



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tad-19 ta' Frar, 2014

Appell Civili Numru. 11/2013

**Gozo Caterers Limited**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Gozo Caterers Limited tas-26 ta' Marzu 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013;

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

Rat l-aggravju ulterjuri mqajjem mill-appellant li d-decizjoni hi nulla billi l-okkju ma jirrispekkjax il-partijiet fil-vertenza;

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

Kopja Informali ta' Sentenza

Rat lil –appell thalla ghad-decizjoni fuq din l-eccezzjoni preliminari;

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

Dan huwa appell minn rifjut ta' l-Awtorita' ta' l-applikazzjoni, outline development application, PA 6211/08 "To erect old people's home", b' decizjoni tat-23 ta' Meju, 2011.

Ir-ragunijiet li ghalihom l-Awtorita' irrifjutat l-applikazzjoni PA 6211/08 kienu s-segwenti:

"1. The proposed old people's home on a site that falls outside the limits to development goes against the provisions of Policy GZ-SOCF-5 of the Local Plan for Gozo and Comino, 2006. The policy explicitly states that "there will be a general presumption against planning proposals for the provision of new facilities for the elderly or retirement complexes outside areas designated for development (i.e. ODZ)".

2. 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.

3. 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.

4. The site lies outside the limits for development defined in Maps 14.3-A&C of the Local Plan for Gozo and Comino, 2006. The proposal is located in an area which

should remain undeveloped and open and therefore it runs counter to Policy GZ-LMDZ-1 of the Local Plan since the development would represent unacceptable urban development in the countryside.

5. Structure Plan policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RCO 2 and RCO 4.

6. The proposal would infringe the Gozo and Comino Local Plan Policies GZ-RLCN-1 and GZ-RLCN-2 which do not allow inappropriate development in areas designated as Category A Valleys and Areas of High Landscape sensitivity.

7. The site is located on the side of a valley and the proposed development does not fall into one of those categories of development permitted in this type of location. It would therefore run counter to Structure Plan policy RCO 29, which seeks to prevent soil erosion and encourage the conservation and management of water resources.

8. The proposal runs counter to Structure Plan policy TRA 4 and the car parking standards set out in Table A2.5 in the Structure Plan Explanatory Memorandum in that it fails to provide the required car parking spaces. It will give rise to unacceptable additional on-street car parking which would not be in the interests of the amenity of the area and which would exacerbate existing problems of congestion, potential highway danger and vehicular and pedestrian conflict."

Fl-appell taghha l-appellanti, permezz tal-Perit Farrugia, taghti r-ragunijiet taghha ghal dan l-appell billi tghid:

"I am hereby appealing on behalf of my clients Gozo Caterers Ltd of 305 Saint Paul Street Valletta Malta from the decision of the 20th January 2011 of the

Kopja Informali ta' Sentenza

Environment and Planning Commission (EPC) at reconsideration stage in connection with the above application and for the following reasons:

"I am hereby appealing on behalf of my clients Gozo Caterers Limited of 305 Saint Paul Street Valletta Malta from the decision of the 20th January 2011 of the Environment and Planning Commission (EPC) at reconsideration stage in connection with the above application and for the following reasons:

These are going to be divided into three parts or sections namely:

a)--- The Original Reasons for Granting of the Permit and for the Reconsideration thereof

b)---Specific Reasons against Specific Reasons for Refusal

c)---Other Arguments and/or Grievances and/or Reasons for Granting of the Permit

The herein under mentioned reasons for appeal moreover are without prejudice to the fact that the application in question should have been dealt with by the Major Projects Section of MEPA. This renders all the procedures and consequently all decisions including the decision being appealed from as null and void in the first place. Therefore the nullity of the decision and therefore of the relative refusal by the EPC is being invoked on this ground preliminarily and without prejudice to all the other reasons for this appeal.

**A- THE ORIGINAL REASONS FOR GRANTING OF THE PERMIT AND FOR THE RECONSIDERATION THEREOF**

Reference is hereby being made to the previous correspondence already sent by appellant previously in connection with this file.

It should be pointed out 'inter alia' that:

## Kopja Informali ta' Sentenza

1-----Pennits for Old People's Home outside development schemes were granted to third parties as herein under mentioned.

2-----In PA 5146/01 a vast senior citizen home was permitted in Triq il Wied Mellieha Malta

3-----In PA 3189/04 further additional works of an extensive amount were granted to this senior citizen home in Triq il Wied Mellieha

4-----All these two just above-mentioned permits were granted notwithstanding that allegedly the area was objected to by Nature Trust which declared and objected that it had listed the site in question as one of the candidates for Natura 2000.

5-----Furthermore it appears that allegedly the Mellieha site is in the Gniien Ingraw valley zone; [in fact the site is indicated 'inter alia' as in Triq il Wied Mellieha Malta] a zone not only renowned for its scenic beauty but also for its ecological and scientific importance. Despite all these facts and despite that the site was allegedly outside scheme permits were given.

6-----More recently in Gudja another senior citizen home has been granted although part of it appears to have been outside scheme - see PA 7305/06

7-It should also be pointed out that in Gharb, Gozo there IS also another pending application for a senior citizen home (PA 1292/08).

8-----The same as in 7 should be said in regards to PA 3957/08 which includes 'inter alia' an application for a visitor centre, retreat houses, library, parking areas for coaches and private cars.

9----- The principles behind the granting of a senior citizen home should take into consideration the growing need for such homes and more important the projected need for such homes in the future is expected to grow in an

accelerated way. In this scenario an ever-growing multiplicity of senior citizen homes is indeed a logical necessity, moreover it is very clear that given this growing demand – and need - for senior citizen homes (i) - which structures incidentally have to be of a size that consumes a certain amount of land (ii) and should logically and practically as well not be placed inside scheme but rather outside scheme so as not to consume much land within scheme (iii)

The application in question fulfils all the three criteria (i) (ii) and (iii) above-mentioned.

All the files above quoted are to be attached without prejudice and without prejudice to applicant's right to attach further files during the sittings before this Tribunal.

Reference is also made to the Doctrine of Commitment and to the case of Trident Properties Limited.

**B-SPECIFIC ARGUMENTS AGAINST SPECIFIC REASONS FOR REFUSAL** Reference is here being made to the reasons for refusal given at reconsideration stage by the Environment and Planning Commission in connection with this application.

1-----Regarding reason for refusal number one policy GZ-SOCF-5 (a) this mentions only that there is a general presumption against buildings ODZ of old people's homes; but this does not mean that building permits should not be issued; otherwise the wording should have been flatly and squarely 'permits will not be issued' but 'general presumption' means that although as a general rule such buildings are not built ODZ but in specific cases this presumption is rebuttable and can be overturned because (i) it is only a presumption and nothing else – a presumption is not an order or prohibition and (ii) in specific cases as is the present case near to the Development Zone the general presumption above-mentioned is 'overturned' by the specific case and (b) the wording 'general presumption' actually confirms that in cases of commitment this general presumption does not

hold and (c) therefore and accordingly' the words of the policy means and signifies that where there is commitment the general presumption does not count any longer precisely because of Commitment and the Doctrine of Commitment

2-----There is no conflict with Policy SET 12 because (a) the buildings are not urban and residential; and (b) the buildings proposed are and fall in the parameters of a built up area and (c) the site falls in a committed area – hence there is commitment

3-----The Doctrine of Commitment and the reasons mentioned above in 2 are a full and complete justification for the purposes of SET 12  
Consequently this reason (Reason number three) for refusal does not hold too

4-----Furthermore there is no justification for the refusal as per reason number four because (i) the area in question is not 'open countryside' but falls within the parameters of a built-up area; and (ii) in any cases the plans that locate this site as outside development zone are not acceptable and unfair; and (iii) the area in question is a developable area because it is at the edge of the development area. So much so that in terms of the Building Development Areas Act of 1983 it qualified as a building site.

5-----There is also no justification for the fifth reason of refusal because (i) the area in question is not 'open countryside' but £'111s within the parameters of a built-up area; and (ii) in any cases the plans that locate this site as outside development zone are not acceptable and unfair; and (iii) the area in question is a developable area because it is at the edge of the developed area So much so that in terms of the Building Development Areas Act of 1983 it qualified as a building site.

6-----Furthermore policies GZ-RLCN-1 and GZ-RLCN-2 are not infringed as the sixth reason of refusal because the site in question lies in a committed area not in a

valley. Moreover a site that falls within the perimeters of the built up area and/or the built up area itself cannot be classified as an Area of High Landscape Sensitivity especially in view of the fact of the adjacent commitments.

7-----The seventh reason for refusal does not hold because RCO 29 is not infringed. In these respects let it be indicated to this Tribunal how inexact are the wordings of the refusal that states in reason six for refusal that the site falls in a valley but then in the seventh reason for refusal changes version and states that the area is on the side of a valley. This conflict shows the conflicts and contradictions of the sixth and seventh reasons for refusal.

In the morphology of the land the area that is in the side of a 'valley' is by definition 'sloping' which is not the case of the site in question; moreover the area in question is not a 'valley' because a valley is a place through which the waters pass naturally - which is not the case in the site in question.

8-----Regarding reason for refusal number eight, policy TRA 4 if the Tribunal deems so necessary the appellants are willing to change the plans to conform with TRA 4 as requested by this Tribunal, given that this is possible because of the size of the site in question.

#### C-OTHER ADDITIONAL REASONS AND/OR ARGUMENTS AND/OR POINTS

The appellant in addition to the above reasons reserves the right during the hearing of the appeal to bring further reasons against any reason for refusal brought as well as to bring other additional reasons and/or arguments and/or points so that this Tribunal will uphold appellant's appeal and issue the relative building permits for the sake of Consistency, Common Sense and Justice.

Moreover all the reasons brought forward by appellant in this document are additional and without prejudice to



other reasons brought previously in connection with this file.

For these reasons all the grounds and reasons brought forward by the Environment and Planning Commission [EPC] do not hold water and the decision of the said EPC is to be overturned and relative permit granted.”

Fir-risposta tieghu Jonathan Borg għall-Awtorita' jagħti r-ragunijiet għaliex fl-opinjoni ta' l-Awtorita dan l-appell għandu jigi miċhud. Is-seguenti huma siltiet minn dan ir-rapport li t-Tribunal jhoss għandhom jigu ssottolineati:

“5.2.1 Permits quoted by the appellant PA5146/01 was actually approved by MEPA Board but was then withdrawn by the applicant. Therefore no physical commitment emanated from this permit and the validity of this permit has by now expired.

Permit PA3189/04 was issued for an old people's home in Mellieha because the site is specifically designated by the Local Plan for a Community Residential Home.

Permit PA7305/06 was granted for an old people's home in Gudja on the grounds that the majority of the site falls within a Category 1 Settlement and the area outside is compensated by major open gaps within the site falling within the category 1.

Application PA1292/08 is for an old people's home in Għarb. This application is still pending.

Permit PA 3975/08 refers to alterations to façade to a 2-storey terraced house in Marsa.

It is clear from the above overview that the permits quoted by the appellant are not relevant since they were either not utilized as in the case of PA5146/01 which after all was a pre-local plan permit or else as in the cases of PA3189/04 and PA7305/06 are not within ODZ. The other cases quoted by the appellant are either pending or else refer to a completely different development.

### 5.2.2 The proposal vis-à-vis local plan

The proposed old people's home is located within an area that is ODZ. Furthermore the local plan indicates that the site is an Area of High Landscape Value on a site that falls ODZ, within an AHLS and within a Category A Valley.

The appellant is claiming that the site is not located within a valley. Furthermore the appellant is stating that the local plan designations of the area are unfair and do not reflect the context of the site.

The Authority notes that the Tribunal is not the right forum to challenge local plan challenges and that this principle is supported by various decisions of the Planning Appeals Board.

However the Authority would like to demonstrate that the site is indeed within and on the upper part of a valley. The picture below shows the location of the site in relation to the contours of the area. Moreover the aerial photo beneath show the location of site in relation to the surrounding landscaping.

#### 5.2.2.1 The site is located within a valley zone

Local Plan policy GZ-RLCN-2 states that development within Category A Valleys shall be fully subject to Structure Plan policy RCO 29 which reads as follows: '[n]o 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 and the conservation and management of water resources.

#### 5.2.2.2 The site is located in an Area of High Landscape Value

Local plan policy GZ-RLCN-1 states that there would be a strong presumption against new structures in Areas of High Landscape Value and greater restrictions on development than in normal rural areas would apply including structures related to cultivation and animal husbandry structures. This policy also states that the

guidance provided in the Explanatory Memorandum to the Structure Plan clauses 15.34 to 15.40 shall also apply.

It is important to note that these clauses, which usually apply to Areas of Ecological Importance and Sites of Scientific importance, apply to this case as well because according to policy GZ-RLCN-1 they shall apply also to Areas of High Landscape Value. These clauses indicate that at most, in the least protected areas, the only development that one is permitted is small to medium development provided that no other suitable alternative exist. It is obvious that in this case suitable alternatives exist because contrary to what the appellant has stated in his appeal, such developments are more suitable in town centers and areas within scheme.

#### 5.2.2.3 Counter arguments against appellant's justification for an old people's home in ODZ

Local Plan policy GZ-SOCF-5 is also clear that generally speaking, proposals for the provision of new facilities for the elderly or retirement complexes outside areas designated for development will not be accepted. The appellant is arguing that this policy is only stating that there is only a general presumption against such development and therefore if there is a strong case, the Authority may actually accept. The appellant is thus claiming that such a strong case exist because there is commitment on site.

However the appellant did not specify what constitutes this commitment; whether it is the product of the permits he quoted or whether because there are other buildings in the vicinity. If the alleged commitment refers to the quoted permits, the Tribunal is respectfully directed to what has been stated by the Authority in this report in the above section 5.2.1, where it is clear that these permits (where these exist) do not take place in similar contexts. If by commitment the appellant is referring to physical structures in the vicinity, than it is clear that no commitment exists in this sense as there are no buildings adjacent to the proposal as can be verified from the aerial photos and site plan.

Therefore, in view of the above arguments, the Authority re-iterates that there is no justification to go against the general presumption of not permitting old people's home in ODZ. Moreover an Old People's Home already exists in San Lawrenz (also in the west of Gozo) by way of development permission PB1570/92/4823/90. Thus the need for further such provision in the vicinity is seriously questioned.

#### 5.2.2.4 Conclusion: The proposal vis-à-vis structure plan policies

The site is clearly ODZ with no adjoining commitments and therefore ODZ policies are to strictly apply. The application needs to be determined in accordance with current policies and not what the status of the area was in 1983 as the appellant requested. Also there is no justification for the proposed development to be located ODZ. If the applicant wishes to challenge the ODZ designation, this would need to be done through the legal procedures as established by the Environment and Development Planning Act and not through an application process. The proposal also goes against all the provisions of the Structure Plan and the Local Plan to safeguard urban sprawl and urban development within the open countryside. The proposed development goes against SP Policies SET 11, SET 12, RCO 2, RCO 4 and RCO 29. In additions, the proposal also conflicts with Local Plan Policies GZ-LMDZ-1, GZ-RLCN-1, GZ-RLCN-2.”

Fin-nota tal-Avukat Dr Leslie Cuschieri, ghall-appellanta, jghid is-seqwenti:

I-----Illi hu principju fundamentali tal Ligi kif ukoll tal Gustizzja Ugwaljatrici illi kull beneficcju li jinghata lill persuna jew persuni ghandhu jinghata bl-istess mod lill persuni ohra. Dan il-principju hu assodat mhux biss permezz tal-ligi ordinarja tal-pajjiz imma wkoll hu pern tad-Drittijiet Fundamentali tal Bniedem fil Kostituzzjoni ta' Malta kif ukoll fil Konvenzjoni Ewropeja tad Drittijiet tal Bniedem.

Kopja Informali ta' Sentenza

2-----F'din in-Nota ser jkun deskritti fil-qosor zewg progetti illi skont il-Ligi, il Gustizzja Ugwaljatrici wil Kostituzzjoni ghandhom jkunu ittrattati l-istess. Sfortunatament mhux hekk gara pero' u ghalhekk dan it Tribunal hu fl-obbligu u komputu illi jikkoregi dan .

3-----Illi l-ewwelnett: ser tinghata deskrezzjoni qasira kif ukoll deskrezzjoni tal akkwati tal-progett tal-appellanti. u cioe' progett biex tinbena Old People's Home fi Triq Sdieri Ghawdex (pA u PAB fuq indikati)

L-art in kwistjoni ghandha faccata fuq Triq Sdieri Gharb Ghawdex. Quddiem l-art fejn hu propost li jsir il-progett hu diga' asfaltat bis servizz tad drenagg mghoddi u bisservizzi l-ohra 'at hand' Fil fatt l-art in kwistjoni tinsab fi Triq Sdieri, triq li parti kunsidveroli taghha hi zviluppata u mibnija fhafna kazi b'bini gholi sulari diversi. Dawn il binjiet jinsabu metri l boghod mill art in kwistjoni u jinsabu fuq iz-zewg nahhat tat-triq u ghaldaqstant l-area ghandha titqies bhala 'committed area'. Dan il principju gie wkoll segwit fi triq adjacenti Triq il Gidi fejn art li kienet taqa' barra millinja tal izvilupp inghatat permess ghall bini. L-istess ghandu jsir fil kaz prezenti.

Imbaghad ser tinghata deskrezzjoni qasira kif ukoll deskrezzjoni tal-akkwati tal-progett ta' terzi illi l-appellanti ghandhom dritt jibnu bhalu fl-Outside Development Zone u liema progett fil kobor tieghu jizboq bil-bosta il-progett tal-appellanti.

PA/03959/07

Full development application for the construction of retreat house, visitor's centre and ancillary facilities, coach and car-parking areas and the re-planting of indigenous trees on Ghammar Hill.

Location: Ta Pinu Shrine, Triq Ta' Pinu, Gharb

Dan il progett jokkupa elufta' metri kwadri ujinsab bazikament mal-gholja 'Ta Pinu' li hi gholja skenika u protetta.

Kopja Informali ta' Sentenza

A-llli l-ewwelnett jirrizulta car mill Case Officer Report ammont konsiderevoli ta' constraints ambjentali (environmental constraints) fuq l-istess post fosthom jinghad:

"The area is unique on three counts.

First, it is the only sizeable sanctuary in the Maltese Islands which is not surrounded by a settlement.

Secondly, the "Via Sagra" statues which lie along the Ghammar Hill is unique. Thirdly, the amphitheatre complex at the top of the hill is again unique in the Maltese Islands. Through LN 41103, the site is safeguarded as a bird sanctuary. L-Gholja ta' l- Ghammar is declared as a Nature Reserve under the Environment Protection Act (Part 6) where classes 3 to 16 of the GDO is not permitted development [GDO(4)(iii)]. The Ghammar Hill and its base (adjacent to the project site extents) are protected for their Ecological Value on level 4 scale"

B-----llli l-istess Case Officer imbaghad kompla jghaqqad l-environmental constraints fuq l-istess art flimkien mal case history w jirrizultaw car illi japplikaw ghall art policies bhal SOC 23, RCO 4, kifukoll il policy centrali tal Gozo and Comino Local Plan GZ- Gharb-2 liema policies indikaw ezitu negattiv ghall applikazzjonii. Irid jinghad ukoll illi sahsitrajirrizulta li kien hemm ukoll enforcement action fuq l-istess sit.

Mill Case Officer's Report :

Application PA6373107 for the construction of a bus shelter along Ta' Pinu Road adjacent to northern site boundary was refused since it does not comply with Policy GZ-Ghrb-2. This policy allows proposals which include an overall upgrade of the surroundings which are designated as a Site of Special Religious Significance. The proposal may compromise future decisions regarding the proposal for the upgrading of the road leading to the Site of Special Religious Significance. The proposal does not ensure an

accessible environment for all and thus runs counter to Policy SOC 23.

Policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced." The area in which the site is located is of considerable scenic value and the proposal was considered to detract from this. Enforcement action was taken on site (ECF 628101) since no permission was sought for the demolition of a building without permit at the public convenience. A permit was granted and the enforcement was sanctioned. Permission PA3130101 was issued on the 28th February, 2002 to upgrade the public convenience including alterations. Permission PA6139/02 was issued on the 01 st July, 2004 to convert part of public convenience into a tourist information shop. Permission PA 3787/08 was issued on the 11 th November, 2008 for the renewal

C- Il Case Officer imbagħad baqgħet issemmi kif ukoll saħansitra hemm policies oħra ta' portata ambjentali li kienu japplikaw għall kaz fosthom il policies tal Pjan ta' Struttura DCO 7 u BEN 2 u li minhabba fihom PA 3518/03 saħansitra kien giet rifjutat.

Mill Case Officer's Report:-

Application PA3518103 for the construction of sanitary facilities and flower preparation room at the rear of Ta' Pinu Sanctuary was refused since the Sanctuary is a potential Grade 1 listed building where demolition or alterations which impair the setting or change the external or internal appearance, including anything contained within the curtilage of the building, are not be allowed. The proposed additions fail to respect the integrity of such an important building and therefore the proposal runs counter to Structure Plan Policy DC07. The proposed development is incompatible with the environmental characteristics of the area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2

D. Barra minn hekk kien numru ta' objections ghall applikazzjoni jew ahjar representations li taghhom resume'. fil qosor tirrizulta mill istess rapport tal Case Officer.

## 2. Representations:

The planning considerations raised through representations submitted throughout the processing of the application are being summarised below. Reference is being made to 'emails/letters dated 15th and 17th February, 2011 submitted by individual objectors (documents 115, 116 and 139); email dated 06th March, 2011 by the Ramblers Association (document 119); email dated 07th March, 2011 by the Zminijietna - Voice of the Left (document 120), and; letter dated 17th March, 2011 by Din L-Art Helwa (document 122).

- The proposed development is outside the development zone and there are no overriding reasons to locate additional structures on site.
- The proposed development would be highly detrimental to the site which is protected for its high scenic value and detracts from the devotional aspect of the Sanctuary.
- The Visitors' Centre, including the public dated 06th March, 2011 by the Ramblers Association (document 119); email dated 07th March, 2011 by the Zminijietna - Voice of the Left (document 120), and; letter dated 17<sup>th</sup> March, 2011 by Din L-Art Helwa (document 122).
- The proposed development is outside the development zone and there are no overriding reasons to locate additional structures on site.
- The proposed development would be highly detrimental to the site which is protected for its high scenic value and detracts from the devotional aspect of the Sanctuary.
- The Visitors' Centre, including the public toilets may be located within' existing buildings below the Church Parvis. Otherwise, the existing public toilets may be refurbished without further land take-up.
- The necessity of a police station in this area is questionable.
- The building of a retreat house is debatable since there are numerous existing buildings within scheme which belong to the Church and could serve this purpose.



## Kopja Informali ta' Sentenza

- The Ghammar Hill is home to a Way of the Cross and requires upgrading.
- The proposed development may impose negative impacts on the new road and its supporting walls.

E-----Imbaghad il Case Officer ghaddiet biex tispjega nurnru ta' policies applikabbli ghall kaz, policies li mal policies fuq imsemmijin, jekwivalu jekk mhux ukoll huma identici ma dawk illi gew msemmijin mill Case Officer u mill EPC (Environment and Planning Commission) in gustifikazzjoni tad decizjoni taghom fil kaz tal appellanti

F---Fl-istess vena l-Case Officer tibqa tindika u ssemmi policy wara l-ohra li huma sfavorevoli ghall applikazzjoni Ta Pinu Shrine li pero' fllwagt li minkeia dawn il permess ta' Pinu Shrine nhare2 dak tal appellanti ma nharigx. Fost dawn il policies hemm BEN 5, RCO 1, RCO 2, RCO 4, SET 11 u SET 12

Mill Case Officer's Report (pA 3957/07):-

### 4.5.0 POLICY CONTEXT

#### 4.5.1 Structure Plan Policies

BEN 5: Applications for development permits outside urban areas will be judged against the policies and design guidelines of the Local Plans for RCAs.

RCO 1: RCA's are designated as illustrated in the Key Diagram. Within such areas the following sub areas will be designated:

Areas of Agricultural Value: areas comprised of high agricultural land including irrigated and partially irrigated land.

7. Areas of High Landscape Value.

RCO 2: Within RCAs no form of urban development will be allowed. However, in accordance with Policy BEN 5, applications for permission to develop structures or facilities essential to agricultural, ecological, or scenic interests will be favourably considered as long as the proposed development does not infringe the principles set out in RCO 4. With regard to existing buildings and

structures in RCAs and other rural areas, the overall aim is to improve the rural environment.

RCO 4: Prohibits the development of any structures which would adversely affect scenic value because it would visually dominate or disrupt its surrounding because of its mass or location and adversely affect any element of the visual composition.

RCO 29: 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 and the conservation and management of water courses.

SET 11: No form of urban development will be permitted outside existing and committed built-up areas. Permitted forms of urban development outside such areas are restricted to the categories referred to in Para. 7.6.

Para. 7.6 - Normal and legitimate inclusions of development outside the development zone are farmhouses and other genuine agricultural buildings, reservoirs, picnic area toilets and car parks, and control buildings and walls/fences at archaeological and ecological sites.

SET 12: Applicant to present evidence as to why policy SET 11 should be infringed, if proposed development runs counter to SET 11 and, consequently, to Paragraph 7.6.

Reasons must be given from a planning point of view as to why the proposal cannot be located in areas designated for development.

G-----Imbaghad il Case Officer filwaqt li ikkonfermat illi s-sit in kwistjoni buwa Outside Development Zone irreferiet l-istess sit ghall Gozo and Comino Local Plan li koll jaffettwa l-applikazzjoni Ta' Pinu tal-inqas bl-istess mod u manjera ta' kif jaffettwaw (jew allegatament kif intqal mill EPC u mill Case Officer) jaffettwaw il kaz appellat quddiem dan it Tribunal.

Il Case Officer kompliet :

#### 4.5.2 Gozo and Comino Local Plan

The site is located outside the development zone and is acknowledged for its religious importance.

Kopja Informali ta' Sentenza

The Local Plan unifies the Ta' Pinu Sanctuary, its parvis and adjacent environs together with the procession trail leading to the Ghammar Hill as a Site of Special Religious Significance (SSRS) subject to the provisions of policy GZ-Gharb-2. The parvis is designated as an urban open space subject to policy GZ-URSP-1. The existing formal open space below the parvis is reserved as an open air formal recreational area applicable with policy GZ-RECR

Izda mbaghad il Case Officer lejn l-ahhar parti tar Rapport taghha bdiet ggib xi ragunijiet biex tibda ttipprova tiggustifika il konkiuzzjoni 'to grant' li effettivament waslet ghalha. Mhux hekk sar fil kaz tal appellanti li gew ittrattati b'mod differenti , u b'ghaggla kbira u b'ingustizzja inghataw refusal

Ribattiment tar Ragunijiet ta' Rifjut fil Kaz Appellat

Fil fatt ghall kull fini tajba qed jkunu ribattuti wiehed wiehed ir-ragunijiet moghtija ghar-rifjut fil kaz odjem u cioe'

1-----Dwar raguni numru wiehed il policy GZ-SOCF-5 (a) issemmi biss illi jkun hemm general presumption kontra bini ODZ ta' facilitajiet ghall anzjani; u dan ma jfissirx li b'daqshekk permessi m'ghandhornx jinhargu; li kieku jinghad 'permits 'will not be issued' imma 'general presumption' tfisser illi bhala regola generali majinbnewx, imma f'kazijiet specifici din if presunsjoni tista tinqaleb ghaliex (i) hi presunzjoni biss, mhux ordni jew projbizzjoni - il-presunzjoni mhix ordni jew projbizzjoniu (ii) f'kazijiet specifici ma hu dan il kaz ferm qrib id Development Zone if presunzjoni generalihi meghluba mill kaz specifiku (b) il wording 'general presumption' proprju jikkonferma illi f'kazijiet la' commitment din il 'genberal presumption' ma tghoddx u (c) ghalhekk u ghaldaqstant il-kliem tal policy jfisser illi rejn hemm commitment it presunzjoni generali ma tibgax tghodd iktar proprju minhabba it-Commitment wid Duttrina tal-Commitment

2-----M'hemmx kunflitt tal Policy SET 12 ghaliex (a) il-bini mhux urban ghax mhux residenzjali; u (b) il-bini hu fil-

## Kopja Informali ta' Sentenza

parametri ta' 'existing built up area' u ghalhekk jikkwalifika u (c) il-bini jinsab fzona kommissa bil-bini - ghalhekk hemm commitment

3-----Id Duttrina tal Commitment kif ukoll ir ragunijiet msemija f2 kif fuq huma gustifikazzjoni cara u netta ghaliex m'hemm xejn hazin illi l-bini jsir - ai termini tal-istess SET 12 - f din l-area hekk kommissa.

4-----M'hemmx gustifikazzjoni ghall din ir-raguni ghaliex (i) l-area in kwistjoni mhijiex 'open countryside' imma taqa' go built up area u (ii) fi kwalsiasi kaz il mapep li juru din l-area fl-outside development zone mhumieq accettabbli u ghandhom jkunuaggomati u (iii) l-area in kwistjoni ghandha tigi zviluppata proprju ghaliex hi fit truf ta' area zviluppata (built up area).

5----- M'hemmx gustifikazzjoni ghall din ir-raguni ghaliex (i) l-area in kwistjoni mhijiex 'open countryside' imma taqa' go built up area u (ii) fi kwalsiasi kaz il mapep li juru din l-area fl-outside development zone mhumieq accettabbli u ghandhom jkunu aggomati u (iii) l-area in kwistjoni ghandha tigi zviluppata proprju ghaliex hi fit truf ta' area zviluppata (built up area).

6-----Il policies GZ-RLCN-1 u GZ-RLCN-2 mhumieq miksura ghaliex l-area in kwistjoni taqa' go built up area kommissa bil-bini u mhux go wied. Inoltri area li taqa' go built up area prevalentement residenzjali ma hix Area of High Landscape Sensitivity.

7-----Policy RCO 29 mhix miksura ghaliex l-area ma taqax mal-gnub ta' wied. F'dan il-kuntest jigi indikart lit Tribunal kemm hu inezatt il kliem tar-rifjut li l-ewwel f6 jghid illi l-area hi 20 wied imbaghad f7 jbidel il versjoni u jinghad illi l-area hi fil-2enb ta'wied Dan il kunflitt juri l-inezattezza wil kunflitt u kontradizzjonijiet f'dak li tallega il-kontroparti

Fil-morfologija tal-art l-area li tkun mal gnub ta' wied tkun 'sloping' bid definizzjoni taghha stess - filwaqt illi s-sit in kwistjoni hu livell u pjan; u ghalhekk mhux mal 'gnub' ta'

Kopja Informali ta' Sentenza

wied; u l-area in kwistjoni mhijiex f'wied ghaliex 'wied' hu il post li jghaddi l-ilma tax-xita minnu direttament - u fl-art in kwistjoni l-ilma tax-xita naturali ma jghaddix mis sit in kwistjoni; ghalhekk l-area in kwistjoni mhijiex wied.

8-----In kwantu ghall Policy TRA 4 jekk hemm xi necessitajiet li ghandhom jigu indirizzati minhabba is size tal-area jkun possibbli li jkun hemm il-bdil fil-pjanti biex tigi sodisfatta TRA 4.

Osservazzjonijiet u Resume';-

1----Illi il permiss PA PA/03959/07 gie mahrug

2---Illi mhux l-istess sar mal appellanti. Dawn il file taghhom itellghet b'ghagbla guddiem l-EPC - u dan minkeia li kienet applikata wara il file PA PA/03959/07 Ta Pinu Shrine Gharb Ghawdex - id decizjoni minflok mill Case Officer t'Ghawdex ittiehdet mill Major Projects Team - kif l-appellanti thoss li suppost li sar ukoll maghha - u imbaghad l-applikazzjonijiet giet granted b'differenza ghall dik l-applikazzjoni tal appellanti.

3---Dan meta il progett kollu tal appellant hu ghall funzjoni socjali (Old People's Home) u meta lill terzi bhal fil kaz tal Old People's Home tal Mellieha inghatalhom ukoll il-permessi minkeia illi l-art kienet wahda allegatament ambientali; u dan ukoll meta il progett tal appellanti hu biss frazzjoni ta' dak ta' Pinu Shrine; u meta ukoll kien 'committed' sa minn zmien il PAPB.

4-----Illi ghandha tkun l-procedura kostanti f dawn il kazijiet hi illi meta jinhareg perness lill terzi bhalu jsir l-istess ma' haddiehor.

Illi f'kazijiet bhal dan prezenti kien hemm fejn l-EPC jew ahjar il Kummissjoni ghall Kontroll tal Izvilupp kif kienet tissejjah qabel illi tistenna l-ezitu dwar l-ghoti o meno tal applikazzjonijiet adjacenti u meta tinghata din id-decizjoni mill -EPC jew Kummissjoni inghata 1i stess bhas sitjew siti fl-akkwati.

4-----Illi ghandha tkun l-procedura kostanti f dawn il kazijiet hi illi meta jinhareg permess lill terzi bhalujsir l-istess ma' haddiehor.

Illi f'kazijiet bhal dan prezenti kien hemm fejn l-EPC jew ahjar il Kummissjoni ghall Kontroll tal Izvilupp kif kienet tissejjah qabel illi tistenna l-ezitu dwar l-ghoti o meno tal applikazzjonijiet adjacenti u meta tinghata din id-decizjoni mill-EPC jew Kummissjoni tinghata li stess bhas sit jew siti fl-akkwati.

Mhux hekk sar fil kaz odjem. Minkejja illi (i) il Kummissjoni giet mgharrfa illi kien hemm applikazzjoni Outside Development Zone fil vicinanzi u (ii) illi l-Kummissjoni kellha l-ewwel tistenna l-ezitu ta' din l-applikazzjoni u (iii) imbaghad tiddeciedi in linea mad decizjoni moghtija fil kaz 'ta' Pinu', minflok il Kummissjoni ghagglet tirrifjuta ingustifikament l-applikazzjoni tal-appellanti minflok stenniet l-ezitu las sit ta Pinu adjacenti kif fil fatt kienet mitluba li taghmel imbaghad meta deherilha l-istess Kummissjoni wara li kienet rrifutata il-permess lill appellanti odjerni m kaz in kwistjoni, akkordat (u ghamlet sewwa) il-permessi li sit 'ta' Pinu' fl-Outside Development Zone u tat permess ghall zvilupp li jigi ferm iktar mil-qies tal progett formanti oggett ta' dan l-appell. B'dan il mod l-appellanti huma tal fehma illi mhux biss inkisru il principii tal gustizzja naturali, imma twettqet ingustizzja kontra taghhom filwaqt u ghaldaqstant ukoll id-decizjoni tal-istess Kummissjoni fil kaz appellat mhux biss hi ingusta u diskriminatorja imma wkoll nulla. Ghall dawn ir-ragunijiet biss dan it Tribunal ghandu jhassar d-decizjoni tal Kummissjoni tal Izvilupp fis sit in kwistjoni u jakkorda il-permessi mehtiega lill appellanti. Dan f'gieh il hagg w is sewwa u biex jkun osservat mhux biss il principju tal 'commitment' imma wkoll ta' trattament indags 'cerimus paribus'.

5-----Illi dan illi qed jinghad hu bla pregudizzju ghad duttrina tal 'commitment' w illi s-sit tal applikanti gie kommess

## Kopja Informali ta' Sentenza

Illi dak kollu li inghad f'din in-Nota odjerna huwa bla pregudizzju għall dak li gie sottomess mill-appellanti precedentement nkluz fi stadji oħra ta' din l-applikazzjoni. L-appellanti jagħmlu referenza debita għall kazi fejn Old People Homes (nkluz il kaz tal Gudja) - li minflok ngħataw permessi għalkemm ma kienux għal kollox fid Development Zone u għalhekk in parti jekk mhux għal kollox barra mid Development Zone.

Hemm ukoll il kaz PA 1292108 li wkoll hu dwar Old People's Home fl-Għarb Ghawdex.

Dwar dan, dan għadu pendent għalkemm ilu tant snin applikat. Tal inqas l-appellanti thoss illi m'għandux jkun hemm decizjoni f'dan il kaz qabel ma tkun magħrufa d-decizjoni kif kaz msemmi u dan biex jkun rispettati 'cerimus paribus'.

Illi l-appellanti tagħmilha cara illi taqbel u m'għandha xejn kontra illi nhargu il-permessi fil kazijiet kollha ta' terzi msemmija. Li tilmenta u tixtieq l-appellanti hi li tiehu l-permess bħal ma ha haddiehor.

Illi għall dawn ir ragunijiet kollha l-appellanti umilment jitolbu lill dan l-Onorabbli Tribunal sabiex filwaqt li jilqa dan l-appell, jhassar r-rifjut relattiv u johrog il-permessi relattivi.”

Ikkunsidra:

Il-mertu ta' dan l-appell jirrigwarda talba, outline development application, biex jinbena old people's home b' footprint ta' 1,075 metru kwadru. Il-proposta hija għal bini fuq zewg sulari fuq it-triq u zewg livelli ta' basement.

Skond l-Awtorita' is-sit, li huwa ODZ, gewwa Area of High Landscape Value u gewwa Category A Valley, jinsab fil-bidu tar-rahall tal-Għarb fuq it-triq li tagħti għal Ta' Pinu.

L-argumenti, fil-mertu, li tqajmu fid-diversi stadji ta' dan l-appell jistghu jigu elenkati fil-qosor kif gej:

Fl-appell taghha, l-appellanti ssostni li din l-applikazzjoni kien imissa giet evalwata mill-Major Projects Section u ghalhekk id-decizjoni hija nulla.

L-appellanti tkompli billi tirrileva li:

- Diga inghataw permessi ghal old people's homes ODZ;
- Il-bzonn ghal old people's homes qed jizjed u taghmel sens li dawn isiru ODZ peress li dawn jikkonsmaw hafna art;
- Il-policy GZ-SOCF-5 tghid biss li tezisti 'general presumption' kontra li jinbew old people's homes ODZ. Dan ma' jfissirx li dan it-tip ta' zvilupp m'ghandux jithalla jsir f' certi areas. Dan huwa kas fejn dan il-permess jista jinghata peress li jezisti commitment fl-area;
- SET 12 mhix qed tinkiser b' din il-proposta u dan peress li l-bini propost mhux urbanizzanti u anke ghaliex jezisti commitment fl-area;
- Is-sit in ezami m'huwiex fil-kampanja imma taqa gewwa zona mibnija. Il-pjan lokali huwa ingust li jindika dan is-sit bhala li jinsab ODZ;
- Is-sit jista jigi zviluppata; tant hu hekk li fis-sena 1983 is-sit kien building site;
- Il-policies GZ-RLCN-1, GZ-RLCN-2 u l-policy RCO 29 tal-pjan ta' struttura mhux qed jigu miksura u dan ghaliex is-sit mhux qieghed gewwa wied u ukoll ghaliex is-sit huwa committed;
- Is-sit ma' jistax jigi indikat bhala Area of High Landscape Value peress li huwa committed bl-izvilupp; u
- L-appellant lest li jbidel il-pjanti biex jindirizza in-nuqqas ta' parking.

L-Awtorita' rrespondiet li l-argumenti li qed tqajjem l-appellanti diga gew ttrattati fil-fond waqt l-ipprocessar tal-applikazzjoni u cioe':

- Il-proposta ta' old people's home qed issir gewwa sit li huwa ODZ u li fil-pjan lokali huwa inkdikat li jaqa gewwa Area of High Landscape Value u gewwa Category A Valley;
- L-appellanti ma' taqbilx ma' kif il-pjan lokali qed jindika is-sit in ezami u cioe' li qieghed ODZ, gewwa AHLS u Category A Valley. It-Tribunal mhux il- forum fejn jigi challenged il-kontenut tal-pjani lokali u dan kien



ikkonfermat minn diversi decizjonijiet tal-Planning Appeals Board;

- Il-policy GZ-RLCN-2 tghid li zvilupp gewwa Category A Valley ghandu jkun suggett ghal-policy RCO-29 tal-pjan ta' struttura. Din tghid li ma' jistax isir zvilupp gdid f' dawn l-inhawi;
- Il-policy GZ-RLCN-1 tghid li f' areas li huma AHLS kemm jista jkun m' ghandux isir zvilupp u jekk m' hemmx alternattivi oħra zvilupp f' dawn iz-zoni ghandu jkun kemm jista jkun kontenut. F' dan il-kas huwa ovvju li old people's home tista tinbena fuq sit differenti li jkun gewwa iz-zona tal-izvilupp u idejalment vicin town centres;
- Il-policy GZ-SOCF-5 hija cara meta tghid li generalment m' ghandhomx jinbnew old people's homes barra z-zoni tal-izvilupp hlief jekk ikun hemm raguni soda biex isir dan;
- L-appellant qed jghid li f' dan il-kas hemm raguni soda peress li hemm commitment ta' bini fil-vicinanze pero ma' jispecificax x' inhu dan il-commitment. Jirrizulta li fil-fatt ma' jezistux binjiet fil-vicinanze tas-sit in ezami;
- Diga tezisti old people's home f' San Lawrenz.

L-appellanti issemmi numru ta' permessi simili għall-proposti tagħha li nġhataw mill-Awtorita' mentri fil-kas tal-appellant l-applikazzjoni giet rifjutata anki wara li gew imsemmijien dawn il-precedenti. Fuq dan l-Awtorita' tispjega għaliex fl-opinjoni tagħha, il-kazi kollha li semma l-appellant huma differenti totalment f' termini ta' ppjanar u tispjega c-cirkostanzi ta' kull wiehed minn dawn il-permessi fid-dettal.

Wara li kkonsidra il-premess u minn ezami tal-pjanti, ritratti u dokumenti li hemm fil-files PAB 732/11 u PA 5894/09 it-Tribunal jikkumenta kif gej:

Fuq dak li qed tikkontendi l-appellanti li l-applikazzjoni kellha tigi pprocessata mill-Major Projects Section, dan it-Tribunal huwa tal-fehma li t-tqassim tax-xogħol huwa il-prerogattiva tagħha u kien liema kien it-team tad-Direttorat li għamel l-evalwazzjoni, id-decizjoni finali dejjem tittiehed mill-istess EPC

## Kopja Informali ta' Sentenza

L-appellanti tkompli billi tghid li huwa zball li dan is-sit qieghed jigi muri li qieghed fl-ODZ ghalix is-sit kellu jkun fiz-zona tal-izvilupp. L-Awtorita' tispjega fid-dettal ghalix dan is-sit huwa daqshekk sensitiv u li skond il-pjan lokali is-sit jaqa' ODZ, gewwa AHLS u Category A Valley.

Fil-fehma kkunsidrata ta' dan it-Tribunal, wara li ezamina il-files relattivi u l-pjan lokali, ma' jista jkun hemm ebda dubju li s-sit jaqa' ODZ u li huwa ta' sensitivita' partikolari. Fi kwalunkwe kas l-appellanti kien imissa oggezzjonat fuq il-linja tal-izvilupp meta din kienet giet proposta jew inkella billi jaghmel PC Application biex ibiddilha jekk ma' taqbilx maghha. Certament ma' tistax taghmel dan permezz ta' dan l-appell u dan ghalix dan it-Tribunal m' ghandux gurdizzjoni jew poteri li jippermettu li jissindika l-kontenut tal-pjanijiet lokali.

Fuq tezi ohra li pprovat tuza l-appellanti u cioe li peress li s-sit in ezami huwa vicin il-konfini tal-linja tal-izvilupp il-permess xorta seta' jinghata, it-Tribunal huwa tal-fehma li kieku kellu jacçetta din it-tezi ta' l-appellanti ikun iffisser illi nispiçaw fis-sitwazzjoni li wiehed wiehed jinbnew is-siti kollha u dawn il-gzejjer jintlew bl-izvilupp.

L-appellanti issemmi l-issue ta' precedenti u ta' commitments numru ta' drabi fl-appell taghha. It-Tribunal jaqbel ma' l-Awtorita' li biex taghmel konfront bejn kazi differenti kif ghmel l-appellant fil-kors tas-smieh ta' dan l-appell wiehed ghandu jikkonsidra:

- Iz-zmien meta tkun saret l-applikazzjoni peress li f'kull zmien dejjem japplika regime ta' plans and policies specifiku ghal dak iz-zmien;
- Il-lokalita' geografika tas-sit;
- Il-kuntest tas-sit;
- It-talbiet li jkunu saru fl-applikazzjoni; u
- L-istorja f' termini ta' zvilupp tas-sit.

It-Tribunal jaqbel ma' l-Awtorita' li f'kull wiehed mill-kazi kkwotati mill-appellant fil-kors tas-smieh ta' dan l-appell issib differenzi fundamentali f' termini ta' ppjanar mill-kaz in ezami.

## Kopja Informali ta' Sentenza

Fi kwalunqwe kas, dan it-Tribunal huwa tal-fehma li jekk din l-issue ta' x'jikkostitwixxi precedent, f' termini ta' ippjanar, ma' tittehidx fil-perspettiva gusta taghha jista jigi zmien meta' l-ebda parti minn dawn il-gzejjer ma' tigi salvata minn zvilupp urbanizzanti ta' kull tip li bilmod jeqred il-kampanja kollha u dan b' dannu ghall-generazzjonijiet kollha li ghad iridu jigu u kontra wiehed mill-principji fundamentali li ghalih l-iStructure Plan inkiteb u gie addottat bhala l-ligi bazika tal-ippjanar ta' pajjizna.

Hawn taht qed tigi kkwotata decizjoni recenti ta' dan it-Tribunal li turi l-pozizzjoni tat-Tribunal fuq l-issues ta' x'jikkostitwixxi precedent u x'inhu commitment f'termini ta' ippjanar:

“Jekk precedent, f' termini ta' ippjanar, f' dan il-kas jista jfisser permess ta' bini fl-ODZ li inghata f'xi zmien qabel, ghaliex m' ghandux jittiehed bhala precedent ukoll rifjut ta' talba simili li jkun inghata lil xi hadd iehor fl-istess zona skond kif jitolbu l-policies tal-iStructure Plan? Certament jezistu hafna u hafna izjed kazi fejn talbiet ghal zvilupp urbanizzanti fl-ODZ gew michuda appuntu skond ma' jghidu l-policies tal-iStructure Plan u dawn, b' argument identiku, ghandhom jittiehdu bhala li gie ikkreat precedent favor li l-status quo f' dawn iz-zoni ma' jinbidilx.

F' termini ta' ippjanar jekk precedent li jigi segwit b' kazijiet simili fl-istess zona, mhux kas singolu izda numru konsiderevoli ta' kazijiet simili, dan eventwalment jista johloq commitment u cioe il-konsiderazzjoni materjali imsemmija fil-ligi (art. 69 (2)(i)) li l-Awtorita' tista tirritjeni bhala rilevanti fl-ghoti tal-permess. Jidher car mill-premess li f' dan il-kas zgur li ma' tezistix di is-sitwazzjoni.

Fi kwalunkwe kas irid jinghad li l-kuncett ta' commitment f' terminu ta' ippjanar ghandu japplika biss f' kazi eccezzjonali u ghandu jigi uzat b' kawtela kbira u dan ghaliex id-dixxiplina teknika u xjentifika ta' land use planning giet stabbilita f' pajjizi zviluppati u avvanzati appuntu biex permezz ta' pjani strategici fit-tul u management ghaqli jitrazznu u addirittura jigu mmregga lura proliferazzjoni ta' zvilupp u land uses ohrajn li jkunu

qed ikollhom effetti mhux desiderabbli fit-territorju li fuqu jkunu japplikaw u li jkunu qed jixxerdu propju bis-sahha tal-argument li zviluppi u uzi simili diga jezistu fil-madwar. Ghalhekk, by definition, land use plans u policies li jkollhom is-sahha ta' ligi ghandhom generalment japplikaw irrISPettivament minn kwalunkwe indikazzjoni ta' commitment li jista jkun hemm u dan sakemm mal-commitment ma' jkunx ta' entita massicca kif spjegat hawn taht. Jekk ma' jsirx dan, l-ebda sistema ta' land use planning ma' tista qatt tahdem.

Fil-fehma kunsidrata ta' dan it-Tribunal, biex sistema ta' ippjanar tahdem kif suppost u fl-interess publiku, il-kazi fejn jista legittimament, f' sens tekniku, jintuza il-principju ta' commitment huwa meta il-maggoranza kbira ta' permessi potenzjali ta' xi tip partikolari li jkunu jistghu jinghataw jkunu fil-fatt inhargu.

Li qed jinghad hawn fuq ma' jnaqqas bl-ebda mod id-dritt li jista' jkollu l-applikant li jiprocedi kontra l-Awtorita' civilment jekk ihoss li hu kien haqqu jiehu permess ghaliex fil-passat kien inghata permess simili ghat-talba tieghu. Id-differenza hi li din il-kawza civili ma' tistax issir bhala parti mill-process tal-ippjanar.”

Fl-opinjoni kinsidrata ta' dan it-Tribunal u kif jirrizulta mill-premess, l-appellanti naqset milli tittratta b'mod konvincenti imqar wiehed mit-tmien reasons for refusal mill-lat ta' ippjanar biex tikkonvinci li dan l-appell ghandu jigi milquh. Kif jirrizulta mill-premess, il-punti li tqajjem l-appellanti fl-appell taghha m'humiex ta' natura strettament ta' ippjanar u hafna minnhom huma sahansitra bla bazi.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li il-proposta in ezami tikser numru ta' policies tal-Pjan Strutturali, tal-Gozo and Comino Local Plan u tal- Policy and Design Guidance, 2007,dan l-appell ma jirrizultax fondat u ma jimmeritax kunsiderazzjoni favorevoli;

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut mahrug mill-Awtorita' ta' l-

applikazzjoni, PA 6211/08 "To erect old people's home",  
tat-23 ta' Mejju, 2011

### **Ikkunsidrat**

L-aggravju preliminari tal-appellant hu s-segwenti:

1. L-okkju mnizzel mit-Tribunal ma jirraputax l-isem shih tal-appellanti billi hemm uhud neqsin u kwindi d-decizjoni hi nulla;

Ghalkemm dan l-aggravju ma tqajjimx in limini lites izda kienet il-Qorti li ssenjalatu fis-seduta tas-6 ta' Novembru 2013, tali pregudizjali hu ta' ordni pubbliku u jista' jitqajjem f'kull hin anki ex officio.

Dan l-ewwel aggravju jgib fix-xejn id-decizjoni tat-Tribunal peress illi hu aktar milli evidenti illi l-appell sar minn Gozo Caterers Limited cioe l-applikanti fl-applikazzjoni PA 6211/08. It-Tribunal ta decizjoni fil-konfront ta' Amalia Cefai. Jirrizulta mill-atti illi Amalia Cefai pprezentat l-appell f'isem Gozo Caterers limited li kienet is-socjeta applikanta. Jidher li Amalia Cefai kellha biss ir-rapprezentanza ghal finijet tal-prezentata tal-atti izda ma kinitx il-parti. Din il-leggerezza sfortunatament ma tistax tigi korretta jew injorata f'dan l-istadju billi si tratta ta' gudikat zbaljat li ma jistax jorbot lil min mhux parti jew li jigi pregudikat parti b'gudikat li fih kellu interess ghax ma giex imdahhal fid-decizjoni tat-Tribunal. Ghalkemm dan il-process ser jikkosttitwixxi dewmien zejjed li seta' jigi evitat tenut kont tat-tul li ilhom ghaddejjin il-proceduri ta' din l-applikazzjoni, pero din il-Qorti ghandha idejha marbuta bi stat legali li ma fih ebda rimedju hlief in-nullita tad-decizjoni ghal dan in-nuqqas. Ara f'dan is-sens is-sentenza ta' din il-Qorti fl-ismijiet **Alexander Vella et vs Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar et** deciza fit-2 ta' Marzu 2013 u decizjonijiet ohra msemmija fl-istess sentenza.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-aggravju tal-appellant illi d-decizjoni tat-Tribunal ta' Revizjoni tal-

Kopja Informali ta' Sentenza

Ambjent u l-ippjanar tal-15 ta' Marzu 2013 hi nulla u minghajr effett billi l-okkju tal-vertenza ma jikkontjenix l-isem tal-applikant izda persuna terza ghal vertenza u konsegwentement tirimetti l-atti lura lit-Tribunal biex jerga' jiddeciedi mill-gdid il-kwistjoni skond dak mitlub minnu. Spejjez fic-cirkostanzi jibqghu bla taxxa.

**< Sentenza Finali >**

-----TMIEM-----