



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 155/2012

Anthony Cauchi

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Cauchi tas-16 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li cahdet l-applikazzjoni PA 1472/09 full development permit to sanction stables;

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

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

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

B'applikazzjoni tad-9 t'April 2009 – Full Development Permission – PA 1472/09 fejn l-appellant, f' site at Triq Grunju, Qala, Ghawdex, talab:

“to sanction stables.”

Permezz t' rifjut mahrug fiz-17 ta' Marzu 2011 l-Kummissjoni dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relativ ghar-ragunijiet segwenti:

“1 The proposal is not acceptable since it does not meet criteria (e), (f) and (g) of Policy 4.3B of the Policy Guidance: Agriculture, Farm Diversification and Stables (2007); in that the site lies adjacent to a habitable dwelling, the proposal does not constitute an overall environmental improvement for the area and it is not adequately screened.

2 The proposed stables would lead to the loss of land from a registered arable farm and of land earmarked for intensive crop production in Map 14.8-A of the Gozo and Comino Local Plan. Thus the proposal runs against the provisions of Local Plan Policies GZ-AGRI-1 and GZ-AGRI-2.

3 The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.”

Permezz tal-appell tieghu l-Perit Saviour Micallef ghall-appellant ressaq l-aggravji tal-appellant kif gej:

“Reason for refusal 1 - AFDS (2007) Policy 4.3 B criteria e, f, and g

Policy 4.3 B requires that new stables have to satisfy the nine criteria (a-i). The site under consideration is located in area free from ecological or other constraints and in fact the directorate confirmed that proposal satisfies 6 of the nine criteria. Hence there is agreement of 6 criteria with disagreement on remaining 3, that is:

Criteria e- The site has to be within 300 m from the DZ and 100 m from an inhabited area. The site is 150 m from the development zone and hence satisfies this condition. A nearby single dwelling does not constitute an inhabited area and in any case the adjacent dwelling is covered with an enforcement. Hence this criteria is surely being respected.

Criteria f and g - The development has to be environmentally acceptable and screened so as not to have an adverse impact on the landscape. The front stables have been dug into the terrain so that they lie below the terrain level as shown on the section. They will moreover be screened with the proposed landscaping so that the impact on the landscape is minimal. It is relevant to note that greenhouses are permitted in this area together with ancillary storage rooms etc. Such structures will definitely have a massively greater impact on the landscape than these 4 stables lying below terrain level. We feel that these 2 criteria are also satisfied.

Reason for refusal 2 - GZ AGRI -2

GZ agri -2 only states that greenhouses shall be favorably considered if located in areas zoned as Intensive Agricultural Zones. This in view that such areas tend to " ... lend themselves to visual mitigation... ". the policy does not state that stables are not permitted in such zones. The site in question has poor agricultural value and was not used for the production of crops for human consumption. Its location within the IAZ should, to the contrary, be advantageous due to easier visual mitigation as in fact contemplated in same policy. The fact that proposal will

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not affect good agricultural land is confirmed by the fact the agricultural department recommended the proposal.

Reason for refusal 3 - Proposal is not essential in ODZ.

The AFDS policy permits and indeed requires that stables are located ODZ. Hence ODZ location is justified.

For these reasons we respectfully ask the Appeals Board to approve the proposed development. Payment of €186.35 & site plan are attached.”

Permezz tar-rapport taghha l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

“ 5.0 COMMENTS ON APPELLANT'S ARGUMENTS

5.1 The Authority has noted the arguments as brought forward in appellant's request for appeal and shall address these issues hereunder:

5.1.1 In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies.

5.1.2 However, after noting all of appellant's arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breach the relevant policies as will be discussed below.

5.1.3 Reference is made to the assessment as carried out in the DPAR and which included:

The NHAC stated - see minute 32 - that: "the site of the proposed stables is less than 100m from an existing dwelling and therefore sanctioning of these stables is not recommended since it goes against condition (e) of Policy 4.38 of the Policy and Design Guidance Agriculture, Farm Diversification and Stables.

The proposed development is not acceptable since the development lies close to a habitable unit and the proposal does not meet all the criteria for stables ODZ stipulated by the Policy Guidance: Agriculture, Farm Diversification and Stables (2007). In addition, the site falls within an area designated by the Local Plan for greenhouses.

-- Distance from dwellings

The arguments raised in the request for reconsideration at document 42 regarding the distance from inhabited area are not correct in that criterion 1 (e) of Policy 4.38 of the Policy Guidance AFDS 2007 specifically states that "the proposed development is located ... at least 100 metres away from adjacent dwellings or an inhabited area or an area which is intended for residential, residential institutions, ... etc". Therefore, the proposal does not meet the requirement of criterion 1 (e) since a habitable unit lies just 20 metres from the site.

-- Designation of the site

The fact that the site falls within an area zoned for Intensive Agriculture by the Local Plan does not automatically render the site developable for stables. The proposed development constitutes unjustified urban development ODZ and within an area identified as an Intensive Agricultural Zone (IAZ) according to the LP for Gozo and Comino; where greenhouses are permitted. Thus, the proposed stables would lead to the loss of agricultural land that has been earmarked for intensive crop production. Therefore, proposal also goes against the provisions of LP Policy GZ-AGRI-2 in that the proposal would lead to the loss of land that can be used for greenhouses.

-- Stables ODZ

The Policy Guidance AFDS (2007) does not require that stables are located ODZ, but allows this kind of development ODZ subject that all criteria are met. The

proposed development does not meet all the criteria, as explained in the following paragraphs, and therefore there is no justification for the proposed development ODZ. The proposal goes against SP Policies SET 11 and SET 12.

Principle of the development

Paragraph 4.1.2 of the Policy Guidance: Agriculture, Farm Diversification and Stables 2007 states '... the stabling of horses is not an agricultural use nor ancillary or related to such a use (it may be recreational or for business), so it differs in this way from other forms of development addressed in this document'. Thus, the proposal for stables on a site ODZ and within an Intensive Agricultural Zone cannot be assessed in terms of an agricultural development, but strictly in terms of the requirements established in Policy 4.38 of the Policy Guidance: Agriculture, Farm Diversification and Stables 2007.

-- Eligibility of proposal

The proposal for the construction of four stables and ancillary facilities relates directly to Policy 4.38 of the Policy Guidance for Agriculture, Farm Diversification and Stables. The policy states that "Permission will not be granted for the construction of new buildings or structures ODZ for the stabling of horses, except:" in three separate instances. Two instances (which are not applicable for this application) relate to:

1. the provision of stables within the curtilage of existing dwellings; and
2. those areas specifically identified within a Local Plan.

The case under consideration does not fall under any of these categories. A final exception to the restriction for new stables refers to those cases where all criteria set in paragraph 1 of the policy are adhered to. The assessment of this application is therefore based on the requirement of compliance with all the criteria set in paragraph 1 of the policy.

-- Agriculture, Farm Diversification and Stables (AFDS)
Policy 4.38

The following is a summary of the criteria required by paragraph 1 of Policy 4.38 of the AFDS, 2007, and the eligibility of applicant with each criterion.

[...]

It results that the proposal does not meet all the criteria of paragraph 1 of Policy 4.38 of the AFDS, but breaches criteria 1(e) and 1(f) since the site lies adjacent to a habitable unit covered by permission PA784/07 and therefore less than 100 metres from adjacent dwellings and inhabited areas. The proposed layout consisting of two blocks of structures within the site is not acceptable particularly due to the intensification of building along the street. The proposal does not constitute an environmental improvement of the surrounding. The proposal goes against criterion 1 (g) of Policy 4.38 since the two blocks of buildings are not adequately screened.

-- Visual impact

Overall the proposed development constitutes an adverse visual impact due to the structure abutting the street and the location of the stables at the rear of the site. The proposed design of the building is not considered to fit within a rural surrounding. Thus the proposal goes against the provisions of SP Polices RC02&4.

-- Landscaping

The proposed landscaping behind the rubble wall abutting the street is not considered to provide adequate screening to satisfy criteria 1 (f) and 1 (g) of Policy 4.38 of the Policy Guidance AFDS 2007 since the proposed development still consists of two separate blocks of buildings and it would not lead to a wider environmental benefit.

-- Other issues

Considering that the proposal does not meet the relative policy in principle, the issues regarding the rubble walls (and possible dismantling to create the access), materials used for access and the terms of reference for the required Waste Management Plan are not assessed.

In view of the above comments, this request for reconsideration should be dismissed.

5.1.4 As regards to the arguments of the appeal itself, the Authority disagrees with appellant's statement on various accounts and will be explained below.

5.1.5 Re first point of appeal: The Authority disagrees that the location of these stables (which were built without permit and their sanctioning is being requested in this appeal) permits the inclusion of stables in view of the residences in the vicinity. The policy clearly states that:

(e) 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, residential institutions, hotels, education, assembly or leisure buildings, or tourism development;

In this case, dwellings exists in the immediate vicinity and hence no stables could be allowed.

5.1.6 Re second point of appeal: Reference to reason no. 2 which cited policy GZ-Agri-2 is justified since this policy sets criteria which governs proposed greenhouses in such IAZ (Intensive Agricultural Zones) since such unjustified stables would consume land which could be developed for greenhouses (always with the necessary safeguard and criteria which could permit new greenhouses in such areas).

5.1.7 Re third issue in appeal: while it is correct that the Agri. Policy December 2007 does permit stables in ODZ, such permission does not automatically mean that any

stables in any location in ODZ should be outright approved irrespective of whether the provisions of the policy's detailed criteria list is adhered to or not. In this case, new stables (whether proposed or to sanction) must meet ALL the criteria of Policy 4.38 of the Agri Policy and if some are met, that alone cannot commit the Authority to permit such stables when other important criteria are clearly not met as per above detailed technical analysis.

5.1.8 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies. Hence, reference is made to the reports as presented by the Directorate and to the EPC's decision which dismissed this request for development since the EPC Board had based their decision on the valid relevant policies applicable to this area. Reference is also made to the detailed reports as included in the file and to the submissions (verbal and written) which will be presented during the appeals sittings.

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

L-Perit Saviour Micallef ressaq il-kummenti responsive tieghu ghall-appellant kif gej:

“Reason for refusal 1 - AFDS (2007) Policy 4.3 B criteria e. f. and 9

Policy 4.3 B requires that new stables have to located ODZ but must satisfy the nine criteria (a-i) listed in this policy. The site under consideration is located in area free

from ecological or other constraints and in fact the directorate confirmed that proposal satisfies 6 of the nine criteria. Hence there is agreement of 6 criteria with disagreement on remaining 3, that is:

Criteria e- The site has to be within 300 m from the DZ and 100 m from an inhabited area. The site is 150 m from the development zone and hence satisfies this condition. A nearby single dwelling does not constitute an inhabited area and in any case the adjacent dwelling is covered with an enforcement and hence cannot be legitimately considered. Hence this criteria is surely being respected.

Criteria f and g - The development has to be environmentally acceptable and screened so as not to have an adverse impact on the landscape. The front stables have been dug into the terrain so that they lie below the terrain level as shown on the section. They will moreover be screened with the proposed landscaping so that the impact on the landscape is minimal. It is relevant to note that greenhouses are permitted in this area together with ancillary storage rooms etc. Such structures will definitely have a massively greater impact on the landscape than these 4 stables lying below terrain level. We feel that these 2 criteria are also satisfied.

Compared with other sites with approved stables as listed below, this particular site lends itself to very effective screening.

Reason for refusal 2 - GZ AGRI -2

GZ agri -2 only states that greenhouses shall be favorably considered if located in areas zoned as Intensive Agricultural Zones. This in view that such areas tend to " ... lend themselves to visual mitigation ... ". the policy does not state that stables are not permitted in such zones. The site in question has poor agricultural value and was not used for the production of crops for human consumption. Its location within the IAZ should, to the contrary, be advantageous due to easier visual mitigation as in fact contemplated in same policy. The fact that

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proposal will not affect good agricultural land is confirmed by the fact that the agricultural department recommended the proposal.

MEPA is still arguing that the stables will take land suitable for greenhouses. It is noted that these stables are considered as a drop in an ocean. since they take a negligible portion from the whole large IAZ area. Had the IAZ area be developed into greenhouses, there will be enough to provide products for the entire islands.

Also relevant is the fact' that MEPA already approved stables in similar IAZ zones as listed below and hence the IAZ area cannot justify a refusal.

Reason for refusal 3 - Proposal is not essential in ODZ.

The AFDS policy permits and indeed requires that stables are located ODZ. Hence ODZ location is justified.

Finally we respectfully ask the following files to be attached for the tribunal's consideration since they consist of permits for similar stables on the same island of Gozo approved by MEPA under the same policy.

PA 5012/10 Munxar.
PA 1614/09 Qala
PA 5493/08 Sannat,
PA 5591/07 Xewkija

The last 2 approved in similar IAZ areas.”

Permezz tat-Tieni Statement taghha l-Awtorita' irrilevat:

“ The Authority has noted all the arguments as presented in the last submissions and states that:

Reference is made to Policy 4.38 of PDG - Agriculture, Farm Diversification and Stables, December 2007 and especially to para e:

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(e) 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, residential institutions, hotels, education, assembly or leisure buildings, or tourism development;

It is thus to be noted that the planning history of nearby 2 structures include:

PA 1473/09 - To sanction pool, additions and alterations to layout of existing house. (Mr. Anthony Cauchi)

PA 784/07 - To sanction additions and alterations to house and sanction demolished and reconstruction of room and carry out additions and alterations and pool.

(Mr. Anthony Cauchi)

PA 1473/09 - To sanction pool, additions and alterations to layout of existing house. (Mr. Anthony Cauchi)

As regards to para f of same policy:

(f) the development should result in a wider environmental benefit, including the improvement of degraded land within the site;

The Authority sees no benefit to the environment through the proposed stables since such stables do not in any way contribute to the agricultural activity of this area.

As regards to para g of same policy:

(g) the development is either adequately screened from views from outside the site by existing structures or planting or is proposed in the application to be adequately screened, so that it would not have an adverse impact on the landscape;

[...]

The above proposed plan clearly shows that whilst some form of landscaping is proposed, the particular layout and area, would still be highly visible from long distance views since the proposed planting of trees are on one side only and thus, the proposed stables would still be visible from all other angles.

As regards reason number 2, such proposed stables do constitute loss of arable land. Reason number 3 is also valid since in no way could stables be considered as essential to the surrounding agricultural activity since modern farming practice dictate that all the necessary work has long been transferred to modern machinery which surely do not require such extensive take-up (floors pace and massing) as is being proposed in this appeal.

Site is in close proximity to residents.

[...]

Proposed stables are screened by any nearby buildings.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the Board's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba, full development application, għall-issanzjonar ta' 4 stables, fodder store, manure clamp, access, paddock u landscaping. Il-bini huwa ta' sular wiehed u jokkupa circa 100 metru kwadru f' zewg blokki. Parti mill-bini qiegħed mat-triq waqt li parti oħra għandha setback mill-alignment tat-triq.

Skond l-Awtorita' is-sit mertu ta' dan l-appell jinsab ODZ f' zona mmarkata bħala Intensive Agricultural Zone fil-pjan lokali. Il-bini, li huwa ezistenti peress li l-izvilupp diga sar, jiffirma parti minn serje ta' bini li huwa bla permess. Iz-zewg siti adjacents huma residenzi li tagħhom qed jintalab

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sanzjonar u li originarjament kienu jikkonsistu f' sit wiehed (PA 3852/92 u PA 784/07) li wara xi zmien kien inqasam f' zewg zviluppi separati.

Inhareg enforcement kontra l-izvilupp kopert bl-applikazzjoni in ezami (ECF 503/09) u enforcements ohra hargu kontra l-izviluppi fis-siti adjacenti.

Din l-applikazzjoni giet rifjutata peress li:

- Il-proposta mhijiex in linea mal-kriterji (e), (f) u (g) tal-Policy 4.3B of the Policy Guidance: Agriculture, Farm Diversification and Stables (2007) peress li s-sit jinsab adjacenti ma residenza;
- Jaghti lok ghal telf ta' art agrikola;
- Imur kontra l-policies GZ-AGRI-1 u GZ-AGRI-2 tal-pjan lokali; u
- Il-proposta mhijiex acceppabbli in linea mal-policy RCO 4 tal-pjan ta' struttura.

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

L-appellant jissottometti li:

- Is-sit jinsab 150 metru l-bogħod miz-zona fabrikabbli peress li residenza wahda ma tikkostitwix zona residenzjali;
- L-istables sejrin ikunu zviluppati b'mod li jkunu screened u għalhekk l-impatt fuq il-landscape ikun wiehed minimu;
- Mhuwiex minnhu li l-policy GZ-AGRI -2 tipprojbixxi l-izvilupp ta' stalel;
- L-art in ezami mhiex tajba għall-agrikultura, tant hu hekk li d-Dipartiment tal-Agrikultura qed jirrakkomanda din il-proposta; u
- L-izvilupp ta' stables f'zona barra miz-zona fabrikabbli hija gustifikata u dan skond il-Policy and Design Guidance, Agriculture, Farm Diversification and Stables (2007).

L-Awtorita' tissottometti li:

- a) Tezisti residenza 20 metru l-bogħod mis-sit;
- b) Skond il-pjan lokali is-sit in ezami jaqa gewwa area li hija mmarkata bhala Intensive Agricultural Zone fejn

jistghu jinbnew is-serer u ghalhekk il-proposta tikser il-policies GZ-AGRI-1.

c) L-izvilupp ma' jissodisfax il-kriterji kollha necessarji biex ikun accettabbli li jinbena ODZ u ghalhekk dan jikser il-policies SET 11 u SET 12 tal-Pjan ta' Struttura peress li jikkostitwixxi zvilupp urban mhux gustifikat;

d) Dan l-izvilupp mhux ikkunsidrat li huwa attivita agrikola u ghalhekk jaghti lok ghal telf ta' art agrikola;

e) Jmur kontra l-policies GZ-AGRI-1 u GZ-AGRI-2 tal-pjan lokali;

f) L-izvilupp sejjer ikollu impatt estetiku negattiv peress li jaghti fuq it-triq; u peress li l-hajt tas-sejjeigh ezistenti ma jipprovdux screening accettabbli.

L-ewwel haga li trid tigi rilevata hi li skond il-policy 4.3B, il-rekwiziti elenkati fis-Section 1 ghandhom jigu sodisfatti kollha biex wiehed ikun eligibbli biex jaghmel dan l-izvilupp ODZ. Kif jidher mill-premess fil-kas in ezami l-appellant ma' jikkwalifikax skond il-kriterji (e), (f) u (g). Dan kien jafu l-appellant ghax issottometta pjanti dettaljati u allura bil-fors li dawn il-problemi gew individwati mill-bidu.

Skond is-subparagrafu 1(f), billi l-art fejn hu propost listess zvilupp taqa' f' zona ta' valur agrikolu, dan l-izvilupp ma jistax jitqies bhala wiehed li b'xi mod jew iehor sejjer jimmeljora l-uzu tal-art cirkostanti. Tant hu hekk li minhabba l-fatt li l-art tal-madwar hija art agrikola, f'kaz li dan l-izvilupp jigi permess, dan ikun ifisser li ser ikun qed jokkupa art li ghandha tali potenzjal.

Fic-cirkostanzi hu opportun li ssir riferenza ghall-istess Policy And Design Guidance on Agriculture, Farm Diversification and Stables, ta' Dicembru 2007. Il-paragrafu 4.1.2 qed jigi hawn taht riprodott:

“Except for the now probably rare use of horses in the course of agricultural activities, the stabling of horses is not an agricultural use nor ancillary or related to such a use (it may be recreational or for business).”

Il-paragrafu 4.2.2 tal-istess policy jghid hekk:

“... since the keeping of horses is not an agricultural activity, the erection of stables for horses is not a legitimate form of new development in the countryside.”

Id-dokument, Policy and Design Guidance, Agriculture, Farm Diversification and Stables (2007), bhall-policies l-oħra kollha johrogu mill-iStructure Plan li huwa il-pjan fundamentali fejn il-principji bazici dwar l-ippjanar ta' pajjizna saru ligi. Fir-realta', kieku wiehed kellu jara 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 fl-ODZ, huwa urbanizzanti, mhuiex ta' natura agrikola, m'hemmx bzonnu għall-gid komuni u muhiex ta' environmental benefit.

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

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li l-proposta in ezami tikser numru ta' policies tal-Pjan Strutturali, il-policies GZ-AGRI-1 u GZ-AGRI-2 tal-pjan lokali, il-kriterji (e), (f) u (g) tal-policy 4.3B tal-Policy and Design Guidance, Agriculture, Farm Diversification and Stables (2007), u numru ta' policies tal-Pjan ta' Struttura dan l-appell ma jirrizultax fondat u għallhekk ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal, għalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut mahrug mill-Awtorita', tal-applikazzjoni PA 1472/09, “ to sanction stables.”, taz-17 ta' Marzu 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Kienet il-kontenzjoni tal-appellant illi l-policy Agriculture, Farm Diversification and Stables tehtieg li stables jigu approvati f'ODZ kontra dak li qalet l-Awtorita u illi ngiebu bhala prova erba' premissi li jippruvaw dan fl-istess gzira ta' Ghawdex mertu ta' din l-applikazzjoni. It-Tribunal naqas li jikkonsidra dan l-argument u kwindi lanqas investiga kienx hemm il-commitment li kien qed jingieb bhala argument mill-appellant;
2. L-appellant talab li jaghmel nota ta' sottomissjonijiet wara li saret trattazzjoni orali u dan gie michud b'digriet tat-Tribunal bla ma gie motivat u b'hekk gie lez lilu d-dritt li jkollu raguni cara u motivata ghal dan ir-rifjut, u b'konsegwenza ta' dan l-argumenti orali tad-difensur tal-appellant ma gewx riflessi fid-decizjoni.

It-tieni aggravju

Dan l-aggravju ma fihx mertu. Jirrizulta mill-atti illi l-partijiet inghataw l-opportunita li jressqu l-argumenti taghhom bil-miktub waqt is-smigh tal-appell u in oltre inghataw l-opportunita u fil-fatt trattaw l-appell quddiem it-Tribunal u l-kaz gie differit ghas-sentenza minghajr ebda riserva, kondizzjoni jew oggezzjoni. Ma jistax l-appellant jivvanta xi nuqqas ta' smigh xieraq ghax hass li wara li l-kaz gie differit ghas-sentenza irid jerga' jiftah il-kaz biex jaghmel sottomissjonijiet bil-miktub. La darba vertenza tkun giet differita ghad-decizjoni huma eccezzjonalment ic-cirkostanzi li jistghu jaghtu lok ghal ftuh mill-gdid tal-proceduri anki jekk hu biss biex jigu prezentati sottomissjonijiet ulterjuri, din id-darba bil-miktub. L-accettazzjoni tal-partijiet li kaz jmur ghad-decizjoni jfisser li l-atti huma konkluzi u maghluqa definittivament hlief kif intqal ghal cirkostanzi eccezzjonali, li bl-ebda mod ma rrizultaw minn qari ta' dan l-aggravju. Il-fatt li t-Tribunal ma ggustifikax ic-cahda tat-talba mhix ta' rimproveru ghat-Tribunal billi l-gustifikazzjoni hi implicita mill-fatt innifsu li l-partijiet qablu li l-appell jigi differit ghad-decizjoni u ma ngieb xejn gdid fir-rikors li jimmeritaw il-ftuh mill-gdid tal-proceduri. Ix-xewqa tal-appellant, kif jidher mir-rikors tieghu tal-10 ta' April 2012, li jixtieq jaghmel sottomissjonijiet bil-miktub wara li saret it-trattazzjoni orali

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setgħet saret seduta stante u mhux wara l-qbil li l-kaz jigi differit għad-decizjoni.

Kwindi l-Qorti tqis li ma hemmx gustifikazzjoni f'dan l-aggravju.

L-ewwel aggravju

Dan l-aggravju hu aktar serju u hu maqsum fi tnejn. L-ewwel parti tiegħu mhix gustifikata għaliex it-Tribunal ta ragunijiet bazati fuq il-policy Agriculture, Farm Diversification and Stables u qal li għalkemm stables huma permissibbli f'ODZ pero iridu jissodisfaw il-kriterji kollha skond il-policy 4.3B section 1 u f'dan il-kaz kienet il-fehma tiegħu li dan l-izvilupp hu mankranti fil-kriterji (e), (f) u (g). Din hi interpretazzjoni ta' policy li taqa' fil-parametri tad-diskrezzjoni afdana lit-Tribunal li din il-Qorti mhix ser tissindika jekk mhux għal ragunijiet serjissimi li ma jidherx li hu l-kaz.

Pero dak li jinkwieta lil Qorti hu illi l-appellant kien ressaq argumenti ohra għal konsiderazzjoni tat-Tribunal cioe li permessi simili elenkati mill-istess appellant kienu ngħataw f'siti ohra f'Għawdex u kif dawn il-permessi kienu jikkostitwixxu commitment mill-Awtorita fuq applikazzjonijiet simili. Tali kwistjoni li hi wahda ta' sustanza kellha tigi mehuda in konsiderazzjoni mit-Tribunal u wara li jagħmel l-argumenti tiegħu fuq l-aggravju jichad jew jilqa' tali aggravju. Pero f'dan il-kaz hareg car hafna li t-Tribunal injora l-kwistjoni kif dal resto jidher li għamlet l-Awtorita fil-mori ta' appell.

Huwa pacifiku illi din il-mankanza tikkostitwixxi bazi legali għar-revoka tad-decizjoni meta kwistjoni sostantiva u mhux merament periferali u li ma tolqotx is-sustanza ma tigix ikkunsidrata mit-Tribunal. Din il-Qorti mhix qed tghid b'daqshekk illi l-aggravju tal-appellant hu fondat izda biss li kien jimmeritah jigi kkonsidrat u deciz biex jagħti certezza lil gudikat u risposta studjata għall-aggravju mqajjem.

Għal din ir-raguni biss l-appell jisthoqqlu jigi milqugh.

Decide

Ghalhekk il-Qorti, limitatament ghal dak deciz aktar il-fuq, qed tilqa' l-appell ta' Anthony Cauchi, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012, u tibghat lura l-atti lit-Tribunal biex jerga' jiddeciedi l-appell fid-dawl ta' din is-sentenza. Bl-ispejjez kontra l-Awtorita.

< Sentenza Finali >

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