

4 ta' Dicembru, 1998

Imhallfin:-

S.T.O. Joseph Said Pullicino B.A. (Hons.), LL.D. - President
Onor. Carmel A. Agius B.A., LL.D.
Onor. Joseph D. Camilleri LL.D.

Anthony Pace

versus

Il-Kummissjoni għall-Kontroll ta' l-Iżvilupp u l-Awtorità ta' l-Ippjanar

**Att dwar l-Ippjanar - Bord ta' l-Appelli dwar l-Ippjanar -
 Appell minn - Punt ta' Dritt Deċiż mill-Bord**

Il-Qorti ta' l-Appell sabet bħala irritu u null appell minn deċiżjoni tal-Bord ta' l-Appelli dwar l-Ippjanar peress illi ma kienx hemm punt ta' dritt deċiż mill-Bord.

Il-Qorti:-

Fis-17 ta' Settembru, 1996, il-Bord ta' l-Appelli dwar l-Ippjanar ("il-Bord") ippronunzja din is-sentenza:

"Il-Bord:-

Ra l-appell ipprezentat fil-15 ta' Marzu, 1995 mill-Perit Edward Bencini B. Arch., A. & C.E., minn rifjut tal-permess għall-iżvilupp mehud fl-istadju tar-rikunsiderazzjoni mill-Kummissjoni għall-Kontroll ta' l-Iżvilupp, liema rifjut huwa ddatat 27 ta' Frar, 1995;

Omissis;

Illu r-raġunijiet mogħtija għar-rifjut tal-permess għall-

izvilupp huma s-segwent:

"... applicant is not a full-time registered farmer and therefore does not qualify to build a dwelling outside Development Scheme Boundary. Buildings originally permitted for agricultural use and should not be converted into habitable dwellings";

Illu fl-appell il-Perit Bencini ssottometta dan li ġej:

"Application for Permit 399/96 - Bidnija

By registered letter dated 27th February, 1995, to our client, Mr. Anthony Pace, the Secretary of the Development Control Commission informed him that after reconsideration of the original refusal, the DCC "confirmed its refusal since the applicant is not a registered full-time farmer and therefore does not qualify to build a dwelling outside the Development Scheme Boundary. Buildings originally permitted for agricultural use and should not be converted into habitable dwellings" (see doc. 1);

In terms of the law and as directed by our client we are submitting this appeal to the Planning Appeals Board, duly accompanied by the relative payment receipt of the appeal fee;

Case History

By building permit PB 3238/86/399/86 issued on the 2nd September, 1986 to Mr. Joseph Debattista, the PAPB approved the proposal to construct additional stores as per plans submitted (see doc. 2 and doc. 3);

In April, 1991, our client purchased the property from Mr. Debattista. At that time the property was built according to the plans approved by the PAPB (shown herewith as doc. 3), and finished throughout with materials suitable for a residence. In fact the building was actually completed as a residence according to the approved layout. It must be understood that when the permit was issued to construct a store in 1986, no "change of use" application existed and it follows that the store was subsequently upgraded in its finishes to satisfy residential purposes;

Our client then briefed us to prepare plans for proposed modifications and additions to the residence he had purchased. These were submitted for the approval of the PAPB by our application dated the 24th June, 1991, acknowledged by PB 399/86 (doc. 5 and doc. 6);

It must be emphasised that:

Our application categorically defined the existing use of the premises as a "habitation";

The accompanying photos confirmed the "finish" of the building as a habitation (see doc. 6 and doc. 7);

On the 30th November, 1992, the PAPB refused our application because "the works are incompatible with the rural character of the area" (see doc. 8);

On the 18th December, 1992 we appealed to the Select Committee of the House of Representatives as per attached doc. 9;

This appeal was referred to the Planning Authority as per attached doc. 10;

A refusal of Development Permission was issued by the Planning Authority on the 24th March, 1993 on the "grounds that the site falls outside scheme and change of use of stores into residential is not acceptable" (see doc. 11);

On the 13th April, 1993, on behalf of our client we submitted request for reconsideration to the Development Control Commission (see doc. 12);

The Development Control Commission's refusal of this request has already been referred to above (doc. 1);

Reasons for Appeal

The original building permit approved "the erection of additional stores as per plans submitted" and included condition (4) that "Premises are not to be used as Furnished or Holiday Flats by tourists";

The structure was built as approved and finished to a standard appropriate for a residence, and purchased by my client as such;

When the permit was issued in 1986 conversion of derelict country buildings into residential units was customary and no application for a building permit was required unless such conversion included an extension of the building footprint. Change of use applications did not exist;

It is our contention that when this property was

constructed following the issue of the permit in 1986, the only restrictions on its use was that it could not be used as a Furnished or Holiday Flat by tourists;

Our client thus acquires a legal construction (PAPB 3238/86/399/86) finished as a de facto residence (for a Maltese citizen not a tourist) and therefore not in breach of the original permit;

To the best of our knowledge the above is borne out by the fact that no action whatsoever was brought against the former owner, or my client by the Works Department for breach of the original permit conditions, even I submitted the application to extend the "existing habitation" in 1991;

We therefore contend that the use of the property originally approved by PB 3238/86/399/86 as a residence is in no way illegal;

The refusal by the PAPB of the 30th November, 1992 (doc. 8) rejected the application "because works are incompatible with the rural character of the area";

It must be strongly emphasised that this refusal did not refer to the residential use (habitation) of the premises, but defined the refusal as being based on "works incompatible with the rural character of the area";

Clearly therefore this refusal can only refer to the "works" we were proposing to erect as an extension and/or modification to the existing habitation, mentioned in our application. And not to the existing use of the existing premises as a habitation;

We must emphasize that our client has never been asked by the PAPB or by the Planning Authority to modify the external elevations of the building constructed accordingly to PB 3238/86/399/86, to be more compatible with the area's rural character;

Nevertheless our appeal to the Select Committee (doc. 9) later referred to the Development Control Commission of the Planning Authority, made specific reference to Article 2 (a) of the Building Permits (Temporary Provisions) Act, 1988 (doc. 13), which leaves no doubt that even if for the sake of argument, the de facto and legal earlier change of the premises from a store to a habitation is ignored, our client was fully entitled to insist on the issue of a building permit sanctioning such change under the Temporary Provisions Act, 1988;

The above elaborated arguments was completely ignored by the Development Control Commission in their refusal dated 24th March, 1993 which refused our application "on the grounds that site falls outside scheme and change of use of stores into residential is not acceptable". But:

Refusing an application on the grounds that the "site falls outside scheme" is irrelevant:

Our application never requested the change of use from stores to residential use, but from the very beginning proposed to modify and extend (xoghol ta' tibdil b'zieda fl-area msaqqfa) the existing habitation:

We furthermore contended that once the original application was submitted on the 24th June, 1991, then it should also be determined according to rules and regulations applying at the time, namely the Temporary Provisions Act and DC 1/88:

To determine the application under regulations established, after the forming of the Planning Authority nearly two years later, is unfair and unjust and will discriminate against my client who after all purchased the property in good faith in April, 1991”;

Fix-xhieda tieghu, is-Sur Joe Debattista qal hekk:

“F1-1986 konna ġejna mogħtija permiss biex nibnu *stores*. Dak kien permiss “*to add additional stores to main farm*”. Ġara li matul is-sentejn lingħata dan il-permiss il-*farm* ma kienx sejjer tajjeb u deħri, bħala *Manager*, li kelli nibda noqgħod fuq il-post. Hu għalhekk li ġie kkonvertit b’xi twieqi, però *in the meantime* qabel tlesta dan ix-xogħol il-*farm* ingħalaq. Il-bidliet li kienu saru kienu minimi, bħal ftuh ta’ twieqi għal ġewwa sabiex ikollu d-dwal u l-arja, eċċ. Dak iż-żmien lanqas kont tapplika biex tagħmel xi emendi fil-bini. Imbagħad wara ddeċidejna li nbieghu l-art. B’kollox hemm xi 17-il tomna art, li qassmuha fi *plots* biex ma nahlux raba’. Sal-lum għadhom inbieghu ftit *plots* u għaldaqstant għad m’hemmx żvilupp;

Mad-dawra tagħhom hemm majjali u tiġieġ u żgur li mhux ser jintużaw minn xi turisti. L-iskop ta’ wara kien li l-*manager* tal-*farm* ikollu fejn joqgħod. Meta l-*farm* għalaqnih kien vojjt. Dak il-permiss kien fuq biċċa art żgħira minima;

Qiegħed nimmarka bl-ittra A fuq is-*site plan* min għamel il-kelma *proposed* nahseb li mmarka sewwa. Mistoqsi dwar il-kmamar nirrispondi li dwar dan l-ewwel insibu kmamar tal-ġwież u meta tkun qed trabbi, il-kamra l-kbira kollha tintuża bħala *store* tal-ġwież, imbagħad affarijiet ohra meta tkun qed trabbi l-majjali, tiġieġ - *broilers*. Irid ikollok ċerti affarijiet li żżomhom iktar maqfulin minn affarijiet ohra bħal ġwież;

Dak iż-żmien ma kontx tapplika ghaċ-*change of use* minn *store* ghal *residential*;

Ahna ma konniex qed nitolbu ghal alterazzjonijiet go bini li qiegħed jagħti fuq it-triq;

Meta xtrah is-Sur Pace, kien għadu mhux attrezzat biex joqogħdu n-nies go fih;

It-twieqi li jidhru fir-ritratt huma l-istess kif inhuma fuq il-pjanti”;

Il-Kummissjoni għall-Kontroll ta' l-Iżvilupp, min-naħa tagħha, ssottomettiet dan li ġej:

“Discussion

This is an application for the alteration and extension of an existing store to convert it into a dwelling. The application history is summarised as follows:

Application for “proposed additional stores” by Mr. Joseph Debattista (1st February, 1986). Permit no. 3238/86/399/86 issued by the PAPB (2nd September, 1986);

Application for the alteration of existing stores, including extension, for conversion into a dwelling by Mr. Anthony Pace (24th June, 1991);

Note: Mr. Anthony Pace (Deed of Ownership, 10th August, 1991);

Site inspection by the Building Inspector revealed that although the stores had been built according to permit they were being used for habitation (9th September, 1991). Legal action was initiated in PAPB file no. 361/92/A (20th July, 1992);

Application refused by the PAPB on the grounds that "... works are incompatible with the rural character of the area" (30th November, 1992);

Appeal to the Select Committee by the applicant on the grounds that the building had been constructed as per permit no. 328/86/399/86 but that "... the premises were subsequently as a residence ...", also that the "... proposal are to effect additions and alterations to give the earlier building a rustic character, far more compatible with the rural character of the area than the existing building" (18th December, 1992);

APU 1 asked to review the application (2nd February, 1993). In the Development Permit Application report to the Development Control Commission, on the 10th February, 1993, the Area Planning Unit recommended refusal again on the ground that "... the site falls outside Scheme and change of use from farm stores into residential is not acceptable in this area";

Application refused by the DCC for the aforesaid reasons (24th March, 1993);

Appeal to the Planning Authority, on the 13th April, 1993, on the grounds that:

"... when purchased by our clients the premises was effectively constructed and finished as a residence";

On the original permit no. 3238/86/399/86 condition 4 has stated that "Premises area not to be used as Furnished or Holiday Flats, by tourists". But that "... no similar exclusion has been made regarding use of premises as a residence by local residents";

APU 1 asked to review the application further (20th April, 1993);

There are various points to note in this reconsideration as follows:

It is very clear from the wording of the original permit no. 3238/86/399/86 that Mr. Debattista was granted permission for farm stores and not residential units - either for tourists or local residents. Therefore, one can explain how the architect, now representing the present applicant, Mr. Pace, could justify the resultant breach of the permit with the comments made in his letter of appeal dated 13th April, 1993 (see paragraph 5.9 above);

Mr. Anthony Pace is not a fully registered farmer, as confirmed by the Agriculture Department on 4th August, 1993. Therefore, he does not satisfy the conditions laid down in the Structure Plan Explanatory Memorandum which refers to the erection of dwellings in rural areas (see paragraph 4 above);

Despite the fact that when Mr. Pace bought the property the offence had already been made, he would, or should, have been aware of the wording of the permit and therefore of the fact that the "dwelling" was illegal. We cannot now permit the extension of an illegal development which is contrary to the Structure Plan Policy";

Ikkunsidra ulterjorment:

Illi skond it-*Temporary Provisions Scheme*, is-sit in kwistjoni jinsab barra ż-zona permessa għall-iżvilupp u għalhekk, japplikaw il-*policies SET 11, SET 12* u l-paragrafu 7.6 tal-Pjan ta' Struttura. Skond l-imsemmi paragrafu 7.6, l-iżvilupp li l-appellant irid jagħmel ma jistax jinghad li jikkwadra f'dawk it-tipi ta' żviluppi li eċċezzjonalment jistgħu jsiru barra miż-zona permessa għall-iżvilupp. Lanqas ma jista' l-appellant jibbenefika mill-*policies* tal-Pjan ta' Struttura li jittrattaw dwar l-agrikoltura fejn *full-time bona fide farmer* jista' jagħmel żvilupp barra miż-zona permessa għall-iżvilupp peress li l-appellant mhux irregistrat bħala *full-time* mad-Dipartiment ta' l-Agricoltura. Il-Bord jinnota li mill-*planning history* ta' l-applikazzjoni l-permess għall-iżvilupp li kien inhareġ originarjament kien indirizzat lil Joseph Debattista f'isem Andrew Feeds Ltd. "*to erect additional stores as per plans submitted*";

Il-Bord jinnota li l-appellant qed jitlob li jikkonverti l-*istore* għal residenza għall-fini ta' abitazzjoni. Dan il-Bord ra ukoll il-*policies* kontenuti fil-paragrafu 11.2 ta' l-*Explanatory Memorandum* għal Pjan ta' Struttura li jippermettu żvilupp konsistenti f'bini ta' natura residenzjali barra ż-zona permessa għall-iżvilupp basta li l-applikant ikun *full-time bona fide farmer jew animal breeder*. Il-Bord jinnota li l-appellant ma jaqa' taht l-ebda waħda minn dawn iż-żewġ kategoriji;

Għal dawn il-motivi, il-Bord jiċhad l-appell u jikkonferma r-rifjut għall-permess għall-iżvilupp mahruġ mill-Kummissjoni għall-Kontroll ta' l-Iżvilupp fl-istadju tar-rikunsiderazzjoni";

Anthony Pace ressaq l-aggravji tiegħu dwar din id-deċiżjoni quddiem dina l-Qorti u talab li l-istess deċiżjoni tiġi

mhassra u minflok jintlaqa' l-appell li sar fil-konfront tar-rifjut għall-permess għall-iżvilupp mahruġ mill-Kummissjoni għall-Kontroll ta' l-Iżvilupp u mill-Awtorità ta' l-Ippjanar;

Min-naha tagħhom dawn l-appellati, fir-risposta dettaljata li pprezentaw, talbu li din il-Qorti tiċhad it-talbiet ta' l-appellant u talbu li d-deċiżjoni msemmija tal-Bord tas-17 ta' Settembru, 1996 tiġi kkonfermata;

L-appellati ssollewaw eċċezzjoni preliminari fis-sens li l-appell odjern hu rritu u null billi:

“bl-ebda mod ma qed isir appell minn xi punt ta' liġi deċiż mill-Bord ta' l-Appell dwar l-Ippjanar;

L-appell kollu hu bbażat fuq kostatazzjonijiet ta' fatti u xhieda u provi fuq kif kien *de facto* jintuża l-fond in kwistjoni u fuq l-interpretazzjonijiet ta' l-istess pjan ta' struttura għall-fatti in ezami mill-istess Bord, li l-istess Onorabbli Qorti ta' l-Appell f'diversi ċirkostanzi rribadiet li dawn ma jaqghux fil-kompetenza ta' l-istess Qorti ta' l-Appell”;

Din l-eċċezzjoni hija bbażata fuq l-artikolu 15 (2) ta' l-Att 1 ta' l-1992;

“id-deċiżjonijiet tal-Bord ikunu finali hliet dwar punti ta' liġi deċiżi mill-Bord li minnhom ikun hemm appell lill-Qorti ta' l-Appell”;

Għalhekk, l-aggravji li ressaq l-appellant iridu jiġu ezaminati fid-dawl ta' din id-disposizzjoni sabiex jiġi ddeterminat jekk l-istess aggravji jikkwalifikawx bhala “punti ta' liġi deċiżi mill-Bord”. Dana billi kwistjonijiet bhal dawn

biss, jidhlu fil-ġurisdizzjoni ta' din l-Qorti f'appelli bhal dawn. Din il-Qorti m'għandhiex bżonn li telabora *funditus* dwar dan il-punt billi ngħataw numru konsiderevoli ta' sentenzi riċentement li jinterpretaw l-imsemmija disposizzjoni tal-liġi;

Illi jekk wiehed janalizza d-deċiżjoni appellata tal-Bord, wiehed isib li l-istess deċiżjoni tinkorpora *t-test shih u verbatim* ta' l-appell ta' Anthony Pace, tas-sottomissjonijiet bil-miktub tal-Kummissjoni għall-Kontroll ta' l-Iżvilupp u x-xhieda ukoll *verbatim* ta' Joe Debattista (Direttur tas-Socjeta' li ttrasferiet il-fond meritu ta' l-appell lil Anthony Pace). Imbagħad, id-deċiżjoni tal-Bord tikkonkludi bil-konsiderazzjonijiet li għamel il-Bord, liema konsiderazzjonijiet huma riportati fl-aħħar tliet paragrafi tad-deċiżjoni. Għalhekk, proprjament, huma dawna l-aħħar tliet paragrafi li huma l-aktar importanti għall-konsiderazzjoni ta' l-eċċezzjoni li qiegħda tiġi nvestigata preliminarjament. Huwa proprju minn dawn l-aħħar paragrafi tad-deċiżjoni appellata li jrid jirriżulta jekk hemmx jew le punti ta' liġi deċiżi mill-Bord u konsegwentement jekk l-aggravji ta' l-appellant għandhomx bażi ġurisdizzjonali tajba jew le;

Eżami ta' l-imsemmija paragrafi tad-deċiżjoni tal-Bord jindika li l-Bord wasal għal dawn il-konkluzjonijiet:

Li s-sit jinsab barra ż-żona permessa għall-iżvilupp (ODZ) skond it-*Temporary Provisions Scheme*;

Li għalhekk, japplikaw il-*policies SET11, SET12* u l-paragrafu 7.6 tal-Pjan ta' Struttura;

Li kienu rilevanti ukoll il-*policies* kontenuti fil-paragrafu 11.2 ta' l-*Explanatory Memorandum* li jippermettu bini ta' natura residenzjali barra ż-żona permessa għall-iżvilupp basta li l-applikant ikun *full-time bona fide registered farmer* jew

animal breeder;

Li originarjament, il-permess ghall-izvilupp kien inhareġ (fl-1986) "to erect additional stores as per plans submitted". Ta' min iżid hawn li dan il-permess hareġ fis-sena 1986, wara applikazzjoni li kienet tiddekrivi l-proġett bhala "proposed additional stores at Andrews Farm, Bidnija";

Li t-talba ta' l-appellant kienet li jikkonverti l-istore ghal residenza ċjoè ghal fini ta' abitazzjoni;

Li, applikati l-policies msemmija ghall-fatti tal-każ, l-appellant ma kienx jikkwalifika ghal xi ezenzjoni taht il-policies rilevanti u ghalhekk ir-rifjut ghall-permess ghall-izvilupp kellu jiġi kkonfermat;

L-aggravji li ressaq l-appellant ghall-argumentazzjoni u konkluzjonijiet tal-Bord huma s-segwenti, li sejrjn jiġu ċċitati *verbatim*;

"F'ebda hin ma l-esponent talab li jikkonverti store f'residenza. It-teżi ta' l-esponent dejjem kienet illi l-proprjetà u fond mixtrija minnu hu regolarment kostruwit skond permess. Fil-mument li huwa xtara kienu *de facto* fond ta' abitazzjoni u dan jinsab suffragat minn ċirkostanzi ambjentali bhal *finishing* ta' l-istruttura - *finishing* li ċertament mhuwiex kompatibbli ma' *finishing* normalment intiż ghall-imhazen. Jekk il-fond kien wiehed ta' abitazzjoni allura l-applikazzjoni ta' l-esponent kellha tiġi ttrattata bhala applikazzjoni ghall-żidiet f'fond ta' abitazzjoni u mhux tinhareġ mill-isfond li fih ġiet ipprezentata u tiġi miċhuda ghar-raġunijiet illi mhumix applikabbli ghall-każ u dan kif ser jinghad aktar 'il quddiem;

Anke jekk wiehed jara l-ewwel rifjut tal-PAPB dan sar

ghar-raġuni illi x-xogholijiet proposti huma inkompatibbli mal-karattru rurali ta' l-arja. Ma hemm ebda referenza ghall-użu residenzjali jew ghall-kambjament fl-użu;

Gie argumentat mill-Bord ta' l-Appell illi l-permess originali kien jaghti permess illi jinbnew *farm stores and not residential units*. Bir-rispett kollu dan mhuwiex minnu. Il-permess originali jittellem dwar *stores* addizzjonali u ma jsemmix li dawn l-*istores* huma *farm stores* jew xort'ohra. Il-permess però jelenka numru ta' kundizzjonijiet li huma applikabli ghall-permess, bhalma hija l-kundizzjoni illi: "*premises are not to be used as furnished or holiday flats for tourists*". Ma jissemmewx *local residents*, kif jidher li qed jipprova jghid il-Bord ta' l-Appell. Dan kollu jfisser - tenut kont il-fatt illi f'dak iż-żmien ma kinitx teżisti n-neċessità ta' applikazzjoni ghal *change of use* - illi jekk *stores* jigu konvertiti f'fond ta' abitazzjoni (kif inhuwa l-każ odjern) dan seta' jsir sakemm dan il-fond ta' abitazzjoni ma jinbidilx f'*furnished* jew *holiday flats* ghat-turisti;

Il-Bord ta' l-Appell ghamel referenza ghat-*Temporary Provisions Schemes* u stqarr illi s-sit in kwistjoni jinsab barra ż-żona permessa ghall-iżvilupp u ghalhekk japplikaw *policies* SET11, SET12 u l-paragrafu 7.6 tal-Pjan ta' Struttura. Minn qari u eżami tal-*policies* SET11 u SET12 u tal-paragrafu 7.6 tal-Pjan ta' Struttura huwa ovvju u ċar illi dawn jittelmu dwar kostruzzjonijiet godda u mhux dwar modifiki u żidiet f'kostruzzjoni eżistenti, kif inhu l-każ in eżami;

Jidher li l-Bord ta' l-Appell lanqas ma fehem il-kwistjoni li kien hemm quddiemu ghad illi jkompli jistqarr illi l-applikazzjoni ta' l-esponent kienet wahda li tinkorpora talba ghall-konversjoni ta' *store* f'residenza ghall-fini ta' l-abitazzjoni. Dan ma kienx il-każ, kif għa' spjegat u ghalhekk ir-

referenza ghal *bona fide farmer* jew *animal breeder* hija rrilevanti u zbaljata. Dak li kellu quddiemu l-Bord ta' l-Appell kien rifjut ta' applikazzjoni ghall-permess ghal tibdiliet u zidiet lill-kostruzzjoni eżistenti. Ir-rifjut originali kien motivat mill-fatt illi x-xoghlijiet kienu inkompatibbli mal-karattru rurali ta' l-area in kwistjoni. Ma teżisti ebda referenza ghal tibdil fl-użu tal-fond. Huwa wara çjoè meta l-kwistjoni giet quddiem l-Awtorità ta' l-Ippjanar u l-Kummissjoni ghall-Kontroll ta' l-Iżvilupp li ssir referenza ghal bdil ta' użu minn *store* ghal residenza, referenza li ma ghandha ebda relevanza u konnessjoni mal-każ, ghad li ma saret qatt talba ghal bdil ta' l-użu u lanqas kellha qatt ghalfejn issir tali talba, ikkunsidrat il-fatt illi meta sar it-tibdil effettiv lanqas kien hemm bżonn li ssir tali talba. Jidher illi l-Bord ta' l-Appell nesa li kien jeżisti perijodu bejn il-bini ta' l-imhazen u l-applikazzjoni ta' l-esponent fejn it-tibdil ta' l-użu seta' jsir minghajr applikazzjoni u effettivament sehh - ċirkostanza korroborata mix-xhieda ta' Joseph Debattista titolari tal-permess ghall-kostruzzjoni tal-fond in kwistjoni sussegwentement mixtri mill-esponent, apparti minn ċirkostanzi ambjentali fuq spjegati”;

Apparti l-eċċezzjoni preliminari li diġà ssemmiet l-appellati, fir-risposta tagħhom, wiegħbu hekk:

“Illi subordinatament u minghajr preġudizzju ghas-suespost, jinghad mill-appellant li galadarba l-applikazzjoni originali saret fl-24 ta' Gunju, 1991 kellu jigi kkunsidrat ir-regoli ta' dak iż-żmien. Dan mhux minnu, għax skond l-Att I ta' l-1992, l-applikazzjoni giet ikkunsidrata (wara dikjarazzjoni tal-perit ta' l-applikant dok. TDI) hawn anness bhala applikazzjoni ġdida li taghti lill-Awtorità ta' l-Ippjanar ġurisdizzjoni li tismaghha u apparti dan kif diġà ribadit mill-Qorti ta' l-Appell. il-kunsiderazzjonijiet li ghandhom jittiehdu mill-Awtorità f'kull każ huma l-*policies*. pjanijiet u ligijiet ta' meta jinhareġ il-permess jew ir-rifjut, bhal f'dan il-każ;

Illi apparti dan, il-permess li kien hemm fuq il-post kien ghal *additional stores* ghal Andrews Bidnija Farm. Illi l-applikazzjoni meritu tar-rifjut meritu ta' dan l-appell hi ghal *detached villa* u mill-provi kollha li ngibu rrizulta li l-istores dejjem baqghu ntizi bhal *stores* però saru kambjamenti zghar (illegament ghax ftuh ta' twieqi fil-fatt dejjem kienu jirrikjedu permess, mhux kif xehed l-istess xhud), biex il-*manager* jew xi haddiehor joqghod fuq il-post mhux bhala residenza iżda biex ikun jista' jimmaniggja l-istess *farm*;

Ghaldaqstant, subordinatament id-deċiżjoni tal-Bord hi gusta u timmerita konferma stante mhux permissibbli skond il-pjan ta' struttura *detached villa* fiż-żona fejn tinsab u lanqas ebda abitazzjoni hlief dawk eċċetti mill-istess pian ta' struttura, li l-każ odjern ma jaqax fihom”;

L-appellant qiegħed jerga' jsostni quddiem dina l-Qorti, iteżi li digà sostna, bla suċċess, quddiem il-Bord, u ejoè:

Li l-permess originali (dak tas-sena 1996) ghalkemm gie mogħti ghal bini ta' *stores*, però kellu kondizzjoni li *premises are not to be used as furnished or holiday flats for tourists*;

Li l-fond gie mibni f'*finishes* intiżi ghal residenza u kien jintuża bhala residenza ghal ċittadin Malti qabel ma l-appellant akkwista l-fond in kwistjoni;

Li dak iż-żmien ma kienx neċessarju li ssir applikazzjoni lill-Awtoritajiet biex tapprova *change of use* ta' fond;

Li l-fond akkwistat mill-appellant kien gie kkonvertit f'residenza u kien konformi mal-permess originali;

L-appellant jikkritika d-deċiżjoni tal-Bord prinċipalment għaliex skond l-appellant il-Bord interpreta u fehem hażin il-vertenza li kellu quddiemu u *ċaħad* l-appell għal raġunijiet li ma kinux applikabbli għall-każ. L-appellant enfasizza l-applikazzjoni li huwa għamel, l-ewwel lil PAPB u wara lill-Awtorità ta' l-Ippjanar, ma kinitx, għal *change of use* kif irritjena l-Bord, iżda invece kienet biex jiġu approvati tibdiliet u żidiet, dwar fond li diġà kien jintuża debitament bhala abitazzjoni. L-appellant, inoltre, sostna li a bażi tal-fatti fuq spjegati minnu, il-*policies* riferiti fid-deċiżjoni appellata ma kinux applikabbli għall-każ odjern;

Huwa evidenti minn qari tad-deċiżjoni appellata, li l-Bord ma nterpretax il-fatti li rriżultawlu, skond it-teżi ta' l-appellant. Dan sostna bażikament li wiehed seta', skond il-liġi applikabbli dak iż-żmien, jikkonverti *stores* agrikoli mibnija fis-sena 1986 f'*residenza (detached villa)* f'*żona* li fiha mhux permess li jsir żvilupp. Invece, kif jirriżulta mid-deċiżjoni appellata stess li l-permess originali kien għal bini ta' *farm stores and not residential units - either for tourists or local residents*;

Sostnew ukoll li l-appellant ma kienx *a full registered farmer* u għalhekk ma kienx jikkwalifika biex ikollu abitazzjoni f'*area rurali*, skond l-*Explanatory Memorandum*. Sostnew, inoltre, li l-bini eżistenti, bhala *dwellings*, kien wiehed illegali u li l-Awtorità "*cannot now permit the extension of an illegal development which is contrary to the Structure Plan Policy*";

Sfortunatament il-Bord naqas li jaghti r-raġunijiet tiegħu għaliex wasal biex jaċċetta t-teżi ta' l-appellati u li jiskarta t-teżi ta' l-appellant. Il-Bord jidher li qata' għad-dritt u ma dahalx fid-diversi kwistjonijiet issollewati mill-appellant, ewlenin fosthom dawk imsemmija fil-paragrafu 6 supra;

Fil-fehma konsiderata tal-Qorti, il-Bord kien mistenni li jittratta adegwatament dawn il-kwistjonijiet sabiex l-appellant jinghata sodisfazzjon ghalix it-tezi tiegħu ma gietx accettata. Dan hu hekk, aktar u aktar meta si tratta bhal każ odjern, ta' kwistjonijiet predominantement ta' fatt u mhux ta' dritt, fejn, skond il-liġi, id-deċiżjoni tal-Bord tkun finali u ma tkunx soġġetta għal ebda appell lil din il-Qorti;

Naturalment, din il-Qorti, bil-gurisdizzjoni limitatissima konferita fuqha bil-liġi f'appelli bhal dawn, ma tistax tirrettifika kwalunkwe irregolarità, serja jew mhix, li tiltaqa' magħha fid-deċiżjonijiet tal-Bord. Invece trid taġixxi strettament entro l-limiti gurisdizzjonali traċċati għaliha bid-disposizzjoni msemmija;

Infatt, dina l-Qorti ma għandhiex setgħa gurisdizzjonali li teżamina l-fatti tal-każ u tissindika jekk dawk il-fatti kif jirriżultaw mill-atti, ġewx interpretati, valutati u mifhuma sewwa mill-Bord, jew le. Din il-Qorti hija marbuta mal-mod kif il-Bord fehem il-fatti tal-każ, inkluża l-fatt li l-Bord ittratta l-applikazzjoni ta' l-appellant bhala wahda li, effettivament, kienet tikkonċerna *change of use* mill-iskop tal-permess kif oriġinarjament konċess;

Illi jekk wiehed ihares lejn l-aggravji ta' l-appellant minn dina l-perspettiva, wiehed ma jistax ma jikkonkludix li l-eċċezzjoni preliminari ta' l-appellati hija fondata u għalhekk huwa lok li tintlaqa';

Għal dawn il-motivi:

L-appell huwa miċhud u d-deċiżjoni tal-Bord tas-17 ta' Settembru, 1996 hija kkonfermata bl-ispejjeż għall-appellant. Salv kull dritt iehor, jekk jeżisti, favur l-appellant.