

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 3 Deireadh Fómhair 2019

Thursday, 3 October 2019

The Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Marc MacSharry,
Deputy Peter Burke,	Deputy Imelda Munster,
Deputy Catherine Connolly,	Deputy Catherine Murphy.
Deputy David Cullinane,	Deputy Kate O'Connell.
Deputy Alan Kelly,	

DEPUTY SEAN FLEMING IN THE CHAIR.

Mr. Seamus McCarthy (*An tArd Reachtaire Cuntas agus Ciste*) called and examined.

Business of Committee

Chairman: We are joined by the Comptroller and Auditor General, Mr. Seamus McCarthy, who is a permanent witness at the committee. He is joined by Ms Orla Duane, deputy director of audit. Apologies have been received from Deputy Shane Cassells.

Are the minutes of 19 September agreed? Agreed. No matters arise from those minutes.

We shall now deal with correspondence. There are three categories of correspondence. Category A comprises the briefing documents and opening statements in respect of today's meeting. No. 2425A, dated 1 October 2019, and No. 2426 A from An Bord Pleanála are briefing documents and opening statements for today's meeting. We will note and publish these. Is that agreed? Agreed.

Category B comprises correspondence from Accounting Officers or Ministers or both and follow-up documents on Committee of Public Accounts meetings and other items for publication. We discussed No. 2342 on the Strategic Banking Corporation of Ireland last week. The information provided was not that requested by the committee and we circulated among committee members what we asked for precisely. We decided not to publish at the time and to hold the matter over until we received a response from the corporation. When we receive it, we can consider publishing.

No. 2354B is from Professor Phillip Nolan, President, Maynooth University, dated 29 July 2019, responding to a request from the committee for details on an investment by the university in a subsidiary which will not be recovered, as well as information regarding employment contracts for employees in the organisation. Professor Nolan confirms the loss and states the investment was appropriate based on the information and advice available at the time. He also provides an information note in regard to employment contracts and states that engagement of staff on an occasional basis is necessary, appropriate, fair and in compliance with relevant legislation. While we will note and publish this item, I want to make a few remarks on the subsidiary. Maynooth University set up a subsidiary called Innovation Value Services Limited for research and development and the organisation did not meet its expectations. The company was ultimately wound down at a loss to the university of €750,000. That is a very substantial figure and that is why we wrote to the university. In its detailed reply to us, it points out that the provision of €750,000 against the impairment of the loan to Innovation Value Services Limited represents a real and regrettable loss, and that it will not impact on education or services to students but will reduce the university's capacity for research and knowledge transfer. That is an honest answer from a third level college. Normally it is said there is no effect but at least in this case the university says there will be an impact on its capacity for research and knowledge transfer. The university had an innovation value institute in the college that had attracted over €10 million since 2010. It decided to set up a subsidiary, which it is entitled to do. Before it set up the company, based on what is projected, it commissioned PwC to produce a report, and the latter advised against the initial business plan, which projected an investment of €1.25 million. The investment plan was then scaled back on that basis. The university invested €410,000 in the subsidiary in October 2015 and, in May 2016, it advanced another €300,000. After the first year of operation, it agreed to defer the loan repayments until December 2019 because it knew the organisation was not meeting expectations. In May 2019, the decision was taken by the uni-

versity executive not to invest further in the company. The board of Innovation Value Services Limited met on 18 June 2019, which is not that long ago, and decided to wind up the company and cease trading by the end of the financial year, which I presume is about now. Those are some of the salient facts. We need to ask for a copy of the final accounts for the company when it is ultimately wound up and audited.

Second, we raised the question as to whether the loan of €750,000 was included on the university's risk register. The reply given was that the risks associated with Innovation Value Services Limited were not specifically included in the register. The university said it updated the risk register in February 2017, which was two and a half years ago, and it was further updated over the summer of 2019, which has just passed. At this stage, we must write to the university and ask for the risk register. In my view, this should be produced on an annual basis, at a minimum. The HSE produces them on a quarterly basis. It does miss things but at least it has a system in place every quarter. I expect a body such as the university to produce a register regularly. A year is the most that should elapse before producing a register. Even if we get a register once per year, it will not be too bad. The one the university is operating from is two and a half years old. I propose that we write to it asking it for the risk register it was working on over the summer. Let us see where that stands. That is all I want to say about the matter.

I mentioned the occasional lecturers. The university gives details on this on page 17 of its letter, which is a very comprehensive document. There are about 40 pages in the reply. It indicates there are 1,394 occasional staff, 668 of whom receive under €1,000 and 239 of whom receive between €1,000 and €2,000. The overwhelming majority of them receive under €4,000 and would not be considered in any way full-time. They are occasional, perhaps. Most of them are postgraduates at the college. That is what the university says here. I will come to Deputy Catherine Murphy, who will have more knowledge on this. I am just putting on the record what the university says because we will discuss the response. I want to put the response on the record because the university does not expect everyone to read the 40 pages. The university is saying the overwhelming majority of the occasional staff are postgraduates doing just a small amount of work here and there. It says it complies with legislation. That is the university's response. I have a duty to put it on the record.

Deputy Catherine Murphy: Obviously, when we get more information back, we will come back to this. If we had got a copy of the university's risk register last year, it would not have shown up this. What else is the register likely not to include? Seeing it now, after this has been disclosed, yes, they are taking corrective action, but I am concerned we are not getting a full picture. That is one aspect. The business of universities is about creating knowledge. If NUI Maynooth is acknowledging the loss in respect of research and knowledge transfer, that is really at the core of what the university is supposed to be about. I am not sure we have fully fleshed out what this implies, and I would like to hear from the university what it means by "impact".

Regarding the number of staff, I completely accept that universities have people coming in and possibly doing several hours' additional work and that that is normal practice and adds to the value of the university. I think there are much greater employment protections at primary school level than at university level, not just in Maynooth but in the whole university sector. People going to college, who are very often the people paying for the staff, and their parents - and there are Government grants and so on towards tuition fees - do not appreciate that very often what is provided is perhaps one contact hour for every lecturing hour. I think great liberties are being taken in this regard. A total of 1,394 is a lot of people without contracts. We have

spoken about this in the context of RTÉ and bogus self-employment, for example. Whereas this would not fall into the exact same category, it is a category of staff about whom I would have concerns as to how universities manage their accounts.

There is the other issue of how universities perform if not enough research hours are provided compared with contact hours. This shows up in our accounts, and that is the only reason it is appropriate for discussion here. However, we are hearing from the president of the college, not from the people who have a grievance about this. I think we are hearing a one-sided view on it, and I have concerns about that.

Deputy Catherine Connolly: Much of what I wanted to say about the risk register has been said. I thank the Chairman for going through the correspondence in detail.

Chairman: It was a summary.

Deputy Catherine Connolly: It was very helpful, and I will reread it with a different eye. The risk register is what jumped out at me, again, as someone who is not experienced in this area. We rely on such registers. When I look at the accounts every single week I see the risk registers and what has turned up on them. However, the risk register is only as good as what goes on it, so perhaps somebody could help us with that. What criteria are used? Who checks those who put items on the risk register?

Mr. Seamus McCarthy: A risk register is a requirement under the code of practice for governance. It is probably fair to say the register is not a precise science. It is really about requiring an organisation to look at the specific risks that arise in its business. One check on the adequacy of the risk register is whether what happens, and the response to what happens, has been foreseen in the risk register as it goes. I think this has come up with organisations such as An Garda Síochána.

Chairman: CervicalCheck was not on the risk register for the HSE until the court case.

Mr. Seamus McCarthy: Exactly, so it certainly arises that organisations will have blind spots. Nearly every organisation will have things that it assumes will always work because they always have worked. Having a good risk register is more an art than a science, and keeping it up to date is a procedural matter. However, the judgments that are made as to what goes on it and what is an appropriate response are a matter that an organisation needs to grapple with. The organisation needs to update it regularly, as the Chairman said. A review once a year would probably not be adequate for a relatively large organisation. One would want perhaps a quarterly review of the register and systems in place that ensure that it is not just something that is happening at the top of an organisation but that it percolates down through the organisation such that everybody is thinking about the areas specific to their aspect of the business and what they would do if certain of those risks materialised. It is, therefore, hard to say “this is an excellent risk register” and “that is a very poor one”. It is seen in the outturn.

Deputy Catherine Connolly: On that point, let us take the case of Galway. This is very much factual. It is another problem about which nothing was done, but the hospital was good in that it put the capacity of the hospital on the risk register. Then let us turn to the universities, not just NUI Maynooth. Knowledge was mentioned. I believe knowledge should be acquired through questioning. I disagree slightly with just the way Deputy Catherine Murphy put it. I believe that the universities should inculcate a questioning environment, which we seem to be losing, and that knowledge should be acquired in that manner as opposed to knowledge for

knowledge's sake and for a profit. However, that is a policy matter. I was in Waterford on Monday leis an gcoiste Ghaeilge agus bhí mé in Institiúid Teicneolaíochta Phort Láirge. It brought back to me a lot of the matters and issues we looked at here. Does the risk register not assume a lot more importance now that the universities are more and more in the business of setting up companies with a view to making a profit? Is that not a whole new aspect of the risk register now, with public moneys and public buildings being used in that manner?

Mr. Seamus McCarthy: Absolutely. There may be third level institutions that do not have subsidiaries and are not involved in business structures. Once one gets into a new model of service delivery, there are different kinds of risks which one may not be fully aware of if one does not have a background in that. What one would expect to see is that the risk register is an organic instrument of the organisation that changes as the business changes and as the environment around the organisation changes or if demand is going up, funding is tightening or a commercial venture is part of what is being done.

Deputy Catherine Murphy: Given the profile of what has happened here, is that a blind spot? Would Mr. McCarthy have expected to see it on a risk register way earlier?

Mr. Seamus McCarthy: I do not want to speak specifically about Maynooth because I have not looked at this precise point. If one is using subsidiaries to deliver parts of one's business, then one needs to have a part of one's risk register dealing with that. For example, what if there are trading aspects or control of intellectual property as we have had in other institutions? One needs to identify what are the risks and where can this potentially go wrong? What systems and controls do we need to have in place to ensure it does not go wrong, or if it does, that we can respond appropriately?

Deputy David Cullinane: I want to raise a separate issue concerning the follow-up correspondence from Maynooth. It is to do with what it calls occasional staff and staff on contracts. The volume of people on contracts at the university is high. The university stated in its cover note that it does not engage persons on zero-hour contracts. That is true. However, there are if-and-when contracts or what it calls occasional staff contracts. The university stated it believes the engagement of staff on an occasional basis is necessary, appropriate, fair and in compliance with relevant legislation. In some cases, it may well be.

The difficulty is that we are seeing this more and more with public bodies which are employing people on if-and-when contracts. On some occasions, it is the right thing to do; other times, it is not. Watching this across all organisations, my fear is that some public bodies are hiding behind this position. If-and-when or low-hour contracts may suit some people but they do not suit everybody. If it does not suit somebody, then it is the only contract offered. There is an issue in relation to their rights and entitlements, whether it is sick pay, holiday pay and other entitlements. We have seen it with other public bodies and I believe we need to keep an eye on it.

I noted in Maynooth that 1,394 staff were on occasional staff contracts. It seems to be a bit high. I know there is a logic to it and I can see how it would suit a university. It is something that I will keep an eye on. When is the Department of Education and Skills due back before the committee?

Chairman: It is not scheduled yet. There are two points we need to take up on the two different topics. One, what it calls occasional staff. The university says that most of them are postgraduates. We are going to ask about the 1,394 figure it gave and how many of those are in receipt of payment for more than one year, two years, three years and four years? If we find

95% of them were postgraduates, just passing through the college as a tutor, that is fine.

Deputy David Cullinane: That is fine.

Chairman: However, if we find in that bracket that there are some people on that arrangement year in, year out, that is the issue we need to examine.

Deputy David Cullinane: That is a problem.

Chairman: Finding out how long each of those have been in receipt of an occasional arrangement will give us an indication how many are permanently on it.

Following up on Deputy Catherine Murphy's point, the university said it will affect its capacity for research and knowledge transfer. We want the university to give us an information note on the research and knowledge transfer activity for the past three years, as well as its plans and arrangements for this and next year. Based on the figures it gave us, €700,000 seems to be a large figure if it is only had €10 million external research and development over a long period. It might represent a small proportion or it could be the most of it. I have no idea. We want to know the level spent in this area in each of the past three years, this year and the plan for next year. We can then see the impact. Has it closed the whole operation? Has it had a significant impact? I have no idea based on the reply we got.

We need the details on the two points. Is that agreed? Agreed.

We want a copy of the risk register and a note. There should be an audit and risk committee as part of the board. It should have been their job. We want to know what they have been saying.

Mr. Seamus McCarthy: Part of the code of governance is a requirement for an annual review of the effectiveness of the controls in the organisation. One of the things that should be reviewed in that exercise is the risk management system. It should be annually considered outside of the risk assessment process itself. There should be an exercise. Very often this is done by internal audit. This would be looking at whether the risk register is working for the organisation. There is also a requirement on a cyclical basis for an external review of risk management at least once every three years.

Deputy Catherine Connolly: Does that happen all the time?

Mr. Seamus McCarthy: It is supposed to happen. I cannot say regarding any individual or organisation.

Where we see that an evaluation of the effectiveness of the control system is not carried out, we will be drawing attention to that. If we identify that the risk register has gone three or five years without being reviewed externally, we will also draw attention to that.

Deputy Catherine Connolly: Would that be highlighted in the accounts when they come before us?

Mr. Seamus McCarthy: We would certainly be drawing attention - we have done it in the past - to whether the review of the effectiveness of controls had been carried out in a timely fashion. As we are consistently referring to it, the practice is now more embedded. It does not come up as often as it would have done say four years ago.

Chairman: It is something we will keep an eye on. We can ask the Department of Public Expenditure and Reform about this as I assume it sets the policy in this regard.

Mr. Seamus McCarthy: It does.

Deputy Catherine Connolly: Is that not a question for Maynooth as well, namely, that it reviews the effectiveness?

Chairman: We have agreed that. The first thing is the three years and what it said in its governance statement in the annual accounts. If it gets a transcript of this discussion, it will understand why we are asking these questions.

Mr. Seamus McCarthy: I would also make the point that in a situation where an organisation's accounts fall into arrears, there is a danger that all these controls slip because it is not completing the cycle every year in a timely fashion. The whole thing works together. One looks for where there is slippage in the system to nip things in the bud.

Chairman: No. 2410B is from Mr. Pat Meehan, chief executive, National Oil Reserves Agency, NORA, dated 25 September 2019, replying to our request for an information note on the agency's compliance with the EU's oil stocks directive.

We were referring to the Brexit situation. It gives an indication of how much oil is held in the State. When we wrote to the agency, two thirds was in the State and quite a bit was in the UK. Since then, based on this letter, some of it has come on shore. Most of it is stored in Ringsend and Tarbert. It hopes to bring in further facilities for storage in the coming years.

Deputy Marc MacSharry: I was going to raise it anyway. It is ironic that we had written to it and this correspondence came back. I understand the 100-day storage issue that we had. Does the Comptroller and Auditor General audit this agency?

Mr. Seamus McCarthy: Yes.

Deputy Marc MacSharry: The 2007 Act provides that the agency can get its money from a levy of 2 cent per litre on petrol, diesel and home heating oil. It is a bit more complicated for aviation fuel. The Act is prescriptive in that the agency should raise this levy for its running costs. Running costs of the agency are about €80 million to €90 million a year. I am told that there is somewhere in the region of €250 million in its accounts based on this levy. We levy 2 cent per litre under an Act which states that the agency must cover its running costs and not to exceed that. It now seems to have substantially exceeded this amount. We are all hard-pressed consumers paying 2 cent per litre. It has been mentioned in the media and in dispatches from Ministers and the Department that these excesses could be used for the climate action fund.

It has been mentioned in media dispatches from Ministers and their Departments that these excesses could be used for the climate action fund. Frankly, that would be in breach of the law on the basis that if we are collecting the money for A, we cannot use it for B. I am not against using money in this way, but we live in an era in which we all accept that we are heading for carbon taxes. The receipts from the latter will be invested in the climate action fund. If an excess of between €100 million and €150 million accrues because running costs are being exceeded and if, effectively, this is being collected illegally or in a manner that is contrary to legislation, something needs to be done. The Government could consider whether this levy might be reduced or stopped - I accept that this is a policy issue - as long as we can ensure that the oil companies pass it on to the consumer. I emphasise that 2 cent a litre is an awful lot. On

that basis, I think this is something at which we should look. I suggest to the committee that we should invite NORA personnel and officials from the Department of Finance to come in to discuss the issue. Does the Comptroller and Auditor General have any comments to make on what I have said? Can he confirm my concerns?

Mr. Seamus McCarthy: I have not looked at the detail. I do not have the accounts for NORA with me. The committee is certainly entitled to call the organisation. There are current issues of relevance.

Chairman: If there is a large cash balance sitting on the balance sheet-----

Deputy Marc MacSharry: It has been hinted in dispatches that it may be possible to use this money for this, that and the other. It seems that next week's budget will hit consumers with additional carbon taxes. If that happens, so be it because it is a matter for policy or whatever. If we are hitting consumers for 2 cent a litre for the specific purposes of the oil reserve that we require and that we all support, but in real terms we should be hitting them for 0.5 cent a litre or something like that, we need to be honest with people or else we should give the money back.

Chairman: Does the Comptroller and Auditor General know whether NORA has the facility to make a dividend payment to the State? He might not know. I am putting him on the spot. Some of the other semi-states are able to transfer money back to the State. If the Comptroller and Auditor General does not know the answer straight up, that is fine.

Mr. Seamus McCarthy: It would make sense that such a facility would be there. I can check and come back to the committee.

Chairman: Okay.

Deputy Alan Kelly: Will the Comptroller and Auditor General get it checked and come back to us?

Chairman: We will ask the Comptroller and Auditor General to give us an update next week.

Deputy Alan Kelly: It is worth chasing up.

Chairman: Then we can decide whether to put it on the work programme. We will not set a date. The Comptroller and Auditor General might be in a position to answer these questions next week when he has looked at the accounts. If we need to bring NORA in, we can put it on the work programme on a provisional basis.

Deputy Marc MacSharry: I did not make it up.

Chairman: No.

Deputy Marc MacSharry: A levy of 2 cent is being imposed on people.

Chairman: Yes.

Deputy Marc MacSharry: The levy is supposed to cover the running costs. At the moment, approximately two and a half years' running costs are in the bank. People do not have that kind of money.

Deputy Catherine Murphy: Can we find out if this is exclusively what NORA can spend

this money on?

Deputy Marc MacSharry: It is. If the Deputy checks the National Oil Reserves Agency Act 2007, she will see that NORA can impose a levy for its running costs. At present, it is imposing a levy for-----

Deputy Catherine Murphy: I do not dispute what the Deputy is saying.

Deputy Marc MacSharry: I know.

Deputy Catherine Murphy: The only reason I am asking is that I have a memory of the queues during the oil crisis. I suspect that part of the reason for the levy is to make sure there is security. I think this matter was originally raised in the context of Brexit and the rest of it. Can NORA spend the money on providing for additional capacity, as opposed to covering its running costs? That is really what I want to clarify.

Chairman: They have dealt with that. We asked about that in the letter. They informed us that most of the stock in Ireland is retained in Ringsend and Tarbert and that negotiations are ongoing in relation to a further facility, the refurbishment of which is subject to a commercial contract. This would enable NORA to add another 55,000 tonnes, which is not a big amount in its terms, to its stocks in Ireland by 2023, which is four years away.

Deputy Marc MacSharry: The levy was set in 2007. At that time, nobody in the Department was saying that a 2 cent levy might be needed because of Brexit.

Chairman: We will put it provisionally on the work programme for now. We will ask the Comptroller and Auditor General to give us an update for next week. It goes without saying that we will note and publish the correspondence.

The next item of correspondence is from Mr. William Beausang, who is an assistant secretary in the Department of Education and Skills, and is dated 18 September 2019. It provides an update on the development and disposal of intellectual property in FeedHenry at Waterford Institute of Technology. We asked the Minister to consider appointing an investigator under the relevant legislation to examine matters raised in the Comptroller and Auditor General's special report No. 104. Mr. Beausang has advised that the Department is considering documents and has set out a number of concerns relating to the management of conflicts of interest. I will summarise this long letter for Deputy Cullinane by saying they have a whole lot of things to look at, and eventually they might do something. They do not say what they are advising.

Deputy David Cullinane: I am not going to go over the history of the matter because most people here already know it. We had lengthy discussions on this with the Department in the past. We had similar discussions with the HEA when it became obvious that it was not able to publish the report it had done because it was outside its remit. It looked like the Minister, through the appointment of a special investigator by the Department, was the only option. I would like to draw the attention of colleagues to the second last paragraph of the letter that came back, which mentions that there had been a need to follow up with everyone who had submitted correspondence to the previous review, the report of which cannot now be published. According to this letter, the correspondence and documentation subsequently received by the Department - the follow-up documentation - sets out a number of concerns relating to the management of conflicts of interest. That was essentially our point from day one. My point all along has been that the concerns which have been outlined, some of which were the subject of a report, cannot be left hanging. We know it is probable that the report would have set out some

of those concerns, but the HEA was just not able to publish it. Is it going to be left hanging? The Chairman is right when he says that the Department has come back to say it is still looking at whether further action is warranted. If concerns relating to the management of potential conflicts of interest which have been documented by individuals still exist, there is a responsibility on the Department to follow them up. It may or may not transpire that these matters were managed properly, but we cannot adjudicate on that. It is not our job to adjudicate on it. That is why we have a process. Special investigators are appointed to establish the facts and report on them. That needs to be done in this case to give closure to the issue. If it is not done, all of these issues will continue to be raised by individuals within the institute, those individuals will not get any satisfaction and - more to the point - the facts will not be established. We need to go back to the Department to say that if serious concerns are still being documented and sent to it, it has an obligation and a responsibility to follow them up.

Chairman: Having looked at the letter, my view is that it has parked everything to which the Deputy has been referring. The matter has just been parked.

Deputy David Cullinane: Three years have passed.

Chairman: The letter says that the Department has a central oversight role and that the HEA is monitoring governance practices. The Department has asked the HEA to arrange a study of this. The terms of reference are being finalised and the Department will be updated in due course. The Department has stated that when it gets the information from Waterford, which we have mentioned, and when it gets the aforementioned HEA study, the terms of reference of which have not yet been agreed, it will examine all of that. When it has completed its consideration of all of that, it will advise the Minister on what to do next. That sounds like it will take years. Potentially, it could be a long way away from where it started. This issue is being parked.

Deputy David Cullinane: I ask the Chairman to bear in mind that a report from the Office of the Comptroller and Auditor General, which is confined to examining these matters from a value for money perspective, focused on the relationship between State funding and the company that was spun out. It looked at a very limited aspect of this matter. As we know, the HEA report looked in more detail at other issues relating to the spinning out of these companies, including the management of conflicts of interest. That is what they were looking at. The report we got from the Comptroller and Auditor General showed that the institute accepted that it needed to improve on some issues that had arisen. I think the board has since taken those issues on board. We want something similar here. All we want is the facts. When we have the facts, it will be up to the board to follow through on them. It is important for all the other institutes. Many companies spin out of them. Last week, I met representatives of a fantastic company that spun out of an institute. This stuff is good. Many people are doing work in this area. It is important for everyone who is involved in spinning out these companies that the facts are established. We have never said that there is wrongdoing. We are saying that people are saying that there are issues. They are writing into the Department. They are engaging. They are doing the right thing by putting their information on paper, documenting it and giving it to the Department. As the Chairman indicated, it has been parked.

Chairman: Will the Deputy crystallise what he wants us to do?

Deputy David Cullinane: We should write to the Department to thank it for its letter. However, if they have follow-up correspondence and documentation in which concerns regarding management of conflicts of interest are raised, they have an obligation to pursue the matter

further.

Chairman: Notwithstanding the long-term study.

Deputy David Cullinane: We should ask if they have examined the possibility of appointing a special investigator. When they were here, they indicated that was one of the options they were considering.

Chairman: We will write back to them on that basis. The Deputy has made the point very clearly. We will note and publish that correspondence.

Deputy Marc MacSharry: I want to provide one clarification in respect of the previous item that might be of use. Everything I said was correct. In the 2007 Act, section 44(3) states: “In determining the rates of levy, [that is, the 2 cent per litre that everyone is paying] the Minister shall seek to ensure that (taking one year with another) the sums realised by applying those rates to the volume assessments meet but do not exceed the estimated expenses of the Agency and of each designated subsidiary.” Therefore, it has approximately 2.5 times what its running costs are. There have been dispatches, both in the UN speeches by Government this week and by the Minister, Deputy Bruton, talking about repurposing the legislation to use this money in respect of actions suggested by the Joint Committee on Climate Action. That would be a breach of the law. That is from where I am coming from in respect of this matter and I say it for the benefit of the Comptroller and Auditor General in the context of his report to us at next week’s meeting. I apologise for bringing us back to this matter.

Chairman: I thank the Deputy. That is appreciated.

We move to category C correspondence, which is from or relating to private individuals and any other correspondence. Some of this arrived during the summer but we had to clear the earlier categories of correspondence at our two previous meetings. No. 2349C is correspondence from an individual, dated 15 July 2019, responding to a request from the committee for his consent to forward his correspondence in regard to renewable electricity. The correspondent has requested us to forward it to the Joint Committee on Communications, Climate Action and Environment. We will forward it to that committee for any action it may deem appropriate.

No. 2350C is correspondence from an individual copying the committee in on correspondence to the Taoiseach regarding the long-term effect on careers of cannabis convictions. There is no specific request to the committee but the item may be of interest to some members. We have not been asked to do anything and we have just been given a copy of the correspondence to the Taoiseach. We will note this item.

No. 2353C is correspondence from Ms Orla Allen of the Irish Petrol Retailers Association, dated 24 July 2019, providing consent to forward its correspondence to the Valuation Office. There is additional information provided which we will send to the Valuation Office to be considered in its response. Is that agreed? Agreed.

No. 2355C is correspondence from Deputy Catherine Murphy forwarding a query from an individual requesting the committee to make inquiries with the HSE regarding difficulties with its new payroll system, the national integrated staff records and pay programme, NiSRP.

Deputy Catherine Murphy: The movement to automated systems will always cause glitches to begin with, which I completely accept. We have received a response on the NiSRP. Perhaps it was just me who received that.

Chairman: I do not have it.

Deputy Catherine Murphy: It is stated that the system is working well. The only reason I am putting the matter on the agenda is that this was being trialled in one part of the country, which I understand would be a sensible thing to do. However, it has produced quite a significant difficulty for some staff cohorts, from what I am hearing, to the point that there appears to be an inflexibility in it. The HSE has invested in this system and if it is to be rolled out to the rest of the country, it has the potential to cause industrial conflict, for example, because people are not getting paid or are not being paid in a timely way. I would have some concerns about that, although that is not for the Committee of Public Accounts. What is of concern is that if it requires to be recalibrated, that needs to happen. However, if we have invested in a big system and the system is not fit for purpose, that is an issue. If it is just a recalibration, that is another matter. I do not know which it is but I am hearing complaints, although whether that is for this committee is another matter.

Chairman: Where do we go with this?

Deputy Catherine Murphy: I do not know. The HSE is a very complex organisation, as we know, and various types of people are employed, some 9 to 5, some 24-7 and so on.

Chairman: We will include it as an item to be discussed with the HSE representatives. I have proposed that they will be coming in again shortly. There is a chapter in the Comptroller and Auditor General's report in connection with HSE primary care centres. Quite a lot has happened since HSE representatives were here to discuss last year's financial statements, particularly in the context of the Comptroller and Auditor General's report. We will be inviting representatives of the HSE to come before us in the fairly near future. We can address this issue at that meeting.

Deputy Catherine Murphy: It is probably in a wider context as well. There was a time lag for the investment in some IT systems. It would be useful to understand that because one of the constant complaints was that there were something like seven or nine different ledgers. Getting visibility on the accounts, or even segments of things that one could look at in order to compare one part of the country with another, had been deficient. There is a big investment programme and we have to make sure it is robust and fit for purpose. That is where my main concern lies.

Mr. Seamus McCarthy: In advance of a HSE meeting, it might be useful if it provided a note in regard to that system in advance, rather than just taking it up on the morning of the meeting. At least if the committee understood the scale of what the HSE is planning, what stage its plans are at and the costs it envisages, it would be a better start to the meeting, rather than just doing it on the morning.

Chairman: That is agreed. We will write to them and put them on notice.

No. 2356C is correspondence from an individual, dated 8 August, who has made a detailed submission regarding the financial situation of Irish wind farms. Related to this are Nos. 2368C and 2370C, dated 8 August, correspondence from individuals also requesting the committee to review the submission. We know this matter is not within the remit of the committee as it is a policy matter and the submission refers to activities of EirGrid, which is a commercial semi-State company and is not audited by the Comptroller and Auditor General. The correspondent has specifically requested us not to forward the submission to anybody else. I propose, therefore, to advise the correspondent that the matter is not within our remit and to suggest he cor-

respond with the Committee on Communications, Climate Action and Environment. We will thank him for the correspondence, which the members have read, but it is not something we can formally deal with because EirGrid and the wind farms are not under the remit of the committee.

Nos. 2358C, 2359C and 2360C constitute correspondence from an individual copying the committee in on correspondence to the solicitors disciplinary tribunal and related to freedom of information provision. There is no specific request to the committee. We will note these items.

No. 2366C is correspondence from an anonymous individual, dated 30 August, alleging improper and illegal conduct at Maynooth University. We have received correspondence from the university regarding the governance matter, and it deals with those types of issues. I propose to write to the university to provide an information note in regard to the specific items. No. 2385C, dated 13 September 2019, is correspondence from Deputy Louise O'Reilly, forwarding a copy of the same letter. We note this item. When we write to the university, we will give it a copy of letter and ask it to respond.

Deputy Imelda Munster: On No. 2385C and in the context of transparency and proper procedure for public contracts, we should ask the university to clarify the issues raised in the correspondence.

Chairman: Is Deputy Munster referring to the correspondence from Deputy O'Reilly?

Deputy Imelda Munster: Yes.

Chairman: We will forward both No. 2366C, the letter from the individual, and No. 2385C from Deputy O'Reilly, and ask for a comment on both.

No. 2369C, dated 3 September, is from an individual concerning the national broadband plan. The correspondent has copied the committee on a submission to several Ministers and to the Committee on Communications, Climate Action and Environment. We have looked at this matter as it pertains to our last periodic report but the communications committee is responsible for matters relating to the roll-out of broadband. I propose that we advise the correspondent accordingly. The issue of the cost incurred to the Exchequer to date in implementing the national broadband scheme continues to be a matter for this committee.

No. 2371C, dated 21 July, is from the secretary of the Irish Environmental Forum, referring to evidence given by representatives of the Environmental Protection Agency at a meeting of this committee on 18 April regarding the Aughinish plant in County Limerick. I propose to request the correspondent's consent to forward the documentation to the EPA for response to the matters raised. Is that agreed? Agreed.

No. 2372C, dated 6 August, is from an individual querying the frequency and necessity of road repairs and resurfacing in the Donnybrook and Ballsbridge areas of Dublin. I propose that we advise the correspondent that this matter is not within the remit of the committee and should instead be taken up with Dublin City Council or, alternatively, the Local Government Audit Service. We are being asked to take on the potholes.

Deputy Catherine Murphy: It is interesting that this correspondence is from a person in Dublin 4. The perception is that everything has visibility from Donnybrook.

Deputy Alan Kelly: The person should go and see what the roads are like in rural areas.

Chairman: The correspondent is concerned about the frequent nature of the repairs and whether they are necessary. His view seems to be that the road is fine but the city council has so much money that workers come around every so often to do repairs.

Deputy Alan Kelly: In fairness, that is a different point.

Chairman: The correspondent is saying that the repairs are a waste of money, which is probably why he wrote to us.

Deputy Alan Kelly: He is probably right.

Mr. Seamus McCarthy: He is altruistic.

Chairman: We will not get into the issue of funding of local authorities today.

Deputy Alan Kelly: Is the individual saying that roads are being resurfaced when there is no need for it to be done?

Chairman: That is what he is saying. There are many counties where people are crying out for some of that extra money. We will move on.

No. 2391C, dated 20 September, is from a member of the Irish Greyhound Board. The individual is of the view that he was unfairly mentioned during our meeting with representatives of Bord na gCon on 19 September. Having reviewed the transcript of the meeting, I am satisfied that the remarks made at the committee were fair and reasonable. Deputy Kelly asked about the past and current membership of the board, which was a question I would have asked myself if the Deputy had not raised it.

Deputy Alan Kelly: This letter is highly inappropriate. I would not go so far as to say that there is an attempt to exert influence over the committee or nobble somebody, but it is not appropriate. I agree with the way in which the Chairman proposes to deal with it. If there are other instances of people trying to do this to the committee or to a member of the committee, we should deal with them in the same way.

Deputy Catherine Connolly: We should be clear that it is okay for people to write to the committee, and we will deal with the matter. It is important to give that message. I am looking at this from a procedures perspective.

Chairman: Yes, the person is entitled to write to us.

Deputy Alan Kelly: Absolutely. However, for something like this to be published would be a very different matter.

Chairman: We are not publishing the letter.

Deputy Alan Kelly: If it were published, we could have a mistruth being putting out on the basis of somebody's opinion or interpretation. It is our job as a committee to make the decisions on what transpires here. In this scenario, reference was made to what the individual in question said when he attended a meeting of the committee. That person might have a different interpretation of what was said, but he cannot seek to change what was actually said.

Deputy Catherine Connolly: I am not taking issue with the Deputy. My concern relates only to the procedure that applies when a letter of this nature is submitted. I just wanted to clarify the matter.

Chairman: Deputy Connolly is right that the person is entitled to write to the committee. I am dealing with it as Chairman. As I said, I would have raised the issues that were raised had no other member done so. We do not publish correspondence from individuals because to do so would assign parliamentary privilege to that correspondence. All the category C correspondence from private individuals is dealt with in this way.

No. 2399C, dated 24 July, is from the Louth Environmental Group. It concerns a flood risk mitigation project in Dundalk, County Louth, an issue on which the correspondent contacted the committee on a previous occasion. It is a copy of correspondence sent to the Department of Housing, Planning and Local Government. Is it agreed that we note the correspondence?

Deputy Imelda Munster: Will the Chairman consider writing to the local authority or the Department for clarity on this issue?

Chairman: It relates to flood relief, which I assume is a matter for the Office of Public Works, OPW.

Deputy Imelda Munster: There are questions over the level of funding and regarding substandard work.

Chairman: I am happy to write to the OPW requesting that it respond to the correspondence. I thank the Deputy for her suggestion, which is a better way of dealing with it.

Deputy Imelda Munster: Thank you, Chairman.

Chairman: No. 2401C, dated 22 March, is from an individual concerning a decision of Student Universal Support Ireland, SUSI, and related requirements. The individual is in a difficult situation, which we all have encountered with constituents, as a consequence of SUSI's requirement that applicants provide financial information in respect of both their parents. Even where a student's parents are separated or divorced and there may be difficulties within the household, SUSI insists on obtaining that information. In some cases, a student might be living with one parent, who has no contact with the other. It might even be the case that one parent has secured a court order against the other. SUSI will not process grant applications until information on both parents is received, even though it is sometimes not possible for the applicant to obtain it. I propose that we write to SUSI requesting it to indicate its process and procedures for dealing with such exceptional cases. I have encountered students who could not go to college because one of their parents would not facilitate any correspondence with anybody. Without that information, SUSI will not process the application. That is unfair to students and it is not being dealt with in a satisfactory way. We will not refer to the correspondent in our letter to SUSI but we will ask about the organisation's general position on dealing with these types of issues. Is that agreed? Agreed.

No. 2411C, dated 25 September, is from an individual concerned about appointments to the public service of persons with a knowledge of Irish. I propose that we ask the Department of Public Expenditure and Reform to provide an information note regarding those appointments. The correspondent refers to the proposed official languages Bill 2019 and argues that the allocation of employment to a special interest group, which he calls "our Irish speakers", is a contrived State regulation and amounts to jobbery. Can Deputy Connolly advise whether the Department of Public Expenditure and Reform is the right Department to address on this matter?

Deputy Catherine Connolly: Níl aon eolas agam faoi sin.

Chairman: Go raibh maith agat. We will write to that Department.

No. 2414C, dated 22 September, is from Mr. Allen Morgan, who was recently in touch regarding the administration of his correspondence to the committee. The secretariat is providing him with clarifying information in that regard. In this correspondence, he asks the committee to consider a particular matter as part of our examination of the OPW's 2018 account. I propose that we note the correspondence for now and members may refer to it as part of any upcoming engagement with the OPW. There is a chapter in the Comptroller and Auditor General's report concerning the OPW, so we will be engaging with that body concerning its overall financial statements.

No. 2415C, dated 25 September, is a response from the Irish Petrol Retailers Association to our consideration of matters raised by it in regard to the Valuation Office and the Valuation Tribunal. I propose that we note the correspondence and keep the points raised in mind. I want to follow it up in further detail. I have looked at this correspondence. At a previous meeting we asked about the valuation of car-parking spaces in some of these out-of-town locations. To summarise this correspondence, there are two issues. It referred to a two-year backlog for the 2017 appeals. I am not sure if it is the tribunal or the Valuation Office. We want that matter clarified based on this correspondence.

We really need clarification on the second item. The correspondence from the Irish Petrol Retailers Association states: "The Valuation Office has recently made some amendments to the methodology they use for service stations ... which is positive but we have been told that these amendments will not apply to stations revalued under the 2017 revaluation even where they are appealing to the Valuation Tribunal." Essentially, the Valuation Office is stating that there will be two separate methods for valuing filling stations for rates: those valued under the 2017 regulations; and those now being valued under the recent amendments. That is not fair. Given that it could take ten years for such filling stations to be revalued again, they may be at a commercial disadvantage for up to a decade. The IPRA is also saying that when filling stations appeal valuations carried out under the 2017 rules to the valuation tribunal, it will not accept the new amendments and is sticking to the old regulations. That appeals process is unfair. We want that clarified and it does not sound fair to me.

We asked the Valuation Office for a response on the issue of car park spaces at supermarkets, etc. That was mentioned in the context of rates in towns. The Irish Petrol Retailers Association graciously sent us a copy of the Valuation Office practice note regarding supermarkets. We did not get it from the Valuation Office yet, but it is its document. The petrol retailers are utterly confused by what the Valuation Office says about car parking at supermarkets. It states:

Car parking arrangements associated with retail units will be dealt with as follows:

- Common car parking facilities serving retail units will be reflected in the rent passing. [Is that the rent from the landlord to the supermarket?] Under these circumstances these facilities will be reflected in the passing rent.

It suggests that where somebody has developed a facility with many shop units, including a big car park used by all the customers for all the shops, the cost of the car park will be reflected in the rent charged by the landlord who owns the property. However, we are asking about the rates and not the rent.

The practice note also states: "Where the building occupier occupies car spaces at a physi-

cally separate location then they will be valued as a separate relevant property with a description of 'carpark'." It is stating where common car parking facilities are used for several shops, it is reflected in the rent. My question is then about the rates assessment for the landlord. Was the landlord assessed for the commercial value of the car park? It seems to be suggesting supermarkets are covered in the rent. I want to know where in the system the commercial value of the car park is valued for rates. The Valuation Office seems to be suggesting the supermarket does not pay it. That should mean the landlord does it. Are we then going to be told the same property cannot be valued twice? I have not worked that one out. I want clarification on it. It is a good question, and the answer muddied the water further as far as I am concerned. We want to know the commercial value of the car park at these shopping centres. Where is the rates demand notice and who pays them?

Deputy Catherine Murphy: It does not cover all eventualities.

Chairman: No.

Deputy Catherine Murphy: A very large car park could be owned by-----

Chairman: The supermarket-----

Deputy Catherine Murphy: -----the supermarket.

Chairman: -----as happens.

Deputy Catherine Murphy: If it is exclusive to the supermarket, is it rateable? That is competing against small shops on the main street which has paid parking. That is just one aspect of the methodology. As I said last week, there are different categories within a floorspace.

Chairman: We have asked for that; we have not got that reply. We only asked the Valuation Office for that last week. The petrol retailers gave us a copy of the Valuation Office's instruction on the issue of the commercial value of a car park. One of the major supermarkets could own the facility and rent out the units. Is the car park included in its rateable valuation? Where it is owned by a property developer and rented to the supermarket and other businesses, where is the commercial value of the car park captured?

Deputy Catherine Murphy: Is it rateable?

Chairman: Yes. That is what we want to know. I think the Valuation Office will understand what we are asking. If the person writing the letter on behalf of the committee is not sure, I can send him or her a copy of the transcript. The committee can be blamed if the person does not understand it.

No. 2416, dated 26 September 2019, is from an individual regarding the 2017 Comptroller and Auditor General special report on the provision of school transport. We considered a related item from this correspondent last week and suggested that he write to the Joint Committee on Transport, Tourism and Sport. The individual obviously followed the debate here last week and this letter has stated that he is happy to do so.

That covers all the correspondence we have had since July. We come to financial statements and accounts that have been laid before the Oireachtas since the last meeting. The first one is the Health Insurance Authority, for which there is a clear audit opinion. As with all health organisations, there is an issue of funding for pensions. The next item is the risk equalisation fund, for which there is a clear audit opinion. What is that? Is that for the private health insur-

ance?

Mr. Seamus McCarthy: Yes. It is actually managed by the Health Insurance Authority. The two accounts travel together.

Chairman: The next one is the Health Products Regulatory Authority, for which there is a qualified audit opinion. The cost of superannuation entitlements is accounted for as they become payable rather than in the year the entitlements are earned which is standard for health. Why is that qualified and the one above it-----

Mr. Seamus McCarthy: It is because it is operating an FRS 102 accounting system that requires it to deal with pension liabilities on an accruals basis, but it has a direction from the Minister not to do that. Therefore it is not complying with the accounting framework it has adopted.

Chairman: Should it not put at the beginning of its financial policies, “FRS 102, as amended by the Minister”?

Mr. Seamus McCarthy: It does that.

Chairman: Is that not enough for you?

Mr. Seamus McCarthy: No, it is not because effectively it is not complying with the framework. It has disclosed why it is not doing it. I am drawing attention to it, but I am obliged to say it is not giving a true and fair view. That is the qualification.

Chairman: The Health Insurance Authority has a similar issue in accounting for pensions, but it does not get a qualified report. What is the difference?

Mr. Seamus McCarthy: Effectively it is not using an FRS 102 framework.

Chairman: Okay, I understand. It is using a particular accounting framework and not sticking to it whereas the others are not using it at all. I understand. I hope the viewers follow what we are saying on that.

The next item is Horse Racing Ireland, for which there is a clear audit opinion. The National Council for Special Education as been given a clear audit opinion. I think we could talk to representatives of that organisation some time. The next item is the credit institutions eligible liability guarantee scheme, for which there is a clear audit opinion. Athlone Institute of technology has received a clear audit opinion. With regard to St. Patrick’s College, its final residual account is closing down-----

Mr. Seamus McCarthy: It will appear for a number of years. There are a number of legal cases that have to be discharged, but effectively it is not trading.

Chairman: Can the liabilities not be transferred?

Mr. Seamus McCarthy: All the liabilities other than these court cases have been transferred to DCU.

Chairman: Okay. The next item is-----

Deputy Alan Kelly: I support the Chairman in what he said about the National Council for Special Education and its processes.

Chairman: We will put it on the work programme. I am not saying tomorrow. It is definitely an issue that-----

Deputy Alan Kelly: Process.

Chairman: Yes. Everybody in the building would have an interest in that. Its financial statements are now available.

Next are the appropriation accounts for all the Departments' Votes which the Comptroller and Auditor General published on 30 September. His report is with it. He highlighted various matters in his report. We will go through it forensically if we are all here.

Mr. Seamus McCarthy: I look forward to it.

Chairman: It depends on how long we are here. Someone will do it somewhere along the line. I thank the Comptroller and Auditor General for all that. That is the end of the financial statements.

On the work programme, we have already arranged a meeting with An Bord Pleanála for today. Next week, we will have the National Transport Authority. The following week we have Caranua. The week after that we have the Department of Agriculture, Food and Marine because there is a gap between the report and that. We have a gap for the week of 31 October, on Brexit day. People are not sure whether the Dáil is sitting that week but we will assume it is. There are a couple of items we could possibly include. These are the Charities Regulator, Pobal and Sport Ireland. We have mentioned the possibility and we can see whether we can get one of the three of them for that date.

On 7 November, we will discuss the relevant chapters of the report of the Comptroller and Auditor General on the Department of Employment Affairs and Social Protection. I am sure we will also speak about the public services card, on which I want to comment now. We will start to climb up to the HSE and the children's hospital as soon as possible after that because there is a chapter on it in the report of the Comptroller and Auditor General. Now that we have the report of the Comptroller and Auditor General we will try to flesh out our work programme until Christmas at the next meeting. There is nothing major to be said.

An item I want to raise that ties into the work programme is an issue that was raised last week in our very useful meeting with the Data Protection Commissioner on the use of the public services card and her report. We also dealt with other financial matters. Towards the end of the meeting, I raised the issue of a person who continued to use an expired free travel card. The person should not have done so because social welfare payments had ceased. However, the travel card element of the public services card had not been cancelled and the person continued to use it. After several months, the card was confiscated at Heuston Station when it did not work in the turnstile to leave the station. Afterwards, the person received a fine from Irish Rail for €1,000 for not having the correct ticket. So far so good, but this raises data protection issues. The person, whom I dealt with over the summer, told me the issue of how Irish Rail got the individual's name and address had already been raised with the Data Protection Commissioner. There is no dispute with regard to the amount but there is a data protection issue.

Arising from our meeting last week, on Friday I received a very interesting email, as did the Comptroller and Auditor General, from a person with regard to a use of the public services card I had not really thought about until now. If this is happening we really need it to be clarified. On the public services card is a photo, the person's PPS number is on the back, and there is also

the person's signature. The card also shows a date until which it is valid. On the front it may have the letters FT to signify free travel, or it may have the letters FT+S to signify the person's spouse can accompany him or her for free. The individual who sent the card used it on the Luas in Dublin and on one of the major bus companies, not Dublin Bus. When the public services card goes through the ticket machine information is recorded and the individual got curious about what is recorded when the public services card is given to private transport companies. The person tracked it down and eventually received a letter back from the National Transport Authority, NTA, because the bus operator and Luas said it was nothing to do with them and that the person should contact the NTA. In recent days, we received a copy of the letter sent to the individual by the NTA. The NTA states that when a person uses the card none of the person's information on the card is recorded but every card has a number - not the PPS number - that the transport companies have. This allows the companies to claim payment. I know there are also lump sum grants but perhaps Iarnród Éireann is slightly different. This number records all of the trips and journeys made by card holder. The rail company does not have the person's name and address or other details but it sends the number to the Department of Employment Affairs and Social Protection where it can be matched to the person's PPS number.

The NTA states only the Department of Employment Affairs and Social Protection knows the PPS number and the individualised anonymous number held by the transport companies. The Department does not provide this information to anyone. As far as public transport is concerned, all the NTA knows is that the number has been used but not who used it or anything about the person using the card and it is entirely anonymous. The email also states that when the public services card is presented at the ticketing machine, it records that a journey has been taken and assigns the value of the fare forgone to the record, which is stored in the ticket machine. The information held by the transport company is the ID, which is the number on the card, the date and time of the journey, the route number and the fare forgone, which is the adult single fare. The data is then uploaded to the back office system and subsequently made available to the Department of Employment Affairs and Social Protection. The purpose of recording the information is so the transport operator can record overall passenger numbers and overall usage and also be able to make a claim for reimbursement from the Department in respect of services delivered to free travel pass holders.

It appears that when the information comes back from the travel company the Department of Employment Affairs and Social Protection has details with regard to 900,000 people, including every State pensioner in the country, on every time they use public transport and every trip they take. The allegation in the email is that the person did not know the State had such mass surveillance systems in place. I do not think people knew the card and the Department could obtain details on every trip taken. I can see why from a financial position but from a data protection point of view I can see that people were not aware that this is the case. We will write to the Department of Employment Affairs and Social Protection to clarify this particular issue on whether it has a record of all of the travel taken.

Deputy Alan Kelly: The NTA will come before the committee next week.

Chairman: I know it will be budget week but I assume the Department has a lot of staff and that people dealing with data protection are not those involved in who gets an increase next week or whether there will be an increase. Somebody should be able to give us an information note in advance of next week's meeting so we can raise it with the NTA. Is that agreed?

Deputy Alan Kelly: It certainly raises issues.

Chairman: It is raising a big issue.

Deputy Alan Kelly: Something in the back of my head is telling me provision was made somewhere on this but I am not certain.

Chairman: It states the card is for identification and use of public services, and this is a service. For how long are the details of travel and the details of every time the person stepped on a bus or train held? I do not know.

Deputy Catherine Connolly: These are the golden questions that have never been put.

Chairman: We are now asking the questions. The public needs this information.

Mr. Seamus McCarthy: The NTA is the controller of the system and it should be able to explain to us to whom it provides information, the nature of that information and its purpose. My interest in it primarily is with regard to control of public expenditure but obviously we want to ensure the system is operating the way it was designed to operate and within the law.

Deputy Catherine Murphy: Another aspect is that Go-Ahead has some of the bus routes and that information will be transferred through it. My understanding is there is a different type of arrangement with Go-Ahead, in that the fares go directly to the NTA rather than to Go-Ahead, and that its contract is just to drive the buses. The NTA has a direct aspect on this. It is a tripartite arrangement instead of the direct relationship between Irish Rail and the Department of Employment Affairs and Social Protection. It is going three ways.

Chairman: The Deputy is quite right. I did not read all the correspondence on this. The person made very clear that the company was contacted directly, and it stated it operates under licence from the NTA and that as it is the NTA's equipment it will have to deal with the issue.

Deputy Alan Kelly: It is totally an NTA issue. I was there. The licences are centralised through the NTA and it does all-----

Chairman: The processing. It will come before us next week and we will make sure we write to it regarding seeking clarification on this matter next week. We will also write to the Department of Employment Affairs and Social Protection so we have a reply in advance of next week's meeting on this issue so we can close or open the circle as the case may be. We need the information from both organisations prior to next week.

Deputy Alan Kelly: Prior to the summer recess, the issue of Cork Institute of Technology, CIT was being addressed. I will speak to the clerk of the committee as a number of questions were asked and I would like to know whether they have been sent to CIT. I will speak to the clerk and find out. We need to remind the people in CIT that there are questions outstanding. I might provide correspondence to enable that, which might make it easier.

Chairman: That would be good. On housekeeping matters, there is a check under way in regard to the organisations who were in prior to the summer recess and were asked to respond in writing to questions. Any organisation that has not replied fully will be contacted again before next week, following which I will update the committee. I suspect we have received most of them. To my knowledge, there is not much outstanding. Deputy Kelly is correct that we need to follow up on that correspondence specifically.

As there is no other business, I suggest we suspend for approximately 20 minutes. I remind members that voting in the Dáil has been postponed owing to the special debate taking place in

the House today, such that once we get started we will not be interrupted.

Deputy Catherine Connolly: I thought it was postponed to allow us to get home early in light of Storm Lorenzo.

Chairman: We will get to go home early. I only have to travel as far as Portlaoise.

Sitting suspended at 10.30 a.m. and resumed at 10.50 a.m.

2018 Financial Statements of An Bord Pleanála

Mr. David Walsh (*Chairman, An Bord Pleanála*) and **Mr. Terry Sheridan** (*Principal Officer, Department of Housing, Planning and Local Government*) called and examined.

Chairman: This morning we are meeting representatives of An Bord Pleanála in regard to its financial statements for 2018. We are joined by Mr. Dave Walsh, chairman, Mr. Gerard Egan, director of corporate affairs, and Ms Carol Moloney, head of finance. We are also joined by Mr. Terry Sheridan, principal officer in the planning division of the Department of Housing, Planning and Local Government.

I remind members, witnesses and those in the Public Gallery that all mobile phones must be switched off completely. Putting them on airplane mode or on silent will still interfere with the recording system.

I want to advise witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter to only qualified privilege in respect of that evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable.

Members of the committee are reminded of the provisions of Standing Order 186 that the committee shall refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits or objectives of such policies. While we expect witnesses to answer questions asked by the committee clearly and with candour, they can and should expect to be treated fairly and with respect and consideration at all times, in accordance with the witness protocol.

I call on Mr. McCarthy to make his opening statement.

Mr. Seamus McCarthy: As members are aware, An Bord Pleanála was established under the Local Government (Planning and Development) Act 1976. The board is responsible for the determination of appeals and certain other matters under the Planning and Development Acts 2000 to 2018 and for the determination of direct planning applications for strategic housing and infrastructure development. The board also has responsibility for dealing with proposals for the compulsory acquisition of land and with determining appeals under the water pollution and building control Acts.

The board's income in 2018 totalled €24.4 million. Just over €4 million, or 17%, comprised

fee receipts. Oireachtas grant funding issued in 2018 from the Vote for housing, planning and local government amounted to €17.5 million. Expenditure on salaries and related costs amounted to €16 million, representing around two thirds of the board's expenditure in 2018. Expenditure on legal fees amounted to €3.3 million, or 14% of the total. The balance of expenditure, of €4.7 million, related to premises and other operating expenses. The surplus for the year was €552,000. I certified the 2018 financial statements on 19 June 2019 and issued a clear audit opinion.

Chairman: I invite Mr. Walsh to make his opening statement. Is this his first appearance before the committee?

Mr. Dave Walsh: It is, indeed.

Chairman: He is very welcome. I wish him the best of luck.

Mr. Dave Walsh: I thank the committee for the opportunity to appear before it to assist in its examination of An Bord Pleanála's most recent financial statements and to discuss the board's important work and its recent progress in delivering on its statutory mandate. Considering that I took up the post of chairman of An Bord Pleanála in November 2018, 11 months ago, I may, with the Chairman's indulgence, ask my colleagues to address some of the issues that may be raised during the session. They may be more familiar with some of the matters.

It is important to remind the committee that it would not be appropriate to discuss individual planning cases, as to do so could compromise decisions or various judicial review cases before the courts. However, where we can discuss generalities of case types and broad issues emerging, we will endeavour to be as helpful to the committee as possible.

The board is well aware of its critical role in considering and determining planning appeals and major housing and infrastructure proposals, and it remains committed to delivering decisions as quickly and effectively as possible. We are also very cognisant of our corporate governance responsibilities. I can confirm that the board considers itself in full compliance with all applicable provisions of the code of practice for the governance of State bodies.

We have developed and use a framework of assurances, including an audit and risk committee and internal audits, and we undertake regular updates at management committee and board levels of our risks and mitigation actions. As is required under the code of practice, I receive a report annually from the independent, external chair of the audit and risk committee. The committee's most recent report has confirmed that our risk management processes and internal controls are operating effectively. As chairperson, I am also reassured of our financial and governance controls through the unqualified audit opinion from the Comptroller and Auditor General, both for 2018 and for all previously audited years.

The committee will have noted from our annual report and accounts that, in financial terms, as outlined by Mr. McCarthy, the board had a total income of €24.4 million in 2018, comprising primarily an Exchequer grant of €17.5 million and fees revenue of just over €4 million. We spent just over €24 million, leaving a surplus of just over €550,000 when capital transfers and appropriations were taken into account.

I will give members a little background on the organisation. The board currently has 164 whole-time equivalent staff and ten board members. The Minister and Department have been very supportive in approving recent resource requests, including our workforce plan for the period 2019-20, in recognition of the increasing demands and complexity of the cases that are

coming before the board, including in relation to strategic housing developments, vacant site levy cases and major infrastructure projects, and taking into account the forecast increase in cases.

In policy terms, the national planning framework and the emerging regional spatial and economic strategies set a clear priority for appropriate development in the right locations to facilitate the sustainable and orderly growth of our cities, towns and rural areas, and the board has a clear role in implementing such policies through efficient and consistent processing of case decisions.

In a constantly evolving and more complex legislative and legal context, where environmental issues and public participation are rightly to the fore, it is crucial that the board has all the information it needs to make sound decisions and gives people time to feed in their views on proposals during the deliberative process, reflecting our core principles of integrity, independence and fair-mindedness.

While it is acknowledged that the board's capacity and performance to meet its statutory objective period of 18 weeks has been impacted, particularly in 2018, by the transition to our new case management system, the increased caseload and the fallout from reduced board capacity in 2017, we have made strong progress to turn things around in recent months.

In 2018, we recorded a 32% increase in the number of cases decided over the previous year, with over 2,800 decisions made. In November and December alone, we decided almost 600 cases, which is up 36% on the same two months in 2017. This helped us to reduce the number of cases on hand by more than 300, from 1,355 to just over 1,000 files at the end of the year. This reflects the commitment of our hard-working staff and board to really get to grips with the backlog generated and deliver robust decisions as efficiently as possible.

In terms of meeting our 18-week statutory objective period for deciding normal planning appeals, we are aware that an overall compliance rate of 43% for 2018 is not what we would like. Equally, however, the priority and focus for me since I arrived in the job and took over as chairperson has been to process and decide those cases longest with the board, which had a consequential impact on our percentage compliance rate last year. However, we have a clear plan in 2019 to clear the backlog and get back to a compliance rate of 70% to 80% by the end of this year. Things are going well. Our aggregate compliance rate for appeals for the year was up to 67% by the end of August, and the average decision time was 19.5 weeks, down from 22.5 weeks in 2018. For the last four months, we have averaged 78% compliance but we know that more work is needed. The board's performance in relation to strategic housing developments has been very strong, with 39 cases decided during 2018, all within the 16-week target.

In overall terms, last year the board granted permission for 27 applications for more than 7,100 housing units and almost 4,500 student bed-spaces, which is a vital contribution to the overall increase in residential activity. This trend has ramped up significantly in 2019, with 40 applications granted permission in the first eight months of this year for a cumulative 9,070 homes and more than 3,000 student bed-spaces. We are continuing to prioritise these cases and to deal with any large-scale housing appeals expeditiously.

Over the course of 2018, the board prepared a five-year strategic plan with four clear goals. These are to: protect and enhance our reputation for independence, impartiality, integrity, trust and transparency; make robust, timely and high-quality decisions which support proper planning and sustainable development; improve our service to meet changing customer expecta-

tions; and foster a motivated, resilient and responsive organisation. While this is, of course, a five-year strategy out to 2023, there are a number of initiatives and actions that we are prioritising in 2019 to help to realise these objectives and set us on the right path. High among these priorities is the roll-out and refinement of the project, Plean-IT, which will ultimately enable appeals, observations, submissions and applications to be made online, linking in with the local authorities' own e-planning initiatives.

I am conscious that I am taking up members' valuable time to raise specific issues so I will leave it there. I have included some summary graphs in my submission. These outline high-level statistics as a reference. We are happy to take any questions.

Chairman: I thank Mr. Walsh. Our first speaker is Deputy Burke, who has 20 minutes. He will be followed by Deputy MacSharry, who has 15 minutes. All other speakers will have ten-minute slots in the following sequence: Deputy Munster, Deputy Kelly, Deputy Catherine Murphy, and Deputy Connolly.

Deputy Peter Burke: I thank the witnesses for their attendance and acknowledge the unqualified opinion and the annual report which, to be fair, is comprehensive. It is one of the easiest to read we have received from any organisation. I want to acknowledge that because it can sometimes be difficult to understand and interpret some of the reports we get here. Credit is due on that front.

With regard to what Mr. Walsh mentioned in his opening statement in respect of normal appeals, I am looking specifically at table 1 on page 16 of the annual report, which shows that the rate of compliance with the statutory guidelines, that is to say, the time in which the board would like to complete appeals, has fallen. Does Mr. Walsh believe the Minister has provided the board with enough staff and resources to improve this situation? I also note that Mr. Walsh mentioned sufficient improvements this year. At what level does he expect the board to be by the end of 2019?

Mr. Dave Walsh: I thank the Deputy; we appreciate good feedback on our annual report. All our staff put a lot of work into it and it is good to hear that it is legible and easy to follow. With regard to performance and the challenges the organisation has faced over the past two years, it has helped that the Department and the Minister have provided the resources for which we have asked. Back in 2013 or 2014, we were down to 138 to 140 staff members. We are now up to 166, plus the board. Our workforce plan includes 16 additional posts to be filled over the next year and a half, and these have been approved by the Minister. That level of staffing resource and budgetary supports means that we will have sufficient capacity. The challenge for the organisation is often in retaining the great staff we have. In a very buoyant market, there are opportunities for experienced and well-trained people in the public sector to move on. Our job, as part of the strategic plan, is to ensure that people want to work in, and stay in, the organisation and that people see a future for themselves in it.

On the Deputy's question about performance, a 39% rate of compliance in respect of normal planning appeals is very poor. This has been caused by the roll-out of the Plean-IT scheme. It is very difficult. I know from personal experience in previous roles and from talking with staff that the new case management system covers the entire operation of the board from reception through to how the board operates. When anything new is introduced, even when it is as well developed as possible, there will always be challenges as people get used to the new system and make sure that it is as functional as it can be. All it takes is a month or two of a slowdown for a backlog to build up. Thankfully, that backlog is now clearing. We have dealt with the

oldest cases in the system and we expect that, by the end of 2019, our compliance rate will be above 70% and, perhaps, close to 75%. This expectation acknowledges that in January we were already dealing with cases that had been on hand for longer than the 18 weeks, so we were not getting the benefit.

In my opening statement, I pointed out that the percentage can sometimes mask the actual performance of the board. In 2018, the average time to make decision was approximately 22.5 weeks; that time is now down to approximately 19.5 weeks. For September, it was actually down to 19.1 weeks. Even though the target is 18 weeks, the average performance is only one week longer. It is not as if we have left appeals on hand. We have dealt with the oldest cases and cleared that backlog.

Deputy Peter Burke: In the event of a backlog, is there a hierarchy of importance in respect of cases? How is that assessed? There seems to be frustration across the industry with regard to getting responses to referrals under section 5, which are used to determine whether planning permission is needed. Are they given a lower priority in the context of the current housing emergency? How are they assessed? The pushing out of target dates probably has to do with compliance. People sometimes feel that the target is not really a target if it can be pushed out. It does not give certainty. Will Mr. Walsh expand on those three points?

Mr. Dave Walsh: On the first issue, that of our priorities, we deal with a whole range of cases. Given the priority Government and the Oireachtas places on ensuring quick decisions on appeals in respect of strategic infrastructure or strategic housing developments, we expedite them as best we can. We prioritise such appeals and we have put extra resources into our strategic housing division to ensure we meet the 16-week deadline. Of the 91 such cases we have decided on since January 2018, every single decision was made within the 16 weeks. That has been a challenge, but we have met the deadline. Similarly, insofar as is possible, we ensure that we have capacity to deal with applications relating to large infrastructure projects such as roads, energy projects, or major industrial developments. That may have a knock-on implication for lower-level categories.

In addition to normal planning appeals, we deal with building control, referrals, and vacant site levies. Through the management team and the board, the organisation has to assess how to best use our resources and how to prioritise, particularly in respect of the older cases. We took a conscious decision to focus on the applications which had been in the system the longest. That had an impact early in 2019. We have now cleared the majority of those cases and we hope to get back. Referrals are an important element of our work, but they can be more complex and can involve difficult questions of law. They are more about deciding whether something needs permission rather than whether we have a file or appeal before us. In the context of the Deputy's final question, on target dates, there is nothing more frustrating than having uncertainty around when one might get a decision. In the past 12 months, where we have had to provide an extension and inform all applicants and anyone who is observing, we have given realistic dates and, in the vast majority of cases, met them. That has made a difference to the feedback from consumers and customers.

Deputy Peter Burke: I welcome that. On the fee structure, will Mr. Walsh outline An Bord Pleanála's policy for charging and recovery and its bad debt provision for fees?

Mr. Dave Walsh: For the majority of fees the board sets, as governed by section 144 of the Planning and Development Act, the board is permitted to set fees and propose them for the Minister to agree with or not. Every three years we need to review our fees. The most recent

booklet on our system outlines all the fees. It was updated in April 2019 and it reflects the fact we introduced some new fees in respect of vacant site levies, which is a new process the board has. The majority of the fees we have set date back to approximately September 2011. Every two years - we are due another periodic review - we look at the fees, particularly in the context of consumer price index increases, and propose whether we suggest increases. I am sure we would all acknowledge that the tough times during and after the recession were not the time to be loading up. We want to ensure that the fees are kept at a level that encourages as many people as possible who wish to be involved in the process, either in making observations or appeals, to feel there is not a monetary block.

Fees for strategic infrastructure projects and strategic housing projects are set at a fairly high level and we get pretty much full cost recovery for those. We get the fee paid up front and, depending on the overall assessment of the application over its lifetime, we would either look for additional money or, in some cases, refund money that was not a cost incurred. Bad debts occur only in legal cases and there are very few. Where we identify costs that should be recouped, it is normally through that process that we try to chase down those debts and ensure we get value for money for the Exchequer and the organisation.

Deputy Peter Burke: On the IT system and the work being done in that regard, Mr. Walsh mentioned linking in with local authorities and the cost. How will embracing electronic commerce improve how the board does its business? My understanding of An Bord Pleanála is that it sends letters via registered post. Will that process change?

On the strategic housing development, SHD, as far as I understand, applicants have to host an online system to correspond with the board. Some people may argue that it may be difficult for the public to have oversight of the process. Will Mr. Walsh comment on the new IT system? How will it improve the performance of the board's website, provide transparency for the customer and assist in the overall embracing of electronic commerce?

Mr. Dave Walsh: Since I joined the board almost a year ago, our new case management system, along with making sure that, ultimately, the system was available to go online and allow for the full services everyone expects nowadays, has probably been the key project we need to progress as quickly as possible. We are not as far along in the process as we would have originally envisaged. We planned it in 2014 and the project has existed for four or five years. If everything had gone to plan, we would launch this year. It is likely to be towards the end of next year but there are good reasons for that. To return to the previous issue of delays and consequential impacts on the operation of the system, we need to make sure that whatever goes live will be fully functional and will maintain the confidence people have in the system. The last thing we need is a less than perfect model to be out there where, from day one, people say it is not working and they cannot make their connections.

The issue is that everybody expects and knows about the system, and we are all working towards making the process as simple and efficient as possible. As the Deputy will probably know from his local government days, paper and boxes of files are still being shipped. We are keeping An Post and other organisations in business with the volume of paperwork, although that will all change. Local authorities will be able to press a button and send all their digital copies to us. We will not deal with large files. We will have everything on our system and it will be visible. Likewise, any letters and notifications will go out by email. We will need to maintain some level of traditional correspondence for people who do not wish to engage in e-commerce, as in the case of driver licences, motor tax and passports. The vast majority of people, however, including professionals, members of the public and local authorities, will

embrace the change and are waiting for it to come through. It will have greater efficiency, as well as a cost saving in the system, but it is also a simple requirement of how business needs to move on. Before we developed the new system, the system was functional but it never had the required capacity. When we went out with it, therefore, we knew that the design would be a web portal that would allow everybody to view, participate and make payments, and that it would, hopefully, provide an even better service to everybody.

On SHD and oversights, we work within the remit the Minister and the Oireachtas have set in legislation. The requirement for the proposer or applicant to put all the documentation on a website was very much mirroring what was already there in respect of the large-scale strategic infrastructure projects. I am aware that as part of the legislative measures brought in in 2017, the Minister is undertaking a review of SHD and the process, and looking at whether there are ways to improve it. An independent review group was established to produce a report. The board will await the outcome of that and determine what the Minister and the Government wish to do, and we will adapt our systems. The more information that is available on our website and on that of the planning authority, the better. We do not want to hide information but rather make it as accessible as possible, which would be our ultimate goal.

Deputy Peter Burke: Will Mr. Walsh elaborate on the rent review that was conducted, the lease and the review's outcome?

Mr. Dave Walsh: I may ask Ms Moloney and others to deal with the details. The accounts for 2017 and 2018 show that in 2017, we were due to have a rent review of our building in Marlborough Street but it did not happen until 2018. We had factored in that we expected there would be an increase in the price of the rents of potentially up to 15%, given the market that was there. As the review was due in 2017, we had budgeted for retrospective costs that might come through. In the end, as part of our negotiation, we secured a 2% increase in our rents for the next five years instead of the 15% for which we had budgeted. There were no retrospective issues in 2017. We felt it was a good deal in the context of that for which we had originally planned. It is a functional building and we control all of it. It is useful to have everyone in one location in order that we, as an organisation from reception all the way through the board, have a seamless process. We will be there for the next four years. Mr. Egan might like to add something.

Mr. Gerard Egan: In the discussions with the landlord, we found that the negotiations worked out very well for us. We have the main building but we also took on what were two empty retail units on the ground floor of the building. They had been lying vacant for a number of years and we got a very attractive offer from the landlord to take those retail units into the building at a much reduced rent for those floor areas. Those areas are used primarily for the public. As we have increased the space for the reception area and the meeting rooms, we were quite satisfied that this was a very good deal and improved our customer service to members of the public coming into our offices.

Deputy Peter Burke: I was very understanding of the statement that it was not possible to be specific about planning applications. One area of interest is the operation of the strategic infrastructure provision. Perhaps Mr. Sheridan might like to comment on this. It concerns the determination the board must make further to county development plans. I am thinking of areas like the development of the renewables sector and wind farms. I note that An Bord Pleanála's annual report is very clear about the determinations it has made in respect of those. The Department embarked on a trajectory a number of years ago. Councillors were setting out provisions in their county development plans that would aid the development of renewables like wind

farms in particular areas like boglands. They were making it very clear in the development plan that the Minister was issuing directions to overturn those proposals. Subsequently, it stopped doing that. Recent county development plans contain variations that were put forward by the local authorities. They were left in place when concerns may have been raised. In other words, they agreed with the decisions of the democratically-elected local authorities. An example could be if a local authority makes a determination through the democratically-elected councillors to designate an area in its county development plan that might be suitable for the development of a wind farm. This is a global picture to help my understanding of the process. Were the local authority to designate an area, for example, a bog, based on its assessment, the testing of wind speeds, the habitat and all the different matrices it uses, how much note of that would be taken by An Bord Pleanála? Is it a definite “No” that it would override decisions like that in the county development plan or is it something of which it would take substantial account? How does that process work? It has always interested me.

Mr. Dave Walsh: I will kick off. Obviously, the Planning Act and the Schedule to the Act set the threshold. I think it is 25 turbines or a wind energy level of 50 MW. If something meets the threshold, it will come into the board directly. Regardless of whether it involves large-scale or smaller-scale developments, the board must have regard to a range of factors. They include national policy, planning guidelines, regional and spatial plans, city and county plans and local area plans. We must look at the whole range of issues. Regardless of whether it involves Government guidance or a county development plan, there are objectives that, depending on how one reads them, can conflict. There could be objectives around encouraging greater renewable energy generation, protecting landscapes, providing more industry and encouraging rural activity. The board has a range of highly skilled and highly professional planners, who must take everything from the national to the regional to the local into account and must make a judgment call. Planning is never an exact science. It is not a blanket model that one can move because every consideration and every case has its own nuances around access, visibility, appropriateness of location, stability and even the appropriateness of whether one would get the right wind conditions to make it viable. A challenge not only for the board but for planning authorities in dealing with smaller-scale projects is to weigh up all of these different factors and to find the best planning solution. It is often on the basis of the information we have before us and the views of people in favour of or against it but it also takes from the city and county plans, as well as national guidance.

Deputy Peter Burke: I always would have understood that the county development and local area plans constitute the cornerstone documents in terms of how a local authority wants to develop its county. I would have hoped that An Bord Pleanála would place great value on those documents and I hear that in what Mr. Walsh is saying. Mr. Walsh mentioned that national plans can contradict that. Sometimes they can leave a vacuum, for example, with regard to wind guidelines and setback. Does Mr. Sheridan have anything to add regarding cases where variations were stopped and are now allowed? Are we waiting for a clear strategy in the area?

Mr. Terry Sheridan: On foot of the recent national planning framework published last year, which sets out the overarching framework for planning and development on a national basis, we are bringing in regional spatial and economic strategies that must be taken into account by local authorities in the development of local development plans. The national planning framework and regional spatial and economic strategies will have particular objectives regarding renewable energy, including wind farms, and, accordingly, must be taken into account by local authorities in their plans. They are in the process of being reviewed on foot of the adoption of the regional spatial and economic strategies. All local authorities will adhere to new timelines

with regard to the adoption of plans. Under the new arrangements, which will be overseen by the Office of the Planning Regulator, there will be an obligation on local authorities to have regard to national policy generally, including with regard to renewable energy, when adopting their plans, as well the other requirements set out in the Planning Act. Where previously, directions were initiated within the Department against local authorities and confirmed by the Minister, that process is in transition and that function is being transferred to the Office of the Planning Regulator.

Deputy Peter Burke: Essentially, there will be no political intervention. Obviously, primary legislation is different. At the end of the day, the Minister had to sign these guidelines. If a direction was issued against a local authority, it required his consent in order for it to be executed. Is that correct?

Mr. Terry Sheridan: Yes.

Deputy Peter Burke: Is Mr. Sheridan saying this will change?

Mr. Terry Sheridan: It will change slightly in that it will be the Office of the Planning Regulator, rather than the Department that will make recommendations to the Minister.

Deputy Peter Burke: So it is independent, as set out in the recent announcement.

Mr. Dave Walsh: I should have said that where the board is making a decision where there is a clear material contravention of a city or county development plan, it must identify that in its decision and give reasons why it is diverging from what is a very clear policy at local level. Again, we are as transparent as possible and try to explain our rationale if we going against any local policies.

Deputy Peter Burke: I thank Mr. Walsh and his team for their professionalism. It is good to see a report that one can follow and that is easy to read.

Deputy Marc MacSharry: I welcome the witnesses. Page 27 of the report details that out of 43 oral hearings, 30 related to compulsory purchase orders, CPOs. How does the board ensure that the individuals and the State get value for money?

Mr. Dave Walsh: The board's role is to facilitate anybody who might appeal a CPO. Often, a CPO that is not challenged does not even come before the board but where an individual or an organisation challenges a local authority-proposed CPO, even if it is a single person in one house, we will always facilitate through an oral hearing. In many cases, the oral process provides the opportunity to the local authority to outline its views and to enable individuals or appellants to justify their opposition. Ultimately, the board makes a decision that goes back to the local authority for confirmation or otherwise.

Deputy Marc MacSharry: The board is happy that the current process provides value for money. Is that a fair assessment?

Mr. Dave Walsh: Does the Deputy mean value for money in the context of the valuation process?

Deputy Marc MacSharry: Money-----

Mr. Dave Walsh: We do not assign the valuations of the CPOs. Our process is-----

Deputy Marc MacSharry: I am not talking about the valuation. I am talking about the process that is gone through in terms of oral hearings, where they are held and all of that. Is the board happy that it provides value for money?

Mr. Dave Walsh: It is an important process. One could argue that, for small-scale CPOs, it is a lot of time and effort. Equally, however, the CPO process is impacting on people's lives and on their constitutional property rights to a certain extent. It is important that people feel they have not just a written opportunity but also a chance to understand and meet the planning inspector as well. We used to make oral hearings mandatory but in some cases the board now has the opportunity to decide if it has enough information on hand without having a hearing in every instance.

Deputy Marc MacSharry: The board is not necessarily rushing to have one.

Mr. Dave Walsh: Not in every case but for CPOs we would facilitate matters as far as possible.

Deputy Marc MacSharry: I am sure it is not a vast amount of money but I note that all oral hearings are held in hotels. I know that when the Deputy beside me was Minister, he ordered a review and there was a recommendation that such hearings would be held in local authority buildings or chambers. Why was that recommendation not embraced?

Mr. Dave Walsh: That came from the 2016 An Bord Pleanála review. Only in the past month we received a report on our own review of our oral hearing processes in terms of how they are organised, who attends and also trying to identify savings and efficiencies that we can bring to the system. Some of our oral hearings have gone on for a number of weeks, particularly for more complex projects. Again, if we have as much information available to all of the applicants as early as possible, it allows us to get to the nub of the issues quickly. Not all oral hearings are held in hotels. Obviously, any that take place in or around Dublin would be held in our offices, free of charge. A lot depends on the type of project or proposal. We also deal with local authority projects, road CPOs and so on and if the oral hearing is being held in the local authority offices, there might be a perception-----

Deputy Marc MacSharry: We are in the money business, not the perception business.

Mr. Dave Walsh: Yes, but we are not just dealing with large-scale projects. We are also dealing with people whose lives are being affected by decisions that the board will take. We want to ensure that if something is having an impact on their land or property-----

Deputy Marc MacSharry: If we were to follow that through to every Department and if I were suing the State, I would have an issue with the case being held in a court house.

Mr. Dave Walsh: The courts are independent of the Department of Justice and Equality. The Courts Service is separate.

Deputy Marc MacSharry: Yes, and An Bord Pleanála is independent of the local authorities.

Mr. Dave Walsh: That is why it would only be in cases where we feel there is no other option. Again, however, I am not ruling it out. It was a valid recommendation-----

Deputy Marc MacSharry: One would just wonder why Ministers make recommendations or order reviews at all if agencies can state that they like one recommendation but do not like

another.

Mr. Dave Walsh: The review was independent and was conducted by an external group. It was submitted to the Minister initially in 2016 and forwarded to the then chairperson for consideration.

Deputy Marc MacSharry: I would suggest that the board looks at that recommendation. Perception is just perception but we are interested in pounds, shillings and pence. We respect the integrity of independent institutions, including An Bord Pleanála, local authorities and other entities but we want them to be smart with money, although I know this is a small thing.

How many people sit on the board?

Mr. Dave Walsh: There are ten members, myself and nine others.

Deputy Marc MacSharry: How are they appointed?

Mr. Dave Walsh: They are appointed through a statutory process which is written into the 2000 Act. There are nominations from different representative bodies under different classes and groupings. As and when vacancies arise, as the board is turned over-----

Deputy Marc MacSharry: Do members come from prescribed agencies or could I apply to be a member if there was a vacancy?

Mr. Dave Walsh: Again, it is a matter for the Department. There is a range of representative bodies involved. There are groupings such as the planning institutes, the CCMA, the LGMA, architects, engineers and so on because the board-----

Deputy Marc MacSharry: They are allowed to nominate people, is that correct?

Mr. Dave Walsh: Yes, they are allowed to nominate.

Deputy Marc MacSharry: How many prescribed positions are there on the board?

Mr. Dave Walsh: There are nine board members-----

Deputy Marc MacSharry: There are nine board members who come from nine different groups.

Mr. Dave Walsh: There are actually 27 or 28 different nominating bodies.

Deputy Marc MacSharry: Do some of them get together and agree on nominees? Do five or six groups get together, for example, and nominate one board member? How does it work?

Mr. Dave Walsh: The Department would be better placed to answer that question.

Mr. Terry Sheridan: The board appointment process is set out in the Planning and Development Act of 2000. As Mr. Walsh stated, there is a list of prescribed bodies representing interest groups across wider society. In the four groupings from which nominations can be submitted, there are probably about 30 organisations that can nominate members.

Deputy Marc MacSharry: Who decides then?

Mr. Terry Sheridan: When a vacancy arises, we write to the nominating bodies and ask them to make a nomination.

Deputy Marc MacSharry: Who decides then?

Mr. Terry Sheridan: The nominations come in to us, we assess them and then discuss them with the Minister, who-----

Deputy Marc MacSharry: So the Minister decides-----

Mr. Terry Sheridan: Ultimately, it is the Minister who makes the decision.

Deputy Marc MacSharry: All nominations are derived from these nominating bodies. The Department has its own assessment criteria and-----

Mr. Terry Sheridan: We would vet the nominations. For example, for the most recent board appointment, 11 nominations were received which we examined and vetted comprehensively. We discussed them further with the Minister before he made his decision on who to appoint to fill the vacancy. The nominations do not all come at the same time.

Deputy Marc MacSharry: When someone is appointed to the board, can he or she remain a member for life?

Mr. Terry Sheridan: No. It is a five-year term, which can be renewed.

Deputy Marc MacSharry: Can it be renewed indefinitely?

Mr. Terry Sheridan: No, it can only be renewed once.

Deputy Marc MacSharry: So the maximum term is ten years. Is that correct?

Mr. Terry Sheridan: Yes, the maximum is ten years. However, in exceptional circumstances, it can go beyond that.

Deputy Marc MacSharry: What are exceptional circumstances?

Mr. Terry Sheridan: Things like the need for particular skill sets and so on.

Deputy Marc MacSharry: Would all nine or ten members have planning qualifications?

Mr. Dave Walsh: No. They would be familiar with the planning system generally but-----

Deputy Marc MacSharry: As I am but I do not think the board would be appointing me-----

Mr. Dave Walsh: We have architects, engineers, a former county manager, a former civil servant and we have planners as well. The legislation requires that the board has a range of skills. We have a cohort of senior planners with great experience who provide reports and analysis but the system that we have in Ireland allows their recommendations to be brought to a board that has different skill sets to ensure an holistic and hopefully a more balanced and consistent approach.

Deputy Marc MacSharry: Is there climate change expertise on the board?

Mr. Dave Walsh: There was an environmentalist on the board who retired at the end of December. He was an ecologist-environmentalist with particular expertise in the marine area. The Minister has the option to seek an environmental nominee for the board.

Deputy Marc MacSharry: The board does not currently have one. Is that correct?

Mr. Dave Walsh: We do not have one on the board at the moment but we have ecologists and environmentalists within the organisation.

Deputy Marc MacSharry: They are on the staff.

Mr. Dave Walsh: Yes. We deal with many cases where there are significant environmental impact assessments and habitats issues. In recognition of this, four of our board members have undertaken courses in environmental law. They went to the Kings Inns and spent a year studying. While we may not have formally qualified people, we have people with extensive experience and knowledge.

Deputy Marc MacSharry: Are the board positions non-executive ones?

Mr. Dave Walsh: They are full-time executive positions.

Deputy Marc MacSharry: The members are full time. Are there any non-executive directors?

Mr. Dave Walsh: No.

Deputy Marc MacSharry: It is all an executive function. How does the board manage conflicts of interest?

Mr. Dave Walsh: Very simply. We have a process in place through the code of conduct. If any file or category of file comes up, people who may have had recent relations or business contacts do not get involved. The same is true of people who have worked in certain sectors. Normally, for the first two years they would not get any files associated with that sector at all. They would not be allowed even to sit in on meetings. In time, cases might come up that could be local to a member or one might know people who are involved.

Deputy Marc MacSharry: Or a family member might be involved.

Mr. Dave Walsh: Yes, or a family member could be involved. There is a process in the declarations whereby if a file comes up a person can say he or she does not want to be involved in it. That filters down through the organisation.

Deputy Marc MacSharry: In that case, the person recuses himself or herself from that process.

Mr. Dave Walsh: That is correct.

Deputy Marc MacSharry: Is the system based on self-assessment or is there some way of monitoring it?

Mr. Dave Walsh: Again, we have a good self-assessment process. I will just read from our code of practice if that is all right.

Deputy Marc MacSharry: Sure.

Mr. Dave Walsh: The code states: "A member or other person referred to in [the organisation]...shall not deal with any case in any capacity on behalf of the Board where she/he previously had any involvement at any time in the matter, either on a personal basis or on behalf of a

previous employer or as a member of any other organisation or voluntary body.”

Deputy Marc MacSharry: Has the board any audit function to check that that has always happened?

Mr. Dave Walsh: Again, as with any code of practice the board ensures that as far as possible people are fully aware of all the requirements. As public servants, the onus is on the individual to ensure the code of practice is followed but we have certain controls. If we know people have worked in certain sectors, we know that for the first two or three years they will not be dealing with cases in that area.

Deputy Marc MacSharry: Do the board members all make returns to the Standards in Public Office Commission?

Mr. Dave Walsh: Yes, they do on an annual basis.

Deputy Marc MacSharry: Are the returns all up to date and in place?

Mr. Dave Walsh: Yes.

Deputy Marc MacSharry: If the board is dealing with project A, does the board develop into cliques, or how does the board protect against that happening?

Mr. Dave Walsh: No.

Deputy Marc MacSharry: Is there any canvassing outside the boardroom where one person thinks a project should go ahead or another person says he or she does not think it should, for whatever reason? Does that happen and how does the board protect against it?

Mr. Dave Walsh: The main protection is that the deputy chairperson and I, as deputy chairperson, are the ones to assign the timetable. A quorum of three is required for most board meetings. The idea is that we do not want to have the same people going into the meetings all the time - people who share the same views or the same skill set. We always vary the timelines in terms of who people deal with. We are a collective board of ten and while we meet *en bloc* for large applications, for the sake of efficiency we generally have three-person meetings. We could have three meetings going on at the same time. In 2018, we had 940 meetings of the board.

Deputy Marc MacSharry: I just want to clarify that. There are ten members on the board and a quorum is three. Mr. Walsh said for the sake of efficiency there are three-person meetings.

Mr. Dave Walsh: Yes, that is a quorum.

Deputy Marc MacSharry: But that does not mean-----

Mr. Dave Walsh: We would have more for larger cases.

Deputy Marc MacSharry: We hope there are seven or eight members at most meetings. Is that not the case?

Mr. Dave Walsh: It depends actually because of the sheer volume of cases. We dealt with 2,800 cases in the course of the year and had 940 meetings in 2018. Obviously, for cases-----

Deputy Marc MacSharry: The board’s function is split for reasons of efficiency. Is it the

case that three board members deal with one group of 100 cases, another three deal with another 100 cases and a different three members would deal with a further 100 cases?

Mr. Dave Walsh: We assign cases as they arise on the day depending on what is available. As chairperson, I have the ultimate rule to say a case requires a full board, as in all ten members, or that all available members should attend.

Deputy Marc MacSharry: Is that permitted under the Act?

Mr. Dave Walsh: It is indeed.

Deputy Marc MacSharry: Does it state a quorum of three or does it specifically say that due to the volume of cases, it is well within the bounds of possibility that, in taking a decision, seven of the board members were not, as a matter of form, party to the decision?

Mr. Dave Walsh: Again, there is transparency. The minutes of the meetings show who is there and who made decisions.

Deputy Marc MacSharry: I would not say it is widely known that on a daily basis the board operates as a matter of practice with three people taking a decision.

Mr. Dave Walsh: Going back to one of the Deputy's earlier points, in the 2016 review there was some suggestion that we should move to one board member to decide on certain files.

Deputy Marc MacSharry: I was not the Minister. Mr. Walsh can raise that with him in a couple of minutes.

Deputy Alan Kelly: I do not think it was me.

Deputy Marc MacSharry: That is poor practice. I have had the impression that it was the board that was considering cases, and I think that is also true of the ordinary five-eighths whom we are here to represent in terms of value for money, given the kind of decisions the board takes and the confidence that is placed in it by people and the State. The reality in practice is that three members of the board consider most cases. Is that a fair summary?

Mr. Dave Walsh: In a lot of cases, yes.

Deputy Marc MacSharry: That is a revelation to me and I would like to think I know a little about the process.

Mr. Dave Walsh: We do have a range-----

Deputy Marc MacSharry: I imagine it is a revelation to the public that we have a board that splinters due to the sheer volume of cases. It is our problem if the board does not have enough resources. While we might be meeting the rules of the game in terms of the legislation, I do not think we are meeting the spirit of the planning process in terms of the oversight we expect as consumers and the State by having just three people deciding on a case. I will leave that point because I have two other important points and I do not want to go over time.

My next question is probably for Mr. Sheridan. Is it still possible for a Minister to make a ministerial order? I remember reading years ago that a ministerial order was made to give X planning permission. That was before An Bord Pleanála was established.

Mr. Terry Sheridan: No.

Deputy Marc MacSharry: It does not. Could a Minister say something has to get planning and it must go ahead?

Mr. Terry Sheridan: No, it is either the local authority, which is the local planning authority, or the board in the case of strategic infrastructure and strategic housing developments.

Deputy Marc MacSharry: Could a Minister overrule An Bord Pleanála and say a development is to go ahead or not, as the case may be?

Mr. Terry Sheridan: Not to my knowledge. I do not think so. I would have to check the Act but I am not aware of any such power.

Mr. Dave Walsh: There is a provision which has not been used.

Deputy Marc MacSharry: I appreciate that. That is what I am getting at. I know it has not been used, but I want to find out if the provision exists because I think it does.

Mr. Dave Walsh: I think there is a provision, possibly in section 181 of the Act, where, in emergency cases, a Minister may grant permission directly. There are many provisions in the Act that-----

Deputy Marc MacSharry: I appreciate it has not been used and I also appreciate that it may be the practice not to use it. That is up to the Minister and the Government of the day.

Mr. Dave Walsh: I think it is section 181.

Mr. Terry Sheridan: It is section 181. There is a provision for a Minister to grant permission in an emergency situation.

Deputy Marc MacSharry: I get it. I understand that; it is if there is an emergency situation. I just want to establish on the record that the Minister or Government of the day can say in an emergency situation that a scheme is to get planning or not as the case may be. We have established that. That is good.

In its deliberations as a board, does An Bord Pleanála take full account of the habitats directive, for example?

Mr. Dave Walsh: Yes.

Deputy Marc MacSharry: In its deliberations as a board, would An Bord Pleanála take full account of Article 6.4 of the habitats directive, which is the imperative reason of overriding public interest? I am conscious that the board does not want us to discuss individual cases, so let us talk about a hypothetical case. Let us say a lake was infected with cryptosporidium and because the lake provided water to 13,000 families, Irish Water decided it needed to put in a treatment plant immediately because otherwise the 13,000 families would have to boil water. Let us say the planning authority gave planning but An Bord Pleanála overruled it on the basis that it was contrary to the habitats directive, as there was a particular snail or aspect of biodiversity that had to be protected. If An Bord Pleanála was taking adequate cognisance of the imperative reasons of overriding public interest, surely the board would grant permission? It would say the sum of the 13,000 families outweighs the sum of the biodiversity needs of the snail or whatever aspect of diversity was at stake? Would that be the case?

Mr. Dave Walsh: The habitats directive is very clear on the levels and thresholds required

to be able to demonstrate the need for protection. One meets certain tests under the imperative reasons of overriding public interest, IROPI, provisions. Even if this is something that is pursued, EU consent is also required, as well as recognition that a habitat may well be impacted on significantly. For the purposes of public safety, that is where the IROPI and Article 6(4) provisions were written in originally.

Deputy Marc MacSharry: Would Mr. Walsh say that normally the unavailability of clean water to 13,000 families would constitute an emergency?

Mr. Dave Walsh: It might do in certain circumstances.

Deputy Marc MacSharry: If I was part of one of the 13,000 families, I would probably feel it constituted an emergency.

Mr. Dave Walsh: The other question one might be asked is whether there was water that could be received from other locations.

Deputy Marc MacSharry: Okay. Let us say there is not.

Mr. Dave Walsh: Again, we are getting into individual cases.

Deputy Marc MacSharry: I am sorry, but we are not.

Mr. Dave Walsh: I am sorry, but one must look at every case on the basis of what is in front of you. One must consider what the options and the alternatives are. An environmental impact assessment and an appropriate assessment are talk about do-nothing scenarios. One assesses the alternatives and weighs them up, not only against-----

Deputy Marc MacSharry: Let us bring it back to the previous point. On the basis that most cases involve a board of three, if there were perhaps ten, there would be a better opportunity for somebody to state, under the imperative reasons of overriding public interest provisions, that 13,000 families were affected. An Bord Pleanála was not providing adequate scope. Its practice is to involve three persons, but there is the potential to miss the emergency aspect of supplying clean water to 13,000 families. As Mr. Walsh stated, we cannot discuss individual cases, but I am discussing a hypothetical one that happens to mirror an actual case.

Mr. Dave Walsh: The first point is, as chairperson, I can bring any file to the full board if I feel it is appropriate to do so. I am the only person who decides.

Deputy Marc MacSharry: About the specific case, I would love to ask Mr. Walsh if he did bring the file to the full board, but I appreciate that he does not want talk about it.

Mr. Dave Walsh: Going back to the question asked-----

Deputy Marc MacSharry: Mr. Walsh should feel free to tell the committee if he wants to do so.

Mr. Dave Walsh: I would rather discuss the issue in general terms. Going back to the Deputy's question as to why only three persons might have dealt with certain cases-----

Deputy Marc MacSharry: I am only using hypothetical cases where we are talking about 13,000 families being without clean water for what could be years and wondering about the level of proactivity and the fact that, by his own admission, Mr. Walsh considered the habitats directive, in particular, Article 6(4), which deals with the imperative reasons of overriding pub-

lic interest. He did not do it in one instance.

Mr. Dave Walsh: Going back to the Deputy's original point, he mentioned the fact that potentially there were three persons sitting on a board considering a very important case. First, we regard every case that comes before us as important because there are individuals affected by it, but there is a scale of cases. One might have an extension to a house, a single house, a large road or water services infrastructure. We have to marry and adjudicate on a huge range and spread of cases. If we were to have the full board deal with every case that comes through, it would have an impact on the timelines. The committee saw what happened two years ago when our ability to deliver within 18 weeks was severely challenged. It is a judgment call. For large-scale and infrastructure cases, we have a strategic infrastructure division which I chair and has five board members. They deal with most of the larger cases and anything I bring to a ten-person board. The EIA, AA and flood risk assessment are all issues on which we comply fully and of which we are cognisant in making decisions.

Deputy Marc MacSharry: This is my last question. I promise I will then wind up, but I have to ask this question. Did the full board consider the Irish Water application for the Lough Talt treatment plant?

Chairman: I direct Mr. Walsh not to answer that question.

Deputy Marc MacSharry: I accept the Chairman's ruling, but may I comment on it?

Chairman: No. I want Mr. Walsh to accept my ruling. I am not permitting him to answer the question.

Deputy Marc MacSharry: That is grand.

Chairman: Even if Mr. Walsh is inclined to do so, I am not permitting him to do so.

Mr. Dave Walsh: I was not about to.

Deputy Marc MacSharry: Fair enough. I appreciate that it is the Chairman's ruling and I respect the Chair, but I fundamentally disagree with it because it is in the public interest.

Chairman: That is okay.

Deputy Marc MacSharry: We have established today that, under section 181 of the Act, the Minister could have directed that planning permission be granted for that treatment plant and that three years on 13,000 families do not have clean water. If that does not constitute an emergency, I do not know what does. I further add that it is poor practice by An Bord Pleanála to fracture itself into groups of three to consider applications. None of us will ever know which three considered which case and how many were prepared. We will never truly know whether if the ten members of the board, with the full girth of expertise available to it, considered a case. That is poor practice and does not represent value for money. I thank Mr. Walsh for his answers.

Chairman: In respect of all decisions made, Mr. Walsh might inform the committee as soon as is practical how many decisions were made by three or five members and how many were made by the full board. When he might have called a meeting of the full board, he might have had only eight or nine members in attendance.

Mr. Dave Walsh: Obviously, it is the available members of the full board.

Chairman: Mr. Walsh might give us a breakdown. How many of the two thousand and some hundred decisions-----

Mr. Dave Walsh: The figure is 2,800.

Chairman: -----were made by the full board? I think there was a time when there were only three members on the board.

Mr. Dave Walsh: There were four, actually.

Chairman: There was a time when there were only three and they had to do everything and I understand why. Board members can deal with cases simultaneously when broken up. However, we would like to know the numbers. In due course Mr. Walsh might give us the information on the types or categories of decision but not in individual cases where he felt it was appropriate to bring a matter to the full board. If he has that information - I expect somebody in his house has it - he could email it to the committee secretariat.

Mr. Dave Walsh: We will try and get that information.

Chairman: If somebody can telephone Mr. Walsh's office to have it emailed to the committee secretariat, it can be distributed. We ask that there be a facility available to obtain information during the course of every meeting. If Mr. Walsh could answer the query during the course of the meeting, it would be great.

Mr. Dave Walsh: I appreciate that the Deputy has gone, but it is important to note that, even under the provisions of section 181 of the Planning Act where the Minister can make a decision to grant planning permission, it must be fully compliant with both national and EU law. If it involves a large-scale development, an EIA is required. An appropriate assessment may also be required, as well as a flood risk assessment. If a decision was to be taken that did not fully meet the criteria-----

Chairman: A judicial review.

Mr. Dave Walsh: -----it would potentially be invalid.

Chairman: Mr. Sheridan might tell us in due course or today, if he can, how many decisions a Minister has made under these provisions.

Mr. Terry Sheridan: I was just about to supplement my previous comments on the use of the emergency power provisions by the Minister. From recollection, the last time the provisions were used was in the early 1970s, during a health related epidemic when there was a shortage of hospital beds and permission for the construction of a hospital was granted. That is the last time I can recall that the provisions were used. As Mr. Walsh said, any order made in that regard has to be fully compliant with EU and national requirements in terms of proper planning and sustainable development.

Chairman: That is appreciated and understood. It does not bypass the system in place.

Deputy Imelda Munster: I will focus on strategic housing developments, in respect of which An Bord Pleanála has been given enormous power with that policy in legislation. The legislation has removed all checks and balances even in normal circumstance. Certainly, it has removed them from the democratic process in the local authorities' adherence to county development plans in terms of objections from the public, etc. Is it fair to say the provisions for

strategic housing developments have worked nicely for developers insofar as they have allowed them to circumvent county development plans? Is it a fair assertion that it was more about removing regulation than fast-tracking, given what came to light over the weekend?

Mr. Dave Walsh: The first point is that the board operates within the functions to it assigned by the Oireachtas and the Minister. We were assigned the role to deal with strategic housing developments within the bounds of what had originally been set out in the 2017 Act and the regulations from the Minister. It may be more a matter for the Department to explain the justification. However, in the context of addressing the issue of input from all levels, from the local authorities as well as from the applicants and third parties who are interested in the case, one thing that has worked quite well within the system is the tripartite discussions that happen during the pre-planning arrangements. These take place in the first nine weeks of the period. The applicant, the local authority in all its different guises - planners, water people - as well as the board and its inspectors, will meet to discuss the key issues that the local authority, the board and the applicants feel are critical to developing a proposal of the scale that is within the bounds of the SHD legislation. That allows a very clear and formal process to enable views to be expressed, akin to the section 247 processes that the local authority would have had before. This is very much to identify, as part of a final report for the pre-planning, critical issues that the board or indeed the local authority, which will submit its own report, would highlight and that a developer or proposer needs to reach-----

Deputy Imelda Munster: But they are not compelled to take those on board.

Mr. Dave Walsh: Again in the context of pre-planning, we then wait and see what comes through.

Deputy Imelda Munster: If a developer comes to An Bord Pleanála with his proposal for a scheme and it decides in his favour, the public has effectively been taken out of the picture as such.

Mr. Dave Walsh: No.

Deputy Imelda Munster: I am asking how someone challenges An Bord Pleanála's decision, say under the SHD scheme.

Mr. Dave Walsh: We fully meet the public participation requirements. Instead of observations being made to the local authority in the first instance, if it was a smaller housing application, we receive them and consider them as well as the submissions from the local authority. We actually have an opportunity. I think the Deputy is asking where the appeal mechanism is. It is in the courts.

Deputy Imelda Munster: Judicial review.

Mr. Dave Walsh: People can take a judicial review.

Deputy Imelda Munster: They would have to have deep pockets to take that on, would they not?

Mr. Dave Walsh: It depends. We have had judicial reviews under section 50B of the Planning and Development Act if the appeal relates to-----

Deputy Imelda Munster: But in general, a person would have to have deep pockets to take something on. An ordinary man or woman in the street is not going to take that on.

Mr. Dave Walsh: This is where section 50B is important because it provides protection for people who are appealing on environmental grounds in that they should not be liable for any costs.

Deputy Imelda Munster: That is just on environmental grounds though.

Mr. Dave Walsh: Primarily on environmental grounds.

Deputy Imelda Munster: I do not mean “just” but that it is limited to those grounds.

Mr. Dave Walsh: Yes.

Deputy Imelda Munster: I know Mr. Walsh is only new to An Bord Pleanála. Could I ask where he worked before?

Mr. Dave Walsh: I was a civil servant.

Deputy Imelda Munster: Right. What Department did he work in?

Mr. Dave Walsh: I worked originally in the Department of the Environment when I joined the Civil Service in 1995. Obviously the Department changed functions over the years, so my most recent post was actually in the Department of Housing, Planning and Local Government before I moved.

Deputy Imelda Munster: What particular section was it?

Mr. Dave Walsh: It was the housing and planning division.

Deputy Imelda Munster: It is my understanding that the Planning Regulator was also previously an employee of the Department. Am I right in saying that?

Mr. Dave Walsh: He is a former employee of the Department. We have both gone through a fairly robust process.

Deputy Imelda Munster: I am sure. It is interesting. That has just triggered another question. Would Mr. Walsh be aware of many people who have worked in An Bord Pleanála or the Department and are now working for private developers in a consultation role? Would he know offhand if there are such people or how many?

Mr. Dave Walsh: Actually, I cannot think of anybody from the Department. They are the people I have worked with most recently. I am not aware of any people in the board, but as the Deputy says, I am only there 11 months. Obviously, people who are there currently are fully employed within the board.

Deputy Imelda Munster: It is interesting, with Mr. Walsh’s background and his previous work. *The Sunday Business Post* article states that according to a Technological University Dublin housing lecturer, the lack of construction activity on SHD developments highlights flaws in the fast-track process, which is dependent on the developers acting on the permission granted. That is an incredible situation. The one flaw is that a developer might not want to act on permission granted. Was that not seen as a flaw?

Mr. Dave Walsh: Again, the board’s role is to make planning decisions.

Deputy Imelda Munster: The board’s role is also, I would imagine, the process of imple-

menting policy. Even with his planning background, would Mr. Walsh not have seen that as a flaw at all?

Mr. Dave Walsh: I am here as chairperson of the board. The board's function is to decide as expeditiously as possible on planning applications that come before us. Five years is the normal life of a planning permission unless somebody looks to get it extended. In the context of the ongoing SHD review that the Minister has commissioned, they are looking at these issues and seeing if there are further measures and modifications, maybe not to the actual SHD process itself, in which the board is involved, but maybe other measures to encourage it. We have vacant site levies and other provisions within the national policy that aim to move serviced, vacant plots into early development or to penalise those who do not develop them.

Deputy Imelda Munster: Just in his capacity as chairman of the board, at no stage did Mr. Walsh recognise that as a flaw or think that he could flag this up with the Department, given that he was tasked with-----

Mr. Dave Walsh: We feed back regularly in terms of the board's-----

Deputy Imelda Munster: The board has been given enormous powers under the strategic housing development, and with enormous power comes great responsibility. I was just curious if Mr. Walsh had recognised it as a flaw or if he had seen fit to flag it up with the Department.

Mr. Dave Walsh: Once we make the decisions in the board and attach conditions, all of those are enforceable by the relevant local authority. In the context, in any decisions that we take, the role of the board is finished, generally, with the decision. Again, we have had good constructive feedback. We did meet the review group as part of a range of stakeholders to inform them on the process. That was one of the issues that did arise but it is ultimately a matter for the Minister and the Department to decide if additional measures are required.

Deputy Imelda Munster: Let me get it straight. The whole justification for being given the power for this scheme and the whole idea of the scheme was to fast-track. Now that is not happening. For two thirds of the planning applications, two thirds of the houses, work has not even commenced on them. What responsibility would Mr. Walsh take for that? I imagine he would have to accept some responsibility. The policy is not working that he is tasked to implement.

Mr. Dave Walsh: We have to go back to the remit of the board. The SHD legislation was to fast-track planning decisions. That is what we have done. It is not the board's job, and indeed people might argue that the board would be going way beyond its remit if it started taking over what either the Department or planning authorities do. The Deputy mentioned before about making sure there was a local process, and that is the system that the board feeds into. We make fast-track planning decisions and then the system has to ensure that there are sufficient mechanisms to drive development that happens on foot of it. We have approved 16,000 units and 7,500 or 8,000 student bed spaces. Many of those are being built. It is a matter for the Department and the Minister to review to ensure that there is up-to-date information. That is something that Mr. Sheridan might want to speak on.

Mr. Terry Sheridan: If I may come in on this point as well, the purpose of the fast-track process was to fast-track the planning determination timelines for large-scale housing developments in view of the housing supply shortage that was in existence a few years ago. There were claims that the planning system was an impediment or obstacle to the progression of

housing developments and delivery of housing supply. This was considered in the context of the Rebuilding Ireland action plan in 2016, and it was a commitment that the Department and the then Minister, Deputy Coveney, incorporated in the plan. I accept the Deputy's point that the fast-track process was to facilitate the delivery of housing as speedily as possible and that it kind of undermines the system. Despite the granting of planning permission, the permissions are not being acted on as quickly as is necessary, but we are monitoring this issue. It was one of the issues addressed by the review group that reported back to us last week on the operation of the arrangements.

Deputy Imelda Munster: At what stage did somebody in the Department flag up to the Minister that while planning permission was given, the work was not starting in the fast-track process? At what stage did the Department recognise that, while the whole idea was to fast-track development, it was not happening and, therefore, the policy was not working? At what stage did the Department flag that up with the Minister and what was the response?

Mr. Terry Sheridan: As I indicated, we have been monitoring this for a period of time.

Deputy Imelda Munster: How long?

Mr. Terry Sheridan: Since the inception of the scheme in July 2017. The first permissions were not granted until January 2018 and we have been monitoring it since then. Granting planning permission is not the sole factor in ensuring delivery of housing supply but it is the one factor we and the Minister have control over. However, other factors such as access to capital and land are equally important in this regard. There may be situations where developers, on getting planning permission, are still in the process of completing schemes or obtaining finance to progress the permissions they have been granted. It became apparent early in 2019 that things were not happening as quickly as we would like, but one has to allow a reasonable timeframe from the granting of permission to the commencement of development on site. As I indicated, this was something that was focused on by the review group that reported back to us last week on the effectiveness of the scheme, and the group made particular recommendations in this regard. It is ultimately a matter for the Minister, on foot of that review and under the provisions of the Act, to come forward with his conclusions on the review group report and any recommendations within it, and to submit his conclusions on that report, which we only received last week, to the Oireachtas by the end of October.

Deputy Imelda Munster: Is Mr. Sheridan at liberty to say what the review group proposals were or what its findings were?

Mr. Terry Sheridan: No, the Minister is considering them. As I said, we only received the report last week. We will be submitting the Minister's conclusions on the report and also the report itself to the Oireachtas, as required under the 2017 Act, by the end of this month, that is, in a matter of weeks.

Deputy Imelda Munster: Would it be fair to say the sole purpose, the sole justification, of this policy of strategic development was the fast-track process, and that given what has come to light in *The Sunday Business Post*, the fast-track process has failed dismally thus far and has become the fast-track fiasco?

Mr. Terry Sheridan: I would not accept that. It is only in operation for just over two years. The first permissions were granted in 2018 and, as I indicated, normally with development projects there can be a period of time from the granting of planning permission to the activation of

works on site. That is standard practice.

Deputy Imelda Munster: It is standard but not standard in the fast-track process, which is different from everything else.

Mr. Terry Sheridan: That is why we are looking at it. That is why the Minister has already flagged his concerns in public in this regard and he is looking at measures to increase the activation.

Deputy Imelda Munster: Was it this week that he flagged his concerns?

Mr. Terry Sheridan: No, he has been on the record for a few months at least.

Deputy Imelda Munster: About this policy.

Mr. Terry Sheridan: About the lack of commencement of permissions as quickly as we would have hoped and wished. As I said, he is going to come forward with his responses to the review group report within a matter of weeks and they may include further legislative changes. That has been flagged. As Mr. Walsh has signalled, that could include the application of a vacant site levy where permissions are not being activated, and perhaps attaching a condition to those permissions that they must be commenced within a certain period after the permission is granted. All of these issues are being looked at present.

Deputy Imelda Munster: Surely the gaping flaws would have to be addressed for this to work, in particular if the developers are not acting on the planning permission.

Mr. Terry Sheridan: They have planning permission for five years. We are looking at that.

Chairman: Thank you. I call Deputy Kelly.

Deputy Alan Kelly: I welcome some of my former colleagues. For the purposes of transparency, Dave Walsh was assistant secretary over climate change and environment and Terry Sheridan was in planning at the time I was in the Department.

I was looking forward to the meeting today because, during my brief stint in the Department, this area was one where I would have loved to have had more time but, unfortunately, I did not. I am very glad there is a new face to An Bord Pleanála, if there is a face, because it is desperately needed. I believe 100% in An Bord Pleanála but I do not believe that how it operates at the moment can continue from a transparency point of view. It needs to change pretty fundamentally. If I was ever on the other side of the Chamber again, it would be one of my main priorities to put this into a programme for Government. In fact, I would insist on it. I do not think it can continue.

I want to raise five different areas, and this is more by way of discussion than questions. I will not ask the witnesses to speak about any individual cases, and if I mention one, it is not to look for a response. I am certainly not going to down the road that Deputy MacSharry went, basically mirroring a case all the way.

Chairman: It was a great phrase.

Deputy Alan Kelly: I refer to scenarios where somebody objects to a proposal, it continues with a referral to the board, the board makes its consideration, and the decision it makes is, in effect, the ultimate in agreement with the person who made the objection. In other words, the

person objects to a development, that objection is dismissed by relevant authority - the county council - it is referred to the board, and the board disagrees with the planning authority and agrees with the person who referred it. That is all fine, it happens, and it is no problem. Has it ever happened that the actual person who is taking this to the board, where a decision has been made, in whole or in part, does not actually exist? Would that not mean that this decision is in some way in jeopardy or in some way corrupted? I use these words loosely because I cannot think of any other words, and I mean that in generic terms rather than with a personal orientation. I ask the Chair to follow my logic. Somebody objects to a proposal or a development, which is their entitlement. The local authority then passes the development. The person objecting takes it to An Bord Pleanála which reverses the planning authority's decision, partly or fully based on the fact this person referred it to the board. This person does not exist, however. What happens then? Has Mr. Walsh ever heard of any situation like this in any way, shape or form?

Mr. Dave Walsh: That is not as rare a theoretical concept as-----

Deputy Alan Kelly: It is not theoretical at all, but I will allow Mr. Walsh to go on.

Mr. Dave Walsh: We will treat it as theoretical, so.

Deputy Alan Kelly: I will treat it as theoretical.

Mr. Dave Walsh: The first step would be if any appeal or an objection observation is received by the board, we would write to or communicate with the person. In some cases, letters would come back because the address was wrong or, in some cases, the person could not be found. In theory, if there is no objection, then there is no case for the board to deal with.

Any appeal or objection that is received is circulated to the applicant. Again, in some cases, the applicant may raise the same question the Deputy has, namely, does this person exist. The board would take every step that it can to track down and make sure there is a valid appeal from a person who exists.

We would take legal advice as to what the status. The board would have operated on the best available information it had in making its decision. It may be a matter for the courts to decide whether the board's appeal and decision stands.

There have been difficulties. I remember a general case in which somebody wrote in with their views on a topic. It was obvious that English was not their first language. The person spelled their name differently in three different locations on the application form. We undertook to follow up and make sure the person existed. The person did not write in the English script, meaning the challenge was spelling it. Again, these are the kinds of steps the board would take in general terms. In many cases, it would be the applicant who might raise this issue, on which the board would then follow up.

Deputy Alan Kelly: I want to follow through on this because this is a point about which I am aware. This is where my determination to ensure An Bord Pleanála is changed for the better is exemplified. I do not think An Bord Pleanála can or should in any way, shape or form take an application unless it is verified. The stage after involves taking the decision to another level, which is the courts. That is not fair. In fact, it is disproportionate because the applicant has done everything right. A legislative change should be introduced to ensure an objector is verified. I accept it could be graded according to the scale of the development from individual houses up. However, for medium and large-scale developments, there should be some process like I have suggested. In my view, there have been fictitious appeals that have gone all the way

to the board. The board's consideration of decisions has happened based on people who did not exist. That is not acceptable. It is not a good enough answer to say the applicant can resort to the courts.

Mr. Dave Walsh: I might ask Mr. Gerard Egan who has decades of experience in dealing with all forms of cases during his years on the board to elaborate on the processes.

When we receive an appeal and it is circulated, long before the board has decided, we would have administratively gone through the process. In some cases, we have issued registered letters to-----

Deputy Alan Kelly: That is not foolproof.

Mr. Dave Walsh: The legislation requires someone to be able to say it is a valid person. There is a definition in the Act. I am not saying that we do not try to ensure the system is as robust and fair as possible. Equally, if somebody wants to create something as described, the tests are very high.

Deputy Alan Kelly: Yet it happens.

Mr. Dave Walsh: It may happen. For large-scale appeals, it is generally not one individual but a large group.

Deputy Alan Kelly: As I have many other issues to get to, I will highlight a case but absolve the witnesses from commenting on it. It is not in Tipperary, so it has nothing to do with my constituency.

Last March, a planning application for a hotel in a little village, Ballinskelligs – I know the place well because it is where my wife's family comes from – was turned down. It was an insane decision on every level. I have read it all. There was no transparency. It was completely and utterly insane. That is my personal view. I am not saying anything about anyone.

However, Radio Kerry carried a report on an investigation on one of the two objectors. Nobody in Kerry knew who this person was or could find them. This has been discussed *ad nauseam* in Kerry. The decision, however, of An Bord Pleanála on that development was influenced by this. There were only two objectors. Everyone knows who the other one was. That was their right as a citizen and I have no issue with that. The decision, however, was based on the two objections sent to An Bord Pleanála. Nobody knows who the other person was. Most people there do not believe that person exists.

That cannot be allowed happen. Decisions like that are not acceptable. Parking the decision about the actual case, it cannot happen that it was appealed by somebody who does not exist.

Chairman: Does the Deputy mean it was appealed by someone with a false name? The letter must have come from somewhere.

Deputy Alan Kelly: It came from somewhere but the person does not exist.

Chairman: Is it that the named person does not exist?

Deputy Alan Kelly: Put it this way, nobody in Kerry knows who it is.

Chairman: The witnesses are only listening.

Mr. Dave Walsh: We have taken notes.

Deputy Alan Kelly: First, I disagree with the decision. That is fine. However, take the circle of the decision-making process. It is corrupted if a person is appealing it and then the board has to consider that as part of the mix. It cannot say that it is the same complete decision if it got all the way through the board but the person objecting does not exist.

One wonders why people have concerns about An Bord Pleanála. I have had concerns about it from a transparency point of view for many years. This is an ultimate example of why people have concerns. That is why Mr. Walsh must clean it up. I will not stop in my political career until this is fixed. I will keep going on this issue because I believe it must be cleaned up.

The people of Ballinskelligs, a small little place in south Kerry who are dependent on this type of development and need it, will not have this hotel because of this decision. The decision was made by An Bord Pleanála and that is fine. It was a decision that pre-dated Mr. Walsh and that is fine. The fact the people in Ballinskelligs cannot find out who one of the people who objected was, and it got all the way through to the board, is fundamentally, totally and utterly wrong and cannot be allowed to happen in modern Ireland. The impact it has on small places is disproportionate and morally wrong. There are many other questions about it. Mr. Walsh should take that for what it is worth.

I have a couple of comments to make on transparency and I will get back to my recommendations. That was a Freudian slip; I mean the recommendations that came out of the report. My colleague went through issues about who makes decisions and most people do not know that it can come down to three people. I knew that, although most people did not. I do not agree with it, but I know it. I think that at the end of each year, the names of the people who made decisions on each file must be published. An Bord Pleanála should bring that in.

Mr. Dave Walsh: It is there. As it stands, once a decision is made, the minutes of the meeting and those who attended are available.

Deputy Alan Kelly: I understand it is there but it needs to be put into an easier format so people can see it.

All conversations, telephone calls, etc., between members of the board should have to be revealed prior to a decision being made. However many people are involved in making a decision, if any of the decision makers had conversations with each other before the decision was made, they should, through An Bord Pleanála processes, have to declare them prior to the decision being made. It is purely a transparency initiative to stop any notion of people coming together to make decisions beforehand. These suggestions are purely to protect the process of An Bord Pleanála.

I return to the recommendations in the review of An Bord Pleanála that I sought. When I was Minister, I had many other balls in the air about other matters, so I did not have much time for this area. I did, however, ask for a complete review of An Bord Pleanála, organisationally, which was done at the time by very eminent people. I rarely do this, but I submitted a parliamentary question to my former Department, asking for an update, in chronological order, on the 101 recommendations contained in that review. The Department refused to do that. The Ceann Comhairle will be dealing with the matter and I look forward to that being resolved. Will Mr. Walsh please provide the committee, within in a week or two, with the current status of those 101 recommendations?

Chairman: What is the name of that report?

Deputy Alan Kelly: It is called The Organisational Review of An Bord Pleanála by an independent review group, February 2016, commissioned by me. There are very good recommendations in it and I want to find out the status of them all. I have a deep suspicion that many of them have not materialised. That would concern me because I felt at the time that there was not much of a pull towards my decision to start this review in the first place. Page 30 of the annual report states the board consented to the quashing of ten of its orders where a procedural deficit was identified. On ten occasions, the board had to quash its own orders which is a bit of an indictment of the procedures. In this report, many of the procedures are updated and improved on so I want to ensure they are being implemented.

The report was not done for the craic. There are some very good recommendations in the report. For example, recommendation No. 61 is that the board must make clear its direction, by reference to paragraph numbers, those parts of the inspector's report with which it agrees and those parts with which it disagrees. That again brings me back to transparency. Where the board disagrees, it should give its reasons for doing so, supported, if necessary, by relevant evidence. In other words, the reasons should not be formulaic. Does that happen?

Mr. Dave Walsh: Yes.

Deputy Alan Kelly: Does it happen every single time?

Mr. Dave Walsh: It does not in terms of identifying paragraphs, unless there are particular references to specific paragraphs. However, everywhere a board would disagree with a recommendation of an inspector, we insert a paragraph into the decision that says why we disagree with the inspector and the rationale for it. It is not a formula. We explain why.

Deputy Alan Kelly: I would like to see it done in the way outlined in the report.

Mr. Dave Walsh: Okay.

Deputy Alan Kelly: That is for transparency and ease of use. I am not going to take up much committee time on this but there are a number of other useful recommendations. Recommendation No. 3 relates to managerial oversight. Recommendation Nos. 6 and 8 deal with board members being appointed by the public appointments service, PAS. That goes outside the board's remit and is more of a departmental issue but that is a no-brainer and should happen. Recommendation No. 16 relates to biannual seminars. Recommendation No. 24 deals with performance management. There are a whole range of recommendations that need legislative changes which, I understand, would come through the Department and not the board.

Deputy MacSharry spoke about the use of local authorities and I do not believe An Bord Pleanála should be hiring rooms in hotels unless it is going through a very long process. I think they should all be in local authorities, or somewhere close to them.

Recommendation No. 66 is aimed at easing pressures, getting the timelines down and meeting the timeframes set out. It suggests appointing one board member for small developments unless they are going to contradict it. The timelines must improve.

Referring back to my time in the Department, I believe the relationship between An Bord Pleanála and the Department needs to change. I will not say too much more about that but it needs to change pretty quickly.

Another recommendation is that where there is a contravention of a local development plan over a certain level, there should be consultation with the public. Does that happen? It does not. That has to happen and that is an example of a recommendation that never came in.

The board should have an annual conference. Recommendation No. 98 states there should be a head of communications. At the end of the year, key decisions should be explained.

As far as I am concerned, all this is about transparency to the public about operations, the people who make the decisions, how people are appointed, how money is spent and to ensure that serious contraventions of local developments are explained. All this needs to be front-facing. The days of An Bord Pleanála hiding behind secrets and a process that nobody knows about, although I know about it and can see it, are over. The process needs to be front and centre for the public to see. People do not respect, appreciate or understand how all this works. That is becoming a problem because discourses are emanating out there as regards decision making. That creates rumours, which creates concerns. I believe some of these are not warranted. However, I demonstrated examples at the beginning of this meeting where they are warranted, justified and are affecting people's lives in a massive and disproportionate way. It is wrong.

I have a couple of final points to make and questions to ask. I bet our guests are glad I came to the committee today. A number of pieces of legislation are recommended as part of the 101 recommendations. Have our guests any issue with any of the proposed pieces of legislation? If so, they might tell me.

Mr. Dave Walsh: I thank the Deputy. I am conscious that I did not have a chance to speak about some of the other recommendations in that report. The Deputy requested that we provide him with an update on all the actions the board is dealing with and quite a few of the recommended actions relate to the remit of the Department or the Minister.

Deputy Alan Kelly: I understand that, and will ask the Department to deal with those recommendations.

Mr. Dave Walsh: Yes.

Deputy Alan Kelly: Can Mr. Walsh come back to the committee on the recommendations that relate to the board?

Mr. Dave Walsh: I am happy to do that but it is also probably worth highlighting the strategic plan. I do not know if Deputy Kelly had a chance to read it.

Deputy Alan Kelly: I did.

Mr. Dave Walsh: When the Deputy read it, he would have seen that many of the actions and recommendations that fall within the board's remit are now built into that five-year plan. To be fair to the board, we were not waiting around for the review to be completed. We built in what was needed through internal and stakeholder discussions, and many of those actions are included there.

Deputy Alan Kelly: I understand. We will find out about it exactly when the board sends a report on the 101 recommendations to the committee.

Chairman: I ask Mr. Walsh to send it through the committee. He and the Deputy are both familiar with the document but the committee does not have it in front of it. In order to be fair to the full committee, he should send the report-----

Mr. Dave Walsh: The report is publicly available on the Department's website.

Chairman: I ask him to send the response to the report through the committee in order that we know what is being referred to.

Deputy Alan Kelly: There are 101 recommendations in the report in question. I ask Mr. Walsh to remove the ones that are Department-led and give us a status update on the rest.

Mr. Dave Walsh: The Deputy asked my views on legislation, which is also a matter for the Department.

Deputy Alan Kelly: What is Mr. Walsh's view? I am asking if he has an issue with any of the proposed legislation.

Mr. Dave Walsh: A range of legislation needs to be considered.

Deputy Alan Kelly: It has now been nearly three and a half years since the report was published, and I am deeply concerned that the recommendations have not been implemented.

Mr. Dave Walsh: I have been on the board for 11 months and have been progressing this internally, in addition to working on the strategic plan. Finalising and publishing a comprehensive report on the 101 recommendations is one of the items that comes up as part of our regular liaison meetings with the Department, where we have facilitatory discussions around certain issues. That is something with which we are dealing.

Deputy Alan Kelly: That is good, because the Department refused to answer my parliamentary question on it.

Mr. Dave Walsh: We have implemented quite a few of those recommendations, such as bringing in a head of communications. I recognise that in order for people to have confidence in the board and in the system, we must have transparency. All our files and paperwork are publicly available if anyone wants to come in and look at the entire process.

Deputy Alan Kelly: We spoke about that.

Mr. Dave Walsh: There will hopefully be even better access to that information when we move to the new web portal.

Deputy Alan Kelly: I refer to the amount of cases relating to the environmental impact assessment and habitats directives which were lost in the European Court of Justice. How many were lost in 2018?

Mr. Dave Walsh: The Deputy mentioned the ten cases we conceded. From a public perspective we do not want any errors or mistakes in our decisions. Where we have not properly described something or dealt with it, we are not going to waste public money by going into the courts and fighting that decision. Some 20 cases went to the courts in 2018. Seven of those cases were refused leave to appeal, 13 cases were won by the board, and two cases were lost.

Deputy Alan Kelly: There were also ten cases where the board just pulled out.

Mr. Dave Walsh: In those cases we recognised that we would lose and did not want to waste time on them. There are environmental issues about which we are always learning. Even when we win a case we get a report from our legal people in order to strengthen our processes and ensure a similar case will not be brought again.

Deputy Catherine Murphy: I will ask some short questions and I am looking for short answers. I will touch on a number of issues.

I refer to strategic housing developments. If a local authority receives a big planning application, a commencement notice is given in order that it can track permissions and commencements. How does An Bord Pleanála do that?

Mr. Dave Walsh: That is done in the same way. The board has no role in commencements. Any commencements required by an applicant or developer go into the local government system.

Deputy Catherine Murphy: How does the board track strategic housing development commencements?

Mr. Dave Walsh: We have no role in that. Our job is to determine the planning permission, and once that is done, our role is finished and it goes back to the local authorities to enforce it.

Deputy Catherine Murphy: How many of those strategic housing development decisions are conditioned? I presume the local authorities have to deal with Part V and applications that are given permission subject to conditions. Where something is granted permission in theory, the conditions can sometimes take some time to work out and must be worked out at local government level. How many applications would be subject to conditions?

Mr. Dave Walsh: Conditions are attached to every decision the board takes, not only those on strategic housing. Some of those applications require local authority agreement around finishes, landscaping, and so on. These are normal issues in the course of a development. A planning application that is successful at local level would have the same level of conditions attached to it.

Deputy Catherine Murphy: If these applications went through a local authority in the way they used to, some of those conditions would be worked out in advance by going through the process and possibly appealing. Would that be fair to say?

Mr. Dave Walsh: A local authority will generally attach its own conditions regarding waste water, finishes, etc. In many cases, the board will mirror those conditions or cover the same issues in our consideration. It is standard practice that if a developer wants to move ahead, it will submit the finishes or other details to the local authority to be signed off on.

Deputy Catherine Murphy: When a strategic housing development is commenced, the developer is required to provide a website with details of the development. However, when a site gets permission and is subsequently sold, there is no obligation to maintain a website. I have come across that issue in my own area and it becomes impossible for people to find information. There is a question of transparency in public information, because the development has not come through the local authorities. They will only put it up on their system so they can track it for compliance. Is that currently being looked at? There is duplication here which is costing administrative time.

Mr. Dave Walsh: The legislation was designed to require the developer to make that information available. That is something Mr. Sheridan may well update and is being looked at as part of the review. All the information the board receives is on our website as part of the public record, and is also available to view in our offices. That issue is being looked at but it is a matter for the Minister.

Deputy Catherine Murphy: An Bord Pleanála's website is one of the worst websites to deal with, as it is very cumbersome and difficult to find things. I use it reasonably regularly. I hope the upgrade and new case management system includes an update to the website.

Mr. Dave Walsh: It does. It is challenging for people because there is a lot of information on the site and it is not in the modern website style. We have undertaken user experience and interface research in order to design something that will work for people. We have spoken to both stakeholders and our own staff to find out the key pieces of information they need.

Chairman: Mr. Walsh has used the word "stakeholders" a few times. Who are the stakeholders in question?

Mr. Dave Walsh: Stakeholders include the development community-----

Chairman: Who are they?

Mr. Dave Walsh: They include builders, architects, and anyone who uses our system.

Chairman: There are far more people who have made submissions and observations as part of the planning process than there are local authority officials, builders, or architects. How many of those people were consulted? Did An Bord Pleanála go through its files and ask a sample of the site users who corresponded with it to be part of this process?

Mr. Dave Walsh: As part of our strategic plan, we wrote to a range of people, including people who have engaged in the planning process. We held open sessions where we invited people to contribute to-----

Chairman: Very few people come to these public meetings, relative to 3.5 million people, as we know from open meetings and local plans not being contested. I think of the term "stakeholder" as referring to officialdom and all the people with a vested interest in getting through the system.

Mr. Dave Walsh: Many people who use our system to put in appeals will use professional bodies, such as engineering or planning firms, which operate on their behalf.

Chairman: I am referring to regular citizens. I am not taking from Deputy Catherine Murphy's time. When the witnesses refer to talking to stakeholders, are they only talking to themselves and the usual people?

Mr. Dave Walsh: We have a customer charter. The difficulty is that we have 2,800 appeals and we might have 50,000 or 60,000 people on our register who have written in. Is it the best use of the board's time to write out to everybody? What we did was put an advertisement in the-----

Chairman: Would you consider a person who has made a submission as part of your work and not a stakeholder?

Mr. Dave Walsh: The person is a customer and a stakeholder. It is the same. The board is a public body.

Chairman: Nobody is suggesting that you reply to 50,000 people. If you got to 500, you would be doing well. When I hear about stakeholders coming out, I want to know where the ordinary citizen is in that. I have not received the answer yet.

Mr. Dave Walsh: We put an advertisement in the newspaper and said that we were looking to develop on that.

Chairman: Okay. The board knows who responded to the consultation it carried out. You might give us a breakdown of those, such as from local authorities, Departments, Government agencies, professionals representing clients and ordinary citizens.

Mr. Dave Walsh: Yes, we can provide a breakdown. That is no problem.

Chairman: You understand what I am seeking.

Mr. Dave Walsh: I do. The board has people to do a range of jobs and we are dealing with a significant amount of work as well so we must ensure we target our resources and our time as efficiently as possible. However, we want to be inclusive and we recognise that, ultimately, this work-----

Chairman: I am not asking you to do any more work than you have done, which is to give the committee a breakdown of who responded.

Mr. Dave Walsh: I am happy to do that.

Deputy Catherine Murphy: With regard to language, I have a difficulty with using the word “customer”. A builder might be a customer because he is going to sell something, but the citizen cohort has a different dynamic. The board’s accounts and the amount of public money that goes to the board, as opposed to the amount it receives in fees, make the point that it is a public service. If it was strictly customers, it would be a shop.

Mr. Dave Walsh: Everybody who responds generally pays a nominal fee to make a submission or observation-----

Deputy Catherine Murphy: I know. I have done it.

Mr. Dave Walsh: -----so, strictly speaking, they are. However, I understand the point the Deputy is making.

Deputy Catherine Murphy: Obviously the board paid a large amount of money to consultants to design its website and case management system. The local authorities have a similar system. If one calls to any of them, one can navigate through it. How will that interface with the local authorities’ system or will they have to spend money augmenting their system?

Mr. Dave Walsh: The local authorities have a different IT base system. Indeed, there are quite a few different systems operating across the 31 authorities. They have been working on what they call an e-planning initiative. The board is a member of the oversight steering group so we are fully *au fait* with what it is doing. We have been talking at a technical level to ensure understanding of information, particularly in the context of how data and files will move. Ultimately, it is the format of files. The Local Government Management Agency is overseeing that project.

Deputy Catherine Murphy: Okay. Has the money been spent in advance of working through what the ultimate result will be? Obviously, the board requires a proper case management system. Will we end up duplicating some of the spend?

Mr. Dave Walsh: No, I do not believe so. We are operating with different systems. The

key is that the systems talk to each other as effectively as possible. We have chosen a certain project, a Microsoft customer relationship management, CRM, system, to operate in the board and that runs throughout the board. The local government system through the LGMA operates different models in not just the planning area but also in how it operates as an organisation. Obviously, it has other functions. The reality is that most of the documentation that will be transferred over and back will be in the same format and it is about making sure that both systems talk and are compatible. There is no duplication. We have been developing this for the last four years and the system is operational. It is working and we are using it daily in the organisation. The key issue for me is to ensure that it works as efficiently and fully as possible before we roll it out for the public accessing it.

Deputy Catherine Murphy: Did the board put the system out to competitive tender?

Mr. Dave Walsh: Yes.

Deputy Catherine Murphy: How much has been spent so far?

Mr. Dave Walsh: We have a number of contracts. This is a new IT technical system so we had experts to advise us and to help us to assess and speak the technical language. OpenSky Data Systems is the main service provider of the IT language and the system. We had PwC supporting us for the first three or four years and we now have other consultants supporting us as business managers and analysts. Overall, in 2014 we spent approximately €138,000, in 2015 we spent €388,000 and in 2016 it was €572,000. When it went live internally in 2017 the spend was €1.319 million, and in 2018 the spend was €456,000. That gives a total of €2.875 million spent to the end of 2018, with a further €174,000 spent this year so far.

Deputy Catherine Murphy: I will move to something slightly different. Mr. Walsh said that because the board would be holding documents in digital format it will have a digital application. Does that negate having a paper application as well?

Mr. Dave Walsh: Some of the planning regulations have been amended to ensure that the digital record is the primary one. I expect that when the system is fully operational 90% to 95% of the documents we receive will be digital, but there will still be an opportunity for somebody to submit a paper one.

Deputy Catherine Murphy: Where does the board store its historical records?

Mr. Dave Walsh: We have a supplier that stores them.

Deputy Catherine Murphy: Is that off-site?

Mr. Dave Walsh: Yes.

Deputy Catherine Murphy: What does the board pay for that?

Mr. Dave Walsh: It is substantial enough, given the boxes and the years of paperwork. We have the figures here.

Deputy Catherine Murphy: Are there retrieval costs as well? When the board has to get a historical file to consider a case that is on the same site and there is an amendment or the like, what are the retrieval costs?

Mr. Dave Walsh: There is a full contract that includes any retrieval costs over its course.

In 2018, the fee was €112,581.

Deputy Catherine Murphy: Each local authority is in the same position. Mr. Walsh spoke about a combined approach to the IT strategy. Is there a combined approach to storage capacity as well, or would that be appropriate? A very large amount of money is being spent nationally and some of it would not be under the remit of this committee. However, the board is and it feeds into that system so is that being considered in terms of value for money?

Mr. Dave Walsh: Certainly. The Office of Government Procurement has a framework agreement so there are people who have pre-qualified to provide archiving and storage services. We have a current contract but when we will be renewing that there may well be scope through the OGCIO to look at consolidation of, if not central Government Departments, certain agencies anyway.

Deputy Catherine Murphy: I refer to local area plans, county development plans and so forth. A great deal of work goes into them. Many of them have to be re-examined because we have moved from a national spatial strategy to the national development plan and a re-focus. The plans will have gone through, in a very thoughtful way, what is required to permit a housing development to take place, such as associated roads infrastructure, schools, community facilities and so forth. The board does not have to take account of those. It can have regard to them. The phrases “regard to” and “in compliance with” are very different. What note does the board take of those with regard to, for example, large scale strategic housing developments? There is already sizeable disquiet about more one-dimensional housing development. We need housing, but the point is there is a store of other things are not provided in parallel with it. Houses are built but not communities. What is An Bord Pleanála’s remit in that regard? There is a cost associated with it. What is the arrangement?

Mr. Dave Walsh: Local considerations, whether a local area plan, LAP, or a city or county development plan, are assessed and taken into account as part of the review of applications and proposals. The Deputy is making the point that the development is not in isolation. It requires upgrades in servicing through wastewater, water systems or traffic, and has cumulative impacts. We also have regard to national policy, from the national planning framework through what, hopefully, will be regional spatial and economic strategies and the new regional plans in place. It is always a balance to say we have to have regard to those. As I said in response to another Deputy’s question, where we are seriously materially contravening and going against the local plan, we have to justify and explain why that is the case. For SHDs, when a proposal comes in that goes against the plan, it has to advertise in its public notice that it is contravening the plan and set out the reasons for that. The board will analyse and assess that in coming to its final decision.

Deputy Catherine Murphy: The national development plan and the national planning framework were published on the same day and that would be the right sequence. However, there is often a time lag and that is why this phasing approach is often knitted into plans. That is not always followed through on. There could be a potential cost.

Mr. Dave Walsh: That might be something the Department would like to comment on. There is a significant challenge in trying to align and ensure that all of the plans at the different levels are consistent. The local area plans would be the last to be updated, taking account of whatever is in their regional spatial strategy and the key principles. In an ideal world, we would say that we will wait until everything is aligned before making decisions, but we have to make important and efficient decisions on issues and investments now, whether housing, roads or wa-

ter. That is not to say that anything in the plans at present is out of date. We have to recognise that there may be a mismatch in the interim between what might be national and local.

Deputy Catherine Murphy: There is a mismatch. We can see it already.

Mr. Dave Walsh: It depends on the particular issue.

Deputy Catherine Murphy: When there is a judicial review process and an adverse finding with regard to An Bord Pleanála, how is that assimilated into future behaviour, decisions and so on? That is an undermining but costly process. Mr. Walsh might refer to legal settlements. They will not necessarily have happened as a consequence of judicial review. Where the legal settlements fall in, is that separate?

Mr. Dave Walsh: We would only go to court when we feel that there is a case to argue. It is a matter for the courts to ultimately decide whether the board's decision was valid or otherwise. In every case, including some that we win, we get a report from our legal advisers stating what the issue was and that the courts decided to make a judgement, stating that the board's language was deficient or the process was not as robust as it should be and what the board needed to do to amend it. With regard to appropriate assessment, environmental impact assessments or provision of services, the language sometimes used by the board in its orders may or may not fully reflect the requirements.

Deputy Catherine Murphy: Would that find its way into an annual report? Where would it be publicly seen that there is learning from such cases?

Mr. Dave Walsh: In practical terms, the learning is that the board members and the inspectorate would meet quarterly, perhaps even more regularly as needed, to discuss emerging issues that are proving challenging for the board in how it faces judicial reviews or challenges. We have guidance within the board that would outline the appropriate language that we should be using or how to address and ensure that we are fully compliant with the review.

Deputy Catherine Murphy: What were the terms of recent legal settlements?

Mr. Dave Walsh: I ask Mr. Egan to go into some of the detail.

Mr. Gerard Egan: When the Deputy refers to settlements, I interpret that to mean cases that we lose and have to settle with the other side. We have a process which can be convoluted and take a long time. We receive claims from the people who we have liability to, usually in a gross amount. Since we are dealing with the superior courts, those claims can be quite substantial. When we contest a judicial review that goes through the High Court, possibly to the Supreme Court, the claims can range from €250,000 to €500,000.

Deputy Catherine Murphy: Would the board go through the Taxing Master?

Mr. Gerard Egan: To explain the process, we have to consider the nature of the claim. We consult our legal advisers about the quantum of the claim. There can be scope for settlement negotiations to be conducted without necessarily going to taxation. I am not a legal person but as I understand it, it would be quite common in such matters for the parties to try to settle. Given the nature of the committee here, members can rest assured that when we receive a gross claim, we do not just pay it. I am not costing any aspersions on the bona fides of the claimants but the settlement negotiations that we have experienced in the last number of years have substantially settled claims at a much reduced level from the original level, in the quantum of approximately

between 25% and 40%. We have also gone to taxation but I understand that people know that to go to taxation is itself a costly process, including the transaction costs of taxation. We have to make the judgment about whether we settle at what we consider to be an amount that would not be bettered at taxation. That is what we do in individual cases. We have settled but at a level that is much lower than the claim.

Deputy Catherine Murphy: Developers used to pay fees at local authority level and there was an appeal, there would be further fees and so on. This is probably a question for the Department. Was that taken into consideration when assessing fees? Is there a monetary saving for people who go through the strategic investment? Would that play a part in the revision of fees?

Mr. Terry Sheridan: The fees for strategic housing developments are set by the board with the Minister's approval. All of this is on the board's website. The fees can vary. They are based on the number of units in the development. A certain amount is specified per unit. It also depends on whether an environmental impact assessment or Natura impact statement is involved and whether alteration requests are made. They can be quite substantial, going up to a maximum of €32,400.

Deputy Catherine Murphy: Would that fall short of the amount required to cover the cost of doing the work?

Mr. Dave Walsh: No. For once, I have a table that answers the Deputy's question exactly. We did a breakdown for the first six months of the operation of the SHD. We calculated the amount of time taken by staff and local authorities, which get a portion of the fees. For the first 18 months of the operation, we received €2.416 million in fees under strategic housing developments. There was a refund of just over €1.09 million of those fees. Where we were able to process the fees in advance, we gave a refund of money that was not spent. That pretty much left €1.325 million as the estimated costs of what we spent. It is full cost recovery, just the same as strategic infrastructure.

Deputy Catherine Connolly: Cuirim fáilte roimh na finnétithe agus gabhaim comhghairdeas leo. An Bord Pleanála has a full and clean audit opinion. Well done for that. Earlier on, we were talking about a risk register. How often does An Bord Pleanála update its risk register?

Mr. Dave Walsh: We do it every year and the board undertakes a mid-year review because, for example, things might have changed for good or for bad. At the last board meeting, which took place at the end of September, we endorsed the mid-year review of our risk register. We do it twice a year. That is adopted and noted by our independent audit and risk committee.

Deputy Catherine Connolly: Does the board give it serious consideration when it sits down to look at the risk register as to what is on it and what should be on it?

Mr. Dave Walsh: Yes. I know that sometimes in the past so many items would be added to a risk register as to make it almost meaningless. We have 16 or 17 major risks across operations, performance and reputation. We track those and measure them and we also identify the mitigating actions we will take to reduce that number or to ensure these scenarios do not happen.

Deputy Catherine Connolly: Will Mr. Walsh give us more detail on that?

Mr. Dave Walsh: I will use the example of business continuity. We would ask the question of what would happen if the power went down in the organisation or the IT system completely

failed. All departments, from reception up to the board, operate off this system so we would consider what we would do in that scenario. Another example would be performance. At the start of this year, we identified that our compliance with the SOP was not where it should be and we identified that as a major risk.

Deputy Catherine Connolly: What is an SOP?

Mr. Dave Walsh: A strategic objective period. This would be our 80% compliance target. We have made sufficient progress over the course of the year. We set a target for ourselves to be at 70% by the end of the year, and we are currently at about 65%, so we reduced that risk as part of our mid-year review because we recognised that we have more control over it. There is a control effectiveness measure, so the number three signifies the most control and the number one means it is out of our hands. Where that moves in the spectrum will affect the calculation.

Deputy Catherine Connolly: I commend An Bord Pleanála on the documentation and the annual report as well. They are good and easy to read. I come from a slightly different background and I do not condemn An Bord Pleanála or the local authorities about planning. They have been underfunded and under-resourced for a long time. I do not expect Mr. Walsh to comment on what I am about to say but I will preface my remarks by saying we are now in a position where we are rushing through, and putting a statutory obligation on An Bord Pleanála to rush through, housing developments and other strategic developments that should be going through an adequately resourced and funded local authority. We are undermining democracy and the participation of citizens. From a legal background, one matter that always struck me as I listened to the judges was the emphasis they put on the trinity. I want to repeat that here and I will go on to ask some questions. The trinity in planning law is the local authority, the developer and the citizen. The burden on the citizen is huge. I do not like the word “objection”. I have rarely seen objectors in my 17 years at local authority level. I have seen committed people. One does see one or two people who object for the sake of it but most people are committed when they go to the trouble of making a submission. I have seen the role of the public in the planning process significantly reduced to the point that it has been almost entirely removed. That is to the detriment of our democracy.

I have just returned from the Dáil where the Tánaiste justified the legislation the Government brought in giving An Bord Pleanála the power to look at strategic housing developments. He said it was taking 75 weeks to process an application for 100 houses. That was one of the reasons he gave, which I wrote down as he spoke. I was totally unaware of that and I spent 17 years at local authority level. What was missing, since 2009 in particular, was application, staff and public housing.

Mr. Dave Walsh: That 75 week figure was at the outer end of a range of between 50 weeks and 75 weeks. It comes from a piece of work the Department undertook in 2015 and 2016 to track large-scale developments of 100 houses or more from when they went into the local authority to when the decision on the appeal was made by An Bord Pleanála. That is the outside period.

Deputy Catherine Connolly: Is that where that figure is coming from?

Mr. Dave Walsh: Yes. The Department shared a spreadsheet of all those cases and the calculations with the Joint Committee on Housing, Planning and Local Government as part of the deliberations on the legislation. Notwithstanding the point the Deputy has made, if we look at how An Bord Pleanála is operating, we have a mandate to deal with what comes before us. We

have met the nine week pre-application process.

Deputy Catherine Connolly: I have read it and I see that An Bord Pleanála is making progress.

Mr. Dave Walsh: That is the context for that figure of 75 weeks.

Deputy Catherine Connolly: This is more of a policy issue, which may one for another committee, but I have a difficulty with this tunnel we are going through where we push through developments that should be given more consideration. There was no problem getting applications through at local authority level during the Celtic tiger period. I watched that and An Bord Pleanála was understaffed and under-resourced. I am glad to hear it has more resources now but it would have to get more resources given the huge range of responsibilities it has, extending from derelict site levies to projects of common interest, which I will come to. Is An Bord Pleanála adequately resourced to deal with all those responsibilities?

Mr. Dave Walsh: Yes, I believe we are.

Deputy Catherine Connolly: Mr. Walsh must be the first public servant to come in here and say that. That is great.

The IT project that went out to tender has been raised by my colleague and is addressed on pages 10 and 32 of An Bord Pleanála's annual plan. From start to finish, what is the cost of the project and when will it be completed?

Mr. Dave Walsh: Colleagues can step in and clarify this if they wish. The original estimate back in 2014 and 2015 was about €2.9 million. Once we advertised and got our tenders in, the process of developing the project and trying to integrate the complex statutory process An Bord Pleanála has across 150 different types of cases took longer than we thought. The contracts for our advisers, PwC at the time, which is an expert on technical matters, in explaining the system and in trying to provide programme management expertise, and for the designers, had to be extended by a year. As of-----

Deputy Catherine Connolly: What is the price of it from start to finish, including the original contract and the extension? When will it finish?

Mr. Dave Walsh: I expect it will be finished in 2020.

Deputy Catherine Connolly: What does the contract say?

Mr. Dave Walsh: The contract finishes and we will be going out for tender again to finish the remaining elements of it. That is an important point because we extended the open sky contract to May 2020 from May 2019 when it was due to finish. There are still elements to be dealt with, including the portal. We will be going out for tender and we are undertaking an architectural review of the entire system to understand what is there at the moment, how agile it is, and what the clear requirements are to issue and finish.

Deputy Catherine Connolly: I am being a bit unfair to Mr. Walsh because I am cutting across him but it is a specific question. What does the IT project cost? Maybe An Bord Pleanála could send a note to us through the Chairman. When did it start? What was envisaged? What was the business case for it? When will it be completed?

Mr. Dave Walsh: Our latest estimate for completing the project is just under €5 million.

We have spent €2.85 million but we know there will be more expenditure.

Deputy Catherine Connolly: Could An Bord Pleanála set that out and send the Chairman a note on it?

Mr. Dave Walsh: We need to wait until we have our architectural review, which clearly marks out the remaining elements of it. In the meantime, we can certainly give the committee a note that explains the context for it. Until we go out to tender, however, we will not be able to say what the final figure will be.

Chairman: Mr. Walsh should provide his best estimate.

Mr. Dave Walsh: I will give the committee a note on that.

Deputy Catherine Connolly: Page 10 of the report refers to a review of protocols and processes. At what stage is that review?

Mr. Dave Walsh: Is this under ICT?

Deputy Catherine Connolly: It is under the national planning framework on page 10.

Mr. Dave Walsh: The protocol for preapplication consultations was considered by the board last month and is being finalised at the moment.

Deputy Catherine Connolly: Is the review completed?

Mr. Dave Walsh: It has been completed by the board.

Deputy Catherine Connolly: Was it carried out by external consultants?

Mr. Dave Walsh: No. It was carried out in-house by members of the board and inspectors. We looked at how, given our experience, we can streamline the process.

Deputy Catherine Connolly: It has been completed and gone to the board.

Mr. Dave Walsh: It has gone to the board.

Deputy Catherine Connolly: Actions will arise from it.

Mr. Dave Walsh: Actions will arise from it, some of which will be internal while some will be external.

Deputy Catherine Connolly: The subject of projects of common interest will come up in the Dáil in a little while. What is the role of An Bord Pleanála in them? They are mentioned in the annual report.

Mr. Dave Walsh: We are the designated national body for projects of common interest, PCIs. One such example is the Celtic interconnector project connecting us with Europe. Where multiple approvals are in place for transboundary projects, the board will be the co-ordinator of the consent bodies. We have a consent role but it is separate from the PCI unit we have. There will be foreshore requirements and electricity connectivity-----

Deputy Catherine Connolly: An Bord Pleanála has a co-ordination role but it also has a PCI team.

Mr. Dave Walsh: That has to be separate because the PCI group are the co-ordinators. The decision-making on applications before the board is done by the strategic infrastructure unit. We have a consent function in relation to the planning elements but we have a co-ordination function in relation to PCI.

Chairman: Please explain to the public what projects of common interest are.

Mr. Dave Walsh: Projects of common interest are primarily large-scale transboundary projects such as infrastructure, energy connectivity, pipelines, or train lines.

Chairman: They are projects that are carried out with other states.

Mr. Dave Walsh: Yes. They are cross-border projects.

Deputy Catherine Connolly: The project we are debating in the Dáil today is the liquefied natural gas project in Shannon. It will go to Europe on Friday. An Bord Pleanála has a decision-making role in this project, among others.

Mr. Dave Walsh: We have a decision-making role in relation to some planning elements of it. We also have a co-ordination role across all other consent bodies. We liaise-----

Deputy Catherine Connolly: The project has not come before An Bord Pleanála in any way.

Mr. Dave Walsh: It has not come before me.

Mr. Gerard Egan: It has been in as a strategic infrastructure development, SID, application, which was originally made in about 2007. It was granted planning permission back then but the permission lapsed and the development was never constructed. The development has been revived and come back into the system.

Deputy Catherine Connolly: It would be helpful to have a longer note on that.

Chairman: A note on the dual role would be helpful.

Mr. Dave Walsh: I will provide a note on PCIs.

Deputy Catherine Connolly: Climate change measures are mentioned in the annual report, such as the lightbulbs An Bord Pleanála now uses and other energy efficiency measures. All bodies have been tasked with climate-proofing applications, as well as practical steps. How is An Bord Pleanála dealing with this requirement, particularly given the pressure it is under?

Mr. Dave Walsh: Climate policies are laid out in national policy. We have a climate Act and a new climate action plan. We have many measures-----

Deputy Catherine Connolly: I am familiar with them all because we are constantly quoting them. In fact, we are expecting another one. How do they impact on decision-making in An Bord Pleanála?

Mr. Dave Walsh: We take them into account in almost every decision we take, from reducing the impact of car parking and traffic on residential developments to renewable energy projects. We ask how the developments meet our national and international requirements. There are other considerations and a whole range of policies. The national planning framework has a whole chapter on climate requirements.

Deputy Catherine Connolly: There is some wonderful language in the national planning framework, NPF, and many mentions of sustainable development. On the other hand, the NPF pushes roads and other projects that are not consistent with climate change policy. An Bord Pleanála has a difficult job, which is why I am asking how it deals with all its requirements. With each report on climate change the window has narrowed more and more.

Mr. Dave Walsh: It is an evolving challenge for all of Government and for this House. Structures are in place arising from the national planning framework and the national development plan. Those documents try to describe the discrete actions we need to take. In the meantime, while local plans are not fully up to date and do not reflect the latest national policies, it does not stop us from considering the issues and taking them all into account in coming to decisions.

Deputy Catherine Connolly: Is there any vacancy on the board at the moment?

Mr. Dave Walsh: No.

Deputy Catherine Connolly: On page 34 of the report, it states that An Bord Pleanála has a proactive approach to consultation with bodies. There is a glaring absence of community groups and non-governmental organisations, while the Construction Industry Federation is there, as is the Irish Wind Energy Association. Is An Bord Pleanála restricted in its approach to consultation?

Mr. Dave Walsh: No, not at all. We are currently mapping the different parties which engage with us or the board. This is to ensure we explain things and hear people's views. One group which is not listed, but which we meet regularly, is the Irish Environmental Network, which is a combination of environmental NGOs. When I was in the Department we also worked very closely with that group. We have also met Irish Rural Dwellers and other groups so the list is not exhaustive.

Deputy Catherine Connolly: If An Bord Pleanála is back here next year, the list may be much more inclusive.

Mr. Dave Walsh: We will make available all the details.

Deputy Catherine Connolly: The report sets out clearly which levies on derelict sites were upheld and which were not, and there appears to be a fairly even breakdown between the two. Does Mr. Walsh have the figures for how many levies were applied or went on a list?

Mr. Dave Walsh: No. We only deal with the appeals that come through. The Department would monitor and oversee the registers within each of the 31 local authorities.

Deputy Kate O'Connell: I will pick up on the role of An Bord Pleanála with regard to climate. Is it fair to say a data centre, which uses a lot of water and would have a high carbon footprint but very little social dividend in the way of employment and community gain after the construction phase, would be a project An Bord Pleanála would look at in terms of climate impact? Might it be part of its role in the future?

Mr. Dave Walsh: We deal with all planning considerations. Environmental impact assessments are generally carried out on such projects, which would deal with the human impact but also the impact on water, on air and on energy, including renewable energy. The proposer would be expected to outline why the development was positive rather than negative. Loca-

tions are a critical factor and water courses may be impacted in certain areas. Data centres, like any other major infrastructure, have a huge draw on resources generally. We look at the cumulative impact of proliferation as much as an individual case. We marry our approach to major infrastructure and industrial processes to renewable energy proposals and we see the full spectrum, giving us a better picture to enable us to make the best determination we can.

Deputy Kate O’Connell: Is there any role, for An Bord Pleanála or the Department, in looking at the standards for the type of concrete used or other aspects of the carbon impact?

Mr. Terry Sheridan: It is the role of the Department to build control standards, which are required to be compatible with, and take account of, climate objectives.

Deputy Kate O’Connell: They are fluid, which means that things emerge nearly every week and they are reviewed.

Mr. Terry Sheridan: Yes, they are reviewed on an ongoing basis.

Mr. Dave Walsh: The building standards process has evolved. It takes account of EU requirements. There is a major push at EU level to have near-zero energy buildings. It is a regulation. The system is constantly looking at how it can reduce its impact and ensure it is not only retaining energy and limiting its use but also limiting the impact and cost of extracting the materials in the first instance.

Deputy Kate O’Connell: That is what I am really getting at - the production of the product to build the infrastructure. I go back to An Bord Pleanála’s compliance target, the IT system and the delays in 2017 and 2018. The witnesses have noted that last year there were 2,900 cases. To clarify, if Deputy Connolly wants to build 200 houses, that is considered to be one case and if I want to build a shed, that is considered to be one case too.

Mr. Dave Walsh: That is correct.

Deputy Kate O’Connell: One case does not involve one item. A case can be massive or it can be small. The figure of 80% achieved just refers to 80% of the files. It does not have any bearing on the size of the files.

Mr. Dave Walsh: Not at all.

Deputy Kate O’Connell: Is the figure of 20% of cases in which the target is not reached mainly made up of big, rather than middle-sized, projects?

Mr. Dave Walsh: At a very general level, it is more likely that the smaller schemes will be simpler to-----

Deputy Kate O’Connell: They are included in the figure of 80%.

Mr. Dave Walsh: Yes, but we seek further information on some small cases. Often it is not clear what the issue is. In these cases we provide an opportunity for the applicant or the appellant to elaborate or provide further evidence. We normally allow a period of two or three weeks. We then circulate the material to everyone else in the file and the 18 weeks disappear very quickly. We have a priority system to balance the larger projects, particularly where there is masses of information and we need to make sure people will have time to understand and respond to it. Our system looks at files and balances the competing challenges presented by small cases and ones of more strategic, community, economic or infrastructural significance.

We make sure we provide the resources needed to ensure there will be a planning inspector and staff ready to deal with those files, rather leaving all of the hard ones until the end. We have to balance it as we go.

Deputy Kate O'Connell: I refer to the delays in the IT system. I understand how something can be delayed. A lot of people have received letters stating their case was not dealt with within the 18-week period and that it would be dealt with within a few more weeks. When those few weeks passed by, they received another letter stating it would be dealt with in another few weeks. This was a source of much irritation and frustration for real people in trying to go about their daily lives. Does Mr. Walsh acknowledge that this is the case? What has An Bord Pleanála done since that period? Has the organisation learned from it and how will it prevent it from happening ever again to normal people in going about their lives?

Mr. Dave Walsh: As I said to Deputy MacSharry, there is nothing more frustrating than having a new deadline and then not meeting it. Certainly we have learned that we do not want to offer something we cannot actually deliver. We have improved our overall compliance levels. It used to take on average between 22.5 and 23 weeks to decide all cases. Cases were not decided within 18 weeks, but they did not go to far beyond that figure. We have brought it down to 19.5 weeks. In the vast majority of cases where parties do not receive a decision within 18 weeks, they receive one very soon afterwards. We are setting very realistic deadlines that we know we can meet, but there are always cases where-----

Deputy Kate O'Connell: Does An Bord Pleanála tell the people concerned?

Mr. Dave Walsh: We write to everybody. There have always been problems where we have set a deadline and, for whatever reason, miss it. We are looking at the process within the organisation in order to provide certainty. If there is no confidence in the ability and timeliness of decisions, we are losing the battle.

Deputy Kate O'Connell: I wish to get back to the earlier points about the ten-person board. It was said the public would not know that there were three people involved. Some 2,900 cases were processed last year. I am not being smart, but for how many days a year does An Bord Pleanála work?

Mr. Dave Walsh: We work full-time.

Deputy Kate O'Connell: For how many days? To me, full-time means 90 hours a week. I am not really sure what others do.

Mr. Seamus McCarthy: The standard expectation is about 220 days.

Deputy Kate O'Connell: Somebody clever can do the sums. I am just commenting on other assertions made here. I cannot see how it is technically possible or realistic for the ten people to consider all 2,900 cases. I am sure members of the public do not make the calculation. Three members of the board make a decision on a case. As I said at the start, a case could involve a shed at the back of a property or 200 houses. Obviously, the full complement of ten people does not make a decision on an extension. Can I assume that in his leading role Mr. Walsh is the person who balances the expertise of the board in make decisions?

Mr. Dave Walsh: Very much so. We have 55 or 60 planners and a director of planning who identifies cases that are complex and which will require time. It is a perfect balance. If we were getting through decisions in five minutes, it would be said the board was not spending

enough time in considering the issues involved. We have to find the perfect balance between having sufficient sharing of views in order that it is not just one person who is making the decision and the need to prioritise and provide the full scale of perspectives needed on large-scale major projects. It is my job, as chairperson, to convene a meeting of the full board or all of its available members.

Deputy Kate O’Connell: I wish to ask about the ability of people on the board to speak up. Are there cases where other members of the board come to Mr. Walsh with the view that he has not made the correct decision on who is to look at a certain case? Does another member of the board ever say that perhaps member No. 8 should be involved also? Do the other members of the board come together and recommend having seven, rather than five, because the other two have a specific interest in X or Y? Does Mr. Walsh get from where I am coming?

Mr. Dave Walsh: I do. It is at the chairperson’s discretion. However, if a very difficult issue or one that will set an important precedent comes before a three-person board, there will be a proposal to bring it to the full board. Even if it is a smaller-scale case that was originally assigned to a smaller panel, if we believe it will have policy ramifications, it is my job, as chairperson, to identify them and bring the case to the full board.

Deputy Kate O’Connell: I do not want the message to go out from this committee that three random members of the board turn up on random days and pull cases out of a hat. I do not want that to be the narrative because I do not believe that is the case.

Mr. Dave Walsh: No.

Deputy Kate O’Connell: Reference has been made to cases in which An Bord Pleanála has conceded on procedural issues. They account for 0.3% of the total number of cases. As Mr. Walsh said, An Bord Pleanála decided not to spend taxpayers’ money in chasing something it was not going to win. Is that a fair way of characterising it?

Mr. Dave Walsh: Yes. We follow formal well developed procedures that have been built up over decades of experience within the organisation. We are operating in a legal context that is very much evolving. We have new directives and requirements. Case law will alter the thresholds or tests. When legal advice indicates that a case will be challenging, we make a judgment. Normally when we concede a case, it is remitted to the board, but different decision-makers look at it. We make sure our processes are fully up to speed. In these cases that is a better option than going to the courts. The issue is not cost but time. The amount of lead-in time required to obtain court dates, even in the commercial courts, stretches out the process. It probably undermines people’s confidence in the system.

Deputy Kate O’Connell: To what end, one might ask. I assume Mr. Walsh’s role is to uphold the planning process at all times. It is not to be right or wrong but to uphold standards.

Mr. Seamus McCarthy: Yes.

Deputy Kate O’Connell: I assume Deputy Connolly brought up this issue, but I was not here for it. There are three women on the board. Previously, there were four.

Mr. Dave Walsh: I am trying to think as I do not have my list.

Deputy Kate O’Connell: I think there were three women out of ten.

Chairman: There was a recent appointment made to the board. The book indicates that

there are nine members.

Mr. Dave Walsh: Yes.

Chairman: Who was that recent appointment?

Mr. Dave Walsh: The recent appointment in January or February of this year was Chris McGarry.

Deputy Kate O'Connell: Where is he? Is this not up-to-date?

Chairman: No, it is not up-to-date.

Mr. David Walsh: This is 2018.

Chairman: Three of those members have gone.

Deputy Kate O'Connell: What is the breakdown of men and women on the board now?

Mr. Dave Walsh: We have three women and seven men.

Deputy Kate O'Connell: What I cannot understand is why there is not a 50%-50% breakdown. I can understand in some organisations where there is history but the board is drawing from expertise. I would argue that there are plenty of women out there with expertise in planning. Has An Bord Pleanála any plan to have more than 30% women? Some 30% would be the minimum acceptable percentage, even though I do not find it acceptable. I can understand in some areas why there are not women available but women are available in this sphere. What is the problem?

Mr. Dave Walsh: We receive board members who are appointed by the Minister through the process that is set out in legislation.

Deputy Kate O'Connell: Is it the case then that the Minister did not appoint the women?

Mr. Dave Walsh: Sometimes it is down to who was nominated in the first instance, and Mr. Sheridan can probably better explain this.

Deputy Kate O'Connell: I understand.

Mr. Dave Walsh: It goes back then to the nominees who come from the various bodies and who is put on the list. The skill sets that may be required are identified in this particular instance.

Deputy Kate O'Connell: I refer to the list of people from which the Minister picks. Do we have access to that list, Chairman? Can I get information on the bulk list for one of the positions? Have we any idea if there is a 50%-50% breakdown in terms of recommendations coming in? I am getting worn out with excuses as to why we do not 50% women. There is always an excuse.

Mr. Terry Sheridan: Of the three women who are on the board at present-----

Deputy Kate O'Connell: Do not say they are great women.

Mr. Terry Sheridan: They are because they were appointed by the Minister and were deemed to be best qualified at the time, having regard to the nominations received. Those three

have been appointed since 2017.

Deputy Kate O'Connell: How many women were on the board before 2017?

Mr. Terry Sheridan: At one stage, there was only one.

Deputy Kate O'Connell: So this is an improvement of 200%.

Mr. Terry Sheridan: It went up to four until-----

Deputy Kate O'Connell: That lady, the former chair-----

Mr. Terry Sheridan: The predecessor of the current chair then left. It depends on the nominations that are received and the skill sets required. Gender equality is a factor that is taken into account.

Deputy Kate O'Connell: By whom?

Mr. Terry Sheridan: By the Minister and the Department. There are statutory obligations as regards gender quotas on State boards which we try to comply with.

Deputy Kate O'Connell: I am aware of the gender quotas but in this case, there are plenty of women in the sphere. That is why I cannot understand why it is not 50%. Is anything specifically laid out as to how to correct that? Instead of having a quota, have it as equality.

Mr. Terry Sheridan: As stated, it depends on the nominations. It is something I can look at.

Deputy Kate O'Connell: Can Mr. Sheridan give me the weighting between males and females in respect of the nominations for the latest position, to which a man was appointed? From what bucket was he who pulled out of? Was there a 50-50 mix in it?

Mr. Terry Sheridan: I do not have the list of nominees-----

Deputy Kate O'Connell: It always seems to be the guy who gets pulled out of the bucket.

Mr. Terry Sheridan: I do not have the list of nominees for that last vacancy. As mentioned earlier, there were 11 nominations. It may well have been the case that there was a small number of females nominated through the nomination process by the prescribed bodies.

Deputy Kate O'Connell: It may well be. I would like to see it laid out. I do not mind if it is anonymised. If 20 people were nominated, was it 50-50 and are we always choosing the man?

Mr. Terry Sheridan: I can give the Deputy a list of the nominations that have been received over the last three years, for instance, to indicate the breakdown between male and female nominees.

Chairman: Can this be sent back through the committee secretariat, please?

Mr. Dave Walsh: On that issue, this is more of an instruction from the Department to the nominating bodies. All the bodies under the different categories can nominate up to two people.

Deputy Kate O'Connell: If they just keep nominating men, it is-----

Mr. Dave Walsh: As part of the review of An Bord Pleanála and that report, there were

recommendations on looking at the nominating process to bring it up to speed. That may well be something to look at, but it is a matter for the Minister, in first instance.

Deputy Kate O'Connell: It is because sometimes in jobs, in medicine, surgery or whatever, one just does not have the women coming through. In planning, development and building there are definitely women. I do not normally go on about this issue but it is particularly stark and it is very important in terms of the skills mix that is brought to the table when the board is making decisions for people in society, of whom 52% are female.

The IT system had a budget of €2.9 million, or €2.875 million was spent. That is all understandable, in some ways, but we are going from the guts of €3 million to €5 million. It is great that the board will test the system to ensure that it is right. Some sort of architect was mentioned but I cannot-----

Mr. Dave Walsh: A technical architect.

Deputy Kate O'Connell: Somebody who will ensure it works. On the tender to finish up the bits, was OpenSky the company?

Mr. Dave Walsh: Yes, it is the current provider.

Deputy Kate O'Connell: Is it possible that any other company could come in on that tender and take up where it left off?

Mr. Dave Walsh: It is possible.

Deputy Kate O'Connell: Is there a reason for going out to tender?

Mr. Dave Walsh: Yes, we followed the procurement rules and extended the contract with a notification as to the current programme. We are developing a system that is an "off the shelf" one and is from a Microsoft product. Once it is written - CRM Dynamics is its name - it is a product that can ultimately feed into the portal piece and online submissions. This will be a product that will go out to open tender. There are many people out there who would be able to-----

Deputy Kate O'Connell: They would be capable of picking it up, if the board wants to change, or if the original people do not win the tender.

Mr. Dave Walsh: It is down to competitiveness.

Deputy Kate O'Connell: I am just making sure because we have had cases before. For example, with the children's hospital, there were two phases but who else was going to come in and build on somebody else's foundations?

Mr. Dave Walsh: That was one of the reasons because we could have asked the company to write bespoke codes but that would have tied the board-----

Deputy Kate O'Connell: It would own-----

Mr. Dave Walsh: By taking a product and adapting it, we are allowing for a better future use.

Deputy Kate O'Connell: Was the €2.9 million estimate for 2014 the amount of money the board had to spend? How could something end up being €5 million when it was €2.9 mil-

lion? Inflation is understandable but if I was the company who had got that tender I would be delighted I had received a tender for €2.9 million and could potentially get €5 million. I would think this is a good day out for the company but not for the taxpayer.

Mr. Dave Walsh: On the overall project costs, there are a number of different elements from licensing costs to business analysts and programme managers to assist us as well as the core development costs. We estimate the core development costs to be just over €1 million. This is what OpenSky is doing. There are other supports.

I refer to the best laid plans and our best estimates for assessing the future costs. We had advisers on board and programme managers and people with expertise in this area who said what it should cost. The big challenge with any kind of project, whether IT or not, is that if it goes over schedule, it will cost more. We need people for longer and we need to budget for that.

When we started off in 2014, we did not have strategic housing as a function or vacant sites as a function. We also did not have the developments that have happened in the last five years in terms of the expectation of moving everything to the cloud. We want to ensure we do not just retain and keep with the old product envisaged in 2014, but that we create a product that is future-proofed for the next five to ten years and that can be agile and adapt to the future requirements.

Deputy Kate O’Connell: Essentially, what Mr. Walsh is saying is that what was planned for in 2014 has evolved. The board has taken on more roles and the system has to be bigger to cope with the board’s extended roles.

Mr. Dave Walsh: That is pretty much the position.

Deputy Kate O’Connell: There is no big scandal involved with the €5 million. I would like to make a point about holding oral hearings in local authority buildings instead of hotels. A point was made earlier about the interface there. Consider a private citizen who may be in conflict with the local authority. If I was being brought into a local authority office, I would feel that everyone there might be working against me. I agree with cost savings, and I am sure there are ways to explore that. I do not agree, however, and I do not think it is acceptable that a citizen of this country who has an oral hearing to do with a local authority, and where they are on opposite sides, could be put in a position where he or she would have to walk into the opposition’s building. I am not really expecting the witnesses to agree with this, or they can if they want. I just wanted it on the record.

Mr. Dave Walsh: On that point, Ms Moloney has dug out the numbers on compulsory purchase orders, CPOs. The money we spent on accommodation for rooms and so on in 2018 was €4,300.

Deputy Kate O’Connell: We will get over that.

Mr. Dave Walsh: Any oral hearing costs that are associated with strategic or large-scale infrastructure projects are recoupable costs as part of the overall. We make sure of that where we incur costs that we feel merit the requirements. There is a public expectation that there is a neutrality the board brings-----

Deputy Kate O’Connell: That is the word I was trying to think of, but I could not. There is an expectation of neutrality by the citizen that he or she is not landed into a State office.

Mr. Terry Sheridan: Yes. Impartiality.

Deputy Kate O'Connell: Will the witnesses talk us through the CPOs and the vacant properties? I did not really understand it until I read a bit about it. I understand that there has been some success in Louth and in Waterford. Will the witnesses talk me through how it happens? When somebody tells the Department there is a boarded-up house in the middle of wherever and nobody has been in it for a long time, what is the procedure then? I do not want the message to be that properties are being seized and occupied without consideration of the constitutional rights of people. Once the authority moves into the CPO process, is it a runaway train or can it be pulled back for the citizen?

Mr. Dave Walsh: I will let Mr. Sheridan off the hook here. The CPO powers rest with the planning authority. The local authorities will monitor their housing stock in their areas, that is, houses they control such as social housing, and they look at the community. The local authority will hear about vacant properties directly or people may write in and say a building is in terrible state, is not being used and that it should be used. The local authorities have powers under the CPO legislation around derelict sites to enable them either to force the person who owns or controls the house to fix it up and make use of it, and if that does not happen the authority can compulsorily acquire the house. There are a number of steps, which the legislation sets out very clearly. We give everybody involved an opportunity to understand that there are certain requirements and that it can be a safety issue. If a building is going to fall down or is collecting waste and becoming a health hazard, there is a notice of intention placed by the local authority. An Bord Pleanála gets involved only where a person might appeal the compulsory purchase. If the owner of the building says, for example, that he or she wants to do something with the building, then the appeal goes to the board.

Deputy Kate O'Connell: Let us say that someone leaves the country in a hurry, for legitimate reasons, and the building is boarded up, and then they find out the building has been compulsorily purchased. Can that person appeal to An Bord Pleanála and say he or she wants it, and can the process be halted?

Mr. Dave Walsh: The process can be halted in many cases. The Deputy mentioned Louth as an example where they have used the CPO powers a lot to bring properties into proper use. I am speaking on behalf of the planning authority when I say that the motivation is to get a property back into use, whether it is a property the local authority would control, such as social housing, or whether the building would be used, rented or lived in permanently. Where the owner of the property gives assurances to the local authority, the local authority would write to the board and indicate that it wants to annul the CPO because it is satisfied that the property will come back into use. We close off that CPO process then.

Deputy Kate O'Connell: The purpose is to bring properties into use and not to seize properties.

Mr. Dave Walsh: Yes.

Chairman: On those two last points, I understand that in trying to contact the owner the local authorities check with the Property Registration Authority, send registered letters, and go back through old planning files to see the last point of contact. If they cannot find the owners, the local authorities affix a notice to the property, which normally alerts the person who is not living in the area because someone might call him or her to say a notice is stuck on the front door of that old building he or she has on a certain street. That tends to alert the person, who

then has the opportunity to fix up the building in its general appearance. Sometimes if a roof is leaning out into the street, the local authority could carry out the work and charge it against the property. If that all fails, then it might go to the CPO. It would be the end of a long road. There is a lot of work involved, and it is only the minority that end up at this stage. An Bord Pleanála would only deal with the cases that are appealed to it.

I am curious to know if any of the appeals the board has had to date were financial institutions, people with what I would call a beneficial interest. That is a broad question and not about any specific case.

Mr. Dave Walsh: It would be very few. I cannot speak for every single case. I would not have dealt with-----

Chairman: Would Mr. Walsh be conscious of them?

Mr. Dave Walsh: It would be a very small number.

Chairman: I have seen a practice beginning to develop around the country where people have been in default, they cannot pay, they have gone, and the banks are left owning the house. Local authorities are telling me that sometimes the bank lets it go because it is not worth trying to sell it on the open market and they like the CPO process because it gets the property off their hands, they get the current market value, and they do not have to engage a selling agent to sell it. Through the local authorities I am hearing that some banks just sit back, let it happen, and the cheque will roll in at the end of the CPO process. Those cases might not come to the board, however.

Mr. Dave Walsh: In those cases they might not come to us at all because-----

Chairman: They would be happy.

Mr. Dave Walsh: They would be happy.

Chairman: They also end up getting a cheque without leaving their desks. That is the other side of it. I concur completely with Deputy O'Connell's comments about the location for oral hearings and the independence of those. I understand that other members have expressed their own views about whether the hearings should be held in local authority buildings. It is not a view of the committee and it is just people giving their own view on it. I can think of nothing worse than having a hearing in the local authority, because regularly it is people appealing a decision of a local authority. The board comes down on the decision in the local authority chamber. It could not be worse and it could not look worse. It could damage the board to be doing that. It would be like a person appealing to the social welfare appeals office and the appeal being heard in the local social welfare office. The person would wonder what chance he or she has going in there and it being the same people again. It would be different faces, but the same. It would be very bad practice for An Bord Pleanála's independence to have anything to do with the inside of a local authority building. Regularly the board adjudicates on cases from them. That is my view, and the Deputy had the same view.

With regard to the board, we have dealt with the women thing and the female gender balance-----

Deputy Kate O'Connell: The problem is that we have not dealt with the women thing.

Chairman: We have three out of nine. I had it on my list but the Deputy beat me to it. I

wanted to raise it but the Deputy has dealt with it. That is all I am saying. It was raised, if not dealt with, I should say.

Deputy Kate O'Connell: Not yet.

Chairman: Are people appointed to the board through the Public Appointments Service or how does that happen?

Mr. Dave Walsh: No. It is through the legislation and the Minister. It is defined in the Planning and Development Act that-----

Chairman: How old is that legislation?

Mr. Terry Sheridan: It is there since 2000. As Deputy Kelly referred to earlier, during his term as the Minister in the Department in the Custom House, he initiated a review of the operations of An Bord Pleanála. One of the recommendations was that the appointment process for board members be changed. This would require primary legislation.

Chairman: But it is not done.

Mr. Terry Sheridan: It is not done but it is on our to-do list.

Chairman: This committee looks at corporate governance and we hear about appointments to boards. Sometimes the boards need a person who knows corporate governance, a person with a financial background, or somebody in the medical field. I do not need to know their résumés but will the witnesses send on to us their backgrounds?

Mr. Dave Walsh: Of the board members we have?

Chairman: Yes. Who on the board has a financial background, who has a legal background and how many planners are there?

Mr. Dave Walsh: We explain the board members' histories on our website.

Chairman: I ask Mr. Walsh to send it on.

Mr. Dave Walsh: We have two architects, two planners, a former county manager, two engineers-----

Chairman: I will come to the county manager. I understand somebody who has a public job and who goes back working-----

Mr. Dave Walsh: The salary is abated.

Chairman: I wanted to put that on the record. An Bord Pleanála's members would have been around the country when they hired a county manager, and now he is in with An Bord Pleanála, so his salary-----

Mr. Dave Walsh: It is fully compliant. It is abated.

Chairman: That means that the person's salary cannot exceed-----

Mr. Dave Walsh: His or her original salary.

Chairman: -----the salary of his or her original or current position.

Mr. Dave Walsh: Correct. That is it exactly.

Chairman: Fair dues to that person. They are working for very little. They must love their job.

Mr. Dave Walsh: He enjoys it.

Chairman: I just wanted to confirm that-----

Mr. Dave Walsh: The Chairman wanted to put it on the record. I appreciate that.

Chairman: -----because it would have raised queries as the day went on. Mr. Walsh will send us information about the quorum, which I know he has.

Mr. Dave Walsh: Yes.

Chairman: It is ridiculous to think all ten people should look for a house extension. One could not operate without a quorum. It is really an executive board.

Mr. Dave Walsh: There are plenty of examples. Even the Supreme Court operates-----

Chairman: I was about to say it is like the courts. An Bord Pleanála assigns the various members of its board like whoever runs the business in the courts assigns judges to different cases. It is a bit like that because An Bord Pleanála's role is quasi-judicial to an extent, so I see a parallel. It is not the case that every member of the High Court sits on every case. I think that when people think about this, they will appreciate the common sense of what is happening there.

An Bord Pleanála refers somewhere in its documentation to what it calls normal planning applications. I ask Mr. Walsh to explain to the public, the listeners, what is normal. It is a funny choice of word. Does it mean traditional?

Mr. Dave Walsh: No. It is more just an appeal. We deal with a range of appeals, from building consents to vacant sites, but a normal planning application that is appealed is what we call a normal planning appeal. They make up about two thirds of all the numbers we deal with. Obviously, some cases, such as large-scale housing and strategic infrastructure developments, come into us brand new. Others concern different types of water cases or building control. A normal planning appeal is a planning application that has been appealed.

Chairman: Fine. Mr. Walsh can send us a note on the next question I want to ask. An Bord Pleanála's inspectorate does the work on all decisions, presents the report to the board members and so on. Will Mr. Walsh tell us, if he has the figure off the top of his head, which he probably does, although I ask him to send it to us anyway, how many decisions of the board accept the inspector's recommendation and how many overrule it?

Mr. Dave Walsh: Again, we can give the Chairman the exact figures and are happy to send them on. Generally, around 10% to 12% or 13% of all cases are overturned, that is, the board makes a different decision from the inspector's recommended version. Half of these cases are generally to grant where an inspector might wish to refuse, and the others might be to refuse where an inspector has recommended a grant.

Chairman: As Chairman, I want to put to the committee the two sides to this. It depends on whether one likes the judgment or the decision. People will have a view as to whether it

is right or wrong. If a person agrees with the inspector and is overruled by the board, people complain bitterly, but then I always take the view that if the inspector's decision is the final word, why is a board needed at all? A board must have some role. I would be more concerned if there were an acceptance rate of 100% because I would wonder what control the board had if it were just rubber-stamping everything. It is important, therefore, that there be a bit of rigour between both.

Mr. Dave Walsh: Indeed. There is a very strong communication link. Again, for any board decision where we overturn a recommendation of the inspector, we document the reasons. We state in our decision that the board does not accept the recommendation because of the following reasons. We try to explain it, and that becomes a matter of public record. The other point is that, as the Chairman mentioned, the board has many skills and we are multidisciplinary. The whole point is that planning is not an exact science. It is a holistic approach to the question whether something is the right development. That is where our system, as opposed to other systems whereby there may be just one person who is a planner making appeal decisions, is a more transparent and robust process.

Chairman: Did Mr. Walsh say that as part of An Bord Pleanála's published documentation, one can see who the three or four board members were-----

Mr. Dave Walsh: Yes. Once a decision is taken, the minutes of that meeting, including who attended it and who signed the order-----

Chairman: If I look up the decision, I will be able to see all that.

Mr. Dave Walsh: It is not on the website yet-----

Chairman: Okay.

Mr. Dave Walsh: -----but it is available on request to anyone who comes in to us. That information will be there, and that is the functionality-----

Chairman: It is a matter of transparency again.

Mr. Dave Walsh: Yes, completely.

Chairman: Those three are operating as-----

Mr. Dave Walsh: The information is there, though. It is just hard to get at the moment.

Chairman: I have some further questions. I am looking through An Bord Pleanála's annual report. For strategic infrastructure development there is a requirement for pre-application consultation. Am I correct in saying that?

Mr. Dave Walsh: Correct.

Chairman: An Bord Pleanála has the figures for last year in the report. There is a concern that somebody proposing a strategic infrastructure development may sit down with An Bord Pleanála at length before the proposal comes before the board. One would wonder whether An Board Pleanála guided or assisted the applicant or told him or her what he or she had better change. The acid test here is, out of the decisions on strategic infrastructure over, say, the past five years, what is the percentage granted and the percentage not granted? Will Mr. Walsh tell us the percentages? I see that last year there might have been one or two not granted. Reference

is made to an electrical substation. An Bord Pleanála has a mountain of statistics.

Mr. Dave Walsh: Yes, we do.

Chairman: What is the percentage of strategic infrastructure development cases that get permission versus those in which An Bord Pleanála grants an appeal?

Mr. Dave Walsh: We can certainly give the Chairman that information.

Chairman: Mr. Walsh can send it to me.

Mr. Dave Walsh: Yes.

Chairman: I want to see whether there is a material difference.

Mr. Dave Walsh: The first thing to point out is that the pre-application consultation assesses, first, whether it is actually a strategic infrastructure development-----

Chairman: I accept that.

Mr. Dave Walsh: -----and, second, the key considerations. Obviously, quite a few pre-application consultations may be determined not to be strategic infrastructure, and they go back through. We can send the Chairman on the detail of the grants versus the refusals.

Chairman: An Bord Pleanála had 39 requests, 16 of which were deemed strategic. Out of those that were deemed strategic, will Mr. Walsh give us the percentage that ended up as grants for the past number of years. He can understand my question. The same goes for the strategic housing developments. Is pre-planning consultation required for those?

Mr. Dave Walsh: It is. Under the legislation there is a nine-week process that involves the local authority, the applicant and the board. At the end of that process, a report is provided and we give an opinion as to whether the application is appropriate to be sent, that is, whether it is ready.

Chairman: Mr. Walsh means developments of more than 100 units.

Mr. Dave Walsh: No, I am speaking generally. One would only come in to us if one had 100 or more units, even for pre-application. Separately, it is then a matter for the applicant to determine.

Chairman: Am I right, then, in saying there is no further information request process as part of this process?

Mr. Dave Walsh: There is no further information request process.

Chairman: Mr. Walsh can understand people wondering whether An Bord Pleanála and a given applicant sat down together. I refer to what a planning authority would normally consider as part of a planning application. If the authority receives an application, it is unusual not to have some request for further information, and that can then be assessed and people can see it. In these situations, however, An Bord Pleanála has ironed out all that before the application comes in. What then comes in, having been discussed by An Bord Pleanála and the applicant, should be fairly right because the applicant knows there is no further opportunity to put in further information. In other words, so much of the decision is made before the formal application is lodged. Again I come to the percentage of cases granted versus those refused. If a very high

percentage of them are granted, having gone through the nine weeks of private consultation behind closed doors before the formal process commences, it is no wonder. An Bord Pleanála was part of the process, if Mr. Walsh knows what I mean. He gets my question.

Mr. Dave Walsh: I do, and I think-----

Chairman: An Bord Pleanála needs to assuage that concern because it pervades quite a lot of the debate on strategic housing development. Perhaps those figures will add to public concern or perhaps they will not - I do not know - but we need information. That is why we-----

Mr. Dave Walsh: I have the figures. Perhaps it is worth pointing out that the process is there to try to facilitate quick decisions. The point is that the way we operate it is such that there is a planning inspector who participates in the pre-application discussions, but it is a separate planning inspector who looks at what comes through, so there is a separation there. Furthermore, when we have concluded the-----

Chairman: The lads or ladies could be having coffee together, though, so that does not cut the mustard with the public.

Mr. Dave Walsh: They do not have time to have coffee together because there are so many demands on their time. When we produce the nine-week opinion at the end of the process, the development team would go away and it may not put in an application. It might change the application. When it comes in with something on the site, we would publish a report on the paperwork that came through pre-application. That is not hidden away and it is a transparent process.

Chairman: Has the public the opportunity to object at that stage?

Mr. Dave Walsh: Yes. Once it comes to the 16-week period for the application, it is like a local authority process with observations, public notices. Everything is as it is.

Chairman: There are site notices.

Mr. Dave Walsh: Yes. You name it. It is very much-----

Chairman: What is the timescale? It is five weeks at local authority level.

Mr. Dave Walsh: It is the same. It is five weeks.

Chairman: There is a site notice.

Mr. Dave Walsh: Yes. The proof is in the pudding. Many of the applications have received substantial observations and comments. The system is there and it is designed for fast-track decisions. Since the strategic housing development, SHD, process began, we have granted permission for 67 applications.

Chairman: How many applications were there?

Mr. Dave Walsh: There were 91. We have refused 24. The rate is approximately 70%.

Chairman: A third of applications are still not getting through.

Mr. Dave Walsh: Correct.

Chairman: That is the first time I have heard the figure today.

Mr. Dave Walsh: That demonstrates the robustness of the process. Quality is the primary issue. It is not just about getting a decision. We have very clearly set out what we and the local authority would expect during the pre-application piece.

Chairman: Mr. Walsh mentioned compulsory purchase order appeals. There were quite a few dealt with last year but Mr. Walsh said no new cases were received. When people think of compulsory purchase orders, they think of land acquired for road purchases. Is that the case or does this relate to a council doing a compulsory purchase order?

Mr. Gerard Egan: It can be either. If the local authority is building a road, for example, it would have to acquire the land with a compulsory purchase order.

Chairman: Has the board a role in that?

Mr. Gerard Egan: Yes, it could also come to the board.

Chairman: That is the appeal.

Mr. Dave Walsh: It is an appeal process.

Chairman: It is only an appeal. If somebody is not satisfied with the settlement offered, it can be appealed to the board. The board is not the original decision-maker.

Mr. Dave Walsh: Not at all. That is the local authority.

Chairman: That is okay. Everybody sees the board involved in these matters but it is only used at the appeals stage. Will the witnesses speak about the legal costs of €3.25 million? I have not been able to work them out fully in the financial statements. They are referred to twice in the report. On page 72 there is a figure for non-recoverable costs under legal fees of €1.886 million. There is a figure for non-recoverable applicant costs of €1.2 million, giving a total of €3.094 million. What is meant by those headings?

Mr. Gerard Egan: In any particular case of legal costs, there would be judicial review and a decision-----

Chairman: Will Mr. Egan separate the two headings?

Mr. Gerard Egan: Non-recoverable costs of €1.886 million relate to the costs we have accrued where we have not got a cost award in our favour and we cannot get any of that money back from the other side.

Chairman: The case went to court and the board won or lost, as the case may be-----

Mr. Gerard Egan: Exactly.

Chairman: The costs have already been incurred.

Mr. Gerard Egan: Yes.

Chairman: There is no order from the judge to say the costs are payable.

Mr. Gerard Egan: Exactly.

Chairman: What is the other heading?

Mr. Gerard Egan: The non-recoverable applicant costs are effectively where we lose a case and we are fixed with the liability for the people who took the case. The court would have awarded the applicants in a judicial review the costs against the board. We have to pay those costs. That is what the figure represents.

Chairman: Those costs must be paid.

Mr. Gerard Egan: Yes. Invariably, it is in cases we lost.

Chairman: Legal fees are a big percentage of the costs. It is next in size to payroll.

Mr. Dave Walsh: Yes.

Chairman: I know it is a contentious area.

Mr. Dave Walsh: I suppose it reflects the fact we have had 40 or 41 cases with an appeal. It is part of the process and an important step that people feel they should be able to take.

Chairman: It is. Has the board been taken to a European court? It is an expensive process.

Mr. Dave Walsh: It is.

Chairman: Many citizens take cases against the board in those courts as well.

Mr. Dave Walsh: I am trying to think, but generally the Supreme Court or High Court might refer questions to the European Court of Justice. The High Court, Court of Appeal or Supreme Court are costly for the board and applicants.

Chairman: Does the board have a panel of senior counsels? How many are on the panel?

Mr. Dave Walsh: We have two legal teams. There is a primary legal adviser team and a backup team in case there is conflict or-----

Chairman: They could be on another case. They are not employed but are they on retainers?

Mr. Dave Walsh: No. They are paid purely on the basis of the time they spend on each case.

Chairman: Is there a panel?

Mr. Dave Walsh: There is a panel of senior counsels used, depending on availability. It is only on a cost per use basis.

Chairman: I take it the board considers the success rate of the different senior counsels and specifically who keeps winning the cases. If somebody keeps losing, he or she would not be employed again.

Mr. Dave Walsh: We are certainly very happy with the team we have. It is a very complex area, and to understand not only national but European Union law is a major challenge.

Chairman: With respect to legal challenges, is there input from local authorities? It is about their decisions. The board makes an appeal but everything goes back to the local authority for implementation. Has compensation had to be paid on top of legal fees?

Mr. Dave Walsh: No.

Chairman: Would it fall back to the local authority if compensation were to be payable in respect of an application refused for the wrong reason? It has not come across your desk yet.

Mr. Dave Walsh: It has not come across our desk. The Chairman is right that in many cases-----

Chairman: Some refusals may end up with compensation being owed.

Mr. Dave Walsh: It depends on the nature of the original reason for refusal. From the board's perspective, I am not aware of any compensation that we have had to pay.

Mr. Gerard Egan: Any compensation with respect to the particular elements of the planning Acts would be payable by the planning authority.

Chairman: That is my point.

Mr. Gerard Egan: Yes.

Chairman: With the 44 cases where legal costs had to be paid, would additional costs fall to the local authorities?

Mr. Gerard Egan: No, that is generally not the case. If the planning authority's decision is being appealed to the board, it would be the board's decision that would be challenged. Effectively, An Bord Pleanála would be the respondent. The local authority is sometimes what is called a notice party.

Chairman: A notice party.

Mr. Gerard Egan: Generally speaking, they do not get involved in court proceedings.

Chairman: I have a few other bits to get through. It is important for the public to look at this. I refer to the second appendix, detailing planning appeals received and decided by local authorities. Everybody here is familiar with some local authority. The information gives, for each local authority, the number of decisions made, the percentage of planning authority decisions confirmed, the percentage of planning authority decisions granted with conditions changed or added, and the percentage of planning authority decisions reversed. I put my hands up as I will refer to Laois County Council, which had only 8% of the decisions coming before the board reversed. That is the best record. Kerry and Meath had 41% of the decisions rejected, Sligo had 38% of decisions rejected, Waterford city and county had 37% of decisions rejected, and Galway had 36% of decisions rejected.

Some planning authorities seem to be slightly more aligned to the board's thinking than other local authority planning offices. Dublin is a little below average as well. The witnesses get the point. There must be a history of local authorities that have a significant number of decisions rejected year in and year out. Other authorities tend to be more closely aligned to the board's thinking as it tends to support more of their decisions. Perhaps the Department has a role in this. Has there been an examination of these figures? Has the County and City Management Association been involved? Should there be uniformity? It is clear that the board is the one national body that makes consistent decisions, regardless of the origins of an application. It is clear that some local authorities get it and are fairly closely aligned but several others are operating away, probably hoping that cases do not go before the board. If 41% of the decisions

that come to the board are overturned, I worry about all those that would have been granted if they had come to it. I accept that the board states it is a matter for the regulator but does it understand the concern I raise?

Mr. Terry Sheridan: We get these statistics through An Bord Pleanála's annual report.

Chairman: They are very telling data.

Mr. Terry Sheridan: It is something of which we are aware. As I mentioned earlier, one of the core functions of the office of the planning regulator will be to monitor the performance of local planning authorities to ensure they apply consistent standards and operate proper assistance and procedures, etc., in making their determinations. Where they deviate from the national average, the regulator is empowered to go in and-----

Chairman: If there was never a regulator, the Department must have some way of talking to the CCMA or the director of planning services, for example. I am sure that if I looked at the chart from five or even ten years ago, most of the same people will be in the same space. The same will be true in another five years if they are allowed. It is not good for the system. In some counties, there is a great deal of aggravation against An Bord Pleanála because someone may have been prevented from building a house somewhere. Another local authority would have known that the permission was not going to run in any event and might have got it right from day one. It does not do the Department good in some communities when it overturns decisions, after people think they got the decision they wanted but somebody objected or whatever. I have faith in An Bord Pleanála - not every time but usually.

Mr. Dave Walsh: That is good to hear. More generally, it potentially undermines confidence in the entire planning system if there is a great divergence between decisions at a local level and by the board. Different cases can generate different overturn rates. One of the meetings I had soon after I joined the board was with a delegation from the CCMA to discuss how we could share the experiences the board was having. It was not about pointing to authorities that might not do everything right but rather to ones that present their information. The vacant sites levy is an example. It is new for local authorities and the board and we are constantly refining our processes. There should be a dialogue, maybe facilitated by the Department or the new regulator, for people to talk and understand why we do something. I do not mean that the board would tell people but some of the local authorities such as that in County Laois, which are obviously doing something right, could say this is how they approach the board and ask whether it is some best practice that could be shared with the 30 other authorities. We are very open. As the Chairman noted, we have a wealth of knowledge and experience in every type of case. We are there to be tapped for advice.

Chairman: We have made the point that there are inconsistencies. Somebody needs to examine the matter and I put the ball firmly in the Department's court in that regard.

An Bord Pleanála might send us a list of how many cases it has for longer than a year.

Mr. Dave Walsh: Yes.

Chairman: I accept that Mr. Walsh referred to the oldest cases-----

Mr. Dave Walsh: We can give the committee a breakdown of that.

Chairman: I refer to an age analysis. I heard of a wind farm case in my immediate area that

lasted for two and a half years.

Mr. Dave Walsh: For some of those, there may well be judicial reviews as part of the process-----

Chairman: If there are reasons outside the board's control for why some of them are so old, Mr. Walsh should indicate them in the note he will send to us.

Mr. Dave Walsh: We will give a breakdown in that regard. That is not a problem.

Chairman: All local authorities have population targets in their plans. Inevitably, they will not work. While they are a great idea, they just do not work in practice. Let us say a local authority has a population of 100,000. Over the lifetime of its regional and national plans, it is to grow to 110,000 but the natural increase goes beyond that without a new house being built. What happens when the local authority approaches the board? Does it examine the current population? I know that it has the latest CSO figures but I worry that if people were to implement the plans they had drawn up, they would be obliged to say the application cannot be granted because it has exceeded the permitted population figures. How does the board deal with that?

Mr. Dave Walsh: One of the elements of our new programme, which is part of our new case management system, is a geographic information system. It is a mapped information system of all applications that have come before the board, which allows us to see the data around an area. To return to the question on core strategies and assigned numbers, that is in the development plan and the board would very much have regard to it. The challenge, as other Deputies have highlighted, is that until such time as the regional plans and the updated local plans are in place with new figures, we are working off development plans that might be outdated.

Chairman: Most of them are fairly well advanced because they have to be updated regularly. Most of them know that the figures are dictated based on a region, such as that the population might increase by 5%. Since I was elected, the population of County Laois has risen from 48,000 to 85,000, or a 75% increase. We were told that we were-----

Mr. Dave Walsh: A gateway or a hub.

Chairman: We were told Athlone, Mullingar and Tullamore were places that would grow but Portlaoise grew rapidly. Some projections do not take into account economic gravity or increasing birth rates. Many people provide figures for local and regional development plans that they know are wholly unrealistic on the day they provide them. I am afraid those figures will come back and bite some people some day if the board takes a strict line on the matter.

Mr. Dave Walsh: For us, in particular, it is about the services associated with the projection. One has to consider whether there is adequate capacity.

Chairman: Mr. Walsh refers to water, sewerage, electricity and other utilities.

Will Mr. Walsh send us figures on what percentage of the decisions in oral hearings the board holds were upheld? I refer to cases where there were appeals.

Mr. Dave Walsh: Okay.

Chairman: Mr. Walsh knows what I mean. Does the board have any statistics on cases where it made a decision and contravened a county development plan?

Mr. Dave Walsh: We should be able to identify that category.

Chairman: If the board can provide the statistics, I would appreciate them on a county-by-county chart. I acknowledge we have asked a lot of the board.

Mr. Dave Walsh: I thought we had given the committee enough statistics in the documents we provided but obviously-----

Chairman: I apologise.

Mr. Dave Walsh: I understand. The Chairman should not worry.

Chairman: As the Comptroller and Auditor General once stated, this is the starting point. I quote him every time anybody is asked for anything.

On the issue of wind farm guidelines, we operate on old, out-of-date ones. We have been told for years that new ones are expected and that it is a matter for the Department but I do not understand it. When people started building wind turbines, they normally had a height of 50 m, but they are now 180 m and we still have the same setbacks. The Department is negligent - that is the most polite word. The guidelines are utterly not fit for purpose. They are not suitable for the scale of the structures coming through the system. They were designed for a system when wind turbines were much smaller than they are now. I have made my point. The Department should publish new guidelines. I am tired of asking parliamentary questions.

The board is doing a review and I acknowledge that there was an event in Belgium. I attended it several times and our guests will have seen my name in the debates. The World Health Organization, WHO, issued new guidelines recently, which has delayed the review even further. When an appeal from a wind farm is received, there are WHO guidelines on setback distance, flicker and whatever but the statutory guidelines from the Department are way behind the WHO guidelines. Which does the board work off? Does it work off those given by the Department, knowing they are not the best ones for sustainable development and that they are not in line with the WHO?

Mr. Dave Walsh: In many cases where there are large-scale wind applications, there is an environmental assessment that goes through all the issues and highlights them. The applicant must demonstrate that what is being proposed minimises noise or shadow flicker or can significantly reduce them below the thresholds with reference to the WHO and other guidelines. We consider applications in light of the guidelines. Obviously, we have regard to national energy policy and legislation as well as planning guidance and international and WHO standards. In terms of legal effect, the WHO standards are best practice guidelines. We are aware of them and take into account other elements which support and protect citizens as well as the baseline from the 2005 guidelines.

Chairman: The guidelines are taken into consideration but cannot be quoted as the reason for a decision.

Mr. Dave Walsh: We discuss the impacts from the point of view of noise, flicker or whatever.

Chairman: An Bord Pleanála is conscious of the WHO and international guidelines.

Mr. Dave Walsh: We are well aware of them.

Chairman: Mr. Walsh's organisation has moved on, even though the Department has not caught up with it. I am being somewhat critical. He said it all: the guidelines date from 2005, 14 years ago----

Mr. Dave Walsh: Sorry, they date from 2006.

Chairman: ----and are not fit for purpose in a planning context.

Mr. Terry Sheridan: After numerous delays, the new guidelines, or the latest draft revisions to the guidelines, will be published in the next month for public consultation.

Chairman: There will be another round of consultation after they are published.

Mr. Terry Sheridan: As part of the strategic environmental assessment, SEA, process, there must be public consultation. We will then finalise the guidelines on foot of an examination of-----

Chairman: It will be well into next year before that is done.

Mr. Terry Sheridan: It will run into next year.

Chairman: When did the process start?

Mr. Terry Sheridan: Approximately 2013.

Chairman: It will take seven years for the wind energy guidelines to be renewed.

Mr. Terry Sheridan: We were ready to proceed to public consultation last year, but the WHO issued its latest device standards on environmental noise for wind turbines.

Chairman: The court decision in the Belgian case affected the process.

Mr. Terry Sheridan: It did.

Chairman: It will take seven years to issue the guidelines.

Mr. Terry Sheridan: The court decision in the Belgian case requires us to undertake an SEA before the guidelines are produced.

Chairman: How could the Department think it could bring in guidelines on such an important planning and environmental matter without an SEA? It is extraordinary that people in the Department thought that this could work.

Mr. Terry Sheridan: The SEA is a relatively new process. It was not until the European Court of Justice decision in the Belgian case that there was clarification that an SEA is required before wind turbine guidelines can take effect because they form a framework for development consent and, as such, are required to undergo an SEA.

Chairman: We know that. The guidelines are a bit away yet.

Mr. Terry Sheridan: They will be published for public consultation within the next month, along with the SEA on our revised proposals.

Chairman: What is the period for public consultation?

Mr. Terry Sheridan: Eight weeks.

Chairman: If they are published in November, the consultation will be completed in early January. How long will it take the Department to review the public consultation?

Mr. Terry Sheridan: That depends on the volume of submissions.

Chairman: It could take a considerable period.

Mr. Terry Sheridan: I hope it will not. The guidelines have already gone through two public consultations, the most recent of which was a particularly difficult learning curve for us. We did not expect-----

Chairman: They are still out there.

Mr. Terry Sheridan: We did not expect to receive the volume of submissions we did.

Chairman: Interested parties are waiting for the third public consultation. It will be no easier this time. No matter what happens, it is dreadful that we must wait seven years for the process to be completed. I have made my point.

I seek clarification on another matter. We have been referring to An Bord Pleanála in a terms of planning decisions, but I want to separate it from the board, which consists of the same individuals, that is responsible for the governance and corporate running of the organisation. When people hear reference to a board, they normally think of a board of directors, many of whom are non-executive, and which oversees corporate governance. The members of the board have a dual role as they are employees of the board and the equivalent of a board of directors as they are over corporate governance. Am I correct in that regard?

Mr. Dave Walsh: I am an employee, but the board members are not. Rather, they are ministerial appointees.

Chairman: Who are the people pictured on page 48 of the report?

Mr. Dave Walsh: The 12 photos on that-----

Chairman: Page 48 details the scheduled attendance at the general board meetings and they are all-----

Mr. Dave Walsh: They are members of the board but, strictly speaking, they are not employees of the organisation. They work full-time in the area. The Chair is correct that they have a dual role which involves adjudicating on planning appeals-----

Chairman: Are they also members of the board?

Mr. Dave Walsh: Yes.

Chairman: They have a dual role.

Mr. Dave Walsh: That is correct. I also have a dual role.

Chairman: This is unusual.

Mr. Dave Walsh: It is unique. Under the legislation, I am the chairman and the chief executive of the organisation. I have functions-----

Chairman: That is probably historic. It is a bit strange that what a layperson would term senior employees are also the board of directors who run the company.

Mr. Dave Walsh: We have a management committee of directors and senior officials who run each of the sections and we have a chief officer who is the operating officer of-----

Chairman: Who chairs the remuneration board?

Mr. Dave Walsh: There is no remuneration board.

Chairman: The salaries are set.

Mr. Dave Walsh: The rates are set by the Department of Public Expenditure and Reform.

Chairman: It is noted on page 50 that travel and subsistence for the board comes to €2,000. Is that travel and subsistence in respect of the individuals' membership of the general board? I presume that the ten members of the board who deal with planning cases do a certain amount of travel.

Mr. Dave Walsh: No.

Chairman: Are they all office-based?

Mr. Dave Walsh: It is very rare for board members to travel for a planning case. The inspectorate goes out to sites and that is the bulk of the-----

Chairman: Okay.

Mr. Dave Walsh: That covers conferences and attendances-----

Chairman: Yes, small items. It is the smallest figure for quite some time for board travel and subsistence for an organisation that has come before us.

Mr. Dave Walsh: We welcome that.

Chairman: I was wondering whether there is a separate figure relating to the members' other role, but there is not.

Mr. Dave Walsh: Indeed.

Chairman: When an appeal comes in, does an inspector physically inspect each site? Do they inspect the extension at the back of a person's house when an objection is put in by a neighbour?

Mr. Dave Walsh: We visit every site.

Chairman: Every site is visited. Are all Bord Pleanála staff based in Dublin?

Mr. Dave Walsh: Some inspectors are based in other parts of the country but many are based in our main offices. Inspectors-----

Chairman: An Bord Pleanála does not have an office outside Dublin.

Mr. Dave Walsh: It does not. Some people work remotely.

Chairman: The inspectors have to travel to counties Cork and Kerry.

Mr. Dave Walsh: They do. They try to combine visits. We ensure we are as efficient as possible. If there are two or three cases in an area-----

Chairman: Mr. Walsh ensures the travel is worth the inspectors' while.

Mr. Dave Walsh: Certain people are assigned to specific parts of the country.

Chairman: All of the sites are physically inspected.

Mr. Dave Walsh: Yes.

Chairman: That is important. How is it decided whether to hold an oral hearing in an appeal case? What are the criteria in that regard?

Mr. Dave Walsh: Generally, it is about public access. If something is close and we can use our offices at no charge, we do so, but, equally, if it is----

Chairman: No, I asked about oral hearings.

Mr. Dave Walsh: Is the Chair asking about deciding on oral hearings?

Chairman: How is the decision made as to whether to hold an oral hearing?

Mr. Dave Walsh: Sorry. Normally, an inspector prepares a report. The big test is whether the inspector has sufficient information on the file and people have been given sufficient opportunity to comment. Depending on the scale, the inspector often makes a recommendation. That comes to the board for decision. Ultimately, the board decides whether to hold an oral hearing.

Chairman: A decision on an oral hearing is not decided at the beginning of the process but, rather, well into it.

Mr. Dave Walsh: Yes. It depends on the amount of information we have.

Chairman: We have covered significant ground in the past couple of hours. I thank our guests from An Bord Pleanála and the Department for attending. My criticism in respect of the delay is directed at the higher levels of management in the Department rather than at Mr. Sheridan. I also thank the Comptroller and Auditor General and his support staff. It is agreed that the clerk to the committee will follow up any further information and carry out any agreed actions arising from the meeting. We stand adjourned until Thursday, 10 October, when we will meet representatives from the National Transport Authority to discuss its financial statements for 2018.

The witnesses withdrew.

The committee adjourned at 2.40 p.m. until 9 a.m. on Thursday, 10 October 2019.