



**AILG issues paper on Land Development Agency Bill (No 11 of 2021)
and specific amendments
sought to the draft Bill**

Introduction

The President, Officers and Directors of the Association have scrutinised the Land Development Agency Bill which is currently before the Oireachtas.

This combined analysis has highlighted issues in the Bill which need to be amended and rectified to protect the role of the local authority as a housing authority and, specifically, to defend the function of the elected members in relation to council owned property.

AILG position

- **The Association of Irish Local Government is taking a strong position in defence of the role of Councillors in disposing of land owned by the local authority.**
- **AILG is also taking a strong position on the primacy of the local authority as the housing and planning authority**

As the primary representative body representing all Local Authority Elected Members, AILG has supported measures over the last number of years to assist in the delivery of much needed housing as we continue to tackle our housing and homelessness crisis. AILG recognises the importance of all measures required 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 Councillors' workload as is the case with housing and homelessness.

While AILG is committed to working with the Minister, the government and indeed all members of the Oireachtas to address our ongoing housing and homelessness crisis, we must ensure the primacy of Local Authorities in continuing to be the lead provider of social and affordable housing and that they are central to any public housing delivery programme. The current programme for Government is categorical in its commitment to "Ensure local authorities are central to delivering housing". This is a stated commitment in the current programme for government and there cannot be any deviation from that.

AILG are concerned that there are evident potential conflicts between the role and function of LDA and local authorities, for example in that the LDA will be directly providing social and affordable housing. This creates potential conflict between the LDA and local authorities, and may create an inherent conflict between statutory powers, duties of local authorities and remit of the LDA, for example in areas such as proper planning and development and delivering housing for local need. There is no clarity on how any such conflicts will be resolved and where there may be overlaps between the remits of both bodies, these may well end up in disputes.

General Concerns regarding the Land Development Agency

Curbing reserved functions of Councillors

1. The Association is concerned that the Bill by curtailing the democratic oversight of elected members in regard to the disposal of land continues a pattern of legislation enacted by successive governments in recent decades which has eroded the powers and capacity of local authorities.
2. In particular the planning function has been circumscribed by Ministerial directives and by new regulatory structures which limit the capacity of elected members to make decisions based on their knowledge of local circumstances.
3. The establishment of a central agency with compulsory purchase powers further threatens the capacity of local authorities in their roles as planning and housing authorities to initiate programmes based on local need and circumstances.
4. The Bill thereby further advances the centralisation of government in Ireland which is in conflict with the best outcomes for local areas and particularly for rural and for regional locations.
5. The Bill will limit public and democratic input into local planning which is contrary to the principle of subsidiarity enshrined in the European Charter of Local Self Government – to which Ireland is a signatory. The input of all stakeholders is necessary to produce the best outcomes for the public in the provision of public services including housing.

Transfer of public lands to a commercial agency

6. The Bill will give statutory powers to an agency with substantial state-guaranteed funding which may divert from the funding available to local authorities for the delivery of housing.
7. The Land Development Agency (LDA) as envisaged falls well short of the kind of land management agency as envisaged by the National Economic and Social Council (NESC) which would prioritise plan-led provision of houses with an emphasis on place-making and the creation of sustainable communities aligned with the need to provide social and affordable houses.
8. The AILG is concerned that the LDA as provided for in the Bill has a commercial remit which suggests that the agency will have an undue emphasis on providing a return to the Exchequer rather than the provision of housing at affordable prices.
9. There is concern that the Bill opens the door for public land to be transferred by the Land Development Agency to private developers. While there are nominally some safeguards in the Bill these are at the discretion of the Minister of the day

Specific Concerns regarding the Land Development Agency as envisaged by the Bill

10. The Bill will result in the transfer of local authority land to a centralised agency (the LDA) unaccountable to the local public representatives
11. Political responsibility for the development will be left with the elected members of the local authority whose statutory roles were by-passed by the powers conferred on the LDA.
12. There is no guarantee that LDA developments will co-ordinate with the local authority's own future plans.

13. Local authority plans for the use of land for enterprise and amenity projects other than housing also risk being thwarted by the LDA proposals.
14. LDA developments may well overwhelm local services if their development is not co-ordinated in advance with the local authority's statutory plans for the area in question.
15. The LDA will be given compulsory purchase powers by the Bill and there is no exclusion for local authority owned land. This raises the possibility that the LDA could CPO land which the local authority wishes to retain for its own purposes.
16. There is a lack of transparency and oversight in relation to the use of Council lands in that the Bill offers the opportunity for the LDA to deal directly with Council officials regarding the transfer of land without the oversight of the elected members.
17. There is concern with the provisions of Section 28 of the bill which provides for the payment of grants to the LDA to enable the Agency to meet any expenditure incurred by it. The payment of these grants could be a further draw on the Local Government Fund which could well result in a negative funding impact for our member authorities.

Conclusion

Local authorities have been to the fore in the delivery of public housing in its many forms for generations. The foresight of elected members and councils in assembling land banks to provide for future housing needs has been a hallmark of the local authority system. Innovative schemes have been driven forward by local authorities which meet local need and are responsive to local planning considerations.

Therefore, any proposal to diminish the powers of local authorities generally and of Councillors, in particular, will lead to poor planning outcomes on the rational basis that local elected members are best placed to decide on the future use and deployment of publicly-owned assets.

AILG is proposing 13 amendments to the LDA Bill. These proposed amendments focus on our key concerns including protecting the reserved functions of the councillor in the disposal of council land, retaining the primacy of the County Development Plan, asserting the role of the Local Authority in deciding the amount of affordable housing needed on any LDA site in its jurisdiction, expanding the range of towns to benefit from LDA technical assistance, and amendments to strengthen transparency, ensure continued public ownership of LDA. We believe these amendments will strengthen the Bill. The detailed proposals follow

The AILG will be contacting the Minister with its concerns arising from its analysis as well as making representations to members of the Oireachtas with a view to having the relevant amendments made to the legislation to protect the role of elected members in relation to their current reserved function of approving the disposal of council lands and to protect the role of the local authority in its core housing and planning function.



Amendments sought by the AILG to the Land Development Agency Bill 2021 No. 11 of 2021

Arrangement of specification of amendments sought by AILG

The amendments sought are arranged by:

- *Heads of the Bill as described in the Draft Bill
- *the number of the relevant section;
- *the introductory text of the relevant section;
- *the text of the amendment sought by the AILG
- *rationale – the reason why the AILG is seeking the amendment

Amendment No. 1 ... Provision relating to local authority land

Section 56 “Section 211 (2) and section 183 of the Local Government Act 2001 shall not apply to the disposal of relevant public land owned by a local authority under this Part.”

Amendment sought: DELETE entire section.

Rationale: This section as proposed would negate the democratic oversight of the elected members in relation to land acquired, funded and maintained by the local authority. Equally of concern, it removes the opportunity for the elected members to apply conditions to the sale of the land to ensure that the future use of the property has regard to local circumstances best identified by the elected members of the local authority. This is totally unacceptable to the AILG.

Amendment No 2 ... Ensuring delivery of social and affordable housing is priority of agency and not a commercial remit

Section 2 (r): “to enable the Agency to engage in commercial activities consistent with this Act including by generating funding required to enable it perform its functions.”

Amendment sought: Insert the words “only in so far as is necessary for the provision of social, affordable and cost rental housing and” after commercial activities.

Rationale: to ensure that the agency does not prioritise providing a return to the Exchequer when its priority remit should be the delivery of social and affordable houses.

Amendment No 3 (i) and (ii) ... Transparency on ministerial directives

Section 7 (1): “The Minister may give a direction to the LDA ...”

Amendment sought (i): Add sub-section (4): “The content of any such direction shall be published in Iris Oifigúil; in at least one national newspaper; and on the websites of the Minister and of the Land Development Agency.”

Rationale: To ensure transparency – as currently worded local authorities would have no visibility of a Ministerial directive to the LDA which may well have implications for their housing and planning operations.

Amendment sought (ii): Add sub-section (5): “Any such directive shall have regard to any City or County Development Plan, Local Area Plan, or any other statutory plan made by a local authority.”

Rationale: To ensure that the Minister cannot direct the LDA to override local authority statutory plans.

Amendment No 4: ... Expanding the range of towns to benefit from LDA technical assistance

Section 14 (1): “A local authority may request the Agency to provide services to it in relation the development of sites for housing and urban development that are –

(b) located in the area of a town ... the population of which is equal to or greater than 30,000 persons. “

Amendment sought: Delete paragraph (b)

Rationale: to allow a local authority with less populated towns to request the Agency to provide services so as to promote balanced regional development.

Amendment No 5 (i) and (ii)... Prevention of sale of shares to commercial interests

Section 25: (relates to shareholding in Agency)

Amendment sought (i): Add Subsection (5): “Shares in the Agency shall not be sold or otherwise transferred without the prior approval of the Government.”

Rationale: To ensure, as far as is possible, that the shares of the Agency remain in public ownership.

Amendment sought (ii): Add Subsection (6): “Notwithstanding anything contained in the Companies Acts, no alteration of the memorandum of association or the articles of association of the subsidiary shall be valid or effectual unless made with the prior approval of the Government.”

Rationale: To ensure that the company is not sold into private ownership.

Amendment No. 6 ... Reporting arrangements to include reporting to Councillors

Section 47: “(1) The Agency shall, not later than the 30 June in each year, prepare and submit a report to the Minister”

Amendment sought: Add a clause marked (4) to read: “The Agency shall furnish the report indicated in sub-paragraph (1) to the Cathaoirleach of each local authority and the Cathaoirleach shall cause the report to be made available to each member of the authority.”

Rationale: As the Land Development Agency will be a significant actor in the local government environment it is important that elected members be fully aware of its activities.

Amendment No. 7 ... Obligations of relevant public body – clarification of position of elected members:

Section 49 (1): Each of the following persons shall co-operate with and provide every assistance to the Agency in the performance of its functions

(a) A member of a relevant public body.”

Amendment sought: Add a sub-paragraph numbered (d) to read: “(d) Sub-paragraph (a) shall not be construed as referring to an elected member of a local authority.”

Rationale: Section 49 (1)(a) as worded could be interpreted as referring to an individual Councillor. Therefore, to remove any doubt – given that individual elected members do not have any role in council land transactions – it is important to remove any possibility that there is a new obligation being placed on elected members and one they have no power to fulfil.

Amendment No. 8 (i) and (ii)... Report of Agency to Government relating to Certain Land:

Section 50 (3): “In providing a report under subsection (2) the Agency, shall, in relation each parcel of land referred to the in the report, take account of:”

Amendment sought: (i) Add paragraph (f): “Any statutory plan, policy or bye-laws made by the local authority in relation to the location in which the land is situated,

including, but not limited to, the County or City Development Plan and the Local Area Plan.”

(ii) Add paragraph (g): “the Housing Needs assessment prepared by the relevant local authority”

Rationale: It is vital that the Land Development Agency take full account of the policies of the local authority for the location in question to ensure, *inter alia*, that the Land Development Agency proposal is coherent with the plans of the local authority as a planning authority together with ensuring that the LDA project does not overwhelm the local services in place. It is also important that the plan is relevant to, and informed by, the particular housing needs as identified by the local authority which has best knowledge of local circumstances.

Amendment No. 9 ... Disposal of Land by Agency

Section 55 (1): “The Agency may, with the consent of the Minister having consulted the Minister for Public Expenditure and Reform, dispose of land owned by the Agency.”

Amendment sought: Add sub-paragraph (4)” In the case of land that had been acquired originally from a local authority, the land shall be offered for purchase to the local authority at the prevailing market price or the price paid to the local authority at original acquisition, whichever is the lower.”

Rationale: To give the local authority the opportunity to return the land to its asset base should it be considered useful for its future planning and development of the locality.

Amendment No. 10 ... Agency’s power to acquire land compulsorily

Section 59 (1) “The Agency may compulsorily acquire land”

Amendment sought: Add sub-paragraph (4): “The power indicated at (1) shall not apply to land in the ownership of a local authority.”

Rationale: The power to acquire land compulsorily from a local authority would override the democratic right of the elected members to approve or otherwise the disposal of local authority owned land.

Amendment No. 11 ... LDA must have regard to local authority planning role

Add Section (XX): “The Land Development Agency shall be subject to the City or County Development Plan, the Local Area Plan, and any other statutory plans or bye-laws made by the local authority in relation any land which it proposes to develop and including the making of a masterplan for such land.”

Rationale: this new section is to make it clear that the LDA will have to respect the statutory role of the local authority as planning authority.

Amendment No. 12 ... Minister’s power set percentage of land for social housing etc

Section 75: “Minister may set a percentage of housing higher or lower than that specified in s73 (4)”

Amendment sought: Amend s75(1) as follows:

“The relevant Local Authority may set a percentage of housing higher or lower than that specified in s73(4) for the purposes of an agreement under s73(3) and may set different percentages in respect of the administrative area where the proposed development is located.”

Amendment No. 13

Amendment sought: Amend s75(2) as follows:

“For the purpose of setting a percentage in relation to an area under subsection (1) the Local Authority shall have regard to the likely future demand for cost rental dwellings and dwellings for sale and to the following matters in relation to the area concerned:”

As a consequence, amend s73 (4) as follows: to replace the reference to the Minister with reference to the Local Authority.

Rationale

Section 73(4) provides that 50% of land that is subject of a planning application shall be assigned to affordable housing to rent or buy. For the purpose of an agreement under this section, the planning authority must consider proper planning, the housing strategy and the specific objectives of the County Development Plan relating to the housing strategy.

However, s75(1) enables the Minister to intervene and set a percentage higher or lower than that required by the planning authority. The considerations to be taken into account (s75(2) are ones where the relevant knowledge, legal responsibilities are essentially the remit of each Council. For any Minister to exert this power for every county in Ireland and thus undermining and setting aside the duties and powers of the Council, is inappropriate.

This provision represents an unacceptable intrusion on the planning role of the local authority, its county development plan, its housing strategy and the detailed knowledge of the council and Councillors regarding the level of need for affordable housing in the area.

Amendment No 14

Section 76 Price under agreement ... market price basis

Amendment sought: To remove section 76 as currently drawn, and replace in full with a provision for setting the rental and purchase price linked to cost of construction and specified percentage of income.

As a consequence, amend s75(f) to reflect the new terms of s76.

Rationale

This section is seriously problematic. It provides that the rent or purchase price will be a 'a price below the prevailing market price or a rent below the prevailing market price' with the percentage prescribed centrally by the Minister.

Any reduction in market price may or may not bear any relationship to building cost or percentage of income (as is the basis of international models of cost rental or affordable purchase). The price and the quantum of units available nationally will thus depend on the quantum of state funding available for subsidising market prices. This model will also make no contribution to mediating the cost of housing in the state by guaranteeing the public authority as a purchaser at a price set by the developer.
