

POLAND: About the identity of the investment in an outline planning decision and in a building permit

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Since the beginning of the Act of March 27, 2003 on spatial planning and development, there have been doubts as to which extent an application for a building permit should correspond to the content of the relevant outline planning decision. While there are no major doubts that the building permit should meet the parameters specified in the outline planning decision, there are many doubts as to whether the investor can "carve out" from the outline planning decision only a fragment of the investment, when submitting the application for a building permit.

The prevailing approach presented in the doctrine and case law of administrative courts is that dividing one investment provided for in the outline planning decision is unacceptable. In the past, however, this issue has been the subject of divergent approaches.

And so, for instance, in the judgments of the Voivodship Administrative Court in Warsaw of December 11, 2009 (case no. VII SA/Wa 1569/07) and of February 28, 2012 (case no. VII SA/Wa 2210/11) it was stated that the submission of an application for a building permit for an area smaller than that specified in the outline planning decision is acceptable. This is because such a conclusion cannot be accused of violating Art. 35 sec. 1 of the Construction law, as there is no contradiction between the outline planning decision and the building permit issued in accordance with such application. In accordance with the approach represented in the above judgments, an investor could independently determine a territorial scope of a construction project, provided that it was within the limits specified in the outline planning decision. The investor was obliged to submit a declaration of the right to use the land for construction purposes only in relation to the area covered by the application.

This position was thoroughly criticized by the Supreme Administrative Court in the judgment of November 14, 2013 (case no. II OSK 1340/12). The Court assumed that the outline planning decision determines the possible admissibility of the implementation of a specific project constituting a whole in the urban sense, and the possibility of dividing concerns only the implementation stages. The conditions specified in the outline planning decision apply to the entire construction project in connection with the surrounding buildings, and not only to its specific elements. This applies in particular to communication and infrastructure solutions. In the opinion of the Court, in this case, there is a similarity to the provisions regulating the assessment of the environmental impact of projects, where dividing them into smaller segments does not change their classification as one project. The Supreme Administrative Court took the position that the obligation regarding the territorial identity of the construction project provided for in the outline planning decision and in the building permit results from Art. 55 of the Act of March 27, 2003 on spatial planning and development in conjunction with art. 64 of this act, according to which the outline planning decision is binding for the authority issuing the building permit. The binding force for the architectural and construction administration authority applies to all conditions of the planning decision. Therefore, this authority may not act against any requirements resulting from the outline planning decision. The Court stated that *"accepting the opposite approach would mean allowing the possibility of free assessment by the architectural and construction authority of the elements selected by the investor, which could be covered by the application, fulfilling only some of the conditions set out in the outline planning decision related directly to the selected part of the project, and ignoring other conditions as not covered by the application for a building permit, which would contradict the principle expressed in Art. 55 of the spatial planning and development Act."*

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" As a consequence, the scope of the land development project specified in the application for a building permit should coincide with the demarcation lines specified in the graphic attachment to the outline planning decision. This means that the investor has only a relative freedom to define the scope of the investment in areas not covered by local spatial development plans. The investor is bound by the outline planning decision issued upon the investor's request, which determines the territorial scope of the submitted application for a building permit.

This does not prevent the implementation of such a multi-element investment in stages. In such a situation, Art. 33 sec. 1 of the Construction law shall apply, according to which in the case of a construction project covering more than one facility, the building permit may, at the investor's request, apply to selected facilities or a set of facilities that can independently function as intended. In such a situation, the investor is obliged to present a plot or area development plan for the entire construction project. In the opinion of the Supreme Administrative Court, due to the content of Art. 32 sec. 2 point 2 of the Construction law, the investor is, however, obliged to submit a statement of the right to use for construction purposes the entire property located within the area covered by the application, and therefore in the case of a multi-stage investment, such a statement (regarding the entire project) should be submitted when approving the construction design for the first stage. Such a solution makes it probable that the construction project as presented in the outline planning decision will be able to be implemented, as it "creates real grounds for obtaining building permits for the remaining facilities planned to be implemented in the next stages." Otherwise, there would be no guarantee that the investor would develop other facilities provided for in the outline planning decision in the future.

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