An Bille um Athbheochan Uirbeach agus Tithe, 2015
Urban Regeneration and Housing Bill 2015

Meabhrán Mínitheach
Explanatory Memorandum

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EXPLANATORY MEMORANDUM

[This Memorandum is not part of the Bill and does not purport to be a legal interpretation]

General

The purpose of the Bill is primarily focused on addressing housing supply-related issues with a view to facilitating increased activity in the housing construction sector, particularly in the Dublin area where the housing supply shortage is particularly acute. The main provisions of the Bill are:

- the revision of the Part V arrangements on social and affordable housing,
- retrospective application of reduced development contribution charges, and
- the introduction of a vacant site levy to incentivise urban regeneration and the provision of housing in central urban areas.

The Bill amends Part V of the Act of 2000 which deals with social and affordable housing. Informed by a recent review of the Part V provisions, which included a public consultation process, the required legislative changes are contained in sections 31 to 36.

The Bill provides that, in future, the focus of Part V will be on the delivery of social housing, with a requirement for up to 10% social housing in developments in excess of 9 units. In the operation of these revised Part V arrangements, the priority will be to secure social housing units on-site; the making of cash payments in lieu of social housing is to be discontinued. These provisions are a key component of the range of delivery mechanisms that will be required to achieve the targets set out in the Government's Social Housing Strategy 2020 – Support, Supply and Reform.

The Bill gives effect to a number of actions outlined in the Government's Construction 2020 Strategy which require legislative underpinning. The Bill will enable planning authorities to adopt measures to incentivise the use and development of vacant sites in urban areas. The Bill provides that from 1st January 2019, planning authorities will be empowered to apply an annual vacant site levy of 3% of the market value of vacant sites exceeding 0.1 hectares, which in the planning authority's opinion were vacant in the preceding year, in areas

identified by the planning authority in its development plan or local area plan for residential development or regeneration development.

The Bill also provides that developers be enabled to avail of new lower development contributions rates to be applied retrospectively for existing planning permissions that have yet to be activated. The new lower development contribution rates will also be applicable to housing developments where the development is complete but there are unsold housing units.

Provisions

There are 5 parts in the Bill, which contains 36 sections.

Part I – Preliminary and General *(section 1 to 2)*

This Part contains standard legislative provisions.

Section 1 contains standard provisions relating to the short title, collective citation, construction and commencement. *Section 2* is the standard interpretation section which defines relevant Acts and the Minister.

Part 2 – Vacant Site Levy *(section 3 to 26)*

Section 3 provides definitions for Part 2 which, among other things, defines 'housing', 'market value' and 'owner'.

Section 4 provides that Part 2 applies to sites consisting of residential land or regeneration land.

Section 5 provides for the definition of a vacant site. In the case of residential land it means a site in an area where there is a need for housing, the site is suitable for provision of housing and is vacant. In the case of regeneration land it means a site that is vacant and has an adverse effect on existing amenities including a diminution in the amenity. A site is any area of land exceeding 0.1 hectares but does not include a structure that is a person's home.

Sections 6 to 12 provide for the establishment and maintenance of a vacant sites register. Section 6 provides that a planning authority shall, beginning on 1 January 2017, establish and maintain a vacant sites register. The register shall be available for inspection at the offices of the local authority during normal office hours and on their website.

The section also outlines specific criteria to be used by the planning authority, or An Bord Pleanála on appeal, for determining whether or not (i) there was a need for housing in an area, (ii) a site was suitable for housing, and (iii) the site, being vacant, had adverse effects on existing amenities in the area or on the character of the area.

Section 7 provides that the planning authority shall give the registered owners of relevant sites written notice of their intention to place sites on the register with the owners being given 28 days to make submissions on the proposed entry on the register. A planning authority shall give written notice to the owners when a site is entered on the register. The notice shall also request the site owner to notify the planning authority of any mortgage or other security to which the site was subject on the date of the passing of the Act.

Section 8 provides the information to be entered on the register in respect of each vacant site as (i) the relevant property ownership

folio reference attaching to the land, (ii) the name and address of each registered owner, (iii) the particulars of the market valuation of the site and (iv) other information as may be prescribed.

Section 9 provides that the owner of a site entered on the register may appeal the entry to An Bord Pleanála within 28 days of being notified of the inclusion of the site on the register. The burden of showing that a site or a majority of a site was not vacant or idle shall rest with the owner of the site. Where An Bord Pleanála determines that a site was not vacant or idle in the preceding year, it shall notify the planning authority concerned who shall remove the relevant entry from the register.

Section 10 provides that an owner of a site entered on the register shall notify the planning authority if the site is no longer vacant. If the planning authority is satisfied that the site is no longer vacant then it shall cancel the entry on the register. The owner shall also notify the planning authority of any mortgage or other security to which a site was subject on the date of the passing of the Act.

Section 11 provides that planning authorities shall, before 1 June 2018, give written notice to owners of a vacant site entered on the register stating that (i) the site is entered on the register, (ii) the information contained on the register for the site, (iii) commencing 2018 a levy will be charged in respect of the site according to the market value determined and (iv) informing the owner that they may make submissions on the entry to the planning authority within 28 days of the date of the notice. If satisfied that the site is no longer a vacant site, it shall cancel the entry in the register.

If a planning authority, after considering submissions received, does not cancel an entry on the register, it shall give written notice to the owner who may appeal the decision to An Bord Pleanála. The burden of showing that a site is no longer a vacant site shall rest with the owner. Where An Bord Pleanála determines that a site is no longer vacant, it shall notify the planning authority concerned who shall remove the relevant entry from the register.

Section 12 provides a planning authority shall, as soon as possible after the entry of a site on the vacant sites register, and at least every 3 years thereafter, determine the market value of a vacant site and give written notice on the owner of the site of the valuation, or revised valuation, of the site in question.

Section 13 provides that the owner of a vacant site may appeal the market value arrived at by the planning authority to the Valuation Tribunal who shall make its determination on the market value in line with the provisions of the Valuation Act 2001 which may include convening a hearing of the appeal.

Section 14 provides that a planning authority, or the Valuation Tribunal under appeal, may where it considers it appropriate deem that a vacant site has a zero valuation where (i) no market exists for the site, or (ii) the site is on contaminated land and the estimated necessary remediation costs in order to use or develop the site exceed the market value of the site itself.

Section 15 provides that with effect from 1 January 2019 and every year thereafter, a planning authority shall, in respect of the preceding year, charge a vacant site levy on the market value of a site on the owner of each site included in its vacant site register. The levy shall be payable, in arrears, on demand or by instalments if agreed by the

planning authority. The levy shall continue to be payable annually until the site is developed or brought into use at which time the site will be removed from the vacant site register.

Section 16 provides that the vacant site levy shall be 3% of the market value of the vacant site. However, where the value of the mortgage or other security on the site is greater than the market value of the site (negative equity situation) a zero rate of levy shall apply. In a case where the outstanding amount of the site loan is between 75% and 100% of the market value of the vacant site on the date of its determination, a reduced rate of 0.75% levy shall apply. Where the outstanding amount of the site loan is between 50% and 75% of the market value of the vacant site on the date of its determination, a 1.5% rate of levy shall apply.

Section 17 provides that where there is a change in ownership of a vacant site, or the owner of a site dies, the amount of levy chargeable on such site in respect of that year or the previous year shall be zero. This shall not apply where ownership of the vacant site transfers – (i) from one company to an associated company, (ii) from the owner to a connected person, other than where ownership devolves on the death of the owner, or (iii) for the sole purpose of avoiding the obligations to pay the vacant site levy.

Section 18 provides that the owner of a site may appeal the demand for payment of the levy to An Bord Pleanála on the grounds that the site was not a vacant site in the year concerned. Where An Bord Pleanála determines that a site was not a vacant site, it shall notify the planning authority concerned, who shall remove the relevant entry from the register and cancel the demand made. An owner of a site may also appeal on the grounds that the amount of the levy has been incorrectly calculated. Where An Bord Pleanála determines the amount of the levy has been incorrectly calculated, it shall notify the correct amount to the planning authority concerned, who shall revise the demand accordingly.

Section 19 provides that where a vacant site levy remains owing to a planning authority, it shall remain a charge on the relevant land until it is paid.

Section 20 provides that it shall be an offence to make a submission or provide any evidence or information under this Part which is false or misleading.

Section 21 provides that a planning authority shall issue a receipt, and on request a certificate of discharge, in respect of levies paid. The vendor of a site on the register shall before the completion of a sale on the site, pay to the relevant planning authority any vacant site levy due in respect of that site, and give to the purchaser a certificate of discharge for each year in respect of which the site was a vacant site.

Section 22 provides that it shall be an offence to forge or provide a forged certificate or other document in respect of the vacant site levy under this Part.

Section 23 provides that any monies received by a planning authority in respect of vacant site levy shall be spent by it – (a) where the vacant site comprises residential land, on the provision of housing on the residential land on which the site is situated, and (b) where the site comprises regeneration land, on the development and renewal of the regeneration land in which the site is situated.

A planning authority may spend no more than 10% of the total levy monies received in respect of any collection costs incurred by it.

In the case of regeneration land, levy proceeds may be spent on (i) the preservation and protection of structures of special architectural, historical, cultural interest etc, (ii) the provision or improvement of services or facilities for the local community i.e. education, training, recreational, cultural facilities, (iii) the preservation, improvement and extension of amenities, including recreational amenities, on the land, (iv) civic improvements, and (v) projects and works for the benefit of urban streets in the area including the improvement of streets or footpaths in local shopping streets and business areas and the removal of graffiti.

Section 24 provides that section 250 of the Act of 2000 applies to notices served under this Part.

Section 25 allows for the Minister to make regulations for prescribing any matter referred to in this Part as the subject of regulations.

Section 26 provides for the prosecution of an offence under section 20 or section 22 of this Part.

Part 3 – Amendment of Derelict Sites Act 1990 *(section 27)*

Section 27 amends section 23 of the Derelict Sites Act 1990 to provide that derelict site levy shall not be payable in respect of any land in respect of which the vacant site levy is payable under the Urban Regeneration and Housing Bill, when enacted. This is to ensure that no double payment of levy situation arises in respect of any individual site in respect of which vacant site levy is being applied by a planning authority.

Part 4 – Amendment of Parts II and III of Act of 2000

Development Plans and Development Contributions *(section 28 to 30)*

Section 28 amends section 10(2) of the Act of 2000 by the substitution of paragraph (h). Section 10 of the Planning and Development Act 2000, as amended, outlines the objectives that planning authorities are required to take into account in the preparation and adoption of the development plan for their respective areas. The development plan is intended to set out the overall strategy for the proper planning and sustainable development of the area in question, in particular indicating the development objectives for the area.

In this regard, section 10(2) of the Act provides that a development plan shall set out a range of objectives for the area in question, including '*the development and renewal of areas in need of regeneration'*. For purposes of supplementing the provisions relating to the vacant site levy and elaborating on the principles and policies relating to same, this Part of the Act revises the wording of this objective to provide that *'the development and renewal of areas in need of regeneration should be for the explicit purposes of preventing (i) adverse effects on existing amenities, (ii) urban blight and decay, (iii) anti-social behaviour or (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses'.*

Section 29 amends section 48 of the Act of 2000 by providing that where a new development contribution scheme is adopted by a planning authority to provide for reduced development contributions compared to those which were provided for under the previous scheme,

the reduced development contributions under the new scheme shall have retrospective effect in respect of planning permissions granted prior to the date of the adoption of the revised scheme, subject to the development, or part of that development, not having commenced prior to the date of the adoption of the revised scheme.

In order to ensure equitable treatment for housing development where the development is complete but there are unsold housing units, the new lower development contribution scheme will also apply to those unsold housing units. The executive of the relevant planning authority will need to be empowered to amend planning permissions, where the older higher development contributions are specified in the planning permission.

Section 30 amends section 49 of the Act of 2000 by providing that the arrangements in relation to reduced development contributions will also apply in respect of "supplementary" development contribution schemes which are sometimes developed for the purpose of facilitating a particular infrastructure project in a local authority area which will directly benefit the development on which the supplementary development contribution is imposed.

Part 5 – Amendment of Part V of the Act of 2000

Housing Supply *(section 31 to 36)*

Section 31 amends section 94 of the Act of 2000 by requiring a planning authority, in preparing its housing strategy, to consult with approved housing bodies in its functional area and to have regard to relevant housing policies of the Government or any Minister. It also halves to 10%, the percentage of land zoned for residential use, or for a mixture of residential and other uses, that must be provided for social and affordable housing. Retaining the legal provision in relation to affordable housing provides a robust and constitutionally tested legislative mechanism for the future provision of affordable housing. Previous affordable housing schemes have all been stood down since 2011 and there is no intention of providing any scheme in the immediate future. Due to the urgent need for social housing provision, it is essential that the current focus of Part V agreements be placed entirely on social housing output. It is intended to issue a statutory Ministerial Policy Directive under section 29 of the Principal Act to planning authorities directing that, until the issue of a further Ministerial Directive, developers should fulfill their Part V obligation in the form of social housing only. Affordable housing provision shall not be agreed to by planning authorities under Part V until the issue of a further Ministerial Directive.

Section 32 amends section 95 of the Act of 2000 by requiring a planning authority, to have regard to the overall strategy for the proper planning and sustainable development of the area of the development plan when ensuring sufficient and suitable land is zoned for residential use, or for a mixture of residential and other uses.

Sections 33 and 34 amend section 96 of the Act of 2000.

The objective of the amendments to the options, contained in section 96 of the Principal Act, for the delivery of units within a Part V agreement is to maximise the transfer of completed social housing units. The option of providing cash payment in lieu of social housing is being removed, as is the option of providing sites or land elsewhere.

The transfer of completed units on other land not subject to the planning permission is also provided. This allows social housing units to be delivered in another location, in the event that the development that is the subject of the planning permission does not meet the social housing or mixed tenure needs of the local authority. Provision is also made for the Part V obligation to be fulfilled by developers through long term leasing *(section 33)* of properties and rental accommodation availability agreements *(section 34)*. These latter Part V options reflect amendments that were provided in section 38 of the Planning and Development (Amendment) Act 2010, but not commenced.

A number of technical amendments are being made to certain provisions to take account of court judgments and practical difficulties reported in the operation of Part V. These include references to 'net monetary value' and 'attributable costs/appropriate share of cost of common development works'.

The new Part V arrangements can be retrospectively applied to existing planning permissions where works have not commenced (*sections 33(2) and 34(2)*). With the consent of the developer and the local authority, Part V agreements reached on foot of the existing Part V provisions may be renegotiated in line with the amendments contained in the Bill. This aims to provide a 'kick start' to house construction activity and allow for the elimination, or reduction, of any barrier Part V may have had on developments proceeding, while also copper fastening the delivery of social housing and facilitating social integration.

Section 35 repeals section 38 of the *Planning and Development (Amendment) Act 2010* on foot of the amendments contained in *sections 33 and 34* of the Bill.

Section 36 amends section 97 of the Act of 2000 by disapplying the social and affordable housing obligations, contained in section 96 of the Act of 2000, in respect of developments consisting of 9 or fewer houses. Currently, the obligations are disapplied in the case of developments consisting 4 or fewer houses.

An Roinn Comhshaoil, Pobal agus Rialtais Áitiúil,

26 Meitheamh, 2015

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