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# Changes in German building laws and their effects on agricultural building

*The changes in the building planning and regulation laws are of far-reaching importance for agricultural building plans. For building planning law, the catalogue of the so-called favoured plans according to § 35 par. 4 of the building statute book has been added to so that available buildings can be re-used, expanded or re-built under simplified preconditions. Environmental protection under building planning law has been strengthened. Building regulation law has been state-specifically and uniformly standardised. The changes in the state building regulations are marked by the transference of responsibilities from the state to the landlord.*

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**B**uilding legislation is repeatedly under discussion. Thus, calls for a deregulation or a “slimming” of the building planning permission procedures are repeated regularly. This occurs with glances over to other European lands where often there are less plentiful regulations concerning the erection of houses or farm buildings. In the process of the last changes in the building planning and building regulation laws a simplifying and speeding-up of the procedure was an important target.

### The system for testing building permission rights

In the testing of the right for building permission, the authorities have to take into consideration the building planning and regulation laws and also all the public regulations that concern themselves with construction of building complexes have to be considered by the authorities (e.g. § 22 Federal Pollution Protection Law, § 9 Highway Law). Other specialist authorities such as officials for Nature protection, monument protection, or veterinary officers have also to take part in such procedures. Not included are constructional-based regulations in the special laws where an independent permission procedure is envisaged (e.g. water legislative special utilisation or § 8 par. 1 Highway Law). In such cases the building permission need not represent the end point of several procedures but can instead be awarded under the proviso of a legally required additional permit.

Building permission officials together with the community in question decide via a building inspectorate process on the permission of buildings in built-up areas or in areas outwith, according to §§ 34, 35 Building Statute Book. Additionally, the state building regulations plan an instruction of the communities and, in part, also an explicit decontrol [1].

### Changes in building planning law

In the Building Statute Book [2] has been altered through the January 1, 1998 passed Law for the Alteration of the Building Statute

Book and for the Reorganisation of Area Planning Rights (BauROG). The intermeshing of building planning and Nature protection laws is being developed further. Changes are, however not in sight in the Building Use Regulations stemming from this, regulations which play a great role in assessing building permissions.

The following sectors from the Building Planning Law, select from the many changes those characterised as important elements for the building plans discussed here.

#### 1. Buildings outside built-up areas

The buildings stipulated in § 35 par. 1 of the Building Statute Book are privileged in so far as their permissibility first comes into question when public concern acts against them and the connection to mains is not secured. Horticultural enterprises have now also been accepted into the list of privileged buildings within the Building Planning Law. The possibility of building a retiral dwelling-place where agricultural use has already been given-up has, on the other hand, been dropped. The catalogue of the so-called favoured buildings according to § 35 par. 4 Building Statute Book is added to and expanded so that available buildings can, under simplified preconditions, be re-utilised, extended or completely rebuilt. For all uses outside built-up areas there is an explicit requirement for economical handling of site and soil with the sealing-off of ground area to be limited to the very minimum.

#### 2. Increased importance of court controlled standards

An alteration at the area regulation planning level has led to a nearing of regional planning to the level of building supervision planning. According to the BauROG legislative changes, building supervision plans basically no longer have to be presented and only have to have official building permission in exceptional cases, § 10 par. 2 Building Statute Book. The legislation control of building development plans, developed out of a legally-applicable area use plane, is no longer applied. The court for control standards with which the citizen, who has the right to present a case according to § 47 Administra-

tive Court Regulations, can test a building development plan for its validity, has gained greatly in importance because of this. A farmer affected by plans is therefore urged even more to follow not only the community planning but also the regional developments.

### 3. Building planning legislation environment protection system

Building planning legislative environmental protection has been strengthened. § 1a Building Statute Book precises the relationship of building supervision planning to other environmental protectionism specialist plans. On the level of area utilisation plan, the possibilities for compensatory measures have been extended. For communities, the possibility has been allowed on the level of the area utilisation plans of presenting certain areas of community land for measures on the protection, the care and the development of soil, Nature and landscape. Not awaiting the building permission stage but already to be decided at building development planning are the compensatory and replacement actions for developments affecting Nature and the countryside (§ 8a and § 1a Federal Nature Protection Law). There is the possibility of linking development and compensation on an area basis. In this case, the compensatory action may be carried out before the development so that the former can act as a so-called ecological-account. Planning tools in these cases are the development and compensatory building development plans. Within the framework of the time and area based separation of compensatory and operational actions, the community has wide-reaching latitude. In the planning, compensatory or replacement actions can even be planned for outside the area of the development plan or in a neighbouring community. It can be expected that, through the networking of compensatory areas, ecological compensatory concepts will be realised many times outwith built-up areas. Here, high-value agricultural land will also be affected. Because of contractual Nature protection, there is the possibility of offering the community either an ecologically valuable site, or a pool of areas presented together with other farms. On the way towards agreed cooperation, possible conflicts could be cleared-up beforehand. Thus, compensatory actions can be agreed with affected farmers so that they fit-in with the farming concept.

#### Changes in building regulation law

Contrary to the building planning law, the building regulation law is not uniform in the different federal states. And in many sectors the overview is tending to be lost. The state parliaments orient themselves according to

the building regulation model, but state-specific special conditions and on-the-spot conditions lead to differing regulations: for instance in fire protection decisions, rules regarding the distances between buildings, or the way in which building is carried out for liquid manure cellar flooring.

The sixteen state building regulations will be continuously modified. There are new versions of the state building regulations in Brandenburg [3], Mecklenburg-Vorpommern [4], Rhineland-Palatinate [5], and recently-completed considerable changes in North Rhine Westphalia [6], Saxony [7] and Schleswig-Holstein [8].

Standardised in the state building regulations of all federal states have been simplified permission procedures or permission process exemptions. The process legislation deregulation has led to an increased responsibility for landlords and architects. For the procedures which have been exempted from building permission, plan alignment with the public building law must be more thoroughly checked strengthened by the landlord and naturally the architects or those producing the plans.

*Federal Minister of Agriculture Funke declared: "The potential of empty farm buildings must be thoroughly exploited." For this reason the legislative structures covering re-utilisation in § 35 par. 4 of the building statute book should be improved.*

The exemption from building permission freedom does not mean that all the other public law regulations do not have to be observed. Instead of the authorities now deciding as to whether a special permission is required according to the requirements of Nature protection or water legislation, as they did in the past, the exemption of building permission in such cases now means that the landlord has to do the checking himself and is also responsible as to which additional permissions will have to be applied for. The architect who has undertaken the execution of a building permission plan is expected to produce as part of the job a plan which will remain current through the permission process. This involves testing that all public law regulations are complied with. This has the result that

any doubts regarding the judgement of the suitability of the permission plan are the liability of the architects. The contractually agreed service for the production of a plan suitable for the planning permission process would therefore not be executed by the architect where permission is at first granted, but then is later successfully contested by a third party.

There were often problems in the planning permission exemption for buildings in the past. It can be assumed that, at least in the area of agricultural buildings, the deregulation has not led to any notable in process speed. North Rhine Westphalia and Schleswig-Holstein have, in part, reversed this delegation of responsibilities. The landlord there have once more a right to choose between building under his own responsibility under the permission exemption procedure and the preventative authority control through the building permission process.

An overhauling of the model building regulation is planned. This could be the encouragement to create a few important cornerstones in a countrywide and uniform way. For the farming sector with regard to livestock production there is, for instance, a need for regulations regarding the question for the definition of building distance regarding open meadow shelters in fields and farm livestock buildings. The state building regulations do contain a definition of livestock buildings, however the distances between livestock buildings and the oft-seen meadow shelters are not defined. Seen also in the light of the increase in free-range systems, a uniform ruling would be desirable.

Taking all this into account, it can be said that the changes in the building planning laws and the building regulation laws certainly bring about a greater responsibility on the part of the person using the facilities, the landlord or planner. With reference to the state building regulations it is not yet possible to see whether other states will follow the example of North Rhine Westphalia and Schleswig-Holstein and in the future standardise the choice between the permission exemption system and a permission process.

#### Literature

- [1] Löhr, Battis/Krautzberger/Löhr. BauGB 6. Aufl. 1998, Vorb.§§ 29-38 Rdnr.3
- [2] BGBl: 1997 I, S. 2141, ber. BGBl. 1998 I, S. 137
- [3] v. 25. 3. 1998 (GVBl. I S. 82)
- [4] v. 6. 5. 1998 (GVBl. S. 468; Ber. S. 612)
- [5] v. 24. 11. 1998 (GVBl. S. 365, BS 213-1)
- [6] v. 1. 3. 2000 (GV. NRW, S. 256), geänd. am 9. 5. 2000 (GV: NRW, S. 47)
- [7] v. 18. 3. 1999 (SächsGVBl. I S. (86))
- [8] ÄndG v. 29. 11. 1999 (GVBl. S. 418), Bekanntmachung v. 10. 1. 2000 (GVBl. S. 47)