



## **QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 101/2012

**Paul Sant ghan-nom u in rapprezentanza  
ta' Sant BrosComm. Ltd.**

**vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u  
b'digriet tas-7 ta' Frar 2013  
Carmelo Camilleri gie ammess bhala intervenut fl-  
appell**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Paul Sant nomine tat-30 ta' Mejju 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012 fejn giet michuda PA 1101/05;

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

Kopja Informali ta' Sentenza

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

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

Dan huwa appell minn rifjut ta' l-Awtorita' ta' l-applikazzjoni, full development, PA1101/05 'Proposed alterations to façade and change of use from garage to mechanic, panel beater and spray workshop/garage', b'decizjoni tal-11 ta' Mejju, 2010.

Ir-ragunijiet li ghalihom l-Awtorita' irrifjutat l-applikazzjoni PA 1101/05 kienu s-segwenti:

"1. The proposed development conflicts with Structure Plan Policy BEN 1, which states that development will not normally be permitted if the proposal is likely to have a deleterious impact on existing or planned adjacent uses thus resulting in bad neighbourliness. Proposal is unsafe to the immediate residents.

2. Proposal lies in a Category 2 Settlement and therefore it is not related to agriculture. It is commercialization in an ODZ."

Fl-appell tieghu il-Perit Farrugia ghan-nom tal-appellant, jaghati r-ragunijiet ghal dan l-appell billi jghid:

"1. The DCC has completely ignored the Appeals Board decision in PA 4358/96 and PA 5593/99.

2. The DCC should have limited their decision solely on whether the applicant, by means of this application, satisfied the conditions imposed on the site by the Appeal's Board Decision. In fact, the Planning Directorate and Legal Office both confirmed that all legal and planning conditions imposed by the Appeal's Board Decision have been complied with and therefore recommended the application for approval.

3. The DCC therefore had no legal right to review and change the Appeal's Board decision by introducing new planning arguments since the Appeal's Board is a higher authority and therefore the DCC has acted 'ultra petita' and by their action, went beyond the authority and functions established by the Development Planning Act.

4. Ben 1 – It is not correct to state that the application in caption will have a deleterious impact on existing or planned adjacent uses, since the Appeals' Board had already assessed this point and insisted in the preparation of a report by an independent engineer to recommend the mitigation measures that will be required to minimize any impact on the surroundings. This report was accepted by the Planning Directorate. Moreover, the Appeal's Board, in order to further reduce the impact, insisted that the applicant withdraw all trading licenses registered in his name for the other mechanic and spray painting workshops he operates in Wardija, therefore reducing the number of workshops and consolidating into one workshop.

5. Reason 2 of the refusal is that the proposed use lies in a category 2 settlement and is not related to agriculture and is considered to be a commercialization of ODZ does not make sense in view of the Appeal's Board acceptance of the proposed use.”

Fin-nota tal-Perit Buhagiar ghan-nom tal-objectors, Carmelo u Frances Camilleri, ipprezentata fit-18 ta' Novembru, 2010 huwa jghid is-segwenti:

“ My clients are registered official objectors to PA 1101/05 which application has been refused. My clients are contending that no industrial activity should be permitted within a site of such ecological and scenic value as Wardija.

This application has been refused by the Development Control Commission and my clients have now noted that applicants have submitted an appeal against this refusal decision.

As official objectors we would therefore like to request that we be kept informed about the proceedings of this appeal application. We would also like to be present for the appeals board sitting which consider this application and would therefore appreciate if we are duly informed beforehand.”

Fir-risposta tieghu tal-21 ta' Dicembru, 2010, Jonathan Borg ghall-Awtorita' jaghti r-ragunijiet ghaliex fl-opinjoni ta' l-Awtorita dan l-appell ghandu jigi michud. Is-segventi huma siltiet minn dan ir-rapport li t-Tribunal jhoss ghandhom jigu ssottolineati:

"6.2 The Planning Directorate notes that since the was taken by the Planning Appeals Board in PAB412/98 in favour of the appellant, the site has been designated by the North West Local Plan as a Category 2 Settlement in ODZ. This means that it has been recognised that the site forms part of a residential enclave. Light industrial activities such as that proposed have never been accepted within residential areas due to their deleterious impacts on residential neighbourhoods.

6.3 Notwithstanding the favourable recommendation given by the Planning Directorate in view of the Planning Appeals Board decision in PAB412/98, the DCC Board exercised its discretionary powers granted by law to overturn such recommendation. The reason for such overturning is that the negative impacts resulting from the proposal are so serious and damaging that they override any claimed vested rights by the appellant. The DCC Board (minute 88) in fact in its justification for refusing the proposal stated that [the] proposal is unsafe to the immediate residents.

6.4 Furthermore the DCC Board took cognisance of the fact that the site has been recognised to be located ODZ within a 'hamlet' i.e. a rural residential enclave in the countryside. Such areas are agricultural in character and any industrial activity in the area would prejudice such nature to the detriment of the neighbourhood. This was

also clearly explained by the DCC Board in minute 88 – Proposal lies in Category 2 and therefore it is not related to agriculture. It is commercialisation in an ODZ.

6.5 Also, the DCC Board was clearly not convinced that the appellant renounced to all the trading licenses issued in his name as implied in minute 49. The Planning Appeals Board in PAB41298 had stated that the full development application is not to be approved until such time as the applicant renounces all trading licences currently held by him [...]. The Planning Directorate determined that this refers only to trading licences issued on the appellant's name and not to companies. However the DCC Board is also aware that a number of licenses for panel beating and motor repair have been issued on the appellant's name as representative of Sant Brothers Commercial Ltd. These licenses have not been renounced.

This issue is compounded by the fact that the application has been submitted by the appellant in representation of Sant Brothers Commercial Ltd. Therefore it concluded that the spirit of the Planning Appeals Board decision was that such licenses are renounced as well. This finds comfort in the *raison d'être* given by the Planning Appeals Board in upholding the appellant's claim when they stated that *l-proposta hija accettabbli in principju biss jekk tkun soggetta ghall-kundizzjonijiet stretti sabiex jigi zgurat illi r-rizultat ahhari jkun fl-ahjar interess tal-"amenity" taz-zona billi l-attivitajiet kollha jingabru prattikament that saqaf wiehed u jitnehhew mill-fondi minn fejn qeghdin jigu operati sal-lum. Oltre dan, ghandu jigi zgurat illi l-appellant jadopera dawk l-istandards ta' xoghol u ta' makkinarju fis-sit biex tigi zgurata s-sahha kemm pubblika kif ukoll ta' dawk ir-residenti li jghixu vicin is-sit. B'hekk biss jista' jsir xi gwadann favur l-ambjent u l-ippjanar.*

Given that these licenses have not been renounced, and since it is clear that the appellant and the company operate under the same guise (as this application and several licenses make reference to both) the said licenses require to be renounced as well. Should this not happen,

the rationale for the Appeals Board decision to uphold the appellant's original appeal would go unheeded."

Fin-nota tal-Perit Farrugia u l-Avv. Dr Raghael Fenech Adami ghan-nom tal-appellant ipprezentata fl-1 ta' Marzu, 2011, huma jghidu s-segwenti:

“ 1. Illi tajjed li jigi kjarifikat mill-bidu nett illi l-applikazzjoni u l-appell in kwistjoni tghajjat esklussivament lil Paul Sant di proprio u mhux lis-socjeta Sant Bros Comm Ltd. Difatti l-applikazzjoni in kwistjoni hija ffirmata minn Paul Sant f'ismu personali u mhux ghan-nom u in rapprezentanza ta xi socjeta kummercjali. Di piu issir referenza ghal skambju ta' korrispondenza li saret bejn l-applikant di proprio u l-ufficju legal ital-Awtorita' fl-istadju tad-DCC mnejn jirrizulta li l-argumenti mressqa minn-naha (Ta sant) u mwiegba w accettati da parti l-ohra (PL Joe Catania ghall-Awtorita') kienu jinvolve biss u hadd iehor lill-istess Paul Sant f'ismu personali. Di fatti l-parir legali moghti mill-P.L. Joe Catania ghall-Awtorita' lid-DCC kien fis-sens illi Paul Sant di proprio inizjalment kien 'partially compliant' u in segwitu 'fully compliant' mal-kondizzjonijiet imposti mill-Bord ta' l-Appell dwar l-ippjanar fiz-zewg sentenzi li hija kienet tat fil-konfront ta' l-istess Paul Sant di proprio (vide l-ittri tieghi datati 27 ta' Settembru 2006 u 15 ta' Ottubru 2007 u r-risposti relattivi).

2. Illi l-argument mressaq dwar l-possibilita ta' impatt negattiv fuq zoni residenzzjali li l-attivitа proposta tal-applikant tista tikkreja apparti li hija konsiderazzjoni ta' natura ferm soggettiva, tajjed pero' li wiehed jirriveva li tali argument gia gie trattat, skartat u kwindi sorvolat miz-zewg decizjonijiet moghtija mill-Bord ta' l-Appell dwar l-ippjanar. Difatti l-istess decizjonijiet ordnaw li l-permessi rikjesti mill-appellant ghandhom jinhargu diment li huwa jirtira l-licenzji analogi li huwa kien jipposjedi – liema kondizzjoni rrizulta fil-fatt li kien ottempra ruhu maghha fl-intier (vide ittra ta' P.L. Joe Catania). B'hekk ma kienx ser ikun hemm intensifikazzjoni tal-attivitа proposta izda semplicement li wahda kienet sejra tissostitwixxi ohra li m'ghadhiex in vigore. Barra minnhekk jinghad ukoll li tali argument jinsab kontradett minn rapport imhejji minn

esperti imqabnda mill-appellant (l-ing Paul Vassallo) esebit fl-atti tal-imsemmija zewg processi tal-Appelli quddiem il-Bord tal-Appell Dwar l-Ippjanar. Anzi jinghad mhuxd talli l-argument gie kontradett izda r-rizultanzi tal-istess rapport gew abbraccjati u accettati mill-Bord tal-Appell dwar l-Ippjanar tant illi fiz-zewg sentenzi taghhom ordnaw li l-permess rikjest ghandu jinhareg.

3. Jigi osservat ukoll li r-registered objector li qed joggezzjona bil-qawwi ghal tali attivata ghandu interess personali ghal tali oggezzjoni u kwindi ma hiex xi oggezzjoni li temani minn xi interess partikolari li huwa ghandu dwar l-Impatt fuq l-ambjent. Dan qed jinghad peress illi David Camilleri li jigi bin l-objector Frances Camilleri jiggestixxi hu stess attivata simili minghajr ebda permess ta' xejn f'garage iehor li jinsab precizament appogg mal-garage tal-odjern appellant meritu ta' dawn il-proceduri. Dan il-fatt qed jigi konfermat bil-gurament mill-istess appellant permezz ta' affidavit li qed jigi hawn anness ma din in-nota.

4. Jinghad ukoll illi ma jirrizulta minn imkien fil-process li b'xi mod jindika li l-attivata proposta mill-appellant b'xi mod ser ikollha impatt negattiv serju u ghalhekk id-diskrezzjoni li qed jigi allegat li ntuzat biex waslet ghal tali konkluzjoni ma hi bazata fuq ebda prova fattwali u/jew teknika. Anzi kif ga nghad tali konkluzjoni tinsab kontradetta mill-precitat rapport tal-engineer u mill-istess sentenzi moghtija mill-Bord tal-Appell Dwar l-Ippjanar.

5. Fir-rigward tal-osservazzjoni mressqa fil-klawsola numru 6.4 jinghad li z-zona in kwistjoni ga tinsab kommissa minn attiviat simili. Di fatti l-applikant ga kien fil-pussess ta' permessi simili f'dik iz-zona u kulma qed jintalab fl-odjerna applikazzjoni hi li jinhareg l-odjern permess minflok u biex jissostitwixxi permessi ohra li ga kellu skond il-ligi u liema permessi gew minnu rtirati skond kif dirett u ordnat mis-sentenzi tal-Bord tal-Appell Dwar l-Ippjanar. Huwa rrinunja ghal tali permessi sabiex jinghata l-permess odjern skond kif gie ordnat u ghalhekk issa li ottempra ruhu mal-imsemmija sentenzi, l-istess Awtorita' (cjoe l-Bord tal-appell) ma tistax tregga lura mid-

Decizjoni li hija hadet favor tieghu f'dan is-sens stante li issa huwa akkwista 'a vested right' li jinghata l-permess mitlub f'dan il-process.

6. Is-sentenzi tal-Bord tal-Appell ordnaw li t-talba tal-appellant ghandha tigi milqugha diment li huwa (Paul Sant di proprio) jirrinunzja ghal permessi li kellu fuq ismu u dan ghamlu. Ma kien hemm ebda ordni li s-socjeta kummercjali msemmija (li hija persuna guridika separate u distinta minn Paul Sant) kellha wkoll tirrinunza ghal permessi li kellha fuq isimha. Illi dato non concesso anke jekk xtaqet tohrog tali ordni ma setghetx taghmlu in vista tal-fatt li l-applikant li kellha quddiemha kien Paul Sant u kwindi s-socjeta msemmija ma kellha ebda locus standi f'dawk il-proceduri. Illi barra minnhekk kif gia osservat qabel f'din in-nota, dan l-argument ta' natura legali ga gie indirizza fl-istadju tad-DCC fil-korrispondenza skambjata mal-ufficju legal ital-Awtorita' u liema ufficju legali wasal biex qabel fl-intier u mija fil-mija mal-argumenti mressqa minn Paul Sant fis-sens illi wiehed ghandu jikkunsidra biss il-pozizzjoni ta' Paul Sant di proprio kemm fl-evalwazzjoni tas-sentenzi tal-appell u kif ukoll fl-odjerna applikazzjoni mnejn jirrizulta u accettat mill-ufficju legali li Paul Sant ottempora ruhu fl-inteir mal-imsemmija sentenzi tal-Bord tal-Appell – liema fattur legali ma jista jaghti lok ghall-ebda interpretazzjoni ohra.

Ra n-nota tal-Prof. Dr Ian Refalo ghan-nom tal-objectors, Carmelo u Frances Camilleri, ipprezentata fit-30 ta' Marzu, 2011 fejn jghid:

“Il-klienti tieghi fl-ewwel lok qeghdin jehmxu ma' din l-ittra sett ta' ritratti li juru:

1. Ritratt mmarkat numru wiehed garaxx li l-appellant ghandu fl-industrial estate il-Mosta li huwa munit bil-permessi rikjesti mill-ligi u minn mnejn jista' jahdem.
2. Ir-ritratt numru tnejn juri dan il-garaxx f'liema triq qieghed.
3. Ir-ritratt nurmu tlieta juri li l-appellant qieghed jirreklama dan il-garaxx ghall-kiri.



Dan qieghed jinghad biex jindika in-nuqqas ta' necessita' li jinghata l-permess. Tigi notat precedentement li permess li l-appellant allega li qieghed jirrinunzja ma kienx permess fuq propjeta tieghu u ghalhekk dak l-argument huwa irrelevant. Inoltre ir-rinunzja ma saritx effettiva u ghalhekk hemm element fejn wiehed qieghed juri lit-Tribunal haga b'ohra.

Ir-ritratti 4 as 7 juru il-garaxx ghall-liema l-appellant qal li ser jirrinunzja ghall- permess u minflok jidher li l-appellant ghadu jahdem f'dawn l-inhawi kif jidher car mir-ritratti. Huwa importanti li wiehed jirrileva li lanqas ma huwa jirrispett al-hinijiet indikati fil-permess. Inoltre qieghed nehmed kopja tal-permess fir-rigward tal-garaxx li hemm fir-ritratti 4 sa 7. Jirrizulta li skond dan il-permess l-appellant m'ghandux permess jaghmel spray paint f'dan il-garaxx imma minflok qieghed jaghmel dan. Ir-ritratt 8 u 9 juru l-garaxx tal-esponenti, u minn dan jidher bic-car li mhux qieghed jsir xoghol ta' mechanic jew zebgha f'dan il-garaxx. Qieghed ukoll nesebixxi certifikat tal-mard tal-klijent tieghi."

Fit-tielet nota tal-Avv. Dr Raghael Fenech Adami ghan-nom tal-appellant ipprezentata fis-7 ta' Lulju, 2011, huwa jirribatti l-punti mqajma mill-objectors billi jghid is-segwenti:

"1. Huwa ghall-kollox irrilevanti ghal finijiet ta' dawn il-proceduri kemm il-permessi ghandu jew jista' jkollu l-appellant f'inhawi ohra ta' Malta. Il-kwistjoni lit rid tigi deciza f'dan il-kaz huwa purament u semplicement dak jekk l-appellant ottemporax ruhu o meno ma zewg decizjonijiet tal-Bord tal-Appell dwar l-ippjanar li t-tnejn ordnaw li jinhargu l-permessi mitluba minnu diment li huwa jirrinunza ghal numru determinat u identifikat fl-istess sentenzi ta' permessxi ohra li ga kellu fuq ismu fil-lokalita tal-Wardija.

2. Il-garage indikat fir-ritratti numru 4 sa 7 esebita man-nota tal-Prof. Refalo jikkoncerna garage li fuqu kellhom jibqghu jinzammu il-permessi ga ezistenti u kwindi mhux

si tratta ta' permess li kellu jigi rinunzjat skond is-sentenzi tal-Bord tal-Appell. Difatti jekk wiehed jara n-nota spjegattiva tal-Perit Ludovico Micallef fil-PA 4358/96 Appell Nru 412/98 ricevuta mill-Bord tal-Appell dwar l-Ippjanar fit-28 ta' Novembru 1998, kopja ta' liema qed tigi hawn mehmuzza ghall-ahjar konvenjenza, ghandu jirrizulta li dan il-garage kellu jibqa' jintuza bhala workshop (mechanic as at present) kif indikat taht il-paragrafu imsemmi "Result". Di piu jinghad ukoll lid an il-garage jghajjat lil Sant Bros Commercials Limited u mhux lil Paul Sant di proprio u inoltre jigi rilevat ulterjorment li dan il-garage huwa kopert bil-permessi mehtiega sew ghal xoghol ta'mechanic workshop u kif ukoll bhala panel beater u spray painter kif jirrizulta mill-anness kopja ta' permess u kontrarjament ghal dak allegat mill-konjugi Camilleri.

3. Il-konjugi Camilleri qed jipprovaw jikkonvincu lil Bord tal-Appell li mhux qed isir xoghol ta' mechanic gewwa l-garage tagghom billi esibew semplicement zewg ritratti indikati bhala 8 u 9 fin-nota tagghom.

Apparti d-dikjarazzjoni guramentata tal-appellant gia maghmula dwar xogholijiet esekwiti minn dan il-garage, li juri mod iehor, l-istess appellant qieghed jiddikjara ulterjorment bil-gurament tieghu f'din in-nota li huwa baqa jiehu nota tax-xogholijiet esekwiti fuq vetturi minn gewwa l-garage tal-konjugi Camilleri u kwindi jista' jikkonferma s-segwenti.

1/4/11 JAI O18 u KBC 321

5/4/11 BAR 614

12/4/11 EAV 954

20/4/11 IBH 392 u RZR 001

23/04/11 TFA 194, LCQ 964, SRE 123, ABN 874 u CHA 618.

4. Mela l-konjugi Camilleri qed jilmentaw kontra li jsir xoghol ta' mechanic minn gewwa l-garage tal-appellant filwaqt li fl-istess hin huma qed jesekwixxa xoghol identiku gewwa garage tahom adjacenti ghal dak tal-istess appellant."

Fit-tieni nota tal-Prof. Dr Ian Refalo ghan-nom tal-objectors, Carmelo u Frances Camilleri, ipprezentata fiz-19 ta' Ottubru, 2011 huwa jghid:

“Il-klienti tieghi s-sinjuri Francis u Carmelo Camilleri jergghu jirrispondu b'referenza ghall-ahhar nota maghmula mill-appellant Paul Sant li s-Sur Sant ghandu biss garaxx wiehed li huwa tieghu f'liema jahdem. Dan il-garaxx huwa mikri ghandu u mhux propjeta tieghu. Dan il-garaxx kellu permess biss ta' mechanic. Issa f'dan il-garaxx biddel in-numru mid-dipartiment tal-kummerc biex gabu kopert b'permess ghall-affarijiet ohra bhal spray painting. Naturalment ghalkemm huwa qieghed jaghmel referenza ghall-premess b'numru gdid, dan mhux il-permess propju tal-garaxx in kwistjoni imma huwa permess applikabbli ghal xi garaxx iehor. Il-permess bin-numru 39/691 kien biss ghal Mechanic workshop fl-American garaxx waqt li l-permess 55/1277 anke dan fuq American Garage juri panel beater, spray painter and mechanic workshop. Ma hemm l-ebda applikazzjoni lill-awtorita' ghal bdil ta' uzu.

Inoltre l-permessi ghall-liema huwa qieghed jghid li qieghed jirrinunzja ma jghajjtux lilu imma lill-Christopher Sant u Anglu Sant u ghadhom fis-sehh u naturalment l-appellant ma ghandu l-ebda dritt jirrinunzja ghalihom.

Barra minn hekk taht il-garaxx dwar liema hemm pendenti l-appell hemm basement jew kantina li saret minghajr permess u ghalhekk hija illegali.

L-appellant ghandu biss tlett permessi – wiehed ta' mechanic kif fuq spjegat, iehor ta' scrap yard li tintuza ghall-imbarazz imma kienet suppost fuq garaging, u l-yard li l-appellant bena fuq dawn il-garaxxijiet.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghall-tibdil fuq il-faccata ta' garage ezistenti u change of use ghal mechanic, panel beater u spray painter.

Is sit mertu ta' dan l-appell jinsab ODZ f' kantuniera fi Triq Safsafa fil-Wardija fil-limiti ta' San Pawl il-Bahar.

Skond in-North West Local Plan (Map 3.4) is-sit in ezami jinsab gewwa Category 2 Rural Settlement u ghalhekk huwa suggett ghall-policies NWRS 1 u NWRS 2.

Din l-applikazzjoni giet rifjutata peress li

- Il-proposta tikser il-policy BEN 1 tal-Pjan ta' Struttura u dan peress li din l-attivitá jista jkollha impatt negattiv fuq l-uzi l-oħra li jezistu fil-madwar u kif ukoll peress li li taffettwa hazin lir-residenti; u
- Peress li s-sit jinsab gewwa Category 2 Rural Settlement, dan l-uzu m'hux permess.

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

L-appellant jissottometti li

- Id-DCC injora kompletament id-decizjonijiet tal-PAB fil-kazi PA 4358/96 u PA 5593/99 u dan ghaliex id-DCC kien imissu illimita d-decizjoni tieghu fuq jekk l-applikant ottemprax ruhu mal-kondizzjonijiet imposti mill-PAB jew le;
- Il-Legal Office tal-Awtorita' ikkonferma li l-appellant kien ottempra ruhu ma' dawn il-kondizzjonijiet;
- Id-DCC ma' jistax ibiddel decizjoni tal-PAB billi jdahhal argumenti ta' ppjanar godda;
- Mhux korrett li jinghad li din l-attivitá' ser ikolla impatt negattiv meta l-PAB kien diga indirizza din il-problema billi ikkummissjona rapport fuq tali impatti u kif dawn jistghu jigu imminimizzati. Dan ir-rapport gie accettat mid-Direttorat tal-Ippjanar; u
- Biex ikompli jonqos l-impatt ta' din l-attivitá', l-PAB, fid-decizjoni tieghu, kien ordna li l-applikant jirtira l-licenzji li kellu ghal attivitajiet simili fil-Wardija.

It-Third Party Objectors jghidu s-segwenti:

- Din l-attivitá' m'ghandiex tithalla ssir f'zona li hi ODZ u li hi ta' valur ekologiku bhal ma' hi l-Wardija;

## Kopja Informali ta' Sentenza

- Il-licenzji ma' kienux hargu kollha direttament fuq isem l-appellant u ghalhekk mhux ser jirrinunzja ghall-licenzji kollha li huwa qed effettivament jopera minnhom;

### Skond l-Awtorita',

- Minn mindu saru d-decizjonijiet mill-PAB gie fis-sehh in-North West Local Plan li jirrikonoxxi li dan is-sit qiegħed gewwa residential enclave fl-ODZ. L-attivitajiet in ezami li hija wahda ikkonsidrata bhala light industrial activity qatt ma' tigi accettata f'zoni residenzjali;
- Ghalkemm il-Direttorat kien ta rakkomandazzjoni favorevoli peress li kien hemm id-decizjoni tal-PAB (PAB 412/98), id-DCC ezercita' il-poteri discrezzjonali mgħotija lilu mill-ligi u iddecieda li jirrifjuta din l-applikazzjoni peress li l-impatti negattivi ser ikunu serji hafna u anki, skond id-DCC, perikoluzi;
- Id-DCC ha kont ukoll tal-fatt li s-sit jinsab ODZ gewwa hamlet jew rural residential enclave u li f' tali postijiet m'humix accettabbli attivitajiet li mhux konnessi ma' l-agrikoltura;
- Id-DCC ma' kienx totalment konvint li l-appellant kien verament irrinunzja għall-licenzji kollha li kellu fl-inhawi tal-Wardija peress li numru ta' licenzji jezistu li hargu f' isem l-applikant bhala rapprezentant ta' Sant Brothers Commercial Ltd.;
- Id-DCC assuma li minn kif inhi miktuba id-decizjoni tal-PAB, l-ispirtu tad-decizjoni kien fis-sens li anki dawk l-istabbilimenti f'isem Sant Brothers Commercial Ltd. kellhom jigu rinunzjati ukoll;

Fil-fehma kunsidrata ta' dan it-Tribunal, il-pozizzjoni tal-Awtorita' f'dan il-kas hija wahda soda u dan peress li minn mindu ingħataw iz-zewg decizjonijiet tal-PAB ikkwotati mill-appellant lahaq dahal fis-sehh il-pjan lokali li iddefinixxa il-kuncett tar-rural residential enclaves fejn dan il-grupp partikolari ta' residenzi gie ikklasifikat bhala Category 2 Rural Settlement. Fid-dawl ta' dan it-Tribunal jaqbel li d-DCC għamel sew li ezercita d-diskrezzjoni tiegħu f' dawn ic-cirkostanzi u iddecieda li peress li f'dawn l-enclaves, fejn japplikaw il-policies NWRS 1 u NWRS 2, mhux permessi attivitajiet li mhux konnessi mal-agrikoltura, dan il-permess ma' jistax jingħata. F' dawn ic-cirkostanzi

ikun perikoluz hafna li jinghata dan it-tip ta' permess ghalix b' hekk ikun qed jinfetah il-bieb ghal numru kbir ta' talbiet simili li jistghu jwasslu biex issir hsara lill-dawn ir-rural residential enclaves b' uzi kummercjali u industrjali f'nofshom u dan kontra wiehed mill-principji fondmantali tal-iStructure Plan.

Hemm ukoll id-dubju serju fuq kemm ser jigu osservati bis-serjeta l-kundizzjonijiet li impona l-PAB meta tezisti sitwazzjoni fejn l-istabbilimenti simili ghal dak in-ezami fil-Wardija li huma operati mill-kumpanija li jirrappresenta l-appellant imma li muhmiex direttament f'ismu ma' jidhirx li inghalqu u dan kontra l-ispirtu car tal-kundizzjonijiet li ghamel il-PAB kif spjegat supra.

Ghalhekk billi jirrizulta mill-premess li l-proposta ta' l-appellant tikser il-policies NWRS 1 u NWRS 2 tan-North West Local Plan u l-policy BEN 1 tal-iStructure Plan, dan l-appell ma jirrizultax fondat u ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut l-applikazzjoni, full development, PA1101/05 'Proposed alterations to façade and change of use from garage to mechanic, panel beater and spray workshop/garage', b'decizjoni tal-11 ta' Meju, 2010.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ikkonkluda hazin meta ghazel li japplika l-policies vigenti fil-mument tad-decizjoni meta skond il-Local Plans Interpretation Document tal-2007 meta jkun hemm vigenti outline development permission dan ghandu jipprevali fuq il-pjan lokali jekk jinbidel fil-fratemp;
2. L-outline development permit jikkostitwixxi dritt kwezit favur l-applikant li jinghata permess skond il-kondizzjonijiet mahruga in principju fl-outline development permit u t-Tribunal ma setghax jinjora dan il-principju;
3. It-Tribunal ma setghax jikkonstata dubju fuq ottemperanza ma' kundizzjoni fl-outline development

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permit meta l-partijiet jaqblu illi l-kunidzzjoni giet ottemperata.

### **L-ewwel u t-tieni aggravju**

Dan l-aggravju hu wiehed ta' serjeta li ghandu jigi mistharreg. Id-decizjoni tat-Tribunal hi cara. Il-permess shih gie rifjutat principalment fuq raguni wahda cioe illi mill-hrug tal-outline development permit il-pjanijiet lokali inbidlu, gie definit it-kuncet ta' rural residential enclaves u klassifikat bhala category 2 rural settlements fejn japplikaw policies NWRS 1 u NWRS 2 fejn mhux permessi attivitajiet mhix konnessi mal-agrikoltura.

Bhala principju generali, huma l-pjanijiet u policies vigenti fil-mument tad-decizjoni li ghandhom japplikaw. Dan hu issa pacifiku fil-gurisprudenza. Il-kwezit iqum meta hemm gia favur applikant outline development permit li hu fih innifsu accettazzjoni da parti tal-Awtorita tal-progett propost in principju. Tali permess jikkreja drittijiet jew aspettativa legittimi ghall-applikant? X'effett jista' jkollu tibdil fil-pjanijiet u policies fil-perjodu sakemm tigi mistharrga l-full development application fuq dan l-akkordju in pincipju fuq l-izvilupp bejn l-Awtorita jew id-DCC u l-applikant.

Kemm l-appellant u l-Awtorita irriferew ghal Local Plans Interpretation Document tal-2007 u jikkwotaw partijiet zghar li dehrilhom jissufraga l-argument ta' wiehed u tal-iehor. Il-Qorti qed tirriproduci l-parti introduttiva ta' dan id-dokument li jispjega l-hsieb wara dan l-interpretation document:

i. WHAT IS THE STATUS OF THE LOCAL PLAN IN RELATION TO PREVIOUSLY APPROVED POLICIES, PLANS AND OTHER INSTRUMENTS?:

As a general rule, the Local Plan automatically supersedes all previously approved policies, plans and other planning instruments which are in conflict with the Local Plan. Nonetheless, MEPA is in the process of identifying these policies, plans and other instruments with a view of publicizing their repeal, in full or in part.

Furthermore, as a result of the Local Plan, all development applications must be assessed in the light of the respective policy applicable to the site in question, and not in relation to other commitments (use or height) in the vicinity, unless this is allowed in the specific policy in the Local Plan itself or in another policy document in force.

As such the discretion of the decision making bodies is to be applied in relation to application and interpretation of the policies contained in the Local Plans and in other plans in relation to the application in question.

ii. WHAT IS THE STATUS OF PENDING AND PRE-DECISION DEVELOPMENT APPLICATIONS?:

All planning applications which were still pending as on Thursday 3rd August 2006, the date of formal approval by the Hon. Minister of the Local Plan, or which having been referred to the relative decision making body (MEPA, DCC or Appeals' Board) prior to such date, but no decision (minuted) has been taken prior to such a date, are to be assessed and determined with the current policies, i.e. including the Local Plan.

All planning applications which have been decided prior to such a date, or where the decision making body (DCC, MEPA or PAB), has taken a decision in principle in favour of the application or a particular aspect of the application (minuted) shall be considered as prevailing over the provisions of the Local Plan.

These cases would normally refer to those cases where the formal permit would not have been issued since it is either awaiting typing, or alternatively if the file is still pending since after the decision has been taken, it has been referred to the Directorate for amended conditions, or to the applicant for the payment of a fine or of a planning gain or for the submission of a bank guarantee or other information.



Those applications where no formal decision has been taken but a decision in principle in favour of the application has been taken or a strong commitment has been given and minuted, are to be referred to the MEPA Board.

iii. WHAT IS THE STATUS OF OUTLINE PERMITS AND FULL DEVELOPMENT PERMITS IN RELATION TO CHANGES IN THE LOCAL PLAN?:

In accordance with the provision of S.33 of the DPA no change in a local Plan may adversely affect the vested right arising from a valid development permit. The DPA does not distinguish between an outline and a full development permit and as such the assumption is that this provision applies to both.

Therefore, the principle approved in an outline development permit, as determined and approved in the decision in accordance with the description, shall prevail over the provisions of the Local Plan, provided that the said outline permit is still valid. This means that a full development application submitted within the validity of the outline development permit, must be assessed in the light of the principle/s approved by the outline permit.

Likewise, an approved full development permit, if still valid, prevails over the Local Plan provisions. As such, if the applicant requests an amendment to the full development permit, it is only this amendment that must be assessed in the light of the Local Plan and not the whole permit afresh.

The same applies if the applicant requests a reconsideration or an appeal from a condition/s of an approved permit. Only the respective condition/s must be assessed in the light of the Local Plan.

Where the applicant requests a renewal of the development permit within the validity period in accordance with the provisions 33(3) of the DPA and there is a firm commitment on site in that part of the

development which may give rise to a conflict between the existing policies and the previous policies governing the original development permit the principle of the previous permit shall prevail. On the other, if the development has not reached this stage, the provisions of the Local Plan shall prevail.

This obviously applies if the applicant requests MEPA to assess his pending application in the light of the vested rights acquired by him through the previous permit.

Dan l-interpretation document hu fil-fehma tal-Qorti car bizzejjed u jirrispondi l-ewwel zewg aggravji fil-parti sottolineata mill-Qorti.

Dan ma jfissirx b'daqshekk li l-kwistjoni hi maghluqa favorevolment fil-konfront tal-appellant. Kif ighid l-istess dokument, dan hu biss wiehed intepretattiv u ma ghandux jitpogga fuq l-istess livell ta' pjan jew policy li ghandhom forza ta' ligi. Bhala dokument mahrug mill-Awtorita pero ghandu il-valur ta' linji gwida li ghandu jaddotta l-Awtorita fid-determinazzjoni ta' applikazzjoni, u dan sabiex ikun hemm uniformita u certezza u aktar minn hekk trasparenza u ugwaljanza ghall-applikanti. Il-kwezit li jqum hu allura jekk it-Tribunal setghax jinjora dan id-dokument u jibbaza ruhu fuq pjan li dahal fis-sehh wara l-approvazzjoni tal-outline development permit u jekk seta' jaghmel dan, fuq liema kriterju legali jew ta' ippjanar seta' jaghmel hekk.

Din il-Qorti thossha skomda li tirrispondi hi ghal dawn il-kweziti billi t-Tribunal lanqas biss issenjalhom u l-Qorti tqis illi ghalhemm l-appellant ghandu ragun li jpoggi dawn l-aggravji quddiem il-Qorti pero ghandu fl-istess waqt tinghata l-opportunita lit-Tribunal li jirrevedi d-decizjoni tieghu fid-dawl tal-Interpretation Document u fl-istess waqt ma tigix imcahhda lil partijiet id-dritt tad-doppio esame.

Il-Qorti ghalhekk tqis illi t-Tribunal affretta fid-decizjoni tieghu li japplika l-policies vigenti fil-mument tad-decizjoni minghajr ma qies il-portata tal-Interpretation Document fuq

il-pjanijiet lokali u l-applikazzjoni tagħhom f'certu cirkostanzi partikolari.

Ghalhekk u ghar-ragunijiet fuq esposti, il-Qorti qed tilqa' l-aggravji tal-appellant stante li t-Tribunal naqas li jikkonsidra sew il-kwistjoni mill-otika legali kif imiss.

### **It-tielet aggravju**

Dan l-aggravju wkoll jimmerita minn konsiderazzjoni legali serja. Id-decizjoni tal-Bord tal-Appell tat-12 ta' Frar 2003 (PA 4358/96) ghamlet zewg kondizzjonijiet fil-konfront ta' Paul Sant li kien l-applikant f'dik l-applikazzjoni outline. Il-kondizzjoni mertu ta' dan l-aggravju hi cara. Paul Sant kellu jirrinunza ghal kull permess f'ismu fiz-zona tal-Wardija li jirreferi ghal spray painting, motor mechanic (workshop) u panel beater activities. Jekk ghal grazzja tal-argument ser jigi deciz mit-Tribunal li l-outline development permit kellu jipprevali anki fuq bdil fil-pjan lokali, allura l-mansjoni tat-Tribunal b'referenza ghal din il-kondizzjoni hi biss il-verifika ta' rinunzja tal-permessi kollha fil-Wardija f'isem Paul Sant personalment għall-attivitajiet imsemmija f'dik il-kondizzjoni. Din mhix kwistjoni ta' dubju izda accertazzjoni ta' fatt li ghandu jsir mit-Tribunal fuq il-provi migjuba quddiemu u evalwazzjoni tal-fatti skond il-ligi civili dwar il-valur probatorju tal-provi migjuba u l-piz li ghandha tinghata lil provi. It-Tribunal naqas f'dan l-apprezzament li kellu jagħmel speċjalment meta semma' operazzjonijiet kummerċjali ta' kumpaniji li magħhom hu assocjat Paul Sant. Mhux lecit għat-Tribunal li jvarja dak li jirrizulta car mid-decizjoni tal-Bord tal-Appell u ghalhekk dan l-aggravju qed jigi milqugh fis-sens illi t-Tribunal ghandu jerga' jevalwa l-fatti skond il-ligi tal-procedura fejn jirrigwarda l-provi, dejjem jekk ghal grazzja tal-argument ser isib li l-outline development permit ghandu jipprevali fuq il-pjan lokali mibdul.

Ghalhekk dan l-aggravju qed jigi milqugh.

### **Decide**

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Il-Qorti ghalhekk qed tilqa' l-appell tas-socjeta appellanti u thassar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012, u turrinvija l-atti lura quddiem it-Tribunal biex il-kwistjoni terga' tigi mistharrga fid-dawl ta' din is-sentenza. Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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