



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta ta' l-14 ta' Jannar, 2015

Appell Civili Numru. 38/2014

**Grezzju Camilleri**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Grezzju Camilleri tas-7 ta' Lulju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-17 ta' Gunju 2014 kontra PA 3520/10 'construction of dwelling units and underlying basement and demolition of existing building';

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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 iwaqqa' bini ezistenti u minflok jibni garaxxijiet fil-livell ta' basement, u fuqhom binja residenzjali, u dan fi Triq Salvu Pulis, Haz Zabbar.

Illi l-bini propost jinsab f'Category 1 Rural Settlements u f'zona ta' valur agrikolu. Il-Kummissjoni tal-Ambjent u l-Ippjanar irrifjutat il-proposta ghal dawn is-segwenti ragunijiet:-

1. The proposal is unacceptable since it does not comply with policy SMSE 06 of the South Malta Local Plan since the development exceeds the development boundary of the Category 1 Rural Settlement, proposes development in the existing back garden, and exceeds the maximum building depth of 25m.

2. 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 or in an existing built up area.

3. The proposed development is unacceptable since it does not comply with policies SMAG 01 and SMCO 10 of the South Malta Local Plan, since part of the development is situated within an Area of Agricultural Value and a Valley Protection Zone.

4. The proposed development, in terms of its floor area, height, number of rooms and site coverage, is of an excessive scale and would lead to an overdevelopment of the site. This would not be in the interests of the amenity of the area as a whole

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and it would exacerbate the problems of overdevelopment in the area. The proposal is therefore unacceptable and runs counter to Structure Plan policy BEN 1.

5. The proposed development is unacceptable since it does not comply with policies 1.3C and 1.3K found in Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) since the proposal exceeds the limitations of the Category 1 boundary and encroaches onto an area designated for Valley Protection and Agricultural Value respectively.”;

Ra l-appell prezentat mill-Perit Kenneth Camilleri li jaqra' kif gej :-

“On behalf of my client, I am submitting this Appeal Against Refusal of the abovementioned application. This appeal is based on the following reasons:

The first reason for refusal refers to SMSE 06 of the South Malta Local Plan. Here reference is being made to the 2Sm depth of plot. The depth of 25m as also pointed out by MEPA officials during the progress of this application is for areas where there is no other information; in this case Doc1 clearly shows that this is not the case since the boundary is away from the 2Sm. Another important point to mention is that even outside this boundary there are already other buildings existing on site, which are far more than the 2Sm and which abuts the site in question.

Policies SMSE 05 and SMSE 06 both define category 1 settlements as "separated by an undeveloped gap". Part of this undeveloped gap was taken by MEPA's decision namely PA7034/07 and the necessary permits were granted for the construction of a new block of apartments, which undoubtedly are not similar to the type of dwellings already built in the close proximity, as required in category 1 settlements. Furthermore the proposed development follows the limit of development shown on the attached Map RS3, and in my case the proposals also follow the same boundary. (Refer to Doc 1 and 2 attached)

Other policies mentioned were: Structure Plan policy SET 12, here we are not infringing any policy and our proposals are in line with the South Malta Local Plan as clearly shown by Docs 1 and 2. SMSE 06 states: "due attention must be given to the design of new buildings within the established boundary ... " Our proposal is actually this and it is in line with these development boundaries. The structure plan clearly states that category 1 rural settlements must be separated by an undeveloped gap, so in this case the approval of PA7034/07 is in breach of the

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Structure Plan among others, but it was approved following the boundary as shown in the documents attached.

SMAG 01 and SMCO 10 are not applicable in my opinion for reasons already stated above. With reference to BEN 1, apart from raising questions if it was also applied to the approved permit being quoted, our proposals clearly show that we are repeating the existing typology of residential buildings in the area and not inserting yet another typical new block of apartments.

Doc 3 and 4 clearly shows the location of our application, and certainly it is far away from any valley sides or valley bed/watercourse with reference to policy 1.3C of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables. With reference to Policy 1.3K of same document, this is not applicable for reasons already outlined above, i.e. proposal is in line with MEPA's development boundaries and the site in question is only few metres away from the site with same characteristics for which a MEPA permit was already granted. (Refer to site plan in Doc 5)

For the foregoing reasons I would kindly request the Appeals Board to revise this decision.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet prezentata lit-Tribunal fid-9 ta' Awwissu, 2011 u li jaqraw kif gej:

### “5.0 COMMENTS ON APPELLANT’S ARGUMENTS

5.1 The Authority has noted the arguments as brought forward in appellant’s request for appeal and shall address these issues hereunder:

5.1.1 In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies.

5.1.2 However, after noting all of appellant’s arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breach the relevant policies as will be discussed below.

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5.1.3 Reference is made to the assessment as carried out in the DPAR and which included:

### Internal Consultations

Environment Planning Directorate (Doc 8) - The EPD stated that the application is objectionable in principle since the boundary of the Category 1 Rural Settlement is not being respected.

Natural Heritage Advisory Committee (Doc 9) - The NHAC noted that part of the proposed development lies outside the boundary established for the Category 1 Settlement, and the policy also specifies that no development of back gardens is permitted. The development will take up land specified in the Local Plan as being of Agricultural Value and Strategic Open Gap, and will result in intensification of an urban type of development. Thus, the application cannot be recommended.

### External Consultations

None

## PRE-DECISION AMENDMENTS

In letter dated 4th November, 2010 (Doc 11) the architect was requested to submit fresh plans removing the proposed development from the existing back gardens and retaining the development to within the boundary of the Category Settlement as per policy SMSE 06 of the SMLP.

In correspondence dated 7th December, 2010 (Doc 13), the architect submitted fresh plans of all levels. Notwithstanding this, the development as now shown continues to exceed the Category 1 Boundary.

## COMMENTS

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### Site Designation and Overview

In accordance with the South Malta Local Plan, the proposed development is situated within a Category 1 Rural Settlement, where development for residential use may be permitted subject to the limitations as defined in policy SMSE 06 of the South Malta Local Plan. Therefore although the site in concern is situated outside the development boundary, the objective of demolishing an existing structure to create new residential use may be considered.

In accordance with plans submitted (Red 13A & 13B), the development proposes to demolish the existing two storey terraced house, and construct eight separate duplex units over ground and first floor levels, with basement garages and washrooms at roof level for each unit.

### Proposed Development

The proposed structure is to be built over two (2) floors plus basement and washrooms at roof level, and proposes 4 three-bedroomed duplex units and 4 two-bedroomed duplex units. The overall area of each unit is in line with the requirements of policy 2.1 of DC 2007 and the height limitation as proposed is within the limitations for the Category Settlement.

Notwithstanding this, the site boundary as proposed exceeds the limitations permitted for development of the Category 1 Settlement in accordance with Map RS 3 of the SMLP. The development as proposed shall therefore result in formalization of the countryside by committing more land than is permitted in the Category Settlement. Thus, the nature of the proposal is not in line with the policy SMSE 06 of the SMLP which states that any development in the settlement must respect the boundaries provided for development. In addition to this, the development therefore also runs counter to policies SMAG 01 & SMCO 10 of the SMLP which state that the area outside the settlement is to be safeguarded as an agricultural area as well as a valley protection zone.

Furthermore, the development also proposes to extend beyond the 25m development limit and into the back garden of the existing structure. As a result, the development as proposed is also spilling out onto the Agricultural Area and Valley Protection Zone adjacent to the Category Settlement. The development therefore not only runs counter to the policies of the Local Plan, but also to policies 1.3C & 1.3K of the Policy and Design Guidance for Agriculture, Farm Diversification and

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Stables (2007) which seeks to protect the valley and agricultural amenities of the area respectively.

Since the proposal would in itself result in an extension of the boundaries of the category settlement and the contribution of unnecessary land take-up through the further increase of unjustified soul sealing, the development also runs counter to SP SET 12 for the proposed urban development which will further encroach onto the countryside.

### Parking Provision

In accordance with the car parking standards as set out in PA Circular 3/93 and Structure Plan policy TRA 4, parking provision must be made on site to cater for the dwelling units proposed. The development is creating eight dwelling units with eight underlying garages at basement level. Therefore the development is in line with the policy requirements for off-street parking.

### Additional Comments

Consultation with Environment Protection Directorate (Doc 8) noted that the proposal would also lead to the dismantling of existing rubble walls. Therefore, the development would run counter to Article 5 of L.N. 160 of 1997 (and as amended in L.N. 169 of 2004) which prohibits interventions that would lead to dismantling of rubble walls.

## CONCLUSION

In view of the above comments, the Planning Directorate cannot recommend this application.

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

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5.1.5 In addition to the above, the Authority reiterates that Policy SMSE 06 sets clear criteria through which new development could be acceptable in Category 1 Settlements. The most relevant being:

Building heights within Category 1 Rural Settlements will be limited to two floors with basement and the built plot depth is not to exceed 25 m.

No development in the form of extending the built up footprint of the existing building or a completely new development will be permitted in the back gardens forming part of buildings falling within the Category 1 Rural Settlements.

5.1.6 The above however contrasts with the requested development since although being an outline application, the limits of the proposed development have to be decided so as when the full application is eventually submitted the limits of the development would be considered as 'vested rights' if this outline application is approved. Hence, the Authority will produce screenshots of the site with comments so that the Tribunal would be in a better position to understand the EPC's refusal on the bases that the proposed development (ie the actual new units as well as the necessary new backyards and new backyard wall) is not limited to either the Category 1 boundaries nor to the 25m depth limit as per policy.

Location of cited permit PA 7034/07

The above is a screenshot of the MEPA's MapServer database which show an overlap of the site under appeal superimposed on the Category 1 Settlement. It is clear that the aft part of the site is beyond the settlement's boundary.

5.1.7 As regards to comments re Outline permit PA 7034/07 which was granted in the same Category 1 settlement, the Authority states that its location (as identified in the screenshot above) is totally within the boundary and its depth is not more than the maximum permissible 25m. In fact, the DPAR of the cited permit included:

PA 7043/07 - Principle of development:

The proposed development is to construct 14 garages at basement level and twelve overlying apartments on two floors. In principle, the proposed apartments and basement garages are in conformity with the Local Plan zoning for the area, and



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with policy SMSE 06 for residential development in areas zoned as Category 1 settlements since:

- the proposed height is within the height limitation of two floors plus basement;
- a side garden of more than 3 metres is being retained on the part of the site that abuts ODZ (doc. 10a);
- no blank walls are being proposed: and
- the depth of the plot is less than 25 metres.

5.1.8 The above contrasts with the case under appeal since whilst also being an Outline application, appellant is seeking approval for development beyond the boundary and beyond the 25m depth limit as imposed in policy SMSE 06

5.1.9 Additionally, attached to this technical report, a copy of report as prepared by the Environment Protection Department and which also objected to the proposed development on environmental grounds.

5.1.10 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies. Hence, reference is made to the reports as presented by the Directorate and to the EPC's decision which dismissed this request for development since the EPC Board had based their decision on the valid relevant policies applicable to this area. Reference is also made to the detailed reports as included in the file and to the submissions (verbal and written) which will be presented during the appeals sittings.

5.2 MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all the relevant facts, planning policies, legislation and submissions and thus, respectfully requests that the Environment & Planning Review Tribunal to confirm the decision as issued with the refusal notice and to refuse this appeal. The Authority reserves the right to forward further submissions during the appeals process as necessary.”;

Ra n-noti ulterjuri prezentati kemm mill-appellant kif ukoll mill-Awtorita’.

Ra l-inkartament tal-appell kif ukoll tal-applikazzjoni;

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Ra l-Policies SMSE06, SMAG01, u SMCO10 tas-South Malta Local Plan.

Ra l-Policies SET12 u BEN1 tal-Pjan ta' Struttura.

Ra l-Policies 1.3C u 1.3K tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007).

Ra wkoll il-PA files bin-numru PA205/09, PA 7305/06, PA 7034/07, PA 3073/07, u PA 1112/06.

Ikkonsidra ulterjument:

Illi l-proposta fl-applikazzjoni fi stadju ta' outline hija ntiza sabiex isir twaqqiegh ta' bini ezistenti u minflok u jinbnew garaxxijiet fil-livell ta' basement, u fuqhom binja residenzjali, u dan fi Triq Salvu Pulis, Haz Zabbar.

L-applikazzjoni giet rifjutata peress li din tikser il-Policy SMSE06 tas-South Malta Local Plan, li din tezigi li l-gholi tal-bini f'Category 1 Rural Settlement ghandu jkun limitat ghal zewg sulari u basement, u li l-izvilupp propost m'ghandux jeccedi l-hamsa u ghoxrin metru mit-triq. Tezigi wkoll illi l-ebda zvilupp kemm bhala estensjoni ta' bini ezistenti kif ukoll bini kompletament gdid m'ghandu jigi permiss fil-gonna li jiffurmaw parti minn bini ezistenti, u minhabba l-fatt illi mill lat ta' ppjanar ma hemmx raguni valida 'l ghaliex il-bini propost ma jistax jigi f'zona ta' zvilupp. L-applikazzjoni tmur ukoll kontra Policy SET12 tal-Pjan ta' Struttura, kif ukoll kontra Policy SMAG01 u Policy SMCO10 tas-South Malta Local Plan, minhabba l-fatt li parti mill-izvilupp propost jinsab f'area klassifikata bhala "Area of Agricultural Value and A Valley Protection Zone". Ghall-istess raguni l-izvilupp imur ukoll kontra Policies 1.3C u 1.3K tad-Design Guidance on Agriculture, Farm Diversification and Stables (2007). Inghad ukoll illi l-izvilupp propost huwa massiv u jikkostitwixxi over development u ghaldaqstant imur kontra Policy BEN1 tal-Pjan ta' Struttura.

Illi dan it-Tribunal jirriveva li l-appellant inghata c-cans illi jissottometti pjanti emendati fejn l-izvilupp propost kien anqas minn dak originali, u l-process rega' gie rinvijat lill-Awtorita' biex jigi deciz skont dawn il-pjanti l-godda. Ghaldaqstant fit-2 ta' Awwissu, 2013, l-EPC rega' kkonferma r-ragunijiet kollha ta' rifjut li ta fl-ewwel decizjoni.

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Fl-appell tieghu, u wara li l-appellant inghata c-cans jerga' jissottometti pjanti emendati biex jindirizza l-hames ragunijiet ghal rifjut, l-appellant jikkontendi li:

- Fuq is-sit gia' hemm strutturi ezistenti li jmorru oltre d-delinjament tal-Category 1 Rural Settlement, u kif ukoll jikkwota numru ta' permessi li fil-fehma tieghu jikkostitwixxu commitment;
- Jirrileva li fil-pjanti emendati l-iskala tal-izvilupp tnaqqset b'mod konsiderevoli, u ghaldaqstant fil-fehma tieghu l-issue ta' over development giet sorvolata. F'dan is-sens ukoll l-appellant qed jargumenta li minhabba l-fatt li l-izvilupp qed jigi limitat sad-delinjament tal-Category 1 Rural Settlement, it-tielet u l-hames raguni ghal rifjut qed jigu sorvolati.

Wara li fit-2 ta' Awwissu, 2013 l-EPC rega' kkonferma r-ragunijiet kollha ta' rifjut li ta fl-ewwel decizjoni, hekk kif indikat fil-verbal tas-seduta numru 30 mizmuma fid-19 ta' Novembru, 2013, il-konsulenti tal-appellant iddikjaraw li l-pool li hemm indikata mal-bini tista' tigi eliminata mill-applikazzjoni.

Minn naha taghha l-Awtorita' baqghet issostni dawk l-argumenti kollha mressqin fis-smiegh ta' dan l-appell kemm qabel kif ukoll wara it-tieni decizjoni tal-EPC.

It-Tribunal ikkunsidra li ghar-rigward id-diversi applikazzjonijiet kwotati mill-appellant permezz tas- sottomissionijiet tieghu, l-Awtorita' spjegat fid-dettall ic-cirkostanzi ta' kull kaz, u tat spjegazzjoni dettaljata tar-ragunijiet 'il ghaliex tali permessi gew approvati fil-kuntest rispettiv taghhom. Fil-fehma kunsidrata ta' dan it-Tribunal, l-argumenti li gabet l-Awtorita' f'dan ir-rigward u ghar-rigward tal-Policies vigenti li jikkellmu car fuq kif u meta ghandu jigi permess zvilupp f'Category 1 Rural Settlement, kienu konvincenti tant illi l-appellant talab u nghata c-cans biex jemenda l-proposta tieghu skont il-Policies. Madankollu il-pjanti emendati li sottometta ghal-kunsiderazzjoni tal-EPC xorta ma kienux jissodisfaw il-Policies relattivi u ghaldaqstant ma ssorvolawx il-hames ragunijiet ghar – rifjut.

It-Tribunal jidhirlu li fil-kuntest li s-sit jinsab fih, l-izvilupp propost kellu josserva strettament il-policies tal-ippjanar applikabli, partikolarment li l-bini ma jeccediex fond ta hamsa u ghoxrin metru minn mat-triq, li josserva l-gholi predominanti u l-massing tal- madwar filwaqt li l-izvilupp ma jikkostitwiex overdevelopment u li l-gnien ezistenti jibqa bhala tali.

Fil-fehma tat-Tribunal meta wiehed ihares lejn l-izvilupp propost mill-perspettiva tal-principji stabbiliti fil-Pjan ta' Struttura u l-Pjan Lokali, jikkonkludi li l-proposta tmur

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kontra l-principji bazici ta' dawn il-pjanijiet – partikolarment Policy SMCE06 tas-South Malta Local Plan, u Policies BEN1 u SET12 tal-Pjan ta' Struttura, u ghaldaqstant mill-fatti li hargu fil-kors tas-smiegh ta' dan l-appell, dan l-appell ma jirrizultax fondat u ghalhekk ma jimmeritax konsiderazzjoni favorevoli.

Ghal dawn il-motivi, il-Bord jichad l-appell u jikkonferma r-rifjut tal-permess ghall-izvilupp.

### Ikkunsidrat

L-aggravju principali tal-appellant hu s-segwenti:

1. It-Tribunal naqas li jimmotiva c-cahda tal-aggravji tal-appellant ghac-cahda tal-permess mill-Awtorita. Senjatament it-Tribunal ma tax raguni ghaliex wara li l-applikant bidel il-pjanti bi tnaqqas fil-footprint u l-izvilupp gie irtirat mill-linja ta' zvilupp permissibbli, xorta dan tqies bhala overdevelopment. B'zieda ma' dan gie invokat il-principju ta' kompensazzjoni bi spazji godda skond permess PA 7034/07 u t-Tribunal ma kkunsidrahx. Lanqas ma inghatat raguni ghaliex zviluppi simili nghataw permess bhal PA 7305/06 u ghalhekk kien gia jezisti commitment. It-Tribunal ukoll naqas li jaghti raguni ghal applikabilita ta' Policy and Design Guidance on Agriculture, Farm Diversification and Stables DC 2007 u ghaliex ir-restrizzjoni fit-tul tal-izvilupp kellu jkun applikabbli ghal dan il-kaz. Hu sottomess li l-izvilupp hu fil-konfini u ghalhekk mhux applikabbli d-DC 2007 u r-restrizzjoni fit-tul tal-izvilupp ghal 25 metru. In oltre irrizulta li l-gholi propost tal-izvilupp qatt ma kien mertu ta' oggezzjoni mentri t-Tribunal inspjegabilment qal li l-izvilupp ma josservax l-gholi. It-Tribunal zbalja wkoll meta rrefera ghal built plot depth fil-policy SMSE 06 bhala distanza ta' 25 metru mit-triq. Dan ma jirreferix ghat-tul mit-triq izda mill-faccata tal-izvilupp sat-tarf tieghu.

Din il-Qorti tqis illi l-aggravju tal-appellant jimmeritah jigi milqugh. Din il-Qorti taghmilha cara illi mhix b'daqshekk qed taqbel illi l-appellant ghandu ragun li l-izvilupp tieghu jigi approvat. Qed jinghad biss illi d-decizjoni tat-Tribunal hi nieqsa minn motivazzjoni tali li taccerta lil din il-Qorti illi l-kwistjonijiet imqeghda ghal iskrutinju tat-Tribunal gew ikkunsidrati kif imiss mill-istess Tribunal u illi a bazi ta' tali konsiderazzjonijiet inghatat decizjoni ragunata u motivata kemm jekk hi favorevoli jew sfavorevoli ghall-appellant.

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Jibda biex jinghad illi fil-mori tal-appell, l-appellant biddel bl-adezjoni tat-Tribunal il-pjanti tal-izvilupp u dan jitqies minn din il-Qorti bhala sinjal illi l-aggravji mressqa mid-decizjoni tal-Awtorita u l-istess decizjoni kellhom jigu skrutinati mill-gdid mit-Tribunal biex jara jekk bil-pjanti l-godda kienux jissusistu elementi li jinnesessitaw ic-cahda tal-applikazzjoni. Invece kull ma tisa' tara l-Qorti mill-korp tad-decizjoni hu illi f'sentenza wahda zewg paragrafi qabel id-decide t-Tribunal irrefera ghal pjanti emendati u jghid li l-pjanti sottomessi lil Awtorita xorta ma ssodisfawx il-policies relattivi u ma ssorvolawx il-hames ragunijiet ta' rifjut. Dan minghajr spjegazzjoni ulterjuri l-ghaliex il-pjanti ma kienu biddlu xejn mic-cahda inizjali tal-izvilupp mill-Awtorita. Lanqas tista' l-Qorti ssib sollied mid-decizjoni tal-Awtorita li forsi tista' titfa' dawl fuq din id-dikjarazzjoni tat-Tribunal ghax l-Awtorita, wara l-prezentata tal-pjanti godda, kull ma ddikjarat hu illi rega' kkonfermat r-ragunijiet ghar-rifjut.

Fl-istadju tal-proceduri quddiem it-Tribunal, meta l-istess Tribunal ippermetta li jigu prezentati pjanti emendati, l-istess Tribunal kellu l-obbligu lejn il-partijiet li jew jitlob lil Awtorita tispjega r-raguni li terga' tirrifjuta l-izvilupp nonostante pjanti godda, jew jaghmlha l-istess Tribunal biex il-partijiet ikunu sodisfatti li l-kwistjoni giet ben epurata mit-Tribunal nonostante li xi parti setghet ma qablitz mad-decizjoni. Izda f'dan il-kaz il-Qorti ma ghandha ebda konfort fil-gudikat dwar dak li wassal lit-Tribunal ghal din id-decizjoni.

B'zieda ma' dan il-Qorti ma tistax ma tirrimarkax illi fil-paragrafu ta' qabel id-decide t-Tribunal jaghmel kostatazzjoni ta' fatti li jidher li wassluh ghad-decizjoni finali, liema fatti ghalhekk kellhom impatt u effett dirett fuq id-decide. It-Tribunal isemmi li l-izvilupp kellu josserva li l-bini ma jeccedix fond ta' 25 metru mit-triq u li josserva l-gholi predominanti. Fil-bidu tal-konsiderazzjonijiet isemmi li l-applikazzjoni giet rifjutata peress li l-bini ma kellux jeccedi 25 metru mit-triq u kellu josserva certu gholi essendo bini f'Category 1 Rural Settlement.

Din il-Qorti tqis li din kienet enuncjazzjoni zbaljata ta' fatti rilevanti ghal finijiet tal-konsiderazzjonijiet li kellhom iwasslu ghal decizjoni u ghalhekk jikkostitwixxu bazi ta' appell fuq punt ta' ligi. Fl-ewwel lok l-Awtorita innifisha imkien ma tghid li l-bini propost ma kienx qed izomm mal-gholi stabbilit tant li fis-sottomissjonijiet taghha taht 'Proposed Development' tghid li 'height limitation as proposed is within the limitations for the Category Settlement'. In oltre rigward il-kwistjoni tal-25 metru l-policy SMSE 06 ma tikkalkolax il-fond ta' 25 metru mit-triq izda li 'building heights will be limited to two floor with basement and the built plot depth

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is not to exceed 25 metres'. Imkien ma jissema' illi dan il-fond jigi kalkolat mit-triq, u anqas l-Awtorita ma ssib li l-fond kien eccessiv semplicement ghax kien jeccedi dan il-kejl mit-triq (enfasi tal-Qorti). L-Awtorita kienet ferm specifika f'hekk kien jikkonsisti l-kejl eccessiv u dan peress illi kien qed jestendi l-built-up footprint fil-gnien ta' wara li hu assolutament vjetat f'Category 1 Rural Settlements. Dan almenu jirrizulta sal-istadju li gew prezentati pjanti godda fejn din il-Qorti ma ghandha ebda hjiel minn qari tad-decizjoni tat-Tribunal kif u kemm l-appellant xorta kien qed jivjola l-policies rilevanti msemmija mill-Awtorita fl-ewwel decizjoni taghha kontra l-proposta ta' zvilupp u dan b'referenza ghal numru ta' policies ohra imsemmija mill-istess Awtorita.

L-istess jinghad ghall-aggravju mressaq dwar zviluppi ohra fil-vicinanzi li nghataw permess u li l-appellant sahaq li kellu jinghata l-istess trattament. Ghalkemm l-Awtorita trattat il-kwistjoni t-Tribunal naqas li jikkonsidra r-rilevanza tal-aggravju izda semplicement injorah. Bl-istess mod it-Tribunal ma tax risposta cara dwar iz-zona ezatt fen jinsab ezatt is-sit b'referenza ghal policies li jistghu japplikaw, accertat l-ubifikazzjoni tal-istess sit.

Hi l-fehma tal-Qorti li t-Tribunal ma ndirizzax il-proposta riveduta bi pjanti godda b'referenza ghal aggravji mressqa mill-appellant, u semmai, kif, nonostante l-bdil ta' pjanti din il-proposta xorta waqghet il-barra mill-policies rilevanti rilevanza ghal approvazzjoni tal-izvilupp. Ma semma xejn anqas dwar zviluppi ohra fil-vicinanzi u kif dawn setghux jinfluixxu l-vertenza. Kwindi l-gudikat hu nieqes mic-certezza legali li wiehed jistenna li jkollu meta kwistjoni titqieghed f'idejn awtorita quasi gudizjarja biex tigi deliberata u deciza b'mod li l-partijiet ikollhom risposta studjata, cara u certa ghal vertenza.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi, billi in linea ma' dak deciz, thassar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-17 ta' Gunju 2014, u tibghat l-atti lura lit-Tribunal biex l-appell jigi deciz mill-gdid Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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