

Submission to the Oireachtas Committee of the Department of Housing, Local Government and Heritage

I am writing to the Oireachtas Committee of the Department of Housing, Local Government and Heritage regarding the Pre-legislative scrutiny of the Draft Planning and Development Bill 2022 (resumed).

My recent experience with observations on a Lithium-ion Battery Energy Storage System (Li-BESS) has been a rapid educational experience and in my opinion highlighted deficiencies in the present planning process:

1) The requirement for proper and genuine community and stakeholder engagement at pre-planning application stage. The short period in which concerned citizens must make submissions to local County Councils puts them at a severe disadvantage to examine plans. The format in which information is available from County Councils can be inaccessible and difficult to read. All developments, but certainly large infrastructural projects should have mandatory community engagement at the preplanning application stage. This would help all parties to identify difficulties and find solutions early on, avoiding conflict and delay further along the planning process.

It is not reasonable that a highly technical planning application can be notified in only one National newspaper with a low circulation and for no other public stakeholder consultation to take place. It often can take a further 7 days before local residents become aware of a new development and a further 10 days to slowly download all the information from the County Council website. This leaves little time to prepare and submit an observation, whereas the developer would have had 6-12 months to prepare along with preplanning meetings with County Council planners.

2) County Councils spend a long-time formulating the County Development plan with important input from all stakeholders. However, these are merely guidelines, likely to require individual interpretation for certain projects and it is a concern that they can be disregarded by Council Planners and at An Bord Pleanála without detailed and cogent reasons.

3) In certain developments such as Li-BESS technology is changing so rapidly that 6 -9-year County development plans are too inflexible to adapt to change.

4) The proposal to limit local or national groups from taking Judicial Reviews is a serious interference with a citizen's right to follow through on concerns they might have with new developments which will change their environment irrevocably for good or bad. Concerned citizens do not get a good press and are portrayed as obstructionists. This in my opinion is very far from the truth and the number of successful challenges against An Bord Pleanála and cases they concede is testament to this. Concerned groups act like a small citizen assembly and bring a range of expertise to analyse projects.

Everything is stacked against concerned citizens, firstly regarding the very limited time they have to analyse plans and obtain expert opinions to support their case and secondly the costs are substantial even before Judicial Review proceedings. A Judicial Review costs in region €15,000 - €25,000 to lodge and court costs can range from €60,000-€250,000 which is not for the faint hearted. It is just

about possible for groups to do this but if limited to an individual it will be a serious deterrent and a denial of due process and public participation in the planning process. The costs involved act as a deterrent to vexatious or frivolous objections but also make it difficult for cases with genuine reasons of concern.

If a local group had to be in existence for a year before taking a judicial review it would not be possible. It is imperative that affected individuals and groups should continue to be allowed to take Judicial reviews even if they are not incorporated or in existence for a set period of time before a planning application.

4) An Bord Pleanála is expected to adjudicate on many matters including large infrastructure projects where the Inspector may not have the expertise or qualifications to do so. Should an Inspector have no regard for an expert opinion in observations, without corroboration, the only recourse for citizens is a Judicial Review.

An Bord Pleanála should have access to a panel of independent experts to advise the Inspector. All observations should be addressed and cogently countered if disagreed with.

It is a concern that an inspector can disregard an experts opinion without justification. For this reason the right to an oral hearing should be available especially for large industrial/technical developments especially where fire risk/toxic hazard/ explosion and environmental pollution is a possibility.

The independence of the Board is paramount and must not be jeopardised by government appointees.

5) Legislation is lagging some rapidly changing technologies in the renewable industry and in particular with regard to safety. These projects should be liable to Environmental Impact assessment, National Regulations, Health and Safety assessment and Control of Major Accidents and Hazards (COMAH). Agencies such as the HSA, the HSE, the EHS and Fire Officers should be actively involved at an early stage in the planning process to ensure the safety of these developments. The wisdom of leaving concerns regarding fire safety until commissioning would appear to be a flaw in the planning process.

Legislation is also lacking concerning the biodiversity crisis with so many of our indigenous species and habitats in peril with inadequate legal protection.

6) In many instances the major delay is waiting for An Bord Pleanála to adjudicate on an appeal and not the subsequent legal process. It should be properly staffed with adequate personnel and appropriate expertise to perform its role promptly.

On the other hand, more time should be allocated to public consultation and participation prior to planning application. The current lack of transparency is one of the major reasons for many objections by concerned citizens.

In conclusion it is my view that there are problems with the planning process but limiting the right of groups of citizens to take a Judicial Review is not the way forward. Judicial Reviews are a measure to safeguard the environment and any associated delays are a price worth paying to protect the environment and human health. Despite certain commentary to the opposite, the Judicial Review process has worked well in planning, quashing unlawful decisions and it has been efficient and fair. The Judicial review system has exposed many important issues that were not revealed by developers plans or discovered during the planning process. It has helped to discourage bad development and promote good development and is the last resort to correct errors in planning. The public are motivated and interested to promote environmental protection. The citizen's assembly has demonstrated that the public is well informed and capable of good decision making.

The necessity for new homes and meeting climate targets should not and must not ride roughshod over the right to safety, biodiversity, and retention of a good environment for all.

I trust you will give these comments due consideration when dealing with this.

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