



**AN BILLE RIALTAIS ÁITIÚIL (PLEANÁIL AGUS FORBAIRT)
(UIMH. 2), 1988
LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT)
(NO. 2) BILL, 1988**

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The main purpose of the Bill is to amend and consolidate the law on planning compensation. The Bill also amends certain provisions of the sanitary services code so as to regulate connection of premises to public sewers and water supplies in a manner more consistent with the modern planning process.

Irish law has provided for compensation in relation to certain kinds of adverse planning decision since formalised physical planning control began in 1934. The present law is principally contained in Part VI of the Local Government (Planning and Development) Act, 1963 and in a number of other provisions of that Act. Many of these provisions have been further elucidated by the considerable body of case law which has developed around planning compensation.

The compensation provisions of the Local Government (Planning and Development) Act, 1963 are not set out in an easily comprehensible way. For instance, non-compensatable circumstances under Part VI of the 1963 Act are sometimes described in full in Part VI, or sometimes by reference to the Third Schedule of the Act, which itself is principally connected with the making of development plans. Similarly, the Rules for the Assessment of Compensation are not set out in full in the 1963 Act and cover not just planning compensation, but also the separate matter of compulsory purchase of land by local authorities.

The present Bill repeals all existing provisions on planning compensation and re-states them, subject to amendments, in a simpler and more rational format. However, the most important purpose of the Bill is to clarify and extend the reasons whereby planning authorities may refuse or attach conditions to a planning permission without incurring a liability to compensation. The main provisions involved, which will give greater weight to the common interest in the determination of planning issues, are as follows:

—development may be refused without liability to compensation not just where water supplies or sewerage facilities are actually deficient, but also where their capacity is required for prospective other development (*section 13 and Third Schedule, para. 1*);

—development may also be refused without liability to compensation if it is premature by reference to any order of priority

for development indicated in a development plan (*section 13 and Third Schedule, para. 3*);

—refusal of planning permission which would cause serious air pollution, water pollution or pollution connected with the disposal of waste, will be non-compensatable (*section 13 and Third Schedule, para. 6*);

—compensation will be excluded where planning permission is refused because development would materially contravene an objective of a development plan which was in operation at the time the developer acquired his interest in the land. This provision will apply to land acquisitions (otherwise than by inheritance or family settlement) arising after the date of publication of this Bill (*section 13 and Third Schedule, para. 9*);

—conditions may be attached to a planning permission, without compensation; in relation to the preservation of buildings of artistic, architectural or historical interest, or of features of such interest which form part of the interior of structures (*section 13 and Fourth Schedule, paras. 15 and 16*);

—tree preservation orders may embody conditions, without compensation, requiring a proportion of woodlands to be preserved or the felling of trees to be phased (*section 21*).

A number of court judgments have highlighted the problematic nature of the so-called "undertakings" procedure operated under section 57 of the Local Government (Planning and Development) Act, 1963. These provisions will be replaced by a new procedure set out in *section 14*. This will allow a planning authority to rebut a compensation claim by a notice stating that in their opinion alternative development ought to attract planning permission. This notice can only be defeated if planning permission is subsequently refused or conditioned in a manner inconsistent with the permissive statement.

Finally, the Bill makes a number of provisions arising from the Report of the Joint Committee on Building Land (Pl. 3232) of 1985. Rules for determining the amount of planning compensation are set out independently of those applying to compulsory acquisition of land (*section 12 and First Schedule*). The new rules embody a number of additions designed to clarify the concept of market value and to discount the benefit of public subsidies. The question of connection to public sewers and water supplies is dealt with in *sections 25 and 26*. Connection to public sewers will no longer obtain as a right of the person connecting, but will be subject to the consent of the sanitary authority concerned. The right of a supply of water for domestic purposes will no longer obtain in the case of unauthorised development.

PART I

Preliminary

Section 1 provides for the short title of the Act, and for its citation and collective construction together with the Local Government (Planning and Development) Acts, 1963 to 1983.

Section 2 provides that the Act, or different provisions of it, shall come into operation on such day or days as may be fixed by order of the Minister for the Environment.

Section 3 is the interpretation section and includes definition of certain terms used in the Bill. Because under Section 1 the Bill is construed together with the Local Government (Planning and Development) Acts, 1963 to 1983 as one Act, terms defined in the interpretation sections of the earlier Planning Acts will apply also to this Bill.

Section 4 (1) repeals:

—Section 45 (2) of the Local Government (Planning and Development) Act, 1963 (“the Principal Act”), which dealt with compensation arising from refusal or conditioning of consents under tree preservation orders. This matter is taken up by section 21 of the Bill;

—Part VI of the Principal Act. This dealt with planning compensation generally and is replaced by Parts II, III and IV of the Bill; and

—Section 24 of the Public Health (Ireland) Act, 1878, which conferred a right for premises outside a sanitary district to connect to sewers within that district. This general question is dealt with in sections 25 and 26 of the Bill.

Section 4 (2) provides that notwithstanding the repeal of section 69 of the Principal Act, the previous rules for assessment of compensation, i.e. those contained in section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919 as extended by section 69 of the Principal Act, shall continue to apply to cases other than cases under the present Bill. In effect, the older rules will apply to compulsory purchase cases, to purchase notice cases under section 29 of the Principal Act and to any planning compensation cases arising before the new rules of this Bill come into operation.

PART II

Compensation Generally

Section 5 lays down a general time limit of six months within which a claim for compensation must be made to a planning authority.

Section 6 provides that in default of agreement, compensation claims under the Bill must be determined by arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919 in accordance with rules set out in section 12 (2) and the First Schedule. The arbitrator has jurisdiction to make a nil award.

Section 7 provides for the making of regulations in relation to compensation claims. These may provide for the form of claims and the furnishing of evidence and information by claimants.

Section 8 prohibits the payment of double compensation where compensation may arise under this Bill and any other enactment.

Section 9 provides for the recovery of compensation payable by the planning authority, as well as costs, as a simple contract debt. Subsection (3) applies certain standard land law provisions regarding payments to persons under a disability to payments of compensation under the Bill. Subsection (4) provides, in connection with such payments, that where money is paid into Court by a planning authority, no costs shall be payable by that authority to any person in respect of proceedings about the further disposition of the money.

Section 10 requires that where compensation exceeding £100 has become payable by a planning authority, they must enter a statement of this in the planning register kept in pursuance of section 8 of the Principal Act.

Section 11 re-states existing law by providing for the repayment of compensation to a planning authority if development is carried out on land on which compensation has been paid within the subsequent fourteen years. *Subsection (1)* lays down the basic requirement that no person shall carry out any development to which the section applies, on land in respect of which an award of compensation has been registered at any time during the preceding fourteen years, without making an appropriate repayment to the planning authority. *Subsection (2)* applies the section to any development (other than exempted development), being development of a residential, commercial or industrial character set out in *section 14 (2)* or other development to which, having regard to its probable value, it is in the opinion of the Minister reasonable that this section should apply. *Subsections (3) and (4)* deal with the calculation of the compensation claw-back under this section according to whether development takes place on all or part of the land in relation to which compensation has been paid. *Subsection (5)* gives the Minister discretion to remit all or part of recoverable compensation where he is satisfied, having regard to the probable value of the development involved, that proper development of the land is otherwise unlikely to be carried out. *Subsection (7)* provides for recovery of compensation by planning authorities, while *subsection (8)* provides planning authorities with enforcement powers in the event of a person initiating development without repaying compensation.

PART III

Compensation in relation to decisions under Part IV of the 1963 Act.

This part replaces Part VI of the Principal Act which is repealed by *section 4*. Significant changes from the Principal Act are made in *sections 12 and 13* (and related Schedules), and in *section 14*, to give effect to the main new objectives of the Bill.

Section 12 continues the basic principle of planning compensation, first established by the Town and Regional Planning Act, 1934, whereby a person is entitled to be paid compensation by a planning authority if the value of his interest in land is reduced by a refusal or conditioning of planning permission. This entitlement however is heavily qualified by *sections 13 and 14*.

Section 13 specifies the circumstances in which no compensation will be payable where development is refused or is granted subject to conditions. Regardless of the reasons for refusal, no compensation will be payable for refusal of permission for development of the kind described in the *Second Schedule*. Compensation will also be excluded where the reasons for refusal of permission include a reason set out in the *Third Schedule*. Finally, *subsection (2)* provides that any condition of a kind listed in the *Fourth Schedule* may be attached to a planning permission without compensation. More detailed commentary on these Schedules is set out below. *Subsection (3)* re-states existing law which precludes compensation in a case where a planning authority is obliged under section 29 of the Principal Act to acquire an interest in land. This obligation arises only where, as a result of a decision on a planning appeal, land has become incapable of reasonably beneficial use and cannot be rendered capable of such use by the

carrying out of other development for which planning permission has been granted.

Section 14 is intended to replace the "undertakings" provisions of section 57 of the Principal Act, which have been found unsatisfactory by the courts, with a different procedure. Hitherto, a planning authority could avoid liability for compensation by undertaking to grant permission for certain other development on the relevant land. A difficulty about this procedure was that its quasi-contractual character was difficult to reconcile with the position of third parties, of An Bord Pleanála and of the elected members of the planning authority (in the case of a material contravention of the development plan) within the planning process.

The new procedure provided by this section makes it possible for a planning authority to avoid liability for compensation by serving a notice, under *subsection (1)*, on the claimant stating that, in their opinion, the land in question is capable of other development for which planning permission ought to be granted.

Subsection (2) sets out the scope of other development to which a notice may refer. Development of a residential, commercial or industrial character is specified, on the same lines as in section 57 of the Principal Act. *Subsection (3)* provides that a notice under *subsection (1)* shall continue in force until withdrawn or annulled, and *subsection (4)* provides that compensation shall not be payable while a notice is in force in relation to the relevant claim. *Subsection (5)* specifies the circumstances in which a notice under *subsection (1)* will become annulled. This will happen where a planning application is made to develop the land in question in a manner consistent with that contemplated in the notice and permission (whether by the planning authority or An Bord Pleanála) is either refused or is granted subject to compensatable conditions. The effect of the notice under *subsection (1)* being annulled will be to revive the original compensation claim.

Section 15 provides that, notwithstanding the provisions of *sections 13 and 14*, the Minister shall have discretion (subject to certain exceptions) to make an order enabling compensation to be paid if he is satisfied that it would not be just and reasonable in the particular circumstances that payment of compensation should be prevented.

Section 16 re-states existing law by providing for payment of compensation where permission is refused for the erection of a new structure which substantially replaces a structure demolished or destroyed by fire in the two years preceding application. Any dispute about whether a structure substantially replaces the previous structure is to be determined by An Bord Pleanála.

Section 17 re-states previous provisions requiring payment of compensation claims where permission is revoked or modified by a notice issued under section 30 of the Principal Act.

PART IV.

Section 24 provides for compensation where damage is caused as a result of the placing, renewing or removing of cables, wires or pipelines in accordance with a notice issued under section 83 of the Principal Act.

Compensation in Relation to sections 36, 37, 44, 45, 48, 83 and 85 of the Principal Act.

This part of the Bill is mainly a re-enactment of the corresponding provisions of Part VI of the Principal Act, apart from *section 21* which contains new provisions on the preservation of woodlands.

Section 18 provides for compensation where an authorised structure

is compulsorily removed or altered following a notice under section 36 of the Principal Act. However, under *subsection (2)* no compensation will be payable where the authority has the duty to acquire the interest in the land under section 29 of the Principal Act.

Section 19 provides in *subsection (1)* for compensation where an authorised use of land is discontinued or conditions are imposed on its continuance by a notice under section 37 of the Principal Act. No compensation will arise where conditions are imposed in order to avoid or reduce serious air or water pollution or the danger of such pollution. Under *subsection (2)*, compensation is also excluded where a notice is served requiring discontinuance of a use for the exhibition of advertising which has been established for less than 5 years. *Subsection (3)* provides that compensation will not be payable where it is the duty of the planning authority to acquire the interest in the land under section 29 of the Principal Act.

Section 20 provides for compensation where damage is suffered when a hedge is removed or altered as a result of a notice under section 44 of the Principal Act.

Section 21 replaces and extends the provisions of section 45 (2) of the Principal Act which is repealed by *section 4* of this Bill. Planning authorities are empowered by section 45 of the Principal Act in the interests of amenity to make tree preservation orders in relation to trees or woodlands. This section continues the general principle whereby compensation may be claimed for damage suffered because of the refusal or conditioning of consent to fell the trees or woodlands. However compensation may not be claimed where

- trees are declared to be of special amenity value or interest,
- replanting of woodlands is required as a condition of felling,
- preservation of a proportion of trees comprised in woodlands, not being greater than 20%, is specified as an essential condition of the consent, because of special amenity value or of special interest, or
- phasing of the felling or extraction of trees comprised in woodlands over a period of up to 20 years is specified as an essential condition because of special amenity value or of special interest.

Section 22 provides for compensation where damage is caused as a result of a public right of way being created compulsorily under section 48 of the Principal Act.

Section 23 provides for compensation where damage is caused in the course of authorised entry on land under section 83 of the Principal Act.

Section 24 provides for compensation where damage is caused as a result of the placing, renewing or rewiring of cables, wires or pipelines in accordance with a notice issued under section 85 of the Principal Act.

PART V

Connection of premises to Public Sewers and Water Supplies

Section 25 changes the application of certain provisions of the

Public Health (Ireland) Act, 1878 to structures erected after the commencement of this section, as well as to existing structures which are either unauthorised in planning terms or not connected to a public sewer. Section 23 of the 1878 Act entitled the owner or occupier of any premises within the district of a sanitary authority to connect his drains to the sewers of that authority. *Subsection (3)* will end this entitlement for structures to which this section applies; instead, a consent of the sanitary authority will be required. In considering whether to give this consent, a sanitary authority will be entitled, under *subsection (8)*, to have regard to existing or prospective deficiencies in sewerage facilities as described in the *Third Schedule, paragraph 1*. Connection to a sewer without the consent of the sanitary authority will be punishable, under *subsection (4)*, by a fine not exceeding £1,000. The sanitary authority may also, under *subsection (5)*, close any such connection and recover their costs from the person responsible. *Subsection (6)* provides that the consent of the sanitary authority for connection to a sewer shall not be necessary where they themselves require such connection by a notice under section 8 (1) of the Local Government (Sanitary Services) Act, 1962. *Subsection (7)* provides that where planning permission or building bye-law approval is granted in relation to a structure, this shall be taken to include a consent under *subsection (3)* to the connection of that structure to the appropriate public sewer.

Section 26 limits the right to a supply of water for domestic purposes, given by the Waterworks Clauses Act, 1847, to a dwelling house which is authorised under planning law. This section, however, does not restrict the operation of section 8 (2) of the Local Government (Sanitary Services) Act, 1962 under which a sanitary authority may serve a notice requiring connection to a public water supply system.

The *First Schedule* lists rules for the determination of the amount of compensation in the event of a compensation claim going to arbitration. These rules are based on the set of 16 rules contained in the Acquisition of Land (Assessment of Compensation) Act, 1919 as extended by section 69 (1) of the Principal Act. However, some six of the latter rules are omitted from the *First Schedule* because they relate solely to the circumstances of compulsory purchase. *Rules 2* and *3* of the *First Schedule* are entirely new. *Rule 2* is designed to clarify the market value principle in so far as this is relevant to the assessment of compensation. *Rule 3* requires the value of any subsidies or grants from public moneys, or of any special tax or rating concessions, to be discounted in calculating open market values. *Rules 13* and *14* re-enact provisions of section 55 (2) of the Principal Act which is being repealed.

The *Second Schedule* re-enacts provisions of section 56 and 57 of the Principal Act specifying classes of development in respect of which a refusal of planning permission will not attract compensation. These are

- any material change in the use of structures or land,
- the erection of an advertisement structure or the use of land for exhibiting an advertisement,
- development in an area to which a special amenity area order relates,
- development on land which already enjoys planning permission for residential, commercial or industrial development, and
- development on land in relation to which compensation has already been paid.

The *Third Schedule* sets out reasons for the refusal of planning permission which will exclude compensation. *Paragraphs 1, 3, 6 and 9* specify reasons additional to those contained in existing legislation. *Paragraph 1* allows development to be refused on the basis of prospective, as well as existing, demands on the capacity of water supplies or sewerage facilities. *Paragraph 3* provides that prematurity by reference to the order of priority for development indicated in the development plan shall also be a non-compensatable reason for refusing permission. *Paragraph 6* provides that permission may be refused where the proposed development would cause serious air pollution, water pollution or pollution connected with the disposal of waste. *Paragraph 9* provides that permission may be refused, without compensation, where development would contravene materially any development objective of a development plan which was in operation at the time when the applicant for planning permission acquired his interest in the land. This provision will apply to interests acquired in land, otherwise than by inheritance or family settlement, subsequent to 20th October 1988, the date of publication of this Bill.

The *Fourth Schedule* lists conditions which may be attached to planning permissions without compensation. These largely re-enact corresponding provisions of Part VI of the Principal Act, apart from the new provisions of *paragraphs 15 and 16* relating to preservation of buildings and interior features of artistic, historical or architectural interest.

Staffing and Financial Implications

The Bill will not entail additional staffing or financial requirements for the Department of the Environment or any other public bodies.

An Roinn Comhshaoil,

Deireadh Fómhair, 1988.