



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 40/2014

Patrick Tonna

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Patrick Tonna tal-21 ta' Lulju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-1 ta' Lulju 2014 kontra r-rifjut ta' PA 2179/12 'proposed sanctioning of change of use from garage to manufacturing and processing area';

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

Kopja Informali ta' Sentenza

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 l-bdil fl-uzu ta' garaxx ghal manifattura, fil-fond li jinsab fil-pjan terran fi Triq Belvedere, Gzira.

Illi l-applikazzjoni giet rifjutata mill-Kummissjoni tal-Ambjent u l-lppjanar ghar-raguni segwenti:

1. The proposed development will remove the existing parking spaces for the building and so it would conflict with Structure Plan TRA 4 and PA circular 3/93 which seek to ensure that appropriate provision is made for off-street parking.

Ra l-appell tal-Perit Ivan Zammit f'isem l-appellant li jaqra' kif gej:-

"Reference is being made to the Refusal of Development Permission dated 22nd November 2012.

I am writing on behalf of my client, Mr. Patrick Tonna, requesting the Appeals Board to reconsider the decision taken by the DCC for the following reasons:

1. Only one parking space is being removed from site.
2. Such space / garage is not being utilised by the overlying residential units since it is the property of my client and does not live in the above apartments.
3. In the vicinity there will be the availability of a public parking areas as recently approved (Ferry and Manoel Island).
4. Client's site has a narrow site frontage and the street is also narrow, therefore resulting in an unsafe vehicular access from the garage. Indeed the parking area in front of the premises is more appropriate and safer than the parking inside.
5. My client has a butcher shop in the vicinity of the area in Sir Fredrick C. Ponsonby Street, Gzira, within a radius of 100 metres.

Kopja Informali ta' Sentenza

6. Since the processing and manufacturing premises are in the vicinity of the above mentioned shop, this results in less traffic within the area.

7. The applicant is requesting that in such case the principles underlying Commuted Parking Payment Scheme are applied.

In such a particular case, I would be obliged if my client's proposal is considered on the grounds of my arguments and is favourably recommended.

Kindly note that my client and I would like to be present when the above-mentioned application is being deliberated.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fit-22 ta' Marzu, 2013, u li jaqraw kif gej:

“5.2 The Directorate has the following comments to make:

5.2.1 Introduction

In comments submitted, the appellant is arguing that only one car parking space is being removed from the site and therefore a parking space is being retained in the garage. Further to this, the appellant is stating that there is separate ownership between the garage and the overlying dwelling units and that therefore a change in the ground floor use will not have impact on the parking situation on site.

Notwithstanding this, the report below will clarify to the Tribunal why the decision to refuse this development in November 2012 was correct.

5.2.2 Principle of Refusal

Policy NHHO 01 of the North Harbours Local Plan lists the different types of uses acceptable in Residential Areas. The proposed use (manufacturing and processing) qualifies as a Class 11 development in accordance with L.N. 53/94 (Use Classes Order) and is considered acceptable provided that the development subject to limitations provided in the Local Plan policy. Notwithstanding this, the proposed change of use entails the loss of one garage which accommodates one unobstructed car space. Although the appellant is arguing that the ownership of the garage is separate from the habitable units in the building, Structure Plan Policy TRA 4 and Circular PA3/93 require that all development must accommodate its own

Kopja Informali ta' Sentenza

car parking requirement within the site. Consequently the purpose of inclusion of the garage when building was constructed as per site history (para. 3.1 in this report) leaves a loss of existing or approved parking spaces through the proposed change of use.”;

Ra s-sottomisjoni ulterjuri tal-Avukat Dottor Claudio Zammit għall-appellant tal-4 ta' Novembru 2013, li jaqraw kif gej :-

“Illi l-Awtorita' qed tibbaza r-ragunji tar-rifjut tagħha fuq Policy NHHO 01 li telenka t-tipi differenti ta' uzu ta' bini f'akkwati residenzjali.

Illi l-istess Awtorita' rrikonoxxiet illi zvilupp ta' Klassi 11 bhal ma hu dak odjern huwa permess fic-cirkostanzi, izda qalet li dan ha jkun qed ifisser it-telfta' garage.

Illi wiehed mill-ewwel argumenti ta' l-esponent dejjem kien illi l-garage u l-appartamenti ta' fuqu huma separati u distinti minn xulxin. Fil-fatt għandhom sidien differenti. Il-garage in kwistjoni diga' qeda l-iskop tiegħu sabiex seta' jsir l-izvilupp ta' l-appartamenti ta' fuqu.

Galadarba dan il-garage kien konness ma' l-izvilupp ta' din il-blokka bini, ma jistax issa jerga' jigi assoggettat għar-rekwizit l-godda wkoll ta' l-izvilupp odjern.

Illi fit-tieni lok l-istess Policy NHHO 01, meta ssemmi l-Klassi 11, imkien ma ssemmi bhala kundizzjoni għall-otteniment tal-permess 1i għandu jkun provdut xi parking space. Dan għall-kuntrarju ta' klassijiet ohra, ngħidu ahna Klassi 5, li tistipula bhala wahda mir-rekwiziti tagħha illi l-izvilupp m'għandux johloq problemi ta' parkegg. Bl-istess mod, li kieku min fassal il-policy ried jestendi dan ir-rekwizit ta' parkegg għal Klassi 11, kien izidu espressament.

Illi aktar minn hekk, l-attivitá ta' l-esponent ha tkun wahda minima għall-ahhar, kif anke kellu 1-opportunitá jispjega fl-affidavit tiegħu. L-attivitá ta' l-esponent mhux ser tkun qed tohloq zieda ta' karożzi fl-akkwata, għaliex mhux ha jkun qed jiftah hanut, bin-nies gejjin u sejrín.

Illi magħdud ma' dan, għandu jingħad illi għalkemm huwa minnu li ha jintilef spazju ta' karożza minn gol-garage in kwistjoni, bl-istess mod ha jinholoq iehor quddiem dan il-garage, għaliex dan il-garage mhux ha jintuza iktar għall-ipparkeggjar ta'

Kopja Informali ta' Sentenza

karozza. Fil-fatt l-istess Cirkulari PA3/93 tghid illi: "the amount of parking required will depend upon the type of development and its location". Fejn l-izvilupp huwa minimu, ghalhekk, bhal ma huwa fil-kaz odjern, l-esponent ihoss li dan l-Onorabbli Tribunal m'ghandu xejn x'ixekklu milli jikkoncedi dan l-izvilupp minghajr ma wiehed jahseb ghall-parkegg kif trid l-Awtorita'.";

Ra l-affidavit tal-appellant li gie prezentat fil-4 ta' Novembru 2013;

Ra l-policy TRA 4 tal-Pjan ta' Struttura;

Ra l-policy NHHO 01 tan-North Harbour Local Plan CG07;

Ra ukoll il-PA files bin-numru 2179/12, 3103/08 u 3833/06;

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

Ikkunsidra ulterjorment;

Illi r-raguni tar-rifjut mertu ta' dan l-appell tirrigwarda t-tnaqqis ta' parkegg (off-street), ghal-izvilupp li hemm fuq l-istess sit. Il-kuncett ta' ppjanar baziku li johrog mill-Pjan ta' Struttura, skont Policy TRA 4 u gwidi supplimentari (PA circular 3/93, u l-linja gwida Parking Provision for Local Shops, Offices and Catering Establishments, tas-sena 1997) jirrigwarda l-bzonn li kull zvilupp jipprovdi l-parkegg fuq is-sit biex jilqa ghal-impatt ta' traffiku li ser jiggenera, u ghaldaqstant ghandu jigi mhares dan il-parkegg milli jitnaqqas bi zvilupp ghal bdil fl-uzu.

F'diversi decizzjonijiet dan it-Tribunal esprima l-bzonn ta' prova ta' permess li juri l-parkegg, jew garage, marbut mal-kumpliment ta' l-izvilupp li hemm fuq is-sit, qabel ma jigi rifjutat il-proposta ghal-tibdil fl-uzu ta' l-istess garage. F'dan il-kaz huwa evidenti l-garage inezami kien jaghmel parti minn zvilupp ta' appartamenti skont il-permess PA 3833/06, u li dan l-istess garage kien approvat sabiex jipprovdi parti mill-parkegg mehtieg ghall-apartamenti sovrastanti. Ghaldaqstant f'termini ta' ppjanar, l-argumnet tal-appellant illi l-garage odjern u l-appartamenti sovrastanti huwa separati u distini minn xulxin mhux sostnut.

Illi huwa principju mportanti li johrog mill-policies tal-Pjan ta' Struttura li kull zvilupp gdid ma johloqx impatti addizzjonali fiz-zona fejn ikun jinsab, li f'dan il-kaz ser ikun in-nuqqas ta' parkegg f'zona residenzjali. Ghaldaqstant, il-kwistjoni f'dan il-kaz hija dwar il-bzonn li jigi protett l-garage ezistenti fis-sit, u mhux jizjed l-uzu kummercjali jew uzu iehor li per konsegwenza ser inaqqas il-parkegg.

Kopja Informali ta' Sentenza

Illi argument iehor li qieghed iressaq l-appellant favur il-hrug tal-permess, huwa ghall-fatt li quddiem il-hanut ser jinholoq parkegg ta' karozza fit-triq. Dan it-Tribunal huwa tal-fehma li dan l-argument ma jistax jigi kunsidrat meta l-istess proposta fl-applikazzjoni qieghda tinkludi spazzju ta' loading/unloading fil-partt ta' quddiem tal-fond mertu ta' dan l-appell, u ghaldaqstant ser jibqa l-htiega li quddiem il-bieb jinzamm vakanti ghall-access tal-vetturi relatati mal-operat fil-fond odjern.

Ghal dawn il-motivi premissi, dan it-Tribunal qieghed jichad l-appell u jikkonferma r-rifjut.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ghamel zball ta' ligi meta ibbaza d-decizjoni tieghu fuq policy paper: Parking provision for local shops, offices and catering establishments 1977 meta l-applikazzjoni kienet ghal sanctioning of use from garage to manufacturing and processing areas;
2. It-Tribunal ibbaza ruhu fuq affermazzjoni li l-garage kien approvat biex jipprovdi parking ghall-izvilupp ta' appartamenti skond PA 7833/06 meta ma saret ebda prova ta' dan.

L-ewwel aggravju

Dan l-aggravju mhux gustifikat ghaliex it-Tribunal ma ibbazax id-decizjoni tieghu fuq il-policy paper imsemmija. Qari tad-decizjoni juri illi t-Tribunal iddecieda li l-izvilupp imur kontra Structure Plan TRA 4 u PA circular 3/93 li jassigura appropriate provision for off street parking ghal kull zvilupp. Il-linji gwida issemmev biss fil-kuntest li kull zvilupp ghandu jipprovdi l-parkegg fuq is-sit biex jilqa' ghall-impatt ta' traffiku li ser jiggera u illi kull zvilupp in principju ma ghandux johloq impatt addizzjonali fiz-zona fejn jinsab, pero bl-ebda mod ma gie deciz illi l-applikazzjoni kienet tippekka minhabba dawn il-linji gwida.

It-Tribunal ikkritika li dan l-izvilupp ser inaqqas parking space u ma qabilx li t-tnehhija tal-garage bl-uzu propost kien ser jizvinkola l-ispazu necessrju biex tipparkeggja karozza fit-triq. Dan ghaliex it-Tribunal ikkostata illi l-applikazzjoni tinkludi spazzju ghal loading/unloading

Kopja Informali ta' Sentenza

quddiem il-fond mertu tal-applikazzjoni u b'hekk effettivament qed jonqos il-parkegg gia ezistenti bl-uzu prezenti tal-garage, skond l –uzu adebit ghalih fl-isfond tal-binja ezistenti bil-permess moghti PA 3833/06.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju fl-ewwel lok ma fihx mis-sewwa peress illi t-Tribunal ikkunsidra l-permess PA 3833/06 kif jinghad fl-istess decizjoni, u wasal gal konkluzjoni illi l-garage kien jipprovdi parkegg mehtieg ghal appartamenti sovrastanti u li kien irrelevanti illi s-sidien tal-appartamenti u l-garages huma differenti. Mill-atti ma ngiebet ebda prova kuntrarja mill-istess appellant u del resto din hi kwistjoni ta' indoli ta' ippjanar u mhux kwistjoni legali li minnha jinsorgi dritt ta' appell. Il-kostatazzjoni tat-Tribunal dwar il-portata PA 3833/06 huma ta' natura teknika mhux legali u din il-Qorti ma ghandhiex tissindaka tali kostatazzjonijiet sakemm ma jirrizultax xi zball lampanti ta' fatt li kien il-pern tad-decizjoni li mhux il-kaz.

Ghalhekk anki dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Patrick Tonna u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tal-1 ta' Lulju 2014, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----