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Real estate regulations: construction projects in noisy areas

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Swiss construction and environmental laws have become increasingly complex, also due to efforts to prevent urban sprawl. Noise protection requirements have increased not only regarding road projects and aircraft noise, but also with regard to housing projects along busy roads. The Federal Supreme Court takes a strict position when it comes to noise protection and granting of exemption permits for such projects.⁽¹⁾

Key principles

Building long-stay accommodations in areas affected by noise is only allowed if the ambient limit values for noise are not exceeded.⁽²⁾ In a notable decision, the Supreme Court rejected the previously widely applied practice that ambient limit values only have to be met at one window suitable for ventilation of each noise-sensitive room (known as "ventilation window practice"). Rather, according to the Court, compliance has to be ensured on all windows of noise-sensitive rooms⁽³⁾ (for further details please see "[Federal Supreme Court decision on building in noise-affected areas](#)").

Otherwise, building permits for new long-stay accommodations are only issued if noise-sensitive rooms are suitably arranged on the silent side of the building or if structural or design measures are taken to shield the building against the noise.⁽⁴⁾ If, despite such measures, the ambient limit values cannot be complied with, an exemption permit may be granted if there is an overriding interest in constructing the building. In addition to the communal authorities, the cantonal authorities must agree on an exemption permit.⁽⁵⁾

Supreme Court cases

In 2021, the Supreme Court considered a case concerning a building project for 124 residential apartments in a noise-polluted area in the City of Zurich. In 99 out of 124 units, the ambient limit values for noise were exceeded in at least one room. During the day, the ambient limit values were exceeded in some rooms by up to 5 decibel.⁽⁶⁾

In another case, in 2022, the Supreme Court assessed an exemption permit for a project of 22 apartments located on a busy street in the City of Zurich where the ambient limit values were exceeded by up to 9 decibel at night.⁽⁷⁾

Background

In both cases, the Court assessed whether all proportionate noise abatement measures had been taken and whether alternative structural or design measures had been sufficiently examined for an exemption permit.

The main criteria can be summarised as follows:

- Where the ambient limit values are exceeded, the permit applicant must provide an in-depth comprehensively justified analysis of noise protection and of the examined, selected or discarded measures.⁽⁸⁾
- The granting of an exemption permit requires a prior weighing of public interests, in the course of which further noise protection measures are to be evaluated that at least reduce noise emissions inside the building if not noise levels when windows are open.⁽⁹⁾
- The planned use, the extent to which the ambient limit values are exceeded and the possibility of assigning the area to a higher noise sensitivity level must be considered when weighing public interests.
- The same applies to spatial planning concerns, such as closing gaps between buildings and condensing construction to prevent urban sprawl.⁽¹⁰⁾
- An exemption can only be considered if:
 - it is established that all reasonable measures according to the law have been exhausted;⁽¹¹⁾ and
 - if the strict application of the law would not be proportionate.⁽¹²⁾

According to the Court, the tolerance for exceeding noise limits in areas already assigned to noise sensitivity level III (the highest level permitted for residential areas) is generally lower than in areas with lower noise sensitivity levels.⁽¹³⁾

The Court emphasised that protection measures must be taken into account from the beginning of project planning. It would not be acceptable to design a building as if there were no noise pollution and then apply for an exemption permit with reference to the unreasonableness of noise protection measures on the building.⁽¹⁴⁾ Furthermore, the relevant authorities have to legally establish and describe the necessary overriding public interest for granting an exemption permit.⁽¹⁵⁾

Decisions

The Supreme Court rejected both building projects because they clearly exceeded the ambient limit values for noise, and living room kitchens and sleeping rooms were planned to be on the noisy side of the building instead of the silent side. The Court further held that the noise protection measures were not sufficiently assessed.⁽¹⁶⁾

In view of the significant violation of the night time limit values, the Court rejected the argument that building strictly in line with noise protection measures would require expressionless facades with small openings, which would result in street canyons that are undesirable from a city planning perspective.⁽¹⁷⁾

In both cases, the communal and the cantonal authorities were in favour of granting an exemption, while the cantonal courts and the Federal Supreme Court held that the requirements for an exemption were not met.

Although the abandonment of the ventilation window practice led to a change in practice, the decisions are overall in line with previous decisions that strictly applied noise control requirements.⁽¹⁸⁾

However, it is also to be noted that other building projects on busy roads where the ambient limit values were only exceeded by up to three decibel and appropriate noise abatement measures were taken have been successful before the Supreme Court.⁽¹⁹⁾

Comment

In both cases, the ambient limit values for noise were clearly, if not significantly, exceeded (by up to 9 decibel). As substantial noise affects people's health and also reduces the value of real estate, the enforcement of noise protection is certainly justified.

However, the problem must be considered in a larger context. Building in urban areas must satisfy numerous interests, many of which are in conflict with each other:

- affordable housing;
- a high-quality and, in particular, a quiet living space;
- densified building and optimal utilisation of scarce building land;
- good site development and transport connections;
- functioning utility supply, goods delivery and waste disposal; and
- diverse commercial and gastronomic offerings.

In principle, noise must be combated at its source. But especially in urban areas, this has its limits. At law, these interests are all of equal value and none has priority over the others.

Overly drastic restrictions on traffic would not be compatible with the needs of a contemporary city. Therefore, construction-related measures are necessary. To meet the increasing demand for housing, and in view of the scarce supply of building land, it is unavoidable that housing will also be built in noisy areas. It is therefore welcome that the relevant criteria for granting building permits in areas subject to noise are formulated more clearly in the law, as now envisaged in a recent proposal of the federal government.⁽²⁰⁾

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Endnotes

- (1) Supreme Court Decisions 1C_275/2020 of 6 December 2021 and 1C_264/2021 of 24 March 2022.
- (2) Article 22 (1) of the Environmental protection Act of 7 October 1983, SR 814.01 (EPA).
- (3) BGE 142 II 100 E 4 and confirmed in BGE 145 II 189 E 8.1.
- (4) Article 22 (2) of the EPA and article 31 (1) lit. a and b of the Noise Abatement Ordinance of 15 December 1986, SR 814.41 (NAO).
- (5) Article 31 (2) of the NAO.
- (6) Supreme Court Decision 1C_275/2020 of 6 December 2021 E 2.1.
- (7) Supreme Court Decision 1C_264/2021 of 24 March 2022 E 3.1.
- (8) Supreme Court Decisions 1C_91/2020 of 4 March 2021, E 5.2 and 1C_275/2020 of 6 December 2021 E 2.2 – 2.4.
- (9) Supreme Court Decision 1C_275/2020 of 6 December 2021, E 2.2.
- (10) Supreme Court Decision BGE 146 II 187, E 4.1.
- (11) Supreme Court Decisions 1C_106/2018 of 2 April 2019, E 4.7 and 1C_275/2020 of 6 December 2021 E. 2.2.
- (12) Supreme Court Decisions BGE 117 Ib 125, E 6d, p. 134 and 1C_91/2020 of 4 March 2021, E 5.2 and 1C_275/2020 of 6 December 2021 E 2.2.
- (13) Supreme Court Decision 1C_275/2020 of 6 December 2021, E 2.4.2.
- (14) Supreme Court Decision 1C_275/2020 of 6 December 2021, E 2.4.3 et seq.
- (15) Supreme Court Decision 1C_275/2020 of 6 December 2021, E 3.2.
- (16) Supreme Court Decisions 1C_275/2020 of 6 December 2021, E 2.7 and 1C_264/2021 of 24 March 2022 E 3.7.
- (17) Supreme Court Decision 1C_264/2021 of 24 March 2022 E 3.2 et seq.
- (18) See BGE 142 II 100 E 4 and BGE 146 II 187, E 4.1.
- (19) BGE 145 II 189 E 8.4.
- (20) Dispatch on the Amendment of the Environmental Protection Act (concerning noise, contaminated sites, incentive taxes, financing of education and training courses, information and documentation systems, and criminal law) dated 16 December 2022.