



## May 2020

### Changes to Planning Law as a result of Covid-19

The Emergency Measures in the Public Interest (Covid-19) Act 2020 (the 2020 Act) was signed into law on 27 March 2020. Part 3, Section 9 of the 2020 Act and related regulations introduce a number of changes to our planning and building control system. The section in question is not lengthy but its impact is wide ranging and requires careful review in applying the changes to specific cases. A key tip for planning applicants, their advisors and the public is to have a calendar to hand when working out the impact of the changes on projects.

#### Extension of time periods – planning applications

In normal circumstances, a planning authority has eight weeks within which to determine a planning application<sup>1</sup>. The public can make submissions on a planning application at any time within five weeks from the date the planning authority receives it. The 2020 Act extends these timeframes (and others) as a result of the Covid-19 public health crisis by the insertion of a new section 251A in the Planning and Development Act 2000 (as amended) (the **Planning Act**)

Initially, the timeframes were extended for a period of three weeks, commencing on 29 March 2020 and ending on 20 April 2020. However, on 16 April 2020, this period was extended by Government Order to Saturday 9 May 2020 (being a total period of six weeks). Under current legislation, this period can be further extended up until 9 November 2020.

In practice, this means that the time periods specified for any statutory process in the Planning Act and related planning and building control

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<sup>1</sup> This timeframe can be extended if the planning authority seeks further information in relation to the application.

legislation<sup>2</sup> are extended for the duration of the time period specified in the Government Order, which is presently six weeks. In other words, a planning authority now has a total period of up to fourteen weeks (i.e. eight weeks plus six weeks) within which to determine a planning application and the public now has up to eleven weeks (i.e. five weeks plus six weeks) to make a submission on a planning application.

The exact calculation of the extended time period will depend on the date a planning application is submitted and the stage the process is at. By way of example:-

- If a planning application was lodged before 21 February 2020, the five week public participation phase completed prior to the date of commencement of the original Order (i.e. 29 March 2020) and no further extension for public participation will be given. However, the planning authority has the benefit of an additional six weeks within which to make its decision.
- If a planning application was lodged after 21 February 2020, a decision cannot be made by the planning authority until after Saturday 9 May 2020 to ensure that the unexpired portion of the five week period for public participation is completed after the expiry of the duration of the extended Order.
- If an application is lodged after the date of commencement of the original Order (i.e. 29 March 2020), it cannot be decided by the Planning Authority until the five week period for public participation has been completed, which five week period will only commence after the Order expires (presently 9 May 2020). Accordingly, the earliest a decision could be made would be after Saturday 13 June 2020.

### **Extension of time periods - appeals**

The extended timeframe (presently six weeks) will also apply to planning appeals, which An Bord Pleanála will continue to receive by post.

If a planning decision was made in the four week period between 1 March 2020 and commencement of the original Order on 29 March 2020, it may be appealed to An Bord Pleanála and the appeal period is extended by six weeks. The calculation of the final appeal date in each case will depend on the period of duration of the four week appeal period remaining on the date of cessation of the extended Order.

During the period of the extended Order, where a planning authority is entitled to determine a planning application (i.e. a planning application that was lodged before 21 February 2020 so that the five week public participation period expired before commencement of the original Order on 29 March 2020), an appeal may be made to An Bord Pleanála. The four week period in which the appeal may be made, shall be extended by up to the duration of the extended Order remaining on the date of the planning authority's decision.

### **Strategic Housing Development (SHD)**

SHD applications can still be submitted to An Bord Pleanála during the period of the extended Order. At present, it is intended that the Board's offices are to fully re-open to the public on Monday 11 May 2020.

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<sup>2</sup>Derelict Sites Act, 1990; Part 2 of the Urban Regeneration and Housing Act, 2015; Chapter 1, Part 2 of the Planning and Development (Housing) and Residential Tenancies Act, 2016; Sections 4(4), 6 and 17(6) of the Building Control Acts

## Regulations

Two Regulations introduced on 27 March 2020 implemented changes to the planning system with immediate effect for the duration of the “relevant period” (at present, the period from 27 March 2020 to 9 November 2020, subject to potential further extension).

The **Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2020** provide that for the relevant period, a change in use from a premises selling food for consumption on the premises to one providing food for consumption off the premises is now exempt development. This change was introduced to allow restaurants and cafes who do not trade as takeaways, to provide takeaway and delivery services during the relevant period without the need to apply for a change to their planning permission.

The **Planning and Development Act 2000 (Section 181) Regulations 2020** suspend the application of the Planning Act to certain classes of development carried out by, or on the behalf of, a State authority during the relevant period for the purposes of public safety and order, including the provision of:-

- ▣ acute and other health and social care accommodation;
- ▣ self-isolation or any other Covid-19 related short stay accommodation;
- ▣ medical testing centre or laboratory;
- ▣ emergency management coordination facilities; and
- ▣ mortuary facilities.

The Citywest Hotel and Convention Centre in Dublin opened as a self-isolation centre and received its first patients on 1 April 2020. It is an example of a hotel building and its current use being reclassified under these Regulations without the need for planning permission.

## Planning Authorities to take a pragmatic and measured approach to planning enforcement

The Minister for Housing, Planning and Local Government also issued guidance to chief executives and directors of planning on 29 March 2020 to address possible technical contraventions of the planning laws during the period of the Covid-19 outbreak by essential retail operators and childcare facilities for frontline workers. The discretion accorded under the Act to planning authorities relates to infringements of conditions which are considered “trivial” or “minor” in nature. Planning authorities are also permitted to exercise discretion when deciding whether to issue an enforcement notice, in order to take any “material consideration” into account.

## Department of Housing, Planning and Local Government

Our comments above summarise some of the recent changes to planning laws in response to the Covid-19 crisis. We would also refer you to the helpful [FAQ Guide](#) updated by the Department of Housing, Planning and Local Government on 17 April 2020. As further updates to legislation, policy and guidance are inevitable, we would recommend the Covid-19 section of the website of the Department of Housing, Planning and Local Government as a starting point for such updates.

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