



Legal aspects of building a house up to 70 m² without permission. Is it worth it?

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ABSTRACT:

The article presents the current legal situation concerning the construction of a house of up to 70 m² without a permit. The issue of the profitability of this activity is discussed. An analysis was made of the provisions resulting from the modification of individual provisions Act of the July 7th 1994 – Building Law. The benefits resulting from the introduction of amendments to the said Act have been identified. The deficiencies related to the construction of a house of up to 70 m² without a permit were identified, comparing the legal aspects resulting from the construction of a detached house and a recreational house of the same size without a permit. A cost-comparative analysis has been carried out.

KEYWORDS:

building law; lack of permission; cost-effectiveness

1. Introduction

When analysing the issue of building a house of up to 70 m² without a permit, the indicated problem should not be identified with direct innovation. The quoted issue appears in the Act of July 7th 1994 – Building Law. Article 29 para. 1 point 1a stipulates that "A decision on a construction permit is not required, but a notification is required (...) for the construction of detached single-family dwellings not exceeding two storeys, with a footprint of up to 70 m², whose area of influence is located entirely within the plot or plots on which they were designed, and the construction is carried out in order to satisfy the investor's own housing needs." [1].

The Act of September 17th 2021 on amending the Act – Building Law and the Act on planning and spatial development introduces significant changes as the provision allowing the construction of recreational buildings up to 70 m² without a permit appears in the said Act. This provision is a key change that allows circumventing the deficiencies associated with the construction of a single-family house without a permit.

2. Basic assumptions and conditions for building a house up to 70 m² without a permit

The basic assumption of the Polish Deal programme, concerning the construction of a house of up to 70 m², is to ensure an efficient and to some extent simplified construction procedure. The indicated objective, according to the provisions, is achieved by eliminating certain elements

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of the basic procedure. It is no longer obligatory to employ a site manager when building a house of the specified size without a permit. Keeping a construction log is also no longer a necessary element. The indicated provisions are connected with savings for the investor.

However, in order to build a house without a permit, it is necessary to fulfil certain conditions. The construction itself must be in compliance with the conditions specified for the given plot of land. A plot with a local zoning plan guarantees a faster procedure. If the plot does not meet the above conditions, it is necessary to apply for a decision on development conditions. The decision of the development conditions must be issued within 21 days. This time limit has been significantly shortened. If the time limit is exceeded, the issuing authority may be fined. The issuing administrative authority has been deprived of the possibility to express objections to the notified construction. After the introduction of the solution, which came into force on January 3rd 2022, the investor is obliged to have an architectural and construction design. Another condition is the preparation of a plot development project.

It is necessary that a building without a permit should not affect neighbouring buildings. The binding Regulation of the Minister of Infrastructure of April 12th 2002 on technical conditions to be met by buildings and their location determines, among others, the said minimum distances from the neighbouring plot. Confirmation that the conditions are met is made by submitting a statement by the designer.

It is obligatory for the investor to submit three statements to the Building Department in the competent District Authority Office County Office. In the first of these, the investor does not hire the site manager and undertakes to bear responsibility for any possible construction defects. The second declaration confirms that the house is being built solely to meet the investor's own housing needs and is made under pain of criminal liability. The investor is then prevented from selling or renting the building. It is also necessary to make a statement to confirm that the documentation attached to the application is complete. After filing appropriate declarations, the investor is obliged to notify the commencement of construction on a specific plot of land, indicating the date of its commencement. The notification should be submitted to the appropriate district office. In the case of cities with district rights (poviat), the investor shall submit the notification to the competent municipal office.

In the Building Supervision Inspectorate, the investor reports his intention to obtain a use permit. This action enables legal use of the building. The supervisory authority has 14 days to take action. If the inspection of the building does not take place within the indicated period of time, the case is considered resolved by the so-called silence of the administrative authority. The authority then expresses its will by not objecting.

3. Year-round residential building vs. individual recreational building

As one of the glaring shortcomings regarding the legal aspects of building a detached house of up to 70 m² without a permit, the owner is deprived of the possibility to sell or rent the property. It is also not subject to donation. Modifications in Polish law after the introduction of the Polish Deal allow the construction of a single-family house up to 70 m² without a permit only "in order to meet one's own housing needs." [2]. The investor obligatorily, under pain of criminal liability for making a false statement, submits a statement confirming the construction for the above articulated purpose. Pursuant to Article 233 para. 1 of the Act of June 6th 1997 – Penal Code "Whoever, while giving testimony intended to be used as evidence in court proceedings or in any other proceedings conducted pursuant to the Act, gives false testimony or conceals the truth, shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years." [3]. In case of inability to bear the costs related to the maintenance of the property, the investor may wish to sell. This action will not be possible if the property was created on the basis of a simple notification, without a building permit. The construction of a recreational house makes it possible to sell such a property.

However, it should be noted that the decision to build a recreational house also carries unfavourable consequences. The tax paid on the recreational building is significantly higher.

The solution is to change the way the property is used. In this case, a recreational house of up to 70 m² built without a permit is converted into a single-family house. From then on, it is subject to sale. Moving on to further analysis, it should be emphasised that for the requirements of a single-family house to be met, the building must have an elevation. Such requirements do not apply to the construction of a recreational house, which allows the investor to build a property of a larger size. However, a recreational building must have a so-called entresol. According to the ordinance of the Minister of Infrastructure, a mezzanine is "the upper part of a storey or room located above the intermediate floor separating them, with an area smaller than the area of that storey or room, not enclosed by building partitions from the side of the interior from which it is separated." [4]. Entresols are not considered as storeys. However, a usable attic is considered a second storey in a single-family building. On the basis of the provisions of the modifying act, the investor assumes responsibility for managing the construction in the event of not appointing a site manager which also applies to constructing an individual recreation building without a permit [2].

4. Analysis of the current market situation and the cost-comparative analysis of building a house of up to 70 m²

Owning one's own house is a dream perhaps for each of us. However, this dream is nowadays more and more difficult to achieve for many reasons, the most important of which is the high cost of buying a plot of land and building a property. Year-round houses are not cheap; it is much cheaper to build a recreational house, which may be wooden or in a frame construction. But such houses may be even more expensive than traditional houses in brick construction, but they are nevertheless a combination of functionality and extraordinary appearance guaranteeing great satisfaction for the investor. The key factor in the price of building a new house is the floor area and the design of the house, which translate into cost. It has been stated that the cheapest family houses are houses with the footprint of up to 70 m² and the government has decided to help Polish families in this task by introducing certain allowances for those who build their own family house, where it is possible to download a free design, and the implementation can be done on notification, without construction supervision. However, the high cost of building a house is influenced by many other factors. The main factor is the high price of construction materials and labor. However, building a home to last for many years, it is worth investing in high quality materials, so that the home can be enjoyed for its beauty and reliability. Depending on the chosen material, its cost per cubic meter can range from 2500 to even 6000 PLN. However, the construction of the house should begin with the design of the structure that fits the area and building conditions. It should be noted that both year-round houses and recreational houses should have solid foundations, which are usually made of reinforced concrete slabs. This is probably the first, but also the most important step in building a house, because as it is commonly known: if the foundations are solid, the structure placed on them will hold up better and longer, giving more security to the people living in it. Here it should also be emphasized that you should not save too much on reinforcement, which is usually steel rods. The price for good and solidly made foundations is, unfortunately, at present quite high, reaching even approx. PLN 400-600 per square meter. When building a house, especially walls, a significant cost today is primarily labor. And as it is commonly known, it is good to rely on a reliable and professional team, which has experience in erecting single-family houses. Nowadays the cost of building a wall (load-bearing and partition walls) is from 300 to 500 PLN per m². An extremely important element of house construction, crowning the whole structure, is the roof, which is also contains the attic. In order for the roof to perfectly match the house structure and design, it can be made of wood, and in the case of flat roofs, it is often made as a concrete structure, but this solution is often much more expensive. You can choose from many types of materials for the roof trusses as well as for the roofing itself. Adding up the costs and labor for the roof truss plus sheathing and the cheapest shingles, you should be prepared for amounts in the range of several hundred PLN per m² of finished roof. Other elements without which it is impossible to live in the house are windows and doors as well as balcony doors, for which it is worth paying extra and having them made in triple-glazing

technology, which in the future will translate significantly into house exploitation costs. The finishing of the house itself, as well as additional elements such as attic or garage management, are individual matters and can be done "at ease" in certain stages that can be spread over time. However, taking into account the above information, considerations and willingness to invest with some "free money", the question whether it is worth it to build a house is of course a rhetorical question, because who of us does not dream of relaxing in his or her own, and often, self-built house, decorated according to his or her tastes. Nowadays the most important advantage of such a choice is becoming a priority: ecology and modernity. It is also worth remembering that the use of appropriate thermal insulation materials for a newly built house, affects the high ability to accumulate heat, which is associated with future reduction in heating bills. What is important: current technology allows you to quickly build your own house, because a house up to 70 m² can be built even in 2-3 months, starting from the design, until the full "closing", even including the preparation of all necessary materials for its construction. A great convenience is, in the case of building a house of wood or frame construction, that you also do not have to worry about weather conditions. In this case, they do not affect the progress of work on the site and in the formation of a new house. But, however, the biggest barrier to building your own house in a technology other than the generally available, is here, their high price plus the price of the land. However, taking into consideration the current situation, starting from the beginning of 2022, where we have recently observed a sudden increase in the prices of apartments, this makes them very expensive at the moment, and taking into consideration the quality and, above all, independence of living in your own home, building your own house up to 70 m², undoubtedly becomes a very interesting alternative. A very big advantage is the fact that in case you already have an appropriate plot of land, where you can build a house of up to 70 square meters, the situation becomes much easier and it is worth taking it into consideration. However, those interested in such an investment often postpone their decision because of increasing prices, but also because of the turbulent situation in Europe. Analyzing recent events in the world, it has to be stressed that Poles' enthusiasm for construction is clearly waning. According to GUS data, in February 2022 about 5.8 thousand building permits were issued. This is over 18 percent less than a year earlier in the same period. It has become a fact that building a house in Poland is becoming more expensive than ever. Prices of construction materials have been going up since last year. Since the autumn, interest rates have been raised several times, resulting in more expensive loans and borrowers have to pay higher installments, and the Monetary Policy Council has already announced further increases in interest rates, which will certainly hinder the decision of Poles on new constructions. As you can guess, the reasons for the change in the plans of Polish people can be many, ranging from a change of life plans, through the deterioration of their financial situation, to the resignation from investment due to the situation in the construction market. The increase in the prices of materials, difficulties in finding contractors for subsequent stages of construction, more expensive loans as the interest rates are getting higher and higher – all this does not encourage people to devote their time, money and energy to building their dream home.

However, it should be noted that the Polish are perfectly capable of dealing with such situations, where another interesting solution is building their own house up to 70 m² in the so-called "economic system", where Poles will take matters into their own hands and will want to build houses on their own. In other words, it can be expected that after the free designs of houses up to 70m² are made available, in the summer and autumn of 2022, these designs will develop and the construction boom will increase. What is more, the weather in Poland has a great influence on such projects and if it is favorable, it is possible that already in autumn, we will see an increase in construction of small houses up to 70 square meters. We will certainly see new investments, especially in villages and smaller towns, where people often come from and already have inherited or purchased at a lower price land on which such a house can be built. However, we have to ask ourselves right now: will amateur house builders have enough strength and enthusiasm to finish such constructions? We can also expect that there may be dozens of unfinished houses. Summing up the current state and situation in Poland for the second quarter of 2022, it should be emphasized that the announced competition, in which several dozens of designs of modern

houses up to 70 m² were selected, are already available on the website of the Main Office of Construction Supervision. But, at the same time, observing today, on the announcement portals one can notice that the ads for sale of real estate houses in the raw state are multiplying. And here it can be concluded that one of the reasons for the increase in offers for unfinished houses may be the current situation on the market: increased inflation and high uncertainty of the economic situation, which is connected with: the increase in prices of construction materials and more and more expensive loans. At this point, where we have quite a dynamic situation, we can see that the real costs of construction often differs dramatically from the initially assumed cost estimates. The situation with COVID-19 has also changed, where after the end of the pandemic, many Poles have to return to permanent office work. This brings them back to reality and living in a home, far from the city, far from work, is no longer as attractive as it seemed in the first months of the pandemic, where people were working remotely and it seemed then that moving "to the country" to their home was the best solution for the family and for their health. Now these people are "returning" to the city and selling unfinished houses, which were clearly planned "for themselves" and perfectly designed, in great locations and with an idea for finishing. It is also noticed that some people have a real dilemma what to do now, because they have already taken a 300-400 thousand zlotys credit for building a house and it turns out that they still lack another 100-200 thousand zlotys. Some people are overburdened with construction costs and resign from continuing the investment. Many investors also postpone the construction of their homes. Prices of labour and materials turn out to be too high and beyond the budget. Such decisions are faced by many people today. Certainly, inflation, rising interest rates and increasing prices of materials are one of the reasons for "abandoning" unfinished houses. Also, many people decided to move during the pandemic, looking for a bigger home for their family. If you work remotely, a location with a good commute was less important and having your own garden and proximity to nature became more important. Since the beginning of April, employees began to return to the office. Companies require 100 percent presence of employees in the office, without the possibility of remote work. This is probably also the main reason for the decision to sell a house outside the city.

How much does it cost to build a house up to 70 m²?

It is very difficult to indicate one amount specifically, because of the multitude of different factors that mainly influence the price of building a house. However, some assumptions can be made which are, of course, very approximate and for the construction of a single-family house, in developer condition, shown in Figure 1, which has a rather simple pro- design and an area of up to 70 m², at the end of 2021 it would cost around 250 thousand PLN. Of course, now to this price must be added the cost of finishing the property, as well as furnishing the house. And this is a very significant expense. Depending on the materials and equipment used, it can be higher or slightly lower. However it is assumed that in the case of a 70 square meter house, it can be around 250 thousand zlotys and more.

But, however, there is still almost no interest in 70 m² houses as of today. According to current information received by the relevant offices, since the beginning of the year, most District Starosties in Poland have not received any application for the construction of such a house. The Starosty explains the lack of interest by an "unfavorable time", with raging inflation, many people lose creditworthiness, and above all, the prices of plots of land are nowadays often higher than building such a house. Therefore, the whole investment ceases to be profitable. But it is not only about profitability, because simplification of the procedures does not always mean that everyone will keep their common sense and it can be predicted that without building supervision, with the current simplifications, we can expect a rash of just "barracks", put up in just any place. You should also be aware that building a house is such a serious investment that you should think whether you want to save on materials and quality of these important elements. But for today it is too early to make any predictions in this regard. Also, construction companies do not record any great interest. At this moment there are no customers who would like to build such a house. We often hear in the media: building a house of up to 70 square meters is cheaper than a studio apartment. Whether houses up to 70 sq. m will enjoy interest will be seen only at the end of 2022.

Many people may still hold off on investing until the General Office of Construction Supervision launches a free database of architectural designs of such houses. The Main Office of Building Supervision announced last year a competition to select architectural designs of houses that would be functional, ecological, economical and aesthetic. The authors who submit the best designs will receive a cash prize of PLN 5,000 along with an invitation to negotiate a full construction design, which will be made available to investors free of charge in the second quarter of 2022.

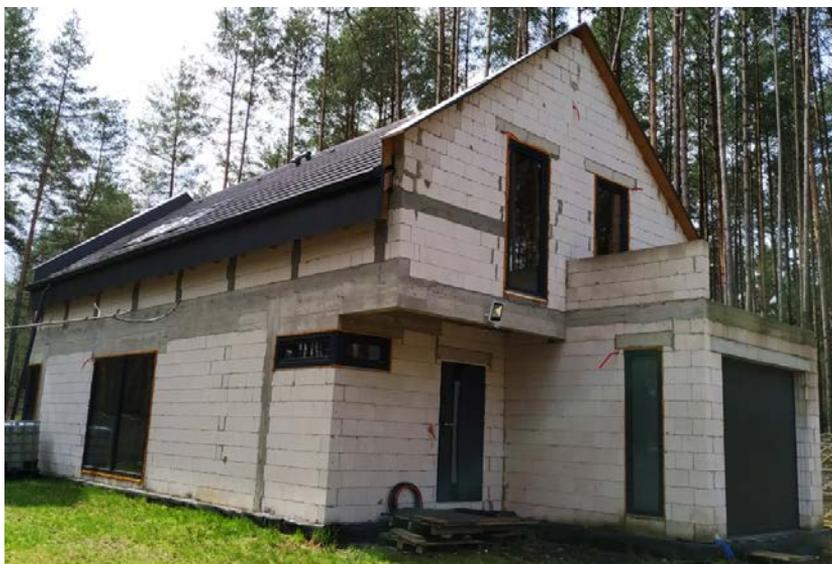


Fig. 1. Example realization of a house up to 70 m² (own research)

In order to determine the profitability of building a house of up to 70 m² without a permit, taking into account the financial criterion, a cost-comparative analysis was carried out. The cost of constructing detached houses up to the building shell is higher than that of recreational houses due to the necessity to cover the costs of elevations and projects for water, sewage and electricity connections. When analyzing the costs of service related activities and administration costs, the following expenses were taken into account: 1) government architectural and construction project when building a single-family house without a building permit and the architectural and construction project prepared by an architect when building a single-family house with building permit; 2) adaptive architect – plot development project and adaptation of the architectural and construction project to the plot; 3) surveyor – map, service (including continuous footing and inventory receipt); 4) building permit, which consists of a fixed fee consisting of the approval of the architectural-construction design and a fee depending on the metric area - included when building with a permit; 5) site manager when building a detached house with building permit. Included in the cost of change of use are expenses such as elevation, designs of water, sewage and electricity connections, the cost of acceptance by the fire officer and the site manager, and the cost of conversion of the entresol into a usable second storey. The annual tax has been extracted on the basis of the current Act of January 12th 1991 on taxes and local charges, which specifies in detail the upper limits of tax (cons. act. Journal of Laws of 2019, item 1170, of 2021, item 401, 1558, 2192, 2290). The annual insurance prices for the articulated buildings have been determined after consultation with the insurance agent.

Having analysed the above research related to the real costs of construction up to 70 m² in compliance with to the current regulations, it can be noted that the cost of construction of a residential building up to the building shell is about 6% higher than the cost of construction

of an individual recreation building, which has an identical surface area of 70 m². On the other hand, comparing the costs of building a residential house up to 70 m² without a building permit and with one, it can be seen that the costs are significantly different. According to the regulations that came into force at the beginning of 2022, the costs of building a house without a permit are only about 1% lower than building a house with a permit.

Table 1

Cost-comparative analysis of building a house up to 70 m² (own research)

		Year-round residential building with building permit	Year-round residential building without building permit	Individual recreational building	Individual recreational building after conversion to year-round residential building
		PLN	PLN	PLN	PLN
Construction cost to building shell		250 000	250 000	250 000	250 000
Cost of service related activities and administration	Cost of architectural and construction project	8000	1	0	0
	Cost of adaptation of the architectural and construction project to the plot	2000	2000	0	0
	Cost of the surveying service	4000	4000	0	0
	Cost of building permit	117	0	0	0
	Cost of the site manager's service	3000	0	0	0
Cost of change of use	Cost of acceptance	0	0	0	3000
	Cost of designs of connections	0	0	0	4000
	Cost of elevation	0	0	0	20 000
	Cost of conversion of the entresol	0	0	0	50 000
Annual tax	max. $0.89 \times 70 = 62.3$	max. $0.89 \times 70 = 62.3$	max. $8.68 \times 70 = 607.6$	max. $0.89 \times 70 = 62.3$	
Annual insurance	129	129	766	129	
Total cost	267 308.3	256 192.3	251 373.6	327 191.3	

The increased costs are solely due to the difference in administrative costs and additional costs of service-related activities not directly connected with the construction itself. Comparing the fact that the law allows the conversion of a recreational house into a residential building, it was calculated that these costs are very high, i.e. about 30% higher than the construction of a recreational house and even 22% higher than the construction of a single-family house with a permit and about 28% higher than the construction of a house according to the amendments to the Act of July 7th 1994 – Building Law [1] – without a permit.

Summarising the costs of construction of a single-family house up to 70 m² up to the building shell, one may conclude that the construction of a year-round house without a permit will be the least expensive in terms of construction and administrative costs.

5. Conclusions

The main advantage of building a house of up to 70 m² on notification is the reduced execution time. This time limit has been clearly formulated, and failure to comply with it by the administrative body will result in criminal liability. The simplified procedure makes it possible not to hire a site manager. Leaving this aspect as an optional factor entails savings to a negligible extent. However, submitting a declaration that there is no site manager is tantamount to taking a risk, as the investor, by submitting it, undertakes to bear the responsibility for managing the construction site. In accordance with the above, in case of irregularities and mistakes made on the construction site, the investor is liable. It should be noted that if the investor decides to build a single-family house of up to 70 m² without a permit, he will be deprived of the possibility to sell the building. The lack of favourable conditions for the realization of a project such as sale or rental results from the investor's statement, which he is obliged to submit. Acting contrary to the articulated statement is subject to criminal liability. However, the indicated shortcoming may be circumvented by deciding to build a recreational house and then converting it into a single-family house. Following the cost-comparative analysis in point 3, the construction of a year-round residential building without a permit should be indicated as the most financially viable option for an investor expressing a desire to own a building for year-round use. However the costs associated with the construction of an all-year residential building with a permit are slightly higher. The investor then gains the possibility of selling or renting it, which is an extremely important aspect.

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Prawne aspekty budowy domu do 70 m² bez pozwolenia. Czy warto?

STRESZCZENIE:

W artykule przedstawiono aktualny stan prawny dotyczący budowy domu do 70 m² bez pozwolenia. Omówiono kwestię opłacalności takiej inwestycji. Dokonano analizy przepisów wynikających z modyfikacji

poszczególnych przepisów ustawy z dnia 7 lipca 1994 r. Prawo budowlane. Zidentyfikowano korzyści wynikające z wprowadzenia zmian w przedmiotowej ustawie. Przeanalizowano uchybienia związane z budową domu do 70 m² bez pozwolenia, porównując aspekty prawne wynikające z budowy domu jednorodzinnego i rekreacyjnego tej samej wielkości bez pozwolenia. Przeprowadzono analizę porównawczą kosztów.

SŁOWA KLUCZOWE:

prawo budowlane; brak pozwolenia; opłacalność