



Pre-Legislative Scrutiny of Planning and Development (Land Value Sharing and Urban Development Zones) Bill 2022

30th May 2023

Submitted by The Irish Farmers' Association



Background

IFA welcomes the invitation of the Joint Oireachtas Committee on Housing, Local Government & Heritage to make a submission on the pre-legislative scrutiny of the general scheme of the (Land Value Sharing and Urban Development Zones) Bill. The Irish Farmers' Association is Ireland's largest farming organisation with over 72,000 members in 940 branches nationwide. The IFA has a commodity committee structure that represents the main agricultural sectors, including, dairy, livestock, sheep pigs, poultry, organics production and aquaculture but also has a number of committees that have overarching responsibility on issues which affect the entire agricultural sector.

Context

Taking into account the Kenny Report (1973) and other reports, the Programme for Government 2020 has a commitment to reviewing how community gain can be captured through a review of the development contribution process, re-zoning/designation systems, and planning permission conditions. Housing for All (September 2021) sets out the Government's commitment to develop proposals for Land Value Sharing (LVS) mechanisms to respond to the objective of the State receiving an appropriate proportion of the increase in land values that result from key public decisions around zoning/designation and investment.

An Initial General Scheme for the Land Value Sharing and Urban Development Zones Bill was published in December 2021, setting out the Government's proposals to permit the State to secure a proportion of the uplift in value in land which occurs as a result of the State decision to zone or designate land for development.

After research on this initial scheme, advice from the Office of the Attorney General, and stakeholder engagement a revised General Scheme was approved by Government on 13 December 2022, which sets out in further detail the updated proposals, taking into account the economic appraisal and stakeholder engagement and informed the detail of the Bill as now proposed.

Key areas of concern in relation to the proposed Bill

1. In the introduction to the Bill, it is stated that it is *"to address the systemic market failure that has led to serious and continuing crisis in the availability and supply of housing within the State,"*. It is not clear how the imposition of a further tax on land that is zoned for the development of houses will help in this matter? It will raise significant revenue for Local Authorities but how will it address the supply of housing within the State? One of the main reasons for the lower than required amount of houses being built in the State is the overall cost of building houses of which the actual cost of the land is but a small fraction.
2. It is further stated in the introduction *"WHEREAS it is accepted that the State is presently unable to sufficiently influence or regulate the price of building land and that this has contributed to present systemic market failure;"*. Is there a plan that in the future the State will be able to regulate the price of land? Is it envisaged that market forces may not dictate the price of land but rather State imposed caps etc?
3. **Section 4**, Purpose of the act - it states,
 - (b) *to provide for mechanisms to encourage timely development on land, in particular residential development;*
 - (c) *to address the market failure leading to serious deficiencies in the housing market;*
 - (d) *to alleviate the shortage of land available for suitable and well-located housing in circumstances where that market is experiencing a systemic housing shortage;*

As commented in the introduction, it is not apparent how the imposition of a tax on land, payable when development is about to start will achieve any of these objectives? If land is suitable, and well located, why is this tax required? There is a significant volume of land upon which planning for development has been applied for or granted; yet there remains a shortfall of housing development.

4. **31BM(9)(b) (8)** *This section shall not apply to applications for permission for—*

(a) development of cost rental housing, housing for eligible applicants within the meaning of Part 2 of the Affordable Housing Act 2021

The fairness of this Bill which will create a large disparity between lands for public and private development must be questioned. The loading of a further tax on land which will be utilised for private development will place a premium price upon this land and may ultimately result in a scarcity of lands for private housing developments.

5. **31BC** This section covers the calculation of the zoning value. This is the difference between the “*market value*” which is the value of the land after zoning and “*the existing use value*” which is the value on the land before zoning and is calculated at the date of zoning.

There is no allowance in the Bill for a situation whereby the market value/sale value at date of development is less/substantially less than the market value at date of zoning. Such circumstances would have happened in the past with land zoned in early to mid 2000’s versus what that zoned land was actually worth if it had been developed in the years subsequent to the collapse in land prices in the 2008-2010 period.

In such circumstances the actual tax payable may be significantly greater than the 30% rate proposed here when looking at the realised value of this land and in circumstances where this transpired an owner may choose to not develop such land in the hope its value would again increase in the future. This would be contrary to the stated purpose of this proposed law.

6. **31BI (2) &(3)** A planning authority publishing a notice in one or more newspapers in its area and on its website about the need to self-assess for this is not sufficient. In all instances the planning authority should endeavour to make direct contact with all affected landowners.

7. **Power to acquire land in a candidate urban development zone or an urban development zone**
171AQ. (1) *“A planning authority or development agency may compulsorily acquire [any] land within a candidate urban development zone or an urban development zone if in its opinion it is needed for public infrastructure, facilities and related measures in accordance with a planning framework made under this Part.”*

The powers granted under the proposal legislation to compulsory purchase land for a designated urban zone are very broad and vague.

State bodies already have extensive powers of compulsory purchase, and it is questionable if additional powers are needed as set out in this draft legislation.

The power given to a local authority or state body to compulsorily purchase land for an Urban Development zone goes far beyond the rehabilitation or development of brownfield sites in urban areas. From our reading, the legislation allows a very broad sweep of land to be compulsory purchased for a very broad range of activities particularly in relation to the loose definition of “Green infrastructure” and “Blue infrastructure”. Farmers and land owners face the prospect of a planning authority enforcing compulsory purchase processes for a range of activities that go far beyond the scope and intention of the legislation, namely to deal with the current housing crisis.

The provisions in relation to Section 171AQ of the Bill go far beyond what is proportionate and constitutional in its aims.

In addition, IFA has engaged at length with TII, ESB and Local Authorities to reach agreements in relation to the State’s encroachment on farmers’ lands and ensure that proper engagement between the farmer and the state body takes place. The scope of this section of the legislation flies entirely in the face of this.

Conclusion

The IFA recognise the current housing crisis. Many of our members are impacted like so many others when it comes to the availability of accommodation.

However, this proposed Bill as currently written, has numerous issues from our perspective including the possible impingement on a person’s property rights, the possible unfairness with regard to public versus private housing, the retrospective manner it is proposed to impose the tax, and the expansion of the reasons to compulsory purchase lands. These go far beyond what is proportionate for the stated aim of this proposed Bill.

The overall objective of this proposed Bill is to *“to address the systemic market failure that has led to serious and continuing crisis in the availability and supply of housing within the State,”*. It is difficult to comprehend how the placing of a further tax on land will assist in achieving this objective. The probability is that the combination of this tax along with CGT and other taxes will discourage farmers in willingly selling land for development as their ability to reinvest in replacement farmland after selling will be severely restricted.

IFA has requested Senior Counsel opinion on this Bill, but due to the tight deadline this advice is not yet available to IFA. We ask that this proposed legislation be paused until such time as the above issues are dealt with in a correct, proportionate, and constitutionally sound manner.

IFA trusts that these comments are useful. If you wish to discuss any aspect of this submission, please contact Karol Kissane, IFA Senior Policy Executive by email on karolkissane@ifa.ie or on 087 3917091

ENDS.