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DENMARK

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National profile on land ownership in urban regeneration - Denmark

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Published in:
Urbact

Publication date:
2007

Document Version
Publisher's PDF, also known as Version of record

[Link to publication from Aalborg University](#)

Citation for published version (APA):
Aunsborg, C. (2007). National profile on land ownership in urban regeneration - Denmark. *Urbact*.

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National profile on land ownership in urban regeneration – Denmark

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National legal framework and policies

Denmark has a highly decentralized system of public administration. The purpose is to solve the tasks at the lowest possible level in order to combine local knowledge and responsibility for decision-making with accountability for financial consequences. Not least this is the case with respect to spatial planning and urban regeneration. The central government provides the overall framework through legislation, policy guidance notes and certain possibilities of financial support. Within this framework it is a municipal task and responsibility to institute, plan, fund and implement urban regeneration projects in accordance with the planning strategies and development policies adopted by the municipal council.

In order to implement the municipality's spatial policies the Planning Act makes up a fundamental tool. By means of the Planning Act it is possible to prevent any undesirable spatial development in urban areas, due to the fact that the municipal council has the power to reject any application for a building permit not being in accordance with the spatial plans and policies. Since the Planning Act provides a statutory basis for very detailed planning regulations in the municipal structure plans and binding local plans, the municipalities this way are able to control any development that might occur.

However, the situation is much more complicated in the case of active implementation. Even though the Planning Act does provide some tools to promote the plans, it is usually necessary to supplement these tools with other means under authority of either other legislation or the general 'municipal authority', which entitles the municipality councils considerable latitude to spend their financial resources on purposes serving the public good.

In Danish legislation a differentiation exists between two types of urban regeneration, depending on the nature of the regeneration area. Urban *renewal* areas are first and foremost worn-down or malfunctioning housing areas needing improvement regarding standard of accommodation, open spaces and social conditions. Urban *transformation* areas are defined as existing industry- and harbor areas etc. where the previous land use is intended to be transformed into housing, institutions, retail, recreational areas or commercial uses compatible with housing. It is a necessary precondition for designating such urban transformation areas that they are delimited in a way so they only covers an area where business-, harbor- or the like activities having an adverse impact on the environment have either stopped or are winding down in a predominant part of the area. Both types of areas are assigned in the municipal structure plans provided under the authority of the Planning Act. However, as the tasks and opportunities are considered

to be substantial different in the two types of areas they are covered by different legislative regulations, subsidies from the state etc.

In urban renewal areas the regeneration aims to retain and improve the existing environment through renovation of the existing buildings and residential units, limited demolition and construction of new buildings, creation of open spaces for the residents and provision of communal facilities, etc. In more recent legislation it has been stated that an objective furthermore is to strengthen the social structures in the neighborhood through varying activities and projects, if necessary. The legal basis for urban renewal is first and foremost the Urban Renewal Act. This act provides a statutory basis for a number of subsidies aiming to implement urban renewal. The subsidies cover both subsidies from the municipality to the land owners and to the residents as well as subsidies from the state to the municipalities.

In urban transformation areas the regeneration aims to put radical changes into action; comprising completely change of the land use, alterations in the structure of the built-up area, changes in land ownership and users within the area etc. Development of this type of areas is considered a supplement and sometimes even an alternative to urban development in the urban fringe. Since the tasks this way can be said to be similar to urban development in general there are only a few statutory provisions particularly addressing this type of areas. The provisions comprise the possibility to zone the areas as special transformation areas and to lay down a specific sequential order for their transformation. Also, the municipalities are given the possibility to operate with an eight year transition period to solve noise problems emerging from enterprises remaining in the area or located in adjacent areas. Finally, it is possible for the municipalities to obtain subsidies from the state covering up to one third of the costs being spent on a number of specified preparatory tasks.

Financial issues

Urban regeneration is subsidized within the regulations of the Urban Renewal Act. To receive such funding it is a precondition that a pledge on subsidies is obtained in advance and that the activities etc. conform to the provisions of the act.

In urban renewal areas the municipalities can subsidize the property owners' total alteration costs and a part of the improvement costs. If rehousing is necessary the municipality must subsidize a part of the tenants' additional rent. The municipality can obtain partial funding of the municipal costs from the state. The subsidies cover common costs, e.g. program preparation, improvement of open spaces and construction of squares etc., as well as rehousing and municipal funding of the land owners expenses to do up and improve the buildings and residential units. The level of state funding is between one third and 50 percent of the municipal costs depending on the type of cost.

In urban transformation areas the municipalities can obtain partial funding of the municipal costs from the state, too. However, the possibility of subsidies is here limited to the preparatory tasks; comprising investigation of possible soil pollution, mapping of land ownership, preparation of action plans regarding the future use of the area and preparation of the organizational basis for the implementation of the transformation. The possible state funding makes up one third of the costs of these tasks as the maximum, while the regeneration itself not is subject to state subsidies. As the subsidized costs only make up a tiny part of the total transformation costs the municipalities have to find other ways to fund the urban transformation.

If a pending amendment to the Planning Act proposed by the government is passed by the Parliament landowners in the urban areas gets the opportunity to offer infrastructure investments to the municipality. Only technical infrastructure is compassed (e.g. roads, water supply and sewers), whereas funding of buildings and installations serving public purposes this way is impossible (e.g. schools and kindergartens). Such private investments must form part of a formal formation of a development contract aiming to 1) improve the quality of the infrastructure, 2) bring forward the area in the regulations of the municipal structure plan concerning the sequential order of urban (re)development, or 3) change or extend the building possibilities in the existing plans. It is a precondition that the contract is formed on a voluntary basis and that the land owners initiate moves to contract. In other words, if the amendment act is passed it admits some limited possibilities for the municipalities to fund some infrastructure investments which otherwise would have been a municipal duty.

Organization and management

The municipality must prepare a special urban regeneration program prior to the commencement of urban regeneration actions. This program has to be prepared in mandatory co-operation with the parties involved and makes up the basis for the granting of subsidies from the state, and in urban renewal areas it makes up the basis for the specific interventions in the area as well. The co-operation can be formalized in an actual public-private partnership.

In urban renewal areas the overall objective is to retain and improve the existing environment through renovation of the existing buildings and residential units, limited demolition and construction of new buildings, creation of open spaces for the residents and provision of communal facilities, etc. These objectives are usually obtained through the legally prescribed co-operation, provision of a detailed urban renewal program and extensive public subsidies. To maintain the spatial results of the urban renewal action a binding local plan under powers conferred by the Planning Act is provided. Adoption of a local binding plan implies that neither owners nor users are allowed to act contrary to the planning regulations. A need for more extensive actions regarding the land owners seldom exists, e.g. change of land ownership. In cases where provision

of land for e.g. squares or other public or common facilities is necessary the general tools under the Planning Act and other legislation (e.g. the road legislation) are available, among others compulsory purchase etc.

In urban transformation areas the overall objective in broad outline is to clean up the area and implement a new part of the town. However, the more specific objectives may vary considerably and depend decisively on the local urban, economic and political context and so may the conditions for the realization of these objectives. Consistent with the decentralized system of public administration the legislation does not provide any procedures or mechanisms specifically designed for handling this task with the exception of the possibility to operate with an eight year transition period to handle noise problems that may occur in the area. Instead, it is left to the municipalities to find an adequate way to design and organize the urban transformation within the general legislative framework. Except for the limited possibility for state subsidies covering some preparatory tasks this is true also for the funding issue.

The municipality council can choose to organize the entire process itself, including acquisition of properties, clearing of the area, subdivision and sale. The municipality can also choose to enter into a public-private partnership carrying out the entire process or parts of it. Further, the municipality can choose to leave the transformation to the land owners or development companies. If appropriate, the municipality council can choose to combine the mentioned possibilities either for the entire transformation area or for parts of it. However the municipality organizes the process and how involved private actors may be the municipality holds the planning authority. The authority to prepare and adopt planning regulations cannot be transferred; neither can the building possibilities assigned to the individual sub areas in the plan.

To organize and facilitate the transformation process the municipalities have a range of powers and tools at their disposal. The fundamental tools are the planning authority and the 'municipal authority' but in addition to these main tools several more specialized tools exist.

The planning authority implies that the municipal council holds the sovereign power to prepare and adopt plans and planning regulations within its urban area as long as it is motivated in planning considerations and state interests are not affected. This means that the municipalities can – and are obliged to – work out detailed plans prior to any major developments. Depending on the area concerned the regulations must deal with e.g. the land use, the size and delimitation of properties, the location of buildings on the sites, the size and design of buildings and unbuilt areas, preservation of existing buildings, etc. That is, the extent and content of the building rights on the individual properties are directly regulated through the binding local plans and with it the value of the properties. As a consequence a land owner has the right to request takeover of his property if it is assigned for public purposes or roads. Since the allocation and distribution of building rights in the transformation area affects the implementation possibilities these issues may be considered together with the other planning considerations.

The 'municipal authority' entitles the municipality councils considerable latitude to spend their financial resources on purposes serving the public good. According to the Constitution the municipalities are self-governing, and in addition they are entitled to collect income taxes. Therefore, the 'municipal authority' gives the right for municipalities to dispose their tax revenue almost freely. However, the disposal of the tax revenue must not be against the legislation or legal doctrines developed by the national supervision authorities (the Ministry of the Interior) and the courts. In a few words, it is illegal if tax revenues are not used to provide the common goods in the municipality or if the use of the tax revenue has an intensive influence on the market and the free competition. For example, it would be illegal if a municipality buys up land paying market price and then sells it to a bacon factory for less than market price for the purpose of attracting the bacon factory to this particular municipality to safeguard employment.

But in a few cases it is actually not prohibited to support individual private businesses financially. The legal doctrines allow municipalities to support businesses indirectly if 'matter-of-fact municipal interests' are handled; e.g. selling land to less than market price. 'Matter-of-fact municipal interests' are interests served by the municipality that are similar to the statutory duties municipalities are serving, e.g. planning, administration of the Planning Act, the Roads Act and the Environmental Protection Act etc. Therefore, *planning interests*, *environmental interests* and *infrastructure interests* are considered as 'matter-of-fact municipal interests' that can give reasons for (and compensate for the loss of money occurring from the transaction of) buying land to market price and selling the same land below market price. Also 'traditions' influence on what can be considered as legal 'matter-of-fact municipal interests'. It is a long tradition that municipalities not only provide citizens and businesses with land. They also develop the land with the necessary technical infrastructure, e.g. road construction, sewer, etc.; just as kindergartens, schools and sport centers and other social infrastructure traditionally is provided by the municipality.

So, the municipalities can use fiscal means for a wide range of purposes, including buying and selling of land and provision of infrastructure. If a municipality chooses to buy up land to secure urban transformation it has the option to attach particular conditions of sale; e.g. obligations to implement the local plan within a certain period of years or in a certain way, which is impossible on the basis of the Planning Act.

Within the framework of the 'municipal authority' the municipalities also have the possibility to act as an ordinary legal person pursuant to private law; e.g. by entering into contracts. In such cases, however, the municipality must make the distinction between its role as contracting party and (planning) authority as the municipalities are not allowed to 'trade' authority; e.g. by offering building possibilities in return of considerations from the other contracting party.

If one or more landowners don't want to sell their property compulsory purchase is an option under certain conditions. As regards urban transformation areas the municipality can use com-

pulsory purchase when it is of significant importance to the implementation of a binding local plan. Entire properties, parts of properties as well as property rights can be subject to compulsory purchase. It is a provision that it is necessary for the municipality to exercise control over the area and that the specific land use of the area in question is imminent. Compulsory purchase is not an option if the owner is able and willing to realize the purpose of the compulsory purchase himself. According to the Constitution the land owner is entitled to full compensation. In a few words this means that the owner must be compensated for the value of the property as it was at the time of compulsory purchase. After compulsory purchase a municipality has the possibility to convey the area to a private person who wants to take action in accordance with the plan.

Local context

Improvement of open spaces through urban renewal – Grønne gårde, Copenhagen ('Green Courtyards', Municipality of Copenhagen)

An example of a successful urban renewal aiming to improve the open spaces in extensive built up areas in the inner city is found in Copenhagen. Since most of the older districts of the city are developed in the 18th century predominant parts of the backyards of the housing blocks are dominated by backyard workshops, sheds, garages and fences etc. dividing the areas. On this background, the municipality has conducted a project 'Green Courtyards' aiming to clear-up the areas and lay out green areas. Since a single block usually contains different kinds of ownerships (i.e. private owned tenement houses, freehold flats, owner-partnership flats and non-profit rental housing) the improvement of open spaces in the backyards typically involves a range of actors and interest. However, an examination of the processes in relation to the implementation of 44 shared courtyards shows that in most cases a large degree of satisfaction exists. Besides, the urban renewal has caused an increase in the property values as well as new social networks within housing blocks. The case shows that a win-win-win situation relative easy can be created within the framework of the Urban Renewal Act due to public funding and mandatory involvement of the parties involved; owners as well as tenants.

Municipal acquisition of land, land development and resale – Mellem broerne, Aalborg ('Between the Bridges', Municipality of Aalborg)

An example of an urban transformation process where the municipality chose to organize almost the entire process itself is found in Aalborg. The area was an old harbor area located centrally in the town dominated by storage buildings and other activities related to the harbor. The size of the area concerned is 58.000 square meters. In the late 1980s the activities in the area was winded down due to an decrease in ship based transportation and the construction of newer harbor facilities closer to the sea. On this background the municipality in 1989 arranged an architectural competition about the future development in the area and a binding local plan was provided. However, in the early 1990s a general slowdown among investors existed and it

was difficult to attract interest to the transformation project. To advance the transformation process Aalborg Municipality chose to buy most of the properties; i.e. 48.000 square meters. Next the municipality carried out land development and site preparation, including extensive pile foundation and construction of a minor canal. A year later the first building site was sold and ten years later the area bought by the municipality was entirely transformed, whereas the remaining area so far remains unbuilt. During the transformation process the municipality adjusted the building possibilities in the original binding local plan in view of implementation considerations. The municipality still owns a minor part of the land, comprising the roads and a minor park.

Setting-up public-private partnership, land pooling and resale with integrated regulations – Teglværkshavnen, Copenhagen ('The Tileworks Harbor', Municipality of Copenhagen)

An example of how an urban transformation process can be kick-started and controlled in details through setting-up a PPP, acquisition of land and resale with integrated regulations is found at Sluseholmen ('The Canal Lock Islet') in Copenhagen. In the beginning of the 2000s investors and developers were not (yet) queuing up to redevelop the waterfronts in Copenhagen. Therefore, in 2003 the Municipality of Copenhagen and Port of Copenhagen Ltd. established the first formal PPP to develop the former industry- and harbor area into new housing. The objective was to develop the first 1000 housing units (135000 square meters floor space) as a kick-start to an intended development of 5000 housing units in the area. Subsequent to land acquisition the sites were resold to investors and developers. In the sale agreements regulations about burden sharing etc. regarding the site preparation were integrated, and so were regulations aiming at safeguarding a certain architectonic concept provided by the municipality. The action involved a financial risk but turned out to be profitable to the PPP. Furthermore, the action 'uncorked' the development as it has been no problem to attract investors and developers to realize the remaining 4000 housing units in the area.

Land ownership and inappropriate planning regulations as a barrier to urban regeneration – transformation of an area adjacent to the central railway station (Municipality of Århus)

An example of delay of urban transformation due to the presence of several landowners and insufficient planning regulation is found in Århus. Adjacent to the central station two previous industry areas were cleared out within a few years; an oil factory and a train repair workshop, respectively. Similarly, two binding local plans were provided, of which the first one covering the former oil factory area was adopted in 1989 while the second one covering the workshop area was adopted in 1996. The plans had strong similarities; i.e. both plans allowed retail buildings. Since the area is located downtown Århus close to the shopping district this land use might be well-founded. However, the strong similarities between the two plans and the fact that the land was owned by two different owners each of them probably trying to optimize their benefits implied that potential investors were scared off. Not until both areas were bought up by the same developer company and a concerted project was developed by the new owner the urban transformation was commenced.

Networking and use of agreements under the force of private law as means to break down barriers originating from a multitude of development interests – Det centrale Valby, Copenhagen ('Central Valby', Municipality of Copenhagen)

Since the 1970s the development of the industrial area around Valby station had been an issue of public debate but not until the late 1990s the regeneration of the partly run down area was initiated. In the area several owner and land use interests were present, and besides a developer company had acquired an option for developing parts of the area. On this background a project group was formed in 1998 under direction of the Spatial Planning Department under the Ministry of the Environment. The network consisted of the municipality, the Valby Neighborhood Council and the parties with financial interest in the area. Initially the parties were far from each other concerned to their interests in the area but at the same time an understanding that some sort of compromise had to be reached in order to break nearly thirty years of stalemate did exist. By virtue of two years of negotiations it was possible to bring the initially conflicting parties closer one another and to reach an agreement of the future use of the area. On the basis of this agreement an implementable binding local plan could be prepared. Among other things, two old workshops and an empty site were bought by the municipality from one of the owners. In one of the workshops a school was to be relocated and in the other a sport and cultural house was to be build. Another feature of the agreement was that the developer company was allowed to transform an old factory into a combined housing and business facility.

Funding of major infrastructure by removing some of the increase in land value – Ørestadsprojektet, Copenhagen ('The Ørestad Project, Municipality of Copenhagen and the Danish State)

In 1991 an agreement to develop the western part of Amager was signed between the Danish State and the Municipality of Copenhagen. The overall objective was to create a new part of the town – The Ørestad – on a piece of undeveloped land and to stimulate growth in the Capital region. The agreement subsequently led to the Ørestad Act of 1992 in which the properties owned by the municipality and the state within the area are pooled, and the tasks for the Ørestad Development Corporation (owned by the municipality (55 per cent) and the state (45 per cent)) was specified: Planning of the area, development and sale of the land and construction of a metro system as well as major roads etc. Together with user payment in the metro and reversed land tax the revenues gained from selling the land were to be financing the major infrastructure.