Permitted use of land plots as most important legal characteristic of real estate unit

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Abstract. One of the fundamental principles of the Land Law is in a certain classification of lands into categories according to their target use. This classification allows determining legal regime of the lands, based on their belonging to a certain category and their permitted use in accordance with the territorial zoning and with determined legislative requirements. The goal of this principle is to use a land plot strictly in accordance with its permitted use. Neglecting the permitted use of a land plot leads to breaking the law and might consequentially lead to expropriation of a capital construction object; this is one side of this aspect. Another one is in violation of the principle of urban development, according to which construction of objects is carried out on the basis of land-use planning documents, land use and development rules, and documents on land planning.

1. Introduction

Presently, the use of land plots in accordance with the Legislation of the Russian Federation is connected with their target designation and is divided into seven categories: 1) agricultural land; 2) residential land; 3) lands for the industries, power engineering, transport, communication, radio broadcasting, television, and informatics; lands for space activity support, defense and security lands, and other lands of special purpose; 4) lands of specially protected territories and objects; 5) forest resource lands; 6) water resource lands; 7) reserve lands. Correspondingly, the named lands are used in accordance with their designated target purpose.

Belonging of lands to one or another category and their permitted use is related to the legal regime of land plots, which gets determined based on requirements stated by the law [1].

As of today, the permitted use has no official definition. At that, based on the overall interpretation of the current legislative norms, this issue is being paid a special attention, connected with conditions of the use of a land plot and with legal bases and their consequences.

2. Mechanism of determining the types of permitted use of land plots

The types of permitted use of land plots are first of all connected with the possibility of placing capital construction objects [2]. For example, Article 37 of the Town-Planning Code of the Russian Federation identifies the following types of zones: general permitted use types; provisionally permitted use types; auxiliary types of permitted use, which are only allowable as supplementary ones for the general permitted use types and provisionally permitted use types, and which can only be used
together with them [2]. At that, characteristics of the territorial zone in which the land plot is located is taken into account. As a result, the Town-Planning Code of the Russian Federation [2] determines the permitted use types of land plots and capital construction objects as applicable to every territorial zone. Independently, territorial zones are zones with determined boundaries and stated town-planning regulations provided by the land use and development rules. The types and composition of territorial zones gets determined on the basis of urban development zoning. Urban development zoning means dividing lands of municipalities into zones in order to determine territorial zones and town-planning regulations.

There are the following types of territorial zones: residential, social-and-business, industrial, zones of engineering and transport infrastructures, agricultural zones, zones of recreational use, zones for military facilities placing, and other types of territorial zones. Each type of territorial zones consists of certain zones, specifying their composition. For example, residential zones can include the following: 1) zones of housing with individual residential houses; 2) zones of housing with individual residential houses and low-rise residential terraced buildings; 3) zones of housing with mid-rise residential terraced houses and blocks of flats; 4) zones of housing with high-rise blocks of flats; 5) zones of residential housing of other types. Social-and-business zones may include: 1) zones of business, public or commercial purpose; 2) zones of placing the objects of social and household use; 3) zones for servicing the objects necessary for industrial and entrepreneurial activities; 4) social and business zones of other types, etc.

Determining the main types of the permitted use of land plots and capital construction objects is compulsory as applicable to each territorial zone, towards which the town-planning regulations are being applied. An essential role here belongs to the town-planning regulations, as this document determines the legal regime of land plots as well as of everything located over and under the surface of the land plots and is used in the process of their housing and further operation of the capital construction objects. Moreover, this document contains information about the types of permitted use of land plots and the capital construction objects.

As stated by Article 30 of the Town-Planning Code, the boundaries of territorial zones get outlined on the map of urban planning zoning, and the types of permitted use of land plots together with capital construction objects get specified in the town-planning regulations. The map of urban planning zoning and the town-planning regulations are included into the set of rules regarding land use and site development. Among everything, land use and site development rules include provisions regarding the change of types of permitted use of land plots and capital construction objects [2].

The choice of the main and auxiliary types of permitted use of land plots and capital construction objects is carried out by the proprietor of the land plots and the capital construction objects independently and without any additional permission or coordination, except for state government bodies, local government bodies, state and municipal institutions, and state and municipal unitary enterprises. This rule is provided by Part 4 of Article 37 of the Town-Planning Code of the Russian Federation[2], as well as by Item 2 of Article 7 of the Land Code of the Russian Federation [1]. Regarding the permission for provisionally permitted type of using a plot of land, it is prescribed by the order provisioned in Article 39 of the Town-Planning Code of the Russian Federation (Part 6 of Article 37) [2].

The possibility of changing one type of the permitted use of land plots and capital construction objects to another type of such a use is carried out in accordance with town-planning regulations under condition of compliance with requirements determined by the law.

As stated by the Land Code of the Russian Federation, the types of permitted use of land plots get determined in accordance with the classifier approved by a federal executive authority which performs functions on state policy elaboration and statutory regulation in the sphere of land regulation [2]. This classifier has been approved by the Ministry of Economic Development of Russia’s Order No. 540 dated 01.09.2014 “On the approval of the classifier for the types of permitted use of land plots” and contains the name and description of the types of permitted use of a land plot [3].
These rules are necessary to comply with in order to exclude further use of a land plot for purposes other than intended, including the possibility of declaring a capital construction object to be arbitrarily created in a result of violating the use of the land plot.

3. **Legal basis for compliance with the requirements regarding the use of a land plot in accordance with the permitted use type**

As determined by the Land Code of the Russian Federation, classification of lands by their target designation, according to which the legal regime of lands gets determined based on their belonging to a certain category and the permitted use in accordance with territorial zoning and legislative requirements, is one of the mains principles of land law. Proprietors and other owners of land plots are obliged to use them in accordance with their target designation and their relation to one or another land category and the permitted use [1]. Hence the conclusion about the necessity to comply with requirements determined by the law regarding the legal regime of the land use.

Article 222 of the Civil Code of the Russian Federation provides that unauthorized construction is a building, structure or other formation, erected or created on a land plot when it not just has no any lawful provision of the land plot, but the permitted use of which does not allow construction of this object on this land [4]. The legislator stresses attention to the requirement regarding compliance with the permitted use of a land plot. Failure to comply with this requirement results in declaring the object of capital construction to be an unauthorized construction. Legal consequences for a person conducted the unauthorized construction is the absence of possibility to acquire proprietary rights for this construction. This person has no rights to dispose of the building: sell it, present is as a gift, let it out for a lease or make any other transactions. It should be noted that legal precedents on declaring the objects to be unauthorized constructions has practically formed nowadays. This conclusion is substantiated by judicial review of the Supreme Court of the Russian Federation No. 4 (2018) (approved by the Presidium of the Supreme Court of the Russian Federation dated 26.12.2018), although this issue might get elaborated in the future [5].

Alteration of the permitted use type of a land plot is only possible in compliance with the order prescribed by the law. In case of intention to create real estate objects on a land plot, proprietor of the land plot cannot neglect the town-planning regulations, as the town-planning regulations determine the legal regime of the land plots as well as of everything located over and under the surface of the land plots and is used in the process of their housing and further operation of the capital construction objects. Town-planning regulations get determined taking into account the factual use of land plots and capital construction objects within the limits of a territorial zone; the possibility of combining various types of the existing and planned use of land plots and capital construction objects within the limits of one territorial zone; functional zones and characteristics of their planned development, determined by space planning documents of municipal entities; the types of territorial zones; requirements regarding protection of cultural heritage sites, as well as specially protected natural territories and other natural objects. It is necessary to understand that the effect of the town-planning regulations equally covers all land plots and capital construction objects, located within the limits of a territorial zone marked on the map of urban development zoning [2].

Presently, the relevance of the issue of determining the type of permitted use of a formed land plot is very high.

According to Item 3 of Article 11.2 of the Land Code of the Russian Federation, designated purpose and permitted use of the formed land plots are admitted to be the designated purpose and permitted use of land plots which form land plots in case of parceling, assembling, replotting or dividing, excluding the cases provisioned by federal laws [1]. Thus, the type of permitted use of formed land plots and the category of lands to which they fall into can differ from the permitted use type and the land category of the initial plot of land, but only in a case that the federal law prescribes the order of determining the given characteristics of the land plot, different from the one provisioned by Item 3 of Article 11.3 of the Land Code of the Russian Federation. An exception from the determined rule can be the case provided, in particular, by Part 14 of Article 26 of the Federal Law No.
499-FZ of December 31 of 2014 “On Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation” [6].

By the general rule, the type of permitted use of formed land plots must correspond with the type of permitted use of land plots which form land plots in case of parceling, assembling, replotting or dividing, including the case when the formed land plots are located within the limits of a territory, for which a town-planning regulation is set.

This issue has been elaborated in the project of the Federal Law No. 496293-7 “On Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation” [7]. The project provisions that, firstly, all lands in the Russian Federation will get attributed to one of the territorial zones: agricultural zones; residential zones; social-and-business zones; industrial zones; zones for recreational purposes; zones for gardening intended for personal use of citizens; nature conservancy zones; zones of historical and cultural designation; zones of natural remedial resources; zones of power engineering; transport zones; zones for space activity support; zones for the country defense provision and national security; zones of special use; multipurpose zones; forest resource zones; reserve zones. Therefore, there will be 17 territorial zones determined.

The project provides for permitted use of lands included in such zones, as well as the order of determination and alteration of their borders.

Switching from categorization of lands to their zoning is supposed to be completed by January 1 of 2025. In their turn, local government bodies and executive authorities of constituents of the Russian Federation, which conduct approval of the rules for land use and development, will need to amend the rules for land use and development till January 1 of 2025 by determining territorial zones as applicable to the entire territory of the municipal entity, taking into account the identified agricultural lands and the changed borders of specially protected natural territories and the limits of forest districts, also considering the necessity to acknowledge the land plots consisting of wooded agricultural lands to be the forestry fund. At that, public hearing won’t be required.

It is also assumed that by April 1 of 2026, information regarding land categories will be excluded from the Unified State Register of Immovable Property (hereinafter referred to as the Register). Instead of this information, new data on attribution of a land plot to a certain territorial zone will be included in the Register. At that, consent of the land plot proprietor won’t be necessary. Keeping of the Unified State Register of Immovable Property is regulated by Federal Law No. 218-FZ of 13.07.2015 “On State Registration of Real Estate”. The Unified State Register of Immovable Property is a set of verified structured information in a text form (semantic data) and graphic form (graphic data) and includes: the register of information about the borders of zones with special terms of territory use, territorial zones, the borders of public easements; the borders of territories of cultural heritage sites, specially protected natural territories, special economic zones, hunting areas, the territories of the advanced social and economic development; zones of territorial development in the Russian Federation, gaming areas, forest districts, urban forests; about the State border of the Russian Federation, the borders between the substituents of the Russian Federation, the borders of municipal entities, the borders of settlements; about the coastlines (the borders of water bodies), as well as information on area demarcation projects (hereinafter referred to as the register of borders) [8].

It is necessary to note that the relevance of this issue has been proved by numerous legal precedents. In practice, there are complications arising: when determining the range of subjects authorized for alteration of the permitted use type; when taking into account specificities of situations when permissibility of changing the type of permitted use is limited, as well as procedural features of such a change; when determining consequences of failure to comply with the determined procedures and consequences of using a plot while violating the provisioned limitations. In this regard, the Supreme Court of the Russian Federation carried out generalization of legal precedents in order to ensure a uniform approach to resolving cases connected with alteration of the permitted use type of a land plot by general jurisdiction courts and arbitration courts. Proceedings of the generalization are given in the Judicial review of cases connected with alteration of the permitted use type of a land plot dated 14.11.2018 [9].
Thus, the state has emphasized the most important topics regarding compliance with the requirements to the permitted type of use of land plots through legislation and judicial acts. This issue is topical and, without a doubt, interesting in research works of many scientists [10-20].

4. Conclusion
Thus, compliance with legislative requirements when creating capital construction objects or during their further operation must correspond with the permitted use type. Alteration of the permitted use type must be carried out in accordance with the rules determined by the current legislation. These requirements should be complied with in order to eliminate negative consequences, connected with declaring an object of capital construction to be an unauthorized construction.

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