

An Bord Pleanála



Applications for approval for Local Authority Developments made to An Bord Pleanála under 177AE of the Planning and Development Act, 2000, as amended (Appropriate Assessment)

Guidelines for Local Authorities

Contents

1. Introduction

2. General

3. Plans, Particulars and Other Considerations

4. Administrative Matters

5. Further Information and Assistance

Appendix: Screening

1. Introduction

- 1.1** This Guidance Note provides procedural advice in relation to submission of proposals to An Bord Pleanála for local authority developments under s.177AE (relating to appropriate assessment (AA)) of the Planning and Development Act, 2000, as amended.
- 1.2** When considering a proposal under section 177AE, An Bord Pleanála must have regard to:
- the likely effects on the environment of the proposed development,
 - the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development, and
 - the likely significant effects of the proposed development on a European site.
- 1.3** Expectations in relation to the plans/particulars to be lodged and the level of detail to be provided with the plans/particulars will be proportionate to the scale and complexity of the proposed development and characteristics of the receiving environment. For all cases, An Bord Pleanála expects that the project is accurately described in drawing and written form and its full implications relating to all relevant considerations including any mitigation measures proposed are clearly set out in the documentation.
- 1.4** The purpose of this note is to provide guidance to local authorities in preparation of submissions so as to facilitate the Board in reaching a fully informed and timely decision.

2. General

- 2.1** There will be a variety of local authority projects in terms of nature, size and scale for which approval under s.177AE is required. Previously these projects have been dealt with by local authorities under s.179 of the Planning and Development Act (as amended) and Part 8 of the Planning and Development Regulations, 2001 (as amended). An Bord Pleanála is conscious that submission of these types of proposals is a change of practice with greater detail and information required due to (a) statutory requirements and (b) because the decision making process is now outside the remit of the local authority, local knowledge that might have been taken for granted by the local authority may now need to be set out in the application.

2.2 An Bord Pleanála's decision:

An Bord Pleanála may

- approve with or without modifications;
- approve in part only with or without modifications; and
- refuse to approve.

An Bord Pleanála may attach conditions as it sees appropriate including in relation to the construction, financing or provision of a facility or service constituting a community gain.

On receipt of An Bord Pleanála's decision, the local authority is required to make a copy of the decision and the Natura Impact Statement available for public inspection and/or purchase.

3. Plans, Particulars and Other Considerations

3.1 This section sets out the 'in general' information required by An Bord Pleanála under plans, particulars and other considerations. Dependent on the nature, scale and complexity of the proposed development and the receiving environment, not all of the information described under the headings below may be applicable. Local authorities should use their knowledge of the area and expertise to decide which might be relevant in a particular case.

3.2 The local authority may wish to combine the various reports as may be required from the matters highlighted into a single volume. This would include the Natura Impact Statement itself and additional commentary in regard to relevant planning matters and the likely effects on the environment.

Plans:

The nature and extent of the proposed development should be fully described in drawing form including provision of

- site location plan
 - scaled site layout plan,
 - plans, elevations and sections of all aspects of the proposed development for which approval is sought:
- Insofar as is relevant to the application for approval being made and having regard to the specific requirements as set out in s. 177AE, note should be taken of the provisions of articles 23 and 83 of the Planning and

Development Regulations, 2001 (as amended) concerning plans, drawings and maps lodged.

- Where the application relates to proposed development remote from a recognised settlement, the site location map should identify the location of the proposed development site relative to the nearest identifiable settlement.
- Details in relation to proposed plant, infrastructure or equipment (for example proposals for waste water treatment facilities or water pipelines) should be provided as far as possible. This should include plans and elevations (including in the context of the structures to which they may be affixed), sections and technical specifications.
- Construction methodology statements describing the full extent of all aspects of the proposed development including location of any site compounds, car parking, materials storage areas, lagoons etc. and mitigation measures where proposed.

Particulars:

Effects on the environment of the proposed development include:

- full description of proposed development including details of construction and operational phases and impacts, likely emissions and/or discharges, phasing, and any mitigation measures proposed;
- protected Structures, Architectural Conservation Area (ACA), archaeological sites or ancient monuments or other built heritage etc. immediately impacted upon or in vicinity whose setting might be affected;
- impact on other designated sites such as Natural Heritage Areas;
- adequacy of the public or other water supply;
- public sewerage facilities and capacity to facilitate the proposed development;
- availability and capacity of surface water drainage facilities and any history of flooding relevant to the site;
- flood risk assessment in accordance with The Planning System and Flood Risk Management – Guidelines for Planning Authorities (November 2009);
- hydrological/hydrogeological assessment of project;
- assessment under the Water Framework Directive and associated regulations including any capacity of receiving waters to assimilate any additional discharge loadings in accordance with water quality standards and objectives;
- assessment of landscape status and visual impact, as appropriate;
- carrying capacity and safety of road network serving the proposed

development;

- the likely significant impact arising from the proposed development, if carried out including impacts on amenities of properties in vicinity;
- air, odour and noise emission assessments; and
- any Special Amenity Area Order (SAAO) which may be affected by the proposed development.

The likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development

- justification for the project;
- main Development Plan provisions relating to the subject site and surrounding area including any relevant Core Strategy provisions;
- relevant planning history relating to the subject site and the surrounding area;
- relevant national, regional and local policies; and
- description of use of adjoining, abutting or adjacent lands.

The likely significant effects of the proposed development on a European site (the Natura Impact Statement - NIS)

- As defined under s. 177T of the 2000 Act (as amended) an NIS constitutes a
“...statement for the purposes of Article 6 of the Habitats Directive, of the implications of a proposed development, on its own or in combination with other plans or projects for one or more than one European site, in view of the conservation objectives of the site or sites” and shall include “.. a report of a scientific examination of evidence and data, carried out by competent persons to identify and classify any implications for one or more than one European site in view of the conservation objectives of the site or sites”.

An Bord Pleanála as the Competent Authority carrying out the appropriate assessment on these cases should be provided with documentation based on the appropriate information. This would include any survey work results, baseline studies and further analysis and assessment of the effects of the proposed development on a European site(s). In absence of such An Bord Pleanála may have to consider refusing to approve the proposed development, to use its powers under s. 177AE(5)(a)(i) to seek further information, to make alterations to the proposed development or to invite a revised NIS.

It is considered that a thorough and complete NIS and its inclusion into a single comprehensive report should provide the necessary information required to facilitate An Bord Pleanála in its timely determination of the case.

Guidance on appropriate assessment and information to be contained in an NIS is available elsewhere. This includes

- DOEHLG (2010) Appropriate Assessment of Plans and Projects in Ireland. Guidance for Planning Authorities (as revised 2010)
- European Commission (2000) Managing Natura 2000 Sites. The provisions of Article 6 of the ‘Habitats Directive’ 92/43/EEC
- European Commission (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the ‘Habitats Directive’ 92/43/EC
- European Commission (2007a) A Guidance Document on Article 6(4) of the ‘Habitats Directive’ 92/43/EEC. Clarification of the concepts of alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission.

4. Administrative Matters

4.1 Application: Article 249 of the Planning and Development Regulations, 2001 as amended by the Planning and Development (Amendment) (No. 3) Regulations 2011 provides that when a local authority makes an application to the Board it shall send:

- (a) 3 copies of the plans and particulars of the proposed development,
- (b) 3 copies of the NIS for the proposed development,
- (c) a copy of the notice published under section 177AE(4)(a), and
- (d) a list of the bodies to which notice was sent under section 177AE(4)(b), a copy of each notice and an indication of the date on which the notice was sent.

In all cases one of the three copies as required above must be a soft copy (eg CD pdf format). Plans and particulars which contain colour in the hard copy format must also be provided in colour in electronic format. Similarly all those provided in colour in electronic format must be provided in colour in hard copy format.

4.2 Prescribed Authorities/Notices: Under section 177AE(4)(b) of the Planning and Development Act, 2000, as amended, a local authority should notify all relevant prescribed authorities of the application.

The notice to each prescribed authority should contain a copy of the application and the NIS; electronic format should suffice unless a prescribed authority requests a hard copy. The notice should state that submissions or observations may be made to An Bord Pleanála and the period given for submissions or observations should be the same period for submissions or observations as given in the newspaper notices (not being less than 6 weeks).

The notice should also state that submissions or observations may be made in relation to all the relevant considerations referred to in section 3(1) above.

Article 251 of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment)(No. 3) Regulations 2011, provides that the prescribed authorities for the purpose of section 177AE(4) shall be the same as those prescribed for the purposes of section 175(4) of the 2000 Act as set out in article 121 (as amended).

4.3 Public Notices: S 177AE(4)(a) sets out the public notice form and content requirements for local authorities. This includes requirements for publishing a notice in at least one local newspaper. There is no fee for submissions from the public.

- 4.4 Oral Hearings:** An Bord Pleanála may decide to hold an oral hearing to assist it in the determination of applications (although in most cases this may not be deemed necessary). A need for an oral hearing will be dependent on the scale, nature, extent and complexity of the case and nature of submissions received and is entirely at the discretion of the Board. An Bord Pleanála will generally hold an oral hearing where an application for approval in whole or part is associated with a compulsory purchase order for the compulsory acquisition of land where objections have been received and confirmation of the compulsory purchase order therefore falls to the Board.
- 4.5. Costs and Expenses:** An Bord Pleanála will direct payment be made by the local authority to the Board towards reasonable costs and expenses it has incurred (section 177AE(9)). Clear and comprehensive application documentation will however facilitate efficient examination of the case by An Bord Pleanála.
- 4.6 EPA:** There are particular provisions concerning proposed developments relating to an activity for which an integrated pollution control licence or waste licence is required (section 177AE(10)).
- 4.7 Road Development:** Local authority road developments not needing an EIS but needing AA must be the subject of an application under s. 177AE (article 15 of the European Union (Environmental Impact Assessment and Habitats) Regulations, 2011).
- 4.8 EIS and NIS:** Where a proposed development requires both an EIS and NIS one application is adequate. The local authority must however comply with the requirements of both sections 175 and 177AE e.g. the associated public notice must refer to and describe the proposed development subject of the EIS and the NIS (article 15 of the European Union (Environmental Impact Assessment and Habitats) Regulations, 2011). These provisions also apply to local authority road cases under s. 50 of the Roads Act where both EIS and NIS are required.

5. Further information and assistance

5.1 If any query arises in relation to an administrative or procedural matter An Bord Pleanála may be contacted to clarify requirements in advance of formal lodgement of an application for approval.

5.2 Contact details are available on the website <http://www.pleanala.ie/> and are set out below

SIDS/LAPS section

An Bord Pleanála

64 Marlborough Street, Dublin 1

Phone: (01) 858 8100 or Lo-call 1890 275 175

Fax: (01) 872 2684

Appendix

Screening

- A.1** An application to An Bord Pleanála will be made under s.177AE where a local authority has screened a proposed development and determined that individually or in combination with others it will likely have a significant effect on a European site in view of the site's conservation objectives.
- A.2** Local authorities are reminded that, where such screening is completed and consequently a decision is made that appropriate assessment and an application under s. 177AE is not required for a development proposed to be carried out, that a formal review of this decision can be requested of An Bord Pleanála by another party (Art 250(3)(b) of the Regulations). Local authorities themselves can also avail of this procedure should they wish to seek a determination from An Bord Pleanála on their proposed project.
- A.3** Where a local authority makes a determination that a proposed development would not be likely to have a significant effect on a European site, the determination including the main reasons and considerations on which it was based should be made available for inspection or purchase.
- A.4** Article 120(3)(a) of the Regulations provides that where An Bord Pleanála considers that a sub-threshold development proposed to be carried out by a local authority would be likely to have significant effects on the environment, it shall require the local authority to prepare, or cause to be prepared, an EIS in respect of the development. It is open to a local authority to make an application to An Bord Pleanála for such a determination (EIS) and an appropriate assessment determination (NIS) in respect of a development that it proposes to carry out. Such applications may be made simultaneously. No fee is required for such applications.