

# ***DJAR FL-ODZ***

*POLICIES 6.2C U 6.3*

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.

## IL-POLICY 6.2C

**Il-Policy 6.2C** tal-**RPDG 14** tagħti l-possibilita' li siti mibnija fl-ODZ, inkluż siti li kienu mibnija qabel is-sena 1978 u laħqu waqaw sa dik id-data, jistgħu jiġu żviluppati mill-ġdid. Din il-policy, fil-fatt, tgħid hekk:

*'Permission may be granted for the total redevelopment of an existing building, or the consolidation of buildings, located outside development zone, provided that all of the following criteria are satisfied:*

- (1) the applicant can sufficiently prove that the building/s is covered by development permission (other than those specifically permitted for agricultural use after the coming into force of this policy document), or that it is/are/was a pre-1978 building/s;*
- (2) the building/s does not merit inclusion in the list of scheduled property and/or is not of historical, architectural, vernacular or other significance;*
- (3) the replacement building does not exceed the total floor area of the previous building/s;*
- (4) the replacement building is of a high quality rural design and shall fully respect the wider context in which it is located;*
- (5) the replacement building shall be limited to:*
  - a) a use already legally established and/or covered by a development permission; or*
  - b) new uses permitted by this policy document subject to the respective criteria. Except for dwellings referred to in Policy 2.2B, this policy excludes dwellings which dwellings can only be permitted in terms of policies 6.2A and 6.2B;*
  - c) disused livestock farms which have ceased operation for at least 10 years (prior to the coming into force of this policy document) and which are creating a negative environmental impact on the site and its surroundings. These may be redeveloped into 1 single dwelling unit which is not to exceed 200m<sup>2</sup> floor space;*
  - d) any other use that would result in a wider environmental benefit, provided the site is already serviced by a road network that would adequately cater for the proposed new use;*
- (6) the use of the building shall be subject to prior consultation with the Departments/Authorities responsible for regulating such use; and*
- (7) any existing trees and shrubs within and around the site shall be fully cared for and retained, and if no such vegetation exists, soft landscaping around the redeveloped building shall contain a*

*number of trees and shrubs of at least three different indigenous species, planted in clusters.*

*A full basement may be permitted and is limited to the footprint of the existing building (the basement will not count as part of the total floor area)'.<sup>1</sup>*

Minn qari ta' dawn id-dispożizzjonijiet, jirriżulta b'mod ċar li din il-policy tagħti lok sabiex il-bini li ser jiġi żviluppat mill-ġdid jintuża bħala residenza. Dan jista' jsir b'żewġ modi.

### **L-EWWEL MOD: META L-BINJA EŻISTENTI TIKKONSISTI F'FARM LI DIĠA MA KIENX BAQA' JINTUŻA FIS-SENA 2004**

Hawnhekk ser nitkellem dwar il-proviso 'c' tar-rekwiżit numru 5. Fl-ewwel lok, il-policy trid li l-binja tkun waqfet tintuża bħala 'livestock farm'<sup>1</sup> qabel is-sena 2004 mingħajr ma tgħid xi prova trid tingieb biex jintwera dan. Il-policy trid ukoll li jintwera li t-tneħħija tal-farm ser jirriżulta f'benefiċċju ambjentali akbar. Darba dawn iż-żewġ kriterji huma sodisfatti, hemm lok li jinħareġ permess sabiex il-bini eżistenti jiġi sostitwit b'residenza bi floorspace li ma jeċċedix 200 metri kwadri.

Proviso 'c' tar-rekwiżit numru 5 jgħid hekk:

*'c) disused livestock farms which have ceased operation for at least 10 years (prior to the coming into force of this policy document) and which are creating a negative environmental impact on the site and its surroundings. These may be redeveloped into 1 single dwelling unit which is not to exceed 200m<sup>2</sup> floor space'.*

### **IT-TIENI MOD: UŻU RESIDENZJALI LI DIĠA GHANDU PERMESS JEW LI HU 'LEGALLY ESTABLISHED'**

Hawnhekk ser nitkellem dwar proviso 'a' tar-rekwiżit numru 5 li jippermetti

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<sup>1</sup> Id-definizzjoni ta' 'Livestock or Animal Farming' fl-**RPDG 14** tgħid hekk: 'Also referred to animal husbandry. The activity of breeding/rearing animals for agricultural production and it involves the sale/use of such produce (mainly meat, eggs or milk) for (i) human consumption; or (ii) processing elsewhere in order to produce other consumable or non consumable goods'.

rikostruzzjoni fejn l-użu li jista' jkun permiss huwa '*...already legally established and/or covered by a development permission*'. Bil-mod kif dan il-proviso huwa miktub, m'huwiex eskluż użu residenzjali diment illi tingħieb evidenza sodisfaċenti li turi li:

(i) l-użu residenzjali prospettat huwa diġa munit b'permiss tal-iżvilupp ('*covered by a development permission*'); jew

(ii) l-użu residenzjali kien '*a use already legally established*' fejn il-frazi '*legally established*' tfisser '*Unless specified otherwise in the policy document, the term 'legally established' refers to any intervention, including land-use change and land reclamation covered by development permission or that which is visible on the 1978 aerial photographs*'.<sup>2</sup> Ergo, biex użu residenzjali propost jitqies taħt il-kappa ta' '*a use already legally established*', irid jintwera, mhux biss li l-bini fl-antik kien jintuża bħala residenza, iżda li dan kien viżibbli fir-ritratti mill-ajru tas-sena 1978 u kien jintuża bħala residenza f'tali perijodu.

### **IL-POLICY 6.3**

Il-**Policy 6.3** tal-**RPDG14** essenzjalment tagħti l-possibilita' *inter alia* li '*existing dwelling*' fl-ODZ tiġi estiża sa massimu ta' 200 metri kwadri. Fil-każ ta' estensjonijiet li seħħew qabel is-sena 1994, *invece*, il-konċessjoni tista' tkun akbar. Din il-policy tgħid hekk:

*'Permission may be granted for a limited extension to an existing dwelling outside development zone, provided that all of the following criteria are satisfied:*

*(1) the building is not of architectural, historical, vernacular or other significance, and/or is not scheduled, in which case it shall be assessed on the basis of Policy 6.2A and 6.2B;*

*(2) the proposed extension is of a compatible design and must respect the rural context. Scheduled locations (Class A or Class B*

<sup>2</sup> 'Glossary' f'pagna V tal-**RPDG14**

*Area/Site of Archaeological Importance, and/or Level 1 or 2 Area of Ecological Importance/Site of Scientific Importance) are in principle considered inappropriate locations, unless it can be duly demonstrated through the necessary assessment, that the development does not compromise the site scheduling characteristics;*

*(3) the applicant can sufficiently proof that:*

*(a) the property in question has been used as a residence prior to 1992 or*

*(b) the dwelling is covered by a development permission, or dates back to pre-1978;*

*(4) the dwelling can be extended up to a maximum floor space of 200m<sup>2</sup>; and*

*(5) the scale, massing and design of the extension shall:*

*(a) not visually dominate the existing dwelling; and*

*(b) be acceptable in the wider landscape setting of the site;*

*(6) extensions to existing dwellings ODZ made prior to October 1994 may be regularised, provided that all the conditions of paragraph (5) are respected.*

*A basement completely below ground level may be permitted provided it does not extend beyond the footprint of the building and is accessible internally'.*

Din il-policy hija differenti għal kollox minn **Policy 6.2C**. Din id-darba, l-applikant għandu jipprova li:

(i) *'the property in question has been used as a residence prior to 1992'* - ergo, il-fond in kwistjoni kien jintuża bħala residenza qabel l-1992 bla ebda data speċifika oħra jew kemm dam l-użu tal-fond bħala residenza; jew

(ii) *'the dwelling is covered by a development permission'* – ergo, ir-residenza odjerna għandha permess; jew

(iii) *'the dwelling dates back to pre-1978'* – ergo, ir-residenza odjerna kienet teżisti qabel is-sena 1978, ossija l-binja ntiza għall-abitazzjoni kienet hekk qabel l-1978 u mhux (bħal fil-**Policy 6.2C**) il-fond intuża bħala residenza sas-sena 1978.

Dawn it-tlett rekwiziti huma wieħed alternattiv għall-ieħor, ergo mhux kumulattivi.

Osservazzjoni ta' l-ahhar - minkejja li l-ewwel paragrafu ta' din l-istess **Policy 6.3** jipprovdi ċar u tond li '*Permission may be granted for a limited extension to an existing dwelling outside development zone.....*', ir-risposta mogħtija mill-Qorti tal-Appell fis-sentenza fl-ismijiet **Anthony Camilleri vs L-Awtorita tal-Ippjanar (gia l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar)**<sup>3</sup> kienet fis-sens li din il-**Policy 6.3** '*lanqas ma issemmi 'existing dwelling' bhala rekvizit*'.

## RIMARKI KONKLUSSIVI

**Policy 6.2C** tar-**Rural Policy and Design Guidance 2014 (RPDG 14)** tirregola '*Redevelopment and change of use of existing buildings ODZ*' filwaqt li **Policy 6.3** tirregola '*Extensions to Existing dwellings ODZ*'.

Għaldaqstant, id-distinzjoni ewlenija bejn dawn iż-żewġ policies hija li **Policy 6.3** hija ntiza għal estensjonijiet ta' residenzi eżistenti fl-ODZ, filwaqt li **Policy 6.2C** hija ntiza għal *redevelopment* u bdil fl-użu ta' binjiet eżistenti fl-ODZ, iżda mhux limitata għal binjiet residenzjali.

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<sup>3</sup> Ara sentenza fl-ismijiet **Anthony Camilleri vs L-Awtorita tal-Ippjanar (gia l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar)** deċiża mill-Qorti tal-Appell nhar is-16 ta' Marzu, 2022 (**App. 45/2021**)



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