

Joint Oireachtas Committee on Housing, Local Government and Heritage

Planning and Development Bill 2020

Opening Statement by Department of Housing, Local Government and Heritage

8 December 2020

1. Chairperson, I would like to thank you and your Committee members for inviting, and giving, the Department the opportunity at short notice to further brief you on the proposed Dáil Committee Stage amendments to the Planning and Development Bill 2020.
2. By way of introduction, my name is Eamonn Kelly, Principal in the EU and International Planning Regulation Section of the Department and I am accompanied by my colleagues Paul Lemass, Assistant Secretary of the Housing Policy Legislation and Governance Division, and Paul Hogan, Principal Planning Adviser in the Department (who should be visible on the video-link). Paul Lemass will give a short opening statement on the proposed amendments relating to the Residential Tenancies Acts 2004 to 2020, and Paul Hogan will be available, if required, to answer questions on the practical operation of Section 11(3)(b) provisions.
3. In my opening statement, I will briefly outline the two main elements of the Planning and Development Bill 2020, as passed by the Seanad last week, as well as referencing the two further amendments to be introduced at Dáil Committee Stage, one of which relates to planning legislation, namely amendments to substitute consent provisions, and the other which relates to Residential Tenancy provisions, which will be addressed in Paul Lemass's opening statement. These amendments will also require a modification to the long title of the Bill.

Planning and Development Bill 2020

4. As per the supplementary briefing note circulated to the Joint Oireachtas Committee, the Planning and Development Bill 2020 has been brought forward as a matter of urgency 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.
5. The purpose of the Planning and Development Bill 2020, as passed by Seanad Éireann, was twofold:

- i. Firstly to amend section 11(3)(b) of the Planning and Development Act 2000 in respect of the mandatory requirement to hold public meetings in relation to a proposed development plan; and
- ii. Secondly, to allow the Government to make orders, during the period of the Covid-19 pandemic, which would extend certain statutory periods applying under the Planning and Development Acts and Building Control Acts.

Amendment of section 11 of the Principal Act (Section 2 of the Bill)

6. The Bill 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 (at the 'issues stage' of the process, before a draft plan has been produced), with the positive 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.
7. Following a Committee Stage amendment in the Seanad by the Government, which was made for the avoidance of doubt, this public consultation by the planning authority shall include the holding of a public meeting or an online public meeting. In other words, as part of a planning authority's statutory obligation to consult with the public in respect to the commencement of the two-year draft development plan process, there will always be some format of public meeting required under section 11(3)(b) at the initial pre-draft stage of the development plan process, either by way of a public meeting, attended by the public in person, or else by way of an online public meeting. Once the COvid-19-related public meeting restrictions have passed, a planning authority could hold both an online meeting as well as an in-person meeting if it wished.
8. This amendment is immediately required to address present restrictions on public gatherings during the pandemic, which may impact on the progression of development plans during the pandemic. It is also in line with the modernisation agenda for the planning system, to improve accessibility and inclusiveness through increased online activity and to ensure continued flexibility in communicating with the public at the initial pre-draft stage of the development plan process, and will therefore be a permanent amendment.

Emergency Periods (Section 3 of the Bill)

9. The purpose of this provision of the Bill is to allow the Government to make orders, during the period of the Covid-19 pandemic, which would extend certain statutory periods applying under the Planning and Development Acts and Building Control Acts.
10. This contingency measure is urgently required so that public participation elements of the planning regime, 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 'stay at home' travel restrictions, or indeed may critically impact on the operation of individual planning authorities..
11. 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 as follows:
 - i. More than one 'extension period' order may be made within the confined operative period for this General Scheme, 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;
 - ii. Extension orders can now be applied not only to the whole country, but to specific administrative areas as required; and
 - iii. 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.
12. In terms of which legislative periods might be extended, an order could, for example, apply to the Planning Acts and not the Building Control Acts, or vice versa, or, if required, an order might apply to specific periods within Acts, particularly those with public participation objectives, such as the public consultation periods in planning applications, planning appeals, or in the adoption of statutory plans, such as city or county development plans, local area plans or variations to those plans.
13. The recently expended section 251A of the Planning and Development Act 2000 introduced a similar 'disregard' provision for statutory periods during the first 'lockdown' earlier this year, in which case the Government Order made under Section 251A lasted for 8 weeks, from the

end of March until 23 May 2020 and applied to all relevant statutory periods in the Planning Acts as well as to specified provisions in the Building Control Act.

14. While this proposed legislation may never be used, it is still an essential temporary safeguard that is urgently needed for as long as the pandemic persists, to provide an agile and flexible process to ensure that the integrity of the Planning and Building Control Systems is maintained in the event of further waves of infection.

Proposed Committee Stage Amendments relating to Substitute Consent provisions in the Planning and Development Acts

15. In order to comply with the findings of the Supreme Court judgment of 1 July 2020, it is necessary to amend the substitute consent provisions at Part XA of the Planning and Development Act 2000 to provide for 'exceptional circumstances' to be considered in an application for substitute consent at section 177K of the Planning Act, along with the necessary ancillary provisions to ensure additional public participation, where required, is facilitated with respect to the consideration of exceptional circumstances at the 'leave to apply for substitute consent' stage, as well as on the wider application.
16. Therefore, following the introduction of these proposed amendments, 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 prescribed by regulations under section 177N.
17. Section 177K will also be amended to provide for additional public participation, where required on exceptional circumstances and on the wider application, where an application for substitute consent is currently pending before the Board upon the enactment of these amendments. This is to ensure, that applications for substitute consent which have already been submitted to the Board, but not decided, are subject to a requirement to satisfy that exceptional circumstances exist, so that applicants are given the opportunity to provide any further information to this effect, and so that the public, prescribed bodies and those who have already made submissions on the application are notified of, and can make submissions on the application, including on whether exceptional circumstances exist in this regard.
18. The introduction of these technical amendments to existing substitute consent provisions is a matter of urgency, noting that these provisions will facilitate the earlier resolution of the terms of the EU Court of Justice judgment in case C-261/18 (which followed on from case C-

215/06 and which also concerns the Derrybrien Wind Farm) – noting that the power of An Bord Pleanála to issue a decision on the Derrybrien Wind Farm substitute consent application have been called into question, due to the recent Supreme Court judgment.

19. It is noted that the State is presently paying fines of €15,000 per day to the European Commission as a result of the judgment in case C-261/18, until the terms of that judgment are met. [The state has already paid a lump sum fine of €5 million since the judgment was issued in November 2019 as well as a further €2.745 million in daily fines relating the first six month period since the judgment date.]
20. The introduction of these technical amendments to substitute consent provisions is also a matter of urgency for the planning system in general, as a vital element of a functioning economy, which needs to have measures in place as soon as possible that are legally compliant with the EIA Directive, to facilitate applications to seek to regularise the planning status of large scale developments (which are subject to EIA), in exceptional circumstances, if required.
21. Chairperson, I will conclude my opening statement at this point but both Paul Hogan and myself will endeavour to answer any further questions that you or the Committee members might have with respect to the three Planning elements of the proposed Bill and Paul Lemass will endeavour to answer questions on the Residential Tenancies element of the Bill.

Thank you for your attention.