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**AN BILLE UM PLEANÁIL AGUS FORBAIRT (LEASÚ) 2005**  
**PLANNING AND DEVELOPMENT (AMENDMENT) BILL**  
**2005**

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*Mar a tionscnaíodh*  
*As initiated*

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**ARRANGEMENT OF SECTIONS**

Section

1. Short title, collective citation and construction.
2. Amendment of section 35 of Act of 2000.
3. Right of action for residents of uncompleted estate.

ACTS REFERRED TO

Companies Act 1990	1990, No. 33
Planning and Development Act 2000	2000, No. 30
Planning and Development Acts 2000 and 2002	



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**BILL**

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*entitled*

AN ACT TO AMEND THE PLANNING AND DEVELOPMENT  
ACT 2000.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.—(1)** This Act may be cited as the Planning and Development  
(Amendment) Act 2005. Short title,  
collective citation  
and construction.

(2) This Act and the Planning and Development Acts 2000 and  
2004 may be cited together as the Planning and Development Acts  
2000 to 2005 and shall be construed together as one Act.

15 **2.—(1)** The Planning and Development Act 2000 is amended by  
the substitution of the following for section 35— Amendment of  
section 35 of Act of  
2000.

“35.—(1) Where, having regard to—

- (a) any information furnished pursuant to regulations  
made under section 33(2)(1), or
- 20 (b) any information available to the planning authority  
concerning development carried out by a person to  
whom this section applies, pursuant to a permission  
(in this subsection and subsection (2) referred to as  
a ‘previous permission’) granted to the applicant or  
to any other person under this Part or Part IV of the  
25 Act of 1963,

the planning authority is satisfied that a person or com-  
pany to whom this section applies is not in compliance  
with the previous permission, or with a condition to which  
the previous permission is subject, the authority may form  
30 the opinion—

- (i) that there is a real and substantial risk that  
the development in respect of which per-  
mission is sought would not be completed in  
accordance with such permission if granted

or with a condition to which such permission if granted would be subject, and

- (ii) that planning permission should not be granted to the applicant concerned in respect of that development. 5

(2) In forming its opinion under subsection (1), the planning authority shall only consider those failures to comply with any previous permission, or with any condition to which that permission is subject, that are of a substantial nature. 10

(3) An opinion under this subsection shall not be a decision on an application for permission for the purposes of this Part.

- (4) (a) Where the planning authority has formed an opinion under subsection (1), the planning authority shall serve on the person to whom the opinion concerned relates a notice of its decision to refuse permission for that reason. 15

(b) A notice under paragraph (a) shall take effect in accordance with its terms on the day that is 21 days after the day on which it is served unless, within that period, the person to whom the opinion concerned relates applies to the High Court, by motion on notice to the planning authority, for an order setting aside the notice and the High Court, on hearing the application— 20 25

- (i) may confirm the decision of the authority to refuse permission for that reason, or 30

- (ii) may set aside the decision of the authority to refuse permission for that reason and shall remit the application to the authority for decision, or 35

- (iii) may give such other directions to the authority as the Court considers appropriate.

- (5) (a) Subsection (8)(a) in section 34 shall not apply where a notice under subsection (4)(a) is made within the period of 8 weeks from the date of the making of an application for permission under this section. 40

(b) Where, under subsection (4)(b), a matter is remitted to the planning authority, a decision on the permission shall be made within the period of 8 weeks from the date of the decision of the High Court, and subsection (8)(b) in section 34 shall be construed and have effect in accordance with this subsection. 45 50

(6) Where the decision of an authority to refuse permission is confirmed by the Court under subsection (4)(a), no appeal shall lie to the Board from that refusal.

(7) In this section, 'a person to whom this section applies' means—

- (a) the applicant for the permission concerned,
  - (b) a partnership of which the applicant is or was a member and which, during the membership of that applicant, carried out a development referred to in subsection (1)(b),
  - (c) in the case where the applicant for permission is a company—
    - (i) the company concerned is related to a company (within the meaning of section 140(5) of the Companies Act 1990) which carried out a development referred to in subsection (1)(b), or
    - (ii) the company concerned is under the same control as a company which carried out a development referred to in subsection (1)(b), where 'control' has the same meaning as in section 26(3) of the Companies Act 1990,
- or
- (d) a company which carried out a development referred to in subsection (1)(b), which company is controlled by the applicant—
    - (i) where 'control' has the same meaning as in section 26(3) of the Companies Act 1990, or
    - (ii) as a shadow director within the meaning of section 27(1) of the Companies Act 1990.”.

3.—(1) A person who has been given a grant of permission for a development subject to conditions under section 34(4)(f) of the Planning and Development Act 2000, and all other persons involved in the direction, management or funding of that development, owe a duty to those who acquire an interest in the development or any part of it to take all reasonable steps to ensure its satisfactory completion in accordance with those conditions.

Right of action for residents of uncompleted estate.

(2) A person who suffers loss or damage by reason of a breach of the duty referred to in *subsection (1)* may bring and maintain an action for damages, in any court of competent jurisdiction, in like manner as any other action in tort.