

Comptroller and Auditor General  
Report on Value for Money Examination

Department of Enterprise, Trade and Employment

## **Property Sale by Shannon Development**

August 2005

© Government of Ireland 2005

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 Enterprise, Trade and Employment, Shannon Development and IDA Ireland. Where appropriate, the comments received from the Department and the two agencies were incorporated in the final version of the report.

# **Report of the Comptroller and Auditor General**

## **Property Sale by Shannon Development**

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 a disposal of property by Shannon Development.

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 circular flourish above the 'P'.

**John Purcell**  
**Comptroller and Auditor General**

31 August 2005



# Table of Contents

---

	Page
<b>Summary of Findings</b>	9
<b>Property Sale by Shannon Development</b>	
1 Introduction	13
2 Proceeds of the Sale	16
3 Conduct of the Sale	18
4 Operation of the Property Function	22
<b>Appendix</b>	
A Proposed property disposal at Gilloge, Co Clare	29



## Summary of Findings

---





## Summary of Findings

Arising out of concerns expressed to my Office, I examined the sale by Shannon Development, of a parcel of land measuring 3.5 acres at Ennis Road, Limerick. After Shannon Development took over responsibility for foreign direct investment in 1988, the land had been transferred to it by the IDA but was not registered in the Land Registry, although an adjoining factory site was.

The failure of the State agencies to protect the title to the property resulted in encroachment and a building company began dumping spoil on the land.

In October 1997, the executors of a previous owner purported to enter into a contract to dispose of the property until searches in the Land Registry and the Registry of Deeds revealed that the site had been sold to the IDA in 1979. In the meantime, the executors had obtained an injunction against encroachment by the building company. Shannon Development was registered as owner in March 1998.

The building company commenced proceedings to establish title by way of adverse possession in 1997, but withdrew from the case prior to a High Court hearing in 2000.

Shannon Development sold the site in May 1998 to the owner of the adjoining factory site for €254,000. The amount coincided with a valuation given by an auctioneer.

The amount of the sale price and the informality of the valuation procedure gave rise to initial concerns on my part as to whether value for money had been achieved. However, taking account of an independent valuation commissioned as part of my review and the fact that the purchaser had agreed to indemnify Shannon Development against any future claims, the proceeds were probably broadly in line with what was obtainable in the circumstances.

Nevertheless, if title had been protected it is likely that Shannon Development would have achieved a better price.

In the context of an industrial development agency, good practice would dictate that in order to achieve the best price reasonably obtainable, surplus property should be sold through an open market process and property for industrial development sold with a covenant restricting its use to that purpose.

Using this yardstick, the disposal procedures adopted by Shannon Development in two cases were inappropriate

- In the case of the Ennis Road property, which was a sale of surplus property, other adjoining property owners, or possible interested parties, were not invited to tender.
- In another case – Shannon Development took preliminary steps to sell a factory on 116 acres at Gilloge, County Clare without a covenant restricting its use to industrial purposes. However, the sale did not, ultimately, proceed.

In addition, where large properties like that at Gilloge are being disposed of, it would be appropriate to segregate property earmarked for industrial promotion from surplus property, in order to ensure that the relevant disposal mechanism is being used.

Shannon Development has assured me that it has taken steps to strengthen its procedures and all proposed disposal transactions are now reviewed by its internal audit.



## **Property Sale by Shannon Development**

---



# 1 Introduction

**1.1** In 2004, a building company wrote to my Office expressing concerns about the procedures followed by the Shannon Free Airport Development Company Limited (Shannon Development) in its disposal of a site measuring some 3.5 acres and located at Coolraine, Ennis Road, Limerick.

**1.2** Section 9 of the Comptroller and Auditor General (Amendment) Act, 1993 provides, inter alia, that I may carry out such examinations as I consider appropriate for the purpose of ascertaining whether and to what extent the resources of a body whose accounts I audit have been disposed of economically and efficiently and whether any such disposal has been effected upon the most favourable terms reasonably attainable.

**1.3** After making preliminary enquiries I decided to examine the sale in detail in order to ascertain

- Whether the disposal of the site had been effected on the best terms reasonably attainable.
- Whether the manner of the sale was in accordance with the proper conduct of public business.
- The results of any reviews of the property function commissioned by Shannon Development.

## Sale of Factory

**1.4** The site in question is to the rear of a factory premises which was separately disposed of. In 1988, pursuant to the transfer of responsibility for Foreign Direct Investment in the Shannon Region from the Industrial Development Authority (IDA) to Shannon Development, the IDA transferred 35 properties in the region to Shannon Development. A factory sited on three acres at Coolraine, Ennis Road, Limerick was included among these. The IDA had purchased the property in 1979 and had let it, at that time, on a short-term basis to a foreign company while a permanent facility was being constructed at another location.

**1.5** In 1996, Shannon Development decided to dispose of the factory at the Ennis Road as it was deemed to be surplus to requirements. At that time Shannon Development had let the property to three separate tenants. The leases were short-term and the total annual rent was €120,000. An independent professional valuer gave an opinion, in September 1996, that the long term potential of the factory lay in the demolition of the existing buildings and the development of the site for commercial or residential use. He estimated that the open market value of the site was around €1.22m. A valuation in July of the same year, from a different estate agent, had put the market value at around €760,000.

**1.6** The disposal of the factory premises was by way of public tender. Four tenders were received by the closing date, 1 November 1996, and the Executive Committee of Shannon Development approved the sale for €1.3 million, which was the highest offer, on 12 November 1996. In December 1996, Limerick Corporation wrote to Shannon Development informing them that the use of the factory premises for retail use was unauthorised and that planning permission would have to be sought. The closing of the sale was delayed. An application was submitted in January 1997 for change of use from industrial to commercial. Further details were required by Limerick Corporation and permission was ultimately granted on 26 May 1997, subject to a number of conditions. The occupier of an adjoining property objected to the permission granted while Shannon Development objected to some of the planning conditions imposed by Limerick

Corporation. An Bord Pleanála granted amended planning permission for the change in use on 24 October 1997. A further delay arose because the purchasers demanded vacant possession of the premises, although this was not a condition of the tender. The sale was closed in November 1998.

## Adjoining Site

**1.7** In December 1997, a written enquiry had been made of Shannon Development on whether it owned a site to the rear of the factory. In response Shannon Development had outlined, by way of a map, the extent of the lands it owned at the Ennis Road. The only property it owned, according to the response, was the factory.

**1.8** Shannon Development was also aware that other interest had been expressed in the site. An individual wrote to the IDA in January 1998 indicating that he represented a client who was trying to establish the ownership of the site as he wished to purchase it. The IDA forwarded the letter to Shannon Development. The letter was from a different individual than the one who had made the enquiry in December 1997.

**1.9** In January 1998, prior to the closure of the sale of the factory, solicitors acting for the executors of the estate of the individual who had owned the factory at the Ennis Road up to 1973 wrote to Shannon Development. The letter stated that the executors had been under the impression that a site with an area of just over 3.5 acres to the rear of the factory site was an asset of the estate they were administering and that they had, in October 1997, entered into a contract to sell the site for €254,000. However, the solicitors pointed out that, following land searches by them in the Registries<sup>1</sup>, it had emerged that the site had been sold in 1973 along with the factory, to a limited company, and that the company had, in 1979, sold both properties to the IDA.

## Title to Site

**1.10** The matter was investigated within the IDA and Shannon Development. This investigation revealed that the IDA had purchased both the factory and the adjoining site in 1979 for €508,000. The land was unregistered land transferred by deed from owner to owner, and had never been entered on the Land Registry registers. In the Deed of Conveyance, dated 4 September 1979, the property was set out in two schedules. The property in the first schedule, the land on which the factory is built, was registered for the first time in the Land Registry<sup>2</sup> by the IDA and was transferred to Shannon Development by transfer dated 14 December 1988. However, the second property, the site<sup>3</sup>, was not registered at that time.

**1.11** The IDA transferred its interest in the site to Shannon Development by way of deed dated 27 March 1998.

**1.12** When a property dealing is being registered a form, known as Form 17, is normally completed and submitted to the Land Registry. Its purpose is to detail the papers submitted with the dealing. The form is signed by the applicant or the applicant's solicitor and among the

---

<sup>1</sup> The Land Registry and the Registry of Deeds.

<sup>2</sup> First registration involves an examination of title under the Registration of Title Act, 1964 and, where valid, the inclusion of the property on a Folio with the Land Registry.

<sup>3</sup> The site of 3.5 acres.

documents which support the application is a map<sup>4</sup> outlining the property to be registered. The map submitted with the registration of the property at the Ennis Road had outlined the factory site only while the Deed of Conveyance which was lodged referred to both properties. It is not clear where the mapping error occurred. Files examined in the course of the examination indicate that the Form 17 could not be located on the file at the Land Registry.

**1.13** The sale of the factory resulted in the site becoming land-locked with access through any of the adjoining properties only.

## Views of IDA Ireland

**1.14** I asked IDA Ireland (the IDA) why it did not know that it owned the land at Ennis Road until it was brought to its attention by a third party.

**1.15** The Chief Executive Officer informed me that the IDA knew that it owned both pieces of land at Ennis Road until 1988 when it believed that all of the land had been conveyed to Shannon Development. This belief was grounded on reliance on the solicitor acting on its behalf in the transaction to ensure correct transfer and registration. It did not become clear to the IDA until 1998 that this had not happened.

**1.16** The property function files and the Legal Department file that were transferred to Shannon Development in 1989 would have shown that the IDA purchased a building on approximately 6 acres. The relevant Deed of Conveyance of 4 September 1979 contained two schedules describing the property. The first schedule referred to 3 acres with a building thereon and the second schedule referred to a plot of ground containing 3 acres 2 roods and 35 perches.

**1.17** Only the property contained in the first of the two schedules of the Deed of Conveyance of 4 September 1979 was registered in 1988. The IDA was not aware of this mistake until 1998.

**1.18** When dealing with these lands Shannon Development relied on the map attached to the copy folio although it believed the legal and property files transferred to them would also have had details of the land inadvertently excluded from the registration.

**1.19** When the matter came to light in 1998 the IDA cooperated with Shannon Development in transferring the 3 acres 2 roods and 35 perches to it as expeditiously as possible.

**1.20** The IDA relied on the solicitor acting on its behalf in the transaction in 1988 to ensure correct registration. In more recent years, the IDA Legal Department operates a system whereby a member of staff maintains contact with any solicitor acting for the IDA in a purchase of land to ensure that the land acquired is registered correctly.

---

<sup>4</sup> An application for first registration of a property must be accompanied by a plan of the property referred to, drawn on the current edition of the largest scale map published by Ordnance Survey or certified Land Registry copy filed plan, when suitable, or a computer generated map at the map scale recommended by the Registrar for the particular area unless the application accurately identifies the property on the Registry map.

## **2 Proceeds of the Sale**

**2.1** Shortly after the executors of a former owner of the site had purported to sell the site, it emerged that the company<sup>5</sup> which owned one of the adjoining properties (the building company) was pursuing a claim to ownership by way of adverse possession. The basis of this claim was that the building company had been using the site as a dump for substantial amounts of spoil over a 25-year period and that it had fenced off the property and treated it as its own. The solicitor for the executors of the former owners informed Shannon Development that the executors had obtained an injunction against the building company.

**2.2** In December 1997, one of the principals of the building company filed an affidavit supporting the claim for ownership. In 1997 also, around the time the building company was claiming ownership of the site, it had enquiries made on its behalf with Shannon Development as to whether Shannon Development owned the site.

**2.3** In June 1998, the IDA commenced an action to defeat the building company's claim of ownership, seeking an order requiring the building company to restore the site to its condition prior to any dumping carried out by the company and seeking damages for trespass.

**2.4** The case was listed for the High Court on 20 October 2000. By that time, Shannon Development and the company which had purchased the site had been joined as plaintiffs with the IDA. Shannon Development informed me that the defendants withdrew from the case prior to the High Court hearing and that this ended the dispute.

### **Sale of the Site**

**2.5** Prior to the transfer of the site from the IDA to Shannon Development in 1998, Shannon Development was approached by solicitors acting for the purchasers of the factory indicating that their client also wished to purchase the site. An internal memorandum at Shannon Development states that the company wishing to purchase the site had established that the IDA owned the site and was aware of the then claim for ownership by way of adverse possession.

**2.6** Shannon Development obtained a valuation of the site from the same estate agency that had provided the lower valuation for the factory site in 1996. The appointment of the valuer was informal, being made by way of a telephone call. The valuation, dated 6 March 1998, stated that there was no separate access to the site and that it could only be developed in conjunction with adjoining lands or the factory unit. The valuer's opinion was that the open market value of the site was €254,000. The valuer did not visit the site but stated that he was familiar with the property.

**2.7** The property division in Shannon Development made a submission, dated 11 March 1998, to the Executive Committee recommending that the Committee approve the sale of the site, to the company which had purchased the factory, for €254,000. The submission to the Executive Committee stated that the valuation of €254,000 took account of the fact that the property could only be developed in conjunction with the front property (the factory). The submission did not disclose that the advice had also stated that the site could be developed in conjunction with any of the adjoining lands. The submission also noted that a third party had claimed ownership rights to

---

<sup>5</sup> The same company that was to express concerns to me in 2004.



the land based on long possession and that the proposed purchasers had agreed to accept the property subject to such rights, thereby indemnifying Shannon Development against any future claims.

**2.8** The Executive Committee, at a meeting on 18 March 1998, agreed to the recommendation. The Board of Shannon Development, at a meeting on 27 March 1998, endorsed the decision of the Executive Committee. The sale agreement was dated 1 May 1998.

**2.9** No evidence was provided to indicate that any negotiations about the price, €254,000, took place between Shannon Development and the purchaser. Neither was there any evidence provided to indicate that discussions were held with any of the owners of the other adjoining properties. The individual who had expressed an interest in purchasing the site in January 1998 was not approached by Shannon Development.

### **Value of the Property**

**2.10** As part of my examination, I commissioned valuations of the properties<sup>6</sup> from an independent professional valuer who had not had any involvement with either property previously. The valuations placed on the properties were

- A combined valuation of €1.7m for both properties as at October 1996.
- A valuation of €15,000 for the site alone as at March 1998.

**2.11** The valuations were made on the assumption that there would be access to the site, both properties had the benefit of vacant possession and the claim for adverse possession which pertained to the site area was ignored. In a further note, the valuer stated that the value of the site, in the absence of any right of way, would be diminished in value up to, say, €100,000. The only likely purchasers would have been adjoining owners.

### **Adequacy of Proceeds - Conclusion**

**2.12** The aggregate proceeds obtained for both properties were broadly in line with the independent valuation. However, if title had been established and protected additional proceeds of around €150,000 in 1996 prices might have been achieved. Accordingly, the method of disposal may have reduced the potential proceeds from the sale of these assets by around €150,000.

**2.13** In regard to this potential diminution in proceeds, the Chief Executive Officer stated that the existence of the claim for adverse possession was a key factor which influenced the decision making process at that time.

---

<sup>6</sup> The factory on 3 acres and the adjoining site of 3.5 acres.

### **3 Conduct of the Sale**

**3.1** The site at Ennis Road was of interest to owners of adjoining property but these were not requested to bid.

**3.2** The information supplied to the Executive Committee and the Board in connection with their disposal decisions was incomplete in two material respects

- They were informed that the site could only be developed in conjunction with the factory site whereas the valuation report had noted that it could be developed in conjunction with another of the adjoining properties.
- They were not made aware of the fact that there was an interest from another adjoining property holder.

**3.3** The proper conduct of public business would have dictated that the Executive Committee and the Board, prior to their decisions, be informed of the interest of other parties and the exact terms of the report of any valuer.

**3.4** It has to be acknowledged, however, that the party who had expressed an interest was simultaneously pursuing a claim for title on the basis of adverse possession. This matter was only resolved two years later. It also has to be acknowledged that the deal indemnified Shannon Development against this claim thus passing the title establishment risk to the purchaser. The Board was informed of this indemnification.

**3.5** The Chief Executive Officer informed me that the reasons for selling the site by valuation rather than by tender were

- Access to the site was considered to be limited, i.e. over the access road to the side of the factory, which had already been sold on with the factory.
- The proposed purchaser was prepared to purchase the site 'as is' and to indemnify Shannon Development against a potential adverse possession claim.
- It was felt at the time, that a better price could not be achieved by exposing the property to the market, because of the potential claim, the absence of any road frontage to the site and the dumping of spoil on part of the site over several years.

### **Safeguarding Assets and Identification of Surplus Assets**

**3.6** Normally one would expect that there would be an annual physical inspection of properties to guard against encroachment and ensure that the boundaries of all property are established and secured. This should be done by reference to maps and asset registers. It is of concern that in this case a builder appeared to be able to use property owned by a State body<sup>7</sup> for a number of years without the matter being detected.

**3.7** In response to my inquiries, the Chief Executive Officer informed me that while the Company's property portfolio is spread over a wide geographical area, the property management function of the Company has in place a number of arrangements which serve as sources of information and control regarding any and all inappropriate activities. These arrangements are

- Local caretakers are employed to monitor and report in certain of the remote locations.
- Company executives have reason to visit all estates periodically in their day-to-day activities.

---

<sup>7</sup>The property was still vested in the IDA at this time.

- Contractor's supervisory staff, particularly landscaping, security and building maintenance are required to report any inappropriate activities.
- Undeveloped lands are, where possible, let out on an 'eleven month' basis.
- The Company has recently commissioned external property consultants whose brief includes a site inspection of all properties to examine, assess and validate the existing property database.

## **Procedures for Asset Disposal**

**3.8** Shannon Development is a limited company governed by the Shannon Free Airport Development Company Limited Acts, the Industrial Development Acts and its Memorandum and Articles of Association.

### ***Internal Procedures and Legislative Provisions***

**3.9** While Shannon Development, from 1994, had written procedures in relation to the disposal of industrial, tourist or commercial assets it had no specific procedures governing the disposal of property identified as surplus to requirements.

**3.10** In response to my inquiries, the Accounting Officer of the Department of Enterprise, Trade and Employment informed me that while Section 3(4) of the Industrial Development Act, 1995 requires the IDA to seek Ministerial approval for the disposal of land for other than industrial purposes

- Shannon Development's power to acquire and dispose of land is derived from its Memorandum and Articles of Association.
- Powers delegated to Shannon Development by the IDA were confined solely to the provision of grants and other financial assistance to enterprises. Shannon Development is not an agency of Forfás and the Department of Enterprise, Trade and Employment (the Department) has never interpreted the Industrial Development Act, 1995 as applying to the operations of Shannon Development in relation to land disposals.
- A review of available files and Dáil and Seanad debates on the introduction of the 1995 Act confirmed that it was not the intention at the time the legislation was enacted that Section 3(4) should apply to the operations of Shannon Development.

**3.11** The Accounting Officer stated that he does not believe that there is a requirement for Shannon Development to seek Ministerial consent when disposing of surplus property having regard to the legislation and the manner in which the operations of the two agencies have evolved. However, he stated, that there may be a case for the same procedures to be applied in relation to the management and disposal of all the State's industrial property assets. The matter will be addressed in the context of proposals that have been submitted to the Minister concerning the future of Shannon Development.

**3.12** In regard to its power to dispose of property, the Chief Executive Officer informed me that Shannon Development's power to acquire and dispose of property is derived from its Memorandum of Association which refers to acquiring or disposing of land for industrial or commercial purposes. Shannon Development's remit as the agency responsible for the development of the Shannon Region as a whole is broader than the remit of either IDA Ireland or Enterprise Ireland. Shannon Development would hold lands for the purpose of tourism activities and until recently had a considerable housing function at Shannon town. Because of this the property functions of IDA Ireland and Shannon Development are not equivalent.

**3.13** He stated that in 1988 Shannon Development took on the role of promoting the Shannon Region as a whole as a location for overseas companies. In that regard, the then Industrial Development Authority transferred certain properties including the Ennis Road factory to Shannon Development. Shannon Development operated its role in giving grants to overseas companies under the provisions of the 1986 Industrial Development Act. Currently, Shannon Development has no functions delegated to it by IDA Ireland as it no longer has any role in giving grants to overseas companies other than at Shannon Free Zone. Shannon Development is not, therefore, an agency as defined in Section 3(4) of the Industrial Development Act, 1995 which requires the Minister's express consent to the disposal of land for other than industrial purposes.

### ***Guidelines for the Governance of State Bodies***

**3.14** When the land was disposed of, the then Department of Finance guidelines (issued in 1994) stated that the disposal or letting of property should be dealt with by competitive tendering or by auction<sup>8</sup>. The rationale expressed in the guidelines was that this approach provided a mechanism which was both transparent and likely to achieve a fair price. The guidelines also provided that departures from this general principle required the prior approval of the Department of Finance.

**3.15** There was an apparent failure to dispose of the surplus property in the manner envisaged in the 1994 guidelines.

**3.16** However, the Chief Executive Officer informed me that Shannon Development is a self-financing body and had agreed a policy with regard to property disposals with the Department of Finance in November 1997 which provides that "Property and land for which there is a low expectation of occupancy or of development for industry, will be disposed of, in a planned and timely way, at market value". The only restriction with regard to industrial development would appear to be that Shannon Development should confine its property transactions to within its (geographical) area of operation.

**3.17** Subsequent to the disposal, a revised Code of Practice for the Governance of State Bodies was issued by the Department of Finance in October 2001. This contained a provision similar to that set out in the 1994 guidelines and gave more detail on the procedures to be followed in cases of property disposal.

**3.18** Shannon Development sought a waiver of the provisions because in its disposal of industrial property it sometimes engaged in the direct sale of a property or building to an existing client without going to public tender. It pointed out that the reason for this was grounded in its development mandate as very often a sale of that nature was instrumental in increasing the level of involvement of a multi-national corporation. It also pointed out that Shannon Development's property portfolio was an essential instrument of development for the Company in both key locations and in the non-core sub-regional centres. The ability to interact with the private sector in a way that fitted with best practice in the private marketplace while at all times operating under Shannon Development's obligations as a public body was an essential requirement if Shannon Development was to get the best value both in qualitative and quantitative terms for its clients and for the region as a whole and that this included being able to respond quickly to opportunities presented by the marketplace.

**3.19** In regard to whether land, surplus to industrial promotion requirements, was covered by the waivers and arrangements the Accounting Officer informed me that

- Any determination as to whether the 1994 Department of Finance guidelines were correctly applied must have regard to the fact that, at the time the Ennis Road property was sold, a

---

<sup>8</sup> Public Procurement, 1994

specific strategy governing the sale and acquisition of industrial property by Shannon Development was in place. He pointed out that this strategy had been agreed between the Department of Finance, the Department and Shannon Development in the context of a decision taken in 1997 that Shannon Development would be allowed to develop a commercial property strategy capable of supporting its broader economic development mandate and reducing reliance on Exchequer support for its activities.

- In relation to the requirement, contained in the 2001 Code of Practice for the Governance of State Bodies, that it should be standard practice for assets of State bodies with a value in excess of €70,000 to be disposed of by way of auction or competitive tendering process, the Department wrote to the Department of Finance in July 2002 seeking waivers from this requirement for both the IDA and Shannon Development. He informed me that the waiver was sought having regard to the procedures in place in both organisations in relation to the management of their respective property portfolios. He stated that the Department of Finance had accepted that the case put forward by both organisations was well made but recommended that the Department should seek confirmation on an annual basis that the procedures in relation to property management are being complied with by both organisations. He noted that the Annual Property Reports to the Department from the IDA and Shannon Development for 2002 and 2003 stated that comprehensive sets of procedures were in place to control the management of the property portfolio. However, specific statements confirming that these procedures were being complied with were not furnished. He informed me that both organisations will be asked to provide such statements in the context of the submission of their property reports for 2004 and subsequent years.

## **Conduct of the Sale – Conclusion**

**3.20** In my opinion, notwithstanding the increased flexibility accorded to Shannon Development in the 1997 policy, it should conduct sales of surplus property in a way that promotes equity of treatment, and maximises competition and the prospect of increased revenue.

**3.21** There is also an apparent need for the Board to establish standards designed to ensure that they are fully informed at the point their decisions are taken and that the terms of their decisions are implemented and outcomes reported.

## 4 Operation of the Property Function

**4.1** In November 2003 external consultants were requested by the Board and Audit Committee of Shannon Development to review its property procedures.

**4.2** The terms of reference were

- To review whether procedures approved by the Board in the period from 1 January 2001 to 31 October 2003 had been implemented.
- To establish if all areas within the Property Division had documented procedures and identify areas that did not.
- To identify, in cases where procedures already existed, whether those procedures had been reviewed by internal audit between 2000 and 2002.
- To identify where internal audits had been completed in areas listed as property functions and to establish if implementation of procedures was covered in the audits undertaken and to identify areas where no internal audit had taken place.

**4.3** The review was carried out primarily through discussions with Shannon Development personnel and by reviewing relevant procedure documents. The findings of the report for each of the above terms of reference are set out below

- In relation to procedures approved by the Board five of nine procedures approved in the period had not been fully implemented by November 2003 (although three of these were being addressed). The five not fully implemented were in relation to
  - o Property valuation procedures
  - o Capital contract management procedures
  - o Procedures for the appointment of property consultants
  - o Industry capital budget 2003
  - o Property insurance procedures
- The report recommended that management take steps to complete the outstanding recommendations particularly the implementation of valuation procedures, which had been approved by the Board in March 2001.
- A number of areas within the Property Division did not at that time have documented procedures. The report recommended that procedures be developed in these areas and collated with existing procedures into a property procedures manual, once approved.
- Any recommendations made with regard to property procedures in internal audit reports between 2000 – 2002 were being dealt with satisfactorily by management.
- Application of and compliance with documented procedures, where they existed at the time of the audit, had been reviewed by internal audit in all property related audits carried out since 2002.

**4.4** The report prioritised its recommendations. There were three serious deficiencies requiring immediate action by management identified during the review.

- In relation to the disposal of land and buildings, the report noted that from a review of five files that it was clear that documented valuation procedures adopted by the Board in March 2001 were not followed. The report recommended that these procedures should be reviewed and updated, if appropriate, for any changes that may have taken place within the

intervening two years and adopted for all property sales. The report also recommended that all files maintained for property disposals should record details of the appointment of valuers, details of the instructions to valuers, details of the quantum of fees and show a clear audit trail of how the valuer was selected. It should be clear from the file that a transparent and fair procedure was used in the appointment of the valuer.

- In relation to land acquisition, the report noted that for land acquisitions from January 2002 to the date of the report two files examined contained little documentation and did not contain any details of the valuation of either property. The Board had approved procedures in respect of land valuation in March 2001. The report recommended that the procedures approved by the Board should be implemented and that these should be updated if necessary. Valuations should be carried out for all property acquisitions to ensure transparency in the process by which the land is purchased and to ensure that value for money is being obtained. All correspondence in relation to an acquisition should be maintained on one file.
- In relation to property insurance, Shannon Development puts contingent insurance cover in place for all properties where tenants are obliged to insure under the terms of their lease. The Board had, in February 2003, agreed that procedures be put in place whereby confirmation of tenants' insurance should be obtained and contingent cover could then be cancelled. At the time of the internal audit report, confirmation of tenants' insurance had not been received for around 40% of leased properties. The report recommended that renewed efforts be made by management to obtain confirmations of insurance cover from the tenants' insurers.

**4.5** The report concluded that there existed in the department a culture of informality and a lack of regard for the importance of proper documentation. The property department needed to operate based on a comprehensive, up-to-date, manual of policies and procedures which had been authorised by the Board and fully adhered to by all executives at all times. The report noted that it might be prudent to appoint an individual to be the 'change champion' to ensure that policies and procedures would be in place in all relevant areas and to ensure that these would then be fully implemented.

**4.6** On foot of the report, executives within Shannon Development commenced a project to create a property procedures manual. The aim as stated in the manual "was to devise a methodology that would lead to the provision of consistent and transparent processes that would minimise risk and facilitate stakeholder satisfaction". The Chief Executive Officer informed me that the final manual which was completed in 2004 has been approved by advising consultants as meeting the requirements with regard to

- Best Practice
- Public Procurement Guidelines
- Board Approved Procedures
- Previously issued Internal Audit recommendations

## **Operation of the Property Function - Conclusions**

**4.7** Notwithstanding the creation of a procedures manual on foot of the consultants' report, there are still difficulties with the operation of the property function in Shannon Development which, on the face of it, compromise its ability to obtain value for money for its disposal of surplus

properties. The way in which a proposed disposal of lands at Gilloge was handled is apposite in this respect (see Appendix A). In order to balance the competing requirements to effectively use State assets in the promotion of industrial development and to achieve the best price reasonably obtainable from the disposal of surplus assets, good practice would dictate that surplus property be sold through an open market process on a freehold basis and property for industry be sold on a leasehold basis with a covenant restricting its use to industrial purposes. The matters of concern in that instance included

- The failure to segregate industrial property from surplus property so that the appropriate disposal mechanisms could be invoked for each.
- The purported disposal of the entire premises without restrictive covenant and on the basis of freehold title.

I have previously referred to this premises in a general report issued in February 1997 and in a Value for Money report issued in August 1998.

## **Response of Shannon Development**

**4.8** In response to my inquiries the Chief Executive of Shannon Development informed me that in line with its property strategy and in accordance with guidelines set down and agreed in 1997 with the Department of Finance and accepted by the Department of Enterprise, Trade and Employment, Shannon Development had, in recent years, identified and disengaged from, or were in the process of disengaging from, significant properties which were considered to be surplus to its current industrial development need e.g. 550,000 sq ft former Ferenka factory in Annacotty, Co. Limerick and 186,000 sq ft former GMX facility in Stradavoher, Thurles. Both of these properties were disposed of through an open market process. In addition, Shannon Development has recently commissioned external consultants, part of whose brief will be to examine the entire property portfolio against agreed classifications to identify properties which are surplus to industrial development requirements.

**4.9** He assured me that it is company policy that all disposals of properties deemed surplus to industrial development requirements are disposed of through an open market process and this is incorporated in the current property procedures manual.

**4.10** In order to ensure compliance with procedures, all property transactions to be submitted by the executive for approval are first reviewed by the company's internal auditors specifically for compliance with approved procedures. Confirmation of compliance is provided in writing prior to the relevant approval meeting and any issues raised are resolved in advance of that meeting. In addition, the internal auditors have recently reviewed a range of transactions handled by the executive without Board involvement and they have confirmed compliance in these cases also.

**4.11** In relation to the valuation of the Gilloge property, he pointed out that the mechanism used to value the property was a formal Red Book valuation.<sup>9</sup>

---

<sup>9</sup> A Red Book Valuation is one carried out in accordance with recognised standards operated by the Society of Chartered Surveyors.











## **Appendix A            Proposed property disposal at Gilloge, Co Clare**

In 1998, the IDA transferred an industrial premises of around 323,000 sq ft and adjoining land of around 116 acres at Gilloge, Co Clare to Shannon Development. The industrial premises which had previously been used as a textile dyeing and finishing plant, had been unoccupied for some time and had fallen into disrepair.

In 1998, Shannon Development refurbished around 100,000 sq ft of the industrial premises and let it on a short-term lease to a logistics company.

In November 1999, the Board approved a proposal to sell, by way of a 999-year lease with a restrictive covenant, the remainder of the industrial premises and its immediate land curtilage of 6.8 acres to a packaging company. The Board sought assurances from the executive about the adequacy of the proposed sale price of €3.81m. The Board was informed that, based on the assumption that the building would be put in lettable condition, a valuation of €5.65m had been placed on the premises in September 1999. It was estimated that the cost of the work required to achieve this would be around €1.9m. The work would be carried out by the purchaser.

Planning difficulties arose and the sale did not proceed. In August 2000, the Board accepted a revised proposal whereby a one year option to purchase the unoccupied portion of the industrial premises and an adjoining 6.8 acres for €3.81m would be granted to the packaging company. In addition, the proposal to the Board noted that the logistics company had an option to purchase the part of the premises which it occupied for €3.17m.

By October 2001, the planning issues had not been resolved and the option to purchase had not been exercised by the packaging company. The Board approved a further revised proposal whereby a 25-year lease would be granted to the packaging company, with an option to purchase for €3.49m. As a condition of the lease, the packaging company would carry out refurbishment work to bring the premises to an agreed standard. The option to purchase could be exercised up to 31 December 2003.

In November 2001, Shannon Development allowed the packaging company to enter the premises under licence pending signing of the lease and option agreements, in order to install and commission specialised machinery. Shannon Development received rent for one month. The agreements were not signed. The packaging company went into examinership in November 2003 and into liquidation in February 2004. The liquidator decided not to adopt the lease and option arrangements.

In April 2004, following an enquiry from the IDA about the availability of large industrial units in the region, Shannon Development obtained a valuation of the entire property at Gilloge. The market value placed on the entire property on the basis of a long leasehold, was €3.25m.

In the meantime, the liquidator had offered the equipment within the factory for sale and a number of parties had expressed interest in acquiring the premises with the equipment in-situ. Shannon Development wrote to the interested parties offering the sale of the entire property for €3.25m subject to receipt of a proposal accompanied by a satisfactory business plan and approval by the Board of Shannon Development.

The only response was from a consortium of local businessmen (the consortium) who were also in negotiation with the liquidator to purchase the equipment.

In July 2004, Shannon Development wrote to the consortium stating that Board approval was to be sought for the sale, by way of freehold title, of the entire property including the 116 acres for €3.25m. In August 2004 the Board agreed the sale of the industrial premises and 47 acres to the

consortium for €3m while noting that the remaining 69 acres should be retained by Shannon Development as they might have potential in the future. The consortium rejected the offer and stated that they were willing to purchase the property if the 116 acres was included. The submission to the Board noted that a letter had been received in July 2004 from a property developer expressing interest in purchasing the entire Gilloge property. It also noted that such a sale would be deemed to be a sale for speculative purposes and would mean that the property would have to be placed on the open market.

A special meeting to discuss the sale of the property, attended by the Chairman, two Board members, the CEO and two members of the executive, was held on 16 September 2004. The Chairman was present for the first part of the meeting, while the two executives attended the second part. The minute of the meeting noted that the Board's major concern was that the lands ancillary to the facility, the 69 acres, could be speculated upon. A potential solution was proposed which was that the sale of the property including the 47 acres would go ahead while the ancillary lands would go on the market for sale by way of public auction.

The issue, while not on the agenda, was again raised at a Board meeting on 24 September 2004. Following discussion, the Board changed its decision of August 2004 and agreed to sell the entire property subject to a new valuation being carried out on the 69 acres. The Board agreed that it would be necessary to get an updated Red Book Valuation to take account of any developments since the previous valuation. In getting this valuation the executive should give a very clear brief to the valuers. Such a valuation would then reflect any speculative element that there might be in the proposed purchase. The valuation, which was supplied on 29 September 2004, stated that the market value of a freehold interest in the 69 acres was in the region of €295,000.

On 1 October 2004, Shannon Development wrote to the consortium informing them that the Board had agreed to the sale of the freehold interest in the entire property for €3.3m. The consortium replied on 4 October 2004 accepting the offer. Shannon Development informed the liquidator.

The Board subsequently held a meeting on 29 October 2004 at which there was a lengthy examination of the proposed sale. A number of directors indicated that they had concerns. A Board member who had been present at the special meeting on 16 September 2004, but not at the Board meeting of 24 September 2004, stated that there were a number of problems to be addressed

- The Shannon Development property portfolio included a considerable land bank which was subject to minimum Board approved land values. The 69 acres did not appear on this schedule and should be subject to public disposal guidelines.
- The Board had, in September 2004, requested an updated valuation of the 69 acres. No written brief had been given to the valuers.

In the subsequent discussion, it was suggested that there were many issues relating to procedures and a failure to carry out Board decisions and that it might be necessary to have the internal auditors review the whole process.

The Chairman noted that the standard practice was to sell property on a covenanted basis linked to industrial development. Following further discussion, the Board confirmed the decision to sell the entire property subject to

- Confirmation from the legal advisor that the sale of the 69 acres would not breach public disposal requirements.
- The sale of the 69 acres to be subject to a deed of covenant whereby Shannon Development could repurchase the lands at the original cost if the consortium failed to develop the 69 acres for industrial purposes by 31 December 2010 or decided to dispose of them prior to that date without having developed the lands.

---

Shannon Development met with the consortium to explain the Board decision. Legal advisors to the consortium wrote to Shannon Development on 14 December 2004 stating that the requirement of a deed of covenant was not acceptable. Shannon Development took advice from its legal advisors and the sale did not proceed.

Shannon Development have informed me that a decision was subsequently taken at a Board meeting on 25 February 2005 to sell part of the Gilloge property, the buildings and its immediate land curtilage, on the open market. Shannon Development will retain ownership of the remaining land.

An internal audit review was commissioned by the Board. Following legal advice and concerns about a possible legal challenge the commission was cancelled and an alternative process instituted. No report has yet issued on foot of this process.

On 26 January 2005, the legal representatives for the liquidator wrote to Shannon Development's legal advisor. The letter requested a detailed explanation as to why Shannon Development had decided not to proceed with the sale and pointed out that Shannon Development had needlessly prolonged the liquidator's occupation of the premises and the incurring of all costs and expenses associated therewith and that the liquidator would reserve his rights in that regard.

On 5 March 2005, the Board's legal representatives wrote to the liquidator's legal representatives. Among the points made were

- Taking account of all relevant factors, Shannon Development had decided not to proceed with the sale as proposed as it was not in its best interests. Shannon Development could not be expected to proceed with a transaction which it believed not to be in its best interests simply to facilitate the sale by the liquidator of assets.
- In regard to Shannon Development's decision not to proceed with the sale, it did not accept that the liquidator was entitled to a detailed explanation of that decision.
- While acknowledging the liquidator's reporting obligations to the High Court, Shannon Development could not accept that those obligations gave him the right to enquire into matters reserved to and which are properly and legally the business of Shannon Development and its Board.
- Shannon Development had decided to place the factory premises together with such lands as are necessarily ancillary to the factory premises for sale on the open market.