Institute of Professional Auctioneers & Valuers

The Voice of Auctioneers & Valuers in Ireland

IPAV Submission on Land Value Sharing and Urban Development Zones Bill 2022

July 2023

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1. Introduction

This submission is made by the Institute of Professional Auctioneers & Valuers (IPAV) on the Government's revised General Scheme of the Land Value Sharing and Urban Development Zones Bill 2022 ("LVS Bill"), as published in April 2023.

The intention to capture and share in part of the uplift in value ensuing from improving the land value of holdings from a lower to a higher use value is a good one, provided it's properly structured and, in our view, that the benefits accruing can be utilised for funding critical local infrastructure, the lack of which impedes and delays construction.

That said, in general terms, we would have a major concern about the lack of coordination of housing policy and how isolated policy measures, legislation and regulation over most of the past decade has brought a whole series of unintended consequences. Such consequences pervade the housing market across both the rental and purchasing sectors, making affordability a major challenge for sizeable proportions of our population.

If the objective of this Bill is to make land less expensive and for this to follow through from builder/developer to home purchaser, we would respectfully suggest that more land should be zoned for housing by Local Authorities. This could be done relatively quickly and would force down the price of land. Instead, many local authorities around the country have, incredibly, de-zoned land or set it aside for future phased development, effectively sterilizing it for the foreseeable future.

It is our belief that the contents of this Bill, as presently structured, would not achieve the desired outcome. In fact, it is highly likely that it would impede the supply of new homes, negatively impacting viability, and affordability.

Viability is currently a major factor in preventing more new homes being fundable for construction around the country. There is an existing problem with lenders being cautious and this has been exacerbated with rising interest rates.

In this environment the proposed measures would make many projects less viable than they already are by adding a tax to lands already overburdened with non-construction expenses in the delivery of houses.

The LVS Bill was originally put forward as something that would replace development levies, but it is now being added to the development land levy regime.

Small builders, many long-established reputable family businesses, are being forced to close and cease building. Their expertise and commitment to housing delivery is being lost, their workforces disbanded because it is no longer viable to acquire sites and fund construction. They are being driven from the market in the same way that small investors are being forced out of the rental market. We do not believe it is sufficient to say that these builders can just sell their land to parties that will develop it; this misses the point that builders do not see a viable business is housing development and they are leaving the industry, thus reducing capacity.

This submission is intended to help legislators implement legislation that will help create a sustainable property market and provide some solutions for what is the most economically and socially challenging issue facing Ireland now.

It is in the interests of all stakeholders to ensure that a properly functioning housing market is enabled. Such a market should be characterised by sufficient supply of suitable housing that is affordable; a moderation of house price inflation; social mobility that is not constrained by housing and a high quality and sustainable housing stock that enhances the overall competitiveness of the Irish economy.

2. Unintended Consequences

The LVS Bill, as currently structured, will give rise to several unintended consequences. These can be summarised as:

- Distorting the land market
- Increasing non-viability
- Overburdening development projects with more taxation
- Creating more uncertainty
- Inhibiting funding and
- Reducing housing commencements.

The LVS Bill, as currently drafted, will force developers and owners of existing land to retrospectively provide for a potential 30 per cent charge on a large part of the value of their land, pushing up development costs, compromising viability, causing many planned schemes to stall, or be abandoned.

All these factors impact consumers, in one way, by pushing up the price consumers pay for homes.

Construction may be perceived as lucrative, and it may well be for some lucky few, but in our experience working with our clients in building and development, they generally tend to operate on low margins relative to the risks involved, including costs arising from planning delays and conditions, infrastructure deficits, increasing cost of finance.

With regards to taxing land zoning improvements, we've been here before. Less than 10 years ago there was an 80% Capital Gains Tax in Ireland on land that was rezoned. It was removed by the then Minister for Finance, Michael Noonan to stimulate the supply of housing. Now we are going backwards with the proposed LVS measures.

Only in recent months the Government reduced levies on a temporary basis to stimulate construction. This LVS Bill is doing the exact opposite of this.

The LVS Bill Explanatory Memorandum States that 'overall, it is considered that the measure is necessary, proportionate, fair/consistent, effective, and will operate with transparency and accountability'. We do not believe that this is the case - and some parties don't believe the process to get us to this point has been either.

3. Issues and Recommendations

Herein we identify 11 key issues and propose solutions to ensure the LVS element of the Bill achieves its desired outcome.

Issue 1:

Ireland is seen by informed parties both domestically and internationally as a very difficult place in which to carry on a business related to the construction of housing, a perception that has only gotten worse over the last 5 years. This is as a result of wide-ranging factors including ever increasing, complex and in some cases contradictory building regulations, a dysfunctional and adversarial planning system, lack of available equity and debt funding, lack of viability, inordinate delays in projects, substantial construction and labour cost inflation and shortages. Funding of new homes is crucial to the national economy and to maintain the social fabric of the country. This proposed LVS legislation will put further pressure on a sector that is already in a state of flux. A mix of domestic and international organisations is fulfilling a crucial role to funding and facilitating Ireland's housing programme and progressing the land development process - to put this further at risk through the current LVS proposals would have very severe consequences.

The LVS Explanatory Memorandum states “a key challenge in implementing LVS is ensuring that the mechanism captures fair value for the State but avoids disincentivising housing supply’. As currently drafted and based on the current crisis in the housing development sector, the proposed LVS measures will further disincentivise housing.

Recommendation 1:

Put a pause on the current process and allow for additional engagement with relevant parties so that the various stakeholders, government, Oireachtas, charitable and private sector can understand the consequences (including unintended ones) fully of the proposals and adjust the proposed legislation if necessary to ensure it is equitable and workable at a practical level, and not an impediment on the future supply of housing.

Issue 2:

The Bill departs substantially from the originally presented documentation and there is no adequate explanation around the reasons for this. For example, the tax is now retrospective, and instead of replacing Development Levies it is in addition to them.

Recommendation 2:

Put a pause on the current process and have additional engagement with relevant parties.

Issue 3:

One of the main issues is the lack of appreciation of the challenged state of the development sector for new homes across Ireland. This LVS, as another additional cost of development that ignores the challenges of viability and the additional costs imposed by the State on the development of housing, which ultimately have to be paid for by home buyers, often a First Time Buyer. Some of the challenges have been clearly outlined in the Department of Finance commissioned report, Project Emerald, prepared by KPMG in 2022 and released in April 2023, which clearly outlines the issues relating to viability.

Recommendation 3:

The Bill should be adjusted to have LVS as a substitute for Development Contributions, not an addition to them.

Issue 4:

The report by Indecon, which influenced the Bill, has not been published, leaving a void in the discourse around the Bill. The LVS Explanatory Memorandum states “it is important to note that the analysis undertaken by Indecon is based on assumptions and an incomplete dataset given the lack of recorded data on land values.”

Recommendation 4:

Publish the Indecon report to enable various stakeholders understand the arguments behind the changes to the proposed tax and contest them through future discourse and stakeholder engagement.

Issue 5:

As currently drafted, the Bill does not allow for a mechanism for offsetting of costs of public infrastructure paid for by the builder / developer.

Recommendation 5:

There needs to be an allowance for offsetting LVS where a builder / developer is delivering significant public infrastructure, services, and facilities as part of a development.

Issue 6:

The valuation process in the Bill is unsatisfactory, there is no explicit appeal process, timeframe requirements or measures to avoid delays.

Recommendation 6:

The valuation and appeal process need to be further developed, including with input from stakeholders.

Issue 7:

The purpose of the tax is to capture increases in the value of land because of re-zoning. However, the valuation methodology does not take into account uplifts in value that could accrue from factors such as inflation, improved public transport or community infrastructure.

Recommendation 7:

These factors need to be taken into account in the valuation process for the purposes of LVS.

Issue 8:

The Explanatory Memorandum states that "it is evident that the benefit conferred by the zoning of land for residential development results in significant uplifts in land value". This is a generalised statement that does not take into account the nuances of valuation and market factors, including the significant challenges around viability, especially for higher density development.

Recommendation 8:

There needs to be further discussion and review of proposed measures with the various stakeholders and a recognition that the LVS in its current form could add further dysfunction to the land and development sector.

Issue 9:

The Bill provides for social and cost rental housing to be given an exemption from the tax. This discriminates against builders and developers looking to supply to the private sector, including First Time Buyers and private renters.

Recommendation 9:

There needs to be fair treatment of both private and social and affordable housing within Government policy, otherwise one tenure type is being discriminated against. While the current focus on social and affordable housing is very much required, there is a risk of creating an unsustainable housing system, where there is a heavy burden on the State and taxpayers to provide and maintain housing into the future.

Issue 10:

Unlike the initial indications, the tax is now being proposed as a retrospective tax.

Recommendation 10:

The tax should be borne by the party ultimately benefiting from the re-zoning decision. In the interest of equity and ensuring that the proposals do not negatively impact on housing cost or delivery, LVS should not apply to lands transacted prior to the legislation being enacted.

This does not undermine the objectives of the Bill. The exclusion of the zoned land transacted prior to the publication of the Bill merely recognizes that the uplift in value has already taken place and there is no ability to share the LVS cost with the original landowner.

Issue 11:

Related to the transitional arrangements - the way the Bill is currently drafted, it may mean that where a planning permission has been applied for during the period of the transitional arrangements, a further application relating to the same land that could be made to improve the overall development may be caught by the provisions of the Bill (e.g. better estate management or more suitable housing types for the needs of the community).

Recommendation 11:

Where a planning application for land has been made within the transitional period that land should be excluded from future liability.

4. About IPAV

IPAV is the representative professional body for qualified, Licensed Auctioneers, Valuers and Estate Agents. It caters for the professional and educational requirements of Auctioneers and Valuers.

IPAV currently has more than 1,500 members nationwide and one of our primary objectives is to uphold, advance and promote professional standards and competence among members.

IPAV operates a comprehensive system of professional education and development for existing members and for those wishing to enter the profession. We introduced the 'Blue Book' European valuation standards to Ireland in 2013. This is the standard recognised by the Irish Central Bank and the European Central Bank for which it holds default status over all other valuation standards in the event of any valuation conflict arising.

IPAV works with other stakeholders and with policymakers to try and influence the development of a sustainable property market where people can buy, sell, or rent properties according to their needs.

IPAV publishes the Residential Property Price Barometer in conjunction with the Sunday Independent twice yearly. It captures prices achieved by auctioneers, as opposed to asking prices, for three- and four-bedroom houses and two-bedroom apartments.

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