

AUDIT REPORT 2009/079

Request for an investigation by Professor Edward A. Mallia concerning developments at Ta' Baldu, l/o Rabat

An investigation was carried out in terms of Section 17C of the Development Planning Act.

Complaint

In an e-mail dated 7 July 2009, the complainant stated:

In the issue for Tuesday 16th June, the Times carried one of the standard MEPA features about buildings, monuments etc. dealing with the area known as Ta' Baldu, limits of Rabat. Three items were mentioned and graded as follows:

- 1. A cave complex of Roman origin -- Class B archeological feature.*
- 2. A 17th century F/H -- grade 2 building of architectural and contextual importance.*

The photograph shown in the Times is of rather poor quality; the one unmistakable feature of the site shown is an Awrikaria (Norfolk pine); to the right of the tree there are some structures which may be the remains of the two farm houses; to the left there is a low structure with a hint of a red-ochre wash used on church domes. The photo carries no date.

I visited the site on foot on Saturday 20th June. At one point, the public roadway (Triq San Gakbu) was bordered by a well-constructed 2m high rubble wall, in which were set two gates: one of wood and the other of wrought iron. There was a PA notice on the wrought iron gate dated 14th May 2009 and asking for sanctioning of one gate and permission for two more (PA.03495/07).

To get some view of things behind the high wall, I circled round on public roads to approach the estate from the other side of the wall. There was a major development there: a long, low building in red-ochre with the pine tree at its right end, with obvious significant additions in re-conditioned stone; further back, possibly close to the position of the ruined farmhouses in the Times photo, a detached two-storey building with blue shutters, also in re-conditioned stone (DSC 246). Moving in the direction of the buildings, I found myself in the middle of the "estate", without any private property notices. I passed along the flank of

the buildings, again without encountering any "Private Property" notices, and finally ended up on the "wrong" side of the wrought iron gate. That could be opened by an "electric key", which I promptly did and returned to the main road. On the way back I noticed a small gap between the end of the high wall and the edge of a neighbouring field. Going in to have a look turned up an arched forecourt, with a steel-beam structure in the middle (DSC 258). I suspect that this "public accessibility" to the "estate" is because the Class B archeological feature is in a depression at the foot of the pine tree. In fact the general public is denied access; for there is no hint that the site lies behind the wrought iron gate. I only gained access by a long walk round the back, having to fight my way through a canine ambush of three or four dogs. I am attaching a set of photographs taken in a west-to-east orientation.

As there is no hint of the two recent buildings in the MEPA photograph or in the Times write up, or in any extant planning application, I would like to ask for an investigation to be carried out by your office.

Action by the Audit Office

The Audit Office requested the Enforcement Section of the MEPA to investigate and report back. On 23 July 2009 an e-mail from the Enforcement Unit was received which stated:

A site inspection was carried out this week confirmed that no illegal works were ongoing within the area in question. The existing buildings are completely legal and covered by several permits and which have been constructed according to approved plans.

A number of enforcements have also been issued on site. These have all been sanctioned by permits except ECF 78/08 which is still awaiting decision in PA 3395/08. PA 3495/07 which is seeking permission to sanction an existing gate and sanction two others is still pending.

A subsequent e-mail was received which included an internal report to the Enforcement Unit Manager on the situation at Ta' Baldu. The report is reproduced hereunder:

The situation may be sub-divided into 3 aspects.

***A** - South Structure owned by Tancred Tabone*

***B** - North Structure owned by Jean Borg*

***C** - Landscaping/maintenance/gates/pools and relevant works in the area*

***A** - This development is covered by dev permits PA 682/04 (outline), PA 3944/05 (Alterations and Additions to existing old structure) & PA 1678/07 (to sanction demolition etc). ECF 500/06 was issued at one stage but eventually closed after*

PA 1687/07 was granted. Works are now completed and no recent works were reported by the PEO. No further action required on this development.

***B** - ECF 86/04 (unauthorized restoration works etc) was issued but later closed when PA 800/04 (to sanction restoration works to the old structure) was submitted and granted. Another application in PA 2600/06 was later submitted and upheld at reconsideration to erect 1st floor. Works are now completed and no recent works were reported by the PEO. No further action required on this development.*

***C** - Various works involving installation of gates, pool, reservoirs, landscaping, rubble walls etc were carried in piecemeal fashion on the (private) land surrounding properties A & B above. Two development permits were issued in PA 3459/05 (reservoir) and PA 5089/05 (sanctioning of landscaping etc).*

DN 4046/01 (reservoir) and pump room) was refused and PA 1209/07 (maintenance of existing rubble walls etc) was withdrawn as the works were incorporated in PA 5089/05.

ECF 503/06 (landscaping works etc w/o permit) was issued at one stage but was later closed when PA 5089/05 was granted.

However the following applications are still pending on this area - PA 3398/08 (demountable pool), PA 7509/07 (correction of site plan in PA 3459/05 for reservoir), PA 3495/07 (sanctioning of gate etc)

Moreover enforcement action is still active in ECF 78/08 (pool subject of PA 3398/08) and ECF 317/04 (gate subject to PA 3495/07). The latter notice is pending for direct action re gate.

Conclusion

*Most of the development indicated in *The Times* is therefore covered by full permits as indicated above. The "estate" is private property but access is allowed to farmers because agricultural land and in view of a natural water spring (inside the cave mentioned in the *Times*) which they have a right to use for irrigation (as was once informally informed by one of the landowners mentioned above).*

*A recent inspection by the PEO confirms no recent illegal works which merits enforcement action at this stage although 2 enforcement notices as mentioned above are still active against the (1) gate and a (2) demountable pool respectively. Applications to sanction were submitted in both cases. As one of them was submitted *fuore termini*, the relevant ECF (1) was listed for direct action.*

Due to the high sensitivity of the area (SAC, habitats, ecological, historical, archeological etc) the area was always under constant surveillance by the Enforcement Unit. The number of ECFs issued in various stages and consequential development permits and applications are a proof to this fact. The area would continue to be monitored and prompt action taken if illegal development is alleged or reported.

In view of the above, it was considered expedient to inspect the approved applications on part of the site. *(There are two adjacent farmhouses in the locality. Only the history of one of them will be investigated as this stage, as it is deemed sufficient for the purpose of this report. Further investigations may need to be carried out.)* The following applications could be traced:

PA 0800/04: To sanction alterations and maintenance works

PA 5089/05: Maintenance of the existing rubble walls. Consolidation of existing roads and tracks. Planting of trees and soft landscaping and general cleaning of the area.

PA 2600/06: To construct first floor and alterations to ground floor.

PA 1209/07: Maintenance of exiting rubble walls. Consolidation of existing road and tracks, planting of trees and soft landscaping and general cleaning of the area.

PA 3495/07: To sanction existing gate and install two more gates.

PA 7509/07: Correction of site plan from that approved in PA 3459/05

PA 3395/08: To sanction installation of demountable pool.

PA 0800/04: To sanction alterations and maintenance works

Jean Borg applied on 16 February 2004 “*to sanction alterations and maintenance works*” on a site at Ta’ Baldu, limits of Dingli (PA 0800/04). As the site was a site of archeological and ecological importance, the case was referred to the Integrated Heritage Management unit. The site was subject to enforcement action (ECF086/04) and an emergency conservation order. A long list of internal consultations follow to decide the appropriate action in this in view of the fact that the applicant had ignored the enforcement order and the great environmental importance of the site (architectural heritage, archeological remains, a Natura 2000 site, an area of Ecological Importance / site of Scientific Importance as per GN 400/96, a Special Area of Conservation as per LN 257/03 and GN 877/03).

A detailed report entitled Ir-Razzett ta’ Baldu. Monitoring Bulletin and Log Scheduled and Listed Properties follows. This is followed by a report on the specific application from the IHM. The report concludes by stating:

The proposed development cannot be sanctioned since this was carried out in defiance of Planning Laws, Enforcement Procedures and in defiance to the Emergency Conservation Order.

The development has caused irreparable damage to a Grade 2 building due to the several modifications made and due to the wrong and incompatible materials used. The development also impacted on an archeologically sensitive area.

Consequently detailed method statements on the proposed works were requested from the applicant. On 30 October 2004 the architect submitted a report detailing all interventions carried out.

On 15 December 2004, the IHM sent a memo to the case officer where it was emphasized that the applicant had carried out extensive works without submitting any application despite the issue of an ECO and a stop notice against him. He also advertised his actions by means of an article in the *Sunday Circle Homes* magazine (September 2004). An adjacent building which was also to be rehabilitated was subject to a rigorous planning process and no additions were permitted. The IHM advised action against the applicant.

The Superintendent of Cultural Heritage also expressed his concern “*that drastic and unauthorized development has been effected on a scheduled property of historical, architectural and contextual value*”.

The application was referred to the Heritage Advisory Committee, who, following a site inspection stated:

Sanzjonar ta' tibdil u Vidiet. Il-kumitat spezzjona is-sit u innota li sar jafna tibdil drastiku u mingjajr ma l-kumitat kellu l-possibilita li jaccertu ruju x'kien l-istat u l-gjamla oriġinali ta' din il-binja rurali. G]andu jifi rilevat ukoll li din il-binja tinsab f'kumpless agrikolu ta' entita u valur rilevanti u li g]andha importanza storika u arkeolojika. Il-kumitat qed jifi ikkonfrontat b'fatt kompjut, u li certu xog]lijiet huma irriversibbli. G]alhekk il-kumitat mhux f'po]vizzjoni li jissanzjoni x-xog]olijiet li saru. Certi interventi ma jistg]lux jif]u accettati g]ax imorru kontra l-etika u x-xjenza tar-restawr. Fosthom li ma sarx Restoration Method Statement, u dan g]ax ix-xog]olijiet saru mingjajr permess.

The Development Planning Application report was concluded on 15 February 2005 with a recommendation for refusal. On 14 March 2005 the DCC reviewed the application and requested the applicant to submit proof of residence for the building. The DCC carried out a site inspection on 20 April 2005 and minuted:

Noted the water gallery and that no interventions were carried out except cleaning. However interventions were carried out in the building. Noted a concrete ceiling in the corridor between the bedrooms and the rubble retaining walls. Cement rendering on the façade was also noted on the adjacent building which is the subject of PA 682/04.

On 24 May 2005 the DCC reviewed the application and decided that:

In view of site inspection note, architect is to submit drawing and method statement regarding change of corridor concrete ceiling to a traditional stone slab and beam construction. Method statement to address works carried out on façade and other issues raised in IHM report. Such a statement is to be reviewed

and commented upon by IHM. In this case the method statement will record how works were carried out. Otherwise gate noted on entrance on Triq San Gakbu to be removed so that passage remains public.

The Environment Protection Department inspected the site and in an internal memorandum expressed strong concern on construction works as carried out stating inter alia:

A number of interventions have been noted within the site indicated as the applicant's property. The ongoing development is neither agricultural in nature nor compatible with this remote rural site of ecological, scenic and cultural heritage value. The site is being transformed into a villa type garden.

It followed by listing these interventions which included:

- The planting of turf on substantial parts of the area;
- The creation of a small turfed football ground.
- Introduction of other alien plant species some of which were potentially invasive thus affecting the ecology of the area;
- Formation of a pathway and building of rubble walls not according to official policies;
- Stone chairs and benches within the terraced fields;
- Lamp posts erected along the pathways.

The EPD made it clear that *“these interventions are illegal and their sanctioning would merely endorse a development which is incompatible with its sensitive location and would thus merely compound existing problem. Given the above, the proposal for sanctioning of the reservoir should not even be considered and a refusal is strongly recommended.”*

The final amended DPA report highlighted the EPD report and referred it to the DCC consideration.

However, the comments and concerns of the EPD were totally ignored by the DCC who approved the application on 8 November 2005. The following justification was given:

Granted 5-0 in view of site inspection note, in view of architect's submission at red 52 comprising method statement (and as amended by architect himself during sitting). Prior to issue of permit architect to submit site plan relating the ownership of passageway as described in deed at blue 51 and the site plan and deed to be referred to Legal Office for their advice regarding whether passageway is public or private.

PA 5089/05: *Maintenance of the existing rubble walls. Consolidation of existing roads and tracks. Planting of trees and soft landscaping and general cleaning of the area.*

The same applicant submitted another application on 11 August 2005 for the “*maintenance of the existing rubble walls, construction of existing road and tracks, planting of trees and soft landscaping and general cleaning of the site*” (PA 5089/05).

Letters of objection to the development were sent, the objector stating that the works had already been carried out that the works were likely to affect the sensitive nature of the area both in terms of ecology and in terms of archeology. This was confirmed by the applicant himself *who on 25 January 2006 wrote to amend the application to read “Sanctioning of etc”*.

A copy of the memorandum from the EPD which had been included in the previous file was also inserted. However, on 18 April 2006 a letter from the Director of Agriculture stated that

Site was inspected and found that land is well kept and serves mostly for agricultural purposes. As long as site continues to serve for such purpose, this department does not find an objection for this application.

The DPA report was concluded on 28 August 2006 with a recommendation for refusal. The DCC reviewed the application and deferred a decision following a site inspection to ascertain whether “*application is in fact of a formal nature or otherwise.*” The DCC inspected the site on 4 December 2006 and minuted: “*Development not objectionable*”. Consequently on 29 January 2007, the DCC approved the application. No reasons were given why the recommendation of the Planning Directorate was being overturned.

PA 2600/06: To construct first floor and alterations to ground floor.

The same applicant submitted another application “*to construct first floor and alterations to ground floor*” (PA 2600/06)

The application was the subject of a memo from the EPD to the case officer. The EPD found the application objectionable for the reasons which already had been outlined in the previous application.

The HAC (Natural Heritage) also reviewed the application on 26 October 2006 and objected to the development in view of its negative visual impact.

An extract from the minutes of the MEPA Board held on 2 November 2006 were also included in the file. The minute involved a scheduling reconsideration. The MEPA Board agreed to re-grade the damaged farmhouse from Grade 2 to Grade 3.

On 15 January 2007 the IHM sent a memorandum to the case officer explaining the situation following the re-scheduling of the building. It explained the requirements which the MEPA Board had imposed on the applicants (including the owner of an adjacent property) before their applications could be processed. Among other things the memorandum stated:

MEPA is not in a position to process further the planning applications and scheduling reconsiderations unless its' requisite is met with. MEPA is also ready to take action to seal the site and prohibit access to the owners until they comply.

As to the particular application the report concluded:

There is no proof that a second floor existed above the existing farmhouse in question (PA 2600/06), and therefore there is no justification as there was for the adjacent farmhouse (PA 3944/05). The construction of a second floor would detract from the homogeneity of this property.

The HAC reviewed the application on 16 January 2007, and after considering the report of the IHM quoted above, agreed with its contents and recommended a refusal.

The DPA report was concluded on 14 February 2007 with a recommendation for refusal. Nine reasons were given for this recommendation. The DCC refused the application on 24 April 2007.

The applicant submitted a request for reconsideration on 18 April 2007 together with amended plans reducing the area at first floor level. The reconsideration report however found the proposal objectionable and recommended its dismissal.

The DCC approved the application on 4 February 2008 with the following justification:

Approved 5-1 in view that extension does not exceed 50 square metres and is not in conflict with Grade 2 listed buildings as per policy UCO7

PA 1209/07: Maintenance of existing rubble walls. Consolidation of existing road and tracks, planting of trees and soft landscaping and general cleaning of the area.

The same applicant submitted another application on 21 January 2007 as detailed above. The EPD and the HAC have already expressed their opinion that this application should be refused. However, the application is still pending and will not be discussed further.

PA 3495/07: To sanction existing gate and install two more gates.

Another application from the same applicant as described above submitted on 24 May 2007. A letter from the Estates Management Department indicates that part of the land where it is being proposed to install the gate is public property. The application is still pending and no further comments are appropriate.

PA 7509/07: Correction of site plan from that approved in PA 3459/05

The same applicant submitted another application on 10 December 2007 as detailed above. The application was recommended for approval by the Planning Directorate and approved by the DCC on 31 October 2008.

PA 3395/08: To sanction installation of demountable pool.

Another application as described above submitted by the same applicant on 8 July 2008. The application is still in the early stages of processing and will not be commented upon.

Comments

When I go over this list of applications (practically all “*to sanction*”) it makes me wonder what is the point of having the MEPA in the first place. A person who seems to consider himself above the law carries out a major development on a highly sensitive site protected by law due to its environmental and archeological sensitivity ... and gets away with it with the blessings of the authorities who are supposed to be responsible for safeguarding for the whole of society (and not on behalf of a privileged few) the natural and historical heritage of the country. What is the point of having the MEPA at considerable expense to the taxpayer when the professional advice of its officers is flagrantly ignored by the DCC without any justification being given? Why not revert back to the previous PAPB system where a Board supported with the minimum clerical staff approved or rejected planning applications with little if any professional input? It would be much cheaper for the taxpayer than maintaining the MEPA, and the result would be the same.

The DCC had a report to consider which clearly indicated that the works carried out by the applicant illegally could not be sanctioned. Instead of giving reasons why the applications could be accepted and the advice of the Planning Directorate not accepted, the DCC decided to concentrate on a relatively minor issue (ownership rights on an existing track) and ignore the relevant factors: site sensitivity, protection afforded to it by law, archeological importance of the site, etc.

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.

This is a very serious situation. In two of the cases considered, there was considerable media coverage because they involved politicians. In another case the DCC Board had to resign – but again the case was initiated by a political party on the eve of a general election. The rest were conveniently filed away and no effective action taken to remedy the situation. Indeed the cases created a precedent which may have a bearing on similar applications. It seems that unless politics are involved, the actions of the MEPA are beyond scrutiny and have to be justified irrespective of circumstances. In fact this is a much more serious case than the ones considered (and given so much publicity). At least in those cases the applicant did not carry out any development before he had the necessary permits from the MEPA. In this case the applicant carried out the development illegally and then applied to sanction a *fait accompli*!

This, as far as I am concerned, is a totally unacceptable situation. 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 (where even the actual financial value of these properties cannot be ignored) at the expense of the community which has to put up with this type of environment in the countryside. Malta is a highly overpopulated island with little countryside. Instead of doing our utmost to protect the little that is left, we allow a few individuals to enjoy at the expense of others what should be part of the common heritage of all the people.

The number of cases investigated involving the actions of the DCC Division A are a major cause of concern. No adequate explanation has ever been given for these actions of the DCC. The fact that this Board has now been replaced is not a sufficient redress in the circumstances. In the interests of the reputation of the MEPA, and the fact that no satisfactory justification for these decisions were ever given, I would recommend to the MEPA to request the Prime Minister to set up a formal Commission of Inquiry under the Inquiries Act to investigate in detail the operations of the DCC Division A and make appropriate recommendations to the Government.

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 to the provisions of the law. I note that in no case was clearance from the Environmental Protection Department obtained.

There are other aspects of concern in these applications:

1. *The continuous abuse of the applicant*: The long list of applications to sanction illegal developments makes me wonder when the applicant intends to stop. In addition to the illegalities which have been sanctioned contrary to policy, there are still pending applications to sanction additional development. Of particular concern is the application

to sanction a swimming pool described as a “*demountable pool*”. From the photographs submitted by the applicant it is clear that this is a normal below-ground pool. I cannot understand what is demountable about it. However, in the circumstances I would recommend that the MEPA should refer all pending cases “*to sanction*” to the MEPA Board itself, especially when the MEPA Board has already taken decisions concerning this development. It is unacceptable that a developer continuously ignores all laws and regulations, carries out development illegally, presents a *fait accompli* to the MEPA and expects to have his development regularized.

2. *The actions of the architect consultant to the developer:* From the correspondence in the file, it seems that all works were carried out under the supervision of a warranted perit. It is not my function to investigate the actions of individual architects, but it is the duty of all professionals in the service they provide to their clients to respect the law of the land and advise their clients accordingly. I consider the actions of the perit highly unprofessional and I would recommend that the MEPA refers the case to the Kamra tal-Periti for a formal investigation under the provisions of the Periti Act.

3. *The letter of the Director of Agriculture.* As I have stated several times, unless the consultees of the MEPA give relevant advice, the work of the MEPA would be seriously impaired. I fail to understand the contents of the letter of the Director of Agriculture where he stated that the development on the land surrounding the property in question was of an agricultural nature. It is clear from the photographs taken by the Environment Protection Department and those presented by the applicant himself, that this is a garden complete with turfed areas and even a small turfed football pitch. How this can be termed “agriculture” is beyond my comprehension.

4. *Applications to sanction:* There may be a scope for such applications when they refer to relatively minor development carried out within development zones and conforming to standard policies. But applications to sanction development on listed sites and buildings and located outside development zones and in particular in protected areas and areas of archeological and ecological importance should be totally unacceptable. I have no hesitation to advise the MEPA to recommend that in the proposed amendments to the Development Planning Act, applications to sanction should not be acceptable in such circumstances. In addition the prosecution of offenders (provided that adequate penalties apply which act as an effective deterrent) should be considered normal practice in these cases. It should be made clear that this would apply not only to the owner / occupier of the land but also to any consultants he / she may employ.

5. *The action (or lack of it) by the Planning Directorate:* It is obvious that the Director of Planning knew all along what was happening in the decisions taken by the DCC Division A. Yet there seems to have been no response to the gross abuse of power and breach of regulations and policies being carried out from the Director of Planning. It should have been his duty to refer to the MEPA Board the situation. It seems that throughout this period the MEPA Board (and consequently the Government) were kept in the dark on what was happening in the operations of DCC Division A with the resulting political embarrassment when cases involving politicians came to light. On the other hand, I had

on several occasions in my reports censored the operations of this Board – but in all cases the MEPA chose to defend these actions and justify decisions taken against policy by this Board.

Conclusions and recommendations

1. The investigation has confirmed that the MEPA has approved developments contrary to approved policies on sites subject to special protection at the area known as Ta' Baldu, limits of Dingli.

2. All pending applications by the applicant to sanction existing illegal developments should be referred directly to the MEPA Board for a decision to take into account decisions on the matter already taken by the MEPA Board. Before any of these cases is decided, the approval or otherwise of the Director for Environmental Protection should be sought. It is essential that the provisions of the law as pertaining to protected buildings and sites is rigidly enforced.

3. The MEPA should refer all approved applications for legal advice to consider the possibility of withdrawing these or some of these permits where they have been issued contrary to the provisions of the law.

4. The MEPA should request the Prime Minister to consider appointing a formal Commission of Inquiry to investigate the operations of the Development Control Commission Division A. The fact that the Board has since been replaced is not sufficient as the individual members should face their responsibilities.

5. The MEPA should refer the actions of the architect consultant to the applicant to the Kamra tal-Periti for an investigation in terms of the Periti Act for giving professional advice to his clients and assuming professional responsibility for works which were being carried out illegally.

6. The MEPA should refer the letter of the Director of Agriculture to the Prime Minister for any action he may deem fit.

7. The MEPA should advise Government that in the proposed MEPA reform a clause should be inserted which

- would not allow the sanctioning of developments involving protected sites or buildings,
- require that offenders be prosecuted and the sanctions against offenders would be sufficient to act as an effective deterrent,
- in addition to the owner / occupier of the building, any consultants who accept to advise on such illegal works would be equally subject to prosecution,
- disciplinary proceedings leading to the revocation of the warrant to practice should be taken against any offending professionals.

Any professional who is giving a consulting service to his client should be obliged to inform the MEPA if his client commences any site operations without the relevant permits or if he chooses to ignore any conditions imposed in the permit.

MEPA's reaction to preliminary report

A preliminary version of this report was transmitted to the Chairman, MEPA for his comments. The Chairman replied by means of a lengthy report, which is impossible to reproduce here. However the main comments are listed hereunder:

1. The DCC followed all the standard procedures for consideration of an application. The DCC had all the information including the submissions made by the applicant and consultees and findings during site inspections.

Comment: The DCC failed to give a valid planning reason why the recommendations of the Planning Directorate were not followed as required by the Development Planning Act.

2. The MEPA is obliged under the law (which is expected to be modified in the proposed MEPA reform) to accept all applications including those to sanction and process them according to policies

Comment: Agreed. However when an applicant consistently carries out illegal development which he then proceeds to sanction, this fact has to be considered in the processing of the applications.

3. The MEPA is bound to honour all decisions taken by Commissions, irrespective of whether the MEPA itself concurs with these decisions.

Comment: Agreed in part. In case of breach of regulations governing procedures or when policies are flagrantly ignored (especially if this is carried out in consistent manner) then the MEPA is obliged to take appropriate measures against members of such Commissions.

4. The Planning Directorate has no powers to investigate the actions of the DCC when it overturns decisions.

Comments: I never said so. I simply stated that the Director of Planning as the Senior Executive Officer of the MEPA had an obligation to alert the MEPA Board on what was happening. It would have been then up to the MEPA Board to take such actions as deemed appropriate.

5. The role of the architect in being considered and action would be taken if legal advice indicates so

Comments: Agreed. My concern as Audit Officer is that the actions of consultants have to assist the MEPA in its assessment of planning applications not try to find loopholes in the system or assist developers to break the law. I consider it a breach of professional ethics when a professional acts in any way or assists in any way another person to conduct illegal activities.

A final comment: I have received information that the premises in question are being used for wedding receptions and similar activities. The MEPA is advised to monitor the site to ensure that such illegal activities are not carried out and to take immediate effective action if they happen. It is to be noted that the site is extremely environmentally and archeologically sensitive and sufficient damage has already been done.

Joseph Falzon
Audit Officer

17 December 2009