



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 112/2012

Sebastian Briffa

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Sebastian Briffa tal-5 ta' Lulju 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 in segwitu ghal PA 4343/06 dwar 'removal of soil, infill with material and replace soil to achieve a higher level of soil and construction of stables';

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tat-Tribunal kellha tigi konfermata u l-appell michud ghar-ragunijiet fir-risposta;

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

Kopja Informali ta' Sentenza

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

B'applikazzjoni tal-11 ta' Lulju 2006 - Full Development Permission – PA/04343/06 fejn l-appellant, f'Site at Luqa Road, Qormi, talab:

"Removal of soil, infill with material and replace soil to achieve a higher level of soil, and construction of stables.
"

Illi permezz ta' rifjut tal-15 ta' Lulju 2010 il-Kummissjoni Ghall-Kontroll Dwar l-Izvilupp cahdet it-talba ghall-hrug tal-permess kif mitlub ghar-ragunijiet segwenti:

"1. The proposed development is in conflict with all the location parameter set out in Policy 4.38 [criterion 1 (e)] of Policy and Design Guidance Agriculture, Farm Diversification and Stables (December 2007) The proposal does not seek to protect the countryside The site proposed for development is located within 100m from the development zone. Therefore, there is no apparent justification in terms of Structure Plan policy SET 12 as to why the proposed stables could not have been located within an existing or identified area for the development of new stables.

2. Central Malta Local Plan is indicating that the site proposed for development forms part of an identified Strategic Open Gap area. Within these identified areas, this Local Plan (policy CG25) aims to promote uses/activities which enhance and improve arable agricultural land. The proposed development conflicts with the overall aim of Central Malta Local Plan (policy CG25) since the development of the proposed stables will lead to the unnecessary further take-up of agricultural land.

3. The proposed site falls within the environment of the valley system of Wied il-Kbir which has been designated as an Area of Ecological Importance and a Site of Scientific Importance. Therefore the proposed development conflicts to the aims of paragraph 15.39 of

the Structure Plan Explanatory Memorandum, Central Malta Local Plan (policy CG22) and Policy and Design Guidance for agricultural buildings (policies I.3D, 1.3G and 1.3H) which prohibit activities that disturb and damage protected area.

4. The proposed development fails to comply with the overall aim of Structure Plan policies RCO 28 and RCO 29 since it does not seek to conserve/manage or protect the soil and the water resource of the area - it will lead to a large scale development on the valley watercourse."

Illi l-Perit Catherine Galea ressqet l-aggravji tal-appellant inter alia kif gej:

"1. The site is just on the periphery of the 100m (limit) from the development zone as can be seen from attached site plan.

This proposal is for the relocation of the present permitted stables PB1387/88/14/88 which are within the development zone and directly beneath residential buildings. Such a relocation will surely be an improvement on the current situation.

If and when this application is approved, applicant is willing to revoke his right (permit) of these existing stables.

The site is in close proximity to the Marsa Race Track. In the vicinity and within scheme there are many long established stables which have, in fact, been permitted due to their proximity to the Marsa Race Track.

2. This proposal is agriculture related; however this cannot be said of the large commercial development (the petrol station) which was approved by MEPA Board in the same Strategic Open Gap.

The site has not been used for any agricultural activity since Luqa Road was raised to its present level as since

then the site is prone to flooding every winter and that is why part of the proposal is to raise the present soil level.

3. A waste management plan endorsed by the Department of Agriculture and the Veterinary Regulation Fish Cons and Control Division has already been submitted.

4. The reason for proposing to raise the soil level is precisely to conserve and protect the soil from erosion due to the seasonal flooding.

It should be pointed out that there is a public lane which separates the site from the actual water course and the proposed stables are on the other perimeter of the site away from the public lane and from the water course."

Illi permezz tar-rapport taghha l-Awtorita ressqet il-kummenti taghha inter alia kif gej:

"6.2.1 The site is just about 85m away from the nearest residential area. Policy 4. 3B(1e) states that new stables have to be located within 300 metres from the development zone boundary but at least 100 metres away from adjacent dwellings or an inhabited area or an area which is intended for residential [...] development.

6.2.2 The Grand Harbour Local Plan identified a particular area adjacent to the Marsa Race Track as suitable for stables. The site in this application is not within this area. Moreover the appellant did not refer to or quoted any permits for stables issued in the vicinity of the site under review (and which are not within the specific area identified by the GHLP for stables).

6.2.3 The appellant did not provide any details for the petrol station referred to in the Appeals claim.

6.2.4 The issue of the waste management plan does not feature among the reasons for refusal. Therefore this objection on behalf of the appellant is superfluous.

6.3 The Directorate would also like to point out the following reasons why the proposed development is not acceptable:

6.3.1 The Central Malta Local Plan (CMLP) designates the site as a Strategic Open Gap and is subject to policy CG25 of the CMLP as indicated in Map QOM1. Moreover the site is designated by the CMLP as a Listed Area/Site of Scientific Importance and subject to policy CG22 - see Map QOM4 of the CMLP: This map also indicates that the site is contiguous with a Listed Ecological Area/Site (also subject to policy CG22).

Local Plan policy CG25 states that MEPA will not permit any urban development in designated Strategic Open Gaps except for essential small scale utility infrastructure which have to satisfy a number of conditions. Therefore the proposed development runs counter to this policy since it is obvious that a stable complex with an area of circa 240 sq.m cannot be considered as a small scale utility infrastructure. Furthermore this policy aims to promote uses/activities which enhance and improve arable agricultural land. The proposed development thus further conflicts with Policy CG25 of the CMLP since the proposal will lead to further unnecessary take-up of agricultural land.

In line with the goals of Structure Plan policy RCO12, according to policy CG22 of the CMLP there is a general presumption against development within sites identified as AE1s and SS1s in order to protect the countryside. Therefore the proposed development is in conflict with Structure Plan policy RCO12 and Policy CG22 of the local plan since the site is located within a Listed Area/Site of Scientific Importance and is contiguous with a Listed Ecological Area/Site. Furthermore the proposed development conflicts to the aims of paragraph 15.39 of the Structure Plan Explanatory Memorandum, and Policy and Design Guidance for agricultural buildings (policies 1.3D, 1.3G and 1.3H) which prohibit activities that disturb and damage protected area.

6.3.2 According to policy 4.38 of Policy and Design Guidance on Agriculture, Farm Diversification and Stables, stables that are not located either (i) within the curtilage of an existing legitimate dwelling ODZ or (ii) in specific areas designated in the Local Plans are permissible only if they satisfy a number of conditions. However the proposal does not satisfy the following criteria of this policy:

(1c) the applicant submits official evidence to demonstrate, to the satisfaction of MEPA, that reasonable attempts have been made, for a period of at least one year immediately before the application for development permission, to find an abandoned or under-utilised building for reuse or conversion and these have been unsuccessful due to reasons beyond his/her control. - No evidence such as notarial declaration related to attempts at finding an abandoned or underutilized building was submitted.

(1d) the proposed development is not located within a scheduled, fisted, designated or protected area or site and the land is not of ecological, scientific, landscape, cultural or archaeological value - The site is designated as a Strategic Open Gap, and as a Listed Area/Site of Scientific Importance. Furthermore it is contiguous with a Listed Ecological Area/Site.

(1e) the proposed development is located within 300 metres from the development zone boundary but at least 100 metres away from adjacent dwellings or an inhabited area or an area which is intended for residential [...] development - The building proposed to be converted is located just 85m away from the residential development zone.

In view of the above arguments, the proposed stables are not permissible as they do not satisfy all the necessary criteria specified in policy 4.38 of Policy and Design Guidance on Agriculture, Farm Diversification and Stables. Moreover the proposed stables run counter to (i) Structure Plan policy AHF 5 and RCO 2 which seek to

protect and support the agricultural industry by encouraging developments of structures in the countryside which are genuinely essential to the needs of agriculture and (ii) Structure Plan policy SET 11 which aims to safeguard the rural character of the countryside by prohibiting urban developments.

6.3.3 The proposed development is contiguous with a valley watercourse. Therefore, the request to construct eleven (11) stables and a manure clamp within the proposed site run counter to Structure Plan policies RCO 28 and RCO 29 which seek to conserve/manage or protect water resources by limiting new physical development in valley watercourses as part of the Structure Plan's aim for the efficient and effective management of the aquifers and Important water catchment areas. Furthermore the Department of Agriculture objected towards the proposed development since it is located almost in a valley course (see Red 24).

Illi l-Avukat Matthew Brincat għall-appellant ressaq is-sottomissjonijiet tiegħu inter alia kif gej:

"1. History of Site

It is pertinent to the proper consideration of this particular application to consider the case history of both the locality and site. The site has been annexed grazing land to a sheep and pig farm for the last 300 years evidenced by a religious icon in an annexed building. For the last forty years it has been used as a paddock for horses as the applicant is a fervent horse lover and a regular competitor at the Marsa Racing scene having had famous race horses. The site in question suffered a setback when some thirty years ago Luqa Road was elevated to avoid flooding problems of Wied ic-Cawlsli intersection. The site is literally in this part of Luqa Road, Qormi and this road elevation and bridge resulted in leaving this site under road level by a good 4.2 metres or 15 courses to say the least. The government even expropriated part of an agricultural room part of which still stands on the site today as can be confirmed by an on site inspection. The

site became inaccessible due to this backdrop but by time an access was provided when a lane was created allowing access only to the underlying stables present with full permits. The area is still today vulnerable to heavy flooding and consequently the present site becomes literally a swimming pool taking several days to dry. The site as described by the Directorate itself (vide 2.0) is fallow agricultural land and accommodating a store, the one described above. So we are not talking about any useful farming land, due to the damage to its value along the years. The situation has been such for at least the last forty years.

The site has no agricultural potential whatsoever and is surrounded by a rubble wall built by the government to curtail this land. It should be appreciated that a major part of the application addresses the need to increase the level of the land and introduce soil at the top level to counteract the flooding. In doing so the application will add protection to the water course as it will have better absorption qualities and add additional scenic value and increase the rural scenery of the area which lies next to the Wied ic-Cawsli Valley. Although 11 stables are incorporated in the application these will be positioned and curtailed away from the valley course so that the new surface soil will be in front of these stables allowing openness to the valley entrance while rendering the stables concealed and under a present retaining wall of another site. The said wall is derelict and partly demolished and needs attention thus in doing so the applicant will enhance the rural scenery of the area that is very derelict and presently gives a scene of abandonment of the area. The soil and stables proposal is strictly rural and agricultural and will enhance the area. MEPA has in these present weeks accepted amendments to the Marsa Local Plan allowing for the golf course to be possibly extended to part of the Ghammieri farm which incidentally happens to be just opposite to this site thus allowing the removal of agricultural and cultivated land to make place for this added sport facility. The new Plan also allows a development of a Hotel and extension to sport faculties to create an Equestrian Village. Next to the site were the valley abuts on to the

road leading to the PA VI back area where trailers are regularly parked we have a long string of stables well over fifty stables and also a blacksmith. So the area is enshrined with horse related structures and the New Government Vision is to allow such embellishments and horse related structures and not disallow them. Worth mentioning is that all horses in the Marsa area pass next to and in front of this site to go to the Horse Swimming Pool facility that is present in mid Luqa Road which is operational and was approved to cater for equestrian exercise. All these circumstance indicate and confirm that the site cannot be more appropriate and adequate in an area well known and in very close proximity to the race track and new Projected and much publicized Equestrian Village by the Government to the extent that a need was felt to extend the local Plan to allow for such development. The Directorate is fully aware of this change in the last weeks whilst this application is pending so this should be an added scenario to the approval of the application, a scenario that enfolded lately. Thus reasons for refusal 6.2.2 and 4.0 (2) DO NOT APPLY ANYMORE as Malta Central Local Plan envisages development just opposite the site just on the other side of the valley watercourse.

2. Present Stables within Development Zone

The applicant and his family live next to the site in a residential block that allows for stables with approved permits from PAPB (PB/387/88/14/88) which lie within the Building Development Zone. Our client is willing to relinquish and close these stables and move them away from the residential area. This is never the case in applications of this kind. The application should on this ground alone be awarded and approved as it will enhance the area and offer an improvement. Here our client is asking out of his own free accord to relinquish and loose a right he has to re allocate stables so no additional creation of facilities are being created. He has presently 8 stables and the development involves 11 stables as he has other horses that are unstabled on the premises. The son of our applicant is local driver and jockey Oliver Briffa who represented Malta in the European Jockey Championship

winning last year in Morocco and is a regular jockey riding practically at every racing meeting held at the Racing Track. The applicant has since his childhood been a horse owner and jockey and the stables are enshrined with horse photos and trophies marking and evidencing a horse racing family. He also competed in the veteran's race held last year and regularly trains and rides his horses. His niece Sarah Briff is an amateur and promising rider who regularly competes and trains in dressage and horse jumping. As opposed to many stable applications were MEPA has suffered abuse and deceit this is a genuine applicant who is in line with the policy in all aspects and details. All documents from the racing Authorities have been submitted and additional veterinary certificates endorsed. Both private and Government Veterinarians have found no hesitation to approve and solicit this application as they know the applicant is a bona fide and genuine horse owner who genuinely wants to move his horses outside the building zone, improve the rural aspect of the area, invest and spend a substantial financial burden only to see the area and his horses in an adequate surrounding. A knowledge of the site is necessary so that all the above is appreciated. The visual impact of the proposal will enhance the present derelict state of the valley area and not go against it. It is superfluous to comment that the reasons for refusals are list of cut and paste reasons listed in most applications of this kind when in actual fact the Directorate is bound to verify documents and photos and all other details to access the veracity and truthfulness of the material so that the DCC Boards and Decision making bodies are guided with true facts not misguided.

3. DCC Hearing Stage and Reconsideration

It must be stated that in 2008 when the application was being decided at DCC level the Board members were all in favour of this application as they appreciated that applicant was to relinquish stables in Building Zone, enhance the area and that the applicant is a fervent horse owner, together with the fact that site went under road level and is consequently flooded as seen in exhibited

pictures. The only concern was the preservation of the water table and thus application went through a complete assessment by the Malta Resources Authority that also ended up in giving its no objection to the approval under certain conditions. Their only concern was to preserve the watercourses in the area, thus the request for a waste management and conservation plan. This is far fetched but yet acceptable by our client as horses, and other farm animals before, have been present there since time immemorial and the application requested additional material and soil that will exclude any seepage of urine and manure to the watercourse. But as is stated and confirmed our client is accepting such a waste plan, so all polices are in observance and extensive protection and improvement to the situation present is catered for. They insisted that the stables themselves be constructed in a particular method allowing a cesspit underneath the stable floor drawings attached in application and approved by the Chief Veterinarian and Malta Resources Authority and signed by then Director Dr Mangion who now happens to be a newly appointed Board DCC Member thus giving further assurance of the genuineness of this application and its full scrutiny by all authorities concerned. The applicant had no objection to this condition although this inquires a hefty expense to construct and needs the need of a bowser to suck out any resulting waste, if at all, as stable floors are always covered in stable horse bedding to absorb manure and waste and is regularly changed. Our client is a farmer and pig breeder and is the owner of such a bowser so he has the facility to provide such a method for waste management. Once this last hurdle was approved the DCC had voted clearly in favour of this application. By ill luck the then DCC Board resigned and a GENUINE application was put aside together with certain applications that went under public scrutiny. This is a public and well known fact. We honestly appeal to this Honourable Board to do justice with our client who has nothing to do with these circumstances. When the New DCC Board was reinstated a refusal was stamped and an additional excuse presented to the applicant, a criteria that was never presented in that it was claimed that site was 85 metres from Building Zone and not the required

100 metres. The 85 metres was calculated from middle of the site whilst if you calculate from the end of the site it falls within the required 100 metres. There is no precise criteria in the law and Policy that defines from which part of site the measurement is taken.

Another sore issue in the processing of the application was that at the first DCC stage no mention was made of this allegation relative to distance so it was never in contention and it was never mentioned as a refusal criteria by the DCC as explained DCC refused in the aftermath of scandals arising from a well known and publicized application in Mistra. It was only at the DCC Reconsideration that it was presented. Although applicant insisted it was not a true statement of the facts and measurement DCC Reconsideration Board refused our invitation to verify measurements and arguments that distance was never in contention by the Directorate and further refused arguments on from what part the measurement is taken went on to refusing without giving and verifying the above considerations it is in duty bound to verify when such claims are being made by applicant.

4. Distance Calculation and Circumstances of Case

In view of the above this Honourable Board cannot put aside and discard the fact that even if the case is an 85 metre distance (which is not the case) the applicant already has stables well within the Building Zone, stables he is offering to relinquish and shift outside the Building Zone as good sense dictates and good neighbourliness dictates a shift that will be definitely welcomed by overlying residents in the vicinity. The applicant is not requesting further stables than he already has, but an improvement to the situation of the area in terms of policy. Also the land is unusable for farming so no detracting of arable soil will be created, to the contrary, it actually enhances as the wording of the application clearly insists and focuses on creating soil surface at a higher level avoiding flooding and enhancing the scenic impact to the valley as stable structures will be recessed from the valley lane a well 60 metres inward under an overlying field.

Applicant will have state of the art stables, with rubble and timber material that should be so characteristic of the Qormi rural area and such environment. Knowledge of the area will confirm the need of this development and not its disallowance which will signify the Directorates lack of consideration to actually improve the area and not to retain it in its abandoned state.

For the above mentioned reasons together with all previous submissions and documents exhibited in the DCC stage, Reconsideration Stage lack of verification and new criteria (distance issue) for disallowing the application, which is not the case, together with the recent January 2011 amendment to the Central Local Plan allowing for development and enhancement in the land just opposite to the site (L-Ghammieri Lower Fields Area) and the Governments commitment and intention to create an Equestrian Village within walking distance of the site in question, render now, the refusal highly in contrast and incongruent. Consequently this Honourable Board once analyzing in its totality the application and our submissions should in our humble opinion out rightly approve this application and not disapprove it."

Illi permezz tat-Tieni Statement taghha l-Awtorita kkummentat ulterjorment inter alia kif gej:

"1. The appellant submitted two letters (one on the 15th March 2011, the other on the 7th April 2011) in reply to the Authority's initial report to the Tribunal and to what has been argued during the appeal's hearing.

2. In order to justify the proposal, in the first letter, the appellant is arguing (in brief) that the site has been used as a horse paddock for at least 40 years and the area has suffered severe flooding after infrastructural works carried out in the neighbourhood. Thus the area is no longer viable farming land.

On the other hand the proposed stables are such that they will be receded from the valley highlighting in the process the openness of the valley whilst the proposed

works (laying of soil, with underlying loose material and the plantation of trees) would permit better absorption of rain to counter the flooding and would blend the complex with the surroundings. The stables being an agricultural activity is thus suitable for the area especially since the new government plan is to transform the whole area behind the proposal into an equestrian village. This means that any reason for refusal based on the local plan are no longer required.

Moreover the proposal would mean that the appellant would relocate his present (and legal) stables within a residential area to a more suitable site.

The DCC Board was originally in favour of the application and only demanded a waste management plan in order to preserve the water course. However in the meantime the DCC Board resigned and the new board refused the application referring to a reason for refusal which was never presented before - that the site is located less than 100m away from the limits of development. The appellant also refutes this distance.

3. In the second submission, the appellant presented various clearances from other state authorities and agencies and documentation regarding the horses, waste management, the other legal stables the permit of which is proposed to be revoked. The appellant is also claiming that the DCC chairman did not give him the chance to explain his proposal and this goes against the principle of fair hearing. Similarly the Authority did not mention the submissions made by the appellant prior to the reconsideration decision. The proposal is also agricultural related; therefore the appellant cannot understand how his application has been refused but a nearby petrol station has been approved which is likewise in a Strategic Open Gap.

4. The Authority has the following comments to make:

4.1 In relation to the first letter

The Authority did not refuse the application because the site is area of agricultural importance but because it is located within a Strategic Open Gap. Therefore the appellant's argument that the proposal should be granted because the site is not agriculturally viable is clearly not addressing the merits of the reason for refusal based on this issue.

Similarly the engineering works (excavation to permit the laying of soil with underlying loose material) the appellant is proposing to protect the site from flooding is obviously not acceptable considering that the site is recognised as a Site of Scientific Importance within a Strategic Open Gap and sited adjacent and contiguous to a major watercourse that is designated as a Listed Ecological Area.

The appellant also continues to refer the proposed stables as being agricultural related and thus suitable in a rural setting. The Authority however points out that stables are not deemed to be an agricultural activity. Indeed paragraph 4.1.2 of the Policy and Design Guidance - Agriculture, Farm Diversification and Stables states "[...] the stabling of horses is not an agricultural use nor ancillary or related to such a use".

The appellant is also misleading the Tribunal when he states that the new government plan is to transform the whole area behind the area of the proposal into an equestrian village. This could not be more far off the mark. The Authority is hereby attaching a copy of the latest approved scheme changes to the area which show that the site subject to this appeal is not related in any way to the new government plan for the area, the equestrian village (in pink) being about 1 km away from the site subject of this appeal, the area opposite the site (mainly the watercourse) re-confirmed as a Site of Scientific Importance and the land opposite the site on the other side of the watercourse earmarked for the extension of the golf course.

The Authority also could not find any trace or hint that the original DCC Board was in favour of the application. Also contrary to what the appellant had stated., that the reason

for refusal based on the lack of the minimum distance of the proposed stables from the limits of development was never communicated before, the Authority confirms that this reason always featured in the list of reasons for refusal including those of the first decision stage (dated 9th July 2009) let alone those given during the reconsideration stage.

4.2 In relation to the second letter

The issue in this application is not whether or not other state agencies submitted clearances for this proposal but whether the site is suitable for stables or not according to the current established policies. Therefore it is superfluous for the appellant to submit a copy of these clearances since they never featured among the reasons for refusal.

The Authority also notes that the appellant cannot submit revised drawings at this stage since the substance of the matter as presented to the Authority will definitively change (given that size of the individual stables has been reduced and thus new assessment would be required as there are specific policies regulating stable sizes). This is clearly not permitted according to the proviso of Schedule 2 (2) of Act X of 2010 (Environment and Development Planning Act).

The appellant is claiming that he was not given a chance to explain his submissions to the chairman of the DCC during the reconsideration stage. The Authority notes that whilst this is a new allegation that has never been made before (this may be checked from any previous submission during the appeal), on the other hand it is clear that the appellant had presented revised drawings and new documentation during the reconsideration stage even at late stages. It is clear from Notes to Committee 3.3 of the Reconsideration DPAR that these submissions, contrary to what the appellant is stating, have been taken into consideration and that the DCC was fully aware of them. Indeed the reasons for refusal were amended to reflect the latest submissions. Thus the Authority cannot

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understand the claim that the appellant was not given a fair hearing."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba għall-kostruzzjoni ta' 11-il stable u manure clamp. Il-proposta tinkludi wkoll it-tnehhija ta' hamrija, tirdim b'materjal ohxon u rippristinjar b'hamrija biex is-sit jilhaq livell għola. Kull stable għandha magħha grooming area, saddlery u exercise area. L-istables jikkupaw area ta' 465 metru kwadru u għoli massimu fuq il-livell il-gdid ta' 3.3 metri. Numru ta' sigar taz-zebbug ser jigu mizrugħa fis-sit.

Is-sit mertu ta' dan l-appell hija għalqa li ma tinhadimx li fuqha hemm store u reservoir u stable temporanja. Is-sit li jmiss ma' water course ta' Wied il-Kbir jinsab ODZ f'Luqa Road, Qormi, madwar 80 metru mill-linja tal-izvilupp.

Skond is-Central Malta Local Plan is-sit jiffirma parti minn Strategic Open Gap, hija Listed Area of Scientific Importance u Listed Ecological Site. Apparti minn dan is-sit jista' jkun suggett għall-policies RDS 2 u RDS 4 tal-Pjan ta' Struttura.

Din l-applikazzjoni giet rifjutata peress li

- L-izvilupp propost mhuwiex in linea mal-location parameters tal- Policy 4.38 [criterion 1(e)] of Policy and Design Guidance Agriculture, Farm Diversification and Stables (December 2007);
- Is-sit jinsab ODZ u jiffirma parti minn identified Strategic Open Gap area;
- Is-sit jinsab f'zona li skond is-Central Malta Local Plan hija mmarkata bhala Site of Scientific Importance u adjacenti ma' Site of Ecological Importance; u
- L-izvilupp propost mhuwiex in linea ma Structure Plan policies RCO 28 and RCO 29 tal-Pjan ta' Struttura;

L-argumenti li tqajmu mill-partijiet fil-kors tas-smigh ta' dan l-appell jistghu jigu migburin fil-qosor kif gejj:

L-appellant jissottometti li:

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- L-izvilupp jinsab vicin il-Marsa Race Track fejn inghataw diversi permessi simili fil-passat u vicin iz-zona fejn hu immirat li jsir i-equestrian village li qed jigi propost mill-Gvern;
- Il-pjan hu li l-appellant jirriloka stallelli ghandu bil-permess fiz-zona tal-izvilupp u jirrinunzja ghall-permess li ghandu ghal stallell jekk jinghata dan il-permess. Ir-relokazzjoni proposta ghalhekk se twassal ghal miljorament fis-sitwazzjoni prezenti;
- Il-proposta hija relatata mal-agrikultura mentri i-petrol station vicin, li ukoll jaqa fl-istess SaG u li inghata permess ghalieh recentement m'huwiex relatat mal-agrikultura;
- Gie ppreparat waste management plan li gie approvat mid-Dipartiment tal-Agricoltura u l-VRFCCD; u
- Is-sit mhux uzat ghall-agrikultura stante li spiss jereq meta taghmel ix-xita u ghalhekk qed jigi propost li jizdied il-livell tal-hamrija. L-izvilupp propost sejjer ihares il-manutenzjoni tal-hamrija.

L-Awtorita tissottometti li:

- Is-sit jinsab vicin hafna (inqas minn 100 metru) ta' zona residenzjali;
- Is-sit ma jaqax gewwa u mhux vicin i-equestrian village li qed jigi propost;
- Il-Grand Harbour Local Plan jidentifika zona partikolari ghal stalel u is-sit mertu ta' dan l-appell ma' jaqax f'din iz-zona;
- Il-Pjan Lokali jistipula li l-Awtorita ma tistax tippermetti zvilupp urban f'designated Strategic Open Gaps hliel ghal small scale utility infrastructure li trid tkun in ottemporanza ma' diversi kundizzjonijiet. Is-sit ghalhekk huwa soggett ghal-policy CG25 tas-Central Malta Local Plan;
- Is-sit huwa soggett ghal-policy CG22 tas-Central Malta Local Plan (Site of Scientific Importance u adjacenti ma' Listed Ecological Site) u ghalhekk mhux permess li jsir spostament ta' material u tibdil ta' livelli fug dan is-sit;
- L-izvilupp ma jissoddisfax il-kriteri tal-policy 4.38 of Policy and Design Guidance on Agriculture, Farm Diversification and Stables;

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- L-izvilupp propost jmur kontra Structure Plan policies RCO 28 and RCO 29.

Mill-argumenti, fil-mertu, li tqajmu fil-kors tas-smigh ta' dan l-appell jirrizulta li l-punti kontenzjuzi u ta' natura fundamentali f'dan il-kaz jistghu jigu ttratat kif gej:

Is-sit jinsab ODZ u jiffirma parti minn identified Strategic Open Gap area.

Fuq dan l-appellant jghid li waqt li l-proposta tieghu hija relatata mal-agrikultura, il-petrol station vicin, li wkoll jaqa fl-istess SOG inghata permess ghalieh recentement u dan m'huwix relatat mal-agrikultura.

Hawnhekk irid jinghad li l-appellant f'certu sens ghandu ragun ghaliex mhux car ghaliex il-petrol station li jsemmi l-appellant kienet inghatat permess fl-istess Strategic Open Gap. Fil-kors tas-smigh ta' dan l-appell l-Awtorita ma ssemmi xejn dwar dan.

Hija hasra li l-Awtorita spiss issib ruhha darha mal-hajt ghaliex ma tkunx tista' tiddefendi certi permessi li inghataw fil-passat. Anki jekk jirrizulta li m'hemmx gustifikazzjoni ghall-ghoti tal-permess li ikkwota l-appellant, dan it-Tribunal ihoss li dan m'ghandux jitqies bhala precedent sufficienti ghas-semplici raguni li fi kwalunqwe kaz l-Awtorita tista iggib hafna ezempji ta' applikazzjonijiet biex isir zvilupp simili li gew rifjutati u kull wiehed minn dawn jikkostitwixxi precedent il-kontra.

Fil-fehma kunsidrata ta' dan it-Tribunal, ikun perikoluz hafna jekk tigi accettata din il-proposta ghaliex tista tikkontribwixxi biex ftit ftit jinfetah il-bieb biex kull min ghandu bicca art f'xi SOG isir potenzjalment eligibbli biex jakkwista permess biex jizviluppha.

Peress li wiehed mill-oggettivi tal-introduzzjoni tal-SOG's hija li tinzamm certa distanza mhux svilluppata bejn villag u iehor, dan jista jwassal biex biz-zmien tingered id-distinzjoni bejn villag u iehor u dan bi hsara kbira ghall-

pajizna u bi ksur ta' wiehed mill-oggettivi principali tal-pjan ta' struttura.

It-Tribunal ma jaqbilx mat-tezi li jipprova jaghmel l-appellant biex juri li l-kaz in ezami huwa b' xi mod sui generis ghaliex tista tghid li kwazi kull minn ghandu bicca art f'xi SOG jista jaghmel l-istess argumenti li ghamel l-appellant.

Peress li n-numru ta' siti li potenzjalment jistghu jigu zviluppati fl-SOG's u li ma gewx zviluppati ghaliex dan ikun kontra il-plans u policies tal-Awtorita huwa bil-wisq ikbar mis-siti li gew zviluppati fl-SOG's, dan it-Tribunal jiddeciedi li l-ezempju tal-petrol station li jgib l-appellant bl-ebda mod ma jimplika li jezisti commitment f'termini ta' ppjanar f'dan il-kaz.

Irid jinghad ukoll li kontra dak li qed jasserixxi l-appellant stables m'humiex meqjusa bhala attivita agrikola tant hu hekk li para. 4.1.2 tal-Policy and Design Guidance - Agriculture, Farm Diversification and Stables jghid "[...] the stabling of horses is not an agricultural use nor ancillary or related to such a use".

Il-proposta tikser Policy 4.38 [criterion 1 (e)] of Policy and Design Guidance Agriculture, Farm Diversification and Stables (December 2007) peress li s-sit jinsab inqas minn 100 metru il-boghod miz-zona tal-izvilupp.

Dan it-Tribunal jaqbel mal-appellant li l-proposta tieghu li jirriloka facilita ta' stables li ghandu fl-abitat ghal zona li tkun ippjanata apposta ghal din l-attivita certament twassal ghal miljorament fis-sitwazzjoni prezenti. Il-problema hi li kif jirrizulta mill-premess dan is-sit mhux idoneju ghal din l-attivita. Apparti mill-fatt li is-sit jinsab fi SOG, is-sit huwa ODZ u ghalhekk attivita li mhix relatata ma' l-agrikultura ma tistax issir fuq dan is-sit.

Dan specjalment meta, kif jirrizulta mill-premess, jidher bic-car li dan is-sit huwa ta' natura delikata u fragli u dan peress li s-sit jinsab f'zona li skond is-Central Malta Local

Plan hija mmarkata bhala Site of Scientific Importance u hija adjacenti ma' Site of Ecological Importance

Dan it-Tribunal ihoss li stables u facilitajiet ghat-trobbija ta' zwiemel li ma jintuzawx ghal-agrikultura ghandhom jigu imqieghda f'areas apposta li ghandhom jigu identifikati fil-local plans. Il-Gvern, biex isolvi din il-problema ghandu iniedi skemi fuq art tieghu biex jikri art f'dawn iz-zoni ghal dan l-uzu.

Meta wiehed ihares lejn dan l-izvilupp mill-ottika tal-principji stabbiliti fil-Pjan Strutturali bilfors ikollu jikkonkludi li din il-proposta tmur kontra numru ta' principji bazici li huma enshrined f'dan il-pjan. U dawn huma li dan l-izvilupp fi Strategic Open Gap u fl-ODZ, huwa urbanizzanti, mhuiex ta' natura agrikola, m'hemmx bzonnu ghall-gid komuni u mhuiex ta' environmental benefit.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smigh ta' dan l-appell, billi jirrizulta li l-proposta in ezami tikser numru ta' policies tal-Pjan Strutturali, tas-Central Malta Local Plan, il-policy 4.3B tal-Policy and Design Guidance, Agriculture, Farm Diversification and Stables (2007), dan l-appell ma jirrizultax fondat u ghalhekk ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma r-rifjut mahrug mill-Awtorita, tal-applikazzjoni PA/04343/06, "Removal of soil, infill with material and replace soil to achieve a higher level of soil, and construction of stables.", b'decizjoni tal-15 ta' Lulju 2010.

Ikkunsidrat

L-aggravji mressqa mill-appellant minn qari tal-appell jidhru li huma s-segwenti:

1. It-Tribunal agixxa ultra vires meta sostna li wasal iz-zmien li tinholq skema ghal min izomm zwiemel mhux ghal skop agrikolu li ma jkunx f'ODZ. L-appellant isostni li kellu jigi applikat il-policy vigenti fuq il-materja Construction of New Stables of the Policy and Design

Guidance on Agriculture, Farm Diversification and Stables 2007;

2. It-Tribunal injora l-kuncett ta' cerimus paribus meta rrikonoxxa li nghata permess tal-petrol station fil-vicin u li hi sitwata fl-istrategic open gap u l-appellant ma nghatax jifhem ghalfejn kien inhareg tali permess;

3. Fil-mertu fuq l-istrategic gap l-appellant isostni illi din bhala fatt kienet ser tibqa' tigi osservata ghax l-izvilupp ser isir taht il-livell tat-triq u hi recessed; hamsin metri paddocks ma kienux ser jigu zviluppati;

4. It-Tribunal ma apprezzax li l-pjan lokali gie emendat fl-2011 proprju f'dan is-sit biex jiffacilita zvilupp ta' villagg ekwestriju tal-Marsa u golf course extension. Ghalhekk r-ragunijiet tat-Tribunal ghar-rifjut cioe ghax is-sit jinsab f'ODZ u SOG ma jreggux;

5. It-Tribunal naqas meta qal li l-izvilupp mhux ta' environmental benefit meta l-wied hu fi stat pjetuz u l-applikazzjoni tindirizza tisbieh u titjeb ambjentali. L-appellant isostni li kien lest jirrinunzja ghal permess li ghandu ezistenti ta' tmien stalel bil-permess f'zona ta' bini u johroghom f'ODZ;

6. Il-partijiet qablu li s-sit hu zviluppabbli u li anki l-Awtorita fir-risposta taghha qalet li ma kienet imposta ebda restrizzjoni fit-temporary revision schemes u lanqas fil-pjan lokali li setghet timepdixxi zvilupp fuq in-naha ta' wara tas-sit u dawk adjacent u ghalhekk it-Tribunal kellu japplika l-policies vigenti kif sar f'sanzjonar ta' reservoir fi stalel fil-Mosta fejn gie applikat il-policy 4.3B fil-Policy and Design Guidance tal-2007. Dan ma giex ikkunsidrat mit-Tribunal ghalkemm imqajjem mill-appellant u ghalhekk id-decizjoni hi monka, ghax l-aggravji tal-appellant ma gewx ventilati.

L-ewwel u s-sitt aggravji

Dan l-aggravju ma fihx siewi. L-appellant qed jallega illi t-Tribunal agixxa ultra vires il-policies tieghu meta bbaza d-decizjoni tieghu fuq dak li dehrlu jkun permess permezz ta' policies li kellu jaddotta l-Gvern biex isib soluzzjoni ghal zviluppi bhal din in kwistjoni, u naqas li japplika l-policies vigenti speccjalment dik idonea cioe Design Guidance on Agriculture, Farm Diversification and Stables

2007. Dan ma hu minnu xejn. Fil-fatt l-izvilupp gie michud mit-Tribunal ghax naqas li jissodisfa l-kriterji ta' din il-policy cioe li kien jinsab f'inqas minn 100 metru boghod minn zona fl-iskema ta' zvilupp u ghax kien f'Identified Strategic Open Gap Area f'zona ODZ. Tant hu hekk illi t-Tribunal qabel l-argumentazzjoni tieghu fuq dawn il-punti ddelinea b'inka skura dawn iz-zewg punti principali. Hu minnu illi t-Tribunal esprima opinjoni kif jistghu jigu indirizzati applikazzjonijiet ghal siti simili kif wara kollox kellu kull dritt li jaghmel, pero bl-ebda mod ma jista' jinghad li din l-opinjoni kienet remotement il-pern tad-decizjoni tat-Tribunal. Lanqas ma hu minnu illi t-Tribunal ibbaza d-decide tieghu fuq il-fatt li s-sit kien f'ODZ ghax dan jidher car li ma ntuzax bhala argument mit-Tribunal ghal cahda tal-permess izda biex jissottolinea illi l-fatt li jinsab f'ODZ kien soggett ghal pjan lokali dwar x'jista jew ma jistax jigi zviluppat f'zona simili ghall-iskop intiz. Lanqas ma jirrizulta illi l-aggravji tal-appellant ma gewx indirizzati. Il-fatt illi l-appellant ikun ressaq argument favur l-izvilupp ma jfissirx li t-Tribunal ikun naqas serjament jekk ma jidholx f'kull argument imressaq mill-applikant biex isostni li l-izvilupp kien permissibbli. Dak li hu important hu illi l-argumenti principali jkunu gew sostanzjalment indirizzati mit-Tribunal, kif jirrizulta car f'dan il-kaz u l-fatt wahdu li whud mill-punti mqajma mill-appellant ma jkunux gew indirizzati specifkament ma jwasslux ghal xi nuqqas li jrendi d-decizjoni 'unsound' jew 'unsafe'.

Ghalhekk dawn l-aggravji qed jigi michuda.

It-tieni aggravju

Din il-Qorti gia kellha okkazzjoni taghmel distinzjoni bejn gudikati ohra tat-Tribunal u l-applikazzjoni tad-duttrina tal-precedent fid-dawl tal-kuncett ta' *cerimus paribus*. F'dan il-kaz l-appellant isostni li fil-vicinanze u f'area li taqa' fl-istrategic open gap inhareg permess ghal petrol station. Isostni li dan kellu jitfa' obbligu fuq it-Tribunal li bl-istess mod jilqa' l-applikazzjoni tal-appellant anki jekk mhux konformi ma policies jew il-pjan lokali (kliem mizjud mill-Qorti). Din il-Qorti ma taqbilx ma dan l-argument. It-Tribunal ghandu l-obbligu l-ewwel u qabel kollox japplika l-

pjanijiet u policies skond l-artikolu 69(1) tal-Kap. 504 u fl-istess waqt iqis affarijiet ohra ta' sustanza pero fil-waqt li ghandu jqis affarijiet li l-applikant iqis ta' sustanza bhala kaz tal-petrol station dan ma jfissirx li t-Tribunal irid jabdika mid-dover primarju tieghu li japplika l-pjanijiet u l-policies. It-Tribunal bhal Qorti mhux marbut la bid-duttrina tal-precedent, ghalkemm il-precedent hu tenut bhala fonti ta' interpretazzjoni ta' materja partikolari. Pero dan ma jorbotx awtomatikament lit-Tribunal. It-Tribunal, gustament, jikkritika b'mod sottili l-hrug tal-permess tal-petrol station ghax ma setghax jifhem il-kriterji li fuqhom inhareg pero izid li b'daqshekk ma ghandhux jiggustifika li din l-applikazzjoni tmur kontra policies specifici u kontra l-pjan lokali u ghalhekk ma kinitx timmerita li tigi milqugha. Dak li qed isostni t-Tribunal hu illi anki jekk permess ma jkunx ghal grazzja tal-argument gustifikat jew gustifikabbli ma jfissirx li dan ghandu jiftah bieb ghal permessi ohra daqstant iehor ingustifikati jew ingustifikabbli. Mhux komputu ta' din il-Qorti li tidhol fil-mertu ta' permessi ohra izda r-ragunament tat-Tribunal hu korrett mill-punto di vista legali u ghamel sew li l-kuncett ta' cerimus paribus ittiehed fil-perspettiva gusta tieghu. Altrimenti diskrezzjoni li ma tirrizultax mill-pjanijiet u policies tista' taghti lok ghal abbuz u ghalhekk l-illegalita tkun qed issir mit-Tribunal li l-obbligu tieghu hu li japplika l-pjanijiet u policies kif promulgati b'dik id-diskrezzjoni li talvolta tista' irrizulta mill-istess pjanijiet u policies fejn l-istess jaghtu lok ghal dan. Ma jfissirx b'daqshekk illi l-applikant ma jistax ifittex rimedju iehor jekk jidhirlu pero mhux f'dawn il-proceduri jew b'dan l-appell.

Il-Qorti zzid fuq din il-kwistjoni illi l-obbligu tat-Tribunal hu illi japplika l-policies u pjanijiet lokali kollha b'mod holistiku ghal kull zvilupp u jekk jirrizulta, kif irrizulta f'dan il-kaz, li hemm diversi fatturi li johorgu mill-pjan strutturali, pjanijiet lokali u policies specifici, dawn kellhom jigi applikati fl-isfond tal-applikazzjoni, ovvjament tenut kont ta' relevanza partikolari ghal policies specifici ghall-izvilupp. Il-Qorti tqis li dan gie trattat mill-partijiet u t-Tribunal fejn inghatat l-opportunita lil partijiet li jivventilaw l-argumenti taghhom fuq il-kwistjonijiet kollha. Lanqas jista' jingieb xi argument sussidjarju li permess ghal petrol station jikkostitwixxi

commitment tas-sit u dan kemm ghax gie trattat mit-Tribunal u ghalhekk il-Qorti ma ghandhiex tissindaka d-decizjoni tat-Tribunal la darba trattata u deciza, u kemm ghaliex dan il-permess uniku ghal zvilupp differenti minn dak propost ma jikkwalifikax wahdu bhala commitment fiz-zona.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet, raba u hames aggravji

Dawn l-aggravji strettament lanqas huma kwistjonijiet ta' punt ta' dritt li fuqhom iddecieda t-Tribunal u kwindi lanqas jimmeritaw li jigu investiti mill-Qorti. Kwistjoni dwar 'environment benefits', kwistjonijiet ta' ippanar u teknici dwar kif kien ser jigi zviluppat is-sit huma eskluzi milli jigu indirizzati mill-Qorti u dan apparti kif gia intqal, id-decizjoni tat-Tribunal ma ttiehditx fuq dawn ir-ragunijiet izda fuq ragunijiet specifici li johorgu mill-pjan lokali u policies u kondizzjonijiet mhux milhuqa anki jekk kellu jigi applikat id-Design Guidance on Agriculture, Farm Diversification and Stables 2007.

In kwantu ghall-punt imqajjem mill-appellant illi fl-2011 l-pjan lokali fiz-zona gie emendat biex jiffacilita zvilupp ta' villagg ekwesterju u l-golf course ma biddel xejn mill-argumenti li fuqhom ibbaza t-Tribunal biex wasal ghad-decizjoni tieghu li del resto l-istess Tribunal semmihom fil-parti inizjali tad-decizjoni kif semma' wkoll ir-risposta tal-Awtorita ghal dan l-argument li dawn il-bidliet biex isir l-izvilupp ma nkorporawx is-sit mertu ta' dan l-appell. Ghalhekk anki dawn l-aggravji qed jigi michuda.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Sebastian Briffa u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tal-21 ta' Gunju 2012. Bl-ispejjez kontra l-appellant.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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