



Construction Works

Recommendations
for simpler and effective control

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OMBUDSMAN

COMMISSIONER FOR ENVIRONMENT AND PLANNING

Construction Works: Recommendations for simpler and effective control

Last June various recommendations were made to the authorities with the main aim of voicing the citizens' concerns and restoring safety in the construction sector. During the same month, new regulations on the avoidance of damage to third parties were published but however, the fatal building collapse that happened a few weeks ago prompted the Commissioner to refresh these recommendations and call for more drastic measures.

One of the recommendations made last year was the setting-up of a one-stop-shop with the main function of enforcing and archiving. This idea is being floated again and expanded in this report with the main aim of achieving simpler and effective control. Reorganising the enforcement control sections of the main three Government entities (that is, the Building Construction Agency, the Occupational Health and Safety Authority and the Planning Authority) under one roof also calls for construction-related enforcement to be administered under the portfolio of the Ministry for Law Enforcement.

Case history helps us understand better the dynamics of similar incidents and in formulating measures that bring about effective change.



Case History

	Date	Place	Incident
1	February 1996	Menqa Marsa	Warehouses collapsed
2	April 2000	Cathedral Street Sliema	Townhouse collapsed onto site being developed leaving one fatality
3	June 2004	Ramon Perellos Street St Paul's Bay	Block of flats with underlying garage collapsed onto site being developed and onto street leaving two fatalities
4	April 2018	Triq is-Silla Marsascala	Recently constructed balconies collapsed onto front garden
5	November 2018	Triq l-Esportaturi Mrieħel	Part of warehouse collapsed onto site being developed
6	April 2019	Gwardamangia Hill Pietà	Part of block of flats with underlying showroom collapsed onto site being developed and onto street
7	June 2019	Main Street Mellieħa	Block of flats with underlying garage collapsed onto site being developed and onto street
8	June 2019	Mimosa Street Hamrun	Part of block of flats collapsed onto site being developed
9	October 2019	Triq Bordin Msida	Ceiling of bar under property undergoing works collapsed
10	March 2020	J Abela Scolaro Street Hamrun	House with underlying garage collapsed onto site being developed leaving one fatality

With one exception of the first Marsa incident, all incidents happened when nearby development was under way and all cases involved a building adjacent to a vacant site, except for the Marsascala and Msida incidents. These latter incidents call for distinct more straight-forward recommendations such as adequate measures to safeguard third-parties and the general public from falling objects including enhanced structural design and temporary platforms/scaffoldings to be approved by the architect of the underlying property (be it private or public space). The current practice whereby the developers' architects are also taking control of the neighbours' or public property (be it a common party-wall or a real existing right on the foundations¹) needs to be inversed so that the neighbours' architect takes full control on what can and cannot be done with the neighbours' property. Then it is for the **Building Construction Authority (BCA)** to decide any disputes between both advices according to law. At this stage of the report it is important to highlight the urgent need for the setting-up of the Building Construction Authority, adequately equipped with resources in proportion with the size of the construction industry. Until the setting-up of the one-stop-shop, the enforcement system calls for a stronger unit in the BCA than that in the Planning Authority (PA) owing to the fact that the BCA usually requires direct action that is urgent in nature and that unlike the PA cannot be sanctioned, and also since the BCA would generally require multiple enforcement related inspections.

On the other hand, the building incidents adjoining vacant sites call for specific attention to three main aspects:

1. The type and extent of excavations.
2. Interventions on the party-walls.
3. Other interventions close to the party-walls.

Article 439 of the Civil Code gives an effective safeguarding measure that is rather simple to control and easy to enforce. However, as this article is only enshrined in the Civil Code, last year the Commissioner was prompted to recommend adequate criminal measures to act as an effective deterrent against who abuses with this legal obligation. Although the Civil Courts decisions in this regard are very consistent and straightforward in the sense that calls to prohibit similar excavations and for the reinstatement of the same when excavations² have already been

1 Civil Court decision reference no. 946/05 (25/05/2016).

2 Civil Court decisions reference no. 402/18 (10/05/2018); 1725/18 (06/12/2018) and 647/19 (20/06/2019).

done³ are generally always upheld, expecting the common citizen to leave his serene routine at home when heavy machinery start closing in and instead embark on complex and expensive legal procedures is too much to ask for. Furthermore, past incidents show that in a number of cases debris also collapsed onto the public road thus implying that one cannot also expect neighbours to start a legal battle to protect the general public when the latter should be protected by the State. Hence, the call for the immediate intervention of the State in similar situations either through direct effective enforcement actions (including clamping of heavy machinery whenever required) and/or by financing third-party professional advice and/or legal actions at prevention stage. In this respect, the authority shall establish a pool of private architects that can give advice to neighbours against an agreed fee to be paid from the funds collected by the same authority from developers. The neighbours shall still retain the option to employ any architect of their choice and be reimbursed the agreed fee amount.

Article 419 of the Civil Code states that it shall not be lawful for one of the neighbours to make, without the consent of the other neighbour, any cavity in the body of a common wall. The consent of the neighbour in this legal obligation consolidates the idea to strengthen the role of the neighbours' architect at the initial phases when the method statement is being formulated. The neighbours lived in the area for a number of years and sometimes they are the ones who built and maintained their own property and hence they are in a much better standing than the developer to decide, according to law, what can or cannot be done with their property, whether it is fully or partially owned.

Other interventions, for example those affecting buttressing adjacent to arches and in the vicinity of underground cisterns and slender walls should also be left under the control of the neighbours as they are in the best position to know the details on how their property's condition could be compromised by the neighbouring development.

The Occupational Health and Safety Authority (OHSA) plays an important role in any construction site safety related reform especially when one considers that by protecting the workmen on site one is also protecting the neighbours and public in general. Furthermore, criminal actions are also based on the same Occupational Health and Safety Authority Act.

³ Civil Court decisions reference no. 278/92 (27/11/2009); 1776/01 (25/10/2010) and 763/09 (29/02/2012).

Article 1638 of the Civil Code and the Occupational Health and Safety Authority Act puts full liability on the shoulders of architects and contractors . Although without a developer there would be no project, the architect and contractor should retain their standings although tougher expectations from architects and contractors will call for additional checks and expertise that finally will still be financed by the developer. Failure to seek expert advice (be it structural, geological or managerial in nature) or merely following the developer's instructions are no good excuses to escape from legal responsibilities.

The introduction of the **Site Technical Officer (STO)** should not serve to shift liability from the two main players (architect/contractor). Although architects, contractors and developers are in a much better position to submit representations on the success of this new obligation introduced last year, it stands to reason that the STO must be a person who is well trained, qualified and thoroughly experienced in the field.

Licensing of all players in the industry, including the various specialized contractors, after following accredited courses is urgent and a must. This will pave the way for mandatory obligations on the developers to employ licensed operators only, aided by strict regulations on subcontracting in order to establish clear hierarchical and legal responsibilities down the line, possibly through the obligation of the appointment of a managing architect assuming responsibility for the implementation of the project on behalf of the contractor.

Construction is a sector whereby all the components, very much like the building itself, are to be planned and built accurately in order to achieve a holistic product that is functional, pleasing and safe to use. Changing the **Planning System** whereby the **Planning Authority (PA)** focuses on the external fabric of the proposal vis-à-vis volumes, uses, urban context, landscaping and skyline whilst the BCA controls the internal subdivision of the development vis-à-vis circulation, safety in use, fire safety, sanitary regulations and energy management, will enhance building control and at the same time simplify and improve the Planning decision process. As the main requirements in the Civil Code are generally internally related, this shifting in the PA/BCA responsibilities will also promote compliance with the legal requirements and regulations from the initial construction design phase at BCA level. In other words, this

recommendation implies that a proposal is first vetted by the PA establishing the external fabric and allowable internal areas and uses with acceptable minor amendments and then the proposal is vetted by the BCA focusing on the actual internal planning and construction methods. This will do away with the multitude of policies and guidelines (such as the 200-page Development Control Design Policy Guidance and Standards 2015) that are in a way restricting and shifting the desired attention at the Planning decision stage whilst at the same time putting important construction related issues under the scrutiny of the BCA.

The planning requirement for **Off-Street Parking** should also be questioned at this stage especially where site restrictions result in excessive excavations and waste plenty of space for access ramps and circulation areas. Doing away with this requirement for off-street parking in certain cases is beneficial on structural safety (no excessive excavations and building supported by load-bearing walls rather than heavily loaded slabs), transport related issues (liberating 24/7 no-parking spaces from the street and reducing vehicular movements on pedestrian footpaths), the environment (by reducing the multitude of unsightly large garage doors at street level) and the social aspect (by welcoming residential and other amenity uses at street level). Instead, conglomerating garages under internal green-roofed developments (where excavations adjoin the backyards rather than the heavily loadbearing party-walls) that with the current policies cannot be carried out also helps in mitigating risks on construction sites.

The PA shall also have to do away with the processing of the commencement notice and with the establishment of the time-window for the execution of the works, both elements falling within the obvious remit of the BCA.

Summary of Recommendations

The recommendations can thus be summarized as follows:

1. Immediate setting up of the Building Construction Authority fully equipped with resources in proportion with the size of the Construction Industry.
2. Deterrents through criminal procedures, fines and direct actions to restore discipline in the industry.
3. Licensing and accredited courses for all suppliers and operators in the field supplemented by adequate building codes.
4. Imposition on developers to employ only licensed operators under a strict subcontracting regime.
5. Enforcement action on issues related to the BCA, OHSA and PA mustered under the one roof of the Ministry for Law Enforcement.
6. Authority to recognise and give priority to neighbours' architect advice.
7. Authority to assist neighbours with professional and legal advice.
8. Shifting construction related responsibilities from the Planning Authority to the Building Construction Authority thus also abetting the same Planning Process.
9. Consider changing certain Planning Policies that are instigating added risks in construction sites.



Perit Alan Saliba, Commissioner for Environment and Planning

Perit Alan Saliba was born in Pietà on 8 November 1970. He studied at the Junior Lyceum, Junior College and the University of Malta where he obtained his degree as Bachelor in Engineering and Architecture (Honours) in 1993 and the following year awarded the warrant to practice his profession as Perit.

Over the years, Perit Saliba pursued his professional development and specialised in Valuations for Accredited Valuers, Ethical Obligations of Arbitrators and Award Writing and on the impact of the Rent Laws Act X of 2009 on valuations.

Perit Saliba started his career in the public sector where he was involved in social housing projects for the Government Housing Department. He later set up his own private practice and was involved in various commercial and residential projects from design to demolition and construction supervision. During his career he also performed commercial and residential valuations for one of the leading banks in Malta and served as Project Architect on various recreational projects and community facilities.

Since 1995, Perit Saliba has been appointed as a Court Expert on building litigation and valuations. From 2004 to date, he also served as an Arbitrator with Malta Arbitration Centre on Building Litigation. Between 2006 and 2013 he was Member of the General Service Board and also served on the Board of Professional Conduct within the Kamra tal-Periti. Since 2011, Perit Saliba is a Technical Member on the Land Arbitration Board, Rent Regulation Board and Rural Leases Control Board.

Perit Alan Saliba was appointed Commissioner for Environment and Planning on 1 September 2017.