



# Relate

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The journal of developments in social services, policy and legislation in Ireland

## Planning in Ireland

This issue of Relate gives an overview of the planning system in Ireland and outlines procedures for getting planning permission.

The planning system aims to facilitate sustainable social and economic development in line with national policies, and therefore encourage improvement in living standards and the environment for citizens.

Planning involves:

- Deciding the physical planning policy for each local authority area through the development plan process
- Controlling new development and building by granting or refusing permission for new works
- Dealing with planning appeals and enforcing decisions

### *Functions of local authorities and elected members*

Planning policy is made at a national level by the Department of Housing, Planning and Local Government but is carried out by the 31 county and city councils, also known as local authorities. They are referred to as planning authorities here when discussing their planning functions.

The functions of local government are divided between the reserved functions of elected representatives and the executive functions of chief executive officers (CEOs, formerly known as county managers) and staff. The reserved functions of elected members include policy, political and financial matters, whereas the executive is responsible for the day-to-day management of the local authority

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and implementing policy. Within the planning system, the elected members vote to adopt a development plan, whereas the executive is responsible for granting or refusing individual planning applications.

### ***Planning legislation***

Planning legislation is largely set out under the Local Government (Planning and Development) Act 1963 and European regulations incorporated into Irish law. It has been subsequently revised under the consolidated Planning and Development Acts 2000 to 2018. Prior to 1963, planning permission was seldom required to build or demolish buildings.

The Planning and Development Act 2000 (the Act) states that the purpose of the legislation is “to provide, in the interests of the common good, for proper planning and sustainable development”, though no definition of “sustainable” is given.

The principal regulations underpinning the Planning and Development Acts are the Planning and Development Regulations 2001 to 2018. These regulations are updated regularly to put legislative changes into effect or to update guidance to planning authorities.

### ***National Planning Framework***

The National Planning Framework (NPF) was published by the Government on 16 February 2018. It is a national framework that aims to ensure that, as the population grows, this growth is sustainable in economic, social and environmental terms.

With the population expected to grow by one million over the next three decades, the NPF seeks to disperse growth to regional cities and towns. Dublin will see 25% of the planned growth, with a further 50% of growth to occur in key regional centres, towns, villages and rural areas.

Unlike its predecessor, the National Spatial Strategy of 2002, the NPF has been incorporated into planning law and regulations that planning authorities must adhere to.

The Planning and Development (Amendment) Act 2018 also provides for a new independent Office of the Planning Regulator, which will be responsible for monitoring implementation of the NPF. The plan also proposes a new National Regeneration and Development Agency which will be responsible for managing State-owned lands. The National Development Plan 2018-2027 sets out the capital investment required to implement the NPF.

## **Spatial and economic planning**

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### **Regional planning guidelines**

Ireland has three regional assemblies - the Northern and Western Regional Assemblies, the Southern Regional Assemblies, and the Eastern and Midland Regional Assemblies. These regional assemblies have a range of functions in relation to spatial planning and economic development. They can make regional spatial and economic strategies and issue regional planning guidelines (RPGs).

The purpose of RPGs is to improve policy development and co-ordination across the region’s various State bodies. Objectives of RPGs include, for example, developing transport corridors and identifying ways in which medium-sized towns and rural areas may promote sustainable development. Under the National Planning Framework, RPGs will be replaced by regional spatial and economic strategies (RSEs), provided for under the Local Government Reform Act 2014.

Until recently, local authorities were only required to “have regard to” RPGs and were not required to comply rigidly with their recommendations. However, the Planning and Development (Amendment) Act 2018 imposes more stringent requirements on local authorities to ensure development plans adhere to national or regional spatial and economic policies and guidelines issued by the Minister for Housing, Planning and Local Government, for example, the Flood Risk Management Guidelines for Planning Authorities published in 2009.

### **Local and county development plans**

Local authorities use development plans as their main policy document in relation to planning. Development plans set out the overall core strategy and specific objectives for the proper planning and sustainable development of the entire functional area of the local authority. The plan consists of a written statement which sets out the policies for the county, and maps which indicate zonings for different types of development, for example, residential, industrial and amenities such as parks.

### ***Objectives of a development plan***

The development plan must set out:

- An overall core strategy for the proper planning and sustainable development of the area
- A written statement and development objectives for the area, including objectives on zoning and infrastructure

Section 10 of the Act sets out a list of objectives that the plan may contain and the First Schedule sets out some 43 other purposes for which planning authorities may set objectives in a draft plan, including the promotion of sustainable settlement and transportation strategies in rural and urban areas. Development plans must include an objective for protection of structures of special interest (see page 7 below). Planning authorities can also include objectives not listed in legislation, as long as these relate to the proper planning and sustainable development of the area.

### ***Timeframe for development plans***

Section 9 of the Act requires each local authority to make a development plan for its entire functional area every six years. The development plan should be consistent with national plans, policies or strategies prepared by the Minister, including RPGs and RSEs and the National Planning Framework.

Within four years of making a development plan, a planning authority must give notice that it intends to review the plan and prepare a new plan for the area. It must publish this notice in one or more newspapers circulating in the area.

### ***Public participation***

The planning authority must then begin a public consultation, inviting written submissions on what should be included in the draft plan. Within 16 weeks of the closing date of the public consultation, the local authority must prepare a report on the comments submitted and must recommend policies to include in the draft development plan. It must then prepare a draft plan and put it on public display for further public consultation. It may hold public meetings and oral hearings at this stage. When a draft development plan is on public display, anyone can submit a comment on any aspect of the plan.

For example, people might comment on proposed council road works or the zoning of new lands for residential development, or suggest placing additional dwellings on the Record of Protected Structures.

The elected members of the local authority then consider the draft plan and related submissions, and may accept or amend the draft. Any amendments at this stage go back on public display for a minimum of four weeks. The final consideration of the amendments to the draft plan must be completed within six weeks. There is a general requirement to finalise the plan within two years of starting the review process. The planning authority may change the plan at any time during the six-year period for a stated reason.

For instance, it may need to bring a plan into line with regional planning guidelines, a national housing strategy or development standards for new buildings.

Separate procedures exist for other variations and material contraventions of a development plan during the six-year period. An example of a material contravention would be proposing an industrial development for an area zoned for residential amenities.

### ***Part V and housing strategies***

Each planning authority must include a housing strategy in its development plan, as per Part V of the Act. This strategy must take into account the most recent assessment of social housing needs, as well as the existing and likely future housing needs of people from different income groups. A housing strategy must reserve up to 20% of lands zoned as residential for social and affordable housing. This percentage must be specified in the strategy.

Private developments of a certain size must include a contribution towards social and affordable housing. Smaller developments can claim an exemption from this requirement by applying to the local authority for an exemption certificate before submitting a planning application.

The Planning and Development (Amendment) Act 2002 changed the original legislation to give developers more flexibility with this requirement, for example, developers can provide sites, units or a specified sum of money to comply with this Part V requirement, with the agreement of the local authority.

### ***Local area plans***

Local authorities are also responsible for developing local area plans (LAP). A LAP is similar to a development plan, but it looks at a smaller area in a more detailed way. It identifies and analyses issues of relevance to the specific area, before setting out principles for its future development. A LAP must be made for any designated town with a population of over 5,000. LAPs can be reviewed or amended at any time, provided the planning authority follows the public consultation procedures set down in the planning acts.

### ***Planning permission***

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Planning permission must be obtained from the planning authority before development starts. A proposed development should be consistent with the policies and

objectives of the local development plan. Development is defined in the Planning and Development Acts as “the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.

Planning permission is also required where there is a material change of use (for example, a change from retail outlet to takeaway restaurant).

An application may be made for:

- Permission
- Outline permission – which gives permission in principle, but does not allow the applicant to carry out the works. These applications are often used to find out whether planning permission would be granted for a development.
- Permission following a grant of outline planning permission

An application can also be made through the standard application procedure for the retention of unauthorised development. However, this retrospective application is not valid if the development should have had an environmental impact assessment or other appropriate assessment and went ahead without getting an assessment.

## Planning register

Under Section 39 of the Act, planning permission granted for land passes to the new owner when the land changes hands. For this reason, each planning authority keeps a formal record of planning applications and decisions – called the planning register. The planning register must be available to the public, who can get copies of any entry for a fee. Local authorities usually keep a searchable planning register on their websites.

The Central Statistics Office collects planning statistics from local authorities. In 2017, permissions were granted for 6,268 new dwellings, 7,941 “other” developments, 7,437 extensions and 3,437 alterations and conversions. In recent years, the number of outline permission applications and decisions has dropped significantly as local development plans and associated legislation contain clearer guidance as to what developments are permissible.

## Rural one-off housing

The Sustainable Rural Housing Guidelines, published in 2005, set out recommendations for local authorities for rural housing. County development plans set out detailed policies for rural housing and rural development. The applicant’s personal circumstances can be taken into

account when considering an application for permission to build a one-off house outside of an urban or village settlement. A person in housing need is defined in of the guidelines as someone who is an intrinsic part of the rural community or is working full-time or part-time in rural areas.

## Sterilisation agreements

In areas of development pressure, the planning authorities may ask the applicant to sign a sterilisation agreement as a condition of planning permission. This agreement prevents an applicant from reselling their dwelling for a certain number of years.

## Pre-application consultations

It is not necessary to own a site to apply for planning permission. However, a full application for permission must show details of the applicant’s interest and include the written consent of the owner.

A person who has an interest in land and who intends to make a planning application may consult the planning authority about any proposed development in relation to the land, and the planning authority may give advice to that person regarding the proposed application. Local authorities are obliged to keep a record in writing of consultations that relate to a proposed development, including the names of those taking part in the consultations. This record is kept with the documents relating to that or any subsequent planning application.

## Exemptions from planning permission

Not all works require planning permission. Works exempt from requiring planning permission (known as *exempted development*) include:

- Agriculture and related rural development, including equine activities
- Minor works of maintenance and improvement, as long as the external appearance is not made inconsistent with neighbouring structures (except in the case of protected structures)
- Developments by a local authority (these have a different procedure set out in Part 8 of the Planning Regulations, see page 7 below)
- Railway works

## House extensions

House extensions may be exempt from planning permission, subject to the conditions set out in the

Planning Regulations. In general, to qualify for an exemption, the floor area of the extension must not exceed 40 square metres. If the house is detached, the floor area of any extension above ground level must not exceed 20 square metres, or 12 square metres in the case of semi-detached or terraced houses. Any extension above ground level must be at least two metres from any party boundary. The height of any such extension must not exceed the height of the eaves or parapet, as may be appropriate, of the main house.

Other works that are exempt include:

- Front porches – subject to conditions on height and roof type
- Garages
- Sheds
- Oil tanks
- Central heating system chimneys
- Satellite dishes – no greater than one metre diameter, and only one per house
- Small-scale renewable energy installations - subject to various conditions

Anyone seeking clarification on what is or is not development or exempted development may request a declaration from the relevant planning authority (a fee is payable).

## Timeframe and procedure

During the two weeks before making a planning application, the applicant must give notice of their intention to apply for planning permission in the local press and on the site. They must place a notice in a newspaper circulating in the area. Site notices must be located in a conspicuous position that is easily visible and legible to people using the adjoining public roads. The description of the development must be brief and clear. Site notices must remain in place for five weeks after the application is submitted and must be replaced if they fall down or become illegible.

## Content of a planning application

The content of a planning application is set out in Section 34 of the Act and Section 22 of the Planning Regulations 2001 to 2018. The application must consist of:

- Copies of a site map
- Plans
- Drawings and details of wastewater disposal arrangements

- Details of existing and proposed changes of use
- Copies of the site notice
- The appropriate fee

The planning authority may refer a planning application to prescribed authorities. Prescribed authorities are listed in the Planning Regulations and include, for example, An Taisce for applications relating to the built or natural heritage, or the National Roads Authority in the case of access to a national road.

## Decisions

The planning authority must make a decision on planning applications within eight weeks of receiving a valid application. It can decide to do one of the following:

- Grant permission without conditions
- Grant permission subject to conditions
- Refuse permission
- Request further information

A request for further information from the applicant must be made within eight weeks of receipt of the application. The applicant has six months to comply with this request for further information, but may extend this period for up to a further three months by agreement with the planning authority.

## Duration of a planning permission

Normally a planning permission is valid for five years. If works have not started within that period, the permission lapses. If work has started but is not finished, it may be possible to extend the duration of the permission for up to five more years provided:

- The development started within the original life of the permission
- Substantial works were carried out during this period, and
- The works will be completed within a reasonable time

A developer can only apply for such an extension once. There is no provision for updating any environmental impact assessment that accompanied the original planning application.

## Making a submission or observation on a planning application

Public participation is a key feature of the Irish planning system. Anyone can make an observation or submission relating to a planning application within the specified

timeframe, subject to a fee of €20. Submissions must be made in writing and include the name and address of the person making the submission. Some local authorities allow online submissions and payments. All submissions, whether on paper or online, are kept on the planning file and may be inspected by any member of the public during the opening hours of the planning office.

A third party (a concerned individual or organisation) wishing to appeal against the decision on the planning application must have made an observation in writing to the planning authority within five weeks of the application being lodged. The planning authority is obliged to consider these submissions in reaching its decision. For this reason, decisions cannot be made on any application until the five-week period has expired. Observers are entitled to be kept informed of the progress of the application and the planning authority must notify them of requests for further information, their decision and any appeal of a decision.

## Enforcement

Planning authorities may take enforcement action against an unauthorised development. An unauthorised development is one which is not exempted or which does not comply with planning permission and the conditions attached to it. In such cases, a planning authority can issue a warning letter or, if urgent action is required, serve an enforcement notice. Anyone who is served with the notice and fails to comply with its requirements is guilty of an offence and may be prosecuted in the District Court by the planning authority or on indictment by the Director of Public Prosecutions. A planning authority, or any other person, may apply to the High Court or Circuit Court for an injunction requiring someone to act, or cease to act, in any way the court considers necessary to prevent or cease unauthorised development.

## An Bord Pleanála and planning appeals

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Anyone can appeal a local planning authority decision to grant or refuse planning permission provided they have submitted observations to the planning authority on the application. Appeals can be "first party" (this means lodged by the applicant) or "third party" (by a concerned individual or organisation).

A planning appeal is made to An Bord Pleanála, whose remit and functions have expanded significantly in the past decade. The Board considers all appealed developments as

if the application had been made to it in the first instance, and its decision annuls that of the planning authority.

Unlike a planning authority, the Board can grant permission for a development that materially contravenes the development plan under certain conditions, for example, if it considers the development to be of strategic and national importance. The Board can also hold an oral hearing on the application, as it commonly does with strategic infrastructure or large developments.

### *Timeframe for appeals*

Appeals must be lodged within four weeks of the date on which the planning authority makes its decision and must contain the full grounds of the appeal. A person who is not a party to the appeal (that is, who made neither the application nor the appeal) may submit observations about the appeal to the Board within a period of four weeks beginning on the date the appeal is received. The Board appoints a planning inspector to prepare a report on the appeal and make recommendations, although it is not bound to follow the recommendations of the inspector. The Board's statutory objective is to determine appeals within 18 weeks, but this period may be extended in certain cases.

## Strategic infrastructure and development zones

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Under the Planning and Development (Strategic Infrastructure) Act 2006, applications for permission to carry out strategic infrastructure projects are now made directly to An Bord Pleanála, and bypass the local planning process. Strategic infrastructure means developments that are of strategic economic or social importance to the State or the region in which they will be located, or that contribute substantially to fulfilling the objectives of national plans, policies or strategies including RPGs and RSEs and the National Planning Framework. Examples include gas pipelines or terminals, high-voltage electricity transmission and flood-relief schemes.

The applicant must inform the public of their intention to make the application, and must keep the application available for inspection for at least six weeks. The Board has a special division to deal with such applications, and it has absolute discretion to grant permission for development that would materially contravene the development plan. There is no recognised basis for appeal against the Board's decision, although it can be subject to judicial review. Data centres over a certain size

have recently been reclassified as strategic infrastructure development.

### *Strategic development zones*

Under the Act, the Government may designate certain parcels of land as a strategic development zone (SDZ) for a fast track planning process where the development of those lands is considered to be of strategic importance. Examples of SDZs are Adamstown, Lucan, Co. Dublin and Clonmagadden Valley, Navan, Co. Meath.

## **Developments by a local authority**

Part 8 of the Planning Regulations 2001 sets out procedures for public notice and consultation about development by local authorities. Such developments include house building; the construction of roads, bridges or wastewater treatment works; and the use of land for waste disposal. Just like a private developer, the local authority must advertise its intention to develop in a newspaper circulating in the area and must erect a site notice. Prescribed authorities must be consulted, for example, the National Roads Authority, and plans made available to the public for at least six weeks. The CEO of the local authority makes a report on the submissions received. The elected members have six weeks from receiving the report to pass a resolution against the development, otherwise the development can proceed in accordance with the CEO's recommendation.

## **Conservation of the built heritage**

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Before 1999, planning legislation and guidance gave limited and weak protection to the built heritage. Following an extensive review and the completion of a national inventory of architectural heritage, new legislation and regulations with detailed guidance for local authorities were introduced. Guidelines under section 28 of the Act cover all aspects of the protection for architectural heritage under the planning code.

### **Protected structures**

To merit protected status, a structure must be of special interest in one or more of the following eight categories:

- Architectural
- Historical
- Archaeological
- Artistic
- Cultural

- Social
- Scientific
- Technical

It is mandatory for development plans to include an objective for the protection of all structures in these categories. This objective is known as the Record of Protected Structures (RPS) and forms part of the development plan. Adding to or deleting from an RPS is a reserved function (carried out by elected local authority members).

Any building or other object constructed on, in or under land can be designated as a protected structure. Designation automatically includes the interior of the structure, the land lying within its curtilage (the land immediately surrounding it), any other structures within that curtilage and their interiors. The extent of the curtilage is determined on a case-by-case basis.

Works to protected structures are only permitted if the works would not materially affect the character of the structure or any element of it which contributes to its special interest. This means that planning permission must be sought for any works to the interior or exterior, although such works would otherwise normally be exempted developments.

### *Declarations under Section 57*

Owners and occupiers may request a declaration under Section 57 of the Act as to the type of works that would or would not be considered to materially affect the character of the structure, if it is unclear whether work could proceed without permission – for example, window replacements.

### *Architectural conservation areas*

The preservation of the character of a place, area, group of structures or townscapes can be made an objective of a development plan. As with protected structures, exempted development rights are restricted, but only in respect of the exterior of the buildings.

### *Dereliction and failures of maintenance*

Owners and occupiers have a duty not to endanger protected structures or proposed protected structures. Planning authorities have the power to issue a notice to prevent a protected structure from becoming or continuing to be endangered, or to compulsorily purchase a protected structure. Limited grant aid is available from local authorities to help people carrying out conservation work to protected structures.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities

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## Conservation of the natural environment

The protection of the natural environment in Ireland has been driven largely by European law. EU Directives require that developments which would have a significant effect on the quality of the environment must go through additional assessment and licensing processes. For example, a waste incinerator or a major factory would normally require both planning permission and a licence from the Environmental Protection Agency.

### *Environmental impact assessment*

EU Directive 2011/92/EU requires an environmental impact assessment (EIA) to be carried out in respect of planning applications, appeals, strategic infrastructure consents and other developments which may significantly affect the environment. Planning authorities and An Bord Pleanála base their EIA on an environmental impact statement. This is a systematic examination of how development proposals are likely to affect people and the natural environment.

### *Strategic environmental assessment*

Strategic environmental assessment (SEA) is the formal and systematic evaluation of the likely significant effects on the environment of implementing a plan or programme, and takes place before a decision is made to proceed with the development. SEA is mandatory for every land-use plan and strategic development zone where the population is over 10,000, and for a local area plan where the population is over 5,000.

### *Appropriate assessment*

Appropriate assessment (AA) means the scientific investigation of the implications of a plan or project on one or more sites that are designated for protection of birds, other species or habitats under the EU Birds or Habitats Directives. Unlike SEA and EIA, AA is protective in purpose, rather than procedural. It assesses whether plans and projects will adversely affect the integrity of a protected site.

## Vacant and derelict sites

The Derelict Sites Act 1990 defines a derelict site as one which significantly detracts or is likely to detract to a material degree, from the amenity, character or appearance of the neighbourhood of the land in question because of its derelict, dangerous, neglected, unsightly or objectionable condition. Under the Act, local authorities must establish a register of derelict sites, and require owners of these sites to improve the condition of the property within a specified period. Local authorities have the power to compulsorily purchase a derelict site, and to impose a levy based on a percentage of the market value.

### *Vacant site levy*

The vacant site levy is designed to incentivise the development of vacant or dormant sites. The Urban Regeneration and Housing Act 2015 empowers local authorities to establish a register of vacant sites and impose a site levy where sites remain vacant. The local authority will apply the levy annually at a rate of 3% of the market valuation of the vacant site, rising to 7% in the second year if it remains vacant.

## Provisions for residential housing over commercial premises

The Planning and Development (Amendment) (No. 2) Regulations 2018 seek to encourage residential housing above commercial premises. The conversion of a commercial building to residential use may now be classed as exempted development under certain conditions. The provision is temporary until the end of 2021. Works to a ground-floor shop front must be consistent with the streetscape, and retail use on the ground floor must not be lost.

The information in *Relate* is intended as a general guide only and is not a legal interpretation