



Winter 2013

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Cover: *President Mary Crowley with students at Ballyfin NS and one of their model cities made as part of the IPI schools initiative, see p. 3*

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President's Christmas Message



MARY CROWLEY MIPI



With Christmas almost upon us and a very busy six months into the 2013/2014 IPI Council Year, I would like to take this opportunity to thank all members for their support during what has been a very busy and exciting year. The holiday period allows us the opportunity to take stock of the progress that has been made by the Institute and its members and also to chart the way forward in the New Year ahead.

The Institute has achieved a great deal during year due in no small part to the adoption of the Corporate Plan and the efforts of those active at branch and national level to implement it. The Corporate Plan is a key instrument however it is only through the continued hard work of Council, Branch Committees and members that its vision will be realised.

The successes of the past year have been numerous and include the Public and Schools Education Initiative, both of which have garnered a great degree of support from members and the public at large. The development of the Institute's education initiatives and the popular support which they have received is indicative of the thirst for planning knowledge which exists in society.

The number and quality of the events held over the past last year also shows the demand within the profession to learn more about the pressing issues of the day and also to refine and enhance the conceptual underpinnings of what is actually meant to be a planner. Over the past year I have been heartened to see

the passion with which this subject is viewed by our members and as Chair of the Urban Forum, I look forward to exploring this debate further.

The recent publication of "Pleanáil" is another success as it demonstrates the continued demand within the professional planning community for practical as well as theoretical research relating to planning practice. The wealth of contributions this year and their multidisciplinary outlook bodes well for the profession as it evolves and gains greater insights into the contribution it can make to the shaping of the built environment as well as rural areas. The contributions to this edition of "Planning Issues" further reinforces this point.

Over the last year, the Institute's participation in the SPECIAL project represents the Institute's desire to advance planning practice at home as well as abroad. The opportunity this project presents was outlined at the Institute's Autumn Planning Conference. To date, the interest of members in this project has been strong and as the project progresses, this interest will be key in ensuring that the training developed through our collaboration with our European partners will contribute greater understanding to the interface between spatial planning and energy.

In a change to previous years I have also assumed the role of Branch Co-ordinator for 2013/2014 and since September I held the first of what I hope will be biannual Branch meetings in order to develop and strengthen our branch network. The results to date have been outstanding and I look forward to attending more

branch and YPN events in 2014.

Finally, I would like to wish all of our members Nollaig Shona agus Athbhliain faoi Mhaise Daoibh - a very Happy Christmas and a prosperous New Year 2013.



JOANNA KELLY MIPI

Further to the previous update regarding this initiative and due to the successful application for grant aid from the Department of Arts, Heritage and Gaeltacht, the Institute has hosted public seminars in Dublin and Limerick. I would like to extend my thanks to the Mid-West Branch who delivered the Limerick seminar that was very well attended in The Strand Hotel in early November. The final seminar took place on 6th December in the Gibson Hotel.

The strong attendance at these seminars continue to highlight the public interest in learning more about how they can engage with planners and the planning system.

The Institute has also run very successful “box model city” projects in a number of locations and the Institute extends their thanks to all of the schools that participated. The enthusiasm and interest that the children in the fourth and fifth classes demonstrated whilst making their models was fantastic. The students demonstrated a very keen interest in their environment, land use patterns and transportation planning. The photographs of the models are testament to this. It is this interest that needs to be harnessed and developed to ensure that the next generation are equipped with the skills required to understand the complexities of the issues facing planners and the difficult decisions that have to be made in the public interest.



TOM O'NEILL

Has Strategic Environmental Assessment (SEA) for land use plans become too complicated?

1. Introduction

The title of the piece is slightly tongue in cheek: the aim of this article is to encourage debate into streamlining the SEA process, taking into account statutory obligations while maintaining the essential overview of plan-making that is the core of the SEA process. It is the contention of this piece that there are opportunities to streamline the SEA process by placing more emphasis on using long established parts of the plan-making process. The usual caveat applies—the opinions are mine and not the official policy position of any organisation.

2. Planning Background

Since its introduction to the Irish planning system in 2004, Strategic Environmental Assessment (SEA) has become well established as a medium for higher level analysis of the environmental effects of plans, policies and programmes. With its introduction there has been a growing corpus of literature and commentary both to guide practitioners and to comment on its success or otherwise in shaping planning policy.

SEA is most effective when it offers an oversight of the general environmental direction of plans. In practical terms, for land use plans, it can inform zonings and policy content to ensure that they conform to the best environmental and planning practice. To achieve this it is best that the process is kept as simple as possible and does not deviate into needless detail which is the preserve of assessments such as Environmental Impact Assessment and Appropriate Assessment.

3. Difficulties of Assessment

SEA does have certain characteristics which add to the difficulties of assessment. They generally cover a large area and are often prepared with little information. What information there exists is drawn from differing sources and is often

not prepared with an SEA use in mind (Therivel and Partidario 1999). One example of this might be information prepared at project EIS level which might be later used for SEA analysis in a Local Area Plan. This brings with it the difficulty of relating location and project specific information to the larger scale of land use plans. It should also be remembered that any mistakes made in the collection of baseline information might lead to this being interpreted incorrectly at strategic level.

Careful thought should be given to the level of detail required for strategic assessment. There is little point in wasting time and effort in gathering information that has more detail than is required. In this context a Russian saying should be remembered; “perfection is the enemy of good enough”.

There are problems too in collecting and analysing data within the statutory time frame of plan preparation. In the face of such difficulties it is only natural that an attempt would be made to offer guidance to assist in the process, in order to provide the planning profession with the guidance and information required to adequately assess plans.

4. SEA Guidance

The first guidance document produced for SEA in Ireland was that produced by the Department of the Environment, Heritage and Local Government in November 2004. From a user's perspective, it is simple, robust and has the benefit of clear links to the parent directive. Since then there has been a number of guidance documents, often non statutory.

The number of guidance documents produced over the last 10 years or so by the Department of the Environment—under S.28 of the Planning Acts—has been impressive both in terms of numbers and scope. These are a valuable resource for plan-makers and have the advantage of having a statutory basis in planning law. These should be the first port of call for planning staff, with additional non statutory guidance being secondary in importance.

It has been said that there is “an overflow of tools and guidelines for practitioners and decision makers. They are developed on normative grounds and often based on piecemeal assembly of “good examples” with little or no systematic evaluation” (Emmelin 2006 p.5). While this is not meant as criticism of the many guidance documents and articles produced it does sound a timely warning. The more guidelines that exist—often non statutory in nature i.e. not produced under S28 of the Planning and Development Act—the more the scope for complexity and hence confusion. From a users perspective there should be certain assumptions implicit in all guidance:

- Guidance should assume limited resources in terms of personnel and time.
- It should be specific to the end user i.e. intended solely for planning if the target is land use plans. The EPA (2012) does make the point that current guidance is geared mainly towards land use planning and this raises the need for specialised guidance for other sectors.
- Given the legalistic nature of much of modern planning the guidance should be grounded as much as possible in the contents of the original directive.
- It should be brief.

5. Making Maximum Use of Existing Structures

While SEA is closely linked with the land use planning process, some aspects of the plan-making system itself might not have its importance recognised. I refer to the Manager's Report, which summarises all of the responses received to the contents of draft plans during the public display process and the planning authorities response to them.

The recent EPA report Review of the Effectiveness of SEA in Ireland (EPA 2012, p. 79) mentioned the need for the SEA statement to include a “summary of consultation responses”. These would already have been included in the various

Manager's Reports prepared at differing stages of the plan preparation process and should be concisely dealt with in the SEA statement with appropriate reference to the relevant Manager's Report. Appropriate cross referencing to the Manager's Report in SEA documentation would have the advantage of reducing the volume of paperwork but would also by referring to the source document would also ensure that readers can view all the responses and place them in their proper context. It can also help to place them in chronological order in that the preparation period for a County Development Plan is two years and the reference to a specific Manager's Report can indicate council thinking at that particular time. This can indicate the evolution or otherwise of plan content.

It also has the advantage of linking the SEA process directly with long-established parts of the plan-making process. While the Environmental Report "forms part of the plan making process" (DEHLG 2004, p.22), there is a residual impression in many areas that it is somehow an addition. The greater the emphasis on linking the SEA process with established documents such as the Manager's Report, the better the opportunity to present the SEA as a central part of these plans.

The practise of beginning SEA after policies have been prepared adds to the complexity of the SEA process and lessens its usefulness. Rather than trying to inform policy content, time and effort is spent trying to justify policy content. This is often at odds with the fundamental principle of integrating environmental considerations into the plan process. The complexities of SEA can be reduced if the plan-making and SEA personnel are the same.

6. Other Forms of Assessment

SEA has close associations with Appropriate Assessment and Flood Risk Assessment. In many situations the level of detail required in these assessments is more detailed than that required for many other sections of the Environmental Report. It is often site specific and it is here where guidance outside

of those produced under S28 are most useful. However despite the level of detail and the often specialist expertise required in compiling such reports, much of the background information might best be presented as an appendix with core arguments being summarised in the Environmental Report and Managers Report. This leads to more concise documents and avoids a micro –level of analysis which may distract from strategic level assessment.

7. Summing Up

By placing more emphasis on the use of the Manager's Report, the paper trail associated with the SEA process might be reduced. This would have the advantage of linking SEA with the longer established components of plan-making thereby presenting all aspects, plan-making and SEA, as a coherent whole.

It is often better to present the main points of the discussion in the Environmental Report or Manager's Report, with supporting documents being contained in an Appendix. This enables clear points to be made at a strategic level which is the core function of SEA.

Section 28 guidance documents are an underrated resource in preparing planning policy, they should be used more. Other guidance documents should be sector specific, brief and to the point. They should assume their audience has limited resources. Last but not least-reread the SEA directive regularly to ensure that all content complies with it.

Autumn Planning Conference Round Up

Energy is one of the defining challenges facing planning today. The Autumn Conference provided an opportunity for planners and others to share ideas, network and keep abreast of the changes guiding and influencing the sector.

Speaking at the conference, Minister for Planning, Jan O'Sullivan said some wind energy developers are "behaving like an oil baron of old" in dismissing concerns of communities about the potentially negative impact of their schemes, according to Minister of State for Planning Jan O'Sullivan.

Echoing criticism by Minister for Energy Pat Rabbitte, Ms O'Sullivan stressed the need for wind energy developers to engage with local communities. "Too often I have seen industry voices talking down to people and dismissing concerns out of hand," said Ms O'Sullivan. "Engagement and consultation with local communities must be at the heart of the development process."

"Public acceptance of such interventions in the landscape is vital and requires meaningful communication on both sides." A new approach to electricity generation "must involve a new approach to communication and the sector has a way to travel in that regard", she said, adding that public acceptance could be achieved by addressing people's concerns.

She was working with Mr Rabbitte to "ensure an all too rare, joined-up approach" to the delivery of wind energy – including proposals for 2,000 or more wind turbines in the midlands targeted at exporting the electricity they generate to Britain.

IPI president Mary Crowley told the conference that a national strategy was "essential" if there was to be a plan-led approach. It also needed to address "the social acceptance challenge and fears surrounding adverse local environmental impacts".

In her speech, Crowley added that this "plan led approach must facilitate and guide the development of commercial, industrial and community renewable energy projects at regional and national level. It must maximise the renewable energy resource and potential of the country with minimal environmental impacts thus enabling a low-carbon economy. It must also address the social acceptance challenge and address ordinary people's fears surrounding adverse environmental impacts." Leading on from this, Mary Crowley outlined that a "National Renewable Energy Planning Strategy is required to strategically plan for the country and to avoid adhoc and reactionary planning. Many planning authorities are being proactive and are preparing renewable energy



strategies for adoption into their respective development plans. Whilst such an approach is supported by the Irish Planning Institute it is nonetheless considered that decarbonising our economy is a national consideration with project impacts transcending county boundaries. This requires extensive public engagement and consultation to ensure transparency, accountability and ultimately public ownership of the planning process. Planning serves the community, and therefore there must be proper engagement," Crowley added.

Conference Papers are available on www.ipi.ie



AMY HASTINGS MIPI

1. Introduction

One of the key activities of the Institute is representing the planning profession and responding on its behalf in relation to upcoming legislative changes and policy guidance that emanate from Government. In general, submissions are prepared in consultation with the membership of the Institute. Occasionally, submissions may be prepared by ad-hoc groups or committees composed of Council members and senior and experienced members of the Institute.

Full and active participation by members in the drafting of submissions is utterly essential to ensure that representations made by the Institute capture a true and accurate picture of the views of members and the profession as a whole. For that reason, the Institute is sincerely grateful to all members who participated in the drafting of submissions in any way.

2. VIA Project

The Policy and Research Group is currently working on guidelines for Visual Impact Assessment. The visual character of development is usually a central issue in the approval process. The appropriateness of the visual scale, appearance and character of a proposed development to its setting is always a central concern. In many cases, visual character would be the dominant issue. In urban areas, proposals for large or tall developments always give rise to concerns over potential visibility and visual impact. In sensitive urban areas, agricultural development, forestry, industry or even a single house can be visually

prominent. Despite the central importance of visibility and visual character in the planning process, guidance on how visual matters should be described and assessed is limited.

Project teams and specialist consultants employ a variety of methods in undertaking visual impact assessment, including visibility analysis, modelling of the zone of visual influence, photomontages (including line diagrams and wire frame models), animations and fly-throughs, balloon tests, etc. There is currently no Irish guidance available to planners on the appropriateness of the methodology employed to the particular circumstances of the application. The appraisal of a visual impact assessment can be further complicated in circumstances where a Planning Authority, an Applicant and a Third Party have each carried out their own (conflicting) visual assessment using different methodologies. The purpose of this research project is to provide guidance on issues of visibility, visual character and visual impact in the context of assessing a visual impact assessment under the planning and development approval processes in Ireland.

3. Existing Methodology

Over the course of recent decades, and particularly since the enactment of the Planning and Development Act 2000, the planning process has become considerably more complicated, requiring Applicants to include more technical information in planning applications than ever before. Application drawings, in particular, illustrate a high level of technical, engineering and architectural detail and can be difficult for the public (and, indeed, for many professionals) to interpret. Visualisations of a proposed development submitted as part of a visual impact assessment, in whatever form they may take, can provide a more accessible representation of a development to the general public. However, no method of visualisation can truly replicate how a development is likely to be per-

ceived once it has been constructed.

There has been much debate on the accuracy of various methodologies of visual impact assessment and the level of emphasis that can be placed on visualisations of a proposed development. This project will seek to examine visual perception and the representation of a proposed development and its context.

The proposed guidelines will consider such matters as architectural representation, including drawings, photomontages and digital animations, and how these might demonstrate visual character. The proposed guidelines will further discuss the differences between the camera and the eye and how the perception of models, drawings or images might be different from perception of real development and its context.

Many visual impact assessments will include relevant photography from viewpoints looking towards the site of the proposed development. Photography is often taken at eye level at ground level and, for practical reasons, from the public realm. The use of artist's renderings as visualisations of a proposed development is, by no means, a new phenomenon.

During the late eighteenth and early nineteenth centuries, English landscape architect, Humphry Repton, provided his clients with bound volumes of water colour sketches of existing and proposed views of the landscapes of their demesnes. Pencil and water colour renderings of proposed developments are still used very effectively throughout the design process and have proved to be valuable during public consultation. Architectural scale models of a proposal in its surrounding context can be produced in a range of materials (e.g., wood, cardboard, plastic). The scale of the model, the level of detail illustrated and the extent of context shown can vary dramatically depending on the scale of the proposal and the specific issues of concern.

A diagram illustrating the Zone of Visual Influence (ZVI) of a development on a specified area (e.g., a 5, 10 or 15 square kilometre box) can be created digitally from mapping data or from on site survey. Using proprietary land survey and modelling software, a digital viewshed can be created using a three-dimensional digital terrain model of a study area to give a general indication of potential sight lines between a proposed development and the surrounding topography. Assessment of the zone of visual influence of a development can also be carried out by driving the roads within the study area to assess intervisibility with the application site.

In a balloon test, a large helium-filled balloon is raised on the development site to a height, which corresponds to a known point (usually the highest point) of a proposed development. It is then possible to identify locations in the surrounding area from which the development might be visible. Balloon tests can be inexpensive, but present obvious difficulties due to the relative unavailability of appropriate equipment and problems associated with securely anchoring the balloon in even mildly windy weather. This methodology is not routinely used in Ireland, but, in other jurisdictions where such tests are used more frequently, specific performance criteria are defined for their use.

4. Strategic Issues

From a reading of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended and more recently consolidated in Directive 2011/92/EU) and supporting documentation (including guidance produced by the European Commission and rulings of the European Court of Justice), the requirements of EU law with regard to visual impact assessment of projects as part of an Environmental Impact Statement could be summarised as follows:

- The visual impact of a project on landscape and / or the visual impact of a project on landscapes of architectural, archaeological or

cultural heritage significance can be a determining factor in the assessment of whether a Environmental Impact Assessment of a project is required.

- The term 'landscape' was not intended to refer solely to natural landscapes and can include semi-natural landscapes and the built environment.
- In undertaking an assessment of the likely impacts of a project on landscape: it is necessary to consider (i) the impact of a development on the quality of the landscape; and (ii) the impact of a development on views and viewpoints (i.e. a visual impact assessment).
- A visual impact assessment should not be confined to an assessment of the likely visual impact of a project on protected or designated views.
- The views and viewpoints chosen for analysis as part of a visual impact assessment of a project should be described and, where appropriate, illustrated.
- Visual impact assessment should be a measure of the change in the visual environment caused by the existence of a development in relation to its non-existence.

While European law is instructive with regard to what might be contained in a visual impact assessment, it provides little guidance as to how the extent or character of a visual impact might be categorised. At a national level, the EPA's Guidelines on the Information to be Contained in Environmental Impact Statements, was prepared under section 72 of the Environmental Protection Agency Act, 1992 and is, therefore, statutory guidance. The definitions at *Section 5: Glossary of Impacts of the EPA's Guidelines on the Information to be Contained in Environmental Impact Statements* are instructive with regard to how the extent of a visual impact might be categorised: 'imperceptible', 'slight', 'moderate', 'significant' or 'profound'. The EPA Guidelines also define ways in which the quality or character of an impact can be categorised, i.e., positive, neutral and negative.

In the absence of Irish statutory guidance on the subject of visual impact assessment, many practitioners choose to make reference in whole or in part to international guidance in assessing the visual impact of a development. The Guidelines for Landscape and Visual Impact Assessment by the UK Landscape Institute with the Institute of Environmental Management and Assessment (often referred to as the Spon Guidelines) is not statutory guidance in Ireland and uses different language to the EPA Guidelines when discussing the assessment of landscape and visual impacts (i.e., the Spon Guidelines describe all potential and predicted impacts as being either of negligible, low, medium and high magnitude, sensitivity and significance rather than as being imperceptible, slight, moderate, significant or profound, as is required by the EPA guidance). This divergence highlights the need for the development of a definitive glossary of terms relevant to visual impact assessment.

5. Introduction

It is proposed to study a small number of relevant case studies as part of the project. These case studies will illustrate where the relative advantages and disadvantages of specific methodologies used in visual impact assessment. In order to ensure that the guidelines the Policy and Research working group produces are relevant to practising planners, please feel free to contact the Institute's Office in order to pass along your insights.



JERRY BARNES MIPI

The Lessons of the Dublin Docklands

To understand the development of Dublin Docklands, one must go back to the mid 1980s when the Custom House Docks Development Authority (CHDDA) was set up to oversee the renewal of a 30 acre site on North Wall Quay. Docklands was a no go area with a limited economic function and deprived surrounding communities. It was an area that had been left vacant and derelict after the migration of port functions downstream, particularly with the advent of containerisation in the 1970s. It had, however, much potential, as it was at the heart of the city, with large tracts of underused land next to potentially attractive waterbodies, including the Liffey and the Grand Canal Docks.

The original concept for regeneration was based on the Urban Development Corporations in Britain which were temporary agencies designed to get development going in derelict areas, using a variety of tools including fast track planning, which inevitably curtailed third party rights including those of the local community. This concept in Dublin was complemented by the incentives associated with IFSC, which underpinned a market for development in the recession of the 80s. A Planning Scheme provided a framework for development and provided certainty. This first phase of the IFSC established a toehold for new development to the east of the Loopline Bridge and Dubliners now began to look eastwards to the sea.

After flirting with abolition in the quiet years of the early 1990s, the remit of the CHDDA was greatly expanded in 1997 with the creation of the DDDA. The area was extended down to the Point, and incorporated the Grand Canal Docks. A 15 year Master Plan for the entire area up to 2012 was prepared under the guidance of Terry Durney, the Authority's Director of Planning. The Master Plan sought to ensure social and economic regeneration of the area, in addition to its physical renewal. Local communities were brought into the process. A series of detailed plans set the framework for the area and guided development in a firm yet flexible way, giving certainty to development in a fast track system. Indeed, it is probably no understatement that the area was the most planned in the State. Yet these were realistic plans designed to cater for swings in the market and could be implemented in an incremental manner, having regard to the development cycles.

The DDDA, as a public agency, was prepared to purchase and invest in the remediation of the former Gasworks site, when the private sector was not. There was other significant public investment in infrastructure, including the Samuel Beckett Bridge, LUAS and the National Conference Centre.

The private sector responded well to the opportunities during a period of economic prosperity. The emphasis was on high quality urban design, with mixed use and higher density development. The area could accommodate the city's missing civic infrastructure in the form of the National Conference Centre and the 2000 seater theatre in Grand Canal Docks. Hotels, cafes, offices, shops and apartments have been provided. It was the first area to accommodate 20% social and affordable housing.

The Financial Times recently recognised how the Docklands has become a major centre for internet giants such as Google, Facebook and LinkedIn. The FT has dubbed it

“Silicon Docks”. The lack of success in certain areas also has to be acknowledged. There had been a failure to attract families into market housing in significant numbers and while civic spaces including the Liffey Campshires, the Royal Canal Linear Park and the Grand Canal Square have been secured for the City, there has been a failure, to date, to deliver family attractive small parks throughout the area.

The Oireachtas gave fast track planning powers to the DDDA, which on the face of it curtailed third party rights. In addition, these planning powers effectively lay outside the main planning system and no regulations were formulated by the responsible Minister for the administration of the system. While this made it administratively light, it was always likely that, when legally challenged, the system would fail. It is somewhat ironic that the challenge came from one developer against another in relation to the proposed Anglo Irish Bank Building on North Wall Quay.

Another significant weakness in the Authority was the inadequate balance of interests and expertise on the Board, which up to 2008 tended to be dominated by those with a financial background. Directors from a banking and development background had always been appointed on the grounds that they brought relevant expertise, but this has left a public perception of conflicts of interest.

Appointment to the Board was not transparent and open and there was inadequate supervision of Board activities during the boom period. The disastrous purchase of the Irish Glass Bottle Company site for over €400m was a culmination of all of these inherent flaws. While these governance issues have been rectified, the damage to public confidence has been done.

It must be remembered that the DDDA was only ever intended to be a temporary agency with a 15-20

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year lifespan. It was always going to be wound up. All responsibilities will now revert to Dublin City Council. The City Council's SDZ Planning Scheme for the area seeks to secure the completion of the project generally in accordance with the broad principles of the original plan. I strongly believe that when all the dust has settled people will view the Docklands with pride and it will be held up as an excellent model of regeneration and real planning, which will be seen as part of our future as an out looking dynamic confident country.



PADDY SHAFFREY HON MEMBER

Eirgrid Pylon Controversy

The current controversy over Eirgrid's proposal to carry out a major extension of electricity transmission across the country echoes the similar challenges regarding the effects of the septic tanks on water quality and proposals for windfarms.

The need for comprehensive and sustainable rural land use planning is not new and has been a concern of many planners over the years. In the 1970's An Foras Forbartha (National Institute for Physical Planning) published a research document prepared by the late and much lamented Bernard Muckley a founding member of the Irish Planning Institute, which addressed the challenges posed by 'urban generated rural housing'.

This research emphasised a need to designate and protect from inappropriate urban development the areas of landscape and heritage value and so in addition protecting the future economic and social life of the many small villages and towns widely distrib-

uted throughout the country. It is a fact that today large parts of the farming countryside are visually and culturally suburbanised and much more so than in Britain and mainland Europe.

They should be aware that major changes to the transmission system would give rise to controversies. It would be interesting to know if they ever made submissions to government regarding future implications of the then rural land use policy which in some parts of the country was a free for all.

In recent years a major national road building programme has been implemented. Such a project created an opportunity for co-operation between the National Roads Authority and the ESB regarding the sharing of infrastructural facilities. Was that ever considered?

The government (in 2002) signed up to the European Landscape Convention. However, so far, there is no official landscape policy, which would be mandatory or binding on Planning Authorities. This creates difficulties for rural land use policy, not least in the current controversy regarding the pylon proposals.

The situation on the ground today is understandable, on one hand many people are extremely concerned about the siting of large pylons in close proximity to their homes for reasons of property value, health and landscape setting. There is obviously a national need to upgrade and improve the electrical transmission system to cater for today's and future needs but the costs of undergrounding and future maintenance does present major challenges. Is it feasible to utilise the national road system as a possible route in some way?

There is also an additional but important matter, one of design and siting. Energy companies in the UK and other countries recently held design competition in respect of pylons and transmission generally. Pylons should be seen as major visual elements in

a rural landscape- treated as sculptures and art forms and using the best skills of landscape engineers and designers. High standards should be demanded in this regard.

However no matter which decision is arrived at, the main lessons to be learned from these controversies is the fundamental need for sustainable rural planning, particularly as regard land use. It should be concerned with the need to protect our historic cultural and visual landscape to create a climate over time for the environmentally acceptable growth of farming activities and to be aware of possible future developments as generations pass on.

It should recognise a national need to protect and encourage the economic and cultural qualities of the small towns and villages, which are widely distributed throughout the countryside and an integral and important part of rural life.

1. Introduction

A selection of recent interesting appeal cases and Section 5 Referral cases has been compiled from the website of An Bord Pleanála. These show to some extent the variation and the complexity of developments. Further details of the individual cases can be obtained at www.pleanala.ie.

2. Kildare Village Outlet Extension

Third party appeals were made by a number of different parties against the decision of Kildare County Council to grant permission subject to conditions for a 10 year planning permission for development consisting of an extension to the existing Kildare Tourist Outlet Village (permitted under Reg.Ref.04/927) known as Kildare Village. The proposed development incorporates an additional gross floor area of c.7,053sq.m (the total g.f.a. of the existing and proposed Tourist Outlet Village will be c.18,219sq.m) in a one and two storey building form adjoined directly to the existing building complex. Proposed commercial uses include two restaurants, 34no. tourist retail outlet units, mezzanine floor levels to some of the units, a tourist information centre, ancillary offices/customer services public toilets etc. It is to include an expansion of car parking facilities, revisions to the existing access road from the Nurney Road access, a new vehicular exit onto the Nurney Road, pedestrian routes, site development works, landscaping etc. The planning application was accompanied by an EIS.

The Board (Ref.PL09.241321 refers) upheld the Council's decision and granted permission subject to a number of conditions. These included that this permission be carried out in an eight year period and that the development be restricted to discount outlet designer village (as specified in the lodged documentation). In coming to its decision the Board had regard to the zoning objective pertaining to the appeal site and the established nature and use of adjoining lands where the existing Kildare Village Outlet is located, the Retail Planning Guidelines 2012, the Greater Dublin Area Retail Strategy 2008, the provisions of the Draft Kildare County Retail Strategy 2010. Regard was also had to the policies and objectives of the Kildare CDP 2011-2018, the policies and objectives of

the Kildare Town LAP 2012 and the nature of the goods to be sold.

The Board considered the environmental impacts of the proposal to be acceptable and, subject to compliance with the mitigation measures set out in the EIS, and subject to conditions, the scheme would not have unacceptable adverse effects on the environment. It was also concluded that no Appropriate Assessment issues arise and that the proposed development either individually or in combination with other plans or projects would not be likely to have a significant effect on any European site.

3. Construction of Dwelling Units

A Third Party appeal were made to ABP (Ref. PL17 .241988 refers) against the decision of Meath County Council to grant permission for the Construction of 160 houses and a crèche in two distinct residential character areas in Dunshaughlin Co. Meath. There is a considerable planning history relative to residential development on this site. The Board noted that the P.A. had omitted the proposed crèche by way of condition and that in the absence of a first party appeal it was not appropriate to address this issue.

The Board concluded that having regard to the planning history of the site, the A2 residential zoning in the Meath County Development Plan 2013-2019 and the Dunshaughlin Local Area Plan 2009, to the Sustainable Residential Development in Urban Areas (Cities Towns and Villages) Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in May, 2009, to the nature and scale of the development and to the pattern of development in the vicinity, that, subject to compliance with the conditions, the proposed development would not seriously injure the amenities of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

On the basis of the information available including an Appropriate Assessment Screening Report, it is considered that the proposed development would not adversely affect

the integrity of European sites, in view of their conservation objectives. Permission was granted subject to a no. of conditions.

4. Windfarm Developments

Third party appeals were made by a number of different parties against the decision of Cork County Council to grant permission for a wind farm consisting of 6no. wind turbines. A 10 year permission was sought to construct six no. wind turbines (each with a minimum hub height of 100m, maximum rotor diameter of 100m with a total tip height of 150m), a substation including one control building and associated internal equipment, one borrow pit, new internal access roads, upgrading of existing internal access roads, underground cables and ancillary works all in the Ballingearry area in County Cork. An EIS accompanied this application.

The Board upheld (Ref.PL04.242223 refers) the Council's decision and granted permission subject to conditions for the proposed wind farm development. They had regard to national policy relating to the development of sustainable energy sources, the Wind Energy Guidelines 2006, the policies of the planning authority as set out in the Cork CDP 2009-2015 as varied, including objectives which specifically address wind energy projects and development on scenic routes. They also considered the characteristics of the proposed development and the impact it would have on the environment. They had regard to the EIS and generally agreed with conclusions as to the acceptability of the mitigation measures proposed and residual effects and included conditions to this effect. They did not consider that the proposed development either individually or in combination with other projects would be likely to have a significant impact on Natura 2000 sites. They considered that it would be in accordance with the proper planning and development of the area. Conditions included that a detailed environmental management plan be submitted and had regard to the constructional and operational phases of the development.

5. Commercial Development

A First Party appeal was submitted against the Cork City Council's

decision to refuse permission for a Change of use from existing ground floor commercial bar to six.no. apartments at Skiddy's Lane, North Main Street, Cork.

The Board (Ref.PL28.242080 refers) upheld the Council's refusal for the proposed development. They had regard to the location and layout of the proposed development, including the proximity of the adjacent car-park areas, the poor quality of private amenity space provisions and the single aspect orientation of the majority of the apartments. They considered that the proposed development would result in a poor quality environment for future residents and would seriously injure the amenities of property in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

6. Section 5 Referral: Demolition of a Dwelling

A Section 5 Referral (ABP Ref.48.RL.3013) was made to An Bord Pleanála regarding whether the demolition of a dwelling currently unoccupied at Farnham Road, Cavan is or is not development or is or is not exempted development.

The Board has particular regard to: (a) the definition of a 'house' as set out in section 2 of the Planning and Development Act, 2000, as amended, (b) Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as substituted by Class 50 of the Planning and Development Regulations 2008, and (c) the submissions on file.

They concluded that: (a) the structure on site is a house and its demolition constitutes works within the meaning of section 2(1) of the Planning and Development Act, 2000, as amended, (b) the said works constitutes development within the meaning of section 3 of the said Act and (c) the proposed demolition of the house is development and is not exempted development as it does not satisfy the Conditions and Limitations Class 50 of Part 1 Schedule 2 set out at no. 2(a) thereof of Class 50 of the Planning and Development Regulations 2001, as substituted by Class 50 of the Planning and Development Regulations, 2008. They

therefore concluded that the works specified constitutes development and that this development does not constitute exempted development.

7. Section 5 Referral: Storage of Cattle

A Section 5 Referral (ABP Ref.13.RL3025) was made to An Bord Pleanála regarding whether the storage of cattle for a period of 52 weeks per year within slatted sheds is or is not exempted development.

The Board in considering this referral had regard particularly to:

- (a) sections 3,4(1)(a) and 177U of the Planning and Development Act 2000, as amended,
- (b) the planning history of the site,
- and (c) the character of the development.

The Board concluded that the storage of cattle for a period of 52 weeks (per year) being materially different from the use in respect of which planning permission had previously been granted for the over-wintering of cattle constitutes a use which is considered to be a material change of use and is, therefore, development. However the use being agricultural in nature comes within the scope of the exemption provided for under section 4(1)(a) of the Planning and Development Act, 2000, as amended. They therefore decided that the storage of cattle for a period of 52 weeks of the year within slatted sheds is development and is exempted development.



JOE BONNER MIPI

IPI Private Practice Branch Section 42 Extension of Duration Survey

A survey of private sector planning consultants was conducted in September 2013, in which they were requested to share their experience of Section 42 'Extension of Duration' applications in the intervening 18 month period. This survey followed on from an earlier survey carried out in March 2012. Responses were received in respect of 1/3 of the County/City Councils in the country and referred to a mix of development types, large and small, urban and rural.

In the period Q1 2007- Q3 2008, 95,541 planning permissions were granted (CSO) and as those permissions expired between Q1 2012 and Q3 2013 (the timeframe for the 2nd survey), a significant number of those applications would have been subject to applications for 'Extension of Duration (EOD)'.

On the basis of the replies received it appears that consultants play only a minor role in the preparation and submission of 'EOD' applications. In many cases, particularly in respect of one off houses, applicants prepare and submit the applications themselves, or else they are submitted by the agent who submitted the original planning applications on their behalf. It is only when a refusal issues that a planning consultant or the planning authority may be called and at that stage it is often too late to rectify the problem that has arisen, as the life of the original permission has expired and there is no appeal process for S42 decisions. Some of the experiences shared by members include-The 9

additional days per year from Browne v Kerry County Council is applied-

- automatically in some counties;
- not at all in others;
- inconsistently within councils, depending on the particular planning officer
- only if referred to by the applicant as part of the application in other counties.

As an example of its application, a Council refused an EOD on the basis that the application had been submitted too early. It was submitted 4 years and one week after the grant of permission issued and the final year was deemed not to start until 4 years and 45 days after the final grant of permission issued. In another case an application was refused on the grounds that it was submitted 5 years and one day after the final grant of permission issued. The DOECLG was not in a position to give any guidance on the matter. Browne v Kerry County Council is currently on appeal to the Supreme Court. While the issue itself is not new, substantial works can mean very different things depending on the County Council that you are dealing with.

Some Councils require that a large proportion of a structure is completed in order to qualify, while in others it is sufficient to have created an entrance and cleared the site in preparation for the laying of foundations. The vast majority of the general public are unaware that the introduction of 'Core Strategies' has resulted in substantial areas of land being rezoned/dezoned, while development boundaries of small villages and rural area have been significantly reduced or eliminated altogether. There appears to be very little public awareness of the implications of these changes on existing planning permissions secured by individuals, who often think that they have an automatic right to have the duration of their permission extended 'on economic grounds'. It is only when the applicant receives a refusal of a permission that they contact a planning consultant or the planning authority and realise that there has been an insurmountable change in development plan objectives for the area since the original permission was granted.

Even if the applicant is aware of changes to the development plan a refusal of permission may still issue. Examples include large multi-unit residential developments in a number of counties being refused extensions on the basis that the previously compliant development was no longer in compliance with the Core Strategy or that the house or apartment types were too big/small and no longer adhered to the planning authorities vision for the area. Two separate Councils refused to extend to duration of apartment developments on the basis that the developments did not comply with the updated apartment guidelines.

In contrast a City Council granted an EOD for a residential development as changes to residential development guidelines were not considered to be part of the Development Plan. One response noted that NGOs are concerned that the provisions of subsection 42 (IV) – need for an EIA / AA – are being circumvented by persons carrying out the most minimal of development activity on the eve of making their s. 42 application. A rural authority refused to extend a 4 turbine wind farm because it was located in a SAC which had been designated during the life of the permission. No process was available to allow the applicant to prepare a Natura Impact Statement prior to the refusal issuing.

The majority of EODs granted were granted on the basis that the development did not commence due to the economic circumstances of the applicant. The degree of detail required to support the claim varies widely between councils with rural authorities appearing to be more lenient than urban authorities. Several permissions have been altered by amending conditions relating to onsite wastewater treatment. Some Councils grant a 5 year extension while others grant for only 2 years. As there is no role for third parties in the application process nor is there any entitlement to appeal the decision of the planning authority, the only recourse for an aggrieved neighbour / third party is to take a Judicial Review action, which is too much of a financial risk for most persons.

While this survey concentrated on the experiences of private sector planning consultants and S42 and refers to 1/3 of all planning authorities, it is considered that all members would benefit from the experiences of local authorities planners who will have assessed a significant number of applications in the 2012-2013 period.

Following that, the IPI and individual local authorities should endeavour to make the public more aware of the function and implications of S42 on their soon to expire planning permissions.

*The Irish Planning
Institute wishes
all its members
a very happy
and prosperous
new year!*

Winter, Dublin Castle

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