The Journal of The Land Institute 2010 Summer (Vol.18 No.3)
土地総合研究 2010 年夏号第 18 号第 3 号

【 寄 稿 】

Deregulation in city planning and development law: The new Dutch environmental permit (*omgevingsvergunning*)

Fred Hobma (TU Delft)
Yuka Shiba (Meikai University)

Introduction[1]

Restrictions on changes in land use are regulated through permits. In the Netherlands, the building permit is the cornerstone of them. As well, there are many other permits to regulate directly how people use land and what can be built on the land. As part of a deregulation project a single permit system (*omgevingsvergunning*) will be introduced that integrates these many permits. The current building permit under the Housing Act (*Woningwet*) will be abolished, and the new environmental permit under environmental law (*Wet algemene bepalingen omgevingsrecht [Wabo]*) will be enforced from 1 October 2010. This environmental permit can be applied even to one administrative window, and decisions regarding the application will be made by one authority.

In Japan, a development permit is required to change land use under the City Planning Law; in addition, a building certificate based on the Building Standards Law and other many notifications are required to erect a building. It is necessary to find an effective way to regulate changes in land use through the coordination of the development permit and the building certificate.

This paper introduces the legal framework of the building permit and a new mechanism for the environmental permit in the Netherlands. The paper shows the Dutch ambitions to integrate approximately 25 different permits into one new permit. This may be an inspiration for Japanese deregulation policy in city planning.

Ⅰ. How to regulate land use

1. Permits and rules regulating land use and building

There are many permits which can be used to regulate directly people's use of land and the buildings that can be built on the land. The most important ones in the Netherlands are mentioned here:

(1) Building permit (*bouwvergunning)*

A building permit is required for any building. However, some smaller buildings and alterations to existing buildings, are permit free.

(2) An environmental permit (*milieuvergunning*)

An environmental permit is required for business activities producing important environmental effects (air pollution, noise nuisance, smells, safety). It is regulated by the Environmental Management Act (*Wet Milieubeheer*).

(3) Cutting tree permit (*kapvergunning)*

A municipality may, if it wants, include in its building ordinance rules for felling trees. It may require a permit for it.

(4) Monument permit (*monumentenvergunning*)

If a building has been registered as a protected monument, a permit must be obtained before making any changes to that building.

(5) Demolition permit(*sloopvergunning*)

In principle, a permit is required for demolishing part or all of a building work. The municipality is obliged to regulate this in its building ordinance.

(6) Environmental Impact

Other than those regulated by the environmental permit, for some projects and plans, an Environmental Impact Assessment is required. The

[1] Dr. Fred Hobma is associate professor of planning law, Department of Real Estate & Housing, Faculty of Architecture, Delft University of Technology, the Netherlands. Dr. Yuka Shiba is associate professor of law, Faculty of Real Estate Sciences, Meikai University. She is a guest researcher at Delft University of Technology from April untill September 2010.

requirement for EIA (milieu-effect-rapportage) were introduced in 1987 in the line with the EU Directives 85/337/EEC.This Assessment is now regulated in the Environmental Management Act (*Wet Milieubeheer*).When a project requires both a building permit and an EIA, the EIA procedures must be completed before the decision on the building permit is taken.

There are a few other environmental issues which are regulated in the land use plan. The Noise Nuisance Act (*Wet Geluidhinder*) specifies that certain uses may not be located in places where the noise is above a certain level. For example, housing may not built where the noise from traffic is above 50 db(A).The municipality is expected to take account of this when making the land use plan. The municipality also takes account of air pollution when preparing the land use plan.

2. Power of permit

Nowadays the Dutch Constitution refers to planning tasks of government:

> *It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.* (Article 21 of the Constitution of the Kingdom of the Netherlands 2002.)

In 2010, the Netherlands consists of 441 *municipalities*, which constitute Dutch local government. Administration of the Municipalities is regulated in the Municipalities Act (*Gemeentewet).*

Municipalities actually have the most important powers in Dutch spatial planning.

Building is not permitted unless a building permit has been granted by the Municipal Executive under article 40 of the Housing Act.

The municipal executive will in most cases be the body which issues the new single environmental permit (*Wabo Art 2.4)*, except for activities which touch on provincial or national interests, when the competence will be assigned to the provincial executive or relevant minster, respectively.

Ⅱ. The building permit system in Housing Act

1. The building permit

Before the construction of a building can begin, permits are almost always required. Often more than one permit is required and sometimes different permits must be granted by different governments.

The best known permit in planning and construction is the building permit. Article 40 of the Housing Act states that it is not permitted to build in the Netherlands without or in derogation of a building permit. The Municipal Executive of the municipality where the structure is to be built is authorised to grant (and reject) permit applications for building work.

Stipulations governing the building permit are laid down in the Housing Act. In certain respects, the designation of this Act is misleading because the building permit requirements not only apply to houses but to all structures (including works of civil engineering). The name can, however, be explained historically. Houses were the first structures where a building permit was required.

The building permit regulates the testing of a design for a structure against criteria related to:

- urban planning (*stedenbouw*);
- technical soundness and safety;
- aesthetics;
- (to a certain extent) health and environment.

2. Buildings for which no building permit is required

The buildings that are permit-free or require a light-regime permit are listed in the 'Decree on permit-free and light-regime building permit obligatory structures' (*Besluit bouwvergunningsvrije en licht-bouwvergunningplichtige bouwwerken.[Bblb]).* Structures that do not fall under the 'Decree on permit-free and light-regime building permit obligatory structures' require standard building permits; this applies to most structures.

3. Assessment frameworks for the regular building permit

The assessment framework for the regular building permit is laid down in article 44, paragraph 1, of the Housing Act.

The regular building permit may only and indeed must be rejected if:

- the structure is in conflict with the Building Decree (*Bouwbesluit*);
- the structure does not satisfy the municipal building ordinance (*bouwverordening*);
- the structure is in conflict with the municipal land-use plan (*bestemmingsplan*) or management regulation (*beheersverordening*) or imposed land-use plan (*inpassingsplan*);
- the structure is, according to the Municipal Executive, in conflict with reasonable requirements of external appearance (*redelijke eisen van welstand*);
- the structure has not been granted the required monument permit;
- the structure is in conflict with the rules of a provincial order (*provinciale verordening)* or (national) Order in Council (*algemene maatregel van bestuur*);
- The structure is in conflict with a development plan (*exploitatieplan).*

Brief descriptions about the important terms in building permits are added below.

(1)The Building Decree

The Building Decree regulations express the minimum technical level allowed, concerning such aspects as load bearing capacity, stability, fire resistance, ventilation, acoustic insulation, energy performance standard, ramps and the minimum amount of daylight in any one room.

The technical regulations of the Building Decree also include regulations regarding technical housing quality, examples being the minimum surface area required for a toilet or the minimum distance required between the floor and the ceiling.

The Building Decree is a national document; it is an Order in Council (Dutch: algemene maatregel van bestuur) based on the Housing Act. No possibility exists for local councils to add new technical regulations, or to elevate the level of regulations locally. Therefore, in principle, the same regulations apply to each municipality in the Netherlands.

(2) The municipal building ordinance

The Housing Act states that every municipality must have a building ordinance (art. 8). The Housing Act provides an overview of the subjects that *must* be laid down in the municipal building regulations (art. 8, para. 2). Among these are provisions regarding warding off building on polluted soil.

In practice most municipal building ordinances very much look alike. This is because most municipalities use the Building Ordinance Model (*Model Bouwverordening*) of the '*Vereniging van Nederlandse Gemeenten*' (Association of Netherlands Municipalities).

(3) The land-use plan

Municipalities usually have many land-use plans. The land-use plan can be used for very different planning purposes: to enable desired changes in land-use (such as urban expansion), or to consolidate an existing situation (such as nature conservation area or realized residential district).

Shortly, the land-use plan points out *what* can be built *where* and which *regulations* (such as maximum heights) apply. This takes place by way of a map showing the land-use objectives (*bestemmingen*). The land-use objectives indicate the allowed land-use. Examples of land-use objectives are: residential area, industrial area or agricultural use.

(4) The development plan

The Spatial Planning Act holds the principle that the costs of certain municipal services for land development must be recovered from those parties

who profit from such municipal services. The services referred to are, for instance, public roads, sewerage, bridges, public parking spaces, squares, public parks, public lighting, street furniture, public objects of art and bicycle paths. The parties who profit from these services are in practice property developers. By closing a *partnership agreement* between a municipality and one of more developers, parties can fulfil the legal requirement of recoup of municipal costs from developers.

However, the conclusion of such an agreement requires consensus between the local authorities and the private developers. Sometimes no consensus can be reached. Certainly, the reason will be disagreement about the sum of money to be paid by the developers to the municipality in return for the services. In case of lack of a *private law* agreement, the Spatial Planning Act obliges municipalities to recover their costs under *public law.*

The municipality must then draw up a *development plan* (*exploitatieplan*) (art. 6.12 Spatial Planning Act). The development plan will be adopted by the municipal council simultaneously with the adoption of the land-use plan for the area (art. 6.12, para 4 Spatial Planning Act).

In pursuance of article 6.13, para. 1 Spatial Planning Act a development plan holds (amongst other things):

- a map of the area to be developed;
- a description of the works and activities needed to prepare the area for construction, install the utilities and lay out the public space in the area;
- a development budget (*exploitatieopzet*). In essence, this is an estimation of the costs and revenues of the land development;
- a description of how the costs to be recovered will be distributed between the lands to be allocated;

The municipal executive shall recover the development costs of the land lying within a development area by attaching, having due regard to the development plan, a condition to the building permit for a building plan that the permit-holder is liable for a development contribution to the municipality.

4. Legal protection

The applicant can make use of legal protection against refusal of the permit.

The rules surrounding legal protection under the General Administrative Law Act (*Algemene wet bestuursrecht*) are applicable in this case and offer possibilities for objection, appeal and higher appeal.

When a building permit is refused, the applicant can first of all lodge an objection with the Municipal Executive by submitting a letter of objection (*bezwaarschrift*) within six weeks of the decision.

If the Municipal Executive deems the letter of objection unfounded, the objector (now called 'the appellant') can file a court appeal against the decision. This must be done within six weeks of the Municipal Executive's decision by submitting a letter of appeal (*beroepschrift)* to the court.

If the court declares the appeal unfounded, the appellant can file an appeal with the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) within six weeks. This must also be done in writing.

Legal protection is also available should the permit be granted. This would, for example, be the case in the event of complaints from local residents regarding buildings that are deemed to be in conflict with reasonable criteria regarding the external appearance of the building. They also have the possibility of objection, appeal and higher appeal.

III. Environmental Permit

1. overview

Implementation of the integrated permit (*omgevingsvergunning*), which is expected in October 2010, will bring about an important degree of deregulation. This single permit will replace a number of existing individual permits in the areas of housing, spatial planning and the environment. Each of the existing permits currently has its own procedure, its own official counter for filing and handling, its own timescale, and its own administrative charges

regulations. The new integrated permit is designed to bring an end to various building, environmental and nature-related permits by bringing them together. All sorts of individual permits, exemptions and notifications related to the building and use of a physical object (building, groundwork, erection, use, and demolition) will be accommodated in a single new permit. There will be one official counter, one (digital) permit application, one competent authority (*bevoegd gezag*) that will decide on the application, one permit procedure and one procedure for objections and appeals.

2. Permits which will be integrated into environmental permit

Some 25 permits will be integrated in the new environmental permit. Integration applies to, among other permits, the following permissions:

1. exemptions from the land-use plan
2. demolition permits
3. building permits
4. construction permits (needed for the construction of roads, tunnels and other activities in the ground)
5. exemptions from the Buildings Decree 2003
6permits to modify or demolish a protected building under the Monuments and Historic Buildings Act 1988
7. environmental licences
8. mining industry environmental licences under the Mining Act
9. fire safety permits

A number of permits required under provincial, and particularly municipal, by-law will also be fully integrated

① cutting tree permits
② permits for constructing, using or changing street access
③ advertising display permits
④ burglar alarm permits
⑤ storage of goods permits

Following the implementation of the environmental permit, the permits mentioned above will cease to exist. They will be merged into the new environmental permit.

3. Impact of environmental permit

The introduction of the single environmental permit will reduce the administrative costs of the private sector by about Euro 33.2 million per year and of households by Euro 3 million per year.

4. Implementation of the Act

The new single environmental permit will mean considerable change, both for the applicants and for the authorities which issue permit. The authorities need to organise their processes in a coordinated way. For simple projects, they need to decide within 8 weeks. For complex projects, the authorities have 6 months to reach a decision.

The introduction has been strongly supported by pilot projects and an implementation project with particular emphasis on public information, ICT and training. There is an electronic application form available for applicants of the permit.

The government planned the introduction of new permit system due to 1 July 2010, but the day of the introduction was postponed to 1 October 2010 due to ICT problems.

The municipal executive will in most cases be the body which issues the new single environmental permit, except for activities which touch on provincial or national interests.The environmental permit will be a great advantage for the applicant.Indeed, the applicant will only have to apply for one permit. However, for the municipal agencies, the environmental permit will mean a toughening.

In the past the different municipal agencies would be responsible for only one specific permit. Now however, all municipal agencies will have to work closely together. This means a strong emphasis on cooperation between
municipal agencies.

Ⅳ. Conclusion

In the Netherlands, land use and building is regulated by many permits especially environment related permits. This caused many complaints from

entrepreneurs and businesses. The new environmental permit integrates approximately 25 permits is an example of far reaching deregulation. To a large extend it gives in to the complaints from businesses. Following the introduction of the environmental permit the applicant needs to follow only one procedure and needs to address only one competent authority and only has to deal with one enforcement agency. The new act provides for a single administrative point of contact for applicants of environmental permits. Furthermore, the new permit system makes use of standard electronic application forms that can be submitted through the internet.

The attempt to unify the multiple permits is not seen in other EU countries. The environmental permit is an attempt to modernise government, simplify permit procedures and stimulate economic growth. It saves time for businesses and households who apply for permits; the new permit will cut their costs as well. This ambitious attempt may give an inspiration to Japanese deregulation policies to improve the permit system. It is advisable that Japanese institutions keep themselves informed of the Dutch practical experiences with the environmental permit. It may be an inspiring example of deregulation in Japanese city planning and development law.

In order to efficiently administer building in Japan, the privatization approach has been taken for building certification. However, this approach has some problems. It is necessary to consider how the efficiency of the administration could be realized. In doing so, the introduction of electronic applications, unified systems of the development permits and building certificates, and the power of the authorities to grant permits should be reconsidered.

References

1. Fred Hobma, E.T.Schutte-Postma, Planning and Development Law in the Netherlands :An Introduction (TU Delft, 2010).

2.Barrie Needham, Dutch land use planning: Planning and managing land use in the Netherlands, the principles and the practice (TU Delft, 2010.).

3. Environmental Licensing (General Provisions) Bill: Summary http://www.vrom.nl/pagina.html?id=2706&sp=2&dn=8049