Streamlining the Planning Process?
A first look at the Planning and Development (Amendment) Act 2015

The Planning and Development (Amendment) Act 2015 (the “Act”) was enacted on 29 December 2015. The Act was introduced against a backdrop of continued housing supply difficulties and indeed the purpose of the Act is to give legislative effect to certain recommendations of the out-going Government’s interim housing programme ‘Stabilising Rents, Boosting Supply’.

In particular, the Act seeks to:

– strengthen the status of guidelines issued by the Minister for Environment, Community and Local Government (the “Minister”) to local authorities to ensure their consistent application; and

– streamline the process for the making of modifications to Strategic Development Zone planning schemes.

Guidelines – One Shoe Fits All?
The Planning and Development Act 2000 (the “Planning and Development Act”) introduced the Minister’s power to issue guidelines to local authorities for the proper performance of their planning functions, for example in the determination of planning applications and in the adoption of development plans. Pursuant to this power, the Minister frequently issues guidelines on a wide range of matters which local authorities must ‘have regard to’, but are not bound by. However, the Act introduces ‘Specific Planning Policy Requirements’ which local authorities and An Bord Pleanála are bound by in the exercise of their functions. The Specific Planning Policy Requirements constrain local authorities’ normal discretion and take precedence over local development plans. The Specific Planning Policy Requirements facilitate the introduction of the widely debated Department of Environment, Community and Local Government’s (the “Department”) ‘Design Standards for New Apartments’, however they may apply to any planning function and it remains to be seen how the Minister will exercise his or her enhanced powers in the future.

The out-going Government advises that it introduced the Act to ensure improved consistency and certainty in the planning process by distinguishing between matters which are suitable to be determined locally or nationally. In short, it is intended to prevent a multiplicity of planning approaches throughout the country. However, certain industry stakeholders have voiced concern that the purpose of local development plans, to react to local circumstance and to tailor policies to local needs and demands, has been undermined (albeit there will still be some scope for developments to be tailored to local circumstances). Indeed, certain local authorities have claimed the Act dispenses with their local expertise and knowledge. In exercising his or her enhanced powers, it remains to be seen how the Minister will achieve the correct balance between national and local needs.
Strategic Development Zones – Making Modifications

The Act also introduces much needed reform of the modification process in respect of Strategic Development Zones ("SDZs"). The Planning and Development Act introduced the concept of SDZs, namely the designation of one or more sites to facilitate specified development of economic or social importance to the State. Within 2 years of this designation, a planning scheme must be made for the site. Broadly, the steps to form such a planning scheme are:

- a development agency prepares a draft planning scheme (a "Draft Scheme") and submits the Draft Scheme to the relevant local authority
- the local authority sends copies of the Draft Scheme to An Bord Pleanála and the Minister and publishes notice of the Draft Scheme in local newspapers
- third parties may send written submissions or observations on the Draft Scheme to the local authority and the manager of the local authority must prepare a report on the third party written submissions received
- the Draft Scheme is deemed approved unless the local authority (i) makes modifications or (ii) rejects the Draft Scheme
- the decision of the local authority may be appealed to An Bord Pleanála within 4 weeks of the date of the decision
- An Bord Pleanála may (i) approve, with or without modifications, or (ii) reject the Draft Scheme.

Under this regime, An Bord Pleanála could approve a Draft Scheme with minor modifications only. As it could not approve material modifications, an unhappy result was the refusal of a Draft Scheme and the re-commencement of the process from the beginning. However, under the Act, An Bord Pleanála can now:

- approve both minor and material modifications to a Draft Scheme
- hear an application from a local authority for an amendment to an existing SDZ.

These reforms will save considerable time, money and effort in the preparation of planning schemes for SDZs and, as a consequence, these reforms will facilitate the earlier development of SDZs.

Conclusion

The introduction of the Act is one of a number of planning reforms introduced in 2015, reflecting the appetite for planning reform in order to stimulate construction and make it more commercially viable. The introduction of this Act is certainly another step to kick-start the construction industry. What next steps can we expect? We understand industry stakeholders are continuing to lobby for a reduction in the cost of planning applications and the time of planning application appeals but, for now, it is a wait and see what planning reforms will be introduced in 2016.

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