



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 164/2012

**John u Geraldine Portelli u
Marco Borg u Maghtab Residents' Association**

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza John Muscat ghall-Wistin Muscat
and Sons**

Il-Qorti,

Rat ir-rikors tal-appell ta' John u Geraldine Portelli u Marco Borg u Maghtab Residents' Association tas-17 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 fejn gie approvat il-permess PA 2875/08 ghal 'extension to existing stores and sanctioning of additional courses to manure clamp';

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Rat ir-risposta tal-Awtorita u John Muscat nomine li sottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konferma;

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

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

B'applikazzjoni – Full Development Permission – PA 02875/08 l-applikant, John Muscat ghal Wistin Muscat and Sons fis-sit EX MGP Farm - WMS, Habel Zwejra, Maghtab talab:

“Extension to existing stores and sanctioning of additional courses to manure clamp”

L-Avukat Tanya Scibberas Camilleri ressqet l-aggravji ghan-nom tal-appellanti kif gej:-

“My clients are registered objectors and are interested parties with the Maghtab Residents Association representing various residents living in the vicinity of the site, whilst John and Geraldine Portelli and Marco Borg reside within a radius of not more than 200 metres and will be affected in the event that the proposed development is approved by the Authority.

Plans

The proposed plans indicate that the development for which the application has been filed is situated close to two already existing fodder stores, such that the floorspace and capacity of the stores is to triple if the application is to be approved. However, it is pertinent to note that the "existing" fodder stores were approved in virtue of PA 2631/06, which permit is subject to appeal before the Planning Appeals Board on the application of my clients spouses Portelli and spouses Borg (PAB 266/2007). One of the contentions being made before the Planning Appeals Board in respect of P A 2631/06 is that the fodder stores were being shown on the plans as

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"Proposed development" whereas they had already been built.

This was pointed out to the MEPA Board during the public hearing held on 6th September 2007, but the Board merely differed the application to the 13th September, whereupon the proposal was amended and plans changed without any re-publication, as should have been done in such a case.

Proposed Development Contrary to Approved Policy and existing Legislation Industrial Development

Although the impression seems to have been given that this development is of an agricultural nature, the scale of the development is such that the fodder is certainly not intended to service the broiler farm situated on site but for distribution of fodder to other livestock farms. Such a capacity for storage is therefore not on an industrial scale and definitely cannot be defined as an agricultural building. The current policy which regulates uses connected with agriculture and livestock farming, entitled Agriculture, Farm Diversification and Stables, approved in December 2007, makes no mention of such a use in an agricultural area. The fodder stores permitted by the December 2007 policy are limited to those stores which are ancillary to livestock farms and therefore, once this proposed use is definitely not intended to service the existing broiler farm, such a use should in principle not even be allowed, since it is not in conformity with approved policies. Furthermore, neither is such a proposal in conformity with existing legislation regarding fodder stores, which disallows stores in proximity of certain farms.

Such a proposal of an industrial nature should therefore be sited in an industrial area and not in the site in question.

Local Plan Designation

My clients' residences are situated within a Category 2 settlement as indicated in Planning Control Maps NAB7 of the Central Malta Local Plan. The development permitted within the settlement is that defined clearly in policy CG 04 of the Plan and the establishment of fodder stores as is currently being proposed by applicant is not provided for in the applicable policy. In fact, the policy allows for residential units, residential farmhouses, agricultural buildings, retail outlets and Farm Retail Outlets. That part of the policy which deals with Agricultural Buildings describes the permitted development as the following:

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)". Indeed, the area of Maghtab is characterised by a variety of uses and this policy, on its own admission, seeks to limit incompatible uses and states the following:

3.3.8. Maghtab lacks an identifiable core area and has a number of existing different uses apart from farmhouses. These existing uses include residential units of varying types and design, batching plants, plant yards, garage industries, animal husbandry farms as well as a substantial number of disused buildings. Due to these mixed and conflicting uses and the disorganised character of this settlement, Maghtab is affected by a fall in rural quality and amenity. The aim of this policy is to counteract these problems by preventing the further development of incompatible uses in the area and by directing further growth only to infill, corner and end of terrace sites as defined in the policy'.

Traffic Generation

The proposal, if accepted, will certainly give rise to increased traffic generation to the site in question, since it is clear that the capacity of the proposed stores is such

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that the use is not intended for the broiler farm on site but in order to distribute fodder to other farms. It is submitted that such traffic generation would have a deleterious impact on the residents in the vicinity of the site and would cause an inconvenience owing to continuous traffic movements of heavy vehicles. The proposal is therefore contrary to policy BEN 1 and TRA4;

Public Health

The proposal also gives rise to a public health issue in that the fodder store is situated on the site of an existing broiler farm and to an adjacent existing pig farm and broiler farm. This is of great concern to my clients, owing to the possibility of contamination of the fodder in the event of an outbreak of disease amongst the swine and/or poultry population in Malta, given that the vehicles would be moving from one farm to another and back to the site in question. This poses a potential threat to the health of the objectors and their families, given that their residences are less than 160m and 180m respectively from the proposed stores. Therefore, in this respect, the proposal is in violation of public health and animal rearing rules and regulations and should not be allowed on the site in question and is in violation of policy BEN 1.

Contrary to Legislation

My clients are informed that applicants were only granted a conditional approval by the Agriculture Department to operate the fodder store and the Board is hereby being requested to investigate whether the fodder store is in fact an Approved Establishment in terms of law and is set up in accordance with Legal Notice 100 of 2005 entitled "Conditions for the Registering of Establishments operating in the Animal Feed Sector".

The attention of the Board is also drawn to the fact that paragraph 20 the Swine Keeping Regulations (Legal Notice 86 of 1990 as amended by Legal Notice 156 of 1991) prohibits the licencing of a swine farm which is situated at a distance of two hundred metres of "any

feedmill". The fact that, as can be proven, this store is situated less than 200 m from an existing swine farm would prohibit the grant of a permit for the carrying on of this activity from this site since it is contrary to law. ”

Illi fis-seduta tat-3 ta' Dicembru 2010, id-difensuri tal-partijiet qablu li dan l-appell ghandu jimxi ma' l-appell PAB 266/07.

Illi permezz ta' rapport l-Awtorita' ressqet il-kummenti taghha kif gej:

“6.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

6.1 The appellant is presenting the following grounds for appeal

(1) This application regards the extensive extension of two already existing fodder stores that have been approved by way of PA2631/06. However these stores, albeit they had already been built were shown as 'proposed' in the drawings pertaining to PA2631/06. When this issue was pointed out during the first public hearing for PA2631/06 (dated 6/09/07), the Board deferred the application to the subsequent week during which period the proposal description was amended and revised drawings submitted. However no re-publishing took place as the normal procedure warrants. This whole issue forms one of the contentious points raised in the third party appeal that has been lodged for PA2631/06.

(2) The scale of the development is not intended to service the broiler farm on site but for distribution to other livestock farms and therefore the proposal it is of an industrial nature. This goes contrary to the established policies in Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008) which permits fodder stores only as ancillary facilities to livestock farms. Furthermore current legislation disallows fodder stores in proximity of certain farms.

(3) The appellants' residences are situated within a Category 2 Settlement as per Map NAB7 of the Central Malta Local Plan (CMLP). The type of development proposed in this application does not fall within the list of appropriate development in such designated areas as set in policy CG04 of the CMLP.

(4) The proposal generates further traffic since the proposed fodder stores are intended for distribution, creating a deleterious impact on the residents in the vicinity. The proposal thus runs counter to Structure Plan policies BEN1 and TRA4.

(5) The proposal gives rise to a public health issue since the proposed fodder store is situated on site of an existing broiler farm and adjacent to a pig farm. Thus the fodder may get contaminated in case of disease among the surrounding swine and poultry population. The appellants are thus at grave risk since they live in great proximity to the farms in question. The proposal is thus in violation of public health and animal rearing regulations as well as Structure Plan policy BEN1.

(6) The applicants were only granted a conditional approval by the Department of Agriculture to operate the fodder store. The Board is solicited to investigate whether the fodder store is in fact an Approved Establishment in terms of law and whether it is set up in accordance with Legal Notice 100105 – Conditions for Registering of Establishments Operating in the Animal Feed Sector. Also paragraph 20 of the Swine Keeping Regulations (LN 86/90; amended LN 156/91) prohibits the licensing of a swine farm which is situated at a distance of 200m of any feed-mill.

6.2 The Directorate has the following comments to make:

6.2.1 Plans in PA2631/06 - Existing feed stores being shown as proposed

The description of the proposal and the plans were changed between the first and second hearing which

decided PA2631/06. The appellant claims that these changes merited the republication of PA2631/06. However the Authority contends that these changes were minimal and did not alter the substance of the proposal and hence it did not require any form of re-publishing. This issue is being addressed in the Appeals for PA2631/06; the appellant fails to specify how this issue affects the current application.

6.2.2 Appellant's claim that the proposal is of an industrial scale

The feed store approved in PA 2631/06 has an area of 500sq.m, and the proposed storage covers another 1,100sq.m.

During the processing of the application it was determined that the present feed mill generates circa 5,000 tons of food per year. Most of this food is used for a pig farm in Pwales that is also operated by the applicant. Another substantial part of the fodder is used by the broiler farm on site and the rest, which amount to between 14%-27% of the total fodder generation (2006-2008 figures) is sold to third parties. The Directorate also determined that the pig farm in Pwales is covered by permit (PA 2215/97).

Taking into consideration the percentage of the food generated on site, used by the applicant to supply fodder for his two farms (the one on site and the other in Pwales), it is clear that amount of food sold to third parties do not cater (in terms of tonnage) for more than one sizeable livestock farm. This means that even if multiple buyers make use of this service, holistically they do not buy/consume animal fodder more than what is required by one livestock farm (of similar size as those pertaining to the applicant).

The applicant also specified that the increase in storage is not required to increase the fodder production but rather to increase the space for the raw material. This extra space is required since the applicant is in the need to buy raw material in greater bulk in order to reduce costs. It is

also pertinent to note that about a quarter of the space is always left empty due to the way that processing takes place.

Therefore since the fodder production will remain the same, and since it has been determined that the current fodder quantities do not cater for more than 3 sizable livestock farms in toto than it clearly cannot be claimed that the proposal is of industrial scale as claimed by the appellant.

6.2.3 Proposal vis-a-vis Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008)

The appellant is claiming that the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008) permits fodder stores only as ancillary facilities to livestock farms. Therefore the proposal runs counter to policy since it has been established that the fodder generated on site caters for other farms other than that on site.

The Directorate notes that this statement is not entirely correct. Policy 2.3A - Existing Livestock Farm Units of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008) states that 'Permission may be granted for the erection of a new building, or redevelopment of, or an extension to an existing building, for animal breeding, production and/or the related storage of feed, fodder or machinery/equipment, provided that all of the following criteria are satisfied: [amongst which]

- the proposed development is directly related to an existing livestock farm managed by the applicant;
- the proposed development is essential for the effective operation of the farm unit and for the overall environmental improvement of the livestock farm operation.'

It is thus clear that the policy does not require the feed/fodder storage to be necessarily on site of the

livestock farm that it will actually cater for. What the policy specifies is that the proposed feed/fodder storage is directly related to an existing, livestock farm managed by the applicant [note the generic article]. It has been clearly proven that most of the feed is required by the applicant for his two farms (and thus, it satisfies the condition directly related).

The applicant has also indicated that the proposed feed/fodder stores are required to be able to buy the raw materials in greater bulk, thus ensuring lower costs (material, overheads and transport) which mean greater competitiveness for his farms. This also satisfies the other relevant condition which requires that any proposed feed/fodder storage is essential for the effective operation of the farm unit.

6.2.4 Proposal vis-a-vis Local Plan Designation

The appellant is arguing that the proposal is not acceptable in the area which is designated as a Category 2 Settlement since Policy CG04 of the Central Malta Local Plan (the policy that regulates development in Category 2 Settlements) does not include fodder stores in the list of permissible development in such designated areas.

On the other hand, the Directorate notes that Policy CG04 of the CMLP states that in Category 2 Settlements it is permissible to develop agricultural buildings for livestock, farming provided that they are in line with the established criteria set in the relative: policy document; in this case being Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008).

Part 2.3 of this policy document is actually entitled Agricultural buildings for livestock farming Policy 2.3A within this section, which has been discussed in detail in paragraph 6.2.3 of this report, actually permits feed/fodder stores even as new standalone structures within an existing livestock farm provided that they are necessary for the viability of any livestock farm owned by the applicant as well. Thus it stands to reason that if

feed/fodder stores are permitted within an existing farm, they in themselves form an agricultural building.

Hence, since it has been established that (1) the size of the operation is not of an industrial scale and that (2) this type of development constitutes an agricultural building that is in conformity with the relevant policies in Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008), then the proposed feed/fodder stores are permissible in terms of land-use according to policy CG04 of the local plan.

6.2.5 Traffic Generation

The Directorate does not agree that traffic in the area is to increase due to the extension of the feed/fodder storage. It has already been explained that the current fodder production levels will remain the same, and therefore it is difficult to envisage an increase in the number of buyers frequenting the facility.

Actually it is possible that the number of trips to the site carrying raw material is reduced given that the idea of the extension of the storage is to permit greater bulk buying of raw materials without increasing production. The applicant specified that the proposal would make it possible to affect bulk purchases of 3 to 4 months supplies of raw material at a time. Since the existing/approved storage are roughly a third of the total storage size applied for in this application, it is inherently implied that the current storage require at least monthly journeys to fill up the current storage space. However whilst the number of different days on which a trip with raw material to the site is to take place is naturally reduced, this does not automatically mean a reduction in the number of trips affected to the site as this depends on whether there will be a change in the size of transport used.

6.2.6 Public Health Issues and the Proposal vis-a-vis Legislation

The issues of whether the fodder store (i) poses any health risk, (ii) is only granted a conditional approval by the Department of Agriculture and (iii) if it is an Approved Establishment in line with Legal Notice 100/05 - Conditions for Registering of Establishments Operating in the Animal Feed Sector falls under the competence of the Department of Agriculture, Department of Environmental Health and the Veterinary Services. As long as these departments approved the proposed development when consulted, MEPA finds no objection. The operational procedures in terms of risks and hazards fall under the mentioned Departments' jurisdiction and it is up to them to ensure that all practices carried out within the farm are not a threat to the health and welfare of other animal farms within vicinity of the site. None of these departments objected to the proposal, as can be verified in their consultation responses in the PA file.

The Directorate notes that the prohibition in Legal Notice Swine Keeping Regulations (LN 86/90; amended LN 156/91) quoted to by the appellant refers to feed-mills. The feed-mill in this case has been operating with a valid permit since 2001 and therefore its operation and legality is not an issue. The Directorate also notes that none of the appellants (one of which had already purchased a place of residence in the Maghtab area) presented any objections in the previous application regarding the setting up of the feed-mill.”

Illi fl-udjenza tal-21 t'April 2011 xehed Frank Ivan Caruana Catania, Principal Agricultural Officer fejn stqarr illi Had-Dingli kien hemm farm nofsu qed jahdmu missier l-applikant u n-nofs l-ihor kien qed jahdmu Frankie. Dan wara xi disgwid applika biex jkollu farm x'mkien iehor u applika l-Maghtab u safrattant kienu ghaddejin il-proceduri tal-applikazzjoni u dan iccaqlaq bil-permessi kollha li gab mis-Servizzi tal-Veterinarji u mar biex jibda jopera mis-Siggiewi u ghandu dak l-agreement li beda jopera mis-Siggiewi. Stqarr ukoll li l-art kienet ta' persuna wahda pero' kien hemm zewg farms separati bi kwota separata ghall-kull wiehed.

Illi fl-udjenza tal-20 t'Ottubru 2011 xehed Dr Anthony Gruppetta mill-Minsiteru ghar-Rizorsi u Affarijiet Rurali, Taqsima ta' Regolament ta' l-Agricoltura u Sajd wara li saret riferenza ghal John Falzon vs MEPA li stqarr li mill-interpretazzjoni taghhom zona residenzjali tfisser zona b'mitt soda f'parametru ta' mitt metru. Id-distanzi huma mnizzlin cari fil-Ligi ghal pig farms biss u mhux ghal farms kollha. Mistoqsi r-regola tas-60 metru minn fejn tohrog wiegeb illi din hi an internal farm policy ghax "it comes down from the co gap guidelines tal-management of manure" u minn policy tal-MEPA li tghidlek that manure clamps should be within buildings.

Illi permezz tat-Tieni statement l-Awtorita' ressqet il-kummenti taghha kif gej:

"1. The appellant submitted a report on a Health Impact Assessment of the planned farm with the intention to show that the proposed farms is detrimental to the people living in the vicinity.

2. The Authority has the following comments to make:

- The Authority consulted with both the Department of Environmental Health and with the Veterinary Regulation and Fisheries Conservation and Control Division. These are the statutory regulatory bodies in relation to health and safety issues pertaining to farms.

Both entities have approved the proposed farms subject to a series of conditions (PA2875/08/45A, PA5926/08/15) and a specific condition that the applicant is to apply directly with the Superintendence of Environmental Health in regards the construction of the cess pits.

The appellant's report makes ample reference to case studies in the USA but fails completely to mention that these two entities found no objection to the proposed farms on health grounds or that they imposed further conditions. Moreover the report clearly indicate that no kind of consultation was carried out with these regulatory bodies. Therefore the correctness and reliability of this

report is being questioned by the Authority in that the report misses out on important data.

The Authority also notes that the report is quite speculative in nature, in that it attributes various potential malaises that can result from the proposed farms without entering into the context of location (the report only makes references to case studies in the USA and Spain) and without assessing the plans. This means, how could the report arrive to its conclusions without having considered for one instance the specifics of each proposal?

The Authority also find comments that industrial farms are usually unhygienic (page 7) and that misuse of antibiotics and other drugs as widespread (to the detriment of who lives nearby) as misleading and again speculative since these are issues that are constantly monitored by the Department of Agriculture.

Finally, the Authority cannot help but notice that the report did not find anything wrong with the proposal per se' but only speculates that given the track record of farms in Malta there is no guarantee that the farm will be monitored to ensure that it complies with the regulations (page 19). This means that the development as proposed are acceptable in terms of both planning and health. The compiler of the report is simply not convinced that the contents of the proposal will be respected; however this is clearly not something for which a development proposal is refused as it is highly hypothetical.

- Reference is also made to the following issues: (a) potential decrease in the value of the neighbouring properties (pages 15-16) and (b) feasibility of the proposed farms. These aspects of the report cast serious doubts on the correctness of the report considering that it is titled as a Health Impact Assessment (what does the value of property or the feasibility has to do with health?) and compiled by an appellant-appointed expert in public health and not on the economics of farms and rural environment.

- The report makes reference that albeit there are no residential schemes in the vicinity, this does not mean that there are no people living nearby and that any farm should be located away from such houses.

The Authority has already commented on this point several times. The appellants have purchased their residences in the following years:

- Mr. & Mrs. Diacono - farmhouse purchased in 1983;
- Mr. & Mrs. Busuttill- farmhouse purchased in 1998; and
- Mr. & Mrs. Borg - farmhouse purchased in 1995.

The appellants knowingly decided to reside within this area, which was already established as an intensive animal rearing area. The appellants are now deciding to object against the creation of new farms and any extensions to existing farms. It appears that the appellants chose to reside within vicinity of an existing farming community, and MEPA considers that this does not justify the appellants' present expectations that the livestock breeding operations established within the area should cease, on the account of their choice to reside within the area.

Moreover, farming and agricultural related developments take precedence over residential development in areas outside the development zone boundary. The schemes have been established in 1988 to curb residential development within the development zone boundary. Hence the presence of rural residences and the choice of individuals to reside within vicinity of animal husbandry farming areas do not justify the cessation of such operations.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba għall-estensjoni ta' mhazen ezistenti u l-issanzjonar ta' filati mizjuda mal-manure clamp.

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Is-sit mertu ta' dan l-appell jinsab fl-indirizz EX MGP Farm - WMS, Habel Zwejra, Maghtab.

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

L-appellanti jissottomettu li l-proposta hija wahda ta' natura industrijali u mhux agrikola, li l-izvilupp propost mhuwiex accettabbli ai termini tal-policy CG04, tmur kontra l-policies BEN 1 u TRA 4 minhabba il-generazzjoni ta' traffiku, li jezistu kunsiderazzjonijiet serji ta' sanita' in vista tat-traffiku ta' trakkijiet minn farm ghall-iehor, u li f'kull kaz l-illicenzjar tal-farm jirrikjedi li tkun 200m 'l boghod minn feedmill u li f'dan is-sens l-operat huwa llegali.

L-Awtorita' tissottometti li l-izvilupp propost mhuwiex ta' natura industrijali in vista li l-produzzjoni tal-ghalf mhijiex ser tinbidel u li ghalhekk l-izvilupp mhuwiex ta' skala industrijali, li skond il-policy relattiva l-uniku rekvizit huwa li l-ghalf koncernat ikun direttament utilizzat mill-applikant, li d-daqs tal-operat mhuwiex ta' skala industrijali u l-bini huwa ta' natura agrikola in linea mal-policy CG04 tal-pjan lokali, li mhuwiex minnhu li t-trakkifu ser jizdied, u li d-Dipartimenti kkoncernati ma oggezzjonawx ghall-izvilupp relattiv u li l-feedmill ilha koperta b'permess mill-2001.

L-ewwel aggravju tal-appellanti hu dwar l-bdil tal-pjanti fil-permess precedenti meta kienet qed tigi pprocessata l-applikazzjoni. Jirrizulta infatti li qabel ma giet ipprezentata l-applikazzjoni mertu ta' dan l-appell PA 2875/08, l-istess applikant b'applikazzjoni precedent, PA 2631/06, PAB 266/07 talab "To construct a feed mill store, broiler unit, manure clamp, and cesspit. Application to include the sanctioning of rest rooms, an extension to the approved broiler unit and the feed mill store."

L-appellanti oggezzjonaw ghall-fatt li l-fodder stores fl-applikazzjoni precedent gew indikati bhala "Proposed development" mentri dawn kienu 'existing'.

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Dan gie rilevat mill-MEPA Board fis-6 ta' Settembru 2007, fil-laqgha sussegwenti dik tat-14 ta' Settembru 2007, l-pjanti gew emendati kif gie rilevat, pero' ma saritx l-publikazzjoni mill-gdid.

L-appellanti jinsistu li billi sar bdil fil-proposta din kellha terga tigi ppubblikata.

Kif diga gie rilevat fl-appell PAB 266/07 l-bdil fil-proposta kien marginali u mhux sostanzjali; kien ghalhekk li fic-cirkostanzi ma kienx necessarju li terga ssir l-publikazzjoni. Dan ghaliex l-iskop tal-publikazzjoni hu propjament intiz biex kull minn jidhirlu li jixtieq jopponi ghall-izvilupp propost dan ikun jista' jaghmlu. Fil-kaz in ezami, l-appellanti li kellhom interess joggezzjonaw, oggezzjonaw wara l-ewwel publikazzjoni ghar-raguni li fil-principju huma ma jaqblux mal-proposta'; l-bdil marginali fil-proposta' ma biddel xejn mill-oppozizzjoni taghhom - billi huma oggezzjonaw ghall-proposta 'ut sic', u mhux specifikatament dwar xi dettal tal-proposta.

It-tieni aggravju tal-appellanti hu fis-sens li l-iskala tal-izvilupp kontestat hu wiehed industrijali u mhux agrikolu u bhala tali m'ghandhux ikun permissibbli.

L-feed store approvat bil-permess PA 2631/06 ghandu area ta' 50 sq.m., dak propost ghandu area ta' 1100 sq.m. Irrizulta li fil-prezent l-produzzjoni hi ta' 5000 tunnellata fis-sena. Il-maggjor parti tal-produzzjoni tintuza mill-applikant stess fuq r-razzett 'de quo' u f'razzett iehor tieghu fil-Pwales fejn irabbi l-hniezer; persentagg zghir circa 25% jinbiegh lit-terzi; cjoe l-ammont li jinhtieg razzett wiehed.

Gie rilevat, in oltre, li l-area kif awmentata mhux kollha intiza, u ma tfissirx zieda fil-produzzjoni, izda hi necessarja bhala storage ghall-'materja prima', u spazju zejzed li jibqa' dejjem vojti biex jippermetti x-xoghol tal-iprocessar.

Billi l-produzzjoni fuq is-sit hi sufficjenti ghall-tlett irziezet biss, ma jistax jinghad li qed issir produzzjoni fuq skala industrijali.

It-Tielet aggravvju hu fis-sens li l-proposta hi inkontravvenzjoni tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008) billi fodder stores skond l-Policy huma permissibbli jekk ikunu ancillari ghall-irziezet.

Effettivament l-Policy (Policy 2.3A) tesigi 'inter alia' li l-izvilupp propost ikun relatat ma razzett gestit mill-applikant; li l-izvilupp propost hu essenzjali ghall-operazzjoni tar-razzett u li jipprovdi miljorament ambjentali ghall-attivitá'.

Irrizulta infatti l-fodder storage propost hu intiz biex jissupplixxi r-razzett fuq is-sit gestit mill-istess applikant, u ghal razzett iehor li l-applikant ghandu band'ohra.

L-applikant inoltre iggustifika l-uzu ta' spazzju ulterjuri, mill-aspett ekonomiku billi jiffranka l-ispejjez kemm fl-impjeggi kif ukoll fit-trasport.

L-appellanti jilmentaw wkoll mill-fatt li l-uzu propost approvat ma jaqbilx mad-disinjazzjoni tal-Local Plan; billi 'fodder stores' mhux zvilupp permissibbli f'Category 2 Rural Settlement.

Pero' dwar dan kif gie rilevat mill-Awtorita' l-Policy CG04 ta' Central Malta Local Plan tippermetti zvilupp f'bini ghall-uzu ta' agrikoltura, u rziezet kemm il-darba dawn ikunu konsistenti mal-kriterji stabbiliti fil-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008). Il-Policy 2.3A ga citata infatti tippermetti zvilupp ta' fodder stores kemm il-darba dawn ikunu necessarji u jintuzaw minn minn jmexxi l-operazzjoni tar-razzett ghat-trobbija tal-animali.

Dwar l-ilment tal-generazzjoni tat-traffiku zejzed b'konsegwenza tal-estenzjoni, ghandu jinghad li l-fatt li kibret l-area tal-operazzjoni, dan ma jfissirx necessarjament li ser jizdied t-traffiku. Hemm diversi cirkostanzi li jikkonfermaw dan; fosthom l-fatt li l-maggjor parti tal-prodott ser jintuza fuq is-sit stess, u ghalhekk ma

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jirrikjedix trasport; l-fatt li persentagg zghir ikun disponnibbli ghal terzi; u cirkostanzi ohra fosthom id-daqs tal-mezzi tat-trasport, billi jekk dawn ikunu kbar, jesghu izjed u jaghmlu anqas vjaggi.

L-appellanti jilmentaw ukoll mill-fatt li billi l-fodder store jinsab fuq is-sit tar-razzett tat-tigieg; dan jista' jaghti lok ghal problema ta' sahha, u igene pubblika minnhabba l-possibilita' ta' kontaminazzjoni.

Strettament dawn il-kwistjonijiet huma fil-kompetenza tad-Dipartiment tal-Agrikoltura, u d-Dipartiment tas-Sahha Ambjentali u Servizzi Veterinarji.

Dawn id-dipartimenti ghan hom l-awtorita' li jissorveljaw l-operat tar-razzett biex jissikuraw li tali attivita' tkun konformi mal-ligi.

Mill-file tal-applikazzjoni PA 2875/08 irrizutla li dawn id-dipartimenti ma oggezzjonawx ghall-proposota'; u l-permess kontestat jimponi kundizzjonijiet impost minn dawn id-dipartimenti fosthom in-numru ta'annimali ghat-trobbija, u l-adesjoni tal-kondizzjonijiet imposti mid-Dipartiment tas-Sahha Ambjentali.

Dwar iz-zoning partikolari tal-lokalita' Category 2 Rural Settlement hu barra z-zona tal-izvilupp.

Kif gie rilevati fl-Appell Numru 266/07

“L-applikazzjoni originali tar-razzett saret fil-1987; kienet segweita b'ohra tal-1999, u b'applikazzjoni tat-2003, fejn intalbu zidietu tibdiliet. L-applikazzjonijiet gew milqugha.

Kif jidher mid-Dok A anness mal-ewwel rapport tal-Awtorita' f'area ta' 500 metru hemm 16-il razzett ghat-trobbija ta' annimali varji, u tlieta ohra barra l-area ta' 500 metru. Il-permessi ghal dawn l-irziezet hargu fin-1980 u fil-bidu tad-disghajnijiet.”

Dan iffisser li f'din il-lokalita' ilhom hemm ghal certu numru ta' snin koncentrazzjoni ta' rziezet ghat-trobbija ta' annimali varji.

Il-konjugi Borg, xtraw il-propjeta taghhom fin-1995, u l-konjugi Portelli fit-2006; u ghalhekk kienu konxji mill-fatt li f'din il-lokalita' partikolari, kien hemm numru konsiderevoli ta' attivitajiet agrikoli, u rziezet ghat-trobbija tal-annimali li kienu ilhom hemm stabbiliti ghal snin shah.

Fl-appell citat 266/07 dwar iz-zona jinghad s-segwent:

“L-appellanti, jinsistu li l-izvilupp approvat, hu ta' pregudizzju ghalihom, billi jnaqqsilhom mill-kwalita' tal-hajja taghhom, minhabba l-irwejjah li tali attivita' iggib maghha, attivita' li tikkostitwixxi 'bad neighbourliness' fit-termini tal-Policy BEN 2. Indubbjament residenza vicin razzett fejn jitrabbew l-annimali, certament issofri minn dan l-inkonvenjent; pero' kif tajjed gie rilevat mill-Awtorita' l-appellanti akwistaw l-propjetajiet taghhom relattivament ricientement, l-konjugi Borg fin-1995, u l-konjugi Portelli fit-2006.

Id-Dok B, anness mal-ewwel rapport tal-Awtorita', jikkonferma li l-ewwel applikazzjonijiet saru fin-1987, u min dak iz-zmien gew approvati kwantita konsiderevoli ta' permessi ghat-trobbija tal-annimali f'din il-lokalita' li hi karatterizzata b'koncentrazzjoni ta' dawn l-irziezet.

Indubbjament l-appellanti kienu ghall-kurrent ta' din l-attivita' fil-lokalita' tal-Maghtab, pero' xorta wahda iddeciedew li jstabilixxu r-residenza taghhom hemmhekk. Jista' jkun li kienu motivati bi prezzijiet vantaggjuzi, propja minhabba din ic-cirkostanzi partikolari ta' vicinanza ghal dawn l-irziezet; izda f'dawn ic-cirkostanzi partikolari, billi l-lokalita' kienet diga ghall-snin shah karratterizzata b'numru konsiderevoli ta' dawn l-irziezet, l-appellanti ma jistghu jippretendu li zvilupp residenzali jiehu s-soppravent fuq dak tat-trobbija tal-annimali, f'area barra z-zona tal-izvilupp, li ilha snin shaht intuza ghal din l-attivita' partikolari.”

Ezaminati fid-dettal l-aggravji tal-appellanti, fil-kuntest tal-Policies tal-Ippjanar rilevanti, l-appell ma jimmeritax konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma l-Permess moghti lill-applikant bl-applikazzjoni PA 2875/08.

Ikkunsidrat

L-aggravji tal-appellanti huma s-segwenti:

1. Dan l-appell jiddependi mill-appell relattiv ghal PA 2631/06 fejn hemm talba ghal zviluppi ohra fuq is-sit konnessi mat-talba ghal sanzjonar bl-applikazzjoni prezenti u kwindi l-ezitu ta' dan il-permess hu intimament konness u jiddependi mill-ezitu tal-applikazzjoni PA 2631/06, u ma jistax jigi deciz ghal rasu izda flimkien mal-iehor;

2. It-Tribunal naqas li jikkonsidra l-aggravju tal-appellanti u kkonsidra biss is-sottomissjonijiet tal-Awtorita. Senjatament l-appellanti ssottomettew li l-proposta tmur kontra l-Avviz Legali 100 tal-2006 dwar "Conditions for the Registering of Establishments Operating in the Animal Feed Sector" u l-Avviz Legali 156 tal-2001 dwar "Swine Keeping Regulations". It-Tribunal abdika mir-responsabilita tieghu taht l-artikolu 69(2) tal-Kap. 504 billi stqarr li kwistjonijiet ta' sahha u igjene u konformita mal-ligi huma fil-kompetenza tad-Dipartiment tal-Agrikolutra u tas-Sahha u li ma sabux oggezzjoni. Lanqas ta konsiderazzjoni ghal Health Impact Statement imressaq min espert ex parte tal-appellanti, li ebda dipartiment koncernat ma investiga. In oltre t-Tribunal lanqas immotiva d-decizjoni tieghu fuq applikazzjoni ta' pjanijiet u policies izda fuq kummenti gratuiti u assunzjonijiet;

3. It-Tribunal skarta l-lanjanzi li saru dwar in-nuqqas ta' ottemperanza tal-Awtorita mal-ligi waqt l-ipprocessar fejn jirrizulta li bejn il-laqgħa tas-6 ta' Settembru 2007 u dik tal-approvazzjoni tal-izvilupp tat-13 ta' Settembru 2007 l-applikant biddlu d-deskrizzjoni tal-izvilupp propost mingħajr ma sar republication fejn zdiegħ il-kliem 'to sanction' billi gie zvelat illi l-izvilupp kien għa sar u t-tibdil tal-kelma 'residence' ma' 'restrooms'. In oltre inbiddlu l-

pjanti u rinunzja tal-Awtorita ghall-Environment Impact Statement. It-Tribunal naqas li jimmotiva dan in-nuqqas u ghalhekk ma huix trasparenti.

L-ewwel aggravju

Dan l-aggravju kien ikollu mertu li kieku l-appell mertu ta' din l-applikazzjoni (A 2875/08) gie trattat u deciz b'mod differenti u f'dati differenti. Pero ma garax hekk. Anzi verbal tat-Tribunal tas-26 ta' Settembru 2008 it-Tribunal laqa' t-talba li l-file PA 2631/06 jigi allegat mal-proceduri f'dan l-appell u fl-appell mill-PA 2631/06 hemm verbal tat-3 ta' Dicembru 2010 fejn it-Tribunal laqa' talba li z-zewg appelli jimxu flimkien. Hekk fil-fatt gara u d-decizjoni fiz-zewg appelli nghatat fl-istess jum. B'danakollu hu minnu illi z-zewg applikazzjonijiet kienu intimament konnessi u decizjoni f'appell wiehed tinfluixxi lil ohra. L-appelli gew michuda t-tnejn u ghalhekk safejn hu relevanti dan l-aggravju ma hemm xejn li jimmerita censura, u ghalhekk qed jigi michud.

It-tieni u t-tielet aggravju

Din il-Qorti tirreferi ghad-decizjoni taghha fl-appell mill-PA 2631/06 fejn laqghet l-aggravji u rrevokat id-decizjoni. F'dan il-kaz din il-Qorti ser taghmel l-istess u dan ghar-ragunijiet segwenti.

Fl-ewwel lok ghalkemm it-Tribunal ghamel il-konsiderazzjonijiet tieghu, dawn il-konsiderazzjonijiet kollha kienu jirreferu ghal PA 2631/06. Fid-decizjoni tieghu, li hi kwazi kopja fidila tad-decizjoni li nghatat fil-mertu ta' PA 2631/06, it-Tribunal fl-ebda hin ma jaccenna ghall-applikazzjoni mertu ta' dan l-appell li ghalkemm intimament konnessa pero hi separata, b'indoli legali u fattwali mhux identici ghalkemm simili. Din l-applikazzjoni saret sentejn wara l-ewwel wahda u li kieku kienet identika ghal dik bin-numru 2631/06 ma kienx ikun hemm bzonn li ssir. It-Tribunal naqas li jiddistingwi bejn iz-zewg applikazzjonijiet u l-kontenut taz-zewg decizjonijiet jipprova dan.

Fit-tieni lok dan in-nuqqas ipoggi f'dubju serju jekk fil-fatt it-Tribunal tax aditu ghal lanjanzi tal-appellant kif imiss a bazi tal-artikolu 69(2) tal-Kap. 504. Il-Qorti taghmilha cara li dan ma jfissirx illi kull kwistjoni ta' sustanza jew dak li l-appellant jippercepixxi bhala kwistjoni ta' sustanza timmerta ezitu favorevoli, pero t-Tribunal hu obligat jikkunsidrahom b'mod dettaljat speċjalment meta l-kwistjonijiet ta' sustanza jkunu policies ohra li jistghu jkunu rilevanti ghal terz fejn it-Tribunal hu obligat jevalwa s-sottomissjonijiet tal-partijiet u jaghti l-opinjoni tieghu ghalfejn ghandhom jipprevalu certi policies fuq ohrajn jew ghalfejn kwistjonijiet ohra, ghalkemm ta rilevanza, ma jistghux jigu milqugha. F'dan il-kaz, kif inghad fid-decizjoni rigwardanti PA 2631/06 appell 163/2012 deciza illum ukoll it-Tribunal kien generiku ghall-ahhar u strah fuq dak li qalet l-Awtorita minghajr ma kkontribwixxa b'mod materjali ghad-dibattitu bejn il-partijiet.

Din il-Qorti tqis li t-Tribunal naqas li jaccerta fejn iz-zewg applikazzjonijiet kienu differenti u fejn kienu jirkbu wahda fuq l-ohra u maghmula din l-indagini, imbaghad jezamina z-zewg applikazzjonijiet fuq il-mertu individwali taghhom ghalkemm flimkien.

Ghalhekk safejn kompatibbli ma' dan fuq maghdud din il-Qorti tqis illi dawn l-aggravji ghandhom jigu milqugha biex it-Tribunal jerga' jinvestiga z-zewg appelli mill-ottika gusta taghhom proceduralment u sostantivament.

Decide

Ghalhekk il-Qorti safejn kompatibbli u in linea ma' dak deciz, qed tilqa' l-appell tal-appellanti, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012, u tirrinviya l-atti quddiem it-Tribunal biex l-appell jigi trattat mill-gdid. Spejjez ghall-appellati flimkien.

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