

# Development Control Advice and Guidelines

## "The Yellow Book"

### INTRODUCTION

The Irish Planning Institute greatly welcomes the opportunity to make a submission on the review of the document "Development Control Advice and Guidelines" published by the Department of the Environment in 1982. This document is also sometimes known as "The Yellow Book".

The Yellow Book has largely fallen into disuse in the current planning practice, partly because it is now out of date in a number of important respects. It is still sometimes taken into consideration by An Bord Pleanála in appeals and is quoted occasionally in relation to appeals relating to conditions attached to decisions to grant permission.

Nonetheless, the Yellow Book remains a relevant document for planning practice in Ireland in some respects. The Institute believes it is important to have general advice and guidelines on development control policy and procedures.

Many of the policy issues addressed in the original document have been overtaken by specific policy guidelines in areas such as retail planning and housing densities. However, these more recent Guidelines are not comprehensive and there will always be a need for an overall guideline document on Development Control issues.

Equally, there is a need for a document setting out guidelines on preparation, content and interpretation of development plans. We understand that such a document is being prepared separately by the Department.

Parts IV and V of the 1982 document deals with refusals of permissions and conditions respectively, remain particularly relevant, subject to some changes suggested below. These elements should be retained.

Part VI in relation to procedural matters has now been completely overtaken by changes in legislation and regulations and should be replaced accordingly.

We will comment specifically on relevant sections of the 1982 document before addressing some of the specific issues raised in the Department's letter

### PART 1 – THE GENERAL APPROACH

The Preface makes reference to Appendix 2 which contains tables setting out statistics on planning applications, planning decisions and refusals. The Preface states "The data should be of assistance to planning authorities in reviewing their own individual approaches to development control". There seems to some implication in that high refusal rates or high rates of appeal means that something is wrong in particular local authorities approach to planning. This is not necessarily the case. The refusal and appeal rates relate more to the degree of pressure for development than the appropriateness or otherwise of planning policies in a particular area. Indeed, it is the Institute's experience that the local authorities with the highest refusal rates are often those which have the most appropriate and relevant planning policies, consistent with Government Guidelines.

Statistics in relation to the percentage of decisions of local authorities which are reversed at appeal stage by An Bord Pleanála are of some relevance. They raise the question as to whether local authorities which have a high rate of reversal on appeal need to review their policy approaches.

There is no relationship between the percentage of refusals or the percentage of appeals and the quality of planning service in local authorities. This is addressed in further detail later in the submission.

The statements contained in paragraph 1.2 are very relevant and important and should be retained and updated to refer to the more recent legislation.

Paragraph 1.4 should not be repeated, as it does not accord with the law. In particular the courts have ruled

in 'Flanagan v. Galway City and County Manager' that planning authorities are not entitled to take the personal circumstances of applicants into account.

Accordingly, the personal circumstances or aspirations of individual applicants are not relevant planning consideration. This should be clearly stated in the revised Guidelines.

Likewise, 1.9 should be re-written to state the opposite i.e. that considerations of a personal nature are not relevant planning matters, to properly reflect planning law.

Paragraph 1.11 should be updated to take into account the limited duration of planning permissions under the law.

Paragraph 1.12 indicates that planning should not concern itself with detailed standards of design unless there is a special need. Again, this needs to be reversed in the new document. It is vitally important that planning is concerned with detail of design if it is to achieve its objectives. Much of urban and rural Ireland has suffered from poor quality design in recent decades. Poor design in urban areas is one of the push factors leading to people to build one off houses. Poor design of one off houses has had a damaging impact on our landscapes.

The Guidelines should emphasise the importance of design in every application. For example, the detail of boundary treatment is too often overlooked in planning applications and can be critical to the integration of the new development into its setting.

Furthermore, since 1982 the Government has published policy documents on the importance of architecture and design in the built environment and this should be reflected in the new Guidelines.

## **PART II – THE DEVELOPMENT PLAN AND DEVELOPMENT CONTROL**

The 1982 Guidelines state in paragraph 2.1 "Nevertheless, the plan is of fundamental importance in relation to development control".

The primacy of the Development Plan again should be reflected in the new Guidelines. A number of the statements in the 1982 Guidelines however introduce too much flexibility and water down the value of the plan, such as those contained in 2.7, 2.8 and 2.9.

## **PART III - PARTICULAR CLASSES OF DEVELOPMENT.**

The Institute understands that the revised Guidelines will focus on procedures following policy issues and therefore most of Part III will be deleted.

The Institute submits however that care should be taken in deleting all or part of Part III to ensure that important policy statements relevant to planning generally are not lost or abandoned. For example, Part III contains some important statements on ribbon development which are not found elsewhere and which should be retained and reinforced until replaced by subsequent policy guidance documents, such as the guideline on rural housing.

Furthermore, Part III contains very important guidelines in respect of development on national primary and secondary roads, which, to the Institute's knowledge, are not repeated elsewhere. Deleting these sections could send out the message that it is no longer important to protect investment in national and primary and secondary road infrastructure from inappropriate roadside development

## **PART IV - REFUSAL OF PERMISSIONS**

As stated in the Introduction much of the Guidelines in Part IV are relevant should be retained.

## **PART V – CONDITIONS**

Again, this section although often forgotten, is still very relevant and important and should be retained and updated as appropriate. However, the last sentence of paragraph 5.9 should be deleted. In particular,

planning authorities should be not discouraged from attaching conditions which seek to address unauthorised developments such as the insertion of inappropriate replacement windows in a protected structure.

The last sentence of paragraph 5.17 should be deleted. Experience has shown that the erection of advertisement structures in run down areas can delay or prevent urban renewal as the rent from advertisement structure is a dis-incentive to redevelop. A number of examples of advertisement structures in the run down areas of Dublin which have remained despite comprehensive renewal and this approach should not be encouraged.

Paragraph 5.22, which advises against conditions regulating the occupation of buildings, should be deleted. Conditions restricting occupation can be important, for example, where planning permissions are granted in exceptional circumstances in highly scenic areas to a farming family, to ensure that the plot is not sold off for speculative gain.

Paragraph 5.24 in relation to conditions requiring to the provision of lay-bys etc should be deleted. Planning Authorities should be discouraged from attaching conditions requiring the provision of lay-bys. Such an arrangement will result in an untidy road boundary and may create a traffic hazard. All developments, including one off houses, should be required to provide for their parking needs on site, entirely separately from carriageways.

Paragraph 5.28 deals with conditions relating to other codes. These Guidelines remain very relevant and should be repeated and updated. It remains far too common a practice in many planning authorities, and in particular in rural areas, for local authorities to include a long list of conditions related to detailed matters, including such matters as water stop cocks, public health requirements in kitchens, water supply, drainage and so on which have little or no relevance to planning control. This perhaps reflects the historic dominance of planning control in rural local authorities by the engineering profession. Nonetheless, these matters are now adequately dealt with by other legislation e.g. the building regulations, and should not form any part of planning conditions. It is notable that such conditions are almost always dropped by An Bord Pleanala when decisions of local authority to grant permission are upheld in principle on appeal.

#### Compliance

Paragraph 5.38 deals with conditions requiring matters to be agreed. We submit that there is a need for specific regulations in relation to compliance of planning permissions for both applicants and third parties. At present, local authorities are not under any obligation to respond to subsequent submissions with no timescale for a response. It is commonplace for local authorities simply to file the submission and not reply. This leads to uncertainty for applicants as they are never sure whether local authorities have agreed or to their specific detailed proposals. Furthermore, it gives the distinct impression to third parties that the local authority is entirely dis-interested in ensuring compliance with the conditions.

The Institute submits that regulations should be introduced to require local authorities to confirm within four weeks of receipt of a compliance submission whether or not it is in agreement with the submission. Where they are not in agreement, the local authority should inform the applicant clearly and in an unambiguous manner as why they are not in agreement and as to what further changes are required. Provision should be made for referral to An Bord Pleanala for determination where agreement cannot be reached.

Paragraph 5.43 should likewise be deleted. It is important that matters which have to be agreed are agreed prior to commencement of development in order to retain effective control. There is little relevance in the local authority seeking to agree, say, a landscape plan six months after commencement.

## **PART VI – PROCEDURAL MATTERS**

This part of Guidelines has being overtaken by events, and in particular the Planning and Development Act 2000 and Planning and Development Regulations 2001 and subsequent circulars in respect of regulations issued by the Department.

#### The Role of elected members

Section 6.27 of Part VI – Procedural Matters - makes reference to the role of elected members in the

planning control process. This section states that  
“The elected members of planning authorities are entitled to become involved in the planning control process. The members knowledge of local conditions and planning and development needs could in some cases assist in ironing out problems and difficulties and consequently reduce the number of decisions which cause dissatisfaction at local level and which lead to appeals”

The Institute considers that this section needs to be re worded. Elected members have a strong role in policy formation through both the Development Plan process and also through Strategic Policy Committees, which allow elected members and other stakeholders advise on policy formulation. There is a need for clear guidance on the role of elected members in relation to the development control process.

#### Role of the planner

Any new guidelines must provide a clear code of conduct for professional planners working within the development control process within local authorities. The relationship between the manager and the local authority planner needs to be defined and the importance of the planners report needs to be recognised and reinforced

### **ADDITIONAL ISSUES**

#### EXAMPLES OF CURRENT BEST PRACTICE

A major issue of concern for the Institute for members at present is the issue of validation of planning applications. The Institute proposes to make a separate submission to the Department setting out detailed proposals to address the concerns in the profession and the wider community regarding the interpretation of local authorities of the new Regulations in respect of invalidation.

In particular many local authorities are adopting an over-zealous and vigorous approach to ensure absolute and strict compliance with the letter of the permission regulations. There are many instances of planning applications being rejected as invalid when the reasons for invalidation are not material in any planning or legal sense. This results in extreme frustration and delay and unnecessary cost and expense to applicants and their advisers. This brings the planning system into disrepute.

The new regulations place considerable onus on the applicants in respect of strict compliance. It is equally important that local authorities set high standards themselves in the operation of their planning departments and planning services if they are to enforce strict compliance on applicants.

#### PUBLIC COUNTER SERVICES

The Department should require all local authorities to operate the public counter of their planning department during the normal business hours of the local authority. These should normally be 9.a.m. to 5 p.m. Monday to Friday. This approach across the country would greatly benefit the public. It is entirely unacceptable that some planning departments of local authorities are open only for limited hours and close in the early or mid-afternoon. The Institute is aware of examples where planning applications delivered during normal business hours have been returned as invalid on the grounds that the public counter was closed at the time of delivery. This practice should be avoided.

Some local authorities do operate a very efficient and helpful public counter service whilst others treat the public with disdain and operate a total minimalist approach. The Department should set down clear guidelines for the operation of public counter service.

The public counter should be staffed by knowledgeable and experienced staff who have an interest in helping the public interact with the complex and sophisticated planning system in this country.

It is important that the public counters provide a reasonably comfortable and attractive environment for members of the public and professionals who wish to access information.

A significant step forward in the new planning regulations is the regulations on the availability of documents relating to planning applications. The Guidelines should refer specifically to these and advise on how they should be implemented in practice as there is still a resistance in some local authorities in making information available to the public. In some local authorities reports of the planning staff or other reports

received on the application are not made available once the decision has been made, in breach of the legislation. This can frustrate applicants or third parties considering an appeal.

The problem of lack of availability of documents also arises in relation to Development Plans. For example, there are local authorities that still refuse to make available copies of Development Plans outside of the formal consultation period. This greatly impedes potential applicants and members of the public generally in understanding and complying with the emerging policies of the planning authority.

On the other hand some local authorities place all of their consultation documents and adopted documents on their website. The use of this web for this purpose should be required under the new Guidelines.

In particular the Guidelines should clearly outlaw the use of the "hatch" which unfortunately is still in existence in some local authorities (e.g. Wexford County Council). This creates a very inappropriate barrier between those providing planning services and the public. Some local authorities provide no facilities whatsoever for people to study plans and files and other relevant documents. Counter /desks and chairs should be available to the public for this purpose. Again, Wexford County Council is an extreme example in this situation where members of the public are forced to consider documents whilst standing in a corridor.

The Guidelines should set out standards in respect of waiting time and queuing for services at public counters.

#### AVAILABILITY OF FILES

There are a number of local authorities which only keep current or very recent files in the planning department. An example is Limerick City Council. Members of the public, or professionals, wishing to access files which are not current have to order the file and then return to the local authority offices the following day in order to access the file. This results in extreme inconvenience and is hopelessly inefficient. All local authorities should be required to retain on site and readily accessible files of at least up to five years old. All older files should be accessible by microfiche or computer based GIS systems.

#### THE PLANNING REGISTER

The standards and quality of planning registers varies enormously throughout the country. Some local authorities, particularly those in Dublin area, maintain a high quality easily accessible planning register where the planning history of particular locations can be readily checked. Other local authorities do not maintain a public accessible register at all. Clear detailed guidelines on how registers should be prepared, drawn up, maintained and accessed should be set down in the new guidelines. The Institute would be willing to elaborate further on the details on how best this might be done.

The current best practice can be found in authorities such as Dun Laoghaire/Rathdown and Dublin City Council. The current worst practice is found in local authorities such as Wexford County Council and Cork City Council where there is no meaningful register accessible to the public. A well-kept and accessible planning register is a vitally important for the efficient operation of the planning system.

Problems have arisen in respect of the introduction of GIS based planning registers. There are a number of instances in GIS databases identify sites/properties by means of stars or other symbols. It can be extremely difficult to identify which stars or symbols relate to a particular property under some of the systems used.

It is recommended that all maps whether paper based or computers should be required to outline precisely every planning application site in red on the register map cross referenced to the register number. This would save very considerable amount of wasted time and effort by those wishing to check planning history of particular sites or locations.

#### THE ROLE OF I.T.

The use of information technology provides scope to greatly improve administration of planning, and public accessibility and understanding of planning issues. We have previously referred to the role of Development Plans and other public documents. These documents should be readily accessible on the Internet including maps. This has become an increasingly common practice although it is by no means universal.

The use of IT and the Internet has long been recognised as an enabling technology and some Planning

Authorities have made notable advances in this area, in Donegal and Limerick County Council for example. A more consistent approach to this is required; in particular the guidelines should specify the content and techniques that could achieve this.

This will require identification of the types of users on such systems and an audit of their needs. The types of users would include 'concerned residents', government agencies, environmental/Heritage NGO's, private developers and companies, and consultant professionals. The key point here is that while the basic information required may be the same, the way that information is accessed may be different. For example private planning consultants under taking a broad planning search of a particular retail sector as opposed to a member of the public seeking to object to a neighbouring development. The guidelines should therefore identify the types of uses made of planning records and facilitate these uses.

In addition to standard data management techniques the planning register should also be directly linked to Commencement and Completion notices. Currently in most authorities there is no direct link between records held on Planning Applications and other associated notices. There are clear benefits in terms of monitoring development, and use of up-to-date records on where development has taken place for strategic analysis. Currently there is a paucity of information on where development is taking place and much effort is required in assessing current levels of development. For example figures on rural housing in the National Spatial Strategy use ESB connections as a proxy for this information, this data is both expensive to acquire and open to criticism on its accuracy. The guidelines should therefore identify methods of linking Planning Applications, Commencement and Completion notices using standardised data management techniques.

The planning register should also be accessible on line. This would save considerable time in travel.

Furthermore, all current planning files should be scanned in and should be accessible via the Internet.

These measures would greatly reduce the need to visit planning offices and free up staff for other duties, adding further to the efficiency of the planning system.

## PRE APPLICATION MEETINGS

There is now a legislative provision for pre application meeting, which is welcome. We note that some local authorities refuse some applicants pre application meetings e.g Wexford County Council.

To be meaningful it is important that planning officers are willing and free to express views on the planning prospects of proposals discussed. Such meetings are of little benefit if all that is said is a direct repetition of what is in the Development Plan.

There should be QC standards for such enquiries re:

- seniority of staff involved
- pre-application drawings required
- willingness of planners to give an opinion
- keeping of minutes
- agreeing of minutes
- agreement to consider application drawings prior to submission.

## DECENTRALISATION

The provision of local authority services on a decentralised basis is welcome in principle. However all relevant planning information, including all planning files should be also be accessible in the main office of each authority. There should be a certainty, that by visiting the main office or headquarters, all information for a particular planning query should be available. A copy of all current files relevant to the particular area should be available at decentralised offices together with relevant policy documents and development plans. The use of information technology as set out above should be required where decentralisation is proposed. Indeed the effective use of information technology will reduce the need for decentralisation.

It is important that planners working in decentralised offices report to a Senior Planner at headquarters and not to an 'area engineer', as sometimes happens at present. Clearly close liaison with the area engineer is important. It vital however for consistency and quality in planning decision making that the planning function does not become subservient to area engineering considerations.

As in centralised situations, the work of the area engineers should input to the work of the area planning team and not visa versa. The planning team should set the policy and spatial framework for the area engineers' work, and the area engineers should advise on the technical aspects of planning applications, e.g. roads or drainage, as an input only to the planning decision. The achievement of consistency and quality should remain the responsibility of the Senior Planner at headquarters.