

MCCANN FITZGERALD

Knowledge Network

What was all the fuss about?
Planning and Development Act 2024

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Go Further





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Background and development of the 2024 Act

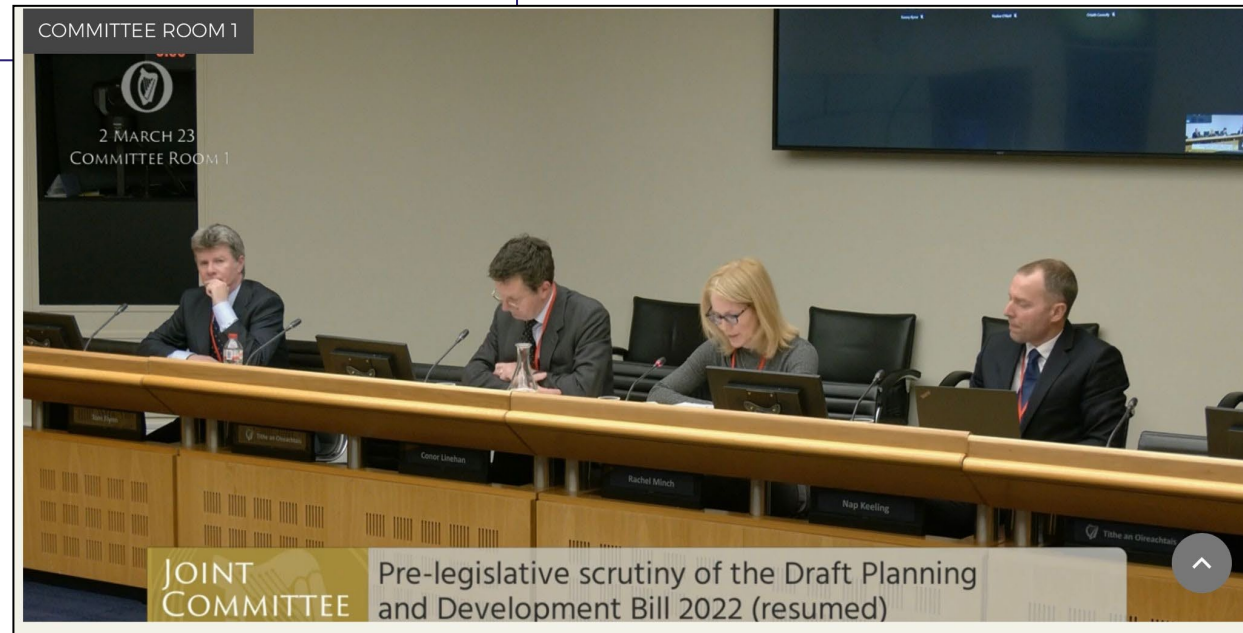
- **Three key drivers leading to the need to overhaul the legislative framework**
- **Since the introduction of the Planning and Development Act 2000:-**
 - **Hundreds of piecemeal amendments** made to Act, driven by changes in EU Law and decisions from the European Courts.
 - **Significant increase in the number of judicial review challenges** brought to decisions of An Bord Pleanála
 - **Significant delays in An Bord Pleanála**, large backlog of decisions to be made, and **corporate governance issues** within An Bord Pleanála



Politics

Planning process set for major review by Attorney General

Review aimed at streamlining process and speeding up delivery of key projects

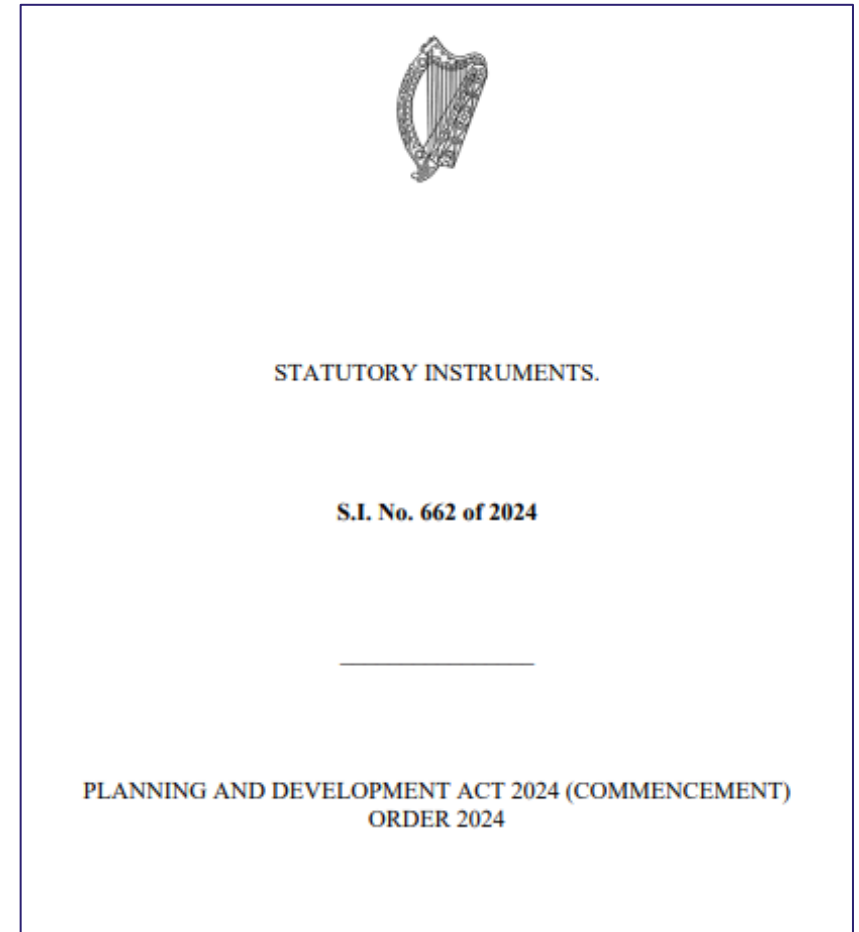


- 3rd longest piece of legislation in the history of the State.
- **However:-**
 - Very little has changed today - the 2000 Act continues to apply until repealed.
 - Section 6 of the Act provides that “**The Act of 2000 is repealed.**” This suggests that the 2000 Act would be repealed all at once, but in fact it can and will be repealed in sections.
 - In general, planning applications etc. commenced under the existing regime will be able to continue to completion under 2000 Act even after it is repealed.
 - Extensive regulations are also required. Current regulations running to over 700 pages to be replaced before large sections of the Act can operate.

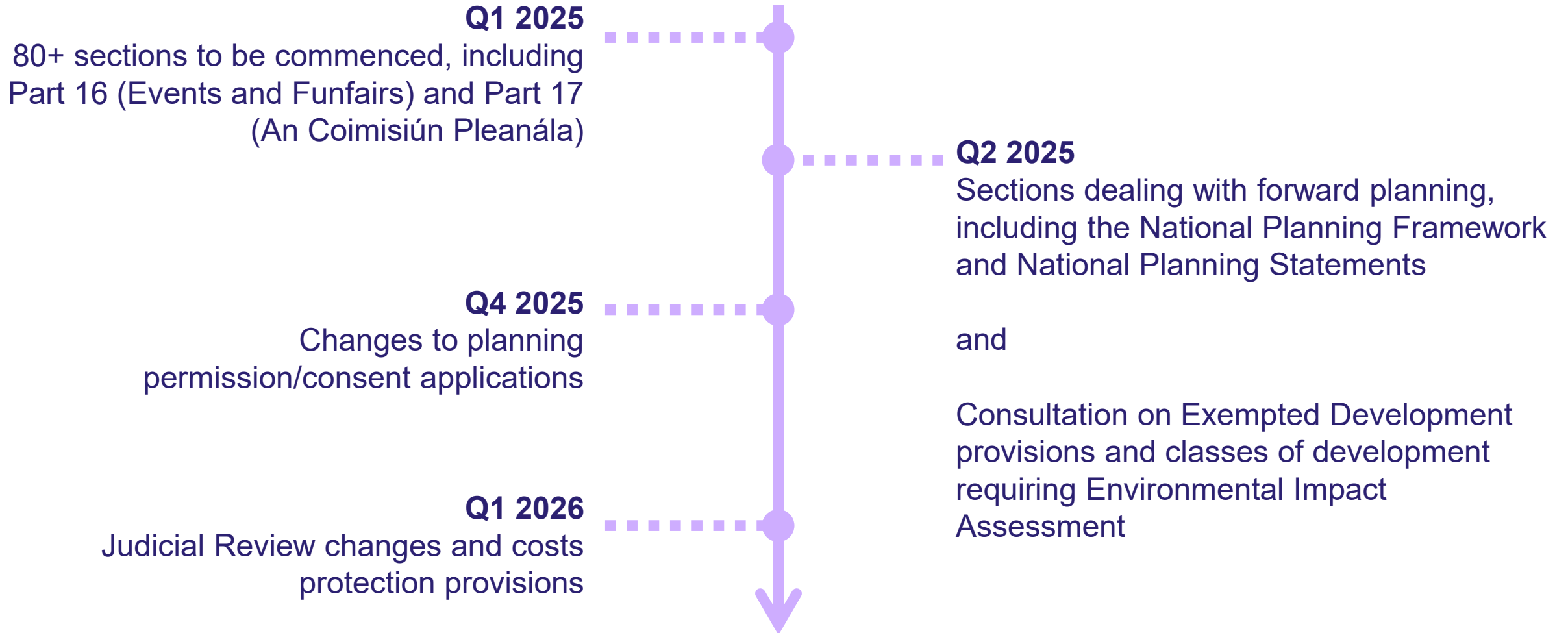
Next Steps – Commencement of the Act

Commenced to Date:

- **Part 25** – Commenced on Enactment
 - Extends the duration of rent controls in rent pressure zones into 2025.
- **First Commencement Order November 2024 – Sections 1-5 and Part 26**
 - Sections 1-5 of the Bill are general provisions relating to definitions, commencement, the power to make regulations, etc.
 - Part 26 provides for the establishment of Owners Management Companies by the Land Development Agency (LDA), and the acquisition of certain NAMA Assets by the LDA



Next Steps – Commencement of the Act



What has changed under the 2024 Act?



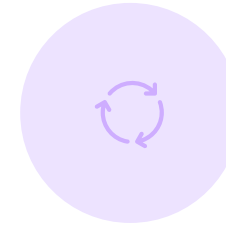
Examples of **issues that we are already looking at** for key clients



Re-structuring of An Bord Pleanála



Timeframes for Decision-making



Development Plans – 10 Year Cycle



National **Planning Policy** Statements/ Guidance



Alterations/ Extensions to Permissions



Judicial Review

Issues that have already arisen for key clients

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Changes to provisions relating to alterations to permissions/ approvals

Changes in relation to remittal of applications to the Board

Application of the new Judicial Review provisions to Road Projects

Changes to provisions relating to alterations to permissions/ approvals

- Under current regime, there is a simple process to seek amendments to road and rail approvals without needing to make a new application.
- For example, minor amendments to Luas Cross City Railway Order made in 2017
- Those provisions will be repealed, and the replacement provisions will not apply to road and rail projects, so any even minor change to for example a Luas approval will need a new Railway Order application process.



Remittal of applications to the Board/Commission

October 2022

2024 Act

Section 50A(9A) of the 2000 Act

Section 289 of the 2024 Act

*“If... the Court decides to quash a decision ... **the Court shall, if requested** by the applicant for permission or approval, **remit the matter** to the planning authority, the local authority or the Board, as may be appropriate, for reconsideration, ..., **unless the Court considers, having regard to the circumstances of the case, that it would not be lawful to do so.**”*

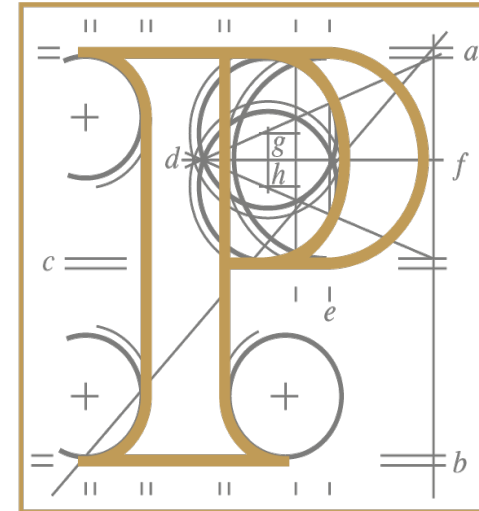
*“Where the High Court considers that a decision... ought to be quashed, it **may, where it considers it appropriate to do so** ... (b) **remit a matter** to the relevant body in light of its order...”*

Application of the new Judicial Review provisions to Road Projects

- Currently judicial review challenges to road approvals (such as for a BusConnects Scheme for example) are governed by exactly the same rules as any other planning JR challenge under the 2000 Act.
- However, the new JR provisions under the 2024 Act will once fully commenced, will only apply to challenges to decisions under the Act, not to decisions made under the Roads Act.
- Unless resolved, that creates a bizarre situation where different rules will apply to judicial review challenges to road approvals than to other planning judicial reviews.

Restructuring of An Bord Pleanála

- Re-named to **An Coimisiún Pleanála**
- Fundamental re-structuring of the organisation
- Separation of corporate governance/management functions from planning decisions



An *Coimisiún*
~~Bord~~
Pleanála

An Coimisiún Pleanála

Governing Executive

Governing Board
Between 5 and 9 Members
(incl. Chairperson)

Chief Executive Officer

Responsible for governance
and strategy

Planning Commissioners

Chief Planning Commissioner

Deputy Chief Planning
Commissioner

13 Ordinary Planning
Commissioners

Responsible for planning
decisions

Timelines under the new 2024 Act are similar to those set out in the 2000 Act

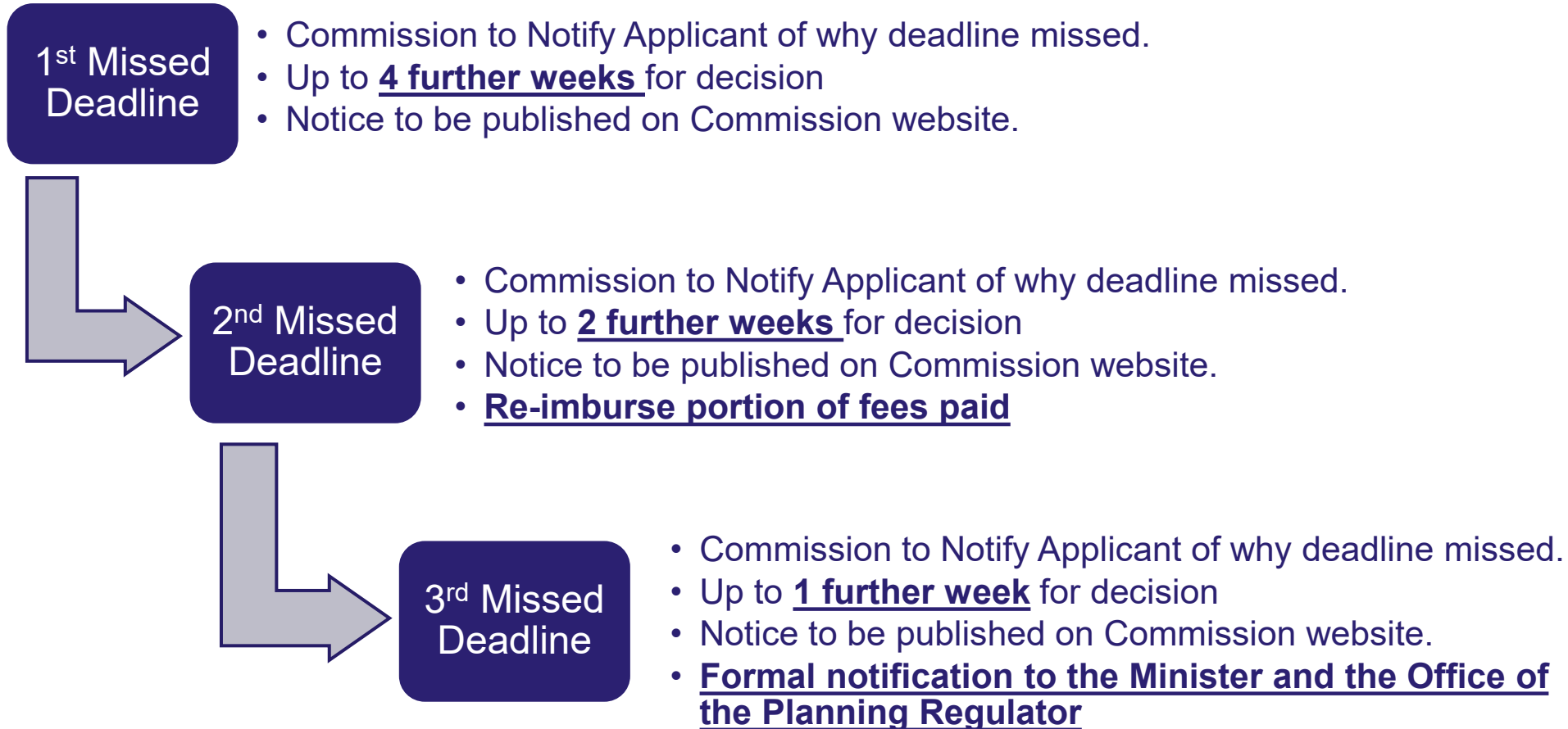
However:-

- Timelines for the Commission now mandatory (but with wiggle room)
- Greater accountability/transparency for delays by the Commission
- Greater consequences of delay by the Commission including fines/reimbursement of application fees

Some timelines vary depending on complexity of applications, and extensions/exemptions are possible similar to the existing provisions.



Example of how Appeal Timelines will Operate

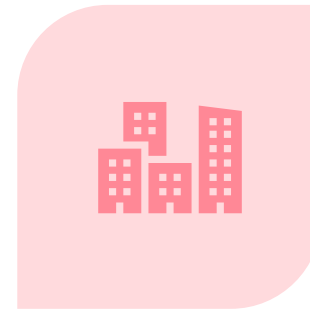




MOVING FROM A 6 YEAR TO 10
YEAR CYCLE TO ALIGN WITH
AVAILABILITY OF CENSUS DATA



REVIEW AFTER 5 YEARS



MORE AGILE LOCAL
IMPLEMENTATION (URBAN
AREA PLANS, COORDINATED
AREA PLANS)



NATIONAL PLANNING POLICY
STATEMENT/ GUIDANCE

“I wasn’t sad, I just needed:

- A 3 year legal case;
- 2 High Court judgments;
- A hearing before a 5-Judge Supreme Court;
- 5 separate but concurring judgments;
- Supreme Court judgment with no order as to costs.”

The screenshot shows a legal case timeline with the following events:

- Dec 15, 2021: SHD0026/21, TA29S.312218
- Jun 07, 2022: H.JR.2022.0000474
- Apr 18, 2023: [2023] IEHC 178
- Jun 30, 2023: [2023] IEHC 365
- Oct 13, 2023: [2023] IESCDet 118
- Jul 23, 2024: [2024] IESC 34 (O'Donnell C.J.), [2024] IESC 34 (Hogan J.), [2024] IESC 34 (Dunne J.), [2024] IESC 34 (Donnelly J.), [2024] IESC 34 (Collins J.)

Below the timeline, the text of a judgment is displayed:

[2024] IESC 34 (O'Donnell C.J.) July 23, 2024

John Conway
-v-
An Bord Pleanála, The Minister for Housing, Local Government and Heritage, Ireland, The Attorney General, and Silvermount Limited

Alterations/ Extensions to Existing Permission



Currently applications for extension made under section 42 of the Planning and Development Act 2000, as amended



New process for extensions/ alterations



Distinguishes between material and non-material amendments or alterations



Section 42 continues to apply for 3 years post passing of the 2024 Act



To avail of extension under 2024 Act:

must have commenced development and
must apply prior to expiration of permission

Table 3 - Cases completed in 2023: 94

Category	JR won	JR lost	JR conceded	JR withdrawn
SHD	4	5	14	11
Large housing	2	4	2	4
Housing single	1	0	2	2
Commercial	4	2	7	1
Telecom masts	3	0	4	1
Wind energy	1	0	3	2
Infrastructure	1	0	2	3
Quarry	2	0	0	2
Renewables	0	0	2	0
Vacant site	0	0	1	2
Total	18	11	37	28

- 2023: 86 JRs served on ABP
- 2015: 30 JRs
- Legal Fees 2023: €4.49million
- Legal Fees (Other Side) 2023: €6m
- Legal Fees 2015: €2.3million

Judicial Review

- Removal of leave stage – proceedings issued by motion on notice to other parties
- Any person with “*sufficient interest*” can take judicial review
- Attempts to impose strict rules for unincorporated bodies (generally residents groups) seeking to JR
- Companies who want to challenge will face greater restrictions if not participated in planning process
- No appeal to Court of Appeal possible
- S288 – new power for High Court to order correction rather than certiorari
- Suspension of duration of permission (s180(2))



- Environmental Costs Regime
 - Environmental legal aid scheme
 - Cost capping
- Prohibition on taking proceedings/ appeal for financial gain – section 588
- Withdrawal of objection/ JR must be accompanied by a declaration that the withdrawal is “*not for the purpose of securing the payment of any consideration to, or the doing of any other thing for the benefit of, any person.*”

Mandatory declaration by certain participants in planning process

- 588.** (1) A submission or observation under *Part 4* or *6* shall be accompanied by a declaration in such form as may be prescribed made by the person making the submission or observation stating that the submission or observation is not made for the purpose of—
- (a) delaying the carrying out of any development or proposed development, or
 - (b) securing the payment of any consideration to, or the doing of any other thing for the benefit of, any person.
- (2) An appeal to the Commission from a decision of a planning authority under *Part 4* shall be accompanied by a declaration in such form as may be prescribed made by the person bringing the appeal (except where the appeal is brought by the applicant for permission concerned) stating that the appeal is not brought for the purpose of—
- (a) delaying the carrying out of any development or proposed development, or
 - (b) securing the payment of any consideration to, or the doing of any other thing for the benefit of, any person.
- (3) A person who brings proceedings for judicial review of a grant of permission shall provide the High Court with a declaration in such form as may be prescribed made by the person stating that the proceedings are not brought for the purpose of—
- (a) delaying the carrying out of any development or proposed development, or
 - (b) securing the payment of any consideration to, or the doing of any other thing for the benefit of, any person.

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Such advice should always be taken before acting on any of the matters discussed.