



**Submission by the Heritage Council in relation to the  
draft Section 28 Development Plans – Guidelines for Local Authorities  
October 2021**

The Heritage Council welcomes the opportunity to contribute to the Development Plan guidelines. We would also welcome a meeting to discuss and progress the formulation and delivery of these important guidelines. We are of the opinion that these guidelines are an improvement in a number of areas but feel that the case studies could be stronger.

The Heritage Council's submission is set out under the following headings:

- 1. UNSDGs, EU Green Deal and the New European Bauhaus Movement;**
- 2. Enable a Data-driven public sector (DDPS) and Data-driven innovation (DDI);**
- 3. Monitoring, Tracking and Evaluation of Development Plans;**
- 4. From quasi-judicial to a narrative role for the planning system;**
- 5. Sustainable development requires long-term planning, which should be entrusted to communities;**
- 6. The Development Plan is an environmental contract;**
- 7. 'Never Demolish, never remove' – an important response to the climate change and biodiversity crisis;**
- 8. Multi-use and repurposing buildings;**
- 9. Architectural Conservation Areas (ACAs) as an engine for regeneration;**
- 10. What is Curtilage?;**
- 11. The EU Biodiversity Strategy for 2020 – Bringing Nature Back into our Lives; and**
- 12. Biodiversity beyond designated areas and the Natura 2000 Network.**

**1. UNSDGs, EU Green Deal and the New European Bauhaus Movement**

The Section 28 Guidelines are being prepared at a transformational time for Ireland and other EU Members States given the emergence of a new wave of initiatives in Europe aimed at creating a carbon-neutral trade bloc by 2050. This strategic pathway for societal change supports the implementation of the UNSDGs through the EU Green Deal and the New European Bauhaus Movement. A key focus of all activity is a major cultural and behavioural 'shift' towards a circular economy where sustainable living is at the heart of all that we do re. live, work and play. It is recommended that the emerging Section 28 Guidelines set out and endorse this international policy context from the 'get-go' at a local authority level through the development plan-making system.

In terms of action, these Section 28 Guidelines can provide visionary leadership by promoting the need for greater co-operation and collaboration on an overall EU Green agenda at a local authority level in relation to governance, economic, social, environmental, cultural objectives and targets and instruments – such positive action would ultimately result in wide-ranging gains to Irish citizens, the Irish Diaspora, overseas visitors and the indigenous and FDI business sectors alike.

## **2. Enable a Data-driven public sector (DDPS) and Data-driven Innovation (DDI)**

According to the OECD (2019), “over the last decade the Open Government Data movement has successfully highlighted the value of data and encouraged governments to open up information to reuse both inside and outside the public sector<sup>1</sup>”. In line with current OECD thinking on data driven innovation, these guidelines need to put the role and value of data at the core of thinking about the digital transformation of government and hence effective, efficient and participative land/building use (or underuse) planning at all levels in the country. A data-driven planning system recognises that data sets are an asset, integral to policy making, service delivery, organisational management and innovation. Such an approach can promote evidence-led policy making and evaluation, and data-backed service design as well as embedding good governance values of integrity, openness and fairness in the policy cycle e.g., development plans which are on a six-year cycle (including a two year review process).

## **3. Monitoring, Tracking and Evaluation of Development Plans**

The Heritage Council welcomes the emphasis on monitoring and tracking of the development plans. We would further recommend that evaluation should be at the heart of the emerging guidelines. The Heritage Council would advise that an Advisory Group should be established to oversee delivery and implementation of the county development plans and the guidelines in full. This Advisory Group would liaise with the proposed Cross-Authority Group (Section 2.2.11).

In addition, it is important that suitable indicators are put in place in relation to Strategic Environmental Assessment (SEA) to assist the effective monitoring and evaluation of development plans. The Heritage Council has recently been working with the EU Dublin Office and the IREO<sup>2</sup> in this regard in order to design suitable SEA indicators for historic town centres – as noted by the IREO in February 2021, such indicators do not currently exist in the Republic of Ireland. The Heritage Council would be pleased to share our work with the team working on the guidelines. One key SEA indicator, which is not included in existing development plans, is the level of vacancy in historic towns and villages (and cities) throughout the country, plus abandoned former housing units in the countryside. Indeed, the level of vacancy in Ireland is out of kilter with the rest of Europe.

The Heritage Council has pioneered work on measuring and tackling vacancy in historic town centres through the innovative **Collaborative Town Centre Health Check (CTCHC) Programme**, which is included in the Programme for Government along with a commitment to formulate a Town Centres First (TCF) Policy. As the Department is aware, the Heritage Council started calling for a TCF in 2019 – see workshop report from CTCHC Workshop held with Scotland’s Towns Partnership (STP) in Dundalk in December 2019<sup>3</sup>. It is recommended that the guidelines include the TCF and the [primary] data-driven CTCHC framework, as stated in the Programme for Government:

**Programme for Government (PfG) – ‘Town Centres First’:**

***“...We will prioritise a Town Centres First collaborative and strategic approach to regeneration of our villages and towns, using the CTCHC framework to gather data and lead actions...”***

**PfG, Pages 12/13**

<sup>1</sup> <https://www.oecd.org/digital/digital-government/working-paper-a-data-driven-public-sector.htm>

<sup>2</sup> <https://www.heritagecouncil.ie/content/files/Historic-Town-Centres-The-EU-Green-Deal-and-Creation-of-SEA-Indicators-Briefing-Pack-feb-2021.pdf>

<sup>3</sup> <https://www.heritagecouncil.ie/content/files/Ireland-Scotland-Collaboration-on-Town-Centres.pdf>

#### **4. From quasi-judicial to a normative role for the planning system**

The Planning and Development Act 2000 commits all planning authorities to the statutory purpose ‘... **To provide, in the interests of the common good, for proper planning and sustainable development** ...’ It is time for the planning system to embrace a step-change in practice.

The planner’s role, (*protected by the legal system in a succession of judicial review cases*) is to balance interests, acting in a quasi-judicial role. But this act defines rather a different role, one which in a declared climate and biodiversity emergency, requires the profession and the system to take on a normative role. The Heritage Council suggests that these planning guidelines provide advice to planning authorities on how to protect biodiversity, and built material resources, including cultural heritage, by committing it as a priority to environmentally sustainable development, a climate resilient society, which takes a cautious and risk-averse approach to development. The origin of the planning profession was in the idealism of creating a better society in the interests of all. Now it needs to defend against unsustainable development.

As such, **Chapter 9** covers Heritage and Landscape issues and how they interact with spatial planning. The care and maintenance of unique built, cultural and natural heritage assets should be highlighted as the basis for responsible asset resource management and the achievement of sustainable development. All of these assets are interdependent and relate to people and place, thus providing a sense of place, and indeed belonging – this was rediscovered by communities during the Covid lockdown. The enhancement and protection of the natural environment, a non-renewable resource, and cultural resources should be prioritised in the guidelines. They should not be looked at in isolation. Government initiatives such as the National Development Plan, the National Planning Framework, Climate Action Plan, Heritage Ireland 2030, Culture 2025, Creative Ireland, the National Landscape Strategy 2015-2025 and the National Biodiversity Action Plan all emphasise this core principle.

In addition, the Heritage Council would recommend that the guidelines support the important role and delivery of County and City Heritage Plans and their ability to underpin development plan activity throughout the State.

#### **5. Sustainable development requires long-term planning, which should be entrusted to communities**

While ‘master-planning’ appears an old-fashioned concept, if we are to achieve a future that has the shape and form and label ‘sustainable’ on it, it will have to be a stable state, and there is an urgency to begin to visualise what that is. Such vision-statements can be drawn up by communities – indeed they must be, to survive the short-termism of the six-year development plan cycle.

The permanent designations – ones that are maintained through development plans - that planning policy permits include the Architectural Conservation Area (ACA) mechanism. This can be re-fashioned to enable development to restore the uses that have been drained from historic urban spaces and rooms. The Heritage Council has indicated, at least in outline, how this could be done in a recent publication ***Ballybrilliant: Heritage-led regeneration in 5 Irish Towns***<sup>4</sup>

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<sup>4</sup> <https://www.heritagecouncil.ie/content/files/Ballybrilliant.pdf>

## **6. The development Plan is an environmental contract**

It may be important again to remember that the Development Plan ought to be considered to be an environmental contract between the citizens, the authority, and its Council. ‘The [development] plan,’ said Mr. Justice McCarthy, in his 1989 Carrowmore Judgment decision, ‘was a statement of objectives. When adopted it forms **an environmental contract between the planning authority, the council and the community, embodying a promise by the council that it will regulate private development in a manner consistent with the objectives stated in the plan** and, further, that the council itself shall not effect any development which contravenes the plan materially.’ This is echoed in the recent Judicial Review decision in relation to the Waterfront Central Strategic Infrastructure Decision.

In para. 28 of that judgment it says “The overall statutory policy is clear that the planning scheme forms a very detailed framework for the area concerned with primacy over the development plan. It would seem to follow from that that not only the planning authority, but also the board, must work within the scheme and not make a decision in contravention of it.” Further, paragraph 38 states “Without trespassing on matters of planning judgment (such as how much high rise should be allowed and where), one can conclude that an interpretation that favours **giving effect to a more considered, more holistic, planner-led analysis adopted after greater consultation is more likely** (I would say significantly more likely), **to promote proper planning and sustainable development** than an analysis that focuses on individual developer-led projects as they arise.”

## **7. ‘Never demolish, never remove’ – an important response to the climate and biodiversity crisis**

“The most environmentally benign building is the one that does not have to be built”.<sup>5</sup> ‘Never demolish, never remove – always add, transform and re-use’ is the working principle of Lacaton and Vassal, Pritzker Prize winning architects, 2021. In other words, adaptive reuse within the structure and cultural value of existing buildings is a spur to architectural achievement, not an unnecessary constraint. This suggests the urgent and comprehensive re-appraisal of the embodied carbon in every existing structure on a site that is the subject of a development proposal. The Irish Green Building Council has information about Carbon Accounting and Life-Cycle Appraisal (LCA) tools on its website<sup>6</sup>.

## **8. Multi-use and repurposing buildings**

Planning policy ought to address the problem, created by the confluence of Fire Safety regulations and conservation, of re-using upper floors in towns. ‘That single staircase’ is a Gordian knot that may have to be cut.

The sometimes small and constrained buildings that make up our historic towns may need regulatory wriggle room to play their role in the revitalisation of urban areas, because there are greater and more urgent social objectives to be achieved. We could and should rebalance the fire safety measures, and other regulations, that we apply to old buildings. There is a specific challenge that demands **multivalence** – juggling priorities and constraints in all their complexity to arrive at a ‘design’, a way to achieve utility by blending and melding different technical demands. Multivalence means multiple values: structure, space, services, appearance, meaning, utility, economic means. This is desperately needed to make use of our building stock and achieve ecological sustainability.

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<sup>5</sup> Grammenos and Russel, 1997, *Building adaptability: a view from future*, proceedings from the second international conference: buildings and the environment, June 9-12 1997, Paris, Vol. 2. Pp. 19-26. Carlo Elefante said ‘The Greenest Building is the one that already exists’ ten years later, in 2007.

<sup>6</sup> <https://www.igbc.ie/what-is-embodied-carbon/>

*The Programme for Government: Our Shared Future*<sup>7</sup> calls for ‘local authority to appoint a Conservation and Repurposing Officers’ (p. 90). These skills are practiced at a heightened level in architectural conservation, and can be disseminated and shared beyond conservation practice in the planning system. ‘Adaptive re-use’ has been a conservation principle for a long time, and it is time it was mainstreamed. This is not the precious preservation approach, but taking account of the contribution that the embodied carbon in existing buildings can make to answering society’s needs without utilising the carbon-intensive construction industry.



### 9. Architectural Conservation Areas (ACAs) as an engine for regeneration

Greater emphasis in this context could be given to the potential for the Architectural Conservation Area (ACA) mechanism to enhance and protect the character of an area through paying policy attention to how uses can be reintroduced to buildings, adding to the function of the area and enhancing its utility. The Heritage Council will publish the results of a research report on the potential of ACAs in the next few months.

### 10. What is Curtilage?

The Heritage Council has researched the legal interpretation of the planning concept of Curtilage, which is of considerable importance in relation to the implementation of Pat IV of the Act<sup>8</sup>. Improved guidance on the use of this concept could be included in these Section 28 Guidelines. We are willing to help develop this further with the Department of Housing, Local Government and Heritage.

<sup>7</sup> <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

<sup>8</sup> [https://www.heritagecouncil.ie/content/files/what\\_is\\_curtilage\\_colm\\_murray.pdf](https://www.heritagecouncil.ie/content/files/what_is_curtilage_colm_murray.pdf)

## 11. The EU Biodiversity Strategy for 2030 – Bringing Nature Back into Our Lives

The response demanded of this generation to our current biodiversity and climate crises has been set out, in Europe, in several complementary documents, that take their lead from the EU Biodiversity Strategy for 2030<sup>9</sup>, this will only be achieved by all agencies working to apply its goals and objectives in both the spirit and the actual. The current and future demands on our finite natural resources need to be focused, planned and informed by robust scientific data and interpreted by those who are trained in this complex area and who can communicate the messages that need to inform county (and regional) executives to facilitate resilient communities. Each local authority should have to hand the expertise offered by senior ecologist level staff, in the guise of Biodiversity Officer(s) who will work alongside and participate in full planning and development policy and processes at the earliest stages.

Currently just five Local Authority Biodiversity Officers exist as posts nationally, with three of this five posts located in the wider Dublin County. The Heritage Council support the rollout of these critical posts nationally and at a level that will support the authority upon which they need to act at.



Location of current Biodiversity Officers: source, The Heritage Council 2020.

## 12. Biodiversity beyond designated areas and the Natura 2000 network

EU ambition shows we need to protect and conserve fauna and flora and the habitats that support them in up to 30% of our land and water ecosystems by 2030, our marine protected areas stand at between 2 and 3%, currently.

<sup>9</sup> <https://www.eea.europa.eu/policy-documents/eu-biodiversity-strategy-for-2030-1>

The mapping of designated areas has been established in line with the development and planning system for decades and often at the cost of broken complex natural systems, habitat loss is compounded by fracturing and a host of species, already threatened by climate change struggle to connect due to the wider gaps imposed due to inappropriate land-use planning. The Heritage Council suggests that much greater thought and effort needs to be given to reknitting these ecosystems/habitats and green corridors to allow the more natural spread of genetic resilient strains. These development plan guidelines can assist local authorities to facilitate biological diversity, not just in pockets/parks and reserves, but throughout the landscape and amongst us.

Heritage Council

8<sup>th</sup> October 2021