

Building legislation in the Nordic Countries:

Planning hierarchy as a frame for building activity, and handling of public opinion

Some issues from a Report for the Nordic Council of Ministers; "Comparison of the building legislation in the Nordic Countries" - Tema Nord 2004:526

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Some background information



The Building Legislation is a complete system in each country

- The "frames" for the Building Act is given by the Planning Act – which may be different in each country.
- They may have the same goals, but they have chosen different "set of tools"
- The challenges may be different, and thus the Building Act reflects different focus

To focus on a specific topic (Ex: competence claims) we have to relate it to the "complete picture"

Some common factors

Same main goal:

- Securing high quality in buildings and built environment, and less defects in the building process

Same focus for "direction of changes" of the legislation:

- Need for better efficiency in the handling procedures for applications for building permits, and more.
- **Need for a more integrated process between planning tasks and building tasks**

Administration of the Building Act

(The Planning Act is administrated by Ministry of Environment in all the countries)

<i>NO</i>	<i>SE</i>	<i>DK</i>	<i>SF</i>	<i>IS</i>
Joint Act: PBL	Joint Act: PBL	Sep. Acts: PL + BL	Joint Act: MBL	Joint Act:
Ministry of Local Govern- ment & Regional Planning	Ministry of Environment	Ministry of Economic & Business Affairs	Ministry of Environment	Ministry of Environment
<i>Operator:</i> BE (partly)	<i>Operator:</i> Boverket	<i>Operator:</i> EBST	<i>Not delegated</i>	<i>Operator:</i> Skipulags- stofnun
	BVL: Act for technical claims in b.			

Norway

- Many one-time and/or non-professional clients
- Many small building and designing companies
- Many small municipalities with limited resources (regarding planning, control +++)
- Scattered development and **not** a very strict planning system

Planning and Building Act of 1997 (under revision)

Direct liability on all parties in the process, and claims for competence on all.

Sweden

- Historically "strong clients", in both public and private institutions
- **Not** a strict planning hierarchy
- Focus on innovation for technical solutions
- Current changes: stronger contractors and weaker clients
- Current challenge: Many different Acts partly dealing with the same issues

Planning and Building Act of 1995 (under revision)

Client has "complete" liability (partly based on the former balance of power)

Denmark

- **Strict** planning hierarchy (since ca 1970)
- Precise claims regarding framework for design, utility ++ (also if there is no local plan)
- Focus on local democracy – result is major differences between municipalities in both organization, application procedures, and claims
- Tools for better quality: focus on guidelines, economic bonus and other voluntary solutions

Building Act of 1992 (rev. 2002)

Client has complete liability

Suomi - Finland

- New Act, which represent a major change, both on the planning and the building part
- Now: A strict planning hierarchy (was **not** before)
- Now: A better logic between planning and building part, and new application procedures
- Focus on democracy and dialogue
- Also a new goal: focus on maintenance

Planning and Building Act of 2002

Client has complete liability, but there is also competence claims on all parties

Iceland

- Historically many "self-builders", and problems with imported building materials. Therefore a need for strong public control, which is still a part of the system
- Historically also a low degree of planned areas, and **not** a strict planning hierarchy. Now this is changed into a strong hierarchy
- There are several acts dealing with different items in the building industry, and they are not co-ordinated

Planning and Building Act of 1998 (now the building part is under revision)

Client has "complete" liability

..... a very quick summary of the history of the building legislation

- The Nordic countries have had a closely linked history, and many similarities in their legislation histories
- They got PBA covering the whole country ca 1960 +/-
- In the 1980's, they had processes to co-ordinate the building legislation better, through the Nordic Council of Ministers.
- This work has been given less attention in the 1990's, after the memberships to EU (first DK, then SE and SF)
- Now the need for co-ordination is increasing again – there is a political vision to establish a "Northern Dimension"



Public opinion (& democracy) in building processes

What do we mean by this ?

Building activity must be based on an approved "local plan", and the planning process **includes democracy**.

But "**public opinion**" in building activity also concerns:

- A check on the "translation" from a framework in a plan to a real project – there may be issues to discuss, especially in large or important projects (hearings, intentions of plan)
- Aesthetics – the plans cannot give precise directions (and architects may not always accept that plans should do so)
- Dispensations – if the projects is not in accordance with the plan, and the local authorities want to dispensate
- Information – what, when, where to build ...
- Complaints – on formal issues and on the substance

Who has the "public opinion" ?

In ordinary "democracy" (approval of plans):

- Political parties, and political boards of all kind – representing the established part of democracy

In **hearings** of all kind (regarding both plans and projects):

- Voluntary interest organisations
- "Ad hoc" groups less organised, but with strong interests in special cases
- Neighbours, plot owners and other stakeholders
- Other administrative bodies (public institutions with own interests, archeological interests ...)

Building permits: What is to be approved ?

<i>NO</i>	<i>SE</i>	<i>DK</i>	<i>SF</i>	<i>IS</i>
Project vs local plan	Project vs local plan	Project vs local plan	Project vs local plan	Project vs local plan
Project vs <i>aesthetic</i> and techn. claims	Project vs claims in several acts: (PBL & BVL, and others)	Project vs <i>aesthetic</i> claims	Project vs <i>aesthetic</i> and techn. claims	Project vs <i>aesthetic</i> and techn. claims
All actors' competence and control plans	KA's competence		The actors' competence (partly)	The actors' competence (partly)

Aesthetics

From a report: "Enforced focus on aesthetics ?" in a research programme on evaluating the Planning and Building Act in Norway; (C.F. Øien, S. Jerkø and H. Ovesen, 2005)

- Politicians wanted stronger focus on aesthetics, and approved several new articles in the PBA to obtain this goal
- The Municipalities started a huge task, identifying "the local building traditions" and specifying guidelines (often based on traditions)
- A dilemma emerged:
 - **Strong and specific guidelines / claims may give "completely harmonized" built environment, but does not give "space" for modern architecture**
 - **"Open-minded" (or lack of) claims in the local plans with (passive) acceptance for modern architecture does not provide legal tools to stop the obvious "un-wanted" projects.**
- The role of the (political) "Building Boards" and judgement of aesthetics may be discussed – **is "aesthetics" a political matter (for a board), a professional matter, or an object for the "public opinion" ?**

Public or private liability ?

	<i>NO</i>	<i>SE</i>	<i>DK</i>	<i>SF</i>	<i>IS</i>
<i>Local plan, claims etc.</i>	Public	Public	Public	Public	Public
<i>Approval from other authorities</i>	Public	Private	Public	Public	Public
<i>Democracy, neighbours</i>	<u>Private</u>	Public	<u>Part of planning</u>	Public	Public
<i>Control of planning and building</i>	Private	Private	Private	Public / Private	Public
<i>Inspection</i>	Public	Public	Public	Public	Public

Claims concerning dialogue and "democracy"

	<i>NO</i>	<i>SE</i>	<i>DK</i>	<i>SF</i>	<i>IS</i>
<i>Starting conference</i>	Yes, voluntary	No, but often used	Yes, voluntary	Voluntary	No
<i>Dialogue with other authority</i>	Public, but client's liability by law	Client's liability	Public	Public	Public
<i>Neighbours</i>	Client (documented)	Public	Part of planning	Public	Public
<i>Conference by time of application</i>	No	Yes (focus on public claims)	No	Yes (QS in focus)	Yes (public co-ordination)
<i>Consequence by delayed approval</i>	Tax release	Considered	Automatic acceptance of project	None	None

Some experiences with local democracy

Denmark:

- Focus on local democracy and "delegation of power" opened for each municipality to define their own formal procedures and –claims. **In DK there is then not the same procedures to be followed**, which may be an obstacle for developers operating in several municipalities.

Sweden – and partly Finland and Norway:

- Local democracy / liberal complaint possibilities had lead to a situation where it was **possible to complain in several stages in the process** (even on the same matters) – which was also an obstacle for developers. This is more restricted now in SF and NO – but still liberal.



Planning hierarchy as a frame for building activity

Planning hierarchy

	<i>NO</i>	<i>SE</i>	<i>DK</i>	<i>SF</i>	<i>IS</i>
<i>State level</i>	Special plans Restrictions		Zoning plan Restrictions		
<i>Region</i>	Strategic pl. (not spacial)	Strategic pl. (rarely used)	Strategic pl. (spacial)	Strategic pl. (spacial)	Strategic (co-ordinat.)
<i>Municipality</i>	Compreh. pl., Local pl., Visualisation	Supervisory Local pl.	Compreh. pl. Local pl.	Compreh. pl. Local pl.	Compreh. pl. Local pl.
<i>Borderline between planning and building processes</i>					
<i>Concept acceptance</i>	Appl. 1 (PBL)	Visualisation Appl. (PBL)	Visualisation	Appl. (judge)	
<i>Building permit</i>	Appl. 2 (PBL)	Appl. (BVL)	Appl. (BL)	Appl. (PBL)	Appl. (PBL)
<i>Notification</i>	For small buildings		For projects fulfilling all claims in plan	Voluntary for municipalities to claim	

The "in-between level"

	NO	SE	DK	SF	IS
<i>Approved and binding local plan</i>					
<i>Planning</i>	Visualisation <ul style="list-style-type: none"> - Planning procedures, - Binding 				
<i>Borderline between planning and building processes</i>					
<i>Dialogue tool</i>		Visualisation <ul style="list-style-type: none"> - Handled by loc.auth. - Binding 	Visualisation <ul style="list-style-type: none"> - A tool for dialogue - Not binding 	Application <p>for judging the claims for an application for a building permit</p>	
<i>Concept acceptance</i>	Appl. 1 (PBL) <ul style="list-style-type: none"> - Proval of accordance with plan a.m. 	Appl. (PBL) <ul style="list-style-type: none"> - Proval of accordance with plan 			
<i>Application for / Acceptance of a building permit</i>					

Summary and findings on this issue

- Historically, all the Nordic countries **except Denmark** did **not** have a strong and binding planning hierarchy.
- They are all strengthening the planning hierarchy – SF and IS has already done this, NO is handling this now (but will not approve a complete binding system), SE is working on the case.
- When the planning system is not binding, there is a greater need for a binding dialogue on the "translation" from plan to project.
- There are different models for such a dialogue – the big difference lies in the views on need for "public opinions" in this stage (NO vs the rest)
- The Report primarily deals with building legislation and handling procedures – which is not the main focus here. But a finding is:

The more stronger and binding planning hierarchy - the more simplified procedures for handling of applications for building permits (and vice versa)

Development agreements



Development agreements

- These integrated "planning and projecteering processes" is **more and more common** – and rapidly increasing
- They represent a **challenge to democracy** in planning !
- Development agreements are of **mutual interest** – developers want to build, and municipalities may have many different wishes, like:
 - A reduction of tasks for the municipality officers
 - A reduction of public economical obligations
 - A higher speed in building / housing
- **To negotiate, the municipalities need to have some "cards on the hand" – and these must be given by the planning system.**

There are different motives, tools and models in the Nordic countries.

Development agreements

	<i>The situation</i>	<i>The legal tools</i>
<i>NO</i>	Used in areas with high growth rates. The municipalities demand increased contribution to cover infrastructure costs	PBA's articles to regulate succession of developing areas
<i>SE</i>	The largest developers own large plot reserves in order to secure own activity. The municipalities contribute and discuss priorities , and gain faster housing	None
<i>DK</i>	Two types: a) Green field development, where D. has to pay a " liberation fee ", and b) In urban zones, used as a tool for flexible handling procedures (in transformation areas)	a) The zoning plan b) Visualisation plans
<i>SF</i>	Used when the developers own the land – not previously regulated areas. Municipalities want " increased value fees " (but this does not work out)	Strict planning hierarchy – but this is too new
<i>IS</i>	Only few cases, and there the developers own the land and set the premisses	None

Development agreements

Development agreements are more and more common

The democratic aspect: When developers and local authorities negotiate and agree on a plan and on some contributions to the society, this is a "private agreement" regarding legal aspects. Then the democratic handling of the Local Plan may lead to just minor justifications.

The benefit for the society is depending on the planning system. This must provide some "municipality negotiation cards", and it is urgent that the needs of the society are identified, and that the planning system provides relevant tools to secure these goals / needs.



Thank you for your attention!
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