



**An Bille um Pleanáil agus Forbairt (Leasú)
(Forbairtí Cónaithe Mórscála), 2021
Planning and Development (Amendment)
(Large-scale Residential Development) Bill 2021**

*Meabhrán Míniúcháin agus Airgeadais
Explanatory and Financial Memorandum*



**AN BILLE UM PLEANÁIL AGUS FORBAIRT (LEASÚ)
(FORBAIRTÍ CÓNAITHE MÓRSCÁLA), 2021
PLANNING AND DEVELOPMENT (AMENDMENT)
(LARGE-SCALE RESIDENTIAL DEVELOPMENT) BILL 2021**

EXPLANATORY AND FINANCIAL 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 to implement and give legislative underpinning to the Programme for Government commitment to not further extending the Strategic Housing Development (SHD) arrangements beyond their expiry date of 25 February 2022.

The Bill also gives effect to action 12.3 of Housing for All which commits to the introduction of a new planning process for Large-scale Residential Developments (LRDs) to replace the SHD process.

The Bill also contains an amendment to section 50A of the Planning and Development Act 2000 to provide that any party to a planning appeal may apply to have it heard directly by the Supreme Court, bypassing the Court of Appeal, in order to reduce significantly the time it would otherwise take to ultimately dispose of the litigation. (section 6)

The Bill comprises 17 sections.

Sections of the Bill

Section 1 contains definitions of terms used in the Bill.

Section 2 inserts new definitions into the Planning and Development Act 2000 (Principal Act) including—

‘large-scale residential development’, which is defined to mean a development that includes—

- (a) the development of 100 or more houses,
- (b) the development of student accommodation that includes 200 or more bed spaces,
- (c) both the development of 100 or more houses and of student accommodation, or
- (d) both the development of student accommodation that includes 200 or more bed spaces and of houses,

where the LRD floor space of—

- (i) in the case of paragraph (a), the buildings comprising the houses,
- (ii) in the case of paragraph (b), the student accommodation,

- (iii) in the case of paragraphs (c) and (d) the buildings comprising the houses and the student accommodation,

is not less than 70 per cent, or such other percentage as may be prescribed, of the LRD floor space of the buildings comprising the development, and

‘LRD floor space’, which is defined to mean, in relation to a building or part of a building, the area ascertained by the internal measurement of the floor space on each floor of a building or part of a building (including internal walls and partitions), disregarding any floor space provided for—

- (a) the parking of vehicles by persons—
- (i) occupying or using the building or the part of the building,
 - (ii) for a purpose incidental to the primary purpose of the building or part of the building, and
- (b) ancillary residential services, including gyms and child-care facilities.

Section 3 inserts new sections 32A to 32G into the Principal Act to set out the process regarding the mandatory two-step pre-application consultation arrangements for large-scale residential developments and provides that:

- Section 32A - A person who intends to submit an LRD planning application on land that is not located in a strategic development zone and the zoning of which facilitates its use, must be in receipt of an LRD opinion or a section 247(7) determination (see section 14 of the Bill), issued by the planning authority not more than 6 months prior to submitting the application and the planning authority shall refuse to consider such an application that doesn’t comply with this criteria.
- Section 32B – Following the initial mandatory consultations under section 247 of the Principal Act, a prospective LRD applicant can proceed to request a meeting with the planning authority in whose area the proposed development would be situated and this meeting is referred to as an LRD meeting. This section also sets out the documentation required to be submitted in respect of such a meeting request, as well as the type of information which may be prescribed by the Minister in this regard.
- Section 32C - The planning authority must hold an LRD meeting within 4 weeks of the request being made to it. The meeting should be attended by planning authority officials with a sufficient level of relevant knowledge and expertise in the matter concerned as well as the prospective LRD applicant and/ or their representative. The planning authority must keep a written record of the meeting, which shall only be made publically available when an LRD planning application in respect of that development is subsequently made.
- Section 32D - The planning authority must issue an LRD opinion within 4 weeks of the LRD meeting taking place and subsequently specify whether or not the documents submitted for the purposes of the meeting constitute a reasonable basis on which to make an application. Where necessary, the LRD opinion must outline the issues with the documentation submitted and, also, the issues which, if addressed, could result in the documents constituting a reasonable basis on which to make the application.
- Sections 32E - The undertaking by a planning authority of actions under the LRD procedures shall be without prejudice to the performance by the planning authority of other functions under the Act and cannot be relied upon in the formal planning process or in legal proceedings.

- Section 32F - A person shall not question the steps taken by a planning authority under the LRD procedures by reason only that they were not completed on time.
- Section 32G - It shall be an offence for a planning authority official to seek benefit in relation to the provision of an LRD opinion.

Section 3 also contains regulation making powers for the Minister in respect of the LRD meeting and LRD opinion.

Section 4 provides a regulation making power for the Minister in relation to planning authority “further information” requests.

Section 5 amends section 34 of the Principal Act to provide that the planning authority shall notify the elected members of the planning authority of the receipt of an LRD planning application. This section also provides that when considering applications for amendments to previously approved SHDs or LRDs, the planning authority shall be limited to solely considering the proposed modifications to the previously permitted development and not to reconsidering the original application again in combination with the proposed new modifications.

Section 6 amends section 50A of the Principal Act to provide that any party to a planning appeal may apply to have it heard directly by the Supreme Court, bypassing the Court of Appeal.

Section 7 inserts new sections 126A and 126B into the Principal Act to provide mandatory timeframes for An Bord Pleanála (the Board) to decide LRD appeals and provides:

- Section 126A - Where no oral hearing is required on an LRD appeal, such appeal should be decided in 16 weeks or, where an oral hearing is deemed to be required, within such period as may be prescribed by the Minister in regulations. It also sets out the timeframes for deciding LRD appeals when further information (FI) is requested i.e. the appeal shall generally be determined within 4 weeks of receipt of the requested FI or within 8 weeks of the requested FI where the request relates to an environmental impact assessment report or a Natura impact statement.
- Section 126B- The Board shall continue to determine LRD appeals notwithstanding that the timeframe has expired. In such circumstances, the Board should notify the parties to the appeal, why it is not possible to determine the appeal on time and when the appeal will be determined. A €10,000 penalty shall be payable to the applicant for permission (i.e. the developer) where the Board fails to meet the LRD appeal timeframes in 126A.

Section 8 provides amendments consequential to section 7 regarding timeframes for the Board’s decision throughout the Principal Act.

Section 9 amends sections 131 and 132 of the Principal Act to provide that the Board when determining an LRD appeal shall not use the provisions set out in these sections for seeking additional information from the applicant for permission.

Section 10 provides a regulation making power for the Minister in relation to the Board’s further information requests in respect of LRD appeals.

Section 11 amends section 146B of the Principal Act to provide that proposals for alterations to SHD planning permissions shall no longer be submitted to the Board under section 146B.

Section 12 amends section 156 of the Principal Act to add the offence created in 32G of the Bill (i.e. planning authority official seeking benefit

in respect of the provision of an LRD opinion) to the penalty provisions in section 156 of the Principal Act.

Section 13 amends section 246 of the Principal Act to provide the Minister with the power to prescribe fees in relation to the provision of an LRD opinion by way of regulations. Such regulations require positive approval from the Houses of the Oireachtas before being made.

Section 14 amends section 247 of the Principal Act to extend the mandatory consultation requirement for all developments of 10 houses or more under section 247(1A) to the development of student accommodation complexes that include 200 or more bed spaces. This section also provides that the written record of a meeting under section 247 shall only be made publically available if an LRD planning application in respect of the proposed development is subsequently made. This section provides for the insertion of a new subsection 247(7) into the Principal Act. Section 247(7) provides that for an application which proposes to amend an already approved SHD or LRD, the planning authority may determine that pre-application consultations under section 247 and the LRD opinion of the planning authority are not required in cases where the proposed development is substantially the same as the previously permitted development.

Section 15 amends the Act of 2016 to provide for the temporary compensation exclusion for SHD applications in the Fourth Schedule of the Principal Act to be maintained so that it applies to all pending SHD decisions, including those to be decided in accordance with the transitional provisions of the Bill.

Section 16 provides the necessary repeal and transitional arrangements in respect of the winding-up of the SHD arrangements. It provides that:

- Section 4(1) of the Act of 2016 (relating to the submission of SHD planning applications to the Board) is repealed, subject to some exclusions.
- The exclusions to the above repeal provision allow for proposed SHD developments which are already in the SHD system (i.e. have requested an SHD opinion or have already received an SHD opinion) on commencement of the Act to continue as though the section had not been repealed, subject to the below timelines.
- Proposed SHD developments which have already been the subject of an SHD opinion from the Board on the commencement of the Act will have 16 weeks to submit an SHD application from the date of commencement of the Act.
- Proposed SHD developments in respect of which an SHD opinion is awaited from the Board on the commencement of the Act will have 16 weeks to submit an SHD application from the date of receipt of the opinion.

Section 17 contains standard provisions dealing with the short title, construction, collective citation and commencement of the Bill.

Financial implications

It is not envisaged that there will be any cost implications for the Exchequer arising from the termination of the SHD planning arrangements and their replacement with the new LRD arrangements proposed herewith. It is intended that the costs associated with any additional staff requirements can be provided for through the setting of new LRD fees to be applied and retained in full by planning authorities for both the pre-application consultation and planning application stages, with a view to ensuring that

any additional resourcing implications of the new arrangements are cost neutral to the Exchequer.

*Department of Housing, Local Government and Heritage,
November, 2021.*

