



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 66/2013

Michael Xerri

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Michael Xerri tat-30 ta' Settembru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Settembru 2013 fejn laqa' in parti u cahad in parti l-applikazzjoni PA 646/12 biex jigu sanzjonati varjazzjonijiet mill-permess PA 7070/97 li jikkonsistu minn zieda fil-ottprint tal-bini, tidbil fil-faccata ta' quddiem u kemm ta' wara u proposta biex joghla l-hajt tas-sejjieh skond kif approvat fil-permess 7070/97;

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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 sabiex jissana varjazzjonijiet mill-permess bin-numru PA 7070/97 li jikkonsistu minn zieda fil-footprint tal-bini, tibdil fil-faccata ta' quddiem u ta' wara, u proposta biex joghla hajt tas-sejjeigh skont kif kien approvat fil-permess bin-numru PA5590/07. L-applikazzjoni giet rifjutata mill-Kummissjoni ghall-Ambjent u l-Ippjanar ghal dawn ir-ragunijiet segwenti:

"1. The breaking down of the ridge, the construction of a retaining walls screened by a 4metres high rubble wall go against the objectives of Structure Plan Policy RCO 22 which aims at protecting cliff edges.

2. Structure Plan policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal detracts from this, and so it conflicts with Structure Plan policy RCO 4.

3. The existing building, which is situated on a ridge, does not conform with criteria (i) and (iii) of Policy 2.7 of Policy and Design Guidance 2007 in that part of the backyard is less than 3 metres from the ridge and the proposed boundary wall exceeds the maximum height of 2.4 metres above soil level (at the ridge).

4. The existing long balconies with railings and cantilever on the rear facade are visually obtrusive and have a negative visual impact on a scenically sensitive area, and so runs counter to Policy GZ-EDGE-2 of the Gozo and Comino Local Plan

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which aims at maintaining the traditional characteristics at the edge of urban settlements. Consequently the proposal also runs counter to Structure Plan policy BEN 2.

5. Due to the existing balcony at second floor level, the building is perceived as unfinished and therefore the design of the front facade of the building is visually unacceptable. In addition, the intervention carried out/proposed on the rear elevation including the construction of rubble wall would have a negative impact on the ridge edge which is seen from long distances. Hence, the proposal runs counter to Structure Plan Policy BEN 2.”;

Ra l-appell tal-Perit Emanuel Vella f'isem l-appellant li jaqra' kif gej:-

Reasons 1 and 2:

The proposed development consists in the construction of the back boundary wall of applicant's dwelling house. Since the yard is located on a ridge, the missing wall at the back is constituting a danger to the house occupiers. Appellant strongly denies that he has broken down the ridge. The ridge edge at the back of appellant's site and of the adjacent sites is as shown on the attached block plan marked Doc A

The ridge consists of fragile yellow rock which is being continuously eroded by the weather. It is also characterised by fissures (daghbien) which cause big chunks of rock to fall down periodically. This can be verified from the presence of large rock boulders at the foot of the ridge which used to form part of applicant's site. Therefore, remedial action has to be taken to prevent further damage and fragmentation of the rock face.

Appellant was constrained to construct stone fin walls/pillars serving as a retaining wall to support the ridge. However, these pillars have a negative impact on long distance views and it is for this reason that the boundary wall (1.2m high) approved in PA5590/07 is being proposed to be raised. These pillars will be hidden behind the proposed boundary rubble wall. I am submitting two long-distance photos marked Doc B. Photo 1 shows the existing situation while photo 2 shows a photo montage with the proposed rubble. As can be seen from these photos, the existing trees and shrubs located beneath the ridge will also mitigate any negative effects of this boundary wall. In actual fact, this photo also verifies that the cliff edge is hardly visible all along the back of the existing buildings due to the presence of these trees.

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As can be seen from the back elevation, this rubble wall will be at a lower level than the height of the rubble wall approved on the adjacent site (PA04760/09). In the latter application, PA04760/09, the EPD had requested applicant to present a construction phase method statement addressing the following issues:

- a) Mitigation measures implemented to protect the maquis which lies adjacent to the site of application;
- b) Measures to prevent spillage onto the adjacent maquis.

Since this is a similar proposal, applicant had presented a method statement for the construction of this rubble wall. This method statement is hereby attached again for easy reference and marked as Doc C.

Reasons 3, 4 and 5:

The variations from the original permission PA7070/97 to be sanctioned are as described in the proposal description and these are:

1) Increase in footprint: As can be seen from the drawings submitted, the approved building depth was 9.0m whilst the actual building depth is 9.5m, i.e. an increase of 0.5m. This is a minimal increase and in any case the back elevation of the building is either in line or even further back from the adjacent buildings.

2) Changes to elements in facade: The changes in the front elevation are deemed acceptable by the directorate. There are no major changes in the back elevation. It respects the character, appearance, scale, massing and height of the locality. The design of the back elevation has the same characteristics and features as the existing adjacent buildings in this area (see buildings on both sides on attached photo). Again it is very similar to the approved elevation, the only difference is that the door openings are arched instead of straight.

3) Height limitation: The height of the building both on the front and back elevations is as approved in PA7070/97. Therefore Policy 2.7 cannot be applied retroactively. Furthermore, the height of the building at the back is much lower than the height of the adjacent building on the right, while it is the same level of the building on the left hand side.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fis-7 ta' Marzu 2013 u li jaqraw kif gej:

“Proposed development on ridge

On the back of the site, the existing development consists of three floors plus additional structural wall at the lower part of the site (at fields' level). In PA 7070/97, the proposal included a two storey terraced house on the front elevation and three storey development on the back in view of the site level as defined in that application (ridge was indicated to be one storey beneath the street level – PA 7070/97/12a). However, it transpires from the enforcement notice ECF 321/03 that excavation on ridge has been carried out illegally.

Moreover, in considering the adjacent third party properties, the submitted back elevation at doc. 23f clearly indicates that the ridge was higher than it is being shown. The ridge is of geological/geomorphologic and of ecological importance and therefore the development does not give the merited protection of ridge edges. The cliff-face forms part of the escarpment of the Xaghra ridge, which is characterised by maquis communities including protected species and trees. The breaking down of the ridge continues to degrade this habitat type on the cliff side, compromises a number of protected species and trees, and therefore cannot be recommended. Hence the development runs counter to Structure Plan Policy RCO 22 which seeks to safeguard such ridge edges.

As regards the height of the building on the rear elevation in relation to the level of fields, the existing building is perceived as four floors. The architect is proposing to construct a 4m high rubble wall to screen the lower floor level. However, the height of the wall is excessive and the overall design of the building on the ridge edge runs counter to Policy GZ-EDGE-2 of the Gozo & Comino Local Plan since the design is not deemed compatible, in terms of massing and building height, with the rest of the ridge edge.

In addition, buildings on ridges are required to conform to Policy 2.7 of the Policy and Design Guidance 2007 in terms of building height and setbacks on the back. According to the policy, the existing development is not sanctionable since:

- Although the 3m backyard is provided at the lower basement level, the 3m setback has been achieved by projecting the backyard outside the ridge edge. The development is just 1.6m from the ridge edge. In the previously permit PA 7070/97, the ridge has been indicated 11.8m away from street while it was actually slightly more than 10m;
- The rear boundary wall is 4m high from the field beneath the ridge edge. Any boundary wall should be proposed at the ridge edge – Although the proposed rubble wall is being indicated as an increase in the height of an approved rubble wall in PA 5590/07, it should be noted that no proposal for a boundary wall adjacent

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to the ridge has been approved in this application (refer to drawing PA 5590/07/51a);

Therefore the proposed development runs counter to Policy 2.7 (Part i and iii) and Policy and Design Guidance 2007. In addition, although each floor should be successively setback by 3m, PA 7070/97 was approved without such setback and hence it is being accepted.

Design and Appearance

Front Façade:

The slight shifting of apertures and the construction of a solid open balcony instead of the approved railings are visually acceptable. However, due to the existing open masonry balcony at second floor level, the building is perceived as unfinished and therefore the design of the front facade as carried out cannot be sanctioned. The proposal runs counter to Structure Plan BEN 2.

Back Elevation and Impact on the Ridge:

According to the submitted drawing at documents at 23f, the discrepancies between the approved rear facade in PA 7070/97/1A and the existing situation on site are as follows:

- the construction of arched apertures instead of flat headed apertures;
- the construction of long balconies with aluminium railings;
- the construction of a cantilever at roof level;
- the construction of franka stone pillars/walls below the ridge edge and roof over by a concrete platform to serve as a back yard/terrace instead of the approved rubble wall;
- the extension of the building onto the back yard/terrace.

In addition, a 4m rubble wall is being proposed to screen off the existing walls abutting the ridge.

The existing balconies with railings and cantilever at roof level do not constitute traditional features and therefore the rear elevation is not in line with Policy GZ-EDGE-2 of the Gozo and Comino Local Plan which seeks to maintain the traditional character at the urban edge of the local settlements.

The existing franka stone fin walls/pillars serving as a retaining wall have a negative impact on long-distance views. In addition, the proposed 4m rubble wall would also be excessive and visually intrusive. The interventions as carried out / proposed including the construction of rubble wall would have a negative impact on the ridge edge which is seen from long distances and therefore cannot be sanctioned in terms of Structure Plan Policies RCO 4 and BEN2.

5.2 Authority's arguments at appeal stage

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

5.2.1 The Tribunal is notified that the site lies within a residential zoning and the rear part of the site is designated as an Area of High Landscape Sensitivity (AHLS) in an area of Xaghra of the Malta and Gozo Local Plan. The main issue is the building vis-à-vis the ridge edge at the back of the site, which development creates an adverse impact on long distance views. Such a development goes against the objectives to protect cliff edges; the intervention also degrades the ridge habitat.

Appellant is stating that he strongly denies that he has broken down the ridge. The Appellant is stating that the ridge consists of fragile yellow rock which is being continuously eroded by the weather and fissures are causing big chunks of rock to fall down periodically. Therefore remedial action has to be taken to prevent further damage and fragmentation of the rock face. According to the appellant the photomontages show that the existing trees and shrubs located beneath the ridge will also mitigate any negative effects of this boundary wall.

The Authority however, notes that notwithstanding the fragility of the cliff edge, the appellant encroached further towards the ridge thus accelerating unnaturally the breaking down of this ridge. This haphazard development is thus also in the process degrading this cliff side habitat and compromises a number of protected trees and species.

The height of the building on the rear elevation in relation to the level of the fields below is perceived as four floors. Thus the design is not deemed compatible with the rest of the ridge edge, in terms of massing and building height. The rear boundary wall is 4m high from the field beneath the ridge edge and the boundary wall should be proposed at the ridge edge as according to Policy and Design Guidance 2007 policy 2.7. This policy states that:

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- i) a backyard of at least 3 metres depth should be provided at the lowest basement level;
- ii) any exposed foundations shall not be more than 1.5 metres high above the external undisturbed soil level at any point;
- iii) the total height of the rear boundary wall together with any exposed foundations shall not exceed 2.4 metres above external soil level at any point. The wall shall be constructed in random rubble and the exposed foundations shall be faced in random rubble.
- iv) each floor shall be successively set back by at least 3 metres from the rear façade; Hence the proposal runs counter to Policy 2.7 of DC 2007 and Structure Plan policies RCO 4, RCO 22 and BEN 2.

5.2.2 Below are comments from consultations which were carried out in PA 649/11 (These comments were indicated in the DPAR prior to EPC sitting.):

These clearly show that EPD disapprove of this development. The EPC refused this development (27/10/11) on the basis of what was put forward and what had been concluded during the processing of this application.

Environmental Protection Directorate (EPD) noted that the rear of the site (where the interventions are being proposed) lies on a ridge edge, which is considered important from both an ecological and geomorphological point of view. Furthermore, the EPD objected to the proposed interventions for the following reasons:

1. The interventions involve structural/site engineering works directly to the cliff/rock face (refer to document 12d). Such development which will result in physical damage to the ridge edge is considered insensitive to the site context, and therefore cannot be recommended favourably;
2. Works will result in a change in the existing natural site topography and site contours;
3. EPD is already concerned about works in close proximity to the cliff edge (note approved boundary wall as section XX at document 1i), let alone works which even extend beyond the ridge edge (as shown in the proposed section XX at document 12d)

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4. In view of the sensitive characteristics of the ridge edge, the development should fit within the site context and not the other way round;

5. Case history is characterized by a number of interventions which are of concern;

6. Approval of such development would further result in an undesirable precedent for similar developments which would, on a cumulative basis, lead to a significant overall change in the appearance of the escarpment, foreseeably also structural damage;

7. Whilst acknowledging that ad hoc stances have been adopted in the past vis-à-vis other cases, following a review of such past cases, EPD is no longer in a position to tolerate/approve insensitive works which have been carried out or are proposed, without due consideration to the natural environment (also noting points 5 & 6 above);

8. The block plan indicates the presence of an access road, leading to the site. Hence the proposed stairs should be omitted from plans. Without prejudice to the above overriding concerns, it is foreseeable that a number of mitigation measures would need to be included should the proposal be considered any further. The EPD concluded that the block plan submitted with the current application does not even reflect the approved plan PA 5590/07/51a, which allowed the exposure of the ridge face. Furthermore, additional photos clearly indicating how the works concealed behind the reed windbreaker have been actually carried out should be submitted (refer to document 14 in PA 649/11).

5.3 Permits referred to by the appellant

The architect quoted a PA 4760/09 which is claimed to be similar to the development under appeal. PA 4760/09 proposed a boundary wall at 87, Triq Sant Anton, Xaghra; Permit was issued on 20/10/11. Below is the EPC minute of meeting as noted in the discussion which led to grant the decision in this application by the EPC Board.

EPC B held on 19th April 2011 (minute 58) Architect to consult EPD regarding method statement which is to be an approved document. Also to provide "near" distance views of location.

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To provide within 10 days.

Deferred 17th May 2011.

The EPD stated that the method statement at doc. 63A is acceptable from an environmental point of view (identical to one already reviewed- vide doc. 61 and 61a) - minute 66.

The architect also submitted photos of the rear of site showing an outline of the proposed boundary wall (photos 63A).

Referred for your consideration.

Drawings assessed are: Method statement doc.63A, 1B & 29B.

Case was again discussed at EPC level on 17/5/2011 within which the Board decided that:

EPC B held on 17th May 2011

Approved 4-0

Franco Montesin not present

Directorate to update report.

Standard conditions to apply and in addition a bank guarantee is to be imposed to ensure that works are carried in accordance with the approved method statement. EPD to quantify bank guarantee.

Reasons for overturning

Reasons for refusal 1 and 2, architect has produced a method statement to ensure that interventions are carried out in a sensitive manner and this has been approved

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by EPD. Likewise, the construction of the outer face of the wall is in rubble and approved by EPD.

The concrete platform is a structural necessity and will be adequately screed by the rubble wall.

Fine is applicable if this application is approved and is sanctioning illegalities on site.

The above case was cited by appellant to justify the proposed development. However, the Tribunal is to note that this permit was accepted by the EPD. Hence this cited cases does not having identical planning considerations to the case under appeal.”;

Ra s-sottomissjoni ta' Avukat Dottor Deborah Mercieca ghan-nom ta' registered objector, Noel Mercieca mibghuta lil dan it-Tribunal fis-26 ta' April;

Ra l-policies BEN 2, RCO 4 u RCO 22 tal-Pjan ta' Struttura;

Ra il-policy GZ-EDGE 2, GZ-RLCN-1 u Map 13.1-B tal-Gozo and Comino Local Plan;

Ra il-policy bin-numru 2.7 tal-Development Control Policy and Design Guidance 2007;

Ra ukoll il-PA files bin-numru 464/12, 649/11, 4760/09, 5590/07, 7070/97;

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

Ikkunsidra ulterjorment;

Illi l-izvilupp li qiegħed jintalab jikkonsisti fis-sanzjonar ta' bini għal uzu residenzjali minn kif gie approvat b'permess bin-numru PA 7070/97. L-oggezzjoni principali li jikkoncerna dan l-appell hu l-fatt li l-bini, li jinsab fuq ix-xifer tas-sisien li jdawwru r-rahall tax-Xaghra, mhux biss inbena sax-xifer, izda gie ukoll estiz terrazzin l'il hin mix-xifer bil-konsgwenza illi kellhom jittelghu strutturi mal-wicc tal-irdum ta' taht ix-xifer.

Illi dan l-izvilupp hu munit b'zewg avvizi ta' infurzar bin-numri ECF 321/03 minhabba allegat zvilupp mingħajr permess li jikkonsisti fi tqattiegh ta' blat, u ECF 883/04 li

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jikkonsisti minn zvilupp mhux skond il-permess u l-pjanti approvati f'PA 7070/97, li jinkludu f'varjazzjonijiet interni u esterni fosthom pillastri taht is-sies, tqassim ta' gewwa, u bini ta' galleriji u terrazin.

L-Awtorita qed tinsisti li l-izvilupp li qieghed fuq wara tal-fond sar wisq vicin ix-xifer tant li kellhom jittelghu strutturi mal-wicc tal-irdum u dan bi ksur tal-policy tal-Pjan ta' Struttura, partikolarment policy RCO 22 li tezigi l-protezzjoni ta' l-irdumijiet u tal-policy RCO 4 u l-policy GZ-RLCN-1 (Areas of High Landscape Sensitivity) tal-Gozo and Comino Local Plan li huma kontru zvilupp li jkerrhu l-pajsagg jew li huma ta' dannu ghal-pajsagg ta' valur xeniku. L-Awtorita' qed tinisisti li ga saret hsara lill-irdumijiet minhabba l-qtugh tal-blat, u l-izvilupp kif sar u l-proposta biex jittella hajt gholi tas-sejjeigh biex jghatti l-istess strutturi ser ikerrah id-dehra tal-istess irdum li jaghmel parti mis-sisien li jdawrru ix-Xaghra.

Min-naha tieghu l-appellant qed jinsisti li l-izvilupp sar simili tal-bini ta' biswit l-istess fond, u l-istruttura li tinkludi pilastru kellhom jittelghu biex issahhu l-istess sies minhabba li dan jista' jkun dgħajef minhabba x-xquq u tghawwir tal-blat kawza tal-effett tal-erozjoni. Il-hajt tas-sejjeigh propost ser iservi biex jghatti dawn l-istrutturi u ser ikun simili (anzi pjuttust iktar baxx) ta' dak li gie approvat biswit is-sit fuq in-naha tal-lvant bil-permess li jgieb in-numru PA 4760/09.

Illi l-izvilupp fuq is-sit mertu ta' dan l-appell li jinsab fil-konfini tal-izvilupp tax-Xaghra jaf il-bidu tieghu permezz tal-permess bin-numru PA 707/97. Dan it-Tribunal setgha jinnota li fil-process ta' dan il-permess ftit li xejn hemm dettalji biex wiehed setgha jikkonstata l-istat tax-xifer u s-sisien li jikkaratterzaw in-naha ta' wara tal-fond mertu ta' dan l-appell. Survey tas-sit li seta' jaghti dawl fuq it-topografija tal-art ma jirrizultax fil-process, u l-pjanti approvati jaghtu stampa li hemm dislivell ta' sular min-naha tat-triq ghal fuq wara tal-fond, bil-konsegwenza li fuq in-naha tat-triq il-bini ser jidher b'gholi ta' zewg sulari waqt li fuq wara ser jidher mibni fuq tlett sulari. Dan it-Tribunal ftit li xejn jara differenza mil-profil ta' kif dan il-bini gie approvat ghal dak li nbena, salv ghal xi differenzi fosthom l-inkluzjoni ta' gallerija u t-tkabbir tal-fond.

Huwa propju dan it-tkabbir tal-fond li wassal ghar-rifjut ta' din l-applikazzjoni, hekk kif skont it-tielet raguni tar-rifjut, il-fond inbena vicin hafna tas-sies u ma rrispettax id-distanza li l-policy numru 2.7 tad-DC Guidance 2007 titlob li jkun hemm mill-inqas tlett metri mix-xifer fil-livell sotterran, filwaqt li l-hajt li hemm bzonn jittella huwa ghola minn 2.4 metri kif tippermetti l-istess policy.

Filwaqt li dwar l-proposta tal-hajt sejjer ikun diskuss iktar il-quddiem, dan it-Tribunal jidhirlu li dwar l-estensjoni tal-bini, hekk kif seta jikkonstata mir-ritratt ezebiti fil-process, dan huwa mibni simili u mal-linja ta' wara tal-bini ezistenti biswit is-sit, u

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ghaldaqstant ftit li xejn jara li hemm impatt viziv fuq is-sisien meta dan il-bini jaghmel parti integrali mill-massa ta' bini li hemm matul dan il-parti tas-sisien tax-Xaghra. Pero' dwar il-proposta biex jigi estiz l-appogg fuq in-naha tal-punent, dan it-Tribunal ma jarax il-bzonn ta' tali estensjoni meta dan il-hajt ser johrog iktar 'il barra fuq is-sies, u ghaldaqstant din l-part tal-proposta m'ghandiex tintlaqa'.

L-istess jista jinghad ghal galleriji li gew ikkrejat fl-ewwel u t-tieni livell 'l fuq mit-triq, li huma s-suggett tar-raba' u l-hames ragunijiet tar-rifjut, meta dawn il-galleriji huma simili ghal dawk ga ezisistenit fil-bini adjacenti. Dan it-Tribunal seta' jikkonstata mill-istess ritratti ezebiti f'dan l-appell illi l-bini fil-vicinanze tas-sit huwa kkarettirazzat b'galleriji mal-wesgha tal-faccati ta' wara li jharsu fuq is-sies. Ghaldaqstant dan it-Tribunal huwa sodisfatt li dawn il-gallerija jistghu jigu ssanzjonati.

Mhux l-istess jista jinghad ghat-terrazzin li gie krejat fuq wara tal-livell sotterran, inkluz l-istrutturi ta' taht, li konsegwenza ta' dawn gie mirdum wicc l-irdum li jinsab fit-tarf tas-sies. Dan it-Tribunal jinsab konvint illi din iz-zona partikolari tax-Xaghra ghandha valur xeniku hekk kif giet identifikata skont il-Policy Map 13.1-B tal-Gozo and Comino Local Plan fejn japplika l-Pjan ta' Struttura, policy RCO 4. Fil-fehma ta' dan it-Tribunal, din il-parti tal-izvilupp li jmur lil hin mix-xifer tas-sies certament mhiex kompatibbli u idonja mal-ambjent tas-sies. Dan ghandu japplika wkoll ghal parti tal-proposta biex jinbena tarag biex jinholoq access minn dan it-terrazzin ghall-livell ta' l-art li tigi taht il-fond mertu ta' dan l-appell.

Ghaldaqstant it-talba biex jinbena hjajt tas-sejjeigh biex jitghattew dawn l-istrutturi li nbnew ma' wicc l-irdum mhiex qed tigi kkunsidrata minn dan it-Tribunal. Peress li dan it-Tribunal ma jarax il-bzonn ta' din l-estensjoni tat-terrazzin 'il barra mis-sies, ghalhekk dawn l-istrutturi ghandhom jitnehnew, u mhux jizdied l-izvilupp biex titghatta l-hsara ta' fuq id-dehra tas-sies li ga saret. Dan it-Tribunal lanqas ma jara xebh bejn il-proposta ta' dan il-hajt u dak li gie approvat fis-sit biswit il-fond mertu ta' dan l-appell, li nbena bis-sahha tal-permess bin-numru PA 4760/09. F'dan il-kaz l-hajt sar biex jghatti xogholijiet strutturali li saru biex isahhu l-binja ezistenit peress li s-sies f'dan il-kaz kien ikkarettirazzat minn gebel kbir milli blat shih. Fil-fatt il-hajt kellu jinbena bejn blata u ohra, imma fuq kollox ma jesporgiex 'il barra mil-linja generali tas-sies u sar bejn il-bini ezisteniti fuq kull naha tal-fond.

Ghal dawn il-motivi dan it-Tribunal qed jilqa' limitatament dan l-appell fejn ghandu x'jaqsam is-sanzjonar tal-bini li jinkludi (i) it-tkabbir tal-footprint, u (ii) it-tibdil tal-faccata, u jichad dik il-parti tal-appell rigward (a) is-sanzjonar tat-terrazzin fil-livell sotterran inkluz il-pilastri ta' taht, u (b) iz-zidiet kollha godda mitluba mal-bini.

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Peress illi l-proposta tinkludi s-sanzjonar ta' zvilupp li sar minghajr il-hrug ta' permess, dan it-Tribunal ser jinfliggi multa.

Ghalhekk dan it-Tribunal qed jordna sabiex fi zmien 30 gurnata minn din id-decizjoni, l-appellant ghandu jhallas multa ta' EUR 2,329 u jipprezenta sett ta' pjanti godda li jirriflettu din id-decizjoni inkluz is-segwenti:

1. Li fil-livell sotterran, peress li ser jitnehha it-terazzin ta' wara, ghandu jitnehha l-access ghal fuq wara, b'dana illi l-fetha tal-bibien ghandhom jinbidlu fi twieqi;

2. Ghandu jigi pprezentat flimkien mal-pjanti godda, 'works method statement' ta' kif ser isiru x-xogholijiet tat-tnehhija tat-terazzin u l-istrutturi ta' taht biex jinkixef b'mod komplet t-tarf tas-sies u wicc tal-irdum ta' taht, u ghandu jinkludi deskrizzjoni tat-tip ta' makkinarju li ser jintuza' u l-access ghal fuq wara tal-fond fejn ser isir dan ix-xoghol imsemmi;

3. Kopja ta' dan il-method statement ghandha tintbaghat lil Direttorat tal-Ambjent fi hdan il-MEPA biex jigi evalwat u approvat fi zmien 30 gurnata, u b'dan illi l-applikant ser ikollu sitt xhur mill-approvazzjoni ta' dan il-method statement biex inehti l-izvilupp imsemmi.

Illi s-Segretarju tal-Bord tal-Awtorita' ghandu johrog l-permess bl-istandard conditions fi zmien 30 gurnata wara li l-Awtorita' tkun sodisfatta li l-appellant ikun hatt dawg l-istrutturi msemmija, kixef mil-gdid wicc l-irdum u naddaf is-sit minn kull materjal skont l-istess 'method statement'.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Illi meta t-Tribunal fid-decizjoni teighu cahad is-sanzjonar tat-terazzin fil-livell sotterran inkluz il-pilastri ta' taht u ordna t-tnehhija tat-terazzin, aperturi ghalih u l-pilastri injora li l-appellant kellu gia permess ghat-terazzin u l-areas ghalih b'aperturi bhal ma hu bieb;

2. It-Tribunal injora l-fatt li l-applikazzjoni 4760/09 giet milqugha ghalkemm tinsab ftit metri boghod u tal-appellant giet michuda fuq premissi ta' fatt li ma rrizultawx mill-provi

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senjatament it-topografija tas-sies u ghalhekk ir-raguni ta' rifjut ma tistax tiqies spjegata u ragunata skond il-ligi.

L-ewwel aggravju

Il-Qorti rat l-atti u jidher illi l-permess originali 7070/97 kien fih awtorizzazzjoni ghal backyard ta' tlett metri. Jidher u dan mhux kontraddett illi f'dak il-permess is-sies kien indikat li kien 11.8 metru boghod mit-triq (cioe l-faccata tal-bini) mentri irrizulta li kien biss ftit aktar minn 13 metru. Jirrizulta wkoll skond l-appellant li l-footprint tal-binja ecceda l-permess b'nofs metru. Irrizulta wkoll illi biex l-appellant ghamel il-backyard ossia terrazzin ta' tlett metri fil-livell ta' isfel nett hareg il-barra mis-sies u refa' t-terrazzin jew backyard b'pilastru direttament fuq is-sies. Ir-rifjut tal-Awtorita kien ibbazat fost affarijiet ohra ghax ma giex rispekkjat Policy 2.7 (Part I u III) tal-Policy and Design Guidance 2007 f'dik li jikkoncerna l-gholi propost tal-boundary wall biex ighatti l-parti ta' isfel tal-binja billi l-proposta hi ta' hajt b'gholi ta' erba metri mentri l-policy tippermetti biss gholi ta' 2.4 metru mill-hamrija, u in oltre ghalkemm il-policy trid li jkun hemm backyard ta' tlett metri mill-faccata ta' wara tal-binja, billi s-sit jinsab f'zona residenzjali fejn il-parti ta' wara hi deskritta bhala Area of High Landscape Sensitivity, il-fatt li l-appellant baqa' hierieg fuq il-cliff edge u qatta' l-blat bil-konsegwenza ta' hsara fuq l-istess sies, dan imur kontra l-principju regolatur tal-protezzjoni tas-sisien skond Structure Plan Policy RCO 22. L-Awtorita wkoll fl-argumenti taghha irrilevat li hemm zewg enforcement notices pendenti ECF 321/03 u 883/04 li huma zvilupp bla permess cio tqattiegħ ta' blat, u varjazzjonijiet fil-permess 7070/97 li jikkonsistu f'tibdil intern u estern fosthom pilastru taht is-sies, tqassim ta' gewwa u bini ta' gallerija u terrazzin.

L-appellant qed jilmonta illi t-Tribunal ma setax jaqbad u jordna t-tnehhija kompleta tat-terrazzin fil-pjan l-aktar baxx tas-sit peress illi l-permess 7070/97 kien jippermetti tali terrazzin b'apertura ghalih.

Din il-Qorti tqis illi l-appellant ghandu ragun li d-decizjoni tat-Tribunal ma haditx in konsiderazzjoni l-permess 7070/97 pero mhux ghax l-appellant ghandu ragun li hu bena skond il-permess izda ghax it-Tribunal ma kkonsidrax l-effetti tal-permess meta gie biex jevalwa l-applikazzjoni in kwistjoni fit-totalita taghha mehud in konsiderazzjoni dak approvat

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u dak realment mibni. It-Tribunal pprova jsib soluzzjoni bonarja ghal kwistjoni ta' natura teknika pero legali wkoll. It-Tribunal fil-fehma tal-Qorti ma setax jinjora x'kien ighid il-permess u jekk tenut kont ta' dak li jghid il-permess li ghalhekk hu dritt kwezit, l-applikazzjoni ta' sanar kinitx taqa' fil-parametri tal-policies. Dan kien id-dover primarju tat-Tribunal. Jekk is-sanzjonar ma kienx jirrispekkja l-policies la darba il-permess ma giex rispettata anke minhabba tkabbir tal-footprint u indikazzjoni hazin tal-fond tal-binja mis-sies fl-atti tal-permess originali allura t-triq tat-Tribunal kienet wahda cara u ma setax jghawweg u/jew jinjora l-policies biex jipprova jsib soluzzjoni. Dan mhux il-kompitu tieghu. It-Tribunal, fil-fehma tal-Qorti naqas li jqis l-enforcement notices u l-effett taghhom fuq l-applikazzjoni. Il-Qorti lanqas jirrizultalha f'liema stadju waslu l-proceduri f'dawn l-enforcement notices li jittrattaw fil-maggor parti t-talba ta' sanzjonar.

It-Tribunal ghandu kull dritt jichad is-sanzjonar mitlub ghax ma jirrispekkjax il-permessi ezistenti jew il-policies pero ma ghandux id-dritt li jhassar dritt moghti b'permess cioe li jitnehha kompletament terrazzin u access ghalih fil-parti ta' isfel tal-binja ghax hi irregolari billi estendiet oltre s-sies u oltre l-permess meta fl-istess nifs it-Tribunal qed jissanzjona zieda fil-footprint oltre dak gia moghti fil-permess originali sakemm dak il-permess innifsu mhux ser jigi attackat jew l-enforcement notices isiru res judicata u b'hekk l-appellant imbaghad irid jirregolarizza hu l-pozizzjoni stabbilita skond il-ligi.

Ghalhekk limitatament ghal dawn ir-ragunijiet il-Qorti qed tilqa' l-aggravju tal-appellant u tistieden lit-Tribunal jaghmel rievalwazzjoni tal-konsegwenzi legali naxxenti mit-talba ta' sanzjonar tal-appellant mehud in konsiderazzjoni l-assiem tat-talbiet maghmula fl-istess sanzjonar u l-kompatibilita taghhom mal-permess 7070/97.

It-tieni aggravju

Dan l-aggravju ma fihx mertu ghaliex it-Tribunal spjega b'mod car kif il-hajt propost mill-appellant ma jistax jitqies bhal hajt mibni fil-permess PA 4760/09. Jinghad biss illi dan il-hajt propost qed jintalab biex ighatti estensjoni oltre s-sies li ma kellhiex issir la skond il-peremss u anqas skond il-policies mentri fil-kaz l-iehor saru ghat-tisbih tal-binja, u dan jirrizulta mill-atti riprodotti tal-permess PA 4760/09 a fol. 37 tal-atti ta' dan l-appell paragrafu 5(3).

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Ghalhekk il-Qorti ma ssibx li t-Tribunal naqas li jiggustifika jew ma ggustifikax b'mod ragonat u studjat l-aggravju mressaq.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Michael Xerri limitatament u in linea biss ma' dak deciz minn din il-Qorti, konsegwentement qed tirrevoka u thassar id-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Settembru 2013, u tirrimetti l-atti lura lit-Tribunal biex jerga' jevalwa mill-gdid l-appell. Spejjez fic-cirkostanzi jibghqu bla taxxa.

< Sentenza Finali >

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