

DÁIL ÉIREANN

AN COMHCHOISTE UM THITHÍOCHT, PLEANÁIL AGUS RIALTAS ÁITIÚIL

JOINT COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

Dé Máirt, 12 Samhain 2019

Tuesday, 12 November 2019

The Joint Committee met at 11 a.m.

Comhaltaí a bhí i láthair / Members present:

Pat Casey,	Victor Boyhan,
Darragh O'Brien,	Gerry Horkan.*
Eoin Ó Broin.	

* In éagmais / In the absence of Senator Jennifer Murnane O'Connor.

Teachta / Deputy Noel Rock sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: Apologies have been received from Senators Kelleher and Murnane O'Connor. Senator Gerry Horkan will be substituting for Senator Murnane O'Connor. I propose that the committee goes into private session to deal with some housekeeping matters. Is that agreed? Agreed.

The joint committee went into private session at 11.08 a.m. and resumed in public session at 11.32 a.m.

General Scheme of the Land Development Agency Bill 2019: Discussion (Resumed)

Chairman: At the request of the broadcasting and recording services, members, witnesses and visitors in the Public Gallery are asked to ensure that for the duration of the meeting their mobile phones are turned off completely or switched to airplane, safe or flight mode, depending on their device. It is not sufficient to put phones on silent mode as this will maintain that level of interference with the broadcasting system.

No. 6 is resumed pre-legislative scrutiny of the general scheme of the Land Development Agency Bill 2019. I welcome Ms Maria Graham, Mr. Frank Gallagher and Ms Mary Jones from the Department of Housing, Planning and Local Government. I also welcome Mr. John Coleman and Mr. Phelim O'Neill from the Land Development Agency, LDA. I thank them for coming in.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons, or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I call Ms Graham to make her opening statement.

Ms Maria Graham: I thank the Chair and members for offering the Department a further opportunity to discuss the general scheme of the Land Development Agency Bill 2019.

As the Chairman mentioned, I am joined by Mr. Frank Gallagher, principal officer, and Ms Mary Jones, assistant principal officer, who have responsibility within the Department for matters relating to the LDA.

We have followed the public discussions in the committee over the past few weeks. I propose, in my opening statement, to pick up on some of the key themes from our perspective and provide some further clarifications to assist the committee in its work. Of course, as part of the drafting of the Bill, there will be a thorough and detailed consideration of the committee's

report on the general scheme.

As appropriate for a general scheme dealing with the establishment of a new body, the debate to date has focused on the role and functions of the LDA and its governance. These are matters that I might briefly address. Regarding the role and functions of the agency, it is important to recall that the national planning policy statement, which was published in 2015, recognised the importance of creating sustainable communities by ensuring that the right development takes place in the right locations and at the right time. Following on from this, Project Ireland 2040 through the national planning framework, NPF, and national development plan, NDP, provide for the alignment of spatial and investment policy to ensure future developments are plan-led rather than developer-led.

The LDA is being established in this context and responds to the need for more active land management by the State, which has been articulated in many policy documents over the years, including the 1973 Kenny report and various reports of the National Economic and Social Council, NESC. Indeed, in its latest report on this issue, report No.1451, NESC stated that Project Ireland 2040 provided the perfect moment to transition to a new system of urban development and land management. In this regard, the council strongly supported the concept of a national regeneration and development agency as proposed in the NPF, and now established under secondary legislation as the LDA.

The LDA's immediate focus is on managing the State's own lands to develop new homes and regenerate underutilised sites. In the longer-term, it will assemble strategic land banks from a mix of public and private lands making these available for housing in a controlled manner, bringing essential long-term stability to the housing market.

Allied to this, the LDA will also act as a national centre of expertise, supporting and complementing the ongoing work of local authorities, public bodies and other interests to harness public lands as catalysts to stimulate regeneration and wider investment, and to achieve compact, sustainable growth with a particular emphasis on complex regeneration projects and the provision of affordable housing. The general scheme seeks to ensure that the primary legislation provides for both the immediate and longer-term roles of the agency.

State intervention in this manner invariably gives rise to considerations regarding potential state aid. In developing the legislative approach, we are working both with the Office of the Attorney General and the LDA's legal team to ensure the evolving model is compliant with all aspects of EU law. The advices to date have informed our approach to setting out the functions within the general scheme. In particular, head 9 draws a distinction between a range of non-economic functions, the LDA will carry out on behalf of the State in support of the NPF and management of public lands such as the proposed register of public lands and an advisory role to the Minister, and the core economic functions it is intended will be undertaken on a commercial basis without providing an advantage to either the LDA or other parties under State aid rules.

As the legislative process evolves, including having regard to proposals that may emerge from the committee, we will continue to examine the various legal dimensions, including matters of EU law such as state aid and will engage with the European Commission.

The Commission was informed about the LDA at the time of its establishment in August 2018. The next step will be a structured engagement with the Commission through its informal preliminary procedure. This will be based on information from the agency on its business

model as well as the draft LDA Bill, outlining the nature and role and functions of the agency. This structured engagement is consistent with the approach taken in respect of other commercial state bodies and reflects the specific nature of the LDA.

An important function of the agency will be the delivery of affordable housing on public lands, both through activation of the lands transferred from Ministers to the agency and through the services it provides in partnership with local authorities in respect of the activation of local authority lands.

While the nature of the provision on local authority lands is a matter for the respective local authorities, in the case of public lands, the Government has decided that a minimum of 30% affordable housing should be provided in addition to the 10% social housing requirement under Part V of the Planning and Development Acts. This has been articulated to the LDA and other public bodies, as a matter of policy, but the Minister is open to exploring if this requirement should be placed on a statutory footing.

I turn now to the issues of governance and accountability of the LDA. Having regard to the proposed roles and functions of the agency, it is important that its legislative framework provides the appropriate balance between the commercial freedom to fulfil these functions and the accountability to the State as the owner of the agency. A key document in this regard is the code of practice for the governance of State bodies. This code was updated and revised in 2016. It is designed to ensure that both commercial and non-commercial State bodies meet the highest standards of corporate governance. The code is based on the underlying principles of good governance: accountability, transparency, probity and a focus on the sustainable success of the organisation over the longer term.

The LDA will have to comply with this code, and this will include the issuance by the relevant Ministers of a shareholder expectations letter, which will outline both policy, corporate governance and financial expectations. This letter will be developed with the support of NewERA.

In addition, key components of governance and accountability are reflected in the general scheme, based on the most recent legislative approaches for other similar bodies. Head 6 refers to the development of the constitution of the LDA, such documents are required under the Companies Acts, and were previously known as memorandum and articles of association, which will set out the powers of the agency consistent with its governing statute and the actions that will require ministerial consent. Head 10 deals with board of the agency, which will be appointed through the *stateboards.ie* process. Head 27 deals with borrowing by the agency, with the limit to be set in statute. Head 29 deals with the financial statement of the agency and provides that the Comptroller and Auditor General will audit the agency. Head 30 deals with accountability to the Committee of Public Accounts. Head 31 deals with reporting arrangement. Finally, head 36 specifically provides for a review of achievement of the agency's purposes by the Minister.

I am aware that, in the context of the governance of the LDA, the discussions have focused on the approach to both freedom of information and lobbying. The approach currently being adopted aligns with the general norms for commercial bodies as set out in legislation, which is generally a matter for the Minister for Public Expenditure and Reform. The Minister is open to proposing alternative approaches to Government where measures are identified that would enhance accountability without compromising on the LDA's capacity to execute its proposed statutory role. We will, therefore, consider any recommendations of the committee in this regard. I thank the Chairman and members for offering us the opportunity to update them on the

general scheme of the Bill and I hope I have clarified many of the issues raised in previous sessions. As always, the Department's team will be happy to clarify any further issues.

Chairman: I thank Ms Graham. I call Mr. Coleman to make his opening statement.

Mr. John Coleman: I thank the members for inviting us to appear. I am joined by my colleague Mr. Phelim O'Neill, head of land at the LDA.

During my previous appearance before the committee, in early October, I provided a progress update on the sites in the LDA's initial portfolio and on the wider progress we have made since inception a little over a year ago. I also outlined our plans for the remainder of 2019 and 2020. Our engagement with the committee that day was very constructive and informative. I thank the committee for that and for the wider support it has shown for the LDA and the concept behind it.

On a more general note, I thank the committee for the extensive and detailed work it has done on pre-legislative scrutiny of the general scheme of this Bill. The contributions made by members and the many attendees before the committee recent weeks, which have included people with considerable experience of, and insight into, the issues and constraints facing the housing sector, are essential and valuable steps in the process of designing this legislation. It is clear that the committee's work is making a significant contribution to enabling the LDA to provide effective, tangible and durable measures that will improve housing supply in the short term and bring much-needed stability to the housing market over the long term.

In a similar vein, I am grateful to local authorities throughout the country for the quality of their engagement with the LDA since it began operating. The support they have shown, as well as the detailed knowledge and innovation that they have brought to their discussions with us, augurs well for our collective ability to address the problems that we share and that we want to resolve together.

Ultimately, the LDA cannot succeed without the support of its key stakeholders. I have been greatly encouraged by the strong commitment, collaborative approach and shared desire for solutions that I have seen at first hand among members of this committee, local authorities and our other stakeholders.

I will use my opening statement today to give the agency's perspective on some of the issues that the committee's work has identified in recent weeks. In particular, I would like to talk about the need for the agency to be established as a commercial body; the importance of enacting the legislation so that the agency can make the financial commitments it needs to make; our commitment to accountability, governance and transparency; and the delivery of affordable housing on State lands.

On the need for the LDA to be established as a commercial body, there have been some suggestions in recent weeks that it should not be established as such, or that if it were, it would in some way act in a manner that was not in the interest of addressing our housing issues. I reassure the committee that there is no conflict at all between being established as a commercial body and the provision of much-needed housing. My strong view is that operating as a commercial body offers the best way to ensure the sustainability of the LDA's resources and the sustainability of the agency through economic cycles.

I can assure the committee that the agency and its board, including me as CEO, are clear that our primary objective is to ensure that homes, including affordable homes, get built and deliv-

ered to people and families on the land we gain access to. Many State bodies have a commercial mandate while, at the same time, being committed to achieving important social and economic objectives, which include providing electricity, public transport, operating ports, health insurance and many other essential services. The LDA is no different, and while it will be commercial, pending the outcome of the legislative process, its mandate is clear. The mandate is to accelerate the provision of homes and supporting development on State and other lands.

We see ourselves as custodians and stewards of the €1.25 billion in taxpayers' money that the Government has earmarked for the agency. Our job is to use that money in a way that strikes the right balance in achieving all our objectives – improving housing supply, delivering long-term stability in the housing market, using State lands more effectively and freeing it up to deliver new homes wherever that is appropriate. We must do this in a way that preserves the sustainability and long-term impact of the agency. My fear is that if we do not get the balance right, we will be at risk of using valuable State resources inefficiently or unsustainably, and hence running out of these resources early.

Acting as a commercial operator will also help us to deliver housing in the good times, when Exchequer funding is available to support this activity, and future-proof the agency so that it can be just as effective in bad times, when the Exchequer does not have access to resources to invest. Establishing the LDA as a commercial body will enable it to raise finance and invest in housing provision in times when the Exchequer is simply not in a position to do this. This will mean that the agency will be able to act countercyclically, which will achieve important wider economic benefits in stabilising housing supply and achieve best value for money by enabling it to procure land and buildings when the housing market is weaker.

When we talk about the desirability of the LDA being a commercial body, it is not because we are seeking to make profit for the sake of profit; it is about ensuring the agency can be an all-weather contributor to the State and housing market, irrespective of how the wider economy is performing. By way of example, if we consider the extreme financial pressures on the State ten years ago, as we were on the verge of a troika bailout, it is not realistic to believe that had the LDA been in place at the time, it could have sought money from the Exchequer to buy land or perform any of its other activities. If we are to be successful as a countercyclical operator that can take advantage of long-term opportunities for the taxpayer, we have to create the conditions that will allow us to achieve this. Establishing the LDA as a commercial body is the best way to do this.

Let us consider the importance of enacting the legislation so that the LDA can make the financial commitments it needs to make. There has been some public discussion on its ability to operate in the absence of the legislation. While we are operating effectively on the basis of a statutory instrument signed by the Minister, Deputy Eoghan Murphy, last year and this has been sufficient for what I would term the “start-up phase” of the LDA’s operations, I am conscious that we are approaching the end of this phase. As I told the committee last month, we have made significant progress on the sites in the agency’s initial portfolio, which have the capacity to deliver approximately 3,000 homes, and we are working well with local authorities in respect of these and other potential sites, including at Shanganagh in the Dún Laoghaire-Rathdown local authority area. We have been able to achieve this progress on our existing statutory basis. However, the more progress we make, the closer we come to a stage where we will need the provisions of the proposed legislation to continue to deliver on these sites as expeditiously as possible. In particular, we are approaching a point where we will have to make significant financial commitments in the middle of 2020, as our work evolves from valuable

preparatory work to the nuts and bolts of active construction on the sites. This creates a natural time constraint for the enactment of the proposed legislation. While we do not envisage any delays in progressing our projects based on the current timelines, the existence of this constraint highlights the value of the committee's pre-legislative scrutiny process and the importance of getting this legislation right within a defined timeframe. I assure the committee that we will continue with our existing approach of working closely and collaboratively with it to ensure its concerns are addressed to its satisfaction and to facilitate the efficient and timely passage of the legislation through the Oireachtas.

I assure committee members and other stakeholders that we share their desire to create an organisation that is the best in its class in terms of its accountability, governance and transparency. As CEO of a State agency, I am aware of the importance for the LDA not only of doing our job to the best of our ability but also of being able to demonstrate to citizens and public representatives that we are doing our job to the best of our ability, and, indeed, to the highest standards, which people have every right to demand and expect from agencies such as the LDA. I regard exposure to public scrutiny as an essential part of our mandate and something that my colleagues and I should, and do, welcome. We want significant levels of oversight and accountability built into our operations, and the proposed legislation and governance frameworks for State bodies set out measures to achieve this.

Under the proposed legislation, the LDA is accountable to our ministerial shareholders and the Committee of Public Accounts, and it will be subject to audit by the Comptroller and Auditor General. In addition, it will appoint an external statutory auditor under the Companies Acts and an internal auditor. Since the inception of the agency last September, we have set out to ensure the highest standards of corporate governance. The agency's nine-person board comprises experienced professionals with a diverse mix of both public and private sector expertise. The board was established in January 2019 and provides ongoing strategic direction and oversight in regard to the agency's activities. We have established an audit-and-risk committee with responsibility for overseeing the assessment and management of the strategic risks facing the LDA that could result in financial, reputational or other loss to it. We have also provided for an investment committee, which will have responsibility for assisting the board in the control and management of the agency's investment activities. The agency will adhere to the code of practice for the governance of State bodies, as required and as mentioned by Ms Graham. In summary, the LDA will be accountable to its ministerial shareholders and the Committee of Public Accounts. It will have three separate auditors. It has an experienced independent board with audit-and-risk and investment committees. It will publish a comprehensive annual report and will be subject to the code of practice. I assure the committee that the LDA has been committed to continuing to place accountability, corporate governance and transparency at its core.

I draw the committee's attention to our commitment to delivering affordable homes on State lands. This has been, and will continue to be, one of our top priorities.

The affordability requirement on State lands is a separate policy matter set by the Government. The requirement sits outside the LDA and applies to any party accessing State lands, be it the LDA or anyone else. The LDA will implement the requirement as a party that will seek to access State lands on an ongoing basis. While it is ultimately a policy matter for the Government, in my view the policy strikes a balance in providing significant amounts of social and affordable housing while leaving open the option to lever the initial funding of €1.25 billion provided for the LDA. This is particularly important when one considers the context that if no third party funding was added to the LDA's mix, the €1.25 billion would be used in its entirety

by our initial site portfolio when our ambitions go much further than that. To frame it another way, the 150,000 homes which have been targeted for the LDA to facilitate their delivery in a 20-year period would have a total delivery cost of well in excess of €45 billion, which I do not believe it is feasible to be funded entirely by the State. Furthermore, it provides for flexibility in particular areas which may need a diversity of housing tenures, including social, affordable and private.

As I said to the committee last month, we see the figure of 40% for the number of social and affordable homes to be provided as a minimum, not a maximum. We anticipate that we will be able to deliver social and affordable homes to a figure of 100% on individual sites where the circumstances are right. I am conscious that the provision of social and affordable housing is a major focus for the committee and that it is entirely understandable that many stakeholders want to highlight the importance of not missing any opportunity to deliver in this space. What I say to these stakeholders is that we share that sense of urgency and commitment to delivering on the requirement to provide all types of home, including social and affordable. We are confident that this can be achieved through a range of delivery options, including developments where 100% of the homes provided are social and affordable and developments in which there is a mix of private homes alongside social and affordable homes.

In my opening remarks I hope I have provided greater clarity on some of the issues raised in recent weeks. I am happy to take questions from members.

Chairman: I thank Mr. Coleman. We will take members in the order in which they indicated.

Senator Victor Boyhan: First, I thank the delegates for coming and Ms Graham and Mr. Coleman for their insightful papers. The reoccurring themes in our deliberations have been good governance, accountability, transparency, probity and a focus on sustainable management and structure. That is really important because it is one of the biggest things about which the public is talking. It is one of the issues that arises concerning the LDA when one sees media commentary and letters to various newspaper editors. I do not suggest it is correct, but some people make an analogy between it and NAMA or say they are similar. That is not the case, but the reality is that many see it that way. People will have a greater understanding as the pre-legislative scrutiny ends, the report is made and the Bill published.

I wish to focus on a few issues. I acknowledge that we have had two really important papers which provide great clarity. In particular, I like the tenor of Mr. Coleman's document. I get a sense from it that there is greater partnership and understanding with local authorities, a group with which I work especially closely. An issue arises about the figures of 30% for affordable housing and 10% for social housing. We all know what the mandate will be for the LDA.

Ms Graham referred to the allocation of €2.3 billion for housing. She stated: "While the nature of the provision on local authority lands is a matter for the respective local authorities, in the case of public lands Government has decided that a minimum of 30% affordable housing should be provided ... [and] 10% social housing requirement under Part V". We are familiar with this. I am encouraged by the following line that reads: "This has been articulated to the LDA and other public bodies as a matter of policy, but the Minister is opening to exploring if this requirement should be placed on a statutory footing." Will Ms Graham, please, refer to this when she responds to me because I think people would like it to happen? I personally would like it to happen. I do not wish to be too restrictive, but there is an issue. We are in a housing crisis. We know the reason the LDA has been set up, especially in accessing lands, about which

I would like to hear more. I have been talking to other parties as part of my work on the Bill prior to it being brought to the Seanad. It is an area on which I am focusing and one on which a number of my colleagues want to focus. Therefore, I am flagging it here.

I wish to refer to two or three other points. On page 3 of his statement Mr. Coleman refers to timelines and says we are approaching the end of the first phase. He also says, "In particular, we are approaching a point where we will have to make significant financial commitments." That is clearly telling us that there are timelines. As he is flagging concerns, perhaps he might tease them out with me and the committee.

Mr. Coleman is familiar with the lead agencies, as well as the development agency, particularly in the context of a strategic development zone such as that in Cherrywood. I might be wrong about this, but I read correspondence from IDA Ireland in which it flagged a concern. Does Mr. Coleman consider the LDA should be given power in this legislation to be a developer and take the lead in a strategic development zone? I would like to hear his views on that matter. I think it should, as I am familiar with the strategic development zone in Cherrywood. The issue is very clear. We should remember that at this point the planning application has gone through and that we have a master plan for a strategic development zone. Very little deviation is possible once a strategic development zone is approved and ultimately sanctioned by the Government. I am especially interested in hearing Mr. Coleman's views on that matter.

I seek clarity in situations where the LDA acquires land and on how it will pay another State agency for the land acquired from it. This was an issue of concern in the context of EU competition rules. What is Mr. Coleman's view on that issue which has been flagged for me by elected members in many local authorities?

The disposal of land under section 183 is a reserved statutory function of the elected members of a council, not the executive. How will the LDA overcome this issue? Does Mr. Coleman think it should be addressed in the legislation? Should there be special exemptions in the disposal of State or local authority lands, particularly where it can be demonstrated that they are required for the roll-out of the critical mandate of the LDA in the delivery of housing in most cases, although I am aware that it also has a commercial remit? I refer to situations where there is a strong case to be made for bringing local authority lands into play. We know that there are local authority lands sitting idle throughout the country that are not being developed. In many cases, they have been zoned for residential purposes. Does Mr. Coleman believe we should look again at how we can fast-track the release of local authority lands to the LDA, specifically for housing development, and how will local authorities be compensated for the land which, in many cases, they bought with resources from their own reserves? I am particularly keen to hear what he has to say because it will perhaps be one of the most difficult issues in accessing State and local authority lands. I expect Mr. Coleman to speak about partnership, but the reality is that there are commercial issues involved concerning offers and acceptance, about which I would like to hear more.

Mr. John Coleman: I thank Senator Boyhan for his insightful comments and questions. I will start with the first point he made concerning what I might most appropriately talk about, namely, the financial commitments made and the need for legislation in advance. The funding source of the LDA is to be a transfer of funds from the ISIF which will be taken by the Minister for Finance and then invested in the LDA. The NTMA Act requires an amendment to facilitate this which will follow on the back of this Bill. That is the turning point for the LDA in accessing finance. On how it will co-ordinate with our on-the-ground activity, as the sites to which we have access and of which we have control come on stream with the granting of planning

permission, we are constantly looking to take time out of the process for an obvious reason, namely, to have homes provided. One of the things at which we have started to look is direct delivery, similar to what is anticipated in Shanganagh, whereby we will have to procure a contractor. To do that, we cannot enter contractual arrangements with a contractor until we have visibility on our funding to honour the financial commitments that will arise. That is where my point was focused. As the projects come on stream, they will need money or funding sources triggered by the Bill being enacted.

On how the LDA acquires land and how it is paid for, the way I think about it is that there are, broadly, three ways we can gain access to land, namely, through centrally controlled Government bodies, commercial semi-State bodies and local authorities. I distinguish between the three categories because they have individual governance requirements and infrastructure. Naturally, the Government controls centrally controlled Government bodies. For the local authorities, as was outlined, it is a reserved matter as to what is done in the sale or transfer of land in section 183 decisions. Commercial semi-State bodies are independent bodies with independent boards that have to make decisions as opposed to being centrally controlled, for plenty of good reasons.

We might acquire land from local authorities through negotiation with the local authority, subject to the approval of its elected members. How the land will transfer will depend on the commercial arrangements. As for the payment for the land, typically, local authorities are not necessarily as interested in making money from the land, given that they will often have their own financial constraints. Rather, the provision of affordable housing tends to be their primary concern. It is perhaps less of a material issue for local authorities.

We have to deal with commercial semi-State bodies as if we were dealing with any private market player. A commercial semi-State body, which has a company to run, services to finance and obligations as board members, will typically seek the best deal and, therefore, it will be as if we were dealing with any other party.

In the case of centrally controlled Government bodies, the thinking is that the lands will transfer from the relevant Ministers as an equity investment, or an *in specie* consideration for shares, in the LDA in order that the agency would not necessarily have to transfer money out. That makes sense given that, otherwise, our funding would just be distributed to various State bodies from the Ireland Strategic Investment Fund, which was not the intention. The intention was for the money to be used to fund the agency's activities. The consequence of that would be that land from centrally controlled Government bodies would sit on the agency's balance sheet at the correct market value. That would ensure we would have to preserve, maintain and deal with the asset in the most efficient and financially sustainable way, which would take account of the affordability requirement, namely, a valuation of 30%.

Ms Maria Graham: I will build on what Mr. Coleman stated in response to the specific question on putting affordable housing on a statutory footing. As he noted, local authorities own their land and dictate how it is used. Similarly, Ministers own their land and the Government can dictate the practice it wants associated with its disposal, which is what has been done to date. The Government has been firm about the additional dividend of affordable housing on the disposal of land. The Minister has written twice to colleagues to ensure that the matter has been highlighted. It would be a step forward, to which the Minister is open, to put it on a statutory footing. A number of elements must be considered when putting something onto a statutory footing, which is slightly different from just articulating policy. For example, when drafting legislation and the evidence base for it, it must be decided whether a number will be

hardwired in the legislation or whether it will be a provision prescribed by a Minister. Such elements ensure that legislation will be future-proofed. An important consideration at the backdrop is the new housing needs demand assessments that local authorities will carry out, following on from the national planning framework. They will examine the nature of the demand and the various types of housing required, and including that in development plans. It will give a good evidence base for the future that will build on the overall quantum of affordable housing.

It is in the context of examining two elements. The approaches are whether there should be a requirement for the disposal of public land or whether there should also be a requirement for the LDA, across its portfolio, to achieve a certain percentage of housing. The options would have to be examined.

Senator Victor Boyhan: Or both approaches could be used.

Ms Maria Graham: Yes, indeed. I am conscious that it would be a variation on this legislative vehicle if it is to be used for it. I acknowledge that the committee, on the previous occasion, discussed matters that would arise on Committee Stage, but I am sure that if that is to be the case, the committee will examine it then. We will probably examine it during the drafting of the Bill.

The Senator also referred to strategic development zones, SDZs. I might deal with the matter from a general perspective and Mr. Coleman might like to comment on some of the practical aspects. We have learned quite a bit from the operation of some of the SDZs and how delivery can be affected by changes in the development cycle. In the longer term, one of the purposes of the LDA is site assembly, which allows us to be more robust and the State to be ready before the market can respond. We had hoped activity would be faster for a number of SDZs but it was a matter of market conditions.

The other element is infrastructure provision. Quite often, SDZs were put in place but there may not have been sufficient infrastructure provision, or the cost of infrastructure provision hampered them somewhat. The urban regeneration and development fund, which will account for €2 billion over the period of the national development plan, will provide a useful vehicle for supporting such activity in the future. Under the first call, both Cherrywood and Waterford SDZs received some funding, which was to bridge the gap. From a policy perspective in any event, we seek to learn from experience and ensure that the SDZs work more efficiently.

While one role of the LDA is activating, assembling and working on transferred land, there are also the services it may assign local authorities for master planning and other aspects. Mr. Coleman might like to comment on that aspect and how it might work in an SDZ context. He covered the elements of how land is acquired, which addresses the underlying way we approach the transfer of land as an *in specie* investment, to address the point the Senator raised about ensuring that the LDA will act as an economic operator and that there will not be an issue from a competition perspective.

We probably dealt with the issue of elected members disposing of land. It is their land.

Chairman: I thank Ms Graham and call Deputy Ó Broin. Is the committee amenable to Senator Boyhan taking the Chair for about five minutes? Is that agreed? Agreed.

Senator Victor Boyhan took the Chair.

Deputy Eoin Ó Broin: As somebody who started out as a sceptic of the proposition in front

of us, given everything I have heard in these meetings, I am probably now an outright opponent of the scheme as it is currently proposed. The bit of this project which I like, the active land management, will be far weaker than we need. The part with which I was always uncomfortable, that is, the residential development, is probably worse than I thought it was going to be. I will keep an open mind as we go through the legislative process but I want to be upfront about that. A broad range of people raised significant concerns, most of which have not been addressed in any detail by either the Department or the Land Development Agency today.

Mr. Coleman says the Land Development Agency has been set up as a commercial entity to allow it to operate countercyclically. The opposite is the case. The point of countercyclical interventions is that at a time when the market dries up, in a recession when there is an investment strike by private investors, then State bodies which are reliant on borrowing or rainy day funds directly intervene as non-market operators counter to the cycles of the market. In my estimation, a disadvantage of setting the LDA up as a designated activity company is that it will be cyclical. After the first tranche of investment by the Ireland Strategic Investment Fund, the LDA will be dependent on accessing market finance and investment and market operators. It will fall foul of recessions and slumps when they come.

This will also dramatically undermine the ability of the State to deliver the volume of social and affordable housing that is needed. To keep it off balance sheet, one has to have a majority of units, whether it is 60% or not, as open market price commercial units. We are using public land and a majority of the units will not be for social and affordable housing. At a core level, my view is, and everything I have heard to date suggests, that it will not do the things I genuinely believe Mr. Coleman wants it to do. I am not in any questioning his desire to do what he is saying. I just do not see how it will work. There are two contradictory things in what he keeps telling the committee. On one hand, 40% is a minimum and he hopes to increase it. On the other hand, as Mr. Coleman rightly points out at the end of his presentation, the more one increases the percentage of social and affordable housing, the less one has open market sale houses, and the more liability will be on the State. I will question Mr. Coleman's €45 billion figure in a second. In some senses, he is telling us something that we want to hear, which is that there will be more social and affordable housing. At the same time, he is telling us why that will not really be possible outside of a small number of peripheral projects at the outset.

The figure of €45 billion is not correct. That is for all units but the State is not in the business of building units to sell at open market prices. It funds social and affordable housing. If 40% is the rough benchmark, the Land Development Agency will only deliver 60,000 social and affordable homes over the lifetime of the Land Development Agency. On the basis of Mr. Coleman's calculations, that is a capital investment of €18 billion, or €900 million a year, which is eminently possible for the State. I know it is rough stuff, but the LDA is pricing its units at €300,000. The State currently delivers good quality two and three-bedroom homes at an average price of €216,000. Mr. Coleman is coming to the committee and giving us figures which are back-of-the-envelope calculations. I know it is hard to predict cost over 20 years but it would be better not to give us figures that just are not accurate than to give them.

If I was asked by a councillor in Dún Laoghaire-Rathdown for my advice with regard to section 183, I would say that the first question is to ask what would be the added value of the LDA becoming involved. The purpose of the LDA is to try to access land that cannot currently be used for housing, including land held by the HSE, transport companies or whatever. If lands are held by the Housing Agency and local authorities, they and the Department can develop it now, as they are on Enniskerry Road and elsewhere. Involving another layer of bureaucracy

makes this much more complicated. What added value can the LDA bring to Shanganagh that Dún Laoghaire-Rathdown County Council, with its very competent staff and with advice from the Housing Agency and Department, cannot deliver today? I do not get the value of involving the LDA in residential projects that should be progressing already and in a sense are only being delayed because the land cannot be transferred until the LDA is set up on a statutory footing.

I welcome Ms Graham's comment to the effect that there will be a structured engagement. That is important because, as we know from NAMA, these are tricky and complex areas of EU law. Will she indicate when that will happen? Why did some level of engagement not happen in the context of the general scheme? On an issue as tricky as this, I would have thought that the earlier the engagement started, the better it would have been. Ms Graham talked about the general scheme separating economic and non-economic areas of activity, which is true. From my limited understanding of state aid law, that is not the distinction that matters. The distinction that matters is between services of economic interest, which are fully commercial, and services of general economic interest, which are more public services. In order to not fall foul of or to get exemptions under state aid rules, those two activities have to be kept separate, yet here we are, creating an entity that will mix services of economic interest and those of general economic interest, such as commercial, open-market-price homes and social and affordable homes that are in some way subsidised by the State. Are our guests concerned about that mix? Has there been a discussion in the Department about how to separate those two or whether there is a need to separate those two elements? From my limited knowledge of these issues, if one does not find a way of successfully separating those, one could fall foul of state aid rules and therefore not be able to achieve the off balance sheet status that is sought.

My biggest concern with the legislation is the limited compulsory purchase order powers that it seems will be introduced at some point, whether when we get the Bill or later. NAMA was given very limited compulsory purchase order powers for small strips of land which are often called ransom strips, to gain access to other developments. Those would clearly be helpful to have. I would have thought that if the LDA sits down with the HSE, Dublin Bus or a port authority to negotiate a transfer, while it does not have the ability to threaten to issue a compulsory purchase order for a large parcel of land, it will not get very far in those negotiations or it will have a very weak hand with regard to the eventual outcome. Will our guests provide more information on the kind of compulsory purchase orders that they hope to see catered for in the Bill? Can they give any reassurance that there will be broader powers than those that NAMA has, which would clearly not be sufficient for active land management? I agree with Mr. Coleman that we desperately need active land management in the State.

The price at which the LDA acquires the land from public agencies is an issue. Land can have one of three values. It can have the original book value for which the public authority bought it, it could have the existing use value for whatever purpose the land is currently zoned or planned for and if the land is not currently zoned or planned for commercial residential development, it could have a full market value. The ability of the LDA to do its job well means that, inasmuch as possible, it has to try to acquire land at the first or second of those values if possible. To comply with state aid rules and to ensure that the LDA, as a commercial operator, does not have an economic advantage over other commercial operators, it will have to buy the land at full market price. If the LDA, as a statutory agency, buys Donnybrook Garage, for example, at anything less than full market price, many developers will queue up and ask why it is getting the land for an amount below the market price they would have paid. If the LDA has to pay the full market price, it has to ask if that is what it is trying to do. Does that not go back to inflating land values or limit the LDA's ability to deliver genuinely affordable units because

it has to factor in the full market land value to the prices of homes to buy or to rent on the affordable side?

To return to the matter of social and affordable housing, the Economic and Social Research Institute and National Economic and Social Council are reputable bodies that are not radical hotbeds of socialist thinking or critics of the Government. They are mainstream bodies funded by the State to provide expert advice to the witnesses. It was clear from what they were saying that the quantum of social and affordable housing being proposed here is nowhere close to enough. Both indicated, on the basis of substantial bodies of evidence, that it has to be much more than that. I am not reassured by the language being used that 40% is a minimum. What we really need to see is what the full scope of this will deliver for the needs that are there.

In terms of the land from the Housing Agency, will Mr. Coleman confirm whether this will be transferred before the LDA becomes a statutory body or after? If it is transferred after, will the Housing Agency still have the ability to insist on covenants of use, as it currently does, for the lands it transfers to other bodies? Does the ability of the Housing Agency to constrain what happens with that land change if the LDA is a full statutory body?

I know it is not Mr. Coleman's responsibility but a Government policy area. However, we keep on talking about affordable housing to buy or rent. The only examples of this under way are developments in Enniskerry Road and O'Devaney Gardens. In the main, they are not affordable for households earning between €35,000 and €75,000. If we want to deliver homes to rent for between €1,200 to €1,600 a month, or homes to buy at €320,000, that may not be affordable for the cohort locked out of the private market. My main concern is that, ultimately, the market will set the price for so much of it. This means that we will end up with many developments like O'Devaney Gardens rather than Poppintree in Ballymun. Is there anything that Mr. Coleman can tell the committee that will convince us otherwise? Will we all be here several years from now complaining that, while the LDA built homes, they are not accessible for those households above the thresholds for social housing and below €50,000 for single households or €75,000 for couples? That is who that housing must be accessible for.

Deputy Noel Rock resumed the Chair.

Mr. John Coleman: I am encouraged the Deputy sees the rationale, the role and the need for the LDA, although with some concerns.

On the commerciality and the ability to operate countercyclically, if we have the State as a non-market player which is Exchequer-funded in a downturn, the State will be much more constrained in its ability to fund in a way through the Exchequer. One way to think about is if one thinks about the extreme situation back in 2009 and 2010 when there was no money for anything and everything was being cut. If the LDA had been set up then, dependent on the Exchequer, would money have been there for the LDA to buy land and develop housing? My view is that it would not have been.

The Deputy mentioned that we would be dependent on market funding outside the €1.25 billion. That is a significant amount of money which could come into play. If that was capitalised with that equity capital at a point in time when we enter a downturn - we are now nearer the next downturn than we were at the last one - I expect the LDA would be quite well positioned if it were not dependent on Exchequer funding and had its €1.25 billion to acquire land and so forth. That could be countercyclical if it was done during a downturn.

On the accuracy around the €45 billion remark, the Deputy is correct. That was applying a rule of thumb of around €300,000 delivery costs per home. This takes into account that we will be focused significantly in line with the national planning framework on compact development which implies more expensive typologies to deliver such as apartments. These are coming in a bit more than the €216,000 referred by the Deputy.

On the €18 billion versus the €45 billion, the point I was making was the affordability requirement at 40% and the ability to invoke private housing at 60%. This probably increases the amount of market participation that could happen and money from the market as opposed to perhaps money from the State that would have to go towards funding the €18 billion. A 100% social and affordable housing requirement would become a €45 billion burden on the State in that situation. That is the point I was making around the balance that is achieved with the current affordability level.

On compulsory purchase order, CPO, powers, we are *ad idem* in respect of the powers we hope to obtain in this regard. That is a work in progress with the Attorney General in terms of working through some of the technical issues around those. The Deputy mentioned that if one does not have extensive broad-reaching powers, they are not worth the paper on which they are written. The Deputy may not have said it that starkly but the point is that we need strong powers. If one looks at examples further afield, for example, in the Netherlands, the existence of CPO powers as a negotiating and bargaining chip, rather than having to use them, is often the most significant impact of them in those situations. I am just drawing the Deputy's attention to that point. I am in agreement with him on our need for CPO powers, as is the LDA board.

On the point the Deputy made about land values coming across from, say, commercial semi-State bodies, if there was an affordability requirement through Government policy or, for instance, shareholder expectation letters that may be sent through to commercial semi-State bodies, the land values should take account of the affordability requirement which would have the effect of lessening or reducing the land values where there is affordable housing delivered on those sites.

Deputy Eoin Ó Broin: That is the important issue and it is an area where we may be in agreement. Part V of the Planning and Development Act allows the State to acquire units and the land value calculation on those is existing land use value, not the full market value. My main concern is that even if the LDA gets the CPO powers, in order to be fully compliant with state aid rules, in particular the requirement where the State does not give one an economic advantage over others, it will have to acquire the land at full market value if some of that land is going to be used for the sale of houses sold at open market prices. The reason the State gets away with it through Part V is because it is using it for non-market social housing. My concern is that even if the LDA gets the powers, which I would like it to have in terms of the CPO, it will still be locked into the requirement to pay full market value for it. The State then will have to find some other way to subsidise the affordability, not necessarily in a way that is good for the taxpayer or the home purchaser

Mr. John Coleman: If the land was to be disposed of, when it comes to centrally controlled Government bodies, that would apply to the whole market. If the HSE sold a site, according to Government policy at the moment, there would be an affordability requirement on that site, even if it sold it to a private market player. That would apply to the LDA as well. That has an impact on the value of the private market player would pay. Similarly, it would impact on the value the LDA would pay. It is a level playing field for any market player which will, hopefully, help avoid those issues the Deputy mentioned.

Deputy Eoin Ó Broin: Would that just mean it would be pushed up to pay the market price as opposed to existing land use value?

Mr. John Coleman: The market price for land that comes with a covenant to deliver affordable housing on it is likely to be less than without it.

Deputy Eoin Ó Broin: What about the added value of the LDA being involved in Shanganagh?

Mr. John Coleman: We have always said to local authorities that we are not there to overlay an additional bureaucracy or red tape or add to delays. The value add we have had with local authorities to date, in particular with Shanganagh, is the most advanced but, in respect of other local authorities, it comes in many ways. For example, we are in discussions with Limerick City and County Council on the Colbert station area. The value add we are bringing there is that around that area there are HSE and local authority lands.

Deputy Eoin Ó Broin: My question was about Shanganagh. What added value does the LDA bring to that development, which could be progressed tomorrow by the local authority and the Department were funding provided? What does the LDA bring to the table?

Mr. John Coleman: We are talking about two different things. The point I was trying to make related to our ability to use our mandate to invoke other State lands that may abut local authority lands to create more strategic areas. That is an added value.

Deputy Eoin Ó Broin: That does not apply in the Dún Laoghaire-Rathdown case, which is the first development the LDA is seeking to do, or does it? I am asking a question.

Chairman: The Deputy should allow a reply. We can come back to him if necessary.

Mr. John Coleman: Regarding the specific issue arising in Dún Laoghaire-Rathdown, local authorities, particularly the larger ones, have capabilities. There is no question about that. We have been in discussion with Dún Laoghaire-Rathdown County Council regarding the site pretty much since our inception. The site has been undeveloped for quite some time. We helped the council's departments to work on co-ordination and project management. That went well.

Another issue is the funding structure for affordable housing on the site that we invoked. Our mandate is to deliver affordable housing on sites to which we gain access, be they from local authorities or elsewhere. To deliver affordable housing, we will need a funding structure, which we have been developing. The application of that structure to Dún Laoghaire-Rathdown, where more than half of the homes that are anticipated for development are to be affordable, including affordable rental or cost rental, is a major added value that could not be achieved elsewhere.

Deputy Eoin Ó Broin: I asked about the covenants from the Housing Agency in respect of the land that was transferred under the LDA's current status or its designated activity company, DAC, status.

Mr. John Coleman: The Government decision on the transfer of land is that, following enactment of the legislation and the creation of the new LDA group, the lands will transfer. The Housing Agency has a desire to maximise the social and affordability requirements on those lands. We are in discussions with it about achieving its desire.

Deputy Eoin Ó Broin: In such a transfer, will the Housing Agency retain its ability to set

those covenants after the LDA's establishment as a DAC or will it be in any way weakened?

Mr. John Coleman: Our understanding is that it will not, but what I would say is that-----

Deputy Eoin Ó Broin: Which is the LDA's understanding?

Mr. John Coleman: That the covenant would transfer, or the Housing Agency's ability to influence the social and affordable level would be maintained. We are working collaboratively with the Housing Agency on this matter.

Ms Maria Graham: I will make a couple of points and add to what Mr. Coleman said. I welcome and understand Deputy Ó Broin's support of the concept of and need for active land management. The countercyclical piece was touched on. I might add to Mr. Coleman's explanation and say that many of our commercial companies had sufficient credit ratings to borrow in 2009 when the State was not able to. Unfortunately, we know the impact of those hard times. The companies were able to continue their investment programmes when the State did not have that capacity.

The Deputy asked about engagement with the European Commission. In drafting the legislation, there was an iterative process of developing the operational model through the prism of different elements of EU law, including those that the Deputy touched on - the transfer of land and the structuring of various functions. We need to be ready to show the Commission a formed idea of the CPO powers. We want them to be as strong as possible while also compliant. That is the balancing act that is required. The draft Bill will take account of all of the discussions. Some technical reports, including benchmarking, and the business plan also need to be done. We are nearly there, but we would not find it fruitful to approach the Commission so early in the iterative process that we needed to come back because, for example, we were now thinking of putting the affordable housing component on a statutory footing.

The Deputy touched on the two different components. That is why we have structured the Bill in this way. He correctly pointed to the economic and non-economic functions. We believe that we can do both within the organisation. We are developing an organisation that will have certain capabilities to perform its core function, that is, active land management. We should spin off that centre of excellence to give support, as required, to local authorities and other agencies. It is a matter for us to define this clearly within the draft legislation so that the terms of the two elements are quite clear. One is not in state aid territory and the other has to demonstrate that it is compliant.

This relates to the discussion on affordable housing. It is a complementary and new add-on to the suite of affordable housing activities. It is not substituting for local authorities, but will instead be available to local authorities if they wish to use the centre of excellence to support them in their role. It will not supplant the affordable housing activity that they should engage in as housing authorities. The quantum of affordable housing coming through other streams should be enhanced by this. Local authorities do not have to use the LDA. It is a question of choice. If the State develops an agency with those kinds of capability, it is important that it be used as a shared service to deliver benefits. From the LDA's perspective, this fits into the overall affordable housing policy, which is a matter for the Department.

Chairman: Mr. Coleman and Ms Graham mentioned the current exemptions from FOI. I remain to be convinced that an exemption is necessary. We received correspondence from the Information Commissioner in this regard. He stated that the exemptions contained in the FOI

Act were sufficiently robust to ensure the protection of records whose release would be likely to give rise to any of the harms against which the exemption seeks to protect. Mr. Coleman mentioned how many State bodies had a commercial mandate while being committed to achieving important social and economic objectives, including the provision of electricity, public transport, etc. Public transport bodies are under the auspices of the FOI Act, though. I can submit an FOI request to Dublin Bus, the National Transport Authority or Transport Infrastructure Ireland. I am curious about the logic. I will ask both witnesses why head 39, which provides for an exemption, exists in the Bill. Is it not the case under the FOI Act that commercially sensitive information can be redacted while still being subject to FOI? Is it not also the case that the Information Commissioner could adjudicate on such matters? Are robust and significant protections not built into the Act? I invite Mr. Coleman to answer first, then Ms Graham.

Mr. John Coleman: My comment on commercial bodies was not meant to be a point about FOI. My understanding is that commercial bodies that were recently set up have received similar exemptions. This question is probably best dealt with by Ms Graham from the Government's point of view, but-----

Chairman: I am sorry to cut across Mr. Coleman and break my own rules, but those entities, which have received blanket exemptions, have posed all manner of difficulties that the Committee of Public Accounts has had to scrutinise at great length and detail. I do not need to name the bodies - people know what I am talking about. Any blanket exemption poses significant concerns. I am curious as to the logic behind empowering the LDA with them again. Surely the exemptions in the Act with regard to commercial sensitivity are significant enough.

Mr. John Coleman: The exemptions in the Act are helpful in terms of commercial sensitivity. When I consider the impact on the LDA of freedom of information issues, it is purely to protect the LDA and the taxpayer resources going into it, for instance, regarding information on how we analyse sites or sites we are interested in acquiring in future. It is about commercial sensitivity and commercial operations. Deputy O'Broin made a good point on the general exemptions that exist under the Freedom of Information Act and this just follows recent precedents and precedents from elsewhere.

Ms Maria Graham: The genesis for the provision in the general scheme follows closely on what was done in the most recent body established, which was Home Building Finance Ireland. The concept is that the information will be excluded by nature of the commercial provisions anyway and there is a considerable element of administration and consultation with people. It was for operational reasons.

As I indicated my opening statement, the Minister is open to examining the issues that might be raised by the committee with regard to freedom of information and lobbying to see whether we can strike a balance to increase the accountability people want without being unnecessarily burdensome to the LDA or infringing on its commercial freedom. If measures come forward that can achieve this balance, we are perfectly willing to take them. We were following the most recent legislative vehicle in the housing domain, which was with regard to lending to developers and protecting that commercial role. We will consider whatever comes from the committee in this regard.

Deputy Eoin Ó Broin: I thank the witnesses for their detailed responses. I do not want to go back to the countercyclical issue because it is important to acknowledge that the difficulties the State had after 2008 were not because of a lack of borrowing capacity or a lack of Exchequer revenue; they were because of decisions taken to use the borrowing capacity and Exche-

quer revenue to hand to do something else. For example, we had the National Pensions Reserve Fund with €30 billion. That money was available for a range of measures but the Government made policy decisions to use the money to recapitalise banks.

Likewise, with regard to the borrowing capacity of the State, in 2008 our debt-to-GDP ratio was 42%, which was well below the Stability and Growth Pact rules. The State had a capacity to borrow and, in fact, it took on the liabilities of Anglo Irish Bank with the promissory notes. The only reason I say this is not to rehearse the history of it but to state that at that point in time, economic difficulties notwithstanding, the State had significant borrowing and spending capacity but chose to use it for something else. It is not the case that because we are in a recession, we cannot borrow or pump prime the economy. We just chose to pump prime and borrow for the banks rather than for housing.

I ask witnesses to look at what is happening with the approved housing body sector in the UK. It has taken on an increasingly commercial *modus operandi*, whereby it is engaged in building open market price houses and using the sale of those houses to cross-subsidise mid-market affordable houses as well as social houses. I attended a major conference in London recently where these bodies said clearly that they are nervous about the dip into recession and how it will constrain their ability to generate revenue to invest countercyclically. In fact, the one model that is not unlike that of the witnesses, albeit without the land element, is telling us very clearly there is a danger to this model and I do not hear this being recognised.

To go back to the added value, if I get it right, good local authorities can co-ordinate among themselves and it is about the “financing structure”, to use Mr. Coleman’s words. This really refers to the LDA’s ability to find affordable rental and purchase properties off-balance sheet. The nub of the matter is that is what it brings to the table; therefore, rather than a local authority or an approved housing body having to borrow, as happened in the case of the project on Enniskerry Road, off-balance sheet development is the key. That is my interpretation of what Mr. Coleman said.

My point about the economic and non-economic bits of the Bill is that they are not with what state aid rules are concerned; rather, they are concerned with two types of economic activity. They are economic activities which are commercial and general economic activities which are non-commercial. Market price housing is in the first category, while social and affordable housing is in the second. Is there a concern that mixing the two and having one agency overseeing the development, delivery and sale or allocation of the housing will fall foul of state aid rules? Is this something at which the LDA is actively looking? In my limited knowledge of these matters, this will be one of the big hurdles the agency will face when it comes to engage with the Commission.

Ms Maria Graham: I will start by clarifying that when I referred to 2009, I was referring more to the fact that a Government made a choice about how it would use its finances at a particular time. The distinction I was making was that the commercials were able to stick to their statute and investment plans. They were not dependent on the choices made by the Government. That was the element to which I was trying to refer. We have been looking at that model which includes both affordable housing and private housing, with reference to the tests we have been undertaking from a state aid rules perspective. It takes account of both components and what they mean. Part and parcel of it is the issue to which Mr Coleman referred. We are speaking about the use of public lands in the first instance and the fact that the transfer of those sites, irrespective of whether it was to the LDA or a private operator, would encompass the provision of social and affordable housing. That is the landscape on which all of this is set. I confirm that

we are looking at both angles.

Mr. John Coleman: To follow up on the counter cyclical point about the approved housing bodies sector in the United Kingdom, registered providers and the models for private housing with a subvention or a way to fund social and affordable housing, I am not sure it would be a sustainable model through a downturn when private housing development might suffer or the profits from it might be lower than what would be required to subvent social and affordable housing. I do not believe it is on what the LDA should rely in its model, although I agree that it should seek ways to deal with the issue of affordable housing provision, in particular. Social housing will always be a function of its service in the interests of the general public. We should seek ways for affordable housing to be deliverable without a subvention through a downturn. It is something for which we should strive. In time, it might be decoupled from private housing delivery. Something else we would love to do through a downturn is buy land, particularly for the longer term, that obviously would not be tied to private housing production.

On whether the value added in Shanganagh would be solely due to the financing model the LDA might be able to invoke, it is a significant part of it. Developing something that would be sustainable through a downturn will be very important. If the LDA can sponsor and lead on it, it would be of benefit to the markets and the local authorities. It would also help us to deliver on our obligations through downturns if we still had an affordability requirement to meet on our sites. It is not as simple as purely being about the financing model. On a practical basis, we have been working well with the local authority on project management in Shanganagh, as well as with other local authorities. It is not purely the financing model. We are collaborating well on other aspects.

Senator Victor Boyhan: I acknowledge the work of the Oireachtas Library and Research Service on the briefing document. With Mr. Coleman's previous experience with NAMA, what was the experience there on the freedom of information, FOI, thing? There are some similarities between NAMA and the LDA. Clearly, FOI will be a big issue. Mr. Coleman got a taste of it this morning. We talked earlier about probity, transparency, openness, open government and accountability. This will be a big issue. Many things were learned from NAMA. There was considerable disquiet in the public domain. I genuinely wish the LDA well, but it must have the confidence of the public at large. That will be critical in setting the foundations for its success. I ask Mr. Coleman to share with the committee his experience of how the FOI thing was dealt with in NAMA. Does he see any similarities? Could that type of situation be transposed into the LDA?

Mr. John Coleman: It is a really good question. One way to think about that is to consider the different context that applied in NAMA as opposed to the LDA. NAMA was of a time. The nature of its work was highly controversial. There were many people tied up in NAMA who did not want it to succeed in its objectives, which may have been against their interests. It is a different beast from the LDA. The LDA is generally dealing with State assets, certainly in its initial guise before it starts acquiring land on the private market at the appropriate time. It will probably be more of a force for positivity as opposed to the difficult and sometimes unpopular job that NAMA had to do.

That applies a different context to the FOI requests that come in. We have had a number of FOI requests and our approach to FOI so far would be to err on the side on the side of transparency and releasing as much as we can. We try to engage with inquirers and FOI requesters to work with them to establish what exactly they are looking for and see if we can get to the nub of the issue they are trying to uncover etc. That would be our bias towards doing that and I do

not see why that would change. Irrespective of whether the provisions of the Bill carry through, we will still be subject to FOI.

I would rather not speak too much about NAMA because it was a different context. I would see the LDA having a bias towards releasing as much as we can without it impacting on the commercial sensitivities of the LDA and ultimately taxpayers' money.

Chairman: While what Mr. Coleman is saying about erring on the side of transparency with regard to FOI is commendable, essentially that is from a voluntary position. An FOI would confer an obligation rather than a generous disposition. Personnel may change, as can the focus and ethos of an organisation. If it is underpinned by a legislative certainty where FOI has hold in an organisation, that is far better than the current situation. While I accept the LDA may be erring on the side of transparency right now, in future it may not and that is at the discretion of the organisation. That gets to the nub of my line of questioning.

I have not seen any logic that would override the exemptions already within the Freedom of Information Act and that would override the prerogative of the Information Commissioner to adjudicate on any commercially sensitive issues. In their answers, both the LDA and the Department have indicated the need to maintain and preserve commercial sensitivity. Based on what I have heard from Deputy Ó Broin and Senator Boyhan, I do not believe anybody is saying otherwise. Naturally, it is important to keep that commercial sensitivity with sites it is exploring. Surely the Information Commissioner can do that in the context of the Freedom of Information Act. Surely the existing exemptions in that Act are sufficiently robust. There is a legitimate concern that if this organisation operates outside FOI and the lobbying register, it will be living in the shadows. Based on Mr. Coleman's answer, I do not believe that is a space he wants his organisation to be in necessarily.

There was a description of freedom of information as burdensome. Freedom of information exists in respect of the Houses of the Oireachtas, all Departments and many agencies to shed light on matters and to provide answers. Sometimes those answers may be uncomfortable and may take up administrative time, but they are a good thing. They maintain public trust in an organisation. The LDA is a very important organisation and will be charged with considerable funding and resources. Accordingly, there is great value of having it live within the realm of FOI. From what I can hear, there is no great rationale for it living outside that realm.

Mr. Coleman has experience of working in NAMA and in an organisation that is outside FOI. He correctly compared and contrasted the different natures of the two organisations. Does he believe the core functions of the LDA would be able to exist if it were subject to an FOI regime and if head 39 were changed? Would it infringe on the LDA's ability to work?

Mr. John Coleman: I do not think it would change. As Ms Graham mentioned, the Bill as drafted, replicates the most recent examples that have come through the Oireachtas and I guess that is the starting point. The Bill, as drafted, does not exempt the LDA from FOI. All basically non-business-related activities would be subject to the FOI. Requests relating to whom I meet and the service providers we engage will still be part of that. Obviously, if the committee has concerns that somehow that is inconsistent with what we are trying to do, I am sure we can take that away and pick up on that. Ms Graham may wish to add to that.

Ms Maria Graham: I did not intend to infer that FOI was burdensome. Many moons ago, I was the Department's first FOI officer. I was intimately involved in implementing the freedom of information legislation in the Department and was the champion of it in the Department. I

can assure the committee from that perspective. I was trying to reflect that the FOI provisions are general in nature, trying to cover all the potential areas where there may be exemption. Sometimes specific categories, such as confidentiality or commercial sensitivity, are known to impact on an organisation and that is reflected in its legislation. Some organisations have confidential information or commercial information particularly identified. That is so that based on the general exemption, rather than going through an exercise where the Information Commissioner will end up in that position, we know it from the outset. That is purely the rationale, that there is a component of information that is held. However, I indicated that we believe given the nature of the LDA it is important to have the appropriate balance of accountability and governance. We are mindful of the discussion the committee has had on FOI and lobbying, the legislation relating to both of which is general in nature. For that reason, they are not part of the Minister's legislation. The Minister will look to the Government and discussions with his colleague, the Minister for Public Expenditure and Reform, for proposed alternatives. I am simply signalling that we were conscious of the debate. If we can find a measure that sits appropriately with what we are trying to do, we are open to it. We are only trying to ensure that the LDA can work operationally with the appropriate level of transparency and accountability. We are open to all ideas in that regard.

Chairman: That is good. I am glad to hear that. Ms Graham was a champion of freedom of information requests in a former life, and may be one in her present iteration. My underlying concern comes from what the Information Commissioner said. The Information Commissioner clearly has concerns with the current direction. Those concerns should be noted and acted upon. I am glad to hear the Department has an open mind in this regard.

Deputy Eoin Ó Broin: I will happily second amendments to the legislation if it does not come back in an appropriate form.

Chairman: Let us see how we go. I thank the witnesses for their time this morning. I very much appreciate it. As always, I have no doubt that we will have further discussions on this and possibly many amendments to review, as Deputy Ó Broin noted. I thank all the witnesses for attending today and for engaging with the committee. The next meeting of the joint committee will concern the Traveller accommodation expert review.

The joint committee adjourned at 1.05 p.m. until 9.30 a.m. on Wednesday, 13 November 2019.