



Comptroller and Auditor General
Report on Value for Money Examination

Department of the Environment and Local Government

Planning Appeals

Report for presentation to Dáil Éireann pursuant to Section 11 of the
Comptroller and Auditor General (Amendment) Act, 1993 (No. 8 of 1993)

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This report was prepared on the basis of information, documentation and explanations obtained from the public bodies referred to in the report. The draft report was sent to the Department of the Environment and Local Government and to An Bord Pleanála and comments were requested. Where appropriate, the comments received were incorporated in the final version of the report.

Report of the Comptroller and Auditor General

Planning Appeals

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act, 1993, carried out a value for money examination of the planning appeals system.

I hereby submit my report on the above examination for presentation to Dáil Éireann pursuant to Section 11 of the said Act.

A handwritten signature in black ink, appearing to read 'John Purcell', with a large, stylized initial 'J' and a long, sweeping underline.

John Purcell
Comptroller and Auditor General

8 April 2002

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Summary of Findings

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Spatial planning is regulated by local planning authorities whose decisions can be appealed to a national agency - An Bord Pleanála (the Board).

Persons can appeal to the Board challenging refusal of permission or conditions attached by the authority to permissions granted. Third party appellants can challenge decisions to grant permission.

Appeals involve a complete re-examination by the Board of the application for permission.

The examination set out to review

- how well the appeals system is managed and
- how its effectiveness is evaluated by the Board and by the Department of the Environment and Local Government (the Department).

Overall, around 7% of all planning decisions were appealed each year during the period 1995-2000. There is a greater tendency to challenge refusals with 29% of all applications refused coming before the Board while only 4% of cases where permission is granted are appealed.

Rates of appeal against decisions of individual planning authorities, however, varied considerably. During that period, the rate of appeal against refusals in individual planning authorities varied between 12% and 58% while the rate of appeal against grants of permission varied between 2% and 11%.

Managing the Appeals System

My examination of the Board's output and resources found that

- its caseload more than doubled in the period between 1994 and 2000 while its staff resources increased by 61%
- the Board supplemented its staff resources with fee-per-case inspectors engaged on a consultancy basis — 26% of appeals were processed by this means in 2000
- the Board further increased its recourse to consultancy in 2001, hiring an extra 47 fee-per-case consultants in that year and also engaging firms of consultants to deal with certain complex appeal cases.

My examination also found that the Board's processing performance had been deteriorating in recent years

- the percentage of appeals processed within the statutory time target of four months had decreased from almost 100% in 1994 to less than 50% in 2000
- the backlog of cases not disposed of at 31 December 2000 represented 46% of appeals lodged with the Board in 2000.

While some of this occurred because resources did not keep pace with the increased caseload, the examination also noted that the productivity of the Board's staff in terms of reports produced by each inspector diminished, reducing from a level of 120 reports per inspector in 1995 to 86 in 2000.

This may, in part, be due to the fact that fee-per-case inspectors typically handle less complex cases which correspondingly increases the processing time for those cases handled by the Board's staff.

The Board has introduced a new performance review system for its inspectorate in 2001. The system focuses on report outputs but the full effects of this system have yet to be realised.

Impact of Appeals on Planning Decisions

97% of all original planning authority decisions are either not challenged or are upheld on appeal. My examination noted that where decisions are challenged, a considerable number of them are either reversed outright or varied. In 2000, 27% of all decisions considered on appeal were reversed while a further 31% had the conditions attached to the original decision varied.

There is an apparent need to examine the factors which give rise to the very high overturn rates in some authorities. In cases where the Board was given an opportunity to review grants of permission, the rate of overturn of decisions in individual authorities ranged from 12% to 56% with an average national overturn rate of 28%.

In the case of appeals of refusals, the rate of overturn of planning authority decisions ranged from 8% to 33% compared with a national average overturn rate in this category of 18%.

Although some deviation from the national norms is to be expected, high rates of overturn on appeal suggest that certain planning authorities' decision making would merit deeper examination.

Effectiveness of the Board

The examination found that the Board has adequate systems in place to allow it to evaluate its performance in quantitative terms. However, no formal system is in place to monitor the quality of its decisions. The Board has undertaken to examine how this might be done and has also recently begun to set out reasons in cases where its final decisions depart from an inspector's recommendation. There would be merit in analysing and categorising these departures so as to provide feedback to inspectors.

The examination concluded that the Board needs to consider how it can contribute to adjustment and learning on the part of planning authorities by isolating the main causes of overturns of original decisions and relaying the trends and patterns to the authorities.

Departmental Monitoring

In regard to the role of the Department, the examination found that while it publishes statistics on the planning performance of local authorities, it does not carry out any analysis on the underlying trends. The identification of such trends and their underlying causes would better position the Department to evaluate the effectiveness of the overall planning system.

In addition, data on the volume of development comprised in appeals should be analysed by development category so that the patterns and trends associated with the different types and scales of development can be isolated and, where appropriate, addressed.

The Department has informed me that following the implementation of the Planning and Development Act, 2000, it will move to put procedures in place for ongoing monitoring and evaluation of the performance of planning authorities and the Board.

Planning Appeals

1 Introduction

1.1 The Local Government (Planning and Development) Act, 1963 introduced a nationwide physical planning system. Since then, physical development or material change in the use of land is exempt from the requirement to obtain planning permission only in very limited circumstances. Developments must be in accordance with the policies and objectives set out in the local development plan for the area.

1.2 The planning authorities¹ are invested with a wide range of powers for securing the proper planning and development of their respective areas and for the preservation of amenities. They are also responsible for drawing up local development plans and dealing with planning applications, including applications for outline planning permission, full planning permission and planning approval.

1.3 A planning application may relate to one structure or to developments comprising a number of structures, such as housing estates and apartment blocks. The majority of planning applications are for domestic dwellings and extensions.

1.4 Responsibility for the adoption and amendment of local development plans rests with local authority elected representatives. However, deciding on a planning application is an executive function and planning decisions are made by the relevant county or city manager, or by a local authority official to whom the function has been delegated.

1.5 Planning decisions are open to appeal by applicants or by third parties. All planning appeals are determined by an independent national agency, An Bord Pleanála (the Board). The Board is empowered under the planning acts to overturn or endorse a planning authority decision or to vary the conditions attached by the planning authority to a grant of permission.

1.6 The Department of the Environment and Local Government (the Department) is responsible for planning policy and legislation and the effective operation of the planning system.

Objectives and Scope of the Examination

1.7 The examination set out to examine

- how well the appeals system is managed
- the factors impacting on the effectiveness of the planning appeals system and the extent to which the effectiveness of that system is evaluated.

1.8 The planning appeals system is examined within the general context of the planning system as a whole.

¹ There are 88 designated planning authorities in total (see list of authorities in Appendix A). In this report, small authorities (borough corporations and urban district councils) are grouped with the relevant county councils for analytical purposes. This reduces the number of authorities reported on to 34.

1.9 The examination looks at the Board's resources and its efficiency in processing appeals. It examines the systems, practices and procedures used by the Board to evaluate its own effectiveness. The examination also reviews the systems, practices and procedures used by the Department to evaluate the effectiveness of the appeals system as a whole, including planning authority decisions and their impact on the Board.

1.10 The examination covers the period since the mid 1990s, but references are made to earlier years, where relevant. The main focus is on appeals relating to land development i.e. those under Section 26 of the Local Government (Planning and Development) Act, 1963. These appeals account for 98% of the Board's cases and are termed by it as 'normal planning appeals'.

Examination Methodology

1.11 The examination was carried out by the staff of the Office of the Comptroller and Auditor General. Information was obtained from reports published by the Department and by the Board. Data from the Board's management information system was also used.

1.12 Data has been analysed and presented throughout the report in terms of decisions by local authorities and the Board. Published data on planning authority decisions was reviewed. Interviews were conducted with officials of the Board, the Department and some planning authorities. The planning appeals systems in England, Scotland and Northern Ireland were reviewed for comparative purposes.

Report Format

1.13 The examination findings are presented in the following chapters.

- Chapter 2 provides an overview of the appeals system, including the legal and administrative framework and the roles of the agencies involved.
- Chapter 3 deals with the output of the Board in terms of the number of appeals handled and the timeliness of appeal decisions. It also examines the Board's expenditure and its management of resources.
- Chapter 4 looks at the extent to which the Board monitors its effectiveness and how the Department evaluates the effectiveness of the appeals system and of the planning system as a whole.

2 The Planning Appeals System

2.1 The function of determining appeals was vested originally in the Minister for the Environment and Local Government (the Minister) under the Local Government (Planning and Development) Act, 1963. The involvement of the Minister in the appeals mechanism was, however, the subject of comment and criticism. In 1976, the Board was established under new legislation as an independent agency to deal with planning appeals. Further legislation in 1983 provided for a reconstitution of the Board and an 'arm's length' system for appointing Board members.

2.2 The Department conducted a fundamental review and overhaul of the planning system and planning law in the period 1997-2000 with the objective of ensuring a more effective and efficient planning system. The review included the following stages

- public consultation on planning policy
- updating and consolidating the planning law, culminating in the enactment of the Planning and Development Act, 2000
- reviewing and consolidating all planning regulations.

The principal revised provisions of the Planning and Development Act, 2000 only come into force in March 2002 in relation to applications to planning authorities on or after that time.

2.3 This chapter describes how the planning system operates and how Bord Pleanála is organised. It also describes certain changes that are currently being implemented as a result of the passing of the Planning and Development Act, 2000.

Organisation of An Bord Pleanála

2.4 The planning appeals system is designed to be independent, open and impartial. The planning acts make clear provision for the independence of the Board. At an administrative level, the Board has adopted procedures which are designed to ensure that no single person, be it Board member, planning inspector or other member of staff, can ensure the outcome of an appeal. Since 1995, the entire file of an appeal is available for public inspection for a period of five years after it has been determined by the Board.

2.5 The functions of the Board are listed at Appendix B.

2.6 Every planning appeal is decided by the members who work on a full-time executive basis. In 2000, the Board consisted of nine ordinary members and a chairman. With effect from 1 January 2002, the Board consists of eleven ordinary members and a chairman.

2.7 Ordinary members are appointed by the Minister from among nominees put forward by organisations representing professional, environmental and development interests, and from the civil service. The chairman is appointed by Government from a list of candidates selected by an independent committee chaired by the President of the High Court.

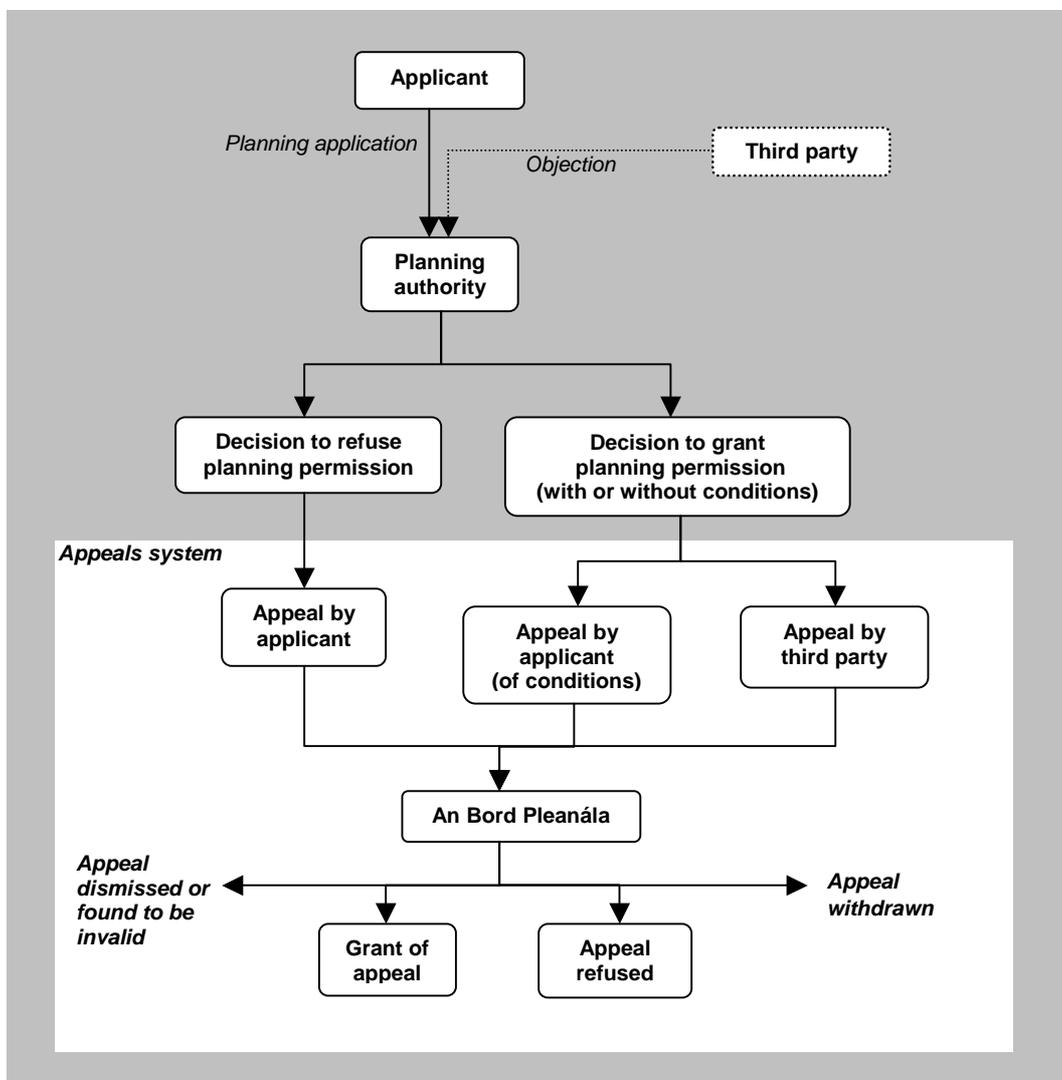
2.8 About 35% of the Board's staff are professional planners. A further 38% of its staff are involved in the administration of appeals. The remainder are engaged in management and support. Staff costs account for two thirds of the annual expenditure of the Board.

2.9 The Board's planners, whether employed on a permanent, temporary or a consultancy basis, are required to be professionally qualified in spatial planning and to have four to five years relevant experience as a planner. Senior planners are appointed from open and confined competitions generally in equal measure.

How the Appeals System Operates

2.10 The structure of the planning system, including the appeals process, is summarised in Figure 2.1.

Figure 2.1 Overview of the planning and planning appeals system



Note: While the vast bulk of appeals against decisions to refuse planning permission are made by original applicants, a very small number (less than 1%) are made by third parties where, for example, the person considers that the reasons are inadequate.

2.11 A person dissatisfied with a decision of a planning authority may appeal that decision to the Board, on payment of a fee. Appellants fall into two categories

- the person who made the original planning application (the applicant)
- third parties who object to the planning decision².

Where an appeal has already been made, another person can become an 'observer' and make submissions or observations on an appeal, subject to a fee.

2.12 An appeal must be lodged with the Board, in writing, within one month (four weeks under the Planning and Development Act, 2000) of the date of a planning authority's decision. The appeal is subject to a fee and must satisfy a number of statutory requirements, including specifying the name and address of the appellant, the subject matter of the appeal and the full grounds of the appeal, together with supporting documentation and arguments.

2.13 An appeal is registered on receipt and checked to ensure it meets the requirements for validity. Appeals deemed to be invalid are rejected at this point. Valid appeals go through the following procedures

- requesting and checking the planning authority's planning application file
- circulation to the relevant parties of the grounds of appeal or submission and of observations received from the parties and observers
- initial assessment of the case in relation to such issues as compliance with statutory requirements, completion of required environmental impact assessment, and the relationship of the proposed development to designated areas or sites
- files are also screened to determine whether they should be sent to the Board at an early stage, for its direction on matters such as dismissal of the appeal, whether to hold an oral hearing, etc.

2.14 The Board may request further information or documentation or further comments on aspects of the appeal. These inquiries are carried out in accordance with statutory procedures and generally within strict time limits.

2.15 Following the completion of these procedures, appeals are normally assigned to a senior planning inspector for the geographical area concerned. An inspector assesses the file, carries out a site inspection and makes a report (which includes an assessment of the case, a recommendation to grant or refuse permission, reasons for the recommended decision and a schedule of appropriate conditions, where applicable). As part of this process, an inspector may request further information or raise a new planning issue that was not raised by any of the parties or observers.

2.16 The appeal is decided by the Board following a review of the case, including the inspector's report and recommendations. The report is first submitted to a Member who

² Following the implementation of the Planning and Development Act, 2000, only those who were involved in the original planning application process will be permitted to lodge a third-party appeal.

reviews the case in detail. The Member then brings it to the Board, which considers the appeal and issues its determination.

2.17 Under statute, the quorum for a meeting of the Board is three members. Normal planning cases are determined by three-member boards. Under the Board's operating procedures, there is provision for the constitution of larger boards depending on the type of case and its complexity and sensitivity. Larger boards are constituted by decision of the chairman and in cases where a smaller board decides to remit the case to a larger one.

2.18 The Board's decision may be at variance with the inspector's recommendation. Historically, the Board has accepted the general thrust of the inspector's recommendation in approximately 90% of cases.

2.19 In making its decision on an appeal, the Board must have regard to the grounds of appeal and any submissions and observations made by parties and observers in relation to the appeal. It considers the case under appeal as though the application had been made to it in the first instance.³ The Board applies the same criteria as the planning authority in assessing the appeal. The assessment criteria include

- the proper planning and development of the area, including the preservation and improvement of amenities
- the policies and objectives of Ministers, planning authorities and certain other public authorities, as appropriate
- policy on economic development
- the principle of sustainable development.⁴

2.20 While the Board must take cognisance of the local development plan,⁵ unlike the planning authority, it is not bound by it and may contravene materially the provisions of the plan in any individual appeal.

2.21 A decision of the Board may be challenged in the High Court by way of judicial review, but the review normally considers only the procedures operated by the Board or the proper application of the law in arriving at its decision. The High Court does not revisit the planning merits of the decision.

³ A limited exception to this *de novo* consideration by the Board can apply in relation to appeals against conditions.

⁴ This principle, which has been applied in practice by the Board for a number of years, was given statutory backing in the Local Government (Planning and Development) Act, 2000.

⁵ There are also more explicit requirements on the Board to have regard to considerations of strategic or national importance

Current Developments of the Appeals System

2.22 The Planning and Development Act, 2000 introduced significant changes in the Board's functions and is expected to have major implications for its operations. New functions transferred to the Board include

- the approval of major planning authority infrastructure projects in roads, water and waste water
- functions in relation to the confirmation of compulsory purchase orders.

Under the Planning and Development Act, 2000, the Board may direct a local authority to pay costs to the Board and/or a person attending an oral hearing relating to such State-sponsored infrastructural cases.

2.23 Separate provisions under the Act will enable the Board to direct the payment of compensation where an appeal or referral was made with the intention of delaying the development or securing a monetary gain by a third party.

2.24 Regulations introduced in June 2000 increase the size of domestic extensions that are exempt from planning permission from 23 to 40 square metres, subject to certain conditions. The new exemption is expected to remove about 30% of planning applications for domestic extensions from the planning system. It is also expected to free up planning staff in the planning authorities to concentrate on forward planning and major planning issues.

2.25 In the Department's view, the change in exemption limits for domestic extensions is unlikely to impact significantly on the Board's caseload. This view is based on the fact that there is a much higher appeal rate against decisions to refuse permission, and anecdotal evidence available to the Department suggests that the bulk of applications relating to domestic extensions are granted and that only a small proportion of planning authority decisions in relation to domestic extensions are appealed.

2.26 An independent review of the Board's organisation and staffing is currently underway. Its terms of reference include the following

- to evaluate and make recommendations in relation to the staff structures and organisation of work
- to review staff numbers, reporting structures, responsibilities and skills
- to recommend ways of optimising effectiveness and efficiency and increasing productivity.

Planning Appeals in Other Jurisdictions

2.27 The planning appeal systems in England, Scotland and Northern Ireland are broadly similar to that in Ireland in that planning decisions are made by local authorities and can be appealed to a central agency. However, there are differences, the most significant of which are as follows.

- The Board has statutory independence in making decisions in individual cases. The UK bodies do not have the same degree of independence where, for example, cases may be 'called in' by the Minister to be decided by him.
- Only the original applicants for planning permission may appeal a planning decision in England, Scotland and Northern Ireland. In extending the right of appeal to third parties, the Irish planning appeals system is unusual in Europe.
- Planning appeals in Ireland must be lodged within one month of the planning decision, whereas in England, Scotland and Northern Ireland, six months is allowed to the applicant to appeal decisions.

The Role of the Department

2.28 The Department's primary objective in relation to planning and development is to provide a policy and legislative framework which facilitates development patterns in accordance with the principles of proper planning and sustainable development, balanced regional development, conservation of the natural and built environment and urban and village regeneration. The physical planning system is directly operated by the planning authorities and the Board. The Department's role is to provide the essential legislative framework and policy guidance while seeking to minimise the regulatory burden and cost of the system.

2.29 The Minister and consequently the Department are precluded from any involvement in the consideration of individual cases. The Board is, however, required to have regard to the general policy directives issued by the Minister on planning and development. In turn, the Board advises the Minister on possible policy changes relating to physical planning, in the light of the Board's experience of planning appeals on a national basis.

2.30 The Board's staffing levels and its funding are set by the Department, subject to the approval of the Department of Finance. If necessary for the conduct of its business, the Minister has the power to augment the number of Board members, subject to the approval of both Houses of the Oireachtas. This power has been used on a number of occasions, most recently in July 2001, when the number of members was raised (from ten to twelve) to facilitate an increase in the number of appeals and to discharge new statutory functions assigned to the Board in January 2001.

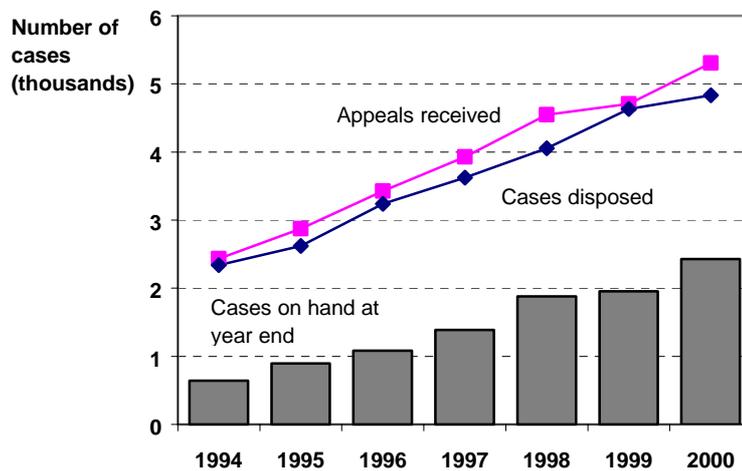
3 Managing the Appeals Caseload

3.1 This chapter considers how efficiently the Board manages the caseload of appeal applications it receives. Efficiency is considered in terms of the timeliness of appeal processing, the productivity of staff and the cost of processing of cases.

Throughput of Appeal Cases

3.2 The number of appeals received by the Board each year more than doubled between 1994 and 2000 (see Figure 3.1). The number of cases disposed⁶ of also increased significantly but did not match the increase in appeals lodged. As a result, the number of cases on hands increased from just under 650 at the end of 1994 (26% of appeals lodged in the year) to around 2,430 at the end of 2000 (46% of appeals lodged in that year).

Figure 3.1 Appeal processing by An Bord Pleanála , 1994 to 2000



Source: An Bord Pleanála Annual Reports

3.3 While the number of planning decisions made by planning authorities increased by 80% in the period 1994-1999, the rate of appeal remained relatively constant at around 7%. The strong upward trend in the number of appeal cases received up to 2000 did not continue into 2001 which saw a 2% decrease in intake compared with the preceding year. This may relate (at least in part) to the widening of the planning exemptions for certain domestic extensions.

⁶ Cases disposed includes appeals determined by the Board and appeals withdrawn, dismissed or deemed to be invalid.

Types of Appeal

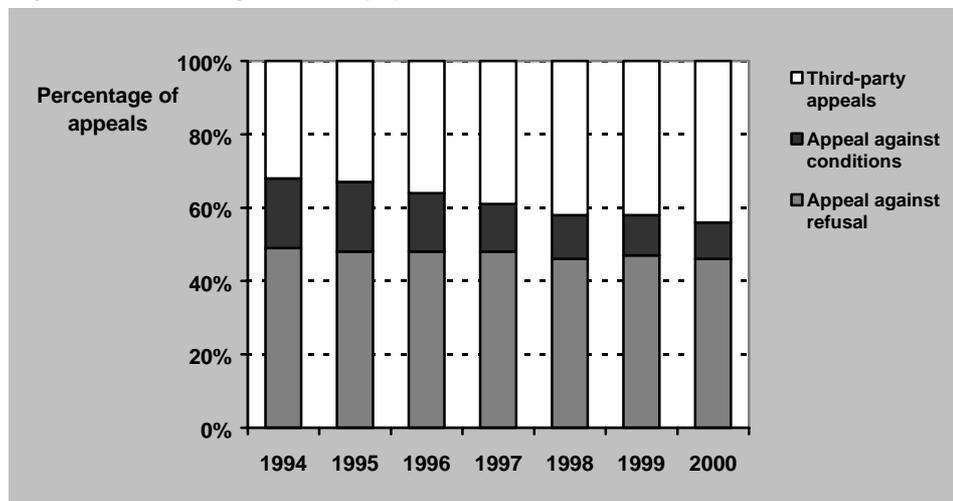
3.4 Appeals may be made against a planning authority's decision or the conditions attached to a grant of permission. The typical types of planning appeal are

- an appeal against a planning authority's decision to refuse planning permission (usually taken by the applicant)
- an appeal against conditions imposed by the planning authority on granting planning permission (usually taken by the applicant)
- an appeal against a decision to grant permission (usually taken by a third-party objector).

3.5 Occasionally, there may be more than one appeal against a single planning authority decision. For example, where permission for a development is granted subject to certain conditions, the applicant may appeal the conditions while one or more third-party objectors may appeal the decision to grant permission. It is estimated that there was more than one appeal in relation to 2.8% of the planning authority decisions appealed to the Board in the period 1995-1999.

3.6 Figure 3.2 shows the trend in the type of appeals between 1994 and 2000. The proportion of appeals that related to conditions of permissions almost halved while the volume of third-party appeals increased significantly. The proportion of appeals relating to refusals remained relatively constant.

Figure 3.2 Planning appeals by type, 1994-2000



Source: Analysis by Office of the Comptroller and Auditor General
 Note: This figure relates to Section 26 appeals determined each year.

Appeal Rate by Type

3.7 The rate of appeal differs significantly, depending on whether permission is refused or granted.

3.8 Overall, 18,900 of the 266,200 planning decisions in the period 1995-1999 were the subject of appeals. The actual volume of development appealed is higher than the volume of decisions appealed which has been consistently around a 7% level. This is

because larger developments are more likely to be the subject of appeal. No firm data is available on the volume of development appealed. However, provisional figures for 2001 indicate that as much as 20% of all final grants of permission for housing are made by the Board.

3.9 There was a much higher rate of appeal of refusals of permission than of grants of permission (see Figure 3.3). Around 29% of planning refusals were appealed. By comparison, only 4% of permissions granted were subject to appeal.

Figure 3.3 Appeals against planning decisions, 1995-1999

	Permission refused	Permission granted	Total
Planning decisions	29,000	237,200	266,200
Appeals	8,400	10,500	18,900
Rate of appeal	29%	4%	7%

Source: Analysis by Office of the Comptroller and Auditor General

3.10 While refusals represented only 11% of all planning decisions, they accounted for 44% of appeals. Appeals of refusals were almost always made by the applicant. By contrast, where the planning authorities granted permission, four out of five appeals were by third parties challenging the permission while in one in five of such appeals, the conditions attaching to the permission by the planning authority were contested, usually by the original applicants. The low rate of appeal of conditions by applicants may reflect the risk that such appeals can result in an overturn of the original decision because the Board hears all cases afresh.

3.11 Based on the latest available UK statistics, planning decisions are appealed in 3%, 1.9% and 1.3% of cases in England, Scotland and Northern Ireland, respectively. The comparative percentage of appeals by Irish applicants aggrieved by planning authority decisions is 4%. Third-party appeals, which are not permitted under the UK planning system, accounted for a further 3% of Irish planning authority decisions.

Appeal Rate by Planning Authority

3.12 Appeal rates varied considerably between planning authorities in the period 1995-1999.

- The rate of **appeal of refusals of planning permission** varied from 12% in Wexford to 58% in Dublin City. This compares with the national average of 29%. In general, the rate of appeal of refusals was higher in major urban areas than in other areas. In six of the other areas however, there was a higher than average rate of appeal of refusals. These authorities were Clare, Wicklow, Tipperary North Riding, Louth, Roscommon and Tipperary South Riding.
- The rate of **appeal of grants of permission** also varied significantly between planning authorities — from just over 2% for Offaly to just over 11% for Dublin City, compared to the national average of just over 4%. The rate of appeal was

generally higher for the major urban areas. This trend was also noted in adjoining authorities such as Kildare and Wicklow, which also show high rates of appeal in this category.

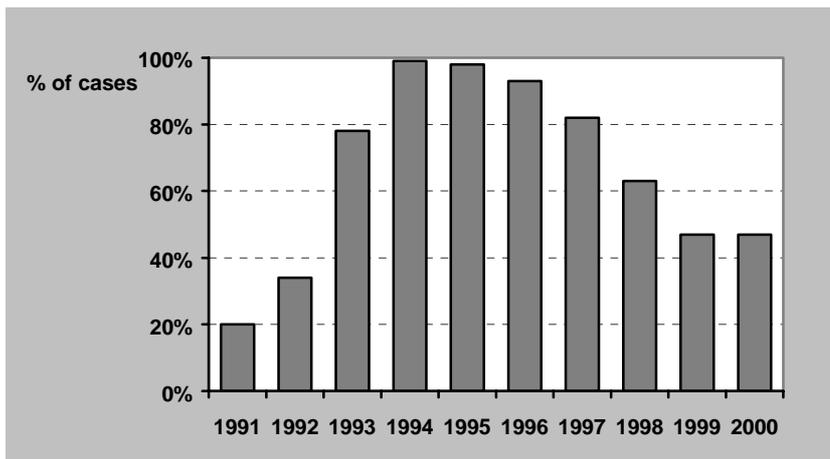
3.13 Rates of appeal for individual planning authorities are shown in Appendix C.

Timeliness of Appeals Processing

3.14 A statutory objective of determining appeals within four months was set for the Board in the Local Government (Planning and Development) Act, 1992. While not legally binding, this time limit is acknowledged and used by the Board as a measure of its efficiency. (The time limit target is being altered to the more consistent period of 18 weeks under the Planning and Development Act, 2000.)

3.15 There was very significant movement in the proportion of cases disposed of within the target time period of four months over the decade 1991-2000 (see Figure 3.4). From a very low base in the early 1990s, the proportion of cases disposed of within the time limit increased to almost 100% by 1994. By 1999-2000, this had fallen back to just 47%.

Figure 3.4 Percentage of appeal cases disposed of by An Bord Pleanála within four months, 1991 to 2000



Source: An Bord Pleanála Annual Reports

3.16 During 1995, the average processing time for appeals was 14 weeks. However, by 2000, the average processing time had risen to 21 weeks.

3.17 The Board attributes part of the difficulty in disposing of appeals within the statutory time target, to increasing size and complexity of cases. For example, 83 planning appeals (1.6% of all appeals) received in 2000 were accompanied by an environmental impact statement, compared with 28 (1%) in 1995. Furthermore, oral hearings were held in 44 cases in 2000 compared with 32 cases in 1995. The Board estimates that oral hearings can add anything between 6 to 24 days to the appeal process.

3.18 Because of the backlog of cases, the Board decided in 1999 to accord priority status to all housing developments in excess of 50 units. In June 2000, the Board reduced this threshold to housing developments of more than 30 units. During 2000, 67% of these priority cases were disposed of within the target time of four months. The average

disposal time for such cases was approximately 13 weeks. The Board also accorded priority status to major infrastructural projects, e.g. electricity generating facilities.

Staff Resources

3.19 Difficulties in recruiting and retaining staff account for a large part of the increase in backlog of cases and the lengthening of case processing time. The number of staff employed by the Board (including Board members and planning and administrative staff) increased from 70 in 1994 to 112.5 in 2000, an increase of 61%. However, during this period, the volume of cases to be processed increased by 118%.

3.20 The Board has identified the need to increase its staff levels further to cope with the continuing increase in the volume of appeals, but considers that the shortage of qualified planners in Ireland represents a considerable constraint. The Board has responded to this by recruiting temporary planners from abroad, particularly the UK, Australia, South Africa and New Zealand.

3.21 The shortage of qualified planners is also affecting the planning authorities. In his annual report for 2000, the Ombudsman concluded that very many local authority planning sections are understaffed and that this is having a negative impact on the functioning of the planning system.

Use of Consultant Planners

3.22 As well as using its own directly employed staff, the Board processes appeals using consultant planners. One in four of the appeal cases disposed of in 2000 involved consultant planners (see Figure 3.5).

Figure 3.5 Cases involving consultant planners, 1991-2000

Year	Number of appeal cases	As % of all cases determined
1991	163	6
1992	349	14
1993	16	1
1994	9	**
1995	145	7
1996	571	22
1997	596	21
1998	516	16
1999	731	20
2000	975	26

Source: An Bord Pleanála annual reports
 Note: ** Less than 1%

3.23 The Board's professional management staff select the cases to be allocated to consultants in accordance with guidelines determined by the Board. The reports produced by consultants are submitted to the Board for decision in accordance with usual procedures.

3.24 Consultant planners or inspectors have, heretofore, been engaged on a fee-per-case basis to handle smaller, less complex planning appeals, involving building or extending private houses, small hotels and small commercial developments. They have not been assigned cases involving oral hearings or environmental impact assessments. As part of its strategy to reduce the backlog of appeals further, the Board engaged an additional 47 consultants on a fee-per-case basis in mid-2001. Of these, 44 were UK-based.

3.25 Specialist consultants are engaged generally to assist a Board inspector in relation to complex technical issues that may arise in an appeal. In some cases, a specialist consultant is engaged as the sole inspector and will make a report and a recommendation directly to the Board.

3.26 Part-time engineering consultants deal with most state-sponsored infrastructural cases i.e. generally those cases transferred to the Board under the Planning and Development Act, 2000 relating to compulsory purchase orders, road schemes and environmental impact assessment of local authority projects. The first part-time consultants were appointed in 2001 and had held oral hearings or public inquiries in 43 cases by the end of 2001.

3.27 As part of its strategy to reduce the backlog of appeals, the Board has in 2001 engaged planning consultancy firms to deal with the larger, more complex planning appeals. However, they are not assigned cases which might be considered sensitive or which involve oral hearings. Seven planning consultancy firms were appointed by September 2001 on the basis of competitive tenders. They were mostly UK-based.

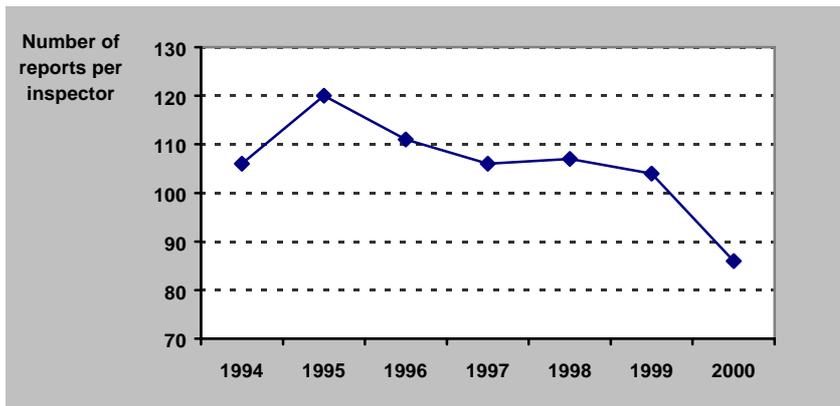
Staff Productivity

3.28 The number of appeal case reports produced by the Board's own planning staff was relatively constant over the period 1994 to 1999, with a peak of 120 reports per inspector in 1995. The average output declined significantly in 2000 to 86 reports per inspector (see Figure 3.6). The Board attributes part of the reduction in 2000 to the full-time involvement of three Board inspectors in the Spencer Dock appeal over a four-month period. Excluding this factor, the Board estimates the average output was 89 reports per inspector in 2000.

3.29 The Board attributed the decline in the average number of cases reported on by inspectors in recent years to

- reduced productivity arising from the intake of new inspectors and the high turnover of inspectors

Figure 3.6 Average number of reports produced per Board inspector, 1994-2000



Source: An Bord Pleanála

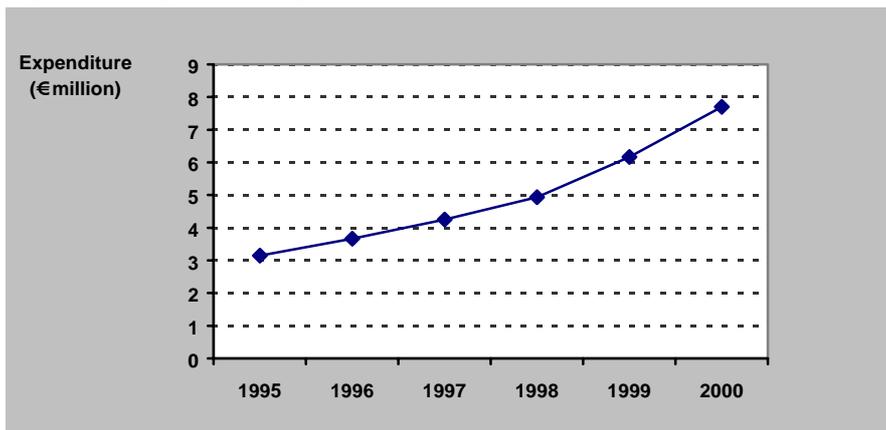
- the fact that a larger proportion of the bigger and more complex cases fall to be reported on by the Board's in-house inspectors, with less complex cases being dealt with by fee-per-case inspectors whose caseload rose from an average of 16% of reports received in the period 1994 to 1999, to 26% of reports received in 2000
- cases have become larger and more complex.

The Board informed me that while it had been the practice in the past to review inspectors' performance, it has now put in place a systematic procedure for forecasting, review and appraisal of an individual inspector's casework and general performance.

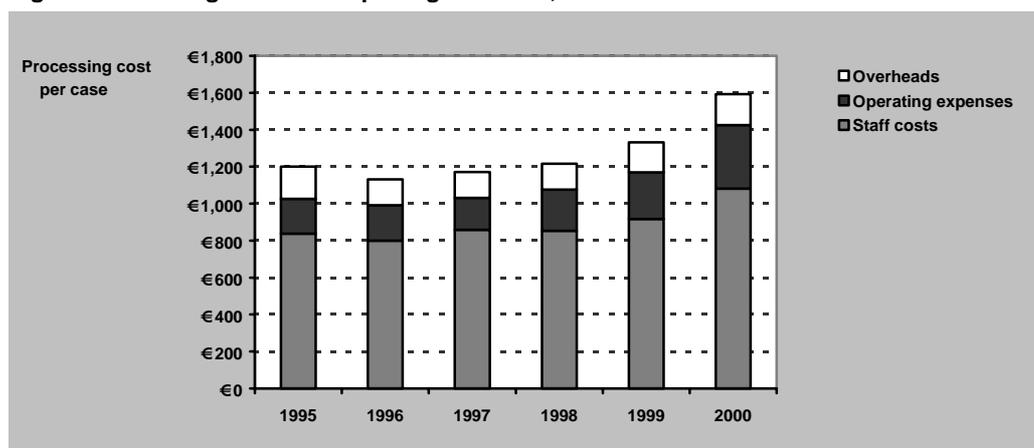
Cost of Appeal Processing

3.30 Expenditure by the Board increased from €3.1 million in 1995 to €7.7 million in 2000 — an increase of 145%. The trend in expenditure is shown in Figure 3.7.

Figure 3.7 Expenditure by An Bord Pleanála, 1995-2000



Source: An Bord Pleanála Annual Reports

Figure 3.8 Average cost of disposing of a case, 1995 to 2000

Source: Analysis by Office of the Comptroller and Auditor General

3.31 Most of the increase in expenditure is related to the increase in volume of cases disposed of by the Board but the average cost of processing a case also increased significantly between 1995 and 2000. There were also changes in the composition of expenditure (see Figure 3.8).

3.32 In 1995, the average processing cost per case was around €1,200. By 2000, this had increased to around €1,600. When account is taken of inflation — around 16% in the period 1995 to 2000 — the real increase in the average cost of processing an appeal case was around 15%.

3.33 Two-thirds of the cost of disposing of an appeal case in 2000 related to staff costs. The element of unit cost accounted for by overheads was around 10%. Operating expenses, which include the costs of recruitment and training, legal fees and travel expenses, increased from 16% of the average unit cost in 1995 to almost 22% of average unit cost in 2000.

3.34 A variety of factors caused the Board's operating costs to increase faster than the other cost elements.

- A major cause of the increase was increased legal costs per case. The Board has no control over the fees charged by solicitors and barristers engaged to work on cases.
- Increases in the authorised staff complement and in staff turnover resulted in the Board being constantly involved in recruitment, the most significant costs of which are advertising.
- Training and development costs have risen to meet requirements for more induction training for new staff and to meet the public sector objective of allocating 3% of payroll costs to training and development.
- Each addition to the staff complement has involved the purchase of office equipment, such as personal computers, desks, etc.
- Much of the Board's typing has been out-sourced to agency firms due to its inability to employ sufficient typists.

- The number of statutory notices published in the media more than doubled over the period 1994 to 2000. Apart from the increased number of notices, the Board has increased the size of published notices to make them more readable, with attendant cost implications.

Charging of Fees

3.35 The Board is financed by a combination of State funding and fee income. Fee rates are decided by the Minister⁷ and are set, as a matter of policy, on a flat-rate basis. In contrast, planning application fees payable to the planning authorities are, subject to capping, related to the size of the development. Fees related to planning appeals are not set at a commercial or cost-recovery rate as it is considered that the service offered by the Board is quasi-judicial in nature and should be reasonably affordable.

3.36 There are 15 categories of appeal fees, ranging from €10 for observer submissions under the Air Pollution Act to €380 for a first-party appeal against a planning decision on a commercial development. The Board's annual fee income for 2000 amounted to around €1.26 million and made up 17% of its income for the year.

3.37 While the Board is quasi-judicial in nature, there are no provisions for a successful appellant to claim the costs associated with an appeal. However, the Board has power to determine a sum to be paid in compensation for the expense incurred in the appeal process.

3.38 Up to 2000, the Board had not directed that compensation be paid in any case. However, the Board reviewed its position in 2000. Since then, nine cases have come before the Board for decision. In three cases, it was decided not to direct the payment of compensation. Six cases are currently before the Board.

3.39 The Board pays its own legal costs even in cases where costs have been awarded to it by the High Court. It then seeks, where possible, to recover these costs from the appellant. In some cases, the Board does not pursue costs where the appellant has no assets. The total amount of costs being pursued by the Board at December 2000 was €807,100.

Potential Efficiency Improvements

3.40 The efficiency of the appeals process is affected by local planning procedures and practices. For example, other than initial registration and validation, no work can be undertaken by the Board or its staff until the planning authority file on the application is received. In 2000, 25% of these files were not submitted to the Board within the statutory time of two weeks. There has also been a poor response from planning authorities in

⁷ Under the Planning and Development Act, 2000, the Board will set appeal fees, subject to the approval of the Minister. Subsequently, the Board may adjust the fees in line with the CPI.

making submissions and observations in relation to appeals and in responding to requests for further information.

3.41 Certain planning authorities are decentralising services to electoral wards, with the objective of providing improved services to the public. This reorganisation is heavily dependent on the successful introduction of information and communications technology. As part of this process, three authorities — Meath, Donegal and Kildare — are sponsoring a pilot project to bring the planning system on to an electronic (or e–planning) basis.

3.42 Taking Meath as an example, the electronic planning system has been developed to the stage where all planning applications are scanned into electronic format. Access to some of the planning process is already available via the Internet. It is proposed that, eventually, all planning applications will be fully accessible to the public through the Internet. Meath County Council has, as part of the pilot project, succeeded in getting two applicants for commercial developments to submit their applications in electronic format.

3.43 Each member of Meath County Council has been supplied with a computer and given training in the use of the system. It is expected that frequent users (e.g. architects) will convert to electronic use, particularly as their base documents for an application would, in all probability, have been prepared in electronic format.

3.44 The ultimate aim of the system is that all land holdings in Meath will be assigned a number and that planning applications will be related to the land holding number. A complete history of planning activity in relation to the land holding will be constructed which will facilitate both the applicant and the County Council in their approaches to planning applications on the landholding. The system will allow planning authority staff manning pre-application planning clinics access to the full recorded history of the proposed site and to indicate, on a “without prejudice” basis, the planning authority’s likelihood of granting permission for the site. The success of this aspect of the plan is dependent on the co-operation of the Ordnance Survey Office and the Land Registry.

3.45 Meath County Council is hopeful that An Bord Pleanála will interface with its system, which will give the Board full electronic access to the entire planning file, as required. This should reduce the flow of paper between the County Council and the Board, thereby speeding up the appeals process and releasing planning authority staff from work associated with the appeals system.

3.46 The Board has an outline strategy to move to e–planning, but it has not as yet been able to initiate the process due to a lack of qualified personnel.

3.47 E–planning has the potential to contribute to the overall efficiency of the service. An Bord Pleanála and the Department should review the outcome of the pilot projects with a view to determining whether and to what extent the lessons learned can be applied generally.

Conclusions

3.48 The caseload of appeals received by the Board increased significantly throughout the 1990s. The increase was closely related to the increase in the volume of planning applications. This indicates that there has been little change in the overall rate of appeal of planning authority decisions.

3.49 The number of decisions appealed has been consistently around a 7% level in recent years. Because the tendency to appeal is greater in the case of larger developments, the actual volume of development appealed is, however, higher than this level. No firm statistics are available in volume terms.

3.50 There is a much higher tendency to appeal planning decisions where permission has been refused. While refusals account for only 11% of all decisions they account for 44% of decisions appealed. The rate of appeal varied between planning authorities, with urban areas generally having high rates of appeal in both categories.

3.51 Since the mid-1990s, there has been a growing backlog of appeal cases. The timeliness of the disposal of cases has also been deteriorating, with less than half the cases disposed of in 1999 and 2000 meeting the four-month time target. At the same time, the average unit cost of disposing of a case has been increasing.

3.52 The average number of reports produced by inspectors has decreased from 120 reports in 1995 to 86 in 2000. The Board has explained that, with the increasing reliance on consultant planners, the type of cases handled by in-house professional staff tend, on average, to be more complex and require increased resources.

3.53 High staff turnover and a scarcity of suitably qualified professional staff have contributed significantly to increased backlogs and delays in processing cases. As a response to this, the Board has significantly increased its engagement of consultant planning staff. It has also recruited temporary qualified planners from abroad in 2001.

3.54 The Board's management committee introduced a system of performance review focusing on report outputs in early 2001. However, it states that due to other priorities taking precedence, the full effects of this initiative have yet to be realised.

4 Effectiveness of the Planning Appeals System

4.1 Like all public sector bodies, the Board has an obligation to be effective in the discharge of its duties. As part of its responsibility to deliver value for money, it is also responsible for evaluating the effectiveness of its own operations.

4.2 Since the appeals system is an integral part of the overall planning process, how the effectiveness of the appeals system is evaluated must be set in the context of effectiveness of the planning system as a whole, and must be consistent with what the wider system is designed to achieve.

4.3 The Department sets the objectives for both the planning and appeals systems. It is also responsible for their design and organisation. Consequently, it has responsibility for evaluating the overall effectiveness of the systems and for ensuring that they are operating compatibly.

4.4 This chapter examines the systems, procedures and practices used by the Board and the Department to evaluate the effectiveness of the appeals system. The examination is set in the context of the outcome of appeals and the overall impact the appeals system has on planning decisions.

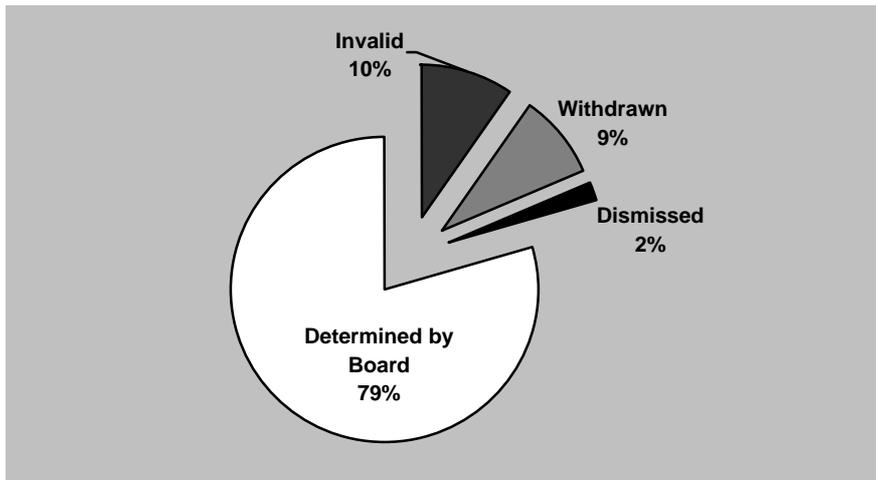
Outcome of Appeals

4.5 The planning appeal process can be viewed as a systematic means of providing assurance that planning authority decisions are properly and correctly made, and that, where errors are believed to have occurred at planning authority level, there is a way to remedy the situation for the parties concerned. The potential to feed relevant information back to individual planning authorities and to the Department is also an important function of the appeals system.

Invalid and Withdrawn Cases

4.6 A significant proportion of appeal cases commenced each year do not reach the stage of being formally determined by the Board. The proportion of such cases has remained relatively constant from year to year.

4.7 The Board finalised around 21% of appeal cases in 2000 without a formal determination of the planning application in question. This was mainly because some appeals were found to be invalid or incomplete, or because the appellant withdrew the case before it had reached the stage of being considered by the Board. A further small proportion of appeal cases was dismissed for a variety of technical reasons. Figure 4.1 shows how appeal cases were disposed of in 2000.

Figure 4.1 Method of disposal of appeal cases in 2000

Source: Analysis by Office of the Comptroller and Auditor General

Outcome of Cases Determined

4.8 The outcome of the Board's determinations of cases can be viewed in a variety of ways, depending on the perspectives of the different parties to the case.

- Since the Board reviews each case from the beginning, its determinations may be viewed as being similar to those of any planning authority — it decides either to refuse or to grant the planning permission sought by the first-party applicant, for stated reasons. (A grant of planning permission by the Board is usually subject to specified conditions.)
- The Board's determination may also, validly, be considered in relation to the planning authority's original decision in the case. Thus, the determination may confirm or overturn the decision of the planning authority, or may change the conditions of a grant of permission.
- The Board's determinations may also be considered from the point of view of the appellant. The Board may, in whole or in part, grant or deny the remedy sought by the appellant, who may be the original applicant for the planning permission, or may be an opponent of the proposed development.

Recent Appeal Outcomes

4.9 Figure 4.2, which presents the outcome of Bord Pleanála decisions on planning appeals in 2000, tries to capture the outcome data in a way which presents the various perspectives. The shaded sections indicate the proportion of cases determined where the Board's determinations confirm the planning authorities' decisions.

4.10 Since appellants submit appeals presumably because they are dissatisfied with the decisions of planning authorities, it is relevant to compare the Board's determinations with the planning authorities' decisions. In 2000, 42% of all planning authority decisions considered by the Board were confirmed while 31% were varied and 27% overturned.

Figure 4.2 Outcome of Bord Pleanála decisions in 2000

Type of appeal	Number of appeals determined	Bord Pleanála determination in appeal cases		
		Planning permission granted	Permission granted with varied conditions	Planning permission refused
Appeal of refusal	1,706	15%	—	85%
Appeal of conditions	376	17%	63%	20%
Third-party appeals of grant of permission	1,644	2%	57%	41%
All appeals	3,726	9%	31%	60%

Source: Analysis by Office of the Comptroller and Auditor General

4.11 A very high percentage of appeals of refusals of planning permission – 85% — were also refused by the Board in 2000.

4.12 Where the conditions of a grant of permission by a planning authority were appealed, almost two-thirds of cases determined resulted in the conditions being varied in some way. This may have been to the advantage or disadvantage of the appellant. Significantly, one in five of such appeals resulted in the planning permission being refused outright by the Board in 2000. (This percentage increased steadily from 6.2% in 1995 to 20% in 2000.)

4.13 In third-party appeals of grants of planning permission, the Board confirmed only 2% of original planning authority decisions in 2000 without varying any conditions. More than half such cases resulted in variation of the conditions set by the planning authority, which may have been to the advantage or disadvantage of the appellant. However, since two in five of such cases resulted in planning permission being refused, it may not be unreasonable to conclude that the variations in conditions determined by the Board may also often favour the appellants.

4.14 There is considerable variation between authorities in appeal outcomes within each category of appeal. Nationally, in the period 1995-1999, 18% of appeals against refusal of permission were overturned while, aggregating all cases where the Board reviewed a grant of permission, 28% of such grants were overturned. A summary of the outcomes is shown in Figure 4.3.

Trend in Appeal Outcomes

4.15 Figure 4.4 shows the trends in the extent to which planning authority decisions appealed are confirmed by Bord Pleanála determinations. There was an increase in the rate at which the Board confirmed decisions by planning authorities to refuse planning permission from just over 70% in 1995 to around 85% in 2000. The rate of confirmation of planning authority decisions by the Board in cases of third-party appeals against grants of planning permission declined from around 11% in 1995 to under 2% in 2000.

Figure 4.3 Outcome of Bord Pleanála decisions, 1995-1999

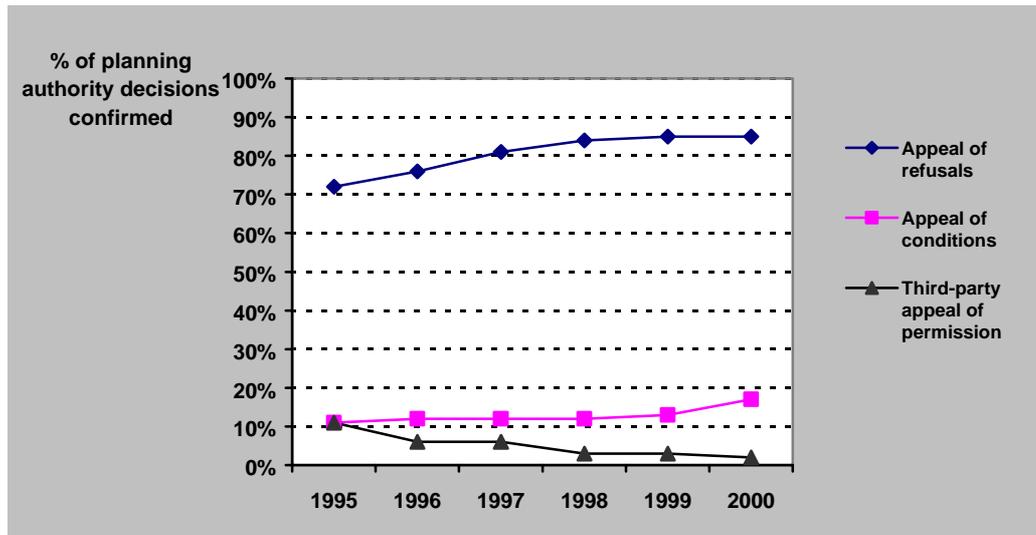
Type of appeal	National average	Lowest in range ^b	Highest in range ^b
Appeal of grants of permission^a			
Local authority decisions			
— confirmed	5%	1%	10%
— varied	67%	39%	83%
— overturned	28%	12%	56%
Appeal of refusals of permission			
Local authority decisions			
— confirmed	82%	67%	92%
— overturned	18%	8%	33%

Source: Analysis by Office of the Comptroller and Auditor General

Notes ^a This category aggregates all cases where the Board was given an opportunity to review a grant of permission. It includes third-party appeals against granting of permission and appeals by the applicant against the conditions attached to the granting of permission.

^b The outcomes for each authority are presented in Appendix D.

Figure 4.4 Rate of confirmation by Bord Pleanála of planning authority decisions, 1995-2000



Source: Analysis by Office of the Comptroller and Auditor General

Alteration of Planning Decisions as a Result of Appeals

4.16 Just over 3% of all planning decisions made in the period 1995-1999 were overturned or varied as a result of appeal. This gives reasonable assurance that planning authority decision making is generally effective in striking a consistent balance between the interests of developers and other interests.

4.17 Nationally, 1.3% of original planning authority decisions in 1995-1999 were overturned on appeal and 2.1% were varied. Differences exist, however, between individual authorities. For instance, 3.2% of Dublin City planning decisions were

overturned as a result of appeal with a further 5.7% varied, while only 0.5% of County Limerick planning decisions were overturned and 1.2% of decisions varied.

4.18 Nationally, just under 1% of planning authority decisions which resulted in a grant of planning permission were subsequently overturned as a result of appeals. (In nine out of ten such cases, the change came about as a result of a third-party appeal.) By contrast, around 4.6% of all refusals by local authorities to grant planning permission were overturned as a result of appeals.

4.19 In regard to overturn rates, the Board stated that

- It would not generally agree with any suggestion that planning authorities with higher appeal rates and, consequently, relatively higher overturn rates are performing less well than other authorities.
- There is probably a greater incentive for developers to appeal against refusals of large scale developments in view of the likely return if the appeal is successful and that such factors are more likely to lead to a greater number of appeals, in the first instance, and subsequently to a higher level of overturns by the Board.
- In rural local authority areas which have a high percentage of appeals relating to refusals of one-off housing on the grounds that the proposed developments would contravene materially the development plan, it is more likely that the Board's decision would uphold the original planning authority decision. However, in similar circumstances where the planning authority decides to grant such applications, and an appeal is lodged by a third party, there would probably be a higher incidence of overturns by the Board having regard to the National Strategy on Sustainable Development in Ireland.

Comparison of Overturn Rates for Refusals and Grants

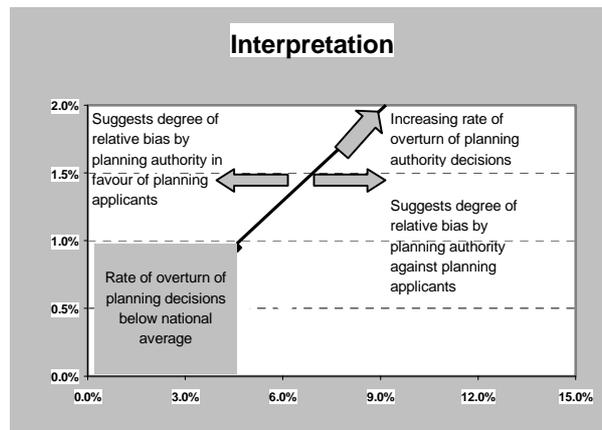
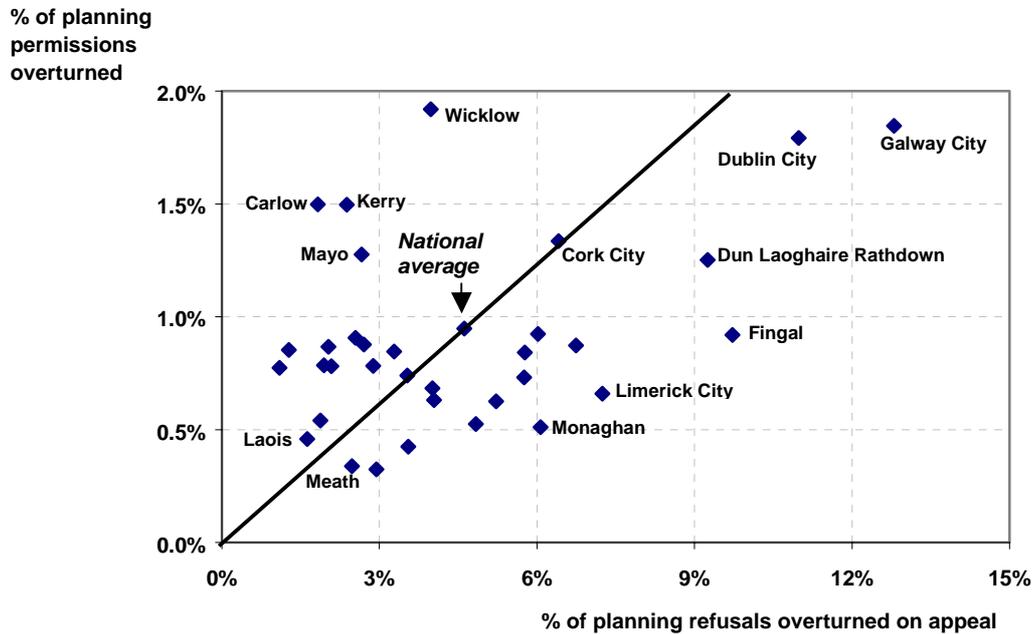
4.20 An original planning authority decision is overturned through the appeal system in circumstances where

- a person is aggrieved by the planning authority decision and appeals it to the Board and
- that person's grievance is subsequently upheld on appeal.

4.21 Apart from an appellant's feeling of grievance at the outcome of the original application and the perceived likelihood of the Board making a different decision, a decision to appeal may be influenced by a variety of local factors including population density, proximity of the proposed development to other people or property and the value of property.

4.22 Figure 4.5 plots the relative influence of the appeal system on final planning decisions by comparing overturn rates for decisions to grant permission against those for decisions to refuse permission, for each planning authority in the period 1995 to 1999.

Figure 4.5 Relative impact of appeals system on planning decisions, by local authority, 1995-1999



Source: Analysis by Office of the Comptroller and Auditor General

Note: '% of all planning permissions overturned on appeal' is defined as 'the number of planning permissions granted by planning authorities that were subsequently appealed to and overturned by An Bord Pleanála, expressed as a percentage of all planning permissions granted by planning authorities in the period 1995-1999'.
 '% of all planning refusals overturned on appeal' is defined as the number of planning permissions refused by planning authorities that were subsequently appealed to An Bord Pleanála and where planning permission was granted by the Board, expressed as a percentage of all planning applications refused by planning authorities in the period 1995-1999.

4.23 Where the rate of overturn on appeal of both refusals and grants of permission was less than the national average, the local authority appears in the shaded area of Figure 4.5. For these authorities, the appeal system has relatively little impact on final planning outcomes.

4.24 Where the rate of overturn by the Board of permissions and/or refusals is significantly above the national average, the appeals system has a more significant impact on planning outcomes. It may be useful to examine the decision making in those authorities to determine whether the cause of the higher overturn rates can be isolated. Furthermore, in those planning authorities where the overturn rates differ substantially for decisions to grant and decisions to refuse permission, there may be merit in investigating whether a decision pattern is operating locally which favours or discourages development relative to the outcome for planning authorities generally.

4.25 The pattern shown in Figure 4.5 does not invalidate or bring into question the correctness of any individual decision taken by any planning authority. The point of identifying such divergences is to indicate where the Board and/or the Department might focus enquiry and efforts to ensure the highest possible level of consistency in the effectiveness of planning authority decision making.

Quality of Bord Pleanála Decisions

4.26 The analysis of planning authorities' decisions is based on the implicit assumption that the Board's own decisions conform to an agreed quality standard and do not themselves contain any inherent bias. However, since the Board is, in effect, the final arbiter in planning matters, it must put procedures in place to ensure that its decisions are of a consistently high standard and confirm the extent to which this standard is achieved.

4.27 The fact that Board decisions are taken by a panel of members and that a quorum of three members must be present should help to ensure that there is consistency between Board determinations. In addition, since the members are in regular contact, relatively close agreement on standards and their interpretation is likely.

4.28 In addition to these structural procedures designed to ensure consistency, periodic formal assurance about the quality of Board decisions would be desirable. No such system is in place at the moment. The Board, accordingly, should consider the introduction of formal quality review procedures to allow evaluation of the planning merits of decisions and the setting of standards. It should be possible to undertake such exercises without affecting the Board's authority as final arbiter in planning matters.

4.29 While the Board already has a good degree of feedback from the various organised stakeholders through a series of meetings which the Board holds with such groups on a regular basis, it accepted that there is no system in place to assess the quality of Board decisions. The Board, however, informed me that it would welcome any system of quality assessment for use by itself and by outside interests and will give further consideration, in conjunction with the Department, to devising measures.

High Court Reviews of Bord Pleanála Cases

4.30 Appellants who are dissatisfied with the process adopted by the Board in arriving at determination of their appeals have the right to apply to the High Court for a judicial review of the procedures followed. The High Court does not, however, revisit the planning merits of the case.

4.31 The number of High Court challenges on appeal case procedures is very small. Up to 1999, 286 High Court cases had been commenced against the Board from the date of its establishment in 1977. This represents 0.5% of all appeals determined during the period.

4.32 Of the 237 High Court cases that had reached a conclusion by the end of 1999⁸, 122 (52%) had been discontinued and judgment had been in favour of the Board in a further 84 cases (35%). The judgment was against the Board in the remaining 31 cases (13%).

Planning Inspectors' Recommendations

4.33 While the Board bases its consideration on recommendations made by its planning inspectors, it may, however, disagree with an inspector's recommendation to grant or refuse a planning application. Even where the Board agrees with an inspector's recommendation, it may also

- delete, amend or attach new reasons for either granting or refusing permission or
- attach conditions different to those recommended by the inspector to a grant of permission.

4.34 On average, the Board gives a decision contrary to the planning inspector's recommendation (i.e. to grant or refuse a planning permission) in around 10% of the cases determined each year. Statistical data is not available to determine the extent to which the Board applies different reasons and conditions to those recommended by inspectors, but it is understood to occur in a substantial number of cases.

4.35 The Board has pointed out that in anticipation of the provisions of the Planning and Development Act, 2000 coming into force, it was the practice since 2000 to set out the reasons in cases where it disagrees with an inspector's recommendation. After the new provisions come into force, it will attempt to keep information for future analysis in relation to different types of circumstances in which the recommendation is reversed. The Board pointed out, however, that these cases often involve a fine judgment since they can result from factors such as disagreement as to the interpretation of a development plan or national policy or on the relevant weight to be given to different aspects of a case.

⁸ At the end of 1999, there were 49 High Court cases at various stages of the legal process. Of these, 22 had been initiated that year.

4.36 From an internal management point of view, analysis of divergences between inspectors' recommendations and Board decisions should be monitored to provide feedback to any inspectors whose reports may be disproportionately unacceptable to the Board.

Reporting Bord Pleanála's Performance

4.37 The Board's management information system allows it to track the progress of appeal cases and to monitor the timeliness and rate of disposal of planning appeals in general. Detailed information on the performance of the Board in this regard is published in its annual report, together with an evaluation of the factors affecting performance and the actions planned in response. In summary, the Board has systems in place to enable it to evaluate its performance in quantitative terms.

4.38 However, in order to allow for adjustments and learning to occur within the wider planning system, there is an apparent need for the Board to isolate the main causes of overturns of planning authority decisions and prepare information on the trends and patterns emerging so as to better inform planning authorities and the Department. This, in turn, holds out the prospect of reducing the extent of reference to the Board by way of appeal.

Monitoring of the Planning System

4.39 The Department is the agency best positioned to monitor the quality of planning decisions, to evaluate the impact of these decisions on the Board's effectiveness and workload and to ensure that any problems in relation to the quality of planning decisions which become apparent through the Board's work are addressed at either a policy or planning authority level. It receives regular updates of statistics from the planning authorities and publishes them in an annual report entitled *Planning Statistics*. The report contains data for each of the planning authorities, including the costs attributable to the provision of the service as estimated by the planning authorities.

4.40 Some interpretation of data is presented in the Department's report, but its main purpose is to provide a set of basic statistics relating to development control procedures and the operation of the planning system as a whole. Consequently, while data is collected and published as statistical output, the Department does not carry out any systematic analysis of the planning performance of local authorities.

4.41 Planning legislation contains provision for the Board to report to the Department on a regular basis on planning issues arising from its review of planning applications at a national level. Statistical data on the number of appeals and the rate at which they are overturned is provided to the Department. However, the Board does not report to the Department on matters coming to its attention relating to the quality of planning authority decisions.

4.42 Information is captured by the Board by category of development. The trends and patterns which an analysis of this information would provide could inform the decisions

of the planning authorities and the management of the process. No such analysis is carried out at present.

4.43 The effectiveness of the planning system as a whole depends on its capacity to respond to trends and patterns emerging from the administration of applications and appeals. The identification of these trends and their underlying causes are key steps in positioning the Department to evaluate the effectiveness of the overall planning system. Accordingly, the Department should carry out periodic analysis of appeal and planning decision overturn rates in order to determine the reasons for the outturns and variations across the planning authorities.

4.44 The Department has indicated that, following the implementation of the provisions of the Planning and Development Act, 2000, it will move to put procedures in place for the ongoing monitoring and evaluation of the performance of planning authorities and of the Board.

4.45 There was also a gap in the information available to or used by the Department relating to the outcome of appeals against Section 4 motions and material contraventions of development plans.

Section 4 and Material Contravention Cases

4.46 Deciding planning applications at planning authority level is an executive function vested in the County or City Manager. However, the planning acts make provision for elected representatives to bring some influence to bear on the process. This can be achieved through the use of motions under Section 4 of the City and County Management (Amendment) Act, 1955 and motions to materially contravene the development plan under the Local Government (Planning and Development) Act, 1976. Since 1991, either type of motion must be passed by not less than three quarters of the members of the planning authority. Where the County/City Manager is of the opinion that a Section 4 motion for planning permission would lead to a material contravention of the development plan, s/he may order that the Section 4 motion be superseded by a motion for material contravention.

4.47 Under Section 4, elected members of a planning authority may, by resolution, require the executive to carry out an action mentioned in the resolution. The section is sometimes used to require County and City Managers to grant planning permission. If a planning application materially contravenes the development plan, the elected members may, following public notice and consideration of any objections, pass a resolution granting planning permission.

4.48 The use of these motions arises in only a small number of planning applications, as is indicated in Figure 4.6. The frequency of introduction or passing of Section 4 motions has declined significantly. However, there has been a significant increase in the number of motions for material contravention introduced and passed.

4.49 Of the 47 planning applications introduced by way of Section 4 nationwide in 1999, Donegal accounted for 29, or 62% of the total. However, only five of these were passed.

Figure 4.6 Section 4 motions or motions for material contravention of the development plan, 1991 - 1999

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Section 4 Motions									
Introduced	138	80	98	94	39	37	28	32	47
Passed	52	23	52	63	12	9	3	8	11
Superseded	55	46	31	34	16	18	18	20	22
Material Contravention Motions									
Introduced	122	111	91	109	84	95	106	142	156
Passed	105	96	81	92	74	82	88	122	138

Source: Department of the Environment and Local Government *Planning Statistics*, 1999

4.50 Material contravention of the development plan is used more widely. For example, Galway granted the highest number (19) of planning permissions in material contravention of the development plan in 1999, which represented 14% of all applications so granted nationwide in that year.

4.51 Information is not recorded systematically at national level on the outcome of appeals related to Section 4 or material contravention motions. The systematic collection of information on planning permission granted on foot of these procedures and on the number and outcome of related appeals would ensure the Department is better informed in formulating policy in this area.

Conclusions

4.52 97% of original local authority decisions are either not challenged, or are upheld on appeal.

4.53 In those cases where decisions were appealed in 2000, over 27% of the planning authority decisions reviewed were reversed outright while a further 31% had the conditions attached to permissions varied.

4.54 There is considerable variation between individual planning authorities in the rate of overturn of decisions on appeal. Identifying and investigating such variations could point to areas where action might be taken by the Department to ensure consistency of planning authority decision making.

4.55 No formal system is in place to assess the quality of Board decisions. Consideration should be given to the introduction of such a system.

4.56 Formal Board decisions concur with the recommendations of the Board's inspectors in about 90% of the cases. Notwithstanding this level of convergence, analysis of the reasons for departure from inspectors' recommendations would be desirable.

Appendices

Appendix A List of Planning Authorities

There are 88 planning authorities in Ireland. These include county councils (of which there are 29), county borough corporations (5), borough corporations (5) and urban district councils (48). All the authorities are listed in the following table.

For analysis purposes in this report, borough corporations and urban district councils were grouped with the relevant county council planning authorities. This reduces the number of planning authorities to 34 for analysis purposes, as listed in the left-hand column of the table.

County Council and County Borough Corporation planning authorities	Urban District Council and Borough Corporation planning authorities
Carlow	Carlow
Cavan	Cavan
Clare	Ennis Kilrush
Cork	Clonakilty Cobh Fermoy Kinsale Macroom Mallow Midleton Skibereen Youghal
Cork City	
Donegal	Buncrana Bundoran Letterkenny
Dublin City	
Dun Laoghaire/Rathdown	
Fingal	
Galway	Ballinasloe
Galway City	
Kerry	Killarney Listowel Tralee
Kildare	Athy Naas
Kilkenny	Kilkenny Corporation
Laois	
Leitrim	
Limerick	
Limerick City	
Longford	Longford

County Council and County Borough Corporation planning authorities	Urban District Council and Borough Corporation planning authorities
Louth	Drogheda Corporation Dundalk
Mayo	Ballina Castlebar Westport
Meath	Navan Ceannas Mor Trim
Monaghan	Carrickmacross Castleblaney Clones Monaghan
Offaly	Birr Tullamore
Roscommon	
Sligo	Sligo Corporation
South Dublin	
Tipperary North Riding	Nenagh Templemore Thurles
Tipperary South Riding	Carrick on Suir Cashel Tipperary Clonmel Corporation
Waterford	Dungarvan
Waterford City	
Westmeath	Athlone
Wexford	Wexford Corporation Enniscorthy New Ross
Wicklow	Arklow Bray Wicklow

Appendix B Statutory Functions of An Bord Pleanála

Functions Under the Planning Acts

Normal Planning Appeals

Appeals under section 26 of the 1963 Planning Act (usually referred to as normal planning appeals) constitute the principal task of the Board and account for approximately 98% of its appeal decisions. Normal appeals fall into three categories, namely

- appeals against decisions of planning authorities to refuse permission
- appeals against conditions proposed by the planning authorities to be attached to permissions
- appeals against decisions of planning authorities to grant permission.

Exempt Development

Section 5 of the 1963 Act provides that any question as to what, in any particular case, is or is not an exempted development shall be referred to and decided by the Board.

Determination

A ‘determination’ means a determination by the Board of

- a disagreement, question or dispute to which section 26(7) of the 1963 Planning Act relates (requiring infrastructural works ‘in excess of the immediate needs of the proposed development’), or
- a disagreement, question or dispute under section 15(2) of the 1990 Planning Act in relation to whether a new structure substantially replaces one previously demolished or destroyed, or
- a contribution or other matter which under a planning condition is to be agreed between the planning authority and the applicant and in default of agreement, is to be determined by the Board.

Purchase Notice

Section 29 of the 1963 Act provides that where, on appeal, permission to develop land has been refused or granted subject to conditions, the owner of the land may, in certain circumstances, serve a purchase notice on the planning authority requiring the authority to purchase his/her interest in the land. Where the planning authority is not willing to comply with the purchase notice, the matter may fall to be determined by the Board.

Extension of Time

Section 29(1) of the 1963 Act as amended provides that where the statutory time limit for serving a purchase notice has expired, a landowner may apply to the Board for an extension of the period.

Revocation

Section 30 of the 1963 Act provides for an appeal against a notice by the planning authority of revocation or modification of any permission to develop land.

Removal of Structure

Section 36 of the 1963 Act provides for an appeal against a notice by a planning authority requiring removal or alteration of a structure.

Discontinuance of Use

Section 37 of the 1963 Act provides for an appeal against a notice by a planning authority requiring discontinuance of use of land or imposing conditions on the continuance of such use.

Tree Preservation Order

Section 45 of the 1963 Act enables a planning authority to make a tree preservation order in the interest of amenity. Any person on whom such a notice is served may appeal to the Board against the order.

Application for Consent to Remove Trees

A tree preservation order made by a planning authority under section 45 of the 1963 Act may provide for an appeal in relation to application for consent to remove trees.

Conservation Order

Section 46 of the 1963 Act provides for an appeal against an order made by a planning authority to protect flora or fauna in an area to which a special amenity area order relates.

Licence - Section 89

Section 89 of the 1963 Act enables a planning authority to grant to any person a licence to erect, construct, place and maintain petrol pumps and other specific types of appliances and structures on public roads. Any person may appeal to the Board in relation to the grant, refusal, withdrawal or continuance of a licence or against the conditions specified in relation to a licence.

Public Right-of-Way

Section 48 of the 1963 Act provides that a planning authority may create a public right-of-way over land by serving a notice on the owner and on the occupier of the land affected. Any person on whom such a notice is served may appeal to the Board against such an order.

Acquisition Notice

Section 25 of the 1976 Act provides for an appeal by a landowner against a notice by a planning authority of intention to acquire land for open space.

New Functions under the Planning and Development Act, 2000

New functions under the Planning and Development Act, 2000, which were implemented by September 2001, related to the following.

- Consent to the compulsory acquisition of a protected structure by a planning authority
- Withholding consent for laying cables, wires and pipelines by the local authority on private land
- Confirmation of compulsory purchase orders by local authorities and sanitary authorities
- Approval of a proposed road development or scheme by a roads authority and direction on the requirement for an environmental impact statement on the proposed development and its content
- Certification/approval of local authority projects requiring environmental impact assessment.

Functions Under Other Acts

Apart from the Planning Acts, appeals and functions under other statutory codes have been assigned to the Board.

Fire Safety Certificate

Section 7 of the Building Control Act, 1990 provides for an appeal to the Board by an applicant who is dissatisfied with the decision of a building control authority relating to an application for a fire safety certificate.

Relaxation/Dispensation from Building Regulations

Section 7 of the Building Control Act, 1990 provides for an appeal to the Board by an applicant who is dissatisfied with the decision of a building control authority relating to a dispensation from, or relaxation of, any requirement of the building regulations.

Licence to Discharge to Waters

Section 8 of the Local Government (Water Pollution) Act, 1977 as amended by section 6 of the Local Government (Water Pollution) Act, 1990 enables any person to appeal in relation to the grant or revocation of a licence to discharge effluent to waters.

Licence to Discharge to Sewers

Section 20 of the Local Government (Water Pollution) Act, 1977 as amended by section 15 of the Local Government (Water Pollution) Act, 1990 enables a person to whom a licence has been refused to appeal to the Board. Where a licence to discharge to sewers is granted or reviewed, the occupier of premises to whom the licence to discharge relates may appeal to the Board in relation to the attachment, amendment or deletion of conditions or the revocation of the licence.

Licensing of Industrial Plant

Section 34 of the Air Pollution Act, 1987 provides for any person to appeal to the Board in relation to the granting or refusal of a licence under section 32 or 33 of the Act to discharge emissions to the atmosphere.

Appendix C Rates of Appeal of Planning Authority Decisions, 1995-1999

Figure C.1 Rates of appeal of decisions to refuse planning permission, by planning authority, 1995-1999

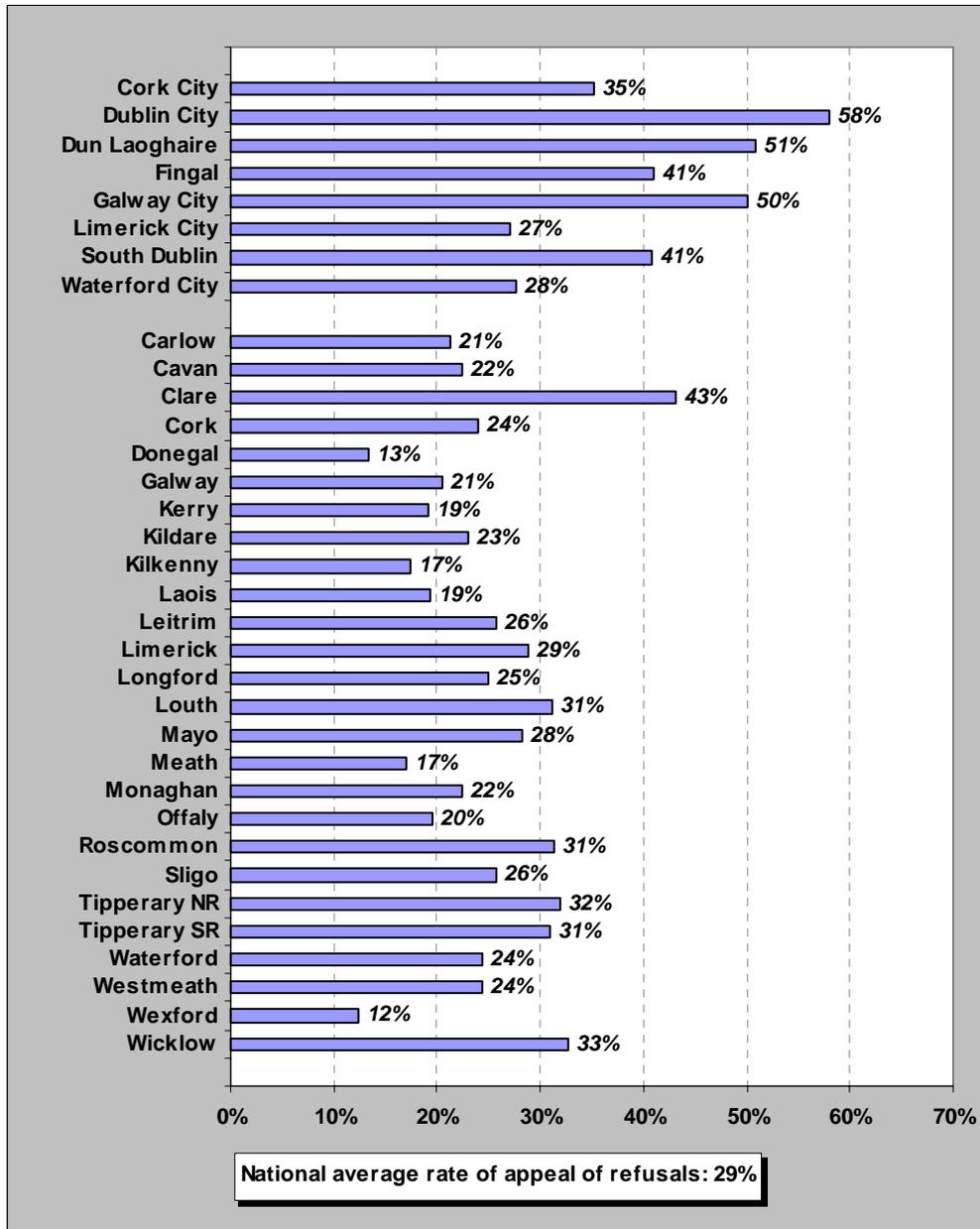
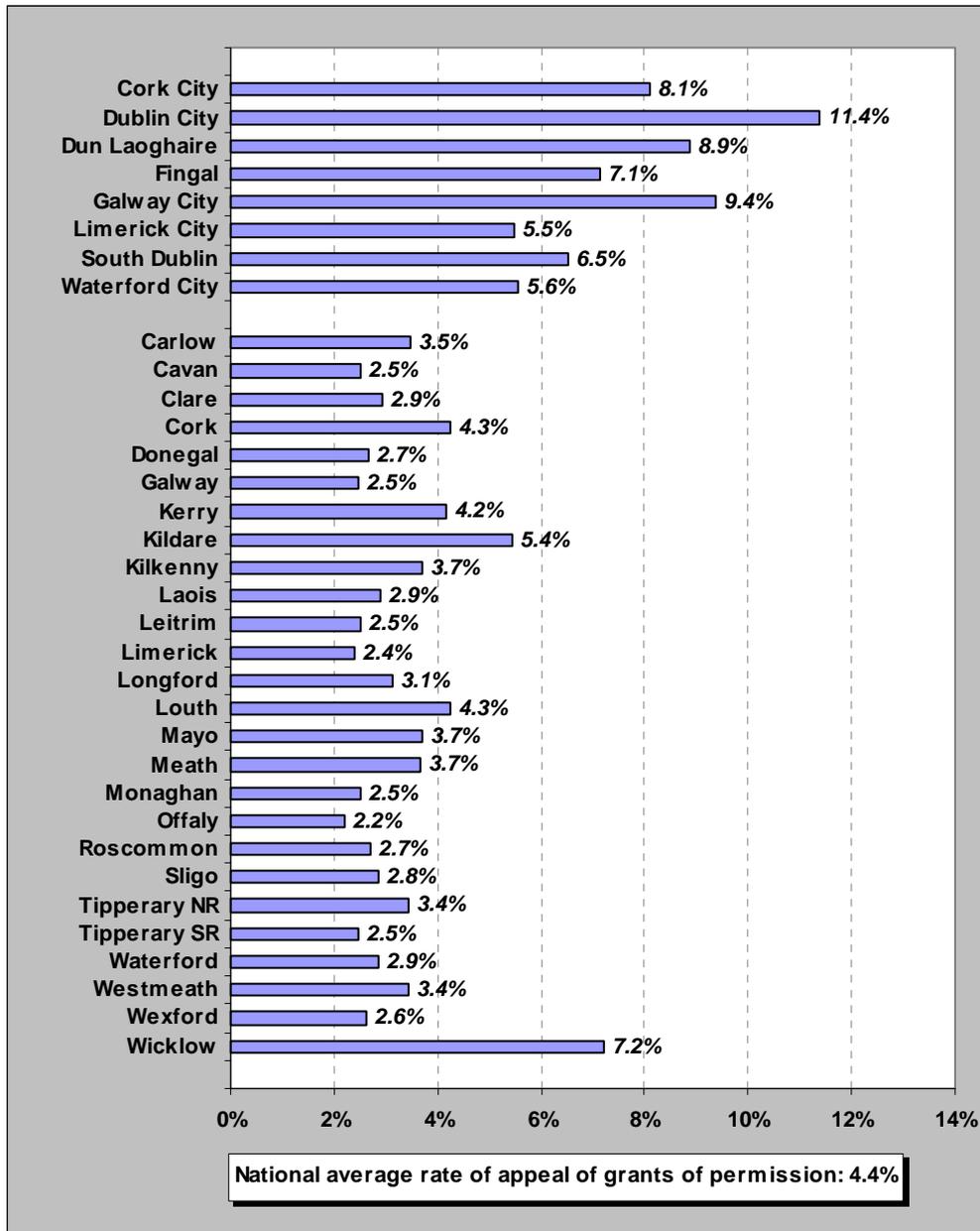


Figure C.2 Rates of appeal of decisions to grant planning permission, by local authority, 1995-1999



Appendix D Outcome of Planning Decisions on Appeal, 1995-1999

Figure D.1 – Outcome of appeals against decisions to refuse permission

Planning Authority ^a	Number of appeals determined ^b	Confirmed	Overtured
Cork City	139	78%	22%
Dublin City	1,185	79%	21%
Dun Laoghaire/ Rathdown	544	79%	21%
Fingal	667	74%	26%
Galway City	238	71%	29%
Limerick City	46	67%	33%
South Dublin	381	84%	16%
Waterford City	34	79%	21%
Carlow	28	89%	11%
Cavan	49	82%	18%
Clare	135	89%	11%
Cork	536	87%	13%
Donegal	156	88%	12%
Galway	375	89%	11%
Kerry	172	84%	16%
Kildare	249	71%	29%
Kilkenny	101	85%	15%
Laois	78	90%	10%
Leitrim	38	92%	8%
Limerick	145	88%	12%
Longford	49	69%	31%
Louth	166	76%	24%
Mayo	170	88%	12%
Meath	267	83%	17%
Monaghan	93	71%	29%
Offaly	104	79%	21%
Roscommon	92	86%	14%
Sligo	82	87%	13%
Tipperary North Riding	107	87%	13%
Tipperary South Riding	60	88%	12%
Waterford	69	90%	10%
Westmeath	107	78%	22%
Wexford	176	90%	10%
Wicklow	409	87%	13%
National average	7,247	82%	18%

Note: a Care needs to be taken when interpreting percentages where the total number of appeals is less than a hundred.

b Excludes appeals lodged in the period 1995-1999, which were subsequently withdrawn, dismissed or found to be invalid.

Figure D.2 – Outcome of appeals against decisions to grant permission

Planning authority ^a	Number of appeals determined ^b	Confirmed	Varied	Overtured
Cork City	236	6%	73%	21%
Dublin City	1,185	7%	73%	20%
Dun Laoghaire/ Rathdown	562	8%	75%	17%
Fingal	390	9%	74%	17%
Galway City	215	7%	67%	26%
Limerick City	67	1%	81%	18%
South Dublin	296	6%	80%	14%
Waterford City	68	3%	81%	16%
Carlow	82	5%	39%	56%
Cavan	105	1%	64%	35%
Clare	185	4%	65%	31%
Cork	783	5%	68%	27%
Donegal	263	2%	55%	43%
Galway	315	2%	59%	39%
Kerry	415	2%	49%	49%
Kildare	351	4%	75%	21%
Kilkenny	154	5%	62%	33%
Laois	88	2%	77%	21%
Leitrim	47	2%	68%	30%
Limerick	148	8%	74%	18%
Longford	52	2%	62%	36%
Louth	230	4%	70%	26%
Mayo	295	4%	49%	47%
Meath	204	5%	83%	12%
Monaghan	78	9%	64%	27%
Offaly	71	3%	73%	24%
Roscommon	83	10%	58%	32%
Sligo	86	1%	62%	37%
Tipperary North Riding	125	6%	61%	33%
Tipperary South Riding	99	7%	44%	49%
Waterford	105	5%	60%	35%
Westmeath	136	4%	75%	21%
Wexford	217	3%	58%	39%
Wicklow	390	4%	63%	33%
National average	8,126	5%	67%	28%

Note: a Care needs to be taken when interpreting percentages where the total number of appeals is less than a hundred.

b Excludes appeals lodged in the period 1995-1999, which were subsequently withdrawn, dismissed or found to be invalid.

