

A biased Planning Authority

Dr. John Ebejer

July 2020

In this opinion piece Dr. John Ebejer explains that the Planning Authority has repeatedly shown bias in its decisions on major developments. In particular, the opinion piece gives detailed reasons why the PA should have rejected the ITS-DB application at St. Georges back in September 2018. The opinion piece was published in The Malta Independent on Sunday on 5 July 2020.

<https://www.independent.com.mt/articles/2020-07-07/newspaper-opinions/A-biased-Planning-Authority-6736224916>

Keywords: Planning, City planning, Urban policy, Malta - Planning Authority

20 September 2018 is a day of shame for the Planning Authority (PA). It was the day the PA held a public meeting and approved the ITS-DB development at St. Georges. The decision was subsequently reversed by a court decision because of the conflict of interest of one of the PA Board members. The application was objected to by over 4,000 people, some of whom were present in the packed hall to witness the charade that was put up by the PA. Everything about that meeting pointed to a decision that already been taken elsewhere. The true colours of the PA were there for all to see – an authority overwhelming biased in favour of the application.

The following are a few examples of the PA's bias in the processing of the ITS-DB application. As is the normal procedure, a PA case officer presented a report at the meeting. The report claimed that there were no trees on site. This was incorrect. There is a landscaped area on part of the site. In a community-oriented event in March 2015, Pembroke residents planted two hundred trees, with the support of a private sponsor and in the presence of the then-Minister for the Environment. It was bias that blocked the PA's vision and prevented it from seeing these trees.

It was also bias that prevented the case officer from noting that no Waste Management Plan had been submitted, in spite a request from the Environment and Resources Authority. The excavation of the site will produce huge volumes of waste, equivalent to thirteen per cent of the annual waste generation for Malta and Gozo. The case officer was too biased to notice. For developments of this scale, it is the developer's responsibility to ensure that the waste is handled in a satisfactory manner.

Other things that the PA Board failed to notice were the massivity of the structure, its disproportion to the context, the inappropriateness of locating it on a ridge and the extent of shadowing on adjacent residents. The PA also ignored the impact of eventual construction vehicles on nearby residents. All these were vital considerations but they were barely mentioned in the PA meeting, let alone considered in the PA's controversial vote in favour of the project.

It was bias that induced the PA to commit a huge procedural foul in that meeting of 20 September 2018. The endorsement of Transport Malta was subject to a commitment by the government that a tunnel access road to the site would be built. Up until the day of the meeting, there was no such commitment and therefore the case officer was duty bound to recommend a refusal. During the meeting, the Executive Chairman produced a letter purportedly from the government with a vague commitment of a road tunnel. A biased Executive Chairman encouraged the Board to ignore proper procedure and accept a commitment that arrived at that very late hour.

Then there was the infamous expenditure of public funds, authorised by the PA's Executive Chairman, to bring back a PA board member from her holiday in Sicily to vote at the meeting.

Another howler of the 20 September 2018 meeting came from the Chairman of the Environment and Resources Authority, who is also a member of the PA Board. In the meeting, he said the proposed development should be permitted because all the required studies were carried out. His argument is the apex of absurdity. An application is evaluated on the basis of planning policy, taking into account environmental, social and economic considerations. A proposed development cannot be permitted merely because the studies were carried out. In any case, those same studies showed that significant issues remained unresolved including visual impact, bad neighbourliness, disposal of waste and impacts of traffic.

Let's hope that with the new application for the ITS-DB development, the PA will not be biased as it was in the first application.

It was not just the PA that was biased in favour of this development. The government gave public land to the developer that went way beyond the ITS site itself. Included in the generous property handout were a car park and a landscaped area across the road. The developer got every square metre of public land that could possibly be handed over to him, including a stretch of public road. From a public interest perspective, there is no justifiable reason why this huge area of public land should be given away for commercial development of luxury apartments.

Months before the permit approval, the government relocated students and staff of the Institute of Tourism Studies to the former Air Malta buildings at Luqa. The zeal with which they were kicked out is further proof of the bias.

A few weeks ago, DB group accused the objectors of bias. It takes a lot of cheek for DB Group to do so considering the persistent and overwhelming bias in favour of the ITS-DB development, by the PA and by the government.

The PA's bias is not limited to this application. In an article in another newspaper, aptly titled *Planning gone mad!* (10 February 2019), Dr. Godwin Cassar lists and explains several instances where the PA wrongly interprets policy to facilitate the approval of major development applications. As the PA Director General in the 1990s, Dr. Cassar was instrumental in the setting up of a proper planning system for Malta, complete with appropriate legislation, an independent-minded PA, a Structure Plan and a wide range of planning policy documents and guidelines. His views on the use of planning policy do matter and should be taken note of by the PA.

A recent press release (23 June 2020) by the Chamber of Planners also highlights the PA's bias. The Chamber pointed out that the PA has taken the habit of changing policies to accommodate developers'

requirements. This undermines good planning. The Chamber argued for a holistic planning process that takes stock of the country's spatial requirements.

There are several circumstances that explain and facilitate the PA's persistent bias in favour of major developments.

Legal changes made in 2016 effectively removed the autonomy of the Planning Authority. The legislative changes allows the Minister to appoint and remove the Executive Chairman at will. Main decisions are now entrusted to a small committee, the Executive Committee, which in turn is under the control of the Minister, through the Executive Chairman. As was clearly evidenced in that fateful PA meeting of 20 September 2018, the PA Board sees itself as a mere rubberstamp for decisions that are taken by politicians, for and on behalf of the big developers.

PA governance is not inspired and motivated by the public interest but by the interests of some developers. In this 'make-hay-while-the-sun-shines' frenzy, government politicians have abdicated their role of overseeing the planning regulator and instead act as intermediaries working to further the interests of some.

Another circumstance that encouraged bias was the way conflicts of interest were tolerated by the government and by the PA itself. There were at least two key individuals in the planning process who had a direct personal financial interest in having a pro-development PA. Inevitably their interpretation of policy was coloured by their own desire to encourage development. Following the recent court decision on conflict of interest, it is hoped that abusive use of public positions will never be tolerated again.

In a context of persistent pro-big-developer bias, I reiterate that the PA repeatedly interprets planning policy in an incorrect manner. In using planning policy, the PA has adopted an approach that is excessively legalistic, whereby adherence to the letter of the policy is considered sufficient. This is incorrect. Trying to apply the letter of the policy, while ignoring the 'spirit' is a fundamentally wrong approach to policy. The 'spirit' of the policy is set out in the policy document itself, with objectives, explanations and parameters on how the policy is to be applied.

For example, the Hotel Height Relaxation policy allows additional floors for hotels to facilitate hotel improvements and thus improve the tourism product. Instead the PA uses it to justify increased floor area in applications for mixed developments (i.e. developments that include both residential and commercial uses). The PA uses the policy to increase the number of residential units, rather than to improve the quality of the hotel.

Another example is the Floor Area Ratio policy. A main objective of this policy is to create open spaces that are amenable for use by the public. Instead the PA interprets the FAR policy abusively to bypass the requirement of having at least 50% of the site as public open space.

There are many different planning policy documents that would be relevant to a major development application. Policy documents should be used in a holistic and coordinated manner when assessing a major development application. A gross error by the PA is to use the Hotel Height Relaxation policy to justify bypassing basic planning requirements such as good neighbourliness, minimizing impacts, respect of context and so on. Nor can the Hotel policy be used to justify the non-application of Floor Area

Ratios. The PA must stop using planning policies like they were chewing gum and interpreting them abusively to the extent that they are rendered meaningless.

These and other shortcomings in policy interpretation were especially evident in the processing of the ITS-DB application. For the new application, it is hoped that the PA will apply planning policy correctly.

Up until the end of last year, the PA interpreted planning policy, not according to professional competence, but according to the diktat of politicians (and sometimes according to personal interests of some public officers). Some months ago, there were important changes in the senior management of the PA. Moreover there is now also a new Minister responsible for planning. We will wait and see whether the PA will continue in its bias and persist in wrongly using planning policy, or whether the planning system will be used to achieve the objectives as set out in the legislation: *“To enhance the quality of life for the benefit of the present and future generations through a comprehensive sustainable land use planning system, and to preserve, use and develop land and sea for this and future generations, whilst having full regard to environmental, social and economic needs;*”

John Ebejer is an urban planner and Senior Lecturer at the University of Malta.