

Legal opinion

Adapting listed historic buildings for commercial use: legal requirements

One way in which old structures deemed to be of special historic significance are protected in Poland is through inclusion in the register of historic monuments. Article 9 paragraph 1 of the Act of 23 July 2003 on the protection and care of monuments¹, henceforth the Act, stipulates that “A structure of special historic significance is included in the register of historic monuments either by means of a decision issued ex officio by the voivodship monument conservation officer, or upon the request of its owner, or of the perpetual usufruct holder of the site on which it is erected.” Inclusion in the register means the structure becomes protected by public law, imposing additional rights and obligations on its owner or user. These obligations effectively restrict the owner’s freedom to dispose of and use the structure as they see fit², placing limitations on what they can do with it that can be quite far-reaching. One such limitation is laid out in Article 25 of the Act. It stipulates that in order for a structure included in the register of historic monuments to be adapted for commercial use, its owner or holder must have the following documents:

- conservation documentation, detailing the structure’s conservation state and the extent of permitted adaptations, given its historic function and value, as well as permitted changes to make it a friendly space for people with special needs;

¹ Consolidated text: Journal of Laws 2021.710.

² Cf. B. Ruszkiewicz, *Ochrona nieruchomości zabytkowych jako przykład ingerencji państwa w sferę prawa własności*, Gdańskie Studia Prawnicze, Volume XXI, 2009, p. 110.

- a programme of conservation works agreed upon with the voivodship monument conservation officer, specifying the scope and method of the works and the materials and technologies to be used;
- a programme of subsequent use of the building and its surroundings agreed upon with the voivodship monument conservation officer, including ways of displaying its historic value.

What is meant by conservation works? The Act defines conservation works as “actions aimed at safeguarding and conserving a historic monument’s substance and halting processes of its destruction, as well as documentation of such actions.”³ Conducting conservation works (and conservation research) on a structure included in the register of historic monuments requires obtaining a permit from the voivodship monument conservation officer⁴, in an administrative proceeding that is separate and independent of the proceeding to obtain a building permit.⁵ The permit to conduct conservation works has the status of an administrative decision as defined in Article 107 of the Code of administrative procedure. The law does not spell out the conditions under which it should be granted or denied, leaving it to the discretion of the voivodship monument conservation officer. In making a decision on whether to grant the permit, the conservation officer is bound by the request of the applicant and cannot suggest changes in its technical or architectural choices; they have to be either approved or rejected.⁶

³ Article 3 item 6).

⁴ Article 36 paragraph 1 item 1) and 3).

⁵ Cf. e.g.: ruling of the Supreme Administrative Court (NSA) of 27 January 2011, II OSK 31/10, LEX no. 953062; NSA ruling of 26 April 2013, II OSK 2625/11, LEX no. 1365872; or NSA ruling of 16 June 2011, II OSK 1599/10, ONSAiWSA 2012, no. 4, item. 73).

⁶ Cf. commentary to Article 36 [in]: A. Ginter, A. Michalak, *Ustawa o ochronie zabytków i opiece nad zabytkami*. Komentarz, WK 2016, LEX.

The applicant for a permit to conduct conservation works on a structure included in the register of historic monuments has to ensure that the works are conducted or overseen by a person who meets specific requirements laid out in the Act⁷, namely a person who holds a master's or second-level master's degree in conservation and restoration of works of art or in conservation of historic monuments and who, after completing the sixth semester of the master's programme or after starting the second-level master's programme, spent at least 9 months working on the conservation of structures included in the register of historic monuments. In fields not covered by the university degree programmes mentioned above, conservation works are required to be overseen by a person who has:

- a secondary (vocational) education certificate and professional title or diploma in the applicable subject area, or
- a master craftsman certificate in the applicable subject area
- and who has spent at least four years working on the conservation of structures included in the register of historic monuments, or in the List of National Heritage Treasures (LSD).⁸

The Act also lays down requirements for persons employed as construction managers or project managers of conservation works on structures included in the register of historic monuments. Such a person has to possess a building license as defined by the Construction Law, and has to have spent at least 18 months working on construction projects involving structures included in the register of historic monuments, or historic monuments belonging to museums that have the legal status of cultural institutions.⁹

⁷ Article 36a paragraph 1.

⁸ Article 37a paragraph 1 and paragraph 2.

⁹ Article 37c.

In considering the legal requirements around adapting listed historic buildings for commercial use, one issue that warrants attention is the procedural mode in which the voivodship monument conservation officer gives agreement to the programme of conservation works and to the programme of the building's subsequent use. As has been pointed out in the legal literature, the Act contains no provision explicitly giving the conservation officer the power to give such agreement. The interpretation suggested by scholars is the one that is commonly used in administrative practice, namely that the granting of the agreement occurs with the issuance of so-called conservation recommendations under Article 27 of the Act ("Upon the request of the owner or holder of a historic monument, the competent voivodship monument conservation officer formulates, in writing, a set of conservation recommendations for the monument, detailing how it should be used, how it should be protected and what conservation works should be conducted, as well as the extent of permitted adaptations."), with the granting of the conservation officer's agreement during the proceeding to obtain a land development decision, and with the issuance of one of the permits listed in Article 36 of the Act.¹⁰

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¹⁰ Cf. commentary to Article 25 [in]: M. Cherka (ed.), Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz, LEX 2010.