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Fit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar

Carmel Busuttil (ID Nru: 66266 M)

vs.

L-Awtorita` tal-Ippjanar

Rikors tal-appell ta' Carmel Busuttil [ID no: 66266 (M)]

ENVIRONMENT AND PLANNING
REVIEW TRIBUNAL
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Jesponi bir-rispett:

PA: **07957/19**

Location: **Site at Triq Santa Katerina, Dingli**

Proposal: **Demolition of existing rural structures and re-construct as per 1968 footprint.**

1. Illi dan huwa Appell minn decizjoni tal-Awtorita` tal-Ippjanar tas-27 ta' Jannar 2021, ippublikata fid-9 ta' Frar 2021 rigward applikazzjoni numru PA 07957/19 hawn fuq citata.

2. Illi l-appellant jixtieq li jissottemetti Appell wara decizjoni mill-Awtorita` tal-Ippjanar li ma jawtorizzax l-permess ghall-izvilupp tas-sit skont l-applikazzjoni numru PA 07957/19.

3. Illi **l-fatti** fil-qosor huma s-segwenti:

i. Illi l-appellant issottometta applikazzjoni ghall-izvilupp – PA 07957/19;

ii. Illi l-Awtorita' appellata cahdet l-applikazzjoni ghas-segwenti ragunijiet:

" 1 The proposed works on site located within a Category 3 Rural Settlement runs counter to the provisions of Local Plan policy NWRS 4 of the North West Local Plan since no structures were ever present in year 1967 and the present illegalities within the site have resulted in the take up of fresh land. The proposal therefore also runs counter to the Urban Objective 3 of Strategic Plan for the Environment & Development (SPED) which aims to protect and enhance the character and amenity of urban areas.

2 The proposal runs counter to criterion 3 of policy 6.2C of the Rural Policy and Design Guidance (RPDG) 2014 since the footprint of the structures being requested to be constructed exceeds that of the pre-1978 building. Furthermore the proposal is also counter to Policy 2.5A of the Rural Policy & Design Guidance (RPDG) 2014 as applicant proposal exceeds the maximum storage entitlement. In addition the room is not surrounded with agricultural land pertaining to applicant. The proposal is therefore also runs counter to the Thematic Objective 4 of the Strategic Plan for Environment & Development which seeks to protect the landscape.

3 The proposed removal of the concrete passageway and concrete platform and the laying of local hard-stone paving is not acceptable since the existing passageway is not an access to an arable holding. The illegality has resulted in the take up of agriculture land thus counter to policy 1.2D of the Rural Policy and Design Guidance 2014 which seeks to ensure soil conservation. Thus the proposal is in conflict with Rural Objective 1 of the Strategic Plan for Environment and Development which seeks to ensure protection of good quality soil from any development

4 The proposal cannot be considered further unless the following illegal development covered by ECF 0010/15 is first sanctioned or removed and this in terms of Regulation 17 of Legal Notice 162 of 2016. The illegal development consist of the use of the rooms as a residence, concrete platform enclosed with a boundary wall of 3 courses high with a timber structure adjacent to some room and concrete passage leading to the said illegal development. ";

iii. Illi l-appellant ma jaqbilx mal-konkluzjonijiet tal-istess decizjoni u qieghed jinterponi umli appell.

4. **L-Ewwel aggravju** tal-appellant huwa car u manifest u jikkonsisti fis-segwenti u cioe` li l-Awtorita' appellata fid-decisjoni taghha sostniet li ai termini tar-Regolament 17 tal-Avviz Legali 162 tal-2016, l-appellant ma setghx iressaq l-applikazzjoni li ressaq qabel ma jissanzjona jew inehhi l-izvilupp illegali li hemm fis-sit.

   Illi bir-rispett dak li qed jipproponi huwa "**Demolition of existing rural structures and re-construct as per 1968 footprint.**

   Illi ghalhekk l-appellant fl-applikazzjoni tieghu stess l-appellant qieghed jipproponi li se jkun qieghed inehhi u jwaqqa l-istrutturi ezistenti u jibni skond il-1968 footprint.

   Illi jinghad li r-Regolament 17 tal-Avviz Legali 162 tal-2016 jikkontempla s-sanzjonar innifsu u li x-xoghlijiet illegali li ma jkunux inkluzi f'applikazzjoni ta' sanzjonar ghandu jitnehha qabel il-hrug tal-permess u cjoe **bhala kundizzjoni ghal hrug tal-permess** u mhux li wiehed ma jistax japplika jew li l-applikazzzjoni ma tigix ikkunsidrata.

   Illi f'dan il-kaz jekk hemm strutturi li huma mibnija illegalment dawn se jkunu imnehhija.

5. Illi minghajr pregudizzju ghas-suespost **it-tieni aggravju** tal-appellant huwa car u manifest u jikkonsisti rigward il-passagg li jwassal ghas-sit inkwistjoni.

   Illi bir-rispett dan il-passagg mhux biss huwa l-uniku access ghas-sit inkwistjoni u ma hemmx access iehor u ghalhekk jirrizulta ex lege mid-dispozizzjonijiet tal-Kodici Civili rigwardanti landlocked areas u mill-att tal-akkwist tal-appellanti izda dan il-passagg kien dejjem hemm u dan kif jidher fis-survey sheets ta' l-1968 kustoditi ghand l-istess Awtorita' u anke kif jirrizulta mis-site plans ta' qabel 1978.

   Illi kuntrarju ghal dak allegat, l-istess passagg jwassal ghal art agrikola.

   Illi bir-rispett it-tnehhija tal-passagg tal-concrete u l-concrete plantform kif propost se jwassal ghal dehra isbah u ahjar fl-ambjent tal-madwar.

6. Illi minghajr pregudizzju ghas-suespost **it-tielet aggravju** huwa car u manifest u jirrigwarda d-daqs l-istrutturi ezistenti u allura l-massimu li l-appellant setgha jinghat taht il-policy RPDG 2014.

   Illi din l-istess policy tippermetti li tigi kostruita struttura ta' l-istess daqs that l-istrutttura ezistenti u addirittura l-applikant jista jinghata daqs akbar jekk jissodisfa l-kriterji stabbiliti f'din l-istess policy.

   Illi bir-rispett l-appellant huwa intitolat li japplika ghal storage adegwat.

7. Illi minghajr pregudizzju ghas-suespost **ir-raba aggravju** huwa car u manifest u jikkonsisti fis-segwenti illi l-appelant ma qieghedx ikun trattat b'mod gust u qieghed ikun iddiskrimat mill-agir tal-appellata.

   Illi dan qieghed jinghad minhabba l-fatt li kif se jkun spjegat waqt il-mori ta' dan l-appell, l-Awtorita' tal-Ippjanar f'dawn l-ahhar snin fl-istess area fejn jinsab dan is-sit approvat applikazzjonijiet li huma simili ghal applikazzjoni intavolata mill-appellant.

   Illi minn issa ghall-finijiet u effetti kollha tal-ligi l-appellant qieghed jirrizerva l-pozizzjoni Kostituzzjonali tieghu.

Ghaldaqstant, l-appellant, filwaqt illi jirriserva li jgib provi ohra skont il-Ligi u li jaghmel sottomisjonijiet ulterjuri kemm verbalment u kemm bil-miktub, jitlob bir-rispett li dan l-Onorabbli Tribunal joghgbu jilqa' dan l-appell u jirrevoka, jhassar u jannulla d-decizjoni tal-Awtorita` tal-Ambjent u l-Ippjanar datata 27 ta' Jannar 2021 u ppubblikata 9 ta' Frar 2021 u jordna u jiddeciedi li l-applikazzjoni PA/ 07957/19 tkun approvata.

Avv. Franco Galea

58, Old Bakery Street, Valletta

Appellant:28, Tanti Flats, Mons Buhagiar Street, Rabat, Malta.

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vs.

L-Awtorita` tal-Ippjanar

Lista tax-Xhieda tal-appellant

1. L-appellant sabiex jixhed dwar il-fatti tal-kaz;
2. Rapprezentant tal-Awtorita` tal-Ippjanar sabiex jixhed dwar il- permess indikat f'dan ir-rikors tal-appell, dwar korrispondenza mibghuta lill-Awtorita` u d-dokumenti pprezentati, kif ukoll sabiex jixhed u jipprezenti dokumenti rigward applikazzjonijiet approvati mill-Awtorita tal-Ippjanar fl-akkwati tas-sit tal-appellant;
3. Rapprezentant tal-Awtorita` tal-Artijiet (Lands Authority), Rapprezentanti tal-Kunsill Lokali ta' Had-Dingli u tar-Rabat Malta, Nutara Pubblici Maltin, Perit Julian Borg, periti ex parte lkoll dwar il-fatti tal-kaz;
4. Sidien ta' siti li jinsabu fl-akkwati tas-sit tal-appellant sabiex jixhdu rigward applikazzjonijiet intavolati minnhom u approvati mill-Awtorita tal-Ippjanar.

B'riserva ta' kull xhud iehor li waqt il-mori ta' dan l-appell jirrizulta li huwa mehtieg ghal finijiet ta' dan l-appell.

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