

# BINI LI

*JMISS MAL-UCA*

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.

## DAHLA

L-ippjanar ta' l-iżvilupp f'Malta huwa regolat bl-**Strategic Plan for the Environment and Development (SPED)** (magħruf fil-liġi bħala 'l-istrateġija spazjali') u numru ta' *policies* u pjanijiet sussidjarji li jikkonsistu f'pjanijiet dwar suġġetti, pjanijiet lokali, pjanijiet ta' azzjoni jew pjanijiet ta' mmaniġġar, *briefs* dwar l-iżvilupp u, *in fine*, *policies* linji gwidi (fil-liġi magħrufa bħala '*policies oħra*').

Il-**Kap 552**, infatti, jiddefinixxi l-*Policies* u Pjanijiet Sussidjarji f'**Artikoli 47, 48, 49, 50 u 51**.

L-**Artikolu 47** jikkoncerna dwar '*Pjan dwar suġġett*'. Dan jgħid hekk:

*'(1) Pjan dwar suġġett huwa pjan li jitratta dwar materja speċifika ta' pjanar ta' żvilupp li jstabbilixxi policies dwar materja speċifika ta' pjanar ta' żvilupp konformi mal-Istrateġija Spazjali u li jinkludi l-ispeċifikazzjonijiet dettaljati intenzi għall-implimentazzjoni tiegħu.*

*(2) Pjan dwar suġġett għandu jkun magħmul minn stqarrija bil-miktub ġustifikata b'dokumenti, mapep u dijagrammi li jkunu meqjusa meħtieġa.*

*(3) Hlief kif mistqarr xort'oħra fil-pjan, pjan dwar suġġett għandu japplika f'kull qasam rilevanti tal-Istrateġija Spazjali, sew jekk huwa wkoll qasam kompreżiż fi pjan jew policy oħra sew jekk le.'*

L-**Artikolu 48** jikkoncerna dwar '*Pjanijiet Lokali*'. Dan jgħid hekk:

*'(1) Pjan lokali huwa pjan li jitratta dwar il-ħtiġiet speċifiċi tal-ippjanar tal-iżvilupp ta' zona fejn ir-rata ta' żvilupp jew żvilupp mill-ġdid ma tistax tiġi adegwament jew fejn fatturi speċjalima jistgħux jittieħdu f'kunsiderazzjoni biss fuq il-bażi tal-Istrateġija Spazjali. Għandu jstabbilixxi policies dettaljati relattivi għall-materjatal-iżvilupp tal-ippjanar taż-żona b'konformità ġenerali mal-Istrateġija Spazjali u fejn applikabbli, ma' kull pjan ta' suġġett.*

*(2) Pjan lokali għandu jkun magħmul minn stqarrija bil-miktub*

*ġustifikata b'dokumenti, mapep fuq skala adegwata u dijagrammi lijkunu meqjusa meħtieġa'.*

**L-Artikolu 50**, imbagħad, jittellem dwar 'Policies oħra'. Dan jgħid hekk:

*'(1) "Policies oħra" huma policies u gwidi dettaljati li jittrattaw dwar l-amministrazzjoni xierqa u effettiva tal-iżvilupp ta' artu baħar għajr dawk li diġà jinsabu fi pjan sussidjarju. Għandhom ikunu konformi mal-pjanijiet sussidjarji u l-Istrateġija Spazjali.*

*(2) Policies bħal dawn għandhom ikunu f'forma adatta għas-suġġett, u jistgħu jkunu sostnuti minn dokumenti, evalwazzjonijiet, mapep, dijagrammi, disinji u illustrazzjonijiet kif jistgħu jitqiesu neċessarji'.*

Kwindi, il-Pjan Lokali qiegħed hemm biex, għal kull lokalita', jiġi stabbilit x'tip u għoli ta' żvilupp jista' jiġi żviluppat fuq kull sit. Mill-banda l-oħra, il-policies jipprovdu prinċipji oħra li jolqtu s-siti fl-ispeċifiku.

## **L-ARTIKOLU 52**

Ser nagħmel referenza issa għall-**Artikolu 52** tal-**Kap 552** li jgħid hekk:

*'Fiċ-ċirkostanzi fejn iktar minn pjan jew policy waħda japplikaw għall-istess suġġett jew zona u hemm kunflitt materjali bejn kwalunkwe wieħed minnhom, il-preċedenza għandha tingħata fl-ordni li ġejja: l-Istrateġija Spazjali fuq pjan dwar suġġett, il-pjan dwar suġġett fuq il-pjan lokali, il-pjan lokali fuq pjan ta' azzjoni jew pjan ta' mmaniġġar, il-pjan ta' azzjoni jew pjan ta' mmaniġġar fuq il-Brief dwar l-iżvilupp u l-Brief dwar l-iżvilupp fuq policies oħra msemmija fl-artikolu 50'*

Skont dan l-Artikolu, l-**iSPED** għandu l-għola preċedenza fuq kwalunkwe policy jew pjan ieħor li timplimenta l-Awtorita' tal-Ippjanar, b'dan huwa segwit minn pjan dwar suġġett (magħruf bħala *Subject Plan*) u fit-tielet ordni ta' preċedenza, il-Pjani Lokali. Fl-aħħar nett ta' l-iskaletta nsibu l-policies. Dan l-Artikolu jagħmilha ċara li huwa biss fiċ-ċirkostanzi fejn hemm kunflitt materjali bejn pjanijiet jew policies li din l-ordni ta' preċedenza tiskatta.

Barra minn hekk, min jallega 'kunflitt materjali' bejn pjan u ieħor jew bejn pjan u *policy*, għandu jidentifika dan bi preċiżjoni. Numru ta' drabi, jiġi riskontrat l-argument li partijiet mill-Pjani Lokali mnedija fl-2006, u anke qabel din id-data, ma jilqaghux għall-aspirazzjonijiet tal-**iSPED**. Dan huwa argument li jfalli *ab initio* għaliex fl-ewwel kapitlu tal-**iSPED** jingħad bl-aktar mod ċar li '*Subsidiary Plans will need to take on board the SPED*'. Minn hawn fitnissel il-preżunzjoni li kull pjan lokali u *policy* linja gwida – almenu dawk li daħlu fis-seħħ qabel il-miġja ta' l-**iSPED** – huma ntrinsikament kompatibbli ma' dak li jimmira għalih l-istess **SPED**.

Ta' min iżid jgħid ukoll li jekk jeżistix xi tip ta' kunflitt jew le bejn pjan u ieħor jew pjan u *policy* hija purament materja ta' ippjanar li taqa' lil hinn minn kwistjoni ta' liġi li Qorti revizorja għandha l-*vires* tissindaka.<sup>1</sup>

## L-ISPED

L-**iSPED** jikkellem kjarament favur is-salvagwardja tal-wirt kulturali u l-protezzjoni w it-tisħiħ tal-karattru u l-amenita' ta' żoni urbani. Infatti, l-**iSPED** jikkontjeni numru ta' objettivi li jikkellmu dwar kunsiderazzjonijiet li għandhom jittieħdu f' termini ta' għoli, profil tal-bini u l-impatt ta' żvilupp ġdid fuq l-*skyline* f'centri storiċi. Fost dawn l-objettivi, insibu s-segwent:

**UO2.4:** *'To improve the townscape and environment in historic cores and their setting with a presumption against demolition of property worthy of conservation - Development in historic sites is to be carried out in such a manner so as to ensure that the historic sites' skyline is not adversely affected'.*

**UO3.2:** *'To identify, protect and enhance the character and amenity of distinct urban areas by carrying out an appraisal of the value of the character, amenity and distinctiveness of urban areas'.*

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<sup>1</sup> Ara sentenza fl-ismijiet **Moviment Graffiti, Din l-Art Helwa, Friends of the Earth Malta, The Archaeological Society Malta, Zminijietna -Voice of the Left, Flimkien għal Ambjent Ahjar (FAA), Green House, Rota, Allison Pullicino, Sonia Tanti, Rita Zammit, Norman Zammit, Adrian Grima, Josef Buttigieg, Stephanie Buttigieg u Arnold Cassola vs L-Awtorita tal-Ambjent u r-Rizorsi u l-kjamat in kawza, db San Gorg Property Limited Attn: Mr. Silvio Debono** deċiża mill-Qorti tal-Appell nhar il-31 ta' Mejju 2023 (**App. 2/22**)

**UO3.6:** 'To identify, protect and enhance the character and amenity of distinct urban areas by establishing appropriate building heights and development densities'.

**UO3.7:** 'To identify, protect and enhance the character and amenity of distinct urban areas by protecting and greening open spaces which contribute towards the character and amenity of urban areas, reduction of soil sealing and support biodiversity with a view of developing ecological corridors'.

## IL-PJANI LOKALI

Il-Pjani Lokali jipprovdu *height limitation maps* għal kull belt u raħal, permezz ta' liema wiehed jista' jkun jaf kemm bini jista' jogħla 'il fuq mit-triq.

*In via* ta' prinċipju, l-Awtorita' m'għandha l-ebda diskrezzjoni li taddotta dawn il-mapep b'mod approssimattiv skond kif jidhrilha hi jew, wisq agħar, timprovizza ċirkostanzi bil-konsegwenza li jiġi newtralizzat dak li jiddisponu dawn il-mapep.

Ħadd m'għandu għalhekk jippretendi li l-*height limitation maps* m'għandhomx jiġu applikati għax dawn qed 'ikerrħu' l-pajsaġġ Malti. Dak li qalu l-Qrati fis-sentenza fl-ismijiet **Dixson et vs Awtorita' ta' Malta dwar l-Ambjent**<sup>2</sup> fis-sens li '*...materja li tirregola height limitation hi kkunsidrata li għandha l-forza ta' ligi*' u li, minħabba f'hekk, applikant ma jstax jiġi akkordat għoli anqas minn dak konċess lilu bid-dritt għadu jgħodd. F'din is-sentenza ta' **Dixson**, it-Tribunal kien ġie iċċensurat mill-Qorti ta' l-Appell għaliex '*...ghazel li jezercita d-diskrezzjoni tieghu, u skarta għal kollox il-height limitation stabbilit mill-Pjan Lokali, minghajr ma kellu l-jedd.*'

<sup>2</sup> Ara sentenza fl-ismijiet **Chris Dixson u Valerie Anne Lloyd u b'digriet tat-2 ta' Lulju 2012 l-avukat Dr Kevin Mompalao inhatar bhala kuratur sabiex jirraprezenta lill-assenti Chris Dixson u Valerie Anne Lloyd Vs l-Awtoria ta' Malta dwar l-Ambjent u l-Ippjanar u l-imsejha Candice Galea mogħtija mill-Qorti tal-Appell nhar is-7 ta' Novembru, 2013 (App 1/2012/1)**

## ID-DC15

Fil-**Policy and Design Guidance 2015**<sup>3</sup> (**DC15**) insibu numru ta' *policies* u linji gwidi senjatament intiżi sabiex jipproteġu ż-Żoni ta' Konservazzjoni Urbana.

Nibda biex niffoka fuq **Policy P6**. Din tipprovdi s-segwent:

*'Specifically, where development is sited immediately adjacent to an UCA, it will not be higher than the height of the predominant buildings located within the stretch of the perimeter block with frontages in the UCA in question (refer to Figure 18 (a)), so as not to visually dominate the streetscape or other spaces within the UCA. If it adjoins a garden in the UCA, it will be of an appropriate height in relation to the garden wall and set back from that wall by a minimum distance of 3 metres. In this manner the height of the new building will reflect its context and be related to the height of the wall, the size of the garden or space, the distance of the building from that garden, and its overall effect on the garden'.*

Minn hawn isegwi li meta sit fl-iskema ta' l-iżvilupp imiss ma' ġnien fil-UCA, hemm ħtieġa li tinżamm distanza ta' 3 metri mill-ħajt tal-ġnien filwaqt li l-iżvilupp ikun *'of an appropriate height in relation to the garden wall'*. B'dan il-mod, jintlaħaq bilanċ bejn il-limitazzjoni tal-għoli kif indikata fil-Pjan Lokali u l-għoli tal-bini fil-UCA billi tigi provduta soluzzjoni transitorja. Ma teżisti ebda formola stretta li biha wieħed jista' jgħid li jkun intlaħaq *'...an appropriate height in relation to the garden wall'*. Fil-konkret, pero', ikun utili, sa fejn hu dejjem possibli, li tinżamm distanza iżjed minn 3 metri mill-ħajt tal-ġnien. Jista' jkun ukoll ta' fejda t-tneħħija tal-massing fil-livell tal-bejt fuq il-parti li tħares fuq il-ġnien ta' wara fil-UCA. *Tanto meglio*, imbagħad, jekk l-*overall height* kif stipulat f' **Annex 2** u **Policy P35** tad-**DC15** ma jgħix utilizzat sal-massimu.

Fid-**DC15** insibu wkoll **Policy P42** li tipprovdi hekk kif ġej:

*'There may be instances where the site lies:*

<sup>3</sup> Din il-policy taqa' taħt il-kategorija ta' *'policies oħra'*

[...]

b) *within or contiguous to an Urban Conservation Area;*

[...]

d) *lies close to a scheduled property or a property that merits scheduling;*

*In these circumstances due regard must be given to the design of the side and back elevations in terms of architectural quality'.*

Kif wieħed jista' jara, **Policy P42** titkellem dwar is-side u back elevations li ser jibqgħu esposti b'mod permanenti. M'añniex għalhekk qed nitkellmu dwar dawk il-ħitan jew l-appoġġi mikxufa tal-ġnub iġġenerati versu s-siti kontigwi li ma jkunux għadhom ġew żviluppanti. Dwar appoġġi fuq siti vakanti li jistgħu ikunu żviluppabbli bl-istess kundizzjonijiet ta' zoning u limitazzjoni ta' għoli bħas-sit li jkun qed jiġi żviluppat, ma jreġix l-argument li ser jiġu ġenerati ħitan t'appoġġi mikxufa għaliex dawn huma mistennija jibqgħu hekk għal żmien temporanju, sakemm eventwalment jiġu koperti bi żvilupp futur fuq is-siti kontigwi. *Kwindi*, għandu jkun ċar li **Policy P42** hija koncernata dwar side u back elevations li, darba l-iżvilupp jitlesta, ser jibqgħu esposti b'mod permanenti. Dwar dawn l-elevations, għandu jkun assigurat li d-disinn il-ġdid li jħares fuq il-UCA ma jkunx wieħed sofistikat iżda, jekk xejn, simplistiku b'aperturi ta' proporzjon limitat u li jagħti kontribut pożittiv, mingħajr, kemm jista' jkun, ma jinħolqu gallariji li jistgħu jagħtu lok għal overlooking dirett fuq il-ġonna ta' wara. Idejalment, meta niġu għall-materjal tal-frames ta' l-aperturi, għandu jintuza materjal bħal PVC u, jew injam.

Id-**DC15** jikkellm ukoll dwar it-topografija fuq barra tal-UCA.

**Gwida G1** tad-**DC15**, infatti, tgħid hekk:

*'Any development should aim to create urban environments with local distinctiveness, in the sense of both a distinctive Maltese identity and a character reflecting that of the specific place in which it is to*



be located. It should seek to respect and enrich its context, in terms of the:

- a) natural features – with regard to the natural landscape per se to issues in relation to topography, contours and site levels;
- b) built features – including issues with regard to the particular urban form, architectural quality and architectural elements of its settlements; and
- c) degree of activity of the particular area in which it is situated’.

**Gwida G2**, imbagħad, tgħid hekk:

*‘Roofscapes are not only seen at street level but have long-distance implications. They should therefore be carefully studied and assessed, particularly due to topographical changes (in line with the discussion in Policy P2) and the existing townscape’s configuration. The impact of development on the skyline should therefore be taken into consideration’.*

**Gwida G3**, imbagħad, tgħid hekk:

*‘As and where appropriate, dominant defining design considerations of adjacent buildings should be identified and reinterpreted into the new development. Such design considerations will vary from parameters with regard to urban form, where there should be a concerted effort to relate to such issues, to more specific issues in relation to architectural quality and architectural elements, which may or may not be reinterpreted or possibly reproduced, depending on the specificities and sensitivity of context.*

*Where a uniform design prevails and it may be established, through a streetscape and photographic analysis, that a number of important streetscape parameters exist that merit inclusion within the proposed development, the emphasis will be on respecting, and possibly as far as practical reproducing, such parameters.*

*Where a uniform design does not prevail and/or it may be established, through a streetscape and photographic analysis, that the overall street quality is low and inconsistent, the emphasis should be on high-quality contemporary designs that seek to introduce new positive urban design principles into the streetscape.*

*Transition zones/areas, as defined within the Local Plans, have a*

*distinct character. In these zones/areas, particular attention is to be given to bridging between the adjoining areas, each having their own specific characteristics. Design interventions in terms of urban form and architectural quality will be gradually and incrementally introduced in order to achieve a better transition between developments while safeguarding the qualities of the more sensitive area, in line with the provisions in Policy P6.'*

**Policy P2**, li ssir referenza speċifika għaliha fi **Gwida G2**, tgħid dan:

*'It is very possible to have a building that is to be designed within a site that (a) lies at the edge of a development zone where the topography is sloping; (b) lies on a sloping street frontage; or (c) has frontages on two streets located at different site levels. The two streets might furthermore be characterised by different height limitations.*

*In either of these cases it will be critical for the design proposal to fit as seamlessly as possible within the particular topography, reflecting the profile and basic contours/levels that characterise the particular site, rather than trying to compete with them and resulting in a significant visual impact. For this reason, a design proposal in this context must fulfil the following four requirements:*

- a) Its profile must be stepped in accordance with the site topography.*
- b) The height limitation in either the higher or lower street must not be exceeded.*
- c) It must not generate any blank party or rear walls.*
- d) It must not result in a design that causes privacy issues (through the possibility of overlooking) and environmental issues (issues in relation to light and ventilation), without prejudice to third party civil rights.*

*In such circumstances together with the development planning application it will be required to submit:*

- a) Official and accurate cross-sections through the site and adjacent streets showing existing street levels and site levels prior to any site clearance or other work; and*
- b) A site survey with spot levels.*

*The street levels will be checked by the Authority's Land Survey Unit in order to ascertain precise site levels and avoid any doubt as to these levels and the topography of the site relative to the proposed development.'*

Minn dan kollu jtnissel li **Gwida G1** tad-**DC15** titlob li żvilupp għandu jfittex li jirrispetta u jtejjeb il-kuntest f'termini ta' pajsagġ naturali senjatement f'dak li jirrigwardja topografija, *contours* u livelli tas-sit.

**Gwida G2** tad-**DC15**, *invece*, tirregola l-impatt viżwali ta' żvilupp f'termini ta' *skyline*, fejn żvilupp għandu jkun *'carefully studied and assessed, particularly due to topographical changes (in line with the discussion in Policy P2) and the existing townscape's configuration'*. **Gwida G2**, għalhekk, torbot b'mod dirett mal-**Policy P2** tad-**DC15** li tirregola kunsiderazzjonijiet topografiċi b'referenza, fost l-oħrajn, għal *'sloping street frontages'*, fejn f'każijiet bħal dawn il-policy titlob li *'it will be critical for the design proposal to fit as seamlessly as possible within the particular topography, reflecting the profile and basic contours/levels that characterise the particular site, rather than trying to compete with them and resulting in a significant visual impact'*.

**Gwida G3** li tirregola r-relazzjoni bejn bini ġdid u żvilupp eżistenti titlob, imbagħad, li *'where appropriate, dominant defining design considerations of adjacent buildings should be identified and reinterpreted into the new development'*.

Minn dan kollu jtnissel li meta sit li jinsab fuq barra tal-UCA ikun f'diżlivell, l-Awtorita' għandha tara li jekk kemm -il darba dan ser jġi żviluppat, l-iżvilupp il-ġdid ma jfixkilx it-topografija naturali u, jew jiddomina l-kuntest ta' madwar il-UCA. Fil-konkret, wieħed għandu għalhekk ifittex li l-bini l-ġdid jibqa' jinqara 'l isfel sew mill-Knisja.

Finalment, ser naghemi referenza għal **Policy P36** li tgħid hekk:

*'In line with Policy P2, any development or redevelopment located along sloping sites or streets will be bound by the height limitation along the depth of the site and/or along the street. In the case of Urban Conservation Areas, the height limitation is established following the streetscape analysis in line with Policy P35.'*

The design of such development will furthermore ensure that:

- a) Its profile and building envelope, including boundary/parapet walls, are compatible with that of buildings on the adjoining plots.
- b) It is visually appropriate and will not result in excessive bulk or mass.

The gradient derived from the sloping site or street levels will first be projected upwards to the height limitation. In the case of two differing height limitations, the projected topography profile will always be projected upwards to the lower height limitation.

The building will subsequently be stepped such that at no point along its depth the height limitation is exceeded, unless compensated by an equivalent area measured along the section of the building and provided that there will never be more than a 3.4 metre-high wall, measured externally. Furthermore, such a building profile will enable the opening of apertures as opposed to generating blank walls. Nonetheless, if blank walls are inevitable, these will be suitably treated with architectural features and/or soft landscaping that complement and enhance the streetscape (Figure 49).

This design approach will similarly characterise developments located within sensitive environmental locations, such as at development edges facing ODZ areas as well as on ridges, the latter in line with provisions established in Policy P3.

In the case of infill terraced developments, the scenarios outlined in Guidance G16 should constitute the starting point for any design, with the additional consideration that each step beyond the projected topography profile will not be allowed to exceed 3.4 metres, measured externally, in height (Figure 50).

In line with Policy P2, (a) accurate longitudinal cross sections on at least two positions through the site showing existing site levels (the top soil level) prior to any site clearance or other work; (b) a site survey with spot levels; and (c) proposed site levels will be submitted with the development planning application. Where the site has been excavated for mineral workings or cleared prior to the proposed development, the above height limitations shall be adjusted to the profile of the natural topography extrapolated prior to the excavation. These levels will be checked by the Land Survey Unit.'

**Policy P36** tirregola b'mod iktar dettaljat l-għoli tul siti jew toroq b'topografija mżerzqa fl-iskema ta' l-iżvilupp. **P36** tgħid b'mod ċar li '*...the gradient derived from the sloping site or street levels will first be projected upwards to the height*

*limitation.*' Iżżid tgħid: '*...The building will subsequently be stepped such that at no point along its depth the height limitation is exceeded, unless compensated by an equivalent area measured along the section of the building and provided that there will never be more than a 3.4 metre-high wall, measured externally.*'

**Policy P36** hija rilevanti għal dak li qed ngħidu benche il-linja tat-triq fl-iskema ta' l-izvilupp tkun normalment maqlugħa sostanzjalment 'il barra mill-konfini tal-UCA. Dan għaliex id-dehra tal-UCA mill-bogħod tista' tiġi danneġjata jekk il-bini jitħalla jogħla bla kontroll fil-parti għolja ta' triq li tkun imżerzqa.

### IS-SOLUZZJONI GĦAL BINI LI JMISS MAL-UCA

Minkejja dak li jingħad fis-sentenza ta' **Dixon**, huwa dottrinalment paċifiku li '*..meta policy qed tagħti direzzjoni cara dwar il-height limitation, u din tiġi sodisfatta bl-izvilupp propost, ma jfissirx li ma jistax ikun hemm policies oħra li jirrigwardaw l-izvilupp li għandhom jigu skartati u mhux konsidrati.*'<sup>4</sup> Dan huwa rifless ukoll fis-sentenza fl-ismijiet **Victor Vassallo vs L-Awtorita' tal-Ippjanar**<sup>5</sup> fejn il-Qorti qieset is-segwent:

*'.....il-ligijiet, pjanijiet u policies qeghdin hemm biex jigu implimentati u l-Awtorita ma tistax tinjora jew tmur kontrihom. Dan ma jfissirx pero li għax applikant iqis ruhu konformi ma' policy jew pjan f'certi aspetti, allura ebda konsiderazzjoni oħra ma tista' issir speċjalment meta tali konsiderazzjoni hi rilevanti u kompatibbli ma ligijiet, pjanijiet jew policies oħra u fejn l-istess ligi, pjan jew policy ihallu diskrezzjoni bil-mod kif redatti. Jibda biex jingħad li għalkemm il-pjan lokali jagħti permess għal certu għoli ta' bini dan wahdu ma jfissirx li ser jingħata bilfors permess għal dak l-għoli kollu permissibbli. L-għoli f'dan il-kaz hi wahda mill-konsiderazzjonijiet ta' rilevanza f'għoti ta' permess pero tista' ma tkunx l-unika konsiderazzjoni'.*

Skont l-insenjament ta' **Falzon** u **Vassallo**, l-assessjar ta' l-applikazzjoni m'għandux, għalhekk, jieqaf biss mal-provvedimenti tal- *height limitation maps* tal-Pjani Lokali.

<sup>4</sup> Ara sentenza fl-ismijiet **Charles Falzon vs L-Awtorita tal-Ippjanar** deċiża mill-Qorti tal-Appell nhar il-15 ta' Marzu, 2023 (**App. 75/2022**)

<sup>5</sup> Ara sentenza fl-ismijiet **Victor Vassallo vs L-Awtorita' tal-Ippjanar** deċiża mill-Qorti tal-Appell nhar l-20 ta' Jannar 2021

Huwa minnu li, fl-ewwel lok, għandu jiġi stabbilit l-għoli li jippermetti l-Pjan Lokali. *Detto cio'*, wieħed irid imbagħad jara x'rilevanza għandhom il-policies tad-**DC15** meta żvilupp gdid javviċina l-linja tal-UCA.

Filwaqt li l-*height limitation maps* tal-Pjani Lokali juru b'çeġġeċ ikkulluriti li jiddenominaw għoli ta' ħames sulari sal-linja tal-UCA, id- **DC15** irid li jkun hemm soluzzjonijiet tranżitorji adegwati. Dawn jistgħu jinkisbu billi:

(i) tinżamm distanza minima ta' 3 metri mill-ħajt tal-ġnien li jmiss mal-UCA. Jista' jkun ukoll ta' fejda t-tneħħija tal-massing fil-livell tal-bejt fuq il-parti li tħares fuq il-ġnien ta' wara fil-UCA. *Tanto meglio*, imbagħad, jekk l-*overall height* kif stipulat f'**Annex 2** u **Policy P35** tad-**DC15** ma jiġix utilzzat sal-massimu;

(ii) ikun assigurat li d-disinn il-ġdid li jħares fuq il-UCA ma jkunx wieħed sofistikat iżda, jekk xejn, simplistiku b'aperturi ta' proporzjon limitat u li jagħti kontribut pożittiv, mingħajr, kemm jista' jkun, ma jinħolqu gallariji li jistgħu jagħtu lok għal *overlooking* dirett fuq il-ġonna ta' wara. Idejalment, meta niġu għall-materjal tal-frames ta' l-aperturi, għandu jintuża materjal bħal PVC u, jew injam;

(iii) meta s-sit fuq barra tal-UCA u li ser jinbena ikun f'diżlivell, l-iżvilupp il-ġdid m'għandux jiddomina l-kuntest ta' madwar il-UCA u dan billi jibqa' jinqara 'l isfel sew mill-Knisja;

(iv) meta l-faċċata tas-sit li ser jinbena tikkonfina triq imżerżqa, għandu jkun assigurat li *'at no point along its depth the height limitation is exceeded, unless compensated by an equivalent area measured along the section of the building and provided that there will never be more than a 3.4 metre-high wall, measured externally.'*

Meta *si tratta* ta' bini ġdid fl-iskema ta' l-iżvilupp li ser javviċina l-linja tal-UCA, l-objettiv aħħari huwa, għalhekk, wieħed ċar – dak li tinħoloq transizzjoni xierqa

mal-ġonna ta' wara fil-*UCA* f'termini ta' disinn kif ukoll *massing* u profil tal-bini li jwassal għal bilanċ xieraq bejn dak li jippermettu l-Pjan Lokali u l-*policies* tad-**DC15**.

