

DÁIL ÉIREANN

AN COMHCHOISTE UM THITHÍOCHT, PLEANÁIL, POBAL AGUS RIALTAS ÁITIÚIL

JOINT COMMITTEE ON HOUSING, PLANNING, COMMUNITY AND LOCAL GOVERNMENT

Déardaoin, 27 Deireadh Fómhair 2016

Thursday, 27 October 2016

The Joint Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Pat Casey,	Senator Victor Boyhan,
Deputy Barry Cowen,	Senator Grace O'Sullivan.
Deputy Dessie Ellis,*	
Deputy Mattie McGrath,	
Deputy Fergus O'Dowd,	

* In the absence of Deputy Eoin Ó Broin.

DEPUTY MARIA BAILEY IN THE CHAIR.

Chairman: Apologies have been received from Deputy Eoin Ó Broin. I am delighted Deputy Dessie Ellis is substituting for him. Apologies have also been received from Senator Paudie Coffey.

At the request of the broadcasting and recording services, members are requested to ensure that, for the duration of the meeting, their mobile telephones are turned off completely or switched to airplane, safe or flight mode, depending on the device. It is not sufficient for members to put their mobiles on silent mode as this will maintain a level of interference for the broadcasting system.

In accordance with standard procedures agreed by the Committee on Procedure and Privileges for paperless committees, all documentation for the meeting has been circulated to members on the document database.

I propose we now go into private session. Is that agreed? Agreed.

The joint committee went into private session at 9.32 a.m. and resumed in public session at 9.40 a.m.

Annual Report and Accounts of An Bord Pleanála for 2015: Discussion

Chairman: By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they are to give to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Any submission or opening statement submitted to the committee may be published on its website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

At the request of the broadcasting and recording services, members, delegates and those in the Visitors Gallery are requested to ensure that, for the duration of the meeting, their mobile phones are turned off completely or switched to airplane, safe or flight mode, depending on the device used, and not left in silent mode.

I welcome the representatives of An Bord Pleanála. The committee is pleased to have the opportunity to hear and discuss their presentation on its annual report and accounts for 2015 which were published recently. They are Dr. Mary Kelly, chairperson; Mr. Conall Boland; Ms Loretta Lambkin; Ms Rachel Kenny and Mr. Gerard Egan. I invite Dr. Kelly to proceed with the presentation.

Dr. Mary Kelly: On behalf of An Bord Pleanála, I thank the joint committee for giving us the opportunity to meet it following the publication of our annual report earlier this year. Mr.

Conall Boland is deputy chairperson; Ms Loretta Lambkin, chief officer; Ms Rachel Kenny, director of planning; Mr. Gerard Egan, director of corporate affairs; and Mr. Chris Clarke, secretary to the board.

In 2015 An Bord Pleanála saw a 9% increase in case intake. As there has been a similar increase so far in 2016, there has been a small upturn in the numbers of cases before us. In the same period in 2015 we had an 80% compliance rate with the statutory period of 18 weeks across all case types. The average time for a decision to be made across all cases was 16.9 weeks. For normal planning appeals, we had an 83% compliance rate, with the average time for a decision to be made being 15.1 weeks. I apologise for all of the figures, but in An Bord Pleanála we live on them. Certain case types and individual very complex cases took longer, some a good deal longer, than that to decide, but the majority of cases are decided on time.

In 2015 we introduced a new initiative, Project Freeflow, to clear the simpler cases, small housing developments and that type of case, out of the system as quickly as we could, with an internal objective of meeting a 14 week turnaround time in dealing with less complex cases. It was a pilot project and we dealt with 218 such cases in 2015. We have a set of criteria, a kind of triage system, for deciding which cases can be dealt with under that system and achieved a figure of 78% in meeting the internal objective of having a turnaround time of 14 weeks. There is no diminution in the level of assessment or decision making in these cases; they just move faster through the system. We considered it would be in the interests of householders in making relatively small applications or appeals and ours to decide them quickly. The initiative is being continued in 2016 and we hope to see good results. It has helped us to bring down our average turnaround time per week. In 2007 we were dealing with over 6,500 appeals and applications. This figure has gone down this year to between approximately 2,100 and 2,300. There is an upturn. However, we do not expect it to go back up to 6,000 but believe it will increase.

In 2015 more than 60% of cases involved residential developments, while 169 involved retail developments. We dealt with retail utilities - energy infrastructure, water and other developments. Even though residential developments account for a huge percentage of applications and appeals, some of the other cases are very complex and take up a lot of time. Under the residential heading, in 2015 householder developments - small extensions to existing houses - accounted for approximately one third of the work. The next heading was single houses, urban and rural, including single infill houses, followed by multiple residential - two plus. That is the profile of the cases we dealt with in 2015.

We have a strategic infrastructure development division of the board and in 2007 the Planning and Development (Strategic Infrastructure) Act 2006 gave new powers to An Bord Pleanála to act as a one-stop-shop, with direct application of certain cases to An Bord Pleanála. These cases are set out in the Schedules to the Act. We have to decide whether a case qualifies as a strategic infrastructure development. When it is approved, the application is made directly to the board. There is no appeal allowed against a board decision in these cases, except a judicial review which is allowed for in all cases. Pre-application consultations are provided for in these cases also. Many of them require an environmental impact assessment and an appropriate assessment under the habitats directive. These directives are very important. Environmental issues have become more important in planning, particularly in the context of implementation of EU directives. The strategic infrastructure development cases are often very high profile and can be controversial. They generally attract a lot of public participation and, in general, an oral hearing is held. Their complexity makes it extremely difficult to achieve an 18 week target, particularly when an oral hearing is held which can take two to three weeks. The inspector must

then assimilate not only the written material he or she has received but also what he or she has heard at the oral hearing and assess and evaluate it. These cases generally take a few board meetings to go through. There is a lot of information involved in them. In order to analyse and evaluate it etc., we spend much time on them. It is extremely difficult to do it within 18 weeks and those are the kinds of cases that are taking the longer times.

I said the Act started in 2007 and we have done a total of 85 strategic infrastructure cases since. The document outlines the breakdown of the type of cases we have done in the past two years, 2015 and 2016, and there is a chart giving a little more detail on that. There were seven strategic infrastructure development wind farms coming before us in those two years. Wind farms usually go to a local authority and to us on appeal, so we can see wind farms in two different ways. We had two very significant port developments, electricity developments and three major hospitals. We had the redevelopment of Dublin and Ringaskiddy ports, which are two extremely large developments, and both of which were granted by the board. We also dealt with the National Rehabilitation Hospital in Dún Laoghaire, a forensic mental health services hospital in Portrane, a number of wind farms and the significant case of the children's hospital at the St. James's Hospital campus. Although there are not that many cases, they take up much time and effort between the inspectorate and the board.

I will move to housing development. In one of the first slides seen by the committee, it was indicated that almost 60% of the An Bord Pleanála case load consists of housing development. As I said, they consist of householder developments and single house developments, both urban and rural, along with multi-unit developments. In recent years, the majority have been householder and single house cases, and there has been very little big development going on. We all know that. There were very few significant multi-unit developments. When we see multi-unit developments, which we categorise as over 30 units, they are prioritised for attention in the board and generally get decided within the timeframe. They are tagged when they are received and they go through pretty quickly.

There is a graph demonstrating fairly starkly the way in which the planning appeals for residential units above 30 have gone in the past few years. At the height of the economic boom in 2007, there were 568 developments over 30 units and by 2013, that had gone down to 19. In the past couple of years we have begun to see a small rise in those multi-unit developments of more than 30 units. It went from 35 in 2014 to 60 in 2015 and already this year we have 66. Many of those came in the second and third quarter of the year. We are beginning to see more development in that area.

Staying focused on housing, there is a slide on housing developments with more than 100 units. The committee knows this type of development will be the subject of the new legislation that is going through, and I will come to that in a moment. The total number of appeals received in 2016 for these was 15 and our average time for decision on those was 19.2 weeks. In 12 of the 15 cases, we met our statutory objective of 18 weeks and with one of the other three, we came in a day over the 18-week period. The other two were significantly complex cases with very significant planning history attaching to them and significant connections with other difficult cases with significant planning history. They were just difficult cases and they went beyond the 18 weeks. In general, these kinds of housing developments are relatively straightforward and the vast majority are decided on time. We are very conscious of ensuring that is done.

I will deviate from the annual report to speak briefly in this context about Rebuilding Ireland - Action Plan for Housing and Homelessness published in July by the Minister, Deputy Coveney. It allows for direct applications to An Bord Pleanála for large-scale housing develop-

ments and student accommodation, with no appeal apart from a judicial review of the decision. It relates to developments of more than 100 houses, including student accommodation. There is a connection with strategic infrastructure development, which is a similar type of legislation but for much more complex development.

In what is proposed for housing, the committee has seen and discussed the general scheme. It will have seen that there is a mandatory pre-application consultation with the local authority before An Bord Pleanála is ever involved. There is then a pre-application process led by An Bord Pleanála, with the developer and the local authority, and that is to be complete within nine weeks. As I stated, the planning application comes directly to An Bord Pleanála at that point. Submissions from the public, the planning authority and prescribed authorities are taken at that point in the usual way. All the submissions and application documents etc. are assessed by an inspector and a board decision must issue within 16 weeks of receipt of the application. It is very tight but we will establish a strategic housing division that is required in the legislation. We are putting together a special housing team within the board to deal with the applications, so they will get immediate attention.

We have been assured the necessary resources will be forthcoming. We have been discussing the mechanics and practicalities of the implementation. We know we will need some extra resources and we have been assured we will get them. We are confident that will happen. We are happy to take on this work and ensure efficient decision making in this regard, dealing with what is a housing crisis.

To return to the annual report, between 2015 and 2016 four strategic development zones were approved by An Bord Pleanála. That provides a significant quantum of planning permissions for residential development with commercial and mixed-use areas. We conducted a look-back earlier in the year at all the strategic development zones we dealt with since that legislation was introduced. From what we can see, we think they work well. It gives an opportunity for better-quality coherent built environments delivering sustainability. There is potential to deliver a really high-quality built environment, and it is something that should be encouraged.

I will change tack and speak about the legal challenges we face arising from our decisions, although this is contained in our annual report as well. Planning is very litigious and it gets great interest from the public. In the almost 40 years of An Bord Pleanála's existence, more than 700 of its decisions have been challenged in the courts. The reason is because the development of infrastructure in particular at this stage is often very controversial among the public. Traditionally, we have had ordinary planning appeals to do with housing, residential development etc. The increased complexity of environmental legislation arising from European Union directives and the European Court of Justice case law, as well as national case law decisions, all give more scope for making legal challenges. This means we have a developing legal framework because of case law. We had a very significant court judgment in late 2014 to do with a wind farm. I will not go into the details but it meant that a number of wind farms that were in front of us had to be delayed while we sought further information to comply with the court judgment. In some ways, the way in which the law develops is a moving target.

There is also the implementation of the Aarhus Convention. It gives rights for public participation in environmental decision-making. We think including special cost rules in the legislation has also increased the number of judicial reviews that have been taken.

The graphic in the presentation shows the number of judicial reviews per annum against our caseload. In 2008, we had almost 6,000 appeals and 45 judicial reviews were taken. In

contrast, in 2014, when we did not even have 2,000 cases, we had 42 judicial reviews. I put it down to the environmental provisions, to a large extent, the Aarhus provisions in the cost rules, the greater interest that people are taking and the knowledge those in communities have about their rights and all of that. The blue column in the graph in the presentation shows that at the end of September 2016, we had 35 cases already. It looks like we will be close to, if not at, the same level as 2014. It looks like a high number. There are costs attaching to that, and there is a slide with our breakdown of costs. An Bord Pleanála spends approximately 11% of its expenditure on legal cases.

The bulk of our decisions are upheld. A graph in the presentation shows the results of proceedings in the High Court for 2015, when 15 decisions were upheld and one was not. There are all sorts of other decisions, such as orders being quashed. Sometimes we can concede a case, generally on a technical issue, and sometimes appellants withdraw cases. Some years are better than others, but in general, looking back over a number of years, the vast majority of our decisions are upheld.

All the accounts are in the annual report, but I will give the committee a flavour of them. Our total income in 2015 was €20.8 million. It can be seen how that has developed. Our income decreased from 2011 onwards. We had some increase in 2015, some of which was to do with investment in an ICT project that we have running at present and for which we were funded by the then Department of the Environment, Community and Local Government, now the Department of Housing, Planning, Community and Local Government.

Legal fees amount to 11.4% of our total expenditure in 2015. Most of our expenditure is on salaries, PRSI and superannuation. Approximately 10% is spent on establishment expenses. We use consultants for various issues, mostly to do with casework. These are all listed at the back of the report. Sometimes we need to bring in an ecologist or different professionals, such as those with an engineering specialism, and that is what that is about.

An organisational review of An Bord Pleanála was established in 2015 by the then Minister, Deputy Kelly, and that report was published in March 2016. The report acknowledged the excellent reputation for independence and impartiality of An Bord Pleanála and recommended ways of enhancing that. It put forward a broad change agenda for the organisation to ensure what it called a fit-for-purpose organisation - the then Minister asked them to design something for a fit-for-purpose organisation - in meeting present and future challenges. We are in the process of putting together an implementation plan to take forward the key recommendations, and that is in preparation.

A number of actions we had identified are progressing. There is an overview group, composed of the Department and ourselves, which is overseeing the implementation of the key recommendations. That will report to the Minister at some stage.

When the review was put in place, we put off developing a new strategy for An Bord Pleanála, which was due, on the basis that we would like to see what was in the review and use it to inform that new strategy. We will get that under way within the next month.

A transformational change has been going on in the organisation, from a paper-based system which we have always had for the 40 years of our existence to a new digital platform. We, like many public service organisations, have embraced that. We made significant progress on the implementation of that major upgrade. The project, which we call “Plean IT” is to deliver an efficient, IT-enabled organisation providing a fully digital service for the public, including on-

line submission of cases, payment of fees and review of documentation. It will be a complete transformation. As it stands, if a person wants to look at a file in An Bord Pleanála, he or she has to come into the board's offices in Marlborough Street. Once this project is fully rolled out, such a person will be able to do that from his or her own PC, laptop or whatever. That will be a significant change. People will also be able to make applications and appeals and submit other documentation online and pay their fees. Clearly, it is a major project and the organisation is fully engaged in the change initiatives that are required to make that happen.

Although we think we are a fit-for-purpose organisation given that we produce good, robust planning decisions that are upheld in the courts, the challenges we have to be a fit-for-purpose organisation relate to doing it in a new way. We have to maintain our reputation for integrity, fairness and transparency. That is the key aspect for An Bord Pleanála and will be our number one objective. We must make robust planning decisions in light of the increased levels of complexity. We have to ensure the continuity and consistency at decision-making level because everybody - the public, the local authorities who are the planning authorities, and others - depends on that. We also have to ensure the appropriate resources and necessary skill sets are available to us. We are in ongoing talks with the Department about that. We have to deal with increased caseloads and priority housing applications in a timely manner. We have to take on this new housing legislation and make it work. We have to deliver this ICT project to provide a modern digital customer service. In the middle of all that change, we have to keep our performance going and ensure we continue to meet our SOPs and our objective of dealing with at least 80% of cases within 18 weeks.

I acknowledge the huge amount of work that the staff in An Bord Pleanála put in to the results in 2015. Every member of staff in An Bord Pleanála contributed to it. This is not something the board or any particular part of the organisation did on its own. It was a whole-team effort. I acknowledge that in putting our annual report before the committee.

Chairman: I thank Dr. Kelly. I very much welcome such detail in her presentation. A number of my questions are answered within that already. The streamlining processes that she has gone through are very much welcomed and appreciated. There are a number of questions.

Senator Victor Boyhan: I welcome Dr. Kelly and her team. I am familiar with the board's work. I have been engaged in planning appeals from time to time and, in fairness, I have been fairly happy with the outcomes.

I want to go through the two documents that were presented to us, namely, Dr. Kelly's opening statement on behalf of the board and her PowerPoint presentation which I took the time to look at in advance of attending the meeting.

Our Library and Research Service had all the back issues of An Bord Pleanála's annual report but the people there said they had not received a hard copy for the past three years. I accept the world has moved on, and Dr. Kelly spoke of IT and paper. If Dr. Kelly has a few spare hard copies for the Library here, three or four Members were looking for them yesterday. Clearly, they wanted to see them. Someone sent me a copy today. I am one of these hard copy Members. I recognise Dr. Kelly's comments in this regard but she might consider that.

I have looked at An Bord Pleanála's accounts. They are always well presented and I am not going to get into that too much. I am more concerned about the action plan for housing and homelessness. We cannot presume that this legislation will all go through. There is a summary proposal for legislation and a scheme has been published. It may vary. There are mixed mes-

sages coming from different political quarters.

An Bord Pleanála's website states that the planning process provides a comprehensive appeals process and yet we have heard Dr. Kelly say there would be no appeals on a number of matters, which greatly concerns me. I am very conscious of the role of local government practitioners and local authority members in empowering and engaging citizens. That is why there is such great activity in the planning process. That is a weakness, but it is not An Bord Pleanála's fault. It is political.

I seek clarification on some of Dr. Kelly's comments. The presentation refers to a general scheme of a Bill as published which includes provisions for the direct application of An Bord Pleanála. There is reference to the time constraint. Dr. Kelly said she was confident about having resources. How confident is she? What is the commitment on resources?

In winding up, Dr. Kelly spoke about An Bord Pleanála's ambitious IT project, which is great. Until that is operational, however, it is not acceptable that citizens have to travel on a bus or train from west County Cork to Marlborough Street to look at hard copy files. It is not a problem for me because I live in Dún Laoghaire, but other people have to travel to the board's offices. An Bord Pleanála should have these files online where people can view them and consider them. Dr. Kelly spoke about the Aarhus Convention and she clearly knows that it provides for a citizen to be allowed engage in a process. People will be denied engagement in a process until An Bord Pleanála has its IT and digital hub operational. That is a real weakness. I want to be helpful. Perhaps Dr. Kelly could highlight this genuine concern to the Minister and ask for resources to do that.

Dr. Kelly spoke about being fair and getting third party appeals, which echoes what I am saying. An Bord Pleanála will not get third party appeals on the housing scheme. How does Dr. Kelly square that with fairness and equal access to the planning process? She has confirmed that there will not be a third party appeals process, something I knew. We need that.

Dr. Kelly spoke about the funding. Let us hear about that. We know An Bord Pleanála is missing deadlines for critical infrastructure. In one case which is dear to my heart - I will not mention it here - the board has missed three deadlines. Despite people attending a board oral hearing a year ago, we have heard that only in September of this year did the report from the An Bord Pleanála inspector go to its board. That needs to be explained.

Dr. Kelly also needs to explain why her inspectors are being overruled by her board. There have been very complex and detailed submissions by very competent and able inspectors, and yet Dr. Kelly's board has overridden their decisions. That has not been adequately explained to the public. I have been involved in some of these and I cannot understand the rationale of a board of people. An Bord Pleanála needs to open up. Transparency was one of Dr. Kelly's key words. If the board is overriding its very able and competent inspectors, Dr. Kelly needs to explain that fully to the public to instil confidence.

I understand there is to be a scaling back of oral hearings. Currently, people can appeal to the board. Ultimately, it is the prerogative of the board, it can decide, that is the scheme, which is fair enough, and I do not have a difficulty with that. There is some suggestion, however, that oral hearings would be used very sparingly. There is an issue there and I would like Dr. Kelly to clarify it.

Dr. Kelly spoke about the 18-week period and efficiencies. An Bord Pleanála is not meeting

its 18-week target. As it stands, the board is taking on additional work and I presume, therefore, it will have additional staff. Will some planners be seconded to the board from local authorities, as has been suggested to me? I would be opposed to that, as is the Irish Planning Institute.

On this issue of IT, I commend the former Minister, Deputy Kelly, who commissioned this report which made recommendations. An Bord Pleanála is to agree a strategy and this committee should be kept informed on that. I fully acknowledge the independence, impartiality, expertise and professionalism of the board, which is exceptional. However, An Bord Pleanála's communication of its decisions is weak.

On the IT platform, I want the board to consider this. The members do not necessarily have to respond today. In terms of exercising democracy, the planning process provides for a comprehensive appeals process. However, people cannot even make an intervention if they have no access to the material, the drawings and other information. We see a deficit in some local authorities that do not even have colour copiers and colour printers for maps and graphs. Until An Bord Pleanála's IT system is operational and available to everybody, including every planning authority, the board is not in a position to proceed with having some kind of fast-tracked centralised planning system in Marlborough Street.

I thank the witnesses for coming in. I am greatly interested in their work. This is a weakness and it should be highlighted to the Minister. More important, Dr. Kelly has said she is confident she will get the necessary resources. I ask her to outline to us the commitments she has. It is also our job to impress on the Minister to resource An Bord Pleanála fully.

Deputy Pat Casey: I thank Dr. Kelly and the rest of the delegation for coming in this morning.

An Bord Pleanála has achieved 80% compliance on the decision-making process. What are Dr. Kelly's views on having mandatory time limits from now on? Even though it achieved 80% compliance, 400 cases were not decided within that timeframe. It is important that we move to a time-bound process.

Given the lack of legislation on wind energy development, what is the importance of the wind energy strategy in individual county development plans to An Bord Pleanála's decision-making process?

County Wicklow has a number of very small quarries and the new regulation requiring an environmental impact statement, EIS, and appropriate other assessments is making them almost unviable. We are shutting them down, in effect. We will need this stone from somewhere at some stage. Much of this may have been driven for Europe where there are much larger quarries. Can anything be done in this regard? In one serious case, Wicklow County Council granted permission for a quarry. It was appealed to the board, which refused it. Now Wicklow County Council is being sued for loss of earnings by that company. Where is this all going?

Further to what the Senator said, do the witnesses have statistics for the number of occasions on which the board has overruled the decisions of inspectors?

The most important matter before us at the moment is the fast-track planning process. I also have some reservations as to whether this is fast-tracking. Dr. Kelly has said she has been told that the resources will be forthcoming. However, are the resources available? Are there people with appropriate qualifications available in Ireland?

Dr. Kelly mentioned the nine-week pre-planning process, which is time bound and which is fantastic. However, there is another pre-planning process prior to that within the local authorities. In a recent presentation from departmental officials, we were informed that it is taking 28 weeks on average. If we add 28 weeks to what is being presented here at the moment, we are not far away from where we were. As part of that, an environmental impact assessment or Natura 2000 assessment may be required. I am not sure if I am reading it correctly. Is the board requesting an additional eight weeks to make a decision on whether that pre-planning application will need an EIS or an EIA? After that, if it is in a Natura 2000 site, it needs a further eight weeks. Is that only to tell the applicant that these assessments are needed? If not, what is the purpose of it? In that case, we are adding another 16 weeks onto the whole process. I have concerns about whether we are actually fast-tracking the process when some of these issues are not quite clear. The pre-planning around local authorities is not time-bound and, therefore, that period could go on forever. The Minister says that it is important that we get quality in the application process. I do not fully understand from reading the heads how that is determined and what the process is. Is it in the pre-planning process? If one gets an application through the pre-planning process with the board, can it then be turned down in the application process because it is a poor application? If that is the case, there is something wrong there.

The Senator also honed in on the issue of public consultation. One aspect of the heads is a material contravention of a county development plan or a local area plan. Normally that would have nearly two stages of public consultation at local level. From what I am reading, it will only have one stage of public consultation if it is in the fast-track planning process. This would be in the case of a site that is not zoned. At least in the case of a zoned site, it goes through a development plan process and then a public process. I am worried about public consultation in the fast-track process.

I have an observation to make. Are we actually too concerned about the number of houses that we are building in the planning process as opposed to creating sustainable communities moving forward? Maybe we should have a more balanced emphasis on that.

Chairman: I will caution members to refrain, please, where possible from mentioning any cases currently in legal dispute or in the planning process.

Deputy Dessie Ellis: I thank Dr. Kelly for her presentation and her staff for coming before the committee. There are a few things I wish to ask. I notice that An Bord Pleanála generally tries to make a decision on an application in 15 or 16 weeks. The one thing that stood out was the number of wind farm applications that were receiving refusals. I know that may be down to the court case and the court judgement, but there certainly seems to be many of them judging by the presentation Dr. Kelly made.

Increasingly, members have residents coming to us and asking about the judicial review process. We all tell them that it is a very costly affair and that they cannot afford to deal with it. That is a big problem. Do we have a rough idea of what a judicial review costs? I know it probably depends and varies, but I would like to get a rough idea. We have had some cases in which people have been requesting it. I had not experienced a case before in which the local authority refused a planning application but the developer appealed it to An Bord Pleanála and received the permission to go ahead. Are there many cases of that where An Bord Pleanála grants the appeal that had been refused by the local authority? I am curious because I had not experienced it before. I am thinking of the Lanesborough case up in Fingal where the old castle was on the edge of Finglas. It caught a lot of residents by surprise. They thought that they had managed to stop the development and suddenly it was appealed successfully by the developer.

I am curious as to whether there are many such applications and decisions being made.

Do the witnesses have a view on the fast-tracking of the housing planning process? Do they agree with it? I am not asking them to go against the Minister, but it is something that has been very much set in stone that the process goes through the local authority and other stages. Now the process will bypass many of those stages. While we all agree with trying to deliver housing quickly, we would want to be very careful that we do not give people the opportunity to appeal and get their way. Once An Bord Pleanála makes a decision, what is left for the citizen? It is only a judicial review, which is very costly. I believe that will be a bone of contention for many people.

I am interested in the use of environmental impact assessments on large developments and the EU rules attached to them. Does An Bord Pleanála find them very time-consuming in their consultation? They seem to drag on for a long time. They require consultation and it probably sucks up many resources in terms of time.

Senator Grace O'Sullivan: I thank Dr. Kelly for coming before the committee. I have a few questions. Senator Boyhan brought up the question of transparency. It does seem to be a weakness, particularly in the area of the strategic infrastructure development, that the public does not seem to be able to access information in a timely fashion to be able to make an input. As Senator Boyhan says, that people have to come from rural Ireland to Dublin is not efficient or acceptable in this day and age. An online facility would be very useful. In its absence, transparency is a concern.

I have a question about the multi-unit developments. What is the process for developments that are currently idle to be re-activated and to come back into supply? I consulted some people prior to the meeting and the strongest reaction I received was to the fast-tracking of the developments of 100 units or more. There is real concern among the public about the fast-tracking. Of course, we recognise there is a housing crisis. However, there are concerns already among the public. That comes back to the issue of transparency and people having the information in order that they are not jumping to the conclusions that are often put out by the media, which can be misleading. How will An Bord Pleanála provide notice to citizens of any proposed development plans in excess of 100 units? What will happen to the site notice? Is that something that will be of the past? In terms of universal design, how will developments of 100 units or more take regard of age and disability? Will that be a part of the process if everything is being rolled out at a rapid pace? Does Dr. Kelly anticipate hiccups in the process? What weaknesses can she identify that might impede the process?

We have heard talk about the planning regulator. Has Dr. Kelly been in contact with the Minister about the planning regulator position? What will be the role of An Bord Pleanála in the appointment of the planning regulator? In Dr. Kelly's presentation, she spoke about four strategic development zones, SDZs. What is happening with the area on the north side of the river in Waterford? I do not know if that is an acceptable question.

Chairman: Is that case going through the process at the minute?

Senator Grace O'Sullivan: I am not too sure.

Chairman: If it is, we cannot ask about it. We cannot reference anything that is going through the application process.

Senator Grace O'Sullivan: That is okay, but if Dr. Kelly can comment, it would be very

useful. With regard to planning fees, currently €20 goes to the local councils. What will be An Bord Pleanála's fee?

Deputy Barry Cowen: I apologise for being late but as I had read the presentation, I am aware of what the board had to say. I welcome the witnesses and thank Dr. Kelly for her presentation. I acknowledge what has been said by previous speakers, much of which I agree with and I await the response of the witnesses in that regard.

The witnesses are well aware that we are in the midst of a housing crisis. I would go so far as to say it is an emergency. There is much talk and debate about new legislation to deal with the need in this area. As stated by previous speakers, it needs to be focused but balanced with built-in reviews and sunset periods in order that we, as legislators, can evaluate the strength or weaknesses associated with the efforts being made collectively by us all to address this huge crisis, which is the greatest single crisis facing the economy and society. We know this from our constituency clinics.

It is our job to ensure that An Bord Pleanála is focused but balanced and to ensure it plays its part in responding to this crisis. For example, in regard to the legislation to fast-track planning in respect of projects comprising over 100 units, I agree with the thrust of that, although there are elements of it that need to be analysed and debated by the Oireachtas with a view to improving it. My biggest concern in that regard, among other things, pertains to the ability of An Bord Pleanála to meet the expectation that will be placed upon it. Does An Bord Pleanála have the necessary personnel and resources to enable it to meet the demands that will be placed on it? I agree with those demands. I am happy to see that there is provision for a statutory period within which the board must make a decision.

I want to respect the wishes of the Chairman and so I will not mention specific cases, but the witnesses will be well aware of a case involving Bord na Móna that has been put back twice now and in respect of which the High Court has said that if there is no decision by January, it will be in the negative. That will have huge implications for my constituency and the greater midlands region and for Bord na Móna and the 1,200 people employed by it. We are speaking about an area of Bord na Móna's business that is the only one that is profitable despite the fact that there are commitments to-----

Chairman: Is that currently going through the process?

Deputy Barry Cowen: -----stop the extraction by 2030. This, to me, proves there is a lack of capacity to deliver decisions. That is only one example. There are many others. I apologise for having mentioned that one but the witnesses will understand the gravity of the situation and the impact it could have on those I represent and who have given me the privilege to be here.

I am equally concerned, and rightly so, about the growing number of representations being made to me by people who are at their wits' end in relation to their being able to find a home into the future. An Bord Pleanála has as much of a role to play as the rest of us. Great expectations will be placed upon it in the context of this legislation and possibly other legislation to address this crisis. I am conscious of the fact that we have area-based plans, county plans, regional plans and spatial strategies to which An Bord Pleanála must have regard when dealing with appeals but none of those were designed at a time or in a space such as that in which we find ourselves now. That worries me. I do not think An Bord Pleanála can appropriately deal with the crisis while having regard to plans that are years old and do not take account of the current emergency. For this reason, I would have preferred the establishment of an authority to bring

forward emergency legislation to allow for a period of suspension of many of these items to allow houses to be built. Ultimately, that is what has to be done. We can talk all day long about the provisions in the Finance Bill but that is a demand solution to a supply problem. There is a need for a holistic approach by the Houses of the Oireachtas by way of emergency legislation to provide for a period of suspension of those plans to allow address of this problem, in respect of which we can all stand back in two or three years' time and suffer the consequences or accept the plaudits in terms of whether it has failed or succeeded.

Chairman: I have one or two questions for Dr. Kelly in respect of which I accept she might not have the figures to hand today. In 2007-08 over 500 multi-applications were made to An Bord Pleanála. This year, only 65 or 68 applications were made. Is it the case that the majority of applications in respect of projects of over 100 units would always end up with An Bord Pleanála anyway? If Dr. Kelly does not have that information today she might forward it to the committee.

I fully respect what members have said today but I am supportive of fast-tracking the planning process for many reasons. Local members do have a role to play in planning decisions in the context of local area plans and development plans but where an application goes through the proper statutory process with the local government, councillors do not have a role, except to air the concerns of their constituents, which they will still be able to do at their meetings. I recognise that we have to tease out that issue further and, perhaps, to amend that process slightly.

I also acknowledge that, as mentioned by Deputy Cowen, we need a focused and balanced approach but much of the action plan in terms of Rebuilding Ireland is around rebuilding supply. An Bord Pleanála will have a huge role to play in that regard. I would like to hear more detail around the type of resources that will be required. I fully respect that the witnesses cannot reference any planning application or any locations mentioned here and I do not expect specific answers in that regard.

Dr. Mary Kelly: I thank members for their questions, to which I will try to respond. If we have not sent hard copies - I think we did - to the Library, we will send them in the next few days. We will certainly do that in respect of the years for which they are missing. A number of questions have been asked and so if I do not answer specific ones members might come back to me on them.

In regard to the Chairman's question about the 100-plus unit applications, approximately 60% of them are appealed to An Bord Pleanála currently. In other words, 60% of the 100-plus projects go through the planning authority and then come before An Bord Pleanála on appeal. In the vast majority of cases, the local authority decision is upheld by An Bord Pleanála. In respect of the recent past, they are the figures.

On resources, we have an expert planning inspectorate in An Bord Pleanála. Ms Rachel Kenny is the director of planning. She is a very experienced director. We have good expertise such that I think setting up an emergency organisation to deal with planning and some of the other things suggested is probably not a good idea. We are happy to offer our expertise to help in this regard. We immediately said to the Department that we will play our part but we cannot do so within our current resource base. We have put together a plan, which is outside of our current workforce plan but will be contained in the 2017 workforce plan that all public sector authorities are required to produce. We have looked in detail at the projections for the next two years in terms of numbers. We do not know the number in that regard but we have some estimates, in respect of which we have sought sanction from the Department for a certain number

of staff members. The Department came back to us recently asking us to formalise that. The process of looking for the staff to do the work is in train. I am confident we will get them because we have been told we will. That is as confident as I am about it. That is as confident as anybody in the public sector can be about staffing. I believe we will get them. We intend to put experienced people in a housing group within An Bord Pleanála. Some of the new staff we will get may well be in that group, but it is likely that it will consist of existing experienced staff. That will allow us to start this process with an experienced panel of inspectors.

Housing applications can be big, but they are generally not that complex. They are not as complex as those involving strategic infrastructure developments. They generally do not necessitate an environmental impact assessment or involve appropriate assessment issues. There is no question of projects being brought forward on anything other than zoned land. As far as I know, that is what the legislation is designed for. We will not be doing anything outside it. The public and the local authority will already have gone through the planning stages informed by the county development plan and the local area plan.

While we are very conscious that this is a different scheme, it is similar to the strategic infrastructure development scheme in the way it will run. Anyone who has an interest in one of these schemes, including any member of the public, can make submissions to the board. Submissions are treated very seriously by the inspectors. That part of the process is working very well in the case of strategic infrastructure development schemes. I do not think people believe their detailed submissions are not heard, even if they might not like the decisions made at times. Although the legislation is written in a way that does not allow for appeals, An Bord Pleanála staff will be very conscious that the board is the court of final appeal to a certain extent. We will be very conscious of the need to look at what people say, as we are in strategic infrastructure development cases and others.

We think we can do this within the very tight timeframe provided for, but we have not tried this before. I cannot say for sure there will be no glitches. We are certainly planning to provide the resources we need to deal with it in a very structured way. We want to ensure not only that housing developments will ultimately be granted permission, but also that the process will be fair and transparent and could result in planning permission being granted or refused, depending on the quality of what is requested. The developments will receive the same independent and fair assessment as any other housing or other development. If it is a good development and meets everything that needs to be met, planning permission will be granted. If that is not the case, it will not be. That remains the case.

When we have been considering housing developments in recent times, we have been very conscious of the design manual for urban roads and streets, the aim of which is the development of sustainable communities. When we have been considering large housing developments and strategic development zones, we have been requiring developers to focus on sustainable communities, not just housing estates of the traditional type. We will be demanding high quality. We will be able to set out our concerns in that regard for developers during the pre-application process. During the pre-planning stage we will ensure there are no major gaps in proposals in areas such as water supply and wastewater services. For example, we will make sure traffic densities are within the county development plan guidelines and other guidelines. Applications that tick all of these boxes should be robust. They will still be applications at that stage and it will not be a case of pre-decision. It will still be possible for the applications to be granted or refused, but at least we will have flagged at an early stage the concerns at which the board will be looking as it makes its decision. We will try to meet our deadlines.

The new housing development cases will be available online from day one. Hard copies will always be available in local authority offices and An Bord Pleanála. It will be possible for people to access and see these details. The system in this regard is no different from the current local system. People will be able to see applications in local authority offices. It will not be any different.

We do not yet know what the fees will be. Obviously, we will discuss that matter with the Department. I assume they will be along the same lines as the fees that apply to ordinary applications. I do not know and cannot say as I have not seen anything on it.

I will address some of the comments made about the IT system. We have worked for 40 years without the direct access digital platform we are to produce. It is clear that the system is working. Planning applications are available at local authority offices. The whole file is also available in An Bord Pleanála. I assure the committee that An Bord Pleanála has been one of the most transparent organisations in putting the decisions of inspectors, etc., online during the years. It was one of the first organisations to have a proper website with this kind of information available on it. In every single case the inspector's report, the board's direction and order are put on the website and available for everybody to see. That has been the case for quite a number of years. We are very conscious that many people avail of this service. I am talking about the provision of an enhanced service, rather than the development of a new one from scratch. There is no question of our having to stop doing things until we get the IT system ready. We have been running the organisation very effectively for 40 years without it.

While I am on the subject of information technology and transparency, I must mention that there was a big change in 2007 for An Bord Pleanála and society as a whole when strategic infrastructure development cases started to come to us in direct applications. At that stage, we insisted on there being a dedicated website for each such application. We demanded that all of the documentation from the applicant's side such as plans, drawings, environmental impact statements and Natura impact statements should be available on the applicant's website. In those days we were not in a position to host such information on An Bord Pleanála's website. Therefore, we insisted on the applicant having a dedicated website. A similar approach will be taken to housing applications when they come to us directly. From day one we insisted on people being able to see applications.

When we make a decision, we are legislatively required, for reasons of transparency, to give reasons for it and address the matters to which we gave consideration. The board does this on the face of the order. We set out our reasons for every part of the decision. That information is available. Similarly, the legislation gives the board the ability to overturn the decision of an inspector in some cases. If it does so, it has to explain why it is overturning the inspector's report. Not only does it have to give the reasons for the decision, but in overturning an inspector's recommendation it also has to specifically address the matters to which it gave consideration and state why it has made its decision. We have been doing this for many years and will continue to do so. I know that people sometimes feel not enough reasons are given, particularly if the decision is not the one they wanted or were hoping for. That issue has been the subject of many judicial reviews during the years. I said earlier that there had been 700 reviews. While I do not know exactly how many were about the reasons given and the matters to which consideration had been given, it was quite a lot. Our reasoning has generally been upheld in the courts.

I heard what was said about individual cases. I will not say anything about them, save to say large strategic infrastructure cases are extremely complex. The environmental directives from the European Union have been put in place to protect the environment and have to be met to

the letter of the law. Many citizen groups look precisely at whether we are meeting the requirements of the directives, right down to making very detailed submissions. They do take a long time to deal with. In some cases we have had a court quash a decision of the board, possibly based on an EU environmental or habitats directive or an environmental impact assessment. Frequently, when the case comes back to us, we have to look for further information to fill the gaps identified by third parties or the courts. There is no doubt that it can take a long time to deal with them, but we try to do so as quickly and as efficiently as we can. Sometimes to provide the further information required an applicant can be required to engage in extra surveying for a year or two. Nothing can come back to us until these surveys are completed. It has added much complexity to the system. Nevertheless, we have to remember the reason for the directives is to protect the environment and the precious resource we have available in Ireland.

Senator Grace O'Sullivan asked whether ageing and disability factors would be considered in housing provision. The guidance in place is on a better mix of housing, which we take into account. It involves a mix of houses and unit sizes. That was what I was referring to in mentioning the design manual for urban roads and streets, DMURS. When we are looking at large developments, we are looking at whether there is an appropriate mix of units, etc. Ageing and disability factors will be taken into account. The building control code also covers some of the specifics, including ramps, lifts, etc. These cases can be referred to us on appeal based on building controls. It is all part of the building regulations.

The number of inspector reports overturned was 13% last year. The figure stays remarkably steady at between 11% and 13% every year. The legislation allows for the board to overturn an inspector's report. If we do, we have to give a reason and state the matters to which consideration was given. There would be no need for An Bord Pleanála if we were to agree 100% with what an inspector said. He or she could decide all cases. However, the Oireachtas decided in its wisdom that the inspector was not to have the last word on the issue and that An Bord Pleanála would review an inspector's work and make the final decision. That is precisely what we do. It is healthy that there are some reports overturned. Otherwise, it would be just a technical decision.

It does happen that a developer has a refusal from a local authority overturned, but it only happens in a minority of cases. First parties have a right to appeal a decision as much as third parties do. They can and do appeal, but the majority of original decisions are upheld. I can get the committee specific numbers if it wants me to do so. On occasion, we grant permission for whatever reason, but, again, we have to state the reasons for our decision.

Deputy Dessie Ellis: There was an application to a local authority-----

Chairman: Does it concern a finalised application or an application that is still in the planning system?

Deputy Dessie Ellis: Supposedly, it is a case which has been resolved.

Chairman: If it has not been, the Deputy should not mention it.

Deputy Dessie Ellis: In many cases, it goes back to the local authority. Is there scope with An Bord Pleanála to insist on this happening? Does the board just make a decision as happened in the case to which I have referred?

Dr. Mary Kelly: Our role as an appellate body is to hear an appeal and make a decision. We do not really have a role to get involved with the local authority, or any other party, in how

they conduct their business. When a local authority grants permission for a development, it is important that the local community stay involved until the end of the appeal period. Clearly, a developer can appeal to An Bord Pleanála. The community can then make observations to us, as in the case of any other appeal. It is just that the boot is on the other foot. The community is the observer rather than the appellant. Where people are really concerned about a development and a local authority refuses permission, they need to stay involved to ensure they will be involved in the next stage. In general, in the cases we see, we receive observations from third parties. In that sense, most third parties are aware of their rights and responsibilities.

Deputy Dessie Ellis: However, people drop their guard once they think a development has been refused permission.

Dr. Mary Kelly: Yes, that may be fair enough. It is important they stay with it until the end of the appeal period.

Senator Victor Boyhan: Dr. Kelly has made the point that there will be no third party appeals in the fast-tracking process. I cannot say that enough. If this provision goes through, the board will be facilitating the Government in fast-tracking housing developments without third party involvement. Will Dr. Kelly clarify this?

An Bord Pleanála expressed a valid concern about strategic development zones. It stated clarity was needed on who was responsible for the funding and delivery of the infrastructure, as well as the economic viability of the scheme that needed to be considered at the outset. I am familiar with two strategic development zones which have presented this problem. The board is dealing with strategic development zones. In some cases, we have a local authority acting as the agent or promoter of a zone. There needs to be greater clarity in this regard. An Bord Pleanála has identified the problem, but I have not quite heard what it is suggesting in this regard. Will it provide more detail?

Who will enforce the decisions of the board? We know from local authorities all over the country that it does not get involved in the enforcement of its decisions at local authority planning level. It makes decisions but washes its hands of enforcing them. In this case, it will be totally responsible for the fast-tracking process. Applications will go directly to it and it will decide on them. Is it committed to enforcing its own decisions? I believe it should be. I do not believe anyone should make a decision who does not have the power, tenacity and commitment to enforce it.

Who appoints the board? Is it all political? I seek clarity on who appoints this board. How transparent is the appointments process of the board Dr. Kelly works with? Will she elaborate on the way she interfaces with that appointments structure in terms of the members? How involved is the Minister of the day in the appointment of this board? That is another area that may need reform. Dr. Kelly should share her experience in terms of the way the members of the current board were appointed.

Deputy Pat Casey: On the environmental impact assessment, EIA, and the appropriate assessment, AA, I want to tease out the question of the fast-track planning process to ensure we are not here next year saying we missed out on some aspects. Dr. Kelly said that if a proposed site appears to have gone through the county development process, an AA has probably been carried out on that proposed site. Is she saying that will be adequate? The heads of the Bill provide for an eight-week window. I do not know whether that eight-week window is to give time to An Bord Pleanála to decide on whether an AA or an EIA is needed. I seek clarity on that.

Also, must the decision of the local authority be made at the pre-planning stage before it goes to the board rather than it being left with no timeframe on it? I would be concerned about that. I never thought of the long-term consequences in terms of An Bord Pleanála making the decision as to who will enforce this, who will control the development contributions and the number of times a site will be inspected. If all that falls back on the local authority, they will need some finances to fund it.

Deputy Dessie Ellis: I asked about the cost of judicial reviews. If An Bord Pleanála is fast-tracking the process, I assume the judicial review option is still open, even with that fast-tracking process in place. Will Dr. Kelly give us some idea of what that would cost a citizen because it may be the only way to proceed if he or she has an objection of any description?

Dr. Mary Kelly: First, it is not the case that third parties will not be heard. I said there is no appeal, but the third parties are heard from the very beginning of the applications process. Third party observers will make their submissions. The inspector will review, evaluate, assess and make a recommendation to the board. The board will see the submissions from third parties at board meetings, but it is a one-application process. There is no appeal to our decision, but that does not mean that third parties will not be heard. Third parties will be heard. They will have the opportunity to make whatever submissions they want and they will have them evaluated and assessed in the normal way. The board will consider those alongside the application when the board is making the decision on the application. There is no question that third party views will not be represented to the board; they will be.

Senator Boyhan asked about enforcement. An Bord Pleanála is a statutory body set up under the Planning and Development Acts agreed by the Oireachtas. It has no enforcement role whatsoever, and it never did have one. The board was originally set up as an appellate body in the 2007 Act and began to take the direct applications on strategic infrastructure development. The Bill is only a general scheme at the moment but we are trying to plan forward. When the Bill is enacted it may give us these provisions to do direct applications but we do not have any enforcement function. Planning enforcement has always been carried out by local authorities. It has been the case for all the years of planning that the local authorities carry out the planning. The board has no role to play in that regard. It is not that we consciously wash our hands of anything. We do the job we are asked to do, make the decision and move on to another decision. It is not that we are ignoring enforcement; it is outside our *vires* to have anything to do with enforcement.

On the EIA side, the EIA-AA screening part in the scheme before us refers more generally to EIA and AA screening outside of housing. It is almost a stand alone piece that is being put in with this part of the scheme. It applies to all kinds of projects. In terms of the scheme it is a little confusing in that it is not only applicable to houses. The county development plan, the local area plan, LAP, and any of those high-level plans have already had strategic environmental assessment, SEA, and appropriate assessment carried out at the macro scale. Were appropriate assessment or EIA to arise on an individual application before us, that would be one of the issues that would be flagged at the early stages. Nobody would be coming back to the board with an application without an EIA where one was required, but it would be a big thing to have to do at that stage. I imagine that people who are putting forward developments under this scheme and who want them decided within a fast-track area will know if they need an EIA and will do that project elsewhere. Fast-track is for projects that are ready to be determined quickly. It would have to have all that information to hand immediately. If they are ready to do that and they have the EIA it can be done but otherwise, it will not. The EIA and the AA process would

involve the public being involved at the earliest stage because separate regulations apply to those under the European directive. Those projects are almost in a separate category.

On the board appointments, the Planning and Development Act sets out precisely how board members and the chairperson are appointed. To deal with the chairperson first, the chairperson is appointed following a public competition, which is run through the Public Appointments Service. Following the competition, two or three names go to the Minister of the day, I understand the Minister proposes a name to the Cabinet and the appointment is made. The chairperson's appointment is for a seven-year term.

The ordinary board members are appointed in a different way and this has been the case since the establishment of An Bord Pleanála. The Act sets out a number of statutory nominating bodies under a number of headings such as the economic sector and so on. I do not have the exact details but there are five or six panels and those panels consist of organisations that are either involved in the environment, the community, education and so on. There are different panels of people. The Act requires the Department to seek nominations from those bodies when board membership becomes available. The nominations go to the Department of Housing, Planning, Community and Local Government. They are assessed by the Department and the Minister makes the final decision on those, but the nominating bodies have different ways of deciding who to nominate. Some of them go through interview procedures. Engineers Ireland is one of the nominating bodies and it would usually seek expressions of interest, conduct interviews and recommend somebody on the basis of that process. Other bodies have different processes. An Bord Pleanála has nothing to do with it. It is conducted by the Department under the terms of the Planning and Development Acts. The nominating body model is meant to get a board that reflects civil society because the nominating panels are reflective of civil society. In fairness, it has worked very well over the years. It brings forward people with experience in various areas who are nominated by civil society to sit on the board, but the final decision rests with the Minister.

Regarding legal fees, we do not know what happens on the other side. We do not know what costs other people are incurring. We only know what we have to pay. We only know third party costs if they become visible and we have to pay them. It depends on the arrangements between the persons taking the judicial review and their legal team. Sometimes we understand that solicitors or lawyers will take a case for people on the basis that if they win, they will get paid. We do not really know what the fees are. I do not know the average. Our experience suggests there is a huge variation in arrangements and costs. It also depends on the size of the case. Some cases have two or three senior counsel, a few junior counsel and many other people attending. Depending on how the case goes in the court, it could be there for one day, half a day or 16 days. We have no control over that. It is very difficult to come up with an average on it, so I cannot really help the Deputy on that. It is an expensive activity.

Deputy Dessie Ellis: I assume a judicial review is still part of the new fast-tracking arrangements in the planning for housing and that a person can still take a judicial review.

Dr. Mary Kelly: Yes.

Deputy Dessie Ellis: Okay. I just wanted to get that clarification.

Dr. Mary Kelly: Absolutely. All our decisions are open to judicial review.

Chairman: Are there any further questions?

Senator Victor Boyhan: Dr. Kelly might address the question about SDZs. Her report states that clarity is needed as to who is responsible for the funding and delivery of the infrastructure and the economic viability of the schemes.

Dr. Mary Kelly: I will ask the deputy chairperson, Conall Boland, to answer that because he was the one who did that work so he is probably the best expert to do that.

Mr. Conall Boland: We have dealt with a number of appeals regarding SDZs going back three to five years. One of the issues that was coming up was appeals regarding how much the section 48 scheme levy should be for SDZ housing areas. That is not an area over which we had any jurisdiction. Another issue that was coming up repeatedly was the provision of transport, water and rail infrastructure, who would be responsible for it and how quickly into the scheme it had to be delivered. Another issue that was coming up was the standard of design. Sometimes the standard of design and building in terms of energy and architecture can be even higher in an SDZ area, delivering a very high-quality product.

Having looked back over the schemes, it appeared to us that there was room for better alignment between, say, the central decision at government level to nominate an SDZ and the mechanisms between that at regional and local authority levels as to who would deliver the various pieces of infrastructure to make it happen and when. What we saw in some cases was maybe a lack of alignment between the various tiers involved. In the planning stage of an SDZ and when the commitment is being made, people should bear in mind at an early stage the economic viability of the project and that if an area is nominated as an SDZ, it seems to work better if all the people with responsibility act together and have thought through who will deliver what. We do not have specific solutions, but people should bear that in mind when nominating.

Chairman: Are there any further questions?

Deputy Pat Casey: I have a quick one about wind energy policy. In the absence of a national policy on wind energy, does An Bord Pleanála follow the county development plan policy? What are the witnesses' views in regard to quarries?

Dr. Mary Kelly: I noted those two questions. I am trying to figure out what I have not answered. On reading the decisions and the board orders that come out on wind energy, it will be seen the issues to which we have regard. We always have regard to the county development plan and we have regard to any wind energy strategy where it exists. An important part of our considerations is the presence or absence of a wind energy strategy. It is always taken into account.

Obviously, I cannot answer about any individual quarry case and I will not attempt to do so. The legislation on the regulation of quarries is extremely complex, and any of the people working in the field of quarries to whom the Deputy has spoken will probably have told him that. We must follow that legislation to the letter. Quarry development has happened in Ireland in a somewhat unregulated way over the years, but the European Union has insisted that we look back and redress the deficiencies, particularly in environmental impact assessment and appropriate assessment. There have been a series of regulations and legislation on quarries that we have had to implement. Between us and the planning authorities, there has been an awful lot of work on this. It is very difficult for the quarry owners as well as for us to make decisions in this regard. It is very complex.

Senator Grace O'Sullivan: What does An Bord Pleanála see as its role, if any, in the ap-

pointment of the planning regulator? Have the witnesses had any discussions with the Minister or has any information about this come to them?

Dr. Mary Kelly: I had that question written down to come back to. The planning regulator will exist completely separately to An Bord Pleanála, and we will not have any formal relationship with it as such. We have not spoken to the Minister about the planning regulator, but over the years since it was mooted, we have had various discussions with the Department with responsibility for the environment, if only to tease it out in the first instance and then come to a conclusion eventually that it should be independent of An Bord Pleanála and planning authorities and should be an independent body. That is our understanding of it. I have no further information on it. I think the legislation is going through the Houses at the moment but, other than that, I understand that the regulator will have some function in examining and reviewing An Bord Pleanála's systems.

I was asked about an SDZ in Waterford. I can report that we do not have any application for an SDZ in Waterford so I can comment on that. If we did, I would not be able to comment on it.

I have been tardy in replying to Deputy Casey. He asked about mandatory time limits. It has not generally been a feature of the planning Acts for An Bord Pleanála, but a statutory objective period was introduced in 1992 which has worked well so far. We have an internal objective of meeting it 80% of the time. There will always be cases that cannot be determined within the time because we do not have the information to determine them. There is a mandatory time limit on this housing. It will be the first time we have faced one. We must put our resources into it and make sure that we meet the mandatory time limits.

My opinion on mandatory time limits is that they could hamper good development because if a decision has to be produced within a certain amount of time and there is not enough information to grant, something might be refused at that point which, with a little more information, could have been a good development and got through.

Deputy Pat Casey: On a point of clarity, does An Bord Pleanála not have the facility to seek clarification or further information?

Dr. Mary Kelly: We do, but if the Deputy is suggesting a mandatory timeframe of, say, 18 weeks, and further information has to be obtained and assessed, sometimes the complexity of what is involved can be problematic. For example, a one-year survey might be involved. One cannot ask someone for such a survey and then decide on it within 18 weeks.

Deputy Pat Casey: Does the further information requirement not give both parties additional time?

Dr. Mary Kelly: From how we understand it, it would not. We have never been subject to a mandatory timeline. Our timeline is an objective period. In new legislation for housing, it is mandatory and we must meet the 16 weeks. There is no clock stopping in the middle.

Deputy Pat Casey: In the planning process, there is a mandatory timeline. However, the decision can be to look for further information or for clarification.

Dr. Mary Kelly: At the local authority, the clock stops.

Deputy Pat Casey: Yes, but could the same process be applied to An Bord Pleanála where, at least, when a decision has been made whether it is to seek further information or clarification,

the first decision is made within an 18-week timeframe?

Dr. Mary Kelly: We probably meet that on every occasion. Yes, it could but the process in the legislation as it stands is the one we are administering.

Chairman: On behalf of the committee, I thank Dr. Mary Kelly, Mr. Conall Boland, Ms Loretta Lambkin, Ms Rachel Kenny, Mr. Gerard Egan and Mr. Chris Clarke for the extensive knowledge and advice they have shared with us. The committee looks forward to working with them in the future.

The joint committee adjourned at 11.21 a.m. until 9.30 a.m. on Wednesday, 9 November 2016.