



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta ta' l-20 ta' Mejju, 2015

Appell Civili Numru. 59/2014

Stephen Vella

vs

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

Albert Bonnici

Il-Qorti,

Rat ir-rikors tal-appell ta' Stephen Vella, registered objector, ta-24 ta' Novembru 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-4 ta' Novembru 2014 li laqghet

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I-applikazzjoni PA 3779/2010 'proposed minor amendments to layout of approved farm (part not yet built) and to sanction part of farm as built';

Rat ir-risposti tal-Awtorita u l-applikant li ssottomettew 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:

Ra l-aggravji mressqa fl-appell hekk kif gej:-

“Reference is made to the above mentioned development application, approved by MEPA on 6th February 2013, which decision was published on 6th July 2013. On behalf of my client, Mr. Stephen Vella, holder of I.D. 460675 (M), who is an objector, I would like to lodge a third party appeal. Whilst attaching at Annex I the relevant Development Permit conditions, a copy of the payment receipt and the site plan, on behalf of my client I would like to appeal such decision on the following arguments:

The area where the proposed rabbit farm is to be located has been classified as a Category 2 Settlement by the Central Malta Local Plan. The proposed development thus runs counter to Policy CG 04, which clearly states that such rural settlements which are located within a wider rural area, should be conserved, consolidated and rehabilitated while protecting their rural character;

As a matter of fact the proposed rabbit farm shall have a floor-space of some 700 square metres, which is an excessive commitment in such a rural area characterised by a 17th Century chapel within a distance of some 20 metres;

The proposed development runs counter to Structure Plan Policy AHF5, which clearly states that the development of structures essential to agriculture outside the development zone are subject that the materials and design of the development are

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compatible and compliment the environment in which it is located, which is not the case for this particular development;

The proposed development runs counter to Structure Plan Policy BEN 1, in view that the proposal shall have a deleterious impact on the existing adjacent legally approved residential uses;

The proposed development runs counter to Structure Plan Policy RCO 4, which clearly prohibits development in rural areas that will adversely affect the scenic value of the area in which its shall be located;

It is our opinion that the proposed manure clamp cannot properly function in view that it is being proposed to be located at basement -2 level. Furthermore the access to this manure clamp shall be through a narrow rural passageway, which is characterised by random rubble walls on either side, as better indicated in red colour on the attached extract from the 1967 relevant survey sheet - attached at Annex II;

The existing rabbit farm is currently operating in an illegal manner, then how is it that this application has been approved when the illegal operation was still on going. A proof of such illegal development is the The Times article of 26th January 2013 - a copy of which is being attached for ease of reference at Annex III - whereby the ex-Prime Minister, Dr. Gonzi, carried out a visit to these premise;

The proposed development has been subject to a number of other newspaper articles, in which the approval of this rabbit farm has harshly condemned, copies of which are being attached at Annex IV.

As per Superintendent of Cultural Heritage minute, the proposed development shall be sited some 20m metres away from the Seventeenth Century Chapel dedicated to the Assumption of the Virgin Mary which has a considerable architectural and historical value. SHC further stated that the application will have a considerable impact on this historical monument in particular the following:

Visual Impact - the volume and height of the new proposed structure will dwarf the historic chapel;

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Material Impact - in terms of vehicular traffic, this application is proposing a site access just opposite the historic chapel, which will expose the chapel and its historic parvis to a threat from the increased passage of heavy vehicular traffic.”;

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fit-3 t'Ottubru 2013 u li jaqraw kif gej:

“5.2 The Authority has the following comments:

5.2.1 Introduction

The approved rabbit farm (PA 1930/99) covers an area of circa 700sq.m. However not the entire farm has been built. No additional increase in the building footprint is envisaged in this proposal vis-à-vis what has been already approved in PA 1930/99.

The amended farm unit includes two large breeding areas, one at basement level -1 and one at ground floor level. The breeding units cover an area of circa 360sq.m on each floor, and the remaining space is occupied by storage facilities, garage, office and kitchenette at ground floor level. The manure clamp is proposed at basement level -2, covering an area of 360sq.m. The waste produced at the upper breeding units is transferred to the manure clamp at the lower level by means of a conveyor belt, as shown on the submitted drawings.

Six silos are being installed (4 of which are included for sanctioning). Two cesspits are also included in the proposal, one at basement level -2, to service the manure clamp, and one at level -1, to service the breeding units.

The farm has an external height ranging from 4.8m to 5m from the road level, and all the feed silos are incorporated within the building structure, hence the silos are not visible from the public road. Proposal includes the request for the sanctioning of works which have already been carried out.

5.2.2 Proposal vis-à-vis the rural settlement

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The appellant is arguing that the proposed farm does not respect the surroundings because it is characterized by a rural settlement regulated by local plan policy CG 04.

The Authority notes that the proposal is sited in an ideal location exactly because it is located in a rural settlement. Farms do belong to the rural landscape. Actually farms are expected to be located in such areas and thus it respects Structure Plan policy BEN 1. Moreover, the appellant is completely wrong when stating that the proposal runs counter to local plan policy CG 04 since this policy specifically permits farms in Category 2 Settlements.

5.2.3 Proposal vis-à-vis the surrounding rural landscape and nearby chapel

The Authority cannot understand why the appellant stated that the proposed building runs counter to Structure Plan AHF 5 since the appellant failed to explain why the proposal does not respect the surroundings or that its design and materials employed are not acceptable.

On the other hand the Authority notes that the existing and proposed extended farm is only 1 storey high above the street level, at a maximum height of 5m. The materials and design proposed are acceptable and typical of a modern farm structure. In no way it can be considered as overbearing in relation to the rural landscape.

Furthermore, the entire building is recessed from all sides. The massing of the building is going to be broke up by lower lying walls surrounding the perimeter of the site as well as vegetation to mask the main façade, the one fronting the public street. Low lying rubble walls along the side fronting the chapel will further integrate the site with the surrounding environment. The limited façade fronting directly the church is to be in fair faced masonry and recessed by an average of 2m from the rubble wall.

The proposed farm is deemed to be in full respect of the surroundings including the chapel.

5.2.4 Re: Manure Clamp

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The appellant is arguing that the manure clamp will not function because it is at the lower basement level and since access to it is from a narrow rural passage.

Primarily, the Authority remarks that both the Department of Agriculture and the Department of Environmental Health endorsed the proposal. Moreover, the appellant failed to substantiate why the manure clamp will not function. Also the 'narrow' rural passage is at least 3m wide.

5.2.5 Re: Illegal Development

The appellant is incorrect to state that the farm was operating illegally. The existing farm is covered by a valid permit. The illegalities on site regard the fact that it was not constructed according to permit. However the differences do not involve any increase in footprint or floorspace but rather limited to the internal layout. Any illegal extensions not forming part of the application have been demolished during the course of the application. This state of affairs was confirmed by the Enforcement Unit during the processing of the application.

5.2.6 Re: Superintendence of Cultural Heritage

The appellant implied in his appeal that the Superintendence of Cultural Heritage (SCH) objected to the development. This is not correct. The SCH comments were limited to the fact that the proposed farm is located next to a historical church and therefore any works should respect its context. Moreover the concerns expressed by the SCH were based on a set of drawings which were updated by the applicant after a request by the EPC before the permit was to be issued.

It is also important to note that the SCH comments were still taken into consideration by the EPC in its final decision even if the said comments were submitted after the expiry of the date communicated by the Authority (the comments were submitted just the day prior to the decision).

The appellant when quoting the SCH failed to refer to the last section, which stated that if the application had to be considered, the drawings had to be updated so as to minimize the potential for impact. The SCH requested that:

- The façade of the new building facing the chapel should be receded away from the monument as far as possible.

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- The new building should not dwarf the existing chapel and must not exceed the height of the church;
- Any clearing and rock-cutting is to be in keeping with an approved methodology not to cause damage to the chapel through vibrations or through the passage of machinery;
- The eventual operation of the farm and especially its related traffic flows are to be regulated so as to ensure that no negative impact is caused to the chapel. The entrance to the farm should be oriented away from the chapel to avoid this potential impact.

The revised drawings requested by the EPC in fact show that the façade of the new building facing the church has been receded by an average of 2m from the site boundary, which façade outlook is mitigated by a low-lying rubble wall that breaks off the massing of the building. The materials employed are acceptable and the façade nearest to the church which was to create a blank wall is to be rendered in fair faced masonry. The height of the farm is limited to one storey and never exceeds the height of 5m from the street level. It surely does not dwarf the chapel. Also, any excavation and rock cutting is subject to a monitoring condition and bank guarantee. The main entrance is indeed at the furthest point possible from the church whilst any waste collection is to be affected from the side elevation fronting the open countryside rather than facing the church.”;

Ra r-risposta ghall-appell prezentata lil dan it-Tribunal mill-Avukat Dottor Gianfranco Gauci ghan nom tal-applikant, li taqra' kif gej:

“Nikteb inkarigat mill-applikant appellat Albert Bonnici ta' Redentur, Triq Santa Marija, Maghtab l/o Naxxar sabiex b'referenza ghall-appell tat-terz hawn fuq indikat, nissottometti l-prezenti risposta tieghu ghall-aggravji elenkati fl-istess appell.

1. Illi fl-ewwel lok l-appellant irid jipprova li huwa ghandu locus standi bhala registered objector ai termini tal-Kap.504 tal-Ligijiet ta' Malta u ghaldaqstant qed jintalab li l-Awtorita tivverifika dan mill-atti taghha qabel ma dan l-appell jipprocedi ulterjorment fuq il-rnertu;

2. Illi minghajr pregudizzju ghas-suespost, l-aggravji kollha mressqa mill-appellant huma infondati fil-fatt u fid-dritt u ftermini ta' policies ta' l-ippjanar li fuqhom ghandu gurisdizzjoni dan it-Tribunal u ghaldaqstant ghandhorn jigu michuda minn dan it-Tribunal;

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3. Illi minghajr pregudizzju ghas-suespost, il-permess appellat jikkoncerna biss alterazzjoni minuri ghal razzett tal-fhiek antik ga approvat b'permess ta' zvilupp precedenti (PA 1930/99: 'Demolition of existing building, excavation of basement level, and construction of a rabbit farm at ground and basement level, filwaqt illi bosta mill-aggravji mressqa mill-appellant jikkoncemaw proprju l-uzu tas-sit bhala razzett tal-fhiek; tali aggravji ghaldaqstant jezorbitaw rnil-kompetenza ta' dan it-Tribunal stante li l-uzu llum il-gurnata huwa res judicata u ma jistax l-appellant permezz ta' dan l-appell jerga' jiftah il-mertu ta' l-applikazzjoni ta' zvilupp bin-numru PA 1930/99. Jigi sottomess li lura fl-2005 meta hareg il-permess ta' zvilupp PA 1930/99 l-appellant odjern kellu kull dritt li joggezzjona u semmai jappella mill-ghoti tal-permess, izda dan ghazel li ma jaghmlux u llum dik id-decizjoni hija res judicata u l-applikazzjoni appellata tikkoncerna biss l-imsemmija alterazzjoni;

In vista tas-suespost, l-appellat qed jitlob li dan it-Tribunal jiddikjara li l-aggravji kollha ta' l-appellant li jikkoncernaw l-uzu tas-sit bhala razzett tal-fhiek, li fl-opinjoni tal-appellat huma l-aggravji bin-numri 1, 2, 3, 4, 5, 8 u 9, jezorbitaw il-kompetenza tieghu u ghalhekk huma irritwali u nulli u ghandhom jigu michuda;

4. illi minghajr pregudizzju ghas-suespost, b'referenza ghall-ewwel aggravju li jallega ksur tal-Policy CO 04 tas-Central Malta Local Plan, jigi sottomess is-segwenti:

illi l-appellant qed jippretendi fl-ewwel lok li dan it-Tribunal japplika din il-policy kontra l-ghoti tal-permess sabiex is-sit jintuza bhala razzett ghall-fhiek b'mod retro-attiv. Jigi rilevat li din il-policy giet promulgate fl-2006 filwaqt li l-permess originali hareg qabell-istess policy;

illi apparti minn dak suespost, jigi sottomess li mhux minnu li l-applikazzjoni odjerna tikser Policy CO 04 tas-Central Malta Local Plan. Fil-fatt, l-aggravju ta' l-appellant jidher li jinjora b'mod assolut il-kontenut ta' l-istess policy, u dan stante li l-kriterji ta' l-istess jimmilitaw favur l-ghoti ta' dan il-permess ta' zvilupp u mhux kontra. Issir referenza partikolari ghall-paragrafu C ta' din il-policy li specifikatament jippermetti dan it-tip ta' zvilupp, cjoe 'Agricultural buildings for livestock farming and for arable farming'. L-istess applikazzjoni hija wkoll konformi mal-Policy 2.3A tal-Policy and Design Guidance - 'Agriculture, Farm Diversification and Stables' 2008 kif proprju dikjarat mill-Awtorita fid-DPA Report taghha;

illi l-argument ta' l-appellant imur sahsitra kontra l-principji stabbiliti mill-istess Policy CO 04, li fil-paragrafu 3.3.10 taqra kif gej:

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The acceptable land uses in these settlements are aimed at ensuring the genuine needs of agriculture are met, the remnants of agricultural activity are retained and allowing for rural diversification.

Jigi rilevat li l-iskop tar-Rural Settlement mhuwix li jigu salvagwardjati biss ir-residenzi, bhal ma hi dik ta' l-appellant li fuq kollox hija recentissima, izda li jigi salvagwardjat il-karattru, inkluz l-uzu rurali u agrikolu, ta' dawn is-settlements. Proprju dan taghmel l-applikazzjoni odjerna, li wiehed jerga' jfakkar tipproponi biss emendi ghall-uzu ga approvat snin ilu;

Ghar-ragunijiet suesposti, dan l-aggravju mhux gustifikat u ghandu jigi michud;

5. Illi b'referenza ghat-tieni u d-disa' aggravji ta' l-appellant, li jenfasizzaw id-daqs ta' l-operat u l-vicinanza tal-Kappella ta' Santa Marija, jigi sottomess dan li gej:

illi ghal darb'ohra l-principju li ghandu jkun hemm razzett tal-fniek fuq is-sit ma giex deciz f'din l-applikazzjoni izda f'dik precedenti u ghalhekk il-kwistjoni hija res judicata u dan it-Tribunal huwa prekluz milli jidhol fil-kwistjoni jekk mhux bi ksur tad-drittijiet tal-appellat;

illi l-istess jinghad dwar l-oggezzjoni ghad-daqs ta' l-operat ta' madwar 700 metru kwadru. Dan id-daqs, kif ikkonfermat ukoll fid-DPA Report ta' l-Awtorita (paragrafu 4.2) gie approvat originarjament fl-ewwel permess ta' zvilupp u mhux fil-permess odjern. Ghalhekk dan il-punt legalment ma jistghax jigi appellat f'dan l-istadju quddiem dan it-Tribunal. Jekk it-Tribunal jaghzel li jidhol f'din il-kwistjoni, ifisser li jkun qed jerga' jiftah mertu li huwa res judicata u dan bi ksur tad-drittijiet tal-appellat;

(iii) illi fil-fatt l-Awtorita tul il-process ta' smiegh ta' din l-applikazzjoni esprimiet ruhha kontra estensjonijiet oltre dawk tas-700 metru ga approvati u talbet lill-applikant sabiex jissottometti pjanti emendati kif fil-fatt ghamel. Referenza partikolari ssir ghall-paragrafu segwenti (4.6 Consultations) tad-DPA Report:

The original proposal included additional development on the back part of the site which included a store, manure clamp and underlying cesspit. The EP D expressed their concern in view of the proliferation of the built structures and requested that the footprint of the farm is limited to that originally approved [. . .] A revised proposal was submitted, limiting the farm structures to the front part of the site, and following

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request for additional waste management details, the EPD recommended condition as per doe. 82.

Ghalhekk jirrizulta li l-Awtorita flimkien mad-Dipartimenti kkoncernati accettaw il-pjanti kif emendati stante wkoll li baqghu jirrispettaw id-daqs originali gia approvat.

(iv) illi inoltre, l-istess DPA Report ta' l-Awtorita jiddikjara li mill-aspett viziv ma kienx qed jistenna li jkun hemm impatt sinjifikanti (paragrafu 4.9) u dan wara li anke saru diskussjonijiet mas-Suprintendenza kif konfermat fid-DPA Report;

L-applikant intalab jissottometti ritratti tal-Kappella in kwistjoni u tas-sit sabiex l-Awtorita u l-EPC jkunu jistghu japprezzaw ahjar l-impatt ta' l-izvilupp. Dan fil-fatt sar (ara dokumenti 109 A sa E u drawing 109 F) u jidher li l-Awtorita kienet sodisfatta b'dak li rat u pprocediet sabiex tohrog il-permess ta' zvilupp;

(v) illi dwar l-impatt materjali msemmi fl-aggravju numru 9 u b'referenza partikolari ghat-traffiku u l-access ghas-sit, jigi rilevat li dan l-argument kien ukoll tqajjem mill-membri tal-EPC u li l-perit ta' l-applikant intalab jipprezenta pjanti emendati u spjegazzjoni sabiex juri ezatt kif u minn fejn kien ser ikun hemm access ghas-sit. Dawn gew prezentati (dokument 109A) u gew ikkunsidrati bhala accettabbli da parti ta' l-Awtorita kif ukoll da parti ta' l-EPC. Wiehed f'dan l-istadju ma jridx jinsa ghal darb'ohra li l-uzu tas-sit huwa ga kommess permezz tal-permess ta' zvilupp precedenti;

Ghalhekk in vista tas-suespost, dan l-aggravju wkoll mhuwiex gustifikat u ghandu jigi michud.

6. Illi minghajr pregudizzju ghas-suespost, it-tielet aggravju u l-hames aggravju tista' tghid jikkoncernaw l-istess lanjanza, billi wiehed jaghmel referenza ghal Structure Plan Policy AHF 5 b'referenza ghall-materjal u disinn uzat fl-izvilupp u jekk dan jikkumplimentax l-ambjent u l-iehor jaghmel referenza ghall Structure Plan Policy ReO 4 li tirreferi ghall-valur xeniku taz-zona, Bir-rispett kollu anke dawn l-aggravji ma japplikawx ghall-perrness ta' zvilupp odjem ghar-ragunijiet segwenti:

Illi t-tip ta' zvilupp, il-materjal u d-disinn principali ta' l-izvilupp gew decizi fil-permess ta' zvilupp precedenti u mhux fdin l-applikazzjoni u ghaldaqstant dawn ma jistghux jigu appellati fdan l-istadju u wisq anqas mibdula f'dan l-istadju minn dan l-Onorabbli Tribunal. Kif ga nghad, din l-applikazzjoni tittratta biss emendi ghall-binja

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approvata originarjament u zgur li ma jistax jigi preciz mill-applikant li ghall-ernendi biss juza' materjal jew disinn divers minn dak ga approvat;

illi l-appellant inoltre jaqbad u jitfa' dawn l-aggravji minghajr ma jghid kif skond hu l-izvilupp approvat jikser dawn il-policies ghal dak li jirrigwarda materjal u disinn jew kif qed jigi affettwat il-valur xeniku taz-zona u jippretendi li ghandu jkun it-Tribunal li b'xi mod isib xi difett f'dak propost fil-pjanti. Dan meta la l-Awtorita u wisq anqas l-EPC li approva dan il-permess ta' zvilupp ma sabu l-ebda oggezzjoni ghall-istess. Tant huwa ovvju li dawn l-aggravji ntefghu unikament sabiex izidu n-numru ta' aggravji, minghajr ebda gustifikazzjoni, illi jirrizulta li fl-oggezzjoni originali tieghu l-appellant lanqas biss ghamel referenza ghal dawn il-policies;

Illi dwar l-aspett viziv ta' l-applikazzjoni l-Awtorita mhijiex ta' l-istess opinjoni ta' l-appellant, tant illi fid-DPA Report (4.7 u 4.9 tar-rapport) tiddikjara kif gej:

The original permit (P A 1930/99) indicated a height of one storey above road level, reaching a maximum height of 16 courses. The proposed building will be roofed over a height of 18 courses, i.e. 4.8m

In view that the farm shall be constructed as an infill between third party property (propjeta tal-appellant stess), and in an area committed with various farm buildings, the development is unlikely to trigger any negative visual impact within this area.

L-Awtorita, wara li hadet konjizzjoni ta' dawn iz-zewg policies, tghid ukoll (4.9 tad-DPA Report) illi:

No significant visual impacts are foreseen.

(iv) illi l-appellantjinjora li l-izvilupp tieghu stess li sar recentement ukoll semmai affettwa l-valur xeniku taz-zona, izda fil-kaz tieghu ma sab l-ebda oggezzjoni. Anzi ta' min jirrileva li almenu fuq is-sit tal-appellat ga kien hemm strutturi ezistenti, filwaqt li fis-sit ta' l-appellant ma kienx hemm u nhareg permess ghall-bini kompletament gdid (PA 3504/00);

Mis-suespost jirrizulta kemm dan l-aggravju huwa wiehed frivolu u vessatorju ghall-ahhar u ghandu jigi michud minghajr ebda ezitazzjoni;

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Illi minghajr pregudizzju ghas-suespost, b'referenza ghar-raba' aggravju u l-allegat ksur tal-iStructure Plan Policy BEN 1, jigi sottomess li dan ma japplikax ghal diversi ragunijiet:

(i) Stante li z-zona in kwistjoni, kif anke kkonfermat nill-Awtorita fir-rapport taghha, hija kommessa ghal bosta rziezet inkluz irziezet tal-fniek, rziezet tal-baqar u bhejjem ohra;

(ii) illi f'dan il-kuntest sfortunatament jidher li l-appellant jinjora l-fatt li huwa nhariglu l-permess ta' zvilupp recentement u sahsitra wara li kienet ilha ntavolata l-applikazzjoni originali ta' l-appellat, specifikatament ghaliex is-sit tieghu jinsab f' Rural Settlement li l-ghan principali tieghu huwa li ippromwovi l-karattru ta' dawn is-'settlements' billi residenzi u l-uzu agrikolu, inkluz dawk tal-irziezet, jikkumplementaw lil xulxin. L-appellant ma jistax jippretendi, wara li ghazel li jmur hu jghix gewwa zona rurali rnizghuda b'siti ta' uzu agrikolu, li issa dawn jieqfu u jkun hemm biss l-uzu residenzjali f'din iz-zona. Dan anke meta wiehed jara li originarjament il-permess ta' zvilupp fuq is-sit ta' l-appellant stess kien gie michud stante li l-uzu residenzjali ma kienx gustifikat u konsegwentement gie gustifikatbiss ghaliex ingabu provi li l-applikanta kienet 'registered farmer' u ghalhekk il-gustifikazzjoni ghal residenza f'zona agrikola (ara PA 3504/00 u c-cahda precedenti da parti tal-Bord tal-Appell fl-applikazzjoni bin-numru 205011996 PAB 361197);

Jigi rilevat li jidher li b'dan l-aggravju l-appellant issa wara li ha dak li ried mill-applikazzjoni tal-policies applikabbli favur tieghu qed jippretendi li din iz-zona tigi identifikata bhala zona ta' zvilupp residenzjali u mhux zona rurali;

(iii) illi anke fil-kuntest ta' dan l-aggravju, tapplika l-eccezzjoni li l-uzu tas-sit bhala razzett tal-fniek ilu res judicata sa mill-hrug tal-permess ta' zvilupp originali u ghalhekk dan it-Tribunal ma ghandux il-kompetenza li jiehu konjizzjoni ta' dan l-aggravju;

8. Illi minghajr pregudizzju ghas-suespost, b'referenza ghas-sitt aggravju u l-opinjoni tal-appellant li l-manure clamp kif approvata ma tistax tiffunzjona sew minhabba fejn giet sitwata u l-allegat passagg dejjaq, jinghad is-segwententi.

(i) illi tista' tghid li l-kwistjoni tal-manure clamp kienet is-suggett principali li fuqu saru diskussjonijiet f'din l-applikazzjoni u dan bir-ragun stante li fil-principju l-uzu u d-daqs kienu ga approvati u l-akbar preokkupazzjoni kienet il-waste disposal tas-sit. Jinghad illi kemm id-Direttorat kif ukoll l-Awtorita hadu din il-kwistjoni bis-serjeta

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hafna tant illi anke imponew fil-permess ta' zvilupp kundizzjonijiet specifici fuq dan il-punt. Referenza partikolari ssir ghall-Kundizzjoni numru 7 tal-permess ta' zvilupp;

(ii) illi fil-mori ta' l-applikazzjoni, l-applikant intalab jissottometti pjanti emendati dwar l-istess manure-clamp, inkluz dwar il-ventilazzjoni ta' l-istess, sabiex jigi assigurat standard sanitarju oghla. Id-disinji emendati gew intavolati u gew anke kkonfermati minn Inġinjer kwalifikat ut-Tribunal jista' jaghmel referenza ghalihom f'dokument 109h;

(iii) illi l-entitajiet kollha involuti approvaw il-facilitajiet ta' 'waste management' bhala adegwati u nhargu l-permessi u l-awtorizzazzjonijiet kollha relattivi. Nonostante dak suespost, l-appellant qed jghid li fl-opinjoni tieghu il-manure-clamp mhijiex adegwata u li l-opinjoni tieghu ghandha tipprevali fuq dik ta' bosta nies kwalifikati fil-kamp, minghajr ebda sottomissjoni ta' sustanza f'dan ir-rigward; ghar-ragunijiet suesposti, dan l-aggravju wkoll mhux gustifikat u ghandu jigi michud;

9. Illi finalment u minghajr pregudizzju ghas-suespost, b'referenza ghas-seba' u ghat-tmien aggravju, dwar l-allegat uzu illegali tas-sit u l-artikli fil-gazzetti:

(i) fl-ewwel lok artikli fil-gazzetti ma humiex materja ta' ippjanar li fuqhom jista' jsir appell quddiem dan it-Tribunal u ghaldaqstant hum a ghal kollox irrilevanti ghall-mertu ta' dan l-appell u ghandhom jigu sfilzati;

(ii) illi dwar l-allegazzjoni li l-uzu tas-sit huwa illegali, semplici referenza ghall-permess ta' zvilupp PA 1930/99 ixxejjen ghal kollox din l-allegazzjoni. Issir ukoll referenza ghal dak li jinghad fid-OPA Report, cjoé 'the use of the premises as a rabbit farm was granted in PA 1930/00 and as such is not illegal' .

(iii) illi d-Oirettorat ta' l-Infurzar, tul il-mori tal-applikazzjoni, ikkonferma wkoll li kwalunkwe struttura illegali fuq is-sit kienet tnehhiet u ghalhekk l-Avviz ta' Nfurzar 33/06 ma kienx ghadu jissussisti; Nonostante dak suespost, l-appellant ghadu jinsisti li l-uzu tas-sit huwa illegali; jirrizulta mill-fatti li dan mhux minnu, u ghalhekk dan l-aggravju ghandu wkoll jigi michud.

Tant jissottometti umilment l-applikant ghas-savju gudizzju ta' dan l-Onorabbli Tribunal, sabiex l-appell odjern jigi michud. Nitolbok tinforma lill-A vukat sottofirmat kif ukoll lill-applikant bid-data tas-smiegh ta' dan l-appell kif ukoll bi kwalunkwe sottomissjonijiet ulterjuri li jistghu jigu ntavolati.”;

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Ra s-sottomissjoni ulterjuri tal-Avukat Dottor Chris Cilia tal-14 ta' Frar 2014, hekk kif gej:

"I write for and on behalf of my client the third party objector Mr. Stephen Vella of 'BertKarlJoe', Triq il-Kappella ta' Santa Maria, Maghtab l/o Naxxar.

These are the final submissions which are being made on behalf of my client and which are to be viewed in conjunction with the contents of the appeal application as well as the other submissions which have already been made on behalf of my client by his appointed architect AIC Joseph Attard.

In the first place it is to be reiterated that my client together with his wife and children reside next door to the rabbit farm in question and the commercial operation of a fully-fledged -rabbit farm by applicant Bartolomeo Bonnici may cause and is causing a great hazard to the health of my client and his family, as evinced by the attached medical documentation (Doc. 'A'). My client's residence is a legal one and covered with a regular permit and hence it is also to be noted, from a technical point of view that the proposed development runs counter to Structure Plan Policy BEN 1 since it shall certainly and undoubtedly have a deleterious impact on the existing adjacent legally approved residential uses (including my client).

In the second place it is to be underlined that the above mentioned development application was approved by MEPA on 6th February 2013 a few days after a much publicized visit by the then Prime Minister and the then Minister for Resources and Rural Affairs at this rabbit farm which was already being operated illegally and without a permit. This as can be seen from the attached newspaper reports which are being filed and marked as Document 'B'. Hence the approval of this application for a rabbit farm which was clearly already being operated illegally and without a permit (as irrefutably proved by photographic evidence presented during the Board hearing and as also admitted by the applicant himself) was rushed ex post facto at an incredible speed which in my entire career I had never witnessed before in ally my dealings with MEP A for the sole and simple reason to accommodate Mr. Bonnici and reward him for his political allegiance and above all in order to legitimize what was then an illegitimate state of affairs. In the said newspaper reports it was stated that Mr. Bonnici had received hundreds of thousands of Euros in EU funds in order to operate an illegal rabbit farm and hence the application was hurried at lightning speed and approved by a Board which, in my experience, is more used to object and disapprove applications for even the most minor of

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irregularities. But in this case it chose to approve with immediacy an application which was not merely tainted but riddled with illegalities and abuse.

As a result of this a very serious and grave injustice has been done and the rights, interests and well-being of my client and his family has been sacrificed on the altar of political expediency in the thick of an electoral campaign and hence it is being respectfully submitted that this honourable Board should not condone such actions and hence uphold this third party appeal.

I have stated in this Note of Submissions that the approved application as riddled with illegalities and irregularities and shall now proceed to highlight the said irregularities –

1. As already stated, when the application was submitted the rabbit farm was already being operated illegally and with a complete flaunting of all sanitary laws. The rabbit manure produced was being transported by hand (bil-karretta) [vide attached photos - Doe. 'C'] and disposed of in the open countryside since the farm had no functional manure clamp. This in violation of an undertaking which Bartolomeo Bonnici had made with the Court in the acts of a warrant of prohibitory injunction which had been filed against him whereby he obliged himself not to dispose of the rabbit manure in such manner (vide attached judicial documentation marked 'D'). And Bonnici flaunted the undertaking he had made with the Court, continued to operate this rabbit farm illegally and reaped his reward with the approval of his application a few weeks prior to the 2013 General Election after the much publicized visit to his illegal rabbit farm by the then Prime Minister !! An injustice of the highest order !

2. It is further to be noted that the area where the proposed rabbit farm is to be located has been classified as a Category 2 Settlement by the Central Malta Local Plan and hence the proposed development thus runs counter to Policy CG 04, which clearly states that such rural settlements which are located within a wider rural area, should be conserved, consolidated and rehabilitated while protecting their rural character. The proposed rabbit farm shall have a floor-space of some 700 square metres, which is an excessive commitment in such a rural area, which, furthermore, is characterized by a 17th Century chapel which is situated in the immediate vicinity of this rabbit farm. It is to be noted and underlined that the Superintendent of Cultural Heritage minute has objected to this development since it shall be sited merely some 20m metres away from the Seventeenth Century Chapel dedicated to the Assumption of the Virgin Mary which has a considerable architectural and historical value. SHC had further stated that the application will have a considerable impact on this historical monument both from the point of view of Visual Impact since the volume and height of the new proposed structure will

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dwarf this historic chapel as well as from the point of view of Material Impact in terms of the vehicular traffic of heavy vehicles which this development will inevitably generate and which will threaten the chapel and its historic parvis. Nevertheless, in spite of these objections which were made by the as above-stated, this application was fast-tracked at lightning speed for the reasons above-outlined.

3. The proposed development runs counter to Structure Plan Policy AHF5, which clearly states that the development of structures essential to agriculture outside the development zone are subject that the materials and design of the development are compatible and compliment the environment in which it is located. This is certainly not the case here since all structures have been developed in an amateurish manner without any regard whatsoever to the surrounding environment. Consequently, this inevitably means that the proposed development also runs counter to Structure Plan Policy RCO 4, which clearly prohibits development in rural areas that will adversely affect the scenic value of the area in which its shall be located.

Another main area of concern is the issue of the Manure Clamp. It is clear that the proposed manure clamp cannot properly function as per its proposed location at basement -2 level with access through a narrow rural passageway with random rubble walls on either side. The said manure clamp cannot function properly and the threat to human health hazard from the toxic waste and fumes which will be generated and which may easily seep through the rubble walls is enormous. It is also to be noted that there is a water reservoir in the immediate vicinity of the site where the manure clamp is proposed to be situated.

This rabbit farm was already the subject of enforcement notices issued by MEP A and yet the application has sailed through and was approved. This contrasts dramatically with a myriad of other applications in which I was professionally involved in which the fact that there was an enforcement order or notice and / or the existence of an illegality (in this case the illegalities are flagrant and in-the-face) always constituted an insurmountable obstacle to the issuance of the relevant permit. Not in this case, though - and the reasons above outlined clearly explain why.

Hence it is being respectfully submitted that this Honourable Tribunal should uphold this appeal and redress the injustices which have been committed so far."

Ra r-risposta tal-Awtorita' li giet prezentata lil dan it-Tribunal fil-20 ta' Mejju 2014, u li taqra kif gej:

(5) 1.0 COMMENTS ON APPELLANT'S ARGUMENTS

The Authority has noted all the submitted arguments and accusations and disagrees with these statements on various accounts as will be explained below.

1.1 The Appellant argues that this case had been "rushed" due to political pressures. The Authority wishes to point out that the development planning application had been submitted on the 15th of July 2010 and approved on 28th June 2013. If the appellant considers 3 years of processing an application as rushed, then the Authority is rather baffled by this accusation. The first DPA Report was compiled and endorsed on the 15th of November 2012; this recommendation was to grant the development. It is to be noted the Appellant alleges that this application was rushed in view of the election which took place in March 2013, however, the permit was issued on 28/06/2013 and posted on 1/07/2013 which is three/four months after the said election. These are very serious accusations made against the Authority which claim the Authority of wrong doings - allegations made by the Appellant that the farm under appeal is an illegal farm, which in reality is a farm covered by Planning Permit PA 1930/99 but was not built according to permit hence the request for sanctioning parts of this farm. The Tribunal is invited to take into consideration the following chain of events:

Minute 104 dated 9/1/2013:

As per EPCA's request, in view of objectors' allegations that farm is already in operation please inspect and confirm status and whether this should be a case for dismissal. Please reply within 10 days and refer to PRTA.

Minute 105 dated 14/01/2013:

Site inspected and it can be confirmed that structures on site are used as a rabbit farm. Following previous minute, the issue of the continued use as a rabbit farm was discussed with senior management, and it was concluded that the use of the premises as a rabbit farm was granted in PA1930/99, and as such is not illegal. To note that all the illegal structures subject to ECF33/06 have been removed and the only pending issue from an enforcement concern is the manure clamp. This matter has been discussed with owner and pending a final decision on this application, owner obtained approval from the Agricultural dept, (doc 41 in EC33/06) to use the cesspit without the manure clamp. In the circumstances, referring this case for dismissal is not deemed applicable.

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Minute 109 dated 19/01/2013:

Architect submitted the requested documents and information, as requested in Minutes 100 & 101

Minute 121 dated 20/02/2013:

Case Officer DPA Report was updated in view of EPC requests, clarifications and amended drawings. The updated DPA Report was again recommended to grant as was the original DPA Report.

Minute 168 dated 28/06/2013:

The Decision Notice was issued.

Minute 172 dated 1/07/2013:

Permit was posted.

1.2 The comments brought up by the appellant are a reiteration of what has been already stated in previous reports. Therefore, the Authority has no further comments to make other than stating that its position as set in the initial report remains completely valid and pertinent.

In view of the above arguments the Authority states that the decision as taken by the EPC was taken in conformity with the relative policies and in view of previous legal permit PA 1930/99, and hence, respectfully requests the Environment and Planning Review Tribunal to confirm the decision as issued by the EPC, whereby an approval for development permission was issued. The Authority reserves the right to forward further submissions during the appeals process as necessary.”;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi l-aggravvji mressqa f'dan l-appell jistghu jigu migbura hekk kif gej:

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1 – is-sit jinsab f'Category 2 Settlement u vicin djar residenzjali, inkluz tal-appellant li tinsab biswit l-istess razzett;

2 – l-izvilupp huwa massiv u jmur kontra l-policies AHF 5 u RCO 4 tal-Pjan ta' Struttura peress li ser johloq impatt negattiv fuq l-ambjent tal-madwar u fuq id-dehra tal-kappella li tinsab fil-vicinanze tas-sit;

3 – il-manure clamp mhix adegwata kemm minhabba li hija fil-livell sotterran u kif ukoll minhabba l-access ristrett;

4 – is-sit huwa munit b'avvizz ta' nfużar u kien qiegħed jigi operat b'mod illegali.

L-ewwel u t-tieni aggravji:

Filwaqt li s-sit mertu ta' dan l-appell jinsab f'Category 2 Rural Settlement kif indentifikat fil-pjan lokali (Central Malta Local Plan), l-istess pjan lokali permezz tal-policy CG04 ma jeskludix l-izvilupp ta' rżieżet fl-inhawi tal-Magħtab fejn jinsab is-sit. Illi fir-rigward ta' 'livestock farming', il-policy CG04 tipprovdi dan li ġej:

“The settlements of Magħtab and Bidnija as indicated in Planning Control Maps NAB7 and MOB8 are designated as Category 2 Rural Settlements located within a wider rural area that should be conserved, consolidated and rehabilitated while protecting their rural character.

Within these Large Rural Settlements rehabilitation, development and re-development for the following land uses will be permitted:

[...]

C. Agricultural buildings for livestock farming and for arable farming provided they comply with the criteria set out in the draft Policy & Design Guidance “Agriculture, Farm Diversification and Stables (2005)”. The rural settlement is to be considered as an inhabited area for the purposes of the draft Policy & Design Guidance “Agriculture, Farm Diversification and Stables (2005).”

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Illi f'dan il-kuntest, l-aggravju principali li qieghed iressaq l-appellant huwa ghal-fatt li r-razzett approvat ser ikun fil-vicinanze ta' djar residenzjali, u iktar minn hekk, biswit l-istess residenza tieghu. Fis-sottomissjoni tal-14 ta' Frar 2014, l-appellant jiccara din il-kwistjoni hekk kif gej:

“(appellant’s) residence is a legal one and covered with a regular permit and hence it is also to be noted from a technical point of view, that the proposed development runs counter to Structure Plan Policy BEN 1 since it shall certainly and undoubtedly have a deleterious impact on the existing adjacent legally approved residential uses.”

Illi f'dan ir-rigward, l-Awtorita' kif ukoll l-applikant (permit holder), irribattew billi ssottolinjaw il-fatt li l-permess odjern jittratta f'alterazzjonijiet u estensjoni ta' razzett ezistenti munit bil-permess tal-izvilupp, u mhux ta' bini ta' razzett mill-gdid hekk kif donnu qieghed jaghti l-impressjoni l-appellant.

Illi dan it-Tribunal seta' jinnota li l-izvilupp ta' razzett tal-fniek jaf il-bidu tieghu bill-permess numru PA 1930/99, approvat fit-13 ta' Settembru 2005 (qabel ma gew fis-sehh il-pjan lokali) li kien intiz ghat-trobbija ta' 500 fenka (doe) f'bini mifruq fuq medda ta' 700 metru kwadru. Illi l-izvilupp mertu ta' dan l-appell jirrigwarda z-zieda tat-trobbija tal-annimali minn 500 ghal 700 fenka, imma mhux necessarjament ser jizdied il-firxa ta' bini, li ser jibqa dak ta' 700 metru kwardu.

Illi l-aggravji mressqa f'dan l-appell huma relatati mal-izvilupp tar-razzett, liema razzett huwa wiehed stabbilit bil-permess PA 1930/99, filwaqt li l-permess mertu ta' dan l-appell huwa limitat ghaz-zieda u alterazzjonijiet ta' dan ir-razzett kif originarjament approvat.

F'dan ir-rigward, dan it-Tribunal seta' jinnota li l-Awtorita' filwaqt li qieset li l-pjan lokali ma jeskludix l-izvilupp ta' rziezet fir-rural settlement, illimitat l-izvilupp fil-konfini tal-izvilupp kif originarjament approvat fil-permess PA 1930/99. Fil-process tal-applikazzjoni PA 3385/10, l-applikant naqqas l-izvilupp propost sabiex jindirizza l-kwistjonijiet mqajjma mill-Awtorita' minhabba l-impatt negattiv taz-zieda tal-izvilupp f'din il-parti tar-rural settlement tal-Maghtab.

Hawnhekk, dan it-Tribunal seta' jinnota n-nuqqas tal-appellant li jindika kif iz-zieda tal-izvilupp tar-razzett jikser il-policies tal-pjan ta' Struttura, kif ukoll tal-pjan lokali. F'dan ir-rigward dan it-Tribunal qieghed jaqbel mas-sottomissjonijiet migjuba mill-Awtorita' u l-applikant li l-aggravji fl-appell mhumiex indikati lejn il-permess kif

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mahrug, imma lejn l-izvilupp tar-razzett, fejn l-uzu ta' razzett tal-fniek huwa gja kommess bil-permess PA 1930/99.

It-tielet aggravju:

Fir-rigward tal-manure clamp, l-appellant qieghed iqajjem id-dubju kemm din tista' tigi operata b'mod tajjed meta din tinsab fit-tieni livell that il-livell tat-triq, kif ukoll minhabb l-access dejjaq li hemm biswit ir-razzett. Hawnhekk ukoll dan it-Tribunal seta' jinnota li l-appellant naqas li jissostanzja dan l-aggravju, meta ma gabx evidenza kif il-fatt li l-manure clamp tinsab fil-livell sotterran u l-access huwa minn sqaq dejjaq jista jincidi fuq l-operat ta' din il-manure clamp. Dan it-Tribunal huwa sodisfatt illi l-izvilupp ta' dan ir-razzett kif ukoll il-manure clamp kienu suggett ghall-iskrutijnu u approvazzjoni mill-awtoritajiet koncernati bhad-Dipartiment tal-Agricoltura, l-Awtorita' tar-Rizorsi u d-Dipartiment tas-Sahha Ambjentali. Ghaldaqstnat dan l-aggravju mhux sostnut u qieghed jigi michud;

Ir-raba' aggravju:

L-ahhar aggravju jirrigwarda l-izvilupp illegali li kien ghaddej fuq is-sit li skont l-appellant kellu jincidi fuq l-ezitu tad-decizjoni tal-Kummissjoni li kellha tichad il-permess. Din il-kwistjoni fil-fatt giet kunsidrata mill-Kummissjoni qabel id-decizjoni finali, meta d-Direttorat tal-Infurzar fi hdan il-MEPA ikkonferma li filwaqt li l-uzu tar-razzett kien munit bil-permess PA 1930/99, l-izvilupp illegali msemmi fl-avviz ta' nfurzar bin-numru ECF 33/06 kien tnehha mill-applikant. Il-kwistjoni pendenti kienet fir-rigward tal-operat tar-razzett minhabba n-nuqqas ta' manure clamp u cesspits li kienu gja gew imposti fil-permess originali PA 1930/99. Fuq din il-kwistjoni tal-ahhar, l-applikant gab prova ta' permess temporanju mid-Direttorat tal-Agricoltura (Sezzjoni tat-Trobbija ta' l-Animali) datat 3 t'Ottubru 2012, sabiex ikun jista jiddisponi mill-iskart sakemm jigi mwettaq l-izvilupp propost fl-applikazzjoni PA 3779/10. F'dan ir-rigward, dan it-Tribunal jista' jikkunkludi li l-Kummissjoni kienet korretta fid-decizjoni li hadet u ma kienx hemm kwistjoni ta' illeglita' fuq is-sit li seta' jwaqqaf milli l-istess Kummissjoni tiddeciedi favur il-hrug tal-permess PA 3779/10.

Ghal dawn il-motivi, dan it-Tribunal qieghed jichad l-appell, u jikkonferma l-permess PA 3779/10.

Ikkunsidrat

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L-aggravji tal-appellant huma s-segwenti:

1. Il-permess ma setax jigi approvat ghax l-izvilupp propst kien illegali milqut b'enforcement notice 33/06. L-applikant ma setax juza r-razzett kif propost ghax ma kellux manure clamp u ghadu qed jintuza hekk. Dan kollu jmur kontra d-dispost tal-artikolu 86(10) tal-Kap. 504. Clearance temporanju mid-Dipartiment tal-Agricoltura ma jistax jissana zvilupp illegali;
2. It-Tribunal naqas li jitratta l-aggravji kollha tal-appellant senjatament l-impatt tal-izvilupp fuq il-wirt kulturali;
3. It-Tribunal skarta kompletament l-aggravju tal-appellant fejn ingiebu provi li l-manure clamp kif proposta ma tiffunzjonax. Il-fatt li t-Tribunal qal li din giet approvata mid-Dipartiment tal-Agricoltura, l-Awtorita ghar-Rizorsi u tas-Sahha Ambjentali ma jezionerax lit-Tribunal milli jinvestiga l-kwistjoni hu stess.

L-ewwel aggravju

L-appellant ma gab ebda prova illi l-enforcement notice ghadu in vigore. Dak li jirrizulta mill-atti hu illi s-sit hu munit b'permess ghat-trobbija tal-fniek PA 1930/99 li seta' jintuza ghal dan l-iskop. L-Awtorita wara spezzjoni li ghamlet, skond minuta datata 14 ta' Jannar 2013, irrelevat li kull sturturra illegali kolpita bl-enforcement 33/06 kienu tnehhew. Il-kwistjoni kienet biss tirreferi ghal kostruzzjoni ta' manure clamp li kien parti mis-suggett tal-applikazzjoni pendenti. It-Tribunal irreleva illi ghalhekk l-avviz ta' enforzar ma kienx ghadu ta' valur ghax l-izvilupp illegali kein tnehha mill-applikant pendenti l-ezitu ta' din l-applikazzjoni li kienet tinkludi l-izvilupp ta' manure clamp. Pendenti l-ezitu d-Dipartiment tal-Agricoltura kein hareg permess temporanju ghal uzu ta' cesspit u t-Tribunal ikkunsidra li dan il-fatt ma jikkostitwix xi trasgressjoni tal-avviz ta' enforzar anzi kien permess temporanju ghal uzu ta' cesspit pendenti l-ezitu tal-applikazzjoni fuq il-manure clamp. Jigi rilevat mill-Qorti li ma jidhirx li cesspit kienet tiffirma parti minn l-enforcement notice.

Kwindi l-aggravju tal-appellant kif maghmul ma hux validu u qed jigi michud.

It-tieni aggravju

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Hu minnu li dan l-aggravju ma giex trattat direttament mit-Tribunal pero dan ma jfissirx illi b'daqshekk biss id-decizjoni hi monka jew ghandha tigi revokata. Jekk it-Tribunal ikun itratta l-aggravji fis-sustanza taghhom u ikkunsidra l-kwistjoni fil-partijiet l-aktar saljenti taghha, allura din il-Qorti ma tid-disturbax il-gudikat. Jigi rilevat illi t-Tribunal ikkunsidra u ikkonkluda li zvilupp kif gie munit bil-permess, u propost li jigi alterat kien permissibbli fiz-zona u illi l-appellant ma gabx prova kif dawn l-alterazzjonijeit ser imorru kontra l-policies tal-plan ta' struttura u l-pjan lokali.

Dan l-aggravju ghalkemm kien ta' certa rilevanza pero xorta lanqas kien il-pern tal-kwistjoni. Il-pern tal-kwistjoni kienet l-enforcement notice, il-manure clamp u l-fatturi ambjentali involuti fl-izvilupp jew ahjar l-estensjoni tal-izvilupp, li gew trattati mit-Tribunal. In oltre pero din il-Qorti tirrelewa li mhux korrett l-applikant li s-sovraintendenza ghal wirt kulturali kien avvers ghall-izvilupp, izda talab li jittiehdu debiti kawzjonijiet kif elenkati minnha ghax bisiwt l-izvilupp kien hemm kappella storika. L-Awtorita fil-fatt hadet in konsiderazzjoni dan kollu u l-EPC talbet u ottjeniet revised drawings fuq il-faccata tal-izvilupp li jaffaccja l-kappella.

Kwindi dan l-aggravju, mehud fit-totalita tal-izvilupp propost u kunsiderazzjonijiet maghmula mit-Tribunal flimkien mar-rizultanzi fuq il-valur sotriku tal-kappella biswit l-izvilupp u l-kundizzjonijiet imposta ghall-izvilupp in mertu, ma ghandux jigi milqugh.

It-tielet aggravju

Fl-ewwel lok l-appellant, u dan hu konfermat mit-Tribunal, ma gab ebda prova fejn dan il-propost manure clamp kien tali li ma jiffunzjonax hekk kif propost, u ghalhekk ma issostanzjax dan l-ilment. It-Tribunal munit bil-porter li jevalwa kwistjonijiet ta' natura teknika u ta' ippjanar wasal ghal konkluzjoni illi dan il-manure clamp kif propost ghadda mill-iskrutinju ta' varji dipartimenti rilevanti u kellu joqghod fuq ir-rakkomandazzjoni favorevoli taghhom. It-Tribunal ma ghandux obbligu fil-ligi kif donnu jippretendi l-appellant li jaghmel studju ex parte biex jivverifika dan kollu iktar u iktar meta l-appellant ma gab ebda prova li tmur kontra dak li d-dipartimenti koncernati kunsidraw bhala fattibbli. Mill-banda l-ohra ghandu kull dritt li jqis u

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jizen l-evalwazzjonijiet li jsiru mid-dipartimenti koncernati f'xi aspekt tal-izvilupp kif ghamel f'dan il-kaz.

Ghalhekk l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Stephen Vella u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-4 ta' Novembru 2014, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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