



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum L-Erbgha, 17 ta' Frar, 2016

Numru 5

Appell Nru. 50/2015

David Youngman

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza Francis X. Tabone f'isem
Gozo Club Developments Limited**

Il-Qorti,

Rat ir-rikors tal-appell ta' David Youngman, terz interessat, tat-28 ta' Ottubru 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Ottubru 2015 li ikkonfermat il-permess PA 6077/07 'additions and alterations to dwellings';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi dan l-appell gie rimess lura lil dan it-Tribunal mill-Qorti tal-Appell skont id-decizjoni tal-14 ta' Novembru 2013 li laqghet l-appell tal-applikant (permet holder) kontra d-decizjoni tat-Tribunal diversament kompost tat-8 ta' Novembru 2012 li laqa' l-appell tat-terz u rrevoka l-permess PA 6077/07. Il-Qorti rrinvjat lura l-atti ta' dan l-appell sabiex dan it-Tribunal jiddeciedi mill-gdid dan l-appell fuq il-mertu tal-izvilupp propost.

Illi f'dan il-kaz l-appellant rega' ressaq l-aggravji tieghu fis-sottomissjoni prezentata fis-16 ta' Gunju 2015 hekk kif gej:

“Appellant’s grounds of appeal can be summed up as follows:

The original permit (PA 2924/04) was still subject to a third-party appeal at the time filed by appellant and therefore, the approval of permit PA 6077/07 could severely compromise his appeal regarding the original one.

Although appellant was a registered objector to PA 6077/07, he was not notified of the hearing during which the Commission called on the applicant to present fresh plans, resulting in a flawed procedure adopted by the Commission as client was not given the opportunity of making his submissions on the suggestion of the Commission.

The original permit was filed by Baron Group Limited, whereas this application has been filed by Gozo Club Dev. Limited and therefore, the declaration of ownership of the site was being questioned and could result in a false declaration which would justify the withdrawal of the permit.

This last proposal which was approved consists of an “extension” to one of the existing dwellings, when any reasonable person who examines the approved plans may reach the conclusion that what is really being proposed is a separate dwelling under the guise of an extension to an existing one. One questioned the acceptance of an almost identical footprint by the Authority in this application process, when, in terms of application PA 6464/06, this same footprint was considered unacceptable by the DCC. It is pertinent to point out that the “extension” is almost larger than the unit it is extending and this unit has now been approved with 5 bedrooms, 4 of which have ensuite facilities.

The massing of the extension is unacceptable since it does not respect the context, character, appearance and scale of the development which can already be described as an “overdevelopment” of the site, in violation of policies 1.3 and 3.8 of Policy & Design Guidance 2007. The already existing building cannot but be described as a massive overdevelopment of an existing site, affecting long-views of the area as can be seen from photos which will be presented to the Board in due course.

The extension, which is at the end of a ridge will now tower over the surrounding properties and will result in loss of amenity to our client's residence. This is in violation of policy 2.7 of Policy & Design Guidance 2007 which states that the development should be stepped down as the site is situated at the end of a ridge. Contrary to this, the resulting development is now at least 7 courses higher than the adjacent building increasingly overlooking my client's property.

The "extension" will certainly have a deleterious effect on our client's residence and will create a nuisance in terms of added traffic generation, operating times (given that this is essentially a tourist development), and loss of privacy, resulting in bad neighbourliness to my client's property. Consequently, it is submitted that this proposal violates policy BEN 1 and therefore should never have been accepted.

The original application (PA 2924/04) was approved with a turning circle at the front of the development. This turning circle, which was imposed presumably owing to the increased generation of traffic in this very narrow alley, was not built as originally approved and therefore, the permit should never have been approved before it was ensured that applicant had conformed with the original permit, and this in line with Circular PA 2/96. Furthermore, this permit has resulted in a further intensification of use but without the provision of the turning circle imposed by the DCC in the original permit.

The approval of the permit for the "extension" only serves to further detract from the scenic value of the area, greatly undermining the long-distant views from the surrounding areas, and in violation of policies UCO 6, UCO 8 and UCO10. A site inspection would clearly confirm this together with photographs which our client will be exhibiting in due course.

Appellant finally submitted that the Commission acted in violation of Article 33 of Chapter 356 (now replaced by Article 69 of Chapter 504), in approving the development since it is contrary to approved policies.

The Tribunal has had occasion to visit the site and hold a site inspection in both appellant's and applicant's property. Both properties are situated in an Urban Conservation Area in a small enclave named "Ta' Ghammar", with appellant's property consisting of a residential farmhouse and applicant's property consisting of internal development. The enclave is characterised by the difficult access to the properties which is through a very narrow alley which, in parts, is barely wide enough for a normal vehicle to pass.

It is important at this stage to describe the site history relating to the site which is the object of this appeal:

Applicants were granted permission to build four houses with pools in accordance with PA02924/04 from which an appeal was filed by appellant

and which was amended by the imposition of a number of conditions and which is the subject of appeal PA 114/06.

None of the four houses are facing the public alley but access to them is via a passageway which is parallel to appellant's property and this is therefore classified as internal development.

Subsequently applicants applied to build a fifth house and pool but this application (PA06464/06) was refused. The reasons are on file, the main but not the only one being that DC2005 had expressly banned all internal development within UCA's.

Following upon this refusal, applicants submitted an application to build an extension to the fourth house mentioned above which was approved. This application PA06077/07 is the subject of this appeal. As originally submitted, it is to be noted that PA06077/07 was virtually identical to PA06464/04 (for the fifth unit), but minor amendments were introduced during reconsideration stage and before it was approved.

Subsequently the applicants applied to have the extension split as a separate unit. Somewhat surprisingly this also was approved but the permit was revoked by the Appeal Board and this was not challenged in the Court of Appeal.

As can be deduced from an examination of the Court of Appeal judgment, it can be stated that the Court, in its considerations leading to the revocation of the refusal, stated that although the Tribunal ievé can be summarised as stating that while the decision to revoke the permit may be correct, the Appeal Board decision needed to be more thoroughly justified in the light of the fact that this appeal relates to a permit to grant an "extension" in an internal development rather than the grant of an entirely separate unit.

It must be stated that the "Additions and alterations" approved in terms of this application PA 6077/07 in order to extend the fourth residence were only meant to be a prelude to the eventual division of that same unit into two and this is borne out of the fact that the "additions and alterations" approved resulted in a single unit having two separate swimming pools and five bedrooms. Indeed, appellant has evidence of the fact that, prior to the site inspection held by the Tribunal, the "extension" was being utilised as a separate unit, in contravention of all permits and confirming appellant's arguments regarding the true intentions of applicant.

In any event and, with reference to the planning policies which appellant cited in his application for appeal and which, in his view, were being breached with the approval of the relative permit, he submits the following:

Policy regarding Internal Development

Policy 3.8 of Policy & Design Guidance 2007 relating to Internal Development is categorical in stating that internal development is not allowed in Urban Conservation Areas (UCAs) where it states the following:

Within Urban Conservation Areas, internal residential development will not be permitted.

This blanket provision is justified in the same policy which states that:

“Within UCAs, internal development is likely to be out of keeping with the streetscape and with the morphology of these historic areas. It would have an adverse impact of the character of UCAs and so will not be permitted.”

It is to be pointed out that the policy relating to “internal development”, originally allowed in terms of Policy & Design Guidance 2005, was subsequently restricted in terms of the subsequent policy above quoted and which was in force when the decision was taken by the Commission in relation to this application. Therefore, it is submitted that such an application, whether a new unit or the extension of an existing one, is prohibited in terms of planning policies and should not be permitted. The policy is clear and is not subject to any other interpretation except the prohibition of any further development in an internal development such as the one approved in PA 2924/04, except development which is simply intended to conserve and maintain the upkeep of that originally approved. The “additions and alterations” which are the object of this permit do not have these characteristics but consist in the take-up of fresh land at the edge of a ridge and the construction of an additional swimming pool when, presumably, residents could make use of the already existing one. Therefore, it is submitted that the approval of an extension to one of the units already approved is in breach of policy and should be revoked since there can be no justification for this blatant breach of current policies relating to internal development and the grant of the requested development. Furthermore, the 4 units approved in terms of PA 2924/04 are already not in keeping with the characteristics of the UCA and therefore an “extension” to one of the units will continue to exacerbate the negative effect of the internal development as a whole.

Appellant has also submitted in his appeal that the development is contrary to policies BEN 1, policy 1.3 and 2.7 of Policy & Design Guidance 2007, PA 2/96 and policies UCO 6, UCO8 and UCO 10. These will be dealt with summarily as follows:

BEN 1

The Tribunal has had first-hand experience of the deleterious effect of this extension on the property of appellant which has been existing for many years. The extension has resulted in the loss of existing amenity on my client’s property since it is directly overlooking his terrace and exacerbates the total lack of privacy which has resulted as a consequence of the approval of the units in terms of permit PA 2924/04. The renting out of this entire

property presumably to a larger number of people will only continue to have a deleterious effect on my client's property, given the total lack of privacy on the terrace which he previously enjoyed and the fact that the windows of both properties face one another and are extremely close, so that it is even doubtful whether they respect sanitary regulations.

Policy 1.3 of Policy & Design Guidance 2007

Policy 1.3 of Policy & Design Guidance provides the following:

New development should respect its context, including the character, appearance, scale, massing, height and density of the particular area in which it is situated. It should respect, but not necessarily reproduce, any predominant style of buildings. Where a uniform design does not prevail, contemporary designs of high quality may be more suitable. Where appropriate, dominant defining features (such as lintels, cills, cornices, mouldings, balconies etc.) of adjacent buildings should be carried through into the new development.

It is submitted that the massing of this extension, both when viewed in isolation and as part of the pre-existing development, is definitely not in keeping with the context of this small enclave and evidence of this are the long view which have already been submitted before this Tribunal and which already form part of the acts.

Policy 2.7 of Policy & Design Guidance 2007

This policy provides the following:

Where a building is to be erected on a ridge, the building profile should reflect the profile of the existing topography, as set out in policies 2.5 and 2.6. In addition as shown in Diagram 2.7, the building should comply with the following:

- i) a backyard of at least 3 metres depth should be provided at the lowest basement level;
- ii) any exposed foundations shall not be more than 1.5 metres high above the external undisturbed soil level at any point;
- iii) the total height of the rear boundary wall together with any exposed foundations shall not exceed 2.4 metres above external soil level at any point. The wall shall be constructed in random rubble and the exposed foundations shall be faced in random rubble.
- iv) each floor shall be successively set back by at least 3 metres from the rear façade;
- v) if the building is to be erected between two existing buildings along a frontage of not more than 8 metres, its maximum depth shall not exceed that of those buildings and it should follow the profile of the existing buildings at its extremity, if the existing buildings are already in close proximity to the ridge;
- vi) the design, external appearance and treatment of the building should avoid large expanses of blank rear and party walls;

and vii) on exposed ridges where there are no existing buildings, the building shall not be more than 25 metres deep”

It is submitted that the extension made no attempt at following the slope of the land but it was built over 7 courses higher than the adjacent building, resulting in further overlooking and lack of privacy with regards to appellant's property

PA 2/96

This policy has largely been replaced by the relative provision in Legal Notice 514 of 2010 which states that development cannot be approved if an illegality already exists on site and a request for its sanctioning is not included. The decision of the Tribunal in PA 2924/04 makes it amply clear that, notwithstanding the content of the permit conditions and the approved plans following the approval by the MEPA Board, appellant did not conform to the conditions imposed with respect to the turning circle and the decision of the Tribunal itself is evidence of this. Therefore, this confirms that PA 2/96 was not respected at the time of the approval of permit PA 6077/07 and this should lead to the revocation of the permit.

Urban Conservation policies

As was mentioned by appellant in his appeal, the approval of permit PA 6077/07 is in violation of Structure Plan policies relating to Urban Conservation, namely UCO 6, UCO 8 and UCO 10 which provide the following:

POLICY UCO 6: Within Urban Conservation Areas, the basic objective will be to preserve and enhance all buildings, spaces, townscape, and landscape which are of Architectural or Historical Interest, and generally to safeguard areas of high environmental quality and improve areas of low quality. 15.11 There will be a presumption against the demolition of any building POLICY UCO 8: In Urban Conservation Areas applications for permission to develop existing gap sites or sites on which the existing building is to be demolished will be judged with reference to the following criteria: 1. The development must fully respect the conditions set out in development control policies BEN 1, 2, and 3.

2. The development should be sympathetic with adjoining buildings in terms of building line, height, silhouette, fenestration, and materials. 3. The development generally should follow design guidelines for Urban Conservation Areas set out in the Explanatory Memorandum

POLICY UCO 10: Developments will not be permitted which adversely affect views of or from Urban Conservation Areas, or which detract from the traditional urban skyline. Particularly important views will be identified in detail in Local Plans.

The urban conservation policies are all intended to conserve, maintain and enhance urban conservation areas but this extension does nothing of the sort. As already mentioned, this extension was granted at the edge of the development where the land dips downwards towards the underlying terraced fields. Notwithstanding this the extension was approved and built at a higher level to the lie of the land, thereby detracting from the skyline, as can be evidenced by the photos already submitted by appellant. Although built in weathered stone, the development, and consequently the extension too, makes no pretence at being sympathetic towards the existing development but is merely a modern urban internal development cloaked in "urban characteristic". The same can obviously be said with respect to the development approved in terms of this permit PA 6077/07.

It is submitted that this development should never have been approved, since it is in breach of policies existing and in force at the time that the development was approved and therefore, it follows that the DCC was in breach of Article 33 of Chapter 356 (now replaced by Article 69 of Chapter 504). It is no argument to state that, once four units have been approved, one may as well approve the extension to the fourth unit. There is absolutely no possible planning policy which can justify this argument and, as has already been submitted, the extension itself is contrary to approved policy and should never have been approved.

Kindly note that it was agreed during the appeal process that the appeals would be considered together and therefore, appellant makes reference to all documentation, photographs and submissions made in all four appeals to support his argumentation in respect of this appeal from permit PA 6077/07.

In conclusion, it is submitted that there are ample grounds for the revocation of PA6077/07 by this Tribunal which should never have been approved.”;

L-applikant irrisponda hekk kif gej:

“The present appeal concerns a full development application for "additions and alterations to dwelling" at a Site at, Triq ta' Ghammar, Ghasri, Gozo.

It is respectfully submitted that the appellant's grounds for appeal are entirely unmeritorious and ought to be dismissed in toto.

First and foremost, it must be premised that there is fundamental distinction between the creation of a new, standalone, unit and the extension of an existing unit, as is being proposed by means of the present application. The internal development has been legally created by virtue of P A 2924/04. The application involves only an extension to one of the approved units and no internal development is hence being created now. This Tribunal, as differently composed, failed to make this distinction in its decision of the 8th November 2012 and this failure led the Court of Appeal to quash the Tribunal's decision in its judgment of the 14th November 2013.

To this extent any line of argument tending to equate the present proposal to the creation of a new unit is intrinsically incorrect. The appellant is also incorrect in his assertion that the present application ought to be dismissed as it may constitute a prelude to an eventual separation of the extension into a separate unit.

Any such separation would require the filing of a separate application which would, in the circumstances, need to be determined on its own merits. At present the Tribunal is required to assess the application as proposed *sic et simpliciter* and should not entertain hypothetical arguments.

The appellant's grounds of appeal are the following:

The original permit (PA 2924/04) was still subject to a third-party appeal at the time filed by the appellant and therefore, the approval of permit PA 6077/07 could severely compromise his appeal regarding the original one.

As rightly pointed out by the Authority there is no evidence of a false declaration on the applicant's part, this was confirmed in the EPRT's decision of the 8th November 2012.

This ground has been superseded by the approval of PA 2924/04.

Although appellant was a registered objector to PA 6077/07, he was not notified of the hearing during which the Commission called on the applicant to present fresh plans, resulting in a flawed procedure adopted by the Commission as client was not given the opportunity of making his submissions on the suggestion of the Commission.

This ground is clearly frivolous and vexatious. From the Authority's reply it results that the appellant was duly notified at the address of his previous legal consultants. The appellant's failure to inform the Authority about a change in legal representation does not entitle him to claim a failure on the Authority's part to notify him with the date of the DCC hearing.

The original permit was filed by Baron Group Limited, whereas this application has been filed by Gozo Club Dev. Limited and therefore, the declaration of ownership of the site was being questioned and could result in a false declaration which would justify the withdrawal of the permit.

This last proposal which was approved consists of an "extension" to one of the existing dwellings, when any reasonable person who examines the approved plans may reach the conclusion that what is really being proposed is a separate dwelling under the guise of an extension to an existing one. One questioned the acceptance of an almost identical footprint by the Authority in this application process, when, in terms of application P A 6464/06, this same footprint was considered unacceptable by the DCC. It is pertinent to point out that the "extension" is almost larger than the unit it is extending and this unit has now been approved with 5 bedrooms, 4 of which have ensuite facilities.

The proposal under consideration relates to additions and alterations to an existing dwelling. PA6464/06 proposed a separate dwelling and additionally the proposal did not include the terracing proposed in this application. The applicant is casting doubt as to the genuineness of the proposal and is suggesting that "what is really being proposed is a separate dwelling". Whatever doubts the appellant may have harboured, these ought to have been settled following the site inspection ordered by the Tribunal wherein it was ascertained that the proposed development forms an integral part of an existing unit, from which it has its only access. Thus, the proposed development cannot be considered to be a separate dwelling, independently of its dimensions.

The massing of the extension is unacceptable since it does not respect the context, character, appearance and scale of the development which can already be described as an "overdevelopment" of the site, in violation of policies 1.3 and 3.8 of Policy & Design Guidance 2007. The already existing building cannot but be described as a massive overdevelopment of an existing site, affecting long-views of the area as can be seen from photos which will be presented to the Board in due course.

As correctly pointed out in the Case Officer's Report prior to the approval of the present application by the DCC " ... the principle of internal development was already approved in permission PA 2924/04. The proposed development does not constitute an intensification of the previously approved internal development since no new additional dwelling units are being created. A bank guarantee is being recommended to ensure this. "To this extent there is no breach of Policy 3.8 of DC2007 since no new unit is being created, but rather, the applicant is seeking to ameliorate an already committed site, which is after all, zoned as being within the development boundary. This is evident if one examines the photos submitted with the application, whereby the originally approved blank wall facing ODZ has now been addressed. In fact the LPU when consulted by the DCC stated in min 46 in PA 6077/07 "This development should be guided by the provisions of GZ-EDGE-I which among others states that development is to respect the traditional UCA skyline and that it shall not be permissible to have blank party walls. Thus considerations to screen the existing blank party wall as indicated in architect's photo IA may be considered by the DCC".

The Gozo and Comino Local Plan was, in fact, amended in 2006 so as to extend the development zone to incorporate the area over which the development in question lies (Vide Figure 2.4.1). It is thus clear that the policy maker, by re designating a site which was formerly ODZ into a developable area, has shown a clear intention to the effect that the site in question should be developed in the manner in which is being proposed.

The allegations regarding over-development and the dimensions of the development are merely subjective assertions made by the applicant. The Tribunal had due opportunity to verify the baselessness of the appellant's

insinuations during the on-site inspection that was held in the course of these proceedings.

The extension, which is at the end of a ridge will now tower over the surrounding properties and will result in loss of amenity to our client's residence. This is in violation of policy 2.7 of Policy & Design Guidance 2007 which states that the development should be stepped down as the site is situated at the end of a ridge. Contrary to this, the resulting development is now at least 7 courses higher than the adjacent building increasingly overlooking my client's property.

As correctly stated in the Case Officer's Report prior to DCC approval:
"The designs of all elevations are considered to be acceptable. The designs are compatible with the urban design and environmental characteristics of the area and comply with the DC Guidance for development within UCAs. The design of the boundary wall facing ODZ is considered to be acceptable."

The Tribunal had due opportunity, during the on-site inspection of the property in question, to verify that there is no issue regarding the proposed development overlooking the appellant's property or that otherwise the proposed development towers over the appellant's property. The applicant cannot understand how a two-floor construction can be seriously considered to be towering over another property of the same height!

The "extension" will certainly have a deleterious effect on our client's residence and will create a nuisance in terms of added traffic generation, operating times (given that this is essentially a tourist development), and loss of privacy, resulting in bad neighbourliness to my client's property. Consequently, it is submitted that this proposal violates policy BEN 1 and therefore should never have been accepted.

As correctly pointed out in the Case Officer's Report issued prior to DCC approval:

-- Height limitation

The height limitation for the area is 2 floors. The height of the existing building is two floors and the height of the extension is also two floors. The height limitation is being complied with.

-- Car parking

No additional dwellings are proposed from the previously approved drawings. The car parking requirements of SP Policy TRA4 are still being complied with.

-- Design

The designs of all elevations are considered to be acceptable. The designs are compatible with the urban design and environmental characteristics of the area and comply with the DC Guidance for development within UCAs. The design of the boundary wall facing ODZ is considered to be acceptable.

The appellant's arguments are merely subjective and are not based on objective planning considerations. The proposed development complies with

the applicable height limitation, design considerations and DC2007 policies. To this extent the proposal ought to be approved.

The original application (PA 2924/04) was approved with a turning circle at the front of the development. This turning circle, which was imposed presumably owing to the increased generation of traffic in this very narrow alley, was not built as originally approved and therefore, the permit should never have been approved before it was ensured that applicant had conformed with the original permit, and this in line with Circular PA 2/96. Furthermore, this permit has resulted in a further intensification of use but without the provision of the turning circle imposed by the DCC in the original permit.

The appellant has filed numerous reports with the enforcement unit at MEPA. Had there been any irregularity, as is being alleged, by the appellant MEPA would have noticed the same and would have taken the appropriate enforcement action. It thus clear that even this ground is altogether unfounded.

The approval of the permit for the "extension" only serves to further detract from the scenic value of the area, greatly undermining the long-distant views from the surrounding areas, and in violation of policies UCO 6, UCO 8 and UCO 10. A site inspection would clearly confirm this together with photographs which our client will be exhibiting in due course.

This is, more or less, a repetition of the previous grounds raised by the appellant. As already submitted the proposed development is in full compliance with the applicable height limitations and its design conforms to the applicable policies.

Appellant finally submitted that the Commission acted in violation of Article 33 of Chapter 356 (now replaced by Article 69 of Chapter 504), in approving the development since it is contrary to approved policies.

This ground is, once again, a generic repetition of the appellant's contention that the proposed development runs contrary to the approved policies. As already submitted in detail, the appellant's allegations are altogether unfounded in fact and at law. The proposed development fully respects the applicable policies and therefore it ought to be approved.

It is therefore respectfully submitted that the appellant's appeal ought to be dismissed and the approval of the present application by the DCC should be confirmed in toto.”;

Dan it-Tribunal qed jaghmel referenza ukoll ghar-risposta tal-Awtorita' ghal dan l-appell hekk kif gej:

“The Appeals Board may wish to note that the current permission does not compromise any contestation from the original permission relative to Third Party Appeal PAB114/06. Permission PA6077/07 refers to an addition to the

existing building and thus the development subject of this permission relates directly to the development relative to the original permission PA2924/04. In addition, all the appeals relative to the development in question, i.e. the third party appeal from permission PA2924/04 (PAB114/06), the third party appeal against the sanctioning of the variations on site in permission PA3945/08 (PAB57/09) and the appeal against the refusal for an additional dwelling PA6464/06 (PAB152/08); are linked and appointed to be heard concurrently.

Notification for DCC hearing

It results that the objection regarding the notification for the DCC hearing is not correct. The Appeals Board may wish to note that the objector has been registered when he was represented by Buttigieg & Refalo Advocates in February 2008 - see document 30. Thus all the correspondence to the objector was sent to his registered representative. The notification for the DCC hearing (of the 11th November 2008) has been issued to Buttigieg & Refalo Advocates - see document 84. Actually, Buttigieg & Refalo Advocates informed MEPA that their office is no longer representing the objector by letter dated 11 December 2008 - see document 96. Thus the process of notification was carried out according to the proper procedures.

Applicant's name

There is no evidence that the difference in names between the original application and the current application constitute a false declaration.

Details of the drawings

The proposed additions subject of the current permission has been assessed in terms of the committed internal development and the relevant policies of the Design Guidance 2007 and the Local Plan. There is no violation of Policy 3.8 of the DC 2007 since the internal development is committed and the proposal meets the conditions of the Policy in question. In addition, Policy 1.3 of the DC 2007 regards the general principles for new development. The proposal is in line with the existing internal development in both in the form and also in the style. Thus the provisions of Policy 1.3 of DC 2007 are complied with. The Appeals Board may wish to note that the Planning Directorate is consistent in not allowing a separate dwelling of the site. The application for the separate dwelling PA6464/06 was refused and the current permission makes specific provisions through condition number three, which is also tied with a Bank Guarantee, to ensure that the proposal is actually an extension to the existing dwelling and not a separate dwelling.

Loss of Amenity

The argument raised by the appellant that the site falls on the ridge is not correct. Maps 14.4-C&D of the Gozo and Comino Local Plan clearly indicate that the site falls within an area designated as the edge of the development zone. The relative Local Plan policy for sites within the edge of the

development zone is Policy GZ-EDGE-1. In addition, Policy 2.7 of the DC 2007 mentioned by the appellant is not relative to the site since the site does not fall on a ridge. As regards the terraces at the back of the site, the Appeals Board may wish to note that these overlook an area outside the limits to development and not over third parties. The necessary provisions (through side gardens, height limitation and setbacks) have been taken to ensure that the amenity of the area is respected.

Illegalities on site

It results that the variations from the previous permission have been sanctioned by permission PA3945/08. There are no records of illegalities on site and therefore Circular PA2/96 does not apply.

UCA characteristics

The design and form of the proposed development subject of permission PA6077/07 is similar and on the same lines as the design and form approved in permission PA2924/04. Thus, all the policies relating to safeguard the UCA characteristics of the area are being respected.”

Ikkunsidra ulterjorment:

Eccezzjonijiet ta' natura preliminari:

Rigward l-ewwel aggravju, illum dan jinsab ezawrit ghar-raguni li l-Permess PA 2924/04 jinsab konfermat b'decizjoni kemm ta' dan it-Tribunal diversament kompost u l-Qorti tal-Appell. Il-Qorti, ikkonfermat id-decizjoni tat-Tribunal diversament compost ghajr ghal tlett kundizzjonijiet imposti mill-istess Tribunal, u irrinvjat lura l-appell numru 114/06 sabiex jigi rikonsidrat mill-gdid zewg kundizzjonijiet godda li gew imposti mit-Tribunal fid-decizjoni tat-8 ta' Novembru 2012, u li qed jigi deciz illum flimkien ma din id-decizjoni.

Dan it-Tribunal qed jaqbel ukoll mal-osservazzjoni tat-Tribunal diversament compost illi l-permess tal-izvilupp jinghata bla pregudizzjoni ghad-drittijiet ta' terzi u fil-permesss jigi specifikament indikat li jista jsir appell quddiem dan it-Tribunal, u l-Qorti tal-Appell u li l-permess jista' jigi revokat b'rizultat ta' dawn id-decizjonijiet.

It-Tieni aggravju jittratta kwistjoni ta' procedura fejn l-appellant qed jilmenta li ma kienx gie nformat bil-laqgha tal-Kummissjoni meta l-applikant gie mitlub pjanti godda.

Illi dan it-Tribunal wara li ezamina l-inkartament tal-PA 6077/07 qed jaqbel mal-konkluzzjoni tat-Tribunal diversament kompost illi ghall-laqgha tal-Kummissjoni tal-11 ta' Novembru 2008, l-konsulenti legali tal-appellant gew debitament avvzati (skont minuta numru 84). L-istess konsulenti informaw l-Awtorita' li ma kienux aktar qed jippatrocinaw l-appellant b'ittra tal-11 ta' Dicembru 2008 (dokument a fol 96). F'dan il-kaz il-procedura ta' notifika giet

segwita' u ma jistax jinghad illi l-Kummissjoni naqset milli tinforma lill-appellant bil-laqgħat meta kienet ser tigi diskussa u deciza l-applikazzjoni.

It-tielet aggravju huwa ukoll bla mertu , hekk kif ma jirizultax li saret xi dikjarazzjoni falza dwar l-propjeta tas-sit inezami billi kien hemm tibdil fl-isem tas-socjeta applikanti minn applikazzjoni għal oħra. Fuq dan il-punt, dan it-Tribunal huwa gwidad ukoll bid-decizjoni tal-Qorti tal-Appell fl-ismijiet Mark Vella kontra l-Awtorita' (deciza fl-20 ta' Mejju 2015) fejn gie spjegat illi:

“illi permess jinhareg fuq sit u l-kwistjoni dwar min hu s-sid u l-permess tas-sid jekk l-applikazzjoni issir f'isem terz, kif inhu possibli li jsir, hi kwistjoni bejn l-Awtorita u l-partijiet interessati u mhux it-terz li l-interess tieghu hu cirkoskritt għall-izvilupp u kif dan ser jaffettwah.”

Mertu:

Illi l-aggravji l-oħra għajr għat-tmien (8) aggravju (li ser jigi kunsidrat b'mod separat) jittrattaw il-mertu tal-izvilupp, ossia, l-bini addizzjonali mal-kumpless għa approvat fil-permess PA 2924/04. L-izvilupp addizzjonali jikkonsisti f'zieda ta' kmamar fuq zewg sulari mar-raba' residenza għa approvata u li tinsab f'tarf il-kumpless residenzjali internal development.

Illi dan il-kumpless jinsab fuq in-naha tal-Lvant, biswit il-proprejta tal-appellant f'tarf iz-zona tal-izvilupp fi Trejgħet Dun Guzepp Cassar fl-inhawi magħrufa l-Għammar, fil-lokalita' tal-Għasri, Ghawdex. Is-sit inezami jinsab ukoll fil-konfini taz-zona ta' Konservazzjoni Urbana tal-Għasri.

Illi l-ilment principali tal-appellant jirrigwardja l-estent u l-massing tal-bini li jikkonsisti f'internal development li skont l-appellant qed jikser il-policies 1.3, 2.7 u 3.8 tal-linja gwida dwar il-kontroll tal-izvilupp.

Illi f'dan il-kaz, dan it-Tribunal seta' jinnota li rigward dan l-izvilupp, l-Awtorita' dawret fehmta fejn fl-applikazzjoni precedenti, ossia PA 6464/06, irrifjutat l-proposta ta' zieda ta' dar residenzjali fuq l-istess sit għar-raguni li qed tikser il-policy 3.8 tal-linja gwida, u zieda fil-generazzjoni tat-traffiku.

Illi l-Awtorita' spejgħat illi fl-applikazzjoni odjerna l-izvilupp ma jikkonsistix f'zieda ta' abitazzjonijiet u għaldaqstant mhux qed iwassal għall-intensifikazzjoni ta' zvilupp fl-internal development għa approvat fil-permess PA 2924/04.

Illi dan it-Tribunal seta' jinnota ukoll illi s-seperazzjoni tal-fond inezami huwa għa deciz b'decizjoni tat-Tribunal diversament kompost fejn gie revokat il-permess PA 763/11 u li tali decizjoni hija wahda finali. Mhux eskluż illi l-intenzjoni primarja tal-applikant kienet li tinbeda dar residenzjali separata kif johrog evidenti mill-applikazzjonijiet PA 6464/06 u PA 763/11, imma f'dan il-kaz dan it-Tribunal għandu jikkunsidra il-proposta ta' zvilupp skont il-permess PA 607/07 li hija wahda differenti minn tnejn imsemmija u f'dan il-kaz jekk kienx hemm ksur lampanti tal-policies citati, partikolarment dik 3.8 tal-linja gwida u finalment jekk fil-permess odjern jirrizultax impatt

addizzjonali minn dak l-izvilupp gja approvat, u ghaldaqstant jekk tali impatt huwiex sostanzjali jew le.

Illi dan it-Tribunal jinnota li bhala zvilupp, ghalkemm qed jizdied il-built-up footprint kif ukoll il-kobor (massing) tal-izvilupp intern, mhux qed jizdied in-numru ta' abitazzjonijiet u konsegwentament zieda ta' generazzjoni tat-traffiku. F'dan il-kaz, dan it-Tribunal qed jaqbel mal-Awtorita' li kellu jigi kunsidrat l-fatt li s-sit inezami jaghmel parti minn kumpless intern gewwa z-zona ta' Konservazzjoni Urbana, u li kien hemm tibdil fil-konfini tal-izvilupp meta gie fis-sehh il-Pjan Lokali.

Illi ghaldaqstant, l-Awtorita' iddecidiet li ma tapplikax il-policy 3.8 li teskludi internal development f'zona ta' Konservazzjoni Urbana. Dan kien possibli billi gie applikat il-proviso ta' flessibilita' tal-policy kif indikat fil-paragrafu E4 u E5, f'pagna 3 tal-linja gwida dwar il-kontroll tal-izvilupp tas-sena 2007, u dan ghar-ragunijiet u konsiderazzjonijiet indikati fil-paragrafu precedenti.

Bhala ammont ta' traffiku generat, dan it-Tribunal gja kellu l-okkazzjoni li jikkunsidra tali aggravju fid-decizjoni dwar l-appell kontra l-permess originali PA 2924/14 li qed tingara llum flimkien ma din id-decizjoni. L-ammont ta' karozzi generat huwa kkalkoklat fuq zewg karozzi ghal kull residenza li qed jigu kumpensati bi hlas favur il-Urban Improvement Fund. F'dan il-kaz mhux ser ikun hemm zieda fin-numru ta' residenzi u ghaldaqstant mhux il-kaz li ser jizdied it-traffiku bhala konsegwenza ta' zieda ta' zvilupp, ossia numru ta' abittazzjonijiet, iktar minn dak li gja gie approvat.

Illi ghalkemm il-kobor tad-dar residenzjali hija wahda sostanzjali, dan it-Tribunal seta' jinnota li l-kumpless residenzjali inezami huwa kostitwit minn erba' (4) djar ta' certu kobor, u f'dan il-kuntest, id-dar inkwistjoni hija kompatibbli mal-karatteristici ta' dan il-kumpless residenzjali. L-istess jista jinghad ukoll rigward id-disinn u l-karatteristici arkitettonici tal-bini, inkluz il-massing u l-gholi tal-bini.

Minn dak li seta' jikkonstata mill-access mizmum fuq is-sit, dan it-Tribunal huwa tal-fehma li d-disinn tal-izvilupp huma kompatibbli mal-karatteristici tal-bini gewwa z-zona ta' Konservazzjoni Urban tal-madwar, u konformi mal-policy GZ-Edge-1 tal-Pjan Lokali u ghaldaqstant mhux qed isir ksur tal-polcies UCO 6, UCO8 u UCO 10 tal-Pjan ta' Struttura kif qed jigi allegat.

Importanti ukoll il-fatt li l-izvilupp jinsab fil-konfini tal-izvilupp kif indikat fil-Pjan Lokali, kif ukoll ghall-fatt li l-izvilupp kien mehtieg sabiex jaghlaq appogg mikxuf f'tarf il-kumpless residenzjali kif originarjament approvat fil-permess PA 2924/04. Din kienet ukoll konsiderazzjoni mehuda mill-Kummissjoni fuq parir tal-Local Plannig Unit fi hdan id-Direttorat tal-Ippjanar kif spjegat f'minuta numru 43 fl-inkartament tal-PA 6077/07.

Illi rigward il-policy 2.7 tal-linja gwida, ma jirrizultax li s-sit jinsab f'tarf ta' ridge, ghalkemm jinsab f'tarf iz-zona tal-izvilupp. F'dan il-kaz il-policy applikabbli hija GZ-Edge-1 tal-Pjan Lokali.

Aggravju numru 8

Illi f'dan l-aggravju l-appellant qed jilmenta dwar in-nuqqas ta' osservazzjoni tal-kundizzjonijiet tal-permess PA 2924/04 li kien jinkludi turning-circle f'tarf it-triq sabiex jindirizza z-zieda tat-traffiku f'din iz-zona.

Illi fuq dan l-ilment, dan it-Tribunal ukoll dahal fid-dettal fl-appell kontra l-permess PA 2924/04. F'dan il-kaz, dan it-Tribunal ikkonkluda illi t-turning circle hija parti mit-triq kif giet delinijata fl-amendi approvati skont mappa numru 2.4.1 fil-Pjan Lokali u ma taghmilx parti mill-permess PA 2924/04.

Illi dan it-Tribunal josserva li ma jirrizultax li hemm xi avviz ta' infurzar pendent rigward il-formazzjoni tat-triq. Minn naha l-oħra kull permess tal-izvilupp johrog bil-kundizzjoni standard li l-izvilupp ghandu jsegwi l-linja ufficjali tal-bini u huwa fid-dover tal-Awtorita' li tara' li t-triq tigi miftuha u ffurmata skont il-linja ufficjali, u li ma hemm ebda zvilupp jew strutturi li jistghu b'xi mod jistakolaw it-triq.

Osservazzjoni addizzjonali:

Illi l-ilment iehor li tressaq ukoll fir-rikors tal-appell kien in-nuqqas ta' privatezza b'rizultat tal-estensjoni li saret, b'mod partikolari biswit il-bitha retrostanti tal-proprijeta tal-appellant. Mill-access mizmum fuq is-sit, dan it-Tribunal seta' jinnota l-izvilupp minn naha tal-bitha tal-appellant, hemm tieqa li thares dirett fuq il-proprijeta tal-appellant. Dan it-Tribunal huwa tal-fehema illi din il-kwistjoni tista tigi rizolta bl-inalzament tal-hajt tat-terrazzin li jhares b'mod dirett fuq il-proprijeta tal-appellant b'zieda ta' seba' (7) filati 'il fuq mill-livell tas-saqaf tal-istess terrazzin. Tali amenda fil-permess tista ssir permezz tal-procedura ta' minor amendment skont ir-Regolament 12 fl-Avviz Legali 514 tal-2010.

Konkluzzjoni:

Ghal dawn ir-ragunijiet premissi, dan it-Tribunal qed jichad l-appell, u jikkonferma l-hrug tal-permess PA 6077/07, b'dan illi qed jordna lill-applikant sabiex fi zmien 30 gurnata mid-data ta' din id-decizjoni jipprezenta applikazzjoni ta' minor amendment skont l-Avviz Legali 514 tal-2010, sabiex jinkludi amenda zghira fil-pjanta approvata PA 6077/07/90A li tindika l-hajt tat-terrazzin li jhares fuq il-proprijeta tat-terz sa 7 filati 'il fuq mill-livell tal-art tal-istess terrazzin.

Ikkunsidrat

L-aggravju tal-appellant hu marbut ma' dak li jipprovdi l-policy 3.8 tal-Policy and Design Guidance 2007 u cioe illi 'within urban conservation areas, internal development will not be permitted'. Qed jikkontendi li din il-policy hi wahda cara li telimina kull diskrezzjoni tal-Awtorita. L-izvilupp in kwistjoni hu internal development

f'urban conservation area. L-appellant izid illi l-proviso ta' flessibilita fil-policy indikata fil-paragrafu E4 u E5 tal-linji gwida dwar il-kontroll tal-izvilupp tal-2007 gew applikati hazin mit-Tribunal. Fl-ewwel lok il-Kummissjoni qatt ma ghamlet referenza ghalihom fl-approvazzjoni tal-permess u ghalhekk ma applikat ebda flessibilita kif it-Tribunal jaghti x'jifhem li hekk ghamlet il-Kummissjoni. In oltre kull gustifikazzjoni biex l-Awtorita tiddipartixxi mill-policy u jkun hemm relaxation of standards irid ikun gustifikat bil-miktub fl-ghoti tal-permess u jridu jirrizultaw minnu u fil-fatt ma jirrizultax. Ghalhekk il-Kummissjoni ma applikatx l-eccezzjoni ghar-regola u t-Tribunal ma setax isib konfort f'eccezzjoni li ma tirrizultax.

Din il-Qorti tqis li dan hu appell fuq punt ta' ligi, billi dak li qed jigi invokat hu l-applikazzjoni inkorretta tal-ligi mit-Tribunal fid-decizjoni tieghu.

Il-Qorti tirreleva illi l-applikazzjoni in kwistjoni, kif ikkonferma l-istess Tribunal mhix applikazzjoni ghal internal development gdid. Dan l-internal development gia jezisti u gie approvat u issa sar res judicata bil-hrug tal-permess PA 2924/04. Dak li qed jintalab f'din l-applikazzjoni hi estensjoni mhux zghira ghal wahda mill-erba' residenzi gia approvati. Ghalkemm l-appellant jaghmel sottomissjonijiet dwar il-veru intenzjoni tal-applikant cioe li jzid reidenza ohra, din il-kwistjoni giet epurata mit-Tribunal u ikkonsidra li fil-fatt saret applikazzjoni ghal dan l-iskop li ukoll giet deciza finalment u giet rifjutata.

L-ewwel li kellu jaghmel it-Tribunal hu li jiddeciedi jekk l-applikazzjoni ta' estensjoni rikjesta kinitx taqa' fil-parametru tal-policy 3.8 cioe jekk din tistax titqies bhala internal development fiha nfisha. Sorvolat dak il-pass it-Tribunal imbaghad seta' jikkunsidra jekk iz-zieda fil-kobor mitlub ta' wahda mir-residenzi hiex ser ikollu impatt sostanzjali negattiv fuq dak gia ezistenti u approvati b'permess iehor f'dan l-internal development u jekk kienx ser jaffettwa b'mod aktar ampju z-zona nfisha. Kellu ovvjament jikkonsidra dan fl-isfond fost policies ohra, tal-policy 3.8 tal-2007, u jekk l-Awtorita fil-fatt uzatx id-diskrezzjoni taghha li taghmel 'relaxation of standards' ghal ragunijiet minnha indikati fil-permess skond paragrafi E4 u E5 tal-policy. Il-paragrafu citat mill-appellant fejn it-Tribunal irrefera ghal proviso ta' flessibilita f'paragrafu E4 u E5 tal-policy hu infelici kemm ghaliex l-Awtorita ma semmietx li qed tistrieħ fuq dawn

il-paragrafi fil-ghoti tal-permess u kemm ghaliex l-istess Tribunal fil-qari tad-decizjoni tieghu mehuda b'mod shih u mhux limitata ghal dan il-paragrafu hi diretta b'mod car ghal fatturi rigwardanti possibli vjolazzjoni ta' policies ohra ghal zvilupp gia ezistenti u legali. Infatti l-istess Tribunal ighid li dan mhux kaz ta' internal development gdid fejn irid jigi applikat il-policy 3.8 izda fejn jekk iz-zieda fil-izvilupp gia ezistenti u legali hiex ser tkun ta' piz mhux ragonevoli u ghalhekk mhux misthoqq. It-Tribunal fil-fatt ikkunsidra l-massing tal-izvilupp intern kemm tar-residenza in kwistjoni u dik tar-residenzi l-ohra, l-impatt fuq il-generazzjoni ta' traffiku billi l-isqaq li jwassal ghal internal development mhux wiesa u l-kumpens li l-applikant kellu jhallas ghal Urban Improvement Fund. Ikkunsidra wkoll id-disinn, u l-karatteristici tal-binja, l-gholi u l-massing fil-kuntest tal-fatt li l-binja kienet fil-konfini ta' zona ta' zvilupp ghalkemm f'urban conservation area.

Pero din il-Qorti tqis illi t-Tribunal naqas li jikkunsidra u jiddeciedi sew l-ewwel element cioe jekk il-policy 3.8 kinitx applikabbli essendo dan hu zvilupp ulterjuri f'internal development ghalkemm b'zieda ma zvilupp gia ezistenti, u jekk applikabbli, kienx hemm lok ghal relaxation of standards u jekk dawn gewx applikati u kif gew applikati mill-Awtorita skont paragrafi E4 u E5 dwar din il-flessibilita permissibbli u jekk fil-fatt l-Awtorita tatx ragunijiet ghaliex kien hemm lok ghal tali flessibilita skont ma jipprovdu l-istess guidelines ghall-uzu korrett tal-policies, liema guidelines, ghalkemm mhux ligi, pero ghandhom jigu osservati mill-Awtorita biex jiggarrantixxu ugwaljanza ta' kunsiderazzjoni bejn applikazzjonijiet simili.

It-Tribunal wasal ghal konkluzzjoni illi l-policy 3.8 ma gietx applikata mill-Awtorita ad unguem ghax applikat il-guidelines ghal 'relaxation of policy'. Dan ma jirrizultax mill-atti u lanqas hu spjegat u gustifikat mit-Tribunal bhala konsiderazzjoni primarja qabel ikompli jiddelibera fuq il-mertu nnfsu tal-appell. Jekk l-Awtorita ma ggustifikatx ruhha bil-miktub meta harget il-permess kif iridu l-guidelines, it-Tribunal ma setax jassumi hu dan il-kompitu izda semmai kellu jerga' jibghat kollox lil Awtorita biex jergghu jikkunsidraw l-applikazzjoni u jaghti ragunijiet specifici jekk il-policy 3.8 ma kinitx ser tigi applikata jew ser tigi applikata bir-relaxation of policy standards.

Hu meritevoli li t-Tribunal dahal hu fil-kwistjoni pero dan ma setax jaghmlu jekk l-Awtorita ma ddikjaratx espressament fil-permess kif ighidu l-guidelines ghaliex kienet qed tirrilassa l-istandard stretti tal-policy.

La darba t-Tribunal ma dahalx f'din il-kwistjoni, id-decizjoni tieghu tistrieħ fuq ir-ramel mhux il-blat u ma tistax treggi nonostante l-kunsiderazzjonijiet fil-mertu li ghamel, liema kunsiderazzjonijiet setghu biss ikollhom sahha wara li jigi superat l-ewwel skoll dwar l-applikazzjoni korretta tal-policy 3.8 mill-Awtorita.

Decide

Ghalhekk ghar-ragunijiet moghtija, il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' David Youngman, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Ottubru 2015, u tirrinviya l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell mill-gdid. Spejjez għall-Awtorita.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur