

CHANGE OF USE

TA' GARAXXIJIET

Robert Musumeci

Bijografija



Dr Robert Musumeci kiseb PhD fil-liġi mill-Universita ta' Malta wara li, fl-2016, huwa rebañ il-*'Best Doctor of Laws Thesis Award 2016'* għall- publikazzjoni *'The Development Planning Act 2016 - A critical Appraisal'*. Dr Musumeci kiseb ukoll *Master of Science in Conservation Technology for Masonry Buildings* lura fl-2004 mill- istess Universita' ta' Malta wara li ggradwa bħala perit fis-sena 1997. Dr Musumeci serva bħala ċermen tal-Kunsill Konsultattiv dwar l-Industrija tal- Bini (BICC) bejn is-snin 1998 u 2008. Eventwalment huwa serva bħala konsulent tal-gvern Malti fejn kien strumentali fir-riformi wara d-*demerger* tal- Awtorita' ta' Malta dwar l-Ambjent u l- Ippjanar, it-twaqqif ta' l- Awtorita' ta' l- Artijiet, l-emendi kostituzzjonali li jippermettu sigġijiet addizzjonali għas-sess sotto-rappreżentat l-introduzzjoni ta' liġi ġdida li tirregola l-aġenti tal-proprjeta' immobili kif ukoll il-liġi li waqqfet l-Awtorita' tal-Bini u l-Kostruzzjoni. Dr Musumeci huwa l-awtur tal-ktieb *'Selected Principles of Maltese Planning Law.'* (Kite 2021) Dr Musumeci huwa *senior lecturer* fi ħdan il-Fakulta' tal-Liġi fl-Universita' ta' Malta u jgħallem il-liġi tal-ippjanar u l-liġi amministrattiva. Dr Musumeci huwa l-ewwel detentur ta' *warrant* biex jipparattika bħala avukat u *warrant* biex jipprattika bħala perit.

Sabiex go zona residenzjali, garaxx li jintuza għall-parkegg tal-vetturi formanti parti minn residenza jew kumpless ta' residenzi jinbidel f'hanut kummercjali (uzu Klassi 4B) hemm bzonn ta' permess ta' zvilupp. Jekk jinharigx tali permess, primarjament jiddependi minn zewg affarijiet – il-kobor tal-garaxx u jekk il-bdil ta' uzu hux ser iwassal għal nuqqas ta' *on site parking*.

Fl-ewwel lok, tajjeb jigi ccarat li **Policy P18** tal-linja gwida **DC15** tgħid hekk:

'PARKING PROVISION AND TYPOLOGY

For both residential and non-residential development there will be a concerted effort to provide on-site parking in line with the Vehicle Parking Standards provided in Annex 1 to this document. This will be particularly enforced in residential areas. If this is physically and technically unfeasible/impossible, or undesirable, there will subsequently be a contribution to a Commuted Parking Payment Scheme (CPPS)/Urban Improvement Fund (UIF). Specifically, in comprehensive industrial developments or for industrial developments involving more than a single plot, there will always be an allowance for parking provision, which will furthermore be located underground and designed as part of the entire industrial development.

In areas where CPPS or UIF are applicable, the loss of parking provision may be compensated for by a contribution established by the Authority towards either of these schemes.

In the case of non-residential developments the parking provision will be in the form of communal (open) parking spaces, rather than lock-up garages, to facilitate their use by customers, other visitors and employees. Where it serves more than 15 spaces, the access width of such communal car park will be not less than 4.1 metres.

In all cases permits issued will be conditional so as to preclude any change of use that may give rise to new parking requirements without notification to the Authority.'

Jinzel mill-precitat li **Policy P18** trid li, fil-kaz ta' proposta ta' zvilupp, '*there will be a concerted effort to provide on-site parking*' nonche' '*this will be particularly enforced in residential areas*'. B'danakollu, huwa pacifiku li l-policies tal-ippjanar ma japplikawx retroattivament u, b'hekk, għandu jitqies li ser ikun hemm telf ta'

on-site parking meta tali parkegg ikun gie gja rikjest bhala parti minn permess fuq dak l-istess sit. Kemm hu hekk, l-imsemmija **Policy P18** hija maghna f'sens prospettiv u tuza l-kliem '*permits issued will be conditional so as to preclude any change of use that may give rise to new parking requirements without notification to the Authority.*' Kwindi, biex ikun hemm telf ta' post ta' parkegg privat, irid jigi stabbilit ness bejn il-parkegg 'mitluf' u l-uzu fuq l-istess sit sorgenti minn kundizzjoni ta' xi permess. Infatti, dan il-principju kien rifless fid-decizjoni fl-ismijiet **Johann Curmi vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar** moghtija mit-Tribunal ta' Revizjoni ta' l-Ambjent u l-Ippjanar nhar it-28 ta' Meju 2015 (**Ap 188/14**) fejn inghata permess ghall-bdil ta' uzu tal-garaxx wara li kien kostatat li dak il-garaxx ma kienx marbut mal-uzu tar-residenza fuq l-istess sit, u, b'hekk, l-Awtorita' ma setghetx tibqa' tinsisti li l-bdil ta' uzu kien ser jirrizulta fit-telf ta' parkegg.

Appropositu, jezistu kazijiet eccezzjonali fejn inghataw ukoll permessi ghall-bdil ta' uzu minn garaxx ghal *public service garage* minkejja li l-garaxx in mertu kien marbut mar-residenza sovrapposta. Tali permessi inhargu ghaliex l-appellant, apparti li kien jghix fir-residenza sovrastanti, wera li kien ser juza l-istess '*public service vehicle*' biex jinqeda ta' kuljum.¹

Ferm il-premess, tajjeb jigi mfakkar li l-**MEPA Circular 3/14** bhal donnu taghmel eccezzjoni ghaliex fiha hemm provdut li l-bdil ta' uzu minn garaxx marbut ma' *single dwelling* ghal uzu gdid Klassi 4A u, jew Klassi 4B jista jigi kkunsidrat favorevolment diment '*...the size of the shop floor area should be limited to 50 sq.m*'. Infatti, f'din l-imsemmija cirkolari insibu hekk:

'[...]

Requests for the change of use from a private garage to a commercial use are common [usually from garage for private cars to Use Classes 4A (offices) or 4B (retail)]. These are often located in Residential Areas or in areas designated for Commercial, Tourism or Entertainment activities.

¹ Ara decizjoni fl-ismijiet **Chris Sheridan vs l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** moghtija mit-Tribunal ta' Revizjoni dwar l-Ambjent u l-Ippjanar nhar it-28 ta' Meju 2015 (**Ap 173/14**) u decizjoni fl-ismijiet **Michael Galea vs l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** moghtija mit-Tribunal ta' Revizjoni dwar l-Ambjent u l-Ippjanar nhar it-30 t'April 2015 (**Ap 142/14**)

3.2 Use Classes 4A and 4B proposals are normally permitted in the following instances: a) where the use is specifically permitted by the relevant subsidiary policies; or b) through the application of the Consolidation and Regeneration Policy (2013).

3.3 Apart from the change of use related issues, loss of parking often features in such applications. There are instances where in case of a single dwelling terraced house or a maisonette which have an associated garage for private cars, Class 4A or Class 4B proposals are refused solely on the basis of loss of parking provision.

3.4 Discussions with Transport Malta have revealed that in instances where there is a conversion from a garage for private cars to small scale Use Classes 4A or 4B use, the "No Parking" space in front of the former garage may be released for general parking. The situation is rather different in the case of apartment blocks which may have multiple lockup garages associated with dwelling units within the same block or a nearby area. In the case of loss of parking from apartment blocks, scale and layout imparts a different dimension to the issue and the overall impacts on parking, circulation and amenity created by the change of use are deemed to be higher.

3.5 Therefore in line with the above, MEPA considers that proposals for change of use from garages for private cars to small scale Use Classes 4A or 4B may be favourably considered where: a) The garage in question is part of a single dwelling which is not part of a block of apartments. (Note: In some circumstances maisonettes may be similarly considered to the same effect on the basis of a link of one garage to one dwelling); b) The space in front of the garage can be made available for parking and is not restricted by other measures that preclude parking (eg. double yellow lines, corner development, part or a wider "No Parking" scheme for the area etc.); c) The permit will be issued subject to a condition which will not allow any reserved parking or any other restrictions to parking as a result of the permitted commercial activity; and d) The size of the shop floor area should be limited to 50 sq.m.

Naturally, the above are subject to the rest of the planning policy context. In all cases it is important to take into account the context of the area, its traffic and parking carrying capacity and the compatibility of the proposed use with surrounding uses.'

Ta' min jinnota li din ic-cirkolari titkellem specifikament dwar 'shop floor area' izda ma ssemmi xejn dwar 'storage'. Detto cio', id-disposti tac-cirkolari iridu jinqraw flimkien mal-Pjan Lokali li, riferibilment ghal uzu 4B f'residential areas, l-uzu kummercjali 'totali' ('total floor area') huwa hafna drabi cirkoskritt hekk kif gej:

'[...]

Class 4 (Use Classes Order, 1994) small shops provided that:

- *the small shops (of any nature) are not to exceed a total floor area of 50 m² each, and convenience shops are not to exceed a total floor area of 75 m² each'*

Izjed minn hekk, il-prospett ta' hwienet zghar fejn xulxin jew, addirittura, konsolidament ta' hwienet zghar fejn xulxin f'applikazzjoni wahda isibu rezistenza fil-*Local Plan Interpretation Document* fejn hemm provdut dan li gej:

'When applications, as submitted individually, do not exceed the policy parameters, these shall be regarded as compatible with the LP policy. If however, they are submitted as separate non-connected units exceeding 50 or 75 sq. m. in a single application or there is a request to connect a number of small shops together in a non commercial area, these shall not be construed to be generally compatible with the policy and should normally be refused.'

Interessanti, pero', li dawn id-dispozizzjonijiet ma jsibux applikazzjoni meta jkun hemm talba ghal '*separate non-connected units exceeding 50 or 75 sq.m.*' permezz ta' applikazzjonijiet separati w distinti minn xulxin.

Izjed minn hekk, il-**paragrafu (e)** tal-**Policy FL- GNRL – 1** tal-'**Partial Review of Subsidiary Plans: General Policy relating to Regeneration/Consolidation Initiatives**' ta' Jannar 2013, jikkontrasta fil-hsieb tal-*Local Plan Interpretation Document* ghaliex jitkellem espressament favur il-possibilita' ta' konsolidament ta' hwienet operanti:

'For instances listed in a) to g) below where development applications consist of proposals which are deemed to be neighbour compatible and will not result in unacceptable cumulative adverse impacts on the locality but may not be in line with the detailed provisions of approved Subsidiary Plans, MEPA may consider justifiable departures from policies which can be adequately justified from a planning perspective;

[...]

e) Legitimate operating premises which intend to expand and consolidate their premises without relocating and are able to do so without creating unacceptable impacts on surrounding landuses;

[...]'



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