

Legal issues relevant to decisions on conditions for development and land use

Issues relating to decisions on conditions for development and land use are regulated by the Act on Spatial Planning and Development of 27 March 2003 (Official Journal of 2015, item 199). Decisions on conditions for development and land use are issued so as to define the ways in which land for which no local zoning plans have been adopted can be used or developed. In practice, the decision on conditions for development and land use addresses the question of a potential investor as to whether the competent public administration authority accepts the proposed manner of developing the land. Obtaining the decision on conditions for development and land use is usually the first crucial step affecting the project's future.

As a rule, the commune head (wojt), town mayor (burmistrz) or city mayor (prezydent) is the competent authority in this respect. The process of issuing the decision involves an administrative procedure. The applicant need not have a title to the property in question. Therefore, the decision on conditions for development and land use can be issued to any party. However, it should be noted that the decision does not give rise to any right to the site to which it pertains, nor does it infringe on the ownership right or any third-party rights. In addition to the applicant, parties to the procedure also include owners or users of the neighbouring plots of land. Judicial decisions of administrative courts in that area suggest that the term 'neighbouring plots of land' includes not only the sites lying directly next to the property in question but also plots located further away in an area under review whose owners can show their legal interest in the matter (cf. the decision of the Regional Administrative Court of Gdansk of 10 November 2011, court docket II SA/Gd 653/11). It is possible that several decisions on conditions for development and land use have been issued for a real property. If this is the case, the party having the right to use the property will have the right to make the choice to develop the land in the manner they deem appropriate.

The conditions for issuing a decision on conditions for development and land use are set out in Art. 61.1 of the Act on Spatial

Planning and Development. Pursuant to Art. 61.1, the obligatory requirement for issuing the decision is that at least one adjacent plot of land accessible via the same public road should be developed in the way which makes it possible to determine the requirements related to the new development as regards the continuation of land use functions, parameters, features and indicators of built development and land development, including overall dimensions and architectural form of building structures, the building line and land utilisation intensity. Neighbouring plots are a reference point for assessing whether the given way to develop the real property is permitted. A review of decisions issued by the administrative courts yields two basic principles which should govern the activities of the entity undertaking the assessment. One is the principle of the continuation of land use functions. The term 'continuation of land use functions' concerns development which does not threaten the status quo. Therefore, new development is permitted as long as it is consistent with the requirements of the existing land use policies. The other is the principle of good-neighbourliness. The principle of good neighbourliness requires that new development must comply with the current state of development and urban planning (development of the area) and architectural (built-up development) features and parameters.

Another condition which must be fulfilled to issue a decision on conditions for development and land use is that the site to which the decision pertains must have access to a public road. The Act also requires that the existing or planned utilities are sufficient to meet the needs of the planned construction undertaking. Furthermore, the Act on Spatial Planning and Development also presents an obstacle to the grant of the decision on conditions for development and land use. The relevant decision may not be issued if a permit is required to change the intended land use from arable or forest land use to non-arable or non-forest use. Furthermore, some additional conditions defined in specific acts may apply to selected types of land.

It should be noted that the decision on conditions for development and land use may be freely assigned to another party. However, the assignment is conditional on the fulfilment of the conditions defined in Art. 63.5 of the Act on Spatial Planning and Development. Pursuant to Art. 63.5, the authority which issued the decision on conditions for development and land use is required, with the agreement of the party to which the decision was issued, to transfer the decision to another party provided that the party agrees to accept all the conditions contained therein. Only entities involved in the assignment can be parties to the procedure for assignment of the decision.

A decision that stipulates conditions which are not satisfactory to the applicant or a decision refusing to define the conditions for development can be appealed against with the Local Government Board of Appeals. A register of decisions on conditions for development and land use is maintained by the commune head, town mayor or city mayor. The register is open to the public for inspection.

Emilia May

Kancelaria Adwokatow i Radcow Prawnych Miller, Canfield, W. Babicki, A. Chelchowski i Wspolnicy Sp.k.