



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-17 ta' Gunju, 2015

Appell Civili Numru. 63/2014

Adrian Deguara

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Adrian Deguara tal-15 ta' Dicembru 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Novembru 2014 li cahdet l-applikazzjoni PA 4480/09 'to remove existing third floor level (retaining facade) and construct five overlying apartments';

Kopja Informali ta' Sentenza

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-15 ta' Gunju 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 4480/09 – 8, The Strand c/w Triq San Vincenz, Sliema: To remove existing third floor level (retaining façade) and construct five overlying apartments.

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

“1. The proposal is exceeding the maximum permissible height within the UCA as stipulated in Map SJ 3 of the North Harbours Local Plan. It is also exceeding the maximum number of additional floors permissible by policy NHSJ 06.

2. The proposal is not providing a proper transition from the UCA; is not considered as a good solution to break the visual mass that results from the different height limitations; and is disrupting the traditional urban character of the area. Proposal is thus in conflict with policy 1.8 of the Policy and Design Guidance 2007 and Structure Plan Policy BEN 2, which seeks to provide good urban design.

3. The proposal is in conflict with policy 15.4 of the Policy and Design Guidance 2007, which requires that commercial and residential uses have a separate access.

4. The proposal does not comply with sanitary laws and regulations in that Triq San Vincenz does not cater for the proposed additional floors, and the depth of yard is less than 5.49 metres.

5. The proposal goes against Policy NHSJ06 that prohibits proposals for new high buildings which have a facade width less than 25m, to avoid pencil development along the Sliema waterfront, except where the proposed facade is designed to be identical to and continuous with, that of its existing neighbouring building. In addition, as proposed the development does not create a transition along Triq San Vincenz (leading towards the UCA) and would create blank party walls which would disrupt the streetscape along the said street.”

B. In-noti tal-Avukat Dott.ssa Sharon Mizzi u tal-Perit David Psaila ghall-Appellant, ripsettivament ipprezentati fl-14 ta' Lulju 2011, senjatament il-punti segwenti:

“1. L-Gholi tal-Binja – ‘The proposal is exceeding the maximum permissible height within the UCA as stipulated in Map SJ3 of the North Harbour Local Plan. It is also exceeding the maximum number of additional floors permissible by policy NHSJ 06.’

a. Illi l-appellant ma jaqbilx ma din d-decizjoni u fuq dan l-punt hassu aggravat. Preliminarjament s-sit inkwisjtoni jinsab fil-maggor parti tieghu barra miz-zona UCA. Is-sit jinsab f' kantuniera u ghandu zewgt faccati wahda fuq Triq ix-Xatt Sliema u l-ohra fi Triq San Vincenz. Il-faccata ta' Triq San Vincenz minn fejn hemm l-entrata tas-sit hija wisa iktar minn 25 metri u hija biss parti zghira li tinsab fil-UCA. Kif jirrizullta mill-Map SJ 3, l-gholi fix-Xatt ta' Sliema huwa tmien sulari u penthouse u anke f'certa kazijiet disa sulari u penthouse. Minn ittratti esebiti fil-process jidher ampjament li l-izvilupp ser ikollu faccata fuq ix-Xatt tas-Sliema u faccata ohra (kantuniera) fi Triq San Vincenz. Minn ezami tal-process u l-ittratti ezebiti jidher li hemm numru ta' binjiet, f'posizzjoni identika bhal dak tal-appellant li gew approvati. L-appellant qed jerga jesebixxi hawn wkoll, ittratti ta' binjiet sitwati fl-istess posizzjoni tieghu u f'toroq paralleli ghal tieghu li gew debitament approvati dawn huma:

- Binjiet f' St. Pius V Street kantuniera ma Triq ix-Xatt;
- Binjiet f' Annunciation Street kantuniera ma Triq ix-Xatt;
- Binjiet f'Tower Road kantuniera ma Triq ix-Xatt; u
- Binjiet f'Bisazza street kantuniera ma Triq ix-Xatt; Dok A

b. Illi jigi osservat illi binja partikolari fi Triq ix-Xatt kantuniera ma Annunciation Street hija gholja tmien sulari u penthouse u jistgħa ikun li anke disa u penthouse.

Kopja Informali ta' Sentenza

Dan is-sit ghandu parti konsiderevoli fil-UCA u minkejja dan diversi Permessi inhargu:

PA 3624/09 Internal alterations and alterations to facade; altered use at 4th floor from residential to retail and addition of basement

PA 3487/09 To sanction asbuilt ground floor shop

PA 0026/09 Internal and external alterations on all floors and change of use of level 4 from residential to commercial (class 4) and levels 5, 6, 7, and receded floor from residential to office.

PA 8193/05 Partial demolition of existing building and construction of commercial and residential building

Qed jigi ezebit Dok B relativ għall-permess numru PA 8193/05 u Map SJ 3 Dok C fejn jirrizulta li f'dan l-izvilupp għandu parti sostanzjali (ikbar minn dak tal-appellanti) fil-DCA. Minn ezami tal-case officer's report u d-decizjoni f'dan il-kaz partikolari jidher li l-unika oggezzjoni li giet sollevata kienet dwar t-tul u l-uniformita tal-faccata. L-gholi stipulat fil-DCA ma gietx addebitata hawn u għalhekk l-appellant jikkontendi li huwa iħossu aggravat minn dan l-punt fid-decizjoni lillu mogħtija stante li huwa għandu parti ferm iżgħar li tins ab fil-UCA u meta huwa għandu faccata ta' 25 metri jew iktar. F'dan il-kaz partikolari kien hemm rifjut minhabba l-kwistjoni tal-uniformita tal-faccata, izda sussegwentment din l-proposta ta' żvilupp giet accettata fl-intier tagħha permezz tal-permess PA26/09.

Għalhekk l-appellant jikkontendi li dak li ingħata għal sit f'posizzjoni identika għal tiegħu għandu jingħata lillu u qed jinterponi appell minn dan il-Punt fuq din il-bażi.

Qed issir referenza għal mod kif gew trattati ukoll diversi applikazzjonijiet għall-appartamenti, stabilimenti u lukanda f'zona li taqa that l-istess pjan lokali u kkonfinata bit-toroq Triq Gorg Borg Olivier ma Triq il-Kbira u partikolarment Triq Gorg Borg Olivier ma Triq Forrest. Dan għal rigward diversi punti relatati ma dan il-kaz. Dok D

c. Jingħad li l-policy ikkwotata NHSJ 06 tirreferi esklussivament għal żvilupp f'Sliema u St Julians Urban Conservation Areas totalment- dan mhux il-kaz inkwistjoni stante li s-sit għandu l-magħor parti tiegħu (fil-fatt kwazi 75%) l-barra minn DCA b'faccata fi Triq ix-xatt. Għalhekk l-istess policy ma tistax tigi applikata in toto. Jidher illi din il-policy kienet intiza sabiex tirregola binjiet totalment fil-DCA li gustament għandhom jigu protetti għal dak li jirrigwardja għoli u estetika. Fil-kaz odjem tirrizulta binja li hija parti sostanzjali barra mill-DCA u biss ftit metri fl-istess

Kopja Informali ta' Sentenza

DCA. Huwa rilevanti l-fatt li l-appellant huwa anke dispost u anke ressaq pjanti fejn gie propost li jirtira ftit mill-faccata fejn il-binja qiegħda fil-DCA sabiex jakkomoda s-suggeriment tal-Awtorita, għalkemm rnhux għax necessarjament jemmen li din il-policy qed tigi interpretata kif suppost.

Effettivament jekk wiehed jaqra sew il-policy hija tghid hekk:

'Within the Sliema and St Julian's DCAs, additional floors may be permitted ..'

Jigi ribattit li:

1. s-sit inkwisjtoni mhux qiegħed totalment fil-UCA anzi percentagg zghir jinsab fil-UCA u għalhekk din il-policy mhux applikabbli;

2. l-appellant issottometta pjanti fejn indika li kien dispost li jirtira il-gewwa mill-parti mill-faccata fejn il-binja qiegħda parti zghira fil-UCA;

3. u dan a kuntrajru ta' binjiet ohrajn li qiegħdin fl-istess posizzjoni u cioe jinsabu f'parti ikbar minn dik tal-Appellanti fil-UCA u ma irtiraw xejn mill-ebda UCA. [...]

d. Illi l-appellant jikkontendi wkoll li Policies NHSE 04 u NHSE09 mhumiex applikabbli stante li l-binja mhux 'within UCA' imma għandha parti zghira biss. Dan l-principju gie applikat f'diversi permessi bħal:

a. Triq Pius V - Triq parallela tmien sulari u penthouse - jidher car li ma kien hemm ebda transition għall-UCA fejn is-sit immedjatament hdejh għandu għoli ta' zewgt sulari;

b. St Vincent Street - faccata tal-binja prososta - wkoll għandha tmien sulari u penthouse -l-istess sitwazzjoni li hemm Pius V Street tinsab proprju f'din it-Triq fejn qed jigi proposta l-izvilupp. L-appellant qiegħed jipproponi li jirtira mill-faccata fejn huwa imiss mal-UCA kuntrarju ta' dawn l-izviluppi li ma sarithom ebda imposizzjoni;

c. Annunciation Street clw The Strand - PA 08193/05. Dan l-bini wkoll qiegħed parti kbira minnu fil-UCA - jidher li ma kellu ebda impediment għall-izvilupp, jirrizulta li dan għandu tmien sulari u possibbilment anke disa u penthouse, ma irtirax fuq in-naha li għandu f'UCA għalkemm is-sit adjacenti huwa ferm baxx, 1-blank party walls fuq wara huma għoljin mill-inqas hames sulari;

Kopja Informali ta' Sentenza

L-appellant jikkontendi li l-gholi predominanti fuq ix-Xatt tas-Sliema jipprevali f'din is-sitwazzjoni. Policy NHSI 06 timmilita favur l-gholi u l-predominanza tax-Xatt ta' Sliema. Jinghad li meta gew ippromulgati l-istess policies l-gholi tal-bini tax-xatt kien diga determinat u ghalhekk din l-Policy saret f'din ir-realta.

Minn qari akkurat tal-policy jidher illi:

'within and on the boundary of the Sliema UCA, in cases where due to the difference in the maximum building height limitations between two adjacent sites there results a side blank party wall that is 2 or more floors high, Mepa may consider the construction of additional floors over the immediately adjacent single property with the lower building height limitation, notwithstanding that this will not conform with the maximum building height limitation for the lower property as indicated in Map S13, provided that the following conditions are satisfied: ...'

Dak li qieghdin jinghad hawn fuq huwa proprju il-kuntrarju ta' dak li ikkonkludiet id-decizjoni u cioe li hija il-binja tal-UCA (the lower building height limitation) li ghandha tghola b'nofs id-differenza tal-gholi tal-binja tax-Xatt u mhux vici versa.

Illi ghalhekk fuq dawn il-principji, l-appellant hassu aggravat bid-decizjoni tal-Awtorita li naqset li tikkonsidra l-istess u qieghed jinterponi umli appell a bazi tal-argumentazzjonijiet suesposti.

2. It- Transition fil-UCA – 'The proposal is not providing a proper transition from the UCA; is not considered as a good solution to break the visual mass that results from the different height limitations; and is disrupting the transitional urban character of the area. Proposal is thus in conflict with policy 1.8 of the Policy and Design Guidance 2007 and Structure Plan Policy BEN 2, which seeks to provide good urban design.'

a. Illi d-decizjoni mhux gusta [...] Kif diga intqal l-binja hija partikolari ghall-posizzjoni inerenti taghha, kif inhuma numru ta' binjiet ohra fposizzjoni identika, sitwati fl-istess zona u ftorog ftit metri l-bogħod u paralleli. Il-kwistjoni tal-blank party wall diga giet diskussa hawn fuq fejn jirrizulta ampjament li huwa l-bini fil-DCA li ghandu joghla ghall-gholi tal-binja ta' hdejh u mhux vici versa u ghalhekk l-appellant jikkontendi li din l-Policy giet interpretata b'mod hazin. Fi kwalunkwe kaz, li l-appellant offra soluzzjoni b'recessed floor.

Kopja Informali ta' Sentenza

b. Fuq il-kwisjtoni tal-Policy Design and Guidance 2007 1.8 jidher illi ir-rifjut huwa ibbazat fuq is-segwenti premessa:

'in particular, development outside but adjoining DCAs should reflect the predominant height of buildings in a DCA and should not visually dominate or overshadow gardens or other spaces within the DCA.

where development is sited immediately adjacent to an urban conservation area, it shall be higher than the predominant height of the surrounding buildings, ...'

Policy Ben 2

'development will not normally be permitted if, in the opinion of the planning authority, it is incompatible with the good urban design, natural heritage, and environment characteristics of existing or planned adjacent uses, and is unlikely to maintain the good visual integrity of the area in which it is located.'

L-aggravji li tressqu hawn fuq ser jergu jigu puntwalizzati u applikabbli anke ghal dawn l-Policies li gew ikkwotati in sostenn tar-rifjut:

a. Is-sit ghandu biss ftit metri fil-UCA u allura il-Permess ghandu jinghata bhal permessi precedenti li inghataw X-Xatt, basta li binja isegwi dak enuncjat fil-BEN 2 u cioe li l-binja ghandha ikollha l-karatteristika ta' 'existing or planned adjacent uses' ma binjiet li hemm fix-Xatt Sliema.

b. Issir referenza ghall-permess numru 08193/05 u P A26/09 fejn jidher li thaddnet dan il-principju li meta sit huwa adjacenti ghall-UCA u li ghandu parti sostanzjali minnu fl-istess zona, gie segwit l-principju/Policy Ben 2 ta' 'existing .. adjacent uses' referibbilment ghall-izvilupp simili li hemm x-Xatt u fejn ipprevalew 1-Permessi u l-Policies tax-Xatt u rnhux dawk 'within UCA'. L-appellant jikkontendi li din hija l-interpretazzjoni gusta fuq bazi ta' "good and sensible planning grounds."

c. Issir referenza wkoll ghal permessi f'toroq paralleli ghall-izvilupp propost li inghataw u li illum jiformaw parti rnix-Xatt tas-Sliema u jigi rilevat li l-izvilupp propost ghandu jigi ikkunsidrat bhala zvilupp li ghandu l-karateristika ta' 'existing or planned adjacent uses, and is (unlikely) to maintain the good visual integrity of the area in which it is located. '

d. Illi peress li l-izvilupp propost jinsab f'kantuniera u ghandu faccata fix-Xatt Sliema, allura jikkwalifika ghall-gholi u sulari li hemm ix-Xatt. Il-posizzjoni inerenti tas-sit (bhal dawk li huma paralleli ghalih) jikkwalifikah bhala 'a Sliema Front Development'. Jekk l-Awtorita (issa) qed tinsisti li ghandu ikun hemm 'a proper

Kopja Informali ta' Sentenza

transition' fuq in-naha li trniss mal-UCA, ghalkemm jidher li fil-Permessi precedenti dan ma kienx rekwizit, l-appellant qieghed jerga jipproponi billi bicca mill-izvilupp propost (fuq wara) tigi irtirata il-gewwa; ara pjanti sottomessi fil-Process.

Illi fil-fehma umli tal-appellant din kellha tkun il-posizzjoni korretta u qieghed iressaq appell fuq dawn l-aggravji.

c. Il-Gurisprudenza - Committed Area:

Illi l-appellant ihoss li ghandu aggravju anke fir-rigward li l-A wtorita naqqset li tikkonsidra l-posizzjoni tas-sit u l-Permessi precedenti li inhargu.

Il-Qrati taghna kemm il-darba sostnew li l-policies ma jistghux jinqaraw b'mod rigidu meta ikollok sitwazzjoni partikolari ta' proprjeta, kif del resto jidher li gara meta inghataw permessi ohra u ipprevala dan il-punt.

Mill-gurisprudenza huwa assolut l-principju tal-area li tkun committed b'certu tip ta' bini.

(1) Fil-kaz Joseph Tonna vs L-Awtorita' Maltija ghal Ambjent u L-Ippjanar (PAB 20/2009 ISB) (P A 1498/07), deciz fid-9 ta' Lulju 2010 il-Bord ikkonferma il-principji enuncjati fit-Trident casel li fejn area tkun committed ghandu jkun hemm konsiderazzjoni ulterjuri ta' zvilupp tal-istess area.

(2) Illi wkoll il-Qorti tal-Appell fil-kawza Anthony Ciappara vs L-Awtorita Maltija tal-Ambjent u l-Ippjanar deciza fil-28 ta' Gunju 2006 (Qorti Appell 1112004), il-Qorti dahlet fil-mertu ta' x'jikkostitwixxi precedent u fejn gie elenkat x'jikkonsisti 'commitment ':

"A valid commitment would consist of a similar development present or permitted within the same immediately locality "

d. Il-Principju tal-Ugwaljanza u Trattament Identiku:

Kopja Informali ta' Sentenza

Illi l-appellant hassu aggravat li huwa ma giex ittrattat b'mod identiku ghall-permessi ohra li gew debitament approvati u jissottometti li kemm-il darba dan l-appell jigi rifjutat ser issehh ingustizzja u diskriminazzjoni manifesta' fil-konfront tal-appellant.

Din il-posizzjoni giet ikkonfermat mill-Onorabli Qorti tal-Appell fil-kawza fl-ismijiet Joseph Muscat vs f-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza fit -18 ta' Mejju 2005, fejn il-Qorti qalet illi:

'Fil-fatt gie retenut gudizzjarjament illi l-applikazzjonijiet simili jirrikjedu trattament identiku. Id-decizjonijiet f'dan ir-rigward, u l-konsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necessarjament jinhtieg li ikunu konsistenti. L-inkonsistenza ghandha bhala konsegwenza, il-kontestazzjoni gustifikata, id-diskriminazzjoni, l-inegwaljanza, u mill-aspett soggetti tal-applikant 1-ingustizzja.'

L-istess gie konfermat fid-decizjoni tal-Bord ta' l-Appell fl-ismijiet Salvu Mallia vs. Kummissjoni ghall-Kontroll ta' l-Izvilupp (PAB 221197, PA 4213/96):

'Ir-regola ta' ceribus paribus maghdud mal-commitment maSSICC li hemm favur 1-applikazzjoni odjema ma thalli ebda triq 1 t-tribunal hliet li japplika f'dan l-appell dak li gie applikat mill-Kummissjoni stess fid-diversi binijiet.'

e. u wkoll fid-decizjoni Dione Bartolo kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp (PAB 633/98, PA 0131/98):

'Dak li thalla jsir fil-kaz ta' wiehed ghandu jithalla jsir fil-kaz ta' kulhadd.'

3. Residential and Commercial Premises – 'The proposal is in conflict with policy 15.4 of the Policy and Design Guidance 2007, which requires that commercial and residential uses have a separate access.'

Illi l-kwistjoni tal-access separat f'residential u commercial uses jidher li giet sorvolata billi l-appellant issottometta pjanti godda li indirizzaw dan il-punt u allura dan huwa aggravju manifest meta l-Awtorita naqset li tikkonsidra l-istess tibdil.

Kopja Informali ta' Sentenza

4. Sanita – 'The proposal does not comply with sanitary laws and regulations in that Triq San Vincenz does not cater for the proposed additional floors, and the depth of the yard is less than 5.49 metres.'

F'dan il-kaz gew sottomessi pjanti godda sabiex jirregolarizzaw mal-ligijiet sanitarji billi l-bini at penthouse level gie spustat il-gewwa bi tlett piedi kif titlob il-ligi.

5. Frontage ta' 25 metri – 'The proposal goes against Policy NHSJ06 that prohibits proposals for new high buildings which have a facade width less than 25m, to avoid pencil development along the Sliema waterfront, except where the proposed facade is designed to be identical to and continuous with that of its existing neighbouring building. In addition, as proposed the development does not create a transition along Triq San Vincenz (leading towards the UCA) and would create bland party walls which would disrupt the streetscape along the said street.'

Illi anke f'dan il-punt l-appellant jissottometti li huwa hassu aggravat minn din id-decizjoni u li ir-ritjut mhuwiex gustifikat lanqas f'dan ir-rigward. Issir referenza ghall NHSJ 06 relattiva ghall-Frontage widths along the Sliema and St. Julinas Waterfront u l-appellant jissottometti is-segwenti:

a. Illi preliminarjament l-Awtorita' trid tiddeciedi liema Policies qed tinvoka filkaz odjern stante li min naha qed tikkwota Policies li jirregolaw l-UCA u issa jidher li qed tikkwalifika s-sit bhala 'Sliema Front'

Ghalhekk l-Awtorita' trid tiddeciedi jekk hux qed tibbaza l-argumenti taghha fuq Policies intizi (totalment) ghall-UCA jew Policies ohra li jirrigwardaw is-Sliema Front.

b. Illi fuq il-punt ta' frontage ta' 25 metri sollevat mill-Awtorita, l-appellant ma jaqbilx ma dak sottomess u qed jappella anke minn dan il-punt.

L-aggravju huwa manifest: jidher li ghalkemm il-NHLP ilha promulgate mis-sena 2006, minn harsa lejn ix-Xatt ta' Sliema u mix-Xatt ta' San Giljan, jidher car li ir-ragunijiet li qed jigu sollevati kontra din l-applikazzjoni ma gewx applikati fil-passat f'permessi simili u anke identici ghal kaz odjern. L-enfasi li qed isir issa huwa li ma jistghax jinghata Permess jekk l-faccata tas-sit hija inqas minn 25 metru u jinghata permess (biss) meta l-faccata proposta (ghalkemm idjaq minn 25 metru) ikollha design 'that is identical to, and that is continuous with, that of its existing neighbouring building' .

Kopja Informali ta' Sentenza

Minn osservazzjoni tax-Xatt kollu tas-Sliema u dak ta' San Giljan huwa manifest li dan ir-rekwizit f'din l-policy, ma giex applikat fil-passat. L-appellant jazzarda jissottometti li kwazi l-ebda binja fix-Xatt Sliema ma ghandha frontage iktar minn 25 metri u fl-ebda faccata ma jirrizulta li d-design ta' sit huwa identiku ghal dak ta' hdejh. Ghalhekk ma taghmel ebda sens li is sa jigi applikat dan il-principju meta dan l-principju ma gie applikat qatt bil-konsegwenti konfigurazzjoni li illum ghandu ix-Xatt tas-Sliema u San Giljan u dan huwa l-ewwel aggravju tal-appellant.

Illi dwar ir-rekwizit tal- 'proposed facade is designed to be identical to and continuous with that of its existing neighbouring building' issir referenza ghall-pjanti sottomessi fejn jirrizulta wkoll li d-disinn tal-faccata tal-izvilupp kif propost huwa intiz biex izomm 1-faccata tal-blokk ezistenti ujestendi b'cornices' u 'similar embellishments'.

Anke l-istess BEN 2 tghid hekk:

'development will not normally be permitted if, in the opinion of the planning authority, it is incompatible with the good urban design, natural heritage, and environment characteristics of existing or planned adjacent uses, and is unlikely to maintain the good visual integrity of the area in which it is located.'

Ghalhekk f'dan il-kaz partikolari l-appellant jikkontendi li l-faccata li taghti ghal fuq ix-Xatt ghandha 'existing or planned adjacent uses' ma binjiet ohrajn li jinsabu fix-Xatt Sliema u l-faccata l-ohra taccedi il-25 metri frontage, bil-parti mill-binja li hija fil-UCA qed issir proposta mill-appellant li issir ' a proper transition', billi parti mill-faccata ta' wara tigi irtirata il-gewwa. Din l-proposa qed issir minkejja li binjiet olujan ma saritilhornx l-istess imposizzjoni u minkejja li ghandhom parti ikbar mill-izvilupp propost fil-UCA Dok C.

Illi anke f'dan ir-rigward id-decizjoni kontra l-izvilupp hija manifestament hazina u 1-aggravju tal-appellant huwa gustifikat. Illi ghalhekk fuq dawn il-principji, l-appellant hassu aggravat bid-decizjoni tal-Awtorita li naqset li tikkonsidra l-istess u qieghed jinterponi umli appell a bazi tal-argumentazzjonijiet suesposti.

d. Finalment issir referenza ghall-Policy NHS] 06 17.4.16 illi tistipula illi:

Kopja Informali ta' Sentenza

'In line with the overall objective to promote rehabilitation and upgrading rather than intensification and redevelopment in Sliema and St Julians area ... however it is to be pointed out that there are legitimate buildings that do not confirm to the indicated height limitations ... the policy is designed to aesthetically tone down the harsh punctuation created in the streetscape when the difference between 2 adjacent properties is two or more floors.'

Huwa manifest li l-ispirtu tal-policy tippunta lejn 'rehabilitation' iktar minn 'redevelopment' tas-Sliema area u anke fuq dan il-punt dan il-Permess ghandu jinhareg.

e. Wkoll l-appellant jikkontendi illi bl-izvilupp kif propost u specifkament id-disinn tal-faccata jikkwalifka taht policy 17.4.18 'facade positively contributes to the streetscape' u anke fuq dan il-punt l-permess ghandu jigi approvat stante li kif jirrizulta mill-pjanti hemm numru ta' embellishments fil-faccata li ser ikompli isebhu din il-Binja,

L-izvilupp kif proposta jipprovdi ghal numru ta' features diga esistenti fil-binja presenti li fuqha ser isir l-isvilupp bhal cornices u 'frontespiziu.' Huwa propost li l-estetika tal-binja esistenti tigi mizmuma u estiza ghall-ahhar sular tal-binja.

L-appellant jikkontendi li d-decizjoni ta' rifjut kienet manifestament hazina u l-permess ghandu jigi approvat in linea tal-argumentazzjonijiet esposti.

5. L-Objectors

Illi fuq dak li gie sollevat mill-objectors relattivament ghall-Policies minnhom ikkwotati, issir referenza ghas-sottomissjoniet hawn fuq imsemmija stante li jirrispondu l-punti li gew sollevati mill-istess. Fuq il-kwisjtoni tal-istruttura u l-istabilita taghha, l-appellant ghandu certifikat rilaxxat minn Structural Engineer li iccertifka li l-istruttura ezistenti tiflah l-piz ta' dak li qed jigi propost. Din ser tigi ippresentata fil-mori tal-appell.”

Kif ukoll:

“1. The proposed development is exceeding the maximum permissible height within the UCA:

Kopja Informali ta' Sentenza

The maximum permissible height on the Strand and the first part of St.Vincent street is eight floors. This is being respected. The maximum height within the UCA is two floors, however the existing adjacent building is already three floors. Due to the site configuration the depth of this plot within the UCA is only 8.6 metres. It is from the UCA that this site has the only entrance at ground floor level, since in the remaining frontage, the lower floors belong to third parties. Therefore, we are constrained to include the access to the overlying floors from the area situated within the UCA.

On investigating similar blocks, situated in the transition area from a high permissible number of floors to a much lower number of floors in the UCA, it transpired that most of these buildings have a blank wall and even exceeds the height limitation.

2. The proposal is not providing a proper transition from the UCA:

The maximum height limitation for this site is eight floors, while the height limitation in the UCA is only two floors. How a proper transition can be made when there is a difference of six floors? This problem should have been noted and solved when the height limitations for this area were being approved. How can a proper transition be achieved? Is there an existing similar transition to provide a guideline?

3. Commercial and residential uses should have a separate access.

We have submitted fresh drawings removing the office from this block and instead using this room as a games room for the entire block.

4. The proposal does not comply with sanitary laws:

Fresh plans were submitted prior to the EPC meeting of the 10th June 2011 in which this problem was addressed by making a set back at penthouse level.

5. The proposal goes against Policy NHSJ06 that prohibits proposals for new high buildings which have a façade width less than 25m:

Kopja Informali ta' Sentenza

It is very unfair to apply this policy for the development of the airspace on an existing building. The building was constructed many years ago and has a different design from the existing adjacent property.

On the Sliema seafront most of the sites are less than 25 metres. In fact a number of permits were issued, even since this application was submitted, to construct blocks on the Sliema Seafront with frontages of less than 25 metres.”

C. In-nota responsiva ta' Mario Scicluna ghall-Awtorita', ipprezentata fl-20 ta' Settembru 2011, inter alia l-punti segwenti:

“1. Preliminary Plea:

(a) The Malta Environment and Planning Authority notes that one of the reasons for refusal was based on the fact that the development as proposed does not comply with the Sanitary Laws and Regulations (refer to reason for refusal no. 4).

(b) This reason for refusal was given after the decision taken by the Sanitary Engineering Officer in minute 135 in the relative application file.

(c) Minute 135 in PA 4480/09 inserted by the Sanitary Engineering Officer, dated 15 March 2011 states:

‘Sanita Refused please refer to plans Red 68a, 68b. Sanita refused as Triq San Vincenz does not cater for the proposed additional floors. Depth of internal yard is less than 5.49mts (21e, 68a, 68b, 68c).’

2. Right to Appeal:

(a) The applicant does not have any right to appeal from this reason of refusal as upheld on various occasions by this Environment and Planning Review Tribunal and confirmed the Court of Appeal in its decision in the names of Pater Holding Co. Ltd.

Kopja Informali ta' Sentenza

(b) The Environment and Planning Review Tribunal does not have jurisdiction in this regard, since this issue falls under the remit of the General Services Board.

3. Further Comments:

(a) In his appeal, the appellant states that fresh plans were submitted prior to the EPC meeting which was held on 10 June 2011 which refused application, in which the sanitary issues were addressed by making a set back at penthouse level.

(b) The Environment and Planning Review Tribunal may wish to note that according to the First Schedule of Act X of 2010, the Malta Environment and Planning Authority shall decide and determine any matter under its consideration during the first sitting at which such a matter is brought for determination. The Authority may request applicant to file fresh plans and documents, in which case the Authority shall give reasons for such a request provided that the substance of the matter under its consideration shall not change.

(c) In the appeal under review, the appellant has presented unauthorized fresh drawings which the Environment and Planning Commission (EPC) has not requested. On the first hearing, the EPC considered that the DPA Report presented by the Planning Directorate was satisfactory and as per Act X of 2010, has determined the application under its consideration during the first sitting.

4. Conclusions:

(a) Consequently, whatever the reasons for appealing that the applicant might produce during the course of this appeal, there is still the impediment that the development as proposed does not qualify from a sanitary point of view and the appeal submitted can never be accepted.”

D. Il-verbal tas-Seduta numru 48, mizmuma fil-31 ta' Mejju 2012, senjatament il-punti segwenti:

“Dwar l-oggezzjoni ta' sanita' il-perit Psaila ddikjara li kien ipprezenta pjanti godda biex jindirizza din il-kwistjoni.

Kopja Informali ta' Sentenza

Tribunal jordna biex il-process jintbaghat lura lill-EPC biex jiddeciedu jekk it-tibdillet humiex tibdillet materjali u jekk m'humieq jibghatuhom lil SEO ghad decizjoni tieghu li wara jerga' jibghat il-process lil EPC biex tigi deciza l-applikazzjoni minnu jekk ikun il-kaz."

E. Ix-xhieda ta' Joe Farrugia, Sanitary Engineering Officer fi hdan l-Awtorita' prodott mill-Appellant u moghtija bil-gurament waqt is-Seduta numru 26, mizmuma fit-18 t'April 2013, inter alia r-risposti segwenti:

"Din l-applikazzjoni l-ewwel darba li giet ghandi kien hemm zewg affarijiet li marru kontra s-sanita'. Kien hemm kemm internal yard u kif ukoll gholi min-naha ta' St. Vincent Street rigward l-height limitation. Fl-ewwel pjanta li giet sottomessa li hija pjanta 1C li ghamilt referenza ghalha qabel, l-internal yard kienet turi fil-fatt li tibda mill-ground floor minflok li kienet tibda mis-second floor. Fejn hemm l-internal yard ghalkemm turi t-third floor, pero' kienet tindika li tibqa' niezla izjed l-isfel.

[...] L-unika binja li hemm ta' sitt sulari hija kantuniera li tigi faccata tal-binja proposta. Il-binja ta' hdejh hija erbgha sulari pero' imbaghad l-ohrajn huma kollha tnejn.

[...]

L-oghla bini li kien hemm huma kollha fuq ergha sulari barra kif diga' ghidt tal-faccata tieghu li huwa fuq sitt sulari. Ikkonfermajt id-decizjoni li kont diga' hadt f' diversi drabi f' dan il-file."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' font li jinsab gewwa l-urban conservation area (UCA) f' Tas-Sliema, tinzamm il-faccata pero' jitwaqqa t-tielet sular u jinbnew hames appartamenti sovrastanti.

Ir-raguni ghar-rifjut jistghu jigu riassunti kif gej:

- Gholi eccessiv:

Kopja Informali ta' Sentenza

L-izvilupp propost jissupera l-gholi permessibbli f' UCA, kif indikat permezz ta' Mappa SJ 3 tal-Pjan Lokali (NHLP). Il-proposta teccedi wkoll in-numru ta' sulari permessibbli skond il-policy NHSJ 06 tal-istess Pjan Lokali.

- Transizzjoni minn mal-UCA:

Peress li mhux qed jigi proposta l-ebda transizzjoni minn mal-UCA, l-izvilupp ser jirrizulta f' massa viziva u blank party wall li ser jiddominaw il-karattru tradizzjonali taz-zona. Il-proposta hi di konsegwenza f' kunflitt mal-policy 1.8 tad-Development Control Policy and Design Guidance (DC 2007) kif ukoll mal-policy BEN 2 tal-Pjan ta' Struttura.

- Accessi komuni:

Billi l-partijiet kummercjali u residenzjali tal-proposta qed jinqdew mill-istess access, l-izvilupp huwa in kontravvenzjoni tal-policy 15.4 tad-DC 2007.

- Rekwiziti sanitarji:

Il-parti tal-izvilupp li thares fuq Triq San Vincenz mhix irtirata u/jew imtarrga bizzejjed, u l-btiehi fuq wara ghandhom dawl ta' inqas minn 5.49 metri.

- Faccata dejqa hafna:

Peress li kif proposta, il-faccata li thares fuq Triq ix-Xatt, mhix wiesgha almenu 25 metri, l-izvilupp ser jirrizulta f' pencil development li ser jgharraq l-istreetscape u l-aspett viziv tal-UCA.

L-aggravji tal-Appellant jistrieħu fuq il-premessi segwenti:

- L-gholi massimu tal-izvilupp fuq Triq ix-Xatt huwa ta' tmien sulari mentre dak fil-UCA li jmiss mieghu jista' jinbena biss sa zewg sulari. Ghalhekk, billi hemm differenza ta' sitt sulari, huwa ferm diffiċli li l-izvilupp ikollu transizzjoni felici bejn il-parti li thares ma' Triq ix-Xatt u Triq San Vincenz. In oltre, l-binja li prezentement hemm fil-parti tal-UCA hi gja' mibnijja fuq tlett sulari, u peress li l-unika access ghas-sit hu propju minn din il-parti tas-sit (ghax is-sulari sottostanti fil-parti li tmiss ma' Triq ix-Xatt jappartjenu lill-terzi) ma jistax tigi evitata t-transizzjoni qawwija.

Kopja Informali ta' Sentenza

- Il-faccata li thares fuq Triq San Vincenz hi wiesgha aktar minn 25 metru u parti biss minnha tinsab fil-UCA. Ghalhekk, f' dan ir-rigward, mghandhomx japplikaw il-policies li jirrigwardaw il-UCA, u dan peress li l-maggor parti tas-sit jaqa' barra l-istess UCA. Ghal dan il-ghan saret riferenza ghall-policies NHJS 06, NHSE 04 u NHSE 09, li skond l-Appellant mghandhomx japplikaw fil-kaz de quo.

- In oltre, skond il-Mappa SJ 3 hemm bosta zvilupp tul Triq ix-Xatt, partikolarment binjiet fuq kantunieri, li ghandu gholi ta' tmienja jew disa' sulari, u l-Awtorita' approvat bosta permessi fejn l-izvilupp ma jirtirax minn mal-allinjament tal-UCA, u sahsitra ghandu faccati iqsar minn 25 metri. Dan kollu appartu l-fatt li anke fil-partijiet tal-UCA f' Tas-Sliema, hemm zvilupp mibni fuq disa' sulari b' penthouse. Isegwi ghalhekk li l-Awtorita' qed tinterepreta l-policies hazin peress li skond il-policy NHSJ 06, huwa l-bini li hemm fil-UCA li ghandu joghla sa nofs id-differenza bejn dak mibni, per ezempju, fuq Triq ix-Xatt.

- Il-kwistjonijiet tal-access komuni kif ukoll tar-rekwiziti sanitarji minhabba s-setbacks inadegwati, gew sorvolati fil-fazi tal-applikazzjoni permezz ta' pjanti riveduti li jeskludi l-parti tal-ufficini (kummercjali) u faccati godda.

Gew citati wkoll il-permessi PA 3624/09, PA 3487/09, PA 26/09 u PA 8193/05 bhala kazistika, fejn allegatament gie permess tip ta' zvilupp simili, jew addirittura aktar oneruz minn dak in ezami.

L-Awtorita' zammet ferm l-oggezzjoni taghha u eccepjet eccezzjoni preliminari in kwantu l-pjanti riveduti ma kienux gew awtorizzati mill-Kummissjoni, u ghalhekk, d-decizjoni ttiehdet abbazi dawk originali (minuted drawings 68a u 68b), fejn inter alia l-faccata li thares fuq Triq San Vincenz mhix irtirata bizzejjed, u fejn id-dawl tal-bitha interna huwa inqas minn norma.

Jigi nutat li fil-mori tal-appell, saru zewg appelli mid-decizjonijiet tal-General Services Board (GSB), u prezentement hemm pendenti appell quddiem il-Qrati Superjuri ta' Malta kontra l-istess GSB, madankollu peress li kwistjonijiet ta' sanita' mhumieq fil-gurisdizzjoni ta' dan it-Tribunal u billi f' ic-cirkostanzi l-kwistjoni ta' sanita' mhix l-unika motivazzjoni tar-rifjut, dan it-Tribunal sejjer jaqta' w jiddecidi abbazi tar-ragunijiet kollha l-ohra li waslu ghar-rifjut.

Minn dan isegwi li kemm il-darba jigu sorvolati l-kwistjonijiet ta' sanita', jibqu l-oggezzjonijiet in kwantu l-gholi eccessiv tal-izvilupp, it-transizzjoni goffa mal-UCA, u

Kopja Informali ta' Sentenza

I-kwistjoni ta' pencil development minhabba l-faccata dejqa hafna li hemm ma' Triq ix-Xatt.

Fic-cirkostanzi, jigi osservat li l-parti zghira fuq wara tal-font f' Triq San Vincenz taqa' gewwa d-desinjazzjoni tal-UCA. Hawnhekk, skond il-Pjan Lokali, l-izvilupp ma jistax jaqbez iz-zewg sulari, u anke jekk prezentement il-bini hawnhekk huwa ta' tlett sulari, il-proposta titlob tmien sulari u penthouse. Ex admissis, skond ma ddikjaraw il-konsulenti tal-Appellant fis-sottomissjonijiet separati taghhom, ghalkekk din il-parti tas-sit tinsab fil-UCA, hija l-unika parti li ghandha access dirett minn mat-triq. Il-bqija tas-sit ghandu tahtu bini ta' terzi. Ghalhekk huwa ferm inutile li l-Appellant jittenta jiggustifika l-proposta tieghu billi jargumenta li l-Awtorita' gja' ppermettiet svilupp b' gholi simili fiz-zona, ghax qabel xejn, irid jigi nutat li permezz tal-Artikolu 69 tal-Att X tal-2010 illum ma jistawx jigu kkunsidrati commitments in kwantu building heights. Il-partijiet rilevanti ta' dan l-Artikolu huma kif gej:

"2 Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorita' ghandha ukoll tqis:

(a) kull haga ohra ta' sustanza, komprizi konsiderazzjonijiet ambjentali, estetici u sanitarji li l-Awtorita' tista' tikkunsidra rilevanti:

Izda ebda konsiderazzjoni materjali inkluza konsiderazzjoni bbazata fuq l-ezistenza ta' binjiet fil madwar ma tista' tigi interpretata jew tintuza sabiex izzid l-limitazzjoni tal-gholi stabbilita fil-pjan;"

Il-Pjan Lokali jistabbilixxi l-height limitation (cjo'e' number of floors) f' din iz-zona. Biz-zieda ta' erba' sulari u penthouse sovrastanti l-izvilupp prezenti, fuq is-sit de quo ser ikun hemm effettivament sa' tnax-il livell; u li kieku dan l-appell kellhu jintlaqgha, ikun qed jigi kkostitwit precedent ferm perikoluz, ghax it-talba tkun qed timplika approvazzjoni ta' zvilupp in kontravvenzjoni tal-imsemmi Artikolu 69, peress li l-izvilupp ikun oghla mill-height limitation tal-UCA kif indikata mill-Pjan Lokali. Minn dan isegwi li allura anke l-kwistjoni ta' transizzjoni tibqa' rilevanti ghal-kaz odjern. Dawn huma ragunijiet sufficjenti sabiex dan l-appell jigi michud.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 4480/09 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-15 ta' Gunju 2011.

Ikkunsidrat

Kopja Informali ta' Sentenza

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ta s-sentenza fuq l-aggravji migjuba fl-appell meta kien ghad hemm pendenti appell quddiem il-General Services Board fuq kwistjoni relatata ma sanita. It-Tribunal kellu jissoprasjedi u jistenna din id-decizjoni qabel jiddeciedi l-appell in kwistjoni;
2. It-Tribunal ghamel zball ta' fatt fuq is-sustanza tal-izvilupp propost meta sostna li l-progett kien ghal 12-il sular meta l-proposta hi li jitnehha t-tielet sular ezistenti u jinbnew hames sulari fuq it-tnejn l-ohra. It-Tribunal zbalja meta qal li tali zvilupp ser johloq precedent perikoluz u dan ghaliex l-izvilupp ser ikun in linea ma' dak gia ezistenti fix-xatt tas-Sliema;
3. It-Tribunal zbalja bhla fatt ukoll meta qal li parti zghira fuq wara tal-fond fi Triq San Vincenz ser taqa' fiz-zona UCA fejn l-izvilupp permissibbli hi ta' zewg sulari u li l-proposta titlob tmien sulari u penthouse. L-appellant ma talabx tmien sulari u penthouse imma erba' sulari u penthouse fuq iz-zewg sulari li ser jinzammu mill-binja originali u ser ikun tal-istess gholi tal-binijiet fi Triq ix-Xatt;
4. Fil-mori tal-proceduri l-appellant ippropona pjanti godda b'set back mill-UCA li t-Tribunal ma ikkonsidrax.

L-ewwel aggravju

Dan l-aggravju ma jistax jigi milqugh. It-Tribunal ma ghandux jedd jiddeciedi hu kwistjonijiet ta' sanita u gustament dan ma ghamlux. Pero ma hemm xejn fil-ligi li jivvjeta lit-Tribunal li jiddeciedi aggravji li huma fil-kompitu tieghu li jiddeciedi. Li kieku t-Tribunal sab li l-aggravji tal-appellant kien jisthoqqilhom jigu milqugha, kien ikollu jiddeferixxi l-appell biex jibqa' jigi deciz biss il-kwistjoni tas-sanita wara l-appell quddiem il-General Services Board. F'dan il-kaz billi t-Tribunal ikkonkluda illi l-izvilupp kien jippekkha mill-lat ta' ipplanar kien irrelevanti li wiehed jistenna l-ezitu tal-kwistjonijiet sanitarji. Del resto ma kien hemm ebda digriet tat-Tribunal dwar xi sospensjoni tal-prolazzjoni tad-decizjoni sakemm jigi deciz l-appell quddiem il-General Services Board.

It-tieni u t-tielet aggravji

Kopja Informali ta' Sentenza

Hu minnu illi t-Tribunal f'zewg okkazjonijiet ikkommetta zball ta' fatt fuq l-entita tal-izvilupp. Darba minnhom jalludi ghal zvilupp ta' t-nax-il sular u darba ohra ghal zvilupp ta' tmien sulari u penthouse. Pero ma' dan irid jigi precizat illi fil-bidu tal-konsiderazzjonijiet tieghu iddeskriva tajjeb l-entita tal-izvilupp. Hi l-fehma tal-Qorti li dawn l-izbalji ma kienux tali li sostanzjalment effettwaw il-konsiderazzjonijiet u konkluzjonijiet tat-Tribunal. It-Tribunal ibbaza d-decizjoni tieghu fuq dak li jipprovdni l-pjan lokali ghaz-zona dwar l-ghoti tal-bini permess. Hi l-fehma tat-Tribunal illi l-unika entratura ghall-izvilupp hi minn Triq San Vincenz fejn parti mill-izvilupp, cioe dak li ma jaffaccjax fuq Triq ix-Xatt li ma ghandux entratura, hu gholi aktar miz-zewg sulari permissibbli skond il-pjan lokali. It-Tribunal irraviza li qabel l-izvilupp il-fond f'din il-parti tat-triq kien gholi tlett sulari, pero l-proposta avanzata kienet tissupera bil-bosta dak l-gholi permissibbli bil-pjan lokali u t-Tribunal ma setax jinjora dan. In oltre t-Tribunal jiggustifika din id-decizjoni billi jikkwota l-artikolu 69(2) tal-Kap. 504 cioe illi fid-determinazzjoni ta' applikazzjoni, ebda kwistjoni ta' commitment fiz-zona dwar gholi ma ghandha titqies rilevanti, jekk ikun qed jinkisru provvedimenti ta' pjan lokali. Din kienet il-bazi tad-decizjoni tat-Tribunal u l-fatt illi t-Tribunal zbalja matematikament l-gholi tal-izvilupp propost, jibqa' l-fatt illi l-gholi propost hu ghola minn dak permess fil-pjan lokali u billi l-uniku access hu minn din il-parti cioe l-parti UCA u mhix minn Triq ix-Xatt l-izvilupp qatt ma seta' jinghata ezitu pozittiv u f'dan is-sens it-Tribunal qal li permess simili ikun precedent perikoluz. Kwindi l-izbalji imsemmija mill-appellant ma biddlux mill-konsiderazzjonijiet u konkluzjonijiet fis-sustanza tad-decizjoni tat-Tribunal ibbazata fuq pjan lokali skond MAP SJ3 u policy NHSJ06, dejjem b'referenza mhix ghal binjiet fuq Triq ix-Xatt izda fuq it-Triq San Vincenz fejn parti mill-izvilupp u l-uniku access ghal binja jaqa' fiz-sona UCA.

Ir-raba aggravju

Dan l-aggravju ma fihx mertu peress illi l-pjanti ta' set back tal-ahhar sular kemm jekk ammissibbli jew le, ghaliex dawn iddahhlu, skond l-Awtorita, meta dawn ma kienux awtorizzati, ma hu ta' ebda rilevanza ghal metru proprju deciz mit-Tribunal. L-gholi tal-izvilupp kien jippekkja l-policy rilevanti tal-UCA u ghalhekk kwalsiasi set back tal-ahhar sular ma kienx ser jaffettwa l-gholi. Il-Qorti tqis li d-decizjoni assorbiet dan l-aggravju ftali konsiderazzjoni u ma kellhiex bzonn issemlih specifikament.

Decide

Kopja Informali ta' Sentenza

Ghal dawn ir-ragunijiet il-Qorti tiddeciedi billi tichad l-appell ta' Adrian Deguara u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Novembru 2014.

Spejjez kontra l-appellant.

< Sentenza Finali >

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