



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 61/2013

Michael Axisa

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Michael Axisa tal-31 ta' Ottubru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Ottubru 2013 rigward PA 2298/05 'to construct industrial park for SME's with amenities';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra :-

B'applikazzjoni prezentata fit-22 ta' April 2005, Full Development Permission, PA 2298/05, l-appellant f'sit fi Triq il-Belt Valletta, Ghaxaq ippropona :-

“to construct industrial park for SME's with amenities”.

L-applikazzjoni giet milqugha bil-permess tas-27 ta' April 2009 bil-kundizzjonijiet segwenti :-

“1. Prior to the issue of the planning permission, a planning gain to the value of €10,980 towards the Environmental Initiatives in Partnership Programme (EIPP). The funds raised from the planning gain shall be used to fund environmental improvement projects in the locality of the site. The planning gain is not refundable and funds shall be utilized as required and directed by the Malta Environment and Planning Authority in consultation with the Local Council.

2. Prior to the issue of the planning permission, a Bank Guarantee of €3494.25 shall be imposed to ensure that the street is properly restored in accordance with the Environmental Management Construction Site Regulations, LN 295 of 2007, together with the submission of a pre-construction condition report of the street including photographs (as defined in the same legal notice). The bank guarantee shall only be released after the architect submits a post-construction condition report together with photographs evidencing compliance with this condition which is hereby being approved accompanied by clearance from the Local Council. This guarantee shall be forfeited after 3 months from the date of notification by the Authority of a notice to effect the remedial works covered by the same guarantee. Its forfeiture would not, however, preclude the applicant from adhering to all the conditions contained in this development permission.

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Bank Guarantee calculation

For construction works involving demolition and/or excavation works and additional floors:

Length of frontage (55 metres) plus twenty metres multiplied by EUR 46.59.

3. No residential use, nor any retail (or other) use not directly related to the authorised SMEs should be permitted.

4. Only the following land uses in accordance with the Development Planning (Use Classes) Order, 1994 shall be allowed in this Industrial Park

Use Classes: 11, 12, 17 and 19

The Industrial Park and its activities shall be subject to a separate Environmental Operational Permit. No operation whatsoever shall commence prior to the said permit is approved.

None of the below mentioned uses shall exceed a comprehensive floor area of 2000sqm. Any change of uses to any of the mentioned classes shall be subject to a separate full development application - Classes 13, 14, 15 and 19.

5. The site manager shall enter in a site management contract as required in the SME's Micro Enterprises - Site Selection Exercise July 2004.

6. An updated Construction Management Plan shall be submitted within 3 months from the issue of this development permission. The Construction Management Plan shall be complete in accordance to the Draft Construction Management Plan and will include the routes for construction traffic to and from the site, and including written confirmation from the local council that they will implement the traffic management proposal as described in the Traffic Impact Statement prior to the commencement of works.

7. Landscaping of the site shall be implemented in its entirety within the first planting season following completion of the development hereby approved, in

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accordance with the details submitted with the application unless the prior approval in writing of the Malta Environment & Planning Authority has been obtained to depart from these details. No compliance certificate (partial or full) shall be issued on part, or the whole, of the development hereby approved prior to the implementation of the landscaping scheme in its entirety.

Prior to the issue of the planning permission, a bank guarantee to the value of €24,000 to cover any failure to implement the landscaping scheme or to maintain the landscaping to the satisfaction of the Malta Environment and Planning Authority. This bank guarantee shall be managed as follows:

i. the bank guarantee shall be reduced by €4,000 to a balance of €20,000 on planting of the whole landscaping scheme and effective irrigation. Planting shall be carried out within the first planting season following completion of the development hereby approved, failing which the bank guarantee shall be forfeited.

ii. the remaining balance of €20,000 will expire after five years from planting, subject to maintenance of landscaping. Any trees that die or become severely diseased shall be replaced with the equivalent or greater number of trees of the same species and age as soon as planting is possible.

In the event that the applicant fails to implement the scheme within the stipulated time limit, or fails to properly maintain the landscaping, the outstanding bank guarantee shall be immediately forfeited.

Its forfeiture would not, however, preclude the applicant from adhering to all the conditions contained in this development permission.

8. A lighting scheme together with a advertising plan shall be presented within 6 months of the issue of this development permission. The lighting shall be designed in such a manner that it will not illuminate any area outside the permitted area.

9. This development permission is subject to prior written clearance from the Environment Protection Directorate regarding the demolition, or carrying out of significant alteration, of a rubble wall/non-habitable rural structure.

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10. No approval is hereby granted for the display of any sign or advertisement. These must form the subject of a separate application for advertisement consent.

11. Any soil on the site shall not be built over but shall be collected for reuse. A permit from the Director of Agriculture is required to remove the soil from the site. All soil shall be deposited at the place indicated by the Director of Agriculture.

12. The ramp leading down to the underlying basement/garage shall at no point, along the centreline of its length, be steeper than 1:8 if ramp is straight or 1:10 if the ramp is helical. The ramp shall be so formed that it does not encroach onto the pavement.

13. A Public Sewer Discharge Permit in accordance with LN 139 of 2002 may be required for this development.

14. The common access area is to be adequately paved and drained.

14. Discharge points channelling effluent to land, sea or natural water bodies are prohibited unless otherwise explicitly prescribed by an Environmental Permit.

16. Any below ground petrol, oil or chemical storage tank or container shall be constructed to incorporate appropriate anti-pollution measures to the satisfaction of the Malta Resources Authority and the Malta Environment & Planning Authority.

17. Before any of the buildings hereby permitted are occupied, adequate underground ducts shall be installed by the developer to the satisfaction of the Malta Environment & Planning Authority to enable telephone, electricity and communal television services to be connected to any premises within the site, without recourse to the erection of distribution poles and overhead lines.

18. A water cistern with a volume of 4649 cubic metres shall be constructed to store rainwater run-off from the built-up area of the development. This cistern shall be completed and available for use prior to the development hereby permitted being first brought into use.

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Should the Malta Resources Authority accept the applicant's proposal to re-charge the water table then the water cistern shall have the volume of 2536 cubic metres. The acceptance from the Malta Resources Authority shall be notified to MEPA within 30 days from the date of the same letter.

19. There shall be no service pipes, cables or wires visible on the front elevation or on any other elevations of the building.

20. Any infilled fissures (debien), caverns, hollows, Pleistocene deposits or other features of potential geological, paleontological or archaeological interest which are discovered must be reported immediately to the Superintendent of Cultural Heritage and no further workings or activity must take place which would disturb these features until the Superintendent of Cultural Heritage has completed the investigations.

21 a) This development permission is valid for a period of FIVE YEARS from the date of this notice but will cease to be valid if the development is not completed by the end of this five year period.

b) It should be noted that a third party may have the right of appeal against this permission. Any development which is carried out when such an appeal has been made, or until the time limit for the submission of such an appeal has expired, is undertaken at the risk that this permission may be revoked by the Planning Appeals Board or quashed by the Court of Appeal.

c) This development permission does not remove or replace the need to obtain the consent of the land/building owner to this development before it is carried out. Furthermore, it does not imply that consent will necessarily be forthcoming nor does it bind the land/building owner to agree to this development. Where the land/building is owned or administered by the Government of Malta a specific clearance and agreement must be obtained for this development from the Land and/or Estate Management Departments.

d) All works shall be carried out strictly in accordance with the approved plans and the conditions of this permission. Where a matter is not specified on the plans then the conditions of this permission and of Development Control Policy and Design Guidance shall take precedence and modify the plans accordingly.

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e) Before any part of the development hereby permitted commences, the enclosed green copy of the Development Permit shall be displayed on the site. This must be mounted on a notice board, suitably protected from the weather and located not more than 2 metres above ground level at a point on the site boundary where it is clearly visible and can be easily read from the street. The copy of the permit must be maintained in a good condition and it shall remain displayed on the site until the works are complete.

f) The enclosed Commencement Notice shall be returned to the Malta Environment & Planning Authority so that it is received at least five days prior to the commencement of the development hereby permitted.

g) Copies of all approved plans and elevations shall be available for inspection on site by Malta Environment & Planning Authority staff at all reasonable times.

h) Where the street bordering the site is unopened, it shall be opened up prior to the commencement of the building operations hereby permitted.

i) The Enforcement Unit of the Malta Environment & Planning Authority shall be notified prior to the commencement of the following stages of the development: construction of the foundations; roofing over the last basement level; roofing over the first level above ground level.

j) The height of the building shall not exceed the permitted number of floors as indicated on the approved drawings.

k) Apertures and balconies shall not be constructed of gold, silver or bronze aluminium.

l) The facade of the building shall be constructed in local stone, except where other materials, finishes and colours are indicated on the approved plans and drawings.

m) Where applicable hoarding should be erected in accordance with Schedule 2 of the Environmental Management Construction Site Regulations, LN 295 of 2007

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n) The permit is issued on condition that, where applicable, any excavation shall be subject to the requirements of the Civil Code regarding neighbouring tenements.

o) Where applicable, the development, hereby permitted, shall be carried out in accordance with the provisions of the Environmental Management Construction Site Regulations, LN 295 of 2007.

22. No services shall be allowed on the roof of the industrial units within the park, except for those that contribute in renewable energy sources.

23. At the applicants expense the enforcement unit shall inspect the site every quarterly.

24. All aluminium apertures shall be light coloured.

25. The development hereby permitted shall not be brought into use until the Final Compliance (Completion) Certificate, certifying that the development has been carried out in full accordance with the plans approved by this permission and with the other conditions imposed in this permission, has been issued by the Malta Environment & Planning Authority. Prior to the issuing of the Final Compliance Certificate for this development, this applicant shall submit, to MEPA,

(i) clearance from the National Commission for Persons with Disability verifying that the development fully satisfies any conditions imposed

(ii) certification from a qualified engineer confirming that the development fully satisfies the requirements specified in the Fire Safety and Ventilation report as stated in the approved report PA 2298/05/67a.

Should the site fall within areas designated as HOS and properly originating from the Housing Authority, this permit does not exonerate the applicant from obtaining the necessary clearances from the same Authority.

This permit is granted saving third party rights. The applicant is not excused from obtaining any other permission required by law. The applicant should contact the

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following regarding the location and provision of services prior to commencing development:- Enemalta, Water Services Corporation, Maltacom, Drainage Department and Cable Network Operators.”

Il-perit Anthony Fenech Vella fl-appell tieghu ghall-appellant nomine prezentat fid-9 ta' Gunju 2009 iddikjara li qed jappella minn xi kundizzjonijiet impost fil-permess. Hu ddikjara is-segwenti :-

“Fisem il-klijent tieghi Michael Axisa Ltd, nixtieq naghmel Appell kontra il-kundizzjonijiet in generali fejn intalbu diversi garanziji jew pagamenti fil-permess mahrug mill-Awtorita ta' l-ippjanar, fis 27 ta' April 2009 izda li wasal bil posta ghandna fis- 27 ta' Mejju 2009, u dana ghar-ragunijiet li ser inressaq u li huma l-aktar ibbazati fuq id-diskrepanza cara ta' kif gew implimentati fuq din l-applikazzjoni in konfront ma progetti ohrajn ta' natura simili anzi, f'kaz ugwali.

Wiehed irid ifakkar li dan is-sit hu wiehed minn grupp ta' artijiet li gew identifikati wara ghazla fuq bazi nazzjonali halli jinholqu centri ghal SME's (Small Medium Enterprises) biex b'hekk jinqatghu dawk id-diversi 'workshops' u garagijiet bhal ta' mastrudaxxi, til/aru, vulcanizers u anke ta' xi forma ta' manifattura li kienu jispicaw fit-truf tar-rahall peress li ma kienx hemm 'Policies' cari ta' fejn ghandhom joqghodu u, ghalhekk, inholqot anomanlija ta' illegalita ta' operazzjonijiet li jhaddmu settur daqshekk importanti u mehtiega fl-ekonomija nazzjonali bhal dik tas-servizzi.

Ghalhekk, dawn i-siti gew meghjuna mil-Gvern fir-rassikurazzjoni tar-rata tal kiri tal 'garages' industrijali' halli johorgu bi prezz li jintlahaq minn kullhadd. u fil-kontraparti, l-izvilupatur ghandu jkun attent fuq l-ammont ta' spejjes u jevita he la u nfieq zejzed. pere hu cert li l-fehma tal Gvern. meta inhalqu dawn is-siti li jkunu. bejn wiehed u l-iehor. ta' standard talieb u ezemplari. Kwalunkwe diskriminazzjoni fi spejjes imposti minn entitajiet bhal MEPA jikkostitwixxu ingustizzja lill-izvilupatur direttament u indirettament lill nies li ser jikruhom jew jixtruhom u bhala konsegwenza lill istess Gvern.

KUNDIZZJONI Nru 4. para 3 fejn jigi llimitat l-ammont ta' kull tip ta' attivita.

Apparti li l-kundizzjoni ma tiftiehemx ghax tibda b'titolu li ghandu il-Klassijiet 11,12.17 & 19 waqt li l-ahhar linja tghalaq b'lista ohra ta' Klassijiet 13.14.15 & 19 u ma hux car il-kumment ta' liema grupp huma limitati u liema huma dawk li it-tibdila ghalihom ma hijjex 'straightforward' u tehtieg applikazzjoni, dan il-limitu mitlub ma deheritx la fil-kuntratt li gie iffirmit bejn l-Applikant u is-8egretaju Parlamentari ghal Industrijia Zghar u lanqas fil-kundizzjonijiet tal PA 5003/05 ghal svilupp simili illi hemm fi-Nofs in Nhar ta' Malta. Cioe dik tal-Maggi cioe' f'Haz-Zabbar.

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KUNDIZZJONI Nru 7.- Garanzija Bankarja fuq Landscapingr

Mentri fil PA 5003/05 (SME Tal Maggi) ma giet mitluba ebda garanzija bankarja ghal 'Landscaping', fil kaz taghna intlabna is somma ta €24,000. Jerga, dan l-ammont , hlief ghall-ewwel sena ma tnaqqsitx skaletta tul l-4 snin l-ohra li intalbet tinzamm miftuha, minkejja insistenza taghna.

KUNDIZZJONI Nru 18 - Volumtal Bir

Din forsi hi l-aktar kundizzjoni li taghna fastidju ghaliex, minkejja li l-Ligi ta Malta tirrekjeda nhazna minima ta 60% tal wicc tal bejt, u t-Awtorita ta l-Ippjanar kienet harget awiz xi snin ilu sabiex, fi progetti kbar, speċjalment fejn hemm industrij privati zghar jew lukandi, jitnaqqas dan it persentagg u jinzel ghal 45%, gejna imgieghla naccetaw kalkolu ta xita ta 1.20%, cioe', kwazi it-tripplu ta dak il intalab minghand haddiehor. Skond it-Case Officer li ippresenta l-applikazzjoni lill Bord, din il hazna akbar rnis-soltu, nhasset necessarja ghaliex ikkontenda illi darba kull 10 snin ikollna 'flash floods' li ma nifilhux ghaliha. Dan hu argument li nikkunsidraw sproporzjonat. aktar u aktar fil-kuntest li din kienet ser tkabbar, titrippta, l-ispejjes tal gwiebi b'mod qawwi li jaffetwa serjament l-budget tal progett. Bhala konsegwenza, irid joghla il-prezz bazi ta kull unit u qed qed tikkreja 'unfair competition' ma l-izviluppaturi ta progetti simili.

Fattur importanti hu li, minkejja li ahna ssugerejna u dan gie milqugh mill-Bord tal-MEPA, li nippruvaw naghmtu trattativi mal Water Services Dept sabiex jiehu l-irma, dawn qatt ma tawna risposti u lanqas urew xi interess.

Ma nistghux hawn ma nikkumentawx jekk hemmx provi bizzejjed li juru li din ix-xitwa sproporzjonata isseh x bixx rH la Ghaxaq, ga a darba ma gietx rikjesta fi bnadi ohra!

Kundizzjoni Nru 23 - Spejjes ta Ta Monitoragg.

Filwaqt li, ghal darba ohra intenu li ma ghandna xejn kontra il-principji li jiskattaw fuqhom certu bzonn ta kontroll, pero naraw illi, mentri, fil para 24(i) tal permess tal Maggi (PA5003/06) gew indikati 4 stadji li fihom l-Enforcement Section kella torganizza 'site inspection' ma l-applikant gha monitoragg, f'taghna giet imposta visita kull gimgha, a spejjes taghna (ghal anqas hekk tiftiehem) u ma hemmx termlnu ta ghelug, cioe', jekk dan hux ghal waqt it-terminu tal-kostruzzjoni jew ghal dejjem. Dan it punt hu krucjali ghat vijabilita tal progett stess, speċjalment fil-fazi ta wara li jigi kompletat u jehrieg jigi ikkjarifikat halli 1-applikant jiehu il-mizuri adegwati.

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Jekk kien hemm xi dubbju dwar dan it-trattament inegwali , nirreferu ghal, fost ohrajn il-permess PA 554/06 li nghata ghal kostruzzjoni ta Supermarket Lidl f'Hal Safi fejn 1-garanzija ghal Landscaping intalbet biss is-somma ta E6988 biss fuq art li hi kwazi daqs taghna u fejn il volum tal bir inhaddem ghad-dirittura fuq 30%.

Ghandna lista shiha ta refernzi ghal permessi ohrajn li jippruvaw l-ingustizzja tal Bord u tinirriservaw li niproducu waqt.

Ghat dawn ir-rgunijet nergghu intennu li l-Bord ta' l-Appell ghandu jiehu konjizjoni tar-rejaltaijiet tal-MEPA u l-permessi li tohrog.”

Fis-seduta tas-26 ta' Marzu 2010, il-Perit Anthony Fenech Vella ghall-appellant nomine ghamel referenza ghal zewg permessi PA 5003/05 u PA 6508/05, b'referenza ghall-imposizzjoni ta' qisien konsiderevoli tal-giebja approvata u kkontestata.

L-Awtorita' fir-rapport taghha ddikjarat is-segwenti :-

“iii. The appellant submitted further documentation in reply to the Authority's second statement to continue to justify his appeal. The appellant is mainly reiterating that his case is not different from the other SME sites at Naxxar and Ta' Marga. However the appellant is also claiming that the Authority was not exhaustive in its last submission in regards to the permits quoted by him and have not stated anything in regards to the adjacent permit which was approved with a reservoir of 80%. Reference is also made to the Skyparks project.

The Authority has the following comments to make:

“2.1 The appellant submitted his comments in three different letters, without any apparent structure, and thus makes it difficult for the Authority to be comprehensive in its response. Thus the Authority structured its comments by grouping the appellant's concerns according to the development or issue he is referring to.

2.2 Adjacent SME site (Falzon's development) - PA 6913/05

The appellant is criticizing the Authority because it did not make reference to the adjacent SME site (also known as Falzon's development). According to the appellant, the Authority first granted the adjacent SME with a cistern of 110% of the

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roof area which is already 10% less than his and then reduced this to 80% at reconsideration stage.

The Authority cannot help but notice that the appellant throughout his submissions makes reference to figures and numbers without any verification or put them into context.

First of all, in this case the appellant is claiming that the cistern subject of this appeal is 120% of the roof area. The Authority cannot understand how the appellant arrived at this figure.

The roof area of the SME Site subject of this appeal amounts to circa 5005sq.m. The cistern requested by the Authority amounts to 4649cu.m., i.e. less than 93% of the roof area of the building approved - a far cry from the 120% referred to by the appellant. Had the Authority requested a cistern of 120% of the roof area, it would have imposed a cistern of 6006cu.m!

Second, the appellant failed to explain why the Authority reduced the volume of the cistern originally requested. The applicant of the adjacent development (PA 6913/05) had applied for the Authority to reconsider the imposition of a cistern of 110% of the roof area. The applicant in that reconsideration had provided detailed workings of how the water is going to be utilised, on the basis of which the Authority reduced the cistern size. No such workings have been provided in this case to merit reduction in cistern size.

Furthermore, the appellant should explain why he is stating that the cistern in the adjacent SME site amounts to 80% when two separate water cisterns have been approved; one with a volume in cubic metres of 60% of the built roof area and the other 30% of the external hard surface area.

2.3 Re: Montekristo Winery (PA 1416/05, PA 3214/06)

On the letter dated 20/6/12, the appellant claims that the Authority is not being consistent when it states that the permits regarding the MonteKristo winery and estate are not comparable because of existing commitment when the Authority itself tries to distance itself from this concept in several other instances.

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The Authority is perplexed by the appellant's comments in this regard especially when the reference to the concept of commitment in relation to height limitation and outline permits is absolutely not relevant to these issues in this appeal.

What the Authority had previously stated in regards to PA 1416/05 and PA 3214/06 is that these permits regard the sanctioning of extensions of buildings and activities that are themselves covered by pre-local plan permits. When the original permits were issued, there were no statutory designated aquifer protection zone or valley protected areas; therefore there could not be any provisions in the said permits in this sense. The element of 'commitment' was not even raised by the Authority in its previous reply; however how could larger cisterns be provided on a site that was already characterised by a building, the majority of which was legally established by a permit? Moreover, how this issue means that the Authority is admitting that the water provision in these sites is thus deficient (as the appellant is claiming) is beyond the comprehension of the Authority.

It must also be highlighted once again that PA 3214/06 was subjected to an EIA which outlined specific mitigation measures including directing surface run off to the natural water course in order to safeguard the valley and the water catchment area. This means that in the case of PA3216/06, which was in part already compromised by earlier developments, specific measures were adopted apart from the formation of a further underground cistern as identified in the EIA in order to safeguard the water catchment area and aquifer zone in addition to previous cisterns that existed on site. This is an important element that the appellant repeatedly ignores - in PA 3214/06 hydrology oriented measures went beyond the provision of cisterns (as identified in the EIA), however the appellant keeps comparing cistern sizes across different developments.

The Authority cannot understand what the appellant means that no information was given regarding the volume of the reservoirs that already existed on the site of PA 3216/06. Is the appellant stating that no information was given during the course of this appeal (i.e. in the last submissions) or that the EIA in PA 3216/06 does not give this information? The appellant then starts to fire away figures and percentages which he himself admits that these are based on guesswork and not from official reports. Indeed whilst the appellant states that the site in PA 3216/06 is about 99,000sq.m - the DPAR in the said report states that the buildings on this site including the extension is about 44,500sq.m (half what the appellant has guessed).

2.4 Ta' Maggi SME Site (PA 5003/05)

The appellant is once again claiming (see letter dated 13/7/12) that he was discriminated against when his development is compared to the SME site at Ta'

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Maggi, Zabbar (PA 5003/05) because according to the appellant this site is also found in an aquifer protection zone.

The Authority has already commented on this issue, but the appellant keeps submitting his comments on this regard.

Ta' Maggi SME site is indeed in an aquifer protection zone. However the case in this appeal is not only within an aquifer protection zone but also in a valley protected area. Therefore the Authority had to take into consideration the impacts of the development on a more sensitive area than that at Ta' Maggi especially because apart from uses Use Classes 11, 12, 17 & 19(a) the appeal case permit allows uses (which collectively should not exceed 2000sq.m) falling under Classes 13, 14, 15 & 19(b) and 19(c) which are considered to be obnoxious industrial uses with associated major impacts.

The motive of the condition reflects the environmental impacts that are envisaged to be generated by this development. The applicant has failed to identify the precise uses that shall be allocated within this industrial development, as was confirmed in the Waste Management Plan, stating

that "at present there has been no specification by the developer which type of industry will occupy most of the site" (paragraph 233 of document red 45L). The requirement for the preparation of an EIA was waived by MEPA partly on the grounds of this, however subject that any uses falling within Classes 13, 14, 15 and 19(b) & (c) do not exceed a total floorspace area of 2000m². Should such uses exceed such a total area, the development would be subject to an Environment Impact Assessment as required by the Environment Impact Assessment Regulations.

On the other hand this condition was not pertinent in the Ta' Maggi SME site since the applicant in that case declared the uses to be allocated within the industrial units would be limited solely to uses falling under Classes 11, 12, 17 & 19(a) only. The conditions imposed in that permit reflect such allocation of uses.

2.5 Naxxar SME Site (PA 6508/05)

Similar to the case of Ta' Maggi, the appellant is also claiming that the Authority discriminated against him when it treated the Naxxar SME Site differently.

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The Authority will not repeat the comments made in paragraph 2.3 above since they apply just the same in this case. However it is important to note that the Naxxar SME Site was subjected to an EIA (which addressed the hydrology aspect). The Naxxar SME Site is characterised by a cistern under each and every unit amounting to 40% of the total roof area (in square metres) above plus 2 reservoirs of 300cu.m each.

It is important also to note that in this case the appellant simply stated a figure - 40,000sq.m which denotes the site area but failed to state that the building block area amounts only to 22,715sq.m. Being correct on figures is crucial in this appeal given that the size of the cisterns depends on the building roof area and not the site area. Attempts to give any other figure would simply mislead.

2.6 Skyparks development (PA 2760/09)

The appellant in note of submissions dated 13/7/12 and his rikors of the 19/7/12 makes reference to the Skyparks project and states that this was approved with a cistern of 30%.

The Authority notes that this development is not a SME site and is not within a Valley Protected Zone. Comparisons are valid only if they compare like with like. The condition being appealed in this case was imposed by the Authority on the basis of the location and the type of development as explained repeatedly.

2.7 Other permits quoted by the appellant

The appellant continues to make reference to a number of permits, which range from showrooms to supermarkets, from waste separation plants to office blocks, without stating their relevance. The appellant must explain their relevance such as designation and protection status of the area they occupy, else the Authority would not be in a position to reply."

Ix-xhud Johann Buttigieg li xehed fis-seduta tas-26 ta' Novembru 2010, 'inter alia' kkonferma li nhasset il-htiega li l-bjar ikunu daqshekk kbar wara li l-kwistjoni giet diskussa mal-'strategic care group'; u dan biex jigi evitat zieda fil-volum tal-ilma fi Triq tal-Barrani minhabba l-izvilupp tas-sit kif ukoll biex is-sid juza' l-ilma tieghu stess. Din issemmiet fid-DPA report tal-25 ta' Novembru 2008. Mistoqsi fuq il-kobor tal-giebjja x-xhud qal hekk:-

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“qed niggi mistoqsi jekk l-estent tal-giebja fuq dan is-sit twassalx għall-iskop tal-Policy SMCO 07, jiena ngħid illi l-istrategic care group dak iz-zmien hass illi minhabba 's-site' qeghda 'valley protection zone', peress li l-izvilupp kien ta' indistrija u possibilment jintuza' kwantita ta' ilma, kienet opportunita' biex kemm jista' jkun jintuza' l-ilma li jingemgha. Ngħid ukoll li dan gie diskuss fit-tul fil-MEPA Board hearing u rrid ngħid ukoll li kien hemm ruling tal-MEPA Board illi l-giebja tkun tista' titnaqqas mill-Bord jekk l-Malta Resources Authority tawtorizza illi l-ilma minn dak il-gibjun jidhol fil-'Water table'.

Ix-xhud zied “jiena ngħid illi l-mod kif sar l-kalkolu tal-kobor tal-giebja, f'dan il-kas hija n-norma.”

Il-Perit Anthony Fenech Vella fir-risposta teknika tieghu tat-28 ta' Marzu 2012 ssottometta s-segwenti :-

“Risposta teknika lill argumenti tal MEPA bl-ghajnuna ta' tabelli u pjanti.

Il-kwistjoni principali mqajjma minna hi dik tal kobor tal gwiebi, pero' jekk wiehed jezamina it-Table Dok "A" annessa, li fiha paragon ma progetti simili industrijali f'diversi zoni agrikoli, mhux biss fuq il-kobor tal gwiebi imma anke il-garanziji tal-'landscaping', il-frekwenza tal-monitoragg, jidher car li l-applikazzjoni taghna giet mgħobbija bil wisq aktar. Pero' l-aktar ovvju hi d-differenza fil-qies li fuqa gie ikkalkolat il-volum tal gibja, ghaliex l-aktar gholja huma dawk fil-limitu ta 60% tal qies tal bejt u b'maggoranza li qedin bejn it 30% u 45% u mhux 120% bhal taghna. Ahna esprimewna li ahna lesti naccettaw anke is 60% bhal ma inghata fil Polidano Plant u Monte Kristo.

Dan ghaliex jidhrilna li l-MEPA ma ghandiex ragun titrattana ghar, mhux biss mill-progetti l-ohra ta' l-SMEs kif ga argurmentat fl-appell li pprezentajna, imma certament ma ghandiex titrattana differenti minn permessi ta' Polidano (PA3216/06) u tal-Monte Kristo (PA 1416/06) u tal-lufthansa Teknik (GDO 371/07) li gew applikati wara taghna ,u jinsabu fuq Wied Xkora li qed f'Valley Protection zone, kif protetta minn Policy SMCO 07 ta l-istess Pjan lokali li fih il policy SMCO 08 ikkwotat ghal taghna.

Qed nannetti sett ta pjanti li juru:

1. Pjanta Doc "8" Generali ta Malta li turi b'mod carissimu li, l-ewwelnett, is-sit ta Hal Ghaxaq jaqa ftarf il Water Protection zone waqt li dawk li qedin fiz-zona ta Polidano

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huma addirittura ezatt fic-centru anke tal Water Catchment area Nazzjonali (SMCO9)

2. Pjanta "C" turi il lokazzjoni aktar ezatta tat-tlett permess citati fil-kuntest

Ta' Environment Constraints Policy MAP tal Pjan lokali LU7

3. Waqt li l-pjanta "0" turi b'aktar dettal dawn it-tlett siti in relazzjoni mal-Wied, b'inset, bl-istess skala, tas-sit ta Hal-Ghaxaq halli wiehed ikun jista jipparguna 'a colpo d'occhio' il proporzjon bejniethom u jista jimmagina allura l-effett komplessiv negattiv ta 'l fuq min 200,000 mk ta zvilupp direttament fuq Wied ghal dak ta 10,000mk fuq Water protection zone.

Hu rilevanti li l-Pjan Lokali fil policy SMC07 tindika li f'Wied Xkora u f'Wied Sillani ghanda issir riabilitazzjoni u mhux jizdied jew jigi intensifikat l-izvilupp issa, aktar u aktar, biz zieda ta lukanda mal grupp ta 3, u li nghata permess ezatt faccata ta' Lufthansa Teknik.

Meta gie ezaminat l-applikazzjoni PA6508/05 ghal SME li hemm ft'Alla u Ommu, ir-raguni moghti mid Direttorat ghal tickien tal gwiebi kienet li l-Wied hu ormai kompromess mill inkwinazzjoni li hemm u li, jekk wiehed jara l-ispirtu tal-Policies, hi raguni li tmur diametrikament oppost taghhom ghal htiega bzonn li niprotegu l-ilma.

Anke bhala 'layman' jekk wiehed ihares mad-dawra tas sit hekk kif mizghuda Bi 'scrap yard' wiehed malajr jifhem li s-sitwazzjoni, tixxiebah allura, dak li gie stabbilit fin Naxxar ghandu jghodd hawn ukoll.

Allura d-domanda tohrog naturali: kif f'dawn applikazzjoinijet li huma ta' natura simili ma taghna, il-MEPA issorvolat kwalunkwe sforz biex timpani livell ta protezzjoni aktar gholli minn normal jew fejn, anzi, in natura tat-terren hu aktar sensittiv ghax addirittura fuq Wied, il-MEPA zammet standard normali bla ma hasset il-htiega ta' rimedju speċjali bhal taghna? Jiena, hawnhekk, ma nistax nhalli barra il-fattur li s-sit taghna hu fit-tart taz zona sensittiva mentri l-ohrajn huma ezatt fin-nofs. Minn naha l-ohra, nistaqsi, "Hi soluzzjoni vera li wiehed jaghmel gibja enormi ghal-skop ta protezzjoni, biex jitlahaq l-iskop ta Policy SMCO 08?

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Ahna nsostnu li LE, ghaliex il-giebjja xogholha hu li tigbor, li tahzen, l-ilma tax-xita li taqa fuq il-bjut u meta tintela, jekk hux wara sena, wara sentejn jew tlieta ma tghamilx differenza, tferra iz-zejjed ghal got-triq u mhux fl-"aquifer"!!!!. Anzi, il-protezzjoni tal-'water catchment zone' fil fatt isir billi, bil gabra, jigi evitat it-tniggez ta 'aquifer' b'zjut, skart u materjal iehor li vehikoli industrijali invarjabilment iwaqqghu. U dana hu garantit bis-soqfa u t-toroq interni; altrimenti il-hsara issir sew jekk ikollna gibja zghira jew ikollna wahda kbira; ma taghmel ebda differenza. Dak li jingema fuq bini jew toroq, fl-ahhar mill ahhar, ghal fuq it-toroq jerga jispicca.

Ghaldaqstant, inhossu li r-rimedju ta' giebjja b'qies id-doppju ta' dak rikjest mill Ligi, apparti l-lat finanzjarju negattiv, ma hijiex soluzzjoni koretta u tippregudika u titratta l-appellant Axisa b'mod totalment differenti minn dawk partecipanti bhalu fl-ezercizju tal SMEs u , anzi, hafna ghar f'siti aktar sensitivi minn tieghu u, ghalhekk, nsosntu l-argument li l-appell taghna ghandu jintlaqa."

Fit-third statement taghha l-Awtorita' kkumentat kif gej :-

"1. The appellant submitted further documentation in reply to the Authority's second statement to continue to justify his appeal. The appellant is mainly reiterating that his case is not different from the other SME sites at Naxxar and Ta' Marga. However the appellant is also claiming that the Authority was not exhaustive in its last submission in regards to the permits quoted by him and have not stated anything in regards to the adjacent permit which was approved with a reservoir of 80%. Reference is also made to the Skyparks project.

2. The Authority has the following comments to make:

2.1 The appellant submitted his comments in three different letters, without any apparent structure, and thus makes it difficult for the Authority to be comprehensive in its response. Thus the Authority structured its comments by grouping the appellant's concerns according to the development or issue he is referring to.

2.2 Adjacent SME site (Falzon's development) - PA 6913/05

The appellant is criticizing the Authority because it did not make reference to the adjacent SME site (also known as Falzon's development). According to the appellant, the Authority first granted the adjacent SME with a cistern of 110% of the roof area which is already 10% less than his and then reduced this to 80% at reconsideration stage.

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The Authority cannot help but notice that the appellant throughout his submissions makes reference to figures and numbers without any verification or put them into context.

First of all, in this case the appellant is claiming that the cistern subject of this appeal is 120% of the roof area. The Authority cannot understand how the appellant arrived at this figure.

The roof area of the SME Site subject of this appeal amounts to circa 5005sq.m. The cistern requested by the Authority amounts to 4649cu.m., i.e. less than 93% of the roof area of the building approved - a far cry from the 120% referred to by the appellant. Had the Authority requested a cistern of 120% of the roof area, it would have imposed a cistern of 6006cu.m!

Second, the appellant failed to explain why the Authority reduced the volume of the cistern originally requested. The applicant of the adjacent development (PA 6913/05) had applied for the Authority to reconsider the imposition of a cistern of 110% of the roof area. The applicant in that reconsideration had provided detailed workings of how the water is going to be utilised, on the basis of which the Authority reduced the cistern size. No such workings have been provided in this case to merit reduction in cistern size.

Furthermore, the appellant should explain why he is stating that the cistern in the adjacent SME site amounts to 80% when two separate water cisterns have been approved; one with a volume in cubic metres of 60% of the built roof area and the other 30% of the external hard surface area.

2.3 Re: Montekristo Winery (PA 1416/05, PA 3214/06)

On the letter dated 20/6/12, the appellant claims that the Authority is not being consistent when it states that the permits regarding the MonteKristo winery and estate are not comparable because of existing commitment when the Authority itself tries to distance itself from this concept in several other instances.

The Authority is perplexed by the appellant's comments in this regard especially when the reference to the concept of commitment in relation to height limitation and outline permits is absolutely not relevant to these issues in this appeal.

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What the Authority had previously stated in regards to PA 1416/05 and PA 3214/06 is that these permits regard the sanctioning of extensions of buildings and activities that are themselves covered by pre-local plan permits. When the original permits were issued, there were no statutory designated aquifer protection zone or valley protected areas; therefore there could not be any provisions in the said permits in this sense. The element of 'commitment' was not even raised by the Authority in its previous reply; however how could larger cisterns be provided on a site that was already characterised by a building, the majority of which was legally established by a permit? Moreover, how this issue means that the Authority is admitting that the water provision in these sites is thus deficient (as the appellant is claiming) is beyond the comprehension of the Authority.

It must also be highlighted once again that PA 3214/06 was subjected to an EIA which outlined specific mitigation measures including directing surface run off to the natural water course in order to safeguard the valley and the water catchment area. This means that in the case of PA3216/06, which was in part already compromised by earlier developments, specific measures were adopted apart from the formation of a further underground cistern as identified in the EIA in order to safeguard the water catchment area and aquifer zone in addition to previous cisterns that existed on site. This is an important element that the appellant repeatedly ignores - in PA 3214/06 hydrology oriented measures went beyond the provision of cisterns (as identified in the EIA), however the appellant keeps comparing cistern sizes across different developments.

The Authority cannot understand what the appellant means that no information was given regarding the volume of the reservoirs that already existed on the site of PA 3216/06. Is the appellant stating that no information was given during the course of this appeal (i.e. in the last submissions) or that the EIA in PA 3216/06 does not give this information? The appellant then starts to fire away figures and percentages which he himself admits that these are based on guesswork and not from official reports. Indeed whilst the appellant states that the site in PA 3216/06 is about 99,000sq.m - the DPAR in the said report states that the buildings on this site including the extension is about 44,500sq.m (half what the appellant has guessed).

2.4 Ta' Maggi SME Site (PA 5003/05)

The appellant is once again claiming (see letter dated 13/7/12) that he was discriminated against when his development is compared to the SME site at Ta' Maggi, Zabbar (PA 5003/05) because according to the appellant this site is also found in an aquifer protection zone.

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The Authority has already commented on this issue, but the appellant keeps submitting his comments on this regard.

Ta' Maggi SME site is indeed in an aquifer protection zone. However the case in this appeal is not only within an aquifer protection zone but also in a valley protected area. Therefore the Authority had to take into consideration the impacts of the development on a more sensitive area than that at Ta' Maggi especially because apart from uses Use Classes 11, 12, 17 & 19(a) the appeal case permit allows uses (which collectively should not exceed 2000sq.m) falling under Classes 13, 14, 15 & 19(b) and 19(c) which are considered to be obnoxious industrial uses with associated major impacts.

The motive of the condition reflects the environmental impacts that are envisaged to be generated by this development. The applicant has failed to identify the precise uses that shall be allocated within this industrial development, as was confirmed in the Waste Management Plan, stating that "at present there has been no specification by the developer which type of industry will occupy most of the site" (paragraph 233 of document red 45L). The requirement for the preparation of an EIA was waived by MEPA partly on the grounds of this, however subject that any uses falling within Classes 13, 14, 15 and 19(b) & (c) do not exceed a total floorspace area of 2000m². Should such uses exceed such a total area, the development would be subject to an Environment Impact Assessment as required by the Environment Impact Assessment Regulations.

On the other hand this condition was not pertinent in the Ta' Maggi SME site since the applicant in that case declared the uses to be allocated within the industrial units would be limited solely to uses falling under Classes 11, 12, 17 & 19(a) only. The conditions imposed in that permit reflect such allocation of uses.

2.5 Naxxar SME Site (PA 6508/05)

Similar to the case of Ta' Maggi, the appellant is also claiming that the Authority discriminated against him when it treated the Naxxar SME Site differently.

The Authority will not repeat the comments made in paragraph 2.3 above since they apply just the same in this case. However it is important to note that the Naxxar SME Site was subjected to an EIA (which addressed the hydrology aspect). The Naxxar SME Site is characterised by a cistern under each and every unit amounting to 40% of the total roof area (in square metres) above plus 2 reservoirs of 300cu.m each.

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It is important also to note that in this case the appellant simply stated a figure - 40,000sq.m which denotes the site area but failed to state that the building block area amounts only to 22,715sq.m. Being correct on figures is crucial in this appeal given that the size of the cisterns depends on the building roof area and not the site area. Attempts to give any other figure would simply mislead.

2.6 Skyparks development (PA 2760/09)

The appellant in note of submissions dated 13/7/12 and his rikors of the 19/7/12 makes reference to the Skyparks project and states that this was approved with a cistern of 30%.

The Authority notes that this development is not a SME site and is not within a Valley Protected Zone. Comparisons are valid only if they compare like with like. The condition being appealed in this case was imposed by the Authority on the basis of the location and the type of development as explained repeatedly.

2.7 Other permits quoted by the appellant

The appellant continues to make reference to a number of permits, which range from showrooms to supermarkets, from waste separation plants to office blocks, without stating their relevance. The appellant must explain their relevance such as designation and protection status of the area they occupy, else the Authority would not be in a position to reply.”

Ikkunsidra ulterjorament :-

L-appellant nomine ippropona li kostruzzjoni ta' park industrijali ghal Small and Medium Enterprises. L-applikazzjoni giet milqugha mill-MEPA Board, pero' bl-imposizzjoni ta' diversi kundizzjonijiet li uhud minnhom qed jigu kkontestati mill-appellant; li principalment jillmenta minn diskriminazzjoni. Hu infatti jirreferi ghal diversi permessi ohra fejn fl-opinjoni tieghu gew imposti kundizzjonijiet anqas oneruzi.

L-appell qed isir mill-kundizzjonijiet segwenti :-

1. Il-kundizzjoni numru 4 para 3 dwar l-limitazzjoni ta' attivitajiet kummercjali permessibbli;

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2. Il-kundizzjoni numru 7 – garanzija bankarja dwar l-landscaping;
3. Il-kundizzjoni numru 18 dwar il-volum tal-bir; u
4. Il-kundizzjoni numru 23 dwar spejjes ta' monitoragg.

1. Dwar il-kundizzjoni numru 4 l-perit tal-appellant irrileva li fl-indikazzjoni tal-klassijiet permessibbli hemm disgwid billi fl-ewwel parti jissemmew certi klassijiet u fit-tieni parti jissemmew ohrajn, b'eccezzjoni tal-Klassi 19 li tissemma fiz-zewg kazijiet.

L-ewwel group ta' klassijiet jissemma fil-kuntest tal-uzi accettabbli; u t-tieni group jissemma fil-kuntest li jinhtiegu applikazzjoni separata.

L-Awtorita' fil-paragrafu 4.2.2 tar-rapport taghha accettat li tinhtieg kjarifika billi l-Class 19 tissemma fiz-zewg kazijiet.

Gie kkonfermat, in parti, li l-uzi li jistghu jigu allokatu f'Industrial Park 'on an industrial basis' huma daww fil-use classes 11, 12, 17 u 19; u daww l-uzi li flimkien ma jistghux jikkupaw aktar minn 2000 m.sq. huma daww li jaqghu fil-klassijiet 13, 14, 15 u 19 billi dawn jistghu jigu kkunsidrati bhala 'obnoxious industrial uses'.

Skond l-Awtorita' ghandha ssir din il-precizzjoni : daww l-uzi li jaqghu that il-klassi 19 (a) jistghu jigu allokatu f'area bla limiti; mentri daww li jaqghu that il-klassi 19 (b) u (c) ghandha jkollha area flimkien ta' mhux aktar minn 2000 m.sq.

F'dan is-sens il-perit tal-appellant kien korrett; pero' kif tajjed irrilevat l-Awtorita', fil-Waste Management Plan prezentata mill-appellant stess, ma inghatatx indikazzjoni tal-uzi specifici li kienu ser jigu allokatu fl-izvilupp industrijali.

L-Awtorita' ghal kull bon fini, irrilevat li f'kas ta' zvilupp propost ta' aktar minn 2000 m.sq. tal-uzu tal-klassijiet 13, 14, 15 u 19 (b) u (c), jinhtieg Environment Impact Assessment minhabba l-impatti ambjentali assocjati mal-izvilupp propost.

2. Il-kundizzjoni numru 7

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Dwar il-garanzija bankarja għall-Landscaping l-ilment tal-appellant nomine mhux tant dwar l-ammont impost izzda li f'SME sites ohra bhal Ta' Maggi u T'Alla u Ommu, dawn il-garanziji ma ntabx.

Din l-allegazzjoni pero' giet kontradetta mill-Awtorita' li kkonfermat li fil-Permess PA 5003/05, Ta' Maggi SME site, il-kundizzjoni numru 1 imponiet garanzija ta' Euro 85,000; kif ukoll l-obbligu tal-istess (condition 8). Anke fil-permess PA 6508/05, T'Alla u Ommu SME site giet imposta garanzija bankarja fl-ammont ta' Euro24,000 biex jigi assikurat li jsir l-landscaping u l-manutenzjoni tal-istess (condition 8) – kundizzjoni simili għal dik imposta fil-permess li qed jigi in parti, kkontestat.

3. Il-kundizzjoni numru 18 – Volume of Water Cistern

Il-perit tal-appellant nomine ilmenta mill-fatt li gie mgieghel jaccetta 'kwazi' t-triplu ta' dak li ntab minn haddiehor' In oltre ddikjara li l-case officer rrakomanda hazna akbar billi 'kull 10 snin ikollha 'flash floods'.

Din pero giet ikkontestata mill-istess Johann Buttigieg (ara xhieda tieghu fis-seduta tas-26 ta' Novembru 2010) li kkonferma li fir-rapport tieghu qatt ma semma 'flash floods'.

Fl-istess okkazzjoni, ix-xhud indika r-ragunijiet li jiggustifikaw l-qisien impost, partikolarment in vista ta' certi cirkostanzi partikolari, fosthom l-lokalita' tas-sit.

L-appellant nomine ddikjara li l-giebja approvata hi 120% tal-area tal-bejt tal-izvilupp. Dan gie kkontestat u kjarifikat mill-Awtorita' (para. 2.2 tat-third statement) billi l-area tal-bejt in kwistjoni hi ta' 5005 sq.m. cirka, mentri l-giebja approvata hi ta' 4649 cu.m. cioe' anqas minn 93% tal-area tal-bejt approvat u ferm anqas minn dak dikjarat mill-appellant ta' 120% tal-area tal-bejt. F'dak il-kas il-giebja kellha tkun ta' 6006 cu.m.

L-Awtorita' fl-istess third statement ikkumentat fid-dettal dwar il-permessi citati mill-appellant nomine u nghatat spjegazzjoni ezawrenti dwar l-fatti specie partikolari għal dawk il-permessi u li assolutament ma jistax jinghad li saret xi forma ta' diskriminazzjoni fil-konfront tal-appellant nomine kif qed jigi minnu allegat.

4. Il-kundizzjoni numru 23 dwar l-monitoragg;

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L-appellant nomine dwar din il-kundizzjoni jilmenta mill-fatt li fil-permess Tal-Maggi PA5003/06 'gew indikati 4 stadji li fihom l-enforcement section kellha torganizza 'site inspection' mal-applikant ghal-monitoragg' f'taghna giet imposta visita kull gimgha a spejjes taghna u ma hemmx terminu ta' gheluq".

Skond il-perit tal-appellant, billi t-terminu mhux specificat cioe' jekk hux limitat ghal-fazi ta' kostruzzjoni; jew dejjem, dan jista' jincidi fuq il-vijabilita' tal-progett.

Il-kundizzjoni 23 fil-permess tghid hekk :-

"At the applicants expense the enforcement unit shall inspect the site every quarterly."

Ghall-korrettezza kellu jinghad jew 'every quarter' jew 'quarterly' u mhux 'every quarterly'.

Ghalkemm t-terminologija adoperata hi kemmxajn infelici, il-kundizzjoni ghadha tiftiehem li l-monitoragg mill-enforcement section issir 4 darbiet f'sena, kull tlett xhur – 'quarterly'; certament mhux 'visita kull gimgha' kif allega l-appellant nomine.

In oltre, kif tajjeb irrilevat l-Awtorita', generalment f' 'major projects' bhal dan in ezami, l-Awtorita' timponi l-obbligu ta' monitoragg indipendenti, li naturalment jinvolvi lill-applikant fi spejjes mhux traskurabbli. F'dan il-kas, il-fatt li l-monitoragg kellu jsir mill-membri tal-enforcement section tal-istess Awtorita', effettivament ifisser anqas spejjes ghall-applikant; beneficju ghall-applikant u mhux penali.

Fir-rapport taghha (para 4.5) l-Awtorita' kkonfermat li din il-koncessjoni saret billi l-izvilupp tal-'Industrial Park' kellu jigi sussidjat mill-Gvern u li l-istess kundizzjoni giet imposta f'permessi ohra li kienu jinvolvu SME sites.

Ezaminati fid-dettal l-aggravji tal-appell fil-kuntest tal-Policies tal-lppjanar rilevanti, l-appell ma jimmeritax konsiderazzjoni favorevoli salv li ssir l-kjarifika dwar il-kundizzjoni 4 paragrafu 3 tal-permess.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess dwar l-appell mill-kundizzjonijiet numru 7, 18 u 23 tal-permess li qed jigu kkonfermati; pero' jilqa' l-appell in kwantu jirreferi ghall-kundizzjoni 4 paragrafu 3 fis-sens li din il-kundizzjoni

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ghandha tigi kkjarifikata kif indikat fil-paragrafu 4.2.2 tar-rapport tal-Awtorita' prezentat fis-6 ta' Meju 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. In-nullita tad-decizjoni ghax l-applikant ma kienx Michael Axisa personalment izda s-socjeta Michael Axisa Limited;
2. Ghalkemm l-applikant applika u ottempera ruhu ma' kondizzjonijiet specifici taht skema intiza ghal zvilupp simili, kuntrarjament ghal kazijiet ohra, gew imposti kondizzjonijiet li zvantaggawh fuq is-suq. Din hi diskrezzjoni mhix afdana f'idejn l-Awtorita u ghalhekk agixxiet ultra vires u t-Tribunal naqas li jirratifikah, anzi strah biss fuq l-argumenti tal-Awtorita minghajr verifika indipendenti da parti tieghu dwar il-fatti prodotti quddiem l-Awtorita.

L-ewwel aggravju

Dan l-aggravju, jekk fondat igib in-nullita tad-decizjoni minghajr mal-Qorti tista' tidhol fil-mertu tal-aggravji l-ohra. F'dan il-kaz l-applikazzjoni u r-rifjut u l-appell quddiem it-Tribunal saru minn Michael Axisa Limited, cioe socjeta b'personalita differenti minn Michael Axisa personalment.

Ghalkemm jidher car li dan kien zball innocenti da parti tat-Tribunal billi fil-korp tal-appell jirreferi ghall-appellant nomine, madankollu l-Qorti ma tistax tinjora li d-decizjoni ma tikkolpax lill-appellant nomine izda lil Michael Fenech personalment li hu persuna differenti fil-ligi mill-applikant u kwindi d-decizjoni tat-Tribunal ma taghmilx stat fil-konfront tas-socjeta li ghamlet l-applikazzjoni ghall-izvilupp. Din il-Qorti ma tistax tissana tali nuqqas bla ma tinkorri f'nuqqas hi stess. Dan hu rassodat mid-decizjoni ta' din il-Qorti fl-appell **Alexander Vella vs Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** deciza fit-2 ta' Meju 2013 u sentenzi ohra msemmija fl-istess gudikat.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Michael Axisa u tiddikjara nulla d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Ottubru 2013 peress illi l-okkju ma jirrispekkjax l-partijiet u tirrinvoja l-appell lura lit-Tribunal skond il-ligi. Spejjez jibqghu bla taxxa.

< Sentenza Finali >

-----TMIEM-----