



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-22 ta' April, 2015

Appell Civili Numru. 65/2014

Martin G. Spillane

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Camilleri tas-17 ta' Dicembru 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Novembru 2014 li biha irrevokat id-decizjoni tal-Awtorita li kienet awtorizzata l-izvilupp PA 304/11 'to sanction works as built and division of existing residence into two residential duplex units';

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Rat li t-third party objector Martin Spillane ghalkemm notifikat ma irrispondiex ghall-appell u anqas deher quddiem il-Qorti;

Rat ir-risposta tal-Awtorita li ssottomettiet li izzomm firm mad-decizjoni moghtija minnha fejn approvat l-izvilupp fit-12 ta' Ottubru 2011;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni – Full Development Permission – PA/304/11 l-applikant, f' 30, Sir Luigi Preziosi Square, Floriana talab: “ To sanction works as built and division of existing residence into two residential duplex units. No changes to facade ”

Fit-12 ta' Ottubru, 2011, l-Awtorita' laqghet it-talba ghall-hrug tal-permess relattiv prevja l-ottemporanza ma diversi kundizzjonijiet.

Permezz ta' Third Party Appeal, l-appellant, Dr Martin Spillane, ressaq l-aggravji tal-appellanti kif gej:

“A) STATUS OF APPELLANT:

- I am joint owner with my wife of Apartment No. 3214 (which is directly adjacent the construction at No. 30) and we are also joint owners of the Ground Floor office and basement at No. 31, which underlies the Applicant's premises (Doe. 1 in the Appendix).

B) BACKGROUND

- The Applicant, Joseph Camilleri, was granted approval (PA 8232/05), by the DCC Board on 9, November, 2006, to build another storey on the roof of the property and a roof-room of 36 sq. metres.

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- The Case Officer had recommended refusal on the grounds, inter alia, that "Sir Luigi Preziosi Street, Floriana is a visually sensitive area close to Misrah Sir Luigi Preziosi and the bastion walls. The visual integrity of the street is of concern especially since it can be seen from across the Harbour. The site pertaining to PA 8232105 is part of a streetscape of considerable visual merit, hence, any development on the facade of buildings should respect the context of the particular site. "

- Approval was granted contrary to the advice of the Planning Officer and the Planning Directorate, on reconsideration and subject to stringent conditions as to size of roof structure (36 sq. metres) and external finishes.

- The Applicant then ignored the MEPA-imposed conditions and undertook substantial internal demolition and construction well in excess of that covered by the permit. including the building of a Scandinavian-style penthouse of 67sq. metres, with a substantially reduced setback. This significantly blocks the view of the Grand Harbour from the roof of my apartment (2).

- The current Application 304/11 requested MEPA "To sanction works as built and division of existing residence into two residential duplex units. No changes to facade, "thus asking the EPC ignoring its previous reservations and requirements.

- On 12th October, 2011, the EPC approved the Application 340111.

- This decision clearly conveys the implication that a person can construct as they please and that MEPA can then be relied on to rubber-stamp building work it had previously refused to approve.

C) OBJECTION ON THE GROUNDS THAT THE APPLICATION 304111 SHOULD NOT HAVE BEEN ACCEPTED as it was incomplete in terms of the Environment & Development Planning Act (CAP 504) and subsidiary legislation (Legal Notice 514 of 2010).

- As the application was made after 11th January, 2011, LN 514/10 applies.

- The application constituted a "material change" from PA 8232/11 in that it involved:

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- 1) an increase in the density of the units from one to two;
- 2) the construction of a penthouse which involved a substantial change in the external appearance and design;
- 3) Internal demolition of a staircase.

- The application was to sanction works as built, but the work is far from complete and the application should have been either:

- 1) a full application to include works as built and also proposed future work or
- 2) an application to amend the previous PA 8232/10.

- The application, as submitted, does not provide:

- 1) a detailed and clear description of the development;
- 2) a summary of the proposed works;
- 3) a comprehensive outline of the differences between the original and new proposal;
- 4) photographs that "faithfully" show the "current and latest state of the site" and in particular depict the penthouse as visible across the harbour and from the gardens.

- As a result, the application does not provide a full and unambiguous description of

- 1) the work that had been carried out,
- 2) the variations from the Approved Drawings or conditions of PA 8232105,
- 3) the work which has still to be done to complete the construction.

- Thus the Case Officer and the EPC were not in a position to realistically assess the Application 304/11.

- They should have rejected the application and referred it back to the Applicant for amendment, enhancement, and re-submission.

D) BREACHES OF THE CONDITIONS OF THE ORIGINAL APPROVAL 8232/05

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- The original Planning Permission 8232105 was only granted as "the proposal will not exceed the height of adjoining buildings. " Condition 4 required that "The height of the building shall not exceed ... a receded level as indicated on the approved drawings, " "roof structures are limited to 36sq. metres" and "elevation of roof level ...is to be in stone. "
- The approval was for one dwelling. Two have been constructed ..
- The approved drawings for 8232105 show the height of the roof of the recessed room as approximately two thirds of the height of the adjacent wall, that is 1.0 metre below the level of the adjoining building (Doc. 3).
- These drawings are incorrect as they overstate the height of the adjoining building and include a non-existent opramorta.
- The roof of the recessed room as built is approximately 0.5 metres above the adjoining roof (Doc, 4)
- The roof structure as built amounts to 67 sq. metres, or nearly double the 36 sq. metres authorised under PA 8232105.
- This was achieved by reducing the setback from 7 metres to approximately 4.5 metres and over-building at the rear (Doc. 5).
- As stated previously, this reduced setback increases the apparent height of the building from ground level and partly blocks the view of the harbour from the adjacent roofs (Doc. 2).
- PA 8232105 Condition 2 stated "All services on the roof shall be screened by a wall 1.4 metres (5 courses) high constructed in Franka stone and set back by at least 2 metres from al/ edges of the roof' and "The services shall not exceed the height of this wall. No services shall be located on the roof of the roof structures."
- The services are not shown on the 304111 Approved Drawings, are on top of the roof structures and not screened.

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- As the penthouse and front balcony now occupy 95% of the original roof space, the services can only be located on the roof of the penthouse.
- Condition 5c: "This development permission does not remove or replace the need to obtain the consent of the land/building owner to this development before it is carried out. Furthermore, it does not imply that consent will necessarily be forthcoming nor does it bind the land/building owner to agree to this development." I am the joint owner of the land, my consent has not been sought or given and I will not agree to the subdivision into two dwellings.
- Condition 5d: "All works shall be carried out strictly in accordance with the approved drawings and the conditions of this permission."
- From the beginning, there appears to have been no intention to comply with this condition

E. COMMENTS ON THE DPA REPORT

4.1 SUMMARY OF ISSUES. 'The proposed development is acceptable since the alterations will not have a negative impact on the character of the property. "

- This is incorrect and misleading as the penthouse has a negative impact on the external appearance of the building, particularly from across the Grand Harbour.

PROPOSAL" No external alterations have been carried out."

- This is also incorrect and misleading: substantial external alterations have been undertaken.

CONSULTATIONS: "The SEO requested changes to the internal layout of the building to have ante-rooms in front of the WCs. On viewing the revised drawings, the SEO recommended approval of plans from a sanitary point of view."

- This was the only consultation made. There have been no recent consultations undertaken with Valletta and Floriana Harbour Rehabilitation Committee or the Cultural Heritage Advisory Committee. The information originally provided to them for PA 8232105 is now incomplete, misleading and often just wrong and should not be relied on to support PA 304/11.

4.7 DISCUSSION "--Sanctioning of internal alterations: The works carried out include the demolition of the staircase from first to second floor level and the construction of new staircases to permit the division of the property into two duplex units and the installation of a lift. Although normally the demolition of staircases is not permitted in such buildings, there is no photographic evidence of the demolished staircase, thus the Planning Directorate cannot comment on whether this might or might not have merited retention. "

- As "normally the demolition of staircases is not permitted in such buildings," the demolition should not be sanctioned without firm evidence that the demolition would have been approved had a permit been applied for prior to demolition and the Applicant or his Architect should be called upon to provide such photographic evidence. That the Applicant did not request permission prior to demolition is prima facie evidence that he was aware that a permit was unlikely to be granted.

- I have previously climbed the staircase several times in the presence of the Applicant and can state that it was an easy-rise, wide tread design in stone in a classical Maltese town-house design.

"The Directorate therefore finds no Objection to the sanctioning of the internal alterations subject to a fine."

- The DPAR discussion is inadequate as it does not extend to the other considerable alterations and extensions that have been made without a MEPA permit, nor to the increase from one dwelling to two.

"- Sanctioning of alterations to the roof structures

The roof structures have been extended both on the back and front terraces. The main concern is regarding the extension of the front terrace since it may have an impact on the views towards the area. "

- It should be noted that "the views towards the area" are in fact views of the Grand Harbour, which considerably enhanced the value of the neighbouring properties.

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The front elevation of the roof structure has been constructed 2m further forward than that approved, although still at a setback of 4.55m from the facade. The Planning Directorate does not find any objection to this extension since the roof structure was already committed to roof structures, as per previous permit PA 8232105, and the setback is in line with policy 10.4 of DC 2007, therefore will not have any impact on the streetscape. The height of the roof structures are in line with DC 2007 policy 10.4. It must be noted however that the bank guarantee imposed in condition 1 of permission PA 8232105 was imposed to cover the reinstatement of the cornice and to ensure that the roof structures are limited to 36sqm. In this case, the roof structures cover a floor area of 56sqm. [Actually 67 sq. metres] Whilst there is no objection to the sanctioning of such a floor area, since there is no established building height limitation in the area, and thus DC 2007 policies regarding roof structures do not strictly apply, the bank guarantee should be forfeited since the condition was not fully adhered to.

- The floor area of the roof structures is in fact approximately 67 sq. metres, comprising the original 36, plus 17.5 (from the reduction in set-back from 7.0 metres to approximately 4.5) = 53.5 sq. metres plus 13.5 sq. metres at the rear = 67 sq. metres.

- The area of 36 sq. metres was acceptable, but the 67 sq. metres is not as it significantly impacts the interests and amenities of the adjacent properties. This is not mitigated by the forfeiture of the bank guarantee and the area of the roof structure should be reduced to 36 sq. metres in accordance with the original permit.

- Other issues

"The roof structures have been constructed concrete block (bricks), thereby breaching condition 5(n) of permission PA 8232105, which states that the whole exterior of the building, including all roof structures are to be constructed in local weathered stone. The architect indicated that the external skin of the roof structures has been plastered and rendered in a stone colour. Although this runs counter to this condition, the Planning directorate is not finding any objection to the sanctioning of the material used since the roof structures will not be visible from the street below, and since they are rendered in stone colour, the material used will not be identifiable from a distance."

- The original permission 8232/05 required the use of weathered stone, but the new facade of the building has been constructed using unweathered stone and does not blend in with the surroundings.

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- The photograph submitted by the Architect A. Cassar is misleading as it was taken at an upward angle from a position in the gardens where the penthouse is not visible and it does not represent the view from across the Grand Harbour. (Long distance and close-up views, Doc. 1 & 3).
- The penthouse is actually visible from the gardens below and it is patently obvious that the structure is of rendered concrete block, rather than stone, and there is no guarantee that the paint used to coat the rendered concrete will weather in the same way as the stone used in the adjacent buildings or as the unweathered stone used for the newly erected facade. If the penthouse had been set 2 metres further back, it would have been less visible from below.
- The penthouse is in Scandinavian modern contemporary architectural style and is completely out of character for the area.
- The proposed aluminium sliding windows do not conform to the Maltese style and are out of alignment with the windows below.
- The structure is of rendered concrete, rather than stone, and the facade is completely un-ornamented.

"- Parking

In view that the residences on site have been increase by one, the development requires an additional parking space. Since no off street parking is being proposed, the development is to be subject to contribution towards CPPS to compensate for the shortfall of one parking space."

- There is already a major problem for parking in the area, due in part to the spaces reserved for embassy use and more particularly since the Square is now being used for parking large trucks and trailers. This development can only make matters worse (Doc. 6).

"- Objections

The objections raised regarding planning issues, are related to the size and design of the roof structures since they have been designed in a contemporary manner, not respecting the architecture of the building and that no off street parking has been provided for the additional residence. The proposed extension to be sanctioned will

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have a negative impact on the views towards the area, considering its height, setback and wide opening on the elevation. The use of aluminium on the elevation of the roof structure, together with its construction in bricks is also objectionable."

- There were submissions from five registered objectors and also a submission from Monsignor Victor Zammit-McKeon, who resides in the Square. Three of the objectors join this appeal and their original objections are attached (Docs. 7, 8 & 9)

E) REASONS FOR OBJECTING TO PLANNING APPLICATION 304/11

- The Application and submitted drawings are incomplete and insufficiently detailed to permit a full assessment of the finished development.

- The development is still under construction and the Applicant is asking MEPA to "sanction works as built" but does not specify what works and installations are still to be performed or explain what impact they will have on the completed development.

- The Application and submitted plans do not:

- identify the numerous deviations from the original Full Development Permission 8232/05 dated 7 May, 2005.

- demonstrate that the development will maintain the harmony of the existing streetscape and respect the context of the particular site (a major concern expressed in the original Planning Officer's report 8232105).

- include drawings which show the levels of the newly-built facade and recessed room in relation to the existing buildings on either side, so as to demonstrate that the levels conform with Structure Plan Policy BEN 2 and Structure Plan Policy UCO 6 ..

- provide for the recessed room to have traditional wood doors, but rather patio doors of "grey aluminium," although they will be clearly visible from the harbour.

- provide for the recessed room to be of stone, as required by PA 8232/05, but of "plastered hollow concrete block."

- address the concerns of the Cultural Heritage Advisory Committee (PA 8232/05) regarding the demolition of the second floor, which included an elegant staircase of traditional Maltese town-house design, which has been demolished.

- identify the purpose of, or necessity for, the concrete cube on the roof of the recessed room, which is clearly visible from the harbour.

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- provide a drawing of the roof area to show the proposed location of the services. (As a result of the over-building on the roof these can only be placed on top of the recessed room, with consequent implications for the visual aspect of the building from the harbour.)
- take any account of the detrimental effect that the overbuilding has on the neighbouring properties in respect of amenity, value and the blockage of light.
- Cannot provide any additional parking for the second dwelling in an area within in which parking space is already at a premium.

F) OBJECTION ON THE GROUNDS THAT AS A REGISTERED OBJECTOR I DID NOT HAVE A FAIR HEARING AT THE EPC.

- It is a widely accepted principle of law that "Not only must Justice be done; it must also be seen to be done." Lord Chief Justice Hewart, R v Sussex Justices, Ex parte McCarthy ([1924] 1 KB 256, [1923] All ER 233)

- At the first hearing on the EPC deferred a decision and requested that the Applicant's Architect, Mr A. Cassar, submit fresh plans for two windows at penthouse level in place of the large Scandinavian-style patio doors.

- The drawings subsequently submitted to MEPA showed three windows which did not align with the windows below.

- At the second hearing, on 12th October, 2011, in terms of Section 5(2) of Ch. 189 of the Laws of Malta, I declared that I am an English speaking person and do not understand the Maltese language. I requested that the hearing be conducted in English.

- Mr A. Cassar responded in Maltese.

- The Chairman explained that Mr Cassar had said that he felt he could explain the matter better in Maltese and that the Committee could not compel him to speak in English. However, he and the Committee would speak in English and he would give a translation of Mr Cassar's Maltese.

- In fact Mr Cassar and his clients are fluent in the English language and all our discussions have been conducted in English ..

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- Mr Cassar then made a lengthy submission in Maltese, at the conclusion of which the Chairman replied, also in Maltese.
- Joseph Camilleri's wife then smiled and leaned over and hissed to me, "It is approved!"
- The Chairman then said in English that the Perit had explained that they were unable to have just two openings as there was a concrete pillar in the way.
- I pointed out that had Mr Camilleri sought MEPA's permission before it was installed, the pillar could have been placed elsewhere and so not obstructed the windows.
- I do not understand much Maltese, but I gained the impression that Mr Cassar's remarks had dealt with far more than the concrete pillar and that he had possibly also suggested that my objections were based on malice.
- The Chairman then asked me to detail my objections and I handed round copies of my written objection and gave a brief explanation. There was then a short discussion in English, but it was apparent that the decision had already been taken.
- I would also add that, far from obstructing Mr Camilleri or being malicious, I had facilitated his building work by selling him the corridors of my office and basement so he could install a lift.
- I did this on the understanding that it was to be a single dwelling and that it would comply with the drawings for PA 8232/05.
- When I prepared my draft of the Convenu, I included a provision that Mr Camilleri would be responsible for the necessary permits.
- At the meeting to sign the Convenu, Mr Camilleri quoted PA8232/05 as covering all the proposed building work.

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- I was then told by his Notary that it was therefore not necessary to include this clause and regrettably I did not pursue the matter.

CONCLUSION

PA 304/11 demonstrates a total disregard of:

- The aims and objects of the Valletta and Floriana Harbour Rehabilitation Committee, the Cultural Heritage Advisory Committee and the Grand Harbour Local Plan;
- The interests and concerns of the owners and occupiers of neighbouring properties;
- The requirements of the DCC Board and the latitude they granted in over- ruling the recommendation of the Case Officer and the Planning Directorate and exceptionally allowing the original Application 8232/05.
- The necessity for the Applicant to provide accurate plans, drawings and photographs in order that the EPC can make a fair determination and not be misled.

It should therefore have been refused.

REMEDIES SOUGHT

- Withdrawal of the permit 304111
- Reinstatement of the conditions attached to PA 8232/05
- A requirement for the submission of a new or amended application within the structural specifications of PA 8232/05.

NOTE

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As I am making the appeal and all the parties are fluent in English, I request that for the avoidance of any misunderstanding, the Tribunal proceedings be conducted in English.”

Permezz ta' nota l-perit Anthony Cassar, ghall-applikanti, jghid is-segwenti:

“Reply to objections filed by Dr. M. Spillane on November 10, 2011.

1. Basically Dr. Spillane is objecting to the issue of this permit because his view which he enjoyed over my clients' property at roof level is now reduced. It is pointed out that the view enjoyed from across his property was untouched.

2. The application was to sanction works as built – having 2 duplex units and contrary to what he says works are complete in shell form. There was no increase in height but only an increase in area at roof level. In PA 8232/05 the area was to be 36sq.m. but this condition was wrong as there is no height limitation for Floriana.

3. The variations between the approved drawings in PA 8232/05 and that in PA 304/11 were correctly indicated and there are no works to be done to complete the construction.

4. The facade was not touched and its height remained unaltered – as built according to PA 8232/05

5. The services on the roof will be screened once in place.

6. Dr. Spillane does not own any part of the roof and does not even have access to it. Hence he is not a co owner and his consent was not required

7. The building at roof level is set back 4.55m from façade and there is no need to align with the windows below.

8. The width of the opening was approved without any pillars in PA 8232/05 but client found no objection to put in two pillars as requested by the EPC in PA 304/11.

Dr. Spillane's objections are not based on planning issues because the permit conforms to all policies and the set back at roof level is even more than that required of 4.25m. For these reasons, these objections should be overruled.”

Permezz ta' nota b' risposta l-appellant jghid is-segwenti:

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"Response to the Perit Cassar's reply dated 6th December, 2011 to the objections I filed on November 10,2011. (Perit Cassar reply is in plain type, my response is in italics)

1. Basically Dr Spillane is objecting to the issue of this permit because his view which he enjoyed over my client's property at roof level is now reduced.

This is incorrect.

The Application 304111 should not have been accepted by MEPA or the permit issued as the Application was made after 11th January, 2011 and is therefore contrary to the Environment & Development Planning Act (CAP 504) and subsidiary legislation (Legal Notice 514 of 2010) in that it requested approval of "Material Changes" from PA 8232105, which, in terms of Section 2 of the Legal Notice, involved:

1) "an increase in density (including volume, area or units of more that 16%)". namely an increase in the density of the units from one to two;

2) "a substantial change in the external appearance or design"; namely the construction of a penthouse which had an area of 67sq. M. instead of the 36 sq. m. approved under PA 8232105

It is pointed out that the view enjoyed from across his property was untouched. This is not correct - the view from the adjacent roof is substantially reduced, as is shown in the photographs submitted with my objection (Document 2 of 10th November, 2011).

2. The application was to sanction works as built - having 2 duplex units and contrary to what he says works are complete in shell form. There was no increase in height but only an increase in area at roof level. The increase in height is not in the facade, but in the penthouse and also in relation to the adjacent building (Documents 3 & 4)

In PA 8232105 the area was to be 36sq.m but this condition was wrong as there is no height limitation for Floriana. This condition was accepted by the applicant when

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PA 8232105 granted and the applicant did not appeal. Had the application been for 67 sq metres then there would have been an objection at that stage (Document 5).

3. The variations between the approved drawings in PA8232/05 and that in PA304/11 were correctly indicated and there are no works to be done to complete the construction. It is not sufficient for the variations to be "correctly indicated" on the drawings, the applicant should provide "e description which is "clear and in detail" and which should include "a concise but complete summary" of the variations (Legal Notice 514 of 2010).

4. The facade was not touched and its height remained unaltered - as built according to PA8232/0S. This problem is not the facade, but the size and scale of the penthouse.

5. The services on the roof will be screened once in place. In order to demonstrate that the finished building would comply with the conditions of the PA, the proposed screening should have been shown on the revised drawings.

6. Or Spillane does not own any part of the roof and does not even have access to it. This is accepted - I am however the owner of the apartment immediately adjacent to the new building works and of the office, garage and basement below those works. I also have the use of the roof above my apartment which is adjacent to the newly constructed penthouse and which has had its view blocked. This is used for social and leisure occasions.

Hence he is not a co owner and his consent was not required. On both PA 8232105 and 304/11 the applicant declared that he is "the owner of the entire site shown on this site plan." The land he marked on the site-plan provided on the MEPA website greatly exceeds the footprint of the roof and I am the co-owner a (copy of his site-plan is attached).

7. The building at roof level is set back 4.55m from facade and there is no need to align with the windows below. At the hearing on PA 304/11, the EPC requested that the openings at roof level be reduced and aligned with the existing windows below. The applicant claimed that this could not be done as the two pillars mentioned in 8 below were already in place.

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8. The width of the opening was approved without any pillars in PA8232/0S but client found no objection to put in two pillars as requested by the EPC in PA304/11. The pillars had already been constructed when PA304/11 was submitted.

Dr Spillane's Objections are not based on planning issues because the permit conforms to all policies and the set back at roof level is even more than that required of 4.2Sm. For these reasons, these objections should be overruled. As outlined above, this is incorrect.

In addition the space for parking cars is inadequate (Document 6).

This response also ignores the complaints of the other objectors (Documents 7, 8, 9a, and 9b).

Please note that as I am making the appeal and am not a Maltese speaker and all the parties are fluent in English, I request that, for the avoidance of any misunderstanding, the Tribunal proceedings be conducted in English.”

Fl-ewwel rapport taghha l-Awtorita' tghid is-segwenti:

“1.0 THE PROPOSAL AS PER DPA

This full development permission application proposes the sanctioning of works as carried out, including the division of the existing property into two duplex units. No external alterations have been carried out different to the previous permit.

2.0 COMMENTS ON APPELLANT'S ARGUMENTS

2.1 The Authority has noted all arguments of appellant in this appeal and disagrees that the permit as issued by the EPC as per decision taken on 12th October 2011

Approved 5-0

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

Objector: Dr M Spillane

Was taken on incorrect planning issues and this decision merits revocation.

2.2 Hence, the Authority will address appellant's planning issues accordingly.

2.3 Permit PA 8232/05 had been issued for structural additions on 7th May 2007 and which included an additional full floor and structures at roof level. This application sought the sanctioning of structural alterations and additions which did not follow the approved plans of the previous permit. In this regard the Authority disagreed that since this application under appeal was submitted after January 2011, the requested sanctioning should not have been accepted since the new law did not prohibit such sanctioning of additions in development zone areas. The proposal does include 'To sanction works as built' and hence, applicant informed the Authority that he is requested sanctioning of the alterations and additions as now shown in the new plans so that the case officer and the Authority could evaluate the new 'as built' development vis-à-vis the previous permit. This is normal procedure that proposals includes 'to sanction' and when these involve internal alterations and extensions at roof level, the fact that applicants clearly state 'to sanction as built' and the plans also show in colour the areas affected, there is no misleading / incorrect / uncompleted information which could have mislead the case officer and the Authority from concluding an informative assessment and decision. In fact, the case officer has confirmed that the proposal and plans as presented were sufficient in order for the DPA for be concluded.

2.4 As regards to the issue of whether the works are actually finished or not (as regards to structural alterations), the responsible architect has declared (in his reply to this third party appeal) that all structural works are completed and hence, the official description is correct. Furthermore, in view that applicant had declared from the very onset that he is requesting 'to sanction.....', a fine was imposed and paid as per procedure prior to the issue of the permit under appeal.

2.5 While it is correct that previous permit had included conditions such as the maximum area of the roof structure, such a condition could always be requested by applicant to be changed either through a separate full application (as had happened through the application under appeal) or through a request for reconsideration or even through a request for Appeal. Hence, when applicant requested permission for a bigger structure at roof level, such a request was still assessed by the Directorate

and the EPC vis-à-vis the planning policies applicable to such development, and, if and when additional works are permissible by policies, a new permit is granted and issued (as in this case under appeal).

2.6 Re services at roof level overlying the approved structure, architect has declared that when these are eventually installed on site, appropriate screening will also be carried out.

2.7 The issue of the height and visual intrusion was discussed prior to the final decision, however it is important to note that this permit did not approve a full floor at roof level but an extension to the front part of an approved structure at roof level (ie the previous structure was approved with a setback of 6.5m whilst the one approved now is with a setback of 4.25m as per normal procedures and policies which regulate structures and even penthouses at roof level) as well as an extension at the rear part which is surely not visible from the harbour area.

2.8 The Authority disagrees that the DPAR discussion was somehow inadequate since such reports are prepared by professional staff and was also endorsed by their Manager. Such planning reports are prepared by the Authority on a daily bases and had been altered through time to address the main issues without unnecessary and lengthy discussions which could only misguide and confuse the deciding body (ie the EPC) from focusing on the main issues of each case. Furthermore, any objections are duly inserted in file and noted in the DPAR and hence, objector could have (as actually did) highlight any other issue which he considered relevant to the deciding body. This again is the normal procedure adopted according to law and objectors cannot dictate the manner in which the Authority's report are formatted and compiled. The law provides ample space for objectors to air their views and concerns and to even participate in the public meeting in which decisions are taken. The important issue is that objector had availed of this right and had presented several submissions to forward his objections. The deciding body has eventually to take into consideration, applicant's submissions, objector's submissions, the Directorate's recommendation as well as their own assessment so as to conclude a final decision according to policies and the provisions as stipulated by law. In fact, this appeal itself is a right for objectors to air their objections to an independent Tribunal where the Tribunal will eventually decide whether the EPC's decision was correct or not. However, the Authority, after evaluating objector's appeal, is still reiterating that the Directorate's recommendation and the EPC's approval was in line with planning policies and if appellant feels that his rights (eg. the enjoyment of side views) were hindered, such a grievance should be forwarded to a different fora.

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2.9 Re the design of the roof structures, it is noted that the previous permit (not under appeal) had approved a large and single opening onto the harbour area whilst in this application, it was the EPC who imposed that pillars are included in the front part of the roof structure. In fact in meeting of 14th September 2011 the EPC ordered that Architect to provide within 10 days (without prejudice to final decision) fresh plans and elevations reducing opening to penthouse to two 1.8m openings.

2.10 In view of the above arguments the Authority states that the decision as taken by the EPC was taken in conformity with the relative policies and hence, respectfully requests the Environment and Planning Review Tribunal to confirm the decision as issued by the EPC, whereby an approval for development permission was issued. The Authority reserves the right to forward further submissions during the appeals process as necessary."

Fin-nota b' risposta ta' l-appellant, huwa jghid is-segwenti:

"Using the paragraphing in the Technical Report, I comment as follows:

2.03: " ... since the new law did not prohibit such sanctioning of additions in development zone areas." Sir Luigi Preziosi Square falls within the Floriana Urban Conservation Area (GHLC - GF10) and the new law does prohibit such sanctioning of additions, specifically when it involves "material changes." (L.N.514/2010, Schedule 2: types of applications, (a) (i) and L.N. 514/2010 Section 2.) The present case involves a material change, namely an increase in density from one to two dwellings and "a substantial change in the ... design."

"...the proposal and plans as presented were sufficient for the DPA for be concluded" (sic). That "the proposal and plans as presented were sufficient" simply means that they were accepted as meeting the minimum standards for the DPA to be concluded. They did not provide a description which is clear and in detail, nor did they provide "a concise but complete summary of the variations" (LN 214/2010, 4 (1) (b) (a) (vi) (e) and (g) and were inadequate for potential objectors to assess the impact on their interests.

2.4: "As regards to the issue of whether the works are actually finished or not (as regards to structural alterations) the responsible architect has declared (in his response to this third party appeal) that all structural work is completed and hence, the official description is correct." What the architect actually wrote was "The application was to sanction works as built - having two duplex units and contrary to

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what he [Spillane] says works are complete in shell form." In fact on 1 st January, 2011, the new construction was not complete as it still had a roof that was porous and did not drain rain-water, a situation which continued for several months into 2011.

2.7: The extension at the rear part is not visible from the harbour, but it has a significant impact in that it considerably reduces the sunlight reaching my courtyard.

2.8: I am not seeking to "dictate the manner in which the Authority's report are formatted and compiled," but I am seeking transparency and clarity and I am respectfully reminding the Authority of the requirements set out in the relevant legislation.

NOTES: The MEPA Deputy Chairman, Franco Montesin, is reported as saying at the hearing on sanctioning for PA 1119/11 (MITA) that MEPA does not "like to be faced with a fait accompli." The Directorate is quoted as saying that in that case there was "no objection" to the sanctioning since the modifications did "not involve any material change as defined in LN 514110." ("The Independent," 12 Nov, 2011).

The present case presents a "fait accompli," the property is in an Urban Conservation Area and involves a substantial material change from one dwelling to two.

The "Times" reporter, Matthew Xuereb, quotes Board Member Roderick Galdes "We have to show people that they cannot do what they like then come to us for our blessing." (Nov. 25, 2011)."

Fit-tieni rapport taghha l-Awtorita' tghid is-segwenti:

"1.0 COMMENTS ON APPELLANT'S ARGUMENTS

1.1 Following the submission of the initial report by the Authority; the appellant submitted additional comments in letter dated 23rd March, 2012.

1.2 The Authority has the following comments to make:

1.2.1 Material Change and description not detailed.

At second statement the appellant is arguing that present case involves a material change, namely an increase in density from one to two dwellings and a substantial change in the design. The case did not provide a description which is clear and in detail nor did they provide a description which is clear and in detail, not did they provide a concise but complete summary of variations “ and were inadequate for potential objectors to assess the impacts on their interests.

The Authority disagrees that the case under appeal involves a material change since the proposal description in the application include sanctioning as built and the division of existing residence into two residential duplex units. The case officer accepted this description related to drawings and assessment was taken on the submitted information. Furthermore the drawings indicate clearly that there was no change in the design of the existing façade. Moreover the approved drawings conform to description in that from the case officer point of view, the approved plans include coloured areas affected and the Authority did not found that there was misleading/incorrect /uncompleted information. During the processing of the application, the submitted latest drawings referred to EPC Board conform to the description of the application and thus the present case does not involves any material change. In fact the case officer concluded that the given information was adequate to conclude the DPA report.

1.2.2 Works not finished, and reduction of sunlight to appellant's courtyard.

The appellant is also arguing that on 1st January 2011, the new construction was not complete as it still had a roof that was porous and did not drain rain water, a situation which continued for several months into 2011. The appellant is also stating that this development has a significant impact in that it considerably reduces the sunlight reaching his courtyard.

With regards to mention works were not completed, the fact that appellant/architect made a declaration for the sanctioning of works as built and was fined by the Authority and had paid this fine prior to the issue of the permit under appeal, it is the responsibility of architect in question and not of the Authority whether works are actually finished or not.

With regards to impact/sunlight reaching appellant courtyard, this issue concern Sanitary Laws and Regulations. The drawings of this development were approved by the Sanitary Engineering Officer as per minute 63 in case under appeal. This development as proposed complies with Sanitary Laws and Regulations and thus

appellant's courtyard has also adequate light and ventilation. From the planning point of view, although a bigger structure was permitted at roof level, request was assessed by the Directorate and EPC against planning policies applicable and a new permit has been granted and issued and thus this development is according requirements set out in the Planning Legislation.

2.0 CONCLUSION

2.1 The Authority reiterates that in line with its previous reports, this request for appeal goes against the present planning policies relevant to this area and states that the EPC Decision to refuse this application was justified; and hence respectfully requests the Environmental and Planning Review Tribunal to confirm this decision and to refuse this appeal for development permission."

Permezz ta' nota l-Perit Jo Ann Giannakellis De Bono, ghan-nom tal-appellant jghid is-segwenti:

"Reference is made to the appeal sitting held on the 29th April 2013.

While it must be made clear to the Board that the arguments raised by the appellant in the earlier submissions, dated 23rd March 2012 and 10th November 2011, are not being withdrawn in any way, the appellant wishes to clarify the following issue that was raised during the aforementioned sitting:

1. When the first application was submitted by Messrs Camilleri on 30, Triq Sir Luigi Preziosi (PA 8232/05), the elevation submitted with this application (refer to Appendix 1) showed a gradual step-up between the parapet walls of the properties of Dr. Spillane (No. 31), Mr. Camilleri (No. 30) and the third party property (No. 29). Hence, the highest level of the proposed structure at No. 30 was indicated to be lower than the "existing" height of No. 29. However, it must be pointed out to the board that the parapet wall on No. 29 was never built and we have no reason to believe that there ever was any intention to erect this parapet wall. The representation of the parapet wall on the roof of number 29 could have misled the EPC when taking their decision. Hence, the proposed elevation gave the impression that the penthouse would be less obtrusive than it actually is, the more so when one considers that the set-back was reduced to almost half of what was shown in the original application.

It was for these reasons that the appellant had not contested the original proposal.

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2. On the drawing of the elevation that was submitted with the application to sanction works (PA 304/11), a note stating "NO CHANGE PROPOSED TO EXISTING FACADE" was included. Again, this elevation was not contested. However, the appellant wishes to point out to the Board that this drawing (refer to Appendix 2) differs to the approved drawing in the 2005 permit (refer to Appendix 1), mainly in that the elevations of No. 31 and No. 29 were left out.

3. With this assertion, one was led to deduce that the as-built elevation would be similar to the one approved in the 2005 permit, as shown in appendix 2. However, this is not the case. The as-built elevation differs significantly from the originally approved elevation, and this is one of the reasons why the appellant has since lodged an appeal against sanctioning of the works.

4. Two documents are being submitted with this letter showing the differences between what was approved and what has actually been built.

5. Appendix 3 is a drawing of a section taken from the roof of No. 31 indicating the as-built extension and the location of the third part properties; The drawing clearly shows that rather than a step up from the rooflines of No 31, No 30 and No 29, the roof line of No 30 is actually higher than that of No. 29. Appendix 4 is an axonometric view showing the extension as-built on No. 30 together with the adjacent properties.

6. Finally, Appendix 5 is a photo taken from a cruise ship. The difference between what has been built and the elevation that was approved in 2005 are clear.

Hence, in the light of the above, we kindly ask the Board to send the file back to EPC stage to review the proposal in the light of the discrepancies that have been highlighted above and to consider the aesthetic implications of the as-built structure which, even though is not visible from street level, is at eye level with the cruise liners berthing at the Valletta Waterfront.

Should you need any clarifications, please contact the undersigned."

Fit-tielet rapport taghha l-Awtorita' tghid is-segwenti:

“1.0 COMMENTS ON APPELLANT’S ARGUMENTS

1.1 Following the submission of the initial report by the Authority; the appellant submitted additional comments in letter dated 27th May 2013 (Doc 122) which include the presentation of photos and plan.

1.2 The Authority has the following comments to make:

1.2.1 Re-Step up between parapet walls

At the third statement the appellant is arguing that in permit PA 8232/05 the elevation showed a gradual step-up between the parapet walls and the third party property. He added that since this parapet wall of the third party adjacent building was never built the EPC was misled and gave the impression that the penthouse would be less obtrusive than it actually is and thus the setback was reduced to almost half of the original application. The Authority disagrees that the EPC was misled since the Board was fully aware of the step up between properties. The main photos 1E submitted with application clearly indicate that the parapet wall of the third property was not built. In fact in the objection letters, as stated in DPAR already pointed regarding the height of the roof structures and the negative impact on the views towards the area. In objection letter (red 64) which was noted by the EPC Board also remarked on the height of the roof structure vis-à-vis adjacent buildings. Thus the Authority reiterates that the issue of height and visual intrusion was discussed prior to the final decision. However since approval was only for an extension to the front part of an approved structure at roof level as well as an extension at the rear part, this led the EPC Board Members to permit the request to sanction works as built and the division of existing residence into two residential duplex units.

1.2.2 Re-Elevation

Appellant is stating that although the drawings is stating that no change to proposed existing façade, the drawing differ from the approved drawing in the 2005 permit. He claimed that this is one of the reasons that the appellant has lodged an appeal against sanctioning of the works since as built is not similar to the original approved elevation. It is not correct that the approved drawing of the elevation in the previous permit differs from the one submitted in application PA 8232/05. For validation only the particular elevation vis-à-vis site plan is accepted in an application. In fact the elevation of site in question is similar to case under appeal. The drawing of the cited application (PA 8232/05) includes also the adjacent buildings in that these were submitted for guidance of the HAC and the EPC Board in terms of adjacent cornices vis-à-vis building in question. In fact in view that the site is designated as an Urban Conservation Area and located in Misrah Sir Luigi Preziosi, in the original

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decision the EPC Board approved application subject that the existing cornice is reinstated at a higher level. However in this application, the proposal does not involve the main elevation facing the street but the proposed penthouse which is built at a setback of 4.55m. Thus since the main elevation in case under appeal was not involved in proposal with regards adjacent cornices, the adjacent buildings on drawings was not required.

2.0 CONCLUSION

2.1 In view of the above arguments the Authority states that the decision as taken by the EPC was taken in conformity with the relative policies and hence, respectfully requests the Environment and Planning Review Tribunal to confirm the decision as issued by the EPC, whereby an approval for development permission was issued. The Authority reserves the right to forward further submissions during the appeals process as necessary.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda Third Party Appeal kontra Full Development Permission, PA 0304/11. Dan il-permess hareg ghas-sanzjonar ta' xogholijiet li diga saru u jinkludu s-sub-divizjoni ta' propjeta ezistenti f' zewg duplex units.

Skond l-Awtorita':

- Il-permess precedenti, PA 8232/05 kien hareg ghal xogholijiet strutturali f' dan is-sit fis-7 ta' Mejju, 2007. Dawn ix-xogholijeit kienu jinkludu z-zieda ta' sular shih u strutturi fuq il-bejt;
- Fl-applikazzjoni ghall-permess in ezami kien intalab is-sanzjonar ta' xogholijiet li ma' sarux skond il-pjanti approvati bil-permess PA 8232/05; u
- Fil-permess in ezami ma' sarux alterazzjonijiet fuq barra li huma differenti mill-permess originali u cioe' PA 8232/05.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellant huwa is-sid ta' fond adjacenti dak in ezami. Huwa ghamel tliet sottomissjonijiet u argumenta, inter alia, kif gej:

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- L-applikant kien gie moghti il-permess originali, PA 8232/05, f' Mejju, 2007. Dan il-permess kien ghal sular gdid u roof room ta' 36 m.k. Id-Direttorat kien ta rakkomandazzjoni kontra li jinghata dan il-permess peress li ' Sir Luigi Preziosi Street, Floriana is a visually sensitive area close to Misrah Sir Luigi Preziosi and the bastion walls. The visual integrity of the street is of concern especially since it can be seen from across the harbour. The site pertaining to PA 8232/05 is part of a streetscape of considerable visual merit, hence any development on the façade of buildings should respect the context of the particular site';
- Il-permess kien inghata wara Reconsideration pero b'kundizzjoni cara, fost ohrajn, rigward id-daqs massimu tal-kamra fuq il-bejt;
- Il-permess PA 8232/05 kien gie finalment approvat peress li 'the proposal will not exceed the height of the adjoining buildings' u kundizzjoni numru 4 kienet tghid 'The height of the building shall not exceed the permitted number of 4 floors and a receeded level as indicated in the approved plans';
- Il-penthouse hija mibnija gholha milli kellha tkun fl-applikazzjoni originali, PA 8232/05;
- Il-pjanti approvati bil-permess PA 8232/05 juru li l-gholi tal-kamra kellu jkun madwar 2/3 tal-gholi tal-hajt adjacenti u kienu juru wkoll opramorta mal-faccata adjacenti li ma' kienix tezisti;
- Fil-permess PA 8232/05 il-faccata kienet imtarga bejn l-opramorta u l-propjeta ta' terzi fuq il-lemin. Peress li l-opramorta tal-bini adjacenti qatt ma' nbniex, l-EPC kien sgwidat u haseb li l-penthouse proposta hija inqas goffa milli fil-fatt jirrizulta issa u ghalhekk kienet accettat li s-setback jitnaqqas minn 6.5m ghal 4.25m;
- Waqt li l-drawings jghidu li ma' kienx qed jigi propost tibdil fil-faccata ezistenti, il-faccata murija fid-drawings tal-applikazzjoni tvarja mill-faccata approvata fil-permess PA 8232/05. Din kienet wahda mir-ragunijiet ghal dan l-appell;
- Ma sarux kunsultazzjonijiet dwar l-applikazzjoni PA304/11 mas-CHAC u mal-Valletta and Floriana Harbour Rehabilitation Committee;
- Il-penthouse ma' nbniex minn 'weathered stone' kif stipulat fil-kundizzjoni 5(n) tal-permess PA 8232/05;
- L-applikazzjoni in ezami tikkostitwixxi 'material change' u dan peress li qed tizdied id-densita' ta' bini minn residenza wahda ghal tnejn u peress li sar tibdil sostanzjali fid-disinn. Ghalhekk l-applikazzjoni in ezami qatt ma' kellha tigi accettata peress li din giet intavolata wara l-11 ta' Jannar, 2011, u ghalhekk kien lahaq dahal fis-sehh il-Kap 504 u s-subsidiary legislation LN514 tal-2010. Peress li l-applikazzjoni talbet tibdil mill-applikazzjoni originali li kien ta' natura tali li jikkostitwixxi 'material change' din tmur kontra section 2 tal-LN514;
- Il-veduta mill-bejt adjacenti, li huwa propjeta tal-appellant, giet affettwata konsiderevolment;

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- Fil-permess originali, PA 8232/05, kien hemm kundizzjoni li l-area tal-binja fuq il-bejt ma' kellhiex teccedi l-36 m.k. L-applikant dak iz-zmien kien accetta din il-kundizzjoni tant li ma' appellax minnha. Kieku l-applikazzjoni kienet ghal 67 m.k. l-appellant kien joggezzjona f' dak l-istadju;
- L-applikazzjoni ma' kienitx dettaljata u ma' kienitx turi ezatt it-tibdiliet cari bizzzejjed biex objector jkun jista jifhem ezatt x' ser jinbidel. Mhux bizzzejjed li t-tibdiliet li kienu qed jintalbu jigu murija fuq il-pjanti, skond il-LN 514 (2010) kellu jkun hemm 'a description that is clear and in detail' li kellha tinkludi 'a concise but complete' summary. Dan ma' sarx fl-applikazzjoni in ezami;
- L-iscreening tas-servizzi ta' fuq il-bejt kellu jigi muri fil-pjanti tal-applikazzjoni;
- Fiz-zewg applikazzjonijiet jigifieri il- PA 8232/05 u l- PA 304/11, l-applikant iddikjara li huwa s-sid tas-site kollha murija fis-site plan. L-area tas-sit immarkata fis-site plan teccedi bil-kbir l-area tal-bejt fejn sar l-izvilupp;
- Ix-xogholijiet ma' kienux lesti meta saret l-applikazzjoni ghall-permess in ezami;
- L-izvilupp ghandu impatt konsiderevoli tant li d-dawl tax-xemx li jippenetra fil-bitha tal-appellant kien naqas drastikament;
- Id-decizjoni li jinghata l-permess PA 304/11 ghalhekk, taghti l-impresjoni li persuna jista jibni kif irid ghaliex il-MEPA finalment kienet tapprova zvilupp anke jekk qabel kienet deciza li ma' tapprovahx;

Fl-ewwel sottomissjoni taghha l-Awtorita' tghid, inter alia, s-segwenti:

- L-Awtorita' ma' taqbilx mal-appellant li peress li din l-applikazzjoni giet sottomessa wara Jannar, 2011, din ma kellhiex tigi accettata u dan peress li din l-applikazzjoni giet sottomessa ghas-sanzjonar ta' xogholijiet 'as built' fejn il-varjazzjonijiet kollha mill-permess originali gew murija fl-applikazzjoni. Ghalhekk m'hemm ebda disgwid minn-naha tal-applikant li seta' fixkel lill-case officer. In fatti l-case officer iddikjara li l-applikazzjoni kien fiha bizzzejjed informazzjoni biex huwa seta jikkonkludi d-DPA report;
- Dwar jekk ix-xogholijiet kienux tlestew jew le, il-perit kien iddikjara li dawn kienu tlestew u peress il-talba kienet 'to sanction' kienet giet imposta multa u dan skond il-procedura normali f' kazi bhal dawn;
- Waqt li huwa veru li l-permess PA 8232/05 kien jinkludi kundizzjoni li kienet tiddefinixxi l-area massima li seta' jigi mibni fuq il-bejt, xejn ma kien jipprekludi lill-applikant milli japplika biex din il-kundizzjoni tigi mibdula permezz ta' applikazzjoni fil-kuntest tal-policies tal-ippjanar vigenti. F' dan il- as jekk il-policies kienu jippermettu allura din il-kundizzjoni setghet tinbidel kif fil-fatt gara;
- Dwar is-servizzi ta' fuq il-bejt l-applikant iddikjara li l-iscreening kien ser jitpogga meta jitlestew ix-xogholijiet fuq is-servizzi;

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- Fuq il-kwistjoni tal-gholi u l-visual intrusion, dawn kienu gew diskussi qabel ma' gie approvat il-permess. Jigi nnotat li l-permess in ezami ma' approvax sular shih fil-livell tal-bejt imma estensjoni tal-parti ta' quddiem ta' struttura li diga kienet giet approvata fil-permess PA 8232/05. Waqt li fil-permess originali kienet approvata setback ta' 6.5m issa qed tigi approvata estensjoni li tirrizulta f' setback ta' 4.25m minflok. Dan huwa s-setback normali li jithalla dejjem f' kazi bhal dawn;
- Bil-permess in ezami giet approvata wkoll extension fuq wara li pero ma' tidhirx mill-port;
- L-Awtorita' ma' taqbilx li d-DPAR kien insufficienti. Dawn ir-rapporti jigu endorsed mill-manager u ilhom isiru u jigu ipperfezzjonati matul is-snin. Dawn ir-rapporti jinzammu concizi u apposta jevitaw li jigu ttrattati fatti u dettalji li ma' jkunux rilevanti f' termini ta' ippjanar u dan biex jkun evitat kull possibilita' ta' disgwid;
- Fl-istess hin l-objectors jinghataw l-ispazju kollu necessarju u s-sottomissjonijiet kollha taghhom jinzammu gewwa l-file biex l-EPC jkun f'pozizzjoni li jevalwa l-fatti kollha tal-kas qabel ma' jaghmel decizjoni; u
- L-Awtorita' tibqa tinsisti li d-decizjoni saret skond il-policies tal-ippjanar vigenti u jekk jezistu xi aggravji minn-naha tal-appellant dwar xi drittijiet tieghu li setghu gew pregudikati ghandu jsib mezz ta' rimedju band' ohra.

Fit-tieni sottomissjoni taghha tirrisponda ghat-tieni nota tal-appellant, inter alia, kif gej:

- L-Awtorita' ma' taqbilx li l-kas in ezami jikkostitwizzi material change u dan peress li d-deskrizzjoni tal-izvilupp kienet dettaljata bizzejjed biex il-case officer jkun jista jaghmel assessment komprensiv tal-applikazzjoni. Oltre minn dan il-pjanti kienu juru it-tibdiliet kollha proposti u ghalhekk l-EPC kellhom bizzejjed informazzjoni biex jkunu jistghu jaslu ghal decizjoni;
- L-applikant ghmel dikjarazzjoni li x-xogholijiet kienu lesti u kien hallas il-multa dovuta. Hija r-responsabbilita' tal-applikant li din l-informazzjoni tkun kompluta u mhux tal-Awtorita'; u
- L-Awtorita' tghid li l-kwistjoni ta' kif l-izvilupp jafettwa id-dawl li jippenetra fil-bini hija kwistjoni ta' ligijiet sanitarju u s-Sanitary Engineering Officer kien approva l-izvilupp. Ghalhekk din il-kwistjoni mihiex responsabbilita' tal-Awtorita'.

Fit-tielet sottomissjoni taghha l-Awtorita' tirrispondi ghall-punti li tqajmu mill-perit DeBono ghall-appellant kif gej:

- L-Awtorita' ma' taqbilx li l-EPC kien sgwidat mill-elevation sottomessa u dan peress li l-EPC kien jaf bid-dislivell. In fatti ir-ritratti sottomessi mal-applikazzjoni ghall-permess in ezami juru b' mod car li l-opramorta ma' nbnitx. Dan il-fatt kien gie sottolineat ukoll f' wahda mill-objection letters. Ghalhekk l-EPC kien jaf b' dan qabel

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ma' ghamel id-decizjoni finali. Peress li l-EPC kellu jiddeciedi fuq estensjoni ta' bini li kien bil-permess dan il-fatt ma' kienx jinciedi fuq id-decizjoni li kellu jaghmel fuq din l-applikazzjoni; u

- L-appellant mhux korrett meta jghid li l-faccata fil-permess PA 8232/05 hija differenti minn dik proposta u dan peress li l-applikazzjoni in ezami ma' tirrigwardax l-elevation li tiffaccja t-triq imma l-penthouse li ghandha setback ta' 4.25m u ghalhekk ma' tifformax parti mill-faccata principali.

Mill-premess jirrizultaw numru ta' diskrepanzi/irregolaritajiet fil-mod kif gew iprocessati l-applikazzjonijiet PA 8232/05 u PA304/11. L-izjed serji f' termini ta' ppjanar huma l-fatti segwenti:

- Il-permess PA 8232/05 kien gie approvat b' numru ta' kundizzjonijiet li kienu jillimitaw l-gholi u l-area tal-binja fuq il-bejt u kif ukoll il-materjali li kellhom jintuzaw biex din tinbena (Conditions 1, 4 u 5(n)). Bil-permess PA 304/11 l-Awtorita' ssanzjonat binja fuq l-istess sit li kienet ta' area kwazi d-doppju ta' dik approvata bil-permess PA 8232/05, kienet ghola mill-bini adjacenti u inbniet minn concrete blocks meta il-kundizzjoni 5(n) tal-permess PA 8232/05 kienet tghid specifikament li din kellha tinbena bil-franka. Minkejja l-fatt li bejn id-data meta hareg l-ewwel permess u dik meta hareg it-tieni wiehed ma' kienx hemm tibdil fil-policies tal-ippjanar (hlief li dahlet fis-sehh il-Kap 504, 2010, li jekk xejn ziedet il-protezzjoni fuq siti skedati), u ghalhekk ir-regime ta' ppjanar baqa' l-istess, l-Awtorita' ma' ggustifikatx f' termini ta' ppjanar x'wassalha biex tibdel il-pozizzjoni taghha f' termini ta' ppjanar b' mod daqshekk drastiku. Din hija sitwazzjoni li dan it-Tribunal qatt ma' Itaqa' maghha fil-kazi li gew quddiemu sa issa;

- Jirrizulta car li l-elevation PA8232/05/55C (55C) li hija drawing approvata u li fuqha kienet ibbazata l-applikazzjoni PA 8232/05 kellha zewg zbalji fundamentali fiha u cioe l-gholi tal-binja adjacenti s-sit in ezami kienet murija

madwar metru ghola milli fil-fatt kienet filwaqt li l-gholi tal-bini fuq is-sit in ezami gie muri izjed baxx milli huwa fil-verita'. Dawn l-izbalji wasslu, konvenjentement, biex l-gholi tal-binja proposta fuq il-bejt kif murija f' din il-pjanta gie jidher izjed baxx mill-faccata adjacenti. Ghalhekk deher li l-kundizzjonijiet fil-permess PA 8232/05 setghu jintlahqu facilment. Meta inbniet irrizulta li anke b' headroom minimu ta' madwar 2.8 metri il-kamra giet kwazi nofs metru ghola mill-faccata adjacenti. Dan juri bic-car li l-pjanta 55C ma' kienitx turi dak li veramnet kien jezisti fuq is-sit mertu tal-applikazzjoni u fuq is-sit adjacenti fuq il-lemin. L-Awtorita' ma' spjegatx ghaliex dawn id-diskrepanzi hekk serji ma' gewx rilevati meta kienet qed tigi pprocessata l-applikazzjoni PA 8232/05 u ghaliex anke meta harget il-verita' b'mod l-aktar palesi l-Awtorita' baqghet ma' qalet xejn. It-Tribunal jerga jirribadixxi l-fatt li l-approvazzjoni tal-permess PA 8232/05 kienet marbuta strettament ma' dak li kienet turi l-pjanta 55C;

- L-Awtorita' naqset li tispjega ghaliex fil-kas tal-applikazzjoni PA 304/11 meta il-kas f' termini ta' ppjanar kien hafna izjed oneruz, ma' sarux l-konsultazzjonijiet mas-CHAC u l-organi l-ohra li normalment jigu kkonsultati f' kazi ta' zvilupp f' areas

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skedati. Ta' min jinnota li waqt l-iprocessar tal-applikazzjoni PA8323/05, qabel ma' inkixfu d-diskrepanzi fil-pjanta 55C, l-Awtorita' kienet ghamlet il-konsultazzjonijiet normali izda ma' regghetx ikkunsultat fil-kaz tal-applikazzjoni PA 304/11 meta rrizultaw id-diskrepanzi deskritti sopra li fil-fatt rrizultaw f' impatt negattiv hafna akbar minn dak propost fl-applikazzjoni PA8323/05;

- L-Awtorita' baqghet tiddikjara li fl-applikazzjoni PA304/11 ma' kienx qed isir tibdil fl-elevation tal-faccata. Dan huwa zbaljat ghalix il-faccata tal-penthouse inbidlet b' mod drastiku tant li issa giet ghola mill-bini adjacents. Inutili li l-Awtorita' tibqa tghid li l-penthouse ma' tghoddx bhala parti mill-faccata ghax dan ma' jista' qatt jkun korrett speċjalment f' zona hekk sensitiva u izjed u izjed meta il-faccati ta' dan il-bini jidher minn-naha l-ohra tal-port u issa bil-business tal-cruiseliners il-parti ta' fuq ta' dawn il-faccati giet livell mad-decks tal-cruiseliners. Konferma li l-faccata tal-penthouse tiffirma parti mill-elevation ta' quddiem tal-bini huwa il-fatt illi fil-kundizzjoni 5(n) fl-ewwel permess l-Awtorita' insistiet li din ghandha tinbena bil-franka; u
- Fit-tliet sottomissjonijiet taghha l-Awtorita' ma' rrilevatx li kien hemm ksur car tal-kundizzjoni 5(n) tal-permess PA8323/05.

Ghaldaqstant, peress li, kif spjegat sopra, numru mill-aggravji tal-appellant jirrizultaw fondati f'termini ta' ppjanar u peress li dawn jirrizulta li huma ta' natura mill-aktar serja, dan it-Tribunal qieghed jiddisponi minn dan l-appell billi jilqa' dan l-appell u jirrevoka l-permess, Full Development Permission – PA/304/11, "To sanction works as built and division of existing residence into two residential duplex units. No changes to facade", f' isem l-applikant Mr Joseph Camilleri tat-2 ta' Novembru, 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ikkunsidra li hemm numru ta' diskrepanzi u irregolaritajiet kif gie processat il-permess PA 8232/05 u l-applikazzjoni mertu ta' dan l-appell. It-Tribunal agixxa ultra vires u ultra petita meta ikkunsidra permess li hu res judicata biex jirrevoka l-permess moghti mill-Awtorita a bazi tal-PA 304/11. In fatti t-Tribunal agixxa ultra vires meta qal li l-pjanta tal-permess 8232/05 ma kinitx tirrifletti r-realta u meta sahaq li l-Awtorita ma irrelevatx li kien hemm ksur car tal-kondizzjoni 5N tal-permess PA 8232/05 meta t-talba li saret a bazi tal-applikazzjoni PA 304/11 kienet biex jigi sanzjonat dan;
2. It-Tribunal naqas meta ippermetta lit-third party jipprezenta sottomissjonijiet meta kien awtorizzat jipprezenta biss pjanta li turi l-faccata u jispejga b'mod vizwali l-oppozzjoni

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tieghu. Minflok fin-nota ta' sottomissjonijiet gie attackkat il-permess 8232/05 liema sottomissjonijiet inghataw piz mit-Tribunal. Dawn is-sottomissjonijiet ma gewx notifikati lil appellant jew lil perit tieghu biex iwiegeb. L-atti juru biss li n-nota kienet intbaghtet mhux giet notifikata;

3. It-third party objector Martin Spillane ma ghadux sid il-fond adjacenti u ghalhekk ma ghandux interess guridiku fil-vertenza.

It-tielet aggravju

Dan l-aggravju ma fihx mertu. Jista' jkun li t-terz oggezzjonant ma fadallux interess, izda l-permess jew ir-rifjut jinghata ghall-izvilupp propost fuq is-sit u kwindi l-interess o meno t-terz hi irrelevanti ghal mertu tal-vertenza billi l-appellant li hu l-applikant qed jappella mid-decizjoni tat-Tribunal u hu dan li din il-Qorti trid tiddetermina.

L-ewwel aggravju

Hu minnu illi t-Tribunal iccensura permess mahrug mill-Awtorita cioe PA 8232/05 u hu minnu wkoll li dan il-permess jikkostitwixxi rabta bejn l-Awtorita u l-applikant li jista' jigi revokat biss f'sitwazzjonijiet eccezzjonali li l-ligi stess issemmi. Pero din ic-censura ma irrenditx il-gudikat tat-Tribunal f'dan l-appell bhala wiehed ultra vires jew ultra petita. Dak li fil-fatt ikkonsidra t-Tribunal hu illi l-permess PA 8232/05 kien intiz biex filwaqt li jaccetta zvilupp ulterjuri fis-sit in kwistjoni pero fl-istess waqt ried jillimita l-gholi u l-entita tal-binja u l-materjal uzat cioe kondizzjonijiet 1, 4 u 5(n) tal-permess. It-Tribunal ikkonstata illi mindu inhareg il-permess tal-2005 ma sar ebda tibdil fil-policies tal-ippjanar hlief li dahal fis-sehh il-Kap. 504 li jekk xejn zied il-protezzjoni fuq siti skedati. Ghalhekk it-Tribunal ma sabx gustifikazzjoni f'termini ta' ippjanar ghaliex l-Awtorita kellha taccetta tibdil daqshekk drastiku f'permess li kien inhareg f'it snin qabel. Din hi kwistjoni teknika u l-Qorti mhix ser tintrometti ruhha fuq kwistjoni simili.

It-Tribunal ma marx ultra vires jew ultra petita meta ipparaguna dak koncess fil-permess 8232/05 u l-applikazzjoni in kwistjoni li del resto kienet intiza tissanzjona tibdiliet sostanzjali minn dak esplicitament approvat fil-permess PA 8232/05. B'daqshekk ma jfissirx illi t-

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Tribunal b'xi mod mess il-validita u l-effikacija tal-imsemmi permess PA 8232/05 li ghadu validu kif mahrug. Pero t-Tribunal kellu kull dritt jiccensura lil Awtorita li rinfaccjata b'diskrepanza fattwali li ikkonstata t-Tribunal fl-elevation plan li fuqha kienet ibbazata l-applikazzjoni PA 8232/05 l-Awtorita xorta baqghet tinsisti fuq l-approvazzjoni ta' din l-applikazzjoni. Ma jfissirx b'daqshekk li l-permess PA 8232/05 b'xi mod intmess jew gie limitat u b'hekk it-Tribunal mar oltre l-poter tieghu. It-Tribunal ghandu il-poter li jiddetermina applikazzjoni b'referenza ghal permess iehor li hu wara kollox parti mill-applikazzjoni ghax qed jintalab is-sanzjonar ta' dak li gie koncess fil-permess originali u jikkonsidra jekk l-applikazzjoni jisthoqqhiliex ezitu pozitiv in vista ta' dak kontenut fil-permess gia ezistenti tenut kont tal-policies vigenti. L-appellant mhux qed jattakka l-veracita tal-argumenti u konsiderazzjonijiet tat-Tribunal li waslul jiskarta l-applikazzjoni fosthom anki n-nuqqas tal-Awtorita li tikkonsulta ma' organi specifici bhal CHAC f'kaz ta' zvilupp onerus fuq siti skedati u d-diskrepanza cara fl-elevazzjoni tal-binja fil-pjanta tal-permess 8232/05 paragonata mal-bini adjacenti. Hu qed jattakka biss l-argumenti li ngiebu mit-Tribunal biex juru li l-Awtorita kellha quddiemha diskrepanzi fattwali bejn dak li gie akkordat fil-permess 8232/05 u dak li fil-fatt kien jezisti u nonostante dan baqghet tikkonsidra l-applikazzjoni in kwistjoni bla riservi jew investigazzjoni aktar intensiva ghal gustifikazzjoni fuq bazi ta' ipplanar li jinhareg il-permess mertu ta' dan l-appell.

It-Tribunal ma uzax il-permess PA 8232/05 biex jirrevoka l-permess moghti mill-Awtorita fil-PA 304/11 izda sabiex juri illi l-ewwel permess, validu kemm hu validu kellu nuqqasijiet fil-fehma tat-Tribunal li b'din l-applikazzjoni kienu ser jigu aggravati u fit-tieni lok anki bla ebda referenza ghal tali diskrepanzi ma kien hemm ebda tibdil fil-policies li kienu jiggustifikaw zvilupp aktar oneruz kif mitlub f'siti skedati.

Kwindi dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju fil-fehma tal-Qorti hu wiehed serju. It-third party objector inghata l-possibilita fis-seduta quddiem it-Tribunal tal-25 ta' April 2013 li jipprezenta pjanta li turi l-faccata tal-

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izvilupp b'indikazzjoni tal-filati biex jispjega vizwalment l-oggezzjoni tieghu b'kopja tintbaghat lil Awtorita u ohra lil applikanti u l-vertenza thalliet ghad-decizjoni.

Jirrizulta li mal-pjanti giet prezentata wkoll nota ta' sottomissjonijiet agguntiva ghal dak gia ipprezentata li ghaliha irrispondiet l-Awtorita bla ma hemm indikazzjoni kif saret taf biha billi ma jidhrux li n-nota tat-third party datata 21 ta' Mejju 2013 giet kupjata lil xi hadd hlief lit-third party mid-ditta ta' periti imqabba minnu. L-appellant jiddikjara fl-appell li ma irceviex din in-nota u apparti li tali nota qatt ma giet awtorizzata, hu anqas kellu opportunita jirrispondi. Hu car mill-atti illi t-Tribunal ha konjizzjoni taghha ghax isemmiha fid-dettall fid-decizjoni tieghu. Anki jekk ghal grazzja tal-argument din in-nota setghet ma ziedet xejn sostanzjali fl-appell, pero gie pregudikat serjament id-dritt tal-appellant ghal equality of arms cioe id-dritt li jirrispondi ghal kritika maghmula la darba t-Tribunal ghazel li ma jisfilzax in-nota u anzi jsemmiha esplicitament fid-decizjoni. Tali cirkostanza sfortunatament ma tistax tigi skartata minn din il-Qorti ghaliex ma ghandhiex ic-certezza li t-Tribunal rinfacjat b'risposta tal-appellant ghas-sottomissjonijiet ma kienx jiehu linja ohra. Lanqas ma jirrizulta illi l-appellant irceva n-nota u halla l-kwistjoni ghaddejja bla ma qajjem oggezzjoni.

Ghalhekk il-Qorti tqis li l-gustizzja trid tidher li qed issir u li t-Tribunal wizen l-argumenti kollha tal-partijiet moghtija l-istess fakolta li jinstemghu minnu u ghal din ir-raguni biss qed tilqa' l-aggravju.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' t-tieni aggravju tal-appellant Joseph Camilleri, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Novembru 2014, u tirrinvoja l-atti lura lit-Tribunal biex jgħaddejja l-appell mill-gdid. Spejjez jibqghu bla taxxa.

< Sentenza Finali >

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