



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-22 ta' April, 2015

Appell Civili Numru. 58/2014

Maurice Formosa ghan nom u in rappresentanza ta' JMA Ltd,

Ian Zammit ghan-nom ta' Mortar Investments Ltd, u

Joseph Grech

vs

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

Il-Qorti,

Rat ir-rikors tal-appell tal-appellanti Maurice Formosa personalment kif ukoll f'isem JMA Ltd, Ian Zammit f'isem Mortar Investments Ltd, u Joseph Grech tad-19 ta' Novembru 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-4 ta' Novembru 2014 rigward PA 4557/10 'construction of residential units';

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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:

Ra l-aggravji tal-appell hekk kif gej:

"Further to the issue of development permit application in caption dated 30th November 2012 by the Environment and Planning Commission (copy attached), as applicants consider that the conditions of this development permission are unreasonable and/or amount to the quasi-refusal of this application, on behalf of said applicants and for the reasons listed here below, I am appealing to the Environment and Planning Review Tribunal and request the revision of the conditions of this permit in order to allow the development of the site into a greater number of units than the number which is possible in terms of the conditions imposed by the Environment and Planning Commission.

1. This site is bounded on one side by sui-generis single family homes with a two storey height limitation and on the remaining three sides by extensive maisonette development two-storeys high, (some of which also include underlying semi-basements).

The site subject to application in caption is classified as "Vacant Land" in Map 27 of the approved Local Plan and the relevant policy NWML 4 provides that "The currently vacant land at the centre of the site as shown in Map 27, can be developed into residential units on a maximum height of two floors provided that 260sqm are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30%. The M.E.P.A. will impose a bond to ensure that the public open space is actually implemented".

During the processing of this application the Planning Directorate adopted a peculiar theory that the North West Local Plan limits the number of units on the site subject to this application to only two units. The E.P.C. agreed that this recommendation by the Directorate was based on factual error but did not agree that the site was zoned for terraced development, (which had never been questioned or contested before). It reasoned that, irrespective of the actual context of the site and the fact that it was zoned for two storey development, it was to be considered as regulated by the same conditions that govern the Santa Maria Estate and Tal-Qortin bungalow sites, with the exceptions of the two storey height limitation and the requirement of a public open space of 260s.m. which are clearly stipulated by the Local Plan. To underscore that the E.P.C. had disagreed with the Planning Directorate's recommendation that this application be refused because the site was already covered by full development permits for two units (i.e. P.A.3393/91 and P.A.3394/91), it included Condition 3 that states that policy 3.2 of the Development and Planning Guidance 2007 applies so sites with an area of one tumolo may be developed into two semi-detached units that provided that "the design of the dwellings maintains and enhances the character of the area by ensuring that semi-detached units appear as a single dwelling"(!?). This site has an area of 2,510 square metres, so after deducting the prescribed 260s.m. public open space, two tumoli remain and therefore the maximum number of units permitted by the E.P.C.'s decision is four units. In order to avoid any doubt regarding the actual intention of the Commission, during the relative sitting I requested that the number of units that it had agreed to (i.e. four), be specifically noted in the permit conditions but the Commission held that its decision was clear enough. When I replied that I was sure that some spark in the Directorate would take advantage of this omission to claim that the E.P.C. had only approved two units, the Commission members advised that I immediately lodge a full development permit application for the development of the site as four units so that they would approve it during their remaining one year term of office.

2.While reserving the right to lodge such an application concurrently with this appeal, applicants consider the effect of the Environment Planning Commission's decision to restrict the number of units that may be constructed on this site to only four, is contrary to sensible and objective planning policy for the following reasons:

a) To compensate for the change in zoning of part of High Ridge from villas to bungalows as well as the precluding of separate dwelling units at basement level, Paragraph 17.1.14 of- NWML 3 provides that "an increase in density is envisaged on another site within the area of Tal-Qortin (Refer to NWML 4) and this should accommodate any demand for dwelling units in this area". This provision had not been made in Draft Local Plan policy NWML 19, that covered the same area which was eventually regulated by approved policy NWML 3. It is therefore clear that latter policy refers to the "Vacant Land" which the Local Plan specifically zoned for development. Furthermore, paragraph 17.1.16 of NWML 4, provides that the areas classified as Tal-Qortin Villas and Tal-Qortin Terrace Houses in Map 27, "should not

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be allowed to expand". Hence it results that the Local Plan envisages that all the demand for additional housing in the approximately 100 hectare area situated to the east of the older part of the town is to be accommodated on the site subject to this outline application. The M.E.P.A. is required to give effect to the decisions of the Legislator by encouraging the efficient use of the site subject to application in caption and not to subvert the Legislator's intention by doing the very opposite.

b) This site is not included among the Residential Priority Areas identified in the Local Plan, clearly marked as "Vacant Land" in NWLP Map 27 and regulated solely by the above quoted Local Plan policy NWML 4. In full conformity with the provisions of said Local Plan policy, applicants applied for the "Construction of Nine Residential Units" (each occupying a plot with an area of 250 square metres), and also allocated 260 square metres as a public open space on the remainder of the site. The site-coverage proposed for these terrace houses is appreciably lower than that usually imposed on villa sites. From Table 3.2 of the Development and Design Guidance 2007, it results that, with the exception of the very exclusive areas of San Gwann Evangelista, L-Iklin, Tal-Ibragg and Madliena, practically all land zoned for villa development has a maximum site coverage of 40% going up to 45% and 50% at Ta' Xbiex and Marsaxlokk respectively. The overall residential density of development on this site proposed by applicants in this application is only 35.8 units per hectare.

It should be evident that the nine units indicated in the drawings presented are hardly enough to satisfy the demand for additional housing envisaged in paragraph 17.1.14 of the Local Plan and that that the M.E.P.A. should not be requiring that this relatively small number be reduced even further.

c) The area surrounding the site mainly consists of two-storey maisonettes (some with underlying semi-basement), as well as a restricted number of terrace houses with a two-storey height limitation. The Development Control Commission had approved application P.A.298/06 for the redevelopment of the only villa in this area into four units even though it has an area of only 1,236 square metres. The whole of the developed annulus surrounding the site has an area of approximately 15,000 square metres and the Planning Directorate established that it currently consists of 62 dwelling units. Hence, the existing residential density of the surrounding area is 41.3 units per hectare, which is appreciably higher than the density proposed in this outline development application.

d) Draft Local Plan Policy NWML 20 issued in June 2001 had classified the site as forming an integral part of the ring of development that immediately surrounds it and proposed that "the development of this area should not increase the existing residential densities and should not have an adverse impact on the existing

residential character. No further extensions to existing buildings beyond their footprint or on the open spaces and no increase in the height of the existing buildings will be allowed", Following the representations made during in the Public Consultation process, the approved Local Plan issued in August 2006 provided that the developed area, which surrounds the site subject to application in caption, is regulated by a very similar policy NWML 4 that pointedly excludes the text shown underlined above and provides that, "the development of this area should not increase the existing residential densities and should not have an adverse impact on the existing residential character. No further extensions to existing buildings beyond their footprint will be allowed. The height of the buildings on the site shall conform to the building heights on the Building Heights Map 29". The site subject to application in caption was however separately classified in Map 27 of the approved Local Plan as "Vacant Land" and the relevant policy NWML 4 provides that "the currently vacant land at the centre of the site as shown in Map 27, can be developed into residential units on a maximum height of two floors provided that 260sqm are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30%. The M. E.P.A. will impose a bond to ensure that the public open space is actually implemented". The fact that Map 29 does not specifically indicate the height limitation of the site subject to this application demonstrates that the three sentences which appear prior to the specific policy regulating this site refer only to the surrounding area defined on Map 27 as the "Tal-Qortin Comprehensive Scheme".

e) Page 86 of the Public Submissions appendix to the North West Local Plan refers to my letter dated 10th August 2001 requesting that this site be specifically zoned for three-storey residential development. The M.E.P.A. had recommended the partial acceptance of this request but, in order to protect residential amenity, imposed a two-storey height limitation, the requirement of a usable public open space as well as a 30% site coverage on the remainder. This reply made no mention of a restriction on the number of units on this site. The Mellieha Local Council also wrote on the 1st October 2001 complaining that the Draft Local Plan was "rather sketchy about the area of Tal-Qortin and should go into more detail about the central part of this site".

The M.E.P.A. replied on Page 85 of this appendix by stating that it had established the development criteria in NWML 4, (which replaced draft policy NWML 20). Hence, it is clear that the M.E.P.A. did not impose any further unusual limitations on the development of the site subject to application. Practically none of the thousands of blocks zoned for development throughout the whole of the Maltese Islands is limited to a specific maximum number of units as such control is exercised by the minimum development standards established by the Development and Design Guidance.

f) The E.P.C.'s decision for the land to be developed as only four residential units restricts the residential density of 15.9 units per hectare). It implies plot sizes of 562.5s.m. each so at 30% coverage, the built-up area of each unit will be 168.75 s.m. per floor. Hence, two floors and a semi-basement will comprise over 500 square metres of floor space. This floor space is in unduly lavish and is not in conformity with the main goal of the Structure Plan, which is "to use land and buildings efficiently".

The M.E.P.A. should be encouraging the development of this site at a residential density similar to that of the development immediately surrounding it, and not perverting its mission and ensuring waste. It is unlikely that when approving the Local Plan both the M.E.P.A. and the Legislator had intended to act contrary to the major goal of the Structure Plan by restricting the development of this particular 2,510 square metre site to four very large units, (to be disguised as only two units so as to be completely out of scale with the surrounding streetscape). Had such a decision been taken, this restriction would have certainly have been specified in the list of onerous conditions listed in NWML 4. My notes of the discussions with the Planning Directorate staff made prior to the approval of the Local Plan demonstrate that it was not proposing any artificial restriction on the number of units that could be built on this site.

g) While the M.E.P.A. needs to ensure the reasonable availability of a lavish housing for the elite ready to pay for it, it should be clear that such land should be in high quality areas where said elite will be ready to establish their residences. It flies in the face of common sense to require land completely surrounded by maisonettes to be developed as four very large semi-detached villas.

3. It is understood that Planning Directorate staff were intimidated by some of the objectors. As a result, the officials processing application in caption (that were arriving to the conclusion that it was appropriate that the residential density on this site be similar to that of the immediately surrounding development), received orders to appease the objectors, even though they had not presented any valid planning grounds for the refusal of this application. For example, the objectors hold that the M.E.P.A. should not have adopted a policy to regulate this site because, although it was within scheme the Temporary Planning Schemes published in 1989 neglected to indicate specific zoning conditions. The objectors make various statements such as "the proposed development increases the risks of the health of residents", which are self-evidently ridiculous. Lacking genuine planning reasons, some objectors resort to falsehoods such as "the proposed plans indicate only circa 200 sq.m. as public open space". It is interesting to note that not one of these objections claims that the Local Plan should be interpreted as restricting the number of units on this site to only two or four. While the objectors are very exigent as to what applicants can or cannot build on their site, they do not seem at all worried about the legality or

otherwise of their own developments. A casual examination of the permits covering the surrounding development demonstrates that nearly all the units built in the 1980's are not in accordance with an array of permit conditions such as "having a 4.5m front garden", "minimum floor area of 1,500 square feet", "each block to be at least 15 feet away from the road" etc. Although I have been making this allegation for years, it does not seem to have been investigated.

4. As a result of the negative impact resulting from the Tas-Sellum development, the Local Plan converted part of the Santa Maria Bungalows into a new zone labeled "St. Maria Estate Villa Site" increasing the height limitation from one to two floors and its residential density from 17.8 units per hectare to 40 dwellings per hectare, even though it is surrounded on the other three sides by bungalow development. It is therefore incongruous that the E.P.C. requires that, although it is surrounded by maisonettes and terrace houses, the relatively small site subject to application in caption must be developed as lavish semi-detached villas.

5. One cannot help contrasting the torturous process that the owners of the site subject to application in caption have been put through by the Planning Directorate with the generosity that regaled the owners of the Tas-Sellum development, (which was built on the strip of land that had been purposely left outside the planning scheme approved in the early nineteen eighties to provide a suitable buffer to Santa Maria Estate). Both the site subject to application in caption and the Tas-Sellum site were white areas in the Temporary Planning Scheme for Mellieha.

Despite the fact that the Tas-Sellum site is bounded by the sea, a very large residential priority area zoned for bungalow development and a stretch of pristine garigue, the owners of this 13,500 square metre site benefitted from the rapid issue of planning permits for five residential storeys, a density of 85 units per hectare, a 45% site coverage as well as no requirement for providing a public open space in this much-frequented area.

The owners of the Tas-Sellum development benefitted further by being exempted from having to wait for the approval of the Local Plan before planning permits were issued. Outline development permit P.A.3540/00 on the Tas-Sellum site provided for 117 extremely spacious dwelling units. The site subject to application in caption is situated in a far less environmentally sensitive location than that of the Tas-Sellum development, and its superficial area is about 18% of the Tas-Sellum site. Hence, on a pro-rata basis, it would qualify to be developed as 21 spacious units. Not content with the far more onerous conditions that were imposed on this site after a fifteen year planning process, the M.E.P.A. has persisted in obstructing its development by a far-fetched interpretation of the Local Plan, which is diametrically opposed to the intended policy for this site. A request for an explanation of the

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reason for the incredible contrast between the two cases has been made, but it has not been forthcoming.

Furthermore, Draft Local Plan policy NWiV1L 31 which proposed the planning policy for the white area today developed into the Tas-Sellum complex includes Paragraph 2.2.17 that augurs that the developer will accept "a more appropriate gain, such as public open space". In fact, the planning permission was granted to this developer prior to the approval of the Local Plan and without the requirement of a public open space. On the other hand, despite the fact that article 37 of the Constitution of Malta clearly states that "no property of any description shall be compulsorily taken possession of Except where provision is made by a law for the payment of adequate compensation", quite exceptionally, not only does the North West Malta Local Plan require the owners of the site subject to this application to allocate 260 square metres of their land as a public open space, but it also obliges them to carry out the necessary works for its enjoyment by the public, at their own expense.

In view of the above it should be clear that, not only is the development proposed in this application in line with the North West Malta Local Plan, but that it is the M.E.P.A.'s requirement that the area intended by the NWLP to "accommodate any demand for new dwellings in the area' be used inefficiently by requiring it to be occupied by only four very large units that is) incompatible with the both Local Plan as well as the Structure Plan.

6. According to the Development Planning Act permits are to be issued for a period of five years. Article 69(4) of the Environment and Planning Act provides that development permission may be granted for a limited period or in perpetuity, and in fact all Full Development Permits currently being issued by the M.E.P.A. are valid for a period of five years. Hence, there is no justification for the restriction in Condition la) of the period of validity of Outline Development Permits to only one year. Even though it has been established that it is not lawful for a board to seek to tie the hands of future board members, this condition also seeks to preclude the M.E.P.A. from renewing this permit.

7. There is no justification for Condition id) which proposes that future changes in policy take precedence over the principles established by this Outline Development Permit. The rest of this condition is unnecessary because all applications are to be considered in the light of the Structure Plan and the Local Plan.

In view of the above, it is requested, that as well as reinstating the original proposal description (i.e. Construction of Nine Residential Units), which was amended by the

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E.P.C., the Tribunal also amends the conditions of the development permission issued by the Environment and Planning Commission as it deems fit and proper or as follows:

la) The full development permission application shall be submitted for the approval of MEPA within FIVE YEARS of the publication of the decision in the press. This outline permission shall expire within five years from the date of issue of this permission. (and the last five words of this condition deleted). Id) Completely deleted

3. After the deduction of the 260 s.m. which are to be developed as a public open space as per Condition 2 above, the remaining part of this site, which has an area of approximately 2,250 square metres, may be developed into as many terrace house units as can be accommodated on the site, provided that the 30% maximum site coverage imposed by NWML 4 as well as the minimum dwelling size established by DC2007 policy 3.7 are observed, the maximum height limitation shall be two storeys and an underlying semi-basement and that no buildings above ground level are to be constructed on the north portion of the site which is shown in yellow on Map 27 of the North West Local Plan.

4. Subject to the same provisos listed in Condition 3 above, this site may also be developed in whole or in part as flats or maisonettes.

The right is reserved to present further planning justifications in support of this appeal during the relative sittings. The white copy of the Appeal Payment fee voucher number 2861 duly stamped by the receiving bank as proof of payment of the relative appeal fee is herewith enclosed. A copy of the relative application form, site plan as well as the plans submitted on the 7th October 2011 are also herewith attached.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fit-28 ta' Mejju 2013 u li jaqraw kif gej:

“5.1.3 Re-condition No.1a, 1d - specifies that the full development application shall be submitted for MEPA approval within one year from the date of the outline permission and that it will expire within 1 year from the date of issue of permission and it will not be renewable. Appellant is claiming that there is no justification for the restriction of the period of validity of Outline Development Permits to only one year and that this precludes the MEPA from renewing this permit. With regards to condition 1d, the appellant is suggesting that this condition is completely deleted.

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The Authority disagrees as these paragraphs are part of a standard condition used generally for all outline applications.

5.1.4 Re-condition No. 2 - The DPAR concluded by stating that “the proposed nine units increase the existing residential density of the area and thus runs counter to Policy NWML 4 of the North West Local Plan”. This report also stated that when considering the actual area of the site that actually is covered by the same policy, it transpires that the proposal does not fully satisfy the requirement for a 260 square metres public open space. The Directorate noted that if this requirement be addressed without reducing the proposed building foot print, the site coverage would exceed the allowable 30%. In view of this reason for refusal, a condition was included in the permit after the EPC Board requested consultation from the Local Planning Unit (min 59). The LPU forwarded the following comments: The development parameters for this site are set out in policy NWML 4 ie residential use with 30% site coverage on two floors and a public open space of 260sqm, provided the development does not increase the existing residential densities and does not adversely affect the residential character. The DPAR, prepared in consultation with FP, aptly describes the interpretation of these parameters and I see no reason to counter them (min.63). Thus the Board overturned the decision in this outline application which in principle the EPC considers that density typical of the residential priority are being respected through the above parameters in terms of policies 3.2 of DC 2007 and NWML4 of the Local Plan.

5.1.5 Re-condition No. 3 – The appellant is stating that the site may also be developed in whole or in part as flats or maisonettes. This condition relates to NWML 4 and Policy 3.2 of DC 2007. NWML 4 specifies that this land can be developed into residential units on a maximum height of 2 floors provided that 260m² are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30% (policy 3.2 of DC 2007). Policy 3.2 General conditions for the area of Santa Maria Estate and tal-Qortin. of DC 2007 states that Dwellings to be constructed in the areas zoned for detached/semidetached dwellings in the Local Plans shall comply with the requirements for dwelling type, minimum site area, maximum site coverage, minimum site cartilage, and maximum number of habitable floors set out in Table 3.2 or as otherwise specified in the relative approved Local Plan. Hence since this area is affected by these policies the EPC has made the right decision to impose this specific condition in this outline permit. With regards to contents of this condition, this was already achieved through an approval of a previous permit PA 3393/91 and PA 3394/91 each of which permitted the construction of a bungalow.

In these circumstances, the Authority reiterates that in view that this permit is an Outline Permit and only a site plan is approved, the above conditions are necessary so that the conditional approval is adhered to in the subsequent Full Development

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Application, hence, the Authority requests the Tribunal to confirm the DCC's decision which included conditions 1a, 1d, 2, and 3 forming part of the permit as issued on 30th November 2012.”;

Ra l-ittra tal-Perit Joseph Attard ghan-nom tal-Kunsill Lokali Mellieha u residenzi tal-madwar bhala persuni nteressati prezentata fis-16 t'Awissu 2013;

Ra s-sottomissjoni ulterjuri tal-appellant prezentata fit-18 t'April 2014 u r-risposta tal-Awtorita' prezentata fis-26 ta' Mejju 2014;

Ra l-verbal tal-access fuq is-sit mizmum minn dan it-Tribunal fit-30 ta' Jannar 2014;

Ra ukoll il-PA file bin-numru 457/10;

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

Ikkunsidra ulterjorment;

Illi s-sit jinsab fiz-zona ta' Residential Priority Area tal-Mellieha, f'erja li hija specifikament identifikata bhala 'Residential Zoning in the Residential Priority Area' f'dik il-parti ndikata bhala 'Tal-Qortin Comprehensive Scheme' skont il-Mappa 27 fil-North West Local Plan, hawn iktar l-isfel fid-decizjoni ser ikun referut bhala l-pjan lokali.

Illi l-maggor parti tas-sit inezami jinsab f'dik il-parti tal-'Qortin Comprehensive Scheme' li hija mmarkata bhala 'vacant land' fl-istess mappa 27 fil-pjan lokali.

Illi l-policy NWML 4 tipprovdi dan li gej fir-rigward tal-Qortin Comprehensive Scheme:

“The development of this area should not increase the existing residential densities and should not have an adverse impact on the existing residential character. No further extensions to existing buildings beyond their footprint will be allowed. The height of buildings on the site shall conform to the building heights on the Building

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Heights Map 29. The currently vacant land at the centre of the site, as shown on Map 27, can be developed into residential units on a maximum height of two floors provided that 260sqm are allocated and built as public open space as part of the development and the built site coverage for the remaining part of the site does not exceed 30%. MEPA will impose a bond to ensure that the public open space is actually implemented.”

Aggravvi 1-5

Illi l-ewwel hames aggravvi f'dan l-appell huma ndirizzati lejn iz-zewg kundizzjonijiet fil-permess odjern, cioe: dik numru 3, fejn qed tinkludi limitazzjonijiet tal-izvilupp billi qed jigu applikati l-policies ta' bungalows skont il-policy 3.2 tal-linja gwida dwar il-kontroll tal-izvilupp tas-sena 2007; u dik numru 4 li qed teskludi flatted dwellings.

Illi l-appellant qieghed jilmenta li b'dawn il-kundizzjonijiet, il-Kummissjoni qed tillimita l-izvilupp ghal-erba' (4) t'idjar biss (hekk kif finalment gie approvat fil-permess full development PA 705/14), filwaqt li dawn l-istess kundizzjonijiet huma bbazati fuq policies u parametri tal-izvilupp li mhumiex parti mill-policy specifika li hemm fil-pjan lokali.

Fl-ewwel lok, dan it-Tribunal jinnota li l-izvilupp fuq din is-sit, indikat bhala 'vacant land' fil-pjan lokali, ghandu jkun ta' natura strettament residenzjali u jsegwi dawn il-kriterji specifici:

1. Bini sa massimu ta' zewg sulari;
2. 260 metru kwadru ghandhom jigu allokatu bhala 'public open space'; u
3. Footprint tal-bini li m'ghandux jeccedi 30% tal-art identifikata ghall-izvilupp (cioe' teskludi l-260 metru kwadru ghall-uzu ta' public open space).

F'dan ir-rigward it-tqassim, disinn u numru ta' djar ma giex specifikat f'din il-policy fil-pjan lokali u ghaldaqstant thalla element ta' diskrezzjoni f'idejn l-Awtorita' sabiex tiddetermina hi l-izvilupp finali ta' din is-sit, fil-kuntest tal-parametri tal-izvilupp kif elenkati f'din il-policy sucitata.

Illi f'dan il-kaz, il-Kummissjoni qieset li l-applikazzjoni tal-policy 3.2, inkluz il-limitazzjoni ta' tomna bhala minimum site area, u l-eskluzzjoni ta' 'flatted dwellings', bhala mizuri sabiex jikkontrollaw l-izvilupp hekk gew kunsidrati fil-kuntest tar-Residential Priority Area fejn jinsab is-sit inezami.

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Illi f'dan ir-rigward, dan it-Tribunal jidhirlu li filwaqt li l-policy thalli certu diskrezzjoni fejn jidhol it-tqassim u d-densita tal-izvilupp fuq is-sit, l-Kummissjoni kienet korretta li tikkunsidra l-kuntest fejn jinsab is-sit inezami u ghaldaqstant timponi dawk il-kundizzjonijiet li jidrilha xierqa skont id-dispost tal-Artikolu 69 subinciz (3) tal-Kap 504.

Illi l-pjan lokali huwa car, partikolarment fil-paragrafu numru 17.1.17, fejn gie spjegat illi dan is-sit immarkat bhala 'vacant land' kien parti minn skema tal-izvilupp f'tal-Qortin biex jintuza bhala 'communal open space as part of a specific development permissions but this open space was never implemented.' Dan il-paragrafu jkompli jispjega li zvilupp fuq dan is-sit qieghed jigi kunsidrat wara li nhargu permessi ta' zvilupp fuq is-sit mill-Kummissjoni tal-Kontroll tal-Izvilupp, u din il-policy fil-pjan lokali hija intiza biex tizgura li jigi akkomodat public open space, filwaqt li jikkonkludi li 'the development permitted on the remaining part of the site does not prejudice the residential amenity of the neighbourhood of tal-Qortin.'

Ghaldaqstant dan it-Tribunal huwa tal-fehma li l-kundizzjonijiet impost mill-Kummissjoni sabiex jikkontrollaw id-daqs u d-densita' tal-izvilupp, kienu f'waqthom u ragenevoli fil-kuntest tal-policy fil-pjan lokali sabiex jigi protett l-karattru residenzjali tal-Qortin F'dan ir-rigward dan it-Tribunal qieghed jichad l-ewwel hames aggravji ta' dan l-appell.

Aggravju numru 6:

Illi s-sitt (6) aggravju jittratta z-zmien ta' validita' tal-permess kif indikat fl-ewwel kundizzjoni ossia 1(a) tal-permess, fejn qed tillimita l-permess ghal perjodu ta' sena. L-appellant qieghed jitlob li dan il-permess outline jigi estiz ghal hames snin simili ghal permess full development li generalment huma validi ghal hames snin.

Dan it-Tribunal jidhirlu li dan l-aggravju m'ghandu l-ebda bazi legali meta kif indikat mill-appellant stess, l-Artikolu 69 subinciz 4 tal-Kap 504 jippermetti lill-Awtorita' li tohrog licenzja jew permess ghall-izvilupp ghal zmien limitat sa massimu ta' hames snin, u ghaldaqstant ma jipprekludi xejn lill-Awtorita' milli timponi zmien limitat bhal fil-kaz odjern. Jidher fil-kaz ta' permessi outline, l-Awtorita' addottat il-prassi li tillimita dan il-permess ghal sena, u dan sabiex tigi prezentata l-applikazzjoni full development fi zmien immedjat kemm jista jkun wara l-hrug tal-permess outline. F'dan ir-rigward dan it-Tribunal ma jara xejn censurabbli f'din il-kundizzjoni u ghaldaqstant qieghed jichad dan l-aggravju ukoll;

Aggravju numru 7:

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Illi fis-seba' (7) aggravju l-appellant qiegħed jilmenta li l-kundizzjoni numru 1(d) mhiex gustifikata, fejn skont l-appellant din il-kundizzjoni qed tipproponi li 'future changes in policy take precedence over the principles established by this Outline Developmet Permit.' Hawnhekk dan it-Tribunal jidhirlu li l-appellant qiegħed jinterpreta hazin din il-kundizzjoni meta din tipprovdi b'mod car illi "Unless otherwise specified, the proposal in the full development application shall be in conformity with the provisions of the Structure Plan, the Local Plan and any other policy documents applicable at the time of submission and determination of the application."

Illi fuq insenjament ta' diversi decizjonijiet tal-Qorti tal-Appell, huma dawk il-policies vigenti li għandhom jigu applikati waqt id-decizjoni ta' kull applikazzjoni ta' żvilupp. Hawnhekk il-kundizzjoni qegħda tikkonferma dan, imma bil-frazi 'unless otherwise specified' fl-istess kundizzjoni, huwa car li l-parametri u kundizzjonijiet elenkati fl-istess permess outline, qed jiehdu precedenza fid-determinazzjoni tal-applikazzjoni full development, dment li din tal-ahħar tkun qed isegwi l-kundizzjonijiet elenkati fl-istess permess outline. Għaldaqstant, anke f'dan il-kaz dan l-aggravju mhux sostnut u qed jigi michud.

Fl-istess aggravju, l-appellant għamel referenza għal fatt li l-Kummissjoni bidlet id-deskrizzjoni tal-proposta u qed jitlob sabiex dan it-Tribunal iregga lura d-deskrizzjoni originali ossia: "Construction of 9 residential units" minflok dik emendata mill-Kummissjoni li taqra: "Construction of residential units".

F'dan il-kaz jidher illi l-Kummissjoni segwiet ir-regolament numru 9(5) tal-Avviz Legali numru 514 tas-sena 2010, fejn jipprovdi illi:

"L-Awtorita', il-Kummissjoni jew id-Direttur tal-Ippjanar, hekk kif ikun il-kaz, għandhom ikunu awtorizzati jemendaw il-proposta ta' żvilupp wara d-decizjoni tal-applikazzjoni sabiex din tkun tirrifletti ahjar il-principju tal-izvilupp li jkun qed jigi approvat mingħajr il-htiega ta' konformita' mad-dispozizzjonijiet tar-regolament 6(1) sa (5)."

Għaldaqstant huwa evidenti li l-Kummissjoni kienet korretta fl-ezekuzzjoni ta' din l-emenda dwar il-proposta tal-izvilupp, u certament bl-ebda mod ma bidlet il-principju tal-izvilupp kif approvat, u f'dan ir-rigward dan it-Tribunal mhux qiegħed jilqa din it-talba tal-appellant.

Għal dawn il-motivi u wara li kkunsidra l-fattispeci tal-kaz, dan it-Tribunal qiegħed jichad l-appell.

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Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. In-nullita tad-decizjoni ghax l-okkju ma jirrispekkjax il-partijiet kollha. Infatti Maurice Formosa u martu Maria Assunta ma jidhrux fl-okkju meta huma kienu applikanti;
2. Is-sottomissjoni tal-appellanti rigward il-policy NWML 3 para 17.1.14 ma gewx kunsidrati mit-Tribunal meta dawn kienu fundamentali ghat-tezi tal-appellanti ghax torbot mal-policy NWML 4 li semma t-Tribunal. Tali policy kienet tipprovdi ghal zieda fid-densita u dan jikkwalifika dak li jipprovdi l-policy NMML 4. Kwindi c-cahda tat-Tribunal tal-ewwel hames aggravji impressqa kienet erroneja fil-ligi;
3. It-Tribunal ma tax spjegazzjoni ghaliex it-tqassim u numru ta' djar thalla fid-diskrezzjoni tal-Awtorita la darba mhux specifikat fil-policy. Hu minnu li hemm numru zghir ta' siti fil-pjan lokali li jistabilixxu dan pero fin-nuqqas la darba l-applikant jottempera ruhu mad-DC policy 2005 dwar l-gholi sta ghalih jiddeciedi kemm irid jibni units. In fatti fil-madwar hemm numru ta' siti izghar minn dawk li imponiet l-Awtorita u t-Tribunal ghalhekk kellu jispjega l-gustifikazzjoni tal-Awtorita li jimponi mod iehor. In oltre t-Tribunal kellu jaghti spjegazzjoni ghaliex il-pjan lokali NWML 3 dwar 'increase in density' kellu jigi skartat u rimpjazzat b'diskrezzjoni tal-Awtorita.

L-ewwel aggravju

Dan l-aggravju jerga' jpoggi in risalt il-kwistjoni dwar l-importanza li l-partijiet kollha li lilhom kienet tinteressa u tolqot il-vertenza fil-gudikat tal-Awtorita, u aktar, il-partijiet li appellaw minn dik id-decizjoni jigu imsemmija u inkluzi fl-okkju tad-decizjoni ghaliex il-gudikat japplika u ghandu effett fil-konfront ta' min jinghata.

F'dan il-kaz hu car illi Maurice Formosa applika personalment ghall-izvilupp flimkien ma terzi u appella wkoll flimkien ma' terzi quddiem it-Tribunal. Nonostante dan, fl-okkju tad-decizjoni tat-Tribunal thalla barra. Il-Qorti tiskarta l-aggravju dwar mart l-istess Maurice Formosa peress illi hi ma kinitx applikanta jew appellanti quddiem it-Tribunal. Pero a rigward ta' Maurice Formosa, il-Qorti ma tistax taghlaq ghajnejha semplicement ghaliex la darba l-istess

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Maurice Formosa appella quddiem din il-Qorti, b'daqshekk l-okkju ta' gudikat jista' jigi injorat. Din il-Qorti ma ghandhiex il-jedd li tbiddel okkju ta' gudikat li hu kjament errat fundamentalment ghax ma jirrispekkjax fattur ta' importanza vitali cioe l-partijiet li lilhom tolqot id-decizjoni li favur jew kontra tagghom inghatat id-decizjoni.

Din il-Qorti ippronunzjat ruhha fuq din il-kwistjoni f'diversi appelli l-aktar ricenti fl-appell **Mikiel Farrugia vs L-Awtorita ta' Malta Dwar l-Ambjent u l-Ippjanar** deciza fil-11 ta' Marzu 2015. Ghalkemm f'dan l-appell, b'differenza ghas-sentenza kwotata, il-parti nieqsa mill-okkju, appellat ukoll u ghalhekk ebda element ta' pregudizzju ghal nuqqas ta' smigh xieraq ma jista' jitqajjem pero fl-istess waqt il-Qorti tqis illi kull decizjoni li tinghata minn din il-Qorti ma tistax torbot lil min ma hux parti fiha.

Ghalhekk hi l-fehma tal-Qorti illi l-aggravju tan-nullita ghandu jintlaqa anki f'dan il-kaz.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-aggravju tan-nullita tad-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-4 ta' Novembru 2014, u tirrinvoja l-atti lura lit-Tribunal biex l-appell jigi deciz mill-gdid. Spejjez jibqghu bla taxxa.

< Sentenza Finali >

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