



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 105/2012

**Thomas Zahra**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Thomas Zahra tal-4 ta' Gunju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Mejju 2012 ghal outline development permission PA 1548/05 ' to construct a farmhouse to a full time breeder';

Rat ir-risposta tal-Awtorita li sottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

Kopja Informali ta' Sentenza

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

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fis-17 ta' Frar 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 1548/05 "Site at Triq il-Qasam Sperimentali, Luqa: Outline application to construct a farmhouse to a full-time breeder."

It-tlett ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed development is unacceptable since it does not satisfy the criteria, set out in Policy 2.2A: Farm dwellings for livestock farmers of Policy and Design Guidance on Agriculture, Farm Diversification and Stables, in particular paragraph (2b) and (5).

2. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

3. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area."

B. In-nota tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fis-17 ta' Marzu 2011, inter alia l-punti segwenti:

"3. L-appellant huwa full time breeder. Illi huwa ilu jiggstixxi tali attivita fis-sit mertu ta' dan l-appell sa mill-1988. Illi ricentement inhareg permess PA 7501/05 fuq dan is-sit sabiex l-appellant ikun jista' jtejjeb l-operat tieghu in linea mal-provedimenti dettati mill-Unjoni

Ewropeja. Illi fil-fatt dan ix-xoghol, li kien jinkludi bini ta' demmiela (manure clamp) u tisqif tal-btiehi fejn jirghaw il-hniezer, tlesta.

4. L-appellant jirrileva li ghal kuntrarju ta' dak li qed ticcita l-Awtorita' appellant, huwa jissodisfa l-kriterji 2b u 5 ta' Policy 2.2A stante li fir-rigward ta' kriterju 2b, 'the applicant's livestock farm unit has a minimum of : 40 sows (i.e. pigs, but excluding piglets) or 400 fattenin units, or 40 milk cows (excluding cattle), on the same site or on land immediately adjacent to the site of the proposed dwelling' u dan kif se jkun rilevati fil-mori tal-process. In oltre' fil-kaz ta' kriterju numru 5 'the proposed dwelling is not located within a schedules, listes, designated or proptected area or site of ecological, scientific, cultural, archeological or landscape value', tant li s-sit de quo jikkonsisti f'razzett tal-bhejjem, vicin attivita' industrijali u l-iskema ta' l-izvilupp, u ma jirrizulta minn ikien li dan is-sit huwa skedat jew prtoett. Oltre hekk, l-appellant ottjena il-clearance necesarju mill-Awtorita' ta' Malta dwar ir-Rizorsi.

L-appellant jirrileva ghal darb' ohra li huwa jissodisfa il-kriterji ta' Policy 2.2A Farm dwellings for livestock farmers of Policy and Design Guidance on Agriculture, Farm Diversification and Stables. In oltre, l-appellant jirrileva li hu misruq diversi drabi, stante li s-sit ma kienx sorveljat."

C. In-nota risposta ta' Darren Fava ghall-Awtorita', ipprezentata fl-4 ta' Lulju 2011, precizament it-tlett punti segwenti:

#### "5.2.1 Criteria Requirements of Policy 2.2A

In the first part of the reason for refusal, the appellant is arguing that he has the minimum number of sows/fattening units or cows to be eligible for the requested development. In fact, consultation with Veterinary Services (Doc 14 in PA File) has provided information that the appellant is registered as a full-time breeder and has 4900 broilers and 3439 layers, and that he is a licensed pig breeder holing approx. 140 pigs. Notwithstanding this, there is no evidence that the farmhouse is genuinely essential for agricultural needs. It

appears that the farm has been in operation for a considerable number of years. Para. 2.2.3 of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) states that the dwelling must be essential for the effective management of the livestock farm unit; and that para. 2.2.4 continues to state that agricultural needs are not likely to justify the provision of new dwellings as retirement homes for livestock breeders. In this case, age of the applicant does not justify the need of a three (3) bedroom farmhouse, especially when the farm is located within a few metres away from the residential area.

The second part of the first reason for refusal states that the proposal runs counter to Part 5 of Policy 2.2A; which states that the proposed dwelling is not located within a scheduled, listed, designated or protected area or site of ecological, scientific, cultural, archaeological or landscape value. Although the appellant is insisting that the development is not situated within a protected area, the site is partially designated as an Area of High Landscape Value and a Valley Protection Zone; in accordance with Maps LU 7 of the South Malta Local Plan (2006).

As a result, the development proposed is not acceptable from a planning point of view since the construction of a farmhouse on site runs counter to policies 1C and 1H of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) as well as policies SMCO 06 and SMCO 07 which seek to protect Areas of High Landscape Value and Valleys from development which are detrimental to the natural landscape and function of the valley.

#### 5.2.2 Urban Development ODZ

[...] The appellant is seeking to introduce urban development ODZ which is not justified, and hence the proposal runs counter to Structure Plan policies SET 11 and SET 12 since there is no reason why the works cannot be carried out in an area designated for urban development. In addition, the proposal also runs counter to Structure Plan policy BEN 5 since the type of

development requested is not acceptable on site in accordance to the Local Plan.

### 5.2.3 Other Comments by Authority

In accordance with policy PLP 20 in the Design Guidance for Development ODZ (1995), MEPA may also consider residential development outside the limits of development. As per Section 8.2 (iii) of the policy, dwelling units with a maximum floorspace of 150m<sup>2</sup> may be considered when they are an extension to existing building. Although the appellant has indicated that the overall floorspace of the proposed unit is exactly 150m<sup>2</sup> (as per Doc 1 in PA File), the development is not extending an existing building but rather creating a new urban structure outside the development zone. Hence, the development cannot be considered under policy PLP 20.”

D. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fis-26 t' Awissu 2011, inter alia l-punti segwenti:

"Illi mkien ma gie ikkontestat mill-Awtorita' li l-appellant huwa full-time breeder u ilu jiggestixxi l-attivita fis-sit mertu ta' dan l-appell sa mill-1988. fil-fatt huwa ammess mill-Awtorita' stess li l-appellant jissodifa l-provedimenti tas-subinciz 2B ta' Policy 2.2A stante li [...] l-kwota ta' l-appellant hija aktar minn tlett darbiet tal-minimu stabbilit (in effetti 3.5 aktar) fl-imsemmi subinciz [...] Aktar min hekk, id-Dipartiment ta' l-Agricoltura stess qed jenfasizza dwar il-bzonn li mil-lat ta' pratticita, huwa bzonnjuz li l-appellant jirrisjedi fuq il-post u jekk anke, adirittura jghix fil-vicin, huwa ser jibqa rinfacjat bi problemi fl-operat tal-farm. Fil-fatt, riferibbilment ghar Red 19 tal-file PA 1548/05 jinghad li d-Dipartiment ta' l-Agricoltura esprima no objection.

L-esponent jirrileva li l-appellant huwa self employed u mhux bi hsiebu jirtira mix-xoghol. Di piu, din se tkun l-unika residenza tieghu. Oltre hekk, policy 2.2A tippermetti firxa sa massimu ta' 150 metri kwadri. Tajjeb jigi rilevat li l-politika tal-Gvern kienet sa minn dejjem favour anzjani li jibqghu jahdmu.

Illi dwar dak li qed jinghad mill-Awtorita' fis-sens li 'the site is partially designated as an Area of High Landscape Value and a Valletta Protection Zone, in accordance with Maps LU 7 of the South Malta Local Plan (2007).' L-esponenti jirrileva lid an m' huwiex il-kaz stante li l-lok fejn qed tigi proposta ir-residenza de quo ma jinsabx entro iz-zona protetta (ghalkemm vicin) u dan ank eif jirrizulta meta wiehed jstrapola id-designations murija f'Map LU 7 (Environmental Constraints Map) tal-Pjan Lokali fuq il-block plan relativa.

Illi kwalsijasi riferenza mid-Direttorat li saret fir-rigward ta' policy PLP 20 m' ghandha ebda rilevanza stante li l-applikant huwa eligibbli ghal residenza gdida.";

E. In-nota third statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fit-2 ta' Marzu 2012, precizament it-tlett punti segwenti:

"2. As stated by the Department of Agriculture and Veterinary Services the applicant's farm holds 140 pigs (refer to Red 14 and 19, respectively in PA file). The Veterinary Services were requested to distinguish by type and age the number of pigs in the farm. No reply has been received to date and thus the actual number of sows/fattening units could be specified.

[...] Para. 2.2.3 of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) states that the dwelling must be essential for the effective management of the livestock farm unit; and that para. 2.2.4 continues to state that agricultural needs are not likely to justify the provision of new dwellings as retirement homes for livestock breeders. [...] Although the appellant is insisting that the proposed development is not situated within a protected area, the appellant's site (including the farm) is partially designated as an Area of High Landscape Value and a Valley Protection Zone; in accordance with Map LU 7 of the South Malta Local Plan (2006)."

F. In-nota ulterjuri tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fl-4 t' April 2012, senjatament il-punti segwenti:

“2. Illi l-appellant jinforma li, bi zvista, dan id-dokument ma giex ipprezentat flimkien mas-sottomissjoni precedenti.

3. Illi dan id-dokument jitkellem primarjament dwar l-appellant – kwindi, huwa fl-interess anke ta' l-Awtorita', li din id-dokumentazzjoni tkun esposta fl-Atti processwal, anke jekk fi stadju pjuttost tard f'dawn il-proceduri. In ogni kaz, l-Awtorita' mhux se tiggwadanja xejn jekk din l-informazzjoni, li wara kollox hija ufficjali u titkellem, tibqa mistrura!”.

Ma l-istess nota giet annessa dikjarazzjoni originali ta' Dott. Anthony Gruppetta, Direttur Generali fi hdan l-Agriculture & Fisheries Regulation Department tal-Ministeru ghar-Rizorsi u Affarijiet Rurali, bid-data tal-20 ta' Lulju 2011. Din id-dikjarazzjoni tghid is-segwenti:

“Thomas Zahra has been breeding pigs and chickens for over 20 years at the farm in caption. Mr. Zahra has an extensive activity that requires his presence on farm almost throughout the day. His present official living residence is off the farm although the family unit made of Mr. Zahra and his wife are normally on the farm for over 16 hours per day. The farm is situated across the road from a housing estate and therefore this Department finds no objection for the building of a concise housing unit on the farm of Mr. T. Zahra to enable him to continue his work on farm and at the same time maintain full contact with his family on site. This need has become necessary in view of the development of the health situation of the other member of the family unit.

This Department highly recommends the consideration by MEPA of a limited living unit on this mixed farm holding in view of the proximity of the holding to an urban area, on humanitarian grounds to enable Mr. Zahra to maintain his work in the livestock sector whilst meeting his new challenges that have developed in his household and in

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view of improving the security of livestock on his farm that may suffer from long spells of absence of personnel from the farm.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta tat-tip outline application sabiex f' sit fil-qasam sperimentali ta' Hal Luqa, tinbena residenza f' razzett ta' bidwi li jrabbi l-bhejjem.

Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li l-proposta hi in kunflitt tal-paragrafi 2b u 5 tal-policy 2.2A tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables; kif ukoll tal-policies SET 11, SET 12 u BEN 5 tal-Pjan ta' Struttura, peress li m' hemmx raguni ghaliex tali proposta ma' tistax tinbena gewwa zoni urbani, intizi għalbini ta' residenzi. Di konsegwenza, l-proposta hi wkoll in kontravvenzjoni tal-paragrafu 7.6 tal-Pjan ta' Struttura għax qed jigi propost zvilupp urbanizzati gewwa zona li mhix edifikabbli.

L-aggravji tal-Appellant huma bbazati fuq il-fatt li ilu full-time breeder sa' mis-sena 1988, u li recentement kien anke nhariglu permess għall-izvilupp sabiex fuq dan is-sit ikun jista' jopera b' mod li jkun aktar idoneju mad-direttivi tal-Unjoni Ewropeja. Għaldaqstant kienet inbniet manure clamp, kif ukoll issaqfu xi btieħi fejn ikun jista' jghammar il-majjal. In oltre, giet anke pprezentata dikjarazzjoni mid-Direttur Generali tal-Agriculture & Fisheries Regulation Department, li propju tikkonferma l-bzonn li l-Appellant ikollu din ir-residenza sabiex ikun jista' joqod vicin il-bhejjem li jrabbi u jkun jista' jaqdi xogħlu aħjar.

Mhux qed jigi kkontestat mill-partijiet li l-Appellant izomm numru sostanzjali ta' bhejjem u annimali, li jaqbez il-minimu rikjest mill-policy indikata supra; għandu rispettivament 4900 u 3439 tigięga għall-produzzjoni tal-laham u li jitrabbew għal-bajd, kif ukoll 140 majjal. Jigi rilevat pero' li parti mis-sit in ezami jaqa' gewwa area of high landscape value – valley protection zone, kif indikat permezz tal-mappa LU 7 tal-Pjan Lokali u għalhekk il-



proposta tirrizulta in kontravvenzjoni tal-policies SMCO 6 u SMCO 7; kif ukoll tal-policies 1C u 1H tal Policy and Design Guidance – Agriculture, Farm Diversification and Stables.

L-Awtorita' tirribatti l-argumenti mressqa mill-Appellant billi tispjega li r-razzett kif prezenti ilu joppera ghall-zmien twil, u gabadarba ma' jidhirx li qabel qatt ma rrizulta l-bzonn jew saret xi talba specifika sabiex tinbena residenza bhal din in ezami, lanqas m' ghandu jkun il-kaz illum (specjalment meta jigi kkunsidrat il-fatt li qeda tintalab residenza b' tlett kmamar tas-sodda, konsistenti ma' residenza ghal-familja zaghzugha).

Fir-rigward ta' d-daqs tal-binja proposta per se, l-Awtorita' tirrileva li fil-kaz ta' estensjoni ghal-binja rurali, l-paragrafu 8.2(iii) tal-policy PLP 20 jippermetti floorspace b' massimu ta' 150 metru kwadru. Jigi rilevat ghalhekk, li sebbene din it-talba hi precizament ghall-floorspace ta' 150 metru kwadru, madankollu ma' tezisti l-ebda binja rurali fuq is-sit u ghalhekk dan mhux il-kaz ta' estensjoni izda ta' binja kompletament gdida.

Jidher illi mhux qed jigi kkontestat li dan ir-razzett hu munit b' permess kif ukoll li hu in linja mar-rekwiziti tal-policies u tal-Pjan Lokali. L-unika oggezzjoni li ghandha l-Awtorita' hi in kwantu l-htiega tal-izvilupp propost, u jekk f' ic-cirkostanzi huwiex gustifikabbli peress li r-razzett ilhu hafna jopera kif jinsab prezentement; u in kwantu l-fatt li fil vicin hemm residential area u li jkun facili li wiehed jittransita min hemmhekk ghalm ghawnhekk. F' ic-cirkostanzi, dan it-Tribunal jifhem il-bzonn li breeder jista jkollu, li jirrisjedi vicin il-bhejjem li jrabbu, u dan sabiex ikun jista jassitihom. Madankollu b' it-teknologija tal-lum wiehd ikun jista jaghmel dan sebbene mhux di persona, billi jhares u jghasses dawn il-bhejjen mill boghod. In oltre, jigi nutat li l-Appellant naqas illi jissotometti provi jew dikjarazzjoni kif kien hsiebu jittrasloka ghal ghawnhekk u/jew x' ser jigri mill-propjeta' li hu ghandu prezentement sabiex jibda' joqghod f' dan ir-razzett. Dan qed jinghad billi semmaj tinbena din id-dar, tkun giet mibnijja residenza

gdida barra z-zona tal-izvilupp u fic-cirkostanzi dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

Ghalhekk, in vista tal-kunsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 1548/05 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fis-17 ta' Frar 2011.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal injora ghal kollox il-policies rilevanti u ddecieda a bazi ta' motivazzjonijiet estraneji ghal dak lil trid il-policy rilevanti cioe policy 2.2A tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables;
2. It-Tribunal naqas li jevalwa sottomissjonijiet tal-appellanti fosthom jekk is-sit fil-fatt jinsabx f'area of high landscape value u d-dikjarazzjoni tad-Direttur Generali tal-Agrikolutra.

Dawn l-aggravji ser jigu trattai flimkien. Il-fatt fil-qosor hu illi l-applikant li pacifikament stabbilit hu full time breeder jixtieq jibni residenza fis-sit fejn jopera l-farm a bazi tal-policy 2.2A fuq imsemmija li titratta farm dwellings for livestock farmers. Din tghid testwalment fil-bidu taghha:

Preference will be given to the location of farm dwellings for livestock farmers within urban areas of rural settlements as defined in local plans.

Permission will be granted for the erection of a single dwelling unit for livestock farmer outside the development boundary (ODZ) provided all the following criteria are satisfied.

Hemm 8 kundizzjonijiet f'din il-policy li jridu jigu sodisfatti. L-Awtorita cahdet il-proposta senjatament b'referenza ghal din il-policy billi ma gewx sodisfatti paragrafi 2b u 5. il-paragrafu 2b jirreferi ghall-ammont minimu ta' annimali li jaghmlu l-policy eligibbli u illi s-sit hu sitwat f'zona protetta jew disinjata bhala high landscape value. L-Awtorita

semmiet policies ohra li setghu kienu ta' relevanza ghal kwistjoni.

It-Tribunal semma' s-sottomissjonijiet tal-partijiet u rrikonoxxa li l-provi urew li l-appellant kien jikkwalifika a bazi tal-paragrafu 2b tal-policy izda qal li s-sit jaqa' f'area of high lanscape value kif indikat fil-mappa LU7. It-Tribunal pero naqas li jevalwa s-sottomissjoni tal-appellant li gab prova, skond hu, relevanti, li s-sit jaqa' barra din iz-zona u t-Tribunal lanqas biss rrifera ghal din is-sottomissjoni u ddecieda minghajr ma wasal ghal konkluzjoni kif kien obligat li jaghmel li l-prova tal-appellant dwar il-pozizzjoni tas-sit kienet errata.

La darba t-Tribunal ma kkonsidrax dan il-punt essenzjali biex jigi pruvat l-applikabilita o meno tal-policy in kwistjoni, ma jistax jinghad li t-Tribunal ghamel valutazzjoni certa u soda tal-applikazzjoni quddiemu.

Il-Qorti ma tistax ma tikkumentax fuq zewg paragrafi tal-Awtorita fuq din il-kwistjoni. L-ewwel wahda tirrigwarda il-fatt li qatt ma ntalab permess ghal binja residenzjali qabel illum u li t-talba ghal residenza bi tlett ikmamar tas-sodda hi konsistenti ma' residenza ghal familja zaghzugha. Il-Qorti ma tifhimx ghalfejn it-Tribunal semma' dak li qalet l-Awtorita meta hu stess ma kkumentax dwarha. It-Tribunal jikkumenta pero dwar il-kobor li skond hu, ghax imsemmija mill-Awtorita, japplika policy PLP 20 fejn il-floorspace ma jistax ikun aktar minn 150 metri kwadri u tapplika ghal estensjoni. Bir-rispett lejn it-Tribunal, din il-Qorti ma tifhimx ir-relevanza tal-policy PLP 20 meta l-policy mertu tal-applikazzjoni cioe l-Policy and Deisgn Guidance – Agriculture Farm Diversification and Stables tispecifica fit-tmien kundizzjoni illi l-farmhouse ma jistax ikollha footprint akbar minn 150 metri kwadri, daqs li jidher li gie mizmum fil-proposta maghmula. Kwindi l-osservazzjoni tat-Tribunal hi barra minn postha u errata.

Daqstant iehor hi gratwita u bla bazi legali l-kunsiderazzjoni tat-Tribunal illi hemm mezzi moderni teknologici kif ikollok sigurta fil-farm bla ma jkun hemm bzonn li tkun prezenti fizikament, jew li l-applikant ma

spjegax x'ser jaghmel bil-propjeta li ghandu prezentement sabiex jibda joqghod fir-razzett. Dan huwa konsiderazzjoni barra mill-parametri tal-policy u kif qalet din il-Qorti f'decizjonijet ohra, id-diskrezzjoni tat-Tribunal bhal tal-Qorti hi cirkostretta ghal dak li tippermetti l-ligi u mhux oltre. Il-policy ghandha diversi kondizzjonijiet dwar residenzi ohra tal-applikant, u l-kondizzjonijiet li jigu imposti marbuta mar-residenza gdida jekk jinghata permess ghal zvilupp. Dan hu dak li kellu jikkunsidra t-Tribunal.

Finalment il-Qorti tirrelewa illi jekk it-Tribunal jikkonsidra policies ohra irid jaghmilha cara kif u safejn dawn il-policies ghandhom ikollhom prevalenza fuq policy specifika li tittratta l-applikazzjoni mertu ta' dan l-appell.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-aggravji tal-appellant u tirrevoka kompletament id-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Mejju 2012, u tirrinvoja l-atti lura quddiem it-Tribunal biex jerga' jisma' u jiddeciedi l-appell skond il-ligi. Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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