



**QORTI TAL-APPELL**

**(KOMPETENZA INFERJURI)**

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

**ONOR. IMHALLEF MARK CHETCUTI LL.D.**

**Illum L-Erbgha, 22 ta' Gunju, 2016**

Numru 6

**Appell Nru. 8/2016**

**Stephen Galea**

**vs**

**L-Awtorita tal-Ippjanar gia  
I-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Maurice Mizzi u ohrajn, terzi interessati tat-18 ta' April 2016 li hassew ruhhom aggravati bid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016 li approvat PA 3116/12 'to construct winery below street level' fil-Bidnija;

Rat ir-risposta ta' Stephen Galea li sahaq li d-decizjoni tat-Tribunal ghandha tigi konfermata;

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tal-Awtorita tat-22 ta' Mejju 2014 (li giet mibdula mit-Tribunal) kienet wahda li tirrifletti l-policies applikabbli ghal kaz u in ogni kaz ma ghandhiex tbat i spejjez ghax l-appell mhux intiz kontra dak li kienet iddecidiet l-Awtorita;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

L-applikazzjoni giet rifjutata mill-Bord tal-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar wara li dawret ir-rakommandazzjoni tad-Direttorat tal-Ippjanar ghal hrug tal-permess, ghal dawn ir-ragunijiet segwenti:-

“1. The proposed winery is not located on the applicant's vineyard holding and is not within 500m of at least 2 hectares of the applicant's registered vineyard and thus it runs counter to policy 2.8B of the Policy and Design Guidance Agriculture, Farm Diversification and Stables.

2. The conditions of the outline permit are not being followed since the vineyard holdings locations are situated at an additional distance from the proposed winery.”;

Ra r-rikors tal-appell li jaqra hekk kif gej:

“The application PA 3116/12 was filed following the approval of outline permit PA 2185/06 by the Planning Appeals Board in terms of a decision delivered on 30th June 2011, a copy of which is being herewith attached. In its decision, the Board overturned the refusal originally issued by the Authority and ordered the issue of the permit subject to the following conditions:

1. Li tali binja tkun strettament limitata ghal winery u bl-ebda mod ma tista' tintuza bhala residenza;

2. Impozizzjoni ta' Bank guarantee ta' ghaxar t'elef Euro (10,000) sabiex tigi implimentata landscaping scheme ghas-saqaf tal-winery mal-livell tat-triq u li tali landscaping scheme tkun approvata mill-Awtorita';

Notwithstanding the fact that the decision of the Board was delivered on 30th June 2011, the actual permit was issued by the Authority on 12<sup>th</sup> April 2012, (almost ten months later). In the permit document, the Authority arbitrarily included a number of conditions which were not imposed by the Board and which are therefore, strictly speaking, ultra vires, since the Authority was not entitled to impose further conditions in addition to those imposed by the Board. It is submitted that this factor is crucial when examining the application of the conditions included in the permit by the Authority and which were not authorized by the Board and regarding which applicant reserves all his rights at law.

Furthermore, and without prejudice to my client's submissions about the fact that the inclusion of such conditions was ultra vires, it must also be stated that the Board had already finally decided that appellant was eligible for the construction of a winery, based on a number of criteria. Reference is made to the text of the decision of 30th June 2011, where the Planning Appeals Board had considered a number of factors, including the following:

- "L-appellant is-Sur Stephen Galea huwa registrat mal-Viticulture and Oenology Unit bhala vine grower mis-sena 2003"
- "L-appellant issottometta dokumentazzjoni ufficjali li turi li hu ghandu r-rekwiziti sabiex jintitolaw ghal bini ta' winery";
- "Ghaldaqstant, tenut kont tac-cirkostanzi u tal-fatti li l-appellant huwa bona fide vine grower u huwa registrat mad-Dipartiment ta' Viticulture u Oenology, is-sit huwa wiehed addatat ghal bini ta' winery".

Therefore, given that the Board considered and decided that applicant was eligible for such development and therefore ordered the issue of the outline permit, it is submitted that this is now a closed matter and consequently, my client has acquired a vested right to the issue of the full development permit so long as he adheres to the decision of the Planning Appeals Board.

This point was further driven home following a decision delivered by the Environment & Planning Review Tribunal on 3rd April 2014 with regards to the request made to the Tribunal by Chevalier Maurice Mizzi and others (App 143/12). These proceedings consisted of a request made to the Tribunal in terms of Article 77 of Chapter 504 for the revocation of permit PA 2185/06 on the grounds that errors and/or incorrect declarations were made to the Planning Appeals Board by appellant when the Board was considered appellant's appeal to the Board following the refusal of PA 2185/06.

The Tribunal examined the allegations made by Chevalier Maurice Mizzi and others that error or incorrect declarations were made by appellant to the Board and concluded that no such grounds existed for the application of Article 77. Indeed, the Tribunal quoted excerpts from the decision of the Board of 30th June 2011 and reached the following conclusion:

"... l-Bord ezamina r-rekwiziti necessarji skond il-ligi, ezamina l-policies applikabbli, ezamina l-fatti u dokumentazzjoni tal-kaz, u tenut kont anki tas-sit u d-dintorn, ikkonkluda dak li kkonkluda ... Ghalhekk, ai finijiet tal-mertu ta' din l-applikazzjoni t-Tribunal ghandu quddiemu decizjoni mehuda mill-Bord li certament dahal fl-istess mertu li dwaru llum ilmentat mir-rikorrenti ..... Si tratta ta' fatti li dwarhom il-Bord ghamel analizi tieghu u wasal ghall-konkluzzjonijiet tieghu."

This recent decision of the Tribunal in concluding that there was no fraud, error or incorrect information submitted by appellant to the Board, effectively confirmed and highlighted those considerations and conclusions of the Board in deciding to grant the outline permit in terms of its decision of 30th June 2011. Therefore, insofar as the acceptance in principle of the application is concerned, this was conclusively decided in terms of this decision and could not be re-examined by the Authority.

Application PA 3116/12 was submitted as a consequence of the issue of the outline development permit and, in the DPA report presented to the Authority Board, the Directorate recommended the grant of the permit subject to a number of conditions (copy attached). Indeed, the Directorate concluded the following in its report to the Authority:

"The principle for the construction of a winery has already been established through the approval of the outline permit PA 2185/06, and the information with regard to the applicant's vineyard holdings (doc. 16f and drawg. 68) correlates with the information previously submitted with the outline application and was therefore taken into account by the Planning Appeals Board when considering the site as "wieved addatat ghal bini ta winery" (refer to docs. 41-41fin PA 2185/06). In view of this, the proposal is being recommended for approval."

Notwithstanding the Directorate's own clear and unequivocal recommendation to the Authority Board, a decision was taken on 22 May 2014 refusing the application.

As a preliminary issue, the appellant submits that the Authority is bound by law in terms of the proviso to Article 69(3) to "give specific reasons based on existing plans, policies and regulations or other material considerations for such refusal" and therefore, the Tribunal is being requested to order the production of the minutes of the meeting of 22<sup>nd</sup> May 2014 in order to establish whether the decision of the Board was taken according to law and whether such "specific reasons" were given at that instance. In this respect, appellant reserves all his rights at law vis a vis the members of the Board.

Appellant submits that the decision of the Board was ultra vires since the decision of the Planning Appeals Board in respect of PA 2185/06 established the acceptance in principle of the development and consequently, the Board was not authorized to re-examine this matter once again on the basis of the same information as was submitted and considered by the Planning Appeals Board. Reference is made to the Structure Plan policy BEN 8 which provides the following:

"Intending applicants for permission to develop are advised to consider applications for outline permits which establish the principles and general characteristics of a development proposal before the applicant is faced with the expense of the more detailed application for a full permit to develop. Where this procedure is used, the application fee will be payable for the outline application only".

The Structure Plan then goes on to define an outline permit as a permit" which gives approval in principle to the proposed development, but specifies reserved matters which need to be included in a full permit application or applications. A time is given within which full permit applications shall be submitted otherwise the Outline Permit becomes invalid. No development may commence without a full permit"

Turning to the current application and specifically to the two reasons for refusal, it is submitted that once the permit was approved in principle by the Planning Appeals Board based on the information submitted and given that the Board had decided that applicant was eligible for the grant of a permit for a winery, the Authority's remit was that of deciding matters relating to the actual design, access and plans of the building itself, and not to consider once again whether the development was acceptable in principle on the basis of that same information submitted before the Planning Appeals Board. The Authority had no authority to do so and therefore, its decision of 22nd May and communicated by means of the refusal dated 10th June 2014 is ultra vires and consequently illegal and null and void.

The status of the outline development permit has been confirmed by various decisions of the Planning Appeals Board and judgments delivered by our Courts. Thus, to quote a few judgments, reference is made to the judgment in the name "Eucharist Bajada noe vs l-Awtorita Maltija dwar l-Ambjent u l-lppjanar" delivered on the 31st May 2012 (App Civili 37/2011) where the Court examined the status of a full development application filed subsequent to an outline development permit. For the record, it must be stated that this case dealt with the refusal on the part of the Authority and the Tribunal to approve a full development application presented subsequent to the issue of an outline development permit. In this particular case, a schemed road was approved on the same site on which the outline permit had been approved for the construction of semi-detached villas and this schemed road was cited as a reason for the refusal of the full development application.

The Court held that the approval of a schemed road on a site already covered by an outline permit was illegal and incorrect. It described an outline development permit as "dritt kwezit tal-appellanti u ma ghandux jigi vanifikat jew res ineffettiv b'decizjoni tal-Awtorita' li effettivament trendi tannula fattwalment u legalment l-effett tieghu".

After referring to various decisions of the Planning Appeals Board, Tribunal, the Court concluded that: "tali full development permit ghandu jigi deciz in konformita u b'mod li jirrispetta l-import legali tal- outline development permit gja mahrug legalment mill-Awtorita appellata, u li allura f'dan il-kuntest il - policies vigenti huma ghal kollox irrelevanti."

The Court seemed to have concluded that the previous decision, approving the grant of an outline development permit, had to necessarily lead to the approval of the full permit which followed such previous permit and that it even superseded applicable policies. This is also consonant with a number of similar decisions of the Planning Appeals Board relating to this same principle. (Vide Nicholas Cassar vs il-Kummissjoni tal-Kontroll tal-Izvilupp (PAB 267/02) decided on 23<sup>rd</sup> July 2003 and Ferdinand Zammit vs il-Kummissjoni tal-Kontroll tal-Izvilupp (PAB 240/04) decided on 27th September 2006.

Reference is also made to the issue of permit PA 667/08 granted by the Authority Board for the relocation of an existing petrol station to the outskirts

of Mgarr, Malta and the construction of a basement workshop/garage, signage and showroom, where a previous outline permit PA 3920/98 had already been granted for the relocation of the petrol station. Following the outcry which ensued after the approval of the full development permit, the Authority felt the need to issue a press release (copy attached), wherein it was stated that "An outline development permit for the relocation of these activities was granted in 2006 and the full development permit approved today is a consequence of such an outline permit which is still valid and in force." Moreover, the Chairman justified the issue of the full development permit by stating that "the recommendations presented to us today by the Environment Protection Directorate and the Planning Directorate for the approval of this application, including the relocation of the open storage area, were legally constrained by the outline permit which had been issued in 2006."

In the light of this situation, it is safe to argue that appellant was justified and correct in his legitimate expectations that the full development permit was to be granted, given the development was accepted in principle on the strength of the prior issue of the outline development permit. It is also clear that application PA 3116/12 mirrored outline permit PA 2185/06, as was confirmed by MEPA officials in their written submissions to the MEPA Board. This refusal is therefore an aberration of the procedures and turns on its head the very principle on which an outline development permit is based. Suffice it to state that my client qualified for EU funding further to the issue of the outline permit and this has been put in jeopardy by the decision of the MEPA Board, for which he holds the Authority, the Board and its members responsible at law.

In conclusion, appellant submits that the refusal of PA 2185/06 is incorrect and requests that it is overturned by the Tribunal."

Ra r-risposta tal-Awtorita li taqra hekk kif gej:

"5.2 The Directorate has the following comments to make:

#### 5.2.1 Principle of Development

The proposal consists of a winery on two floors below street level, with the lower basement covering an area of 220 sqm and the upper basement covering an area of 160 sqm, i.e. a total floorspace of 380 sqm. The lower basement will be below the existing site levels and the building depth is limited to 25m from the existing road. The design of the building has a rectangular layout, cutting across the terraced fields, with no particular regard to the existing features. Access to the building, both vehicular and pedestrian, will be from a 3.1m wide ramp directly from the public road.

#### 5.2.2 Comments

The Authority wishes to point out the following fact:

The DPA report recommended the proposal to grant since "The principle for the construction of a winery has already been established through the approval of the outline permit PA 2185/06, and the information with regard to the applicant's vineyard holdings (doc. 16f and drwg. 68) correlates with the

information previously submitted with the outline application and was therefore taken into account by the Planning Appeals Board when considering the site as 'wiehed addatat ghal bini ta' winery' (refer to docs. 41-41f in PA 2185/06). In view of this, the proposal is being recommended for approval."

The Directorate acknowledged that "the applicant's eligibility for this development, and the location of the proposed winery in relation to the vineyards, have already been raised in outline application PA 2185/06, and were in fact cited as reason for refusal (see reason 3 on doc. 31 in PA 2185/06). The decision of the Appeals Board to overturn the previous decision was based on the fact that the applicant is a registered vine grower since 2003, working around 41 tumoli of vineyards, the winery cannot be located within an industrial or residential area, and that a number of two storey buildings existing in the proximity of the site under consideration (refer to decision in doc. 45 in relevant file). In the current application, information regarding the applicant's holdings was again requested and submitted as per docs. 16f and drwg. 68. In this documentation, it is confirmed that the applicant works around 41 tumoli of vineyards (equivalent to approx. 4 ½ hectares) and that around 12 tumoli of these vineyards (approx. 1.3 hectares) are located within the 750m from the site. This information correlates with the information on which the appeal decision was based (refer to docs. 41-41f), and therefore the development of the winery on this site is considered to be in accordance with the decision in outline permit PA 2185/06."

During the MEPA Board sitting held on the 22nd May 2014, the Directorate clarified that "due to an error in the scale of the submitted plan, the actual holdings amount to 4 hectares within a 1500m and not as indicated on the DPAR, i.e. 1.3 hectares within 750m."

During the MEPA Board sitting held on the 22nd May 2014, the board was concerned if the applicant had 2 hectares of vineyards within 500m from the proposed site.

The MEPA Board voted against the proposed winery since:

1. The proposed winery is not located on the applicant's vineyard holding and is not within 500m of at least 2 hectares of the applicant's registered vineyard and thus it runs counter to policy 2.8B of the Policy and Design Guidance Agriculture, Farm Diversification and Stables.
2. The conditions of the outline permit are not being followed since the vineyard holdings locations are situated at an additional distance from the proposed winery.

## 6.0 REQUEST

6.1 For the above-mentioned reasons, the Malta Environment & Planning Authority respectfully requests the Environmental and Planning Review Tribunal to confirm the decision of the MEPA Board and to refuse this appeal for development permission.";

Ra r-risposta tal-Avukat Dottor Katrina Borg-Cardona prezentata fl-24 ta' Settembru 2014, ghan-nom ta' Chev. Maurice Mizzi, Omar Schembri, Stefano Mallia, Faye Mallia bhala terzi persuni nterressati u li taqra hekk kif gej:-

1. Illi fl-ewwel lok l-esponenti jergghu jaghmlu tagghom l-oggezzjonijiet kollha mressqa minnhom originarjament bhala formanti parti minn din ir-risposta kontra l-ghoti tal-permess mitlub u jirrizervaw li jaghmlu sottomissjonijiet u jressqu provi ulterjuri;

2. Illi dan l-appell huwa minn decizjoni tal-Awtorita' data 10 ta' Gunju 2014 li rrifjutat l-applikazzjoni PA 3116/12. Din l-applikazzjoni titratta proposta ghal zvilupp ta' fabbrika tal-inbid fil-Bidnija f'sit li prezentament ghadu fi stat vergni u vakanti minn kull xorta ta' zvilupp;

3. Illi l-esponenti ma jaqblux mal-izvilupp propost ghal ragunijiet varji li ser jigu mfissra aktar 'l quddiem f'din ir-risposta u fil-mori tas-smiegh tal-appell u ghalhekk ezercitaw id-dritt li jirregistraw u jintavolaw l-oggezzjonijiet tagghom ai termini tal-artikolu 68(4) tal-Kap. 504;

4. Illi wara li kkunsidrat il-proposta tal-appellant, l-Awtorita' gustament irrifjutat 1 applikazzjoni principalment ghal zewg ragunijiet. L-ewwel raguni ta' rifjut hi bbazata fuq il-fatt li l-proposta tal-appellant ma tissodisfax l-kriterji tal-Policy 2.8B tal-Policy & Design Guidance: Agriculture, Farm Diversification and Stables 2007. It -tieni raguni ta' rifjut moghtija mill-Awtorita' tirrigwarda l-inkonformita' tal-izvilupp propost mal-kundizzjonijiet impost fl-outline development permit;

5. Illi fl-ewwel parti tar-rikors tal-appell, l-appellant jesponi l-aggravji tieghu in konnessjoni mal-outline development permit PA 2185/06. Preliminarjament, tajjeb li jingieb a konjizzjoni ta' dan it- Tribunal li l-permess outline kkwotat mill-appellant, ghalkemm jirrigwarda l-istess sit u proposta ta' bini ta' fabbrika tal-inbid, ma jiffurmax mertu tal-appell odjern stante li hu permess totalment distint mill-applikazzjoni tal-izvilupp PA 3116/12. Bl-appell tieghu l-appellant qed jipprova jvarja l-kundizzjonijiet mposti fuqu permezz tal-appell ippublikat fit-12 ta' April 2012 ossia aktar minn sentejn ilu. L-appellant ma jistax jippretendi li juzufuwixxi mill-proceduri tal-appell odjern sabiex illum iressaq aggravji li jikkoncernaw strettament u limitatament il-permess outline sentejn wara l-ghoti tal-permess sabiex b'xi mod jittenta li jinfluwenza l-ezitu tal-proceduri odjerni. M'hemmx dubju illi illum, fil-kuntest tal-outline permit, m'ghadx fadal lok ghal proceduri ta' appell jew revizjoni tad-decizjoni tal-Bord tal-Appell jew l-Awtorita' u ghalhekk huwa proceduralment skorrett li l-appellant jressaq aggravji u sottomissjonijiet fir- rigward tal-outline permit f'dan l-istadju. L-esponenti ghalhekk jitolbu illi t -Tribunal jisfilza kull aggravju mressaq dwar il-permess outline peress illi dawn huma intempestivi u intizi biss sabiex jiddevjaw fuq kwistjonijiet li huma estraneji ghad-decizjoni u l-applikazzjoni odjerna pendenti quddiem dan it-Tribunal;

6. Illi minghajr pregudizzju ghas-suespost, l-esponenti jirrivaw illi mill-appell intavolat tirrizulta inkonsistenza in kwantu ghal permess outline. Fl-ewwel parti tal -appell, l-appellant jilmenta u bhal donnu jgib fid-dubju l-validita' o



meno tal permess outline minhabba allegat nuqqasijiet fl-ghoti u l-pubblikazzjoni tal permess outline. Imbagħad, b'kuntrast u kontradizzjoni, il-magħor parti tas sottomissjonijiet li jsegwu fir-rikors huma msejsa principlment fuq l-istess permess outline li fihom nfushom jgibu fix-xejn l-aggravji preliminari li qajjem l-appellant stess;

7. Illi skond l-appellant permezz tal-permess ta' zvilupp outline l-appellant kwezixxa dritt fil-ligi li b'mod awtomatiku jingħata permess ta' zvilupp sabiex jizviluppa fabbrika tal-inbid fuq l-istess sit. L-esponenti ma jaqbilx ma tali logika għar- ragunijiet segwenti :-

a. Illi anke jekk dato ma non concesso li permess outline jikkwalifika bhala qbil fil-principju u semplicement prima facie, l-appellant fi kwalunkwe kaz dejjem jibqa obligat li, fl-istadju tal-intavolar tal-full development permit, jissodisfa kemm il-policies vigenti u applikabbli għall-izvilupp propost, kif ukoll il-kundizzjonijiet kollha imposti fil-permess outline. Bl-ebda mod l-ghoti ta' permess outline ma jfisser illi fi stadju ulterjuri l-Awtorita' jkollha tbaxxi rasha għal kollox u tidderoga minn policies u linji gwida applikabbli semplicement għaliex inhareg permess outline. Li kieku dan kien il-kaz ma kien ikun hemm ebda skop li outline permit jigi segwit minn full development permit. Għalhekk m'hemm l-ebda dubbju li l-applikazzjoni ta' zvilupp odjerna kellha tigi kkunsidrata fid-dawl tal-policies vigenti u peress illi rrizulta illi l-kriterji applikabbli ma gewx sodisfatti fil-proposta ta' zvilupp, allura korrettement giet rifjutata.

b. Illi kif jirrizulta mid-decizjoni ta' rifjut tal-permess PA 3116/12, kif ukoll mill-minuti tas-smiegh quddiem il-Bord tal-Awtorita' tal-Ambjent u l-Ippjanar, il-proposta tal-appellant tivvjala policies ta' ppjanar u zvilupp approvati ai termini tal-Kap. 504 u għalhekk l-Awtorita' kienet obligata bil- ligi li tichad l-applikazzjoni konsegwenza ta' inkonformita' mal-policies. Fil-fatt l-esponenti jirreferu inter alia għas-subartikoli 69(1) u 8(2) tal-Kap. 504 li jobbliga l-Awtorita' tapplika l-policies ifformolati taht il-Kap. 504, inkluz il-policies u pjanijiet li jiggustifikaw d-decizjoni ta' rifjut mogħtija mill- Awtorita' hawn appellata.

c. Illi mir-rikors tal-appell intavolat mill-applikant jirrizulta li mhux kontestat il-fatt li -proposta fl-applikazzjoni PA 3116/12 (mertu tal-appell odjern) ma tissodisfax il-kriterji u kundizzjonijiet impost fost oħrajn fil-Design and Policy Guidance: Agriculture, Farm Diversification and Stables (2007). Huwa stat ta' fatt, kif ġia' rrizulta fis-smiegh quddiem il-Bord tal-Awtorita' u kif ser jirrizulta fil-mori tal-appell odjern, li l-bini ta' fabbrika tal-inbid fis-sit propost jivvjala policies li huma fis-sehh. La l-Awtorita' u lanqas dan il-Bord ma' għandhom il-poter jew dritt fil-ligi li ma japplikawx jew ma jimplimentawx policies vigenti fil-kunsiderazzjoni tal-applikazzjoni ta' zvilupp PA 3116/12 fuq is-semplici premessa li hemm fis-sehh permess outline. L-obbligu ta' implimentazzjoni tal-policies hu wiehed tassattiv u jibqa' jissussisti minkejja l-permess outline. Fid-dawl li ma tezisti l-ebda deroga fil-ligi li tippermetti lill-Awtorita' li ma tapplikax il-policies tagħha stess f'kaz ta' ezistenza ta' permess outline, il-pretensjoni tal-appellant ta' dritt kwezit tibqa' semplicement pretensjoni (u mhux dritt) kemm-il-darba l-proposta tmur kontra l-imsemmija policies jew linji gwida applikabbli. Fuq kollox dan mhux l-ewwel kaz fejn nonostante l-

ezistesza ta' permiss outline, applikazzjonijiet 'full' fuq is-sit xorta wahda gew korrettement rifjutati mill -Awtorita'. PA 7747/07 kien kaz car fejn minkejja l-hrug ta' outline permit, il-full development permit ma nghatax peress illi l-izvilupp propost ma kienx konformi mal-policies applikabbli u l-Bord tal-MEPA iddecieda bla tlaqliq illi l-ezistenza ta' outline permit ma jfissirx illi fl-istadju tal-full development permit il-Bord kellu jservi biss ta' rubber stamp.

d. Kontra dak sottomess mill-appellant, l-Awtorita' tkun qed tagixxi ultra vires il-poteri taghha kieku kellha fuq diskrezzjoni assoluta taghha u minghajr bazi fil-ligi tiddeciedi li tiskarta l-obbligi taghha fil-ligi u tiddevja mill-policies jew aghar, tiskarta ghal kollox l-imsemmija policies kif fl-ahhar mill -ahhar qed jigi propost mill-appellant. Tajjeb li jinghad ukoll illi fil-kaz Eucharist Bajada ghan-nom tas-socjeta' Baystone Ltd vs L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (Appell Nru 65/97, PA2847/95) citat mill-appellanti, il-punti legali huma ghal kollox diversi mill-fatti in dizamina u ghalhekk ma jistghux jigu applikati ghal dan il-kaz. Inoltre, imkien fis sentenza fuq citata ma jinghad illi permiss outline jaghti lok ghall-hrug awtomatiku ta' full development u dan jirrikonoxxuh l-appellanti stess meta juzaw il-kliem "The Court seemed to have concluded (emfasi mizjud) that the previous decision, approving the grant of an outline development permit, had to necessarily lead to the approval of the full permit which followed such previous permit .... ". Ta' min jghid ukoll illi l-kaz tal-Imgarr citat mill -appellant, fejn pompa tal-petrol giet rilokata 'l barra mic-centru tal-village ghal go sit ODZ, kien wiehed ghal kollox divers ghal dak tal-esponenti peress illi fid-decizjoni inghata piz kbir l-element ta' interess pubbliku u l-fatt ukoll illi r-rilokazzjoni kien ta' beneficcju ghar-residenti u ghall-ambjent. Ghaldagstant m'hemmx dubju li l-Awtorita' agixxit fil-parametri tal-poteri vestiti lilha skont il-provvedimenti tal-Kap. 504, kif del resto kellha l-obbligu li taghmel u ghalhekk l-aggravji tal-appellant f'dan ir-rigward ghandhom jigu michuda in toto;

8. Illi minghajr pregudizzju ghas-suespost, fir-rikors tal-appell-appellant jirriveva li s- subartikolu 69(3) tal-Kap. 504 jobbliga lill-Awtorita' taghti ragunijiet sabiex jiggustifika r-ragunijiet ta' rifjut jew l-imposizzjoni ta' kundizzjoni. Ghal kull buon fini, s-subartikolu 69(3) jistipula li:

"L-Awtorita' jkollha s-setgha li taghti jew li tirrifjuta licenza jew permiss ghall-izvilupp, u fl-gnoti ta' dik il-licenza jew permiss l-Awtorita' jkollha jedd timponi kull kondizzjoni li jidhrilha xierqa:

Izda mar-rifjut jew mal-impoiizzjoni ta' kondizzjonijiet partikolari, l-Awtorita' ghandha taghti ragunijiet specifici bbazati fuq pjanijiet ta' zvilupp, policies ta' ppjanar u regolamenti jew kull konsiderazzjoni materjali ezistenti ghal dak ir-rifjut jew ghal xi kondizzjonijiet partikolari li jkunu gew imposti ... "

Minn qari akkurat kemm tad-decizjoni ta' rifjut ippublikata mill-Awtorita' kif ukoll mill-minuti tas-smiegh tal-Bord tal-Awtorita' jirrizulta kjarament li (i) fl-ewwel lok l-Awtorita' effettivament tat ragunijiet specifici ghar-rifjut; (ii) fit-tieni lok ir-ragunijiet huma bbazati fuq policies ta' ppjanar u regolamenti tant li l-istess decizjoni tindika bl-aktar mod specifiku mhux biss il-policy izda sahsitra l-paragrafu applikabbli, u (iii) fit-tielet lok ir-raguni ta' rifjut inghatat fil-mori tal-udjenza quddiem il-Bord kif jixhdu l-minuti tal-Bord ippublikati fuq

is-sit elettroniku. Minn dan jirrizulta li r-rekwiziti tad-disposizzjonijiet tal-Artikolu 69(3) huma pjenament soddisfatti u ghalhekk ir-ragunijiet ta' rifjut huma validi fil-ligi. L-esponenti qeghdin minn issa jirriservaw id-dritt li jressqu sottomissjonijiet ulterjuri dwar dan il-punt;

9. Ghal ragunijiet injoti lill-esponenti, l-appellant qiegħed jirriserva d-dritt ta' kull (allegat) azzjoni spettanti lilu mhux biss kontra l-Awtorita' jew il-Bord, izda specifikament kontra l-membri tal-Bord u dan fir-rigward ta' fondi Ewropej illi gew allokati lill-appellant sabiex tigi zviluppata fabbrika tal-inbid. Fl-opinjoni umli tal-esponenti dan mhu xejn ghajr tentattiv tal-appellant illi jintimida il-membri tal-Bord u wkoll sabiex jizvijja lil dan it-Tribunal mill-fatti pertinenti u c-cirkustanzi inekwivokabbli tal-kaz odjern, ossia li l-proposta tal-appellant hi wahda li tivvjola l-policies, linji gwida u regolamenti tal-ippjanar u gustament għandha tigi rifjutata. F'dan il-kuntest ta' min wiehed isemmi artiklu li deher fl-edizzjoni tat-3 t'Awwissu 2014 tas Sunday Times of Malta li jitfa' dubju dwar jekk, fl-ewwel lok, l-appellant kellux effettivament id-dritt li jibbenefika minn tali fondi, aktar u aktar meta skont l-artiklu de quo l-appellant fil-fatt għadda għall-kancellament tal-kuntratt li a bazi tiegħu kien ser jibbenefika mill-fondi in kwistjoni;

Għaldaqstant l-esponenti, filwaqt li jirreferu għas-suespost u s-sottomissjonijiet magħmula fil-proceduri tal-permess in ezami, umilment jitolbu lil dan it-Tribunal jiddisponi minn dan l-appell billi jichad it-talba tal-appellant u jikkonferma d -decizjoni ta' rifjut tal-applikazzjoni PA 3116/12 datata 10 ta' Gunju 2014."

Ra d-decizjoni tal-Bord tal-Appell fl-ismijiet Stephan Galea kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-ippjanar tat-30 ta' Gunju 2011, appell numru PAB 166/07 ISB.

Ra l-permess outline bin-numru PA 2185/06 datat 12 t'April 2012 li jinkludi dawn il-kondizzjonijiet segwenti:

1 a) The full development permission application shall be submitted for the approval of MEPA within ONE YEAR from the date of this outline permission. This outline permission shall expire within one year from the date of issue of this permission and it is not renewable.

b) No work shall commence on site until full development permission has been granted for the development. The following reserved matters still require approval by MEPA as part of a full development application:

- the internal layout;
- design;
- external appearance of the proposed building;
- car parking provision; and
- landscaping of the site, where applicable.

c) The full development application shall be submitted according to the standard requirements of submissions of applications. The Authority may request additional information and studies, as required, so as to carry out a complete assessment of the full development application. The Authority may

impose additional conditions and obligations on an eventual full development permission.

d) Unless otherwise specified, the proposal in the full development application shall be in conformity with the provisions of the Structure Plan, the Local Plan, and any other policy documents applicable at the time of submission and determination of the application.

e) With the full development application, car parking details are to be submitted. However, any shortfall in on-site parking provision shall be made up for through the applicant's contribution in the Commuted Parking Payment Scheme or the Urban Improvements Fund for the locality.

2 The building shall be used strictly as a winery and shall, in no way, be used as residence.

Ra d-decizjoni ta' dan it-Tribunal fl-ismijiet Chevalier Maurice et kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (143/13MS) datata 3 t'April 2014, fejn giet michuda t-talba ta' revoka tal-permess PA 2185/06 prezentata skont id-dispost tal-Artikolu 77 tal-Kap 504.

Ra l-PA files bin-numru 3116/12 u 2185/06;

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

Ikkunsidra ulterjorment:

Illi dan it-Tribunal wara li ezamina bir-reqqa l-aggravji fir-rikors tal-appell, id-diversi sottomissjonijiet, l-inkartament tal-applikazzjoni odjerna, kif ukoll l-inkartament tal-permess outline PA 2185/06, seta' jinnota zewg kwistjonijiet principali li gew trattati fid-dettal matul il-process ta' dan l-appell:

(i) Illi l-permess outline jikkostitwixxi dritt kwezit favur l-appellant fejn b'dan l-istess permess outline, ossia PA 2185/06 mahrug fit-12 t'April 2012 wara decizjoni tal-Bord tal-Appell tat-30 ta' Gunju 2011, gie stabbilit fil-principju l-bini ta' winery fuq is-sit mertu ta' dan l-appell;

(ii) Illi l-proposta mertu ta' dan l-appell mhux qed isegwi l-kondizzjonijiet tal-permess outline, u dan peress illi l-bini ta' winery ma jsegwiex il-kriterji ta' zvilupp skont il-linja gwida dwar l-agrikoltura tas-sena 2007, ossia policy 2.8B, applikabli fi zmien meta giet deciza din l-applikazzjoni odjerna mill-Awtorita'.

Illi l-ahhar kwistjoni hija riflessa fiz-zewg ragunijiet ta' rifjut wara li l-Bord tal-Awtorita' qaleb ir-rakommandazzjoni tad-Direttorat tal-Ippjanar favur il-proposta fl-applikazzjoni u rrifjuta l-hrug tal-permess. L-ewwel kwistjoni hija l-perm tal-aggravji fir-rikors tal-appell imressqa mill-appellant kontra din id-decizjoni ta' rifjut.

Validita' u portata tal-permess outline:

Illi m'hemmx dubju mill-fatt li l-permess ta' zvilupp fi stadju ta' outline jistabillixxi principju ta' zvilupp u dan johrog mill-Pjan ta' Struttura, applikkabli meta giet deciza din l-applikazzjoni odjerna, skont il-paragrafu numru 7.8 u Policy BEN 8 li jinqraw hekk kif gej:

"7.8 A great deal of time and effort can be saved and frustration avoided if the general principles of particular development proposals can be established early in the application procedure. Pre-application consultations will therefore be encouraged. A prospective developer, either before buying land or before incurring the cost of preparing detailed proposals, may wish to know whether the proposed development is acceptable in principle. To achieve this, an application for an Outline Permit which can be granted subject to reserved matters, can establish a firm commitment."

"POLICY BEN 8: Intending applicants for permission to develop are advised to consider applications for outline permits which establish the principles and general characteristics of a development proposal before the applicant is faced with the expense of the more detailed application for a full permit to develop. Where this procedure is used, the application fee will be payable for the outline application only.

Two types of development permit can be granted:

1. OUTLINE PERMIT which gives approval in principle to the proposed development, but specifies reserved matters which need to be included in a full permit application or applications. A time is given within which full permit applications shall be submitted otherwise the Outline Permit becomes invalid. No development may commence without a full permit.
2. FULL PERMIT which is required before any development can commence whether or not on Outline Permit has been issued. Full permits will also include Conditions which must be followed by the development."

Illi l-Att dwar l-izvilupp (Kap 356) (applikabli meta giet prezentata l-applikazzjoni outline PA 2185/06) ma kienx jinkludi defenizzjoni ta' permess ta' zvilupp outline. Minn naha l-oħra d-defenizzjoni ta' outline application tinsab fl-Artikolu 2 tal-Avviz Legali 112 tal-1996 (Buiding Levy Rates Regulations) kif emendat u li tfisser b'dan li gej:

"...an application submitted specifically for outline development permission and in which one of the specified matters are reserved for further submission and approval."

Illi l-Policy BEN 8 tal-Pjan ta' Struttura tindika b'mod car illi l-permess outline ghandu jstabilixxi principles and general characteristics of a development proposal, filwaqt li fil-paragrafu spjeggtiv numru 7.8 il-Pjan ta' Struttura jiddefenixxi dan il-permess bhala wiehed li jipprovdi firm commitment. Dawn il-principji huma fil-fatt ibbazati fuq is-sistema ta' ippjanar fl-Ingilterra fejn fil-gurisprudenza kien gja gie stabbilit illi permess outline jikkosstittwixxi commitment favur il-principju tal-izvilupp, "thus preventing the authority from

refusing to approve any reserved matter on grounds which go to the principle of the development.”<sup>1</sup>

F’dan ir-rigward l-Awtorita’ permezz tal-permess outline qed tohloq commitment fuq is-sit favur l-izvilupp kif propost fl-applikazzjoni outline ghajr ghal dawk ir-reserved matters li ghad iridu jigu kunsidrati fid-dettal fl-applikazzjoni full development li ghandha ssegwi wara l-hrug tal-permess outline.

Illi f’dan il-kuntest, li fil-fehma kunsidrata ta’ dan it-Tribunal, jirrizulta b’mod car illi l-permess outline qed johloq dritt kwezit ta’ zvilupp fuq is-sit. F’dan il-kaz, l-applikazzjoni full development ghandha tigi determina fl-isfond u fil-limitazzjonijiet tal-permess outline, hekk kif il-process tal-applikazzjoni fi stadju ta’ outline u dak full development huwa wiehed kontinwinu fejn qed jigi kunsidrat l-istess proposta ta’ zvilupp, dment li jigu sodisfatti zewg rekwiziti importanti:

1. Li l-full development application ghandha tigi prezentata fit-termini stabbiliti fil-permess outline;
2. Illi l-proposta fl-applikazzjoni full development tkun limitata ghall-principju tal-izvilupp approvat u dawk ir-reserved matters indikati fil-permess outline;

L-ewwel rekwizit gie stabbilit b’sentenza tal-Qorti tal-Appell fl-ismijiet Hector Borg et kontra l-Awtorita’ tat-22 ta’ Jannar 2014, fejn gie konfermat id-decizjoni tat-Tribunal diversament kompost fis-sentenza fl-istess ismijiet tat-30 ta’ Lulju 2013, li gie konkluz dan li gej:

“Meta nhareg il-permess outline d-dicitura adottata fil-permess kienet cara u cioe illi l-full development application kellha ssir fi zmien sena u mhux il-process ta’ screening kellu jinbeda fi zmien sena. Fejn id-dicitura hi cara ma hemmx lok ghal interpretazzjoni u t-Tribunal addotta din it-triq u zied li b’dan il-parametru ta’ zmien l-applikant messu ha hsieb li jibda l-process fi zmien utili biex jkun f’pozizzjoni li jressaq full development application fi zmien sena mill-hrug tal-outline permit. Invece irrizulta illi t-talba ghal screening saret fit-8 ta’ Frar 2012 pero sakemm skada l-outline permit f’April 2012 ma kienet ghadha saret ebda applikazzjoni ghal full development kif irid il-permess 5214/08. Mhux komputu ta’ din il-Qorti li tinvestiga x’wassal biex l-iscreening process ma nghalaqx qabel l-iskadenza tal-outline permit. Il-komputu ta’ din il-Qorti hu li tara li t-Tribunal kien konxju tal-fatti ppruvati u minn ezami tal-fatti wasal ghal interpretazzjoni u applikazzjoni taghhom ghal kaz skond illigi kif vigenti. Dan hu dak li ghamel it-Tribunal u l-apprezzament tal-fatti li fuqhom ma hemmx kontestazzjoni u l-interpretazzjoni tal-kondizjoni rilevanti tal-permess mit-Tribunal abbinat mal-fatti, ma jaghtux lok lil din il-Qorti tissindaka d-decizjoni raggunta mit-Tribunal dwar l-effetti tal-kondizjoni dibattuta f’dan l-appell in linea mal-Avviz Legali 514/2010.”

Dwar it-tieni rekwizit, dan it-Tribunal gja kellu l-okkazzjoni li jidhol f’din il-materja f’sentenza preliminari fl-ismijiet Mark Gasan kontra l-Awtorita’ tad-9

<sup>1</sup> Moore Victor, 2002: A Practical Approach to Planning Law, 8<sup>th</sup> Edition, Oxford, Pg 185:-

“It is well-settled case law that the grant of outline permission constitutes a commitment by the local planning authority to the principle of the development, thus preventing the authority from refusing to approve any reserved matter on grounds which go to the principle of the development (Lew Thirkwell v Secretary of State for the Environment [1978] Jpl 844).”

ta' Dicembru 2015 fejn gie milqugh l-aggravju tal-appellant illi l-applikazzjoni full development kienet tirrigwardja proposta ta' zvilupp differenti u ma kinietx intiza li ssegwi l-permess outline, u ghaldaqstant id-decizjoni ta' rifjut ibbazata fuq il-permess outline ma kinietx korretta. F'din id-decizjoni gie spjegat dan li gej:

"Il-permess outline PA 245/07 kien intiz sabiex tinbena dar residenzjali flok bini ta' razzett ezistenti. Fil-full development application sussegwenti kien ser jigi deciz ir-reserved matters elenkati fil-permess outline.

Il-full development application PA 501/15, huwa ntiz ghall-zvilupp ta' zewgt id djar fuq is-sit, u ghaldaqstant huwa evidenti li din l-applikazzjoni ma kinietx intiza li s-segwi l-permess outline PA 245/07.

Fil-fatt fil-process ta' screening, precedenti l-validazzjoni tal-applikazzjoni full development, l-applikant (illum l-appellant) gie maghrraf mid-Direttorat tal-Ippjanar illi l-proposta mhix konformi mal-policy fil-linja gwida tal-2014, u fl-ebda stadju fil-process ta' screening ma gie ndikat il-permess outline PA 245/07. L-applikant irribatta din il-posizzjoni tad-Direttorat u talab li l-proposta tigi validate kif originarjamnet sottomessa.

Kien biss fil-case officer report li d-Direttorat ikkunsidra l-applikazzjoni odjerna fuq il-permess outline PA 245/07, u mhux a bazi tar-Rural Policy 2014 kif indikat fl-iscreening letter. Finalment l-applikazzjoni giet rifjutata mill-Kummissjoni peress li l-proposta fl-applikazzjoni ma kinitx konformi mal-kondizzjonijiet fl-outline permit skont kif indikat fl-ewwel raguni ta' rifjut.

F'dan ir-rigward dan it-Tribunal qed jilqa' dan l-aggravju tal-appellant, ihassar id-decizjoni ta' rifjut, u qed jirrimetti lura l-process tal-applikazzjoni fl-istadju ta' qabel il-case officer report sabiex id-Direttorat tal-Ippjanar jipprocessa u jipprepara rapport mill-gdid a bazi tar-Rural Policy and Design Guidance 2014 u l-applikazzjoni tigi deciza mill-gdid mill-Kummissjoni."

Fuq il-kwistjoni ta' dritt kwezit naxxenti mill-permess outline, dan it-Tribunal huwa gwidad b'diversi sentenzi kemm tal-Bord tal-Appell, Tribunal tal-Ambjent u l-Ippjanar, kif ukoll tal-Qorti ta' l-Appell.

Fis-sentenza tal-Qorti tal-Appell fl-ismijiet Eucharist Bajada ghan-nom u in rappresentanza tas-socjeta Baystone Ltd. versus l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, deciza fil-31 ta' Mejju 2012, gie deciz inter alia illi:

"Illi issa sar dan l-appell ghaliex qed jinghad li mis-socjeta' appellanti li d-drittijiet kweziti mill-ODP gew skartati gharragunijiet indikati fl-appell u hawn elenkati u allura l-appell kif impost necessarjament jirrikjedi li tigi indikata l-portata legali tal-ODP u wkoll interpretazzjoni ta' dak indikat fl-ODP li huma bla ebda dubju punti ta' dritt li dwahom hemm appell quddiem din il-Qorti kemm taht il-Kap. 356 u kemm taht il-Kap. 504.

Illi mill-ezami tal-istess decizjoni u l-atti esebiti din il-Qorti thoss li dak li qal l-istess Tribunal ma kienx lanqas fattwalment korrett u dan ghall diversi ragunijiet, fosthom li injora kompletament il-fatt li sussegwenti ghall-hrug tal-ODP inhargu FDP b'zewgt permessi PA 2631/99 u PA 2357/00, proprju

isegwu PA 1232/93, u kien biss din lapplikazzjoni flimkien ma' PA 3323/95 biss li gew rifjutati, u allura l-hrug ta' dawn il-FDP jikkonferma d-dritt akkwizit naxxenti favor l-appellant bil-hrug tal-ODP, u li l-outline devopment permit huwa dritt akkwizit gie rikonoxxut mill-istess Bord tal-Appell dwar l-Ippjanar fid-decizjonijiet tieghu "Ferdinand Zammit vs il-Kummissjoni ghal Kontroll ta' l-Izvilupp" (PAB 240/04/TSC) u "Nicholas Cassar vs Kummissjoni ghall-Kontroll tal-Izvilupp" (PAB 267/02/TSC) u "Dr. Gerard Spiteri Maempel vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar et" (Appell Numru PAB393/02/TSC) u addirittura f'decizjonijiet ta' dan it-Tribunal kif attwalment kompost fid-decizjonijiet fl-ismijiet u "Michael Axisa nomine vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar" (Appell Numru 163/10/CF – PA3227/08) deciza fil-10 ta' Mejju 2012) u "Michael Tabone et vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar et" (Appell Numru 274/09/CF) deciza fid-29 ta' Marzu 2012, fejn inghad li ODP huwa dritt akkwizit u dan jiddetermina "l-envelope tal-bini jigifieri il-volum li ghandu jokkupa u ghalhekk kemm il-footprint u kif ukoll l-gholi jigu stabiliti fi stadju ta' outline permit". F'dan il-kaz, a kuntrarju ta' dak li inghad fid-decizjoni citata, il-volum ta' bini indikat fl-ODP, li allura bid-decizjoni msemmija huwa gja determinat bl-ODP, gie kontestat, u allura per principju din id-decizjoni tat-Tribunal fuq dan il-punt hija diametrikament opposta ghall dak li l-istess Tribunal medissimu ftit xhur wara ddecieda fuq il-portata ta' ODP, ghaliex f'dan il-kaz huwa proprju l-volum ta' bini li qed jigi affettwat bid-decizjoni tieghu, u dan meta tali punt kien gja determinat bl-ODP."

"...u allura abbazi ta' dak kollu premess din il-Qorti qed tannulla d-decizjoni tat-Tribunal ta' Revizjoni ta' l-Ambjent u l-Ippjanar ghall finijiet u effetti kollha tal-Ligi, b'dan li qed jigi hawn deciz, li l-ODP de quo huwa dritt kwezit tal-appellanti u ma ghandux jigi vanifikat jew res ineffettiv b'decizjoni tal-Awtorita' li effettivament trendi tannula fattwalment u legalment l-effett tieghu, u li l-kwistjoni ta' reserved matters bid-dettalji hemm indikati ma kienet qatt tirreferi u lanqas tista' tirreferi ghall holqien ta' triq pubbliku minn gol plots hekk approvata fis-sit hemm approvat ghall bini tal-istess zvilupp, b'dan li l-kliem means of access jirreferu biss ghal zvilupp intern u l-arrangamenti ta' access intern ta' kif wiehed ghandu jghaddi ghall bini hekk approvat u qatt ghal possibilita' li fuq art koperta b'outline development permit tista' tigi approvata triq pubblika, u wkoll li tali full development permit ghandu jigi deciz inkonformita' u b'mod li jirrispetta l-import legali tal-outline development permit gja mahrug legalment mill-Awtorita' appellata, u li allura f'dan il-kuntest l-policies vigenti huma ghall kollox irrelevanti. (emfazi tat-Tribunal)"

Illi b'mod simili kemm it-Tribunal tal-Ambjent u l-Ippjanar<sup>2</sup>, il-Bord tal-Appell<sup>3</sup>, kif ukoll minn diversi decizjonijiet tal-istess Awtorita'<sup>4</sup> sahqu ukoll fuq il-portata legali tal-permess outline li jikkostitwixxi dritt kwezit.

<sup>2</sup> Ara decizjoni tal-appell numbru 274/09CF fl-ismijiet Michael Tabone et. kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar u l-kjamat in kawza Tony Gauci, appell numru 215/10CF fl-ismijiet Dr. John Bonello kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, u appell numru 163/10CF fl-ismijiet Michael Axisa ghan-nom ta' Laylay Co. Ltd. kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar

<sup>3</sup> Ara decizjoni PAB 240/04TSC fl-ismijiet Ferdinand Zammit kontra l-Kummissjoni ghall-Kontroll tal-Izvilupp

<sup>4</sup> Ara decizjonijiet Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar tal-PA 667/08 u PA 2256/10



Illi minn ezami tal-process tal-applikazzjoni full delopment ossia, PA 3116/12 jirrizulta b'mod car illi din qed isegwi l-permess outline, u limitata ghal dawk ir-reserved matters indikati fil-permess outline li kienu s-segwent: "internal layout; design; external appearance of the proposed building; car parking; and landscaping of the site, where applicable."

Illi d-Direttorat tal-Ippjanar permezz tal-case officer report a fol 221a fl-inkartament tal-PA 3116/12, spjega fid-dettal id-differenza bejn il-principju tal-izvilupp ta' winery li gja gie stabbilit fil-permess outline, u l-konsiderazzjonijiet ta' ippjanar marbuta mar-reserved matters fil-kuntest tal-policies vigenti, hekk kif gej:

**"Eligibility and Site Location:**

Condition 1(d) of the outline permit specified that the proposal in the full development permit shall be in conformity with the provisions of the relevant policy documents at the time of submission and determination of the application. In this case, the relevant policies for this development include local plan policy CG04 (regulating development within the rural settlement), and policy 2.8B of the PD Guidance for Agriculture (regulating the development of new wineries).

The proposed development of the winery within the rural settlement complies with the provision local plan policy CG04, given that the proposal qualifies as an agricultural building (in line with criterion C), and given that the building depth is being limited to 25m, in line with para. 7.6 of the Local Plan Interpretation Document.

Criterion C of policy CG04 also requires that any proposed agricultural buildings are compliant with the relevant policies set in the PD Guidance for Agriculture. In this case, policy 2.8B of this document is relevant, and this policy specifies that permission for the construction of a new winery building can be considered when the applicant has a registered vineyard holding of at least 2 hectares in size within a radius of 500m, and that the development is intended to be complementary to his operations and for the production of 'quality wine psr'. The policy also requires that the proposed winery building is located directly on the applicant's vineyard holding (which is at least 1 hectare in size), and that the winery is not located within a protected/scheduled area (criteria 1, 4 and 6).

The applicant's eligibility for this development, and the location of the proposed winery in relation to the vineyards, have already been raised in outline application PA 2185/06, and were in fact cited as reason for refusal (see reason 3 on doc. 31 in PA 2185/06). The decision of the Appeals Board to overturn the previous decision was based on the fact that the applicant is a registered vine grower since 2003, working around 41 tumoli of vineyards, the winery cannot be located within an industrial or residential area, and that a number of two storey buildings existing in the proximity of the site under consideration (refer to decision in doc. 45 in relevant file). In the current application, information regarding the applicant's holdings was again requested and submitted as per docs. 16f and drwg. 68. In this

documentation, it is confirmed that the applicant works around 41 tumoli of vineyards (equivalent to approx. 4 ½ hectares) and that around 12 tumoli of these vineyards (approx. 1.3 hectares) are located within the 750m from the site. This information correlates with the information on which the appeal decision was based (refer to docs. 41-41f), and therefore the development of the winery on this site is considered to be in accordance with the decision in outline permit PA 2185/06.

#### Reserved Matters:

As per condition 1(b) of permit PA 2185/06, the internal layout, design, external appearance, car parking provision and landscaping of the site were the reserved matters to be assessed in the full development application.

The layout, design and external appearance of the proposed winery are mainly affected by the site constraints, the dimensions specified in policy 2.8B and the specific requirements of the regulatory departments. In this regard, concerns had already been raised in outline application PA 2185/06 (see reasons 4-6 on doc. 31 in PA 2185/06), due to the creation of blank party walls, the roof garden and the removal of mature carob tree and rubble walls.

Criterion 7 of policy 2.8B specifies that new wineries should not exceed a footprint of 150 sqm, a floorspace of 220 sqm (plus 180 sqm at basement level), and should not exceed the height of 7m. In the original proposal (drwgs. 1e-1g) the size of the proposed winery was much larger than the dimensions specified by this policy, and involved significant adverse visual impact due to the blank party walls and the formal landscaping at roof level.

Following consultations and discussions (docs. 30 and mins. 38/46), the proposal was revised to limit the winery to a plot depth of 25m and the total floorspace not exceeding 400 sqm (220 sqm floorspace plus 180 sqm at basement). The proposed winery building is now terraced in a way that the lower basement is almost completely below the existing site levels. The total floorspace of the winery is 380 sqm (including the lower basement).

With regard to the visual aspect, the Appeals Board imposed a condition requiring a landscaping scheme at roof level, subject to a bank guarantee (doc. 45 in PA 2185/06). The original proposal (drwgs. 1e) included a landscaped roof, however the EPD remarked that the proposed landscaping is characteristic of a formal urban-type garden (docs. 11/30) and was therefore amended and now consists of just grass-crete paving. The proposal was also revised to introduce landscaping at the back of the site (refer to section AA in drwg. 73b), improve the appearance of the side-elevation which is mostly visible from the public roads (drwg. 73c), re-use the existing rubble walls within the site to construct the front and rear boundary walls, in line with recommendations by the EPD (docs. 11, 30, 63 and 70). The new winery building, as revised, is considered to be in line with the spirit and the conditions of the Appeals Board decision. The original drwg. 16h also includes the endorsement by the regulatory departments, i.e. the

Department of Agriculture and the Department of Environmental Health, in line with criterion (8) of policy 2.8B.

As regards traffic and parking, the applicant provided additional information at doc. 64, noting that this a very small family business, with two normal sized vans per day accessing the site. Any vehicles will be parked in the garage, and the number of employees depends on the amount of work. This information was forwarded to the TM (doc. 65a), however no response has been received within the statutory 30-day, hence a no objection is being assumed.”

Illi skont kif gie nnutat fid-dettal hawn fuq, mhux intiz li fil-full development application jerga jigi evalwat mill-gdid il-principju ta' zvilupp li gja gie stabbilit fil-permess outline, imma fl-applikazzjoni full development li qed isegwi l-permess outline ghandhom jigu determinati dawk ir-reserved matters kif indikat fil-permess outline u dan skont l-policy BEN 8 tal-Pjan ta' Sruttura, u konfermat b'sentenza tal-Qorti tal-Appell sucitata.

Illi filwaqt li dan it-Tribunal mhux ser jidhol fil-mertu dwar il-motivazzjoni tal-Bord tal-Appell fil-hrug tal-permess outline, dan it-Tribunal jista' jifhem li l-Awtorita' tista ma tkunx qed taqbel ma tali permess, u dan anke ghal fatt illi l-istess zvilupp mhux konformi mal-kondizzjonijiet kollha tal-Policy 2.8b tal-linja gwida dwar l-izvilupp agrikolu tal-2008.

Madankollu jibqa' l-fatt li gjaladarba l-permess outline huwa wiehed validu, l-Awtorita' ghandha l-obbligu li tonera tali permess kif gie ukoll meqjus f'decizjoni tat-Tribunal diversament kompost fl-ismijiet Dr. John Bonello kontra l-Awtorita' (App 215/10 CF) tat-8 ta' Novembru 2012 fejn anke f'dan il-kaz l-Awtorita' ma kinitx qed taqbel mal-permess outline ghax ma kienx konformi mal-policies fil-Pjan Lokali. F'dan il-kaz gie konkluz illi:

“Huwa fatt ukoll li l-applikazzjoni in ezami (PA 7747/07) kienet saret in linja mal-pjanti u l-kundizzjonijiet li kien hemm fil-permess PA 1687/07. Ghalhekk, peress li l-permess PA 1687/03 kien ghadu validu, u billi f'termini tal-policies tal-ippjanar li huma applikabbli ma' inbidel xejn l-Awtorita' kella l-obbligu li tonora dak il-permess.”

F'dan ir-rigward, l-Awtorita' kif ukoll dan it-Tribunal ma jistghux jirrendu l-permess outline bhala wiehed irrelevantu jew ineffettiv, dment li ghadu validu meta giet prezentata din l-applikazzjoni full development.

Minn naha l-ohra dan it-Tribunal huwa tal-fehma illi l-oggezzjonijiet tal-Awtorita' fid-determinazzjoni ta' din l-applikazzjoni odjerna gja gew ezaminati fil-permess outline precedenti fejn il-Bord tal-Appell wara li ha konjizzjoni tal-policies applikabbli, ezamina l-fatti u dokumentazzjoni tal-kaz, u tenut kont anki tas-sit u d-dintorn, laqa' l-appell biex inghata l-permess. F'dan il-kaz l-applikazzjoni odjerna kienet saret in linja ma' dak deciz fil-permess precedenti, u jirrizulata ukoll li f'termini ta' policies ta' ippjanar applikabbli ma' nbidel xejn u ghaldaqstant ma kien hemm ebda ostaklu ghal hrug tal-permess full development.

F'dan ir-rigward iz-zewg ragunijiet ta' rifjut jirriflettu b'mod dirett il-principju tal-izvilupp, ossia l-bini ta' winery fuq is-sit inezami, li gja huwa wiehed determinat fil-permess outline, u ghaldaqstant f'dan il-kaz l-Awtorita' agixxiet ultra vires hekk illi f'dan il-kaz l-obbligu tal-Awtorita' kien li tiddertermina r-reserved matters indikati fil-permess outline u mhux il-principju tal-izvilupp. Ghaldaqstant l-aggravji tal-appellant qed jigu milqugha.

Kondizzjonijiet imposti fl-outline permit:

Illi kemm l-Awtorita' kif ukoll it-terzi persuni nterressati qed jinsistu illi l-kondizzjonijiet fil-permess outline mhux qed jigu segwiti u dan b'referenza ghal-kondizzjoni numru 1D fil-permess outline PA 2185/06 li taqra hekk kif gej:

"Unless otherwise specified, the proposal in the full development application shall be in conformity with the provisions of the Structure Plan, the Local Plan and any other policy documents applicable at the time of submission and determination of the application."

Illi dan it-Tribunal mhux tal-fehema li din il-kondizzjoni qeghda b'xi mod tobbliga l-Awtorita' li l-proposta fl-applikazzjoni ghandha tigi ezaminata mill-gdid skont il-policies vigenti. Anzi, it-term 'unless otherwise specified' huwa ndikazzjoni ta' dan u certament tali kundizzjoni ghandha tinqara u tintfiehmed fil-portata legali tal-permess outline.

Illi kif gja gie ezaminat fid-dettal iktar 'il fuq f'din id-decizjoni, fil-full development application ma jstax jerga jigi determinat mill-gdid il-principju tal-izvilupp b'mod ghal kollox estranju mill-permess outline. Dment li gja gie stabbilit li bini tal-winery huwa addatat fuq is-sit inezami, fi stadju ta' full development il-parametri u kondizzjonijiet tal-policies vigenti iridu jigu applikati fir-rigward tar-reserved matters li gew determinati fil-permess outline, u dan fir-rigward tal-kobor, disinn, u d-dehra tal-bini tal-winery.

Certament tali kundizzjoni m'ghandiex tigi applikata sabiex jigi determinat jekk winery ghandhiex tigi permessa fuq is-sit inkwistjoni – kif jirrifletta fir-ragunijiet ta' rifjut mertu ta' dan l-appell – meta dan gja kien determinat fil-permess outline. L-eghibilita' tal-appellant li huwa rregistrat mad-Dipartiment ta' Viticulture and Oenology u l-ammont u fejn tinsab l-art li tinhadem ghat- tkabbir tad-dwieli gew ampjament ezaminati u sorvolati waqt l-iprocessar ta' dik l-applikazzjoni outline precedenti. Ghaldaqstant it-tieni raguni ta' rifjut hija ghal kollox superfluwa u ma tindirizzax il-mertu tar-reserved matters li gew indikati fil-permess outline.

Decizjoni:

Ghal dawn il-motivi, u wara li ha konjizzjoni tal-fattispeci kollha tal-kaz, dan it-Tribunal qed jilqa dan l-appell, ihassar id-decizjoni ta' rifjut, u jordna lis-Segretarju tal-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar sabiex johrog il-permess skont il-pjanti u kondizzjonijiet elenkati fil-case officer report a fol 221a fl-inkartament tal-PA 3116/12.

## Ikkunsidrat

L-aggravju tal-appellanti hu s-segwenti:

1. It-Tribunal zbalja meta ma kkonsidrax sew il-kondizzjoni 1D tal-outline permit moghti lil Stephen Galea fejn tali kondizzjoni kienet tghid li fl-ghoti tal-full development permit kellhom jigu kunsidrati l-istruktura u local plan u kull policy ohra applikabli fiz-zmien tad-determinazzjoni tal-applikazzjoni. It-Tribunal ikkonsidra biss zewg kondizzjonijiet cioe li l-applikazzjoni ghal full development giet prezentata fiz-zmien moghti fl-outline permit u kkonsidra r-reserved matters bla ma ta qies ta' kondizzjoni 1D. It-Tribunal fil-fatt jikkoncedi illi l-applikazzjoni ma kinitx konformi ghal kollox ma' policy 2.8b tal-linji gwida dwar l-izvilupp agrikolu 2008 pero zied li dan ma kienx jobbliga lil Awtorita terga' tikkonsidra mill-gdid il-proposti fil-full development skond il-policies vigenti ghax fil-full development permit ma jistax jigi determinat il-principju ta' zvilupp fl-outline permit gia moghti. L-appellant iqis dan l-argument zbaljat fil-ligi ghax kondizzjoni 1D tal-outline permit stess qed tillimita l-izvilupp outline ghal policies applikabli meta jigi determinat il-full development. Ghalhekk id-dritt kwezit tal-applikant fl-outline permit hu limitat bil-kondizzjoni 1D fl-outline permit.

Din il-Qorti tqis li dan hu punt ta' ligi li l-appellanti kellhom id-dritt jappellaw minnu. Il-kwistjoni kollha hi x'konsegwenzi legali igib mieghu outline permit tenut kont tal-kondizzjoni 1D imposta fl-outline permit.

Kif tajjeb esprima ruhu t-Tribunal l-istruktura plan f'paragrafu 7.8 u policy BEN8 jtkellmu dwar il-portata ta' outline permit fejn jirrizulta illi meta jinhareg outline permit, dan jikkostitwixxi 'firm commitment' da parti tal-Awtorita favur dak l-izvilupp fil-principju, soggett ghal kondizzjonijiet imposta. L-outline permit jistabilixxi l-principji u l-karatteristici generali tal-proposta ta' zvilupp, filwaqt li r-reserved matters jew kondizzjonijiet specifici fl-istess outline permit jigu kkunsidrati fil-full development application.

Il-Qorti tqis illi l-fatt innifsu ta' approvazzjoni tal-izvilupp fl-outline permit jorbot lil Awtorita li l-izvilupp propost hu accettabbli fil-principju tieghu soggett ovvjament ghal konsiderazzjonijiet dettaljati tal-proposta fil-full development application in linea mal-kondizzjonijiet u reserved matters li l-istess outline permit jimponi. Ara f'dan is-sens

**Paul Sant noe vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**, deciz fl-14 ta' Novembru 2013.

Dak li tista taghmel l-Awtorita hu illi tikkonsidra d-dettalji tal-full development application izda mhux l-accettabilita tal-izvilupp innifsu qua zvilupp ghax dan gia gie deciz bl-approvazzjoni tal-outline permit fiz-zmien meta dan gie deciz.

L-appellanti fil-fatt mhux jinsistu li l-outline permit ma jaghtix drittijiet lil applikant anzi jissottomettu illi l-outline permit jaghti dritt kwezit ghall-proposta ta' zvilupp kif mitlub. Pero huma qed jargumentaw illi kondizzjoni 1D tal-outline permit ma taghtix dritt awtomatiku lill-applikant ghall-izvilupp billi tali kondizzjoni kienet timplika li xorta jrid jsir accertament li l-izvilupp hu konformi mal-pjan ta' struttura, pian lokali u policies rilevanti.

Qabel ma tidhol fil-mertu tal-kondizzjoni, il-Qorti tqis illi l-Awtorita ma ghandhiex jedd li timponi konsderazzjoni fis-sens illi l-ghoti ta' outline permit li jimplika accettazzjoni tal-proposta ta' zvilupp fil-principju jista' jerga' jigi skrutinat fil-principju tieghu meta ssir l-full development application. Argumentazzjoni simili ggib fix-xejn l-iskop kollu ta' outline permit cioe li applikant ikollu 'commitment' tal-Awtorita li zvilupp propost hu accettabbli fil-principju tieghu u b'hekk l-applikant ikun f'pozizzjoni li jidhol fl-isbriga biex jipprezenta applikazzjoni dettaljata ta' zvilupp fuq il-principju ta' zvilupp gia approvat. F'dan l-istadju qed jigi kunsidrat il-full development fejn il-principju tal-izvilupp ta' winery fuq is-sit in kwistjoni gie accettat u ma jistax jerga' jigi dibattut kif qed jippretendi l-appellanti. It-Tribunal fil-fatt irrimarka illi tali zvilupp seta' ma kienx konformi ma' policy 2.8B tal-Policy and Design Guidance Agriculture (regulating the development of other wineries) rigwardanti s-site location pero jibqa' l-fatt li l-Awtorita jew ahjar it-Tribunal ta' Revizjoni li approvat l-izvilupp tal-winery fuq is-sit bhala principju ta' zvilupp outline accettabbli, ma setghetx terga' dduh lura fuq principju gia stabbilit, u tbiddel id-decizjoni fuq il-principju gia accettat precedentement. Din il-Qorti taqbel ma' tali konsiderazzjoni u tqis illi d-diskrezzjoni tal-Awtorita kienet limitata ghar-reserved matters u l-kondizzjonijiet specifkati fl-istess outline permit. Fil-fatt il-Qorti tqis bhat-Tribunal, illi r-rifjut tal-Awtorita tal-full development kien jirrigwarda l-

principju tal-izvilupp ta' winery ghax imur kontra l-policies vigenti fil-mument tal-full development u mhux ghal xi reserved matter li bih kien kondizzjonat l-outline permit.

Dan iwassal lil Qorti biex tikkonsidra b'mod aktar dettaljat il-kondizzjoni 1D fl-outline permit li l-appellanti jissottomettu li ma giex meqjus sew mit-Tribunal. Din il-kondizzjoni tghid hekk:

Unless otherwise specified, the proposal in the full development application shall be in conformity with the provisions of the Structure Plan, the Local Plan, and any other policy documents applicable at the time of submission and determination of the application.

Hu minnu li din il-kondizzjoni timponi obbligu fuq l-Awtorita u t-Tribunal li jqisu l-pjanijiet jew policies fiz-zmien tad-decizjoni fuq il-full development application pero kif tghid l-ewwel frazi tal-istess kondizzjoni, il-kliem 'unless otherwise specified' huma salvagwardja, jekk kien hemm bzonn, tal-kunsens fil-permess outline u li kien gia jikkostitwixxi 'firm commitment' mill-Awtorita li tikkonsidra applikazzjoni full development fuq sit specifikat gia deciz fl-outline application u approvat li hu idoneju biex fih issir winery. Hekk sostna t-Tribunal, li fil-fehma tal-Qorti ghamel applikazzjoni gusta tal-klawsola 1D b'referenza u in konnessjoni mal-outline permit. Jekk titqies wahedha din il-kondizzjoni allura l-Qorti tqis li l-interpretazzjoni tat-Tribunal tal-istess klawsola hi fil-limiti tal-poteri tat-Tribunal u la hi kontra l-ligi jew assurda u ghalhekk il-Qorti ma thoss li ghandha tissindaka ulterjorment. Il-Qorti zzid biss li jekk xi parti kellha xi dubju jew oggezzjoni ghal klawsola 1D allura seta' jsir appell meta nghatat id-decizjoni fuq l-outline permit pero dan ma sehnx.

## **Decide**

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell tat-terzi interessati u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016, bl-ispejjez kontra l-appellanti.

Onor. Mark Chetcuti LL.D.  
Imhallel

Anne Xuereb  
Deputat Registratur