



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

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 116/2012

**Nature Trust (Malta)**

**vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u  
l-kjamat in kawza Joe Micallef**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Nature Trust (Malta) tad-9 ta' Lulju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-21 ta' Gunju 2012 fejn gie approvat full development permit PA 5560/05 fuq talba ta' Joe Micallef ghal bini ta' appartamenti u garages u penthouses b'faccata fuq Constitution Street, Mosta. L-applikazzjoni tinkludi d-demolizzjoni tal-binja ezistenti;

Kemm l-Awtorita u Joe Micallef sostnew illi l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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Rat l-atti kollha;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tal-20 ta' Jannar 2009 – Full Development Permission – PA/5560/05 fejn l-applikant, f' 146-148, Triq il-Kostituzzjoni, Mosta talab:

“Construction of 24 apartments and 26 in number garages, five of which are duplexes. There is also a penthouse level at third floor level fronting onto Constitution Street Mosta. Application to include demolition of existing premises.”

Illi fit-18 ta' Frar, 2009, l-Awtorita' laqghet it-talba ghal-hrug tal-permess relattiv;

Illi l-Avukat Philip Manduca ressaq l-aggravji tal-appellant inter alia kif gej:

“The decision delivered is incorrect and should be revoked for the following reasons:

1. The land in question is at least partly outside the development zone. The area is protected in accordance with the Central Malta Local plan. So much so that the site was declared as partly outside development zone when an application had been filed in 2002. This application was rejected following various objections.

2. Structure plan policy RCO 29 declares: "No new physical development will normally be allowed on the sides of valleys and especially on valley watercourses except for constructions aimed at preventing soil erosion". This area contains part of the valley watercourse.

3. The proposed development will be on the sloping side of Wied il-Ghasel, on of the most picturesque valleys in Malta, destroying the last remaining fields in central Mosta.

4. Refusals for development in this area have been consistent. I refer to application 3882/2002. There are no

valid reasons as to why the original decision for refusal of development in this area should have been reconsidered.

5. Applicants have failed to mention the girna on site which is one of the last remaining structures of this nature in a town centre. We submit that this omission alone entitles MEPA to revoke the permit under article 39A of the DPA.

6. The decision is in contravention of Policy BEN 4.

7. Mosta Policy Map A. 11 shows that the limit of development at Wied is-Sur and il-Hanqa area was already made public in 2002 so developers can not claim that they filed their application before the area was declared to be ODZ.

8. The development is in conflict with MEPA's own ratification of its A11 proposal approved and dated July 2006 and designated at MOM7, namely its Environmental Constraints Map.

9. We submit that the application fails to consider that garages are not usually approved if they abut on to main roads especially in view of the large number of units being applied for.

10. We submit that by developing the fields above the valley, volumes of water and debris within the valley may be increased to such an extent as to cause damages.

11. MEPA should also consider the potential to develop a heritage trail and valley walkway along Wied il-Ghasel and Victoria Lines and the need to safeguard spaces for recreational use.

12. Appellant reserves the right to raise other points at a later stage.”

Illi l-Perit Paul Buhagiar ressaq l-kummenti responsivi tieghu f'ismhu propju u ghan-nom tal-applikanti inter alia kif gej:

“The appellant has apparently not evaluated well the conditions of the permit as all his claims are either well covered by the permit conditions or else are outright false and thereby frivolous and, or vexatious.

The first falsehood is that the site is partly ODZ. It is true that the owner's site is partly outside the development zone, however, that part that has been allowed to be developed is all within the legally approved building zone of Mosta. The latter contrary to what is being claimed has never been changed and has always remained at its present position. The fact that the site is also within the valley confines as resulting from the local plan documents does not exclude its fabricable nature for that part within the building zone envelope. The closeness to the valley has impinged heavily on the type of development that could be built. The appellants seem to be oblivious of the fact that this application was submitted on 6th September 2005 and permit was only granted on 18<sup>th</sup> February 2009 at the end of an arduous reconsideration stage struggle. The DCC Board itself, after seeking and obtaining guidance from Mepa's executive Board did not agree with the positive recommendation of the Directorate's at Reconsideration stage but sought and obtained further plan refinements from the developers to protect and enhance the integrity of the adjacent sensitive valley. Perhaps one should emphasize that for that part of the development adjacent to the ODZ line the height limitation, as expressed in the Local Plan of the area, has been reduced from three to two floors. Moreover, no direct access was allowed in the form of stairwells to the roof area let alone the construction of a penthouse level that would have been permissible had the statute height limitation had been allowed to prevail. The minutes of the file's progress would surely belittle any claims that the Planning authority did not exercise the maximum possible breaks on the development to safeguard the site's delicate characteristics. During the lengthy and numerous public occasions when this application was discussed in public, none of the official objectors ever bothered to attend and voice any concern. The final plans were not approved by the DCC prior the official invitation from

Mepa for the latter to review and comment on the final plans. No adverse comments were received. The present orchestrated media campaign organized and fanned by numerous residents adjacent to the development is not based on any love for the valley but by selfish interests as the approved development within the legally approved building envelope would impinge negatively on views that they have been allowed to enjoy for quite a number of years. However, the right of the developers to develop their property within the building zone should not be held hostage by any other interests apart from those arising from official planning policy.

The so called "Girna" structure has also been roped in as well to put spoke's in the wheel of this development. The permit conditions, especially conditions 1, 8 and 9 deal with it effectively. However, in order to apply further self imposed constraint on the developers' end a minor amendment will be submitted shortly to relocate the rural structure for all its worth to posterity to a position ODZ within the client's site.

The developer is bound to observe quite a number of conditions aimed to conserve the landscaping and the effected agricultural soil and rubble walls bound to bank guarantees to ensure his full compliance."

Illi fl-udjenza tal-15 ta' Mejju 2009 l-Awtorita' ghamlet referenza ghal paragrafu 5 tal-appell u dan b'referenza ghal artiklu 39(a) u irrilevat li dik it-talba ai termini tal-istess artiklu ghandha tkun indirizzata lill-Bord tal-MEPA u mhux lill-Bord tal-Appell, stante li dan il-Bord jista' jisma appell minn tali decizjoni taht l-artikolu 39(a) u dan skond is-subinciz 39(a) 3.

Illi l-appellanti ddikjaraw illi kontestwalment mal-appell saret talba quddiem il-Bord tal-MEPA ai termini tal-Artiklu 39(a). L-Applikanti ddikjaraw li jaqblu mal-posizzjoni tal-Awtorita' li dan il-Bord m'ghandux kompetenza jiehu decizjoni ai termini tal-Artiklu 39(a) jekk mhux f'kaz t'appell minn decizjoni tal-Awtorita' a bazi tal-istess

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artikolu. L-appellanti ddikjaraw illi qed izommu ferm il-klawsola 5 tal-appell taghhom.

Illi l-Bord ra t-talba tal-appellant, sema' d-difensuri tal-partijiet u cahad t-talba.

Illi l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:  
"4.0 Comments on Appellant's Arguments

4.1 The approval of development permission on this site is mainly due to the development being in conformity with the site's zoning designation, and the applicant having a vested right to develop this site through the acquisition of outline development permission obtained in PA 3882/02. This full development permission application retains the same building footprint as approved in the outline permit, and there have been no changes to the zoning conditions of the site between the outline and full development permit.

The Third Party Appeal presented for this application highlights several issues, and which shall be discussed separately as follows.

#### 4.2 Site's Zoning Designations

The appellant claims that the site is located "at least partly outside the development zone", and concludes that due to this, the site should be protected and hence the proposed development not allowed. On this issue, the Authority points out that when reviewing the approved site plan PA 5560/05/1C, the actual site (marked in red) is located in its entirety within the development zone boundary. A further piece of land (marked in blue) consists of the extent of the applicant's property, however no development shall be carried out within the blue area, as the approved development is limited solely to the area of the applicant's land that is located within the development zone boundary. Hence, the appellant's arguments claiming that the site is located outside the development zone are unfounded.

The appellant further claims that the same reasoning applied in the previous application PA 3882/02 should be sustained for this application, which the appellant claims was a decision to refuse development permission. Contrary to this statement, and as already indicated in this report, the outline application PA 3882/02 was approved by MEPA on the condition that development is limited solely within the part of the site located within the development zone boundary. While several objections by third parties were raised in this outline application, no Third Party Appeal was ever made to contest this permit. The present full development permission application respects the conditions imposed and issued for the outline application, and hence the appellant's comments on this issue are also unfounded.

#### 4.3 Impact on Valley

The appellant highlights the fact that part of the site is subject to scheduling due to its proximity to Wied il-Ghasel, with the latter being designated as a Level 2 Area of Ecological Importance. Part of the site falls within the Level 3 buffer zone to the valley. The appellant states that the development contravenes with the Local Plan's Environment Constraints Map MOM2 which identifies the scheduled areas, and that Structure Plan Policy RCO 29 will be infringed.

The Authority has been aware of the site's proximity to the Level 2 scheduled Wied il-Ghasel from the off-set of this application, as well as in the course of the outline development permission application PA 3882/02. Notwithstanding this the outline permit was issued, while in the course of this full development permission application the Environment Protection Directorate were consulted for their assessment on any perceived impacts that the development may have on this protected watercourse. In their reply (blue 41 in PA file), the Environment Protection Directorate stated that:

1. the footprint should be limited to areas within scheme;

2. construction management plans and stringent monitoring should be submitted to ensure that no overflows beyond the site boundary occur;
3. an EPD permit is required for the dismantling of rubble walls and uprooting of trees; and
4. a bank guarantee is to be imposed to ensure compliance with these conditions.

With regards to the fact that part of the site is within Wied il-Ghasel's scheduled buffer zone, the Environment Directorate stated that this concern is mainly relevant to the part of the site that is located outside the development zone. Conversely the Directorate also noted that the proposal was revised limiting the building footprint within the scheme boundary.

In effect, as the development was limited within the scheme boundary and on the basis of the Environment Directorate's conclusions, the Planning Directorate considered that a favourable recommendation could be arrived at with the imposition of adequate conditions and the approval of a construction Method Statement, which would ensure that there is no negative impact on the nearby valley from construction works. In view of this, MEPA contends that the permit was issued with adequate safeguards towards the site's surrounding sensitive environment and is thus not in contravention with any environmental constraints affecting this site.

On the appellant's claim that the development will be visually intrusive, the Authority remarks that the visual impact of the development on the nearby valley has been effectively mitigated through the sensitive design of the development. In the first instance, the internal development has been limited to only two floors above the street level, and as can be confirmed by the photomontages at red 115, the row of existing buildings fronting Constitution Street are higher than the approved development. Hence, the visual impact additional to that at present is minimal. The design adopted for the massing of the development with the adoption of appropriate setbacks creating a stepped effect on the external



appearance of the building facing Wied il-Ghasel has further softened the visual impact of the development. Moreover, additional landscaping shall be planted within the site, and which will effectively screen the internal development's appearance from distant views in relation to the valley.

#### 4.4 Imposition of Article 39A to Revoke Permit

The appellant states that the applicants have failed to mention a girna which is present on site, and on the basis of this, claims that MEPA is entitled to revoke the permit under article 39A of the Development Planning Act. While the appellant mentions this issue, the appellant seems to have failed to present any formal request to MEPA for such a revocation of permit. MEPA contends that the Planning Appeals Board has no jurisdiction to enter into such an issue, as it would be ultra vires the powers of this Board as a Board of revisions.

Article 39A clearly enables a right of appeal on the Authority's decision on revocation, and hence the Planning Appeals Board cannot hear such a contestation unless the Authority decides such an issue.

#### 4.5 Technical Details & Other Considerations

The appellant also raises an issue in relation to traffic generation stating that "garages are not usually approved if they abut on to main roads especially in view of the large number of units being applied for". On this issue, the Authority points out that it has been ensured that adequate on-site car parking is provided for the development as required by Structure Plan Policy TRA 4. In addition, there is only one direct access onto the main road, as the car parking provision consists of internal garaging space. Moreover, the main road is only classified as a distributor road, and not an arterial road, with the latter scenario being the only form of prohibition from direct vehicular access.

In his appeal, the appellant also suggests that "MEPA should also consider the potential to develop a heritage trail and valley walkway along Wied il-Ghasel and Victoria

Lines and the need to safeguard spaces for recreational use". The Authority contends that such issues are not relevant to this appeal, and it may also be re-iterated that this permit has been issued in full compliance with the zoning conditions applicable to the site for development, and which is not zoned as a recreational area. The change in zoning of this site may only be carried through a Local Plan review and not through a development application."

Illi fl-udjenza tat-13 ta' Novembru 2009 xhedet Helen Zammit, prodotta mill-appellanti, li xhedet inter alia kif gej:

"Jiena ili noqghod fl-akkuati 46 il sena u nghid illi l-girna in kwestjoni minn dejjem niftakarha hemmhekk. [...] Nghid illi mal-girna hemm kamra ohra. Bejn il-girna u il-post tieghi nikkalkula li hemm sular. [...] Nghid li mill-kcina tieghi issa nara l-wied."

Illi xheded ukoll Joe Abdilla, prodott mill-appellant, li xheded inter alia kif gej:

"[...] Jiena dik l-girna minn dejjem niftakarha hemmhekk [...]. Din hija girna kwadra, u nista nikkonferma li l-gebel taghha huwa qaddim mibnija bi still qadim. [...] Jiena fin-1965 kont noqghod hemmhekk u daqsek ilni niftakar hemmek dik l-girna. "

Illi xheded ukoll John Portelli, prodott mill-appellant, li xheded inter alia kif gej:

"[...] Jien kont accedejt fuq l-post biex nara din il-girna u nista nikkonferma li l-girna hi mibnija b'sengha tajba hafna. Irrid nghid ukoll illi, dehrili li sar intervent fuq din l-girna billi saret l-blata tal-konkoss biex jipprotegewha milli taqa. [...]"

Illi permezz ta' rapport ippreparat minn Norbert Gatt u Paul Saliba, ghall-applikantii, in vista ta' diversi konsiderazzjonjiet li saru fir-rapport, huma ikkonkludew billi osservaw s-segwenti:

#### “4.0 Conclusion

4.1 Considering the fact that (a) this small rural structure post-dates the two nearby small rural structures mentioned in paragraph 1.3 and (b) its decadent building techniques that were becoming very common during the latter part of the twentieth century, especially in the building of rural rooms and rubble walls, one should conclude that this particular room merits the same degree of protection as that of the two nearby rural structures. Fr. Michael Fsadni, author of the book *The Maltese Corbelled Hut* specifically states that the pseudo-girna (preudo means fake) reflects the result of the decadence on the building techniques of the old girna.

The vernicular value of this particular rural room is less than that of a pseudo-girna.”

Illi fl-udjenza tal-5 ta' Frar 2010 xehed John Sammut, prodott mill-appellant, li xehed inter alia kif gej:

“[...] Jien nista' nghid, illi, fis-sit mertu ta' l-applikazzjoni hemm girna u dejjem nafha hekk. [...] Jien ghadhi oggezzjoni ghall-izvilupp u huwa dnuh illi, l-girna tintilef.”

Xehed ukoll Stephen Borg, prodott mill-appellant, li xehed inter alia kif gej:

“[...] Irrid nghid ukoll illi, il-fatt illi l-girna ma tkunx imnizzla fuq survey sheet, mhuwix konklussiv tal-fatt illi ma kienetx hemmhekk.

[...] Mistoqsi mill-esperjenza tieghi, x'data nista' naghti lill-bini ta' din il-girna, jiena nghid illi, ma nistax naghtiha data pero', mis-saqaf ta' din il-girna, jiena stajt nikkonkludi li ghandha numru ta' snin.”

Illi permezz ta' nota, l-appellanti ressqu is-sottomissjonijiet taghhom inter alia kif gej:

“Illi l-appell huwa dwar l-applikazzjoni PA5560/05 li giet approvata mill-Bord tal-MEPA u li permezz taghha l-applikant Mr Joe Micallef inghata l-permess ta' zvilupp biex isir "Construction of 24 apartments and 26 in number

garages, five of which are duplexes. There is also a penthouse level at 3rd floor level fronting onto Constitution Street Mosta. Applications to include demolition of existing premises." u dan fuq is- sit 146/148 Triq i1-Kostituzzjoni Mosta,

Illi fl-appell sottomess mill-ghaqda appellanti hemm elenkati r-ragunijiet li a bazi taghhom l-ghaqda appellanti hi tal-fehma illi d-decizjoni tal-Kummissjoni ghall-Kontroll tal-Izvilupp approvat il-permess tal-izvilupp PA5560/05 tkun revokata liema ragunijiet huma ibbazati fuq il-valur ekologiku ta' Wied il-Ghasel li hu protett mill-policies diversi applikabbli kif ukoll mill-Pjan Lokali ghaz-Zona Centrali ta' Malta,

Illi diversi drabi waqt il-proceduri quddiem dan it-Tribunal intqal illi billi fuq is-sit kien hemm permess Outline bir-referenza PA3882/02 dan kien b'xi mod jobbliga lill Awtorita' illi tohrog permess ta' zvilupp fuq is-sit; hu sottomess li dan mhux il-kaz u dan ghaliex in-natura tal-applikazzjoni PA5560/05 hi kompletament differenti minn l-applikazzjoni Outline approvata u cjoe PA3882/02 u dan kif gie registrat fil-minuta 25 datata 9 ta' Mejju 2006 fil-file PA5560/05 u iffirmata mill-konsulent legali tal-Awtorita',

Illi l-Kummissjoni ghall-Kontroll tal-Izvilupp ddecidiet dwar l-applikazzjoni nhar 1- 20 ta' Jannar 2009 (ara minuta 119 fil-file PA5560/05 u iffirmata mill-Perit David Vassallo ghan-nom tac-Chairman tal-Kummissjoni ghall-Kontroll tal-Izvilupp Sezzjoni 'B') kellha l-obbligu li tiddeciedi skond il-policies fis-sehh dak in-nhar tad-decizjoni,

Illi l-Pjan Lokali ghaz-Zona Centrali ta' Malta jhares Wied l-Ghasel permezz ta' diversi policies kif ukoll billi fil-Mappa MOM7 intitolata Mosta Environmental Constraints Map jistabilixxi l-linja li l-izvilupp ma jistax jaqbez biex ikun imhares il-wirt ekologiku,

Illi minn ezami tal-pjanti sottomessi mill-applikant u komparati l-istess mal-mappa MOM7 tal-Pjan Lokali ghaz-Zona Centrali ta' Malta jirrizulta li, kif indikat fil-mappa hawn annessa bhala annessa I, il-Kummissjoni ghall-

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Kontroll tal-Izvilupp qabez il-linja permissibli indikata bl-ahdar u ippermettiet lil hinn minn din il-linja parti mill-zvilupp li kien mitlub mill-applikazzjoni PA5560/05.

Ghaldaqstant dan it-Tribunal huwa mitlub biex :

- 1) jezamina l-pjanti approvati u jqabbilhom mal-limitazzjonijiet stability fil-mappa MOM 07 tal-Pjan Lokali ghaz-Zona Centrali ta' Malti,
- 2) jistabilxxi illi l-pjanti approvati jikkonfliggu mal-provedimenti tal-istess Pjan Lokali u
- 3) jikkonkludi ghaldaqstant li l-permess ta' zvilupp PA5560/05 ghandu jkun revokat.”

Illi permezz tat-Tieni Statement taghha l-Awtorita' irrilevat ulterjorment inter alia kif gej:

“1. The appellant submitted a note on the 21 st November 2011 arguing that the proposed development encroach onto the ecologically protected zone of the valley as shown in Map MOM7 of the Central Malta Local Plan.

2. The Authority notes that the proposed development does not encroach anywhere beyond the limits of development - see survey at Blue 23 in the PA file. This means that no part of the built up will take place ODZ and the area of ecological importance as shown in Map MOM7 of the local plan. During the course of the application the proposal was specifically revised for the purpose of limiting the building footprint within the scheme boundary.

The appellant is arguing that part of the development will encroach within the area of ecological importance as the boundary of this area actually is within the limits of development and therefore the proposed development will nevertheless encroach on a protected area. The Authority has demonstrated during the course of appeal that this area is quite negligible and inconsequential Moreover the Authority's Environment Protection Directorate were aware of it and in fact stated (see document 41 in PA file) that 'site also falls within a Level 3 Area of Ecological Importance, this concern is mainly relevant to the part of the site that is located ODZ, whereas the revised footprint

is now confined within scheme boundary' (emphasis added).

The Authority also contends that the proposed build up will also not encroach on the small sliver of land that forms part of the area of ecological importance but which is within the limits of development. This may be easily attested by comparing Map MOM 7 of the local plan, the block plan at Blue 23 in PA file and approved ground floor plan at Red 122A in the PA file and compare the perimeters and contours of the development. The area of ecological importance was designed following the contour of a particular rubble wall (having north-east to south-west orientation); it is clear that the proposed development will not encroach beyond this line.

As the development was limited within the scheme boundary and on the basis of the Environment Directorate's conclusions, the Planning Directorate considered that a favourable recommendation could be arrived at with the imposition of adequate conditions and the approval of a construction Method Statement, which would ensure that there is no negative impact on the nearby valley from construction works. In view of this, MEPA contends that the permit was issued with adequate safeguards towards the site's surrounding sensitive environment and is thus not in contravention with any environmental constraints affecting this site."

Ikkunsidra ulterjorment:

Dan huwa Third Party Appeal kontra permess li hareg ghad-demolizzjoni ta' bini ezistenti u l-kostruzzjoni ta' kumpless residenzjali, ta' 24 appartamenti, 5 minnhom appartamenti duplex, u penthouse fit-tielet pjan. Il-proposta tinkludi ukoll il-bini ta' u 26 garage. L-izvilupp propost ser ikollu faccata fuq Triq il-Kostituzzjoni, Mosta u block fuq wara fil-forma ta' internal development.

Waqt li t-talba originali kienet ghal 24 residenza, in-numru nizek ghal 20 residenza waqt l-ipprocessar tal-applikazzjoni. Peress li l-livell intern ta' dan l-internal development huwa madwar 4.5 metri izjed l-isfel mill-livell

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tat-triq, l-izvilupp ser ikollu faccata ta' zewg sulari fuq Triq il-Kostituzzjoni.

Il-progett kif approvat jinkludi landscaping scheme.

Waqt li s-sit mertu ta' dan l-appell ghandu bicca minnu li hija ODZ, l-izvilupp approvat bil-permess in ezami ser ikun kollu gewwa z-zona tal-izvilupp.

Il-permess in ezami, li kien hareg fi Frar tas-sena 2009, kien hareg bil-kundizzjonijiet li normalment isiru f' applikazzjonijiet ta' dan it-tip li kienu jinkludu klawnsoli fuq construction management, l-gholi, materjali ecc. Il-permess jinkludi ukoll l-impozizzjoni ta' garanzija bankarja biex l-applikant isegwi id-dokument PA 5560/05/84 li huwa method statement intiz biex jissalvagwardja dik il-bicca tas-sit li hija ODZ.

Precedentement, kien hareg permess tat-tip outline (PA 3882/02) fuq is-sit in ezami ghall-izvilupp ta' old people's home bil-kundizzjoni li l-izvilupp kellu jsir f' dik il-parti tas-sit li tinsab gewwa z-zona tal-izvilupp. Ghalkemm kienu saru numru ta' oggezzjonijiet fil-kors tal-iprocessar ta' dik l-applikazzjoni qatt ma' sar appell kontra l-permess meta dan hareg.

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:

1. Parti mill-art fejn huwa propost li jsir l-izvilupp huwa ODZ;
2. L-izvilupp imur kontra il-policy tal-Pjan ta' Struttura, RCO 29;
3. L-izvilupp huwa propost li jsir vicin hafna tal-water course ta' Wied il-Ghasel;
4. Gew michuda diversi applikazzjonijiet f' din l-area fil-passat, fosthom PA 3882/2002;
5. Giet injorata l-prezenza ta' girna fuq is-sit;
6. Il-proposta tikser il-policy tal-Pjan ta' Struttura, BEN 4;
7. Il-linji tal-izvilupp kienu diga cari fis-sena 2002;

8. Il-proposta mhux konsistenti mal-Environmental Constraints Map tal-Awtorita';
9. Ir-regoli ghall-izvilupp dwar l-access tal-garaxxijiet fil-proposta gew applikati hazin;
10. Bl-izvilupp ser jizdied il-potenzjal u l-periklu li tigber il-kwantita ta' ilma u debris gol-wied ; u
11. Ser jigi ppregudikat il-potenzjal li jsir nature trail fil-wied.

L-applikant jissottometti li

- Il-kunsiderazzjonijiet tal-appellant huma koperti bil-kundizzjonijiet tal-permess relattiv, u/jew li l-allegazzjonijiet maghmula huma skorretti u nfondati;
- L-area li hi proposta tinbena hija fabbrikabbli;
- Il-progett kien gie skrutinat mill-Awtorita' ghal hafna snin qabel ma' gie approvat u b' rizultat ta' dan saru hafa tibdiliet fil-proposta;
- L-appellanti ma ressqux l-oggezzjoni taghhom fl-istadju tal-ezami mill-Awtorita';
- L-oggezzjonijiet huma motivati biss minn interess personali ta' propjetarji li jibzu li ser jitilfu l-veduti li ilhom igawdu ghal diversi snin;
- Il-girna sejra tigi rilokata fil-parti ODZ; u
- Gew imposti diversi garanziji u kundizzjonijiet sabiex tigi mharsa dik il-parti tas-sit li hija ODZ.

L-Awtorita' tissottometti li:

- Il-progett propost ser jinbena kompletament gewwa z-zona tal-izvilupp;
- L-applikazzjoni tat-tip outline li kienet saret fuq is-sit in ezami PA 3882/02, kienet giet approvata;
- Ma kien hemm ebda tibdil fiz-zoning minn mindu hareg il-permess PA 3882/02;
- L-applikant ghandhu vested right ghal-permess in vista ta' outline development permission PA 3882/02;
- L-izvilupp ser isir fil-parti l-kbira tieghu fuq il-footprint tal-permess originali (PA 3882/02) u fi kwalunkwe kas dan ser isir kompletament f' dik il-parti tas-sit li taqa' gewwa z-zona tal-izvilupp;
- L-Awtorita' kienet konsapevoli sa mill-bidu, anke waqt li kienet qed tipprocessa l-ewwel applikazzjoni (PA 3882/02), tal-fatt li is-sit huwa vicin Wied il-Ghasel li jaqa



f'zona skedata bhala Level 2. Fil-fatt fil-kors tal-iprocessar tal-applikazzjoni in ezami kien gie ikkonsultat l-Environment Protection Directorate li kien ghamel assessment tal-impatti u issuggerixxa numru ta' mizuri biex jigu minizzati l-impatti. Dawn il-mizuri gew addottati u applikati fil-hrug tal-permess in ezami u ghalhekk giet rispettata il-Environmental Constraints Map ;

- Il-progett li gie approvat ghandu bizzejjed parking, u hemm access wiehed biss ghall-karozzi. Peress li Triq il-Kostituzzjoni hija distributer road u mhux arterial road tali access huwa permess; u
- Dwar il-heritage trail l-Awtorita' tghid li din l-issue hija irrelevanti ghal dan il-permess stante li s-sit li fuqu ser isir il-progett huwa gewwa iz-zona tal-izvilupp.

F' nota ulterjuri l-Awtorita' terga tirribadixxi li l-izvilupp ser isir kollu kemm hu gewwa iz-zona tal-izvilupp u ghalhekk ebda parti mill-izvilupp m'hu ser isir f'zona li hija ekologikament sensittiva.

L-Awtorita' tikkontendi ukoll li r-raguni li ghalija f' dik il-parti tas-sit fejn iz-zewg linji jigifieri il-linja tal-izvilupp u il-linja li turi fejn tibda il-Level 3 Area of Ecological Importance ma' jaqblux hija li din il-linja tal-ahhar kienet ingibdet mhux ezatt mal-linja tal-izvilupp ghaliex kienet qed issegwi habel ta' hajt tas-sejjieh. Fi kwalinkwe kas l-Awtorita' tghid li apparti l-fatt li dan il-feles ta' art huwa zghir hafna u ta' ebda konsegwenza, fil-fatt xorta l-izvilupp propost mhux ser imissa.

Meta wiehed jezamina l-aggravji tal-appellant fid-dawl ta' dak kollu li hemm fil-files tal-Applikazzjoni u tal-Appell u kif ukoll ta' dak kollu li intqal fil-kors tas-smieh ta' dan l-appell jirrizulta li:

- L-aggravji 1, 4 u 6 huma infondati;
- Il-girna li tissemma f' aggravju 5 mhix ta' valur arkitettoniku jew arkeologiku kif johrog car mir-rapport ippreparat minn Norbert Gatt u Charles Saliba;
- L-aggravju 9 huwa teknikament infondat;
- Kif tispjega sew l-Awtorita', waqt l-iprocessar tal-applikazzjoni ittiehed kont tal-fatt li s-sit jinsab vicin hafna ta' zona delikata mill-punto di vista ta' ekologija u

ghaldaqstant ittiehdu il-mizuri necessarji kollha biex kemm jista jkun l-impatti jittaffew u dan anke fid-dawl tal-Environmental Constraints Map li tissemma fl-aggravju 8;

- L-aggravji numru 2, 3, 7, 8, 10 u 11 ma' jirriflettux is-sit in ezami per se imma il-pozizzjoni minn fejn tghaddi l-linja tal-izvilupp f' dawk l-inhawi.

Il-punt krucjali f' dan l-appell huwa li dan l-izvilupp ser jinbena kollu kemm hu gewwa z-zona tal-izvilupp. Din il-linja jidher li ilha tezisti sa minn meta dahlu it-Temporary Provision Schemes u ma' inbidlitx meta dahal fis-sehh il-pjan lokali. Jirrizulta b' mod l-iktar car mill-premess li l-bicca l-kbira tal-aggravji tal-appellant jirrigwardaw precizament kif giet moghddija din il-linja f'dawn l-inhawi.

L-appellant seta facilment oggezzjona fuq kif giet mghoddija il-linja tal-izvilupp f' din il-parti tal-Mosta vicin Wied il-Ghasel. Dan seta sar jew permezz ta' oggezzjoni formali li kella ssir waqt il-public consultation li saret meta kien qed jigi finalizzat il-pjan lokali jew, wara li skada iz-zmien ghal tali oggezzjoni, permezz ta' PC Application li huwa process totalment separat mill-process ta' applikazzjoni ghall-izvilupp. L-oggezzjoni ghal din il-linja setghet saret zmien ilu anke qabel ma' saret l-applikazzjoni ghall-izvilupp in ezami u anki qabel ma' saret l-applikazzjoni ghall-permess PA 3882/02.

Minn kif kienet tghaddi il-linja tal-izvilupp, kullhadd, inkluzi l-appellant u l-Awtorita' seta' facilment jipprevedi l-effetti li kien ser ikollu zvilupp eventwali fuq is-sit in ezami u allura kif dan kien ser jaffettwa l-ambjent tal-madwar. Fi kliem iehor l-aggravji principali tal-appellant ghandhom x' jaqsmu ma' kif giet moghddija l-linja u mhux ma' dan l-izvilupp specifiku.

F' tali PC application huma kien ikollhom l-opportunita' jargumentaw li kif giet mghoddija l-linja kull zvilupp eventwali kien ser ikollu numru ta' impatti fuq l-ambjent tal-madwar li hafna minnhom huma elenkati fl-aggravji tal-appellant. Minkejja dan, l-appellant mhux talli ma' ghamilx dan imma lanqas biss appella mill-permess PA 3882/02 meta dan hareg. L-istess ezistenza tal-permess PA

3882/02 u l-fatt li iz-zoning tal-area in ezami ma' inbidilx kien jaghmilha impossibbli ghal-Awtorita' li ma ikkonsidrax favorevolment l-applikazzjoni in ezami u li wara kollox ghamlet dan wara ezercizzju twil ta' tibdiliet li intalbu lill-appellant biex jigu mitigati kemm jista jkun l-impatti.

Huwa pjuttost sorprendenti li organizzazzjoni bhan-Nature Trust tattakka zvilupp li qed jintalab li jsir gewwa il-linja tal-izvilupp, kif suppost li jsir skond il-ligi, minflok ma attakka kif giet mghoddija il-linja tal-izvilupp inniffisha. Din it-tattika tista tkun counter productive fis-sens li socjeta bhan-Nature Trust ghandha tidher li qed tirresisti kull forma ta' zvilupp illegittimu li jinghata fl-ODZ u mhux wiehed li qed jigi approvat legittimament u skond il-policies gewwa il-linja tal-izvilupp li, fic-cirkostanzi ta' kif inzerta li tghaddi il-linja tal-izvilupp, huwa zvilupp relattivament innokwu f' sens ta' ippjanar u ta' envelope pjuttost skontat stante l-fatt li diga kien gie approvat permess outline fis-sit (PA 3882/02) ta' bejn wiehed u iehor kobor simili u uzu pjuttost izjed impenjattiv (old people's home) li qatt ma' gie appellat. L-izjed kwalita' importanti li ghandu jkolla sistema ta' ippjanar biex jigi salvagwarjat l-ambjent hija ic-certezza jigifieri illi gewwa z-zoni tal-izvilupp isir zvilupp skond il-policies li japplikaw f' kull kas u li barra z-zoni tal-izvilupp ma' jsir ebda zvilupp hlief dak strettament necessarju ghall-agrikoltura. Jekk jibda jiddahhal is-susspett li kollox huwa dubjuz, anki dak li jidher ovvju, allura is-sistema ta' ippjanar issir instabbli u dan ghad-dannu tal-amjent.

Il-linja tal-izvilupp qieghda hemm precizament biex tindika li gewwa jista jsir il-bini u barra ma' jistax. Allura kif tista kredibilment tattakka bini li ser isir gewwa l-linja meta ma' ghamilt xejn biex tibda process biex titmexxa din il-linja?

Ghalhekk, fil-fehma kunsidrata ta' dan it-Tribunal, il-pozizzjoni tal-Awtorita' f' dan il-kas hija wahda korretta u li hija pjenement sostnuta mill-plans u policies tal-ippjanar vigenti meta hareg il-permess in ezami. Dan it-Tribunal jemmen li waqt li l-linja tal-izvilupp setghet giet moghddija b' mod li kien ikun izjed sensitiv ghall-ambjent tal-vicinanze, ma' gie miksur edba scheduling jew xi tip ta'

protezzjoni iehor meta hareg dan il-permess. Minn naha l-ohra irid jinghad li f' din l-applikazzjoni l-Awtorita' kellha idejha marbutin minhabba l-fatt li kienet approvat il-permess PA 3882/02, li del resto ma' giex appellat. Il-mistoqsija fuq jekk il-linja tal-izvilupp kelliex titmexxa kella ssir qabel jew waqt l-ipprocessar ta' dik l-applikazzjoni. Jirrizulta li la l-Awtorita' u lanqas terzi persuni ohra ma' ghamlu dan.

Ghalhekk, kif jirrizulta b' mod car mill-premess, m'hemm xejn fil-policies tal-Awtorita' li kienu vigenti meta sar l-ipprocessar ta' din l-applikazzjoni li kien jipprojbixxi li zvilupp ta' dan it-tip isir f' din l-area partikolari.

In-konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, jirrizulta li l-permess hareg in konformita mal-policies kollha vigenti u ghalhekk dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma il-permess PA/5560/05, "Construction of 24 apartments and 26 in number garages, five of which are duplexes. There is also a penthouse level at third floor level fronting onto Constitution Street Mosta. Application to include demolition of existing premises."

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ddecieda hazin meta kkonkluda li ma hemm xejn li jmur kontra l-izvilupp billi ma kkonsidrax il-pjan ta' struttura fil-paragrafu 15.36 li jghid li 'valleys are a valuable national resource in terms of water resources agricultural, wildlife, landscape, soil conservation and leisure'. In oltre policy RCO 29 ighid li 'no new physical development will normally be allowed on the sides of valleys and especially on valley water courses except for constructions aimed at preventing soil erosion and construction and management of water resources'. L-appellant izid li din hi ligi u jekk l-Awtorita fil-formulazzjoni tal-pjan lokali u identifikazzjoni ta' linji ta' zvilupp injorat

jew skartat din il-policy, ma jistax ikun hemm gustifikazzjoni ghal zvilupp ghax dak li hu null jibqa' null;  
2. It-Tribunal naqs li jkun sensitiv ghall-ordinamenti imposti fuqha bhal Environmental Constraints Map MOM07 u fil-kwistjoni tal-girna.

Dawn l-aggravji ser jigu indirizzati flimkien. Il-Qorti ma fehmitx ezatt fejn l-appellanti iridu jaslu f'dan l-appell. Jekk l-iskop tal-appell hu biex il-Qorti taghzel liema policy ghandha tapplika a skapitu ta' iehor, dan mhux kompitu taghha imma kompitu tat-Tribunal, sakemm l-appell ma hux intiz biex il-Qorti tinvestiga policy li giet applikata meta tali policy jew pjan ma kienx applikabli jew gie applikat hazin ghal kaz izda invece kellu jigi applikat policy jew pjan iehor. Dato non concesso li dan hu l-intiza li tohrog mill-ewwel aggravju, il-Qorti ma taqbilx mal-appellanti illi l-Awtorita jew it-Tribunal ghamlu applikazzjoni hazina tal-fatti mal-policies ezistenti. Jibda biex jinghad illi l-pjan lokali indika z-zona fejn gie approvat l-izvilupp bhala zona ta' zvilupp. In kwantu hu zona ta' zvilupp, l-Awtorita u t-Tribunal huma marbutin li jikkonsidraw it-talba f'dawn il-parametri, tenut kont, kif fil-fatt ghamlu li dan l-izvilupp f'zona approvata mill-pjan lokali, hu fi prosimita ta' wied. Kwindi l-ogezzjoni tal-appellant taqa' billi l-pjan ta' struttura stabilixxa linja gwida biss u policy RCO 29 tipprovdi wkoll, izda fl-istrutt, indikazzjoni ghal Awtorita biex ma jsirx zvilupp fil-gnub ta' widien ghalkemm l-istess policy ma teskludix dan l-izvilupp billi l-istess policy tikkwalifika kliemha bil-kliem 'will not normally be allowed'. F'dan il-kaz pero din id-diskrezzjoni fil-policy RCO 29 giet eliminata bil-pjan lokali nnifsu li ppermetta f'parti mill-wied tal-Mosta zona ghal zvilupp. Ma hemm xejn kontra l-ligi jew kontra policy jew pjan ta' struttura f'dak li ghamlet l-Awtorita u kkonferma t-Tribunal. L-aktar parti krucjali tal-applikazzjoni kienet li l-izvilupp ikun kostrett fil-parti zvilupabli u jittiehdu mizuri, kif it-Tribunal dehrlu li ttiehdu, ghal protezzjoni tal-wied. Tali konsiderazzjoni ta' natura purament ta' planning huma diretti ghal mansjonijet tal-Awtorita u t-Tribunal u din il-Qorti ma ghandhiex tissindakahom.

Kif qal tajjed it-Tribunal, Nature Trust (Malta) kellha kull opportunita fl-istadju tal-konsultazzjoni pubblika ghal pjan lokali li tivventila l-oggezzjonijiet taghha u in mankanza taghmel hi PC application ghar-revizjoni tal-linji ta' zvilupp. Nature Trust (Malta) ma hadet ebda pass simili kif lanqas hadet ebda passi meta fl-2002 kien gia inhareg outline permit fuq dan l-izvilupp li baqa' sostanzjalment l-istess f'din l-applikazzjoni ghal full development permission. It-Tribunal ghandu kull jedd jesprimi opinjoni bhal meta qal li l-linja ta' zvilupp setghet saret b'mod li tkun aktar sensittiva ghal ambjent pero din kienet biss opinjoni obiter u t-Tribunal ma jstax ibiddel linji ta' zvilupp jew jiskarta li japplika policies ta' zvilupp fuq opinjoni biss kif gustament mexa t-Tribunal f'din l-istanza.

Harsa lejn l-appell ta' Nature Trust (Malta) fid-dettal hu impernjat fuq l-oggezzjoni ghal linji ta' zvilupp fil-pjan lokali u mhux ghal zvilupp per se li ghandu jkun l-iskop tal-appell billi l-pjan lokali ma jstax jintmess f'appell quddiem din il-Qorti.

It-Tribunal irrikonoxxa kuntrarjament ghal dak sottomess mill-appellant, illi l-outline development permit ghamilha difficli li l-permess shih ma jinharigx mhux kif qal l-appellat minhabba xi dritt kwezit izda minhabba aspettativa legittima meta ma jkun inbidel kwazi xejn bejn meta nhareg l-outline permit u l-full development permit.

In kwantu ghat-tieni aggravju dwar in-nuqqas ta' sensittivita tat-Tribunal ghal xi aspetti fattwali ta' ppjanar, jinghad illi dawn l-aspetti teknici ttiehdu in konsiderazzjoni mit-Tribunal u ghalhekk din il-Qorti ma ghandhiex tissindaka l-apprezzament li ghamel it-Tribunal.

## **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Nature Trust (Malta) u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ppjanar tal-21 ta' Gunju 2012. Bl-ispejjez kontra l-appellant.

Kopja Informali ta' Sentenza

**< Sentenza Finali >**

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