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Planning Guidelines

Development Management

Guidelines for Planning
Authorities

June, 2007



Minister's Foreword

I would like to thank sincerely the more than 80 organisations and individuals who made submissions on the Draft Development Management Guidelines.



Many of the submissions were broadly supportive of the draft guidelines. Indeed many of the suggestions have been included in and have “added value” to the finalised guidelines. The Guidelines reflect the changes in the planning environment that have taken place in Ireland over the past 25 years with a shift in emphasis from Development Control to a more pro-active focus on Development Management.

At the launch of the draft guidelines I referred to a new approach to planning that required the ambitious implementation by planning authorities of the positive vision for their areas set out in the development plan and the adoption by all of a pro-active approach towards development proposals which help achieve plan objectives. I encouraged everyone working within the planning system to adopt the positive Management Development term and the attitude it reflects.

The planning system in Ireland continues to face unique challenges and demands at this time. The planning process has to mediate the country's unprecedented economic development. It is predicted that Ireland's population will reach 5 million by 2020. That's almost an extra million people requiring housing, schools, hospitals, roads, etc. It is clear that planning authorities will have to be in a position to plan for this sustained growth in order to be able to meet these demands. In this context, I am particularly pleased that Guidelines on Development Plans are also being published in parallel with these Guidelines.

It is right that we have higher expectations of planning authorities. We expect that they will support economic growth and a better quality of life for all. We also expect them to put sustainable development and the delivery of sustainable communities with good local services, at the core of our planning process.

At an individual level, applicants for planning permission also expect that the planning process will be responsive and customer orientated.

These Guidelines are intended to help planning authorities meet these expectations, both by setting out what is required and by sharing the good practices, which are being applied in local authorities across the country.

There is much in these Guidelines that is challenging for those who work in the planning system and who manage that system. However, I believe that we can overcome these challenges by further developing a customer orientation, and continuing to build capacity in the planning system over the coming years.

A handwritten signature in black ink, appearing to read 'Dick Roche', with a large, stylized flourish extending from the end of the name.

Dick Roche T.D.
Minister for the Environment, Heritage and Local Government

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Chapter 1 Introduction

1.1 Guidelines under the Planning and Development Acts 2000-2006

These Guidelines are issued by the Minister for the Environment, Heritage and Local Government under section 28 of the Planning and Development Act 2000. Planning authorities, and, where applicable, An Bord Pleanála (“the Board”) must have regard to guidelines issued under section 28 in the performance of their functions under the Planning Act. The Guidelines replace the former “yellow book” Development Control Advice and Guidelines issued in 1982; some of the advice contained in that document is still valid however and has been incorporated into these guidelines where appropriate.

The Guidelines are intended to assist both the technical and administrative staffs of planning authorities, not only in adhering to the requirements of the Planning Acts and Regulations, but also in providing a high quality of service to users of the planning process. It is hoped that the Guidelines will also be of practical value to applicants, agents and the wider public who interact with the planning process.

The Planning and Development Acts 2000 to 2006 are generally referred to throughout as “the Planning Act” or “the Act”, as appropriate, while the Planning and Development Regulations 2001 to 2007 are referred to as “the Planning Regulations” or “the Regulations”. An unofficial consolidation of the Planning Acts 2000-2006 is available on the Department’s website at www.environ.ie.

1.2 Purpose of the Guidelines

These guidelines are intended to promote best practice at every stage in the development management process. The term “development management” is preferred to “development control” because it implies a more positive role for the planning system. It is the purpose of the planning system to promote proper planning and sustainable development, rather than merely to control undesirable forms of development. The guidelines seek to build on a culture within the planning service which is positive, responsive and promotes high standards.

If this is to be achieved, it is vital that the process of development management is driven by an ambition to implement a positive vision for the area as set out in the development plan; planning authorities are required by the Planning Act to take all necessary steps to secure the objectives of the plan¹. This means that planning authorities should adopt a pro-active approach towards development proposals that help achieve plan objectives. The role of pre-application discussions (see Chapter 2) is of particular

¹ Section 15(1) of the 2000 Act

importance here. In all cases, proposed developments, however acceptable in principle, must be sensitive to their local environment.

The guidelines focus mainly on process, not policy. The Department has issued a series of planning guidelines², and it is not intended to repeat such material here. The Department's policy on development and national roads will be stated in further planning guidelines, currently in preparation, which will also give guidance on carrying out transport assessments in relation to proposed developments. In the meantime, policy on development and national roads is as set out in the National Roads Authority's Circular Letter 7/2004.

1.3 Achieving quality in the environment

Whilst the primary focus of these guidelines is on development management as a process, the underlying objective of that process is to contribute towards a sustainable and high quality environment.

Many planning policy objectives aim to protect the natural environment, through prudent use of natural resources and the avoidance of pollution. Development management has the potential to make a significant contribution towards achieving sustainable forms of development, for example: -

- by providing higher residential densities in appropriate locations;
- by facilitating sustainable forms of transport i.e. public transport, walking and cycling paths in new urban developments;
- by preventing pollution of air and water.

Development management also influences the design quality of the built environment, which in turn affects not only the users of particular buildings, but also the general public. According to *Action on Architecture 2002-2005*³

“Poor standards of design and construction represent a waste of effort, energy, materials and opportunity. They debase our quality of life now and are a liability for the future. Good architecture contributes to our sense of well-being, both as individuals and as a community and has a positive role to play in mitigating social exclusion”.

It is not within the scope of these guidelines to outline urban or rural design criteria. However, development management is best seen as a collaborative effort between the applicant's design team and relevant planning authority staff (see Chapter 2), where all concerned strive to make successful places for people, in terms of their function, amenity and visual appearance, access, safety and maintenance. Development plans and local area plans should

² See www.environ.ie for list of current guidelines.

³ *Action on Architecture 2002-2005* (former Department of Arts, Heritage, Gaeltacht and the Islands, 2002)

provide clear design principles, but much will depend on the skill of the designers, particularly in responding sensitively to the local context. Planners need to be less reliant on prescriptive standards, and more on performance criteria which facilitate a range of design solutions (see, for example, Chapter 5 *Controls and Safeguards* in the guidelines on residential density⁴). Innovative design approaches should be considered on their merits.

1.4 Importance of the development management process

A good planning system is essential to ensure a high quality of life for all of us, particularly by ensuring that development is sustainable. The Planning and Development Act 2000 was designed to give us a modern planning system and far-reaching improvements in local government have resulted from the implementation of the Better Local Government programme in recent years, including significantly increased staffing levels in many planning authorities and in the Board.

Land use planning has a higher profile in Ireland than ever before. Our population has reached its highest level since 1871, influenced to a significant extent by high economic growth rate. Provisional figures for 2006 indicate that planning authorities handled over 95,000 applications in that year as compared to about 40,000 annually in the early 1990s; this increase has of course led to a consequential increase in the number of planning appeals.

1.5 Best practice in development management

Best practice in development management is made up of various elements, such as:

- Efficiency in handling planning applications and appeals, and the elimination of avoidable delay;
- Rational and consistent decisions;
- Effective communication and explanation of decisions;
- Reduction in the number of poorly-prepared applications;
- Compliance with statutory requirements and fair procedures;
- High quality service offered to developers, members of the public, prescribed bodies, and elected representatives;
- High quality permitted developments;
- Effective planning enforcement.

⁴ *Residential Density: Guidelines for Planning Authorities* (DOELG, 1999)

1.5.1 Efficiency

The achievement of greater efficiency throughout the planning system was one of the key objectives of the Planning and Development Act 2000. In particular, the Act introduced tighter time limits for processing planning applications. All applicants are entitled to a decision within the timeframes set by the Act. It is also essential that planning authorities devote adequate resources to dealing with applications for major developments of strategic national, regional or local importance.

Planning authorities must therefore seek to give proper consideration to and decide all applications without avoidable delays. The achievement of an effective and efficient planning service is the responsibility of the Manager and the Director of Services in the first instance. The use of information and communications technology offers significant potential in this regard both for planning authorities and for applicants and their agents (see para. 1.6).

1.5.2 Statutory requirements and fair procedures

Decisions on planning applications affect people's rights, whether those of the applicant or of third parties, and determine the form of the future built environment. The planning process is therefore governed both by statutory requirements and the principles of natural justice and fair procedures under administrative law. If a planning decision is held by the courts to breach such principles, it risks being set aside.

Relevant principles include:

- **Avoidance of bias:** Those involved in making planning decisions must have no vested interest in the outcome and must not demonstrate any bias either for or against particular applicants⁵. Each application must be judged solely on its merits;
- **Procedural fairness:** Decision-makers must be seen to evaluate all material considerations for and against a proposed development in an open and transparent manner. This requirement is of particular relevance in the preparation of the planning reports;
- **Providing reasons for decisions:** Section 34(10) of the Act requires that the main reasons and considerations on which the decision on a planning application was based must be given. In the case of a decision to refuse permission, the applicant is entitled to know all of the relevant reasons for refusal: this will also allow him/her to assess the prospects of a revised application or of an appeal to the Board. In the event that a planning decision is

⁵ See *Local Government Act 2001: Code of Conduct for Employees* (DEHLG, 2004), particularly section 3 dealing with conflict of personal and public interest.

challenged in a court it also important that the court be able to ascertain how it was reached.

- **Consistency:** Consistency in the interpretation of development plan policies is essential if public confidence in the planning system is to be maintained, although of course decisions on individual applications will vary in light of the land use considerations that apply to them. Achievement of consistency requires that suitable management structures be in place in planning authorities; Directors of Service have a particular responsibility in this regard. Where the individual circumstances indicate the need to depart from normal policy, the reasons should be explained. Also, while area offices enable some larger planning authorities to offer a more convenient service to the public, there is a need to ensure consistency of approach (e.g. in interpreting development plan policies) between such offices. The issue of consistency is dealt with in more detail at para. 6.7).

Good development management needs a balanced and common sense approach that seeks to reconcile the need for development and the legitimate concerns of those who may be affected by it. Informed professional judgement will be guided by planning and other relevant Government and Ministerial policies, while not adopting an over-rigid stance, and by objective evaluation of the arguments presented for and against specific proposals.

1.5.3 Customer focus

A focus on the customer is an important way of ensuring a high quality planning system. Planning may be perceived as complex and bureaucratic to those who do not interact with it on a regular basis: courtesy and helpfulness towards customers can do much to dispel such perceptions. Planning officials are also, of course, entitled to courtesy from their customers.

Better Local Government: A Programme for Change (1996) aimed at the provision of quality services to the citizen and stressed the need to ensure that the delivery of public services is driven by the requirements of customer needs. Much has been achieved in recent years, including the development of local offices and an increased focus on area-based delivery of services. The launch of nationwide service indicators in 2000 has helped to drive the process.

A revised set of local authority service indicators was published in January 2004⁶, some of which relate directly to planning and the development management process:

- **P1 - Planning applications – decision-making;**

⁶ *Delivering Value for People: Service indicators in local authorities* (DEHLG, 2004)

- P2 - **Planning enforcement;**
- P3 - **Public opening hours;**
- P4 - **Time taken to provide pre-application consultations.**

Information on indicators should be presented in each local authority's annual report, to inform both the elected members and the general public. The indicators can also be used as part of a regular management review process to monitor performance in the planning service. Local authorities, where they are not already doing so, are encouraged to develop their own local indicators to supplement the nation-wide list of service indicators. For instance, planning authorities might seek customer feedback on the planning service by asking users of the service to complete a feedback form. Some of the local indicators should be qualitative, e.g. measuring sustainable development.

The planning service, including development management, has a variety of customers – all of whom are important – including the applicant, third parties, prescribed bodies, elected members and the public at large. In endeavouring to meet their legitimate expectations, planning authorities should ensure that the interests of the common good, referred to in the long title of the 2000 Act, remain paramount.

- **Applicants:** Applicants for planning permission are entitled to a courteous and helpful service that aims to provide them with all necessary information, including relevant national and local policies, for the preparation of high quality applications, and to process their applications without avoidable delay.
- **Third parties:** Those who may have an interest in a planning application are entitled to ready access to the application and to the policy context in which it will be determined, including the development plan, any local area plan and the planning history of the site. The Internet offers considerable advantages in this regard. Persons who have made submissions on a planning application are entitled to be informed speedily of the decision on the application.
- **Prescribed bodies:** Statutory consultees should be notified as early as possible in relation to categories of development that are likely to affect them. This is absolutely necessary in order to allow them time to assess applications and make submissions if desired and thus exercise their rights to participate in the planning process as intended by the legislation.
- **Elected members:** Councillors will generally have an interest in how the development plan, which they have adopted, is applied. Individual councillors, in their representative capacity, are entitled to make submissions and should be kept informed on particular applications. Use of modern IT systems can provide councillors with a range of relevant information, thus saving time in responding

to routine queries. It should be noted that a public representative does not have to pay the fee when making an enquiry with a planning authority as to the position regarding an application or simply supporting or when supporting or objecting to the application in general terms without elaborating on the grounds of the application or on a submission by an observer. However, where a public representative makes a formal submission, i.e. elaborates on the grounds of an application or a submission or raises a substantive new issue, the submission cannot be considered by the planning authority unless it is accompanied by the appropriate fee.

- **The public at large:** Whether in general, or in relation to a particular planning application, members of the public need to have confidence that the process is being carried out in the interests of the common good.

Relatively simple changes, such as good facilities at public counters and longer opening hours, can have a major impact on how customers view their experience of dealing with the planning service. Lunchtime opening is highly desirable in the interests of an accessible service. Public offices should provide ready access to the development plan, local area plans/integrated area plans, the planning register and advisory leaflets, together with suitably designed desks for examining planning files and development plan maps. Counter staff should be trained to respond to routine planning queries, with planners available (perhaps on a rota basis, unless clinics are provided – see Chapter 2) to deal with more technical issues. Planning authorities might also consider establishing user liaison groups to get feedback and suggestions on their operation of the system.

Best practice example

Cork City Council have provided for extended opening hours in the Planning Office from 9.30 am to 4.30 pm, not by employing additional staff, but by implementing a system whereby planning staff at all levels, both administrative and technical, operate a rota system at lunchtime to equally share the additional duties.

Planning authorities should also, of course, be aware of their responsibilities under sections 26 to 28 of the Disability Act 2005 which require public bodies, where practical and relevant, to make services and information accessible to people with disabilities. The National Disability Authority's 2006 *Code of Practice on Accessibility of Public Services and Information provided by Public Bodies* gives practical guidance in this area (website www.nda.ie).

1.5.4 Information sharing and networking

It is recommended that planning authorities put systems in place to network and share relevant information between the different sections/departments in the authority, e.g. roads, housing, water services and environment, so that staff are informed about the policy aims of those other departments. It is also highly desirable that planning staff have communication links with their counterparts in other planning authorities, whether by e-mail networks or otherwise. This will enable planning staff to share experiences and expertise in development management and will promote consistency of approach throughout planning authorities.

1.6 Role of Information and Communication Technologies (ICTs) in delivery of improved development management

E-Planning – i.e. using ICTs to deliver as many planning services online as possible – has the potential not only to facilitate private citizens and corporate bodies to interact more easily and conveniently with planning, but also to greatly increase the speed and efficiency of the entire planning process.

ICT advances in planning administration systems, document imaging and management systems and geographic information systems have a huge role to play in delivering an improved development management process. ICTs, on the one hand, give planning staff a more powerful resource in dealing with current development proposals and in retrieving complete sets of historical site data. On the other hand, they offer the possibility of giving applicants, agents, prescribed bodies, the Board, members of the public, public representatives, etc. an appropriate level of access over the world wide web in order to conduct business with the planning authority on a 24-hour basis without the necessity of attending in person at the authority's offices to do so.

Most planning authorities, and the Board, have developed user-friendly web sites which offer ever-increasing levels of service to the public, including in some instances the possibility of viewing details of current planning applications. This is clearly an area which provides scope for further development.

1.7 Layout of the Guidelines

The guidelines follow a generally chronological approach, from pre-application consultations to ensuring that a development is completed in accordance with the terms of the planning permission. Where relevant, examples of best practice are cited.

Chapter 2 Pre-Application Consultation

2.1 Introduction

Pre-application consultation is generally very beneficial and will improve the quality of a subsequent planning application. It is in the interest of the planning authority and the applicant that the latter has the maximum amount of relevant information on the application process itself, development plan objectives and other relevant considerations prior to making a planning application. This Chapter deals with the pre-application stage of the planning application process.

2.2 Making information available to potential applicants

Outside of, or before, actual consultation, it is important that planning authorities make the maximum amount of relevant information available to potential applicants to assist them in relation to a possible planning application. Apart from the statutory requirement to maintain the planning register⁷ and to make copies of the development plan available for inspection or purchase⁸, it is very much in the interest of both the planning authority and the prospective applicant that the latter should be able to readily access all relevant background information. Planning authorities should ensure that not only is all such information easily accessible in the vicinity of the public counter, together with desks or tables to facilitate examination of large plans or maps, but that trained staff are available to answer queries of a general nature. It is also desirable that planning authorities would make much of this information available through their websites, as doing so will greatly facilitate access at a time and place convenient to customers and will relieve the pressure at public counters.

Ancillary information, such as local area plans, DEHLG planning leaflets, Government directives and guidelines, Record of Protected Structures, heritage and conservation maps (including information on Special Areas of Conservation, etc.) should also be provided near the public counter and on-line, either on the planning authorities' websites or through relevant links. Where plans/studies have been prepared (such as Integrated Framework Plans or Local Area Plans), these also should be available for viewing at the public counter.

2.3 Pre-application consultation: general

Pre-application consultation in its broadest sense covers a range of contacts between potential applicants and the planning authority, which can include contact/discussion/communication face-to-face, by telephone, letter, fax, or e-

⁷ Section 7 of the Act

⁸ Section 16 of the Act

mail. Very frequently potential applicants will contact a planning authority with general queries and the availability of assistance here is a valuable and helpful service to the public and may avoid the necessity, on the prospective applicant's part, to seek more elaborate consultation. Planning authorities should ensure that staff are readily available to deal with such casual enquiries. A number of planning authorities offer informal planning advice through clinics, sometimes held in local offices. It is important to ensure that the planning staff that attend such clinics are given appropriate training to deal in an efficient and helpful manner with the public. The type of consultation provided will vary greatly, depending on the nature and scale of the proposed development, and on the staff resources available to the planning authority. Every effort should be made to facilitate, as far as is practicable, reasonable demands for pre-application consultations, and planning authorities should use whatever format is considered appropriate to their circumstances to facilitate such requests. Efforts should also be made, however, to provide consultation in the form that it is requested. Requests for consultations should be acceptable by telephone or in writing. Whatever form of consultation is requested, e.g. a meeting, a telephone conversation or response to an e-mail, planning authorities should aim to facilitate such requests as soon as possible, but in any event within 2-3 weeks.

Some of the above communications will constitute section 247 consultations while some will not. Paragraph 2.5 below attempts to clarify this issue, while promoting the greatest flexibility for planning authorities.

The provision of pre-application consultations does have resource implications for planning authorities, but such consultations merit investment of resources because of the overall benefits to the planning system, particularly in terms of improved quality of planning applications and development proposals.

The Department's *Architectural Heritage Protection Guidelines for Planning Authorities* (2004) should be consulted in relation to pre-application consultations involving protected structures⁹.

2.4 Benefits of pre-application consultation

Pre-application consultation has many benefits. Such consultations will generally improve the quality of a subsequent planning application and will ideally obviate the necessity for seeking additional information. They provide the applicant/agent with an opportunity to discuss/consult on the merits of a proposal for development at an early stage and to avoid wasting time and money on a development proposal that has no chance of success. Such consultations also allow the planning authority an opportunity to play a proactive role in guiding a project from its inception in accordance with proper planning and sustainable development principles.

More specifically, consultations can be of value in:

⁹ See also Chapter 7 below in relation to consultation with fire officers.

- **Applying development plan/local area plan objectives to a particular site**, and especially assessing how the design treatment responds to the local context, thus allowing the planning authority to input to design and layout at an early stage;
- **Co-ordinating the various local authority inputs to a complex or large-scale proposed development (see also para. 2.7 below);**
- Informing the applicant about **local policy documents** such as design guides, Action Area Plans, framework plans;
- Suggesting that further **specialist advice** be sought, e.g. in relation to conservation of the built or natural environment;
- Advising prospective applicants of **procedural requirements**, such as:
 - Planning application requirements, particularly in relation to protected structures;
 - Necessity to carry out Environmental Impact Assessment in certain cases;
 - Necessity to obtain IPPC licence or waste licence in certain cases;
 - Need to comply with other planning guidelines, where relevant, e.g. Retail Planning Guidelines, Sustainable Rural Housing Guidelines, Childcare Facilities Guidelines;
 - Implications of Building Control legislation, including provisions in relation to fire safety and access for the disabled (including, following the enactment/commencement of the Building Control Act 2007, provisions regarding Disability Access Certificates);
 - The necessity to ensure that the design implications of accessibility for all are addressed in the approach routes to buildings, including the location of car parking and other related issues; the National Disability Authority's publication "Building for Everyone" offers good practice on this issue; consultation with representative organisations of people with disabilities may also be of assistance;
 - Application of Major Accidents Directive in certain cases;
 - Possible exemptions for minor developments under section 5 of the Planning Act, and the mechanism for seeking a declaration that a particular development is exempted.

The number and nature of requests for further information may reveal, in particular planning authorities, other general matters that could benefit from discussion in pre-application consultations.

The carrying out of consultations cannot, however, prejudice the performance by a planning authority of any other of its functions under the Planning Act or under ancillary regulations. The prospective applicant should be reminded of

this and in particular reminded that the planning authority is obliged to take into account, in determining any subsequent application, submissions which may be received from third parties and prescribed bodies.

2.5 Section 247 consultations

Section 247 of the Planning Act provides that an applicant who has an interest in land may request a pre-application consultation regarding a proposed development and that the planning authority should not unreasonably withhold agreement to enter into such a consultation. More often than not an applicant who seeks a more formal consultation, of the type envisaged by section 247, will seek a face-to-face meeting with a planner. Accordingly section 247 consultations will frequently take the form of individual meetings held between planning officials and applicants/agents.

However there may be instances where both the applicant and the authority are happy to carry out such a consultation without a face-to-face meeting, e.g. over the telephone or by e-mail correspondence: the Act does not preclude this.

For a consultation to be deemed a section 247 consultation, the Planning Act requires that the applicant has an interest in the land concerned and that he/she wishes to consult about a particular proposed development.

The Planning Act also provides that in a section 247 consultation the planning authority must advise on:

- The procedures involved in considering a planning application;
- Any requirements of the permission regulations e.g. site and newspaper notices, documentation to be forwarded including maps, drawings and EIS where required;
- The relevant objectives of the development plan.

The Act also provides, most importantly, that a record must be kept of a section 247 consultation and that the record should be associated with the planning application file, should an application be made subsequently.

The Act allows planning authorities to meet their obligations in relation to section 247 consultations by means of planning clinics where planning officials meet the public with or without appointment. If the planning authority decides to carry out pre-application consultations under section 247 in the form of planning clinics, it must publish notice of the times and locations where discussions are to be held in one or more newspapers circulating in its area at least once a year. Not every face-to-face meeting at a planning clinic will constitute a section 247 consultation, as the potential applicant may merely be seeking some general advice. However, where the potential applicant wishes to consult about a specific proposed development on a

specific site, this brings the consultation under section 247 of the Act and the requirements of the section should be adhered to, in particular in relation to keeping a written record of the discussion.

As stated above, requests for consultations should be facilitated as speedily as possible so that where a meeting with the area planner is requested, such a meeting should ideally be arranged within 2-3 weeks. Where the area planner is unavailable, arrangements should be made to provide a properly briefed substitute; the keeping of full, detailed notes of the consultation will be important in such circumstances.

It should be noted that, in addition to other requirements of the ethics code¹⁰ a member or official of the planning authority is guilty of an offence if he or she takes or seeks any favour, benefit or payment, directly or indirectly, in connection with any consultation or advice provided under section 247.

2.6 Submission of details in advance of consultations

To ensure that a consultation will be productive, the applicant may be required to submit a certain minimum level of documentation (depending on the scale of the proposal) in advance of a pre-application consultation. A guidance document in relation to such requirements should be available on the planning authority's website, which lists the range of maps, drawing types/scales and other details normally required in relation to different categories of site and development proposal. The guidance should also state the period in advance of the meeting that the documentation will require to be submitted.

2.7 Pre-application meetings: who should attend?

This will depend on the nature and scale of the proposed development, but as a general rule:

- Senior planning staff should attend in the case of large-scale or complex developments, or where the site has given rise to significant issues in the past;
- Representatives from all relevant local authority sections/departments (e.g. traffic or sanitary services engineers) should attend in the case of large-scale or complex proposals. This not only saves the applicant time in arranging a series of consultations, but perhaps more importantly, facilitates a co-ordinated approach by the authority; the detailed technical requirements of one department may have consequences for the layout or design that affects other departments.

¹⁰ *Local Government Act 2001: Code of Conduct for Employees* (DEHLG, 2004).

- Both Housing and Planning representatives need to be involved in pre-application meetings involving Part V of the Planning Act (see para. 2.10 below);
- Heritage/conservation officers should be involved in cases involving protected structures, zones or sites of archaeological interest, and protected sites (such as Natural Heritage Areas or Special Protected Areas).

Planning authorities should ensure the availability of suitably sized and located meeting rooms to facilitate consultations.

2.8 How should a pre-application meeting be structured?

The aim of both parties should be to identify any potential issues arising from a development proposal at a sufficiently early stage in the design process in order to avoid needless delays and/or costs after an application has been lodged.

If it is clear from the development plan that the proposal is acceptable in principle, especially in the case of relatively small developments, the prospective applicant may be encouraged to bring reasonably detailed design drawings to the consultation.

Planning authorities will know from experience what issues are likely to arise in the case of the most common types of development in their areas and will be able to advise prospective applicants in advance on the kind of information which will be needed if consultations are to be productive. For example, in the case of rural housing, applicants should be able to demonstrate that the proposed site can satisfactorily accommodate drainage, can be accessed safely without creating a traffic hazard and can be sensitively incorporated into the landscape.

In the case of larger proposed developments, or where it is not certain that the proposal would be acceptable, it is important that issues of principle be resolved before proceeding to more detailed design issues. In such cases, the proponent should clearly explain the rationale for the proposed development. Equally, the planning officer will need to be explicit about what are “sticking points” from a development plan viewpoint. Relevant national policy which applies to the development should also be explained. While both sides should endeavour to find a constructive solution to problems, in some cases it may not be possible to reconcile the two positions. In such a case, it may be necessary for the planning authority to indicate that the proposal is unlikely to be considered favourably.

2.9 Keeping a record of what was discussed

As indicated above, section 247 of the Planning Act requires the planning authority to keep a written record of pre-application consultations under the section, including the names of those who participated. A copy of such record (and any documentation submitted) must be retained and placed on the planning file in the event of a subsequent planning application in respect of the proposed development. It will be necessary for the planning authority to have in place for records of pre-application consultation an appropriate filing system, that may be easily queried/searched when a planning application is received. As records of pre-application consultation form part of the planning file, they also should be forwarded to the Board in the event of an appeal.

The clear intention behind the requirement to keep a record is to inform those involved in determining any subsequent application, particularly if they were not directly involved in the prior consultation. The keeping of records can also ensure consistency of approach in situations where staff turnover is an issue or where the particular development proposal has a long time-span.

Key information which should be recorded includes:

- The postal address (where available) or an accurate description of the location. Ideally, if the planning authority has a Geographic Information System, the co-ordinates of a point within the site, or the site boundaries, should be digitised so that it can be easily traced in the event of a subsequent application;
- An indication of the area of the site;
- A succinct description of the nature and scale of the proposed development (e.g. number of housing units, or amount of floor space);
- A list of the documentation submitted describing the proposal;
- An indication of whether the proposal is in accordance with the development plan;
- An indication of whether key design or other issues remained to be resolved;
- An indication of whether further specialist advice is required (e.g. from the Heritage Service of the DEHLG);
- An indication of whether an environmental or retail impact statement is mandatory or likely to be needed.

Where design team acting for the prospective developer submits its own account of the consultation, this should also be kept with the file. It would be important to draw attention to any significant errors or misunderstandings at

the earliest opportunity, particularly if the prospects for a successful application were overestimated.

Best practice example

Limerick County Council uses a computerised system to keep detailed records of all pre-planning consultations held in the Council. Notes of the consultation are linked to the Council's GIS to facilitate retrieval later, and any documents handed over at the meeting are scanned in. The system can also track the time taken from the request for a consultation to the date when the consultation takes place.

Management structures need to be put in place to inform applicants whether, when the planning application is received, there has to be a material departure from the approach adopted by the planning authority at the pre-application consultation. Such a departure might be required if the subsequent application is substantially different from that originally discussed, or if planning authority needs to respond to valid issues raised by the public or by statutory consultees following submission of the application¹¹.

2.10 Part V consultations

The role of pre-application discussions in negotiating agreements for the provision of social and affordable housing required under Part V of the 2000 Planning Act (as amended by the 2002 Act) is discussed in Chapter 10 of *Part V of the Planning and Development Act 2000 – Housing Supply: Guidelines for Planning Authorities* (DELGH 2000)¹². Key points include:

- The need to develop a shared approach between the applicant and the planning authority (and an approved housing body, where relevant);
- The need for the planning authority to have regard to the objectives set out in its Housing Strategy;
- The need for the planning authority to have regard to the overall coherence of the proposed development and to the views of the

¹¹ See also Chapter 6 on making recommendations on planning applications.

¹² See also *Implementation Issues* (DEHLG, 2002), *Further Guidance on Implementation Issues* (DEHLG, 2003), *Part V Resource Pack – Concluding Part V Agreements* (DEHLG and Affordable Homes Partnership, 2006) and DEHLG Circular AHS 4/06, November 2006.

developer in relation to the impact of the proposed agreement on the development;

- The importance of arranging joint planning and housing teams to negotiate Part V agreements. Where they are available, local authority architects should be also involved to ensure the design quality of the housing to be handed over to the authority;
- The importance of recording the essential elements of the proposed agreement.

Further guidance on Part V implementation issues, set out in Circular AHS 4/06¹³, emphasises the importance of undertaking pre-planning consultations on Part V and sets out advice on how a range of matters relating to Part V should be dealt with efficiently in the planning process.

2.11 Pre-auction consultations

When a development site is put up for auction, prospective purchasers may seek consultations with the planning authority before making a bid. Such prospective purchasers should instead be referred to relevant information, such as development plan zoning objectives, specific local objectives, local area plans etc. and should be encouraged to seek independent professional advice. Prospective purchasers will not in any case have a legal interest in the land and their plans will probably not be sufficiently advanced to engage in pre-planning discussions. Pre-application consultations could of course be arranged with the new purchaser after the site has been sold and the development proposals have been advanced.

In very specific instances, for example in the case of sites of high priority for the planning authority in relation to the need for urban renewal or large green-field sites, the planning authority or the seller or auctioneer may consider it appropriate to prepare a development brief listing the authority's objectives for the site, and to make this brief available to all interested parties.

¹³ Part V of the Planning and Development Acts 2000 - 2006; Implementation Issues (DEHLG, 2006)

Chapter 3 Lodgement and Validation of a Planning Application

3.1 Introduction

In order to improve the efficiency and transparency of the planning system, the Planning and Development Act 2000 and subsequent Regulations made a number of changes to the development management process. Following these changes, the applicant needs to focus on ensuring that the requirements of the Planning and Development Regulations 2001-2007 are complied with when making a planning application (that is, on the need to make a valid application) and the planning authority needs to focus on managing the validation system in an efficient, helpful and fair manner. Where a planning application complies with the Planning Regulations it is declared valid and continues to be processed; when the Regulations are not complied with, the application is declared invalid and returned to the applicant in its entirety.

3.2 Information required in making a planning application

When lodging a planning application the applicant will be required to submit specific information that is statutorily required to validate the application, and may be required to provide other information necessary in that particular case in order to assess the application.

Article 22 sets out the information that is statutorily required to validate a planning application. The validation process will be facilitated by the introduction of the standard application form, which will be used by all planning authorities. The application form when fully and correctly completed, and accompanied by the plans and particulars required under the Planning Regulations, will constitute a valid application.

There may be other information that is required for assessment, but not for validation, of a planning application. The additional details needed will obviously depend on the type of development proposed. For example, a planning authority might require information on the transport implications of a proposed development or on proposals for open space and landscaping details in a major development. Planning authorities should ensure as far as possible, by dissemination of information at pre-planning consultation stage, in planning leaflets and on their websites, that applicants are aware of the information that is required in order to assess their particular proposals.

It is in the applicant's interest to ensure that any information required for assessment, as opposed to validation, is submitted with the application, as this will enable the planning authority to reach a conclusive decision without the need for an additional information request.

There will of course be occasions where despite every effort being made to ensure that the applicant is clear as to what information the planning authority requires, gaps will occur, which will necessitate a request for additional information. When this happens, it should be made obvious to the applicant why the information is required and how it is relevant to the assessment of the planning application.

3.3 Statutory validation requirements

Article 26 sets out the procedure to be followed when validating a planning application and indicates that the application must comply with Articles 18, 19(1)(a) 22 and, as may be appropriate, Article 24 or 25.

3.4 Purpose of public notices

The purpose of the notices, that is, the newspaper notice (Article 18 of the Planning Regulations) and the site notice (Article 19), is to inform the public of the proposed development and alert them as to its nature and extent. Third parties may then examine the files in detail at the planning office (or on the authority's website, where applications are put on the website) and, if they so wish, may lodge a submission or objection. In recent years the amount of detail in the public notice has increased continuously to the extent that such notices frequently include every detail of the proposed development, rather than comprising a brief description of the proposed development. This level of detail is unnecessary and can cause confusion. In order to clarify the issues around the content of the public notice the Planning and Development Regulations 2006 amended Article 18 and Schedule 3, Form No. 1, to provide that the public notices should give "a brief description" of the nature and extent of a proposed development.

The public notice should therefore be drafted so as to give a brief indication as to the nature and extent of the proposed development and is not required to go into excessive detail. As a rule of thumb, a notice is not required to include details that can reasonably be assumed to be part of a normal part of development. The Regulations also prescribe the level of information required in different circumstances, for example, they prescribe that in a residential scheme the notice must indicate the numbers of houses to be provided, or that if works are to be carried out to a protected structure this must be stated. Otherwise a common-sense approach to informing the public of the nature and extent of the development should be applied. For example, in the case of a normal domestic extension there is no need to specify the internal usage of the rooms. Or, to take another example, if the notice makes plain that the application is for a block of 10 apartments, it should not be deemed invalid because it does not state that some of the proposed apartments have balconies. On the other hand, it is important that the notice *does* give a brief description of the nature and extent of the development: a notice which simply states that the application is for a "modification to Planning Permission ref xx/xxx" does not comply with this requirement to give a brief description of the

nature and extent of the development and should instead include a brief description of the proposed modification, as well as the reference number of the original permission.

3.5 Newspaper notice

As stated in the previous paragraphs the purpose of this notice is to inform the public.

Article 18(2) requires that the planning authority, at least annually, reviews the list of approved newspapers for planning application notices in its local area and displays such a list in its office(s), or at any other place or by any other means, e.g. on their websites, as the authority considers appropriate.

The newspaper notice, and similarly the site notice, is required to be placed within the period of 2 weeks prior to the making of the application. In calculating these time limits, and all time limits specified in the legislation, periods are calculated by reference to the Interpretation Act 1937 and are reckoned to include the day from which the period is to run. Thus, a week will run from Tuesday in one week to Monday of the following week. Accordingly, if the site and newspaper notices are placed on a Thursday, the planning application must be received in the planning authority before the end of the following Wednesday week.

The date of the making of the application is the date it is received in the planning authority. Where the last day of the 2 week period referred to in the preceding paragraph is a Saturday, Sunday, a public holiday or any other day on which the offices of the planning authority are closed, the application will be valid if it is received on the next following day on which the offices of the planning authority are open.

3.6 Site notice

Article 19(1) specifies the validation requirements for the site notice, the format of which was modified in the 2006 Regulations. Again, the issue is one of informing the public and a reasonable approach has to be taken to the location of the site notice(s) on the lands. The Planning Regulations require the site notice to be in the prescribed form or a form “*substantially to the like effect*”. The notice is not therefore required to be identical to the prescribed form – whether it is substantially the same will be a matter for the judgement of the planning authority. Obviously the Courts would be the final arbiters in any dispute, but from a common sense point of view, a planning authority that invalidated a site notice which did not contain the words “site notice” but was in all other respects identical to the prescribed form, might be regarded as having been over-exacting.

For major developments which cover large areas of land, appropriate placement of site notices, to ensure maximum public awareness, should be discussed at pre-application consultation stage.

In some instances there will be an issue over retaining the site notice on site. While the onus is on the applicant to maintain the notice on the site for the required period, the application will not be deemed invalid if other persons remove it maliciously, provided that the planning authority is satisfied that the applicant has made a bona fide effort to maintain it.

The planning authority must ensure that all site notices are inspected within 5 weeks of receipt of the application. The inspection should be carried out at the earliest possible date and the person carrying out the inspection should report back to the planning section/department as soon as possible; this is to facilitate the efficient working of the development management process and to avoid unnecessary delays in dealing with planning applications.

Best Practice Example

Clonmel Borough Council sends a technician to undertake the site notice inspection as soon as possible after receipt of the application. 2 photographs are taken of the site notice, one up close and one wider angle photograph showing the context of the location of the site notice in relation to the proposed development site. Both photographs are placed on the application file as a record.

A yellow notice is required when a valid planning application is made on any land or structure, within six months from the date of making a previous application, where the second application is in respect of land substantially consisting of the site or part of the site to which the first application related.

3.7 Planning application form

A standard planning application form was introduced in the Planning and Development Regulations 2006. The form is quite detailed and notes on its completion are included in the document. Circular Letter PD 4/07 recommends use of a revised format of the form, to meet concerns expressed by the Office of the Data Protection Commissioner (See para. 5.3 below).

3.8 Application documentation

Article 22 of the Planning Regulations and the application form sets out the documentation that is required to accompany a planning application, i.e. the notices, the location/layout plans, the plans and particulars required to

describe the proposals, the appropriate fee and the information required in certain instances e.g., letter of consent from the landowner, certificate of exemption from Part V or evidence as to the suitability of the site for a proposed system of wastewater disposal.

Article 22(3), as inserted by the 2006 Regulations, clarifies that in accordance with section 248 of the Planning Act planning authorities may consent to the receipt of the application wholly or partly in electronic form and that in the case of electronic submission one copy will be sufficient. To allow such receipt, Article 22(2)(a) now allows for “a copy of the relevant page of the newspaper” to be submitted as an alternative to “the relevant page of the newspaper”.

The maps, plans and drawings required by Article 22 must comply with the requirements of Article 23. Amendments were made in the 2006 Regulations which allow location maps and site or layout plans to be of a scale agreed in advance with the planning authority. In some instances planning authorities are given some discretion - where the terms “as may be appropriate” or “main features” are used – as to the degree of detail and amount of information that they locally require. In some cases the information required will be quite basic; in other cases, such as in the case of a protected structure, it may be more detailed. Planning authorities should use this discretion in a manner that ensures the efficient operation of the development management system and avoids unnecessary delays while ensuring that public participation rights are safeguarded. While it is important that the Planning Regulations are complied with, it is equally important that the planning authority should not go beyond the requirements of the Regulations, making more onerous demands than the Regulations permit. For instance, it is not open to planning authorities to require particular colours on maps, plans, etc. where this is not required by the Regulations. It is open to planning authorities to request (but not require), if desired, in their own planning leaflets, or on their websites, that the maps and drawings be pre-sorted into 6 sets.

In relation to the other mandatory documentation under Article 22, planning authorities should take a reasonable approach in validating such documentation. In relation to the requirement that evidence as to the suitability of the site for the proposed system of wastewater disposal (where it is proposed to dispose of wastewater other than to a public sewer) must be supplied with the application, planning authorities should not be over-rigorous in assessing the adequacy of the evidence for the purposes of validation: further evidence may be sought by way of further information.

When submitting a planning application for the development of homes on lands subject to Part V of the Act, the legislation requires an applicant to specify the manner in which he/she intends to comply with the Part V obligation. This requires the applicant to indicate which of the options set out in section 96(3)(a) or section 96(3)(b) it is proposed to use to achieve compliance with Part V. As outlined in Appendix A (para. 2) of DEHLG Circular AHS 4/06, submission of the agreement in principle reached at pre-

planning stage, if any, provided that it clearly specifies the manner of compliance with Part V, will be sufficient to comply with this requirement.

Article 22A of the Regulations allows a planning authority to require the applicant to submit specified additional information with the planning application and sub-articles (2) to (5) of Article 23 provide for the submission of additional information/evidence in particular cases i.e. additional details in relation to works to a protected structure; a transport assessment; additional copies of maps, etc; a scale model, photographs, etc. It is important to note however that the non-submission of any of this information/material cannot be a cause of invalidation of the application, and in cases of non-submission of such information the planning authority should proceed to formally request the required information/material under Article 33.

3.9 Fees

Schedule 9 of the Regulations indicates the fee that must be paid with each application. In some cases there may be a genuine misinterpretation of the Schedule. Where the fee is overpaid it should be accepted as validating the application and the balance of the fee should, of course, be refunded. Where the fee is substantially paid, but there is an underpayment, the applicant should be contacted and given the opportunity, within a short specified time frame, to submit the balance. The application should be regarded as valid until this time limit has expired.

3.10 Validation

Where the requirements of Article 18 (newspaper notice), Article 19(1)(a) (site notice) and Article 22 (application form and required accompanying documentation) are complied with the application is then deemed to be valid. As set out in the preceding paragraphs, planning authorities should adopt a reasonable approach towards validation. While compliance with the Planning Regulations is essential, particularly to protect the interests and participation rights of third parties who may be affected by the proposed development, planning authorities should take a common sense approach and should avoid invalidating applications on very minor points such as a mis-spelling or an illegible signature, particularly if third party rights are not prejudiced. While it is of course the responsibility of applicants and agents to submit applications which comply with the Regulations, planning authorities might consider an approach whereby (as recommended in the case of a small underpayment of a fee) in a case where an application contains just one minor defect, the applicant would be contacted and offered the opportunity, within a very tight time-frame, to correct the defect (the application would be regarded as valid in the interim period).

The Planning Regulations provide that when an application is deemed valid, the planning authority will stamp each document with the date of its receipt and send an acknowledgement to the applicant. Documents should not be

date-stamped before validation, as, in the event of the application being deemed invalid, the applicant may wish to use some of the documents in a subsequent application. It will be important therefore that the planning authority, while not date-stamping all the documents prior to validation, have some mechanism for noting the date of receipt of the application, e.g. by initially date-stamping only the application form, on receipt of the application.

It is in the planning authority's interest to ensure that planning applications are validated as quickly as possible to minimise the amount of time and effort that will otherwise go into returning the planning application and the fee, informing any objectors and returning such fees. As the authority's planning applications list must be prepared not later than the fifth working day following a particular week, (i.e. by the following Friday) a similar period of time should be aimed at for validating a planning application. Under the Planning Regulations the weekly list must indicate which applications have been invalidated, so that persons wishing to make submissions are aware of this fact.

Best practice example

A new applications unit was established in Galway County Council comprising 6 administrative and technical staff. The team is responsible for the acceptance, validation and distribution to the planners/assessment centre of all new planning applications received both at the public counter and by post.

The administrative team accepts all planning applications at a dedicated counter, which can accommodate up to three customers at any one time and the technical team is responsible for the validation/mapping of all planning applications. The team is also involved with other planning procedures within the office. Both teams were given special training and instruction in relation to all relevant aspects of the Planning and Development Regulations 2001 and IT training e.g. ECDL etc.

Software requirements include iPlan, SoftCoWeb, PlanReg and Map Info.

The advantages of this system are

- *The agent and applicant know that the file is valid.*
- *The files are on the planner's desk within 7 days.*
- *Better customer service.*
- *Increased security for file and fee.*
- *Reduced number of files to handle.*
- *Cost savings.*
- *Increased staff productivity.*

3.11 Dealing with invalid applications

Where the application is deemed invalid the planning authority must return the entire application, including all drawings and the fee, to the applicant (or the

applicant's agent). The applicant must be informed in writing of the precise reasons – all the reasons - why the application was invalid. The letter should also emphasise the importance of removing the site notice. The planning authority then enters in the register an indication that an invalid application has been made (rather than, as heretofore, the details of the application). If any observations have been made on the application prior to its validation, the persons who made the observations must be informed that the application is deemed invalid and any fee paid in respect of the submission returned.

Where an application has been validated, but on inspection of the land to which the application relates, the planning authority considers that the requirements of Articles 17(1)(b), 19 or 20 have not been met or that the information submitted in the planning application is substantially incorrect or incomplete, Article 26(4), as amended, allows the planning authority to invalidate the planning application notwithstanding the fact that it has been acknowledged. Again the letter to the applicant should explain clearly why the application is invalid and any persons who made submissions should be informed that the application has been invalidated and have their fees refunded.

In a case where an application has been invalidated in error, there is no provision for re-instatement or “de-invalidating”. This is right because a member of the public might have been informed that an application had been invalidated and would not know that it was subsequently “de-invalidated”. Cases of invalidation in error will be rare, but it is important that when a customer has a complaint about the invalidation of a planning application or the process of validation, he or she should have recourse to the planning authority's complaints procedure and that the complaint should be treated seriously and dealt with promptly. If following investigation it transpires that the application was in fact invalidated in error, an apology should issue to the applicant and the planning authority should consider appropriate redress e.g. paying the advertising costs of a subsequent application.

3.12 Managing the validation process

In managing the validation process the planning authority will be aiming to achieve a situation where all applications lodged are valid on receipt. The planning authority can use its discretion to ensure that the best system is put in place, having regard to its local situation. As indicated above, this will be facilitated when the planning authority has a clear and helpful approach to the information that is required for making planning applications in its area.

Other methods of encouraging valid applications that have been tried by planning authorities include:

- Holding advisory seminars for architects, planning consultants and other agents who lodge applications, on a regular/annual basis in their planning authority;

- Providing written advice at the public counter and on the authority's website;
- Validating applications as they are lodged at the counter by the applicant or agent.

Planning authorities should endeavour to have adequate staff levels, appropriately trained, for receiving and validating applications either by post or over the counter.

Obviously, the percentage of applications invalidated may be no reflection on the performance of the planning authority. However, planning authorities should monitor the level of invalidations, looking at the trends within their own organisations and comparing the figures with other planning authorities through the Department's Quarterly Planning Statistics (published on the Department's website at www.environ.ie). Directors should be aware, broadly, of the principal reasons/categories under which applications are being invalidated in their authorities, and of the broad numbers in these different categories, so that they can consider whether there are any steps they can take to reduce the level of invalidations. Consideration should be given to developing local targets or indicators in this respect, as part of the pursuit of continuous improvement in service delivery to customers.

3.13 Applications involving protected structures or proposed protected structures

For such applications the site/newspaper notices must indicate that the proposal involves works to a protected structure, or a proposed protected structure. (The notices do not have to indicate that the structure is in an Architectural Conservation Area).

The additional documentation required to accompany a planning application for works to a (proposed) protected structure will depend on the scale, extent or complexity of the works involved. The additional documentation will generally relate only to the areas affected by the proposed works¹⁴.

¹⁴ This is further detailed in the *Architectural Heritage Protection Guidelines for Planning Authorities* (DEHLG, 2004).

Chapter 4 Environmental Impact Assessment

4.1 Introduction

Environmental Impact Assessment (EIA) is a key instrument of EU environmental policy. The primary purpose of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC) is to ensure that those projects which are likely to have significant effects on the environment are subject to a comprehensive assessment of their likely significant impacts. The mandatory requirement in the Directive to carry out EIA in respect of certain project classes over certain thresholds is implemented in planning legislation. In many cases, Ireland has adopted a substantially lower threshold than that set out in the Directive. Planning legislation also makes provision for sub-threshold EIA. The EIA requirements under planning legislation have been consolidated into Part X of the Planning Act and Part 10 of the Planning Regulations with 3 associated Schedules (5, 6 & 7).

EIA consists of:

- Preparing an Environmental Impact Statement (EIS);
- Making the planning application and EIS available for comment by prescribed bodies and the general public;
- Evaluating the adequacy of the EIS;
- Evaluating the application in the light of an acceptable EIS and any comments received during the consultation process.

EIA is a process which focuses on anticipating all environmental impacts of significance of a proposed development prior to consent being granted, and which specifies those measures that should be taken to eliminate or at least mitigate such impacts to an acceptable level. It should be clear from the records of the consent authority that the adequacy of the EIS has been fully considered and that the project has received a full environmental impact assessment.

EIA when correctly carried out, is of considerable importance in the development management process because:

- It leads to improved decision-making by providing better information, including information on cumulative effects;
- It facilitates consideration of alternatives (including alternative sites, routes, layouts, processes, etc.) at a formative stage;
- It enables potential significant adverse impacts on the environment to be identified and either eliminated, reduced or alleviated through

appropriate mitigation measures, thus contributing to more sustainable development;

- It facilitates and encourages public involvement in the process – an integral part of the Directive.

It is not possible within the scope of these guidelines to address all aspects of EIA in detail. Instead, the intention is to highlight some key issues relating to proper planning and sustainable development, and to point to sources of further guidance.

4.2 Environmental Protection Agency guidance

The EPA has published two guidance documents¹⁵, which should be consulted by planning authorities when assessing an EIS (or when preparing an EIS for major development by the local authority itself):

- *Guidelines on Information to be Contained in Environmental Impact Statements* (2002): these Guidelines were drafted with the primary objective of improving the quality of EISs in Ireland. The guidelines contain useful information on initial screening in regard to the need for EIS. They also address a wide range of project types and potential environmental issues. The guidelines deal with issues such as alternatives and mitigation. They also provide a focus for scoping between the parties concerned.
- *Advice Notes on Current Practice* (2003): These were designed to complement the 2002 Guidelines. They contain greater detail on many of the topics covered by the Guidelines and offer guidance on current practice for the structure and content of EISs. Section 3 provides guidance on topics to be addressed in EISs for different classes of development, detailing 33 generic project types with similar development or operational characteristics, and highlights typical issues that arise. Information in relation to the range of bodies that should be consulted in relation to an EIS is provided in Section 4.

4.3 Lodging an planning application with EIS and procedures for dealing with such applications

Where an EIS is required to be submitted with a planning application:

- The newspaper and site notices must state that an EIS will be submitted to the planning authority with the application, and that the EIS will be available for inspection or purchase at a fee not

¹⁵ Available on www.epa.ie.

exceeding the reasonable cost of making a copy, during office hours at the offices of the relevant planning authority;

- 10 copies of the EIS must be submitted.

Procedures for determining a planning application that includes an EIS are different from those applicable to other planning applications in a number of respects, particularly in terms of the time period available to the planning authority and the requirement to notify prescribed bodies; the procedures are set out in Part 10 (Chapter 2) of the Planning Regulations.

In deciding on an application for which an EIS has been submitted the planning authority, and the Board on appeal, must have regard to the statement, any supplementary information submitted relating to the statement and any submissions or observations submitted concerning the effects on the environment of the proposed development.

Where a planning application for a development for which a mandatory EIS is required is not accompanied by an EIS, it should be declared invalid by the planning authority (Article 99 of the Planning Regulations). Where the Board considers that an appeal relates to a planning application which falls within one of the prescribed classes of development requiring assessment (Article 93) and an EIS was not submitted to the planning authority in respect of the planning application, it must require the applicant to submit an EIS (Article 109 (2)). In addition, a planning authority/the Board must require an EIS in the case of a planning application/appeal relating to an application for sub-threshold development in cases where it considers that the development would be likely to have significant effects on the environment.

In exceptional circumstances, the Board may grant an exemption from the obligation to prepare an EIS. An exemption cannot be granted in respect of developments, which may have transboundary environmental effects.

An application for outline permission may not be made to a planning authority for development mandatorily requiring an EIS (Article 96(1)). Accordingly any such applications should be returned to the applicant. Where a planning authority or the Board receives an outline application in respect of a sub-threshold development which would in its opinion be likely to have significant effects on the environment it must (Article 96(2)) inform the applicant that the outline application cannot be made and that a full application accompanied by an EIS is required. In such a case the outline application is deemed withdrawn and returned to the applicant, relevant details entered on the register, any persons or bodies who made submissions informed and any fees for submissions returned.

4.4 Above threshold and sub-threshold developments

Schedule 5 of the Planning Regulations sets out the classes of development for which an Environmental Impact Statement must be prepared and must accompany a planning application. Schedule 5 is divided into two parts:

- Part 1 of Schedule 5 reflects Annex 1 of the EIA Directive on projects which of their nature would be likely to have significant environmental impacts, and for which an EIS is mandatory under European law.
- Part 2 of Schedule 5 details categories of development for which an EIS is required in Ireland, and relates to Annex II of EIA Directive, which required Member States to establish their own criteria and/or thresholds for determining when Annex II projects would have significant environmental effects.

In considering whether or not a development is below a mandatory EIS threshold, it is important to consult the two parts of Schedule 5 - because certain categories of development appear in both Part 1 and 2 - and to be aware that the lower mandatory EIA threshold in Part 2 applies.

The purpose of the sub-threshold provision in EIA legislation is to ensure that projects which are below the mandatory thresholds set out in the EU Directive in quantity, area or other limit specified, but which are likely to have significant effects on the environment because of their location, nature or cumulative effects, are made subject to EIA. It is important to remember that the meaning of the term “effects” here is not necessarily confined to adverse effects. The Department has issued detailed guidance to assist consent authorities in determining whether or not significant effects are likely to arise: *Environmental Impact Assessment Guidance for Consent Authorities regarding Sub-threshold Development* (August 2003). Where the planning authority, or the Board on appeal, considers that such effects are likely, it must require the applicant to submit an EIS. A decision on the need for sub-threshold EIA should be made with reference to the criteria which were introduced by the EIA amending Directive of 1997 (97/11/EC) and which are now set out at Schedule 7 of the Planning Regulations.

In the case of sub-threshold development on any of the sites of conservation sensitivity listed in Article 103(2) of the Planning Regulations, there is an obligation on a planning authority to formally consider in every such case whether the development is likely to have significant effects on the environment of the site, area or land.

Where a planning application for a sub-threshold development is not accompanied by an EIS and the planning authority considers that the development would be likely to have significant effects on the environment it must in writing require the applicant to submit an EIS (Article 103). Provision

is also made in the case of appeal for the Board to require an EIS (Article 109).

Planning authorities and the Board should record the reasons for their decision for requiring (or not) the submission of an EIS for a sub-threshold development and should retain a copy of the decision on the relevant file for inspection by the public.

4.5 Scoping

Scoping is the process whereby a person intending to apply for planning permission seeks to ascertain from the planning authority the nature and extent of issues that should be addressed during the EIA process. A scoping request may be formal where a written opinion is sought from the planning authority (under Article 95), or informal. In either case, the purpose of the scoping request is to ensure that the EIS will be focussed on the most important issues, to identify the likely significant environmental impacts, to consider possible alternatives and/or mitigation measures and to discuss relevant data sources and forecasting/measurement methods. It is of crucial importance that major issues are adequately dealt with objectively, and that minor issues are not described in excessive detail.

In drawing up an opinion about the scope of the coverage required, the planning authority must have regard to the prescribed contents of an EIS. The planning authority may seek observations from the Board, other statutory consultees and relevant agencies as part of this process and must take into account all observations received to ensure that all relevant issues are identified and addressed to an appropriate level. If the planning authority considers that it has insufficient information to enable it to give a written opinion on the scoping request, it may require further information.

It must be recognised, however, that advice given by the planning authority at the scoping stage is given without prejudice to its subsequent assessment of the adequacy of the EIS or to its decision on the accompanying planning application.

4.6 Quality of EISs

The EIS has often provided a focus of attention for opponents of large or controversial development projects, particularly where the adequacy or objectivity of the EIS has been open to question. The EPA's 2003 Advice Notes highlight the most common problems affecting the quality of EISs. It is very much in the interest of the promoter of a project requiring EIA that these problems should be avoided, in order not only to avoid risk of delay in processing the application (and any subsequent appeal) but also risk of refusal.

It is important that adequate consideration of alternatives¹⁶ at the design stage is undertaken and that any potentially significant adverse impacts are not understated, but rather identified and designed out or mitigated as far as possible. The question of mitigation will be addressed in further detail in para. 4.7.

It is also important to avoid the inclusion of an excessive level of detail of questionable relevance in the EIS, and to focus instead only on likely significant environmental impacts. Detailed studies from which conclusions are derived should be referred to in appendices and included if necessary.

Where a planning authority considers that an EIS fails to contain all the necessary information, the planning authority may seek further information.

It is a mandatory requirement that a non-technical summary be submitted as part of an EIS. The purpose of this summary is to summarise the contents of the main document(s) in non-technical language; it should not introduce new or unrelated information.

4.7 Mitigation measures

Mitigation measures proposed in any EIS are designed to limit the environmental impacts of the development. There are 3 established strategies for impact mitigation, namely, avoidance, reduction and remedy. In dealing with a planning application it is important to consider how the main mitigation measures specified in an EIS can be secured.

- **Avoidance.** Avoidance measures will generally form an integral part of the proposed development, as they tend to involve site selection and design processes at the very early stage of the project;
- **Reduction and Remedy.** Reduction seeks to monitor and control emissions before they enter the environment and remedy is a strategy used to deal with residual impacts that cannot be prevented from entering the environment. It may be necessary to reinforce such mitigation measures through planning conditions attached to a planning permission. However, a condition requiring that the development be in accordance with the EIS is unlikely to be of value unless the EIS is particularly precise in relation to what specific measures are to be undertaken. Therefore in order to enable the planning authority, or the Board on appeal, to satisfactorily frame conditions with regard to securing mitigation it is important that the mitigation measures in the EIS are focused, clear

¹⁶ See Par 2.4.3 of the EPA's 2002 guidance on the issues to be addressed when considering alternatives.

and precise and the quality of the EIS should be assessed in this light.

If the proposals for mitigation are unclear, consideration should be given to seeking clarification by way of additional information to ensure that no ambiguity exists in relation to the measures proposed. Such clarity will ensure that securing the implementation of these measures will be more straightforward.

4.8 EIA application time limits

A planning application accompanied by an EIS must be decided within 8 weeks of receipt of the application. If, however, further information is sought, the planning authority has an additional 8 weeks from the date of lodgement of such information (rather than 4 weeks, as in other applications) in which to make a decision.

Where a sub-threshold EIS is sought by a planning authority, the planning application will be deemed to be made on the date of receipt of the EIS and the appropriately worded public notices. Any person or body who made a valid submission or observation on a sub-threshold application must be notified where an EIS is subsequently received by a planning authority, and may, within 5 weeks of receipt of the EIS by the planning authority, make further submissions in relation to the EIS. In cases involving transboundary consultation, the Planning Act makes provision for the extension of time limits for the making of decisions.

4.9 Transboundary environmental impacts

Article 124 of the Planning Regulations requires that where a planning authority receives a planning application or where the Board receives an application for strategic infrastructure development and where such development requires an EIS and would, in its opinion, be likely to have significant effects on the environment in a transboundary State (that is, as another EU Member State or a state which is a party to the Espoo Transboundary Convention), it must notify certain particulars to the Minister and provide him or her with a copy of the EIS.

The planning authority or the Board must also provide information on the proposed development to the transboundary state, at the same time as notifying the Minister, and must also enter into consultations with the state. Where the other state indicates that it wishes to take part in the decision-making process, a copy of the EIS must be sent to it.

The Regulations also provide that where a transboundary state considers that a proposed development would be likely to have significant effects on the environment in that state and requests that it be provided with information on

the proposed development, the planning authority or the Board as appropriate must provide it with information.

Where a planning authority or the Board have not notified the Minister in relation to a proposed development requiring EIS and the Minister is of the opinion that the proposed development would be likely to have significant effects on the environment in a transboundary state he or she may require the planning authority or the Board to furnish him or her with such information as he/she may specify.

A decision on a transboundary planning application or appeal cannot be made until after the views of any relevant transboundary state have been received or the consultations are otherwise completed (Article 130).

The planning authority must notify the applicant, and Board must notify the parties to the appeal/the local authority/the applicant (as appropriate) in cases where information has been provided to, and consultations have taken place with, a transboundary State.

The planning authority may place specific conditions on the granting of permission, thereby reducing or eliminating any possible environmental effects on other Member States. Notice of a decision on a transboundary planning application or appeal should be sent to the Minister, and the relevant transboundary State.

4.10 Local authority development and EIA

Any development identified as requiring environmental impact assessment that a planning authority proposes to carry out or that any other person proposes to carry out on behalf of or jointly or in partnership with a planning authority within the functional area of a planning authority, requires the preparation of an EIS and its submission to the Board for approval. These provisions do not apply to proposed road development by road authorities that is dealt with separately under the Roads Act 1993, section 50 of which requires a roads authority to prepare an Environmental Impact Statement and submit an application for approval to the Board for any motorway, busway or other prescribed road development. Specific guidance on the preparation of EISs for road scheme proposals is contained in the National Roads Authority's *Environmental Impact Assessment of National Road Schemes - A Practical Guide*. The guide should be read in conjunction with the EPA guidance documents on EISs generally.

A newspaper notice of the nature and location of the proposed development must state that an EIS is to be submitted with the application and that it will be available for inspection or purchase at a specified location for a period of not less than six weeks. The notice must invite submissions or observations to the Board within the specified period, in relation to the possible effects on the environment of the proposed development and any possible implications for

the proper planning and sustainable development of the area. A similar notice must be sent to the relevant prescribed bodies.

A local authority may make a scoping request to the Board regarding the content of an EIS (Article 117 of the Planning Regulations) and a road authority may make a scoping request to the Board under section 50 of the Roads Act 1993.

Chapter 5 Processing a Planning Application

5.1 Introduction

This Chapter outlines ways of combining efficient and effective processing of applications with adherence to strict statutory requirements. In a high quality service there should be no avoidable delays in the process, especially in relation to proposed developments central to the social and economic well being of the community, such as housing, employment, and infrastructure.

5.2 Notification of prescribed bodies

Article 28 of the Planning Regulations requires planning authorities to give notice of valid planning applications to certain prescribed bodies where, in the opinion of the authority, the development would be relevant to the functions of that body. The Regulations, as amended, require a planning authority, when giving notice to a prescribed body, to forward the planning application form together with the location map and to forward further documentation on request. Planning authorities should endeavour to meet the reasonable requests of prescribed bodies on the information to be furnished to them e.g. if a specific prescribed body indicates that it will always require a particular document or plan when looking at planning applications, planning authorities should if possible forward this plan with the initial notice.

As planning authorities may determine the application without further notice to a prescribed body that does not make a submission within five weeks of the date of lodgement of the application, it is imperative that such bodies be notified at the earliest possible stage. Planning authorities should therefore establish internal procedures that enable new applications to be reviewed speedily to determine the prescribed bodies, if any, that should be notified. In this regard, planning authorities should endeavour to notify relevant prescribed bodies within two working days of validation. It would be helpful if the planning authority indicated the specific reason why the case is being referred, e.g. by citing the relevant sub-paragraph of Article 28. A GIS system offers potential advantages in this regard, because site locations affecting or in the vicinity of protected structures, European protected sites, Gaeltacht areas, airports, major electricity lines, etc. can readily be identified.

In relation to development proposals likely to affect a transboundary state or relating to the provision of or modifications to an establishment to which the Major Accident Regulations apply, planning authorities should also note the consultation requirements set out in Chapter 5 of Part 10 and Chapter 1 of Part 11 of the Planning Regulations, respectively.

Planning authorities should keep a record on the file of all bodies consulted about any particular application and whether any response was received. This record should be part of the documentation submitted to the Board in the event of an appeal. Planning authorities should note that a prescribed body is

entitled to lodge an appeal if it was entitled to be notified but was not notified¹⁷.

5.3 Making the planning application available to the public

As required by section 38 of the Planning Act, certain documents must be made available for inspection or purchase as soon as possible after they are received. Accordingly as soon as any necessary copies have been made, the planning application, the EIS where applicable, any other material submitted by the applicant (with the exception of contact details) and any submissions or observations received should be placed on a file available for public inspection, irrespective of whether the application has been validated or not, together with copies of records of any pre-application consultations. An up-to-date copy of the planning application file should be available for inspection at the public office at all times when the office is open.

In order to satisfy the requirements of Data Protection legislation the recommended format of the application form to be used (available at www.environ.ie) is one where the contact details of the applicant or agent are inputted on a page separate to the body of the form, which page should not be placed on the public file. The front page of the recommended format also advises the applicant that the planning application (but not the contact details) will be placed on the public file, and will be placed on the planning authority's website, where this is the policy of the planning authority. The recommended application form also contains a tick box in relation to direct marketing and Article 27 of the Regulations has been amended to require the weekly lists of planning applications and planning decisions to contain a warning in relation to the use of the information in the lists for direct marketing purposes. The former requirement to include the applicant's home address in the weekly lists of planning applications and decisions, under Article 27 and Article 32, respectively, has been removed, also for reasons of data protection and privacy.

In addition to issues regarding contact details, other issues arise here in relation to personal data and privacy. Planning authorities will often require evidence from applicants seeking to build one-off rural houses in order to determine whether the proposed development would be in accordance with the planning authority's rural housing policy for the area in question, as set out in its development plan, and with the Department's *Sustainable Rural Housing Guidelines for Planning Authorities* (April 2005). For instance, an applicant may be required to demonstrate his/her links with the area or to demonstrate housing need. While transparency is an integral part of the planning system, it is important to respect the privacy of individuals as far as possible. Accordingly, in gathering such evidence, planning authorities should endeavour to accept only evidence which does not contain unnecessary personal details, such as the applicant's age, income, marital status, etc.

¹⁷ Section 37(4) of the 2000 Act

For example, a planning authority should not seek utilities bills or bank statements as evidence that a person has been resident at a certain address for a period of time, as these will include account number and financial details. Instead the planning authority could require a letter from a utilities' company or bank to establish the person's billing address over the period. Similarly, where a person seeks to prove that he/she has been employed in an area over a period, documents showing financial details such as payslips, P60s, tax certificates, should not be accepted as evidence, instead a letter from the employer could be sought, which, while confirming the fact of the employment would not contain any extraneous personal data, such as the nature of the applicant's job or his/her salary scales.

Where an applicant claims a particular medical condition that requires him/her to live in a particular area, a medical certificate/letter which states that he/she has a condition or an illness without specifying its nature should be sought. Particular care should be taken about the personal information of persons other than the applicant. Insofar as possible, the names and personal details of others should not be included in the material supplied with the application form. For example, in a case where an applicant is applying for permission to live in an area in order to care for an elderly parent who is ill, it is suggested that the planning authority, rather than accepting medical evidence which states that a named individual has a specific medical condition, should request medical evidence to the effect that the applicant has a close relative living in the area who has a medical condition such that he/she requires care/assistance.

As a general rule, the approach of the planning authority should be to compile the amount of evidence needed, but no more, and to ensure that the evidence submitted contains no superfluous personal information, other than that required to establish the specific fact(s) that the planning authority needs to have confirmed. It is suggested that planning authorities should not, for example, seek evidence in an open-ended way which could encourage the applicant to submit voluminous personal data, but should be specific rather than general in requesting supporting documentation.

Many local authorities are putting the planning file on their websites which is very desirable for ease of access. However planning authorities might note that the requirement under section 38 of the Planning Act is to make all documentation received from the applicant available for inspection at the office of the planning authority and to make a copy available for purchase. Accordingly, as long as the file in the planning office contains all documentation submitted by the applicant the requirements of the Act are met. There may be rare occasions where a planning authority might decide, because of the particularly sensitive nature of a specific piece of information that was taken into account in deciding a planning application, that while the law requires it to be placed on the hard copy file in the planning office, it should not be put on the website. This will be a judgement call for the planning authority having regard to the principles of data protection. It is obviously not generally desirable that there would be 2 versions of a planning file i.e. the complete hard copy available at the planning office and an edited

version on the website and accordingly it is suggested that the decision to hold back particular documents from the website should only be taken after every effort has been made, as set out in the previous paragraphs, to obtain evidence that is capable of being published without breaching the privacy rights of individuals.

The Office of the Data Protection Commissioner also recommend the use of a Robot Exclusion Protocol by planning authorities in relation to planning application data on their websites. This allows web site administrators to indicate which pages of the website should not be accessed by a robot that is categorising a website. While the protocol is purely voluntary and cannot restrict a robot from searching and categorising a website, it is understood that the reputable search engines, such as Google, etc., do abide by such exclusions.

5.4 Internal circulation of files

It is also important to decide as quickly as possible, which departments/sections or specialist staff within the planning authority need to be consulted about a particular application. It is recommended that each planning authority should devise internal guidelines for doing this; certain categories of development may always need to be referred to particular sections or officers. For example, applications involving Part V proposals will need to be referred to the Housing Department at the earliest possible stage so that the assessment of the proposals can be completed for inclusion in the planning report. Similarly, applications involving protected structures should normally be referred to a conservation officer where there is such a post in the authority. In other cases the planner may need to exercise his or her judgement regarding appropriate referrals.

Planning authorities should have clear and consistent standard procedures to facilitate the process of internal circulation. It should be easy for any person reading the planning file to identify the source of any reports or comments on the file. Any written reports or comments should be dated, and should include the author's name, title and section/department.

Staff within the authority who normally deal with other statutory codes should be informed of the advice given in Chapter 7 below regarding planning conditions and such codes.

Best Practice Example

Cork City Council has appointed a Senior Executive Engineer who prepares a composite report on all the engineering issues i.e. roads, water, drainage and environment (waste) for its smaller applications i.e. house extension, individual house applications, shopfronts, etc. which constitute roughly 50% of its applications. This obviates the need for the file to be referred to 4 different Directorates. The average response period for the composite engineering report has been 5 working days, which greatly aids the issuing of speedier decisions.

5.5 Dealing with prescribed body and third party submissions

As required by Article 28(4) and Article 29(2) of the Regulations all submissions from prescribed bodies and others must be acknowledged as soon as possible - ideally within 3 working days of receipt. It is vital that this is done, as without an acknowledgment a person may not appeal the decision of the planning authority to the Board. The 2006 Regulations have prescribed the form for such acknowledgements. Submissions received prior to the validation of the application must be accepted; where the application is subsequently invalidated, any person who made a submission must be informed and the fee returned (see para. 3.11). Where a submission, other than a submission from a prescribed body, is received either without the prescribed fee, or outside the statutory time limit, it should be returned to the sender as soon as possible with an explanation as to why it is being returned. It should be noted, as clarified by the amended Article 28(2), that any submission or observation received from a prescribed body before the decision is made on the application must be taken into account by the authority in making its decision on the application.

It is also important, as stated in para. 5.3, that submissions must be put on the planning file as soon as possible after they are received, so that they are available for inspection or purchase by members of the public. The former requirement to include a telephone number with a submission has been removed from the Regulations. While the public will generally be aware that submissions made on planning applications are available for inspection they may not have considered the fact that many planning authorities are now scanning all planning documents and placing them on their websites. The Department's Planning Information Leaflet No.3 *Commenting on a Planning Application* will shortly be amended to include reference to the fact that persons should be aware that their submissions will be made public and could be placed on the planning authority's website and that they should therefore be careful not to include excessive or superfluous personal information about themselves or others. Planning authorities should also draw attention to this in any information material on the planning process, either handed out in hard copy or placed on their websites.

5.6 Processing major/complex planning applications

Planning authorities should establish special procedures for dealing with applications for major developments (such as those deemed to be of strategic local, regional or national importance) or those involving complex technical issues. (Obviously developments subject to the provisions of the Planning and Development (Strategic Infrastructure) Act 2006 are dealt with under a separate procedure). Such procedures should involve the designation of a senior staff member to take overall responsibility for processing the application. He or she will be responsible for briefing the management team and the elected members as to the progress of the application, for ensuring that all relevant external and internal consultees are notified in good time and for co-ordinating the various submissions and professional or technical reports when the application is being determined. In certain cases involving complex technical issues (which may be raised by an environmental impact statement, for example), it may be necessary to seek specialist consultancy advice, and to brief the consultant on the issues involved.

Regular case conference meetings between personnel from relevant departments within the planning authority will help identify and resolve key issues arising at an early stage. Any minutes or notes of such meetings should be put on the planning file after the decision has been made.

5.7 Requests for further information (Article 33)

As stated in Chapter 2 above, one of the objectives of pre-application consultations is to avoid the need for seeking further information at a later stage. However, whether or not such consultations have taken place, consideration of the application may reveal the need to seek such information before the application can properly be determined. The Planning Regulations provide that a request for further information must be made within 8 weeks of the receipt of the application: such a request cannot therefore be made outside this period even where the applicant has consented to an extension of time under section 34(9) of the Act. The Planning Act also provides that where further information is requested within 8 weeks, the normal 8 week time period for dealing with a request is extended by 4 weeks from the date of compliance with the request (8 weeks in the case of an application accompanied by an EIS).

A request for further information should clearly indicate all the information required, as the Planning Regulations do not permit a second request save where this is necessary to clarify matters raised in the applicant's response.

Requests for further information, if necessary, should be made as soon as possible, and certainly soon after the expiry of the 5-week period for submissions from third parties.

Further information may only be sought where it is necessary for the determination of the application. Requests for further information may not be used to seek changes to aspects of the proposed development.

Requests for further information under Article 33 on one aspect of a proposal should not be sought where there is a fundamental objection to the proposed development on other grounds; applicants should not have to suffer unnecessary delay or expense if a refusal is likely. For example, additional elevational details should not be sought if the proposed use is not acceptable in principle. However the application should, of course, be considered as fully as possible on the basis of the information lodged and, where the application is being refused, all the reasons for refusal arising from this information should be given to the applicant in the decision.

The further information must normally be supplied by the applicant within 6 months of the request otherwise the application is deemed withdrawn: obviously this should be brought to the applicant's attention when further information is being sought. It should also be noted that where clarification of further information is sought this must also be provided within 6 months of the request for further information (not the request for clarification) and if it is not the request will be deemed withdrawn: again this should be brought to the applicant's attention. Article 33 as amended, however, allows the planning authority to permit an extension to the 6-month time limit. This can be used to permit clarification to be obtained in cases where the further information was supplied very late in the 6-month period, or in cases where for various reasons the applicant has difficulty in complying with the 6-month time limit.

Further information should, of course, be put on the public file as soon as it is received.

5.8 Revised plans/modified plans (Article 34)

Where a planning authority is disposed in principle to granting permission for a proposed development, but considers that modified plans are needed, it may invite the applicant to submit such plans. Revised plans will usually be sought in a situation where the proposal is broadly acceptable and where permission could be granted if one, or a small number, of modifications were made. The applicant may of course prefer to have the application dealt with as originally submitted and exercise his/her right of appeal to the Board if necessary. Where the applicant does not wish to submit revised plans the application should be decided by the authority, that is, either refused or granted with appropriate conditions.

Under the amended Planning Regulations revised plans must be sought within 8 weeks of receipt of the application and where the applicant wishes to avail of the opportunity to submit such revised plans he/she must indicate in writing, within a time limit specified by the authority that he/she intends to submit revised plans. The planning authority should specify a very tight deadline so that in the event that the applicant does not reply, or indicates that

he/she does not wish to submit revised plans, the planning authority still has time to make the decision on the planning application within the original 8 weeks. (Such a decision would presumably be a refusal, or a grant which conditioned the desired modification).

The amended Regulations also provide that when indicating that he/she intends to submit revised plans, the applicant must also consent in writing under section 34(9) of the Planning Act to an extension of the time for making a decision on the application under section 34(8). This provision gives the planning authority additional time for dealing with revised plans, as, without the consent to extension of time, the Act would require such applications to be decided within the original 8 week period. This new provision also means that there will be time to allow the publication requirements of Article 35 to be complied with, should it transpire that the revised plans contain significant additional data (see para. 5.9 below).

5.9 Significant additional data (Article 35)

Article 35 of the Planning Regulations provides for the situation where further information received under Article 33, or revised plans received under Article 34, contain significant additional data. When a planning authority receives further information following a request under Article 33, or revised/modified plans following a request under Article 34, or otherwise receives further information, it should consider whether it contains significant additional data. The question of 'significant additional data' can only be determined by the planning authority on an individual basis in each case using professional judgement and having regard to the particular circumstances, but the impact on the environment and/or the effects on third parties will always be material considerations.

If it is considered that the further information or revised plans contain significant additional data, prescribed bodies and persons who made submissions or observations must be informed about the further information or modified plans/revised plans and about their right to make additional submissions. Also, the planning authority must require the applicant, within a specified period, to publish a newspaper notice marked "Further Information" or "Revised Plans" and, since the 2006 amendments, to erect a site notice, and to forward copies of those notices to the planning authority. The period for publication may be specified by the planning authority: this should be a short period. The notices must invite submissions to be made not later than 2 weeks after receipt of the newspaper and site notices by the planning authority. A planning authority should also accept and consider any submission received in the period between its request for publication under Article 35 and the date copies of the notices are received from the applicant. A €20 fee is payable in respect of a submission, unless the person making the submission has already paid a fee in respect of a submission on the same planning application. The planning authority must acknowledge receipt of such submissions on the prescribed form.

5.10 Unsolicited further information

As the submission of unsolicited further information by the applicant may have implications for the rights of third parties, such submissions should only be considered when they relate to non-contentious matters, such as clarification of details already submitted. If further information received departs substantially from the application as originally lodged, it should be dealt with in accordance with the requirements of Article 35, as detailed above, otherwise the application should be determined on the basis of the original plans. Alternatively, the applicant may choose to withdraw the original application and to submit a fresh application.

5.11 Time extensions

As outlined in Chapter 1, efficiency is one of the hallmarks of best practice in the development management process. This implies that there should be no avoidable delay in the processing of a planning application. Section 34(9) of the Planning Act provides that an applicant may only give written consent to extend the period for making a decision during the first 8 weeks following lodgement of the application. A time extension should only be used for a limited period where the extra time would facilitate resolution of a problem or problems that might otherwise require that permission be refused. Further information cannot be sought within the extended period. Only one time extension is permitted.

5.12 Material contravention applications

Section 34(6) of the Planning Act sets out the procedure under which a planning authority may decide to grant permission for a development which would materially contravene its development plan. Section 34(8)(d) provides for an extension of time in such cases. A planning authority must publish a notice in the prescribed form (Form No. 5, Schedule 3 of the Regulations, as amended) of its intention to grant a permission that would materially contravene the development plan, in a newspaper circulating in its area. The notice must specifically state the objective of the development plan that will be materially contravened by granting the permission.

Any person or body may make a written submission in relation to a decision that would involve a material contravention, such submissions to be made within 4 weeks of publication of the statutory notice. No fee is payable for such submissions. As provided for in the amended Article 36 of the Regulations, the planning authority must acknowledge such submissions in writing.

The development plan is of central importance in the planning process¹⁸, and section 34(2)(a) of the Act requires a planning authority to have regard to its provisions when deciding an application. In deciding whether any development would materially contravene the plan, the authority should consider whether there would be a departure from a fundamental provision of the plan or whether the development – alone or in conjunction with others – would seriously prejudice an objective of the plan. If the answer is “no”, there is no statutory prohibition on the granting of permission. While section 34(10) requires that in all cases the main reasons and considerations on which the decision on an application is based must be stated, it is particularly important that the reasons for contravening the development plan in the particular circumstances should be fully explained.

It should be noted that where a planning authority has decided to refuse permission for a material contravention application, section 37(2) constrains the Board's freedom to grant permission. However, one of the circumstances in which the Board may grant permission is where it considers that there are conflicting objectives in the development plan, or that the objectives are not clearly stated, as far as the proposed development is concerned.

Decisions to grant material contravention permissions should be forwarded to the development plan section of the planning authority, in order that any future changes to the provisions of the plan might be considered.

5.13 Issues relating to title to land

Under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.

The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that

¹⁸ *Development Plans Guidelines for Planning Authorities* (DEHLG, 2007)

basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.

Before a planning application can be made in respect of proposed development on land owned by the local authority, the local authority will have to give a letter of consent to the making of the application: in this regard a letter from the Manager will suffice. The consent of the elected members will of course be required for the disposal (whether by means of lease, licence, or sale) of the land in question: the developer should be advised of this in advance.

5.14 Section 140 motions (Local Government Act, 2001)

Section 140 of the Local Government Act 2001, provides that (subject to the procedures set out in the section), an elected council may by resolution require any particular act, matter or thing specifically mentioned in the resolution and which the local authority or the Manager concerned can lawfully do – which includes making a decision to grant planning permission – to be done in the performance of the executive functions of the local authority. Section 140(11) states that this section is without prejudice to the procedures for dealing with material contravention applications under section 34 of the Planning Act, i.e. if the application is deemed to materially contravene the development plan, section 34(6) applies.

In requiring the Manager to decide to grant permission in this way, the elected members are restricted to considering the proper planning and sustainable development of the area, regard being had to the criteria set out in section 34(2)(a) of the Planning Act. Officials should present the same report on the application (including an assessment of submissions from prescribed bodies, third parties, and technical reports) to the Council as they would to the Manager or delegated officer. The report should include suggested planning conditions for use in the event that the Council decides to grant permission despite a recommendation to refuse. While the members are not bound to accept any recommendation offered, councillors are required to act reasonably, and must have a basis on which to lawfully reject the expert advice given to them by the authority. They must have regard to the matters set out in the Planning Act; it is not possible to consider matters other than those relating to the proper planning and sustainable development of the area. If councillors do not comply with those requirements, local authority Managers may refuse to comply with any resolution passed as being unlawful. The minutes of the meeting must contain a full account of the matters taken into account by the councillors in reaching their decision. A copy of the Council's decision, and of the relevant Council minutes, should be placed on the planning file.

5.15 Use of external consultants to process planning applications

The staff of the planning authority will process the vast majority of planning applications. However, at times of particular pressure on staff resources, the authority may find it necessary to employ external planning consultants to assist in processing applications, normally those of a relatively straightforward nature. In such cases, best practice would indicate that:

- Procedures must be established to avoid any actual or perceived conflicts of interest in respect of each individual case. The attention of any consultants or contractors engaged should be drawn to the provisions of section 179 of the Local Government Act 2001 which provides that any person whose services are being availed of by the local authority must disclose in writing to the Manager any interest which he or she, or a connected person, has in relation to any matter in relation to the performance by the authority of any of its functions and must comply with any directions the Manager may give him or her in relation to the matter;
- The consultants must be provided with ready access to the same range of technical advice and the planning history of the site as if a member of staff was dealing with the file;
- Planning reports prepared by consultants should be counter-signed by experienced planners within the authority to ensure consistency of policy interpretation.

5.16 Use of ICTs in processing applications

An increasing number of planning authorities are exploiting the potential of Information and Communication Technologies (ICTs) to deliver an improved and more efficient service as regards the processing of planning applications. In particular, ICTs can facilitate prompt internal and external circulation of planning files, tracking of submissions and technical reports, and adherence to statutory time limits. A GIS system can help planners to access a wide range of spatially-referenced information of relevance to a particular application, such as development plan objectives, heritage data, availability of infrastructure, planning history of the site, etc.

The Department, working with planning authorities, the Board, and the Local Government Computer Services Board, is committed to working towards the seamless transmission of electronic data throughout the entire planning system, including the online submission of planning applications and appeals and the online submission of observations or comments.

Chapter 6 Making Recommendations on a Planning Application

6.1 Introduction

In making its decision on a planning application, the planning authority is restricted to considering the proper planning and sustainable development of an area, having regard to the matters provided for in section 34 of the Planning Act. Section 34 sets out in detail the considerations which the planning authority must take account of, including the provisions of the development plan, Guidelines issued by the Minister for the Environment, Heritage and Local Government, other relevant Ministerial or Government policies and any submissions or observations made in accordance with the Planning Regulations. Planning authorities should also consider whether there has been substantial non-compliance with a previous planning permission, having regard to the provisions of section 35, as amended, of the Planning Act.

A key mechanism through which planning authorities demonstrate in an open and transparent manner that these matters have been considered in making the decision on a planning application is the planning report.

As stated earlier, these Guidelines are also applicable to the Board where the principles set out would be relevant to the activities to the Board, which is the case in relation to this Chapter.

6.2 Planning reports

The planning report should be prepared by the planner responsible in day-to-day terms for examining the technical aspects of the application, who must have sufficient knowledge of the site in question to enable him/her to carry out an accurate assessment of the impact of the proposed development. Generally the sites of the proposed development should be inspected by the planner responsible for dealing with the application and a digital photograph or photographs should be taken: this site inspection is quite separate from the site notice inspection referred to in Chapter 3. The level of detail appropriate in reporting on different types of planning applications is a matter for planning authorities to decide upon; however 6.3 below sets out certain minimum requirements. Planning reports should:

- Gather together all information relevant for the proper consideration of the application;
- Structure these considerations in a way that is clear to the applicant and the wider public and that enables informed judgements to be made as to the merits of an appeal to the Board.

6.3 Structure and content of planning reports

The format and structure of planning reports will necessarily vary in line with differing types of application but, in general, a planning report should be typed/in electronic format, logically set out and clearly signed by the person who prepared it, and should contain at least the following elements:

- (1) A brief description of the proposed development including the location and characteristics of the site;
- (2) Any particular distinguishing features of the site (including the date on which the site was inspected), which are relevant to the application and to the development proposed, observed at the time of the site inspection, such as visibility at a proposed entrance point or the type of development in the vicinity of the proposed development;
- (3) Consideration should be given to the inclusion of photographs to illustrate particular points made in the planning report; any photographs taken during the site inspection should be included;
- (4) A summary of the planning history relating to the site and any relevant pre-application consultation, focusing primarily on applications and decisions made in the past five years, not only in relation to the site itself, but also in relation to adjoining or nearby sites that might have a material bearing on the application;
- (5) A summary of the relevant matters set out in section 34 of the Planning Act. These matters include the provisions of the development plan and any Local Area Plan, any European site, any relevant policy of the Government or the Minister, which of course includes Planning Guidelines issued by the Minister, and any other relevant planning policy provisions relevant to the area including zoning, development objectives and architectural conservation areas;
- (6) A list of the prescribed bodies that were notified under Article 28 and an indication as to which of these bodies made submissions or observations. The number of submissions received under Article 29 should also be noted. The key points made in submissions both from prescribed bodies and others should be summarised;
- (7) A summary of the key points discussed at pre-application consultation, if any, and also key points made in any submissions made by internal local authority sections/departments. It is important to remember that matters discussed/agreed at pre-application consultation meetings are without prejudice and cannot bind the planning authority to act in a particular manner in the determination of any subsequent application. However, where the recommendations in the report are likely to depart significantly from the matters discussed or agreed at the pre-application discussion stage, the matter should be highlighted for the attention of the decision-maker

on the application. This will help to ensure that applicants are treated consistently and reasonably throughout the course of their application or, where there is a change of direction on the part of the planning authority, it is clear to the applicant why this is the case;

- (8) A summary of the key planning issues;
- (9) An assessment of each planning issue as outlined at (6), (7) and (8) above;
- (10) The assessment made by the Housing Department on the applicant's proposals for complying with Part V, where applicable;
- (11) Where the recommendation is to refuse because of a fundamental difficulty or difficulties, but where even if such difficulties did not exist, further information would have been required, an indication of the matters on which such information would have been required¹⁹.
- (12) A recommendation for the granting of permission, with or without specified conditions, for the refusal of permission or for a request for further information. The reasons for the conditions, the refusal or the further information requirement should be explained.

Reports subsequent to the receipt of further information should also address the adequacy of such information.

6.4 Planning reports – importance of a balanced approach

The preparation of planning reports and recommendations depends on a variety of inputs from, for example, the roads, environment, housing, water services, fire safety or other departments/sections of a local authority and also, on occasion, from external agencies. Not all such submissions and reports may be in agreement on the course of action necessary.

In such situations, it is the function of the planning report to set out all the relevant issues and to assign the appropriate weighting to issues raised. In this regard it is especially important that the planning report takes into account, and responds appropriately to, national planning policy and relevant provisions of the development plan.

Minor concerns that arise in internal reports, for example concerns in relation to minor deficiencies in the capacity of local infrastructure, may be capable of being resolved by way of conditions in cases where the proposed development would otherwise be consistent with the objectives of the development plan. Essentially the planning report must strike an appropriate

¹⁹ This is important: a frequent complaint by agents and others, is that when they submit a second application which addresses/overcomes all the expressed reasons for refusal of a first application, they find that contrary to their expectations it is not granted, but that new issues or problems are raised.

balance between concerns at local level and an overview of all relevant policies and information.

6.5 Submissions and observations

Submissions and observations on applications made under Article 29 of the Planning Regulations are an important part of an open and transparent planning system.

Where such submissions are received, it is essential that every effort is made to record and assess their general thrust in the planning report and to respond appropriately to any concerns or issues raised which are relevant to the consideration of the proper planning and sustainable development of the area. Efforts in this area can go a long way to addressing local concerns about proposed developments and may in some cases avert subsequent appeals to the Board or applications for judicial review.

6.6 Environmental Impact Assessment²⁰

For planning applications that are accompanied by Environmental Impact Statements, the adequacy of the content of the EIS is a key issue in the preparation of the planning report.

In particular, the report should include an assessment as to whether the contents of the EIS comply with Article 94 of the Planning Regulations, for example by recording whether the information required under the relevant headings has been included and whether the quality of the information supplied is such that it will enable the planning authority to assess the environmental impact of the proposed development.

Where planning authorities have already given a written “scoping” opinion under Article 95(4), it must carry out the above assessment with reference to the matters set out in the opinion.

6.7 Measures to improve consistency

All reasonable efforts should be made to research the planning history of sites and their general environs, including details of any pre-application consultation, as this is very important to help ensure that planning authorities take a consistent approach to planning proposals in a particular area over time. The availability of IT based solutions such as GIS and electronic viewing of planning registers and files are powerful tools in making such research efficient and easy to retrieve. Such research efforts are an effective means of building up the planners’ local knowledge and are particularly valuable in addressing situations where staff turnover has been significant.

²⁰ See Chapter 4 for detailed discussion of EIA.

In a situation where many planning authorities, particularly the larger ones, have, or are putting in place, area-based planning offices and associated management structures, it is also vitally important that standards of service and consistency in decision-making are assured between area-based offices.

The achievement of consistency can be promoted by:

- The use of standardised reporting formats and templates and conditions;
- Consultation between officials dealing with particularly complex proposals and officials from other area offices of that local authority to compare planning issues and responses;
- Regular meetings of officials reporting on planning applications to deal with practice issues, for example the manner of responding to newly published planning guidelines;
- Mentoring of junior or inexperienced staff;
- Networking between planners including attending regular training and professional development activities;
- The preparation of in-house guidance on the development management process or the interpretation of particular development plan policies;
- The preparation of design leaflets for issues such as parking in front gardens or domestic extensions.

Consistency is also facilitated when the planner's report is countersigned in certain circumstances by a more senior planner, such as a team leader or area planner, who is in a position to ensure that, as far as possible, similar cases are assessed using similar criteria.

6.8 The planning decision²¹

The responsibility for deciding a planning application rests clearly with the Manager or an officer to whom the function has been delegated, and he/she has the ultimate role in ensuring the consistency and fairness of such decisions. Where the delegation of responsibility for deciding planning applications has been delegated, on an area basis, to 2 or more offices, it will be the role of the Manager to ensure consistency and fairness.

It is vital, of course, that decisions are made within the relevant statutory time limits to avoid permissions being granted by default.

²¹ See more detailed discussion of the planning decision in Chapter 7.

The notification of the decision must give the main reasons and considerations on which the decision is based and the main reasons for the imposition of any conditions.

The decision that issues as a result of the analysis outlined above must be clear, unambiguous and easily understood. It follows that the decision should be drafted in as informative and helpful a manner as possible so that the applicant and any interested parties will be in a position to assess the impact of the decision and the options open to them as a consequence of the decision. Reasons for refusal and conditions on a decision to grant permission should have a clear purpose and meaning. Any information deficits should also be referred to in refusals, that is, issues that would have required to be clarified by further information, were it not the case that there was a fundamental objection to the proposal. The applicant should not need to seek clarification of the detail of a decision from the planning authority. The decision should be self-explanatory, fair and reasonable. However where factual clarification is required the planning authority should respond speedily – even aside from customer service issues, a speedy response may avert an unnecessary appeal to the Board.

6.9 Decisions that differ from the recommendations in the planning report

Section 34(10)(b) of the Planning Act requires that where a final decision of a planning authority on a planning application is different, in relation to either the granting or refusal of permission, from the recommendation of the final planning report, the decision must indicate clearly the main reasons for not accepting the recommendation. It is best practice that the decision would address all the relevant issues raised in the final planning report. Similarly, it is best practice that where the decision, while not differing from the recommendation in relation to the grant or refusal, significantly varies the conditions, it should give the reasons for this variation. Implementing the above procedure is vital in supporting the openness and transparency of the planning system.

6.10 Notification of planning decisions

The notification of a planning decision must be given within 3 working days of the decision and must comply with the other requirements of Article 31 of the Planning Regulations, including the requirement to give information in relation to the lodgement of appeals. It is important that the notification of the decision makes clear the date of the decision and that this date (rather than the date of the notification, if that is different) is the relevant date for the purpose of appealing to the Board. In accordance with Article 31 of the Regulations, the notification of a decision must give details of the nature of that decision including conditions attached to a grant of permission, or reasons for refusal in the case of a refusal of permission. Best practice suggests that in the interests of better customer service, planning authorities should also make the

planning report available with the planning decision and send a copy of the report, if requested, to applicants and any persons who made submissions, for information purposes. Alternatively the option of making the planning report easily available over the web or through a telephone ordering service should be pursued. Section 34(11) of the Planning Act requires that where no appeal is taken against the decision, the planning authority must make the grant of permission as soon as possible after the expiration of the period for making the appeal: it is recommended that this is done within 2 weeks of the expiration of the period.

6.11 Documents to be made available to the public after the decision has been made

In accordance with section 38 of the Planning Act all documentation relevant to the planning application must be made available for inspection and purchase within 3 days of the making of the planning decision. Pursuant to section 38(3), the planning application, other information received from the applicant and submissions will have been put on the planning file as soon as possible after receipt. Accordingly, after the decision is made, the documents referred to at section 38(1)(c) to (e) should be added to the file, that is:

- A copy of all reports prepared by or for the authority in relation to the planning application;
- A copy of the decision and a copy of the notification of the decision given to the applicant;
- A copy of any documents relating to a contribution or other matter referred to in section 34(5).

(Para. 5.3 may also be relevant here). It is best practice to also put a copy of the actual grant of permission, when it is made, on the file. These documents should be also be added to the website file as soon as possible after the decision has been taken. Under section 38 of the Planning Act, the documents required to be made available must be available for inspection or purchase for a period of not less than 7 years).

Chapter 7 Drafting Planning Conditions/Reasons for Refusal of Permission

7.1 Introduction: planning conditions

Conditions proposed to be attached to permissions, and the reasons for them, should be carefully drafted so that their purpose and meaning are clear. Conditions must always be precise and unambiguous, particularly since the effectiveness of subsequent enforcement action may depend on the wording. Moreover, adequate reasons should be given by planning authorities to justify conditions; it is not, for example, in the majority of cases, acceptable to give as a reason "in the interests of the proper planning and sustainable development of the area" since this affords the applicant no indication of the particular object of the condition.

The number of conditions should be kept to the minimum as the attempt to regulate details to an excessive extent may defeat its own ends. Moreover, difficulties can arise for developers and landowners generally at conveyancing and other stages in attempting to provide evidence of compliance with numerous conditions, especially those of a vague or general nature.

The recommendations in this Chapter apply equally to the drafting of planning conditions by the Board.

7.2 Standard conditions

Some planning authorities have devised standard conditions (and reasons) for use in relation to different types of applications. This practice is useful in the interests of consistency and can achieve timesavings. Great care should be taken, however, to ensure that standard conditions are used only where they actually apply or that they are properly adapted to meet the needs of particular cases, and that the availability of sets of standard conditions does not lead to the automatic inclusion of unnecessary conditions in particular cases, e.g. conditions which are irrelevant to the particular development, or which deal with matters best dealt with under other codes (see para.7.8 below).

7.3 Basic criteria for conditions

Certain basic criteria have often been suggested as a guide to deciding whether to impose a condition. These include whether the condition is:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise;

➤ Reasonable.

In addition, it is useful before deciding to impose a condition to consider what specific reason can be given for it: if the only reason which can be framed is a vague, general one, the need for or relevance of the condition, or its validity, may be questionable.

7.3.1 Conditions should be necessary

One useful test of need is whether, without the condition, either permission for the proposed development would have to be refused, or the development would be contrary to proper planning and sustainable development in some identifiable manner. It is not enough to be able to say that a condition will do no harm: if it is to be justified, it ought to do some good in terms of achieving a satisfactory standard of development and in supporting objectives of the development plan. It should also be borne in mind that a condition is not necessary where what is sought by the condition is clearly provided for in the plans and particulars by reference to which the permission is being granted.

Where revised plans have been submitted during the course of the application, it is essential that the decision should specify which plans are being permitted, e.g. by referring to a plan or plans submitted on a specific date. Equally, if it should appear that there might be some ambiguity in lodged plans as to the scope of the development (such as partial change of use), a condition may be necessary to clarify the position.

7.3.2 Conditions should be relevant to planning

As the planning system is intended to be used for genuine planning purposes and not for any extraneous purpose, it is obvious that a condition that has no relevance to the “proper planning and sustainable development of the area” ought not to be attached to a planning permission.

Unless the requirements of a condition are directly related to the development to be permitted, the condition may be ultra vires and unenforceable. Section 34(4)(a) of the Planning Act gives power to impose a condition regulating the development or use of adjoining etc. land, but such land must be under the control of the applicant and the condition must be “expedient for the purposes of or in connection with the development authorised by the permission”. Moreover, where a condition requires the carrying out of works, or regulates the use of land, its requirements must be connected with the development permitted on the land to which the planning application relates.

7.3.3 Conditions should be enforceable

Clearly a condition should not be imposed if it cannot be made effective. In a case where any doubt arises, it may be useful, therefore, to consider how the enforcement provisions of the Act could be operated to secure compliance

with a proposed condition. To facilitate enforcement, the aim should be to frame conditions, where possible, so as to require some specific act to be done at or before a specified time, or to prohibit some specific thing from being done in carrying out the development.

Conditions should be capable of being complied with. It is doubtful that a condition requiring the maintenance of sightlines by the removal or trimming of hedges or trees on a neighbour's property is within the applicant's power to fulfil: even where the neighbour has given consent that consent may subsequently be withdrawn. The Law Society has advised that such conditions may create difficulty as to title and have advised that in such cases the applicant be required to obtain an easement over the neighbour's property thus obtaining the legal right to maintain the sightline.

7.3.4 Conditions should be precise

Every condition should be precise and clearly understandable. It must tell the developer from the outset exactly what he or she has to do, or must not do. A condition which requires the developer to take action if and when some other indefinite event takes place is unacceptable e.g. to improve an access "if the growth of traffic makes it desirable". A condition that requires that the site "shall be kept tidy at all times" is clearly of little value, as is a condition requiring that the permitted development "shall not be used in any manner so as to cause nuisance to nearby residents". In the one case, the condition is too vague, and in the other, the question of whether or not a particular use constitutes a nuisance is left open. Conditions that can only be expressed in such vague general terms will often be found to be unnecessary or unenforceable.

7.3.5 Conditions should be reasonable

A condition may be so unreasonable that it would be in danger of rejection by the Courts. For example, it would normally be lawful to impose a continuing restriction on the hours during which an industrial or other use can be carried out, if the use of the premises outside these hours would seriously injure the amenities of property in the vicinity, but it would be unreasonable to restrict the hours of operation to such an extent as to effectively nullify the permission. Again, it may be unreasonable to make a permission subject to a condition which has the effect of deferring the development for a very long period, by requiring, for example, that the permitted development should not be carried out until a sewerage scheme for the area - which may only be at the preliminary design stage - has been completed. If the development is genuinely premature, the application ought to be refused. A condition that requires a developer to carry out additional works may be reasonable but the provisions of section 34(4)(m) of the Planning Act may come into play in some cases where such a condition is attached. Section 34(4)(m) of the Act allows for planning authorities to impose conditions to require a developer to carry out additional works, such as the provision of roads, traffic calming measures,

open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities. If such a condition is attached the planning authority will be liable for the costs of the services over and above the requirements of the development.

In other cases, a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

7.4 Time limits

Having regard to the statutory provisions regarding the life of a planning permission, conditions should not generally (except in the case of retention permissions) require that a development be commenced or finished by a certain date. However, it may be appropriate in particular circumstances to regulate the phasing of a development – see para. 7.13 below re residential development – or to require that a building should not be occupied until it has been substantially completed in accordance with approved plans should this be necessary. Planning authorities may grant permission for a duration longer than 5 years if they see fit, e.g. for major developments (for example for wind energy developments) but it is the responsibility of applicants in the first instance to request such longer durations in appropriate circumstances.

7.5 Temporary permissions

In deciding whether a temporary permission, which can apply to a particular structure or use, is appropriate, three main factors should be taken into account. First, the grant of a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. Secondly, it is undesirable to impose a condition involving the removal or demolition of a structure that is clearly intended to be permanent. Lastly, it must be remembered that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development they can only be safeguarded by ensuring that it does not take place.

An application for a temporary permission may, however, raise different material considerations from an application for permanent permission.

Permission could reasonably be granted on an application for the erection of a temporary building to last seven years on land that will be required for road improvements in eight or more year's time, whereas permission would have to be refused on an application to erect a permanent building on the land. Similarly, an application for permission to erect an advertisement structure in a rundown area may warrant more favourable treatment if the structure is to be removed on the expiration of a specified period when redevelopment works are likely to be under way.

In the case of a use which may possibly be a "bad neighbour" to uses already existing in the immediate vicinity, it may sometimes be appropriate to grant a temporary permission in order to enable the impact of the development to be assessed, provided that such a permission would be reasonable having regard to the expenditure necessary to carry out the development²². A second temporary permission should not normally be granted for that particular reason for it should have become clear by the expiration of the first permission whether permanent permission or a refusal is the right answer. In other circumstances, an application for a second temporary permission may be quite genuine and should be dealt with on its merits. For example, where a temporary permission has been granted for a structure which is inherently impermanent, an application for a permission for a further limited period could reasonably be made if the structure has been well maintained and there has been no other change in circumstances relating to the proper planning and sustainable development of the area concerned.

In all temporary permissions for structures, express provision should be made by condition requiring the removal of the structure and the carrying out of appropriate reinstatement works on the land at the expiration of the specified period. In addition, the condition should specify the period for which the permission is being granted by reference to some particular date and not by reference to the occurrence of some indefinite future event. Use of expressions such as "such longer period as the planning authority may allow" or "on three month's notice" should be avoided.

7.6 Conditions relating to occupation of buildings

Planning permissions attach to the land, and not to the applicant. Section 39(2) of the Planning Act, enables a condition to be attached, specifying that the use of a structure as a dwelling shall be restricted to use by persons of a particular class or description. Planning authorities should be sparing in their approach to such conditions, as they can limit the freedom of the owner to dispose of his or her property or to obtain a mortgage. However, the Sustainable Rural Housing Guidelines²³ outline circumstances in which it would be reasonable to attach occupancy conditions, e.g. in rural areas under considerable development pressure where the applicant is a person with roots

²² The *Childcare Facilities Guidelines* (DOELG, 2001) recommend, for instance, that if a temporary permission is granted, the permission should be for a period of not less than 5 years.

²³ See para. 4.7 and Appendix 1 in relation to occupancy conditions.

in or links to the area. Those guidelines also advise that the use of so-called “sterilisation agreements” under section 47, that is, agreements for the purposes of restricting or regulating the development and use of land permanently or for a specified period, should be avoided apart from highly exceptional cases, because of the inflexible nature of such agreements.

7.7 Conditions directly departing from the application

A condition that radically alters the nature of the development to which the application relates will usually be unacceptable. For example, a condition should not require the omission of a use, which forms an essential part of a proposed development, or a complete re-design of a development. If there is a fundamental objection to a significant part of a development proposal, and this cannot fairly be dealt with in isolation from the rest of the proposal, the proper course is to refuse permission for the whole.

7.8 Conditions relating to other codes

There has been a tendency to attach to planning permissions conditions relating to matters that, though of concern in the exercise of development management, are the subject of more specific controls under other legislation or are directly regulated by other statutes or by the common law. The aim, no doubt, is to seek to improve the operation of those other controls or codes by the use of the enforcement provisions of the Planning Act. It is inappropriate, however, in development management, to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and it is entirely wrong to use the development management process to attempt to force a developer to apply for other some licence, approval, consent, etc. At best, the imposition of conditions in relation to matters that are the subject of other controls is an undesirable duplication. In practice, such an approach can give rise to conflict and confusion if the effect of a condition on a development is different from that of the specific control provision. In this context, it should be remembered that the Building Regulations require certification by the developer’s design team.

Instead, where they consider it necessary to do so, planning authorities could, when notifying the grant of a permission, issue a clear warning about the requirements of other codes. Planning authorities may find it helpful to circulate guidance to staff with responsibility for commenting on planning applications, as to what kind of conditions can be validly attached to planning decisions.

7.8.1 and 7.8.2 below give examples of cases where it may be appropriate to add conditions in relation to other codes.

7.8.1 Conditions in relation to construction and demolition waste

In relation to the issue of the proper management of construction and demolition waste, planning authorities should have regard to DEHLG Circular Letter WPR 7-06 and Best Practice Guidelines on the Preparation of Waste Management Plans for Construction & Demolition Projects (available at www.environ.ie) or any subsequent revision of these guidelines. These documents provide guidance on how proposals with significant construction and demolition waste management issues relevant to planning should be considered in an integrated manner.

7.8.2 Conditions relating to accessibility for all

As stated in Chapter 2 the necessity to ensure that the design implications of accessibility are addressed in housing and commercial development should be brought to potential applicants' attention at pre-application consultation stage, otherwise the development might be compliant with Part M of the Building Regulations but still inaccessible from the main road, street or car park. Planning authorities should also consider whether it is necessary to add conditions to ensure access for all in the approach to buildings from the main road, street or disabled car parking. As stated earlier, the National Disability Authority's 2002 publication "Building for Everyone" offers good practice on this issue. Conditions in relation to safe passage for the public, including people with disabilities, in the vicinity of the site during the construction phase could be also considered where appropriate.

7.8.3 Fire conditions

While it is appropriate that the Planning Acts should be used to the full to ensure that all development meets adequate fire safety standards, it must be emphasised that when dealing with a planning application, fire safety can only be considered where it is relevant to the primary purpose of the Acts, namely the proper planning and sustainable development of the area. For example, fire safety considerations may arise in respect of:

- The location of proposed development in relation to existing industrial or other hazards;
- The historic fabric and contents of protected structures²⁴;
- Fire service access for proposed development;
- Water supplies for fire fighting.

Under no circumstances should a condition be included in a permission requiring that "the developer shall consult with and comply with the

²⁴ See Chapter 17 of the 2004 planning guidelines on architectural heritage protection.

requirements of the Fire Officer” (or other words to that effect), whether or not such requirements are known at the time the decision is made. This kind of condition is objectionable in principle, and probably invalid.

In some cases, it may become apparent from the information provided in the planning application that a proposed development would also require a fire safety certificate under the Building Control Regulations and, where this is made known to the planner, it may be appropriate to inform the applicant (e.g. by means of a cover letter with the planning decision).

Similarly, the information provided as part of a planning application may indicate that aspects of a proposed development could give rise to difficulties for the developer in obtaining a fire safety certificate, and the planner may need to discuss with the applicant whether any design modifications should be made before a planning decision issues.

7.8.4 Conditions relating to Environmental Protection Agency licensable activities²⁵

Under section 99F of the Environmental Protection Act 1992 as inserted by section 15 of the Protection of the Environment Act 2003, the planning authority and the Board, in granting permission for an activity licensable by the Environmental Protection Agency, may not impose conditions relating to the control of emissions²⁶ from the activity, or to the control of emissions following the cessation of the operation of the activity. The construction aspects of the development can however be regulated by the planning authority. Before making a decision in respect of such a proposed development, the authority or the Board may request the EPA to make observations within a specified period in relation to the development (including in relation to any EIS submitted), and shall have regard to such observations in making the decision. Section 257 contains similar provisions regarding waste licences. See also para. 7.17 - Refusals of permission for EPA licensable activities.

7.8.5 Conditions recommended by other departments within the local authority

When a planning application is referred to other departments in the local authority, certain conditions may be recommended. Such recommendations must be tested against the validity criteria set out above, as these departments may not be familiar with the constraints on planning conditions.

²⁵ See also para. 7.17 regarding refusal of permission for such activities.

²⁶ “Emissions” are defined in section 2 of the 1992 EPA Act as amended by the Protection of the Environment Act 2003. The definition also applies to the Waste Management Act.

7.9 Conditions requiring matters to be agreed

In some cases, it may be considered unreasonable when granting a permission to require the applicant to go through the statutory application procedure again in relation to some detail of the proposed development and, to obviate this, a practice has developed of using a form of condition which requires that the matter shall be agreed with the planning authority. However, such conditions should be avoided in cases where the matters involved are of a fundamental nature or such that third parties could be affected²⁷.

The use of such conditions should be minimised, in order to reduce the number of compliance submissions that have to be dealt with subsequently. Care needs to be taken in the wording of these conditions; for example, some minor details (e.g. type of paving) will not need to be agreed before development commences, but could be negotiated during the construction phase.

Conditions requiring matters to be the subject of consultation with, or to be agreed with, a named officer of the planning authority, or with a particular department or branch of the local authority, or with another public authority, should not be attached to a permission. An applicant should not be required by condition to ascertain and comply with the requirements of a particular officer or department of the local authority or to comply with some general requirements of the authority that are not clearly spelled out in the permission or elsewhere. If the matter in question is of genuine planning concern, it should be dealt with in the decision order, or be made the subject of a further permission or an agreement with the planning authority; if the matter is not proper to planning, it should be omitted entirely from the decision.

7.10 When are compliance conditions appropriate?

Planning permissions often include conditions requiring developers to carry out certain actions prior to or during the course of development. Chapter 2 emphasised the value of pre-application consultations in relation to specifying the information needed to be submitted with an application; full submission of such information should minimise the requirement to seek further information or to impose compliance conditions. Compliance conditions are resource-intensive in terms of subsequent implementation and this needs to be borne in mind when attaching such conditions. One of the main difficulties associated with compliance submissions from a developer's viewpoint is that there is no statutory period within which the planning authority must respond, and that costly delays can occur at the critical start-up phase. However, there is also an onus on developers to ensure that compliance submissions are complete and relate adequately to the specific terms of the relevant planning conditions.

²⁷ Section 34(5) of the Act enables conditions to state that points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for agreement.

Accordingly, the number of compliance conditions should be kept to a minimum, to ease the burden on both developers and planning authorities.

While as a general principle compliance conditions should be kept to a minimum, they can be of value in certain circumstances, such as:

- Where they relate to matters of detail which could cause the applicant undue expense (e.g. detailed design of external facades) before the principle of development has been established through a grant of planning permission;
- Where they relate to matters of detail which the planning authority may wish to have an input, such as the layout/landscaping of public open spaces;
- Where they relate to the implementation or monitoring of mitigation measures proposed in a planning application or accompanying EIS.

Conversely, there are situations where compliance conditions would not be appropriate, such as:

- Where the details would be required by the planning authority or the Board in order to decide on the overall merits of the planning application, which situation would apply, for instance, in the case of proposals in connection with the restoration of a protected structure;
- Where an inadequate EIS has been submitted, or the information supplied does not adequately address issues in relation to potential impact on a site of international importance for nature conservation (Natura 2000), e.g. where drainage outfalls might affect an environmentally sensitive site, or inadequate mitigation measures have been proposed (for further information see PD 2/07 and NPWS 1/07);
- Where compliance with the condition might affect the amenities of a third party, without that party having the right to comment on the compliance submission.

In such cases, if the development is acceptable in principle, further information should be sought.

7.10.1 Dealing with compliance submissions

Planning authorities need to put in place effective management and tracking systems to ensure that compliance submissions are processed speedily – it is recommended that all but exceptionally complex submissions (e.g. reports of archaeological excavations, which may need to be referred to statutory bodies) should be dealt with within four weeks. While certain submissions may need to be circulated for comment to other sections/departments within

the authority, computerised tracking systems are available to log the progress of submissions. It is clearly unacceptable that developers should be induced by economic pressures (such as the cost of holding land) to commence or proceed with development in the absence of a timely response from the planning authority, with all the potential legal and financial risks involved.

Currently many planning authorities have a backlog of compliance submissions awaiting finalisation. In clearing this backlog as expeditiously as possible, it is recommended that priority be given to dealing with (a) major developments, and (b) more recent submissions (on the basis that older submissions may be of little practical value at this stage - this could be confirmed with applicants). Staff resources should be allocated to clearing the backlog within a specified period, so that in future all submissions will be processed within the 4-week period and no further backlog will be allowed to develop.

7.11 Conditions requiring the ceding of land

Conditions should not be attached to planning permissions requiring land to be ceded to the local authority for road widening or other purposes, nor should conditions require applicants to allow the creation of public rights-of-way, other than such access roads as are considered a necessary part of the development, or to agree to transfer part of their land to some third party as, say, the site for a school or a church. Conditions of this sort are not lawful. It is in order to require a developer to reserve land free of any development in order, for example, to permit the implementation of a road improvement proposal, or to reserve land as a site for a school or other community facility. It is not lawful, however, to require by condition a transfer of an interest in land to the local authority or other person/body.

Elements of “planning gain” – not strictly required as part of the development, but of benefit to the public (e.g. transfer of specified land or buildings for public use) - may be accepted as part of a permitted development. (In such cases, it may be appropriate to refer in the decision to specific application documents that set out the offer). However, it is important to ensure that the decision whether to grant or refuse planning permission is not contingent on an offer of planning gain²⁸.

7.12 Conditions requiring development contributions (sections 48 and 49 of the Planning Act)

Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance

²⁸ See the Supreme Court ruling on planning gain in the case of *Ashbourne Holdings Ltd. V. An Bord Pleanála*.

with those sections of the Act, or on the need for a special financial contribution.

There are three categories of conditions under which the payment of financial contributions may be required

Section 48 (general) schemes relate to the existing or proposed provision of public infrastructure and facilities benefiting development within the area of the planning authority and are applied as a general levy on development.

Section 49 (supplementary) schemes relate to separately specified infrastructural services or projects – such as roads, rail or other public transport infrastructure – which benefit the proposed development.

Although there is no entitlement to appeal against the principle of attaching a condition formulated in accordance with a general or supplementary scheme, the contribution requirements of any such scheme may be the subject of a valid appeal where the applicant considers that the terms of the scheme in question were not properly applied. The planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development; as well as being best practice this will help to minimise unnecessary appeals.

Finally '**special**' contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.

7.13 Residential development

The following types of conditions relate specifically to residential development.

- **Conditions requiring security for completion:** It is essential that

permissions for residential development are subject to a condition under which an acceptable security is provided by way of bond, cash deposit or otherwise so as to secure its satisfactory completion. The amount of the security, and the terms on which it is required to be given, should enable the planning authority, without cost to themselves, to complete the necessary services (including roads, footpaths, water mains, sewers, lighting and open space) to a satisfactory standard in the event of default by the developer. The condition should require that the lodgment of the security should be coupled with an agreement that would empower the planning authority to realise the amount of the security at an appropriate time and apply it to meet the cost of completing the specified works. Planning authorities should also ensure that the bond is of sufficient duration to allow them time to inspect the development after the expiration of permission and still call in the bond if necessary. A security condition could also provide for the recalculation of the amount specified in the condition by reference to the House Building Cost Index (or other appropriate Index) if the development to which the permission relates is not commenced within a specified period after the granting of the permission. The bond should be refunded on satisfactory completion of the development.

- **Conditions in relation to phasing:** In the case of large schemes, it may be appropriate to attach a condition regarding the phasing of the development in order to ensure that residents do not have to live in uncompleted estates for lengthy periods. It is desirable that any such condition should be worked out in consultation with the developer. A phasing condition could include requirements relating to the completion of roads, public lighting, open spaces, etc. which are necessary for, or ancillary to, the completed units in each phase. Such an arrangement would permit the security for satisfactory completion to be related to a particular phase or phases of the development and thus enable completion of sections of the scheme to be advanced while, at the same time, facilitating the developer by obviating the need for a very large security appropriate to the entire development. Care should be taken in devising any phasing arrangement to ensure that main sewers, surface water drainage systems, main distributor roads, etc., are completed at an appropriate stage so that the first and each subsequent phase will, on completion, be fully serviced and independent in the event of other phases not proceeding.
- **Conditions at outline permission stage:** It is particularly important that conditions relating to basic services, significant design criteria, financial contributions, security for completion, road reservations and other such fundamental matters are attached, where appropriate, to outline permissions for housing development. If this is not done, difficulties may arise at the permission consequent stage.

7.14 Reasons for refusal of planning permission

Notwithstanding any pre-application consultations which may have taken place, some applications will be refused, and it is in the interests of all that the same care and attention is devoted to the drafting of refusal decisions as is given to grants of permission.

Section 34(10) of the Planning Act requires that a decision (and the notification of the decision) shall state the main reasons and considerations on which the decision is based. This is of fundamental importance to applicants so that they can assess options open to them as a consequence of the refusal. Reasons for refusal should therefore be clear and unambiguous, as informative and helpful as possible, should be self-contained statements, and should be related specifically to the particular development proposal.

All substantial reasons for refusal should be stated since it is in the interest of prospective developers to be aware of all the fundamental objections to their proposals if they are considering whether to amend the scheme and re-lodge or to appeal. It is essential to avoid a situation where some fundamental reason for refusal is not given and the subsequent amended application is refused for that reason. Also, as stated in para. 6.8 information deficits should be referred to in the planning decision so that the applicant is made aware that there could be further obstacles to the grant of permission other than the reasons listed.

7.15 Refusals arising from development plans or local area plans

A statement of objectives in a development plan should not be regarded as imposing a blanket prohibition on particular classes of development and does not relieve the planning authority of responsibility for considering the merits or otherwise of particular applications. A brief reference to an objective or policy statement is not, therefore, adequate as a reason for refusal if it is not made clear what the objective is, how it would be contravened by the proposed development, and why that contravention would be contrary to the proper planning and sustainable development of the area. A reason for refusal must, as far as possible, bring out the reasonableness of applying the provisions of the plan in the particular case. Accordingly, caution should be exercised when refusing permission on the grounds that the proposed development would materially contravene the development plan. Where such a reason is given it must be clearly shown that specific policies/objectives of the plan would be breached in a significant way.

7.16 Non-compensatable reasons

Section 191 of the Planning Act provides that compensation will not be payable in respect of the refusal of permission for any development:

- Of a class or description set out in the Third Schedule to the Act;

- If the reason or one of the reasons for the refusal is a reason set out in the Fourth Schedule to the Act.

Planning authorities will, naturally, be concerned to ensure that they do not incur a compensation liability in cases where the facts of the case are such that payment of compensation would clearly not be justified by reference to the provisions of the Planning Act. There should be no question, however, of including or “tailoring” reasons for refusal to obviate the possibility of successful compensation claims in cases where the facts of the case do not justify the reasons stated.

On the other hand, where the facts do justify the use of non-compensatable reasons, care should be taken to use the precise wording used in the Planning Act, so that there can be no ambiguity about the compensation position, e.g. “the proposed development would endanger public safety by reason of traffic hazard because ...”

7.16.1 Premature development

Development which is premature because of existing deficiencies in water supply, sewerage facilities and/or road network may be refused without incurring a compensation liability provided that the criteria set out in the Fourth Schedule of the Planning Act are met. In general, prematurity arises where there are proposals to remedy the deficiency. If there are no such plans to remove the constraints within a reasonable period (e.g. if there are no plans to extend public water supplies or sewerage to a particular area), this form of wording should not be used as a reason for refusal. It should be borne in mind that for a compensation claim to succeed, the applicant must demonstrate that the planning decision has resulted in a reduction in value of the land in question.

Premature development in this context also includes development which would be premature pending the determination by the planning authority or the road authority of a road layout for the area.

However development which is premature because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated time frame.

7.17 Refusals of permission for Environmental Protection Agency licensable activities

Section 256 of the Planning Act provides that where an EPA licence has been granted or will be required in relation to an activity, a planning authority or the Board may decide to refuse planning permission for a development

comprising such an activity, where it considers that the development, notwithstanding the licensing of the activity, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area concerned. The authority or the Board may request the EPA to make observations within a specified period, before making such a decision, and shall have regard to any such observations (section 257 contains similar provisions in relation to waste licences). See also para. 7.8.4 - Conditions relating to EPA licensable activities.

Chapter 8 Planning Appeals

8.1 Introduction

The appeal component of the development management process is a very significant element of the planning system. Under section 37 of the Planning Act decisions on planning applications are open to appeal by applicants or third parties. In deciding an appeal, the Board, which is a quasi-judicial body, considers the entire case again, having regard to the same matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance. The Board must therefore consider the proper planning and sustainable development of the area, having regard to the provisions of the development plan and the other considerations set out in section 34(2) of the Act, which include Guidelines issued by the Minister for the Environment, Heritage and Local Government and other relevant Ministerial or Government policies. The Board must also consider any submissions or observations made in accordance with the Planning Regulations. The Board also considers any new matters arising in the appeal.

The Board has the power under the Planning Acts to overturn or uphold a decision of the planning authority or to vary the conditions attached to a grant of permission. The system is designed to be open, fair and independent. Since 1995 the entire appeal file, including the Inspector's Report, is open to public inspection for a period of at least five years after the appeal has been determined by the Board. The appeal decision, Board direction and Inspector's Report are also available on the Board's website.

Under section 127 of the Act, an appeal against the decision of a planning authority on a planning application must be lodged with the Board in writing within four weeks beginning on the date of the planning authority's decision. The appeal must be accompanied by a fee and satisfy a number of statutory requirements, which are dealt with in the following paragraphs.

The Board has a number of other important functions, including section 5 declarations and referrals which, as they are closely related to the planning application process, will be dealt with in these Guidelines (see Chapter 9).

8.2 Who may appeal?

The following may appeal the decision of a planning authority on a planning application to the Board:

- The applicant;
- Any person or body or interested party who made a submission or observation in writing to the planning authority on the planning application, in compliance with the permission regulations. In order for the appeal to be valid, a person who made such a submission or observation is required to enclose the acknowledgement;

- Any prescribed body which although entitled to be notified of the planning application by the planning authority was not sent such a notification²⁹;
- In a case where an EIS is required, a non-governmental organisation whose aims and objectives relate to environmental protection and who satisfies the other requirements of section 37(4)(d) of the Planning Act, as amended;
- Any person who did not make a submission or observation but who has an interest in adjoining land and on application to the Board has been given leave to appeal. The Board may grant leave to appeal where the person shows that the decision of the planning authority to grant permission differs materially from the application because of the conditions imposed and that the conditions imposed will materially affect his/her enjoyment of the land or reduce the value of the land³⁰.

It should be noted that there is no appeal to the Board:

- Against a decision of a planning authority to refuse permission on the basis of the past failures of a developer or a related person to comply with a previous permission (section 35 of the Planning Act)³¹;
- Against a decision to grant permission consequent on the grant of an outline permission in respect of any aspect of the decision which was decided in the outline permission, or
- Against a decision of a planning authority on an application for permission in respect of a development in a strategic development zone.

There is obviously no prohibition on an appeal against the original decision of the planning authority to make a grant of outline permission.

8.3 The period for making an appeal

An appeal under section 37 must be made within four weeks beginning on the date of the decision of the planning authority, except where leave to appeal has been granted by the Board. In such a case the appeal must be made within two weeks beginning on the day of receipt of the notification of the grant of leave to appeal.

²⁹ Section 37(4) of the Act

³⁰ Section 37(6) of the Act

³¹ In this case the applicant must apply to the High Court if he/she wishes to have the decision overturned.

8.4 Appeal Procedure

Section 127 of the Planning Act sets out the requirements for making a valid appeal under section 37. As stated above, an appeal must be made within the period specified. An appeal must also:

- Be made in writing;
- State the name and address of the appellant and of the person, if any, acting on his or her behalf;
- State the subject matter of the appeal;
- State in full the grounds of the appeal and the reasons, considerations and arguments on which they are based;
- In the case of an appeal by a person who made submissions or observations, be accompanied by the planning authority's acknowledgement of such submissions or observations;
- Be accompanied by such documents, particulars or other information relating to the appeal as the person making the appeal considers necessary or appropriate. (It is not permitted to elaborate in writing upon, or to make further submissions in writing in relation to the appeal, or to submit further grounds for appeal);
- Be accompanied by the prescribed fee;
- Be made within the period specified.

If these requirements are not all complied with, the appeal is declared invalid by the Board and will not be considered. A person who has made an appeal can withdraw it at any time before the Board makes a decision. When an appeal is withdrawn, notice of the withdrawal is served on other parties to the appeal or any party who made submissions or observations.

8.5 Notification

The planning authority must issue notification of a final decision to grant or refuse planning permission, to the applicant and any person or body who made a submission, within 3 working days of the day of the decision. It is most important that the planning authority ensures that all those who made submissions are notified of the decision, and that the time limit is strictly adhered to, in order to give time to parties to prepare an appeal. In terms of providing good customer service it would be helpful if the notification were accompanied by details of the procedure for making an appeal and the fee required.

Where an appeal is made to the Board, the Board notifies the relevant planning authority and sends it a copy of the appeal. It is a mandatory requirement that the planning authority notify a person who made a submission or observation on the planning application that the decision on a planning application has been appealed³². This enables a person who participated in the decision making process at the planning authority stage to make a further submission or observation to the Board. This notification must be given as soon as possible and should in any case be given within 5 working days to enable an interested party to comply with the four-week deadline.

8.6 Forwarding relevant documents to the Board

As pointed out in the Report of the Comptroller and Auditor General on Planning Appeals of April 2002, the efficiency of the appeals process is affected by local planning procedures, as no work on an appeal file can be undertaken until the planning authority submits the planning application file. The importance of timely and efficient submission of application files to the Board is crucial to the effectiveness of the appeals system.

The Board requires the following documentation to be sent to it within a period of two weeks commencing on the day on which a copy of the appeal is sent to the planning authority:

- A copy of the planning application concerned and any drawings, maps, particulars, evidence, environmental impact statement, other written study or further information received or obtained from the applicant in accordance with the permission regulations. A copy of the site notice and published notice should also be included, as should a copy of records of any pre-application consultations;
- A copy of the outline application where the application is consequent on a grant of outline permission. The application should be accompanied by the drawings and maps etc. referred to above;
- A copy of any technical or other report(s) prepared by or for the planning authority in relation to the planning application;
- A copy of the decision order of the planning authority in respect of the planning application and a copy of the notification of the decision given to the applicant;
- A copy of any submissions or observations received by the planning authority from any persons or bodies in accordance the permission regulations. (It would be helpful if a list of all

³² Article 69(1) of the Regulations

prescribed bodies notified of the planning application, stating whether any response was received, were also supplied);

- Particulars of the applicant's interest in the land or structure, as supplied to the planning authority;
- A copy of any request to the applicant for further information relating to the application together with copies of any documents or other information submitted in response to such request;
- Particulars and relevant documents relating to previous decisions affecting the same site or relating to applications for developments in near proximity where similar planning issues may have arisen, including details of any enforcement taken. In the case of a grant of permission, history documents should include details of the final grant, including the decision order of the authority, site location map and any report(s). Where a decision was appealed, it is recommended that the appeal reference number of the Board be supplied;
- Certification that the planning authority holds no further material relevant to the case.

In addition to the above material the planning authority should also endeavour to furnish to the Board any non-statutory plans or studies or any other material which may have been referred to in the report on the planning application.

8.7 Documents to be made available to the public

As has been set out at paras. 5.3, 5.5 and 6.11 above, the following documents must be put on the planning file, which is available for inspection or purchase.

- The planning application including any documentation received from the applicant in accordance with the permission regulations (as soon as possible after it is received);
- Any submissions or observations on the application received by the planning authority. To comply with best practice each file should contain a list of all observations or submissions received on an application (as soon as possible after they are received);
- A copy of any report prepared by or on behalf of the planning authority in relation to the application (within 3 working days of the making of the planning decision);
- A copy of the decision and the notification of the decision to the applicant (within 3 working days of the making of the planning decision);

- Any documents relating to a contribution or any other matter referred to in section 34(5) of the 2000 Planning Act (within working 3 days of the making of the planning decision);

As soon as a copy of an appeal is sent to the planning authority by the Board the planning authority must, in accordance with Article 68 of the Planning Regulations, make a copy of the appeal available for inspection or purchase; accordingly a copy of the appeal should be put on the planning file.

As stated in Chapter 2, records of pre-application discussions should also be placed on the planning file. In the interests of transparency the planning authority should make available all documents that may have influenced the planning decision.

8.8 Written submissions by the planning authority

In general most appeals will be dealt with by way of written submissions. The planning authority should engage fully with this process. It is desirable that the planning authority, in addition to providing the necessary information, participates fully in the appeal process by submitting strong and rational arguments in support of its decision particularly in relation to matters of policy.

When the planning authority receives an appeal from the Board, a copy should be forwarded to the planner who reported on the planning application. A clear and comprehensive response that deals with all relevant issues pertinent to the appeal should be prepared. Where issues arise which concern other sections/departments in the planning authority, the grounds of appeal should be referred to those sections for a written response within a specified deadline. It is important that these reports be as comprehensive as possible as once they are submitted to the Board they cannot be elaborated on. The absence of an adequate response may seriously weaken the prospect of the decision of the planning authority being upheld.

Any submission by the planning authority should be made within the statutory period of four weeks. If no substantive response is to be made by the planning authority, a letter indicating this should be sent to the Board.

8.9 Requests for additional information/further submissions or observations

Where the Board requests submissions or observations or further documents in relation to any new matter which has arisen relating to an appeal, or relating to a matter which was not raised by parties to the appeal, the planning authority should ensure that it responds as fully as possible, within the period stipulated for a response, in order to ensure that the Board has all relevant facts before it in reaching a decision. Where there is no response to such a

request within the time specified, the Board will deal with the appeal without further notice.

8.10 Oral hearings

Any party to an appeal is entitled to request an oral hearing on payment of the correct fee and within the appropriate time period.

The Board has absolute discretion to hold an oral hearing with or without a request from a party. It will normally hold one where this would help to clarify a particularly complex case or where it considers that significant national or local issues are concerned, or where it considers that in a case involving significant national or local issues, written submissions need to be supplemented by an oral hearing of the issues.

The planning authority might consider requesting an oral hearing where a decision to refuse a material contravention application has been appealed. In such a case the planning authority may find it beneficial to present the case to uphold the development plan orally and in a public forum.

A person conducting an oral hearing may request any officer of the planning authority to attend and/or provide any information that he or she reasonably requires for the purposes of the appeal. This request must be complied with.

In advance of an oral hearing, the planning authority should prepare its case with great care. It should be borne in mind that the planning authority must explain fully its decision and should engage with the process to support its decision in a well-organised and comprehensive manner. Where matters arise which are pertinent to other sections/departments in the local authority, a detailed report should be prepared by that section/department. Copies of the planning authority's response should be available for circulation at the hearing. The authors of all reports, or suitably briefed substitutes, should be present and available for questioning by the inspector and the parties to the appeal, as their absence may seriously weaken the case of the planning authority being presented.

8.11 Appeals against conditions

An appeal can be made against a condition or conditions that have been attached by the planning authority to a decision on a planning application subject to specific exceptions outlined in 8.12 below.

The Board has complete discretion to give to the planning authority whatever directions it considers appropriate relating to the attachment, amendment of or removal from the grant of permission of the condition or conditions the subject of the appeal, or any other conditions. However in appeals relating to section 48/section 49 financial contributions conditions only, the Board is restricted to consideration of the matters under appeal.

8.12 Contribution conditions

An appeal cannot be made against a contribution condition attached to a decision on an application where the contribution is in accordance with a Development Contribution Scheme or Supplementary Development Contribution Scheme made under section 48 or section 49 of the Planning Act, except where the applicant contends that the terms of the contribution scheme have not been properly applied.

In preparing a contribution condition it is important to ensure that the requirements of the condition conform to the detailed provisions of the relevant contribution scheme, otherwise it may be open to the applicant to bring an appeal to the Board against the improper application of the terms of the scheme.

An appeal is allowed in the case of a condition regarding the payment of a special contribution³³.

Where an appeal in relation to a section 48/section 49 contribution is made and there is no other appeal, the planning authority is required to issue the grant of permission after the expiration of the period for making an appeal, provided that the appellant furnishes security for the payment of the full amount of the contribution specified in the condition, pending the decision of the Board.

8.13 Prohibition of an identical application

Where a decision is under appeal an application for permission for the same development may not be accepted by a planning authority before the Board has determined the appeal or it is withdrawn or dismissed. Where such an application is made it must be sent back by the planning authority together with the fee.

8.14 Appeal decisions

Future planning decisions on the same site need to have due regard to previous Board decisions. Any decision of the Board should be carefully examined by the planning authority to see whether it raises any policy issues in relation to the development plan particularly where the decision of the planning authority has been reversed.

An Bord Pleanála publish statistics which show, by county/city planning authority, the percentage of appeals where the decision of the local authority is confirmed, varied or reversed. The Report on Service Indicators in Local

³³ Section 48(2)(c) of the Act

Authorities now compiled on an annual basis by the Local Government Management Services Board gives similar data, but broken down into further categories (individual houses, housing developments, other development requiring EIA and other development not requiring EIA. It is important that planning authorities monitor trends and patterns of alterations and overturns to establish if there is a need for policy or practice changes on the ground and also to provide feedback to planning officers responsible for recommendations.

The appeal file will be available to members of the public at the offices of the Board three working days after the making of the Board's order on any planning appeal. Copies of the Inspector's Report and any Board directions on the case and also other relevant documents on the appeal file will be available to interested members of the public upon payment of an appropriate copying charge.

8.15 Website

Further information on making an appeal can be obtained from the website of the Board at www.pleanala.ie. The website provides access to all appeal and other decisions, directions of the Board and Inspectors' Reports.

Chapter 9 Declarations and Referrals

9.1 Declarations: introduction

The following advice relates to declarations issued under section 5 of the Planning Act. Declarations issued under section 57 of the Act relate to protected structures and are dealt with in detail in Chapter 4 of the Architectural Heritage Protection Guidelines for Planning Authorities and are therefore not covered in this document.

If any question arises as to what, in any particular case, is or is not development, or is or is not exempted development, under the provisions of the Planning Act and Regulations, any person may, on payment of a prescribed fee, request in writing from the relevant planning authority a declaration on that question.

9.2 Information to be provided with a request for a declaration

The Planning Act requires that a person seeking a declaration under section 5 must provide to the planning authority any information necessary to enable the authority to make its decision on the matter. There is no prescribed form for the request or specified requirements with regard to the content of a request, to a planning authority, for a declaration under section 5. To clarify the question at issue it is suggested that, in the interest of good practice, the following details should be provided:

- Name and contact details of person(s) making the request;
- Name and address of an agent acting on the person's behalf (if any);
- Address of the site to which the question relates;
- The question upon which a declaration is sought should be clearly stated;
- Site location map of sufficient scale to facilitate the identification of the site;
- Drawings, plans and photographs to identify the matter to which the question relates;
- Any relevant planning history details.

A planning authority may require any person who made a request for a declaration, or any other persons notified under section 5(2) of the Planning Act, to submit further information with regard to the request to enable it to issue the declaration.

In accordance with Article 151 of the Planning Regulations the planning authority must notify the Health and Safety Authority if/when a request for a declaration is made to it relating to the provision of, or modification to, an establishment and it considers that the development would have significant repercussions on major accident hazards. Such a notice must issue as soon as possible following receipt of the request for a declaration. It must include a copy of the relevant request for a declaration and must ask for technical advice on the effects of the proposed development in relation to the risk or consequences of a major accident.

9.3 Time period for making declarations

A planning authority must issue the declaration on the question that has arisen, and the main reasons and considerations on which its decision is based, to the person who made the request within 4 weeks of the receipt of the request. If further information is requested and received the planning authority must issue the declaration within 3 weeks of the date of receipt of the further information.

It should be noted that if the declaration has been requested by a third party, the declaration must also be issued to the owner/occupier, who also has a right to make a referral to the Board.

The details of any declaration issued by a planning authority or of a decision by the Board on a referral (see below) shall be entered in the planning register.

9.4 Preparing recommendations on declarations

In making its decision on a declaration, the planning authority is restricted to considering what is, or is not, development, or is, or is not, exempted development, within the provisions of the Planning Act and Regulations. A planning report should be prepared clearly setting out the matters which have been considered in making the decision and giving the main reasons on which the decision is based.

The planning report should be typed/in electronic form, logically set out and clearly signed by the person who prepared it. The Report should:

- Contain details of the question that is being asked, together with a brief description of the location and of the site;
- Contain a summary of the planning history (if any) relating to the question and site;

- Examine the issue in relation the definition of development and exempted development as set out in the Planning Act and Regulations;
- Address the adequacy of further information where such information has been obtained.

The Report should structure the above considerations in a way that is clear to the applicant and to the wider public and that enables informed judgements to be made as to the merits of a referral to the Board. The decision of the planning authority on the question at issue should be clearly stated.

9.5 Availability of relevant documents

The Planning Act does not specifically provide for documents relating to requests for declarations being made available to the public for inspection during the course of its consideration by the planning authority, or subsequent to the decision being made by the planning authority. However, it is recommended that the planning authority should make such information available. It will be noted that there is provision in the Act for any person other than a party to a referral to make an observation in relation to a referral to the Board; it would be difficult for a third party to make an observation if the relevant documents in the possession of the planning authority were not readily accessible.

9.6 Referrals to the Board under section 5

The question as to what, in any particular case, is or is not development or is or is not exempted development may be referred to the Board for decision.

9.7 Who can make a referral to the Board under section 5?

The following may make referrals to the Board under section 5:

- A person issued with a declaration by a planning authority may, on payment of a prescribed fee, refer a declaration for review to the Board within 4 weeks of the date of the issue of the declaration. If the declaration has been requested by a third party, the owner/occupier also has a right, within the same 4-week period, to make a referral to the Board.
- Where a planning authority fails to issue a declaration within the prescribed time, the person who made the request for the declaration may, on payment to the Board of a prescribed fee, refer the question for decision to the Board within 4 weeks of the date on which a declaration was due to be issued.

- A planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is, or is not, development or is, or is not, exempted development, to be decided by the Board.

9.8 Referral Procedure

Section 127 of the Planning Act sets out the requirements for making a valid referral. A referral must:

- Be made in writing;
- State the name and address of the person making the referral and of the person, if any, acting on his or her behalf;
- State the subject matter of the referral;
- State in full the grounds of referral and substantiated reasons, considerations and arguments on which they are based. These should be purpose designed and in this regard planning authorities should not rely on sending copies of enforcement files or of correspondence without specifying the grounds for referral;
- Be accompanied by such documents, particulars or other information relating to the referral as the person making the referral considers necessary or appropriate. (There is no entitlement to elaborate in writing upon, or to make further submissions in writing in relation to, the referral, or to submit further grounds for referral);
- Be accompanied by the prescribed fee;
- Be made within the period specified.

If these requirements are not all complied with, the referral is declared invalid by the Board and will not be considered. A person who has made a referral can withdraw it at any time before a decision is made by the Board. When a referral is withdrawn, notice of the withdrawal shall be served on other parties to the referral or any party who made submissions or observations.

9.9 Forwarding of relevant documents to the Board

The planning authority must, within a 2-week period commencing on the date of receipt of notice from the Board of a referral, provide to the Board any information or documents in its possession relevant to the referral (section 128 of the Act).

9.10 Decisions by the Board

The decision of the Board on the question referred to it must state the main reasons and considerations upon which it is based. The Board must inform the planning authority and any party to the referral of its decision and the details of the decision must be entered in the Planning Register by the planning authority. The Board must keep a record of any decision made by it on a referral and of the main reasons and considerations on which the decision is based and must make this record available for purchase and inspection. The Board is also required to forward to each planning authority a copy of the record of its referral decisions from time to time, but at least once a year. The planning authority must have regard to the decisions on this record in making decisions on future declarations. Details of referrals and the related Inspectors' Reports are available on the Board's website.

9.11 Other Referrals

In addition to referrals under section 5 and those under section 57(8), as amended, (works affecting a protected structure) the Planning Act allows for referrals to the Board under 4 other sections. These are:

- Section 34(5), as amended: Points of detail on conditions of a permission;
- Section 37(5)(c): Applications for same developments;
- Section 96(5): Social Housing;
- Section 193(2): Replacement Structures.

These additional referral cases are solely in response to disputes arising between an applicant and a planning authority and the referral procedure outlined above applies to the making of all such referrals.

9.12 Oral Hearings

The general advice given in relation to oral hearings in para. 8.9 applies to referrals also. In addition, in the case of the other referrals listed above, the Board may convene a meeting of the parties if it considers that it would expedite the determination of the referral. A record must be kept in writing of such a meeting.

Chapter 10 Enforcement of Planning Control

10.1 Enforcement: general

Most of the advice contained in these guidelines is aimed at improving the quality of the development management process. However, the quality of outcomes is equally important. Much public and political effort will have been devoted to the preparation of the development plan as the basis for determining planning applications, and similarly considerable resources are invested by planning authorities and prescribed bodies in processing such applications. However, the majority of complaints to the Ombudsman's Office in recent years about planning matters related to enforcement, including the issue of inadequate response to complaints and inadequate resources allocated to enforcement.

Under planning legislation any development which requires permission and does not have that permission is unauthorised development, as is a development which is proceeding in breach of conditions laid down in the planning permission. Enforcement of planning control is the responsibility of the planning authority and this is the case, of course, whether the planning decision, including conditions, was made by the planning authority or the Board.

A major objective of the revision of the planning code that culminated in the 2000 Planning Act was to ensure increased compliance with planning law, in response to complaints about failures in the planning enforcement system from both individuals and local authorities. The introduction of a culture of enforcement is critical to ensure that the planning control system works properly and for the benefit of the whole community. Some high profile cases of blatant disregard for planning law have highlighted ongoing problems with compliance with the law. The EU Commission has also raised a number of issues with Ireland on unauthorised developments in the context of the implementation of the EIA Directive. Aside from the environmental consequences, lack of planning enforcement can lead to an uneven playing field for economic operators, with the result that those who break the law may secure economic advantage over competitors who comply with the law.

Lack of enforcement of planning control may result in damage to communities, the environment and our natural and built heritage. It can also lead to:

- **Erosion of public confidence and support.** The public – and particularly those directly affected by unauthorised developments – expect that developments carried out either without planning permission or in substantial breach of planning conditions, will be investigated and that effective enforcement action will be taken where necessary. If genuine cases are brought to the attention of the planning authority, and no reason is given for not taking action, public support for the planning system as a whole will be

undermined. Furthermore, an implied signal is sent out that non-compliance will be tolerated, thus risking more widespread breaches of the law;

- **Substandard development:** If the planning authority or the Board considered it necessary to attach a planning condition in the first instance, development should not be allowed to proceed in substantial breach of such a condition. This is particularly the case where conditions were imposed in the interest of sustainable development or public safety, or in response to the concerns of third parties or prescribed bodies.

It is essential therefore that the full rigours of the enforcement provisions of the Planning Act are applied to ensure that the integrity of the system is maintained. That legislation now provides for a full and effective range of enforcement measures.

10.2 Statutory Obligations

Planning authorities are reminded of their statutory obligations under Part VIII of the Planning Act, including:

- The issue of warning letters, in relation to any non-minor unauthorised development it becomes aware of, within 6 weeks;
- The carrying out of an investigation into an alleged unauthorised development, as soon as possible after the issuing of a warning letter;
- The making of a decision, as expeditiously as possible, as to whether to issue an enforcement notice, such a decision to be made within 12 weeks of the issue of a warning letter if at all possible;
- The entry of the decision, including the reasons for it, in the planning register (section 7(4) of the Planning Act also requires that the register incorporate a map to facilitate the tracing of any entry in the register);
- The notification of the complainant(s) regarding the decision. Where the decision is not to issue an enforcement notice a complainant must be informed of the reason for this decision.

10.3 Best practice/principles of good enforcement

The following paragraphs set out a number of principles and best practices for good enforcement.

10.3.1 Resources

Adequate staff, financial and other resources should be allocated to ensuring that compliance is given the importance it deserves. This will require an input from senior management. The planning authority budget should provide for adequate funding to pursue court cases where necessary, and the authority should use its powers under the legislation to require persons to pay for the costs of an investigation. The time and effort required to pursue a court case can be considerable; given this high level of input it is important that the planning authority presents the best possible case in court. Increased enforcement should lead to greater compliance with planning law, which will reduce the need for enforcement action in the long run.

10.3.2 Taking the initiative

As stated above, the planning authority is obliged to issue a warning letter and investigate all potential acts of non-compliance, however it becomes aware of them. The authority's staff should note and report any significant instances of unauthorised or non-compliant development observed during the course of routine site inspections; local planners are likely to be familiar with ongoing developments within their area. Previous enforcement experience with certain developers may indicate the need for selective checks on specific sites.

10.3.3 Time limits

Planning authorities should of course keep in mind the 7 year time limits set out in the Planning Act in relation to issuing enforcement notices or seeking injunctions and should take care not to let the 7 year period expire without taking action where action is appropriate.

10.3.4 Good Information Systems

The provision of adequate information management systems can play a vital role in ensuring that the enforcement regime is efficient and effective. Software which tracks documents (such as grants of permission and commencement notices), highlights when deadlines are approaching, can scan for similar cases, etc., can significantly reduce the staff requirements and ensure that early and effective enforcement actions are taken. Staff turnover can significantly undermine consistency; however, adequate records of past cases and a suitable means of querying these records help ensure that similar cases are dealt with in a consistent manner. Planning authorities might also consider a dedicated telephone number and e-mail address – an enforcement complaints hotline – which the public might use to make complaints about unauthorised development.

10.3.5 Dealing with unauthorised development having significant adverse impacts on the environment

It is vital that planning authorities take swift action in relation to unauthorised development having significant adverse impacts on the environment, which includes development which may require assessment under the terms of the EIA Directive and may include development in architectural conservation areas or areas protected under the Habitats Regulations or National Wildlife legislation. The principle underlying the EIA Directive and the Habitats Regulations is that projects that are likely to have significant effects on the environment, or may affect the integrity of a European site, respectively, should be subject to a thorough assessment of those effects prior to a decision being taken as to whether or not such a project should proceed.

Swift action in such cases is vital from an environmental protection perspective. Also, of course, visible tolerance by planning authorities of breaches of the law in such cases, as indeed in all cases, undermines the whole planning code and brings it into disrepute. Accordingly, it is essential that the planning authority acts swiftly where it becomes aware of apparent unauthorised development likely to have significant adverse impacts on the environment.

Such cases, and in fact, all cases, should be assessed immediately, in order to determine an appropriate course of action, e.g. immediate investigation followed by injunction (section 160) or early enforcement notice without warning letter (section 155) in serious cases. Where an enforcement notice is not complied with, a prosecution should quickly follow. It is recommended that an injunction or an enforcement order with a tight time-frame for compliance would be appropriate in the case of developments which in the planning authority's view would be unlikely to obtain planning permission.

Planning authorities are also reminded that not only should the position regarding unauthorised development be rectified, but also any damage to the environment should be made good as far as this is possible. In this regard the provisions of section 154(5)(c) and (d) which empower planning authorities to require, or to carry out, the restoration of any land, are relevant.

10.3.6 Dealing with large-scale unauthorised development

The planning authority should also act swiftly in relation to large-scale unauthorised development, as visible tolerance of such developments again undermines the law and brings it into disrepute. Also, the non-application of the planning law in relation to large developments could, as stated above, give competitive advantage to the offending developers. In such cases, planning authorities should give consideration to pursuing a prosecution on indictment, notwithstanding the additional complexity of such prosecutions, given the higher penalties that can be imposed under such prosecutions.

10.3.7 Use of injunctions

The planning authority should consider whether it is appropriate to seek injunctions in particular cases. These would include, as stated above, developments likely to have significant adverse impacts on the environment and large-scale developments in flagrant breach of the law, but also developments that pose significant health and safety risks or threats to amenity, developments where reinstatement would be difficult, if not impossible, and works to protected structures.

10.3.8 Enforcement notices.

While the issuing of an enforcement notice, unlike the issuing of a warning letter and the carrying out of an investigation, is discretionary, the planning authority is required, in making its decision regarding enforcement, to consider “all material considerations”. Such considerations would include the nature, size and location of the development, impacts on the environment, the desirability of developers being treated equally and the need to secure increased compliance with the planning law. It is recommended that enforcement notices should issue in all cases where an investigation has established that unauthorised development is being or has been carried out, unless there are compelling and defensible reasons for not doing so. Enforcement action should always be taken in situations where permission to retain an unauthorised development has been refused, including a refusal by the Board.

The actions specified in an enforcement notice should be clear and precise, be sufficient to correct the non-compliance, be fair given the nature and severity of the non-compliance and give reasonable time to ensure compliance. In cases where minor contraventions are involved it may be possible to resolve the issue through discussion and negotiation with the owner.

10.3.9 Prosecution of offences

It is recommended that persons who do not comply with enforcement orders should be prosecuted in all cases. Also, it is recommended that others who have committed substantial breaches of the law should also be prosecuted, regardless of whether they have now applied for or obtained planning permission or have ceased the offending development. The enforcement provisions of the planning code are designed not only to regularise the situation, i.e. to ensure that an unauthorised development obtains consent or is removed, but also to deter future unauthorised development. For this reason the law was specifically amended in 2000 to provide that, where a person applies for, and even obtains, retention permission, a court prosecution could continue for his/her breach of the law.

10.3.10 Applications for retention permission

Developers should not be permitted by authorities to indefinitely postpone enforcement action through applying for retention permission. Even where the planning authority may be inclined to grant permission for the retention of the development, the authority should still seek to have a fine imposed on the developer for the past failure to comply with planning law. Where courts are inclined to grant deferrals of enforcement action on the grounds that an application for retention has been made, the authority should bring to the court's attention the provisions of section 162(3) of the Planning Act, which provides that no action shall be stayed or withdrawn on the grounds that retention permission has been applied for or granted. Any past refusals of retention permission for the development should also be brought to the court's attention.

10.3.11 Transparency

All documentation relating to enforcement actions (correspondence, planner's report to the Manager, Manager's decisions, representations made under section 152 of the Planning Act, warning letters, enforcement notices, notes on site visits, etc.) should be readily available to all parties directly involved and to the general public, except:

- where this could prejudice a possible court action;
- where this would reveal the identity of complainants (in order to prevent possible intimidation).

10.3.12 Monitoring and review

Each planning authority should review the operation of its enforcement system annually. The review should include an analysis of particular trends or enforcement issues within the area, and suggest actions for improved performance. The adequacy of existing procedures, staff resources, ICT systems, etc. should form part of the annual review by senior management. Planning authorities also report annually on complaints received, notices served, injunctions sought, etc.³⁴.

To help planning authorities share practical experiences and expertise in order to carry out their enforcement role as effectively as possible, the Department intends to establish a planning enforcement e-forum in 2007. The aim in doing so is to provide a web-based facility, or discussion forum, to allow planning enforcement practitioners to pose questions or offer suggestions and guidance to practitioners in other authorities on particular

³⁴ For Report on Service Indicators in Local Authorities (Local Government Management Services Board) and Annual Planning Statistics (DEHLG)

enforcement issues. It is also proposed that the site would host judgments of the courts that are relevant to the issue of enforcement, recent policy developments on enforcement from both individual planning authorities and the Department, and provide links to planning circulars and planning legislation. Planning authorities should contribute to and make use of this facility.

10.4 Past failures to comply with planning permissions

Section 9 of the Planning and Development (Strategic Infrastructure) Act 2006 amended section 35 of the Planning Act to provide that a planning authority may, where it forms the opinion that there is a real and substantial risk that a proposed development would not be completed in accordance with the permission being sought, refuse permission without prior authorisation from the Courts, to a person or company who has failed substantially to comply with a previous permission (subject to giving the applicant prior notification and an opportunity to respond). This provision effectively reversed the burden of proof that applied in this provision in the 2000 Act.

Where a planning authority refuses permission under section 35 of the Act, the applicant can apply to the High Court to have the refusal annulled. In this case the High Court may, as it considers appropriate:

- Confirm the decision of the planning authority,
- Annul the decision and direct the authority to consider the applicant's application for planning permission without reference to the provisions of section 35;
- Make such other order as it thinks fit.

Where the Court directs the planning authority to consider the application without reference to section 35, the planning authority must make its decision on the application within a period of 8 weeks from the date the order of the High Court in the matter is perfected (that is, the date on which all necessary legal steps are completed). Where the High Court confirms the decision of the planning authority, there is, of course, no provision for the applicant to appeal to the Board.

Planning authorities should consider the use of section 35 in the case of developers with a history of substantial non-compliance, both as an effective deterrent and as a means of strengthening public confidence in the efficacy of the enforcement process.



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