

The Ramblers' Association of Malta

P.O. Box 108, Sliema, Malta. SLM 1000

Tel/Fax: 21342121. Email: ram205@gmail.com

<http://www.ramblersmalta.org/>

www.ramblersassociation.blogspot.com/

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Marie Claire Blin
Deputy Head, Legal Affairs & Cohesion Directorate
European Commission
DG Environment
Unit A.1 - Enforcement, infringement co-ordination and legal issues

Dear Mme Blin,

Following the news on The Sunday Times of the 21 November that the EC has asked the Malta Environment and Planning Authority (MEPA) for a full brief on the Natura 2000 site at Dwejra, I thought it opportune to complement the issue by the following.

Main issue of concern

The Ramblers' Association of Malta (hereinafter referred to as RAM, my Association or The Association) would like to raise its concern regarding the abusive treatment that sites Outside the Development Zone (ODZ) are extensively receiving at the hands of the MEPA, the Government body responsible for their protection. MEPA is constantly failing to uphold the laws and policies governing ODZ by its leniency in granting permits for development and omits to enforce the law on illegal buildings thereon. You will of course be aware of this. However considering your terms of reference we will limit this brief to those areas in the ODZ that are protected for their various interests and more specifically to Sites of Community Interest and the designated Natura 2000 sites, as generally governed by the Birds Directive 79/409/EEC and/or specifically by the Habitats Directive 92/43/EEC Art 4(5).

It is RAM's considered opinion that the Authorities are infringing the said Directives indiscriminately by the granting of permits for developments that are certainly not for "*reasons of overriding public interest, including those of a social or economic nature,*" as specified under Article 6 (4) of the Habitats Directive.

My Association is aware that "*Natura 2000 is not a system of strict nature reserves where all human activities are excluded, and that the aim is to ensure that the management of such sites is sustainable, both ecologically and economically.*" However certain developments permitted (and sometimes discreetly pushed forward) in such sites cannot but be deemed unnecessary and harmful to ecological and economic sustainability. They accommodate capricious private interests, in full contravention of the aims of Art 2 (1) "*to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.*"

Such permits also run counter to Art 3 of the same Directive because they do not “endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.”

Also, while the Government procrastinates in drawing up management plans for the conservation of these protected areas as required by Art 6 (1), the MEPA is wittingly infringing Art 6 (2) and (3) with the possible intention of accommodating influential developers of varying sorts without the appropriate assessments and/or compensatory measures being taken before the full implementation of the Directives take effect.

My Association considers that other articles of the same directive have also been infringed by the permitted developments and requests the DG Environment Unit to investigate this issue which has been disturbing us for years.

The Sites

The sites which my Association is calling to your attention are locations popularly known and referred to as follows, and are classified as Sites of Community Importance for Malta, under the EC Habitats Directive

1. **FOMM IR-RIH: Site Code MT000024: Rdumijiet ta' Malta: Ir-Ramla tac-Cirkewwa sa Il-Ponta ta' Benghajsa, MT000032: Rdumijiet ta' Malta: Ras il-Pellegrin sa Ix-Xaqqa**
 - a) Information about site: In June 1996 the site was approved for protection as an Area of High Landscape Value (AHLV), Area of Ecological Importance (AEI), Site of Scientific Importance (SSI) through GN 400/96. DPA/EPA - LN 257/03 GN 877/03 raised the status to Special Area of Conservation of International Importance. Presently it is raised to Special Protection Area Wild Birds Directive (79/409/EEC), Candidate Special Area of Conservation Natura 2000 Habitats Directive (92/43/EEC),
 - b) As far back as the years 1996 (ECF00745/96) and 1998 (01195/98) the protected site was subjected to Enforcement Orders against developments that were started without permit, and their recommendation was for Direct Action to be taken to remove the illegalities. No action to remedy was ever taken.
 - c) In October 2007 new owners of the Natura 2000 site put in a planning application (PA06321/07) to “Reinstate and marginally extend security fence, planting of indigenous trees /shrubs and reinstating rubble walls in vicinity of existing dwelling, repairing damaged internal roads and footpaths.”
Before the permit was issued works were started that did not fit the description: non indigenous trees and shrubs were planted in newly built concrete landscaped flower pots, new roads were laid and surfaced with concrete, boulders excavated and bulldozed to extend the road to the shore, outbuildings constructed for purposes alien to the nature of the site.
 - d) When this devastation to the Natura 2000 site was brought to the attention of MEPA another Enforcement Order (ECF00466/07) was issued, calling for Direct Action again. Still works continued and so the Planning Application was eventually dismissed by the DCC acting on the recommendation of the enforcement unit.
 - e) However works continued unabated and my Association wrote to MEPA on the 28th March 2008: “Notwithstanding ECF466/07 against the formation of track at Fomm ir-Rih,

works have forged ahead with the application of a concrete surface to part of the track and with the destruction of natural plants for landscaping and other works. Low walls and troughs have been built on the way down that are altogether alien to the environs there. The area is of pristine natural beauty and artificial landscaping will not enhance but destroy the site. The Ramblers Association expects that the law is enforced with equal strength against everybody who breaks the law irrespective of social and economic standing.

The Association reiterates that Enforcement Notice 00466/07 was recently issued to put a temporary stop to the rampage and misappropriation. In accordance with Minister Pullicino's new measures it should have been followed by aerial photos to check what was there before and then have the illegality removed. The ecological importance of the area warrants that no consideration should be given to any relative application for the sanctioning of the abuse already committed and still being carried out. Vehicular traffic in the area should be stopped immediately if the site is to be conserved ecologically.

The application (PA 6321/07) to "Reinstate and marginally extend security fence, planting of indigenous trees / shrubs and reinstating rubble walls in vicinity of existing dwelling, repairing damaged internal roads and footpaths" is based on an evident fabrication which even the MEPA mapserver can reveal. There was only one road stopping mid-way and certainly no damaged internal roads to repair. Only foot paths led to the beach and to the fields. Pictorial evidence is in hand of heavy rock-cutting machinery used to break boulders for road formation to beach access.

It is high time that the Direct Action promised by MEPA for the last ten years in connection with the site is resorted to at once and that further sanctioning of destruction is refused." (RAM email dated 28.03.08)

- f) On April 1st 2008 MEPA replied: *"ECF 466/07 and other related enforcement case files on same site were listed for direct action. When opportune, MEPA may enter the site and take the necessary measures in order to bring the site back to the state it was before the illegal works were carried out."* (MEPA email 01.04.2008) Since no direct action nor any fines were imposed as provided by law, my Association requested a meeting with top officials of MEPA. The meeting was convened on the 13th August 2008. From the Minutes of that meeting we quote:

RAM: "Degradation in a protected Natura 2000 site that has been and is being abused continuously by human interventions of every kind – boulder breaking, concrete laying, construction, light pollution, destruction of endemic species and planting of invasive trees. At the prevailing rate of degradation the site risks losing its Natura 2000 status soon. Prevention of such abuses falls under the remit of MEPA whose instruments have yet again proven to be ineffective to stop the degradation. Penalties and fines are often ridiculously low, and hardly ever applied.

MEPA reply: All members present agree they are not satisfied with their present toothless instruments, which renders most of their efforts practically useless. MEPA has exhausted legal means at its disposal to stop degradation and cannot do much more with an appeal pending. The possibility to apply fines will be considered with immediate effect."

- g) Actual position: Nothing has been done to restore this Natura 2000 site. In the meantime abusive use of the illegal roads together with the consolidation of imported trees that are left to invade the site to the detriment of native plants are causing havoc to the sensitive

biodiversity of the bay. The Appeals Board of MEPA was due to hear the Appeal of the applicant on the 17th November 2010, but the meeting was deferred without another date being appointed.

2. BAHRIJA: : Site Code MT000024: Rdumijiet ta' Malta: Ir-Ramla tac-Cirkewwa sa Il-Ponta ta' Benghajsa

- a) History of site: In the year 1996 this valley site was approved for protection as an Area of High Landscape Value(AHLV)- GN400/96, Area of Ecological Importance (AEI) Level 2 - GN400/96, and Site of Scientific Importance (SSI) Level 1 – GN063/96, because site supports typical watercourse vegetation and several rare and endangered species as well as endemic ones with a restricted distribution in the Maltese Islands. In 1998 the Archaeological Importance of the site (AAI) was approved by GN278/98. In 2003 MEPA undertook to provide Environmental Protection by reference to relevant Legislation for constraints and exceptions, and finally designated a Special Area of Conservation (SAC) according to the Habitats Directive (92/43/EEC)
- b) In the year 2000 an Outline Development Permission was sought “To reconstruct the existing structures with very minor alterations to facilitate use” (PA02835/00). The DCC refused Development Permission because the Case Office strongly recommended refusal on the grounds that the site was “outside scheme,” subject to the above mentioned protection levels and the proposal ran counter to all Structure Plan policies. Inexplicably however the case status of the same PA02835/00 declares “*The request for reconsideration has been granted overturning the original decision. A development permit has been issued.*” All traces of the file giving reasons for this original overturn have mysteriously disappeared from the MEPA offices.
- c) Other applications were submitted to MEPA in 2002, 2004 and 2006 all of which were recommended to be refused permission by the case officers. However all were approved by the DCC/MEPA board. More reasons for refusal were brought up by the case officers as the developer changed his application from rehabilitation to demolition, increasing the footprint. The DCC/MEPA board not only overlooked such facts but tried to assist the developer by giving him instructions as how to proceed.(Auditor’s report) Also overlooked is the fact that the architect of the applicant made a fraudulent application by declaring that the site was level, when a considerable gradient exists directly adjacent to the watercourse.
- d) The attached Audit Report 2009/054 (**Appendix 1**) best explains the irregularities and serious failures committed by the Authority in failing to stop this development that cannot but lead to substantial degradation of the delicate biodiversity of the protected environment, with particular reference to the important population of fresh-water crab(qabru) that thrives there but whose species is rare and endangered. It suffices to quote the opening comment of the Auditor: *The assessment of this application, particularly by the DCC, should read: How to damage the natural environment with the blessing of the authorities responsible to safeguard it. It is more than clear from the history of the application that the DCC ignored completely all policies meant to protect and safeguard the environment and they were bent that irrespective of any policies the application should be approved. The extreme arrogance shown by the DCC in ignoring all policies and advice from the properly constituted bodies of the MEPA without giving any plausible justification for such action is unbelievable.*”

- e) Actual Position: The new construction (certainly not “very minor alterations” as declared on the outline permit) has gone ahead and is finalised, even though the permit did not include provision for the disposal of domestic waste drainage – another irregularity - and a planning application (PA02309/10) for a cesspit is presently “*being assessed in terms of the Structure Plan and other established policies*” . A cesspit not more than twenty meters distant from the actual Watercourse sustaining the endangered species that mostly accounts for the designation of the SCI of itself is prohibitive and necessitates a rigorous EIA.
- f) My Association has initiated a court case against MEPA to stop the damage after the Judicial protest sent to the Authority on 25th January 2010 remained unanswered.

3. TA' BALDU INT 014. Ta' Baldu/Wied ir-Rum

- a) Information about the site: Ta' Baldu has been classified a “Special Area of Conservation of International Importance” (L.N.257/03, GN 887/03), “Levels 2 and 3 Area of Ecological Importance” (GN400/96), “Site of Scientific Importance” (GN400/96), “Class A site of Archaeological Importance” (GN 114/04) and “Natura 2000 site.” It is subjected to Emergency Conservation Order: Grade 2 Listed Buildings/Class A Site of Archaeological Importance.
The site offers some of the most beautiful valley landscapes of Malta, with lush vegetation generated by permanent fresh water streams. Since Roman times the place was nurtured for its intrinsic natural features and in the 17th Century Gan Frangisk Abela marvelled at the beauty and bounty of the fields there. Ever since, the traditional agricultural methods complemented the historic remains on the site. On the 16th June 2009 MEPA advertised Ta' Baldu on the Times under “One World – Protecting the most significant buildings, monuments and features of the Maltese Islands.”
- b) Recent History: About 8 years ago some of the fields and a scheduled building at Ta' Baldu were purchased by new owners who tried to impose their life-style and commercial concerns, which were adverse to the traditional agricultural way of life of the peasant community that still earns its livelihood from harvesting their fields in the area. They have turned their fields into lawns and a football ground, and turned fields into formal landscaped villa gardens with lights, invasive non-native plants and a swimming pool. Organised mass social activities such as weddings and parties started to be organised. Insensitively they are playing havoc with methods and installations that are totally alien and damaging to the ecology of the area. The traditional agricultural community there is feeling threatened by the non-agricultural innovations.
- c) All the works within this SCI were committed without the necessary planning applications from MEPA. Since 2004 seven planning applications were submitted with MEPA by the new owners. Four of them were decided by the MEPA board, and three are still under consideration. Five of them asked for sanctioning of illegalities committed. Of these three were accepted! On all three applications the Planning Directorate recommended refusal. Every time the board over-ruled and granted development permission! Twice the original decision to refuse was over-turned. Twice the Environment Protectorate Directorate also recommended dismissal, twice was the recommendation over-ruled.
- d) Again here the attached Audit Report 2009/079 (**Appendix 2**) best explains the details of the irregularities and serious failures of the MEPA in dealing with the developers. Suffice it to quote from the Auditor's comments:

Once again the Audit Office has no choice but to censor severely the DCC for overturning the recommendations of the Planning Directorate without giving sound planning reasons for doing so as required by the Development Planning Act and for approving a development contrary to official policies. The proposed development was not as described by the applicant in his application forms. It was simply the construction of a rural villa complete with extensive gardens, play areas, swimming pool, etc –generally carried out illegally – which the applicant subsequently sanctioned by submitting applications. (Incidentally it seems that despite the sanctioning no fines were imposed on the applicant)

I have only managed to investigate very few of the development applications submitted outside development zone and approved by the DCC following a negative recommendation of the Planning Directorate. In practically all the cases, the action of the DCC amounted to abuse of power, deciding policy instead of enforcing it, ignoring the official policies of the MEPA, and in general approving development applications which official policies meant to safeguard the environment indicated that they could not be approved.

...Irreparable damage to the environment has been carried out and certain privileged individuals have been able to obtain highly desirable properties located in the countryside..... at the expense of the community which has to put up with this type of environment in the countryside.....

In view of the level of protection given to the area by law, I recommend that all approved applications be referred for legal advice to see whether the permits were issued in accordance with the provision of the law. I note that in no case was clearance from the Environmental Protection Department obtained.

- e) The actual position remains that MEPA has taken no direct action to remove illegalities (although ECF78/08 and ECF317/04 are still active), has not imposed any fines, and as far as can be gathered from the MEPA website none of the recommendations of the Auditor were taken into account.

Conclusion

This brief has been restricted to detailing the known cases that infringe on the EC Directives. Other infringements to the provision of the Maltese Laws regarding development in sites Outside the Development Zone (ODZ) abound and many can be quoted. For the sake of brevity however we limit ourselves to presenting only three other cases – at Tas-Salib, at Qala and at Mosta. And for the purpose we attach the relative reports that were issued by the same MEPA Audit Office (**Appendices 3, 4, and 5**). RAM considers that these three developments together with innumerable others in Malta's ODZ, which were and are being condoned irregularly by MEPA, are irreversibly damaging not only to the ecosystem of the sites in question but to the biodiversity of the Maltese Islands in general.

If proof were needed to substantiate the above facts we refer to THE ENVIRONMENT REPORT 2008 which MEPA compiled in partnership with National Statistics Office, and was published in March 2010. The attached copy of page 48 (**Appendix 6**) on the Status of Maltese Habitats and Species of European Community Importance declares "...64% of habitats..... have a bad or inadequate conservation status. Stringent measures are required for these to attain favourable status..."

The accompanying Chart 1 shows that the Conservation status of habitats of European Community importance was 29% unknown, 26% bad, 38% unfavourable and only 7% favourable.

It evidently follows that for the “known” habitats of European Community Importance in Malta as much as 90% had a bad or unfavourable conservation status at the end of 2008.

Today my Association estimates that matters have become worse as a direct consequence of the failure of MEPA to carry out its duties adequately. The MEPA Boards act irresponsibly and never have any board members or officers of the Authority been held accountable for their actions.

We bring the matter to your attention in order that you may follow the course of action that you deem necessary in the circumstances.

Alex Vella
President
Ramblers' Association of Malta.