

DEVELOPMENT CONTROL AND ENFORCEMENT MECHANISMS APPLICABLE IN RIVERS AND LAGOS STATES OF NIGERIA

By

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Abstract

Development as an effective tool for urban management ensured that the persistent growth and management of settlements could be such that made for orderliness and improved settlement. It also ensured that the environmental problems arising from settlement and growth could be reduced to a bearable level. Development control required special skills as a result of the daily issues the authorities were plagued with, which was referred to the absolute size and rate of increase of these settlements and the challenges of the task involved. The issues range from non-implementation of planning laws, political intervention and manipulation by government functionaries and poor monitoring of planning schemes. The article adopted the doctrinal research methodology. The article highlighted the concept of development control mechanisms for producing a conducive, safe and healthy environment for all Nigerians. The findings revealed the lawlessness of unplanned physical development and haphazard development in the environment. The article suggested the ability to realize positive results in the course of enforcement. The laws that would satisfy both private and public interest needed to be harmonized.

1.0 INTRODUCTION

The rapid growth of settlements in Nigeria with particular reference to Port Harcourt and Lagos need to be controlled in order to prevent chaotic and haphazard physical growth and development which will ultimately take place in the absence of development control measures.

The implementation of planning and development laws are indeed an essential component for realizing sustainable land development control in Nigeria. This is aimed at preventing wrong development of housing and other land uses. It is used for the various planning institutions to eliminate abuse and provide safety and welfare of members of a particular society.¹

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The consequences of breach of planning and development laws as well as planning regulations are stiff penalties in form of issuing the various enforcement notices and other control tools. These instruments are examined hereunder:

2.0 Enforcement Notice

The enforcement notice is an instrument or tool often used in the development control process by the planning authority. This notice is served on any breach of planning and development law with respect to carrying out development without obtaining development approval or permission. The Control Department of a planning authority or agency shall serve one or all of these enforcement notices on the developer or owner of any structure on any land whenever development is carried out without obtaining a development permit. The enforcement notices are notice of contravention, notice to stop work or stop work order, notice to quit, notice to seal up and notice of demolition.²

The enforcement notice served on the developer or owner of a structure on land may direct the owner of the structure to alter, vary, remove or discontinue the development in question.³ The Control Department has the discretion to impose additional condition as it may deem fit in each circumstance. The Control Department before issuing or serving an enforcement notice must have regard to the existing conditions for granting a development permit, have regard to the likely environmental degradation or impact of a development under consideration on its surrounding environment and consider the overriding public interest without regard to the existing conditions for granting a development permit.⁴

It should be stressed that any of the enforcement notice as prescribed by *section 59(1)* of the law must be expressed in writing and served on the party who has carried out the unauthorized development or be served by pasting the enforcement notice on the unauthorized development and state reasons why the control department has acted the way it did or state the reasons why it has issued the enforcement notice.⁵ The Control

¹ K Oyesiku, *Modern Urban and Regional Planning Law and Administration in Nigeria* (Ibadan: Kraft Books Limited 1998) 106.

² RSPDL 2003, s59(1).

³ RSPDL, s60(1).

⁴ *Ibid*, s60(a)(b)(c).

⁵ RSPDL, s61(1).

Department must consider any representation made by the developer, owner or agent of the developer and intimate him of the department final decision on the development.⁶ A developer shall carry out the development according to the development permit, where the development does not comply with the development permit, the control department shall enforce an order granted by the Planning Tribunal or High Court.⁷

The Control Department has the prerogative to issue work stop order where it appears to it that there is an unauthorized development being carried out or a development does not comply with a development permit issued by the department. It should be emphasized that a stop work order issued by the department takes immediate effect upon service on a developer pending the service of an enforcement order.⁸ The stop work order shall inform the developer of the development it seeks to stop and the work to be carried out on site must conform with the development permit issued to the developer. Where the developer has been issued with a stop work order for unauthorized development or non-compliance with the development permit, the Control Department shall give a time not exceeding twenty-one days within which the developer shall be required to comply with the development permit. A stop work order shall cease to have effect if within twenty-one days of its issue the enforcement notice is not served on the developer. The Control Department among other things has the power to serve on a developer a demolition notice if a structure erected by the developer is found to be structurally defective or it poses a danger or constitutes a nuisance to the occupier and the public.⁹

The enforcement procedure in the RSPDDL and that of the LASURPDL which is the principal law in Lagos State are almost the same except some innovations made in the Lagos State Physical Planning Permit Regulations (LASPPPR) of 2019 and the Lagos State Building Control Agency Regulations (LASBCAR) of 2019 by the Commissioner for Urban and Regional Planning.¹⁰ In the LASPPR, the notices of enforcement to be served on a developer for non-compliance are demand notice, stop work order, quit notice, seal off order and regularization notice.¹¹ The regulation

⁶ *Ibid*, s61(2).

⁷ (n 6), s 62.

⁸ (n 7), s 65.

⁹ RSPDDL, s70(1).

¹⁰ LASURPDL Cap U2, LSN 2015.

¹¹ LASPPPR 2019, r23.

makes it explicit that the Physical Planning Permit Agency may serve enforcement notices on an owner of a private or public, residential, commercial, industrial, institutional, recreational or any other land use whenever any development is carried without planning permit.¹²

The LASBCAR enforcement notices are the same with the LASPPPR except with the addition of contravention notice and demolition notice enshrined in the LASBCAR.¹³ The Building Control Agency is empowered by the regulation to mark any property identified as defective, abandoned, illegal and unauthorized after service of the relevant notices where it is absolutely necessary and thereafter remove same.¹⁴ The LASPPPR and LASBCAR may direct the developer of a property who had been served with enforcement notice to obtain planning permit, building control authorization or to alter the structure to be in conformity with building regulations within ninety days of the contravention.¹⁵ Any person served with contravention notice is required by the regulation to show evidence within forty-eight hours of the service of the notice why the development he has carried out or commenced should not be removed.¹⁶

The BCA has the power under the regulation to issue stop work order notice demanding the developer of an unauthorized development to stop work forthwith, stating the reasons for the stop work order. The stop work order shall contain the stage of development found on site at the time of service of the notice. The agency may seal up any illegal development and any structure identified to be dangerous to public safety after seventy-two hours of the service of a seal off notice. The agency is further mandated to have power over any abandoned building in respect of sealing up the property to prevent its conversion by squatters, unseal the property when it is confirmed that it is structurally stable, unseal the property when the owner of the property submits a written application annexed with an affidavit showing the readiness to further develop the building within fourteen days of the unsealing and to make the owner of the structure pay penal fees before such structure is unsealed.¹⁷

The mode or method of service of notice to unauthorized developers is by way of delivery of the notice to the developer, occupier or agent at the

¹² *Ibid*, r23(2).

¹³ LASBCAR 2019, r28(1).

¹⁴ *Ibid*, r28(2).

¹⁵ LASPPPR 2019, r23(4); LASBCAR 2019, r28(5).

¹⁶ LASBCAR 2019, r30(3).

¹⁷ *Ibid*, r33(2)(a)(b)(c)(d).

premises with picture of the recipient taken or pasting on the offending structure with photograph of such notice taken or mailing same to the last known address of the developer or publication in the newspapers.¹⁸ In the same vein the LASPPPR mode of service is by way of addressing the notice to the owner or occupier of the illegal structure and it is deemed to have been duly and validly served by pasting or affixing such notice and marking on any part of structure, premises or when handed to any representative of the developer found at the site or where service of notice is effected by pasting or affixing on any part of a structure or premises, the officer effecting the service shall make photographic evidence of the pasting or affixing of the notice stating the date and time of service.¹⁹ Where a development or use is a minor development or use, the Authority shall have the power to order the developer to discontinue, alter or remove the development or use.²⁰

There is a national building code which states that there shall be established in all Federal, State and Local Government Urban Development Agencies, a Code Enforcement Division or Section or Unit in their Development Control Department.²¹ The Code Enforcement Unit can enter any premises or building at reasonable times to inspect any building or premises to perform any duty imposed by the enforcement of the code provided that if such building is occupied. Where such building is occupied, the Enforcement Officer shall first present necessary credentials and request entry.²² Should the building be unoccupied, the Enforcement Officer shall make reasonable effort to locate the owner or other person having charge or control of the building and request entry. Where entry is refused or cannot be secured, then the officer shall have recourse to every remedy provided by law to secure entry.

It should be stated that a person carrying out building works shall give the Code Enforcement Unit notice in writing of the commencement of work at least seven days in advance; a person who has carried out any further work to secure compliance should within a reasonable time after the completion of such work, give notice in writing of its completion; the completion of any stage of work not more than seven days after such completion; the completion of the building not more than seven days

¹⁸ LASBCAR 2019, r37.

¹⁹ LASPPPR 2019, r23(9)(10).

²⁰ *Ibid*, r23(14).

²¹ E O Aina and N M Idris, *The National Building Code of Nigeria: Development Control*

²² *Ibid*.

thereafter or not less than seven days before occupation and not more than seven days after completion and before the commencement of any construction works, a site signboard showing the names and addresses of the client, professionals and contractors involved in the project shall be erected in a place to be seen clearly by the general public.²³

Under the National Building Code, the Code Enforcement Unit is to serve on the developer who contravenes planning and development laws such notices as contravention notice, which orders or directs the developer to discontinue the illegal action or condition and the abatement of the violation; stop work order, this is issued to the developer stating the conditions under which work will be permitted to resume.²⁴ No further work is to continue unless the order is revoked in writing; quit premises order, this is where any building or structure has been declared unsafe, dangerous and unsuitable for habitation, the Code Enforcement Unit may order the building vacated by serving a quit premises order on the developer or owner or any person occupying the building or structure. And can only be revoked upon complete abatement of the violations or unsafe and dangerous conditions; this notice instructs the developer or owner to remove the dangerous or defective structure within seven days, at the expiration of which the building or defective structure will be removed and the cost of effecting the order recovered from the owner.²⁵

The requirement or mode of service of notices, orders and other documents under the National Building Code is that notices, orders and other documents required or authorized by the provisions of the code to be served on the owner or occupier of any premises should be properly addressed to the description of the owner or occupier of such premises without further name or description.²⁶ Every notice or order or other documents required or authorized by the Code to be served on any person may be served by pasting in a conspicuous place on the premises with photographs taken; by delivering same to the addressee in person; if the person addressed with an order or notice cannot be found within the city after diligent search, then such notice or order shall be served by registered post or certified mail to the last known address of such person and by publication in the local daily papers.²⁷

²³ *Ibid.*

²⁴ (n21).

²⁵ (n 24)

²⁶ (n 21).

²⁷ *Ibid.*

2.1 Breach of Condition Notices

If planning permission is granted subject to conditions and any of those conditions are not complied with, the planning institution may serve a breach of condition notice requiring for the compliance of the conditions.²⁸ This notice will indicate or specify the time limit within which certain steps are necessary to comply with the conditions which must be taken after which time the developer responsible for the contravention will be guilty for the offence.²⁹

2.2 Limitations on Enforcement

It is an essential restriction of the ability to enforce planning control that there are time limits on the taking of enforcement action;

- i. If operations have been carried out on land without planning permission, no enforcement action can be taken four years after the operations were substantially completed.³⁰
- ii. If a change of use is made to a building to convert it to a single residential house, in breach of planning control, no enforcement action can be taken after the end of four years from the date on which the breach occurred.³¹
- iii. No enforcement action can be taken for any other breach of planning control after ten years following the date of the breach.³²

2.3 Sanction

Sanction as a tool is used to regulate the conduct and activities of developers, owners and agents of land to conform to the authority's development permit and approval mechanism. Sanction may be by way of monetary penalty or by way of serving a prison term to serve as a deterrence to others who may wish to contravene planning law and regulations. Where a holder or developer of a development permit fails to comply with the order of a Planning Tribunal or an order of a High Court, the Control Department can enforce the compliance of the order and

²⁸ NURPA, s

²⁹ *Ibid.*

³⁰ J Thornton and S Beckwith, *Environmental Law* (2nd edn, London: Sweet and Maxwell 2004) 12.

³¹ *Ibid.*

³² (n 31)

recover all expenses incurred from the developer in the course of enforcing that order.³³

In a similar vein, where a structure erected by a holder of a development permit is found to be structurally defective, poses danger or constitutes a nuisance, upon service of the demolition notice and after the expiration of the notice, the Control Department shall take the necessary steps to commence demolition and all expenses incurred by the department shall be reimbursed by the developer to the Control Department.³⁴ Penalties are meted out to a developer or a holder of development permit who did not comply with the terms of an enforcement notice or disregard a stop work order served on the developer.³⁵

The enforcement agency under the LASBCAR has the power to seal up any illegal or defective and or distressed building after service of the relevant enforcement notice.³⁶ The Building Control Agency apart from the recovery of the cost of demolition executed by the agency may issue a Demand Notice on the developer to recover the cost of the demolition exercise as a requirement, where the developer refuses to respond to the Demand Notice issued to her within ninety days the structure is forfeited to the State Government.³⁷ This is an innovation brought into the regulation to strengthen physical planning law in Lagos State and further stem the activities of developers under control.

Under the National building code, any act that is performed, caused or permitted by any person, firm or corporation that is in conflict with or not in compliance with the provisions of the code is a violation.³⁸ It is unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, demolish, use or occupy any building or structure violating the provisions of the code. The Code Enforcement Unit is empowered to serve a notice of violation in writing on the violators of the unauthorized erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building in violation of the provisions of the code.³⁹ The notice shall order the discontinuance of the unlawful act

³³ RSPDDL 2003, s63.

³⁴ RSPDDL, s71.

³⁵ *Ibid*, s 69.

³⁶ LASBCAR 2019, r40(1).

³⁷ *Ibid*, r42(1)(2)(3).

³⁸ National Building Code 2006.

³⁹ National Building Code (38).

and the abatement of the violation and to comply with the notice within twenty-one working days.

It should be stated that if the notice of violation is not complied with within the stipulated period, the Code Enforcement Unit will request the legal unit to carry out prosecution to correct or abate the violation.⁴⁰ Any person who violates a provision of the code or fails to comply with any of the requirement or who erect, construct, alter or repair a building or structure in violation of an approved plan will be guilty of an offence punishable under the existing law.

2.4 Designation of Areas

For effective development control and enforcement mechanism, the city master plan designate the area into land use zone and complimentary uses. In the LASPPPR 2019, permissible developments are classified into Complimentary Uses and Mixed Uses.⁴¹ Complimentary Uses consist of residential zone, commercial zone, industrial zone, agricultural zone, recreational zone and institutional zone.

2.4.1 Residential Users

Residential developments shall be permitted generally within areas designated as residential zones only and other ancillary uses shall be as specified in other land use zones.⁴² Developments not permitted for residential uses shall be prohibited. Land uses can be granted for private use as residential dwellings, public housing estates, churches/mosques, community centres, club houses and so on.⁴³ In Port Harcourt certain areas such as Ogbunabali Layout (D Line), Abuloma Housing Estate, Eliakahia Housing Estate, Old Government Residential Area and New Government Residential Area where designated as residential areas.

2.4.2 Commercial Users

Commercial development shall be permitted for area so designated for that purpose. Commercial development shall include hostels and guest houses, restaurants and fast food, machines for mills used for the preparation of corn mill, grinding of maize, pepper and other food stuffs

⁴⁰ *Ibid.*

⁴¹ LASPPPR 2019, r6.

⁴² LASPPPR, r6(1).

⁴³ U Jack-Osimiri and M O'Sullivan, *Conveyancing Transactions Law, Practice & Procedures* (Port Harcourt: Chigaung Law Publishers 2019) 857.

in the market shops, plaza, shopping mall, offices, warehouses, schools, hospitals, clinics, medical centres, mechanical workshops, petrol and gas stations, banks, law firms, business centres, night clubs, cinemas, gymnasiums/fitness centres and so on.⁴⁴

Under the LASPPPR 2019, commercial developments shall be permitted generally in commercial zones with the exceptions that other land use zones where retail business may be permitted at areas considered on its merit but subject to other relevant provisions of the regulation; where complimentary residential use of not more than thirty percent of the gross floor area of the designated land use and not more than eleven metres in height may be permitted; other land use zones where informal activities as specified in schedule four of the regulation may be permitted at areas considered on its merit and industrial zones where complimentary office or commercial use building not exceeding thirty percent of the gross industrial floor space and maximum of four floors or thirteen point eight metres in height may be permitted.⁴⁵

2.4.3 Industrial Users

Industrial Users according to Jack-Osimiri and O'Sullivan are large scale bakeries, confectionary companies and food businesses with maximum capacity operations such as Coca Cola, Unilever Breweries PLC, Cadbury PLC, Dangote Food PLC, Honey Well Flour Mills PLC and Friesland PLC and so on fall within the meaning of industries.⁴⁶ These industries are likely to be located in the mixed-users but in the area designated as industrial users subject to planning regulations and economic factors influencing the location and localization of industrial outfits.

Other examples of industrial users are manufacturing companies such as manufacturers of vehicles, glasses, papers and woods, chemical industries, construction companies, assemble plants and so on. In Port Harcourt, the trans/amadi industrial layout is designated for industrial users and in Lagos, the Alausa Ikeja Central Business Area, Ilupeju low density layout and the Victoria Island are designated for industrial purposes.⁴⁷

Industrial developments shall be permitted in industrial zones, service industries and workshops such as light industry to create a schedule for

⁴⁴ *Akingbade v Lagos City Council* [1973] 7 CCHCJ 84; *Tselentis v City Council of Salisbury* [1965] Rhodesia LR 282 CA Zimbabwe.

⁴⁵ LASPPPR 2019, r6(2)(a)(b)(c).

⁴⁶ (n 43)

⁴⁷ *ibid*

light industrial uses for clarity, for example, bakery, carpentry workshop, factory not exceeding six hundred and fifty square metres gross floor location and six to eight metres double volume height may be permitted in areas considered on its merit and subject to other relevant provision of the LASPPR.⁴⁸

2.4.4 Agricultural Users

Agricultural users are animal breeding/husbandry, cattle grazing, trees/fruits and roots, crops farming, bee cultivation for production of honey, fisheries and aquatic.⁴⁹ A permissible development for agricultural user should be for the purposes permitted by the planning authority and nothing more. In *Cone Properties Limited v Salisbury Rural Town Planning Authority*, the decision of the court was that under the Town Planning Act the owner of a land whose land was zoned for agricultural uses cannot use the land for an industrial use. The right of the land owner is that of the right of those whose land were zoned for agricultural user but with an existing user for industrial purpose.⁵⁰

In a similar vein, where the permission was for the utilization of land for dwelling houses, agriculture and for training of people to ride horses, the court had held that it was an unreasonable exercise of discretion by the planning authority.⁵¹ The regulation provided that agricultural related uses shall be permitted or allowed in agricultural zones with the exception that other land use zones where subsistence farming on vacant lands may be permitted with the proviso that animal husbandry such as piggery, poultry and sheep or goats rearing shall not be practiced and no development shall be permitted in agricultural zones except where the development is complementary to activities related to agriculture, farming, animal husbandry and other conditions that may be spelt out in the Lagos State Agricultural Land Holding Law.⁵²

⁴⁸ LASPPPR 2019, r6(3).

⁴⁹ (n 43).

⁵⁰ [1974] Rhodesia LR 128 Zimbabwean HC.

⁵¹ *Salisbury Rural Town Planning Authority v Beauty Counsellor Limited* [1974] Rhodesia LR 82 AC.

⁵² LASPPPR 2019 (n50), r6(4)(a)(b).

2.4.5 Recreational Zone

The regulation provided that no development shall be permitted in designated recreational land except where such development is of complementary use and shall not exceed thirty percent of the major use.⁵³

2.4.6 Institutional Zone

The regulation further provided that no development shall be allowed in designated institutional land with the exception of where such development is of complementary use and shall not exceed thirty percent of the net floor area of the designated use except in areas where model city plan applies.⁵⁴

2.4.7 Mixed Uses

The combination of two or more users in one land holding. These are mixed or multi-purpose users. These users may comprise of agricultural, residential houses, commercial and industrial purposes.⁵⁵ The mixed users are majorly residential, commercial and at times it may involve little industrial activity. Churches, mosques, schools or educational institutions fall within this classification since they may be found within the precinct of the residence of parishioners or worshippers.⁵⁶ Such land holding may be grouped as private land acquired for a specific planning purposes but later used for mixed purposes. In an estate designated for residential uses medium and small scale businesses may spring up to alter the development permission granted. In *Osman v Dattani*⁵⁷ the court held that the premises designed as shop in the front and living quarters behind were combinations of business and residential uses which may suffice for mixed user lettings. Mixed lettings comprise of dominant, overriding users and subsidiary ones. The premises in the instant case comprised of shops and a residential apartment, the court held that it was a mixed premises and fell into business and residential quarters.⁵⁸

⁵³ *Ibid*, r6(5).

⁵⁴ LASPPPR 2019, r6(6).

⁵⁵ LASPPPR 2019 (n50).

⁵⁶ (n 43).

⁵⁷ [1957] East African Law Report 398, Ugandan High Court.

⁵⁸ *Unadkat v Shantibhai* [1961] East African Law Report 505.

The regulation provides that mixed use development may be permitted on its own merit except that where otherwise specified by an operative development plan or in other areas with approved development plan.⁵⁹

2.5 Punishment

Those who breach or contravene planning and development laws and its regulations are punished to deter others from breaching or contravening the law. Non-compliance with the terms of an enforcement notice or neglecting or disregarding a stop work order issued by the planning authority and served on a developer shall be guilty of the offence of neglecting or disregarding a stop work order validly served on the developer. The developer shall be liable on conviction to a fine of not more than ten thousand naira for an individual who contravened the law or fifty thousand naira for a corporate entity that breached the law.⁶⁰ Failure to comply with the written consent of the Control Department to execute any work aimed at carrying out a demolition exercise or the alteration of a building shall be guilty of an offence and liable to a fine of two thousand naira or in the alternative serve a prison term of twelve months for an individual and a fine of five thousand naira for a corporate body.⁶¹

The LASBCA imposes a fine on a developer who commences a construction without giving the agency a prior notice of the construction to have committed an offence which attracts a fine of two hundred and fifty thousand naira or a one month community service or both as punishment.⁶² Those who give false information to the agency are not spared of punishment. Any intending developer, agent or a petitioner who divulges false information to the Agency commits an offence and shall be liable on conviction to a fine of not more than two hundred and fifty thousand naira or one-month community service or both.

The LASBCA has a duty to prevent incessant fire out break and other unexpected accidents that occur. Developers and owners of houses are required to insure their buildings and failure to insure their buildings attracts a fine of not more than five hundred thousand naira or one month community service or both.⁶³ The LASBCA is mandated to carry out

⁵⁹ LASPPPR 2019, r6.

⁶⁰ RSPPDL 2003, s69.

⁶¹ RSPPDL, s77(a)(b).

⁶² LASBCAR 2019, r43(1).

⁶³ *Ibid*, r43(3), r43(7).

building stage certificate on a construction site, where a developer who carries out construction to a particular stage without obtaining stage certificate for the preceding stage contravenes the provisions of the Regulation and the developer commits an offence and shall be liable to a fine of not more than two hundred and fifty thousand naira or one month community service or both.⁶⁴

Buildings must be structurally stable and fit for habitation. A structure that is found to be structurally defective and or distressed and where the owner or developer fails to produce on demand by the officials of the LASBCA, a Certificate of Structural Stability issued by a registered Engineer commits an offence and shall be liable on conviction to a fine of two hundred and fifty thousand naira or one month of community service or both. In the same vein a person who causes any building to be occupied without a Certificate of Completion and Fitness for Habitation issued by the LASBCA commits an offence which attracts the sum of two hundred and fifty thousand naira or one month community service or both.⁶⁵

The LASBCA ensures that after carrying out a due diligence investigation and discovered that a developer has contravened its laws and regulations and the developer is so served an enforcement notice of stop work order and the developer still carries on work, in order not to make a mockery of its enforcement notice, the developer who carried on development with or without development permit is liable to an offence which attracts one hundred thousand naira on every day such offence is being committed.⁶⁶ The breaking of the seal or removal of markings placed on the contravening property without the authorization of the relevant Agency commits an offence and shall on conviction be liable to a fine of not more than five hundred thousand naira or two months community service or both.⁶⁷

Where a building has been assessed to be removed by the Agency, failure to pay the cost of the assessment for the removal of the building by the owner commits an offence which is liable on conviction to a fine of not exceeding the sum of one hundred and fifty thousand naira or one month community service or both in addition to the payment of the assessed cost

⁶⁴ LASBCAR 2019, r43(4).

⁶⁵ LASBCAR 2019 (n62), r43(5), r43(6).

⁶⁶ *Ibid*, r43(8).

⁶⁷ (n 66) r43(9).

of removal of the building by the convict.⁶⁸ Structures built on earmarked or declared for a proposed road, drainage channel, green or buffer zone, swamp or any area likely to be flooded shall be demolished without payment of compensation to the owner or developer. In addition the person who is responsible for the erection of the structure commits an offence and liable on conviction to a fine not more than two hundred and fifty thousand naira or one month community service or both.⁶⁹

The regulation also makes it an offence that where the act which constitutes an offence after the service of the necessary enforcement notices, if the developer continues to violate the same offence for which the notice was served commits an offence liable on conviction to a sum not more than one hundred and fifty thousand naira for every day the offence continues. The regulation did not spare developers, contractors or consultants, agents, architects, engineers or builders or independent contractors who knowingly partake in the contravention of the provisions of the regulation shall be liable on conviction to a fine of one hundred and fifty thousand naira or one month community service or both.⁷⁰ The Agency in carrying out its enforcement duties has zero tolerance to quackery. It ensures that professional builders are found on site and criminalizes any person who makes a false claim to be a professional builder.⁷¹ Corporate entities who contravene the regulation are fined twice of what individual violators are fined.

Officials of the Ministry of Physical Planning and Urban Development, the Building Control Agency or any agency of the government who connives with anybody to breach the provisions of the law shall be subjected to disciplinary action according to the provisions of the civil service rules on discipline.⁷² Persons or corporate bodies who obstruct officials of the agency from performing their lawful duties commit offence and are liable on conviction to a fine of two hundred and fifty thousand naira for an individual and five hundred thousand naira for a corporate body or two months community service or both.⁷³ The law will not allow an official of the agency to use his privileged position to unlawfully demolish the structure of a member of the public who did not contravene the provisions

⁶⁸ LASBCAR 2019, r43(10).

⁶⁹ LASBCAR 2019 (n62), r43(11).

⁷⁰ LASBCAR, r43(13).

⁷¹ *Ibid*, r43(14).

⁷² LASBCAR 2019, r43(16).

⁷³ LASBCAR 2019 (n62), r43(17).

of the law. The said official will be made on conviction to pay the cost of the structure wrongfully demolished and further face disciplinary action in line with the civil service rules.⁷⁴ Those who are caught to be impersonating the officials of the agency shall be prosecuted in line with the criminal law.⁷⁵

2.6. Planning Permission

Planning permission or planning consent is the permission required by the owner or developer in order to be granted approval. In Rivers State, the Ministry of Urban Development and Physical Planning grants this approval before carrying out development on land.⁷⁶ The Land Use Management Scheme (LUMS) is the tool used to guide the taking of such decisions and ensures development is in the right place and manner. It helps and accelerates to maintain a balance between development, growth and environmental sustainability. All persons who wish to carry out development of plots, temporary or permanent within the state, particularly Port Harcourt shall apply on a prescribed form obtainable upon payment of a prescribed fee.⁷⁷ A building plan approval is essential before any construction can commence. This is to ensure that the building complies with building laws, codes and regulations and to also prohibit unauthorized persons from carrying out development.⁷⁸

The checklist to enable a developer obtain a building plan approval are title document, that is Certificate of Occupancy, Assignment with Consent Certificate signed by the Hon. Attorney-General and Commissioner for Justice, Lease or Deed of Conveyance with evidence of application for Certificate of Occupancy and so on; income tax clearance certificate for individuals or certificate of incorporation of company or organization tax for corporate bodies; soil test report prepared by qualified firms, engineers; copy of workmen compensation insurance certificate; letter of conformity from client including name, residence and or office address and telephone number; six sets of drawings duly signed and sealed by the

⁷⁴ LASBCAR 2019, r43(18).

⁷⁵ *Ibid*, r43(19).

⁷⁶ A Ayotamuno and O B Owei, 'Housing in Port Harcourt, Nigeria: The Modified Building Approval Process' [2015] 4 (1) *Environmental Management and Sustainable Development*, 16-28.

⁷⁷ *Ibid*.

⁷⁸ *Ibid*.

relevant professionals in the building industry with their curriculum vitae attached; Name of the site engineers and or builders, their qualifications, registration number, residential and office address, their passport photograph, phone numbers and a letter of undertaking accepting full responsibility for the construction; survey plan charting report from the office of the Surveyor-General of Rivers State for new development or land without Certificate of Occupancy or Registered Instrument; structural integrity report for existing building with structural drawings; site analysis report and location plan duly prepared by a registered town planner and environmental impact assessment report duly prepared by a registered town planner in respect of application for a residential land in excess of two hectares and or development in excess of four floors or eight family units; factory building or expansion of factory buildings; place of worship; major recreational development covering more than two thousand square metres; institutional buildings; petrol filling and service station and any other type of commercial and industrial buildings not described in the site analysis report.⁷⁹

To obtain a building plan approval, these requirements must be fulfilled, architectural design must be submitted for inspection to confirm if the design is in conformity with the approved standards for the area which the land is located; verification of documents for assessment, the assessment is based on the volume of the building multiplied by the rate applicable to the land location; It should be noted that before the submission of the building plan application, the site must be inspected to be sure that the site is the same as the one in the approved plan and that work has not commenced before building plan approval. The site will further be checked with the immediate environment to affirm if proposal is in conformity with the existing land use and if the size of the plot is as presented in the survey plan and design proposal.⁸⁰

It should be noted that the above procedure was what was obtainable before and has been replaced with the "One - Stop - Shop" by the Rivers State Government.⁸¹ This policy established a committee where all the professionals involved in the building industry are drafted into the committee as members in order to facilitate the speedy approval of building permit. The state chapter chairmen of the professional bodies in

⁷⁹ Rivers State Ministry of Urban Development and Physical Planning 2013.

⁸⁰ (n 76).

⁸¹ (n 76).

the building industry are usually in attendance. They check the drawings to affirm if they were prepared by registered and certified members of their professional bodies and if the drawings are of the required standard. For the developer to commence work, the engineer will sign an undertaking assuring that the construction will meet specification and best practice as well as taking his recent passport photograph. This practice has eliminated quacks that usually dot construction site in the past. The professionals use their seal to execute official documents which the quacks cannot possess. With the One -Stop -Shop, building approvals are faster because the process is transparent and not cumbersome.

A development of real property whether be it private or public is required to obtain permission or approval from the relevant Development Control Department before embarking on any development on land.⁸² This is notwithstanding any existing law exempting government and its agency involved in land development from obtaining such approval.⁸³ A DCD is authorized to issue a development permit to a developer when such application is made with developer attaching such information which includes plans, designs, drawings and any other information as may be prescribed by Regulations made pursuant to the law.⁸⁴

In Lagos State such application for development permit on any land by any person, Corporate Body, Federal, State and Local Government or its Agencies must be directed to the Lagos State Physical Planning Permit Authority.⁸⁵ All physical developments in Lagos State shall have an approved planning permit and all planning permits to be granted shall be within the context of an approved operative development plan or master plan. It should be noted that where there is no master plan, the application shall be considered on the basis of the result of the planning information application process.⁸⁶

A building plan required to be made shall be prepared by qualified professionals registered to practice in Nigeria and as prescribed in the Building Plan Regulations made pursuant to the law.⁸⁷

⁸² I O Smith, *Practical Approach to Law of Real Property in Nigeria* (2nd edn, Nigeria: Ecowatch Publications Nig Ltd 2007) 536; NURPA Cap N138 LFN 2004 s28; RSPPDL No 8 2003 s40(1)(a)(b)(c), s41.

⁸³ RSPPDL 2003, s41.

⁸⁴ RSPPDL (n83), s42.

⁸⁵ LASPPPR 2019, r2(1).

⁸⁶ *Ibid*, r2(2)(3).

⁸⁷ RSPPDL 2003, s43(1)(a).

3.0 Development Control Mechanisms

The development mechanisms provide tools through which planning objectives, goals and ideals are achieved. There are two identified technical instruments being used in development control processes. These are land use zoning and planning standards.⁸⁸ The planning standards are also sub divided into two, prescriptive and the regulatory standards. The prescriptive standards are the guides or specifications used in dimensions in the preparation of a disaster risk reduction plan. While planning standards are used in town planning as recognized models for imitations.⁸⁹ These are legislated standards which in most cases are mandatory and inflexible. They serve as specifications or tools before building operations can be permitted under the law.⁹⁰

3.1 Issues of Development Control

There are a number of constraints militating against the effectiveness of development control and they include:

- (a) Inadequate funding of physical planning programmes. Government particularly at the local level misunderstands planning institutions to be revenue generating department rather social service providers.
- (b) Political intervention and the manipulation of government officials. Government officials at all levels collaborate with other departments in the ministries and local governments to cite development projects without approval from the Development Control Department.
- (c) No proper monitoring of planning schemes which leads to abandonment of plots granted to allottees.
- (d) Inadequate number of qualified town planners in the service of the government. For example, the Nigerian Urban and Regional Planning Act provided for at least six professionally qualified Town Planners to effectively man the various units in the Authority.

⁸⁸ M Robert, *An Introduction to Town Planning Techniques* (London: Hutchinson and Co 1975) 35.

⁸⁹ L Keeble, *Principles and Practice of Town and Country Planning* (Bath: Pitman Press 1976) 17.

⁹⁰ V Ezra and Others, 'The Nature, Scope and Dimensions of Development Control, Tools and Machineries in Urban Planning in Nigeria' [2013] 1 (1) *International Journal of Innovative Environmental Studies Research*, 48-54.

4.0 Recommendations

The enforcement of planning laws constitutes the major concern in the development control. The following recommendations are aimed at reducing the issues of development control considerably:

1. Training, refresher courses, workshops, seminars and conferences should be organized for the personnel of the planning authorities to enhance their productivity.
2. Planning laws and regulations should be fully implemented to provide legitimate power to all physical planning agencies to aid in carrying out their enforcement.
3. Personnel in the Development Control Department should be encouraged and rewarded as at when due.

5.0 Conclusion

This article has attempted to examine development control and enforcement mechanisms in Nigeria. It highlighted the concept of development control mechanisms for producing conducive, safe and healthy environment for Nigerians. It emphasized the futuristic element of development control as the most relevant for healthy and functional urban and rural areas in Nigeria.