

HOW ARE RECREATIONAL FACILITIES INFLUENCED BY THE NEW BUILDING ACT IN THE CZECH REPUBLIC?

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Abstract

The paper is devoted to the new legislation on public building law and issues related to legislation in this area in relation to recreational facilities. In 2021, a new construction law was approved, which should, among other things, reorganize the public construction administration and should simplify the processes within the framework of building permits, including recreational buildings. This paper focuses on selected issues related to the permitting of buildings for recreation and on the digitalisation of construction processes.

Keywords: Building Act, building authorities, authorities concerned, recreational objects

Introduction

In recent years, there has been a discussion among the professional and lay public in the Czech Republic about the need to improve the legislative environment in the field of building permits, to bring the public building law closer to the standards leading to its streamlining, to remove obstructions, delays or barriers that today limit the construction and development of the Czech Republic. Therefore, all steps taken by the legislator during the recodification should have been aimed at simplifying the processes and rules leading to building permits and ensuring construction in general. The permitting of buildings, and not only buildings for recreation, has long been an area of criticism in the Czech Republic. One of the problems cited is the length of the permitting processes, their complexity (or the difficulty of understanding which specific process is to be applied to a particular building) and, last but not least, the complexity and lack of transparency of the authorities that are supposed to comment on buildings. In 2021, a new Construction Act was approved and published in the Collection of Laws under No. 283/2021 Coll. The new Construction Act came into force gradually. This date was postponed to 1 January 2024 by a major amendment to Building Act 152/2023, but it will not apply to recreational buildings until 1 July 2024. The period between 1.1.2024 and 1.7.2024 is referred to in the Act as the transition period¹. During the transition period, Building Act No. 183/2006 Coll. applies to buildings for recreation.

Recreational buildings and the new Building Act

The new Building Act does not specifically define buildings for recreation. According to the Building Act, buildings for recreation are divided into buildings for individual recreation,

¹ In matters relating to spatial planning, the existing legal regulations shall apply during the transitional period, with the exception of the zoning decision and the binding opinion of the spatial planning authority, which shall not be issued for the purpose of permitting a reserved building listed in Annex 3 to this Act, a building related to it and a building forming a set of buildings with it. For the purposes of the transitional provisions in Part Twelve, Title II, Part 2, the date of entry into force of this Act shall be 1 July 2024.

In matters relating to projects under this Act, the existing legislation shall apply during the transitional period, except in matters relating to the reserved structures listed in Annex 3 to this Act, structures related thereto and structures forming a complex of structures. In matters relating to the reserved buildings listed in Annex 3 to this Act, related buildings and buildings forming a group of buildings with them, this Act shall apply, except for sections 172, 173, 185(3)(c) and Part Seven.

Note: Structures listed in Annex 3 are e.g. motorways, railways, civil aviation structures, renewable energy plants other than hydroelectric works (e.g. photovoltaics with a total installed capacity of more than 5 MW), etc. ...

residential recreation, or buildings of accommodation facilities used to provide accommodation and related services. In order to determine the necessity and form of obtaining a building permit for recreation, the Building Act distinguishes between small buildings, simple buildings and other buildings.

A minor building for recreation is a building, including the foundation structure, up to 55 m² of built-up area and up to 4 m in height on a plot of land that is determined by a decision on the permit of the plan, a zoning plan with elements of a regulatory plan or a regulatory plan for use as a recreation area, which is placed at a distance from the boundaries of the land of at least 2 m and the area of the part of the land capable of absorbing rainwater after its placement will be at least 50% of the total area of the land.



Fig. 1: A simple recreation building is a building for family recreation which has no more than two storeys above ground and one underground storey and an attic or setback storey

In addition, all buildings that meet the purpose of being used for recreational purposes and do not have to be buildings for accommodation, e.g. water reservoirs, buildings for sport or other relaxation, can be considered as buildings for recreation. If we take recreation to mean anything that is used for relaxation, rest or relaxation, we could also consider, for example, spas or amusement parks to be recreational buildings in a broader sense. However, from the point of view of the Building Act, this distinction cannot be made. The Building Act then divides the aforementioned buildings into separate categories, e.g. the aforementioned building for individual recreation, buildings for sport are classified by the Building Act as civic amenities, which are buildings, facilities and land serving to ensure the basic needs of the inhabitants. Water reservoir buildings are then water works, which can be further subdivided according to other criteria under the Water Act, etc.

Due to the variety of buildings for recreation, for the purposes of this article we will focus on the construction of recreational huts (according to the Building Act, this building is referred to as a building for individual recreation). In this article, we will focus on the form and method of permitting construction plans for holiday cottages from the perspective of the new Building Act.

Holiday cottage

The construction of a holiday cottage (from the point of view of the Building Act - a building for individual recreation) will be dealt with. The size of a particular building is essential for a holiday cottage. If the holiday cottage building is up to 55 m² of built-up area and up to 4 m in height and meets the conditions of a small building as described above, it does not require any permission from the building authority. However, this does not mean that such a building can be built anywhere without any further interference from other public authorities. Such a building must always be located in accordance with the zoning plan, and must comply with all conditions

for the protection of any affected interests, e.g. nature protection, conservation, protected areas, etc.

Other holiday cottages already require permission from the building authority. To do this, they must of course meet the requirements of the zoning plan, protection of protected interests or protected areas described above. Compared to the Building Act No. 183/2006 Coll., the new Building Act has abolished the two-stage permitting of buildings. Permitting the location of a building, whether in the form of a decision or in the form of a planning consent, has been abolished. The new Building Act only provides for the authorisation of a construction project in one form. All variants of permitting, whether a notification of intent or a certificate from an authorised inspector, have been abolished. The authorisation of the project under the new Building Act will also resolve the assessment of the suitability of the location of the building and its implementation. It will therefore be similar to the current joint planning and construction procedure.

The application for the commencement of the building permit procedure will be submitted on the prescribed form electronically via the builder's portal or in paper form. The application form should be laid down in the implementing legislation (decree). The building authority should notify the parties to the proceedings, the authorities concerned and the principal designer of the initiation of the proceedings within 7 days of receipt of a defect-free application or of the removal of defects in the application. In the notification, it shall state how the parties to the proceedings may acquaint themselves with the plan and whether and when, if necessary, an oral hearing or a public hearing will be ordered in the case and whether the oral hearing will be combined with an on-site inspection. If the building authority orders an oral hearing, it shall notify the parties to the proceedings and the authorities concerned of the date of the hearing at least 15 days in advance. If no oral hearing is scheduled, the building authority shall specify in the notice of initiation of the proceedings a time limit, which shall not be shorter than 15 days, within which the parties to the proceedings may lodge objections.) In the case of a project in an area where no zoning plan has been issued, the building authority shall always order a public oral hearing. In the case of EIA projects in an area where a zoning plan has been issued, the building authority may order a public hearing. The public hearing shall be announced to the public by public notice and may be scheduled no earlier than 30 days after the date of service of the public notice, during which time the building authority shall allow anyone to inspect the decision documents. After all the actions have been carried out, the building authority shall assess whether the project complies with the requirements laid down in the Building Act² and whether it can be authorised. If all the conditions are met, or if they can be ensured by imposing conditions in the decision to authorise the project, the building authority shall issue the planning permission; otherwise, it shall reject the application for planning permission. The time limits³ for issuing a decision are laid down in the Building Act in such a way that a decision must be taken by:

- a) 30 days from the date of commencement of proceedings in the case of a simile construction,
- b) 60 days from the date of initiation of proceedings in other cases.

These time limits may be extended by resolution before their expiry:

- a) up to 30 days in particularly complex cases or where an oral hearing is ordered, or

² The building authority assesses compliance with

- a) the spatial planning documentation, zoning measures and the definition of the built-up area,
- b) the objectives and tasks of spatial planning, in particular with the character of the territory and with the requirements for the protection of cultural, historical, architectural and urban values in the territory, if the municipality has not issued a zoning plan,
- c) the requirements of this Act and its implementing legislation,
- d) the requirements of other legislation protecting the public interests concerned,
- e) requirements for public transport or technical infrastructure,
- f) the protection of the rights and legally protected interests of the parties to the proceedings, which shall be assessed and measured in relation to each other.

³ Note: The time limit for issuing a decision is interrupted in the event of a suspension of proceedings due to defects in the application and starts again from the beginning once the defects have been rectified.

- b) for up to 60 days in proceedings involving a large number of parties or where service by public notice is to be effected on persons to whom service is demonstrably impossible or where service is to be effected abroad.

A simple building with no more than two storeys above ground and one underground storey and an attic or recessed storey is described above as one of the categories of buildings for recreation. These structures could be permitted under an accelerated procedure, subject to the conditions set out in the Building Act. In such a case, there is no oral hearing, no time limit for lodging objections, but the building permit is issued as the first act of the building authority in the procedure. The conditions are that the builder has applied for a decision in the accelerated procedure and that the construction is located in an area where a zoning plan has been issued, it is not an EIA project, it is not a project requiring an exemption or a derogation procedure under the Act on Nature and Landscape Protection, the construction meets the requirements for the permit and the builder has documented the consents of all parties to the procedure for the project, indicated on the situational drawing of the documentation.

It is clear from the above that the permitting of buildings for individual recreation will be simpler in that it will not be necessary to choose from a large number of variants of permit forms. There will be only one variant, which can be simplified under certain conditions. On the other hand, when comparing the permitting process under the new Building Act with the joint planning and building procedure under the old Building Act, it must be noted that it is a similar procedure with similar time limits.

Digitization

The basis for simplifying the permitting of construction plans under the new Construction Act should be the so-called digitalization of construction law, which should facilitate communication between the builder and individual administrative authorities and between the affected entities such as owners of public technical infrastructure. High-quality digitisation could significantly simplify not only the processes of building permits, but also the protection of protected public interests, where it could contribute to greater awareness. All newly created information portals should be linked to existing information portals and should allow a range of information to be obtained online.

Commenting on the digitisation, the Ministry of Regional Development states that it will allow a developer to submit only one proposal instead of dozens of applications. An intuitive form will guide them through the whole process. The building authorities will have an IT system where all the tasks that are now fragmented in the preparatory phase, the planning decision-making and the building procedure will be under one roof. The state will also have better control thanks to this, it will know exactly where the whole process is stalling, what the average length of the construction procedure is, or how many appeals there are. The builder, planners and other parties will have an immediate overview of the stage of the procedure. The electronic administrative file will contain the complete construction documentation. Moreover, its management will be possible in standardised pdf, dwg and BIM formats. The system will efficiently link land-use planning and infrastructure data with information on buildings and procedures⁴.

The builder's portal should enable digital actions towards the building authority and the affected authority, submitting requests to the owner of public transport or technical infrastructure, providing statements from the owner of public transport or technical infrastructure, etc. This portal should be the basis for simplifying communication between building authorities, authorities concerned, owners of public infrastructure and builders.

In the area of spatial planning, the main objective of digitising spatial planning is to create a new unifying information system, which is the National Geoportal for Spatial Planning. This will serve as a support for spatial planning processes and will also make the outputs of spatial planning in the Czech Republic available to all citizens. It will facilitate the coordination and sharing of

⁴ [Ministerstvo pro místní rozvoj ČR - Digitalizace stavebního řízení v ČR \(gov.cz\)](https://www.mmr.cz/aktualizace-stavebniho-řízení-v-čr)

spatial plans, even at the drafting stage. As the Ministry of Regional Development states, the digitisation of spatial planning is not just a matter of converting paper documents into electronic form, but of changing the entire system of their acquisition and work with them⁵.

Another system should be the register of construction procedures, which should provide for the registration of submissions and other documents, decisions and other actions of the construction authority or the authority concerned, information on the authorised official person or persons, as well as documentation for project authorisation, etc.

Another system - information system of construction proceedings should serve for exercising the competence of construction authorities, concerned authorities, if they take actions according to other legal regulation serving as a basis for issuing a decision in proceedings under this Act, central administrative authorities in exercising control over the competence of state construction administration authorities⁶.

Conclusion

The new Building Act will certainly bring some simplification in relation to the processes of permitting holiday homes. There will be a significant simplification in the area of the forms of building permits, where the so-called two-stage permitting (location permit and implementation permit) will no longer be necessary, but only one permit will suffice. It will also simplify the 'choice' of the form of permit, as there will be only one permit option, namely planning permission. On the other hand, it is necessary to consider whether the planned speeding up will also take place, since the time limits set are similar to those under Building Act No 183/2006 Coll. and most recreational buildings will require a building permit as before, as well as the opinion of the authority concerned. The digitisation of processes can be considered beneficial. If the planned builder's portal is launched, and if it is functional and, as the Ministry of Regional Development states, intuitive and instructive, it will be a great asset that will simplify not only the processes of communication with the authorities, but also information in this area.

Souhrn

Nový stavební zákon přináší řadu faktických změn v procesech povolování staveb pro rekreaci, ale v řadě případů se jedná pouze o změny v názvosloví, o změny spíše technického charakteru. Co přinese nový stavební zákon pro stavby pro rekreaci? Při porovnání stavebního zákona č. 183/2006 Sb. a zákona č. 283/2021 Sb. lze uzavřít, že k výraznějším změnám nedojde. Většina staveb pro rekreaci bude vyžadovat povolení stavby. Ke zjednodušení dochází v oblasti forem povolování staveb, kdy již nebude nutné tzv. dvoustupňové povolování (povolení umístění a povolení realizace), ale postačí pouze jedno povolení. Také se zjednoduší „výběr“ formy povolení, neboť bude pouze jedna možnost povolení, a to povolení záměru. Velké zjednodušení by mohla přinést očekávaná digitalizace stavebních procesů, která by měla být spuštěna k 1. 7. 2024.

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⁵ [Ministerstvo pro místní rozvoj ČR - Digitalizace územního plánování \(gov.cz\)](https://www.mprv.cz/)

⁶ Kliková, A. Nový stavební zákon č. 283/2021 Sb. a jeho změny. In: Exfos XXXI. Mezinárodní vědecká konference soudního inženýrství Brno 2023.