



**The drastic restraint of tourist growth in
Lanzarote needs a Law from the Canarian
Parliament, and would cost approximately 300,5
meuros
(more or less 50.000 million pesetas)**

Lanzarote poses two questions that have difficult answers when restraining tourist growth after the year 2010 is contemplated.

First question: Is it legally possible to restrain accommodation offer on the island? Answer: yes, but it needs a Law from the Canarian Parliament which legally covers this objective.

Second question: If the majority of the accommodation offer that is pending execution is situated on consolidated residentially developed ground and therefore its owners have to be compensated, how much money would it cost to restrain growth? Answer: the cost of a drastic declassification of non-developed building in tourist areas of Lanzarote might be around 300,5 meuros (approximately 50.000 million pesetas).

Synthesis of the Report:

*“Establishing a legal frame for growth restraint in tourist areas of
Lanzarote”*

Director:

F. Prats, town planning architect AUIA.

Produced by:

Enrique Jiménez Larrea, Lawyer.

Ángel Menéndez Rexach, Professor of Governmental Law.

Is it possible to declassify urban ground in island tourist resorts where it is unreasonable to maintain valid planning and where carrying out the entire foreseen building according to the approved town planning should not be allowed?

This question tries to be answered in the Report “Establishing a legal frame for growth restraint in tourist areas of Lanzarote”, published by the lawyer Enrique Jiménez Larrea and requested by the Island Government of Lanzarote, for Life Lanzarote in the Biosphere 2 (2001-2004). Exploration of new lines of action, financing and taxation for the Reserve of the Biosphere.

*The answer to the foregoing question is affirmative: **yes, it is possible to declassify urban ground in tourist resorts.** But two conditions have to be considered. The first condition is **the need of a legal frame that would authorise it, by ways of a new Law by the Canarian Parliament.** The second condition is that urban planning rights in many of these grounds have been consolidated, therefore **it is impossible to hinder its building without compensating its owners.***

1. “Developing” urban planning versus “sustainable” urban planning

The growth of tourism and the multiplication of “second residences” together with an extraordinary increase in new urban planning development that has taken place in the last decades have allowed extreme urban growth known as “unimpeded development”. The number of built houses, apartments and hotels has unfortunately become the index with which to measure the dynamism and prosperity of a municipality or an island.

But development is not a means in itself, but a means at the service of superior purposes, such as the improvement of the inhabitants’ life quality as stated in the introduction of the 1978 Constitution. This improvement of life quality cannot be measured by mere economic terms. It demands reconciling economy by overcoming territorial unbalance, protecting the

environment and safeguarding the peculiar values of each territory. Thus it demands promoting “sustainable” development.

Although the expression “sustainable development” has become well known in many places, and has also become a topic, it is not a rhetoric expression, but a way of acting that integrates the need to re-establish the relationship between mankind and his environment. This has an obvious projection on the field of economic, social, cultural and ecologic politics of society, according to the definition coined in the European Letter adopted in Torremolinos 1984.

These ideas also form part of the inspiring principles of the European Community, one of its tasks being the promotion of “harmonious, balanced and sustainable development”, according to article 2 of the Constitution Treaty. This change in sensitivity is reflected in the Spanish constitutional text from 1978 which in a series of rules defines “the environmental constitutional order”. One of these rules defines the right to enjoy adequate environment, and the command to public powers to rationally use resources or the obligation to regulate the use of ground according to general interests to avoid speculation. On the other hand, the Constitutional Court has emphasized the need of compatibility between development and environment.

*Territorial and urban planning can and must adapt to changing circumstances of reality, but is not free, meaning that planning criteria cannot be established at one’s whim. There exist constitutional determining factors, and other state and autonomous laws that bind the planner, like the Island Government in the case of Lanzarote. If a law can be declared unconstitutional because it is contrary to Fundamental Normative, for more reason will it be compulsory to revise administrative plans that establish unsustainable growth guidelines and therefore differ from the Constitution. As a consequence **sustainability is not a mere political option but a constitutional and legal law plainly binding citizens and public powers.***

The preoccupation to reconsider territorial and urban planning based on a purely quantitative growth has become thoroughly important. This has been translated into important decisions that would not merely avoid new urban and tourist development, but also stop already started processes. Some via redefinition of its objectives and others even hindering its accomplishment by ways of establishing a special protection regime on the territory where its situation was foreseen. This reconsideration of criteria has started to operate in Spain and in the Balearic and Canarian archipelagos.

2. Measures adopted in the Canaries: limitations of the legal frame and possibilities opened by new Government guidelines.

In the Canaries various measures have been adopted in the last years to restrain unlimited growth of tourist accommodation offer, beginning with the Law of Island Planning in 1987 and carrying on to the General and Tourist Planning Guidelines which at the moment (June 2002) are in the process of initial approval.

But are the adopted measures that are supposed to reconduct the foreseen and clearly excessive increase of tourist accommodation offer towards reasonable limits sufficient?

Until now they have been insufficient as they did not affect the enormous plots of yet unbuilt ground existing in tourist areas, which nonetheless legally bear the consideration of urban soil due to their grade of urbanisation, and which find themselves in the process of urban execution.

*This is the essential key to finding an answer to the demands of sustainable tourist guidelines. Lanzarote's problem is not to declassify urban soil, this was done 1991 when the Insular town and Country Planning came into effect and 250.000 places located on such ground were declassified. **The main question in Lanzarote lays in the possibility of declassifying or not declassifying "formal" urban ground in which it is unreasonable since it is "unsustainable", to develop the foreseen building.***

*But the prevailing autonomous legislation seems ridiculously limited as to the revision of planning and of building potential contemplated on urban soil. Therefore it is very important to emphasize that Lanzarote has succeeded in that the provisional document of the new Guidelines for General and Tourist Planning promoted by the Canarian Government considers the possibility **to declare the island a territory with spent growth capacity** which would also help acting upon unbuilt urban soil.*

Definite approval of new possibilities considered in the provisional document of the Guidelines would mean modification of the present soil regime in some aspects, and would affect other matters which are at present controlled by Law. This approval (which would correspond to the Canarian Parliament, according to emphatic and repeated doctrine of the Constitutional Courts) would be an expression of a new territorial and urban model in line with the demands and peculiarities of the Archipelago.

3. The propriety of compensation as a consequence of lawful actions

The Report ordered by the Island's Government as mentioned before, refers to supposed declassification of urban soil in Lanzarote: there is no thought of eradicating existing tourist kernels, but of avoiding the consolidation of building processes on grounds that are apt for it, due to the fact that they are urbanised and sustain the consideration of urban, but whose development is not advisable according to the criteria of territorial sustainability.

In tune to this approach the Report is considered as a study to try and understand the total of eventual economic compensation payments that can be demanded from Public Administration in case of maximum building restraint of foreseen and not yet executed accommodation on urban soil.

In virtue of the consolidated legal criteria, the promoter of urban soil within a tourist resort who has fulfilled the urban rules imposed by the normative and who will be harmed by a declassification of soil will have to be compensated for the cutback in the exploitation, but excluding mere future prospects or hypothetical benefits.

The process of assessment of the reduced urban exploitation will have to reflect the real market value assigned to the affected soil as exactly as possible and within the legal valid frame,. As it is a question of urban soil the value will have to be determined according to the basic state legislation in matters of urban value assessment, applying to the corresponding exploitation the basic repercussion value of the plot, stated in the report of property values of the Tax Ministry.

Lacking more detailed information of the situation, an advance of the afore mentioned study, complementary to this Report, indicates that applying the mentioned principles to the tourist areas of Lanzarote with important unbuilt plots for tourist and residential accommodation, the global cost of a total declassification of undeveloped building capacity (tourist and residential) in tourist areas could be around 300,5 meuros (approximately 50.000 million pesetas).