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RUNNING HOODWINKED ON THE SAME SPOT?

REFLECTION BY THE INTERDIOCESAN COMMISSION FOR THE ENVIRONMENT FOR WORLD TOWN PLANNING DAY 2022

The Interdiocesan Commission for the Environment (KA) welcomes two major documents which were published recently for public consultation, namely the draft National Strategy for the Environment 2050 ('NSE 2050') and the White Paper on Agricultural Reform ("WPAR"). The success of these initiatives is, however, highly dependent on a supportive land use planning framework.

The NSE 2050 draft strategy through its strategic objectives would lead to an improvement in the quality of life of citizens who have the right to enjoy a healthy environment that sustains their life. In conjunction with the NSE 2050, the proposed agricultural reform as set out in the WPAR aims to create a "legal framework and control systems that safeguard the social rights of all stakeholders, food safety and environmental protection".

More effective power required for Environment and Resources Authority and the proposed Authority responsible for Agricultural Land

The planning system as practised under the Development Planning Act and through other practices that have no legal basis at law (including the concept of precedent that is used to approve certain development applications) is working against some of the strategic objectives of the draft NSE 2050 and the aims of the White Paper on Agricultural Reform. The KA had brought the attention of the pitfalls of the current regulatory planning and environment protection framework when the Development Planning Act and the Environment Protection Act were issued for public consultation years ago.

One should not be surprised that agricultural land is being lost and that the natural environment is being urbanised. The infamous Rural Policy and Design Guidance

2014 has been contributing to such loss. Following a public consultation that ended in August 2020, that is more than two years ago, the policy has not yet been reviewed. This dragging of feet has given ample time to applicants to continue wreaking havoc in the countryside with buildings cropping up in place of ruins and the valuation of agricultural land increasing because of the possibility of agritourism projects.

Another case of a planning policy permitting environmental degradation is the Development Control Design Policy, Guidance and Standards 2015 which is the main cause of devastation of Gozo's ridges with the consequent accelerated loss of Gozo's unique landscape. No action has yet been taken to amend this policy.

If the Environment and Resources Authority (ERA) and the Environment Protection Act, together with the proposed Authority responsible for agricultural land, are to play a distant second fiddle to the Development Planning Act and its decision-making processes then we would as a nation be betraying the country as well as current and future generations. The planning system, due to the way it has developed over the last years, needs more effective checks and balances for it to really serve the common good.

One should not be surprised by the current state of the urban and natural environment if ERA has no veto power in matters relating to development plans and planning policies and development applications that have a significant bearing on the quality of life, whether through single impacts or the aggregation of such impacts. The KA has for years called for ERA to have such veto power.

White Paper on Agricultural Reform

The valuation of agricultural land is an important aspect underlying the White Paper. It is crucial that prior to the approval of development plans and policies related to rural areas, an impact assessment is carried out to assess what impacts such development plans and policies would have on the valuation of land that, prior to the approval of the policy, would have been used or permitted to be used exclusively for agricultural purposes.

A new planning policy would easily push up any valuation of land if such new policy would permit other uses apart from a strictly agricultural one. A landowner would be incentivised to get the maximum value for such land and, if eviction is not possible, then agreements with farmers can be made for the latter to abandon agricultural land.

While this may benefit individual farmers, it goes against the public interest to safeguard agricultural land.

The White Paper proposes the setting up of an Authority responsible for agricultural land. One of the main responsibilities of the Authority would be “to reinforce the need of ensuring that agricultural land is worked and utilised in line with its agricultural purpose *without undermining the rights that emanate from existing planning policies*”(Proposal 01.ii). The proviso “without undermining the rights that emanate from existing planning policies” goes against the whole spirit of what the White Paper aims to achieve.

No rights should emanate from existing planning policies. Such rights should emanate only from a valid development permit. This is expressly stated in the Development Planning Act. The argument of “legitimate expectation” has been promoted for many years by those who want to make such a concept a supreme maxim which fundamentally means the death knell for any planning process because it makes it close to impossible to change any planning policy. Under such maxim people carry out transactions (without applying for a development permit) expecting that such a policy would still be in place when in later years they would apply for a development permit. **The KA recommends that the proviso, that is “without undermining the rights that emanate from existing planning policies” of Proposal 01.ii be removed.**

Proposal 09 suggests “stricter protection systems that make it more difficult to change the use (of agricultural land) where this is not permissible as per current planning policies”. The KA has on various occasions invited the authorities to grant a higher-protection status to agricultural land than it enjoys today. However, for agricultural land to be truly safeguarded, current policies need to be changed so that what is permissible to be changed from agricultural use to another use is restricted further. The White Paper admits the unfortunate fact that even though such change of use may not permissible by current planning policies, decision-makers do go against such policies. **The KA recommends that a review is carried out of all legal instruments related to planning, including development plans and planning policies, the Use Classes Order and the Development Notification Order in order to identify how such instruments pose a threat to agricultural land and address them accordingly.**

The KA finally recommends that such Authority will have veto power when development plans, planning policies and development applications relating to agricultural land are being considered.

Conclusion

The publication of the NSE 2050 and the WPAR give the impression that a lot is being done. If the good intentions of the NSE 2050 and the WPAR are seriously undermined by a planning process that does not support them but rather undermines them, then one gets the impression that indeed we may be running ahead with the publication of strategies and White Papers. However, if we cannot see the impacts that such planning process is having on the urban and natural environments including the future of agriculture then we would be running hoodwinked on the same spot. Then, the only hope for effective change would be the constant militancy in favour of a planning system that really serves the common good. The unwavering determination of such militancy is obvious in the case of the Hondoq Bay development application refusal.

The KA invites Government and the Standing Committee on the Environment, Climate Change and Development Planning to reflect and take decisive action now to stop the urban and natural environment from continuing to be irreparably damaged by misguided development plans and planning policies and decision-making processes based on concepts anathema to planning including the concepts of “precedent” and “legitimate expectation” that have been introduced informally over the years by decision makers.