

Sam Keenan,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.

3rd June, 2021.

Your Ref: S000376 PAC 33

Further Information arising from An Bord Pleanála's appearance before the Committee on the 13th of May 2021.

Dear Mr. Keenan,

I refer to your letter dated the 20th of May 2021 in respect of further information requested to be submitted to the Committee following An Bord Pleanála's recent appearance before it.

Please see below responses to those queries per the numbering set out in your letter.

Question 1:

An Bord Pleanála's new Website

The website project was formally commenced in late August 2019 with engagement of specialist website design consultants to research best practice options for the public interface of the website and then suggest design concepts that would align with those options. This initial stage of the website project concluded at the end of 2020 and involved expenditure of **€66,827.13**.

The build element of the project then commenced in August 2020 and building and testing was completed from then until launch of the new website in April 2021. This element of the project involves expenditure of **€91,556.75** which is payable to an external specialist website building company.

The total cost of the website development project is therefore a total of **€158,383.88**.

Question 2:

Information on Strategic Housing Development (SHD) judicial review applications

- (i) In respect of SHD cases concluded in the Court system over the period since the SHD system commenced 4 such cases have concluded with Court decisions rejecting the challenge to An Bord Pleanála decisions. Two of these cases related to the same planning application.

An Bord Pleanála was not awarded its legal costs against the unsuccessful judicial review applicant in any of these cases and hence it could not recover its own costs in those cases. The decision to award or not award costs in any such cases is a matter for decision by the relevant Court and is also the subject of certain statutory provisions as set out at section 50B of the Planning and Development Act 2000, as amended.

The application of these statutory provisions generally provides that in the majority of cases involving challenges to planning decisions, An Bord Pleanála will not get a costs award in its favour against an unsuccessful judicial review applicant but will be the subject of a cost award against it for applicant costs where the judicial review outcome finds in favour of the applicant.

- (ii) In cases where An Bord Pleanála's SHD decision was quashed by the High Court applicant legal costs were either awarded against the Board or, in a small number of recent adverse judgements where this matter has not yet been dealt with, it is anticipated that applicant costs will be awarded against the Board.

There were 29 such judicial review cases concluded in respect of SHD decisions and these related to 24 planning decisions (some cases involved separate applications against the same decision). 14 of these cases were conceded and 15 were concluded following a full Court hearing and judgement.

- (iii) In relation to judicial review applications, it is An Bord Pleanála's experience that the applicant stated grounds for judicial review within the legal papers lodged in the High Court typically comprise 25 – 75 separate stated grounds

for challenging the legality of the Board decision in question. A small number may deviate either below or above this typical range.

The Court judgements on cases usually revolve around a smaller number of core findings but it is difficult to summarise those in a meaningful or concise way given that it can often be the case that the judgements can involve complex reasoning within a discursive format.

Following an overview review of those 33 cases concluded so far, the main issues raised and the main **categories** of core reasons for quashing of the Board decisions would break down as follows with some cases featuring more than one category as a core element:

Overview description of Main Substantive Legal Issue in JR Cases	Number of Cases where this was the main deciding issue in the case
1. Legal issues concerning Material Contravention of the Development Plans	9 cases
2. Legal interpretation of zoning provisions in Development Plans	5 cases
3. Legal interpretation of SHD legislation	2 cases
4. Legal adequacy of reasoning for decision	7 cases
5. Legal issues relating to Strategic Development Zone Scheme and SHD interface	2 cases
6. Habitats Directive Legal Issues	6 cases
7. Environmental Impact Assessment Directive Legal issues	4 cases
8. Legal deficiency in Application Documentation	4 cases
9. Legal deficiency in Decision Documentation	1 case

Out of these 29 cases lost, An Bord Pleanála has paid the applicant costs in 11 of the cases. In the other 18 cases either no cost claims have yet been received or costs claims are currently subject to analysis where recently received.

Question 3 and 4:

Data Centre Applications

One data centre application was refused by An Bord Pleanála (in 2011) but this decision was quashed following a judicial review on an issue relating to whether the planning appeal which gave rise to the application falling to be decided by the Board had been withdrawn at the point that the Board made its decision. Following the Court decision, the original planning authority decision which was to grant permission subject to conditions would have remained.

From an examination of the Board's records the Board has to date granted permission, subject to conditions, for 7 data centre applications. These decisions were all made following receipt of appeals against planning authority decisions on these applications. All of the planning authority decisions in these cases were also to grant permission subject to conditions. An Bord Pleanála does not determine such applications unless it receives a valid appeal against the local planning authority decision and it therefore has no knowledge of the volume and outcome of any such applications where there has been no appeal lodged against any such planning authority decisions .

Of the above 8 data centre appeal decisions, 4 related to applications involving more than one data centre – one was refused (that decision then quashed) and three were granted permission subject to conditions.

Question 5

Planning Appeal Judicial Review Figures

Of the 55 judicial review cases received in 2019, 31 related to planning appeal decisions.

83 judicial review applications in respect of Board decisions were received in 2020 and 31 of those related to planning appeals.

Question 6

SHD JR cases subject to appeal to the Court of Appeal

There are currently two appeals pending before the Court of Appeal in respect of High Court decisions relating to SHD planning decisions. Both of these appeals are made by notice parties in those cases (the applicants for planning permission in both cases). In two such cases An Bord Pleanála sought leave to appeal the High Court

decision but those applications for leave to appeal were refused by the High Court. In one of those cases An Bord Pleanála then sought leave to appeal the High court judgment to the Supreme Court but that application for leave to appeal was refused by the Supreme Court. The Board made an appeal to the Court of Appeal in respect of a preliminary stand-alone judgement in one SHD judicial review in respect of a protective costs order application in that case, but that appeal is confined to that issue alone and does not involve the substantive judgement in that case. That appeal has been heard by the court of appeal and judgement has been reserved.

Question 7

Please refer to 6 above. An Bord Pleanála is involved in one appeal case in the court of appeal and there are two appeals from other parties pending before that Court.

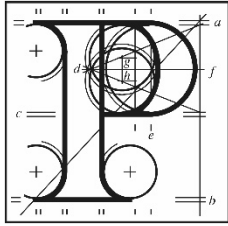
I also attach, as requested, internal An Bord Pleanála memorandum issued in relation to Department of Housing, Local Government and Heritage Circular Letter NRUP 02/2021.

I hope that the above information is satisfactory in responding to the Committee's queries. Please contact me if any clarification or further information is required in respect of these matters.

Yours sincerely,



Dave Walsh
Chairperson
An Bord Pleanála



An
Bord
Pleanála

Memorandum Residential Densities Inspectorate Advice Note

To: Inspectorate
From: Rachel Kenny, Director of Planning Operations
Re: Residential Densities in Towns & Villages - Inspectorate Advice Notes
Date: 28th April, 2021

Background:

Further to the Circular issued by the Department on 21st April 2021 advising of the Minister's **Circular Letter: NRUP 02/2021** in respect of [Residential Densities in Towns and Villages, as set out in Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas \(2009\)](#) to provide technical assistance and consistency of approach in an Inspector's Report, this Memo is intended to provide informal guidance and advice to Inspectorate.

Main Provisions:

The purpose of the Circular is to provide clarity in relation to the interpretation and application of current statutory guidelines, in advance of issuing updated Section 28 guidelines that will address sustainable residential development in urban areas, later in 2021.

The national policy context remains unchanged by this circular – and this policy context is as outlined in the statutory 'Section 28' guidelines for planning authorities on *Sustainable Residential Development in Urban Areas* (the 'Sustainable

Residential Development Guidelines'), were issued in 2009, with a companion *Urban Design Manual* also published as a best practice document. Further, related and overlapping guidelines were issued subsequent to the Sustainable Residential Development Guidelines in the form of updates to the *Sustainable Urban Housing: Design Standards for New Apartments* (the 'Apartment Guidelines') most recently in 2020, and the *Urban Development and Building Heights Guidelines for Planning Authorities* (the 'Building Height Guidelines'), in 2018

A key shared outcome of the NPF and NDP is the compact growth of cities and towns of all sizes so as to add value and create more attractive places in which people can live and work. The preferred approach is to focus on greater reuse of previously developed 'brownfield' land, consolidating infill sites, which may not have been built on before, and the development of sites in locations that are better serviced by existing facilities and public transport. The NPF also acknowledges that there is a need for more proportionate and tailored approaches to residential development.

In publishing this Circular, the Minister of State considered it important to address this matter in the context of both the need for significantly increased, and more sustainable, housing supply throughout Ireland, and national recovery from the Covid-19 pandemic.

The Circular emphasises the need to adapt the scale, design and layout of housing in towns and villages, to ensure that suburban or high-density urban approaches are not applied uniformly, and that development responds appropriately to the character, scale and setting of the town or village, particularly at the edge of larger towns and cities, including outer suburban locations and within smaller towns and villages.

Current statutory guidance is already sufficiently flexible to facilitate greater variation in residential density at such locations, and the Circular requests that all Planning Authorities including the Board apply this flexibility. The Circular reminds those considering residential development of the different scenarios and circumstances relating to the different locations within which a development may be cited and what the applicable densities may be.

Implications for Inspectors/Board:

The Board's general understanding and interpretation of the 2009 Guidelines, is that minimum appropriate/stated densities as per the guidelines should generally be applied and that in most instances densities of less than 30 units to the hectare for larger towns and cities should be avoided. However, the Circular states that there is no presumption against the granting of developments below the minimum stated densities in the Guidelines, and therefore consideration of densities of less than 30 must be assessed on their merits, as too must lower densities (e.g., 15-25uph) in villages/small towns.

The 2009 Guidelines should also be considered and applied having regard to the Urban Development & Building Height Guidelines (2018), National Planning Framework 2040, etc.

To this end, in considering all residential developments going forward, in particular where the issue of density is a key consideration in respect of the proposal, the Inspector should:

- Note and have regard to the Circular (in the policy context, assessment and R&Cs) and note the clarity it is intended to provide in respect of the section 28 Ministerial Guidelines of 2009.
- Confirm the type of area that the development is located in – e.g. edge of centre/centre of a large town/city or whether in a village or small town setting, etc.; and also confirm the envisaged scale for the settlement (e.g. where does the development sit within the County's settlement hierarchy?)
- Confirm the densities applicable in the guidelines based on the settlement's designation within the county's settlement hierarchy, and
- Confirm whether a reduction is appropriate, having regard to the flexibility of approach noted in the Circular, or whether development at a lower density would not be supported/intended as a result of the Circular or the flexibility it refers to and that perhaps in these instances the updated section 28 guidance in the form of the Urban Development & Building Height Guidelines apply (SPPR3) or in terms of NPF/NDP or RSES objectives apply. (In this regard

criteria 3.2, SPPR3 of the 2018 Guidelines provide a good template/checklist to assist in determining the appropriate density).

- In so far as most of the country has been developed with a low density low height typology (typically two-storey traditional semi-detached and terraced housing), this character context alone should not solely determine the suitable density (as per the s.28 Urban Development & Building Height Guidelines, 2018), and that the character and context of relevance in considering densities generally is the function of the town/village and its position in terms of the 'proposed/planned' settlement hierarchy associated with the location/settlement within which the site is located.

Note: Compact Growth and sustainable development patterns as outlined in the NPF continue to underpin planning policy and should be applied in respect of all planning assessments. Where density is raised as an issue in terms of key considerations within the planning assessment, reliance on a stated development plan/LAP density or s.28 recommended density (2009) should inform your assessment, but a fundamental 'merits-based planning' assessment is required. As with all planning cases, planning judgement and a clear rationale within the assessment to support your thought process/assessment and ultimately the Recommendation (in terms of the applicable density) is required. Detailed 'Reasons & Considerations' for every recommendation/decision – grant or refusal – is required.