



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-17 ta' Gunju, 2015

Appell Civili Numru. 15/2015

Dr. Joseph u Maria konjugi Mifsud,

Aaron u Charmaine konjugi Farrugia,

Peter u Heidi konjugi Bellia,

Dolores Gauci, Godwin Attard u Joseph Attard

vs

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

l-kjamat in kawza John Bonavia

Il-Qorti,

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Rat ir-rikors tal-appell tat-third party objectors tal-20 ta' April 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' April 2015 kontra l-permess PA 1906/10 'change of use from garage to one part to be used as an office and the remaining part to be used as Class IV shop';

Rat ir-risposti tal-applikant u tal-Awtorita li ssottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Ra l-aggravji ta' l-appell, hekk kif gej:

"I write on behalf of my clients Dr. Joseph Mifsud and his wife Maria Mifsud residing at 73, "Eleison" , Triq it- Tuffieh, Naxxar; Aaron Farrugia and his wife Charmaine Farrugia residing at 63, Triq it- Tuffieh, Naxxar; Peter Bellia and his wife Heidi Bellia residing at 77, Triq it- Tuffieh, Naxxar; Dolores Gauci residing at 71, "Yanish", Triq it-Tuffieh, Naxxar; Godwin Attard residing at 83, Triq it-Tuffieh, Naxxar and Joseph Attard residing at 75, 11 Rochel" , Triq it-Tuffieh, Naxxar.

My clients were registered as interested third party objectors in the process before the Malta Environmental and Planning Authority concerning the consideration of the above application. By means of a letter dated the 7th February, 2011, my client, Dr. Joseph Mifsud was notified by the decision taken by the Malta Environment and Planning Authority whereby the development permission on the above mentioned application was granted subject to the terms and conditions laid down in the relative decision notice.

My clients feel aggrieved by the said decision whereby development permission was granted to John Bonavia after submitting application PA/01906/10. The grounds for this appeal are the following:

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1. Mr. John Bonavia had already previously applied for a change of use from a garage to a gymnasium (PA 7487/07) and change of use from a garage to a Class IV shop (PA 01529/09) and these applications were dismissed. Mr. John Bonavia is now reproposing the same development application with some minor differences but evidently to reach the same aim and scope not attained when the previous development applications were dismissed. It is evident that the development as now proposed is being done in such a way as to avoid the policy which lays down that a class IV shop must be of not more than fifty square metres and an office not more than seventy five square metres. The plans as submitted by applicant are evidence that the development proposed is by the same owner, of one and the same garage which will be used for one and the same purpose - that is a class IV shop. To submit plans showing that the office will have a bigger area than the shop - as was done by applicant - is anything but credible and goes to show the real intention of the applicant to thwart existing policies.

2. Furthermore, the access to the development proposed is limited and since the office has an area of more than sixty (60) square feet the proposed development should comply with the sanitary requirements (as it is considered as a living space where more than six hours are spent) and in particular that it should have a minimum of a thirteen (13) foot backyard as required by the same sanitary regulations unless otherwise approved by the General Services Board.

3. The approved drawings submitted by applicant show clearly that the internal size of the class IV shop is of forty five (45) square metres whilst the gross floor space exceeds forty nine (49) square metres. This runs counter to condition number four (4) of the permit granted to applicant.

4. Furthermore, the office space is of more than seventy five (75) square metres contrary to the same condition number four (4) of the permit granted to applicant.

5. Since the office area is larger than seventy five (75) square metres the proposed development should be accessible to persons with disability together with all the necessities and requirements that the office should cater for this in line to PA circulars 3/99 & 3/10.

6. During the consideration of the previous applications, the same case officer has already pointed out the fact that the drawing as submitted in PA 7487/07 did not tally with the plan that was being considered in PA 1529/09. Whilst the total footprint as declared in the current application is that of one hundred and forty seven square

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(147) metres (excluding the backyard) whilst the real size of the site in question is that of one hundred and fifty six (156) square metres and therefore, with all due respect, the applicant has once again made incorrect submissions in order to by pass the applicable legislation and policies.

7. Whilst condition number three (3) of the permit granted to applicant states that the class IV shop and the class V office shall not be interconnected, it is amply clear that the development will be a single development as the elevation and section as approved authorizes the installation of a door on the facade. The development is indeed a shop and an office with a common entrance and due to the fact that the office will be accessible through a narrow and dark corridor, this might give rise to crime thus running counter to Structure Plan policies BEN1 and BEN 2. It must be pointed out that condition 13 (d) is clear in that the approved plans override the conditions of the permit when a conflict arise between the conditions and the plans. It is the norm of the authority to request fresh plans to ensure that the plans reflect the decision of the board. In view that Act X of 2010 First Schedule paragraph 11 does not allow the Environment and Planning Commission to defer for more than 2 weeks the board proceeded to approve the permit with the plans it had in hand. The board had no other option but to refuse as the plans did not tally with the conditions as laid down by the same commission and this as laid down by the same Act.

8. The proposed development runs counter to policy CG7 due to the fact that the different units - class IV shop and office) - should have a separate frontage and not an office at the back of the proposed shop, that is to say, not a development within a development.

9. The proposed development runs counter to policy 1.1 and 1.2 (d) of DC 2007 in that it does not create a good quality internal and external environment; does not contribute positively to the local environment but will definitely have a negative effect; it is not compatible with its context and surrounding are and does not respect the scale, bulk, proportions and materials of neighboring buildings and this amongst other things. Furthermore, the proposed development neither has a "pedestrian friendly frontage".

10. The proposed development runs also counter to policy 2.4.2 of the Central Malta Local Plan.

For these reasons, and other reasons which might be raised during the hearing of this appeal, clients humbly submit that their appeal should be upheld and the impugned decision revoked in its entirety."

Ra r-risposta tal-Awtorita' ghal dan l-appell li giet prezentata fit-13 ta' Gunju 2011 li taqra hekk kif gej:

"2.0 COMMENTS ON APPELLANT'S ARGUMENTS

2.1 In this request for Appeal, appellant has stated that

1. Appellants allege that "it is evident that the development as now proposed is being done in such a way as to avoid the policy ... ". "To submit plans showing that the office will have a bigger area than the shop – as was done by the applicant – is anything but credible and goes to show the real intention of the applicant to thwart the existing policies.”;

2. The Appellants state that the office should comply with sanitary requirements;

3. The internal size of the class IV shop is of 45 sqm whilst the gross floor space exceeds 49 sqm. This runs counter to condition (4) which states that the Class IV shop shall not exceed an area of 42 sqm;

4. Appellant states that the office space is more than 75 sqm which is contrary to the condition;

5. Appellant states that since office is larger than 75 sqm then the proposed development should be accessible to persons with disability;

6. Appellants allege that the drawings submitted in PA 7487/07 and PA 1529/09 do not tally. Furthermore, the total footprint as declared in the current application is 147 sqm whilst the real size is 156 sqm, thus alleging that the applicant made an incorrect submission in order to by-pass the applicable legislation and policies;

7. Condition 3 states that the Class IV shop and the Class V office shall not be interconnected; the Appellants state that it is amply clear that the development will be a single development. The office will be connected via a narrow dark corridor which might give rise to crime thus running counter to BEN 1 and BEN 2;

8. Development runs counter to policy CG 7 since the two classes shall have a separate frontage;

9. Development does not create a good quality internal and external environment, negative effect, not compatible; and

10. Development runs counter to policy 2.4.2 of the Central Malta Local Plan.

2.2 On the other hand the Authority notes:

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1. The arguments brought forward by the Appellants do not hold any ground since the proposed plans indicate that the existing garage will be used for two separate uses namely a Class IV shop at the front and an Office at the rear of the garage. There is no thwarting of the existing policies as alleged by the Appellant. The uses under appeal are according to Policy namely Policy CG 07: Residential Zoning, of the Central Malta Local Plan. The area of the Class IV shop is of 42 sqm whereas the Office has an area of 63 sqm which are both LESS than the permitted areas as stated in CG 07 which area 50 sqm for Class IV shops and 75 sqm for offices.

2. This development under appeal was subject to sanitary vetting and had been approved as per sanitary regulations on the 5th of October 2010. Therefore, the argument brought forward by the Appellants is unfounded. As regards sanitary objections these are not within the jurisdiction of this Tribunal but within the remit of the General Services Board

3. The argument brought forward by the Appellants is incorrect since the total area of the Class IV shop has an area of 42 sqm which is according to Condition (4) and in line with Policy CG 07 which states that a Class IV shop has to have an area less than 50 sqm.

4. The argument brought forward by the Appellants is incorrect since the total area of office is NOT larger than 75 sqm. The total area of the office is 63 sqm which is less than the area stipulated in CG 07 and less than the area stated in condition (4). Hence the total area is LESS than the area stated by the Appellant.

5. The office under appeal has an area of only 63 sqm which is LESS THAN the 75 sqm, then the office under appeal is not to be subject to Access for All Policies.

6. The issue related to the footprint of the development under appeal was not a relevant for the case office in this PA Application since it was not brought up during its processing. Hence one cannot base any comments on correspondence which was held in previous Planning Applications. The total footprint of the development under appeal has the same dimensions as that shown in PA 2062/98 which is the original permit for this garage. Therefore the development under appeal is by no means incorrect.

7. It is incorrect to say that the Class IV Shop and the Office under appeal are interconnected. These two uses are separate having separate doors: a separate door for the Class IV Shop and separate door for the Office. There two uses are by

no means internally connected. The two uses have separate stores and separate WCs which clearly indicate that the uses are NOT interconnected and by no means can they be read as one development as clearly shown by the approved layout at drawing Document 34A. The Appellants argue that the entrance to the Office is dark and narrow. An electrical layout has not been submitted hence one cannot state that the corridor will be a dark space. The sightline from the office's main entrance door to the office per se is on straight line, hence one cannot argue in favour of crime being held within this corridor.

8. Points 8 and 9 brought up by the Appellants deal with frontage of the development under appeal. The development under appeal respects the existing streetscape and preserves the continuity of the said streetscape. By retaining a common opening to the two separate uses under appeal, the development will not create a negative effect on the local environment thus respecting the scale and proportions of the neighbouring buildings, nor will it create a development within a development since the two approved uses are distinct and separate. By no means will the development create a non-pedestrian friendly frontage. There are no accretions to the façade, nor are there any projections which project onto the pavement, hence one cannot argue against the negative effect the approved development would create.

9. The Appellants state that the proposed development runs counter to Policy 2.4.2 of the Central Malta Local Plan. This policy deals with office space on an industrial level. In fact this policy quotes Central Malta Local Plan Policies

- CG 12: Town Centres: a town centre is defined as a hub of commercial and community activities; offices in such areas have an area of more than 75 sqm as permitted within Residential Areas;
- CG 13: Local Centres: Office to be provided in such areas shall have a gross floor area of 100sqm which is greater than the 75 sqm permitted within Residential Areas;
- CG 14: Commercial Areas

This policy therefore cannot be said to be run counter to, as it is NOT relevant to areas designated as Residential Areas.

2.3 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

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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.

Ra r-risposta tal-Avukat Dottor Antonio Tufigno f'isem l-applikant li giet prezentata fil-5 ta' Lulju 2012, hekk kif gej:

"I write on behalf of applicant John Bonavia.

Applicant respectfully submits that the third party appeal should be dismissed and the permit confirmed, in that third parties' grievances as detailed in the appeal are totally unfounded in fact and in law.

Applicant agrees fully with the reasons detailed in the Technical Report re Third Party Appeal Against Full Development Permit submitted by the Authority.

This letter is being written in reply to the note of submissions filed by third party objectors but it is to be noted that Applicant's position is in agreement with that expounded by the Authority in reply to the appeal.

Applicant wishes to moreover make emphasis on the following points:-

- The fact that the owner is going to use the property for two separate uses is acceptable and allowed and in conformity with Policy CG07.

-There was absolutely no misrepresentation regarding measurements. The situation can be amply explained by Perit Samuel Formosa and by the MEPA officers in charge, such as Mr Attard, who will be appearing at the forthcoming sitting. The allegations regarding misrepresentation are baseless, injurious and untrue and are to be withdrawn once the Board would have had the opportunity to hear the relevant persons.

-With regard to comments by third party appellants regarding sanitary regulations, the application has been duly vetted and approved by the sanitary authorities. In

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any case, this Tribunal is - with respect - not the pertinent forum in such regard, as sanitary matters are the remit of the General Services Board.

-Regarding the allegations of interconnection between the shop and the garage, such allegations are false. The shop and the garage have separate doors, they are not internally connected and have separate stores and separate WCs.

-As regards frontage and streetscape, again the allegations are unfounded. The development respects the existing streetscape and in all manners does preserve its continuity. There are neither accretions to nor projections from the facade and thus submissions in this regard are also baseless.

In conclusion it is to be noted that the proposed development does conform in regard to all laws, rules, policies and regulations obtaining and thus the appeal is to be dismissed as it is wholly unfounded and baseless and prejudicial to my client's legitimate interests, in which regard he reserves the right to undertake legal action when and if necessary."

Ra s-sottomissjonijiet tal-appellanti prezentati fid-9 ta' Settembru 2011 u fid-9 ta' Frar 2015;

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

Ra l-PA files 1906/10, 7487/07 u 1529/09;

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

Ikkunsidra ulterjorment:

Illi dan l-appell jirrigwardja permess tal-izvilupp PA 1906/10 biex isiru alterazzjonijiet gewwa garaxx fil-pjan terran u jinqasam f'zewg stabbilimenti kummercjali, ossia dak ta' hunut fi Klassi 4, fuq in-naha ta' quddiem tal-fond u officju fi Klassi 5 fuq in-naha retrostanti.

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

Illi l-ewwel sitt paragrafi fl-appell jikkoncernaw l-aggravju dwar id-diskrepanza tal-qisien kif murija fil-pjanti approvat. Saru diversi sottomissjonijiet fir-rigward. L-appellant inghata c-cans waqt l-access mizmum fuq is-sit minn dan it-Tribunal fit-30 ta' Jannar 2014 sabiex jaghmel il-kejl necessarju sabiex ikun jista jsostni l-argument tieghu.

Illi l-Perit Samuel Formosa ghall-applikant fil-fatt prezenta pjanta spjegattiva lill-Awtorita' a fol 110 fl-inkartament tal-PA 1906/10, bhala parti mill-investigazzjoni li kienet qed isir mill-Awtorita' fuq l-istess ilment tal-appellant rigward id-diskrepanza tal-pjanti.

Minn din il-pjanta dan it-Tribunal seta' jinnota li fil-fatt kien hemm xi diskrepanzi zghar hekk kif spjega l-Perit Formosa meta rrizulta zieda fil-wesa' tal-fond u dan ghall-fatt li gie muri l-pilastri mal-hitan fejn fil-pjanta originali ma kienux qed jidhru, u caqliq marginali fit-tul tal-fond li fil-fatt huwa ftit iqsar.

It-Tribunal ezamina l-pjanti kif approvati mal-pjanta korrettiva u seta' jinnota dan li gej:

1. Caqliq fil-kobor tal-hanut (inkluz l-istore u w/c) minn 45 metru kwadru ghall-48 metru kwadru, ossia zieda ta' 3 metri kwadri;
2. Caqliq fil-kobor tal-officcju (inkluz kitchinette/store u w/c) minn 69 metru kwadru ghall-68 metru kwadru, ossia tnaqqis marginali ta' metru kwadru;
3. Irrizulta li hemm zieda marginali ukoll ta' madwar 0.25 metru kwadru tal-parti komuni quddiem l-access ghall-istabilimenti kummercjali.

Illi dan it-Tribunal huwa tal-fehma li dan ic-caqliq fl-erja tal-hwienet hija marginali u rizultat ta' nuqqas ta' attenzjoni fil-kejl, u bl-ebda mod ma jista jitqies li dan sar b'intenzjoni jew b'qerq, u certament ma kien hemm ebda tibdil sostanzjali li jista jinfluwixxi fuq l-ezitu tad-decizjoni li hadet il-Kummissjoni.

Iz-zieda fl-erja li kien hemm kienet fir-rigward tal-hanut, li hija ta' madwar 3 metri kwadri li hija inqas minn 10% sabiex titqies bhala materja ta' kunsiderazzjoni skont

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kif defenit fl-AL numru 514 tal-2010. Iktar importanti huwa għall-fatt li l-erja baqgħet inqas minn 50 metru kwadru bhala erja massima għal stabbiliment kummercjali li mhux meqjus bhala convenience use, li huwa permess f'zona residenzjali skont il-policy CG 07 tal-Pjan Lokali (Malta Central Local Plan).

Huwa minnha kif qed irrileva l-appellant li l-kundizzjoni numru 4 fil-permess PA 1906/10 li hija bbazata fuq il-pjanta approvata PA 1906/10/34 qed jissema limitu ta' floorspace għaz-zewg stabbilimenti rispettivi. Kif għa ezaminat iktar 'il fuq jirrizulta li l-erja fil-pjanta approvata kif ukoll fl-ahhar korrezzjoni tal-qisien, hemm zieda marginalment ta' erja minn kif indikat fil-kundizzjoni, għalkemm dan it-Tribunal jista' jifhem illi din il-kundizzjoni saret sabiex tizgura li fuq is-sit jibqa zewg stabbilimenti kummercjali separati li ma jeccedux l-erja massima kif stipulat fil-policy fil-pjan lokali għaz-zewg stabbilimenti rispettivi.

Illi sabiex jigi evitata kull ekwivoku, dan it-Tribunal huwa tal-fehma li l-permess għandu jigi kkoregut skont l-ahhar pjanta spjegattiva a fol 110A fl-inkartament tal-PA 1906/10, filwaqt li kundizzjoni numru 4 tista tigi eliminata peress li l-permess huwa dejjem suggett għall-pjanti approvati.

Is-seba' (7), it-tmien (8) u d-disa' (9) paragrafi fl-appell jirrigwardaw it-tqassimi tal-izvilupp kummercjali li skont l-appellant mhuwiex konformi mal-policy CG07 tal-pjan lokali, u policies tal-linja gwida dwar il-kontroll tal-izvilupp. L-appellant qed jinsisti l-policies jirrigwardaw hwienet u stabbilimenti kummercjali b'faccata fuq it-triq, u mhux bhal fil-kaz inezami meta l-ufficju gie akkomodat fuq in-naha retrestanti b'access ristrett mill-faccata. L-appellant zied jghid li l-izvilupp ta' zewg stabbilimenti għandu jitqies bhala zvilupp kummercjali wiehed hekk kif is-sid dawn huma tal-istess sid u b'access wiehed fuq il-faccata.

Illi il-policy CG 07 fil-pjan lokali tillimita l-uzu u l-kobor ta' zvilupp f'zoni residenzjali, fejn f'dan il-kaz indezamina, l-uzu ta' hanut fi Klassi 4 u l-ufficju fi Klassi 5 huma fil-limiti tal-erja kif indikat fl-istess policy. Illi għall-fatt li dawn iz-zewg stabbiliment huma tal-istess sid, din hija kwistjoni irrelevanti għall-kunsiderazzjonijiet ta' ippjanar. Minn naha l-ohra għalkemm dawn iz-zewg stabbilimenti għandhom dahla komuni, l-access għall kull stabbiliment huwa separat u distint. Il-permess ukoll jahseb sabiex dawn l-istabilimenti jibqgħu separati u għaldaqstant l-ilment tal-appellant huwa indirizzat fl-istess kondizzjonijiet tal-permess.

Għal dawn il-mottivi, dan it-Tribunal qieghed jichad l-appell u jikkonferma d-decizjoni tal-Kummissjoni tal-Ambjent u l-Ippjanar l-permess, għalkemm a bazi tal-kunsiderazzjonijiet meqjusa f'din id-decizjoni, dan it-Tribunal qed jordna lis-Segretarju tal-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar sabiex jerga johrog il-

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permess mill-gdid skont il-pjanta korrettiva a fol 110A fl-inkartament tal-PA 1906/10, u tigi eliminata l-kundizzjoni numru 4 tal-permess datat 28 ta' Jannar 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal zbalja meta cahad l-appell tal-appellanti u ikkonferma d-decizjoni u fl-istess hin ordna li l-permess ghandu jinhareg skond pjanta korrettiva u tigi eliminata l-kondizzjoni numru 4 imposta mill-Awtorita. Dan hu ultra vires il-poteri tat-Tribunal, u fiha infisha d-decizjoni hi kontradittorja;
2. It-Tribunal ukoll mar extra petita ghax l-appellanti ma talbux li tigi korretta xi pjanta jew tigi eliminata xi kundizzjoni fil-permess;
3. It-Tribunal iddecieda hazin u b'sorpriza ghall-appellanti ghax ma inghatawx l-opportunita li jaghmlu sottomissjonijiet dwar it-tnehhija tal-kundizzjoni numru 4 u b'hekk gie mcahhad lilhom id-dritt ta' appell bil-mod kif inghatat id-decizjoni;
4. Bil-mod kif iddecieda t-Tribunal, il-pozizzjoni tal-applikant giet agevolata ghax filwaqt li skond klawnsola 4 tal-permess kien hemm lok li jintlaqghu t-tielet u raba paragrafi tal-appell quddiem it-Tribunal, it-Tribunal ordna t-tnehhija tal-kondizzjoni.

L-ewwel aggravju

Il-Qorti ma tarax li hemm xi kontradittorjeta fid-decide tat-Tribunal. Ghalkemm hu minnu illi jidher illi fit-tieni linja tad-decide hemm xi kelma nieqsa biex tikkompleta sew is-sens taghha, pero hu ovvju illi t-Tribunal ikkonferma l-hrug tal-permess kif ghamlet il-Kummissjoni tal-Ambjent u l-Ippjanar izda zied li l-permess ghandu jinkludi fih il-pjanta kif korretta u li gia kienet tinsab fl-atti tal-applikazzjoni biex tkun aktar cara t-tqassim tal-ambjenti fil-permess.

In kwantu ghall-allegazzjoni li t-Tribunal agixxa ultra vires dan ma hux minnu ghaliex skond l-artikolu 41(14) u r-regolament 5 tat-Tieni Skeda tal-Kap. 504, it-Tribunal ghandu l-jedd li jbidel b'kull mod iehor decizjoni tal-Awtorita, it-Tribunal ghandu s-setgha jordna tibdiliet fil-

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permess bil-prezentazzjoni ta' dokumenti u pjanti minghajr ma jbidel is-sustanza tal-kwistjoni quddiem l-Awtorita. F'dan il-kaz it-tibdil fil-permess cioe l-eliminazzjoni ta' kundizzjoni 4 dwar il-kejl tal-ambjenti separati fl-izvilupp saret biex il-pjanta korretta li kienet ser tkun parti integrali tal-permess tirrifletti ezattament dak li kien jikkomprensi l-izvilupp u jelimina kull dubju li jista' jkun hemm fuq il-kejl ezatt u d-distinzjoni ezatta bejn l-ambjenti fil-permessi. Din il-pjanta ma gietx mitluba fid-decizjoni tat-Tribunal izda kienet gia ezistenti fl-atti.

It-tieni aggravju

Dan l-aggravju wkoll hu bla bazi. Ma kien hemm xejn extra petita fid-decizjoni tat-Tribunal. Il-parti l-kbira tal-aggravji tal-appellanti kien dwar il-kejl tal-izvilupp u l-ambjenti distinti fl-istess zvilupp skond il-policies applikabbli. Dak li ghamel it-Tribunal hu li ezamina il-lanjanzi, fid-dawl tal-provi prodotti, pjanti u sottomissjonijet u wara li ghamel evalwazzjoni ta' dan kollu iddecieda jekk il-lanjanzi kellhomx mertu. Dan jidher car mis-sottomissjonijet tal-appellant rigward id-diskrepanzi fl-approved floor plans esebiti mill-applikant intizi skond huma biex jizvijaw u jevadu l-applikazzjoni korretta tal-policies. It-Tribunal li acceda fuq il-lok tal-izvilupp u wara li ezamina l-pjanti riveduti mill-perit tal-applikant esebiti fl-atti u li kellhom access ghalihom l-partijiet, wasal ghal konkluzzjoni illi d-diskrepanza fil-kejl kien marginali u ma kienx tali (a bazi tal-Avviz Legali 514/2010) li jimmerita cahda tal-permess. Zied pero li flok li jkun hemm il-kejl kif stabbilit fil-kondizzjoni numru 4 tal-permess, ikun hemm il-pjanta bhala refrenza preciza ghal permess stante li permess hu dejjem soggett ghal pjanta approvata u jrid jigi osservat ai termini tal-istess pjanta. Mhux korrett ghalhekk l-argument tal-appellanti li ma talbux li jigu korretti pjanti jew eliminati kondizzjonijet ghax in effetti l-kwistjoni kienet principalment fuq il-kejl tal-izvilupp u jekk dan kienx konformi mal-policies rilevanti. It-Tribunal kellu l-obbligu li jindirizza u jaghti gudikat dwar jekk il-permess kienx in regola mal-policies rilevanti u skond il-ligi kellu kull dritt li jbidel partijiet mill-permess basta s-sustanza tibqa' l-istess kif fil-fatt seh.

It-tielet aggravju

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Dan l-aggravju ma fihx mertu ghax dak li ghamel it-Tribunal kien biss il-konsegwenza tal-mertu tal-appell. Il-kondizzjoni numru 4 kienet tindirizza l-kejl li kien qed jigi dibattut fl-appell u l-pjanta kienet biss sostitut aktar preciz u effikaci minn kundizzjoni li setghet, meta imqabbla mal-pjanta tkun frott ta' xi dizgwid gdid bejn il-partijiet. Mentri t-Tribunal ghazel li jaddotta l-uzu ta' pjanta, gia esebita fl-atti, biex jaghti konferma ghal hrug tal-permess izda bil-parametri ezatti tal-pjanta li hi fattwalment dak li jikkonsisti l-izvilupp. Rilevanti dak li jghid it-Tribunal u jinkapsula l-forma mentis tieghu fid-decizjoni:

Huwa minnha kif qed irrileva l-appellant li l-kundizzjoni numru 4 fil-permess PA 1906/10 li hija bbazata fuq il-pjanta approvata PA 1906/10/34 qed jissemma limitu ta' floorspace ghaz-zewg stabbilimenti rispettivi. Kif gja ezaminat iktar 'il fuq jirrizulta li l-erja fil-pjanta approvata kif ukoll fl-ahhar korrezzjoni tal-qisien, hemm zieda marginalment ta' erja minn kif indikat fil-kundizzjoni, ghalkemm dan it-Tribunal jista' jifhem illi din il-kundizzjoni saret sabiex tizgura li fuq is-sit jibqa zewg stabbilimenti kummercjali separati li ma jeccedux l-erja massima kif stipulat fil-policy fil-pjan lokali ghaz-zewg stabbilimenti rispettivi.

Illi sabiex jigi evitata kull ekwivoku, dan it-Tribunal huwa tal-fehma li l-permess ghandu jigi kkoregut skont l-ahhar pjanta spjegattivita a fol 110A fl-inkartament tal-PA 1906/10, filwaqt li kundizzjoni numru 4 tista tigi eliminata peress li l-permess huwa dejjem suggett ghall-pjanti approvati.

Ir-raba aggravju

Dan l-aggravju isegwi t-tielet wiehed u hu wkoll bla ebda bazi. It-tielet u raba paragrafu tal-appell tal-appellanti kien fuq il-pjanta approvata mill-Awtorita u l-kejl li jirrizulta. Dan hu l-mertu principali tal-appell li gie indirizzat mit-Tribunal kif intqal aktar il-fuq u li ghalih it-Tribunal wasal ghal konkluzzjonijiet tieghu, hafna minnhom ta' natura teknika li din il-Qorti ma tid-disturbax jekk mhux eccezzjonalment. L-appellant irid jikkonsidra li nuqqas ta' qbil mal-interpretazzjoni teknika maghmula mit-Tribunal ma jwassalx ghal revoka tad-decizjoni. It-Tribunal ma indirizzax xi kwistjoni minn rajh minghajr ma giet imqajma izda indirizza l-aggravju tal-appellant, u l-appellant ma jistax jipprezumi li t-Tribunal kien ser jilqalu xi aggravju kieku ma eliminax il-kundizzjoni numru 4. L-eliminazzjoni tal-kundizzjoni 4 saret biex ma jkunx hemm ebda hjiel ta' incertezza jew dubju bejn il-pjanta approvata u l-kundizzjoni infisha li kienet titratta l-kejl. Il-pjanta, fil-fehma tat-Tribunal, apparti li kienet

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konformi mal-policies rilevanti għall-izvilupp kienet tagħti certezza u precizjoni fl-estent u kejl ta' dak approvat.

Decide

Għal dawn ir-ragunijiet, il-Qorti taqta' u tiddeciedi billi tichad l-appell tal-appellanti u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' April 2015, bl-ispejjez kontra l-appellanti.

< Sentenza Finali >

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