

Hradec Králové: Protecting Na Plachtě nature monument from development

A case study on the importance of public participation in environmental protection

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Abstract

Na Plachtě is located at the south-eastern edge of Hradec Králové where over the past 20 years conflicts of interests between environmentalists and local developers have arisen concerning the development and commercial use of the site. This case study is concerned with the importance of public participation in environmental issues and describes the specific opportunities for influencing environmental decision-making. The author refers to specific events which eventually resulted in the declaration of the Na Plachtě site as a “natural monument”; she also investigates opportunities for changing the landscape plan which would strengthen protection against any construction on the site. Other possibilities for influencing decision-making about issues of concern to the general public, and which have an impact on the work of regional representatives are also discussed.

Key words

Nature protection, public participation, local actors, landscape planning.

Abstrakt

Lokalita Na Plachtě je ekosystém na okraji krajského města Hradec Králové, kde v průběhu posledních 20 let vznikl konflikt zájmů mezi environmentalisty a místními developery ohledně rozvoje a komerčního využití místa. Tato případová studie je zaměřena na otázku významu účasti veřejnosti při ochraně životního prostředí a na popis konkrétních možností ovlivnění kauzy dotýkající se environmentálních otázek. Studie se věnuje popisu jednotlivých událostí, které vedly až k vyhlášení lokality Na Plachtě za přírodní památku, a podrobně zkoumá především možnost změny územního plánu, která by podstatně zvýšila ochranu dané lokality před zastavěním. Věnuje se však i dalším způsobům, jak může veřejnost zasáhnout do rozhodování o svém nejbližším okolí a jak může ovlivnit činnost veřejné správy.

Klíčová slova

Ochrana přírody; účast veřejnosti; místní aktéři; krajinné plánování

Introduction

The Na Plachtě site at the south-eastern edge of Hradec Králové is a site significant in many aspects. It comprises sandbanks, fen meadows and moorland, groves and bodies of water. The site was used as a military training ground from 1897, it was a military airfield for several years, and it was thanks to the constant disruption of its sandy surface that this scientifically valuable site has provided a haven for protected animal species (Mikát, Maršík, 1999). The site consists of a mosaic of variously humid habitats from ponds to various stages of wetland to dry moorland. Besides the great crested newt (*Triturus cristatus*) and the large white-faced darter dragonfly (*Leucorrhinia pectoralis*), about 900 species of beetles have been identified on the site, such as the *Chlaenius spoliatus* ground beetle (the only site in the region), wingless terricolous snout beetle species (*Coniocleonus nebulosus* and *Coniocleonus turbatus*), the psammophilous *Leiodes rubiginosa*, and the heather-dwelling ground beetle *Bradycellus ruficollis*. In total, there are 750 species of butterflies, 220 species of hymenopterans, 49 species of dragonflies, 14 species of amphibians, tadpole shrimps, and the *Branchipus schaefferi*.¹

The site consists of three sites named Na Plachtě 1, 2 and 3. The first two sites, covering over 39 hectares, were declared nature monuments back in 1998, and both are protected as Sites of Community Importance.² The third part, covering 17 ha, which is also home to numerous protected animal (Matějčíček, Boháč, 2010) and plant (Zámečník, Čížek, 2010) species, was only declared a specially protected site by an Ordinance of the Hradec Králové Regional Authority following many complicated meetings in June 2012; it has not become part of Natura 2000.³ Despite the significant support of local inhabitants, the protection of the site has not been adequate, particularly because the Council did not support an amendment to the land-use plan some time ago, retaining some parts in the 'developable area' category. The question is, therefore, whether the new land-use plan amendment can be approved in order to provide Na Plachtě with quality protection.

Conflict of interests at Na Plachtě 3

The Na Plachtě site has been considered by developers several times; in the 1980s, for example, a large housing estate development was considered and even sewerage construction works began. Several companies have shown an interest in developing the site

¹ Seznam lokalit: CZ0523010 - Na Plachtě. AGENTURA OCHRANY PŘÍRODY A KRAJINY ČR. *Evropsky významné lokality v České republice* [online]. [cited 2014-02-10]. Available at: http://www.nature.cz/natura2000-design3/web_lokality.php?cast=1805&akce=karta&id=1000103980

² Na Plachtě 1 nature monument was declared by binding regulation of Hradec Králové Municipality no. 9/1998. A Site of Community Importance was declared in the extent of Na Plachtě 1 nature monument by Government Regulation 371/2009 Coll., coded CZ0523010. Na Plachtě2 nature monument was declared by Ministry of the Environment Decree no. 81/1998 Coll. in March 1998. A Site of Community Importance was declared in the extent of Na Plachtě2 nature monument by Government Regulation 371/2009 Coll., also coded CZ0523010. The code is shared by both the nature monuments registered as "Na Plachtě" Sites of Community Importance. See Na Plachtě 3 site vs. land-use plan amendment preparation. STATUTÁRNÍ MĚSTO HRADEC KRÁLOVÉ. *Hradec Králové: official website of the statutory city* [online]. [cited 2014-02-10]. Available at: <http://www.hradeckralove.org/hradec-kralove/lokalita-na-plachte-3-vs-porizeni-zmeny-uzemniho-planu>

³ Nařízení Královéhradeckého kraje č. 8/2012, o zřízení přírodní památky Na Plachtě 3. *Věstník pr. př. Královéhradeckého kraje*, ročník 2013.

since the Velvet Revolution. Since the Na Plachtě 1 and 2 sites were protected from the late 1990s, the developers paid attention to the remaining area – Na Plachtě 3. The site covers an area of 17.3 hectares and is closely attached to existing urban development. Rare habitats and species are found on this site as well.

The land within the site (Nový Hradec Králové cadastral area, to be exact), owned by the Czech Republic, was managed by the Ministry of Defence. It transferred some of the plots worth CZK 42.2 million to the Petrof company in 2007, which sold it to IPB Real, a.s. (of the Orco Property Group) for CZK 44.4 million two days later.⁴ Some time later, in 2009, IPB Real, a.s., succeeded in applying to the municipality to narrow the scope of the first call for plot no. 942/151⁵ to the benefit of the Statutory City of Hradec Králové for the public-interest construction project of road I/21 through the “Na Plachtě” development area.⁶

IPB Real, a. s., planned to build a residential neighbourhood with 200 flats in the immediate vicinity of the already existing nature monument. Other owners of the land concerned were also planning construction: Kelcom International, s.r.o. was going to set up warehouses and office buildings, and Turck IMO, s.r.o. was also planning to build. In the end, no construction took place. Based on an out-of-court arrangement, IPB Real had to return plots nos. 942/151 and 942/228 in Nový Hradec Králové cadastral area to the Czech Republic⁷ (the Ministry of Defence bought them back for CZK 44.5 million⁸). These plots constitute about 70% of the area of the Na Plachtě 3 nature monument. The reason for the out-of-court arrangement was the ineffectiveness of the agreement, for which the consent of the Ministry of the Environment was not obtained.⁹

In addition to the expected construction of apartments, a warehouse and an office building, the site conditions were also adversely affected by the illicit activity of STAKO, which backfilled part of the buffer zone of the Na Plachtě nature monument with hazardous waste in 2009. It destroyed the winter habitat of certain protected animal species such as the common spade foot, common European adder, smooth newt, slow worm, and the sand

⁴ Originally, the Ministry of Defence transferred the plots in the area to more than 15 different owners.

⁵ Along with plot no. 942/7, this plot is part of the Na Plachtě site. Nowadays, both the plots are included in the cadastre as sports and recreation grounds protected as nature reserves or monuments (in addition, plot no. 942/7 is registered as a protected heritage site). The Nature and Landscape Protection Agency has the right to manage plot no. 942/7.

⁶ Usnesení Zastupitelstva města Hradec Králové č. ZM/2009/1611. Available at: http://usneseni.mmhk.cz/rt_ext/part_ressug/search/open_ressug.php?app=zm&n_resolution=1611&year=2009

⁷ See the Cadastre. *Nahlížení do katastru nemovitostí* [online]. 2004 [cit. 2014-02-10]. Available at: <http://nahlizeniidokn.cuzk.cz/>

⁸ Prodej státní půdy firmě Orco neplatí. ČESKÁ TELEVIZE. [online]. 2011 [cited 2014-02-10]. Available at: <http://www.ceskatelevize.cz/ct24/regiony/155860-prodej-statni-pudy-firme-orco-neplati/>

⁹ In detail, see KOPECKÝ, Tomáš and JIŘÍ PILNÁČEK. Přírodní památka Na Plachtě a její boj s větrnými mlýny: Obyvatelé města Hradec Králové se zatím marně snaží zachránit významnou lokalitu, přírodní památku Na Plachtě. *Příroda.cz: příroda, ekologie, život...* [online]. [cited 2014-02-10]. Available at: <http://www.priroda.cz/clanky.php?detail=1138>

lizard. The Regional Authority therefore applied to the police to investigate the case.¹⁰ The Czech Environmental Inspectorate imposed a fine of CZK 2 million on STAKO for this activity.¹¹

Na Plachtě 3 has not been the only target of investors. The Plachta-north residential neighbourhood was built close to the nature monument some time ago. In the autumn of 2014, the investor announced the start of construction of another compound – Plachta-centre – for the spring of 2015. According to available information, the development project is to consist of several stages and result in up to 440 new apartments. About 1,000 new people would settle in the area¹². During the environmental impact assessment (EIA) process for the project, the Czech Union for Nature Conservation demanded that a thorough assessment of the impact of the entire compound (another residential area – Plachta-south – is in the pipeline) on the nearby nature monuments and sites of Community importance be carried out. However, this was refused by the Hradec Králové Regional Authority. No objection was made by the nature protection authority either¹³.

Local citizens' activities

In parallel with these events, local civic associations advocated for the declaration of Na Plachtě 3 as a nature monument and its protection from development.¹⁴ These associations targeted their efforts primarily at the regional level as well as the Municipal Council of Hradec Králové. The primary objective of their work was the declaration of the site as a nature monument and then a site of Community importance. The civic associations were aware of the necessity of a consistent information campaign that would win the support of broad numbers of citizens. That is why the petition for declaration of the Na Plachtě 3 nature monument in Hradec Králové was initiated; it was eventually signed by almost 14,000 people.¹⁵

¹⁰ Kraj podal trestní oznámení kvůli skládce Na Plachtě. KRÁLOVÉHRADECKÝ KRAJ. [online]. 2009 [cited 2014-02-10]. Available at: <http://www.kr-kralovehradecky.cz/cz/kraj-volene-organy/tiskove-centrum/aktuality/kraj-podal-trestni-oznameni-kvuli-skladce-na-plachte-25987/>

¹¹ Inspekce ohodnotila tuny odpadu dvěma miliony. HRADECKÝ DENÍK. [online]. 2010 [cited 2014-02-10]. Available at: http://hradecky.denik.cz/zpravy_region/plachta_inspekce_zivotniho_prostredi_odpad_skladka.html?reakce=604083.

¹² Hradec Králové City: Na Plachtě vyrosté nová čtvrť. Projekt po letech klidu ožívá. *Hradec Králové City* [online]. 2014 [cit. 2014-10-22]. Available at: <http://www.hkcity.cz/2014/10/21/na-plachte-vyrose-nova-ctvrt-projekt-po-letech-klidu-oziva/>

¹³ See the conclusion of the inquiry proceeding on "Plachta-centre residential compound, Hradec Králové" of 19 October 2009, available at the *Informační systém EIA: Záměry na území ČR. CENIA, česká informační agentura životního prostředí*. [online]. 2009 [cit. 2014-10-22]. Available at: http://portal.cenia.cz/eiasea/detail/EIA_HKK509

¹⁴ ČESKÝ SVAZ OCHRÁNCŮ PŘÍRODY JARO JAROMĚŘ. *Na Plachtě: Stránky věnované ochraně přírodní památky Na Plachtě* [online]. [cited 2014-02-10]. Available at: <http://www.naplachte.cz/>

¹⁵ Zpěvák Bárta předal hejtmanovi petici za Plachtu. KRÁLOVÉHRADECKÝ KRAJ. *Královéhradecký kraj* [online]. [cited 2014-02-10]. Available at: <http://www.kr-kralovehradecky.cz/cz/kraj-volene-organy/tiskove-centrum/aktuality/zpevak-barta-predal-hejtmanovi-petici-za-plachtu-31693/>

The Na Plachtě 3 nature monument was declared in June 2012 as a result of this long-term civic activity¹⁶. Councillors of the Hradec Králové Region decided on its declaration in June 2012. According to information available on the Regional Authority's website, this crowned a process that had taken more than three years. During that period, the Regional Authority had purportedly collected and discussed all the information and comments required for the declaration. Yet, in January 2012, the Authority had been convinced that it could not declare the nature monument since a larger part of the land belonged to the State, with the Ministry of Defence possessing the right to manage it. Later on, however, the Regional Authority obtained the legal opinion of the Government Legislation Council, which confirmed that they are indeed plots significant for national defence but outside military training areas. Therefore, the Regional Authority's authority to declare a nature monument was recognised¹⁷.

However, this was not yet the successful conclusion of the campaign, because not even the declaration of a nature monument can guarantee that no construction will take place, although this status results in significant complications for developers. Act no. 114/1992 Coll. on Nature Conservation and Landscape Protection (the NCLPA) deals with nature monuments.¹⁸ Pursuant to the Act, any violation of nature monuments is prohibited as is their economic exploitation leading to damage thereto.¹⁹ However, exemptions from this ban can be granted if, and only if, another public interest greatly outweighs the nature protection interest, or if such action is in the interest of nature protection, and/or if the activity permitted will not significantly affect the conservation of the object of protection in the specially protected area (however, the latter two reasons are out of the question if a permanent residential zone is considered)²⁰. Housing construction does not even conform to the first exemption condition. The reason is the non-existence of the outweighing public interest, as affirmed by the Supreme Administrative Court, according to which a public interest cannot be substituted with a private interest. Specifically, even in cases where there might be an urgent public interest in housing construction, it has to be proven that it cannot be satisfied in another way that would implement the housing construction plan required while minimising any interference with legitimate protection of specially protected animal species.²¹

¹⁶ The specially protected site, Na Plachtě 3 Nature Monument, was declared by Hradec Králové Regional Authority Ordinance no. 8/2012 upon declaration of Na Plachtě 3 Nature Monument, dated 4 June 2012.

¹⁷ Královéhradecký kraj. *Kraj vyhlásil území Na Plachtě přírodní památkou* [online]. 2012 [cit. 2014-10-21]. Available at: <http://www.kr-kralovehradecky.cz/cz/kraj-volene-organy/tiskove-centrum/aktuality/kraj-vyhlasil-uzemi-na-plachte-prirodni-pamatkou-54009/>

¹⁸ So-called species protection, concerning protection of specially protected animals and plants, is designed similarly.

¹⁹ Additional protection requirements are specified by the Hradec Králové Regional Authority Ordinance, which in Art. 2, item a) specifies that structures and facilities can be located and permitted and landscaping can be done in the nature monument territory only with prior approval of a nature protection authority. Moreover, a buffer zone of 3.6 ha has been delineated for the nature monument.

²⁰ Analogously, see Hradec Králové Regional Authority Ordinance no. 8/2012, which in Art. 2 (Detailed protection requirements), item (b) specifies that: In a nature monument, installation and approval of structures and equipment, modifications to structures and landscaping is only possible with prior consent of the nature protection authority. Of course the nature protection authority has to respect requirements made in the law.

²¹ Supreme Administrative Court Judgment of 13 May 2013, file no. 6 As 65/2012.

Land-use plan and territorial protection

A land-use plan is the crucial document for the territorial development of any municipality. The declared purpose of land-use planning is to support the natural development of an area and to try to hinder it as little as possible, specifying criteria for construction and economic development of the area, while such criteria may be restrictive but not only such – they also have to be motivating and aim at finding new solutions²². Land-use planning is defined by Act no. 183/2006 Coll., the Building Act (hereinafter, the Building Act). It distinguishes among several land-use planning tools²³; the land-use plan is of importance for this case study.

The local authority decides on the acquisition of a land-use plan or an amendment thereto. The whole process is divided into several stages, the first of which is the acquisition of an assignment (the acquisition of the assignment and its approval – elaboration of a draft land-use plan – is entrusted to local authorities as the acquirers of land-use plans); this is followed by the land-use plan elaboration (and possibly the assessment of its impacts on sustainable territorial development), and following a public discussion, the draft is approved by the local authority and declared as a so-called general-aspect provision.

The land-use plan acquisition process should enable the broadest possible involvement of the public of all the land-use planning tools, which is self-evident given its nature and purpose. It is a document that has a very significant effect on the territorial arrangement of the municipality, and decides about its further development, not only territorial but also economic, and predefines the citizens' quality of life. The acquirer has to publish the draft land-use plan assignment and, for a period of 30 days following the day of posting the notice of the assignment discussion on the official bulletin board (within 15 days of the delivery of the public ordinance), anyone can make written comments to the acquirer.

Based on the approved assignment, the acquirer has to have a draft land-use plan and an assessment of its impacts on the sustainable development of the area (if any)

²² Plos, Jiří. *Nový stavební zákon s komentářem pro praxi*. 1st edition. Praha: Grada, 2007, p. 31. (hereinafter, "Plos 2007 op. cit.")

²³

- a) land-use planning resources
 - a. territorial analytical resources
 - b. territorial studies
- b) TRB (territorial development blueprint)
- c) land-use planning documentation
 - a. TRP (territorial development principles)
 - b. land-use plans
 - c. regulatory plans
- d) definition of built-up areas
- e) territorial provisions
 - a. halt of construction
 - b. area redevelopment
- f) decision-making in the territory

elaborated. After that, the acquirer is required to deliver the draft land-use plan and the assessment of its impacts on the sustainable development of the area (if any) by way of a public ordinance. Within 30 days of its delivery, anyone can make written comments to the acquirer. Comments made later are disregarded.

After that, a "final" version of the draft land-use plan is made. A public discussion is held concerning this modified and assessed draft land-use plan. The public discussion of the draft and the assessment is held no sooner than 15 days after the delivery. Objections to the draft land-use plan may only be made by owners of land and structures affected by the draft design, legitimate investors and a representative of the public. Anyone can make comments, but again the concentration principle applies: everything has to be done within seven days after the public discussion. As mentioned above, members of the public express themselves during the land-use planning process mostly by means of written objections and comments, which the acquirer of the land-use planning document is required to assess; a decision is issued concerning the objections, which has to contain a justification. The institute of the representative of the public is specific: a group of the citizens may authorise such a representative²⁴. The representative of the public may make an objection to the draft land-use plan. The type of the objection is identical to that applicable by affected owners. The authority has to decide about such an objection as well, and an administrative suit may be filed against such a decision.

The Na Plachtě site in the land-use plan

The Hradec Králové Municipal Land-Use Plan became the stumbling block for the Na Plachtě 3 site. Its amendment was considered crucial as it was supposed to ensure the impossibility of construction on the plots in question. At present, the valid plan is the Hradec Králové Statutory City Land-Use Plan of 2000, according to which developable areas for housing are delineated in Na Plachtě as well. It also includes delineation of developable areas for public amenities and convertible areas with resulting public amenity functions.²⁵ Simultaneously with declaring Na Plachtě 3 a nature monument, the debate on the land-use plan amendment was reopened²⁶; it would convert the concerned land plots into non-developable land, thereby achieving the necessary protection from construction activity.

²⁴ A representative of the public has to be authorised by at least one tenth of the population of a municipality with less than 2000 inhabitants or at least 200 citizens of the municipality who are filing a factually identical comment on the draft, or concept, of a land-use planning document. The authorisation of a representative of the public is proven with a list of citizens of the municipality or region who are making the factually identical comment (i.e., the comment need not be absolutely identical in its content and the citizens need not file it simultaneously, but it has to concern the same problem), and a signature sheet specifying the name and surname, address of permanent residence or residence, or residence abroad, and signature of each of the people, along with a statement that they authorise the representative of the public in question to file the objection based on the factually identical comment and to discuss the objection pursuant to the Act, and a declaration of the representative of the public. The declaration shall include the name and surname of the representative of the public, their address of permanent residence or residence, and signature proving that they accept the authorisation.

²⁵ Územní plán města Hradec Králové. STATUTÁRNÍ MĚSTO HRADEC KRÁLOVÉ. *Hradec Králové: official website of the statutory city* [online]. [cited 2014-02-10]. Available at: <http://www.hradeckralove.org/urad/uzemni-plan>

²⁶ Land-use planning is defined by Act no. 183/2006 Coll. on Land-Use Planning and the Building Code, hereinafter the "Building Act".

Such a step would be more than logical given the significant restrictions arising from the declaration of a specially protected site. However, the land-use plan amendment has not been approved so far, its preparation has not yet started, although it has been discussed since 2010.

The latest proposal for the amendment, presented by the *Změny pro Hradec* association, was discussed formally under ref. no. 221, and the Council of Hradec Králové voted on it on 26 March 2013: it did not endorse the elaboration of the amendment. The Deputy Mayor for Urban Development justified this course of events with the necessity to protect private ownership of properties and ensure compliance of the solution with superordinate, regional land-use planning documentation. According to the Deputy Mayor, all amendments to the land-use plan would be put on hold until these issues are resolved, so it would be illogical to approve the elaboration of amendment no. 221. However, this statement is largely cast into doubt by the fact that the same Council session approved two other amendments to the land-use plan.²⁷ In addition, argumentation emphasising protection of private ownership over nature and landscape protection cannot be accepted. Likewise, the statement that the issue of compensation for territorial changes cannot be resolved appropriately at the moment, related to the necessity to wait for longer-term court decision practice in these issues, is unacceptable, because there is no support for such steps in legal regulations.²⁸

Therefore, the Deputy Mayor's statements have to be viewed critically because the land-use planning process²⁹ naturally may involve, and does involve restrictions to proprietary rights,³⁰ as documented by numerous judicial decisions, particularly those by the Supreme Administrative Court. Several years ago, the Court came to terms with what degree of interference with the proprietary rights is permissible in land-use planning and what is not and whether owners should be compensated for restrictions of their proprietary rights as a result of, e.g., a change to the functional uses of a land plot in the course of spatial planning or the issuance of a prohibition of construction and restriction to the possibilities of exploiting the land plots for business or construction. It can be summarised thus: that the proprietary right is naturally an absolute right but not irrestrictible providing that there is a public interest that requires its restriction (Art. 11, Para 4 of the Charter of Fundamental Rights and Freedoms) and that the intervention is based on law, to a necessary extent and that the intervention follows a legitimate goal. The possibility of restricting proprietary rights in land-use planning has also been detailed by the Constitutional Court, which has ruled that "*it follows from the nature of land-use planning that owners of properties affected by the planning are obliged to bear – to a just degree – certain restrictions. The pur-*

²⁷ Hradec Králové land-use plan amendments nos. 297 and 230.

²⁸ See the statement: "Every plot owner has the legal right to go to the court for a compensation for damage incurred. The judicial practice has not verified this fact in the context of the new Building Act so far." See HK land-use plan amendment no. 221 - Plachta (15 April 2013). STATUTÁRNÍ MĚSTO HRADEC KRÁLOVÉ. *Hradec Králové: official website of the statutory city* [online]. [cited 2014-02-10]. Available at: <http://www.hradeckralove.org/hradec-kralove/zmena-upmhk-c-221-plachta-15-4-2013>

²⁹ More on issues related to land-use planning: PRŮCHOVÁ, Ivana. *Stavební zákon a ochrana životního prostředí*. 1st ed. Brno: Masarykova univerzita, 2011, 487 pp. Spisy Právnické fakulty Masarykovy univerzity v Brně, vol. 396. ISBN 978-802-1056-671.

³⁰ In detail, see, e.g. KOCOUREK, Tomáš. *Omezení vlastnického práva k pozemkům ve prospěch ochrany životního prostředí*. 1st ed. Praha: Leges, 2012, 278 pp. Praktik. ISBN 978-808-7576-106; or DURDÍK, Petr. *Vlastnická práva a územní plánování. Moderní obec* [online] 2013, Vol. 6 [cited 2014-02-10]. Available at: <http://moderniobec.ihned.cz/c1-60010140-vlastnicka-prava-a-uzemni-planovani>

*pose of land-use planning is to balance the interests of owners of the affected land taking into account the public interest, which is, in the broadest sense of the word, an interest in harmonious land use. Such harmony can attain countless forms, and the choice of a concrete form of use of a certain area will always be the result of the political procedure of approving the land-use plan.*³¹

Land-use plans always have to respect certain rules and principles if they are to be in compliance with legal regulations. An intervention caused by a land-use plan has to conform to the proportionality condition³²; in particular, it is necessary for public administration authorities to first carefully consider whether the adoption of the land-use plan will lead to the achievement of an objective, and whether the objective may be better achieved using a different legislative vehicle (subsidiarity). It can therefore be summed up that restriction of proprietary rights in land-use planning is possible as long as it follows constitutionally legitimate reasons resting on legal objectives and as long as the actions are taken to the necessary degree only and in the most considerate of measures reasonably leading to the target in mind, in a non-discriminatory manner and ruling out arbitrariness.³³ If the criterion of minimising the intervention and the subsidiarity requirements are complied with, then it is possible that land-use planning results in a restriction³⁴ of "an owner or another bearer of rights to land plots or structures in the area regulated by the plan, providing that they do not exceed a just degree; such restrictions do not require the consent of the affected owner, and the owner is obliged to bear them without compensation."³⁵ However, the Supreme Administrative Court has gone even further and confirmed that "if a court finds that these principles are adhered to in the land-use plan under examination, the fact that the restriction of an owner or another bearer of material rights has exceeded the just degree is not a reason for cancelling the land-use plan; potential compensation for it cannot be provided in the course of the making (amending) of the land-use plan)."³⁶

For cases of amending land-use plans and the related restrictions to land uses, the Building Act defines methods of compensation for demonstrable property harm: see Section 102 of the Building Act and territorial compensations.

Although the amendment to the land-use plan was not achieved, it was not the only opportunity to influence the territorial development. The reason is that Hradec Králové is acquiring a brand new land-use plan. The concept of the new land-use plan³⁷, option 2,

³¹ Constitutional Court Resolution of 26 May 2011, file no. II. ÚS 2961/10.

³² The Supreme Administrative Court continues dividing this criterion in proportionality in the broader and narrower sense; its perception of proportionality in the broader sense is as "general adequacy of legal regulation".

³³ Supreme Administrative Court Resolution of 29 July 2009, file no. 1 Ao 1/2009.

³⁴ The Building Act, Section 102, deals with compensations for changes to a territory for plot owners who have incurred demonstrable property harm as a consequence of cancellation of the definition of a plot as developable, based on a land-use plan amendment or a new land-use plan. The Section also defines compensations for owners of plots or buildings whose rights to a plot or building have been reduced by a zoning decision on prohibition of construction, causing property harm.

³⁵ Supreme Administrative Court Resolution of 29 July 2009, file no. 1 Ao 1/2009.

³⁶ Ibid.

³⁷ Instructions for elaborating the draft land-use plan were approved by the Hradec Králové Municipal Council on 24 June 2014. Available at Hradec Králové: Oficiální stránky statutárního města. STAT-

registers Plachta among the territorial systems of ecological stability covering 643,175 m².³⁸ According to information available on the Hradec Králové municipality's official website Na Plachtě 3 will no longer be a developable area according to the new land-use plan. "Many years of effort is thus finally going to bear fruit. As concerns Plachta, the Na Plachtě 3 nature monument was declared in 2012 based on our activity, among others, and the new land-use plan has to respect this fact."³⁹

In conclusion, it must be noted that Hradec Králové is no exceptional case. Land-use plan amendments have been discussed analogously in other cities, such as Brno and Prague, where hundreds of amendments have been approved in the last fifteen years⁴⁰. Sometimes elected municipal representatives fail to respect the citizens' will and defend the public interest inadequately, which they mistake for investors' private interest in construction without any deeper justification.

A few sentences for discussion

The public participation principle in environmental protection is one of the fundamental principles of environmental law. Naturally, it is linked to the principle of openness of public administration. In connection with land-use planning, openness of public administration chiefly involves timely publication of all the necessary documents, open communication with citizens, the art of running a discussion, a transparent method of filing comments, objections and their settlement, and transparent passing of final decisions. Open public administration is well-mannered: good governance, which *"is a term describing such conduct of state administration bodies that is not directly prescribed by law but that we can equitably expect them to show in spite of that. Bad governance leads to inequities, burdening people with excessive bureaucracy, delays and other undesirable effects."*⁴¹

The fact that public participation typically leads to the passing of better-quality environmental plans or decisions, which then enjoys better acceptance by citizens and a greater degree of identification with the outcome of the process, is well known from literature⁴². Even the Economic Commission for Europe points out the necessity to involve the public in elaboration of land-use plans; it in fact identifies involvement of stakeholders as

UTÁRNÍ MĚSTO HRADEC KRÁLOVÉ. *Nový územní plán Hradce Králové* [online]. 2014 [cit. 2014-10-21]. Available at: <http://www.hradeckralove.org/urad/novy-uzemni-plan-hradce-kralove>

³⁸ Ibid.

³⁹ Hradec Králové: Oficiální stránky statutárního města. Statutární město Hradec Králové. *Nový územní plán Hradce Králové: Komentář - Ing. Adam Záruba, Ph.D.* [online]. 2014 [cit. 2014-10-21]. Available at: <http://www.hradeckralove.org/hradec-kralove/zmena-pro-hradec-a-novy-uzemni-plan-hradce-kralove-ii-sporne>

⁴⁰ Arnika: Změny územního plánu Prahy. *Arnika* [online]. 2014 [cit. 2014-10-22]. Available at: <http://arnika.org/zmeny-uzemniho-planu>

⁴¹ ČERNÍN, Karel. Principy dobré správy definované veřejným ochráncem práv. In: *Principy dobré správy 2006*, op. cit., p. 11.

⁴² DIETZ, Thomas and Paul C. STERN. *Public participation in environmental assessment and decision making*. Washington, DC: National Academies Press, 2008, xv, 305 pp.

crucial.⁴³ We can therefore summarise that costs expended on improving public participation in decision-making, improving communication between citizens and authorities, and increasing mutual trust and respect, open and timely communication (preferably above-standard, including the use of modern technologies) and efforts to really resolve problems, are a legitimate investment. This argument may be supported by the fact that administrative courts, for example, examine and sometimes even annul many land-use plans or their parts because their acquirers give preference to investors' requirements for construction of large logistics centres or satellite suburban development around large cities over citizens' concerns (resulting, for example, in not assessing all potential options), which makes the entire process tens or hundreds of thousands of crowns more expensive.

In the case of Na Plachtě 3, the citizens concentrated on one of the most effective tools of nature protection: the land-use plan. It is through participation in the process of elaborating a new land-use plan, or effort to propose such an amendment to the existing land-use plan that would render construction in the area impossible, that a positive outcome can be achieved. Of course other tools, such as petitions, can work as a way of informing other citizens in the city and demonstrating to councillors and authorities in charge that the issue concerns many people. Essentially, however, they are not binding for public administration authorities; they are not obliged to follow them. In the case of Na Plachtě 3, the petition primarily attracted the attention of the media and public figures, and made sure that the problem was discussed and became an important local topic.

In this case, and in similar cases, citizens have other means available beyond those documented in this case study. A local referendum⁴⁴ comes to mind in particular. Its objective as a "bottom-up" initiative is to authenticate the *"quality of local democracy, and it offers another channel to give citizens a direct influence on the formation of political decisions within the community. We must not underestimate the cardinal role of a local referendum as a powerful tool of control over local self-government, especially in management of municipal property and municipal economy."*⁴⁵ A local referendum could only bind Hradec Králové municipal representatives; it could not lead directly to the declaration of a protected site in the area. However, if a number of conditions were met, it could bind the municipal council to pass an amendment to the land-use plan and take all necessary action towards protecting the Na Plachtě 3 site. It is therefore a question whether this particular procedure should have been considered and applied.⁴⁶

We can only speculate today about why this was not the factual course of action. Nevertheless, it is a generally known fact that organising a local referendum is extremely difficult, primarily due to the low voter turnout (even if enough signatures were collected under the motion to hold the referendum, the number of people who have to turn up for

⁴³ ECONOMIC COMMISSION FOR EUROPE. *Spatial Planning: Key Instrument for Development and Effective Governance with Special Reference to Countries in Transition* [online]. Geneva, 2008 [cit. 2014-01-11]. Executive summary VIII and IX.

⁴⁴ Act no. 22/20004 Coll. on Local Referenda.

⁴⁵ Judgment of the Supreme Administrative Court of 31 October 2012, file no. Ars 2/2012.

⁴⁶ The Constitutional Court was the first to give its opinion on holding a local referendum concerning a land-use plan. It did so with its Ruling of 13 March 2007, file no. I. ÚS 101/05. The fact that a local concerning a land-use plan can be organised even under the new Building Act was confirmed by the Regional Court in Plzeň in 2012. See the Resolution of the Regional Court in Plzeň of 5 November 2012, file no. 57A 75/2012-101.

the referendum is too high, and sometimes therefore, the referendum outcome is not binding for politicians).

Construction in the area could also be averted even if a zoning proceeding was in progress. However, that would be much more difficult, and if a local citizen association was a party in the zoning proceeding, it would have to furnish numerous arguments and the case might be decided by a court several years later.

Conclusion

It turns out from the latest events that Na Plachtě 3 will continue to be a protected site and will not be developed. After its declaration as a nature monument in 2012, the local inhabitants gained a more powerful tool for preventing construction and protecting the precious natural and recreational site. After the approval of the concept of the new land-use plan and the subsequent instructions for elaboration of the draft land-use plan, Na Plachtě 3 can be expected to be included among sites where future construction will not take place. However, it is alarming that the Ministry of Defence and relevant authorities of the city of Hradec Králové have proceeded in a way that might have had a very negative impact on the whole protected site.

For the time being, therefore, it is likely that such a land-use plan will be passed that will ensure the territorial protection of the nature monument. It is naturally necessary at present for citizens and their associations to continue keeping an eye on the formulation of the land-use plan and supervise its final approved version. It is not very likely any more, but if the approved land-use plan failed to guarantee adequate protection for the site, there would be a need to apply additional means as well; they would naturally include a motion to annul a general-aspect provision (part of the land-use plan) by a court. In the spring of 2014, the Constitutional Court confirmed for the first time⁴⁷ that even citizens' associations have the right to object to a land-use plan, and this opinion has been accepted by administrative courts as well.⁴⁸ Such a procedure would certainly be in order in the case of Na Plachtě.

The local citizens' associations have demonstrated that public participation may influence public administration significantly, primarily at the level of territorial self-governing units, and that supervision of public administration is one of the main roles of citizens' associations. Another task, no less important, is their protection of community rights, which may be affected by public administration decisions. Simply put, citizens' associations "are an equivalent legal entity, as well as an important and supremely democratic element of civic society."⁴⁹ Public participation in the process in question has met this goal as well.

Thanks to the timely participation of affected citizens and their local associations, the precious site has not been built on, and its protection from activities negatively impacting on the condition of the nature monument is secured for the time being. If the local citizens had not been so active, the Na Plachtě site and its precious habitats, plants and animals would likely have been ruined beyond hope of restoration. The original attitude of the authorities of the city of Hradec Králové, and the elected representatives, as described

⁴⁷ Ruling of the Constitutional Court, file no. I. ÚS 59/14, of 30 May 2014

⁴⁸ Judgment of the Municipal Court of Prague of 15 October 2014

⁴⁹ Ruling of the Constitutional Court, file no. I. ÚS 59/14, of 30 May 2014

above, did not suggest that the area would have been declared a protected site and its protection would not have been anchored in the land-use plan concept without citizens' pressure.

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