

THE DEVELOPMENT OF PLANNING LAWS, THE PUBLIC AND PRIVATE SECTORS PARTNERSHIP

By

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Abstract

Various land use planning regulations had been legislated upon in Nigeria over the years to control property development in order to ensure sustainable human environment. In spite of the existence of these laws, property development was still being carried out in a way that constituted environmental challenges in our cities. The challenges ranged from socio-spatial to institutional and undoubtedly political. This article aimed at identifying the challenges confronting development control and urban growth management measures by the planning institutions and its impact on physical planning within the Port Harcourt metropolitan. The objectives of this article was to evaluate the development control measures as currently applied, pinpoint the operational, institutional and political issues encountered by development control authorities as well as pinpoint the impact of these shortcomings on development activities in Port Harcourt. The doctrinal research methodology was adopted. It was revealed that developers did not adhere to percentage building coverage which specified the percentage of land area to be covered by the building on the plot. Developers resorted to construction in progress before making reference to the planning authority for development approval. The article revealed that the reasons advanced for these practices were among others, ignorance on the part of developers who developed their inherited land. The need to employ qualified Town Planners as Development Consultants was recommended and conclusively, given adequate human face with the right publicity, development control operations would be enhanced by voluntary compliance by private developers.

1.0 INTRODUCTION

Nigeria is one of the nations with high rate of urbanization in the global south, with many of her large cities growing astronomically between four percent and six percent per annum despite the economic quagmire.¹ As a

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¹ F O Ogundele and Others, 'Challenges and Prospects of Physical Development Control: A Case of Festac Town, Lagos, Nigeria' [2011] 5 (4) *African Journal of Political Science and International Relations*, 174-178.

result of the rise in population, the attendance consequence of this action is the expansion of cities and urban regeneration. Therefore, there is need for the development of new houses for the purpose of shelter. As the cities are growing, buildings are springing up like mushrooms especially at the urban fringes in agricultural land and without formal planning or layout.² In Rivers State, the capital city of Port Harcourt, new cities are springing up in the formerly rural towns of Igbo-Etche, Rukpokwu, Oyigbo, Ipo, Ozuaha, Omagwa and some other areas of Rivers State. Former agricultural users of these lands are disappearing for the construction of building of more houses for the creation of new cities.³ There is the urgent need to enforce development and planning laws to regulate the new and expanding towns.

Property development in Nigeria has evolved from crude indigenous structures which were fabricated with local building materials like mud, wood and thatch during the pre-colonial and early colonial era to sophisticated buildings designed to cover large expanses of land with multiple floors and advanced technologies and or materials in current dispensation. The changing trend in property development has reflected the changing settlement structure occasioned by rapid urbanization globally. In the global north, property development has kept pace with urbanization trend hence the existence of high technology buildings ranging between fifty floors and above thereby compensating adequately for the restrictions posed by urban space inadequacy.⁴ It should be stated that most cities in the developing countries, technological development and advancement has not matched with the rate of urbanization. Population explosion in the developing countries, Nigeria inclusive, has put urban housing under pressure and property developers have had to maximize construction on their limited urban land space without consideration to land use planning regulations.

Property development in some cities in Nigeria including Port Harcourt have given rise to increased environmental challenges such as traffic congestion, overcrowding, flooding and waste pollution. The vital areas that need enforcement are properly spaced access roads, parking spaces,

² G C Ogbonna and Others, 'Property Development and Land Use Planning Regulations in Nigeria' [2017] 2 (4) *International Journal of Environment, Agriculture and Biotechnology*, 1694-1707.

³ U Jack-Osimiri, 'The Development of Planning Laws, The Government and Private Sectors Partnership' (A Lecture delivered to the members of the Institute of Town Planners of Nigeria in Port Harcourt, Rivers State, Nigeria, 2019) 1.

⁴ Ogbonna and Others (n3).

recreational facilities, creation of drainages, toilet amenities, preservation of green belts or verges (animals, vegetables, medicinal plants and flowers will soon go extinct) and implementation of the approved users. The ways the emerging cities are springing up, if not properly regulated, it will snow ball into chaos. Developers and indigenous landowners are just carving out plots of land from former semi-rural areas and commencing buildings at random. This new and emerging layouts are in violation of development and planning laws. Most of the streets these developers created are in violation of parking spaces, street measurement, space of twelve feet allowance for the roads. The public and private sectors partnership need to partner and enforce the development and planning laws that regulate these activities.

2.0 Conceptual Framework

Some concepts related to the subject matter of this article will be reviewed to ascertain the meaning of the terms and phrases that are essential in this article. The terms to be reviewed are urbanisation, land use, land use control, development and development control.

2.1 Urbanisation

Urbanisation in this context entails the proportional growth in urban population and physical development which is triggered by rural-urban migration.⁵ There are some factors that are responsible for urbanisation, which include rural-urban migration, annexation which is the fallout of geographic enlargement, transformation and subsequent reclassification of rural enclaves into emerging urban centres and increased birth rate in most rural areas.⁶ Urbanisation is referred to as the movement of people from an area with less demand for labour to an area with high demand for labour and with surplus employment opportunities either in public sector or private sector or both.⁷

⁵ I Brown and W Chikagbum, 'Urban Growth: Challenges, Management and Planning Implication in Port Harcourt Municipality' [2017] 6 (4) *Journal of Global Ecology and Environment*, 135-148.

⁶ B Cohen, 'Urbanisation in Developing Countries: Current Trends, Future Projections and Key Challenges for Sustainability' [2006] 28 (1) *Technology in Society*, 63-80.

⁷ W John and Others, 'Urbanisation and its Social Vices in Nigeria' [2019] III (XI) *International Journal of Research and Innovation in Social Science*, 165-170.

2.2 Land Use

Land use is the same as physical planning.⁸ Land use has been referred to as a process aimed at achieving orderly physical development with the overall aim of evolving a functional and liveable environment where individual and common goals can be achieved.⁹ Land use is a geographical concept that refers to the ways in which parcels of land are utilized by people and society and the examination of the factors that influence the nature and dynamics of land usage and development of ways of optimizing those variables to achieve larger social, economic and ecological benefits.

2.3 Land Use Control

Land use control is the spatial distribution of city functions such as its residential areas, its industrial, commercial and retail business district and a space set aside for industrial and leisure time function, it is a functional term which corresponds to the description of areas in terms of their socio-economic purposes, that is areas used for residential, industrial or commercial purposes, for farming or forestry, for recreational or conversion purposes.¹⁰

2.4 Development

Development in this context is defined as a human –created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavating and drilling.¹¹ Development could be assumed as making the highest and best use of space which in some cases connotes, spot clearance, pulling down and upgrading existing structures, structural alterations in the design, usage and function of buildings.¹² It is also further seen as the other activities usually undertaken by builders and developers alike. Development entails changes in the physical characteristics of buildings while change connotes the change of use of land but does not include the use of land for carrying out any building or other activities associated with it.¹³

⁸ O B Owei and Others, 'The Challenges of Sustainable Land Use Planning in Nigeria Cities: The Case of Port Harcourt' (46th ISOCARP Congress, 2010) 1.

⁹ *Ibid.*

¹⁰ V S Balogun and O O I Orimoogunje, 'The Correlation between Land Use Activities and Air Pollution in a part of Southern Nigeria' [2015] 10 (2) *Nigerian Geographical Journal*, 1-15.

¹¹ B A Gardner (ed), *Black's Law Dictionary* (7th edn, West Group 1999) 462.

¹² (n6).

¹³ (n6).

2.5 Development Control

Development control is the practice of regulating, restraining, keeping in order or checking changes on land use that are in conflict with the wish of a developer and the benefit to the public.¹⁴ It is further defined as an instrument of overall environmental quality control, to the extent that it sets standards and regulations guiding the bulk and use of structures as well as the air space around buildings.¹⁵

2.6 Tools of Development Control

These are strategies used in development control. They are basically the procedures used for monitoring development. In Rivers State the tools use for monitoring development control are:

- i. Rivers State Physical Planning and Development Law 2003.
- ii. Rivers State Building Lines Law 1999
- iii. Greater Port Harcourt Development Authority Law 2009.
- iv. Zoning Scheme.
- v. Density Control.

3.0 Applicable Laws

The Nigerian Urban and Regional Planning Decree No.88 of 1992 later Cap N138 Laws of the Federation of Nigeria 2004 was adjudged not applicable to any of the 36 states of the federation. In *Attorney-General of Lagos State v Attorney-General of the Federation and 35 others*.¹⁶ The Supreme Court held inter alia:-

- i. That the Nigerian Urban and Regional Planning Act is applicable exclusively to the Federal Capital Territory (FCT) Abuja pursuant to the provisions of the Constitution.¹⁷
- ii. That the powers to make town planning laws was the exclusive reserve of the States Houses of Assembly.

The implication of the above case is of two folds. First, the regime of physical planning and the development control of all the land in the FCT is within the legislative control of the National Assembly. By virtue of its

¹⁴ O Aluko, 'Sustainable Housing Development and Functionality of Planning Laws in Nigeria: The Case of Cosmopolitan Lagos' [2011] 4 (5) *Journal of Sustainable Development*, 139-150.

¹⁵ C C Nwachukwu and Others, *Town and Country Planning Concept: A Platform for Real Estate Project and Valuation* (Owerri: Chino Prints 2015) 24.

¹⁶ (2003) 1 NWLR (Pt. 833) 1.

¹⁷ CFRN 1999 (as amended), s299.

provisions, it provides the bedrock of the legal instruments regulating town planning laws for FCT and its environ. Consequently, the Federal Capital Development Authority (FCDA) became the regulating institution pursuant to the Federal Territory Act 1976.¹⁸ The planning institution, that is, the FCDA, developed its Development Control Manual (DCM) 2007 for Abuja and its Area Councils and Satellite Towns. Under the DCM 2007, FCDA provided the general policies, procedures and guidelines for regulating development control activities through the FCDA Land Use Regulations which provides rules for land holdings, National Building Code which stipulates the processes of building constructions and the incidentals thereto.¹⁹

Secondly, the division of legislative powers affirmed by the Supreme Court preserved the institutional frameworks both at the federal and states levels in respect of enhancing the modern features of physical planning, development control and bringing planning to the grass root.²⁰ In this process, the stakeholders are allowed to participate in planning matters. They would formulate the relevant policies and facilitate the process of the enforcement of planning regulations.²¹ The NURPA recognizes the relevant laws and aligned its framework with Land Use Act and Environmental Impact Assessment Act. It also made fundamental provision such as the establishment of Regional Planning Tribunal for the resolution of planning dispute where dissatisfied land developers could channel their grievances with the FCDA within 28 days subject to appeal to the High Court.²²

3.1 Applicable Laws to Rivers State

The applicable laws in Rivers State is the Rivers State Physical Planning and Development Law 2003 which repealed the Town and Country Planning Law 1963 of Eastern Region of Nigeria. The other applicable laws are the Rivers State Building Lines Law 1999 and Greater Port Harcourt City Development Authority 2009. Development such as building, rebuilding operations and users of land are regulated by these laws. There is yet to be established the planning institutions such as Rivers

¹⁸ As amended by Cap F6 LFN 2004.

¹⁹ NURPA 1992, ss 13-19, 80(2), 81.

²⁰ I O Smith, 'Adjudicating Process of Nigerian Urban Regional Planning Act' [2010] 28 *Journal of Private/Property Law University of Lagos*, 1-20.

²¹ NURPA 1992, ss6,8,10,45,46,50,80(2),81,84(3),86,87.

²² (n 21), s86.

State Physical Planning Board, Local Planning Authorities in the Local Government Councils and Planning Tribunal to adjudicate on dispute arising from planning violation.²³ There is need for the establishment of these planning institutions who will engage experienced personnel in land matters such as local chiefs, urban/regional planners, land surveyors, estate surveyors, lawyers and other professionals who will formulate blue-print for the land development schemes and layouts.

The Planning Board would prepare planning schemes, publish the notice of the scheme, its desirability for prior approval, rejection or amendment by the Board enforcement by the Development Control Department (DCD). The Board shall ensure that every land planning scheme recommended for approval, shall comply with the requirements of proper sanitary facilities of convenience, provision of roads, preservation of building, its objects, architectural, historic, artistic interests, natural beauty and amenities of residence whether in urban and rural areas of Rivers State.

There is the need to enforce Rivers State Building Lines Law of 1999, which provides for proper spacing on both sides of the roads to be cleared of obstruction, that is, 30.48 metres of the centre line of the road in order not to cause obstruction.²⁴ The building line at railway level crossing of within the distance of 76.2 metres on the side of centre line to the road and the distance of 30.48 metres along the roads on either sides in order not to create obstruction.²⁵ The appropriate authority may in its discretion reduce it to 15.24 metres in other towns and villages and could remove the obstructions and impose penalties. It should be stated that most times buildings are constructed in clear disregard to easements of fresh air, amenities like children play grounds and facilities for recreation and relaxation. Apart from the exceptional needs which could necessitate the desired change of users through proof requiring the special consent, there are other factors which may influence its favourable grant. The reliance on operative master plan of the scheme of development may be defeated and the purported change of user nullified by the court through injunction to forestall encroachment and unauthorized alteration by mere ministerial order.²⁶ In *Alofoje v Federal Housing Authority*²⁷ claimant sued for

²³ J K Synger, *The Nigerian Land Use Handbook* (Odade Publishers, 2016) 25.

²⁴ Rivers State Building Lines Law 1999, s3(1)(a).

²⁵ (n 23), s4(a)(b).

²⁶ *Alofoje v Federal Housing Authority* (1996) 6 NWLR (Pt 456) 559.

²⁷ *Ibid.*

injunction and other relief to set aside an allotment because 1st defendant allotted the area abutting claimant's plot and demarcated as children's playground in its approved master plan. Claimant alleged the allotment to the 2nd defendant had not only adversely affected his right of easement of light, fresh air, blockage of access to other adjoining neighbouring properties and distorted totally the entire master plan of Festac Town. The Court of Appeal held that claimant has the legal capacity (locus) to sue so as to ensure his rights of easement of light, fresh air were not jeopardized or in any way interfered with and that these rights which are threatened by buildings, structures, to be erected on the playground deserve protection.

Although, it is not exhaustive, the following are circumstances that could weigh in the minds of the court to grant it or refuse the change of user such as master plan, sound town planning principles, foreign capital investments but the court would frown at wider social, political implications and the desirability of having the indigenous businesses flock around the vicinity.²⁸ In *Delta Corp v Harare City Council*,²⁹ the Harare City Council development scheme which cover suburbs of Gunhill/Borrodale. Three stands were reserved as green belt area as public open space and recreation. In October 1979, adjacent land consisting of eight stands previously zoned as residential land were re-zoned under supplementary building scheme order for special prestigious office buildings/park. The claimant as one of the pioneers in the planning and construction of special prestigious office complex, applied to use the specially selected site, the space designated as green belt area to establish and develop its office building designed in land scape setting to ensure that it was done in the best interest of the neighbourhood, the environment and the residents in the area. This selection was based on the clear representations and undertaking by the Harare City Council that it was a green belt area and was designated as such. In pursuance of its objective to enhance the green belt area, ensure protection and preservation of national flora and fauna, claimant spent considerable sum of money to maintain and improve the green belt area.

In 1988, a sub-division was made for a wildlife sanctuary and three reserved stands were leased to claimant by Harare City Council. On 12 November, 1988, under the Regional, Town and Country Planning Act,

²⁸ *Delta Corp v Harare City Council* (2002) 2 Zimbabwe Law Report 182.

²⁹ *Ibid.*

the Minister is vested with the authority to send change of reservation.³⁰ The Minister sent a notice pursuant to the Act, indicating that application had been received from Harare City Council for change of reservation over three stands from the open space/recreational user to office user. Claimant objected to the change of user, filed affidavit in support from owners of offices. Minister accepted the recommendation citing the reasons for the change as wider social, political implications, desirability of having successful indigenous business enterprises move into the neighbourhood to be next to their established business counterparts. Claimant sought judicial review that the Minister acted ultra-vires as his asserted reasons had nothing to do with town planning. Claimant stressed that implicit in part IV of the Regional, Town and Country Planning Act are provisions dealing with master plans, local plans and the sound principles of town planning, must at all times be adhered to. The Minister contended that the decision was reasonable as he did not have to confine himself to town planning considerations. The Court noted some irregularities where the name of the applicant seeking the change of use was not stated, the Councillor who was the alleged beneficiary of the application for the change and the Director of the 2nd defendant participated in the Harare City Council meeting without excusing themselves and a similar application by another company several years earlier was refused.

The Court quashed the Ministerial decision and held that a municipality that acquired land must use it for the purpose permissible in terms of operative master plan. The Court further held that the evidence before it revealed that the Harare City Council application was not made bona fide. The real applicant for the change of user was the 2nd defendant but in terms of the Act, it was Harare City Council as the owner of the land that have to make the application but the Minister in treating the application as if it came from the 2nd defendant had acted ultra-vires. Once a master plan has been approved by virtue of the Act and is in operation, the Minister's powers were proscribed.³¹ The Minister was obliged when considering the application under *section* 49 of the Act to be satisfied that the council imposed conditions to ensure the best user of the land or erection on the land such buildings as may appear to be needed for the proper use of the land for the purpose it was acquired. The implication of this is that the

³⁰ Regional, Town and Country Planning Act, s49(3).

³¹ Regional, Town and Country Planning Act, ss 13, 14.

conditions had to be in accordance with the operative master plan. And finally the Court held that the change of user had to be in accordance with the sound town planning principles.

3.2 Institutions of Development Control in Rivers State

There are some institutions saddled with the responsibility of development control in Rivers State. They are as follows:

- i. Ministry of Urban Development
- ii. Greater Port Harcourt City Development Authority
- iii. Ministry of Lands and Housing
- iv. Ministry of Environment
- v. Local Planning Authorities

4.0 Development Control: A Panacea for Urban Restructuring in Nigeria

Successive governments in the past had identified development control as an essential instrument to achieve the objectives of urban restructuring. Its city restructuring takes some measures by way of demolishing illegal structures dotted round the cities, especially those that had been built without development approval. In Rivers State, to strengthen the resolve of city restructuring, the government established the Greater Port Harcourt City Development Authority to regulate development, maintain and improve the land scape of the city of Port Harcourt and its adjoining towns, to prepare a new master plan that will direct and guide development.³²

It should be emphasised therefore, that most states in Nigeria, Rivers State inclusive neglected over the years to establish Planning Board at the State level, Planning Authorities at the Local Government levels. It should also be mentioned that the partial implementation of the Rivers State Physical Planning and Development Law of 2003 by implication makes urban renewal process done outside the given institutional and legal frameworks which has led to compulsory demolitions of property and subsequent evictions of residents by the government in the name of development control and urban renewal schemes.

³² Greater Port Harcourt City Development Authority Act 2009.

4.1 Summary of Planning Approaches in Nigeria

Before independence, there was limited modern physical planning in Nigeria. Physical planning was restricted to the European or colonial masters residential areas. The Nigerian Town and Country Planning Ordinance was the first notable attempt at Urban and Regional Planning law that was an all-inclusive legislation for the entire country.³³ This legislation made provisions for the preparation and implementation of planning schemes by the planning institutions. The focus of the legislation was to upgrade, plan and grow the different parts of the country by means of development schemes implemented by the planning institutions. The Town and Country Planning Ordinance restricted itself to the development control of the European Reserved Areas and the areas where majority of the people lived were abandoned. It is therefore, difficult to assert that the 1946 Ordinance was prepared to serve the modern planning schemes in all settlements of the country. This accounted for most of the cities in Nigeria were largely not planned.

After independence, the 1946 Town and Country Planning Ordinance was retained. Further retained were the Town and Country Planning laws of Western Nigeria of 1959, Northern Nigeria and Eastern Nigeria. In 1992 the Nigerian Urban and Regional Planning (Decree No.88) was promulgated. The NURPA was expected to reinvigorate the dull and static planning activities that pervaded the post independent physical development in Nigeria.³⁴ However, between the 1946 Town and Country Planning Ordinance and the 1992 NURPA there were several legislation relating to development control in form of building regulations, building adoptive by-laws, public health laws and the States Physical Planning Laws. Many of these building adoptive by-laws, for instance, the former Western State of Nigeria by-law of 1960, made provision for air space, building lines density control and other laws are still in force.³⁵

³³ Brown and Chikagbum (n6).

³⁴ O Aluko, 'Functionality of the Town Planning Authorities in Effecting Urban and Regional Planning Laws and Control in Nigeria: The Case of Lagos State' [2011] 5 (6) *African Research Review*, 156-171.

³⁵ *Ibid.*

5.0 Areas of Lack of Compliance to Planning Laws

There are some of the aspects of the Planning Regulations that are commonly breached by developers which includes:

- i. Percentage building coverage which specifies the percentage of land area to be covered by a building on the plot. The developer by the requirement of the Building Regulation is to use thirty-three, one third percent of the plot for construction in residential area and forty percent for unplanned area and a place designated for commercial concerns.³⁶ These stipulated standards in some cases are not adhered to.
- ii. Most developers resort to construction in progress before making reference to the Planning Authority for development approval. The possible reasons for this unwholesome development are ignorance on the part of developers especially within the unplanned areas occupied by indigenous people constructing on their inherited land, construction of shop in place of front set-back. This development is as a result of the poor economic situation of the country where white collar jobs income are no longer sustainable, Change of major future in the original building plan without official permit from the planning authority, construction of buildings on utility lines such as under the high tension lines of Public Electricity Company and erection of buildings on access roads or extension of plot boundaries to the public access road.

5.1 Poor Compliance to Planning Regulation Due to Systemic Failure

Poor compliance to planning regulations are responsible for the poor performance of the planning authorities. This poor compliance include corruption on the part of the field officers who prefer to service their pockets rather than service the purse of the agency of government. Inadequate urban development policies that allow the appointment of non-professionals in sensitive positions, the ineffective enforcement of development control by the planning agencies and lack of incentive on the part of the planning agency.³⁷

³⁶ A D Ude and Others, 'Town Planning Authority Building Regulations and Compliance Challenges in Nigeria: A Case of Imo State' [2017] 8 (1) *Journal of Environmental Management and Safety*, 1-10.

³⁷ S N Uchegbu, 'The Imperatives of Effective Town Planning and the Concept of Urbanization in Nigeria' [2005] 2 (1) *Journal of Environmental and Planning Law*, 103-108.

6.0 Recommendations

The following suggestions have been recommended as a means of enhancing developer's compliance to Planning Laws and development control mechanism.

1. There is the need to discourage the planning authority from the engagement of non- planners as Development Control Consultants. This is an identified common practice where consultants who do not have the requisite skill and training are engaged to carry out enforcement of development control. It is suggested that government should be encouraged to shift emphasis on the financial benefits accruing from development control but rather place emphasis on using its operation to maximize the wellbeing of urban dwellers.
2. The Planning Authorities should intensify effort to enlighten the citizens by using the mass media to regularly sensitize the public on the activities of Town Planning Authority in relation to planning laws and planning regulations. This medium could serve as an avenue to throw light on several questions concerning planning and physical development in urban environment.

7.0 Conclusion

Achieving an orderly urban city where physical planning is carried out in compliance with the planning laws is possible in Nigeria cities, if only development control operations are rebranded and presented to the public as peoples welfare oriented programme designed to improve the wellbeing of the overall urban dwellers as well as its environment. Given sufficient human face with the right publicity, development control operations will be improved by citizens' voluntary compliance by private developers.