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News in the Planning and Building Act

The Planning and Building Act ("PBL") has undergone extensive amendments since its introduction in 2011. As we previously informed inter alia during 2014 there has been an increase in the number of activities that are exempt from building permits. At the beginning of 2015, a number of additional amendments to the PBL will come into effect. At present, the amendments apply to provisions that, according to the Government, shall form part of new measures to render the building permit and planning process simpler and more efficient and to increase residential construction in Sweden.

The amendments concern inter alia:

- Uniform technical performance requirements throughout the country,
- A revised detailed local planning process, and
- Increased opportunities to deviate from the detailed local plan.

However, Parliament rejected several proposals submitted by the Government in Bill 2013/14:126 A Simplified Planning Process. The amendments adopted by Parliament will enter into force on 1st January 2015.

Uniform technical performance requirements

Pursuant to the PBL, buildings must possess the technical performance requirements deemed essential in terms of inter alia, load-bearing capacity, fire safety, noise protection, safe usage as well as energy efficiency and thermal insulation. The Planning and Building Regulation ("PBR") clarifies the meaning of the technical performance requirements and the construction regulations of the National Board of Housing, Building and Planning ("BBR") provide more specific regulations regarding the requirements.

The technical performance requirements are generally applicable and aim to ensure a good quality of the constructed environment throughout the country. Until now, each municipality has been free to set its own more wide-ranging requirements for the technical performance requirements of constructions. For example, it is common for requirements regarding energy to be set, in addition to the requirements of the BBR. The Government maintains that this results in substantial additional costs for the design and construction of housing.

The newly determined amendment means that as a rule when planning, in other matters that fall under the PBL, or in other matters related to the implementation of detailed local plans, the municipality must not impose its own requirements for technical performance requirements on construction works. If a municipality should impose such requirements

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of its own, such requirements will be invalid. However, there are certain exceptions. The provision will not apply in cases where a municipality in a detailed local plan determines protection against disturbances or location, design and execution of buildings or sites, or in cases where the municipality acts as the property developer or property owner. Thus, municipalities retain the option to build, for example, more energy efficient housing.

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A revised local planning process

The process of preparing a new detailed local plan can be carried out using either a normal or a simplified planning procedure. At present, normal planning procedure is a standard but a simple planning procedure may be chosen if the proposed plan proposal inter alia, is consistent with the master plan or the review opinion of the county administrative board and is neither of great significance or otherwise of particular importance nor of any public interest. A simple planning process involves easing the requirements applicable regarding consultation with the county administrative board and property owners, as well as public notification and review.

The amended legislation means that the simple planning procedure will be made into a principal rule – so-called standard procedure – and the current normal planning process will instead be re-named extended procedure. The extended planning process shall be used for a detailed local plan that is not consistent with the master plan or the review opinion of the county administrative board, which is of significance interest to the public, or otherwise of particular importance or is likely to have a significant environmental impact. However, unlike the old simple planning procedure, as a principal rule the consultation groups will be the same for a standard procedure as for an extended planning procedure. In the future, the main differences between the procedures will be found in the rules around public notification before the consultation, the preparation of a consultation report and the time for review.

Increased opportunities to deviation from the detailed local plan

In areas with detailed local plans, it is the content and purpose of the detailed local plan that govern the right of the municipality to grant a building permit. As a main rule, an action must not conflict with the detailed local plan. However, in a detailed planning process, it is difficult to foresee all future needs. There is therefore the possibility of granting building permits for measures that deviate from a detailed local plan if the deviation is minor and consistent with the purpose of the detailed local plan.

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Through the recently proposed amendments, there are increased opportunities to allow for deviations. Provided that the deviation is consistent with the purpose of the detailed local plan, building permits can also be granted if the measure is limited in scope and necessary for the area to be used or built on in a suitable manner. The Bill provides an example of such a measure, in the construction of a small substation on a site, which according to the detailed local plan must not be built on, in order for it to supply the buildings intended for the site under the detailed local plan, with electricity in conjunction with the development of the area. It may also be a question of, for example, a noise barrier on land that, according to the detailed local plan, must not be developed, if the barrier is necessary for the barricaded area to be otherwise developed in the same manner as stated in the detailed local plan.

In addition to the regulations set out above, a new provision has been added that provides further possibilities for deviations in cases where the implementation time for the detailed local plan has expired. A building permit for a measure that deviates from the detailed local plan, may be granted if the measure is consistent with the purpose of the detailed local plan and fulfils an important public need or a public interest, or means other such use of land or water that constitutes an appropriate complement to the use designated in the detailed local plan. An example of an important public need is the construction of an ancillary building adjacent to an apartment building for storage of bikes or new shared laundry facilities on land that is not intended for development.

Concluding comments

As initially mentioned, the Bill incorporated significantly more amendments to the PBL than those finally adopted by Parliament. The proposed amendments that were rejected, concerned proposals regarding the limitation of the requirements of the detailed local plans and that certain planning provisions be repealed following expiry of the implementation deadlines. Parliament regarded these provisions as too wide-ranging and inter alia, would mean a new outlook on detailed local planning and civic influence. Therefore they were deemed not suitable.

We share the assessments of Parliament with respect to the proposals that were rejected. The proposed amendments would probably mean a reduction in the power of the municipality planning monopoly, which is something that would not be accepted by municipal planning authorities. The monopoly on planning by municipal authorities is such a deeply rooted institution that it requires more than an amendment to the PBL to effect a change. In addition, some of the proposed changes would undermine the very purpose of detailed local planning, i.e., regulation of local land use within a municipality in order to create a certainty or predictability with regards to the intentions of the municipality in terms of land.

The changes adopted have faced criticism during the preparation of the proposal. In terms of the technical performance requirements, it is relatively common for municipalities to require for example, energy efficiency in the construction of residential buildings that is above and beyond the provisions set out in the BBR. The criticism is mainly directed towards the adopted regulation with uniform requirements across the whole country and the fact that it may hinder technological development in the building sector that may help reduce energy consumption.

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In this respect, we do not consider the criticism to be justified. On the contrary, the regulation of technical performance requirements results in a predictability and legal certainty for several operators located across several municipalities and regions in Sweden. There should be no difference in the technical performance requirements depending on where in the country they are operating. We believe that regulation does not necessarily have to hinder technological development in different fields, e.g., reduction in energy consumption. It is still possible to set high or challenging demands on technical performance requirements, as long as they are uniform. Therefore, a regulation is not synonymous with an obstacle or a limitation, but may instead be an opportunity, but of course under the condition that it is properly used.

The purpose of the amendment to the regulations regarding planning is to enable faster case management. The biggest difference between the old normal procedure and the simple plan procedures was the ability to reduce the consultation group. However, as a general rule, under the new rules, the consultation group will be the same for both the standard procedure and the extended procedure. Therefore, there has been criticism expressing that there will, in actual fact, be no simplification, since the consultation group may only be reduced if the proposed detailed local plan obviously lacks importance to tenant-owners, tenants, residents or associations of resident and body corporates - especially in urban areas.

In conclusion, the PBL has been in a constant state of flux since the new law came into effect in 2011. Therefore, the current changes are in no way unique. The question is whether all these subsequent amendments to a basically new law should have been investigated and regulated in conjunction with the adoption of this new law. In addition to the changes presented here, there are many more proposals for changes in the pipeline. Therefore we will probably have reason to continue to comment on the developments in the PBL.



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