

## **An Bord Pleanála.**

### **Annual Report 2008.**

#### **Chairperson cautions against relaxation of planning standards in recession**

At the publication of An Bord Pleanála's 2008 Annual Report on 14<sup>th</sup> October 2009, the Chairperson of the Board, John O'Connor, said it would be extremely short-sighted if there was any tendency to relax good planning standards in response to our current economic difficulties. Now, more than ever, we need to embrace the principles of good planning and sustainable development in order to prevent further deterioration of our environment, to respond to climate change, to maximise the return from expensive infrastructure investment, to get the most efficient use of limited land resources and to help restore confidence by producing well located good quality developments. Excessive and unsustainable zoning of land has been a contributor to the property bubble and its aftermath. There is increasing evidence that many of the current local authority development/plans are replete with such zonings. If we are to return to realistic development planning some of this land will have to be dezoned and facing up to this has a part to play in deflating the bubble and restoring a sustainable market. The Chairperson said that the planning bill currently before the Oireachtas should ensure a much more coherent and sustainable approach to zoning and is a very welcome response to the trends over recent years to which he has repeatedly drawn attention to in the past. Thus, anyone now assessing property values in terms of development potential must in many cases look beyond the particular zoning and focus on the availability of services and infrastructure and the other parameters of good planning such as densities, heights, impact on amenities and the orderly sequence of urban expansion. Bad planning has long term environmental, economic and social costs and there can be no expectation that proper planning standards would not be applied to development proposals, even where the land is linked to distressed loans.

#### **WORKLOAD AND TIMESCALES.**

Last year's total intake of 5,800 cases while down on the record intake for 2007 was still very high by historical standards and meant that the Board continued to be under severe workload pressure in 2008. The number of cases of all types on hands peaked at over 3,000 in March 2008. With the continued drop in intake (over 30%) and special measures to maximise output the number of cases on hands has been almost halved to 1550. Last month 36% of cases were determined within the 18 week statutory objective and the average time taken across all cases was 20.6 weeks. The Board regrets the delays that have occurred and believes that we are approaching the point where routine delays can be eliminated.

## **GENERAL TRENDS IN 2008 REPORT**

The following are some general trends in normal planning appeals contained in the 2008 report:-

- The percentage of local authority decisions appealed to the Board increased from 6.7% to 8.1%. (46% were received from 3<sup>rd</sup> Parties).
- The proportion of local decisions appealed which were reversed by the Board remained steady at 33%.
- First party appeals against refusal resulted in grants of permission in 28% of cases. (29% in 2007).
- Third party appeals against grants of permission resulted in 39% refusals. (37% in 2007).

## **OPERATION OF STRATEGIC INFRASTRUCTURE ACT.**

From the introduction of the Act in 2007, to end September 2009, the Board received 137 requests from project sponsors for pre-application consultation. 211 meetings have been held. In 97 of these cases the consultations have concluded. In 33 of these cases, the Board determined that they were to be regarded as strategic infrastructure cases, 46 were not regarded as strategic infrastructure cases and 18 were withdrawn/otherwise concluded.

The Board has received 15 “Seventh Schedule” applications for permission. Of these, 8 have been concluded with 4 granted, 3 refused and 1 withdrawn. 2 railway applications have been concluded and approved. 6 gas applications with related compulsory acquisition requests have been concluded with 4 granted and 2 withdrawn. Two electricity applications have been concluded and approved. The Board met the 18 week statutory objective in 11 out of the 15 cases. In a number of cases the Board has used the powers given to it in the Act to require that projects be significantly amended before they can be approved. There are currently 7 applications under the “Seventh Schedule” with the Board, 1 railway order (The Metro), 2 electricity and 2 gas applications (application and related compulsory acquisition) with the Board.

In its experience of the system to date the Board considers the pre-application consultation procedure to be beneficial in terms of identifying in advance the critical issues that need to be addressed in the application (it is not the purpose to judge the merits of the case at this stage). Most consultations require at least 3 to 4 meetings to achieve this.

However, in some cases prospective applicants are too vague about their proposals for the process to be meaningful (some have not even been site specific). There is a tendency with developments involving public/private partnership proposals to present an outline of design and impacts or standards to be set for the contractor. This is unsatisfactory as the Board must have sufficient information to carry out an environmental impact assessment and the legal requirements on the Board do not differentiate between public/private partnership and conventionally procured projects. There is also concern that some prospective applicants are not engaging fully with local authorities or prescribed bodies (as advised by the Board in the pre-application consultations) in advance of lodgement of the application. This can lengthen oral hearings and give rise to avoidable requests for further information.

When the SIA was introduced, I promised that each project would be subject to a robust and thorough assessment of its environmental and planning implications. I believe that our performance to-date bears this out. It continues to be our general policy to hold oral hearings to facilitate the greatest possible public participation.

### **HOUSING DENSITIES**

The Chairperson said he was concerned that developers may be tempted, in the present market, to return to lower density development. However, national policies on building more sustainable communities for the future do not favour a return to old-style low density development due to the greater than ever need for the most efficient use of expensive infrastructure, for increased environmental sustainability and for less urban sprawl. He cautioned developers that proposed developments involving densities lower than those indicated in the Planning Guidelines on Sustainable Communities or applications for revised permission for lower densities, particularly in major urban centres, would be critically assessed by the Board where they come on appeal.

### **DISPLACEMENT OF SPORTS FACILITIES.**

The Chairperson said that the Board had, over the past couple of years, dealt with a significant number of appeals relating to proposals to move major sporting facilities from their long established locations in the midst of urban communities to remote locations. Permission was refused for some of these proposals because of their poor accessibility, the increased risk to road safety, lack of services and diminution of urban amenities. Sometimes these proposals were facilitated by zoning decisions of local authorities that seem to be based on a rather narrow set of considerations. The Chairperson said that, while each case had to be considered on its own particular merits, he was concerned about the long term effects of this trend. The displacement of sports facilities that were sustainably located in established communities could represent a physical and social loss to the area and could in the long term impact negatively on participation levels in the sports concerned.

### **NEED FOR REFORM OF LOCAL PLANNING STRUCTURE.**

The need for public service reform is widely acknowledged. The structures that deliver the local planning service are a case in point. We have 88 planning authorities for a country with a total population of 4.4 million. While acknowledging the need to retain their local democratic character, many of these authorities have administrative areas that are much too small and fractured to constitute meaningful planning units in terms, for example, of efficient infrastructure provision, the strategic location of future development or the management of water catchments. Equally, they cannot be expected to have at their ready disposal the full range of skills and experience demanded by a modern planning service which must operate under an increasingly complex body of planning and environmental legislation. Sustainable strategic planning is sometimes supplanted by localised short-sighted competition for development. This is particularly evident at the edges of certain cities and large towns. The Chairperson said he believes strongly that the public service reform agenda must include rationalisation of the planning service in the interests of the quality of the planning and public service efficiency.

## **EU ENVIRONMENTAL DIRECTIVES.**

It is an undeniable fact that European Directives have been a major force for good in protecting the environment here in Ireland and across Europe. An Bord Pleanála in its decisions must give effect to the provisions of various EU Directives as transposed into Irish law. Of particular importance in this regard are the EIA, Habitats and Birds Directives. There have been several European Court of Justice decisions in recent years which have given a stringent interpretation of these Directives and have been critical of Ireland and other member states' implementation of them. The Board is conscious of the necessity to carry out its assessments in accordance with the requirements of these Directives and to afford the public full opportunity to participate in the decision making process as required by the Directives. As a result, the assessment of major projects affecting designated habitats in particular has become more complex and resource intensive for the Board, making demands in terms of staff upskilling and training at a time of severe budgetary constraints. It is our experience that developers, their consultants and even local authorities are still not sufficiently cognisant of the demanding nature of the process and the need for detailed information in support of development proposals. The interface between the Board and the EPA in the case of projects requiring an IPPC or waste licence as well as planning permission has been an area of particular difficulty and frequent legal challenges. The Board and the EPA have set up a joint working group to review this issue and make recommendations for improvement so as to ensure that this interface is operated in an integrated, efficient and effective manner

## **EU WATER QUALITY DIRECTIVES.**

In addition to the Directives referred to already, the EU Water Framework Directive together with its Daughter Directives is having and will continue to have major implications for development in the future. The prevention of water pollution and the achievement of good water quality are the fundamental aims of the Directive which will require significant investment in effluent treatment facilities. Proposals which would endanger water quality cannot be permitted. There is a specific prohibition on granting planning permissions for developments which would result in overloading of treatment plants. It is essential for planning authorities to co-ordinate their planning and water service functions in order to ensure that planning permission is not granted for developments which would result in the deterioration of water quality. In the Board's experience, many local authorities also need to undertake much more rigorous assessment of septic tanks and other individual waste water systems. Again, there is a lack of awareness about the very serious nature of the obligations in the whole area of water quality.

## **BUDGETARY CONSTRAINTS.**

As with all other public sector organisations the Board is facing a very challenging budgetary situation at present. Current figures for 2009 show a significant decrease in fee and other income streams relating to casework intake (from €6.2m in 2008 to an estimated €5m in 2009). The central exchequer grant has also been reduced from €15.1m in 2008 to €13.6m in 2009. Accordingly the Board's income from those sources in that period will fall by a total of €2.7m.

It is likely that the situation will become even tighter in 2010. The Board being conscious of the need for expenditure savings has reduced its overall expenditure by a significant proportion in 2009 and further retrenchment will be necessary in 2010 (actual expenditure in 2008 was €23.2m and is currently estimated to be €20.6m in 2009).

Cost savings have included implementation of the central embargo on recruitment and the letting go of temporary staff with consequent reduction in payroll costs and, more significantly, the virtual discontinuance in the use of fee per case planning consultants to report on planning appeals. The Board has traditionally used this flexible resource to react to significant increases in the intake of cases and, while the Board is hugely appreciative of the contribution made by these people over the last number of years, the decrease in the intake of cases and budgetary constraints dictate that the vast bulk of cases will now revert to being reported on by the in-house Inspectors. However, the Board will continue to use the services of a limited number of experienced local authority planners who have spare capacity.