

Non-compliance and non-enforcement: An unexpected outcome of flexible soft densification policy in the Netherlands

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ABSTRACT

In many urban areas, governments are struggling to curb urban sprawl while simultaneously trying to keep up with growing pressures on the housing market. As a result, housing developments increasingly take place within the existing housing stock through soft densification in the form of subdivisions. Municipalities aim to regulate this type of densification because of growing pressure on existing infrastructure, neighborhood cohesion, and (rental) prices. This contribution looks at the city of Utrecht in the Netherlands as a case study, where small-scale private investors increasingly bought up owner-occupied homes to subdivide into rental homes. As a result, the executive council of the municipality introduced new subdivision regulations in 2016. It explores how the interests of the investors influenced the negotiations that took place during the policy formulation and implementation phases. Using a neo-institutionalist approach, we found that policy negotiations gave rise to an increased number of flexible rules on subdivisions, allowing municipal authorities to make decisions on a case-by-case basis. While official subdivisions have reduced drastically as a result of the new policy, investors have moved towards other less regulated opportunities or even illegal subdivisions. These findings highlight that while flexible implementation may provide more steering capacity for municipalities, it may also lead to non-compliance as an unexpected byproduct.

1. Introduction

The provision of an adequate housing supply to accommodate a diversity of incomes and personal preferences is a significant issue in urban areas (Pittini, 2012; Rohe, 2017; Wetzstein, 2017; Goodbrand and Hiller, 2018). As a result of the growing popularity of metropolitan areas and increased awareness of the importance of curbing urban sprawl, urban densification has emerged globally as an important policy objective (Wolff, 2018; Dembski et al., 2020). Such densification measures aim to increase the use density of urban areas by increasing the number of households or persons in a given area (Broitman and Koomen, 2015). As such, municipal policies increasingly aim to offer solutions to a growing housing shortage by means of stimulating new housing development within the boundaries of the existing city, for instance, through greyfield or office building redevelopments. While large-scale densification projects are an essential source of new housing within metropolitan areas, recent studies have shown that small-scale developments can also contribute significantly to the housing stock (Touati-Morel, 2015; Bibby, Henneberry and Halleux, 2020). When

houses are subdivided or supplemental buildings like garages are converted, such processes of densification are often referred to as soft densification (Dunning, Hickman and While, 2020). This contribution focuses specifically on housing subdivisions.

Housing subdivision processes take a variety of forms. In the US, Canada, and Israel, the debate focuses on the creation of so-called Accessory Dwelling Units in low-density single-family housing (Mendez and Quastel, 2015; Chapple et al., 2017; Patterson and Harris, 2017; Holzman-Gazit et al., 2021). However, subdivisions also occur in high-density urban areas such as Hong Kong and London - often in response to high housing prices (Infranca, 2014; Edwards, 2016). In the Netherlands, the subdivision of owner-occupied family homes into rental apartments or student rooms has become an attractive investment for small-scale private individual investors because of the higher economic returns of densified plots and low interest rates and property transfer taxes (Touati-Morel, 2015; Aalbers et al., 2020; Hochstenbach and Ronald, 2020).

Such types of subdivisions often receive resistance from neighboring landowners or tenants, fearing property depreciation or a change in the

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social composition of the neighborhood (Infranca, 2014; van der Poorten and Miller, 2017). Furthermore, municipalities struggle with managing the increased pressure on public space and infrastructure, such as parking, problems with noise pollution, the living quality of subdivided apartments, and fire safety (Idt and Pellegrino, 2021; Teller, 2021). Many jurisdictions have therefore placed restrictions on this type of development. Examples are regulations that govern the minimal permitted size of a subdivided apartment, whether a lot is eligible to add an extra unit, or whether the owner must live on the premises (Chapman and Howe, 2001; Anacker and Niedt, 2019). Simultaneously, research has shown that in many international contexts, these regulations have not prevented the occurrence of illegal subdivisions (Tanasescu, Wing-tak and Smart, 2010; Mendez and Quastel, 2015; Goodbrand and Hiller, 2018; Alterman and Calor, 2020).

As the regulation of soft densification takes place in a web of opposing rights and interests that guide and constrain the behavior of both private and public actors, it is appropriate to study it from a neo-institutional perspective. Within the neo-institutional planning literature, there has been an increased interest in how local planning authorities can use land-use policy in order to actively promote large-scale densification projects in urban regions (Gennaio, Hersperger and Bürgi, 2009; Debrunner and Hartmann, 2020; Debrunner, Hengstermann and Gerber, 2020; Dembski, 2020; Dembski et al., 2020; Meijer and Jonkman, 2020). However, very little has been written about soft densification, even though it is a prevalent form of densification (Dunning, Hickman and While, 2020). While it has been acknowledged that planning instruments are not merely technical devices but are, in fact, highly political (Lascoumes and Le Gales, 2007; Gerber, Hengstermann and Hartmann, 2018), limited research has been done on the political processes behind planning policies. More specifically, there is a gap in the literature on how landowners respond to policies that regulate soft densification.

This research seeks to address this gap by exploring the negotiation strategies of private landowners and local planning authorities during the formulation and implementation of a soft densification policy. It addresses three main questions: 1) What are the mechanisms leading to soft densification, 2) how do negotiations between the local planning authority and landowners affect the type of soft densification policy formulated, and 3) how do the strategies of landowners affect the consistency between the formulated policy and its implementation? A key objective of the study is to discuss the fraught relationship between public policies and property rights in the context of soft densification. This is important given the difficulty of achieving desired planning goals in front of powerful interests rooted in property rights (Gerber, Nahrath and Hartmann, 2017). We performed a qualitative case study to analyze and create an in-depth understanding of these issues. The case study was carried out in the neighborhood of Zuilen in Utrecht, the Netherlands, where the executive council of the municipality enacted a series of new measures to regulate the subdivision of family homes into rental units by individual small-scale investors in 2016. The focus of this contribution is thus on these investors as a specific type of landowners.

2. The governance of soft densification

This study aims to explain the governance processes of market-initiated soft densification in the form of buy-to-let investments. This study uses the Institutional Resource Regime (IRR) framework to portray the challenges that may arise in governing these soft densification processes. The IRR is an analytical framework that emerged from new institutional economics, property rights theory and public policy analysis (Gerber et al., 2009). The framework relies on two central assumptions about the governance of urban development. First, it assumes that institutions provide a framework in which actors' behavior takes place. Institutions thus act as a set of constraints and opportunities that favor specific courses of action. Second, individuals can exercise agency within this frame to take advantage of opportunities. Public policies are

constantly revised, sometimes not implemented, can be diverted or even hijacked – sometimes on the fringes of legality – by different actors involved in the policy formulation and implementation stage (Gerber, Lieberherr and Knoepfel, 2020, p. 157). This makes the framework particularly useful to analyze situations in which several actor groups are in conflict over the use of a particular resource (de Buren, 2015), as in the case of densification.

2.1. Densification at the intersection of public policy and property rights

Two sets of formal rules govern the process of densification: property rights and public policies. Through public policies, the state aims to regulate the behavior of actors that is thought to be the source of a politically defined public problem (target group) (Knoepfel et al., 2011). Public policies constantly evolve because the (understanding of the) problem they target changes (Knoepfel et al., 2011). On the other hand, property rights aim to protect individuals from interference of the state. Property rights are defined as the exclusive, transferable, and legal right to the use of scarce resources, the return of those resources and the alienation thereof (Cooter and Ulen, 2012). They are grounded in private law, remain relatively stable in definition, and aim to protect private interests (Debrunner et al., 2020; Gerber, 2009a).

In many European countries, such as the Netherlands, Germany and Switzerland, densification has become an important policy objective to solve the problem of urban sprawl by increasing density within the existing built-up areas (Broitman and Koomen, 2015). However, densification policy implementation is difficult due to the complex ownership structures in the already built-up areas. Through new planning regulations, a public authority may wish to increase density in a specific area. However, these only get implemented when titleholders agree to undertake new developments or sell their property rights (Davy, 2012). Simultaneously, public authorities may try to regulate privately initiated densification, but through this encroach on the private property rights of titleholders. Public policies regulating densification thus often conflict with the interests of landowners (Slaev, 2016; Gerber, Nahrath and Hartmann, 2017).

2.2. The negotiation of the public interest

When regulations concerning densification conflict with the interest of specific actors, they may strategically attempt to renegotiate their access to resources such as housing or land (Debrunner, Hengstermann and Gerber, 2020). At a local level, actors bound to the same problem will interact in bargaining and negotiation processes, from which self-organized modes of management arise. In these Localized Regulatory Arrangements (LRA), actors decide to “implement all or only selected policy objectives, arbitrate in favor of property rights over policy objectives, or fill [...] regulatory gaps through situation-specific agreements” (Viallon, Schweizer and Varone, 2019, p. 78). These actors are characterized by a portfolio of varying policy resources (e.g. personnel, money, time, etc.) which are means for actors “to assert their [...] interests in different stages of the process” (Knoepfel et al., 2011, p. 86). The LRA is thus the outcome of the selective activation of regulations as determined in the Institutional Regime (IR) (de Buren, 2015). In the case of densification, landowners are especially powerful in shaping the LRA due to the land titles. These quasi-veto rights allow landowners to resist the implementation of public policies (Gerber et al., 2009; Aubin and Varone, 2013; Viallon, Schweizer and Varone, 2019).

Public policies aim to protect the public interest. Due to the redistributive nature of public policies, they create winners and losers. Whereas a public policy can benefit one group, it is often disadvantageous to another, which is usually the target group of a policy. The redistributive effect of planning is legitimized through the public interest (Alexander, 2002b). Since the 1980 s, an increasingly active role of market actors through, for instance, public-private partnerships, a more pronounced focus on efficiency and performance rather than

inputs such as personnel, and shift towards the project scale can be observed in planning (Homburg, Pollitt and van Thiel, 2007; Mäntysalo, Saglie and Cars, 2011; Gerber, 2016). As a result of this shift towards what is referred to as New Public Management (NPM), the public interest is increasingly defined through a negotiation process between both public and private actors.

To sum up, property rights protect the titleholder's interests against the state's interference and provide owners with the right to use, dispose and obtain benefits produced by a resource. On the other hand, public policies, among which densification policies, aim to solve a publicly defined problem by interfering in the property rights of owners. However, since private property rights are strongly constitutionally protected, it is difficult to implement densification plans due to conflicting interests. This study aims to find out the strategies of landowners in the policy formulation and implementation process and to better understand how the relationship between public policy objectives and property rights influences the implementation of a policy.

Two working hypotheses were formulated to guide and structure the research process and to make the authors' assumptions explicit. The first hypothesis (H1) relates to the power of titleholders to resist during policy formulation. In NPM, which puts negotiation at the center, it is expected that investors will be successful in imposing their interests, because of the power they possess as titleholders. This will likely result in more flexible regulations (as opposed to rigid regulation) as it provides more freedom to investors to achieve their interests, and for municipalities to balance different aims. Furthermore, it is expected (H2) that landowners respond to new rules with profit-driven strategies. For instance, by holding off any plans for subdivisions, shifting towards other investment opportunities or through strategic non-compliance. As public authorities have limited resources to respond to such strategies, this leads to a low consistency between the policy formulated and its actual implementation in the LRA. As a result, the local planning system becomes increasingly market driven.

3. Study design and methods

The empirical findings of this paper are based on a qualitative case study of the strategies of actors in response to policy regulating soft densification. An in-depth qualitative case study approach enables a detailed analysis of the context-specific forces at play (Opoku, Ahmed

and Akotia, 2016). The Netherlands is an interesting case to study the negotiation process of the public interest in soft densification. Dutch planning tradition is characterized by a close relationship between public planners and the private sector. Collaborations and partnerships between municipalities, real estate developers and other market actors are common (Homburg, Pollitt and van Thiel, 2007; Hartmann and Spit, 2015). A case study of the neighborhood Zuilen in the city of Utrecht was selected based on two criteria. First, the area has experienced rapid soft densification through subdivisions over the past years (Fig. 1). Second, new regulations (from now on "subdivision policy") were recently implemented to control the number of subdivisions. Therefore, Zuilen is an ideal case to assess the diverse negotiation mechanisms behind subdivision policies (Yin, 2009).

Data was collected from three different sources. First, to get an understanding of the institutions governing housing subdivisions at the national, provincial, and municipal level, the study draws on an analysis of nine policy documents. These included legally binding documents (e.g., acts, changes in legislation, zoning plans), as well as policy documents of a non-binding nature (e.g., strategy documents, reports). Furthermore, 14 documents concerning the negotiation and the implementation process of the new policy were analyzed, including municipal meeting minutes, official decisions, and evaluations. From these documents, the formal negotiation processes were analyzed. Second, the formulation process, the implementation, and the responses of investors to the new municipal policy were further uncovered by conducting 16 semi-structured interviews. Interviews took place with local planning authorities, politicians, investors, and residents. Residents of Zuilen, although not the scope of this paper, were interviewed to confirm investor strategies based on their experiences. Interviewees were initially selected based on their experience with and knowledge on subdivisions and later through snowball sampling. The topics discussed during the interviews included the interests of different actors, their ability to pursue these interests in the policy formulation process, and the degree of implementation of the public policy. Lastly, 15 permit requests and decisions between 2016 and 2020 in the neighborhood of Zuilen were analyzed to draw further conclusions on the actual implementation of the policy.

Both interview transcripts and policy documents were analyzed using qualitative content analysis in MaxQDA®. The initial coding frame was based on the theoretical framework (deductive coding) and adjusted

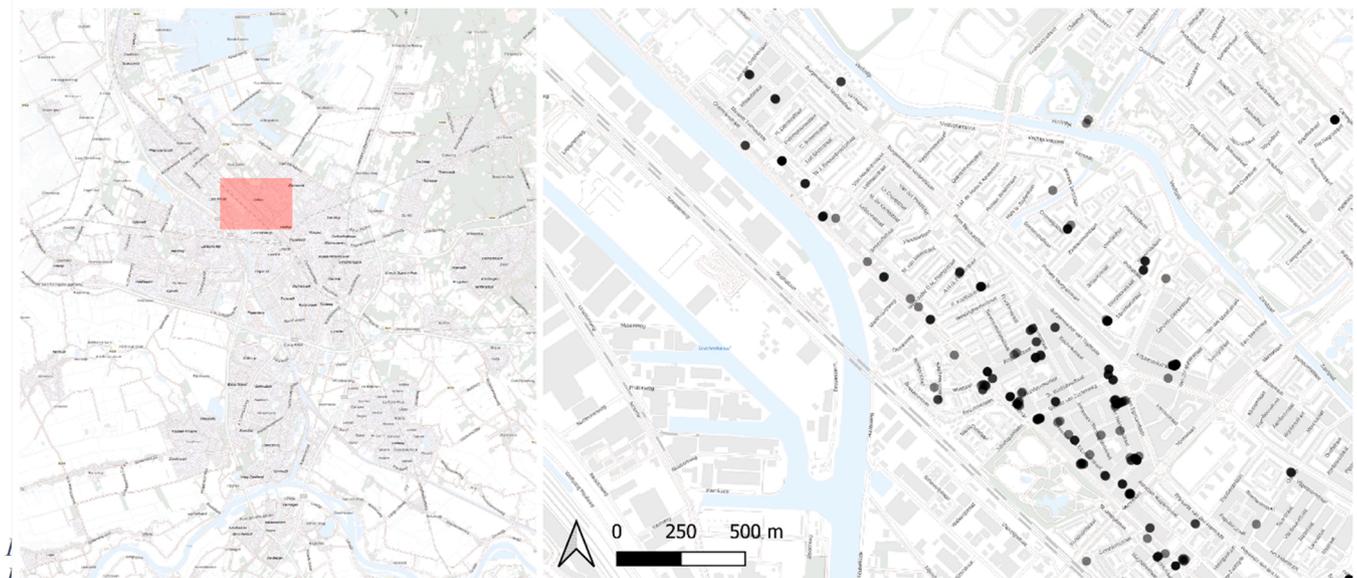


Fig. 1. Left: Location of Zuilen in Utrecht. Right: subdivisions in Zuilen from 2010 onwards
Data Source: LV BAG Kadaster 2021

based on the empirical data (inductive coding). Specific coding patterns, including co-occurrences of themes and recurring issues, were analyzed to interpret the qualitative data.

4. Case study: Zuilen, Utrecht and the struggle to regulate the soft densification processes

Urban densification has taken a prominent position in various national spatial planning policy documents in the Netherlands to protect the surrounding landscape and limit traffic with resulting environmental issues. The Structural Vision on Infrastructure and Space (2012) introduced the new “Ladder of Sustainable Urbanization”, prioritizing new developments within the existing urban areas. The Dutch densification debate is inextricably linked to the debate on housing supply. Considering the already existing urban housing shortage in combination with a steady increase in the number of households, the supply of sufficient affordable housing is currently seen as one of the biggest issues in the Dutch housing market. Since 2013 the Netherlands has seen a sharp decline in the number of new buildings realized (Boelhouwer, 2020). Simultaneously, housing prices increased on average 7% per year since 2015, with apartment prices increasing by 65% since 2013 (CBS, 2021), and rental prices increasing at 2.5% and 10% in case of a change in residents (CBS, 2020).

Increasing demand for housing, often in the more affordable segment, by small-scale private investors is seen as one of the drivers of rising rental and housing prices. This is especially the case as investors are often willing and able to pay more than regular households as they expect future rental incomes (Kadaster, 2019). Statistics show that so-called buy-to-let constructions are becoming more popular in the Netherlands: between 2015 and 2019, buy-to-let sales increased from 11.1–14.9% of all sales by owner-occupiers in the four largest cities of the Netherlands (Amsterdam, Rotterdam, The Hague, and Utrecht) (Ollongren, 2021). The persistently low global interest rates make real-estate an attractive investment opportunity, and Dutch national housing policy has played an important role in giving leeway for its growth. After the Global Financial Crisis, national politics focused on the liberalization and expansion of the rental sector at the cost of decommodified social rent (Aalbers et al., 2020; Boelhouwer, 2020; Hochstenbach and Ronald, 2020). The national government has embraced buy-to-let investments as an important driver of a growing housing stock, and until recently, did not consider national measures to slow down buy-to-let fitting (Hochstenbach and Ronald, 2020).

4.1. Subdivisions in Utrecht: an introduction to the new policy

In response to growing concerns regarding the quality of life and affordability of densified neighborhoods, the municipality of Utrecht implemented stricter policies to regulate the development of subdivided buy-to-let units in 2016. There are two different forms of subdividing dwellings into multiple units for rent: A dwelling can be subdivided into multiple self-sufficient units (*splitsen*) or converted into multiple non-self-sufficient units (*omzetten*). In this case, the inhabitants, mostly students and young professionals, share a kitchen and bathroom.

Many zoning plans in the Netherlands state that the number of dwellings per building area may not exceed one. Planning rules sometimes offer an exception, whereby a different maximum number of residential units is explicitly indicated for some locations. As is formulated in Art. 2.12 of the General Provisions Environmental Law Act (2018),¹ in order to deviate from the zoning plan for the sake of a division, a permit is required. The decision to allow the plot to be used in violation of the zoning plan is thus a discretionary power of the municipality and is not regulated on a national level. In this context, the

¹ Wet algemene bepalingen omgevingsrecht (Wabo) [Netherlands], 28 July 2018. Available at: <https://wetten.overheid.nl/BWBR0024779>

local planning authority has considerable power to decide whether an extra unit is appropriate or not through the permit system.

Before 2007, the planning authority of Utrecht would grant all permit requests for subdivisions and conversions. A change in municipal policy in 2007 regarding subdivisions meant that conversion permits would no longer automatically be granted. Furthermore, the new Spatial Planning Act from 2008² allowed planning authorities to include rules in the zoning plan to protect the living environment, leading to the introduction of the so-called livability test (*leefbaarheidstoets*) as the basis for granting the permit. End 2011, the city council of Utrecht adopted a policy memorandum, making it possible to regulate subdivisions through an additional zoning plan (*facetbestemmingsplan*). In several neighborhoods, including Zuilen, these additional zoning plans were implemented, completely banning subdivisions, unless it concerned a house larger than 140 m² or located along a busy road. The executive council decided to redesign the rules and associated permit system for subdivisions as of 1 January 2016, responding to a change in the Regional Housing Ordinance and persisting complaints from neighborhood associations. The following sections will discuss these changes and how they came to be.

4.2. The policy formulation process

According to the residents, the policy before 2016 did not do enough to stop the proliferation of subdivisions, with one inhabitant referring to a “wild-west” situation (Gemeente Utrecht, 2015, p. 7). Specifically, these issues included the diminishing social cohesion in neighborhoods, noise pollution, improper waste management, shortage of (bicycle and car) parking. From the documents and interviews analyzed, two lines of counter-argumentation by investors during the policy formulation phase can be defined with regards to the nature, the cause, and the solution to the public problem.

1. **The housing shortage for students and young professionals.** In response to complaints by residents about the effects of subdivisions on the livability of neighborhoods, real estate investors argued that Utrecht is a dynamic city, characterized by a changing household composition, combined with a huge demand for shared flats for students, and small and affordable apartments for recent graduates. *Vastgoed Belang*, an interest group for real estate investors, stated in a written response that investors play an important role in creating a more flexible housing market that is required in a city with a changing household composition. According to this definition of the public problem, subdivisions and conversions are not a problem but are the only solution to this shortage of housing for current and future residents of the city of Utrecht.
2. **The lack of enforcement of current rules.** A second problem identified by investors was the lack of enforcement of the current rules. Investors argued that enforcement was hindered because of large-scale evasion of the existing subdivision regulations by some investors, and more rules would only reinforce this. Moreover, it was argued that the proposed stricter measures would actually negatively impact the quality of life as they would promote more evasion. It was instead proposed to lower the threshold for permit applications, so that enforcement becomes possible. According to this line of argumentation, the main source of issues associated with subdivisions and conversions is thus related to illegality, and not the subdivisions in itself.

The first line of argumentation by investors played an important role in the policy formulation process. In the municipal council (legislative), all parties recognized the importance of balancing the interests of

² Wet ruimtelijke ordening (Wro) [Netherlands], 06 November 2008. Available at: <https://wetten.overheid.nl/BWBR0020449>

residents with the interests of students and young professionals in search of rental rooms or apartments. There was a consensus regarding the need for a flexible policy instrument to balance these interests. However, within the council, parties were divided about the main problem the policy should address. Some parties (mainly the more progressive parties with a majority in the council) stressed the importance of protecting the quality of life for residents and the affordable housing stock for future residents. Other parties framed the public problem as an issue of enforcement of the already existing policy. These (in general, more liberal) parties stressed the importance of providing enough housing for students and young professionals and argued for less restrictive measures.

Eventually, the municipality redesigned its subdivision policy to address the following issues: 1) Protect livability of residents, 2) protect scarce housing stock and 3) provide housing for students and young professionals. Conversions and subdivisions became subject to an environmental permit (*omgevingsvergunning*) to achieve these goals. A livability test was introduced to decide whether a permit would be granted. The first part of this test consists of physical aspects, in which requirements are set for the surface area and soundproofing of the additional dwellings/or living quarters. The second part concerns a general quality of life test. Based on various quality of life aspects from the relevant district (such as the general district score, the image of the district, degree of nuisance experienced, clustering) it is assessed whether the district is under pressure. Additionally, a conversion permit (*omzettingsvergunning*) was introduced for all conversions of homes below a certain scarcity of limit, to protect the number of homes with a value below €305,000. Besides the livability test, the conversion permit also introduces conditions of good tenancy and financial compensation for the loss of self-sufficient living space that needs to be paid to the municipality by the investor.

When looking at the different definitions of the public problem put forward during policy formulation, the investors were able to influence the process in the sense that their role in providing student housing and apartments for young professionals was recognized as important. The need for a more dynamic housing market was acknowledged by the entire municipal council and this was translated into a flexible policy design that does not completely ban subdivisions and conversions, nor targets investment practices, but that provides room for case-by-case decision making. However, the argumentation to improve enforcement by lowering the number of regulations did not influence the policy that was implemented.

4.3. Implementation of the subdivision policy

From January 2016 onward, this measure was implemented. The interviews reveal different strategies as a result of investors mobilizing their ownership rights: 1) to comply, 2) to move to other investments and 3) to illegally subdivide or convert.

4.3.1. Strategy 1: comply

For the municipality to balance the three policy objectives, it needs investors to comply. Only when investors comply the planning authority can decide which of these policy objectives weighs heavier in the specific situation. An evaluation of the policy shows that the number of permit requests for subdivisions and conversions reduced by 56 and 74 per cent, respectively, between 2015 and 2016 (Afdeling Onderzoek Gemeente Utrecht, 2017).

If investors decide to comply, a negotiation takes place between the investors, the planning authority, and the residents. Once a permit is requested, it is published by the municipality, giving residents a chance to respond to the request as is stipulated in the General Administrative Law Act. From the analysis of permit decisions, it becomes clear that the planning authority seriously considers these responses to decide whether they are valid or not (for instance, by calculating the pressure on parking spaces). Reasons to reject a permit application included a

high level of subdivisions or conversions in the direct environment, failure to comply with the minimal surface area requirement, and possible pressure on public space in terms of (bicycle) parking and waste management. When affected actors (this includes the applicant for the permit) do not agree with the decision made by the planning authority, they have the right to object (to the municipality) or to appeal (in administrative court). However, as long as the planning authority can prove that all interests were considered and a balanced decision was made, an administrative judge cannot overrule the decision.

An additional negotiation can occur between the planning authority and the investor who requested the permit. The analysis of the permit requests made in Zuilen between 2016 and 2019 showed that about 30 per cent of the requests were only granted after the owner reduced the number of proposed rooms or apartments in collaboration with the planning authority. These findings are in line with what was stated by a member of the permit committee: "Say, you want four apartments here. We are not going to do that, but three apartments, that is possible. Then the request will be changed, and you can move forward." (policy officer 2). These findings show that the planning authority has considerable power to achieve its preferred outcomes once an investor decides to comply to the subdivision policy.

4.3.2. Strategy 2: other investments

While the number of permit requests has significantly reduced since the new policy's introduction, investors' activity on the housing market in Utrecht has steadily increased (Kadaster, 2021). Interviewed investors mentioned that the application fees for a subdivision are high. At the same time, there is "too much uncertainty whether a permit will be granted" (interview investor 3). Therefore, some investors are "currently focusing more on new construction and transformations in peripheral municipalities" (interview investor 1). Many of the investors interviewed indicated that since the implementation of the stricter policies in Utrecht, they have either moved to different investment opportunities within Utrecht or have moved to other municipalities around Utrecht, such as Nieuwegein, Maarssenbroek and Breukelen.

Some of the popular alternatives mentioned in the interviews included Airbnb/short stay, (office) transformations, and private rental. Within the subdivision and conversion policy framework, the planning authority cannot regulate these developments. In response to these changing investment strategies, the municipal executive council has had to introduce new policies: "Investors were just buying up properties and thinking they can turn that into a hotel function. So now we also have to restrict tourist rentals" (interview policy officer 1). At the moment, the council is introducing more general restrictions such as the requirement of a landlord permit to set further conditions to the private rental sector. Furthermore, a purchase protection (*opkoopbescherming*) was enacted at the beginning of 2022 so that individuals can no longer buy up properties if they do not plan to live in it.

4.3.3. Strategy 3: non-compliance

An illegal situation is a non-preferred outcome for all actors, because of the lack of security (both for tenants and investors) and the lack of quality control. However, interviewees mentioned investors who do not comply with the planning regulation are not uncommon. Although there are no exact numbers on the prevalence of illegal subdivisions and conversions, especially illegal conversions into student rooms are estimated to happen a lot: "We have once selected a neighborhood and just checked house by house. When we do that, we come across so many [illegal conversions], we simply cannot even process that in terms of capacity." The main reason given for this thriving illegality is the high demand for rental housing in Utrecht: "The housing shortage is so high that landlords can actually do all kinds of things that are not acceptable. For example, landlords say: Do not register, or you will lose your home" (policy officer 1). Interviewed students also confirmed this. None of the interviewed investors said to be involved in illegal subdivisions. However, the interviewed investors acknowledged that illegal subdivisions do occur.

Illegality in the case of subdivisions and conversions takes different forms. In some cases, owners do not request a permit at all. Certain constructions that do not require a permit, such as the hospice construction, which allows a homeowner who lives in the apartment to have two roommates, were mentioned as being relatively often abused. In these cases, the homeowner only lives in the apartment on paper, while there are only tenants living there in reality. One policy officer estimated that around half of all hospice constructions are not used according to the current rules. Several reasons for illegality were identified. Investors either claim to be unaware of the permit requirement or purposely ignore it because of the uncertainty whether their permit request is accepted.

For the planning authority, it is difficult to detect these illegal situations due to a lack of resources: “We cannot visit all these houses and count the number of toothbrushes present. We just do not have the capacity to do all that” (policy officer 2). The planning authority often only enforces when it receives a complaint from a neighbor, which is referred to as passive enforcement. In these cases, the owner will receive a notification letter and time to apply for a permit or restore the home in accordance with the rules. If this does not occur, a penalty is imposed. However, in some cases, the planning authority is aware of illegal situations but does not enforce the policy. Policy officers indicated that in some cases the interest of housing students is more important. As stated by policy officer 3: “*The moment a[n illegal conversion] cannot be permitted, the [inhabitants] simply end up on the street. If it is already an existing situation about which there are not too many complaints, then you should consider what weighs more heavily*”. Residents also indicated to consider this when aware of an illegal situation but not experiencing any nuisance, before notifying the planning authority. Furthermore, even if investors get fined for an illegal subdivision, it can still be financially profitable to rent the rooms out for a couple of months (interview policy officer 3).

As investors have moved towards strategies to invest in other opportunities or even illegality, political consensus with regards to the public problem has shifted. While policy officers stated to be very happy with the functioning of the current policy, many of the council members interviewed argued that the current policy is too strict and therefore fails to achieve all of its policy goals. The ever-increasing shortage of student housing and the difficulty young professionals have to find a living space in Utrecht seems to play an important role in these changing political opinions. Currently, discussions are taking place in the municipal council regarding the possibility of excluding conversions up to three rooms from the permit requirement.

The findings show that in the case of Zuilen investors respond to the newly implemented regulations in three ways. They can either decide to comply, move to different investment opportunities, or ignore the new policy through non-compliance. Surprisingly, non-compliance is a strategy that the local planning authority is aware of, but does not always respond to, either due to a lack of resources, or because other public problems are considered more pressing. As a result, there is an inconsistency between the objectives of the subdivision policy and the actual outcomes.

5. Discussion and conclusion

This paper aimed to better understand the strategies used by investors to respond to policy formulation and implementation in the context of soft densification. While there is a growing body of literature on the interaction between planning and property rights in the context of densification, there is a lack of literature on the regulation of soft densification processes. This study used a single-case study approach to understand better the planning challenges in regulating soft densification in the face of opposing interests and strategically behaving actors.

Utrecht has been struggling to develop policies to help manage the pressures of development through subdivisions and conversions. Concern of the municipal council and the local planning authority was

not densification per se. There was a strong recognition of the need for increased density, especially due to the shortage of housing for students and young professionals. Rather, the municipality saw the need to regulate subdivisions to avoid clustering and pressure on existing amenities and guarantee the quality of newly created apartments and rooms. The study shows the complicated nature of soft densification policies due to the wide array of sometimes aligning but often contrasting interests. The case of Utrecht in the Netherlands may provide an interesting example for other international contexts on the use of flexible regulations to deal with such contrasting interests.

The results show that investors have been actively involved in the negotiations taking place during the policy formulation and implementation phase. In both phases, procedural rights ensured a seat at the negotiation table. The wish to accommodate multiple, conflicting interests into the subdivision policy led to flexible regulation through the zoning plan. This allowed the planning authority to balance contradicting aims and make decisions on a case-by-case basis. One would perhaps expect that this would be a preferred outcome for investors, considering it gives them more freedom to achieve their interests than in the case of more rigid regulations. However, it was found that the lack of certainty whether or not a permit will be granted has led to a rapid decline in the number of permit requests. In this case, it was found that investors found ways to deal with regulations that were against their interests. This reinforces the idea that densification objectives are challenging to achieve as municipalities are dependent on landowners to realize them (Gerber, Nahrath and Hartmann, 2017; Debrunner and Gerber, 2020; Dembski et al., 2020). As a response to the stricter regulations, investors have moved towards other, more secure, opportunities.

This brings us to a surprising result how investors may react to regulations against their interests: non-compliance as a response to the new regulations that are in conflict with their interests. Plenty of studies have looked into informality as a form of non-compliance in the Global South. These studies have shown how informal subdivisions can serve urban poor as a strategy to renegotiate the right to the city (Bernier, 2001; Morshed, 2014; Sullivan and Olmedo, 2015) and show informality is often governed by institutional rules that secure the access and use of resources such as land or housing (Bouwmeester and Hartmann, 2021). As studies on non-compliance to planning regulations and their enforcement are relatively less common in the context of the Global North (Alterman and Calor, 2020), it is surprising to find non-compliance as a strategy used by investors in the context of Zuilen, Utrecht. This study demonstrates that non-compliance is expected, known, and in some cases even legitimized by local authorities when they decide not to enforce the subdivision policy. Sometimes this is done due to a lack of enforcement capacity, other times because different public problems, such as the shortage of student rooms, are considered more pressing. In the case study, it was found that these rules-in-force with regards to enforcement were strategically activated by some investors to avoid the new subdivision regulations hampering their investments.

The results indicate that there is an inconsistency between the intention of municipal parliament (legislative) to implement stricter rules and the financial and personnel resources available to the local planning authority (administrative). However, the lack of enforcement in the case study also demonstrates the continuum that exists between formal and informal institutions (Roy, 2005; van Assche, Beunen and Duineveld, 2014; Koster and Nuijten, 2016). The findings show how accepting non-compliance can also be used as a strategy by planners to bridge the formal planning process and mutual agreements between local stakeholders, who may accept subdivisions even when not approved by the planning authority. Through this, planning authorities can use the flexibility provided by informal institutions to respond to complex public problems (Innes, Connick and Booher, 2007). Further research should be conducted to investigate the role of informal housing in other urban Western European contexts.

The Netherlands enjoys an international reputation for being well-planned and highly coordinated. The active and dominant role of national and local governments in spatial developments is often discussed (Alexander, 2002a; Van der Krabben, 2008; Roodbol-Mekkes, van der Valk and Korthals Altes, 2012). However, as many scholars have pointed out, a transition towards New Public Management can be observed, through the more facilitating as opposed to managing role of the public sector and the greater role for private initiatives (Heurkens and Hobma, 2014; Dembski, 2020), a focus on the project level (Waterhout, Othengrafen and Sykes, 2013), and increasingly flexible decision-making at the stage of planning permissions (Buitelaar and Sorel, 2010). This trend is not only observed in the Netherlands, but also in a wide range of other international contexts (Homburg, Pollitt and van Thiel, 2007; Sager and Sørensen, 2011; Swyngedouw, Moulaert and Rodriguez, 2012; Gerber, 2016). Perhaps surprisingly, in the case of Utrecht, this aim for flexibility translated not into less rules, but instead into a higher legal complexity. While this may provide the local authority with more steering capacity, negative side-effects of legal complexity were identified in this case, including the lack of enforcement and policy officers using the “elbow-room” provided by ambiguous legal frameworks (Moroni et al., 2020, p. 2). The findings of this study raise the question whether the search of efficiency and flexibility in the context of planning according to New Public Management-values may ultimately promote increased tolerance for non-compliance. When cost-benefit considerations become the rule at the level of developers, planners and even neighbors, abstract considerations on the general interest(s) and corresponding necessary compliance with the law are pushed into the background. What becomes even more important is a general level of satisfaction guaranteeing the perpetuation of a negotiated balance of power between all actors, including planners, developers, and neighbors.

Declarations of interest

None.

Data availability

Data will be made available on request.

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