



**AN BILL UM PLEANÁIL AGUS FORBAIRT (EASTÁIT A
GHLACADH FAOI CHÚRAM), 2012**
**PLANNING AND DEVELOPMENT (TAKING IN CHARGE
OF ESTATES) BILL 2012**

EXPLANATORY MEMORANDUM

Purpose of Bill

The key objectives of the bill are:

- To reduce from seven years to three years the period after expiry of a planning permission for which residents in an unfinished housing development must wait before they can initiate proceedings to have the development taken in charge by a local authority.
- To ensure that plebiscites of owners of properties within such developments be decisive even where not all of those qualified to vote in fact do so, by requiring only a majority of all votes cast rather than a majority of all those qualified to vote.
- To provide for voting arrangements analogous to those provided for in Management Companies, under the Multi-Unit Developments Act 2011.
- To render inoperative any restrictive covenants requiring compliance with a management company, where the management company has been struck off the register of companies and has not sought to be restored to it for a period of three years.

Background

Section 34 of the Planning and Development Act 2000 provides that a planning authority may decide to grant permission for a development subject to or without conditions, or to refuse it.

Conditions may include:

- conditions for requiring the satisfactory completion within a specified period, not being less than 2 years from the commencement of any works, of the proposed development (including any roads, open spaces, car parks, sewers, watermains or drains or other public facilities);

- conditions for requiring the giving of adequate security for satisfactory completion of the proposed development;
- conditions for determining the sequence and timing in which and
- the time at which works shall be carried out;
- conditions for the maintenance or management of the proposed development (including the establishment of a company or the appointment of a person or body of persons to carry out such maintenance or management);
- conditions for the maintenance, until taken in charge by the local authority, of roads, open spaces, car parks, sewers, watermains or drains and other public facilities.

Section 180 of the Act deals with taking in charge of estates. It states that, where the development of an estate including new roads, open spaces, car parks, sewers, watermains or drains has been completed to the satisfaction of the planning authority in accordance with the permission and any conditions to which the permission is subject, the authority shall, where requested by developer or by the majority of the qualified electors who are owners or occupiers of the houses involved, as soon as may be, initiate procedures under section 11 of the Roads Act 1993.

Those procedures have the effect of making the roads public roads, maintainable by the local authority, and also result in the taking in charge of open spaces, car parks, sewers, watermains and drains within the development.

However, where a development has not been completed to the satisfaction of the planning authority and enforcement proceedings have not been commenced by it within seven years of the expiry of the planning permission, the authority must, where requested by the majority of qualified electors who own or occupy the houses in question, comply with section 11 of the Roads Act 1993.

The authority may then apply any security given by the developer towards the satisfactory completion of the development in question. The result is that the owner occupiers can compel the local authority to take an unfinished estate in charge but only after seven years after the planning permission has expired. (Planning permissions have a normal life of five years but this period can be extended.)

The primary purpose of this Bill is to reduce from seven years to three years the period after expiry of a planning permission for which residents in an unfinished estate must wait before they can initiate proceedings to have the estate taken in charge by a local authority.

The Bill also adopts certain recommendations of the Law Reform Commission. The Bill implements the recommendation that plebiscites of owners and occupiers be decisive even where not all of those qualified to vote in fact do so, by requiring only a majority of all votes cast rather than a majority of all those qualified to vote.

The Bill also provides for the non-operation of restrictive covenants regarding Management Companies, where the Management Company is no longer in existence, and reduces the period of time within which a Management Company which has been struck off the Register of Companies may be restored thereto from six years to three years.

Provisions of Bill

Section 1 amends section 180 of the Planning and Development Act 2000 in subsection (2)(a) by substitution of “the majority of those casting votes in a plebiscite of owners” for “the majority of the owners of the houses involved”.

The Law Reform Commission’s 2008 report on Multi-Unit Developments noted that progress in the taking in charge process was often hindered by inconclusive plebiscites. It referred to occasions where “a minority of qualified electors vote, or even where a majority vote but the majority of votes cast does not comprise a majority of the electorate as a whole”, and noted that such occurrences can require the holding multiple plebiscites, none of which may prove to be conclusive. This amendment ensures that a majority of votes cast will be sufficient to initiate the taking in charge procedure.

Section 1 further amends section 180 of the Planning and Development Act 2000 in subsection (3) by providing for voting arrangements analogous to those provided for in Management Companies, under the Multi-Unit Developments Act 2011.

In the interests of uniformity and clarity, the assignment of votes to owners of properties should be consistent. Multiple systems cause confusion and uncertainty. This section adopts the distribution of votes provided for in the Multi-Unit Developments Act 2011.

Section 1 further amends section 180 of the Planning and Development Act 2000 in subsection (2)(a) and in subsection 2A(a) by substituting “three years” for “seven years”.

Currently, residents must wait for a period of seven years before there is even a possibility of an unfinished development being taken in charge. This is an unacceptable period of time in circumstances where home-owners often have young families who are placed at risk by unsafe conditions. This section shortens the wait period.

Section 2 amends Section 30 of the Multi-Unit Developments Act 2011 by the substitution of “three years” for “six years”.

Section 30 of the Multi-Unit Developments Act 2011 allows for a management company to be restored to the Register of Companies at any time within a period of seven years of the publication in *Iris Oifigiúil* of the notice that the company was struck off the register. In many cases there is no possibility that the management company will ever be so restored. This section shortens the time within which management companies may be restored to the register, to facilitate the proper operation of Section 3, below.

Section 2 further amends Section 30 of the Multi-Unit Developments Act 2011 by the insertion of a new subsection providing for the non-operation of restrictive covenants regarding Management Companies, where the Management Company is no longer in existence.

Certain properties in developments which are managed by a management company are subject to restrictive covenants which require, in order for the properties to be sold, the fulfillment of certain duties relating to the management company. Where a management company has ceased to exist, these duties cannot be fulfilled. In consequence, home-owners find themselves, through no failing of their own, unable to sell their homes. This section renders

any such restrictive covenants null and void where the management company has ceased to exist for a period of three years and where no application has been made within that time to restore it to the register of companies.

Section 3 provides for the short title and collective citation of the Bill. These are standard provisions.

*An Teachta Dominic Ó hAnnagáin,
Bealtaine, 2012.*