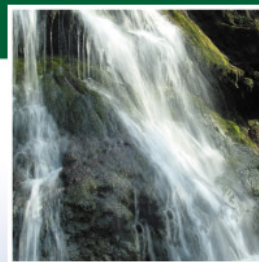# ELREN
## European Leader+ Renewable Energy Network

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**Chapter 13**

# Participation, Consultation & the Planning Process

**TIPPERARY INSTITUTE**

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# 13 Participation, Consultation and the Planning Process

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## 13.1 Objectives

Having completed this section of the training course and manual, learners should:

- Be familiar with the concepts, purposes and opportunities of participation and consultation
- Be familiar with some participation and consultation techniques
- Be able to incorporate participation and consultation processes into a project development programme
- Be familiar with the planning process in Ireland as it applies to the sustainable energy sector in particular
- Be able to commission a planning consultant and review his or her work

## 13.2 Part One: Consultation and Participation

Consultation and participation are often spoken of as if they were the same thing. However, they are considerably different. Some of the principal differences are as follows –

| Participation | Consultation |
|---|---|
| Opportunity to agree the agenda as well as the outcome | Agenda set by the person offering the consultation |
| Opportunity to agree the questions as well as give an opinion on the answers | Questions set by the person offering the consultation |
| Opportunity to engage in dialogue | Usually no opportunity to engage in extended dialogue |
| Opportunity to persuade as well as give an opinion | Usually can only give an opinion. Harder to persuade |

Table 13.1    Characteristics of Participation and Consultation

In essence, participation is a process in which those involved decide together on the outcomes being sought, the methods that will be used for achieving those outcomes and the ways in which the achievement of the outcomes will

be measured and managed. They share the decision-making, the responsibility and, ideally, should share the cost of the development.

Consultation, on the other hand, is a process in which one person (or group or organisation) decides on what they want to achieve, how they want to achieve it and so on and ask others what they think of their proposal. Whether they respond to the opinions of others is their choice and those being consulted have no real say in the final decision.

In the field of sustainable energy opportunities for participation and consultation may be given to you and may be given by you.

Opportunities that are given to you are generally those regarding policies and strategies that lie within the public sphere or within the sphere of representative or professional organisations. These may include national policies on renewable energy development, regional development strategies, local development plans and so on. As a potential developer of a renewable energy project it is important that you keep yourself informed of policy and strategy developments, as the capacity to carry out a specific development may be compromised by policies and strategies adopted at national and local level, of which you may not even be aware.

## 13.2.1  Availing of the opportunities given to you

Most important strategies and policies of state or semi-state bodies are presented for public comment prior to adoption. Such opportunity may be provided because it is a legal requirement but, even if it isn't many organisations consider it prudent to do so, at least in a nominal way. Of course it is never clear to what extent such exercises are genuine, but even if they turn out not to be genuine it is unwise not to participate on the grounds that it may be a waste of time.

Participation in strategic and policy development may be considered in a number of ways.

At the National and International level it will not be possible to participate actively in responding to policy and strategy proposals in practice. There are too many relevant processes ongoing for an individual to map and respond to. For this form of participation, therefore, the approach recommended is to become a member of and participate in a representative organisation. There are many of these organisations and a good one will act in the interests of its members, consult members on key issues and keep them informed. By joining a representative organisation and doing your part to keep it strong, you will be able to participate by proxy at least in the larger national and international decisions that may seem remote but that may have significant implications for your particular programme in due course.

At regional and local level there are a number of policies and strategies that are of particular importance. These include regional and local development plans, development strategies, landscape protection policies and so on. More detail of how to participate in the plan-making process will be discussed in the section on planning. At regional and local level you may also try to make submissions in association with a network of like-minded individuals. However, as proposals at this level are likely to be more locationally specific you do need to examine the proposals as they apply to your own projects.

### 13.2.2    Making a submission

It is true that some submissions need to be written in technical language and have a technical focus. However, this is not always required and people should not be dissuaded from making submissions by fear of the cost or the complexity. It is always appropriate to make a submission in simple language and to clearly state your concerns. These are often readily identifiable from the proposals that are being made. If you can suggest what you would like as an alternative to what is being proposed so much the better but this is not absolutely necessary.

### 13.2.3    Giving opportunities to others

As well as taking the opportunities for participation offered to you, you will also, as a developer or policy-maker, be able to offer an opportunity to others

to participate in decisions regarding your proposed policy or development. This is something that should always be considered. Sometimes it may be required by law and you will have no option but even where the provision of such an opportunity is not mandatory it should be seriously considered.

### 13.2.4    What consultation and participation are not

Even if you engage in a consultation or participation process, you are not offering a guarantee that you will respond to everybody's wishes. That would, in effect, be offering a veto to each person engaging in the process which is something that you are unlikely to wish to do.

Different participation and consultation processes will incorporate different degrees to which the process will be permitted to affect the outcome. Consultation and participation processes should always make clear what the boundaries of their impact will be. Of course it is quite appropriate for you to try to persuade those participating in the process to your point of view. However, if the only outcome acceptable to you is exactly that which you are proposing, then the process is essentially pointless and fraudulent.

### 13.2.5    Approaches to participation

The essence of participation is that the question as well and the answer to it are developed together by those engaging in the process. This is likely to be a more effective process at a strategy and policy level than at a project level, though it could be used for particular elements of a project development process.

When engaging in a process such as this it is usually necessary to consult widely as there may be widely differing opinions. There is no benefit in getting the opinion of the person that thinks the same as you do. That is the one opinion you do not need – you have it already!!!! Include public officials in your consultation – and listen to what they have to say!! It is amazing sometimes how people ignore what they are told or translate into what they wish they had been told. Not all public officials are perfect or right all the time. But they are worth listening to.

### 13.2.6    Techniques to Facilitate Participation

Though there are many aspects to a participatory process, two of the key elements are decision-making and communication. How decisions are taken will ultimately relate to where the authority to take decisions is lodged. There are many techniques that can be used to facilitate true communication. These include the following –

- Public meetings
- Focus groups
- Newsletters
- Press
- Radio
- Public Notices
- Post or hand delivered communication
- Community leaders
- Word of mouth
- Communication through organisations
- Schools and youth organisations
- Web based processes
- Community Questionnaires
- House Meetings
- Citizen Juries
- A physical presence in the community
- ICT based decision-making processes
- Web-based consultation processes
- Representative steering group

All of these techniques have their advantages and disadvantages. The following table indicates a small number of the characteristics of each technique.

| Technique | Characteristics |
|---|---|
| Public meetings | Good for information giving and endorsements; not an appropriate mechanism for discussion or collaboration. |
| Focus groups | Good for in-depth discussion; difficult to ensure that all interests are covered and may be time-consuming. |
| Newsletters | Good for wide circulation; may not be read by all and are unlikely to be fully read other than by a few. |
| Press | Good for wide circulation but may not be read by everybody. |
| Radio | Good for wide circulation and discussion; however may not be heard by everybody and may be mis-reported by those that do. |
| Public Notices | Good for wide circulation but may not be read by all. Also not good for large amounts of data |
| Post or hand delivered communication | Good for wide circulation; however all written communication may under-represent opinion of those with reading difficulties |
| Community leaders | Good for engaging with community viewpoint; however may give biased opinion |
| Word of mouth | Is likely to take place in any event; helps to engage the community at large but may misrepresent viewpoints and give rise to difficulty |
| Communication through organisations | Good for engaging the community and those that are activists within the community. However, organisations may have their own agendas and opinion may be distorted by such agendas |
| Schools and youth organisations | Good for engaging young people in the process but requires clarity about their role and the co-operation of school authorities |
| Web based processes | Good for interactive decision-making techniques. However, may be limited to those with computer access and may be distorted by those moderating the web |

| Technique | Characteristics |
|---|---|
| | discussion, |
| Community Questionnaires | Good for detailed data-gathering. However, may be somewhat costly and one-dimensional. |
| House Meetings | Good for more in-depth discussion of local issues. However, may exclude those that are reluctant to voice an opinion in public and requires a wide range of people in the community willing to participate. |
| Citizen Juries | Can be useful in bringing a variety of perspectives together. However, hard to ensure that all perspectives are represented. |
| A physical presence in the community | Good to allow discussion, explanation and interaction. However, may be costly and could give rise to confrontation and cynicism in a contested context. |
| ICT based decision-making processes | Can be useful at delivering rational decision-making approaches. However, requires expert facilitation. |
| Representative steering group | A good way of sharing the decision-making amongst representatives of different sectors; However, difficult to ensure representation, needs considerable capacity building and facilitation. |

Table 13.2        Participation and Consultation Techniques

Not all of these techniques will be used in all contexts. What is important is that a participation strategy that involves a range of complimentary techniques is developed and implemented. In addition, how a method is used is as important as the method itself.

### 13.2.7    Approaches to consultation

If it is decided to engage in a consultation process with regard to a particular project, the following steps might be considered. There is no absolutely ideal process that might be undertaken or the stages that might be involved.

*Step1.* Decide on the nature and extent of the consultation process to be engaged in, in terms of –

− The extent to which the detail of the proposal has been developed

− The extent to which the proposal can be modified

The extent of the degree of flexibility should determine whether consultation is essentially information-giving or consultation that might lead to change.

*Step 2.* Decide on the relevant stakeholders. These could include individuals or organisations. The appropriate stakeholders are those most likely to be directly affected by the development.

*Step 3.* Decide on the nature of the consultation processes. Some of the key approaches might be –

− Public Meeting – For information only

− Private meetings with individuals and organisations – For information and/or discussion

− Newsletters/Notices of advice – For information

*Step 4.* Consult with public officials – For information and response

*Step 5.* Give notice of consultation events.

− Private notices to homes best

− Public notices OK

− Formal newspaper notices not as good.

*Step 6.* Hold events.

− Have clear and honest in formation available

− Be clear on the nature of the event

− Advise of further communication

*Step 7.* Give feedback, especially of consultation events.

− Advise of issues raised

− State response

− Give reasons if possible

*Step 8.* Include outcome of consultation and proposed mitigation steps in planning application or EIS.

### 13.2.8　Summary

In summary participation and consultation are related but very different processes. You will have opportunities to be part of these processes both as a responder to the initiatives of others and as an initiator of such processes yourself.

These few notes are not intended to be a comprehensive statement on the issue – it is far more complex than that. A few key points that you should reflect on are as follows –

- It is important to take the opportunities given to you to participate in policy and strategic participation and consultation processes

- You can engage in these processes either as an individual, as a member of an organisation or as both

- While very technical submissions may sometimes need to be made this is not always necessary

- As an initiator of a process of participation or consultation you need to be clear on the extent of the compromises that you are willing to make as a result of the process

- If you are not willing to make any compromises then give information rather than an opportunity for consultation

- There are many techniques for participation and consultation but how they are put together into a strategy is what is important

- Honesty with yourself and with others is fundamental to these processes as is honest communication

- Giving an opportunity to people to influence what you do is both correct in its own right and likely to make the process a little less problematic.

- Giving people a right to have their say does not mean you are going to do what they ask

- However, if you have asked opinion and receive it, whatever you do respond and let people know what the outcome is and why you cannot accept their point of view if you can't. Giving an opinion into silence can make people really cross.

And finally, remember that developing and implementing these processes require a high level of expertise. This short introduction will start you on the road to acquiring that expertise. **However, for now it will enable you to instruct your advisers more effectively, to monitor what they are doing more purposefully and to get a better outcome from the effort you both put in.**

### 13.2.9 Sources of further information

1. The following website gives a good insight into some of the issues outlined in this section

   http://www.partnerships.org.uk/guide/main1.html

2. Though set in a different context this document has some insights about how to run a campaign to influence policy

   http://uk.search.yahoo.com/search?p=how+to+influence+policy&prssweb=Search&ei=UTF-8&fr=FP-tab-web-t340&fl=0&x=wrt&meta=vc%3D

3. Again though set in a different context this short piece has some interesting ideas

   http://www.nls.org/conf2006/top%20ten%20tips.htm

4. This website has some practical advice on influencing policy

   http://www.2020vision.org/resources/r_activists.htm

5. This website has practical tips on with downloadable documents though set in an Irish context

   http://www.combatpoverty.ie/publications/newtitles.htm

6. For a view of public participation as manipulation see the following.

   http://www.uow.edu.au/arts/sts/TPP/beder.html

7. Aronstein's original article on the Ladder of Participation is available here

   http://lithgow-schmidt.dk/sherry-arnstein/ladder-of-citizen-participation.html

8. This is another website with a lot of information and resources

   http://www.partnerships.org.uk/part/index.htm

### 13.3 Part Two: Renewable Energy and the Planning Process in Ireland

Most renewable energy projects in Ireland are likely to be subject to the planning system. This system regulates through policy and a system of licensing the nature of the developments that may take place in particular areas and the conditions under which such developments may take place.

This section is intended to give students some understanding of the planning system in Ireland with particular reference to opportunities to participate in the process and the procedure for submitting applications for Planning Permission.

#### 13.3.1 The Planning System

Land-use planning in the Republic of Ireland is one of the most decentralised aspects of Governance in the country. Within some guidelines set by Government, it is largely left to Local Authorities (which are designated as Planning Authorities for the purposes of the legislation) to decide on the policies that they should adopt for their areas and to make the decisions on specific planning applications that are the basis for the implementation of the adopted policies. Planning Authorities consist of the County Councils, the City Councils and the larger Town Councils (the former Urban District Councils).

The Irish planning system is governed by the Planning and Development Act of 2000 and the regulations made under it. The system is very much based on the UK model in that it is a policy and licence rather than a zoning ordinance base approach. There are, therefore, three key elements of the planning system – Development Plans, Development Control and Enforcement.

The policy elements of the system are contained in the Development Plans that are made by each Planning Authority while the licensing system consists primarily of the making of a formal application with detailed plans for permission to carry out a proposed development and a system of enforcement

procedures for use against those that do not seek permission or that carry out development in ways that are not in accordance with the approved plans.

Applications for permission are made to the relevant Planning Authority and the Authority's decision can be appealed to An Bord Pleanála an independent planning appeals board. Like all administrative bodies the Planning Authorities and An Bord Pleanála are also open to court action on the grounds of failure of due process.

A further important piece of legislation for larger developments is the Planning and Development (Strategic Infrastructure) Act 2006.This amends the Planning and Development Act 2000 to provide for the introduction of a 'strategic consent process' for strategic infrastructure of national importance provided by other statutory bodies and private promoters.  It also provides for a range of supporting measures, including the restructuring of An Bord Pleanála to allow for the establishment of a Strategic Infrastructure Division, which will handle decisions on all major infrastructure projects - major local authority projects and motorways which are already the responsibility of the Board, strategic infrastructure consents, major electricity transmission lines and railway orders.

The effect of this legislation is, effectively, to take the decision-making process for large-scale infrastructure projects that are of national importance out of the local decision-making process and to bring the process directly to An Bord Pleanála. This is an attempt to shorten the time-frame for making decisions on such applications. It has been criticised by some as being contrary to local democracy. However, the Planning Authority must still be consulted by An Bord Pleanála and, it may well be argued, the process is acceptable since it is common practice in other jurisdictions for national decisions to be made by national bodies (the Secretary of State 'call-in' system in the UK for example).

### 13.3.2   Who makes the decisions?

The Irish Local Government system is somewhat unusual in that it assigns distinct powers to the Elected Members of the Council and to the appointed Chief Executive, the City or County Manager. In essence, the Elected Members are responsible for making the main policy decisions while the Manager is responsible for taking the executive decisions that implement the policy. The relationship is, of course, far more complex than that and the interplay between the exertive and the political elements of the system is a key feature of local governance in Ireland.

In the context of the planning system, the main policy vehicles (Development Plans, Charging Schedules and so on) are adopted by the Elected Members while the Manager has the primary responsibility for taking the specific decisions regarding individual applications for development. However, there are also procedures through which the Elected Members can require the Manager to exercise his or her powers in a particular way with regard to individual proposals while the Elected Members (like the Manager) are bound by the *ultra vires* rule and must act within their legal powers at all times.

We will now examine the different elements of the planning system in a little more depth.

### 13.3.3   Development Plans

The Development Plan is a statutory document which has legal effect. The following are the effects of the Development Plan -

– The Local Authority is under a general obligation to achieve the objectives laid out in the plan  and a report must be given by the Manager to the Council after two years on the extent to which this is being achieved

– The Local Authority's own developments must be in accordance with the plan

– Decisions on applications to carry out developments must generally be in accordance with the plan although there are procedures for granting permission even though they may materially contravene the plan

– The use by local authorities of some of their other powers can be limited by the plan

So it is clear that the Development Plan is a very important document and it is important that one tries to make sure that it does not contain policies that would inhibit one's future planned developments.

In making a development plan a planning authority is required to have regard to Government policy, to the Planning Guidelines adopted by their relevant Regional Authority and to the proper planning and sustainable development of the area. At present in Ireland the most relevant national policies are those that relate to Wind Energy Development and those that relate to sustainable development and renewable energy in general.

The planning legislation requires that a development plan *"shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan and shall consist of a written statement and a plan or plans indicating the development objectives for the area in question."*

The legislation also lays down what *must* be included in Development Plans and what *may* be included in such plans. Amongst the matters that must be included and may be relevant to renewable energy developments are the following –

– the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses), where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated;

– the provision or facilitation of the provision of infrastructure including transport, energy and communication facilities, water supplies, waste recovery and disposal facilities (regard having been had to the waste management plan for the area made in accordance with the Waste Management Act, 1996), waste water services, and ancillary facilities;

– the conservation and protection of the environment including, in particular, the archaeological and natural heritage and the conservation

and protection of European sites and any other sites which may be prescribed for the purposes of this paragraph;

− the integration of the planning and sustainable development of the area with the social, community and cultural requirements of the area and its population;

− the preservation of the character of the landscape where, and to the extent that, in the opinion of the planning authority, the proper planning and sustainable development of the area requires it, including the preservation of views and prospects and the amenities of places and features of natural beauty or interest;

− the protection of structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest;

− the preservation, improvement and extension of amenities and recreational amenities;

The range of topics that *may* be covered in a development plan is very wide and includes the following that may be of relevance to renewable energy developments.

− Reserving or allocating any particular land, or all land in any particular area, for development of a specified class or classes, or prohibiting or restricting, either permanently or temporarily, development on any specified land.

− Preserving the quality and character of urban or rural areas.

− Regulating, restricting and controlling the development of coastal areas and development in the vicinity of inland waterways.

− Regulating, restricting and controlling development on the foreshore, or any part of the foreshore.

− Regulating, restricting or controlling development in order to reduce the risk of serious danger to human health or the environment.

− Regulating, promoting or controlling the exploitation of natural resources.

− Protecting and preserving the quality of the environment, including the prevention, limitation, elimination, abatement or reduction of environmental pollution and the protection of waters, groundwater, the seashore and the atmosphere.

− Securing the reduction or prevention of noise emissions or vibrations.

− Protecting features of the landscape which are of major importance for wild fauna and flora.

- Protecting and preserving (either in situ or by record) places, caves, sites, features and other objects of archaeological, geological, historical, scientific or ecological interest.

- Preserving the character of the landscape, including views and prospects, and the amenities of places and features of natural beauty or interest.

- Preserving any existing public right of way, including, in particular, rights of way which give access to seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility.

- Providing for works incidental to the making, improvement or landscaping of any transport, communication, energy or other network

When reviewing Draft Development Plan proposals for their impact on renewable energy developments, as well as searching for policies that refer directly to such developments it is important to look at policies such as those outlined above and to consider their implications. Many development plans will now also contain the following:

- Landscape Character Assessments

- Wind Energy Policies that identify areas within which wind energy developments are likely or not to be favourable considered.

As these policies may be incorporated into Development Plans it is important that attention is paid to draft policies when they are presented for public consultation.

## 13.3.4 How to participate in the plan-making process

The legislation gives a number of opportunities to participate in the plan-making process. These opportunities are there from the beginning of the process to the end.

In order to participate effectively and remembering some of the points about participation outlined above in the first section of this module, the following points should be borne in mind.

- It may be easier to participate at a strategic level through an organisation. Consider, therefore, joining an organisation that you feel represents your views and try to have a say in their submissions

- Participate in the process at all stages. Even the very first offer to suggest what should be included in a plan should be responded to

- Seek an opportunity through your representative organisation to make an oral presentation of your views

- Read the Draft Plans carefully looking particularly for the kinds of policies noted above. Examine both key policies and specific objectives

- Write a letter saying what you think – it doesn't necessarily have to be highly technical in nature

- Keep an eye on the dates and make sure your submissions are on time

- Keep an eye on what is happening through the papers and the local authority's website. Most are good and up to date

- Make sure your elected members know what you think. Contact them directly and provide them with a *short* briefing document that outlines your principal requirements.

### 13.3.5   Permission to develop

The Irish planning system incorporates a process through which formal permission must be obtained to carry out most developments. This is a highly regulated statutory process the powers for which are contained in the 2000 Planning and Development Act and the detailed procedures for which are set out in the Planning and Development regulations, primarily those of 2000 and 2001.

**Making a planning application is now a highly complex process and for developments such as those involved in renewable energy developments, will almost certainly require professional advice and expertise. These notes, therefore, are primarily intended to enable a proposer of a development to work effectively with his or her professional team.**

The process for making a planning application does not vary significantly for different types of renewable energy development, though the technical elements, project description, principal environmental impacts and so on may vary.

### 13.3.6    Types of application

There are four different types of planning application –

**Application for permission** – This is a detailed application and includes all the plans and particulars required to enable the Planning Authority to make a decision on the application. If permission is granted the development is authorised to proceed,

**Application for outline permission** – This is an application for permission in principle. It is less detailed than an application for permission and if outline permission is granted a further approval of the detail is required. It should be noted that an outline application cannot be made for a development that requires an EIS.

**Application for permission consequent on outline permission** – This is an application to address the further detail of a development that has been granted outline permission

**Permission to retain** – This is an application for permission to retain a development that is unauthorised.

### 13.3.7    Making a planning application

A planning application is made to the planning authority for the area in which it is located. If an application is located in the functional area of more than one authority application must be made to both authorities.

Public notice of the intention to make the application must be given by placing a notice on the site of the proposed development and by publishing a notice in an appropriate newspaper circulating in the area. There are very precise rules about these notices.

A planning application must include the following amongst other things –

- Completed application form
    - Where the applicant is a company, its address and registration number along with names of directors must be given
- The appropriate fee
- Plans, Drawings and Maps – six copies of each.
- Clearly distinguish new and existing in extensions/alterations
- Overall dimensions including distance of structures from boundaries
- Name and address of person who prepared plans
- Schedule listing the drawings
- The page of the newspaper containing the notice
- One copy of the site notice (Location plan must show the place on site where it is erected)

Where an application exceeds certain thresholds an Environmental Impact Statement (EIS) is also required. For renewable energy developments, for example, developments that have a capacity in excess of 5MW require such an EIS.

In addition to what *must* accompany an application, there are things that *should* accompany such an application – but often don't.

For a development of any significance the following are advisable –

- An Environmental Impact Review even if an EIS is not required
- A written statement as to why the development should be permitted, including an evaluation of its compliance with development plan requirements
- For larger scale developments a Landscape Impact Assessment.

### 13.3.8 What can happen

There are a number of responses that a planning application may give rise to.

1. The application can be adjudged to be invalid
    - It will not be registered and will be returned to be made valid

An application can be accepted as valid and be entered in the planning register. Once an application is registered submissions may be made by third parties; the application may be referred to particular organisations known as Prescribed Bodies; various technical reports are obtained both internally and possibly externally; a recommendation is made to the County Manager or his or her delegate who makes the formal decision.

2. The recommendation can be -

   − That a decision be made on the application or

   − That a request for additional information be issued

3. There are a number of different decisions that can be given

   − Outline permission with or without conditions

   − Permission with or without conditions

   − Refusal

In coming to a decision on the planning application the Planning Authority is restricted to considering the proper planning and sustainability of the area; the policies in the Development Plan; the Regional Planning Guidelines and Government and EU policies. In other words, the decision cannot normally take individual circumstances into account.

When the decision is made it can be appealed to An Bord Pleanála, (an independent appeals body established by the Government but over which the Government has no control), either by the applicant or by a third party who normally has to have previously made a submission regarding the application to the Planning Authority.

An Bord Pleanála considers the application as if it had been made to it in the first place and all parties have an opportunity to make submissions.

The Board may consider either the whole application or just the conditions attached to the decision of the Planning Authority. It may hold an Oral Hearing in complex or difficult cases though most appeals are considered without such a hearing.

The Bord is bound by exactly the same considerations as the Planning Authority. Its decision is final but subject to review on legal grounds by the High Court.

### 13.3.9    What are the time limits

Planning is a very time-defined process. Here are some of the key time frames that are involved.

**Two weeks before application date**

- Place notice in newspaper
- Erect site notice

**On receipt of planning application,**

- The Authority must make an assessment of the validity of application (no time limit, but an objective is that it would be within two weeks of the Planning Authority receiving the application). The assessment is provisional prior to a site visit to confirm that a notice is on site.

**Within five weeks of receipt of valid application by Planning Authority**

- Observations or submissions by third parties
- Site notice must stay in place for full period
- Decision cannot be made by Planning Authority until five weeks have elapsed

**Within eight weeks of receipt of valid application by Planning Authority**

- Decision to grant or refuse or request further information

**Within four weeks of receipt of further information**

- Decision to grant or refuse

**Within three days of decision**

- PA must issue copy of decision to applicant and those who have made submissions or observations.

**Within four weeks of date of decision**

- Any appeal to an Bord Pleanála must be lodged

**Anytime during the process**

− Application may be withdrawn by notice in writing

− Request for further information may be issued

− Request for revised plans may be issued

**Within six months of issuing of request for further information**

− If further information not responded to the planning application is deemed to be withdrawn.

## 13.3.10  Factors to consider when making a renewable energy application

There are a number of factors that should be taken into account when submitting an application for planning permission. These include the following-

1. All developments require permission unless the regulations specifically say that they don't. Therefore, for example, permission is normally required to **erect an anemometer** for measuring wind-speeds in order to determine whether a site is suitable for development and may be required to **erect a gauge to measure water flow.**

2. **National policies and guidelines.** The Planning Authority is required to take these into account and a submission that refers to them can urge the Planning Authority in the right directions. Currently the most important document in this regard is the Guidelines on Windfarm Development which provide a lot of detailed guidance.

3. **Development plan policies.** An applicant should always consider whether or not a proposal is in accordance with the development plan. If it is not then it will be unlikely that permission will be granted.

4. **The appropriateness of the scale** of the proposed development in the **context of the surrounding environment**

5. **The proximity of dwellings** to the proposed development and the likely impact of the development on such dwellings

6. **Noise levels** associated with the development in its immediate vicinity and at the site boundaries

7. **Health implications.** These should at least be addressed if only to dismiss them.

8. **Safety** during construction phase and subsequently.

9. **Odours** that may arise from the proposed development and how they will be mitigated and controlled.

10. **Traffic** associated with the proposed development.

11. **Electro-magnetic interference** that may arise from electricity generating developments and the ways in which such effects will be mitigated.

12. **Ecological impacts** particularly on flora and fauna. The stability of the terrain and ways of ensuring that it remains stable should also be addressed.

13. **Visual impact.** This is often one of the most contentious issues. It is a difficult one to resolve since it is affected, at least in part, by individual perceptions of the nature of landscape and of the appropriateness of particular structures in the landscape. However, a detailed assessment of the visual impact of the development is important. When carrying out such an assessment it is important to be honest. There is little point in carrying out an assessment that does not include the most extreme impact even if these appear to weaken the case. If a strong argument cannot be made as to why the development is acceptable despite these impacts it may be appropriate to ask yourself if the development is appropriate.

14. Impact on the **water regime** in the area for certain developments.

15. **Other permits that may be required** – fire safety certification, water abstraction, road opening licenses, waste permits and so on.

16. **Other bodies that should be consulted**. There is a wide range of these – An Taisce, The Regional Fisheries Boards, An Comhairle Ealaion/The Arts Council, The Heritage Service of the Dept of Environment, Heritage and Local Government (DoEHLG), adjoining Planning Authorities, possibly the Environment Protection Agency (EPA), Iarnrod Eireann, the National Roads Authority (NRA) – and so on. Who should to be consulted will depend on the specific circumstances of each application. The Planning Authority can usually advise on this.

17. **Connection issues.** These can often be as problematic as the renewable energy development itself. It is important, therefore, that the means of connection to the grid, the route for such connection and proposals with regard to it be considered as part of the overall proposal.

18. Consider the **nature and level of development that is necessary for a project to be successful**. Sometimes developers seek to maximise the return from an investment and ignore some of the more unacceptable impacts. Many developments can be successful even if a somewhat lesser level of return is achieved. If accepting a lower level of return will help to eliminate some of the most intractable issues it should be considered.

19. The more that **policies and strategies, national regional and local** can be invoked the better. The planning application process is a quasi-judicial process. In effect an applicant should marshal his or her evidence and present it in a coherent and rational way that will convince those that are making the judgement on the proposal. It is important to remember that an applicant is not entitled to permission but must *earn* it. There will be others marshalling other facts and presenting their case.

### 13.3.11 Dealing with objections

One of the most effective ways of dealing with potential objectors is to enter into a consultative process before the details of the proposal are finalised. Particularly where it is possible to design a development in a number of different ways consultation with those that may be affected is well worth while. The thinking and principles outlined at Part One above should inform any such approach.

If, however, following consultation there are still objections then the planning application should be made. In the application, however, reference should be made to any objections that may be anticipated. These objections should be addressed objectively and rationally and mitigation measures proposed where possible.

The same approach should be taken to objections raised after an application has been lodged. It is much more appropriate to consider them from the point of view of the objectors, to analyse them objectively and to make a rational response. An emotional response that sees the objectors either as ignorant Luddites or as unreasonable fools is unhelpful.

Even at this stage it may be helpful to meet with representatives of the objectors. This should be done at a private rather than a public meeting, however; you should come to such a meeting with something to offer as a compromise; and the outcome of the meeting should be made public. An offer of a financial or other return to the affected community from the development is not inappropriate though often derided as 'buying them off'. Because if made late such an offer can give rise to such a response, it is worth considering incorporating it as part of the development proposal.

If, however, following attempts at compromise, no resolution has been found, it may be necessary to use the processes that exist to seek permission. At all times, however, it is suggested that an objective and rational approach be used even if provoked. As noted above, constant communication is an important part of the process and should receive considerable attention.

### 13.3.12 Dealing with an appeal

Following the decision of the Planning Authority an appeal may be made by the applicant or a third party. In dealing with such a situation the same objective rational approach should be used as outlined above.

### 13.3.13 Enforcement

While this chapter does not focus on the issue of enforcement a short note is included for the sake of completeness.

The Planning Authority may take action if a development is carried out without permission or in contravention of permission. If the Planning Authority considers that a breach of the planning laws has occurred it may do one or more of the following –

- Issue a Warning Letter which seeks the opinion of the developer regarding the alleged breach. This is a less formal process that seeks to have an issue resolved.

- Issue an Enforcement Notice requiring that certain actions be taken to ensure that the unauthorised development ceases. It is an offence to ignore an enforcement notice or knowingly participate in actions that contravene it

- Seek a High Court injunction to remedy the situation. Failure to comply will result in contempt of Court.

- Enter on the site, carry out the necessary work and recover the cost of carrying out the work.

The Planning Authority can prosecute an offender for carrying out an unauthorised development and for failing to comply with an enforcement notice. Penalties can be very high including fines of up to ten million Euro and jail terms of up to two years.

Finally, if a complaint is made to a Planning Authority that an unauthorised development is being carried out it is under an obligation to investigate and to decide on whether or not to take action. It must also keep the complainant informed as to the decisions made and the steps being taken. This is another reason for seeking good relationships with those in the vicinity of a development, since a constant running battle regarding alleged breaches of the planning legislation is frustrating, time-consuming and expensive.

## 13.3.14  Summary

Like all planning systems the Irish Planning system is quite complex – but not impossible to understand. The system has three principle elements – the policy making process as carried out through the making of Development Plans; the development approval process as implemented through the Planning Application and permission process; and the process for ensuring that the requirements of the legislation are complied with, the Enforcement process.

The decision-making of the planning system lies principally with the local authorities (which are known as Planning Authorities for the purposes of the legislation) and, within these authorities is shared between the elected members of the Authority and the executive in the person of the City or County Manager. In essence, the Elected Members adopt the policies and the Manager implements them – although that is a very simplified version of a complex reality.

Almost uniquely in Europe the Irish planning system provides substantial opportunities for participation by the public in the process. The Planning Authorities have statutory obligations to facilitate participation at the plan-making stage; every organisation and individual in the world let alone Ireland can make submissions regarding applications for planning permission and can appeal the decisions of the Planning Authority to an independent appeals board (An Bord Pleanála); and every individual can make a complaint of unauthorised activity to a Planning Authority which it is under obligation to consider, as well as having the right to seek redress in the Courts.

These opportunities should be availed of and, in particular, attention should be paid to opportunities to have an impact on the policy-making process since an adverse policy may make it almost impossible to obtain permission to carry out a specific development.

The making of a planning application is a complex process that requires professional expertise. When engaging in this process one of the key points to bear in mind is that it is one that is quasi-judicial and that, therefore, one should consider the process as one in which a court is being persuaded. It is important therefore, not merely to comply with the minimal requirements of the legislation with regard to the information that is submitted but to build a case that will persuade the 'court' that the proposed development is in accordance with national policy, Development Plan policy and the proper planning and development of the area.

### 13.3.15  Sources of further information

1. Most Local Authorities now have very good web-sites that contain information on their planning policies and the status of current draft documents that are open for consultation. Planning application details can also be viewed on many of these sites.

2. Further details on the Planning System are available at -

   http://www.environ.ie/DOEI/DOEIPol.nsf/wvNavView/Planning?OpenDocument&Lang=

3. Details are also available at though with more of a focus on housing

   http://oasis.gov.ie/housing/planning_permission/

4. A "Guide to Making a Planning Application" is available at

   http://www.environ.ie/DOEI/doeipub.nsf/0/559a098a4b8ace5580256faf00394f01/$FILE/2.%20Making%

5. Details of Wind Energy Development Guidelines are available at

   http://www.environ.ie/DOEI/doeipub.nsf/0/559a098a4b8ace5580256faf00394f01/$FILE/Wind%

6. Details of the National Spatial Strategy are available at -

   http://irishspatialstrategy.ie/

7. Details of Regional Planning Guidelines are available on the Regional authority websites eg

   http://www.mwra.ie

   http://www.sera.ie

8. Details of the planning legislation are available at the following but do note the disclaimer

   http://www.irishstatutebook.ie/

9. For a comprehensive review of Irish planning and environmental legislation and case law see

   *Scannell, Yvonne, Environmental and Land Use Law,* (Thomson Round Hall) (Brehon Series) (2nd. Edition, 2006)