

CHANGE OF INTENDED USE FROM OFFICE TO RESIDENTIAL: BUILDING PERMIT REQUIREMENT AND LIMITS TO THE APPLICATION OF THE SALVA CASA DECREE

On 30 May 2026, the Regional Administrative Court for Sicily issued its Judgment No. 1573 concerning the alleged unlawfulness of a change of intended use from office to residential carried out by means of a certified notice of commencement of activity (SCIA) as an alternative to a building permit pursuant to Article 23 of Presidential Decree No 380/2001.

The judgment provides important clarification on the amendments concerning changes of use introduced by the *Salva Casa* Decree (Decree-Law No 69/2024, converted, with amendments, into Law No 105/2024).

1. Factual background

The complainant submitted a SCIA as an alternative to a building permit in order to convert an office unit into residential use. The municipal authority prohibited the continuation of the works on the ground that the property was located within Zone F3 – *Private Facilities and Services* under the applicable Urban Development Plan (Piano Regolatore Generale – PRG). Indeed, the relevant Technical Implementation Rules (NTA) expressly excluded residential use within that zone.

The owner challenged the measure, arguing that the *Salva Casa* Decree had amended Article 23-ter of Presidential Decree No 380/2001 by providing, subject to certain conditions, that a change of use between different functional categories was no longer subject to the prior issuance of a building permit. Accordingly, the claimant maintained that the proposed intervention fell within the simplified SCIA regime.

2. The Court's decision

The Regional Administrative Court dismissed the complainant's arguments on the basis of several grounds.

First, the Court referred to Article 23-ter (1) and (1-bis) of Presidential Decree No 380/2001, which identifies five functional categories (namely residential, tourist-accommodation, productive and directional, commercial and agricultural) and, as a general rule, allows for changes of use within the same functional category.

Secondly, the Court recalled the settled case-law of the administrative courts, according to which a change of use not involving building works is subject to a SCIA where it takes place within the same functional category. By contrast, a change of use involving a different functional category within the meaning of Article 23-ter

of Presidential Decree No 380/2001 constitutes an urban planning transformation and, accordingly, qualifies as a new construction pursuant to Article 3(1)(e) of Presidential Decree No 380/2001. It therefore requires a building permit under Article 10(1)(a) of the same Decree.

In particular, the conversion of an office into residential use, irrespective of whether the intervention involves structural works, results in an increased demand for public infrastructure and services and requires a greater provision of areas intended for public services and facilities. This is because office use does not involve the stable and continuous presence of occupants that characterises residential use.

The Court therefore held that the change of use of the property concerned from office use (directional functional category) to residential use (residential functional category) could not be carried out by means of the mere submission of a SCIA as an alternative to a building permit.

The Court further examined the amendments introduced by the *Salva Casa* Decree to Article 23-ter(1-ter) of Presidential Decree No 380/2001. Under that provision, changes of use between different functional categories are always permitted in relation to individual property units located within Zones A (historic centres), B (fully or partially developed areas outside historic centres) and C (areas designated for new development). This is without prejudice to the power of municipal planning instruments to lay down additional specific conditions.

The Court clarified that the simplified regime applies exclusively to individual property units located within Zones A, B or C. In those areas, according to the prevailing case-law, Article 23-ter(1-ter) of Presidential Decree No 380/2001, as amended by the *Salva Casa* Decree, prevails over provisions of the municipal planning instrument previously governing changes of use.

In the present case, however, that regime was not applicable. The intended use certificate submitted in the proceedings established that the property was located within Zone F. Consequently, the provisions of the applicable municipal planning instrument remained applicable. Those provisions expressly excluded residential use and therefore constituted the relevant legal standard for assessing the lawfulness of the proposed intervention.

Accordingly, the Court held that the SCIA submitted by the claimant could not produce legal effects, since it failed to satisfy an essential legal requirement, namely, compliance with the provisions of the PRG. As the Court explained, a SCIA enables private activities to commence without prior administrative authorisation. Compliance with the applicable legal requirements is then subject to subsequent administrative review. However, its use is limited to the cases falling within its scope of application under the law. Hence, for a SCIA to produce its legal effects, it must satisfy the requirements laid down by law and concern an activity falling within the scope of the SCIA procedure. Since those conditions were not met in the present case, the SCIA could not produce any legal effect.

3. Concluding remarks

The judgment provides important clarification on the rules governing changes of intended use introduced by the *Salva Casa* Decree. In particular, pursuant to Article 23-ter of Presidential Decree No 380/2001, as amended by the *Salva Casa* Decree, changes of use between the residential, tourist-accommodation, productive and directional, and commercial functional categories are always permitted within homogeneous territorial Zones A, B and C. This is without prejudice to any different provisions laid down by municipal planning instruments adopted after the entry into force of the *Salva Casa* Decree. By contrast, for properties located outside those zones, the ordinary planning and building rules continue to apply. It follows that, where a change of intended use results in an increased demand for public infrastructure, services and facilities, it remains subject to the ordinary planning consent regime and requires the prior issuance of a building permit. Consequently, the mere submission of a SCIA is not sufficient.

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