

SundayTribune

Straight Talking, Bill Nowlan – New bill sets up a smarter planning framework for all

Legislation has been passed amending the planning and development process, moving us away from questionable ethics and hopefully back to business

Traditionally July and August are the slack months in the property industry and this year looks like being no exception. Apart from Nama and receiverships virtually nothing is happening. However, before the Dáil and Senate slipped away on holidays one piece of legislation was passed which is highly significant for many property owners. The long debated Planning and Development (Amendment) Bill was approved and only remains to be signed by the President.

The bill is not long (36 sections) but has major technical changes relevant to how development plans are prepared and approved (now 75% of councillors have to approve the plan or any changes). It moves Ireland's planning system to a new robust paradigm which is top-down or strategy-based on the reality of resource availability, and not on the whim of local pressure groups or other interested parties. It also enhances the powers of the minister to discipline erring councils. No more self-serving development plans that ignore the big picture issues. The bill is too complex to cover here but all professional planners and property people should take a copy of the legislation with them for reading while on holidays because it will significantly impact on their lives from the autumn on.

One section is of vital importance to some property owners – that of the lifespan of planning permissions. Up to now the life of a planning permission expired at the end of five years. Effectively this meant that a planning permission only had a shelf life of about three-and-a-half or four years when one allowed for the construction period. The old Act provided that if the construction was well under way the planning permission could be extended if "substantial" works were carried out but if no works had been carried out then the permission withered. There was much debate about the clear definition of "substantial works". Many will recall the court case when Michael McDowell SC was refused an extension of his expiring planning permission for a part-built holiday home in Co Leitrim. He won and we all benefited from the clarification.

Section 23 amends Section 42 (1) of the existing Planning and Development Act 2000, to provide for an extension of a planning permission for up to five years in circumstances where significant works have not been carried out but where there are commercial, economic or technical reasons beyond the control of the applicant which

substantially mitigate against either the commencement of development or the carrying out of substantial works.

This section allows a number of my clients to sleep a lot easier at night and it will also significantly impact on many projects going into Nama. Why is this so significant?

Firstly, planning permissions aren't cheap. For significant commercial developments the price starts at over €100,000 and quickly goes north of this as complexity builds up and more and more information is required by the planners. It is not unusual to spend €500,000 on a planning application for a significant commercial application in an urban environment. There is also the possible cost of an appeal to An Bord Pleanála.

Secondly, a fresh planning application would have to comply with the then current development plan if it is to succeed. Many requirements in development plans will have changed as a result of planning circumstances and as a result of the new legislation. This by-passing of new requirements will not make everyone happy and it remains to be seen how planning authorities will deal with conflicts.

Thirdly the delay and uncertainty involved with expiring permissions significantly undermines the capacity of (the few) viable projects to proceed. I have first-hand experience of a project (non commercial for a charity) that could not raise funding because of the risk that the permission would have expired before the builder got to the point where significant works had been executed thus enabling a request for an extension.

Finally, huge uncertainty is removed from the value of development land and even part-built situations. The fact that a planning permission is expiring, and without substantial works being executed, effectively meant that property valuers have to assume that no planning permission existed in carrying out a valuation. For example, a one-acre residential site with planning permission in, say, a rural/scenic environment where there is now a policy ban on such houses, might have its value reduced from about €150,000 to approaching agricultural value. Now the valuation should remain at or close to the old level of €150,000.

The legislation sets out the procedures for renewing permissions with two key conditions. Firstly the application must be made before the expiry of the old permission and secondly there must be pre-consultation with the planning authority. There will also be regulations.

It is not clear what conditions, if any, a planning authority might impose on granting an extension but these may be covered by the regulations. In the current environment, property owners should not have much trouble demonstrating that there are 'commercial or economic' reasons for not proceeding with their project.

Undoubtedly my own office's planning team will be wrestling with these issues for clients over the next few months as a huge number of planning permissions were granted in the period between 2005 and 2007 which will need urgent attention if they are not to lapse and destroy the underlying development value.

The changes should also be welcomed by the construction industry as projects that had got delayed by the economic environment now don't have the added delays of expiring planning permissions.

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