Planning and Development (Amendment) (No. 2) Bill 2022

Mar a tionscnaíodh

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Bill

entitled

An Act to amend the Planning and Development Act 2000 to provide for applications to be made to An Bord Pleanála in respect of development of lands where an application for substitute consent of development of those lands has been made, or in respect of development of lands adjoining those lands; to remove the requirement to apply for leave for substitute consent under Part XA of that Act; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Board” means An Bord Pleanála;

“Principal Act” means the Planning and Development Act 2000.

Amendment of section 7 of Principal Act

2. Section 7 of the Principal Act is amended in subsection (2)—

(a) in paragraph (a), by the deletion of “including for leave to apply for substitute consent”, and

(b) by the substitution of the following paragraph for paragraph (xa):

“(xa) particulars of any decision of the Board under section 177K, or direction served under section 177J or 177L.”.

Amendment of section 34 of Principal Act

3. Section 34 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (12):

“(12) A planning authority shall refuse to consider an application to retain unauthorised development of land where it decides that either or both of the following was required or is required in respect of the development:
(a) an environmental impact assessment;

(b) an appropriate assessment.”,

and

(b) in subsection (12A), by the substitution of “an application in respect of the following development shall be deemed not to have required, and not to require, a determination as to whether an environmental impact assessment is required” for “if an application for permission had been made in respect of the following development before it was commenced, the application shall be deemed not to have required a determination referred to at subsection (12)(b)”.

Amendment of section 37 of Principal Act

4. Section 37 of the Principal Act is amended by the insertion of the following subsections after subsection (6):

“(7) Subject to the modification referred to in subsection (8), and any other necessary modifications, subsections (12) and (12A) of section 34 apply to the consideration by the Board of an application on appeal under subsection (1) against a decision of the planning authority.

(8) The modification is that the reference in section 34(12) to the planning authority shall be construed as a reference to the Board.

(9) Where the Board refuses under section 34(12), as applied by subsection (7), to consider an application on appeal—

(a) it shall give the reasons for the refusal to the person who made the appeal,

(b) the application on appeal shall be deemed to have been withdrawn by the applicant for permission, and

(c) the refusal shall operate to annul the decision of the planning authority as from the time when that decision was given.”.

Amendment of section 37L of Principal Act

5. Section 37L of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) Where a person applies for substitute consent in respect of development of land under section 177E, the person may also apply for permission for the following:

(a) development of the land the subject of the application for substitute consent;

(b) development of land adjoining the land the subject of the application for substitute consent.”,

(b) in subsection (2), by the deletion of “to further develop a quarry”,

(c) by the substitution of the following subsection for subsection (3):
“(3) Development referred to in paragraph (a) or (b) of subsection (1) is not required to be the same as, or of the same description as, the development the subject of the application for substitute consent referred to in that subsection.”,

(d) by the substitution of the following subsection for subsection (5):

“(5) Where prior to the date of the coming into operation of section 5 of the Planning and Development (Amendment) Act 2022 an application for substitute consent has been made under section 177E, but no decision has been made by the Board in respect of that application prior to or on that date, an application for permission may be made under subsection (1) as substituted by that section 5, within 6 months of that date.”,

(e) by the substitution of the following subsection for subsection (6):

“(6) An application may not be made under subsection (1), as substituted by section 5 of the Planning and Development (Amendment) Act 2022, where a decision has been made by the Board in respect of the application for substitute consent referred to in subsection (1) as so substituted, prior to or on the date of the coming into operation of that section 5.”,

(f) by the substitution of the following subsection for subsection (7):

“(7) Where—

(a) subsection (5), as substituted by section 5 of the Planning and Development (Amendment) Act 2022, applies, and

(b) the applicant for substitute consent informs the Board by notice in writing prior to it making its decision in respect of the application for substitute consent, in this subsection referred to as the ‘first application’, that he or she intends to submit an application for permission under subsection (1), as substituted by that section 5, in this subsection referred to as the ‘second application’, the Board shall, notwithstanding section 177P(1), not make its decision on the first application prior to—

(i) the date that is 6 months after the date of the coming into operation of that section 5,

(ii) the date the second application is received by the Board, or

(iii) the date the applicant for substitute consent informs the Board by notice in writing that he or she no longer intends to submit a second application,

whichever is the earlier.”,

(g) in subsection (8)—

(i) by the deletion of “in respect of a quarry”, and
(ii) by the substitution of “referred to in subsection (1)” for “in respect of that quarry”,

(h) in subsection (10), by the substitution of “environmental impact assessment report” for “environmental impact statement”,

(i) in subsection (11), by the substitution of “environmental impact assessment report” for “environmental impact statement”, and

(j) in subsection (12)(b), by the substitution of “paragraph (a)” for “subparagraph (a)”.

Amendment of section 37M of Principal Act

6. Section 37M of the Principal Act is amended in subsection (1)(a) by the substitution of “environmental impact assessment report” for “environmental impact statement”.

Amendment of section 37N of Principal Act

7. Section 37N of the Principal Act is amended in subsection (2)(a)(i) by the substitution of “environmental impact assessment report” for “environmental impact statement”.

Amendment of section 37O of Principal Act

8. Section 37O of the Principal Act is amended—

(a) in subsection (3)(a), by the substitution of “environmental impact assessment report” for “environmental impact statement”, and

(b) in subsection (4)—

(i) in paragraph (b), by the deletion of “and”,

(ii) by the insertion of the following paragraphs after paragraph (b):

“(ba) where a decision to impose a condition (being an environmental condition which arises from the consideration of an environmental impact assessment report) is materially different, in relation to the terms of the condition, from a recommendation in a report of a person assigned to report on the application for permission on behalf of the Board, the main reasons for not accepting or for varying the recommendation in relation to such condition,

(bb) in relation to the grant or refusal of any permission, subject to or without conditions, that the Board is satisfied, where an environmental impact assessment was carried out, that the reasoned conclusion on the significant effects on the environment of the development was up to date at the time of the taking of the decision,

(bc) in summary form, the results of the consultations that have taken place and information gathered in the course of the environmental impact assessment and, where appropriate, the comments received from an affected Member State of the European Union or other
party to the Transboundary Convention, and how those results have been incorporated into the decision or otherwise addressed, and”,

and

(iii) in paragraph (c), by the insertion of “(being a decision which arises from the consideration of the environmental impact assessment report concerned)” after “a decision by the Board under section 37N”.

Amendment of section 37P of Principal Act

9.  (1) Section 37P of the Principal Act is amended by the substitution of the following subsections for subsections (1) and (2):

“(1) The Minister shall make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications for permission under section 37L and decisions under section 37N.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

(a) make provision for the payment of fees to the Board, and

(b) make provision for matters of procedure in relation to the making of an application under section 37L, including the giving of public notice and the making of applications in electronic form.”.

(2) All regulations made under section 37P of the Principal Act and in force immediately before the date of the coming into operation of subsection (1) shall be deemed on and after that date to have been made under section 37P of the Principal Act as amended by subsection (1).

(3) Every act done, or purporting to have been done, under the regulations referred to in subsection (2) before the date of the coming into operation of subsection (1) shall on and after that date be, and be deemed always to have been, valid and effectual for all purposes.

(4) If subsection (2) or (3) would, but for this subsection, conflict with a constitutional right of any person, the operation of the subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall be otherwise of full force and effect.

Amendment of section 104 of Principal Act

10.  Section 104 of the Principal Act is amended—

(a) in subsection (2), by the deletion of “177C,“, and

(b) in subsection (2A), by the deletion of “177C,“.

Amendment of section 144 of Principal Act

11.  Section 144 of the Principal Act is amended in subsection (1A)(f) by the deletion of “an application for leave to apply for substitute consent or”.

7
Amendment of section 177A of Principal Act

12. Section 177A of the Principal Act is amended in subsection (1) by the substitution of the following definition for the definition of “exceptional circumstances”:

“‘exceptional circumstances’ shall, other than in section 177K(2A)(b), be construed in accordance with section 177K(1J);”.

Amendment of section 177E of Principal Act

13. Section 177E of the Principal Act is amended—

(a) in subsection (1), by the insertion of “in respect of development of land” after “substitute consent”,

(b) by the substitution of the following subsection for subsection (1A):

“(1A) The Board may, at its own discretion and at the request of a person who intends to make an application for substitute consent, enter into consultations in respect of the application with that person before he or she makes the application.”,

(c) by the insertion of the following subsections after subsection (1A):

“(1B) Subject to subsection (2A), an application for substitute consent may be made by—

(a) a person who has carried out the development referred to in subsection (1), or

(b) the owner or occupier of the land on which the development has been carried out.

(1C) The Board shall only consider an application for substitute consent in respect of development of land where—

(a) subject to subsection (1D), the Board is satisfied under section 172 that an environmental impact assessment was required or is required for the development,

(b) subject to subsection (1E), the Board is satisfied under section 177U that an appropriate assessment was required or is required for the development, or

(c) subject to subsections (1D) and (1E), the Board is satisfied under sections 172 and 177U, that both of the assessments referred to at paragraphs (a) and (b) were required or are required for the development.

(1D) Where the Board receives an application which is accompanied by a remedial environmental impact assessment report under subsection (2) (b) and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an environmental impact assessment is required and was required and the Board shall consider the application.
(1E) Where the Board receives an application which is accompanied by a remedial Natura impact statement under subsection (2)(b), and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an appropriate assessment is required and was required and the Board shall consider the application."

(d) by the substitution of the following subsection for subsection (2):

“(2) An application for substitute consent shall—

(a) state the name of the person making the application,

(b) be accompanied by a remedial environmental impact assessment report or remedial Natura impact statement, or both,

(c) be accompanied by the fee payable in accordance with section 177M,

(d) comply with any requirements prescribed under section 177N, and

(e) be accompanied by any other document that the applicant considers would be of assistance to the Board in making a decision in relation to his or her application."

(e) by the substitution of the following subsection for subsection (2A):

“(2A) Where an application for substitute consent is made in respect of development of land for which planning permission has been granted, that application may be made in relation to—

(a) that part of the development permitted under the permission that has been carried out at the time of the application, or

(b) subject to subsection (2B), that part of the development referred to in paragraph (a) and all or part of the development permitted under the permission that has not been carried out at the time of the application."

(f) by the insertion of the following subsection after subsection (2A):

“(2B) Where subsection (2A)(b) applies the applicant shall, in relation to that part of the development that has not been carried out at the time of the application, furnish one or both of the following to the Board with his or her application:

(a) where a remedial environmental impact assessment report has been furnished with the application, an environmental impact assessment report;

(b) where a remedial Natura impact statement has been furnished with the application, a Natura impact statement.”,

(g) in subsection (4), by the substitution of “specified in section 177B (whether the notice given under section 177B(1) was confirmed or amended before the date of the coming into operation of section 21(a) of the Planning and Development (Amendment) Act 2022, or confirmed or amended on or after that date in
accordance with section 22(3) of that Act) or specified in section 261A” for “specified in section 177B, 177D or 261A”,

(h) by the insertion of the following subsections after subsection (4A):

“(4B) Where the Board considers that a remedial Natura impact statement does not comply with paragraph (a), (b) or (c) of section 177G(1), the Board shall require the applicant for substitute consent to furnish, within a specified period, such further information as it considers necessary for the statement to so comply.

(4C) Where further information required by the Board under subsection (4A)(c) or (4B) is not furnished to it by the applicant within the period specified under that subsection, or within any further period as may be specified by the Board, the application shall be deemed to have been withdrawn by the applicant.”,

and

(i) by the insertion of the following subsection after subsection (5):

“(6) Where a remedial environmental impact assessment report, remedial Natura impact statement, environmental impact assessment report or Natura impact statement is received by the Board in response to a requirement under subsection (2CA), (2CB) or (2CC) of section 177K, the Board shall, as soon as may be after its receipt, send the report or statement, as the case may be, to the planning authority referred to in subsection (5), and the planning authority shall place the report or statement on the register.”.

Amendment of section 177F of Principal Act

14. Section 177F of the Principal Act is amended—

(a) in subsection (2)(a)—

(i) by the substitution of the following subparagraph for subparagraph (i):

“(i) A person may request the Board to give him or her an opinion referred to in subparagraph (ii) in relation to a development—

(I) before he or she makes an application for substitute consent in respect of the development, or

(II) after he or she has made such an application, where required by the Board under section 177K(2CA) to submit a remedial environmental impact assessment report.”,

(ii) in subparagraph (ii)—

(I) by the substitution of “the Board shall, when requested to do so by the person referred to in subparagraph (i),” for “the Board shall,”,

(II) by the substitution of “the person” for “the applicant”, and

(III) by the insertion of “in relation to the development” after “remedial environmental impact assessment report”,
and

(iii) in subparagraph (iii), by the substitution of “the person referred to in subparagraph (i)” for “the applicant”,

and

(b) in subsection (2)(b), by the substitution of “The person referred to in paragraph (a)(i)” for “An applicant”.

Amendment of section 177I of Principal Act

15. Section 177I of the Principal Act is amended—

(a) in subsection (1), by the substitution of “Subject to subsection (1A), no later” for “No later”, and

(b) by the insertion of the following subsection after subsection (1):

“(1A) Where section 177E(6) applies, the period of 10 weeks referred to in subsection (1) shall run from the date of receipt by the planning authority of the report or statement, as the case may be, under that section.”.

Amendment of section 177K of Principal Act

16. Section 177K of the Principal Act is amended—

(a) by the insertion of the following subsection after subsection (1I):

“(1J) In considering whether exceptional circumstances exist under subsection (1A)(a) the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

such other matters as the Board considers relevant.”,

(b) in subsection (2)(c), by the insertion of “or in accordance with a requirement under subsection (2CA), (2CB) or (2CC)” after “submitted with the application”,

(c) by the insertion of the following subsections after subsection (2C):

“(2CA) Where the applicant submitted a remedial Natura impact statement under section 177E(2), but did not submit a remedial environmental impact assessment report under that section, and the Board determines that an environmental impact assessment was required or is required, the Board shall require the applicant to submit such a report within a specified period.

(2CB) Where the applicant submitted a remedial environmental impact assessment report under section 177E(2), but did not submit a remedial Natura impact statement under that section, and the Board determines that an appropriate assessment was required or is required, the Board shall require the applicant to submit such a statement within a specified period.

(2CC) Where section 177E(2A)(b) applies and a remedial environmental impact assessment report or remedial Natura impact statement, as the case may be, was not submitted with an application but is subsequently required under subsection (2CA) or (2CB), the Board shall, in relation to the part of the development referred to in section 177E(2A)(b) that has not been carried out at the time of the application, require the applicant to submit an environmental impact assessment report or a Natura impact statement, as the case may be, within a specified period.

(2CD) Where the Board requires the applicant to submit within a specified period a report under subsection (2CA), a statement under subsection (2CB), or a report or statement under subsection (2CC), and the report or statement is not submitted to it within that period, or within any further period that the Board may specify, the application shall be deemed to have been withdrawn by the applicant.”,

(d) in subsection (2D)(a), by the substitution of “in accordance with the Planning and Development Regulations 2001” for “under article 227(2A) of the Planning and Development Regulations 2001”,

(e) in subsection (2E)(a)(ii), by the substitution of “in accordance with the Planning and Development Regulations 2001” for “under article 227(2A) of the Planning and Development Regulations 2001”,

(f) in subsection (4)(aa), by the insertion of “where an environmental impact assessment was carried out,” before “the reasoned conclusion by the Board”,

(g) in subsection (4A)—
(i) in paragraph (b), by the insertion of “an environmental impact assessment was carried out and” before “the decision under subsection (1)”, and

(ii) in paragraph (c), by the substitution of “Where an environmental impact assessment was carried out, the Board shall” for “The Board shall”,

and

(h) in subsection (6), by the deletion of paragraph (a).

Amendment of section 177L of Principal Act
17. Section 177L of the Principal Act is amended in subsection (1) by the deletion of “refuses an application for leave to apply for substitute consent under section 177D, or”.

Amendment of section 177M of Principal Act
18. Section 177M of the Principal Act is amended—

(a) in subsection (2), by the deletion of “in a case where it granted leave to apply for substitute consent on the grounds that exceptional circumstances exist, or in a case where the application is made in compliance with a direction to apply for substitute consent under section 261A”, and

(b) in subsection (4), by the deletion of “at the same time as notifying the applicant of its decision under section 177D(6),”.

Amendment of section 177N of Principal Act
19. Section 177N of the Principal Act is amended in subsection (2)—

(a) in paragraph (a), by the deletion of “for leave to apply for substitute consent or”,

(b) in paragraph (d), by the deletion of “leave to apply for substitute consent or”, and

(c) in paragraph (k), by the deletion of “applications for leave to apply for substitute consent or”.

Amendment of section 177O of Principal Act
20. Section 177O of the Principal Act is amended—

(a) in subsection (3), by the substitution of “under section 177B, before the date of the coming into operation of section 21(a) of the Planning and Development (Amendment) Act 2022, or on or after that date where section 22(3) of that Act applies, or under section 261A” for “under section 177B or section 261A”, and

(b) in subsection (5), by the substitution of “application for substitute consent” for “application or for substitute consent”.

Repeals
21. The following provisions of the Principal Act are repealed:

(a) section 177B;
(b) section 177C;
(c) section 177D;
(d) section 177K(1A)(b) and (c);
(e) section 177K(1B) to (1I).

Transitional provisions

22. (1) Subsections (12) and (12A) of section 34 of the Principal Act as amended by section 3 shall apply, in accordance with the amendments made to section 37 of that Act by section 4, on and after the date of the coming into operation of section 4, to the Board’s consideration of—
(a) any appeal under section 37 of that Act made but not determined before that date, and
(b) any appeal under section 37 of that Act made on or after that date, whether or not the decision of the planning authority under section 34 of that Act the subject of the appeal was made before that date.

(2) Where a person has made an application under section 37L of the Principal Act before the date of the coming into operation of section 5 but the application has not been determined before that date, the application shall on and after that date be considered in accordance with section 37L of the Principal Act as if section 5 had not come into operation.

(3) Where a notice is given under section 177B(1) of the Principal Act before the date of the coming into operation of section 21(a), section 177B shall continue to apply in respect of the notice on and after that date as if section 21(a) had not come into operation.

(4) Where a person applied for leave to apply for substitute consent under section 177C of the Principal Act before the date of the coming into operation of section 21(b), but a decision on the application for leave was not made under section 177D before that date, the applicant shall be deemed to have withdrawn his or her application for leave to apply for substitute consent under section 177C and the Board shall return to the applicant any fee received from the applicant in respect of the application.

(5) An application for substitute consent under section 177E of the Principal Act made before the date of the coming into operation of sections 12 to 21, or made on or after that date pursuant to leave to apply for substitute consent granted under section 177D before that date, shall on and after that date be considered in accordance with the Principal Act as if those sections had not come into operation.

Short title, collective citation, construction and commencement

23. (1) This Act may be cited as the Planning and Development (Amendment) Act 2022.

(2) The Planning and Development Acts 2000 to 2021 and this Act may be cited together as the Planning and Development Acts 2000 to 2022 and they shall be construed together as one.
(3) This Act shall come into operation on such day or days as the Minister for Housing, Local Government and Heritage may by order or orders appoint, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions.
An Bille um Pleanáil agus Forbairt (Leasú) (Uimh. 2), 2022

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um Pleanáil agus Forbairt, 2000 chun socrú a dhéanamh go ndéanfar iarratais chuig an mBord Pleanála i leith tailte a thhorbaírt i gcás go mbeidh iarratas déanta ar thoiléid ionaid le haghaidh na tailte sin a thhorbaírt, nó i leith taistil a thhorbaírt is tástil atá tadhlaí leis na tailte sin; do chur deireadh leis an gcéanglas atá ann iarratas a dhéanamh ar chéad le haghaidh toiléid ionaid faoi Chuid XA den Acht sin; agus do dhéanamh socrú i dtáobh nithe gaolmhara.

Presented by Senator Regina Doherty on behalf of the Minister for Housing, Local Government and Heritage,
1 Aibreán, 2022

An Seanadóir Ríona Uí Dhochartaigh a thíOL an Aire Tithíochta, Rialtais Áitiúil agus Oidhreachta,
1 Aibreán, 2022

Planning and Development (Amendment) (No. 2) Bill 2022

BILL

(as initiated)

entitled

An Act to amend the Planning and Development Act 2000 to provide for applications to be made to An Bord Pleanála in respect of development of lands where an application for substitute consent of development of those lands has been made, or in respect of development of lands adjoining those lands; to remove the requirement to apply for leave for substitute consent under Part XA of that Act; and to provide for related matters.

Presented by Senator Regina Doherty on behalf of the Minister for Housing, Local Government and Heritage,
1st April, 2022

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