

# Farewell to urban planning

**Dr. John Ebejer**

---

*Article featured in The Malta Independent on Sunday on 29 November 2015.*

<http://www.independent.com.mt/articles/2015-11-29/newspaper-letters/Farewell-to-urban-planning-6736149236>

*Dr. Ebejer argues that there are three principles underpinning Malta's planning system namely autonomy, transparency and better informed decisions. He comments about the Development Planning Bill published for public consultation process in July 2015. Dr. Ebejer argues that the Bill is a step backwards on each of these three principles and explains why. (The Bill was eventually debated in Parliament and became ACT No. VII of 2016).*

The current set-up of Malta's planning system was legislated in the early 1990's, mostly as a reaction to the uncontrolled development and perceived abuses in development permits in the seventies and early eighties. The relevant legislation has since been amended several times and the planning system has evolved while trying to maintain a balance between many diverse requirements. The 1992 legislation was designed on the basis of a set of 'planning principles' even if these were not stated explicitly. Through the evolutionary process these principles have been retained. Each change of legislation was based on the experience of previous years.

The principles underpinning Maltese planning legislation since 1992 (and which are now being discarded by the new planning legislation) are autonomy of the regulatory authority, transparency in decision-taking and better informed decisions. The following is a brief explanation of each:

**Autonomy of the planning regulatory authority:** Decisions on development applications are taken by boards composed of people who have security of tenure i.e. they cannot be removed by the minister. This allows board members to resist and reject any political pressure to which they may be subject. The appeal boards are also autonomous and this is provided for by security of tenure of members. For plans and policies, it is slightly different in that these are prepared by planners/technical people and then approved by the minister responsible for planning.

**Transparency in decision taking:** There is a high degree of transparency with all meetings relating to decisions on development applications being open to the public. The same applies for decisions on plans and policies. Moreover, information on development applications is easily accessible to third parties. Apart from going to see the applications at MEPA offices, information may also be accessed online. The principle of transparency in decision-taking is considered essential to increase scrutiny and thus reduce the possibility of abuse in the planning process.

**Better informed decisions:** Decisions are taken by committees (not individuals). Within reason, many people are involved in the decision on a development application, either as part of the deciding body, as a member of an advisory body or as a technical person within MEPA. In this way, the eventual decision is better informed and thus more likely to be correct. Part of the set-up includes the Heritage Advisory Committee, which in fact are two advisory panels, one for built heritage and another for the natural environment. The two panels include experts in cultural heritage and natural heritage respectively and their insight on the implications of proposed developments is essential for the deciding board to come to the best decision.

Is the current planning system perfect? Of course not, but it is the best possible taking into account the socio-cultural context. Over the years there were problems but these were not due to a major weakness of the legislation but due to the way the various planning operators and stakeholders chose to operate the legislation.

The Maltese Parliament is currently debating new planning legislation. This will establish a planning system that is fundamentally different to the planning system we currently have. The following comments are based on the Bill of the Development Planning Act, as published in the public consultation process held last July.

The new planning legislation will dismantle the current planning system in that these fundamental principles are being discarded. It will make it more possible for the politician to intervene in the planning process, and the planning authority's autonomy in decisions is being reduced virtually to nil in a number of ways. The security of tenure is being removed for the members of the Executive Council, including for the Executive Chairman. The Executive Council controls the process of the assessment of an application through the work of the case officer. The lack of security of tenure makes it possible for the minister or other government politicians to pressurise the Executive Council on the report and recommendations made by the case officer. The security of tenure of members of the appeals tribunal is also being removed. This exposes members to political pressures when deciding on appeals on development applications.

In addition, the new legislation reduces transparency by allowing decisions of the Executive Council on subsidiary plans to be taken behind closed doors (First Schedule Article 3(e)). It reduces the scrutiny of the decision process on plans and policies. All decisions on plans and policies should be made in a public meeting to increase the scrutiny of the process.

The new legislation concentrates too much power in the hands of one individual, namely the Executive Chairman, who is in turn directly influenced and given instructions by the planning minister. The Executive Council may delegate to the Executive Chairperson or any of its members, the power to endorse policies and plans (First Schedule Article 3(d)). Decision by an individual, rather than a board, reduces transparency. A discussion between different board members provides a more holistic analysis of the issues and ensures that all relevant information is taken into account. The new legislation will make it possible for this healthy discussion in the board to be bypassed and removed. Worse than that, when decisions are taken by individuals rather than a group of people in a board, the possibility of abuse is greatly increased. Another retrograde step is the reduction in size of the Commission deciding development applications. This is being reduced from five to three members, with a quorum of two. Two people to decide on important development proposals is too few.

The Heritage Advisory Committee is being removed. This is a seriously retrograde step because the technical input in decisions on development applications is being reduced. It has been said that the Superintendent of Cultural Heritage will be engaging new personnel to give feedback. This will be grossly inadequate because new graduates employed in a government agency will not have the knowledge and clout which more independent Heritage Advisory Committee members would have.

Most of the legal provisions of the new legislation have nothing to do with the MEPA demerger and everything to do with creating a much weakened planning system with greatly reduced checks and balances. This is evident from a closer look at the detail of the legal provisions but a discussion of these details would be too technical and therefore beyond the scope of this article.

Much on the debate on the new legislation revolves around the environment implications. This is important but these changes are not just about the environment. They are also about residents and the increased possibility of developments incompatible with residential neighbourhoods. There are many potential developments which could be detrimental to residents. This could be for example an extra floor over existing street height or a

commercial use in the ground floor of a block of flats. Alternatively it could be incongruous alterations to a historic building or an ODZ urban fringe development blocking the views of nearby residents. These and other potentially detrimental developments will be made more possible thanks to the new planning legislation and thanks to new powers which make it possible for the planning minister to apply pressure on the people taking the decisions.

Changes in the planning legislation are very bad news for the planning profession. With greater control of the politician on the development application process, the role of the urban planner and technical expert will be made virtually redundant. Planning policy should be based on the public interest. Instead, with the new legislation, there will be instances where the new Planning Authority will change planning policy to make it more possible for otherwise dubious proposed developments to be permitted.

The new legislation is also bad news for the architecture profession because certain decisions on development applications will not be based on the intrinsic merits of the proposed development but on the good contacts the developer or the architect may have.

Malta needs a planning system that is fair and that truly seeks the public interest. Malta needs a system which takes balanced decisions which will safeguard the environment while meeting the needs for economic and social development. For this to happen Parliament will need to substantially revise the Bill of the Development Planning Act.

*Dr. John Ebejer is a lecturer at the University of Malta. He is an urban planner with extensive experience of the Maltese planning system. Between 1992 and 2008, he was involved in Malta's planning system in a number of ways, first as manager at the Planning Authority, then as member of the Development Control Commission and finally as advisor to the ministry responsible for planning. He was also instrumental in the drafting of various legislation relating to planning and the environment.*