

**Observations of the Minister for Justice and Equality
on the Environmental Impact Assessment and
the Report of the Rapporteur on the Proposed Prison Development
at Rathmore Road, Cork City.**

These observations are laid before the Houses of the Oireachtas

Pursuant to section 26 (3) of the Prison Act 2007

7th June, 2013

Legislative framework

Part 4 of the Prisons Act 2007 sets out the procedure that may be applied for determining whether consent should be granted to larger prison developments.

The Act provides for a number of stages before the development can proceed. These include the preparation of an environmental impact assessment (EIA), and a public consultation process involving the appointment of a Rapporteur to receive written submissions and observations on the proposed development. The Rapporteur prepares a report identifying the main issues raised in submissions which is then submitted to the Minister.

To facilitate the Houses of the Oireachtas in considering the matter, the Minister must lay before each House a visual representation of the proposed development, details of its location, purpose and size, a copy of the EIA, and the results of the public consultation process in the form of the Rapporteur's report. He must also submit a draft resolution which, if adopted, gives approval for the development to proceed. This must be then confirmed by an Act of the Oireachtas.

The purpose of the Rapporteur's report is to identify those who have made submissions, identify the main issues raised, and to provide a summary of the submissions and observations received. There is no provision for the Rapporteur to comment on the validity or otherwise of submissions made nor is there any provision for him to make any recommendations. The Minister has to have regard to both the EIA and the Rapporteur's report in bringing forward the draft resolution seeking the consent of the Houses of the Oireachtas to the proposed development. In that context, and pursuant to section 26(3) of the Prisons Act, 2007, the Minister wishes to give his observations on the issues raised in the EIA and Rapporteur's report.

General Approach to the Development

Cork Prison is located in the north inner city area of Cork City. It was constructed as a military prison in the early 19th century as part of the British military infrastructure in Cork.

Following independence, the facility came under the control of the Irish army and was transferred in 1972 to the control of the Department of Justice for use as a civil prison. In July 1983, it became the committal prison for counties Cork, Kerry and Waterford and has remained so since then.

There are 153 cells in Cork Prison of which 138 are operational cells and the remainder are used for purposes such as close observation and separation of protection prisoners from the general prison population.. The cells range in size from 7.5 to 9.0 square metres and, in the view of the Inspector of Prisons, none are suitable for multiple occupancy. However, the prison has typically accommodated 270 or more prisoners – 80% more than its design capacity.

The cells also lack integral sanitation facilities requiring slopping out to be undertaken there. There is wholly insufficient recreation yard space and, due to inadequate work training facilities, Cork prison constantly struggles to provide a level of regime activity suitable to meet the needs of the prisoner population. The overall standard of accommodation is very poor.

The poor infrastructure, inadequate facilities and problems associated with overcrowding has been subject to ongoing criticism from the Council of Europe Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Inspector of Prisons and, more recently the Thornton Hall Review Group. That Group recommended urgent and critical intervention in relation to Cork Prison and expressed real concern about exposure to operational, reputational, legal and financial risk arising from the poor conditions and overcrowding problem there.

For reasons gone into in some detail in the EIA and particularly in the business case in support of the new Cork prison proposal, it is not considered viable to refurbish or replace the existing Cork prison facility. Accordingly, it is proposed to build a new facility.

The main purpose of the new prison facility is to replace the substandard prison accommodation in Cork and, in particular, to provide a modern prison facility designed on the principle of rehabilitation and resettlement.

The day to day design capacity for the new prison complex is approximately 275 spaces for prisoners based on double cell occupancy. The prison will have a peak accommodation capacity for 310 prisoners but that will only be reached in emergency type circumstances. All of the cells are of a size acceptable to the Inspector of Prisons for double occupancy and all will have integral toilets and showers. There will be much improved facilities for work training, education and rehabilitative programmes as well as a central stores and maintenance area.

A fundamental principle of the design and location of the prison on the site has been to minimise and mitigate the impact of the development. The EIA itself goes into considerable detail on the mitigation measures proposed to minimise adverse impact on local residents. Notwithstanding that, the public consultation process and the Rapporteur's report identified very specific concerns on the part particularly of local residents who, from the outset, have identified their major concern as being shadowing of properties by the prison buildings and, to a lesser extent, by the boundary wall of the prison. In so far as is practicable, further measures are being taken to address these concerns.

In particular, visually conditioned concrete will be used on the sections of the wall most visible to the public. It will be finished in Eco Cement and will have a very light colour of finish. In addition, the wall around the prison's horticultural area which is directly adjacent to 60 Errigal Heights will be at a height of 5.2 metres (TBC). It should be noted that a very significant portion of what will be the boundary wall of the new prison has been in place since 2000 and the proposed development will result in the extension of the walls length.

Amongst other matters identified as of concern to local residents is the perception that the prison will result in a security risk to the properties adjacent to it. The Irish Prison Service has however concluded that the new facility will assist in the elimination of anti-social behaviour in its vicinity and will, in fact, make the properties adjacent to it more secure. To address the concerns of those residents in the immediate vicinity of the proposed development, the Irish Prison Service will draw up a Good Neighbour policy which will provide a framework under which the concerns of local residents during the construction phase can be fully dealt with.

Issues referred to in the Report of the Rapporteur

While the Minister has reviewed all the issues referred to in the report of the Rapporteur, it is not practicable in a document such as this to provide a detailed response on every point. Nevertheless, this document seeks to give a concise response to the points identified.

Nearly all the main issues referred to in Part 1 of the Report are repeated in the detailed section in Part 2. To avoid duplication, these "main issues" are addressed as they appear in the detailed sections in Part 2 i.e. on a heading by heading basis following the format and numbering used.

1.1 Cork City Council stated that the EIA was deficient in its consideration of alternative sites and layouts, in the failure to provide a Masterplan and that it relied on inaccurate light studies and was also lacking in detail in terms of its assessment of visual impact of the development and it lacked detail in relation to construction noise. – The EIA was prepared by a professional

firm of consultants of the highest repute. It meets - and in many aspects - even exceeds all of the requirements for an EIA set down in the provisions of Part 4 of the Prisons Act, 2007.

1.2 A contributor asked that the objections of local residents be given every consideration –

The Irish Prison Service has fully considered all of the observations set out in the report of the Rapporteur which are addressed in this document.

1.3 EIA may not meet legal standards and an independent report should be prepared - The Prisons Act 2007 sets out the manner in which an EIA is to be prepared in relation to this development. The EIA is fully compliant with the provisions of the Act which states inter alia that the EIA is to be commissioned by the Director General of the Irish Prison Service.

1.4 and 1.5 Questions the EIA findings on the effect of the development on property values and visual appearance of the nearby properties. – There is no evidence that prison developments elsewhere have had any sustained negative effect on the value of nearby properties or their visual appearance.

1.6 Locals should be allowed to take measurements to ensure IPS measurements are accurate – The Minister is satisfied that all measurements used in the EIA are accurate. All drawings used in the EIA are to scale and the dimensions are clearly annotated on the drawings.

Consultation Process

1.7 A contributor recorded satisfaction with the competence of IPS officials at the public meetings – This is noted with appreciation.

1.8 6 weeks inadequate to make submissions to the Rapporteur, not enough consultation with residents – The period for making submissions to the Rapporteur is prescribed in law – Section 23(2) Prisons Act 2007 - and cannot be extended. The Irish Prison Service met with interested parties and the Minister is satisfied these meetings were sufficiently informative to enable any resident to make an informed submission to the Rapporteur.

1.9 A scale model of the prison should have been made available – The information required to be made available for consultation under the terms of the Prisons Act 2007 is quite specific and the requirements of the Act have been fully met.

1.10 Photomontages used in the EIA were deficient and biased - The photomontages were prepared to the highest standard by a specialist agency. The submitted views were selected to show the “worst case” scenario in terms of visibility from the public domain.

1.11 The IPS and contractor should communicate with residents during the construction phase – The IPS Project Manager will act as liaison officer and will set up a local consultation group to address any issues that arise during the works phase.

1.12 Saying the prison will be built on the car park of the existing prison is misleading – At all times, any drawings / representations of the site issued into the public domain clearly indicated that the entire of the site would be used for the construction of the new prison. The Irish Prison Service has acknowledged that on occasion, as a means of convenient shorthand, the intended site was sometimes described as the “car park of the existing prison”. The Minister is satisfied that there was no intention to misrepresent the scale of the development and no material misrepresentation occurred.

1.13 Residents were informed in the past that any development would be an extension to the existing prison and smaller in scale with no windows overlooking the nearby houses – No binding commitment on the future use of the site was ever given to residents or any other party at any time.

1.14 Unacceptable for IPS to advise that future developments in relation to the prison proposal will be advised through the media - The Prisons Act 2007 sets out the manner in which notice of the development is to be given. That requirement has been fully met.

1.15 Views of residents should be taken seriously and a petition against the prison has been drawn up and submitted – All of the observations made to the Rapporteur have been fully considered and, where practical, have been taken into account. The petition has been noted.

Planning History

1.16 A previous grant of planning permission from the City Council to the Prison was not complied with - The development in question was not proceeded with. The matter of the wall as constructed was never previously raised by the City Council at any time.

Matters pertaining to Cork City Development Plan 2009 – 2015 and the Glen Regeneration Project

2.1 Cork City Council state the proposal contravenes aspects of the City Development Plan particularly in relation to the height and scale of the development – The Cork City Development Plan permits institutional developments in residential areas. It is not accepted that this proposal materially contravenes the Cork City Development Plan.

2.2 Proposed development contravenes the spirit of the Glen Regeneration Project – The development of the site currently used in part as a car park for Cork Prison will bring a mostly vacant and unattractive site into productive use and further complete the development of the area in an orderly fashion.

2.3 Development will prolong disruption already suffered by residents during the Glen Regeneration Project and should be deferred - The Irish Prison Service in conjunction with the Cork City Council, Gardaí, the developer, and others will put in place a traffic management plan as part of a Construction Environment Management Plan to ensure minimal disruption to residents during the construction phase.

2.4 The site should be used for social needs purposes and the development can be appealed to An Bord Pleanála. – The site is the property of the Irish Prison Service and is not available to be used for social needs purposes. There is no appeal to An Bord Pleanála on any point as the development consent is being sought under Part 4 of the Prisons Act 2007 and not the under the Planning and Development Act 2000.

Matters pertaining to the selection process and the identification of Rathmore Road as a viable site:

3.1 to 3.7 Site is too small, development is too large for site, site selection determined by financial considerations and because prison staff not willing to move to a new location – The site is wholly adequate to carry the scale of the development. When completed, only 27% of the site's area will be built on. The observations on the reasons for selection of the site are entirely speculative. A myriad of factors influenced the choice of site and all were fully considered before a decision was taken to build at Rathmore Road.

Local Road Infrastructure

4.1 - 4.6 Concern expressed about adequacy of footpaths and roads in the vicinity of the development and noise and pollution arising from increased traffic movements – The IPS has committed to engaging with the City Council, Gardaí and others to devise a traffic management plan for the construction phase so as to ensure minimal vehicle movements are achieved and disruption is kept to an absolute minimum. There will be no hazardous increase in pollution as a result of the construction traffic. There will be no increase in vehicular or pedestrian traffic once the new prison is operational.

Health, Safety and Security Concerns of Local Residents

5.1 -5.5 Many residents expressed concerns about personal safety in the event of an escape from the prison, trespass on properties in an effort to get drugs into the prison grounds, the

absence of an escape alert system and an increase in anti-social behaviour – There will be no increased security risks for residents. In fact, the risk to residents will be reduced when the new prison is completed. The existing prison is the only closed one in the State that does not have a prison standard perimeter security wall. As the new prison will have such a wall and will also have an outer “cordon sanitaire” secured by a 2.5 metre fence, the risk of escape is significantly reduced. Escape from a closed prison is an exceptionally rare occurrence in Ireland.

The issue of throwing drugs or contraband into the prison from all perimeters was carefully considered in the design of the prison and informed the positioning of perimeter blocks, wall and building heights and distances of recreational yards from points outside the building.

Currently, the space between the boundaries of the houses surrounding the site and the boundary of the site itself is a “no man’s land” that is often used for anti-social behaviour including illegal dumping. That area will become the “cordon sanitaire” referred to above which will be constantly monitored by CCTV. It will be lit at night to a lesser level than public street lighting and will actually offer much enhanced security to the houses in question.

Environmental Issues – Noise, Air & Light Pollution

6.1 – 6.5 Some residents are concerned about light pollution from prison security lighting, noise from car parks, and annual reviews of emission levels - There will be no increase in emission levels - including air pollutants - as a result of building the new prison. Given that the heating, air management and other systems will be of the highest modern standards, there will actually be a reduction in emissions at the new prison. The IPS has a comprehensive Environmental Management policy in place and is committed to the highest standards of environmental care. It will comply fully with all relevant statutory requirements on emissions and will cooperate with any relevant authorities in measuring emissions as and when required.

Measures that will be taken to mitigate any light pollution include the use of low level lighting (below normal street lighting) and use of lighting cowl. With the exception of the low level lighting along the route of the “cordon sanitaire”, all security lighting will be directed inwards and away from houses in the area of the prison boundary. The lighting in the “cordon sanitaire” will be positioned so that it does not spill over into the nearby properties. Modern CCTV cameras can operate successfully at very low levels of ambient light and the perception of dazzlingly strong lights outside the perimeter wall is unfounded.

Flora

6.6 Appropriate measures must be taken to control Japanese Knotweed growing on the site - The EIS considered this issue fully and defines an appropriate methodology for dealing with any Japanese Knotweed on the site.

Concerns relating to Local Infrastructure & Services

6.7 – 6.12 Concerns that flooding will result from the prison being built on high ground, local water supply will be insufficient to meet increased demand, there will be pollution from sewage holding tanks and electricity supplies may not be able to deal with extra demand placed on it - Cork City Council have no objections in the area of either water supply or drainage subject to detailed conditions being agreed prior to commencement of the development. The IPS and the selected contractor will engage fully in discussions on drainage and water supply with the City Council at detailed design stage. With the exception of drinking water, the great bulk of the water to be used within the prison will be from storage tanks that will usually be replenished at night when demand in the city generally is at its lowest.

There will be no negative impact on electricity supply to local residents and businesses. It is projected that the new prison will have an electricity requirement of only 85% of the 2011 electricity usage in the existing facility. That significant reduction in demand is a reflection of the modern standards of insulation and energy conservation in the new development. The sewage facilities will be compliant with all current regulations.

Privacy Issues

7.1 - 7.2 Use of CCTV and overlooking from windows in the prison will impact on the privacy of local residents – CCTV will be controlled to ensure it is not used in a manner that will facilitate viewing into private property. All windows overlooking the exterior of the prison will be opaque.

7.3 -7.5 Concerns about loss of sunlight to rear gardens and resultant dampness in nearby houses – The EIA addresses the subject of overshadowing in considerable detail and concludes that there will be a comparatively slight impact in the case of most of the nearby houses. It did not find any basis for the serious consequences contemplated here.

7.6 – 7.9 Some observations to the effect that the buildings are too high and obtrusive, the boundary wall is too high and could result in nearby residents feeling hemmed in. - One of the critical aspects of the brief behind the design for the proposed development was to ensure that the building mass and roofscape had only minimal negative impact on the surrounding areas. The Minister is satisfied that that objective has been achieved to the greatest extent possible. The boundary wall is a standard height prison boundary wall no different from those at other urban prisons.

7.10 -7.11 The site for the new prison has traditionally been used by the travelling community to graze horses and it should now be left as green space and given to the local community - The use of the site by members of the travelling community for the grazing of horses is a trespass and an unauthorised use of the lands. It is not the responsibility of the IPS to provide recreational spaces for Cork City and the area is not zoned for open space use.

7.12 -7.13 Fears expressed that property values in the vicinity of the new prison will plummet, properties will become unsaleable, and it will not be possible to get tenants to accept housing in the vicinity - Experience with residential properties close to other prisons in the State would not suggest there are any letting or indeed sales difficulties associated with a prison as a neighbour because a prison quickly becomes part of the existing settled environment. Recent significant extensions to both Portlaoise and Midlands prisons did not give rise to similar fears amongst the urban communities immediately adjacent to them even though, in the case of the Midlands prison, the extension was on to a Greenfield site that is surrounded by housing.

Matters Pertaining to the Construction of the Prison

8.1 – 8.2 Concerns about noise from pneumatic drilling operations, adverse effects on nearby properties from vibrations – In order to mitigate noise pollution, the boundary wall is to be constructed before the prison construction begins. The wall is, in effect, a bespoke sound barrier and, in addition, the IPS will undertake localised shrouding if the need arises. The EIA adequately addresses the issue of noise during the construction phase and confirms that extensive noise and vibration monitoring will be undertaken during the construction phase. This matter will also be addressed in the Construction Environmental Management Plan.

8.3 -8.4 – Roads infrastructure is inadequate for the construction phase and there will be traffic noise pollution – These points have been addressed earlier.

8.5 There will be adverse health impact on persons with medical ailments – particularly chest ailments caused by dust and grit from construction works - There is no evidence made available to support the concern expressed here. However, the prison wall will be constructed first (before the construction of the prison buildings commences) and it will create a dust barrier to entrap much of the dust and grit thrown up on the site. Damping down of dust will also be undertaken as required.

8.6 – Potential damage to water and gas mains and disturbance of vermin on the site during the works – Water and gas mains are clearly mapped and will be fully protected at all stages of the project. An extensive professional programme of vermin eradication will be undertaken in the weeks immediately before the commencement of the works.

8.7 No clear security strategy in place for the construction phase - The Minister is satisfied that a comprehensive security protocol to protect the site and immediate environs has been drafted.

8.8 – 8.9 A Community Benefits Clause should be included in the contract and the contract should stipulate the use of local employment during construction – The Minister is supportive of promoting local employment and preferential apprenticeships on site. This will be the subject of negotiations between the Irish Prison Service and the construction contractor.

8.10 The Prison Service should give something to the local community and especially provide funding for the local schools (St. Brendan's and St. Mark's) – The Irish Prison Service will consider making a limited contribution to the schools in question.

General Comments on Cork Prison

9.1 – 9.2 General welcome for the proposed development but some concern that it may not have adequate capacity. - The Minister appreciates the support for the development and is satisfied that the planned capacity of 275 prisoners is adequate for the needs of the prison's catchment area.

9.3 A submission claims that the reason for building the new prison is to correct a breach of a European Directive and to avoid fines – The Minister has no knowledge of any contravention of a European Directive that has had any bearing on the decision to provide a modern, safe and secure detention facility in Cork.