

## Case study of the month: The Dutch Digital Building Permit Office

### **Introduction**

The Netherlands Ministry of Housing, Spatial Planning and the Environment has decided, in cooperation with nine local authorities<sup>1</sup>, to create a Digital Building Permit Office (DBPO).<sup>2</sup> The purpose of this office is to develop a mutual service that enables building permit applicants to file their application electronically. The aim was to make the DBPO operational by January 2006 but this has now been postponed until March 2006. However, in a pilot version of this project the first building permit has already been granted completely electronically.

### **The aim of the project and its advantages**

The DBPO will enable the electronic submission of building applications, including drawings and calculations. In addition, it enables all communications between the parties involved to be carried out electronically. All documents created during the procedure are prepared and stored electronically. In this manner a complete digital file is made that is accessible to different parties, independent of time and place. The legal time-limit is automatically controlled. Besides these advantages it also means that there is a reduction in the processing time, a substantial saving of costs and it also reduces the amount of paperwork which the present procedures need.

### **‘Spatial and Development permit’ (Omgevingsvergunning)**

The Ministry of Housing, Spatial Planning and the Environment supports the project because it is the first step towards an electronic application for an all encompassing ‘Spatial and Development permit’ (Omgevingsvergunning). At present there are a lot of different regulations for building, re-building, the foundation and the use of all kinds of buildings. All these regulations have their own criteria and procedures, terms and conditions, fees and supervisory authorities. These different procedures can lead to contradictory decisions that can be time-consuming and obscure for citizens and businesses. Moreover, it can be an enormous financial burden. The integration of these different procedures and permits will lead to a system where only one application needs to be filed, which can be dealt with in one procedure that leads to one decision with only one instance of appeal.

### **Legal issues**

The realisation of a (DBPO) is only possible if several legal issues are overcome. The Dutch government has already taken the first step in the right direction. On the first of January 2004 the General Administrative Law Act was amended by the Electronic Administrative Communications Act ‘Wet elektronisch bestuurlijk berichtenverkeer’.

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<sup>1</sup> Alkmaar, Den Haag, Dordrecht, Enschede, Groningen, Haarlemmermeer, Heerlen, Leidschendam-Voorburg en Zwolle.

<sup>2</sup> Until the first of July 2005 this project was known as Central Server Building applications (Centrale server bouwaanvragen).

With mutual consent of the parties involved, this Act makes it possible for local authorities and those who apply for a permit, to communicate completely electronically. However, even though one of the big legal hurdles has been removed, there are still several legal issues which need attention.

### **Legal competences**

Firstly, the competences under public law should be taken into consideration. It must be clear where certain competences such as the approval of a building permit application lie. Will the DBPO, as such, be given these competences or will these remain with the local authorities? It must also be clear which legal acts can be performed by the DBPO on behalf of local authorities. For example, it should be specified whether the DBPO can issue an acknowledgement of receipt of an application on behalf of local authorities. This is of importance as legal terms will commence at the moment of receipt.

### **Intellectual property rights**

Intellectual property rights, especially copyrights and database protection rights, will also play an important role in the process. First, there is the question of architect copyrights covering architectural drawings in a database and which, to a certain extent, are accessible to the public. In this respect the use of third party information requires due consideration. Second, consideration should be given to the database protection rights when a large number of building permit applications are submitted to the DBPO.

### **Privacy**

The rules deriving from Directive 95/46/EG must be respected. This legal issue must be taken into account when designing the DBPO's legal structure especially because one of the legal grounds to process personal data is the performance of public tasks.

### **Liability**

It is of great importance for government to minimize the risk of being held liable for the malfunctioning of the DBPO, or the violation of other rights and interests of parties involved in or using the DBPO. In this respect, the possibility of excluding the government's liability should be assessed as well as insurance. If liability risks cannot be reduced to an acceptable level, this might be a barrier in realising the DBPO. Another legal issue in this respect is the legal status of disclaimers. Besides the above-mentioned legal issues there are also other legal issues which need attention in realising the DBPO, such as, the authentication of the involved parties, obligations to keep records, and the contractual relations between the public and private parties involved in the project.

### **Financial and technical risks**

Besides legal barriers there are also financial risks and technical issues which are or could become barriers for the realisation and functioning of the DBPO. The initial costs to realise the DBPO are relatively high because of the scale of the project and the necessary

security measures which have to be taken. At the beginning, the project costs will not match the benefits so there is a financial risk and thus a barrier for the local authorities wanting to join the project. To minimize the initial costs it has been decided to use open-source software to found the DBPO. In this respect, the legal issues regarding open-source software need special attention.

Technical risks will emerge because of the vast number of files to be dealt with by the Digital Building Permit Office and the enormous flow of data within this system. Due to these flows it could mean that the speed and consultation of digital files will diminish, and it could also result in network connections becoming overloaded or the site being temporarily unavailable for data.

In addition, the joining of different information systems in use within the different local authorities can be a technical barrier in realising a DBO to which all local authorities have access. Not only technically, but also financially it might be too high an investment to realise the complete joining of every information system.

### **To conclude**

This description of the DBPO highlights some of the barriers to achieve this project and an in-depth analysis will most certainly reveal even more bottlenecks.

More information relating to the Digital Building Permit Office can be found at: <http://www.egem.nl/projecten/digitaalbouwluket> (in Dutch only).