

Third party rights in demolition, excavation, construction



Angelo Xuereb

It is undeniable that a frequent cause for court cases is disputes about party walls. This is mainly due to limited space and the construction methods that we have adopted over the past few decades.

Not so long ago, a six-storey building with one basement floor was considered a high structure. Today, we are constructing nine storeys and more, besides four storeys below ground level, changing our approach to construction completely and presenting the industry with new challenges.

The BICC (Building Industry Consultative Council), represented by some 15 organisations, including Mepa and the Chamber of Architects, was involved in the drawing up of proposals to deal with these issues for presentation to the minister.

After several meetings between November 2004 and March 2005 and having presented a document identifying several proposals, the FOBC had organised a conference in October, 2004 to present these proposals to the public.

The conference was well attended but, unfortunately, as happens with many other reports, it was presented to the minister and was shelved as a draft, gathering dust.

We should be determined to implement the necessary changes to our law to regulate issues related to demolition, excavation, construction and third party rights to safeguard the interests of all parties involved. We cannot solve all problems associated with the industry but we must do our best to reduce them. We must also realise that each site has its own specific problems and challenges.

I propose a few changes to this end. The architect appointed for a site must take full responsibility of



all technical matters, including demolition, excavation, designing of foundations, structural engineering, construction, etc. The demand on major projects dictates that architects should be obliged to appoint specialised professionals, like demolishing experts, geologists, and structural engineers to help in the brief.

The sole responsibility of any development in the eyes of the law would have to rest with the developer. On his part, the developer would protect his position and seek indemnification by requesting back-to-back undertakings from other service providers like demolishing contractors.

Each development site would have to be constructed within its own precincts. This means that each party has to construct a party wall exclusively within its own property. The wall must be structurally independent of any neighbouring buildings. The adjoining party should not have the automatic right to render the wall common.

In all circumstances, the structure must be capable of safely withstanding lateral loading, which may be placed on it by backfill and any other imposed loadings.

The law stipulating that a new adjacent development should leave 75 cm distance from the existing foundations no longer makes sense in today's scenario. The old law was enacted to avoid neighbours being

allowed to excavate next to an adjacent well. In those times, it was common practice to construct a basement to use the space rather than excavate the rock. Rock cutting in those days was very expensive, while land cost was relatively cheap.

Our islands' geographical formation is made up of various types of rock and each has a specific foundation. This also changes according to the load bearing on the ground.

In today's terms, a 75-cm gap would be insignificant if the rock is soft like *turbazz* or clay. Technically, you may require 30 metres in case of clay ground, or six metres in the case of *turbazz*. On the other hand, if the ground is solid rock with no fissures, no gap at all may be needed, and the existing structure would be safe and sound. Concrete piling techniques were recently introduced and have solved many problems with foundations.

It does not make sense to leave a 75-cm gap at foundation levels only and have a party wall of a ten-storey building extended on cantilevers from ground level.

One could only assume that in a few years' time, the adjacent building would carry out the same exercise. This would result in a fragile 1.5-metre free-standing slender rock between both properties, no use for either party, apart from the additional, unnecessary costs for both parties to protect this gap. The use of a 23-cm thick wall as a party wall over the

past few decades was adapted as a practical solution to reduce costs and space. The relative clause in our Civil Code (Chapter 16, Article 407) stipulates that a party wall should not be less than 38 cm thick, two skins of 15 cm on an eight-cm void. In today's terms, this also should be eliminated at the discretion of the site engineer or architect. Considerations on the thickness of a party wall should be based on sound insulation, ensuring there is no interference with neighbouring properties.

A 23-cm party wall could also result in structural damage through the structural loading of an eight-storey building on both sides of the party wall. If tenants or owners of individual apartments chase this party wall horizontally, possible on both sides, to install services, without knowing, these individuals would have caused the whole structure to be loaded on a 15-cm party wall. This argument also strengthens my proposal that each site *must* be self-sufficient within its own precincts (from the median line).

Before any works are taken in hand, a method statement would have to be submitted at Mepa for any interested party to view and comment.

This method statement and any subsequent additions and/or modifications thereto shall be available for public inspection. A notice to this effect shall be affixed on site and published in a local newspaper.

Owners of neighbouring properties and third parties should have the right to object formally on reasonable technical and legal grounds within 21 days of registration of notification.

Where a dispute arises, the parties should appoint an independent architect within 14 days. If the parties fail to agree on the appointment of the independent architect, disputes should be resolved before the Malta Arbitration Centre.

On completion of the building, a set of structural drawings should also be deposited with Mepa or another specifically designated office. This is essential to ensure that when a neighbouring property is about to be excavated and developed, the engineers would have a better understanding of the adjoining structure and would design the new development structure after considering the pressures on the foundations.

An insurance policy issued on behalf of the developer and contractors should cover third party risk and liability for an amount to be agreed on between contractor and insurer on the basis of an evaluation of the site and the work to be carried out, however not less than a minimum of €500,000 with respect to damage which results in the adjoining properties resulting from the execution of new development; and third party body injuries resulting from the execution of the new works.

The architects taking full responsibility of the development must also be covered with an appropriate professional indemnity up to a maximum of €500,000. This would depend on the extent of the development.

I cannot emphasise enough the necessity of constant supervision of a demolishing expert during this phase. This is the most dangerous phase of construction. Inexperienced demolishing contractors are often seen ignoring all sorts of precautions for ensuring the health and safety of workers, neighbours and pedestrians. Inexperience in this area is one of the main factors that has brought about an increased risk of serious injury and loss of life in the construction industry. Demolition should be treated as a specialised job and only licensed contractors should undertake such works.

Mr Xuereb is a contractor.

New Coldwell Banker offices

It has certainly been a great start to the new year for Coldwell Banker Malta. Two new state-of-the-art branch offices in St Paul's Bay and Qormi have started to operate. Another office in Msida opened on Friday.

According to general manager Geoffrey Ciantar: "We are proud to welcome on board a number of high-quality real estate professionals who have been in the industry for a good number of years."

"Andrew Gatt, who manages the St Paul's Bay office, has over 25 years' experience in the field, having held various top management positions in one of Malta's largest real estate agencies. Michelle Attard is also based in St Paul's Bay. Graziella Vella, who has specialised in properties in Qormi for a number

of years, manages the Qormi branch. Ultimately, the quality of the people we are associated with remains our main priority and greatest asset."

Coldwell Banker opened its first office in Malta in May last year. "Merely eight months ago we set about creating a new approach to real estate based on Colbert Coldwell and Benjamin Banker's founding principles of 'honesty, integrity and service'." Mr Ciantar said. "This is the very reason why we are proud to be associated with a high quality, customer-focused, service-oriented worldwide organisation that has a consistent look and feel in everything that is done from country to country and continent to continent. The branches will mainly focus on the Maltese

market. "It's the core of our business. We are not simply relying on international buyers. We are the only agency with an office in Qormi, an area untapped by competitors not because there is no demand for property in the area, but because most people are afraid of it."

However, any property that is listed with Coldwell Banker automatically gets exposure on the international market.

"Besides the global website, all the 3,800 offices worldwide have access to our database and vice-versa, with a healthy referral system generating business worldwide. Also, Maltese properties are continuously being featured on prestigious international magazines, putting Malta firmly on the international map as a property destination.

"The number of developers, property owners and property buyers that have approached us has been overwhelming. All the players in the real estate industry in Malta claim the best standards and highest levels of service. That's good for the industry, but we do not just promise service, we guarantee it, in writing. And no other company on the island has the global reach, network and marketing opportunities that Coldwell Banker can offer."

Coldwell Banker Real Estate Corporation is a subsidiary of Realogy, the largest real estate and hospitality world franchiser. With over 125,000 sales associates in 46 countries in six continents, Coldwell Banker's ethics, standards and service are second to none.