

Regime for existing buildings in green zones: changes to come

As successive laws on the protection of nature and natural resources have been passed and amended, the regime for existing buildings in green zones has become increasingly stringent.

Indeed, it was impossible to carry out most of the work on a building located in a green zone.

Over the past few months, the administrative courts have made considerable changes to this situation.

Based on the fundamental principle of human dignity, two judgments of the Administrative Court of Appeal dated 9 January (No. 43470C) and 26 March 2020 (No. 43708C) allowed a former operator to remain in his dwelling and to remodel it by extending it, if necessary, in order to adapt it to a disability or to old age.

This first step forward was supplemented by the decision of the Administrative Court of 10 January 2022 (No. 44875), and by the judgment of the Administrative Court of Appeal of 20 July 2022 (No. 47027C).

The decision of the Minister for Environment, Climate and Sustainable Development which refused to authorise roof raising works to ensure better energy performance has been annulled.

The Court confirmed this annulment by relying on the provisions of Articles 11*bis* and 16 of the Constitution, on the general principles of the rule of law, effective remedy, proportionality, legitimate expectations and legal certainty (see judgment of 23 December 2021, No. 46070C, and judgment of 10 March 2022, No. 46378C). The case was referred to the Minister, who will have to take a new decision in compliance with these principles.

It appears from these decisions and judgments that the regime for construction work in green zones should be made more flexible.

Following this judgment, the Ministry of the Environment, Climate and Sustainable Development issued a press release on 20 September 2022, inviting owners of legally existing dwellings in green zones affected by applications for permission to either apply to the same administrative authority to reconsider its decision if the refusal decision is less than three months old, or submit a new application for permission regardless of a refusal decision and the date of such a decision.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.