MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tad-9 ta' Lulju, 2015

Appell Civili Numru. 16/2015

Joseph Apap, Carmelo Zammit, John Attard, Rita Fenech

vs

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

l-kjamat in kawza Maria Debattista

ghan-nom ta' Tourist Services Limited

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Apap u ohrajn tal-14 ta' Mejju 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' April 2015 mill-hrug tal-permess PA 151/14 'introduction of minor alterations (including the introduction of a light weight enclosure

with retractable roof) to change use from existing shop to cateteria/bar (class 6), limitatament pero ghal dik il-parti li tawtorizza cumnija mis-shaft li l-appellanti jikkontendu hi proprjeta taghhom biss;

L-appellat Tourist Services Limited jirrispondi li l-appellanti taw il-kunsens tghhom ghal proposta kif ighid espressament l-artikolu 68(3) u illi l-kwistjoni tas-shaft, li s-socjeta appellati tikkontendi hi komuni, hi biss kwistjoni ancillari ta' natura civili li l-Awtorita ma tidholx fiha. Altrimenti kull proposta tista' tigi imblokkata bi pretensjoni ta' titolu, haga li l-ligi ta' ippjanar trid tevita tant li permess johrog 'saving third party rights';

L-Awtorita irrispondiet illi l-appellanti mhux jilmentaw mill-proposta izda minn xoghol ta' istallazzjoni ta' cumnija li hi ancillary ghall-proposta. L-artikolu 68(3) jitkellem biss fuq il-proposta u dan qed tigi accettata mill-appellanti. Mhux minnu li l-applikant qed jitlob zvilupp ghal cumnija ghax il-proposta hi cara u l-Awtorita ghandha l-jedd tiddeciedi li tqis il-proposta bid-dettalji kollha hux konformi mal-ligijiet ta' ippjanar. Il-kwistjoni dwar it-titolu tas-shaft hi kwistjoni mhux ta' planning u hi salvagwardata bid-drittijiet civili li ghandhom il-partijiet;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

> Ra r-ragunijiet ta' l-appell hekk kif gej:
>
> "With reference to the granting of Development Permission number PA/00151/14 regarding the proposal: 'Minor alterations (including the introduction of a light weight enclosure with retractable roof) to change use from existing shop to cafeteria/bar (class 6).' at site at, Melody, Triq it-Turisti clv«, Triq il-Merluzz, Qawra, San Pawl il-Bahar, Malta.
>
> I am writing on behalf of my Clients, Joseph Apap, Carmelo Zammit, John Attard and Rita Fenech resident at Block B, Manor Court, Triq it-Turisti, San Pawl il-Bahar, holders of ID Card Nos. 214036M, 961347M, 472835M and 252040M respectively, being regestered objectors in relation to the planning permit application referred to above.

My Clients would like to object to the decision taken by the Malta Environment and Planning Authority (MEPA) for the proposal in question, on the following grounds :-

• During the first Environment and Planning Commissions (EPC) Board sitting held on the 9th April 2014 with respect to the proposal in question, it was noted that the actual size of the shaft through which a chimney relating to the Class Order being proposed is to be directed, does not tally with that shown on the submitted drawings and the respective Engineer's Report. Following this, the EPC Board instructed the respective Architect in charge to revise and re-submit fresh correct drawings and Engineer's Report within a stipulated time period of 5 days in order not to mislead the Board representatives. The requested documents were submitted on the 18th April 2014, hence not within the legal time frame and as instructed by the EPC Board, making this late submission and hence the latter application void.

Approved 5-0 Fine is applicable if this application is approved and is sanctioning illegalities on site. Approved subject that the perit shall within 5 ays submit fresh plans which address the following issues: an updated engineer's report incorporating both clarification and latest drawingsAny other alterations to the plans and which do not address the said matters indicated above shall not be considered and shall not be construed as approved. Condition 5 to be amended to read for 4 parking spaces since entire front garden in 72sqm

• Further more, the updated Engineer's drawings requested by this same Board were never submitted until it was noted during the second EPC Board hearing held on the 7th May 2014, in which the latter Board reminded the Architect in charge to re-submit a revised Engineer's Report with the requested updated drawings signed by the respective Engineer. Engineer's drawings (not signed) were infact submitted on the 11th May 2014, i.e. not within the stipulated time period of 5 days referred to above. Please note that to date no signed drawings have yet been submitted to MEPA by a competent Engineer.

• With reference to the latest submitted approved drawing, doe. 55b and 55c please note that the Applicant has no direct access to any of the shafts on site. In fact, according to my Clients, the Applicant does not own the shaft but only has the right of use. Hence, the Applicant should have obtained consent from all the overlying third party properties making use of and/or owning part of the shaft in caption i.e. all the regestered objectors referred to above, prior to proceed with the application in caption. Subsequently a Certificate of Ownership B should have been submitted. No such consent was ever requested by the Applicant with this regards.

Subsequently, noconsent granted by the Objectors. Please note that according to Applicant's decleration in terms of article 68(3):

I am not the sole* owner of the entire site (or part thereof) indicated on the site plan. However, I have notified (by registered letter a copy of which is attached) the owner/s of my intention to apply and the owner/s has/have granted consent to such a proposal.

Also, being the entire site NOT owned by the applicant alone, Section 15 of the application form submitted with this application should have read the above quotation rather than:

I am the sole oumer of the entire site indicated on the site plan.

Hence, following the incorrect decleration on the respective application, the Applicant was not requested by MEP A to provide such a consent from the overlying third party owners of the said shaft prior to proceed with the application in question. As a result the permit was issued irrespective of the effects which such a proposal would have on the respective overlying/adjacent third party properties and their respective opinions.

• Being the Applicant not the sole owner of the shaft in question including the upper most roof of the premises, co-owned in equal parts with the overlying apartment, it follows that drawing doe. 55c should have never been approved prior to obtaining consent from the respective co-owner. This because PA/00151/14 proposes the demolition of the projecting part of the roof owned in part by one of the registered objectors, and that no consent was given by the latter to demolish part of this roof (marked in yellow on doe. 55c).

• With reference to drawing doc. 55c, the nearest sensitive receptor is not located at first floor but rather at ground floor, having the window directly opposite to thatof the proposed Class 6 premises. Hence, again, doe. 55c and the respective Engineer's Report do not reflect the actual situation on site and thus are incorrect and misleading. Policy BEN 1 applies.

• Reference is made to the size of the existing shaft through which the proposed chimney will be located. Considering that numerous foul/rain water pipes are directed through the said shaft, some of which cross from one wall to the other, it

follows that such a chimney is impossible to install considering that third party services need to be removed and/or redirected in order to ensure a minimum distance of 300mm between the chimney and the third party walls - as per sanitary laws and regulations. Again, my Clients were never informed and/or gave or are giving their consent with this regards.

• Apart from the fact that such a proposal would generate a deleterious impact on existing adjacent uses, hence counter to Policy BEN 1, the latter proposal will also effect the light and ventilation which my Clients are entitled to. Such a chimney located at the centre of the yard will obstruct and/or impede my Clients from opening the respective windows overlooking the yard (vide drawing doe. 55c).

POLICY BEN 1: Development will not nonnally be permitted if the proposal is likely to have a deleterious impact on existing or planned adjacent uses because of visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times, or any other characteristic which in the opinion of the Planning Authority would constitute bad neighbourliness.

• Reference is made to drawing doe. 55c wherein the Architect in charge included the dimensions of the walls of the shaft at the respective levels as per EPC Board instructions. Considering that at fourth floor and penthouse levels the shaft diminishes in size i.e. 720mm by 750mm it followed that these dimensions were not included on the said drawing. If such dimensions were included the latter application would have been refused due to sanitary issues. This because according to sanitary laws and regulation a minimum distance of 300mm should be left between the proposed chimney and the third party walls, whilst if the approved 150mm chimney is fixed in the location shown on the approved drawings, a distance smaller than that requested by law will be left in areas along the shaft, effecting third parties.

• Reference is made to KNPD Report (doe. 31a) wherein the latter clearly states that:

The intermediate level is not accessible to wheelchair users. As long as this intermediate level is used solely as a store this is fine. But if in future this level will have a different use, then a wheelchair accessible lift must be provided.

It is unclear on what basis did KNPD issue the relevant clearance considering that the intermediate floor is marked as a kitchen rather than as a store and hence no

proper access to the kitchen at intermediate floor is being provided for the disabled. Hence, permit was granted for the wrong set of drawings, counter to KNPD instructions.

• Reference is made to the internal floor to ceiling height indicated on drawing doc. 55b. Considering that no steps are present both at ground floor and intermediate level, how come the difference in internal height at ground floor level i.e. 2.4m headroom within the WC for disabled cubical vis-a-vis the internal height of 2.1m of the adjacent WC and store respectively? Also, how did a WC of 2.1m internal height (vide doc. 55c) be approved by the Sanitary Officer, knowing that the minimum height considered is 2.45m! In my opinion, if one refers to drawing doc. 55c and to doc. lr it can be concluded that being the total floor to ceiling height 17 courses high (excluding the thickness of the intermediate roof slab), the 2.4m headroom within the WC for disabled is incorrect and misleading. It should read 2.1m as indicated on drawing doe. 55. Hence also counter to sanitary laws and regulations.

• According to doc. 40a, the Direttorat Ghas-Sahha Ambjentali clearly stated that:

Height of proposed food rooms should not be less than 7 ft 6 inches (2.29m) - the food store is 2.1m in height

Proposed toilets leading to food rooms should be provided with an adequate ventilated ante room. - such ante rooms are missing in the approved drawing.

Where natural ventilation is not possible, adequate extract ventilation by mechanical means is to be provided. - the WC for disabled lacks both natural and mechanical ventilation.

Proposed grease trap (unless self-cleansing)!gully traps are to be located in the open air. - The location of these have not been indicated on the submitted drawings as is the norm.

• Reference is made to the latest submitted Engineer's Noise Report doe. 67b and drawings doc. 67c. According to the latter report:

In view of the noise levels above, it is envisaged that the noise generated will be reduced to 44dB(A) at a distance of 2m and 38dB(A) at a distance of 4m from the equipment.

Considering that the nearest recipient is 0.77m away from the approved Class 6 premises (vide doe. 55c) it follows that the noise level at the nearest sensitive receptor exceeds the 45dB(A) requested by law, counter to what is indicated on drawing doc. 55c. Hence policy BEN 1 applies.

• No mention is made in the respective Engineer's Report on the type of canopy/hood that shall be adopted in the kitchen, its noise level and whether the latter shall include any filters to avoid being a nunsance to the overlying third party properties.

• Reference is made to doc. 62a wherein the Engineer stated that:

Considering that the cooking area shall be the same size as that of a domestic kitchen, the extract ducting shall be a maximum of 150mm in diameter.

Please note that as opposed to the proposal in question (proposed cafeteria/bar), according to doc. 40a, the Direttorat Ghas-Sahha Ambjentali clearly stated that:

Proposed premises should be used as a snack bar for the preparation/cooking of snacks/grills as per the attached copy of declaration/menu.

The above clearly shows that as per Applicant's declaration to the respective Department, the proposed kitchen should NOT be considered as of the domestic type. A domestic kitchen caters for a maximum of 4 to 6 heads whilst a Class 6 premises caters for far more people, with different tastes and likings - hence the menu submitted. The size of the flue does not depend on the size of the kitchen but rather on the nature of the premises. Also, considering that 150mm refers to the external diameter of the proposed flue and that the latter shall be over 6 storeys high, it follows that both the above statement and the size of such a chimney is incorrect. A professional opinion was obtained by my Clients from an Engineer with this regards and it was noted that the flue as approved is not functional and/or adequate for the use proposed given the circumstances.

• Please note that clearance from MTA was not sought and/or granted. If proven otherwise, was it granted as a Class 6 Snack Bar considering that the proposal is for a cafetteria/bar wherein no kitchen - domestic or not is necessary.

• It must be noted that clearances submitted by the Applicant from the respective departments (KNPD, Direttorat Ghas-Sahha Ambjentali, etc.) referred to drawings which were superceded by new drawings. The EPC Board, unaware of this, granted the respective permit for drawings which were not vetted and/or approved by any department.

In view of all these facts and considerations, my Client sincerely hopes that the EPC Board shall look upon this appeal favorably."

Ra r-risposta tal-Awtorita' li giet prezentata fit-23 ta' Settembru 2014 li taqra' kif gej;

"5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The third party appellants submitted arguments against the approval of PA151/14 in letter dated 3rd June, 2014 (Doc 92 in PA file).

5.2 The Authority has the following comments to make:

5.2.1 Process of the Application

The appellant is arguing that the applicant submitted the requested drawings and the Engineer's Report not within the stipulated period of 5 days. The Authority notes that contrary to what the third party appellant is claiming, the EPC requested the applicant to submit, within 10 days, the above mentioned document on the 9th April 2014:

"EPC B held on 09 April 2014 Architect to provide within 10 days (without prejudice to final decision)

1. detailed plan and section of shaft showing proposed flue to its full height.

2. engineer's report to be updated accordingly and noise levels given at nearest sensitive receptor and not to exceed 45dB."

As correctly said by the same appellant, these documents were submitted on the 18th April 2014, that is within the timeframe as directed by the EPC in minute 52. Following the submission of these document, the EPC met on the 7th May 2014 and approved the application “subject that the perit shall within 5 days submit fresh plans which address the following issues:

1 an updated engineer's report incorporating both clarification and latest drawings

2 Any other alterations to the plans and which do not address the said matters indicated above shall not be considered and shall not be construed as approved.

Condition 5 to be amended to read for 4 parking spaces since entire front garden in 72sqm.”

Eventually, permit PA 151/14 has been issued following the submission of the amended engineer’s report on the 11th May 2014 after EPC’s decision. The Authority confirms that there were no late submissions as being alleged by the third party appellant and therefore their claim that the application is void cannot be justified.

The Authority also notes that the appellant is incorrect to claim that the applicant did not submit the updated engineer’s report prior to the EPC meeting on the 7th May 2014. In fact an engineer’s report has been submitted by the application on the 18th April 2014.

5.2.2 Third Party Rights

According to the third party appellants, the applicant proposed to pass the chimney flue through the common service shaft and therefore he was bound to seek consent from all overlying third party properties. Other issue raised by the appellants is that it is impossible to install the chimney as proposed without the need to remove / redirect the existing services and that the proposal includes the demolition of a projecting part of the roof which is co-owned . The appellants noted that they gave no consent to carry out these alterations. The Authority points out that the applicant is bound to carry out the proposed development as indicated on the approved drawings. If the development is not compliant with the approved drawings, the applicant would be subject to enforcement action. Furthermore, the Authority remarks that these issues are related to third party civil rights. These are protected by any development planning permit, including the one subject of this appeal, which are all issued with a proviso saving third party rights.

The third party appellants also note that the applicant should have submitted a Certificate of Ownership B. In this regard, the applicant was not required to submit such certificate since no development was being proposed within that property except for the use of the service shaft for the installation of services (flue). In similar cases, applicants are never required to submit a Certificate of Ownership B to use a common shaft for the installation of foul water drainage pipes or any other services. Moreover, the Authority notes that the service shafts are not indicated as owned by the applicant. Therefore the appellants are incorrect in stating that the applicant made an “incorrect declaration”.

5.2.3 Sanitary Issues

The third party appellants are arguing that the appellant wrongly indicated the internal height of the W.C. as 2.4m instead of 2.1m and therefore it was not compliant with the sanitary laws and regulations. The Authority respectfully points out that this Tribunal does not have jurisdiction to hear and decide on this issue since the argument is based on sanitary laws and regulation grounds.

5.2.4 Technical Reports and Consultations

The appellants pointed out that there are a number of issues which arise from the clearance of the Direttorat Ghas-Sahha Ambjentali and the Engineer’s reports. The Authority remarks that these are reports issued by independent consultees / professional bodies which provide consultation on specific issues. These reports and clearances are listed as approved documents in the permit and the applicant is obliged to comply with all the conditions imposed by these entities.

5.2.5 Other Matters

The third party appellants are alleging that no MTA clearance was not sought and/or granted. In this regard, the Authority notes that the Tourism Compliance Certificate has been submitted by the applicant at document 1D in the PA file. The Authority also confirms that the proposed property designation is a “Snack Bar”.

6.0 REQUEST

6.1 For the above-mentioned reasons, the Malta Environment & Planning Authority respectfully requests the Environment and Planning Review Tribunal to confirm the decision of the EPC and confirm development permit PA 151/14.”

Ra r-risposta ghal dan l-appell tal-Perit Daniela Chetcuti ghall-applikanta prezentata fit-18 ta’ Lulju 2014 hekk kif gej:

“With reference to Perit Grima's letter dated 19th May 2014 but lodged at MEPA on 3rd June 2014 and received by the Applicant (Ms. Maria Debattista) on 26th June 2014, which lists the reasons why the residents overlying my Client's property are objecting to the EPC's Board decision to grant permission for application no. PA 00151/14 having description: "Minor alterations (including the introduction of a light weight enclosure with retractable roof) to change use from existing shop to cafeteria/bar (class 6)", I hereby detail my response accordingly.

Please note that the points outlined in Perit Grimes letter are not numbered, so it is kindly requested that the replies below are read in conjunction with the former, so as to avoid confusion.

1. While it is true that the shaft dimensions were erroneous on the submitted drawings, I categorically state that this was a result of a genuine human error, and was not intentionally done in order to "mislead" the EPC Board representatives. In fact, following the EPC Board meeting of the 9th April 2014 (decision deferred to 7th May 2014) fresh drawings were submitted accordingly and within the requested time frame.

It is incorrect for Perit Grima to state that this was not done "within the legal time frame" hence making the application "void". The proof of this is as per document "DOC01 EPC Deferral 9th April 2014 (53a)" attached. One may note that the time frame given by the Board was that of "ten days" and not of 5 days as Perit Grima is claiming. In fact, he erroneously quoted the instruction given by the EPC Board during the following meeting, that is, on the 7th May 2014.

2. Again, Perit Grima is erroneously making reference to the instruction given by the EPC Board during the second meeting, that is, that of the 7th May 2014. During the meeting of the 9th April 2014, only the following documents were requested and subsequently submitted on the 18th April 2014 (as shown in E-Apps Document List extract below):

i. Revised Architect's drawings showing correct dimensions of the shaft.

ii. An Architect's drawing showing a section through the shaft and chimney flue.

iii. A clarification from the Engineer that the proposed chimney flue is sufficient to cater for it's intended use.

The fact that Perit Grima is making reference to the Board decision of the 7th May 2014 Board and erroneously stating that this was decided on the 9th April 2014, and failing to quote what was indeed the instruction on the latter makes his argument null and void. Moreover, Perit Grima's failed attempt at trying to show that the EPC Board's instructions were not adhered to by the Architect in Charge it is consequently misleading the Tribunal.

Following the EPC Board's decision of Wednesday, 7th May 2014, the documents requested were indeed submitted by the undersigned again within the correct time frame, not as Perit Grima is again insinuating. The documents were submitted on Sunday, 11th May 2014, therefore within the 5 day time frame, as shown in the E-Apps Document List extract below.

The letter sent to the Architect in Charge following the second and final EPC meeting is also attached and has reference "DOC02 Post Decision Requirements 12th May 2014 (68a)". This letter only asked for an additional request for payment in CPPS scheme a result of a higher number of parking spaces as the request for information by the EPC Board was already satisfied by the undersigned on the 11th May 2014. Therefore, the documents were in reality submitted prior to MEPA actually requesting for them in writing.

It must also be pointed out that the undersigned was not "reminded" to submit a revised Engineer's report/drawings as it was during the second and final EPC Board Meeting that the members specifically asked the Architect in Charge to submit a revised report to conglomerate the a) Engineer's Report, b) revised Engineer's drawings and the c) clarification regarding the chimney flue shaft and noise levels at the nearest sensitive receptor. One must note that the two latter documents were already submitted post the Board Meeting of the 9th April 2014, but the Board wanted to make sure the documents were all submitted as one whole report simply for comprehensive and easy reference.

Furthermore, the Board did not specifically ask for "signed" drawings by Ing.Silvio Aquilina, as Perit Grima is reporting. The drawings handed by Ing. Aquilina have his full details printed on them, as do the reports.

3. Perit Grima is again making an incorrect assumption when he states that "the Applicant has no direct access to any of the shafts on site". Indeed this is false as can be clearly shown in the photos included in the attached document "DOC03 Photos of shaft from Applicant's property on ground floor". Furthermore, it must be noted that when maintenance work was required in the shaft in the past, this was accessed from the Applicant's window overlooking the shaft.

Perit Grima' s Clients claim that" the Applicant does not own the shaft but only has the right of use" is currently being contested in the Civil Court following a suit filed against my Client by the same group of residents. Therefore, it is only pertinent to comment on this point once the Civil Court has reached its verdict and not at this stage.

In view of the fact that my Client does not solely own the full shaft where the chimney flue is proposed to be installed, copies of the registered letters have been in fact submitted as per MEPA regulations whereby all the owners of overlying apartments have indeed been informed through registered mail as per attached document "DOC04 Registered Letters (18j-18m)". Copies of these have been submitted to MEPA on the 19th November 2013.

Not only did Perit Gnma's Clients receive the notification, but they actually sent a letter of objection signed by Dr. Robert Piscopo as per attached document "DOC05 Objection Letter {ML. a copy of which was also submitted to MEPA on the 19th November 2013. Furthermore, Perit Grima is again incorrect when he states that Section 15 of the MEPA application form was not filled in properly. Proof of this is the attached document "DOC06 Revised Application Form(18a)" submitted to MEPA on the 19th November 2013 whereby my Client declares that she is not the sole owner of the shaft in question.

The permit in question was therefore issued with all relative documents lodged through E-Apps so that the Case Officer and later the EPC Board could make an informed recommendation/decision accordingly, despite Perit Grima tries to prove otherwise.

The undersigned therefore cannot accept Perit Grima's claim that a false declaration was lodged in the application for this development and does not understand why Perit Grima is trying to discredit the responsible way in which MEPA regulations have been adhered to throughout the handling of this application by the Architect in Charge.

4. With reference to Perit Grima's claim that "PAl00151/14 proposes the demolition of the projecting part of the roof owned in part by one of the registered objectors, and that no consent was given by the latter to demolish part of this roof (marked in yellow on doc.55c)", this is again untrue as the owner of the apartment was informed together with the other owners that the common shaft was being affected by this application, as per previous point.

Furthermore, it must be pointed out that the projection of the ceiling (not "roof' as quoted above) of the ground floor property owned by the Applicant results from negligence perpetrated during the original construction of the block. Indeed, the concrete precast slab was erroneously positioned to project into the shaft, hence causing part of the shaft to reduce in width for the depth of the slab. This application therefore strived to make good such a construction error, which was anyway originally executed within the height of the building owned by the Applicant, where the "height of a floor" is defined as per Policy 2.2 (Diagram 2.2), in DC 2007.

5. When the EPC Board requested a clarification regarding the noise levels generated by the proposed kitchen hood (located on upper ground floor) at the "nearest sensitive receptor", given that the registered objectors on upper levels challenged it, the appointed Engineer quoted the noise level at the window located on first floor, which belongs to one of the Objectors. Ing. Silvio Aquilina advised that the noise level at this point would not be greater than 38 dB, which is acceptable by MEPA guidelines.

Though the noise level at the lower ground floor window belonging to the owner of the property adjacent to the Applicant's property was not quoted, it may be said to be equivalent or less to that on first floor, as the distance from the said hood to this window is greater than that to the first floor window belonging to one of the objectors. It must also be noted than the neighbouring ground floor window was actually included in the submitted section through the shaft, which shows that there was no intention to conceal the fact that it exists. It must also be pointed out that the owner of the neighbouring ground floor property in question is not one of the Objectors to the proposal.

Therefore, Perit Grima's claim that the documents submitted are "misleading", is essentially false. The Sanitary Regulations Officer who vetted the documents could have easily asked for more information if this was required or unclear.

6. While it is true that the shaft in question has "numerous foul/rain water pipes" along its full depth, which leads Perit Grima to conclude that "such a chimney is impossible to install considering that third party services need to be removed and/or

redirected", one must question why such pipes were not installed following good practice in the first place.

The Applicant has right of use of the shaft, which includes the right to install a service which is necessary for the proper function of the MEPA-approved use of the space. In this case, my Client needs to install a 150mm chimney flue in the centre of the shaft, which according to the dimensions taken by the undersigned on site, will fit so that a minimum distance of 300mm between the flue and the party walls is ensured. The full length section of the shaft was in fact endorsed by the Sanitary Regulations Officer at MEPA.

Therefore, if on the actual installation of the MEPA endorsed chimney flue, some pipes need to be redirected/moved simply because they were not installed according to the trade's best practice, the undersigned does not find a reason why Perit Grima's Clients should object. The function of the services will not be undermined and if at a" necessary, such work will be executed at the Applicant's expense.

7. Perit Grirnas comment that "such a proposal would generate a deleterious impact on existing adjacent uses" is not fully understood by the undersigned. In what way will a 150mm chimney flue in a service shaft negatively impact on existing adjacent uses? The Objectors' Architect states that "the latter proposal will also affect the light and ventilation which my Clients are entitled to" and goes on to quote Policy BEN 1. This policy clearly states that a "deleterious impact" is considered to result from "visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual opening time, or any other characteristic which in the opinion of the Planning Authority would constitute bad neighbourliness".

Now, one must point out that the chimney flue installation will not cause any of the above. As regards visual intrusion, this is simply a pipe installed vertically in a service shaft. No noise, vibration, atmospheric pollution etc. quoted above will be generated by the chimney flue, the function of which is simply to direct warm clean air upwards 3m above roof level.

Furthermore, Perit Grima states that such a chimney will impede his "Clients from opening the respective windows overlooking the yard". It must be noted that a" windows are two-leaf opening out into the shaft, and are narrower than the average width of the shaft which is O.77m, so it will in fact be possible for the aluminium apertures to be opened by the bathroom users on each floor.

8. Perit Grima is again vaguely implying that the shaft section submitted by the undersigned intentionally did not include information in order to mislead/misinform the Sanitary Regulations Vetters at MEPA, which would lead to some kind of benefit to the Applicant. This notion again tries to undermine the professional integrity of the Architect in Charge, which is not acceptable.

The service shaft's walls in question are unfortunately not built according to best practice, so that the width and length vary at practically every level. When the average dimensions per level were quoted in the shaft section document, as per "DOCO? Section through service shaft (55c)" attached, the dimensions at fourth and penthouse level were simply not included cause it was necessary to show that the chimney flue is at 0.30m from the walls at both ends.

So such an omission resulted from the need for the respective drawing to be as clear as possible and in real fact, if one needs to know the clear dimensions of the shaft at the upper levels, a scale rule can simply be used as the drawing is obviously drawn to the correct dimensions at each level.

9. In the case of the KNPD's Architect's instruction that a wheelchair accessible lift must be provided given that the upper ground floor level is going to be used as a kitchen rather than a store, one should point out that unfortunately, and as far as the undersigned is informed, the Case Officer in charge did not re-send updated drawings to the KNPD when the proposed store was changed to a kitchen.

This was very probably a genuine oversight on the Case Officer's part. However, it should be noted that even if the KNPD were informed of this change at the time, the Applicant would have requested the case to be vetted by the Test of Reasonableness Board, where it would have been argued whether the need of a wheelchair accessible lift would have been objectively necessary for the given area of the existing premises.

Furthermore, it must be noted that following the issue of MEPA Circular 2/14, where conditions for exemption from accessibility requirements are outlined, the given development would very probably be eligible for exemption if the application were to be filed and vetted on this day.

10. Perit Grimas points out his concern that both the accessible WC and the secondary WC on lower ground floor have a clear height of 2.1 m. It must be noted that although the plan indicates a headroom of 2.4m in the accessible toilet, this is

clearly a result of a typographical error, as both plans and section show that there is no change in ceiling level between the accessible toilet and the secondary toilet and store at the same level. Therefore, even though the Sanitary Regulations Officer did not point out the error, he had all the information in hand to be informed on the clear heights of all areas mentioned when vetting the drawings.

11. Perit Grima quotes the document issued by the Direttorat Ghas-Sahha Ambjentali and states that a number of instructions have not been adhered to. However, to counteract such claims one should kindly be informed that:

i. The room of 2.1 m height which is referred to as a "food store" by the Objectors' Architect is marked as "store" on the submitted plans. Therefore, this room does not qualify to have a minimum height of 2.29m as quoted.

ii. Again, assumption is made by Perit Grima that the "store" on lower ground floor is going to be used for storage of food, so that an ante-room is necessary adjacent to the proposed toilets, which is not the case.

iii. Given that natural ventilation in the accessible toilet is not possible, mechanical ventilation will be provided as recommended in the report drafted by Ing. Silvio Aquilina and submitted to MEPA accordingly. Quoting from the "Fire and Ventilation Report" "Moreover, a separate extraction system shall be provided in the restrooms. The extraction system shall be ducted and extracted out of a high level extraction grille in the adjacent shaft. "

iv. A mechanically activated/chemical grease trap will be installed at upper ground floor level as confirmed with the said Direttorat accordingly. Also it must be pointed out that MTA will not issue a permit without a grease trap installed on site anyway, so there is definitely no intention to omit it.

12. The Objectors' Architect again writes about his concern regarding the noise levels quoted in the Engineer's report at the nearest sensitive receptor. With reference to the remarks made by the undersigned in point no. 5 above, one should make it clear that the noise generation which the Engineer studied in his report is the installation of the kitchen hood on upper ground floor, as this was the reason for concern pointed out by the same Objectors following the first EPC Board Meeting. In this regard, the nearest recipient is definitely more than 0.77m away from the kitchen hood which counteracts Perit Grirnas argument.

If the undersigned is correct in interpreting Perit Grirnas comment as to refer to the noise generated by prospective patrons of the premises, one should note that the noise generated is not envisaged to be of nuisance to the neighbouring residents. It must be reminded that this Class 6 premises is located in the prime Tourism Zone

(Triq it-Turisti c/w Triq il-Merluzz) of Qawra, as specifically defined in the Local Plan for the area. There are a number of other catering establishments not only in the same street, but also within the same block.

13. Perit Grima also reports that certain information pertaining the kitchen hood was not forthcoming in the Engineer's Report. The following quotes challenge his claim:

i. In the "Fire and Safety Report" drafted by the Engineer it is stated that: "The kitchen area shall have forced ventilation through a kitchen hood located above the cooking equipment. The kitchen hood shall provide the necessary negative pressure within the premises in order to extract all fumes out of the premises. The extracted air shall be routed from the hood to the roof through ventilation ducting located in the service shaft.

ii. In "Noise Report" Ing. Aquilina states that: "the noise levels emitted from the kitchen hood fan will not exceed 38dB(A) and will be attenuated further due to third party walls.

iii. A detailed description of the kitchen hood including reference to the type of filters used is given by Ing. Aquilina in the attached document. "DOC08 Engineer's Declaration".

14. The Objectors' Architect states that the proposed kitchen is being considered by Ing. Aquilina as of the "domestic type". This assumption is unfounded as when Ing. Aquilina stated that "Considering the size and use of the premises, the type of equipment and machinery shall be limited to that as used domestically", he is not defining the proposed kitchen as domestic, but he is simply comparing it to a domestic kitchen. This was done in view of the size and nature of the equipment which is planned to be used.

Perit Grima goes on to point out to the Appeals Board that "A professional opinion was obtained by my Clients from an Engineer with this regards and it was noted that the flue as approved is not functional and/or adequate for the use proposed given the circumstances". Due the fact that the Engineer claimed to be making such a declaration has not been mentioned by name or warrant number, nor a written Engineer's declaration has been submitted by the same, the undersigned sees no reason for such an "opinion" to be considered by the Appeals Board. Ing. Silvio Aquilina has given his professional advice in a report which bears his name and warrant number, therefore questioning his professional competence with no official document to support the contrary is not acceptable.

15. It is untrue that "clearance from MTA was not sought and/or granted" as claimed by Perit Grima. Proof supporting this is the attached document "DOC09 MTA

Clearance (1d)". The simple reason why the premises is classified as a "Snack Bar" by MTA is that the designation "Cafeteria/Bar" falls within the "Snack Bar (Second Class)" category in MTA's application, part of which is also included in the attachment for easy reference.

When the Applicant specifically asked MTA which box she should tick, they advised that the "Snack Bar (Second Class)" option should be declared. Therefore, there was no intentional discrepancy between the description of use of the space given in the MEPA Application with respect to the MTA Application. It was just a matter of failure to include the nomenclature "Cafeteria/Bar" in the latter's list of options on the application. The clearance from MTA grants the Applicant the right to cook reiterates points already discussed and argued earlier so these are not going to once again be counter-argued here.

I trust that following careful consideration by the Environment and Planning Review Tribunal of the clarifications/reasons listed in this response, the Objectors' request for the revocation of the grant of development permission is upheld accordingly."

Ra s-sottomissjoni ulterjuri tal-appellanti prezetntata fit-13 t' Ottubru 2014, u r-risposta tal-applikanta tal-14 ta' Novembru 2014;

Ra r-rapporti teknici tal-Ing C Cuschieri ghall-appellanti prezentati fit-28 t'Ottubru 2014, u 22 ta' Jannar 2015m, u tal-Ing Silvio Aquilina ghall-applikanta prezentatifl-14 ta' Novembru 2014 u fit-23 ta' Dicembru;

Ra l-PA file 104/14;

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

Ikkunsidra ulterjorment:

Illi d-diversi aggravji mressqa f'dan l-appell jistghu jigu migbura hekk kif gej:

1. Zmien ta' meta gew sottomessi l-pjanti reveduti;

2. Dikjarazzjoni ta' ownership;

3. It-tqeghid tac-cumnija fis-shaft;

4. Dokument approvat tal-Kummissjoni Nazzjonali dwar Persuni b'Dizabilita';

5. Permessi u kondizzjonijiet tas-Sanita, Dipartiment tas-Sahha Ambjentali u MTA;

6. Generazzjoni ta' hsejjes

L-ewwel aggravju:

Mill-inkartament tal-process tal-applikazzjoni dan it-Tribunal seta' jikkonstata dan li gej:

1. Illi fl-ewwel laqgha tal-Kummissjoni meta giet diskussa din l-applikazzjoni tad-9 t'April 2014, il-Kummissjoni talbet ghal pjanti godda mill-applikanta li kellhom jaslu fi zmien ghaxar (10) t'ijiem skont il-minuta numru 52, u mhux 5 t'ijiem kif qed jallegaw l-appellanti. Dawn il-pjanti waslu ghand l-Awtorita' fit-18 t'April 2014;

2. Fit-tieni laqgha, dik tas-7 ta' Mejju 2014 meta giet deciza din l-applikazzjoni, il-Kummissjoni talbet lill-applikanta sabiex tipprezenta fi zmien hames (5) t'ijiem korrezzjoni tal-engineer's report sabiex jirrifletti l-ahhar pjanti approvati. Dawn id-dokument fil-fatt gew prezentati fil-11 ta' Mejju 2014;

Illi huwa evidenti li l-aggravju mqajjem mill-appellanti ma fih xejn fis-sewwa, u ghaldaqstant qed jigi michud;

It-tieni aggravju:

It-tieni aggravvju jikkoncerna dikjarazzjoni ta' ownership fl-applikazzjoni li skont l-appellanti din hija hazina ghax l-applikanta ma setax tiddikjara sole ownership, anzi kellha jgib il-kunsens tal-owners tas-shaft fejn ser tghaddi c-cumnija qabel ma tkun tista tapplika.

Fl-ewwel lok, dan it-Tribunal seta' jinnota li d-dikjarazzjoni fl-applikazzjoni a fol 18A fl-inkartament tal-PA 151/14, prezentata qabel ma giet validata l-applikazzjoni hija wahda korretta fejn qed tindika li l-applikanta mhiex the sole owner fir-rigward tal-internal shaft. Flimkien ma l-ittri registrati lis-sidien dwar in-notifika tal-applikazzjoni (a fol 18J-18M), gie prezentat ukoll l-oggezzjoni tas-sidien ghall-installazzjoni tac-cumnija fis-shaft komuni skont l-ittra a fol 18.

Illi l-Artikolu 68(3) tal-Kap 504 jipprovdi illi “min japplika għal permess għall-iżvilupp għandu jiċċertifika lill-Awtorità: (a) li huwa s-sid tal-art jew li avża lis-sid bl-intenzjoni li japplika b’ittra reġistrata li l-Awtorità tkun irċeviet kopja u li s-sid ikun ta’ l-kunsens tiegħu għal dik il-proposta; jew (b) li huwa awtorizzat li jagħmel dak ix-xogħol propost permezz ta’ xi liġi oħra jew ftehim mas-sid.”

F’dan il-kaz, l-applikanta ma hbitx il-fatt li kunsens ghall-installazzjoni ta’ cumnija gewwa s-shaft kien ghad ma kellhiex, ghalkemm dan il-fatt m’ghandux ikun ta’ ostaklu ghall-Awtorita’ li tkompli bil-process tal-applikazzjoni kif sottomessa, meta tali kunsens kien biss relatat ma nstallazzjoni ta’ cumnija jew le u mhux rigward il-proposta fl-applikazzjoni ossia “Introduction of minor internal and external alterations so as to change use from existing shop to cafeteria/bar (class 6)”. Il-kunsens huwa hemm fir-rigward tal-proposta u mhux kunsens jekk l-applikanta jew l-Awtorita’ jistawx jipprocedu bl-applikazzjoni tal-izvilupp kif qed jishqu l-appellanti.

Fuq kollox, kull permess ghall-izvilupp mahrug mill-Awtorita’ huwa dejjem suggett ghad-drittijiet ta’ terzi. Dan ifisser illi kullhadd ghandu dritt li jattakka kwalunkwe permess li johrog ai finijiet tal-Ligijiet Civili u dana billi jirrikorri ghall-Qrati taghna.

It-tielet aggravju:

Illi dan l-aggravju jirrigwarda l-ilment principali dwar l-installazzjoni tac-cumnija fis-shaft komuni, li skont l-appellanti huma ma tawx il-kunsens li dan ikun jista jsir. L-oggezzjoni principali hija fir-rigward il-kobor tal-istess shaft fejn l-appellant qed jishqu li dan mhux kbir bizzejjed sabiex jakkomoda tali cumnijja jekk ma jinqalghux servizzi ezistenti, filwaqt li mhux possibli li jinzamm id-distanza ta’ 0.3 metri mill-hitan proprejeta tal-appellanti. Bl-installazzjoni tal-istess cumnija f’nofs is-shaft mhux ser ikun possibli li jinfethu l-aperturi li hemm fl-istess shaft.

Dan it-Tribunal jidhirlu li l-installazzjoni ta’ cumnija huwa parti minn makkinarju relatat mal-operat tal-istess stabbiliment u l-ilment jirrigwardja principalment kwistjoni ta’ natura civili li jmorru oltre mill-permess ta’ zvilupp. Jekk finalment jirrizultra li din ic-cumnija ma tistax tigi nstallata skont kif indikat fil-permess, sta ghall-applikanta li tuza sistemi alternattivi ghall-operat tal-kcina kif fil-fatt gja gie indikat mill-Ingineer Silvio Aquilina fl-ittra tad-19 ta’ Mejju 2014 prezentata mas-sottomissjoni tal-applkant fl-14 ta’ Novembru 2014, u dan wara talba ghal-emendi fil-permess tal-izvilupp.

Ir-raba' aggravju:

Illi f'dan l-aggravju l-appellanti rrelevaw li l-approvazjoni tal-Kummissjoni Nazzjonali dwar Persuni b'Dizabilita a fol 31A mhiex ibbazata fuq l-ahhar pjaniti approvati fil-permess. Il-kwistjoni principali tirrigwarda l-intermediate floor li fil-pjanti kunsidrata mill-Kummissjoni dan kien indikat bhala 'store' u mhux kcina kif fil-fatt gie finalment approvat. Fil-paragrafu 5.8 tal-istess dokument gie indikat illi "the intermediate level is not accessible to wheelchair users. As long as this intermediate level is used solely as a store this is fine. But if in future this level will have a different use, then a wheelchair accessible lift must be provided."

F'dan il-kaz, dan it-Tribunal jinnota li l-aggravju jolqot direttament kwisjtoni ta' accessiblita'. Min naha l-ohra, dan it-Tribunal huwa sodisfatt li l-istess permess huwa suggett ghall-clearance minghand l-istess Kummissjoni, qabel il-hrug tal-Final Compliance Certificate. Ghaldaqstant l-istess permess jahseb sabiex l-fond u l-uzu li ghalih inhareg il-permess jigi zgurat li jkun accessibli mill-entita' kompetenti. F'dan ir-rigward dan l-aggravju qed jigi ndirizzat fl-istess kundizzjonijiet tal-permess.

Il-hames aggravju:

F'dan l-aggravju qieghed jigi allegat li l-izvilupp qed jikser ir-regolamenti u l-ligi sanitarji billi qed jigi allegat deskrepanzi fil-pjanti, partikolarment fl-gholi tat-toilets. Dan it-Tribunal jinnota li tali pjanti gew approvati mis-Sanitary Engineering Officer, li certament dan it-Tribunal m'ghandux gurisdizzjoni li jirrevedi jew jissindika fuq tali decizjonijiet.

F'dan l-aggravju gie nnotat ukoll li l-pjanti ma josservawx il-kondizzjonijiet tad-Direttorat ghas-Sahha Ambjentali, minhabba nuqqas ta' ventilazzjoni tat-toilets u l-gholi tal-food store. F'dan il-kaz ukoll dan it-Tribunal ma ghandu ebda gurisdizzjoni li jissindika d-decizjonijiet tas-Sanita, jew tad-Direttorat tas-Sahha Ambjentali, filwaqt li l-istess permess tal-izvilupp jitfa l-onus fuq l-applikanta li ghandha tosserva l-kundizzjonijiet ta' dawn l-entitajiet.

L-ilment principali jibqa dwar in-nuqas ta' clearance mill-MTA, Dipartiment tas-Sahha Ambjentali u KNPD wara li gew mibdula l-pjanti. Kif gja gie accennat iktar 'il fuq, it-tibdil fil-pjanti jikkoncernaw caqliq fit-tqassim tal-fond, imam l-permess kif mahrug ma jezenorax lill-istess applikanta li ggib il-permessi u clearances necessarji minn dawn l-entitajiet sabiex tkun tista tibda topera l-fond kif approvat.

Is-sitt aggravju:

F’dan l-aggravju qed jigu mressaq dubbji dwar il-konkluzzjonijiet tar-rapport tal-engineer ikkommissjonat mill-applikanta fil-process tal-applikazzjoni, u dan kemm dwar l-emmissjoni tal-hsejjes, kif ukoll dwar il-ventilazzjoni mehtiega. F’dan ir-rigward, kemm l-appellanti u l-applikanta ressqu diversi sottomissjonijiet, inkluz rapporti u dikjarazzjonijiet minn enginiera migjuba bhala esperti sabiex issostnu l-argumenti rispettivi .

Fir-rigward l-ilment dwar il-generazzjoni tal-hsejjes, l-appellanti qed jishqu li d-distanza tan-nearest recepient kellha tkun dik ta’ 0.77 metri u mhux 2m u ghaldaqstant qed jinsistu li “the noise level at the nearest sensitive receptor exceeds the 45dB(A)”.

F’dan il-kaz dan it-Tribunal qed jaqbel mal-osservazzjoni tal-applikanta li the nearest recepient hija l-apertura tas-shaft fl-ewwel sular residenzjali, u mhux it-tieqa ndikata mill-appellanti li tinsab fil-pjan terran li huwa livell kummercjali. F’dan il-kaz l-asserzjoni li r-rapport tal-enginieer kien b’xi mod erranju mhux minnhu.

Dwar il-ventilazzjoni tal-kitchen area, dan it-Tribunal qed joqghod fuq id-dikjarazzjoni tal-engineer tal-applikanta li l-kcina hija wahda zghira u l-uzu taghha huwa limitat kemm minhabba d-daqs u t-tip ta’ ikel li qed jigi servut fl-istabbiliment. Fuq kollox l-istess permess jahseb sabiex l-engineer jiccertifika li l-izvilupp fuq is-sit sar skont dawk il-parametri u kundizzjonijiet li gew identifikati u dikjarat fir-rapport tal-istess engineer bhala parti mid-dokument tal-permess tal-izvilupp.

Konkluzzjoni:

Ghal dawn il-mottivi, u wara li kkunsidra l-fattispeci tal-kaz, dan it-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma l-permess PA 151/14.

Ikkunsidrat

L-aggravju tal-appellanti hu s-segwenti:

1. It-Tribunal iddecieda hazin meta iddecieda kontra dak li jghid l-artikolu 68(3) tal-Kap. 504. L-appellanti ma appellawx mill-bdil tal-uzu izda kontra li tghaddi cumnija minn shaft li l-appellanti jsostnu hi taghhom mhux tal-applikant. L-applikant stess jammetti li s-shaft mhux proprjeta assoluta tieghu. L-artikolu 68(3) jimponi obbligu fuq min mhux sid tal-izvilupp illi javza lis-sid b'ittra registrata b'kopja lil Awtorita u li s-sid ikun ta l-kunsens tieghu. F'dan il-kaz is-sid cioe l-appellanti ma tawx il-kunsens taghhom u ghalhekk l-applikazzjoni ghal permess in kwantu tikkoncerna c-cumnija ma kellhiex tintlaqa'. It-Tribunal qies li din ma kinitx relatata mal-proposta pero dan mhux minnu ghax il-parti tal-applikazzjoni li tirrigwarda l-moghdija tac-cumnija minn shaft hi parti mill-izvilupp. Lanqas hu korrett it-Tribunal li l-kwistjoni tirrigwarda drittijiet civili izda l-appellanti qed jinvokaw adezjoni mal-artikolu 68(3) tal-Kap. 504. In oltre l-proposta ta' zvilupp tinkludi li tigi demolita parti mis-saqaf proprjeta ta' Joseph Apap li tisporgi fis-shaft komuni.

L-aggravju

Dan jirrigwarda esklussivament l-applikazzjoni korretta o meno tal-artikolu 68(3) tal-Kap. 504 li jghid hekk:

> Min japplika ghal permess ghall-izvilupp ghandu jiccertifika lill-Awtorita:
>
> (a) li huwa s-sid tal-art jew li avza lis-sid bl-intenzjoni li japplika b'ittra registrata li l-Awtorita tkun irceviet kopja u li s-sid ikun ta l-kunsens tieghu ghal dik il-proposta; jew
>
> (b) li huwa awtorizzat li jaghmel dak ix-xoghol propost permezz ta' xi ligi ohra jew ftehim mas-sid.

L-appellanti jikkontendu illi huma mhux kontra l-izvilupp cioe li l-hanut isir restaurant izda kontra li cumnija proposta ghal operazzjoni tal-restaurant ser tigi mghoddija minn shaft li huma jikkontendu hi taghhom biss. Kwindi kellu japplika l-artikolu 68(3) fejn ma jinhareg ebda permess meta hemm oggezzjoni tas-sid.

Din il-Qorti tqis illi fl-ewwel lok dan l-aggravju trattat mit-Tribunal bhala t-tieni aggravju fid-decizjoni tieghu hu wiehed mhux ta' applikazzjoni izda ta' interpretazzjoni li din il-Qorti ma tissindakax hlief f'kaz eccezzjonali fejn it-Tribunal ikun mar kontra l-kliem espress tal-ligi jew

fejn l-interpretazzjoni h assurda. F'dan il-kaz it-Tribunal fehem li l-artikolu 68(3) qed jitratta l-kunsens tas-sid ghal proposta u mhux ghal kwisjtoni ta' fattibilita teknika biex tigi attwata l-proposta u fejn allura l-artikolu 68(3) mhux applikabbli pero jibqa' dejjem il-principju illi kull permess jinhareg 'saving third party rights'. Il-Qorti tqis illi din l-interpretazzjoni mhix wahda assurda u anqas tmur kontra l-kliem espress tal-ligi, u fil-fatt tista' tieqaf hawn.

Pero l-Qorti tqis illi ghandha tippreciza illi l-artikolu 68(3) hu intiz biex applikant li qed jissottometti proposta ta' zvilupp fuq art (jew proprjeta) ta' terzi jrid ikollu l-permess tas-sid ghal proposta. Fin-nuqqas il-Qorti tqisha l-obbligu tal-Awtorita li ma tintratjeniex ebda applikazzjoni ta' zvilupp meta ma hemmx dubju jew kontestazzjoni dwar il-fatt li l-applikant mhux sid l-art u fejn is-sid qieghed joggezzjona.

Madankollu fejn hemm kontestazzjni dwar it-titolu fuq il-proprjeta jew xi dritt reali jew anki personali fuq l-istess proprjeta li fuqha tkun mibnija l-proposta, l-Awtorita ma hix fdata tiddetermina l-kwistjoni ta' natura civili hi, izda ghandha tindirizza l-applikazzjoni biss mill-lat ta' ippjanar u kull permess li talvolta jista' jigi approvat, hu attwabbli biss fin-nuqqas ta' oppozizzjoni minn min ikun qed jivvanta dritt fuq il-proprjeta li fuqha jkun inhareg il-permess ta' zvilupp. Altrimenti kull min irid ifixkel lil Awtorita milli taqdi d-dover primarju li tikkonsidra proposti ta' zvilupp mill-lat tal-ligijiet ta' ippjanar u jista' facilment jistultifika l-process billi jivvanta dritt fuq is-sit u jwaqqaf il-procedura ta' ippjanar. Dan ma huiex l-iskop tal-legislatur. L-obbligu tal-Awtorita hi li f'kaz car ta' nuqqas ta' disputa fuq it-titolu tas-sit, jekk jirrizulta li l-izvilupp qed jintalab fuq sit ta' terz li qed joggezzjona ghall-izvilupp, l-Awtorita ma ghandhiex tintratjeni applikazzjoni fuq il-bazi teoretika biss ta' dak li jista' jigi zviluppat. Il-kwistjoni pero hi differenti meta l-partijiet mhix konkordi fuq it-titolu jew xi limitazzjoni fuqu u ma hemmx prova cara dwaru. F'dan il-kaz l-Awtorita hi libera li tiddeciedi x'inhu fattibbli u sta ghal partijet li jirregolaw ruhhom fuq kwistjonijiet purament ta' natura civili.

Wara kollox il-legislatur fl-artikolu 68(3) kien pjutost car fil-kliem uzat cioe li jekk mhux sid ikun avza lis-sid u s-sid ta l-kunsens ghal proposta maghmula ta' zvilupp minn terzi fuq proprjeta tieghu.

Fil-kaz prezenti l-appellanti mhux qed joggezzjonaw ghal proposta tant li ma ghandhomx oggezzjoni. In oltre lanqas huma konkordi mal-applikant fuq it-titolu tas-shaft li minnu ser tghaddi c-cumnija proposta minnu bhala parti mill-mekkanizmu necessarju ghall-attwazzjoni tal-proposta skond il-ligijiet tal-ippjanar. Huma jsostnu li s-shaft hu taghhom biss meta l-applikant jikkontendi li hu ko-proprjetarju. Din il-kwistjoni mhix relatata mal-proposta per se u hi wahda purament ta' natura civili li minnha jiddependi jekk l-applikant jistax jattwa l-izvilupp kif approvat. Fil-fatt l-aprovazzjoni tal-izvilupp ma tikkreja ebda drittijiet ta' proprjeta lil applikant li jrid xorta josservahom u ebda permess ma jawtorizzah jaghmel xogholijiet li jmorru kontra l-ligi civili. Fl-istess sens ghandu jinqara l-parti tal-aggravju tal-appellant Joseph Apap rigward l-isporgenza ta' saqaf f'parti mis-shaft.

Ghalhekk il-Qorti tqis illi l-appell mhux gustifikat.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Joseph Apap, u ohrajn u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' April 2015, bl-ispejjez kontra l-appellanti.

< Sentenza Finali >

----------TMIEM----------