



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-27 ta' Novembru, 2014

Appell Civili Numru. 26/2014

Manuel Buhagiar

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Manuel Buhagiar tas-16 ta' Mejju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' April 2014 li cahad l-applikazzjoni PA 3229/07 'to sanction extension of chicken farm';

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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:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-25 ta' Mejju 2010, ikkonfermat ir-rifjut tal-applikazzjoni ghall-permess tal-izvilupp PA 3229/07 - Site at Has Sajjed off, Triq Has-Sajjed, Zabbar: To sanction extension of a chicken farm.

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed sanctioning of poultry units, structures at first floor level, and the construction of waste management facilities are located within a Heavy Anti-Aircraft Battery of the Second World War which is still in a good condition and which is one of the best remaining examples of the last of the impressive fortifications in Malta. The development is an accretion to a structure of architectural and historic interest, and is not acceptable from a heritage point of view. The proposal therefore runs counter to Structure Plan policies UCO 12 and UCO 13 which encourage the conservation and restoration of buildings of architectural or historical interest.

2. The proposed construction of 5 course boundary wall around the site, and waste management facilities are located within a Heavy Anti-Aircraft Battery of the Second World War which is still in a good condition and which is one of the best remaining examples of the last of the impressive fortifications in Malta. The development is an accretion to a structure of architectural and historic interest, and will further fragment it and erode its significance. It is not acceptable from a heritage point of view. The proposal therefore runs counter to Structure Plan policies UCO 12 and UCO 13 which encourage the conservation and restoration of buildings of architectural or historical interest.

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3. The capacity of the farm has significantly increased from that legally established. In view that the site lies within 183 metres from an inhabited area and in view that the Food and Veterinary Regulation Division DID NOT consent to the development, the proposal runs counter to section (5) of policy 2.3A (M.E.P.A. Policy and Design Guidance on Agriculture, Farm Diversification and Stables) which stipulates that where farms are located within 183 metres from the development zone, the Food and Veterinary Regulation Division must confirm that the development will not create additional negative impacts in terms of amenity and health of nearby residents in the development zone.

4. The proposal is hence also considered unacceptable in view of the bad neighbourliness it could engender on residents in the nearby Jabbar development zone."

B. In-nota tal-Perit Antiella Grech ghall-Appellant, ipprezentata fl-1 ta' Lulju 2010, senjatament il-punti segwenti:

"Mr Buhagiar is a self-employed registered breeder whose only income is derived from this activity. He does not own any other property where he can conduct this activity. His livelihood depends on the continued operation of this chicken farm.

Attached please find:

i. Communication from Ministry for Rural Affairs and Environment dated the 28th June 2007 stating that Mr. Emanuel Buhagiar is a registered poultry breeder with the Veterinary Affairs and Fisheries Division. The farm licence number is PBLM 023 having a capacity of 5,000 broilers per cycle and 1,227 layers. The farm can rear and subsequently slaughter in an approved slaughter house 5,000 broilers per cycle (maximum 5 cycles annually). Broiler capacity is calculated 13 birds per m². (please refer to attached document A)

ii. Licence for Poultry Production dated the 31st December 2007 showing authorised capacity (please refer to doc B)

iii. ETC Cottoner Job Centre also stating that Mr. Emanuel Buhagiar is a self-employed full-time farmer (please refer to doc C)

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iv. Registration of Poultry Producers by the Department of Agriculture and Fisheries (refer to Doc D).

In view of the above, I kindly request the board to reconsider this decision in view of the moral implication involved. One may argue that what should be discussed here are planning and not moral issues. However I strongly feel that one cannot ignore the reality of the situation and taking planning decision solely based on policies UCO 12 and UCO 13.”

C. In-nota risponsiva ta' Jonathan Borg ghall-Awtorita', ipprezentata fil-21 ta' Dicembru 2010, inter alia l-punti segwenti:

“6.2.1 The application seeks to sanction a number of illegal structures carried on a farm consisting basically of two buildings that are situated a few meters away from each other and which form part of a larger historic WW2 complex.

The following is what the application is seeking to sanction:

Building A

A poultry unit at ground floor having an area of 70sq.m;

A poultry unit at ground floor having an area of 150sqm;

A poultry unit at first floor having an area of 140sqm.

Building B

Construction of pre-1992 yards having an area of circa 100sqm. No details of this building have been provided except those shown in block plan at red 13C

The application is also seeking permission to construct a manure clamp covering an area of 200sqm (with a height of 3m), an underground cesspit covering 170sqm, an underground reservoir covering 80sqm and a 5 course masonry boundary wall around the site boundary.

6.2.2 Planning History and Illegalities on site

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An application for the sanctioning of the 70sq.m poultry unit at ground floor (and other illegalities) in Building A has already been submitted before by way of PA6435/98. This has been refused by the DCC and again at Reconsideration Stage. The Planning Appeals Board confirmed the DCC's decision. A subsequent attempt at sanctioning this illegality was tried again by the appellant through application PA3986/04. This has been refused again by the DCC as well as at Reconsideration Stage.

Another application (PA6439/98) has been submitted to carry out alterations to the gun post so that it will be used as agricultural store. This application was also refused by the DCC and at reconsideration stage, and a subsequent Appeal was dismissed.

Following this series of refusals, an enforcement notice (ECF 1209/98) was issued to cover the illegalities that have been refused to be sanctioned. Notwithstanding that the various requests to sanction these illegalities have been refused, the appellant not only did not remove the illegalities but continued to increase the illegal footprint.

In view of the complicated development history on this site, aerial photos of the site are being shown below to understand better the development which has taken place along the years.

Building A

From the aerial photos above, it appears that little changes between 1967 and 1988 have been made. It appears that significant construction has taken place between 1988 and 1994 since the internal yard of this building was roofed over. From the 1994 aerial photo it appears that two small rooms at the upper floor level also existed, as well as what appears to be a ventilation opening in the middle of this building. Between 1994 and 2004 additional construction appears to have taken place at the ground floor level and the upper floor level. The construction at the ground floor level have been marked in red, however the additional construction at upper floor level is not marked in red. Drawing at red 13D also indicates an additional structure at the upper floor level. It is not known whether this structure has been already constructed.

Building B

From the aerial photos above, it appears that considerable changes between 1967 and 1988 have been made since additional construction was made to the north of

the building. Between 1988 and 1994 additional construction was made, mostly to the west of the building. Between 1994 and 2004 an additional construction also took place to the north-east of the building - this has also been indicated on the block plan at red 13B, however no details of building B has been provided in the submitted drawings. Hence it appears the application is trying to ignore these illegalities and obtain a planning permit.

6.2.3 Historical Significance of site

On more than one occasion, the Directorate indicated that the World War II site is of historical importance and deserves to be conserved. This position was maintained and stressed by the Superintendent of Fortifications, the Superintendent of Cultural Heritage, and the Cultural Heritage Advisory Committee. Nonetheless illegal development has continued to take place. Therefore the proposal runs counter to Structure Plan policies UCO 4, UCO 5 and UCO 7 since it seeks to sanction additional accretions to a historical

building or structure.

Structure Plan policies UCO 11, UCO 12 and UCO 13 permits the conversion and conservation of buildings of architectural or historical interest in the countryside but only in circumstances where these interventions would preserve a building and where the new use would create public access. In this case, the proposal is to sanction additional farm buildings within one of the best remaining examples of this type of fortification in Malta. Hence it is clear that the application is not acceptable from a heritage point of view and that it runs counter to the aims of the above-mentioned Structure Plan Policies.

In PAB 201/99 and PAB 393/00, the Planning Appeals Board had expressed itself quite extensively on the significance of the historic complex. In fact this was one of the main reasons why both appeals were dismissed. Of particular importance is the following statement by the Planning Appeals Board in PAB201/99: Il-preokkupazzjoni ta' dan il-Bord huwa l-valur intrinsiku tal-binja mil-lat storiku u ta' wirt nazzjonali ta' pajjizna. Il-Bord iħoss illi l-izvilupp li sar fuq il-binja znaturat il-binja nnifisha mill-importanza storika tagħha u kkompromettietha b'mod konsiderevoli u għalhekk, iz-zieda ta' seba' filati fuq il-hitan ezistenti tal-gunpost m'għandux jittiehed b'mod legger kif donnu qieghed jissottometti l-appellant. Il-binja kif ukoll il-kumplex kollu li jikkompreni l-gun emplacement jimmerita illi jigi prezervat għall-godiment tal-pajjiz in generali u anke tat-turisti li jzuru dawn il-Gzejjer.

6.2.4 Eligibility of Buildings for Animal Breeding

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The Planning Directorate has established that whilst the farm within the historic complex per se is legal since it is a pre-1992 agricultural complex, the extensions are not because it has been found out that they have been carried subsequently. It has also been established that the farm has a license for 5,000 broilers plus 1227 layers.

Using the standards set by the Food and Veterinary Regulation Division (13 birds per 1sq.m of space), the whole complex may cater up to 10,000 broilers. This clearly points out to a significant intensification from the threshold set by the existing license.

Furthermore albeit the appellant has a license from the FVRD for 5,000 broilers, this license takes into account the 70sq.m poultry unit at ground floor in Building A which has been determined to be illegal from a planning point of view. Therefore using the standards outlined above, in terms of planning permission, the appellant has only space for circa 4,100 broilers, which is the space covered by the pre-1992 farm, since the space taken up by the 70sq.m poultry unit must be eliminated from the equation. It is thus clear that the illegal constructions have resulted in a production capacity increase on the farm way beyond from that legally set.

Section (5) of Policy 2.3A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables stipulates that livestock farms may be permitted if the site is distant by at least 183 meters from the development zone. The site in question is located 160 away from the Zabbar residential scheme and 130 metres away from the Category 1 Settlement.

However the above mentioned policy guidance does not automatically rules out applications that are less than 183 meters from an inhabited area. In such cases the policy requires that the Food and Veterinary Regulation Division consents to the development on the basis that this will not create adverse impacts on the neighbouring settlements. No such declaration has been submitted by the FVRD.";

D. In-nota ta' sottomissjonijiet tal-Perit Joe Cassar u l-Avukat Dott.ssa Graziella Attard ghall-Appellant, ipprezentata waqt is-Seduta numru 4 mizmuma fl-20 ta' Jannar 2011, precizament il-punti segwenti:

"i. When one reads the report one gets the impression that the 'battery' has been compromised by the illegal construction carried out. This is not the case. The battery was already compromised by previous constructions legally carried out

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specifically for the use of a chicken farm and such 'battery' is not found in the property of the farmer....

ii. The illegal constructions present on site were carried out to facilitate the workings of a genuine chicken farmer. It is important to note that the farm is legally constructed and even the farmer has all the necessary licenses (License No. PBLM023) from the competent authorities to function as a full time farmer. The farmer also forms part of a Producer Organisation which is an entity recognised as well by the Director of Agriculture.

iii. When one visits the site and compares the illegal constructions carried out against the other buildings legally constructed, I believe that the whole argument put forward by the directorate does not hold close scrutiny. If the preservation of the batteries were essential then the constructions of approximately three hundred and fifty square metres (350m²) should not have been permitted in the first place (area is edged in red on attached 1968 survey sheets). The site to-day is legally committed as a chicken farm and I believe that the farmer should be given all the encouragement to modernise his farm in line with current competition and provide good agricultural practices. The new extension will facilitate the day to day running of the chicken farm and especially to adhere to the new European and Maltese regulations regarding animal welfare regulations which are of utmost importance in the agricultural sector."

E. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fit-22 ta' Frar 2011, senjatament il-punti segwenti:

"The appellant submitted a reply (dated 20/01/11) to the Authority's report. The appellant is stating that Authority is not correct when it gives the impression that the battery has been compromised by the illegal structures as this was already compromised when it was given over as a chicken farm. Furthermore the illegalities were committed to enhance and modernise the farm. the appellant is also questioning the historical importance of the site because according to the appellant, if the site was so important than the construction of 350sq.m of buildings should not have been permitted in the first place.

2.1 The Authority cannot but maintain that today the site has been modified beyond recognition by modern accretions. A copy of successive aerial photos dating from 1967 onwards have been attached to show how the site has been transformed illegally.

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2.2 Moreover the Authority cannot understand what is meant by the appellant when he stated that if the site was so important than the 350sq.m of built up should have never been allowed in the first place. The Authority just cannot understand what is being referred to here. What building? On site? In the vicinity?"

F. Il-verbal tal-access fuq il-post tas-Seduta numru 47, mizmuma fl-24 ta' Gunju 2011, precizament il-punti segwenti:

"Il-perit Cassar wera lit-tRibunal iz-zewg garages li jishru fuq is-sit u li qed jitlob sanctioning taghhom. Fuq il-post jidher li hemm attivita' tat-trobbija tal-annimali u hemm f'diversi lokalitajiet gunposts li kienu jintuzaw mill-militar fl-antik."

G. Il-verbal tas-Seduta numru 90, mizmuma fl-24 ta' Novembru 2011, senjatament il-punti segwenti:

"L-Awtorita' tirrimetti ruhha pero' tiddikjara li minn meta sar l-access, zdieg l-izvilupp fuq is-sit u hareg enforcement order 291/11, li ma sarx appell minnu."

H. Il-verbal tas-Seduta numru 16, mizmuma fit-22 ta' Frar 2012, precizament il-punti segwenti:

"Jonathan Borg informa lit-Tribunal li hareg ECF 291/11 dwar xi cilindir tal-gas li jinsabu fuq is-sit."

J. In-nota ta' sottomissjonijiet tal-Perit Daniel Grima ghall-Appellant, ipprezentata fil-25 ta' Mejju 2012, precizament il-punti segwenti:

"1. As per submitted drawings and according to the Development Permit Application (DPA) Report issued on the 18 July 2008, the footprint area of both the chicken farm (both ones being sanctioned/proposed and pre-1967 building) amount to 510 square metre (Building A in the figure below). Considering that the 510 square metre is the footprint area of the whole chicken farm including all ancillary facilities as per requirements imposed by the Veterinary Regulation Department, it follows that the actual breeding area is much smaller in size. Without the extension of the chicken farm being sanctioned, the premises would not be suitable to keep an adequate capacity of birds, making the farm unfeasible to continue its activity considering today's policies and standards as opposed to those of yesteryears.

2. The Applicant is a registered poultry breeder with the Veterinary Affairs and Fisheries Division (Farm License No. PBLM023). At the time of application the Ministry of Agriculture and Fisheries authorised the Applicant to keep a capacity of 5,000 broilers per cycle and 1,227 layers at the premises in question (vide enclosed copy of License for Poultry Production valid from 1/1/2007 to 31/12/2007). As suggested by the Department of Veterinary Services (vide enclosed copy of declaration dated 28th June 2007), a rate of 13 birds per square metre is necessary. As such, the total area required by the Applicant for breeding 6,227 chickens (layers and broilers) amounts to 479 square metre (breeding area alone). A difference in area of just 31 square metre when compared to the footprint area of the whole chicken farm. This confirms the above point.

3. Building B referred to in figure above is a pre-1967 farmhouse and as such was not included in the latter application (vide enclosed 1957/67 MEPA aerial photos including copy of 1957 MEPA survey sheet). The proposal for the application in question deals only with the sanctioning of the chicken farm in se i.e. residence excluded. If the MEPA requires a survey of this pre-1967 building and/or sanctioning of any extensions (if any) to the residential property in question, my Client is willing to apply and/or submit such additional requisite. It is in the interest of all parties to ensure that any existing illegalities are sanctioned and the respective enforcement notice removed.

4. Building B shown highlighted in the 1957 MEPA aerial photo below has been used as a residence by Mr. Joseph Buhagiar, the late father of the Applicant, from before the Second World War (vide enclosed copy of affidavit and ID Card). In fact, as indicated in the enclosed copy of the 2009 Electoral Register, the children of the late Mr. Buhagiar continued residing in this property until Mr. Daniel Buhagiar (ID No. 189584M), the Applicant's son, took over the management of the farm. Mr. Daniel Buhagiar has been residing in the farmhouse in question since before 1996 (vide enclosed copy of affidavit, ID Card, and ARMS Ltd and GO plc bills).

5. 'Rukkell Farm' was operational well before 1991. In fact, the oldest records the Applicant could trace date back to 1979 wherein the farm was used as a pig farm (vide enclosed copy of declaration from the Ministry for Resources and Rural Affairs dated 19th May 2011). The farm in question was registered as a poultry producer and inspected occasionally by the Ministry for Rural Affairs and the Environment since 1988. At that time the farm had a capacity of 8000 broilers and 200 layers. When compared with today's laws, the total area required for breeding such an amount would amount to 631 square metre. This because, due to revised regulations in respect of animal welfare, the rate of birds per square metre has nowadays been reduced to 13 birds per square metre. Thus, removing the extensions being sanctioned would subsequently imply a reduction in the existing

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breeding area, which area is vital for my Client in order for him to breed an adequate number of birds enough to provide his livelihood and avoid closing down a business which has been going on for over 50 years.

6. The Applicant is a self-employed full-time farmer whose only income is derived from this activity (vide enclosed copy of declaration from ETC Cottonera Job Centre). My Client does not own any other property where he can conduct such activity. Therefore, his livelihood depends on the continued operation of this chicken farm.

7. The battery was already compromised by the issue of permit granting the use of a chicken farm. Today the site is legally committed as a chicken farm (vide enclosed copy of receipt from the Veterinary Affairs and Fisheries Division for the 2012 Farm License) and the additions carried out were simply to facilitate the workings of the chicken farm. If the preservation of the batteries was a prerogative then previous permits should never have been issued.

8. It is unfair that in view that the site lies within 183 metres from an inhabited area the proposal has been refused, considering that at the time when the chicken farm started to be operative, no inhabited areas existed and/or Local Plans drafted indicating limits to development. Residential properties started to develop within the stipulated range much after, during the late 1980's (vide enclosed 1978/88 MEPA aerial photos), and since then the farm never had complaints for bad neighbourliness with respect to its activity as a chicken farm. Residents were/are aware of the activity within the site in question, especially being the only one within 500 metres radius from the proposed site (vide enclosed copy of declaration from the Ministry for Rural Affairs and the Environment dated 28th June 2007). As such, precedence should be granted to the Applicant with conditions saving third party rights.

9. It is questionable why the Food and Veterinary Regulation Division did not consent to the development in question, especially knowing that the proposal is not for a change in use but rather an extension to the farm in order to bring the latter in line with the issued Farm License, and current animal welfare and sanitary policies. As such, any negative impacts that this activity might have (if any) on the neighbouring residential properties were already present prior to such extensions. Thus, the Food and Veterinary Regulation Division should have confirmed that the proposed additions, which include waste management facilities, poultry units and a boundary wall, will not create negative impacts of amenity and health of nearby residents in the development area. On the contrary these additions will ensure that the chicken farm is respecting policies stipulated by the the respective department, and which policies have been created to avoid any such negative impacts.

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10. Reference is made to letter dated 19th May 2011, issued from the Food and Veterinary Regulation Division wherein the latter department did not oppose to the proposal. On the contrary the Veterinary Regulation Directorate pointed out the commitment that the premises in caption possessed during these last 30 years up to today. This same commitment will not be altered in any way by the proposal in question, as the proposal only seeks to enhance and modernise the farm in order to conform to today's standards.

11. Following a telephone conversation between the undersigned and the Veterinary Regulation Directorate representative, Mr. Reuben Montebello, please note that by next year, if any farm is found without an adequate waste management system similar to the one being proposed, the license will be revoked without notice. Therefore failing to consider the proposal in question automatically implies the closing-down of the latter farm after an operational period of over 30 years.

12. Reference is made to the attached contract of sale for the farm in caption. As per contract, only one battery out of the still existing three batteries on site is located within my Client's property (vide enclosed registered copy of site plan indicating boundaries of property and 1957 MEPA aerial photos). The remaining two batteries are still in good condition though their age, without any sort of accretion.

13. Considering the long use of the battery in question, over the past decades, for animal husbandry, the latter battery has been already heavily comprised and degraded. My Client is ready to professionally restore to its original state the adjacent batteries located on third party properties at his own expense and/or pay a monetary contribution to a department which the Planning Appeals Board deems adequate if the Board decides to grant my Client permission for the proposal in caption. In doing so, my Client will be ensuring that policy UCO 11, 12 and 13 are observed with regards to the rest of the adjacent batteries, which batteries are not committed and degraded as my Client's battery."

K. Il-verbal tas-Seduta numru 46, mizmuma fid-29 ta' Mejju 2012, senjatament il-punti segwenti:

"Dr. De Gaetano informa lit-Tribunal illi l-enforcement officer Mario Grima ikkonfermat li m'ghadux isir l-uzu ta' depot ghal gas cylinder mis-sit. Pero' il-passaggj esfaltata u l-hitan tal-franka indikati fl-avviz, ghadhom fus is-sit."

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L. In-nota third statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fit-22 ta' Frar 2011, precizament il-punti segwenti:

"1. Re: Point 3 and 4:

The appellant cannot claim that Building B does not form part of the proposed sanctioning since it is indicated as part of the proposal according to the Block plan. In fact, the appellant never stated otherwise either during the application stage nor during the appeals.

Furthermore, it is misleading to refer to Building B as a pre-1967 building since the current structure has nothing to do with what existed before 1967. If the appellant insists that the current application does not include the sanctioning of this structure (any extension to this building carried after 1967) than the provisions of Article 14 of LN 514/10 applies. This means that no permit can if there are illegalities on site which are not being regularized in this application and which are in the control of the appellant.

In this case post-1967 extensions to this building require sanctioning since the appellant is confirming that it is not part of the farm but a farmer's dwelling. The 1992 concession (i.e. referring to illegal structures before 1992) is limited only to licensed farms and does not apply to farmer's dwellings (as per policy 2.3 E of the P&DG Agriculture - see paragraph 1 of this report).

The appellant is claiming that his grandfather Mr. Joseph Buhagiar has lived in Building B since before the Second World War. The Authority notes that this is quite unlikely given that the building forms part of a Second World War military complex - i.e. it did not exist for long before the war and when it existed, it formed part of the military machine and for residential purposes. Nevertheless even if the structure was used as a residence before 1967, any extensions carried after still require sanctioning (see previous paragraph) and indeed Building B experienced prolific extensions after 1988 (see aerial photographs explanation submitted with the second statement).

2. Re: Points 7, 12 and 13:

The appellant is claiming that the issue of the historical importance of the site has been superceded the moment a license for a chicken farm has been granted. Nevertheless, the appellant is contending that he is ready to restore the other military structures (i.e. that are not used as a farm) which are in a better condition.

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The Authority disagrees in that a license from the Department of Agriculture to operate a chicken farm on this site was never intended as a *carte blanche* nor was it a permit to extend the existing premises or to ruin the historical structures. The argument that the moment the license for a farm was granted the structures lost their merit (by way of the farming operation) does not hold water since it is clear that the majority of the accretions and extensions are relatively recent. This means that there was no severe loss of the historical fabric when the site was originally used as a farm - only when the operation started to expand.

On more than one occasion, the Directorate indicated that the World War II site is of historical importance and deserves to be conserved. This position was maintained and stressed by the Superintendent of Fortifications, the Superintendent of Cultural Heritage, and the Cultural Heritage Advisory Committee. Nonetheless illegal development has continued to take place in what is considered as one of the best remaining examples of this type of fortification in Malta.

In PAB 201/99 and PAB 393/00, the Planning Appeals Board had expressed itself quite extensively on the significance of the historic complex. In fact this was one of the main reasons why both appeals were dismissed. Of particular importance is the following statement by the Planning Appeals Board in PAB201/99: Il-preokkupazzjoni ta' dan il-Bord huwa l-valur intrinsiku tal-binja mil-lat storiku u ta' wirt nazzjonali ta' pajjizna. Il-Bord iħoss illi l-izvilupp li sar fuq il-binja znaturat il-binja nnifisha mill-importanza storika tagħha u kkompromettietha b'mod konsiderevoli u għalhekk, iz-zieda ta' seba' filati fuq il-hitan ezistenti tal-gunpost m'għandux jittiehed b'mod legger kif donnu qieghed jissottometti l-appellant. Il-binja kif ukoll il-kumplex kollu li jikkompriendi l-gun emplacement jimmerita illi jigi prezervat għall-godiment tal-pajjiz in generali u anke tat-turisti li jzuru dawn il-Gzejjer.

3. Re: Points 9, 10 and 11:

The Authority maintains that the appellant cannot argue that the Veterinary Regulation Division (VRD) should not have objected to the development. The appellant's comments in this regard are not even pertinent to the appeal since they relate to the position taken by the VRD and not the MEPA and the current proceedings are an appeal from the Authority's decision. As regards to the refusal in view of VRD's objection, the Authority is bound to take the advice of the competent authority on board. Moreover the decision of the VRD cannot be reviewed by the Tribunal as it is not the way the appellant can contest VRD's negative recommendation; it can only be contested by using VRD's own specific procedure.";

M. In-nota ta' sottomissjonijiet tal-Perit Daniel Grima għall-Appellant, ipprezentata fis-17 ta' Dicembru 2012, precizament il-punti segwenti:

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1. Re: Point 1:

MEPA is arguing that due to the fact that the property being sanctioned is located within the distance stipulated in Policy 2.3A i.e. 183m, the proposal in question cannot be considered. "...unless the Food and Veterinary Regulation Division consents to the development on the basis that this will not create adverse impacts in terms of the amenity and health of the residents in the neighbouring development zones/built-up areas, or that it will not create adverse impacts on such residents in addition to the situation that is already legally established;" (abstract from Policy 2.3A).

Attached please find copy of consent to the development in question from the Veterinary and Phytosanitary Regulation Department (vide Doc. A).

2. Re: Point 2:

Unlike what is being stated in the third statement that my Client's grandfather, Mr. Joseph Buhagiar, including his family, could not have resided before the Second World War in the property shown highlighted on the 1957 MEPA aerial photo, the attached Doc. B clearly indicates otherwise. Building B, shown highlighted in photo below, existed prior to the Second World War; in fact at that time it was a typical Maltese farm/farmhouse. The four batteries also shown on the photo below were built afterwards during the war (refer to minute 15 in PA/06439/98).

In PA/05784/08, MEPA's Environment and Planning Commissions (EPC) Board accepted a certificate that a plant capable of producing 14,400 chickens was in existence in 1988 and denied the fact whether the huge structure forming the broiler unit could be traced on the respective 1988 aerial photo – even though the latter aerial photo indicates an ancient farmhouse, smaller in area, dating back hundreds of years. This clearly shows that MEPA's decision was based on formal declarations rather than photos which might give a wrong interpretation of what really was built at the time of shooting. Similarly with PA/03229/07, this same Authority should refer to the attached Doc. B prior to commenting further on whether Building B, or part of, existed and was inhabited by my Client's ancestors before the Second World War. With reference to the aerial photographs explanation submitted with MEPA's second statement, any extensions to the whole chicken farm are being sanctioned in PA/03229/07 even though, for the reason previously stated, in PA/05784/08 such evidences from aerial photos have been discarded.

3. Re: Point 3:

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PA/03229/07 is seeking to sanction extension of a chicken farm and NOT the change of use from a military structure to a chicken farm. The military structure itself is already legally committed as a chicken farm. In no way was this structure ruined by the extension being sanctioned but rather during the course of all these years, considering that the structure itself has been transformed into a broiler unit, necessary for operating the chicken farm in question. As stated by the Veterinary and Phytosanitary Regulation Department (vide Doc. A), the number of broilers to be reared on this farm will not increase with the proposed sanctioning. As such the extension will ensure that further loss of the historical fabric will be reduced or even halted, considering that a large number of the broilers, if not all, will be shifted and reared in the extension being sanctioned. Both the Superintendent of Fortifications, the Superintendent of Cultural Heritage, and the Cultural Heritage Advisory Committee should give their consent to such an extension, which will ensure reduction and/or removal of the broilers from this military structure to a place of no historical importance.

4. Re: Point 4:

As stated by MEPA, the Authority is bound to take the advice of the competent Authority on board i.e. the Veterinary and Phytosanitary Regulation Department. Thus, as happened with the Veterinary and Phytosanitary Regulation Department (vide Doc. A), MEPA should overturn its decision regarding the development in question, considering that the proposal is not for a change of use but rather an extension to the farm, which extension will ensure that the military structure is not further damaged by its existing use (vide Point 3 above), and that the latter extension is necessary in order to bring the chicken farm in line with the latest issued farm license, and current animal welfare and sanitary policies.”

N. In-nota fourth statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fil-15 ta' Jannar 2013, precizament il-punti segwenti:

“2.1 Re: Veterinary Services' comments:

The Veterinary Services are declaring that the proposed sanctioning will not increase the productivity on site and thus there is no added impact on the residential neighbourhood.

The Authority does not dispute the fact that the proposed sanctioning will not increase the current productivity on site. What the Authority is stating is that the proposed sanctioning will increase the productivity / capacity of the farm from what is legally established on site.

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The following should explain the difference easily:

Building A as is includes over 400sq.m of illegal accretions on two floors and has a license for 5,000 broilers. Should these illegal units be sanctioned, Building A which as is has a capacity of 5,000 broilers will obviously remain with such a capacity.

However should the proposed sanctioning be refused (as the Authority already did) because the historic site does not merit these accretions, the said accretions must be removed. This means that using the standards set by the Food and Veterinary Regulation Division (13 birds per 1sq.m of space), Building A has only a legal capacity much less than that in existence.

2.2 Re: status and history of 'farmhouse':

2.2.1 The appellant is again claiming that the dwelling on site dates back as a residence from before the war. The appellant is actually arguing that first there was the farmhouse and the batteries came later during the war and paints a picture where the batteries and the 'farmhouse' are distinct properties.

The above situation is simply incorrect. The entire site formed part the 3.7" Heavy Anti-Aircraft Battery of Has-Said. The building housing the current dwelling was built specifically part of the fortification complex. This building (Building B) was the command post (including billet and H&R F position) of the HAA Battery. The appellant cannot even state that the farmhouse existed before and was only used as part of the battery later on since the survey sheets and more importantly the 1967 aerial photo clearly shows that the command post share a common design standard to all the command posts associated with the 3.7" batteries had. The appendix documents shed further light on this aspect.

The following is a detailed explanation of the above assertion, showing that the structure claimed to have been a farmhouse from before the wall was actually a purposely built command post:

'A typical prepared position for a troop of anti-aircraft guns consisted of four gun emplacements set out roughly in a semi-circular plan at a distance of around 150 feet from each other. To the rear and approximately in the centre if the semicircular layout stood the command post with small protective concrete pens for the height-and-range-finder and the predictor equipment, and the command post, together with a partially underground structure designed to house an officer and fourteen men. Situated nearby were magazines and stores, and other ancillary buildings, all

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enclosed within a barbed wire perimeter. The gun emplacements themselves were usually covered with camouflaged netting. The structures built in concrete were usually the guncrew accommodation, predictor, and height-and-range finder emplacement, the command post, magazines, explosive stores and instrument and ammunition recesses.'

[British Military Architecture, Stephen Spiteri, p. 547].

This HAA Battery of the Second World War is truly historical not only as it is still in good condition and is one of the best surviving examples of the last impressive fortifications in Malta, but also because it has sustained aerial enemy attack during which a Maltese Gunner died on the spot while defending his country

Therefore the Authority reiterates that the dwelling in Building B is illegal and is not being requested for sanctioning. Thus Article 14 of LN 514/10 applies.

2.3 Previous applications on site:

The Authority notes that there have been already 3 previous applications for similar proposals. These are PA6435/98 and PA6439/98 which were refused by DCC and refused by the Appeals Board and PA3986/04 which was refused by DCC and refused again on Reconsideration.

In PA6439/98, the EPD (which were a separate government entity at the time) also noted that this site is one of the last remaining Ack Ack batteries and the department was against the alterations and accretions to the existing structure. The Superintendence of Cultural Heritage also noted the cultural significance of the site. PA6435/98 and PA6439/98 were then refused by DCC. The files were also refused Appeal.

Enforcement Notices for works carried out without a permit were then issued. Another application (PA 3986/04) with a similar proposal to sanction existing accretions and further development was submitted which was also objected to by the IHM (today's HPU). The DC-EPD group in Minute 48 also objected to the development. The application was refused by DCC and on reconsideration on heritage grounds.

In view of the above planning development history, the Authority finds it incomprehensible for the appellant to continue to insist that the site has no historic value whatsoever in spite of the contrary decisions given by the Authority, the

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Tribunal, the Superintendence for Cultural Heritage and the Superintendent for Fortifications.

In PAB 201/99 and PAB 393/00, the Planning Appeals Board had expressed itself quite extensively on the significance of the historic complex. In fact this was one of the main reasons why both appeals were dismissed. Of particular importance is the following statement by the Planning Appeals Board in PAB201/99:

‘Il-preokkupazzjoni ta' dan il-Bord huwa l-valur intrinsiku tal-binja mil-lat storiku u ta' wirt nazzjonali ta' pajjizna. Il-Bord ihoss illi l-izvilupp li sar fuq il-binja znaturat il-binja nnifisha mill-importanza storika taghha u kkompromettietha b'mod konsiderevoli u ghalhekk, iz-zieda ta' seba' filati fuq il-hitan ezistenti tal-gunpost m'ghandux jittiehed b'mod legger kif donnu qieghed jissottometti l-appellant. Il-binja kif ukoll il-kumpless kollu li jikkompreni l-gun emplacement jimmerita illi jigi prezervat ghall-godiment tal-pajjiz in generali u anke tat-turisti li jzuru dawn il-Gzejjer’.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghas-sanar ta' estensjoni ta' razzett ghat-trobbija tat-tigieg li jinsab barra z-zona tal-izvilupp (ODZ) ta' Haz-Zabbar. Fid-dettal, it-talba tikkonsisti fis-sanar ta' zewg strutturi kif ukoll ghall-kostruzzjoni ta' demmiela u recint gholi hames filati.

Iz-zewg strutturi jikkonsistu f' binja konsistenti minn poultry units li jkopru firxa ta' madwar 70, 150 u 140 metri kwadri fuq zewg sulari, kif ukoll binja ohra ta' madwar 100 metru kwadru li jidher li nbriet qabel is-sena 1992, pero' b' uzu mhux specifikat.

Ir-razzett jinsab mibni f' sit li f' zmien it-Tieni Gwerra Dinija, kien jintuza bhala heavy anti-aircraft battery. Il-batterija per se kienet tikkonsisti f' erba gun emplacements li jduru madwar command post, ilkoll f' kundizzjoni relattivament tajba, u li skond l-Awtorita' huma reperti arkejologici importanti - rappresentattivi tal-fortifikazzjonijiet tas-seklu ghoxrin.

Precedent kienu gew intavolati tlett applikazzjonijiet fuq is-sit: PA 6435/98 u PA 6439/98 f' isem Joseph Buhagiar. Dawn kienu rispettivament jikkonsistu fis-sanar tar-razzett in ezami, kif ukoll f' talba sabiex gun emplacement minnhom jigi mgholli seba' filati sabiex jintuza bhala mahzen agrikolu. It-tnejn kienu gew rifjutati u r-rifjut ikkonfermat fil-fazi tal-appell. Kien ghalhekk li s-sit intlaqat b' avviz biex tieqaf u ta'

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twettieq ECF 1209/98. Sussegwentement, giet intavolata applikazzjoni sanatorja ohra PA 3986/04 li tixbah dik precedent izda f' isem l-appellant odjern. Din ukoll kienet giet rifjutata.

Ir-ragunijiet ghar-rfjut odjern jistghu jigu riassunti kif gej:

- Hawn si tratta minn sit storiku ta' interess arkitettoniku:

Il-poultry units fl-ewwel sular, il-waste management facilities kif ukoll ir-recint propost ser ihallu impatt negattiv fuq sit storiku kkunsidrat bhala wiehed mill ftit ezempji tajbin li baqa' ta' heavy anti-aircraft battery tat-Tieni Gwerra Dinija. It-talba hi ghalhekk in kontravvenzjoni tal-polcjes UCO 12 u UCO 13 tal-Pjan ta' Struttura li ghandhom bhala ghan, il-harsien ta' siti b' wirt kulturali.

- Intensifikazzjoni fl-operat u distanza mill-bini ezistenti:

Peress li r-razzett jinsab f' distanza ta' inqas minn 183 metri boghod minn residenzi ta' terzi, il-proposta ser tikkomprometti l-bonvicinat u di konsegwenza hi f' kunflitt mas-section 5 tal-policy 2.3A tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables. In oltre, l-Food and Veterinary Regulation Division ma tghatx il-kunsens taghha ghall-izvilupp.

L-aggravji tal-Appellant jistrieu fuq il-premessa li huwa self-employed bhala full-time farmer u li mis-sena 2007 huwa registrat bhala poultry breeder u ghandu licenzja (PBLM023) sabiex irabbi 5,000 broiler u 1,227 layers kull ciklu (u li jista' joqtol l-istess ammont ta' broilers hames drabi fis-sena). In oltre, ghalkemm ir-razzett ilhu hafna li gie stabbilit gewwa l-imsemmija anti-aircraft battery, madankollu ma saret l-ebda hsara lill-fdalijiet storici. Oltre minn dan jiddikjara li skond Food and Veterinary Regulation Division (FVRD), ghandu spazju ta' madwar 510 metri kwadri sabiex izomm it-tigieg (hafna inqas mill-ispazju li huwa ghandu prezentement). Minn dan isegwi li kieku r-razzett kien inkompatibbli ma' dawn ir-reperti storici, kieku ma kienx jigi permess ab initio.

F' sottomissjoni ulterjuri tal-25 ta' mejju 2012, l-Appellant jispjega kif inter alia, l-familja tieghu (sa almenu minn wara t-Tieni Gwerra Dinija kienu dejjem jghixu u jrabbu l-bhellem (originarjament il-majjal) f' dan ir-razzett. Sahansitra r-residenza tieghu tinsab hawnhekk. Madankollu, l-standards ghat-trobbija tat-tigieg illum saru ferm aktar ristrettivi minn darhi u ghalhekk illum kull tajra irid ikollha spazju ta' mill-inqas tlettax il-metru kwadru. Dan ifisser li l-firxa tar-razzett li hemm prezentement (u li qed jintalab is-sanar taghha) mhix wahda eccessiva, izda jekk din titnaqqar ulterjorment, tonqoslu il-kwota u r-razzett ma jibqax aktar vijabbli. Terga tghid,

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hemm anke bzonn ta' upgrading sabiex titpogga demmiela, altrimenti ir-razzett ma jkunx in linja man-norma u jkollu jieqaf l-operat tieghu.

L-Awtorita' zammet ferm l-oggezzjoni taghha u qabel xejn iddikjarat li l-mertu tal-applikazzjoni de quo gja' gie ezaminat fl-applikazzjonijiet precedenti (kif ruilevatr supra) u li dawn kinu kollha gew rifjutati – tant li kienet anke harget enforcement notice ghaliex l-illegalitajiet baqghu ma tnehhewx. Tirrileva wkoll li f' medda ta' ghaxar snin wara l-1994, zdieđu wkoll l-illegalitajiet. Gew anke pprezentati sensiela ta' ritratti mill-ajru li jispjegaw kif teal' l-izvilupp (illegali) fuq medda ta' zmien.

Mhux kontestat il-fatt li peress li s-sit kien jintuza bhala razzett qabel is-sena 1992, l-attivita' hi wahda permessibbli, madankollu l-Awtorita' tikkontendi li s-sit gie talment modifikat bl-accretions u l-addizzjonijiet li nbnew maz-zmien, li m' ghadux aktar possibbli li l-heavy anti-aircraft battery tinftiehem.

Barra minn hekk, l-Awtorita' tirrileva li ghalkemm skond il-policies sucitati, razzett li ma jinsabx boghod bizzejjed mill-konfini tal-izvilupp, jista' f' kazijiet eccezzjonali, jigi approvat mill-Food and Veterinary Regulation Division (FVRD), fil-kaz in ezami ma giet sottomessa l-ebda prova li l-FVRD ma kienietx qed toggezzjona ghat-trobbija tat-tigieg.

Qabel xejn, tajjed li jigi nutat ukoll li fil-mori tal-appell, inhareg avviz biex tieqaf u ta' twettieq ulterjuri ECF 291/11 li ma sarx appell minnu, u li jaqra' kif gej:

“Ghandek zvilupp minghajr permess li jikkonsisti minn: bdil t' uzu t' art ghal hazna ta cilindri tal-gass u pparkjar ta' trakkijiet u karożzi. depozitu u hazna ta' gebel tal-franka. Iffurmajt trejqa miksija bit-tarmac u bnejt hajt bil kantun tal-franka li jhares fuq l-istess trejqa”

Jidher li ghalkemm illum il-hazna tac-cilindri tal-gass LPG tnehhiet, madankollu it-trejqa li giet iffurmata ghada fil-post. Peress li mhux qed jintalab is-sanar taghha, japplika l-Artikolu 14 tal-Avviz Legali 514 tal-2010.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, skond il-kopji tad-dokumenti annessi mal-appell odjern, jigi rilevat li gja' fis-sena 1998, Emanuel Buhagiar kien registrat full-time sabiex irabbi mitejn layer u tmien-t elef broiler u li ma kellux dipendenti jahdmu mieghu. (dok. D) Dan hu wkoll ikkonfermat mill-employment history (dok. C) fejn hu ndikat li l-istess Emanuel Buhagiar beda' jahdem bhala full-

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time famer mis-sena 1984. Imbagħad, fis-sena 2007 inhargitlu licenzja sabiex irabbi ftit izjed minn elf u mitejn layer u hames-t elef broiler, cjoe' zieda ta' 614% fin-numru ta' layers u tnaqqis ta' 63% f' dawk li huma broilers. (dok. B)

Minn korrispondenza tal-ufficjal veterinarju tal-Gvern (dok. A), jigi rilevat li l-prassi hi li l-kwota ta' qtil tal-broilers hi l-massimu li razzett partikolari jkun jiflah - cjoe' fil-kaz in ezami 5,000 tigiega – u li l-qatla ssir hames darbiet f' sena (five annual cycles). Dan ifisser li jekk għall-grazzja tal-argument l-istandards tat-trobbija tat-tigieg baqa' l-istess tul iz-zmien kollu li r-razzett ilhu jopera – cjoe' li l-ispazju/volum li kull tigiega tokkupa baqa' l-istess – allura jista' jingħad li minn aspett t' intensifikazzjoni tal-operat, il-fatt li l-ammont ta' broilers naqas b' 63% (i.e. minn tmienja għal hames t'elef broiler), ir-razzett naqqas fil-produttività tal-broilers. Madankollu, skond l-istess dikjarazzjonijiet tal-Appellant (sottomissjoni tal-25 ta' Mejju 2012), bl-animal welfare standards in vigore, illum it-tajr jingħatalu hafna aktar spazju biex jimrah (milli qabel). Għalhekk jekk xejn, jista' jingħad li llum nonostante l-fatt li n-numru ta' broilers naqsu ma jfissirx li hemm spazju notevoli li mhux qed jigi utilizzat fir-razzett – izda li l-broilers qed jgħixu f' kundizzjonijiet aktar komdi.

L-istess pero', ma jistax jingħad għall-layers; għax kemm il-darba jigi kkunsidrat il-fatt li fil-perjodu in ezami, in-numru ta' dawn zdied gmielu - b' 614% cjoe', minn 200 għal 1227 layers - zgur li l-kwsitjoni ta' spazju giet ikkawzata biz-zieda sostanzjali fin-numru eccessiv ta' layers.

Tajjeb li jigi osservat ukoll, li ma giet sottomessa l-ebda kopja tal-licenzji li nhargu fil-perjodu bejn is-sena 2007 u llum, bhala konferma tan-numru ta' tigieg li jitrabbew f'dan ir-razzett. Madankollu, ittra recenti tal-istess ufficjal veterinarju (dok. A - fis-sottomissjoni tas-17 ta' Dicembru 2012), apparti li tikkonferma dak li qed jingħad supra – cjoe' li in kwantu l-broilers, mhux ser ikun hemm zieda fl-operat - għal dak li jirrigwarda layers, gie ddikjarat li “this farm has ceased in the production of eggs by removing and dismantling all un-enriched cages [...] since January 2012”.

Għalkemm l-argumenti tal-Appellant jistrieħu fuq il-fatt li llum trid aktar spazju sabiex trabbi t-tigieg, ma ngiebet l-ebda prova ta' kif qed jigi utilizzat l-ispazju li precedentement kienu jokkupaw il-layers. Oltre minn hekk, mhux talli din il-korrispondenza tal-ufficjal veterinarju hi prova cara li l-ispazju li qabel kien uzat mill-1,227 layer illum gie liberat, talli, tispjega wkoll li almenu sa s-sena 1979, fuq dan l-istess razzett kien predominantement jinzamm il-majjal. Dan kollu qed jingħad in kwantu fis-sottomissjonijiet tieghu l-Appellant jilmenta l-fatt li l-ewwel l-awtoritajiet hallewh jagħmel razzett f' dan is-sit storiku, imbagħad illum qed rinfaccat b'dan ir-rifjut. Mhux komputu ta' dan it-Tribunal li jissindika d-decizjonijiet li ttieħdu mill-Gvern decenni ilu, madankollu wiehed jifhem li altru razzett tal-majjal u altru wiehed tat-tigieg. Zgur li bhala principju, wiehed jistenna li t-trobbija tat-tjur hi ferm inqas

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invasiva fuq binja bhal din (u tirrikjedi inqas spazju) milli per ezempju razzett tal-bhejjem.

Izda anke jekk jista' jigi argumenttat li dan mhux il-kaz – u li razzett tat-tigieg huwa daqstant impenjattiv fuq sit storiku daqs wiehed tal-majjal, zgur li bl-istess argument tal-Appellant, li illum saret qabza fil-kwalita' f' dak li huwa animal welfare, jista' jintuza ghall-siti storici. Fejn qabel ftit li xejn kienet tinghatalhom attenzjoni, illum postijiet bhal dawn zdiedetilhom is-sensibilita' popolari. Ghalhekk, kemm il-darba illum zdieded is-sensibilita' lejn annimali, zdied ukoll l-apprezzament ghall-wirt kulturali.

Minn dan isegwi li apparti l-kwistjoni ta' bonvicinat, is-salvagwardja tal-heavy anti-aircraft battery timmerita wkoll kunsiderazzjoni importanti, u kemm il-darba Appellant jirnexxilu li jipprova ex admissis (bhalma fuq kollox hu l-kaz in ezami) li l-operat tar-razzett tieghu has outgrown its purpose, minflok li jithalla jhassar sit storiku – li wara kollox huwa irriversibbli u bhala provenjenza jmur lura ghal qabel ir-razzett tat-tigieg – allura huwa ferm aktar ragonjevoli li jigi rilokat ir-razzett. Dan qed jinghad inkwantu t-tezi tal-Appellant li r-razzett hu aktar qadim mill-heavy anti-aircraft battery ma treggix; ghax huwa impensabbli li stallazzjoni militari bhal din li nbriet ex novo taghmel uzu minn razzett ezistenti. Anke r-ritratti mill-ajru sottomessi fil-mori tal-appell juru car li l-istallazzjoni militari hi wahda perfettament geometrika.

Fl-ahharnett, jigi osservat li kif jidher mir-ritratti mill-ajru, peress li parti sostanzjali tal-izvilupp li qed jigi ttenat is-sanar tieghu inbniet wara s-sena 1992, hemm ukoll il-kwistjoni li t-talba trid tigi kkunsidrata daqslikieku operat gdid. Minn dan isegwi li l-Awtroita' imxiet tajjeb meta wieznet it-talba de quo fid-dawl tal-policy 2.3 et seq. tal-Policy and Design Guidance sucitat.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 3229/07 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-25 ta' Mejju 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segweni:

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1. Wahda mill-konkluzzjonijiet tat-Tribunal li l-applikazzjoni ma sabitx il-kunsens tal-Food and Veterinary Division hi errata għax l-istess Tribunal ikkwota mill-istess permess u billi dan kien fatt determinanti għad-decizjoni li wasal għaliha t-Tribunal, jikkostitwixxi punt ta' ligi appellabbli u d-decizjoni għandha tigi revokata;

2. It-Tribunal naqas li jevalwa l-aggravju tad-dritt kweżit li għandu l-appellant. It-talba kellha tigi miftehma fl-ambitu tad-dover li għandu l-appellant biex ikabbar is-sit biex ikun konformi mal-ligijiet. Il-permess li għandu l-appellant għat-tkabbir tat-tigieg fil-fatt gie rikonoxxut mit-Tribunal pero flok qabel is-sensitivita tal-applikazzjoni mad-dover tal-applikant skond il-ligi, għamel biss apprezzament kulturali taz-zona li hu già kommess bl-izvilupp tal-istess applikant li fuqu għandu dritt kweżit u kwindi konsiderazzjonijiet dwar wirt storiku ma jstgħux jipprevalu fuq dritt.

L-ewwel aggravju

Dan l-aggravju hu wiehed li jisthoqqlu jigi milqugh in parte. Bħala fatt it-Tribunal accetta li l-Food and Veterinary Division f'ittra tat- 3 ta' Dicembru 2012 (Dok. A a fol. 87 tal-process) iddikjara li t-trobbija tat-tigieg bil-permess PBLM 023 mhux ser jizdied bis-sanzjonar mitlub u illi 'immediate neighbourhood is not envisaged to experience any increase in adverse impacts with the approval of the sanctioning'. Din id-dikjarazzjoni skond l-appellant titfa' dubju fuq it-tielet u raba raguni ta' rifjut tal-Awtorita a bazi tal-policy 2.3 Policy and Design Guidance on Agriculture, Farm Diversification and Stables. Din il-policy tistabilixxi illi fejn zviluppi jkun f'distanza vicin l-abitat iridu l-konferma tad-dipartiment veterinarju illi mhux ser ikun hemm zieda fl-impatt negattiv fuq ir-residenti fid-development zone fil-vicin.

It-Tribunal qabel mal-Awtorita li l-proposta giet evalwata sew mill-Awtorita meta wieżnet it-talba taht il-policy 2.3 suicitata. Dan ifisser kif jimplika l-appellant li t-Tribunal injora l-ittra tad-dipartiment. Qari tal-ittra tad-dipartiment ma twassalx għal konkluzzjoni li qed jaqbel mal-Awtorita, anzi jikkonferma dak li jrid il-policy 2.3 biex zvilupp, taht dak l-aspett tal-policy, jigi accettabbli cioe li ma jkunx hemm zieda, fl-impatt negattiv. Dan hu precizament dak li tghid l-ittra tad-dipartiment. It-Tribunal għalhekk ma setax jikkonkludi fuq bazi purament legali li l-Awtorita kellha ragun f'din il-parti tar-rifjut tal-applikazzjoni. Irid jigi kunsidrat pero illi fiz-zmien tar-rifjut tal-Awtorita, id-dipartiment ma kienx għadu għamel din id-dikjarazzjoni pero t-Tribunal kellu l-ittra a dispozizzjoni tiegħu.

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Ghalhekk dan l-aggravju jisthoqqlu jigi milqugh ghal din il-parti tal-aggravju.

Pero din il-Qorti ma taqbilx mal-appellant li t-Tribunal ha zball tant importanti u essenzjali ghal ezitu tal-appell li wahdu jimmerita li l-appell jigi revokat ghaliex hemm ragunijiet ohra li waslu lit-Tribunal biex jichad l-appell li wahedhom ukoll setghu jwasslu ghal nuqqas ta' approvazzjoni tal-applikazzjoni. Tali ragunijiet li ser ikunu s-suggett tat-tieni aggravju jistghu, jekk jinstabu gustifikati, iwasslu ghal konferma tad-decizjoni tat-Tribunal peress illi tali decizjoni tkun sostanzjalment gusta u l-ilqugh tal-ewwel aggravju ma jimpingix fuq il-gustifikazzjoni tad-decizjoni fis-sustanza taghha.

It-tieni aggravju

L-appellant isostni li t-Tribunal naqas li jevalwa l-aggravju tad-dritt kwezit tal-appellant fuq l-istrutturi li fuqhom ma hemmx kwistjoni, mal-obbligu tieghu li jikkonforma ruhu mal-ligijiet tal-pajjiz rigward it-trobbija tal-tigieg, kif ukoll naqas li jaghti d-debita importanza ghal fatt li s-sit hu kommest ghat-trobbija tat-tigieg.

Din il-Qorti tqis tali aggravju bhala tentattiv biex din il-Qorti tevalwa hi l-fatti biex tiggustifika t-talba tal-appellant. Ebda kwistjoni legali ta' dritt deciz mit-Tribunal ma qed jigi invokat izda biss apprezzament mill-gdid tal-fatti li jistghu jwasslu lil diversi persuni ghal daqstant diversi opinjonijiet u konkluzzjonijiet.

Hu indubitat illi l-parti tar-razzett mhux kopert bit-talba ghas-sanzjoni mhux qed tigi mimsusa bid-decizjoni tat-Tribunal. L-appellant pero ma jistax javventaggja ruhu u josostni xi dritt kwezit fuq dak li hu illegali. Altru ottemperanza ma' ligijiet dwar trobbija ta' annimali dment li jikkollok is-sit munit bil-permess ta' ippjanar ghal tali skop u l-kaz odjern fejn is-sit, fl-opinjoni esperta tat-Tribunal ghandu partijiet sostanzjali mhux koperti b'permess ta' zvilupp. L-appellant ma jistax jiggustifika t-talba tieghu billi jissottometti li ghandu l-permess ghat-

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thaddim tas-sit. Iz-zewg premessi huma distinti u l-appellant kellu l-ewwel jassigura li s-sit hu munit bil-permess tal-bini qabel japplika u jottjeni permessi ghal uzu specifiku meta seta' ma kellux l-ispazju necessarju munit b'permess ta' zvilupp, ghal tali skop.

It-Tribunal wizen jekk is-sanzjonar tal-illegalitajiet kienx kompatibbli mad-desinjazzjoni tas-sit u wasal ghal konklużjoni li s-sit hu ta' natura storika tali, illi l-izvilupp li qed jintalab jigi sanzjonat kien ser ikun ta' pregudizzju wisq gravi biex tali zvilupp jigi sanjonat. It-Tribunal hu fdat bid-diskrezzjoni li jevalwa kwistjonijiet teknici u kwistjonijiet ta' ipplanar u din il-Qorti ma ghandhiex il-poter li tissindakahom sakemm ma jkunx gie kommess zball ta' fatt grossolan li wassal ghas-sustanza essenzjali tad-decizjoni jew fejn it-Tribunal ikun naqas li jagixxi skond il-principji ta' gustizzja naturali. Dan ma sehnx f'dan il-kaz.

L-appellant jissottometti illi s-sit hu kommess. Dan hu minnu u t-Tribunal bl-ebda mod ma jcahhad lil appellant. Pero dan japplika biss ghal dak kollu li mhux kopert bis-sanzjoni tal-izvilupp mitlub. Jekk l-appellant ma jstax jopera kif inhu minghajr is-sanzjonar tal-bini illegali hi kwistjoni li t-Tribunal ma kellux jidhol fiha kif fil-fatt ma ghamilx. Dan mhux komputu tieghu. Il-konsegwenzi tal-agir illegali tal-appellant irid jefaghhom l-appellant. It-Tribunal qies l-importanza storika tas-sit kompromess kif inhu bl-izvilupp u uzu minghajr is-sanzjoni mitluba u ikkonkluda li hi tali li s-sanzjonar tal-izvilupp illegali ulterjuri miltub ser ikun irriversibbli ghas-sit storiku. Kwindi t-Tribunal b'hekk ikkonferma l-ewwel u tieni raguni ta' rifjut tal-Awtorita.

Decide

Ghalhekk in linea ma' dak deciz, il-Qorti ghalkemm tilqa' in parte l-ewwel aggravju tal-appellant, pero billi t-tieni aggravju mhux gustifikat u ghalhekk id-decizjoni tat-Tribunal fis-sustanza decisiva taghha ghal ragunijiet ohra ta' rifjut tal-applikazzjoni hi valida u jisthoqqilha tigi konfermata, qed tichad l-appell tal-appellant u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' April 2014. Bl-ispejjez fic-cirkostanzi jiqghu bla taxxa.

< Sentenza Finali >

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