



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-19 ta' Frar, 2014

Appell Civili Numru. 192/2012

Darren Grima

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Darren Grima tad-19 ta' Dicembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-11 ta' Dicembru 2012 kontra c-cahda tal-applikazzjoni PA 955/10 'construction of a car wash – outline application';

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

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

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

B'applikazzjoni tad-9 ta' Marzu 2010 – Outline Development Permission – PA 00955/10 l-appellant, f' sit f' Ta' Campra, Triq Burmarrad, San Pawl il-Bahar, talab:

“Construction of a car wash”

B' rifjut mahrug fis-27 ta' Gunju 2011 l-Awtorita' dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relativ ghar-ragunijiet segwenti:

“1 The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests. The proposal is not essential to the needs of agriculture.

2 The site is located in an Area of Agricultural Value as indicated on the North West Malta Local Plan, where further human intervention, particularly in the form proposed, is not desirable. The proposal would therefore adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan.

3 The site lies outside the limits for development defined in the Temporary Provisions scheme for Burmarrad and so it is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

4 The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or

committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy.

5 There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

6 The proposed development has a direct access on to a distributor road and it will generate additional vehicle movements and on-street parking. It would give rise to potential traffic hazards and adversely affect the free and safe flow of traffic on the distributor road. The proposal therefore runs counter to Development Control Policy and Design Guidance 2000 policy 4.3.”

Fl-appell tieghu l-Perit Samuel Formosa ressaq l-aggravji tal-appellant kif gej:

“1. Car-Wash:

The site is located on Triq Burmarrad and lies adjacent to an approved nursery - covered with permits PA 0705/06 and PA 1590/09. Such an activity is not visually located within the development zone for several reasons, apart from the car wash resulting in disrupting the traffic management of the locality. Consequently since Burmarrad road has been re-designed recently to create a better traffic flow and traffic management layout, the road has been altered in such a manner that the introduction of a car wash shall not disrupt the existing traffic flows.

Moreover, the site is located next to a nursery and thus its construction (which is a simple lightweight structure) shall create an additional impact upon the surrounding environment due to the existing building, adjacent to the site in question. Consequently, this development cannot be considered as an urban development since it concerns

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a small structure which can eventually be removed when the use of the development is no longer required.

2. Transport Malta:

The entrance and exit to the site in question is a matter which shall be discussed in the Full Development permit. Accessibility to the site shall basically be similar in principle to the adjacent garden centre covered with PA 0705/06 and PA 1590/09. Thus access was approved by Transport Malta and confirmed by the DCC Board decision.

3. MRA:

Collection of surface water, water conservation techniques and waste management shall be discussed and considered in the Full Development Application. It is too pre-mature to discuss these details during the processing of the application since the principle of whether the development is acceptable in this site or not is basically at issue in this application.

4. Landscaping:

The site shall be surrounded with adequate landscaping, in order to visually mitigate the development. This shall be treated in the Full Development permit.”

Fir-rapport taghha l-Awtorita' kkummentat kif gej:

“1. The Malta Environment and Planning Authority is hereby presenting a copy of the latest DPA Report. Since the arguments raised in the appeal submission have already been submitted by the appellant during the processing of this application and the Environment and Planning Commission has already taken cognisance of such, the Authority has no further comments to add at this stage of this appeal in relation to the merits of this Appeal other than those already mentioned in the mentioned DPA report.

2. The Authority thus states that the attached detailed technical report addresses the arguments as submitted by the appellant in this request for appeal.

3. Consequently, the appeal as presented should be dismissed as per reasons illustrated in the refusal letter dated 27 June 2011.

4. Without prejudice to the above, the Malta Environment and Planning Authority reserves its right to reply further on the merits of the appeal, if it would become necessary.

[...]

4.7 Discussion

This proposal is for the construction of a car wash. The overall site area is 2600 square metres. When considering the history of applications on this site, a pre-1993 application namely PA 765/92, for the construction of a Car Wash Service, had been refused.

4.7.1 Principle

The site within which the proposal lies is an Area of Agricultural Value as per NWLP Map Sp 3. The Forward Planning Team stated that the proposal is not a legitimate use ODZ and is located on land of agricultural value. Furthermore, the Environment Protection Directorate also objects to the proposed development. The EPD states that the proposal is objectionable in principle, since it shall result in the further urbanization of the countryside and also in the unnecessary take-up of agricultural soil. The principle of the proposal constitutes an unjustified commercial type of development at the expense of the uses essential to the needs of agriculture since the proposal will contribute to an increase in soil sealing by committing more land than is reasonably required and would potentially create a precedent for similar developments within the countryside with significant cumulative impact on take-up of fresh land. EPD is concerned about the proliferation and further

consolidation of unjustified commercial developments within the countryside. Therefore, the proposal cannot be considered from an environmental perspective since the nature of the proposal shall result in the intensification and further formalization of the countryside.

The proposed development conflicts with the overall aim of Structure Plan policy SET 11 which channels commercial development within areas zoned for such developments. The acceptance of the proposed car wash within an Area of Agricultural Value will further intensify commercial activities within the outside the development zone. Furthermore, the North West Malta Local Plan designates the area within which the site lies, as an Area of Agricultural Value (NWLP Map SP 3). The objective of this Local Plan Policy is to safeguard the rural environment by prohibiting urban developments within such designated areas. It is stated that MEPA will continue to protect agricultural land from all types of inappropriate development; within such areas only buildings, structures and uses essential to the needs of agriculture will be permitted. Therefore there is no apparent justification in terms of Structure Plan Policy SET 12 for the proposed car wash to be located within an Area of Agricultural Value.

The proposal would contradict the Structure Plan's strategy to restrict further urban sprawl outside the development zone especially since the proposed site falls within a designated Area of Agricultural Value and lies close to Wied ta' Ghajn Rihana. From an agricultural point of view, the Department of Agriculture also objects for the above proposed development, since site consists of good arable land.

4.7.2 Landscape and Visual Impact

The nature of the proposal as a whole shall affect the scenic value of the site and of the surrounding countryside. Although visual mitigation has not been proposed, its inclusion is not considered to effectively address visual impacts which the proposal would create

from all outside views. The proposed development is considered to be objectionable since it shall result in a physical change of the existing site's topography. The proposed development- will also runs counter to Structure Plan Policy RCO 4 which prohibits the development of any structure that would have an adverse visual impact on the countryside.

4.7.3 Transport Issues

The proposed development lies along Triq Burmarrad which is classified as a distributor road. It was discussed that this road is one of the two main routes (namely Triq Burmarrad and the Coast Road) which carries a high volume of traffic to and from the north of the island. The proposed site vehicular access does not follow standards in terms of design and layout. It was stated that the acceleration and deceleration lanes do not merge and diverge with the main carriageway in an appropriate manner that maximizes safety for all road users. Furthermore, the layout does not prevent right-turning vehicles, which would be a very dangerous manoeuvre on Triq Burmarrad. The access layout is inappropriately designed. Furthermore, the indicated site is large yet the proposed development occupies a small parcel of land within the site; this could therefore lead to future proposals within the site (e.g. a fuel station). Therefore, in view of the limited information available and the issues raised above, Transport Malta cannot favourably recommend this proposal, from a transportation point-of-view.”

Bil-kummenti responsivi tieghu l-Avukat Matthew Brincat wiegeb kif gej:

“1. Scope of Application

The applicant wishes to develop a very limited part of the site into a car wash and retain the remaining part as strictly agricultural. The development is actually very limited and negligible. The erection on site of water pressure operated machines are already permissible

since the site is already allowed a pump room as per DNO 886/09 .The washing bays will be covered in mobile tent pvc structures that are easily dismantable and do not amount to permanent structure and are in reality identical and less intrusive than the tents permitted as greenhouses for the adjacent nursery that are much larger. In reality the flooring is required only to allow drainage of water and its re collection and harvesting so as to re utilise it. This is an Outline Application and a more complete and detailed water harvest plan will follow as modern car washes are all run in such a way as to preserve and reutilise a large amount of water an initiative that should be supported and is only possible if applicants are allowed such new developments.

The site is located on Triq Burmarrad and lies adjacent to an approved nursery and which is presently in operation - covered with permits PA 0705/06 and PA 1590/09. One must point out that this approved nursery, which includes several warehouses, is much larger than the proposed development. Consequently the visual impact of the existing nursery upon the surrounding built environment is significantly much larger than the proposed car wash. Consequently, this development cannot be considered as an urban development as argues in the dpa report since it concerns a small simple lightweight structure which can eventually be removed when the use of the development is no longer required.

One must point out that such an activity is not visually located within the development zone for several reasons, apart from the car wash resulting ill disrupting the traffic management of the locality. Moreover, in order to mitigate the visual impact of the proposed development even further, the site shall be surrounded with adequate landscaping, in order to screen the development adequately – a proposal which shall be treated in the Full Development permit.

The site enjoys a regular approved reservoir so water is retained and is readily available on site .The applicant has observed in detail the fact that his site is abutting onto the

Burmarrad Road described as a distributor road and Transport Malta has set its requirement to an approved permit adjacent to the site wherein Transport Malta insisted that the entry and exit to the site is recessed inwards to allow a wide vision of oncoming traffic . This will allow for security to both oncoming traffic and transit to and out of the car wash.

The ideal location for this type of operation is along a distributor road away from urbanized areas as they will cause no nuisance or bad effects to neighbours and so in full observance of Policy Ben 5 .In actual fact there is no specific provision for the specific development of a car wash and car wash operations are and have developed in these last years with the increase of vehicles numbers on our roads. A car wash operation is an environmentally friendly operation and is a service provided to motorists who are always being advised with additional obligations to avoid car washing in neighbourhood streets and residential areas. If we are to address these legitimate constraints we should favour car wash areas were motorists wash their vehicles in appropriate modern eco friendly areas such as the proposed car wash.

The site once allowed with a recess entry will erect tents and power wash points and leave the rest of the site as field providing for all necessary landscaping that will enhance the area. The site is bordered with a rubble boundary wall and all parameters will remain with such characteristic Maltese rubble walls .In terms of RC04 a detailed plan will be presented in the full permit. The proposal is permissible in terms of this policy as its ecological in nature. Whereas normal car wash areas are not restricted in any manner and are allowed to loose all water used for the operation such a development that has as its proposed operation that of water harvesting and reutilisation procedures should be favoured as it aims to retain, preserve water whilst avoiding waste water to contaminate our water table. The retention and reutilisation of water whilst being the basis for the ecological and environment friendly proposal is justified as it will signify that the operation will reduce costs in

purchasing water and so retains the viability of the operation.

2. Area and Adjacent Approved Development

Attached to the site is a fully approved Nursery that has been even recently allowed further extensions and development both to its pre fabricated tent structures and both to erection of extensive warehouses. As detailed above an alternative exit and entry area was refurbished to permit exit and entry to commuters and offering safety to traffic in the area. The same is being suggested in this application and its future operation.

PA 0705/06 and PA 1590/09 can be verified to attest that the site is adjacent to the present one and that major non rural development has been permitted in the interest of the commercial operation adjacent to the nurseries which are agricultural in nature. Visual impact is not an issue to the proposed car wash which proposes no roofed structures such as the adjacent site that has numerous concrete slabbed roofing at numerous levels and are used as large warehouses for the agricultural and commercial activity . The site in question although really being in an area of agricultural value is adjacent to the Ghajn Rihana Hamlet and besides the adjacent development is enclustered with various developments. The site will remain agricultural as the applicant who is a full time farmer intends carrying on a full agricultural activity on the site and retain it in its majority as a field .The lightweight structure proposed cannot be considered as an urban development and can only be erected in open and non urbanized areas all situated in ODZ .

3. Misconception on ODZ AREAS Applications

The applicant humbly submits that there are certain misconceptions from MEPA as to the objectionability of all applications in ODZ. The premise is basically an outright objection unless according to the policy the applicant proves that the development is justified. Justification in terms of the Policy is based on the fact that the proposed

development is not permissible in urban areas and thus implicitly can only be permissible in ODZ areas. The only ways and means to avoid observance to Policies is actually to allow such an operation precisely in an ODZ area and efforts to allow the application should be aimed to preserve the agricultural landscape, increase landscaping and insist as has been the case of the adjacent site application on a traffic management scheme to allow safe access and exit from the site.

All ODZ allowable developments are allowed and permissible according to prevailing Policies as applicant must prove that their development is only possible in ODZ areas and not elsewhere. SET 12 clearly outlines this justification as the basis of allowing the application and the development is permissible since SET Paragraph 7.6 also mentions " car parks" as a development exception. A car wash and a car park are akin and identical in nature and this implies necessarily that the objections from MEPA are not at all justifiable from a policy point of view. This earmarks that from a Policy context MEP A is not all correct in stating that the use of a car wash is objectionable and not in line with the Policy and this emphasises that even from a point of law aspect the application should be approved as an outline permit, allowing stringent conditions to be set in the full development permit to follow at a later stage.

This said this Honourable Board should avoid outright refusals to all ODZ applications when in reality the Policies as they stand actually envisage and allow for a development such as the present one. More emphasis and control should be directed in applying conditions of a very stringent nature and a further effort to enforcement that conditions in approved permits are respected at all times as this undermines the scope of having separate Boards to decide such applications. Its is a Planning Authority not a Refusal Institution. MEPA is basing its objection on Policy SET11 when in fact this Policy allows for such an exception to have the proposed operation in a non urban area situated ODZ. IF we are to observe BEN 1 and 2 such an operation must be allowed in a non

urbanized area being by implication necessarily ODZ. BEN 17 has been addressed as applicant has undertaken to implement a detailed landscaping in the interest of the area and his own site which will continue to enjoy most of its use as an agricultural field and so in full respect to RC04 that takes into consideration the preservation and integrity of the rural character of the area that as undertaken will remain unchanged.

Conclusion

For the above Planning Policies that fully justify and allow this application we humbly submit that the application should be approved. This said the application is an OUTLINE application not a full application. By Policy measures the approval of this Board at this stage is merely to decide whether in principle according to Policy context as we have proved in detail, is whether the proposal is permissible and objections as to the details should not be an issue at all at this stage. The issues to details are Transport Malta, MRA and Agricultural Department. MEPA is objecting with Policies that can all be addressed in future applications as to the conditions of the application. This said it will be the merits of a Full Application to scrutinize and set stringent conditions to observe traffic management and security as was the case in PA 0705/06 and 1590/09, MRA certainly instrumental as to details and requirements for water preservation and the Agricultural Departments request to detain and observe integrity of the agricultural field will be addressed at a later stage and this Board emphasis is to advise the subordinate Boards to go into the details and conditions to be set to applicants to preserve all Policy contexts .

We submit that according to Policy this Review Board should accept that in principle the application of this Outline Permit should be approved and accordingly make reservations that all future applications will then be treated in merit and detail to observe other Policy constraints, the duty of MEPA and its other Boards. Barring and refusing the application at this stage certainly conflicts and

undermines the Policy context that actually permits such a development.”

Fit-tieni rapport taghha l-Awtorita' kkummentat kif gej:

“1.1 In this request for appeal, the appellant has cited two permits PA 705/06 and PA 1590/09 relative to a garden centre not far away from the site under appeal to outline that the dimensions of this building are larger than the proposed car wash. The Authority has looked into the permit history of the garden nursery and has concluded that the garden centre and the proposed car wash are incomparable since the nature of their development is totally different. Although both cases have common environmental considerations in view of their location, their assessment in terms of planning policies was conducted under different planning regimes.

Permission PA 705/06 reads as follows:

To sanction existing structures of nursery that vary from approved permits, including retail on site and replacement of old greenhouses. Installation of new greenhouses for growing of plants and vegetables. Propose a new development in excavated area (Garden Centre).

Hence it is understood that PA 705/06 was issued based on previous permits cited below:

PB 2546/88: Grant application for the construction of greenhouses, agricultural stores, and a water reservoir. Permit issued on 25/6/1990.

PA 3694/94: Grant application for the extension to existing nurseries including greenhouses, parking facilities, agricultural stores and a new-fence. Permit issued on 25/10/1995.

The consideration of the retail aspect in PA 705/06 was assessed by Policy 3.3 - Visitor Attractions in the Policy and Design Guidance on Agriculture, Farm Diversification

and Stables as requested by the DCC. From Notes to Committee of PA 705/06 dated 14/10/08:

The Policy and Design Guidance on Agriculture, Farm Diversification and Stables allows some degree of retail/commercial activity in relation to agricultural activities. The document refers to agricultural activities presented in Part 2 of same policy document, namely livestock/arable farming, wineries, olive oil production and beekeeping/honey processing.

From the information presented above, it is evident that the commercial activity of the car wash is not in any way related to agriculture. On the contrary, the proposed development would transform an existing pristine agricultural field into a formalized hard standing area which does not blend with the surrounding rural environment.

1.2 In an attempt to impart an agricultural connotation to the car wash development, the appellant is claiming in a contradictory manner that he is a full-time farmer and intends to work that part of the site which will not be sealed by the structure but at the same time is stating that the undeveloped site would be devoted to landscaping. The Tribunal may wish to note that the site is designated as an Area of Agricultural Value in the North West Local Plan and to this effect, the Department of Agriculture objected to the proposal (see document 15 in PA file). Policy NWAG 01 of the North West Local Plan states that within Areas of Agricultural Value, only those uses which are essential to the needs of agriculture will be permitted and then only if it can be demonstrated to the satisfaction of MEPA that they will not adversely affect water supplies, soil and landscape, and accord with all other policies within the North West Local Plan.

Although the proposed development would not commit the whole site (extent of development circa 505m² including paving), the change of use from agricultural land to a commercial activity will involve the disturbance of the site through construction and vehicle activity which would

undermine the productive capacity of the field. It is also envisaged that such activity would lead to the loss relocation of soil which counters Structure Plan Policy AHF 4 which requires mandatory soil conservation and soil saving measures. Furthermore, Transport Malta which also objected to the proposal, remarked on the possibility of future proposals within the site (e.g. a fuel station) once this principle is established (see document 14 in PA file).

1.3 Another important issue in this appeal is that of access. The location of the proposed development has direct access onto the distributor road of Burmarrad. It is envisaged that the facility would generate a considerable volume of vehicular movements in and out of the proposed site with a resultant increase in traffic hazards. The proposed car wash was objected to by Transport Malta since the proposed site vehicular access does not follow their standards in terms of design and layout: The acceleration and deceleration lanes do not merge and diverge with the main carriageway in an appropriate manner that maximizes safety for all road users given the high speed of traffic flow on this road. Furthermore the layout does not prevent right-turning vehicles, which would be a very dangerous manoeuvre on Triq Burmarrad. Therefore the development would breach DC 2005 Policy 4.1 (a) and (c) since the development should be located and designed so as not to compromise traffic flow, other road users and adjacent accesses and it must not materially reduce road safety.

Response from TM-ITSD

The main issues, from a transportation point-of-view, relating to this site, are:

- Triq Burmarrad is classified as a distributor road but is one of the two main routes, along with the Coast Road, to/from the north of the island (St Paul's Bay, Mellieha and Gozo), therefore carries a high volume of traffic.

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- In view of this, any new developments, particularly vehicular access points, should achieve a high level of design, especially in terms of safety and visibility.
- It is noted that the proposed 'site vehicular access docs not follow standards in terms of design and layout; the acceleration and deceleration lanes do not merge and diverge with the main carriageway in an appropriate manner that maximizes safety for all road users. Furthermore, the layout does not prevent right-turning vehicles, which would be a very dangerous manoeuvre on Triq Burmarrad.
- It is unclear whether a car-wash is an acceptable use in this location, especially since the access layout is inappropriately designed. Furthermore, the indicated site is large) yet the proposed development occupies a small parcel of land within the site; this could therefore lead to future proposals within the site (e.g. a fuel station), once a principle is established, together with a vehicular access.

'Therefore, in view of the limited information available and the issues raised above, Transport Malta cannot favourably recommend this proposal, from a transportation point-of-view.

Part reply from TM consultation letter Red 14 in file.

1.4 The appellant is making an incorrect analogy of the proposed car wash with a car park which are two independent and totally different developments. The Structure Plan considers a car park as a community facility whereas a car wash is a commercial utility which does not hold any planning gain to the community. Paragraph 7.6 states 'In seeking to prohibit urbanisation of existing non urban areas it is not the intention to prohibit built structures of various kinds which are normal and legitimate inclusions in the non urban scene - farmhouses and other genuine agricultural buildings, reservoirs, picnic area toilets and car parks [...]. Hence the proposed car wash does not qualify as a use acceptable within a nonurban area. The site has already been

previously considered for an identical development through PA 765/92 which was refused through Structure Plan Policy SET 11. The car wash was to accommodate a tyre service, a shop and an oil store.

Furthermore a car park in ODZ can only be considered in special cases where such an area for parking is necessary as an ancillary facility to a particular nearby development 1 activity which necessitates an amount of visitors from other areas. The proposed car wash, on the other hand, could easily be located in a more inconspicuous location where such important and sensitive considerations, ie environmental and traffic issues, would not be so pronounced as is in this case under appeal.

1.5 The Tribunal may wish to note that although this is an outline application, additional details as to the material of the car wash facility per se which the appellant is claiming is a 'light weight structure' and on the operation of this facility would have facilitated the assessment of this application. To this end, the Malta Resources Authority requested details on the water source, water collection, water conservation technique and waste management and pollution mitigation prior to their comments. Such information is imperative in order to determine hydrological implications as a result of this activity since water is the main element characterizing this activity.

Appellant is also stating that the structure is lightweight and demountable and hence its visual impact is very limited. However, the fact that the proposed use would be of a permanent nature, ANY structures are also of a permanent nature and any inevitable impact would also be of a permanent nature and cannot be considered as a reversible development even due to the extensive concrete flooring and all the necessary infrastructural works which also spills outside the area under appeal.

In this appeal, the appellant is trying to justify the proposed installation of water pressure operated machines by referring to DNO 886/09 issued on site which

was issued for the construction of a pump room. The Authority has noted that the site has also been subject to DNO 399/09 for the construction of a reservoir and timber gate. It is to be noted that certain types of small-scale interventions and development types do not require a formal application for development permission, but can be allowed under the Development Notification Order (DNO), 2007 if they respect the parameters of the DNO. Class 8 of the DNO 2007, relates to agricultural developments including pump chambers and reservoirs. Hence the pump room cannot be used as a pretext to justify development which needs a water source to operate but which has nothing to do with farming but is of a purely commercial activity.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the Board's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghall-izvilupp ta' car wash.

Is-sit mertu ta' dan l-appell jinsab f'Ta' Campra, Triq Burmarrad, San Pawl il-Bahar.

Din l-applikazzjoni giet rifjutata peress li l-proposta ma taqax taht kategorija ta' zvilupp permess f'zona ta' konservazzjoni rurali in linea mal-principji u kriterji tal-policy RCO4 tal-pjan ta' struttura, li l-proposta mhijiex essenzjali ghall-interessi agrikoli, ekologici jew xjenici, li s-sit jinsab f'zona ta' valur agrikolu fil-North West Malta Local Plan, li s-sit jinsab barra l-limiti tal-izvilupp skond it-Temporary Provisions scheme ghal Burmarrad liema zona ghandha tibqa mhux zviluppata, li l-izvilupp propost imur kontra l-policy SET 11 tal-pjan ta' struttura li ma jippermettix zvilupp urban barra zoni zviluppata u kkommissi, li l-izvilupp propost ma jaqax taht kategorija ta' zvilupp extra-urban permess barra zona ta' l-izvilupp ai

termini tal-paragrafu 7.6 tal-pjan ta' struttura, li l-izvilupp propost mhuwiex gustifikat skond l-policy SET 12 tal-pjan ta' struttura u li l-izvilupp propost ghandhu access dirett fuq distributor road u li jiggenera traffiku addizzjonali u on-street parking, li jaghti lok ghal perikolu ta' traffiku u jaffetwa s-sigurta' tat-traffiku fid-distributor road u li dan kollu imur kontra d-Development Control Policy and Design Guidance 2000 policy 4.3.

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 peress li Triq Burmarrad giet ridisenjata ghall-kors ta' traffiku ahjar l-introduzzjoni ta' car wash mhijjex ser taffetwa il-kors tat-traffiku, li l-izvilupp propost jikkonsisti fi struttura zghira li tista tigi mnehhiija facilment u li ghalhekk ma jikkostitwix zvilupp urban, li l-access ghas-sit ser ikun simili ghal dak tal-garden centre adjacenti li hu kopert bil-permessi PA0705/06 u PA1590/09 u li l-access f'dan il-kaz gie wkoll approvat minn Transport Malta u kkonfermat permezz ta' decizjoni tal-Bord tal-Kummissjoni Dwar il-Kontroll Tal-Izvilupp, li dak kollu relatat mal-kontroll tal-ilma u l-immanigjar ta' skart jistghu jigu trattati fil-Full Development Application, u li s-sit ser jigi mdawwar b'landscaping adegwat.

L-Awtorita' tissottometti li l-applikazzjoni relattiva ghandha tigi michuda abbazi tar-ragunijiet ghar-rifjut, li l-izvilupp propost imur kontra l-policy SET 11 tal-pjan ta' struttura, li s-sit jinsab f'zona ta' valur agrikolu ai termini tan-North West Malta Local Plan, li mil-lat agrikolu id-Dipartiment tal-Agrikoltura oggezzjona ghall-izvilupp propost peress li l-art tas-sit hija tajba ghal skopijiet agrikoli, li l-proposta kif maghmula ser taffetwa l-valur xjeniku tal-kampanja u li anki jekk isir screening l-impatt vizwali ma jigix indirizzat, li l-izvilupp propost iwassal ghal kambjament fit-topografija tas-sit, li l-izvilupp propost imur kontra l-policy RCO4 tal-pjan ta' struttura li jipprojbixxi l-izvilupp ta' struttura li twassal ghal impatt vizwali negattiv fil-kampanja, li Transport Malta ma tistax tirrakkomanda li l-izvilupp propost jigi awtorizzat billi Triq Burmarrad tintuza minn volum sostanzjali ta' vetturi, li minhabba certi karatteristici

tat-triq is-sigurta' tat-traffiku hija kompromessa, flimkien ma kunsiderazzjonijiet ohrajn.

Kif irrizulta mir-rapport tal-Awtorita', fuq l-istess sit kienet saret applikazzjoni PA 7745/96 – outline development permission for the construction of agricultural store, greenhouses and shop. Din l-applikazzjoni giet michuda, sar appell izda r-rifjut gie kkonfermat mill-Bord ta' l-Appell tal-Ippjanar.

Anke dwar Car Wash - l-applikazzjoni prezenti, kienet saret applikazzjoni precedenti. Bl-applikazzjoni PA 765/1992 saret proposta ghall-kostruzzjoni ta' Car Wash Service. Din l-applikazzjoni kienet giet michuda.

Is-sit jinsab barra z-zona ta' l-izvilupp ta' Burmarrad, f'area maghrufa bhala 'Ta' Campra', fi Triq Burmarrad. Is-sit hu ghalqa li tintuza ghal skopijiet agrikoli, u tinsab f'lokalita' li hi predominantement art agrikola. Skond in-North West Local Plan Map SP 3, l-art hi disinjata bhala Area of Agricultural Value.

L-appellant issottometta li l-applikazzjoni, billi Outline, jixraq li tigi milqugha fil-principju, billi l-izvilupp propost hu permissibbli skond l-Policies, b'dan illi l-kondizzjonijiet li l-Awtorita' jidhirha rilevanti, jistghu jigu mposti fl-applikazzjoni Full Development Permission. Hu inoltre iddikjara li bhala lokalita', din l-attivita hi aktar idonja vicin arterja principali tat-traffiku milli f'areas urbanizzati; l-fatt li mhux ser tigi utilizzata l-art kollha, li in parti ser jibqa jsir l-uzu agrikolu, u li parti mill-izvilupp propost jikkonsisti f'materjali hfief li jistghu jigu zarmati facilment, huma kollha fatturi li ghandhom jimilitaw favur l-izvilupp propost.

Ghandu jigi rilevat dwar iz-zoning li l-appellant mhux korrett fl-interpretazzjoni tieghu tal-Policies tal-Ippjanar. Skond l-Pjan ta' Struttura, kull zvilupp ghandu jigi propost f'zoni hekk disinjati, u mhux f'areas disinjati barra zona tal-izvilupp. Hemm xi eccezzjonijiet meta proposta ta' zvilupp tista' tigi accettata barra z-zona tal-izvilupp, izda dawn skond l-Para 7.6 tal-Pjan ta' Struttura ghandhom ikunu 'normal and legitimate inclusions in the non-urban scene'

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fosthom farmhouses u strutturi mehtiega ghall-xoghol genwin ta' agrikoltura, reservoirs, picnic area, toilets and car parks, etc.

L-appellant b'referenza ghall-car parks imsemmija f'dan il-paragrafu hawn citat, erronjament jikkonkludi li dawn jinkludu 'car wash' li mhux il-kaz. Anke l-car parks permissibbli huma dawk ancillary ghall-picnic area toilets; l-interpretazzjoni li dan il-paragrafu jfisser li 'car parks' in generali, u mhux specifici huma skond l-Policies permissibbli, f'areas barra z-zona ta' l-izvilupp m'hijjex korretta.

L-appellant issottometta li dan l-izvilupp mhux indikat f'zona urbana billi jista' jikkrea inkonvenjent lill-girien. Tali zviluppi pero' jikkostitwixxu servizz ghall-komunita', u bhala tali 'car washes' ghandhom ikunu f'zoni urbani, fejn jistghu jigu milhuqa mill-klijenti b'certa facilita' billi vicin l-areas residenzjali.

Il-fatt li s-sit igawdi minn permess ghar-reservoir m'ghandhux jigi kkunsidrat bhala 'vantagg' biex din l-proposta ghall-'car wash' tigi milqugha.

It-talba ghall-reservoir kienet saret fil-kuntest tan-necessita' ghall-attivitá' agrikola; proposta permissibbli skond l-para 7.6 fuq citat; ghalhekk hi l-attivitá' agrikola l-aktar indikata fuq dan is-sit partikolari; rizorsa prezzjuza bhal ma hu l-ilma, partikolarment f'din il-lokalita' li hi wahda agrikola, ghandu jintuza ghal dan l-iskop, u mhux jinhela fil-hasil tal-vetturi.

L-appellant ghamel referenza ghall-permessi dwar 'garden centre' li jinsab vicin is-sit mertu ta' din l-applikazzjoni; pero' aktar milli bhala precedent, l-appellant jinsisti li billi l-proposta tieghu tinvolvi materjali hfief u li jistghu facilment jizarmaw, l-izvilupp propost m'ghandux ihalli impatt negattiv fuq l-ambjent rurali. Kif tajjeb iddikjarat l-Awtorita'ma jistghax isir paragon bejn iz-zewg proposti. L-unika fattur komuni hi l-lokalita'. L-izvilupp tal-garden centre kien gie originarjament approvat bil-permess tal-25 ta' Gunju 1990 PB 2546/88. Certa attivita

kummercjali relatata ma attivita' agrikola hi permissibbli skond l-Policy and Design Guidance on Agriculture, Farm Diversification and Stables; mentri l-attivita kummercjali generata minn 'car wash' ma hi b'ebda mod relatata ma attivita agrikola. Anzi f'sit propost isservi biex ma jsirx l-uzu agrikolu li hu l-aktar indikat u idoneju ghas-sit de quo.

Oggezzjoni ohra tal-Awtorita' ghall-izviluppp propost, hu l-access ghas-sit. Kif ga gie rilevat Transport Malta, oggezzjonat ghall-proposta, billi l-access propost ma jissodisfax dak li hu rikjest kemm mill-aspett ta' disinn, kif ukoll minn dak ta' layout, u ma jindirizzax b'mod accettabbli l-flow tat-traffiku, billi jikkreja a traffic hazard.

Indubbjament Triq Burmarrad hi wahda traffikuza hafna, fejn normalment, stante l-wisa' tat-triq, vetturi jnsaqu b'certa velocita', u ghalhekk hu essenzjali li l-access ikun disinjat b'mod li jiggerantixxi li ma jsiru l-ebda incidenti, b'rizultat ta' din l-attivita'.

Ezaminata fid-dettal l-proposta tal-appellant, l-motivazzjonijiet tar-rifjut, u l-aggravji tal-appell fil-kuntest tal-policies tal-lppjanar rilevanti, l-appell ma jimmeritax konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell, billi jichad l-istess, u jikkonferma r-rifjut tas-27 ta' Gunju 2011 ghall-Applikazzjoni PA 955/10.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li japprezza li dan hu outline application fejn certi aspetti u dettalji teknici tal-izvilupp jigu trattati fl-applikazzjoni ghal full development, kif sehha fl-izvilupp tal-garden centre biswit l-izvilupp propost. It-Tribunal naqas li jikkunsidra li fl-applikazzjoni ghal garden certu kwistjonijiet ta' traffic management gew risolti fil-full development mentri f'dan il-kaz qed jigi eskluż a priori li traffic management mhux ser jigi resolt;
2. It-Tribunal, filwaqt li apprezza li ma kienx hemm policies li jikkontjenu provvediemnti dwar car wash, ma jfissirx li

dawn ma jistghux isiru jew li jridu jsiru biss f'zoni urbani. Dan hu apprezzament zbaljat tal-policies billi zvilupp hu permess f'ODZ jekk l-applikant jirnexxielu jipprova li l-applikazzjoni hi gustifikata u mhux permissibbli f'zona urbana. F'zona urbana tali proposta ma tkunx permissibbli ghax tmur kontra l-policy BEN 5 minhabba kwistjonijiet ta' inkonvenjent;

3. It-Tribunal zbalja l-apprezzament tal-policy SET 12 paragrafu 7.6 fejn qal li 'car parks' ghandhom ikunu limitati biss ghal uzu ancillari ta' picnic areas u toilets, izda hi intiza b'mod generali ghal zvilupp f'ODZ. L-appellant isostni li l-izvilupp hu minimu, hu eco friendly bi strutturi temporanji u ma jinfluix fuq in-natura agrikola taz-zona;

4. It-Tribunal naqas li jikkunsidra li s-sit hu kommess bi zvilupp iehor biswitu u ghalhekk l-istess trattament kellu jinghata lilu.

L-ewwel aggravju

Dan l-aggravju ma fihx mertu. In kwantu din l-applikazzjoni kienet wahda 'outline', l-Awtorita u t-Tribunal kellhom jikkunsidraw jekk l-izvilupp, in principju, cioe a bazi tal-policies vigenti, kellux jigi accettat. Hi din il-mansjoni principali tal-Awtorita u t-Tribunal fl-outline permit.

L-appellant isostni illi t-Tribunal naqas li jaghmel din id-distinzjoni u minflok fettaq f'dettalji bhal ma huma dawk ta' traffic management biex jichad l-applikazzjoni.

Harsa lejn id-decizjoni tat-Tribunal juri li dan ma hux il-kaz. It-Tribunal ikkonsidra s-sit li fih qed jintalab l-izvilupp fl-isfond taz-zona li jinsab fih. Wasal ghal konkluzjoni illi s-sit kien jinsab f'zona ta' agricultural value u illi s-sit bhalissa jintuza ghal skopijiet agrikoli f'zona predominata minn art agrikola. It-Tribunal zied li zvilupp ghandu jigi propost f'zona adibita ghal tali zvilupp u mhux f'zoni fejn ma jistax isir zvilupp u dan bl-eccezzjonijiet li jaghti l-paragrafu 7.6 tal-pjan ta' struttura SET 11.

It-Tribunal aggunga wkoll illi ma hemmx raguni ghaliex dan l-izvilupp ma jistax isir f'zona urbana fejn l-izvilupp ta'

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natura kummercjali jista' jigi milhuq b'aktar facilita miz-zoni residenzjali. It-Tribunal ikkonkluda li l-izvilupp mhux konness ma' ebda attivita agrikola li fl-isfond tal-policy applikabbli ghal zvilupp f'din iz-zona hi permessa.

Dan kien ir-ragunament fil-principju kontra l-approvazzjoni tal-outline permit u kwindi l-appellant hu skorrett li jsostni illi t-Tribunal naqas li jikkonsidrah minn dan l-aspett u minflok dahal f'aspetti teknici li setghu gew rizolti fil-full development permit. Ir-referenza li saret minnu ghal garden centre biswit l-izvilupp u l-mod kif dan gie trattat fl-outline u full development lanqas biss issemew mit-Tribunal u ma jistghux jittiehdu in konsiderazzjoni f'din il-parti tal-aggravju billi l-applikazzjoni giet rifjutata fuq il-mertu taghha bhala zvilupp f'zona partikolari kolpita b'policy specifika.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju ma hu xejn hlief kritika tal-apprezzament tat-Tribunal tal-izvilupp u l-policies li skond l-istess Tribunal irrendew dan l-izvilupp mhux accettabbli in principju. It-Tribunal ma qal fl-ebda hin illi car wash ma jistax isir f'zoni ODZ izda specifika illi f'zoni ODZ huma limitati l-izviluppi li jistghu isiru u illi fiz-zona fejn qed jintalab l-izvilupp, dan l-izvilupp ma setghax isir ghax imur kontra l-uzu predomnanti agrikolu taz-zona kopert b'policies specifici. Zied li ma hemmx raguni li tali zvilupp ma setghax isehh f'zoni urbana fejn ikun aktar accessibbli ghal pubbliku. L-argument tal appellant li tali zvilupp ma jistax isir f'zoni urbana ghax tikkreja inkonvenjent kontra policy BEN 5 hu argument ipotetiku u jmur kontra dak li qal l-istess Tribunal f'sens kuntrarju.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju jitlob lil Qorti tikkunsidra interpretazzjoni li t-Tribunal ghamel li paragrafu 7.6 policy SET 11

(errorjament indikata bhala SET 12 mill-appellant). Interpretazzjoni ta' policy taqa' fil-mansjoni esklussiva tat-Tribunal u f'dan il-kaz it-Tribunal uza l-poter tieghu li kkunsidra l-paragrafu 7.6 mill-ottika ta' dak li trid l-ispirtu tal-policy cioe uzi adatti ma zoni ODZ fi sfond ta' zoni agrikoli. It-Tribunal wasal ghal konkluzjoni illi 'car park' imsemmi fil-paragrafu 7.6 kien intiz bhala zvilupp ancillari bhala 'normal and legitimate inclusions on the non urban scene, fosthom farmhouses u strutturi mehtiega ghal xoghol genwin ta' agrikolutra, reservoirs, picnic areas, toilets u car parks'. Hu allacja t-toilets u car parks mal-picnic areas u mhux car park in generali u b'mod izolat mill-ispirtu tal-policy. Dan l-apprezzament u interpretazzjoni tat-Tribunal mhux sindakabbli billi t-Tribunal interpreta l-ispirtu tal-policy mal-uzi permissibbli u 'car wash' mhix inkluzja specifika fejn allura t-Tribunal ma kienx ikun f'pozizzjoni f'dak il-kaz li jaghti interpretazzjoni ta' dak li ried il-policy maker bl-inkluzjoni ta' certi strutturi f'zoni ODZ. Ir-ragunijiet ta' fatt ghaliex l-izvilupp kien jimmerita kunsiderazzjoni favorevoli huma f'dan l-istadju tal-process, irrelevanti ghall-iskop ta' dan l-aggravju.

Ghalhekk dan l-aggravju wkoll qed jigi michud.

Ir-raba aggravju

L-appellant jilmenta li z-zona hi kommossa bil-garden centre biswit is-sit in kwistjoni fejn inghata koncessjonijiet ta' zvilupp ulterjuri li mhux relatati mal-agrikoltura u ghalhekk dan l-izvilupp kellu jigi trattat bl-istess mod stante li hu fuq skala hafna izghar.

Fl-ewwel lok it-Tribunal dahal fil-kwistjoni tal-commitment billi qal illi l-garden centre kellu permess sa mill-1990. In oltre skond il-Policy and Design Guidance on Agriculture, Farm Diversification and Stables certa attivita kummercjali relatata ma attivita agrikola hi permissibbli. F'dan il-kaz il-Qorti tirrileva illi t-Tribunal kien qed jaccenna ghal vistors centre u car park li inghataw permessi separati b'PA 3094/94 u PA 705/06. Ma kien hemm ebda paragon ma'

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dan l-izvilupp purament kummercjali li ma hu bl-ebda mod konness mal-agrikoltura.

Ghalhekk dan l-aggravju ma jistax jigi milqugh ghax gie trattat u deciz b'mod sodisfacenti mit-Tribunal ibbazat fuq l-iskop u portata tal-policies rilevanti ghal kaz.

Kwindi dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Darren Grima u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-11 ta' Dicembru 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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