

POLAND: Issuing of an outline planning decision for a part of a plot

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An outline planning decision (the "WZ decision") is a key element of any construction project carried out in an area which is not covered by a local spatial development plan.

The decision contains information determining whether it is possible to execute an investment with specific parameters on a particular plot, being the subject of the application. However, the decision does not specify the exact location of the investment on the plot. Moreover, the Spatial Planning and Development Act does not require that the WZ decision should refer to a given registration plot. Article 61 of the Spatial Planning and Development Act refers to the investment area and not to the plot. As a consequence, the question arises whether the WZ decision may be issued for a part of a registration plot. The answer is important especially where part of the plot is intended for agriculture or forestry, while the remaining part of the plot is intended for construction purposes.

The case law is inconsistent and represents divergent views on this matter. The first position assumes that it is permissible to establish development conditions for a part of a given registered plot if the investment area can be clearly separated and the plot division can be presented in a graphic attachment. Such a view was expressed by the Supreme Administrative Court in the judgment of 19 February 2021, ref. no. II OSK 2976/20, according to which, "By means of the lines delimiting the investment area, it is possible to distinguish (indicate) a specific part of the plot on which the construction project may be implemented without violating generally applicable regulations. In the case of smaller registration plots, the lines delimiting the investment area usually coincide with the plot boundaries. In the case of larger plots, it is possible to define in the application the boundaries of the area intended for the construction project only to a part of the plot, and consequently indicate this area in the outline planning decision and show this part of the plot in a graphic attachment, which is an integral part of the decision."

The view assuming the permissibility of establishing development conditions for a part of a plot of land is often found in jurisprudence. However, a more restrictive position of the judicature may also be found, according to which the WZ decision may be issued for a part of the plot only in exceptional circumstances. This was the opinion of the Provincial Administrative Court in Rzeszów, which in the grounds of the judgment of October 15, 2020 II SA/Rz 737/20 stated that "In the light of Art. 59 sec. 1 of the Spatial Planning and Development Act, the including a part of the registered plot in the outline planning decision is allowed only exceptionally and must result from special normative conditions (part of the plot is covered by the provisions of the local plan, part of the plot is a forest or agricultural land requiring transformation, or a decision issued under the so-called special act)". The cited opinion is similar to the first view of the jurisprudence, but differs from it as it requires an additional prerequisite for issuing a WZ decision for a part of a plot, that is, presence of an "unusual situation" with respect to land conditions.

Contrary to the views described above is the third concept, according to which the development conditions may be determined only for the entire area of a plot, which was indicated in the application, and not only for its part, which is to be developed through the implementation of the project. According to the judgment of the Supreme Administrative Court of December 11, 2019, file ref. no. II OSK 260/18, "through 'the area' referred to in Article 59 sec. 1 and Article. 61 sec. 1 point 4 of the Spatial Planning and Development Act one should understand the area of one or more specifically defined registration plots, and not a part of the registration plot on which the investor plans to implement the investment. [...] The concept of a building plot as a whole, and not a part of a plot separated by lines delimiting the

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investment area, was also directly referred to in other regulations [...], what clearly indicates that the intention of the legislator was not to allow for the possibility of establishing development conditions for parts of registration plots." Thus, the third concept does not provide for the possibility of issuing an outline planning decision covering only a part of a plot.

Discrepancies in the courts assessment of the admissibility of issuance of a WZ decision for a part of a registration plot certainly do not contribute to legal certainty, which is of considerable importance in the investment process. In the light of the latest rulings, however, it is possible to obtain development conditions for a part of a plot, and such a solution is undoubtedly beneficial for investors. However, one must take into account the fact that such a decision of the authorities may be questioned.