

## Briefing Note to the Public Accounts Committee -

Appearance on 27<sup>th</sup> April, 2023

### Background

An Bord Pleanála was established by the Local Government (Planning and Development) Act, 1976. The Planning and Development Act 2000 (2000 Act) and the Planning and Development (Strategic Infrastructure Development) Act 2006 introduced significant planning law reforms, including to the powers and functions of An Bord Pleanála. In addition to planning appeals, An Bord Pleanála was given responsibility for strategic infrastructure developments (SID), including major road and rail applications, local authority applications and compulsory purchase (CPO) applications. The Planning and Development (Housing) and Residential Tenancies Act 2016 introduced strategic housing developments (SHD) as a distinct new class of SID, with special powers and procedures under the 2016 Act as amended. This has now been replaced with the Large Scale Residential Developments (LRD) appeals process, with the initial application now going to the planning authority in the first instance and to the Board on appeal.

Most recently the Maritime Area Planning Act, 2021 added to An Bord Pleanála's functions in terms of dealing with preapplications and applications under this Act relating to significant marine projects. The Board has also been given additional functions under Section 80 of the Finance Act, 2021 in relation to appeals relating to Residentially Zoned Land Tax. The Board also has a number of responsibilities for a variety of other case types under other legislation.

### Our Mission

To play our part as an independent national body in an impartial, efficient and open manner, to ensure that physical development and major infrastructure projects in Ireland respect the principles of sustainable development, including the protection of the environment.

In carrying out its functions, An Bord Pleanála operates within a legislative framework that interfaces with EU legislation and policy and is constantly evolving particularly in the areas of environmental protection and sustainable development.

As an agency of the State, An Bord Pleanála also has certain obligations in terms of promoting participation and access to decision-making in the planning system under the various EU Directives, the Aarhus Convention, Freedom of Information, Access to Information on the Environment and Data Protection Acts.

## Our Values

In seeking to fulfil its mandate and mission, An Bord Pleanála is guided by the following core values:

 <p><b>Independence and Impartiality</b></p>	<p>An Bord Pleanála is committed to preserving and protecting its independence in its decision-making functions and ensuring that all decisions made are based solely on an impartial assessment of each case.</p>
 <p><b>Professionalism and Integrity</b></p>	<p>An Bord Pleanála places great value and reliance on the professional expertise, integrity, dedication and public service ethos of its Board members and staff.</p>
 <p><b>Participation and Transparency</b></p>	<p>An Bord Pleanála is committed to providing the maximum degree of openness and accountability in its operations consistent with the quasi-judicial nature of its statutory functions and ensuring that its procedures facilitate effective participation by the public in the planning system.</p>
 <p><b>Respect, Dignity, Equality and Fairness</b></p>	<p>An Bord Pleanála is committed to a culture of respect, dignity, equality and fairness in all dealings with the public and with and between its own staff.</p>
 <p><b>Excellent Customer Service and Innovation</b></p>	<p>An Bord Pleanála is conscious of the need to ensure that its overall customer service is aligned to current expectations and best practice and is committed to being responsive seeking new ways to improve service delivery.</p>

## Overview of 2021 Performance

Over 2021, the Board saw an increase in the overall number of cases lodged, with a total of 3,251 received, up 18% on the previous year. The number of cases decided by the Board in 2021 was up just under 6% on the previous year's total, with 2,775 cases decided. While some of these increases may be attributed to the return to normal business following the extensive Covid-related disruptions during 2020, there was also an increase in activity in the planning sector, reflecting the increased residential development activity, as well as wider economic activity across a range of sectors.

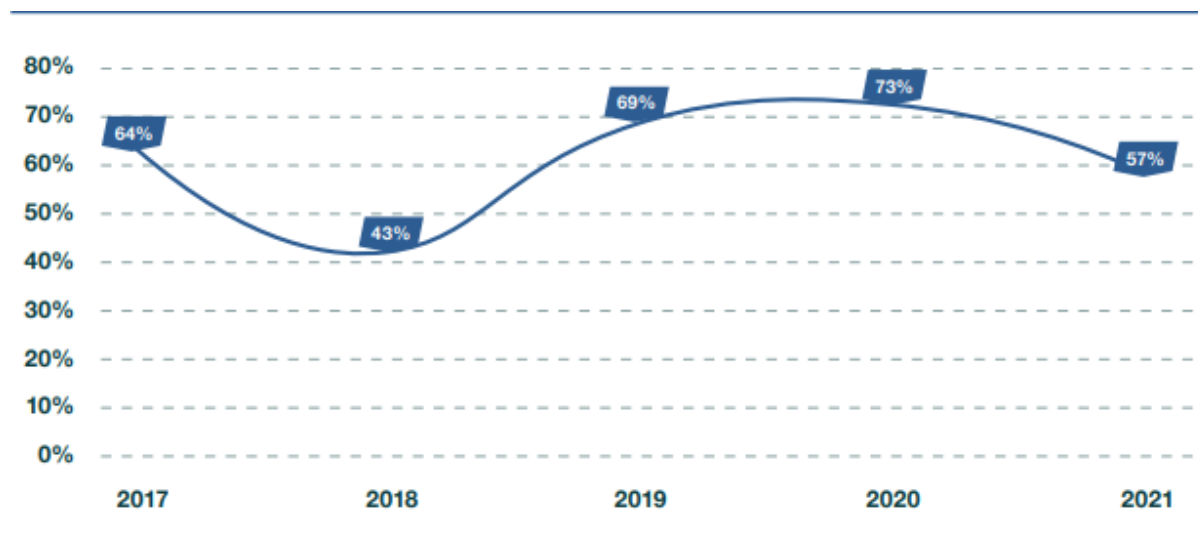
### All Case Work

Operations	2021		2020	
Planning Cases Received	3,251		2,752	
Planning Cases Disposed	2,775		2,626	
Operations	Received	Disposed	Received	Disposed
Normal Planning Appeals	2,331	1,992	1,955	1,887
Strategic Infrastructure Development (Private Entities /Statutory Undertakers): All cases	105	69	74	65
Strategic Infrastructure Development (Local Authority)	31	30	20	18
Other Local Authority Projects <sup>1</sup>	138	146	117	78
Strategic Housing Development Applications	126	115	120	137
Vacant Site Levy	62	28	45	47
Other Case Types	458	395	421	394

## Compliance with Statutory Objective Periods

Set out below is an overview of compliance rates in relation to all cases before the Board. In relation to normal planning appeals, which is the majority of case work, the compliance rate with our statutory objective period (SOP) for 2021 fell back to 58%, from the 76% recorded in 2020 – this was due to a confluence of factors including the significant rise in case numbers received, reduced staffing capacity arising from the impact of Covid with isolation periods, absences, changes in work practices with ongoing restrictions and managing staff capacity including filling vacancies, sick leave etc in a challenging environment. With the significant volume of cases on-hand at the end of 2021 and ongoing disruptions from the latest Covid waves, it is proving a very significant challenge to reverse this downward trend and return to more acceptable levels of compliance this year.

### All Cases compliance rates - 2021



## Strategic Housing Developments

The Board continued to prioritise SHD cases during 2021 with just over 100 cases decided, with all but one of these cases determined within the statutory timeline. Of these, the Board granted permission in 76 cases and refused permission in 25 cases. A further 127 applications were received. There is still a significant volume of applications within the system that will continue to be determined over the coming months, while the new Large-scale Residential Development (LRD) process is already up and running with the local planning authorities.

## Strategic Infrastructure Development (SID) Cases

The Board received 30 applications in 2021 up from 24 in 2020, and 30 cases decided up from 19 in 2020. The total of 74 pre-application consultation requests during 2021, was up 24 on 2020 intake. This indicated a significant ramping up of major complex applications being considered and proposed. Compliance rates with

the relevant statutory objective period in 2021 with these complex cases was 21% compared to 17% in 2020.

### Legal Cases – Judicial Reviews

The significant increase in the volume of legal challenges to Board decisions during 2020 continued in 2021 (with 83 new cases in 2020 and 95 in 2021). These applications for judicial review of the legality of decisions involve significant detailed legal scrutiny of complex matters of procedure and interpretation relating to European Union environmental directives and other issues arising from the Strategic Housing Development application process. Legal costs for representation before these Courts are substantial, and there continues to be significant costs associated with legal cases with €7.6 million expenditure in 2021 (€8.4M in 2020). These legal costs are split between the Board's costs for solicitor and barrister representation but also payment for other side costs in cases where the case is lost or conceded.

### Finance – Overview 2021

Statement of Income and Expenditure and Retained Revenue Reserves	2021
<b>Income</b>	
Oireachtas Grants	17,225,584
Fees	1,723,472
Strategic Housing Fees	2,995,751
Large Residential Development Fees	
Strategic Infrastructure Fees & Cost Recoupment	2,274,050
Net Deferred Pension Funding	3,136,020
Miscellaneous Income	6,470
Deposit Interest	0
Profit/(loss) on disposal of Fixed Assets	0
<b>Total Income</b>	<b>27,361,347</b>
<b>Expenditure</b>	
Salaries, Allowances and Superannuation	17,989,703
Establishment Expenses	2,442,746
Operating Expenses	11,016,130
<b>Total Expenditure</b>	<b>31,448,579</b>
<b>Surplus/(Deficit) for the Year before Appropriations</b>	<b>(4,087,232)</b>
Transfer from/(to) the Capital Account	326,162
<b>Surplus/(Deficit) for the Year After Appropriations</b>	<b>(3,761,070)</b>
Balance Brought Forward at 1 January	(680,819)
<b>Balance Carried Forward at 31 December</b>	<b>(4,441,889)</b>

## Overview of 2022 Performance

2022 was a particularly challenging year for An Bord Pleanála which attracted significant media coverage in relation to its operations and procedures in relation to conflicts of interest that may arise during the course of the decision-making process. This has had a serious detrimental impact on the Board's reputation and overall performance during 2022.

The consequences culminated in the departure of both the Deputy Chairperson (in July) and the Chairperson at the beginning of November which had a significant knock on effect on the overall decision making capacity at Board level and legislative ability to make certain decision relating to Strategic Housing Developments (SHD) and Strategic Infrastructure Developments (SID). Coupled with this a number of Board members terms of office also expired in July and September, which in November left 5 serving Board members, four of which were available to make decisions. A further term of office and a resignation of a Board member took place at the beginning of February 2023.

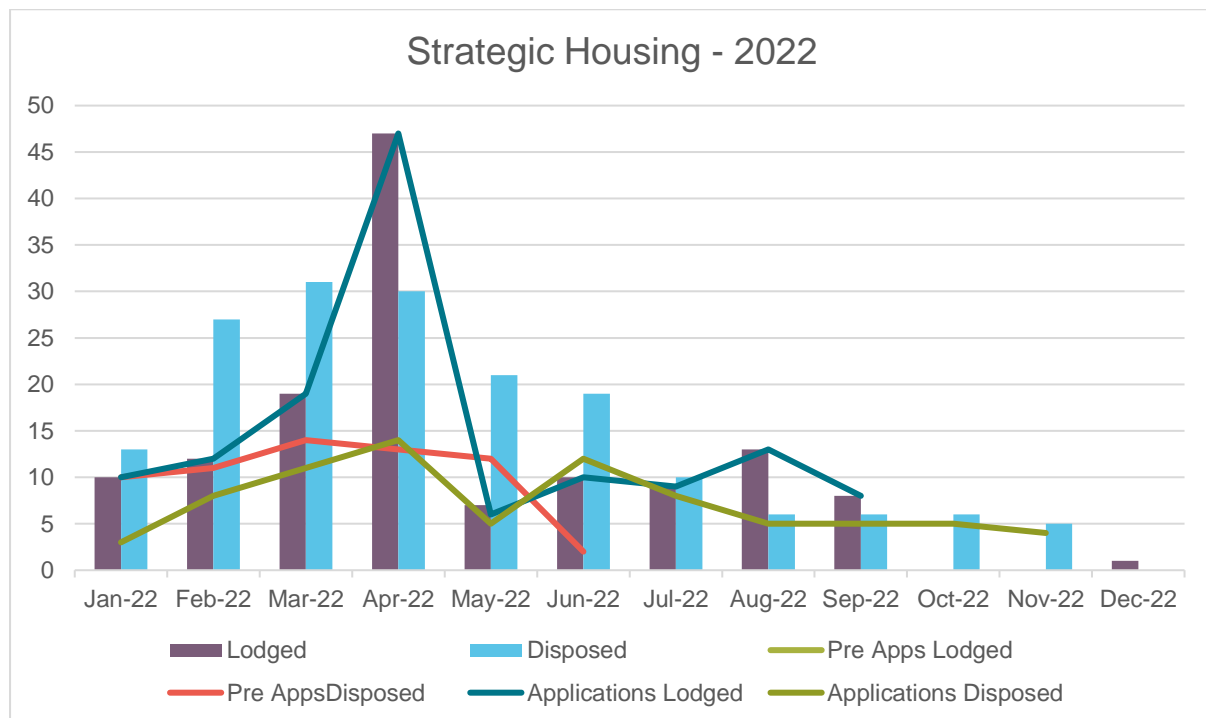
The total number of cases received by the Board in 2022 was 3058 6% less than in 2021 (3251) The number of cases decided by the Board in 2022 was 2090 down 25% on 2021.

Operations	2022		2021	
Planning Cases Received	3,058		3,251	
Planning Cases Disposed	2,090		2,775	
Operations	Received	Disposed	Received	Disposed
Normal Planning Appeals	2294	1439	2,331	1,992
Strategic Infrastructure Development (Private Entities /Statutory Undertakers):All cases			105	99
Strategic Infrastructure Development (Local Authority)	160	120	31	30
Other Local Authority Projects <sup>1</sup>	70		138	146
Strategic Housing Development Applications	127	80	126	115

## Strategic Housing Development

The total number of SHD cases received in 2022 was 127 and 80 disposed of. There was also an increased frequency of penalty payments to applicants where decisions on strategic housing development applications (SHD) are not made within the statutory time objective. The Planning and Development (Housing) and Residential Tenancies Act, 2016 provides, in Section 9(13)(d), that where the Board fails to make a decision within the statutory objective period of generally 16 weeks a payment of the sum of €10,000 is due to the applicant. Only one such payment of the €10,000 penalty was made in 2021 but 134 such payments totalling €1.34M have now been made in 2022. This was due to the significant number of SHD cases received at the same time during 2022, in part due to the ending of the relevant legislation at the end of 2021. There were not sufficient resources in place to process the large volume of cases received within the statutory time limit.

This situation raises concerns from both a reputational and a case processing perspective with an outcome of an impact on financial resources



## An Bord Pleanála

### Outcomes of Legal Cases which concluded in the relevant calendar year

Year	No. of Cases Disposed in Year	No. of Legal Cases Received in Year	Cases Won	Cases Lost Court Judgement	Cases Conceded	Cases Withdrawn
2022	2,090	95	9	9	35	12
2021	2,775	95	15	21	19	14
2020	2,628	83	11	19	13	8
2019	2,971	55	9	8	7	11
2018	2,847	41	13	2	10	16
2017	2,143	47	19	2	10	19
	<b>Total</b>	<b>416</b>	<b>76</b>	<b>61</b>	<b>94</b>	<b>80</b>

A large proportion of the increasing caseload of judicial reviews relating to An Bord Pleanála decisions concern complex matters of procedure and interpretation relating to the EU environmental directives and procedures to do with handling of Strategic Housing Development applications.

It is accepted that recent judicial review outcomes have seen a greater number of such cases conceded or lost and this is an outcome of the increasing complexity of those European law issues and novel issues relating to the new strategic housing process.