SUBMISSION ON THE 2023 DRAFT PLANNING AND DEVELOPMENT BILL

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This submission is made in response to a request received from the Clerk to the Joint Oireachtas Committee on Housing, Local Government and Heritage to provide a submission in relation to the Pre-Legislative Scrutiny of the Draft Planning and Development Bill 2023.

I make this submission drawing in particular on my experience as a an academic in the UCD School of Planning and Environmental Policy since 1994, where my research and teaching focused on planning law and practice; as a researcher in An Foras Forbartha; and on my professional practice as a barrister and member of the Law Library since 1991.

1. Change of Name of An Bord Pleanala

Since its establishment, this organisation has been known by its Irish name, which is highly unusual within the public sector. The proposed Irish title of the restructured body, An Coimisiún Pleanála, is awkward on the tongue and is unlikely to be widely used. The English language version, the planning commission, is easier to say and will become the commonly known name of the agency.

In planning law and practice, the term "the commission" is used to refer to the European Commission, which has significant responsibilities in the overlapping area of environmental law. This could give rise to confusion.

There are numerous other "commissioners" within the State, some of whom interact with planning, such as the Commissioner for Environmental Information, the Commissioner for Energy Regulation and the Commissioners of Public Works.

An Bord Pleanala has a unique identity. The public is familiar with its name and its role and may respond negatively to a name change, which could be interpreted as a "rebranding exercise" following recent issues which have affected the Board.

Apart from the negative image suffered by the Board as a consequence of these issues, the Board has been seen as independent, impartial and ethical over some 45 years. It was the most significant organisation in the construction and development sector to come through the Celtic Tiger period with its reputation enhanced. The Government has moved quickly to repair the situation that arose in 2022 with the 2022 Planning Act and recent appointments to the Board. These actions will ensure the reputation of An Bord Pleanala is restored.

Conclusion

For the above reasons, I am not in favour of the proposed name change to An Coimisiún Pleanála. The proposed restructuring of the organisation can be undertaken without loosing the name An Bord Pleanala.

2. Addressing Delays in the Planning System – an Overview

The desire to eliminate delays in the planning system has been expressed on many occasions by a variety of Ministers but any attempt to do so needs to be addressed with great caution. Well-intended amendments to the planning code can have disastrous results, as the following examples demonstrate.

(i) Reduction of the Quorum

In order to speed up the appeals process, the 2010 Planning and Development Act reduced the quorum for appeal decisions from three to two Board members in specified circumstances[1]. I was strongly opposed to this amendment when it was proposed. Among the dangers I identified was the possibility the two person quorum could lead to longer rather than speedier decision making and the "lurking spectre of collusion". I raised these concerns in an article published in the Irish Times on 11 June 2009[2]. Following allegations made in 2022 regarding certain decisions of An Board Pleanala, the Office of the Planning Regulator carried out a review of its systems and procedures. Recommendation 3 of the OPR's report was that the possibility of this reduced quorum should be removed by legislative amendment as a matter of urgency and this was done by s. 10 of the 2022 Planning and Development and Foreshore (Amendment) Act.

(ii) Strategic Housing Development Mechanism

The Committee is familiar with the Strategic Housing Development mechanism. Again, the laudable intention of the 2016 Planning and Development (Housing) and Residential Tenancies Act was to support the Government's Action Plan on Housing and Homelessness by "introducing a fast-track planning procedure" for residential developments of 100 or more units[3]. The development and construction industry was strongly supportive of the 2016 Act. One of the complaints they had made, which was addressed in the SHD procedure, related to the delays caused by requests for further information. In addition to imposing a deadline on decision making by the Board, the Act prohibited requests for further information. In a number of cases, this had the unintended consequence of resulting in a refusal where a request for further information could have resolved the matter at issue.

The pressure on the Board to meet the deadlines in the 2016 Act was largely the cause of the number of successful judicial review actions taken against SHD decisions.

3. Time Limits on Appeals

(Section 302, page 561)

(i) Background

In 1983, An Foras Forbartha carried out the first review[4] of the operation of the Irish planning system. It records that developers expressed their concerns at the "long and expensive delays" caused by planning (page 5), citing in particular the length of time taken to issue appeal decisions and the absence of a time limit on the making of these decisions (page 32).

When the planning system was introduced some 60 years ago[5], decisions on planning applications at local level had to be made within two months, a period extendable if further information was sought. In the absence of a decision, permission was granted by default.

"Any person" could appeal this decision, including a default permission, which provided an appropriate safeguard against negligent or deliberate[6] failure to meet the deadline. An appeal had to be lodged within one month of the planning authority's decision but no other statutory time limits applied to appeals. When An Bord Pleanala was established in 1977[7], it set its own procedures under the chairmanship of High Court Judge Denis Pringle. In recognition of the quasi-judicial nature of the Board's decisions, these reflected court procedures. Documents were scrupulously circulated and comments thereon were provided subsequently to all parties and observers. Unquestionably, this was a slow and protracted process.

The 1983 Planning Act reconstituted An Board Pleanala, replacing the requirement that the chairman be a High Court judge with an open competition for this appointment[8]; restricting the Minister to appointing ordinary board members from a list of nominees submitted by various cultural, professional and commercial organisations; and putting the Board's procedures on a statutory basis which largely followed the procedures already in place. It also amended the existing legislation to enable certain classes of appeal to be dealt with more expeditiously by empowering the Board to serve notices specifying time periods for submission of various documents.

The 1992 Planning Act introduced a series of carefully nuanced amendments to the appeals procedure intended to ensure that all cases could be "decided in a much shorter period"[9], such as requiring the grounds of appeal to be stated in full when making an appeal. However, the Board was not given a deadline for decision making. Instead, it was given an objective to determine appeals within four months.

(ii) Analysis of Time Limits for An Bord Pleanala

Setting an objective recognised the quasi-judicial nature of the Board's position. Unlike at local level, it always has to evaluate at least two opposing sets of arguments (the appellant's and the planning authority's), possibly more in the case of a third party appeal or where observers are involved.

Having received in all appeals and observations, it has to consider if any matter has been raised on which, in the interests of justice, the other parties and observers should have an opportunity of making comments. New issues can arise in the course of assessment by the inspector or by the Board itself and, where it is minded to take them into account, the Board must give notice to the parties and observers and allow them time to make a submission thereon, in the interest of fair procedures.

Having regard to these requirements, the danger of imposing an absolute time limit on the Board has always been accepted. Where the Board makes a error in coming to its decision, the only recourse for the injured party is judicial review. Decisions made under pressure are far more likely to contain errors, as has been seen in the operation of the SHD mechanism.

In his statement to the Committee on 9 February 2023, the Regulator made reference to the danger of "rushed rather than correct decisions". While I am in agreement with him that fines are inappropriate, I differ on the introduction of statutory timelines.

The variations in complexity of appeal cases makes it inappropriate to impose a "one size fits all" time limit. This is recognised at s. 302 (1) (a) but class-specific time limits will give opportunities for legal challenges as to whether an appeal has been correctly classified. Moreover, a multiplicity of time limits provisions will give rise to public confusion.

Where a point of European law arises in the course of an appeal, the requirement to meet a time limit could be impossible to meet. Where the appeal comes to the Board accompanied by an environmental impact assessment report and / or a Natura impact statement, the complexity of the case is greater than otherwise and more circulation of documentation will probably be required, necessitating a longer period for assessment.

While any party to an appeal can request an oral hearing, the Board has complete discretion in the matter. Oral hearings have an important role in confirming to local communities that their perspective is being heard. Where the Board is facing a deadline, it will be strongly disinclined to accede to any requests and this could result in a sense of alienation from the planning process over time, because developers get to have face-to-face consultation before submitting planning applications.

Conclusion

Time limits have always applied to decision making at local level but when a planning authority is running out of time on a very complex application it has the comfort of knowing that its decision is likely to be appealed and the Board will correct any error or omission. The Board provides a safety net that complements the deadline. There is no such safety net at appeal stage.

The Board has never abused the discretion given to it to extend the 18 week period and, once it deals with the current backlog, there is every likelihood that it will return to a high percentage compliance with its 18 week time objective. In response to a question from Deputy Higgins, the Interim Chairperson pointed out that, when the Board was properly resourced, it met its objective 70% of the time.

For the above reasons, I consider that no deadline should be imposed on the Board's decision making.

4. Changes to Public Participation – an overview

The drafters of the Bill, both lawyers and policy makers, undoubtedly intended to be even handed in addressing the updating of the planning code. However, there appears to be an unconscious bias against public participation in favour of commercial interests and against the community in favour of developers in some of the changes proposed.

In this context, it is worth noting that the Regulator described public participation to the JOC as being "at the very core of our planning process".

5. Judicial Review

(Section 294, page 480)

The number of judicial review actions against the Board in recent years was justified. Where a judicial review is successful, that shows the applicant has done the State a service, undoubtedly at considerable cost to themselves in terms of stress and anxiety even if their pecuniary costs are met. If the applicant for JR was someone other than the developer, they had no possible economic benefit in prospect.

The 1983 Foras Forbartha report's analysis of the operation of the planning system is as valid today as it was in 1983: "Conflicting aspirations and attitudes are evident in the development control process. The developer of an office block wants to get an equitable return on his very expensive capital as quickly as possible, but the family living next door recognise that they and the office block will remain neighbours long after the developer has moved on. Therefore, they feel that the application should be examined in minute detail"[10].

The planning code is far more complex today than it was in 1983 and it is necessary for members of the public to have the ability to ask the High Court to intervene if they consider on legal advice that an appeal decision is in error with regard to procedural matters. The Board is the final arbiter on the planning merits of any case. Judicial review is an expensive procedure and daunting for anyone without deep pockets. It is not engaged in lightly by anyone.

Since the enactment of the 2000 Planning Act, s. 50 (which provides for JR) has been amended on at least 15 occasions[11]. In general terms, the purpose of these amendments was initially to limit the ability of third parties to access the High Court and, post ratification of the Aarhus Convention, to rebalance public participation rights.

Conclusion

At this stage, I consider the balance is correct with regard to equivalence of treatment, constitutional justice, fair procedures and Ireland's obligations under international law. I recommend that no further changes be made to the established procedure for judicial review until sufficient experience has been gained of the proposed amending 2023 legislation in operation.

6. Exempted Development

(Section 8, page 44)

(i) Current Position

The central principle of the planning system has always been that permission is required in respect of the development of land. The legislative intention behind the concept of exempted development is that certain types of minor development do not need to be individually scrutinised and assessed.[12] Accordingly, they have been given an exemption from the obligation to obtain planning permission.

Section 5 of the 2000 Planning Act provides for declaration requests by "any person" and, where the request is not made by the landowner, the planning authority will invite their comments before coming to a determination. Any person to whom the declaration is given can refer it for review to An Bord Pleanala, so the landowner can refer a declaration sought by a third party if dissatisfied with the outcome.

(ii) Value of Third Party Requests for Declarations

Great unhappiness and bad relationships can be caused by small developments in residential areas, such as extensions which are too close to or overshadow adjoining houses or overlook neighbouring gardens. The ability to ask the planning authority for a Declaration as to whether the development comes within the definition of exempted development (ED) has served the community well over the last two decades. The neighbour who wants to build may be unwilling to amend their long cherished plans on being approached directly and asked to do so. However, if the planning authority indicates in a Declaration that their prospective development is not ED, they may pragmatically make the small changes necessary to come within the relevant exemption[13]. Of course, they also have the option of applying for planning permission to build the extension exactly as they want. While neither party is totally satisfied, an acceptable compromise can be reached.

Some developments which initially appear to be ED actually are not and this is identified on examination of the Declaration request, such as where environmental impact or appropriate assessment is required. This would typically happen in rural and coastal areas.

Changes of use are a particularly complex type of ED and require careful teasing out to establish exactly what is involved.

(iii) Analysis of the Proposed Legislative Changes

The outline of the Bill prepared by the Department of Housing, Local Government and Heritage (DHLGH) does not mention the changes proposed to ED and Declarations, much less attempt to justify the abolition of access by neighbours and the general public to the remedy of a Declaration.

Section 5 of the 2000 Planning Act, even as amended over two decades, is quite straightforward. It contains some 1,700 words. Section 8 of the 2023 draft Bill, which runs to 2,800 words, is so convoluted as to be almost impenetrable and is breathtaking in its restriction of the Declaration procedure to the owner and occupier of the land or the person developing with the consent of the owner.

Exempted development involves mixed questions of fact and law. In a request for a Declaration the facts may be accidently, negligently or deliberately misstated, leading to a positive outcome for the requestor. Even where the facts are carefully and accurately set down, the planning staff may not have the expertise necessary to interprete the provisions of the ED Regulations in the context of these facts and may come to an erroneous conclusion.

Everyone makes errors but under the present system, the possibility of referring a Declaration to An Bord Pleanala provides an important safeguard. The landowner / developer can refer a Declaration sought by a third party but there is no corresponding right for a third party to refer a Declaration sought by the developer.

On receipt of a referral, the inspector prepares a detailed report and, at minimum, three Board members carefully analyse the inspector's assessment and recommendation and the issues of fact and law involved. Thus, there is a greater likelihood of a correct Declaration being given on review.

(iv) Significant Case Law

In 2016, the Narconon Trust obtained a Declaration from Meath County Council that change of use of a permitted nursing home development to a residential drug rehabilitation facility at the former national school site in Ballivor was exempted development. None of the local community were aware of the request for a Declaration because there is no public notification required and no role for third parties in a first party request.

When the local community discovered the change of use was taking place in 2018, they made a s. 5 reference to the planning authority asking substantially the same question. The matter was immediately referred by the Council to the Board, which determined the change of use was not exempted development because a drug rehabilitation centre was materially different to a nursing home. Narconon successfully challenged the Board's Declaration by way of judicial review. The High Court held that the second request was in fact an attempt to question the validity of the 2016 Declaration, which was impermissible, and that the appropriate mechanism for the Ballivor Community Group to challenge the original decision by Meath County Council would have been to take judicial review. Of course, by the time the Community Group became aware of the matter, they were long out of time to mount such a challenge.

An Bord Pleanala appealed the High Court decision to the Court of Appeal, which upheld the High Court.

In his judgment, with which Judge Woulfe agreed, Judge Collins stated:

> "In such circumstances – and they are the circumstances here – a declaration or decision having potentially significant legal effects may issue without any opposing voice or contrary argument being heard. Even where a member of the public immediately becomes aware of the issuing of a section 5 declaration by a planning authority and wishes to object to it, they are not entitled to seek review by ABP. Only the person who made the request and the owner and occupier of the land (if different) may do so ……. However, the scope for challenging the merits of the decision of the planning authority or ABP, as the case may be, in such proceedings will clearly be limited. In any event, once it is accepted that a section 5 declaration or decision may affect the rights and/or interests of third parties …… it seems difficult to justify their exclusion from participation in the process leading to such declaration or decision. An entitlement to bring judicial review proceedings, potentially involving significant time and expense, would appear to be a poor substitute for an entitlement to be heard before the planning authority or ABP."[14]

Far from suggesting that third parties should be excluded from the Declaration remedy altogether, as is proposed in the draft Bill, the Court of Appeal criticised the absence of a right for a third party to refer a Declaration for review to the Board.

Conclusion

Section 5 of the 2000 Act is in need of amendment, not replacement. Removing the right of a third party to seek a Declaration is a serious diminution of public participation and is entirely unwarranted. Leaving third parties with only the remedy of judicial review flies in the face of Judge Collins' analysis (quoted above).

For these reasons, I consider s. 8 as drafted should be removed from the Bill and replaced by s. 5 of the 2000 Planning Act, subject to a simple amendment enabling third parties to participate in the process where they have not sought the Declaration. This will ensure better outcomes for everyone involved and for the general public.

Possible wording of such an amendment to section 5 of the 2000 Planning Act

> (3) (c) (i) Where a planning authority issues a declaration under ss. (3) (a) or refers any question to the Board under ss. (4), it shall include details of the declaration or question, as the case may be, on the weekly list of planning applications made available under Art. 32 of the Planning Regulations, which list shall be headed "Decisions on Planning Applications and Referrals"
>
> (ii) Any person may, within 4 weeks of the date of issuing the declaration or referring the question to the Board and on payment of such fee as may be prescribed, submit observations to the Board on the matter.
>
> (iii) Where the planning authority or the Board makes a decision, it shall, not later than 3 working days thereafter cause the relevant documents to be published on its internet website, and be made available for inspection and purchase by members of the public during normal office hours at its offices during such period (which shall not be less than 8 weeks from the date of the making of the decision) as it considers appropriate.

This amendment will address Judge Collins' concerns. Consequent amendments to the Planning Regulations will be required.

7. Transparency in Planning Applications

(Section 334, page 588 and section 335, page 590)

(i) Present Position

Section 38 of the 2000 Planning Act states that the full planning application and any further information must be made available by the planning authority for inspection and purchase, as at reasonable cost, as soon as possible after they are received. This underpins public participation, obviously it is necessary to be in possession of the full facts to make an observation.

However, because of concerns about data protection, the 2007 Development Management Guidelines recommended that planning application forms should have a separate page on which the contact details of the applicant or agent are sought and that this page "should not be placed on the public file"[15].

This guidance was subsequently given a statutory basis by the insertion of ss. (1)(A) into s. 38 of the 2000 Act.[16] Section 38 (1)(A) provides that details of the applicant's telephone number or email address do not form part of the planning application. The updated planning application form contained in the Planning Regulations, Form No 2, asks for the applicant's address at question 24, which is in the section of the form the Regulations stipulate is not to be published.

The application form in the Regulations needs to be changed immediately to come within the definition of a planning application in s. 38 (1) (A). Only contact details can remain undisclosed.

Moreover, the applicant's present residence is usually a material consideration in applications based on rural housing need. Section 38 is clearly contravened if this information is not available to the public, who are thus prevented from making an informed decision on whether to submit an observation and the contents of any such observation.

(ii) Changes Proposed in the 2023 Bill

Section 335 (5) (a) provides that personal data which serves no legitimate purpose can be redacted in a document available publicly. This addresses this problem because an applicant's present residence and the circumstances of their rural housing need go to the core of their application; disclosure of this information therefore serves a "legitimate purpose".

A difficulty may arise in ensuring consistency of disclosure across all planning authorities. At present, despite Ministerial Guidance and the requirements of statutory Form 2, a number of planning authorities include questions relating to rural housing need on the second part of their planning application form and indicate it will not be published.

Section 335 (5) (b) goes too far in giving the Minister power to prescribe "circumstances in which a planning authority may restrict access to the register or documents referred to in *section 334(2)*, in the interests of protection of the privacy, reputation or personal safety of an individual, commercial sensitivity, the administration of justice, or the security of the State." Certain developments by State authorities are exempted development under s. 181 of the 2000 Planning Act and Part 9 of the 2001 Planning Regulations and in carrying out a public consultation will not contain any such information.

Any provision for this type of restriction on public information should be contained in primary legislation which is scrutinised by the Oireachtas.

Conclusion

As discussed under (i) above, the application form in the Regulations needs to be changed immediately to bring it into conformity with the definition of a planning application in s. 38 (1) (A) of the 2000 Planning Act.

Section 335(5)(b) should be amended to specify the circumstances in which access to planning documentation can be restricted, in the interest of democratic control over limiting transparency. In the alternative, it should be deleted.

8. Availability of Planning Documentation

(Section 334, page 588 and section 335, page 590)

The documents which are submitted in respect of planning applications and appeals need to be available for inspection for a considerable period after "the conclusion of the application or appeal" for a number of reasons.

Prospective purchasers of land (which terms includes any structure) must be able to examine all documentation to ensure they know if there is unauthorised development on the land, or if there is a valid permission not yet commenced and its details.

Prospective purchasers of land will want to know if there are any extant permissions not yet commenced on adjoining land which could have adverse implications for them, and will want to scrutinise the details of any such permission before contracting to purchase.

If a question arises that development taking place on land is not being carried out in accordance with the relevant permission, the public must be able to thoroughly investigate what exactly was proposed, if there were any amendments to the original proposal, etc., in the context of their statutory entitlement to take a planning injunction under s. 294.

Conclusion

All planning documentation needs to be retained for at minimum 12 years. Section 334 (3) should be amended by removal of the phrase "other than the documents or information referred to in *subsection (2)*". Consequential amendments may also be required.

9. Material Contravention

(Section 105, page 265)

The 1983 Foras Forbartha Report acknowledged that "Local authority planners and elected representatives are frustrated by the ability of An Bord Pleanala to grant permission which materially contravenes the development plan" (page 40).

The 2000 Planning Act restricted the Board's discretion to four specific sets of circumstances where the planning authority has refused permission.[17]

One of the purposes of the 2023 draft Bill is to provide for a plan led system (S. 1A (1)(d).

It is at variance with the overall legislative intention to continue to empower the Board to grant permission which would materially contravene the development plan. Moreover, in view of the supervisory role now exercised by the OPR over plan making, it is unnecessary.

Conclusion

The power of the Board to grant a permission that materially contravenes a development plan, in circumstances where the planning authority has refused the application, should be removed from the planning code.

10 Interpretation

It is most unusual and quite unhelpful to have an interpretation section at the beginning of so many parts of the Bill. It begs the question does the same word mean different things in different parts of the legislation. If this is so, it will give rise to enormous confusion. Where for good reason a term has a particular meaning in relation to a specialist area, such as Compensation, it is valid to have a section-specific definition, but not otherwise.

The concept of "Development" is central to the planning code. For this reason, its definition has always had a separate section, Section 3 in both the 1963 Act and the 2000 Act.

The definition of development has always been far more extensive than the outline of the term now provided on page 32 of the Bill, as is shown by comparing the Bill's definition with that on page 49 of the Law Reform Commission's most recent consolidation of the 2000 Act.

It is very helpful to have the additional details of what development means in one place, and clarifications where there is clearly room for dispute. The drafters of the 1963 Act knew this and provided

s. 3 (3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

Conclusion

The structure of the draft Bill is completely different to the Planning Act we have all worked with for some 60 years. In order to operate the new legislation, practitioners and the public must be able to understand the basic terminology of the legislation.

There is no good reason to depart from the standard practice of having all definitions in the interpretation section at the commencement of the Bill. This is where everyone goes to find the meaning of the words used. All definitions of terms used in the Bill should be gathered into Section 2 Interpretation.

I strongly recommend that the definition of development be contained in a stand alone Section 3, and that the full explanatory definition be reinstated.

Source Material

In preparing this submission, I have used material contained in two publications extensively.

Grist and Macken Editors: *The Irish Planning Law Factbook* (Thomson Round Hall, 2003, updated annually)

Berna Grist: *An Introduction to Irish Planning Law* (Institute of Public Administration, 2012)

References

[1] Section 41 of the 2010 Act. The Explanatory Memorandum to the 2009 Bill stated the aim was to "improve the throughput and performance of An Bord Pleanala".
[2] Berna Grist: *Three Heads are Better than Two when Making Planning Decisions at the Appeal Stage* (Irish Times Property, 11 June 2009, page 2).
[3] Explanatory Memorandum to the Bill, page 1.
[4] An Foras Forbartha: *Twenty Years of Planning* (1983). This report was the result of a series of colloquies held by AFF in Dublin attended by invited representatives of the four parties to the planning process - the public, developers, elected representatives and planners – what would today be called "stakeholders".
[5] 1963 Local Government (Planning and Development) Act.
[6] The remote possibility of collusion between a developer and a member of the local authority staff was thus recognised.
[7] 1976 Local Government (Planning and Development Act), s.3. The establishment day was 1 January 1977.
[8] Section 5 of the 1983 Act and Art. 3 of SI 285 of 1983.
[9] Explanatory Memorandum to the Bill, page 1
[10] An Foras Forbartha: *Twenty Years of Planning* (1983), page 28.
[11] The Law Reform Commission's administrative consolidation of the 2000 Act, dated January 2023, shows there have been 15 amending pieces of legislation, which means that in total there have been more than 15 amendments to s. 50. Two additional sections, 50A and 50B, were added to the original s. 50. Some of the amendments have themselves been amended.
[12] A second and very different category of exempted development is based on the identity of the body carrying out the development. Local authorities have a complete exemption in their own functional area, subject to the requirements of EU law. State authorities have certain exemptions, again subject to EU law.
[13] The Planning and Development Regulations, SI 600 of 2001 as amended, contain detailed descriptions of various classes of exempted developments, for example Class 1 of Part 1 of Schedule 2 sets out the type of extension which can be added to a house without having to obtain planning permission.
[14] Narconon Trust v ABP [2021] IECA 307
[15] Page 46, Development Management Guidelines, June 2007, issued by the Minister for the Environment under s. 28 of the 2000 Planning Act
[16] Section 27 of the 2010 Planning Act
[17] Section 37 (2) of the 2000 Planning Act.