# Legal Digest

## Learning from Litigation

Issue 13: September 2026

**Legal Cases:**

South Dublin County Council v Thresford Limited, Mullnassa Limited and Branach Developments Limited and John O'Neill v Branach Developments Limited and Mullnassa Limited [2026] IEHC 342

Stephen Keogh, Tom Quirke and Rural Residents Wind Aware and Environmental Group v An Coimisiún Pleanála and EDF Renewables Ireland Limited [2026] IEHC 339

Abbey Park and District Residents Association Baldoyle and John Oliver McCann v An Coimisiún Pleanála and Rondesere Limited [2026] IEHC 365

John Fox v Wicklow County Council, Minister for Housing, Local Government and Heritage, Minister of State at the Department of Housing, Local Government and Heritage and the Office of the Planning Regulator [2026] IEHC 412

**Appeal Watch**

Pat O Donnell and Company v Dublin City Council and Uniphar Group PLC [2026] IESC 36

Prepared by Fieldfisher for the Office of the Planning Regulator

# Introduction

The Office of the Planning Regulator (OPR) is pleased to present the thirteenth 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.

***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.**

**Case: South Dublin County Council** (Respondent/Plaintiff) **v Threshford Limited, Mullnassa Limited and Branach Developments Limited** (Appellants/Defendants)

**And**

**John O'Neill** (Applicant/Respondent) **v Branach Developments Limited and Mullnassa Limited** (Respondents/Appellants)

**Date delivered: 03 June 2026**

**Citation: [2026] IEHC 342**

**Judge: Humphreys J.**

This judgment of the High Court (the Court) concerned the decision of the Circuit Court (O'Connor J.) to grant injunctions under Section 160 of the Planning and Development Act 2000, as amended (the 2000 Act). The injunctions were granted upon applications by South Dublin County Council (SDCC) and John O'Neill (the Applicant) in respect of alleged unauthorised development on lands located at Chianti Park, Mount Seskin Road, Raheen, Brittas, Co. Dublin (the Lands). The injunctions were sought against Threshford Limited, Mullnassa Limited and Branach Developments Limited (together the Developer). However, Threshford Limited was not named in the proceedings initiated by John O'Neill.

The alleged unauthorised development referred to in the proceedings involved replacing mobile homes with dwelling houses. The High Court judgment helpfully provided images of the pre-existing mobile homes and the subsequent dwelling houses to illustrate the alleged unauthorised development.

**Background**

Following engagement between SDCC and numerous parties, including the Developer, seeking cessation of the unauthorised development and undertakings in respect of same, SDCC received a response from Threshford Limited and Mullnassa Limited asserting that the development was exempted development pursuant to Section 4(1)(h) of the 2000 Act.

The Applicant is a resident of a dwelling near the Lands and issued proceedings in respect of a property comprising a former caravan, mobile home and chalet site owned by Branach Developments Limited and Mullnassa Limited (the Respondents). While this property was originally used for agricultural purposes, it was subsequently used for mobile homes and chalets, with planning permission granted for the retention of a limited number of mobile homes in 1971 subject to the condition that they be removed within one year and that no further structures be erected. However, further structures were erected and the Court noted a history of unauthorised development on the property.

In August 2025 works commenced on the maintenance, improvement or other alteration of existing structures on the property. The Applicant made a complaint to SDCC and was informed that a warning letter had already been issued. Solicitors acting for the Applicant wrote to SDCC in September 2025 to see what further action was being taken but received no reply. In October 2025, the Applicant's solicitors wrote to the Respondents seeking the cessation of all works or confirmation of the basis upon which the development was said to be authorised, but no reply was received. In November 2025, the Applicant initiated Section 160 proceedings seeking an injunction restraining the alleged unauthorised development and restoration of the property to its prior condition.

Around the same time as the Applicant issued Section 160 proceedings, SDCC also initiated Section 160 proceedings in respect of the same property but without any notice to the Applicant. Both sets of proceedings were heard together in the Circuit Court, and on 19 December 2025 the Circuit Court granted injunctions restraining the unauthorised development and directing that the Lands be restored to the condition that they were in prior to commencement of the unauthorised development pursuant to Section 160. These injunctions were appealed to the High Court by the Respondents and a limited stay on the injunctions was granted to allow weatherproofing works to be undertaken by the Developer.

**Procedure**

At the outset, the Court noted that an appeal from the Circuit Court to the High Court operates by way of rehearing. Therefore, SDCC and the Applicant (together the Applicants) were required to make their case first even though the Developer was appealing the decision of the Circuit Court. Nevertheless, the Court made it clear that the burden of proof was on the Developer to establish that the development was exempted development. The Court required that the defence, which would be set out in affidavit evidence, be more than vague and unsubstantiated statements. The Court also acknowledged that it may have been open to the Developer to open their case first in order to establish whether or not the development was exempted development, but the Developer did not take up this approach.

**Evidence**

The Court also identified issues with the affidavit evidence produced by the Developer. One affidavit was made by an individual who used the title *"Architect"* in circumstances where they were not a registered architect but were in fact an *"architectural graduate"*. The Court observed that Section 18 of the Building Control Act 2007 criminalises the use of the term *"architect"* in certain circumstances where it is used by a person who is not a registered architect.

Here, the Developer contended that the use of the word *"architect"* was intended to be in the sense of a graduate, but the Court was clear that the whole point of a protected title means people are not entitled to use that title in their own sense. The Court confirmed that the protection requires people to only use the title in the sense defined by law.

In this case, SDCC provided their own evidence on affidavit which put the *"architect"* on notice of certain weaknesses in their evidence, which was not rebutted. Furthermore, the Court stated that it is not always obliged to consider all statements made on affidavit as being equally credible.

## The Issues

All parties agreed that there was development on the Lands with the exception of one issue regarding tree cutting and that there was no planning permission. The Court identified a number of issues to be determined in this case, with the substantive issues being as follows:

- Whether this was pre-1964 development;
- The seven-year rule;
- Whether tree cutting was development;
- Whether this is exempted development under Section 4(1)(h) of the 2000 Act; and
- Whether the Court should apply its discretion to refuse an injunction if it found there was unauthorised development.

### Issue 1: Pre-1964 development

While the Developer had asserted that this development first took place prior to 1964, which would mean that planning permission was not required, at trial the Developer accepted that their contention that a development had taken place *"since approximately 1968"* was a mere assertion and did not come with any formal evidence that there was development of any kind at the Lands prior to 1964. This argument therefore failed, and the Court noted that even if there had been a development in place prior to 1964 a range of changes and intensifications as well as new works which commenced in August 2025 meant that this defence would fail.

### Issue 2: The seven-year rule

This is a rule that operates to prevent enforcement action on unauthorised development after seven years from the date of the commencement of the development. It was placed on a statutory footing in Section 157(4) of the 2000 Act.

The Court observed that:

- abandonment and resumption of development,
- an intervening permission for an inconsistent use,
- resumption of a previous use, and/or
- intensification of works can all overcome this seven-year defence.

The Court found that significant works commenced in August 2025, which resulted in significant new development including site clearance, excavation, tree felling, hard standing and the replacement of mobile home structures with block built modular homes.

This all amounted to changes and intensifications such that the subject matter before the Court was now a new development which could not benefit from reliance on the seven-year rule. The Court also stated that removing an unauthorised structure that would have benefited from reliance on the seven-year rule as a defence did not give rise to an entitlement to reinstate that structure without permission, as this would itself be a new development.

### Issue 3: Whether tree-cutting was development

The Court considered the meaning of development as defined by Section 3 of the 2000 Act and the definitions of *"structure"* and *"land"* as per Section 2 of the 2000 Act, concluding that cutting a tree or hedge involves the carrying out of "works" on *"land"* and therefore is *"development"*. However, the Court also noted that, by way of example, Section 4(1)(i) of the 2000 Act states the following is exempted development:

*"development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species".*

The Court determined that while tree-cutting, as well as tree felling or thinning, is development, this is subject to consideration of any applicable exemptions. The Court went on to consider the application of this exemption to the development at issue but rejected that it applied. The Court found that while development which is not exempt may be permissible if it is ancillary to exempted development, the same logic also operates so as to de-exempt development which is ancillary to unauthorised development.

**Issue 4: Whether this is exempted development under Section 4(1)(h) of the 2000 Act**

The Developer contended that this development was exempted development pursuant to Section 4(1)(h) of the 2000 Act, which applies to:

*"development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures".*

This was based on the contention that the new structures consisted of the maintenance and improvement of the previous structures that were on the Lands, which were largely mobile homes. The Developer described the prior residential units as being in poor condition and requiring improvement, therefore, works were undertaken which were:

- limited to and incorporated the existing foundations of the existing structures,
- within the existing footprints of the structures and respecting the original site layout,
- using the original road and access arrangements, and
- retaining existing site infrastructure and services.

The Developer also contended that the appearance of the new structures was consistent with the character of the original structures as they were of the same size, height, and design, given they were constructed on the original footprint of the pre-existing structure. Therefore, the Developer asserted that this fell within Section 4(1)(h) and was exempted development.

The Court noted that categories of exempted development are required to be interpreted strictly and that the Developer was responsible for showing that the exemption applies. However, not only did the Court find that the Developer had failed to discharge this burden of proof but also that the Developer never had any hope of doing so for two main reasons:

- firstly, the Court made it clear that total or near-total replacement of a structure is not maintenance, improvement or alteration; and
- secondly, the works materially affected the external appearance of each structure to the extent that it was inconsistent with the character of the structure.

The Court rejected the assertion that the foundations constituted improvements to the pre-existing foundations on the basis that there was no evidence to establish existing foundations or any credible argument that the new foundations simply constituted repairs and maintenance. The Court also found that simply remaining within the old footprint and dimensions did not authorise a new development and rejected this approach from the Applicant.

**Issue 5: Whether the Court should apply its discretion to refuse an injunction if it found there was unauthorised development**

In circumstances where the Court deems that a breach of the statutory provision at issue was not intended to automatically result in invalidity and certain factors apply, then the Court may elect not to invalidate the decision on a discretionary basis.

The Court considered whether to exercise its discretion here and to refuse to grant the relief sought i.e. halting the unauthorised development and restoration of the land to its prior state. The Court found that the primary considerations of the integrity of the planning system and the need for equal justice and the rule of law were reinforced by the circumstances of the case. To this end the Court noted that:

- the Lands were zoned as being of high amenity value,
- the development created a traffic hazard (as confirmed by SDCC's Senior Traffic and Transportation Engineer),
- the water and wastewater arrangements impacted on local watercourses (as per SDCC's Senior Engineer),
- there were impacts on the local heritage and sensitive environment (as confirmed by SDCC's Heritage Officer), and
- there was an impact on local residents.

All of these factors meant that the Court should not apply its discretion and full remediation should be required. The Court also found that there were a number of subjective factors specific to this case which formed a further basis for a refusal to exercise this discretion, including the conduct of the Developer, the continuation of works despite warning letters received from SDCC and what was described as the *"ludicrous defence"* that this was a *"genuine mistake"*. Ultimately the Court took the view that a failure to grant relief would have the effect of granting planning permission in a situation where the correct procedures for obtaining permission under the 2000 Act had not been engaged with. The Court therefore refused to exercise its discretion.

The Court dismissed the appeals and confirmed the injunctions granted by the Circuit Court with variations to include the imposition of a prohibition of any further works being carried out on the Lands and a requirement that the Developer submit a detailed draft remediation and landscaping plan.

**Key Takeaways**

- Total or near-total replacement of a structure is not maintenance, improvement or alteration and therefore Section 4(1)(h) of the 2000 Act does not apply.
- Simply remaining within the old footprint and dimensions of a prior structure does not authorise a developer to erect a new structure without permission.
- Alleged '*pre-1964*' and '*seven-year rule*' arguments cannot be relied upon when there is evidence of new and intensified development.
- The onus is on the developer to prove an exemption.
- Development which is not exempt may be permissible if it is ancillary to exempted development. However, this principle logically also operates so as to de-exempt development (which may otherwise be exempted development) that is ancillary to unauthorised development
- Cutting a tree or hedge is the carrying out of works on land and is therefore development. However, this is subject to certain exemptions.
- The use of a title, such as *"architect"* signifying a particular profession or area of expertise should be used carefully and not in a manner that risks misleading other parties, in particular where that the title is one which is protected.

Read the full judgment online

**Case: Stephen Keogh, Tom Quirke and Rural Residents Wind Aware and Environmental Group** (Applicants) **v An Coimisiún Pleanála** (Respondent) **and EDF Renewables Ireland Limited** (Notice Party)

**Date delivered: 29 May 2026**

**Citation: [2026] IEHC 339**

**Judge: Humphreys J.**

This judgment of the High Court (the Court) concerned the decision of An Coimisiún Pleanála (the Commission) to grant planning permission for the development of seven wind turbines and all associated works in the townlands of Ridge, Agharue, Coolnakisha and Seskinrea, Co. Carlow (the Proposed Development).

## Background

In May 2024, EDF Renewables Ireland Limited (the Developer) applied to Carlow County Council (the Council) for planning permission for the Proposed Development. As part of this application an Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) were submitted. In July 2024, the Council decided to refuse to grant planning permission for the Proposed Development. In August 2024, the Developer appealed the decision of the Council to the Commission. In November 2025, the Commission decided to grant planning permission for the Proposed Development subject to 24 conditions (the Decision). In January 2026, Stephen Keogh, Tom Quirke and Rural Residents Wind Aware and Environmental Group (the Applicants) sought and were granted leave to challenge the Decision by way of judicial review proceedings which were heard by Humphreys J. on 28 April and 5 May 2026.

## Grounds of Challenge

The Applicants challenged the Decision on the following grounds:

### Ground 2: Planning History

The Applicants alleged that the Commission was obliged to consider all the planning history for the site of the Proposed Development but failed to do so. It was alleged that the Commission failed to consider a previous refusal of permission for a 21-turbine wind farm in the same area (the Refusal) and, even if it did consider the Refusal, the Commission failed to provide reasons for why it now granted permission for the Proposed Development when it had previously expressly found that wind turbines were unsuitable for the elevated "*ridge*" location in the Refusal.

The Court rejected this argument for a number of reasons, firstly pointing out that the Commission did not fail to consider the planning history of the site or other permitted wind farms based on the Commission’s Inspector's Report and the EIAR and that submissions made to the Commission by one of the Applicants referred to the Refusal. These submissions were then considered by the Commission. The Court found that the Refusal was not relevant as it related to a different development on different lands in a different policy context. More generally, the Court found that each application is required to be considered on its own merits and there is no general obligation on the Commission to engage with the reasoning of each decision in any applicable planning history or to distinguish one application from another. This would be an unworkable obligation save for exceptional cases, for example where an issue of discrimination arises. Such an obligation would become even more unworkable in the context of a policy framework which is shifting radically such as that of renewable energy infrastructure in light of the climate emergency.

**Ground 3: Failure to consider submissions on wind energy guidelines**

The Applicants alleged that the Commission failed to consider their submissions and those of the Council in respect of the applicability of the 2006 Wind Energy Guidelines (the 2006 Guidelines). The Applicants confirmed that the Commission was requested to consider the 2019 draft Wind Energy Guidelines, World Health Organisation 2018 Guidelines on Noise and the independent expert reports that were submitted. The Applicants contended that the Commission incorrectly treated the 2006 Guidelines as *"prescriptive, conclusive and exclusive"*.

The Court dismissed this argument, finding that the Applicants had not demonstrated that their submissions were not considered in circumstances where they had been stated to be considered. The Court also found that the Applicants had taken three entirely inconsistent positions on the 2006 Guidelines in an attempt to succeed on one. Firstly, they argued that the 2006 Guidelines should have been treated as definitive but were not, submitting that the Commission had failed to comply with the 2006 Guidelines. The Court found that the Commission was only required to have regard to the 2006 Guidelines and this obligation had been complied with. Secondly, they argued that the 2006 Guidelines were incorrectly treated as definitive. The Court found that no evidence had been provided to support this argument. Thirdly, they argued that the 2006 Guidelines were adopted in breach of EU law and should have been rejected. The Court found that the Commission had no jurisdiction to find that government guidelines were invalid and that the Applicants could not seek to challenge the validity of the 2006 Guidelines when they had not joined the State to these proceedings or sought relief for this in their pleadings. The Court also noted that the Commission has a wide discretion regarding what non-statutory material it can consider and any such material referenced in submissions is presumed to have been considered unless proven otherwise. The Court determined that the Commission is entitled to prefer the analysis of a developer to that of other participants in the process and to successfully challenge this an applicant is required to demonstrate the Commission has acted unlawfully but the Applicants failed to do so in these proceedings.

**Ground 5: Misdescription of the property of Tom Quirke**

The Applicants contended that the Commission and/or the Developer incorrectly described the property of Tom Quirke (the Property) as being a *"participating property"* with the result that no mitigation measures to eliminate shadow flicker to the Property were proposed, assessed or addressed by the conditions attached to the planning permission granted. This was alleged to amount to a failure to take into account a material consideration in making the Decision. While the Commission accepted that the EIAR mislabelled the Property as alleged, it submitted that there was no dispute on this, meaning that there was no basis for any party to contend that Condition 9(a), which addressed mitigation measures for shadow flicker affecting *"existing nearby habitable dwellings (excluding participating properties)",* did not apply to the Property. The Commission also stated that the Property was actually considered and assessed in respect of shadow flicker.

The Court rejected this ground of challenge as the Applicants had not validly raised it as an issue in the planning process and if they had done so the mislabelling could have been corrected. The Court also found that the mere existence of a labelling error in the EIAR could not have the effect of excluding the Property from the application of Condition 9(a) as it was a nearby habitable dwelling and it was not in fact a participating property.

**Ground 6: Material contravention**

The Applicants argued that the Commission failed to identify a material contravention of the Carlow County Development Plan 2022-2028 (the Development Plan) which sought to protect and maintain the overall integrity of the landscape of Carlow and that the Commission was not entitled to grant permission without carrying out an assessment of how it was justifiable to contravene the Development Plan requirement that wind farms were *"not normally permissible"* in the area in question. The Commission contended that the Applicants had misinterpreted the Development Plan in asserting that it created a clear presumption against wind farms, noting that the Development Plan contained no absolute prohibition and allowed for planning discretion. The Commission's Inspector had identified the Developer's submission that certain policies in the Development Plan were contradictory and therefore carried out an analysis of the Development Plan and its compatibility with national policy, which the Court described as *"a sophisticated, intelligent and insightful analysis of the thorny issue of compatibility of development plans with national climate goals".* The Court observed that the Commission's Inspector correctly focussed on a number of legally valid and relevant factors in forming their view on the issue of whether renewable energy infrastructure should be constrained in a manner that might *"at first sight"* be suggested by any development plan. These factors were as follows:

(i) The extent of quantified climate ambition in a development plan,

(ii) Whether county policy is sufficiently detailed and site-specific,

(iii) Whether the development plan has been updated to reflect evolving policy at regional, national and even EU level,

(iv) Whether relevant regional policy statements have also been updated to reflect the evolving policy developments at a higher level,

(v) The extent to which the development plan embraces the amount of ambition involved in national climate policy goals, and

(vi) Whether the development plan purports to cap the contribution of the county concerned to national goals.

The Court further noted that the Commission went beyond simply accepting the Commission's Inspector's Report to highlight certain contradictions between elements of the Development Plan. The Court found that the tension between different elements of the Development Plan gave rise to a requirement for the Commission to exercise its evaluative judgement, which it had done. Therefore the Court rejected this ground of challenge, finding that the Commission had validly exercised the required planning judgement in reaching its decision. By contrast, the Applicants had read certain portions of the Development Plan in isolation, which is the incorrect approach and illustrative of the necessary role of decision-takers in balancing different policy statements that may suggest differing approaches. The Court also found that the Applicants had failed to identify a material contravention, but even if they had the Court would have refused to find in their favour. The Court confirmed that it had discretion to adopt this position on the basis that:

- the Applicants had not demonstrated real environmental harm,
- the decision would likely have been the same even if this issue had been identified as a material contravention, and
- the imperative requirement of EU and national law to deliver renewable energy infrastructure.

**Ground 1: Lack of full Environmental Impact Assessment (EIA)**

The Applicants alleged that the Commission failed to carry out a full EIA, particularly in respect of the likely significant effects of the Proposed Development on the environment, particularly human amenity, cumulative noise, landscape and visual impact, and public safety due to the traffic impacts. The Applicants also asserted that the Commission had failed to comply with the requirements of the EIA Directive (Articles 3 and 9) and Sections 171A and 172 of the 2000 Act. The Applicants alleged that the Commission reduced the requirements of the EIA Directive and Section 171A of the 2000 Act to compliance with the 2006 Guidelines which meant that the Commission failed to comply with the obligations of the EIA Directive to sufficiently identify, describe and assess the Proposed Development in an appropriate manner.

The Court rejected this argument on the basis that the Applicants had failed to establish any deficiency in the EIA on the evidence and, as a consequence, failed to establish a route map between any alleged defect in the EIA to an entitlement to relief. The Court found that noise issues raised by the Applicants were dealt with in the EIAR and expressly considered by the Commission's Inspector. Furthermore, reliance on a HSE submission suggesting further assessment and mitigation was misplaced as it did not seek refusal of the application and the Commission was not obliged to accept that submission as long as it had considered the submission and exercised its evaluative judgment in deciding what material to prefer in making the Decision. The Court also found that the Applicants had misread the 2006 Guidelines in that they had incorrectly focused on certain sections of these guidelines, reading them out of context.

**Ground 4: EIA and microplastics**

The Applicants alleged that the Commission failed to consider submissions on the environmental consequences of microplastic emissions from the operation of the turbines as part of the Proposed Development and, if this was considered, the Commission failed to provide sufficient reasons identifying how this issue was dismissed or overcome. The Commission argued that no valid submission had been made to the Commission on this point, with the only observation received in respect of this issue being received outside of the statutory period and therefore invalid. While the issue had been raised before the Council, this did not give rise to a requirement for the Commission to respond to it. While the Commission expressly noted that it had considered all submissions to both the Council and the Commission, this did not give rise to a requirement to provide a detailed narrative on the issue of microplastics which, in any event, was not made out on the evidence as being a material consideration for the purposes of EIA.

The Court rejected this argument as the submission in question was not validly made to the Commission. Furthermore, the Court also found that the submissions made to the Council were stated in the Decision to have been considered and the Applicants had not established that this was not the case. The Court stated that a lack of narrative discussion did not amount to a lack of consideration and it is not for the Applicants to decide whether any point or submission made is *"significant";* that is a matter for the decision-maker, subject to review by the Court. The issue of microplastics had not been demonstrated to be significant.

**Ground 7: Strategic Environmental Assessment (SEA) of the 2006 Guidelines**

The Applicants alleged that the Commission was in error in making the Decision on the basis of *"selective overreliance"* on the 2006 Guidelines which were in breach of the SEA Directive as they had not undergone an environmental assessment in accordance with that directive.

The Court dismissed this argument as a ground which the Applicants could not make in these proceedings as they had not sought any relief in respect of the validity of the 2006 Guidelines or joined the State as party to the proceedings as required. The Court found that the 2006 Guidelines are not binding and therefore did not require SEA. The Court also found that the Commission could not be required to give reasons for not accepting that the 2006 Guidelines were invalid in circumstances where the Commission does not have jurisdiction to declare Government guidelines invalid.

Ultimately, the Court dismissed the proceedings on all grounds. However, in making the Order dismissing these proceedings the Court did include a note in the final Order confirming that the Property is not a participating property and therefore Condition 9(a) applied to it.

**Key Takeaways**

- There is no general obligation on a planning authority to engage with the reasoning of past planning decisions or to distinguish one application from another in making a decision. This would be an unworkable obligation save for exceptional cases.
- A planning authority is entitled to prefer the analysis of one party to that of other participants in the process and to successfully challenge this an applicant for judicial review is required to demonstrate that the planning authority has acted unlawfully.
- Where a development plan contains contradictory policies, a planning authority may carry out an analysis of the differing policies and exercise its evaluative judgment in reaching a decision. In this case, the Court approved the analysis carried out by the Commission's Inspector in respect of the Development Plan and its compatibility with national policy. This analysis is available in the Commission Inspector's Report here.
- A lack of narrative discussion in a decision does not amount to a lack of consideration and it is not for a participant in the process to decide whether any point or submission made is *"significant"* enough to warrant narrative discussion, that is a matter for the decision-maker subject to review by the court.

Read the full judgment online

**Case: Abbey Park and District Residents Association Baldoyle and John Oliver McCann** (Applicants) **v An Coimisiún Pleanála** (Respondent) **and Rondesere Limited** (Notice Party)

**Date delivered: 16 June 2026**

**Citation: [2026] IEHC 365**

**Judge: Holland J.**

This judgment of the High Court (the Court) concerned the decision of An Coimisiún Pleanála (the Commission) to grant planning permission to Rondesere Limited (the Developer) for a Large-scale Residential Development (LRD) of 104 apartments consisting of one apartment block in an L-shape of up to 11 storeys but with lower elevations of 2-4 storeys to the north and 4 storeys to the west (the Proposed Development) on a site of 0.45 hectares at the junction of Grange Road and Longfield Road in Dublin 13 (the Site).

**Background**

In September 2023, Fingal County Council (the Council) and the Developer held an LRD meeting in accordance with Section 32C of the Planning and Development Act, 2000 (the 2000 Act). Thereafter, the Council issued an opinion under Section 32D of the 2000 Act (the LRD Opinion). The Council confirmed that the Developer's proposal did not constitute a reasonable basis on which to make an application for permission for the proposed LRD due to inappropriate density, scale, massing and layout, inappropriate visual impact, insufficient provision and quality of public open space and insufficient car parking on site.

In December 2023, the Developer applied to the Council for an LRD permission. In February 2024, the Council issued a decision to refuse permission for five reasons. In March 2024, the Developer appealed the Council's decision to the Commission. In July 2024, the Commission decided to grant permission for the Proposed Development, subject to 21 conditions (the Decision). In August 2024, Abbey Park and District Residents Association Baldoyle and John Oliver McCann (the Applicants) sought leave to challenge the Decision by way of judicial review proceedings. In November 2024, leave was granted and the proceedings were heard by Holland J. in June 2026.

**Grounds of Challenge**

The Applicants challenged the Decision on the following grounds:

**Ground 2: Playground**

The Applicants argued that the Commission failed to:

- consider and/or conclude that the Proposed Development was not in compliance with Objective DMS068 of the Fingal Development Plan 2023-2029 (the Development Plan),
- address the Council's conclusion that the Proposed Development did not provide a playground as required by the Development Plan, and
- provide adequate reasons in relation to the foregoing.

Objective DMS068 required that all residential schemes of over 50 units incorporate children's playground facilities at a rate of 4m2 per residential unit. The Court noted that the Development Plan Objective did not differentiate between playgrounds in private open space, communal open space or public open space.

The Court acknowledged that the Proposed Development included a creche with an associated open play area of approximately 117.1m2. The total play area requirement for the Proposed Development was 416sq. m.[1] After deducting the play area for the creche there was a shortfall of 299 m2 (or 72%). The Court stated that this meant that approximately 72% of the children resident in the Proposed Development, which it estimated to be about 90 children, would be without an on-site playground.

The Court observed that the Council, in refusing permission, found that the Developer had not provided the required acceptable public open space. While the Council's planner's report, which was adopted by the Chief Executive, acknowledged that the Developer had not provided the required play provision for the Proposed Development and the proposals for this were unacceptable, there was no specific reference in the Council's decision to Objective DMS068. Similarly, the Court noted that the Commission Inspector's report had not referred to Objective DMS068.

The Commission contended that as the Applicants had not raised the inadequacy of playground facilities in the planning process then they could not now seek to do so as part of the proceedings, but the Applicants argued that the Commission had an autonomous duty to consider the issue. The Court agreed with the Applicants in this regard and also found that the Proposed Development was in material contravention of Objective DMS068 given the objective is set out in terms that are clear, quantified and specific.

While the Commission argued that the Council had failed to find that material contravention on the playground issue, and therefore suggested that any contravention was not material, the Court expressed doubt as to whether this was the case.

The Court found that there was a material contravention of the Development Plan and that, although the Commission can grant permission in material contravention of a development plan, it cannot do so in circumstances where it has inadvertently failed to identify an existing material contravention. Therefore, the Court found in favour of the Applicants and overturned the Decision.

[1] 104 residential units x 4m2 = 416m2

While the Court overturned the Decision on the basis of Ground 2, it also considered certain other grounds as set out below.

**Ground 8: Appropriate Assessment (AA)**

The Applicants alleged that there was a risk of bird collisions with the transparent glazing of the Proposed Development and contended that the Developer failed to carry out a bird survey to assess this. The Court found that the Developer's Revised Natura Impact Statement (the Revised NIS) considered and addressed this risk. Therefore, the Court dismissed this ground, noting that the Applicants had failed to produce any expert evidence to displace the findings of the AA that was carried out and that the Commission was entitled to reach the conclusion that it did in this regard.

As regards the remaining grounds, certain elements of these were considered and some commentary was provided by the Court with a view to the Commission's reconsideration of these matters on remittal but the Court did not go so far as to reach a complete decision on these grounds.

**Key Takeaways**

- There are certain issues which go to the heart of proper planning and sustainable development which a planning authority has an autonomous duty to consider. This includes a requirement to consider any relevant objective of a development plan which is clear, quantified and specific.
- While the Commission can grant permission in material contravention of a development plan, it can only do so where it has identified the existence of the material contravention. The Commission cannot inadvertently grant permission where a material contravention exists but has not been identified by the Commission.
- Expert evidence is required in order to displace scientific findings that are produced as part of an application for permission. Where no expert evidence is provided, a planning authority is entitled to reach a conclusion that it accepts the scientific findings forming part of the application documents.

Read the full judgment online

**Case: John Fox** (Applicant) **v Wicklow County Council, Minister for Housing, Local Government and Heritage, Minister of State at the Department of Housing, Local Government and Heritage and the Office of the Planning Regulator** (Respondents)

**Date delivered: 30 June 2026**

**Citation: [2026] IEHC 412**

**Judge: Holland J.**

This judgment of the High Court (the Court) concerned a decision by the Minister for Housing, Local Government and Heritage (the Minister) to issue a direction (the Direction) pursuant to Section 31 of the Planning and Development Act, 2000 (the 2000 Act) to Wicklow County Council (the Council) to amend the Wicklow County Development Plan 2022-2028 (the Development Plan). The Direction had the effect of excluding the lands of John Fox (the Applicant), situated on the western edge of the developed area of Willowgrove and amounting to approximately 1.2ha (the Lands), from the area within the Kilpedder-Willowgrove village development boundary (the Development Boundary).

**Background**

Since at least 2013, the Lands were outside the Development Boundary. The Lands were then included within the Development Boundary when the Development Plan was made. However, the effect of the Direction was to place the Lands outside the Development Boundary again.

The Court identified that the village of Kilpedder-Willowgrove is a *"Level 7 Villages (Type 1)"* settlement for the purposes of the Development Plan. Lands in Level 7 are not zoned but instead are enclosed by settlement development boundaries in order to identify areas within the settlement and distinguish them from rural areas. The effect of this in terms of the status of the Lands in this case is to substantially increase or decrease the prospect of obtaining planning permission for residential development on the Lands depending on whether they fell inside or outside of the Development Boundary. The Applicant asserted that he intended to develop three houses on the Lands for his children.

Section 31 of the 2000 Act sets out what the Court described as a *"highly iterative and complex"* statutory scheme. All parties agree that the jurisdiction of the Minister to make the Direction was contingent on the Minister agreeing with a recommendation made by the Office of the Planning Regulator (the OPR) pursuant to Section 31AN(4) of the 2000 Act.

## Procedural History

In June 2020, the draft Development Plan was published. The Applicant made a submission in respect of the draft requesting that the Council amend the Kilpedder-Willowgrove Development Boundary to include the Lands. In December 2021, the Chief Executive submitted a report to the Elected Members of the Council recommending against the Applicant's proposed amendment. In March 2022, the Elected Members amended the draft Development Plan to include the Lands within the Development Boundary (the Proposed Amendment), among other amendments.

A Strategic Environmental Assessment (SEA) Screening report and SEA Report on the proposed amendments to the draft Development Plan identified the Proposed Amendment as having "*the potential to undermine sustainable development and proper planning*" given it was lacking in an evidence-based framework for development and the reports identified a need to reject same.

In May 2022, the OPR made a submission to the Council under Section 31AM of the 2000 Act recommending that the Development Plan be made without the Proposed Amendment. In July 2022, the Chief Executive reported to the Elected Members on the submissions received and recommended that the Development Plan be made without the Proposed Amendment. In September 2022, the Elected Members made the Development Plan, deciding against the Chief Executive's recommendation to include the Proposed Amendment.

In September 2022, the Chief Executive notified the OPR under Section 31AM(6) of the 2000 Act that the Development Plan had been made and that the OPR recommendation to reject the Proposed Amendment had not been complied with. In October 2022, the OPR issued a Notice to the Minister pursuant to Section 31AM(8) of the 2000 Act (the Notice) recommending that the Minister issue a draft direction to the Council outlining the intention of the Minister to direct the reinstatement of the Development Boundary to exclude the Lands. The Court noted that the Notice set out and recommended to the Minister the OPR's reasons for what later became the Direction, and this was later asserted in a number of documents as stating the reasons for the Direction.

The Development Plan came into effect on 23 October 2022 and on 24 October 2022 the Minister issued a Notice of Intention to Issue a Direction and a draft Direction to the Council. On 24 October 2022, the draft Direction was published by the Minister and on 8 November 2022 the Notice and draft Direction were published by the OPR. On 31 October 2022, written submissions on the draft Direction were invited by public notice published by the Council under Section 31(7) of the 2000 Act.

On 16 November 2022, the Applicant made a submission in respect of the draft Direction. In December 2022, this submission, along with the other submissions received, was reported to the Minister and the OPR by the Chief Executive of the Council. The Chief Executive recommended that the draft Direction be effected (but the Court noted that the statutory power of the Chief Executive here was limited to how best to effect the draft Direction as opposed to whether or not to effect it at all).

The OPR considered the Chief Executive's report. In January 2023, the OPR issued a recommendation to the Minister under Section 31AN(4) of the 2000 Act recommending that the Minister issue the Direction. This recommendation referred to and relied upon the submissions of the OPR made in the Notice and also responded to the additional issues raised in the Applicant's submission of November 2022. On 21 February 2023, the Minister issued the Direction, noting that it was made *"consequent"* to the OPR's Section 31AN(4) recommendation.

The Applicant challenged the Direction by way of judicial review on the following grounds:

**Ground 1: Reasons for the Direction**

The Applicant contended that there had been a failure to provide adequate reasons for the Direction which was a breach of Section 31 of the 2000 Act. Section 31 required the Minister to provide *"stated reasons"* for issuing the Direction. The Applicant argued that the Direction itself failed to provide adequate reasons and the OPR's recommendation could not be relied upon as the Applicant had not had sight of it, but even if he had, it was contended that Section 31 required the Minister to independently form an opinion that a Direction should issue.

**Where can reasons be found?**

The Court noted that a participant in the planning process is not a passive recipient of decisions in terms of ascertaining the reasons for those decisions, and the submission that any document prepared by the OPR could not provide reasons for the Direction made by the Minister was misconceived. The Court went on to find that a decision-maker can adopt any document as illustrating the reasons for a decision. The Court also noted that reasons must be sufficiently clear to a reasonable observer on reasonable inquiry, and found that this requires the observer to make that reasonable inquiry rather than sit back and rely solely on the decision on its face without examining the materials available to them.

The Court considered affidavit evidence from the Applicant asserting that he did not believe that the OPR's Section 31AN(4) recommendation and proposed draft Direction was available to the public until the OPR provided a link to same as part of these proceedings and, in any event, that accessing this web page was a difficult process involving navigation of a sequence of web pages on the OPR website. The Court noted that this affidavit made no reference to specific efforts made by the Applicant to seek out these documents and found that there was no evidence that it was excessively difficult to access same. Therefore, the Court found no basis for asserting that these documents did not contain the reasons for the Direction.

The Court then examined whether the contents of the OPR's Section 31AN(4) recommendation, Section 31AM(8) Notice and Section 31AM submission contained discernible reasons for the Direction. The Court noted that the Minister is required to consider a Section 31AN(4) recommendation to issue a direction and, if they agree with the OPR's recommendation, the Minister must issue that direction. The Court found that a recommendation normally advises a recipient of what to do and why they should do it and this is therefore an appropriate place to look for reasons.

The Court observed that where a Ministerial direction is concerned the case for reasons to be found in an OPR recommendation is even stronger as it is part of a statutory scheme, compliance with which is required, and the Minister is required to agree with a recommendation in order to issue a direction. While this scheme did not rule out a scenario where the Minister agrees with the recommendation to issue a direction for different reasons to those provided by the OPR, it remained likely that the Minister would rely on the reasons given by the OPR and so the OPR notice and recommendation should be examined. Furthermore, the Direction explicitly noted that it was made *"consequent"* to the OPR's Section

31AN(4) recommendation which the Court observed made it entirely reasonable and not at all excessive to expect the Applicant to seek out the Section 31AN(4) recommendation. While the Section 31AN(4) recommendation was not published until 7 March 2023, two weeks after the Direction was made, the Court found that although undesirable, it was unlikely that this delay gave rise to prejudice to the Applicant.

The Court found that reasons could also be found in the Section 31AM(8) notice as it forms part of the same iterative statutory scheme leading to the Direction and the OPR's Section 31AN(4) recommendation explicitly adopted the OPR's submissions in the Section 31AM(8) Notice. The Court went on to find that the OPR's submission and recommendations made in May 2022 could also be said to outline reasons for the Direction.

**The *"Stated Reasons"* Requirement**

The Court went on to reject the Applicant's contention that the Minister may only issue a direction for *"stated reasons"* meant that the Minister must independently form an opinion to issue that direction and state reasons other than those found in the Section 31AN(4) recommendation.

While the Court agreed that the Minister is required to independently form an opinion to issue a direction, this can be done by adopting the reasons of others which the Minister agrees with. However, the Court rejected the argument that this requires the Minister to form its own reasons which differ from those of the OPR.

The Court considered it a *"pointless and unconvincing invention"* to propose that the Minister is required to add some novel reasons of their own to those of the OPR where the Minister agrees with the reasons provided by the OPR.

The Court reiterated that reasons can be found anywhere as long as they are in fact the reasons of the decision-maker, regardless of whether the decision-maker or another party was the first in time to actually state those reasons.

**Adequacy of Reasons**

The Court then addressed whether the reasons provided were adequate. The Court found that reasons were included which specifically related to the Lands and therefore the reasons provided were adequate even if the Applicant disagreed with their merits.

**Ground 2: Failure to have regard to the Submission of the Applicant**

The Applicant contended that the Minister failed to have regard to a submission made by a planning consultant on behalf of the Applicant. The Court rejected this on the basis that the Applicant produced no evidence to support their argument and found that there was clear evidence in the Section 31AN(4) recommendation that the OPR had had regard to the submission.

The Court dismissed the proceedings.

**Key Takeaways**

- A participant in the planning process is not a passive recipient of decisions and is expected to take steps to ascertain the reasons where they are to be found beyond the specific decision document.
- Reasons must be sufficiently clear to a reasonable observer on reasonable inquiry.
- Reasonable inquiry requires the observer to examine the materials available to them to discern the reasons.
- A recommendation normally advises a recipient of what to do and why they should do it and this is therefore an appropriate place to look for reasons, particularly where the recommendation is required as part of a statutory scheme.
- Reasons can be found anywhere in the decision documents as long as they are in fact the reasons of the decision-maker, regardless of whether the decision-maker or another party was the first in time to actually state those reasons.

Read the full judgment online

## Pat O'Donnell and Company v Dublin City Council and Uniphar Group Plc [2026] IESC 36

**Case: Pat O'Donnell and Company** (Applicant/Respondent) **v Dublin City Council** (Respondent/Appellant) **and Uniphar Group Plc** (Notice Party)

**Date delivered: 2 July 2026**

**Citation: [2026] IESC 36**

**Composition of the Court: O'Donnell C.J., Woulfe, Hogan, Murray and Donnelly JJ.**

**Judgment delivered by: Woulfe J. and Hogan J.**

**Background**

Dublin City Council (DCC) appealed the judgment of Mr Justice Holland in the High Court which was included in the Learning from Litigation Legal Bulletin Issue 7. Please refer to that issue for the full background.

However, by way of brief overview, the High Court decision overturned the decision of DCC to adopt the Dublin City Development Plan 2022-2028 (the Development Plan) insofar as it adopted material alteration MA D-0004 (the Material Alteration) to the previously published draft Development Plan. The Material Alteration changed the zoning of lands, owned by Uniphar PLC (the Notice Party) at the Chapelizod bypass/Rossmore Drive, Kylemore Road, Dublin 20, from Z6 – Employment/Enterprise to Z10 – Inner Suburban and Inner City Sustainable Mixed-Uses. The High Court identified that what most distinguished the Z6 from the Z10 zoning for the purposes of the proceedings was that *"Z10 envisages considerable residential development and Z6 does not."*

Pat O'Donnell and Company, the Applicant in the Judicial Review proceedings and Respondent to this appeal (the Respondent), operates an industrial site on lands contiguous to the north and east of the Uniphar site. The Respondent claimed that its operations are incompatible with any adjoining residential use and contended that friction with any potential adjoining residents would be inevitable. The Respondent made a submission to DCC on this in the Development Plan process (the Submission). Doyle Kent Ltd (named as planning consultants to the Respondent) lodged the Submission with DCC on behalf of the Respondent on 31 August 2022.

DCC prepared a Chief Executive's Report on 21 September 2022 (the September 2022 CE Report). Section 12(8)(b) of the Planning and Development Act 2000, as amended (the 2000 Act) required the September 2022 CE Report to, inter alia, list the persons or bodies who made submissions or observations received in respect of the Material Alteration.[1] The September 2022 CE Report listed Doyle Kent Ltd as the organisation that made the Submission and did not list the Respondent. The High Court found that this was a breach of the mandatory obligation in Section 12(8)(b)(i) of

[1] Section 12(8)(b)(i) has since been repealed as noted in the judgment of Hogan J. The Planning and Development Act, 2024 contains a similar requirement at Section 55(6)(c)(i).

the 2000 Act to list the name of the specific persons who made the submission rather than the name of their planning agents.

DCC sought leave of the High Court to appeal the decision to the Court of Appeal. Although the High Court granted leave to appeal to the Court of Appeal, DCC elected to seek leave to appeal to the Supreme Court in what is known as a *"leapfrog"* appeal and the Supreme Court allowed this (the Appeal). The Supreme Court allowed DCC to make the Appeal on the basis that the nature of the issues meant that it was highly probable or inevitable that the case would end up in the Supreme Court anyway.

The Appeal dealt with the following issues:

1. What is the purpose/intention of the statutory requirement under Section 12(8)(b)(i) of the 2000 Act for the Chief Executive's report to list persons who made submissions on proposed material amendments to a development plan and, in light of this purpose, whether this provision is satisfied by the listing of an agent who lodged the submission?

2. If the statutory obligation on a decision-maker is to list the persons who made submissions, can listing an agent instead be treated as a minor error or de minimis breach, or must it be treated as not being in substantial compliance with Section 12(8)(b)(i) of the 2000 Act?

3. What principles are to be applied in assessing whether a breach of a statutory requirement under the 2000 Act is to be treated as de minimis and whether such breach amounts to the quashing of a decision?

**Issue 1: The Correct Interpretation of Section 12(8)(b)(i) of the 2000 Act**

The Supreme Court considered the principles of statutory interpretation in respect of Section 12(8)(b)(i) of the 2000 Act and concluded that the *"ordinary and natural meaning"* of that provision was that the correct person to be listed in the Chief Executive's report could be any one of:

- the Respondent's planning agent,
- the Respondent itself, or
- the Respondent's planning agent on behalf of the Respondent.

The Supreme Court also found that this interpretation accurately reflected the statutory context and represented the purpose of the provision. In this case, the Respondent's planning agent, Doyle Kent Ltd, was the literal person who made the Submission but the Supreme Court also found that the Submission was made by Doyle Kent Ltd as agent on behalf of the Respondent and therefore the Respondent could also be said to have made the Submission.

The Supreme Court highlighted the fact that the making of a development plan is an onerous undertaking for a planning authority which involves processing a large number of submissions within limited timeframes. The Supreme Court also acknowledged that:

- the Chief Executive, in this case, had just eight weeks to prepare a report on the material alterations (this time period commenced on the day that the notice of the material alterations was published), and
- the Chief Executive's report is required not only to list the persons or bodies who made submissions but also to provide a summary of those submissions and to give the response of the Chief Executive to the issues raised.

The Supreme Court took the view that this context was important in the sense that it would be a significant burden to impose on a planning authority an obligation to investigate whether the person who sought to make a submission had actually made the submission themselves or whether an agent acting on their behalf had done so.

The Supreme Court ultimately found that the purpose of the requirement to list the person who made the submission was an administrative one of formally recording who made submissions. In addition, the Supreme Court found that the view expressed by the High Court was inconsistent with the general principle that the identity of persons is irrelevant to proper planning and sustainable development.

**Issues 2 and 3: Whether a Breach of Section 12(8)(b)(i) of the 2000 Act is Capable of being Treated as De Minimis**

The Supreme Court went on to find that even if it had been wrong in its interpretation of Section 12(8)(b)(i) of the 2000 Act, the hypothetical "*breach*" of listing the wrong person as having made a submission would be merely trivial or technical and, in the absence of demonstration of any prejudice to the public, the "*breach"* could be considered to be a "*harmless error*" and therefore would not give rise to a basis for the Court to quash the decision.

**Key Takeaways**

- The Supreme Court held that, for the purposes of Section 12(8)(b)(i) of the Planning and Development Act 2000, a planning authority could validly list the principal, the agent, or the agent acting on behalf of the principal. The Court considered all three approaches capable of complying with the statutory requirement.
- Harmless procedural errors are unlikely to justify the quashing of a decision. The judgment confirms that courts consider the purpose of the statutory requirement, the nature of the breach, and its consequences before deciding whether a decision should be quashed. Courts may refuse to quash a decision where a breach is technical, trivial, peripheral or otherwise insubstantial and where no material prejudice has been caused.
- Decision-makers should ensure that their processes are robust and comply with the letter and purpose of the legislation. All processes should be clearly documented to demonstrate compliance and that no material prejudice has been suffered by any party due to a procedural error.

Read the full judgment of Woulfe J. online

While the above is a summary of the judgment of Woulfe J., a second judgment was delivered by Hogan J. This judgment endorsed the decision of Woulfe J. and observed that it could not be said that any non-compliance with Section 12(8)(b)(i) of the 2000 Act that had been made out could have prejudiced the Respondent or frustrated the purpose of the provision from being achieved.

Read the full judgment of Hogan J. online

These case summaries were prepared by members of the Planning and Environmental Department of Fieldfisher Ireland LLP (Craig Farrar, Jonathan Moore and Evan O'Brien). Supported by the Law Society of Ireland, Environmental and Planning Law Committee.

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OPR

Oifig an Rialaitheora Pleanála

Office of the Planning Regulator

Publication date: 8 September 2026