



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-27 ta' Novembru, 2014

Appell Civili Numru. 37/2014

Maria Dolores Calleja

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Maria Dolores Calleja tat-2 ta' Lulju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-12 ta' Gunju 2014 rigward PA 1148/04 'to sanction farmhouse with garage';

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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 pprezentata fl-1 ta' Marzu 2004, Full Development Permission PA 1148/04 l-appellanti f'sit Il-Mahzen, Pwales Road, San Pawl il-Bahar talbet:

“To sanction farmhouse with garage.”

L-applikazzjoni giet michuda fl-4 ta' Jannar 2005; saret talba ghal reconsideration izda d-decizjoni originali giet ikkonfermata b'rifjut tat-13 ta' Novembru 2009 ghar-ragunijiet segwenti:

"1. This proposed development is not related to the management of the Simar Special Area of Conservation (SAC) and is considered as potentially having a significant impact on the favourable conservation of the SAC. The proposal thus runs counter to the preservation status and conservation of the SAC, as stated in LN257/03 Flora, Fauna and Natural Habitats Protection Regulations and also to the Trees and Woodland (Protection) Regulations, Legal Notice 12/01, in view of the removal of protected trees.

2. There is no apparent justification why applicant requires to reside close to this holding. The proposal lacks sound evidence that applicant's farming enterprise entails intensive arable farming, hence the proposal does not meet the objectives of Section 1.4.3 of the adopted Policy and Design Guidance: Farmhouses and Agricultural Buildings.

3. The proposed floor space exceeds the maximum limit of 150m² set out in paragraph 8.2(iii) of Policy PLP 20 - Development Control Guidance: Developments Outside Built-up Areas. The proposed footprint also exceeds the maximum limit of

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100m² set out in the adopted Policy and Design Guidance: Farmhouses and Agricultural Buildings (paragraph 1.7.1, p. 7).

4. The proposal does conform to the design objectives of Section 2.5 of Policy and Design Guidance: Farmhouses and Agricultural Buildings, which seeks to achieve a more informal, broken and less regimented massing than might be appropriate in an urban context."

FI-Appell tieghu l-Perit Anton Zammit ghall-appellanti ssottometta s-segweni:

"With reference to the above mentioned application and to the refusal issued on the 13/11/09, we are hereby requesting for an Appeal hearing of the said case for the following reasons:-

- The said farmhouse lies on the same site of previously approved legal structure covered by permit PB 1420/92. The issuing of such permit clearly indicates that the Planning Authority had no obligation to the construction of a permanent structure in this particular area. The permitted development and construction of a store on stie is a clear proof that the site has already been tainted with a development permit. Thus the area is considered to be already committed for development, and therefore to state that 'This proposed development... is considered as potentially having a significant impact on the favourable conservation of the SAC' is not justified. Eventually, this permit triggered the applicant to alter and extend his main proposal for a dwelling, in order to meet with his family's daily agricultural tasks.

Thus, the green light given by MEPA for the development within this area demonstrates and confirms that the site's geomorphologic characteristics and contours were not being jeopardized by the development. One has to keep in mind that the area permitted for the construction of a store amounts to 80m², which is a bit less than half the area of the whole structure here being assessed. Any structure would have definitely not endangered the flora and fauna and other natural habitats within this area, especially when one considers that there are several other dwellings and buildings in the immediate vicinity of the residence in question.

Reason for refusal (2): the applicant has submitted more than necessary information to document that she is a full-time farmer. The comments brought forward by the Planning Directorate regarding the outcrop produced by the applicant's family are very subjective. There are no quantified reasons to categorize whether a full-time farmer's enterprise entails intensive arable farming or not. The

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sound evidence is that the applicant is a registered full-time farmer, and has been a full-time farmer for a considerable number of years. This evidence includes detailed records from the Agriculture Department which substantiate this fact, and moreover they pre date this application.

It is also to be noted, that the applicant has submitted in the course of the application a revised set of drawings which indicate a proposed footprint of 100m² and 50m² at first floor level as stipulated by the then existing policies. There exist a number of cases where approved stores in ODZ areas were granted a change of use into a residential dwelling and thus we expect MEPA to remain consistent with previous decisions it has previously taken in similar situations.

From a socio-economical point of view, the refusal of such sanctioning will deprive a family from their fundamental rights in having a dwelling of their own. This is the only dwelling owned by the family, and the consequences of such a decision by MEPA is vital for this family. In addition, eradicating the applicant's benefit to reside close to his crop land will hinder his farming activity and heavily disrupt his living and finances.

The policy mentioned in the reason for refusal is outdated since the documentation mentioned has been superseded with new policies.

Reason no. 3 – Notwithstanding what is being stated, the maximum limit of 100m² as mentioned in this reason for refusal has been superseded by new policies as per policy 2.2B of the DC Guidance – Agriculture, Farm Diversification and Stables.

This limit has now been set to 150m², and in which case the said residence has an area of approximately 150m² measured externally and which area is in this case is assumed to be in line with the policy. Thus there is no justification for this reason for refusal. The garage is obviously utilized as a storage/garage and a full time farmer has more than one need for such a storage to garage his vehicles/plant.

Finally with regards to reason number 4, please note that we fully agree with your reasoning.

Concluding, whilst reserving the right to submit further arguments, we request MEPA to understand that this is a genuine case and that the reasons being brought

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for refusal by MEPA do not take into account the full reality of the situation. You are kindly requested to hear this appeal and to grant the said hearing.”

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

"5.1 The proposed development was originally assessed against the Policy & Design Guidance 'Farmhouses & Agricultural Buildings' (February, 1995). However, this policy was replaced by the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables', which came into force in January 2008. Consideration to residential units for full-time arable farmers is subject to assessment against Policy 2.2B, which now provides clearer guidance when assessing such requests.

5.2 The Planning Appeals Board is now obliged to decide this appeal against the provisions of the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables', in line with the Court of Appeal decision Angelo Farrugia vs. Planning Authority (24th April, 1996) as all decisions are to be taken against plans and policies that are in force at the time of the decision. In the appeal presented for this application, the appellant also highlights the fact that the provisions of this policy are to be applied to this application.

5.3 In fact, when applying the Policy 2.2B of the present agricultural policy, reasons for refusal (3) & (4) are no longer applicable due to the revised drawings that were presented at 53H, I & J. These revised drawing provide an improved external design for the residential building, and also respects the footprint and floorspace limitations set out in Policy 2.2B. The Planning Directorate had informed the DCC of this in Notes to Committee (6) of the Reconsideration report at blue 54. Nevertheless, the Planning Directorate had also informed the DCC that reasons for refusal (1) & (2) were still applicable, in that:

A. The proposal negatively effects the protection of the Special Area of Conservation (SAC) of Is-Simar. The site was formerly a steppe/garigue area, and the proposal has resulted in the destruction of such protected natural habitat. It has also become evident that the proposal has resulted in the removal of protected trees. The proposal offers no form of benefits to the preservation status and conservation of this SAC, and is therefore counter to Policy 2.2B(5). This criterion clearly states that any proposed full-time farmer's dwelling is not to be located within a scheduled, listed, designated or protected area or site of ecological, scientific, cultural, archaeological or landscape value;

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B. The proposed development is not considered to be justified on sound planning grounds, as the applicant has failed to present suitable justification as to why the proposed residence is required to support her full-time arable agriculture enterprise. Moreover, the provisions of Policy 2.2B further support this reason for refusal, as the applicant does not qualify for such a development in terms of the minimum eligibility criteria, including the need for:

- The applicant's arable land holding to be located over 1 kilometre away from the development boundary, as required by criterion (1). The applicant's agricultural land holding is located at an average of only 500 metres from the development zone boundary, and hence entailing that this agricultural land can be easily accessed from a residential site located within the development zone boundary;
- The applicant's agricultural enterprise does not qualify as an intensive agricultural enterprise, as the applicant's arable farm has not produced sales of at least Lm10,000 worth of produce for three years prior to this application, as required by criterion (2). The documents at 53G indicate that for the year 2003, the applicant sold only a total of Lm3,494.30 worth of produce, while documentation for the years 2004 & 2005 are incomplete;
- The applicant's registered arable cultivated land holding occupies a total land area of significantly less than 30 tumoli, as required by criterion (3). The applicant's agricultural registration card indicates that while registered as a full-time farmer, the total agricultural land holding only amounts to 12.3.0 tumoli of land.

These three factors determine whether the location of the proposed dwelling, the extent of agricultural produce sold by the applicant, and the extent of land cultivated by the applicant, merit the construction of a full-time farmer's residence outside the development zone. As all the minimum requirements of these three criteria are not met by the applicant, the proposed dwelling is not considered to be justified on sound planning grounds."

B'nota pprezentata fit-13 ta' Settembru 2010, l-Perit Robert Musumeci ghall-Appellant ssottometta kif gej:

"1. Illi permezz ta' decizjoni moghtija nhar l-erbgha (04) ta' Jannar 2005, il-Kummissjoni ghall-Kontroll ta' l-izvilupp (DCC) cahdet it-talba odjerna, sabiex ikunu sanzjonati farmhouse u garage, maghrufa bhala "Il-Mahzen" fi Triq Pwales San Pawl il-Bahar.

2. Illi fi stadju ta' rikunsiderazzjoni, l-applikanta modifikat il-pjanti proposti (ara 53H, I u J fil-file relattiv), b'dan illi l-area kumplessiva ta' l-izvilupp odjern giet ridotta ghal 150 metri kwadri.

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3. Illi madankollu, dan il- permess gie michud fi stadju ta' rikunsiderazzjoni nhar l-gahxra (10) ta' Novembru 2009.

4. Illi l-applikanta intavolat dan l-appell quddiem dan l- onorabli Bord permezz tal-perit Anton Zammit.

5. Illi sussegwentement, il- perit sottoskritt beda jassumi l-inkarigu ta' din l-applikazzjoni.

6. Illi l-Awtorita appellata baghtet ir-risposta taghha datata 9 ta' Awwissu 2010, fejn indikat li it-tielet u r-raba ragunijiet ghar-rifjut ma kienux ghadhom applikabbli. (ara 5.3 fir-rapport ta' l- Awtorita datat 9 ta' Awwissu 2010)

7. Illi madankollu l- Awtorita appellata qed tinsiti li l-ewwel u t-tieni raguni ghar-rifjut ghandhom jibqghu fis-sehh u ghalhekk l-appellanta qed issostni is-segventi f'dan ir-rigward stante li ma taqbilx ma dik id-decisjoni kif mehuda.

8. Illi dwar l- ewwel raguni ghar-rifjut, u cioe' "the site was formerly a steppe/ garigue area and the proposal has resulted in the destruction of such protected natural habitat....the proposal has resulted in the destruction of the removal of protected trees" irid jinghad li dawn il- konkluzjonijiet huma nfondati. Ta' min ifakkar li l-istess Awtorita kienet diga hadet konjizzjoni tal-karatteristici tas-sit meta hi stess kienet approvat zvilupp konsistenti minn agricultural store mdaqqas (PA1420/92) fuq is-sit odjern. Dan l- izvilupp (li illum gie konvertit fir-residenza odjerna) kien gie permess f'din iz-zona wara li l- Awtorita' ikkonstatat li s-sit in kwistjoni kien jikkonsisti f' bicca art mitluqa, u mhux "steppe/garrigue" kif qed ikun allegat mill-istess Awtorita' f'dan l-istadju. Fil- fatt, l- Awtorita harget ilpermess imsemmi (PA1420/92) fuq area kumplessiva ta' 79 metri kwadri wara li qieset bir-reqqa il-policies RCO 4 u RCO 8 (fil- Pjan ta' Struttura), u cioe' wara li l- Kummissjoni stabbiliet li zvilupp f'din iz-zona ma kien bl-ebda mod se jippregudika il- valur ekologiku tas-sit u l-madwar. Fi kliem iehor, kieku kien minnu li iz-zona odjerna hi wahda ta' valur ekologiku, kien jispetta lill- istess Awtorita li tichad l-applikazzjoni PA1420/92.

9. Illi hawnhekk irid jinghad li l-izvilupp odjern si tratta ta estensjoni zghira ma l-istruttura li kienet approvata permezz ta' PA1420/92. B'hekk jirrizulta li l-izvilupp odjern ma kienx jinvolvi (jew se jinvolvi) il- qlugh ta' sigar jew "shrubs" u wisq anqas, se jkun ippregudika il- valur ekologiku taz-zona meta l-istess Awtorita, kif diga spjegat, diga harget permess ghal struttura ta' 79 metri kwadri.

10. Illi dwar il- kwistjoni fejn qed ikun sostnut illi “This proposed development is not related to the management of the Simar Special Area of Conservation (SAC) and is considered as potentially having a significant impact on the favourable conservation of the SAC”, irid jingahd li uzu residenzjali hu meqjus bhala uzu accettabli (ghal kuntrarju per ezempju ta' attivita industrijali) f' tali zona, aktar w aktar meta ir-residenza hi konnessa ma operat agrikolu fl-istess zona.. Dan il- principju hu ben stabbilit f' numru ta' decizjonijiet moghtija mill- istess Awtorita , kif ukoll mill- Bord ta' l-Appell dwar l- Ippjanar. (Ara decizjoni tad- DCC PA 7633/05 u decizjoni tal-Bord ta' l- Appell fl-ismijiet George Farrugia kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar PAB 89/09 RT.PA 1011/08) F'dawn iz-zewg kazijiet gew approvati residenzi f'zoni li huma Special Area of Conservation (SAC), liema decizjonijiet ma gewx ikkontestati a bazi ta' allegat ksur ta' Artiklu 39 A rizultanti minn “zball f'dokument li jidher minn eżami ta' l-istess dokument” (fil- kaz ta' PA7633/05) jew allegat ksur ta' punt ta' ligi naxxenti minn Artiklu 33(1) ghaliex il- Bord ma ddecidiex skond ilprovidiment tal- policies u ligijiet vigenti (fil- kaz ta' PA1011/08).

11. Illi applikati dawn il- kunsiderazzjonijiet ghall-kaz de quo, jirrizulta li ma ghandu jkun hemm ebda diffikulta sabiex ir-residenza odjerna tkun sitwata f'zona Special Area of Conservation (SAC), u dan meta hu principju legali ben stabbilit li “l-konsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necessarjament jinhtieg li jkunu konsistenti” kif gie sostnut diversi drabi mill- Qorti ta' l- Appell. (Ara decizjoni fl-ismijiet Grace Borg vs. l-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar (AIC – (RCP) 29th October 2009) fejn inghad: “Fil-fatt gie ritentut gudizzjarjment li applikazzjonijiet simili jirrikjedu trattament identiku. Id-decizjonijiet f'dan ir-rigward, u l-konsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necessarjament jinhtieg li jkunu konsistenti. L-inkonsistenza ghandha bhala konsegwenza l-kontestazzjoni gustifikata, id-diskriminazzjoni, l-inugwaljanza, u mill-aspett soggettiv ta' l-applikant l-ingustizzja.”

12. Illi dwar it-tieni raguni ghar-rifjut, u cioe' “There is no apparent justification why applicant requires to reside close to this holding. The proposal lacks sound evidence that applicant's farming enterprise entails intensive arable farming, hence the proposal does not meet the objectives of Section 1.4.3 of the adopted Policy and Design Guidance: Farmhouses and Agricultural Buildings.” irid jinghad li l-Kummissjoni immotivat din id-decizjoni madwar ir-rekwiziti li jinsabu f'policy 1.4.3 tal- Planning and Design Guidance: Farmhouses and Agricultural Buildings¹ (u imkien ma jissemma id- dokument Policy and Design Guidance Agriculture Farm Diversification and Stables, tant li sabiex tkun stabbilita l-area permessibli tar-

¹ 1.4.3 The Planning Authority will therefore only allow permits for residential farmhouses to satisfy the genuine agricultural needs of full-time farmers/ breeders, having regard to the type of farming carried out (e.g. livestock farming, greenhouses or other forms of intensive arable farming). Intensive arable farming involves the cultivation of a range of crops which require attention throughout the year, such as fruit and vegetable crops rather than single crop cereal farming, such as wheat and clover. Unless they satisfy the genuine need criterion, residential quarters will have to lie in villages or hamlets.

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residenza, ir-raba raguni ghar-rifjut taghmel riferenza ghad- document PLP 20 , u mhux Policy 2.2B (7) Policy and Design Guidance Agriculture Farm Diversification and Stables)

13. Illi allura kwalunkwe riferenza mid-Direttorat f'dan l-istadju ghal Policy and Design Guidance Agriculture Farm Diversification and Stables hi ultra vires, aktar w aktar meta dan id-dokument kien disponibbli lill-Kummissjoni waqt id-decizjoni u din l-istess Kummissjoni ghazlet li ma taghmel ebda riferenza ghalih fil- process li wassal ghad-decizjoni, tant li ma jissema bl-ebda mod fil- motivi ghar- rifjut. Meta l-ewwel Bord ta l-ewwel sentenza ghazel li ma jghamilx referenza ghal dan id-dokument u ghalhekk issa f'dan l-istadju dan mhux permess ghaliex b'hekk l-applikant ser ikun priv mid-dritt tieghu li l-lanzanzi tieghu jigu kunsidrati darbtejn. Jekk dan il-Bord jiehu konjizzjoni ta din il-Policy l-applikant mhux ser jinghata id-dritt il ikollu tienu gudizzju fuq din l-interpretazzjoni tal-ligi. Dan imur kontra l-ispirtu ta Bord ta Appell li in realta mhu xejn salv Bord li jirrevedi dak li gie deciz u cioe jekk is-sentenza li inghata hiex wahda gustifikata jew le u jekk ghandhiex tigi konfermata jew le.

14. Illi allura f'dan l-istadju, il- Bord ta' l- Appell qed jigi mistieden sabiex jistharreg jekk il- proposta odjerna tmurx kontra il- kriterji li jinsabu f'policy 1.4.3 tal- Planning and Design Guidance: Farmhouses and Agricultural Buildings in linea ma' dak li qed ikun allegat mill- Awtorita.

15. Illi f'dan l-istadju l-appellanta tirrileva li fi kwalunkwe kaz, l-impjeg taghha hu “ full-time farmer” filwaqt li l-attivitá li tiggestixxi tikkostitwixxi “Intensive arable farming involving the cultivation of a range of crops which require attention throughout the year, such as fruit and vegetable crops rather than single crop cereal farming, such as wheat and clover”, u b'hekk tissodisfa ir-rekwiziti li jinsabu citati f'policy 1.4.3 tal- Planning and Design Guidance: Farmhouses and Agricultural Buildings.

16. Illi dan kollu jirrizulta mill- evidenza prodotta mill- appellanta, fejn hu indikat li l-applikanta hi “full time farmer” (ara Dokument MDC01) u l-attivitá agrikola tinvolvi varjeta ta' prodott agrikolu matul is-sena kollha u l-biegħa kienet wahda sostanzjali matul l-ahħar snin.

17. Illi mingħajr pregudizzju għas-suespost, irid jigi sottolinejat ukoll illi:

- Is-sit jinsab aktar minn kilometu 'il bogħod mill- eqreb designated urban area jew rural hamlet

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- L- applikant hi full time farmer (ara Dok MDC01)
- L-applikant jahdem tmax –il tomna raba tat-tip saqwi (irrigated). Dan l-ammont ta' art irid jigi multiplikata ghal erba darbiet ghall- fini li jkun stabbilit l-ammont ta' art li tinhadem mill-applikant.² F'dan il- kaz, - ammont ta' art saqwi li tinhadem mill-applikant hu mifruq fuq 12 –il tomna (ara Dok MDC02) u b'hekk il- Pjan ta' Struttura jipprovdi li l-applikant qed jahdem 48 tomna ghall-fini ta' eligibilita wara din l-applikazzjoni.
- Il- prodott hu wiehed varjat u mhux limitat ghal qamh jew cerejali u dan skond il-provedimenti ta' policy 1.4.3 tal- Planning and Design Guidance: Farmhouses and Agricultural Buildings.
- Il- kwoti tal- biegha tul l-ahhar snin kienet wahda sostanzjali, u allura dan jindika il-genwinita ta' l-applikanta.
- L- applikant ma gahndu jew kellu ebda residenza oħra fil- pusew tieghu matul l-ahhar ghaxar snin (ara Dok MDC03)
- L-applikant jopera numru ta' serer fuq is-sit. (ara Dok MDC04)
- L-area tal- bini propost ma teccedix il- 200 metru kwadru, tant illi il- bini issa gie ridott ghal 150 metri kwadri.
- Il- bini ghandu access direttament ghal triq pubblika.

18. Illi in konkluzjoni irid jinghad li d-disinn tal- bini kif indikat fl-ahhar proposti hu accettabli ghall- Awtorita tant li l-istess Awtorita minn jedda qed tesigi li it-tielet u r-raba ragunijiet ghar-rifjut ma ghadomx applikabbli.”

L-Awtorita' rrispondiet bis-second statement li gie pprezentat fis-seduta tad-19 ta' Novembru 2010 fejn intqal is-segwent:

"1. This Second Statement is being presented in reply to the appellant's last submissions dated 13th August 2010, received by MEPA on 13th September 2010

² STRUCTURE PLAN FOR THE MALTESE ISLANDS EXPLANATORY MEMORANDUM- December 1990 - 11.2 FARMHOUSES:

"Where the building to be constructed for purely residential purposes on land having a frontage on a street and the applicant has been either:

(a) A bona fide full time registered farmer tilling at least 20 tumoli of dry agricultural land in the vicinity of the site for at least two years prior to his application, provided that for the purposes of this paragraph any area of irrigated land tilled by the applicant in the vicinity of the site shall be taken into account and considered as dry agricultural land of four times the actual area of irrigated land

(b) A bona fide full time registered animal breeder running an animal farm in the vicinity of the site for at least two years prior to his application

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and attached at red 89 in the PA file. This statement is to be read together with the Authority's report of 4th August 2010.

2. In his submissions, the appellant addresses the grounds for refusal as presented by MEPA in its report of 4th August 2010. The appellant acknowledges that MEPA's main objections towards the proposed development are limited to Reasons for Refusal (1) & (2), while reasons (3) & (4) are being waived even though these were issued with the last Refusal Notice of 13th November 2009.

3. In Points 8 & 9 of the appellant's submission, it is being claimed that the development of this site has already been conceded to since a permit was issued in PA 1420/92 for the construction of a store. On the grounds of this permit, the appellant claims that the Authority accepted that development may be carried out within this environmentally protected area, and hence the first reason for refusal should not apply.

4. On this, the Authority points out that the scheduling of this area as a Special Area of Conservation was carried out through LN 257/03 in the year 2003, and hence well after the permit PA 1420/92 was issued. Thus, the same environmental scheduling that is presently applicable for this site was not applicable at the time when PA 1420/92 was assessed, determined, and its respective permit issued by the Authority. The presence of a previous permit on the same site does not entail that MEPA is now not bound to follow the environmental obligations set out by this Legal Notice.

5. Moreover, the Authority further considers that the proposed new development for this site cannot be compared to the agricultural store that was permitted on site in PA 1420/92. This is due to the fact that the proposed new development is of a different nature, being residential, and also of a larger scale. Residential development requires a different evaluation due to its associated impacts, while the new development is also of a larger scale than that of the original permitted store. Hence, the appellant's arguments on Reason for Refusal (1) are considered to be unfounded, as the circumstances have changed from the first permit to the present time, while the policies, designations and legislation that are now applicable for consideration have also changed.

6. The appellant also claims that the ecological value of the area has not been affected by the proposed development, as the existing site was degraded and abandoned land. The appellant however fails to substantiate this statement, and no evidence is provided illustrating the original state of the site prior to any

development. To the contrary MEPA's aerial photographs reveal that the site was garigue and natural land, similar to that characterising the site's surroundings.

7. In the appellant's Points 10 & 11, reference is made to two decisions taken in PA 7633/05 & PA 1011/08, whereby the appellant states that residential development has been permitted within a designated SAC. The appellant also refers to the Court of Appeal sentence *Grace Borg vs. MEPA*, whereby the Court ruled that commitments should be taken into consideration to enable fair and equal treatment to all applications.

8. However, the appellant fails to refer to the Court of Appeal sentence of *Anthony Ciappara vs. MEPA*, whereby the Court ruled that commitments consist of those similar developments that are located within the same locality or within vicinity of the site. In the case of the two permits cited by the appellant, both are located within a different locality (Mosta), and are not located within a designated SAC, but a Level 3 Area of Ecological Importance (AEI). Both these sites were also subject to different site histories in terms of their development and previous applications and decisions on site. It is therefore clear that identical considerations cannot be given to the application subject to appeal, as this present appeal is subject to a different site context and located within a different locality, and where different policies and designations are applicable.

9. In Points 12 & 13, the appellant addresses the Authority's comments on Reason for Refusal (2). The appellant contends that Policy 2.2B of the present agricultural policy and design guidelines 'Agriculture, Farm Diversification and Stables' should not be taken into consideration, in view that this policy was in force at the time of the DCC's decision, yet the DCC did not amend the reasons for refusal accordingly. The appellant contends that the Planning Appeals Board would also act *ultra vires* as it is obliged to act as a board of revisions, and hence is bound to deliberate only on the policies considered by the DCC in their decision.

10. On these points the Authority re-iterates that in line with the Court of Appeal decision *Angelo Farrugia vs. Planning Authority* (24th April 1996), and followed by several other subsequent decisions, the Planning Appeals Board is bound to decide this application against present plans and policies that are in force. Hence, the Board's decision would be *ultra vires* if it is not based against an assessment of the proposal with the provisions of the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables'. In fact, in the reply of 4th August 2010, the Authority has already conceded to the waiving off of Reasons for Refusal (3) & (4), as they were no longer applicable under the provisions of Policy 2.2B. This also presents a contradicting position for the appellant, who does not contest the Authority's decision to waive off these reasons for refusal in the course of this appeal.

11. Moreover, even if the issued reasons for refusal refer to the previous (and now obsolete) agricultural policy, the Planning Appeals Board may consider other factors in a refusal of a development permission application, other than those contained in MEPA's refusal. This is in line with the Court of Appeal decision of Michael Camilleri vs. Planning Authority (31st May 1996).

12. In Points 14, 15, 16 & 17, the appellant lists several issues as justification for the proposed residence. The Authority does not consider the issues raised as sufficient in justifying this proposal on sound planning grounds, and re-iterates its position as expressed in Paragraph 5.3(B) of the report of 4th August 2010. The Authority considers that as the proposal does not satisfy all the criteria listed in Policy 2.2B of the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables', it cannot be considered as justified on sound planning grounds.

13. Furthermore, the Authority would also like to point out two issues mentioned in the appellant's Point 17 which require clarification. The first regards the appellant's statement that the site is located more than a kilometre from a designated urban area or rural hamlet. This is not the case, as the site is located only 500 metres away from the urban development scheme of Xemxija. The second issue, concerns the appellant's reference to the Structure Plan Explanatory Memorandum and the computation of irrigated land in comparison to dry agricultural land. This provision is no longer applicable with the coming in force of Policy 2.2B of the Policy & Design Guidance 'Agriculture, Farm Diversification & Stables'.

14. On the grounds of the arguments hereby presented, and in addition to those already presented in the Authority's submission of 4th August 2010, the Malta Environment & Planning Authority respectfully requests the Planning Appeals Board to confirm the refusal decision issued for this application."

Fis-seduta tas-17 ta' Marzu 2011, l-Avukat Dottor Anthony DeGaetano ghall-Awtorita' ghamel referenza ghall-Artikolu 70 u ghas-sitt skeda tal-Att X ta' l-2010 billi qed jintalab sanzjonar fi propojeta skedata. Dwar dan il-partijiet skambjaw noti ta' osservazzjonijiet li gew inserit fil-Process Appell Numru 186/07.

Fin-nota ipprezentata fid-19 ta' April 2011, il-Perit Robert Musumeci ghall-appellanti ssottometta s-segwenti:

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“1. Illi l-mittenti appellant applikanta Maria Dolores Calleja issottomettiet rikors ta' appell datat 25 ta' Gunju 2007 permezz tal-Perit Anton Zammit, fejn kienu indikati fid-dettal ir-ragunijiet ghaliex dan l-appell ghandu jintlaqa'.

2. Illi sussegwentement, l-Awtorita' eccepjet risposta bid-data tad-9 ta' Awwissu 2010. Illi sussegwentement l-esponenti issottometta nota responsiva bid-data tat-13 ta' Awwissu 2010.

3. Illi fl-ahhar seduta li nzammet quddiem dan it-Tribunall nhar is-17 ta' Marzu 2011, Dr. De Gaetano ghall-Awtorita' ghamel referenza ghall-Artikolu 70, u ghas-sitt skeda tal-Att X ta' l-2010 billi qed jintalab sanzjonar fi projeta skedata.

Fl-istess seduta, l-esponenti talab zmien biex jaghmel nota dwar ir-riferenza ghal dan l-imsemmi Artiklu.

4. Illi f'dan l-istadju, l-appellant qed bid-dovut rispettt jaghmel dawn osservazzjonijiet:

- Illi l-provediment ta' l-Artikolu 70, u s-sitt skeda tal-Att X tal-2010 ma japplikawx ghal kaz de quo stante li l-applikazzjoni mertu ta' dan l-appell kienet intavolata qabel l-Att X ta' l-2010 gie fis-sehh.

- Illi hawnhekk issir referenza ghas-sentenza li giet deciza nhar it-3 ta' Dicembru 1947 mill-Prim Awla tal-Qorti Civili fl-ismijiet Dottor Filippo Nicolo' Buttigieg et. vs. Maggur Gerard C. Gatt R.m.a. fejn gie sostnut is-segwent: 'Jinghad li meta procedure ikunu ga inizjati u mixjin quddiem xi tribunal jew Qorti dawn m'ghandhom jigu affetwati minn leglazzjoni b'effett retroattiv salv jekk il-ligi il-gdida ma tghidx hekk espressament. Jinghad wkoll f'din is-sentenza ghalhekk li bhala linea generali ghandu japplika l-principju ben kwotat mill-Qratinostrana taghna li lex non habet oculus retro. Dan qed jinghad ghaliex f'kaz li l-ligi gdida ghandha tapplika f'kazijiet li gew inizjati qaqbel ma saru l-emendi fil-ligi daww l-applikanti jigu pregudikati. Dan qed jinghad ghaliex forsi l-applikant ma kienx jinvesti f'progett kieku kien jaf li l-ligi ser tinbidel. Jinghad ukoll li meta l-legislatur ried lil-ligi ikollha applikazzjoni retroattiva dan qalu. Sitwazzjoni bhal din tista wkoll taffettwa l-ekonomija tal-pajjiz ghaliex b'hekk hadd ma jkun jaf fejn qieghed u ikollu jiprocedi bl-isperanza li l-ligi tibqa' l-istess.”

- Dan l-istess hsieb huwa rifless fis-sentenza moghtija fl-ismijiet Joseph Sciberras kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza 20.09.02 mill-Bord ta' l-Appell presedut minn Dr. Kevin Aquilinafejn intqal li: 'Peress li din l-applikazzjoni mertu ta' dan l-appell saret fl-1995 u mhux wara l-emendi tal-1997, ma kienx jehtieg allura li l-appellant jikkonforma mad-dispozizzjonijiet ta' l-artikolu 32(5) ta' l-Att dwar

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L-Ippjanar ta' l-Izvilupp peress li fil-1995 ma kien hemm l-ebda limitazzjoni bhalma hemm illum fejn jidhlu appelli tat-terzi.

- Illi fil-fatt l-Awtorita' diga applikat dawn il-principji sucitati f'kazijiet ohra ta' natura simili u b'hekk l-esponenti se jkun f'pozizzjoni li jitratta da nil-punt f'aktar dettal fis-seduta li jmiss."

L-Avukat Dottor Anthony De Gaetano ghall-Awtorita' b'risposta pprezentata fis-17 ta' Awwissu 2011 ssottometta kif gej:

"Illi t-talba ghas-sanzjonar illum mhux permissibbli iktar f'dan l-appell stante li sal-lum l-appellant ghandu rifjut w illum dahal fil-ligi l-Att X tal-2010 (Kap. 504 tal-Ligijiet ta' Malta), fejn fl-art. 70 u l-iskeda 6, taghmilha cara li illum ma jistax jigi ssanat zvilupp fi proprjeta` skedata, liema proprjeta` mhux qed jigi ikkontestat li hi skedata;

Ta' min jinnota li l-appellant ghamel nota dwar in-non applikabbilita` tal-artikolu 70 u tas-sitt skeda fl-appell de quo mhux ghar-rigward fatti li l-area hi skedata (mhux ikkontestat) u ta' min jissemma li id-definizzjoni ta' "scheduled properties" fl-istess Kap. 504 jinsab fl-artikolu 81 (1) u din tfisser kwalunkwe wahda minn dawn: "zoni, bini, strutturi, fdal b'importanza geologika, paleontologika, kulturali, arkeologika, arkitettonika, storika, antikwarjat, artistika jew ta' pajsagg kif ukoll zoni ta' sbuhija naturali jew ta' valur ekologiku jew xjentifiku (hawn izjed 'il quddiem imsejha "proprjeta` skedata");

L-Awtorita` tikkontendi li illum it-Tribunal ma jistax jaghti permess biex jigi issanzjonat zvilupp fi proprjeta` skedata;

Illi tant hu hekk li l-Qorti tal-Appell Superjuri fid-decizjoni Michael Camilleri vs l-Awtorita` deciza 31/5/96 tat l-insenjament li anki jekk ikun hemm xi raguni ohra ta' rifjut li ma gietx ikkunsidrata mill-Awtorita`, l-istess Bord ghandu jikkonsidraha u jekk jidhirlu li din tkun ta' ostakolu ghall-hrug ta' permess, ghandha xorta tikkonferma r-rifjut fuq ragunijiet differenti mill-ewwel decizjoni;

L-insenjament tal-Qorti tal-Appell, li beda mill-Qorti tal-Appell Superjuri u baqa' jigi segwit sal-lum (vide Angelo Farrugia vs PA 24/4/96 u Emm. Mifsud vs DCC 31/5/96) hu li l-pjanijiet u l-policies li ghandhom jigu ikkunsidrati, kif ukoll il-ligi li ghandha tigi ikkunsidrata, hija dik mhux meta saret l-applikazzjoni izda dik meta jigi determinat finalment l-applikazzjoni, sija jekk id-decizjoni finali tkun dik tal-Awtorita`, sija jekk dik finali tkun PA/01148/04 al-Bord (illum it-Tribunal) tal-Appell. Hekk jekk il-ligi jew policy illum taghmilha permissibbli certu zvilupp li ma kienx permissibbli

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meta inghatat l-ewwel decizjoni tal-Awtorita`, it-Tribunal illum ma jistax jinjoraha. Hekk ukoll jekk zvilupp kien permissibbli izda fil-frattemp inbidlu l-polices jew il-ligijiet, u dawn ma baqghux permissibbli, it-Tribunal ma jkunx jista' johrog permess sakemm ma jkunx hemm temporary provision fil-ligi innifisha li tghid li l-ligi li giet abrogata (Kap. 356) ghandha tibqa tigi ikkonsidrata fid-decizjonijiet tat-Tribunal taht il-Kap. 504 ghal dawk l-applikazzjonijiet jew dawk id-decizjonijiet li saru qabel ma gie fis-sehh l-Att il-gdid (il-Kapitolu 504 tal-Ligijiet ta' Malta);

Illum l-istess dritt li l-appellanti kellhom ghar-reconsideration intilef jekk ma jkunx diga` sar, l-istess id-dritt taghhom li jidhru quddiem il-Bord tal-Appell dwar l-lppjanar w il-ligijiet taht l-istess intilef ghajr ghat-temporary provision li zammet fis-sehh l-Avvizi Legali kollha li saru taht il-Kap. 356 (Att 1 tal-1992) – Artikolu 97 tal-Kap. 504 – izda l-istess Att Kap. 356 b'Avvizi Legali gie imhassar u ma saritx xi avviz legali fejn l-artikolu 70 u l-iskeda 6 ma ghadiex tapplika ghal decizjonijiet li kienu diga` inghataw qabel l-ewwel ta' Jannar, 2011 u kienu ghadhom suggestt ta' appell jew ghal appelli li f'dak il-perijodu kienu diga` in vigore – l-uniku temporary provision b'avviz legali kien dak li irregola li l-artikoli tal-Bord tal-Appell dwar l-lppjanar ghandhom jibqghu in effett ghal dawk l-appelli BISS li kienu thallew ghal decizjoni QABEL l-1 ta' Jannar, 2011, id-data cjoe` meta gie fis-sehh il-Kapitolu 504 (Att X tal-2010). Veru li fiz-zmien meta inghatat id-decizjoni mid-DCC ma kienx hemm is-sitt skeda, pero` fil-mument li ser tinghata d-decizjoni mit-Tribunal, illum l-istess ligi (Kap. 356) antika ma ghadiex tezisti w fit-temporary provision (Art. 94 tal-Kap. 504), l-istess Tribunal hu obbligat li jiddeciedi skont il-ligi tal-lum;

L-Awtorita` taghmel terga referenza ghat-temporary provision (Art. 97), fejn dan l-Att japplika ghal kollox li ghadu ghaddej – bhal ma hu dan l-appell, u bil-ligi tal-lum (Kap. 504).

Tant hu hekk kieku bl-istess argument tal-appellant, dan l-appell ma kienx kieku jinstema quddiem dan it-Tribunal izda quddiem il-Bord tal-Appell precedenti – izda dan mhux hekk stante li l-Art. 97 (1) ipprovda li “dati, regoli u proceduri differenti jistghu jigu hekk stabbiliti ghat-thassir u, jew l-applikabilita` tad-dispozizzjonijiet differenti taghhom”, u bl-Avviz Legali 511 tat-2010, dan gab fis-sehh kemm l-Artikolu 70 u l-iskeda numru 6, liema artikoli ma japplikawx biss ghal dak li jissemma fl-Avviz Legali 27 tat-2011 u cjoe` dawk l-appelli li kienu thallew ghad-decizjoni qabel l-1 ta' Jannar, 2011 mill-Bord tal-Appell dwar l-lppjanar, f'liema kas, dawn jigu decizi bil-ligi l-antika taht il-Kap. 356 u l-Bord precedenti;

U allahares ma jkunx hekk ghax kieku dan it-Tribunal ser ikun jigi f'pozizzjoni li meta jiddeciedi illum zewg appelli fl-istess jum, wiehed li kien fuq applikazzjoni qabel l-1 ta' Jannar, 2011 u iehor fuq applikazzjoni ta' wara l-1 ta' Jannar, 2011 ikun jista' fl-istess jum jissanzjona illegalita` f'tal-ewwel meta l-ligi taghmilha mhux permissibbli illum;

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Ir-retroattività` titnizzel fil-ligi meta din taghmilha applikabbli ghal permessi li jkunu diga` inhargu, izda ghal dak kollu pendenti – il-ligi bil-kontra, taghmel dak pendenti mhux applikabbli ghall-ligi vigenti biss jekk jissemma (haga li ma saritx fl-Art. 70) izda li saret per ezempju fid-DC Guidances tat-2007 u oħrajn, fejn itnizzel li applikazzjonijiet li saru qabel taht id-DC Guidance 2005 u għadhom pendenti, għandhom illum jigu decizi bil-policies vigenti taht id-DC Guidance 2005 li illum spicca;

L-artikolu 81 (6) tal-Kap. 504 jgħid li “ebda xogħol ta’ kull xorta m’għandu jsir fi proprjeta` skedata jew fuqha u ebda proprjeta` skedata m’għandha tigi demolita, mibdula jew imkabbra hlief bil-permess tal-Awtorita` wara li ssirilha applikazzjoni”, izda dan mhux qiegħed izomm milli wieħed japplika għal permess izda li mhux aktar permissibbli li wieħed l-ewwel jikser il-ligi billi jagħmel żvilupp fi proprjeta` skedata u wara jitlob biex jissana – ikollu skont l-artikolu 70 l-ewwel inehhi l-illegalita` (li forsi kieku kienet tkun permissibbli kieku ma għamiliex bla permess) u wara japplika biex jagħmilha;

Del resto dan l-artikolu 81 (6) hu riproduzzjoni tal-istess artikolu li kien diga` jezisti fl-Att 1 tal-1992 (Kap. 356) bhala artikolu 46 (4) u minn dan ma johrogx li l-istess provvedimenti tal-ligi japplika minn meta gie promulgat izda kien jezisti u ma inbidel xejn dwaru hlief in-numrar tiegħu!

Ir-Rule of Law fil-fatt tipprevedi li kull applikazzjoni trid ta’ bilfors tkun deciza skont il-policies u ligijiet vigenti kif diga` ingħad, sakemm ma jinzammx applikabbli xi parti tal-ligi l-antika. Retroattività` fil-ligi ma tapplikax biss fil-kamp kriminali w limitament biss għal piena cjoe` wieħed ma jistax jehel piena illum oghla għal reat (li meta gie kommess kellu piena inqas), u dan għax specifikata fil-procedura kriminali a bazi tal-Kap. 9 tal-Ligijiet ta’ Malta;

Issa kif diga` ingħad il-ligi tnizzel li tkun applikabbli retroattivament BISS meta timponi fuq xi haga li diga` saret – ez. dazju fuq oggetti li jkunu dahlu fl-ewwel tlett xhur tas-sena, izda -ligi f’April tagħmel retroattività` iz-zieda tad-dazju għall-bidu ta’ dik is-sena. Issa fin-nota odjerna tal-appellant qed ihawwad dwar il-kazijiet u kazistika dwar dan mal-kaz de quo. Il-kaz de quo mhux li qed tagħmilha retroattiva għal xi haga li gara (ez. permessi biex jissanzjonaw żvilupp f’area skedata li hargu qabel ma dahal fi-sehh l-Att fl-1 ta’ Jannar, 2010), izda għall-kazijiet attwali;

Fil-fatt l-appellant isemmi decizjoni tal-Qorti recentii! tat-3 ta’ Dicembru, 1947, kopja hawn annessa mmarkata dok. RM1, li turi li l-kaz ta’ Dr. Buttigieg et. Vs Gerard C.

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Gatt applika il-kwistjoni ta' procedura li hu principju ben risaput li "ubi iudicium acceptum, ubi et finem accipere debet" u cjoe` li fil-kamp ta' procedura kif kien dak il-kaz (mhux ligi sostantiva bhall-kaz tal-appell de quo), fejn il-ligi taghmel stipulazzjoni li l-procedura kellha tkompli quddiem kompetenza gdida, din kellha tinbidel – u hekk gie deciz, li ghalkemm il-proceduri bdew quddiem il-Prim'Awla, bil-ligi li giet promulgata wara Ord. XXIX tal-1947 li gabet il-kompetenza quddiem il-Bord tal-Kera, minhabba dispozizzjoni transitorja, il-Qorti kompetenti inbidlet ghal dik tal-Bord tal-Kera – u hekk gara quddiem it-Tribunal odjern – il-Bord tal-Appell precedenti gie mhasrar pero` inzamm in vigore b'avviz legali ghal dawk il-proceduri fejn lahqu thallew ghal decizjoni;

Pero` dan mhux il-kaz de quo – il-proceduri pendenti tkomplew quddiem Tribunal gidid li illum (ghax ghadu mhux deciz) iridu jiddeciedu bil-ligijiet vigenti;

L-istess appellant ukoll ikkwota decizjoni tal-Bord precedenti Joseph Sciberras vs MEPA hawn ukoll riprodotta dok. RM2, li pero` titratta fuq eccezzjoni li kien tal-applikant ghall-appell tat-terz (mhux l-Awtorita` kif hemm fid-decizjoni), fejn l-eccezzjoni kienet fuq bidla fil-ligi dwar l-ammissibilita` ta' appell li sar fin-1995 (meta l-ligi nbidlet fin-1997) u ergo l-PA/01148/04 appell kien diga` sar dak iz-zmien. Il-mument ta' meta sar l-appell hu il-mument li wiehed jara jekk l-appell kien ammissibbli. Fil-fatt anki quddiem dan it-Tribunal, baqghu jinstemghu appelli minn rikonsiderazzjonijiet dwar rifjut (li illum mhux iktar permissibbli) ghax fil-mument meta dahlu kienu validi. Izda dan ma ghandu x'jaqsam xejn mal-kaz de quo li hu li illum ghad irid jigi deciz jekk jistax jinghata permess ghalih. Infatti applikazzjonijiet li ma kienux fi stadju ta' rikonsiderazzjoni, izda fl-ewwel stadju sal-31 ta' dicembru, 2010, illum ma jistghux jitolbu rikonsiderazzjoni mir-rifjut izda biss appell.

Il-kazistika li giet imsemmija (u ghalhekk l-esponent ghamel kopji taghhom) mhux il-kaz de quo izda il-kaz li wiehed kien iqabbel ma' affarijiet li diga` saru tipo permess li diga` hareg;

Ghaldaqstant l-istess Tribunal illum hu bil-ligi ipprojbit li b'xi mod jissanzjona l-izvilupp ojdern f'din il-proprjeta` skedata."

B'nota pprezentata fis-26 ta' Awwissu 2011, l-Perit Robert Musumeci ghall-appellanti ssottometta li skond l-Frequently Asked Questions fis-sit elettroniku tal-Awtorita' jinghad li l-Artikolu 70 u s-sitt skeda japplikaw biss ghall-applikazzjonijiet li gew ipprezentati wara l-1 ta' Jannar 2011;

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L-Awtorita' rrispondiet b'nota pprezentata fl-1 ta' Settembru 2011 fejn irrilevat li l-informazzjoni moghtija fil-Frequently Asked Questions, ma tiehux s-sopprovent fuq il-ligi. Gie ddikjarat, in oltre, li ghal-kemm kienet harget 'draft legal notice' dwar dan, din qatt ma giet approvata u ghal-hekk ma dahletx fis-sehh.

Ikkunsidra ulterjorment dwar din l-eccezzjoni.

Dan it-Tribunal kellu l-opportunita' li jittratta din l-eccezzjoni f'numru ta' appelli fosthom dak deciz fit-30 ta' Jannar 2014 fl-Appell fl-ismijiet 'Carmelo Psaila vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar' Appell Numru 624/11.

F'dawn l-kazijiet zewg konsiderazzjonijiet huma necessarji, cjoe liema ligi hi applikabbli, jekk hiex dik vigenti meta saret l-applikazzjoni, jew dik in vigore meta l-applikazzjoni tigi determinata, kif ukoll jekk l-ligi tipprovdux xi dispozizzjonijiet specjali dwar meta dahal fis-sehh l-Artikolu 70 u s-Sitt Skeda annessa mal-Att X ta' l-2010, Kap. 504.

Dwar l-ewwel konsiderazzjoni, fis-sentenza citata supra intqal hekk:

"Dwar liema ligi hi applikabbli, cioe' jekk hix dik ta' meta saret l-applikazzjoni jew dik meta tigi finalment deciza l-applikazzjoni, l-Awtorita' ghamlet referenza ghal zewg decizjonijiet tal-Qorti tal-Appell li stabbilew il-principju li l-ligi applikabbli hi dik vigenti meta tigi deciza l-applikazzjoni.

Dan gie stabbilit b'sentenza fl-ismijiet 'Angelo Farrugia vs Chairman tal-Awtorita' tal-Ippjanar' deciza mill-Qorti tal-Appell fl-24 ta' April 1996 u dik f'ismijiet 'Emanuel Mifsud vs il-Kummissjoni ghall-Kontroll tal-Izvilupp' deciza mill-Qorti tal-Appell fil-31 ta' Mejju 1996. Dan gie kkonfermat b'sentenzi aktar ricenti tal-Qorti tal-Appell Inferjuri fosthom 'Stella Buttigieg vs Joseph Cordina vs MEPA deciza fid-29 ta' Jannar 2009 RCP A.I.C. li ccitat sentenza precedent tal-istess Qorti fl-ismijiet 'Philip Micallef vs MEPA deciza fis-26 ta' April 2007 fejn intqal is-segwenti :-

"Illi fil-fatt huwa principju legali kkonfermat guridizzjarjament li l-istess Bord u l-Awtorita' huma tenuti li japplikaw l-ligi li tezisti waqt li tkun qed tigi determinata l-applikazzjoni u dan s'intendi japplika ukoll meta l-kas ikun quddiem il-Bord".

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Fil-kaz in ezami jirrizulta li l-art giet skedata fit-2003 Avviz Legali 257/03 fejn giet dikjarata "Special Area of Conservation of International Importance and within the boundaries of the Nature 2000 Ramsar Site.

"L-Artikolu 70(1) tal-Kap. 504 jitratta dwar 'Supplimentary Provisions regarding permissions and licences. Minn dan l-Artiklu huma eskluzi pero' l-kazijiet elenkati fis-sitt Skeda annessa mal-Att – fosthom dik numru 2 – applikazzjoni biex jigi regolarizzat zvilupp fi propjeta' skedata."

L-applikazzjoni prezenti qed titlob li jigi sanzjonat farmhouse b'garage f'area li illum hi skedata.

"Skond dan l-artikolu ghalhekk il-proposta prezenti ma tistax tigi awtorizzata.

L-Artikolu 97 (1) tal-Kap. 504 jawtorizza lill-Ministru li jistabilixxi data permezz ta' avviz fil-gazzetta tal-Gvern meta jigu revokati l-Att dwar l-Ippjanar tal-Izvilupp Kap. 356 u l-Att dwar il-Harsien tal-Ambjent, Kap. 435.

Dawn id-dati gew stabiliti bl-Avviz Legali 512 tal-2010 u l-Avviz Legali 513 tal-2010 rispettivament.

Bl-Avviz Legali 511 tal-2010 – Avviz ta' Bidu fis-sehh, giet stabbilita d-data tal-31 ta' Dicembru 2010 bhala d-data meta d-disposizzjoni ta' diversi Artikoli tal-Kap. 504 fosthom l-Artikolu 70 u s-sitt Skeda, dahlu fis-sehh.

L-Artikoli 14 u 15 tal-Kap. 356 li jirreferu ghall-komposizzjoni u funzjonijiet tal-Bord tal-Appell dwar l-Ippjanar ma gewx revokati bl-Avviz Legali 512 tal-2001 billi skond l-Avviz Legali 27 tal-2011 –Planning Appeals Board and Environment and Planning Review Tribunal (Transitory Provisions) Regulations 2011 daww l-appelli li kienu gew differiti ghas-sentenza qabel il-31 ta' Dicembru 2010, kellhom jigu decizi mill-Bord tal-Appell tal-Ippjanar, cioe' skond il-Kap. 356 u mhux mit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar skond il-Kap. 504. Skond l-istess Avviz Legali, l-appelli l-ohra kollha kellhom jigu decizi minn dan it-Tribunal."

Fic-cirkostanzi ghalhekk is-sottomissjoni tal-appellant, li l-izvilupp in kwistjoni mhux millqut mill-Artikolu 70 tal-Kap. 504 mhix korretta, billi dan ma jirrizultax mill-ligi.

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It-Tribunal, ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess, jikkonferma r-rifjut tat-13 ta' Novembru 2009 ghall-applikazzjoni PA 1148/04, billi jilqa' l-eccezzjoni preliminari tal-Awtorita' li l-proposta ta' sanzjonar ta' zvilupp illegali f'area skedata, hi in kontravvenzjoni tal-Artikolu 70 u sitt skeda annessa mal-Att X tal-2010, Kap. 504.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal iddecieda biss aggravju wiehed u ma ghamel ebda referenza ghal aggravji l-ohra mqajma u ventilati quddiem it-Tribunal. Kien hemm decizjonijiet ohra fejn it-Tribunal tratta aggravji oltre dik li fuqha ddecieda f'dan il-kaz.

Din il-Qorti tqis li dan l-aggravju ghandu jitqies fis-sens illi c-cahda ta' aggravju wiehed ma jistax iwassal ghal cahda tal-appell shih fejn hemm aggravji ohra li jekk jinstab li huma gustifikati jwasslu ghal akkoljiment tal-appell.

Din il-Qorti pero taghmel distinzjoni bejn aggravji li jistrunkaw l-appell innifsu u ohrajn fil-mertu tal-appell fejn ic-cahda ta' aggravju wiehed ma joqtolx l-appell u jridu jigu kunsidrati l-aggravji l-ohra. Dan hu wiehed mill-appelli li l-eccezzjoni ulterjuri sollevata mill-Awtorita illi s-sit kien jinsab f'zona skedata u kwindi skond l-artikolu 70 u s-Sitt Skeda tal-Kap. 504, ebda sanzjoni ta' ebda xorta ma tista' tintalab joqtol l-appell fil-mertu kollu tieghu.

L-appellant mhux jilmenta li s-sit jinsab f'zona skedata. Lanqas qed jilmenta illi fil-fatt huma applikabbli l-artikolu 70 u s-Sitt Skeda izda biss li kien hemm aggravji ohra ta' sustanza li messhom gew kunsidrati mit-Tribunal kif ghamel f'appelli ohra.

Fl-ewwel lok din il-Qorti ma taghmilx paraguni bejn modus operandi u iehor tal-appelli mismugha mit-Tribunal. Din hi kwistjoni li tohrog barra mill-funzjoni ta' din il-Qorti. Dak li jinteressa lil Qorti hu jekk fil-kaz quddiemha t-Tribunal agixxiex skond il-ligi. Jekk l-appellant

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ghandu lanjanzi ta' trattament differenti, tali lanjanza tista' tigi ventilata, jekk jitqies idoneju, f'fora ohra izda mhux dan.

L-eccezzjoni mqajma mill-Awtorita mhix wahda fuq il-mertu tal-izvilupp izda wahda li di natura skond il-ligi tistronka l-permissibilita tal-applikazzjoni nfisha. Kwindi kull aggravju tal-appellant fuq il-mertu tal-izvilupp huma kollha irritwali jekk jinstab illi s-sit jinsab f'zona skedata u qed jintalab sanzjonar ta' zvilupp, peress illi l-ligi stess tipprekludi konsiderazzjoni ta' tali applikazzjoni. Hekk fil-fatt ghamel it-Tribunal u kien ikun zbaljat li kieku tratta xi aspett tal-mertu anki fuq is-sustanza tal-applikazzjoni u aggravji tal-appell konnessi mieghu meta l-ligi hi skjetta u ma tippermetti ebda eccezzjoni ghar-regola.

Kwindi l-aggravju tal-appellant hu bla mertu u qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Maria Dolores Calleja u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-12 ta' Gunju 2014, bl-ispejjez kontra l-appellant.

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