

voivodship, by 29%. The highest growth came in Opolskie – of 25.2%

Output in residential construction has risen in only four voivodships: Lubuskie (2.9%), Podkarpackie (16.6%), Pomorskie (31.1%) and Zachodniopomorskie (19.7%). The biggest decline in construction and assembly

output in the residential category came in Wielkopolskie – of 41,1%.

Construction and assembly output in the civil engineering segment fell in eight voivodships, above all in Lubuskie – by 54.4%. The highest growth, of 27%, was recorded in Lodzkie.

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Objections by official bodies to notice of construction works

The institution of notice of construction works was introduced into construction law as an alternative to the construction permit, designed to reduce and simplify the construction process. In the notice, the investor defines the type and scope of the planned construction works. The notice must be filed prior to the date on which the construction works are to be commenced. Pursuant to Article 30 par. 5 cl. 2 of the Construction Law Act of 7 July 1994 (further: “the Act”), the investor may begin the work if within 30 days of the date on which the notice is filed the official body with jurisdiction has not raised an objection, in the form of an administrative decision. This means that the relevant body has 30 days to check the correctness of the notice and, where necessary, raise an objection; only after the expiry of this period with no objection may the investor commence the construction works.

The official body may only raise an objection if any of certain circumstances listed come into play. An objection may be raised in the first case if the notice concerns construction works that should be conducted on the basis of a construction permit; in the second case where the construction works that are the subject of the notice are in violation of legal regulations, including the terms of the local zoning plan; and in the third case where the investor files notice of construction works to a temporary structure that is not attached permanently to the ground and is intended for demolition on the site where the structure is (Article 30 par. 6 pts 1-3 of the Act).

Separate grounds for the official body to raise an objection to a notice are set down in Article 30 par. 7 of the Act, which constitutes the grounds for the obligation to obtain a construction permit for works to which the notice regulations are applicable if performance of these works might violate the local zoning plan or cause a hazard to the safety of humans or property; a deterioration to the state of the environment or state of preservation of historical buildings or structures; a deterioration of health and/or sanitation conditions; or the creation, extension or aggravation of restrictions on or inconvenience to neighbouring sites. If any of these circumstances comes into play, the official body is under obligation to issue an objection in the form of a decision, contrary to the literal reading of the regulation: “the body may impose”. (See: B. Majchrzak, *Procedura zgłoszenia robót budowlanych*, p. 58)

The objection raised by the official body to the notice, whether it arises out of par. 5 or out of par. 7 of Article 30 of the Act, is an administrative decision. This has its consequences in court in terms of the possibility to appeal against an objection pursuant to the regulations in the act of 14 June 1960 – the Administrative Procedure Code (further: the “KPA”). However, the KPA is not applicable at all stages of the procedure of giving notice of construction works. It is worth emphasising that the notice itself is only a declaration of intent, and does not cause the commencement of administrative proceedings. This is because notice of construction

works is an institution unique to construction law and its character does not permit the application of regulations from administrative law, such as hearings of evidence or suspension of proceedings (verdict of the Supreme Administrative Court of 6 March 2009, file no. II OSK 307/08, with gloss by A. Plucińska-Filipowicz).

One of the ways of terminating a notice of construction works procedure is where the official body does not raise an objection within 30 days. This is a short period for official bodies, hence the problem has arisen of whether raising an objection in this situation is equivalent to the formulation of such a decision, or whether the objection can only be considered raised once that decision has been delivered to the addressee. In its analysis of the regulations of the Act, the Supreme Administrative Court assumed that the deadline for the official body to raise an objection may be considered observed if by that deadline the body had dispatched the decision to the addressee (verdict of the NSA of 12 December 2006, file no. II OSK 79/06, not publ.). This stance should be considered erroneous. As B. Majchrzak argues (*Procedura zgłoszenia...*, p. 67), decisions not communicated to their addressees should be treated as not engendering any legal consequences. The position adopted by the NSA would extend the procedure by forcing the investor to wait for the delivery of a potential objection. Hence it seems more correct to assume that the official body has not raised an objection if no objection in the form of a decision has been delivered to the addressee within 30 days.

In summary, it is important to stress that the objection described above is one of the three possible endings to the procedure begun with a notice of construction works. The construction works may begin if the official body is silent, i.e. does not issue the administrative decision that is an objection within the statutory period of 30 days from the notice, or if the body answers in writing wi-

thin that period to the effect that there are no reservations to the construction works. While the regulations in the Act do not indicate the possibility of the body responding in writing before the expiry of the statutory period to confirm the compliance of the notice with the legal regulations, this solution

has deep-rooted foundation in judicial verdicts (see: the NSA verdict of 18 April 2000, file no. II S.A./Lu 217/00, not publ.). Use of this solution should be recommended to official bodies, as it facilitates a considerable reduction in the duration of the construction procedure.

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A D V E R T I S I N G
