

PRS: Compliance with zoning regulations



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Private rented sector on the rise

Private rented sector (“**PRS**”) projects are a new occurrence on the Polish real estate market and, as a result, there is a shortage of a relevant legal framework or jurisprudence. On the other hand, however, the PRS market in Poland is developing very fast, with currently around 5,000 apartments ready to rent and around 25,000 under construction.¹ As a result of this large demand, investors are often faced with the question of the type of zoning under which it is permitted to develop PRS projects. However, it is still debatable whether PRS projects may be developed on services-designated zoning.

Difficulties in interpreting the legal framework

In Polish law, the main zoning principles are listed in the Act dated 27 March 2003 on spatial planning (“**Spatial Planning Act**”) and supplemented by Resolution of the Minister of Development and Technology dated 17 December 2021 on the required scope of the draft local zoning plan (“**Spatial Planning Resolution**”). While zoning permits remain a popular planning tool, the challenges faced by the PRS projects described herein arise where there are local zoning plans that are adopted by municipalities for their territory (or part of it) and which constitute a universally binding source of law. As a result, local zoning plans are rather general in nature and usually leave more room for interpretation than zoning permits (Polish: *decyzje o warunkach zabudowy*).

As far as PRS projects (dedicated for long-term residence) are concerned, the following designation categories provided in the Spatial Planning Resolution are most relevant: residential multi-housing areas (marked with the symbol “**MW**”) or generally residential housing areas (marked with the symbol “**M**”) or generally the areas of services (marked with the symbol “**U**”).

Legal acts do not specify what kind of structures and buildings can be located in the above areas. Such specifications can be indicated in a local zoning plan, but in fact they vary in terms of their precision among the municipalities which adopt the zoning plans. Sometimes they are more detailed and, for instance, explicitly allow or prohibit the construction of developments similar to PRS (such as “buildings with apartments for rent”). In such cases – i.e. when the provisions of the zoning plan are exhaustive – it should be rather clear whether a PRS project can be located on a given property or not.

¹ https://www.housemarket.pl/inwestycje/102/sektor_mieszkan_na_wynajem_szybko_rosnie_najwieksze_wydarzenia_na_rynku_prs_w_2021_roku,29916.html

Residential or services-oriented purpose?

Still more ambiguities arise when a local zoning plan describes a permitted designation using only general terms such as “areas of services” or “residential multi-housing areas”. In these cases, it is decided individually by the relevant authorities – mostly at the stage of issuing the building permit – whether a concept or design presented by the investor is compliant with the provisions of a zoning plan.

In addition, it is necessary to differentiate typical PRS projects – designated mainly for the purpose of long-term of stay – from so-called condos or apart-hotels, i.e. facilities used mainly for recreational purposes and short-term leasing.

According to the available jurisprudence, the distinction should be made on the basis of the purpose of the stay. Other helpful factors could include the architectural design, the layout of the rooms, their functionality, or related services offered in the facility (such as a reception desk). Nevertheless, the technical differences between some condos and apart-hotels and residential houses may not be that obvious. We have noticed that these technical aspects sometimes provide an opportunity for investors as regards zoning limitations as they may be able to slightly change an element of the building’s design (for instance, in the eyes of the relevant authority responsible for issuing the building permit) from residential to service by adding certain facilities in the project, such as a reception desk or a canteen.

One can also encounter the opinion that PRS projects should be located on areas with a service designation (despite the fact that in the majority of cases such facilities are used by the tenants for residential purposes) because they are connected with the business activity undertaken by its investor (owner), i.e. the provision of rental services.

We believe, however, that it is safest to interpret the provisions of the zoning plans, as well as other spatial planning regulations, purposively, i.e. in the context of the regulation’s purpose. If certain terms are not legally defined, then they should be construed with reference to the common language and understanding. Therefore, if a particular development is intended to be used for residential purposes, then it should be rather located on areas with a residential designation in the zoning plans.

From this point of view, typical PRS projects – perceived to be an alternative to traditional residential housing – should be rather located in areas with a residential or mixed residential-service designation (unless otherwise specified in the local zoning plan).

Nonetheless, the length of the term for which premises in a given building are leased may be an important (but not the deciding) factor in determining the correct zoning designation. Short-term rental corresponds to the provision of tourism services, while long-term rental may be more adequate for residential purposes.

It is important to remember that not only is there no relevant legal framework regarding PRS projects but also the approach of the authorities and the courts is not yet settled and remains uncharted territory in this regard. Local authorities may in the future come to favour one interpretation over the other, but until such time as there is a unified approach (either by way of court jurisprudence or relevant legislation), certain challenges may arise in connection with the operation of PRS projects in cases where they have been developed in areas which would be later considered incorrect due to a subsequent change of approach.



It is necessary to differentiate typical PRS projects – designated mainly for the purpose of long-term stays – from so-called condo- or apart-hotels, i.e. facilities used mainly for recreational purposes and short-term leasing.

Risks arising from an incorrect designation

We would like to outline some potential risks related to the construction of a PRS project on lands with a designation that would be later considered incorrect (assuming, however, that all the required permits have been obtained for such project, though the relevant authorities issued them on the basis of wrong assumptions or interpretations). Such potential risks could be related to compliance of the real property's use with the zoning plan, the building permit being challenged, or the establishment of separate ownership of premises in a building.

There is a limited number of situations where the authorities can verify whether a development and the subsequent use of a real property are compliant with the provisions of the zoning plan for the land. These include, for example: (i) in the course of the issuance of a building permit, (ii) in the case of redevelopment of the real property, and (iii) in the case that there is a change in the manner of use of the real property.

Securing PRS operations by a building permit

Once a building permit has been issued, compliance with the zoning plan is not verified when issuing the occupancy permit. The use of the PRS project should be in line with the intended use described in the relevant building permit. Therefore, if the PRS project is described sufficiently for the purpose of obtaining the building permit for a services-designated zoning designation, the investor is entitled to rely on the ruling of the authorities and develop (and operate) the PRS project based on the applicable zoning plan, as the conformity of such use is confirmed by the issuance of the building permit.

Therefore, as long as the real property is used in line with the designation outlined in the investor's application for the building permit and the building permit itself, it should not constitute a change in the manner of use of the property and should not trigger the authorities' right to inspect the compliance of the use. To this end, developers working on a PRS project on a services-designated zoning area should ensure that the application for the building permit exhaustively addresses the manner of carrying out the planned operations so that the conformity with the zoning plan is secured already at the stage of issuing the building permit.



PRS projects are a fairly new occurrence on the Polish real estate market. As a result, the legal approach is not yet uniform or solidified



Risks related to redevelopment

In the case of a redevelopment of the property, such as when there is a need to carry out construction work under a building permit or a notification of construction work, the authorities will verify the conformity of the planned redevelopment with the current zoning plan. This should be taken into account when planning future operations for the real property, as the conformity of the operations after the planned redevelopment will be checked against the current zoning designation.

The investor should also be aware that if the authorities' approach to PRS projects on land for which an incorrect zoning designation has changed to a less favourable one, the redevelopment and the conformity check may be used to interfere with the PRS operations.

If the owner of real property intends to change the use of the property, such intention should be reported to the authorities prior to the change. Then the authorities will verify whether the new intended use complies with the zoning designation and may approve or deny such change. Changing the manner of the real property's use in contravention with the zoning plan may lead to a suspension of occupation of the building.

In our view, in the case of PRS projects developed on land with an incorrect zoning designation, this risk may potentially materialise if the authorities determine that the long-term lease signifies that the property is being used for residential purposes, rather than for service-related purposes, which would not be in line with the zoning designation. On the basis of available rulings of administrative courts, it seems that there are two factors which should help determine whether the intended use of premises is residential: (i) the purpose of the stay, (ii) the periodical renewal of the right to occupy the premises.

The consequences of potentially infringing the purpose of the development are mostly related to an infringement of the occupancy terms of the building as determined by the building supervision authority. Since the difference in use would result from the length of the leases and actual occupancy, rather than changes to the building itself, it is unclear how the decision would be enforced. We assume that it could be carried out by suspending the extended term of stay for the time being; however, this should be analysed on a case-by-case basis.

Should this kind of risk materialise, the investor could also consider changing the operation of the project (for example, by converting it from a residential building into an aparthotel).

Uncharted territory

Due to the absence of an established approach by the authorities and the courts with regard to PRS projects, there might be a risk that in the future the zoning designation of some of them will be questioned.

However, the risks for each PRS project should be analysed on a case-by-case basis, taking into consideration the exact wording of the available zoning plan and the planned operations, and should be addressed as early as possible from the stage of preparing the development, in order to mitigate any potential challenges.



PRS projects are located on both residential and service zoning
– both have their advantages and disadvantages

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