



dublinchamber
of commerce

**Improving the Planning Process:
Recommendations for Change**

**Submission to the Minister for the Environment, Heritage
and Local Government**

November 2009

Executive Summary

Planning management is a necessary tool for our social infrastructure. The current planning system in Ireland is the result of an overhaul of the primary planning legislation in 2000 and its attendant regulations. Nonetheless, the system continues to come under criticism, much of which is justified. This critique has been prepared on the basis of our members' experiences of the planning system in the Greater Dublin Area.

Our submission highlights the challenges that businesses face when interacting with the land use planning system. It is acknowledged that as land use planning deals with conflicting interests, a certain level of dissatisfaction is to be expected. However, it has been the experience of our members that the current system is highly unsatisfactory due to uncertainty of decisions and bureaucratic processes leading to significant delays.

Despite the statutory obligation on Local Authorities to take decisions on planning applications within eight weeks, this was only achieved in over half the cases in 2008, the most recent year for which data is available. Despite the provision for pre-planning meetings, one in six applications in 2008 was refused. There is a widespread perception that the mechanism which allows a Local Authority to request Further Information is widely used by planning authorities as a mechanism to "buy time". In its Annual Report for 2007, An Bord Pleanála acknowledged that while its intake of new cases in the first ten months of 2008 was down 16% on the unprecedented level of 2007, only one quarter of appeals will be disposed of within the Board's statutory time objective of eighteen weeks. In effect, an Bord Pleanála is admitting that it is unable to meet its own self imposed targets.

Despite recent welcome developments in forward planning at a strategic level, in the form of the National Spatial Strategy and the Regional Planning Guidelines, the planning system in Ireland still lags behind its European and North American counterparts in more plan led development. Originally based on the British model, the Irish Planning system uses concepts such as 'amenity' and 'character' as considerations in the decision making process, and hence has a high degree of vagueness. The disadvantage of this is that it leaves much uncertainty for all concerned, which in turn necessitates an adversarial appeals system.

The Need for Forward Planning

Ireland must now adopt a Forward Planning System. Ease of use, certainty and consistency in approach, and decision-making with clear and adhered to timelines, should underpin the system.

More prescriptive systems which set out development standards in a clear and unambiguous manner offer the advantages of greater certainty and comfort to both applicants and the public.

The majority of professional staff in Local Authority planning departments in Ireland are employed in Development Management rather than Forward Planning. Redirecting these resources to Forward Planning would lead to greater clarity and consistency in the planning application process, allow for better and timelier decisions and clearly indicate most likely outcomes for both applicants and third party appellants. Furthermore a planning application process based on Forward Planning should reduce the number of both planning applications and subsequent appeals.

Given today's financial challenges, every business engaging with the planning system is seeking value and savings. The Forward Planning model would allow finite resources to be deployed optimally. The provision of certainty, guaranteed timelines and a consistent approach to the process, would maximise savings for all concerned.

Dublin Chamber Recommendations

- ❖ A Forward Planning model should be developed and implemented as a matter of urgency.
- ❖ An Bord Pleanála must be properly and adequately resourced as a matter of urgent priority as it is being allocated more responsibilities. In particular, administration to the Inspectors and to the Board must be increased.
- ❖ A statutory deadline, rather than a statutory objective, must be set for appeals to An Bord Pleanála to ensure timely delivery of decisions. If this deadline is missed then automatic approval for the application should ensue.
- ❖ The third party appeals system needs to be reviewed as part of a root and branch review of public participation to create a positive means of public and third party engagement, with the focus of participation more at development plan stage and less at the actual specifics of each application. Consideration should be given to allowing Local Authorities or the Board to grant or deny leave to appeal to third parties.
- ❖ The provisions of the Planning and Development Regulations should be comprehensively reviewed to identify where certain types of development can be removed from the planning system thus reducing the workload of Local Authorities and ultimately An Bord Pleanála. With more pre-planning, such things as standard house extensions in estates could be exempt from planning.¹
- ❖ By placing the emphasis on forward planning (and enforcement), pressure will be taken off the middle section of development management. While two-thirds of Local Authorities' planners are employed in development control, forward planning is under resourced. Lessons can be learned from the Denmark model.

Table 1:

Ireland is ranked as the 7th easiest country for doing business in out of the 181 countries. However when comparing regulations in relation to dealing with construction permits, Ireland's ranking falls 23 places to 30th.²

| Country | Rank (Overall ease of doing business) | Rank (Dealing with construction permits) | Procedures (number) | Time (days) | Cost (% of income per capita) | Absolute cost (US\$) |
|-----------------------|---------------------------------------|--|---------------------|-------------|-------------------------------|----------------------|
| <u>Denmark</u> | 5 | 7 | 6 | 69 | 60.9 | 33,440 |
| <u>Ireland</u> | 7 | 30 | 11 | 185 | 44.4 | 21,375 |
| Sweden | 17 | 17 | 8 | 116 | 103.5 | 47,675 |
| USA | 3 | 26 | 19 | 40 | 13.1 | 6,030 |

¹ See Appendix 2

² See Appendix 1



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Understanding the Planning System

November 2009

1.0 SUMMARY OF CURRENT PLANNING LEGISLATION AND PROCEDURES

Ireland's planning system has its origins in the Local Government (Planning and Development) Act 1963, which, together with subsequent amending legislation, was comprehensively overhauled with the Planning and Development Act 2000. The 1963 Act was considerably influenced by the principles of the planning system in the UK. Subsequent initiatives and legislation such as the National Spatial Strategy and the Planning and Development (Strategic Infrastructure) Act 2006 have influenced the operation of the system.

1.1 Forward Planning System

1.1.1 National Spatial Strategy (NSS)

The NSS was developed to provide a coherent National Planning Framework for Ireland for the years 2002-2020. The objective of the NSS is to achieve a better balance of social, economic and physical development across Ireland, by building up a critical mass in eight designated "gateways" outside of Dublin – Cork, Limerick/Shannon, Galway, Waterford, Sligo, Letterkenny (linked with Derry), Dundalk, and the linked gateway of Athlone/Tullamore/Mullingar. The "gateways" are supported by nine designated strategically located "hubs", such as Wexford and Ennis. The strategy is a response to the diseconomies of scale currently being experienced in the Greater Dublin Area.

1.1.2 Regional Planning Guidelines (RPG's)

The aim of the Regional Planning Guidelines (RPG's) is to give effect to the National Spatial Strategy, provide a long-term (12-20 year) strategic planning framework for each region, and guide the Development Plans of each Local Authority within the region. Each Regional Authority has produced Guidelines for their own region, with the exception of the Dublin Regional Authority and the Mid-East Regional Authority, which between them produced the Regional Planning Guidelines for the Greater Dublin Area. Local Authorities are obliged to have regard to the RPG's in their Development Plans.

1.1.3 Development Plans

Development Plans are the main instrument of forward planning, and prior to the introduction of the National Spatial Strategy and Regional Planning Guidelines, were the preeminent planning instrument for a given Local Authority. Plans comprise written objectives and policies and zoning maps. Local Authorities are obliged to create and regularly revise them (every six years), and have a duty to secure objectives. Drafts are made available to the public and submissions invited, before being voted on by Local Authority Councillors.

Development Plans are part of a planning hierarchy and Local Authorities are legally obliged to 'have regard to' the Regional Planning Guidelines in their preparation. The Minister for the Environment, Heritage and Local Government retains powers to reject plans which do not accord with the provisions of the relevant Regional Planning Guidelines. Councillors have a significant role in creating and varying development plans, it being a reserved function under the Local Government Act 2001.

1.1.4 Strategic Development Zones (SDZ's)

The Planning and Development Act 2000 provided for the establishment of Strategic Development Zones (SDZ's). These zones are lands designated by Central Government as being considered necessary for the strategic development of the National economy. Once a proposal has been prepared by a Local Authority for an SDZ, any application for development within the SDZ which complies with the plan is

granted planning permission. Developers are legally obliged to adhere to a timeline for the concurrent delivery of supporting infrastructure. There is no third party right of appeal on developments within SDZ's.

1.1.5 Local Area Plans (LAP's)

Like Development Plans, Local Area Plans (LAP's) provide guidance on zoning, infrastructure, and physical development, but for a more focused geographical area. Local Area Plans must be prepared for towns with a population of more than 2,000 people within a County Council's functional area, and may be prepared for other areas as necessary, such as urban or suburban areas. They are considered particularly suitable for areas in need of economic, social or physical renewal or areas likely to be subject to large scale development. The preparation of LAP's must adhere to consultation periods and timescales that are set out in the Planning and Development Act 2000.

"Action Area Plans" and "Framework Plans", are used for similar purposes to LAP's, but are non-statutory in nature.

1.2 Development Management

1.2.1 Planning Permission

Local Authorities have the primary role in the management of development within their respective functional areas, granting or refusing planning permission in line with their adopted Development Plan. While Development Plan production is a reserved function, the determination of planning applications is an executive function dealt with by the Manager, or his or her delegated officer. Granting permission for development that would contravene the Development Plan, however, is also a function reserved to Councillors.

Once a valid application is received, the Local Authority has eight weeks to either make a decision or request further information. Applications must be publicly advertised by newspaper and site notices, and third parties have five weeks to lodge a submission or objection to the application. Any individual or corporate body with an address within the state may make a submission or objection.

In the event of a Further Information Request being issued by the Local Authority, the applicant has six months to respond, and the Local Authority must generally make a decision within four weeks of receipt of the Further Information.

Although the Planning and Development Act 2000 allows for applications or submissions to be made in electronic format with the consent of the Local Authority or the Board, in practice there has been slow uptake by Local Authorities. Some Local Authorities (and the Board) make great use of their websites to provide information to the public while in others it still necessitates time consuming and costly visits to council offices to obtain information. By contrast, in England, it is now possible to make some planning applications wholly online.

1.2.2 Appeals to An Bord Pleanála

All appeals to any decision are made to An Bord Pleanála. The Board reserves the right to consider anew any case before it. First Parties (applicants) and Third Parties who have made a submission on the application can appeal to the Board. The Board can confirm, reverse or vary the Local Authority's decision.

From 2002 to 2007, there has consistently been a roughly three way split, with 32% of decisions reversed, 33% confirmed, and 35% varied³.

Unlike most countries, Ireland has relatively strong third party rights enshrined in planning legislation. In UK, for example, while Third Parties can make submissions or objections on applications, only applicants can appeal the Local Authority's decision. In 2007 (the most recent whole year for which figures are available) 45% of cases formally decided by An Bord Pleanála were on foot of Third Party appeals.⁴ While the intake of planning appeals in 2007 was 5,891, only 5,644 were determined, leaving 2,865 cases open at the end of the year.⁵

1.2.3 Strategic Infrastructure

An Bord Pleanála has the primary decision making role for large-scale projects, often initiated by Local Authorities, such as Special Development Zones, Strategic Infrastructure Development, or the compulsory purchase of land, which is evidently putting further strain on the Board's resources. Under the Planning and Development (Strategic Infrastructure) Act 2006, certain specified large-scale developments must be submitted to the Board in the first instance, rather than to the Local Authority. The Board first decides whether the proposed development constitutes Strategic Infrastructure. This first stage is known as the Pre-Application Consultation. If the proposed development is deemed Strategic Infrastructure, it passes to the second stage, the Application itself. If the proposal is not deemed to be Strategic Infrastructure, the applicant is then free to lodge a planning application with the relevant Local Authority in the usual way.

1.2.4 Judicial Review

Judicial review is the final recourse in the planning system. The applicant must first apply for leave to bring proceedings, and if leave is granted, then may have recourse to a judicial review.

An applicant for judicial review need not have made a submission or appeal, but must have a "substantial interest" in the case. Proceedings must be brought within four weeks of the Board's decision.

The process is a review of the legality of the planning procedure only – it does not revisit planning issues. It is usually lengthy and expensive and accordingly availed of sparingly and by those with the resources to do so.

2 THE NEED FOR CHANGE

Land use planning, by its nature, deals with conflicting interests. It is designed to mediate and arbitrate between conflicting or competing interests; to protect the property rights of individuals; to protect public amenities; and provide for the public good. It is distributive in nature; giving, limiting or withholding development rights.

From the first enactment of the Constitution, provision was made for legislation to reconcile the exercise of property rights with the exigencies of the common good.⁶

³ Table 8, Department of the Environment Annual Planning Statistics 2007. Annual appeal figures for 2008 not yet available.

⁴ Appendix 1 and Appendix 4, An Bord Pleanála Annual Report 2007.

⁵ Page 13, ABP Annual Report 2007.

⁶ Article 43, Bunreacht na hÉireann

Applicants (and appellants) must accept, therefore, that a favourable outcome may not be forthcoming, and they may not get the response they had wanted.

However, they should be able to expect a timely decision and a level of consistency from the system, which provides a reasonable measure of clarity and certainty. It is the experience of many businesses in Dublin (and Ireland) that the preparation of planning applications is time consuming, decisions are slow and lacking in consistency and certainty, and the appeals process often adds further delays and consequent frustration.

These are all detrimental to economic development for two reasons:

Firstly, companies wishing to locate or expand in Ireland can be thwarted by lengthy delays and lack of certainty and clarity in the processing of planning applications that may be required.

Secondly, the provision of infrastructure vital for business - transport, telecommunications, waste management, conference centres - is also subject to planning delays, notwithstanding the purpose of the strategic infrastructure provisions.

In a climate of extremely mobile global capital, the Dublin City Region is competing for international investment with cities like Berlin and Barcelona among many. The European Commission has acknowledged Dublin as the only region in Ireland that is of sufficient scale to become a competitive major European City-Region.⁷ International corporations with no sentimental attachment to Ireland will take their business elsewhere if they cannot be accommodated in the Dublin City Region. Increasing efficiency in the planning system is therefore fundamental to the future competitiveness of the Dublin region and the State.

Unfortunately, the Strategic Development Zone (SDZ) mechanism, which was intended to fast track development of economic or social importance to the State, has been neither widely used nor particularly speedy. The fact that no new SDZ's have been designated since 2001, and that the mechanism was not availed of for sites such as Lansdowne Road Stadium, Dublin Airport, or The Digital Hub, suggests that it is of limited utility.

It remains to be seen whether the objectives of the Planning and Development (Strategic Infrastructure) Act 2006 will succeed where the SDZ legislation has not. Of the 35 strategic infrastructure development applications received in 2007, only 6 were concluded in that year. The Board has received 17 formal applications for strategic infrastructure developments in the first five months of 2008. By November 2008 determinations were issued in respect of 8 infrastructure developments in 2008. Accordingly, it is feared that without changes to the structures in place, the Board lacks the capacity to operate the system efficiently.

3 ROOM FOR IMPROVEMENT

The two main causes of concern for Dublin Chamber are:

- Length of time taken for decisions to be made,
- Lack of clarity, consistency and certainty for applicants - and indeed third parties.

⁷ Dublin Chamber of Commerce document, "Deliver, Deliver, Deliver"

3.1 Delays in decision making

3.1.1 Planning Authority Decisions

In the last quarter of 2008, (the most recent quarter for which planning statistics are available from the Department of the Environment) of 10,799 planning decisions made nationally, only 57.4% were made within eight weeks. The Dublin Local Authorities performed relatively well in comparison, with 80.3% of their decisions delivered within the eight week period⁸.

In Dublin City Council for the same period, 90.5% of decisions (705 out of 779) were made within eight weeks; in Dun Laoghaire-Rathdown, 74.18% (316 out of 426). Fingal and South Dublin did slightly better with 75% (279 out of 372) and 79.5% (241 out of 303) respectively.

Of the 1,234 decisions made by the four Dublin Local Authorities, 991 (80.3%) were made within eight weeks, the remainder were deferred, largely by requests for further information.⁹

Recent performance of Local Authorities is mixed compared to the last quarter of 2007. In that period only 55.9% of decisions made nationally were made within eight weeks. In Dublin City Council for the same period, 88.9% of decisions (826 out of 929) were made within eight weeks; in Dun Laoghaire Rathdown, 90.5% (450 out of 497). Fingal and South Dublin did slightly worse than currently with 72.7% (325 out of 447) and 78.7% (306 out of 389) respectively. In total, of 1,422 decisions made by the four Dublin Local Authorities, 1,151 (80.9%) were made within 8 weeks, the remainder were deferred, largely by request for further information.¹⁰

It must be noted that current performance must be seen against a significant drop in the number of applications made – from 17,052 in the last quarter of 2007 to 10,799 in the last quarter of 2008. Notwithstanding that there has been a 36.6% drop in the number of applications received; there percentage of decisions made within eight weeks has shown only a marginal improvement.

3.1.2 Further Information requests

One of the obvious failings of the current planning system is the length of time taken to receive a decision on a planning application. Local Authorities have a statutory obligation to make a decision within eight weeks; otherwise permission is granted by default. Unlike in the UK system, where failing to meet this deadline results in the application being deemed refused, failing to meet the deadline can have serious consequences for Local Authorities.

Anecdotal evidence indicates a widespread perception that under-resourced planning departments, forced to meet their statutory deadlines, are finding themselves forced to request further information in order to “buy time”. The Planning and Development Act 2000 allows Local Authorities to extend the date by which it must decide an application by mutual consent with the applicant. However, this mechanism is rarely used, with a concurrent increase in further information requests. Such requests provide only short term relief to the Local Authority, deferring the inevitable, and actually increase the workload on both themselves and on the applicant.

Nationally in 2007, 36.8% of all applications were deferred that is, where the decision was not made within a normal eight week statutory period, for permitted reasons,

⁸ Department of the Environment, Quarterly Planning Statistics, October – December 2008.

⁹ Ibid.

¹⁰ Department of the Environment, Quarterly Planning Statistics, September – December 2007.

e.g. because a request for further information has been made or because an applicant agrees to an extension of the appropriate period. In the Dublin Local Authorities the rate of deferral was 13.3% in Dublin City Council; 17.2% in Dun Laoghaire-Rathdown; 31.3% in Fingal; and 19.5% in South Dublin. In all cases bar Dublin City Council, this deferral rate has increased from 2006.¹¹

It is acknowledged that further information requests are sometimes initiated by the applicant. Where a Local Authority indicates that an application is likely to be refused, the further information process allows the applicant the time and opportunity to attempt to address those matters of concern.

Notwithstanding this, it is hard to accept, however, that on average almost one in five applications to the Dublin Local Authorities is deficient, inadequate or otherwise flawed as to necessitate the provision of further information.

3.1.3 Appeals

Delays are further exacerbated by the appeals process, and the most recent annual report from An Bord Pleanála, covering the year 2007, shows that the systematic delays prevalent in recent years shows no signs of dissipating significantly.

It is broadly accepted that the four-week period during which an appeal can be made is not excessive – by comparison, in Britain and Northern Ireland, an applicant has 6 months to appeal.¹² However, once an appeal is made by any party, there is no statutory time limit by which the Board must make its decision. Under the Planning and Development Act 2000, it is an 'objective' of the Board (but not an obligation) to determine appeals within 18 weeks. There is no sanction for exceeding this 18 week period, and it can be much longer. Members have told the Chamber that the Board is no longer advising what the likely decision dates are for appeals as they are effectively meaningless.

As an example, the board refused permission on 8 April 2008 for a substantial mixed use development on the "MJ Flood" site in Sandyford Business Estate in Dun Laoghaire. The first appeal was lodged with the Board on 23 August 2005. It took the Board two years and seven months to make a decision. While this may be an extreme example, it is indicative of a system that is still finding it difficult to cope where decisions on even the most straightforward appeals are routinely delayed by four to eight weeks. This level of delay is unacceptable for all parties involved. A statutory deadline, as is imposed on Local Authorities, is necessary to ensure the Board delivers decisions in a timely manner. These delays are particularly galling when the application concerned has already been subject to a lengthy delay at Local Authority stage. In the case of the Sandyford site, the application was lodged with Dun Laoghaire-Rathdown on 3 December 2004, three years and four months before the decision was finally made by the Board.

By the Board's own admission in its most recent annual report (covering 2007 and published on 6 November 2008), the record level of activity it experienced in 2005 and 2006 continued unabated in 2007 when the intake of cases of all kinds approached 6,700. Notwithstanding a 10% increase in cases determined, this resulted in a significant rise in the workload on hand at year end (of 2007) and a further deterioration in the Board's performance in relation to the timeliness of its decision making.

¹¹ Table 14, 2007 Annual Planning Statistics, Department of the Environment

¹² However, it is significant that in Britain and the North, only first parties (that is, applicants) have the right to appeal. Like many European countries, their development management process does not accord rights of appeal to third parties.

The intake of new cases was 6,664 - up 12% on 2006; the number of cases was determined 6,163 - up 10%; the number of cases to hand at year end was 2,865 - up 21%; the 18 week statutory objective was met in only 48% of cases, compared to 52% in 2006; and the average time to determine cases was 19 weeks, compared to 18 weeks in 2006.¹³ As recently as 2005, 78% of cases were disposed of within 18 weeks, and in 2004, the figure was 85%.

In terms of the outlook going forward, the Board states that the first five months of 2008 are showing a 15% decline in the total intake of cases.

The number of cases disposed of is down by 8% due in the main to the Board's decision to concentrate on the oldest appeals. The volume of cases on hand has started to decline but remains very high and contains a substantial element of backlog. The Board is confident that with the continued fall in the intake of cases, the increased resources and other measures to improve productivity considerable progress will be made in 2008 in moving back towards its strategic target of determining 90% of cases within the 18-week period.¹⁴ When the Board makes requests for Further Information, it has the power to impose deadlines for their submission – sometimes very tight deadlines. In the interests of natural justice and fairness, it is imperative that appellants and potential developers have some comfort and a reasonable expectation of a deliverable timetable being kept by the Board.

The level of Local Authority decisions appealed to the Board is consistently between 6% and 8% per annum nationally from 1992 to 2007.¹⁵ In 2007 it was 6.1%. In the Dublin Local Authorities (Fingal, Dun Laoghaire Rathdown, South Dublin and Dublin City Council) in 2007 the rate of appeal is consistently much higher – 15.7% in Dublin City Council, 14.2% in South Dublin, 22.4% in Dun Laoghaire Rathdown; and 14.4% in Fingal.¹⁶ While planning applications to the Dublin Local Authorities formed 12.2% of the national total in 2007, 30% of all appeals to the Board came from Dublin Local Authority areas.

3.1.4 New Mechanisms for “expeditious” determination

3.1.4.1 Strategic Infrastructure

The purpose of the Planning and Development (Strategic Infrastructure) Act 2006 is to facilitate developments “*of strategic economic or social importance to the State.*” This echoes the Planning and Development Act 2000, which provided for the establishment of Strategic Development Zones (SDZ’s) to facilitate such development. The Planning and Development (Strategic Infrastructure) Act 2006 is therefore intended to speed up the delivery of large infrastructure projects, by providing for the “expeditious determination” of such applications by allowing direct application to the Board.

Under this legislation, the Board must first determine whether a project comes within the remit of “Strategic Infrastructure”. There is no time limit on the Board to make this determination, and during which time the potential developer may not apply to the Local Authority for planning permission, adding an extra level of delay to unsuccessful applicants.

Of the 35 strategic infrastructure development applications received in 2007, only 6 were concluded in that year. The Board has received 17 formal applications for

¹³ Page 6, An Bord Pleanála Annual Report, 2007.

¹⁴ Page 7, An Bord Pleanála Annual Report, 2007.

¹⁵ Table 5, Department of the Environment Annual Planning Statistics 2006, and Department of the Environment Planning Statistics Quarterly 2007.

¹⁶ Table 6, 2007 Annual Planning Statistics, Department of the Environment.

strategic infrastructure developments in the first five months of 2008. By November 2008 determinations were issued in respect of 8 infrastructure developments in 2008. Accordingly, it is feared that without changes to the structures in place, the Board lacks the capacity to operate the system efficiently.

It is noted that there is no penalty or sanction on the Board for failing to meet its objective for reaching a decision. The Board has little hope of achieving its stated aims as it does not have the capacity to deal with its current case load. For the 40% of applications deemed not to be "Strategic Infrastructure", the applicants may now recommence their applications in the normal channels, having waited up to 23 weeks on a decision by the Board. It is noted that the Metro North project, a vital piece of strategic infrastructure first mooted in 2002, has been in the initial pre-application stage with An Bord Pleanála for over 13 months now.

3.1.4.2 Strategic Development Zones

To date, only four Strategic Development Zones have been designated, all of a primarily residential nature – Adamstown in South Dublin, Hansfield in Fingal, Clonmagadden Valley in County Meath, and most recently Clonburris, in South Dublin (currently at Oral Hearing stage with An Bord Pleanála). Adamstown has seen the quickest progress, with 972 residential units completed in March 2008, with planning permission for some 1600 more, and the development of transport and education infrastructure. Permission was granted for 219 homes in Hansfield in January 2007. Clonmagadden Valley was approved as a Strategic Development Zone in 2004, but has not yet reached the planning permission stage. The difficulties in achieving commitments from all stakeholders and service providers (Irish Rail, Department of Education and Science, other developers, etc.) are evident in the Oral Hearing report for the Hansfield Strategic Development Zone. The Board has no powers to compel Irish Rail to reopen the Navan-Dublin rail line, for example, on which the recommended density of the development depended.

3.1.4.3 Local Area Plans

While we welcome the opportunities for integrated planning and development afforded by Local Area Plans, the lack of timely preparation is a hindrance to development. It appears that, despite the stated intentions of Local Authorities, a chronic lack of human resources and funding at forward planning stage leads to an inability to prepare Local Area Plans in a timely fashion. This leads to obvious problems as applications are deferred until such time as the plan is completed, due to a lack of objectives and zoning for the area. For example, the draft Local Area Plan for Bray Environs was originally envisaged for presentation to the members of Dun Laoghaire Rathdown County Council in early 2006. While section 19 of the Planning and Development Act 2000 imposes a two-year time limit for the preparation of Local Area Plans after the creation of the Development Plan on Local Authorities, there is no sanction for exceeding this, and hence little incentive for Local Authorities to divert scarce resources into this valuable area of forward planning.

3.2 Flexibility or vagueness?

Compared with other jurisdictions, Ireland's development plans are designed to be very flexible. While all planning regimes vary, most have in common that they regulate both land use activities and the form of the built environment. In a comparison with other regimes in North America, Europe, and New Zealand, the English and Scottish systems were the only two with a similar level of flexibility – or vagueness – as Ireland, regarding the form and application of development control standards.

3.2.1 International Examples

For example, while Dublin City Council has two types of residential zone (residential and residential conservation area) **Baltimore City** has twelve different residential zonings. For each of these twelve zones, acceptable heights, densities and site coverage are designated. They list nine different dwelling types, not all of which are permitted in every zone – some allow only low-density detached housing, while others allow terraces of up to twelve houses. This is not purely a US phenomenon, the **City of Vancouver** has no less than 40 different residential zones. This system is not without its faults, developed in the main to protect the amenity of existing middle class suburbs, it has been heavily criticised for contributing towards low density car-dependant sprawl and racial and social segregation. However, it remains popular in many North American cities as it confers a high level of certainty and reassurance to both existing property owners and potential developers as to what may or may not be developed on a particular site.

In Hungary, the 'Area Arrangement Plan' (Development Plan) is much more prescriptive than Irish development plans providing site specific designations in the form of guidance (limits) on key parameters such as Site coverage, Building heights, Plot Ratio, Open Space, etc., for each plot within the plan area.

Christchurch in New Zealand has detailed development standards, community standards and critical standards for each 'Living zone' providing specific limits for heights, site coverage and building form.

The **City of Paris** does not differentiate between different types of residential typologies; however, it provides considerable certainty in the built form by setting different maximum height limits throughout the city, from 18 to 37 metres, (5 to 11 storeys). In certain significant streets, the roof pitch and profile of any future development is also decided upon at development plan stage. There are extra provisions for protected views in the city centre, which provide further certainty as to the height and form of buildings that will be permitted.

The **City of Westminster's** Unitary Development Plan sets out its policy on high buildings in relative terms, defining a high building as 'that which is significantly higher than its surroundings.' No figures are given for maximum (or minimum) heights, however high buildings are not permitted where they would intrude on specific views or impact adversely on conservation areas.

Glasgow's City Plan similarly sets out a policy on 'high-rise development', which it defines as developments which 'exceed the general building heights of their surroundings', indicating geographical areas where they may be acceptable.

4 DUBLIN'S APPROACH TO BUILDING HEIGHTS

4.1 Current Debate

Perhaps not surprisingly given the history of the development of planning in Ireland, Dublin development plans resemble the UK examples above more than those of the rest of Europe or further afield. Most of the councils in the Greater Dublin Area rely on guidelines on height, but not limits (either maximum or minimum). South Dublin County Council gives a benchmark maximum height of five storeys. It is Fingal's policy to take into account a list of urban design and amenity considerations, when considering a proposal for a tall building, but no height guidelines are given. Dun Laoghaire Rathdown's *Building Height Strategy* (March 2007) is to be welcomed,

setting out recommendations for benchmark heights and landmark buildings for different area types, ranging from two to fifteen storeys.

The DEGW Report *Managing Intensification and Change A Strategy for Dublin Building Height* (2000) was a much needed attempt to develop a strategy to produce a building height policy for Dublin City, but it was non-prescriptive in nature. This has recently been superseded by the publication in December 2007 of the draft report "*Maximising the City's Potential: a Strategy for Intensification and Height*", which has gone through extensive public consultation stage but has yet to emerge as a policy document. This identifies "high intensity clusters" to the East (Docklands) and to the West (Heuston) and the "knowledge axis" of Grangegorman and the Digital Hub, as having significant scope for intensification. Building heights within the historic core of the city will be determined by the prevailing height, with a proposed upper limit on new development of 8 storeys. Heights of 4 to 10 storeys are proposed for some areas in the outer city, but guidelines for many areas are dependent on as yet uncompleted Framework Plans and Action Area Plans.

4.2 Lack of clarity and consistency

This greater degree of flexibility in Dublin's development plans is sometimes construed as a liberal approach to development – however, in practice; it merely defers much necessary decision-making to the development control stage. Individual planners must consider subjective concepts such as amenity and character, relying on indicative guidelines, framework documents and suggestions rather than referring to predetermined statutory limits (whether minimum or maximum) on height and density. This lack of clarity has the added effect of congesting the appeals system, as the subjective interpretation of many policies leads to a lack of clarity for development control planners, a perceived lack of consistency in decisions, and a consequent lack of esteem for decisions made.

Due to the flexibility of the development plan, a large volume of information is necessary at the development control stage, both in applications and further information requests. While it is accepted that much information is needed to allow a decision to be made, the ensuing expense and commitment of resources is particularly frustrating when an application is refused.

The Chair of An Bord Pleanála, John O'Connor, previously expressed concern about the lack of informed debate and the lack of properly debated and adopted policies on building height in cities and towns. He found decisions are being made on an *ad-hoc* basis, and the majority of high-rise developments seem to be appealed.

5. SUGGESTED CHANGES TO IMPROVE THE OPERATION OF THE PLANNING SYSTEM

5.1 Amend focus of planning staff and resources

In 2007, of 576 planners (full time equivalent) employed in Local Authority planning departments nationally, 65% are engaged in a planning control role, with 28% of staff engaged in forward planning and 7% engaged in enforcement.¹⁷

¹⁷ Table 32, Department of the Environment Annual Planning Statistics 2007.

5.2 Increase capacity by decreasing caseload

Dublin Chamber believes it is beneficial to examine ways of decreasing the workload on local authority planners and the Board. The Chamber see there being two main ways of approaching this:

- Identify areas of development that do not need the attention of the planning system. (i.e., expand the scope of exempted development or identify areas that could be managed by other authorities or bodies).
- As land use planning is a mechanism to manage potential conflict, increase mechanisms to achieve consensus and certainty.

These are not mutually exclusive models; but rather two ways of looking at the same process - increasing consensus, reducing uncertainty and conflict.

5.2.1 Increase scope of exempted development

Local Authorities sometime effectively create work for themselves by requiring that development that would otherwise be exempted development be the subject of a planning permission – by, for example, specifying by condition that normally exempt changes of use or construction such as extensions or alterations need planning permission. A thorough re-examination of the exempted development regulations, regarding internal layouts, commercial buildings and industrial premises, and changes of use is required and would contribute in no small measure to reducing the number of applications being made to Local Authorities. In the UK, the General Development Order (GDO) is updated approximately every 10 years. This sets out “permitted development”, the UK equivalent of exempted development. The GDO of 1988 allowed for extensions and alterations to industrial buildings and agricultural buildings, without the need for planning permission, subject to certain conditions. The General Permitted Development Order 1995 replaced the General Development Order of 1988, and the schedule of permitted development was updated to permit the erection of Driver Information Systems, Toll Road Facilities, and CCTV cameras, subject to certain criteria. It also permits extensions or new buildings to school or hospital grounds, subject to conditions, removing the need for many small planning applications.

In this regard, the recent Planning and Development Regulations that introduced exemptions for renewable energy technologies on domestic properties is welcomed. It is critical that a more flexible regime applies to the installation of small sized wind turbines and solar panels on commercial buildings as well.

Reviewing the exempted development provision should be a continuous process and an integral part of the management of the system, as in the UK. In the UK, the Use Class Order 1987 is regularly reviewed and updated, to adapt to changes in society. For example, internet cafés have been classed as shops since 2005, (as are hairdressers, travel agents, and post offices), so planning permission is not required to change a travel agency into an internet café. The Department for Communities and Local Government issues detailed circulars giving guidance in laymen’s terms on such matters as the interpretation of the Use Classes. In Ireland, however, the Planning and Development Regulations 2001 reproduced exactly the Use Classes of the 1994 regulations. There is no mention for example of internet cafés in the 2000 act, or in any subsequent Regulations or Amendments, so anyone wishing to open an internet café, even in existing commercial premises, must apply for planning permission. The current Use Classes are not sufficiently fine grained to reflect current land uses and thus many changes of use could be removed from the need to obtain planning permission.

5.2.2 Neighbours' consent

New Zealand makes use of what are known as "neighbours' consents" for developments, which have effects over a limited area. If an individual wants to build right up to their site boundary, for example, or run a small business from their home, they ask their affected neighbour(s) to sign a consent form. The planning authority will take this consent into account, aiding a speedy decision. This also has the effect of encouraging dialogue and co-operation between neighbours in a way an adversarial system doesn't, as neighbouring property owners depend explicitly on each other's consent.

5.2.3 Single permissions for multiple developments

A similar initiative would allow for future domestic extensions or alterations, for example, when granting permission for housing developments. A planning application for a medium or large residential estate could include proposals for a comprehensive scheme of future roof or side extensions, or attic conversions throughout, for example, which could be granted a fifteen-year permission. This would mean commencement notices would be sought, and building control satisfied, without dozens of small planning applications having to be made. This would have an additional benefit – it would cut down on future objections and third party appeals, as residents would have prior knowledge of potential future development.

5.2.4 Increase consensus and certainty

A central purpose of the planning system is to mediate between conflicting interests in land uses. More clarity and consensus at forward planning stage would remove the burden on development control, including third party appeals, further in the process.

The current Development Plan preparation process falls under the 'present and defend' heading – a draft plan is presented to the public, and planners defend it. In Paris, during the consultation process for their development plan (known as the *Plan Local d'Urbanisme*) a questionnaire was sent to every Parisien soliciting opinions. This has the dual benefit of legitimising council decisions, and creating an inclusive consultation system.

5.2.5 Increased role for pre-application meetings

While pre-application meetings are often helpful, they take place without prejudice. The Local Authority is not bound by anything it says or omits to say. Permission can be and is refused on grounds not highlighted at pre-planning consultations. This is obviously a source of considerable frustration to applicants, who make time consuming and expensive applications only to be refused on issues not previously highlighted as being relevant. If the conclusions and recommendations of pre-planning meetings were made binding, fewer further information requests and refusals necessitating repeat applications and/or appeals would result.

In the UK, a Design and Access Statement is necessary with every application, giving an account of how the design was arrived at and how it meets the access needs of the population. Depending on the development, this can range from a very simple document to a very complex one. A similar system in Ireland is an example of how to reduce further information requests, and be helpful to third parties.

5.2.6 Utilising existing capacity in the wider community

Consideration should be given to creating a larger participative rather than consultative role in the planning system for members of the wider community.

There's a growing emphasis on participative rather than representational democratic structures throughout the European Union (e.g., citizen participation in Water Framework Directive River Basin Management). Citizen Review Boards have long been used in cities in the United States. For example, Baltimore, Maryland's Commission on Historical and Architectural Preservation (established 1964) is a committee of eleven volunteers selected by the Mayor, with considerable responsibilities for designating landmarks (protected structures).

Creating a larger direct role for citizen representation has a dual benefit. Firstly, on a practical level, it spreads the workload. Secondly, it creates a positive forum for citizen participation rather than a negative objection-based role.

In addition, care should be taken to avoid 'mission creep' by planning departments. Issues that are the concern of other sections of the Local Authority (building control, fire safety, drainage) or other authorities (EPA) should not be the concern of the planning system. Developers and builders have a responsibility to adhere to Building and Fire Regulations, and architects have the responsibility of signing certificates of compliance. These are issues which are not of concern to land-use planning.

5.2.7 Public Representation

The role of Councillors is currently undergoing comprehensive review as part of the green paper on local government reform.

Since the foundation of the State, there has been a heavy emphasis on representative rather than participative democracy. Dublin City Council's 506,000 residents are represented by 50 councillors – while the 600,000 residents of Boston city are represented by 13 councillors. It is the norm in American cities for zoning to be adjudicated on by Boards selected by an elected Mayor, rather than by directly elected councillors.

The current programme for government has already committed to a directly elected Mayor for Dublin with executive powers by 2011. We have been calling for a directly elected Mayor since 2004 and we welcome this commitment. The example of London shows how a Mayor's office and Regional Assembly with real responsibilities can be successfully added to existing Local Government. There is a need for a single authority for the Functional Urban Region of Dublin, to direct the efforts and plans of the many local authorities and service providers. Dublin needs an equivalent to the London Plan; a strategic detailed spatial development strategy for the Functional Urban Region of Dublin, not curtailed by historical county boundaries but including those areas of surrounding counties which form its commuter belt.

5.2.8 Reduce third party appeals:

Relative to other jurisdictions, Ireland has strong third party rights. Anyone with an address in the state can make an objection and subsequently appeal a decision on a site elsewhere in the state. There is no onus on the appellant to prove that they have a 'substantial interest' or any interest, in the development proposed, as is necessary for judicial review. Unaffected third parties are accorded the same rights as affected third parties.

In New Zealand by comparison, Local Authorities identify who is likely to be affected by a development and only these are entitled to make a submission. Appeals in New Zealand are made directly to the Environment Court – a costly and time consuming process similar to a judicial review in Ireland.

Third party appeals are frustrating for applicants, and Greg Coughlan of Howard Holdings, one of the major developers of the significant Cork Docklands project recently referred to “a culture of serial objection” in Ireland which risked repelling potential investors with mobile capital. Just under half the cases dealt with by An Bórd Pleanála in 2007 concerned third party appeals.¹⁸ While the Board has the right to dismiss an appeal which is frivolous, vexatious or without substance or foundation, there is no sanction applied to those who lodge such appeals. This, combined with the lengthy delays currently experienced, leaves the appeal system open to abuse. Even when the appeal process is exhausted, appellants with the means to do so can apply for a judicial review.

However, what is sometimes perceived as NIMBYism needs to be approached as a symptom of an underlying problem. Research shows that objectors usually have genuine fears and concerns – although these fears may ultimately be unfounded.

Any restriction of third party rights of appeal would need to be approached as part of an overall review of the planning system, to ensure adequate participation and equitable decisions. Many systems with less third party participation in development control have meticulously detailed development plans and zoning maps, according a high level of assurance to all parties, not just third parties. In Ireland, as elsewhere, it is necessary to balance the constitutional and human rights of third parties against the rights of the applicant and the common good.

¹⁸ 45% of cases concerned third party appeals only, 3.2% of cases concerned first party appeals and third party appeals.

Appendix 1

Doing Business 2009 is the sixth in a series of annual reports by The International Bank for Reconstruction and Development / The World Bank, investigating the regulations that enhance business activity and those that constrain it. *Doing Business* presents quantitative indicators on business regulations and the protection of property rights that can be compared across 181 economies—from Afghanistan to Zimbabwe—and over time.

Regulations affecting 10 stages of the life of a business are measured:

- starting a business,
- dealing with construction permits,
- employing workers,
- registering the business,
- getting credit,
- protecting investors,
- paying taxes,
- trading across borders,
- enforcing contracts, and
- closing a business.

Data in *Doing Business 2009* is current as of 1st June 2008. The indicators are used to analyse economic outcomes and identify what reforms have worked, where and why. Overall Ireland is ranked as the 7th easiest country for doing business in out of the 181 countries (USA is 3rd, UK is 6th, Germany is 25th, France is 31st and Italy is 65th). However when it comes to dealing with construction permits Ireland ranks 30th (out of 181 countries). (See Table 1)

Table 1

| Country | Rank (Overall ease of doing business) | Rank (Dealing with construction permits) | Procedures (number) | Time (days) | Cost (% of income per capita) | Absolute cost (US\$) |
|-----------------------|--|---|------------------------|----------------|--|----------------------------|
| <u>Austria</u> | 27 | 46 | 13 | 194 | 70.4 | 30,060 |
| <u>Belgium</u> | 19 | 44 | 14 | 169 | 65.2 | 26,540 |
| <u>Bulgaria</u> | 45 | 117 | 24 | 139 | 493.6 | 22,630 |
| <u>Cyprus</u> | Not Surveyed | | | | | |
| <u>Czech Republic</u> | 75 | 86 | 36 | 180 | 16.9 | 2,440 |
| <u>Denmark</u> | 5 | 7 | 6 | 69 | 60.9 | 33,440 |
| <u>Estonia</u> | 22 | 19 | 14 | 118 | 27.5 | 3,630 |
| <u>Finland</u> | 14 | 43 | 18 | 38 | 118.3 | 52,525 |
| <u>France</u> | 31 | 18 | 13 | 137 | 23.8 | 9,163 |
| <u>Germany</u> | 25 | 15 | 12 | 100 | 62.2 | 24,170 |
| <u>Greece</u> | 96 | 45 | 15 | 139 | 46.4 | 13,750 |
| <u>Hungary</u> | 41 | 89 | 31 | 204 | 10.3 | 1,190 |
| <u>Ireland</u> | 7 | 30 | 11 | 185 | 44.4 | 21,375 |
| <u>Italy</u> | 65 | 83 | 14 | 257 | 136.4 | 45,750 |
| <u>Latvia</u> | 29 | 78 | 25 | 187 | 20.6 | 17,090 |
| <u>Lithuania</u> | 28 | 63 | 17 | 162 | 109.9 | 10,900 |
| <u>Luxembourg</u> | 50 | 40 | 13 | 217 | 20.0 | 15,175 |
| <u>Malta</u> | Not Surveyed | | | | | |
| <u>Netherlands</u> | 26 | 94 | 18 | 230 | 112.1 | 51,365 |
| <u>Poland</u> | 76 | 158 | 30 | 308 | 137.0 | 13,480 |
| <u>Portugal</u> | 48 | 128 | 21 | 328 | 53.5 | 10,080 |
| <u>Romania</u> | 47 | 88 | 17 | 243 | 91.2 | 5,610 |
| <u>Slovakia</u> | 36 | 53 | 18 | 287 | 13.1 | 1,540 |
| <u>Slovenia</u> | 54 | 69 | 15 | 208 | 112.2 | 23,520 |
| <u>Spain</u> | 49 | 51 | 11 | 233 | 62.3 | 18,350 |
| <u>Sweden</u> | 17 | 17 | 8 | 116 | 103.5 | 47,675 |
| <u>United Kingdom</u> | 6 | 61 | 19 | 144 | 64.2 | 27,265 |
| | | | | | | |
| USA | 3 | 26 | 19 | 40 | 13.1 | 6,030 |
| Canada | 8 | 29 | 14 | 75 | 103.7 | 40,890 |
| Australia | 9 | 57 | 16 | 221 | 13.2 | 4,750 |
| China | 83 | 176 | 37 | 336 | 698.4 | 16,480 |
| | | | | | | |

Appendix 2

In July 2009, the UK Department for Communities and Local Government published a consultation document entitled "Improving Permitted Development". The basic thrust of the consultation is to help businesses cut their costs during the challenging economic climate.

The document sets out the Government's proposals for changes to the planning system to increase the types of development that can be undertaken by commercial and industrial concerns without the need to apply for planning permission from the local planning authority. It also proposes a prior approval procedure for proposed developments which requires limited information from applicants with regard to prospective developments, and where consent is deemed granted if the planning authority does not object within a given time-period.

The Department believes that if implemented in full, the proposals set out in the consultation document would remove approximately 25,000 applications from the system annually in England. (In 2007-08, 649,000 planning applications were made in England. The latest figures indicate a 30% drop in applications made year on year in the first quarter of 2009).

Allowing for the differing statutory basis and systems between the UK and Ireland, some of the principles contained in the consultation document would hold true here – for example, reducing the types of non-domestic development that require permission and streamlining the information required to make an application.