

Observations of the Minister for Justice, Equality and Law Reform
on the Environmental Impact Assessment and
the Report of the Rapporteur on the Proposed Prison Development
at Thornton Hall.

These observations are laid before the Houses of the Oireachtas
pursuant to section 26 (3) of the Prisons Act 2007
14 May 2008

Legislative framework

The Prisons Act 2007 sets out a special procedure that may be applied for the purpose of determining whether consent should be granted to larger prison developments. Prior to the Prisons Act 2007, the procedure for all prison developments was determined in accordance with Part 9 of the Planning and Development Regulations 2001. Under those Regulations the Minister of the day was effectively the deciding authority for planning matters for prisons and until the enactment of the Planning and Development (Strategic Infrastructure) Act, 2006 there was no statutory provision for an environmental impact assessment for a prison development.

The purpose of the 2007 Act is to provide a special mechanism for major prison developments under which an environmental impact assessment (EIA) meeting EC standards must be prepared and where the Houses of Oireachtas make the decision whether or not to grant development consent. To facilitate the Houses of the Oireachtas in their consideration of the matter, the Minister must, inter alia, lay before the Houses visual representations of the proposed development, details of its location, purpose and size, a copy of the EIA, the results of the public consultation process in the form of the report of the Rapporteur. He must also submit a draft resolution which if adopted in effect gives "planning permission" or consent for the development to proceed and this must be then confirmed by a Bill.

Section 23 of the Prisons Act makes it clear that the purpose of the report of the Rapporteur 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 had 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 for the information of both Houses he wishes to give his observations on the issues raised in the EIA and Rapporteur's report. This document therefore sets out his observations pursuant to section 26 (3) of the Prisons Act 2007.

General Approach to the development

The EIA goes into considerable detail on various aspects of the proposed development, but it may be useful to give a brief account of how the development came about. The Mountjoy prison complex has a total bed capacity for 934 persons across 4 institutions. The biggest of these institutions is the Mountjoy Male Prison and both the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) and the former Inspector of Prisons and Places of Detention have consistently and trenchantly criticised the conditions there. For reasons gone into in some detail in the EIA, it is not viable to refurbish or replace the facility on the Mountjoy site and for that reason it was decided to build a new facility on a greenfield site. The site eventually chosen was at Thornton Hall. The siting of a new prison is always a sensitive matter and it is not the purpose of this document to re-open that debate. However the size and location of the site offered a significant opportunity for the Irish Prison Service to design a purpose built, regimes oriented complex incorporating best practice based both on the experience gained here but also elsewhere in Europe. There will be a double benefit with the provision of better facilities for prisoners and prison staff in a more cost effective environment.

The main purpose of the new prison facility is to replace the substandard prison accommodation in Mountjoy and, in particular, to provide for in-cell sanitation doing away with "slopping out". Obviously as far as capacity is concerned the design must be future proofed. Existing capacity is already under strain, for example on 1 May 2008 there were 992 prisoners in custody in the Mountjoy complex which has a total bed capacity of 934. Irish Prison Service projections 2005-2015 suggest an increase in capacity is required even on the assumption that there is no significant increase in committal rates and that our ratio of prisoners per 100,000 head of population actually decreases. The design capacity for the new prison complex is approximately 1,400 spaces for prisoners based on single cell occupancy. It is not however one super sized prison building, rather there will be eight individual, practically self contained, accommodation blocks with differing security levels and will range from the largest which has 192 cells to "house and apartment" style accommodation. There will be facilities for work training, education and rehabilitative programmes as well as a central stores and maintenance area. (For the purpose of assessing its potential impact on the environment, the EIA assessed it on the basis of a maximum possible prisoner population of 2,200.)

Any large scale development, whether it be a prison or housing estate will affect those living in the immediate proximity of the site and therefore some impact is likely. It is clear from the EIA that the overall environmental impact is not significant from a national or regional perspective but it is also true to say that a number of individual residents, particularly those adjoining the main site will be affected to a significant degree. Considerable efforts have been made to minimise and mitigate the impact of the development. For example there is extensive use of tree screening and except for one building (the control centre) all the buildings are of two stories or less. The EIA itself goes into considerable detail on the mitigation measures proposed to minimise impact both during the construction and operational phase. Notwithstanding

that, the public consultation process and the Rapporteur's report identified very specific concerns and further measures are being taken to address these concerns.

In particular the existing planting area which is 10 metres in depth and runs around the outer boundary will be increased in key areas by extending it by another 4 to 10 metres in depth and planting a number of mature trees to greatly enhance the screening effect for those residences adjoining the main site. This will require the main security wall to be moved further back from the boundary in some areas. 3 metre timber fencing will be installed around the car parks on the west side of the site, the parking level lowered and light fixtures will be kept below the height of the fence to ensure that the noise and light impact on adjoining residences is minimised. Visually conditioned concrete will also be used on the sections of the wall most visible to the public.

From the outset, the major concern of the local residents has related to the possible use of the R130 road (a secondary route) as the main access route to the new development. The relevant section of the R130 is a straight stretch of approximately 1.5 kms in length. It passes by a local national school. While technically the R130 could support the traffic required for the development, there were concerns expressed about the implications for the safety of local schoolchildren and its impact on the local community particularly during the construction phase. In direct response to these concerns and in an effort to minimise the impact of the development on the local community, additional lands were purchased to allow a dedicated access road to be provided running from the former N2 main road (now the R135) direct to the main facility. It had been intended to use the R130 in the very initial phase to allow this new access route to be completed as quickly as possible. Once the new access route has been constructed (complete with underpass) all traffic to the development would use it and there would be no need to avail of the R130. In the light of submissions received by the Rapporteur it has now been decided that the construction of this new access route should be prioritised and that no heavy construction vehicles will be allowed use the R130 road through Coolquay even during the construction of this new access route. This in recognition of the fact that there were genuine concerns locally about heavy construction traffic passing a school even if it was only for a limited period.

There was also some concerns expressed about certain emergency exits being used by service and delivery vehicles and this is also addressed in the draft Resolution by ensuring that the emergency exits will never be used for deliveries or service vehicles.

These are the main new issues addressed by the Resolution in response to the concerns raised during the public consultation period. The Irish Prison Service has drawn up a Good Neighbour Mission Statement and Operational Implementation Plan which addresses a wide range of concerns raised by local residents and that is being made available.

Issues referred to in the Report of the Rapporteur

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 does seek 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 therefore these "main issues" are addressed as they appear in the detailed sections in Part 2. They are addressed on a heading by heading basis following the format and numbering used in Part 2 of the report of the Rapporteur.

There is one exception, reference is made in Part 1 to the Central Mental Hospital and the Forensic Science Laboratory but these are not elaborated upon in Part 2. Both matters fall outside the scope of Part 4 of the Prisons Act 2007. A site has been set aside for the possible construction of a new Central Mental Hospital. That project is a matter for the Health Service Executive and the Department of Health and Children. It is understood that no concrete plans have as yet been drawn up and that any proposal would be subject to the normal requirements to obtain planning permission. Similarly consideration is being given to constructing a new Forensic Science Laboratory in the vicinity but no concrete plans have been finalised and it would be subject to a separate planning procedure.

- 1.1 ***Independence of the EIA*** - The EIA was prepared by a professional firm of international repute, meeting the requirements of the Prisons Act 2007. Standard practice is for the developer to produce the EIA.
- 1.2 ***Compliance with standards and legislation*** - The Minister is satisfied that the EIA fully meets the statutory requirements.
- 1.3 - 1.6 ***Public Consultation*** - The Irish Prison Service met with local groups on a number of occasions and in addition the former Minister met with local groups twice. Newsletters were distributed and people were free to make observations or comments. A Good Neighbour Mission Statement and Operational Implementation Plan is being prepared by the Irish Prison Service. These provide for liaison arrangements to be put in place with the local community both for the construction and operational aspects of the development. The EIA follows the statutory formula for consultees. The Prisons Act 2007 sets out the arrangements for public consultation following publication of the EIA and allows a 6 week period for submissions to be made and these arrangements are considered adequate.
- 1.7 - 1.9 ***Scope*** - The Minister is satisfied that the EIA scoping exercise was extensive. The visual, noise and air impacts of nearly 100 receptors covering key areas was included. The pump station for foul sewage is not covered by development consent procedure in Part 4 of the Prisons Act 2007 and is being addressed by Fingal

County Council through a separate process. Extensive traffic surveys were used to model traffic impacts. Other possible developments require separate planning (and environmental impact assessment where appropriate) if they were to proceed but in any event the potential cumulative effects on traffic etc are addressed in general in section 18.3.2 of the EIA.

- 1.10 - 1.11 **Quality of Publication** - A printed and CD version of the EIA were made available. There may be a small number of typographical errors but nothing of substance. It is not accepted that the photo-montages are inadequate. There was only one inquiry as to the availability of an Irish language version of the EIA on the last day for making submissions and there is no special statutory requirement to produce an Irish version. The EIA is not flawed or disingenuous.
- 2.1 **Fingal Development Plan** - A development under Part 4 of the Prisons Act 2007 does not fall within the local authority planning process including the Development Plan.
- 2.2 - 2.4 **Breaches of Relevant Legislation** - Section 28 of the Prisons Act 2007 exempts a development under Part 4 from a number of statutes including the Planning and Development Regulations. The High Court (Kavanagh v Ireland and others 31 July 2007) has ruled that the development is not in conflict with the requirements of Directive 2001/42/EC or Directive 85/337/EEC. Over 30 sites were assessed under an objective marking matrix and cost was neither the sole nor primary consideration. The selection process was examined in detail by the Comptroller and Auditor General and the Public Accounts Committee. The tree planting on the site is in full compliance with all legal requirements.
- 2.5 **EPA Guidelines** - It is not accepted that the site selection process was in breach of any statutory requirement or that the relevant section of the EIA is incomplete.
- 2.6 **Independence of the Minister** - The deciding authority under Part 4 of the Prisons Act 2007 is the Oireachtas not the Minister.
- 3.1 - 3.3 **Selection of Site** - As explained in the section above dealing with the legislative framework, there was already a special planning procedure for prison developments under Part 9 of the Planning and Development Regulations 2001 under which the development at Thornton Hall could have proceeded. The provisions introduced by the Prisons Act 2007 are, in fact, more transparent and onerous than previously provided for and make the Oireachtas not the Minister the deciding authority. The Minister rejects any allegations of impropriety in the site selection process. It was examined in detail by the Comptroller and Auditor General and the Public Accounts

Committee and there was no finding that the Department of Justice, Equality and Law Reform or the Irish Prison Service breached public procurement procedures in any way. Having considered all issues, the Minister is strongly of the view that proceeding with the development at Thornton Hall is the best possible option but it is a matter for the Oireachtas to decide.

- 4.1 - 4.2 ***Use of Road Network*** - As explained above in the section dealing with the General Approach to the Development, significant measures have been taken to address concerns about the use of road network. As regards the specific issues identified through the public consultation process, it has been decided that sole access to the development during both the construction and operational phase will be through a new dedicated access route from the R135 road (the former N2) so there will be little if any impact on the secondary roads in the area.
- 4.3 ***Use and Development of the R130 Specifically*** - The R130 is not going to be used as an access route during the construction or operational phase.
- 4.4 ***Construction of New Road*** - As a result of the public consultation process, it has been decided that sole access to the development during both the construction and operational phase will be via the new access route and the R130 will not be used as an access route. No heavy construction vehicles will be allowed use the R130. The construction of the underpass will cause temporary inconvenience but it will be limited as much as practicable. It is not considered feasible for safety, cost and environmental impact grounds to provide a direct link to the new N2.
- 4.5 ***Emergency Access Routes*** - The emergency access routes can only be used in the case of emergencies or emergency exercises when special traffic measures will be implemented. Delivery or service vehicles will not be allowed use emergency access routes.
- 5.1 ***Security, personal safety and privacy*** - The new development has been specifically designed to ensure a secure environment both along the perimeter as well as inside the development. The cordon sanitaire ensures that it is not feasible to try and launch drugs and other material over the perimeter wall to an area where prisoners have access. The most up to date security technology is being employed inside a series of security zones. Escapes from secure prisons in the State are extremely rare. Riot situations and hostage taking within the Irish Prison system are also extremely rare. High risk prisoners such as terrorists are detained in Portlaoise prison and there are no plans to move such prisoners to the new development at Thornton Hall. A new Garda station will be provided at Thornton Hall to provide an additional Garda presence in the locality. All visitors to the prison must register in advance and access to the facility will be through the new access route

from the R 135. Prisoner releases will be managed to minimise any risk to local residents. Security risks were addressed by the EIA (Section 6).

- 5.2 **Garda presence** - The construction and manning of a new Garda station at the site is being given priority. It is not envisaged that the existence of the prison facility will lead to any increase in Garda checkpoints inconveniencing residents.
- 5.3-5.5 **Security reviews** - A Good Neighbour Operational Implementation Plan which will address these concerns is being drawn up by the Irish Prison Service and will be finalised in consultation with local residents.
- 5.6 **Risk to children** - For the reasons explained above there is no reason to believe that the development itself will result in local residents being more exposed to drug dealing or discarded drug related paraphernalia.
- 5.7 **Dublin Airport** - Both the Irish Aviation Authority and the Dublin Airport Authority were consulted. The Dublin Airport Authority expressed no concerns while the Irish Aviation Authority pointed out that it may not be possible to establish an aviation prohibited area. (Prohibited areas do not apply to all existing secure prisons.)
- 6.1 **Impact of the development on the landscape** - The development will have a visual impact in the immediate vicinity but local topography as well as the design and mitigation measures being applied reduce that impact significantly.
- 6.2 **Noise and Light pollution** - The EIA addresses the impact of noise and light in detail. Further measures to mitigate the effect on those residents adjacent to the car park are provided for in the Resolution (3 metre high timber screening, lowering the level of parking and lowering the height of light fixtures.)
- 6.3-6.5 **Flooding** - The EIA addresses the question of flooding and measures are being taken, including the use of underground attenuation storage, to ensure that the development will not adversely affect local residents or other land owners.
- 6.6-6.7 **Flooding/Air pollution** - The pumping station and holding tanks being referred to are not being granted development consent under the draft Resolution. It is a separate development being progressed by Fingal County Council which is fully aware of local concerns and will address them under a separate planning/development consent procedure. The EIA addressed the question of emissions on the basis of a maximum potential prison population of 2,200. The Minister is satisfied that the emissions from the development will not be a significant source of air pollution but undertakes to ensure that levels are monitored on a regular basis.

- 6.8 **Waste Management and related issues** - The EIA addresses the question of waste management in detail. Extensive excavation of the site has not revealed any evidence of potentially hazardous waste.
- 6.9 **Flora and Fauna** - No protected species have been located on the site. As far as possible, existing hedgerows are being preserved and extensive new woodland is being planted.
- 6.10 **Archaeology** - There has been extensive and careful archaeological investigation of the site and nothing of significance has been discovered.
- 7.1-7.3 **Affect on individual properties** - Any development has the potential to impact on neighbouring premises and the EIA assesses the level of that impact. Additional measures to mitigate the effect on residences immediately adjacent to the development are being provided for in the Resolution including significantly enhancing the planted wood screening, the addition of large trees and mature planting, the use of timber fencing, lower light fixtures, lowered parking areas and the use of visually textured concrete on those areas of the wall most open to public view.
- 7.4 **Loss of development potential** - There are a wide variety of factors that affect the price of development land and it is impossible to forecast the longer term impact but the development may have both positive and negative effects on the potential for development of other land in the area.
- 7.5 **Buy out scheme** - There are no proposals to introduce a buy out scheme.
- 7.6 **Affect on local businesses** - The majority of local businesses should benefit from the development while others may be adversely affected. Every effort will be made to maintain power and other utilities and there is no risk to local water quality.
- 7.7 **Affect on local schools** - A liaison officer from the Irish Prison Service has been appointed and contact with the school established.
- 7.8 **Landscaping and screening the prison** - The draft Resolution provides for additional screening measures in response to concerns expressed including significantly enhancing the planted wood screening, the addition of large trees and mature planting, the use of timber fencing, and the use of visually textured concrete on those areas of the wall most open to public view. The use of berms was considered but rejected as it poses security problems for both the development as well as neighbours.

7.9-7.10 **Major disasters and hazards** - The EIA does address fire and fire safety (section 14.9). The gas supply is not considered to create any special hazard. As indicated above the question of effluent holding tanks is a matter for the Local Authority.

8.1-8.3 **Construction issues** - The draft Resolution requires a Construction Environmental Management Plan to be drawn up to minimise or eliminate all unnecessary temporary construction nuisances. Formal liaison arrangements with the local community will be put in place and these will be addressed in the Irish Prison Service Good Neighbour Operational Implementation Plan. The question of linking the local community and school to any new sewage system is a matter to be addressed by the Local Authority

8.4- 8.5 **Prison Wall** - The draft Resolution provides that priority be given to the construction of the relevant parts of the prison wall in conjunction with other work after the access route is in place. The draft Resolution also provides for large sections of the wall visible from outside to be finished in such a way as to mitigate its visual impact. For security reasons, it is not proposed to reduce the height of the perimeter wall but the draft Resolution provides for enhanced screening by widening the planted areas and by the inclusion of larger trees and mature planting. Normally only walls or structures of greater than 20 metres would adversely affect a potential wind farm. There is no engineering analysis available that suggests a 7.2m perimeter wall will have any adverse effect on wind energy facilities in the area.

8.6 **Architectural Conservation** - Thornton Hall and related buildings are being retained and fall outside the site of the proposed development.

8.7 **Operational issues pertaining to the prison** - These issues will be addressed in more detail in the Irish Prison Service Good Neighbour Operational Implementation Plan which will be finalised in consultation with the local community. Consideration will be given to the effect that the timing of shift changes may have on the local community. (Existing shift changes are normally at 08.00, 17.00 and 20.00.) All visitors to the prison must register in advance and bus drop off points will be within the overall site close to the visitors' centre. Prisoner releases will be managed to minimise any perceived risk to local residents.

8.8 **Compensating the community** - The Irish Prison Service prides itself on being a good neighbour and will actively engage in local community activities, encourage the utilisation of shared facilities in the Development for the use of the local community and will consider limited financial contributions to local community projects.

Matters pertaining to the prison system and welfare of prisoners

- 9.1 One of the main objectives of the development is to radically improve the accommodation and facilities for prisoners which will only be possible by the move from Mountjoy to the much larger site at Thornton Hall. It is recognised that access will be more inconvenient for some visitors particularly those dependent on public transport however it also has to be recognised the new site will be more accessible than Mountjoy for visitors from certain areas of Dublin. The provision of a dedicated bus service is intended to alleviate the problem for those dependent on public transport and a similar arrangement was used when Wheatfield prison was opened in 1985.
- 9.2 While it is desirable to reduce the number of people offending, there is also an immediate need to upgrade the existing prison infra structure and replace prisons built in the 19th century.
- 9.3 The planning process for the development was based on a detailed analysis of the need for prison places up to 2015. Existing imprisonment rates per 100,000 inhabitants are comparatively low by European and American standards and projections are based on the expectation that our existing low rate of imprisonment will continue. Alternatives to custody are being explored and indeed only a small proportion of the people who are convicted of offences receive a prison sentence.
- 9.4 The Dóchas Centre already suffers from overcrowding. On 1 May 2008 there were 111 prisoners in custody in the Dóchas Centre which has a bed capacity of 85. It cannot continue to cope with existing committals. The design of the new facility will build on the experience gained in the operation of the Dóchas Centre.
- 9.5 It is expected that new facilities for the detention of children will be available before the closure of St Patrick's Institution in the Mountjoy complex. However facilities are being planned for the development at Thornton Hall as a contingency. If these contingency facilities are required for a short period, the youths in question will be kept separate from adult offenders and will have access to better facilities than those available at St Patrick's Institution.
- 9.6 There will be greater opportunities for rehabilitative programmes at the new development than exist in Mountjoy prison and the improved security available will cut off many of the existing methods used to smuggle drugs into prisons.
- 9.7 The new development is specifically designed to significantly enhance the prospects of rehabilitating offenders and to reduce the potential for violence within prison.