

ARTICLE

PLANNING LAW NEWSFLASH - 1

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The planning permissions reform: entry into force on March 1, 2012

A wave of simplification is currently unfurling over French planning law. An implementing decree will shortly bring into force the Ordinance aimed at simplifying the regime applicable to local planning regulations (plans locaux d'urbanisme - PLU) and territorial coherence plans (schémas de cohérence territoriale - SCOT) (Ordinance no. 2012-11 of January 5, 2012). Another implementing decree (decree no. 2012-274 of February 28, 2012, Official Journal of February 29, 2012) has just been published for the Ordinance on the simplification of planning permissions (Ordinance no. 2011-1916 of December 22, 2011): March 1, 2012 indeed marks the entry into force of the planning permissions reform. According to the Government, this reform "is intended to make planning rules more straightforward for individuals, local authorities and professionals, to speed up application processing times and improve the density and insulation of constructions, in response to the issues raised during the Grenelle de l'environnement". Below is an overview of the main new provisions which constructors, developers and local authorities will need to become familiar with. The bill on increasing building rights is currently being debated by Parliament and will be addressed once it has been definitively passed.

The clarification of the subdivisions ("lotissements") regime: a much-awaited reform

According to the new definition, "a subdivision is the division of ownership or enjoyment of a unit of land or of several adjacent units of land for the purpose of creating one or more units to be built upon" (Article L. 442-1 of the French Planning Code). The term "subdivision" designates a group of dwellings resulting from the sectioning of a plot of land, and is regulated by the French Planning Code.

To differentiate between subdivisions subject to a prior declaration (déclaration préalable) (Article R. 421-23 of the French Planning Code) and subdivisions subject to a development permit (permis d'aménager) (Article R. 421-19 of the French Planning Code), it is no longer necessary to refer to the number of units to be built or to the existence of previous divisions. As soon as the first unit is created, a subdivision is now subject to a development permit when it:

- provides for the creation or development of common roadways, areas or equipment internal to the subdivision, OR
- is located in a graded or preserved area (site classé ou secteur sauvegardé).

All other subdivisions are subject to a prior declaration only.

In this regard, also worth noting is:

- the possibility, at the time of the planning permission, of regularizing a subdivision which should have been the subject of a prior declaration (Article R.442-2 of the French Planning Code),
- the possibility of subdividing a unit without having to use the subdivision modification procedure (Article R. 442-21 of the French Planning Code),
- the better regulation of the grant of planning permissions in authorised subdivisions (Article R. 442-18 of the French Planning Code).

Reform of the floor area

As of March 1, 2012, the "floor area" (surface de plancher) becomes the reference surface area for planning purposes. It means all of the floor area of closed and covered constructions with a ceiling height over 1.80m. Contrary to the "net floor area" (surface hors œuvre net (SHON) which now disappears, the floor area does not include the exterior walls. As a result, this new reference should contribute to increasing constructability and improving exterior insulation.

Reform of planning taxation

This reform stems from the fourth rectified Finance Act for 2010 and abolishes the local equipment tax and its related taxes, and creates a new system comprising two complementary taxes: the planning tax and the payment for under density, thereby encouraging space saving projects.

A myriad of adjustments to planning formalities

The last planning permissions reform entered into force on October 1, 2007. After four years of practice, some readjustments were deemed necessary.

From March 1, 2012, building works of a surface area of 5m² or less are no longer subject to any planning formalities





(compared to 2m² previously).

Regarding establishments open to the public (French acronym: "ERP"), there is now the possibility of granting planning permission for projects where the interior arrangements have not yet been determined (an "empty shell" establishment open to the public) (Article R. 425-15 of the French Planning Code). The planning permission will indicate that additional permission, based exclusively on Article L. 111-8 of the French Construction and Housing Code, must be obtained before opening to the public. However, some difficulties may arise in the implementation of these provisions, should any of the exterior works (e.g. emergency staircases) depend on the interior arrangements.

Regarding renewable energies, and particularly photovoltaic panels integrated into constructions, it is specified that the installation accessory to the construction does not constitute an "electricity production element" within the meaning of Article L. 422-2 of the French Planning Code. The mayor therefore remains the competent authority for granting a planning permission covering the overall structure: the new construction and the photovoltaic installations.

In addition to these and other adjustments, the CERFA standard forms have also been updated and a new form has been dedicated to the modified planning permission.

For further information, please consult the section of the Ministry's website on the new planning permission: <http://www.e-xtranet.nouveaupermisdeconstruire.gouv.fr/>

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