

REGULATION OF BUILDING PROJECTS IN NIGERIA - INADEQUATE OR UNENFORCED? A CASE STUDY OF LAGOS STATE



Introduction

The recent collapse of a 21-story building on Gerard Road, Ikoyi area of Lagos State and the consequent loss of precious lives in that debacle has once again brought to fore the persisting unresolved issues plaguing the built environment sector¹ in Nigeria and the inadequacy of existing measures put in place to safeguard the life and property of citizens. Over the past two decades, the number of collapsed buildings in Lagos State alone has risen to worrisome levels and this once again raises the question of whether Nigeria is behind in enacting adequate laws to regulate this crucial sector or whether adequacy is not the problem but rather that the laws are more honored in their breach than in their observance.

Despite Nigeria's huge housing deficit, and the need to encourage foreign direct investment into the built environment sector, investors and citizens continue to encounter various challenges in obtaining building permits from regulators. A four-year assessment of business regulations by World Bank around the 36 Nigerian States and FCT Abuja in four regulatory areas including dealing with construction permits, discloses Kaduna, Enugu, Abia, Lagos and Anambra as States showing the largest advancement toward the global good practice frontier. The assessment ranked Lagos the least State² in dealing with construction permits as investors and developers have to go through 17 procedures to obtain permit which is estimated to take about 118 days.

In 2017, one of the writers of this article was privileged to be a member of the Construction Permits Working Group which participated in compiling an Enabling Business Report on the Nigerian Business Climate, a project of the Steering Committee of the Presidential Enabling Business Environment Council & the Nigerian Bar Association Section on Business Law Collaboration. The Report adopted the World Bank's Doing Business indicator which has a building quality control index that evaluates as a prototype, the time, and costs of the permitting process of building a warehouse, transparency of processes, quality of building regulations, the strength of quality control and safety mechanisms, liability and insurance regimes, and professional certification requirements.

Permitting processes are regarded as important because delays in obtaining a building permit, particularly with planning approvals, can create adverse effects on a building project and can lead developers to abandon otherwise viable investments. In many instances, it may also cause builders to choose to bribe building officials for a "fast-track" permit or resort to building informally which can lead to poor compliance with standards and increased risks to lives as well as loss of critical infrastructure. Good permitting practices are regarded as those which ensure that building quality control and safety mechanisms are in place, sets rules and ensures that they are clear and coherent, use one-stop shops to improve coordination, and differentiate projects by risks. At the moment, most of the nation's permitting processes fall below these standards and sadly, the same issues identified in the 2017 Report, continue to plague the sector and it seems there is no respite in sight. This article will put forward a couple of the solutions proffered in the Report in the hope that reform efforts will take them into consideration.

Building Regulation in Nigeria

Nigeria has a National Building Code which was enacted in 2006. The Code was first initiated by the National Council on Housing and Urban Development which deemed the Code necessary to halt the ugly trend of perennial building collapse in the built environment sector and promote integrity of building projects and qualitative housing for every Nigerian. The Code makes provision for the administration of the entire building process and State Governments in Nigeria were implored to integrate the provisions of the Code into their local laws particularly those relating to Design, Construction and Maintenance (Post Construction), and efficiently monitor its implementation. However, aside from the industry concern that the Code is obsolete and non-operational, one of the major issues has always been the fact that the Code is only applicable and enforceable in States where the State Government chooses to integrate the provisions of the Code into their local laws. Lagos is one of those States which has integrated the Code into its construction permitting processes, and as the commercial nerve center of

¹ This includes housing, industrial, commercial, hospitals, schools, etc.

² The World Bank- IBRD-IDA; Doing Business – Measuring Business Regulations; Accessed Nov 11, 2021; <https://www.doingbusiness.org/en/data/exploretopics/dealing-with-construction-permits/nigeria>

the country, our discourse will focus on Lagos State's building and construction permitting processes.

Lagos State Building Regulation and Permitting Process

With the plethora of reform guidelines issued by international institutions such as the World Bank and examples from other jurisdictions that have been able to effectively regulate their built environment sector as well as recommendations from commissions set up in the past to look into the issue, has Lagos State, which is lauded as a pacesetter State in Nigeria, been able to implement standardized good practices in its construction sector in a manner that ensures a high level of regulatory compliance with planning and building code requirements and improve the outcome of industry practitioners' interactions with regulatory agencies in the permitting process? The obvious answer is of course in the negative. Building collapse (of both old and new structures) continue to be a reoccurring decimal in the State notwithstanding the regulatory policies on building construction and the establishment of agencies³ for the monitoring of building development from its design stage through the various stages of construction to completion.

A brief review of extant enforcement and building control regulations in Lagos State clearly indicate that the problem is not inadequacy of relevant laws

and monitoring agencies but rather lack of proper enforcement of building regulations either due to corruption on the part of the enforcement agencies or inexperience, lack of capacity and industry knowledge amongst agency officials, infrastructural deficit, and lack of adequate monitoring mechanisms amongst others.

Extant Statutory Provisions in Lagos State

Over the years, Lagos State has developed a number of laws/ policy directives and has established agencies to implement these laws and policies. These include the Lagos State Urban and Regional Planning and Development Law 2010, established to provide for the administration of physical planning, urban development, urban regeneration, building control and other connected purposes (the "Planning Law"). The Planning Law established relevant Physical Planning and Development Agencies that would play crucial roles in the execution of the provisions of the law. A very significant establishment of the Planning Law is the Lagos State Physical Planning Permit Authority ("LASPPPA"), established for processing and issuance of Planning Permit in the State and ensuring compliance with planning approval standards, and the Lagos State Building Control Agency ("LASBCA"), established as a necessary measure to combat lapses in building projects in Lagos State by enforcing building control regulations and implementing the Planning Law.⁴

³ Lagos State at different periods developed different agencies to monitor building development in the State. Lagos State Physical Planning Permit Authority was established in 1998; Lagos State Building Control Agency also officially started in August 2012; Lagos State Material Testing Laboratory was established in 2006 and Lagos State Safety Commission inaugurated in 2009.

⁴ Its functions include inspection of building works and certification of various stages of building construction and keeping of such records, issuance of certificate of fitness for habitation, removal of illegal, non-conforming material evaluation and testing services, fire and health control, structures, etc

Recently, the Lagos State Building Control Agency Regulations, 2019 (the “Regulations”) was released and it sets out the procedures for obtaining authorization of LASBCA and LASPPPA for commencement of construction, building stage certification, certificate of worthiness for electrical, mechanical elements and fire safety before occupation of high-rise buildings and, a certificate of completion and fitness for habitation amongst others. There is also the Building Control and Stage Certification Process Law, the Building and Civil Engineering (Construction) Materials Quality Control Laboratory Law, the Model City Plans Approval Orders, Operative Development Plans, Operative Approval Orders on Approved Layout Plans as well as other bodies such as the Lagos State Urban Renewal Agency (“LASURA”) for clearance for urban renewal sites, LASURA- Inspectorate & Quality Control Department – for stage Certification and Habitation for Fitness, Lagos State Material Testing Laboratory– for Building Material and Equipment Testing, Lands Bureau – for Clearance on Land allocation and associated clearances. Thrown into the mix also is the need to obtain tax clearance from Lagos State Internal Revenue Services. In addition, there are other MDAs⁵ involved in the permitting and certification process such as the Ministry of Environment – for Drainage Clearance, Ministry of Transportation – for Traffic and Transportation Clearance, Waterfront and Infrastructure Development Agency – clearance from water bodies, Ministry of Agriculture – clearance for agricultural lands where applicable.

Is the multiplicity of laws and enforcement agencies a good thing?

The reality is that multiplicity of agencies dealing with different levels of the permit process can create unwanted bottlenecks notwithstanding the efforts made by the government to make all relevant information and required permitting processes available in a single platform. There is, therefore, need for streamlining of processes and collaboration between agencies, and stripping off some layers of approvals to reduce processing time and bureaucracy. Considering the limitations of these agencies in carrying out their functions, it is important that they collaborate with

approved private building practitioners to assist in the permits and inspection process and stage certifications to reduce workload, delays, and bottlenecks.

The process should be clearly thought out and would involve some form of certification and accreditation process for the professionals beyond registration with relevant professional bodies as well as imposition of accountability and liability obligations. Such professional consultants may be retained by the government or be contracted by the developers directly from a list of approved, accredited professionals or agencies, with requisite checks and balances and enforcement of higher mandatory professional standards including the enforcement of adequate insurance coverage. The agencies themselves should be required to undergo periodic rigorous trainings to keep them informed and up to date with best international standards and practices .

Accessibility of Building Regulations

Lagos State has embraced the use of technology in disseminating information. The Planning Permit Authority has established an online presence in an attempt to provide access to regulations, permit and certification requirements, stages of approval/ procedure for grant of permit, as well as availability of electronic application system.⁶ This however needs to be fine-tuned for greater effectiveness. The permitting/ inspection/certification processes need to be reduced and simplified to encourage developers, and there is a need to discontinue physical/paper applications in order to reduce the avenues for corrupt practices. The government can take a cue from successful systems from other jurisdictions, such as Singapore’s CORENET. An effective, unified Building Guidelines/Regulation should capture all the provisions for an Online Single Window System for complete process: building plan approval, stage level inspection etc. The system should be sophisticated enough to issue online building plan approvals with digital signature, in downloadable format. There should be established a one-stop shop for all the building stages with collaboration between relevant MDAs thus, improving administrative efficiency, transparency, and cost management.

⁵ Ministries, Departments and Agencies of the Federal Government.

⁶ <https://epp.lagosstate.gov.ng/Home/AboutPlanningPermit>



Regulatory Controls Exercised Before, During and after a Building Project

Section 5(1) of the Regulations mandates developers to request authorization from LASBCA to commence construction in the manner provided under Schedule 2 of the Regulations. The developer is required to keep on site a copy of the Planning Permit granted, for sighting upon demand by officers of LABSCA. To ensure building quality control following the issuance of a permit and an authorization to commence construction, Section 11 (1) & (2) of the Regulations provides that LABSCA shall monitor the use of certified professionals and artisans in construction sites and to ensure compliance. LABSCA is authorized to request any professional or artisan working on a construction site in the State to show evidence of registration with their respective professional bodies and/or the Lagos State Government.

The Regulation also mandates developers to display details of the permit granted by LASPPPA using a project site board erected at the construction site which shows the planning permit number, title of project, names and addresses of the professionals/consultants appointed for the project, name and address of main contractor, number of floors approved, inclusive of the ground floor, project duration, safety and health coordinator, and quality control consultant (where

applicable). Developers are also required to obtain Stage Certification upon the conclusion of each stage of a building construction. Additionally, every developer is required to obtain from LABSCA, a Certificate of Completion and Fitness for Habitation.⁷

The Certificate shall be issued upon an assessment of satisfactory completion, and where a defect is observed or an alteration made, the Certificate issued may be withdrawn or revalidated. Buildings under construction are also required to undergo material evaluation and testing, and upon conclusion, a structural integrity test of the building would be carried out by the developer in authorized centers of LABSCA, prior to the grant of the Certificate of Completion and Fitness for Habitation. The Certificate would be issued upon the submission of pictures showing all the elevations of the building, Electrical Certification, Gas Certification, Mechanical Certification, Fire Safety Certification, Insurance Policy, and a Letter of indemnity obtained from all relevant professionals (Architect, Builders and Structural Engineers).

Where a developer fails to comply with any of the Regulatory requirements, LABSCA may issue any of the authorized notices including a Contravention Notice⁸, Stop Work Order⁹, Quit Notice¹⁰, Seal Off Order¹¹, Demand Notice¹², Regularization Notice,

⁷ Section 10 (1), (2), (3), (4), (5) of the Regulations

⁸ Section 10 (1), (2), (3), (4), (5) of the Regulations

⁹ Section 31 of the Regulations

¹⁰ Section 32 of the Regulations

¹¹ Section 33 of the Regulations

¹² Section 35 of the Regulations

and a Demolition Notice¹³. Clearly, these requirements are not strictly adhered to and in the writer's view, aside from monitoring constraints experienced due to lack of proper data on all construction works embarked upon in the State, the major culprit for non-compliance is corruption. Using the collapsed Ikoyi building as a case in point, if the officials of the relevant agencies and other relevant government actors had done their work conscientiously, ensuring that one stage has passed all the relevant tests before moving to the next stage, the building should not have been raised to the level it was when the collapse happened. To combat this, there is the need to adopt an automated system that publishes information online, including the application processes, the permit approval processes, etc., with e-signatures of the approving officers for accountability purposes.

Liability for Defects and Regulatory Requirement for Insurance:

Where a development is above two floors, the developer in line with the provisions of the Insurance Act 2003 and the Regulations is required insure his liability in respect of construction risks which may be caused by his negligence or the negligence of his servants, agents or consultants likely to result in bodily injury or loss of life to or damage to property of any workman on the site or of any member of the public. Under the Regulations¹⁴ a General Contractors' All Risk Insurance Policy is a requirement for the submission of a commencement notice to LABSCA.

The Insurance Policy is also a pre-requisite for the issuance of a Certificate of Completion and Fitness for Habitation. Additionally, LABSCA may issue a demand notice requiring a contractor to submit for verification its General Contractors' All Risk Insurance Policy and Building Insurance Certificate in respect of a building under construction and existing developments respectively.

The Insurance Act makes failure to obtain an insurance policy for a property development of more than two floors an offence and the offender liable upon conviction to a fine of N250,000 or imprisonment for three years or both. The fine in our view is not in keeping with current economic realities and needs to be significantly increased. Where a structural defect is observed in a

building, or the building fails due to negligence leading to collapse, the law holds the developer liable, including the Civil Engineer/Structural/Mechanical, the Builder, and the Architect who participated in the development of the building. Section 43 (1) – (19) of the Regulation also provides for penalties where a developer commits such offences as failure to obtain permission before commencement of construction work, giving of false information to LABSCA, failure to insure building, proceeding to another stage of development without obtaining stage certification, failure to obtain certificate of completion and fitness for habitation before occupation, and failure to comply with fire requirements amongst others.

Conclusion

Based on the foregoing, it is clear that lack of adherence to laid down laws by developers with or without the complicity of regulatory agencies and the inefficiency of these agencies are some of the major problems experienced by the State rather than inadequacy of regulation or enforcement provisions. The State government needs to urgently take things in hand. Beyond the efforts already made to improve the permitting processes, decisive steps must be taken to clean up the agencies and implement recommended measures for transparency and accountability in its processes, without this, the government will only continue to pay lip service to lasting reform. There is also an urgent need for public awareness of regulatory requirements for buildings and improvement of regulatory checks on long existing buildings with a view to encouraging good maintenance culture. Occupiers and purchasers of properties should be encouraged through public awareness to demand for transparency from developers and landlords. Adequate transparency should be evidenced by a demand for the disclosure of requisite approvals and insurance coverage (especially for newer buildings such as those constructed from 2010 upwards), and the introduction of a whistle blowing policy which rewards exposure of erring developers and State officials.

¹³ Section 35 of the Regulations

¹⁴ Section 3(v)

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