



To: An Bord Pleanála
Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils
Senior Planners, City and County Councils
Directors of Regional Assemblies
Office of the Planning Regulator

Circular Letter: EUIPR 04/2020

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**Amendments to Substitute Consent procedures by
Sections 6, 7 and 8 of the Planning and Development,
and Residential Tenancies, Act 2020, & by the
Planning and Development (Amendment) (No. 2)
Regulations 2020**

I am writing to inform you of recently made amendments to Part XA of the Planning and Development Act 2000 (the 2000 Act) and Part 19 of the Planning and Development Regulations 2001 (the 2001 Regulations) concerning Substitute Consent procedures.

These amendments derive from the following new legislative provisions:

- sections 6, 7 and 8 of the Planning and Development, and Residential Tenancies, Act 2020 (No. 27 of 2020) (the 2020 Act), as enacted on 19 December 2020; and
- the Planning and Development (Amendment) (No. 2) Regulations 2020 (S.I. No. 692 of 2020) (the 2020 Regulations), which were signed and came into force on the 23 December 2020.

A copy of the 2020 Regulations is enclosed at Appendix 1. The 2020 Act will be available to view or download on the electronic Irish Statute Book (<http://www.irishstatutebook.ie>) in due course.

These amendments to the substitute consent provisions in Part XA of the 2000 Act and Part 19 of the 2001 Regulations were made in response to the Supreme Court judgment issued on 1 July 2020 in the “Ballysax/ McQuaid” cases - three joined appeal cases relating to two quarries (An Taisce v An Bord Pleanála, An Taisce v An Bord Pleanála, and Sweetman v An Bord Pleanála).



This judgment, delivered by Mr. Justice McKechnie, found that certain provisions of the substitute consent system in the 2000 Act were inconsistent with the provisions of the Environmental Impact Assessment Directive (Directive 2011/92/EU, as amended) in terms of requiring exceptional circumstances and public participation. A copy of this judgment is available to view online on the website of the Courts Service of Ireland (https://www.courts.ie/acc/alfresco/80f2cbbf-4f1e-4065-8ca3-f8c14308035b/2020_IESC_39.pdf/pdf#view=fitH).

Amendments to Part XA of the Planning and Development Act 2000

Sections 6, 7 and 8 of the Planning and Development, and Residential Tenancies, Act 2020, which commenced upon enactment on 19 December 2020, amend Part XA of the Planning and Development Act 2000. These new provisions are summarised as follows -

- **Section 6** of the 2020 Act amends section 177E of the 2000 Act to allow applicants for substitute consent to submit with their application any other documents that the applicant considers would be of assistance to An Bord Pleanála (the Board) in making a decision in relation to his or her application.
- **Section 7** of the 2020 Act amends section 177H (1) of the 2000 Act, to clarify that submissions or observations which can be submitted by any person to the Board in respect of an application for substitute includes submissions or observations regarding the existence or absence of exceptional circumstances justifying a grant of substitute consent.
- **Section 8** of the 2020 Act amends section 177K of the 2000 Act to provide the following:
 - an amended subsection (1) where the Board may, subject to restrictions set out at new subsection (1A), grant or refuse an application for substitute consent;
 - under new subsection (1A) the Board is precluded from granting substitute consent unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board;



- new subsection (1B) provides that subsection (1A) applies to both new applications for substitute consent submitted to the Board on or after 19 December 2020 and to existing applications pending before the Board on that date;
- new subsection (1C) provides for the submission of further information by the applicant to the Board in respect of an existing application pending before the Board on 19 December 2020. In this regard:
 - (a) Under paragraph (a) the Board must to invite the applicant to submit, within a specified period, information that the applicant considers relevant for the purposes of the Board satisfying itself as to the existence of exceptional circumstances,
 - (b) Under paragraph (b), the Board may request further information from the applicant concerning the existence of exceptional circumstances, notwithstanding that further information may have been previously requested,
 - (c) Under paragraph (c), where the applicant fails to comply with such a request under paragraph (b), the application shall be deemed to be withdrawn;
- new subsection (1D) provides for additional public consultation in respect of an existing application pending before the Board on 19 December 2020. The decision in respect of which will now include consideration of exceptional circumstances in accordance with new subsection (1A). In this regard, notwithstanding that any or all of these things may have already been done in respect of the application for substitute consent previously, the Board must:
 - (a) require the applicant to publish an additional newspaper notice, including advertising any additional information submitted under subsection (1C),
 - (b) make the application for substitute consent, including any additional information submitted, available for inspection at its offices and online on its website,
 - (c) give notice of the application, including any further information, to the prescribed bodies required to be notified of such applications,



- (d) give a copy of any further information received in accordance with subsection (1C) to the relevant planning authority (the planning authority will have previously been given a copy of the application itself upon receipt by the Board),
 - (e) request the relevant planning authority to consider that information as part of its report to be submitted under section 177I of the 2000 Act on the application, including the relevant environmental reports, which shall include amending that report where required. The planning authority is given an additional 5 week timeframe to do so, and
 - (f) require the applicant to erect additional site notices of the application, copies of which must be submitted to the Board;
- new subsection (1E) provides that an applicant must comply with any requirement of the Board under subsection (1D);
 - new subsection (1F) provides that the relevant planning authority must comply with any request of the Board under subsection (1D);
 - new subsection (1G) provides that the relevant planning authority must to enter details of any further information it receives from the Board under subsection (1D) in the planning register;
 - new subsection (1H) provides that the Board in making its decision to grant or refuse substitute consent must consider any submissions or observations made, including those made in respect of existing application pending before the Board on 19 December 2020 after compliance by the Board, the applicant and the planning authority with respective requirements and requests under subsection (1D); and
 - new subsection (1I) provides that Board may extend the timeframe within which a planning authority is required to submit its report under section 177I of the 2000 Act where further information has been received pursuant to subsection (1C).

Amendments to Part 19 of the Planning and Development Regulations 2001

The Planning and Development (Amendment) (No. 2) Regulations 2020 provide for consequential and supplementary amendments to the 2001 Regulations arising from the amendments made to Part XA of the 2000 Act under sections 6, 7 and 9 of the 2020 Act.



The 2020 Regulations came into operation on 23 December 2020 and provide for the following matters -

- **Article 1:** This contains the citation for the regulations, as the Planning and Development (Amendment) (No. 2) Regulations 2020 and notes that they be included in the collective citation for the 2001 Regulations.
- **Article 2:** In the Regulations, “Principal Regulations” means the 2001 Regulations.
- **Article 3:** This contains an amendment of Article 226 of the Principal Regulations so that the time limit applying to substitute consent application site notices (that they must be kept in place until the Board has made its decision) will apply to additional site notices also.
- **Article 4:** This inserts new articles 233A, 233B, 233C, 233D, 233E, 233F, 233G, and 233H into the Principal Regulations –

233A (Additional notice of application for substitute consent):

Where the Board has required them to do so under new Section 177K(1D), the applicant’s additional newspaper and site notice must be in the form as required by article 233B and 233C, and copies must be submitted to the Board.

233B (Additional notice in newspaper): An additional newspaper notice must be in a newspaper approved by the relevant planning authority and include specified information about the application, including, inter alia, that:

- additional information has been furnished to the Board in accordance with an invitation or requirement under section 177K(1C) of the Act, where relevant,
- that the application and documentation may be inspected at the Board and planning authority offices or on the Boards website
- a submission or observation in relation to the application, including any additional information submitted, may be made to the Board within 5 weeks of the Board receiving copies of the additional public notices from the applicant.

233C (Additional Site notice): An additional site notice, where required, must be set out as in new Form No. 6A in the Schedule, in indelible ink on a white background and other standard provisions concerning visibility of site notices also apply.

233D (Procedure on receipt of additional notice of application for substitute consent): The Board must consider whether public notices submitted by the applicant are in compliance with the requirements set out above. If certain provisions have not been complied with, the Board may require the applicant to issue new public notices.



233E (Making the application for substitute consent available for inspection for additional period): Where a planning authority receives a copy of information from the Board pursuant to section 177K(1D)(d) of the Act, it shall make the application for substitute consent and all associated documentation (already received from the Board pursuant to section 177E(5) of the Act) and the additional information available for inspection at its offices. Where no additional information was furnished by the applicant, the Board must request the planning authority to ensure the application and documentation previously sent to that authority is available for inspection at their offices, notwithstanding the authority may already have done this previously.

233F(Additional notice to certain bodies): Where the Board is required to do so in accordance with section 177K(1D)(c) of the Act, as soon as may be after receipt of copies of the new public notices, it must notify prescribed bodies, providing a copy of the application and any additional information received. The prescribed bodies will have 5 weeks from the date of the Board's notice to make any submissions or observations, if any.

233G (Notice to persons who made a submission or observation in relation to the application for substitute consent): Regarding an application to which section 177K(1D) of the Act applies, the Board must as soon as may be after receipt of copies of the new public notices, notify any person who made a submission or observation who had previously made a submission on the application for substitute consent that the application, including any additional information, is available for inspection and a submission or observation may be made within 5 weeks from the date the new public notices are received from the Board. This provision is to make those who made submissions on the application where no consideration of exceptionality was to be made aware that the application is to be re-advertised for a further round of public consultation. Arising from this public consultation the Board will be considering exceptional circumstances. Those who already made submissions may wish to submit further observations in this context.

233H (Additional submissions or observations in relation to an application for substitute consent): This provides that any person may make a written submission or observation to the Board in relation to an application within 5 weeks of the Board receiving copies of the new public notices. The Board shall acknowledge receipt of any submissions made. If any are made outside the 5 week period these shall be returned. The Board may consent to electronic submissions.

- **Article 4:** Amendment of Article 235 of the Principal Regulations to require the Board to issue notification of its decision to any body or person who



made a submission on the application arising from the further round of public consultation.

- **Article 5:** Provides a new form for additional site notices in the Schedule

New obligations for the Board and for Planning Authorities

While the above mentioned amendments to Part XA of the 2000 Act and Part 19 of the 2001 Regulations are primarily a matter for the operation of the Board, as part of the consideration of applications for substitute consent under those parts, planning authorities are requested to note their additional obligations under new subsections (1D)(d) and (e), (1F), (1G) and (1I) of section 177K of the 2000 Act and new article 233E of the 2001 Regulations.

Interpretation

Please be advised that the above summary of the new legislative provisions, both with respect to the 2020 Act and the 2020 Regulations, has been prepared by the Department for ease of reference only and does not purport to be a legal interpretation of the legislation, which is a matter for planning authorities or the Board, as the case may be, in the first instance, and ultimately a matter for the Courts.

Online resources

The 2020 Act will be available to view or download on the electronic Irish Statute Book (<http://www.irishstatutebook.ie>) in due course. The Law Reform Commission also maintains an administrative consolidation of certain Acts, including the Planning and Development Act 2000, as amended, which are available online (<https://revisedacts.lawreform.ie/revacts/intro>), and which will also incorporate amendments made by the Planning and Development, and Residential Tenancies, Act 2020, in due course.

The Department maintains an up-to-date administrative consolidation of the Planning and Development Regulations 2001, as amended. An up-to-date version, incorporating amendments made by the 2020 Regulations (S.I. No. 692 of 2020), will be made available on the Department's website (<https://www.gov.ie/housing/>) as soon as possible.



Any queries in relation to this Circular letter should be emailed to euplanningregulation@housing.gov.ie.

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EU & International Planning Regulation