



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta ta' l-14 ta' Jannar, 2015

Appell Civili Numru. 30/2014

**Joseph u Raquel Pisani**

**vs**

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

**l-kjamat in kawza Oscar Grech**

**Il-Qorti,**

Rat ir-rikors tal-appell tal-konjugi Pisani tat-30 ta' Meju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Meju 2014 kontra l-ghoti tal-permess PA 3058/12 'amendment to permit PA 1868/11 - change of use to class 6 in lieu of class 4 including

## Kopja Informali ta' Sentenza

minor amendments to facade, additions of a proposed retractable awning and table and chairs or in (private) front garden area;

Rat ir-risposta tal-Awtorita u Oscar Grech li ssottomettew 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 dan huwa appell minn terzi persuni ghar-revoka tal-permess bin-numru PA 3058/12 mahrug favur l-applikant Oscar Grech wara li dan kien gie approvat mill-Kummissjoni tal-Ambjent u l-Ippjanar fil-21 ta' Gunju 2013, rigward il-fond li jinsab fi Triq Schembri, Hamrun.

Ra r-ragunijiet ta' l-appell prezentat mill-Avukat Dottor Toni Abela hekk kif gej:

"I am writing on behalf of Joseph and Raquel spouses Pisani of 6, Ruth House, Schembri Street, Hamrun.

My client is hereby lodging a formal appeal from the permit issued to Mr. Oscar Grech of Joscar, 48, Mountbatten Street, Hamrun, dated 16th July 2013.

My client has been a third party objector all the way during the hearings and processing of the said application. My client's family live next and above the commercial outlet subject of the above mentioned application, and are deeply worried that the conversion of the said premises from Class 4 to Class 6 will inevitably be of unbearable nuisance and annoyance to my clients and their children. Suffice it to say that a petition was sent to Compex Co. Ltd., the operator of the premises of the outlet in question.

## Kopja Informali ta' Sentenza

Furthermore, members of the family of my client Raquela Pisani herself and Lorena Pisani suffer from a medical condition which will be surely aggravated if the outlet in question is going to be operated under a Class 6 permit, which will be enabling the operator to operate from the front garden by the placing of tables and chairs, and to make matters worse a horizontal duct will be placed in this restricted place, in order to give vent to the fumes that will be generated during the commercial activities that will be carried out in this outlet.

My clients insist that whatever conditions were imposed by MEPA in order to mitigate the inconvenience, the proximity of my client's residence to this activity will not be spared from the fumes, the noise that will be generated and what is more of street parking which will necessarily be taking place in an already traffic congested area.

Reference is being made to Article 15 of the Development Control – Policy and Design Guidance Regulations of 2007, in particular to Article 15 (5). My clients sustain that whatever the conditions imposed on the permit, these will not neutralise the inconveniences listed in the said article.

Furthermore, para (b) of this subarticle clearly states that in case of flues, these shall terminate at least three metre above the roof of the building to which the flue is attached and of any immediately adjacent buildings. In these circumstances, it was impossible for MEPA to give the permit for the placing of a flue in the manner described in the permit, and therefore such a condition is in breach of these regulations. Furthermore, from a close inspection of the permit issued in July 2013 it does not seem that the appropriate attention has been given to this aspect when during DCC sittings it was a subject which was heavily debated, and from what the applicant recalls, the chairman presiding these meetings had insisted that a flue or chimney cannot in any manner be placed in such a proximity to the appellants' residence.

My client in principle never objected to the retail outlet being used in terms of Class 4, since in that instance a front garden could not be as an extension of the outlet, but could only be used for the display of goods. Furthermore the activity carried under Class 4 did not necessarily entail the set of inconvenient circumstances that are intrinsic to the exercise of a commercial activity from a retail outlet under Class 6.

The activity under a Class 6 retail outlet in the circumstances is plainly in breach of the principle of good neighbourliness regulated by BEN I and BEN II of the

## Kopja Informali ta' Sentenza

structural plan. This activity will entail a mixture of noise, fumes, and off road traffic just underneath the very balcony of my clients' residence.

Furthermore operating under a Class 6 retail outlet entails longer opening hours and this up to midnight every day of the week, whereas under Class 4 the opening hours were reasonable and balanced.

In view of the above, my clients is requesting that this tribunal revokes the permit above mentioned in its totality.”

Ra r-risposta tal-Awtorita' li giet prezentata fl-4 ta' Novembru 2013 li taqra' kif gej :-

“6.2 The Directorate has the following comments to make:

### 6.2.1 Introduction

In comments submitted, the appellant is arguing that the permit issued by MEPA for change of use to Class 6 will create a nuisance and annoyance to the appellant's family, who live next door to and above the commercial unit. The appellant is insisting that members of the family suffer from a medical condition which will be aggravated by the Class 6 use involving noise, fumes, traffic/parking problems and operation in the front garden (tables and chairs).

The Authority will be addressing the merits of the EPC Board decision in this report and will clarify to the Tribunal why the decision taken to approve the proposed development was correct from a planning point of view.

### 6.2.2 Principle of Development

In accordance to the Central Malta Local Plan, the site falls in a designated Primary Town Centre, regulated under policy CG 12 which permits Class 6 shops in Town Centres. The proposed Class 6 snack bar including the storage area and out door seating area cover a total floorspace of 96m<sup>2</sup>. The proposed development therefore conforms to policy CG 12 and Structure Plan policy BEN 1 which aim at safeguarding the amenity of the existing and planned adjoining uses.

### 6.2.3 Cooking on Site

## Kopja Informali ta' Sentenza

The appellant is adamant that whatever conditions are imposed to mitigate the inconvenience of cooking fumes will not be suffice to avoid the smells from reaching the neighbouring residences in view of their close proximity. Having said so, cooking smells from Class 6 are regulated under policy 15.5 Flues and Fume Extraction of DC 2007 to ensure that a standard of adequate fume extraction is being achieved. A Noise and Ventilation Report was submitted by a warranted engineer as which states that extracted air is filtered via a canopy, then through active carbon filters or UV filtration system before being discharged in the outside environment. The exhaust pipe ends onto the front façade of the premises and therefore should not create bad neighbour development. This form of extraction system is encouraged in the relative policy 15.5 of DC 2007 and is also therefore acceptable.

### 6.2.4 Parking Requirements

In order to minimise the impact of a proposed development to the amenities of the surrounding neighbourhood, restaurants, bars and clubs are calculated for parking provision at a rate of 1 car space per 10m<sup>2</sup> (as stipulated in Table A2/5 of the Explanatory Memorandum and PA Circular 3/93). The proposal (including front garden) has an area of circa 50m<sup>2</sup> and therefore the proposal requires a total of 5 off-street parking spaces.

In previous permit PA 1868/11, the Class 4 shop required 2 parking spaces and it was argued that since there is no real intensification of the proposed development, no parking is being required. Nonetheless the original decision requested a contribution towards the Urban Improvement Fund for 5 spaces. After a Reconsideration was submitted the condition was reduced to 3 spaces in view of the 2 originally existing parking spaces from PA 1868/11.”;

Ra r-risposta tal-Avukat Dottor Inger Cini ghall-applikant li giet prezentata fil-11 ta' Settembru 2013, hekk kif gej:

“Our client is hereby strongly rebutting and contending the appellant's claims which are manifestly frivolous and unfounded in their entirety.

The appellant opened his appeal by stating that he was a third party objector "all the way during the hearings and the processing of the said application" and that a petition was sent to Compex Co. Ltd qua operator of the outlet subject of this appeal. This is nothing but a passing comment which however already sheds light on the weakness of the appellant's arguments.

This for the very simple reason that it shows how the appellant has been duly heard, he has voiced his concerns which were however unreasonable and consequently discarded. This is so because our client's case is a text book case, wherein the premises in question satisfy all the requirements and are situated in suitable in a manner that strongly favours the grant of a Class 6 permit, which was indeed released.

Not appeased by the outcome, the appellant is now trying to create further obstacles to the detriment of our clients who are suffering damages with every day that passes due to this appeal since they cannot use their property. He consequently further argues that "members of the family ... suffer from a medical condition which will be surely aggravated if the outlet in question is going to be operated under a Class 6 permit, which will be enabling the operator to operate from the front garden by the placing of tables and chairs ... " In this respect, not only is it questionable whether there exists any medical condition which may be aggravated by the placing of tables and chairs without a third party's property but moreover, the appellant gave no details whatsoever of this medical condition, nor did he attach any documentary evidence of such. Clearly, the appellant had no such evidence to include for there is no such true condition to attest.

The appellant also objects to the duct that will be placed horizontally in the owner's front garden, which, he claims, will produce fumes "that will be carried out in his outlet." Again this is a failing argument since this duct was purposely studied and amended according to MEPA's requirements as per letter of the is" April 2013 to be at front garden level and as far as practicable from the facade.

Appellants than insist that "whatever conditions were imposed by MEPA in order to mitigate the inconvenience ... these will not neutralize the inconveniences listed in the said article. [Article 15 (5) of the Development Control Policy and Design Guidance Regulations 2007]" For the sake of completeness this article is being reproduced in toto hereunder:

### 15.5 Flues and Fume Extraction

Cooking smells from restaurants, cafes, snack bars, take-aways and other Class 6 uses can provide a source of nuisance, especially where these uses are located under or adjoining dwellings. Adequate filtering and fume extraction is therefore important, but it must be located and designed so that the fumes are filtered and vented away from overlooking windows. In particular, venting into a shaft shared with dwellings is not acceptable, nor is venting at roof level close to the windows of overlooking dwellings. It may of course be possible to utilise a form of filtering which

## Kopja Informali ta' Sentenza

does not require external venting and the Authority will encourage this. Control on the environmental effects of the development and its operation will also be operated through the (separate but related) environmental permitting process.

All proposals for development falling within Class 6 of the Development Planning (Use Classes) Order 1994, where hot food is prepared and cooked, shall provide for the extraction of cooking fumes and smells, which shall:

- (a) not vent to, or terminate in a shaft or yard which serves residential properties;
- (b) in the case of flues, terminate at least 3 metres above the roof of the building to which flue is attached and of any immediately adjacent buildings;
- (c) not be so located or positioned on the roof of a building that it terminates within 4 metres of the windows of any residential property overlooking or adjoining the roof;
- (d) not be so located that it intrudes into the outlook from any adjoining residential properties;
- (e) be fitted with the appropriate filters and of sufficient capacity to deal adequately with the fumes produced; and
- (f) be so designed, located, dimensioned and coloured that it does not detract from the visual quality of the area nor from the appearance of the building to which it is attached (so that locations on the front facade of a building or on other facades visible from a public space will not normally be permitted).

This article which was referred to by the applicants, nowhere states that cooking smells are to be "neutralised" but simply requires "Adequate filtering and fume extraction is therefore important, but it must be located and designed so that the fumes are filtered and vented away from overlooking windows." It was in this spirit that MEPA required amendments to the ventilation which were duly satisfied by the appealed. Clearly, after such changes, the premises are completely in line with the relevant policies and regulations.

Moreover it is strange and slightly confusing how the appellants bring into game sub-article (b) to article 15 which regulates "flues" when there are no envisaged flues in the premises in question. Indeed, the same appellants had earlier on referred to the fumes that will be generated through a "horizontal duct" which truly is the case. This incoherency from the appellant's part is nothing but further evidence of how the appellants are grappling with random arguments which have no relevance to their claim, with the sole purpose of creating obstacles to the appealed.

## Kopja Informali ta' Sentenza

The appellants further mention the street parking and the principles of "good neighbourliness" mentioned in policies BEN 1 and BEN 11 of the structural plan. Again, both these arguments are ill founded not only because the street parking has been regulated by the contribution paid by the appealed to compensate in terms of law but further still since the BEN 1 policy speaks of 'unusual' traffic or 'unusual' opening times which is not the case in question. In turn, BEN speaks of design which is incompatible with the surrounding, again, nothing to do with the case in question. What the appellant fails to mention is that the site in question is located in an area which is designated as permissible Class 6 in the local plan and therefore our client's permit is not only undisturbing, regular and legal but it is also envisaged and anticipated in its area. In a nutshell, it is a permit which is highly appropriate for the particular area in as much as a factory would be in an industrial area or a tree in a park. Should this honourable Tribunal choose to uphold the appellant's claims it would be carrying out a gross injustice in withholding the appealed from the enjoyment of their property when they have every right to hold such a permit and when they have scrupulously adhered to all conditions, regulations and policies regulating the same.

Consequently, in view of the reasoning outlined above, the appealed requests the honourable tribunal to refuse the appellant's requests in toto and confirm the permit issued to them tale quale. The appealed further humbly request this Tribunal to expedite the termination of this appeal so as to limit the notable damages which are being caused by the appellant's unfounded claims to their prejudice.”;

Ra n-noti ulterjuri prezentati mill-paritjiet;

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

Ikkunsidra ulterjorment;

L-appellanti Joseph u Raquel konjugi Pisani appellaw mid-decizjoni moghtija mill-Kummissjoni ghall-Ambjent u l-Ippjanar favur Oscar Grech u oggezzjonaw ghall-permess PA 3058/12 moghti sabiex jigi mibdul l-uzu ta' hanut fi klassi 4, ghal hanut tal-ikel u xorb fi klassi 6, fil-fond li jinsab fi Triq Schembri, gewwa l-Hamrun.

F'dan l-istadju, huwa mportanti jigi kjarifikat li kull referenza ghal-klassijiet ta' uzu f'din id-decizjoni huma skont l-Ordni ta' l-1994 dwar il-Klassijiet ta' Uzu fl-Ippjanar ta' l-Izvilupp, ossia l-Avviz Legali 53 ta' l-1994.



## Kopja Informali ta' Sentenza

L-appellanti qed jibbazaw l-oggezzjonijiet taghhom minhabba illi dan l-izvilupp ta' hanut fi Klassi 6, inkluz l-imwejjed u siggijiet fit-terrazzin ta' barra, li jinsab sottostanti r-residenza taghhom, ser jiggenera storbu, irwejjah, u traffiku, u ghaldaqstant qed imur kontra l-principji tal-Pjan ta' Struttura skont policies BEN 1 u BEN 2.

Illi l-appellanti qed joggezzjonaw ghal horizontal duct tas-sistema ta' ventilazzjoni li gie approvat bhala parti mill-izvilupp ta' hanut fi Klassi 6. Skont l-appellanti dan imur kontra l-policy 15.5 tal-linja gwida dwar il-kontroll ta' l-izvilupp tas-sena 2007, li fil-kaz ta' flues din l-istess policy tippermetti li dawn jitterminaw 'l fuq mill-livell tal-bejt.

Minn naha tal-Awtorita' u l-applikant, irribattew dawn l-aggravvi mressqa fl-appell billi ssottomettew illi l-permess hareg skont il-provizjonijiet tal-Pjan Lokali li jippermetti l-uzu ta' hanut fi Klassi 6 peress li s-sit jinsab f'Town Centre. Fir-rigward tal-fume extraction system approvata fil-permess, din hija konformi mal-policy 15.5 tal-linja gwida msemija fl-appell peress li l-permess jahseb sabiex l-ventilation duct ikun 'l boghod mill-bini tal-appellant skont kif tesigi l-istess policy.

Illi dan it-Tribunal seta' jinnota li s-sit jinsab fil-Primary Town Centre li huwa wiehed mit-tlett centri kbar fil-konfini ta' Central Malta Local Plan skont il-policy CG12 tal-istess pjan lokali, fejn l-uzu kummercjali huwa dak predominanti. Skont din l-istess policy fil-pjan lokali, uzu fi Klassi 6 huwa accettabli, u ghaldaqstant dan it-Tribunal jista' jikkonkludi li l-Kummissjoni kienet korretta fl-applikazzjoni tal-policy li tirregola dan l-izvilupp permess.

Illi l-appellant qed jinsisti illi l-izvilupp 'is plainly in breach of the principle of good neighbourliness regulated by BEN 1 u Ben of the Structure Plan'. Rigward BEN 2, din titratta dwar id-disinn tal-bini u certament mhux marbut ma bad neighbourliness.

Il-policy principali tibqa dik ta' BEN 1 fejn titratta dwar zvilupp li mhux accettabli jekk jikkawza 'bad neighbourliness', u li dan qed jifisser zvilupp li 'is likely to have a deleterious impact on existing or planned adjacent use because of visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times.' Illi din il-policy trid tinqara fil-kuntest tal-paragrafu 7.1 fil-Pjan ta' Struttura precedenti ghal din il-policy fejn dan jispjega illi:

"It is the intention to exercise strict control of development in all parts of the Islands through the medium of the Structure Plan and of Local Plans when these have been

## Kopja Informali ta' Sentenza

completed. Development will be permitted only if in the opinion of the Planning Authority the proposal fulfils all of the conditions applicable to the particular type of area in which it is located. These areas will be zoned in terms of their predominant use (e.g. residential and ancillary uses) and of their urban design, and architectural and environmental characteristics. [...]"

F'dan il-kaz, l-izvilupp permess huwa kompatibbli fiz-zona ta' predominanza kummercjali hekk kif giet identifikata bhala primary town centre fil-pjan lokali, u ghaldaqstant f'termini ta' ppjanar, l-izvilupp huwa konformi mal-principji elenkati fil-Pjan ta' Sruttura. F'dan ir-rigward, Policy BEN 1 mhix intiza biex twaqqaf zvilupp jekk kemm il-darba dan ikun mahsub fil-pjanijiet u policies li jirregolaw l-ippjanar taz-zona fejn jinsab, dment li jkunu sodisfatti dawk il-regolamenti li jirregolaw l-istess zvilupp.

F'dan ir-rigward, l-appellant jaghmel referenza ukoll policy 15.5 fil-linja gwida dwar il-kontroll tal-izvilupp tas-sena 2007, "Flues and Fume Extraction", li skont l-appellant din ma tippermettix flues jekk mhux fuq 'l fuq mill-livell tal-bejt, u ghaldaqstant skont l-appellant l-ventilation duct li jesporgi mill-faccata ghal fuq it-triq mhux konformi ma din il-policy.

Illi l-policy 15.5 fil-linja gwida tipprovdi dan li gej:

"All proposals for development falling within Class 6 of the Development Planning (Use Classes) Order 1994, where hot food is prepared and cooked, shall provide for the extraction of cooking fumes and smells, which shall:

- (a) not vent to, or terminate in a shaft or yard which serves residential properties;
- (b) in the case of flues, terminate at least 3 metres above the roof of the building to which flue is attached and of any immediately adjacent buildings;
- (c) not be so located or positioned on the roof of a building that it terminates within 4 metres of the windows of any residential property overlooking or adjoining the roof;
- (d) not be so located that it intrudes into the outlook from any adjoining residential properties;
- (e) be fitted with the appropriate filters and of sufficient capacity to deal adequately with the fumes produced; and
- (f) be so designed, located, dimensioned and coloured that it does not detract from the visual quality of the area nor from the appearance of the building to which it is attached (so that locations on the front façade of a building or on other facades visible from a public space will not normally be permitted)."

## Kopja Informali ta' Sentenza

Illi l-appellant ghamel referenza ghal-memo mahruġa mis-CEO tal-MEPA tat-28 t'Awissu 2013, fejn gie emfazzjat li din il-policy msemmija supra tikkonsidra biss l-uzu ta' flue li tesporgi 'l fuq mill-livell tal-bejt, u ghaldaqstant l-istess policy ghandha tigi applikata f'dan is-sens.

Fl-ewwel lok dan it-Tribunal jidhirlu li din il-memo, li kienet is-suggett ta' digriet moghti minn dan it-Tribunal fl-istess ta' din id-decizjoni, hija biss direttiva nterna u ma gietx komunika b'mod estern bhala direzzjoni lil periti jew lil pubbliku generali. Ma jidhirx il din il-memo b'xi mod qed tbiddel jew taghti xi nterpretazzjoni differenti minn dak li hemm miktub fil-policy, u f'dan ir-rigward, dan it-Tribunal huwa limitat f'dak li tipprovdi l-policy.

Illi din il-policy tipprovdi sabiex "adequate filtering and fume extraction is therefore important, but it must be located and designed so that the fumes are filtered and vented away from overlooking windows. In particular, venting into a shaft shared with dwellings is not acceptable, nor is venting at roof level close to the windows of overlooking dwellings." F'dan il-kuntest ghalhekk ghandhom jigu kunsidrati l-ewwel zewg kriterji tal-policy fejn l-extraction of cooking fumes and smells huma eskluzi milli jitterminaw f'shaft jew bitha ta' bini residenzjali, filwaqt li f'kaz ta' flue, din ghandha tittermina mill-inqas 3 metri 'l fuq mill-livell tal-bejt.

F'dan il-kaz l-applikant qed jinsisti li l-proposta ma tinkludix flue imma ventilation duct, u ghaldaqstant ma japplikax it-tieni kriterju msemmi fil-policy. Dan it-Tribunal jidhirlu li anke jekk il-policy ma taghmilx distinzjoni bejn flue u ventilation duct, fil-kaz in ezami, l-istess ventilation duct jittermina ferm 'l boghod mill-eqreb aperture tal-appellant, cioe' il-gallerija sovrastatni l-hanut. Il-ventilation duct fil-fatt jittermina fl-livell baxx mat-triq, madwar 4.5 metri 'l boghod mill-linja tal-bini, billi dan qiegħed jaqşam terrazzin ezistenti bejn il-linja tal-bini u t-triq.

Dan it-Tribunal jidhirlu li l-uzu mekkaniku ta' ventilazzjoni fih innifsu huwa ntiz sabiex inaqqas l-inkonvenjet partikolarment dak tal-irwejjeh, u l-istess arja li qiegħda tigi ventilata qed tittermina kemm jista' jkun il-bogħod mill-bini u ftuh ta' twieqi residenzjali.

F'dan ir-rigward dan it-Tribunal mhux qed jara raguni valida ghaliex ghandu jiddisturba prassi addotta mill-Kummissjoni li tikkonsidra sistemi alternattiv għal flues jew ventilation ducts li mhux necessarjament jitterminaw fuq il-livell tal-bejt, u dan anke fil-kuntest tal-istess linja gwida li hija ntiza biex jitnaqqas l-inkonvenjent fl-operat ta' tisjir fi stabbiliment tal-ikel.

## Kopja Informali ta' Sentenza

Ghal dawn il-motivi premissi, it-Tribunal qed jichad dan l-appell, u ghaldaqstant qed jikkonferma l-hrug tal-permess mill-Kummissjoni tal-Ambjent u l-Ippjanar datat 16 ta' Lulju 2013.

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Id-decizjoni tmur kontra policy BEN 1 ghax ser tohloq inkonvenjent insopportabli u l-appellanti jghixu sovrapposti ghall-izvilupp in kwistjoni. In oltre l-appellanti jbatu minn kundizzjoni medika;
2. Il-flue ma setghetx issir ai termini tal-artikolu 15(5) tad-Development Policy and Design Guidance 2007 ghax ma setghetx issir aktar minn 3 metru oghla mill-bini. Minflok thalliet issir b'mod orizzontali meta l-ligi ma tippermettix;
3. Id-decizjoni ghandha tigi revokata ghax ma ntlaghetx talba biex jinstema' CEO tal-MEPA li hareg direttiva dwar kif ghandha tigi applikata l-policy;
4. It-Tribunal ikkontradixxa lilu innifsu meta qal li l-policy ma tinbidilx b'direttiva, pero imbaghad hareg barra minn triqtu biex jiggustifika l-izvilupp meta qal li l-policy ma taghmilx distinzjoni bejn flue u duct u f'dan il-kaz jispicca ferm il-boghod mill-linja tal-bini ghax qed jaqsam terrazzin bejn il-linja tal-bini u t-triq. It-Tribunal qed igebbed il-policies meta l-obbligu tieghu hu biss li japplikahom.

### L-ewwel aggravju

Dan l-aggravju ma jikkostitwix punt ta' ligi appellabli izda punt ta' fatt li fuqu hemm nuqqas ta' qbil. Fil-waqt li l-appellanti jissottomettu li l-uzu ta' class 6 ser ikun ta' inkonvenjent insopportabli, il-fehma tat-Tribunal kienet illi l-fatti kienu juru li l-izvilupp jinsab f'town centre fejn hu permess l-izvilupp u hu kompatibbli maz-zona. Il-Qorti hi prekluzza milli tiddisturba konkluzzjonijiet ta' natura ta' ippjanar ibbazata fuq evalwazzjoni ta' fatti. L-appellanti mhux

## Kopja Informali ta' Sentenza

jilmentaw li l-aggravju ma giex konsidrat izda li ma qablux mal-konkluzzjonijiet dwar jekk l-izvilupp imurx kontra jew le l-istess policy. La darba t-Tribunal dahal fil-kwistjoni, din il-Qorti ma ghandhiex tissindaka jekk mhux ghal ragunijiet gravi u eccezzjonali. L-appellanti ma ressqux tali raguni.

Ghalhekk l-aggravju qed jigi michud.

### **It-tieni u r-raba aggravji**

Dan l-aggravju hu punt ta' ligi deciz mit-Tribunal. L-appellant isostni li l-policy 15.5 tad-DC 2007 ma tippermettix flues li jisporgu orizzontalment izda biss dawk vertikali. Il-Qorti kif gia kellha okkazzjoni tghid f'sentenzi ohra, ma tindahalx fl-interpretazzjoni li t-Tribunal jaghti tal-policies sakemm l-interpretazzjoni ma tmurx kontra l-kliem espress tal-policy fejn allura ma hemmx lok ghal interpretazzjoni jew l-interpretazzjoni fejn dan hu possibbli hi tant assurda jew applikata b'mod ingust u manifestament pregudizjevoli ghall-fatti tal-kaz.

F'dan il-kaz il-linji gwida f'policy 15.5 dwar flues u fume extraction tghid illi kull zvilupp ghal class 6 (bhal dan il-kaz) ghandu jigi provdut mod ta' estrazzjoni tal-irwejjah u duhhan tattisjir. Il-modalita ta' kif issir l-estraxxjoni ma ghandhiex taghti u tittermina f'shaft jew bitha residenzjali, u f'kaz ta' flues iridu jispicaw tlett metri l-fuq mill-bejt tal-binja li maghha hu imwahhal il-flue jew binjiet immedjatament adjacenti. Aktar il-quddiem inghad li mhux normalment jinghata permess ghal flues fuq il-faccati ta' binjiet jew faccati vizibbli minn spazji pubblici. F'dan il-kaz jidher li t-talba saret ghal ventilation duct mhux flue u ghalhekk gie sottomess li ma japplikax il-kriterju msemmi fil-policy 15.5 dwar flue vertikali li tisporgi tlett metri mill-bejt. It-Tribunal gustament qal li l-policy ma taghmilx distinzjoni bejn ventilation duct u flue. Il-Qorti tqis li d-definizzjoni ta' flue fl-Oxford dictionary hi 'duct or passage for the extraction for smoke, air or gas', u ghalhekk ma hemmx distinzjoni bejn duct u flue.

Maghdud dan pero t-Tribunal injora l-kliem tal-policy u iggustifika l-izvilupp. Afferma li dan id-duct kien orizzontali u jisporgi mill-faccata tal-bini billi jestendi tul ta' terrazzin li jaghti ghat-triq, u iggustifikah billi qal li b'hekk l-objettiv tal-policy kien gie milqugh, cioe adequate

## Kopja Informali ta' Sentenza

filtering and fume extraction il-boghod mill-aperturi tal-appellant, u kwindi tnaqqis tal-inkonvenjent. It-Tribunal zied li ma kellux ghalfejn jiddisturba prassi adottata mill-Kummissjoni li tikkonsidra sistemi alternattivi ghal flues jew ventilation ducts li ma jittterminawx fil-livell tal-bejt.

Din il-Qorti tqis illi l-policy ma ippermettix din il-lassitudni ta' interpretazzjoni li kienet tirrendi l-gudikat wiehed korrett fis-sens li interpretazzjoni ta' policy mhix sindakabbli mill-Qorti jekk mhux kif inghad aktar lura f'din is-sentenza. Pero f'dan il-kaz il-policy ma hallietx lok ghal ebda interpretazzjoni. Assumendo, kif del resto ghamel it-Tribunal, illi ventilation duct u flue huma definizzjoni tal-istess process, il-ligi issemmi biss il-possibilita ta' flue vertikali l-fuq mill-bejt tal-bini li mieghu tkun imwahhla u fejn anqas ma jidher li hu facilment permissibbli tali installazzjoni meta tkun fuq il-faccata jew esposta ghal spazju pubbliku. L-end result wahdu ma jiggustifikax li t-Tribunal jestendi dak li l-policy ma taghtix lok ghalih. Il-policy tuza l-kelma 'shall' bl-Ingiliz u in oltre apparti flues vertikali ma tinkludix jew taghti spazju ghal mezzji ohra ta' estrazzjoni fl-istess policy. Ghalhekk hi l-fehma tal-Qorti illi l-policy hi cara u t-Tribunal ma setax jestendi l-applikazzjoni taghha ghal strutturi mhux kontemplati jew dezumibbli mill-kliem tal-istess policy.

Ghalhekk l-aggravju qed jigi milqugh fis-sens deciz.

### **It-tielet aggravju**

Dan l-aggravju ma fihx mertu. Sta ghat-Tribunal li jiddeciedi jekk persuna ghandhiex tittella' tixhed jew le. Pero f'dan il-kaz jidher illi l-appellant irid li jigi konfermat memo intern ta' CEO tal-MEPA fuq l-interpretazzjoni tal-policy, u kif qal it-Tribunal, l-istes Tribunal hu obligat japplika l-policies li jigu l-fuq mill-memos, ghalkemm din il-Qorti tqis li direttivi u prassi tal-Awtorita ghandhom jittiehdu in konsiderazzjoni meta jkun ta' ghajnuna ghal soluzzjoni ta' vertenza dejjem bla ebda pregudizzju ghad-dover primarju tat-Tribunal li japplika l-ligijiet, pjanijiet u policies kif ezistenti fil-mument tad-decizjoni.

## Kopja Informali ta' Sentenza

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-appellanti fit-termini hawn decizi, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Mejju 2014, u turrinvija l-atti lura lit-Tribunal biex jgħid jiddeciedi l-appell. Spejjez għall-Awtorita.

### **< Sentenza Finali >**

-----TMIEM-----