

DEMOLITION AND RECONSTRUCTION OF A BUILDING ON A DIFFERENT SITE: IT DOES NOT QUALIFY AS A NEW CONSTRUCTION

The case at hand

On 3 June 2025, the Regional Administrative Court of Appeal for Sicily issued its judgment in case No. 422. The case concerned a proceeding for the annulment of a building permit issued for the execution of an intervention classified as “building renovation”, consisting in the demolition of a pre-existing building and in its subsequent reconstruction on a physically and cadastrally different area.

Namely, the intervention entailed the demolition of a structure located on a specified parcel and its reconstruction on a separate parcel, with a transfer of the demolished asset to a non-contiguous area falling within the same homogeneous territorial zone. According to the complainant, the intervention would fall within the legal notion of “building renovation” by virtue of the legal provision allowing for reconstruction to be carried out on a different “site”.

Therefore, the legal issue submitted for adjudication concerned the interpretation of the notion of “renovation” as set out under Article 3, paragraph 1, letter d) of Presidential Decree No. 380/2001, in the version most recently amended by Article 10, paragraph 1, letter b), number 2) of Decree-Law No. 76 of 16 July 2020, converted, with amendments, by Law No. 120 of 11 September 2020.

The Ruling

At first instance, the Regional Administrative Court for Sicily – Palermo dismissed the complaint, holding that interventions involving demolition and reconstruction must be carried out on the same site, *i.e.* the land previously built upon by the former structure. According to this interpretation, the legal provision would not permit reconstruction on a completely different site, even if located within the same zoning area. Rather, it would merely broaden the scope for the reuse of land that has already been developed.

The Regional Administrative Court of Appeal for Sicily, reversing the judgment at first instance, upheld the complaint, stating that the previous case-law — according to which building renovation must necessarily preserve the fundamental characteristics of the pre-existing structure — could no longer be regarded as applicable. Namely, the Court held that the amended wording of Article 3, paragraph 1, letter d) of Presidential Decree No. 380/2001 expressly encompasses, within the scope of renovation works, interventions entailing reconstruction on a different site, without laying down any additional constraints.

It was further clarified that, from a technical standpoint, the term “site” refers to the portion of land on which the foundations of the building rest and does not coincide

with the entire cadastral plot. Hence, in the absence of express legal provisions to the contrary, reconstruction on a different plot shall be deemed admissible, on condition that the building potential of the destination plot is duly observed and, where applicable, to resort to volumetric transfer mechanisms.

Concluding remarks on the so-called “Salva Milano”

Some stakeholders may be inclined to rely on the judgment at issue to legitimise, for defensive purposes, the demolition and reconstruction works carried out in Milan - which are currently the subject of investigations carried out by the Milan Public Prosecutor’s Office - and to support the legal consistency of the so-called “Salva Milano” Decree.

Such an interpretation, however, must be approached with caution.

Indeed, it should be noted that the factual scenario examined by the Court is of very limited scope and lacks the substantial transformations—both in qualitative and quantitative terms—that interested numerous demo-reconstruction interventions carried out in Milan by means of a SCIA (certified notice of commencement of works), in lieu of the building permit that was required under the applicable law. In particular, the interventions carried out within Milano entailed changes of the building’s intended use as well as significant volumetric increases, resulting in a substantial increase in the demand for infrastructure services.

Hence, it may be reasonably concluded that judgment No. 422/2025 fails to provide a jurisprudential framework applicable to the more complex factual and legal circumstances currently under investigation by the Milan Public Prosecutor’s Office.

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