

**THE ARCHITECTURAL
ASSOCIATION OF KENYA**

MANAGING BUILDING DEVELOPMENT

A Policy Position Paper of the
Architectural Association of Kenya

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Established in 1967, the AAK is Kenya's apex association for professional practitioners in the Built and Natural environments. AAK, a leading professional body, represents the interests of the following professionals: Architects, Town Planners, Quantity Surveyors, Engineers, Landscape Architects, Environmental Design Consultants, and Construction Project Managers. As an umbrella Association, AAK brings together professionals in central government, local authorities, private sector and academia. The Association also acts as a link between professionals and stakeholders in the wider construction industry - including policy makers, manufacturers, real estate developers, financial institutions, and so on.

OUR VISION: To be the leading professional Business Membership Organization in the built and natural environment in the region.

OUR MISSION: To promote professionalism and integrity in the built and natural environment.

OUR CORE VALUES

- a) Good governance
- b) Integrity
- c) Service Delivery
- d) Team Work
- e) Innovation
- f) Knowledge Based Advocacy



INTRODUCTION

Most growth in rapidly urbanising developing world cities, such as Nairobi, takes place on the urban edge; often existing settlements link to form extended urban corridors. Such growth presents a host of planning issues and challenges: settlements tend to be informal, unserviced and fragmented, with a mix of tenure systems and, in many cases, beyond the boundaries of single municipal governments. In Kenya, as elsewhere in the developing world, rapid urbanisation processes and the unregulated physical growth of towns have emerged as major development planning issues. Controlling development effectively requires a range of measures.

DEVELOPMENT CONTROL PRACTICE

Development control refers to the practice of granting development approval by appropriate public bodies. Development control measures are largely set in place by national goals, legislation and policies covering the planning and management of new developments. This is decentralized through an institutional framework in which roles and responsibilities for planning, management and development control are delegated to the counties. The broad objective of development control is to ensure the orderly development of land. In particular it aims to:

- provide a good living environment for all by ensuring safety, amenity, accessibility, energy conservation and environmental protection;
- provide a safe, healthy, useable, serviceable, pleasant and easily maintained environment for commercial, industrial, civic and community land users and ameliorate disturbance to neighbouring environments;
- ensure that conflicting requirements of different land uses are reconciled amongst mixed land users; and
- provide orderly and progressive development of land in urban areas and preserve amenities as well as promoting environmental control and socio-economic development.

Development control regulations are meant to ensure that no person develops any land within a without planning consent or otherwise than in accordance with planning consent.

The objectives of an effective framework are to ensure development control

- complies with all the provisions of the Kenya Constitution (2010);
- is within the framework of the relevant legislation that governs development control, including those passed under Kenya's constitution 2010 dispensation;
- protects the integrity and purpose of development permissions and approvals that are granted by the counties;
- ensures that development is consistent with the provisions of the relevant county spatial plans;
- ensures development is consistent with Kenya's Vision 2030;
- ensures development accords with sound planning principles and practices;
- promotes development that is sustainable and achieves appropriate community standards of health, safety and amenity;
- ensures that development recognises trends in development across the globe for competitiveness of local investments;
- ensures that development is site-responsive, enhances local identity and character and is well-connected to the adjacent neighbourhood;
- ensures that conditions, where applicable, improve the quality and consistency of development approvals;
- promotes efficiency in the planning and development assessment process.

The Physical Planning Act Cap 286 defines development generally as any material change in the use of land, including specifically any building works. Part V of the Act is solely dedicated to development control.

Section 30 (1) provides that no person shall carry out development within the area

A NOTE ON METHODOLOGY

Some 17 local authorities spread across 14 counties and four development control agencies were surveyed for the *Study on Development Control Frameworks in Kenya*. These included Nairobi, Kiambu, Nyeri, Machakos, Moyale, Garissa, Marsabit, Kajiado, Kericho, Kisumu and Kakamega counties.

Primary data was collected through questionnaires, interviews and observation.

A sample of 143 members from the public, 51 practitioners from the built environment, 412 developers, 17 District Physical Planners, 34 officers from four public institutions, 12 Neighbourhood Associations, and the Director of Physical Planning were surveyed by questionnaire. The response rate was 62 per cent. A stakeholders' workshop was held to validate the preliminary findings of the study and seek feedback. The institutional framework for development control is reviewed and mapped against international best practices from Botswana, Switzerland and Singapore. Observed data was captured through photography.

Physical development plans of the 17 Local Authorities were obtained from the Municipalities or the Ministry of Lands, and sample photographs of development projects mapped on to the development plans. Data collected was presented and analysed using the Statistical Package for Social Scientists (SPSS) and presented using descriptive statistics, tables and figures.

of a local authority without development permission granted by the local authority (now counties under the constitutional dispensation). The County Governments' Act of 2012 gives the counties the powers to control development within their areas of jurisdiction.

Section 29 provides local authorities with powers

- to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- to control or prohibit the subdivision of land or existing plots into smaller areas;
- to consider and approve all development applications and grant all development permissions;
- to ensure the proper execution and implementation of approved physical development plans;
- to formulate by-laws to regulate zoning in respect of use and density of development;
- to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

Section 32 provides that the Local Authority (County Governments) may, when considering a development application submitted to it under subsection (1), consult with a range of technical and administrative departments of the National and County Governments that deal with land, including the relevant departments that are responsible for land surveys, land administration, roads, public health, agriculture, water, livestock development, urban development, and so forth. This has been seen to make the development control process longer than is required.

Section 32 (4) and (5) provides that if any development application requires subdivision or the change of user of any agricultural land, the Local Authority shall require the application to be referred to the relevant Land Control Board and that the relevant Land Control Board shall recommend to the Local Authority to accept or reject the application, providing reasons for the recommendation.

After counties have assessed the merits of the applications, three decisions are within their powers:

Decision	Grounds for decision
Approval	Allowable by the various instruments of development control
Refusal	Allowable by the various instruments of development control
Deferment	When counties require further information to reach a final decision

Source: Adopted from PPA (1996)

Development control brings together diverse professions working at different levels. These are the national government levels, county government levels, and a wide array of professionals working in the private sector who initiate application for development permission processes on behalf of their clients.

They include:

National Government	Counties	Private Sector
The cabinet secretary in Charge of Lands, Housing and Urban Development	County chief executives	Architects
The principal secretary in Charge of Lands, Housing and Urban Development, Surveys	County Chief Officers	Planners
Various directorates dealing with sectoral aspects including the environment, housing, physical planning, water etc	County development control departments (including Architects, Planners, Draughtsmen, Building inspectors, Enforcement sections)	Land Surveyors
The National Land Commission County Town Planning Committees		Land Valuers
Various policy decision levels	County Assemblies	Real estate investors
	County land management boards	
	Town management boards	
	Land officers	
	Land surveyors	

Source: AAK, 2014

The Jica Study Team (JST) on the *Integrated Urban Development Plan for Nairobi (2014)* has asserted the importance of development control. Integrated spatial development plans have been identified as important for development. Such plans are ideally stepped down by spatial development projects which lead to implementation of the integrated plans which are prepared at smaller scales. Infrastructure management plans are important in enabling infrastructure provision for development. It is development control that actualizes implementation of the provisions of all those plans.

Counties have for long used a range of instruments for development control for orderly and sustainable development, including Regional Physical Development Plans, Local Physical Development Plans, Part Development Plans, Zoning Plans and ordinances and Local Authorities Planning and building Regulations (The Building Codes);

The County Governments' Act of 2012 provides for various categories of plans for which their funding and operation is dependent. These instruments include:

- County Integrated Development Plans
- County Spatial Plans
- Town Plans
- Sectoral plans – including for housing, water, roads, and so forth.

Development control is intended to ensure that only planned developments in their correct zones are allowed.

For a development to be implemented to completion, there are four levels of development permit granted by the National and County Governments.

In addition to these, the National Environment Management Authority also seeks that developers present an Environmental Impact Assessment Report for them to issue construction licenses. These approvals are summarized in the Table below:

Development Control Instrument	Enforcing Institution	Important deliverables/ guidelines	Role of the guidelines
Physical Planning Act (PPA, 1996), Physical Planners' Registration Act (1996)	Counties (Policy Implementation Sections)	PPA1	Application for Development Permission
		PPA2	Approval
		PPA8 & PPA9	Appeal against refusal to approve
	Counties – Development Control Sections	Approval	Approval of architectural drawings
	Director of Physical Planning	PPA5 -	Certificate of compliance
Environment Management and Coordination Act	National Environment Management Authority (NEMA)	EIA Licence	Approval of development

Source: AAK (2015)

Some counties, such as Nairobi City County have established a **Policy Implementation Section (PIS)** to take responsibility for issuing land development permission. Permission is required for four cases of land development including change of use, extension of use, land amalgamation and subdivision.

For permission to be granted, an application has to be submitted in the prescribed form PPA 1 by a registered and licensed Physical Planner. The Physical Planners' Registration Act of 1996 provides for the registration of such persons.

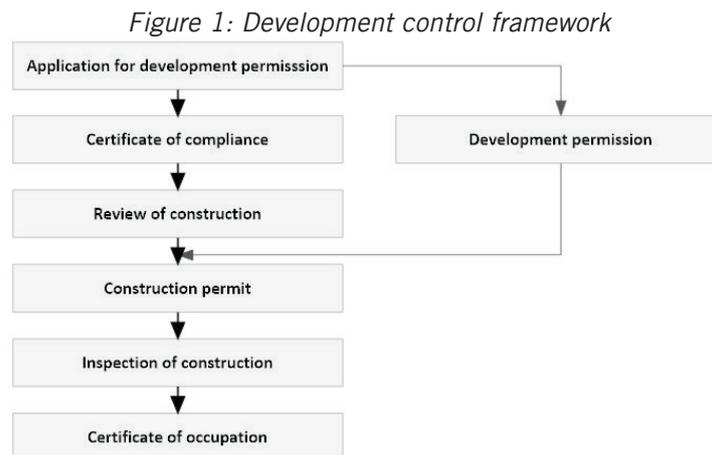
Development will not be permitted in local authorities unless the **Director of Physical Planning** issues a certificate of compliance, referred to as PPA5. The counties provide approvals (or refusal or deferment) in the prescribed form PPA2.

Registered architects submit architectural drawings on behalf of their clients. The **Development Control Section**

of local authorities such as Nairobi City County is responsible for issuing construction permits.

Once construction permits are issued, building inspectors from the **enforcement directorate** periodically visit the site to inspect and complete the building card to ensure that construction is undertaken in compliance with the relevant standards and that the construction is supervised by approved professionals.

A certificate of occupancy is issued when the construction is completed and the building is ready for use, which is the responsibility of the Enforcement Section. Figure 1 summarizes the generic development control process in Kenya.



Source: Adopted from JICA Study Team (JST)

Even though building construction permit is required for all building construction, in fact, most buildings are constructed without a permit. According to *the Study on Development control framework in Kenya (2011)*, 70 per cent (or more) of construction in all local authorities are carried out without permission especially in low-income neighbourhoods. The rate is lower (40-50%) in higher income neighbourhoods.

To reduce the number of illegal constructions, Nairobi City has been trying since 2006 to improve the permit system including change in evaluation process by establishing Technical Committees and re-organizing the office for efficient process since. The Technical Committee, composed of departments in Nairobi City and professionals (Architect Association of Kenya, Kenya Institute of Planners, Nairobi Water Supply Company, etc), now meets every two weeks to discuss and approve applications. These efforts have shortened the process to less than 30 days.

THE ISSUE

There are a number of factors that contribute to ineffectiveness and inefficiency:

- Most Counties do not have Physical Development Plans or County Spatial Plans which leads to absence of standards for development control. The absence of Physical Development Plans or Spatial Plans means that there are no instruments, including zoning plans, against which development control standards are set:
 - Lack of Local Physical Development Plan (LPDPs)
 - Outdated LPDPs
 - Lack of county Spatial Plans as provided for in the County Governments Act
 - Lack of review of physical development plans
 - Poor coordination among multiple players involved in development control process
- Most counties have different challenges in terms of technical capacities. These challenges include:
 - Technical capacities in most Counties which do not meet the required establishment requirement in terms of experience, expertise and numbers. Only the Nairobi City County has a functional City Planning Department with nine sections, but which still requires strengthening. 82 per cent of the Counties studied do not have adequate development control staff, while 6 per cent had no technical staff and support from related agencies, yet, they proceeded on with full council meetings to approve development applications. Further, some counties have employed persons without the required academic and professional expertise which limits their capacities to deliver effective development control;

Delay in approving plans which discourages developers from submitting applications for development permission, and some of those who do are tempted to be corrupt to 'speed up the process'. Sometimes some officers in the local authorities deliberately delay the process of approval so that the clients can 'facilitate them' to 'speed up the process';

- Inadequate budgeting for development control activities which limits the number of professionals to be employed in development control sections. This is because counties see development control as a source of revenue, yet they fail to further invest the revenue to expand their capacities;
- Political interference from local political leaders, especially those represented in the Town Planning Committees create unnecessary delays and duplication of roles in development control practice. Development control which is mainly a technical process leaves room for political interference in the process.
- Lenient penalties do not provide adequate deterrence for offenders and defaulters. For example, Section 38 (4) of the PPA (1996) provides that any person who obstructs a local authority from making a determination on developments without approval is deemed guilty of an offence and shall be liable for an offence not exceeding Kshs. 50,000 or to an imprisonment not exceeding 2 years. Such a punishment may not be prohibitive for developers with buildings worth millions of shillings.
- Lack of public awareness on development control procedures which lead most developers into not applying for development permission. In spite of professional's awareness of the development control procedures, developers usually seek for short-cuts which are in the short-term less costly to them but in the long-term prove more harmful. For examples, developers would use unqualified persons to prepare for them architectural plans who charge less for their services, persons who will not follow development control processes;
 - Problems of institutional frameworks and legal provisions by the presence of many acts on development control domiciled in many government departments, including the county governments Act, Physical Planning Act, The National Land Commission Act, *inter alia*. Data shows that there exists plenty of development policy in Kenya. Development control institutions are also in place. However, policy is fragmented, domiciled in different institutions, and effective enforcement mechanisms are weak.
 - Only Nairobi has implemented an online plans submission platform. There is need for other counties to adopt the use of ICT for submission of plans as this not only speeds up the process, but also lowers incidences of corruption in the development control process.

RECOMMENDATIONS

AAK recommends measures at different levels where action is expected to spark efficient development control practices. The recommendations are directly derived from solutions to the problems that have been tested and proven in other countries that are more advanced in development control like Botswana and Switzerland.

Policy level recommendations

- a) regular review of development plans, and enforcement mechanism that ensure compliance with the physical development statutes
- b) Preparation of all levels of spatial plans to provide a basis for development control. These plans include
 - National spatial plans
 - County spatial plans
 - Town plans and county urban spatial projects

Recommendations on Legal Framework

- a) Review and consolidate existing statutes in order to strengthen good governance of development control. For example, the PPA Cap 286 of 1996 is still in use

REFERENCES

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in spite of most of its provisions being obsolete after the promulgation of the Constitution of Kenya in 2010. Urban areas and Cities Act No 13 of 2011 is another Act that needs to be reviewed to provide clear guidance and direction to professionals and counties on urban areas and cities in Kenya.

Harmonize and coordinate institutions and related agencies that deal with development control process and management. This will help in reducing political interference and lengthy circulation processes which make the process tedious and expensive.

Recommendations on governance and institutional framework

- a) There is need for the creation of public awareness on development control regulations to engrain and deepen the common knowledge base of the facilitative nature of spatial development planning and its associated the development control processes. It is not enough that professionals are aware, the public needs to be properly informed of what the professionals do to encourage their compliance;
- b) Counties should have adequate and competent technical staff, and set aside adequate resources for development control activities. For example, each county needs to structure its development control departments and adequately staff them to ensure that development is done in accordance with the standards;
- c) The National assembly and county assemblies need to pass laws which will effectively stem corruption practices in development control departments across the country. Singapore has used the strategy of severe penalties to act as disincentives for corruption. Kenya can borrow from such practices in these countries in its endeavour to achieve the goal of a well housed population living in a safe and secure built environment, as well articulated in both the Constitution of Kenya and Kenya Vision 2030.

Recommendations on process of development control

- a) Counties need to adopt development control processes that are fast to discourage non-compliance which is abetted by the slow process. Development control should be made accessible to all citizens regardless of social class to enable all sections of the Kenyan societies to enjoy the benefits of effective development control regimes which lead to more liveable, sustainable and inclusive neighbourhoods.

Recommendations on capacity development

- a) Counties should ensure that only relevant professionals who have been registered by their respective registration boards are involved in development control processes.
- b) Counties need to ensure adequate budgetary allocations for development control practices, including for preparation of county spatial plans and town spatial plans, inter alia, to ensure that development control tools are adequately prepared, and periodically updated;
- c) Institutions of higher learning, including universities and colleges should ensure that they train professionals in development control, and equip them with adequate development control skills and knowledge. A better trained workforce ensures increased productivity, including a better understanding of issues and solutions;
- d) Counties need to have their staff properly equipped with the various ICT skills relevant in development control, for example, in GIS and in the use of the e-platforms for plan submission to improve efficiency.

JUSTIFICATION

This PPP summarizes the policy issues and recommendations identified in the review of the '*Study on Development Control Frameworks in Kenya*'. Its substantive content is not only important for policy dialogue leading to development control policy improvement for efficient development control, but its subject matter is classic textbook material for universities, polytechnics and professional organizations in the areas of Architecture, Urban Planning, Engineering, Land Economics, Land Surveying, Business Studies and Development Studies. The PPP is a timely intervention as counties are still battling to integrate effective development control.

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