

Investments involving historic properties

Historic properties of historical, artistic or scientific value are subject to special legal protection. This “special treatment” is also reflected in the management of the investment process involved in a historic property (e.g. a building or complex of buildings). Given that it is becoming increasingly widespread to invest not only in old residential properties such as townhouses but also in whole former factory or military complexes, there would seem to be grounds for going through the specific details of the investment process where properties subject to the protection of the conservator of monuments are concerned.

Pursuant to Article 7 of the Act of 23 July 2003 on the protection and care of historic buildings, protection of historic buildings may take one of the following forms: inscription on the historic buildings register, recognition as a historical monument, creation of a culture park, or provision of protection within the local zoning plan. Recently, this portfolio of options was expanded to facilitate protection of the building at the planning permission stage. Moreover, the amendment in 2010 of the above-mentioned act on the protection of historic buildings has introduced another form of protection: inclusion of the historic property in the borough historic buildings records.

In practice, the aspects of greatest significance to the prospective investor are the implications of the inscription of the property on the historic buildings register, its protection within the local zoning plan or in the form of the terms of its planning permission, or its inclusion in the borough historic buildings records.

Any investor undertaking a project involving a historic property must be prepared for additional obligations, both at the administrative stage prior to commencement of construction work and during the execution of the work itself.

Planning permission, which is the first stage of any investment process regarding a historic property subject to any of the above forms of protection (including inscription on the historic buildings register or the borough historic buildings records) where there is no local zoning plan, is only issued with the specific approval of the voivodship conservator of monuments regarding its terms.

This planning permission, or the local zoning plan, where one has been approved for a given property, may specify the steps necessary to prevent danger to the buildings, and ensure their protection during the investment process and their restoration to optimum condition. The execution of these steps during the performance of the work may engender additional costs or prolong the construction process.

In addition, if the property is one inscribed on the historic buildings register pursuant to Article 25 of the abovementioned act on the protection of historic buildings, its adaptation for use and occupancy are contingent on possession by its owner or proprietor of the appropriate conservation documentation profiling its state of preservation and potential for conversion, as well as a schedule of conservation work approved by the voivodship conservator of monuments and a programme governing the administration of the building and its subsequent use. To enable the investor to meet these conditions, the voivodship conservator of monuments is obliged to grant the investor access, free of charge, to all documentation in the conservator's possession regarding the historic property.

Also at the construction permit application stage, the relevant architectural and construction administrative authorities are obliged to cooperate with the conservator of monuments. Where construction work is to be performed on a building or structure inscribed on the historic monuments register or on a site inscribed on the historic monuments register, permission for execution of this work must be obtained from the relevant voivodship conservator of monuments prior to the

issue of the construction permit. Permission for the demolition of a building or structure inscribed on the historic monuments register may only be issued pursuant to a decision to strike the structure off the historic monuments register by the General Conservator of Monuments acting on behalf of the minister with jurisdiction for culture and preservation of national heritage.

The amendments to the above act on the protection of historic buildings introduced in 2010 have considerably increased the number of cases in which the architectural and construction administrative authority must liaise with the voivodship conservator of monuments before issuing a construction or demolition permit. At present this obligation applies to all structures inscribed on the borough historic buildings records (prior to the amendment it applied only to structures subject to conservator protection within the zoning plan).

As indicated above, the protection of the voivodship conservator of monuments also extends to the construction work stage in the form of the conservator's right to monitor observation and application of monument protection and care regulations. In the course of an inspection the voivodship conservator of monuments is entitled to enter the property if there are justifiable grounds for suspecting destruction of or damage to the monument. He or she is also entitled to assess the state of preservation of monuments inscribed on the register and the conditions in which they are kept and safeguarded, to check the conformity of all action taken on monuments inscribed on the register, and to make entries in the construction log within the scope provided for by the Construction Law.

Failure to adhere to the requirements detailed above regarding the participation of the conservator of monuments in the administrative process preceding the actual investment process could cause any decisions issued to be flawed, and consequently even see them annulled.

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