

Joint Oireachtas Committee on Housing, Planning & Local Government Submission on Vacant Housing Refurbishment Bill 2017

County and City Management Association

28th March 2018

Before I begin Chair, I would like to thank you and the Joint Committee for the invitation to address you today. I am here with my colleague from the Land Use and Transportation Committee (**LUTS**) of the CCMA, Richard Shakespeare, Assistant Chief Executive of Dublin City Council and we are joined by Seamus Murphy, Chief Fire Officer, Mayo County Council and Pat Nestor, Senior Building Surveyor, Dublin City Council. At the outset I would like to confirm that the return of currently vacant or underutilised upper floors to residential use is a high priority for the CCMA. We strongly support any initiative in this regard which will assist in the regeneration of urban areas and particularly our small towns and villages. That said we do have concerns regarding the current proposal which I would like to share with you.

General Overview

Our understanding is that the Bill aims to introduce a streamlined system of obtaining the necessary Planning and Building Control statutory approvals for certain specified works which contribute to the provision of residential accommodation. These works fall into three categories:

1. The change of use or partial change of use of any building to residential use where the top storey is no more than 10m above ground level.
2. The alteration or provision of escape windows and doors.
3. The sub-division of any existing dwelling into two or more new dwellings.

The three categories of development are deemed to be exempted development for the purposes of the Planning & Development Acts if the procedures in this Bill are followed.

The Bill proposes to assign to the Local Authority the responsibility of approving the design and construction of the works with the requirements of the Building Regulations. The Local Authority

shall verify this by way of issuing a *'works permit'*. This replaces any requirement to apply for a Fire Safety Certificate or Disability Access Certificate.

On completion of the work an *'authorised person'*, being an employee or agent of the Local Authority, shall sign the *'works permit'* if they are satisfied the works have been constructed in accordance with the approved plans. One or more site visits are required by an *'authorised person'* before the *'works permit'* is signed and the building may be used.

The *'authorised person'* may ultimately decline to sign the *'works permit'* and the building owner would then be required to submit applications in respect of the same development via normal planning and building control procedures.

Main Objectives

The objective of this Bill appears to be the smoothing of procedures currently in place to support the provision of residential accommodation. The main procedural requirements which the Bill proposes to replace with a proposed single *'one-stop-shop'* process are;

- Planning consent
- Fire Safety Certificate
- Disability Access Certificate
- Commencement Notice, associated appointments and certificate of compliance of the designed works with the building regulations.
- Certificate of compliance of the completed works with the building regulations.

The Local Authorities are committed to facilitating the provision of residential accommodation and any measures which support this goal are welcome. The general welcome for the provisions in this Bill by TDs and Senators who have spoken or contributed on it so far are noted. There is clearly a perception that the current regulatory controls in place in terms of obtaining planning permission or demonstrating compliance with the building regulations are onerous and excessively time consuming.

We do not agree with this perception and consider that the proposals may not confer any advantages in terms of delivering projects and will place a significant risk on the developer in the event that their application ultimately fails on completion of the project.

We set out later by way of a comparative sample project which illustrates how existing Planning and Building Control provisions (**Table 1**) can deliver projects to a similar timescale and with more regulatory certainty at completion than the procedures proposed in this Bill (**Table 2**).

Potential Conflicts with Current Legislative Procedures

The Bill proposes to legislate for entirely different functions within a single statute. The provisions of the Planning and Development Acts and those of the Building Control Acts are set down for entirely different purposes. While the Building Control Act is focussed on various standards in buildings and construction, the Planning & Development Act has a much broader environmental and social role beyond the built environment.

Section 4 of the Building Control Acts 1990 to 2014 allows a Building Control Authority to grant a dispensation or relaxation of the requirements of the building regulations. To extend a provision allowing for exemption from building regulations to provide for fast track development as set out in the Bill is likely to bring unintended consequences and will most certainly lead to confusion as to whether or not the building regulations apply to these developments.

Section 5 Planning & Development Acts 2000 is set down solely to allow an answer to one of two questions; does a development proposal constitute development subject to planning control or is it exempted development? It is considered that the Bill proposes an inappropriate use of the Section 5 process. The Section 5 process does not provide a mechanism to de-exempt certain forms of development from the requirement to obtain planning permission. Categories of exempted development are already set out in planning law. Any proposal to introduce new categories of exempted development might more appropriately be made by way of changes to the Second Schedule to the Planning & Development Regulations rather than the primary Act.

Executive Functions: The making of decisions under Section 4 of the Building Control Acts and Section 5 of the Planning & Development Acts are executive functions of the Chief Executive of the Local Authority or their appropriately appointed delegate and decisions are made by ‘*Order*’.

The establishment of a *'one-stop-shop'* decision making panel may undermine this established principle of local government.

Technical Review and Certification

The *'one-stop-shop'* panel of authorised persons is expected to come to a conclusion on a *'proposed projects'* compliance with all aspects of the building regulations in two weeks or less - the attached explanatory note suggests a decision shall issue on the same day. We are of the belief that this is not an adequate period of time to consider complex construction technology issues, structural implications, fire safety provisions, thermal insulation requirements, ventilation and indoor air quality, access and use requirements and other important issues.

While the building may well have been correctly designed and significant time taken by the designers in considering these matters, it is the Local Authority who is expected to approve the designs as per the provisions of the proposed Bill. This is a most onerous undertaking and a fundamental departure from long established principles and existing provisions of Building Control.

The *'one-stop-shop'* panel may set down conditions to the works and may also direct that one or more inspections be carried out by a member of the panel. This person, who may be a direct employee of the Local Authority or a contracted agent, appears to have complete discretion in coming to a decision as to whether or not to sign the final *'works permit'*.

If there are difficulties with compliance issues and these are not resolved upon repeat inspection the development will be deemed to be unsuccessful and the developer must revert back to the established planning and building control procedures.

This would appear to place the developer in an almost impossible situation. Having entered the *'one-stop-shop'* process in good faith they are now left with a completed building which cannot be occupied. At the very least it is likely that significant deconstruction would be required to demonstrate compliance with building regulations in accordance with established procedures.

Comparative Application

Existing Arrangements and Controls versus Proposed Arrangements in Bill

Property Description:

Former hardware store on the main street. The building is of three stories and four bays and was constructed in the late 19th century. The retail area at ground floor measures 250m², while the 1st and 2nd floors measure approx 100m² each respectively. The upper floors were used as ancillary showrooms and offices. The building has been vacant for over five years since the last operators of the hardware store were forced to close, being unable to compete with larger retail chains and hit by a collapse in trading revenue.

The property is a size which seems to be in low demand and a replacement retail operation has not been found. A decision has been taken to convert the building into apartments. It is expected that 6 apartments will be provided.

Current Procedures: Table 1

Planning: The change of use of this building from commercial to residential use will benefit from the recent amendments to the Planning & Development Regulations made by way of S.I. No. 30 of 2018. The change of use of this building from commercial/retail to residential is now considered exempted development and therefore does not require planning permission within the limitations of the regulations.

Fire Safety Certificate: A Fire Safety Certificate is required for the change of use of a building. Residential use is considered a high risk due to people sleeping on the premises.

A Fire Safety Certificate application is a detailed study of the proposed design and its compliance with building regulations related to fire safety. Detection and alarm, means of escape, spread of

fire, structural integrity of the building, external fire spread and access for the fire services are some of the issues carefully considered.

A Fire Safety Certificate application may take up to two months or longer if agreed between the Building Control Authority and the applicant. An application fee of €2.90 per m² applies which in the case of this building would be €1,305.00

Disability Access Certificate: A Disability Access Certificate is required for the change of use of a building. This control measure ensures that buildings comply with the requirement for adequate provision to be made for people to access and use a building.

For the purposes of this building a passenger lift is not required. Any new stairs is required to be of a gentle pitch with height limitations between landings. Existing stairs are often suitable and retained if they are suitably located.

A Disability Access Certificate application may take up to two months or longer if agreed between the Building Control Authority and the applicant. A fixed application fee of €800.00 applies.

Commencement Notice: This project would be subject to the additional requirements introduced in March 2014 colloquially referred to as BC(A)R. This requires the owner to appoint a competent, registered, professional person to design the works and to carry out regular inspections of the work to ensure they are constructed in compliance with the requirements of the building regulations. The registered professional person signs a Certificate of Compliance stating that the design complies with all the requirements of the building regulations.

7 Day Notice: A 7 Day Notice may be submitted in place of a Commencement Notice if the project is under time pressure. The 7 Day Notice must be accompanied by a Fire Safety Certificate application and works may commence 7 days after the Notice is lodged. This allows the project to proceed while the fire safety certificate application is being considered by the Building Control Authority. The building owner agrees to comply with any condition that may be attached to the final Fire Safety Certificate. A fee of €5.80 per m² applies including the fire safety certificate fee which would be €2,610 for this project. The same inspection and completion certification requirements apply as for a commencement notice.

Completion of Project: At the conclusion of the project a statutory Certificate of Compliance on Completion signed by both the registered professional person and the builder is lodged with the Building Control Authority who may then add the certificate to the public register. This certificate states that the as-constructed works comply fully with the requirements of the building regulations.

Proposed Procedures: Table 2

‘One-Stop-Shop’: The proposed Bill has provisions which require the Planning Authority to establish facilities for pre-application consultations to establish if the development is suitable for the ‘one-stop-shop’ application procedure. The owner or their agent must present in person at this meeting adequate information to show how the proposal complies with the requirements of the building regulations.

A decision is made within two weeks if the development is suitable for the ‘one-stop-shop’ procedure or not.

If approved, the owner has 6 months to make an application for a ‘works permit’ which will be issued by the ‘one-stop-shop’. The owner may then proceed after 2 days to construction.

The ‘works permit’ may include conditions and requirements for one or more site visits by a member of the ‘one-stop-shop’ panel. The ‘works permit’ shall be signed by the member of the ‘one-stop-shop’ panel if they are satisfied the building conforms to the approved plans and is fit for habitation. The member of the ‘one-stop-shop’ panel may refuse to sign the ‘works permit’ if they are not satisfied.

If, after a repeat inspection by a member of the ‘one-stop-shop’ panel, the building still does not pass then the owner must revert to the normal approval channels of applying for Planning Permission, Fire Safety Certificate and Disability Access Certificate. There is no mechanism for obtaining a Certificate of Compliance on Completion as required by Building Control if all associated requirements were not followed preceding and during construction. Significant deconstruction would likely be required in order to comply with established building control procedures.

Comparison:

Under current procedures the sample development of a former hardware store does not require planning permission for change of use to residential and may proceed directly to the construction stage by submitting a 7 Day Notice to the Building Control Authority. Concurrently the Building Control Authority will be considering the Fire Safety Certificate and Disability Access Certificate applications and the works will be inspected regularly during construction by a registered competent professional. On conclusion of the project the owner, having complied with any conditions that were attached to the Fire Safety Certificate, will benefit from a Certificate of Compliance on Completion (with the building regulations).

The proposed ‘*one-stop-shop*’ system requires up to two weeks after the meeting with the Local Authority panel of staff to establish if the project is suitable for the proposed procedures. Works may proceed within two days of receiving the ‘*works permit*’. There is no system of regular inspection or point of contact between the project and the ‘*one-stop-shop*’. If the authorised person from the ‘*one-stop-shop*’ panel is dissatisfied with the quality of the work and a re-inspection does not address these concerns then the project must revert back to the established system of planning and building control.

The potential of an authorised person refusing to sign the ‘*works permit*’ must be reasonably high considering the disconnect between the person and the detail design of the project. The authorised person will be expected to approve a project based substantially on a visual inspection of the works. The practice of declaring compliance with building regulations by way of visual inspections only, has been discredited by the bitter experiences of the last decade.

It is our view that the proposed system carries little if any advantage in terms of time necessary to gain approval for a project as against existing procedures and in addition transfers significant risk onto the owner of the works, the authorised person from the ‘*one-stop-shop*’ panel and the Local Authority.

Having approved, inspected and signed off on the works the Local Authority cannot expect to be immune from responsibility and liability if there is a failure in the building resulting in harm to occupants, fire fighters or others.

Once again Chair, I would like to thank you and the Joint Committee for the opportunity of presenting today and we will be happy to respond to any questions you might have.



Peter Hynes

Chief Executive

Mayo County Council

Change of use of 450m ² 3 storey building from hardware store to residential apartments	
Regulatory Consent Required	Fast Track option available under Established Procedures
Planning permission	Zero weeks - Exempt
Building Control – 7 Day Notice	Works may commence 7 days from submission of notice on BCMS
Fire Safety Certificate	FSC application must accompany a 7 Day Notice – application is considered as works proceed on site. Decision must issue within two months unless additional time is agreed between applicant and Fire Officer.
Disability Access Certificate	May apply at same time as 7 Day Notice is submitted. Decision must issue within two months unless additional time is agreed between applicant and Building Control.
Additional documents required by S.I. 9 of 2014 submitted with 7 day Notice online. Certificate of compliance of design, appointment of builder, appointment of Assigned Certifier to inspect works and statutory undertakings by builder and Assigned Certifier.	No approval time required by Building Control
Works proceed under agreed inspection plan	Regular inspections on site by Assigned Certifier.
On completion the Builder and Assigned Certifier sign a Certificate of Compliance on Completion and submit this to Building Control for consideration before adding to the register.	Prior notice may be given of submission of completion and the Certificate of Compliance on Completion may be added to the Register within 24 hours of receipt by the Building Control Authority. FSC and DAC must be granted prior to completion.
	7 days from giving notice to Local Authority to start on site. There is a high level of certainty at achieving Certificate of Compliance on Completion using this process.

	Design and construction time not included.
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Table 1: Regulatory Consent Timeline under Established Planning & Building Control Procedures

Change of use of 450m ² 3 storey building from hardware store to residential apartments		
Section of Bill	Regulatory Consent Required	Time Required 'One-Stop-Shop' Proposal
(6)(a)(i)	Arrange pre-application consultation with Planning Authority	Say two weeks to arrange– depending on availability and workload of panel.
(6)(a)(iii)	Submission to Building Control Authority to decide if development is 'm,n,o' exempted development	Not set down but say two weeks and presumably contemporaneous to Planning Authority pre-application consultation
(6)(a)(i)	Approval to proceed with One-Stop Shop procedure	Two weeks – envisaged to be 1-2 days
(6)(b)(ii)	Issue of 'Works Permit' by 'One-Stop-Shop' following receipt of written submission by applicant advising of intent to proceed.	Not set down but say two weeks.
(6)(b)(iv)	Works commence – 'Works Permit' is uploaded to BCMS by applicant with short form commencement notice	Not less than 2 days before commencing work. Note:7 days currently required to consider validity of a commencement notice
(6)(b)(iii)	Works subject to inspection by authorised person	
(6)(b)(vi)(I)	Authorised person signs works permit confirming the building is appropriate for habitation.	Works complete and may be occupied
(6)(b)(ix)	Authorised person refuses to sign 'works permit' even after repeat inspections	Building may not be occupied and owner must revert to established planning and building control procedures
		6 weeks plus 2 days from initial applications to Planning/Building Control Authority to proceeding with work on site. This is an optimistic prediction subject to availability and work load of 'one-stop-shop' panel. Design and construction time not included.

Table 2: Regulatory Consent timeline via 'One-Stop-Shop' procedure