazzjonijiet kollha simili billi fin-nuqqas ikun hemm trattament mhux ugwwali u ssir diskriminazzjoni.

Indubbjament applikazzjonijiet simili jirrikjedu trattament identiku, pero' jinhtieg li jkunu simili. L-appellant ghamel referenza ghall-permessi li nghataw barra z-zona tal-izvilupp, pero' ghad-differenza taz-zona fejn jinsab is-sit mertu ta' din l-applikazzjoni, applikazzjonijiet f'areas ODZ li huma Rural Settlement jistghu jigu accettati purché jissodisfaw certi kundizzjonijiet. L-area fejn jinsab is-sit mertu ta' dan l-appell ma jinsabx f'Rural Settlement, u ghalhekk l-paragun ma jreggix; u fic-cirkostanzi ma jistax jigi allegat trattament diskriminatorju.

Konsiderazzjoni ohra doveruza hi li mhux kull permess jista' jigi citat bhala precedent; kif jippretendi l-appellant. Jista' jkun l-kaz li jinghata permess b'zball; jew in kontravvenzjoni ta' xi plans jew policy; dan ma jfissirx li l-'izball', ghandu jigi ripetut biex ma ssirx diskriminazzjoni ma' applikant susegwenti. Ezempju ta' dan hu l-Housing Estate tal-Mosta li wara snin mibni b'mod simetriku, gew milqugha xi applikazzjonijiet ghall-garages f'dak li originarjament gie approvat bhala front garden. Dawn huma permessi li ma kellhomx jinghataw, u l-fatt li inghataw ma jaghtu l-ebda dritt lill-haddiehor li jippretendi li jinghata l-permess semplicement ghax dan nghata lill-haddiehor. Ara Appell Numru 294/11 fl-ismijiet Jesmond Farrugia vs. MEPA deciz fis-7 ta' Frar 2012.

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Finalment l-perit tal-appellant ilmenta mill-fatt li d-dewmien kien ta' pregudizzju ghad-drittijiet tal-appellant, billi l-applikazzjoni giet deciza skond l-Policies attwali li huma aktar rigoruzi.

Il-perit isemmi 'a 28 year old application'. Dan mhux korrett. Dan mhux kaz ta' applikazzjoni li damet 28 sena biex tigi determinata; izda kwistjoni pprokurata mill-istess agir tal-appellant li applika l-ewwel darba fin-1984; u bena nonostante li l-applikazzjoni giet michuda.

Dwar liema Policies huma applikabbli, cjoe jekk humiex daww fis-sehh f'zmien meta saret l-applikazzjoni, jew daww fis-sehh meta tigi determinate l-applikazzjoni; dan hu illum stabbilit minn sentenzi tal-Onorabbli Qorti ta' l-Appell fosthom "Angelo Farrugia vs Chairman tal-Awtorita' ta' l-Ippjanar deciza fl-24 ta' April 1996, u "Emanuel Mifsud vs il-Kummissjoni ghall-Kontroll ta' l-Izvilupp", deciza fil-31 ta' Mejju 1996."

Ezaminata l-proposta fil-kuntest tal-Policies ta' l-ippjanar rilevanti, l-motivazzjonijiet tar-rifjut jirrizultaw gustifikati, u l-appell ma jimmeritax konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tas-26 ta' Frar 2007, ghall-applikazzjoni PA 0354/04.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ma applikax il-commitment li hemm fiz-zona ghal kaz u b'hekk iddiskrimina mal-appellant u kkommetta zball ta' ligi. Issir referenza specifika ghal permess PA 4742/05 ghal zvilupp li inghata permess faccata tas-sit tal-appellant fl-istess triq u fejn kienu japplikaw l-istess policies. Ebda wahda mill-izviluppi ma huma f'rural settlement kif issottometta t-Tribunal, pero irrifjuta l-applikazzjoni mertu tal-appell fuq il-bazi li l-izvilupp mhux gustifikat ghax mhix qeghda f'rural settlement. Il-paragun ma jreggix. In oltre t-Tribunal inkorra zball ta' ligi meta qal li l-permess PA 4742/05 kien gustifikat nonostante illi l-bini biswit is-sit in kwistjoni kienu illegali mentri invece l-izvilupp mertu tal-appell ma kienx gustifikat ezattament ghall-istess raguni;

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2. It-Tribunal zbalja meta kkonkluda li l-appellant mhux qed jigi diskriminat ghax ma nghatawx permessi ta' zvilupp ohra fil-lokalita meta fil-fatt inhareg il-permess 4742/05 u fejn it-Tribunal sostna bhala argument li jinsabu f'partijiet diversi tat-triq;
3. It-Tribunal interpreta hazin il-kuncett ta' commitment meta qal illi mhux kull permess jista' jigi citat bhala precedent meta dan jinghata bi zball jew in kontravenzjoni ta' pjan jew policy, dan igib fix-xejn il-principju li applikant ma ghandux jigi diskriminat fil-konfront ta' ohrajn, ghax bl-argument tat-Tribunal jista' jigi injorat il-commitment bhala principju;
4. It-Tribunal naqas li jikkonsidra s-sottomissjonijiet u provi tal-appellant u dan jikkostitwixxi ingustizzja manifesta fil-konfront tieghu bil-ksur tad-dritt audi alteram partem. L-appellant jirreferi ghas-sottomissjonijiet li ghamel fil-15 ta' Marzu 2007 u premessi hemm ikkwotati.

L-ewwel aggravju

L-ewwel parti tal-aggravju jirrigwarda d-diskriminazzjoni li saret mill-appellant peress illi fil-konfront tieghu ma ittehidx kont tal-commitment fiz-zona u b'referenza partikolari ghal permess 4742/05 li hu allegat hu simili ghall-izvilupp in kwistjoni u jinsab faccata tas-sit in kwistjoni. Din il-kwistjoni giet ventilata mit-Tribunal b'mod dettaljat fejn it-Tribunal fl-ewwel lok sab illi l-izvilupp bil-permess 4742/05 mhuiex faccata tas-sit in kwistjoni izda f'certu distanza boghod. In oltre ma hemm ebda similitudni bejn iz-zewg fattispecie li jikkarakterizaw l-izviluppi. Fil-kaz tal-permess 4742/05, dan gie meqjus bhala infill site bejn zewg proprjetajiet legali u adjacenti blank party wall. L-applikazzjoni mertu ta' dan l-appell ma ghandhiex l-istess karatteristici anzi hi wahda minn sensiela ta' binjiet fl-istess zona mibnija illegalment u kolpiti b'enforcement notice. Il-Qorti in oltre tqis zbaljata s-sottomissjoni tal-appellant li z-zewg permessi kienu kolpiti bl-istess policies peress illi sottomissjoni tal-Awtorita, mhix ribadita mill-appellant, gie relevat illi s-sit fil-permess 4742/05 kellu gia permess ghal residenza qabel ma sar il-local plan fejn kien jinghata permess ghal zviluppi fuq il-mertu ta' kull kaz bhal kaz 4742/05 bil-fattispecie tieghu. Mid-dhul tal-pjan lokali eccezzjonijiet isiru biss f'rural settlements. Is-sit in kwistjoni ma jaqax f'din il-kategorija anzi hu desinjat bhala Area of Ecological Importance.

Kwindi hi l-fehma tal-Qorti li l-argument tad-diskriminazzjoni ibbazat fuq nuqqas ta' applikazzjoni ta' commitment hi errata fil-fatt.

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In oltre kif già intqal mhix korretta l-allegazzjoni fit-tieni parti tal-aggravju illi t-Tribunal ghamel xi evalwazzjoni hazina ghax irrifjuta din l-applikazzjoni ghax mhix f'rural settlement. It-Tribunal anzi qal li ebda ecezzjoni ma setghet issir ghal dan l-izvilupp precizament ghax mhix f'rural settlement izda f'conservation area mertu ta' protezzjoni. L-istess jinghad ghall-argument zbaljat li z-zewg siti cioe dik in kwistjoni u dik bin-numru 4742/05 jinsabu biswit zviluppi illegali. Anzi inghad preciz bil-kontra mit-Tribunal u din kienet wahda mir-ragunijet ghaliex iz-zewg siti ma setghux jigu paragonati bl-istess mod. Dan kollu apparti l-konsiderazzjoni tat-Tribunal illi ma jistax jigi sanzjonat zvilupp meta tali zvilupp hu ancillari ghal zvilupp primarju cioe residenza li hi illegali qabel din tal-ahhar tigi sanzjonata kif inkorporat fir-regolament 14 tal-Avviz Legali 514/2010 precedentement ic-cirkolari PA 2/96.

Ghalhekk dan l-aggravju qed jigi kompletament michud.

It-tieni aggravju

Dan l-aggravju hu bla bazi ghax l-appellant kien selettiv fl-argument li uza bhala bazi tal-aggravju. It-Tribunal wasal ghal konklużjoni li l-appellant ma kellux raguni jsostni li ghandu jircevi trattament simili ghal premissi ohra mahruga fiz-zona ghaliex il-premess ikkwotat 4742/05 apparti li jinsab f'parti opposta tat-triq f'distanza mbeghda, zied illi dak il-permess inhareg ghax kien infill site bejn zewg proprjetajiet bil-permess u qabel ma inhareg il-pjan lokali. Invece l-izvilupp in kwistjoni kien jinsab fost diversi zviluppi bla permess f'zona li hi protetta sew mill-izvilupp skond l-istess pian lokali. It-Tribunal iddecieda a bazi tal-pjanijet u policies ezistenti fil-mument tad-decizjoni u la darba giet applikata l-ligi ma setax ikun hemm diskriminazzjoni ghax id-diskriminazzjoni tirrikjedi trattament differenti f'circostanzi identici. Dan kollu jinghad bla ebda pregudizzju ghal fatt li strettament kwistjonijiet ta' diskriminazzjoni mhumiex fil-mansjoni tal-poteri ta' din il-Qorti li iddeciedihom fejn jirrigwarda appelli minn decizjonijiet tat-Tribunal.

Ghalhekk l-aggravju qed jigi michud.

It-tielet aggravju

Hi l-fehma tal-Qorti illi t-Tribunal ma ghamel ebda apprezzament hazin tal-kuncett ta' commitment. It-Tribunal mhux marbut bil-precedent ghalkemm ghandu jkun konsistenti fid-decizjonijiet tieghu biex jaghti certezza lil gudikati u sens ta' direzzjoni lil min irid jaghmel zvilupp. Apparti dan pero, it-Tribunal hu marbut primarjament li japplika l-ligijiet, pjanijiet u policies fil-mument tad-decizjoni bla ebda diskrezzjoni afdana lilu li jiddeciedi mod iehor. Ghandu l-obbligu li jqis kwistjonijiet ta' sustanza bhal ma huma permessi simili fiz-zona fejn qed jintalab il-permess, pero approvazzjoni ta' zvilupp ibbazat semplicement fuq permess simili minghajr kont li l-izviluppi huma identici u li jitqies li fil-fatt l-applikazzjoni in kwistjoni tkun konformi mal-ligijiet, pjanijiet u policies in vigore fil-mument tad-decizjoni ma jikkostitwix bazi ghal gustifikazzjoni tal-aggravju kif qed jippretendi b'mod akkamediku l-appellant. Dan jinghad ghaliex kif irrelevat il-Qorti, fuq bazi fattwali ma hemmx is-similitudni allegata mill-appellant li jpoggi fix-xejn kull argument dwar nuqqas ta' apprezzament korrett jew aplikazzjoni tal-kuncett ta' commitment fil-kaz in ezami.

Ghalhekk anki dan l-aggravju qed jigi michud u din il-Qorti taqbel mal-kunsiderazzjonijiet li ghamel it-Tribunal fuq il-materja.

Ir-raba aggravju

Dan l-aggravju hu bla bazi peress illi t-Tribunal ikkonsidra l-aggravji mressqa mill-appellant u l-argumenti mressqa u wara li ghamel il-kostatazzjonijiet tieghu wasal ghal konkluzjonijiet li wasal. Il-fatt illi t-Tribunal ma jkunx semma' kull dokument jew argument jew sottomissjonijiet li tressqu mill-partijiet sa l-ahhar dettall ma jfissirx li jkun sar xi ingustizzja mal-partijiet. Jirrizulta minn qari tad-decizjoni illi l-aggravji tal-appellant kienu tnejn u t-tnejn gew trattati mit-Tribunal u d-decizjoni dwarhom kienet wahda kunsidrata u ittiehed konjizzjoni tal-argumenti fis-sustanza dwarhom. Apparti dan kollu l-appellant jaghmel referenza specifika ghall-ittra tal-15 ta' Marzu 2007 li skond hu, it-Tribunal ma semmiex fid-decizjoni tieghu. Din l-ittra b'din id-data ma tinsabx f'dan il-process u anqas fit-tlett processi ohra konnessi cioe appelli 174/2012, 176/2012 u 177/2012. Anki kieku kienet tezisti, in-nuqqas li t-Tribunal isemmiha ma jirrendix perikoluz jew dubjuz il-gudikat peress li kif inghad, it-Tribunal

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ikkonsidra u iddelibera fuq l-aggravji mressqa cioe d-decizjoni li ittiehdet fin-nuqqas tal-prezenza tal-applikant u l-aggravju dwar il-commitment taz-zona, permessi simili li nhargu fl-istess inhawi u li partijiet mill-binja huma gia koperti b'permess. Dan kollu gie ezaminat mit-Tribunal.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Frankie Tonna u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012. Bi-ispejjez kontra l-appellant.

< Sentenza Finali >

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