Hungary - Planning Systems

Introduction

The Republic of Hungary is situated in Central Europe and occupies an area of 93,030 km². In 2004 the population was 10,107,000 with a population density of about 110 per square km. The capital Budapest has about 1,760,000 residents. There are 3,156 local authorities in Hungary. Many of these (2,920) are small communities (“villages”) with less than 5,000 inhabitants. In addition, 19 counties have “self government” status with elected councils; 173 are designated cities; 20 large cities with “county rights”; and Budapest which is divided into 23 local government districts with special status. With its per capita GDP of US$16,300 Hungary produces about half of the four most wealthy countries in Europe, but belongs to the group of the 25 richest nations in the world.

Planning framework

1. Administrative structure

Hungary is a unitary state and a parliamentary republic.

2. Administrative competences for planning and planning legislation

Legal foundations of urban planning
In urban planning even the smallest municipalities (local government) have wide discretionary powers. Their planning decisions may be annulled only in cases of breaking the law (central state act or a government statute). Legal control of local plans is performed by the 19 County Administrative Offices, the control in specific professional fields is exercised by 27 Special Purpose State Agencies and the Regional Chief Architects acting on behalf of the Ministry. In cases of disputes the final authority is the Constitutional Court. Therefore, Hungarian urban planning is deeply embedded in codified law.

The new urban planning law (Act on the Formation and Protection of the Built Environment) was adopted by the Hungarian Parliament in 1997, after a seven year period of preparatory work. It was modelled on the German law (Baugesetzbuch). The Act was supplemented in the same year by a central government statute, the National Building Code (OTÉK). The Code is binding on all local planning decisions, but municipalities are permitted to render its maximum/minimum standards more “rigorous”. The 1997 Act introduced four planning tools, namely:

- Urban Development Concept
- Structure Plan (preparatory land use plan)
- Regulatory Plan (binding land use plan)
- Local Building Code.

The first two tools are adopted by the local authorities through a local government decision (e.g.
they are “only” binding on the local decision makers), the other two are adopted through a local
government statute (i.e. they are binding for all concerned – property owners and developers).

Planning decisions are enforced by the Building Authorities functioning as departments of local
government offices in cities and bigger villages. For some building affairs (i.e. heritage
buildings, heritage areas, Natura 2000 districts) other state agencies function as first level
building authorities and their full consent is needed for the issuing a building permit. As in the
case of planning legislation, none of these authorities and agencies has discretionary powers,
but operate in terms of the platform of law administered and enforced by them. The second
level building authority - the place for appeals against decisions – operates within the County
Administrative Offices.

The Hungarian urban planning system in the international context

The recent functioning and interrelationships of the four planning tools and of the building
authorities can be better understood by a short description of the operation of the former
planning system of Hungary. In 1937 a new Urban Planning Act introduced three planning tools:
(i.) urban development programme, (ii.) general land use plan, and (iii.) detailed land use plan.
These three instruments were revived in the 1960s because they fitted well to the special
development patterns in the state socialistic period. The general plan was handled as a loose
land use plan with zoning regulations referring to only private properties (single family house
and condominium districts etc.), while through amendments the detailed land use plans could
easily be adjusted to changes in state development decisions (large scale housing programmes,
redevelopment of inner cities, or of industrial districts, that were of state property).
After the political and economic transition of the country a special “orientation dilemma”
appeared among Hungarian planners and experts of the Ministry working on the new Act. The
question arose whether to continue working with the traditional system of Central-European
origin or to change over to an “Anglo-Saxon” (British) method of planning and building
administration. As shown by a simple explanatory model below this dilemma touched upon one
of the basic distinctive characteristics of planning: to what extent it serves public and/or private
interests and goals.

In most countries “official” planning is delivered by four distinctive instruments:
- comprehensive plan,
- zoning plan and ordinance,
- detailed plan and
- planning permission.

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<th>Table 1: Orientation of urban planning instruments</th>
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<td>larger scale plans</td>
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The “public or private character” – orientation – of planning of a given country is determined by
the relative strength of these tools in their planning system.

In Table 1 types of planning tools that refer to larger areas (total city, metropolitan region) are
situated on the left hand side, those that cover smaller areas are shown on the right hand side.
• Comprehensive plans can be best exemplified by the German Flächennutzungsplan” (“Preparatory Land-Use Plan”), the British “Local” or “Unitary Development” Plans
• Zoning plans and ordinances are similar to the American “zoning” plans
• Typical examples of detailed land use and building plans are the German “Bebaungsplan” (“Legally Binding Land-Use Plan”) and the Dutch “Bestimmingsplan”
• Planning Permission procedures constitute the central element of the British system, while in the USA the “Subdivision Review” and “Site Development Review” procedures fall under this category.

Zoning and planning permission is categorised as “private-oriented” because the use of these instruments involves a private initiative of change and/or development action, i.e. the private owner or developer may apply for changes in the regulations or for the realisation of a development project.

Changes in the other two tools are initiated by the public sector, which is why they are listed as “public-oriented”. There is a kind of hierarchy among some of these tools, but those are the “strong” elements of any planning system that directly influences granting of building permission. A special case is the British planning system in which planning permission is separate from building permission. It represents an organic part of the delivery of planning, and is a discretionary procedure in compliance with the guidelines and proposals included in (local or unitary) development plans.

In the early 1990s, when private development gained ground, law-makers started to be deeply influenced by two strong objectives:

- to strengthen the legal position of urban planning through the dominance of the local planning and building regulations adopted as a municipal statute – a “local law” – in order to effectively control unwanted developments of the emerging private sector
- to leave the initiative at local government level by focusing mainly on the rules of the planning procedures and minimising the scope of planning and building regulations which could be used as mandatory instruments in local plans.

In the belief that the “power of law” would prevail, and the hope of positive outcomes from the operation of the newly elected local governments, as well as a fear of unwanted private sector initiatives, the introduction of a procedure similar to the British planning permission was abandoned. The first version of the 1997 Act required that localities adopt a Local Building Code for their whole territory, including areas not yet planned for development. At the same time the Ministry ceased to issue guidelines assisting municipalities. It merely retained the role of a “final professional control” function through ministerial agents, the Regional Chief Architects.

In reality neither objective has been achieved. Although the initial idea was to introduce a flexible system with a really preparatory – non-binding and long-range – Structure Plan (similar to the German Flächennutzungsplan) urban planning started to function in Hungary like zoning in America. The new private landowners and developers who had been able to acquire land on a highly discounted price in the early 1990s were keen to secure their “development rights” by having their land zoned for building as early as possible.

According to the newly adopted plans in most large Hungarian cities, land zoned for building has almost been doubled because local authorities have been unable to stand up against development pressures emanating from both the new and old owners on the fringe of cities.
Despite the intention of the law-makers, modifications of the adopted building regulations remained relatively easy in the inner city. This goes back to a special parallelism in the new Hungarian planning system. Besides the extensive use of codified “zoning” the “old” detailed plan survived in the form of the Regulatory Plan that can be established for an area as small as a building block. While applications for changes in planning and building regulations are not legally permitted, amendments of regulatory plans became relatively easy. Initiatives for amendments come typically from private developers and investors. In most cases they cover the costs of the planning work done by private consultant planners (there are no “in-house” planners in Hungary) and offer some “planning gains” (building public roads, providing additional infrastructure improvements etc.) to the municipalities. In the event the elected local government adopts the plan together with its building regulations. On the one hand this type of detailed planning enhances the flexibility of planning on the other hand it can be regarded as legally unsound, because in this way a “local law” is established based partly on an agreement with a private developer (See “contract zoning” in the USA.)

As compared to the simple model presented earlier, the new Hungarian planning system is a real mixture of American and German planning tools. While some articles of the 1997 Act are simple translations of sections in the German Baugesetzbuch, Hungarian law-makers did not pay attention to the fact that in Germany no zoning exists: if an area is not covered by a Bebaungsplan (qualified legally binding land-use plan) the crucial criterion for the permissibility of a building project is that it should blend with the character of its immediate environment.

| Detailed development control mechanisms |

The regulatory content of Hungarian urban plans and ordinances
As described above, relatively few planning standards are fixed at national level. Table 2 lists the matters to be defined in the non-binding local Structure Plan and the binding Regulatory Plan for land designated for building. It is clear that law-makers wanted to strengthen the legal position of local planning by a direct matching of the land-use categories in the two types of plan. Municipalities are able to break up these categories into sub-categories and also to shape the state-determined rules “more rigorously” in their own plans and ordinances within a set of maximum or minimum standards.

Land use categories for non-building land are the following:

- transport, public utilities, telecommunication networks,
- open spaces, parks
- forests
• for protective purposes
• for commercial purposes
• for health-care, social and recreational purposes
• for education and research
• agriculture
• other uses.

In open spaces and parks building coverage shall not be higher than 2 %. In commercial forest areas, or areas for education and research, the building coverage shall not exceed 0.5%, in forest areas for health, social, and recreational purposes it doesn’t exceed 5 %, but only if the size of the building lot exceeds 10 hectares. In agricultural land these national standards are set in a more complicated way: in areas of vineyards, orchards and vegetable gardens, one dwelling is permitted to be built if the lot exceeds 3000 square metres, in areas of other agrarian use 6000 square metres. Non-residential farm buildings are allowed on smaller lots, but larger than 720 square metres.

It is also noteworthy that the 1997 Act introduced a special principle prescribing the use of identical building regulations in areas that are in the “same position” in order to avoid any partiality. This principle is called as “normative” among Hungarian planners. As already mentioned the number of regulatory elements able to be used in regulatory plans and in zoning regulations is very limited. As an example, regulatory elements permitted for use in residential areas are the following:

- minimum plot sizes,
- plot coverage index (%),
- maximum height of buildings,
- part of the plot landscaped (%),
- permitted non-residential uses,
- morphology of building (detached, semi-detached etc.),
- needed architectural regulations (i.e. roof shape),
- part of the plot outside which no building is permitted.

This clear-cut legal soundness facilitates equality but, on the other hand, renders more sophisticated planning in complicated cases rather difficult. “Law tends to dominate over planning and design” - a complaint by many architect-planners in Hungary.

Growing environmental complexity of urban planning in Hungary

While the permitted regulatory content of urban physical building plans in Hungary is rather limited, another important trend facilitates their complexity. Most state agencies, representing specific professional fields look at local physical plans as “omnipotent” tools for the assertion of their interests. That is why a great - and growing - number of so called “supporting studies” should be worked out as part of a local plan.

These include:

- the protection of local historic and architectural heritage (including archaeology),
- environmental protection and control
- landscape and nature protection (including Natura 2000 areas)
- generation and management of local traffic
• development of public utilities
• rain water management.

These studies should be part of the non-binding Structure Plan, thus enhancing the complexity, specifically the environmental foundations of local planning. However, the 27 State agencies find it rather problematic to formulate clear-cut and legally sound regulations in these fields in Regulatory plans and in local building codes. It is also noteworthy that no social or housing studies are prescribed by law as “supporting studies”. Social planning has never been strong in Hungary while environmentalists are gaining ground here as everywhere in the world.

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**Planning process**

1. **Planning system**

**Plan making**

The planning procedure and the main public actors in Hungary

In Hungary the planning process is initiated by a decision of the local elected Board of Representatives (Council). Based on this decision the local government enters into a contract with a professional planner. If the initiative comes from a private developer for the amendment of a Regulatory Plan, the municipality enters into another contract with the developer about the financing of the planning work and also about the selection of the planner. Recently, a new legal instrument the “municipal contract” was introduced, by a modification of the 1997 Act, in order to facilitate the inclusion in this contract of other more substantive elements of planning as well.

The next step is the notification of the 27 Special Purpose State Agencies and the Regional Chief Architect. Some of them are control agencies in technical matters (traffic, public utilities) others in environmental matters; in addition other organs of the state (army, police etc.) have to be contacted as well. These agencies should declare whether they intend to take part in the planning procedure or not.

In bigger cities the ongoing planning work is managed by the municipal chief architect, responsible to the Planning Committee and the Council as a public servant. Although in most cases their professional background is architecture the chief architect’s/planner’s role ends with the management of planning. Their function is strictly separated from that of the building authorities. They may operate local architectural and planning juries but their say in building permission procedures is only advisory. The Hungarian planning and building law has been unable to handle “architectural – quality – control”.

Besides the contacting of the 27 State Agencies only a short section of the 1997 Act regulates the involvement of the local stakeholders: the plan should be made public according to the “locally accustomed manner”.

Meanwhile the Ministry, in cases of cities of county status and of communities of some special importance, and the 8 Regional Chief Architects may organise planning juries of a consultative character. The recommendations of these juries are, similar to those of the municipal juries, only advisory.
Before the finalisation of the plan the full documentation should be sent to those of the 27 State Agencies that had formerly declared their will to participate. In a one month period they need to issue an “expert opinion”. Their objections should be considered by the municipalities only in cases when a planning decision offends a law.

Before the adoption of the plan the Mayor of the municipality should summarise the “answers” to the expert opinions issued by the State Agencies and send it to the Regional Chief Architect who, based upon a thorough knowledge of the plan and the opinions, declares whether the plan is “adoptable” or not. Even if he/she has objections the local board of representatives may adopt the plan.

The final legal control of the plan is performed by the County Administrative Office acting on behalf of the central state. At these offices everybody may contest the plan, but the plan – or a part of it – may be nullified only if it offends law. The final say in disputes between platforms of local and central state level democracies is that of the Constitutional Court.
The special planning system of Budapest

In terms of the 1991 Local Government Act the capital city has 23 district authorities, and a 24th, the Municipal Government of Budapest, which is the authority for the entire city. According to this Act district governments are not subordinated to the Municipal Government. Responsibilities and authorities are divided between the Municipal Government and the district governments. For instance, building and maintenance of collector roads that carry public transportation fall under the responsibility of the Municipal Government, other roads fall under the responsibility of the district governments. The plan for Budapest was adopted by the Decision No 1125/2005 (25th of May) of the General Assembly of the Municipal Government of Budapest.

In Budapest “planning and zoning power” is also divided between the city and its districts. The 1997 Act introduced a non-binding plan, the Framework Structure Plan, and a binding plan, the Framework Regulatory Plan, together with a Framework Planning and Building Code, both under the authority of the Municipal Government of Budapest. The same Act also authorised the districts to work out their own District Regulatory Plans and District Planning and Building Codes. Contrary to the equal powers of the city and its districts in general policy matters, urban plans of the districts are subordinated to the city-wide plan. In the Framework Regulatory Plan of Budapest there are binding components that affect the development of the whole city, or more than a single district, and also those that affect legal responsibilities of the Municipal Government. These mandatory elements of the Framework Regulatory Plan have to be applied in the regulatory plans and building codes of the districts.

The Framework Structure Plan of Budapest was first adopted in 1996 (latest revision was in 2005), since then it took two and a half years until an agreement could be reached between the city and its districts about the actual content of the city-wide binding plan and building code. Finally, the so-called framework zoning districts were established, providing “space” for the districts to formulate their own rules according to the specific local requirements, but within the limits set by the city-wide binding plan. This two-tier planning system substantially complicates planning and building process in Budapest, especially in cases when an amendment of a binding plan affects major planning and zoning decisions. If an amendment of this kind is initiated by a private developer, as is usually the case, the consent of both the district and the city should be obtained. An essential role is played in these “bargaining” processes by the chief architect/planner of the city and of the districts. The municipal chief architect’s work has been rendered even more difficult by the fact that the building authorities are functioning in the districts and that the second level building authority is operating in the County Administrative Office as well as the Hungarian capital.

“Special legal institutions” as weak incentives for the realisation of urban plans

A number of tools were introduced by the 1997 Act in order to facilitate the implementation of urban plans. If a municipality intends to utilise a legal instrument it should be included in the Regulatory Plans and in the Local Building Code.

These include:

- legal requirements of building (permissibility of building)
- development freezes (building ban and other types of restriction)
- land subdivision (subdivision permit)
- pre-emption rights (those of the municipality)
- designation land for local roads
• contribution to the expenses of public infrastructure
• enforcement of obligations set by binding plans and regulations
• rules for compensation.

Permissibility of building. As a general rule building activities shall take place on designated building sites. A building permit can only be issued if the lot in question conforms to the standards set in the local ordinance and is accessible (by vehicle) through a public or private road. If an area is not covered by a binding plan the building permit has to be issued when the proposed building fits into the surrounding urban environment.

Development freezes, building and land subdivision ban. The concept of development freeze intends to safeguard the planning process against unwanted developments, presumably in conflict with the proposed plan. Municipalities may opt to add a development freeze by issuing a local government statute for the area covered by a proposed Regulatory Plan and Local Building Code. The freeze shall be terminated three years after its adoption. In contrast to development freezes, a building/land subdivision ban is performed as an administrative action by the building authority through an administrative decision issued individually for those sites actually affected by the ban. Affected parties may lodge an appeal against the decision. In cases of development freezes this is not possible.

Compensation
Rules of compensation. The Hungarian law-makers adopted almost all the German planning law regulations relating to compensation. Accordingly, material losses resulting from the limitation of development rights by urban planning measures are compensated in the following cases:

• Change of the previous, permitted use of a property in a way that is to the disadvantage of the owner. Within three years of the amendment of the plan/code, the owner is entitled to compensation amounting to the extent of the fall in value of the property.
• The property is designated for a public use. The owner may require the purchase of the property by the beneficiary of the public interest or by the local government.
• The property falls under building/land subdivision ban for a period exceeding three years. Annual compensation shall be paid proportionate to the material loss, but it cannot exceed 5 % of the current value of the property.
• Compensation can be provided either in money or in land.

Land subdivision
It is a pure administrative procedure that ensures that land is split into parcels, the characteristics of which (area, width, shape etc.) are in compliance with the Local Building Code. The task is performed by the Building Authority. As in regulatory plans neither the planned property lines, nor the maximum plot-size may be in contradiction of building and subdivision regulations.

Pre-emption rights of the municipalities
The 1997 Act has re-established the right of the municipalities to a priority over any other pre-emption rights, excluding properties with listed buildings. A municipality is entitled to exercise a general pre-emption right in respect of the purchase of those properties that are “required to achieve the goals and targets” set by the Regulatory Plan and the Local Building Code.

Designation of land for local roads
For many years it has been extremely cumbersome to open new local streets even if this has been in the interest of the majority of the affected owners, i.e. new building sites created by splitting long plots into two or three parts. The revival of a rule from the 1937 building act, a compulsory dedication of land amounting to one fifth of the area of the plot, was rejected by the Parliament and a new, legally unclear, provision has been adopted.

Although the implementation of public roads and public utilities is the responsibility of the municipal government, the 1997 Act authorises municipalities to charge the expenses of roads and public utilities to the owners of the properties concerned.

**Expropriation**

While issues of planning blight caused by zoning amendments is sufficiently regulated by the 1997 Act, it doesn’t include any specific rules about expropriation. The Act on Expropriation does no more than stress that expropriation is lawful in urban planning (regulatory) cases. Decisions of local governments on expropriation may be challenged in court. Expropriation is used almost exclusively in cases of road and motorway building in Hungary.

Until recently, few municipalities began to consider the introduction of any of these tools. As discussed earlier, most municipalities tend to rely on “positive agreements” with private developers. It is much easier for the local politicians to achieve “planning gain” through a “bargaining process” than to enforce the inclusion of any of the above legal institutions into a Regulatory Plan and Local Building Code initiated and financed by a private developer or investor. Another reason why Hungarian municipalities tend to refrain from the use of these incentive measures is that most of them are unable to follow a really pro-active development policy. As a result of the privatisation process in the 1990s they are inadequately provided with public land and public properties. Very few of them follow an efficient land policy and most are short of money for initiating larger infrastructural and building projects by themselves. Finally, even if they might be able to do so, they fear of not gaining back at least a part of the “betterment” resulting from their development activity because the Hungarian planning law does not include any legal measures similar to the French ZACs or the German Sanierungssatzung that might work against speculation.

2. Development control

**Enforcement of planning decisions by the Building Authorities**

Between 1990 and 1997 Building Authorities operated in cities and even in small villages. In order to ensure adequate professional staffing, the 1997 Act ordained their concentration in cities leaving the rights of villages to set up their own authorities provided that their staffs had adequate qualifications. Administration of a broad set of construction activities (roads, railroads, airports, telecommunication, electric power etc.) is performed by other agencies, some of which also act as Special-Purpose State Agencies in matters under the power of the building authorities. They may give or deny consent in matters within their limited legal responsibilities. A Building Authority may also act as a Special-Purpose State Agency in building matters outside its powers.

In Hungary building authorities may issue the following types of permissions: preliminary building permission, building permission, permission for demolition, occupation permission, “permission to stand” and use-amendment permission. Land-subdivision permission is also issued by the Building Authority. As a general rule permission is required for new building, extension or removal (demolition) of existing structures and also if a structure under
consideration is intended to be renewed, reconstructed, altered, modernised, or the number of the distinct “units”, i.e. the number of dwellings, or their use is intended to be changed.

The task of a preliminary building permission is “to clarify in advance requirements of ... architectural character, archaeology, urban heritage, cityscape, environmental protection and natural conservation, eliminating dangers to life ...” A Regulatory Plan and a Local Building Code may also render application for a preliminary permit binding in pre-determined cases. The preliminary permission is binding for both the Building Authority and the involved Special-Purpose State Agencies within one year, but it will be invalidated if no application for a “final” building permission takes place within a year.

The content of an application document for building permission is by and large the same as an application for a preliminary permit. These are: plans, declarations of consent of public utility companies/agencies, a declaration of the architect that the plan conforms to the relevant regulations and standards, and that he/she is a licensed architect, a statement of an architectural and planning jury if needed by law, an environmental permit if the project is subject to an Environmental Impact Study (EIS). An additional document should be attached from the Land Utilisation Office if agrarian land is planned to be used for building. The builder must also prove that he/she is entitled to build, i.e. is the owner of the property. A building permit can be issued on conditions as well. The decision should also be disclosed to the immediate neighbours of the site. The latter can lodge an appeal against the decision.

The occupation permit is issued to verify that a permitted structure has been built according to the approved plan and can be used properly and safely. If the safe use of the structure is not guaranteed or the construction activities have caused dangerous adverse affects to an adjoining property the Building Authority shall withdraw the occupation permit. The Building Authority makes its decision after carrying out an on-site inspection and may issue an enforcement order together with a warning of a prospective penalty if the required corrections fail to be carried out. At the end of the procedure the builder is obliged to present an “as-built” plan to the Land Registry Office.

In the past decades construction without a building permit, or not in compliance with the approved plan, (i.e. illegal building), has been relatively frequent. Consequently a complicated procedure of “permission to stand” was introduced in order to “legalise” completed, or semi-completed, structures. The 1997 Act re-established the obligation for payment of fines on illegal building and determined also its minimum at an amount of 20 per cent of the value of the structure or part of structure completed. The maximum of fine may amount as high as 100 per cent of value.

Building Authorities are authorised to issue enforcement orders for individual properties if the above mentioned obligations fail to be met. They are also authorised to make decisions in individual cases, or may order a total or partial rebuilding (if demolition of structures is not possible), termination of use, corrections of defects, maintenance and renewal in cases when it is found that recent conditions have serious adverse affects on the stability of the structure or the adjoining structure, jeopardise life, health, public and material security.