

# Working paper

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## Problems in enforcing Dutch building regulations

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### Abstract

**Purpose** – The aim of this study is to structure the policy problems in Dutch building control by performing a literature review and a field study.

**Design/methodology/approach** – In this analysis both a literature review and a field study were conducted in order to gain a clearer picture of the problems in Dutch building control. The methodology was Dunn's public policy analysis for problem structuring (2003). The field study was added to the literature review with the aim of obtaining deeper insight into the problems at the level of local building control authorities. The field study incorporates characteristics of a survey, with methodology developed by Fowler (2003).

**Findings** – The changing Dutch building regulatory framework seems to have implications for enforcement; yet, throughout the approximately 100 years that the Housing Act has been in force, local building control has scarcely changed. Attempts to deregulate and standardise the framework should not stop short at scrapping or changing the rules. Changes in the supervision

system might offer an alternative route to improving the quality of the (technical) building control and clarifying the tasks and responsibilities.

**Research limitations/implications** – The analysis focuses strongly on problems in building control and does not consider design and construction problems.

**Practical implications** – Policy analysis provides useful information on the developments in a particular policy field. The field study supports the definition of the policy problem, as concluded from the literature review.

**Originality/value** – An analysis of the Dutch building control system as performed in this study might serve as basis for analysing building control systems elsewhere.

**Key words** – Structuring policy problems, Building regulations, Building control, the Netherlands

**Paper type** – Research paper

### **Introduction – problem sensing**

A number of construction-related incidents at the beginning of the 21<sup>st</sup> century, some of them fatal, sent local building control straight to the top of the Dutch political and public agenda. Investigations into these incidents revealed that various municipalities were consistently neglecting to perform adequate building checks, that there were shortcomings in the issue of building permits, and that the allocation of responsibilities between the administrative and building control authorities in the municipalities was not clearly enough defined (Oosting Commission, 2001; Alders Commission, 2001; Ministry of the Interior, 2002; Cachet, 2001; VROM, 2002a; 2002b; 2003a; 2003b; 2004; Gemengde Commissie Gevaarlijke stoffen/Risicobeleid (joint commission for hazardous substances/risk policy), 2005; Onderzoeksraad voor de Veiligheid (safety supervisory board); 2006). The reports concluded that

the government should play a stronger role in policing the regulations and that a clearer distinction was needed in the task allocation. Also, many reports stated that the Dutch system of building regulations had become too complex and that the problems might be solved by deregulation.

In the last two decades of the 20<sup>th</sup> century, the Dutch government's view on building policy was reshaped by deregulation as part of a mission to enhance freedom (including freedom of design), accord equal legal status and protection to all citizens, and ease the burden on industry and administrative bodies. Various legislative and regulatory amendments were passed to achieve these aims but the desired effects were only partly realised. Many players in the building sector are critical of the complexity of the building regulations. Other European countries have reshaped their building regulatory framework via deregulation as well (Meijer & Visscher; 2006). However, one major difference between the Dutch system and other European systems is the monopolistic status of local building control authorities. In the Dutch system these have traditionally been and still are solely responsible for controlling and checking building plans and for granting permits, whereas in other European countries a shift has occurred towards different systems involving various players (Meijer & Visscher; 2006). That said, in the Dutch context initiatives have been underway for some time now to involve private players in the building control process (see e.g. Visscher *et al.*, 2003).

In a broad sense, public policy can be defined as the pursuit of certain goals with certain means within a certain timescale (Hoogerwerf; 2003: 20). Regulation is one of the tools at the disposal of a government. Regulation can be defined as the deployment of legal instruments by public players for the benefit of public and private interests (Den Hertog; 2003: 1). In regulatory literature a distinction is often drawn between economic and social regulation (e.g. Den Hertog; 2003; Rasmusen; 2005). Economic regulation concentrates primarily on market regulation,

market structures and the individual behaviour of companies while social regulation concentrates primarily on the collective behaviour of companies, usually with a special focus on public health, public safety and the environment. Social regulation is generally justified by referring to externalities and information asymmetries. Only part of the building regulations can be described in terms of economic regulation. For instance, directives and codes established at European level are primarily intended to facilitate the free trade of building products throughout the member states. The social aspects are the most important component of building regulations. Building and planning regulations have been developed to ensure that buildings meet basic quality standards. Safety and health have always been the core elements of the regulations in the Netherlands, but also in other European countries (Meijer & Visscher; 2006).

This study focuses on the policy problems in Dutch building control and questions whether these can be solved by deregulation alone. Following on from Dunn (2003), it is believed that problem structuring is an important step towards finding the right solution to the perceived problem. The aim of this study is therefore to structure the policy problems in Dutch building control. Dunn splits problem structuring into four independent phases: problem sensing, problem search, problem definition and problem specification. This study will follow these phases. As stated in the start of this introduction, the sensed problem is on the level of local building control authorities, which do not appear to be adequately performing their legal tasks. However, the construction-related incidents point to more than only shortcomings in local building control: somewhere in the design and/or construction process errors seem to have been made which may eventually have caused these incidents. It is therefore plausible that, from the perspective of social regulation, a framework is still needed for the regulation and control of buildings. The building sector itself seems unable to guarantee a safe public environment. A different attitude to the attainment of policy goals in this construction market – such as integrated quality assurance –

might also influence and redefine the government's role. As stated above, this is not the subject of this study, but it could be another important step in tackling some of the problems.

The problem search phase will concentrate on the building regulatory framework. A closer look at developments in building regulation and enforcement might provide insight into the (in)ability of the local building control to enforce statutory building regulations. The study will then focus on the problem definition and problem specification phases. The problem definition phase is based on a literature review which provides insight into the substantive policy problem. The problem specification phase is based on a field study which provides insight into the formal policy problem(s). Finally, conclusions are drawn on policy problems in Dutch building control and possible solutions, such as the reshaping of the supervision system. Ideas for further research, such as a comparison of international building control systems, will also be put forward.

### **Problem search: changing regulations, tied enforcement**

The Dutch government's first formal involvement in building and housing stemmed from the need to improve public health. The result was the Housing Act of 1901, which placed the responsibility for public housing policy squarely with the government and the responsibility for implementation with the local municipalities. This legislation gave the municipalities the freedom to draw up their own building and housing regulations, and to introduce their own control and inspection measures. Accordingly, a situation evolved in which building regulations in one municipality could differ radically from building regulations in another. Interestingly, no legal obligations were established with respect to building control (De Vreeze; 1993). This 'solution' was chosen as a happy medium between municipal autonomy and rule from above (Boogman; 1988: 340). It was not until the Act was amended in 1921 that building control became obligatory

at municipal level; the municipalities, however, were free to choose the means of implementation.

World War II was an important factor in the run-up to government involvement in the building sector. Building plans had been tightly centralised during the war to optimise the success of the reconstruction efforts (Vreeze; 1993). Delays occurred in projects that were set up with the specific aim of easing the urgent housing shortage in the post-war years. The government decided to tackle the housing shortage by introducing amendments to make the building legislation more uniform and nationally applicable. All parties in the building sector needed better legal protection. It was to this end that the Housing Act was drastically amended in 1961, but the municipalities still had considerable freedom. In 1965 the Association of Netherlands Municipalities produced its model building by-law with the aim of establishing a nationally acceptable minimum standard for housing and other buildings. The specifications were expressed as far as possible in functional terms; specific requirements and descriptions from previous models were avoided. The model was not mandatory, but most municipalities adopted it as a building by-law. As the model allowed the municipalities to grant exemption from requirements and to add further requirements of their own, each municipality was more or less free to draw up its own local (individual) building by-law. This is exactly what happened. But such actions seemed to fly in the face of the original intention of the model, i.e. to introduce uniformity into the municipal building by-laws, thereby improving (local) legal protection for parties in the building trade. The form and application of the building regulations were obstructing rationalisation, renewal and (cost) optimisation in the building chain (Scholten; 2001).

The government tried to end this situation by focusing, from the 1980s onwards, on standardising and deregulating the building regulatory framework. Superfluous rules and regulations had to be dropped – particularly on the technical requirements of housing – and the

building regulations themselves had to become more uniform. Nevertheless, almost no judgements were made on the enforcement of these regulations. In 1983 a so-called 'Deregulation Action Plan' submitted to the House of Representatives more or less marked the start of deregulation in the building sector. It was hoped that deregulation would ultimately increase freedom, improve legal security, stimulate equality of status for members of the public, and ease the burden on businesses and government (TK; 1983). The action plan also described how the government's proposals for improvement could be incorporated in a Building Decree (Overveld; 2003: 11). Under an Order in Council this Building Decree would set out all the technical requirements for existing and new constructions and thus automatically lead to unity and transparency in the building regulations (Visscher; 2000: 32). This Building Decree (1992) set out the minimum standards that a plan had to meet in order to get a building permit. It also set minimum standards for existing constructions, as far as possible in the form of performance requirements. It further contained functional descriptions, which indicated the purpose of the requirements, and a threshold value which indicated the required performance level and referred to a calculation method based on nationally accepted norms and standards. Finally, buildings were divided into three categories: permit-free, light-permit obligatory and normal-permit obligatory. At enforcement level statutory limits were set for the control of building permit applications. Despite all of this, the Building Decree of 1992 only partially reflected the goals in the policy plan to deregulate the building sector. An evaluation of the Building Decree by the Ministry of Housing, Spatial Planning & the Environment (VROM; 1996) revealed that the building sector favoured a systematic approach and endorsed the principle of performance levels. However, it also emerged that the envisaged simplicity was being obstructed by a complex reference system of norms and ministerial arrangements and by the legal wording of the regulations. Local building control departments also responded to the changes (Meijer *et al.*;

1995): the statutory limits and the division of the buildings into three categories were experienced as having an influence on processing time and on pre-application consultancy

A need for further deregulation coupled with reports about the incomprehensibility of the building regulations and incompatibility with other legislation prompted a revision of the Housing Act. The new version came into effect along with the (re-worked) Building Decree 2003 on 1 January 2003 (Overveld; 2003). It was hoped that the Housing Act and the underlying Order in Council would lead to more customer-friendly and comprehensible building regulations (Damen; 2003). Building Decree 2003 differed in form and content from Building Decree 1992. One significant innovation was the introduction of 'table legislation', i.e. sets of tables determining the sub-sections which apply to parts of a building with one and the same intended use (Overveld; 2003: 17 *et seq.*). There was no question of actual deregulation via the amendments: Building Decree 2003 comprises more sections (regulations) than Building Decree 1992 and pursues even more goals: health, safety, usefulness, energy saving and environmental conservation (although the latter has not yet been incorporated in regulations).

Summarising, it may be stated that during the one hundred years or so that the Housing Act has been in force, the building regulatory framework has been changed to suit topical issues and goals. However, as building regulations became more detailed and more uniform, almost no legal changes were made to the enforcement system: the responsibility for building control still lies with the municipalities and implementation is still to be established in clear rules. According to Section 100 of the Housing Act, a municipality only has to make provision for a local building control authority, it does not necessarily have to establish one. Section 100 was supposed to pave the way for departmental cooperation amongst different municipalities, or the incorporation of private parties in the system. Yet, almost all municipalities still have their own building control department, whose size depends on the size of the municipality. Furthermore, these local building



control departments are scarcely responsible, if at all, for carrying out their enforcement tasks (Drion & Schueler; 2005). Remarkably, in 2004, the Minister of Housing, Spatial Planning & the Environment stated that building control by these departments cannot be accorded absolute significance in the sense that an intended building plan complies totally with all the regulations. The building permit application only has to prove that, on the basis of the provided documents, compliance is plausible (TK; 2004: 10).

**Problem definition: building control does not meet legal criteria**

Under the present Housing Act, municipalities are required to check permit applications for new developments against the Building Decree, issue building permits, and supervise the construction work. The Dutch Ministry of Housing, Spatial Planning & the Environment (VROM) is monitoring the performance of these tasks. Within a period of four years, starting from 2003, a special ministerial inspectorate has investigated and reported the performance of Dutch municipalities. The reports, which are freely accessible through the Internet, provide insight into the quality of local building control. Two overview reports give an impression of the situation in the period 2003 - 2005 (VROM; 2005; 2006). They show that, in this period, only 12 - 16% of the municipalities adequately supervised building permit applications and only 7 - 11% adequately supervised the construction work for the building permit. Furthermore, these reports revealed that information which is needed for evaluating various requirements of the Building Decree was missing from 45% of new-building files for 2003 and from 27% for 2004. In addition, the Building Decree was (partially) breached by approximately 8% of the files for 2003 and 17% of the files for 2004. Finally, the reports state that in 2003 and 2004 no (visible) checks were performed for the various elements in the Building Decree in 69% and 47% respectively of

permit applications. Large discrepancies were also found in the calibre of the checks performed by the different municipalities.

In short, many local building control authorities were not fulfilling their building control responsibilities on a level commensurate with the legal criteria. No clear view was offered of the underlying causes although the overview reports do carefully state that understaffing and lack of resources led local building control authorities to make certain choices that make full control impossible. It seems, however, that the local government is not always consulted on these choices as responsibilities are not always clearly established. Lack of expert knowledge and disagreement with the building regulations are other reasons why enforcement is not always adequate. The inspectorate reports indicate that almost 65% of all Dutch municipalities – especially those with fewer than 30,000 inhabitants – seem to suffer from both qualitative and quantitative understaffing. The understaffing seems to be in line with previous notions: in 2003 the municipalities had made known through the Netherlands Association of Building Inspectorates that they were unable to fully monitor adherence to the building regulations: “100% supervision is beyond our capability” (VBWTN; 2003).

### **Problem specification: daily practice**

The various incident reports were unable to clearly explain why local building control authorities seem unable to perform building control on a level that meets the legal criteria. The reports by the ministerial inspectorate do not identify specific causes either, but view the problem in more general terms. To identify the possible causes a field study was carried out on the daily practices of local building control. Twenty-seven municipalities participated in the study, which consisted of a series of semi-structured open interviews and a questionnaire focusing on the time spent on

different control tasks, which was sent to the municipalities before the actual interviews. The interviewees consisted of local building control managers and inspectors (Heijden, *et al*; 2006). The field study had the characteristics of a survey; with methodology by Fowler (2003).

The field study enabled insight to be gained into the actual building control process. Understaffing was said to be the principal problem in monitoring compliance. Both the workload at local building control departments and the nature of work were said to be key problems. The workload at most local building control departments was said to be too high for the present staff, but the content of the work also seems to require a wide range of qualified specialists who are able to perform building control in a such way that the legal criteria are met. As building control departments, especially in smaller cities, only have a limited personnel budget, generalists are preferred to specialists.

The different local building control authorities seem to deal with building control in different ways. There is no 'national' standard, but some assumptions on Dutch building control can still be made. First of all, almost all the interviewees stated that safety and health requirements are the main focus of building control in their municipality. The Building Decree, which includes health, safety, usefulness and energy-saving requirements does not appear to be pursued widely. It emerged that applications for frequent-building activities (defined as activities with maximum building costs of € 50,000, mostly house adjustments or improvements – 80% of all applications concern frequent-building activities) are checked in basic terms. Second, the departments seem to work with an informal prioritisation in relation to the expected risks of a building plan, which is roughly based on the building costs. Third, as the interviews progressed, it became clear that building control employees treat different applicants in different ways. There is a clear distinction between the way non-professionals and professionals (e.g. housing associations, architects, advisors and building contractors) in the building sector are treated. Non-

professionals seem to get more help, more instruction and more advice prior to and during the building control process than professionals. Professionals are expected to know their way around and manage their own difficulties. “That’s what they [the professionals] get paid for” seems to be the general justification for the difference in attitude to the different applicants. Also, the employees of building control departments treat the professionals they know differently from the professionals they do not know. The work – both design and construction – of professionals with a good reputation at the department seems to be checked out far less thoroughly than the work of professionals with a poor reputation at the department. Again, a risk estimation seems to determine the level of enforcement. This risk estimation is said to be based upon the reputation that a professional has built up in the course of his dealings with the building control department. Like the risk estimation based on building costs, the risk estimation based on reputation is not formal policy in the building control departments. A final factor is the way municipal building control departments value the possibility of consultancy prior to application. Pre-application consultancy apparently enables the departments to steer conceptual plans, thereby sparing the applicant non-compliance problems and giving him more certainty about the outcome of the control process (the applicant is told where the plan does and does not comply with the regulations and where it should be altered). Another argument in favour of pre-application consultancy is that it shortens the processing time. None of the interviewed departments actually recorded the processing time of pre-application consultancy, but some interviewees did say that it could mount up considerably. Though pre-application consultancy was valued by the different interviewees, it should be noted that it is not formal Housing Act policy.

## **Conclusion**

At the turn of the 21<sup>st</sup> century the building sector became the focus of political and public attention after a series of construction-related incidents. Diverse incident-driven reports concluded that various municipalities were consistently neglecting to perform adequate checks, that there were shortcomings in the issue of building permits, and that the responsibilities of the administration and building control departments in the municipalities were not clearly enough defined. These reports also concluded that the government should play a stronger role in policing the regulations and that a clearer distinction was needed in the task allocation. Finally, some reports concluded that the Dutch system of building regulations had become too complex and that deregulation was needed. However, another conclusion that can be drawn from the incidents is that an actual need exists for a building regulatory framework: the construction sector itself seems unable to guarantee a safe public environment.

As in many other European countries, the Dutch building regulatory framework has a long history: throughout the 100 years or so that the Housing Act has been in force, it has been subject to changes to suit topical issues and goals. The goals of the original Housing Act in 1901 were health and safety. As the building regulations developed further in the twentieth century the list of goals grew. It now includes health, safety, usefulness, energy-saving and environmental conservation (though the latter has not yet been incorporated in the regulations). From the 1980s onwards, developments in the building regulatory framework were subject to ideas of deregulation and uniformity. Nevertheless, the present-day Building Decree has more sections and regulations and pursues even more goals than its predecessor. However, as building regulation became more detailed and more uniform, almost no legal changes were made to the enforcement system: responsibility for building control still lies with the municipalities and implementation is still not established in clear rules in the Housing Act or any other national

policy document. According to the Housing Act, a municipality only has to make provision for a local building control authority, it does not necessarily have to establish one. Yet, almost all municipalities still have their own building control department. Furthermore, these local building control departments are scarcely responsible, if at all, for carrying out their enforcement tasks. In 2004 even the Minister of Housing, Spatial Planning & the Environment stated that building control by these departments cannot be accorded absolute significance.

Reports by a special ministerial inspectorate indicated that many local building control authorities do not perform building control on a level that meets the legal. The inspectorate municipal reports offered no clear view on the underlying causes, although the inspectorate overview reports carefully quoted understaffing, lack of funding, lack of expert knowledge and disagreement on building regulations as contributory factors. To gain an understanding of the possible origins of the problem a field study was carried out on the daily practices of Dutch local building control authorities. It emerged from this study that understaffing, both quantitative and qualitative, was indeed regarded as one of the major causes. Moreover, as the size of a municipality roughly determines the size of its local building control department, understaffing was especially noticeable in municipalities with fewer than 30,000 inhabitants – roughly 65% of all Dutch municipalities. Other causes might lie in the fact that consultancy in municipal building control departments is entrusted mainly to non-professionals and that non-formal prioritisation is accorded amongst building plans and building professionals. A final cause might be the historically developed municipal autonomy from the national government and the inability of the local building control to keep up with the many changes in the building control framework over the years. The field study revealed that municipalities still seem to focus mostly on the original goals of the Housing Act and therefore do not cover many of the amendments made throughout the years.

A changing regulatory framework seems to have implications for enforcement; yet, throughout the approximately 100 years that the Housing Act has been in force, local building control has scarcely changed. It may be concluded that the efforts to deregulate and standardise the framework, which have been underway since the 1980s with a view to fewer administrative and management tasks, better building control and clearly defined tasks and responsibilities, should not stop short at scrapping or changing the rules. The reshaping of the supervision system might offer an alternative route to improving the quality of the (technical) building control and clarifying the tasks and responsibilities. Given the importance of a lower administrative burden as a policy goal, assigning more staff to local building control departments does not seem a feasible option. The form and content of this reshape – for example, more standardisation/uniformity in local building control, involving private parties to tackle problems concerning the specialist nature of the work, or the withdrawal of local government from the building control system in favour of private parties – will be the subject of further research, which will include an analysis and comparison of international systems of building control.

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