

## ENFORCEMENT IN DEVELOPMENT PLANNING LAW

## Definition of development permission

"development permission" means a permission to carry out or retain development granted by the Planning Board or the Planning Commission either in consequence of an application **or of a development order**

# Developments that do not require permission

(a) maintenance operations which affect only the interior of a building or which do not materially affect the external appearance of the building; Provided that such maintenance works are not contrary to any order made under this Act in relation to the building;

Provided further that maintenance operations shall not include demolition and rebuilding works, irrespective of the location where such demolition and rebuilding works are carried out;

(b) the use of land for agriculture, animal husbandry and forestry (including afforestation), except where such use consists of:

(i) the erection of buildings or amounts to intensive raising of crops or animals; or (ii) the reclamation of land for agriculture by the deposit of material on such land unless such reclamation of land for agriculture can be proven to have subsisted prior to 1994;

(c) in the case of buildings or other land that are used for a purpose of any class specified in an order made by the Minister, as the case may be, under this Act, the use thereof for any other purpose of the same class;

(d) emergency works in relation to public safety carried out by Government;

(e) a use which subsisted continuously from a period when such use was not considered illegal and did not require a permit;

# Developments that do not require permission

(f) the placing of plant and machinery required for the operation of a use already covered by development permission on land within the perimeter of the site covered by the same permission of the use being operated.

(3) For the purpose of this article - (a) the use of a building resulting in an increase in the number of dwelling units in which the building was previously used; or

(b) the deposit of materials on land; or

(c) the use for the display of advertisements on any external part of a building that is not normally used for that purpose, involves a material change in the use of that building or land, or part thereof, without prejudice, in the case of advertisements, to any regulations or order made under this Act with respect to their control.

(4) For the purpose of this article, development includes clearing of valleys from accumulated sediment and development in relation to the sea includes land reclamation from the sea, aquaculture and beach developments and their related uses.

## LN107/16 insofar as Category A and B developments (Chap. 504) are concerned

10. The provisions **of articles 91 and 92 of, and Schedule 8** to, the Environment and Development Planning Act shall remain in force and be applicable in so far as they relate to notices issued under **Category A** of the Eighth Schedule and concessions issued under **Category B** of the Eighth Schedule to the Act and to requests for such notices and concessions which have not been determined by the 3<sup>rd</sup> of April 2016.

# Articles 91, 92, Schedule 8 of Chap. 504

**91.** (1) Notwithstanding the other provisions of this Act, any person **who is served with an enforcement notice** in respect of development **referred to in Schedule 8, shall have the right to claim that such notice shall not be executed.....**

(2) An enforcement notice falling within the provisions of subarticle (1), the development in question shall not be considered as having been regularised in terms of this Act unless and **until a development permission has been granted** to cover the development in question and a penalty fixed by the Authority within the limits established in article 93 has been paid...

(3) When the Authority receives an application for development permission requesting amendments, alterations, additions or extensions to a development referred to in Category A of Schedule 8, the applicant shall request the Authority to sanction the said illegal development in terms of the provisions of this Act, if such sanction is possible in terms of law. Where the illegal development has not been sanctioned no further development permission, other than for that type of development which may be prescribed by the Minister, after consultation with the Authority, from amongst the development mentioned in article 63(9)(a) and (b), may be granted with respect to the land in question **unless and until the illegal development is removed.**

# Articles 91, 92, Schedule 8 of Chap. 504

**92.** (1) The following provisions shall have effect with respect to any development which has taken place or is to take place after the date of the coming into force of the Development Planning Act\*, hereinafter referred to as "new development".

(2) **No service consisting in the supply of water or electricity** to any new development shall be provided by any authority **unless** there is in respect of such development a certificate issued by the Authority stating that the development is in accordance with a development permission or **falls under Category B of the Eighth Schedule....**

# Interestingly in previous LN 514/10..... (Proviso omitted in LN 162/16)

**14.** (1) Without prejudice to article 70 and the Sixth Schedule to the Act, when existing development on a site is wholly or partly illegal, the Authority shall refuse a development application relating to new development on that site, unless the illegal development is included for sanctioning and the illegal development complies with current policies:

**Provided that for the purposes of this regulation, a development falling under Category B of the Eight Schedule of the Act shall not be construed as illegal development.**



# Commencement notice

## Art 72 (4) [...]

Provided further that if the applicant fails to submit the commencement notice relative to the permission, **such development permission shall be considered as never having been utilised.**

# From LN 514/10 to LN162/16

- **LN514/10 REG 14 (1)**: Without prejudice to article 70 and the Sixth Schedule to the Act, when existing development on a site is wholly or partly illegal, the Authority **shall refuse** a development application relating to new development on that site, unless the illegal development is included for sanctioning and the illegal development complies with current policies....
- **LN162/16 REG 17 (1)**: When an application is submitted on a site which is subject to an enforcement notice, the Planning Board **may dismiss** the application unless the illegal development is included for sanctioning and, or any payments due as a result of any enforcement notice on site are settled prior to the issue of the permission.

# LN162/16

17. (1) When an application is submitted on a site which is **subject to an enforcement notice**, the Planning Board **may dismiss** the application unless the illegal **development is included for sanctioning and, or any payments due** as a result of any enforcement notice on site are settled prior to the issue of the permission.

(2) The illegal development may either be regularised through **a specific development application** made solely for that purpose or through a development application which includes the sanctioning of illegal development as well as the proposed new development.

(3) Where sanctioning of illegal development is being requested in a development application, **the proposal description and the drawings shall clearly indicate the development which is to be sanctioned** so as to ensure that the illegal development forms part of the development application.

(4) The proposal description of a development application and the drawings submitted **may not propose the removal of illegal development from the site**. The development application shall include only illegal development which is proposed to be sanctioned. **Any illegal development which is not indicated for sanctioning in a development application shall be removed prior to the issue of a development permission, provided that where the application is determined by the Planning Board, or the Tribunal subject to the removal of the illegal development prior to the issue of the development permission**, the period by which the applicant is required to comply with this requirement shall not exceed six months or within a period specified by the Planning Board or the Tribunal, failing which, the application may be dismissed by the Planning Board or the Tribunal, as the case may be.

# Powers of Officers (Chapter 552)

**96.** (1) The Executive Council may appoint officers for the purposes of this Act, and such officers may, upon production of proof of their identity, in order to ensure compliance with this Act or any regulations made thereunder:

- (a) **enquire from any person information** in connection with any activity or other matter regulated by this Act;
- (b) **issue stop notices or enforcement notices or stop and enforcement notices or warning notices** to any person in accordance with the provisions of article 97

# Right of entry (Chapter 552)

**94.** (1) Notwithstanding the provisions of any other law, for Right of entry. the purposes of carrying out their functions under this Act, the Executive Council and such officer, employee or committee or any other person as may be authorised by the Executive Council or the Executive Chairperson for this purpose, and if so required by the Executive Council with the assistance of the Police Force, shall have:

the right to enter any premises, public or private, at all reasonable times, and in the case of a dwelling house after giving previous reasonable notice of at least twenty-four hours and not before seven o'clock in the morning or later than seven o'clock in the evening, and inspect or survey any land, or verify whether an illegal development or activity is taking or has taken place or to take any photographs after entering or request any legitimate information from any occupier of such premises; and

(b) the right to do anything that is ancillary or consequential thereto.

(2) Any person authorised pursuant to sub-article (1) shall produce a means of identification issued by the Authority and thereon be authorised to enter the land.

# When to issue a notice

**97.** (1) If it appears to the Executive Council that an activity and, or **development is being carried out without the grant of a permission** and, or licence required under this Act or that any conditions subject to which such permission was granted in respect of any such activity and, or development are not being complied with or such activity and, or development is against this Act or regulations made under this Act, the Executive Council shall issue a stop notice to any such person carrying out such an activity and, or development:

Provided that when the illegal activity and, or development is **limited to part of the site**, the Authority may in its discretion **issue a partial stop notice** requiring the activity and, or development to be stopped forthwith only in relation to that part of the activity and, or development to where the illegal development subsists and not in relation to the whole development:

Provided further that no such notice shall be issued for **any development carried out before 1967**:

Provided further that the Executive Council **may issue a warning notice** in writing requiring illegal activity and, or development to be stopped forthwith prior to proceeding with the issue of a stop notice, which has to be abided with immediately on notification, provided that only one warning notice may be issued for the same infringement.

(2) A copy of the notices mentioned in sub-article (1) **may also be served on any representative, builder, contractor or workman on the site** and the Executive Council shall also affix such notices in a prominent position at a point of entry onto the site.

# When to issue a notice

97. (3) The Executive Council shall, in the case of a stop notice issued under sub-article (1), **also inform:**

(a) the **local council** in whose locality the land mentioned in sub-article (1) is found;

(b) the **perit** responsible for the said works and the site manager, if known, that a stop notice as aforesaid has been issued by the Executive Council:

Provided that the non-compliance with the provisions of this sub-article **shall in no case invalidate** any notice issued under sub-article (1).

(4) If it appears to the Executive Council that any activity and, or development of land has been carried out after the coming into force of this Act without the grant of permission required on that behalf under this Act, or that any conditions subject to which such permission was granted in respect of any activity and, or development have not been complied with, the Executive Council may, having regard to the provisions of development plans, planning policies and any other material consideration, serve on **the owner of the land or on the occupier of the land or on the person responsible for the acts** mentioned in the notice or any combination thereof as the Executive Council deems most expedient, an enforcement notice and sub-article (3) shall also here apply, **requiring such steps as may be specified in the notice to be taken within such time** as may also be so specified for restoring the land to its condition before the activity and, or development took place or for removing such development or for securing compliance with the conditions aforesaid, as the case may be, and in particular, but without prejudice to the generality of the aforesaid any such notice may, for the purpose aforesaid, require the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on the land of any building or other operations:

# When to issue a notice

[...] Provided that where the Executive Chairperson believes that there is an **imminent danger to the environment, an emergency enforcement notice may be served on the above indicated persons without the need of consulting the other members of the Executive Council:**

Provided further that **an appeal from an emergency enforcement notice** or the submission of an application for the retention on land of any buildings, works or development or to sanction the continuance of any use of the land to which the emergency enforcement notice relates **shall not stay** the operation of the emergency enforcement notice.

(5) The Executive Council **shall register all stop notices** and all other enforcement notices issued in terms of this Act in the index mentioned in article 57(2), and the provisions of the said article concerning indexing of conservation orders shall *mutatis mutandis* apply to stop and other enforcement notices in terms of this Act.

(6) Any notice made under this article shall contain a **detailed description of the infringements** being alleged and where applicable, a **site plan** indicating the land which is the subject of such a notice shall be annexed thereto together with any additional information as deemed appropriate by the Executive Council to clearly identify the alleged infringements.

(7) A notice under this article may include a combination of a stop notice and enforcement notice and shall be known as a stop and enforcement notice. Moreover a notice given under any of the provisions of this article, other than the immediate request stopping or prohibiting any further work or development or requiring the cessation of use, **shall take effect at the expiration of such period, being not less than fifteen days and not more than sixty days** after service thereof, as may be specified therein.



# When to issue a notice

(8) When an application for development permission has been submitted **before the expiry of the period mentioned in sub-article (7)** -

(a) for the retention on the land of any buildings, works or development to which the enforcement notice relates; or

(b) to sanction the continuance of any use of the land to which the enforcement notice relates, **the operation of the notice**, in respect of any requirement other than a requirement stopping or prohibiting any further activity and, or development or requiring the cessation of a use, **shall be suspended** pending the final determination of the application.

If the permission applied for is granted on that application and it comes into operation, **the enforcement notice shall cease ipso jure** to have effect.

(9) Any application to regularise an activity or a development or an appeal to the Tribunal from a refusal, **may be dismissed** forthwith if a requirement in the **notice** stopping or prohibiting further activity and, or development, or requiring the cessation of a use, **has not been complied with** and there is evidence to show that the notice has not been complied with during the processing of the application or during the Tribunal sittings, or if any penalty or other payment for which any person has become liable under this Act in respect of the relevant activity or development has not been paid.

# When to issue a notice

(10) The Executive Council may exercise its powers under article 100(1) **notwithstanding that a second or subsequent application intended to regularise the illegal activity or development may have been filed** with the Planning Board concerning the same or part of the same activity or site, irrespective of whether the said application is filed by the same applicant or by another applicant.

(11) Any person who feels aggrieved by any notice served on him may appeal against it to the Tribunal in terms of the Environment and Planning Review Tribunal Act, in which case the effects of the notice, other than the request stopping or prohibiting any further activity and, or development or requiring the cessation of a use, **shall be suspended** pending the final determination of the appeal..

# Onus of proof

95 (2) The Executive Council shall also undertake a review of all such activities and development carried out before the coming into force of this Act, or any other Act preceding this Act, **not being development carried out before 1967**, not in compliance with rules, regulations, plans or policies in force at the time the activity or development took place, and in respect of any such activity or development the Executive Council shall have such powers as it has in respect of an activity or development carried out after the coming into force of this Act in order to ensure that the rules, regulations, plans and policies aforesaid are enforced or, if this is not reasonably possible, to regularise any such activity or development to the extent the Executive Council deems adequate in the circumstances:

**Provided that the onus of proof that a development or activity is not in compliance with rules, regulations, plans or policies in force at the time the activity or development took place is on the Executive Council.**