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Tacit Consent on Building Permits upon Submission of Incomplete Applications

Council of State (Consiglio di Stato), Judgment no. 5814/2026: the structural unconfigurability of an application lacking the mandatory technical report on renewable energy sources prevents the formation of a tacit building permit

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Reading time 12 min

Current Legal Framework as of 5 November 2026: Italian administrative case law establishes the structural boundaries of tacit consent in building and planning procedures, ruling out the formation of an implied building title whenever the mandatory statutory technical reports on renewable energy sources have not been submitted.

ABSTRACT

This contribution examines the recent ruling of the **Council of State** defining the scope of application of **tacit consent on building permits** where applications lack mandatory statutory documentation. By distinguishing between **structural unconfigurability** of the application and ordinary substantive unlawfulness (voidability) of an implied measure, the analysis clarifies why failure to enclose the certified technical report on the integration of **renewable energy sources** precludes the building title from coming into existence, thereby entitling the municipal authority to issue an express refusal even after the expiry of the ordinary statutory time limit without having to resort to *ex officio* annulment under Article 21-*nonies* of Law no. 241/1990.

Key Takeaways

- **Structural completeness of the application:** Tacit consent requires the prior submission of all essential documents mandated by Article 20(1) of Presidential Decree no. 380/2001, including the technical report on the integration of renewable energy sources pursuant to Article 11 of Legislative Decree no. 28/2011.
- **Unconfigurability of the statutory scheme:** The absence of essential technical documents prevents the application from triggering an administrative duty to adjudicate, thereby barring at the outset the running of the time limit required for the formation of a tacit building permit.
- **Inapplicability of administrative self-redress under Article 21-*nonies*:** Where no tacit title has come into existence, the public authority retains its full primary power to issue a late express refusal without having to comply with the procedural safeguards and statutory time-bars governing *ex officio* annulment.
- **Effectiveness of multi-grounded administrative acts:** In administrative litigation, the lawfulness of even a single autonomous ground for refusal suffices to uphold the contested measure in full and renders challenges directed against the remaining grounds ineffective.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Administrative Law & Construction & Urban Planning

LEADING DECISION
Council of State (Consiglio di Stato), Judgment no. 5814/2026 — Rules out the formation of tacit consent on a building permit w

Legal Principle / Editorial Headnote

Tacit consent governed by Article 20(8) of Presidential Decree no. 380 of 2001 presupposes the structural configurability of the building permit application, which is lacking whenever the applicant fails to enclose the essential documentary elements mandated by sector-specific legislation, including the technical documentation certifying compliance with renewable energy integration requirements under Article 11 of Legislative Decree no. 28 of 2011. In such circumstances, because the statutory period for the maturation of a tacit building title never begins to run, the municipal administration retains the power to expressly reject the application without having to initiate prior ex officio annulment proceedings by way of administrative self-redress pursuant to Article 21-nonies of Law no. 241 of 1990.

01. THE LEGAL REGIME GOVERNING TACIT CONSENT ON BUILDING PERMITS BETWEEN PROCEDURAL SIMPLIFICATION AND EFFECTIVE PUBLIC OVERSIGHT

Article 20 of Presidential Decree no. 380 of 6 June 2001 shapes **tacit consent on building permits** as an instrument designed to expedite building and urban planning procedures, while making its operation strictly conditional upon specific factual and legal prerequisites. Under this statutory provision, the fruitless expiry of the time limit for adopting an express decision is deemed equivalent to granting the application, save where environmental, landscape, hydrogeological, or cultural heritage constraints apply to the site. Both in administrative practice and in urban planning litigation, the most delicate interpretive issue lies in determining whether a tacit title can crystallise upon the submission of an application lacking the minimum documentary requirements mandated by statute, or whether such an evidentiary and procedural deficiency radically prevents the statutory time limit from starting to run.

The wording of Article 20(1) of the Consolidated Building Act (*Testo Unico Edilizia*) requires the application to be filed with the **One-Stop Building Desk** (*Sportello Unico per l'Edilizia*), accompanied by rigorous proof of standing and title, full architectural design drawings, and a certified declaration signed by a licensed design professional. Such technical certification is not confined to attesting compliance with local zoning plans and municipal building regulations; rather, it extends to all sector-specific rules governing construction activity, foremost among which are mandatory standards on energy efficiency and the integration of renewable energy sources. Compliance with those technical benchmarks reflects a non-derogable public interest that cannot be circumvented merely by filing an application stripped of the requisite supporting documentation.

The ruling of the **Council of State (*Consiglio di Stato*)** directly addresses this interplay between the applicant's duty of documentary completeness and the exercise of public administrative authority[1]. The appellate administrative court places decisive weight on the concept of **structural unconfigurability** of the application: whenever an application lacks the essential items exhaustively listed under Article 20(1), no legal duty to adjudicate arises on the part of the municipality and, consequently, the statutory clock for the formation of an implied building permit cannot begin to run. This interpretive approach aligns with established administrative doctrine concerning the effectiveness of building notices and the completeness of private filings, an issue already explored in relation to the validity requirements of building communications for precarious structures and building titles.

The reconstruction set forth by the Court restores a substantive balance between the principle of procedural simplification enshrined in Article 20 of Law no. 241 of 7 August 1990 and strict adherence to technical building regulations. Protection of a private party's legitimate expectations cannot arise out of negligent or incomplete documentary conduct: the mere passage of time cannot cure the structural absence of the minimum certified technical filings required by sector-specific legislation to enable public scrutiny of the proposed development.

02. CONFIGURABILITY OF THE BUILDING PERMIT APPLICATION AND ESSENTIAL DOCUMENTARY REQUIREMENTS

2.1 — Documentary Prerequisites and Operational Boundaries of the Statutory Scheme

Examining the procedural architecture governed by Article 20 of Presidential Decree no. 380 of 2001 requires a threshold verification of whether the private party's filing conforms to the **statutory procedural model**. Tacit consent does not operate as an abstract or unconditional mechanism: for the implied enabling effect to materialise, the applicant must have submitted a request endowed with all formal and substantive components needed to allow the municipal authority to carry out its technical review. Paragraph 1 of Article 20 exhaustively enumerates the mandatory contents of the application, identifying proof of title, design drawings, and the licensed professional's certified declaration.

Viewed from this perspective, the licensed designer's sworn certification attesting that the project complies with **energy efficiency regulations** forms a constitutive element of the application itself. Far from representing ancillary or merely supplementary paperwork that may be deferred until the construction stage or produced at the applicant's discretion, this documentation is indispensable at the time of filing. Article 11 of Legislative Decree no. 28 of 3 March 2011 expressly mandates that designs for new buildings incorporate renewable energy systems to cover thermal and electrical demand, specifying in paragraph 3 that non-compliance with this obligation inevitably entails refusal of the building title.

Completeness of the Application as a Prerequisite for a Tacit Title

> The formation of an implied building permit through the expiry of the statutory period requires the prior submission of all mandatory technical annexes prescribed by building legislation; absent the minimum set of certified filings, the statutory scheme fails to crystallise.

It follows that failure to file the specific **technical report on renewable energy sources** amounts to the omission of a structural component of the initiating application. Where the applicant fails to attach the design of the photovoltaic or solar thermal installation meeting the benchmarks set out in Annex 3 to Legislative Decree no. 28 of 2011, the application remains incomplete and incapable of triggering a duty to decide on the part of the municipal planning office. The operational boundaries placed upon procedural simplification are grounded in the protection of overriding public interests safeguarding energy sustainability and orderly territorial governance.

2.2 — Distinguishing Structural Unconfigurability from Legal Unconfigurability of the Application

Administrative case law on tacit consent is shaped by a fundamental conceptual dividing line. On one side stands the line of authority holding that **tacit consent on building permits** crystallises solely by virtue of the passage of time even where the proposed development conflicts with municipal zoning instruments or area-specific planning standards[2]. Under that reconstruction, the substantive non-conformity of the building works with planning rules does not prevent an administrative measure from coming into existence *per silentium*; rather, it operates solely as a ground of substantive unlawfulness (voidability) that may be remedied through administrative self-redress within the strict statutory conditions of Article 21-*nonies* of Law no. 241 of 1990.

By contrast, the judgment under review clarifies that such a rule **does not apply** when confronted with a radically different situation marked by the omission of essential annexes directly required under building legislation. In such instances, one is not dealing with an application that is procedurally complete yet substantively unlawful on the merits, but rather with the **structural unconfigurability** of the application itself. The absence of mandatory documentation prescribed by Article 20(1) of Presidential Decree no. 380 of 2001 prevents the procedural fact presupposed by the legislature from coming into being.

Alongside structural unconfigurability, the Council of State identifies the distinct category of **legal unconfigurability**, which arises whenever a private party applies for a building title while invoking tacit consent in subject areas or statutory procedures expressly excluded from simplification by law. Examples include applications for building permits in derogation from zoning instruments under Article 14 of Presidential Decree no. 380 of 2001, requests to extend expired permits involving discretionary assessments, or applications for retrospective conformity assessment under Article 36, which are governed by the statutory rule of tacit refusal (*silenzio rifiuto*). Across both forms of unconfigurability, the mere expiry of the procedural time limit produces no favourable administrative measure.

Category of Defect	Substantive Zoning Non-Conformity	Structural Unconfigurability
Nature of the defect	Conflict of the design with zoning rules, setback distances, or height limits.	Omission of certified technical reports or mandatory annexes under Article 20(1).
Effect of expiry of the time limit	Tacit building title is formed	No building title is formed
Administrative remedy available	*Ex officio* annulment under administrative self-redress pursuant to Article 21-*nonies* of Law no. 241/1990.	Issuance of an ordinary express refusal accompanied by a formal notice not to commence works.

The taxonomy articulated by the Council of State strikes a rational systemic balance: whereas the legal order accepts that a public administration forfeits its primary power to issue a late refusal once it has been placed in a position to evaluate a formally complete application file, it refuses to allow a private applicant to profit from administrative inaction where that applicant failed to submit the foundational documents mandated by statute.

2.3 — Documentary Deficiency and the Burden of Proof in Administrative Litigation

From a strictly procedural and litigation standpoint, the configurability of a tacit building title decisively shapes the allocation of evidentiary burdens. In **administrative court proceedings** brought either to obtain a declaratory judgment confirming the formation of tacit consent or to challenge an express refusal issued by the municipality, the **burden of proof** regarding the timely and complete submission of every document required under Article 20(1) of the Consolidated Building Act rests entirely on the private applicant. The claimant cannot merely point to the filing receipt of the application or the bare passage of procedural deadlines, but must provide specific proof of the documentary contents of the initial annexes and of any supplementary filings subsequently lodged.

In the dispute examined by the Council of State, counsel for the appellant company contended that the technical report on the photovoltaic system had already been enclosed with the initial application, further inferring acquiescence from the conduct of the municipal administration because no mention of that omission appeared in the prior notice of grounds for refusal. The Court rejected that line of argument: once the respondent municipality raises a specific challenge denying receipt, rigorous documentary proof demonstrating actual delivery of the technical report mandated by Article 11 of Legislative Decree no. 28 of 2011 becomes indispensable. Any failure to produce such evidence, or lingering uncertainty over whether the report was lodged, precludes proof that the application was structurally complete.

For **legal practitioners** advising developers or private property owners, a clear precautionary rule emerges. Both when lodging a building permit application and when responding to municipal requests for clarification, it is essential to compile an itemised schedule of all transmitted files backed by electronic delivery receipts certifying the inclusion of every sector-specific technical certification. Should the public authority raise in court a **procedural defence** of structural unconfigurability due to missing essential annexes, inability to prove initial filing renders the running of procedural deadlines unenforceable and defeats any claim that a tacit building permit has matured.

03. POWER OF LATE EXPRESS REFUSAL, ADMINISTRATIVE SELF-REDRESS, AND MULTI-GROUNDED DECISIONS

3.1 — When the Power of Express Refusal Operates Without Administrative Self-Redress

Establishing that no tacit building title has been formed carries direct implications for identifying the exact administrative power exercisable by the competent authority. Under the ordinary statutory framework, once **tacit consent on a building permit** has validly crystallised, the municipality forfeits its primary administrative power to issue a negative decision on the application. Any belated determination rejecting the project incurs the statutory sanction of ineffectiveness laid down in Article 2(8-*bis*) of Law no. 241 of 1990, leaving the municipal administration solely with the power to act by way of administrative self-redress under Article 21-*nonies*, subject to demonstrating a concrete and current public interest and complying with the twelve-month statutory time-bar (*decadenza*).

> The passage of time does not cure the structural incompleteness of a building permit application, leaving intact the public authority's primary power to issue an express refusal without resorting to *ex officio* annulment under administrative self-redress.

Yet that strict statutory forfeiture regime presupposes that legally significant silence has actually come into existence. Conversely, where the application is vitiated by **structural unconfigurability** owing to the failure to lodge the certified technical report on renewable energy integration, no tacit building title ever arises. Consequently, the public authority encounters no time-bar stemming from the formation of an implied title and retains its original primary decision-making power intact. The municipal planning director may lawfully adopt an **express refusal of the building permit** without having to initiate prior *ex officio* annulment proceedings or provide specific reasoning weighing competing public and private interests[1].

This legal conclusion resolves a recurring defensive fallacy, clarifying that a municipal formal notice prohibiting the commencement of works and a subsequent express refusal do not infringe Article 21-*nonies* where the initial application lacked indispensable technical certifications. Protection of legitimate expectations presupposes private conduct guided by **good faith and loyal cooperation**: an applicant who files an incomplete request cannot claim that administrative inaction operates as an automatic cure for their own documentary omission.

3.2 — Effects of a Multi-Grounded Administrative Act on Judicial Protection of the Applicant

A further point of systemic importance addressed by the Council of State concerns the legal regime governing **multi-grounded administrative acts** and its impact on the claimant's litigation strategy. Both before the Regional Administrative Court (*TAR*) at first instance and on appeal, the developer had raised specific grounds of challenge against each of the two reasons underpinning the municipal refusal: first, failure to enclose the mandatory technical documentation on renewable energy sources; second, failure to provide a surety bond guaranteeing payment of the remaining balance of infrastructure and construction charges. With respect to the latter ground, the appellant company argued that the obligation to pay construction charges under Article 16 of the Consolidated Building Act constitutes a mere consequence of granting the building permit rather than a prerequisite conditioning its formation.

The appellate Chamber held that it could dispense with examining the ground concerning construction charges, applying the settled procedural rule whereby, when an administrative measure rests upon multiple independent grounds,

the dismissal of challenges directed against one autonomous ground renders judicial review of the complaints targeting the remaining parts of the act superfluous[3]. Because a multi-grounded administrative measure retains full legal validity and effectiveness so long as even a single one of its independent *rationes decidendi* withstands judicial scrutiny, the claimant can derive no substantive benefit from a favourable ruling on ancillary grounds of appeal.

This principle of procedural economy calls for careful reflection on **pleading strategy in judicial review** and on preliminary litigation risk assessment. In urban planning and building disputes, whenever a refusal issued by a municipal authority relies on an incurable structural deficiency of the application alongside secondary financial or fee-related objections, counsel for the private party must concentrate the core of their legal and evidentiary effort on overcoming the structural defect. Once the ground resting on omitted environmental and energy documentation stands firm, any prospect of obtaining the annulment of the contested refusal is foreclosed.

04. CONCLUSIONS AND SYSTEMIC REMARKS

The judgment of the Council of State establishes a firm ordering principle in the application of **tacit consent on building permits**, averting the risk that procedural simplification in administrative law might degenerate into a substantive circumvention of environmental and energy safeguards. Drawing a clear conceptual boundary between substantive unlawfulness affecting a complete application and threshold unconfigurability stemming from the omission of essential statutory documents restores systemic coherence to the interplay between Article 20 of Presidential Decree no. 380 of 2001 and Article 20 of Law no. 241 of 1990.

At an operational level, the decision reminds design professionals and property developers of the strictly mandatory nature of compliance with the rules on **renewable energy sources** enacted under Legislative Decree no. 28 of 2011. Failure to attach the certified technical report cannot be treated as a mere formal irregularity open to discretionary cure at will: it paralyses *ab origine* the running of the statutory deadline for administrative adjudication, preventing a tacit building title from maturing and preserving the municipality's primary power to issue an ordinary express refusal.

Ultimately, the protection of legitimate expectations and legal certainty in private construction law presupposes strict adherence to duties of documentary diligence and candour. Only an application structurally capable of enabling full public verification of the proposed building works' compliance with statutory standards can benefit from the favourable legal effect attached to municipal inaction.

References & Authorities Cited

Statutory Provisions

- Presidential Decree no. 380 of 6 June 2001, Articles 11, 16, and 20 — Consolidated Act of legislative and regulatory provisions on building matters, with particular reference to the prerequisites and formation of express and tacit building permits.
- Legislative Decree no. 28 of 3 March 2011, Article 11 — Implementation of Directive 2009/28/EC on the promotion of the use of energy from renewable sources and mandatory integration requirements in newly constructed buildings on pain of refusal of the building title.

Law no. 241 of 7 August 1990, Articles 2, 20, and 21-nonies — General rules on administrative procedure, legal effectiveness of tacit consent, and prerequisites for *ex officio* annulment under administrative self-redress.

Case Law Cited

1. **Council of State (*Consiglio di Stato*), Judgment no. 5814/2026** — Rules out the formation of tacit consent on a building permit where the application lacks essential statutory documentation on renewable energy sources, upholding the lawfulness of an express refusal issued without prior administrative self-redress. Outcome: appeal dismissed. Para.: paras. 10-18.

2. **Council of State (*Consiglio di Stato*), Judgment no. 2674/2025** — Holds that tacit consent crystallises solely through the passage of time even where the proposed building works conflict with substantive zoning rules, such non-conformity being relevant solely as a ground for *ex officio* annulment under Article 21-*nonies* of Law no. 241/1990. Outcome: appeal upheld. Para.: paras. 5-12.

3. **Council of State (*Consiglio di Stato*), Judgment no. 2753/2025** — Reaffirms that in a multi-grounded administrative measure the lawfulness of even a single autonomous ground suffices to sustain the contested decision and warrant dismissal of the judicial challenge. Outcome: appeal dismissed. Para.: paras. 22-23.

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