



---

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

---

**EXPLANATORY MEMORANDUM**

---

*Purpose of Bill*

The purpose of the Bill is to amend the provisions of the Planning and Development Act 2000 dealing with unfinished estates.

*Provisions of Bill*

*Section 1* is a standard provision dealing with the short title and collective citation and construction of the Bill.

*Section 2* amends the Planning and Development Bill by substituting a new section for section 35 “Refusal of planning permission for past failures to comply”.

The new section provides that, where, having regard to any information available to the planning authority concerning development that was carried out by the applicant or certain connected persons pursuant to a previous permission, the planning authority is satisfied that they are not in compliance with the previous permission or any condition of that permission, the authority may form the opinion that there is a real and substantial risk that the development in respect of which permission is now sought would not be completed in accordance with the permission or a condition, if granted, and that planning permission should not be granted to the applicant.

The authority is required to consider only those failures to comply that are of a substantial nature.

Where the planning authority has formed the opinion that there is such a real and substantial risk, it is obliged to serve on the person to whom the opinion concerned relates a notice of its decision to refuse permission for that reason. The notice takes effect in accordance with its terms 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. The High Court, on hearing the application—

- may confirm the decision of the authority to refuse permission for that reason, or
- 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
- may give such other directions to the authority as the Court considers appropriate.

It is provided that the deadlines for deciding an application for planning permission set out in section 34 of the Act of 2000 do not apply where application to the High Court is made under this section.

Where the decision of an authority to refuse permission is confirmed by the Court, no appeal shall lie to An Bord Pleanála from that refusal.

The section applies not only in cases where a previous permission was granted to the applicant but also where it was granted to a partnership of which the applicant is or was a member.

Where the applicant for permission is a company, the section applies to cases where the previous permission was granted to

- a related company within the meaning of section 140(5) of the Companies Act 1990, or
- a company under the same control, within the meaning of section 26(3) of the Companies Act 1990.

Where the previous permission was granted to a company, the section applies where the present applicant controlled that company or was a shadow director of that company.

The existing section 35 enables a planning authority to refuse permission on “track record” grounds. But the authority must first apply to the High Court for authorisation to do so. Under this Bill, the authority will be obliged to refuse permission on track record grounds and it will be up to the applicant, within 21 days, to apply to the High Court against that decision.

*Section 3* provides for a duty owed by a person granted planning permission that is made subject to conditions requiring the satisfactory completion of the development within a specified period. The duty is also owed by all other persons involved in the direction, management or funding of that development and it obliges those persons to take all reasonable steps to ensure the satisfactory completion of the development in accordance with those conditions

The duty is owed to those who acquire an interest in the development or any part of it. A person who suffers loss or damage by reason of a breach of the duty may bring and maintain an action for damages, in any court of competent jurisdiction, in like manner as any other action in tort.

Eamon Gilmore T.D.  
February, 2005