

## **Opening Statement to the Public Accounts Committee**

### **An Bord Pleanála Annual Report and Accounts 2021**

**27 April 2023**

Chairman and Members of the Committee,

My name is Oonagh Buckley. I was appointed Interim Chairperson of An Bord Pleanála in January this year, having been appointed to the Board in December 2022.

I am accompanied today by Deputy Chairperson Mr. Chris McGarry, Ms. Brid Hill, Chief Officer, Mr Gerard Egan, Director of Corporate Affairs, and Ms Anne Killian, Head of Finance.

While this opening statement will primarily reflect activity in 2021, it will be necessary to refer to events in 2022 and into this year also.

#### **Annual Report 2021**

Members of the Committee will know that the annual report of the Board for 2021 was published before the Oireachtas in the last few weeks. I will set out some of the key information from that report.

In general, 2021 saw an increase in activity in the planning sector. This reflected in part a rebound of activity affected by the pandemic, increased residential development activity, as well as wider economic activity across a range of sectors.

Consequently, activity in the Board was up substantially in 2021 relative to 2020. The Board saw an increase in the overall number of cases lodged, with a total of 3,251 received, up 18% on the previous year. The number of cases determined by the Board in 2021 was up just under 6% on the previous year's total, with 2,775 cases disposed of.

In relation to planning appeals, which comprise about 75% of case work, the compliance rate with our statutory objective period (SOP) for 2021 of 18 weeks fell to 58%, from the 76% recorded in 2020. I am advised that this was due to a confluence of factors. These included the significant rise in case numbers received, reduced staffing capacity arising from the impact of Covid with isolation periods, absences, changes in work practices with ongoing restrictions and managing staff capacity including filling vacancies in a challenging environment.

The Board takes direct applications in certain instances. The most relevant of these are applications for strategic housing developments (SHD) under 2016 legislation

(which has now come to an end) and applications for strategic infrastructure under legislation dating from 2006.

As required under the 2016 legislation, which imposed a penalty fine on the Board if it did not meet its shorter SOP of 16 weeks for SHD cases, the Board gave priority to decisions on SHD cases during 2021 with just over 100 cases decided. All but one of these cases was determined within the statutory timeline, with the Board incurring a penalty cost of €10,000 for that one case.

The Board granted permission in 76 cases and refused permission in 25 cases. A further 127 applications were received that year.

The Board received 30 applications for Strategic Infrastructure Development (SID) in 2021, up from 24 in 2020. 30 cases were decided, up from 19 in 2020.

There were 74 pre-application consultation requests during 2021. This was up 24 on the 2020 intake. This indicated a significant ramping up of major complex applications being considered and proposed. Compliance rates with the relevant statutory objective period in 2021 for these complex cases was 21% compared to 17% in 2020.

The significant increase in the volume of legal challenges to Board decisions during 2020 continued in 2021: there were 83 in 2020 and 95 in 2021. These applications for judicial review of the legality of decisions involve significant detailed legal scrutiny of complex matters of procedure and interpretation relating to national law and policy, European Union environmental directives and other issues in particular arising from the Strategic Housing Development application process.

Legal costs for representation before the Courts are substantial. Expenditure on legal costs was €7.8 million in 2021. These legal costs are in respect of the Board's costs for solicitor and barrister representation and payment for the other side's costs in cases lost or conceded. Many payments have yet to be settled, and the Board is required to make substantial ongoing provision for those outstanding liabilities.

## **2022**

Chairperson, Members of the Committee, 2022 was a particularly difficult year for An Bord Pleanála. The Board attracted major regulatory and public attention in relation to its operations and procedures, in particular in relation to potential conflicts of interest that may arise during the course of the decision-making process. A number of departures from the Board occurred, including that of the Deputy Chairperson in July and the Chairperson in November, and others as their term of office expired.

Chairperson, you and members of the Committee will appreciate that I cannot in the circumstances discuss those issues in any detail given pending matters before the courts. Suffice it to say that these events have had a serious detrimental impact on the Board's reputation. Its overall performance disimproved significantly over the

second half of 2022. The departure of board members diminished the capacity of the board to take decisions. It is fair to say the morale of staff was also badly affected.

In an effort to learn from what occurred and to ensure that it cannot reoccur, I appointed an external investigator, Ms. Lorna Lynch, SC., earlier this year to carry out a scoping investigation into a substantial number of files and make recommendations to me as to any necessary next steps. Ms. Lynch and a colleague have recently begun a process of interviewing colleagues in the Board. I have asked that her final report should be capable of being published, although that event may need to be deferred if any disciplinary or other action is indicated as appropriate following the scoping investigation.

As I have said, the departure of Board members, including scheduled departures, sharply reduced the overall decision-making capacity at Board level. From November 2022 only four serving Board members were available to make decisions. In the absence of a Chairperson and Deputy Chairperson, the Board was not in a legal position to take certain decisions relating to Strategic Housing Developments (SHD) and Strategic Infrastructure Developments (SID). That legal capacity was only restored when I was appointed Chairperson and Mr McGarry was appointed Deputy Chairperson in January of this year.

While the total number of cases received by the Board in 2022 was down slightly at 3058, 6% less than in 2021, the number of cases determined by the Board in 2022 fell sharply. At 2090 determinations, it was down 25% on 2021 and SOP compliance for normal planning appeals fell to 45% and has since fallen further.

It will be a very significant challenge to reverse the downward trend in SOP compliance and return to more acceptable levels of compliance in 2023. However, the rapid appointment of board members, with 15 appointed as of this week, will allow the Board to resume a much higher level of weekly decision making once the new Board members are trained. I am confident that decision output from the Board is increasing and will continue to do so.

I am also working with colleagues from across all areas in An Bord Pleanála to see how we can reduce the significant overhang of work from 2021 and 2022 over the remainder of this year. Additional staffing resources have been sanctioned by the Department and we are recruiting them as quickly as possible. These will be in part for the new functions recently assigned to the Board under 2021 legislation relating to marine developments and in part aimed at building capacity across the Board's existing functions.

In 2022, 127 SHD cases were received with 80 determined. An increase in the number of SHD cases received in 2022, particularly in April, in part due to the ending of the relevant legislation at the end of 2021, coincided with insufficient decision makers in place to determine the cases received within the statutory time limit.

A substantial number of penalty payments had to be made to applicants where decisions on strategic housing development applications were not made within the statutory time objective under the 2016 Act, of 16 weeks (subject to certain exceptions). As I have noted, only one such payment of the €10,000 penalty was made in 2021 but 134 payments totalling €1.34m were made in 2022.

There continues to be a significant volume of applications within the system that will be determined over the coming months, while the new Large-scale Residential Development (LRD) applications are being made to local planning authorities, and in certain cases appealed to the Board.

An Bord Pleanála faces an increasing caseload of judicial reviews relating to its decisions. As I have noted, many concern complex matters of procedure and interpretation. Over recent years, a greater number of such cases have been conceded or lost, in part due to this legal complexity and novel issues relating to the strategic housing process. The Board's average annual legal costs over the last 3 years has increased by about 2 ½ times over those of previous years.

The Board is now increasing its capacity to handle these cases. I am determined we will improve processing and decision making of future cases, by employing a head of legal services and expanding the in-house legal unit. We are also in the process of re-tendering for external legal firms with a view to expanding the number of firms who will manage cases for the Board.

## **2023**

There are several priorities for me and the Board for this year. They are -

- Reducing the backlog of work and restoring timely decision making to appeals and applications made to the Board.
- Managing the new functions now assigned to the Board, namely applications relating to significant marine projects under the Maritime Area Planning Act, 2021 and appeals relating to Residentially Zoned Land Tax under Section 80 of the Finance Act, 2021. Pre application discussions on maritime projects will start in May. Appeals in relation to the zoned land tax are now arriving to the Board.
- Working through the actions set out in the Board's implementation plan which we drew up in response to the recommendations in the Minister's Action Plan for An Bord Pleanála, and both reports by the Office of the Planning Regulator (OPR). That comprises a significant body of work aimed at restoring public confidence in the work of the Board. One of the most important initial actions we prioritised was to draw up and promulgate a strengthened Code of Conduct for Board members and staff. I am happy to report that a new draft Code is now out for consultation with the Minister and OPR and with staff

representatives. It will be formally adopted by the Board once those consultations are completed.

- Working with the Department on the new planning legislation, in particular as it applies to the Board, and starting the internal change process needed to move to the new Commission model. The Bill will adapt the internal structure of the organisation to a modern governance and operational model, and bring greater clarity, both to the roles of those working across the organisation and to the procedures for making decisions on planning files.
- Recruiting the people the Board needs to carry out its critical national mission, including the permanent Board members who will replace the public servants like myself who have been appointed on an interim basis. I want to take this opportunity to thank my fellow public servants for volunteering to come to the Board to help the organisation in this difficult period.

Chairperson, Members of the Committee, An Bord Pleanála is an organisation with a long history from its establishment in the 1970s, an organisation with its own strong identity and culture. Dealing with its ongoing challenges, both from the events of last year and around new and existing workloads, requires huge effort for all those working in the Board. It is a task that all of us working in the Board are engaged in. We are determined to see progress in the coming months.

Thank you for your attention. I and my colleagues are happy to answer any questions that you may have.