



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 163/2012

**John u Geraldine Portelli u
Marco u Alexandra Borg
vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza John Muscat ghall-Wistin Muscat
and Sons**

Il-Qorti,

Rat ir-rikors tal-appell ta' John u Geraldine Portelli u Marco u Alexandra Borg tas-17 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 fejn gie approvat il-permess PA 2631/06 ghal 'to construct a feed mill store, broiler unit, manure clamp u cesspit. Application to including the sanctioning of restrooms, an extension to the approved broiler unit and the feedmill store';

Kopja Informali ta' Sentenza

Rat ir-risposta ta' John Muscat nomine u tal-Awtorita li sottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konferma;

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

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

B'applikazzjoni tal-21 ta' April 2006 – Full Development Permission – PA 02631/06 fejn l-applikant, John Muscat ghall-Wistin Muscat and Sons fis-sit EX MGP Farm, WMS, Habel Zwejra, maghtab, talab:

“To construct a feed mill store, broiler unit, manure clamp and cesspit. Application to include the sanctioning of restrooms, an extension to the approved broiler unit and the feed mill store.”

L-applikazzjoni giet milqugha, u l-permess igib id-data tas-26 ta' Settembru 2007.

Illi l-Avukat Tanya Scibberas Camilleri resqet l-aggravji ghan-nom ta' John u Geraldine Portelli u Marco u Alexandra Borg kif gej:

“A. Procedure adopted

My clients strongly object to the procedure adopted by the Planning Authority Board in considering the proposed development. By merely following the manner in which the application was dealt with during the public hearing, it is obvious to all that the Authority was interested in approving the proposal as soon as possible, ostensibly after having been told by applicant that he was eligible for EU funding in respect of the project and was bound by a deadline in order to apply for such funds. In fact, the Planning Authority Board held two public hearings within a week of one another, on 6th and 13th September 2007 respectively, during which this application was discussed and approved. Prior to the public hearing and drawing up of the case officer's report, the requirement to draw up an

Environmental Planning Statement was waived by the Authority, thus denying itself the opportunity of assessing the environmental impact which such a increased activity would give rise to.

Misleading information

During the first public hearing, my clients drew the attention of the Board to the fact that although the description of the development included a "proposed fodder store" indicated on plans Red 91A and B, this store measuring 480 square metres was actually built. An aerial photograph was produced by my clients to support their contention, whereupon the architect of the development stated that this was simply a "mistake". It is pertinent to point out that, both in the presentation and the case officer's report, it was stated that a site inspection was held 8 August 2007, but strangely enough, this structure was not even noted. Rather than dismissing the application on the basis of the fraudulent information given by applicant in the plan, the Board did not even bat an eyelid about this matter, but proceeded to continue with the hearing, which my clients consider as highly irregular.

Although the Directorate recommended a refusal, during the presentation made by the case officer, it was made clear that the Directorate was objecting solely to the sanctioning of the residence, but found no objection to the farm extension. In fact, the case officer informed the Board that the justification in favour of the extension to the farm was the existence of other farms in the vicinity. However, this statement was extremely misleading, and my clients who know the area very well reacted by raising the following questions to this statement during the public hearing:

1. One of the "pig farms" indicated by the case officer on the site plan presented to the Board was actually a cultivated field in respect of which an outline application (PA 3694/03) was filed by the same applicants of this permit for the fattening unit for pigs. Incidentally, applicant

in that case is requesting the partial location of part of a farm built illegally in Pwales and only sanctioned in 2004 (PA 2215/97)

2. Another "broiler farm" indicated by the case officer has been the subject to no less than three (3) enforcement notices, one of which states that the extension to the same farm is illegal (ECF70/07, ECF 9/06 and ECF53/98).

3. Other "farms" in the area were in fact not being used as such but were utilised for a myriad of commercial and other activities ranging from the storage of boat to the storage of skips and aluminium works. Photos of these various "farms" were even produced and submitted as evidence to the Board.

Notwithstanding these questions raised during the hearing, the Directorate and the Board failed to either investigate or act upon my clients' reactions. In the interval of a week between the first and second public hearing, the plans were changed in the sense that the fodder store was no longer shown as "proposed" but as "existing" and the description of the development was amended accordingly to include the sanctioning of the fodder store. Therefore, it clearly results that the approval of the application which was based on misleading information.

Residence changed to Restroom

As stated above, the Directorate recommended a refusal since it held that the sanctioning of the residence was objectionable. However, the Board held that although the residence was objectionable, it would not find the sanctioning of "restrooms" objectionable. This effectively meant that in the interval between the first and the second public hearing, the plans showing the residence were left unchanged save that, the bedrooms of the residence were now described as "restrooms" and the description of development amended accordingly. This procedure is a clear abuse of the system and violates the rights of third parties to object to the development in terms of law.

Material change of the development

My clients clearly feel that the consideration and handling of this application was not transparent in the least and in fact, a complaint has already been filed with the Audit Officer in this regard. Normally, the Authority does not allow a change in plans and a change in description at such a late stage, but insists that a fresh application would have to be filed or alternatively, orders the re-publication of the application. In this case, although the changes which resulted following the first public hearing were substantial the Authority chose to completely ignore my clients' submissions, in clear violation of their rights and of the law.

It is pointed out that the original application was described as :

"To construct feed mill store, broiler unit, manure clamp and cesspit. Application to include the sanctioning of a residence and the sanctioning of an extension to the approved broiler unit and change of use from the approved cold stores to an administration office"

Following the first public hearing, the description was changed to the following:

"To construct a feed mill store, broiler unit, manure clamp and cesspit. Application to include the sanctioning of restrooms, an extension to the approved broiler unit and the feed mill store"

This departure from established procedure afforded to applicant in allowing him to change plans and description of the development between the first and second public hearing (when he would normally be requested to reapply), and in refusing to investigate my clients' claims represents a clear case of discrimination in favour of applicant, in violation of the basic rules which administrative bodies are expected to apply.

Other development on site

Another query which was raised by my clients in response to the case officer's presentation was in response to a statement made by him in referring to part of the development as "former cold stores". This query was raised since emphasis was placed during the presentation that applicant was no longer applying to change the formerly approved cold stores to offices. This is also mentioned in page 2 of the Case Officer's report. Clients asked whether this part of the development was in conformity with the approved permit if it no longer served as cold stores but applicant was not applying to change its use. Again, nothing was done on the part of the Directorate or the Board, which would normally have looked into the matter and they continued to proceed with the consideration of the application without raising any questions about this matter and establishing whether this part of the development was in conformity with prior permits or not.

B. Objection in principle to development approved

As previously explained, the development approved consists of the sanctioning of an extension to a broiler farm and other related structures, together with the sanctioning of restrooms and garages.

My clients object in principle to the development and submit that it violates approved development policies and should never have been approved:

The site lies outside the Development Zone in the Maghtab area, an area designated by the Central Local Plan as a "Category 2 Rural settlement" (policy NAB7). The Plan clearly states that such a settlement is to be "conserved, consolidated and rehabilitated whilst protecting its rural character".

The area is also designated as an "Area of Agricultural Value"(map NAM 10) to which policy CG24 applies. According to policy CG24, MEPA is bound to classify such

areas "following confirmation of the quality of agricultural land by the Authorities responsible for Rural Development and Agriculture. Within designated AAVs only building, structures and uses essential to the needs of arable agriculture will be permitted'. The policy clearly states that such limited development will only be permitted provided that it is shown that it will not adversely affect water resources, soil and landscape and will not conflict with scenic, ecological, scientific, archaeological and mineral interests.

My clients' residences also lie within the boundaries of this settlement and are situated less than 200 metres away from the site in question. Therefore, the applicable policy to the area in question is also policy CG 04 which restricts development to the following:

- Dwelling units defined as "new units on uncommitted land, redevelopment of existing buildings, rehabilitation of existing buildings, and extensions to existing buildings used for residential purposes", which prohibited unless they are proposed on infill sites, corner sites which abut two public roads or which abut a blank party wall on one side.
- Agricultural buildings for livestock farming which are only allowed provided they comply with the criteria set out in the draft Policy and Design Guidance "Agriculture Farm Diversification and Stables (2005). In this context, the policy states clearly that "The rural settlement is to be considered as an inhabited area for the purposes of the draft Policy & Design Guidance "Agriculture, Farm Diversification and Stables (2005)"

The policy entitled "Agriculture, Farm Diversification and Stables policy" approved by the Board in February 2007, and to which reference is made in policy CG04, deals specifically with extensions to existing buildings and provides as follows in policy 2.3B:

"Permission will not be granted for the expansion of existing livestock breeding/production units located in or

within 200 metres of an inhabited area or an area which is intended for habitation, education or leisure/tourist development" Therefore, in the basis of the policies above quoted, it is submitted that the development should never have been approved.

With regards to the request for sanctioning of the residence, the Board resorted to simple semantics, refusing to sanction a structure described as a residence, but accepting it when its description was changed to "restrooms"! The Board acknowledged that a residence was not in conformity with established policies since the policy approved in 2007 prohibits residential development in conjunction with a poultry farm. However, for all intents and purposes, the structure has remained the same and its impact on the environment has not changed one iota. The residence described in the case officer's report as "a 2 bedroom apartment covering a footprint of 95 sqm" is now effectively serving the same purpose although it is now described as a restroom.

With regards to the extension of the farm, as can be clearly seen from even a cursory reading of the applicable policies above quoted, my clients' residence is situated less than 200 metres away from the development in question, within the rural settlement which is to be considered as a habitable area for the purposes of the expansion of existing livestock breeding/production. Therefore, the development should never have been approved since the proposal is diametrically opposed to approved planning policies. The extension of the unit cannot be justified and the grounds raised by the case officer during his presentation to the Board were based on false or misleading premises, as is explained in this request for appeal.

Other grounds which render the development unacceptable are the following:

1. The floor area of the farm extension is in excess of what is required by applicant in terms of his approved breeding quota and this is acknowledged by the

Directorate in the case officer's report. According to the case officer's report and on information supplied by the Department of Veterinary Services, the farm has a total slaughtering quota of 22,700 but "applicant is entitled for an increase of 3500 broilers which have been pending due to lack of space on farm". According the same report, an extension of 269sqm would be sufficient in order to accommodate this increase. However the extension approved has a floors pace well in excess of the floorspace required to accommodate the breeding quota. Contrary to the submissions of the Directorate, my clients feel that the excess of about 110 sqm is not "minimal" as described in the report and submits that no consideration was given to the environmental impact of such an extension.

2. In the case officer's report, it was stated that applicant was in possession of a trading licence to produce animal feed on a commercial basis and that this covered the site in question. The matter was raised that such an activity, if managed from the same site as the broiler farm, could give rise to a veterinary hazard because if the farm was struck by an infectious disease, this could be easily spread to other farms via the sale of animal feed produced on site.

3. The existing farm no doubt creates an inconvenience to my clients who have to put up with the smells and lack of hygiene associated with this activity. The approval of the extension will certainly exacerbate this inconvenience and is contrary to Structure Plan policy BEN 1. During the public hearing, the impression seemed to be given that the farms came into existence before the residences. However aerial photographs prove the contrary ie that the residences existed well before the advent of the farm to this area and that they were previously surrounded by agricultural land which was cultivated."

Illi fl-access mizмум fis-27 ta' Mejju 2008 gie rrilevat illi fl-akkwati tas-sit in kwistjoni hemm permessi ohrajn ghal farms. Il-bord accede wkoll biswit il-binja koperta bil-permess mertu ta' dan l-appell illi hija storage ghal gwiez

u il-farm imbaghad jinsab fuq in-naha ta' wara tieghu. L-izviluppi li saru huma estenzjonjiet ta' zewg kmamar ghal storage ta' l-ikel li diga' kienu ezistenti. Gie ikkonstatat illi l-mahzen fih kwantita ta' ikel ta' l-animali u l-perit ta' l-applikant spjega li ffit mill-permessi ghdhom ma gewx zviluppati u kollox huwa in regola mar-regolamenti ta' l-EU u li l-farm ilu l'fuq minn ghoxrin sena ezistenti. L-objectors irrilewaw illi r-residenzi taghhom jigu madwar mija u tmenin metru lil hinn mix-xatba tal-farm in kwistjoni u uhud mill-appellanti ddikjaraw illi ilhom residenti hawnhekk madwar hmistax-il sena.

Illi permezz ta' rapport l-Awtorita' ressqet il-kummenti taghha kif gej:

"4.0 Comments on Appellant's Arguments

4.1 The appellant presents several different issues as the basis for this appeal. These shall be discussed separately in the following sub-sections.

4.1.1 Procedure Adopted

The appellant claims that MEPA has given preferential treatment to this application by determining it without delay to assist the applicant in obtaining EU funds. The appellant continues to remark that even an Environment Planning Statement was waived.

Such comments are speculative and with no substance. The authority ensures that all applications are processed in accordance with the provisions of the Development Planning Act, and in particular Articles 35 & 36, in that the stipulated public consultation period is enabled and a recommendation is produced by the Planning Directorate and decision taken by the Authority within the stipulated target dates. It may be pointed out that this application was submitted to the Authority on 21st April 2006 and the respective public consultation site notice was issued on 2nd May 2006. A second site notice was issued on 26th May 2007, after revised drawings were presented for the Planning Directorate's consideration. The first Planning

Directorate's report and recommendation was endorsed on 9th July 2007, and a decision was eventually taken by the Malta Environment & Planning Authority on 13th September 2007. This entails that this application was hardly given any preferential treatment in terms of processing times frames, and all provisions of the law were respected.

With regards to the requirement of an EPS, the application indeed qualified for such a submission. However, a detailed Project Description Statement, the input of external consultees, and sufficient waste management details entailed that the impacts of the development could be forecasted. The Environment Protection Directorate considered that this information sufficiently addressed all forecasted impacts of the development, and it was agreed that the submission of an Environmental Planning Statement could be waived in accordance with the provision of Article 3(8) of the Environment Impact Assessment Regulations (LN 204/2001)

4.1.2 Misleading Information

The appellant states that the application in itself provided misleading information in that a proposed fodder store was actually already present on site, and hence the application should have requested its sanctioning. As correctly pointed out, this was regularized prior to the final decision, and-in any case MEPA never objected to the construction of these fodder stores, let alone to their sanctioning. This irregularity had no impact on and would not alter MEPA's decision

The appellant further states that during the presentation of this application, the Board was misled with regards to the surrounding context. This, the appellant claims is due to the fact that while several permits were issued for animal husbandry farms in the vicinity, these were actually not constructed or operational. The appellant also states that some of the existing farms were being illegally used for industrial activities. With regards to these allegations,

MEPA refers to the attached Docs A & B, which indicate the site history of the surrounding sites and confirm the extent of commitments in terms of development permission issued for animal husbandry farms. The presence of a concentration of animal breeding farms within close vicinity to the site is further confirmed by the Department of Veterinary Services, who indicate that within a 500m radius of the site there are the following farms and their respective number of heads on each farm at any one time (copy of correspondence is attached at blue 19 in PA 2631/06):

- 2 layer farms - 76,201 heads
- 2 broiler farms - 44,700 heads
- 4 pig farms - 3,120 heads
- 4 rabbit farms - 2,900 breeding does
- 6 ruminant farms with a total of 34 ovines, 42 caprines and 114 bovines

The Authority considers that the extent of commitment in terms of animal breeding farms cannot be contested, and that this information has not misled the Board in its decision.

4.1.3 Residence Changed to Restroom

The appellant states that the change from the originally proposed sanctioning of residence to restrooms between the first and second public hearing is "a clear abuse of the system and violates the rights of third parties to object to the development in terms of law". Notwithstanding this, the appellant fails to state in what way the change from residence to restrooms has resulted in a more negative development or how this has affected the third party objectors.

Material Change of the Development

The appellant indicates that the description of the proposal and the plans were changed between the first and second hearing which decided this application. The appellant claims that these changes merited the

republication of this application and also should not have been accepted by the Authority at such a late stage. The Authority contends that these changes were minimal and did not alter the substance of the proposal, and hence did not require any form of re-publishing. Moreover, while the appellant states that this has resulted in a 'clear case of discrimination in favour of applicant', the appellant again fails to specify how these minor changes have affected the third party objectors in any way, or how their complaints were further worsened.

4.1.5 Objection in Principle to Development Approved

The appellant claims that the approved development violates several approved development policies. Different policies and issues are outlined in the presented appeal, as these shall be discussed separately, as follows (text in italics refers to appellant's arguments):

a) The site is within a Category 2 Rural Settlement which the Local Plan states should be “conserved, consolidated and rehabilitated whilst protecting its rural character”

Here the appellant fails to mention that one of the rural traits that characterizes the Maghtab Rural Settlement is the presence of animal husbandry farms. Hence allowing the upgrading and improving of an existing farm surely does not conflict with the protection afforded to this rural settlement's character. In addition, the appellant also fails to mention that Local Plan policy CG04 which regulates development within such Category 2 Rural Settlements confirms that animal husbandry farms are a characteristic of such areas, as they are listed as acceptable forms of development within such areas in Section (C) of this policy.

b) The site is within an Area of Agricultural Value as per LP Policy Map NAM 10

As the appellant rightly points out, the site is located within an area designated as an Area of Agricultural Value in accordance with LP Policy Map NAM 10. This designation however is yet subject to classification in terms of the agricultural importance of these specified

sites. Nevertheless, the site has been developed and in use as an animal husbandry farm for several years (the original permit was issued in the 1980s). The hard paved areas were already in existence prior to the coming in force of the Local Plan and the designation of this site as an Area of Agricultural Value. It may also be noted that a considerable extent of the site has been retained as agricultural land, and the appropriate landscaping of these areas have even been approved in this permit. The approved development balances the need to conserve the arable agricultural use of the site, while allowing for the required upgrading for the husbandry farm to meet EU standards.

c) The site is located within less than 200metres from the appellant's residence & hence on the basis of LP Policy CG04 & the policy 'Agriculture, Farm Diversification & Stables', the proposal should never have been approved While LP Policy CG04 states that a rural settlement is to be considered as an inhabited area, MEPA points out that this application concerns the upgrading of an existing and operational livestock farm, where the provisions of Policy 2.3B of the Agriculture, Farm Diversification & Stables Policy Guidelines applies. This policy does not exclude upgrading of operational livestock farms located within less than 200m from an inhabited area and clearly states that the expansion of existing breeding/production units will not be permitted for units located within less than 183 metres of the development zone. The site for development is located within the Maghtab Rural Settlement, which is not a development zone as the area is still categorized as Outside the Development Zone boundary. With respect to the site's proximity to nearby development zones, it is noted that the site is located at a distance of over 1 kilometer from the development zones of Naxxar, Burmarrad, Salina and Bahar ic-Caghaq. Hence, the appellant's arguments on this issue are considered to be unfounded.

d) The permitted extensions to the farm are excessive
The appellant points out that it had been deduced that an extension of 269m² was sufficient for the applicant's

increased quota, and hence a further extension of 110m² should not have been permitted. Contrary to that stated by the appellant, this 110m² extension is surely minimal and will hardly increase any impacts generated by the livestock farm

e) Production of animal feed on site should not have been permitted as this is hazardous within an operational livestock/breeding farm

This issue falls under the competence of the Department of Agriculture and the Department of Veterinary Services. As long as these two departments approved the proposed development, which included the uses of each space, when consulted, MEPA finds no objection. The operational procedures in terms of risks and hazards fall under the mentioned Departments' jurisdiction and it is up to them to ensure that all practices carried out within the farm are not a threat to the health and welfare of other animal farms within vicinity of the site. Both departments did not object to the proposal, as can be verified in their consultation responses in the PA file.

f) Bad neighbourliness created to the appellants who reside within vicinity The appellant states that aerial photos reveal that the appellant's residence was in existence for several years prior to the presence of farms within the area. Notwithstanding this, during the course of other appeals registered by the same appellants, copies of deeds of sale of their residence in Magtab were presented, as well as the location of their residence (refer to PAB 220108 & PAB 282/08). The appellants purchased their place of residence in the following years:

- Mr & Mrs. Borg - farmhouse purchased in 1995; and
- Mr. & Mrs. portelli - farmhouse purchased in 2006

As can be noted in the attached Docs A & B, the existing farm being appealed against as well as several of the other surrounding farms were established before the appellant's choice to purchase property and reside within this area. Hence, the appellants have knowingly decided

to reside within this area, which was already established as an intensive animal rearing area. It was also noted that the appellants (one of which had already purchased a place of residence in the Maghtab area) failed to present any objections in the previous applications permitting extensions and upgrading of this existing farm. Such circumstances question the motives behind the appellant's sudden argument of nuisance created by this existing and established farm.

In this present day, and after the area has been intensely committed for such use, the appellant's are objecting to new farms and any extensions to existing farms. It appears that the appellants chose to reside within vicinity of an existing farming community, and MEPA considers that this does not justify the appellant's present expectations that the livestock breeding operations established within the area should cease, on the account of their choice to reside within the area.

Moreover, farming and agricultural related developments take precedence over residential development in areas outside the development zone boundary. The schemes have been established in 1988 to curb residential development within the development zone boundary. Due to the necessities of animal husbandry farms, SET 11 & 12 acknowledge such development as justified development in the countryside, subject that such development conforms to the design guidelines applicable for such development, and which this report proves that the development is in full conformity with. Hence the presence of rural residences and the choice of individuals to reside within vicinity of animal husbandry farming areas do not justify the cessation of such operations.”

Illi fl-udjenza tas-16 t'Ottubru 2009 xehed l-appellant Marco Borg li stqarr illi mar jghix fil-propjeta' tieghu f'April tal-1995 u qal illi diga' kien hemm il-farm ezistenti.

Illi permezz tat-Tieni rapport l-Awtorita' ressqet il-kummenti taghha kif gej:

“1. The appellant submitted a report on a Health Impact Assessment of the planned farm with the intention to show that the proposed farms is detrimental to the people living in the vicinity

2. The Authority has the following comments to make:

- The Authority consulted with both the Department of Environmental Health and with the Veterinary Regulation and Fisheries Conservation and Control Division. These are the statutory regulatory bodies in relation to health and safety issues pertaining to farms.

Both entities have approved the proposed farms subject to a series of conditions (PA2875/08/45A, PA5926/08/15) and a specific condition that the applicant is to apply directly with the Superintendence of Environmental Health in regards the construction of the cess pits.

The appellant's report makes ample reference to case studies in the USA but fails completely to mention that these two entities found no objection to the proposed farms on health grounds or that they imposed further conditions. Moreover the report clearly indicate that no kind of consultation was carried out with these regulatory bodies. Therefore the correctness and reliability of this report is being questioned by the Authority in that the report misses out on important data.

The Authority also notes that the report is quite speculative in nature, in that it attributes various potential malaises that can result from the proposed farms without entering into the context of location (the report only makes references to case studies in the USA and Spain) and without assessing the plans. This means, how could the report arrive to its conclusions without having considered for one instance the specifics of each proposal?

The Authority also find comments that industrial farms are usually unhygienic (page 7) and that misuse of antibiotics and other drugs as widespread (to the detriment of who lives nearby) as misleading and again speculative since

these are issues that are constantly monitored by the Department of Agriculture.

Finally, the Authority cannot help but notice that the report did not find anything wrong with the proposal per se ' but only speculates that given the track record of farms in Malta there is no guarantee that the farm will be monitored to ensure that it complies with the regulations (page 19). This means that the development as proposed are acceptable in terms of both planning and health. The compiler of the report is simply not convinced that the contents of the proposal will be respected; however this is clearly not something for which a development proposal is refused as it is highly hypothetical.

- Reference is also made to the following issues (a) potential decrease in the value of the neighbouring properties (pages 15-16) and (b) feasibility of the proposed farms. These aspects of the report cast serious doubts on the correctness of the report considering that it is titled as a Health Impact Assessment (what does the value of property or the feasibility has to do with health?) and compiled by an appellant-appointed expert in public health and not on the economics of farms and rural environment.

- The report makes reference that albeit there are no residential schemes in the vicinity, this does not mean that there are no people living nearby and that any farm should be located away from such houses.

The Authority has already commented on this point several times. The appellants have purchased their residences in the following years:

- Mr. & Mrs. Diacono - farmhouse purchased in 1983;
- Mr. & Mrs. Busuttill - farmhouse purchased in 1998; and
- Mr. & Mrs. Borg - farmhouse purchased in 1995.

The appellants knowingly decided to reside within this area, which was already established as an intensive animal rearing area. The appellant's are now deciding to

object against the creation of new farms and any extensions to existing farms. It appears that the appellants chose to reside within vicinity of an existing farming community, and MEPA considers that this does not justify the appellants' present expectations that the livestock breeding operations established within the area should cease, on the account of their choice to reside within the area.

Moreover, farming and agricultural related developments take precedence over residential development in areas outside the development zone boundary. The schemes have been established in 1988 to curb residential development within the development zone boundary. Hence the presence of rural residences and the choice of individuals to reside within vicinity of animal husbandry farming areas do not justify the cessation of such operations.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghall-estensjoni ta' mhazen ezistenti u l-issanzjonar ta' filati addizzjonali ghal manure clamp.

Is-sit mertu ta' dan l-appell jinsab fl-indirizz EX MGP Farm - WMS, Habel Zwejra, Maghtab.

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

It-terzi appellanti jissottomettu li l-izvilupp propost ta' fodder store' huwa gja ezistenti u li l-Bord tal-Ippjanar injora l-kunsiderazzjonijiet tat-terzi appellanti, li l-proposta originali tbiddlet drastikament, li s-sit jinsab barra miz-zona fabbrikabbli, li r-residenzi tal-appellanti jinsabu inqas minn 200 metru l-boghod mis-sit relattiv, li l-area rikjest mill-applikant hija eccessiva, li l-izvilupp jista jaghti lok ghal perikolu ta' sahha u li l-izvilupp sejjer minghajr dubju jikkrea inkonvenjent lill-appellanti.

Kopja Informali ta' Sentenza

L-Awtorita' tissometti li l-allegazzjonijiet maghmula mill-appellanti huma bla bazi, li z-zona hija kommissa ghal zvilupp bhal dak propost, li l-applikant kien intavola l-applikazzjoni relattiva qabel ma xtraw il-propjetajiet ta' l-appellanti, u li f'zoni mhumiex fabbrikabbli zvilupp agrikolu ghandu jinghata precedenza fuq dak residenzjali.

L-applikazzjoni ghall-izvilupp jigu kkunsidrati u determinati skond l-Artikolu 69 tal-Att X tal-2010 Kap. 504; precedentement l-Artikolu 33 tal-Kap. 356, principalment skond l-plans and policies approvati, tinghata konsiderazzjoni wkoll, jekk l-Awtorita' jidhrilha rilevanti, ghall-cirkostanzi, materjali fosthom dawk ambjentali, estetici, u sanitarji.

Il-Plans u l-Policies jiddefinixxu z-zoning; cjoe l-areas fejn jista' jsir zvilupp, area tal-izvilupp u l-areas fejn ma jistax issir zvilupp billi barra z-zona tal-izvilupp.

Is-sit mertu ta' dan l-appell jinsab barra z-zona tal-izvilupp tan-Naxxar, f'area partikolari mgharufa bhala l-Maghtab, li hi disinjata bhala Category 2, Rural Settlement, kif tidher fic-Central Malta Local Plan Map. NAB 7.

Fuq is-sit kien diga jopera bil-permess razzett ghat-tigieg l-propostaprezenti hi intiza biex jsiru zidiet biex jkunu jistghu jitrabbew aktar annimali fuq is-sit, b'provista ta' waste management infrastructure konformi mal ezigenzi tal-ligi tal-Unjoni Ewropeja.

L-applikazzjoni originali tar-razzett saret fid-1987; u kienet segwita b'ohra ta' 1999 u b'applikazzjoni ta' 2003, fejn ntabu zidiet u tibdiliet. L-applikazzjonijiet gew milqugha.

Kif jidher mid-Dok A anness mal-ewwel rapport tal-Awtorita' f'area ta' 500 metru hemm 16-il razzett ghat-trobbija ta' annimali varji, u tlieta ohra barra l-area ta' 500 metru. Il-permessi ghal dawn l-irziezet hargu fin-1980 u fil-bidu tad-disghajnijiet.

L-Awtorita', fir-rapport taghha, indirizzat b'mod soddisfacenti l-ilmenti tal-appellanti. L-Awtorita'ddefendiet

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I-pozizzjoni taghha li ma gietx segwita l-procedura korretta, kif jallegaw l-appellanti.

Irrizulta li l-applikazzjoni giet ipprezentata fil-21 ta' April 2006. harget Site Notice ghall-konsultazzjoni pubblika fit-2 ta' Mejju 2006, u billi gew emendati l-pjanti harget site notice ohra fis-26 ta' Mejju 2007.

Ir-rapport tad-Direttorat gie approvat fid-9 ta' Lulju 2007, u d-decizzjoni ttiehdet fid-13 ta' Settembru 2007.

Ghalkemm ma sarx l-Environmental Planning Statement skond l-Artikolu 3(8) ta' Avviz Legali 204 ta' 2001, saret Project Description Statement detaljata, li ndirizzat b'mod sodisfacenti l-implikazzjonijiet previsti tal-izvilupp propost.

Dwar l-allegazzjoni tal-appellanti ta' informazzjoni skorretta fl-applikazzjoni, l-Awtorita' annettiet Dok A, u Dok B mar-rapport li juru s-sit mertu tal-applikazzjoni lir-rziezet l-ohra fil-lokalita' u r-residenza tal-appellanti; kif ukoll elenku tal-permessi tas-siti hemm indikati, bid-dettalji partikolari ghal kull applikazzjoni.

Dwar l-emenda tal-proposta tal-izvilupp, gie rilevat mill-Awtorita' li dawk it-tibdiliet kienu marginali u mhux sostanzjali, bhala tali ma kienux jirrikjedu li terga tigi ppublikata l-applikazzjoni. F'dan il-kuntest, l-appellanti certament ma soffrew l-ebda pregudizzju, billi l-oggezzjoni taghhom kienu ghamluha, u fil-mertu l-oggezzjoni taghhom ghall-izvilup propost baqghet identika.

L-appellanti, jallegaw li b'ghoti tal-permess kontestat, saru kontravenzjonijiet ta'diversi policies tal-izvilupp. Anke dwar dan l-agravju, l-Awtorita' fir-rapport taghha, irribattiet dan l-ilment, billi tat spjegazzjoni cara u korretta, li effettivament l-permess ghall-kuntarju ta' dak allegat, nghata billi l-izvilupp propost jissoddisfa r-rekwiziti ta' diversi policies rilevanti.

Il-lokalita tal-Maghtab Rural Settlement hi karatterizzata bil-prezenza numeruza ta' diversi rziezet fejn jitrabbew l-annimali bhala Category 2 Rural Settlement, tapplika ghal

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din il-lokalita l-Local Plan Policy CG04, fejn l-attivitá ta' rziezet hi zvilupp accettabli f'din l-area partikolari.

Ghalkemm is-sit jinsab f'area ta' valur Agrikolu skond l-Local Plan Policy Map NAM 10, l-permess originali tarrazzett inghata fis-snin tmenin (1980's) qabel ma dahal fis-sehh l-Pjan lokali pubblikat f'Lulju 2006, u l-izvilupp approvat jiprovdi bilanc pozittiv bejn l-htiega ta' konservazzjoni ta' art agrikola, kif ukoll miljoramenti radikali fl-attivitá ta' trobbija tal-annimali, konformi ma standards Ewropej.

Il-proposta mhix qed tipproponi zvilupp gdid; izda li dak ezistenti jigi miljorat; u ghalhekk tapplika l-Policy 2.3B tal-Agricultural, Farm Diversification and Stables Policy Guidelines. Skond din l-Policy l-attivitá proposta ma tigix approvata jekk tkun anqas minn 183 metri miz-zona tal-izvilupp. F'dan il-kaz is-sit jinsab fil-Maghtab Rural Settlement, li mhux zona tal-izvilupp, u jinsab barra z-zona tal-izvilupp.

L-appellanti, jinsistu li l-izvilupp approvat, hu ta' pregudizzju ghalihom, billi jnaqqsilhom mill-kwalitá tal-hajja taghhom, minhabba l-irwejjah li tali attivitá iggib maghha, attivitá li tikkostitwixxi 'bad neighbourliness' fit-termini tal-Policy BEN 2. Indubbjament residenza vicin razzett fejn jitrabbew l-annimali, certament issofri minn dan l-inkonvenjent; pero' kif tajjed gie rilevat mill-Awtoritá l-appellanti akwistaw l-propjetajiet taghhom relattivament ricentement, l-konjugi Borg fin-1995, u l-konjugi Portelli fit-2006.

Id-Dok B, anness mal-ewwel rapport tal-Awtoritá, jikkonferma li l-ewwel applikazzjonijiet saru fin-1987, u min dak iz-zmien gew approvati kwantita konsiderevoli ta' permessi ghat-trobbija tal-annimali f'din il-lokalitá li hi karatterizzata b'koncentrazzjoni ta' dawn l-irziezet.

Indubbjament l-apellanti kienu ghall-kurrent ta' din l-attivitá fil-lokalitá tal-Maghtab, pero' xorta wahda iddeciedew li jstabilixxu r-residenza taghhom hemmhekk. Jista' jkun li kienu motivati bi prezzijiet vantaggjuzi, propja

minhabba din ic-cirkostanzi partikolari ta' vicinanza ghal dawn l-irziezet; izda f'dawn ic-cirkostanzi partikolari, billi l-lokalita' kienet diga ghall-snin shah karratterizzata b'numru konsiderevoli ta' dawn l-irziezet, l-appellanti ma jistghu jippretendu li zvilupp residenzali jiehu s-soppravent fuq dak tat-trobbija tal-annimali, f'area barra z-zona tal-izvilupp, li ilha snin shah intuza ghal din l-attivitá partikolari.

Ezaminati, fil-fond, l-aggravji tal-appellanti, fil-kuntest tal-Policies tal-Ippjanar rilevanti, l-appell ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell, billi jichad l-istess u jikkonferma l-permess moghti lill-applikant fis-26 ta' Settembru 2007, PA 2631/06.

Ikkunsidrat

L-aggravji tal-appellanti huma s-segwenti:

1. It-Tribunal naqas li jiddeciedi fuq il-mertu tal-applikazzjoni billi kkunsidra l-mertu bhala 'talba ghal estensjoni ta' mhazen ezistenti u sanzjonar ta' filati addizzjonali ta' manure clamp';

2. It-Tribunal strah fuq is-sottomissjonijiet tal-Awtorita u ma kkunsidrax l-aggravji tal-appellanti fosthom illi d-direttorat kien iggustifika l-izvilupp propost fuq il-premessa li kien hemm irziezet ohra fil-vicinanze ghat-trobbija tal-animali mentri l-appellanti allegaw li dawn l-irziezet kienu qed jintuzaw ghal skopijiet differenti, uhud kellhom enforcement notice u ohrajn ghadhom fi stadju ta' applikazzjoni. It-Tribunal naqas li jinvestiga din l-allegazzjoni;

It-Tribunal naqas li jinvestiga kontradizzjoni bejn dak li tnizzel mid-direttorat lill-Bord tal-Awtorita li l-applikant ma kienx qed jinsisti fuq it-talba li jbidel il-cold stroes f'ufficini meta ufficjal tal-Awtorita stqarr li dawn kienu former cold stores bl-implikazzjoni li kien hemm zvilupp illegali. Din kienet lanjanza tal-appellanti li ma gietx investigata;

It-Tribunal naqas li jinvestiga s-sottomissjoni tal-appellanti dwar l-applikazzjoni ta' policy CG 24 ghas-sit in ezami billi jinsab f'area of agricultural valur fejn jithalla biss zvilupp

'essential to the needs of arable agriculture' u mhix tat-trobbija ta' animali, u in oltre tali zvilupp ma ghandux 'adversely affect water resources, soil, and landscape and will not conflict with scenic, ecological, scientific, archaeological and mineral interests;. L-Awtorita ma evalwatx il-valur agrikolu tal-art biex tara l-izvilupp propost setax isir. Apparti dan l-appellanti semmew diversi policies ohra li t-Tribunal injora, kif injora studju pprezentat mill-appellanti ta' espert tal-universita fuq l-impatt li tali rziezet jaghmlu fuq is-sahha tal-bniedem;

3. It-Tribunal skarta l-lanzja li saru dwar in-nuqqas ta' ottemperanza tal-Awtorita mal-ligi waqt l-ipprocessar fejn jirrizulta li bejn il-laqgha tas-6 ta' Settembru 2007 u dik tal-approvazzjoni tal-izvilupp tat-13 ta' Settembru 2007 l-applikant biddlu d-deskrizzjoni tal-izvilupp propost minghajr ma sar republication fejn zdieg il-kliem 'to sanction' billi gie zvelat illi l-izvilupp kien gia sar u t-tibdil tal-kelma 'residence' ma' 'restrooms'. In oltre inbiddu l-pjanti u rinunzja tal-Awtorita ghall-Environment Impact Statement. It-Tribunal naqas li jimmotiva dan in-nuqqas u ghalhekk ma huix trasparenti.

L-ewwel aggravju

Din il-lanzja tirrigwarda punt ta' ligi li jisthoqqlu jigi dibattut. L-applikazzjoni kif korretta kienet tinkorpora zvilupp konsistenti fi store, broiler unit u manure clamp u cesspit kif ukoll sanzjonar ta' restrooms u estensjonijiet ta' store u broiler unit. It-Tribunal jibda l-konsiderazzjonijiet tieghu billi jikkwota din l-applikazzjoni u jelenka l-argumenti kolha tal-partijiet fid-dettall kollu fuq dan l-izvilupp.

Meta imbaghad it-Tribunal jibda biex jevalwa l-argumenti ipoggi fil-perspettiva soggettiva tieghu l-qofol tal-applikazzjoni. Hu jghid illi l-mertu hu estensjoni ta' mhazen ezistenti u sanzjonar ta' filati addizzjonali ghal manure clamp. Din is-sottomissjoni iccekken bil-bosta l-estent ta' zvilupp li kien qed jintalab li jsir jew jigi sanzjonat. Il-kwistjoni ghalhekk tqum jekk din kinitx semplicement leggerezza da parti tat-Tribunal mhix sorretta minn dak li evalwa fil-paragrafi sussegwenti biex wasal ghad-

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decizjoni tieghu jew jekk fil-fatt it-Tribunal naqas li jqis sew l-applikazzjoni proposta u l-aggravji maghmula kontra l-hrug tal-permess fl-interita taghhom.

Qari tad-decizjoni l-Qorti tinnota li t-Tribunal ma kien xejn specifiku dwar dan. Isemmi li l-proposta hi intiza biex isiru zidied biex jitrabbew aktar animala bi provista ta' waste management infrastruttura. F'parti ohra jghid li ghalkemm raw tibdilat fil-proposta inizjali t-Tribunal ighid ukoll illi l-appellanti ma sofrew ebda pregudizzju billi l-oggezzjoni taghhom saret u fil-mertu baqghet identika. F'parti ohra jerga' jzid li l-proposta mhix tipproponi zvilupp gdid izda li dak ezistenti jigi injorat.

Il-Qorti ma hi xejn konvinta li t-Tribunal kien car f'dak li kien qed jikkonsidra bhala mertu tal-applikazzjoni. L-argumenti u konsiderazzjonijiet tieghu gew maghmula b'mod generiku u fl-ebda hin ma indirizza l-applikazzjoni per se fid-dettall taghha.

Il-Qorti ma tistax tqis din id-diskrepanza bhala wahda immaterjali, marginali jew anki effett ta' xi lapsus calami ghax fiha nfisha tolqot is-sustanza nnifsa ta' dak li qed jigi dibattut. Qari tal-konsiderazzjonijiet kollha li waslu lit-Tribunal ghad-decizjoni tieghu jevalwaw varji argumenti mressqa pero b'mod li l-Qorti ma tistax tkun moralment konvinta li fil-fatt it-Tribunal hares lejn l-appell mill-perspettiva komplessiva tieghu u kwindi ddecieda b'gustizzja mal-partijiet kif jimmerita appell. Il-Qorti ma tistax f'dubju serju li ssib ruhha rinfaccjata bih tiskarta dan kollu u b'leggerezza tinjora l-ilment tal-gustizzja li mhux biss trid issir izda tidher li qed issir.

Ghal din ir-raguni dan l-aggravju ghandu jigi milqugh u d-decizjoni tigi mhassara.

It-tieni aggravju

Dan l-aggravju gie maqsum f'diversi partijiet. In kwantu ghal dik il-parti tal-aggravju fejn l-appellanti jirreferu ghall-uzu ta' zviluppi ohra fil-vicinanze, it-Tribunal ikkonsidra dak li qalet l-Awtorita cioe n-numru konsiderevoli ta' rziezet ta'

trobbija ta' animali skond ir-rapport tal-Awtorita kien jispetta lil appellant li jgib prova kuntrarja u mhux jistrieħ biss fuq xi żvilupp li mhux qed jintuzaw għat-trobbija tal-animali jew jitlob lit-Tribunal jinvestiga hu l-iskop tal-iżviluppi li hemm fil-vicinanzi.

Ma jistax jingħad l-istess dwar l-aggravju rigwardanti l-kwistjoni tal-cold stores. Din il-kwistjoni ta' fatt li dwarha setgħu jinsorgu elementi ta' illegalitajiet fuq is-sit mhux sanzjonati jew mitluba li jigu sanzjonati ma gietx indirizzata mit-Tribunal u billi din il-kwistjoni hi wahda mhux periferali jew li ma għandha ebda konsegwenza fuq l-eżitu tal-applikazzjoni nnifisha messha giet ventilata u deciza mit-Tribunal pero minflok giet injorata u hu aggravju li jimmerita wkoll li jigi akkolt.

In kwantu għall-aggravju dwar il-policies applikabbi u l-fatt li t-Tribunal injora s-sottomissjonijiet tal-appellant, il-Qorti tqis illi għalkemm it-Tribunal semma' l-policies applikabbi pero billi kif ingħad hemm incertezza serja dwar dak li t-Tribunal kien fil-fatt qed iqis bħala estent ta' żvilupp u sanzjonijiet proposti, din il-Qorti tqis illi d-decizjoni fir-rigward ma hi xejn sikura u certa.

Għalhekk f'dan il-kuntest biss qed jintlaqa' l-aggravju

It-tielet aggravju

Dan l-aggravju wkoll qed jigi milqugh mhux għax qed jingħad li fil-fatt kien hemm xi nuqqas ppruvat ta' ottemperanza mal-procedura da parti tal-Awtorita waqt l-ipprocessar tal-applikazzjoni izda għaliex a bazi ta' dak deciz fl-ewwel aggravju, il-Qorti mhix konvinta li t-Tribunal meta ddecieda b'mod semplici hafna li kull tibdil li sar fl-applikazzjoni ma hux ta' pregudizzju għall-appellanti meta din il-Qorti mhix konvinta kemm it-Tribunal kien qed jikkonsidra l-applikazzjoni kif magħmula u kif emendata fit-totalita tagħha. Id-dikjarazzjoni tat-Tribunal li rrepeti dak li ssottomettiet l-Awtorita li t-tibdiliet kienu maginali u ma kienx jehtieg ripubblikazzjoni tal-applikazzjoni ma ssolvix il-kwistjoni principali dwar dak li verament kien qed

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jikkonsidra t-Tribunal bhala l-mertu komplut tal-izvilupp propost.

Ghalhekk u ghal dawn ir-ragunijiet qed jintlaqa' anki dan l-aggravju.

Decide

Il-Qorti taqta' u tiddeciedi billi in linea ma' dak deciz tilqa' l-appell tal-appellanti, thassar id-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tas-27 ta' Settembru 2012, u turrinvija l-atti tat-Tribunal biex jerga' jisma' l-appell skond il-ligi.

Spejjez ghall-appellati flimkien.

< Sentenza Finali >

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