



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tas-7 ta' Mejju, 2014

Appell Civili Numru. 77/2013

**Cristinu Cassar**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Cristinu Cassar tas-17 ta' Dicembru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Novembru 2013 li biha cahad l-applikazzjoni 'to sanction part of field as horse training track and haystore and construct stables with paddocks';

## Kopja Informali ta' Sentenza

Rat ir-risposta tal-Awtorita li ssottomettiet 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:-

Dan huwa appell minn rifjut tal-Awtorita' tal-applikazzjoni PA1544/07 'To sanction part of field as horse training track and haystore and to construct stables with paddocks', b'decizjoni kkomunikata lill-appellant b' ittra mill-Awtorita' bid-data tat-18 ta' Jannar, 2011.

Ir-ragunijiet li ghalihom l-Awtorita' irrifjutat l-applikazzjoni PA1544/07 kienu s-segwenti:

"1. The proposed development is not likely to lead to an environmental improvement of the site in caption. The proposed development therefore runs counter to paragraph 1(f) of Policy 4.3B: Construction of New Stables of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007)."

Fl-appell tieghu tat-18 ta' Frar 2011, l-Perit Philip Azzopardi ghan-nom tal-appellant, jaghti dawn is-sitt ragunijiet ghal dan l-appell:

"1. For more than three years to acquisition of site, applicant had been trying to find a suitable site with the intention of utilizing it as a paddock for his horses and ultimately for the erection of their stables (see declaration attached). Since he lives at Rabat, his priority was to find an area close by to be able to take care of their constant needs and their security. This site was the only site available in the area that could fully satisfy his requirements with regard to size and condition of terrain.

2. Applicant bought the land on 6 July 2011 by a deed of transfer by Notary Dr. Anthony Abela (see copy of part of deed attached). From the aerial photo of 1998 it

is evident that the site was degraded prior to the acquisition of the land (see aerial photo attached).

3. The full development permission application submitted by applicant was to propose the construction of five stables with paddocks and a manure clamp with underlying rainwater reservoir and cesspit while leaving an area on part of the site to be converted into a field for the production of fodder for the horses; and to sanction a horse training track around the proposed field and to sanction a hay store that applicant had developed on site. The application also considers landscaping all around the site.

4. The site covers an area of 1840 square metres of which 750 square metres (one fourth) is landscaping area; 350 square metres (one fifth) are occupied by the stables, manure clamp, haystore and paddocks; 285 square metres (one sixth) by the fodder field; 295 square metres (one sixth) by the track and 160 square metres (one eleventh) are circulation space between the paddocks, manure clamp and hay store. It should be noted that the track, the paddocks and area adjacent to the gate are not paved but made of beaten earth and finished smooth in fine brown sand.

5. Applicant owns five horses that take part in races at Marsa for the Malta Racing Club. The intention of the applicant is to have a safe and comfortable place for the keeping and training of his horses. The tracks keep the horses off the village vehicular road and so are kept in a safe environment and safe for other people. When required, the horses will be delivered to Marsa by appropriate horse cabins.

6. Applicant intends to grow fodder for his horses in the central part of the site and this fodder will be supplemented by other food which is stored on site. The area between the manure clamp and the hay store will be in concrete, finished smooth for ease of proper and regular cleaning. Adjacent to the gate, a wheel cleaning trough will be constructed to avoid mud from being deposited onto the road and also as a disinfectant for in-coming vehicles."

FI-appell tieghu l-appellant ikompli hekk:

" The proposed development will lead to a major environmental improvement of the waste and degraded site for the following reasons:

a) The upgrading of a substantial part in the centre of the site (one sixth of the whole site) to an agricultural field measuring 285 square metres for the growing of

fodder for the horses. This is a sustainable use of land to be used in conjunction with stables.

b) The upgrading of the perimeter of the site by landscaping with different kind of trees mainly olive and citrus trees and also conifers. The landscaping will occupy the major area measuring 750 square metres (one fourth of the whole site). The landscaping around the site is designated to protect the area from strong winds while allows breezes to pass through and give much needed shade in summer.

c) The development of unobstructive stables and ancillary equestrian structures occupying an area of 350 square metres (one fifth the whole site) that are situated at a distance from the development zone boundary within the limits as requested by the policy.

The proposed development is therefore in complete conformity with all the requirements of Policy 4.3B for the Construction of New Stables as listed in the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007)."

Fir-risposta tieghu tat-13 ta' Mejju, 2011, Darren Fava ghall-Awtorita' jaghti r-ragunijiet ghaliex fl-opinjoni ta' l-Awtorita dan l-appell ghandu jigi michud. Is-segwenti huma siltiet minn dan ir-rapport li t-Tribunal jhoss ghandhom jigu ssottolineati:

## "2.0 SITE LOCATION, DESCRIPTION & CONSTRAINTS

2.1 The site is located outside the development zone at Triq il-Lunzjata, Rabat (Malta). The area is characterized by agricultural land and other outside development zone structures.

2.2 In accordance with the provisions of the North West Local Plan, the site is designated as an "Area of Agricultural Value" (policy NWAG 01).

## 3.0 SITE HISTORY

### 3.1 On Site

PA 4785/05: Full Development application for the construction of two stables and paddock - applicant Mr. Etienne Cassar. Permit was refused by DCC on 23rd March, 2005 and again by Reconsideration Board on 7th November, 2006.

PA 1131/03: Full Development application to construct agricultural store - applicant Mr. Kristinu Cassar. Permit was refused by DCC on 7th May, 2003 and Reconsideration was withdrawn by applicant on 18th June, 2004 prior to Board decision but following recommendation for dismissal by Planning Directorate."

## "5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.2 The Directorate has the following comments to make:

### 5.2.1 Introduction

The sanctioning as proposed was refused by MEPA Board following three inconclusive votes by DCC Board. It was concluded that the proposed development cannot be justified as a means of improving the state of the site. In fresh arguments, the appellant is illustrating that the proposal does cater for restoration of the site; with 285m<sup>2</sup> to be reclaimed for cultivation of wheat and barley, and an additional 750m<sup>2</sup> to provide landscaping around the perimeter of the site.

From information provided by the appellant in Application Form (Doc 1 in PA File), it is calculated that the site has an area of 1839m<sup>2</sup>, and therefore the restoration of the site for its agricultural value barely addresses half the site (56%). The appellant is indicating in proposal that the remaining area of the site is to be consumed by a vehicular access around the site and the structures intended for stabling horses. The works therefore disregard the intention of MEPA to protect areas of agricultural value from such development which would further degrade such areas and clearly runs counter to the intentions of the policy guidance and Local Plan.

### 5.2.2 Proposed Development

As noted from 1988 Aerial Photos (Doc 73B in PA File) the site in concern suffered from considerable agricultural degradation; apparently the result of vehicles passing through the site to access structures towards the rear which were existing at the time. Nonetheless, the North West Local Plan (issued in 2006) identified the area for its agricultural value, and therefore only development leading towards the holistic environmental restoration of the site is will be permitted.

Prior to refusal by Board, the appellant submitted a copy of purchase contract for site in 2001 (Doc 32A in PA File) and hence is claiming that he had no direct contribution to the degradation of the agricultural site in question. Notwithstanding this, the illegalities carried out on site which are applied for sanctioning are not restoring agricultural use to the entirety of the site, but are proposing direct formalisation of vehicular passageways around the site, parking facilities, and other hard landscaping. These developments run counter to the intentions of policy 1.3K

of Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) which seeks the protection of agricultural land, and therefore cannot be interpreted as an environmental improvement of degraded land.

### 5.2.3 Other Relevant Matters

The development in concern proposes to partly restore the site to agriculture (one sixth of the site as stated by appellant) whilst sanctioning the established use on site for stabling of horses and ancillary facilities. The Directorate is kindly bringing to the attention of the Tribunal that a similar application was refused in PA 4785/04 for the construction of two stables and paddock area. Although the development was determined prior to issue of Local Plan and Policy Guidance for Stables, MEPA had already stated that the proposal was not essential to agricultural interests of the area.

Under policy documents presently in use, the NWLP established a designation for agricultural improvement and protection for the area, and the Design Guidance for Stables launched a criteria set-up by which the construction of new stables are determined. Since the wider environmental benefit is not being attained, the Authority respectfully highlights that the development runs counter to policy 4.3B Part 1(f)."

Fl-ittra tieghu tal-25 ta' Lulju 2011, ghan-nom tal-appellant, l-Avv Dr Matthew Brincat jispjega fit-tul il-process li ghaddiet minnu din l-applikazzjoni u ir-ragunijiet ghaliex, skond l-appellant, din il-proposta tirrispetta l-policies kollha ta' l-Awtorita' u li ghalhekk ghandha tigi approvata. L-Avukat Brincat, inter alia, jghid li gej:

"This said certain approved applications in the past have resulted in non bona fide applicants turning approved stables structures to other uses. This with respect renders such applicants in breach of the approved permits and MEPA is bound and should direct its efforts to reinstate the approved usage revoking permits issued to so said horse owners when such are effectively not horse owners at all . This said it is therefore unjust and contrary to policy that applications such as the present one are seen in a bad light, with certain scepticism and scrutiny when at various stages before this appeal MEP A has declared that applicant's proposal is according to Policy and the only reason for refusal is Policy 4.38 Part 1 (F) that is a most generic clause namely 11 that the development should result in a wider environmental benefit, including the improvement of degraded land within the site" . As will be verified this is exactly what is being asked; a permission to improve the site vide 1988 photos and proposal.

## SITE HISTORY

In actual fact the application goes actually to propose an overall improvement to the site in that MEPA in its report has confirmed in the case history of the site that previously to the applicant acquiring the said land in 2001 an application namely DNO/04054/01 ( application to construct a reservoir for agricultural purposes) was refused and the reason being that Mepa stated that the land is NOT AGRICULTURAL. In fact during the presentation in front of the MEPA Board various aerial 1988 photos (Doe 81- 82 ) show the land as a derelict site, (with dumping in flagrante better omit the word dumping) and this excluded its potential for agriculture.

How can MEPA now at this stage bring the argument that the application should be refused as the area is of agricultural value. In actual fact it is not stating it is of agricultural value but merely that it lies in an area designated as agricultural. This said MEPA itself has produced photos ( 1988) that is, dating back a good 23 years back that the site has not and cannot be used for agriculture. MEPA has to decide, it cannot declare two opposite and contradictory terms simply to find a reason to base its unjustified refusal. The application to construct a reservoir was refused since site was nothing but agricultural, so applicant acquired this land ( vide contract of acquisition as presented documents in file) , as its was not agricultural but within the limit (loomt0300M ) in an ODZ area adequate for stables according to the prevalent and still in vigore policy.

However the applicant in question was asked in the first hearing whether he would consent to signing a public deed to always use site as stables for horses and if he ceased to own it or stop using it than the approved structure would be demolished and permit revoked.

Applicant declared that being a bona fide horse owner he had no other scope than to stable his horses and was ready to sign any deed and any condition to be enrolled in a public deed binding him and his successors in title with any condition MEPA deemed opportune to curtail any abuse. Then subsequently the informal meeting with Chairman and Legal Attorney at MEPA ensued with MEPA showing concern as to how one can have assurance that applicants in general are really bona fide. This is being said in certain detail so that this Board and in the case of a future Court case one appreciates all the circumstances and times when this application was being examined and in reality it ended up not being a particular normal application but a guinea pig test applications asking direction by DCC from the MEPA Chief Board. It is evident and accepted by MEPA that application is in line with all the Policy parameters but a certain reluctance as to stables on a general level resulted . Even the MEPA Board itself opted to differ the case to seek

legal advice on the way a public deed could be drafted to accept the application to bind the applicant and avoid any abuse. In so far as this was clearly the reason for differing the case we appreciate that The MEPA Board being the ultimate and supreme Body in the MEPA structure wanted to ensure that it not only decided this application but wanted to address and give a guideline to its inferior DCC Boards.

We are also presenting Document C that was an extract of a local newspaper reporting the first hearing and as all those present certainly felt including the applicant and his architect and myself, the vote was taken approving Mr. Walker's suggestion to postpone the acceptance of the application but only after seeking legal advice on the drafting of a public deed binding. All Board members save for one voted in favour of approving permit with the condition of a public deed the owner of the land and its future use. As detailed in the Boards notes DR Matthew Brincat on behalf of applicant was asked to confirm and in fact confirmed during all the hearing that applicant was accepting unconditionally to sign any public deed as he is

definitely a bona fide horse owner.

In fact in between sessions of the Board the Enforcement section made a surprise visit on site to verify presence of the horses. The applicant was not on site but was contacted by phone to open and give them access. Being unable to leave his workplace at that instance he authorized them to access through the gate as it is possible to open he hinge, without his presence so that they could at their own leisure verify and confirm the genuine nature of the site that has changed from a derelict dump site as per 1988 photos to an area with proper rubble walls, olive trees, citrus trees, conifers and a field for barley and wheat to characterize the area giving it an agricultural character in the very strict sense of the word .

It took MEPA from July to January to decide on the format of the public deed to give it assurance that notwithstanding it found no ground, like the other DCC Boards on which to refuse such application, it should approve the application subject to a public deed merely to ensure and curtail for any future abuse.

During the last MEPA Board sitting of the 7th July 2011 we further declared that the applicant was accepting to sign a public deed with unconditional reserve. This said the architect mentioned other stable applications namely PA 2848/08 sanctioning in Mqabba stables and PA 3280/07 Mgarr stables with illegalities in site, that had been approved during the six months between the first and second MEPA Board sittings in question. These were approved and no public deed was imposed by MEPA . Once again we confirmed that the applicant never had and still has no objection to sign a public deed but as legal counsel I felt I should draw the Boards



attention that all applicants on similar applications should be treated the same and if it wished to change policy and include this obligation it should do so , but as Policy stands no such deed is envisaged as necessary .

We feel we have to present Document E 1 to 9 that is the report relative to PA 3280/97 Stables approved in Mgarr wherein we humbly ask you to read and refer and consider part of our appeal submissions that stated in Document E 5 as this states clearly that stables per policy requirement HAVE TO BE SITUATED ODZ and cannot be approved anywhere else. In said document E5 Section 8.0 enlists seven ( 7) reasons for refusal unlike our present application. The 7th reason in the Mgarr application being Article 4.3B also. The present application has only one generic reason 4.3B 1 (f) . If the Mgarr application had 7 reasons against and was overturned by DCC we certainly feel that this Review Board should have no hesitation in overturning the previous stand and approve the application as even the only reason for supporting a refusal is not only a very weak one but one that in reality is not a correct picture of the reality .

The pari paribus rule has always been a sore point and legal maxim that MEPA from, time to time is being drawn attention to by our Law Courts and repeatedly such a rule of law is discarded and unobserved leading to the applicant's only resort than to appeal in Court when both policy and fairness justify an approval at the DCC stage when he is in full observance of the policy, as is this particular case .Hence we appeal to this Honourable Board to accept this application and its approval, having the duty and courage to apply all conditions discussed by the MEPA Board that chose and refrained from accepting to address such applications. Page 6 of Document A confirms that even at the MEPA Board hearing the undersigned attorney stated that the Board had deferred this case to approve the application subject to a public deed and case had been deferred to obtain this advice as to the drafting of the public deed. We are incredulous as to how then the Board opted to vote as to whether to approve or refuse the application!!

Discussion ensuing in page 6 and 7 of Document A were all made to address the instances of overturning of the refusal recommendation. Mr Justice Dr Giovanni Bonello who is a renowned legal figure in Malta and abroad actually intervened to assure the Board in the context of the pari paribus rule, in that the other two applications decided favourably during the process of this application had to be considered and in page 6 of the discussion Justice Dr Giovanni Bonello addressed the issue of the public deed which in our opinion was the sole reason that the MEPA Board had postponed the case.

As detailed clearly applicant did not and does not have any objection to signing and binding himself to a public deed although this was not applied to other applicants

.MEPA Board was prone to introduce this extra measure to assure applicants are bona fide and should only be entitled to continue using the development in future years under those strict conditions. Those all bona fide applicants such as this applicant do not have any objection to signing a public deed.

Item 11631 (Document A6) is also of note as Ms Christine Pace questioned if site is suitable for agriculture. When the site has been declared to be non agricultural for the past 23 years and MEPA itself presented photos to the Board confirming the pity state of the site when used by other owners other than the applicant, one cannot assert that any land can become agricultural if soil is deposited on it. Similarly any degraded land, rocky land and to exaggerate the seashore can be turned to agricultural land as anything is possible by introducing soil on such areas. The fact is that MEPA DCC, EPC and the Highest MEPA Board have hard evidence that for over 23 years the site is not agricultural and the merit is that this application purports to establish assurance it will be used in terms of agricultural policy and if need be bound by a public deed to its continued use in the future. Although unprecedented and not according to Policy and not applied in other applications, also approved during the consideration of this particular application, the applicant continued to accept and declare he had no reserve and would sign to any public deed to give MEPA his reassurance of a bona fide applicant.

This Honourable Board should examine item 11635 (Document A7) wherein after all these considerations and analysis of the MEPA Board to introduce measures of reassurance and avoidance of future abuse in general not merely this application, The Chairman of the Board Mr Walker opted to quote Policy 4.3A and 4.3B and said unjustly it does not conform to the criteria of the policy. This was utterly incorrect to say the least as no other case officer or Board had to date stated such a statement and in fact this was not in contention as the case officer himself only stated Policy 4.3B 1 (f) as the sole reason for refusal. A generic clause certainly inserted to substantiate a refusal that with respect should not be contended and the permit approved with all the public deeds and conditions of reassurance discussed by all Board members.

To confirm the situation of the applicant item 11637 page 7 of the MEPA Boards notes Mr Joe Vella stated that this site is in fact degraded land giving assurance that is was not contrary to any Policy as inadvertently might have been exposed in the discussion .In fact this application should be approved as it upgraded a previous derelict site ( vide 1988 photos) that will be used for horses in an agricultural setup full of character.

A certain degree of unnecessary concern was aired on the approval of the horse training track. This can be approved or not approved by this Revision Board. In

reality it is not a track but merely a jog lane wide enough to take one horse with jog cart to enable daily exercise necessary for race horses, exercise that would have to be carried out in neighbouring lanes and roads or causing applicant to travel to and fro from Rabat to the only racetrack in Marsa to train his horses. This is impracticable when walking or trotting the horses around the fodder field in the middle of the site created a natural walking path .It is not a track but a path created through daily walking of the horses on the same spot around the centre fodder field. This was explained to the Board Members to assure them it was far and remote to imagine the horse track akin and possible to some form of race track as the general public knows it. The applicant and all those horse owners know such a limited and confined space is the bare minimum to permit daily exercise within the site offering a degree of safety to both horse and rider avoiding access on Maltese roads. This said if MEPA feels that this would give some sort of precedent it can approve the permit for stable construction, haystore and paddocks whilst refusing the horse track. NOTE: As far as I know the EPRT cannot alter a proposal, so they either approve all or refuse all. So I think its better to omit this sentence.

Also Paddocks are not per se developments as these consist not of any particular structure but only areas of the site encircled with electric wire fencing, easily dismantled and removed within minutes; paddock space used everywhere else in horse compounds abroad worldwide and in Malta giving liberty needed to stable horses to be able to relax and not be confined in the stables for long hours daily. Both the track and paddocks do not consist of any structure and land would remain untouched although the area would be used for that scope so there is no alarm or development being visible and both MEPA and this Review Board should accept the proposed application as it is in duty bound, in full accordance to Policy.

We humbly ask this Honourable Board to examine and consider The Directorate Report Section 5.0 that are the comments on appellants arguments and refusal. Once again comments are being based on the premise that land is agricultural (or has agricultural potential- better omit) when in fact (application) all previous applications including DNO 04054/01 had clearly stated that application for reservoir is being refused as land is not agricultural. This is the same MEPA and the same institution saying and confirming this contradiction. Herewith please find attached Document I that I was a request by EPC for Architect to present details and photos of site and adjacent land that I shows area is not completely agricultural. Vide also Document B1 and B2.

Section 5.2 confirms that 56% of site will be reinstated and restored with agricultural value. This is not precise as is stated above the track and paddocks are not in reality a development as explained as the soil ground will remain as always was and horses allowed to walk on same leaving such areas crudely agricultural. From 1839 sq m of the whole site five stables of 16 sq m each will be put up , a hay store

and manure clamp 12 sq m. The rest is regenerated as agricultural area with adequate embellishments of olive trees, citrus and conifers. The centre field being the main focus on the site will be a fully fledged wheat and barely field used for the horses themselves giving an added agricultural character to the site and a drastic improvement after 23yrs of accepted derelict character accepted by MEPA and the authorities. The development and sanctioning is only one fifth (1/5) of the site and not as exposed in the comments which might adversely affect the merit of the application.

Also detailed unfairly in the comments is the mentioning of the refusal of PA 4785/04 for construction of two stables. This said the refusal was pronounced in 2004 when no Policy existed at the time relative to such applications. At present, the Policy for Stables of this kind are to be all in an ODZ area and so there is no alarm or blanket clause that in ODZ areas no applications should be approved. If this is the present stand, it is illegal, as there is the prevailing Policy which should either be removed and for amended. As things stand both EPC Boards and this Honourable Board are bound to approve regular applications in ODZ areas as per policy .

The present application now respects the current Policy and all requirements have been addressed. The application was scrutinized by the DCC Board culminating to three consecutive inconclusive votes and yet two sessions and a six months lapse to result in further reluctance to approve the application that is 100% in line with the Policy .There is nothing whatsoever in this application that is attiring (?? attracting) any concern merely the timing and reluctance of MEPA to look at such applications and their approval in bad light when a public deed albeit the first of its kind would have given reassurance and binding duty for applicant to his much needed stables for his treasured horses.

Stating Clause 4.3B Part 1 (9f) of the Policy and justifying any refusal on the basis that a wider environmental benefit is not being attained is unfair to say the least when the plans, drawings photos of present state and proposed development show an agricultural site embellished to highest standards, bringing character to the area a far cry from the 1988 derelict (dump- better omit) site. We do not wish to believe that the MEPA structure is refraining to approve this application and accept that the site should remain a derelict site. The MEPA Boards including this Honourable Review Board is entrusted with verifying if applicant is in line with Policy, which he definitely is, if in line with the *pari paribus* rule similar applications have been accepted even recently, without the pains the applicant has had to endure, and in so doing approve this application doing justice both to Policy and to the applicant.

The applicant as confirmed at various stages is still accepting to bind himself to the use of the site as approved subject to signing an ad hoc Public deed, that was a suggestion the MEPA Superior Board had decided to impose to address concerns and controls directed to assure only bona fide horse owners were and will be awarded stables. Those who are genuine and true such as applicant should find no objection and this Review Board should find no hesitation approving the application as proposed with all the restraints and conditions it deems fit and appropriate.”

Fit-tieni risposta ta' l-Awtorita' ppresentata fit-18 ta' Ottubru, 2011 minn Jonathan Borg huwa jghid is-segwenti:

“1. The appellant submitted a reply, on 25th July 2011, to the Authority's initial report to the Tribunal. The appellant is arguing (in brief) that:

- the proposal would result in restoring degraded land;
- A DNO (DN 4054/01) for a reservoir was refused because the land was not agricultural;
- there is an unjustified general presumption on behalf of MEPA against stables in ODZ;
- the proposal respects all necessary policies; in fact the reason for refusal quoted by the appellant is a general one with no specific reference to particular benchmarks;
- other similar permits have been granted subject to a public deed to ensure that applicants are bona fide. MEPA was obliged to treat this application the same.

2. The Authority has little more to add than what has stated in the DPAR and in the initial report to the Tribunal. However it would like to point out the following observations:

- The appellant is justifying the application by stating that it would restore degraded/derelict land. The Authority notes that this land has been degraded not because of natural processes or by an activity covered by some old permit but due to an illegal use of land. The proposal is not to restore the land as was but to an entire different use;
- The DNO for reservoir was refused because the land was not used for agricultural purposes and therefore there was not justification for the reservoir. This does not mean that the Authority stated that the status of the site is not agricultural but simply that is not used for such purpose (i.e. abandoned agricultural land).”

## Kopja Informali ta' Sentenza

Ra wkoll id-decizjoni ta' dan it-Tribunal diverzament ippresedut tad-29 ta' Novembru 2011;

Ra wkoll is-sentenza tal-Qorti ta' l-Appell tad-29 ta' Novembru 2012 li hassret id-decizjoni tat-Tribunal tad-29 ta' Novembru 2011 u rremettiet l-atti lura li dan it-Tribunal sabiex l-appell jerga' jinstema' mill-gdid;

Ra l-verbal tat-30 ta' April 2013 fejn it-Tribunal zamm access fis-sit mertu ta' dan l-appell. Waqt l-access gie kkostatat li kien hemm numru ta' zwiemel fis-sit mertu ta' dan l-appell kif ukoll strutturi illegali illi ammetta l-istess appellant li ghandu izda li kien se jnehhihom jekk jinghata l-permess relattiv. Min-naha taghha, l-Awtorita' gibdet l-attenzjoni tat-Tribunal ghac-Cirkolari PA 2/96 u issottomettiet illi sakemm ma jitnehhewx l-istrutturi illegali, it-Tribunal ma kellux b'xi mod japprova l-permess in kwistjoni. Vicin is-sit tal-appellant hemm ukoll binja ohra li l-appellant informa lit-Tribunal li ghandha wkoll stables fiha, izda l-appellant ma ghandux kopja tal-permess relattiv u allura ma jistax jipprova li hemm permess. L-Awtorita' kkontendiet li fir-realta' ma kien hemm l-ebda sit fil-vicinanze tas-sit mertu ta' dan l-appell ghal stables li huwa kopert bil-permess ghall-izvilupp;

Ra n-nota tal-Perit Philip Azzopardi ghall-appellant ipprezentata fl-10 ta' Lulju 2013 li taqra kif gej:

“Reasons that justify an approval by the EPRT.

1. Applicant owns five horses that take part in races at Marsa for the Malta Racing Club. The intention of the applicant is to have a safe and comfortable place for the keeping and training of his horses as provided by policy.

2. Applicant bought the land on 6 July 2001 by a deed of transfer by Notary Dr. Anthony Abela. An aerial photo of the site in 1998 shows that the site was degraded prior to the acquisition of the land.

3. The proposed development will lead to a major environmental improvement of the degraded site by :

a. The upgrading of the perimeter of the site by landscaping with different kind of trees mainly olives, citrus and conifer trees. The landscaping will occupy nearly half the area of the site area measuring 750 sq.mtrs or 41% of the whole site.

b. The development of a circular track of beaten earh situated just behind the peripheral landscaping and therefore completely screened from outside view, has an area of 295 sq. metres or 16% of the whole area.

c. The upgrading of a part in the centre of the site into an agricultural field measuring 285 sq. metres or 15% of the whole site, for the growing of fodder for the horses providing a sustainable use of the land in conjunction with the stables.

d. The development of unobstructive stables and ancillary equestrian occupying an area of 350 sq. metres or 19% of the whole site, that are situated at the required distance from the development zone boundary within the limits as requested by policy.

4. The proposed development is completely in conformity with all the requirements of Policy 4.3 B for the Construction of New Stables as listed in the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007)

5. A judgement by the Civil Court of Appeal awarded the applicant the right for the proposed development.

Therefore on behalf of the applicant, I kindly request the Tribunal to consider favourably our submissions, revoke the decision for refusal and accede to our request.”;

Ra t-third statement tal-Awtorita' li jaqra' kif gej :-

“Authority has the following comments in reply to the appellant's latest note of submission.

The Authority notes that during the site inspection, the Tribunal noted a number of stables and horses already on site. The appellant stated that he will remove them if he will be granted a permit - see minutes of site inspection. First of all the Authority notes that any illegal structures must be removed now, and not wait for a permit to be granted. Moreover contrary to what the appellant has stated, these illegalities must be removed even if the appeal is dismissed. Therefore in view that the site is characterised by illegal structures that are not being requested to be regularised, the provisions of Article 14 (1) of LN 514/10 apply which state that no permit should be issued if there are illegalities on site.

The appellant is justifying the application by stating that it would restore degraded/derelict land. The Authority notes that this land has been degraded not because of natural processes or by an activity covered by some old permit but due to an illegal use of land; apparently the result of vehicles passing through the site to access structures towards the rear which were existing at the time. Nonetheless, the North West Local Plan (issued in 2006) identified the area for its agricultural value, and therefore only development leading towards the holistic environmental

restoration of the site should be permitted. The proposed stable complex leads to the formalisation of vehicular passageways around the site, parking facilities, and other hard landscaping. These developments run counter to the intentions of policy 1.3K of Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) which seeks the protection of agricultural land, and therefore cannot be interpreted as an environmental improvement of degraded land.”;

Ikkunsidra ulterjorment:

Illi l-applikant applika ‘to sanction part of field as horse training track and haystore and to construct stables with paddocks’ f’sit fil-limiti tar-Rabat, Malta. Huwa ssottometta waqt l-access li l-gar tieghu kellu stables izda qatt ma pproduca xi forma ta’ permess in sostenn ta’ din l-allegazzjoni. Dwar il-mertu tal-appell, it-Tribunal jaghmel dawn il-konstatazzjonijiet:-

- skond il-policies tal-ippjanar vigenti, it-trobbija taz-zwiemel tat-tigrija mhix attivita’ agrikola u allura mhux lokha f’sit li huwa barra miz-zona permessa ghall-izvilupp. Ara, f’dan il-kuntest, il-paragrafu 4.1.2. tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables

- is-sit in kwistjoni mhux biss jinsab barra miz-zona permessa ghall-izvilupp izda huwa sitwat f’area of agricultural value – ara, f’dan is-sens, Policy NWAG 01 tal-North West Local Plan. B’hekk dan it-Tribunal irid ikun aktar kawt fid-decizjoni tieghu peress li s-sit barra miz-zona tal-izvilupp ghandu wkoll pregju agrikolu li ma haqqux li jigi mittiefes bl-izvilupp, aktar u aktar meta l-izvilupp propost mhux wiehed ta’ natura agrikola;

- hemm numru ta’ policies tal-Pjan ta’ Struttura li jinkisru jekk jinghata dan il-permess. It-Tribunal qed jirriferi b’mod partikolari ghall-Policies AHF 5, RCO 2, RCO 4, SET 11, SET 12 u l-paragrafu 7.6 tal-Pjan ta’ Struttura. Dan it-Tribunal ma jara l-ebda raguni ta’ ppjanar ghalfejn huwa ghandu jiddipartixxi mill-applikazzjoni ta’ dawk il-policies tal-Pjan ta’ Struttura li lhom jigu mhaddma mill-Awtorita’ u minn dan it-Tribunal ghal dawn l-ahhar 21 sena;

- il-Policy and Design Guidance on Agriculture, Farm Diversification and Stables tal-2007 hija wkoll ta’ rilevanza ghad-determinazzjoni ta’ dan l-appell. Dan peress illi hemm numru ta’ paragrafi f’din il-policy li jichdu l-applikazzjoni sabiex tkun tista’ tinzamm il-kwalita’ tajba tal-art agrikola bhalma hija dik mertu tas-sit tal-appell in kwistjoni. Bizzejjed li wiehed jiccita hawnhekk Policy 1.3K u Policy 4.3B;

- illi ma hemm l-ebda raguni ta’ ppjanar valida li tiffavorixxi dan l-appell. Ghall-kuntrarju, il-policies hawn fuq citati huma lkoll uniformi filli jipprovdu li tali tip ta’ zvilupp m’ghandux jigi sitwat f’zona barra mill-izvilupp u f’zona ta’ valur agrikolu kbir;

- illi din hija applikazzjoni sanatorja fejn l-izvilupp illegali ghandu lanqas biss tnehha;



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- illi l-area madwar is-sit in kwistjoni hija wahda ta' art agrikola u mhiex mittiefsa bl-izvilupp;
- illi ma giex ipprovat li hemm permess validu ta' stables fil-vicinanze tas-sit mertu ta' dan l-appell;

Ghal dawn il-motivi, dan it-Tribunal qed jichad dan l-appell u jikkonferma r-rifjut tal-permess approvat mill-Kummissjoni għall-Kontroll tal-Izvilupp.

## Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal iddecieda hazin meta kkunsidra li l-policy dwar Agriculture, Farm Diversification and Stables ma tippermettix stalel barra z-zona ta' zvilupp;
2. It-Tribunal iddecieda punt ta' ligi hazin meta qal li hemm illegalitajiet u għalhekk l-izvilupp ma jistax jigi accettat. L-Avviz Legali 514/2010 f'paragrafu 14(5) ighid illi qabel johrog permess jista' jinghata awtorizzazzjoni biex jitnehha zvilupp illegali;
3. It-Tribunal naqas li jaghti kaz għal commitment f'diversi permessi ohra. Qal biss li ma hemmx permessi fil-vicinanze. L-Awtorita harget permessi simili f'zoni ohra u t-Tribunal kellu jikkonsidra dan l-aggravju u jimmotiva d-decizjoni tieghu a rigward.

## L-ewwel aggravju

Sfortunatament it-Tribunal kien kategoriku f' enuncjazzjoni ta' principju dwar eccezzjoni ta' stables godda f'zona ODZ meta ddikjara illi t-trobbija taz-zwiemel tat-tigrija mhix attivita agrikola u mhux lokha barra zona ta' zvilupp u jikkwota l-paragrafu 4.1.2. tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables. Iktar il-quddiem izid illi l-policies citati fosthom din in kwistjoni jipprovdu li tali zvilupp ma għandux jigi sitwat f'zona ODZ u zona ta' valur agrikolu kbir.

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Avolja l-Awtorita tipprova tiggustifika l-argument tat-Tribunal billi issostni li qari shih tal-policy turi li dan hu l-ispirtu wara l-eccezzjoni ta' stables godda, din il-Qorti ma taqbilx ghaliex it-Tribunal kien tant xott u skjett fl-argument qasir tieghu illi din il-Qorti ma tistax taghlaq ghajnejha ghal dak li seta' kien il-hsieb tat-Tribunal.

Il-Policy and Design Guidance tal-2007 fejn jirrigwarda stables godda jipprovdi artikolu appozitu cioe 4.3.B li jekk jissodisfa l-kriterji kollha, jista' jinhareg permess u dan ghalkemm il-proposta tinsab f'ODZ. Dan il-paragrafu hu eccezzjoni ghal dak provdut fl-artikolu 4.1.2 ikkowitzat mit-Tribunal. Fil-fatt artikolu 4.1.2 ighid hekk:

This part is concerned with stables for these activities (cioe leisure/recreational riding by their owner; racing; working for karrozzin or for use in agriculture; breeding or for a combination of these). Except for the new 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), so it differs in this way from the other forms of development addressed in this document. Should there be any proposal for stables for horses used in the course of agricultural activities, they will be considered in the light of the relevant policies in Part 2. Discussion in the remainder of this part is directed solely to the other types of stables.

Iktar il-quddiem l-artikolu 4.2.1 ighid:

4.2.1 The policy context for stables is that set out earlier in Part 1. Structure Plan policy SET 11 prohibits urban development in the countryside. Those forms of development which are considered non urban and hence legitimately located outside the development zone are defined in paragraph 7.6 of the Plan as "...farmhouses and other genuine agricultural buildings, reservoirs, picnic area toilets and car parks, and control buildings and walls/ fences at archaeological and ecological sites".

L-artikolu 4.2.2 ighid hekk:

So as noted above, 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. However, policies UCO 11 and RCO 2 of the Structure Plan do permit the conversion or change of use of existing buildings in particular circumstances. Also, limited provision for the construction of new horse stables in the vicinity of the development zone would provide adequate accommodation for horses in appropriate sites, other than residential areas.

Il-policy imbaghad taghmel distinzjoni bejn permess for the rehabilitation, conversion or change of use of an existing abandoned building, particularly an abandoned livestock farm building, for the stabling of horses (4.3A) u permess ghal kostruzzjoni ta' stalel godda (4.3B) fejn il-policy taghmila cara illi 'permission will NOT be granted for the construction of new buildings or structures ODZ for the stabling of horses', hlief fil-kazijiet fejn il-kriterji kollha elenkati fl-istess policy 4.3B jigu soddisfatti.

Il-Qorti tqis li din kienet konsiderazzjoni principali ghalkemm mhux l-unika li wassal lit-Tribunal ghad-decizjoni li ha. Il-Qorti ma tistax tqis b'leggerezza l-konsiderazzjonijiet ta' natural legali li waslu lit-Tribunal ghad-decizjoni tieghu. Tali konsiderazzjonijiet kienu l-bazi tal-argumenti l-oħra migjuba mit-Tribunal u jekk il-bazi li fuqhom inbnew l-argumenti l-oħra hu zbaljat jew mhux car u preciz allura jpoggi fid-dubju l-gudikat intier u ma jaghtix ic-certezza rikjesta minn gudizzju. Il-Qorti tirrileva illi anki meta kkwota l-policy u l-paragrafu 4.3B kull ma jghid it-Tribunal hu illi hemm numru ta' paragrafi fil-policy li jichdu l-applikazzjoni fosthom il-policy 4.3B minghajr ma jispecifika fejn u ghaliex l-applikazzjoni hi monka taht dan il-paragrafu. Dan ikompli jikkonferma n-nuqqas tat-Tribunal li jaghti decizjoni motivata kif imiss.

Ghalhekk dan l-aggravju qed jigi milqugh.

### **It-tieni aggravju**

Dan l-aggravju wkoll ghandu jigi milqugh ghax it-Tribunal ghal darb'ohra ma spjegax u ggustifikax a bazi tal-Avviz Legali 514/2010 ir-raguni wara d-dikjarazzjoni xotta illi din hi applikazzjoni sanitarja fejn l-izvilupp illegali ghadu lanqas biss tneħha. L-istess Avviz Legali jaghti dritt li ssir applikazzjoni ta' zvilupp fejn l-illegalitajiet ezistenti fis-sit jintalbu li jigu sanati flimkien mal-izvilupp propost. It-Tribunal naqas li jispjega b'mod car l-intendiment tieghu tar-raguni moghtija minnu u kif din kellha semmai tinfluixxi o meno fuq it-talba tal-appellant li kienet wahda sanatorja u ta' zvilupp fl-istess hin. It-Tribunal ma jghidx jekk kienx hemm strutturi illegali li ma ntalabx li jigu sanzjonati. Il-Qorti mhix qed taqbel jew tiddistanzja ruhha mill-osservazzjoni tat-Tribunal ghaliex biex isir hekk il-Qorti trid tkun taf x'wassal ghal

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konkluzzjoni tat-Tribunal li ma nghatatx mill-istess Tribunal. Il-Qorti ma tistax tipprezumi dak li ma jirrizultax mid-decizjoni.

Ghalhekk dan l-aggravju wkoll qed jigi milqugh.

### **It-tielet aggravju**

Dan l-aggravju wkoll jisthoqqlu jigi milqugh billi l-kwistjonijiet ta' commitment kif mressqa mill-appellant ma gietx trattata mit-Tribunal. It-Tribunal illimita ruhu biss li jghid li ma hemmx stables ohra b'permess validu fil-vicinanzi. Dan ma kienx l-aggravju tal-appellant izda li premessi simili nghataw f'zoni ohra u din l-applikazzjoni kellha tigi trattata bl-istess mod. Dan hu dak li kellu jigi indirizzat mit-Tribunal u cioe jekk dan l-argument kienx wiehed validu jew le u r-ragunijiet ghaliex dan l-aggravju kellu jigi michud. Id-decizjoni trid tikkunsidra l-aggravji mressqa u mhux tahrab minnhom jew tinjarahom. It-Tribunal f'dan l-aggravju wkoll naqas li jiddilibera fuq il-lanzanzi tal-appellant, liema lanjanzi kienu jikkostitwixxu punti ta' ligi li setghu, jekk fondati, ibiddu d-decizjoni tal-Awtorita. Dan l-aggravju bhal ta' qablu ma kienx wiehed superficjali jew periferali ghal kwistjoni izda materjalment rilevanti. Ghalhekk it-Tribunal naqas mill-obbligu li jaghti risposta cara ghall-aggravju bhall-ohrajn mertu ta' dan l-appell u kwindi d-decizjoni ma ghandhiex fundament sod fil-ligi.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Cristinu Cassar in linea ma' dak deciz mill-Qorti u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tad-29 ta' Novembru 2013, u tirrinviya l-atti lura lit-Tribunal biex l-appell jerga' jigi deciz mill-gdid. Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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