

# **Transferable development rights in regeneration schemes for historic city centres.**

## **Legislation in the Umbria Region.**

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### *ABSTRACT*

*The debate on the possibility of transferring the right to build, defined and intended as the development right, does not have a long tradition in Italy. In fact, it is only since the mid 1990s, when Perequazione (equalization) was introduced in practice, that there has been debate about transferability and example of implementation. At the moment, the notion and use of transferable and tradable development rights have passed de facto and become widespread among local authorities to achieve various objectives such as compensation for a loss, economic or planning incentives, distributive justice among landowners and between these and non-landowners.*

*This paper will report on the experience of the Umbria Region in Italy in the use of development rights as a bonus to encourage certain characteristics of both development and re-development proposals in regeneration schemes for historic centres.*

## **INTRODUCTION**

During the 1950s and 1960s the debate on the need to transfer to the state the right to develop land was very intense. It was considered as necessary, in line with what was happening in the rest of Europe, such as in England, (Cullingworth & Nadin, 2006), to separate the right to build from the property right as a way of capturing increases in the values of land. In Italy the last attempt dates back to 1977 (Act n. 10) when national legislation tied the value of undeveloped land to the agricultural value on which compensation should be based<sup>1</sup>. However, three years later the Constitutional Court, with the judgment n. 5 of 1980 (Corte Costituzionale, 1980), judged such a norm as unlawful, stating that the right to build is an intrinsic part of the property right and therefore must be compensated when land property or part of it is taken for public purposes.

On the one hand, the debate on the possibility of transferring the right to build, defined and intended as the development right, does not have a long tradition. In fact, it is only since the mid 1990s, when the equalisation tool was introduced in practice, that there has been debate about transferability. In practice, the notion and use of transferable and tradable development rights have passed *de facto* and become widespread among local authorities. Development rights are thus used to achieve objectives such as compensation for a loss, economic or planning incentives or distributive justice by granting landowners development rights proportionally to the size of their property but irrespective of the land use designated for their land parcels. Therefore, development rights are used as a planning tool in order to achieve planning policy targets.

However, according to Karrer (2009) and Sabato (2010) it should not be possible within a development proposal to transfer development rights if receiving areas are not previously identified by either the development plan or action plans. If this is correct, it would mean that development rights exist but cannot be used as there is no receiving area available. This would lead to

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1 For further information on attempts at betterment value capture in Italy from the mid 18th century to the present day, see Falco E. (2012), *Dealing with Betterment Value: Different Trends between Italy and England*.

development rights “*in the air*” waiting for receiving areas to be identified, whilst there is the need to designate a precise land parcel that should accept the transfer of development rights. Such a hypothetical situation of “*development rights in the air*” would give the opportunity for market speculation by developers who could possibly be able to buy great amounts of development rights and, therefore, influence the construction market (Stanghellini, 2009).

This paper will report on the Italian experience in the use of development rights as a bonus to encourage certain characteristics of both development and re-development proposals in regeneration schemes for historic centres. This implementation procedure, considered in this way since it aims to facilitate the achievement of planning objectives, can be defined as a bonus in terms of development rights granted to developers whose actions contribute to the attainment of objectives of public interest. The paper will deal with the case of Umbria Region which has been one of the first regions to introduce legislation on historic centre regeneration through the bonus-rights practice and will seek to highlight the issues, difficulties and problems that may arise in the use of such practice.

## **WHAT ARE DRs IN ITALY?**

Recently, the concept of development rights as a bonus has been introduced in national legislation in Italy by the Annual Financial Act n. 244/2007. It states (article 1, subsections 259):

*“so as to encourage the implementation of interventions aiming at the realisation of social housing, urban and housing regeneration schemes, improvement of settlements’ environmental quality, the local authority, within its planning instruments, can grant a bonus-increase in buildable volumes (...)”*

As can be seen from this quotation, development rights are intended as an incentive, or bonus as it will be referred to later, for qualitative characteristics of land development proposals. Nowadays, transferable development rights are mainly used within three planning practices - Equalisation, Compensation and Bonus-rights - by which a local planning

As can be seen from this quotation, development rights are intended as an incentive, or bonus as it will be referred to later, for qualitative characteristics of land development proposals. Nowadays, transferable development rights are mainly used within three planning practices - Equalisation, Compensation and Bonus-rights - by which a local planning authority (Comune) grants development rights to landowners and implements its local plan<sup>2</sup>. At present, the use of such planning tools is rapidly increasing and they form part of the implementation policy adopted by many local planning authorities. Their use varies in relation to, and depends on, the objectives to be achieved and the land uses designated to a given land parcel or site. Purposes range from environmental protection and preservation of land and the protection and restoration of heritage and historic centres, the equal distribution of advantages among landowners and the redistribution of these benefits to the wider community through the capture of betterment value.

Bearing in mind that the bonus-rights practice, and therefore the power to grant extra development rights to developers and landowners, falls within the planning powers attributed to local authorities, legal issues may arise from its use. These concern the contributions asked from landowners and developers in terms of public facilities and the portion of the development area to be ceded to the public estate, the level of fiscal taxation on development value and the respect of the European Union market competition principle and state aid regulations (Bartolini, 2008; Falco, 2010). In-kind contributions and taxation on landed property fall within the legal matters subject to the constitutional reserve on private property. As a consequence, private property can only be regulated by legislation at the national level rather than within regional acts and, even more so, not through planning acts.

Therefore, with regard to the first and second issues, a recent judgment of the Lazio regional administrative court (Tar Lazio, 2010) on the Rome local plan stated that in-kind contributions and tax measures cannot be defined *a-priori* but should be the result of a negotiation process between local

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2 The three practices are known respectively as *Perequazione*, *Compensazione* and *Premialità urbanistica*.

planning authorities and developers (judgment n 1524/2010).

### **ITALY'S TRADITION IN HISTORIC CITY CENTRE REGENERATION**

Regeneration purposes pursued by local administrations through bonus-rights techniques are in line with the very large cultural and historical heritage present in Italy. Italy's historical heritage has spurred many initiatives and legislative measures in this field over the years. The long traditions in protection and conservation of heritage items date back to 1912 with the first protection and conservation Acts (n. 364/1909 and n. 688/1912). Moreover, an important protection mechanism which applied to the whole country was introduced through the Act n. 1089 of 1939. On the basis of such a mechanism all heritage items that were listed by the then Ministry of National Education as worthy of protection formed the historical heritage of the whole Nation. Yet, with regard to the protection and restoration of historic town centres, importance is assumed by the Gubbio Charter (1960) and the Venice Charter (1964) where the notions of the historic centre as a whole and the opportunity to consider the whole setting as a heritage item were defined. In fact, with the World Heritage List historic centres such as Rome, Florence and Naples are among the many listed. As a direct consequence of this debate, in 1978 the Act n. 457 was passed, concerning the restoration of existing housing stock from a single building to a whole setting, where particular emphasis in practice was placed on housing units in town centres.

### **THE UMBRIA BONUS-RIGHTS LEGISLATION AND TOOLS**

The Umbria region was the first to introduce specific legislation to encourage planning interventions within historic centres of towns through the bonus-right practice. In fact, although previous jurisprudence on bonus development rights was already in force in Umbria as well as in other regions, Umbria issued a new Act (*n. 12/2008 Norms for historic centres*) with the precise objective of regulating planning interventions such as regeneration schemes, home refurbishment and renewal.

The Act is important since it introduces two new planning documents within

which bonus rights may be used to achieve objectives of regeneration and revitalisation of historic town centres.

## **TWO INNOVATIVE DOCUMENTS**

The two planning documents introduced by the Act are the Quadro Strategico di Valorizzazione (QSV) (*Improvement Strategic Framework*) and the Ambiti di Rivitalizzazione Prioritaria (ARPs) (*Priority Regeneration Areas*). Along with economic and fiscal incentives and planning measures intended to encourage such regeneration actions, the Act provides the opportunity to use bonus development rights as a form of incentive within ARPs.

The QSV is a document intended to identify the role the historic centre can play, its strengths and weaknesses, strategic actions and long term development policies and to define economic actions within sectors such as tourism, commerce, retail and services. It is a statutory planning document for municipalities either with a population of over ten thousand inhabitants or with a town centre larger than fourteen hectares. Whilst ARPs are considered as an essential part of the QSV and are identified through an analysis process (SWOT methodology) which should lead to the definition of three objectives and three issues which should be coherent with those pre-determined within the Act n. 12/2008.

The determination of ARPs is made possible through a set of indicators defined by the Umbria Region such as: functional, hygienic and technological inadequacy; partially or totally unused buildings; lack or obsolescence of network infrastructures, services and green spaces; loss of 25% or more of resident households over the last ten years; reduction of economic activities by one-third over the last ten years; social decline and public safety issues; hydrogeological and seismic risks.

Once *Priority Regeneration Areas* have been identified on the basis of these indicators, and when at least three are met (regional act n. 12/2008), the implementation is carried out through action plans and programmes which should aim and demonstrate to reduce the conditions of decline within the identified ARPs.

## **THE ROLE OF TDR**

Transferable bonus development rights then are granted to property owners only when regeneration and restoration works have been completed and may only be used outside the historic centre. The amount of bonus rights granted to the proponent is calculated by the ratio of the total cost of the intervention to the cost per square metre of council housing previously determined by the Region. This factor is then multiplied with a sum of coefficients (omitted for simplicity) which refer to several parameters such as: dimension of the historic centre, land use, private car parking spaces for residential settlements, size of development and housing market value. The formula is as follows:

- in the case of ARPs falling within the historic centre:

$$\text{SQM of BTDRs} =;$$

- in the case of ARPs falling outside the historic centre:

$$\text{SQM of BTDRs} =$$

Where:

- SQM of BTDRs is Square Metres of Bonus Transferable Development Rights;
- TC is Total Cost of planned interventions;
- CCH per SQM is Cost per Square Metre of Council Housing.

However, in order for private property owners to be granted transferable bonus rights, some conditions must be met. Firstly, private owners must prepare a regeneration action plan, and the buildings involved must have a Gross Floor Area (GFA) of at least 500 square metres for municipalities with historic centres smaller than 14 ha, and at least 1,000 square metres for municipalities with historic centres larger than 14 ha.

As seen from the formulae, what is interesting and at the same time presents a limit of such a mechanism is the fact that the market value of the amount of transferable development rights assigned to developers cannot be higher than 50% or 20% of the total cost of the plan's provisions in the case of ARPs falling respectively within or outside the historic centre. This element

coupled, with the provision of a share of at least 80% of the total cost which must be for conservation and regeneration works, as a necessary condition for being granted bonus development rights, can effectively limit private initiative.

Considering the very recent introduction of such mechanisms it has not been possible to collect thorough information on the planning activity of local planning authorities. At the time of writing there are no fully approved QSV, perhaps highlighting some issues arising during the elaboration process.

A typical example of a regeneration and protection scheme would see the local planning authority (Comune) draw up a *Valorisation Strategic Framework* through which *Priority Regeneration Areas* would be identified. However, the regional act that introduced such mechanisms explicitly states that local planning authorities *could possibly* identify ARPs within the QSV meaning, by this expression, that determination of ARPs is a permissive rather than a statutory planning activity (art. 7, Act n. 12/2008). Nevertheless, the same time article 2 of the same regional act states that ARPs form part of the necessary contents of a QSV (Regione Umbria, 2009). Therefore, those municipalities for which the QSV is a statutory document (municipalities with a population of over ten thousand or with an historic centre larger than 14 hectares in size) are somehow obliged to identify ARPs, whilst those municipalities with a population of under ten thousand can proceed, if they choose, to directly identify ARPs.

#### **CONCLUSIONS: NECESSARY CONDITIONS AND POSSIBLE DOWNSIDES**

It becomes clear that at the stage of determining the eligibility of an intervention which is to be granted transferable development rights, a thorough cost-benefit evaluation must be carried out to verify if the above-reported quantitative and economic conditions are met.

Yet, this becomes of fundamental importance to determine the advantages private owners may earn also in consideration of the fact that public grants are made available to support such regeneration schemes which involve residential, mobility, marketing, commercial and tourism actions. By now, some fifteen local authorities have been granted public funds to activate such measures. The cities to benefit from public grants are as follows:



Spoleto, Bevagna, Foligno, Spello, Terni, Todi, Narni, Città di Castello, Gualdo Tadino, Orvieto, San Giustino, Corciano, Nocera Umbra, Acquasparta, San Gemini and Massa Martana.

Within the whole Region, 23 are the Communes obliged to draw up a QSV (Regione Umbria, 2012).

In conclusion, there is another important element worth mentioning which may impact on the efficacy of such schemes. It is the need for regeneration plans to conform to the objectives of the general planning document (Piano Regolatore Generale) and, more importantly, with its zoning. It is straightforward to comprehend that if the general plan provides a different zoning for the areas involved within the ARPs and for the newly identified receiving areas where transferable development rights must be transferred, then the general plan might be put under review and that, as a result, the entire process may be lengthy and less successful.

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