

ENVIRONMENT AND PLANNING

COVID-19: Legislation Passed to Suspend Deadlines for Various Elements of the Planning and Building Control Systems

30 March 2020

The Emergency Measures in the Public Interest (Covid-19) Act 2020 (the "Act") was enacted on Friday, 27 March 2020.

The Minister for Housing, Planning and Local Government (the "Minister") has, by order, commenced section 9 of the Act which suspends certain deadlines imposed under Planning and Building Control legislation.

Section 9 inserts a new section 251A into the Planning and Development Act 2000, as amended (the "Planning Act"). The Government has made an Order under section 251A(4) to the effect that the period from 29 March 2020 to 20 April 2020 inclusive, may be disregarded when calculating certain deadlines imposed by:

- The Planning Act
- The Building Control Act 1990 (as amended)
- The Derelict Sites Act 1990 (as amended)
- Sections of the Urban Regeneration and Housing Act 2015 relating to vacant sites
- Sections of the Planning and Development (Housing) and Residential Tenancies Act 2016 relating to Strategic Housing Development ("SHD")

HOW LONG MIGHT THE SUSPENSION LAST?

The suspension of all deadlines will operate initially from 29 March 2020 to 20 April 2020 and the Government may permit extensions of this suspension period for successive periods until

9 November 2020 (the "Suspension Period"). Decisions to extend this period must be taken in light of matters of public and economic interest, including the need to ensure the effective operation of the planning and building control system and the need to mitigate the impact of COVID-19 on the availability of State resources to perform their functions in relation to the planning and building control system.

EFFECTS OF THE SUSPENSION PERIOD ON PLANNING AND BUILDING CONTROL MATTERS

The Suspension Period will affect various deadlines imposed under Planning and Building Control legislation. This will include deadlines and the calculation of time periods relating to:

- the processing of applications and appeals;
- the making of submissions and observations in respect of planning applications;
- the publication of observations and documents on a planning authority's website;
- responding to requests for further information;
- the making of appeals to An Bord Pleanála (the "Board");
- the provision of documents to the Board;
- the notification of decisions of the

Board;

- time limits for enforcement procedures;
- the bringing of judicial review proceedings;
- the time period within which the building control authority must respond to an application for dispensation or relaxation of the Building Control Regulations;
- the time period within which the building control authority must respond to applications for/notifications of: fire safety certificates, 7 day notices, revised fire safety certificates, regularisation certificates, disability access certificates, revised disability access certificates or certificates of approval; and
- the entry of a site onto the Vacant or Derelict Sites Registers.

WHAT ARE THE PRACTICAL IMPLICATIONS?

Effectively, time will be suspended for the above actions for the duration of the Suspension Period. We have set out some of the practical implications below:

Public Consultation

In terms of public consultation requirements, in a Departmental press release on 29 March 2020, the Minister confirmed that the Government, at his request, agreed to make an order to extend public participation periods in

'live' planning applications and appeals for a period of three weeks, up to 20 April 2020. In effect, the Order will add 23 days to the general statutory time periods for processing of those planning applications and appeals lodged after 21 February 2020. The purpose of this is to allow for proper public participation in light of the enhanced restrictions on movement announced by the Irish Government on 27 March 2020.

"Live" Applications

If you have a "live" planning application or appeal, all deadlines are set aside until the end of the Suspension Period. In situations where the consultation period has closed and any further information requested has been supplied, the planning authority or the Board may determine the application or appeal, as there is nothing to stop them from making a decision within the existing time limits in these cases, but one may anticipate that they may suspend issuing a decision until the end of the Suspension Period, as they will be entitled to do so. Where the consultation period or the period given for the supply of further information has not started on the date the Suspension Period comes into force, a decision may not be taken until the consultation period or the period to supply information plus the Suspension Period have passed. If these periods have started but not yet closed, a decision may not be taken until the remaining time of those periods plus the Suspension Period have passed.

Pending Planning Applications

Any person who wishes to make a new planning application or an appeal during the Suspension Period is still entitled to do so. However, the ordinary statutory deadlines in relation to the actions listed above will be extended to include the Suspension Period.

Pending SHD Applications

The specified period during which applications can be made to the Board for SHD is probably extended beyond 31 December 2021 by the Suspension Period. We say probably here because of complications generated by case law on section 251 where the High Court in *Drumquin Construction (Barefield) Ltd. v. Clare County Council* [2017] IEHC 818 held that the extensions of time in section 251 did not apply when a specific date was (wrongly) given by a planning authority for the expiration of a planning permission. The Court would not allow the planning permission to be extended by the extra days because ordinary people would not know that those extra days should be added to the specific date given for the expiration of the permission. We

think this decision does not apply in the case of suspensions of time under the Act because the context is different and ordinary people are aware of the current emergency and the Suspension Period.

Potential Appeals / Judicial Review Challenges

Unfortunately, for any person who has secured a notification of a decision to grant permission from a planning authority or a final grant of permission from a planning authority or the Board, the 'exposure' period for appeals (normally 4 weeks) or judicial review challenges (normally 8 weeks) remains open for the remainder of the relevant period plus the Suspension Period. Commercial decisions will need to be taken on whether to build out final grants of permission where judicial review challenge periods remains "live".

The "life" of Existing Grants / Planning Compliance Enforcement

Planning permissions with expiry dates that arise during the Suspension Period will probably not expire until the expiry date plus the Suspension Period. The so called 'seven year rule' within which planning breaches must generally be enforced is probably extended by the number of days in the Suspension Period.

WHAT ARE THE FORESEEABLE DIFFICULTIES?

In a Departmental press release, the Minister confirmed on 26 March 2020 that the Planning and Building Control systems remain open for business and that the measures contained in the Act will only be activated "when necessary". However, there are, of course, practical reasons why public authorities may wish to rely on the extended deadlines. For example, will site visits by local authority or the Board's inspectors be undertaken with appropriate social distancing measures employed? Do planning authorities and the Board have the capacity to process and determine applications or appeals remotely, if or when their public offices must close? In relation to the holding of Board oral hearings, any oral hearings which have commenced are now indefinitely suspended and any others planned are indefinitely postponed until further notice.

The pressing question is what elements of a planning application can easily and usefully be progressed when the Suspension Period comes into force. In relation to SHD, for example, it may be that pre-application consultations ("PAC") could and should continue to be progressed during this time, given that no public consultation is involved and it

can be done on a hard copy basis. This would allow developers to continue to progress their projects in the Suspension Period by making any revisions to their SHD proposals on foot of the PAC in order to get their applications ready for submission.

WHAT PROVISIONS ARE IN PLACE FOR BUSINESS CONTINUITY?

The Minister and the Department for Housing, Planning and Local Government (the "Department") have been engaging with the Board and local authorities regarding business continuity and are advising that every effort is being made to ensure that the Board and the local authorities can continue to operate, with appropriate accommodations, taking account of public health advice.

The Department is acutely conscious of the key role played by local authorities in the planning system in facilitating general construction activity (including residential development) which is to be maintained as a critical service by local authorities. It is hoped that the potential for the maximisation of the current system which is available for people to view planning applications and make submissions on-line in many planning authorities is realised. Similarly, many of the systems including the Building Control Management System can be accessed remotely over the local authority network.

NEW PLANNING REGULATIONS

The Minister has made two regulations to address particular development needs during the COVID-19 Emergency:

- The Planning and Development Act 2000 (Exempted Development) (No.2) Regulations 2020 provide that, for the period of the emergency, a change in use from a premises selling food for consumption on the premises to one providing food for consumption off the premises will be considered an exempt development.
- Planning and Development Act 2000 (Section 181) Regulations 2020 provide for the nonapplication of the Planning Act to certain classes of development by or on behalf of a State authority. This may include the change of use and repurposing of existing buildings and facilities, and/or the provision of temporary new-build accommodation and structures to address the COVID-19 Emergency.

SECTION 28 GUIDELINES ON ENFORCEMENT

The Minister has issued [guidance](#) under section 28 of the Planning Act

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on the enforcement of certain planning conditions during the COVID-19 Emergency to address potential uncertainty arising from the interaction between the public health measures that

have been implemented and operational restrictions which may be imposed by a planning condition. We will report on these guidelines shortly in a separate briefing.

This is an evolving area. If you have any questions arising from this note, please do not hesitate to contact us for assistance.

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