LEITRIM COUNTY COUNCIL

This matter is being dealt with by: Ciarán M Tracey. Direct Line: 071-9650455

Date: 14th March 2014

Marian O’Driscoll,
Asst. Principal,
Planning Section,
Department of the Environment, Community and Local Government,
The Custom House
Dublin 1.

Re: Review of The Development Management Guidelines 2007

Dear Marian

I refer to the notification of the above and the request for submission by the 14th inst at the latest.

Leitrim County Council welcomes the proposed review and the opportunity to express its views in relation to a number of issues which have been of concern to it for some time.

This authority is of the view that there is a need to further streamline the planning application process not only for the applicant’s but also for the Planning authority, particularly as staff resources are limited in a contracting staff compliment within local authorities throughout the country

Validation / Invalidation:
The standardisation of planning application forms has made a significant impact already. However, notwithstanding this the levels of validation diverges significantly from local authority to local authority. Leitrim county council is of the view that this does not necessarily reflect a more bureaucratic approach being taken by one local authority when compared to another but more reflects standard of application being submitted. It s this authority’s experience that when significant deadlines are likely to impact, in this authority’s case, with the introduction of the development levy scheme and the ending of the rural renewal scheme, that applications which were time critical were better prepared and the level of invalidation dropped dramatically. The range of reasons why an application may be deemed to be invalid are extensive and usually an application is deemed invalid for a multiple of reasons. One however which is worth noting is that many agents place the public notice in the paper well in advance of lodging the application and when the application is deemed invalid it leads to the applicant having to re-advertise as the newspaper which was valid will have run out of date prior to the correct documentation being re-submitted. The management guidelines should advise agent to place the notices as close to the date of lodgement of the application as possible and not to
utilise the full 13 days allowed in the regulations [i.e. “within 14 days”], so that a valid newspaper notice may be reused when re-submitting an invalidated application. The guidelines should also provide clarity regarding what is meant by “within 14 days” as this gives rise to difficulties when an application is lodged on the 14th day i.e. the same day two weeks later as it appeared in the paper.

This authority is therefore of the view that a small charge should be made where an application which was ill-prepared is declared invalid. This should be, say 20% of the prescribed fee, for the proposed development, to a maximum of, say €80.

This council is also of the view that a standard validation sheet might be produced, against which the validity or otherwise of the application will be assessed. This council operates such a validation sheet, a copy of which is attached to this submission. The provision of a national validation checklist would help secure consistency among Planning Authorities and should assist agents in making a valid application.

**Exempted Development.**
A root and branch review of the exempted development provisions of both the Act, section (4)(1) and of the regulations made under section (4)(2) is to be welcomed.

There still, after a long number of years, significant confusion regarding the creation of a new vehicular access onto a public road and a material widening to an existing access and when this exemption applies. This council is of the view that any new access onto an existing public road, regardless of the width of its metalled part, should require planning permission in the interest of traffic safety. It is also of the view that “material widening” should not only relate to the actual physical widening of the access but also have regard to any material change of use of the access. E.g. a field gate, where it is used only to gain access to a field and does not service any existing structures should not be allowed to be considered as an existing access to service what would otherwise amount to an exempt development of a new farm building under Classes 6 to 10 inclusive of Part 3 of the 2nd Schedule of the Planning Regulations. This is an acute issue, particularly with regard to field gates which access onto either a national primary or national secondary route. A definition of a “field gate” versus an “access” would be a worthwhile inclusion in the regulations.

Similar issues relate to forestry and the provision of new access and/or materially widened of access points onto public roads for tree felling and/or thinning works

**Signage**
This authority has had difficulty with the recently included provision under Class 16A, which relates to “local events carried promoted or carried on for commercial purposes. In this instance the term “is not defined and such items as beauty product promotion weeks etc have sought to claim exemption under this provision. There is no restriction on the number of these signs which may be placed at any one time and our experience is that they are numerous such signs placed on all of the approach roads to the town or village where the ‘event’ is being held. While the exemption allows for three events a year, this is not defined, i.e. is this within a calendar year or a year from when the first event was promoted. While the exemption allows the sign to be in place 7 days before the event and to be removed after the event, the duration of the event is not defined. Thus a product promotion may be for a full month or six weeks and still fall within this exemption. The planning authority has not got the resources to monitor whether this provision is complied with or not, even if the terms were more clearly defined. The erection of such commercial signage is very extensive and has given rise to significant adverse comments in the adjudicator’s reports for the Tidy Towns competition, a national competition sponsored
by the Department of environment. This authority noted that there was no prior consultation on the inclusion of this exemption. If not re-pealed, then it should be radically revised so:

a) That the promoter of the event must notify the planning authority of the forthcoming event. An example of such notification can be found in Class 31 (i) condition 5 [Part 1 of the second schedule] in relation to telecommunications antennae
b) That the duration of the promotion should not exceed 7 days and
c) That such commercial events should be restricted to such events as trade fairs, wedding fairs etc and not to the promotion of a product within a retail or other outlet.
d) That it be restricted to signage of a particular construction and materials.
e) That the Planning Authority can restrict their erection where there is likely to be an adverse cumulative effect of a number of events being promoted in the one area at the same time or within a limited time period.

This would enable the Planning Authority to monitor the activities of any individual promoters and hopefully control the extent of such signage an mitigate same in the interest of the protection of the amenity of the area. This council’s policies for advertising and signage can be viewed at the following location:


S.5 declarations
This authority recognises the difficulties which may arise in relation to section 5 references. This authority is satisfied that the local authority is an appropriate authority to deal with such issues. However, it recognises that difficulties which may arise where the rights of a third party are concerned. This authority considers that it would be more appropriate that the applicant for a section 5 declaration make his application known to the general public so that they are given the opportunity to participate in the consideration of the matter and if necessary where they are in disagreement with the decision of the Planning authority to make an appeal to an Bord Pleanala. This would require some significant changes to the provisions of the act. Were the planning authority no longer a deciding authority, it would continue to receive requests as to whether or not it was of the opinion as to whether a matter constituted development and whether such development were exempt or not. The formal process through the section 5 declaration is, in the opinion of this authority, the most appropriate mechanism to provide such advise.

S.247 consultations
This authority handles a number of pre-planning consultations during the course of the year. Not all of these result in a meeting being arranged between the Planning department and the potential applicant. The guidelines should make separate provisions in relation to advise which is communicated at a meeting and that which is provided in other forms [ e-mail, post over the phone] this should also be reflected in the performance indicators as it inevitably takes longer to arrange meetings than it takes to deal with a matter by phone or correspondence.

This authority is of the opinion that pre-planning consultation should remain confidential during the period starting at the time of the consultation up to the point where a valid application has been lodged. At this point the advice proffered at the pre-planning should be available for public scrutiny. Any “commercially sensitive” material which is brought to the pre-planning meeting should be identified as such at that meeting and this should not be referred to in the written minutes of the meeting. The minutes should, however, indicate that commercially sensitive information, which will remain sensitive at the time of the application, had been presented at the pre-planning. Where an application is deemed invalid, both initially
or subsequently [e.g. invalidated due to on site notice issues] the preplanning should return to its ‘confidential’ status.

This Planning Authority is also of the opinion that any potential applicant cannot use the pre-planning service ad infinitum, continuing to seek alternative opinion as to that already provided. This can arise in cases where enforcement action has taken and the recipient of the enforcement may seek a further pre-planning meeting in an attempt to have court proceedings deferred further on the basis that a resolution is being sought. The Planning Authority should in such circumstances have the discretion to refuse to hold any further pre-planning in relation to a matter on which its advice has already been clearly expressed and / or on a matter that is the subject of an enforcement notice.

S.34 – permissions

The introduction of a mechanism for agreeing minor modifications to an existing permission without having to apply for permission is not considered appropriate – such a system is likely to spawn deviations from that permitted and inconsistencies in approach between local authorities. There is however, scope for allowing some flexibility within the Conditions where appropriate, e.g. The development shall comply with the following requirements unless otherwise agreed in writing with the planning authority prior to the commencement of the development. 1) ……. This however would need to be subject to caveats whereby the rights of third parties are vindicated and material changes which effect adjoin properties should not be allowed under such an approach.

The making of an application for modified plans is already provided for by way of a reduced fee mechanism. Perhaps the period of consideration of such revised plans could be foreshortened with the third parties have say 3 weeks within which they may make observations and 5 weeks for the planning authority to make its decision. Unless the changes were deemed material from the permission already granted, such submissions should be restricted to adjoining landowners and those who had made submissions on the original permission. No charge should apply to the latter for making such a submission. Where the changes were deemed to be material the full application process would apply.

Granting of permissions which materially contravene the development plan

This Planning Authority is satisfied that the current provisions are appropriate. Given that the decision on empowering the county manager to make the decision in such circumstances, is the same body who have the power to vary the development plan, this mechanism has many advantages. Firstly were the land re-zoned to facilitate a desirable development, there is no guarantee that that development will proceed and once zoned thither uses which meet the new zone’s land use matrix may be proposed by another promoter. Through the material contravention process, the desirable development is promoted and not readily ‘gazumped’ by an alternative. The decision is always appealable to An Bord Pleanala, and therefore the need to render such decisions, always appealable to the Bord is not considered appropriate. Perhaps the role should be vested in the minister as the Minister has the power to call in inappropriatezonings, which such a material contravention might be deemed. Where the decision is made to materially contravene the plan, the minister is notified in any event, so it his powers could be extended to call in the “material contravention were he / she to deem it inappropriate.

Verbal representations by elected members

The keeping of a written record on the planning file of all verbal representations by elected members on an application is considered appropriate by this authority and such representations should be available to the public as soon as practicable. The representation however should not
comment on the merits or de-merits of the application, but be simply a representation requesting to be advised of the outcome of the application and an acknowledgement of the members interest in the case. The making of a written submission, on a similar vein, by a representative without a fee is also considered appropriate. However, in order to benefit from the right to make observations on the merits and or demerits of the case or to be in a position to make an appeal, a representative should be required to make a normal submission together with the required fee. Were this not the case, constituents may prevail on the member to make such submissions on their behalf and so avoid having to pay for their own submission and to obtain a right to appeal. The 5 week time limit should apply in all such cases.

S.175, S.177AE and S.226 –
The provision of a facility to local authorities to engage in pre-application consultation with the Board in the case of Sec 175, 177AE and 226 is considered appropriate.

Other issues
The introduction of a mechanism for the attachment of conditions in the case of the granting of an extension of duration where a change in the County Development Plan or Government Guidelines or Legislation, determines that such, would be appropriate.
The introduction of a requirement to describe, in the public notices, the changes to an application where significant further information is requested. Also significant further information site notices should be coloured in order to highlight the change to the public.

The fees applicable to retention applications for developments where the development, as constructed *ab ignition*, has not been strictly developed in accordance with the permission granted and now needs to be regularised. This is causing considerable hard ship particularly in relation to dwellings. Where the retention application is based on triple fees based on the floor area being retained, rather than the triple flat fee for the dwelling unit, a mechanism whereby the fee would be triple that what would have applied, had they applied for modified plans prior to commencement, is consider to be a more appropriate mechanism.

Should you have any queries regarding the views expressed herein, or wish to explore these views further, please feel free to contact me.

Ciarán M Tracey
Senior Planner.

Tel: 00 535 (0)71 9620005 x 205
Fax: 00 353 (0)71 9621982
Web: www.leitrimcoco.ie