

An Outline of the French Town and Country Planning System

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ABSTRACT

The French town and country planning system is extremely complex. While specialist advice should always be sought when considering investing in France, a general appreciation of how the planning system works is imperative if the right questions are to be asked of the specialist and if ultimately the right decisions are to be made.

French planning procedure has its origins in the French Revolution and has traditionally been characterised by a high degree of centralisation. Control resided with central government in Paris and was delegated throughout the country by way of regional representatives known as *préfets*. The system has been decentralised somewhat since the early 1980s and the local *commune* may now be regarded as the basic unit of planning control.

Nonetheless, the *commune* continues to work in close liaison with central government and regional authorities. The *commune urbaine* or *commune rurale* is itself a subdivision of the *département* which is the basic administrative unit. Within regions, groups of *départements* are formed into larger

administrative units known as *régions*, with each *région* having its own regional assembly. The *région* may intervene directly in the planning process by drawing up (either itself or with *communes*) regional plans known as *plans régionaux de développement économiques et sociaux de territoire* which must be taken into account by the *commune* and indeed will take precedence over any conflicting local plans. Regional plans must be drawn up within the framework of existing central government guidelines.

The *schémas directeurs* (SD) and the *plan d'occupation de sols* (POS) contain the basic rules applicable to land development.

The SDs, which are usually drafted by a group of *communes* in association with central government, determine fundamental planning objectives.

A POS explains how these fundamental objectives are to be implemented and divides the land into different zones: urban zones (zones U); zones which may be urbanised (zones NA); zones which may not be further developed (zones NB); zones of natural resources (generally agricultural) (zones NC); zones to be protected (zones ND). Within each zone, the POS provides the rules governing the right to build, the type of buildings allowed and their use. It may also contain detailed rules governing, for instance, building façades and their size, the

layout of roads or the protection of certain buildings or sites.

In order to encourage *communes* to draw up plans for their locality, further property development is generally forbidden outside already developed urban areas in localities where *communes* have not drawn up a POS.

A *zone d'aménagement concerté* (ZAC), which might be described as a special development zone, may be created by a *commune* either on its own initiative or at the behest of a third party developer wishing to carry out a development within the locality. The ZAC procedure is generally used when a *commune* does not have a POS or, if it does, when its provisions do not permit the carrying out of a proposed development.

Where the envisaged ZAC straddles two or more *communes*, its creation requires the consent of the local representative of central government, ie the *commissaire de la République* (formerly called *préfet*).

The creation of a ZAC with the subsequent adoption of a *plan d'aménagement de zone* (PAZ) renders the POS unenforceable in respect of the land covered by the ZAC unless permitted by the terms of the ZAC. The PAZ is in effect a detailed planning permission covering the proposed development outlined in the ZAC. Like the POS, the PAZ determines the rules governing the right to build, the type of buildings allowed and their use.

The ZAC will determine whether any existing POS shall continue to be enforced within the zone, and/or whether it should be superseded by a PAZ. Where it is proposed to adopt a PAZ, the PAZ must be approved within two years of the creation of the ZAC (unless such period is extended by an aggregate period which may not exceed a year), if the ZAC decision authorising the drawing up of the PAZ is not to be declared null and void.

The decision to create a ZAC is an administrative act and as such may be overruled by way of *un recours pour excès de pouvoir*, due *inter alia* to lack of proper

administrative authority; non-compliance with substantial rules of procedure; or *une erreur manifeste d'appréciation*. It has been held that such an *erreur* occurred where a mayor stated that fire fighters had ready access to a site when in fact the site was linked to public roads by a small inadequate private alley.

A ZAC decision may be challenged by owners of land covered by its ambit, any resident of the *commune*, the *commissaire de la République*, or any other person having a sufficiently close legal interest in the decision. The decision consenting to a PAZ may also be challenged *pour excès de pouvoir* on similar lines.

Unlike the case of a ZAC, a public inquiry has to be held before a PAZ is approved by the *commune*. The inquiry is presided over by a *commissaire enquêteur* or a *commission d'enquête* appointed by the *président* of the local administrative tribunal. The inquiry has a maximum prescribed duration of two months with a possible additional 15-day extension.

Approval of the PAZ and the role of the developer will also require the *commune* to be satisfied, normally by way of a financial plan, *un plan de financement*, that the developer has adequate financial backing for the successful completion of the proposed development. The type of evidence required will depend on the nature and size of the development as well as the financial standing of the developer. Normally a *garantie bancaire* such as *une garantie extrinsèque*, whereby a reputable bank or approved credit institution guarantees the continued financing of the project should the developer become insolvent and unable to proceed with the development, will be required. The provision of acceptable collateral warranties is not as intractable an issue as it is in the United Kingdom, due to France's effective system of no fault decennial insurance provided for under Articles 1792-1 and L.242-1 of the *Code civil* and *Code des assurances* respectively. Regard may also be had, *inter alia*, to the two-year and one-year warranties known as

la garantie biennale de bon fonctionnement and *la garantie annale de parfait achèvement* provided for under Articles 1792-3 and 1792-6 of the *Code civil*.

Once a PAZ has been adopted only minor subsequent amendments are allowed.

Various other consents must also be taken into account. Save for a few exceptions anyone planning any type of building work must first obtain a *permis de construire*. The permit will be granted by the *maire* acting on behalf of the *commune* provided that the proposed development project complies with the zoning rules and regulations stipulated in the SD, POS, ZAC, PAZ, etc. Where a *commune* has not drawn up a POS, the permit will be granted by the *maire*, the *commissaire de la République*, or other appropriate representative on behalf of central government.

Where the proposed development covers woodland areas, a *permis de défrichement* will be required. This is granted by the *maire* or in certain cases by the *commissaire de la République*, and may be conditional, eg allowing certain trees to be cut down provided that others are planted elsewhere. Where the development covers an area of at least 25 hectares (or 10 hectares if less than 10 per cent of the territory of the *commune* is covered by woods), a public inquiry is necessary, except where a public inquiry has already been carried out as part of the planning process prior to the compulsory purchase of the land in question.

Certain sites may benefit from special protection by reason of their archaeological, historical, scientific or picturesque value. Such sites will either be listed, *sites classés* or registered as sites which could be listed *sites inscrits*.

Any construction work on or near a *site classé* must be authorised by the Ministry of Culture.

In the case of *sites inscrits*, the *commissaire de la République* of the *département* must be notified of any proposed construction work located on the *site inscrit* before such work is

commenced. The *commissaire* has four months from the date of notification to determine whether or not to authorise construction.

Where it is proposed to purchase land by way of compulsory purchase, the *commune* must issue a *déclaration d'utilité publique* after having held a public enquiry.

Should there be a conflict between an existing POS and the proposed *déclaration d'utilité publique*, the *déclaration* may only be adopted if the public inquiry also covers the conflict between the POS and the proposed *déclaration* and deals with any necessary modification to the existing POS. Land deemed to belong to the *domaine public* may benefit from certain rights preventing expropriation and in such case an agreement will have to be entered into with the relevant land owner allowing its transfer from the owner to the *commune*. This is particularly important where land belongs to public utility bodies. Any such transfer will require re-classification of the asset to be transferred as an asset no longer belonging to the *domaine public* by the appropriate administrative body which originally declared the asset as belonging to the *domaine public*.

In order to ascertain what consents have or have not been approved, enquiries may be made of the *commune* or other appropriate administrative body for an informal document known as a *certificat d'urbanisme*. The *certificat* will enable the applicant to determine whether or not an application has been approved to build on the land in question, whether the land may be built upon or whether or not the land may be used for the purposes envisaged. An administrative body issuing a *certificat d'urbanisme* is bound by what is stated in the *certificat* for a year after it has been issued.

Preliminary information concerning land rights, titles, etc, may be obtained from the *cadastre*, at the local *mairie* with more detailed information obtainable from the *Bureau des Hypothèques* otherwise known as the *Conservation des Hypothèques*.

This paper outlines some of the main planning matters and concepts to be taken into account when considering property development in France. However, it needs to be stressed that each case must be dealt with

on its merits and other issues such as local taxes, transfer duties, general conveyancing and funding matters will also require attention.