

MASSONETO, Luis Fernando. "Operações urbanas consorciadas: a nova regulação urbana em questão". Revista da Procuradoria-Geral do Município de Porto Alegre, n. 17, Porto Alegre, 2003, pp. 101-118.

NICKSON, A. Where is local government going in Latin America ? A comparative perspective. Trabalho apresentado na Annual Conference of the Society of Latin American Studies, University of Liverpool, 17-19 abril, 1998

NOVAIS, Pedro. Uma estratégia chamada "planejamento estratégico": deslocamentos espaciais e a atribuição de sentidos na teoria do planejamento urbano. Rio de Janeiro: 7Letras, 2010.

PEREIRA, Alvaro. Intervenções em centros urbanos e conflitos distributivos: modelos regulatórios, circuitos de valorização e estratégias discursivas. Tese (Doutorado) - Faculdade de Direito, Universidade de São Paulo. São Paulo, 2016.

PORTAS, Nuno. Planificación Estratégica Urbana. Seminário Internacional: Las Ciudades Medianas en el Contexto Europeo. 1994.

RIVIERE D'ARC, Heléne. Lecture "As palavras da Cidade", Prolam-USP, São Paulo, Oct 2001. Ref: World Bank, A strategic view of urban and local government issues: implications for the Bank, January 1999, draft, Washington, 1999.

TOLEDO, Benedito Lima de. São Paulo: Três Cidades em um Século. São Paulo, duas Cidades, 1981.

VAINER, Carlos. "Pátria, empresa e mercadoria: notas sobre a estratégia discursiva do Planejamento Estratégico Urbano". In: ARANTES, Otilia; VAINER, Carlos; MARICATO, Ermínia (orgs). A cidade do pensamento único: desmanchando consensos. Petrópolis: Vozes, 2000, pp. 75-103.

VILLAÇA, F. Uma contribuição para a história do planejamento urbano no Brasil, in DEÁK, Csaba e SCHIFFER, Sueli R. orgs. O processo de urbanização no Brasil, São Paulo, Edusp, 1999.

ID 1552 | THE SUBSTANTIVE IMPACT OF A PROCEDURAL RULE: THE CASE OF THE DUTCH 'LADDER' FOR SUSTAINABLE URBANIZATION

David Evers¹

¹PBL Netherlands Environmental Assessment Agency

david.evers@pbl.nl

1 STEPS TOWARDS SUSTAINABLE URBANIZATION

Since the dawn of the new millennium, the Netherlands, world famous for its protected Green Heart, growth centers, mainports and prohibition of out-of-town shopping malls, has been busy dismantling its national planning (Zonneveld and Evers 2014). In 2012, it opted to decentralize, deregulate and replace all remaining national urbanization policies with a single procedural rule called the ladder for sustainable urbanization. The 'ladder' owes its name to the three steps that local zoning plans must consider when granting rights for new urban development (see text box below). In short, they must argue that (1) a regional need exists, (2) explain the siting within the urban fabric and, if out-of-town, (3) consider multimodal accessibility. This substantiation should be included in the plan's explanatory notes.

Like many regulatory instruments, the ladder is a procedural rule aiming to achieve substantive ends, in this case, reining in the overproduction of housing and commercial property on car-dependent greenfield sites which had characterized post-2000 urban development in the Netherlands (Janssen-Jansen and Mulders 2012). One could easily be forgiven for not believing that a requirement to explain planning decisions in non-binding explanatory notes would overcome the powerful economic logic of land development. Indeed, an initial evaluation found the application of this rule in local plans to be clearly inadequate (Evers 2015a). Even so, the ladder – and more particularly its enforcement through the court system – has since been blamed for hampering development and in the summer of 2017, less than five years after it entered into force, it was relaxed.

Given the benefit of several years of implementation history, it is now possible to shed light on the impact of this instrument in more detail and reflect on whether the ladder was as ineffective its proponents had feared or as obstructing as its detractors had claimed. The research draws on an analysis of hundreds of

explanatory notes over the 2012-2016 period, a review of jurisprudence and 43 structured interviews conducted with a random sample of municipal planning officials in 2016. A guiding principle of the evaluation are the concepts of 'conformance' and 'performance' in planning theory (Faludi and Mastop 1998). Conformance, as the word implies, indicates the degree to which the rule is followed in practice, in this case whether a zoning plan that should have applied the ladder, actually did. Performance goes a step further, asking whether this application affected planning practice in a meaningful way. It can be assumed that conformance is a necessary but insufficient condition for performance.

Spatial Planning Decree (Bro) Article 3.1.6, Section 2 Section 2: The explanatory notes of a zoning plan enabling new urban development must contain the following: a) A description of how the foreseen urban development satisfies a current regional need; b) If the description in part a shows that a current regional need exists, a description shall be provided of the extent to which this need could be accommodated in the existing urban area of the region in question by reusing, refurbishing or transforming available space; c) If the description in part b shows that the urban development cannot be accommodated within the existing urban area of the region in question, a description shall be provided of the extent to which this need will be met at locations that are, or can be, suitably connected by different modes of transport.

Source: http://wetten.overheid.nl/BWBR0023798/geldigheidsdatum_09-02-2015, own translation.

This paper will first provide a brief overview of the literature on plan and policy assessment to contextualize the evaluation undertaken for the ladder. Next, the terms conformance and performance will be operationalized and the methods of the empirical research explained. The last section presents the results and conclusions.

2 LITERATURE REVIEW

Even though planning generally gravitates towards ex-ante evaluations (i.e. survey before plan), assessing the impact a plan or planning policy ex-post has a long tradition as well (Talen 1996; Seasons 2003). Generally, this draws on the policy analysis literature, and more specifically implementation studies. One of the most important insights to emerge from this literature is that a great gap can exist between what is written on paper and what happens in actual practice (e.g. Pressman and Wildavsky 1973).

What is the nature of the policy being evaluated? The ladder is a procedural rule with the ambition to achieve substantive aims (sustainable urban development) and in this sense, works indirectly. This resembles other instances of institutional design, where "[t]he tacit assumption is that changing the rules of the game will affect gameplay in a durable and predictable way, and that this will ultimately result in substantively different outcomes" (Evers 2015b, p. 428). Specifically, the ladder seeks to influence urbanization processes by mandating that plans argue why the development meets a regional need, and if applicable, why a greenfield site is necessary for this and whether the location is multimodal. Because the ladder is essentially a policy instrument prescribing an assessment be made, assessing its impact has the character of a metaevaluation. In this respect, we can turn to the extensive literature on the effectiveness of environmental impact assessments (EIA), which have similar aims and mechanisms as the ladder (e.g. Chanchitpricha and Bond 2013). Like the ladder, an EIA assembles information about the desirability of a development project given its potential impact with respect to alternatives. Like the ladder, the EIA's purpose is to improve decision-making (Oliveira and Pinho 2010). And, finally, like the ladder, it seeks to contribute to sustainable development. On reflecting on how to study the effectiveness of EIAs, Sadler (1996) made a distinction between procedural effectiveness (if and how the procedures were implemented as required), substantive effectiveness (the extent to which the EIA led to actual change) and transactive effectiveness to the mix (whether these changes were cost-effective). Baker and McLelland (2003) added the criterion of normative effectiveness (the extent to which normative goals were achieved).

These notions correlate well to a distinction made in planning theory between conformance and performance (e.g. Barrett & Fudge 1981 cited in Faludi 2000, p. 305). Conformance relates to the extent to which practices comply with rules or development follows plans. Most conformance research in planning is carried out when clearly defined objectives are present, such as housing targets in particular locations (Bontje 2001; Korthals Altes 2006, Alfasi et al. 2012). In the case of a procedural rule like the ladder,

conformance is tantamount to the 'procedural effectiveness' identified by Sadler (1996) above. In other words, if the explanatory notes of a plan granting urban development rights contain the necessary substantiation, it is ipso facto in conformance.

Performance, on the other hand, regards how rules work themselves through organizational practice. This is particularly important for strategic plans where targets are long-term and hard to quantify. According to Faludi, a vocal proponent of this evaluation method, "[p]lans perform their role if and when they help decision-makers make sense of their situations, and so they need to be evaluated in this light" (Faludi 2000). With respect to the EIA literature, this notion of performance carries with it elements of both 'substantive' and 'normative' effectiveness.

I contend that in the case of the ladder, both conformance and performance is relevant for understanding its effectiveness. It is reasonable to claim that non-conformance means that this rule has not meaningfully affected municipal planning practice (performance). Conversely, the faithful application of the ladder (conformance) may entail some degree of organizational effort (performance), unless this was already standard procedure at the municipality. Performance is vital, however, since the ultimate substantive aim of the ladder, to make urban development in the Netherlands more sustainable, means going beyond simply applying the rule, but internalizing it and acting accordingly.

3 METHODS

This study takes the aforementioned distinction between conformance and performance as a point of departure, elaborating on these terms from the insights gained from the EIA evaluation literature. The research draws on an analysis of explanatory notes, a review of the relevant case law and structured interviews. Some results have been published (in Dutch) by the Netherlands Environmental Assessment Agency.

In our evaluation of the ladder, conformance is defined as the extent to which the explanatory notes of a local plan falling under the requirement contains explicit argumentation on the points stipulated by the ladder. This was performed in two steps. The first was to determine whether a particular (randomly selected) zoning plan provided for 'new urban development' as defined in the regulation, whereby application of the ladder was compulsory. This was not as straightforward as expected and often required close reading. As a result, plans were sorted into the following categories (1) noncompulsory (no significant urban development), (2) unclear/indeterminate, (3) possibly compulsory (small-scale building or rezoning uses in existing buildings), (4) clearly compulsory (significant new or expanded zoning for residences, industry or retail). Afterwards, the explanatory notes were scanned and the application of the ladder, if present, read. A score was then awarded according to how well the ladder was applied: (A) complete and proper application, (B) an argument given why it was not applied, (C) partial or incorrect application (e.g. cursory remarks, skipping steps), and (D) not applied and/or mentioned (it was assumed that if a plan made no mention of the ladder, it did not apply it). Obviously, of all possible combinations, the most relevant cases are 4A and 4D. The analysis was carried out using a sample of approximately one thousand explanatory notes in the 2012-2014 period (randomly drawn from a pool of approximately 5,000 plans) and repeated two years later using the same methodology for the 2014-2016 period. During this time, ladder case law was followed in order to keep track of how key issues were being interpreted, such as the evolving definitions of 'new urban development' and 'existing built-up area', but no changes were made to the methods in the two periods for the sake of comparability.

The performance of the ladder was carried out using mixed methods. The first entailed a reflection on the data obtained during the conformance analysis. As stated, performance was considered absent in cases of noncompliance: it is unlikely that the ladder had a significant effect on the plan if it was not even mentioned. A sample of 200 explanatory notes of zoning plans were therefore randomly selected that did mention the ladder and sorted according to type of urban development being granted and the kind of argumentation being put forward. This analysis was more qualitative and entailed subjective interpretation as regards quality of argumentation. Like the conformance analysis, this analysis was carried out twice for the 2012-2014 and 2014-2016 periods respectively.

The second method to measure performance concerned structured interviews with planning officers from 43 randomly selected municipalities. The interviews were carried out by planning students from the

University of Amsterdam in the spring of 2016 using a standard set of 18 questions and were approximately 60-90 minutes in length. The results were single-blinded in so far as the respondents were told that the interview was about the effects of national planning policy on local planning in general and not on the ladder specifically. This allowed some strategic questions to be posed at the beginning of the interview on ladder-related issues to see if the respondents would spontaneously mention it on their own behalf and volunteer information about its impact. The ladder was only raised as a topic after the respondents had reflected on the impact of other national and European policies on plan-making in their municipality, making their assessment of the ladder more consistent and balanced. Towards the end of the interview, respondents were invited to reflect on the meaning and significance of the ladder (i.e. how it compares to the Dutch planning concept of 'good spatial planning') and to share their opinions on the ladder and provide advice to the national government. The interviews were transcribed and analyzed qualitatively by hand (coding in margins and tallying in Excel). In order to protect the privacy of respondents, the results are presented anonymously.

4 RESULTS

The degree of conformance and performance of the ladder will be presented along the lines of the four criteria for effectiveness of EIAs discussed earlier, but using terminology more attuned to planning. As stated, Sadler's 'performance effectiveness' strongly resembles the concept of 'conformance' in plan evaluations and will be treated first. The remainder of the paper evaluates the performance in several sections. First, the performance in terms of 'substantive effectiveness' or the impact of the ladder on municipal planning (both in terms of content of plans as well as the planning process) will be assessed. This will lead to a discussion about 'normative effectiveness', that is the extent to which the ladder is aligned with the municipality's own policy objectives and broader notions of 'good spatial planning'. Finally, the matter of 'transactive effectiveness' will be considered by presenting some results about the added value of the ladder as an instrument vis-à-vis some of its perceived side effects.

4.1 CONFORMANCE

As explained, the level of conformance is ascertained in two steps: (1) whether a given plan enables 'urban development' and therefore is required to apply the ladder and (2) whether this plan applied the ladder. This exercise was performed on approximately 1,000 plan explanatory notes in 2014 and repeated two years later. Each time, approximately 250 plans were found to enable urban development and thus these plans comprised the units of analysis.

The two periods reveal remarkable differences in conformance. In the 2014 assessment only 8% of plans applied the ladder in full and 72% did not apply it at all (Evers 2015a). It is reasonable to assume that the low level of conformance with the rule is related to the 'pipeline effect' of plans slowly making their way through the system when the ladder entered into force in October 2012. A second factor concerns the awareness of the existence of this requirement, a matter which was greatly enhanced after the Dutch administrative court struck down some plans for non-compliance in late 2013. Both explanations would suggest improved compliance in the future, an expectation which was confirmed by the 2016 assessment. In the second period about half of the plans applied the ladder in full: about six times as many as in 2014. The figures strongly suggest that this instrument is becoming institutionalized in local planning practice, especially considering that an additional 24% had made an attempt (i.e. partial or incorrect application). In this period, the ladder was widely discussed in professional trade journals and seminars, further contributing to awareness and, presumably, conformance.

4.2 PERFORMANCE

Since the ladder is the last existing national rule on urbanization, its performance is no trivial matter. In order to investigate the extent to which it impacted local planning practice, a number of tests were carried out. First, the argumentation in the plans was evaluated. Second, the opinions of the 43 municipal planners were analyzed about how and if the ladder affected planning content and processes and how they felt about these impacts.

4.2.1 SUBSTANTIVE IMPACT

As a first step to understand the performance, a random sample of ladder texts were read (200 in each period). Already in the selection of plans for further analysis, it became abundantly clear that awareness had improved: about twice as many plans mentioned it explicitly in 2016 than had in 2014, confirming the analysis on conformance above. Another interesting difference related to the kind of plan being made: a greater share of plans enabled development, but these developments were generally smaller and, saliently, under the legal threshold for the ladder as defined in the jurisprudence (i.e. 10 housing units, up from about 5 in the 2014 analysis). Obviously, the degree to which plans are legally required to apply the ladder will affect its impact on local planning practice and substantive outcomes. Since a majority of plans are now under the threshold, they do not have to consider regional need or provide arguments regarding siting or multimodal accessibility. This means that the ladder is ineffective in curbing, and indeed may even encourage, piecemeal urban sprawl. Moreover, in both periods only a small fraction of plans (less than 10%) pertained to commercial property development, which was at the root of the problems surrounding poor siting, multimodal accessibility and oversupply/vacancy, and a major reason why the ladder was introduced in the first place. One can therefore question, purely based on these figures, the real impact the ladder has had on municipal planning.

A reading of the argumentation itself casts further doubt on the impact of the ladder on substantive planning decisions. Of the three steps, by far the most attention was devoted to the first (regional need). For new housing, the plans generally stated that the foreseen development fit within the allotted capacity granted to the municipality within a provincial or regional strategy. The justification for commercial development, particularly retail, was more substantial and generally included quantitative needs assessments carried out by consultancies. With respect to the second step (siting), the ladder applications resembled ex-post rationalizations of decisions already taken; it did not seem like the ladder was guiding decision-making. Reasons for greenfield locations included the need for large parcels, open space (for luxury developments) or costs. Finally, the third step (multimodality) was rarely applied, or unconvincingly (e.g. that the site was multimodal because it could be reached by taxi as well as a car, or that public transport could be supplied at a later date).

The 43 interviews carried out in 2016 largely confirm the impressions gleaned from the textual analysis. When asked what the most important change had occurred over the past 10 years in their municipal planning, only 10% mentioned the ladder spontaneously, and only one respondent called it the most important change. Matters like the economic crisis, more vocal citizens, regional cooperation and a shift in planning doctrine towards more pro-development planning were considered far more important. The following questions on ladder-related issues (including one explicitly on national policy) elicited more mentions, bringing the total up to half of respondents. Still, the impression is not one of great significance (later, it was evident that all respondents were familiar with the ladder).

To measure the substantive impact further, the planners were asked whether the ladder had led to changes in plan content in their municipalities. Nine felt that it did have tangible impacts, and two provided examples of plans being abandoned or resubmitted. In most cases, the application led to a reduction in the number of homes or type of homes being zoned (only one regarded the second step, resulting in a different location for development). One of the most important impacts on local planning was a new fixation on qualitative analyses to argue that a 'regional need' existed. This was viewed as particularly difficult (but not impossible) to do in areas of slow growth or demographic decline.

4.2.2 PROCEDURAL IMPACT

The impact on planning processes was also discussed. In theory, the ladder is a new requirement, requiring extra time and effort to research and/or write up justification. Estimations ran a large gamut: some claimed it could be done in less than a day or even 'in about an hour', while others revealed that they had been dealing with the ladder application for over a year. One planner bemoaned the fact that a plan had been held up for a long time in court because the ladder had not been applied, and when it was applied, it was just a simple one-page explanation. Finally, as most zoning plans are written by consultants, many respondents admitted that they had no direct experience of how much time and effort was required. In general, the respondents agreed that the larger the plan, the more work was required for application. Another factor was the quality of the planning environment. The existence of regional housing visions, accurate and up-to-date information and the like expedite the writing of ladder applications. The

examples that the ladder influenced decisions to alter and reduce the amount of urban development or, in a few cases, opt for a different location. On the other hand, some developments have occurred that demonstrate a blatant disregard for the spirit of the ladder, while still following it in letter. Moreover, given that a majority of plans are too small to be required to apply this rule, the ladder is powerless to affect piecemeal urban sprawl.

Arguably more important are the impacts the ladder has had on the planning process: it has proved in some cases costly and time-consuming and created tensions with stakeholders. On the other hand, it has stimulated regional coordination, something which enjoys widespread support. The jury is still out regarding the desirability of this instrument on balance; the municipal officers interviewed were highly divided in their opinions. Nevertheless, the national government has decided to rewrite the ladder in order to make it less demanding. The first step, which had the most significant impact, has been weakened (the term 'current regional need' has been replaced by the more vague 'need') and the third step on multimodality scrapped. The lighter version of the ladder will enter into force in the summer of 2017, inevitably sparking a new round of jurisprudence and evaluation.

BIBLIOGRAPHIC REFERENCES

- Alfasi, N. J. Almagorb and I. Benensonbet (2012) The actual impact of comprehensive land-use plans: Insights from high resolution observations, *Land Use Policy*, 29, pp. 862– 877.
- Baker D., J. McLelland (2003) Evaluating the effectiveness of British Columbia's environmental assessment process for first nations' participation in mining development, *Environmental Impact Assessment Review*, 23, pp.581–603.
- Bontje, M. (2003) The challenge of planned urbanization, PhD thesis, University of Amsterdam.
- Chanchitpricha, C. and A. Bond (2013) Conceptualising the effectiveness of impact assessment processes, *Environmental Impact Assessment Review*, 43, pp. 65-72.
- Evers, D. (2015a) Ladders and snakes: Implementation and enforcement of national urbanization policy, paper presented to PLPR Conference, Volos.
- Evers, D. (2015b) Formal institutional change and informal institutional persistence: the case of Dutch provinces implementing the Spatial Planning Act, *Environment and Planning C*, 33, pp. 428-444.
- Evers, D. and W. Blom (2016) Gemeenten op de Ladder, PBL Netherlands Environmental Assessment Agency: The Hague.
- Faludi, A. (2000) The performance of spatial planning. *Planning Practice & Research* 15 (4): 299-318.
- Faludi, A. and H. Mastop (1997) Evaluation of strategic plans: the performance principle, *Environment and Planning B*, 24, pp. 807-813.
- Janssen-Jansen, L. & M. Mulders (2012) Ontwikkelingsbubbles en planningsdromen, *Rooilijn*, 45(4), pp. 244-251.
- Korthals Altes, W. (2006) Stagnation in housing production: another success in the Dutch 'planner's paradise'? *Environment and Planning B*, 33, pp. 97-114.
- Oliveira, V. and P. Pinho (2010) Evaluation in Urban Planning: Advances and Prospects, *Journal of Planning Literature*, 24(4) pp. 343-361.
- Pressman, J. and A. Wildavsky (1973) How Great Expectations in Washington are Dashed in Oakland, University of California Press, Berkeley.
- Seasons, M. (2003) Monitoring and Evaluation in Municipal Planning, *JAPA*, 69(4), pp. 430-440.
- Sadler, B. (1996) International study of the effectiveness of environmental assessment, Ottawa: Canadian Environmental Assessment Agency.
- Talen, E. (1996) Do plans get implemented? A review of evaluation in planning, *Journal of Planning Literature*, 10(3), pp. 248-259.
- Zonneveld, W. & D. Evers (2014) "Dutch Spatial Planning at the End of an Era" in: Reimer, M. et al. (eds.) *Spatial Planning Systems and Practices in Europe*, New York: Routledge, pp. 61-82