Guide to buying plots in Spain

Foreword

Modern Villas was originally created in Marbella, Spain, by Belgian entrepreneur Philippe De Smedt and his wife Lu de Castro Costa Smedt (Brazilian, architect), to address the shortage of modern quality villas in the area.

Philippe first moved to Marbella in 1996, and later become strategic director of the then leading Dutch developer La Perla Living (La Heredia, Monte Mayor, NonSuch Bay Antigua).

From 2003 to 2013 he moved to Brazil, creating Brazil Estates; sourcing investment and development land for hotels, developers and institutional investors.

Modern Villas originally was created as a *brokerage* focused on modern villas, but soon specialized in architecture and project management, as local providers couldn't match the high demands of their mostly Belgian and Dutch clients.

The portfolio now includes dozens of the most exclusive luxury villas around the world and a client base that includes many Belgian and Dutch captains of industry.

Since 2016, Modern Villas went global and slowly transformed into an architectural power house, with architects around the world, and specializing in cross-border development of modern luxury villas.

modern | villas

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How to pick value for money in a plot

When you pick a plot, you are automatically defining both the *cost of construction*, and the *potential end value* of the finished house. Getting this right is important - as in most cases, the final market value of the finished house will be 3 to 5 times the cost of the land.

It's often misleading to pick the "cheapest" plot; as the price is often low for a reason - but often (foreign) buyers don't know what the catch is.

On the cost side, the plot will impact the building cost in the following ways:

- a steep plot may cost more in terms of foundations, retaining walls, earth movement
- a long, narrow plot will cost more in terms of perimeter walls and even the cost of walls and structure of the house itself
- a plot with unstable or extremely rocky soil may require expensive depth foundations like piling, or create extra earth movement costs

On the value side, the plot will impact the potential value of the finished house:

- identical houses may be worth 2-3x more in exclusive neighbourhoods than in a medium neighbourhood (so it often pays off to go for the best possible neighbourhood/plot you can afford)
- wide plots allow for sleeker, more impressive houses (and more rooms with views) than narrow plots.

For investors and developers we often use a few parameters worth thinking of:

- **ratio of land cost to final home value**. E.g. if a plot costs €300k and the market value of the finished house would be €1m, the ratio is 30%. For villas in Marbella e.g. this ratio should normally be below 30%. If you can do 20%, great! It is wise to add the estimated cost of earth movement, retaining walls, depth foundation to the cost of the land: i.e. all the costs to make the land "build ready". Often, the "cheap" plot ends up very expensive when factoring in all the investments needed to make it ready for construction.

- **repercussion:** the land cost divided by the # of m2 you can build on it. Imagine two plots of 2000m2 each costing €500k: on plot A you can build a 200m2 home, on plot B you can build a 400m2 home. The first plot has a repercussion of €250/m2; the second one only €125/m2. (Yet often, neighbourhoods with a lower build "density", like plot A, translate into higher house prices; and the higher repercussion may be worth it!)

Building code: what can you build on your plot?

In 95% of cases, town halls have very clear regulations as to what can be built on each plot.

The key urbanistic numbers for these are the construction ratio ("edificabilidad"), the occupancy ratio, the base level ("rasante") and the allowed altitude & number of floors. There are many other rules that can interfere as well, but let's start with these.

Edificabilidad ("buildability" or building allowance)

The "edificabilidad" ratio is the most important factor: it tells you how many m^2 of construction is allowed above the base level ("sobre rasante"). Multiply the size of your plot with the "edificabilidad" and you know how many m^2 you may build.

> *Ex.: if your plot is 1000m^2, an edificabilidad of .20 means you can build 200m^2. An edificabilidad of .25 means you can build 250m^2. Sometimes the ratio is also expressed as a percentage (e.g. 25% instead of .25).*

This number is the *total* number of m^2 allowed, so you can nót multiply this by the number of floors: you have to split this total number of m^2 over the number of floors you will build above the base level.

> *Ex.: If you are allowed to build 250m^2, you may for instance build 125m^2 on the ground floor plus 125m^2 on the first floor, or 150m^2 + 100m^2, or any other combination that works for you. But there are limits to this freedom - imposed by óther rules that we'll discuss later.*

Usually, only construction abóve the base level ("sobre rasante") counts; and you can add as many m^2 of basements below this level as you like. Also uncovered terraces and pools are normally nót included in the calculation for "edificabilidad".

Ocupación ("occupancy rate")

As we've just seen, once you know how many m^2 of edificabilidad you have, you are more or less free to divide them over the different floor levels, ground floor, first floor, etc. But... there are other rules that limit your freedom.

First, the occupancy rate (ocupación) tells you how big the "footprint" of the construction may be. E.g. if the 'ocupacion' allowed on a 1000m2 plot is 20%, the footprint of the construction can

be only 200m^2. If you could look at your plot from outer space, the construction can 'cover' or 'occupy' only 20% of the plot. For the more technical among us - it's the 'vertical projection' of the construction on the plot that counts.

To continue with the above example: if you have an edificabilidad of .25 (=250m^2) but an 'ocupacion' of 20% (=200m^2), the footprint can not be bigger than 200m^2.

So if you dó want to build the full 250m^2 allowed by the "edificabilidad", you can build a maximum of 200m^2 on the ground floor; the rest will have to go on the first floor. You would not be allowed to build the full 250m2 if you wanted to build everything on the ground floor only.

> *Careful with overhangs! If this 50m^2 somehow hangs 'over' the ground floor it would increase the footprint. Even "low" constructed areas like pools or terraces, that do not count for "edificabilidad", usually count for "occupación".*

For the more creative amongst us: yes, you could (in theory) have 200m^2 on the first floor, which would be floating over a smaller ground floor. Looking at it from space, it would still occupy 200m^2 of the plot.

> *The logic behind this rule is to make sure that there is enough green around all houses... partly to ensure that rainwater can drain in a natural way into the ground.*

Setback distances to the neighbour

Now that you know how much you can build, you also need to know *where* you can build.

The most important rules are those that indicate the minimum distance or setback between any construction and the boundaries of the plot. This varies from zone to zone, but in villa neighbourhoods it usually is 3 meters.

In some cases, a bigger setback is required from the second floor on: for example, in some áreas the first floor can only start 5m. from the plot boundary.
In modern, minimalist design this may be a disadvantage, as we often try to align the ground floor and first floor. If the plot is narrow, it also means you will have less "frontage" on the first floors i.e. less windows with views to divide over the bedrooms!

> *Ex.: on a plot of 25m width and a 3m setback for the ground floor, we can design a house with 19m of frontage. But if the setback is 5m for the first floor, we'll have only 15m on the first floor... and it will get difficult to squeeze 4 suites width nice wide windows in the front... so one may have to go in the back or to the ground floor.*

In many towns, this “no build zone” is almost a “no touch zone”, where you can not even modify the natural terrain: i.e. that you can not even raise/lower the land, maybe not even to create an access ramp to an underground garage! In some cases it ís allowed only if you have written authorization from the neighbour. But bear in mind that neighbours often want you to build as far away as possible from their house, so they’re not always open to such requests! In some cases it becomes a tough negotiation, with the neighbours asking unreasonable amounts of money in order for their approval.

> *The logic behind this rule is to guarantee a certain amount of privacy and green area between the different homes; and to make sure that your house doesn’t create too much shadow on the plot of your neighbour.*

Height restrictions

Each zone has specific height restrictions; usually 7 to 8 meters for villas, which is good enough for two floors. This is measured at the “roof line” or base of the roof. A pitched roof that rises up higher is not a problem.

General rule: maximum height

But it is important to know from what level this height is calculated. Many plot buyers are led to believe that they can raise their house 7 or 8 meters starting from the highest point of the plot... but that is not often the case.

Usually, town halls specify that this rule applies to *any* part of the house: whether front, back, left or right: you can not have one single façade of the house stick out more than this above the natural terrain; and the architect will have to show cross sections of all façades to show no single point is higher.

In fact, this means that the maximum height allowed is determined by the *least favourable* part of the plot. If your plot slopes down from the street, it will be the back/garden side of the house that determines the maximum height. If on top of that, the plot is also irregular - say, it drops steeply on the left side, it is that left side that will determine how high you can build.

Special rule: predefined levels, exceptions for very steep plots

In some developments, town hall has already studied all plots in the subdivision and decided on a maximum base level for each plot. This way, they can make sure that all houses in a street are nicely aligned ánd that one house doesn't block the views of others.

In some towns, there are also "special" rules for very steep plots, e.g. for plots that have a slope of more than 50%. These rules can become very complicated to evaluate so we will not even go into detail here.

Exception: a "tower" or torreon

Sometimes towns allow for a small "tower" to be built . i.e. some additional construction on top of the upper floor. This was historically meant to accommodate things like a staircase for roof access, private water tanks on top of the roof or as a ventilation tower. The size is usually restricted, for instance 20% of the size of the upper floor.

In larger houses, this may be sufficient however to add a master suite to the third level!

Although it's not very common in modern villas, please bear in mind that the neighbour in front of you one day *might* use a tower and block a small part of your view.

Rights of view

In some urbanisations, the original land developers have protected the views of the "higher" plots by creating a "servitude" limiting the maximum height/altitude of construction in front of them. When documented in the original title deed, this right of view (servidumbre de vistas) can impose restrictions that áre valid.

Caution with landfills!

In most cases, townhall rules are determined based on the original, natural, level of the terrain.

But all too often, cheeky developers or land owners have done ground works which have created a nice level platform - but nothing guarantees that this corresponds to the base level determined by town hall! It is quite possible that you would nót be allowed to build on that nice flat platform that makes this plot look so attractive.

There is a second complication with landfills. In most cases, these “platforms” are created by simply dumping hundreds of truckloads of loose earth on the original slope. But this loose earth is worthless as base for a foundation... the foundation of the house will always have to rest on solid, highly compacted underground.

This may mean that the builder will have to resort to “piling”: driving pillars tens of meters into the ground in order to find a suitable base for the foundation... and this tends to be extremely expensive. It’s easy to spend €100k for a villa on something that will never give you any joy.

The “Sliding Box” house designed by Modern Villas. Note the basement with garden access.

Basements

In principle, any floors built below the 'rasante' level do not count as built area for licensing purposes, so you can add garages, basements, cinema rooms, game rooms, sauna's etc. on these levels.

Because of the lack of light and ventilation, in most towns it is NOT allowed to use these levels for more permanent "living" areas like bedrooms, bathrooms, kitchens, etc. You are allowed to put garages, storages, and technical rooms, and often rooms for "short term" use like gyms, sauna's, wine cellars etc.

To avoid abuse, many towns strictly limit the size of windows on these levels. So even if your plots slopes and part of your 'basement' really could be equipped with windows or even doors, many towns don't allow it.

> *(Often, of course, homeowners do add such windows after the works are completed - although that is not exactly legal.)*

In many towns, the basement may rise slightly above the natural terrain (1.20m); in other words they allow you to put your "ground floor" 1m or 1.20m above the rasante. This, however, usually does not mean you can go up higher with your construction.

> *Ex. If you can build 7.5m above the 'rasante' level, but put your ground floor at 1.20m, you'll have only 6.30m left for your ground floor + upper floor. For modern homes with flat roofs this usually is not a problem.*

Obviously, if the basement can "stick out" only 1.20m above the natural terrain, it means you can not normally get nice windows, doors or terraces.

> *Note: after the final occupation licence is obtained, many homeowners dó dig out some of the terrain around the basement and add the doors and windows that are not officially allowed. While not strictly legal, this is often tolerated; and in some towns builders actually prepare everything for it's real final use and then "hide" these preparations for the final inspection.*

However, in many towns it is allowed to dig out areas around the basement, so they form a kind of "sunken patio" - also known as "English patio - patio Inglès).

Note - some towns allow 'basement' floors to have unlimited doors and windows. As a result, on steep plots one can create one or two 'underground' floors that may have garden access and even sea views.

In Andalucia, for instance, the town of Marbella is very strict with basement levels while the neighbouring town of Benahavis is very flexible. In Benahavis, some villas have 4 levels connected by elevators - each with access to terraced gardens.

Size limits

In some towns, basements can be lárger than the ground floor above them (and even extend to the building limits of the plot), in others, basements are limited to the size of the floor above them.

Difficult plots

It is a complicated 3D puzzle to find out exactly how a house can be fitted on a plot - if you want to buy a steep and irregular plot, DO consult an architect before you buy. Some plots impose so many constraints to construction that it's just not worth buying them.

At the same time, these "difficult" plots in the hands of a great architect often become the most spectacular projects! A good architect will think of innovative ways to "fit" the house around the natural shape of the plot just like a fashion designer fits a dress around a model.

But this will be "coutûre" - and the building cost can be higher than usual.

Esthetic rules for construction

Many are surprised to see that Spanish town halls often have nó "esthetic" requirements at all! As long as you stay within the "quantitative" limits set by the rules, it is rare that one sets "qualitative" rules.

In order to avoid an unkempt mix of styles, some communities or "urbanizaciones" dó introduce requirements into their community rules, and it may be that a committee has to approve the style of your house. Some Andalucian communities, e.g., still require that you build in "Andalusian" style (e.g. with sloping, clay tile roofs[1].).

[1] Often you can get away with a small part of the roof being sloped... and if it's placed far enough from the façades it may very well be invisible.

Interestingly, in most cases these have nó legal standing and if you decide to build against the community's wishes, there is little or nothing they can do in court - as long as you are respecting the town hall rules, they can not impose additional requirements.

The only "pressure" they can exercise is whatever leverage they have as a community (e.g. they could deny access to the communal tennis court if there is one). But in most cases the community presidents *know* that their power is limited.

Sometimes, a small "gesture" is required so the design follows the community's requirement at first sight. I know quite a few houses which dó have a little sloping, clay tile roof in the center of their otherwise totally flat roof... It's not even visible from the street but at least on a plan the project does (seem to) have an Andalusian roof.

But more and more, communities are aware that today's buyers want more modern houses and that their communities will lose value and attractiveness by imposing these 20th century rules.

About terraces, pergolas, and similar.

Uncovered terraces around the house do usually nót count as "built" área for licensing purposes.

Covered terraces, however, sometimes áre accounted for (often at 50%: i.e. a covered terrace of 100m2 will "eat up" 50m2 of your "edificabilidad". This often depends on two factors: whether the terrace is enclosed or not; and whether it is "enclosed" or not.

Usually, terraces only count as "covered" if they are really 100% covered with a roof; while semi-transparent structures, like pergolas, do nót count. So if you're struggling with limited edificabilidad, it may be wise to put "pergolas" around the house rather that will provide shadow. Of course, in that case they do not create a walkable terrace for the first floor suites...

> *Note: a common trick is to execute pergolas with a sturdy concrete structure... Many house owners then transform these àfter the final licence into fully covered terraces.*

In many areas, covered terraces will only count if they are "enclosed" by walls on two or three sides. In that case, a terrace that is covered by a roof but is open on the left, right and front may not count. A pillar or two to support this roof doesn't count.

In those cases, a smart design is required that provides you with all the covered terraces you need, without creating recessed/enclosed terraces that *would* count towards the edificabilidad.[2]

[2] *Note: often, these covered terraces can later easily be enclosed with windows... creating additional internal space.*

Garages and access ramps

So... you know how big the house can be, where we can position it, how high it can be positioned and as a result, where the basement goes.

But if you want to use the basement for garages, you also must make sure you can get a legal access ramp to get down to it!

In the old days, many homes in Spain were built with pretty steep ramps and frankly that worked pretty well. But... for reasons of security many towns now limit the slope of access ramps to (often) 16%. This means that you need 6m of access ramp to go down just one meter from street level... 12 meters if you go down 2m etc.

> *Note: you often need even more, because many towns allow only a 5% slope in the first few meters from the street! The logic is that cars must be able to stop there and watch for pedestrians before driving out.*

This is another complication of steep plots. Very often, one wants to build the house on the highest point of the plot i.e. close to the street... but then there is not enough space for a ramp to go down into the garage!

Also: it often would make sense to have the ramp placed on the side of the house, with the garage entrance then as far as possible from the street. But in many cases, that would mean building the ramp in the no-build zone or that you need approval from the neighbour.

> *Note: sometimes older properties have access ramps and retaining walls that today might be impossible to achieve... sometimes it is worth paying a premium for older villas and tear them down so you can benefit from this valuable existing infrastructure!*

Servitudes

Servitudes are limitations that are imposed upon certain properties for the benefit of others; like rights of view (servidumbre de vistas), rights of way (paso), rights of water etc.

They are documented in the title deeds of the property and hence are legally enforceable by the other party who “benefits” from them; but they are also easy to check.

Not really a servitude - but something to watch out for - are the old “cattle ways”. In the old days, farmers had to be able and cross a great number of properties to be able and take their cattle to the market. If one of these “cattle ways” crosses your plot, although they may never be used, can prevent you from building on part of your plot! You can use it for your garden but can not “build” anything that would prevent the (theoretical) passage of cattle.

The ideal orientation of your house.

Too often clients think that a “southern” orientation is ideal - to catch as much sun as possible - but that’s not necessarily true.

Solar orientation

Indeed, at noon, the sun will be in the south - but because Spain is so far south, in summer it will be up so high in the sky that is doesn’t matter on what side of the house you sit: you’ll have sun everywhere.

It’s more important to realize where the *evening sun* will be... especially for those that will use their house in Spain mostly in the colder seasons to escape from the winter weather back home.. In winter, a house that’s oriented south-west or west will have the sun warming up the terrace (and the inside) of the house until the last possible moment, making outdoors living much more enjoyable than in other orientations.

Of course, in summer it means that the terrace can be pretty hot at the end of the afternoon - from 5 to 8 p.m. The air temperature is then at its highest, and on a west facing terrace, you’ll then get the sunrays right in front of you. After 8 p.m. of course things get nice again and it’s wonderful to enjoy the sunset right in front of your terrace.

East- or southeast facing homes will of course get a lot of sun in the morning (when it’s not so hot yet) while they will only get evening sun on the “side” of the house. This makes them cooler in summer, but often too “cold” in winter.

East-facing houses will need a lot less overhanging terraces to protect the interior from the sun... a west facing house ís probably nicer but it is also going to require more covered terraces - and that will come at a cost. But: these covered terraces are probably going to be the best spot of your house!

> *Note: modern software can visualize, minute by minute, how sun and shadow are going to “play” around your house at any given date of the year, and help us design exactly the right size of overhanging terraces!*

The ideal wind exposure for your house

When you're building a holiday home in a warmer climate, many clients are not familiar with the different climate and seasons on their destination.

In the south of Spain, e.g., summers can be very hot - so you'll probably nééd a shadowy terrace, ánd you'll probably be grateful if that terrace catches a little bit of breeze!

In winter, having a sheltered terrace on the west side of your house will probably allow you to sit outside for many more hours, and enjoy the sunset basked in the warm rays of the sun.

(Yet in summer, that same terrace would be an absolute oven!)

For these reasons, an "ideal" house should have terraces in ánd out of the wind; in ánd out of the sun... which often means terraces on three sides of the house, some covered, some uncovered; some sheltered from wind, some open to the breeze...

Therefore, shape and exposure of the plot are very important as they will determine how comfortable your house can be.

About slopes, platforms and retaining walls

Is building on a slope more expensive? Not necessarily - but it depends on the shape of the house ánd the garden you want.

In Spain, most houses are resting on big concrete foundation “blocks” that are dug in 2-3m below the ground - where one normally finds soil that’s dense and strong enough to take the weight. The first 1-3m of “topsoil” are usually lighter, more unstable material with lots of organic (plant) residues.

The house is then raised on pillars that rest on top of these blocks. If the plot is sloping, that means the “pillars” on one side will have to be a bit longer, but that, in itself, is not thát expensive.

The problem starts when one then wants a nice, big, flat garden around the pool to look at... because this means fílling the gap with hundreds if not thousands of tonnes of earth - ánd to build retaining walls to keep all this earth from rolling downhill (and dragging the house with it.)

The higher the walls, the more expensive - in fact, the cost rises exponentially. If you need 3m, that’s OK, 6m is getting a bit expensive, but 9, 12 or 15m retaining walls are best reserved for the multi-millionaires among us.

There’s a second catch: many cities do nót allow you to build retaining walls of more than 3m high. If you need more, they’ll want you to build multiple 3m walls with a spacing between them, often 2.5m. - like a giant staircase. This means that if you want to raise your plot by 9m, you’ll need 3 walls of 3m with 2 spaces of 2.5m between them... i.e. 5m of your plot gets “eaten” by this giant staircase.

> *Remember, in some cases the first retaining wall can only be built 3m from the boundary wall unless the neighbour agrees!*

It is also a matter of design. On a steep plot, for cost efficiency (and to satisfy building code!) you will have to build a long, narrow house that follows the contour of the land and doesn’t advance too much into the “void”. That is not impossible, but it will take a really good and motivated architect. (We personally lóve difficult plots!)

The plot defines the architecture!

Good architecture should always be based on its environment - the plot, slope, views, solar expositions etc. All architects know that, and on flat plots it's easy to do that.

On complicated, sloping plots (and those with the best sea views always seem to be like this!) it is very important that your architect can "think" and design "in 3D".

Surprisingly, most Spanish architects still design in 2D. Floor plans, "elevations" and "sections", they're all 2D designs for a house that's essentially a 3D object that has to be fitted closely to a 3D terrain.

> *Imagine a fashion designer that would try and fit a strictly flat and rectangular dress on a curvy model...*

If the plot is irregular, it is extremely difficult for a 2D-architect to design a house that fits the plot, satisfies all regulations, has a naturally flowing floor plan, and looks good!

There may be a few geniuses that can pull this off but usually the problem is "avoided" by converting the 3D plot in a flat 2D platform so the architect can fit a nice and easy rectangular design on it. Too bad that these flat platforms cost tens if not hundreds of thousands of Euros in earth movement and retaining walls! And too bad... that the opportunities for exceptional architecture get lost by reducing everything to simple boxes.

Oh sure... most architects produce nice 3D renderings at the end of the process... but these are made at the end, by outside "architectural visualisation artists" who use special angles, colours and Photoshop to make the result look nice. (These renderings then often look nicer than the real house will be.) Remember, you're paying for a great house - not a great picture!

I believe that these days, architecture should be designed from the start in 3D.

Architects should create immediately in 3D, seeing all the time what the house looks like, how the spaces “feel” inside, what the sight lines are inside and outside (do you see the fridge in the kitchen from the dining room? do the doors and windows of ground vs first floors nicely align and have a nice “rhythm” to them?)

Architects that only see the 3D result at the end (and have to pay expensive render artists for that) will only be able to tweak a few things at the end; while architects that design in 3D all the way will do hundreds of little tweaks that will make the house look a lot nicer.

The details are not the details - they are the design

The purchasing process: reservation, contract, title deed

The below is the "standard" procedure used for most real estate transactions - but bear in mind, that everything is negotiable so you may be able to agree on other terms with sellers.

As a first step, it is common to "secure" a plot by paying a small deposit or "reservation fee" to the seller. This usually gives you the exclusive rights to buy the property at the agreed price for a period of 30 days. (The logic here is that this gives the lawyers of both parties the time for due diligence and to come to an agreement on the fine print of the sales contract.

As a second step, usually a "private" contract is made at the end of the reservation period. This binding and detailed document describes the transaction in all details; the "private" refers to the fact that this document is not publicly registered so third parties (incl. tax authorities) are not aware of it. It is common that an additional payment is made at this time, completing up to 10% of the total agreed price.

The private contract usually specifies a deadline of 4-6 weeks for the third step: the title deed transfer. This gives both parties the time to arrange any further paperwork and the international transfer of funds. If one of the parties does not go ahead, it will cost him the deposit: the buyer would lose the deposit paid; the seller would have to return the deposit ánd double it.

> *Note: for this reason, it is recommended to make this "deposit" big enough so the seller does not get tempted to cancel the transaction if he gets a better offer. And many sellers do not accept small deposits - if you don't comply, they may get stuck for months in legal procedures before they can safely sell to another party... and lose other buyers in the process.*
>
> *Tip: this private contract can include a clause that allows you to transfer your purchasing rights to a third party; this way you can still decide if you want the final, public purchase to be made in your own name, a company, the children etc. These choices may have tax and inheritance impact; but by adding this clause you maintain flexibility while securing the property.*

The third step is the "public" title deed transfer, signed in front of a notary public ("escritura publica"). For safety, the payment of the remaining 90% is often done at this very moment, using a banker's draft issued by a Spanish bank. For this reason, it is important to have a Spanish bank account opened as early as possible and transfer the funds in time.

There is actually a fourth step: this “escritura” then has to be registered immediately in the real estate registry, where it can be consulted by anyone. It is the real estate registry where you can consult the “nota simple”: a simple “extract” of the registry which shows the official owner of the property, if there are any liens/debts etc. on the property.

Hence this “nota simple” is the cornerstone of the due diligence that you will have to do before buying. It can be obtained online in 24 to 48 hours for a few euros. Lawyers however like to justify their fees by making the process sound more complicated (and longer) than needed.

Due diligence

Legal

At the cornerstone of any due diligence is an up-to-date "nota simple": an extract of the nota simple that shows you who the legal owner of a property is, what its (official) size is, and if there are any debts, liens or encumbrances, and most importantly: whether it is an urban (and hence: buildable) plot or a rural plot (with tremendous limitations).

In many cases, this nota simple is very short and shows little or no signs of complications; in this case, the legal part of due diligence is short, fast and easy, and you can decide to move forward in a matter of days.

Planning

A lawyer or architect can also go to town hall and verify the planning rules of the plot. Truth be told, in most cases these rules are published online and even on maps, so we can often do a first due diligence in a matter of days. It doesn't hurt, though, for them to make an appointment with the person in charge at town hall to verify if the published rules are indeed up to date. All too often, rules have changed, or applied in a more - or less - flexible way than what's published.

Architects have the advantage of understanding the difference between theory and reality. Sometimes a plot may, on paper, allow for, say, 30% of building volume (edificabilidad). But in reality, the site may be so steep, irregular, or difficult, that it would be impossible to build a villa of that size. Or the villa may become very awkward. Or car access to a garage may be impossible. Protected trees may prevent you from building on the best spot of the plot and force you to build at the bottom where there is no view, etc. etc

> *Note: for our clients, we usually have our architects do a report on the planning rules of the plot and any suspected complications, free of charge. This way, we can alert you of any limitations even during the reservation period, and you will know ahead of time if it's safe to continue with the purchase.*
>
> *Tip: if complications are expected, we put teams of extremely fast topographers, geologists, biologists at your disposal to check out any complication during the reservation period. Topographers can give us a "real" survey to confirm the right size and boundaries. Geologists can do soil tests to see if we will need (expensive) deep foundations. Biologists can inventorize the trees and see if there are any protected species, so we can check the feasibility (and cost) of transplanting or replacing them.*

Technical due diligence

It is quite common, especially in older urbanisations, that there are discrepancies in the plot sizes reported by (older) escrituras and nota simples, the real estate registry ("registro de inmuebles"), the tax authority's registry ("catastro")... and reality.
The "nota simple" is the one that legally determines the amount of construction allowed; if reality is too different it may be necessary to have the size corrected in the nota simple.

Topography

A topographer will confirm the actual, physical location of the plot and it's boundaries - and try to match it with the official data. He will also do an "altimetry", i.e. measuring the altitude levels across the terrain; and he can list the major trees, obstacles etc. that may influence construction. This topographical study will be required in any case to prepare a building licence application - it costs only a few hundred euro so this is money well spent.

Verifying the real size is especially important when the surface indicated by the seller is below or close to the “minimum” size required for building in this área!! If you buy a 797m2 plot in an area that requires 800m2 to build, authorities may still allow you to get away with this. But if in reality it measures only 782m2 you may end up with a plot that is nót buildable at all.

Often, “double” plots are not really double but just belów the size of a double plot... effectively blocking you from subdividing the plot and building two villas. Be very careful when buying “double” plot... you can't always believe the seller or the agent. Have a topographer check the real size if you want to be able and subdivide the plot.

Geological study

If we suspect that the soil may be unstable, requiring depth foundation, some may go as far as to order a geological study in key areas of the plot. This means that a company will drill several test holes into the plot, collecting samples along the way and measuring the strength of the soil at all levels; and the (highly technical) results of this will give the structural engineers vital input to calculate the correct foundation of the plot.
A geological study costs a few thousand euro though; and the tests should be performed right on the locations where the future house will be built. Although we can in most cases make a preliminary design for a house to decide where the geological study should be testing the soil, very often the design and location of the biggest pressure points (incl. pool) will still change. This may lead to do a new/additional soil study; and to avoid this double cost, we usually do this only áfter the designs are finalised.
Only if the difference in foundation costs is a “make or break” condition for the plot purchase do we recommend to do this before purchase.

Vegetation study

All too often that beautiful but protected “pinsapo” pine tree sits right on a vital spot for the house... While some trees can be cut and many trees can be moved to another location, it is important to know if there isn’t any tree complicating your project and/or if a house can conveniently be positioned to avoid any problems. Again, involving an architect at this early stage is important.

While the topographer can usually indicate the most important species, a biological specialist may be required to assess the risks ánd to defend the case with the authorities. Some trees (like palm trees) can be moved around the plot; but some trees are just too fragile and the authorities may require a “security” deposit that you lose if the tree dies as a result. (And even if the tree doesn’t die, it’s not always easy to effectively get that deposit back.) These deposits can range from a few thousands to tens of thousands of euros for one single old tree... so be careful when that “cheap” plot seems to be full of beautiful trees!

VAT and transmission taxes on plots

Spain has a surprisingly high VAT rate of 21% on building plots, whereas turnkey projects (sold by a developer, *including* a plot, benefit from a lower 10% VAT rate. Also the professional fees of architects, technical architects etc. are subjected to a 21% fee.

For this reason, it can be interesting to have the plot of your choice bought by a design & build company, so you will be taxed "only" 10% of VAT on the whole and can save 11% on the plot (and architects). The design & build company may still have to pay 21% upfront (so they will require you to fund it) - but at the end of the process, they will recuperate the difference (and so will you.)

If you build a house as an investment, i.e. if you are planning to sell it within the first few years after completion, it is usually interesting to create your own "developer" company. This way, when you sell the villa and charge/receive the 10% VAT to the end buyer, you can deduce (=keep!) all VAT you already paid on plot and construction, and only pay the balance to the VAT authority.

Plus there is always the option to sell the company instead of the villa... the buyer can then save the 10% which of course helps in the negotiations. Not all buyers are happy with that, but as many buyers are business owners anyway I would say that about half of the buyers are happy to buy a company while the other half isn't (it depends a lot on the reputation of the accountant that managed your company, and if the company has had any other activity aside from owning the property). And if they don't, they can still just buy the house and pay 10% VAT - there is no catch here.

Mind you: the VAT is only applicable to the *first transmission (primera transmisión),* i.e. when a plot is sold for the first time by a company (developer, investor) to a private person. So if you buy from a developer or company, you will almost always have to pay VAT.

On later transactions, when private persons are reselling the plot, instead of VAT a transmission tax (ITP: 8-10%) is levied. It's an either/or situation: either you pay VAT, or you pay ITP.

In both cases there are some extra costs with stamp duties, notary, registration etc, which can amount to another 2-3%. (Even more, when a mortgage is recorded, because this is a second notary deed.) The most notable one is the "AJD", which is 1.5% in most regions.

Conclusion

As you can see, it is a very complex 3D puzzle to imagine how a house can be positioned on a plot, with multiple and sometimes conflicting rules, all imposing constraints. Move the house 50cm to the left, and you bump into rule A. Move it 50 cm to the front, you may solve rule A but bump into rule B! Weak soils, protected trees, incorrect sizes can all ruin your dreams and turn your project into a nightmare.

So if you want to buy a steep and irregular plot, DO consult us or a locally experienced architect before you buy. Get them involved early in the process. (If you only show your "final" choice to an architect, he'll be tempted to be positive about *any* plot - as a new assignment may be around the corner!

Some plots impose so many constraints to construction that it's just not worth buying them. Sometimes cheap plots end up being very expensive while more expensive plots can be very easy to build on, and actually end up being much "cheaper".

Or sometimes, expensive plots may be worth it, simply because the market value of the house will be much higher. Location, location, location!!! It's the attractiveness of the plot that will define the end value of the house; so buying a great plot usually leverages your investment.

At the same time, "difficult" plots, in the hands of a great architect often become the most spectacular projects! A good architect will think of innovative ways to "fit" the house around the natural shape of the plot just like a fashion designer fits a dress around a model.

But this will be "coutûre" - and the building cost can be higher than usual.

If the plot you want to buy is steep, irregular, or seems to be landfilled, please make sure to consult with an architect that is highly versed in the matter!

> *Within our market areas, we offer this consulting for free to our prospective clients. Even remotely, we can make a 3D model of the plot, showing the possible placement of a mock villa on the plot, in order to understand the pro's and con's of the plot.*