



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum Il-Hamis, 10 ta' Dicembru, 2015

Numru 1

Appell Nru. 47/2015

Raymond Cassar

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Raymond Cassar tad-19 ta' Ottubru 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-1 ta' Ottubru 2015 li cahdet l-applikazzjoni PA 4099/05 'changes to approved development (sanctioning) including use as stables';

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:

Ra l-appell ipprezentat fl-14 ta' Jannar 2010, mill-Perit David Pace, f'isem l-appellant minn rifjut tal-permess ghall-izvilupp ghar-rigward l-proposta fl-applikazzjoni PA4099/05, ossia: "Changes to approved development (sanctioning) including use as stables" f'sit li jinsab fi Triq it-Torri Marsaxlokk;

Ra r-risposta tal-Awtorita' pprezentata fit-18 ta' Frar 2010;

Ra n-nota ta' sottomossjonijiet tal-Perit Robert Musumeci ghall-appellant ipprezentata fit-13 ta' Settembru 2010;

Ra t-tieni statement tal-Awtorita' pprezentat fis-26 t'Ottubru 2010;

Ra s-sottomissjoni ulterjuri tal-appellant ipprezentata fl-10 ta' Novembru 2010 u r-rispostant tal-Awtorita' pprezentata fid-29 ta' Novembru 2010;

Ra n-nota tal-Perit Robert Musumeci ghall-appellant ipprezentata fl-14 ta' Dicembru 2010;

Ra s-sentenza tat-Tribunal ta' Revizjoni ta' l-Ambjent u l-Ippjanar diversament compost tat-8 ta' Marzu 2011, li cahad l-appell;

Ra s-sentenza tal-Qorti tal-Appell (Kompetenza Inferjuri), hawn aktar 'l isfel f'din id-decizjoni referita bhala l-Qorti tal-Appell, tad-29 ta' Marzu 2012, li laqghet l-appell billi rrevokat d-decizjoni tat-Tribunal tat-8 ta' Marzu 2011 u rrinvjat l-atti lura lit-Tribunal biex jerga jisma' l-appell mill-gdid;

Ra s-sentenza tat-Tribunal ta' Revizjoni ta' l-Ambjent u l-Ippjanar diversament compost tas-17 ta' Gunju 2013, li cahad l-appell;

Ra s-sentenza tal-Qorti tal-Appell tat-22 ta' Jannar 2014, li laqghet l-appell billi rrevokat d-decizjoni tat-Tribunal tas-17 ta' Gunju 2013, u rrinvjat l-atti lura lit-Tribunal biex jerga jisma' l-appell mill-gdid;

Ra s-sottomissjoni ulterjuri tal-Perit Katia Agius ghall-appellant iprezentata fil-25 ta' Lulju 2014 hekk kif gej :-

"I am writing on behalf of the appellant Ray Cassar, with regards to the decision of the Court of Appeal, dated 2200 January 2014. The decision states that the application should be determined according to the policies in force during the processing of the application, thus the policies pre- 'Policy and Design Guidance - Agriculture, Farm Diversification and Stables, December 2007'.

In order to fully appraise the period of the application, it is necessary to give a chronology of events:

1. Submission of Application for Development Permission – PA 4099/05 received on 4th July 2005 - Changes to approved development (Sanctioning).
2. DPA report recommending a refusal – dated 20 April 2006.
3. MEPA letter giving two way forwards for the processing of the application - dated 16th April 2007.
4. Architect's letter stating that client wishes to continue with the processing of his application as per current policies - dated 11 May 2007.
5. Refusal of Development Permission - dated 6th October 2008.

We would like to draw the Tribunal's attention to various applications for the construction of stables in areas outside the limits of development, which were approved by MEPA.

PA 6892/94 (To construct 7 horse stables and fodder stores), Birzebbugia - approved on 21st June 1995. The Board approved the construction of stables in an area outside the limits of development, situated adjacent to an existing residential dwelling.

PA 2038/97 (To regularise part of existing building and change of use of building into stables to keep horses for horse riding), Xaghra, Gozo – appeal approved on 23 July 1999. The appeal was approved in view of the fact that the proposed development which consisted of stables should be located outside the limits of development as it is considered a project of agricultural nature, even though the proposal runs counter to various MEPA Policies.

PA 3237/05 (To construct stables), Munxar, Gozo – reconsideration approved on 15th October 2007. The Board approved the proposed development, even though the site in question is located more than 300m from the development zone, thus not in accordance with the policy guidance.

PA 6805/05 (To construct stables), Zebbug - reconsideration approved on 9th July 2007. The proposed development was also not considered acceptable in the light of the Draft Policy and Design Guidance Agriculture, Farm Diversification and Stables 2004 which requires that all the criteria specified in policy 3.3 B are met, in order to consider the development of stables outside the limits of development. Nonetheless, the application was approved by MEPA.

PA 5440/05 (To construct stables), Siggiewi - approved on 30th May 2006. Even though the proposed development is located in an area known for its high agricultural value, and the development is not according to policies, the permit was approved by MEPA.

PA 0334/06 (To construct stables and reservoir), Ghaxaq - approved on 17 April 2007. The proposed development was not considered acceptable in the light of the Draft Policy and Design Guidance Agriculture, Farm Diversification and Stables 2004, but was the same approved.

PA 5983/06 (Proposed construction of stables for the keeping of horses, and manure clamp related to the stables, and proposed construction of rubble boundary wall and timer gate), Siggiewi - approved on 4 July 2007. Application was approved in view of similar applications for the construction of stables approved by MEPA.

PA 5952/06 (To construct stables), Zejtun - approved on 18th July 2007. Even though the proposed development was not in line with the criteria of policy 4.3 B of the Draft Policy and Design Guidance Agriculture, Farm Diversification and Stables 2007, the application was approved.

The above cases are a clear example of how an appreciable amount of permits for stables were being issued at the time when the appellant submitted his application. Appellant is requesting that his case be treated identically to the cases quoted, or else he will be discriminated. Furthermore, the Tribunal should note the various cases which were being approved by the Appeals Boards, stating that stable facilities are more desirable to be located outside the developed zone.

Appellant is also willing to increase the planting of trees for further screening if required and demolish the two rooms situated away from the main block to reduce the footprint.

The appellant is thus requesting that the refusal be reversed and that the permit for the application in caption be issued.”;

Ra r-risposta tal-Awtorita' pprezentata fid-29 ta' Settembru 2014 hekk kif gej:-

“1.0 COMMENTS ON APPELLANT’S ARGUMENTS

1.1 Following the submission of the initial report and subsequent statements by the Authority, the appellant submitted additional comments in letter dated 20th July, 2014 (Doc 91).

1.2 The Authority has the following comments to make:

1.2.1 Opening Comments

Following all previous reports and statement, the appeal against refusal for the proposed development was dismissed by EPRT in decision dated 17th June, 2013. Notwithstanding this, the case was heard at Court of Appeals in Civil Appeal Number 46/2013 where it was decided on 22nd January, 2014 that the case is to be sent back to the EPRT to decide the proposal against the policies in vigore at the time the application was submitted (July 2005) and not on the Policy and Design Guidance: Agricultural, Farm Diversification and Stables (2007) issued at a later stage. For clarification purposes, this nullifies any attempts which may be made (present or otherwise) on any parts, for the case to be determined on the recently approved Rural Policy and Design Guidance (2014). The Court of Appeal decision is clearly accepting the appellant’s clear request that the proposal is to be determined on the previous policies and therefore any forthcoming

planning decisions for the proposed development must follow the decision of the Court of Appeal.

1.2.2 Reply to Comments

In Fourth Statement the appellant is presenting a chronological timeframe of events in the processing of this development application to sustain the argument that the development was processed and decided incorrectly on the Policy and Design Guidance for Agriculture (2007).

Whilst the Authority acknowledges that the reasons for refusal in the decision taken by DCC Board (30th September, 2008), Reconsideration Board (9th December, 2009) and EPRT (17th June, 2013) made reference to the Policy and Design Guidance on Agriculture (2007), the original DPA Report drafted by the Planning Directorate (Doc 15 in PA File dated 12th April, 2006 and subsequent NTCs) were making use of the policy framework present at the time as being requested by the appellant and sustained in Court of Appeal decision.

In view of the ongoing amendments to the policy framework present at the time, the Authority consulted with the appellant in letter dated 16th April, 2007 (Doc 32 in PA File) to advise MEPA whether he wished the development to continue processing under the current policies or whether the application is to be kept on hold until the finalisation of the policies being revised. In reply dated 11th May, 2007 (Doc 33 in PA File) the appellant informed that he wished to continue the processing of his application under the policies in vigore at the time; but changed the proposal description to read: changes to the approved development (sanctioning), including use as stables.

Although the processing stages of the application had already seen the DPA Report and subsequent Notes to Committee compiled, this change to the proposal description required that the application would need to return to the opening stages as re-publishing, printing and placing of site notice, allow a legally-fixed time period to elapse to allow any representations or objections to the development to be submitted to the Authority; and then the processing stages will be allowed to carry on.

Seeing that the amended Policy and Design Guidance came into force in the final months of 2007, the proposed development now found a new policy framework in use for processing. When the Authority had requested the appellant to inform whether the he wished the proposal description to be continued or put on hold, the appellant chose to continue the processing stages. This is in fact what happened.

The Authority did not hold the proposal to await the issue of the new Policy and Design Guidance on Agriculture (2007) nor did it go against the request of the appellant to continue the processing. The changes resulted inadvertently on the Authority's end as a result of the appellant requesting to alter the proposal description. After the matter was settled the Authority was correct in processing the development proposal against the newly issued

policy framework as it was not bound to maintain the old policy framework now that the new policies were issued. In correspondence between the appellant and MEPA during April/May 2007 It was simply determined the appellant that it was his desire to continue the processing stages at the time rather than await any new policies.

In Notes to Committee dated 18th April, 2008 (Doc 37) the Authority reassessed the proposal against the new policies. The requested proposal against the policy framework present at application stage (in 2005) was always recommended for refusal and the amendment in policy framework merely resulted in alterations to the reasons for refusal to reflect the 2007 policies rather than those which had then been superseded. If anything the original reasons for refusal as per DPA Report (6 in total) were reduced to four (4) prior to DCC Board decision as a result of the changes made.

1.2.3 Closing Comments

The Authority asserts that the attempts being made by the appellant to indicate that the proposal should be reverted in decision against the policies present at time of application (in 2005) is highly misleading as it is attempting to shed light that had this procedure been done in the first place, then the development would have been approved by DCC Board.

It has always been practised by Tribunal that any decisions to be made must be done so against the policies in vigore at the time.

Notwithstanding this and solely for the case in concern, the Court of Appeals has advised that the reasons for refusal and subsequent dismissal by EPRT in 2013 cannot stand. The Authority rests on the arguments made against the development in DPA Report, subsequent Notes to Committee and Reasons for Refusal; and concludes that the development is unacceptable from a planning point of view under all policy frameworks in use in the year 2005.

2.0 CONCLUSION

2.1 The Authority reiterates that in line with its previous reports, this request for appeal goes against the present planning policies relevant to this area and hence respectfully requests the Environmental and Planning Review Tribunal to dismiss this appeal.”;

Sema' lill-Perit Katia Agius ghall-appellant;

Sema' lis-Sur Darren Fava u lill-Avukat Dottor Anthony De Gaetano LL.D. ghall-Awtorita`;

Ra l-atti kollha, l-verbali u d-dokumenti kollha esibiti;

Ra l-file PA file 4099/05;

Ikkunsidra ulterjorment:

Hekk kif gie deciz mill-Qorti tal-Appell skond is-sentenza tad-29 ta' Marzu 2012 u kif ukoll dik tat-22 ta' Jannar 2014, u kif maqbul fil-verbal tas-17 ta' Gunju 2014, din l-applikazzjoni qed tigi kkunsidrata fuq il-policies applikabbli qabel ma gie fis-sehh il-Policies dwar l-Agricoltura tas-sena 2007.

Il-Policies applikabbli qabel ma gew fis-sehh il-Policies tal-Agricoltura tal-2007 huma l-policies generali tal-Pjan ta' Struttura li huma ntizi li jiprotegu z-zona agrikola u rurali partikolarment SET11, AHF5 u RCO2 kif ukoll il-linja gwida dwar l-agricoltura tal-1994. Minn dawn il-policies johrog evidenti illi zvilupp ta' stalel ma kienx kunsidrat bhala zvilupp relatat mal-agricoltura u ghaldaqstant mhux zvilupp gustifikat barra z-zona tal-izvilupp (ODZ) jew f'zoni rurali.

Illi f'dan il-kas ma jistax jigi injorat ukoll illi s-sit jinsab f'zona li taghmel parti mill-Peninsula ta' San Lucjan fejn tappilka l-Policy ML 01 tal-Pjan Lokali ta' Marsaxlokk; illi l-Pjan Lokali kien qed jesigi illi z-zona madwar it-torri ta' San Lucjan kif indikat fil-Policy Map tal-Pjan Lokali tibqa' miftuha u protetta minn zvilupp gdid ghajr ghal zvilupp ta' konversjoni u/jew uzu mill-gdid ta' bini ezistenti. Ghaldaqstant il-policies msemija applikabbli ghal-dan is-sit ma kienux jippermettu stalel godda hekk kif qed jigi propost fl-applikazzjoni mertu ta' dan l-appell.

Illi l-aggravju ewlieni mressaq mill-appellant huwa ibbazat fuq permessi simili ta' stalel mahrug mill-Awtorita' qabel ma gew fis-sehh il-policies tal-2007 u ghaldaqstant l-appellant qed jinsisti ghal trattament ugwali. Illi mill-listi tal-permessi ndikati fis-sottomissjoni tal-25 ta' Lulju 2005, dan it-Tribunal qed jaghmel dawn l-osservazzjonijiet hekk kif gej:

1. Illi dan it-Tribunal huwa tal-fehma li zvilupp ODZ jirrikjedi gustifikazzjoni cara, bbazata fuq parametri u konsiderazzjonijiet ta' ppjanar, kif ukoll il-kuntest u l-karatteristici taz-zona fejn hu propost l-izvilup. Dan ghalhekk iwassal ghal fatt li kull kaz ghandu jigi ezaminat fuq il-merti u l-fattispeci tieghu. Huwa tajjeb kif issottometa l-appellant li l-Awtorita ghandha timxi bi principji ta' ekwita u konsistenza fl-applikazzjoni u fl-interpretazzjoni tal-policies, imma jiqba l-fatt li l-zvilupp ODZ huma varji u sparsi, mhux la kemm wiehed jista jqabbal kas ma iehor.

2. Fil-fatt minn ezami tal-process tal-applikazzjoni msemija mill-appellant, jidher illi fil-kaz ta' PA 3237/05, PA 6805/05, PA 5983/06, 5952/06 il-Kummissjoni tal-Kontroll tal-izvilupp ikunsidat illi s-sit huwa idonjeu ghal bini ta' stalel ghar raguni li jew jinsab f'zona fejn hemm diversi bini ta' rziezet adjaenti, jew ghal-fatt li jinsabu f'distanza sostanzjali miz-zona residenzjali. Dan japplika ukoll ghal kaz ta' PA 334/06, ghalkemm l-Kummissjon ma resqet ebda gustifikazzjoni ghall-hrug tal-permess, bhal ma huwa l-kaz tal-PA 6892/94, ghalkemm dan tal-ahhar jinsab fl-konfini ta' Benghisa Settlement kif indikat fil-Pjan Lokali ta' Marsaxlokk.

3. Fil-kaz ta' PA 2038/97, il-Bord tal-Appell fid-decizjoni ta' 23 ta' Lulju 1999, ikkunsidra l-izvilupp ta' stalel bhala zvilupp ta' natura agrikolu, ghalkemm l-

izvilupp approvat jinsab fil-konfini ta' farmhouse ezistenti, bhal ma huwa l-kaz fil-PA 5440/05.

4. Illi kazijiet imsemmija gew ezaminat u kunsidrati fuq il-fattspeci u l-kuntest taz-zona fejn jinsabu. Certament dawn il-permessi m'ghandux jitqiesu bhala direzzjoni jew gustifikazzjoni ghal-hrug tal-permess tal-izvilupp mertu ta' dan l-appell. Dan it-Tribunal huwa tal-fehema li fil-kaz inezami hemm cirkostanzi u konsiderazzjoni ta' ippjanar differenti mill-kazijiet imsemmija, u dan b'mod partikolari l-vicinanza tas-sit ghaz-zona residenzjali ta' Marsaxlokk u l-limitazzjoni tal-izvilupp kif intiz fil-Policy ML 01 tal-Pjan Lokali ta' Marsaxlokk gja spjegat iktar 'il fuq f'din id-decizjoni.

Ghal dawn il-mottivi, u wara li kkunsidra l-fattspeci kollha tal-kaz, dan it-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut tal-PA 4099/05.

Ikkunsidrat

L-aggravji tal-appellant hu illi t-Tribunal meta kkonsidra permessi ohra li l-istess appellant issottometta li kienu simili ghall-applikazzjoni pendenti, wasal ghal konkluzzjoni zbaljata li ma kienux u dan bla raguni valida u legali biex jigi gustifikat id-diskriminazzjoni li soffra l-esponenti.

Din il-Qorti diversi drabi f'diversi sentenzi gja esprimiet l-opinjoni taghha illi t-Tribunal ghandu jikkonsidra l-element ta' ugwaljanza bejn applikant u iehor fuq applikazzjonijiet simili meta u safejn il-policies jippermettu li jsir dan. Ebda raguni ta' similitudni ma tista' treggi jekk l-applikazzjoni tmur kontra l-kliem espress ta' ligi jew policy. Konsiderazzjonijiet ohra li jinsorgu minn tali applikazzjoni ta' dan il-kuncett jistghu fil-kazijiet kongrui jaghtu lok ghal proceduri ta' natura legali ohra mill-applikant fil-konfront ta' min seta' gie perceptit li naqas fil-konfront tieghu pero fl-ambitu ta' appell ta' ippjanar iridu jigu applikati di rigore l-ligijiet, pjanijiet u policies konnessi mal-ippjanar.

F'dan il-kaz it-Tribunal ikkonsidra l-permessi kwotati mill-appellant li l-istess appellant issottometta li kienu simili ghall-applikazzjoni tieghu. It-Tribunal qies illi kellu jiddeciedi l-kwistjoni fuq il-parametri u konsiderazzjonijiet ta' ppjanar u l-karatteristici taz-zona fejn hu propost l-izvilupp li jfisser li kull kaz irid jigi deciz fuq il-mertu tieghu. Ghalkemm qies li t-Tribunal ma kellux jiddiskrimina u jkun konsistenti fl-applikazzjoni

u interpretazzjoni tal-policies, fejn l-izvilupp f'ODZ hu varju u spars, mhux semplicement il-kaz li applikazzjoni titqabbel ma' ohra. It-Tribunal ikkonsidra il-permessi u wasal ghal konkluzzjoni illi l-kaz prezenti kellu konsiderazzjonijiet differenti mill-permessi kwotati u b'mod partikolari meta titqies il-vicinanza tas-sit ghal zona residenzjali u l-limitazzjoni tal-izvilupp kif intiz fil-policy rilevanti applikabbli ghal kaz.

Din il-Qorti ma tqis illi t-Tribunal naqas mill-kompitu afdat lilu u mexa fuq il-parametri tal-ligi u l-gurisprudenza ta' din il-Qorti f'dawn l-ahhar snin. Mhux kompitu ta' din il-Qorti li tissindaka taqbilx jew le mat-Tribunal fuq kwistjonijiet ta' apprezzament ta' fatt u ippjanar kif ghamel fil-fatt. L-appellant qed jistenna din il-Qorti terga tikkonsidra l-appell mhux fuq punt ta' ligi deciz izda fuq riapprezzament ta' fatti tat-Tribunal li magghom ma qabilx. Dan ma jistax isir mill-Qorti tal-Appell.

Dan l-appell ghalhekk mhux misthoqq u qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Raymond Cassar u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tal-1 ta' Ottubru 2015, bl-ispejjez kontra l-appellant.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur