



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 43/2011

Raymond Fenech

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Raymond Fenech tal-4 ta' Ottubru 2011 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Settembru 2011 fejn cahdet it-talba ta' Raymond Fenech għall-izvilupp ta' PA 0011/11 u kkonfermat id-decizjoni tal-Bord tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tat-12 ta' Mejju 2011 ippublikata fid-19 ta' Mejju 2011;

Rat ir-risposta tal-Awtorita li ssottomettiet illi d-decizjoni tat-Tribunal kellha tigi konfirmata u l-appell michud;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

A. Il-Bord tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar, fit-19 ta' Mejju 2011, irrifjuta l-applikazzjoni għall-permess tal-izvilupp PA 11/11 "Site at Triq Luret Cutajar, Zebbug, Malta: To construct a bus depot including bus parking facility, a bus maintenance shed and a bus-washing facility with underground reservoirs. "

Ir-raguni għar-rifjut kienet is-segwent:

"1. The site is ODZ and there was not enough justification to be used for a Bus Depot in this location."

B. In-nota tal-Avukati Dott. Joseph J. Vella u Dott. Karl Briffa għall-Appellant, ipprezentata fit-8 ta' Gunju 2011, inter alia il-punti segwenti:

"Firstly in terms of Article 69(3) of the Environment and Planning Development Act 2010, the Authority when granting a refusal for any application is required to give 'specific reasons based on existing plans, policies and regulation or other material consideration for refusal.'

There is absolutely no doubt that the abovementioned reasons (or lack of them) for refusal ... do not in any way conform with the legal requirements in terms of said Article 69(3). ... MEPA Board in actual fact had no reasonable justification to refuse the application ... The only possible inferred reason provided [i.e.: that the site falls in an Outside Development Zone (ODZ)] ... cannot per se constitute a reason for refusal since the development of the proposed facility in and ODZ is accepted by MEPA's very own policies. One must also stress that such developments are not allowed in residential development boundaries, nor in commercial designated areas, nor in designated industrial or Industrial Containment Areas, as at the time of application all the above locations were subject to Structure Plan review.

Infact this type of development was only possible if it is strictly complied with the conditions of the Open Storage policy, as set out in the Structure Plan.

In terms of Article 6.1 of the Areas for Open Storage policy, MEPA will favourably consider 'Land outside development zones contiguous to land zoned for industry in Temporary Provisions Schemes, 1988' as a suitable location [and] section 4.6 of the Development Permit Application (DPA) Report ... clearly states that The site is contiguous to a designated industrial area.

As requested by the Areas for Open Storage policy the site is in close proximity to the arterial and distributor road network so much so that the said facility is connected to the TEN-T Network. Besides the road connecting the proposed development and the said TEN-T Network is a 45 ft wide industrial distribution road which thus complies with the internationally accepted design norms for the circulation and parking of heavy vehicles.

The proposed site is more than 100m away from residential areas and rural settlements identified in approved development plans, and this in compliance with site location requirements of the Areas for Open Storage policy.

... The final decision of the MEPA Board is an illogical conclusion not only of the whole planning process but also of the very discussion held during the MEPA Board sitting of the 12th May 2011 where all technical and environmental considerations raised were exhaustively and suitably addressed within the very meeting."

C. Ir-rikors tal-Avukati Dott. Joseph J. Vella u Dott. Karl Briffa ghall-Appellant, ipprezentat fit-8 ta' Lulju 2011, u li jaghmel riferenza ghas-subinciz 8 tal-Artikolu 41 tal-Kapitlu 504 tal-Ligijiet ta' Malta; li jipprovdi terminu tas-smiegh iqsar ghall-kazijiet ta' urgenza.

D. In-nota ta' Mario Scicluna ghall-Awtorita, ipprezentata fil-25 ta' Lulju 2011, inter alia iz-zewg punti segwenti:

"5.1.3 Reference is made to the meeting of the MEPA Board minutes (red 102) and which clearly state the main concerns which led the Board members to refuse this request for development. ... There is no contention that the site is ODZ and as such any proposed development which would transform the existing agricultural land (although this land may have been left unutilized, its agricultural potential is still evident) into one which serves as a full[y] fledged[d] 'modern and state of the art' bus depot, this would inevitably necessitate both detailed technical assessments as well as a more holistic approach which would include a strategic view as to whether this specific ODZ area is the only option for a bus depot. This was debated in the light that other 'special' developments have through time been directed to more appropriate locations other than on agricultural land ... Issues that were raised ... included:

A more adequate site selection process should have been carried out,

site is not contiguous to an industrial zone,

the Gozo bus depot is located as part of an industrial area,

no photomontages of the proposed development vis-a-vis the surrounding area were prepared,

the EPD had preferred an area which was contiguous to an industrial area,

a site within an area of containment should have been a better option,

a genuine effort should have been made to relocate the project to an Area of Containment or an industrial zone,

the term contiguous is not applicable since only a small part of this site is touching the industrial area,

the site selection should have been more rigorous,

the site selection studies were not serious.

It was also suggested that in order to ensure that the site would be reinstated once the operation stopped, a permit with a ten year validity period would be a better option and after the ten year period a new application would be submitted to be assessed [accordingly].

5.1.5 ... Policy Guidance - Areas for Open Storage - February 2005, para 6.1 states that sites which are contiguous to approved Industrial Areas could be considered. Hence while internal consultation with the Planning Directorate Advisory Committee had interpreted the proposed site as being in line with this policy, the MEPA Board discussion had led to a decision wherein the Board disagreed with this [advice] ..."

E. Il-verbal tas-Seduta numru 59, mizmuma fit-28 ta' Lulju 2011, senjatament il-punt segwenti:

"Qed jigi dikjarat ghal kull bon fini, illi t-Tribunal ghadu ma rceviex risposta mill-ufficcju tal-Prim Ministru dwar l-ittra mibghuta fit-termini tal-Artikolu 75 tal-Att X tal-2010."

L-imsemmijja ittra kienet data t-28 ta' Lulju 2011, u billi t-Tribunal ma rcieva l-ebda risposta dwarha, l-appell qed jigi deciz fit-terminu tal-imsemmi artikolu.

F. In-nota tal-Avukati Dott. Joseph J. Vella u Dott. Karl Briffa ghall-Appellant, ipprezentata fit-12 t'Awwissu 2011, inter alia il-punti segwenti:

"1. The only motivation granted by the MEPA Board for the refusal of application PA 11/11, if such may be qualified as a justification in terms of law, was merely the fact that the site in question fell in an ODZ. ... The applicable policy regulating this application, namely the Areas for Open Storage policy published in February 2005, clearly allows such developments to be made in an ODZ.

2. [The] Authority in its reply ... refers to the comments/clarifications/queries raised by those Board Members voting against the project during the said meeting as reported in the minutes thereof as providing the basis of the Board for such refusal. ... If one were to agree with the argument raised by the Authority, this would imply that the members of the Board would have expressed an opinion on the adjudication of the application before the decision was actually taken. ...

Furthermore, the minutes of the Board meeting do not form an integral part of the decision of the MEPA Board so much so that the minutes are not even attached to the notice of decision of the MEPA Board.

3. (i) All technical assessments required by the MEPA throughout the whole application process were carried out by the Applicant and the various directorates within MEPA handling this application were satisfied with the results thereof ... The said project received the relative no-objections by all entities concerned including the Malta Resources Authority, Transport Malta and the Department of Agriculture.

If the MEPA Board felt that any further technical reports were required in connection with this project then its obligation was to request same and not proceed with a decision. As a result from the minutes of the meetings, the MEPA Board was assured by the EPD that it had received all sufficient data for it to be able to make its recommendations so much so that the EPD indicated their approval of the site as falling squarely within the Policy guidelines and therefore recommended the issuance of the relative permit.

(ii) As to the photomontages, the EPD, during Board meeting, confirmed that these were never requested of the Applicant since in their opinion the plans were sufficiently clear.

(iii) With regards to the issue of the site selection process not being carried out, one must firstly note that no site selection process was requested by MEPA, and any such process would anyway have to be conducted by MEPA itself. Neither does the MEPA Policy on Areas for Open Storage itself require a site selection process to take place [Moreover,] prior to the submission of the application, the proposed development had to be screened by the Authority in terms of Regulation 3 of L.N 514/2010 ... As part of the said screening process, the Authority is obliged ... to indicate, if applicable [a series of parameters] ... The Screening letter issued in favour of the

Applicant in terms of Regulation 3(3) highlighted no such deficiencies.

(iv) With regards to the comment that the project should be located in an Area of Containment or an industrial zone ... [such areas] are still considered to be ODZ. Besides, at the time the application for the project was made and decided, applications in Areas of Containment were being frozen by MEPA since such areas were subject to Structure Plan Review. With regards to relocating the project to an industrial zone, as mentioned in the meeting, the Malta Industrial Parks, ... does not grant its approval for open storage areas in industrial zones.

(v) On the issue whether the site is contiguous to an industrial area or otherwise, one cannot but refer to the fact that the Planning Directorate Advisory Committee (PDAC), following thorough consultation, has classified the site as contiguous to a designated industrial area and compliant with the MEPA Policy on Areas for Open Storage It is indeed ironic and strange that the Planning Directorate in its reply to the Appellant's Appeal Application seems to shed doubt whether the site in question is [so].

It would indeed be nonsensical and abusive of the Authority and certainly counter to the spirit of the reform of the planning process if an applicant were to obtain clearance from the Screening process, be required to pay the Development Permit Fees, Environment Fees, and other fees due, which in this case amount to over €110,000, conduct detailed technical studies ... to then face a refusal of an application for a consideration which, if at all, ought to have been raised at the Screening Stage."

Mal-istess nota, gew ukoll allegati dokumenti (x'uhud minnhom kienu diga gew pprezentati dik in-nhar li l-Appell gie intavolat), u li jikkonsistu f'kopji ta' n-no objection letters tal-Awtorita ta' Malta dwar ir-Rizorsi, l-Awtorita ghat-Trasport f'Malta, kif ukoll tad-Dipartiment tal-Agricoltura (fi hdan il-Ministeru ghar-Rizorsi u l-Affarijiet

Rurali). Gew annessi wkoll sensiela ta' fotomontaggi u site plan li tindika l-extended development boundaries.

G. In-nota second statement ta' Mario Scicluna ghall-Awtorita, bid-data ta' t-23 t'Awwissu 2011, inter alia il-punti segwenti:

"1. The Authority reiterates that its final decision (i.e. not what was recommended by its Technical Directorate) was based on the applicable policies of ODZ (which do not permit such development) and the Policy Guidance – Areas or Open Storage [of] February 2005.

2. The reason which led the Authority to cite parts of the official minutes of the MEPA Board meeting in which the decision [for refusal] was taken was intended to inform the Tribunal with the arguments and discussion which took place in that meeting ... The Authority also disagrees [with the point raised by the Appellant] that when the Board members forward queries and comments during the Board meeting, this is somehow in conflict to their role ... [Such] meetings include time for open discussion in which Applicant, any objectors and the general public are given time to air their views.

3. (i) While it cannot be denied that clearances from other agencies had been acquired, this still cannot change the fact that the existing site is not committed with any commercial/industrial/open storage facility and although the Agriculture Department had submitted its no objection ... [it also stated] that the field is cultivated with wheat and potatoes. Hence the Authority's claim that the site is still an agricultural field is also confirmed by the Agriculture Department.

(iii) Reference is made to the screening letter ... wherein the Authority had informed appellant that when the full development application is submitted, further clearances and consultations will be necessary.

Hence the screening letter is not a decision in itself and is not voted upon by any legally established deciding body

[sic.] but is limited to informing applicant that an application could be [recte may be] considered for a full assessment prior to being discussed/assessed/decided upon by a deciding body (i.e. EPC or MEPA Board).

(iv) Reference is made to possible relocation of the proposed use in areas such as Areas of Containment or Industrial Zones. In this regard it is important to clarify that this application ... did not include any considerations as regards to other alternative sites within such areas. Hence applicant's claim that the proposed use would not have been approved in such areas is not backed by any MEPA decision and [is therefore] premature. ... In the absence of a formal application for the requested development to be located in a specific area of containment or in an industrial zone, the Authority cannot comment [further].

(v) The MEPA Board, as requested [recte required] by law, attended to the arguments as presented by the Directorate as well as to issues present[ed by others. The] members discussed certain issues which they felt relevant and finally voted according to law. This process is totally in line with established procedures [There have also been instances where decisions of the MEPA Board overturned the recommendations of the Directorate].

... the Authority still reiterates that if this site is actually considered and decided upon as being in line with the Open Storage Policy on the basis that a site located on the other side of the road of an industrial area is to be considered as contiguous, then such an argument must also apply to adjacent fields (adjacent to the site under appeal) on the same side of the road and be also granted similar development which is not agricultural related [sic.]

[Regarding] a nearby area which through the rationalization process was eligible for a PC application so as to establish zoning ... PC 92/07 was submitted ... [for road re-alignment and) Mixed Uses development. This contrasts [with] the proposed development ... since appellant's arguments are limited to the interpretation of the Open Storage Policy and whether the site under appeal could be considered as contiguous to the area

designated for Mixed Uses Development but which is located on the other side of the road."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda permess biex jinbena bus depot li jservi kemm ghall-parkegg ta' xarabanks kif ukoll ghall manutenzjoni u hasil tal-istess vetturi. L-izvilupp jikkonsisti wkoll f'sensiela ta' gwiebi (reservoirs) u silt traps taht l-art, sheds, diversi mhazen, u ufficini.

Skond l-ahhar pjanti intavolati mal-applikazzjoni ghall-permess (indikati bhala block plan, floor plan, elevations, sections, u rubble wall-reconstruction u li jgibu in-numri ta' riferenza f'sekwenza minn 01 sa 04 u 06 rispettivament, u li fil-file PA 11/11 huma mmarkati bhala red 76a, 73a, 73b, 42b, u 42c), jigi rilevat, li is-sit li jikkonsisti f'madwar 9300 metru kwadru, jinsab barra z-zona tal-izvilupp. 7200 metru kwadru minnu huma proposti li jservu ghall-open storage, bl-2100 metru kwadru li jibqa jigu landscaped. Il-parti tal-open storage kif roposta, hi mqassma kif gej:

- Bus maintenance shed ta' 708 metri kwadri, b' gholi ta' 6.75 metri, u li ser takkomoda mhux inqas minn sitt parking bays ghall-xarabanks ta' tnax-il metru u tnejn ghall-dawk ta' tmintax il-meru.
- L-istess maintenance shed hi proposta li tkun tinkorpora mezzanin li jakkomoda ufficini ghall-dispatchers, muster area, mess u rest rooms, mhazen varji, kif ukoll parts store li jkopru madwar 370 metru kwadru fuq zewg livelli.

Fl-istess pjanti hemm wkoll indikati mill-inqas tlieta w tletin parking bays ghax-xarabanks, bus washing lane, kif ukoll binjiet zghir li jirrilataw ma' din it-tip ta' infrastruttura bhalma huma sub-station, switch room, etc. Jigi nutat ukolli hajt tas-sejjieh li jaqsam Prattikament tul is-sit kollu mertu tal-appell odjem, ser jinhatt u jerga jinbena izghar u kartabun ma dan li ser jitnehha, lejn in-nofs in-nhar tal-istess sit.

Skond is-South Malta Local Plan u l-policy SMAG 01 - Protection of Agricultural Land, is-sit huwa ddesinjat għall-uzu agrikolu izda awaiting classification. Din il-policy tghid hekk:

"MEPA will continue to protect agricultural land from all types of inappropriate development. Within Agricultural Areas, as indicated on the relevant Environmental Constraints Maps, only buildings, structures and uses essential to the needs of agriculture will be permitted and then only if it can be demonstrated to the satisfaction of MEPA that they will not adversely affect water supplies, soil and landscape, and accord with all other policies within this Local Plan. Applications for development permission for agricultural related developments which will result in the subdivision of land holdings, will not be permitted.

This will also apply to other land being cultivated for agricultural use and which in the opinion of MEPA (after consultation with the Department of Agriculture) has a realistic potential to be upgraded and sustainably improve its productivity. (This policy will not apply to such land where it is designated for other purposes in the Local Plan).

Improvements to existing agricultural land and buildings aimed at increased productivity will be favourably considered by MEPA providing they are well designed, efficient and contribute to rather than detract from the quality of the local and surrounding environment.

6.4.1 The agricultural land indicated in the relevant Environmental Constraints Maps is based on information supplied by the Department of Agriculture and reflect the importance of soil quality and access to irrigation water, but not only, for successful farming in the plan area. It is estimated that agricultural land constitutes approximately 67% of all non-urban land in the plan area. Limited development related to the continuation of the agricultural activity will be permitted."

L-argumenti principali li jressaq l-Appellant fil-konfront tar-rifjut mertu ta' dan l-appell jistghu jinqasmu kif gej:

- Li l-Bord tal-Awtorita meta ta d-decizjoni tieghu, ma mmotivax ir-raguni tar-rifjut (did not give specific reasons for refusal), tant li kif qed jigi allegat mill-istess Appellant, il-fatt li s-sit jinsab l-barra z-zona tal-izvilupp (Outside Development Zone - ODZ) ma jikkostitwixxix per se motivazzjoni b' sahhita bizzzejjed biex tigi rifjutata l-applikazzjoni tieghu. Fuq kollox, nonostante l-fatt li kien hemm stqarrijiet ta' no objection mill-awtoritajiet kollha li l-Awtorita appellata ghogobha tikkonsulta magghom; sahsitra iz-zewg direttorati fi hdan l-istess Awtorita ma sabux oggezzjoni ghall-izvilupp, l-applikazzjoni giet michuda.

- Li l-fatt li-sit jinsab f'ODZ m'ghandux ikun ta' konsegwenza li tigi rrifjutat l-applikazzjoni ghall-permess tal-izvilupp, partikolarment minhabba l-fatt li skond l-Appellant, il-bus depot kif propost u mertu ta dan l-appell, huwa konformi mal-policies tal-Areas for Open Storage. L-oggezzjoni tal-Awtorita hawnhekk jirrigwarda l-fatt li ghalkemm parzjalment mitluqa, l-ghelieqi xorta wahda ghandhom potenzjal agrikolu li bi ftit attenzjoni, jista facilment jigi riattivat.

Dan it-Tribunal ghalhekk sejjer jaqta' u jiddeciedi in kwantu dawn l-argumenti, kif ukoll punti ohra bhalma huma l-intensifikazzjoni tal-izvilupp (li johloq bixra ta' natura urbanizzanti) u r-riversibilita tal-proposta, in kwantu dawn jincidu fuq l-istess argumenti indikati supra.

A. Rigward l-ezitu ta' 'the lack of reasons for refusal' fil-konfront tal-paragrafu (3) tal-Artikolu 69 tad-Development and Planning Act tal-2010, kif indikat mill-Appellant permezz tan-noti tal-konsulenti tieghu ipprezentati fit-8 ta' Gunju u fit-12 t'Awwissu 2011, li;

"the Authority when wanting a refusal for any application is required to give 'specific reasons based on existing plans, policies and regulations or other material consideration for refusal"

u li,

"the only motivation granted by the MEPA Board for the refusal of the application PA 11/11, if such may be qualified as a justification in terms of law";

mid-Development and Permit Application (DPA) Report, tal-4 ta' Mejju 2011, jirrizulta li l-Awtorita ikkonsultat, kemm; il-Planning Directorate Advisory Team u l-Environment Protection Directorate fi hdan l-istess Awtorita, kif ukoll; il-Ministeru ghar-rizorsi u l-Affarijiet Rurali, l-Awtorita ta' Malta dwar ir-Rizorsi, u l-Awtorita ghat-Trasport f'Malta.

Fir-risposta taghha, l-Awtorita ghat-Trasport f'Malta permezz ta' ittra ta' ufficjal David Sutton, Chief Officer - Integrated Transport Strategy Directorate, lill-perit tal-Appellant, tat-18 ta' Frar 2011, (Dok. B anness man-nota tal-konsulenti tal-Appellant tat-12 t'Awwissu 2011), tghid precizament hekk:

"Please be informed that Transport Malta has no objection for the proposed development, on condition that bus parking will not be allowed on the public highway in the vicinity of the proposed facility."

Ma ssir l-ebda riferenza rigward eziti ohra bhalma huma; l-impatt li tali zvilupp ta' xarabanks (gejjin u sejrjn) jista' qatt johloq fit-toroq arterjali li jwasslu ghall-dan is-sit u fil-madwar. Donnu l-uniku punt ta' rilevanza u ta' mportanza ghall-din l-awtorita fir-rigward ta' din il-proposta, hi li ma jigux ipparkjati l-ebda xarabanks fit-toroq principali barra s-sit. Lanqas ma almenu hemm indikazzjoni in terminu ta' distanza fattwali, x'ghandu jigi miftiehem bil-kliem in the vicinity of u ghalhekk tali distanza hi soggettiva ghall-ahhar.

Din l-istqarrija taghti wkoll lill-wiehed x'jifhem li x-xarabanks kollha tal-Appellant (li bhalissa jammontaw il-fuq minn mitejn vettura) ser ikunu kollha ipparkjati; jekk mhux f'dan id-bus depot, f'postijiet ohra simili, specjalment

meta wiehed iqis il-fatt li bil-lejl, tali vetturi ma jkunux qed joperaw. Dan il-punt pero tqajjem biss fid-DPA Report, tal-4 ta' Mejju 2011 kif ser jigi spjegat aktar il-quddiem.

L-Appellant pero permezz tan-nota tal-konsulenti tieghu ipprezentata fit-12 t'Awwissu 2011, jaghti x'jifhem diversament: li bhal dan il-bus depot ser ikun hemm wiehed biss f'Malta, u li sahansitra ix-xarabanks li joperaw f'Ghawdex ser jitnizzlu Malta ghat-tiswijja meta jghid:

"With reference to the facility in Gozo indicated to be located as part of an industrial area, one must note that the depot in Gozo is on a far much smaller scale than the proposed facility in Malta, so much so that the facility in Gozo does not include a maintenance area since all maintenance of buses, whether operating in Malta or Gozo will be carried out in the facility in Malta."

Hawnwhekk, irid jigi nutat li anke b'din id-dikjarazzjoni, iqud dubbju serju kemm fil-fatt dan is-sit hu bus depot biss fl-isem izda ser ikun l-uniku maintenance centre ghax-xarabanks kollha ta' Malta u Ghawdex. Dan il-punt ser ukoll jigi trattat aktar il-quddiem.

Inoltre, l-ittra ta' no objection tal-Ministeru ghar-Rizorsi u l-Affarijiet Rurali (Dok. C anness man-nota tal-konsulenti tal-Appellant tat-12 t'Awwissu 2011), kienet daqs tant sommarja fil-motivazzjoni taghha; ghaliex tali zvilupp ghandu jigi accettat.

Anzi, fir-risposta tieghu, id-Direttur Generali tal-Agricoltura fi hdan il-Ministeru ghar-Rizorsi u l-Affarijiet Rurali mar oltre dak li gie mitlub jirrispondi. Kellu biss l-obbligu jindika jekk is-sit ghandux uzu agrikolu, u jekk fl-affermattiv, f'isem liema gabillott kienet irregistrata. La kien il-kompitu tieghu u lanqas m'hu lecitu jiffirma n-no objection biss fuq il-fatt li:

"in view of the importance of this project, this department finds no objection for the above mentioned development."

Fil-fatt, l-unika awtorita li mmotivat ir-risposta no objection taghha, kienet l-Awtorita ta' Malta dwar ir-Rizorsi (Dok. A anness man-nota tal-konsulenti tal-Appellant tat-12 t'Awwissu 2011).

B. Rigward l-idonjeta tal-operat tal-bus depot mertu tal-appell odjern ma' open storage, il-paragrafu (A) tal-fire safety and ventilation report tal-Ing. Kevin Spiteri, ipprezentat fil-Front Office tal-Awtorita, fit-22 ta' Frar 2011, inter alia jghid hekk:

"Areas referred to as 'spare parts stores' and 'changing rooms' shall be ventilated via forced mechanical ventilation ... Administration offices shall be provided with fresh air ... A pit lane exhaust extraction system shall also ... be installed to provide direct fume extraction from the bus exhaust pipe directly to ambient when buses are being serviced and engine needs to be operated."

Il-Policy Guidance - Areas for Open Storage, inter alia tipprovdi s-segwenti:

1.1 This policy document sets out the policy for the development of open storage areas. 'Open Storage' can mean the keeping of any goods, material, merchandise, or equipment not within an enclosed building, including incidental maintenance and repair of the material, which is being stored. The concept of open storage is rather wide ranging but the term 'open storage' as used throughout this document is taken to mean only the parking/storage of ... buses and coaches ... all of which must have a valid operational licence."

Il-policy hija cara. Il-kuncett ta' open storage fil-kuntest lokali ghandu jinftihem hiss ghall-parkegg u l-hazna ta' veikoli, bcejjeċ u ingenji ohra inkluzi x-xarabanks. Huma eskluzi kull tip ta' storage areas li jinkludu wkoll il-manutenzjoni u/jew it-tiswijja ta' tali vetturi, kif fuq kollox huwa propost f'dan l-appell.

Generalment, open storage areas jistaw jikkomprenđu (can include) wkoll il-manutenzjoni u t-tiswijja ta' vetturi

imma għall-fini ta' din il-policy il-parkegg hiss (only the parking) ta' tali vetturi huwa permessibbli.

Sahansitra il-binja tal-maintenance shed (li barra s-sempliċi parkegg imsaqqaf tinkorpora wkoll ufficini u mhazen) tagħti indikazzjoni cara tal-intensità tal-iżvilupp, mhux sempliċi parkegg jew mahzen fil-berah. Permezz tan-nota tal-perit tal-Appellant lid-Direttur tal-Ippjanar, tal-25 ta' Marzu 2011 (Dokument 10A anness man-nota tal-konsulenti tal-Appellant tat-12 t'Awwissu 2011), jiġi rilevat is-segwenti:

"The maintenance shed is an 8 bay steel structure. The steel cladding proposed for the sides and roof will be insulated whilst the facilities on [recte to] the rear part of the maintenance building will be constructed in blockwork which will be finished in rendering and painting. The steel structure will be bolted/anchored on [recte to the] reinforced concrete foundations."

Anke jekk għall-mument jiġi sorvolat l-operat tal-bus depot kif propost, dwar il-kontigwita tas-sit maz-zona industrijali, jiġi osservat li Triq Luretu Cutajar li tagħti għall-bus depot kif propost, kategorikament taqta u tissepara z-zona industrijali mis-sit mertu ta' dan l-appell, Wiehed irid ihares lejn wiehed mill-pjanijiet lokali biex jifhem u japprezza li normalment, bejn zona w oħra hemm biss triq li tifridhom, u mhux insolitu li per eżempju bini fuq naha wahda ta' triq jagħmel ma zoning partikolari u dak fuq in-nahha l-oħra jaqa taht tip ta' zoning iehor.

Inoltre, jekk wiehed ihares lejn it-tifsira tal-kelma 'contiguous' isib illi biex ikunu kontigwi, zewg siti iridu jkunu jmissu ma xulxin, cioe adjacenti u/jew huma konnessi flimkien, in an unbroken sequence.

Bl-istess argument pero u jekk xejn, is-sit imiss ma u hu kkonfinat minn ODZ. (Fil-fatt jifforma parti mill-istess ODZ). Altru li contiguous with an industrial zone, is-sit huwa contiguous with agricultural land in the Outside Development Zone.

C. Jigi rilevat ukoll, li jekk għall-grazzja tal-argument, tigi sorvolata c-cirkostanza tal-konformita tal-proposta mal-policy tal-open storage, l-area ta' landscaping kif proposta (allegatament konformi mal-minimu ta' ghoxrin fil-mija stipulati mill-istess policy), cioe l-2100 metru kwadru ta' landscaping, għandhom bixra urbanizzati.

Anke jekk jithawlu sensiela ta' sigar taz-zebbug etc., biex iservu ta' buffer b'dana li jittaffa l-impatt fiziku-viziv tal-izvilupp, landscaping formali bhal dan mhux naturali u xorta wahda ser jispikka fil-kampanja. Pjuttost il-mod li bih il-landscaping prattikament inqata' fuq nahha wahda tassit (l-aktar parti il-boghod mit-triq), jaghti l-wiehed x'jifhem li tali spazju hu sempliciment skuza biex l-izvilupp ikun allegatament konformi mal-istess policy. Donnu bhallikieku xi hadd qasam sit ta' 9,300 metru kwadru fi tnejn: parti ssir bus depot, u l-bqija tigi landscaped.

Mhux minnu allura, li 7,200 metri kwadri biss ser ikunu sviluppati, ghax l-2100 metru kwadru l-ohra ser jigi zviluppati (developed) ukoll f'landscaping (development of natural elements).

D. Rigward l-ezitu tar-riversibilita tal-proposta, in kwantu l-ghelieqi għandhom potenzjal agrikolu, jigi rilevat li l-proposta tikkonsisti wkoll f'sensiela ta' gwiebi sottinterrati (kif diga gie ndikat qabel), bl-ghan li l-ilma li jiskula mill-attivitá tal-bus depot, (waste water) minflok jintrema fid-drenagg pubbliku, jingabar u jigi rriciklat.

Permezz tan-nota tal-perit tal-Appellant lid-Direttur tal-Ippjanar, tal-25 ta' Marzu 2011, jigu rilevati il-punti segwenti:

"Work in the bus-washing area comprises: the removal of the top soil (which will be stored on or off site for the eventual re-use in the proposed landscaped areas); the trimming of rock to formation levels as described in the block plan (good excavation material will be crushed and re-used as grading material underneath asphalt works); the casting of 75 mm blinding concrete to form falls underneath the bus-wash reinforced concrete base; the

laying of 4.5 mm polystyrene torch-welded waterproofing membrane (drained); the casting of a reinforced concrete base laid to falls surrounded by gutters."

Inoltre, l-istess tip ta' site clearance gie propost għall-bus parking area, bid-differenza li hawnhekk, l-art tkun iffurmata kif gejj:

"... laying of 100 mm hot-pitch asphalt base course and the laying of 100 mm hot pitch asphalt wearing course. The hot pitch asphalt with sufficient falls to gutters will guarantee the site impermeability."

Dan it-Tribunal ma jistax jifhem allura, li minn banda wahda, id-DPA Report jinnota li l-art, għalkemm agrikola, jirrikmanda li meta jithammlu u jinbnew il-gwiebi, il-hamrija kollha li titnehha għandha tigi salvata u uzata x'imkien iehor. Fuq kollox imbghad jerga' jaghti l-wiehed x'jifhem li jekk qatt xi darba il-bus depot jieqaf rnill-operat tieghu, is-sit jista' jerga' jsir għelieqi agrikoli.

Din hi rakkomandazzjoni kemm xejn konfuza: jew l-art (inkluz il-hamrija li hemm fuqha), m'hi tajba xejn għall-agrikoltura, jew hi, tant li ser terga' tintuza. Altro che r-riversibilita tal-proposta. Galadarba il-bus depot ma jibqax jiffunzjona, ser ikun diffiċli ferm biex l-art terga' tigi rripristinata għall-uzu agrikolu li għandha llum.

Jigi rilevat ukolli mhux minnu kif iddikjarat mill-Appellant permezz tan-nota tal-konsulenti tieghu ipprezentata fit-8 ta' Gunju 2011, kif soprandikat, li tali zvilupp fl-ODZ is accepted by MEPA's very own policies. Fil-fatt, l-istess Policy Guidance - Areas for Open Storage ta' Frar 2005, tghid hekk:

"2.7 Policy SET 11 refers to 'permitted forms of non-urban development'. These uses are listed in preamble to policy BEN 5. However storage uses are not listed in the examples of 'normal legitimate uses in the non-urban scene'. Therefore storage uses should not normally be located ODZ."

Il-kliem 'should not normally' jaghtu l-wiehed x'jifhem li open storage areas barra z-zona tal-izvilupp jistghu jigu biss permessi f'cirkostanzi estremi: wara li jkunu gew indagati l-alternattivi kollha possibli u ma tkunx instabet soluzjoni aktar felici. Anke il-fatt li gie propost maintenance shed ta' dimensjonijiet sostanzjali (inkluzi ufficini, mhazen, etc.) ixejjnu kwalsiasi nozzjoni ta' open (jigifieri, mhux imsaqqaf), fil-kuncett ta' open storage.

Fl-ahhamett, zgur li tali zvilupp, meta mqabbel ma bus terminus tal-istess numru ta' vetturi (il-fuq minn erbghin xarabank) hu aktar intensiv, u ghalhekk jista jimmerita xi tip ta' studju ambjentali. Il-fatt hu li zvilupp b'zvilupp, bus depot hu aktar intensiv minn bus terminus u ghall-grazzja tal-argument anke minn container depot (fejn ma ssir l-ebda forma ta-manutenzjoni fuq vetturi), hu ikkonfermat mid-DPA Report, tal-4 ta' Mejju 2011, li ghid hekk:

"As part of the commitment and service a number of centralised depots are necessary to cater for the over 200 bus fleet which will operate throughout the Maltese territory. The existing infrastructure, which is limited to very basic hand washing near the bus terminus and the servicing of vehicles both at the terminus and at many times within private garages within residential areas can no longer be accepted.

Zebbug was chosen as a central location to the public transport network. The issue remained where to locate such a use. The use per se is quite restricted to the fact that the operation is in nature industrial and can neither be located within the mixed use area identified in the local plan nor within the strategic open gap, nor within the residential area.

During the screening process that [recte the] EPD found no objection in principle for the proposed development provided that the proposal complies with planning policies. However, during the validation process the proposed site area was enlarged in view of operational requirements of Arriva Malta Ltd. Through re-consultation with EPD the

proposed site amendments the directorate objected for the intensification of industrial related uses.

Whilst it is ideal that a location of an area for development is found since the site required for this national project requires a site of 9000 sqm. which is compatible with the adjacent uses, is in accordance to the open storage policy or other local plan policies and is located on the distributory [sic.] road network the sites are limited to a few area similar to the one being considered.

Following the concerns raised a meeting together with the EPD was set with the applicant [sic.]. Changes to the plans were made to concentrate the development nearer to the distributor road. EPD re-vetted the plans and provided their no objection subject to a number of conditions."

Wiehed jifhem li tali paragun qed isir bejn is-sitwazzjoni precedenti fil-venda tal-Belt Valletta - jigifieri, tar-regim l-antik ta' qabel ir-riforma tat-trasport pubbliku - u l-proposta mertu tal-appell odjern. Billi l-izvilupp kif propost ser jakkomoda il-fuq minn erbghin vettura - jigifieri, prattikament ser jassorbi madwar ghoxrin fil-mija tax-xarabanks fit-triq - wiehed jifhem li f'qasir zmien, bus depots ohra simili ghall dan huma mahsuba li jigu zviluppati f'postijiet ohra mxerrda madwar il-gzejjer Maltin.

Jekk allura bl-istess ammissjoni tad-DPA Report, dan hu minnu, ghalfejn l-Awtorita ma talbietx lill-Appellant jidentifika is-siti kollha fejn bi hsiebu jaghmel depots bhall dawn, bl-ghan li kienet tniedi studju ambjentali (bhal per eżempju Environmental Impact Statement jew Environmental Planning Statement), biex jigu identifikati areas li huma idoneji ghall-tali zvilupp, u li ssir xi forma ta' master plan fejn anke setghu jigu ippjanati estensjonijiet ulterjuri, u b' hekk anke fil-futur qarib, jigi evitat it-tnaqqir tal-kampanja b'mod piecemeal ghall-ahhar? Anke wahdu, tali zvilupp kien jimmerita studju ambjentali, ahseb u ara li kieku kienu ser jigu proposti sensiela ta' bus depots ohra, simili ghall-dan, mertu tal-appell odjern.

Jidher car li kieku ma intervenietx l-EPD, kieku kien ghall-Appellant, l-izvilupp kien jestendi ferm aktar minn kif propost hawnhekk. Ikun inutli li wiehed jillimita zvilupp bhal dan biex jimxi mal-policy jekk ir-realta hi ohra. Kien ikun ferm aktar ghaqli li kieku l-Appellant thalla jressaq il-karti tieghu kollha fuq il-mejda, u saret konsultazzjoni pubblika permezz ta' studju ambjentali.

L-importanza ta' tali zvilupp (u allura il mod li l-Awtorita kien imissha ipprocediet) hu kkostatat permezz ta' ittra tal-avukati tal-Appellant ipprezentata fit-8 ta' Lulju 20011, u li inter alia, tghid hekk:

"Undoubtedly, as was even categorised by the very same MEPA during the application stage, this project is one of national interest."

L-agir inkonsistenti tal-Awtorita hu kkostatat minn fatt semplici. Skond id-DPA Report tal-4 ta' Mejju 2011 (ipprezentat fil-fazi tal-applikazzjoni ghall-permess), un-nota ipprezentata waqt il-mori ta' dan l-appell, fil-25 ta' Lulju 2011, l-izvilupp imur kontra il-policies SET 11 u precizament is-subinciz 7.6, SET 12, BEN 1, BEN 2, BEN 5, AHF 4 u PTR 11 tal-istess pjan lokali.

Jigi rilevat pero, li ghalkernm id-DPA Report, u l-istess nota jargumentaw abbazi ta' dawn il-policies, haga tal-ghageb li tal-ewwel spicca b'recommendation to grant mentri din tal-ahhar tispicca billi tghid ezattament l-oppost, u precizament kif gej:

"5.2 MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all relevant facts, planning policies, legislation and submissions and thus, respectfully requests that the Environment & Planning Review Tribunal to confirm the decision as issued with the refusal notice and to refuse this appeal."

Hawnhekk, tajjeb li jigi nutat li l-Awtorita fil-fazi ta' screening, b'mod partikolari fl-iscreening ta'

applikazzjonijiet ta' certa portata, għanda thalli il-process f'idejn il-Bord. Kien ikun ferm utli li kieku l-Bord stess a priori, strada l-applikazzjoni mertu tal-appell odjem, b'dan li kienu jigu identifikati l-issues kollha li setghu jikkarakterizzaw din l-applikazzjoni fl-istadju ta' screening, u kien jigi evitat hafna xogħol zejjed lill-Appellant.

Minn nahha l-oħra, mhux minnu li kif stqarr l-Appellant permezz tan-nota tal-konsulenti tieghu ipprezentata fit-12 t'Awwissu 2011, li s-site selection process għanda tagħmlu l-Awtorita. Bicca xogħol bhal din għandu jipproponija l-Appellant flimkien mal-Awtorita, u flimkien ma terzi, għandhom jipprovaw ifittxu siti li hurna idoneji għal tali żvilupp. Zgur li jeżistu zoni aktar centrali fejn dan l-iżvilupp jista jigi akkomodat, mingbajr hsara ulterjuri għall-ambjent.

Jigi rilevat ukolli għalkemm l-Appellant iddikjara li similar sites are limited u li l-Malta Industrial Parks ma kienux lesti li jipprovdu spazju għal tali żvilupp, naqas milli jipprezenta provi konkreti li jikkonfermaw tali dikjarazzjoni. Fil-fatt, dan it-Tribunal ma jistax jifhem kif proġett ta' skala nazzjonali ma għandux isib is-support ta' kumpanija tal-Gvern u li wara kolloxx għanda l-obbligu li tmexxi u tirregola iz-zoni industriali kollha tal-pajjiż.

Inoltre, permezz ta' nota tal-konsulent tieghu, ipprezentata fit-8 ta' Gunju 2011, l-appellent ighid hekk:

"Such a facility is a crucial element within the strategy of the reformed public transport sector providing for improved quality and maintenance of the bus fleet serving the public. Such development is undoubtedly one of national importance and is essential for the success of the new public transport system widely and long anticipated by the public."

Huwa proprju minhabba l-importanza u l-impatt li tali riforma ser ikollha fuq l-infrastruttura ta' pajjiżna u b'konsegwenza fuq il-kwalita tal-hajja ta-cittadini, li tali żvilupp kellu jigi mfassal fl-ottika ta' pjanifikazzjoni aktar wiesgha. Dan it-Tribunal ma jistax jara għalfejn meta giet

imnieghda r-riforma fit-trasport pubbliku, l-awtoritajiet ikkoncemat i ma hasbux fuq l-infrastruttura ta' tali servizz; kif ser tinbena u fejn ser titqiehed, qabel ma beda fis-sehh tali servizz.

L-istess ammissjoni tal-Appellant, maghmula permezz tar-risors ipprezentat mill-konsulenti tieghu fit-8 ta' Lulju 2011, tghid hekk:

"Notwithstanding the fact that the said public transport operator commenced operations last 3rd July, the required facilities are not in place for the servicing of such vehicles and the operator is having to make use of temporary measures which are certainly inadequate and fall short of what is expected from a newly reformed and modernised public transport system."

Din hija dikkjarazzjoni kemm xejn inkwetanti speċjalment in vista tal-fatt li tali nfrastruttura thalliet barra meta giet imnieghda ir-riforma tat-trasport pubbliku; bhallikieku wiehed xtara ziemel imbaghad skopra li m'ghandux fejn iraqqu, jew xtara dghajsa u ma hasibx fejn ser jirmeggha.

Kellu ghalhekk isir master plan, fejn is-siti kollha li potenzjalment setghu iservu ta' bus depots u kwalsiasi tip ta' nfrastruttura u facilita' oħra essenzjali għall-operat ta' tali xarabanks, kellhom jigu evalwati flimkien, bhallikieku kienu l-koll zvilupp wiehed olistiku; massicc izda kongunt, b'dan li tigi mirquma strategija li tinkludi wkoll serje ta' alternattivi, u dan sabiex tigi evitata kwalsiasi pjanifikazzjoni frammentarja, li tista tirrizulta fi sfregju indiskriminat tal-kampanja.

Dan il-punt hu kkonfermat minn necessita li skond l-Artikolu 2 - Progetti Infrastrutturali, paragrafu 2.4 - Trasport lehor, subinciz 2.4.2 - Progetti f'Kategorija II, ta' l-iskeda 1A ta' l-Avviz Legali 114 ta' l-2007, Regolamenti ta' l-2007 dwar l-Istudju dwar l-Impatt Ambjentali; jehtieg studju ambjentali għall:

"2.4.2.2. Facilitajiet ohra tat-trasport kbar bhal terminus tal-karozzi tal-linja jew depot tal-kontejners."

In vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox minhabba l-fatt li din il-proposta tinkludi wkoll strutturi għall-manutenzjoni kostanti tax-xarabanks - hawnhekk b' manutenzjoni kostanti, wiehed jifhem regular maintenance b'turn-over konsiderevoli, fejn hemm anke presenza fissa (on site) tad-dipendenti tal-Appellant, u mhux manutenzjoni straordinarja li ssir minn zmien għall-zmien - ma tikkwalifikax bhala open storage area skond il-policy 1.1 tal-Policy Guidance - Areas for Open Storage, dan l-Appell ma j istax jigi milqugh.

It-Tribunal qed jasal għall-konkluzzjonijiet segwenti:

i. Il-fatt li r-rifjut kien motivat b'raguni wahda mhux aggravju fondat li jiggustifika ir-revoka tad-decizjoni. Il-motivazzjoni tar-rifjut hi cara: il-proposta ma tistax tigi milqugha ghaliex is-sit propost jinsab f'area li skond l-iStructure Plan għanda tigi protetta u ppreservata.

ii. Kif intwera mill-premess, il-policy għall-Areas for Open Storage ta' Frar tal-2005, mhux applikabbli għall-kaz in ezami; billi l-attività mhix limitata għas-sempliċi parkegg jew magazzinar ta' xarabanks fit-termini tal-istess policy, izda hi a fully-fledged operation.

iii. Ma jistax pero ma jigix rilevat li l-process ta' screening hu proprjament intiz biex fl-istadju inizjali tal-process kollu, jigu stabbiliti kwistjonijiet ta' principju. F'dan il-kaz, il-motivazzjoni tar-rifjut kellha tigi sollevata f'dak l-istadju u mhux wara li sar l-process kollu.

Għalhekk, sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il- Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut għall-PA 11/11 mahrug mill-Bord tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar, fid-19 ta' Mejju 2011.

Ikkunsidrat

L-aggravji li ressaq Raymond Fenech kontra d-decizjoni tat-Tribunal huma s-segwenti:

1. It-Tribunal ecceda l-poteri tieghu meta qajjem konsiderazzjonijiet u bbaza l-konkluzzjonijiet tieghu fuq kwistjonijiet li ma tqajmux mill-Awtorita jew gew trattati quddiem l-Awtorita u t-Tribunal;
2. Konsegwenza tal-ewwel aggravju, l-appellant gie mcahhad minn smigh xieraq billi ma kellux opportunita jaghamel ir-rapprezentazzjonijiet fuq dawn il-kwistjonijiet;
3. It-Tribunal ghamel evalwazzjoni hazina tal-ligi meta qal li fil-policy tal-Areas for Open storage mhux permess facilitajiet ta' manutenzjoni;
4. It-Tribunal injora l-aggravju mqajjem quddiem it-Tribunal li kien jirreferi ghan-nuqqas ta' gustifikazzjoni tal-Bord tal-Awtorita fid-decizjoni ta' rifjut;
5. It-Tribunal ibbaza l-konkluzzjonijiet tieghu fuq assunzjonijiet mhux riflessi fil-provi;
6. It-Tribunal ma messux iddecieda l-kaz meta hu stess stqarr li l-Awtorita messha ghamlet konsultazzjonijiet jew studji ulterjuri dwar il-progett u minflok messha rremettiet il-kaz quddiem l-Awtorita.

Ir-raba u sitt aggravji

Il-Qorti tqis bhala relevanti hafna ghal kaz in kwistjoni d-decizjoni tal-Bord tal-Awtorita li f'decizjoni qasira hafna qalet biss "The site is ODZ and there was not enough justification to be used for a Bus depot in this location."

It-Tribunal imbaghad f'decizjoni dettaljata kkonferma d-decizjoni tal-Bord tal-Awtorita fuq tlett binarji cioe:

1. Il-fatt li r-rifjut tal-Bord tal-Awtorita kien immotivat b'raguni wahda cara ma jiggustifikax ir-revoka tad-decizjoni;
2. Il-policy ghal Areas for Open Storage mhux applikabbli ghal kaz in ezami ghax l-attivita mhix limitata ghas-sempli parkegg jew magazzinagg tax-xarabanks fit-termini tal-policy, izda hi fully fledged operation;
3. Il-process ta' screening hu intiz biex fl-istadju inizzjali tal-process jigu indirizzati kwsitjonijiet ta' principji u l-motivazzjoni tar-rifjut kellha tigi mqajma f'dak l-istadju mhux wara li sar il-process kollu.

Il-Qorti taghmilha cara illi huma kwistjonijiet ta' ligi biss li din il-Qorti tista' tissindaka, liema kwistjonijiet iridu jkunu tqajmu u gew deliberati mit-Tribunal.

Hu car illi l-aggravju mqajjem mill-appellant li l-Bord ma mmotivax id-decizjoni tieghu u kwindi kellha tigi revokata hi kwistjoni ta' ligi li t-Tribunal kellu l-obbligu jindirizza.

L-artikolu 69(3) tal-Kap. 504 fil-proviso tieghu hu tassattiv f'dan is-sens:

Iżda mar-rifjut jew mal-impożizzjoni ta' kondizzjonijiet partikolari, l-Awtorità għandha tagħti raġunijiet speċifiċi bażati fuq pjanijiet ta' żvilupp, policies ta' ppjanar u regolamenti jew kull konsiderazzjoni materjali eżistenti għal dak ir-rifjut jew għal xi kondizzjonijiet partikolari li jkunu ġew imposti:

Dak li kellu jagħmel it-Tribunal hu illi qabel xejn jindirizza din il-lanjanza serja da parti tal-appellant. L-obbligu tat-Tribunal ma hux li jissostitwixxi ruhu jew jagħmel tajjeb għall-obbligi imposti fuq l-Awtorità fejn dan jonqos, tajba kemm hi tajba l-intenzjoni aħharija tat-Tribunal. It-Tribunal għandu jara li l-Awtorità qdiet dmirha skrupolozament skond il-ligi. Laqas jista' t-Tribunal jistrieħ fuq l-interpretazzjoni tal-istess Awtorità fir-risposta li tkun għamlet għall-appell interpost għal dak li qed jew ried iġid jew ifisser il-Bord tal-Awtorità fid-decizjoni tieghu.

Dak li jkun intqal u gie diskuss fis-seduti tal-Bord huma biss argumentazzjonijiet u sottomissjonijiet jew addirittura hsibijiet jew riservi pero bl-ebda mod ma jistghu jissostitwixxu jew jagħmlu tajjeb għad-decizjoni tal-Bord tal-Awtorità li hi l-fonti unika ta' dak li ried iġid l-Bord tal-Awtorità biex ifisser ir-rifjut jew l-approvazzjoni tal-applikazzjoni li tkun saret.

It-Tribunal zbalja meta fid-decide ikkonkluda li motivazzjoni cara ta' rifjut hi bizzejjed biex tissodisfa l-ligi. Dan mhux il-kliem u anqas l-spirtu tal-ligi. Kull kaz irid jittiehed skond il-fattispecie tieghu u hemm kazijiet fejn rifjut jew awtorizzazzjoni jistghu jinstiltu minn pjan jew

policy jew regolament specifiku minghajr il-bzonn ta' hafna dilungar u spjegazzjoni ulterjuri. Pero dan ma kienx wiehed minn dawn il-kazijiet. F'dan il-kaz kien hemm zewg kwistjonijiet principali li l-Bord kien obligat jifli cioe l-fatt indisputat illi parti kbira mill-art in kwistjoni kienet taqa' barra zona ta' zvilupp skond il-pjan regolatur u marbuta ma' dan il-pjan, il-policy ghal Areas for Open Storage ta' Frar 2005 li tippermetti f'certi cirkostanzi u taht certi kondizzjonijiet zviluppi barra zona ta' zvilupp. Din kienet il-perm tal-kwistjoni kollha quddiem il-Bord u nonostante li rapport tad-direttorat tal-istess Awtorita fuq dawn il-kwistjonijiet u l-process dettaljat u informazzjoni u dokumentazzjoni migbura fih, il-Bord fid-decizjoni tieghu injora kollox u ddecieda biss fuq il-pjan regolatur bla ebda hjiel ghaliex skarta dak li qallu d-direttorat u l-policy ghal Areas for Open Storage.

Il-Qorti mhix tissindaka din id-decizjoni ghax tohrog il-barra mill-parametri gurisdizzjonali taghha pero l-ilment tal-appellant fuq din ir-raguni quddiem it-Tribunal kienet ta' massima importanza u kellha tigi ndirizzata mit-Tribunal fuq bazi legali. Il-Qorti fliet sew id-decizjoni tat-Tribunal u imkien ma sabet hjiel ta' xi konsiderazzjoni fuq dan il-punt legali mqajjem mill-appellant. Minflok il-kwistjoni legali mqajma mill-appellant giet skartata mit-Tribunal fid-decide bla ebda gustifikazzjoni valida u minflok ssuplixxiet hi ghan-nuqqas tal-Bord fil-konsiderazzjonijiet fattwali, teknici u ta' planning. Dan hu skorrett. It-Tribunal irid jevalwa appell fuq dak li jkun deciz mill-Bord tal-Awtorita u jekk l-Awtorita naqset fid-dover li tiggustifka rifjut jew approvazzjoni b'mod specifiku u car kif trid il-ligi, tenut kont tal-fattispecie tal-kaz, kellha tieqaf hemm, tannulla d-decizjoni u tibghatha lura lill-Awtorita biex taghmel dmirha kif inhu mistenni. Dan japplika mhux biss ghax il-kwistjoni hi ta' certa importanza izda tapplika ghal kull kaz ghax kull applikant iqis li l-applikazzjoni tieghu hi importanti ghalih.

It-Tribunal iddecieda hazin meta qal li l-motivazzjoni tad-decizjoni ta' rifjut tal-Bord hi cara. Il-fatt wahdu li l-Bord qal li s-sit kien barra zona ta' zvilupp kienet biss kostatazzjoni ta' fatt maghruf. Dak li kien id-dmir tal-Bord hu li jiggustifika o meno l-applikazzjoni ta' policy specifika ghal

kaz. Dan kien iwassal ghal decizjoni bbazata fuq ragunijiet specifici, ragunijiet li l-Bord tal-Awtorita ma dahalx fihom meta kellu obbligu ghax din kienet il-qofol tal-kwistjoni. It-Tribunal ma setax jistrieħ biss fuq 'decide' tant biex jiddikjara li l-kelma tal-ligi giet sodisfatta. Il-ligi trid iktar minn hekk u c-cittadin ghandu dritt ghal spjegazzjoni cara ghaliex ikun gie rifjutat permess.

Tant hu hekk illi l-istess Tribunal jistqarr illi r-rapporti ta' whud mid-dipartimenti koncernati biex jaghtu l-pariri taghhom fuq il-progett ma kienux ezawrjenti u illi kien hemm lok ghal aktar informazzjoni u studji. Dan jinghad b'referenza ghal kummenti tat-Tribunal dwar l-impatt tal-izvilupp fuq it-toroq arterjali, in-nuqqas ta' oggezzjoni maghmula b'mod skarn għall-ahhar tal-Ministeru għar-Rizorsi u Affarijiet Rurali, u l-motivazzjoni wara risposta tad-Direttur Generali tal-Agricoltura. Aktar minn hekk pero t-Tribunal ukoll ikkumenta fuq ir-rakkomandazzjoni konfuza tad-Direttorat tal-Awtorita dwar l-uzu tal-hamrija meta jsir il-progett billi ma rrizultax jekk din hiex art tajba għall-agricoltura jew le liema kwistjoni timpingi fuq il-konsiderazzjonijiet li kellhom isiru.

Dawn il-fatturi iktar isahhu l-argument tal-Qorti illi t-Tribunal ma kien xejn komdu bid-direzjoni tal-Bord tal-Awtorita bbazata bil-mod xott kif kienet minghajr ma ttiehed in konsiderazzjoni b'mod car u inekwivoku r-ragunijiet validi għalfejn il-progett ma setghax jigi milqugh b'referenza għal policies vigenti.

Għalhekk il-Qorti qed tilqa' r-raba aggravju u relatat mieghu anki s-sitt aggravju tal-appellant.

La darba qed jigu milqugh dawn l-aggravji, din il-Qorti tqis li mhux ta' siwi illi tidhol fl-aggravji l-oħra mressqa mill-appellant li huma rilevanti fil-mertu tal-kwistjoni. Il-Qorti hi tal-fehma illi t-Tribunal kellu jiegaf fl-aggravju principali cioe li d-decizjoni tat-Tribunal ma kinitx tissodisfa la l-kelma u anqas l-ispirtu tal-ligi u ma kinitx taghmel gustizzja ma hadd bil-mod skarn kif giet pronunzjata u kellha tibghat l-atti lura lill-Bord tal-Awtorita biex jiddelibera u jiddeciedi kif imiss. B'hekk il-partijiet kien

ikollhom l-opportunita quddiem it-Tribunal jiddibattu l-kwistjoni fl-intier taghha wara decizjoni spjegata tal-Awtorita u t-Tribunal ma jkunx kostrett jissuplixxi ghan-nuqqas tal-Awtorita bil-konsegwenzi legali problematici li din tista' tikkreja kif jidher mill-istess aggravji mressqa mill-appellant.

Decide

Ghalhekk ghar-ragunijiet moghtija din il-Qorti qed tilqa' ir-raba u s-sitt aggravji tal-appellant u konsegwentement qed thassar u tannulla d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Settembru 2011 u tibghatha lura lit-Tribunal biex fit-termini hawn fuq decizi, terga' tigi determinata mit-Tribunal. Spejjez ghall-appellat.

< Sentenza Finali >

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