

PENCIL DEVELOPMENT

FL-ISKEMA TAL-IŽVILUPP

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.

DAĦLA

Huwa dottrinalment paċifiku li *'..meta policy qed taghti direzzjoni cara dwar il-height limitation, u din tigi sodisfatta bl-izvilupp propost, ma jfissirx li ma jistax ikun hemm policies oħra li jirrigwardaw l-izvilupp li għandhom jigu skartati u mhux konsidrati.'*¹

Dan ifisser li d-direzzjoni mogħtija fil-Pjani Lokali sa fejn din tirrigwardja *height limitation* ma tagħtix *carte blanche* lil dak li jkun. Kif ser naraw, meta żvilupp ġdid jipprospetta sulari ġodda fi *streetscape* bilkemm mittiefes, għandu, qabel xejn, jittieħed kont ta' dawk il-*'policies oħra'* li jistgħu ikunu rilevanti.

IL-POLICIES G2 u G3 TAD-DC15

Policy G2 tad-**DC15** 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'.

Policy G3 tad-**DC15** 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

¹ 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**)

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.'

Dawn il-policies huma mnebbha mill-presuppost li darba fl-istreetscape jiġi identifikat '*dominant defining design consideration*', dan għandu jiġi '*...reintegrated into the new development*'. Dan ifisser li l-għoli dominanti ta' l-istreetscape hekk kif stabbilit għandu jkun rifless fid-disinn tal-bini l-ġdid.

Ma jistax, ħabta w sabta, ikollok żvilupp goff li jippekkja fl-għoli dominanti fil-bajja tal-istreetscape. L-argument li l-uniformita' fi *streetscape* ma titqiesx li qed toffri '*dominant defining design*' għaliex il-bini mhux antik jew il-faċċati m'humix identiċi ma jiswiex.

F'sens kuntrarju, dan kollu, pero', ma jibqax jgħodd jekk jintwera li l-*skyline* hu ġja kompromess b'bini għoli bħal dak prospettat. Ergo, il-presunzjonijiet li jpoġġu **Policies G2** u **G3** għandhom jingħelbu bi prova mlaħħma b'permessi speċifiċi li juru l-'*commitment*' eżistenti fil-viċinanzi tal-iżvilupp kif irid l-**Artikolu 72(2)(d)** tal-**Kap. 552**. Nazzarda nżid ngħid li, sal-lum, m'aħniex komfortati b'ġurisprudenza li

tgħid li tali 'commitment' jista' jinkludi dak li xi darba jista' jinbena skont il-Pjan Lokali, ossija '*.....any future commitments provided for by the Local Plans, even if the commitments are as yet unbuilt*' kif, *del resto*, jinsab kontemplat fil-**Policies P1** tad-**DC15**.²

RIMARKI KONKLUSSIVI

Jitnissel minn dak kollu hawn fuq osservat li meta triq hija ddominata mill-presenza ta' *terraced houses* mibnija fuq żewġ sulari biswit xulxin, hemm diffikulta sabiex siti ndividwali jiġu żviluppati skont l-għoli li, ħafna drabi, jippermettu l-*height limitation maps* tal-Pjani Lokali. L-argument li bini mingħajr biżżejjed valur arkitettoniku ma jsarrafx f'uniformita' fl-*streetscape* m'għandu ebda fejda. Naturalment, dan jibqa' jgħodd sakemm ikun tabilhaqq jissussisti sens t'uniformita' fl-għoli tal-bini eżistenti li jikkarakterizza l-*streetscape*. Tali 'commitment' jidher ukoll li jrid ikun jeżisti għaliex, almenu sal-lum, ma teżisti ebda ġurispridenza fejn jintqal li, abbazi ta' dak razzat fil-**Policy P1** tad-**DC15**, tali 'commitment' jista' jinkludi dak li xi darba jista' potenzjalment jinbena skont il-Pjan Lokali fil-futur.

² **Policy P1** tad-**DC15** tgħid hekk: '*The extent of commitments that is to be taken into account when analysing an existing context will include:*

1. *existing legal developments that are physically present on site;*
2. *valid planning commitments even if such commitments are as yet unbuilt; and*
3. *any future commitments provided for by the Local Plans, even if the commitments are as yet unbuilt*'.



ROBERT MUSUMECI
avukat - perit

www.robertmusumeci.com