The Institutional Challenges of Development Control in Urban Areas

A Case Study of Thika Municipality, Kenya

DOMINIC MUCHEMI NDUTHU
REG: B63/64865/2010

A Research Project Submitted in Partial Fulfillment for the Requirements of Master of Arts (In Planning) Degree in the University of Nairobi.
DECLARATION

This thesis is my original work and has not been presented for a degree in any other University.

Signed ___________________________ Date ______________________

Dominic Muchemi Nduthu

This thesis has been done under our supervision and has been submitted for examination with our approval as University Supervisors:

Signed ___________________________ Date ______________________

Dr. Samuel Obiero
ABSTRACT

Urbanization is the process by which large numbers of people become permanently concentrated in relatively small areas, forming cities. Land use planning is concerned about how a space can be utilised sustainably with its functionality potential at the optimum. There are both legal and policy frameworks, supplemented with town by-laws that ensure there is order in the manner by which urban space is utilised. In Kenya there are several related Acts of Parliament, approved development plans and zoning regulations.

However, irrespective of the assumably robust policy, legal and institutional framework, urban areas in Kenya are still characterized by incongruent structures, inadequate roads, among others with less regard to environmental sustainability, the character of the urban space, the aesthetics, etc, suggesting that development control is still a mirage.

This study conducted an analytical evaluation of the institutions surrounding development control and to establish the operational challenges facing development control in Kenya’s urban areas. This was done by focusing on the following specific objectives; examining the actual development control process as applied in Thika Municipality; establishing the challenges behind the current level of development control in Thika Municipality; and proposing policy guidelines to improve development control regime in Kenya. The geographical scope of the study was Thika Municipality.

By research design this was an exploratory study. It adopted a case study approach. It sampled its respondents judgmentally since it was dealing with very few key informants as revealed by the existing urban management organizational structure of Thika Municipality. The variable scope was limited to analyzing the institutional challenges variables within development control. These included the fundamentals of development management; the development control process adopted; and who are involved in the decision-making process for development control in urban areas concerned among others.

The study found out that weaknesses in the Physical Planning Act as a legislature, lack of a spatial planning framework, limited human resource capacity and fear of change from the old legal order to the new dispensation in terms of embracing the new County Government Act and the Urban Areas and Cities Act, are majorly responsible for the institutional and capacity challenges facing development control in Thika Municipality.

The study recommends enactment of a new PPA, embracing the new urban management systems through the provisions in the Urban Areas and Cities Act and County Government Act thanks to the devolved governance structure, and also improving the level of participation as required by law and employing diverse human resource personnel.
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I sincerely acknowledge officers from Thika Subcounty, developers, professional colleagues among many more people who provided data that formed the basis for the research. In a special way I wish to thank Moses Makori for typing, editing, printing and binding of the document.
DEDICATION

To the suffering urban landscape due to avoidable development control intrigues
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### ABBREVIATIONS

<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CIDP</td>
<td>County Integrated Development Plan</td>
</tr>
<tr>
<td>DPHO</td>
<td>District Public Health Officer</td>
</tr>
<tr>
<td>DPPO</td>
<td>District Physical Planning Officer</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EMCA</td>
<td>Environmental management Co-ordination Act</td>
</tr>
<tr>
<td>GIS</td>
<td>Geographical Information Systems</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
</tr>
<tr>
<td>IDP</td>
<td>Integrated Development Planning</td>
</tr>
<tr>
<td>KLGRP</td>
<td>Kenya Local Government Reform Programme</td>
</tr>
<tr>
<td>PPA</td>
<td>Physical Planning Act</td>
</tr>
<tr>
<td>PPP</td>
<td>Public Private Partnership</td>
</tr>
<tr>
<td>PSC</td>
<td>Public Service Commission</td>
</tr>
<tr>
<td>UDD</td>
<td>Department of Urban Development</td>
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CHAPTER ONE: INTRODUCTION

1.1 Background

1.1.1 Urbanization and Its Externalities

Urbanization is the process by which large numbers of people become permanently concentrated in relatively small areas, forming cities. According to Antrop (2004), urbanization is primarily a complex of functional changes, followed by morphological and structural ones. It causes a polarization of space by changing population densities, economical activities and mobility. Traditional landscapes with their ecological and cultural values become highly fragmented and gradually lose their identity. Regional landscape diversity decreases and a new diversity emerge with land use designed for urbanites. Many of these changes are gradually accepted and integrated as part of the local landscape character.

Every scholar of land use planning is concerned about how a space can be utilised sustainably with its functionality potential at the optimum. The concern is that the effects of rapid urban growth are attributable to scramble for space, since urban space have higher economic returns, implying that if not nipped in the bud, urbanization would make a town experience unprecedented change; expansion of land area, increase of population among others. Urbanization has also been accompanied by enormous deficiencies in housing, water supply, sewage, electricity, formal education, health facilities and so on, including transportation and communication facilities. As the core of towns and cities are too crowded, this uncontrolled and unplanned urban sprawl is capable of impacting negatively on the environment.

1.1.2 Defining Development and Its Control

Development in the context of space utilization means; a) demolition of buildings; b) rebuilding; c) structural alterations of or additions to buildings; and d) other operations normally undertaken by a person carrying on business as a builder. These definitions which are hinged on the 2 main principles of development are; a) Operations- which deals with something that changes the physical character of the building and; b) Change of Use- "use", in relation to land, does not include the use of land for the carrying out of any building or other operations on it.' The issue of controlling physical development is crucial to the health of our cities. For instance, the siting of incompatible development based either on the ground of
social, economic or political interventions is a serious threat and very harmful to the co-
existence of human and the other components of the built up and developing sites.

The British Town and Country Planners Act of 1917 defines development “as the carrying out
of building operations engineering, mining and other operations in, on, under or over land; or
other land”.

The Nigerian Urban and Regional Planning Degree No. 88 of 1992 describes development as
“the carrying out of any building, engineering, mining, or other operations in, on, over or
under any land, or the making of any environmentally significant change in the use of any
land or demolition of buildings including the felling of trees and the placing of tree-standing
errection used for display of advertisements on the land and the expression “develop” with its
grammatical variations shall be constructed accordingly.

Ogundele (2010) goes ahead to define the control aspect of development. He notes that control
means the process of exercising power over one’s area of jurisdiction to check development
according to Development control thus means a physical planning instrument, which generally
involves the regulations, retraining and keeping in order or checking materials’ change on
land.

Keeble (1969) concurs with the earlier definitions by stating that “development control
involves regulation of the detailed aspects of development, about which precise guidance
cannot be given by the development plan, so as to ensure convenient and slight results”. In the
real sense, the desire is to allow for orderly environment that will meet the requirements for
ideal living.

Johar (2006) views development control and approval, as one that involves the process of
analyzing the appropriateness of planning applications, requires various data from the relevant
agencies. A planning application will be assessed in terms of current development scenario,
land information, planning requirements and planning design (Yaakup et al., 2002a). Consideration
given to an application requires a tedious process as it will have to go through several committees and technical evaluation.
However, development control cannot be exercised in a vacuum. One of the ways of doing so is by instituting a credible spatial planning regime that would ensure physical plans are made and implemented, otherwise called spatial planning. Spatial planning is about anticipating change – short, medium and long-term (and the pressures and opportunities that emerge from it) and articulating a logical and flexible development path for a more sustainable and equitable future.

In Kenya for instance, there are both legal and policy frameworks, supplemented with town by-laws that ensure there is order in the manner by which urban space is utilised. The Physical Planning Act (PPA) Cap 286 of 1996 the laws of Kenya, gives a broad framework on how spatial plans should be made, who should make them, who should implement them, how disputes regarding their implementation should be resolved among other functions. The Physical Planning Handbook and The Building Code guide physical planning standards and structural development of space respectively. While the Environmental management Co-ordination Act (EMCA) guides on the thresholds of environmental requirements before any development is effected, the now defunct Local Government Act Cap 265 equally had a relevant role in so far as spatial planning is concerned. Other relevant documents like the Public Health Act, Traffic Act, Approved Physical Development Plans and Zoning regulations also have very significant roles in so far as space management is concerned. By-laws formulated by various councils supplement the existing laws into making meaningful development impact on the existing space.

The aforementioned framework in its endeavours to direct development, anticipated developers who undertake projects which are not according to laid down regulations and devised methods of handling such. Interesting to note is that such unruly developers double up as the political power wielders of these urban spaces, and therefore portends a lot of spatial disorder by virtue of the political manoeuvres. For instance, the PPA identifies roles of various bodies in the whole spectrum of physical planning. Local authorities have enormous roles when it comes to the implementation of these plans. Sec 29, part V, of the same act, says that development control (one of the tools to check the excesses of developers) is a preserve of the local authorities. It describes development control as process that regulates development and use of land and buildings with the objectives of; ensuring growth of a healthy economy
and a healthy environment, i.e. ensures order and compatibility; protecting the public interests from inappropriate developments; ensuring equity – on the equal opportunity principle - i.e. horizontal equality (access to public services); and vertical equality (high income people should contribute towards the cost of public services and subsidize the low income people. Also based on the benefit principle i.e. contributing according to benefits achieved; among other objectives. The same Act prescribes that development control is carried out against set out standards on housing, infrastructure (building code, plot ratios and coverage, building lines, materials); as requirements for development applications (PPA) and zoning regulations (existing physical plans).

While highlighting the principles of development control, Burnside (City) Structure Plan says that among other principles, development generally should be consistent with the capability of the land to support development without causing, or contributing to, any environmental hazards or damage; should be undertaken in a manner that is consistent with the intended use and character of the relevant zone and policy area, and that would not interfere with the use of any other land; and should seek to promote a sense of place or community identity by creating, protecting or enhancing distinctive landscape, streetscape, “gateway”, entrance or related design features.

1.2 Problem Statement

Most fast-growing urban centres in Kenya have got an accomplished team of technical personnel to steward land use planning and development. The towns have physical planners seconded from the national offices. For instance most towns have town planners from the former Ministry of Local Government and District, Provincial Physical Planning Officers from the Ministry of Lands, Housing and Urban Development. This is coupled with a strong supervisory team at the national level (Department of Urban Development – UDD) and the Physical Planning Department.

However, with such a robust policy, legal and institutional framework, urban areas in Kenya are still characterized by incongruent structures, inadequate roads, among others with less regard to environmental sustainability, the character of the urban space, the aesthetics, etc. See
the following pictures that fairly illustrate the severity of lack of proper development control in Thika Municipality.

Fig. 1.1 Structures Built on Wetlands

Source: Fieldwork, 2013

Fig 1.2 (a): Congestion on Traffic Circulation Due To Informal Businesses

Source: Fieldwork, 2013
Fig 1.2 (b): Congestion on Traffic Circulation Due To Informal Businesses

Source: Fieldwork, 2013

Fig 1.3 (a): Crumbling of Structures Indicating Lack of Inspection by the Authorities

Source: Fieldwork, 2013
A rapid appraisal on the situation in Nairobi faults the planning institution as deficient in implementation of development control measures. This study investigated the institutional challenges behind this deficiency.

### 1.3 Study Question

1. What the actual development control processes are as applied in Thika Municipality?

2. What are the operational and institutional challenges behind the current level of development control in Thika Municipality?

3. What are the possible policy interventions and operational guidelines to improve development control process regime in Kenya?

### 1.4 Objective of the Study

Looking at the problem statement above, this study endeavoured to conduct an analytical evaluation of the institutions responsible for development control and be able to establish the challenges therein that are facing development control in Kenya’s urban areas. This was done by focussing on the following specific objectives.

1. To examine the actual development control process as applied in Thika Municipality.
ii. To identify the operational and institutional challenges behind the current level of development control in Thika Municipality

iii. To propose policy guidelines to improve development control regime in Kenya

1.5 Justification

Development control forms part of physical planning. It is done side by side with the implementation of a physical development plan of an area. It portends enormous significance to realisation of a functional urban landscape. However, there could be forces bent on frustrating this noble goal of physical planning, may be out of economic and political standpoint or simply laissez-faire atmosphere where – let-nature-take-its-course attitude prevails.

Therefore by studying;

i. The fundamentals of development management in urban areas, the study intends to look at all the factors that go into making a decision on an application for planning permission made, under the existing legal and policy frameworks. For instance by looking at the material considerations and development plans and planning policies. Other aspects to be explored in this objective is a detailed description of the legal powers relating to the development management process with particular examination of the vitally important ability to impose conditions and the ability to enforce against breaches of planning control;

ii. The development control process, the study will reveal the way in which a planning application is processed through the system on a step by step basis from submission to local authorities, through the appeal system and on to possible legal challenge in the courts. In so doing reference will be made to the role and choices of all the players involved, the applicant, local planning authorities, and third parties; the financial
penalties arising from the threat of an award of costs after an appeal, and other actions that may give rise to compensation;

iii. Who are involved in the decision-making process for development control, sets the political scene with regard to the control of development, as a general background to the subject. It may already be evident from other literatures that power to determine what is built and what use is made of land and buildings in Kenya is highly centralised, and government has been able to retain a relatively tight control over the modern system of planning. Nevertheless, Kenya is a pluralist country with a strong institutional, professional and business lobby, an independent judicial system, a free media and a population becoming increasingly aware of environmental matters. Therefore, many pressures may be brought to bear to influence the course of events. These may manifest themselves in the form of direct action in response to particular problems or proposals, or as the result of longer-term lobbying by particular interest groups. The power play involved in making decisions about the future of the built environment is thus a complex matter, which not only involves the conventional central/local government discourse, but also a large variety of other protagonists. It is hoped that, by examining those bodies wielding power over the making of planning decisions, some of this complexity may be explained;

The study will have furnished policy makers with important information for restructuring institutional aspects of development control and how they can work much better.

The study will also have benefitted the academia with relevant information that is crucial in beefing knowledge bank in so far as development control issues are concerned.
1.6 Scope of the Study

The geographical scope of the study will be Thika Municipality. This is a fast-growing town within the wider metropolitan sphere of Nairobi, presenting unique aspects of development without proper development control measures as reflected by the town’s expansion pattern and character. Its study will go a long way to examine the challenges of development control which could offer some interesting lessons to scholars, practitioners and policy makers.

The variable scope will be limited to analysing the challenges facing development control in Kenya’s urban areas in as far as; the fundamentals of development management; the development control process adopted; and who are involved in the decision-making process for development control in urban areas is concerned.

1.7 Operational Definitions

1.7.1 Challenges: Factors inhibiting smooth running or effectiveness of an institution or a system

1.7.2 Development: Carrying of building or other operation in, on, over or under land or making of any material change in the use of building or land or the subdivision of any land

1.7.3 Development Control: The act of regulating use and development of land and buildings, subdivision of land in the public interest

1.7.4 Municipality: An urban district having corporate status and powers of self-government

1.7.5 Urban area: An area characterized by relatively high population density, vast human features and diverse economic activities associated with mining, commerce, manufacturing, services and also comparatively sophisticated infrastructure
CHAPTER TWO: LITERATURE REVIEW

2.1 Perceptions of Land Use Planning

According to Healey (1995), the purpose of planning is to produce plans (as formal institutional constraints) that provide a store of rules to guide a stream of regulatory and investment decisions. This means that planning directs how actors influence, negotiate, and renegotiate rules, procedures, discourses and power relations. Gleeson et al (2000), state that the capacity of state-centred planning frameworks to direct private market operation has been criticised by private market actors and neoliberal policy circles alike. While planning has been identified by some as restricting the operation of the market, alternative arguments have been made to suggest that planning gives a degree of certainty to the market and plays a vital role in the construction of the market (Healey, 1997). This interpretation follows a similar line to those proposed by post-structural readings of the market emerging from the fields of economic sociology and economic geography (Fligstein, 2001; Larner, 2003), and it also hints at the constitutive relationship between state and market, and the fact that neither the state nor the market are hermetically sealed (Peck, 2000). As such, the planning system plays a pivotal role in determining the location of new residential housing by providing the main avenues through which policy makers can influence development (Adams and Watkins, 2002) and where developers can influence policy. Although traditionally positioned as a set of formal arrangements that direct interaction and market operation, an increasing number of studies have highlighted the complex institutional environment that surrounds plans, their development and implementation, with informal associations progressively being placed on the research agenda.

While traditional readings of planning in urban development rest firmly in the realms of modernist thinking (Ennis, 1997), more recent interpretations see planning as neither the pursuit of universal truth and ideal form, nor the sole impediment to market efficiency and allocation, but rather a hybrid which constructs spatially and temporally specific development. While the interpretation of the planner as the all-knowledgeable guardian of society no longer holds much sway, it is important to note that the idea of the planner as an expert remains vitally important to the enrolment, negotiation and expression of urban development. According to Healey (1991) there are three roles of state planners: first, they must envision
possible futures of development projects, including their physical, institutional and cultural contexts; second, they must manage and prepare arguments both for the development (thus seen to be supporting development interests) and for the modification of the proposal (therefore setting the stage for comments from others); and, third, they must present and negotiate their own formal analysis of the project proposal and alternatives to it.

Thus, planning becomes the site at which the development gain and costs are negotiated (Claydon and Smith, 1997; Keivani et al., 2001). This negotiation of policy, however, is far from simple as the list of interested actors is vast, with analysis based on state and market, or planner and developer dichotomies greatly underestimating the importance and complexity of political context (Healey et al., 1995). It is this negotiation of costs and benefits, and the institutional arrangements and associated actors enrolled in these negotiations, which are traced in this research project.

Negotiation is defined by Claydon (1996) as the process whereby parties attempt to reach agreement. This is differentiated from bargaining (where benefits are traded) and compromise (the acceptance of sub-optimal agreements), which may be part of the negotiation process (Claydon and Smith, 1997). Here actors, be they developers, local environmental groups, or local governments, employ consultants and lawyers to promote and protect their claims in the negotiation of projects and policy preparation exercises (Healey, 1997). This typology of negotiation simplifies the complex and shifting nature of these translations, as negotiation, bargaining and compromise all represent different network configurations as the enrolment of actors and intermediaries shift in efforts to secure a network (development or policy) outcome.

In such an institutional setting plan making becomes an advocacy process centred on competing claims of authenticity and authority.

2.2 Understanding Development Control

2.2.1 General Definitions

Development in the context of space utilization means; a) demolition of buildings; b) rebuilding; c) structural alterations of or additions to buildings; and d) other operations normally undertaken by a person carrying on business as a builder. These definitions are
hinged on the 2 main principles of development are; a) Operations- which deals with something that changes the physical character of the building and; b) Change of Use- "use", in relation to land, does not include the use of land for the carrying out of any building or other operations on it.’

The British Town and Country Planners Act of 1917 defines development “as the carrying out of building operations engineering, mining and other operations in, on, under or over land; or other land”. Similarly, the Nigerian Urban and Regional Planning Degree No. 88 of 1992 describes development as “the carrying out of any building, engineering, mining, or other operations in, on, over or under any land, or the making of any environmentally significant change in the use of any land or demolition of buildings including the felling of trees and the placing of tree-standing erection used for display of advertisements on the land and the expression “develop” with its grammatical variations shall be constructed accordingly.

Meanwhile, control means the process of exercising power over one’s area of jurisdiction to check development according to Ogundele (2010). Development control thus means a physical planning instrument, which generally involves the regulations, retraining and keeping in order or checking materials’ change on land. Its application tends to have a negative approach on development, while at the same time; it is a creative and permissive tool for development planning. In essence, it is a strategy employed by a physical planning agency for ensuring proper implementation of urban and rural development plans as well as regulating the flow of additions of infrastructural facilities. Moreover, it is a regulatory power exercised by planning agencies to either approve or reject a development application. It is a system by which the use of land and buildings on the land are regulated so that misuse or abuse of use and nonconforming uses are prevented or checked.

The earlier definitions concur with Keeble (1969) who said that “development control involves regulation of the detailed aspects of development, about which precise guidance cannot be given by the development plan, so as to ensure convenient and slight results”. In the real sense, the desire is to allow for orderly environment that will meet the requirements for ideal living. Johar (2006) views development control and approval, as one that involves the process of analyzing the appropriateness of planning applications, requires various data from
the relevant agencies. A planning application will be assessed in terms of current development scenario, land information, planning requirements and planning design (Yaakup et al., 2002a). Consideration given to an application requires a tedious process as it will have to go through several committees and technical evaluation.

2.2.2 Negotiated Development Control

Policy negotiation is a process of network translation where competing actors mobilise other actors and intermediaries to secure a policy closer to the objectives of their constituent networks. Actor-Network Theory is one such move. It moves beyond traditional structuralist, spatially-fixed, and human-centred interpretations of networks by recognising the role of non-human actors in the construction of life and offers a topological view of the world where actors, rather than being on different scales, are more or less connected (Murdoch, 1997). Through an ANT framework the objectives and enrolments of each of the disparate actors can be traced and recognised in the creation of policy. Thus, while planners may retain some of the institutional characteristics as experts, they also need to be able to negotiate with other actors who are also equally constructed as experts in their institutional field (Ennis, 1997; Ball, 2002). It envisages a situation where negotiation is conducted between private sector interests (local builders and industry representatives) and public sector officials (council officers).

While planning of some form is present in virtually all locations of residential development, there is little doubt that the nature of local politics and planning processes can differ significantly across locations, which leads to great variety in the nature of processes even within policy sectors (Allmendinger, 1996). The plan, therefore, becomes a site of political struggles which continue after implementation, as interpretations of rules and discourses are challenged and transformed. In their study of greenfield development, Adams et al. (2002) suggest that local planning policies are the most important component of the rules and regulations influencing development.
2.3 Kenya’s Policy and Legal Understanding of the Role of Development Control

2.3.1 Constitution of Kenya 2010

The Constitution of Kenya, 2010 created a two tier system of governance, a national and 47 devolved county governments that requires a paradigm shift in development planning. It envisages implementation of fundamental policy decisions on nature and extent of investment in land and land information management.

This constitution establishes a national land commission. The commission by Article 67(2) (h) will ensure that planning at the national and county levels operate within the law and that policies and development plans are implemented. The commission will also prepare and submit annual reports on the state of spatial planning in the country to the President and National Assembly as required by Article 254 of the constitution.

2.3.2 Physical Planning Act

According to Physical Planning Act of 1996 of the Laws of Kenya, Cap 286, sec 29, part V, Development Control is a preserve of the local authorities. It defines development control as a process that regulates development and use of land and buildings with the objectives of

i. Ensuring growth of a healthy economy and a healthy environment, i.e ensures order and compatibility.

ii. To protect the public interests from inappropriate developments.

iii. To ensure equity –on the equal opportunity principle - i.e. horizontal equality (access to public services); and vertical equality (high income people should contribute towards the cost of public services and subsidies the low income people. Also based on the benefit principle i.e. contributing according to benefits achieved.
iv. Environment sensitivity-to minimize negative impacts of development especially on ecologically fragile areas, pollution of air, land, water by industrial developments i.e. to guard against injurious development to man and the physical environment.

v. To inform authorities so that planning standards, regulations and procedures are updated from time to time so as to accommodate changes that might bring conflicts.

It is carried out against set out standards on housing, infrastructure (building code, plot ratios and coverage, building lines, materials); requirements for development applications (according to Physical Planning Act); and zoning regulations (existing physical plans).

2.3.3 The Physical Planning Handbook

The purpose of the Physical Planning Handbook is that the preparation of physical development plans needs to be guided by a handbook that spells out guidelines, methodologies, standards and planning considerations. This it does by focusing on how to operationalize Physical Planning Act Chapter 286 of the Laws of Kenya and subsequent legislations; how to develop a comprehensive land use planning guidelines and standards for emerging opportunities and challenges; and how to integrate physical planning guidelines and standards with other relevant parliamentary statutes. The target users of this handbook are land use planners in the public service, land use planners in the private practice, students of planning schools, universities and other academic institutions, and professional in the built-environment: Surveyors, Architects, Engineers, Valuers and other relevant professionals.

The handbook spells out development permission application procedure whereby it is made in the P.P.A 1 form as prescribed in the fourth schedule of the PPA, to the clerk of the local authority where the land is situated. The application is accompanied by such plans and particulars as are necessary to indicate the purposes of the development. The local authority shall circulate the application to the respective offices for comment. These include District Physical Planning Officer (DPPO), District Public Health Officer (DPHO), Works Officer, and District Architect among others. Upon receiving the comments the application is forwarded to the technical committee of the local authority for approval. The comments from
the various offices form the bases for approval of the development permission application. Development permission is granted in the P.P.A 2 form with or without conditions as prescribed in the fifth schedule. The local authority may also refuse to grant the applicant such development permission stating the grounds for refusal. The local authority shall notify the applicant in writing its decision within thirty days of the decision being made. Any person aggrieved by the decision of the local authority may appeal against such decision in the relevant liaison committee.

### 2.3.4 County Governments Act

This is an Act of Parliament meant to give effect to Chapter Eleven of the Constitution; to provide for county governments’ powers, functions and responsibilities to deliver services and for connected purposes. In its Part Xi — County Planning, the Act in section 103 says that county planning shall be to (a) ensure harmony between national, county and sub-county spatial planning requirements; (b) facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county; (c) maintain a viable system of green and open spaces for a functioning eco-system; (d) harmonize the development of county communication system, infrastructure and related services; (e) develop urban and rural areas as integrated areas of economic and social activity; (f) provide the preconditions for integrating under-developed and marginalized areas to bring them to the level generally enjoyed by the rest of the county; (g) protect the historical and cultural heritage, artefacts and sites within the county; and (h) make reservations for public security and other critical national infrastructure and other utilities and services; (i) work towards the achievement and maintenance of a tree cover of at least ten per cent of the land area of Kenya as provided in Article 69 of the Constitution; and (j) develop the human resource capacity of the county.

These functions in principle define development control in a very elaborate manner as applicable to any devolved unit of governance.

Section 104(1) of the County Government Act, 2012 requires that “a county government shall plan for the county and no public funds shall be appropriated without a planning framework developed by the county executive committee and approved by the county assembly”. It also
states that the county planning framework (as in the definition above) shall integrate economic, physical, social, environmental and spatial planning. In addition to an integrated county development plan, each county is expected to have the following:

i. County Sectoral Plan (for the county departments and other county entities);

ii. County Spatial Plan; and

iii. City and Urban Areas Plans.

The above county plans serve as a basis for engagement between county government and the citizenry, other stakeholders and interest groups (section 102(i)). They shall also serve as the basis for all the budgeting and spending in a county (section 107(2)).

Section 108(1) states: there shall be a five year integrated development plan for each county which shall have (a) clear goals and objectives; (b) an implementation plan with clear outcomes; (c) provisions for monitoring and evaluation (M&E); and (d) clear reporting mechanisms. This is the policy and reporting requirement. Sub-section 108(2) (a) then states: each County Integrated Development Plan (CIDP\(^1\)) shall at least identify (a) the institutional development framework for (i) the implementation of the integrated development plan; and (ii) addressing the county’s internal transformation needs. This is the institution-building requirement.

Sub-section 108 (2) (b) then states: (that the plan shall...identify): (i) any investments initiatives in the county; (ii) any development initiatives in the county, including infrastructure, physical, social, economic and institutional development initiatives; (iii) all known projects, plans and programmes to be implemented within the county by any organ of state; and (iv) the key performance indicators set by the county. This is the investment development requirement.

\(^1\) A CIDP is a five year plan prepared by the county government covering the area of a county that provides an overall framework for development. Its main purpose is to guide, harmonize and facilitate development within each county and to give effect to county budget. It is an approach to planning that involves the entire county and its citizens in finding the best solutions to achieve good long-term development.
Sub-section 108 (3) states that an IDP shall (a) have attached to it, maps, statistics and other appropriate documents or (b) or refer to maps, statistics and other appropriate documents that are not attached but held in a GIS based database system. The plans under (a) and (b) are supposed to be open for public inspection at the offices of the county in question. This is the public information requirement.

### 2.3.5 Urban Areas and Cities Act

No. 13 of 2011 was assented to on the 27th August, 2011. It is an Act of Parliament to give effect to Article 184 of the Constitution; to provide for the, classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes. On the management of cities and municipalities, the Act that the management of a city and municipality shall be vested in the county government and administered on its behalf by in section 12 (1) by a board constituted in accordance with section 13 or 14 of this Act; a manager appointed pursuant to section 28; and such other staff or officers as a the county public service may determine. It describes some of the board’s functions to include among others to control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the city or municipality as may be delegated by the county government.

Section 36(2) of the Act states that, an integrated urban or city development plan shall bind, guide, and inform all planning for development and decision-making and ensure comprehensive inclusion of functions.

Section 37(1) of this Act requires that a city or urban area integrated development plan shall be aligned to the development plans and strategies of the county governments. The city or urban area integrated development plan is expected to be the basis for:

i. the preparation of environmental management plans;

ii. the preparation of valuation rolls for property taxation;
iii. provision of physical and social infrastructure and transportation;

iv. preparation of annual strategic plans for a city or municipality;

v. disaster preparedness and response;

vi. overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and

vii. the preparation of a geographic information system for a city or municipality.

2.3.6 Environmental Management and Co-Ordination Act

This Act of Parliament was assented to into law on the 6th January, 2000 and commenced on the 14th January, 2000. It is an Act of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected therewith and incidental thereto [Act No. 8 of 1999, Act No. 6 of 2006, Act No. 17 of 2006, Act No. 5 of 2007, Act No. 6 of 2009.]

In its part ii – general principles, the Act expressly talks about every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment. This law establishes the National Environment Management Authority whose objects and functions is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

In its part iv – environmental planning, the Act establishes National Environment Action Plan Committee whose role shall, after every five years, prepare a national environment action plan for consideration and adoption by the national assembly. In its part v – protection and conservation of the environment, the same law says that (1) no person shall, without the prior written approval of the director-general given after an environmental impact assessment, in relation to a river, lake or wetland in Kenya, carry out any of the following activities

i. erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake or wetland;
ii. excavate, drill, tunnel or disturb the river, lake or wetland;

iii. introduce any animal, whether alien or indigenous, dead or alive, in any river, lake or wetland;

iv. introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake or wetland;

v. deposit any substance in a lake, river or wetland or in, on or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake or wetland;

vi. direct or block any river, lake or wetland from its natural and normal course; or

vii. drain any lake, river or wetland.

By implication, such developments as discussed above must be subjected to environmental impact assessment (EIA) prior to its implementation.

**2.3.7 Public Health Act**

Date of Commencement of this Act was 6th September, 1921. This law make provision for securing and maintaining health. For instance in Part IX – Sanitation and Housing, section 115 talks about prohibition of Nuisances, where no person shall cause a nuisance or shall suffer to exist on any land or premises owned or occupied by him or of which he is in charge any nuisance or other condition liable to be injurious or dangerous to health. In section 116, it directs the Local authorities to maintain cleanliness and prevent nuisances by taking all lawful, necessary and reasonably practicable measures for maintaining its district at all times in clean and sanitary condition, and for preventing the occurrence therein of, or for remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health, and to take proceedings at law against any person causing or responsible for the continuance of any such nuisance or condition.
The law further directs Health authorities in section 117 to prevent or remedy danger to health from unsuitable dwellings. It defines what constitutes nuisance in section 118.

2.3.8 Engineers Registration Act

Engineers Registration Act otherwise referred to as Chapter 530 Laws of Kenya provides for registration and regulation of the conduct of persons registered as engineers in Kenya. It further prescribes the measures to be taken against a person impersonating an engineer of any category as described under the act. The act creates the board of registration of engineers which is charged with the responsibility of among other duties the custody of the register of engineers in Kenya.

2.3.9 Architects and Quantity Surveyors Act

Architects and Quantity Surveyors Registration Act otherwise referred to as Chapter 525 Laws of Kenya provides for the registration and regulation of persons registered to practice as architects and Quantity Surveyors. It also defines practices amounting to professional misconduct and the punitive measures to be taken against the culprits. The is mandated with the duty of among others maintaining of the register of architects and quantity surveyors.

2.3.10 Traffic Act

The traffic Act also known as Chapter 403 Laws of Kenya regulates land use in matters related to construction of roads, parkings and road signage. To facilitate safe use of the roads the act under clauses 70(1), 70(2) and 70(3) provides for placement of road signs at particular points; A role that is assigned a Highway Authority. The act under clause 71 sets out to regulate use of road or bridge through closure or notice warning against use with a view to protecting the infrastructure and safety of the road users. Local Authorities are mandated to designate parkings and regulate their use under clause 72A. Encroachment on or damage to the road or road reserve through erection of buildings, dumping or allowing animals to stroll into the road thus negatively affecting safe use of the road is addressed under clause 91. Contravention of the aforementioned clause amounts to an illegal change of use.
2.3.11 Building Code: The Local Government (Adoptive By-Laws) (Building) Order 1968

The building code which has always been implemented by Local Authorities is a development control tool that comprehensively addresses among others matters revolving around comfort, aesthetics, safety, public health, lifespan and performance of the built environment and their inhabitants.

The code clearly outlines the process of application for development permission. It envisages a situation where developers may be at the mercy of rogue authorities charged with the responsibility of granting development permission. As such it sets the limit of 30 days as the period within which the authority must communicate to the developer or his agent about the status of the application under clause 7(1). Under clause 9, the code defines the extent of approval including basis of conditions or period within which development must be commenced or terminated and even grounds for disapproval. For purposes of ensuring safety of both occupants and buildings during and after construction, the code provides for mandatory inspections under clause 16. The regulations prescribe mandatory enlisting of services of registered architects and engineers under clause 124 for purposes of design and supervision of certain category of buildings to ensure compliance with the set standards.

2.4 Modernism - Theoretical Framework for Analysis

Modernism has always been seen by some theorists (such as Beauregard, 1989; Hall, 1989) as a cultural reaction to the process of modernisation associated with the rise of capitalism in the 19th and 20th centuries. Its emergence was seen as a tool that was meant to mediate between the capitalist selfish motives of accumulation and the inefficiently organised production space that was emerging in the form of towns. Critical manifestations that characterized the industrial city included physical degradation, functional chaos and the general miseries that the working class suffered (Preston, 1996). Modernism as a school of thought in planning was a reaction to these negative challenges that were associated with cities. In addition, the impetus for the institutionalisation of planning grew out of social problems related to massive immigration, large-scale manufacturing and the lack of controls over the built environment. Beauregard (1989) commenting on the evolution of modernist planning in American cities summarises the urge behind the planners of the day by noting that: -
“Planners grasped early on that different capitalists pursue different spatial investment strategies in an un-coordinated fashion, thus creating an intra-capitalist competition alongside capital-labour struggle for control over the built environment.

If the industrial city was to be an efficient mechanism for capital accumulation, and if labour was to be allowed respite from the ever expanding oppression of the factory system and be given protection from unrestrained property capital, someone had to bring order to its fragmented form.”

It was therefore envisaged as the task of planners to produce organised and physically coherent cities grounded in good functional and aesthetic principles. These early modernist planners were encouraged by utopian attitudes and beliefs that social problems could be tamed and humanity liberated from the constraints of scarcity and greed. It was believed that once capitalism was tamed, the city organised, and prosperity diffused socially and spatially, the lower classes would rise to affluence and take on the values and behaviours of the middle class (Gans, 1968). The process of developing modernist planning was driven by universalising forces whose focus was to allow functionality and efficiency in urban space (Gans, 1968). Resonating from this modernist perspective of planning are a number of themes that can be regarded as the major drivers and these include knowledge, functionality, efficient, the spatial paradigm and the public interest (Robinson, 2006).

Knowledge was seen as the basis for development in modernist planning. Modernist thinking was driven by the understanding that objective truth was only obtainable through science Scholte (2005:150). The belief was that the world was logical and orderly – therefore its internal logic can be uncovered and subsequently manipulated (Robins, 303). Knowledge and reason, it was believed, would free people from fatalism and ideologies and allow the logic intrinsic to the industrial society to be uncovered and exploited. To this end, knowledge in planning was evaluated on a performance criterion since it was within the scientific mode of legitimation. Therefore, modernist planners were supposed to act as experts who could utilize the laws of development in order to provide societal guidance (Lyotard, 1984).

Another core aspect to modernist planning was the need to maintain functional equilibrium in the built environment. Appalled by the chaos that characterised the industrial cities, the belief
among planners was that the functional organisation of the city would allow orderliness and efficiency in the operation of the city (Robinson, 2006). This led to the emergence of functional zoning as a key attribute in the planning fraternity.

Key features of zoning that emerged were the segregation of land uses in different and compatible land uses such as for housing, industrial and commercial developments. In addition, land was also allocated for open spaces such as green belts and parks. By so doing, it was believed that the organic and totalising view of the city would leave little leeway for chaos and indeterminacy (Hall, 1989). The central ideas of modernist planners were also to be achieved through a spatial paradigm. In planning circles, this spatial paradigm involved production of grandiose plans (in the form of blue prints) that were meant to guide development (Preston, 1996). It is in these plans that knowledge and functional zoning ideas were articulated. These were meant to guide spatial developments. These plans, in Robins’ (2000) words, displayed seriousness, depth and austere autonomy in the cities that were to emerge.

Finally, the ideas of modernist planning were also driven by the belief that the state was progressive in that regard; it would do anything in the name of the public interest. From this progressive perspective, it was envisaged that the state is an instrumental representative of the interest of all citizens as disclosed by the expertise of planners. It was believed that planners were void of self-interest and were also disengaged from the interests of any particular group. As neutral practitioners, planners could easily position themselves within the state without being labeled political and therefore play a mediatory role between capital and labour.

In this regard, modernist ideas of planning and development focused on large-scale, metropolitan-wide technologically rationalised, and efficient urban plans. Such grand plans (envisaged in the form of master planning schemes) were supposed to arrange land use activities in functional zones. For example, Ebenezer Howard, Frank Lloyd Wright and Le Corbusier devised new ways of organising human settlements and lining arrangements in what they perceived to be orderly and efficient manners. Macleod (http:www3.sympatico.ca/david.macleod/POMO.HTM), borrowing his ideas from Goodchild summarises the key tenets of modernist planning around specific themes such as the
conceptualisation of the city itself, designing, strategic planning and decision making style. The concept of the city envisaged the city as an object represented by a mass of housing. The development of housing, as conceptualised in the urban design theme, was supposed to focus on functional zoning with lower densities and mixed housing. Above all, through the theme of strategic planning, focus was on the redevelopment of flats (through the bulldozer approach), controlled expansion through suburbs, new towns and the creation of green belts. All this was supposed to be achieved through concrete decision making driven by either blue-print (unitary) plans (of the 1940s – 1960s) or adaptive plans.

It can therefore be concluded that the modernist planning paradigm led to the emergence of the scientific mode of legitimating, the concept of an orderly and spatially integrated city that meets the needs of society, and the fostering of an interventionist state. This was seen as a valid and superior means of making public decisions since it was duly guided by scientifically gathered information expressed spatially through the preparation of grand development plans (Beauregard (1989). It is these ideas that were exported the world over especially to developing countries at the height of colonialism. From such traditions came a mode of town planning that was essentially local, physical, restrictive and negative, aiming for orderly suburbanisation (Hugue, 1997).

These modernist principles, regrettably, failed to meet the developmental expectation of the emerging economies. Most of the development plans were produced by foreign consultants while at the same time they were guided by static finite master plans which implicitly presumed a strong state capable of delivering implementation. But the state that emerged after the departure of colonial masters had to deal with the reconfiguration of the social and economic space which spatially affected the implementation of modernist principles. Rakodi (2006) summarily portrays these post-colonial cities (especially that in Sub-Sahara Africa) as being in crisis and which in itself is characterised by rapid population growth, governance failures, severe infrastructure and social breakdown and service deficiencies and inadequate land administration. Hence the failure to deliver services via public funding in developing countries resulted in the informalisation of the cities.
2.5 Development Control Experiences from Other Countries

2.5.1 Kuala Lumpur – Malaysia

In the context of urban planning, the present system of development control in most local authorities in Malaysia is by the granting or refusal of planning permission for development. The local authority is empowered to grant or refuse any planning application in its area. The recent amendment to the planning statute requires that certain planning application be accompanied by a development proposal report which include a written statement and a plan to (i) describe the present condition of the land to which the application relates; and (ii) describe the proposed development, in particular on how it would be likely to have a significant effect on the built environment (Ali, 1990). In most cases, a development proposal report involves a technique for the systematic compilation of expert quantitative analysis and qualitative assessment of the proposed project’s land use and development viability, including its effect on the surrounding area, and the presentation of results in a way which enables the importance of the predicted results, and the scope for modifying or mitigating them, to be properly evaluated by the relevant decision making body before a decision on an application is rendered (Yaakup, Johar and Dahlan, 1997). Information required for a development proposal report would therefore include the following major aspects:

i. Status of land and restrictions;

ii. Land use analysis and intensity of development – this includes land use zoning, population density zoning, height limit, plot ratio, plinth area, predetermined public area;

iii. Analysis of issues and potential of sites – this includes site location, existing drainage system, topography and slope, existing road system, existing land use, natural features which must be preserved and development potential;

iv. Analysis of surrounding development – this includes infrastructure, type, intensity and facilities available in the surrounding area;

v. Structure Plan and Local Plan policy, if available.
In addition, a planning proposal report should also observe the planning standards or other policies which may be imposed from time to time.

For CHKL, all application for any development will have to be submitted to the City Hall for approval. Depending on the type and scale of development, these applications will be processed and considered by either one of the following committee: (i) Town Planning Committee I; or (ii) Town Planning Committee II. Town Planning Committee I chaired by the Mayor looks at proposals for comprehensive and large-scale development, layout plans, change of use of land and increased density, and the application for the use of government land. This committee comprises the Director General of City Hall, Deputy Secretary to the Minister of Federal Territory, and all the directors of the technical divisions. Before an application is reviewed by this committee, it will have to go through all the technical departments for comments and recommendations, based on which decision is derived whether to approve, approve with conditions or reject the proposed development, after which Development Order will be issued by the Mayor. Meanwhile, Town Planning Committee II looks into the applications for development of shop houses, detach houses, mosques, industrial building, etc. The procedure adopted by Town Planning Committee II is similar to the former committee, except that 'Development Order’ will be issued by the Director General (Yaakup, 2003).

Development control and approval, which involves the process of analyzing the appropriateness of planning applications, requires various data from the relevant agencies. A planning application will be assessed in terms of current development scenario, land information, planning requirements and planning design (Yaakup et al., 2002a). Consideration given to an application requires a tedious process as it will have to go through several committees and technical evaluation. However a number of drawbacks have been noted as follows:

i. Delay related to the overall process of development control process and procedures. This may be divided into

   o consultation-caused;
o planning committee-caused and

o applicant-caused (Larkham, 1990).

ii. Lack of consistency in making decisions due to personal judgment and lack of comprehensive information.

iii. Lack of transparency in decision making process. Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decision and by enforcement. It also means that the information provided is in easily understandable forms and media.

iv. Lack of updated information. This is due to difficulties in obtaining specific data as data exchange mechanisms are not fully automated to facilitate cooperation between data holders. Data which is in hardcopy is often difficult to retrieve and at time hard to trace their whereabouts.

v. Lack of public participation in planning decision making process due to the lack of readily available information.

2.5.2 Ekpoma - Nigeria

To initiate a more harmonized activities within development control, the Lagos state government enhanced a good working environment through the Ministry of Physical Planning and Development, the Lagos State Urban and Regional Planning (LASURP), the Lagos State Waste Management Authority, (LAWMA) and the Ministry of Environment. This was in regard to enforcement, administration, approval of building documents and demolition of illegal structures. However the government noted that there may be other lapses that are not related to these aforementioned which involve operational mechanisms that inhibit development control. Findings in the past have showed that different ministries or agencies had granted approval for development without inputs from other relevant ministries or agencies. This development has jeopardized effort of government at promoting a healthy environment.
The genesis of development control can be associated with the land tenure system operated by both the North and Southern parts of Ekpoma state. Land was vested in the Emirs, Obi and the Oba for onward usage as it may be necessary and conditions were set for acquisition.

The outbreak of different types of disease and the need for effective town and country planning necessitated the formulation of ordinances that touches on health, land use, environmental preservation, roads classification of towns became operational. Planning scheme approval committee was set up in 1924 and in 1928 Lagos Executive Development Board (L.E.D.B) was established and became effective in 1929 for planning and development in Lagos.

Later Town and country planning gained recognition with the introduction of more planning schemes and planning authorities with the promulgation of Nigerian Town and Country Ordinance No. (4 of 1946). Between 1954 and 1963 a regional systems of planning was adopted in Lagos with the law in 1958, west as cap 123 laws of western region of 1959, East as cap 126 laws of Eastern Nigeria 1963 and North as cap 130 laws of Northern Region 1963.

With the creation of Town planning division to enhance planning and the introduction of planning authority and development unit in the old Mid-Western State with Edict No. 3 of 1969 herald the National Development Plan which became operational since 1920 through 1980. Of importance in the policy are planning of urban centers, designing and planning of new settlement and urban renewal scheme.

To make Town and Country planning more relevant and effective, their power to function was vested in the local government area and with the creation of more local government areas in 1976 planning authorities were established to handled planning matters. Various issues relating to land matters were tackled by the promulgation of Land use decree of 1978. This effort was aimed at making land available to Nigerians and exercise control over land.

It has been established that most development control measures are not adhered to because the benefits expected are sometimes not easily recognized. For this reason people are usually reluctant to comply with such directive. For example some clients did not see it necessary to obtain approved building plan before embarking on construction of buildings. Until when
there is problem associated with developments, which contravene existing laws relating to
development, that is when developers will be responsive. This reaction is based on previous
experience where approval is regarded difficult or impossible.

Officers are often accused of miss using the powers vested in them to the detriment of the
public. This development has generated complaints from stakeholders. With the present
commitment on the part of concerned officers, agents and bodies responsible, an appreciable
success is being recorded.

The preparation for the visit of Queen Elizabeth of England around 1958 accelerated one of
the planning schemes that rejuvenated part of Lagos which the inhabitants acknowledged.

Areas that are orderly and traces of planning are noticeable especially in districts,
neighbourhoods, housing estates and in some part of settlements are not always difficult to
manage and cheaper in term of renewal such example can be found in Oyo State, Bayelsa
State and some Eastern states, where world bank assisted fund was made available for the
projects.

Development control measures have not been successful in some states of the federation
because necessary support is not coming from the government. Uncertainty, fears are
associated with the exercise not actually knowing that the gains derivable from it out weight
the disadvantages. Lagos state government housing computerization exercise which is being
introduced in Edo State is a typical example. This initiative was viewed as important in aiding
research and investigation regarding settlement. Experience in the past has shown that most of
the blame arising from physical development efforts is usually directed at selected
professionals. In deed Town Planners are recognised as professional in charge of development
control. There are other professionals in the building team who have roles to play. This is to
ascertain that various contributions are being made, and will still be made.

In addressing these physical development control measures and to improve the general well
being of the people, the Urban and Regional Planning Decree (88) of 1992 was promulgated.
The surprising thing is that the law has not come to full operation since then. For physical
development and social well being to be realized, there is need to actualize the usage of the act.

Development control can be appreciated in Ekpoma zone because of the initiative by the former Governor of the State Prof. Ambrose Alli who assisted in opening up several roads within the town and later the roads were tarred. Considering the nature of road network, linear type of settlement is more common compared to other types. For instance 91.6% of the buildings obtained building plan approval before commencing construction which is a healthy development for any town. There are still cases where building laws and regulations are not carried out to the letter. Physical development of the major linear roads where access roads are not provided often develop into haphazard development resulting to congestion. This trend is now part of the character of the settlement which must be addressed immediately. There should be accessibility to all forms of development. Another fight must be declared against defaulter of development control rules and regulations especially developers who don’t obtain building plan approval or have due regard for orders issued by the planning authorities for the good works of the planning authorities to be appreciated. There is need for the town and country planning to respond spontaneously to the rapid growth of most built up areas. This will help reduce the cases of uncontrolled development.

2.5.3 Festac Town, Lagos - Nigeria

Like any other regulatory laws enforcing citizens of a nation like Nigeria to comply with certain standards, development control regulations (despite the positive effects on its environment) face many problems. That is, numerous constraints in Festac Town militate against the effectiveness of development control measures.

Ogundele, F. O. et al (2010) note that lack of up-to-date land use map to reflect the trend of development and vehicles earmarked for development control purpose forms one of the challenges. Also, the procedure for development control is not effective since it does not allow or ensure easy access to the police and/or other law enforcement agents when there is need to respond quickly against any defiance development.

Inadequate funding of the control authority. Compared to other sectors of the economy, physical planning programmes suffer a lot of set back through inadequate funding. Rather
than government at the three tiers seeing urban and regional planning activities and programmes as social service, instead they misconstrue the development control authorities and agencies (including Federal Housing Authority (FHA) to be revenue-generating units in their setting.

Lack of public enlightenment programmes on physical planning issues by the Federal housing authority makes members of the public “illiterate” on physical planning programmes. This leads to development of illegal structures to fulfill their selfish-interest without considering the negative impact of such action. Public support is a pre-requisite to a successful and effective development. This is because people will always be ready to support any action once they can be informed so as to have a pre-knowledge of such action. It was also observed that most of the people are not aware of the procedure, requirement and penalty of FHA since there has not been any effort made aimed at enlightening the public and residents of the area on the importance of development control in physical planning. Some of those who are fully aware of the operations of FHA are as a result of their interaction with the FHA official while others are through their Landlords and friends.

There is also improper or inadequate monitoring of development to ensure compliance especially in a case where development permit (approval) is granted. The study, however, revealed that there is need to departmentalized, equipped, and adequately funds the Town planning unit to enable it cope with the challenges of development control as this would lead to constant monitoring of development on a daily basis in order to restore the lost glory of Festac Town.

Inadequacy of professionally qualified town planners in the Town planning unit of the authority. That is, shortage of manpower is a major problem. For instance, the Estate/Town planning unit required fifteen staff members but the staff strength as at the time of the study was only four with a shortfall of eleven staff members. From the foregoing it is clear that the Town planning unit is not only short of man-power, but also seriously short of professionally qualified Urban and Regional planner (Registered/Registrable) despite they yearly turn-out of professionally qualified town planners from Polytechnics and Universities.
The inefficiency of most utilities agencies in Nigeria saddled with the responsibility of providing such utilities has affected the location or sitting of physical development projects. For instance, filling station and shopping complex should rather be located where there is easy accessibility that will enhance high patronage, regular electricity supply from the national grid than in an area where the aforementioned are poorly available. This gives rooms for concentration of this development projects in virtually improper locations not giving respect to physical planning standards.

Likewise, illegal conversion of residential buildings into mixed used (mainly residential and commercial; residential-institutional) is another hindrance of development control in the study area. The percentage of mixed use indicates that rate of contravention of the planning laws in the area in the sense that most of the mixed use was not given approval before carrying out such changes or conversion.

Another factor is the act of bribery and corruption, which is characterized with the FHA in the course of processing a development proposal (application) for approval. This act has spread all over the relevant officials, doggedly collecting bribe and calling it processing fee. This is a very sad case, which has seriously impacted negatively on the area as this encourages double standards in granting or rejecting approval. However, this view is supported by the extremely low rating of FHA in terms of its performance in development control in Festac Town.

2.5.4 Ruiru – Kenya

In Ruiru Town, development planning and development control are totally non-existent, basically development supercede planning. In his study of Development Planning and Development Control Challenges, Gateri (2002) noted that the municipality does not provide any services and even municipal council officials admitted that they have been overtaken by events.

On the regulatory framework, Gateri (2002) noted that the council does not have a local physical development plan but has one which was prepared in 1978. This has limitations in terms of the geographical coverage. The 1798 plan only covers 17% of the total municipal area. This study also found out that the Physical Planning Act (PPA) is not enforced. Although it is empowered by the same PPA to make by-laws, it has never done so instead it adopted by-
laws from Kiambu county council, by-laws which were fairly outdated and less customised to solve physical development challenges in Ruiru.

In its development endeavours, Ruiru according to Gateri (2002), has ignored the planning standards totally. Building code adoptive by-laws equally have not been enforced.

2.6 Study’s Conceptual Framework

2.6.1 Theory of Organization

The term organization may refer to either a process or the result of organizing (French and Saward 1983, Collin 2004, Baum and Rowley 2005). In the context of organization theory the process explains the how i.e. the way people and activities are organized while the result represents what is being organized i.e. an entity (Child 2005). This study focuses on both.

There are three main approaches that can be used in the study of organizations i.e. classical, human relations and systems approaches (see for example Williamson 1981, O’Shaughnessy 1966). The classical approach considers an organization as a formal entity operating within certain defined principles such as division of labour, unity of command, unity of direction, scalar chain, centralization etc (Williamson 1981, Woolf et al. 1985). By defining organization as formal entity, the classical theory of organization isolates the informal type of organizations hence the theory is largely not applicable to this work but helps to demonstrate the limitations of the theory of organization in capturing the organizational realities of the developing world. Secondly, it only concentrates on the internal management of organization.

The human relations approach as a reaction to the classical approach by theorists who saw organization not as mere social structures ruled by rationale but more importantly as structures created and constituted by human beings whose actions made them function or not. This approach mainly focuses on the internal management of personnel in individual organizations in contrast to the systems approach that considers an organization as a web of interacting variables within an environment (Williamson 1981).

The systems approach, sometimes referred to as the contingency approach, is based on the principle of the general systems theory that was developed from the ideas of Ludwig von Bertalanffy – the German biologist who argued that all systems whether organic or
organizational shared similar characteristics and could be analyzed in similar ways (Woolf et al. 1985, Hatch 1997). The proponents of the systems theory rejected the universal principles advocated by the classical and human relations approaches on the grounds that an organization’s operations depended on its own unique environmental circumstances (Woolf et al. 1985). This theory assumes that an organization is interrelated with its environment such that a change in the environment will effect a change in the organization and vice versa. This fits well with the assumption of the study that changes in the institutional (enabling) environment would lead to changes in the performance of producer organizations. The theory assumes a case of ‘open systems’ as described below.

The figure illustrates an open systems model an organization receives inputs from its external environment processes the inputs and then gives it back to the environment as outputs. The arrows represent the transaction/exchange processes between the study organization and its external environment. As already mentioned, the study organization’s environment can be divided into two for ease of analysis—the micro and the macro environments which are usually categorized into Political, Economic, Socio-cultural, Technological, Legal, Ecological and International environments.

The *political environment* would include issues such as the actions and policies of political authorities that influence the activities of the study organization (Campbell 1997). The political authorities may be of national or national government origins. The *economic environment* on the other hand involves issues of type of the national economic system – whether command, mixed or market economy (Campbell 1997). The Kenyan economy, for example, is being re-organized towards the market typology through the Structural Adjustment Policies, SAPs, of the Bretton Woods institutions. The economic environment also involves issues of unemployment levels and types and the regulations and practices involving financial and capital markets. Issues of industrial protection policies and fiscal policies regarding product subsidies and taxation are also relevant.
Connected to the political and the economic environments is the *socio-cultural environment* that involves the analysis of the demographic features such as population size, distribution, composition and changing trends (Campbell 1997). Relevant in this case, also, are the cultural attributes of the population including the opinions, beliefs, norms and preferences. The general awareness and interestedness by the population concerning environmental issues related to a product’s processing and consumption will also influence the activities of the study organization.

The *technological environment* is related to the cultural history of a country (the national political set-up) and its economic system. Technology is of great significance to the economics of the study organization because it can reduce the overall costs of the organization by replacing manual tasks with automation (Campbell 1997). Likewise, it can enable increases in the study organization’s productivity in terms of increased volume of output or increased product volume per unit cost. Technology can also increase quality of the organization’s product by removing the human error and introducing more consistent procedures (Campbell 1997). In terms of the processes, technology can speed up the processes so that the turnaround time is reduced for the organization’s products and services (Campbell 1997).

The *legal environment* can form part of the political environment but due to its complexity and importance it deserves a separate attention. To start with, the legal framework is what forms the basis upon which organizations come into being. Going by the definition of enactment as the basis of organization formation the influence of the legal environment cannot be emphasized. In the same token, the functions of organization must conform to the legal framework, otherwise it risks ceasing to be an organization. Apart from giving life to organizations, the legal framework also defines and enforces property rights which are a very crucial bit to the survival of organizations upon enactment. Additionally, the laws permit individuals to engage in lawful activities without fear of or actual molestation by others, restrict unlawful behaviour and constrain individuals to comply with legally required activities or business (Campbell 1997). Most significantly, the law supports and streamlines the transactions/exchanges between the study organization and the stakeholder organizations within its external environment such as enforcement of private contracts, payment of taxes
and fees et cetera. The system that ensures law and order is composed of the police and the judiciary. In this respect, when North (1990) defines organizations as players and institutions as rules of the game, the legal framework makes the bulk of the formal rules. The informal rules are also defined in contradistinction to the formal rules laid out in the legal framework. The transactions/exchanges that take place between the study organization and its external environment are conducted according to the provisions of the law.

The ecological environment is concerned with issues to do with availability and use of natural resources and pollution of the ambient environment by the study organizations. Issues to do with environmental ethics like: employment practices and health and safety in workplaces are also important (Campbell 1997). Some writers also consider the spatial dimensions by differentiating between the local, national and international scopes of these factors (see for example Campbell 1997, Capon 2000).

2.6.2 Participatory Planning and Decision-making

Once appropriate stakeholders have been identified and measures taken to ensure their involvement, the next question to answer is how do stakeholders engage in participatory planning and decision-making? This section documents approaches that sponsors and designers have used to collaborate with other stakeholders in this process.

Participatory planning and decision-making should start by creating a mood for learning rather than plunging directly into problem solving. The learning phase then sets the stage for strategic and tactical planning. The strategic planning stage in turn generates broad directions and priorities, which are operationalized into detailed implementation actions during tactical planning.

Participatory techniques intend to achieve the following;

The essential steps of project planning and re-planning (setting objectives, creating strategies, and formulating tactics) can be carried out in both the external expert and participatory stances. The essential difference between the two is that, in the expert stance, undertaking
these steps is the primary responsibility of the sponsors and designers; in the participatory stance, these steps are undertaken collaboratively with relevant stakeholders.

Participatory techniques (or methods or approaches) generate constructive collaboration among stakeholders who may not be used to working together, often come from different backgrounds, and may have different values and interests. Among other things that participatory techniques do achieve include:

- Creating a learning mood so that participants take action based on what they have learnt,

- Interrupting the normal mood by “working with strangers” so as to break the ice and therefore establish openness and informality.

- Creating common purpose to create unity of vision. This helps in succeeding in creating a new-albeit temporary-community of people with shared understandings and goals.

- Opening up new possibilities

### 2.6.3 Relevance of the Above Theories to this Study

As mentioned earlier, the term organization may refer to either a process or the result of organizing (French and Saward 1983, Collin 2004, Baum and Rowley 2005). In the context of organization theory the process explains the how i.e. the way people and activities are organized while the result represents what is being organized i.e. an entity (Child 2005). This study focuses on the how and the entity.

This study looked at the way Thika Municipality organized itself toward delivery of development control in terms of the regulatory framework, the human resources capacity,
stakeholder participation which underscored the decision making framework within an organization. These among other variables, and the challenges therein formed the chore objectives of the study.

While other studies have attempted to unravel the challenges of development control within the urban management institutions, they majorly looked at the manifestation of lack of development control. For instance the reviewed studies mention cases like incongruent buildings, bad roads, and frequent burst sewers among others. It is important to note that this study is focusing squarely on the reasons as to why the institutions charged with the responsibility of delivering development control do not function as required.
CHAPTER THREE: RESEARCH METHODOLOGY

The study intended to give an institutional evaluation of development control in terms of the fundamentals of development management in urban areas, the development control process and the stakeholder composition of the persons or organizations involved in the decision-making process.

3.1 Research Design

This study takes an exploratory design. Reason being that with exploratory researches, the nature of the research problem is not clear and would prompt the research to have an expectation that further study would be necessary to give conclusive evidence, (Zikmund, 1997). Exploratory research helps to crystallize a problem and identify information needs for future research. According to Robinson, (2002), this kind of research is the means of seeking new insights, asking questions and assessing phenomenon in a new light. It allows the researcher to familiarize him/herself with the problem or concept to be studied, and potentially generate hypotheses or research propositions to be tested. According to Zikmund (2003), the output is qualitative and may serve as a basis for subsequent quantitative research.

3.2 The Geographical Scope of the Study

A pilot evaluation of Thika Municipality in terms of planning organization, revealed very important information that will help steer this study in the right direction with regard to sampling Key Informants.
Fig. 3.1 Map of Kenya Showing the Position of Thika Municipality
Fig 3.2: Map of Kiambu County Showing the Position of Thika Municipality
3.3 Data Needs

Table 3.1: Study’s Data Needs Matrix

<table>
<thead>
<tr>
<th>Study Objectives</th>
<th>Type</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>To examine the actual development control process as applied in Thika Municipality.</td>
<td>Secondary and primary</td>
<td>Policy makers, Urban managers, Private sector and literature</td>
</tr>
<tr>
<td>To identify the operational challenges behind the current level of development control in Thika Municipality</td>
<td>Primary</td>
<td>Policy makers, Urban managers, Private sector</td>
</tr>
<tr>
<td>To propose policy guidelines to improve development control regime in Kenya</td>
<td>Analytical</td>
<td>Analysis, benchmarking</td>
</tr>
</tbody>
</table>

3.3 Methods Data Collection

The study collected two types of data, secondary data which in some quarters is called second degree data and primary data otherwise known as first degree data.

3.3.1 Secondary Data

This marked the beginning of the exercise where the researcher endeavoured to familiarize with the development control programmes in Kenya and in other countries with respect to stakeholder involvement. This assisted the researcher in developing detailed, focused and solid background information, which formed the basis of developing other appropriate tools for the study data.

Various documents were reviewed to enlighten the researcher on the specific issues about management and stakeholder involvement in development control.

3.3.2 Primary data

This raw data was got from the Municipal Council of Thika so as to understand how the variables identified play out with respect to development control.
The primary data was collected from a range of respondents including developers, planning managers, Urban Development department among others.

The study used Focussed Group Discussions through semi-structured guides with the aforementioned stakeholders and Key informant interviews.

3.4 Methods Data Analysis
Qualitative data which is anticipated to form the bigger percentage of the study’s data was analyzed using qualitative content analysis, sketches, stakeholders and institutional analysis in order to explore the pattern of relationships.

3.5 Sampling Methodology

3.5.1 Case Study Approach
The researcher noted that in circumstances where qualitative data needs to be captured, non-probability sampling is normally handy. Non-probabilistic methodology is useful for qualitative research, particularly for concept development, for which estimates are not required although descriptions and a willingness by participants to describe are required.

Being an applied social research, the researcher will consider a purposive sampling since the sampling problem has been approached with a specific plan in mind. Some of the reasons why purposive sampling is the most appropriate here are; we sample with a purpose in mind, we usually would have one or more specific predefined groups we are seeking, because the time constraint in the survey is imminent, this kind of sampling can be very useful for situations where one needs to reach a targeted sample quickly, sampling for proportionality is not the primary concern and the research intends to get the opinions of the target population.

*Quota Sampling* is an example of purposive sampling. In quota sampling, respondents are selected non-randomly according to some fixed quota. As part of quota sampling, the study intends to carry out a non-proportional quota sampling. This method is the non-probabilistic analogue of stratified random sampling in that it is typically used to assure that smaller groups
are adequately represented in ones sample. Since the researcher knows very little about the population, and is also looking for participants for a focus group and that there is a subgroup that is likely to be underrepresented, this kind of sampling method, a predetermined number – a quota - of sample units were included from various subgroups.

Other non-probabilistic sampling methodology that would be used by the researcher is known as Judgment Sampling. To establish the stakeholder and institutional arrangements within the Organization, the researcher intends to select the sample based on expert judgment. This method is very key in sampling key informants.

Therefore against this background, this study takes a case study approach, which is one of the methods of non-probability sampling. According to Kothari C, (2008), the case study method is a very popular form of qualitative analysis and involves a careful and complete observation of a social unit, be that of a person, a family, an institutions, a cultural group or even the entire community. He further notes that the case study method is to locate factors that account for the behaviour-patterns of the given unit as an integrated totality. The behaviour pattern in this case is how the issue of involvement of beneficiary community in low-cost housing initiatives is handled by the respective managements of these initiatives across board, and try to establish if there is commonality or if there are any distinct variations.

3.5.2 Sampling Frame

The study’s sampling frame was formulated depending on the stages of development control processes. In the pilot survey, it was noted that development applications revolve around four major categories viz Change of Use, Building Plans, Subdivision and Extension of Lease. The study was therefore hinged on the experiences of the four categories in so far as development control challenges are concerned.
Table 3.2: Sampling Frame for the Respondents

<table>
<thead>
<tr>
<th>Development Permission Stage</th>
<th>Type of development Permission</th>
<th>Informant</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application stage</td>
<td>Change of Use</td>
<td>Physical Planner</td>
<td>2 Physical Planners</td>
</tr>
<tr>
<td></td>
<td>Building Plan</td>
<td>Architect, Engineer</td>
<td>2 Architects, 2 Engineers</td>
</tr>
<tr>
<td></td>
<td>Subdivision</td>
<td>Physical Planner</td>
<td>1 Physical Planner</td>
</tr>
<tr>
<td></td>
<td>Extension of Lease</td>
<td>Physical Planner</td>
<td>1 Physical Planner</td>
</tr>
<tr>
<td>Evaluation stage</td>
<td>Change of Use</td>
<td>Authority, Physical Planner</td>
<td>4 Authority Technical Personnel, 1 Physical Planner</td>
</tr>
<tr>
<td></td>
<td>Building Plan</td>
<td>Authority, Architect, Engineer</td>
<td>4 Authority Technical Personnel, 1 Architect, 1 Engineer</td>
</tr>
<tr>
<td></td>
<td>Subdivision</td>
<td>Authority, Physical Planner</td>
<td>4 Authority Technical Personnel, 1 Physical Planner</td>
</tr>
<tr>
<td></td>
<td>Extension of Lease</td>
<td>Authority, Physical Planner</td>
<td>4 Authority Technical Personnel, 1 Physical Planner</td>
</tr>
<tr>
<td>Implementation stage</td>
<td>Change of Use</td>
<td>Authority in charge Agent (depending on the use)</td>
<td>4 Authority Technical Personnel, 1 Physical Planner</td>
</tr>
<tr>
<td></td>
<td>Building Plan</td>
<td>Architect, Engineer</td>
<td>4 Architect, 4 Engineer</td>
</tr>
<tr>
<td></td>
<td>Subdivision</td>
<td>Developer</td>
<td>2 Developers</td>
</tr>
<tr>
<td></td>
<td>Extension of Lease</td>
<td>Developer</td>
<td>2 Developers</td>
</tr>
</tbody>
</table>

Table 3.3: Sample Number of the Respondents by Type

<table>
<thead>
<tr>
<th>Development Permission Stage</th>
<th>Respondents Type</th>
<th>TOTAL Sample size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Authority</td>
<td>Physical Planners</td>
</tr>
<tr>
<td>Application stage</td>
<td>All Technical Personnel</td>
<td>4</td>
</tr>
<tr>
<td>Evaluation stage</td>
<td>All Technical Personnel</td>
<td>3</td>
</tr>
<tr>
<td>Implementation stage</td>
<td>All Technical Personnel</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

On top of the 38 sampled respondents in Thika Municipality, the study investigated the experiences of the policy makers at the ministry headquarters. The study segregated the respondents in terms of their mandates.
<table>
<thead>
<tr>
<th>Area of Specialization</th>
<th>Physical Planning</th>
<th>Architecture</th>
<th>Engineering</th>
<th>TOTAL Sample Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number per Area of Specialization</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>8</td>
</tr>
</tbody>
</table>

Therefore the total number of sampled informants for the study will be 46 respondents.

3.5.2 Criteria for Sampling

Selection of sample form Thika Municipality was done based on several factors

i. The stage of development application

ii. The type of development application

iii. The frequency of development application

iv. The agents involvement in the stage of the development application

Selection of sample respondents at the ministry headquarters was based on the area of policy specialization i.e. physical planning, architecture and engineering.

3.6 Research Authentication and Authorization

Pursuant to the Research Authorization and Ethics as required by the Laws of Kenya, the researcher endeavoured to meet all the requirements in Form-A (Revised 2009) “Application for Authority to Conduct Research in Kenya”, at the Ministry of Education, in the Department of National Council for Science and Technology.

3.7 Monitoring

The researcher always sought clarification and guidance from the assigned supervisor on the representativeness of those sampled for the research. The researcher also ensured that the data collection exercise, data entry, analysis and interpretation are done objectively so as to reduce cases of subjectivity and biasness.
The exercise made use of triangulation in data collection to enhance objectivity and unbiasness.
CHAPTER FOUR: ANALYSIS AND FINDINGS

4.1 Introduction

Looking at the problem statement above, this study endeavoured to conduct an analytical evaluation of the institutions responsible for development control and be able to establish the operational challenges facing development control in Kenya’s urban areas. This was done by focussing on the following specific objectives.

i. To examine the actual development control process as applied in Thika Municipality.

ii. To identify the operational challenges behind the current level of development control in Thika town

iii. To propose policy guidelines to improve development control regime in Kenya

4.2 Physical Planning in Thika Municipality in Perspective

In terms of planning organization, the town has a Technical Committee comprising of

i. A Physical Planners and an Assistant,

ii. An Engineers and an Assistant,

iii. a Chief Finance Officer

iv. a Public Health Officer

v. Technicians (a holder of higher national diploma in structural engineering and the other certificate in craftsmanship holder

Whenever one applies for development permission, the application is received by the planner who scrutinizes to establish whether the following documents are included; ownership documents, valid cadastral survey plan, clearance certificate as evidence of clearance of rates for the property targeted for development and attachment of registration certificates or practicing certificates of the relevant professional (no due diligence is carried out to confirm
whether the developer’s agent is indeed the bona fide owner of the attached professional certificates).

The application then is circulated amongst the technical committee members which after finally goes back the planner whom makes the decision to reject conditionally or unconditionally or approves by issuing form PPA 2.

Upon receipt of form PPA 2, application has to be submitted to National Environmental Management Authority (NEMA) who evaluates to check for compliance of the proposed development with the provisions of the Environmental Management and Coordination Act. Note: If NEMA rejects with conditions that would require material revision of the development for compliance with her conditions, then the application has to be made afresh to the planning authority and other application fees paid.

In terms of inspections during the implementation of the proposed development the following are responsible; Technicians and Engineers (occasionally).

4.2.1 The Physical Planning Organogram in Thika Municipality

Fig 4.1: Showing the Organization Structure of Planning in Thika Town

Item 4.2.1 The Organization Structure of Planning in Thika Municipality formed the geographical scope of this study. The four technical persons formed the Key informants for the study.
3.2.2 The Conceptual Stages of Development Control within a Town

According to the Physical Planning Handbook development permission application procedure is as follows;

Fig 4.2: Application Processes of Development Control

Stages for development control have the following stakeholders involved.

- In the application stage, there is the developer who expresses intention to develop. The developer does this through agents who in this case could be a physical planner, an architect or an engineer depending on the type of development application.
• At the evaluation stage there is the authority in charge with its technical persons as highlighted in item 4.2.1 The Organization Structure of Planning in Thika Municipality.

• At the implementation stage there is the authority within whose jurisdiction the development is meant to be implemented, the consultants in charge of the implementation of the project on behalf of the developer.

4.3 Spatial (&Legal) Framework

4.3.1 Very Fundamental Planning Tools

The study endeavored to review the legal and policy framework that guides development control in the Thika Municipality. It studied what legal tool established the office of the planner, whether Thika Municipality has a physical development plan, whether it has got a zoning spatial policy framework, or then on what basis do they carry out development control? This was done cognizant to the fact that no meaningful development control could take place, or no one could purport to be guiding development without such very basis tools to underlie such efforts. It is common knowledge that on these basis ant local authority management in charge of physical planning would make decision on whether an application for development is valid or not.

Logically - From a physical development plan to area action plans to zonal policy framework. So the municipality cannot purport to have prepared a zoning policy guideline without hinging that preparation on a physical development plan which they don’t have and has never in the history of the municipality been prepared.

The study found out that Thika Municipality town relies heavily on the Physical Planning Act Cap 286 of the Laws of Kenya and Public Health Act as legal tool for development control. The town has no any other document. But even in situations where there could be documents like the Building Code, their use is blatantly impaired. Whereas building regulations are supposed to operationalize the Physical Planning Act, their use is not applied as the Authority does not have the capacity to interpret the document. The interpretation of the building code should involve the following professionals; Architects, Planners, Engineers (electrical,
mechanical and civil/structural). Thika Municipality as a planning authority is grossly deficient because the interpretation of the building code is limited to the planners and engineers. Complex and sensitive developments are subjected to evaluation by the National Environmental Management Authority under Environmental Management Coordination Act.

4.3.2 Service Plans
Service plans are an important element in the management of the development control service. The service plan should set out the action to be taken to improve the standard of service and the indicators against which success can be measured. Standards should be regularly monitored and have the support and commitment of both the political leadership (councillors) and the technical leadership. This is lacking in the Thika Municipality.

4.3.3 Decentralised Arrangements
Decentralisation of the development control service is both necessary and desirable in geographically larger authorities. Such arrangements present particular challenges in respect of harmonisation and consistency of service within and between teams and area offices. Headquarters staffs have an important role to play in providing a strategic overview of policy, providing support and cover, consistency of procedures, specialist advice, implementation and review of performance standards and budgetary control. When applications are referred from area offices to the central office, applicants should be informed and the relevant area office kept up-to-date with progress of the application.

In practice, Thika Municipality which should be providing its planning service through a network of decentralised offices is not doing so. This has disabled decisions to be made at a local level, by local area committees, advised by officials with local knowledge and experience.

4.3.4 Links with Development Planning and Other Departments
While conducting any local physical development planning, strong communication links between the development control service and development planning are vital to an effective service. The processes should complement each other. Development plan policy directs development control decision making and development control experience should inform
policy development. Furthermore, the implementation of policy through development control is an important means of monitoring the effectiveness of the plan. The planning office in Thika Municipality (both management and other officers) does not seem to understand this. The scenario is that everything has been left in the hands of the physical planner who apparently gives policy direction and implementing the same policies. There is no checks and balances contrary to situation where the expected synergies brought forth by the two department working together to foster close co-operation between these aspects of the planning process is totally lacking.

The one-man-show syndrome thanks to low staffing by the public service commission is responsible for many ills bedevilling development control in Thika Municipality. It is expected that a municipality of Thika’s status ought to have several specialised departments to offer those highly needed services, efficiently and cheaply. One would easily notice total lack of this in Thika municipality. In praxis, close links between physical planning department with other council departments such as building control, environmental health and roads and highways should be developed. This study found out that none of those affiliate-apparent departments do not only exist but also there no plans to establish them.

4.3.5 Performance Monitoring

Regular monitoring of performance is essential. Monitoring should not only be of overall levels but also of teams and individuals. Information on performance is not an end in itself, but can assist in identifying how individuals and teams are contributing to the overall service. In Thika Municipality, the study established that this has never been conducted.

4.4 Role of Stakeholders

The development control service must satisfy three main groups. Firstly the Developers who seek an efficient, effective and economical service that provides speedy and consistent responses and decisions. Secondly Members of the Public who expect a service that operates effectively and consistently, offering a high standard of customer care and access to information on the progress of applications and the guarantee that their views are taken into account in the decision making process, and last but not the least the Regulators who expects
that development control is being operated fairly, openly and consistently, in line with national policy and with high standards of service and outcomes on the ground.

However to achieve quality in development control service delivery requires a commitment from both political leaders (the ward representatives) and management to work together. The following section will look at what the roles of different stakeholders are and what the study established as the discrepancies associated with their execution of these roles.

4.4.1 Political Leadership

Councillors have the key responsibility to create the conditions within which a high quality development control service can operate. It is for councillors, and particularly the convenor of the relevant committee(s) to ensure that:

i. the service is properly staffed and equipped;

ii. arrangements are in place for monitoring performance and minimising delay;

iii. elected members are kept well informed of the overall position on applications in progress and of cases that are taking longer than two months to decide; and

iv. arrangements are made for appropriate decision making to be delegated to officers or members of a technical sub-committee.

4.4.2 Technical Committees

Technical committee cycles and support arrangements should be geared to meeting the requirement for decisions to be made within specified period of time depending on the kind of development application.

Their other role is to expedite decisions and to allow elected members to focus on applications raising major policy issues or matters of general public concern; decision-making responsibilities should be delegated to officials, as appropriate. Delegation of decision making is particularly appropriate for applications that are consistent with the development plan or which raise no objection from consultees or the public. It is important that urban councils keep schemes of delegation under review to ensure that opportunities for more streamlined decision
making are taken and that elected members are satisfied with their level of involvement in decisions.

Upon interrogation on such, the study found out that Thika Municipality staffs have no idea what such committees are, nor what their mandate could be, essentially saying that none of such serious development control decision has ever been made through such an organ.

4.4.3 Decision Making

At all times when making planning decisions, they must be made in accordance with the development plan unless material considerations indicate otherwise. Political leadership represent the interests of the local community in planning matters, but the planning authority must take into account any view on planning matters expressed by neighbours, local residents, consultees and others; and it is essential that those who take part in the development control process are satisfied that their views have been considered in reaching a decision.

Decision making at Thika Municipality is done by one person, the office of the physical planner. The implications are that most of the decisions made do not meet the constitutional threshold. The danger is that any one litigation regarding the manner development control decisions are made may lead to another and this may eventually be open a pandoras box that the management may not be ready to deal with.

Lack of technical committee meetings, full council meetings have made key development control decisions to be done is a very haphazard way. A number of issues are at jeopardy due to lack of such key organs in the execution of all development control decisions. For instance the management and the political leadership in Thika Municipality should seek to ensure consistency in their decision making, particularly concerning the application of policy and be aware of the implications for policy of decisions on individual applications. The situation should be monitored and reviewed regularly. They should also be aware that where a decision is taken contrary to technical officers' recommendations, the officers may be unable to defend that decision in the event of an appeal. Where an appeal is made, they may be required to appear at a public local inquiry to explain why the advice of officers has been rejected. If the appeal is successful and it is shown that the planning authority has dealt with the matter unreasonably, then the costs of the appeal can be awarded against the council.
4.4.4 Management

A successful development control service requires clear management direction and commitment. Managers must promote a positive approach to service delivery, ensure that resources are optimally deployed and seek opportunities for improvement to the service. They must also ensure staffs are aware of what is expected of them. The study established that there no clear, up-to-date and specific job descriptions supported by a system of performance appraisal in the planning department of Thika Municipality. Lack of this has denied the municipality a valuable opportunity to link service objectives to individual duties and responsibilities.

Dialogue within the development control team is essential. This is equally a major weakness in the management of all development control matters. It must be noted that regular management and staff meetings to discuss cases, performance, concerns, and wider issues are important. An emphasis on team working and communication is key to delivering and improving performance, reviewing procedures and implementing new practices. Team meetings can be used to update staff on current planning (development control) issues and offer the opportunity to exchange ideas and information and to discuss problems. It is glaring that the one-man-show syndrome has taken centre stage. The study established that there is no flexibility, therefore making use of and improving the skills and experience of all staff on matters of development control is just a dream.

This culture which ought to be positive yet otherwise has discouraged innovation at all levels. Management according to most developers are not easily accessible and open to ideas about change. This is quite demotivating to them.

4.5 Infrastructural Support

The study also endeavoured to establish how development control is influenced by the availability of infrastructure. The study hinged this on the fact that planning departments require heavy presence of infrastructure. This was pursued in terms of interrogating the availability of basic facilities like hardware and software availability, human resource like the inspectorate department such that once an approval is made (with or without conditions) its implementation is compliant with what was approved.
4.5.1 Site Visits

Thika Municipality has one vehicle available to the planning department only twice a week to undertake inspection of development control within the municipality. It should be appreciated that a day in development is such a long time to warrant enormous change in landscape (complaint and otherwise).

Site visits is never restricted to technical officers only. For instance a site visit by elected members may be of value in informing the decision. There are a lot delays resulting from site visits by management and political leadership. No alternatives are offered during decision making sessions like use of photographs, slides or other illustrations at technical committee meetings to improve understanding of the application in its wider context. Lack of site visits in some instances has meant that decision on a difficult or controversial application is delayed.

4.5.2 Information and Communication Technology

The need for use of Information and Communication Technology (ICT) by planning authorities in Thika Municipality is significant and not an overestimation when it comes to development control.

One would expect total embrace of internal use of technology such as the introduction of computerised case handling systems, development of Geographic Information Systems (GIS), the introduction of electronic communication (e-mail), the exploitation of web technology is becoming increasingly important for planning authorities, particularly in terms of public access to information. The study found out that the planning department has hardware (the computers) but without necessary software to enhance its operations as the champion of development control.

However the study found out that in terms of the sharing of information electronically between planning authorities, the municipality scored fairly well, but in terms of expanding the use of GIS the study can report that this is below expectation of a planning office. This implies that most GIS-related work is outsourced from the Ministry of Lands offices.
Lack of this corporate approach to the adoption and exploitation of ICT is key to impairing efforts to proper physical development and control. In the same token it frustrates the efficient commitment of adequate resources, both financial and human.

The planning department in Thika Municipality has staff with the basic skills to use the information technology effectively however further training and refresher course, which is a key element of corporate ICT strategies is conspicuously lacking.

4.6 Human Resource

4.6.1 Professional Requirements

Indicative professional requirements for planning in a planning authority according to the Planning and Development Control Manual, a Kenya Local Government Reform Programme (KLGRP) document, an urban authority of the status of Thika should have the following experts:

1) Physical Planners

2) Architects

3) Civil and Transportation Engineers

4) Sociologist/Social Planner

5) Environmentalist

6) GIS Specialist

7) Financial Analyst

8) Human Resource Specialist

9) Housing Economist
10) Land Economist

11) Economist/Economic Planner

12) Labour Force Analyst

For the above professionals to effectively carry out their mandate, they have to be supported by the following technicians:

1) Planning Assistants

2) Draughtsman with GIS Knowledge

3) Development Control Assistants

4) Architectural Assistants

5) Engineering Assistants

6) Research Assistants

However, in the study found out that in the Thika Municipality, there is two Physical Planners, one civil engineer and a financial expert. There is no Architect, GIS expert and the other key experts plus the technicians as advised by the KLGRP documents.

This is an oversight which may be contributing significantly to some of the glaring challenges facing development control in this municipality.

4.6.2 Training and Information for Staff

Training of staff is a key human resource component for any organization that intends to work efficiently. At the planning department, for them to achieve that level of efficiency, the skills of all staff should be maintained and improved and everyone should be kept up-to-date with current planning issues. In the contrary, there are no clearly worded desk instructions to offer
a useful framework to staff in dealing with casework. Talking to the staff at the planning department reveals that there is not internal training sessions meant to encourage the exchange of information and knowledge. There are no regular assessments of training needs of each member of staff as may be a requirement for human resource replenishments.

4.6.3 Support Staff

Administrative and technical support staffs are a vital part of the team and have a central role to play in the successful delivery of the development control service. Staff must be well organised with clear roles and deployed to make effective use of their skills.

In the planning department of Thika Municipality, there are only three support staffs, one secretary, one messenger and a driver. This is in contrary to the recommendations in the Physical Planning and Development Control Manual a Kenya Local Government Reform Programme (KLGRP) document. This essentially impairs adaptability which is crucial, as is on-going training of existing and new team members.

This unnecessarily lean support staff base burdens the already few professional staff in terms of handling some administrative work. For instance management should consider extending the role of support staff to routine tasks such as the retrieval of decision notices for copying, acknowledgement of objections, printing, minor planning enquiries at the front desk.

Moreover this sheer lack of technicians tends to assume some point deliberately or otherwise that technicians are not a useful resource and cannot advise on straightforward applications, monitor developments, carry out much of the processing of housebuilder and advertisement applications and cannot prepare material for committee meetings. This is a grave assumption on the part of the employer.

4.6.4 Competence of the Political Leadership

Training is necessary for all councilors involved in the planning process. It applies both to those who are directly involved in making planning decisions and to councillors who may become involved in the process when representing the interests of their constituents. This is one lacking scenario which could be significantly be contributing to the kind of development control seen in Thika Municipality.
All councilors, whatever their role in planning matters, seem not to bother seek to develop a clear understanding of their role and responsibilities. They are not familiar with the key principles and elements of the planning system and are not up-to-date with changes in policy and legislation. Partly this could be blamed on the lack of a training programme for councilors.

4.7 Dispute Resolution Mechanism

4.7.1 Satisfaction Indicators

This section discusses instances when complaints are raised, how do they get handled? Some of the indicators of satisfaction for regular users of the planning services are: the ease of access by person and by telephone; the speed of response by telephone and correspondence; staff understanding, helpfulness and knowledge; and the quality of information available. For this to be done effectively, a planning authority should set standards and targets which meet the expectations of users and communicate these standards. This in a number of government offices is called Service Charter. There is none in the planning office of Thika Municipality.

This implies that performances against the targets are never monitored and procedures are never amended as necessary. They are no named complaints officer thereby increasing the number of formal complaints. This is further exacerbated with lack of use IT for more consistent handling and analysis of all non-routine contacts.

4.7.2 User Forums

There are never any user forums organised the planning department. It is important to note that workshop sessions or forums with developers and community groups can help the planning staff improve their understanding of customer requirements. Equally they offer the opportunity for customers to give views on the quality of the service and scope for improvement. An informal liaison group involving elected members can be a positive forum for discussion on design issues. When such kind of a forum lacks, like it is in Thika Municipality, then some of the dispute-related challenges experienced should not really be a surprise.
4.8 Customer Care

4.8.1 Users of the Service
Users of the development control service and the general public have the right to expect:

- planning applications to be decided promptly, without extra costs incurred through unavoidable delay;

- easy access to information about applications which are likely to affect them;

- an up-to-date development plan on which decisions are based;

- consistent decision making, with applications granted as a departure from the development plan adequately justified;

- constructive and prompt answers to planning queries; and

- complaints to be thoroughly investigated.

The study found out that planning applications in Thika Municipality are decided upon on condition that it is from a known politician, or a known businessman. If one’s applications do not fall within such categorization, then one will have to wait until the department has mercy and of course with extra costs incurred through unavoidable delay. For instance travelling there every other time to plead for the service, making follow-ups with phone calls among others.

Of course as discussed earlier there is no up-to-date development plan on which decisions are based meaning that there is no consistent decision making, with applications granted as a departure from the development plan adequately justified.
There are no constructive and prompt answers to planning queries, questions are met with undue arrogance and complaints are never thoroughly investigated as it should be expected unless the case involves a big politician or a businessman or woman.

4.8.2 Written Guidance for the Public
None of such is found in the planning department of Thika Municipality. The implications are that there is no clear and easy to understand guidance explaining how the planning process works and cover issues such as how to make an objection and appearing at committee.

4.8.3 Complaints from the Public
The expectation is that complaints from the public should be dealt with swiftly through an agreed procedure. This is possible if a planning department has a complaints officer which is not the case in this Planning Department, meaning that all complaints always go directly to the head of the department. Where there may be grounds for a claim of maladministration against the planning authority in relation to the decision making process, the matter may be referred to the Local Government Ombudsman.

4.8.4 Monitoring Customer Care
This should be an on-going priority which is never done at the planning department in the Thika Municipality. Possible methods include the use of questionnaires that can be sent out with all decision notices to provide a continuing indication of customer satisfaction.

4.9 Specialist Skills and Advice
The availability of advice from specialists is an essential resource for development control officers. Apparently all qualified practitioners working in Thika stay in Nairobi and because of that distance they tend to charge prohibitively. As a backlash to service provision, developers tend to seek services of less qualified professionals which in essence affect the quality of service in various fronts. Firstly, most quacks do not understand what regulations expect from them thereby making them prone to manipulation by the authorities. Secondly, if the first case is true then it follows that the developer ends up suffering.
4.10 Summary

4.10.1 Urbanization Facts and Trends

Urbanization is a reality which is central to economic growth. In Kenya, it is estimated that urban areas will account for 16.5 and 23.6 million people by 2015 and 2030 respectively. Key to note too is that urbanization forms the fulcrum of economic growth globally. For instance it is much easier to supply utilities to a more agglomerated population than a sparse one. Anecdotal evidence suggests that urban areas account for a large share of growth in Kenya. For example, 70% of Kenya’s GDP is generated by a pool of five cities only – Nairobi, Mombasa, Kisumu, Nakuru and Eldoret, where Nairobi alone generates 50% of the total GDP. That notwithstanding, provision of services to urban population and the accompanying urban economy (the firms etc) are not met. This has constrained the productivity of businesses and negatively-impacted on the quality of life of the residents.

In Thika, rapid urbanization has left it with huge unmet demand for critical infrastructure and basic services which has constrained the productivity of businesses and negatively impacted the quality of life of the residents. It is also a fact that highly visible result of poorly-managed urbanization is the massive expansion of overcrowded and impoverished informal settlements. The framework for management of Thika is very weak, mandates of both devolved and national agencies overlap, responsibilities are fragmented, mechanisms to ensure accountability barely exist and key institutions meant to manage the urbanization process suffer from weak capacity.

4.10.2 Legislative Weaknesses

Physical Planning Act Cap 286 is the main legislation that governs spatial planning in the country. The new Constitutional dispensation has created an urgent need to re-evaluate this statute since it (the constitution) has introduced new governance structures in the form of devolved government, citizen rights, citizen participations, expanded definition of land and new categorization of land tenure. Physical Planning Act (Cap 286) is out of tune with the new devolved governance structure. It does not ingrain citizen rights and participation, neither does it articulate Constitutional values and principles and define land in a narrower sense.
Since the enactment of the Physical Planning Act Cap 286 fundamental changes have taken place in the way planning is done. These changes cannot be accommodated by the Physical Planning Act. For instance;

- The Act does not provide for definition of stakeholder participation; Public Private Partnership (PPP); Integrated Development Planning (IDP); Rural Planning; Resource Based Planning (Marine Planning); Extra territorial/trans boundary Planning; Metropolitan planning and special planning needs for the ASAL regions.

- Definition of land forms another front for contention. The Constitution defines land broadly beyond the definition provided in the Physical Planning Act. That land means:-(a) the surface of the earth and the sub surface rock, (b) any body of water on or under the surface, (c) marine waters in the territorial sea and exclusive economic zone, (d) natural resources completely contained on or under the surface, and (e) the air space above the surface. The PPA defines land to include any land covered with water, and any buildings or other things attached to land, and any interest or right of easement in, to or over land. The implication is that the horizon of planning has expanded in relation to the definition of land in the Constitution. More so the recognition of land as a resource other than a commodity underscores the need to plan land as a resource in a sustainable manner.

4.10.3 Physical Development Framework

Non-existence of spatial development framework forms the backbone of the physical development challenges in Thika. Principally once development agenda lacks a spring board on which to launch its operations, then it will be foolhardy on the implementers to realize any success in their endeavours. Thika Town has been a victim of this.

On the existing spatial development framework, the town was found to be struggling with the pronouncements in the various laws and policy documents to justify its realisation of development control. It is common knowledge that for any urban area to benefit from development control, some fundamental tools must be there. These include;

i. a physical development plan
ii. area action plans developed from the physical development plan

iii. zoning policy guidelines generated from the area action plans

On how to go about developing a spatial framework, PPA Cap 286 is very clear in Part (IV) (A & B) (*Physical Development Plans*) Sections 16 to 28 and Part (V) (*Control of Development*). If this was religiously adhered to then the kind of urban spatial mess that is typical of Thika Municipality would not be seen.

Further in the new dispensation, physical planning is still given the due status it deserves in the build environment. The County Government Act is equally non-equivocal on how spatial development framework could be realized. Reading Section 108 (*County Integrated Development Plans*), Section 109 (*County Sectoral Plans*), Section 110 (*County Spatial Plans*), and Section 111 (*City or Municipal Plans*), one would appreciate how elaborate this piece of legislature is regarding the organization of Kenya’s urban space.

### 4.10.4 Human Resource Capacity

The study noted that the number of workers in charge of physical planning management is insufficient. This is exacerbated by lack of enough expertise base which do not meet the recommended threshold as per the Kenya Local Government Reform Programme (KLGJP), Local Authorities Service Delivery Tools; *Manual 3: Planning and Development Control*. This piece of document prescribes the kind of human resource specialization which can convincingly manage an urban area satisfactorily. This prescription is clear on page 17 of the manual, item 3.2 Indicative Professional Requirement for Planning in a Local Authority. By ignoring this, Thika Municipality fell into the HR mess which eventually affected performance of the few professionals who are there and hence compromised the interpretation of what the policies and laws are saying with regard to development control.

### 4.10.5 Stakeholder Participation

To be effective any decision to approve and implement any development application, the spirit of ownership and acceptance must be inculcated throughout the process. Principally it should be a widely-consulted resolution to develop, approve and implement any development application. In case of Thika, there is blatant lack of substantive dialogue with the groups that
matter. This lack of recognition that Thika Municipality as a community is made up of a myriad of groups with diverse backgrounds and needs forms a key weakness point towards realizing a well-serving development control framework for the town.

4.10.7 Devolved Urban Management System – The Transition

The new constitution promised the devolved system of governance. This would principally mean that even physical planning under which development control is was to be managed by the locals through the spirit of participation. The Urban Areas and Cities Act in section 12 (1) is very clear on how the urban areas in Kenya are to be managed. However this is yet to be realized in Thika Municipality since the disease of power consolidation by the executive (i.e. the Governor’s Office) is out hammer and tongs to frustrate such an endeavor.
CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Current and emerging realities demand for more responsive and innovative legislation and planning approaches. These realities include: Rapid rate of urbanization characterized by informality in urban development, uncontrolled urban growth and sprawl, and acute shortage of housing and inadequate provision of infrastructure and services.

The demographic trends of high population growth in Thika Municipality pose new challenges which should be addressed through planning. These challenges include management of land and other natural resources: land fragmentation, encroachment into environmentally fragile areas, rational provision of services and infrastructure and poverty.

This study findings and recommendations build on the experience of Thika Municipality planning authority in providing a high standard of service in development control. Many examples of good service delivery can be identified, but there is scope for further improvement. The advice should be of interest to all those involved in the development control process, particularly councillors, planning officers, applicants, consultees and the general public.

The legal framework attaches a high priority to the provision of a high quality development control service. Speed of decision making is only one indicator of a good development control service. Providing a high quality service requires clear and transparent procedures, efficient working practices and ensuring that development adds to the quality of our surroundings.

Institutional and capacity challenges bedeviling Thika Municipality may not be attributed to the town management structure per se. Legislations regarding physical planning and deployment of workers is done at national level. Harmonization of how different government agencies operate at such a local level then was also at the mercies of the national government. For instance, in many occasions one would find NEMA and the local government working at cross-purposes. NEMA officers at such a local level felt that they are answerable to the Nairobi office, so it wouldn’t matter much how urgent an application would be as long as they are working within their timelines.
Deployment of Thika Municipal was also at the mercies of the then Ministry of Local Government. They would transfer as they wished, they would deploy as they wished. No inventory in terms needs assessment of human resource capacity was ever done. Management of Thika Municipality was simply a victim of circumstances.

Allocation of resources through LASDAP-LATF nexus was bedeviled by a lot of politics. As one may recall, local councilors were the alpha and omega; no allocation of any kind of resources within the municipality would be done without their poking holes into it however meaningful it would be to the development of the town. This would transcend to all other facets of development within Thika Municipality including physical planning and hence development control. This in essence would affect the department a great deal since it often fell a victim of budget cuts. This would frustrate its development agenda, including improving its IT section, Customer Care component, motivation of the workers in general among other key considerations that are fundamental in resource mobilization of a working and efficient development control section.

It is either the employer (Public Service Commission – PSC) lacked evidence regarding the kind of human resource personnel it had in Thika Municipality. A lot of complaints were noted regarding how development control was implemented. None of such complaints would reach the employer, or if it ever reached them then they simply deliberately ignored it. What they didn’t know was that by ignoring, they acted as key agents to failure of development control in Thika Municipality.

5.2 Recommendations

5.2.1 Enact New Physical Planning Act

This may look like a national responsibility. No doubt it is. However, it forms the basis for physical planning in the country.

It is evident that legislative intervention through re-writing of the Planning Law is the only way to address the problems associated with the current PPA as it is. Other options such as administrative action, piece-meal amendments, would not address the problems adequately.
Furthermore piecemeal amendments would produce patch work in legislation leading to incoherence and inconsistency.

The legislation that will be enacted through this initiative should be aligned in such a manner as to facilitate the delivery of the Constitutional Promise. Important aspects of this realignment should include: - allowing planning to be undertaken at all the levels of government (national and country), embedding principles and values therein for example, equity, social justice, equality and sustainability, and engendering effective citizen participation in the planning process; entrench the Constitutional principles on land, resource and environment management.

The new law should take cognizance of paradigm shifts in planning and thus be able to address the unrelenting existing challenges and emerging realities. For example inability to provide land for urban expansion and development, a disconnect between infrastructure planning, investment promotion and service delivery.

The new legislation should incorporate an effective conflict resolution mechanism by providing for inclusive conflict resolution institutions and clearer means of implementing their decisions/verdicts.

Planning is a concurrent function of County and National Governments. The two levels of Government must co-operate in the delivery of their Constitutional mandates. The Physical Planning Act which was enacted under the old Constitutional order will not appropriately function under the new order. There is need to re-write Planning law in order to capture the aspirations of the Constitution.

5.2.2 Improvise Physical Development Framework

As indicated in section 4.10.3, non-existence of a spatial development framework forms the backbone of the physical development challenges in Thika Municipality.

Even though the municipality failed to take advantage of PPA Cap 286 Part (IV) (A & B) (Physical Development Plans) Sections 16 to 28 and Part (V) (Control of Development) to develop a spatial framework, all is not lost. As efforts to amend PPA Cap 286 is on course, such vigour must also be seen in embracing the provisions in the County Government Act
Section 108 (County Integrated Development Plans), Section 109 (County Sectoral Plans), Section 110 (County Spatial Plans), and Section 111 (City or Municipal Plans).

The management of Thika Municipality must endeavor to formulate a physical development framework. This will form the basis for making development control decisions. It will also go a great deal in giving the management a basis for doing a zoning policy framework. This will enhance decision making and also form a good elevation for apportioning responsibilities and holding the workers accountable in cases of misconduct. The same physical development framework will form a good basis for evaluation and monitoring of development. It will help the management to take stock of what is working and what is not for ease of re-planning. Otherwise as the situation is, things will just be done as deemed fit by the executive and the Thika residents won’t have any document against which to hold them accountable for any wrong-doing in so far as development control is concerned.

5.2.3 Improving Human Resource Capacity

The management of Thika Municipality should endeavour to meet the recommended human resource threshold as per the Kenya Local Government Reform Programme (KLGRP), Local Authorities Service Delivery Tools; Manual 3: Planning and Development Control, page 17, item 3.2 Indicative Professional Requirement for Planning in a Local Authority. At least the town should employ the following; physical planners (and assistants), architects (and assistants), civil and transportation engineers (and assistants), social planner, environmentalist, GIS specialist, Financial Analyst, HR Specialist, Land Economist, and draftsmen. With this robust labour force, the municipality will be certain about one thing, with a good head things will be done very professionally.

5.2.4 All-inclusive Development

Decisions regarding planning, approvals and implementation of the same must be widely-consulted. Let decisions that are going to affect Thika residents not be done at boardrooms. This is a diverse community, with diverse interest.
5.2.5 Embrace the new Urban Management System

The Urban Areas and Cities Act in section 12 (1) states that the management of a city and municipality shall be vested in the county government and administered on its behalf by –

(a) a board constituted in accordance with section 13 or 14 of this Act;

(b) a manager appointed pursuant to section 28; and

(c) such other staff or officers as a the county public service may determine.

Regardless of whether this piece of legislation is going to leave the executive a lame duck should be a debate for another day. In the meantime this board should be constituted to run the affairs of this town.

5.2.6 Other Areas Requiring Interventions

5.2.6.1 Management Commitment

Managers must promote a positive approach to service delivery and seek opportunities for improvement. They must ensure staffs are aware of what is expected from them.

5.2.6.2 Job Description/ Appraisal

Clear, up-to-date and specific job descriptions supported by a system of performance appraisal are required.

5.2.6.3 Support Services

Support should be well resourced with clear-cut roles and an emphasis on team working. Opportunities for the greater involvement of technical support in handling minor applications, dealing with enquiries and carrying out site visits should be maximised.

5.2.6.4 Information and Communications Technology (ICT)
ICT has the potential to achieve significant improvements to the service. It needs to be supported by adequate training.

5.2.6.5 Performance Monitoring

Targets should be set performance in relation to these targets monitored and action taken as appropriate.

5.2.6.6 Policy Context

Development Plans

Priority should be given to the preparation of local plans that are relevant to current and emerging issues.

Policy Monitoring

Political leadership should establish a monitoring framework to assess consistency in the application of policy

5.2.6.7 Processing Applications

Registration

Applications should be registered or declared invalid within the legally stipulated time span

Revised Schemes

Be prepared to refuse permission rather than wait indefinitely for amendments.

Reports

Succinct reports highlighting key issues are required

5.2.6.8 Committees

Re-introduction of the technical committee meetings and full-council meeting
5.2.6.9 Code of Conduct

Codes of conduct are helpful in explaining issues such as the weight to be attached to development plan policy, the criteria for continuation of applications or site visits and the implications of decisions being taken contrary to officials' advice.

5.2.6.10 Training

Planning can be a complex subject and it is important that the management is familiar with the key principles and elements of the planning system. They should also be kept up-to-date with developments in policy and legislation with opportunities for training in specific issues such as design.

5.2.6.11 Customer Care

The standards that the public can expect should be clearly specified. This should cover issues such as how to make an objection, appearing at committee, etc. Guidance should also indicate how applicants can assist the efficient handling of their applications.

5.3 Areas for Further Research

This study proposes the following areas for further research:

i. According to the Urban Areas and Cities Act, Section 12 – *Management of Cities and Municipalities* – part (1), the management of a city and municipalities shall be vested in the county government and administered on its behalf by a board. This legislation was enacted in 2011 two years before Kenya’s elections in preparation for the devolved governance units. However two years after elections, none of the county governments have instituted the management boards. Lack of these boards mean that urban management is still left in the hands of politicians, one reason why this legislation was enacted. This is a challenge that requires an interrogation.

ii. Development Control is a tool meant to operationalize Physical Development Plans through spatial zoning policies. Most urban areas have embraced the idea of formulating Physical Development Plans and hence spatial zoning policies,
development control cannot be carried out in a vacuum. A study should therefore be conducted with a view to establishing the hurdles impairing formulation of these Physical Development Plans since without them; no meaningful development control can be undertaken.
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Appendix

Appendix 1 Questionnaire

QUESTIONNAIRE

The Operational Challenges of Development Control in Urban Areas

A Case Study of Thika Municipality, Kenya

Candidate

MUCHEMI NDUTHU
REG: B63/64865/2010

The Study’s Main Objective

This study wants to conduct an analytical evaluation of the institutions responsible for development control and be able to establish the operational challenges facing development control in Kenya’s urban areas. This will be done by focussing on the following specific objectives.

i. To examine the actual development control process as applied in Thika town.

ii. To identify the operational challenges behind the current level of development control in Thika town

iii. To propose policy guidelines to improve development control regime in Kenya

Informed Consent

As a good gesture to research ethics, I find it prudent that I ask for your consent. Consequently I am therefore bound by the following;

a. Your responses will be treated with CONFIDENTIALITY

b. The study DOES NOT intend to associate any of the responses in this questionnaire with you or your associates or your firm.

c. ANY divulgence if so occur, will be my responsibility
By the above, will you accept to respond to the questions in this questionnaire?

<table>
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<tr>
<th>01</th>
<th>Yes</th>
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<td>02</td>
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THE PHYSICAL PLANNER

Section A: History of Physical Planning in Thika Town

1. How old is Thika town?
2. What is Thika town’s size (its boundary coverage) in terms of area?
3. How it has metamorphosed?
4. Who was responsible then, with what kind of structure and responsibilities?
5. How is it different now?

Section B: Spatial (&Legal) Framework

1. What is your area of jurisdiction?
2. What legal tool established the office of the planner (is it the defunct local government Act?)
   a) If yes doesn’t this pose a challenge to your work
   b) How?
3. Does Thika town have a physical development plan?
   a) If yes, any copy to appreciate this?
   b) If not, why not?
4. Does it have a zoning spatial policy framework?
   a) If yes, any copy to confirm?
   b) If not, why not?
5. Do you carry out development control?
   a) On what basis (a physical development plan or a zoning spatial policy framework or part development plans) do you do this?
   b) What guides you in making decision on whether an application is valid or not?
6. What specific challenges does your office have with regard to spatial framework under which you execute development control responsibilities?

Section C: Organizational Framework

1. Who are the other relevant national government agencies that you work closely with?
   a) In times of development application, do you circulate to these agencies to solicit their comments?
   b) If yes, under what circumstances?
   c) Any specific challenges related to this kind of arrangement?

2. These applications should normally come back for technical evaluation by the technical committee; does the town have one in place?
   a) If not why not?
   b) If yes, what is its composition (in terms of membership)?
   c) Do you think this membership meets the threshold of the basic membership requirement of a technical committee?
   d) What is the organizational relationship amongst its membership?
   e) Any specific challenges related to this kind of arrangement?

3. Does the town normally have a full council meeting?
   a) If not why not?
   b) Whatever verdict is given for any development application (approved, approved with conditions or rejected) must be ratified by the full council, is that the case with Thika town?
   c) Any specific challenges related to availability of the full council?

4. After ratification by the full council, whatever verdict is given to any development application (approved, approved with conditions or rejected), how do you communicate to an applicant?
   a) a sample of evidence to confirm?

Section D: Infrastructural Support
1. In terms of very basic facilities, Planning departments require heavy presence of Information Technology. Would you tell me more about this in terms of the following

   a) Hardware availability?

   b) Software availability?

   c) Human resource?

2. Does Thika town have an inspectorate department?

   a) Once an approval is made (with or without conditions) who ensures their implementation is compliant with what was approved?

   b) If your office is involved, how do you ensure full compliance is achieved?

   c) Have you had instances where the compliance is altered?

   d) Inspection requires availability of standby vehicle. Is that the case in Thika town?

Section E: Dispute Resolution Mechanism

1. What mechanism do you have in times of dispute resolution?

Section F: Relationship with Agents

1. Development applications require practitioners whose qualifications, integrity, accountability among other eligibility criteria are above board. How do you ensure that happens?

THANK YOU
OTHER TECHNICAL COMMITTEE MEMBERS

Section A: Spatial (&Legal) Framework

1. What is your area of jurisdiction?

2. Does Thika town have a physical development plan?
   a. If yes, any copy to appreciate this?
   b. If not, why not?

3. Does it have a zoning spatial policy framework?
   a. If yes, any copy to confirm?
   b. If not, why not?

4. Do you carry out development control?
   a. On what basis (a physical development plan or a zoning spatial policy framework or part development plans) do you do this?
   b. What guides you in making decision on whether an application is valid or not?

5. What specific challenges does your office have with regard to spatial framework under which you execute development control responsibilities?

Section B: Organizational Framework

1. Development applications should normally (after circulation) come back for technical evaluation by the technical committee; does the town have one in place?
   a) If not why not?
   b) If yes, what is its composition (in terms of membership)?
   c) Do you think this membership meets the threshold of the basic membership requirement of a technical committee?
   d) What is the organizational relationship amongst its membership?
   e) Any specific challenges related to this kind of arrangement?
2. Does the town normally have a full council meeting?
   a) If not why not?
   b) Whatever verdict is given for any development application (approved, approved with conditions or rejected) must be ratified by the full council, is that the case with Thika town?
   c) Any specific challenges related to availability of the full council?
3. After ratification by the full council, whatever verdict is given to any development application (approved, approved with conditions or rejected), how do you communicate to an applicant?
   a) a sample of evidence to confirm?

Section C: Infrastructural Support

1. In terms of very basic facilities, Planning departments require heavy presence of Information Technology. Would you tell me more about this in terms of the following
   a) Hardware availability?
   b) Software availability?
   c) Human resource?
2. Does Thika town have an inspectorate department?
   a) Once an approval is made (with or without conditions) who ensures their implementation is compliant with what was approved?
   b) If your office is involved, how do you ensure full compliance is achieved?
   c) Have you had instances where the compliance is altered?
   d) Inspection requires availability of standby vehicle. Is that the case in Thika town?

Section D: Dispute Resolution Mechanism

1. What mechanism do you have in times of dispute resolution?
Section E: Relationship with Agents

1. Development applications require practitioners whose qualifications, integrity, accountability among other eligibility criteria are above board. How do you ensure that happens?

THANK YOU
AGENTS

1. Give me a brief history of working as a consultant in Thika town?

2. How it has its management metamorphosed?

3. How is it different now?

4. Does Thika town have a physical development plan?
   a. If not, on what basis do you apply for development?

5. Does it have a zoning spatial policy framework?
   b. If not, on what basis do you apply for development?

6. On what basis does council evaluate applications?
   a. What challenges do you think this arrangement poses on the evaluation credibility?

7. Have you had any dispute within the council’s jurisdiction regarding any development application?
   a. How was the dispute resolved?

8. What challenges do you face as a consultant at the time of implementing your approved projects?

THANK YOU