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Meeting with the Joint Committee on Environment, Culture and the Gaeltacht on the General Scheme of the Planning and Development (No.1) Bill 2014
20th January 2015

Opening Statement

1.0 Introduction

1.1 We thank the committee for the invitation to address you on the General Scheme of the Planning and Development (No.1) Bill 2014. Chief witness is Ms. Mary Hughes MIPI, President of the Irish Planning Institute, with:

- Mr. Brendan Allen MIPI, Vice President of the Institute
- Ms. Deirdre Fallon MIPI, Honorary Secretary of the Institute
- Mr. John Spain MIPI, a member of the Institute's Council and a Past President.

1.2 The Irish Planning Institute (IPI) was founded in 1975 and is the all-island professional body representing the majority of professional planners engaged in physical, spatial and environmental planning in Ireland and Irish planners practicing overseas. The Irish Planning Institute's mission is to advance planning by serving, improving and promoting the planning profession for the benefit of the community and the common good. Our members work in central government, private practice, agencies, third level institutes, planning authorities in the Republic of Ireland and Northern Ireland, An Bord Pleanála and elsewhere.

1.3 There is no doubt that elements of the planning process need to be streamlined but as highlighted at our last meeting, the IPI has concerns regarding the sequencing of forthcoming legislation and the fact that we are proposing to amend legislation to stimulate growth before reforming key elements of the system, namely:

- A Planning Regulator arising from the Mahon Report;
- A Government policy on planning;
- The National Planning Framework succeeding the National Spatial Strategy.

We hope that more detail on proposals for these key aspects will be available shortly as part of, or in conjunction with, details of the Planning and Development (No.2) Bill.

2.0 Review of Part V

2.1 The IPI supports the principle of a mechanism such as Part V, believing that it is consistent with its aims of supporting the common good and the development of balanced and sustainable communities. The Institute strongly agrees that the complexity of existing legislation (including a lack of definitions) has hampered implementation and delivery of housing under Part V and we welcome efforts to improve its efficiency and operation.

2.2 Housing affordability is not static, and, as was seen dramatically in recent years, is capable of rapid change in a short duration, affecting both affordability levels and the need for social and affordable housing. Given the increase in affordability over recent years the Institute appreciates the rationale for the shift in focus to social from social and affordable housing. However given the rapidly improving market in Dublin in particular we believe provision for some affordable element for the Greater Dublin Area should be considered. Concerns have been expressed that 10 per cent may be insufficient, particularly in Dublin.

2.3 An authority's approach to securing benefits through the Part V process should be grounded in evidence-based policy and with a regional planning component. The IPI believes that more effective forecasting of housing supply and monitoring of delivery of housing in areas where supply is needed, is required. This suggests that the process of preparing housing strategies may need to be amended

and that authorities should be more responsive to change when it appears that the recommendations of a housing strategy are obsolete or require amendment. It is essential that housing strategies and core strategies align and are considered together.

2.4 The Heads of Bill require the provision of a maximum of 10 per cent social housing on developments in excess of 9 no. units, except in exceptional circumstances. The exemption of 9 no. units could lead to many separate smaller schemes being built in an area with a social housing provision requirement and would not deliver the housing or social mix objectives of the provisions. The 'exceptional circumstances' alluded to needs to be carefully and succinctly defined so that it supports the provision of housing for local needs. The Bill also needs to consider and provide for circumstances where the development cost of individual units proposed, particularly in smaller more exclusive schemes, result in unviable and unaffordable social housing. A register of social housing provision should be maintained to enable the balanced tenure objectives to be met.

2.5 Part V must be made more efficient and its practical implementation and delivery must be linked to statutory timeframes thereby binding the local authority and the applicant to agreement schedules and timelines. The General Scheme of the Bill does not provide for this.

2.6 The disparity between the role of the market in providing social housing in urban areas and rural areas must be considered. The aim of Part V to promote greater social inclusion is equally applicable in rural areas. The General Scheme does not provide for this and could make building houses in rural areas a more attractive option. Building a house in a rural area must require meeting the same obligations as building a house in an urban area, including social housing provision.

2.7 The retrospective provision of Part V to existing permitted developments may prove to be overly onerous and complex. The legislation needs to clearly define what parts/elements of Part V can be retrospectively applied. Also there may be complexities associated with development contributions as the element of the scheme originally subject to social housing would not have attracted a development contribution levy. In addition, the matter will be further complicated in scenarios whereby extant permissions exist on sites that are no longer zoned – retrospective application in these instances may not be possible as the sites are no longer eligible for Part V.

3.0 Vacant Site Levy

3.1 Overall the Institute recommends that a site or land value tax be considered as an alternative to the vacant site levy to avoid a patchwork of piecemeal fiscal initiatives. Furthermore any tax/levy introduced should have a mechanism which ensures that land in public ownership is subject to the levy. Incentive schemes for redevelopment of vacant sites need to be considered as a positive option to leaving such sites vacant.

3.2 The relationship with derelict sites legislation needs to be more explicit and the operation of the derelict sites legislation needs to be reconsidered. One challenge with the viability of developing land is the fragmentation of sites around major urban areas. A more proactive approach to land assembly is required. In France, Germany and the Netherlands and in parts of the USA, Australia and New Zealand, local authorities play an active role in land assembly which is often coupled with Compulsory Purchase powers. The General Scheme of the Bill does not provide for this. Consideration should be given to applying the levy to 'key strategic sites' and larger sites in urban areas and not necessarily all sites. There needs to be a closer correlation between the vacant site levy application criteria and the development plan/local area plan system. The vacant site levy applies to towns with a population of 3,000 whereas local area plans are only required for towns with a population of 5,000 people. It may be the case that many towns with a population of 3,000 people do not have a detailed development plan/local area plan whereby vacant sites are identified with key objectives. Some consideration needs to be given to exemptions for vacant sites where there is evidence to suggest that there is no demand for additional housing or community facilities.

3.3 Clarity, consistency and equity on how the levy is calculated and administered across local authorities is essential. The Institute wishes to avoid any measures that could result in pressure for/facilitate bad development that would not be allowed otherwise or which would result in the erection of 'vacant buildings'. Furthermore, any money accrued under the vacant site levy should be ring-fenced to facilitate appropriate town centre regeneration.

3.4 Legal implications of exemptions and the administration and investigation of these (such as determining legal ownership which would not generally be a planning function) need to be carefully considered, particularly in light of resource pressures on planning authorities.

3.5 Consideration should be given to potential financial incentives for bringing vacant sites into use, particularly for more innovative or community uses. These could be stated in the development plan. The new *Community Empowerment (Scotland) Bill 2014*[1] is an innovative example of a balanced approach to dealing with vacant buildings/sites and enabling and incentivising the reuse of buildings/sites, which are currently blighting local environments, by all sectors of 'the market'. Part 5 of the Scottish Bill's Explanatory Notes states: *Paragraph 73: A core purpose of the legislation is to allow community bodies to identify for themselves which assets would help them develop their communities. It is founded on the principle that the transfer process should be initiated by a community body with an interest in an asset, rather than public bodies looking to dispose of an asset.*

3.6 The legislation should not just relate to vacant sites. There is also a need to make provision for the refurbishment of existing buildings, particularly in historic town centres, Architectural Conversation Areas (ACAs) etc.

4.0 Reduced Development Contributions

4.1 The Institute supports the key aim for future development contribution schemes; that they must promote sustainable development patterns, secure investment in capital infrastructure and encourage economic activity. The criteria for any proposed reductions or exemptions should be set out clearly in the adopted development contribution scheme and should be subject to the rigors of public consultation.

4.2 There needs to be more emphasis on time periods and to provide for more consistency in general for development contributions schemes. There is concern that uncertainty around development contributions could hold up development due to fears that schemes that are currently viable may become unviable. Any changes of this nature, or the introduction of the vacant site levy, risk creating uncertainty that would affect funding for development. Development contributions should be used proactively.

4.3 There is a requirement for a mechanism to assist with the funding of pieces of local infrastructure up front to speed up the delivery of housing (and commercial projects). In the UK, Revolving Infrastructure Funds (RIFs) are being introduced as a funding mechanism for infrastructure ahead of developments being completed. The fund enables the delivery of infrastructure required to unlock or serve development that will bring about economic and/or housing growth. By providing this key infrastructure upfront, planning risk is reduced, as are up-front planning obligation costs, enabling development to come forward quicker than it would ordinarily do. The new developments will also have a reduced impact on existing communities, as new infrastructure required to serve them will be in place prior to the completion of large-scale development. The Bill should consider something similar to the Revolving Infrastructure Fund (RIF) possibly funded by the European Investment Bank (EIB) to provide upfront funding for the completion.

5.0 Modification of Duration of Planning Permissions

5.1 The principle proposed under this amendment conflicts with the basic structure of the planning system which consists of a policy mechanism in the form of a statutory planning document with a policy lifetime (i.e. duration of the development plan or local area plan) and an implementation mechanism in the form of a planning permission also with a lifetime (i.e. normally five years). Just as the planning authority is not required to review the development plan within its life time (although it may choose to do so), the implementation agent in the form of the developer who has applied for planning permission should not be required to review the planning permission during its lifetime. However in general longer term planning permissions (i.e. over five years) should only be implemented in exceptional cases (regard could be had to introducing a definition of such).

5.2 Market flexibility requires that a development can modify phasing of a development and planning conditions in relation to phasing should normally only deal with the sequence of stages (i.e. which parts of the development get built first or which piece of infrastructure must be implemented before a next phase can be considered) rather than the precise timing of the implementation. The 'Use It or Lose It' proposal is not only overly restrictive on the private developer (as it creates potential uncertainty) but is also contrary to the design of the planning system.

[1] http://www.scotland.gov.uk/Topics/People/engage

6.0 Miscellaneous

6.1 Existing planning legislation has a number of deficiencies and there is no proposal within the General Scheme to address these. In particular legislation relating to quarries and peat extraction areas and wetlands needs redrafting and consideration.

6.2 There are a number of additional areas where planning legislation should be reviewed to give effect to a more efficient and transparent planning system.

- Statutory provisions should be put in place to give statutory effect to compliance approvals so that they can be relied on by applicants.
- Certificates of lawfulness of use for development should be introduced to overcome the inconsistency with the Section 5 declaration process.
- Minor amendments to permitted development should be allowed in certain circumstances as long as they are not considered material in the context of the overall development.
- In general except in more complex and exceptional cases An Bord Pleanála should be tied to statutory timeframes for making decisions on standard planning applications and should not be entitled to exceed a specific statutory timeframe.
- Legislation regarding Strategic Development Zones (SDZs) should be reviewed to enable more progressive and flexible planning as circumstances dictate.
- There is no provision in planning legislation to modify or amend an existing planning permission. This should be introduced.
- Provision should be made to allow the variation or material contravention of a local area plan, including allowing planning authorities add or delete ACAs and protected structures.

7.0 Conclusion

7.1 As expressed in its submission to the Department of the Environment, Community and Local Government on the *Development Management Guidelines* (March 2014) and in our evidence to the Committee in November 2014, the Institute is conscious of the need to avoid untimely delays in planning and the need to bring a greater degree of certainty for prospective developers. However, any streamlining arising from this or other legislation must have regard to the rights of the public to participate in decision-making; transparency and accountability in the planning process; and the need to safeguard proper planning and sustainable development.