Solving the housing crisis
Urban Regeneration and Housing Act 2015

Background
Following the dramatic transition from boom to bust, wherein the Irish construction industry moved from completing 93,000 houses in 2006 to 8,000 houses in 2013, Ireland has a housing supply shortage. Born out of the supply shortage and the Government’s Construction Strategy 2020 and Social Housing Strategy 2020, the Urban Regeneration and Housing Act 2015 (the “Act”) has been introduced to make provision for vacant land and social and affordable housing. The Minister of State at the Department of the Environment with Special Responsibility for Housing, Planning and Coordination of the Construction 2020 Strategy, Paudie Coffey TD, (the “Minister”) in introducing the Bill to the Seanad said that the Government aims to return to a market equilibrium situation where housing supply equals demand and where the sector is operating at a sustainable level. While the Act alone will not put an end to the housing supply problems, which are multi-faceted and require a comprehensive and co-ordinated approach, the intention is that it will help make a start in addressing the issue.
**Vacant Sites**

One of the key measures in the Act is the introduction of a vacant site levy to incentivise the development of vacant sites in central urban areas for housing and regeneration purposes. The introduction of a levy of this nature is not a novel concept and there is legal precedent for measures of this kind, namely the Derelict Sites Act 1990. Both Acts are examples of measures taken in relation to private property rights for the benefit of the overall common good.

Part 2 of the Act provides a definition of what constitutes a vacant site, the establishment of a vacant sites register (the “register”), entry onto the register, a process for appealing entry onto the register and the valuation and levying of vacant sites.

In the case of residential land a vacant site is defined as:

(i) a wholly or majorly vacant or idle site;
(ii) located in an area where there is a need for housing; and
(iii) is suitable for the provision of housing.

In the case of regeneration land a vacant site is defined as

(i) a wholly or majorly vacant site;
(ii) that has an adverse effects on the existing amenities or character of the area.

The Act provides that a site is an area of land exceeding 0.05 hectares, but which does not include a structure that is a person’s home. When first presented the Bill provided that a site would be an area of land exceeding 0.1 hectares, however, following debate the Government reduced the size threshold to bring a greater range of sites within the Act’s scope.

**The Register**

Section 6 provides for the establishment of the register. Beginning 1 January 2017, each local authority must establish a register of residential and regeneration lands which, in the local authority’s opinion, were vacant sites during the preceding year. Before 1 June 2018, each local authority will notify vacant site owners of the entry of their property onto the register and of the local authority’s intention to charge a levy. The entry of a site on the register can be appealed to An Bord Pleanala within 28 days of a notice of intention to enter the site on the register.

Following entry of a site onto the register, the local authority must determine the market value of the site and notify the site owner of the valuation. Thereafter, the market value must be reviewed at least once every three years. The valuation may be appealed to the Valuation Tribunal. The register will be publicly available and will be useful market information for developers and investors.
The Levy

Section 15 provides that all vacant sites will be charged and levied in accordance with their market values. The levy will be charged each year from 1 January 2018 and will be payable in arrears each year from 1 January 2019. The levy will be 3% of the market value of the vacant site. However, where a site is subject to a site loan greater than the market value of the site the levy will be reduced to zero, where a site loan is greater than 75% of the market value of the site the levy will be reduced to 0.75% and where site loan is greater than 50% of the market value of the site the levy will be reduced to 1.5%.

Section 17 provides an exemption to the levy in circumstances of death or change of ownership. It provides that in any year where there is a change in ownership of a vacant site the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, will be zero. However the change of ownership exemption will not apply for transfers between associated companies or connected persons or transfers for the sole or principal purpose of avoiding the levy.

In the case of a vacant site which is also a derelict site under the Derelict Sites Act 1990, only the vacant site levy will still be payable.

Charge on Land

What recourse will exist in the event of a failure to pay the levy? Where the levy is due and owing it will become a charge on the land. Section 21 provides that the vendor of a vacant site entered on the register must, before the completion of the sale of the site, pay to the local authority any vacant site levy due and owing in respect of that site. It further provides that, on or before completion the vendor of the site must provide the purchaser with a certificate of discharge for each year in respect of which the site was a vacant site.

The vacant site levy has been welcomed by those who see the hoarding of sites as a practice which has held back development in many parts of the country. In Dublin, Dublin City Council estimates that more than 61 hectares of vacant or derelict land spread over 282 sites in central Dublin could be developed for residential or commercial property. It is hoped that the Act will be the catalyst for this development.

Social and Affordable Housing

Action 9 of the Construction Strategy 2020 called for a review of Part V of the Planning and Development Act 2000 (“Part V”) to ensure it was delivering social and affordable housing as intended. Under Part V developers are obliged to set aside 20% of a residential scheme for social or affordable housing for local authorities. However, Part V allows developers to make a payment in lieu of providing such social housing. While the review noted the positive outcomes of Part V it concluded that, as the economic context within which the Part V provisions were developed has changed, Part V has delivered very little in terms of social housing in recent years. However, it is considered that the Part V mechanism, with appropriate adjustments, has the potential to again be a significant contributor to future social housing provision.

The Act provides that where a residential scheme is greater than 9 units developers are obliged to set aside 10% of the scheme for social or affordable housing for local authorities. The option of making of payment in lieu of social housing is no longer available. Under the Act, the new arrangements can also be retrospectively applied to existing planning permissions where works have not commenced. In line with Social Housing Strategy, the Minister has estimated that 4,000 additional social housing units will be delivered under the new arrangements by 2020.

Reduced Development Contributions

There have been many calls from the construction industry for existing development contributions to be reduced to kickstart construction. Planning permissions in place pre-2013 continue to be subject to development contributions determined at the time of the grant of planning and development contributions for similar sites have in many instances, been reduced considerably since that time. The Act provides that where a new development contribution scheme is made by a planning authority that the new scheme will have retrospective effect where the development or part of the development has not yet commenced. The new scheme will also apply to unsold housing units in a residential development.
Concluding Remarks

The Government has sought to use the “carrot and stick” approach to resolving the issue of vacant development land. The carrot is to allow for reduced development contributions and a 10% reduction in the percentage of social and affordable housing that must be set aside by developers. The stick is the vacant site levy which will operate from 1 January 2018. According to the Government, the levy is intended to be pro-development, pro-investment, pro-business and pro-community. It hopes that the vacant site levy will incentivise and accelerate development of vacant sites by existing land owners or result in the sale of land to those who have the interest and resources to do so.

However, a number of concerns arise. First, there remains difficulty in securing development finance and it remains uneconomical to develop certain vacant sites. There is concern that the levy will add to these existing financial issues. Second, there is concern that, despite the requirement to discharge the vacant site levy before completion of any sale, in reality the cost of the levy will be passed from the current site owners to prospective purchasers resulting in an increase to the already rising cost of development land. Third, there is concern that the levy will penalise smaller landowners and genuine developers by forcing sales to speculating investors who, given the rising cost of development land, may purchase with the intention of hoarding sites and selling for profit. Finally, there is concern that the Act fails to provide adequate exemptions. In particular, there is no exemption for vacant sites that are not of strategic importance nor vacant sites for which planning is being sought through the planning process.

Of course, the Act is only one of a number of measures planned by the Government to seek to resolve the housing crisis. It is expected that an announcement relating to the Government’s capital plan for the next five years will be made in September 2015, which should include projects in social housing. So it’s ‘wait and see’ for now.