

The Planning and Development (Amendment) Bill, 2009

By **Terry Prendergast**, BSc, MPhil, MSc, MIPI., School of Engineering and the Built Environment and Campus Planning Team Member, Dublin Institute of Technology

“Planning is about people and a sound development plan is the key to ensuring good planning at local level. . . . We must learn from, and not repeat, the mistakes of the past.”

Minister John Gormley, Dáil Debate, 25 March 2010.

Introduction

This article outlines some of the key provisions included in the Planning and Development (Amendment) Bill, 2009. The Bill is wide ranging in scope and deals with a miscellaneous number of areas. Key features only will be described. Amendments to the Bill can (and are likely) to be introduced as it passes through the Oireachtas. The Bill has passed from the Seanad to the Dáil where it is being debated by the Dáil Select Committee on Environment, Heritage and Local Government. The Green Party is hopeful that it will become law very shortly. The Bill is available at <http://www.environ.ie/en/Legislation/DevelopmentandHousing/Planning/FileDownload,20411,en.pdf>

Background

In introducing the Planning and Development (Amendment) Bill, 2009, Minister Gormley described its key objective as ensuring

“a strategic approach to zoning which will allow development take place at the right time and in the right place, and which will allow the State plan for the provision of infrastructure with much greater certainty”. (DoEHLG, 2009a)

The Minister has taken a more proactive role than his predecessors in exercising powers requiring planning authorities to vary their development plans, particularly in cases where the Department of the Environment, Heritage and Local Government (DoEHLG) considers that excessive or unsuitable lands have been zoned for development. The DoEHLG notes that while, in

the main, development plans are generally satisfactory;

“In the past, there have been instances where land zonings or development policies set down in the six-yearly development plans have failed to provide a proper and sustainable planning framework for the economic and social development of the area, particularly in terms of the inappropriate scale, pattern and phasing of development, and without sufficient regard to national and regional policies and priorities.” (DoEHLG, 2009b)

A main feature of the Bill is the introduction of consistency at all planning levels from national to local i.e. a closer alignment between the National Spatial Strategy (NSS), Regional Planning Guidelines (RPGs), development plans and local area plans (LAPs), as illustrated in Figure 1 below.

Figure 1: Hierarchy of Plans

Level in Hierarchy	Plan	Responsibility
National	National Spatial Strategy 2002-20	DoEHLG
Regional	Regional Planning Guidelines (RPGs)	Regional Authorities
Local- City and County	Development Plans	Planning Authorities
Local	Local Area Plans	Planning Authorities

The Minister states that the Bill will reduce the need for central government intervention in the development plan process. (DoEHLG, 2009b)

The Bill introduces important new mechanisms to help achieve this consistency including

- consistency between plan levels.
- the “core strategy”.
- an enhanced role for the Minister in the making of Development Plans.

increases in the period from 2002-2006 have not been directed primarily at the major growth gateways identified in the strategy, running “counter to the NSS objective of building up critical mass within the gateways and hubs” (O’Brien T., 2010). Specific measures to support the strengthening of linkages between plan levels are included in the Bill.

The Bill expressly requires linkage between the NSS and the RPGs and between the RPGs and plans at local

of the RPGs will be strengthened overall. A regional authority will have an express function at pre-draft and draft development plan stage to make recommendations to the planning authority on the amendments required in order to ensure consistency with the RPGs.

In addition, when making or varying a development plan, the Manager’s report must address separately any issues raised by the Minister or a regional authority



Consistency between Plan Levels

Consistency at all levels of planning is a common feature in European planning systems but has not been a statutory requirement in Ireland to date. Indeed, until the preparation of the National Spatial Strategy in 2002, local planning operated in a policy vacuum. The NSS, and the Regional Planning Guidelines that followed, provide a framework for planning at local level. Despite this, the DoEHLG has recently commented that housing development and population

level. Regional Planning Guidelines will be required to support the implementation of the NSS by including guidelines consistent with the strategy. Currently no statutory link exists. In particular, population targets in the NSS must be respected in regional guidelines.

Likewise city and county development plans will be required to be consistent with the RPGs in force in an area. Again, at local level, local area plans will be required to be consistent with development plans, thus achieving consistency at all plan levels. Currently, development plans are simply required to “have regard to” any RPGs. The role

and make recommendations as to how a draft development plan can ensure consistency with the NSS and RPGs. The DoEHLG considers that this will allow a clear and open response to any Ministerial concerns on a development plan at an early stage in the plan making process. (DoEHLG, 2009a)

The Core Strategy

The Bill introduces an evidence based “core strategy” in land use city and county development plans. The key objective of the core strategy is to secure a strategic and phased approach to zoning which in turn will facilitate

infrastructure provision. The core strategy is seen as the key element in providing the linkage between the national/regional level plans and local area plans.

The core strategy in a development plan will

- provide information as to how a development plan and a housing strategy are consistent with any Regional Planning Guidelines and the National Spatial Strategy.
- take account of Ministerial policy in relation to national and regional population targets.
- include specific measures in relation to land zoned for residential or mixed residential/other use. It will provide details of existing and proposed zoned lands, the number of housing units proposed on existing zoned lands and how areas proposed to be zoned for residential use accord with national policy that development of land takes place on a phased basis.
- County development plans will be required to set out an Urban Settlement Hierarchy in the core strategy, consistent with the NSS and any RPGs. The hierarchy will include population projections, road and rail connections.
- City development plans will identify growth areas and availability of public transport.

The DoEHLG envisages that the location, quantum and phasing of proposed development will be shown in development plans as well as growth scenarios, details of transport plans, retail development and proposals for development in rural areas. (DoEHLG, 2009a)

In terms of zoning, the Bill proposes to exclude submissions from the

public/landowners etc. in relation to the zoning of land from the pre-draft stage of a development plan. It will be interesting to see if this departure from current practice is retained as the Bill progresses through the Oireachtas.

Role of the Minister in the Making of Development Plans

The DoEHLG plays an active role in providing guidance for planning and regional authorities. Guidelines are wide ranging and cover areas such as development management, architectural heritage protection, flood risk management and urban design etc. Under the Bill, guidelines produced by the Minister will have greater legal force. Planning authorities will be required to set out how their policies are consistent with such guidelines. In addition, if a planning authority fails to implement the objectives and policies of the Minister, it must give the reasons why. Minister Gormley states that the Bill “will help to minimise the number of instances in which the Minister is forced to intervene in the development plan process by using his or her powers of direction.” (Dáil Debate, 25 March 2010)

Other Provisions

Other important provisions of the Bill include:

Amendments to the Making of a Development Plan: Role of the Elected Representatives

The Bill introduces an important amendment in respect of the role of the elected representatives in the making of a development plan. The DoEHLG notes that the “power of local authority members to take zoning decisions is among the most significant reserved

powers available to them. It is important, therefore, to enhance the transparency in this process.” (DoEHLG, 2009b)

It is proposed that, following public display, material amendments to a draft development plan or local area plan will require the support of two-thirds of the total number of members of the planning authority. Currently a simple majority is required.

Local Area Plans

The mandatory population threshold for the preparation of a local area plan is proposed to be increased from 2,000 to 5,000 persons. In addition, the duration of a local area plan is proposed to be extended from 6 to 10 years. The DoEHLG states that this latter provision is included to ensure local area plans are comprehensively linked to city/county development plans. (DoEHLG, 2009a)

Development Management

The Board of An Board Pleanála is to be given the discretion to reduce its quorum for making decisions on specified cases from 3 to 2 Board members. If the quorum of 2 is evenly divided on a decision, the matter is to be referred to a meeting with a quorum of 3. This discretion is to be available to the Board where it is considered necessary to ensure the efficient discharge of its business.

The aim is to increase the throughput of the Board and to secure higher compliance with the statutory period of 18 weeks for deciding on an appeal. It may not be applied to more significant developments i.e. those that would materially contravene a development plan, a strategic infrastructure development or a development which is the subject of environmental impact assessment.

The Bill proposes that planning authorities will be permitted to refuse permission where an applicant for permission has previously carried out a substantial unauthorised development or has been convicted of an offence under the Planning Acts. The planning authority must also be of the view that there is a substantial risk that the proposed development would not be completed in accordance with a permission.

Under the Bill, two thirds of the elected members of a planning authority will be required to vote in favour of a motion to grant permission for a development that would materially contravene a development plan. Currently, three-quarters of the members must do so for a motion to pass.

At present, the life of a planning permission can be extended before it expires provided “substantial works” have been carried out. The Minister states the Government is acutely conscious of the difficulties being experienced with the tightening of bank credit and the knock on effect that this has had on development. (DoEHLG, 2009a).

An amendment is included in the Bill which would allow for an extension of permission (for a period of up to 5 years) in circumstances where substantial works have not been carried out, but where there are commercial, economic or technical considerations, beyond the control of the applicant. Under the Bill,

the provision to extend a planning permission can be made once only, with no provision for a further extension.

The reference to technical considerations is included to assist wind farm developments which are experiencing delays in securing grid connections.

Development Contributions

The Bill provides for a wider definition of “public infrastructure and facilities” for which development contributions can be levied by a planning authority. Planning authorities will be empowered to levy contributions for a broader range of infrastructure to include school sites, broadband provision and flood relief works. In addition, the supplementary development contribution scheme has been broadened to include levies towards the finance of new schools.

Miscellaneous Provisions

This article has concentrated on the key features and focus of the Bill. Other provisions are wide ranging and include the following: the updating of planning fines, the taking in charge of estates, allowing An Bord Pleanála to recover costs in respect of some strategic infrastructure projects, empowering planning authorities to secure sites of scientific or ecological interest, providing that development is no longer exempt if it would materially affect the character of a proposed protected structure, and the inclusion of objectives in development plans and RPGs for the promotion of sustainable settlement and

transportation strategies in urban and rural areas etc.

In addition, the Minister has noted that the retention planning permission system is being reviewed. In particular, the availability of retention permission for developments which would have been subject to Environmental Impact Assessment may be curtailed and more generally, retention for unauthorised development significantly in breach of the Planning Acts may be subject to a significant penalty.

These and other amendments may be introduced as the Bill passes through the Oireachtas.

Conclusion

The Planning and Development (Amendment) Bill, 2009 introduces significant changes to the planning system. The main objective of the Bill is to achieve consistency at all planning levels from the National Spatial Strategy to Regional Planning Guidelines, city and county development plans and local area plans. The Bill introduces provisions that require plans to be consistent with any relevant higher level plan. This objective is further reinforced by the core strategy concept and the giving of greater effect to Ministerial guidelines. Whether, however, the Minister is correct in stating that “this is groundbreaking legislation that will ensure that bad planning will not raise its ugly head again” remains to be seen. ♦

Bibliography

Planning and Development (Amendment) Bill, 2009.

DoEHLG, (2009a), Press Release on the Planning and Development (Amendment) Bill, 2009 available at <http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/Planning/News/MainBody,20366,en.htm>.

DoEHLG, (2009b), Regulatory Impact Assessment for the Planning and Development (Amendment) Bill, 2009.

DoEHLG, (2009c), Planning and Development (Amendment) Bill, 2009- Explanatory and Financial Memorandum, 2009.

Dáil Debate on the Planning and Development (Amendment) Bill, 2009, available at <http://www.kildarestreet.com/debates/?id=2010-03-25.350.0>.

O’Brien T, (2010), Planning Bodies ‘ignored National Spatial Strategy’. Irish Times, 10 June.