

# **AnBord Pleanála-AnnualReport 2007**

## **Board Chairperson says planning must respond to new realities of both economic and climate change.**

At the publication of An Bord Pleanála's 2007 Annual Report on the 6th November 2008, the Chairperson of the Board, John O'Connor, said that planning in this country must respond to the more difficult economic situation in the period ahead and, at the same time, face up to climate change.

He called on local authorities, when reviewing their statutory Development Plan, to take stronger account of important new realities such as climate change, energy costs, the need to maximise the return on expensive infrastructural investment, increased concerns about heritage loss and about unnecessary sprawl into good agricultural land. This will inevitably mean de-zoning some of the indiscriminate and excessive zonings in existing Development Plans which are now completely out of line with current imperatives.

Also, it is incumbent on planning authorities and An Bord Pleanála when making decisions on planning applications, to interpret Development Plan policies in a way that reflects these realities. In dealing with planning appeals the Board is constantly coming across zoned sites that are too far removed from developed areas, too remote from public facilities such as piped services, footpaths, lighting and with no prospect of public transport. Many such development proposals are dependant on long distance commuting by private transport. Much of the development we have seen does not represent the orderly expansion of settlements in conjunction with the efficient use of land and infrastructure. The idea that every place must get development no matter how thinly spread was never sustainable, but will be distinctly less sustainable in the future - either in the environmental or the economic sense. Major public investment in railways, roads, water supplies, waste water treatment and education facilities, must dictate where future development should be located. Development is necessary to ensure these investments yield best returns but these investments cannot be replicated everywhere and this must be reflected in Development Plan zonings.

In the context of climate change the Chairperson welcomed the recent publication by the Minister for the Environment Heritage and Local Government of draft planning guidelines on flood risk management and hopes that, in future, these will lead to fewer appeals against permissions granted in floodplains by local authorities.

Water resources are another constraint which must be taken into consideration in planning future development strategy. Already one can see that some settlements have difficulties in sourcing drinking water supplies and in finding suitable water bodies to assimilate treated waste water discharges without causing pollution. This will mean directing development to areas that don't have such constraints, however controversial

this might be. The long term economic and environmental costs of pumping water or sewage over long distances will have to be factored into planning decisions.

Mr. O'Connor also said that there was a need for some local authorities with relatively recently adopted Development Plans to reconsider some of the more unsustainable zonings by way of variation of their Development Plans. Otherwise the risk that the Board will refuse permission on zoned lands for reasons relating to National Policies or Regional Planning Guidelines, with possible consequent compensation liabilities for the local authority, will increase. However, if Development Plan making is to be reformed to reflect the new imperatives, management in local authorities will have to refocus resources on issues of sustainability and the common good, with less effort expended on responding to special pleading for unsuitably located lands.

The Chairperson said that the Board also had concerns about the frequency with which decisions on individual developments do not reflect the policies in the Development Plan or the Local Area Plan. The Board can often be seen as a stronger defender of the Development Plan than the local authority who adopted it. This has serious implications for the credibility of the whole system as the statutory Development Plan is the anchor of the land use planning process and, if councils are not seen to respect their own plans, developers and the general public are less likely to do so.

## **WORKLOAD/INTAKE OF CASES**

Last year's record intake of 6,700 cases left a significant backlog at year end and resulted in a deterioration in the timeliness of Board decisions. While the intake of cases of all types in the first ten months of 2008 is down 16% on last year's unprecedented level, it is only 4% down on the intake in 2006. The number of cases on hand at end of October was 2,780, 250 less than the peak experienced last March. It still represents a backlog of some 1000 cases. With the expected moderation in intake and continued efforts to maximise output the Board expects the number of cases on hand to drop to 2,700 by year end. In 2008 only one quarter of appeals will be disposed of within the statutory time objective of eighteen weeks. The Board regrets the delays that are occurring and hopes that significant progress can be made in 2009 towards restoring compliance with the statutory objective period.

Within the overall intake of cases there has been a notable fall in the number of appeals relating to schemes of 30+ houses. In the first three quarters of 2008 the Board received 297 such cases compared with 403 in the previous year. Categories of development requiring considerable resources from the Board during 2008 include major urban mixed use developments, quarries, waste facilities and strategic infrastructure developments under the 2006 Act.

## **GENERAL TRENDS IN 2007 REPORT**

The following are some general trends in normal planning appeals contained in 2007 report:-

- The proportion of local decisions appealed which were reversed by the Board remained steady at 32%.
- First party appeals against refusal resulted in grants of permission in 29% of cases, up from 26% in 2006
- Third party appeals against grants of permission resulted in 37% refusals, down from 43% in 2006.

## **OPERATION OF STRATEGIC INFRASTRUCTURE ACT**

To end October the Board has received 98 requests from project sponsors for pre-application consultations. 150 meetings have been held. In 68 of these cases the consultations have been concluded. In 23 of these cases, the Board determined that they were to be considered as strategic infrastructure cases, 35 were not regarded as strategic infrastructure cases and 10 were withdrawn. These cases have covered a range of projects from electricity, gas, waste, airport, harbours, wind farms and various types of railway.

The Board has received 8 "Seventh Schedule" formal applications for permission, 4 of which have been decided. The 4 decisions related to a power station at Toomes, County Louth, a LNG regasification terminal at Ralappane/Kilcolgan Lower, County Kerry a waste management facility at Drehid, County Kildare and a container terminal at Ringaskiddy, County Cork. Permission was granted for the first 3 of these projects subject to significant conditions and permission was refused for the Ringaskiddy project for reasons that underline the Board's mandate. Two Railway Orders have also been approved subject to conditions. One electricity transmission line application has also been determined. The Board met the statutory objective in 5 of these 7 cases. The average number of weeks for those 7 cases was 21 weeks from the last date for public submissions.

The 4 current "Seventh Schedule" applications relate to, a biomass heat and power plant at Nobber, County Meath, a resource recovery project at Rathcoole, County Dublin, port facilities at Dublin Port and a mixed development at Terminal 2 in Dublin Airport. In addition to the Seventh Schedule proposals before the Board under the Strategic Infrastructure Act, other major proposals are a pipeline facility relating to the Corrib gas field, gas pipelines at Midleton and Ballylongford and, of course, Metro North.

## **RETAIL DEVELOPMENT**

Mr. O'Connor said that the recent report by the Competition Authority on the retail sector showed that a relatively high proportion of planning decisions on supermarket developments are appealed to the Board. The Board co-operated fully with that Authority's review of the sector but is convinced that any follow up to the review, which was focused only on competition aspects, should take account of the wider social, environmental and planning dimensions. The Board entirely accepts that it is not a function of the planning system to restrict or oversee competition but there is an onus on planning to protect town centres from being denuded of their retail function, to preserve the capacity of major road junctions, to ensure the local availability of retail services, to reduce reliance on private transport, etc. Generally, the Board considers that the 2000 Retail Guidelines have served us well and have helped to avoid some of the harmful effects that would have certainly happened in their absence. While accepting that a review of some aspects of the Guidelines is desirable, there is a risk that the long term price to the community of permitting huge mega stores at arterial road junctions outside our towns and cities could be much greater than any short term gain in terms of grocery prices.

## **WASTE MANAGEMENT**

The Board expects that the requirement of the European Directive on member states to reduce the amount of waste going to landfill will result in an increase in the number and range of alternative solutions coming before it for determination either as planning appeals or Strategic Infrastructure Projects. Experience to date suggests that project sponsors need to pay more attention to two aspects in particular, namely, the location of the project and the disposal of residues, both liquid and solid. It is not enough to choose a location just because it hosts an existing waste facility or because of land ownership considerations. Neither is it acceptable to leave the disposal of residues to be dealt with later. Locations should be chosen based on a set of objective criteria which take account, inter alia, of the geographical sources, quantities, transportation distance etc, of the waste, the environmental characteristics, current land uses etc, of the site location and also the environmental effects of the disposal of the residues. It is essential that the EIS for any such project sets out clearly the nature and quantity of residues and the method of final disposal. Otherwise it is almost impossible for the Board to be satisfied as to the environmental sustainability of the project, no matter how desirable it may appear.

## **NURSING HOMES**

With an ageing population there is an increase in the number of nursing homes being provided around the country. Some of these are coming on appeal and it is noted that the locations of some are singularly inappropriate in planning terms and even in terms of future occupiers, operators and employees. A number of large scale nursing homes have been proposed in isolated greenfield sites remote from towns or villages, shops or

services of any description. Invariably, these have been refused by the Board as it is considered that such facilities are best located within existing settlements where public services are available and where the occupants have some degree of access to shops and other amenities or can walk up the street and encounter members of the local community. We have also noticed that the design and layout of large nursing homes often neglects to provide adequate outdoor space for residents.

## **ORAL HEARINGS**

While most ordinary planning appeals are processed by means of written representation, the Board attaches considerable importance to the oral hearing as a means of ensuring that in the larger, more significant, cases all the information necessary to make the best possible quality of decision is brought out and tested by those of different view points.

Mr. O'Connor, said, however, that he is determined to ensure that oral hearings being held by the Board into strategic infrastructure applications and planning appeals are conducted "expeditiously" and without "undue formality" as the Act requires. There is concern that some lawyers participating in hearings are engaging in courtroom histrionics which may be good for the odd headline but have no place in a planning hearing. While not denying that lawyers can make a valuable input to hearings, this conduct tends to prolong hearings unduly, distract from the real purpose of the hearing and can also hinder the inspector in getting to the root of the planning and environmental issues involved and reporting the facts to the Board. These comments would also apply to certain non-lawyer participants on occasion. Persons participating in such oral hearings should concentrate on the substantive planning and environmental arguments for or against the development proposed.

**6<sup>th</sup> November 2008**