

“BUILDING WITHOUT BORDERS” URBAN ENCROACHMENT ON PROTECTED NATURAL AREAS

Carmen Delgado Viñas
University of Cantabria

The study on which this article is sustained aims to determine how effective the existing instruments of protection in Spain are as *legal borders* that are able to restrain urban encroachment on protected natural areas. Although at first sight it could seem incongruous, protected natural areas, which strictly speaking, should not be built on, are not immune from effects that are rightly being described as “wild urban development”. The analysis of numerous cases allows us to detect the existence of manifold and varied aggression procedures.

I. VULNERABILITY BY LAW

Some Autonomous Regions such as Murcia, The Balearic Islands or Castilla and Leon have left unprotected by law, through different procedures, tens of thousands of hectares of land within their natural areas with the aim of making housing development easier.

The most spectacular case is the one in Murcia where amendments to the autonomous Land Law 1 / 2001, which considers that all territory not strictly protected can be developed, meant a lack of defence for some 15,000 ha, mostly in coastal areas between Cartagena and Águilas, which automatically became building land.

A similar model to Murcia’s was applied in The Balearic Islands between 2003 and 2007. Although it may seem unusual, the Balearic Government, chaired by former environment minister Jaume Matas, amended or abolished some of the protective measures that the previous government had implemented.

One of the latest actions by Castilla and León’s regional Government with regard to favouring the absence of legal defence for areas of high natural value and under great urban pressure was the recent decision not to protect the northern slopes of the Sierra of Guadarrama by declaring it a National Park.

II. ACTUAL PREVALENCE OF TOWN PLANNING OVER ENVIRONMENTAL LAWS

Article 19.2 of the Law for Natural Areas, in force since 1989, established the priority of Use and Management Master Plans over town planning. However, in practice legality is very often ignored. On a few occasions, some protected areas lack a Natural Resources Management Plan (PORN), on others, the PORN are transgressed through extralegal and illegal activities carried out at different levels. In the final instance, if the previous procedures are not carried out because the law courts logically prevent illegal activities, opportune modifications and adulterations of PORN are frequently being resorted to so as to be able to get round the law in a perfectly legal way. Numerous examples of these practices exist.

Without doubt, the most emblematic and well-known case, although it is not unique or, perhaps, the one with greatest impact, is The Algarrobo, a hotel with more than 400 rooms on 22 floors whose construction was begun by Azata S.A. in 2003 on the beach of the same name, located in the municipality of Carboneras. This hotel was the first building of a great housing estate on which the construction of a complex of 8 luxury hotels, a golf course and 1,500 houses is projected, to be distributed in three sectors, 4 kilometres from the city centre, on a virgin beach and adjacent hills, that make up an ecosystem of great importance within the Natural Park.

On the Cantabrian coast urban aggressions to protected natural areas are more recent and take place on a smaller scale, but they are also present. A typical example is the case of the Oyambre Natural Park located on the Western coastline of Cantabria, in the municipalities of San Vicente de la Barquera, Valdáliga, Comillas, Val de San Vicente and Udías, within which the construction of a housing estate that would occupy 72 ha and that consisted of a golf course, 350 detached houses and a luxury hotel was projected.

III. INFRINGEMENT AND UNAWARENESS OF ENVIRONMENTAL PLANNING

In 2006 the autonomous Government of Castilla and León modified the Natural Resources Management Plan for the Fuentes Carrionas and Fuente Cobre-Montaña Palentina Natural Park to allow the construction of ski runs as part of the installation project for a winter sports station in San Glorio. At the beginning of April 2008 the Castilla and León Supreme Court of Justice passed a sentence annulling the Castilla and Leon government decree that modified the Natural Resources Management Plan for Fuentes Carrionas Natural Park.

The Madrid Autonomous Region's policy on protected natural areas has also favoured defencelessness by means of several formulas. On the one hand, all protected natural areas have seen their budgets substantially reduced over recent years. On the other, laws have been promulgated whose fulfilment can hinder inspection and control of urban infringements in protected areas. Such is the case of the Madrid region's Urgent Measures Law, which came into force at end of July 2007. Thirdly, big infrastructure projects have been brought in that run through protected natural areas, such as, for example, the M-50 main road northern closing project that, if it were carried out, would seriously damage the Manzanares Upper River Basin Regional Park

These are some of the most spectacular examples, but the list of smaller-scale cases, while not of lesser importance or significance, is much longer.

IV. BUILDING SIEGE ON THE SURROUNDINGS OF PROTECTED NATURAL AREAS

Another method of urban aggression against protected natural areas is the formation of belts of buildings that hedge them in, annulling the existence of essential peripheral areas of defence that should be there to exert the cushioning role of territories acting as buffers. The threat is very serious because these are strips of land that practically lack defence instruments.

The 14 municipalities that surround the National Park of Doñana have projected strong real estate growth; several urban plans have foreseen the construction of 48,174 houses on the edges of the Park, which means that the number of houses around Doñana could grow from 105,440 to 153,400 in little more than ten years, even though it has been predicted that this "complex and fragile" protected enclave, put under intense pressure, will not survive if it is surrounded by buildings and roads.

Buildings also besiege the greatest Natural Park in Spain: Cazorla. In one of the most depopulated regions of Andalusia, 23 municipalities included in the Park are projecting 7,200 houses, of which almost 2,000 would be located within the limits of the protected area.

If all the Autonomous Regions contribute to examples of the building siege on the surroundings of protected natural areas, the Region of Valencia wins hands down as far as the number of cases is concerned. The enlargement of the enormous Marina D'Or housing estate, in Oropesa del Mar (Castellón), is located next to Prat de Cabanes-Torreblanca Natural Park, which lacks a strip of land to serve as a buffer and prevent numerous residential and tourist oriented buildings from being constructed just a few metres from the Park's limits.

V. SOME GLIMMERS OF HOPE

The variety of formulas for breaking down legal defence of natural areas, the proliferation of cases, their territorial generalization, the collaboration of the very authorities who are there to watch over the fulfilment of the regulations currently in force on the legal fraud commission, does not paint an encouraging picture. However, ever more frequent interventions by judges and public prosecutors, numerous sentences in favour of the environment and landscape, and increasing public awareness and citizen mobilization, although still a minority, open a door to hope for the future. The advance, albeit a modest one, in the development of recent political and administrative initiatives aimed at turning the limits of protected natural areas into true borders against "predatory urban development" also contribute to this.

During the drawing-up of the text of the Land Law in the Spanish Parliament (Senate), the Spanish Socialist Party introduced an amendment whose purpose was to restrain urban development in Natural Parks. In this amendment it was set out that only protected areas that had lost their natural value could be developed, and that, to stay within state law, Autonomous Regions would have to justify "scientifically" that this value had been lost. In the Law, passed on 10 May 2007, the said amendment was authenticated in section II article 13.4; the text of the Law seems clear, but, bearing in mind what happened during the previous legislation, it would be dangerous to make conjectures on how effectively it will be observed.

The new Law for Natural Heritage and Biodiversity, drawn up by the Ministry of the Environment (Law 42/2007 on 13 December), aims specifically to reinforce the defence

of areas with great biological and environmental wealth against the threats of urban development. Among other precautions, the text sets out that no area included within the Natura 2000 network can lose its protected status, unless its biological wealth is degraded naturally, not brought about by human action; its ultimate objective seems to be, therefore, to serve as a brake on urban speculation.

A Strategy for the Sustainability of the Coast, which started out in September 2007, and *Spanish Strategy on Sustainable Development*, drawn up in November 2007, have a similar meaning, although they are less specific.

Likewise, some Autonomous Regions have also implemented regulations directed towards the conservation of ecologically important natural areas, although protected natural areas are not the main aim. Such is the case of the Guiding Plan for the Coastal System, drawn up and carried out in Catalonia since 2005. Also, the Consello of the autonomous Government of Galicia passed an urgent measures bill in defence of the coast which bans the development of building land less than 500 m from the coastline. The Asturian Coast Management Plan (POLA) that has been enforced in the Principality of Asturias, and the Coast Management Plan (POL) in Cantabria are similar. Also, in March 2007 the Basque Country passed a Sectorial Territorial Plan (PTS) for Protection and Management of the Coast that limits the construction of new buildings in the first 500 m “from the shore”.

VI. CONCLUSIONS

From the long-winded repertoire of analysed cases, which are a minimal part of those that really take place, it follows that protected natural areas are an easy prey for speculative and predatory urban development and the building threats that set out to entrap them are extraordinarily polymorphic.

As can be verified, town planning very often ignores environmental guidelines (Law for Coasts, state and autonomous Laws for Natural Areas, etc.) and contravenes planning that governs those areas, both Natural Resources Management Plans (PORN) and Use and Management Master Plans (PRUG), when they exist at all, since protection of the environment and landscape are often perceived by real estate developers as an obstacle that should be removed. As has been denounced, the fact that until now “approaches of passive conservation have had priority and, frequently, socio-territorial realities have been underestimated”, seems to play a part in this reject-and-block situation.

In some cases, these activities are possible because of the enormous abundance of defence procedures and the extraordinary diversity of guidelines that exist regarding the environment, aggravated by the dispersion of state, autonomous and, even, local jurisdictions.

In apparent contradiction with the aforementioned, in many other cases, the problem derives from the absence of instruments of specific planning for territorial and environmental management of the areas subject to protection. Or from the extraordinary delay in their elaboration, application and procedure, which is usually taken advantage of to accelerate the approval and execution of activities in order to make them a “fait accompli” before plans can prevent it. The elaboration of management plans for resources that contain criteria not strict or effective enough to prevent building aggression is by no means unusual either.

One of the most harmful aspects that have been stated is the generalization of the use of a defence system that only affects areas with greater ecological wealth. The end result is a patchwork-like model of territorial organization in which protected areas appear surrounded, without any solution of continuity, by extremely contrived aureoles where housing estates and isolated buildings proliferate.

What is more, the present model of protection stimulates the presence of the so-called "border effect", that is to say the generation of radical contrasts between different territorial areas (municipalities and/or Autonomous Regions) produced by the completely differentiated planning and management for areas whose natural value is identical; in contiguous areas, even, on many occasions.

Most of the new guidelines and plans started up recently, as much on a supranational as on a nationwide and autonomous scale, seem geared to palliating some of these aberrant situations. One can only hope that they are more efficient than the previous ones in establishing "borders" that can reinforce protected natural areas in the face of the unstoppable attack from expanding building development, should the effects of the present real estate crisis not prevent it.

