

Determining development conditions for forest land – selected issues

It can be the case that a planned investment is also located on the terrain classified as forest land. The aforesaid may have a major effect on the course of the investment process – in particular with regard to investments located in areas, for which no valid zoning plan is binding.

In the first place it should be noted that, in principle, realization of the investment on land, for which no zoning plan has been enacted, will require determination of the development conditions for the site. Pursuant to Art. 61.1.4 of the Act as of 27 March 2003 on spatial planning and development, a decision determining development conditions may be issued, among others, on condition that an area in question does not require a permit for designation of the agricultural land and forest land for non-agricultural and non-forest purposes, or if the land is covered by a permit obtained during preparation of zoning plans adopted in accordance with previous regulations. Furthermore, pursuant to Art. 7.1, Art. 7.2.2 and Art. 7.2.5 of the Act of 3 February 1995 on protection of agricultural and forest land, the use of forest land for non-forest purposes may be effected in the zoning plan, subject to prior consent of the competent public administration authorities, which applies both to forest land owned by the State Treasury, as well as to forest land held by private persons.

Referring to the above, it should be firstly indicated that the restriction mentioned above does not mean that it is impossible to determine development conditions for forest land. First of all, in the event that a permit for change of designation of the forest land has been obtained pursuant to the previous regulations, it is possible to use this land for non-forest purposes without having to obtain a new permit. Furthermore, it should be noted that it is possible to determine the conditions for development of such sites also in cases, where the planned development is in line with designation of the sites for forest purposes. The essence of the regu-

lation referred to above is to limit the capacity for changing the designation of the forest land to other purposes to the cases, where the discussed change arises from the zoning plan. In particular, it is unacceptable to effect above change of designation of the land in question directly on the basis of a decision determining the conditions for land development – acceptance of a contrary interpretation would lead to unacceptable limitation of the local administration's powers with respect to its planning authority.

Obviously, it should be recognized that in course of business transactions it may be useful to develop the forest land for needs of the investment of a non-forest character; in particular, it may be considered to include such land in the application for decision on development conditions with intention to classify the land as the green active area accompanying the main part of the investment. However, it should be noted that the very fact of including protected forest land in the application for the decision determining development conditions prevent from obtaining a positive resolution in the matter. In particular, it should be specified that possible clarification informing about planned development of the terrain exclusively in part not constituting forest land does not change the legal assessment of the situation in any way. According to the positions consistently presented in the judicature of the administrative courts, determination of the development conditions refer to the entire plots included in submitted application and not to the part of the plots which are intended to be really developed. A specific location of the investment, as well as the manner of development of the site is determined at the stage

of obtaining the building permit. Therefore, the very fact of including in the application for the decision determining land development conditions the forest land, which requires a permit for its designation for non-forest purposes, does not meet the conditions required to issue such decision and exclude possibility to receive positive decision in the matter.

The issue described above may be of crucial importance from the viewpoint of realisation of the investment. It should be emphasised that even recognition of a part of the plot comprising the site of the planned investment as the forest land that requires permit for its designation for non-forest use prevents determination of land development conditions for the site for non – forest development. If the public administration authority determines development conditions for the protected forest land in a manner that permit development of the site for non-forest use, there is a risk that the decision can be claimed null and void pursuant to Art. 156 § 1 of the Code of Administrative Proceedings.

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