



AN BILLE UM PLEANÁIL AGUS FORBAIRT (LEASÚ) 2006
PLANNING AND DEVELOPMENT (AMENDMENT) BILL
2006

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Short title, collective citation and construction.
 2. Amendment of Section 96 of Principal Act.
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ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo 5., c. 57
Capital Acquisitions Tax Act 1976	1976, No. 8
Housing (Miscellaneous Provisions) Act 1992	1992, No. 18
Housing Acts 1996 to 2004	
Housing Act 1988	1988, No. 28
Planning and Development Act 2000	2000, No. 30
Planning and Development (Amendment) Act 2002	2002, No. 32
Property Values (Arbitration and Appeals) Act 1960	1960, No. 45



AN BILLE UM PLEANÁIL AGUS FORBAIRT (LEASÚ) 2006
PLANNING AND DEVELOPMENT (AMENDMENT) BILL
2006

BILL

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entitled

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AN ACT TO AMEND THE PLANNING AND DEVELOPMENT ACTS 2000 TO 2002 TO RESTORE THE OBLIGATIONS IN RELATION TO THE PROVISION OF SOCIAL AND AFFORDABLE HOUSING WHICH EXISTED UNDER PART V OF THE PLANNING AND DEVELOPMENT ACT 2000 PRIOR TO THE AMENDMENT OF THAT ACT IN 2002.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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1.—(1) This Act may be cited as the Planning and Development (Amendment) Act 2006.

Short title,
collective citation
and construction.

(2) This Act and the Planning and Development Acts 2000 and 2002 may be cited together as the Planning and Development Acts 2000 to 2006 and shall be construed together as one Act.

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(3) In this Act, “Principal Act” means the Planning and Development Act 2000.

2.—The following section is substituted for Section 96 of the Principal Act as amended by the Planning and Development (Amendment) Act 2002:

Amendment of
Section 96 of
Principal Act.

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“96.—(1) Subject to subsection (14) and section 97, where a development plan objective requires that a specified percentage of any land zoned solely for residential use, or for a mixture of residential and other uses, be made available for housing referred to in section 94(4)(a), the provisions of this section shall apply to an application for permission for the development of houses, or where an application relates to a mixture of development, to that part of the application which relates to the development of houses, in addition to the provisions of section 34.

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(2) A planning authority, or the Board on appeal, shall require as a condition of a grant of permission that the applicant, or any other person with an interest in the land to which the application relates, enter into an agreement with the planning

authority, concerning the development for housing of land to which a specific objective applies in accordance with section 95(1)(b).

(3) (a) An agreement under this section may provide for—

(i) the transfer to the planning authority of the ownership of the land required by the agreement to be reserved for the provision of housing referred to in section 94(4)(a), 5

(ii) instead of the transfer of land referred to in subparagraph (i), the building and transfer, on completion, to the planning authority, or to persons nominated by the authority in accordance with this Part, of houses of such number and description as may be specified in the agreement at a price determined on the basis of— 10
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(I) the site cost of the houses being calculated as if it was equal to the cost of land transferred to the authority under subparagraph (i), and

(II) the building and attributable development costs as agreed between the authority and the developer, including profit on the costs, 20

or

(iii) instead of the transfer of land referred to in subparagraph (i), the transfer of such number of fully or partially serviced sites as the agreement may specify to the planning authority, or to persons nominated by the authority in accordance with this Part, at a price determined on the basis of— 25
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(I) the site cost of the sites being calculated as if it was equal to the cost of land transferred to the authority under subparagraph (i), and

(II) the attributable development costs as agreed between the authority and the developer, including profit on the costs. 35

(b) Where an agreement provides for the transfer of land, houses or sites in accordance with paragraph (a), the houses or sites or the land, whether in one or more parts, shall be identified in the agreement. 40

(c) In so far as it is known at the time of the agreement, the planning authority shall indicate to the applicant its intention in relation to the provision of housing, including a description of the proposed houses, on the land or sites to be transferred in accordance with paragraph (a)(i) or (iii). 45

(d) Nothing in this subsection shall be construed as requiring the applicant or other person to enter into an agreement to transfer houses or sites in accordance with subparagraphs (ii) or (iii) of paragraph (a) 50

instead of transferring land in accordance with sub-paragraph (i) of that paragraph.

(e) For the purposes of an agreement under paragraph (a), the planning authority shall have regard to—

(i) the proper planning and sustainable development of the area to which the application relates,

(ii) the housing strategy and the specific objectives of the development plan which relate to the implementation of the strategy,

(iii) the need to ensure the overall coherence of the development to which the application relates, and

(iv) the views of the applicant in relation to the impact of the agreement on the development.

(f) Government guidelines on public procurement shall not apply to an agreement made under paragraph (a)(ii) or (iii), except in the case of an agreement which is subject to the requirements of Council Directive No. 93/37/EEC¹ on the co-ordination of procedures relating to the award of Public Works Contracts and any directive amending or replacing that directive.

(4) An applicant for permission shall, when making an application to which this section applies, specify the manner in which he or she would propose to comply with a condition to which subsection (2) relates, were the planning authority to attach such a condition to any permission granted on foot of such application, and where the planning authority grants permission to the applicant subject to any such condition it shall have regard to any proposals so specified.

(5) In the case of a dispute in relation to any matter which may be the subject of an agreement under this section, other than—

(a) a dispute in relation to an agreement under subsection (3)(a)(ii) or (iii),

(b) a dispute as to the amount of compensation payable under subsection (6), or

(c) a dispute as to the sum payable to a planning authority under subsection (12),

the matter may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

(6) Where ownership of land is transferred to a planning authority pursuant to subsection (3)(a)(i), the planning authority shall, by way of compensation, pay to the owner of the land a sum equal to—

(a) (i) in the case of—

¹O.J. No. L 199/54, 9.7.1993

(I) land purchased by the applicant before 25 August 1999, or

(II) land purchased by the applicant pursuant to a legally enforceable agreement entered into before that date or in exercise of an option in writing to purchase the land granted or acquired before that date,

the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon (including, in circumstances where there is a mortgage on the land, interest paid in respect of the mortgage) as may be determined by the property arbitrator,

(ii) in the case of land the ownership of which was acquired by the applicant by way of a gift or inheritance taken (within the meaning of the Capital Acquisitions Tax Act 1976) before 25 August 1999, a sum equal to the market value of the land on the valuation date (within the meaning of that Act) estimated in accordance with section 15 of that Act,

(iii) in the case of—

(I) land purchased before 25 August 1999, or

(II) land purchased pursuant to a legally enforceable agreement to purchase the land entered into before that date, or in exercise of an option, in writing, to purchase the land granted or acquired before that date,

(where the applicant for permission is a mortgagee in possession of the land) the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon calculated from that date (including any interest accruing and not paid in respect of the mortgage) as may be determined by the property arbitrator,

or

(b) the value of the land calculated by reference to its existing use on the date of the transfer of ownership of the land to the planning authority concerned on the basis that on that date it would have been, and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development,

whichever is the greater.

(7) (a) Subject to paragraph (b), a property arbitrator appointed under section 2 of the Property Values (Arbitration and Appeals) Act 1960, shall (in accordance with the Acquisition of Land (Assessment of

Compensation) Act 1919), in default of agreement, fix the following where appropriate:

(i) the number and price of houses to be transferred under subsection (3)(a)(ii);

(ii) the number and price of sites to be transferred under subsection (3)(a)(iii);

(iii) the compensation payable under subsection (6) by a planning authority to the owner of land;

(iv) the sum payable to a planning authority under subsection (12); and

(v) the allowance to be made under section 99(3)(d)(i).

(b) For the purposes of paragraph (a), section 2(2) of the Acquisition of Land (Assessment of Compensation) Act 1919, shall not apply and the value of the land shall be calculated on the assumption that it was at that time and would remain unlawful to carry out any development in relation to the land other than exempted development.

(c) Section 187 shall apply to compensation payable under subsection (6).

(8) Where it is a condition of the grant of permission that an agreement be entered into in accordance with subsection (2) and, because of a dispute in respect of any matter relating to the terms of such an agreement, the agreement is not entered into before the expiration of 8 weeks from the date of the grant of permission, the applicant or any other person with an interest in the land to which the application relates may—

(a) refer to the Board any dispute to which subsection (5) applies, or

(b) refer to the property arbitrator—

(i) any dispute to which subsection (3)(a)(ii) or (iii) relates,

(ii) any dispute as to the amount of compensation payable under subsection (6), or

(iii) any dispute as to the sum payable to a planning authority under subsection (12),

and the Board or the property arbitrator, as may be appropriate, shall determine the matter as soon as practicable.

(9) (a) Where ownership of land or sites is transferred to a planning authority in accordance with subsection (3)(a)(i) or (iii), the authority may—

(i) provide or arrange for the provision of, houses on the land or sites for persons referred to in section 94(4)(a),

- (ii) make land or sites available to those persons for the development of houses by them for their own occupation, or
 - (iii) make land or sites available to a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992, for the provision of houses on the land for persons referred to in section 94(4)(a). 5
- (b) Pending the provision of houses or sites in accordance with paragraph (a)(i), or the making available of land or sites in accordance with paragraph (a)(ii) or (iii), the planning authority shall maintain the land or sites in a manner which does not detract, and is not likely to detract, to a material degree from the amenity, character or appearance of land or houses in the neighbourhood of the land or sites. 10 15
- (10) (a) Where a house is transferred to a planning authority or its nominees under subsection (3)(a)(ii), it shall be used for the housing of persons to whom section 94(4)(a) applies. 20
- (b) A nominee of a planning authority may be a person referred to in section 94(4)(a) or a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992, for the provision of housing for persons referred to in section 94(4)(a). 25
- (11) Notwithstanding any provision of this or any other enactment, if a planning authority becomes satisfied that land, a site or a house transferred to it under subsection (3) is no longer required for the purposes specified in subsection (9) or (10), it may use the land, site or house for another purpose connected with its functions or sell it for the best price reasonably obtainable and, in either case, it shall pay an amount equal to the market value of the land, site or house or the proceeds of the sale, as the case may be, into the separate account referred to in subsection (13). 30 35
- (12) (a) Where for reasons of the size, shape or other attribute of the site, the planning authority, or the Board on appeal, considers that an agreement under subsection (3) is not practical, the planning authority, or the Board on appeal, may as a condition of a grant of permission in accordance with section 34 require the payment to the planning authority of an amount equivalent in value to a transfer of land to the authority under paragraph (a) of subsection (3). 40 45
- (b) The condition specified in paragraph (a) shall provide that the sum shall be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the sum shall be fixed by a property arbitrator in accordance with subsection (7). 50
- (13) Any amount referred to in subsection (11) and any amount paid to a planning authority in accordance with subsection (12) shall be accounted for in a separate account and shall only be applied as capital for its functions under this Part or by 55

a housing authority for its functions in relation to the provision of housing under the Housing Acts 1966 to 2004.

(14) This section shall not apply to applications for permission for—

- 5 (a) development consisting of the provision of houses by
a body standing approved for the purposes of section
6 of the Housing (Miscellaneous Provisions) Act
1992, for the provision of housing for persons
10 referred to in section 9(2) of the Housing Act 1988,
where such houses are to be made available for letting only,
- (b) the conversion of an existing building or the reconstruction of a building to create one or more dwellings, provided that 50 per cent or more of the existing external fabric of the building is retained, or
15 (c) the carrying out of works to an existing house.

(15) In this section, ‘owner’ means—

- 20 (a) a person, other than a mortgagee not in possession, who is for the time being entitled to dispose (whether in possession or reversion) of the fee simple of the land, and
- (b) a person who, under a lease or agreement the unexpired term of which exceeds 5 years, holds or is entitled to the rents or profits of the land.”.