Routledge
Taylor & Francis Group

Urban Research & Practice

ISSN: 1753-5069 (Print) 1753-5077 (Online) Journal homepage: https://www.tandfonline.com/loi/rurp20

Spanish urban law, changes after Aznar´s law

Álvaro Cerezo Ibarrondo & José Ignacio Tejerina González

To cite this article: Álvaro Cerezo Ibarrondo & José Ignacio Tejerina González (2016) Spanish urban law, changes after Aznar´s law, Urban Research & Practice, 9:1, 82-90, DOI: 10.1080/17535069.2016.1138683

To link to this article: https://doi.org/10.1080/17535069.2016.1138683

Urban Research & Practice, 2016
Vol. 9, No. 1, 82–90, http://dx.doi.org/10.1080/17535069.2016.1138683

Routledge
Taylor & Francis Group

POLICY ARTICLE

Spanish urban law, changes after Aznar´s law

Álvaro Cerezo Ibarrondo [a]* and José Ignacio Tejerina González[b]*

[a]*Freelance Architect, Professor (IVAP-EVETU) and Researcher, Getxo, Bizkaia, Spain;* [b]*Lawyer, Public Officer and Professor (IVAP-EVETU), Bilbao, Bizkaia, Spain*

It is common to blame 1998 urban law, promoted by the president Aznar, the present Spanish urban situation defined by the unnecessary construction of housing units. But the analysis of the Aznar´s urban law requires to briefly describing the Spanish urban law development, at least since the 1956 urban law. In 2007, after that ´marvellous decade´, and along with the real estate bubble burst, Spain went through a major change on urban law model which ended in the 2013 3R Act, the law for the urban sustainable development and the existing city intervention.

Keywords: Urban model evolution; urban law; 3R Act; sustainable development; existing city

'*In Spain there are 1.6 million houses still to be sold. Within that amount, 657,000 almost cannot be sold due to their location*' (El País, 19 September 2015).

Probably the most significant aspect of the present Spanish urban situation is the paradigm defined by the unnecessary construction of housing units, the large amount of land consumption, the evermore inaccessible raw materials, the cost line exploitation (as the European Parliament Auken report shows on 26 March 2009, passed with the majority of the Spanish representatives against vote), the cost exceeding of public service exploitation and what is even worse, the induced degradation of the pre-existing urban fabric, the cities.

The Anzar´s urban law

It is common to blame 1998 urban law, promoted by the president Aznar and his economic vice-president Rodrigo Rato (Managing Director of the International Monetary Fund – IMF – from 2004 to 2007), who has become recently and sadly famous ('the judge seizes the vital pension of the IMF and possessions valued over 18 million euro', El País 24 September 2015). This law introduced two major regulations:

- The land offer deregulation that in Spain was known as 'all the land is buildable', trying to overcome the interventionist model of the Franco regime, where the buildable land definition was made by the public authorities depending on the estimated necessities.
- The reinforcement of the built landowner legal status, which enhanced the real estate demand.

These regulations were aligned with the main European political axes related with the competitiveness or legal protection enhancement, but more as a justifying tale than as a

*Corresponding author. Email: acerezo@aci-arquitectos.es (Álvaro Cerezo Ibarrondo); natxo@orbenismo.es (José Ignacio Tejerina González).

real founding of the law. As we will explain in this paper, since the 1956 urban law the Spanish urban model was based on providing the urbanization function monopoly to the owners. But this monopoly creates inefficiencies and there are many ways to prevent them, but the truth is that the deregulation measures chosen by Aznar´s government were limited to alter the rational land consumption control and the compact city development regulations.

But the analysis of the Aznar´s Urban law requires to briefly describing the Spanish urban law development. Therefore, let us take a look back to the characteristics of the Spanish urban system born with the 1956 urban laws that were reformed in 1975.

It might seem obvious, but the objectives of the law always shape the model. The purpose of the 1956 urban law was to provide enough housing units for the emerging industrial poles (so that they could have the manpower they need), that could not be satisfied with public funding. Therefore, the real estate investment encouragement was part of the legislative package for both land development and homeownership, formed by the Urban Tenancies Law 1956, the Subsidized Housing Law 1957 and the subsequent Condominium Law 1960 (Figure 1). This legal package was defined by the following key features:

- *The transformation surpluses provision to the owner from the plan approval*. The land transformation required a considerably high investment (public services and infrastructure provision, the construction of buildings, etc.), so the legislator overcame the lack of initial funding, by the legal guarantee of the land value as if it was already transformed, so that this guarantee could work as access to financing. With this crucial regulation, the rural or untransformed land that the urban plan decided to transform suffered an incredible price rise (i.e. from 5 to 200 €/m^2). This land value increase of the non-transformed plots implied the opposite effect on the already transformed urban tissues, the urban renovation interventions (this kind of valuations not on what the land is but what it could be, could imply lower values depending on the specific project conditions), even

Figure 1. San Ignacio neighbourhood, Bilbao (1944–1954). Photo by Alvaro Cerezo.

though this effect was partially mitigated by the second measure the 1998 law aimed by ensuring the position of the owner.

- *Privatization and imposing on the owner the role of developer*. Making a virtue out of a necessity, the congress of 1956 entrusted to private owners making the public function of the city development that could not be addressed due to lack of resources. So, the owner had to develop, cede public facilities and infrastructures for free and build the construction plots.
- *Dissociation of planning and execution*. Outsourcing the function of the developer was compensated with control by the public authorities of the quantification of transformable lands. This determination was amended by 1998 urban law because the delimitation of transformable land was maximized in that law. In addition to the quantification of developable land, planning was almost the only mechanism to control the quality of the result (today this remains basically the same). Therefore, the plan should define each and every detail of the project, because no trust could be set on the developer to readjust the planning definitions or regulations. So, planning had to be set with pinpoint precision, alignments, detailed uses, FAR . . . shaping the rules of the real estate business.
- *Exception on the compensatory mechanisms*. The regulation established compensatory mechanisms to prevent or mitigate the adverse effects of such a risky model, the most important being: The registration of construction plots to combat speculative retention of land, public land assets that would operate as stocks to regulate the free market and to avoid the effects of speculative tensions and building land management by concessionaire. Virtually none of these tools were deployed.
- *Equitable distribution of benefits and burdens with limited effectiveness*. One of the most unique features of the Spanish urbanism is called equal distribution of benefits and burdens among owners affected by a transformation intervention (which originates in the technical development of the Eixample in Barcelona of Ildefonso Cerdá 1859). This technique based on the benefits (the FAR ratio) and burdens (urban development costs, public lands provision and the public quota of the benefits due to the transformation process) sharing proportional to the original lands square meters provided by the owners is one of the keystone of the Spanish urban development. This sharing of benefits could mitigate speculative tensions and discourage political corruption, but on the hand the equal sharing is limited because it is not general, but is singular within specific areas (i.e. single owner development). There is no mechanism requiring that the net benefits of the transformation might be homogeneous between different areas.

This panorama allows one to set the true scope of the 1998 law: The Deoxyribonucleic Acid of the 1956 Urban law was development orientated, encouraged real estate speculation and relied on it to achieve their goals, but had a compensatory mechanism, the administration contained the availability of land matching it with the needs (which can also be seen as a guarantee for the developer). The 1998 urban law deprived the public administration the power to contain the offer and at the same time encouraged the demand of the end consumers.

However, Aznar´s and Rato´s plan met with a major obstacle that made the maximizing of the offer not to be as intended. In the Spanish administrative organization, the power to define the urban model does not correspond to the national government but to the regional governments, as stated by the Constitutional Court ruling 164/2001. Most of

regional governments, including those governed by the Partido Popular, did not apply the land liberalization regulations or if they did, with little enthusiasm.

Consequently, there is not much to blame for the Spanish over development on maximizing the offer established in the 1998 urban law, but rather on the possibilities defined in the original urban law (1956), that allowed any public planning authority to regulate the land offer.

So, where is the motor of Spanish overdevelopment, also known as the 'marvellous decade'?

We might consider that the privatization of any urban development would embrace some kind of rational factor of the offer, because no developer would invest in land transformation or in building construction if there is no demand or if the construction plot is disconnected from urban services. Logic would anticipate that the absence or lack of administrative regulation would provoke the market self-regulation.

But it has not been that way. In Spain, there has been another phenomenon, which is infrastructure development as an end in itself (high speed train lines without passengers, airports without airplanes … are striking examples that mask a policy of inefficient investments). This practice can be explained by the political corruption (the investment is an opportunity for public administrators to gain commissions and thank voters for promoting small-town pride: '*Thanks to the exhibition centre, to the museum that will be full in the future, to the global cultural centre* …' culture has always been a well-known excuse – or to proclaim that '*finally, we are on the map*'). However, there is a substantial difference between the public investment in infrastructures and private property development: while the infrastructure is paid with public money (in Spain what is public does not belong to everyone, it belongs to nobody), the developer risks his money.

Why have private developers not been prudent with their patrimony or investments and have risked by building developments in locations that no one will buy? The answer is simple, because they have not risked their own money.

Here two conditions meet: the easing of the financial sector and the ability of banks to easily access credit created excess liquidity that caused a sustained increase of 17% per annum in property values (an obvious real estate bubble). In these circumstances, everybody thought that time would correct any failed real estate purchase. While rates were low, banks could obtain huge profits if a sufficient volume was reached, so they took the easy way to improve their balance sheets in the short term through loans of 120% of the valuations without other warranty than the property itself: thus the ultimate purchaser used to buy the house and the car on the same loan and the developer gained direct liquidity (Figure 2).

Before the real estate bubble, credit to develop was awarded if at least the developer had enough money to cover the land costs, if the construction could start immediately and despite this, it was common for funding to not cover more than 70–80% of the building costs. With the financial deregulation, banks gave credit to developers, without any security other than the land itself, sometimes potato fields, and liquidity to pay the land, to cover the construction costs, VAT and to buy a private jet (this is a real story) in the same loan.

The 1998 law attempted to maximize the buildable land offer depriving the local administration of containing the offer. Although this measure failed, the authorities have not resisted in many instances the flood of money to invest in new developments, because the old 1956 law allowed the government the land offer containment, but did not bother to regulate the use of that power. Therefore, private over developing has an explanation that does not differ from the construction of unnecessary or inefficient public infrastructures.

Figure 2. Abandoibarra neighbourhood, Bilbao (1991–present). Photo by José Ignacio Tejerina.

Nevertheless, the effects of both responsibilities, public and private, have been so different, since the irresponsibility of the developers has been finally transferred as a problem to the financial sector, that has had to keep the overvalued assets as default loan payments and finally, to the public sector through the bank bailout, that has turned the owners of unviable developments to be the same as those of the pedestrian airports: all of us.

2007 urban law model (2nd episode)

In the middle of this urban storm or just when the real estate bubble burst (depending on the authors) a model change was set. Although this model change was endorsed and fostered for the purposes of expropriation (high speed train and highways around Madrid), it made possible to fit the nonsense of the previous model, at least on comparative law basis. On the other hand, it made possible to put into effect the constitutional principle of the social function with regard to the right to private property, considerations of the European Parliament and finally to incorporate the principles of Sustainability in urban planning.

As we have previously addressed, the 1978 Spanish Constitution established the regional government model, defining the different legislative powers among the national and regional governments. Therefore, the national parliament could define the basic urban model in terms of equality and common ground conditions and principles among the Spanish citizens (constitutional rights and duties). But at the same time, we have to point out that since then, this differentiation created a dual system, that most of the time produced disagreement in both diagnosis and solutions.

Years later, the Maastricht Treaty (formally, the Treaty on European Union or TEU) made the European regulations overlap the Spanish urban law. The 2002 Auken report of the European Parliament[1] is particularly eloquent in its criticism of:

- Overdevelopment, harmful to the environment
- The obligation to transform the land (urbanize) transferred to the land owners
- The use by the private sector of public powers, obviating the principles of public bidding procedures and free competition.

On the other hand, even though almost all the previous laws declared the sustainability principles, the truth is that environmental issues and land protection were left out of the real agenda. Therefore, the 2007 urban law promoted a change of mindset through the need for sustainability, environmental impact reduction, the compact city development and the inconvenience of the urban sprawl, the social segregation and the economic inefficiency due to energy, building and infrastructure maintenance costs and finally public services expenses (even though it took us up to 2010 to define the first urban planning instruments on sustainability principles and tools with the sustainable economy law – LES in Spanish).

The key element of the 2007 urban law was to change the criteria for land value increase through planning approval, recovering the basic principle of any expropriation process, of not considering any value increase due to the planning changes that activate the expropriation. This crucial change made possible to comply with the Constitutional law after 30-years delay that enforced the public administrations to prevent the land speculation mandate.

However, it is relevant to point out the changes that were applied in 2007 and the characteristics of the second Spanish urban model:

- *The core of the law is the regulation of the rights of citizens*: It focuses on citizens as a group against the rights of individuals, subject to the necessary compensation to avoid unfair situations.
- *The function of developer is public. The private action is subsidiary*: The preferential allotment to the private initiative model of 1956 was replaced by opposite regime; the execution of urbanization will be handled by the administration preferentially.
- *The function of private developer, under free market principle*: Urban development activity must be developed within a regime of free competition of third parties and therefore being the land owner will not be a prerequisite for transforming (urbanizing). This latter will be carried out under public control and will not impede the particularities or exceptions that this control foresees in favour of the owners of the land.
- *The private developer as a right*: In 1956 the urban model imposed on owners the obligation to execute the planning, with the 2007 urban law that duty was no longer stated, but included as a legal right to participate in the urban transformation intervention. This key issue turns out to be one of the major changes in this new law.
- *The land is not valued by expectations but what it really is*: In the 1956 model, the law provided that the value of land was determined by what it would be (as if expectations were insured). The 2007 law, in a 180° change, prohibits considering any value forecasted by the planning, to the extent that land that was to be transformed had the same value than one that is protected from the transformation. The FAR value cannot be consolidated until all burdens are satisfied and the urban transformation duties complied.

- *The duties and burdens resulting from the transformation does not refer to the owners but to the urban transformation intervention itself*: The core of the law is the regulation of the rights of citizens, therefore the urban transformation intervention must fulfil the lucrative buildings and fulfil the need for public services and infrastructures defined in the operation, no transformation is exempt.

Nevertheless, the 2007 urban law did not address intervention in the existing city and just considered solving the deep problems of the previous urban model. Additionally, some of the measures defined to protect the owners within areas that are already transformed provoked the perverse effect of making impossible any regeneration or renovation interventions in the existing city.

The urban model of the 2007 law of turned out to be a diametrically opposed from the initial model of 1956, although we have not seen the effects due to the economic and finance crisis that prevails not only in Spain but throughout Europe, which in Spain's case has been multiplied by the huge stocks of land and housing in the hands of the financial sector.

The 3R act, the law for the urban sustainable development (3rd episode)

The expansionist nature of the 1956 urban law explains the disregard of intervention within the pre-existing city, both in terms of existing and of new creation. The whole regulatory efforts were focused on regulating how urbanization was paid without any attention to maintenance and conservation or to finance the redevelopment, which had the advantage of making these costs invisible and thereby encouraging homeownership. This is in turn, helped the buyer to believe that the price paid to the developer included the future costs of maintenance and redevelopment (one mix, 'all included' and insurance for new replacement costs).

The 2007 urban law reform focused on correcting the major dysfunctions of the previous model without worrying about the lack of regulation in terms of the existing city. Not only did it not regulate, but it did not evaluate the consequences of some of the reactive measures: the optional nature of participation in the activities of transformation and that those owners of developed land and built plots that chose not to participate saw the value of its properties guaranteed according to the market. These determinations were causing the costs to soar for intervention in previously transformed land and in land in need of regeneration, making them totally unviable unless the existing building value was not relevant in relation to the future development, therefore producing an apparent loss of urban quality and questioning its sustainability.

In the year 2010, the first steps towards urban sustainable development were taken inside Spanish urbanism, even though these initial steps were slightly faltering and confusing.

In the year 2013 with the 3 R Act (urban restoring, regenerating and renovating Act), the complete revision was carried out of the mechanisms used for intervention in the pre-existing city in order to tackle the phenomena of urban degradation and make urban regeneration possible. At the same time, the unification of the city urban regulations enforced since 1956 and that prevented the adequate tools of intervention, ended.

Among the special measures enhanced by this law included:

- The property legal duties increase up to the 50% of the construction cost of the building that could be destined to urban quality improvement interventions.
- The mandatory and legal binding of the owners with the duties of urban regeneration and renovation interventions.
- A more clear and defined regulation for reallocations.

But the most significant regulations of this 3 R Act are:

- The need to fulfil the energy efficiency, accessibility and maintenance requirements for any kind of building, even with new requirements.
- The necessary costs are the ones as defined in the urban intervention, not in the law (each city area requires different solutions and standards).
- All the incomes belong to the urban intervention, not to the owners.
- There is a new benefit and burden sharing rule considering the income increase and not the plot square meters.
- The economic viability depends upon not surpassing 50% of the construction value as a mandatory contribution for each owner.

This new law establishes the specific regulations for interventions in the existing city, adopting the necessary and practical rules, making the owners fulfil their property duties, maintaining their buildings and urban spaces, granting universal accessibility, providing the necessary energy efficiency in the buildings and developing urban planning sustainable and integrated instruments, all that is necessary for the city continued existence.

The 1956 law main concern was how to finance the construction of the city, neglecting maintenance costs and redevelopment. Now we have to address the retrofitting and redevelopment of the city repaid without having provided cost. 3 R Act provides effective mechanisms but reproduces the problem since it merely regulates the current investment without measures to ensure the provision of amortization of the city.

However, Spain is not prepared to accept and deal with this problem: neither political leaders nor the citizens contemplate a different scenario than the rehabilitation of private housing and redevelopment of public spaces are to be paid with public funds, as if the price once paid to the developer was true and included an insurance for the housing retrofitting and redeveloping of the urbanization.

Conclusions

As it has been explained, the initial 1956 urban law model has gone through two substantial changes in the years 2007 and 2013. And even though most people reject this idea, the 1956 urban law model has defined the public and private urban development till the present day, because the reconsideration of 2007 coincided with the burst of the real estate bubble and implied that almost no practical effects were deployed.

The 1956 classic urban model was the answer to a specific problem at that time, the development of large amounts of housing around the industrial poles planned by the public authorities. A development model based in the guarantee of benefits and profits, the entrustment and imposition of the urban development to the private owner counterbalance with the public supervision of the planning, bringing a hierarchical model of administration that was projected into a public city planning design and a private developing with the speculation problems implied years after (corruption, price increase, lack of maintenance, no sustainability and suffering crisis). This model of development, that

became a success model, has continued deploying routines even when no more houses were necessary or even when this development was opposite to the most elementary environmental and economic sustainability criteria.

Concurrently with the 1956 urban law model, the 1998 Aznar´s urban law did little to change the urban development, that in any case had strong limits in the regional and urban planning laws (regional laws and local urban plans). But the finance framework of those years was the real reason for the speculative urban development and as a metaphorical comparison, the urban law model was an engine that without gasoline (credit) could not work and vice versa. When the market is flooded with finance this creates real estate bubbles and no one has assumed this crude reality, because everyone (right and left) has made profit from it.

The 2007 urban law model implied a 180º change in the substantial aspects of the expansionist urban model, so that some rationality was tackled (property legal status, urban development regulation and land valuations), but no effort was made on interventions within the pre-existing city, generating an impasse situation, not recognized by the real estate sector and hidden due to the real estate crisis generated by the financial problematic situation.

It would fall to the first law of a left wing government (LES, 2010) and subsequently another from the right wing (3 R Act, 2013) to affront the great deficit within Spanish urban planning – intervention within the pre-existing city – thus articulating the third Spanish urban model.

If the first urban model represented the suppression of tools for intervention in the pre-existing city, the second model did nothing to try to solve the problem, leaving a huge visible void although obscured by the economic crisis. That is why, with the 3 R Act a new urban model has arrived, that even though it is not perfect (none are), it will permit the articulation of flexible ways to intervene in the existing urban fabric, guaranteeing that the intervention of regeneration be efficient, viable and sustainable at the same time as being integrated. This new urban law model points to a new era for what makes us citizens: the built city.

ORCID


Álvaro Cerezo Ibarrondo http://orcid.org/0000-0002-9823-9057

Note

1. Auken Report: On the impact of extensive urbanization in Spain on individual rights of European citizens, on the environment and on the application of EU law, based upon petitions received (2008/2248(INI)).