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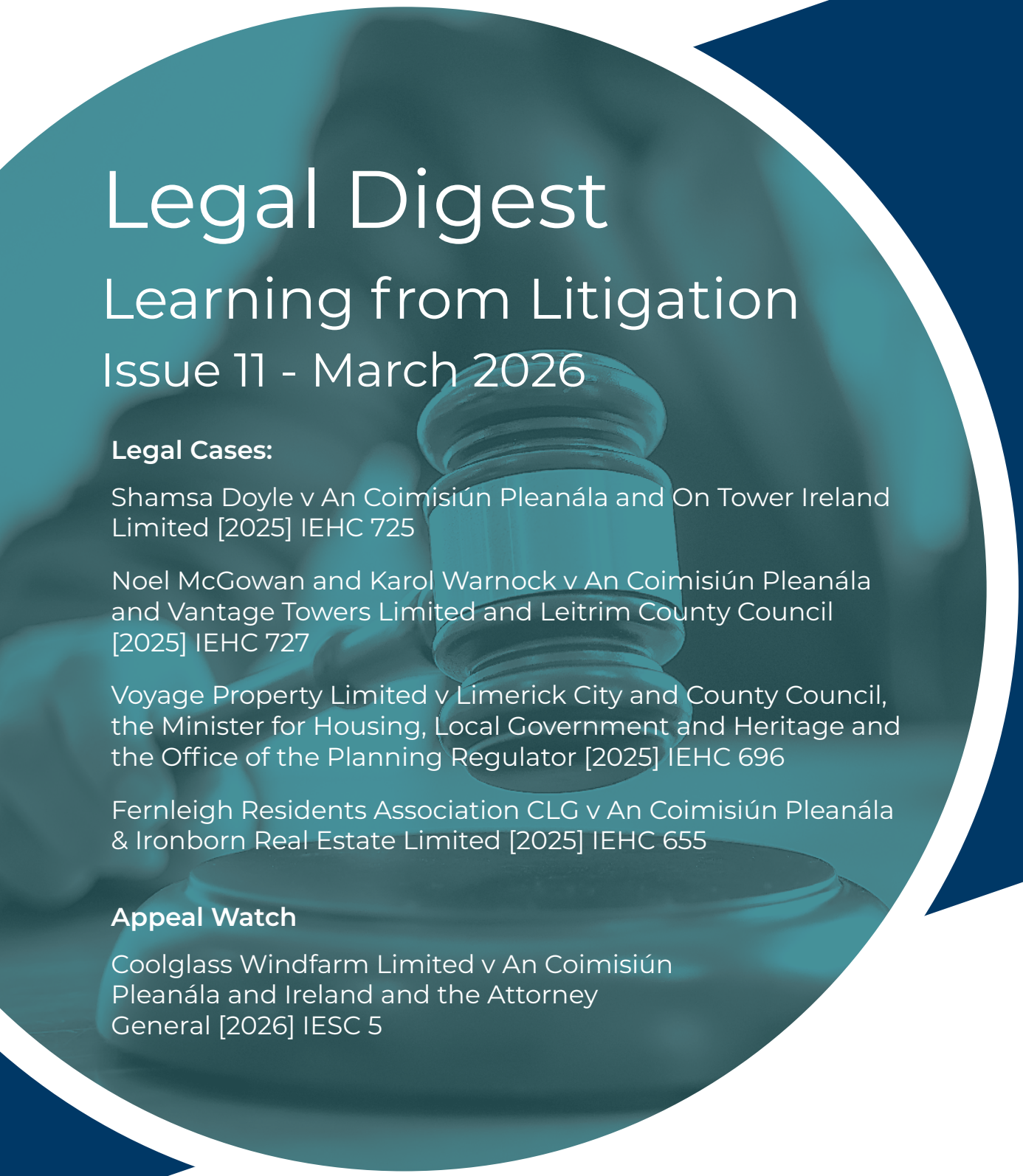

Legal Digest

Learning from Litigation

Issue 11 - March 2026

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Prepared by Fieldfisher for the Office of the Planning Regulator

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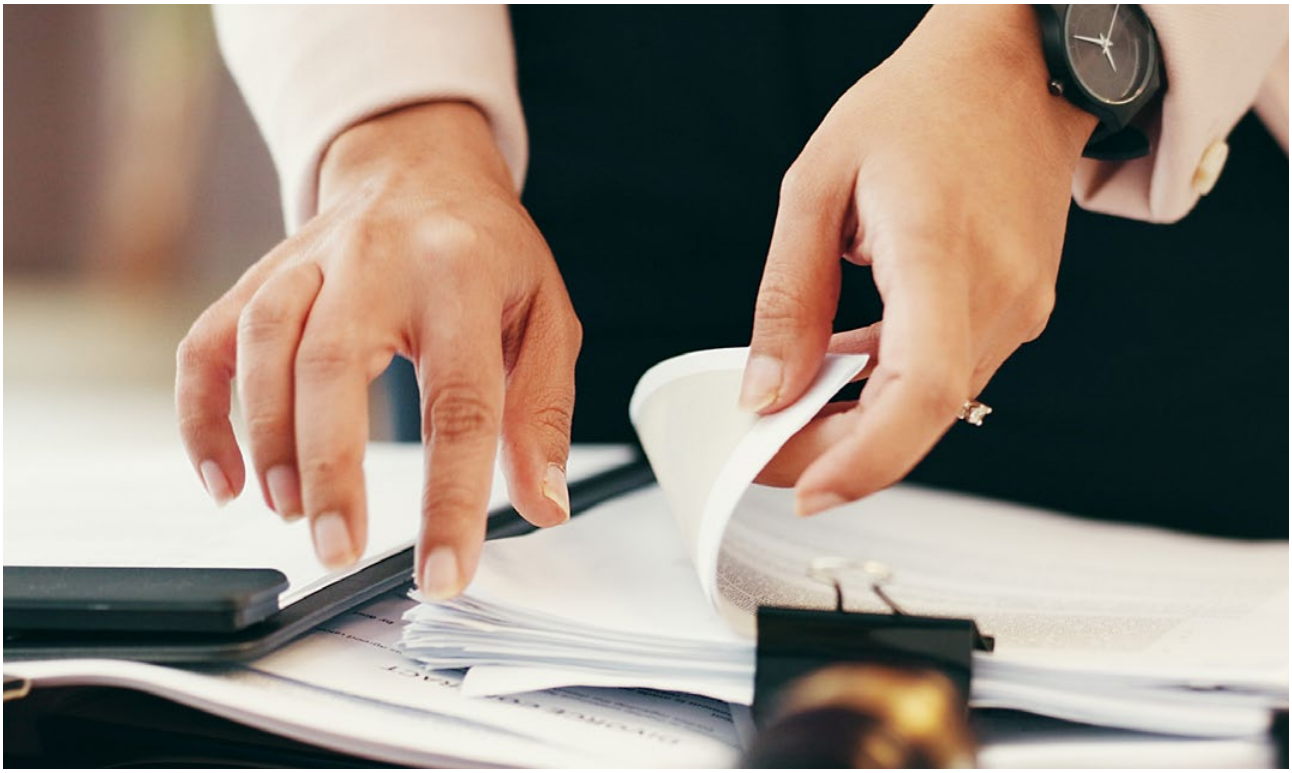
Introduction

The Office of the Planning Regulator (OPR) is pleased to present the eleventh edition of the *'Learning from Litigation'* bulletin. This bulletin has been prepared to highlight and disseminate key learnings from the continually evolving planning and environmental case law. It provides information on important precedents, court decisions and emerging trends with an overview of noteworthy planning cases.

The case selection for this edition of the bulletin was made following recommendations received from the Planning Law Bulletin Steering Group. This Group consists of nominees from the Law Society of Ireland's Environmental and Planning Law Committee, An Coimisiún Pleanála, the OPR legal services provider Fieldfisher LLP, the County and City Management Association and the OPR.

In the Appeal Watch section of this bulletin we feature a Supreme Court judgment in respect of a case that was included in Issue 8 of the bulletin.

Disclaimer: This document is for general guidance only. It cannot be relied upon as containing, or as a substitute for legal advice. Legal or other professional advice on specific issues may be required in any particular case and should always be sought before acting on any of the issues identified.



Shamsa Doyle v An Coimisiún Pleanála and On Tower Ireland Limited [2025] IEHC 725

Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

Case: Shamsa Doyle (the Applicant) **v An Coimisiún Pleanála** (the Respondent) **and On Tower Ireland Limited** (the Notice Party)

Date delivered: 17 December 2025

Citation: [2025] IEHC 725

Judge: Humphreys J.

This judgment of the High Court (the Court) concerned a decision of An Bord Pleanála (now An Coimisiún Pleanála, hereafter referred to as the Commission) to grant permission for On Tower Ireland Limited (the Developer) to erect a 21m high monopole telecommunications support structure carrying antennae, dishes and associated telecommunications equipment (the Proposed Development). The Proposed Development was to be located on a site within the curtilage of a protected structure at Laytown Railway Station, Laytown, Co. Meath (the Site).

Background

The Developer applied to Meath County Council (the Council) for permission for a 24m high monopole telecommunications support structure carrying antennae, dishes and associated telecommunications equipment in March 2023. The Council issued a decision to grant permission in July 2023, and a third party, Shamsa Doyle (the Applicant) appealed this decision to the Commission.

The Commission's Inspector recommended that permission be granted for the Proposed Development (the support structure was reduced from 24m to 21m as part of the Developer's appeal response) subject to conditions. In May 2024 the Commission granted permission (the Decision).

The Applicant sought to challenge the Decision by way of judicial review in July 2024 and a hearing took place before the Court on 19 November 2025.

Grounds of Challenge

The Applicant challenged the Decision on five grounds, summarised as follows:

1. The Decision was invalid as the application for permission was invalid because the plans and elevations submitted did not comply with Article 23 of the Planning and Development Regulations 2001 (the 2001 Regulations) which sets certain requirements for plans, drawings and maps accompanying a planning application.

2. The application for permission was invalid due to a failure to give adequate public notice contrary to the 2001 Regulations.

3. The Commission misinterpreted the Telecommunications, Antennae and Support Structures Guidelines for Planning Authorities, July 1996 and Circular Letter PL07/12 (together noted as the Telecommunications Guidelines) and as a result failed to determine the appeal in accordance with those guidelines as required by the Meath County Development Plan 2021-2027 (the Meath CDP).

4. The Commission failed to comply with Section 146(5) of the Planning and Development Act 2000 (the 2000 Act) by failing to place on its file page 2 or any subsequent page of its Environmental Impact Assessment (EIA) "Form 1, EIA Pre-Screening (EIA not submitted)."

5. The Commission erred in concluding that the Proposed Development did not fall within a class of development requiring Environmental Impact Assessment (EIA) for the purposes of the EIA Directive.

Ground 4 was withdrawn by the Applicant and so was not considered by the Court.

Ground 1: Lack of features on plans

This ground concerned the plans and elevations submitted with the application for permission.

Article 23(1)(a) of the 2001 Regulations sets certain scale and delineation requirements for site and layout plans. It also requires features including buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates to be shown on the site layout plans.

Article 23(1)(c) sets level or contour requirements for the site layout plans.

Article 23(1)(d) requires drawings of elevations of any proposed structure to show the main features of any contiguous buildings, and where the development would involve work to a protected (or proposed protected) structure, the main features of any buildings within the curtilage of the structure which would be materially affected by the proposed development must be shown.

The Applicant alleged that the plans and elevations submitted with the application for permission did not comply with these requirements.

The Court noted that for the purposes of enforcement it is important to have definite plans and particulars, but found that it was necessary to consider whether the plans and particulars in question gave rise to any real uncertainty.

The Court found that no particular breach had been identified or demonstrated in respect of features displayed on any site layout plans that could give rise to confusion on the issue of levels.

In terms of the main features of any buildings within the curtilage of the structure which would be materially affected by the development, the Court found that there was sufficient information on any visual impacts on the protected structure so any potential technical infirmity was not material.

The Court noted that the protected structures in question, being the stationmaster's house and buildings within its curtilage including the wooden railway building and possibly the railway station, were illustrated by photomontages. The Court determined therefore while there was an absence of further detail on the plans this was not significant, particularly where there were also reports on conservation from both the Council and the Developer.

The Court also noted that the concept of what is materially affected is evaluative and the Commission's satisfaction with the material provided was indicative of a conclusion that the protected structure would not be materially affected by the Proposed Development.

Ground 2: Lack of public notice

The Applicant alleged that adequate public notice of the application for permission was not given as a notice was not posted at all public entrances to the railway station as required. While there was a notice at the Site of the Proposed Development, this was at the back of the public car park which the Applicant stated was out of the way of most foot passengers. The Applicant acknowledged that there was a notice at a road entrance used mostly by those arriving by car but noted there was no notice at the pedestrian entrance closest to Laytown.

The Applicant alleged that this was a breach of Article 19(1) of the 2001 Regulations which includes the requirement to erect a site notice on or near all entrances from public roads. However, the Court noted the contents of Article 19(2) of the 2001 Regulations i.e. *"Where the land or structure to which a planning application relates does not adjoin a public road, a site notice shall be erected or fixed in a conspicuous position on the land or structure so as to be easily visible and legible by persons outside the land or structure…"*. The Court queried whether the Site adjoined a public road given it adjoined a car park, noting that the appropriate definition of a public road is set out in the Roads Act 1993 as follows:

"public road" means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority.

The Court held that the Applicant bears the onus of proof to establish a breach of the 2001 Regulations and the Applicant had not proved that the car park was a public road. This meant that Article 19(2) of the 2001 Regulations applied in this instance and the Court determined that this provision had been complied with.

Ground 3: Misinterpretation of guidelines

The Applicant alleged that the Commission misinterpreted the Telecommunications Guidelines and therefore failed to determine the appeal in accordance with those guidelines as required by the Meath CDP. The Applicant claimed that the Commission's breach of the Telecommunications Guidelines included:

- finding that it did not have the jurisdiction to consider health and safety issues of masts; and
- by breaching the 'last resort' test by allowing for the location of the proposed mast in a small town or village without establishing that the location was a 'last resort'.

Public Health

The Applicant alleged that the Commission's finding that it did not have jurisdiction to consider public health issues was invalid.

The Court found that:

- this element of Ground 3 failed as it would be impracticable for the Commission to consider human health to the extent sought by the Applicant in every case where a telecommunications mast is concerned;
- the Commission can generally rely on industry standards on human health;
- a debate about the health impacts of masts has to be dealt with primarily at a general policy level; and
- a debate on the health impacts of masts in each case before the Commission is a waste of time in the absence of any submissions on health impacts specific to the development in question as opposed to masts generally.

The 'Last Resort' Test

The Telecommunications Guidelines set out that free-standing masts should only be located within or in the immediate surrounds of smaller towns or villages as a 'last resort'. The Applicant alleged that the Commission had breached this test by allowing the Proposed Development to be located in a small town or village without establishing that the location was a 'last resort'. The Applicant asserted that the Commission had only established that there was no evidence regarding suitable alternative locations, but that this was entirely different from evidence of what sites might be available and why they are not suitable which the Applicant alleged was required to satisfy the 'last resort' test.

While the Court noted that the Commission did proceed on the basis that the 'last resort' test did apply, the Court also noted that the Applicant had not demonstrated that the 'last resort' test actually did apply i.e. the Applicant had not shown that Laytown is a small town and fell within the parameters of the 'last resort' test. The Court found that under the Meath CDP Laytown falls above the lowest tier of towns (i.e. small towns) within the settlement hierarchy and the Applicant had not demonstrated that it was in fact a small town.

Ground 5: EIA

The Applicant also alleged that the Commission erred in finding that the Proposed Development was not a project which required EIA, specifically an urban development project. The Applicant asserted that European Commission guidance on the interpretation of definitions of project categories of annex I and II of the EIA Directive (the Project Interpretations Guidance) states that telecommunications/ wireless communication deployment could fall within the EIA project category of urban development projects.

The Commission contended that not all development in an urban area constitutes an urban development project and that there was nothing urbanising about the Proposed Development.

The Court noted that the mere fact that a development falls within the definition of a "*project*" under the EIA Directive is not determinative as such a project

is then required to fall within a category of projects that require EIA, and not all projects having effects on the environment require EIA. While the Project Interpretations Guidance contemplated that telecommunications communication deployment could constitute an EIA project, the Court found that just because telecommunications masts may in certain circumstances come within EIA this did not mean that such projects are always EIA projects.

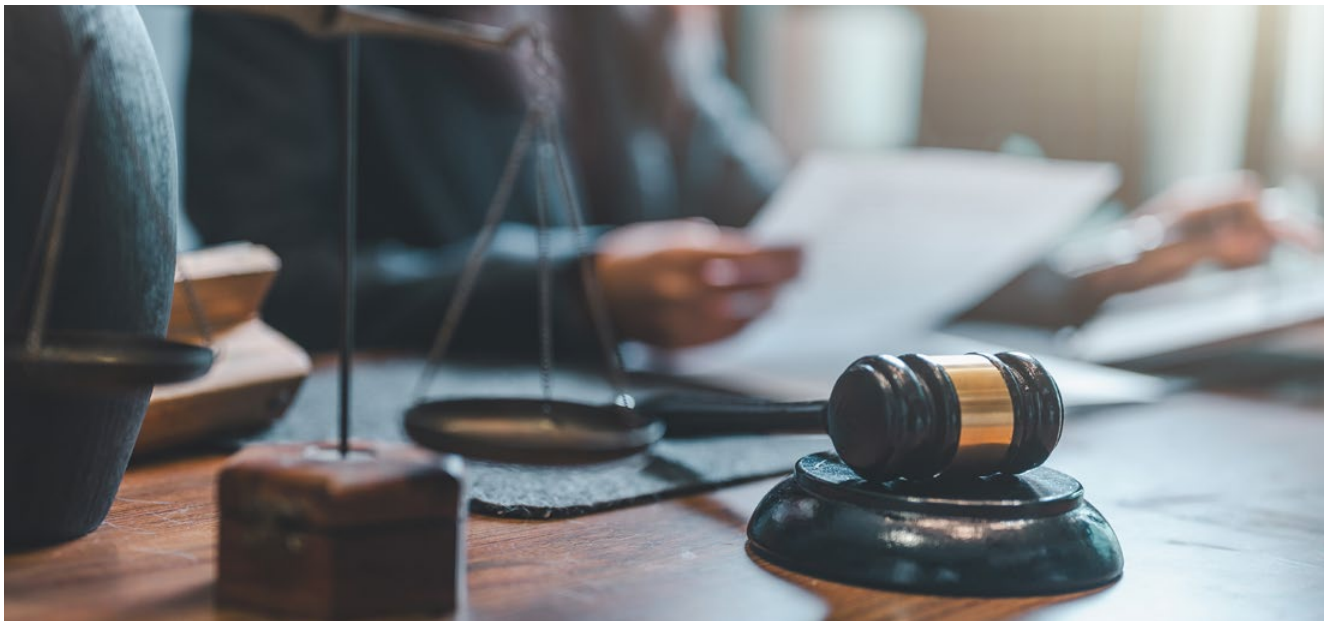
The Court found that not everything that happens in an urban area is urban development. Instead, urban development is development which must relate to an urban area or an area being urbanised which leaves a wide margin for evaluation. The Applicant bears the burden of proving this and the Court found the Applicant failed to do so here in the context of a case involving a single mast project. The Court also found that the fact that all masts form part of an overall network did not give rise to a conclusion that this mast or the network of masts to which it belongs was inherently urban.

Having refused all grounds of challenge, the Court dismissed the proceedings.

Key Takeaways

- A planning authority can generally rely on industry standards on human health. A debate about the health impacts of matters such as masts must be dealt with primarily at a general policy level. A debate on a general issue like this in each case before a planning authority is not required but there may be a requirement for a planning authority to consider such an issue where specific submissions are made on the issue which are specific to that project and the health impacts arising therefrom which go further than submissions which are generic on health impacts and could be applied to a similar type of project.
- Just because a development falls within the definition of a *"project"* under the EIA Directive does not mean that that project is then required to fall within a category of projects that require EIA.
- Not all projects having effects on the environment require EIA. They must fall within a category of projects as set out by the EIA Directive.

A full copy of the judgment is available **here**.



Noel McGowan and Karol Warnock v An Coimisiún Pleanála and Vantage Towers Limited and Leitrim County Council [2025] IEHC 727

Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

Case: Noel McGowan and Karol Warnock (the Applicants) **v An Coimisiún Pleanála** (the Respondent) **and Vantage Towers Limited and Leitrim County Council** (Notice Parties)

Date delivered: 17 December 2025

Citation: [2025] IEHC 727

Judge: Humphreys J.

This judgment of the High Court (the Court) concerned a decision of An Bord Pleanála (now An Coimisiún Pleanála, hereafter referred to as the Commission) to grant permission for Vantage Towers Limited (the Developer) to erect a 24m high lattice telecommunications support structure with antennae, dishes and associated telecommunications equipment (the Proposed Development).

The Proposed Development was to be located on a site to the west of the settlement of Kinlough in the townland of Laghta (the Site). The Site was located approximately 280m from *"the concentrated residential settlement boundary"* and approximately 86m from the nearest point of a field located on a site owned by an existing school. That field was not yet developed but the Court noted that the school apparently intended to expand into same.

Background

The Developer applied to Leitrim County Council (the Council) for permission in October 2022. The Council issued a decision to refuse permission in April 2023, and the Developer appealed this decision to the Commission in April 2023. The Commission's Inspector recommended that permission be granted subject to conditions and in August 2023 the Commission granted permission (the Decision).

The Applicants challenged the Decision by way of judicial review in October 2023. In February 2024 the Commission conceded those proceedings on the basis that material from the Council had not been taken into account. This resulted in the matter being remitted to the Commission for reconsideration in order to make a fresh decision. The Commission's Inspector recommended that permission be refused. However, in February 2025 the Commission granted permission subject to conditions (the New Decision). The Applicants challenged the New Decision by way of judicial review in April 2025 and a hearing took place before the High Court on 18 November 2025.

Grounds of Challenge

The Applicants challenged the New Decision on seven grounds, summarised as follows:

1. The Commission erred in concluding that the Site was not a site of 'last resort' as defined in the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, 1996 as updated by circular letter PL07/12 (together the Telecommunications Guidelines) and failed to provide adequate reasons for rejecting the Inspector's recommendation to refuse permission due to a failure by the Developer to demonstrate that alternative sites had been examined.

2. The Commission failed to have adequate regard to the Telecommunications Guidelines, in granting permission and in particular in its decision to permit the construction of a lattice structure contrary to the provisions of those guidelines.

3. The Commission erred in concluding that the Proposed Development would not be highly visible or obtrusive or have a significant impact on protected views and prospects as set out in the Leitrim County Development Plan 2023-2029 (the Leitrim CDP). Furthermore, the Commission failed to provide the main reasons for not accepting the recommendation of the Commission's Inspector in circumstances where the Inspector concluded that the absence of a Visual Impact Assessment meant there was no evidence before the Commission to demonstrate that the Proposed Development would not have an adverse impact on protected views and prospects under the Leitrim CDP and in contravention of certain requirements and policies of the Leitrim CDP.

4. The Commission failed to consider health and safety issues raised in the appeal.

5. The New Decision materially contravened the Leitrim CDP and the Commission failed to provide reasons for this material contravention and failed to take into account relevant considerations and took into account irrelevant considerations.

6. The Commission erred in concluding that the Proposed Development did not fall within a class of development requiring Environmental Impact Assessment (EIA) for the purposes of the EIA Directive.

7. The New Decision contravened Article 6(3) of the Habitats Directive in circumstances where the Commission, in carrying out a screening for Appropriate Assessment (AA) permitted the decommissioning of the Proposed Development and reinstatement of the Site leaving over details to be agreed with the Council.

Ground 1: Conclusion that the Site was not a site of 'last resort'

This ground concerned the Commission's conclusion that the Site was not a site of 'last resort'.

The Telecommunications Guidelines set out that free-standing masts should only be located within or in the immediate surrounds of smaller towns or villages as a 'last resort'.

The Applicants contended that the Commission's conclusion that the Site was not a site of 'last resort' was irrational. They suggested that the Commission did not provide reasons for its conclusion on this point and for disagreeing with the Inspector's recommendation to refuse permission for the Proposed Development.

The Commission contended that the New Decision made clear that the Commission disagreed with the Inspector that the Site was not a site of 'last resort' as the Site was located outside of the development boundary of Kinlough and not in a residential area or immediately adjacent to a school. While the Commission and the Inspector agreed that the Site was not in a residential area or immediately adjacent to a school, the Commission disagreed with the Inspector as to whether the site was within *"the immediate surrounds of smaller towns or villages"*. The Commission contended that it was open to it to exercise its evaluative judgement to come to this conclusion.

The Court noted that the Leitrim CDP required proposals for telecommunications antennae and support structures to be assessed *"in accordance with"* the Telecommunications Guidelines and this gave those guidelines a heightened development plan level status. The Court observed that the Telecommunications Guidelines would otherwise lack status had the Leitrim CDP not contained this requirement.

In carrying out its analysis of this ground, the Court considered the application of the Telecommunications Guidelines and the 'last resort' principle in the most favourable way possible to the Applicants i.e. that the Site was in the immediate environs of the development envelope. The Court found that even if this was the case, the Commission still dealt with the 'last resort' principle in substance by considering evidence provided by the Developer in respect of the unsuitability of alternative sites and the design of the Proposed Development. The Court also found that there was no obligation to give reasons by contrast with previous planning decisions as such a requirement is unworkable in practice. Accordingly, the Court dismissed this Core Ground.

Ground 2: Failure to have regard to the Telecommunications Guidelines

The Applicants contended that the Commission did not consider why a lattice structure was required for the mast forming part of the Proposed Development in circumstances where the Telecommunications Guidelines recommend the use of a monopole (or poles) and therefore failed to have regard to these guidelines.

The Commission asserted that the Developer's material clearly illustrated why a lattice structure was required, and the Applicants' complaint was based on a lack of specific text dealing with this in the decision which is not required.

In dismissing this ground, the Court stated that if a decision says it had regard to something then the onus is on the applicant to prove that this did not happen, and the Applicants had not done so here. The Telecommunications Guidelines were expressly considered by both the Commission's Inspector and the Commission. The Court also found that the lattice issue did not arise on the facts as this was not a site beside a school or in a residential area.

Grounds 3 and 5: Material Contravention

The Applicants contended that the Commission erred in concluding that the Proposed Development would not be highly visible or obtrusive or have a significant impact on protected views and prospects as defined in the Leitrim CDP. The Applicants stated that the Commission's finding that the photomontages

submitted provided sufficient information to reach this conclusion was irrational as the Commission's Inspector had stated that there was no evidence before the Commission in respect of impacts on certain protected views and that no visual impact assessment had been provided. The Applicants also asserted that the Commission failed to provide adequate reasons for disagreeing with the Inspector's recommendation that permission should be refused on this basis and for the material contravention of the Leitrim CDP.

The Commission stated that the photomontages submitted by the Developer addressed the impacts on protected views and that the Commission was entitled to accept that the information provided by the Developer constituted a visual impact assessment even if the Commission's Inspector disagreed on this. The Commission contended that it was entitled to exercise planning judgement and assessment and to differ from its Inspector in doing so. The Commission also submitted that there was no material contravention of the Leitrim CDP in circumstances where it had exercised its evaluative judgement to reach its own conclusions on visual impact.

The Court found that it was clear that the Commission had relied on the photomontages submitted by the Developer, and the onus was on the Applicants to show that there would have been an impact on certain views but the Applicants had failed to do so. The Court also found that the Leitrim CDP requirements for a visual impact assessment were somewhat evaluative and that it was implicit that the Commission thought the Proposed Development did not contravene these requirements. Furthermore, the Leitrim CDP does not require a specific visual assessment *"report"* and the photomontages and explanations submitted by the Developer could satisfy the actual requirements of the development plan. The Court held that the Commission was entitled to disagree with the Inspector's conclusion that the information provided was not sufficient and that reasons had been provided in the Commission's Order. Even if the Applicants disagreed with these reasons on the merits this did not result in a basis for this ground to succeed. Accordingly, the Court dismissed this Core Ground.

Ground 4: Public Health

The Applicants alleged that the Commission failed to consider health and safety issues raised in the appeal and that the Commission is not entitled to treat any matter such as public health as falling outside of the scope of the Planning and Development Act 2000 (the 2000 Act). While the Commission is entitled to consider the matter of any other authorisation and the extent to which it will mitigate any effect caused by a development, the Commission is not entitled to treat such a matter as being removed from the scope of the 2000 Act.

The Commission submitted that it was incorrect to state that the health impacts of the Proposed Development were not considered as the Inspector expressly considered submissions on health impacts and the provision of a Declaration of Conformity with the International Commission on Non-Ionising Radiation Protection Guidelines (ICNIRP) as required by the Telecommunications Guidelines. However, the Commission did accept that it did not address health complaints in respect of operational telecommunications infrastructure as the decision made was to grant permission for a telecommunications mast and not a general

authorisation for an electronic communications network which falls under a separate statutory code.

The Court found that this ground failed as it would be impracticable for the Commission to consider human health to the extent sought by the Applicants in every case where a telecommunications mast is concerned and that the Commission can generally rely on industry standards on human health. The Court stated that a debate about the health impacts of masts has to be dealt with primarily at a general policy level and a debate on this in each case before the Commission is a waste of time in the absence of any submissions on health impacts specific to the development in question as opposed to masts generally.

Ground 6: Error in concluding that the Proposed Development was not one which requires EIA

The Applicants alleged that the Commission erred in finding that the Proposed Development was not a project which required EIA, specifically an infrastructure and urban development project. The Applicants stated that just because the Proposed Development was situated outside of the development boundary for the village of Kinlough did not determine the question of whether it constituted an infrastructure and urban development project.

The Commission contended that the Proposed Development, and masts and antennae generally, do not constitute infrastructure and urban development and therefore no EIA was required. The Commission stated "*where there is nothing inherently urban about the development, or its location, nor does it urbanise a previously rural area (nor could it because a telecommunications mast is nothing to do with 'urbanisation') the proposed development cannot be 'urban development' within the meaning of the EIA Directive.*" The Developer added to this that the question of whether the development is infrastructure does not of itself make it an EIA project.

The Court noted that the mere fact that a development falls within the definition of a *"project"* under the EIA Directive is not determinative as such a project is then required to fall within a category of projects that require EIA, and not all projects having effects on the environment require EIA. While European Union guidance on the Interpretation of definitions of project categories of annex I and II of the EIA Directive (the Project Interpretations Guidance) contemplated that telecommunications/wireless communication deployment could constitute an EIA project, the Court found that just because telecommunications masts may in certain circumstances come within EIA this did not mean that such projects are always EIA projects. The Court found that the Commission is entitled to exercise its judgement in order to evaluate the application of the concept of urban development, and that not everything that happens in an urban area is urban development. Instead, urban development is development which must relate to an urban area or an area being urbanised which leaves a wide margin for evaluation. The applicant bears the burden of proving this and the Court found the Applicants failed to do so here in the context of a case involving a single mast project. The Court also found that even if masts could not generally be considered to fall outside of the concept of urban development, the development actually at issue in this case could not fall within any plausible meaning of urban development given it is:

- a standalone mast in a field, and
- outside of the existing settlement and development envelope of Kinlough which itself is a small country town and a rural area.

Furthermore, the Court found that the Proposed Development was not of itself inherently urban and that standalone masts such as this are more often a characteristic of rural areas rather than urban areas as in urban areas communications equipment is often placed on buildings.

Ground 7: AA Screening

The Applicants contended that the Commission failed to carry out any assessment of the impacts of the Proposed Development in breach of Article 6(3) of the Habitats Directive which requires the Commission to assess all aspects of a plan or project that might affect the conservation objectives of a protected site prior to granting permission. This included the permitting of the decommissioning of the project and reinstatement of the Site, neither of which was considered in the AA Screening Report submitted by the Developer.

The Commission asserted that it screened out the need for a full Appropriate Assessment to be carried out and that the Commission did not purport to permit or authorise the decommissioning of the project and the reinstatement of the Site. Instead, the permission included a condition which required these aspects to be agreed with the Council. However, the Commission also asserted that the Inspector did in fact consider the impacts of decommissioning as being similar to those arising at construction stage, concluding that neither would give rise to likely significant effects. The Court agreed with the Commission and found that the Applicants were factually incorrect as there was an assessment of the effects of decommissioning.

Having refused all grounds of challenge, the Court dismissed the proceedings.

Key Takeaways

1. Where a development plan requires applications to be assessed in accordance with guidelines issued under Section 28 of the 2000 Act this gives those guidelines a heightened status beyond the typical *"have regard to"* status.
2. A planning authority can generally rely on industry standards on human health. A debate about the health impacts of matters such as masts must be dealt with primarily at a general policy level. A debate on a general issue like this in each case before a planning authority is not required but there may be a requirement for a planning authority to consider such an issue where specific submissions are made on the issue which are specific to that project and the health impacts arising therefrom which go further than submissions which are generic on health impacts and could be applied to a similar type of project.
3. Not everything that happens in an urban area is urban development. Urban development is development which must relate to an urban area or an area being urbanised which leaves a wide margin for evaluation to be exercised by the decision-maker in determining whether an EIA is required.

A full copy of the judgment is available **here**.

Voyage Property Limited v Limerick City and County Council, the Minister for Housing, Local Government and Heritage, the Minister of State at the Department of Housing, Local Government and Heritage and the Office of the Planning Regulator [2025] IEHC 696

Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

Case: Voyage Property Limited (the Applicant) **v Limerick City and County Council, the Minister for Housing, Local Government and Heritage, the Minister of State at the Department of Housing, Local Government and Heritage and the Office of the Planning Regulator** (the Respondents)

Date delivered: 16 December 2025

Citation: [2025] IEHC 696

Judge: Holland J.

This judgment of the High Court (the Court) concerned a challenge to a decision of the Minister for Housing, Local Government and Heritage (the Minister) and the recommendation of the Office of the Planning Regulator (the OPR) to issue a direction concerning the zoning of 47 hectares of land at the former Greenpark Racecourse, Dock Road, Limerick (the Greenpark Lands) owned by Voyage Property Limited (Voyage). The Greenpark Lands are located outside the 2km radius from the city centre.[1]

Background

The Greenpark Lands had been zoned for residential use, mixed use, a neighbourhood centre and public open space, in the 2010 Limerick City Development Plan (the 2010 CDP). Most of the Greenpark Lands were in Flood Risk Guidelines Zone A (high probability of flooding) with some in Zone B (moderate probability of flooding) and some in Zone C (low probability of flooding).

From June 2021 the Draft Limerick Development Plan 2022 (the Draft 2022 CDP) proposed to rezone the Greenpark Lands to Enterprise and Employment use, which was informed by a flood risk assessment carried out on behalf of Limerick City and County Council (LCCC). In February 2022, Voyage was granted permission for a Strategic Housing Development (SHD) on eight hectares of the Greenpark Lands that were in Flood Zone C.

At the request of Voyage, an elected member of LCCC proposed and LCCC adopted Material Alteration 147 (MA 147) to the Draft 2022 CDP which proposed to zone 14.7 hectares of the Greenpark Lands as *"New Residential"*, about 10 hectares of which was outside the SHD site and entirely in Flood Zones A and B (these are referred to by the Court as *"the Subject Lands"*).

On 17 June 2022, LCCC adopted the Limerick Development Plan 2022-2028 (the 2022 CDP) with MA 147, therefore zoning the Subject Lands as "*New Residential*" and in so doing rejecting the recommendations of the OPR and the Chief Executive (CE) of LCCC that the lands remain zoned as *"Enterprise and Employment"*.

[1] As defined in the Limerick Development Plan 2022-2028 Map 1 - Limerick City and Suburbs (in Limerick), Mungret and Annacotty – Residential Settlement Capacity Map

Following the iterative process under Section 31 of the Planning and Development Act 2000, as amended (the 2000 Act), upon a recommendation of the OPR, the Minister made a Direction on 4 November 2022 (the Direction) that the Subject Lands would be zoned for *"Enterprise and Employment/Open Space and Recreation"* and not as *"New Residential"* as Voyage wanted. It was this Direction that Voyage sought to overturn in these proceedings.

The Flood Risk Guidelines

The Court considered the Planning System and Flood Risk Management – Guidelines for Planning Authorities, 2009 (the Flood Risk Guidelines), which deem residential development highly vulnerable to flooding and inappropriate in Flood Zones A and B and only allow for the exceptional possibility of residential development upon the application of a *"sequential approach"*. This approach requires the decision-maker first to consider whether inappropriate development can be avoided and whether a less flood vulnerable development type can be substituted to avoid and then substitute where possible. Only if avoidance and substitution do not rule out the proposed development type is a justification test required. A justification test then has to happen at two stages of the planning process:

1. First, a Plan-Making Justification Test (PMJT) – this is done for land-use zoning any flood vulnerable development on land in Flood Zone A and for zoning moderately flood vulnerable development on land in Flood Zone B, during the spatial plan making process (in this case a Development Plan Justification Test (DPJT) was carried out on behalf of LCCC during the making of the Draft 2022 CDP).

2. Second, a Development Management Justification Test (DMJT), which is completed in the context of a planning application for any flood vulnerable development land in Flood Zone A and for moderately flood vulnerable development land in Flood Zone B.

In this case, consultants on behalf of Voyage only carried out a DMJT on the masterplan for the Greenpark Lands and for the SHD planning application, and did not carry out a PMJT for the Greenpark Lands.

The OPR and the Minister's logic in preferring Enterprise and Employment to Residential zoning in Flood Zones A and B is that Enterprise and Employment is less vulnerable to flooding in terms of the severity of the consequences of flooding (i.e. flooding homes is considered worse than flooding business premises).

The key issue – accordance with NPO 57

The core of this case lay in the OPR and the Minister's assertion that the zoning of the Subject Lands by LCCC for residential use was inconsistent with National Policy Objective 57 (NPO57) of the National Planning Framework (NPF), which requires accordance with the Flood Risk Guidelines as follows:

"Enhance water quality and resource management by:

***Ensuring** flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding **in accordance with** The Planning System and Flood Risk Management Guidelines for Planning Authorities"*

(emphasis added)

The OPR and the Minister asserted that LCCC zoned the Subject Lands for Residential Development without their having passed the requirements of the sequential approach and the PMJT/DMJT stipulated in the Flood Risk Guidelines.

Voyage asserted that:

- Residential zoning of the Subject Lands had passed a valid DPJT and hence was not illegal, and
- Enterprise and Employment zoning of the Subject Lands had not passed a valid DPJT and hence was illegal.

The Court accepted that the opening remarks of counsel for the OPR reflected the overall concern of the Minister, the OPR and the CE, as follows:

"... the central concern of the OPR throughout this process has been that we should not [sic] been zoning land in floods zones for highly vulnerable developments such as Residential development. That's the highest category of vulnerability for flooding. And that in fact is one of the central tenets of our national planning policy relating to proper planning and sustainable development, and it's also a key aspect of our national policy relating to adaptation to the effects of climate change."

"... the central reason the Minister's making a direction is that the material amendment 147 was inconsistent with NPO57 of the NPF and the requirement not to locate development inappropriately in areas susceptible to flooding in accordance with the flood guidelines."

The Court accepted that the motivation behind the Direction was not to positively achieve Enterprise and Employment zoning, but rather the purpose of the reversion from MA 147 was the removal of the Residential zoning. The converse was reflected in Voyage's purpose in bringing the proceedings, which was to positively achieve a Residential zoning and not to achieve the overturning of the Enterprise and Employment zoning.

Obligations when making a development plan

The Court considered various aspects of Sections 10 and 12 of the 2000 Act, concerning the statutory obligations on the planning authority when making a development plan, including:

- Section 10(1A) of the 2000 Act which requires: " *(1A) The written statement referred to in subsection (1) shall include a core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Planning Framework and the regional spatial and economic strategy and with specific planning policy requirements specified in guidelines under subsection (1) of section 28."*
- Section 12(18) of the 2000 Act which requires the planning authority *"to ensure that the development plan is consistent with — (a) the national ... development objectives specified in — (i) the National Planning Framework"*.

The Court referred to the interpretation of Section 10(1A) of the 2000 Act by the Supreme Court in ***Killegland***[2] where it found *"consistent as far as practicable"* to mean *"consistent generally, as distinct from complying in every detailed and minor particular"*. In that case the Supreme Court had found the language in NPO 3c of the NPF requiring compact and sustainable growth to be generally precatory (i.e. indicating a preferred approach) rather than mandatory (i.e. imposing a legally prescriptive standard). On this basis the Supreme Court had found that what was required of the development plan was general consistency with such precatory NPOs on a countywide (rather than a site specific) basis.

However, the Court in this case concluded that *Killegland* did not mean that all NPOs were inevitably precatory and aspirational, rather it was a matter of the interpretation of the particular NPO in question. In addition, the Court concluded that countywide consideration may operate in different ways depending on the NPO, and in this case, the application of a countywide consideration of how much residentially zoned lands had been provided elsewhere in the county would undermine the application of the sequential approach in the Flood Risk Guidelines.

The test for applying guidelines

The Direction asserted that the 2022 CDP failed to adequately explain, consistent with the requirement of an overall strategy, why lands were zoned without regard to the policies and objectives of certain guidelines, including the Flood Risk Guidelines in breach of Section 28(1A) of the 2000 Act. The light burden generally imposed by Section 28 of the 2000 Act, which is the statutory duty merely of having regard to a guideline, is well-established in caselaw *Cork County Council v Minister for Housing [2021] IEHC 683*. In essence, it means that the guidelines must be considered but do not need to be complied with, no matter how mandatory the terms in which a guideline itself is expressed.

However, the Court found that Sections 28(1A) and (1B) of the 2000 Act impose an obligation on elected members as to the terms of their development plans (i.e. their description and explanation of their regard to – rather than implementation of – guidelines), and the Minister was entitled to assert a breach of that obligation.

Application to NPO 57

The text of NPO57 is set out above, and is supported by the following text:[3]

"Flooding is a cross-sectoral issue that can affect all aspects of life, and that can be influenced, positively or detrimentally, by actions in many other sectors. Of particular importance is the consideration of potential future flood risk in the area of planning and development management…"

"Core objectives include:

- *Avoiding inappropriate development in areas at risk of flooding;*
- *Avoiding new developments increasing flood risk elsewhere, including that which may arise from surface run off;*

[2] Killegland Estates Limited v Meath County Council and Ors [2023]IESC39 See also **Issue 3: March 2024** of the Learning from Litigation Bulletin

[3] Section 9.3 of the NPF – Protecting Conserving and Enhancing our Natural Capital – Water Resource Management and Flooding – Subsection on Water Resource Management and Flooding

- *Ensuring effective management of residual risks for development permitted in floodplains;*
- *Avoiding unnecessary restriction of national regional or local economic and social growth; and*
- *Improving the understanding of flood risk and ensure flood risk management in accordance with best practice."*

The Flood Risk Guidelines were published in 2009 pursuant to Section 28 of the 2000 Act, therefore although they are framed in mandatory terms, they are not of themselves mandatory rather the duty of a planning authority in making a development plan is merely to have regard to them.

However, as the State confirmed in the defence of these proceedings, the adoption of NPO 57 in the NPF – read with the obligations under Sections 10 and 12 of the 2000 Act – *"transmuted the straw of a s.28 obligation of mere regard to the Flood Risk Guidelines into the gold of a statutory obligation of compliance."*

The Court agreed that NPO 57 is not precatory or aspirational in the sense found in *Killegland*, rather it imposed clear requirements to *"ensure"*, in making development plans, *"accordance"* with the Flood Risk Guidelines. Therefore, the purpose of the objective is avoiding inappropriate development in areas at risk of flooding.

Although, the Court did express some unease that the Government in adopting an NPO in the NPF could in effect amend the terms of Section 28 of the 2000 Act to change the obligation from merely *"have regard to"*. However, the Court accepted that in these circumstances the obligation had been amplified to mandatory compliance with the Flood Risk Guidelines. The Court acknowledged that while allowing for the exceptions prescribed by the Flood Risk Guidelines, there was a duty to avoid zoning for inappropriate, flood-vulnerable, development in Flood Zones A and B and this duty is both mandatory and strong.

Voyage's grounds in the pleadings

The Court did not deal with Voyage's grounds in numerical order, but rather dealt with Grounds 8 and 15 together, and then Ground 5, which were enough to dismiss the proceedings as they amounted to a valid basis for the Minister to issue the Direction, but the Court also proceeded to deal with a number of remaining grounds, summarised as follows:

Grounds 8 & 15 – the OPR misinterpreted the Flood Risk Guidelines and erred in concluding that the Subject Lands failed a DPJT for residential development and that LCCC failed to correctly interpret/apply the Flood Risk Guidelines or give reasons for departing from them - the Court found on this ground that the default in the Flood Risk Guidelines was that Residential zoning was inappropriate because of the requirements of the sequential approach (i.e. as the CE Report on the draft 2022 CDP showed that there were adequate suitable lands to meet housing zoning requirements zoned elsewhere) and the DPJT had not been positively carried out (i.e. Voyage's consultants, RPS, nor anyone else, had ever carried out a DPJT for Residential zoning for the Subject Lands). On the other hand, Enterprise and Employment use had passed the DPJT for the Subject Lands (and the Court noted that Voyage's submission in support of MA147 had positively asserted this point). Therefore, the Court dismissed these grounds.

Ground 5 – the Minister erred in law in concluding that the LCCC elected members failed to have regard to the Flood Risk Guidelines – in essence Voyage claimed that a Government policy document such as the NPF could not override Section 28 of the 2000 Act to convert an obligation of *"have regard to"* guidelines to one of compliance. Voyage said that the LCCC elected members had regard to the Flood Risk Guidelines in this case.

As set out above, the Court accepted that NPO 57 is not precatory and aspirational and requires compliance with the Flood Risk Guidelines and this is expressed in mandatory terms. This gave the Flood Risk Guidelines an enhanced legal status as compared to that conferred by Section 28 of the 2000 Act. This obligation requires any development plan to be consistent, as far as practicable, with the Flood Risk Guidelines. In the absence of such consistency the Minister is empowered under Section 31 of the 2000 Act to issue a Direction to amend a development plan thereby remedying a breach of that obligation.

Ground 2 – the Direction was invalidated by *ultra vires* CE recommendations – in essence Voyage said that the Ministerial Direction was *"premised"* on the CE's Draft 2022 CDP Report and the CE's Material Amendments Report, which Voyage claimed were void for various reasons including on fair procedures grounds.[4]

However, the Court first of all found that those reports were not invalid, and secondly, even if they were the Court said that Voyage was attempting a mechanistic application of the *"domino theory"* (i.e. if an earlier part of the iterative process leading to the Direction was found to contain a legal error, then the whole process should be overturned). The Court dismissed this argument on *inter alia* the basis that any earlier errors were capable of being remedied in the later steps in the process.

Ground 3 – the Direction was void for want of reasons and uncertainty – Voyage said that the Minister had failed to give any or any adequate reasons for the requirement to reinstate the Enterprise and Employment Zoning in respect of the Subject Lands.

However, the Court found that the real nature and purpose of the Direction lay in the removal of the Residential zoning. The resultant zoning for the less flood vulnerable use of Enterprise & Employment use was not the purpose of the Direction but rather a consequence of the Direction.

Ground 7 – the Minister erred in concluding the Development Plan lacked an overall strategy – the Court found that this ground was *"parasitic"* on the other grounds pleaded against the Minister, and as they had failed, this ground was also dismissed.

Grounds 10, 6 and part of 3 (para. 8) – LCCC failed to advise the OPR of all members' reasons for zoning the Subject Lands for residential use and the Minister failed to consider all members' reasons for zoning the Subject Lands *"New Residential"* – the Court found that while Section 31AM(6) of the 2000 Act permitted a CE to summarise elected members' reasons in its letter to the OPR, that summary must fairly, impartially, accurately and in substance completely notify the OPR of the members' actual reasons for their decision.

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[4] There was also a claim that the Court accepted that the OPR made an incorrect statement in its Section 31AM(8) notice to the Minister that New Residential zoning of the Greenpark Lands had failed the DPJT done by LCCC, but this was corrected by the later Section 31AN(4) notice.

The Court noted that the OPR may not simply refuse to consider credible evidence that members' reasons for their decision (e.g. the members' minutes of the meeting) in fact differed from those stated in the Section 31AM(6) notice. The Court found, in this case, the approved minutes included reasons in precisely the terms as the Section 31AM(6) Notice. Therefore, the OPR knew the members' reasons for the adoption of MA 147 and Voyage was not prejudiced in this regard.

Voyage had also been given the opportunity (and took it) to make a submission to the Minister at the draft Direction stage and canvassed the members' reasons in that lengthy submission, so it was clearly afforded fair procedures.

Grounds 11 & 14 – LCCC misinterpreted the RSES/LSMASP as to whether the Greenpark Lands were Strategic Employment lands and failed to give reasons for zoning the Subject Lands despite error in treating them as a Strategic Employment site or for why they were so treated – the Court dismissed these grounds as they were based on the assertion that the Greenpark Lands were not in the Dock Road Strategic Employment Location (the DRSEL). The Court had already decided that the lands were not in the DRSEL on the basis of the Court's best interpretation of the maps in the Southern Region Regional Spatial and Economic Strategy (RSES) and the Limerick-Shannon Metropolitan Area Strategic Plan (LSMASP). In any event, the Court found even if this was wrong, the fact that the lands might not be essential for Employment uses, it would not follow that the Subject Lands could or should be zoned Residential.

Ground 9 – Development Plan invalid as Minister's Direction invalid - this was a technical ground based on the Minister's Direction being invalid, and as the Court had upheld the Minister's Direction, this ground was also dismissed.

Ground 1 – Direction invalid as OPR's Section 31AM(8) notice invalid - the Court found that this ground was *"parasitic"* on the other grounds pleaded, and as they had failed, this ground was also dismissed.

Key Takeaways

1. Section 10(1A) of the 2000 Act and the term *"consistent as far as practicable"*, as interpreted by the Supreme Court in *Killegland*, means *"consistent generally, as distinct from complying in every detailed and minor particular"*. However, this does not mean that all NPOs are inevitably precatory and aspirational. Instead, each NPO should be the subject of its own interpretation in order to establish the extent of the obligations it gives rise to.
2. NPO 57, when read with the obligations under Sections 10 and 12 of the 2000 Act, changes the obligation of mere regard to the Flood Risk Guidelines under Section 28 of the 2000 Act into a statutory obligation of compliance.
3. The words in the NPO *"ensuring"*, *"inappropriate"* and *"in accordance with"* were sufficient to have the effect of elevating the requirement to one of mandatory compliance with the Flood Risk Guidelines while allowing for the exceptions set out in these guidelines.
4. NPO57 differs from the NPOs at issue in *Killegland* – it is not precatory or aspirational, rather it is explicitly mandatory and specific – therefore it is suited to discrete application to particular sites.

A full copy of the judgment is available **here**. This judgment is now the subject of an appeal to the Court of Appeal and the outcome of that appeal will be summarised in a future edition of the bulletin.

Fernleigh RA CLG v An Coimisiún Pleanála and Ironborn Real Estate Limited [2025] IEHC 655

Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

Case: Fernleigh RA CLG (the Applicant) **v An Coimisiún Pleanála** (the Respondent) **and Ironborn Real Estate Limited** (the Notice Party)

Date delivered: 28 November 2025

Citation: [2025] IEHC 655

Judge: Holland J.

This judgment of the High Court (the Court) concerned a decision of An Bord Pleanála (now An Coimisiún Pleanála, hereafter referred to as the Commission) to grant permission to Ironborn Real Estate Limited (the Developer) for a Strategic Housing Development (SHD) of 422 Built-To-Rent (BTR) apartments and associated works (the Proposed Development) on lands at Aiken's Village, Stepaside, Dublin 18.

Background

The Developer applied directly to the Commission for permission in September 2022 under the SHD provisions of the Planning and Development (Housing) and Residential Tenancies Act 2016 (the 2016 Act). The Developer applied for permission for 438 no. BTR apartments across nine blocks. The Commission's Inspector recommended that planning permission be granted subject to 28 conditions including Condition No. 2 which provided for the omission of the proposed Block E which would result in permission for 422 units across eight blocks. The Commission agreed and granted permission accordingly in October 2023 (the Decision).

The Applicant challenged the Decision by way of judicial review in December 2023. The hearing took place before the High Court on 18 and 19 November 2025.

Grounds of Challenge

The Applicant initially challenged the Decision on nine grounds but before the hearing withdrew four grounds. The grounds pursued at hearing are summarised as follows:

1. The grant of permission was invalid as it contravened a zoning objective of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 (the CDP) i.e. Zoning Objective F *"To preserve and provide for open space with ancillary active recreational amenities"*. This was contrary to the requirements of Section 9(6)(b) of the 2016 Act. In addition the Applicant claimed that Condition 14 is void for uncertainty and/or the Proposed Development otherwise constitutes a material contravention.

4. The grant of permission was invalid as it materially contravened the CDP requirements relating to daylight/sunlight.

5. The grant of permission was invalid as it materially contravened the CDP requirements in relation to private amenity space.

8. The grant of permission was invalid as it materially contravened the CDP in relation to dual aspect units and this material contravention was not identified by the Developer in the Statement of Material Contravention and the Commission failed to exercise its powers under Section 9(6)(c) of the 2016 Act to grant permission in material contravention of the CDP.

9. The grant of permission is invalid as no notice was given to statutory consultees, namely Inland Fisheries Ireland, as required in the Planning and Development Regulations 2001, as amended (the 2001 Regulations) in respect of a development that might have a significant effect on waterways.

Ground 1: Open space zoning

This ground related to whether the proposed underground wastewater storage tank and kiosk constituted *"public services"* so as to fall within the *"open for consideration"* list associated with zoning objective F in the CDP.

The Applicant's argument was that whilst Uisce Éireann (UÉ) required the tank and kiosk in order for the Proposed Development to be connected to the public water supply, it was clearly not a public service as it was a private development for private profit. The Applicant claimed that the Commission was precluded from granting permission for a proposed SHD development which materially contravened the CDP in relation to zoning and that the grant of permission was unlawful as it materially contravened the zoning in the CDP.

The Court considered that the works fell within the broad CDP definition of *"public services"* in that the infrastructure in question was required by a statutory drainage undertaker, UÉ. Some weight was placed by the Court on the fact that UÉ indicated the works were not in its investment plan and therefore needed to be funded by the Developer. This suggested that the works were of a type that could be included in the investment plan but had not been prioritised as such.

The Court therefore held that the proposed tank was a public service falling within the CDP definition and was open for consideration within the applicable CDP zoning objective F and there was therefore no material contravention of the zoning and the Commission was entitled to consider the application under the SHD legislation.

Ground 4 Daylight/sunlight – material contravention and irrelevant consideration

This ground related to the adequacy of the Developer's documents and the Commission's subsequent assessment in relation to the effects of the Proposed Development on daylight and sunlight issues.

The Applicant's main arguments under this core ground were as follows:

- The Commission erred in law in relying on an irrelevant consideration i.e. the UK standard - and not the applicable Irish standard.
- The Inspector's view that it would be difficult to comply with the Irish standard is irrelevant and misconceived as to what is the applicable standard.
- The Proposed Development constituted a material contravention of Section 12.3.4.2 of the CDP as, when judged against the correct standard, the Proposed Development does not provide appropriate levels of natural/daylight.

Ultimately the Court dismissed this ground of challenge for a number of reasons:

- The Court determined that unless rendered compulsory by a statutory instrument or a development plan, the various daylight/sunlight standards across the EU, the UK and Ireland are voluntary for adoption or non-adoption by decision-makers.
- The CDP required applications to *"be guided by"* the principles of (the British Research Establishment (BRE) Report, 2011)[5] and/or any updated, or subsequent guidance, in this regard. The Court considered this was simply a 'have regard to' obligation. This did not preclude the Commission from taking into account other standards and certainly did not make those irrelevant considerations.
- The term *"be guided by"* in the CDP gave rise to a 'have regard to' obligation, no more.
- The BRE Guide 2022 and its National Annex clearly came within the meaning of an update to the BRE Guide 2011 in the context of the CDP requirement.
- In explicitly requiring regard to be had to the BRE Guide 2011 which incorporates BS 8206-2:2008[6] the CDP explicitly required regard to the targets which were in substance applied by the Developer and the Inspector.
- The argument that the words 'and/or' in the CDP required the adoption of the Irish standard and that the BRE Guide 2011 be ignored was rejected by the Court as without substance.
- The Court noted that the Applicant had actually made submissions to the Commission asking it to rely on the British standards and yet was in judicial review proceedings seeking to disavow reliance on the British standards. In this regard, the Court noted that a party could not be entitled to have the decision quashed on the basis of a point where it had argued to the contrary during the decision-making process before the Commission.

This ground of challenge was therefore dismissed.

Ground 5 – Private open space for apartment developments

The CDP sets out minimum requirements for private open space for Build-to-Rent Accommodation (Section 12.3.6) stating that *"all proposed units must provide for private open space in the form of a balcony, terrace, winter garden or roof garden. A reduction in the area of private open space serving each unit will only be considered in instances where at least an additional 10% high quality, useable, communal and/or additional compensatory communal support facilities are provided."* In Section 12.8.3.3 of the CDP a table (Table 12.11) confirms the specific minimum sizes for private open space depending on the apartment type/number of bedrooms.

The Developer had omitted private open space entirely from 74 of the 422 apartment units in order to improve daylight and sunlight.

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[5] British Research Establishment Site Layout Planning for Daylight and Sunlight: A guide to good practice (2011)

[6] British Standard 8206-2:2008 Lighting for buildings – Code of practice for daylighting

The Applicant argued that the grant of permission was in material contravention of the CDP in relation to the requirement for private open space for apartment developments as the CDP only permitted a reduction of the size of open space serving each unit but did not permit the total omission of open space serving an individual unit.

The Court therefore had to consider the meaning of the word 'reduction' in the CDP provision.

The Court found that while a reduction to zero (i.e. no balcony) was a possible meaning of the concept of 'reduction' in the CDP, it is not the ordinary or more likely meaning and that it was credible that the CDP would reflect a view that, in the interests of their well-being, each apartment-dweller should have access to at least some private open space. In the Court's view, there was nothing in the context of the CDP to suggest anything other than the ordinary meaning of the word 'reduction' and therefore concluded that the CDP required each apartment to have some private open space. The Court further commented that this would not lead to absurd results as it clearly meant a reduction to what would still be useable open space. In the Court's view, a reduction to an unusable level of open space would not accord with the CDP requirements so there was a practical limit to the flexibility provided by the CDP wording.

Having found the complete omission of private open space from an individual unit to be a contravention of the CDP requirements, the Court decided that the omission of private open space from 74 apartment units was clearly a material contravention of the CDP and was therefore a breach of the legislative requirements relating to SHDs which required material contraventions to be identified by the developer and justified by the Commission before permission could be granted and the Court therefore quashed the Decision as those procedural requirements had not been complied with.

There was a related argument that if Specific Planning Policy Requirement (SPPR) 8 of the Apartment Design Guidelines 2020[7] applied instead of the CDP provision, the same issue arose where the wording did not permit a reduction to zero. Likewise the Court agreed with the Applicant that the flexibility contained in SPPR8 which also used the word 'reduction' did not allow complete omission of private amenity space serving an individual unit.

Ground 8 – Dual aspect units – alleged material contravention

The CDP provides that at least 50% of apartment units in a development must be dual aspect. The CDP defines a dual aspect apartment as follows:

"A dual aspect apartment is designed with openable windows on two or more walls, allowing for views in more than just one direction. The windows may be opposite one another, or adjacent around a corner. The use of windows, indents or kinks on single external elevations, in apartment units which are otherwise single aspect apartments, is not considered acceptable and/or sufficient to be considered dual aspect and these units, will be assessed as single aspect units."

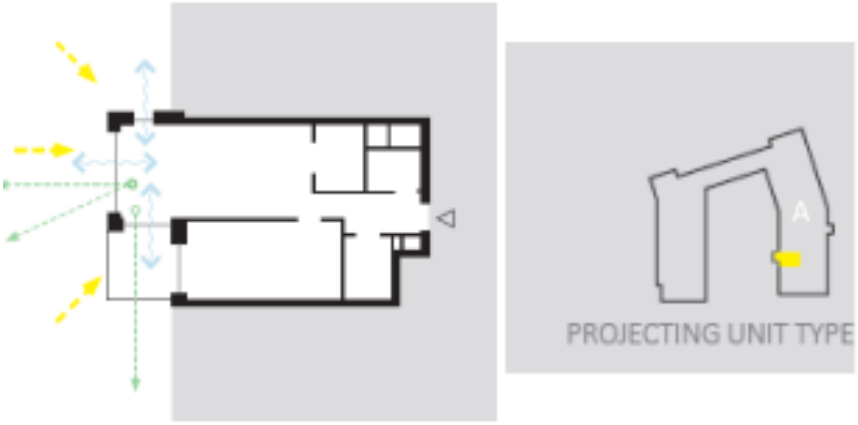
[7] Sustainable Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities issued under Section 28 of the 2000 Act (December 2020)

The Applicant argued that the Proposed Development was a material contravention of the CDP requirement as the 34 so-called projecting units were not actually dual aspect but simply jutted out from one elevation. If the projecting units were not counted as dual aspect, then the Proposed Development would fall below the 50% CDP requirement and it would, in the Applicant's opinion constitute a material contravention of the CDP.

The Inspector was satisfied that the 34 units were at least dual aspect and therefore the 50% threshold was met. The Commission agreed with the Inspector's approach to this.

There was a related point as to whether SPPR4[8] reduced the 50% to 33% in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate. The CDP had designated the entire functional area as an intermediate location and there was a question as to whether SPPR 4 could override this but ultimately this issue did not need to be addressed by the Court due to the Court's conclusion on the dual aspect nature of the projecting apartments.

In this regard, the Court indicated that its first (and strong) impression on seeing the below Developer's drawing was that the Applicant was correct and that only one elevation was apparent.



However, when the Commission produced the elevation drawings at trial, the Court was of the view that the protrusions evident on the elevations could not be inevitably dismissed as *"windows, indents or kinks"* (in the words of the CDP – Section 12.3.5.1) and that, whilst the Court might not necessarily take the same view, the Inspector and the Commission were entitled to reach the conclusion they did as a matter of evaluative judgment.

Taking it that the Commission was entitled to regard the projecting apartments as dual aspect, the 50% requirement was met and there was no material contravention of the CDP.

This ground of challenge was therefore dismissed by the Court.

[8] Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)

Ground 9 – Effect on waterways – no notice given to Inland Fisheries Ireland

In respect of this ground, the Applicant argued that the grant of permission was invalid as no notice was given to the relevant statutory consultees (i.e. Inland Fisheries Ireland) pursuant to Article 295(h)(i) of the 2001 Regulations read with Section 8(1)(b)(ii) of the 2016 Act as required in respect of a development that might have a significant effect on waterways.

Inland Fisheries Ireland (IFI) are required to be notified where the proposed SHD, as to a waterway, *"in respect of which it exercises its functions", "might give rise to significant discharges of polluting matters or other materials to such waters or be likely to cause serious water pollution or the danger of such pollution..."*

The Applicant argued that the Commission should have required the Developer to notify IFI of the SHD application due to potential effects on the nearby Ballyogan stream.

The Court interpreted the requirement as meaning IFI had to be notified only if, applying a precautionary approach, there is a real risk of environmentally significant pollution to a waterway as to which IFI exercises functions (which included the Ballyogan Stream).

The Applicant emphasised the Inspector's view that *"without the attenuation of the underground foul tank or in the event of pump/tank failure there is potential for a direct pathway between the proposed development and the Ballyogan stream".*

Ultimately the Court dismissed this ground on the basis that the Applicant had not demonstrated that the Proposed Development posed a real, rather than theoretical, risk of serious water pollution as arising either from the construction of the pumps and tank or from their operation. They could point to no such evidence.

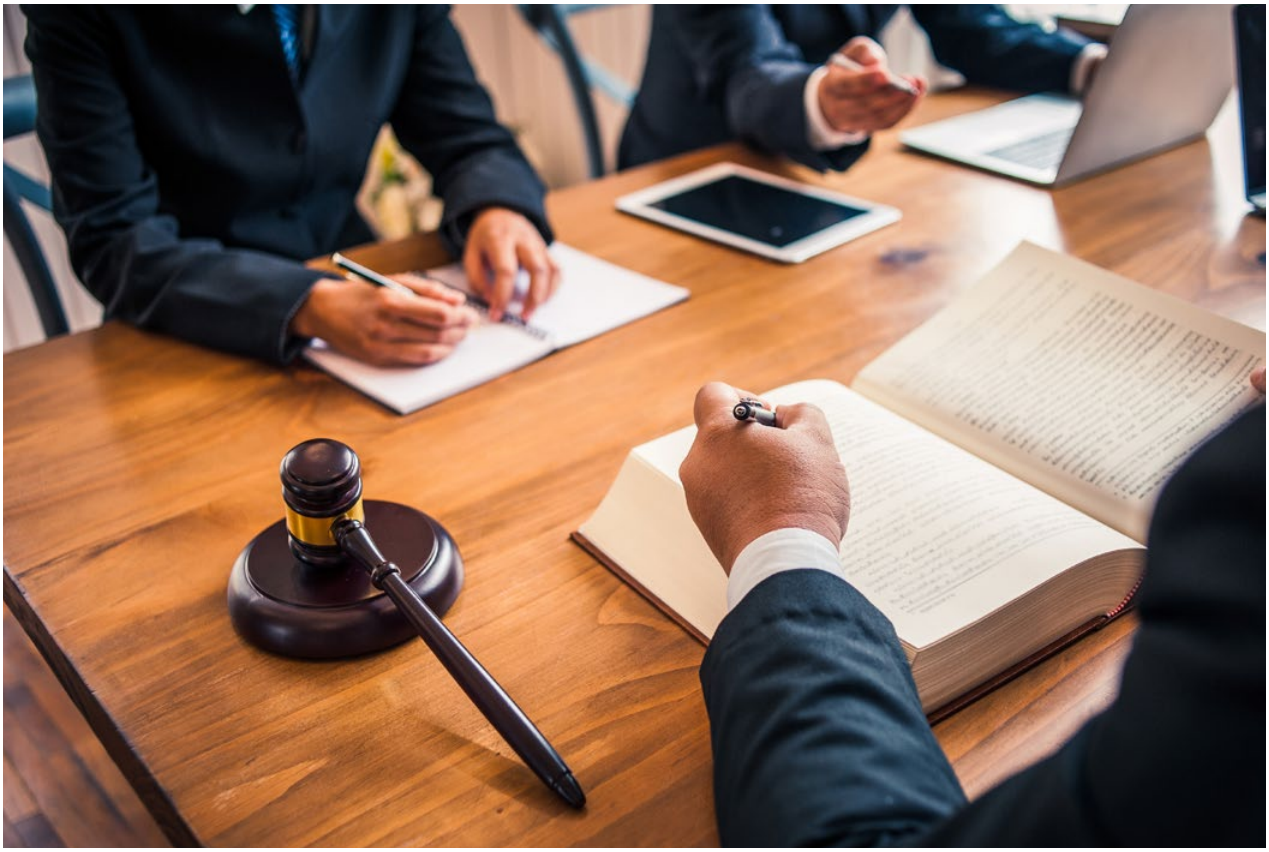
This ground of challenge was therefore dismissed.

The Court rejected a submission from the Commission that only the statutory consultees who had not been notified could argue non-compliance with these provisions in judicial review proceedings. The Court said that the general principle that applicants could not argue a breach of rights of third parties did not apply in these circumstances. Therefore, applicants are not precluded from arguing that a decision is invalid due to a failure to consult necessary prescribed bodies.

Key Takeaways

1. The meaning of 'public services' in the relevant list of uses *"open for consideration"* in the zoning definition in the Dún Laoghaire-Rathdown County Development Plan 2022-2028 is capable of covering development carried out by the developer at the request of a statutory undertaker such as UÉ.
2. Unless made compulsory by a statutory instrument or a development plan, the various daylight/sunlight standards across the EU, the UK and Ireland are voluntary for adoption or non-adoption by decision-makers.
3. The wording of a development plan will be given its ordinary and everyday meaning unless the context suggests otherwise. The ordinary meaning of the word 'reduction' in the context of private open space is that there must be something useable left rather than complete omission.
4. In determining whether an apartment is dual aspect for the purposes of a development plan requirement, the Court considers this to be a matter of evaluative planning judgment in the first instance, subject to review by the Court only where the evaluative judgment is shown to be so unreasonable that no reasonable decision-maker would make it or where there was no evidence to support such a conclusion.
5. The entitlement to challenge a decision on the grounds of a failure to notify prescribed bodies is not limited to those prescribed bodies and the general principle that one cannot argue a breach of the rights of third parties does not apply in those circumstances.

A full copy of the judgment is available **here**.



Coolglass Wind Farm Limited v An Coimisiún Pleanála and Ireland and the Attorney General [2026] IESC 5

Case: Coolglass Wind Farm Limited (Coolglass) **v An Coimisiún Pleanála** (the Commission)**; and Ireland and the Attorney General** (the State Parties)

Date delivered: 4 February 2026

Citation: [2026] IESC 5

Composition of the Court: O'Donnell C.J., Dunne J, Charleton J, O'Malley J, Woulfe J, Hogan J and Murray J.

Judgment delivered by: O'Donnell C.J.

Background

The Commission appealed the judgment of Mr. Justice Humphreys in the High Court which was included in **Learning from Litigation Legal Bulletin Issue 8**. Please refer to that issue for the full background.

By way of brief overview, the High Court decision overturned the Commission's decision to refuse Coolglass planning permission for a Strategic Infrastructure Development (SID) of a 13-turbine windfarm and associated works in Timahoe, County Laois (the Proposed Development). The Proposed Development would have constituted a material contravention of the Laois County Development Plan 2021-2027 (the CDP) and the associated Wind Energy Strategy (the WES) which identified certain areas in the county preferred for wind energy, other areas designated as open for consideration and other areas which were designated as not open for consideration. The Proposed Development was located almost entirely in an area designated as not open for consideration. The Commission has the power to materially contravene the development plan but decided to refuse permission in order to uphold the clear policy intention in the CDP and the WES.

Grounds of Appeal

The Appeal dealt with a number of grounds but the following five grounds were the main grounds:

Core Ground 1 - The interpretation of Section 15 of the Climate Action and Low Carbon Development Act 2015 (the 2015 Act) and whether the Commission had failed in its obligations under Section 15(1).

Core Ground 3 - Whether the Commission had abdicated its obligations under Section 15 of the 2015 Act to either the Office of the Planning Regulator (OPR) or the Minister for Housing, Local Government and Heritage (the Minister).

Core Ground 4 - Whether the Commission had erred by placing reliance on Section 37(2) of the Planning and Development Act 2000 (the 2000 Act) which applies to standard planning appeals, instead of Section 37G(6) of the 2000 Act which applies to SID development.

Core Ground 5 - Whether the Commission had failed to exercise its functions in a manner which was compatible with Article 2 and Article 8 of the European Convention on Human Rights (ECHR) in accordance with Section 3 of the European Convention on Human Rights Act 2003 (the 2003 Act) in the light of, in particular, the decision in *Verein KilmaSeniorinnen Schweiz v Switzerland* [2024] ECHR 304 ([GC] No. 53600/20 9 April 2024).

Core Ground 7 - Whether the Commission had breached the duty of sincere cooperation in Article 4(3) of the Treaty on European Union (TEU) by refusing to exercise its discretion under Section 37G(6) and/or Section 37(2)(b) of the 2000 Act to grant permission for the Proposed Development.

Core Ground 1 - The interpretation and obligations under Section 15 of the 2015 Act

The Supreme Court found that the 2015 Act applies across the public sector generally. Section 15 does not expand the existing functions of a relevant body[9] or create new functions, rather the Supreme Court determined that the existing functions of a relevant body must be performed in a manner consistent with the Section 15 objectives.

The Supreme Court noted that the Climate Action and Low Carbon Development (Amendment) Act 2021 (the 2021 Act) amended the obligation on a relevant body in relation to the performance of its functions, in so far as practicable, under Section 15(1) of the 2015 Act from *"have regard to"* to *"in a manner consistent with"*, which is a much higher standard, and was intended to create legal obligations capable of being enforced by a court.

The Supreme Court determined that the obligation under Section 15(1) is not just a procedural obligation or one of general discretion for a relevant body. The obligation of *"consistent with"* concerns the result to be achieved but it does not dictate a single result. Instead, a range of decisions may be consistent with the objectives of Section 15 and there is a *"degree of tolerance"* in the manner in which this is to be achieved.

Furthermore, there may also be scenarios in which a relevant body may not be required to perform its functions in a manner consistent with Section 15 objectives where it is not practicable to do so. While *"in so far as practicable"* does not permit a relevant body to take *"mere matters of convenience"* into account, it does allow for practical difficulties to be considered where they would render something incapable of being carried out.

The legal test for a court to apply under Section 15, where it is asserted that a relevant body failed to comply with Section 15(1), is whether the performance of the functions of that relevant body falls *"within the spectrum of possible outcomes that could be said to be consistent, in so far as is practicable with the objectives of s. 15"*. This is a standard which must be complied with by a relevant body.

However, Section 15 is not a standalone provision. Instead, it is an obligation that applies to and takes effect within the limits of a relevant body's existing functions. In the planning context there is already detailed statutory regulation establishing and

[9] Relevant body is defined in Section 15 of the 2015 Act as meaning (a) a prescribed body, and (b) a public body.

defining the powers of planning authorities, including in relation to climate change, so Section 15 takes effect in that already detailed statutory and policy context. Furthermore, the climate policies set out in Section 15(1) operate at a much higher level of generality than a planning decision, therefore the question of consistency with them in respect of an action of a relevant body is more nuanced than a traffic light system of climate friendly *"go"* (unless impracticable) and climate unfriendly *"stop"*. Ultimately, by the time a planning decision comes to be made, a planning authority is entitled to work from the starting point that compliance with the development plan will lead to compliance with the duty on the planning authority under Section 15.

That said, there might be marginal cases where the planning authority is obliged to depart from a development plan (e.g. it is outdated compared to climate policies at the time of the decision, or the location of a development is on the border of an area not open for consideration for that type of development) and materially contravene a development plan as a result of the Section 15 obligations.

Section 15 is a form of climate sense check to be undertaken to ensure that decisions of public bodies are aligned with the applicable climate objectives. A relevant body must engage with this in a real and substantive way in order to ensure that it has adequately directed its mind to whether the climate benefits of the project require or justify a grant of permission even if this would amount to a material contravention of the development plan. However, climate targets are net ones to be assessed globally and Section 15 cannot be the main determinant of the refusal or grant (or grant subject to conditions) of a planning permission. Proper planning and sustainable development considerations are also necessarily taken into account in any decision.

In light of the obligations under Section 15(1) of the 2015 Act, the Supreme Court determined that the fundamental question was whether the Commission should exercise its power under Section 37G(6) of the 2000 Act to materially contravene the CDP, with the obvious argument in favour of doing so being the climate benefit of the Proposed Development. The Supreme Court held that the Commission's failure to engage with this question *"in a real and substantive way"* was an error in law, with the Inspector's and Commission's reasoning instead treating the material contravention of the CDP as justifying refusal. The Supreme Court found that this was in error in light of Section 15(1). The Supreme Court determined that the Commission was required to consider whether the climate benefits of the Proposed Development required or justified the material contravention of the CDP. Accordingly, the Supreme Court decided to overturn the decision of the Commission, with the decision of the High Court being upheld on this ground albeit on a different and narrower basis.

Core Ground 3 - Abdication of the Commission's function to the OPR or to the Minister

The Supreme Court found that in referring to the OPR and the Minister – who had decided not to intervene in respect of the zonings of land for windfarm developments – the Commission had not abdicated its own statutory functions. The fact that the OPR or the Minister had not intervened in the process leading up to the adoption of the CDP was a relevant consideration for the Commission. It was held that the Commission did not treat the OPR's position as binding and the High Court's finding on this ground was set aside.

Core Ground 4 – Reliance on Section 37(2) instead of Section 37G(6) of the 2000 Act

The Supreme Court found that the Commission did err by placing reliance on Section 37(2) of the 2000 Act instead of Section 37G(6) of the 2000 Act. However, in circumstances where this error followed from an erroneous submission made by Coolglass, and where it had not been demonstrated that this led to any failure to consider a ground for material contravention, the Supreme Court did not think this warranted overturning the decision of the Commission and the finding of the High Court was set aside.

Core Ground 5 - Alleged breach of Article 8 of the ECHR

The Supreme Court did not agree that the Commission was in breach of its obligations under Article 8 of the ECHR by reference to Section 3 of the 2003 Act by failing to exercise its discretionary power under Section 37G(6) of the 2000 Act to grant permission in material contravention of the CDP.

The Supreme Court held that the High Court finding was made against the Commission and not Ireland, whereas in *KlimaSeniorinnen*, it was the perceived systemic failures of the Swiss Confederation in respect of climate change at national, legislative and administrative levels which led to the Article 8 ECHR violation. Further, the Supreme Court noted that it was not obvious that a commercial entity like Coolglass could qualify as a *"victim"* for Article 34 of the ECHR purposes. In contrast the association in *Klimaseniorinnen* was a non-profit organisation with a record of campaigning on climate change and human rights grounds. The Supreme Court further noted that when interpreting or applying the ECHR, such issues must be considered within the framework of the Irish Constitution, specifically under Article 41, and any legal challenge should reference these constitutional provisions. The Supreme Court ultimately determined that the Commission's actions did not amount to a violation under the ECHR and the finding of the High Court was set aside.

Core Ground 7 - EU sincere cooperation/conforming interpretation

The Supreme Court held that *Pfeiffer* (joined cases C-397/01 to C-403/01) concerned the application of the *Marleasing* principle[10] to the interpretation of national law designed to give effect to a specific directive and did not establish a broader rule requiring national laws to be interpreted by reference to EU law except where the national law is designed to give effect to a specific EU legislative obligation. Accordingly, the Supreme Court set aside the High Court's finding that the State was in breach of its obligation of sincere cooperation contrary to Article 4(3) of the TEU.

[10] National courts must interpret domestic law in light of the wording and purpose of relevant EU directives to achieve the result pursued by a directive.

Key Takeaways

1. The Supreme Court upheld the High Court's order quashing the Commission's decision, but on narrower grounds focused principally on the proper application of Section 15(1) of the 2015 Act.
2. Section 15(1), understood correctly, is a statutory "climate sense-check" that requires public bodies to align their decisions with national climate objectives, as far as practicable, but it does not override other statutory duties or create an automatic presumption in favour of climate-positive projects. Its effect is to reinforce, not replace, the existing planning and policy framework.
3. The Commission erred by failing to properly consider the exercise of its power under Section 37G(6) of the 2000 Act in light of these obligations.
4. The remaining grounds relating to abdication of statutory obligations, EU interpretation, and Article 8 of the ECHR—were rejected.

A full copy of this judgment is available **here**.

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