



Number 63 of 2015

Planning and Development (Amendment) Act 2015



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PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2015

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[No. 63.]

Planning and Development (Amendment) Act 2015.

[2015.]

ACTS REFERRED TO

Multi-Unit Development Act 2011 (No. 2)

Planning and Development Act 2000 (No. 30)



Number 63 of 2015

PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2015

An Act to amend and extend the Planning and Development Acts 2000 to 2015 and to provide for related matters.

[*29th December, 2015*]

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Principal Act” means the Planning and Development Act 2000.

Amendment of section 28 (Ministerial guidelines) of Principal Act

2. Section 28 of the Principal Act is amended by inserting the following after subsection (1B):

“(1C) Guidelines to which subsection (1) relates may contain specific planning policy requirements that, notwithstanding subsection (1), are required to be applied by planning authorities and the Board in the performance of their functions.”.

Amendment of section 34 (permission for development) of Principal Act

3. Section 34 of the Principal Act is amended—

(a) in subsection (2)(a) by inserting the following after subparagraph (i):

“(ia) any guidelines issued by the Minister under section 28,”,

(b) in subsection (2) by inserting the following after paragraph (a):

“(aa) When making its decision in relation to an application under this section, the planning authority shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28.”,

(c) in subsection (2) by inserting the following after paragraph (b):

“(ba) Where specific planning policy requirements of guidelines referred to in subsection (2)(aa) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.”,

(d) in subsection (2) by inserting the following after paragraph (c):

“(d) In this subsection ‘specific planning policy requirements’ means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.”,

and

(e) by inserting the following after subsection (3):

- “(3A) In determining an application for permission that relates to an existing planning permission for a residential multi-unit development (within the meaning of section 1 of the Multi-Unit Development Act 2011) and where the purpose of the application for permission is to take account of specific planning policy requirements (within the meaning given by subsection (2)(d)) of new or revised guidelines issued by the Minister under section 28 with regard to the previously permitted development, the planning authority concerned or the Board (as the case may be) shall, notwithstanding section 34(2)(a), be restricted in its determination of the application to considering the modifications proposed by the applicant.
- (3B) Notwithstanding section 37, no appeal shall be made to the Board in respect of the determination by the planning authority concerned of an application to which subsection (3A) relates unless it would relate to a materially significant change to the approved external appearance of the proposed development.”.

Amendment of section 168 (planning scheme for strategic development zones) of Principal Act

4. Section 168 of the Principal Act is amended by substituting the following for subsection (3A):

- “(3A) A screening for appropriate assessment and, if required, an appropriate assessment of a draft planning scheme shall be carried out in accordance with Part XAB.”.

Amendment of section 169 (making of planning scheme) of Principal Act

5. Section 169 of the Principal Act is amended—

(a) in subsection (3)(b) by substituting the following for subparagraph (i):

- “(i) list the persons or bodies who made submissions or observations for the purposes of subsections (1) and (2),”,

and

(b) by substituting the following for subsection (7):

- “(7) (a) Following consideration of an appeal made under this section, the Board may—
- (i) subject to paragraph (b) and (c) and subsection (7A), approve the making of the planning scheme, with or without any modifications, or
 - (ii) refuse to approve the making of the planning scheme.
- (b) Except where otherwise provided for by and in accordance with paragraph (c) and subsection (7A), the Board shall not approve, on an appeal under this section, a planning scheme with a modification where it determines that the making of the modification would constitute the making of a material change in the overall objectives of the planning scheme concerned.
- (c) If the Board determines that the making of a modification to which, but for this paragraph, paragraph (b) would apply—
- (i) is a change of a minor nature and not likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC¹ on the assessment of the effects of certain plans and programmes on the environment) or on a European site, then it may approve the planning scheme with such a modification and notify the planning authority or each planning authority for the area or areas concerned, of the modification, or
 - (ii) constitutes the making of a material change but would not constitute a change in the overall objectives of the planning scheme concerned, then, subject to subsection (7A), it shall approve the planning scheme with such modification.
- (d) Where the Board approves the making of a planning scheme in accordance with paragraph (a) or (c), the planning authority shall, as soon as practicable, publish notice of the approval of the scheme in at least one newspaper circulating in its area, and shall state that a copy of the planning scheme is available for inspection at a stated place or places, a copy of which shall be made available for inspection accordingly.
- (7A) (a) Before making a decision under subsection (7)(c)(ii) in respect of a planning scheme, the Board shall—
- (i) determine whether the extent and character of the modification it is considering are such that the modification, if it were made, would be likely to have a significant effect on the environment (within the meaning of Annex II of Directive 2001/42/EC) or on a European site, and
 - (ii) for the purpose of so determining, the Board shall have reached

¹ O.J. No. L197, 21.7.2001 p.30

a final decision as to what is the extent and character of any alternative amendment, the making of which it is also considering.

- (b) If the Board determines that the making of a modification referred to in subsection (7)(c)(ii)—
 - (i) is not likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC) or on a European site, then it may approve the planning scheme concerned with the modification, or
 - (ii) is likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC)² or on a European site, then it shall require the relevant planning authority to undertake a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, in relation to the making of the proposed modification.
- (c) Before making a determination under subsection (7)(c)(ii), the Board shall require the relevant planning authority—
 - (i) to send notice and copies of the proposed modification of the planning scheme concerned to the Minister and the prescribed authorities, and
 - (ii) to publish a notice of the proposed modification of the planning scheme concerned in one or more newspapers circulating in that area,

and every such notice shall state—

 - (I) the reason or reasons for the proposed modification,
 - (II) that a copy of the proposed modification, along with any assessment undertaken in accordance with paragraph (b)(ii), may be inspected at a stated place or places and at stated times during a stated period of not less than 4 weeks, and
 - (III) that written submissions or observations with respect to the proposed modification may be made to the planning authority within the stated period, being a period of not less than 4 weeks, and any such submissions or observations will be taken into consideration before making a decision on the proposed modification,

and the copy of the proposed modification shall be made available for inspection accordingly.
- (d) Not later than 8 weeks after giving notice under paragraph (c), or such additional time as may be required to complete any assessment that may be required pursuant to subsection (7A)(b)(ii)

² O.J. No. L197, 21.7.2001 p.30

and agreed with the Board, the planning authority shall prepare a report on any submissions or observations received as a consequence of that notice and shall submit the report to the Board for its consideration.

- (e) A report under paragraph (d) shall—
 - (i) list the persons or bodies who made submissions or observations for the purposes of paragraph (c)(III),
 - (ii) summarise the issues raised in the submissions or observations so made,
 - (iii) include, where and if required for the purposes of subsection (7A)(b)(ii), either or both—
 - (I) the environmental report and strategic environmental assessment, and
 - (II) the Natura impact report and appropriate assessment, of the planning authority, and
 - (iv) give the response of the planning authority to the issues raised, taking account of the proper planning and sustainable development of the area, the overall objectives of the planning scheme, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.
- (f) Where a report has been submitted to the Board under paragraph (d), the planning authority concerned shall, upon being requested by the Board, provide it with copies of such submissions or observations to which that paragraph relates as are so requested.
- (g) The Board shall have regard to any report prepared in accordance with paragraphs (d) and (e), and
- (h) Subject to any obligations that may arise under Part XAB, if the Board makes a determination to make a modification as referred to in subsection (7)(c)(ii), it shall—
 - (i) approve the planning scheme with the modification accordingly,
 - (ii) notify the planning authority or each planning authority for the area or areas concerned of the modification, and
 - (iii) notify any person who made a submission or observation in accordance with paragraph (c)(III) of the determination under subsection (7)(c).”.

Amendment of planning scheme

6. The Principal Act is amended by inserting the following after section 170:

- “170A.**(1) A planning authority may, on its own behalf where it is promoting a planning scheme, or on behalf of a development agency which is promoting a planning scheme, make an application to the Board to request an amendment under this section to a planning scheme.
- (2) Where an application under subsection (1) has been made, the Board shall make a decision, in a manner provided for by this section, as to whether the making of the amendment to which the request relates would constitute the making of a material change to the planning scheme.
- (3) (a) Where the amendment satisfies each of the criteria referred to in subparagraphs (i) to (iv) of paragraph (b) and may satisfy the criteria referred to in subparagraph (v) of that paragraph, the Board shall require the planning authority to amend the planning scheme in compliance with the procedure laid down in section 169 and that section shall be construed and have effect accordingly.
- (b) The criteria referred to in paragraph (a) are that the amendment to the planning scheme concerned—
- (i) would not constitute a change in the overall objectives of the planning scheme concerned,
 - (ii) would not relate to already developed land in the planning scheme,
 - (iii) would not significantly increase or decrease the overall floor area or density of proposed development,
 - (iv) would not adversely affect or diminish the amenity of the area that is the subject of the proposed amendment, and
 - (v) may be required due to considerations of an infrastructural, commercial or economic nature.
- (4) If the Board determines that the making of the amendment to a planning scheme—
- (a) is a change of a minor nature and not likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment) or on a European site, then it may approve the making of the amendment to the planning scheme and notify the planning authority or each planning authority for the area or areas concerned, of the amendment, or
 - (b) constitutes the making of a material change but is within the criteria set out in subsection (3)(b), then, subject to subsection (5), it may approve the making of the amendment to the planning scheme with such amendment, or an alternate amendment, being an amendment that would be different from that to which the request

relates but would not represent, in the opinion of the Board, a more significant change than that which was proposed.

(5) Before making a determination to which subsection (4)(b) would relate, the Board shall establish whether or not the extent and character—

(a) of the amendment to which subsection (1) relates, and

(b) of any alternative amendment it is considering and to which subsection (4)(b) relates,

are such that, if the amendment were to be made, it would be likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC) or on a European site and, for that purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative amendment, the making of which it is also considering.

(6) If the Board determines that the making of either kind of amendment referred to in subsection (4)(b)—

(a) is not likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC) or on a European site, it shall proceed to make a determination under subsection (4)(b), or

(b) is likely to have significant effects on the environment (within the meaning of Annex II of Directive 2001/42/EC) or on a European site, then it shall require the planning authority to undertake a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, in relation to the making of the proposed amendment or alternative amendment.

(7) Before making a determination to which subsection (4)(b) would relate, the Board shall require the planning authority concerned—

(a) to send notice and copies of the proposed amendment of the planning scheme concerned to the Minister and the prescribed authorities, and

(b) to publish a notice of that proposed amendment in one or more newspapers circulating in the area concerned,

and every such notice shall state—

(i) the reason or reasons for the proposed amendment,

(ii) that a copy of the proposed amendment, along with any assessment undertaken according to subsection (6)(b), may be inspected at a stated place or places and at stated times during a stated period of not less than 4 weeks, and

(iii) that written submissions or observations with respect to the

proposed amendment may be made to the planning authority within the stated period, being a period of not less than 4 weeks, and any such submissions or observations will be taken into consideration before making a decision on the proposed amendment,

and the copy of the proposed amendment shall be made available for inspection accordingly.

- (8) Not later than 8 weeks after giving notice under subsection (7), or such additional time as may be required to complete any assessment that may be required pursuant to subsection (6)(b) and agreed with the Board, the planning authority shall prepare a report on any submissions or observations received as a consequence of that notice and shall submit the report to the Board for its consideration.
- (9) A report under subsection (8) shall—
 - (a) list the persons or bodies who made submissions or observations for the purposes of subsection (7)(iii),
 - (b) summarise the issues raised in the submissions or observations so made,
 - (c) include, where and if required for the purposes of subsection (6)(b), either or both—
 - (i) the environmental report and strategic environmental assessment, and
 - (ii) the Natura impact report and appropriate assessment, of the planning authority, and
 - (d) give the response of the planning authority to the issues raised, taking account of the proper planning and sustainable development of the area, the overall objectives of the planning scheme, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.
- (10) The Board shall have regard to any report prepared in accordance with subsections (8) and (9).
- (11) Subject to any obligations that may arise under Part XAB, if the Board makes a determination to make an amendment of any kind referred to in subsection (4), it shall—
 - (a) approve the making of an amendment to the planning scheme accordingly,
 - (b) notify the planning authority or each planning authority for the area or areas concerned of the amendment, and
 - (c) notify any person who made a submission or observation in

accordance subsection (7)(iii) of its determination under subsection (4).

- (12) The amendment of a planning scheme shall not prejudice the validity of any planning permission granted or anything done in accordance with the terms of the scheme before it was amended except in accordance with the terms of this Act.
- (13) Without prejudice to the generality of subsection (12), sections 40 and 42 shall apply to any permission granted under this Part.”.

Revocation of planning scheme

7. The Principal Act is amended by substituting the following for section 171:

- “**171.**(1) A planning authority may by resolution, with the consent of the relevant development agency, revoke a planning scheme made under this Part.
- (2) Notice of the revocation of a planning scheme under this section shall be given in at least one newspaper circulating in the area of the planning authority.
- (3) The revocation of a planning scheme shall not prejudice the validity of any planning permission granted or anything done in accordance with the terms of the scheme before it was revoked except in accordance with the terms of this Act.
- (4) Without prejudice to the generality of subsection (3), sections 40 and 42 shall apply to any permission granted under this Part.”.

Amendment of Part XAB (appropriate assessment) of Principal Act

8. Part XAB of the Principal Act is amended—

- (a) in section 177R(1) by inserting the following after paragraph (b) of the definition of “Land use plan”:
 - “(ba) an amendment of a planning scheme in respect of all or any part of a strategic development zone,”,
- and
- (b) in section 177S(2) by inserting the following after paragraph (b):
 - “(ba) in relation to a proposed amendment of a planning scheme in respect of all or any part of a strategic development zone, the Board.”,

Short title, construction and collective citation

9. (1) This Act may be cited as the Planning and Development (Amendment) Act 2015.
- (2) This Act shall be included in the collective citation “Planning and Development Acts

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2000 to 2015” and shall be read together as one with those Acts.