John Ebejer

An architect and urban planner, Mr Ebejer is chairman of the Building Industry Consultative Council.

Interpreting the planning law

The Mepa audit officer is of the opinion that meetings between the chairmen of the Development Control Commission and applicants are illegal (November 2). He "... argues that the planning law clearly lays down that all DCC meetings must be held in public". He arrives to this conclusion on the basis of article 15 (5) of the Development Planning Act which states: "The sitting of the board shall be open to the public...".

I am not a legal person. I offer the following opinions on legal interpretation of the Development Planning Act with a good dose of trepidation.

A closer look at the Development Planning Act would reveal that Mepa's auditor is probably incorrect in his interpretation. There are at least two pre-requisites for a "sitting of the board" to take place.

First, the function of the DCC board is to take a decision on any development application (articles 13(2) and article 36 (10) of the DPA). Hence, notwithstanding the presence of board members, a meeting is not a DCC board meeting if there is no specific intent to take decisions on development applications. Second, for a DCC meeting to be held there needs to be at least four out of seven members present (article 13 (4)). In a meeting with an applicant, there are at most two DCC board members. This cannot remotely be considered to be a "sitting of the board" and, therefore, the legal provision relating to the presence of the public does not apply. It becomes a DCC board meeting, according to law, if decisions are taken and if there are at least four members present.

It appears that Mepa has legal advice that is also contrary to the auditor's view. Had Mepa's legal adviser indicated that, in his opinion, such meetings are illegal than certainly Mepa would have taken steps to stop them. This did not happen.

Ultimately, it is a court of law that determines what is legal and what isn't after due process. In its decision on the Mistra case (October 28) the court says (translated from Maltese): "It is therefore apparent that these meetings could be legitimately held and there does not seem to be anything irregular, so much so that the authority established a complaints and liaison officer precisely for this purpose".

From a practical point of view, meetings between the DCC chairman and the applicant (together with his architect) are useful because issues relating to a development application can be discussed and ways sought to improve the proposed development. In truth, it is the responsibility of Mepa's case officer to meet the applicant. In a situation where some Mepa case officers are averse to holding such meetings, meetings of the DCC chairman with the applicant are all the more useful.

There is another instance where Mepa's audit officer gave a legal opinion which, in my opinion, is incorrect. In the recent controversial Bahrija report, he claimed that the first permit issued for the site (PA2835/00) was issued illegally because it was in breach of policy. Yet, he claimed the permit is valid. This is contradictory. How can a permit be issued illegally and still be considered valid?

Planning policies are inherently subject to interpretation. Planning policy is not like laws and regulations; most policies allow for ample room for interpretation to cater for qualitative as well as quantitative criteria. Moreover, the interpretation of planning policy is subject to the specific circumstances of the site and of the proposed development.

When determining whether a permit issued was in breach of policy (and, hence, illegal, according to the audit officer), whose interpretation of policy is one to rely on: that of the director at Mepa, the DCC board, Mepa's main board, the audit officer or a court of law? Who is to decide?

Moreover, article 33 (1) of the DPA requires the DCC to "apply" development plans and planning policies as well as "have regard to any other material considerations...." Who decides the relative weighting to give to planning policy and to other material considerations? Who decides if and when the application of "material considerations" would result in a breach in policy?

On practical grounds, the auditor's approach to planning policy would give rise to a minefield with countless permits being legally challenged on the mere pretext that some comma of some obscure policy is being infringed.

I am not a legal person. It is only with reluctance that I offer my views on legal interpretations of the DPA. The auditor is not a legal person either and it appears he did not get any legal advice on either the Mistra or the Bahrija cases. Yet, he makes bold statements relating to legal interpretations without recognising his limitations on legal matters and irrespective of the view expressed by the court on the Mistra case.

The recent court decision on the Mistra case is more than welcome. I read the court's decision and can only conclude that the ordeal of these two former board members was in vain and that an injustice has been committed against them.

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