



**AN BILLE RIALTAIS AITIÚIL (PLEANÁIL AGUS FORBAIRT),
1982**

**LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT)
BILL, 1982**

EXPLANATORY MEMORANDUM

The main purposes of the Bill are—

- (i) to amend section 29 of the Local Government (Planning and Development) Act, 1976 (which imposes limits on the duration of planning permissions);
- (ii) to make provision regarding the validity of certain permissions and approvals granted on appeal;
- (iii) to enable the Minister for the Environment to issue general policy directives as to planning and development to planning authorities as well as to An Bord Pleanála;
- (iv) to provide for increased penalties for offences under the Local Government (Planning and Development) Acts, 1963 and 1976, and
- (v) to permit the introduction of charges for planning applications and appeals.

Section 1. Interpretation.

Section 2. This section provides for a limit on the duration of planning permissions. The new provisions will not affect permissions for the retention of structures, permissions granted for a limited period or the continuance of a use of land in accordance with a permission. In addition, the expiration of a permission will not affect the obligation to comply with conditions attached to the permission nor will it affect the carrying out of development works which are necessary for or ancillary or incidental to completed buildings (*subsection (2)*). The Minister will have power, by regulations, to exempt permissions of any class or description from the scope of the section but any such regulations must be approved in draft by both Houses of the Oireachtas (*subsection (3)*). Under *subsection (4)*, the provisions of the section will be deemed to have come into operation on 1 November, 1981. *Subsection (5)* spells out the limits which will apply in particular situations: permissions granted before 1 November, 1976, will expire on 31 October, 1983; permissions granted on or after 1 November, 1976 and before 31 October, 1982, will expire on 31 October, 1987 or seven years after the granting of the permission, whichever is earlier; and permissions granted on or after 1 November, 1982 will expire five years after the granting of the permission. The duration of permissions granted after the commencement of the new

legislation will be greater if the provisions of *section 3* are used by the planning authority or on appeal. In addition, where a planning authority have granted an extension under *section 29 (9)* of the 1976 Act for a period longer than those now provided for, the planning authority decision will continue to apply. *Subsection (6)* is designed to prevent the use of *section 3* so as to reduce the period of duration which would apply under *subsection (5)*.

Section 3. Under this section, a planning authority or An Bord Pleanála on appeal, may, in deciding to grant permission, allow a permission to have a period of duration of more than five years having regard to the nature and extent of the relevant development and any other material consideration.

Section 4. This section enables planning authorities to extend the life of a planning permission. *Subsection (1)* provides that where the planning authority are satisfied that development has commenced, that substantial works have been carried out and that the development will be completed within a reasonable time, they shall, (where an application for an extension has been duly made), extend the life of a permission by an additional period to enable the development to be completed. *Subsection (2)* provides for a "decision by default" procedure where a planning authority fail to give notice of their decision to the applicant. *Subsection (3)* enables a planning authority to grant a further extension in certain limited circumstances.

Section 5. The purpose of this section is to enable the Board to declare references, appeals or applications to which appeals relate, to be withdrawn. Where a reference, appeal or application has, in the opinion of the Board been abandoned, *subsection (1)* empowers the Board to issue a notice requiring a submission to be made in writing as to why the particular reference, appeal or application should not be regarded as having been withdrawn. *Subsection (2)* provides that having considered the submission (if any) the Board may declare the reference, appeal or application to be withdrawn. *Subsection (4)* provides that where such a declaration is made the deposit lodged in relation to the relevant appeal may be forfeited to the Board.

Section 6. This section arises from the decision of the Supreme Court in February, 1982, in *The State (Pine Valley Developments Limited) v. Dublin County Council*. *Subsection (1)* provides that a permission or approval granted on appeal prior to the 15th day of March, 1977, shall not be invalid by reason only of the fact that the development concerned contravened, or would contravene, materially the relevant development plan. *Subsection (2)* provides that if *subsection (1)* conflicts with a constitutional right of any person, the subsection shall be subject to such limitation as is necessary.

Section 7. The purpose of this section is to enable the Minister to issue general policy directives as to planning and development to planning authorities as well as to An Bord Pleanála. Section 6 of the 1976 Act, under which such directives may be issued to the Board, is being repealed by *section 15* of the Bill. Where, under *subsection (1)*, the Minister issues a general directive, a planning authority and the Board must have regard to the directive in performing its functions (*subsection (2)*). *Subsection (3)* makes it clear that the Minister may not, by virtue of the section, exercise any power or control in relation to any particular case with which a planning authority or the Board is or may be concerned. *Subsection (4)* deals with the publication, etc., of directives.

Section 8. This section provides for increases in the penalties for offences under the Local Government (Planning and Development)

Acts, 1963 and 1976. Provision is also being made for indictable offences. *Subsections (1) and (2)* provide that, in the case of the more serious offences, the maximum fine on summary conviction will be £800 (instead of £250) while the maximum penalty for further or continuing offences, on summary conviction, is increased to £150 from £50. Penalties for the less serious offences are also being increased. *Subsections (3) and (4)* substitute indictable offences for the existing summary offences arising from contravention of section 24 of the 1963 Act and non-compliance with a warning notice under section 26 of the 1976 Act. The maximum fines will be £10,000 (or £1,000 per day for a continuing offence), or 2 years imprisonment, or both the fine and the imprisonment.

Section 9. This section enables a Justice of the District Court, in certain circumstances, and with the agreement of the defendant, to try an indictable offence summarily.

Section 10. This section authorises the Minister, with the consent of the Minister for Finance, to make regulations providing for the payment to planning authorities of fees in relation to planning applications, applications for approvals, for extensions or for further extensions, and for the payment to the Board of fees in relation to appeals, references, or determinations. *Subsection (2)* provides that a planning application shall not be determined unless the fee due by the applicant has been paid to the planning authority; where the fee is not paid, the two-month period within which the application must be determined will not begin to run. Under *subsection (3)*, an appeal to the Board will be invalid if the fee due by the appellant in respect of the appeal is not received by the Board within the time laid down in the Acts for making the appeal. *Subsection (4)* is designed to secure that, where fees are payable by persons other than the formal parties to an appeal, application, etc., any submissions or observations from such parties will not be considered unless the fee is paid. *Subsections (5) and (6)* contain provisions in relation to fees for references to, and determinations by, the Board and requests for oral hearings.

Section 11. This section provides for the making of regulations providing for any matter of procedure in relation to applications under *section 4* of the Bill for extensions of the duration of planning permissions and making such incidental, consequential or supplementary provision that may be necessary to give full effect to *sections 2, 3 and 4* of the Bill.

Section 12. This section provides for a minor amendment of *section 8 (4) (c)* of the 1963 Act which specifies the fee payable in respect of a copy of an entry in the planning authority Register.

Section 13. This section provides for a minor amendment of *section 80* of the 1963 Act which deals with the prosecution by planning authorities of offences under the Acts. The amendment is consequential on the introduction by *section 8* of indictable offences which are prosecuted by the Director of Public Prosecutions.

Section 14. Subsection (1) of this section enables the Circuit Court or the Board to exercise any of their powers under *section 29* of the 1976 Act with regard to any waiver notices or development certificates issued by a planning authority after the commencement of the Act on foot of applications received before its commencement. *Subsection (2)* will ensure that the retrospective effect of *section 2* will not give rise to claims for permission by default under *section 26 (4)* or *27 (3)* of the 1963 Act.

Section 15. This section provides for consequential repeals. Repeal

of most of the provisions of section 29 of the 1976 Act is provided for in subsection (2), except those necessary to permit the planning authority, the Board, or the Circuit Court, as appropriate, to exercise certain powers in regard to waiver notices and development certificates issued on foot of applications made before the commencement of the Bill. Subsection (3) makes provision for the repeal, on a date to be fixed by order, of section 15 (1) of the 1976 Act under which deposits are payable by appellants to the Board. Subsection (4) provides that waiver notices and development certificates issued under the repealed provisions of section 29 of the 1976 Act will continue to have effect and that applications on hands for notices or certificates may be processed by planning authorities notwithstanding the repeals.

Section 16. Short title, collective citation and construction.

*An Roinn Comhshaoil,
Meitheamh, 1982.*

Section 13. This section provides for a minor amendment of section 801 of the 1963 Act which deals with the procedure by planning authorities of officers under the Act. The amendment is consequential on the introduction by section 8 of the Bill of the new provisions of the 1976 Act which are being repealed by section 29 of the Bill. Where, under subsection (1), the Circuit Court is empowered to exercise any of the powers under section 29 of the 1976 Act with regard to any waiver notices or development certificates issued by a planning authority after the commencement of the Act on foot of applications received before its commencement, subsection (2) will ensure that the repeal of section 2 of the 1976 Act will not give rise to claims for permission by default under section 26 (4) or (5) of the 1963 Act.

Section 14. This section provides for increases in the penalties for offences under the 1976 Act.