

Building plans approval explained

Most architects, many builders, certainly the majority of property developers, and a significant number of private home owners, have had some kind of exposure to the processes of applying for municipal approval of development proposals. This has either been in the form of a simple building plan application or via the more delicate procedure of changing land use rights by means of a consent or rezoning in order to facilitate the re-development of a parcel of land.

Unfortunately, many of these people will have some painful memories associated with the complexities of local authority approval processes. As somebody on the “other side of the fence”, a council official, I sympathise particularly with those who are unaware of the nuances and the pitfalls to be encountered when trying to get to grips with the various pieces of legislation that govern the use of land and buildings.

This brings us to the purpose of this article. My objective, stated simply, is to try to explain how and why the system of building control operates, and to shed some light on aspects of building control that are not always easy to understand. Although the principles discussed are generic, it should be born in mind, however, that my approach is from the vantage point of a large metropolitan municipality, and specifically that of the City of Johannesburg.

Scope

I propose, by means of these articles, to describe the legislation and standards that form the basis for all local authority building control measures; to clarify the difference between “building regulations” and “deemed to satisfy rules”; to briefly describe the interaction between this legislation and a town planning scheme; and to list important town planning procedures that need to be attended to prior to obtaining building plan approval.

Your indulgence is requested, however, in that while I am a practitioner of building control, I am not a legal expert – I cannot point you to interpretations of the finer points of legislation, or a dissection of judgements and precedent.

I am confident, however, that the reader will benefit from a logical “unpacking” of the background as well as the practical interpretation and application of building control legislation and standards in the day-to-day operation of a local authority as it interacts with the property development “community”.

And that, ultimately, is what this process comprises – an interaction between two parties – the City council and the owner or developer of a piece of land and its buildings. Both parties have a vital interest in the process of developing land and erecting buildings. Ideally, this interaction should assume the characteristics of a partnership rather than a confrontation, as bureaucratic mystique is unravelled and dispelled on the one hand and, on the other hand, there is a growing appreciation of the importance of development controls that are applied and managed by an impartial agent.

The legislation

The National Building Regulations and Building Standards Act (Act 103 of 1977 together with its subsequent amendments) is the cornerstone of building control in South Africa.

And the National Building Regulations (SABS 0400) are essential to the implementation of this legislation.

Prior to the promulgation of this Act, every town council in South Africa had its own set of building by-laws, many of which were archaic and convoluted, to say the least. Act 103 of 1977 swept the old order aside and introduced a fairer dispensation, which was aligned with the technical realities of building construction and design in the late twentieth century.

Derived from the Nordic model, this piece of legislation was intended to “provide for the promotion of uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities; for the prescribing of building standards; and for matters connected therewith” (to quote the “long title” of the Act).

Its aim – which was given effect when the National Building Regulations were published – was to provide a simplified and uniform system of building control, irrespective of whether this was to be accomplished in a country town or in one of the major urban centres. The primary focus of the Act was not on constricting design, or prescribing compliance with a myriad of technical factors, but rather on simply ensuring that buildings would be designed and constructed in such a way that people could live, work and play in a healthy and safe environment.

That is not to say that the Act and its regulations are unsophisticated – on the contrary, this was a progressive piece of legislation in its day and the regulations that were published pursuant to the Act, while dated in certain respects in today’s terms¹, were based on a system that has achieved world-wide recognition in the subsequent two decades. And this brings one to the “nub” of the question, which is the National Building Regulations themselves.

The Building Regulations

Building by-laws were traditionally prescriptive in nature – they prescribed in definite terms and in considerable detail what a designer had to do in order to obtain the necessary approval to build. This was a narrow approach that worked well in the early years of the century, but it became an impediment to the ideal of innovation in design and construction as buildings became more sophisticated; and it perpetuated a homogeneous but constrictive technical paradigm.

¹ I must qualify this statement by adding that this situation has been remedied in that the SABS has just completed an exhaustive process of updating and revising the National Building Regulations.

With the formulation of the National Building Regulations², an entirely different approach was adopted, whereby each “regulation” prescribes only the performance required from a building or its elements and components. The onus is then on the designer to prove that a specific design complies with the performance requirements.

These performance regulations are, however, accompanied by a set of deemed to satisfy rules, which are a set of specific prescriptions. Any designer who complies with these rules is automatically considered to have met the requirements of the regulation.

Thus, the system allows for individualism and innovation, but it also provides a set of tools that are readily applicable in the case of more conventional buildings. This system is based on the “Nordic five-level structure”³. The “levels” of the Nordic system are as follows:

Objectives – addressing the essential interests of the total community with regard to buildings;

Functional requirements – stating in qualitative terms the required performance of buildings or elements thereof in order to achieve the stated goal;

Performance requirements – stating in quantitative terms the performance required to achieve a functional requirement (these, in effect, are the “regulations”); and

Verification methods – systems or methodologies that enable verification of compliance with performance requirements. There are two categories of verification methods: the first is performance-based (testing, assessment and the application of well-established engineering principles); the second makes use of deemed to satisfy rules (a set of prescriptions that satisfy performance requirements). The latter is, essentially, the fifth level in the system.

Drawbacks

Unfortunately, the culture of local government in devising administrative systems and procedures for building control has, by default, created a paradigm whereby the prescriptive aspects of the National Building Regulations are deferred to and given prominence to the extent that some building control practitioners have, in fact, forgotten about the fact that building control is essentially performance-based.

Applicants – that is building industry professionals and property developers – benefit, by and large, from a regime of ensuring compliance with the deemed to satisfy rules, simply because of the predictability and certainty involved.

² Published in the form of SABS 0400-1990, *South African Standard Code of Practice for the application of the National Building Regulations*, by the South African Bureau of Standards, Pretoria.

³ Watermeyer, R.B., and Milford, R.V.: “The Use of Performance Based Building Codes to attain Sustainable Housing Objectives: The South African Approach” *Global Policy Summit on the Role of Performance-Based Building Regulations in Addressing Societal Expectations, International Policy, and Local Needs*, National Academy of Sciences, Washington, DC, November 2003, pp 9-10.

But it is also important to assert the right to submit unconventional designs for approval. The sole requirement is that such proposals should be accompanied by a comprehensive motivation on the basis of recognised tests or a rational application of engineering principles, demonstrating to the satisfaction of the local authority that the performance requirements of the relevant regulations have been met by the design.

And should a local authority prove to be obdurate or unreasonable in assessing such proposals there is recourse by way of an appeal to the South African Bureau of Standards Review Board, a body that has been set up to arbitrate in instances where an applicant disagrees with the local authority in regard to the approval or refusal of a set of building plans.

Other applicable laws

The National Building Regulations and Building Standards Act, in setting out the parameters for approval by a local authority of building plan applications, makes the following stipulation⁴:

“If a local authority having considered a recommendation referred to Section (6) (a)⁵... is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall grant its approval in respect thereof.”

The key words here are “any other applicable law”. Local authorities, in accordance with various provincial ordinances, regulate the use of land for development by means of town planning schemes, effectively a set of rules setting out the administrative and technical parameters for such things as changes in the use of land and buildings (also known as “rezoning” or an “amendment scheme”), sub-division of land, consents such as building line relaxations and site development plan approvals and the establishment of townships.

Insofar as any one of these aspects of a town planning scheme has a direct impact on a building plan application, the local authority is then required to ensure that the building plan application in question complies, not only with the National Building Regulations and Building Standards Act, but also with specific clauses in the relevant town planning scheme.

An example

Let's take the example of a property developer who purchases a parcel of land comprising an existing house and its outbuildings, with the intention of constructing a small office block on the site.

The developer instructs an architect to design the office block and to submit drawings to the local authority for approval. The architect proceeds in terms of

⁴ Section 7 (1) (a) of Act 103 of 1977 as amended.

⁵ This is the recommendation made by the appointed building control officer, or those to whom he has delegated this function, that a building plan application be approved by the local authority. Section 5 of the Act deals with the appointment of a building control officer by the local authority, and Section 6 with the functions of a building control officer.

this mandate, carefully ensuring that the design proposals comply in every respect with the deemed to satisfy rules of the National Building Regulations and that the application itself is submitted in the format required by the Act and regulations.

The local authority, however, refuses to approve the application “on town planning grounds”.

The architect approaches the local authority for clarification and is advised that the parcel of land is currently zoned “Residential 1”, which means that the only kind of building that is permitted on the stand is a house and its outbuildings. In order to erect and use an office block on the site it would be necessary to formally apply for the site to be rezoned “Commercial” in accordance with both the applicable town planning scheme and the relevant provincial ordinance.

This is a separate process, involving town planning expertise, and could take up to 18 months to complete. In addition, let’s say that the proposed office block in my hypothetical example is to be built directly upon the street boundary, whereas the town planning scheme dictates a six metre “building line” – a zone of six metres from the street where no buildings may be erected.

In order to erect a building within this zone it is necessary to apply for the council’s consent, again in terms of the town planning scheme and provincial ordinance, for the relaxation of the building line, another separate process that would take about two months to complete.

The local authority may have appeared to have been obstructive in refusing the initial application, but it can be seen that it is in fact obliged by law to ensure that the provisions of the town planning scheme (and the relevant ordinances) are applied when a property is redeveloped and therefore cannot approve the building plans until the conditions that pertain to “land use” are legally changed to permit the kind of development for which building plan approval has been sought.

Pre-conditions for building plans

There are a number of town planning procedures that must be complied with prior to submitting a building plan application to the local authority for approval. I have listed some of the most important of these procedures – bear in mind, however, that there are differences between councils, and, particularly, between provinces, in the way in which town planning schemes are set up and administered.

Township proclamation

A building plan application, other than one for agricultural buildings, can only be considered if the piece of ground on which the building is to be erected has been proclaimed as a “township”, and therefore forms a part of the urban system. There are still many parcels of land on the periphery of the major urban centres that are agricultural portions and these are often the most

sought after parcels of ground for the development of townhouses, cluster houses and retail developments, none of which can be approved without prior township proclamation.

Building line relaxation

Whenever a designer proposes that a building is built (or extended) across a building line, a separate application has to be made for the relaxation of that building line. In cases where the building line is a condition in the title deeds of the property, the application for relaxation of the building line would also involve an application for removal of that particular title deed condition in terms of the legislation governing the removal of title deed restrictions. The services of a professional town planner are essential in the latter case.

Site development plan approval

Specific land use zonings, as well as the new conditions that may be spelled out when land is rezoned, require that a site development plan is submitted to the local authority for approval prior to the submission of building plans. This process must not be confused with the site plan that is submitted with a building plan application.

Approval of a site development plan is, in itself, a formal “consent” that has to be given by the local authority in terms of the applicable town planning scheme, and involves the submission of a set of plans that shows, among other things, how the town planning rights (floor area ratio, coverage, density and so forth) are utilised in the proposed development, the layout of the development, its appearance, the use of landscaping, and any other specific factors that may be called for by a particular local authority.

Subdivision

In a set of circumstances where a parcel of land is to be divided into smaller portions, the council’s “consent” to the subdivision is required, and the subdivision must be registered at the Deeds Office before building plan applications can be submitted for new buildings on the proposed new portions. In more complex situations, application for a subdivision may also necessitate the removal of restrictive conditions of title from the title deeds and/or rezoning.

Rezoning (“amendment schemes”)

In cases where the use of a proposed building development differs from that which is permitted on a particular piece of ground in terms of the applicable town planning scheme, an application has to be made to the local authority for a change in the uses applicable to the stand, hence the popular term “rezoning” (the correct term is an “amendment scheme”, because the applicable town planning scheme is amended so as to permit a different set of uses and conditions on the specific erf in question).

This can be a lengthy process involving advertising of the intention to rezone, an opportunity for objections to be submitted to the local authority by interested and affected parties, the circulation of the application by the local authority to a number of other departments and government bodies for

comment, the preparation of an environmental impact assessment report in accordance with environmental legislation, and the calculation of development contributions (moneys that would have to be paid to compensate the local authority for the additional infrastructure that would have to be provided in view of the change in use of the stand).

A rezoning application is also required in cases where, although the use of the property remains the same, a change in conditions such as the height restriction, the coverage allowed, the density zoning or the permitted floor area ratio are necessitated by the proposed new building development.

Rezoning applications are subject to a formal hearing when there are objections by interested parties, and the final decision can also be subject to an appeal to a higher authority (such as the Townships Board).

Conclusion

Submitting building plans for approval by a local authority is a lot more complex than it seems “on the surface”, and I think it is also clear that this is a process that requires specific professional expertise and which can take a considerable amount of time.

Potential property developers, and those who are about to purchase a property with the intention of either altering existing buildings or erecting new buildings, need to realistically factor this aspect of the process into both their estimates of the time and the costs that will be involved.

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