

Re: DRAFT PLANNING REGULATIONS – SUBMISSION BY IRISH PLANNING INSTITUTE.

Thank you for the opportunity to make comments on the proposed draft Regulations. The Institute has carefully examined these, and consulted with key members of the Institute, working both in the private and public sectors in Ireland today.

Generally, the Institute welcomes the fact that the Regulations are being changed, with a view towards simplifying the current rather bureaucratic regime, particularly with regard to the validation of planning applications. Our members have extensive experience of the problems created by the current validation process, which appears to differ from Planning Authority to Planning Authority, and often depends on the whim of individual administrative or clerical officers in particular Councils. It is our view that this process has added an additional layer of bureaucracy which was not there prior to the 2001 Regulations and frustrates the proper operation of the planning system. The Institute is also supportive of the move towards a standard planning application form, as this will make the submission of planning applications more efficient and transparent.

However, while welcoming the suggested move towards a “e-planning” system, the Institute would make the point that such a system requires considerable investment in both technological and staff resources, particularly in Local Authority planning departments, not least of which is the employment of additional planners, both at entry and more experience levels, if it is to work. An e-planning system will not operate properly with the current staffing levels, and it is doubtful if the staff that are currently working in local authorities will be in a position to properly operate such a system, given the already heavy workloads placed upon them by the time limits in the current planning system, and in particular the eight and four week limits for processing planning applications and further information responses. The Institute therefore would ask the Department to seriously examine the concept of exempting planning staff in local authorities from the Public Sector Employment Restrictions, and permit the taking on of additional planners in order to initiate the e-planning. We recognise that this would require specific consent from the Department of Finance, but are confident that, if a strong case is made for this, on the basis of ensuring the roll out of the “e-planning” initiative, it could be achieved.

While welcoming the draft Regulations, and the helpful purpose that their introduction is intended to resolve, the Institute feels that they do not go far enough in dealing with the problems that its members have experienced, particularly in relation to the validation of planning applications. At the end of this letter, we have therefore set out a number of suggestions, based on the experiences of our members, that we request the Department to address. Some of these can be rectified by amendment to the draft Regulations, while others will need the giving of advice to Planning

Authorities, perhaps by modification to the current proposals for the review of the “Development Control Advice and Guidelines” (Yellow Book) document, currently being considered by the Department. In addition, any such advice to Planning Authorities will have, in certain cases, to be followed up by directions to individual authorities, who currently cause the most difficulties for practitioners. The Institute would be most willing to assist in the monitoring and reporting of recalcitrant authorities in this regard, so that the Department can fully operate its overseeing role, in the interest of the efficiency and public acceptability of the planning system nationwide.

The following suggestions and comments are made in respect of the detailed Articles in the draft Regulations that were circulated to us:-

Article 8 (3)

Amendment to Article 22 (c)

The term “site characterisation form” is not defined. This could lead to problems with validation. In any event, the Institute would question whether this would be sufficient. Many planning authorities currently require site suitability tests, certified by competent testers., and it is considered that these are generally desirable. The term “site characterisation form” is generally understood to be a form used by certain private companies, who sell proprietary waste water treatment systems, to assess the suitability of ground conditions on one-off housing sites for the disposal of effluent. It may not be appropriate to require the use of such forms, which are often treatment system specific, and are often not certified by competent testers, but only by company employees, who would have a vested interest in “proving” that the site in question is suitable for their particular product.

It is considered that an alternative term should be used, such as “details of site suitability tests”.

Additional paragraph (cc).

This amendment appears to require the provision, with a planning application, of a personal public service number (PPSN). The Institute would be strongly opposed to such a requirement, both on grounds of principle, and also in terms of operability. In principle, the Institute sees no need for this information, since a planning permission enures to the benefit of the land, and is not specific to the individual applying for that permission. Gathering this information therefore serves no planning purpose, and it is considered that the requirement for this information serves to undermine the public’s trust in the planning process. Linking of planning application information with other information given to the State for other purposes is objectionable in principle, and may well endanger the public’s confidence in any “e-planning” initiative, if it is felt that the purpose of such an initiative is the inappropriate use of information for purposes for which it is not given by the public. (It is noted that the Data Protection Commissioner has a current public awareness campaign against just such a mis-use of information). In addition, it is considered that the availability of a person’s PPSN number, combined with their address and other details would facilitate identify theft, social welfare fraud etc.

The Institute also feels that requiring such information with a planning application will be difficult to operate in practice, since planning office staff will not be able to verify whether the number given is correct, and hence its validation will not be possible.

Article 9 (2).

It is suggested that the word “immediate” be inserted in line 5, so that drawings of front elevations would only be required in respect of neighbouring buildings in the “immediate vicinity”.

It is suggested that the scale of maps permitted be at a scale of not less than 1:200 *and not more than 1:100*. Some Planning Authorities are currently requiring drawings at 1:50, even though the current Regulations do not provide for such. It is considered that front elevation drawings at 1:100 should be sufficient to meet this requirement.

Article 11

The Institute considers that giving Planning Authorities the lee-way to provide planning lists up to five working days after applications are lodged further restricts the time available for interested persons to make submissions to such Authorities. Given that there is a very strict limitation of five weeks, it is considered inappropriate to alter the period for publication of planning lists. Alternatively, the five-week period for lodging submissions could be lengthened to six weeks.

Article 21

The Institute is opposed to this amendment, as it considers that the deletion of this provision would seriously diminish public involvement, particularly in the light of the European dimension, where Ireland has been criticised on many occasions for failure to conform to the spirit of the Directives. Public involvement is a key aspect of development consent, particularly in the case of developments to which EIA applies. To remove this provision would effectively prevent any person, who had not already made a submission on an application with an EIS at planning authority stage, from getting involved in the system at appeal level. It is considered that there is no justifiable basis for the removal of this provision, other than presumed administrative convenience. It is considered by the Institute that the principle of public involvement in the planning process should take precedence over the administrative convenience of consent authorities.

The following suggestions and comments are made in respect of the proposed Common Application Form.

Question 9 It is considered that the OS grid ref is not necessary and is not required by the current Regulations. Such a requirement would make it difficult for applicants and members of the public, who may not be fully familiar with such references. If the intention of this question is to facilitate Local Authority GIS databases, the responsibility for coding map references should be that of the Local Authority and not applicants. This additional requirement would also be operationally inappropriate,

and would probably lead to more, rather than fewer, invalidations in the future (which the revised form and regulations are intended to reduce), if the grid references are incorrect, or alternatively lead to inaccurate information on a P.A. database.

Question 11. A letter of consent from the owner of a property to the making of the application should be required where the applicant is not the owner. Often this is an issue that has to be clarified, and if not provided with the application, would lead to a request for further information, thereby delaying the decision unnecessarily.

Question 12 The term “dwelling units” or “dwellings” should be used instead of “houses”, as the latter term leads to confusion when mixed developments of houses and apartments are submitted. While the term is defined in note no. 5, it is considered that applicants would be less likely to be confused if the term “dwellings” or “dwelling units” were used on the form itself.

Question 14 It is suggested that the sixth question should be re-worded, for clarity, as follows:- “Is an EIS required for the proposed development?”

Notes to Form It is suggested that applications that refer to a change of use or retention of such a material change of use should not, as a matter of validity, require elevations and sections.

Gross floor area (note 4) This should state that gross floor area would include basement areas (e.g. for car parking), but would exclude roof plant.

Comments on Issues that the Institute considers need to be addressed in the draft Regulations and/or advice and guidelines to planning authorities.

The Regulations and guidance notes need to further amended to address the following difficulties. These relate to specific difficulties encountered in practice. A more reasonable approach by local authorities to validation and the application of the de minimus principle would be of great assistance.

1 Newspapers

- The description of the application should not be all encompassing detailing every minor detail and element of the proposal. A general description of the development should suffice. For example one authority requires that if the development includes balconies that this be included in the development description – yet other local authorities do not. It should outline explicitly in the regulations what data is required in order to have a sufficient description of a development.
- The guidelines should make it clear that the description is only intended to alert people that there is planning application lodged with an indication of the nature and extent of the development. It is not meant to be comprehensive legal description of the development. This is far too open to differing interpretation at present and it is hard to second guess what peculiar requirements a particular LA might have, again leading to expensive invalidations. Some applicants are resorting to asking Senior Counsel to check over notices before lodgement.
- It should state that all national newspapers – e.g. Irish Times, Independent and Examiner are accepted in all local authorities – for example currently one Dublin Authority does not accept the Examiner, yet the other three do.
- The applicant should not be penalised for minor discrepancies/typos that appear in a newspaper advertisement. The de minimus rule should apply. Our members report that they have had expensive invalidations for missing full stops, brackets or very minor misspellings.
- There should be a standard wording regarding the times when a person can go to the planning office to view the file or purchase copies of planning application documentation. The exact opening times should not need to be stated – perhaps – “during office hours” would suffice. These hours should be at least 9.30 am to 1.00 pm and 2.00 pm to 5.00pm.
- Clarity is needed regarding the two weeks from the publication of the advertisement that the application must be lodged. If the last day is a Saturday – is it still valid to submit the planning ad with an application the following Monday?

2 Site Notices

- If you lodge two applications for the development on the site in tandem, some local authorities consider that one of the applications was subsequent to the other and thus requires a yellow site notice. It should be clarified that a yellow site notice is not required in this case.
- There should not be a requirement that only where a site notice has been repeatedly vandalised will the local authority consider the application valid – there should just be sufficient evidence that the notice was removed once.
- Minor discrepancies between the site notice and the newspaper notice should be subject to the de minimus rule.
- It should be clearly stated that a faded signature should not invalidate a site notice. Some of our members have reported that this was a problem, where the signature was not faded as it was laminated. The applicant had no choice but to start again after 6 weeks! (or seek judicial review – not a realistic option for most people).

3 Fees

- There is considerable inconsistency in how local authorities calculate fees.
- For example a substation in some local authorities is considered miscellaneous – Class 13, in others it is commercial – Class 4 and others Class 8. In some authorities, basement car parking is considered to be Class 7– in others, development below ground is not included in the floor space calculations.
- The regulations need to be more specific on these points. An applicant is at the mercy of a planning authority's interpretation, which can often only be established after an application has been lodged a very expensive and inefficient trial and error basis. Requests for clarification of interpretation of the Regulations often do not receive a reply.

4 Drawings

- It should be clarified, in an application for demolition of a building which is not a protected structure, that drawings (floor plans and elevations) are not required.
- It should be clarified that when an application for modifications to a previously permitted application is submitted, it should not be required to submit drawings of the previously permitted scheme.
- It should not be necessary to indicate the contours on a site layout plan if this makes the drawing unclear – a separate contour map should be acceptable.

- It should not be necessary to have a north point on all drawings – it should only be necessary on the site layout and site location plans.

5 General

- A planning authority should only have the opportunity to invalidate an application once and not subsequently try to invalidate an application for an entirely separate reason when it has been re submitted.
- If an application is invalidated, the letter from the local authority should clearly set out the reasons as to why it has been invalidated.
- If the Local Authority invalidate an application and subsequently admit that they made a mistake, the applicant should be able to re-submit all of the documentation without having to re-publish the newspaper ad. As a minimum the LA should pay the cost of resubmission e.g., by the refund or waiving of the planning application fee. This will make LA's more cautious about incorrect invalidations. They are not uncommon.
- It should state clearly in the regulations that, where further information is required and the application includes an EIS, that the Local Authority have 8 weeks within which to make a decision.
- Decisions to Grant by LA's should have ONE date only i.e. the date of the decision. Some LA's have two dates - the date of the manager's order (often hidden in the text) and the date of the notice, which may be a day or two later. This later date is often more clearly set out than the date of the manager's order, at the top or foot of the notice, and not surprisingly is sometimes read as the date of the decision, leading to late appeals!
- Local Authorities should where possible contact applicants by phone or e-mail where they see a difficulty with the validity of an application and give the applicant to address the difficulty immediately without sending back the entire package (e.g. where 5 instead of 6 copies of a particular drawing have been submitted or the fee is incorrectly calculated). Some LA's do this, which is very helpful. Others send the entire package back where there is the most minor deficiency, which could have been easily rectified.

The Institute would welcome a meeting with the relevant officials of the Department to discuss this submission, and the proposed draft regulations generally.