

SUBMISSION ON PLANNING AND DEVELOPMENT BILL, 1999

Comhar welcomes the broad thrust of the Bill, in particular:

- increased public participation in the planning process
- the placing of a framework for assessing environmental implications of regional planning guidelines, development plans and local area plans
- the reintroduction of environmental considerations at local authority level for activities that require IPC or Waste licences.

Comhar's principal concern with this Bill reflects our commitment to sustainable development, which is broadly defined as follows:

"Development which meets the needs of the present without compromising the ability of future generations to meet their own needs." The "needs" include social needs, i.e.

- promoting social inclusion
- minimising unfair distribution of the costs of environmental protection
- maximising local input to decisions that have effect locally.

Our comments are grouped into 6 main headings:

Participatory Democracy

- (1) Comhar welcomes the fact that third party submissions are given a statutory basis - Section 34(3)(b) - and will therefore *have* to be taken into account by the Planning Authority.
- (2) Comhar is opposed to the principle of charging persons to make submissions and **recommend that Section 33(2)(c) should be omitted.**

Comhar feels that the implementation of a prescribed fee for making submissions:

- Would be contrary to the principle of participatory democracy
- Would be costly for local authorities administratively unless a higher fee was charged
- Could lead to the exclusion of comments made in the interest of the public good.

- (3) Comhar does not agree with the proposed restrictions on the right to appeal to An Bord Pleanála and we suggest that **Section 36(1)(a) be amended** to read as follows:

36 (1) (a) An applicant for permission and any other third party may at any time before the expiration of the appropriate period, appeal to the Board against a decision of a planning authority under section 34.

Comhar feels that such a restriction is contrary to the principle of the right to appeal for all those who will be affected by the proposed development, for example:

- Some people will not have seen a site notice and may not become aware of the application within the time period available for submissions at Local Authority level
- Some site notices fall off or are removed before the one-month period is up
- A person may have not made a submission on the original application, but wish to appeal some aspect of the conditions imposed by the Planning Authority.

- (4) Much of the delay in bringing major projects to implementation has been caused by the judicial review process. Section 48 attempts to restrict those who may apply for judicial review. However it is the view of Comhar that the net effect of **Section 48 (4) (b) (iv)** will be to restrict only certain interest groups and individuals from applying to the High Court. Other interest groups such as landowners will not be restricted.

The last part of the final paragraph of this sub-section should therefore be deleted, i.e. *“and that the applicant has a substantial interest in the matter which is the subject of the application”*. If an alternative wording is substituted it should be to the effect that *“the applicant can satisfy the High Court of a legitimate (non-vexatious) interest in the matter”*.

SEA and significant effects on the Environment

- (5) Sections 10(5)(a), 19(5)(a) and 23(3)(a) all refer to the likely significant effects on the environment in implementing development plans, local area plans and regional planning guidelines. The wording in these subsections implies that an Environmental Impact Statement should be produced (refer to the definition of an EIS in section 2), which would not be appropriate for development plans and regional planning guidelines in particular.

We feel that this sub-section is really concerned with the process of Strategic Environmental Assessment (SEA) and we propose, that in the case of development plans,

that **Section 10(5)(a)** be removed from **Section 10** and the following subsection be inserted in **Section 11**:

(a) Development Plans shall be subject to a Strategic Environmental Assessment

(b) The Minister may by regulations make further provisions in relation to the manner in which paragraph (a) may be complied with.

We recommend that **similar changes are made to the wording of Section 19(5)(a) and Section 23(3)(a)**.

Consistency in the Hierarchy of Plans

- (6) The proposal to bring the public consultation process to the beginning of the preparation of development plans should be carried through to the preparation of local area plans. Comhar suggests **that Section 20(1) should be amended to read:**

20 (1) A planning authority shall consult the public when preparing, amending or revoking a local area plan, including consultations with any local residents, public sector agencies, non governmental agencies, local community groups and commercial and business interests within the area.

- (7) Again for consistency when considering an application made for a permission we suggest that the planning authority should also take into account the provisions of any local area plan. Therefore we suggest **that the following be inserted in Section 34(2)(a):**

(vii) the provisions of any local area plan

- (8) Comhar considers that the making of regional planning guidelines should be mandatory and **Section 21(1) should be amended accordingly to read:**

21 (1) A regional authority shall make regional planning guidelines

Regional planning guidelines should be subject to some time limits and **we suggest the amendment of Section 26(1)** for this reason. The following wording is suggested:

26 (1) Regional authorities shall review their regional planning guidelines every 6 years and make new guidelines every 10 years, or at the direction of the Minister.

Since regional planning guidelines have a longer currency than development plans then **Section 27(5) may need to be deleted or amended.**

- (9) Comhar suggests that there should be an explicit time frame for the life of a Strategic Development Zone (Section 153(11)).

Housing

- (10) Comhar welcomes the initiative to bring housing need into the centre of the planning and development process.

Comhar considers that aspects of the housing strategy as defined in Section 80, e.g. Section 80 (4) (a) (ii), will require frequent review on an annual basis at least. Since the process of making a variation to the development plan takes some months to complete, we feel that a simpler method of incorporating changes in the housing strategy would be more appropriate. Comhar recommends that **adjustments to the housing strategy should be exempt from the requirement to carry out a formal variation of the development plan.**

The EPA and Local Authorities

- (11) Comhar welcomes the proposal to include environmental considerations when a local authority decide to refuse a grant of permission for activities that require IPC or Waste licences. (Sections 232 and 233).

Resources

- (12) Comhar considers that this Bill has major resource implications, particularly on staff at local authority level. Without adequate resources the Bill cannot be implemented properly and this will lead to cynicism and loss of faith in the fairness of the planning process. Finding a funding mechanism for local authorities that can satisfactorily respond to increased responsibilities and the related issue of restrictions on staffing numbers by central government are both long-running issues and they have yet to be resolved satisfactorily.

Dissenting and additional views were expressed to the Working Group after the submission was circulated to all Comhar members. Those that could not be incorporated into the submission are appended here.

(A) Submitted by Mary Kelly representing IBEC:

“IBEC is completely opposed to the proposals in the draft Bill to allow local authorities and An Bord Pleanála to refuse planning permission on environmental grounds for developments or waste infrastructures that need IPC or Waste licences. We fell strongly that this will undermine the position of the EPA and will cause delays in the system.”

(B) Submitted by Declan Burns representing the EPA:

“Restriction on the right of appeal to An Bord Pleanála are required to exclude appeals by third parties not directly affected. It is proposed that appeals be confined to the applicant, person who have made submissions or observations etc., and third parties directly affected by the development e.g. they have substantial interest in the matter.

Similarly, applications for a judicial review should be restricted to those who have a substantial interest in the matter.”

(C) Submitted by Seán Regan representing Community Platform, CORI, National Association of Tenants’ Organisations, Irish National Organisation of the Unemployed, Community Workers’ Co-operative, ACRA:

“Combatting social exclusion is a well-established government policy, as reflected in the National Anti-Poverty Strategy, the Cabinet sub-Committee on Social Exclusion, the new Equality Authority, etc. I suggest that social inclusion be incorporated specifically into the new Planning and Development Bill as follows:

Section 10: include an additional objective “*the promotion of social inclusion*”

Section 23: include an additional matter to be addressed “*the promotion of social inclusion*”

The long title of the Bill to be amended to read:

“an Act ... to provide, in the interests of the common good, for proper planning and sustainable development, including *the promotion of social inclusion, and the provision of housing ...*”