



**AN BILLE RIALTAIS AITIUIL (PLEANAIL AGUS  
FORBAIRT), 1973**  
**LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT)  
BILL, 1973**

**EXPLANATORY MEMORANDUM**

**GENERAL**

The main purposes of the Bill are—

- (i) to provide for the establishment of An Bord Pleanála to deal with appeals, references and other matters under the Local Government (Planning and Development) Act, 1963,
- (ii) to strengthen the provisions of the Act of 1963 relating to unauthorised development, and
- (iii) to amend various provisions in the Act of 1963 so that they may be improved or made more effective in the light of experience of the operation of the Act.

*Section 1.* Interpretation.

*Section 2.* On the “establishment day,” to be fixed by order of the Minister for Local Government, the Board will be set up. When it is operative, an order under section 36 will transfer to it from the Minister the functions of deciding appeals, references and other matters, including appeals etc. before him for decision (sections 13 and 19).

*Section 3.* This section provides for the establishment of An Bord Pleanála and applies the provisions of the Schedule. The main provisions are as follows—

- (a) *Chairman*—to be appointed in a wholetime capacity by the Government for such term of office as they may fix and to hold office on such terms and conditions as may be determined by the Minister with the consent of the Minister for the Public Service.
- (b) *Ordinary members*—not less than two, to be appointed by the Minister and term of office not to exceed three years. An ordinary member may be appointed from among the Minister's serving officers.
- (c) *Removal from office*—the Government may remove a Chairman and the Minister may remove an ordinary member. A statement in writing of the reasons for removal must be laid before each House of the Oireachtas. Any member may resign at any time. A member ceases to hold office on becoming a member of a local authority or of either House of the Oireachtas.
- (d) *Reappointment*—members are eligible for reappointment on expiry of their terms of office.
- (e) *Procedure*—every question at a meeting of the Board shall be determined by a majority of the votes of the members present. Subject to the provisions of the Act and any regulations made thereunder, the Board may regulate its



own procedure. The Board may perform any of its functions through or by any of its members duly authorised by the Board in that behalf.

- (f) *Superannuation*—provisions enabling the Minister, with the concurrence of the Minister for the Public Service, to make a scheme for granting of pensions, gratuities or other allowances, are contained in Article 28.

*Section 4.* The Board is required, so far as may be necessary for the discharge of its functions to keep itself informed of the policies and objectives of public authorities and, in particular, of the Minister for Local Government and the planning authorities.

*Section 5.* This section enables the Minister to give general policy directives to the Board but precludes him from exercising any power or control in relation to any particular appeal or other case coming before the Board.

*Section 6.* Provision for expenses of the Board.

*Section 7.* Provision as to the keeping of accounts by the Board and submission to the Comptroller and Auditor General for audit. The annual accounts and audit reports will be laid before each House of the Oireachtas.

*Section 8.* Provision for an annual report by the Board to the Minister. The Board is also required to supply the Minister with any information related to its functions which he may request.

*Section 9.* This section precludes any member of the Board from acting as such in relation to any matter in which he has a material financial or other beneficial interest. The purpose of the section is to ensure that the Board will act objectively and without prejudice.

*Section 10.* Provision for the employment of staff by the Board, including part-time personnel payable on a fee basis.

*Section 11.* This section provides for the making of a superannuation scheme or schemes for the employees of the Board.

*Section 12.* This section precludes a member of either House of the Oireachtas or of a local authority from being an employee of the Board and provides that any employee nominated as a member of Seanad Éireann or for election to either House of the Oireachtas, or who becomes a member of a local authority, shall stand seconded from his employment without pay.

*Section 13.* This section will come into operation on the "appropriate day" (see sections 1 and 36). Subsections (1) and (9) provide that appeals under "relevant sections" of the Act of 1963 will then lie to the Board, viz.—

26. appeal against a decision of a planning authority on an application for permission or approval to carry out development;

27. appeal against a decision of a planning authority on an application for permission for retention of an unauthorised structure which existed prior to 1st October, 1964;

30. appeal against the revocation or modification of a permission previously granted;

33. appeal against an enforcement notice in respect of an unauthorised structure which existed prior to 1st October, 1964;

36. appeal against a notice requiring removal or alteration of any structure;

37. appeal against a notice requiring discontinuance of use;



44. appeal against a notice requiring removal or alteration of a hedge;
45. appeal against a tree preservation order;
46. appeal against a conservation order;
48. appeal against an order creating a public right of way over land;
85. appeal relating to cables, wires or pipelines;  
and
89. appeal in relation to the granting, refusing, withdrawing or continuing of a licence.

Subsection (2) provides for references to be determined by the Board, i.e. questions as to what, in any particular case, is or is not development or exempted development. Other matters arising infrequently are covered by the following subsections—(3) determinations under section 26 (7) of the Act of 1963 where there is disagreement as to local authority contributions to the cost of certain works, (4) determinations as to contributions required by conditions attached to permissions, (5) decisions relating to purchase notices, and (6) determinations relating to questions of “substantial replacement.”

The remaining subsections provide for the necessary consequential amendments of the Act of 1963.

*Section 14.* This section gives the Board absolute discretion to hold an oral hearing of any reference or appeal. This will help the Board to deal expeditiously with cases, particularly where an appeal appeared to be ill-founded or vexatious (see also note on section 16 below). The Act of 1963 required the Minister to accede to the request of any party to an appeal for an oral hearing and it seems clear that the provision was being abused in certain cases.

*Section 15.* The Board will not simply act as an arbiter between parties. When an appeal under section 26 of the Act of 1963 is made to the Minister in relation to a decision of a planning authority on an application for permission, he determines the application as if it had been made to him in the first instance. Considerations relating to the proper planning and development of the area which are taken into account may include matters other than those put before him by the parties but such matters must be brought to the notice of the parties and they must be afforded an opportunity to make observations thereon. This section makes it clear that when the Board is the deciding authority, the same safeguards will obtain for the parties to an appeal.

*Section 16.* The purpose of this section is to enable the Board to deal expeditiously with any appeal or reference which in their opinion is vexatious or being unnecessarily delayed by any of the parties thereto (see also note on section 14 above).

*Section 17.* This section enables the Board to direct a planning authority to pay appeal expenses to the appellant or to the Board. Where an appellant is unsuccessful, he may be directed by the Board to pay appeal expenses to the planning authority, to any other party to the appeal or to the Board itself. Sums payable are recoverable as a simple contract debt. The section is similar to section 18 of the Act of 1963 except that provision is now made for payment by appellants to parties other than those previously covered e.g. to a developer who, having obtained permission, is being held up or obstructed by unwarranted use of the appeals machinery.

*Section 18.* As a result of the transfer of functions to the Board, new regulations will require to be made by the Minister regarding the conduct of oral hearings, etc. It is intended also to provide for more flexibility in dealing with development proposals on appeal. Regulations made under this section must be laid before each House of the Oireachtas (section 10 of Act of 1963).



*Section 19.* Transitional provisions for dealing with cases before the Minister immediately prior to the establishment day.

*Section 20.* Clarification of the position in regard to the latest time for acceptance of appeals under the Acts.

*Section 21.* The purpose of this section is to reinforce the existing powers of planning authorities to secure proper completion of housing estates by enabling them to take action where open space has not been provided as indicated in the developer's application for permission or as required by conditions attached to the permission. If the owner fails to comply with a written request to provide, level, plant or otherwise adapt or maintain such open space, the section provides a procedure whereby the planning authority may acquire the land. Provision is made for an appeal, to the Board after the "appropriate day", by any person having an interest in the land. Where a claim for compensation is referred to arbitration, a nil award shall be made unless it is shown that the value of the land has not been or will not be recovered as a result of the development; in any other case no regard will be had to value for use other than as an open space and a deduction will be made for the cost of necessary works. The section will not apply, however, to "private open spaces".

*Section 22.* The aim of this section is to discourage unauthorised development at an early stage by providing for a new enforcement procedure with substantial penalties. It enables warning notice to be served to prevent or stop any unauthorised development (including use) of land or to protect trees and other features which are required to be preserved by the terms of a permission for development. A warning notice served on the owner of the land requires him to take adequate steps to ensure compliance with its requirements and warns him that proceedings under the section may be brought against him and any other person who fails to comply or who assists or permits any contravention. Failure to comply with a notice involves substantial penalties.

*Section 23.* This section is also designed to make enforcement more effective. It provides that the High Court may prohibit the continuance of any unauthorised development or use. The Court may act on the application of a planning authority or any other person whether or not the person has an interest in the land.

*Section 24.* The purpose of this section is to encourage planning authorities to exercise greater flexibility in the use of their powers and to reduce the number of appeals by reaching agreement locally. Sections 30, 31, 32 and 35 of the Act of 1963 relate to enforcement notices, 36 and 37 to notices requiring removal or alteration of structures and discontinuance of use, and 44 to notices requiring removal or alteration of hedges.

*Section 25.* This section provides for the "withering" of permission for development after a period of five years (subsection (1)). But it enables planning authorities to give extensions in particular cases, if they think fit (subsection (5)), and there is a saver to ensure that developments which are substantially completed are not left unfinished (subsection (2)). In some cases certificates of completion within the period allowed may be required to resolve doubts as to whether development was or was not unauthorised. These are provided for in subsections (3) and (4). Provision is made for an appeal to the District Court by any person aggrieved by the decision of a planning authority on an application for such a certificate (subsection (7)–(9)).

*Section 26.* Where unauthorised development does not come to the notice of a planning authority in sufficient time to institute a prosecution within the period of six months allowed by the Petty Sessions (Ireland) Act, 1851, the effect of this section will be to extend the time to initiate such proceedings.

*Section 27.* In the course of its work, the Board may be expected to gain valuable experience and insights into planning practice and



procedures. This section enables the Board on its own initiative to make submissions to the Minister and also enables the Minister to consult the Board in relation to the performance of any of his planning functions.

**Section 28.** Regulations may provide for payment of fees by applicants for permission, the payment or lodgement of fees or deposits by appellants, and a right of appeal in certain cases where a further approval is required after permission or approval for development has been granted. The question of fees payable by applicants for permission is primarily associated with possible changes in the existing regulations requiring applicants to give public notice of their proposals.

**Section 29.** The purpose of this section is to provide a procedure whereby finality can be reached in the making of a development plan. At present a planning authority are obliged to put their draft plan on public display for a period of not less than three months and then to consider objections and representations received but if they make any material alteration in their draft plan, they are obliged to repeat the whole procedure.

**Section 30.** Miscellaneous amendments of Part IV of the Act of 1963—

- (a) power to impose condition relating to noise,
- (b) provision for extension of the period for considering an application for permission if the applicant consents in writing,
- (c) amendment of section 26 to provide for the giving of reasons by the planning authority where they refuse permission or impose conditions and for the giving of reasons for decisions in all appeal cases under the section,
- (d) amendment of section 28 partly to enable a planning authority to be more specific and less restrictive in regard to the use of permitted structures and partly to meet difficulties and problems arising when development plans envisage exceptions from development restrictions e.g. dwellings for sons or daughters of farmers,
- (e) restriction on the power of a planning authority to revoke or modify a permission previously granted,
- (f) consequential on the establishment of the Board.

**Section 31.** Miscellaneous amendments of Part V of the Act of 1963—

- (a) amendment of section 42 to encourage planning authorities to consider more limited areas as appropriate for the making of special amenity area orders and enabling the Minister to take the initiative in requiring such orders to be made where he considers it necessary,
- (b) amendment of section 46 so as to simplify the making of a conservation order and limiting the making of such orders to areas of special amenity, and
- (c) increase in penalty for noise offences under section 51.

**Section 32.** Miscellaneous amendments of Part VI of the Act of 1963—

- (a) amendment of section 55 relating to the assessment of compensation to enable regard to be had to any permission for development available when the compensation is agreed or determined,
- (b) consequential on establishment of the Board,



- (c) inclusion of conditions relating to noise among the matters in section 56 in respect of which compensation is not payable,
- (d) as in (b) above,
- (e) extension to a case under section 59, where compensation is claimed for revocation or modification of permission, of the provisions of section 58 whereby the Minister may declare that it would not be just and reasonable that compensation be precluded by other provisions of the Act,
- (f) addition to section 61 (1), which provides for compensation where a notice is served requiring discontinuance of use, of a proviso which in certain cases would preclude compensation in respect of discontinuance of use required to prevent serious air or water pollution, and
- (g) amendment of section 61 (2) to redefine the exception made in respect of advertising.

**Section 33. Miscellaneous amendments of Part VIII of the Act of 1963—**

- (a) necessary to enable regulations to be made relating to procedure in appeals which will still lie to the Minister i.e. appeals relating to building regulations and closure of public rights of way,
- (b) consequential on establishment of the Board,
- (c) see (b) above,
- (d) amendment of section 86 to enable building regulations to provide in relation to the special needs of disabled persons,
- (e) power to attach conditions when relaxing or dispensing with requirements of building regulations, and
- (f) redrafting of section 88 in order to give the Minister more flexibility in dealing with appeals relating to the building regulations.

**Section 34. Other miscellaneous amendments of the Act of 1963 are contained in subsection (1)—**

- (a) amendment of section 4 (1) so as to require that planning permission be obtained for the fencing or enclosure of land which has long been open to or used by the public,
- (b) provision to enable a planning authority to make a new development plan in lieu of amending an existing development plan,
- (c) power to extend the five year period allowed for review and making of variations in a development plan,
- (d) provision requiring a planning authority to have regard in the operation of planning control to any requirement of the Minister under section 22 to vary their development plan in a manner specified by him,
- (e) and (f) amendment of section 76 so as to incorporate minor procedural improvements including substitution of an oral hearing for a public inquiry into proposals for closure of public rights of way.

Subsection (2) is consequential on the transfer of appeal functions from the Minister to the Board.



Section 35. Minor repeals, mainly consequential.

Section 36. Short title, collective citation, commencement and construction. See also note on Section 2.

Schedule. The main provisions have been indicated in the note on Section 3 above.

*An Roinn Rialtais Aitiúil,  
Feabhra, 1974.*

## ARRANGEMENT OF SECTIONS

1. Interpretation.
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