



AILG Paper on General Scheme of Housing (Miscellaneous Provisions) Bill 2016 November 2016

Introduction

The Association of Irish Local Government (AILG) is the statutory representative body representing the democratically elected members and their member authority of Irish Local Government. The association supports the elected members in their role as board members of the local government units in the State.

The AILG supports the Ministers policy "Rebuilding Ireland: National Action Plan on Housing and Homelessness" as our members believe that the country is facing one of the biggest housing and homelessness crisis in its history. The AILG did contribute to the work of the Special Oireachtas Committee on Housing and Homelessness in May of this year by way of a submission and appearance before the Committee. The Association recognises the importance of the Action Plan in resolving the challenges facing those affected by this crisis. We can safely state that, currently, no other local government issue generates so much of a councillor's workload as is the case with housing and homelessness.

The Association appreciates that, in order to deal with an emergency crisis such as the current housing crisis, some emergency measures will be needed. The AILG acknowledges that the Minister has published the General Scheme of the Housing Miscellaneous Provisions Bill 2016 in order to introduce some emergency measures to help fast track the delivery of housing units. To this end the Association welcomes the proposed provisions in Part 4 of the Bill where the Minister plans to introduce measures to help streamline and expedite the delivery of housing units under the Part VIII process relating to local authority own development. The amendments, as proposed, will provide clear timelines for key stages within the process. This includes the requirement for the Chief Executive to submit a report to the elected members within 8 weeks following the end of the consultation period. The Association welcomes this requirement. Also, the provision for elected members to consider the report within 6 weeks is also welcomed and we are confident that this will help fast-track delivery of housing units under the Part VIII process.

The Association also welcomes the proposed provisions in Part 5 of the Bill and the various proposed amendments to the Residential Tenancies Acts 2004 to 2015 relating to Approved Housing Bodies. This includes ensuring that private dwellings leased by AHBs

are treated in the same way under the Residential Tenancies Acts as dwellings owned by AHBs. This provision along with the proposed provision in the Bill to legislate to deal with circumstances in relation to the sale of properties with tenants in situ will give some security of tenure to tenants. However, in order to prevent a reoccurrence of situations where a large number of tenants in a single development are given termination notices simultaneously, we would propose in the final legislation that a figure of 10 dwellings (and not 20 dwellings) is the appropriate number of units to allow the legislation to be effective. We would also urge the Minister to consider a period of 9-12 months (and not 6 months) as the appropriate period to achieve the objective of the relevant legislation. The Association also welcomes the provisions under Part 5 of the Bill to legislate to accelerate tenancy dispute resolution timeframes. Again, we feel that these measures will help to provide extra security of tenure to tenants and prevent scenarios where tenants, who have seen their tenancies terminated, are being forced to compete for scarce accommodation.

Finally, the Association also welcomes the proposed provisions in the Bill, under Part 7, to amend the Housing Finance Agency Act 1981 to provide that the Housing Finance Agency may lend finance to Institutes of Higher Education for the provision of student accommodation. In towns and city areas close to third level colleges the student demand can add greatly to the pressure on the availability of property to rent. This measure will help greatly with third-level institutions being able to provide a much greater level of on-campus or near-campus accommodation. The AILG also welcomes the proposal, under Part 7, of funding for the purchase of vacant properties for onward sale to local authorities and approved housing bodies for social housing purposes.

However, while welcoming the above proposed provisions of the Bill, the Association has grave concerns with proposals contained in Part 2 of the Bill in relation to the setting up of a Strategic Housing Division within An Bord Pleanála. We note that the objective of this particular proposal is to fast-track planning applications for residential developments of 100+ units. Planning and the planned provision of housing has always been a key function of the local authority planning system and any move, no matter how temporary, would be viewed by the AILG as further dilution of the role of the local authority. The Association firmly believes that the local planning system should be plan-led. Such an approach enables local people shape the communities where they live, provide for quality design with appropriate amenities, adhere to all local and county development plans and be delivered at the level closest to the public. This level has and should continue to be at local authority level. While recognising that delays can occur within the planning system the AILG believes that local authority planning system is being unfairly scapegoated for delays in the timely delivery of housing units.

Within this context, the Association would question the need for the proposals contained in Part 2 of the bill for the following reasons;

1. General Role of the Local Authority Planning Function

As part of our submission to the Special Oireachtas Committee on Housing and Homelessness earlier this year the AILG reinforced the role of the local authority, as the planning & housing authority in each city and county. We hold that the local authority is the lead providers of social housing throughout Ireland. We believe that this should also be the case with it comes to the planning for private housing. The Association believes that all housing projects need to be focused on delivering sustainable, integrated communities with accessibility to vital services for the benefit of the people who will live there. This is particularly the case for large residential developments and by leaving the planning function within the local authority system for all residential developments the elected members can ensure that all housing projects are designed to ensure that this objective is achieved.

While the Association endorses any movement to streamline the planning system and the regulatory requirements in relation to the provision of housing neither are we saying that housing provision be so rushed as to compromise on build and design standards. People are entitled to appropriate standards of utility and design in their houses which are best decided through the transparent local authority planning system. We have seen too many examples in this country of where rushed building programmes have left lasting social problems. The proper planning of housing provision begins with consideration of location and ensuring -depending on the scale and nature of the development – that there is proper provision of facilities such as schools and public transport. The local knowledge of county and city councils is an invaluable asset in ensuring co-ordinated provision of housing and the necessary support services.

2. The centralisation of planning function

The provisions in Part 2 of the Bill for the establishment of a Strategic Housing Division within An Bord Pleanála, even in only a temporary capacity, can only be viewed as a centralisation of a core local authority function. The Association is of the viewpoint that this is contrary to government policy over the last number of years and contrary to commitments made in the context of the Local Government Reform Act 2014, which has seen some functions delegated to local government for delivery, particularly in the areas of local economic development and local community development. As stated earlier, planning is a core local authority function best delivered by competent planning authorities at the level closest to the public. Local Authorities have the role of developing statutory planning policies for their areas and fulfilling their role as a planning authority in all cases regardless of the size of any potential development.

All local planning authorities have statutory planning timelines (16 weeks), which must be adhered to in all cases including;

- 8-week period for a decision on an application (following validation of the application)
- further 4-week period if a request for further information is made
- final 4-week period for grant of permission if no appeal is made

While the Association accepts that delays in the planning process may arise, we are of the opinion that these delays can often be on the part of the applicant, who has a statutory 6-month timeline for replying to requests for further information. In order to help speed up the timely delivery of planning decisions by local authorities, particularly in relation to large residential developments, we would propose that this period should be shortened to no more than a 3-month period to reply to requests for further information.

In order to help eliminate any time delays within the local authority planning system, the Association would also propose a mandatory time-bound, pre-application consultation process at local authority level. This pre-application consultation could mirror the proposal detailed under Head 4 (Section 37R) of the above Bill including the preparation of a report by the planning authority on the application following this consultation process. This would help to assure applicants that once their application is lodged with the local authority that it will be dealt with in a timely manner.

3. Role of An Bord Pleanála

The Bill has stated that the reason for the setting up of a Strategic Housing Division within An Bord Pleanála is because a large proportion of planning approvals of larger housing developments for 100 new homes or more are being appealed to An Bord Pleanála, meaning that there is a two-stage planning application process which can take 18 to 24 months to secure ultimate approval to go on site and start to build. The Bill states that this can impact adversely on the viability of the development. However, the AILG would advocate that our two-tier planning system is fundamental to a proper, transparent system of planning in the country which currently allows for the first stage planning process at local authority level with an independent appeals process with An Bord Pleanála. If delays in the planning process are being experienced the Association would advocate tackling the causes of these perceived delays rather than eliminating a tier of the planning system altogether. The Association also believes that by not having an appropriate planning appeal mechanism would lead to an increased risk of legal challenge of such decisions.

In 2015 there were 985 residential housing appeals to An Bord Pleanála with 75% of determinations confirming (with or without variation) the decision made by the Local Authority. In 2015 82% of all “priority appeals” made to An Bord Pleanála were disposed of within their target timeline of 18 weeks. The above statistics would suggest that permitting applications for large housing development to be made directly to An Bord Pleanála will not achieve the goal of reducing the time frames in which planning permission can be achieved. Also by now making An Bord Pleanála a combined consent and appeal authority, we believe that this will only lead to further significant delays in the making of planning decisions. This is of particular concern if in effect the High Court were to become a regular feature in the appealing of decisions by an Bord Pleanála which is possible given the limitation on appeals options now available with the current regime.

4. Recruitment of Technical Planning Staff

To help address any delays that may arise within the current planning system the Association believes that recruitment of appropriate technical planning staff needs to be addressed both at local authority and An Bord Pleanála level. Due to the previous moratorium on recruitment in the public sector, local authorities and An Bord Pleanála have lost invaluable technical planning staff over the last number of years and the loss of such experience may be resulting to delays occurring. Over the last 5 – 8 years it is estimated that over a third of technical planning staff have been lost to the local authority system.

While acknowledging that this moratorium was lifted in 2015, local authorities are especially experiencing difficulty in recruiting the appropriate technical planning staff needed because of lack of necessary funds. The AILG would propose that short-term contracts to recruit appropriate technical staff should be afforded to local authorities if necessary, to ensure the faster turnaround of all planning applications.

We would also propose that the shared services model currently operating successfully in the Irish local government environment should be employed to rapidly scale-up the input of specialist housing planning personnel. Design and planning teams could be assembled in a number of core local authorities with their services available across county boundaries to other local authorities. This approach was used to good effect in the early years of the national motorway programme where a design team was assembled in a given county and its expertise deployed to other counties so as to create a flexible and rapid response to the need for expertise in an accelerated building programme.

5. Public Engagement in the Planning Process

While not condoning persons who wilfully try to frustrate the local authority planning process, the Association firmly believes in the democratic right of all citizens to engage in the planning process. The Association is concerned that by moving to a centralised planning system as outlined in the Bill, it will ultimately see the removal of the access by local people to engage with the planning process for large developments in their area. This we believe will result in the significant undermining of the rights of the public when it comes to them engaging with the planning authority. The Bill makes no mention of the fees it intends to charge members of the public in making submissions or indeed whether these fees will be set by the Minister or by An Bord Pleanála itself.

As stated earlier in 2015 there were 985 residential housing appeals to An Bord Pleanála. However, we would contend that a good proportion of these appeals would be 1st party appeals rather than 3rd party appeals made by members of the public. Many planning permissions appealed to An Bord Pleanála, particularly in cases for large residential developments, are 1st party appeals made by the applicant themselves and in many cases, they may be only appealing certain conditions imposed on them by the local authority.

In recent years, An Bord Pleanála have introduced mechanisms to stem the amount of 'serial' objections and appeals being made to the board. One of the measures introduced was increasing the cost of making an appeal to the board. This has resulted in only genuine appeals, be they either 1st or 3rd party appeals being made to the board. This may be an area that the board could look at again to ensure that only genuine appeals of planning permissions end up being appealed to An Bord Pleanála. This would also safeguard the right of the public to engage in the planning process at the local authority again at the closest level to them.

Conclusion

The final point we would make on the Bill would be to Part 6 of the Bill which provides for an amendment of the Local Government Act 1998 which provides that the Minister may make a payment from the Local Government Fund to the Exchequer. We would caution against payments that reduce the Local Government Fund and therefore reduces monies available to Local Authorities by way of general purpose grants. It is not specified in the bill what this payment to the exchequer is for and further clarification on this is needed.

In conclusion, the Association of Irish Local Government endeavours to bring to the fore the voices of elected members who are rooted in their own communities and see at first-hand the importance of having a transparent local planning system. The association will continue to advocate the role of local planning authorities in ensuring sustainable provision of housing into the future.

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