



GOVERNMENT OF BERMUDA

**Department of Planning**

## Guide to Retroactive Applications

### **What is Development?**

The definition of “development” under Section 14 of the Development and Planning Act 1974 means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land or the demolition or the making of a material alteration to the external appearance of a listed building, except that the following operations or uses of land shall not be deemed development for the purposes of this Act of the land -

- a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building unless such works are carried out for the purpose of increasing the number of dwellings within a building;
- b) the carrying out by a highway authority of any works required for the maintenance or improvement or widening of a road;
- c) the carrying out by any Municipality or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- d) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling-house as such;
- e) the use of any land for the purposes of agriculture (except dairy farming or the breeding or keeping of livestock) or afforestation;
- f) in the case of buildings or other land which are used for a purpose of any class specified in an order made

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- by the Minister under this section, the use thereof for any other purpose of the same class;
- g) the carrying out of any works required in relation to the laying of roads and installation of services in accordance with a final plan of subdivision registered under section 35D of the Act.

For the purpose of the Act development constitutes as: -

- a) the increase in the number of dwellings within a building involves a material change in the use of the building and of each part whereof which is so used;
- b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended, and exceeds the level of the land adjoining the site;
- c) the following are acts of development -
- i. any act in a designated area, being an act regulated by section 28 of the Development and Planning Act 1974 and the Fourth Schedule;
  - ii. any act in a historic area, being an act for the doing of which section 31(2) of the Development and Planning Act 1974 provides that planning permission is required.

**What is  
Retroactive  
Development?**

Work that is considered “development” under Section 14 of the Development and Planning Act 1974 but has nonetheless, commenced without the benefit of planning permission.

**Retroactive  
Application  
submission**

Section 20 (1) of the Development and Planning Act 1974 provides for applications for planning permission for buildings or works constructed or carried out, or use of land instituted before the date of an application.

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Where development of land has been carried out in breach of planning permission and an application for planning permission for development is subsequently made, Section 20 (2A) of the Development and Planning Act 1974 states that, the applicant must show to the satisfaction of the Board that he was not responsible for the breach or that, at the time he did not know, and could not reasonably be expected to have known, that the development was in breach of planning controls.

When submitting such applications, a DAP 1 application form must be submitted with appropriate detailed drawings and relevant fees.

In addition, under Section 20 (2A) of the Act, the applicant **“must show”** the Board by way of an Affidavit in Support of the application sworn by the applicant or a Declaration attesting to its truth; setting out the facts which the applicant intends to use to demonstrate that he was not responsible for or aware of the breach of planning control.

If the Board is not satisfied with the evidence provided and that the applicant, in their opinion was responsible or knew of the breach then the application will be refused.

**Appeal to the Minister**

After the Board has made its decision, an applicant can appeal that decision to the Minister if, they are not satisfied with the decision. The appeal must be submitted within 21 days of receiving notice of the Board’s decision.

If aggrieved by the decision of the Minister one may appeal to the Supreme Court only on a point of law within 21 days or such longer period as the Supreme Court may allow after receipt of notification of such decision or direction; Section 61 (1) of the Development and Planning Act 1974 refers.

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**Enforcement Action**

Enforcement measures will **only be taken** if, the applicant does not exercise his right of appeal or once, all alternative measures to address the unauthorized work have been exhausted.

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