Shifting Responsibilities in Building Control in the Netherlands: a Historical Perspective

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INTRODUCTION

The role that local authorities played in actively defining building regulations and monitoring compliance, has a long history in the Netherlands. As far back as the Middle Ages, local administrators were setting standards for existing and future buildings via so-called "civic by-laws". It was not until 1902, when the Housing Act came into effect, that the Dutch government officially got to grips with public housing. However, though public housing policy was legally the responsibility of the government, implementation was the responsibility of the municipalities.

During the twentieth century the building regulations were further developed and streamlined at national level. The Building Decree in 1992 introduced a general set of requirements for all buildings. Since the 1980s and 1990s the government's attitude to the building sector has been re-shaped by the concept of deregulation, which is expected to increase freedom (of design) as well as creating equal legal status and legal protection for citizens, and ease the burden on industry and public administration. These goals were the mainspring behind legislative and regulatory amendments. Although the building regulations have continued to develop, the monitoring practices have more or less remained unchanged. Responsibility still lies with central government and the municipalities still decide on how to exercise control. For some time now the municipalities have been coming under fire because of the way in which they execute this task.

This paper addresses the following questions: How have building regulations developed in the Netherlands and how are they expected to develop in the future? How has building control developed in the Netherlands and how is it expected to develop in the future? It is based on a literature survey, which will form the basis for a dissertation that, hopefully, will help to answer the question as to how shifting tasks and responsibilities can be steered in a way that optimally guarantees adherence to building regulations.

In the second section we briefly discuss some developments in building regulations in the Netherlands before the nineteenth century and the changes that prompted the 1901 Housing Act. In the third section we chart the progress of the 1901 Housing Act until the 1940s. Sections four and five discuss the development of Dutch Building Control in 1940-1981 and 1982-2003 respectively. Section six examines the problems that seem to arise in municipal systems of Building Control.

Finally, Section seven presents some conclusions on possible future changes in Dutch Building Control.

THE DEVELOPMENT OF BUILDING REGULATIONS UP TO 1901

Building processes were being regulated in the Netherlands already during the Middle Ages. The requirements for existing and future buildings were set in so-called 'civic by-laws', which had a decidedly local character (Kocken, 1980 and Kocken, 2004). Adherence to these requirements was monitored by clerks of work, usually carpenters or masons who, besides checking that buildings were erected within the building line, performed only perfunctory inspections on the quality (Wijnja, 1990, p. 9). This example of limited government intervention in the building sector prior to the nineteenth century perfectly reflects the situation in the Republic of the United Netherlands: virtually no administrative machine, weak central government and a large measure of self-regulation by local organisations (Bovens, 2001, pp. 35-6).

In the second half of the nineteenth century steadily expanding industrialisation necessitated more state intervention. Besides the usual tasks in foreign and home affairs, defence, justice, and finance, the government started assuming more responsibility for social welfare and services (Bovens, 2001). Industrialisation and the accompanying growth in population brought about a fundamental change in the relationship between the government and the building sector. Thanks to various publications that drew attention to the problems of housing urban populations, especially labourers, it gradually became clear that legislation and public accountability were essential if proper, qualitative housing was ever to be realised. A report by the Royal Institute of Engineers (KIVI) in 1853, addressed "to the King" and setting out standard requirements for workers' dwellings, and a handbook by Coronel (a physician) in 1872, which addressed public health care, are regarded as the two landmark publications (Vreeze, 1993).

The structural and design standards established in the KIVI reports and the connection they make between public health and (public) housing can be seen as the first push towards the Housing Act of 1901. That said, the rise of socio-political ideology also prompted the Dutch government to take a greater interest in housing. This ideology is reflected in, amongst others, the work of a "new generation of architects", that emerged at the end of the nineteenth century and which placed a strong emphasis on the social relevance of architecture (Kocken, 1974 p. 340).

1901 – 1940: REGULATION IN THE BUILDING SECTOR: THE HOUSING ACT

Prior to 1901 the Dutch government took no official interest in building regulations. This all changed with the Housing Act. The Housing Act (1901) incorporated regulations that demarcated the powers of the municipalities and the responsibility of the government in public housing (Vreeze, 1993). Essentially, the municipalities were empowered by the Housing Act of 1901 to execute the

law. They would be supervised by the provincial authorities who could take over their executive duties if their performance was not up to standard. Central government was empowered to draw up further regulations and codes.

Interestingly, the municipalities were only required to make building by-laws, they were given no standard text or guidelines for form or content. Nor were there any legal obligations with respect to building control (Vreeze, 1993). This "solution" was chosen to find a medium between municipal autonomy and rule from above (Boogman, 1988, p. 340). It was not until the law was amended in 1921 that building control became obligatory at municipal level. Though public housing was the responsibility of central government, implementation legally was the responsibility of the municipalities. This meant that the municipalities could decide for themselves how to incorporate the prescribed subject matter in the by-laws. They could even make additions. Needless to say, this led to huge differences in municipal by-laws across the country. In the first twenty years of the Housing Act the extent of the interests served with this Act were not sufficiently understood. The Building Inspectorate was still in an abysmal state, especially in the smaller municipalities. Usually inspections were carried out on a part-time basis by a municipal official or the local carpenter (Wijnja, 1990, p. 10).

1940 – 1981: STREAMLINING THE REGULATIONS

World War II was an important factor leading 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). No radical amendments were, however, introduced to the building legislation until 1962. Immediately after World War II, De Ranitz (1946) wrote that the amendments to the Housing Act in 1921 and 1931 had had very little effect on the quality of the building inspectorate: "the organisation of the building inspectorate in particular [is] in many municipalities still incapable of meeting the requirements, though steady progress can be observed" (De Ranitz, 1946 p. 3). Moreover, very little use was made of the potential for inter-municipal cooperation in, for example, cutting the costs "because many municipal councils had not developed enough initiative at that time and were usually quite satisfied with the inadequate on-the-spot inspections" (De Ranitz, 1946 p. 8). Many municipalities therefore continued to use a part-time official, who often supplemented his hours of work by performing private inspections and thus undermined the integrity and credibility of the building inspectorate.

In the post-war period, government influence in socio-economic affairs became widely expanded and institutionalised:

> The doctrine of non-interference by the state had been abandoned; what remained was a widespread debate on the nature and extent of the government's role. It was, however, more or less generally agreed that government intervention was desirable to prevent

> serious upsets in the economy. The policy should be geared to facilitating developments which the business community eschews or cannot finance, but are nonetheless important to the future of Dutch society.
>
> (Vreeze, 1993 p. 226)

The government also played a more active role in societal developments after the war: "In addition to regulating, the government assumed an increasingly prominent role in matters of arbitration, performance and management" (Vreeze, 1989 p. 114).

One of the trends that the business community eschewed, or could not finance, was the growing demand for housing. Various reasons prevented this demand from being adequately satisfied in the years immediately following World War II. For example, there was a shortage of skilled construction workers, the building process needed to be rationalised in order to lower costs and raise productivity, work routines had disappeared during the war and investment opportunities were in need of improvement (Laan, 1988 in: Bosma, 1988). Also, the parochial character of the building regulations was undermining efforts to solve the huge housing shortage and the use of standardised building elements and components (Visscher, 2000). To break this parochialism the government introduced a directive for uniform building regulations (*Besluit Uniforme Bouwvoorschriften*) in 1956. This directive, which was withdrawn in 1979, took precedence over the municipal by-laws. Hence, any plans that met the requirements of the directive but not the requirements of the municipal by-laws would still have to be approved (Scholten, 2001, p. 15).

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; concrete requirements and descriptions from previous models were avoided. This model was developed largely because practically all the building by-laws in the country were out of date and because the new Housing Act of July 1962 was due to go into effect halfway through 1965 (Visscher, 2000, p. 27).

The model was not mandatory, but it was generally adopted by the various municipalities as a municipal building by-law. As the model allowed the municipalities to grant exemption from requirements and 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).

Housing

Immediately after World War II the Dutch government used its powers under the Housing Act to introduce quality-based conditions for subsidies. The aim was to ensure that the limited resources

were used wisely (Vreeze, 1993). The government had already used these powers before the war to stimulate house building. In 1944 guidelines were issued for the construction of emergency housing; these were followed in 1946 by *Wenken-1946,* the first guidelines for mainstream subsidised construction of housing (Vreeze, 1993). The *Wenken* were then revised at regular intervals. The Regulations and Guidelines that appeared in 1965 were seen as a highlight in the development of qualitative norms for state-subsidised housing (Vreeze, 1993). In the 1970s the spotlight shifted from quality to quantity. According to De Vreeze, the publication in 1989 of the policy document for public housing in the 1990s (*Volkshuisvesting in de jaren negentig*) marked the end of an era of housing policy (Vreeze, 1993).

1982 – 2003: THE DEVELOPMENT OF THE REVISED HOUSING ACT AND THE BUILDING DECREE

In 1982 certain goals were defined in the Lubbers I Coalition Agreement, which would supposedly simplify and reduce regulations. The Coalition Agreement stated that superfluous rules and regulations should be scrapped – particularly with regard to the technical aspects of housing – and that the building regulations themselves had to become more uniform. The goals that were set in this Coalition Agreement laid the foundation for the MDW operation (market forces, deregulation and law), which involved the modernisation of legislation and regulations from 1994 till 2003. The aims of this operation were to lower the costs for businesses and members of the public, to create more scope for market forces, and to improve the quality of legislation.

In mid-1983 an action plan (*Actieprogramma Deregulering*) was submitted to the House of Representatives, which more or less marked the start of deregulation of the building regulations. It was hoped that deregulation would ultimately increase freedom, improve legal security and 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 p. 11). Under an Order in Council this Building Decree would set out all the technical requirements for existing and new constructions and thus lead to unity and transparency in building regulations (Visscher, 2000 p. 32). The Building Decree of 1992 set out the minimum standards that a plan had to meet in order to get a building permit. It also set out minimum standards for existing constructions. These standards took the form – as far as possible – of performance requirements. And it contained functional descriptions, which indicated the purpose of the Decree, whereas the threshold value indicated the required performance level. Essentially, there was no difference between the level in the 1992 Building Decree and the level in the previously mentioned model building by-law. The requirements in the 1992 Building Decree related only to building, housing and design and, under the Housing Act, had to reflect the principles of safety, health, usefulness and energy saving.

The introduction of the Building Decree in 1992 was accompanied by an amendment to the Housing Act. The main changes compared with the Housing Act of 1962 were as follows (Bercken, 1994 and Visscher, 2000):

- Building projects were split into three categories: a permit-free category, a report-obligation category and a permit-obligation category;
- A deadline was set within which the Mayor and Aldermen had to reach a decision on a report or an application for a building permit (5 and 13 weeks respectively). If no decision was reached within this deadline, the permit would be nominally granted;
- The adoption of the Building Decree;
- A provision was incorporated which attached public law significance to private law certificates.

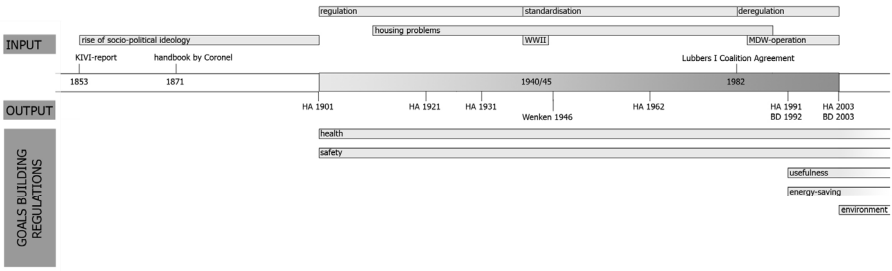

Figure 1. Time-line of the development of Dutch building regulations

Amendment 2003

The definitive Building Decree of 1992 only partially reflected the policy goals in the plan to deregulate the building sector. It failed to address the goal of the Building Decree being brought into line with other building regulations that were not within the remit of the officials at the Department of Housing. The intention was to create clarity and uniformity in the building regulations. An evaluation of the Building Decree (VROM, 1996) revealed that the building sector favoured the systematic approach and endorsed the principle of performance levels. However, it also emerged that the envisaged simplicity was being obstructed by a complex reference structure pertaining to norms and ministerial arrangements, and by the legalese in which the regulations were couched.

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 (converted) Building Decree 2003 on 1 January 2003 (Overveld, 2003). It was hoped that the Housing Act and the underlying Order in Council would trigger the development of 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 that determine the sub-sections that apply to parts of a building with one and the same intended use (Overveld, 2003, p. 17 *et seq*.). The concept of "use function" does not appear in Building Decree 1992. "Use function" is understood as: the parts of one or more buildings on a piece of land which are used for the same purpose and together form a use unit. There was no question of actual deregulation via the amendments: Building Decree 2003 comprises more sections (regulations) than Building Decree 1992.

PROBLEMS IN MONITORING COMPLIANCE WITH BUILDING REGULATIONS

The historical overview shows that government policy moved from regulation in 1901-1940 to uniformity in 1940-1980 and then to deregulation in 1980-2003. Despite the changes to the building regulations and their objectives, the municipalities were still responsible for monitoring compliance. Various incidents at the turn of the last century (the pub fire in Volendam, the explosion of the fireworks factory in Enschede, the collapse of a car park deck in Tiel and the collapse of a balcony in Maastricht) sent building control straight to the top of the political and public agenda (with articles in i.a. *Cobouw*, 2000 and *Cobouw*, 2003). Investigations into these incidents revealed that various municipalities were consistently neglecting to conduct adequate checks, that there were shortcomings in the issue of building permits, and that the responsibilities within the municipalities were not clearly enough defined. The reports concluded that the government ought to play a stronger role in policing the regulations and that clearer distinction was needed in the allocation of responsibility. It should be noted that these defects were ascertained mainly in the municipalities (Oosting Commission, 2001; Alders Commission, 2001; Ministry of the Interior, 2002; Cachet, 2001; VROM (Ministry of Housing, Spatial Planning & the Environment) 2002b; VROM 2002b; VROM, 2003a; VROM, 2003b; VROM, 2004; Gemengde Commissie Gevaarlijke stoffen/Risicobeleid (joint commission for hazardous substances/risk policy) (2005)).

A report on the national ministerial inspections at municipalities (VROM, 2005b) provides an overview of a government inquiry into the quality of municipal building control. The report uncovered that information, which is needed for evaluating various aspects of the Building Decree, was missing from 45% of new-building files for 2003, and 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 report stated that in 2003 and 2004 no (visible) checks were performed for the various elements in the Building Decree in 69% and 47% of permit applications, respectively. Large discrepancies were also found in the calibre of the checks performed by the different municipalities. In 2003, the municipalities had already made known that they were unable to fully monitor adherence to the building regulations: "100% supervision is beyond our capability" (VBWTN, 2003).

A planned amendment to the Housing Act 2003 (TK, 2004e, TK, 2004f, TK, 2004g) will probably increase the impact of these problems on municipal supervision of the building regulations. The amendment (VROM) contains a provision that accords an "issued building permit precedence" over the Building Decree:

> "If the regulations [under the Building Decree 2003 – JH] conflict with the building permit, the building permit shall take precedence and the government may no longer demand adherence to the new-building regulations which are not addressed in the building permit."
>
> (TK, 2005c)

Developments in the Short Term

The Dutch government and the municipalities have launched a number of initiatives that are designed to improve the effectiveness and efficiency of building control. The amendment to the Housing Act in 1991 had already scrapped the obligation to establish a *municipal* building inspectorate stating, instead that "measures should be taken" to that end. This gave municipal councils an opportunity to opt for a privatised form of supervision or to transfer the task (e.g. in a regional context). Private organisations could also be involved in the monitoring process (Visscher, 2000, p. 113).

The MDW Work Group also saw the recruitment of private organisations as a means of simplifying the permit process. It discerned concrete opportunities for legalising voluntary process certification. This would considerably speed up the procedure and, at the same time, ease the burden on the municipality and the applicant: "the deployment of a certified organisation for the design would dispense with the need for preventive technical screening" (TK, 1997). In 2000 the government presented a policy agenda for standardisation, certification and accreditation (TK, 2000a), which stated that, in self-regulation, the focus would be on evaluation and the possible extension of standardisation and certification as an alternative or supplement to regulation. It was announced in the policy document, Building Regulations Agenda, 2002-2006 (TK, 2002b), that the prospects of clarifying public and private responsibility in the building sector on a certification basis would be explored. In 2003-2005 the Ministry of Housing, Spatial Planning and the Environment (VROM) set up trials in which building plans were assessed by private parties, under certification. It was concluded that a uniform screening method would be needed in order to realise a certified Building Decree test that was *at the very least* an equivalent alternative to the municipal Building Decree test (VROM, 2005c). As there is no information about the quality of the municipal test or the amount of time involved, it is impossible to draw conclusions on whether certified organisations could do the job more quickly and effectively than the municipalities. It is, however, interesting that municipalities which participated in the trials say they can perform certified screening more quickly than the other participating parties.

The problems that emerged during the trials and which were caused by the lack of a uniform screening method for the different (public and private) participants also emerged in the Building Decree tests between the municipalities. To devise a consistent screening method the VBWTN (Netherlands association of building inspectorates) has set up two projects in partnership with VROM: the Project for Collective Quality Standards for Building Permits (*Collectieve Kwaliteitsnormering Bouwvergunningen* / CKB) and the Project for Supervision Protocol (*Toezicht Protocol* / PTP).

The aim of the CKB project is to reach consensus on a collective minimum level of screening and to convert this into a tool that can generate checklists for every routine type of building permit application (PCKB, 2003 - 2005). The instigators of the project expect that clear prioritisation and systematic disclosure of the regulations will lead to a realistic work package for the administrator and the screener. This should, in turn, bring about a significant improvement in the quality of the building permits, particularly in terms of safety. To realise this objective a Checklist Generator has been designed as an Internet application. This can be used to create checklists, indicating the aspects that need to be specifically screened on the basis of type of construction, discipline (general, building physics, safety) and the division of the Building Decree.

The PTP project was started by the VBWTN in 2004 with the aim of "developing a broadly supported system which will make the quality of external building inspections more transparent, streamlined and manageable" (VBWTN, 2004). The Inspection Protocol will ensure that the method for monitoring adherence to regulations during a building project (external inspection) is objectively defined. The aim is to arrive at a prescriptive method which can be used for site inspection and for reporting. This method is supported by a set of checklists for different types of building projects (VBWTN, 2004). The TPT should lead to a transparent, unambiguous working method, objective testing criteria, and a traceable end result.

CONCLUSION

The Dutch government is trying to realise a number of goals via building regulations. When the original Housing Act came into force in 1902 these goals were *health* and *safety*. While the building regulations were developing further in the twentieth century the list of goals grew. It now includes *health, safety, usefulness, energy-saving* and *environmental conservation*, although the last has not yet been incorporated in regulations.

The development of the building regulations can be split into three phases: first, a period of regulation from around 1900-1940. The introduction of the Housing Act in 1901 is often regarded as the first step by the government towards official involvement in the building sector. During this period the government passed several amendments which made the municipalities increasingly responsible for drawing up specific building regulations. The municipalities enjoyed considerable

autonomy in determining the content of these (local) regulations. This subsequently created a situation in which there was very little standardisation or transparency. The second phase 1940-1980 was characterised by attempts at standardisation. During this period the government intervened further in building regulations in an effort to make them less parochial. A number of legislative amendments were passed which obliged the municipalities to make the building regulations more uniform. With the appearance of the model building by-law the regulations started to become more consistent and transparent. The third phase, 1980-2003, was characterised by deregulation. The regulations had become so complex that they were experienced as obstructive and the government made several attempts to simplify things. In this period it would be fair to say that there was scarcely any deregulation in the building sector: Building Decree 2003 has more sections than Building Decree 1992. Sections were scrapped only for marginal issues.

Historically, the responsibility for building control rests with the municipalities, which have typically exercised this responsibility with only a limited degree of uniformity and standardisation. Serious problems also exist in supervising adherence to regulations. The municipalities lack the capacity to perform inspections that meet the legal criteria. In addition, they are scarcely responsible (if at all) for testing the content of building plans against the Building Decree. Tentative developments that were started up during the deregulation period may eventually lead to the (partial) transfer of municipal control tasks to the private sector.

It may be concluded that the aims the government wants to achieve through building regulations (fewer administrative and management tasks, better building control and clearly defined tasks and responsibilities) should not only be pursued by scrapping or changing the rules. A change in the supervision system might offer an alternative way to reduce the administrative burden, improve the quality of the (technical) building control and clarify the tasks and responsibilities. This conclusion fits in with a number of current initiatives undertaken by both the government and the municipalities for the same purpose. Two initiatives that might offer an alternative to the present system are *Certified Building Decree Tests* and *Uniform Testing Protocols* for building plans and operations. The Certified Building Decree Test would allow private firms to take over the tasks (and responsibilities) of the municipalities. Streamlining the test procedure with the aid of protocols would bring about more uniformity in the municipal execution of tasks and clarify municipal responsibilities.

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