



An Bille um Pleanáil agus Forbairt, 2020
Planning and Development Bill 2020

Meabhrán Minitheach agus Airgeadais Athbhreithnithe
Revised Explanatory and Financial Memorandum



AN BILL UM PLEANÁIL AGUS FORBAIRT, 2020
PLANNING AND DEVELOPMENT BILL 2020

REVISED EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to make exceptional provision for emergency measures in light of the present Covid-19 pandemic to ensure that the necessary protections are in place to safeguard the operation of the planning and building control systems.

The purpose of the amendments proposed by the Minister for Housing, Local Government and Heritage for the Planning and Development Bill 2020 at Committee Stage in the Dáil are twofold:

- New sections 6, 7, and 8 of Part 2 of the Bill seek to amend the substitute consent provisions at Part XA of the Planning and Development Act 2000 in order to comply with the findings of the Supreme Court judgment of 1 July 2020 in the “Ballysax/McQuaid” cases - three joined appeal cases related to two quarries (An Taisce v An Bord Pleanála, An Taisce v An Bord Pleanála, and Sweetman v An Bord Pleanála) - which found that certain provisions of the substitute consent system in the Planning and Development Act 2000 were inconsistent with the EIA Directive in terms of requiring exceptional circumstances and public participation.
- Part 3 of the Bill provides for temporary modifications to the operation of the Residential Tenancies Act 2004 to provide, subject to certain conditions, for increased notice periods in relation to notices of termination served on tenants during the period from 11 January 2021 to 12 April 2021 for rent arrears and to prohibit rent increases for relevant tenancies during that period.

**Provisions of the Bill, as per amendments proposed in the
Committee stage of Dáil Éireann**

Part 1

Section 1 of the Bill now provides for the short title, collective citations and commencement.

Section 2 of the Bill provides definitions.

Part 2

Section 3 provides a definition for this part.

Section 4 will amend section 11(3)(b) of the Planning and Development Act 2000 to replace the mandatory requirement to hold public meetings in relation to a proposed development plan, with the obligation for planning authorities to consult with members of the public in such manner as it

considers appropriate and to invite submissions in writing from members of the public, in relation to a proposed development plan. This may include the holding of a public meeting.

The urgent requirement for this proposal is to avoid barriers to progressing development plans during the pandemic, in the event of any current or future temporary prohibition on holding public meetings, by allowing the planning authority to take whatever steps it deems necessary (such as public/ newspaper notices, online communication) to ensure the public are consulted in compliance with the principles of the Aarhus Convention, which includes public participation in decision-making in environmental matters. For the avoidance of doubt, the amendment requires that there will always be some format of public meeting under section 11(3)(b) in relation to the initial issues stage of a proposed development plan, either by way of a public meeting attended by the public in person, or else an online public meeting. Indeed, a planning authority may hold both if it wishes.

This permanent proposal will not only make the necessary and urgent adjustments for any restrictions resulting from current or future waves of Covid-19 infection, but will also establish greater flexibility in the planning system in the long term, in line with the modernisation agenda, which will improve accessibility and inclusiveness of this statutory process, including through online communication approaches.

Section 5 of the Bill contains a measure to allow the Government to make ‘emergency period’ orders, during the period of the Covid-19 pandemic. These ‘emergency periods’, if made by the Government, would extend certain statutory periods applying under the Planning and Development Acts and Building Control Acts. This proposal is urgently required so that the integrity of the planning regime, especially its public participation elements, and certain decision making and enforcement systems of the building control regime, are not compromised, in the event that further waves of Covid-19 infections may necessitate a further period of more restrictive travel constraints, or indeed may critically impact on the operation of individual planning or building control authorities.

This measure broadly mirrors the recently expended section 251A of the Planning and Development Act 2000, as inserted by section 9 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (Number 2 of 2020), which was in turn modelled on similar provisions in section 251 of the Planning and Development Act 2000 that covers the Christmas period. However, the present provision includes new flexibilities not contained in Section 251A, namely:

1. More than one ‘emergency period’ order may be made within the confined operative period for this Bill, which is presently due to end on 9 June 2021, by virtue of it being linked to the operation of Part 3 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020;
2. Emergency orders can now be applied not only to the whole country, but to specific administrative areas as required; and
3. The Government (at the request of the Minister) may choose which statutory periods, in which specific legislative provision, they require to extend rather than applying the extension to all periods under the Planning Acts and the specified provisions of the Building Control Acts.

New *sections 6, 7, and 8* of Part 2 seek to amend the substitute consent provisions at Part XA of the Act of 2000 to provide, firstly, that exceptional circumstances must be considered by the Board in the substantive or second

stage application for substitute consent at section 177K of the Planning Act, and secondly, that public participation is facilitated, where required, with respect to the consideration of exceptional circumstances, as well as on the wider application.

In this context, amendments are required to ensure both that

- any new applications for substitute consent must demonstrate exceptional circumstances and, in turn, the Board must be satisfied that such circumstances exist, whilst also complying with the existing public participation requirements of sections 177K and 177H of the Planning Act and as prescribed by regulations under section 177N, and
- in the case of existing applications pending before the Board, the exceptionality test is similarly applied in respect of any grant or refusal, while also ensuring that a further round of public consultation is facilitated in respect of these applications on hand to ensure the public is given the opportunity to comment on the existence of exceptional circumstances or not, as may be the case.

Section 6 amends section 177E of the Planning Act concerning the content of applications for substitute consent. This amendment enables an applicant for substitute consent to submit with their application any other documents that the applicant considers would be of assistance to the Board in making a decision in relation to his or her application. This is to allow the applicant the opportunity to furnish material in support of their case with regard to exceptional circumstances, which previously would only have been required at the leave stage of the process.

Section 7 amends section 177H (1) of the Planning Act, which currently provides that any person other than the applicant for substitute consent or a planning authority may make submissions or observations in writing to the Board in relation to an application for substitute consent, to clarify that this includes submissions or observations regarding the existence or absence of exceptional circumstances justifying a grant of substitute consent.

Section 8 amends section 177K (1) of the Planning Act to provide that the Board may, subject to new restrictions set out at subsection (1A), grant or refusal an application for substitute consent. These new restrictions on the Board's decision making powers in respect of substitute consent applications under new subsection (1A) are that the Board is precluded from granting substitute consent where it is not satisfied that exceptional circumstances justifying a grant exist, and that when making its decision the Board is not bound, or permitted to take account of or have regard to, any decision it made at a previous leave stage as to the existence of exceptional circumstances.

New subsection (1B) provides that the restrictions set out in subsection (1A) apply to both new applications for substitute consent made to the Board and existing applications on hand in the Board pending decision.

New subsection (1C) concerns the submission of further information to the Board by the applicant in respect of applications for substitute consent on hand upon commencement of these new requirements in Part XA of the Planning Act. Paragraph (a) requires the Board to invite the applicant to submit information to the Board within a specified period that he or she considers relevant for the purposes of the Board satisfying itself as to the existence of exceptional circumstances. The making of this invitation by the Board is mandatory but the applicant is not obliged to provide such information where he or she does not deem it necessary. In contrast, paragraph (b) gives the Board discretion to make a request of further information from the applicant concerning the existence of

exceptional circumstances, notwithstanding that further information may have been previously requested. Under paragraph (c) where the applicant fails to comply with such a request, the application shall be deemed to be withdrawn.

New subsection (1D) facilitates additional public consultation in respect of applications for substitute consent on hand in the Board, which will now include consideration of exceptional circumstances. In this regard, notwithstanding that any or all of these things may have already been done in respect of the application for substitute consent previously, the Board must -

- a) require the applicant to publish an additional newspaper notice, including advertising any additional information submitted under subsection (1C),
- b) make the application for substitute consent, including any additional information submitted, available for inspection at its offices and online on its website.
- c) give notice of the application, including any further information, to the prescribed bodies required to be notified of such applications,
- d) give a copy of any further information received in accordance with subsection (1C) to the relevant planning authority (the planning authority will have previously been given a copy of the application itself upon receipt by the Board), and
- e) request the planning authority to consider that information as part of its report to be submitted under section 177I on the application, including the relevant environmental reports, which shall include amending that report where required. The planning authority is given an additional 5 weeks to do so.
- f) require the applicant to erect additional site notices of the application, copies of which must be submitted to the Board.

New subsection (1E) requires an applicant to comply with any requirement of the Board under subsection (1D). Similarly new subsection (1F) and (1G) places an obligation on the relevant planning authority to comply with any request of the Board and to enter details of any further information it receives from the Board into the planning register.

New subsection (1H) requires that the Board must consider submissions or observations made, including any made arising from the further round of public consultation facilitated under subsection (1D) in making its decision, which it only may do so after it is carried out the public consultation steps in subsection (1D) and where the applicant and planning authority concerned have complied with such requests.

Under subsection (1I) the Board is given discretion to extend the timeframe within which a planning authority is required to submit its report on the application.

Part 3

(Residential Tenancies)

Sections 9 to 16 of a new Part 3 provides for temporary modifications to the operation of the Residential Tenancies Act 2004 to provide, subject to certain conditions, for increased notice periods in relation to notices of termination served on tenants during the period from 11 January 2021 to 12 April 2021 for rent arrears and to prohibit rent increases for relevant tenancies during that period. The aim is to further assist tenants financially

impacted by Covid-19, while recognising and balancing the constitutionally protected property rights of landlords.

The enhanced tenancy protections under the Residential Tenancies and Valuation Act 2020 (the RTVA), which prohibit evictions and rent increases for tenants with Covid-19 related rent arrears who are at risk of losing their tenancy, will expire on 10 January 2021.

Section 9 provides for the interpretation of Part 3 and defines the emergency period to mean the period from 11 January 2021 to 12 April 2021.

Section 10 sets out that the new Part 3 protections shall apply where the tenant:

- makes the necessary written declaration that he or she is unable to pay rent due on foot of Covid-19 and is at risk of losing his or her tenancy; and
- at the same time, serves a notice on the Residential Tenancies Board (RTB) requesting assistance to obtain advice from the Money and Advice and Budgeting Service (MABS); and
- within 5 days of making his or her declaration, serves a notice on his or her landlord seeking a consultation to make an arrangement to pay their rent due.

The new Part 3 also applies to tenants who have made a declaration under the Residential Tenancies and Valuation Act 2020, subject to certain conditions.

Provision is made under *section 11* for a counter-declaration by a landlord to disapply the protections. Similar to a tenant declaration, it shall be an offence for a landlord to make a declaration that is false or misleading.

Under *section 12*, a notice of termination grounded on rent arrears and served during the emergency period shall not specify a termination date earlier than 13 April 2021 and shall give 90 days' notice, rather than the usual 28 days. The position for any tenant who made a declaration under the RTVA and to whom Part 3 of this Bill applies, is that their termination date will move out to 13 April 2021 also. A tenant cannot acquire Part 4 security of tenure rights as a result of section 12.

Section 13 provides that no rent increase can take effect during the emergency period and no increase in rent will be payable in respect of any time during that period.

Sections 14 and 15 provide for necessary technical amendments to the Residential Tenancies Act 2004.

Section 16 provides that RTB tenancy tribunals are not required to be held in public during the period to 12 April 2021.

Financial Implications

There are no financial implications for the Exchequer arising from this Bill.

The making of the emergency period orders as proposed in the new section 5 imposes no cost on the Exchequer. Whereas, the proposal to amend the substitute consent provisions in the Planning and Development Act, as proposed in the new Part 2 of the Bill, will result in savings for the Exchequer, on the basis that the amendments will facilitate an earlier resolution of CJEU case C-261/18.

The provisions in Part 3 (Residential Tenancies) will operate on a temporary basis and will impose no cost on the Exchequer; the Residential Tenancies Board (RTB) and the Money Advice and Budgeting Service (MABS) will operate within existing resources.

*An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta,
Nollaig, 2020.*