

# THE PLANNING & DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCY BILL 2016.

**Brendan O'Sullivan**

DIRECTOR OF THE PLANNING SCHOOL AT  
UNIVERSITY COLLEGE CORK, IRELAND



[brendan.osullivan@ucc.ie](mailto:brendan.osullivan@ucc.ie)



[@Brendan\\_OSull](https://twitter.com/Brendan_OSull)



[CPER](https://www.facebook.com/CPER)



ucc

Coláiste na hOllscoile Corcaigh, Éire  
University College Cork, Ireland

CENTRE FOR PLANNING EDUCATION AND RESEARCH UCC

UCC CENTRE  
FOR PLANNING  
EDUCATION  
And RESEARCH

... analysing EXISTING conditions from a VANTAGE POINT of the FUTURE...

Linking KNOWLEDGE to Action

[mplan.ucc.ie](http://mplan.ucc.ie)

diversity, empowerment, social justice

landscape, heritage, culture

Professional values and ethical practice

...design and place-making

rural sustainability

Green cities, Just cities, Growing cities...

Sustainable Development

Planning




## About the IPI

The Irish Planning Institute is the independent professional body representing the majority of professional planners who are engaged in physical, spatial and environmental planning in Ireland, serving both the public and private sectors.



A temporary but significant change to the planning applications process...



- 
- Pre – planning with local authority
  - Request for consultation
  - Opinion from LA
  - Consultation meeting
  - Advice on issues
  - Application

# Planning and Development (Housing) and Residential Tenancies Bill 2016

---

- Flows from pillar 3 of Rebuilding Ireland, the action plan for housing and homelessness
- From the Department's view that the current "two stage process" of Local Authorities and *An Bord Pleanála* is taking 12 to 18 months or longer in some cases.
- Temporary proposal up to 2019 (with potential to extend to 2021)
- Enables large (100 unit+) applications for housing (incl. student accommodation of 200 bed-spaces +) on land zoned for housing to go direct to *An Bord Pleanála*



# Planning and Development (Housing) and Residential Tenancies Bill 2016

---

- A General Scheme was published on DHPCLG website and was subject to priority drafting – objective to finalise before end Q4 2016. The full Bill was published Nov 2016.
- New “fast track” procedure that:
  - Guarantees decisions within a defined timeframe incorporating a mandatory ABP managed and LA delivered pre-application process (9 weeks) followed by application to ABP which will issue either (a) decision to grant permission or (b) refuse permission within 16 weeks
- First Housing Action Plan Progress Report has the Bill’s title as “Planning and Development (Housing and Residential Tenancies) Bill 2016”

# Context

- 
- Residential Land Availability Survey 2014: 17,434 hectares of residential zoned lands nationally = construction of over 414,000 dwellings
  - According to 1<sup>st</sup> progress report on Housing Action Plan, across all 31 local authority areas, there are 17,434 hectares of land zoned residential nationally (serviced and un-serviced), enough for 414,000 new homes
  - According to 1<sup>st</sup> progress report on Housing Action Plan in Dublin, there are enough zoned and immediately developable lands to deliver 50,000 new homes



# Context

- 
- planning permission already in place for 27,000 new homes across the Dublin metropolitan area. In total, there are 2,654 hectares of land zoned (both serviced and un-serviced), sufficient to provide for 116,700 homes
  - Planning permission for 12,963 new homes was granted in the year up to end June 2016, an increase, year on year, of 23%
  - Of these, 7,332 are in the GDA (6,000 in Dublin) and 5,631 in the rest of the country.
  - The planning system cannot be said to be the main constraint on supply.



# Context

---

- Nine in ten applications were granted by local authorities, last year, and two thirds of them were decided within eight weeks.
- *An Bord Pleanála's* annual report for 2015 notes
  - “2015 saw a small increase in the numbers of multi-unit developments over 30 houses; the early months of 2016 has seen this trend increase with a small but significant number of larger multi-unit housing developments (over 100 units) under appeal. To date, all of these appeals have been decided within the statutory compliance time of 18 weeks. *An Bord Pleanála* will continue to prioritise housing cases.”



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- Part 1- Preliminaries and General
  - Commencement and Definitions
- Part 2 - Planning and Development [in 3 chapters]
  - Strategic Housing Development
    - *Insertion of new S37R to S37U (Board's jurisdiction in large housing applications)*
    - *Further 'extension of duration' provisions. [5 years max or 31/12/2021 at latest]*
    - *Establishment of 'Strategic Housing Division' within ABP.*
    - *Streamlining of "Part 8" process for Local Authority 'Own Development'.*
  - Environmental Impact Assessment [EIA] Screening
    - *The Insertion of a new stand-alone EIA screening process. Potential for mandatory screening of certain development, to be prescribed by regulation (e.g. flood relief or related works)*
- Misc. Construction & Amendments to the Planning and Development Act 2000.



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- Part 3 - The Residential Tenancies Act 2004 :-
  - Repeal of S42
- Part 4 - Amendments to Housing Finance Agency Act 1981.
  - Allowing for Institutes of Education to develop student accommodation.
  - And acquire land for this purpose.
- Part 5 - Amendments to the Local Government Act 1998
  - Total payments, not exceeding €450m, may be drawn down by the Minister with consent from the Minister of Finance, from the Local Government Fund [under the Motor Vehicle (Duties and Licences) Act 2013]. Drawdown not later than 31<sup>st</sup> December **2016**



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- The introduction of temporary fast-track planning arrangements whereby planning applications for large-scale housing developments (100+ units), including student accommodation, (200+ bed-spaces) may be made directly to *An Bord Pleanála* and determined within a specified timeframe. Options if land is in a SDZ.
- More precise timeframes for presenting and considering local authority own development proposals through the Part 8 processes, including social housing proposals;
- Providing for further limited extensions of duration of planning permissions for specified housing proposals;
- Introducing certain legislative amendments to enhance the functioning of the private rented sector, including tenant protection issues and strengthening the powers and functions of the Residential Tenancies Board in respect of both landlord and tenant matters;
- Facilitating Higher Education Institutes to borrow monies from the Housing Finance Agency for the purposes of financing student accommodation provision.



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

The Bill also proposes to address a number of other urgent measures, namely:

- To introduce new EIA screening arrangements to streamline the process of determining planning consent for, and the subsequent undertaking of works, including emergency flood relief works to be carried out by the OPW, and
- To enable the Minister to make payments from the Local Government Fund to the Exchequer in 2016 (a legislative provision is required to allow this on an annual basis)





# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- Under the proposed new arrangements, *An Bord Pleanála* will be required to complete pre-application consultations with developers and the relevant local authority in respect of proposed developments within a maximum period of 9 weeks.
- They will, subsequently, be required to make a final determination in respect of planning applications for concerned developments within 16 weeks of receipt of application
- The proposals provide for mandatory pre-planning consultation by developers.
- Local authorities are to take into account all submissions received during the normal 5-week public consultation phase, following the receipt of a planning application, before making their own submissions on the proposed development to the Board.



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- The Bill also makes provision that a second extension of duration of planning permission may be applied for and granted by a planning authority, in certain limited circumstances
- This will only apply in respect of housing developments of 20 or more units and where the planning authority is satisfied that the development has not been completed, due to circumstances beyond the developer's control.
- This proposal has the potential to remove the requirement for developers/housing providers to re-enter the planning process in order to secure approval to complete these developments – again facilitating the early delivery of housing in specified limited circumstances



# Environmental Impact Assessment [EIA] Screening

---

- At present, there is no formal mechanism for a planning authority to assess the potential environmental impacts of a proposed development and determine if an environmental impact statement (EIS) is required outside the existing planning application process, as set out in section 34 of the Planning and Development Act, 2000.
- Accordingly, the Bill provides for new screening arrangements for environment impact assessments (EIA) for certain types of works, including emergency flood relief works to be carried out by the OPW, and is aimed at streamlining the process of determining planning consent for the undertaking of such works.
- The proposed new screening arrangements, which are in full compliance with the requirements of the EIA Directive, have the potential to reduce the necessity for the preparation of a full EIS for proposed works, where a screening decision by a planning authority determines that it is not required.



# Proposals in Practice

## -Questions raised?

---

- Is there a need for anti avoidance measures?
- How will *An Bord Pleanála* be resourced?
- If a lot of applications are anticipated, there must be a commitment to provide the extra resources *An Bord Pleanála* requires to avoid it becoming a bottle neck. If such an increase is not envisaged, the Institute questions the need for the significant change.
- In any case, the Irish Planning Institute suggests that strong consideration should be given to ensuring that Planning Authorities are properly resourced in the first instance, before removing functions from them and diverting them to a different body, which would then require additional resourcing.




# Proposals in Practice

## -Questions raised?

---

- The Bill allows *An Bord Pleanála* set compliance matters, with conditions to be dealt with by planning authorities, but is silent on the timeframes associated with the compliance submission processing, which could see significant delays.
- Strategic Infrastructure Development process can result in significant costs for applicants. The proposed structures for Strategic Housing Developments could result in similar increased costs for many applicants for housing developments.
- Will planning application fees remain the same, as that currently charged for submissions to planning authorities?. This is not clear from the bill.



## Some alternative – and more sustainable - solutions to housing delivery not explored in the Bill.

---

- The Government could investigate practical means of encouraging housing delivery through the renewal or reuse of existing buildings. In many instances, building stock is under-utilised with upper floors over retail or commercial units lying vacant. Facilitating a change of use for residential purposes could assist in meeting housing demand and encouraging renewal in our cities, towns and villages. The Institute, therefore, supports measures to promote change of use of upper floors to residential in suitable locations. LOTS Schemes: **Living Over The Shop**.
- Similarly, consideration could be given to the introduction of exemptions for returning buildings previously in residential use to that use.
- However, there must be consideration of residential amenities and other community facilities and infrastructure, e.g. car parking, open space, schools etc. One approach may be, for Planning Authorities, to identify particular areas as being suitable for such exemptions.



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- Thoughts on the new pre-planning arrangements;
- The bill sets out a new regime for pre-planning for large scale residential developments or mixed development with a large (85%) housing content.
- **It fails to ensure that the LA is provided with the same documentation as *An Bord Pleanala* to help it assess the proposal.**
- While the Board will receive a fee for its pre-planning, **no such fee is provided to the Planning Authority.**
- While clear, regarding the ABP pre-planning, the time scales are not so clear with regard to the time allowed for the initial pre-planning with the Planning Authority. **No new resources to expedite Pre-planning, being provided to the Planning Authority.**







*Images from Cork Residential design guide 2011*

- Are we aiming for speed or quality?
- How seriously do we take public engagement?
- Are we prepared to suspend our much envied appeal system?

## Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- When an application is made to ABP, the PA will also have to prepare a full report on the proposal to ABP. **No finance / income stream is provided for this costly assessment / report.**
- The PA's report cannot be prepared until after the 5 weeks for submissions has elapsed. The PA must take these submissions into consideration, in preparing its report. **This leaves only 3 weeks to prepare the report before it has to be submitted to ABP.**
- Where the PA recommends to ABP that permission be refused, it is also required to provide a draft set of conditions to be considered in the event of ABP deciding to grant permission. **This approach is both un-professional and unethical**, as it requires a professional officer to undermine his / her own report wherein a refusal is being recommended.

## Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- Compliance with conditions of a permission has two aspects;
- Firstly: those conditions which require some detail to be agreed with the Planning Authority prior to commencement of development and
- Secondly: actual compliance with the terms and conditions of the permission.



# Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- Under the proposed bill, ABP will set out such conditions, to be agreed with the Planning Authority and, in default, referred back to ABP. **This arrangement excludes inputs from the interested 3<sup>rd</sup> Parties**, and should be avoided by ABP where possible, other than where the submission is solely to illustrate how the developer intends to modify a scheme, to meet specific requirements of a condition.
- Conditions, requiring details, which should have accompanied the application in the first instance, e.g. road design etc., should not be used in a decision to grant permission. **These details should be obtained by way of a request for Further Information, before the decision is made.**



## Planning and Development (Housing) and Residential Tenancy Bill 2016

---

- To ensure that terms and conditions of a permission are enforceable, they have to be carefully drafted. **Planners drafting such conditions should have enforcement experience, as it is through this experience that one learns what is in fact enforceable.**
- *As An Bord Pleanála* will not be the body to enforce any of the permissions it will grant, many difficulties may arise in enforcing these permissions or interpreting their conditions.
- Local Authority planners undertake both development management and enforcement as part of their routine workloads, therefore their conditions are more relevant and enforceable.

# 28 Conclusion

- 
- Placing an emphasis on the role of Planning Authorities (properly resourced) in developing integrated solutions, needs to be reinforced as a primary solution to the current housing crisis, thus ensuring sustainable provision of housing into the future.
  - Given a strong mandate, Planning Authorities are best placed to ensure long term viability in urban regeneration. You as Councillors, we as planners and Society in general, need to create sustainable communities and quality housing, with the necessary community and social services.
  - **These developments must be located, in the right place, where people can integrate into a community.**



# 29 Conclusion

---

- There are clear pressures to deliver on new housing, but we must be careful not to repeat the mistakes of the Celtic Tiger era. Rather we must continue to focus on the right development in the right place with the right infrastructure, to ensure quality and long-term viability.
- The legislation currently being discussed is still in the form of a Bill and there is still ample opportunity for you, as politicians, to address some of the concerns discussed today.
- The Irish Planning Institute, and indeed other interested parties including the AILG, have and will be making submissions to the Department, to seek appropriate amendments to this legislation, in the interest of the common good..