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Development approval problems for agricultural buildings in rural areas

The extension or erection of livestock housing outside of community development zones is privileged under the law in Germany. But such development is only practical where the distance between the proposed development and existing emission-sensitive buildings either in designated rural areas, or nearby municipal zones, is deemed sufficient, also with regard to future development of the proposed new farm structures. In the case of reclassification of farm buildings to non-agricultural uses, the continued existence of neighbouring livestock units as dynamic viable enterprises should have priority. The increasing importance awarded to the public interest in protection of countryside, nature/landscape and leisure/tourist enterprises is beginning to take priority over the optimum siting of farm buildings as future-oriented and viable full time agricultural units, even in areas outside communal development planning zones. This development is emphasised here with examples.

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Keywords

Building permission in undeveloped outskirts areas, securing of locations, nature and landscape protection

Outwith designated development zones, extending or building new livestock units is only practical on sites where the distance to emission-sensitive developments in countryside areas or adjoining urban areas is sufficient, and this also applies to any foreseen further development of such units. The most suitable site would be on a farm standing on its own with the nearest neighbours at least some 100 m away.

Even other farms too near a proposed livestock unit could negatively affect any development.

Public concern barriers

In reality, the „privileged“ planned agricultural development in a non-development zone must not invoke public concern to such an extent that the public reacts against the plan. In the meantime, three public concerns in particular have more weight than just a few years ago when it comes to balancing the pros and cons for any proposed development: rural area protection, the protection of nature/landscape, and leisure and tourism developments.

Example:

Technical facilities sited a distance from farm buildings

Non-development area protection interests made increasingly difficult the siting of required facilities such as slurry containers which had been requested by the water authorities near large fields a distance from the farm buildings (fig. 1).

Fig. 1: The „protection of non-development areas“ impedes the establishment of facilities such as slurry containers in non-planning development zones

Example: Establishment of additional farm buildings on a greenfield site

Because of legal emission limits to the increasing of livestock production on a farm near an urban development area, there was increased necessity to establishing new farm buildings further away.

The legal planning development fate of a farmer and such a planning request emphasises the current emphasis on the influence of nature and countryside protection with regard to decision-making in the case of building development permission on agricultural land outwith development zones.

On 15. 9. 1986 a full time farmer with 35 ha agricultural land and emission-limited farm buildings within a municipal zone presented a planning request for a building with 480 feeding pig places on a site outwith the municipal zone 600 m north (fig. 2) of the „unstructured“ administration area (MD: mixed area village) where his farm was sited.

The owner-occupied land lay at the crossing of two surfaced roads. There, there was already a sewage treatment plant and an electricity pylon supporting three cables. Location 1 lay in a „general countryside protection area“. A „special countryside protection area“ within the same rural development plan (now NSG) began 50 m west of the proposed building development and served, among other things, for the protection of meadow birds. In the surroundings of location 1 there were, even at the time of the offi-





Fig. 2: Planning permission for a pig feeding house outside a development zone was refused because its location was contrary to the landscape protection plan, although an electricity pylon and a sewage treatment plant were already present nearby.

cial rural development plan, large areas of fields, and these still remain.

After official notification that the argument for planning had been rejected, the farmer's case was dismissed in a civil court judgement of 30.1.89 on the grounds that the planned development would „Substantially detract from the protection purpose of the official rural development plan“. The farmer did not appeal in this case.

It is to be feared that, at least nowadays, building permission will be refused, even where the distance from an NSG is substantially greater, on the ground of the protection needs of a „general landscape protection area“ as „buffer“ zone for an NSG. This is especially applicable to the location-suitability investigation with regard to FFH areas.

In the meantime, the farmer's enterprise has grown to 55 ha through renting land. After considering a total of seven sites, a civil court decision of 27. 2. 96 granted planning permission for a pig building, which has now been erected, on site 7 (fig. 3).

This has meant nearly 10 years of planning insecurity, communal-political friction, substantial legal costs and development hindrances.

As sub-authorities for countryside development, the local district administration was only prepared to grant an exemption from the landscape protection rulings that applied even on site 7 because the site, on low lying land, was outwith the „NSG suitability test zone“. The local town, on the other hand, refused the community agreement for development on the very same piece of land on „protection of non-development area“ grounds.

Location 7 lies about 900 m southeast of the farm buildings and in each case around 400 m from the municipal development zone outskirts to the north and „mixed village“ areas with „better class homes“ sited to the west and south. The emission prognosis (VDI 3741) requested, for the now-672 place feeding pig unit with 100 points, a distance of 215 m from other facilities. But

then the communal authorities tried to stop the building of the piggery using as an argument free space requirements applicable to a development area plan and a connected „alterations stop“. This was because of objections filed from 70 citizens (outwith a 400 m radius!) Now, he finds himself in the midst of this failed „hindrance plan“ – as it was described by the court.

Example: Rural zone agricultural building privilege reduced by building development plan

In the interests of leisure and tourism, objections were made to the establishment of poultry and pig feeding enterprises within the green belt along the North Sea coast which was up until then a cattle farming area.

Additionally the building development plans had, in the meantime, identified special development areas which could be taken into consideration for livestock farming. These were, however, planned only for livestock buildings under the „commercial“ building regulations – without attached, mainly feed-growing, land.

The identification of special areas for tourism and leisure, also put forward as a planning solution, gives those areas priority over commercial and agricultural livestock enterprises. At the moment, a community is attempting to establish about a quarter of its land as such a special area. However, according to the level of knowledge so far, a restriction is not required in this case because microorganism concentration in the air 250 m from live-

stock buildings has probably not increased any more.

In the end effect it is believed that the development is aimed at stopping the farmers' tourist-based enterprises which are an important inner-agricultural income-diversification for them.

Concerning local leisure and recuperation in regional green belts adjoining population centres, it is increasingly claimed that their value is reduced through the building of new livestock housing. Livestock facilities in such areas, even those beneath the threshold for BIMSchG development approval, and those featuring type-specific welfare housing, and keeping within the emission limits, are discriminated against at the communal-political level.

Outlook

Substantial building investments for livestock housing within municipal areas (interior zones) are refused under emission protection grounds or are questionable because of insecure enterprise existence protection. But in country areas outside of communities, too, the high density of regulations, in particular regarding livestock production buildings, excessively limit the further development of agriculture as a business sector with high performance potential.

Farmers, the farmers' union, chambers of agriculture and all agri-administrations are called upon, in the interests of agriculture and the countryside, to strive for the retention of farm building sites outwith community development planning areas. This should be done on all the planning levels: from single building licensing over building development planning through to the district development planning.

At the same time, there should also be agreement that, in the case of re-classification of farm buildings to non-agricultural uses, the survival of neighbouring farms as dynamic viable livestock enterprises should get priority.



Fig. 3: Development of this site, too, is to be prevented under the „protection of countryside areas“.