



# Planning mess in Carlow

Despite malpractice and unlawfulness, Carlow planning boss merely shifted sideways. Minister Hogan decides against even appointing inspectors in national planning review

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FORMER LOUTH CO MANAGER, John Quinlivan, completed a report on planning irregularities in Carlow in November 2010. The report was commissioned after a Local Government Audit Service review of 2008 noted “corporate governance issues” related to the setting of levies including the settlement of a claim relating to a small parcel of land required for the eastern relief road around Carlow town for the extraordinary sum of more than €11 million. While the Irish Times’ story on the matter, was captioned “Report clears Council Planners”, reflecting the Council’s press release, in fact there was a catalogue of unlawful exceedance of delegated power, failure to enforce planning law, poor administration, failure to reply to complaints, sidelining of relevant planning personnel and bad morale. The Director of Planning had too much power over drawing up plans and met prospective planning applicants on his own and without taking notes.



**Aerial view of the 125 hectare quarry complex at Clonmelsh in Carlow operated by Dan Morrissey (Irl) Ltd. According to a February 2011 report by Carlow executive planner Arlene O'Connor, the following structures on the site have no planning permission: the asphalt plant, the biofuel facility, the ready-mix concrete plant, the block-making plant, the gravel washing facility, the offices, the waste-water treatment system and the electricity substation (see other pictures)**

Meanwhile a parallel review ordered a year ago by John Gormley, the then Minister for the Environment, into planning in seven local authorities including Carlow has, despite the empanelment of potential inspectors, been curtailed by Minister for the Environment, Phil Hogan. It is now, according to sources in the Department of the Environment, to be a mere 'internal review'. Phil Hogan told Village before the general election that such enquiries were 'spurious, mostly'.

Overall, Hogan has said he is anxious to improve accountability as part of wide-ranging reform of local government. Carlow is part of his constituency.

The Quinlivan report itself was ordered by Carlow county manager, Tom Barry, in mid 2010, after Barry received complaints from the public relating primarily to the planning function, which was, at the time, overseen by Seamus (aka Jimmy) O'Connor, then Director

for Planning.

But the Quinlivan report went wider: looking at property transactions and the council's operation in some depth. Early in his report, Quinlivan examined two land deals – one at Borris in south Carlow, and the other at Rathvilly in the north.

For Quinlivan, the first obstacle to unpicking what happened was poor file-management. "The files do not possess any direction from management on guidelines in relation to offers to be made for the land, what offers were made, who participated in the negotiations or why the offer at Borris reached the level it did". The monetary level of an offer in relation to the purchase and sale of assets "should be decided by the County Manager", according to Quinlivan.

But no real negotiation took place for either land purchase, and instead of initiating the process with a modest opening bid, council employees offered the value attributed to the land by estate agents in both cases: this sum "should not have been the minimum figure offered", Quinlivan concluded.

For the Borris purchase, the council didn't pay the expenses incurred by the seller but it did at Rathvilly. Local authorities only consider paying the expenses incurred by sellers in very exceptional circumstances, when the purchase constitutes a good deal for a council, according to Quinlivan - and these circumstances didn't arise at Rathvilly.

More generally, land transactions were often unsound: "reliance was placed on 'pieces of paper' and maps containing illegible handwritten notes purporting to transfer land ... which might not survive a legal test". Internal correspondence on the council's files "contradicted other [correspondence] being issued to the legal advisor". There was "ill-prepared documentation" both in respect of major contract works, and for "land assembly on which works were undertaken". Allied to this:

"Comprehensive appraisal of the costs and benefits of projects were few;  
All building blocks were not in place at commencement of contracts or works;  
There was no administrative or legal protection for various processes ... as borne out by documentation;  
Less that fully informative reports were prepared and considered; and  
An unimpressive file management and record-keeping system was in place".

"The Council was placed at risk" by the foregoing. Indeed, sloppy file-keeping and an inexplicable approach to correspondence from the public are identified throughout the report as recurring problems. Some files "were difficult to follow, being devoid of paper and information trails, unanswered correspondence [sic]

**“A parallel review ordered a year ago by John Gormley, the then Minister for the Environment, into planning in Carlow has not even got to the stage of the appointment of investigators.”**

and many displayed no administrative input". While files can genuinely be lost, sometimes "perhaps they get 'lost' due to being removed from offices", Quinlivan noted.

In other instances letters to the council weren't answered but Quinlivan "could not identify any good reason as to why replies, which had been promised, did not issue and explanations were not offered. In other cases where replies were issued, the brevity was worse than no reply".

Some staff were effectively precluded from doing their jobs, or, as the report puts it, were "placed in a position of non-involvement". Other staff hogged responsibility, or in Quinlivan's words, there was "excessive processing at director level", a conclusion aimed at then-Director for Planning, O'Connor. Quinlivan concluded that 'non-involvement' of employees arose by deliberate action because the accounts relayed to him by affected staff (in one-to-one meetings) were "too vivid to have any doubt" about this.

Within the planning section of Carlow County Council, Quinlivan found "the climate for good interpersonal relationships and initiatives, generally, is poor". Again, within the planning section, particular difficulties arose in relation to default planning permissions. In the five years to 2010 there were 11 default planning permissions. If a council neglects to attend to a planning application within the time period the High Court can be asked to grant permission – which it typically does – and this becomes known as a default permission. Where a default arises there is no chance of appeal to national level, and so a local decision cannot be overturned. (More than 85 per cent of appeals of local council decisions taken by An Taisce are upheld at national level.)



Oil Plant...no permission



Other Plant...no permission

Student or trainee planners - engaged on a temporary basis - were blamed for the default planning permissions but should not have been, according to Quinlivan: "It is the responsibility of senior staff to have effective administrative systems in place that ensures Councils fulfil their obligations with regard to all legal requirements, including deadlines".

When planning permission is granted in the normal way conditions are attached to the development, one or more of which will specify the amount of money to be paid to the council in respect of water piping, sanitation and so on. Sometimes, without "satisfactory explanations", the sum of money requested on behalf of Carlow County Council was altered, "which was unacceptable", said Quinlivan.

Effective planning enforcement to ensure legislation is observed in practice "was not in place" in Carlow, Quinlivan said, and this was also unacceptable. It rendered the whole enforcement process questionable, and Quinlivan recommended that "prolonged consultation with those who breach the planning system must not take place".

Development plans and local area plans map out where development should and should not take place. Quinlivan found it surprising and unacceptable that management in Carlow allowed just one official, the Director of Planning, to prepare these plans. This practice "undermined staff and placed the individual in an exposed position of being 'judge and jury' of one's own work".

The Director of Planning had unaccompanied meetings with future planning applicants - again criticised as "an unacceptable practice", and for not recording notes of many such meetings, a breach of the law. Section 247 (5) of the Planning and Development Act 2000 provides, under penalties that extend to jail sentences, that: "The planning authority shall keep a record in writing of any consultations

under this section that relate to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any planning application in respect of the proposed development relates".

Quinlivan found that "over the years the planning directorate assumed unto itself a dominance and independence", and this led to "a perceived culture of leniency and inaction regarding compliance with, and application of, planning law".

Concluding that the management of the planning function "must change", Quinlivan recommended that the planning function be performed by the county manager. Amazingly however, up until April, Mr Seamus O'Connor was still stated to be the Director for Planning on Carlow Council's website, something which changed only after correspondence with Village Magazine.

The report also comes down heavily on Carlow County Council's failures to implement the law in relation to quarries. In fact the council's "supportive approach" to unauthorised quarries was highlighted as unacceptable, encouraging operators of illegal quarry to exploit the leniency shown. A raft of very prominent developments have no planning permission (see accompanying photographs).

The report contains over 100 recommendations. Some simply cross-reference earlier or later advice in the report, while other recommendations are very shortly stated, for example, "delegation order not to be exceeded", suggesting that personnel within the council exceeded the authority entrusted to them in the past.

Quinlivan told Carlow County Council to remedy past situations where correspondence was received but no replies have in fact been sent. Today the council's practice is to issue a reply within two weeks. The reply sent by the

County Manager to Village did not indicate past complaints are being dealt with.

Mr Séamus O'Connor remains on the same salary as before though with changed areas of responsibility. Since 1 January 2011 he has been Director for Housing, Recreation, Amenity and Special Projects, as well as town manager for Bagenalstown town council. County Manager Tom Barry told Village that he himself "has taken direct responsibility for the planning function". Given that Quinlivan found breaches of the law in respect of pre-planning meetings, Village asked if consideration was given to disciplinary procedures. Mr Barry replied saying "having considered the findings ... including those on pre-planning consultation, I no longer delegate the planning function", and that he considered "this to be the appropriate and necessary response to the findings".

Overall Quinlivan found no evidence that power was abused in return for personal gain, i.e. corruption. In media dispatches Carlow County Council claimed there was no "wrong-doing" but this understates what Quinlivan actually discovered in relation to pre-planning meetings. And while other irregularities and malpractices can't be said to be 'wrong' in the sense there is evidence of moral turpitude or ill-gotten personal gain, they are wholly wrong in needlessly exposing taxpayers to avoidable financial strain.

As Quinlivan stressed with regard to Carlow, there are a great many very committed people working within councils - but there are also times where swift and firm corrective action is needed. Having acted unlawfully in pre-planning discussions, the top planner employed in Carlow was merely 'shifted sideways'. If the Department of the Environment ever gets around to its much-heralded review it will be interesting to see if it addresses the issue of whether Carlow County Council has in fact "corrected its errors". ■