



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-22 ta' Jannar, 2014

Appell Civili Numru. 170/2012

Philip Cortis

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Philip Cortis tat-22 ta' Novembru 2012 mid-decizjoni tat- Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 fejn it-Tribunal laqa' l-appell ta' Philip Cortis in parte;

Rat ir-risposta tal-Awtorita illi ssottomettiet fost affarijiet ohra illi l-appell mhux legalment sostenibbli peress illi l-appellant qed titlob lil Qorti tirriforma d-decizjoni tat-Tribunal mentri dan mhux fil-poter tal-Qorti izda semmai jekk l-appell hu fondat fuq punt ta' ligi tirrimetti l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell;

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

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

Ikkunsidra:

B'applikazzjoni tat-2 t'Ottubru 2007 – Full Development Permission – PA 06040/07 fejn l-appellant, f' 1, Chicken Farm, Triq 12 ta' Mejju, Zebbug, Malta, talab:

“Amendments to approved PA 3115/05 (Amendments to approved PA 5266/97 and extension to existing chicken farm).”

Permezz ta' rifjut mahrug fl-14 ta' Jannar 2011 l-Awtorita' cahdet it-talba għall-hrug tal-permess relattiv għar-ragunijiet segwenti:

“1 The proposal, in particular the first floor 150m²+ 'office' use, 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. A much smaller office, restroom and sanitary room can be incorporated at ground or basement level. The scale, planimetry and uses proposed in this first floor are utterly unjustified for the needs of a poultry farm and can in no manner be considered as necessary or acceptable.

2 The office development at first floor level, besides being visually intrusive, is excessive in scale. Furthermore, it is not located in an appropriate location within the farm's existing structure and in the context of the overall height, its proposed development is not acceptable. The heightened ground floor level alone already detracts from the visual amenities of the farm's surrounding area. The manure clamp as constructed is more intrusive. The landscaping scheme, as approved in PA3215/05 has not been adhered both in terms of number of trees planted

and scant screening along the back sides of the farm. Consequently, the farm proposal is seen as bulky and visually intrusive in terms of scale, massing and height even when compared to the historical chapel nearby and the wider open countryside surrounding it. The proposal hence contravenes Structure Plan policy RCO 4 and the Policy & Design Guidance on Agriculture, Farm Diversification and Stables policy 1.3A which does not allow development that has an unacceptable visual impact on the countryside or where the development intrudes onto a pleasant view.

3 The landscaping scheme, as approved in PA3215/05 has not been adhered both in terms of number of trees planted and scant screening along the back sides of the farm. Consequently, the proposal cannot be considered further and this in terms of policy Circulars 2/96 and 2/98."

Permezz tal-appell tieghu l-perit Robert Musumeci ressaq l-aggravji tal-appellant kif gej:

"5. Ir-ragunijiet huma s-segwenti:-

a. Illi jrid jinghad bla tlaqliq li l-Kummissjoni kienet diga ivvutat favur din il-proposta dak in-nhar tas-sittax ta' Settembru 2009. Fil-fatt fil-minuti tal-file hemm citat "In view of the existing permit PA 3215/05, the Board agrees in principle with the proposal." (ara Dokument RM2)

b. Illi minghajr pregudizzju ghas-suesposst, dwar l-ewwel raguni tar-rifjut, u cioe' "The proposal, in particular the first floor 150m²+ 'office' use, does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests ". Irid jinghad li ghal kuntrarju ta' dak eronjament citat mill-Awtorita, l-area kumplessiva ta' l-ufficju ma tammontax ghal 150 metri kwadri u dan ghaliex jirrizulta bic-car li fl-ahhar pjanti li kienu prezentati quddiem il-Kummissjoni, l-area kumplessiva ta' l-ufficju kienet ridotta ghal 75 metri. In oltre jrid jinghad li dan l-ufficju hu ferm bzonnjuz ghall-operat ta' din l-impriza, kif indikat l-istess appellant fl-ittra tieghu lill-Kummissjoni datata 20 ta' Dicembru 2010

(Dokument RM3) Hawnhekk ta' min ifakkar li din l-intrapriża tikkonsisti f'wahda mill-akbar industrij tal-poultry f'pajjizna. Fost dawk li jagħmlu uzu regolari minn dan l-ufficju hemm receptionist u skrivan (accountant), osservaturi f'isem l-Unjoni Ewropeja, tims ta' medici, klijenti, ufficjali ta' Dipartimenti tal-Gvern, suppliers ta' materjal u maintenance personnel. Naturalment, il-haddiema li joperaw fil-kumplement tal-kumpless juzaw din il-parti tal-bini sabiex jistivaw hwejjeg personali tagħhom.

Illi di piu, l-esponenti jissottometti li l-"first floor" in kwistjoni ma jidher minn imkien u dan peress li dan inbena fil-volum tal-kumpless tal-bini ġia approvat f' PA3215/05, u dan kif ikkonferma l-istess Bord meta sostna li "In view of the existing permit PA 3215/05, the Board agrees in principle with the proposal."(ara Dokument RM2)

b. Illi dwar it-tieni raguni tar-rifjut, l-esponenti jissottometti li għal kuntarju ta' dak li qed tghid l-Awtorita, "the office development at first floor level" MHUWIEX" visually intrusive u excessive in scale" u dan peress li kif diga ntqal, dan l-ufficju ma jidher minn imkien u mhux se jikkostitwixxi zieda sterna oltre il-volum tal-bini esistenti. In oltre, mhuwiex minnu li "The landscaping scheme, as approved in PA3215/05 has not been adhered both in terms of number of trees planted and scant screening along the back sides of the farm" u dan kif jirrizulta fil-pjanti sottomessi għall-kunsiderazzjoni. In oltre, mhuwiex minnu li " the farm proposal is seen as bulky and visually intrusive in terms of scale, massing and height even when compared to the historical chapel nearby and the wider open countryside surrounding it" u dan għaliex il-massa tal-bini diga kienet approvata bil-permess PA3215/05. Lanqas hu minnu li "the manure clamp as constructed is more intrusive", għaliex jekk xejn il-manure clamp kif in effetti mibnija hi iżgħar minn dik approvata, u dan barra mill-fatt li din se tkun mgħottija bil-landscaping.

c. Illi dwar it-tielet raguni tar-rifjut, u cioe' "The landscaping scheme, as approved in PA3215/05 has not been adhered both in terms of number of trees planted and

scant screening along the back sides of the farm" irid jinghad li l-proposta odjerna tahseb sabiex tinkorpora landscaping scheme simili ghal dik gia approvata fl-imsemmi permiss PA3215/05.

6. Illi l-files li rrefera ghalihom l-appellant ghandhom jigu verifikati mill-Bord billi l-istess Awtorita' ghandha tigi ordnata li tipprezenta l-files msemmija minnu sabiex it-Tribunal ikun jista' jiehu konjizzjoni ta' l-istess u dan fl-interess tal-gustizzja a bazi tal-principju naturali li l-gustizzja mhux biss trid issir izda trid tidher li qed issir ukoll. Dan qed jinghad ukoll in linea mal-principju naturali ta "audi alteram partem". "

Permezz tar-rapport taghha l-Awtorita' wiegbet inter alia kif gej:

"5.2 The Directorate has the following comments to make:

5.2. 1 Preliminary Plea - Illegal Development, No Landscaping Scheme employed On a preliminary point, this Tribunal cannot hear and decide on the merits of this appeal since illegalities are present on site and are not included for sanctioning in this application. Hence the provisions of Article 14 of LN 514/10 apply.

The landscaping scheme implemented in previous permit PA 3215/05 was originally imposed against a Bank Guarantee in original permit PA 5266/97 as a planning gain to reduce the visual impact of the development approved Such landscaping had not yet been carried out on site at the decision stages of PA 3215/05 in 2006, and as a binding factor for approval it was decided by the Board that such landscaping schemes were to be extended as a condition of permit since their presence was necessary to mitigate the development to the surrounding natural landscape. There were no contestations or appeals to these obligations by the applicant, and such landscaping was accepted by Mr. Cortis.

A Bank Guarantee was also imposed as a condition of the permit, where the sum of €2329.37 (Lm1000) was tied for a period of one year against the completion of the landscaping scheme. The terms of this Bank Guarantee were not adhered to, since during this time the landscaping as imposed in permit was again ignored by the appellant.

The proposal at hand (PA 6040/07) seeks further extension to the existing farm, and at this stage the appellant is remarking that the development as proposed will include a landscaping scheme, and that therefore no breach of previous condition is being made. However, from previous history on site and intentions of the appellant, it is clear, that these suggestions are merely an end to a means to counter-argue the reason for refusal without genuine intention of following through with such commitments. The Directorate kindly requests that the Tribunal takes into consideration that the appellant has twice failed to properly implement the landscaping scheme imposed; even accepting to lose money tied down by Bank Guarantee, and that the decision is dismissed on preliminary plea since the development runs counter to Condition 5 of permit PA 3215/05 and hence the provisions in Article 14 of LN. 514 of 2010 (the regulation superseding PA Circular 2/96) apply.

5.2.2 Board Meeting in September 2009

As mentioned in the appellant's comments for appeal, the Board did meet to discuss the proposed development in September 2009. Notwithstanding this, the Authority wish to bring to the attention of the Tribunal that no vote was taken then. The appellant's attempt to justify the proposal by insinuating that commitments had already been made by the Board in favour of the proposed development is entirely unjustified.

5.2.3 Office Space Proposed

In contestation to the first reason for refusal, the appellant presented a copy of the DPAR and insisted that although

the proposed 150m² office space is essential for day-to-day needs of effectively running the chicken farm, this area had been reduced to 75m² prior to decision.

The Authority would like to notify that the copy of the DPAR presented by the appellant is not the latest report and therefore it does not represent the entire process. In the final entry of the Notes to Committee, i.e. the Planning Directorate's comments prior to decision (Doc 98 in PA file), the EPC was informed that the office space has been limited to 75m², and that this argument was also taken into consideration at planning decision stage of this application.

5.2.4 Impact of Development

From the site history explained in para. 3.1 above, it is clearly shown that the use of the site as a chicken farm prior to the issue of original permit (2005) as an Enforcement Notice was registered against Mr. Cortis in 2001. Upon approval of PA 5266/97 in 2005, the chicken farm had an area of 777m². Following an extension in PA 3215/05 which increased the floorspace to over 1300m², the appellant is now seeking to further extend the chicken farm to approx. 1600m².

Considering that the site is situated outside development zone, such drastic increases in urban development cannot be introduced to the natural landscape without being visually intrusive or excessive in scale as claimed by appellant. It is clear that this application constitutes a piecemeal development which started illegally over ten years ago, and has already resulted in a full-scale industry which according to appellant's comments requires the an additional office space of 150m² (which was later reduced to 75m²) to cater for the daily management of the farm.

Through such a statement by appellant, it is also clear that the farm not only employs a significant number of persons on site, but that further extension of the floorspace would place further strain of the surrounding agricultural landscape and require the necessity of

introducing further urban-type infrastructure to cater for the needs of such a demanding entity.

The Directorate respectfully wish to remark to the Tribunal that in accordance with the Local Plan, the site in concern is designated as an Aquifer Protection Zone with surrounding rural characteristics. The approved farm is considered to be large enough to generate impacts equated with a major industrial activity, so much so that the introduction of an extensive landscaping scheme was deemed necessary.

The Directorate retains all the reasons for refusal and recommends a dismissal on the basis of arguments raised against the comments of appellant.”

Permezz ta' nota l-perit Robert Musumeci wiegeb kif gej:

“1. Illi minkejja li l-esponenti jhoss li huwa ma jistax isejjes dan l-appell kif jixtieq, in vista ta' dak li huwa issoleva fis-suespost, huwa ser jghaddi sabiex minghajr pregudizzju jaghmel is-segwenti osservazzjonijiet in segwitu ta' l-ittra ta' l-Awtroita li ggib id-data tal- 5 ta' Mejju 2011.

Illi preliminarjament, l-esponenti jirrimarka li d-deskrizzjoni ta' l-applikazzjoni kif murija fir-rifjut li jgib id-data ta' l-14 ta' Jannar 2011 hi zbaljata peress li d-deskrizzjoni kienet giet emendata, skont struzzjonijiet moghtija, lill-esponenti mill-istess Kummissjoni waqt isseduta li nżammet nhar il-15 ta' Dicembru 2010. Fil-fatt, fir-risposta tieghu bid-data tas-16 ta' Dicembru 2011, l-esponenti emenda d-deskrizzjoni hekk kif gej: Amendments to approved PA 3215/05. (Amendments to approved PA5266/97 and extension to existing chicken farm) Proposed sanctioning of cesspit. Proposed sanctioning of manure clamp. Proposed sanctioning of structural works consisting of internal and external alterations to built structures. Proposed sanctioning of construction to serve as supporting facilities.) Proposed sanctioning of concrete platform, displacement of silos, generator room and changes in aperture materials. Proposed changes to approved landscaping.

Illi huwa pacifiku li s-sit huwa munit bil-permess PA3215/05 sabiex proprju f'dan is-sit setgha ikun kostruwit poultry form skont standards stabbiliti. Filfatt, il-proposta odjerna tikkonsisti frilokazzjoni ta' numru ta' strutturi gia approvati permezz ta' PA3215/05 (u cioe' il-manure clamp u ic-cesspit li kienu gia approvatij u introduzzjoni ta' mezzanin fil-bini approvat (fuq in-naha li tikkonfina mat-triq) u dan sabiex ikunu " provduti facilitajiet bzonnjuzi ghall-operat tal-farm, liema facilitajiet huma ikoll bzonnjuzi kif kien diga spjegat fir-rikors promotur u affermat aktar 'l isfel. Di piu' dan il-mezzanin jew intermediate floor (li l-Awtorita qed issejnhu first floor) se jkun akkomodat fil-volum tal-bini gia approvat u allura mhu se jidher minn imkien.

Illi b'riferenza ghal dak li ntqal fir-rapport ta' l-Awtorita, u cioe' "5.2.1 No landscaping scheme employed.... The Tribunal cannot hear and decide on merits of this appeal since illegalities are present on site and these are not included in the application development runs counter to Condition 5 of permit PA3215/05 ". L-esponenti preliminarjament jissottometti li l-applikazzjoni tinkludi wkoll Proposed changes to approved landscaping. Di piu' ghal kuntrarju ta' dak li qed tallega l-Awtorita appellata, l-appellant essenzjalment implimenta il-landscaping scheme kif kien rikjest f' PA3215/05 u fil-fatt din kienet wahda mir-ragunijiet ghalfejn l-esponenti insista li ghandu jsir access fil-mori ta' dawn il-proceduri. (Dokument RM23051101). Fil-verita' it-tibdil bejn il-landscaping scheme kif approvat f' PA3215/05 u dak li jesisti fuq il-post " huwa minimu u qed jigi ikkumpensat minn thawwil ta' sigar ohrajn kif muri fil-pjanti proposti ma l-applikazzjoni mertu ta' dan l-appell. (Dokument RM23051/01)

Illi b'riferenza ghal dak li ntqal fir-rapport ta' l-Awtorita, u cioe' 5.2.2 Board Meeting in September 2009, The Board did meet to discuss the proposed development No vote was taken then. The appellant's attempt to justify the proposal by insinuating that commitments had already been made by the Board in favour of the proposed development is entirely unjustified ... l-esponenti jerga'

jsostni li l-Kummissjoni kienet diga ivvutat favur din il-proposta dak in-nhar tas-sittax ta' Settembru 2009. Fil-fatt fil-minuti tal-file hemm citat "In view of the existing permit PA 3215/05, the Board agrees in principle with the proposal." (ara Dokument RM2 mar-rikors promotur) Dak li allura qed isostni l-esponenti bl-ebda mod ma jista jitleqqi bhal "insinuation" ghalix kien il-Bord stess li esprima ruhu favur din l-applikazzjoni u tali dikjarazzjoni tinsab miktuba iswed fuq l-abjad fil-file mertu ta' dan l-appell. (ara Dokument RM2 mar-rikors promotur).

Illi b'riferenza ghal dak li ntqal fir-rapport ta' l-Awtorita, u cioe' 5.2.3 The EPC was informed that the area has been reduced to 75 square metres and that this argument was taken into consideration at planning decision stage of this application, l-esponenti jirrimarka li din id-dikjarazzjoni iggib fix-xejn l-ewwel raguni fir-rapport tar-rifjut fejn 1-Awtorita iddeskriviet l-izvilupp tal-facilitajiet proposti bhal "the first floor 150m²+ 'office' use" u dan meta huwa car u manifest li dan mhux minnu kif issa qed tiddikjara l-Awtorita stess peress li l-area ta' l-offices naqset .

Illi b'riferenza ghal dak li ntqal fir-rapport ta' l-Awtorita, u cioe' "5.2.4 Following approval of floorspace of 1300 square metres, the appellant is now seeking to further extend the chicken by 1600 square metres" l-esponenti jirrive li dan il-fatt assolutament ma jirrizultax. Minn analizi tal-pjanti kif approvati f' PA3215/05 u il-proposta mertu ta' dan l-appell, jirrizulta li l-footprint approvat f' PA3215/05 jekwivalixxi ghal circa 1319 metri kwadri filwaqt dak propost fl-applikazzjoni odjerna jammonta ghal ftit anqas, precizament 1313 metri kwadri. (Dokument " RM23051102).

Illi dwar dak citat mill-Awtorita, u cioe' 5.2.4 It is clear that this application constitutes a piecemeal development which started illegally over ten years ago, and has resulted in a full scale industry l-esponenti jissottometti bir-rispett kollu li l-volum tal-bini u l-iskala ta' l-operat kif approvati mill-MEPA stess fil-permess PA3215/05 mhux se jinbidlu permezz ta' l-applikazzjoni odjerna. Permezz ta' din l-applikazzjoni, l-appellant sempliciment qed jitleqqi li

jissanzjona tibdiliet li kienu iddetatti mill-esigenzi ta' l-operat innifsu, u dawn essenzjalment jinkludu rilokazzjoni ta' strutturi gia approvati permezz ta' PA3215/05, izda li in effetti nbew f'posizzjoni ftit differenti minn dik approvata. Jinghad li ddifferenza magguri bejn din l-applikazzjoni odjerna u PA3215/05 gia approvata tikkonsisti fl-introduzzjoni ta' l-intermediate floor (dak li l-Awtorita qed issejjah first floor) fejn qed ikunu proposti ufficini u facilitajiet ancillari sabiex ikunu akkomodati persuni bhall-iskrivani (accountant), osservaturi f'isem l-Unjoni Ewropeja, it-tims ta' medici, il-klijenti, l-ufficjali ta' Dipartimenti tal-Gvern, is-suppliers ta' materjal u l-maintenance personnel- persuni li bil-fors iridu jigu fuq il-post u allura ma hemm ebda gwadann billi dawn ma jkollhomx facilitajiet adegwati fejn ikunu akkomodati. In oltre, l-esponenti jfakkar li dan il-"first floor" ma jidher minn imkien u dan peress li dan inbena fil-volum tal-kumpless tal-bini gia approvat f' PA3215/05. Wiehed ma jarax ghalfejn li l-Awtorita qed issiba daqshekk bi kbira li jigu introdotti dawn il-facilitajiet li mhu se jidhru minn imkien meta kienet hi stess li hames snin ilu harget il-permess PA3215/05 sabiex proprju f'dan is-sit tkun sitwata din l-industrija.

Illi dwar dak citat mill-Awtorita, u cioe' 5.2.4 It appears that farm not only employs a significant number of persons on site but that further extension of the floorspace would place further strain on the surrounding agricultural landscape l-esponenti jfakkar li l-ufficini proposti ma jidhru minn imkien u dan peress li dawn inbnew fil-volum tal-kumpless tal-bini gia approvat f'PA3215/05, u allura mhuwiex minnu li dawn se jimpattaw fuq il-landscape. Il-proposta odjerna tahseb sempliciment sabiex jinbena mezzanin fi spazju esistenti, u dan minghajr ma jikber il-volum tal-bini approvat bil-permess. Di piu' l-operat fuq is-sit (poultry farm) kien stabbilit u approvat mill-Awtorita stess u dak propost mill-appellant mhu bl-ebda mod se jzid fl-iskala ta' l-operat gia munit bil-permess. L-esponenti jfakkar li l-appellant investa miljuni ta' ewro sabiex dan il-poultry farm ikun jista' jopera skont standards Ewropej stabbiliti. L-ispace li huwa qed jipproponi huma bzonnjuzi sabiex huwa jkompli jiggstixxi l-operat tieghu b'mod

professjonali u effikaci, u dan kif stqarr is-segretarju permanenti fil-Ministeru għall-Ambjent u l-Affarijiet Rurali. (Dokument RM23051/03)

Illi dwar dak citat mill-Awtorita, u cioe' 5.2.4 The site is designated as an Aquifer Protection Zone ... approved farm is considered to be large enough to generate impacts equated with a major industrial activity ... so much that the introduction of extensive landscaping scheme was deemed necessary, l-esponenti jerga' jissottometti li għal kuntrarju ta' dak li qed tallega l-Awtorita appellata, l-appellant ifakkar li huwa essenzjalment implimenta landscaping scheme kif kien rikjest (salv għal xi tibdil zghir li qed jintalab li jkun sanzjonat permezz ta' l-applikazzjoni odjerna) u fil-fatt din kienet wahda mir-ragunijiet għalfejn l-esponenti insista li jsir access fil-mori ta' dawn il-proceduri. (Dokument " RM23051/01) Fil- fatt, it-tibdil bejn il-landscaping scheme kif approvata f' PA3215/05 u dak li jesisti fuq il-post huwa minimu u kien diga ikkumpensat minn thawwil ta' sigar kif muri fil-pjanti proposti ma l-applikazzjoni mertu ta' dan l-appell."

Permezz ta' nota ulterjuri l-perit Robert Musumeci wiegeb kif gej:

"1. Illi l-fatti kronologici li taw lok għad-decizjoni finali ta' l-EPC dak in-nhar tat-13 ta' Jannar 2011 huma s-segwenti:

2. Illi permezz ta' ittra bid-data tas-16 ta' Dicembru 2010, il-Kummissjoni tablet lill-esponenti jissottometti is-segwenti informazzjoni: "Further to its discussion of the application referred to above by the Environment and Planning Commission (EPC) in its meeting of 15 December 2010, you are requested to submit: fresh plans with reduced office space as indicated in DPA report; revised plans where elevation, plans and sections tally as regards height, extent and conventional colouring; revise proposal to sanction manure clamp which has already been constructed not according to previous approved plans and any, other changes and to add tree screening around whole site boundary."

3. Illi in odempjiment ma dak sollevat mill-EPC fl-ittra suespsota tas-16 ta' Dicembru 2010, l-esponenti issottometta pjanti godda flimkien ma "covering letter" bid-data tas-16 ta' Dicembru 2010. Fl-istess covering letter, huwa isspecifica l-illegalitajiet kif kien mitlub minnu, u dan billi talab li l-proposta tigi emendata hekk kif gej: Amendments to approved PA 3215/05. (Amendments to approved PA5266/97 and extension to existing chicken farm) Proposed sanctioning of cesspit. Proposed sanctioning of manure clamp. Proposed sanctioning of structural works consisting of internal and external alterations to built structures. Proposed sanctioning of construction to serve as supporting facilities). Proposed sanctioning of concrete platform, displacement of silos, generator room and changes in aperture materials. Proposed changes to approved landscaping (ara pagna 4 tal-covering letter bid-data tas-16 ta' Dicembru 2010). In oltre, huwa accenna li l-erja ta' l-"office space" ma kenitx se teccedi il-150 metri kwadri, u allura l-ewwel raguni tar-rifjut kienet se tkun indirizzata peress li l-erja proposta ma kenitx ekwivalenti ghal "150 +" izda ghal "150" metri kwadri. Din l-informazzjoni waslet ghand l-Awtorita tromite is-sistema ta' l-eapps nhar it-18 ta' Dicembru 2010 fil-hin tas-6:52 pm, u dan kif ben muri permezz ta' Dokument RM27111/01.

4. Illi sussegwentement, huwa issottometta informazzjoni ulterjuri permezz ta' ittra datata 20 ta' Dicembru 2011, fejn talab li jirriduci l-erja ta' l-"office space" ghal 75 metri kwadri u dan bl-intiza li jkun aktar facli li jinhareg il-permess. Din l-informazzjoni waslet ghand l-Awtorita tramite is-sistema ta' l-eapps nhar il-21 ta' Dicembru 2010 fil-hin tas-14:19 pm, u dan kif jirrizulta minn Dokument RM26111102.

5. Illi eventwalment id-Direttorat ipprocessa din l-informazzjoni u hejja draft list of conditions in bazi ta' l-ahhar pjanti li gew sottomessi nhar il-21 ta' Dicembru 2011, fejn appuntu gew immarkati bhala Drawing Numbers 1B/97B/97C/97D/97E fil-file PA 6040/07 meritu ta' dan l-appell. (ara l-ewwel paragrafu tid-Dokument RM 25111/03)

6. Illi sussegwentement l-applikazzjoni mertu ta' l-appell odjern giet deciza nhar it-18 ta' Jannar 2011 in bazi tal-pjanti Drawing Numbers 1B/97B/97C/97D/97E elenkati fid-draft list of conditions suriferiti.

7. Illi sintendi, dan l-appell huwa ibbazat fuq il-pjanti sottomessi ghall-approvazzjoni, u cioe Drawing Numbers 1B/97B/97C/97D/97E elenkati fid-draft list of condition, li kopja taghhom giet debitamet annessa flimkien mar-rikors promotur ma dan l-appell.”

Permezz tat-tieni rapport taghha l-Awtorita' wiegbet inter alia kif gej:

“The Tribunal decided, during the appeal hearing held on 24th November 2011, to refer back the PA file to the EPC for them to clarify on which proposal description and drawings did they refuse the application.

The EPC have clarified that they decided the application on the drawings 978 - 97E. This is the last set of valid drawings preceding the revised drawings submitted by the appellant following the request by the EPC and on which the DPAR was based. The EPC also clarified with the Post Recommendation Team that the revised drawings consisted of changes that they did not request and thus they could not be taken into consideration.

In view of this clarification, the Authority is kindly requesting the Tribunal to reappoint the appeal for the continuation of the hearing. ”

Permezz ta' nota l-perit Robert Musumeci wiegeb inter alia kif gej:

“1. Illi permezz ta' din in-nota l-appellant jirrileva is-segweni finali kunsiderazzjonijiet:

1.1 Illi kif kien ikkonfermat mill-Awtorita appellata fl-ittra taghha tas-16 ta' Frar 2011 (recte 2012), il-pjanti li gew sottomessi ghall-approvazzjoni tal-Kummissjoni (dak in-

nhar tat-18 ta' Jannar 2011) huma dawk markati 97B sa 97E fil-process. L-appellant mhuwiex qed jikkontesta dan stante li dawn il- pjanti huma proprju l-ahhar pjanti li huwa issottometta fil-process ta' l-applikazzjoni.

1.2 Illi flimkien ma din in-nota huwa qed jissottometti dokument rilaxxat minn Dr Duncan Chetcuti Ganado, Veterinary Officer fid-Direttorat tar-Regolazzjoni Veterinarja, liema dokument igib id-data tat- 3 ta' Mejju 2012. Dan id-dokument, jelenka fid-dettall ir-ragunijiet ghaliex l-applikazzjoni mertu ta' dan l-appell ghanda tigi ikkunsidrata b'mod, favorevoli u dan dejjem fil- kuntest tal-pjanti 97B sa 97E imsemmija aktar 'il fuq. Fil-fatt, kopja ta' dawn l-istess pjanti kienu "endorsed" minn Dr Chetcuti Ganado. (Dokument RM7051201). ”

Permezz tat-tielet rapport taghha l-Awtorita' wiegbet inter alia kif gej:

“1.0 COMMENTS ON APPELLANT'S ARGUMENTS

1.1 The appellant submitted on the 11th May 2012 a document by the Veterinary Regulation Directorate recommending positively this application.

1.2 The Authority has the following comments to make:

1 The clearance of the Veterinary Regulation Directorate does not imply that this development satisfies criteria of Policy 2.3A: Existing Livestock Farm Units of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007);

2 The proposal, in particular the first floor and 'office' use, 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;

3 The office development at first floor level, besides being visually intrusive, is excessive in scale. Furthermore, it is not located in an appropriate location within the farm's existing structure and in the context of the overall height, its proposed development is not acceptable. Consequently, the farm proposal is seen as bulky and visually intrusive in terms of scale, massing and height even when compared to the historical chapel nearby and the wider open countryside surrounding it. The proposal hence contravenes Structure Plan policy RCO 4 and the Policy & Design Guidance on Agriculture, Farm Diversification and Stables policy 1.3A which does not allow development that has an unacceptable visual impact on the countryside or where the development intrudes onto a pleasant view.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghal emendi ghall-permess PA 3215/05 u estensjoni ghal chicken farm ezistenti.

It-tibdil propost jinkludi:

- Sanzjonar ta' zieda fl-gholi intern tal-bini u zieda fil-livelli tal-art tal-bini (raised ground floor);
- Tibdil fil-pozizzjoni u d-daqs tal-manure clamp;
- L-introduzzjoni ta' tliet silos fuq is-sit;
- Tibdil fil-konfigurazzjoni tal-bini;
- Sanzjonar ta' rampa u tarag intern; u
- Il-bini ta' zewg ufficcji fuq l-ewwel sular u facilitajiet ancillari.

Is-sit mertu ta' dan l-appell jinsab ODZ fl-indirizz 1, Chicken Farm, Triq 12 ta' Mejju, Zebbug, Malta.

Skond l-Awtorita':

- In-North West Local Plan juri li dan is-sit jinsab f' zona li hija mmarkata bhala Water Quality (Aquifer Protection Zone) skond il-policy NWCO 09; u
- Is-sit jinsab f' area rurali u huwa imdawwar minn art agrikola pero fil-vicin hemm farm iehor u knisja storika.

Din l-applikazzjoni giet rifjutata peress li:

- Il-proposta mhijiex essenzjali għall-agrikoltura, ekologija u nteressi xjenici li jistaw ikunu permessi f'zoni ta' konservazzjoni rurali ai termini tal-policy RCO 4;
- Il-ufficju jista jsir fuq skala iżgħar fil-pjan terran jew fil-livell tal-basement;
- Fis-sustanza l-proposta mhijiex gustifikata;
- Il-iskala tal-ufficju propost huwa eccessiv;
- Fejn hu propost fl-istruttura ezistenti mhuwiex accettabbli;
- Il-pjan terran kif propost li jigi elevat iwassal għal estetika mhux mixtieqa;
- Il-manure clamp hija 'intrusive';
- Il-landscaping kif approvat fil-permess PA 3215/05 ma giex imwettaq skond l-permess mahrug;
- L-iżvilupp huwa ta' skala inaccettabbli, li f'dan is-sens il-proposta tmur kontra l-policy RCO 4 tal-pjan ta' struttura u l-Policy & Design Guidance on Agriculture, Farm Diversification and Stables policy 1.3A; u
- In vista li l-parametri tal-permess PA 3215/05 ma gewx osservati l-proposta ma tistax tigi kkunsidrata fid-dawl ta' cirkolari 2/96 u 2/98.

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:

- Il-Kummissjoni approvat il-proposta. Fis-seduta tas-16 ta' Settembru, 2009, id-DCC kien ivvota favur il-proposta fil-principju;
- L-area kumplessiva ta' l-ufficju giet ridotta minn 150 meru kwadru għal 75 metru kwadru;
- L-ufficju hu bżonnjuz għall-operat tal-impriza;
- Din l-intrapriza tikkonsisti f'wahda mill-akbar industrij tal-poultry f'pajjizna;
- Fost dawk li jagħmlu uzu regolari minn dan l-ufficju hemm receptionist u skrivan (accountant), osservaturi f'isem l-Unjoni Ewropeja, tims ta' medici, klijenti, ufficjali ta' Dipartimenti tal-Gvern, suppliers ta' materjal u maintenance personnel;

- Il-"first floor" in kwistjoni ma jidher minn imkien u dan peress li dan inbena fil-volum tal-kumpless tal-bini gja approvat f' PA3215/05;
- L-ufficju ma jidher minn imkien u mhux se jikkostitwixxi zieda esterna oltre il-volum tal-bini esistenti;
- Il-massa tal-bini diga kienet approvata bil-permess PA 3215/05;
- Il-manure clamp hi izghar minn dik approvata u li din se tkun mghottija bil-landscaping; u
- Ghalkemm il-landscaping scheme approvata fil-permess PA 3215/05 ma' saritx, il-proposta sejra tinkorpora landscaping scheme simili ghal dik approvata fil-permess PA 3215/05.

L-Awtorita' telabora fuq ir-reasons for refusal u partikolarment tissottometti li:

- Jezistu illegalitajiet fis-sit u ghalhekk l-provvedimenti tal-artikolu 14 tal-avviz legali 514/10 ghandhom jigu osservati;
- Il-landscaping fil-permess originali PA 5266/97 kien kopert b'garanzija bankarja;
- Meta gie approvat il-permess PA 3215/05 giet imposta garanzija bankarja ohra fl-ammont ta' €2329.37 ghal perjodu ta' sena sabiex jitlesta l-landscaping li kien ghadu ma' sarx. Madanakollu xorta baqa ma' sarx il-landscaping u ghalhekk il-kundzzjonijiet tal-garanzija ma gewx osservati mill-applikant;
- Mhuwiex minnhu li l-Bord ressaq vot fuq l-izvilupp propost f'Settembru 2009;
- L-izvilupp propost beda b'mod illegali 10 snin ilu u kiber ftit ftit; u
- Is-sit huwa skedat bhala Aquifer Protection Zone mdawwar b'karatteristici rurali.

Dan it-Tribunal huwa tal-fehma kunsidrata li dan l-izvilupp li effettivament jikkonsisti f' impjant ghall-produzzjoni intensiva tal-prodotti tat-tigieg ghandu jkollu postu f'industrial estate u mhux f' zona sensittiva ODZ imdawwra bil-kampanja.

L-izball sar meta din il-fabbrika giet sanzjonata izjed minn ghaxar snin ilu u hareg il-permess PA 5266/97. Kif jigri

invarjabbilment meta tizdied id-domanda ghall-prodotti ta' kull intapriza, u dan kellha tipprevedih l-Awtorita', din il-facilita' kellha bzonn tikber u ghalhekk l-appellant baqa' jespandi u jzid il-facilitajiet sakemm hariglu enforcement notice u kellu jerga japplika. Nonostante l-fatt li l-applikant ma' kienx zamm mal-permess originali peress li ma' kienx ghamel il-landscaping li kien mitlub minnu meta hareg il-permess PA 5266/97, l-Awtorita' xorta ssanzjonat l-izvilupp illegali u harget il-permess PA 3215/05. F' dan il-permess l-Awtorita' regghet imponiet Bank Guarantee biex isir il-landscaping li kellu jsir bhala parti mill-ewwel permess.

Issa, l-appellant qed japplika biex jissanzjona tibdil sostanzjali (li fil-maggor parti tieghu diga sar) fil-permess PA 3215/05 u jerga jirrizulta li l-appellant baqa' ma' ghamilx ix-xogholijiet ta' landscaping li kien suppost ghamel izjed minn ghaxar snin ilu.

Apparti mill-problema tal-landscaping l-Awtorita' qed toggezzjona wkoll, fost affarijiet ohra, li issa l-impjant sar kbir u goff iz-zejjed u partikolarment ghall-fatt li issa l-appellant bena ufficji fil-fabbrika billi bena livell iehor fl-oghli ta' parti mill-fabbrika. Skond l-appellant, dawn l-ufficji jkopru area ta' 75 metru kwadru.

It-Tribunal issostni li issa huwa tard wisq biex l-Awtorita' tittenta trazzan l-operat ta' dan l-impjant li issa, grazzi ghall-permessi zbaljati li harget tul is-snin u wkoll ghall-fatt li hadd mill-ufficjali tal-Awtorita' ma' induna li l-izvilupp li kien qed isir fuq is-sit ma' kienx skond il-permess, zviluppat f' operazzjoni urbanizzanti ghall-ahhar.

Dan it-Tribunal huwa tal-fehma li dak li tista taghmel l-Awtorita' biex tillimita l-hsara li issa lahqet saret fl-ODZ huwa li tiehu dawn il-passi:

- Dan l-uzu ghandu jinghata ghal perjodu ta' 25 sena. Wara li jiskadi dan il-perjodu ghandhom japplikaw il-policies vigenti fl-ODZ fiz-zmien meta ssir xi applikazzjoni ghal zvilupp fuq dan is-sit.
- Ma tohrogx il-permess in ezami qabel ma' jkun tlesta x-xoghol kollu ta' landscaping kif ipprogettat u wara li dan ix-

xoghol jigi certifikat mill-ufficjali tal-Awtorita' u awtorizzat minn dan it-Tribunal;

- L-appellant ghandu jinghata perjodu ta' zmien biex ilesti il-landscaping li ghandu jkun suggett ghal bank guarantee ta' valur li jkun jirrifletti l-fatt li l-appellant ghal izjed minn darba injora l-kundizzjonijiet tal-permess. L-ammont ezatt ghandha tiddeterminah l-Awtorita' bl-approvazzjoni ta' dan it-Tribunal. Jekk il-landscaping ma' jsirx kif ipprogettat jew l-izvilupp fit-total tieghu jvarja mill-pjanti li qed jigu approvati f' dan il-permess allura ghandha tintilef il-garanzija, ma' johrogx il-permess u jigi mahrug enforcement notice fuq is-sit in ezami;
- Ghandha tigi inkluzja kundizzjoni specifika li tghid li l-fabbrika qed tigi approvata biss ghall-uzu ezatt specifikat fil-permess, jigifieri l-produzzjoni ta' prodotti tat-tigieg u li:
 - L-ufficju ghandu jigi permess biss bhala spazju ancillari ghall-fabbrika b' dan li ma' jkunx jista jintuza ghal ebda skop iehor;
 - Il-manure clamp ghandha tigi approvata biss bhala facilita' ancillary ghall-fabbrika u biss ghall-uzu ta' manure clamp;
- Peress li l-landscaping huwa parti integrali mill-izvilupp, il-permess ghandu jinkludi kundizzjoni li tghid li l-landscaping ghandu jibqa jigi mantnut kif ipprogettat u fl-istess livell approvat sakemm tibqa topera l-fabbrika ;
- Apparti mill-area koperta mill-landscaping, l-izvilupp ghandu jibqa limitat biss ghal dik il-parti tas-sit li hija konfinata mill-fabbrika, il-manure clamp u s-silos u ghandha tigi inkluzja kundizzjoni fil-permess li tghid li ghall-kumplement tas-sit ghandhom dejjem japplikaw il-polices vigenti fiz-zmien meta ssir xi applikazzjoni ghal zvilupp f' dan is-sit; u
- Meta jiskad l-perjodu ta' 25 sena, jew meta jieqaf l-uzu li ghalieh qed japplika l-appellant fuq is-sit ikkonfinat kif spjegat hawn fuq, fuq is-sit kollu ghandhom dejjem japplikaw il-polices vigenti fiz-zmien meta ssir xi applikazzjoni ghal zvilupp fuq dan is-sit.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li bil-proposta tal-izvilupp in ezami, ikkundizzjonata kif spjegat hawn fuq, jistghu, tul medda ta' snin, jigu limitati l-impatti negattivi fl-ODZ li

jirrizultaw mill-permessi zbaljati li lahqu hargu fuq dan is-sit, dan l-appell ghandu jigi milquh limitament.

It-Tribunal, in vista tal-kunsiderazzjonijiet hawn fuq maghmula qiegħed jilqa' dan l-appell limitament billi jordna li l-Awtorita għandha minnufih tiffinalizza d-dettalji tal-landscaping li hemm bzonn isir fuq dan is-sit u permezz ta' ittra lill-appellant timponi garanzija bankarja u terminu ta' zmien li fih l-appellant għandu jagħmel dan ix-xogħol u li kellu jsir izjed minn għaxar snin ilu. Il-valur tal-garanzija bankarja u t-terminu ta' zmien għandhom jigu approvati minn dan it-Tribunal qabel ma' jintbagħtu lill-appellant. L-appellant għandu immedjatement jagħmel ix-xogħol ta' landscaping li suppost għamel meta hareg l-ewwel permess izjed minn għaxar snin ilu. Meta l-Awtorita tkun sodisfatta li xogħol sar kif ipprogettat għandu jinhareg l-permess b'dana illi l-izvilupp jigi approvat bil-kundizzjonijiet normalment imposti f'applikazzjoniet simili u f'dan il-kaz, b'kundizzjonijiet partikolari li għandhom jigu imfassla a bazi tal-punti elenkati hawn fuq. Dawn għandhom jibghatu lit-Tribunal biex dan, wara li jezaminhom, jawtorizza lill-Awtorita' biex jinhareg il-permess.

Jekk ix-xogħol ta' landscaping ma' jsirx fiz-zmien stipulat, l-Awtorita' għandha tirtira l-garanzija bankarja, izzomm il-hrug tal-permess u tohrog enforcement notice fuq l-izvilupp kollu.

Ikkunsidrat

L-aggravju tal-appellant hu essenzjalment wieħed:

L-appellant kien igawdi sit munit b'permessi ta' zvilupp PA 3115/05 u PA 5266/97. It-talba odjerna kienet għal sanzjonar ta' strutturi li ma sarux skond il-premessi citati u estensjoni ta' strutturi mal-permessi ezistenti. Għalkemm it-Tribunal laqa' l-appell fis-sens li approva l-izvilupp u impona xi kundizzjonijiet, pero fost dawn il-kundizzjonijiet illimita l-perjodu ta' validita tal-uzu tas-sit kif adibit għal perjodu ta' 25 sena u wara s-sit kollu jigi sogġett għal policies vigenti f'dak iz-zmien. L-appellant jinsisti li dan hu ultra vires u ultra petita dak li kellu jiddeciedi t-Tribunal.

Dan l-appell hu wiehed gustifikat fis-sens illi t-Tribunal injora principju bazilari cioe li permess mahrug jikkostitwixxi dritt kwezit u l-izvilupp konformi mal-permess ma jistax jintmiss. Kwindi meta t-Tribunal illimita l-permess ghall-uzu tas-sit shih ghal 25 sena kien qiegħed ibiddel kundizzjoni ta' permess mahrug u li ma jistax jitpogga in kontestazzjoni. It-Tribunal hu liberu illi jikkumenta dwar il-legalita jew il-fondatezza tar-raguni ghaliex inhareg permess pero darba mahrug ma jistax jikkostitwixxi bazi sabiex permezz ta' applikazzjoni ohra, bhal ma hu f'dan il-kaz, jigi minsus dak legalment akkwistat.

Il-permess PA 3115/05 li kien jinkludi emendi għal permess PA 5266/07 hu permess li dwaru ma jistax ikun hemm ebda tibdil magħmul ex officio mit-Tribunal. Hu minnu illi kif kostatat, l-applikazzjoni odjerna kienet tinkludi sanzjoni ta' zvilupp mhux konformi mal-permess PA 3115/05 u li kienu qed jintalbu wara enforcement order li nhareg, u illi b'zieda mas-sanzjoni kien qed jintalab estensjoni tac-chicken farm ezistenti. Pero l-parametri ta' dan l-appell kien cirkoskritt għal aggravji kontra r-rifjut li jingħata permess għall applikazzjoni PA 6040/07 cioe dik odjerna. Ir-rilevanza tal-permess PA 5266/97 u PA 3115/05 kienet tikkonsisti fl-apprezzament li kellu jagħmel it-Tribunal dwar is-sanzjoni għal nuqqasijiet fl-izvilupp attwali paragon ma' dak ġia permess bil-permess PA 5266/97 u PA 3115/05 u fil-tieni lok il-gustifikazzjoni għal estensjoni għal permess li jikkostitwixxi rabta bejn l-Awtorita u d-detentur tal-permess.

It-Tribunal ma setax juza l-argument li l-permessi originali ma messhomx inhargu u kwindi juza din l-applikazzjoni biex ibiddel dak ġia akkwizit.

Id-decizjoni tat-Tribunal hi bazata kompletament fuq principju zbaljat tal-ligi u ta' dak li jikkostitwixxi permess mahrug validament u b'konsegwenza t-Tribunal skarta li jitratta l-applikazzjoni odjerna fuq il-mertu tagħha a bazi ta' dak ġia ezistenti qua permessi mahruga u fl-ebda hin revokati.

Il-Qorti ma taqbilx pero illi b'daqshekk l-appellant ghandu ragun jitlob ir-riforma tad-decizjoni billi jellimina l-kundizzjoni tat-terminu. B'tali talba l-appellant qed jistiden lil Qorti tissindaka hi l-fatti u tara jekk it-Tribunal kienx jasal ghall-istess decizjoni bil-hrug tal-permess u bil-kundizzjonijiet imposti eskluż it-terminu ta' 25 sena li japplika anki ghal permessi gia mahruga. Il-Qorti ma tqisux kompitu taghha li taghmel hekk u anqas hu fid-dritt taghha li taghmel hekk billi tkun qed tintrometti ruhha fuq il-fatti u tissostitwixxi d-diskrezzjoni tat-Tribunal ma' taghha. Dak li tista' taghmel il-Qorti flok tichad l-appell ghax dak mitlub mhux konciljabbli mal-poteri tal-Qorti, hu li tirraviza l-gustifikazzjoni tal-aggravju, li f'dan il-kaz sewwes il-gudizzju kollu tat-Tribunal fuq il-mertu tal-applikazzjoni per se u terga' tibghat l-atti biex l-appell jigi kunsidrat mill-gdid. F'dan is-sens thalli f'idejn it-Tribunal jasalx ghall-istess konkluzzjoni gia raggunta pero bl-eskluzjoni ta' rabta ta' terminu ghall-izvilupp gia permess bil-permessi PA 5266/97 u PA 3115/05 jew invece li l-appell kien jimmerita gudizzju mill-gdid, b'dan li f'kull kaz tinghata l-opportunita lil partijiet li jressqu s-sottomissjonijiet ulterjuri taghhom fuq il-kwistjoni.

Decide

Ghalhekk il-Qorti in linea ma' dak deciz minnha, tilqa' l-appell ta' Philip Cortis li t-Tribunal ma jista' qatt jimponi kundizzjonijiet fuq permessi gia mahruga u li mhumieq l-oggett tal-applikazzjoni odjerna izda relatati maghha, u tichad it-talba li ghandha tkun din il-Qorti li tirriforma d-decizjoni tat-8 ta' Novembru 2012, u ghalhekk biex tigi evitata ingustizzja mal-partijiet, qed tirrorvija l-atti lura lit-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar biex jerga' jikkonsidra l-appell ai termini ta' dak deciz.

Spejjez fic-cirkostanzi jibqghu bla taxxa.

< Sentenza Finali >

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