



THE INSTITUTION OF ENGINEERS OF IRELAND

PROPERTY RIGHTS

AN IEI SUBMISSION TO

**THE ALL PARTY OIREACHTAS
COMMITTEE ON THE CONSTITUTION**

MAY 2003

The Institution of Engineers of Ireland with over 21,000 members encompassing all disciplines of engineering across both the public and private sectors is Ireland's largest professional body. The Institution is pleased to respond as follows, to the invitation of the All-Party Oireachtas Committee on the Constitution, for submissions on Property Rights.

The Institution very much welcomes the review by the Committee. We believe the outcome of the Committee's deliberations can have a profoundly beneficial impact for society by ensuring that infrastructure essential for social and economic development can be constructed in a timely and cost effective manner.

1. DEFINING A CLEAR VISION FOR INFRASTRUCTURE DEVELOPMENT:

Ensuring Ireland's infrastructure deficit is reduced is critical to the social, industrial and economic wellbeing of our country. It involves enormous long-term investment by Government and private sector investors and decision often take many years to implement.

The Institution believes it is essential that Government set out a broad vision for what we are aiming to achieve and the principles underpinning this vision. The Institution believes the following should be included: -

Social Equity: All citizens, business and regions of the country should have fair access to quality infrastructure. The rights to private property should be balanced by the rights of society at large and the common good.

Sustainable Development: Infrastructure Development Strategy should be seen as a key element of Ireland's sustainable development agenda. Pollution minimisation, optimum use of energy, public health, resource conservation/management and improved public safety should form part of the decision making process for infrastructure development. We should leave future generations with infrastructure which provides a quality of life and access to services at least equal to previous generations.

Spatial Strategy: Infrastructure development and decisions relating to it should be guided by Government's National Spatial Strategy and what is best for the long term good of society and the economy, and should not be influenced by the vested private interest of individuals or minority groups.

Standards: We should aim to achieve standards of infrastructure and service compatible with our EU partners and international competitors.

- Value for Money:** In decision making and in design and delivery of infrastructure we should ensure value for money is achieved.
- Accountability:** Those charged with delivering and managing our infrastructure should be held accountable for performance.
- Appropriate Public/Private Mix:** Our objective should be to ensure that the best possible infrastructure and service compatible with value for money is delivered as quickly as possible.

2. WORKS FOR THE COMMON GOOD:

Ireland's constitution recognises the need to balance two very important concepts: -

Article 43.1 acknowledges the natural right to private ownership of external goods

Article 43.2 recognises that the exercise of the right to private ownership ought to be regulated by the principles of social justice and goes on to state "... The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good".

The Institution of Engineers of Ireland believes that one of the major reasons for the poor record of delivery to date of major projects is because sufficient emphasis is not placed on Article 43.2 which makes reference to "the exigencies of the common good". Public infrastructure delivers a benefit to every citizen, to industry, to the economy and to society as a whole. The Institution believes that, in progressing public infrastructure, this fact must be taken more into account and the constitutional requirement relating to "exigencies of the common good" recognised in government policy, in statutory instruments and in planning and judicial decisions.

This is not to say that the rights of the individual and special interest groups should be ignored. Plans for infrastructure development should be made available for public scrutiny in a transparent and timely manner. Environmental impact assessments should be published and the advantages and disadvantages of development made known to the public. Citizens should have the right to submit their views on proposed development and to object to proposals as they see fit.

However, final decisions should be made in a timely manner and based on a proper balance between the rights of the individual and the needs of society as a whole – i.e. "exigencies of the common good".

3. THE PLANNING PROCESS:

All major infrastructure development projects are subjected to a significant planning approval process and most require an Environmental Impact Assessment in accordance with EU Directives. The planning process can be a major constraint to timely implementation of infrastructure development and the Institution believes the following key areas in particular require urgent action.

Duplication of Authority:

The current legislation requires the consideration of certain projects by a number of different authorities. This applies particularly where a project may require approval by a Planning Authority, An Bord Pleanála, EPA, HSA and the Department of Communications, Marine and Natural Resources. This leads to overlap and potential for confusion which may in turn invite legal challenge. While recognising the absolute right of individuals and organisations to object to proposed projects, the Institution believes the current planning process itself contributes to attracting unwarranted objections to infrastructure projects, inordinate delays and significant increase in cost. Recent examples include the Corrib Gas Terminal, the M50 Carrickmines Interchange, the Glen of the Downs Road Project, the Kildare Bye Pass, the Cork Electricity Transmission Grid Project and a number of waste management projects.

A method of fast-tracking projects of national interest should be established:

- A specialist “one stop shop” planning body should be established either separately or as a division of An Bord Pleanála with responsibility for assessing planning applications for infrastructural projects which are in the national interest.
- Mandatory timetables for decisions should be given for all infrastructural projects and these target deadlines should be met.
- A special division of High Court should be formally established to deal with legal challenges to infrastructural and environmental planning.

Time to Obtain Approval:

There is a real concern that for many major projects we have excessively long lead-in times before construction is allowed to commence. If Ireland is ever to redress the infrastructure deficit, it is essential to have an effective, efficient, reliable and transparent regulatory regime in place.

Urgent consideration should be given to streamlining the appeal and oral hearing process for major infrastructural projects. There is a necessity for much stricter adherence to the subject matter in the conduct of the hearing. DOELG should be requested to prepare guidelines which ensure clarification of the separate roles

and functions of the various bodies involved in assessing and approving projects. As part of the training of Inspectors it is essential to ensure that they apply these guidelines in a consistent manner.

The general improvement in turnaround of appeal cases by An Bord Pleanála is most welcome. However for foreign direct investment projects it is essential that the standard time-scales outlined for planning approval are maintained, including the 18 week statutory objective period for appeals to the Board. Without such certainty it will be increasingly difficult for Ireland to be a competitive location for inward investment.

4. SERVICED LAND AND LAND ACQUISITION:

Serviced Land for Housing:

The supply of serviced land is a key supply side driver. It is recommended that Government introduce economic instruments, with the aim of minimising any benefits from “holding” developed lands, and to encourage landowners to release these lands onto the market for development. Zoned and serviced lands should not be allowed to remain undeveloped while the landowners hold the property, as its value rises in an imbalanced supply/demand market environment.

The Institution favours a reduced emphasis on outdated single use land zonings in order to allow development to occur in an integrated manner. Housing provisions should increasingly become more an element of mixed used development, rather than as a separated land use, in the interests of securing more sustainable patterns of development.

Following on the success of previous urban renewal strategies, further schemes to encourage the re-development of substantial numbers of brown-field sites and still under-utilised urban properties, should be introduced. The densification and regeneration of the existing urban fabric of the country’s towns and cities should go some way to ease supply side pressures.

The operation of the Serviced Land Initiative, under which DOELG grant aid Local Authorities for the provision of sanitary services for development land, should be examined with the aim of achieving a more dynamic effect on the supply of serviced lands.

The benefits of using Strategic Development Zones (as recommended by Bacon II) as effective instruments to improve housing supply are acknowledged and the use of such zones should be progressed.

Property Acquisition for Infrastructure Development:

When private land or other property is acquired by a public body for infrastructure development, the owner should be paid a fair price. However, the Institution believes that in recent years, the public purse is considered to be limitless by some property owners and exorbitant prices are being demanded and indeed in some instances being paid for property. When property is being acquired for infrastructure development, it should be recognised and accepted that this is being done in the common good. It should be recognised that the rights to private property are not unlimited under the Constitution and that the constitution in Article 43.2 allows the State as may be required to “ ...delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good”. Property owners should not be allowed to hold up essential infrastructure development indefinitely or blackmail the public body involved into paying exorbitant prices.

In relation to price, we have seen instances where decisions by public bodies to rezone land or to route a road, railway, water supply etc. along a given route has significantly increased the market value of property. Such decisions should not subsequently be detrimental to the common good by virtue of increased prices having to be paid by public bodies for such property.

In all instances, a fair price should be paid, related to the value of the property prior to decisions being made on rezoning or routing of infrastructure.

