

Presentation by the Chairperson of An Bord Pleanála to the Joint Committee on the Environment, Heritage and Local Government

28th October, 2009.

I welcome the invitation from the Committee to discuss the Board's annual report and performance for 2008. I will advise the Committee of the up to date position and respond to two issues which you have raised in advance.

At the outset I will deal briefly with the Board's overall workload and performance.

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. This pressure was compounded by the commencement of the Strategic Infrastructure Act in 2007, appeals relating to quarry registrations and the increased size and complexity of projects coming before the Board. The number of cases of all types on hands peaked at over 3,000 in March 2008. However, with the continued drop in the intake of cases- over 30% to date this year - and special measures taken to maximise output the number of cases of all types on hands has at this point been more than halved to under 1,500. Last month 36% of cases were determined within the 18 week statutory objective and the average time taken across all cases decided was 20.6 weeks. The Board has expressed regret for the delays that have occurred and believes that we are approaching the point where routine delays can be eliminated.

The projected intake of all cases in 2009 is 4,000 and the estimate for 2010 is 3,600. As indicated in the Annual Report the Board operates a system of priority for appeals involving important infrastructure, employment etc.

Strategic Infrastructure

On the occasion of my last attendance at the Committee in 2007 I referred to the significant new functions which had been assigned to An Bord Pleanála under the Planning and Development (Strategic Infrastructure) Act 2006. After more than two

years in operation I thought it might be appropriate to give the Committee a brief account of this area.

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to be regarded as strategic infrastructure cases, 46 were not regarded as strategic infrastructure cases and 18 were withdrawn/otherwise concluded.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 formally decided cases (3 cases were withdrawn). 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”, 1 railway order (Metro North), 2 electricity and 2 gas applications with the Board. Despite our best efforts the 18 weeks period has proved to be impossible to attain in some of the larger projects where we have often had to seek further information from the applicants.

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

Impact of European Directives

We would all agree that European Directives have been a major force for good in protecting the environment. An Bord Pleanála in its decisions must give effect to the provisions of various EU Directives. Of particular importance in this regard are the

EIA, Habitats, Birds and various Water 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 obliged 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

Budget/Staffing

The Board's income and expenditure will significantly decline over this and next year. Actual expenditure (excluding deferred pension funding^{*}) in 2009 is now estimated to be €20.6m down from €23.2m in 2008 which equates to an 11% reduction and this is likely to reduce by a further 10% in 2010. The decrease in the intake of cases in 2008 and 2009 has resulted in significant decreases in fee/cost recovery income for the Board from €6.2m in 2008 to a projected €5m in 2009 and €3.5m in 2010. The central Exchequer Grant decreased from €15.1m in 2008 to a grant of €13.6m in 2009. Accordingly the Board is facing a very challenging financial environment in 2009 and 2010 and costs are being pared to the bone in every part of the organisation.

^{*} Actual Expenditure excludes the actuarial calculation for the notional amount set aside to fund future pension liabilities. This appears in 2008 as the figure of €3,994,000 under Income and is also included as notional expenditure under the Salaries, Allowances and Superannuation Heading. This protocol is in accordance with Financial Reporting Statement 17 and aligns with pension arrangements in the public sector in general.

Having regard to these financial constraints and the reduction in the intake of cases the Board has effectively now discontinued the use of fee per case planning consultants to report on planning appeals. Over recent years the Board has used this flexible external resource to react to significant increases in the intake of appeals; they have been producing reports in over 40% of cases. The Board will now rely on its own in-house Inspectorate to report on the great majority of cases. However, we will continue to use the services of a limited number of experienced local authority planners, who have spare capacity, to report on some cases thus continuing an initiative commenced in May of this year.

The Board has also been subject to the central embargo on recruitment and the requirement to not renew any temporary contracts of employment. While the authorised complement of Staff is 172 posts, 166 were filled at the end of 2008 and this will likely further reduce to 159 by the end of 2009.

The Board is conscious of the need to ensure it retains a clear focus on deploying its staff resources in a manner which gives it the capability to achieve clear and measurable performance outcomes in accordance with its statutory remit and in accordance with the Government agenda for transformation of the public sector.

Each year at the publication of our annual report I draw attention to aspects of planning that are of concern to the Board arising out of its functions. On the same occasion I also make myself available to answer questions from the media. Copies of my statement this year have been supplied to the Committee.

I now wish to deal with the two issues arising from the 2008 Accounts which you have requested, viz, internal financial controls and legal costs recovery.

Internal Financial Controls

My statement in the annual report on the system of internal financial control indicates that the 'Board' did not formally review the effectiveness of the system of internal financial control. The Comptroller and Auditor General noted the above and commented that the Board did not accordingly fully comply with the requirements of the Code of Practice for the Governance of State Bodies.

To put this in context, I should say that the Board's finances are relatively straight forward and the Board is not exposed to major business risks. For many years we have engaged an outside experienced professional accountant to check our accounts and advise as necessary. In 2005 and 2006 we engaged an international accountancy firm to conduct internal audit pending the setting up of our own Internal Audit. A comprehensive set of control procedures were in place reporting monthly to the Management Committee of which the Chairperson and Deputy Chairperson are members. Copies of the minutes of the Management Committee meetings including the financial reports were circulated to all the other Board members Furthermore, financial performance was overseen by the Audit Committee which consisted of three Board members other than the Chairperson and Deputy Chairperson.

The Board had endorsed all of these arrangements but it is acknowledged that this falls short of the formal review by the full Board required by the Guidelines. However, it is also clear that the external audit by the C. and A.G. confirmed that the financial statements of the Board and the general accounting practices underpinning same are in order and that no areas of concern were identified in respect of same.

Arrangements are in place to ensure full compliance with the Code of Practice in 2009 including the necessary review by the Board itself of the effectiveness of the system of internal financial control.

I can also advise the Committee that 2008 saw the completion of a restructuring of the staff organisation of An Bord Pleanála which included the appointment of a full time dedicated internal audit officer from the existing staff complement. Furthermore in 2009 the Board appointed an external Chairperson of its Internal Audit Committee. These measures will reinforce the Board's system of financial controls and bring the Board fully into line with corporate governance requirements.

It might be noted that the Board differs from the generality of State Bodies in that all members are full time and there are no non-executive directors. It is a source of satisfaction to me and a compliment to the staff concerned that no auditor – internal or external – has ever had reason to criticise any financial transaction on expenditure of the Board.

Recovery of Legal Costs

The outstanding amount for recoverable legal costs at the end of the financial year 2008 was €3,319,416. However it should be noted that this figure represents the accumulated outstanding total of costs owed to the Board and not written off going back to 1999 and involves approximately 40 cases. Recoverable costs arising in 2008 amounted to €1,174,170 while €952,018 was actually recovered in that year and so far in 2009 the Board has recovered €700,000.

The Board's policy has always been to vigorously pursue recovery of costs where the Courts have awarded same on foot of the Board successfully defending itself against legal challenges to its decisions. In this regard the Board regularly uses the full range of legal options available to it in pursuit of money owed up to and including the registration of judgement mortgages against land/property in the ownership of debtors and/or enforcement of costs orders through requests to the sheriff to call to the houses of debtors and seek to seize goods to off-set against the debt. However, it is a fact that such attempts at recovery involve lengthy additional legal procedures which in themselves generate expenditure of further public money.

In some cases the Board will consider whether to accept a reasonable offer from a debtor in respect of payment of the substantial bulk of costs owed and this can be cost effective in terms of obviating the necessity for additional legal steps to attempt recovery with consequential further expenditure (any outstanding balance would be written-off). It is however often the case that persons involved in making legal challenges do not have sufficient funds or assets to discharge all or any of the costs owed – while such persons of course have a right to institute legal proceedings they do not have to show that they have assets or can give security for costs before instituting the proceedings. Accordingly in certain cases it can come to a point where a decision has to be made not to expend further public money chasing a lost cause. In such cases, and only after exhaustion of a range of options to effect recovery and consideration of legal advice the Board would make a formal decision to write-off a portion or all of the costs as a bad debt.

The Board is in constant liaison with its legal agent in respect of monitoring and reviewing progress on cost recovery in individual cases and the agent is under firm instructions to pursue every possible avenue of recovery. In this context I hope that the committee will appreciate that I am reluctant to discuss details relating to specific cases as our advice is that this may be prejudicial to future recovery of owed monies.

Finally, on the question of legal costs I would draw the Committee's attention to the recent judgement of the European Court of Justice which found that Ireland was not in compliance with European Directives on the grounds that the State had not validly implemented the requirement that there should be a right to review of planning decisions (in EIA cases) which is not prohibitively expensive.

John O'Connor

Chairperson

An Bord Pleanála