



To: Directors of Planning Services in each local authority

CC: Chief Executives
Senior Planners
An Bord Pleanála
Office of the Planning Regulator
Directors of Regional Assemblies

Circular Letter: PL 11/2023

21 December 2023

New design flexibility provisions with regard to certain unconfirmed details as part of application for planning permission

I have been asked by Mr. Darragh O'Brien, T.D., Minister for Housing, Local Government and Heritage to advise that he has signed the following commencement order and two new sets of regulations which have come into effect as follows:

- 1. Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (S.I. No. 645 of 2023) – effective from 16 December 2023;**
- 2. Planning and Development Act (Amendment) (No. 3) Regulations 2023 (S.I. No. 655 of 2023) – effective from 16 December 2023;**
- 3. Planning and Development Act (Fees for Certain Applications) Regulations 2023 (S.I. No. 654 of 2023) – effective from 16 December 2023.**

Copies of the commencement order and regulations are attached for information and an overview of the key provisions of each is set out below. To note, the commencement order commences both the design flexibility and substitute consent provisions of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. The substitute consent



provisions have already been the subject of a separate Circular letter. This Circular relates only to the design flexibility provisions.

1. Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (S.I. No. 645 of 2023)

The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (the Act of 2022), passed by the Oireachtas in July 2022, includes amendments to the Planning and Development Act 2000, as amended, (the Principal Act) concerning flexibility in respect of some of the details of the proposed development to be submitted as part of certain planning applications.

The primary legislation provides for a process whereby a prospective applicant/project promoter who wishes to avail of a degree of flexibility in their planning application may, in advance of submitting their planning application, request a meeting with the planning authority or the Board for the purpose of receiving an opinion as to whether it is appropriate that an application for permission be made before certain details of the proposed development are confirmed. Such unconfirmed details may, for example in the case of a wind farm application, include the precise height or blade length of a wind turbine or the precise grid connection point and route. This process is intended to apply to certain details of a proposed development and is not intended to apply to points of detail generally dealt with by way of compliance condition and agreed between the applicant and the planning authority or the Board post-consent.

As part of the flexibility meeting request, the prospective applicant must set out the details, or groups of details, that will not be confirmed at the time of the proposed application for permission and the circumstances why it would be appropriate for the proposed application to be made and decided before said details are confirmed. Separate pre-application consultations may take place in respect of the proposed application using existing pre-application arrangements. Such consultations, which may take place in advance of requesting a flexible meeting request, may concern the scope of details not likely to be confirmed by the prospective applicant at application stage and likely to be subject to a request for an opinion on unconfirmed details.



Where it is satisfied that appropriate circumstances exist, the planning authority or the Board will issue an opinion in this regard, setting out the details that may be confirmed by the prospective applicant at a later stage and the circumstances considered appropriate to allow an application to proceed on this basis.

A planning application accompanied by such an opinion must include specific options or sufficient information in respect of the parameters within which the unconfirmed detail will fall as is considered necessary to enable the planning authority or the Board to make a decision on the application.

When granting permission in respect of such a planning application, the planning authority or the Board must attach a condition setting out the approved options and/or parameters in respect of the unconfirmed details and requiring the applicant to confirm the actual detail of the development to which the condition relates prior to the commencement of this part of the development.

These provisions apply to both terrestrial and nearshore planning applications submitted to planning authorities under section 34 of the Principal Act as well as strategic infrastructure applications for permission and approval and maritime planning applications submitted to the Board.

This Commencement Order commences, inter alia, sections 10, 11, 12(a), 13(a), 14, 15, 16, 24(a), 25, 35, 36, 37, 38 and 39 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 to give effect to the aforementioned provisions.

2. Planning and Development (Amendment) (No. 3) Regulations 2023 (S.I. No. 655 of 2023)

These regulations amend the Planning and Development Regulations 2001, as amended, (the Principal Regulations) to set out procedural and administrative matters relating to the planning arrangements provided for in the Act of 2022 regarding flexibility in respect of some of the details of the proposed development to be submitted as part of certain planning applications.



The regulations set out the requirements for the flexibility meeting request and for planning applications accompanied by an opinion on unconfirmed details, as well as matters for consideration by the planning authority and the Board in this regard. It further provides for matters of public notification and transparency in respect of the new arrangements and prescribes the forms to be used for the various stages of the process - flexible meeting request; opinion on unconfirmed details issued by the planning authority or the Board; and supplementary statement of unconfirmed details to accompany a planning application. It further prescribes the timeframe, two weeks, within which the applicant must inform the planning authority, or the Board as appropriate, of the final details of the development prior to the commencement of the part of the development that was unconfirmed at the time of the grant of permission.

These regulations also amend the Principal Regulations to provide that the principal dimensions of any subterranean structure not intended for occupation or use by persons (i.e. foundations) are not required to be set out in the plans and particulars submitted to a planning authority or the Board as part of a planning application, other than a maritime planning application. These provisions are supplementary to the planning arrangements in respect of flexibility and apply to planning applications generally.

These provisions apply to both terrestrial and nearshore planning applications submitted to planning authorities under section 34 of the Principal Act as well as strategic infrastructure applications for permission and approval and maritime planning applications submitted to the Board.

3. Planning and Development (Fees for Certain Applications) Regulations 2023 (S.I. No. 654 of 2023)

These regulations amend the Principal Regulations to provide for the planning fees to be applied by planning authorities in respect of the process to seek an opinion on unconfirmed details and for new planning fees to apply to planning applications accompanied by such an opinion.

A fee of €2,500 is to apply to the opinion process, to include the flexibility request meeting and the provision of an opinion on unconfirmed details or notification by the planning authority.



Where an application for permission is accompanied by an opinion on unconfirmed details, the fee payable in respect of the proposed development the subject of the opinion shall be twice the standard amount, subject to a maximum payable fee of €100,000.

Where an application for permission is accompanied by an opinion on unconfirmed details and an Environmental Impact Assessment Report (EIAR), Natura Impact Statement (NIS), or both, the fee payable in respect of the proposed development the subject of the opinion shall be three times the standard amount, subject to a maximum payable fee of €150,000.

Where an application is accompanied by an opinion on unconfirmed details and either an EIAR, NIS, or both, is submitted further to a request by the planning authority, the fee payable in respect of the submission of the EIAR, NIS or both, shall be three times the standard amount in respect of the proposed development the subject of the opinion, less any fee already paid in respect of the application, subject to a maximum payable fee of €150,000.

These fee regulations do not apply to strategic infrastructure applications for permission and approval and maritime planning applications submitted to the Board which has its own separate fee arrangements.

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

Terry Sheridan
Principal
Planning Policy and Legislation

Enclosures:

- Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (S.I. No. 645 of 2023) – effective from 16 December 2023;
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