



**AN BILLE UM PLEANÁIL AGUS FORBAIRT (LEASÚ) 2009
PLANNING AND DEVELOPMENT (AMENDMENT) BILL
2009**

EXPLANATORY AND FINANCIAL MEMORANDUM

[This Memorandum is not part of the Bill and does not purport to be a legal interpretation.]

General

The purpose of the Bill is to amend the Planning and Development Acts 2000 to 2007 with the principal aim of supporting economic renewal and promoting sustainable development by ensuring that the planning system supports targeted investment on infrastructure by the State and further modernising land zoning.

The Bill is driven by the overarching ambition to strengthen local democracy and accountability, a key objective in accordance with the ongoing process of local government reform being pursued in the context of the White Paper on Local Government, by maintaining the central role of local government in the planning process.

The Bill also aims to ensure a closer alignment between the National Spatial Strategy, Regional Planning Guidelines, development plans and local area plans. A key element in the Bill is the introduction of a requirement for an evidence based “core strategy” in development plans which will provide relevant information as to how the development plan and the housing strategy are consistent with regional planning guidelines and the National Spatial Strategy. The location, quantum, and phasing of proposed development must be shown as well as growth scenarios, details of transport plans, and retail development, and proposals for development in rural areas.

The provisions of the Bill also aim to — (i) improve the throughput and performance of An Bord Pleanála — for example, by allowing the Board to reduce its statutory quorum from 3 to 2 members in respect of making decisions on specified classes of (routine) cases; (ii) remove any legal blockage to e-planning; (iii) provide for the implementation of the Law Reform Commission’s recommendation on Multi-Unit Developments (MUDS), as they relate to planning, (iv) empower planning authorities to refuse permission where the applicant has previously carried out a substantial unauthorised development or has been convicted of an offence under the Planning Acts; (v) provide for cost recovery of An Bord Pleanála’s costs across all categories of project under the Strategic Infrastructure Act; (vi) update penalties for offences; (vii) strengthen the legal effect of Ministerial guidelines; (viii) provide for the extension of planning permission in certain circumstances where

substantial works have not been carried out; (ix) give greater flexibility to effect a wider distribution of existing development levy monies and; (x) apply the powers of the Minister to issue a direction, under section 31 of the Principal Act, to local area plans (LAPs). A new consultative procedure is also prescribed in the context of the Minister issuing a proposed direction. This takes full account of the recommendations of the Joint Oireachtas Committee on the Environment, Heritage and Local Government in their March 2009 Report on this issue.

Provisions

There are 3 parts in the Bill, which contains 36 sections.

Part I — Preliminary and General (sections 1 and 2)

This Part contains standard legislative provisions.

Section 1 contains standard provisions relating to the short title, collective citation, construction and commencement. *Section 2* is the standard interpretation section which defines relevant Acts and the Minister.

Part II — Amendment of Principal Act

Section 3 amends section 2 of the Principal Act by inserting definitions which, among other things, defines “core strategy” and “housing strategy” as such strategies included in a development plan.

Section 4 amends the current exemption in relation to forestry works by maintaining the exemptions for thinning, felling and replanting, maintenance, etc., but specifying that any public road or development providing access to a public road is not exempted development and must be subject to the planning process.

Section 5 provides for development plans to contain an evidence-based core strategy which shall provide relevant information to show that the development plan and the housing strategy are consistent with regional planning guidelines and the National Spatial Strategy 2002-2020. The core strategy shall take account of any policy of the Minister in relation to national and regional population targets and shall strengthen further the development plan as the fundamental link with national, regional, county/city and local policies. The core strategy shall also provide the policy framework for Local Area Plans (LAPs), particularly in relation to zoning at LAP level. The location, quantum and phasing of proposed development must be shown as well as growth scenarios, details of transport plans and retail development and proposals for development in rural areas (in accordance with Ministerial guidelines). The key objective is to secure a strategic and phased approach to zoning which will facilitate infrastructure provision.

In support of the broader climate change agenda, development plans must now contain mandatory objectives for the promotion of sustainable settlement and transportation strategies in urban and rural areas, including appropriate measures to reduce man-made greenhouse gas emissions.

Section 6 provides for focusing the scope of submissions/ observations on strategic issues in the preparation of the draft Development Plans.

Sections 7 and 8 provide, respectively in the case of making or varying a development plan, a requirement that the manager's report addresses separately the issues raised by the Minister or the Regional Authority and makes appropriate recommendations on ensuring consistency between Regional Planning Guidelines and the relevant Development Plans. Material amendments to draft development plans and variations to development plans will require the support of two-thirds of the total number of members as opposed to a simple majority, as is currently provided for. Modifications to the amendments of a draft development plan must be minor in nature and have been subject to further public consultation, and must not relate to an increase in the area of land zoned or an addition to or deletion from the record of protected structures.

Section 9 makes a consequential, technical amendment to section 18 of the Principal Act on foot of section 10 of this Bill.

Section 10 provides that the mandatory population threshold for preparing Local Area Plans (LAPs) is raised from 2,000 to 5,000 persons, and that the discretionary or optional threshold on the need to prepare an LAP will be where the population is between 2,000 and 5,000 and where the relevant area is to be subject to large scale development within the lifetime of the plan. In order to ensure LAPs are comprehensively linked to the City or County Development Plan (which is reviewed every 6 years), the lifespan of LAPs is increased to 10 years, although where an LAP is no longer consistent with the City or County Development Plan (where that plan has been reviewed or varied), there is a requirement to vary or review the LAP within 1 year. There is also provision made for the phasing of development within an LAP (as already provided for within a development plan), particularly given that zoning objectives are provided for in an LAP on foot of the Planning and Development (Amendment) Act 2002.

Section 11 provides for consistency of terminology used in the local area and development planning processes. Prescribed bodies, including the Minister, must be notified of material amendments to draft local area plans and such amendments shall require the support of two-thirds of the total number of members as opposed to a simple majority. Only minor modifications are provided for after the amendments have been on public display and these cannot refer either to an increase in land zoned for any purpose or an addition to or deletion from the record of protected structures.

Section 12 provides explicitly for the link between Regional Planning Guidelines (RPGs) and the National Spatial Strategy (NSS), which post-dated the enactment of the 2000 Planning and Development Act. An explicit requirement is provided for RPGs to be prepared in order to support the implementation of the NSS. RPGs shall be set within the policy framework of the NSS, including its population targets that are updated from time to time.

Sections 13 to 16 strengthen the status of Regional Planning Guidelines in relation to development plans and also strengthens the role of regional authorities in the preparation or variation of such plans. *Section 13* provides that a development plan must be consistent with the Regional Planning Guidelines in force for the area to help achieve coherence between the hierarchy of forward plans.

Sections 14, 15 and 16 provide that the Regional Authority has an explicit role in the pre-draft and the draft development plan preparation, and the variation to a development plan stages

respectively to ensure consistency between it and the regional planning guidelines in force, including informing the Minister of its views. They also set a broader perspective for the areas to be covered in the observations report. One of the key objectives in requiring development plans to include a core strategy is to ensure greater consistency between the NSS and RPGs on the one hand, and city and county development plans on the other. This is of particular importance in co-ordinating development objectives across local authority boundaries (for example, within an NSS Gateway) and also in relation to strategic infrastructure within a region.

Section 17 provides that a planning authority must demonstrate, by way of a statement when preparing and making a draft development plan, how it has implemented the policies and objectives of the Minister contained in guidelines issued by him under section 28 of the Principal Act. Equally, as the case may be, planning authorities must detail the reasons why such policies and objectives were not implemented. This should ensure that there is a much reduced need for the Minister to intervene in the development plan process and use his powers under Section 31 of the Principal Act.

Section 18 extends the powers for the Minister to issue a direction, under section 31 of the Principal Act, to local area plans (LAPs). Section 18 also prescribes a new consultative procedure where the Minister can issue a proposed direction (i.e. draft direction) and seek views from local stakeholders (including those of the Council) on his proposal before he makes a final decision whether or not to formally issue a direction. Section 18 also provides for a discretionary provision for the Minister to appoint an independent inspector to review the manager's report prepared on foot of public consultations on the proposed direction.

Section 19 amends section 34 of the Principal Act to require that two-thirds of the members of a planning authority must vote in favour of a motion deciding to grant permission for a proposed development that would contravene materially the development plan. Section 7 of the Bill prescribes a similar voting threshold to pass material amendments to draft development plans.

Section 20 amends section 35 of the Principal Act which currently provides that a planning authority may refuse planning permission, subject to certain conditions, where the planning applicant is substantially non-compliant with a previous planning permission. The proposed amendment shall allow a planning authority to refuse permission where the applicant has carried out a substantial unauthorised development (which could be a development with no permission whatsoever) or has been convicted of an offence under the Planning Acts, subject to certain conditions.

Section 21 provides for the extension of cost recovery to pre-application, scoping requests for Environmental Impact Assessment for strategic infrastructure development cases under the Seventh Schedule of the Principal Act in addition to cost recovery for cases that proceed to full application and determination by An Bord Pleanála.

Section 22 amends section 38 of the Principal Act to prescribe, for the avoidance of doubt, that a planning authority is authorised to display planning application documentation on its website. A further amendment provides that contact telephone numbers and e-mail addresses provided by, or on behalf of, the applicant will not have

to be published. These amendments are designed to remove any legal blockage to e-planning.

Section 23 amends section 42 of the Principal Act, which currently provides that the duration of a planning permission must be extended, subject to certain conditions, where substantial works have been carried out before the expiration of the original permission. The proposed amendment provides for the extension of permission (for a period of up to 5 years) in circumstances where substantial works have not been carried out, but there were commercial, economic or technical considerations, beyond the control of the applicant, which substantially mitigated against either the commencement of development or the carrying out of substantial works. The previous provision is also amended by removing the possibility of a second extension of permission.

Section 24 provides for a wider definition of “public infrastructure and facilities” to reflect newer infrastructural requirements, including in particular the provision of school sites. Having regard to the Sustainable Communities Agenda and other policy developments, such as the Developing Areas initiative, the definition of “public infrastructure and facilities” is re-defined to allow development contributions to be levied and used to fund such infrastructure as school sites, broadband provision, and flood relief works.

Section 25 provides for the possibility of a supplementary development contribution scheme to help finance the provision of new schools that might benefit a particular community or area.

Section 26 amends section 57 of the Principal Act to provide that development, which is normally exempted under section 4 of that Act or any regulations made under section 4, will be de-exempted if they would materially affect the character of a (proposed) protected structure.

Section 27 amends section 93 of the Principal Act by deleting the definition of “housing strategy”.

Section 28 amends section 108 of the Principal Act by providing the Board of An Bord Pleanála with the discretion to reduce the quorum for meetings from 3 to 2 members, on the recommendation of the chairperson or deputy chairperson that such a reduction is necessary to ensure the efficient discharge of the business of the Board. Such a recommendation may not be made in cases where the higher quorum is necessary. If a meeting where a quorum is 2 is evenly divided on a vote, the matter shall be referred to a meeting where the quorum is 3. This amendment aims to improve the throughput of An Bord Pleanála and secure a higher compliance rate with the statutory objective period of 18 weeks for appeals.

Section 29 provides for an increased maximum fine of €5,000 for a summary offence under the Planning Acts and for an increase to €1,500 for the maximum fine for a continued offence.

Section 30 amends the wording of section 168 of the Principal Act by clarifying that only where the draft scheme is prepared by a development agency other than the relevant local authority, shall it be submitted to the planning authority.

Section 31 amends section 180 of the Principal Act which provides that a housing/residential estate would be taken in charge by the planning authority, in certain circumstances, on foot of a request

from a majority of the owners or occupiers. The Law Reform Commission Report on Multi-Unit Developments recommended that it should be owners of units only who would have the right to determine whether the estate is taken in charge. This amendment implements the Law Reform Commission's recommendation.

Sections 32 and 33 amend sections 182B and 182D of the Principal Act, respectively, to provide powers for An Bord Pleanála to recover costs (pre-application and determination) in respect of applications for electricity transmission lines and strategic gas infrastructure.

Section 34 amends section 212 of the Principal Act to extend the scope of the powers of planning authorities to empower them to take action to secure the creation, management, restoration or preservation of any site of scientific or ecologic interest.

Section 35 amends section 248 of the Principal Act by the deletion of the definition of "electronic form".

Part III — Amendment of Act of 2001

Section 36 amends the *Transport (Railway Infrastructure) Act 2001* to provide An Bord Pleanála with powers to recover costs (pre-application and determination) in respect of applications for railway orders.

*An Roinn Comhshaoil, Oidhreachta agus Rialtais Áitiúil,
Bealtaine, 2009.*