



AUDIT REPORT 2010/029

Complaint by Mr Joseph Agius on behalf of the Ramblers Association of Malta concerning the approval of development application PA 6547/06: *Construction of vineyard and winery.*

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

Facts

The history of this application is listed hereunder:

2006 (19 October): Mr Johan Gaffarena applied for the “*construction of vineyard and winery*” on a site at Tas-Salib, l/o Rabat (PA 6547/06).

2006 (7 November): The applicant through his architect informed the MEPA that by an oversight the application was for a full development permit. His intention was for an outline permit.

2006 (29 November): The applicant changed his mind and confirmed that he was presenting a full development application.

2007 (8 January): Letter from the Viticulture and Oenology Unit of the Ministry for Rural Affairs and the Environment where it was stated:

... note that the applicant is not a registered vine grower. Moreover the Viticulture and Oenology Unit is not in receipt of an application from the applicant for new planting rights from the reserve. Unless the rights are granted any vine plantings for the production of wine grapes will be deemed as illegal.

*From the documents presented the proposed plantings will be carried out with *Parthenocrassus quinquefolia* (virgin vine) and not with *Vitis vinifera*. Only plantings with *Vitis vinifera* varieties and for the production of quality wines shall be considered by this Unit. This point should be clarified prior to further consideration of the application.*

2007 (10 January): Letter from the Director of Agriculture which stated:

This Department does have an objection from the Agricultural point of view as stated by the Viticulture and Oenology Unit.

2007 (28 February): Report from the Environment Protection Department to the Planning Unit where it was stated:

- (1) MEPA policies do not allow the construction of wineries ODZ.
- (2) Extensive soil deposition and site engineering works through land reclamation had already been carried out. These interventions resulted *"in significant and adverse impacts not only on the garigue habitat and rock pools but also to the general landscape character of the area"*. The department further added that *"considering that reclamation of garigue within the site is already underway, and since such works were not clearly spelled out in the application, such illegal works further indicate that the proposal cannot be accommodated without adverse environmental impact."*
- (3) *"The conversion of garigue into agricultural land is not acceptable; let alone the construction of additional development"*.
- (4) The presence of various features including rock pools and archeological features such as irrigation channels. Cart ruts are present.
- (5) *"The proposed landscaping for the creation of the vineyard and the proposed winery (and associated facilities) will alter the visible landscape and will therefore alter the setting of known archeological features. This is counter to Structure Plan policies ARC 2 and ARC 3 and Cultural Heritage Act 2002."*

2007 (9 March): The Natural Heritage Panel of the Heritage Advisory Committee agreed with the recommendations of the Environment Protection Department.

2007 (16 May): Letter to the MEPA from the applicant through his architect where he submitted a copy of a permit to excavate and transport soil and to deposit soil at il-Hawlija, I/o Rabat. The permit was issued on behalf of a third party (not the applicant) and issued with reference to development permit PA 2223/06. In the architect's letter there is a reference to a meeting between the applicant and the Planning Directorate. No records of this meeting exist in the file.

2007 (23 August): The applicant through his architect presented a report from a consultant assessing the suitability of the site for the proposed use. In his letter the architect summarized the conclusions of the report stating:

... it transpires that the majority of my client's lands can actually be used for vines, whilst the area of garigue and macquis will be maintained and enhanced. In fact, invasive plants will be removed and the garigue will be left to regenerate slowly within the area. It is pertinent to point out that a number of trapping sites found within my client's property will be removed and the relevant land will be converted back to agricultural use particularly the land will be converted to vineyards.

2008 (28 January): The EPD submitted its comments on the report presented by the applicant. While it accepted that some parts of the land could be used for agricultural

purposes, it reiterated its recommendation to refuse the application for various reasons listed in the previous report and not addressed by the consultant.

2008 (13 February): Letter from the architect submitting amended plans as a result of a meeting held between the architect and the Planning Directorate. Once again no records of the meeting exist in the file. Copies of records from the Viticulture and Oenology Unit indicating land under cultivation by the applicant as well as new planting rights for vines from the reserve were also presented.

2008 (22 February): The Development Planning Application report was concluded with a recommendation for approval. The main reason for the approval was that the development complied with the provisions of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables. The report states that meetings had been held with the architect to update the application according to the needs of the policy. No records of these meetings are given in the file.

2008 (3 March): The application was approved unanimously by the Development Control Commission.

Comments

There are two aspects to this application which needs to be considered:

- (1) Whether the application complied with the relevant policies;
- (2) Whether the concerns of the Environment Protection Department were adequately addressed by the applicant in his submissions.

The Planning Directorate justified its recommendation for approval on the basis of the provisions of the Design Guidance on Agriculture, Farm Diversification and Stables, in particular Sections 2.8B. The provisions of this paragraph are listed briefly in the table below with comments:

Provisions of the Guidance	Comments
The preferred location of new wineries is on land zoned for industrial development.	This condition was not considered by the case officer
Applicant to submit certificate from Department of Agriculture that proposal is essential to the needs of agriculture	According to the case officer such a certificate had been presented as in red 11 and red 22 in file. Red 11 is an objection from the Department of Agriculture to the proposed development. Red 22 is an application from the applicant to obtain planting rights from the reserve and copies of site plans indicating land owned by the applicant at Tal-Hawlija, I/o Rabat. 18 tumoli of land were indicated.

The applicant has to be a farmer registered as wine grower managing a registered vineyard holding for the production of "quality wine psr" for at least 2 consecutive years prior to the application.	The applicant applied for planting rights on 12 February 2008. The application for the winery was submitted to the MEPA on 19 October 2006.
The applicant's registered vineyard holding occupies a total land area of at least 2 hectares in size and located within 500 metres from the site of the proposed development.	The land indicated in the application for planting rights is not the same land indicated in the application for development to the MEPA. Presumably only part of the land indicated in PA 6547/06 will be used for vineyards. The total of 18 tumoli would result from the other land as indicated in the application to the Department of Agriculture.
The applicant shall submit official documentation to demonstrate that the site in question is in conformity with all permissions granted by the Authority.	The report of the EPD indicated that illegal works had been carried out on site.
Conditions (2) to (5) refer to other wineries belonging to the applicant, the distribution of land, presence of other buildings on the site.	Although no documentary evidence has been presented, all indications are that these have been satisfied.
Not located in a scheduled area and the land is not of ecological, scientific, landscape, cultural or archeological value.	While the landscape value may be subjective, the EPD report indicates that the area has archeological values and the proposed development may actually obliterate archeological remains.
Condition (7) refers to the proposed building in terms of area, height, etc	Applicant's proposal complies with these conditions
Applicant to submit an official statement from the Department of Agriculture and the Department of Health to certify that the proposal is in accordance to their standards	No indication of such a statement exists in the file, but a condition to the effect inserted in the permit (Condition 2).
A condition will be imposed by the MEPA, that if the building is not used as a winery or if the land indicated is no longer cultivated as a vineyard then the building has to be demolished and the land restored to the satisfaction of the MEPA.	A condition to this effect has been imposed (Condition 11).

The Table below lists the objections of the Environment Protection Department. The two memos of the EPD (blue 12 and blue 20 in PA 6547/06) are considered together.

Objection of EPD	Comments
Construction of wineries ODZ is not allowed.	This is not correct. The Guidance allows such a development subject to conditions as listed above
Land is predominantly garigue with patches of reclaimed land (legality dubious).	A detailed report was presented by the applicant indicating that parts of the site would remain garigue and only those parts which are already covered with soil will be used as a vineyard. The EPD did not agree with the contents of the report and explained that the area of garigue was in fact much larger than indicated in the report.
Extensive soil deposition and site engineering works through land reclamation had been carried out resulting in significant and adverse impacts on the garigue habitat and landscape character of the site.	The fact that illegal works were being carried out on site was completely ignored by the case officer who limited his comments to the fact that no enforcement notices existed on site.
Archeological features exist on site. The proposed construction may destroy archeological features	The case officer considered that the site had no archeological importance.
Land reclamation of garigue is not permitted.	The case officer claimed that the architect is insisting that no new soil was deposited in the areas indicated by the EPD and plans have been submitted which respect the requirements of the EPD (drawings 22B and 22E). But the EPD report is clear that it does not find the proposal acceptable and also stated that soil had already been deposited on site before the application was submitted.

The approval of this application raises a number of concerns. The impression one gets from the perusal of this file is that the case officer bent over backwards to accommodate the applicant giving, at best, slight importance to the objections of the EPD.

1. **Did the applicant qualify to build a winery outside development zone?** It is clear from the above that for the two previous years the applicant was not a wine grower. Indeed he applied for the winery in 2006 and only applied for planting from the reserve in 2008! The only documents from the Department of Agriculture are two objection letters to the development (red 11). Red 22 is just an application to the Department but not an approval. Only after the applicant had been operating legally as a wine grower for two years could the application for the winery be considered and not before.

2. **Why was the clear indication from the EPD that illegal works had been carried out ignored?** No explanation to this can be found in the file. The case officer had been alerted by the EPD that illegal works which had a bearing on the environmental integrity and possibly archeological value of the site were being carried out. Why did he not ask the Enforcement Section to investigate and take appropriate action? Instead he misled the DCC by stating in his report that no enforcement action existed on site. Why did he choose to take this particular stand on this application? It obviously favoured the applicant ... to the detriment of the environment. It is to be noted that the team manager endorsed without question the report.

3. **The protection of the garigue.** The EPD were adamant that the proposal could not be accepted as it resulted in extensive environmental damage to the garigue. The applicant amended his application claiming that his final proposal addressed the issues raised by the EPD. Yet this final proposal was never sent to the EPD for their endorsement, possibly because it did not actually address the issues raised by the EPD. In their report the EPD stated that most of the site was garigue. In the final approved drawings only two small areas of the site are indicated as garigue.

4. **The archeological value of the site.** The EPD clearly indicated the archeological value of the site. The case officer completely ignored this issue and it is not even mentioned in the DPA report. Instead he indicated that the site has no archeological value. Again he chose to mislead the DCC when there were very clear objections to the development for this specific reason.

5. **The landscape value of the site.** The case officer was satisfied that this condition was being observed because the proposed building conforms to the conditions in the Guidance. We do not need professional persons to judge applications on these criteria. As I have stated on many occasions compliance with the established criteria is essential. But then a professional assessor should judge the application on the basis of the actual particular site conditions. I have to express my concern at the fact that this important consideration was ignored on such an exposed and highly sensitive area.

6. **Meetings with the applicant and his consultants.** There are a number of references to meetings held between the applicant or his consultants and the MEPA. No records of such meetings exist in the file. This is of concern. A complete record of all meetings, preferably signed by all participants, should always follow any meeting. In the interest of transparency no MEPA official should accept to hold meetings with applicant, objectors, etc unless the meetings are minuted and available for perusal by interested parties. A full record of all meetings should be in the file.

The case officer and his team manager should be severely censored for the recommendation given in that:

- (1) they recommended a development application on the basis of a planning document when the applicant did not qualify for the proposed development according to the provisions of the same document;
- (2) they knew that there was an illegal development on site but they did not take any action on this fact;
- (3) they ignored the objections of the Environment Protection Department which considered the development to be objectionable due to the damage which the proposed development was going to cause to the garigue landscape;
- (4) they ignored the concerns of the EPD concerning the possible archeological value of the site.

The MEPA should instruct case officers and their team managers that

- (1) No development application should be recommended for approval unless it complies rigidly with the provisions of the Structure Plan and any subsidiary regulations or guidance documents approved and published by the MEPA;
- (2) No development application should normally be recommended for approval if the Environment Protection Department or other properly constituted bodies object to the development. If the applicant modifies his proposal as a result of the requirements of such bodies then the amended submissions should be returned to the body which made the objections for its comments.
- (3) If the Planning Directorate is alerted, either from an internal source or an outside body or person that an illegal development exists on a site for which a development permit is being sought, then this information should be investigated before the DPA report is concluded. Appropriate action should also be taken.

Conclusions and recommendations

1. The complaint that development application PA 6547/06 was assessed contrary to official policies is sustained. The Planning Directorate is responsible for this in misleading the Development Control Commission in believing that the proposed development conformed to official policies when it clearly did not and for ignoring important information concerning the application and not informing the DCC about it.
2. The MEPA should monitor the site regularly to ensure strict compliance with the conditions imposed in the permit.
3. The clearance of the Environment Protection Department, where applicable, should be considered an absolute necessity for the approval of a development application.
4. The MEPA should instruct all its officers that whenever any one is alerted to a possible illegal development, the matter should be referred to the proper sections for an investigation and appropriate action. No Development Planning report should be

endorsed where such allegations exist unless these allegations have been confirmed or refuted.

5. Once again the Audit Office would like to reiterate its advice that records of all meetings in connection with development applications should be kept in the file. Informal meetings with applicants or objectors should not be held.

Preliminary report

A preliminary version of this report was sent to the Chairman, MEPA on 2 August 2010 for his comments. As no reply has been received to date, it is being assumed that the MEPA agrees with the contents of this report.



Joseph Falzon
Audit Officer

30 September 2010