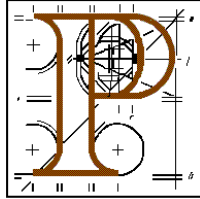


An Bord Pleanála.



7th Schedule: Strategic Infrastructure Development - Guidelines for Applicants.

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1. Introduction

The strategic infrastructure provisions of the Planning and Development (Strategic Infrastructure) Act 2006 (the 2006 Act) came into effect on 31st January 2007. The Act, which amends the Planning and Development Act 2000 (the 2000 Act)^[1], provides generally for applications for permission/approval for specified private and public strategic infrastructure developments to be made directly to the Board.

Part 18 of the Planning and Development Regulations 2006 (S.I. No. 685 of 2006) relating to strategic infrastructure development also came into effect on 31st January 2007. The 2006 Regulations amend the Planning and Development Regulations 2001^[2].

Strategic infrastructure developments (mostly private developments) to which these guidelines refer are those listed in the 7th Schedule to the 2000 Act (inserted by section 5 of the 2006 Act, amended by section 78 of the Planning and Development (Amendment) Act 2010 and section 41 of the Environment (Miscellaneous Provisions) Act 2011). These generally relate to major energy, transport and environmental infrastructure projects and to health infrastructure.

Sections 26, 64, 66 and 81 of the Planning and Development (Amendment) Act, 2010, amend the Principal Act by allowing the Board to determine the amount of costs incurred in conducting pre-application consultations and complying with scoping requests in addition to determining costs involved in processing an application for 7th Schedule developments, electricity transmission lines, strategic gas infrastructure developments, and railway orders. These provisions commenced on 19th August 2010 for 7th Schedule developments.

The determination of such costs must be made by the Board when it makes a final decision on the application.

The statutory provisions provide for up to three stages – pre-application consultations; scoping of the EIS; and the application for permission.

2. Definition of Strategic Infrastructure Development.

The 7th Schedule to the 2000 Act lists the classes of infrastructure development which, if considered by the Board to be strategic infrastructure development, require direct application for permission to the Board instead of the local planning authority. To qualify as strategic infrastructure development a proposed development must first come within the scope of one or more of the classes and comply with the thresholds contained in the 7th Schedule. In addition, the Board must come to the opinion that the proposed development, if carried out, would fall within one or more of the following:-

- is of strategic economic or social importance to the State or the region in which it would be situate,
- would contribute substantially to the fulfillment of any of the objectives of the National Spatial Strategy or any regional planning guidelines in respect of the area or areas in which the development would be situate,
- would have a significant effect on the area of more than one planning authority.

The opinion is formed by the Board at the conclusion of the pre-application stage.

3. Pre Application Consultations (Stage 1).

3.1 General.

It is a mandatory requirement for a prospective applicant for planning permission for development listed in the 7th Schedule to enter into pre-application consultations with the Board and obtain notice from the Board stating whether or not the proposed development is regarded as strategic infrastructure development. For the purposes of these consultations, the prospective applicant must supply sufficient information to the Board to enable it to assess the proposed development in the light of the criteria set out for strategic infrastructure development.

The purpose of pre-applications is set out in the Planning and Development (Strategic Infrastructure) Act, 2006, and in the Planning and Development Regulations 2006. In pre-application consultations the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding –

- Whether the proposed development constitutes ‘Strategic Infrastructure Development’, having regard to the provisions of the legislation.
- The procedures involved in making an application for permission to the Board and in considering such an application.
- Considerations, relating to proper planning and sustainable development or the effects on the environment, which may in the Board’s opinion, have a bearing on its decision in relation to the application.
- An indication of the bodies/persons which the prospective applicant should consult with prior to lodging an application and completion of an EIS.
- The Prescribed Bodies (under Art. 213) which should be notified of the application.

3.2 Request for Consultations.

3.2.1 Before making a request for pre-application consultations, a prospective applicant should check to see if the proposed development is of a class listed in the 7th Schedule of the 2000 Act, as amended. If it is not, it cannot be deemed to be strategic infrastructure development and the application should be made to the local planning authority for the area.

3.2.2 An application for pre-application consultations should be made in writing and be addressed to **The Secretary, An Bord Pleanála, 64, Marlborough Street, Dublin 1.**

3.2.3 An application for pre-application consultations should generally include the following information:

- the name and address of the prospective applicant, contact telephone numbers and email address, if available,
- the name and address of the prospective applicant's main agent, if any, contact telephone numbers and email address, if available,
- general description of the nature and scale of the proposed development,
- address of the proposed development and a brief description of the site and surrounding area,
- A site location map(s) and a site map(s) showing the boundaries of the site,
- Where necessary, a statement of the prospective applicant's legal interest to enable it to carry out the proposed development if approved,
- the class of development within the 7th Schedule to which the proposed development belongs,
- name of the planning authority or authorities, if more than one, in whose functional area(s) the site is situated^[3],
- statement as to why or why not the prospective applicant considers the proposed development should be regarded as strategic infrastructure development having regard to the criteria set out in section 37A(2) of the 2000 Act – see part 2 of these Guidelines.

Note: commercially sensitive information should not be submitted during pre-application consultations as all information on file will be available for public inspection at the close of the consultation stage.

3.2.4 Fees.

In accordance with the provisions of section 144 of the Planning and Development Act 2000, as amended, the Board has determined that a fee shall be charged for any request for pre-application consultations received on or after 5th September 2011. The amount of the fee is €4,500 with the provision that in

any case where not more than one meeting is held as part of the consultations €3,500 shall be refunded to the person who submitted the fee.

3.2.5 On receipt of a request for pre-application consultations, the Board must notify the relevant planning authority (or planning authorities where the proposed application site would straddle different planning authority areas) of the request. This notification will consist of a letter describing the nature of the proposed development and a site location map(s).

3.2.6 Notice of all requests for pre-application consultations will be recorded on the Board's statutory weekly list of new applications received and will be posted on the Board's website (www.pleanala.ie).

3.3 Consultations.

3.3.1 *General*

The nature of pre-application consultations may vary from case to case and may require more than one meeting. The Board will be represented at official level (at least one inspector and one administrator). Board members will not be present at the meeting. The Board may require the prospective applicant to supply additional information to it in order for the Board to give its opinion. Discussions/meetings forming part of the pre-application consultations will generally take place in the Board's offices. It is envisaged that a meeting will be held within 4 weeks of the making of a formal request and the submission of satisfactory information to the Board. If a second or subsequent meeting is held with the prospective applicant then, subject to the prospective applicant being ready, the aim is to hold the second meeting within a further 3 weeks.

Applicants should be aware of the Board's obligation under section 37J of the Act to carry out pre-application consultations expeditiously and to avoid unnecessary delays. Consequently, requests for pre-application consultations should only be made when the applicant has defined the project and not at any preliminary stage. With this in mind, it is the Board's intention to hold meetings at a maximum of three-monthly intervals during the consultation process. The Board may decide at any time to close the consultation process if it is deemed to have reached a natural conclusion or where there is a significant lack of progress evident.

3.3.2 *Issues*

During pre-application consultations the Board may indicate what considerations relating to the proper planning and sustainable development of the area may have a bearing on its decision. For general guidance on such considerations and the matters a prospective applicant might be expected to address at pre-application consultations, see paragraph 5.6 following relating to the planning

authority report. Most of the items mentioned will also be relevant to prospective applicants.

The Board may consult with the local authority(s) in whose area the site is situated, or with any of the relevant prescribed bodies. The purpose of any such consultations will be to identify any constraints that would affect the site and to ascertain whether there are plans or programmes being contemplated or undertaken that would have a bearing on the application. The Board may also consult with any other person who may have information which is relevant for the purposes of consultations under section 37B in relation to the proposed development.

Prospective applicants are advised to directly engage with the local authority in whose area the site is situated and with any relevant prescribed bodies.

3.3.3 Record of Consultations

The Board will make a record of any meetings held. It will forward a copy of the record, on a confidential basis, to the applicant as soon as may be after (each of) the meeting(s). These will remain confidential until the consultation stage has concluded – see 3.4.4 below.

Where the Board consults with the local authority in whose area the site is situated or with any prescribed body or other person, a record of such consultations will be made and a copy of such record(s) will be given to the prospective applicant at the next meeting. The record of any such consultations will also become publicly available when the pre-application consultation stage has concluded.

3.4 Conclusion of Consultations.

3.4.1 Notice

Following consultations, the Board will serve notice of its decision on the prospective applicant and also on the relevant planning authority(s) and any other party that has been consulted.

3.4.2 Development not determined as SID.

Where the Board issues notice that the proposed development is not regarded as strategic infrastructure development, any application must then be submitted to the relevant planning authority(s) in the normal way. There is a normal right of appeal to the Board by any person against the decision of any such planning authority on the application.

3.4.3 *Development is determined as SID.*

Where the Board issues notice that the proposed development is regarded as strategic infrastructure development, the application must be submitted directly to the Board. When issuing the notice, the Board may indicate to a prospective applicant the following:

- which bodies, prescribed under article 213 of the Regulations, should be notified of the application by the prospective applicant,
- where the Board concludes that there would be likely significant effects on the environment in a Transboundary State, which bodies, in which States, should be notified and how many copies of the application and EIS should be sent with the notification,
- any specific requirements in relation to Gaeltacht areas,
- the plans, particulars or other information required to be submitted in order to consider the application,
- the timeframes and sequencing of the application process,
- any other matters in relation to the application process including information in relation to the nature of the costs which may be awarded against the applicant under section 37H(2)(c) of the 2000 Act and any fee to be paid, and the form in which the application should be submitted,
- the form and content of the public newspaper notice required to be published in advance of a planning application to the Board,
- whether the erection of a site notice is required by the Board, specify a location/place and/or website for making available the application, EIS and any other relevant documentation for inspection or purchase at a reasonable fee (this information will be contained in the public notice),
- use of local or national media, and/or holding of meetings with any person or body or for the public.

It should be noted that responsibility for the accuracy of the description of both the development and its location in the public notices, on the website and in the application documents rests solely with the prospective applicant.

3.4.4 *Other Matters*

On completion of pre-application consultations:-

- the record of consultations will be forwarded to the prospective applicant and a copy will be kept and made available for public inspection,
- the Board's determination on the status of the proposed development will be recorded on the Board's statutory weekly list of cases decided and will be posted on the Boards website (www.pleanala.ie).
- a copy of the Board's file, including the records of any meetings, will be made available to the public.

3.4.5 *Meetings non-prejudicial to Board*

The holding of consultations does not prejudice the decision of the Board in any subsequent application in any way and cannot be relied upon in the formal planning process or in legal proceedings. The Board will keep a record of consultations, including the names of the participants.

4. Scoping of Environmental Impact Statement (EIS) (Stage 2).

4.1 General.

Upon receipt of notice that the planning application must be made directly to the Board, the prospective applicant may request the Board to scope the EIS to be submitted with the application, i.e. give an opinion in writing regarding the information which should be contained in the EIS. The scoping stage is not mandatory. Before providing this opinion, the Board must consult with bodies prescribed by the Minister under article 211 of the Regulations including the relevant planning authority. It may also invite submissions or observations from a wide range of other bodies prescribed under article 213 of the Regulations.

In the case of 7th Schedule developments, the pre-application consultations must have concluded before a request for scoping is made.

4.2 Request to Scope.

A request to scope an EIS should be made in writing to **The Secretary, An Bord Pleanála, 64 Marlborough Street, Dublin 1.**

The prospective applicant must supply the Board with sufficient information in relation to the proposed development to enable prescribed bodies to make informed submissions and for the Board to give an opinion in relation to the request. In particular, the proposed development must be adequately described and clearly indicated on drawings of an appropriate scale.

The Board may request the prospective applicant to submit sufficient hard or electronic copies of the scoping request so that it can be circulated to the appropriate prescribed bodies.

The Board is required to comply with a request for scoping as soon as is practicable.

4.3 Fees.

In accordance with the provisions of section 144 of the Planning and Development Act 2000, as amended, the Board has determined that a fee shall be charged for any request received on or after 5th September 2011 for a written opinion on the information to be contained in an environmental impact statement. The amount of the fee is €5,000.

4.4 Scoping Opinion.

4.4.1 Scoping can be defined as the prior determination of the nature and detail of the information to be contained in an EIS. It seeks to identify the areas of potential impact and the appropriate methods by which to evaluate them prior to the commencement of detailed data collection or assessment. The information to be contained in an EIS is set out in article 94 and Schedule 6 of the Planning and Development Regulations 2001 (S.I. No 600 of 2001) and the criteria for determining whether a development would or would not be likely to have significant effects on the environment is set out in Schedule 7 of those Regulations. These are matters to which the Board will have regard when giving a scoping opinion and prospective applicants will be required to submit sufficient information to the Board to enable it to provide such an opinion. The Environmental Protection Agency's *Guidelines on the Information to be contained in Environmental Impact Statements* (March 2002) should be consulted for further information on the matter. Ultimately, it is a matter for the applicant to prepare the EIS in accordance with the statutory requirements when making the application under Stage 3 below.

4.4.2 The Board may hold a meeting (at official level) with the prospective applicant in order to clarify any matter or obtain any additional information. A scoping opinion provided by the Board will be sent to the prospective applicant and will also be attached to the planning application documents upon the making of an application.

4.4.3 The Board's file on the scoping procedure will be open for public inspection at the Board's offices following the giving of the written opinion. The case will be listed on the Board's weekly list of cases determined and the opinion will be posted on the Board's website.

4.4.4 Any opinion given is without prejudice to the Board and cannot be relied upon in the formal planning process or in legal proceedings.

5. Planning Application (Stage3).

5.1 General.

Where the Board has issued notice to a prospective applicant that a proposed development is deemed to be strategic infrastructure development (Stage 1 above), an application for permission in writing for that proposed development may only be made to the Board and must be accompanied by an EIS. An application form is available and should be completed and submitted with the application documents. (Electronic applications are not acceptable at present). If the Board considers the application or the EIS is inadequate or incomplete it may refuse to deal with the application or it may require further information.

5.2 Notice of Application.

Before making an application to the Board, a prospective applicant must publish in one or more newspapers circulating in the area of the application site indicating the following:-

- the nature and location of the proposed development,
- that permission is being sought from the Board and that an EIS, and a Natura Impact Statement (NIS) where relevant, have been prepared,
- the times and places and the period (not less than 6 weeks) during which the application and EIS/NIS may be inspected or purchased (- this time period should commence at least 5 working days after the application has been submitted to the Board),
- that submissions and observations may be made to the Board relating to the implications for the proper planning and sustainable development of the area and the likely effects on the environment or any European site, if the development is carried out,
- indicating the types of decision the Board can make in relation to the application,
- where the proposal will require an integrated pollution prevention and control (IPPC) or Waste Licence or the Major Accidents Regulations apply, an indication of that fact – see also 5.7.4 following,
- the name/address of the stand-alone website, and

- how a person may question the validity of any decision by the Board and where practical information on the review mechanism may be found.

In addition, site notices, the use of local or national media or the holding of public meetings relating to the proposed application may be required. The Board will have specified its requirements, if any, in that regard at the pre-application stage.

A sample public notice is available from the Board.

5.3 Making an Application.

5.3.1 *Documents to be Submitted*

In making an application for permission, the applicant is required to submit the following in writing to the Board:-

- A completed application form,
- Copies of plans and particulars of the proposed development, including the EIS, and any plans, particulars or other information required by the Board (the number of copies and their format will be clarified during the pre-application consultation stage),
- Screening in relation to article 6 of the Habitats Directive and Appropriate Assessment in relevant cases.
- Copies of the NIS where relevant. (The number of copies and their format will be clarified during the pre-application consultation stage).
- A copy of the published notice(s) including any site notice (if required),
- A list of the bodies notified of the application and an indication of the date they were notified,
- A list of any other public notices or other public consultations, and an indication of the date or dates of such notice(s) or consultations (including any notice or consultation required by the Board and indicated to the prospective applicant in pre-application discussions),
- The application fee of €100,000 is payable when the application is being lodged.

Application documents, including the EIS and the NIS where relevant, must be complete on lodgement of the application and the holding of an oral hearing should not be regarded as a stage in the process where deficiencies can be

corrected. Attention is drawn to the Board's power under s.37E(2) to refuse to deal with any application where the Board considers that the application or EIS is inadequate or incomplete, and to the Board's discretion as to whether an oral hearing should be held in any particular case. Unsolicited additional information in the form of survey material or reports generally should not be submitted following lodgement of the application. Any unsolicited information should be confined to non-contentious matters such as clarification of particulars already submitted (as per the Development Management Guidelines 2007). This also applies where the applicant is requested to respond to observations made in advance of an oral hearing.

5.3.2 Copies to Planning Authority

Before an application for permission is made to the Board, the applicant will be required to send a prescribed number of copies of the application and the EIS/NIS to the relevant planning authority in whose area the proposed development would be situate.

5.3.3 Copy to Prescribed Bodies

The applicant will also be required to send a copy of the application and the EIS/NIS to any prescribed bodies (listed in article 213) who were identified by the Board for that purpose at the pre-application consultation stage. (The Board may require that more than one copy is sent). The application and EIS/NIS will be accompanied by a statement inviting submissions or observations from the bodies to the Board relating to the implications for the proper planning and sustainable development of the area, the likely effects on the environment and the likely effects on any European site, if the proposed development is carried out. A sample notice to prescribed bodies is available from the Board.

5.4 Electronic Copy.

In addition to the above, the Board may require that any or all of the application documents to be submitted to it and the planning authority be in electronic form. The Board may also require the applicant to create a specific website to include all of the application documentation. In such cases, the Board will specify the time period during which the public would continue to have access to the website and will require the applicant to certify that the documentation on the website is identical to the application documentation lodged with the Board.

5.5 Weekly Lists

The Boards weekly list will record applications for permission for strategic infrastructure development and will be available for public inspection at the Board's offices and on the Board's website (www.pleanala.ie).

5.6 Planning Authority Report.

There is a requirement for the planning authority for the area to prepare and submit a report to the Board within ten weeks of the receipt of the application by the Board. This provision applies to applications made under Section 37E of the Planning and Development Act, 2000. The report will set out the views of the authority on the effects of the proposed development on the environment and/or the proper planning and sustainable development of the area of the authority having regard to the usual considerations as set out in section 34(2) of the 2000 Act, as amended. This report must first be submitted to the elected members of the authority and any recommendations made by them by way of resolution must be appended to the report sent to the Board along with the meeting administration record of the meeting. In order to facilitate planning authorities in this regard, prospective applicants are advised to consult with local planning authorities at an early date prior to the submission of an application for permission.

The specific issues to be addressed in the submissions and observations of the planning authority will vary from case to case depending on the nature of the proposed development and the receiving environment. The following list of topics will give general guidance to planning authorities – not all will be relevant to each case.

- Main relevant Development Plan provisions relating to the subject site and surrounding area including any relevant Core Strategy provisions. A clear indication of the current status of the relevant Development Plan and any Draft Plans should be given, together with any relevant issues arising .
- Details of other relevant Plan provisions (e.g. Local Area Plans) and a statement regarding status of these Plans (adopted or in draft form).
- Relevant planning history relating to the subject site and the surrounding area.
- Relevant enforcement information relating to the subject site.
- Relevant national, regional and local policies.
- Any Special Amenity Area Order (SAAO) which may be affected by the proposed development.
- European designations, Natural Heritage Areas, which may be affected by the proposed development (whether in or proximate to same).
- Comments regarding article 6 of the Habitats Directive in relation to Appropriate Assessment in relevant cases.

- Protected Structures, Architectural Conservation Area (ACA) etc.
- Waste policy, which may be relevant to the proposed development. This will arise particularly in the case of applications for waste facilities where policies, objectives and other provisions of Waste Management Plans should be referred to in addition to the Development Plan.
- Adequacy of the public water supply.
- Public sewerage facilities and capacity to facilitate the proposed development.
- Availability and capacity of public surface water drainage facilities.
- Flood risk assessment in accordance with *The Planning System and Flood Risk Management – Guidelines for Planning Authorities (November 2009)*.
- Assessment under the Water Framework Directive and associated regulations.
- Appropriate Assessment under the Habitats Directive.
- Assessment of landscape status and visual impact, as appropriate.
- Carrying capacity and safety of road network serving the proposed development.
- Environmental carrying capacity of the subject site and surrounding area, and the likely significant impact arising from the proposed development, if carried out.
- Description of any public use of adjoining, abutting or adjacent lands in the applicants ownership, and the planning authority's view on any condition which may be appropriate for the purpose of conserving a public amenity on those lands.
- Planning authority view in relation to the decision to be made by the Board.
- Planning authority view on conditions which should be attached in the event of the Board deciding to grant permission. (Where an IPPC or Waste licence is required, the Board cannot impose conditions relating to the control of emissions from the activity for which a license is required).

- Planning authority view on community gain conditions which may be appropriate.
- Part V (social and affordable housing) provisions (only likely to be applicable occasionally).
- Details of relevant section 48/49 development contribution scheme conditions which should be attached in the event of a grant.
- Details of any ‘special’ contribution conditions which should be attached in the event of a grant along with detailed calculations and justification for the conditions.

5.7 Processing the Application

5.7.1 Submissions and Observations.

Any person has the right to make a submission or observation to the Board in relation to a proposed development. Any such submission must be received by the Board within the period specified in the public notice and be accompanied by the €50 fee. The legislation does not provide for further follow-up written submissions unless specifically invited by the Board. The opportunity for elaboration of submissions may arise at an oral hearing, if held, subject to the inspector’s discretion. The Board will have regard to all submissions or observations made in accordance with the 2000 Act and Regulations in making its decision.

5.7.2 Additional Information

The Board has the absolute discretion to require an applicant to submit additional information, including a revised EIS. Such a request would be made by way of notice to the applicant and may require new public notices. The Board has the power to request any person (whether or not that person made submissions or observations on the application) who, in the opinion of the Board, may have information which is relevant to the determination of the application to make (further) submissions or observations to it. The Board may make any information relating to the application available for inspection, notify any person or the public that information is so available and invite further submissions or observations, if appropriate, within a specified period.

The Board may request an applicant to submit an Natura Impact Statement (NIS) in accordance with section 177T(5) of the Planning and Development Act 2000 as amended. Where such a statement is requested a notice must be published by the applicant not more than 2 weeks prior to submitting the NIS. Article 214B of the Planning and Development Regulations sets out details in relation to the information to be contained in the public notice. Submissions or observations

may subsequently be made to the Board relating to the effects of the proposed development on any European site. When an NIS is submitted to the Board in these circumstances a fee of €1,500 is payable in the case of all commercial developments (the fee for non-commercial development is €220). In the event of an applicant not submitting a Natura Impact Statement when requested within the specified period the application shall be deemed to be withdrawn.

5.7.3 Oral hearings and meetings.

It is the policy of the Board, generally, to hold oral hearings in strategic infrastructure development cases except where the issues are straightforward or can readily be dealt with by way of written submissions.

The Board may hold a meeting or meetings where such is likely to resolve any issue with the applicant or any disagreement between the applicant and any other party or where the meeting would facilitate the efficient holding of an oral hearing. A meeting may take place either before an oral hearing, or during an adjournment of an oral hearing or after an oral hearing. A written record will be taken of any meeting and this record will be made available by the Board to all participants.

The inspector or inspectorate team dealing with the application will not be available for discussions with the applicant or any other party except through formal meetings or oral hearings.

Where an oral hearing is directed, the hearing will be held in accordance with the Board's "*Guidelines on Procedures at Oral Hearings*".

5.7.4 Environmental and Safety Issues.

Where the proposal is for development which would require an IPPC or a Waste licence, the Board will generally request the Environmental Protection Agency (EPA) to make observations within a specified period and it must have regard to any such observations received. Any observations from the EPA would be made without prejudice to any other functions of the Agency. Where a proposal is for development which requires an IPPC or Waste Licence, any public notice of the proposed application must state that fact.

In cases where the Major Accidents Regulations apply, the Board will notify the Health and Safety Authority and may seek relevant technical advice on the risk or consequences of a major accident arising from the carrying out of the proposed development. Where a proposal is for development to which the Major Accidents Regulations apply, any public notice of the proposed application must state that fact.

5.7.5 *Considering a grant of permission.*

The Board has the absolute discretion to indicate that it is considering granting permission subject to the submission of revised particulars, plans or drawings. Such an indication would be given by way of notice to the applicant, planning authority, prescribed bodies and observers to the application and may also involve a public notice.

5.8 Matters to be considered.

The decision of the Board will be made on the basis of the proper planning and sustainable development of the area and on the likely effects of the development on the environment. In reaching its decision, the Board will have regard to the following:-

- The application,
- The EIS,
- Any submissions or observations made to the Board in accordance with the statutory provisions,
- Assessment of the significant effects of the proposed development on the environment,
- The report of the planning authority and any recommendations made by resolution by the elected members and the administrator's record of the meeting which were appended,
- Where relevant, the ECJ judgement (Case-215/06) ruling relating to retention planning permission for development requiring environment impact assessment,
- Any additional information submitted in response to a Board request,
- The written record of any meetings held in connection with the application,
- The provisions of the development plan(s) and/or Local Area Plan(s) for the area, including any impacts on protected structures,
- The provisions of any Special Amenity Area Order relating to the area,
- Any European site or Natural Heritage Area designation relating to the site or any impact on such a designated ecological site, including any Natura Impact Statement and Appropriate Assessment where relevant,

- The proximity of any SEVESO site,
- Any transboundary effects,
- Any relevant policies of the Government, a State Authority, the Minister or any Minister of the Government,
- Any relevant provisions of the 2000 Act as amended or associated Regulations,
- The national interest and any effect the performance of the Board's functions may have on issues of strategic economic or social importance to the State,
- The National Spatial Strategy and any regional planning guidelines for the time being in force, and
- The report and recommendation of the Inspector assigned to the case, including the report of any oral hearing held.

5.9 Contravention of Development Plan

While the Board may grant permission for a proposed development which would materially contravene the Development Plan for the area, the Board gives importance to placing the proposed project in its plan and policy context, particularly the hierarchy of plans, i.e. the National Spatial Strategy, Regional Planning Guidelines and County, City or Local Area Development Plan.

5.10 Board Decision.

5.10.1 *Timeliness*

There is a duty on the Board to make its decision as expeditiously as is consistent with proper planning and sustainable development, and to avoid delays. There is a statutory objective to make decisions within 18 weeks beginning on the last day for making submissions or observations by the public following the applicant's newspaper notice of intention to apply for permission. Where the Board cannot meet the statutory objective period it must serve notice in writing on the applicant, the relevant planning authority and any person who made submissions or observations and give a reason why it will not decide the case within that period. It must also indicate a new date for making the decision.

5.10.2 *Types of Decision*

The Board may decide to:-

- Grant permission with or without conditions,
- Grant permission with specified modifications, with or without conditions,
- Grant permission in part, with or without conditions, or
- Refuse permission.

5.10.3 *Content of Decision*

In making its decision, the Board must state the following:-

- the main reasons and considerations for the decision,
- the main reasons for the imposition of any conditions,
- that the Board had regard to any submissions and observations received in accordance with the Act and Regulations,
- the sum of money to be paid to:
 - the Board
 - any planning authority and,
 - to any other person – (see also 5.11 below).

In the event of the Board not accepting the inspector's recommendation in relation to a grant or refusal, it is the Board's practice to state the reason(s) for not doing so.

5.10.4 *Effective date of Permission*

A grant of permission will not become operative until costs determined by the Board have been paid.

5.10.5 *Notification of Decision*

The Board must send a copy of its decision to the applicant, the planning authority for the area and any person who made a submissions or observations

in relation to the proposed development. The Board also informs parties in relation to judicial review procedures.

In accordance with section 37H (1A) of the Planning and Development Act 2000, as amended, the Board is required to publish notice of its decision under section 37G in one or more newspapers circulating in the area. The notice must state that a person may question the validity of the decision in accordance with section 50 of the Act. The notice must also state where practical information on the review mechanism can be found.

5.10.6 *Conditions*

When deciding to grant permission for strategic infrastructure development, the Board may attach conditions in the normal manner e.g. as specified in section 34(4) of the 2000 Act. Where an IPPC or Waste licence is required, the Board cannot impose conditions relating to the control of emissions from the activity concerned.

Conditions may include the following:-

- A condition providing for 'community gain'. Such a condition may require the construction or the financing, in whole or in part, of a facility or the provision of a service in the area in which the proposed development would be situated and which the Board considers would constitute a gain to the community.
- A condition controlling the use of land adjoining, abutting or adjacent to the application site which is under the control of the applicant where it is expedient for the purposes of or in connection with the development or appropriate for conserving a public amenity on the adjoining, abutting or adjacent lands.
- A condition providing that points of detail relating to a specific issue may be agreed between the planning authority and the person carrying out the development. Any such agreement must be confined to the points specified by the Board. In default of agreement, the matter may be referred to the Board for determination.
- A condition requiring the payment of a financial contributions under development or supplementary development contribution schemes made by planning authorities under sections 48 and/or 49 of the 2000 Act as amended and including any special contributions under s.48(2)(c).

5.10.7 IPPC / Waste Matters

Where an IPPC or Waste Licence is required, the Board cannot impose conditions relating to the control of emissions from the operation of the activity or for controlling emissions related to or following the cessation of the operation or the activity.

5.11 Costs of the Application

It is a requirement that the Board's decision states the costs to be paid by the applicant: -

- (a) To the Board for the costs incurred by it in conducting any pre-application consultations and complying with any scoping request,
- (b) To the Board for the costs incurred by it in determining the application,
- (c) To the planning authority for its reasonable costs incurred during the course of consideration of the application,
- (d) To any other person as a contribution towards the reasonable costs incurred by that person during the course of consideration of the application.

The Board has absolute discretion to decide reasonable costs and payment of the costs must be complied with before a permission of the Board becomes operative. Where there is a failure to pay costs, the Board and any person to whom costs were awarded may recover the sum as a simple contract debt in any court of competent jurisdiction.

Any fees paid by the applicant to the Board will be offset against the Board's costs.

The costs involved must be paid regardless of whether the decision is to grant or refuse permission.

6 Clerical Errors/Clarification of Decision.

Where there is a clerical error in the Board's decision or where the Board considers it necessary to clarify what it intended should be facilitated by the permission or decision, the Board may amend its decision. The Board may invite submissions to it before it decides whether to exercise its powers to make an amendment. An amendment may not result in a material alteration to the terms of the development, the subject of the decision.

7 Alteration of Permission.

Under section 146B of the 2000 Act, the Board may alter the terms of a permission for strategic infrastructure development on the request of any person carrying it out or intending to carry it out. The Board must first decide if the making of the requested alteration would constitute a material alteration and it may invite submissions in relation to the matter from appropriate persons, including the planning authority. The Board will have regard to any submissions made on foot of this invitation in its determination of the matter. Different procedures apply depending on the nature of the proposed alteration, as follows:-

Alteration would not be material.

If the Board decides that the alteration would not be material, it may alter the permission and notify the requester and the planning authority for the area, of the alteration.

Alteration would be material but EIS not required.

Where the Board determines that the alteration would be material but would not be likely to have significant effects on the environment, it may make the alteration, make an alternative alteration or refuse to make the alteration, having required the applicant to make information on the alteration available for public inspection for a specified period and having invited the making of submissions.

Alteration would be material and EIS required.

Where the Board decides that the alteration would be material and likely to have significant effects on the environment, it will require the requester to prepare an EIS of the proposed alteration or other alteration identified by the Board. When an EIS is prepared the requester must publish a notice in the normal manner and invite submissions or observations to the Board before a specified date (not less than 4 weeks from the publication of the notice). The requester must also send a copy of the EIS, together with a notice in the prescribed form, to the local authority concerned inviting submissions or observations in writing to the Board within a specified date in relation to the likely effects on the environment of the

proposed alteration. The Board must have regard to any such submissions or observations in making its determination. The Board must give public notice of its determination and will send a copy of the determination to the relevant local authority.

8 Enforcement of Decision and Conditions.

The enforcement of decisions for 7th Schedule strategic infrastructure development, including conditions attached, is a matter for the local planning authority. The enforcement provisions in Part VII of the 2000 Act apply.

9 Appeal / Review of Decision.

There is no appeal against the decision of the Board on an application to carry out strategic infrastructure development. Its validity may only be challenged by way of judicial review in the High Court within 8 weeks. The Court will not re-open the planning merits of the case and may only give leave to pursue the review process where it is satisfied that there are substantial grounds for contending that the Board's decision is invalid or ought to be quashed and that the person seeking the judicial review has a sufficient interest in the matter. When issuing its decision, the Board provides information in relation to judicial review procedures.

Note: These Guidelines are subject to on-going change in the light of the Board's and stakeholders' experience. The Board welcomes the views of stakeholders on the Guidelines.

[1] References to sections of the 2000 Act in this document refer to the Planning and Development Act 2000 as amended.

[2] References in this document to the Regulations refer to the Planning and Development Regulations 2001 as amended.

[3] Reference to a planning authority elsewhere in this document should be construed as each planning authority in whose functional area the proposed development would be situate, where the context so requires.

Last modified: January 2012.