



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

Mar a leasaíodh i gCoiste

As amended in Committee

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 45* will transfer to it from the Minister the functions of deciding appeals, references and other matters, including appeals etc. before him for decision (*sections 15 and 22*).

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*—where the Chairman is a former judge of the High Court, appointed by the Government, he is to be appointed in a wholetime capacity for such term of office as they may fix and will hold office on such terms and conditions as may be determined by the Minister, with the consent of the Minister for the Public Service. Under *section 4*, the Chairman may, alternatively, be a judge of the High Court.
- (b) *Ordinary members*—there will be not less than four ordinary members, to be appointed by the Minister with a term of office not exceeding three years. An ordinary member may be appointed from among the Minister's serving officers.
- (c) *Removal from office*—where the Chairman of the Board is a former judge of the High Court, the Government may remove him from the chairmanship in certain circumstances. The Minister may remove an ordinary member from office in similar circumstances. In either case, 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 will cease to hold office on becoming a member of a local authority or on nomination for membership of the Seanad or for election to either House of the Oireachtas.

(d) *Reappointment*—members are eligible for reappointment on expiry of their term 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 by the Minister, 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 the granting of pensions, gratuities or other allowances, are contained in Article 28.

Section 4. The Chairman of the Board will be a judge or former judge of the High Court.

Section 5. The Board is required, so far as may in its opinion 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 6. 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. Such directives will be laid before both Houses and published in *Iris Oifigiúil*. Copies will be sent to planning authorities.

Section 7. Provision for the payment of grants to meet the expenses of the Board.

Section 8. Provision as to the keeping of accounts by the Board and their 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 9. Provision for an annual report by the Board to the Minister. The report must be laid before each House of the Oireachtas. The Board is also required to supply the Minister with any information relating to its functions which he may request.

Section 10. 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 11. Provision for the employment of staff by the Board, including part-time personnel payable on a fee basis.

Section 12. This section provides for the making of a superannuation scheme or schemes for the employees of the Board.

Section 13. 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 14. This section enables the Board to engage consultants or advisers where necessary and to pay them fees.

Section 15. This section will come into operation on the "appro-

prate day" (see sections 1 and 45). Subsections (1) and (10) provide that appeals under "relevant sections" of the Act of 1963 will then lie to the Board, viz. appeals under—

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

Section 27 : 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;

Section 30 : against the revocation or modification of a permission previously granted;

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

Section 36 : against a notice requiring removal or alteration of any structure;

Section 37 : against a notice requiring discontinuance of use;

Section 44 : against a notice requiring removal or alteration of a hedge;

Section 45 : against a tree preservation order;

Section 46 : against a conservation order;

Section 48 : against an order creating a public right of way over land;

Section 85 : relating to cables, wires or pipelines;

Section 89 : 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—*subsection (3)* relates to 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, *subsection (4)* relates to determinations as to contributions required by conditions attached to permissions, *subsection (5)* deals with decisions relating to purchase notices and *subsection (6)* with determinations relating to questions of "substantial replacement". *Subsection (8)* makes it clear that the Board, in determining an appeal, may decide to grant a permission even if the proposed development contravenes materially a development plan or a special amenity area order. *Subsection (9)* provides for the necessary consequential amendments of the Act of 1963.

Section 16. This section provides for the lodgement of a £10 deposit with an appeal. The deposit will be refunded except where, under *section 19 (3)*, the Board considers the appeal to have been vexatious.

Section 17. This section gives the Board an absolute discretion to hold an oral hearing of any reference or appeal. This will help the Board to deal expeditiously with cases. The Act of 1963 requires 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 18. This empowers the Board, in deciding a reference or appeal to take into account certain matters other than those raised by the parties to the appeal provided such matters are brought to the notice of the parties and they are afforded an opportunity to make observations on them.

Section 19. This section enables 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. In addition, the Board may, if it considers the appeal to have been vexatious, direct that the £10 deposit lodged with the appeal (see *section 16*) is to be forfeited.

Section 20. 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 payments by appellants to other parties to the appeal. As in the case of section 18 of the 1963 Act, it is not envisaged that the new power would be used widely.

Section 21. As a result of the transfer of functions to the Board, new regulations will require to be made by the Minister regarding oral hearings, etc. The section also provides for regulations allowing more flexibility in dealing with development proposals on appeal. Regulations made under the section must be laid before each House of the Oireachtas (section 10 of the Act of 1963).

Section 22. This contains transitional provisions for dealing with cases before the Minister immediately prior to the appropriate day.

Section 23. The section clarifies the position in regard to the latest time for acceptance of appeals.

Section 24. The purpose of this section is to provide that not only should reports on oral hearings and inspections be submitted to and considered by the Minister or the Board (as appropriate) but also to require that these reports shall include a recommendation which shall be considered by the Minister or the Board.

Section 25. This section enables a planning authority when considering an application for permission or certain other matters, to take into account (a) the probable effect on areas other than their own and (b) considerations relating to development outside their area. Corresponding powers are conferred on the Board in dealing with appeals.

Section 26. 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 Minister, or 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 27. The aim of this section is to discourage unauthorised development at an early stage by providing for a new enforcement procedure. It enables a 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 will require him to take adequate steps to

ensure compliance with its requirements and will warn 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 will involve substantial penalties.

Section 28. This section is designed to make enforcement more effective. It provides that the High Court may prohibit the continuance of any unauthorised development or use, or, where a development is not being carried out in accordance with the terms of the planning permission, to direct that it be so carried out. 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 29. The purpose of this section is to encourage planning authorities to exercise greater flexibility in the use of their powers, and, by reaching agreement locally to reduce the number of appeals. Sections 30, 31, 32 and 35 of the Act of 1963 relate to enforcement notices, 36 and 37 to notices requiring the removal or alteration of structures and discontinuance of use, and 44 to notices requiring the removal or alteration of hedges.

Section 30. The 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 (9)*), and there is a saver to ensure that developments which are substantially completed are not left unfinished (*subsection (2)*).

Conditions which are attached to a planning permission must still be complied with even after the five-year period has expired (*subsection (3)*). However, on application, the planning authority may if they think fit issue a notice waiving such conditions (*subsection (4)*). An aggrieved applicant for a waiver may appeal the decision of the planning authority to the Board (*subsections (5) and (6)*).

In cases where the planning authority are satisfied that a dispute has arisen, a development certificate procedure is provided for in *subsections (7) and (8)*. Provision is made for an appeal to the Circuit Court by any person aggrieved by the decision of a planning authority on an application for such a certificate (*subsections (11) to (13)*).

Section 31. Contraventions of section 24 (2) of the Act of 1963 or offences under *sections 27, 33 or 34* may not come to notice 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 for initiating proceedings in such cases.

Section 32. 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 33. Under this section, members of planning authorities are required to make and keep up to date written declarations containing particulars of their interests in land, any business of dealing in or developing land in which they are engaged or employed and any business, profession or occupation in which they are engaged and which relates to dealing in or developing land. The planning authority will keep a register of these interests. Failure to comply with the requirements of the section will be an offence with a penalty of up to £100, or six months imprisonment, or both.

Section 34. This section is designed to prevent members of planning authorities and committees thereof from voting on, or otherwise influencing, a decision on a planning or land acquisition matter in which they have a pecuniary or other beneficial interest. Failure

to comply with the requirements of the section will be an offence with a penalty of up to £100, or six months imprisonment, or both.

Section 35. This section contains supplemental provisions relating to sections 33 and 34. A person who is convicted of an offence under either of these sections will cease to be a member of a planning authority or any committee of a planning authority. The proceedings of a planning authority or of any of its committees will not, however, be invalidated by the failure of any member to comply with the requirements of section 33 or 34.

Section 36. Regulations may provide for the payment of fees by applicants for a waiver notice under section 30. They may also provide for the publication by planning authorities of notices relating to planning applications and applications for waiver notices, and for a right of appeal in certain cases where a further approval is required after permission or approval for development has been granted.

Section 37. In any legal proceedings for an offence under the Planning Acts, when a question arises as to whether a permission has been granted or not, the onus will be on the person who claims to have that permission to prove that he has it.

Section 38. 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 39. Miscellaneous amendments of Part IV of the Act of 1963—

- (a) regulations may provide that, when permission is sought for a major development (i.e. one costing more than an amount specified by the regulations) the applicant must provide the planning authority with a study of the impact of the proposed development on the environment;
- (b) power to impose conditions relating to noise;
- (c) provision for an extension of the period for considering an application for permission if the applicant consents in writing;
- (d) provision 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 section 26 of the 1963 Act;
- (e) 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;
- (f) restriction on the power of a planning authority to revoke or modify a permission previously granted;
- (g) a provision to enable a planning authority to join with any of the prescribed authorities in making an agreement under section 38 of the Act of 1963;
- (h) if a planning authority joins with a prescribed authority in an agreement under section 38, it may be enforced by either authority against persons deriving title under the landowner with whom it was concluded; and
- (i) consequential on the establishment of the Board;

Section 40. Miscellaneous amendments of Part V of the Act of 1963—

- (a) an 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) an amendment of section 46 so as to simplify the making of a conservation order and limiting the making of such orders to areas to which a special amenity area order relates; and
- (c) an increase in the penalty for noise offences under section 51.

Section 41. Miscellaneous amendments of Part VI of the Act of 1963—

- (a) an 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 the 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) consequential on the establishment of the Board;
- (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 42. Miscellaneous amendments of Part VIII of the Act of 1963—

- (a) enables the Minister to make regulations relating to oral hearings of appeals which will still lie to him (i.e. those relating to building regulations and closure of public rights of way);
- (b) enables the Minister to make regulations relating to the conduct of oral hearings;
- (c) consequential on the establishment of the Board;
- (d) consequential on the establishment of the Board;
- (e) amendment of section 86 to enable building regulations to make provision in relation to the special needs of disabled persons;
- (f) power to attach conditions when relaxing or dispensing with requirements of building regulations; and
- (g) redrafting of section 88 in order to give the Minister more flexibility in dealing with appeals relating to the building regulations.

Section 43. Miscellaneous amendments of the Act of 1963 are contained in subsection (1)—

- (a) the area declared by a county council to be comprised in a town for development plan purposes may be amended by them;

- (b) an 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;
- (c) enables a development plan to have objectives for the preservation of interiors of buildings;
- (d) enables a planning authority to give assistance to a body or person providing homes or shelters for stray or unwanted dogs and cats;
- (e) provision to enable a planning authority to make a new development plan in lieu of amending an existing plan;
- (f) enables the Minister to extend the five year period allowed for the review and making of variations in a development plan;
- (g) an amendment to secure that the owner and occupier will have to be notified if a development plan lists the structure or any internal feature for preservation;
- (h) 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;
- (i) and (j) amendments 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;
- (k) a planning authority may provide buildings or structures as homes or shelters for stray or unwanted dogs and cats; and
- (l) a development plan may include as an objective the preservation of internal fixtures or features of artistic, historic or architectural interest.

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

Section 44. Minor repeals, mainly consequential.

Section 45. 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 Áitiúil,
Lúnasa, 1975.*