

## **THE LAW TO ESTABLISH THE LEGALITY OF BUILDINGS ON NON URBAN LAND.**

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The uncontrolled spread of housing in our area has hit the headlines on more than one occasion. This phenomenon was a feature not only of Alcaucín, but also the rest of Andalusia, if not the whole of Spain. The building boom was largely confined to the area within 30 km of the coast. The statistics vary according to the source, but the Andalusian Government estimated there to be some 12,000 dwellings with dubious legal status, only in the Axarquía. And this was without counting three municipalities. (Alcaucín, Viñuela and Canillas de Aceituna). Consequently, the figure of 15,000 such dwellings, as suggested by the environmentalist groups, is probably nearer the truth.

Despite the numerous official complaints made by individuals and pressure groups alike, the Andalusian Government failed to act for several years. The Andalusian Town Planning law (LOUA17.12.2002) clearly restricts building on non urban land (SNU) unless connected to agricultural or forestry use.

Buildings on SNU (Non Urban Land) have always existed. They appeared over a long period of time and presented no problem. These small dwellings were for the use of local youngsters who chose to remain in the area, working on the land. Generally they were built on two floors, with the ground floor being used for the storage of agricultural implements and machinery. The problem arose with the arrival on northern Europeans wanting to live in the countryside in relatively isolated surroundings, not far from the coast and enjoying a gentle climate. Suddenly, houses were being built not for the locals to use, but for sale on the burgeoning property market; times of pure speculation, when fortunes were made - and also lost.

It would be naïve to think that this free for all was brought to an end by the intervention of the Andalusian Government. The bubble burst as a result of the banking crisis, (often wrongly named the economic crisis). Demand plummeted and many properties were left unsold; suppliers unpaid; workers unemployed; and the banks, due to the high number of repossessions, became the biggest estate agents in the land. The Andalusian Government now saw the time as ripe for intervening against “illegal” building. I have always rejected the term “illegal”, as it is not compatible with a building that has building permission and a licence for first occupation or use. The permission perhaps should not have been given but unless the situation is reviewed by the Town Hall or the courts of law, then the permission is still valid. The Andalusian Government acted late and badly,

introducing the so called Rules for Planning Discipline (Reglamento de Disciplina Urbanística 60/2010). This was based on a fundamental error: that the Andalusian Government was not to blame and that the blame lay elsewhere - in particular with the owners of the houses. These rules only served to cause more confusion and so 18 months later another decree was issued, aiming to explain what they had tried to explain before with the LOUA of 17-12-2002. (If you are feeling a little lost, don't worry – everyone is).

The Junta of Andalucía probably never thought that we would fight this Decree, especially as we found out that we are protected by the Law 30/1992 that summarizing states in the articles 57 and 139 that:

1. All administrative documents are valid unless they are annulled.
2. When a citizen suffers damage due to a normal or abnormal functioning of the Administration, he/she has to be indemnified.

On the diagram below, I have tried to show an outline of the draft of the law. First some terminology needs to be explained:

- **Protected land:** by definition, no building is allowed. However, the case might arise where buildings have been legally introduced. There are two possible scenarios. (1) The building was there prior to the ruling for protection. (2) The building is compatible with the protected land. Protected land includes for example rights of way, public spaces, and areas protected for their outstanding beauty, scientific, cultural or historic interest etc.
- **Urban settlements:** closely grouped buildings in a defined area and related to urban activities. Examples of this would be the Valle Del Sol housing estate, Valle De Alcaucin, Las Huertas, Los Kikos, etc.
- **Scattered Rural Dwellings:** a group of buildings whose origins are linked to the rural environment and which can expect certain services without being considered a housing estate. Examples of this would be El Espino, Los Cortijillos, El Toril, etc.
- **Not covered by Planning (F.O.):** the building is not included in the current town plan. This does not necessarily mean that it is illegal. Licence for use could be issued if seen fit. It could

also be the case that a house was permitted under former regulations but is not under the new plan. In both cases these are buildings not covered by town planning but in possession of a licence for first occupation.

- ***Certificates of not being covered by Planning:*** Those buildings on non urban land that become “legalised” will not receive a licence of first occupation, only a certificate. This will give them the right to electricity and water, if necessary, but will have very negative repercussions when it comes to selling the property. The house will not be mortgageable.
- ***A.F.O. Assimilated not covered by Planning:*** a legal status introduced by the previous law 60/2010. It is to be applied to all buildings post 2003 that were built without administrative authorisation or in contravention of this licence. It remains unclear whether buildings without authorisation prior to 2003 will be included in this category.
- ***E.P.L.U – Protection Proceedings of Urban Legality:*** The house has been reported to the authorities due to its illegal status. If it is shown that the house is more than 4 years old, the infringement of the land law will be considered as set, it is regularized and considered as assimilated not covered by planning. If the house is less than four years old (now changed into 6 years), there is the chance that a demolition order could be issued. If the building is on public land or in an area of special protection than the time to set the infraction is not limited in time.

Although I know that is not precisely the kind of news you expected, we must face reality. This means that our fight is not over. We need to join forces more than ever. **The Junta might have the law on its side, but we have justice on our side. Laws can be changed at any time, justice cannot.**

# LEGALITY FLOW CHART OF DETACHED BUILDINGS ON NON URBAN LAND

