



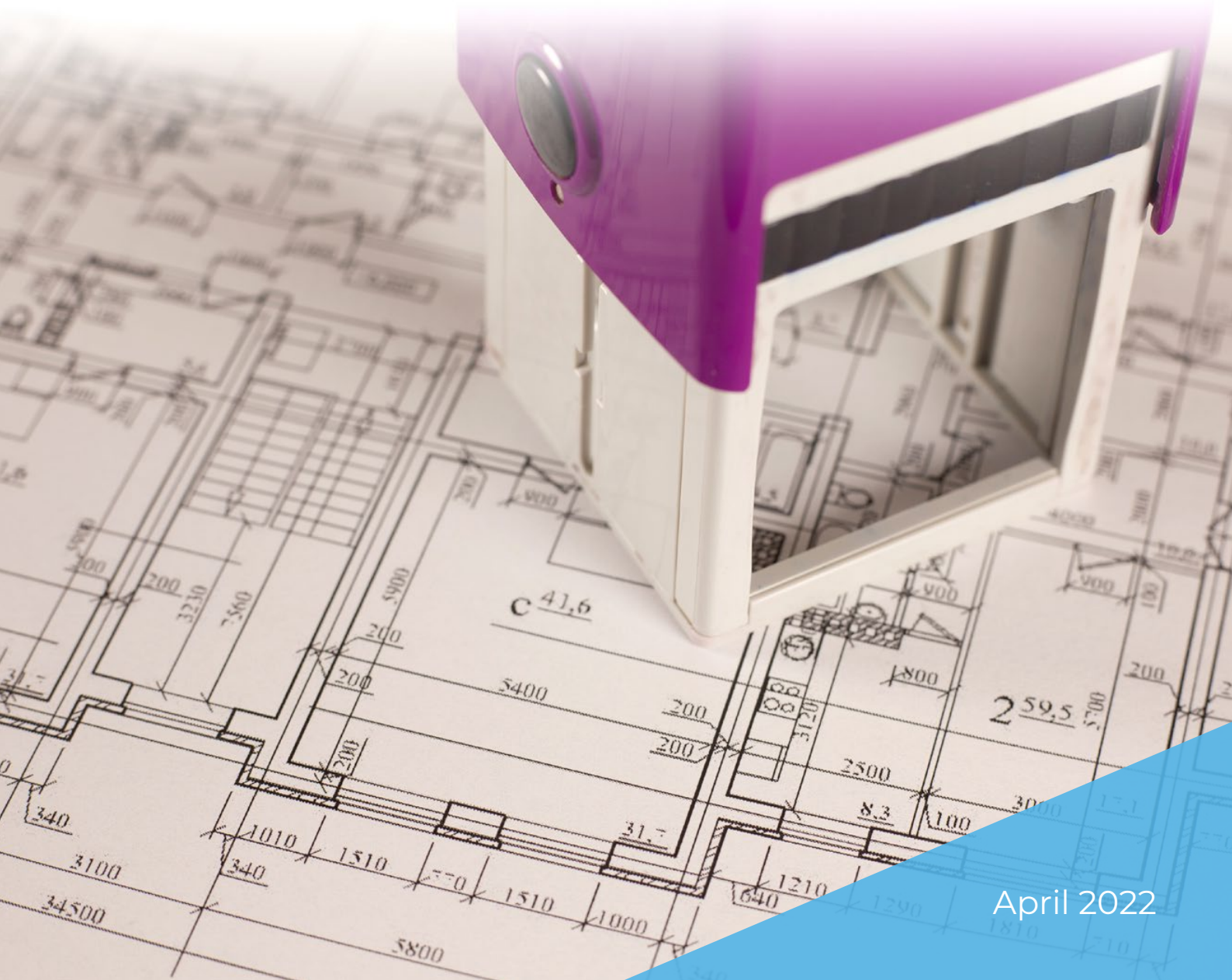
OPR Case Study Paper CSP06

Planning Application Processing

An Analysis of Planning Authority Validation Processes



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*hereinafter referred to as the '2000 Act'.

Acronym List

- > **AA:** Appropriate Assessment
- > **CCMA:** County and City Management Association
- > **CSP:** Case Study Paper
- > **DHLGH:** Department of Housing, Local Government and Heritage
- > **EIA:** Environmental Impact Assessment
- > **EIAR:** Environmental Impact Assessment Report
- > **FI:** Further Information
- > **GCC:** Galway City Council
- > **IPI:** Irish Planning Institute
- > **JR:** Judicial Review
- > **KCC:** Kildare County Council
- > **LCCC:** Limerick City and County Council
- > **LGMA:** Local Government Management Agency
- > **LCC:** Louth County Council
- > **LRD:** Large-scale Residential Development
- > **NIS:** Natura Impact Statement
- > **NOAC:** National Oversight and Audit Commission
- > **OPR:** Office of the Planning Regulator
- > **PP:** Planning Permission
- > **RIAI:** The Royal Institute of the Architects of Ireland
- > **SHD:** Strategic Housing Development
- > **The Board:** An Bord Pleanála
- > **The Regulations:** Planning and Development Regulations 2001, as amended.
- > **TCC:** Tipperary County Council

1.0 Introduction

The first formal step in a planning authority assessing a planning application is the validation process. The validation process involves assessment of the planning application documentation submitted by the applicant to determine if it complies with regulatory requirements with regard to the specified content for planning applications. If a planning application is deemed to comply with the above regulatory requirements, it can then go forward to the next stage of technical and policy assessment.

Given that a planning consent is an important regulatory gateway to what can be very significant and largely permanent changes in a given area, planning requirements and systems have become more complex in recent times. Litigation can ensue and be successfully progressed where regulatory requirements can be proven not to have been complied with. Therefore, there is a considerable onus on both planning authorities, applicants and their agents, to *'get it right'* at the initial stage.

It can be frustrating for both planning authorities as well as applicants and their agents if a planning application does not get over the first threshold of being deemed to meet the essential regulatory requirements for a valid planning application.

This may be because a particular document is missing or there are inconsistencies or gaps in the documentation submitted, compared to the very specific requirements of the Planning and Development Regulations 2001 (as amended).

Such regulations are necessarily precise, so that:

- > there is a level playing field for all stakeholders in the planning process;
- > there is a broadly consistent approach across all planning authorities; and
- > applicants and agents know the standard required for planning application documentation.

Notwithstanding the above, this case study paper came about because the statistics from the Department of Housing, Local Government and Heritage's (DHLGH's) annual planning application data; Local Government Audit Service Reports;¹ and, Ombudsman cases² have highlighted significant inconsistencies in the levels of invalidated planning applications across the local government sector.

The OPR has also handled a constant stream of correspondence from members of the public relating to planning application processing.

Given that there is no appeal mechanism or option for re-instatement or '*de-invalidating*' in the case of a disputed invalidation or an invalidation in error, the '*transaction cost*' (i.e. time, duplication of staff resources, financial and reputational damage)³ for both the planning authority and the applicant/agent is significant.

The **OPR's Annual Report 2020** (Section 8.2) sets out the national average invalidation rates. While the national average has been relatively stable over time, it is noticeable that in more recent years from 2015 to 2020 the invalidation rate increased from 13.9% to 17.1% in 2020 (OPR 2020:p.91). In 13 out of the 31 planning authorities, invalidation rates have been increasing.

More particularly, invalidation rates vary widely between individual planning authorities, and there are a number of planning authorities that have invalidation rates that are consistently⁴ and significantly divergent⁵ from the national rate. As illustrated in Figure 1 below.



¹ Local Government Auditor's Report, Carlow County Council (2009) as cited in MacCabe Durney Barnes. (2015) Independent Planning Review of The Performance of Planning Functions having regard to Specific Issues raised in respect of Six Planning Authorities. Final Report. Available from: <http://mdb.ie/portfolio-item/planning-review/> [Accessed 29th December 2021].

² Complaint concerning Clare County Council and its handling of planning applications at Doonbeg Golf Course. Available from: <https://www.ombudsman.ie/publications/reports/clare-county-council-and/> [Accessed 6th January 2022].

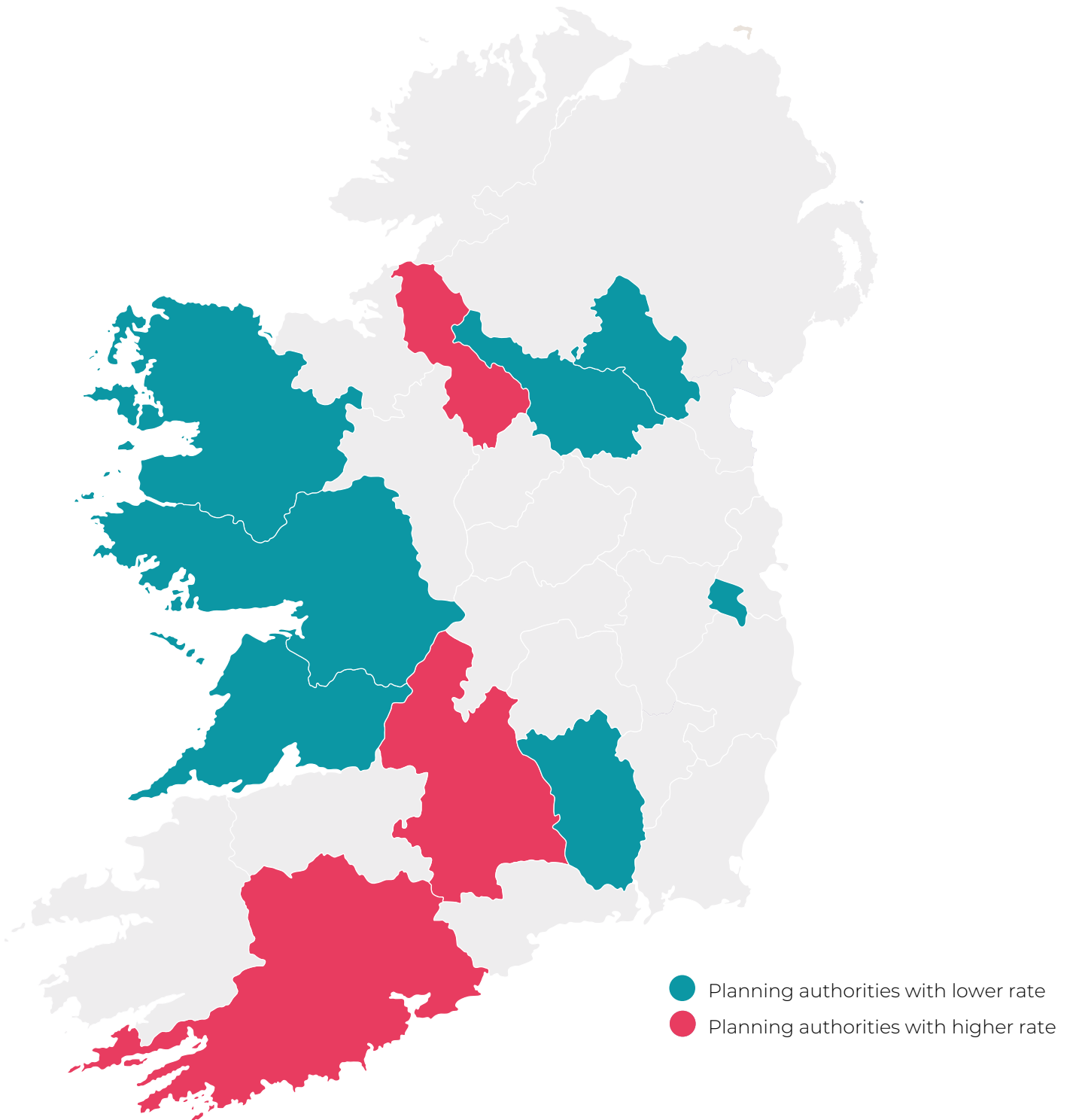
³ Feedback received from IPI's private practice committee (VC meeting 15th September 2021), RIAI representatives (VC meeting 5th October 2021) and see also Phillips, T. (2021) Zero Tolerance for Invalidation: Binning and rubber mallet – Review of Irish Planning Statistics 2009-2020. Edition 2.

⁴ At least three out of five years.

⁵ Where the deviation of the planning authority's invalidation rate from the mean rate is greater than the standard deviation of all planning authorities.

There appears to be a strong correlation between planning authorities handling larger numbers of planning applications and increasing invalidation rates i.e. planning authorities in receipt of 1,000 or more planning applications had higher invalidation rates.

Figure 1 - Overview of planning authorities average invalidation rates.



As noted in the OPR Annual Report 2020, changes to planning legislation have '*raised the bar*' in terms of the standard of application documentation. This coupled to the requirement to make submitted planning application documentation available online not later than five working days after the day on which it receives the application, are some factors that may have contributed to increased invalidation rates.

Furthermore impacts on work practices as a result of the COVID-19 pandemic, such as the temporary movement of staff into planning departments as cover for staff on sick leave or restricting movements, would also seem to have been contributing factors to increased invalidation rates in 2019/2020.



The **Development Management Guidelines for Planning Authorities**

(2007)⁶ set a high bar in suggesting that:

“In managing the validation process the planning authority will be aiming to achieve a situation where all applications lodged are valid on receipt” (p.33).

Whilst noting that “...the percentage of applications invalidated may be no reflection on the performance of the planning authority” the guidelines recommend that planning authorities should monitor the level of invalidations so that they can determine whether any actions are required to reduce the level of invalidations and certainly by comparison with other planning authorities.

Planning application validation data forms part of the annual planning statistics returns that are submitted by planning authorities to the DHLGH. As part of the OPR reviews of planning functions of a planning authority, an examination of the systems and procedures used in validating planning applications is also undertaken.

Taking all of the above into account, the objectives of this paper are to:

- > Distil and share good practices across the local government sector;
- > Develop good practice approaches for consistency and efficiency; and
- > Disseminate knowledge about systems and practices across the local government sector that, over time, can be used to move planning authorities more consistently to average invalidation rates.

To support and inform the preparation of this case study paper, we undertook the following:

- a) High level review of the available validation statistics for all 31 planning authorities over the period 2016-2020;
- b) Identified eight planning authorities from within three bands (below average, average and high invalidation rates);
- c) Issued a questionnaire to these eight planning authorities (please see Appendix A) and following receipt of responses the OPR engaged directly with the planning staff in these planning authorities to better understand local systems. This data was additionally complemented by learnings from four planning authorities reviewed as part of the OPR reviews process;
- d) Analysis of case law to glean insight from relevant Court decisions (see Appendix D); and
- e) Engaged with the Local Government Management Agency (LGMA) in relation to the potential of the new ePlanning system.

The OPR wishes to acknowledge planning authority staff that contributed to the preparation of this paper. In addition, we would like to extend our sincere thanks to wider stakeholders including the Irish Planning Institute (IPI) Private Practice Committee and representatives from the Royal Institute of the Architects of Ireland (RIAI).

⁶ Hereinafter referred to as ‘guidelines’.

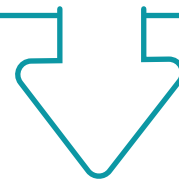
1.1 Project method

The project method for the preparation of this case study paper comprised three phases, as illustrated below in Figure 2.

Figure 2 - Project method.

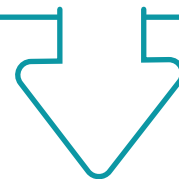
Phase 1 - Scoping and Refining

- > Overview of legislative context and case law database
- > High level review of statistics
- > Selection of case study planning authorities
- > Stakeholder engagement DHLGH, CCMA and Professional Institutes (IPI and RIAI)



Phase 2 - Survey

- > Data collection – questionnaires
- > Data collection – semi-structured interviews and respondent validation
- > Data collection – S31AS review findings



Phase 3 - Analysis & Reporting

- > Analysis, conclusions and drafting
- > Consultation with stakeholders on draft CSP
- > CSP finalisation and publication

2.0 Validation Procedure

2.1 Background

The validation of a planning application by a planning authority confirms that the plans and particulars that were lodged with the application on the receipt date comply with the legislative requirements and processing of the application may continue.

To inform the decision-maker and allow for well-informed public participation it is essential that planning applications contain the requisite documentation and there is consistency in quality across planning authorities. This necessity has resulted in learning over time and progressive changes to the regulations. The invalidation rates may be considered to be, in a way, a barometer of this complexity.

2.2 Relevant legislation

Current legislation relating to the validation of planning applications is contained in the Planning and Development Regulations 2001, as amended (hereafter referred to as *‘the regulations’*). As stated in the **guidelines**:

“Where a planning application complies with the Planning Regulations it is declared valid and continues to be processed; when the Regulations are not complied with, the application is declared invalid and returned to the applicant in its entirety” (P.26).

Currently Articles 22 and 23 of the regulations set out the core information that is required to validate a planning application. Other provisions under Articles 24 and 25, deal with information that is required to accompany applications for outline permission and planning applications by infrastructure providers such as electricity undertakers where site notices are impractical.

Where a planning application is to be accompanied by an Environmental Impact Assessment Report (EIAR), a notice under Article 17(1) must state as per Article 98:

- a) that an EIAR will be submitted to the planning authority with the application, and
- b) that the EIAR will be available for inspection or purchase at a fee not exceeding the reasonable cost of making a copy during office hours at the offices of the relevant planning authority.

In addition where a planning application is to be accompanied by a Natura Impact Statement (NIS), a notice under Article 17(1) must state as per Article 239—

- a) that a NIS will be submitted to the planning authority with the application, and
- b) that the NIS will be available for inspection or purchase at a fee not exceeding the reasonable cost of making a copy during office hours at the office of the relevant planning authority.

More recently, legislation for Large-scale Residential Development (LRD)⁷ and the associated and supporting **Planning and Development (Large-scale Residential Development) Regulations 2021 (SI 716 of 2021)** include additional requirements for an LRD application (Article 20A) and amend Articles 22 and 23.

Other supplementary information

Aside from the validation requirements set out above, planning authorities may also seek the following:

- (1) Supplementary or additional information to enable it to determine more detailed technical aspects of the proposal (Article 22A(1));
- (2) Assessment of the impact of the proposed development on transport in the area, including impact on roads (Article 23(3));
- (3) Additional copies of plans, drawings, maps, photographs or other particulars (Article 23(4)); or
- (4) A scale model of the proposed development including land and buildings in the vicinity, showing the elevations and perspective of the proposed development and any other photographs, plans, maps, drawings or other materials or particulars required by the planning authority to assess an application (Article 23(5)).

2.3 Validation procedure on receipt of a planning application

Article 26 sets out the procedure to be followed when validating a planning application and that the application must comply with:

- > Article 18 (Notice in newspaper);
- > Article 19(1)(a) (Site notice);
- > Article 22 (Content of planning application); and, as may be appropriate,
- > Article 24/25 (outline applications/ applications by electricity undertakers).

Where it is determined that these requirements are complied with, the application is deemed valid and each document stamped with the date of its receipt. The **guidelines** highlight that:

“...documents should not be date-stamped before validation, as, in the event of the application being deemed invalid, the applicant may wish to use some of the documents in a subsequent application. It will be important therefore that the planning authority, while not date-stamping all the documents prior to validation, have some mechanism for noting the date of receipt of the application, e.g. by initially date-stamping only the application form, on receipt of the application” (P. 31 & 32).

⁷ The Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (Commencement) Order 2021 (SI 715 of 2021) was signed with an effective date of 17 December 2021.

Special arrangements apply to applications accompanied by an EIAR. The regulations prescribe (Article 93 & Schedule 5) the situations where an EIAR must be submitted. Where such report has not been submitted, such applications must be deemed invalid and the provisions of Article 26 apply.

For such cases, it is the responsibility of the applicant to notify the DHLGH about the application and to provide information on the proposed development for inclusion on the EIA **portal**.⁸ This information must be submitted to the DHLGH in advance of lodging the planning application, in order to receive a confirmation notice.

On receipt of an application accompanied by an EIAR, including the relevant confirmation notice, the planning authority must send to the EIA portal, in electronic form, a copy of the confirmation notice received, the application reference number and the URL to the documents placed on its website.

This was a step introduced in 2018 when the **Section 28 Guidelines for Planning Authorities and An Bord Pleanála on carrying out EIA** and amendments to legislation were made to achieve consistency of approach in the implementation of the EIA Directive (Directive 2014/52/EU).

2.4 Timing of validation

There is no prescribed statutory time period within which to determine whether a planning application contains the information and particulars required under the regulations.

In more practical terms however, given the provisions of Article 32(1) in relation to the publication of weekly lists of applications received, planning authorities need to progress the validation stage to facilitate the preparation of the weekly list (which must be published not later than the fifth working day following a particular week).

In addition the planning authority must upload all planning application documents onto their internet websites not later than five working days after the day on which it receives the application,⁹ subject to exceptional circumstances i.e.

- > An occurrence that was not reasonably foreseeable;
- > An occurrence that could not reasonably have been prevented; or
- > The size or number of documents received.



⁸ An online map-based website, managed by the Department of Housing, Local Government and Heritage that provides users with access to applications for development consent accompanied by an Environmental Impact Assessment Report made since 16 May 2017.

⁹ **Planning and Development Act 2000 (Section 38) Regulations 2020 – S.I.No.180 of 2020.**

2.5 Procedure for invalidation of applications

A planning authority may determine that a particular planning application does not contain the requisite information and is invalid at two critical stages: (a) shortly following receipt of the application when undertaking the desktop validation exercise, or (b) when the application site, and the site notice, are checked, a site notice is not visible/legible.¹⁰ This latter aspect is because of the importance of public participation in the planning process.

The regulations set down strictly that planning applications are invalid where:

- a) the public notices and planning application documentation has not been complied with or where the notice in the newspaper or the site notice is misleading or inadequate for the information of the public, or
- b) on inspection of the land the site notice requirements have not been met or that information submitted in the application is substantially incorrect or substantial information has been omitted.

Where the application is deemed invalid, the entire application, including the application fee, must be returned to the applicant, who must be informed why the application was deemed invalid. In accordance with the guidelines:

“...the planning authority then enters in the register an indication that an invalid application has been made (rather than, as heretofore, the details of the application). If any observations have been made on the application prior to its validation, the persons who made the observations must be informed that the application is deemed invalid and any fee paid in respect of the submission returned” (p.33).

2.6 Conclusion

As can be seen from the above, the current validation procedures require planning authorities to have robust systems in place to ensure that the regulations have been complied with.

The key drivers of variations in invalidations rates appear to be:

- > the need to have expertise to examine planning documentation to ensure compliance with the regulations;
- > the ability of staff to make judgements needed in relation to trivial matters; and
- > the knowledge of applicants and/or their agents of the regulations and resultant quality of applications.

Through the next sections of this case study paper, we further examine common invalidation issues and highlight good practices from a selection of planning authorities.

¹⁰ The regulations provide detail on how the site notice should be securely erected to ensure it is visible and legible. Legal precedent on the adequacy of the site notice is contained in Appendix D.

3.0 Common Invalidation Issues

In order to identify common issues associated with the validation process, the research and analysis undertaken for this case study paper drew from the following sources:

- > Data received from all eight selected planning authorities;
- > Data gathered from planning authorities subject to review (under Section 31AS of the 2000 Act) in the OPR's Pilot Programme of Reviews of Local Authorities' Systems and Procedures in relation to the Performance of Planning Functions; and
- > Trends in complaints received by the OPR/Ombudsman's Office.

These sources were augmented through engagement with representatives of the RIAI and the IPI's private practice committee from a customer service perspective.

A questionnaire was issued to a sample group of eight planning authorities in October 2021 (see Appendix A). The questionnaire focused on five areas:

- > Your validation system;
- > The validation team;
- > Site notice inspection;
- > Local data; and
- > Your experience.



The eight representative planning authorities were selected from within three bands as follows: below average/average/above average invalidation rates. (See Appendix B, Figure 3 and Table 1).

Figure 3 - Overview map identifying the invalidation rates in the 8 selected planning authorities and 4 planning authorities subject to review under 31AS of the 2000 Act.

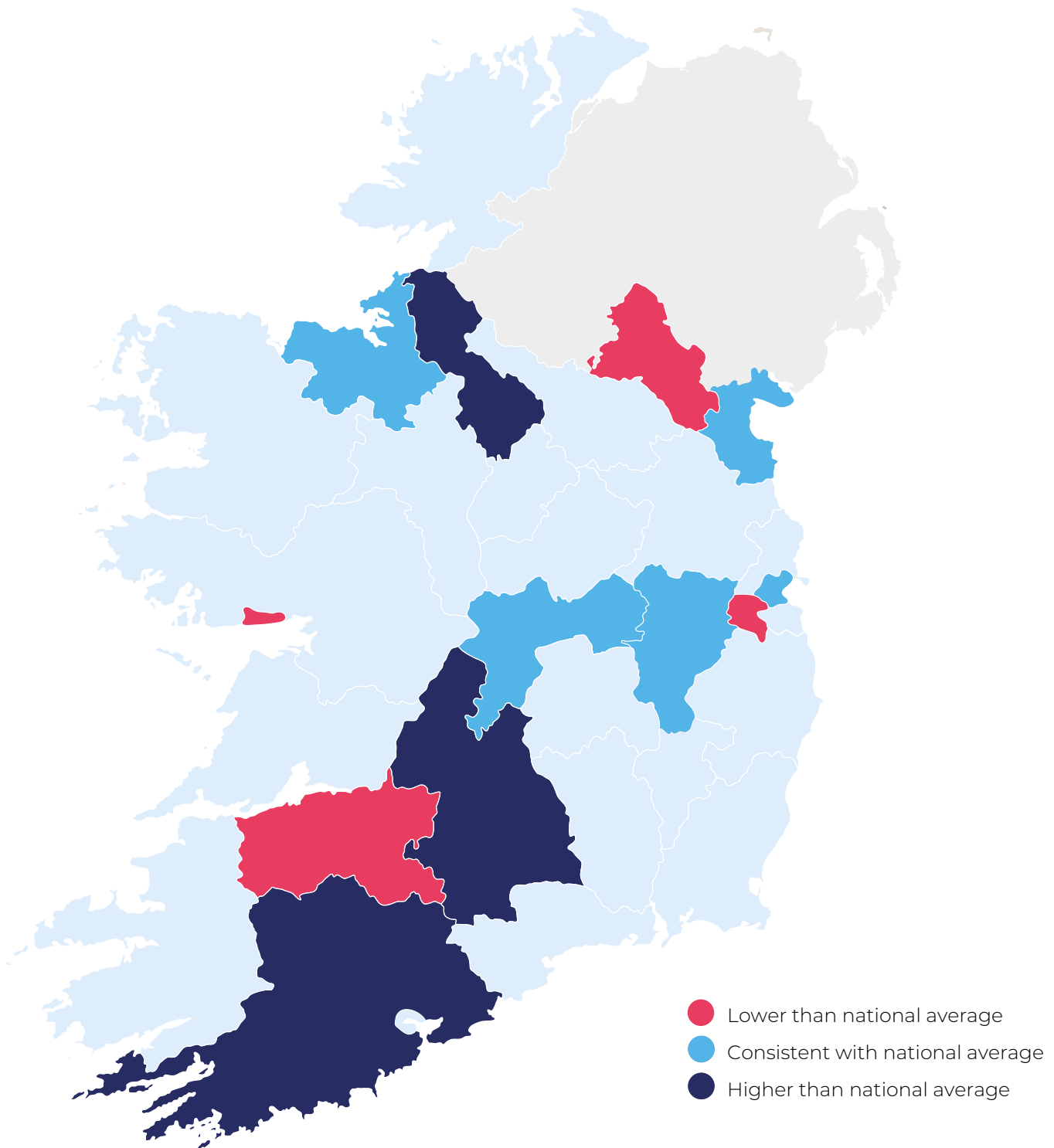


Table 1 - Selected planning authorities for survey.

Cork County Council	Higher than national average
Dublin City Council	Consistent with national average
Leitrim County Council	Higher than national average
Limerick City and County Council	Lower than national average
Monaghan County Council	Lower than national average
Offaly County Council	Generally consistent with national average
Sligo County Council	Consistent with national average
South Dublin County Council	Lower than national average

The survey helped us better understand common invalidation issues.

Following receipt of the completed questionnaires meetings were conducted by the OPR with representatives from each of the selected planning authorities between November 2021 and January 2022.

In addition, the research also took account of the information gathered from planning authorities reviewed under the OPR's Pilot Programme of Reviews of Local Authorities' Systems and Procedures in the Performance of Planning Functions (under Section 31AS of the 2000 Act) in 2021 (see Table 2 and Figure 3).

Table 2 - Local authorities subject to review under S31AS of the 2000 Act.

Kildare County Council	Generally consistent with national average
Louth County Council	Consistent with national average
Galway City Council	Lower than national average
Tipperary County Council	Higher than national average

3.1 Reasons for invalidation

One of the main reasons for the invalidation of a planning application, highlighted from the survey responses, is that the quality of documentation submitted by the applicant/agent is not up to standard and does not comply with the regulations. These errors and omissions are such that they cannot be dealt with as ‘*minor defects*’.

Following consultation with the eight selected planning authorities it is clear that the majority of invalid planning applications are for non-complex developments. Talking to representatives from the selected planning authorities the common factors that arose are as follows:

- > **Newspaper Notice** – Application lodged after 14 days;
- > **Description of Development** – Nature and extent of development not adequately described/inconsistent between notices and submitted documents;
- > **Fees** – Incorrect fee paid;
- > **Supporting Documentation** – Landowner consent not provided;
- > **Drawings** – Incorrect scales/contiguous elevation not shown/conflicting red lines on site location and site layout maps; and
- > **Site Notice** - Not erected or not maintained in position for five weeks from the date of receipt of the application.¹¹

Of the eight planning authorities selected only two indicated that the requirements with respect to the European Directives, Environmental Impact Assessment (EIA) and Appropriate Assessment (AA), are contributing factors to invalidations. In these cases the main issues related to the wording of the newspaper/site notice and occasionally the EIAR portal confirmation notice was not included with the application.

The results of the survey highlight that invalidation issues were common to the surveyed planning authorities. In particular, a number of surveyed authorities indicated that in their experience, they had encountered a pattern of the same agents making the same errors in submitting various applications, which led to repeat invalidations.

In circumstances where a pattern of repeat invalidations is identified, this is a concern given the extra administrative burden for the planning authority and the costs to applicants. While it may be a matter over which the planning authority has limited control it is recommended that targeted and regular engagement should take place with identified agents to flag and address ongoing issues.



¹¹ Whilst invalidations following site notice inspection are a factor in the invalidation rates, in all eight planning authorities surveyed, they are stated as not a significant contributor to invalidations.

3.2 Surveyed planning authority validation systems

The focus in this case study paper up to now has been on looking at situations where invalidation rates have been consistently higher than average rates nationally. By contrast, looking at those planning authorities whose invalidation rates are consistently below average might give rise to concerns that the application regulations are not being as rigorously applied.

However, our analysis does not bear this out. Instead, the questionnaire response and follow up meetings signal that trends of lower rates of invalidations are attributable to planning authorities that work pro-actively in the services they offer to applicants and their agents such as heavily promoted advice and pre-application checking services.

The regulations seek to avoid circumstances where poorly prepared applications are routinely submitted in the expectation that the planning authority will revert with what is required to rectify even basic application documentation and instead to create a culture where applicants get it right first time.

In many of the planning authorities with lower than average invalidation rates, they operate and actively promote pre-application checking services at their counters on a non-statutory and purely advisory basis.

In the follow-up meetings with planning staff it was stated, by the majority of respondents that whilst a pre-validation service is not common, staff do provide guidance as part of pre-application consultations and/or informally as part of general good customer service.

Similarly, all respondents to our surveys confirmed that where quite minor discrepancies are spotted at submission stage, they contact agents/applicants to rectify same. Respondents highlighted that delays in getting these issues addressed can, however, impact on the planning authority's ability to make applications available online not later than five working days after the day of receipt of the application, in line with the requirement of the regulations.



Some planning authorities signalled that an unintended consequence of the otherwise laudable *'five day rule'* is to considerably reduce the opportunity for applicants/agents to correct minor defects or obvious but inadvertent omissions. Because of the five day rule, these authorities signalled that their invalidation rates have increased for reasons outside their control.

From our engagement with planning authorities it is clear that there is some reticence on the part of agents to avail of online systems due to the greater risk of invalidation and delay. A planning authority that is currently operating an online system indicated a preference by agents to revert to the physical/hard copy application. The reason for this was there was some more flexibility for the planning authority to follow-up with the agent in the event of minor discrepancies.

Offering good customer service through informal contact with agents and applicants needs to be balanced with the requirements to deliver impartial, fair and transparent decision-making. As such, it should not be the case that a planning authority widely and routinely contact agents. Contact should ideally only be made where an obvious error is identified and rectification of this error, to allow processing of the application, is a minor matter.¹²

There are probably useful lessons from this experience in the context of the roll-out of the LGMA's ePlanning Portal Project which is considered in more detail in Section 4.0.

These lessons underscore the value of informal across-counter checking even where an online application facility is offered.

Two of the respondents offer a same-day validation service. Notably both these planning authorities' invalidation rates are in line with the national rate. Furthermore, two other planning authorities indicated that they provided such a service prior to the imposition of COVID-19 restrictions in March 2020. In both cases their rates were generally at or lower than the national average rate of invalidations.

The survey would indicate that the breadth and depth of the services made available at the public counter tends to reflect across to lower invalidation rates once applications are submitted.

All respondents confirmed that they use a validation checklist. Two, out of the eight planning authorities surveyed make such a checklist available to the public. In these cases, one has maintained a consistently average rate of invalidations in line with the national average rate and the second planning authority has consistently lower than average validation rates. By contrast, those planning authorities that do not make a checklist available have consistently higher than average invalidation rates.

A concern was raised by one planning authority that as the validation requirements are subject to legislative change/amendment, there may be a risk that agents rely on out of date checklists.

¹² Section 3.10 of The **Development Management Guidelines for Planning Authorities** (2007) provides examples of minor points.

This point highlights the importance of planning authorities maintaining up to date checklists and establishing good lines of communications with agents so that updates to the checklists can be readily provided to the agents typically or consistently operating in their areas.

3.3 The validation team

A critical and common factor underlying planning authorities with average or lower than average invalidation rates is the skill/experience level of their administrative and technical staff dedicated to the initial stages of checking applications.

Based on discussions with the eight selected planning authorities it was clear that there are a multiplicity of approaches being taken to resourcing validation teams.

Some planning authorities rely on a rota systems of planners to carry out the validation function, while others have dedicated validation teams.

Four out of the eight respondents indicated that there is one core validation team/or officer for all applications. Of these four planning authorities, half have lower than the national average invalidation rate and one is generally consistent with the national average invalidation rate.

The majority of the other planning authorities indicated that they use a rota of planners and/or technical and administrative staff to validate planning applications. These procedures were introduced in response to COVID-19 restrictions and following on to accommodate the working from home/in office patterns.

All of the eight selected planning authorities confirmed that training is provided for any new members of staff joining the validation teams. This training focuses on the content of the regulations, customer service expectations and general validation procedures.

All surveyed planning authorities highlighted the importance of maintaining continuity and consistency by staff in validation processes. A number of planning authorities indicated that this was best achieved by assigning a dedicated person to the validation role with provision being made for appropriately trained staff to cover leave periods, and adequate oversight by senior personnel.

It was suggested by some of the respondents that the validation process benefits from being undertaken by a dedicated technician. The dedicated technician could then ensure that compliance with the regulations is achieved. By using a dedicated technician for the validation there would then be a clear distinction between the validation process and the subsequent assessment of the merits of the development proposal by the planner.

One planning authority confirmed that their dedicated validation technician attends team meetings to report on issues arising. Attendance at team meetings also helps to ensure that the technician is fully aware of any amendments to legislation and these amendments are then reflected in updates to checklists and associated changes to the validation procedures.

3.4 Findings from the information gathered from planning authorities subject to review under Section 31AS

The OPR is implementing a programme of reviews under Section 31AS of the 2000 Act whereby, broadly over a six-year cycle, the systems and procedures used by planning authorities in the performance of their statutory planning functions will be reviewed.¹³ The implementation of the reviews programme is intended as a resource for the planning sector, identifying good practice and achievements, and promoting the sharing of learnings between planning authorities, as well as highlighting areas that may be in need of improvement.

As already noted in Table 2 in Section 3.0 the pilot phase of the reviews programme included the following four planning authorities:

- > Kildare County Council
- > Galway City Council
- > Louth County Council
- > Tipperary County Council

In 2020 **Kildare County Council (KCC)** invalidated approximately one-quarter of all planning applications (i.e. 24.5%). This represented approximately double the 2019 invalidation figure. KCC confirmed that the significant increase in invalidation rates from 2019 to 2020 was due to COVID-19 restrictions and changing work practices.

Prior to the imposition of the COVID-19 restrictions, agents called to KCC's planning office and staff checked applications at the public counter prior to validating. With changing work practices this facility was no longer available. Development Management planners confirmed that 15% - 20% of their time was spent validating applications.

Galway City Council (GCC) was subject to the pilot review in 2021 and the figures in relation to the validation of applications illustrate that they had a low invalidation rate. Between 4.2% and 7.4% of all applications received by GCC during the period 2015-2020 were invalidated, which contrasted with the national invalidation rates of between 13.9% and 17.1% for the same period.

It was notable that this planning authority had an effective and robust validation procedure, including:

- > Dedicated staff for validation of applications three times a week;
- > Making a member of the planning team available to prospective applicants/agents to review relevant documents; and
- > Offering applicants/agents the opportunity to address deficiencies prior to submission.

GCC also confirmed that they prepared a technical guidance note for agents/applicants when it was evident that a number of planning applications were being submitted which lacked technical quality and detail.

¹³ 'Pilot Methodology for Conducting Reviews of Local Authorities Systems and Procedures in relation to the Performance of Planning Functions' was published in 2020, following consultation with the DHLGH, the National Oversight & Audit Commission (NOAC), the local government section, An Bord Pleanála (the Board) and the national planning institutes.

The document outlined the level of detail required for new planning applications, applications at further information (FI) stage and at compliance stage.

The guidance note was designed to enable applicants to provide the required information at the appropriate stage, enabling better quality information, better decision making and a reduction in the number of requests for FI. This example is particularly noteworthy.

Louth County Council's (LCC) invalidation rate over the last six years (2015-2020) is consistent with the national average. There is a dedicated validation technician in the development management team. LCC indicated that it produced a standard planning pack for applicants and agents and has also, in the past, organised workshops for agents. LCC noted that they take a proactive approach to the validation of planning applications and if there is a small or minor issue they normally facilitate the correction of this issue by the applicant in an immediate timeframe.

Prior to 2017 **Tipperary County Council's (TCC)** invalidation rate was broadly in line with national trends. However, over the four years (2017-2020) planning applications were invalidated at a significantly higher rate than the national average. During 2020 TCC recorded 1,081 valid planning applications and 491 invalid applications. The invalidation rate was 31% compared to the national average of 17%. Between 2017 and 2020 approximately 25-30% of all planning applications received by TCC have been invalidated annually. Over the same period, the national average rate for invalidations ranged between 15% and 17%.

The marked divergence from the national average invalidation rate from 2017 onwards coincides with the implementation of revised validation procedures by TCC around the same period. Following a process of internal assessment, TCC found that the overall quality of applications submitted required improvement and decided to adopt a more stringent approach to the validation process.

TCC confirmed that they are taking positive steps with a view to bringing the invalidation rate closer to the national average rate over time. These steps include the facilitation of information workshops and one-to-one engagement with agents whose applications have regularly failed to meet the regulatory standard.

3.5 Disputed invalidation/validation

Notwithstanding the points set out in Section 3.1, representatives of professional bodies whose members frequently make applications indicated that in their view, there are ongoing inconsistencies in the validation process, including inconsistent and/or incorrect interpretation of the regulations, both of which they consider have contributed to incorrect invalidations, with significant impacts in terms of additional processing time, cost and reputational matters for their members.

The development management guidelines set out clearly that there is no provision for re-instatement or ‘*de-invalidating*’ indicating that:

“...it is important that when a customer has a complaint about the invalidation of a planning application or the process of validation, he or she should have recourse to the planning authority’s complaints procedure and that the complaint should be treated seriously and dealt with promptly” (p. 33).

In addition to a planning authority’s complaints procedure the Office of the Ombudsman may investigate complaints. Previous Ombudsman’s cases¹⁴ highlight the significance of this stage in the development management process.

Members of the public may also submit complaints to the OPR relating to the planning services delivered by planning authorities, however, these are distinct from other complaint handling services, such as those of the local authorities themselves and the Office of the Ombudsman.

The OPR has been contacted in respect to both invalidation errors and also, on the flip side of the argument, that poor quality applications are being validated. Whilst the majority of these cases do not fall within the OPR’s defined complaints threshold¹⁵ the information received does provide an indication of the issues arising with respect to the invalidation/validation of planning applications.

In Section 4.0 of this case study paper we explore in more detail how the roles and responsibilities of both the planning authorities and the agents/applicants should be clearly set out. The aim is to avoid a ‘*blame*’¹⁶ game, to avoid repeating the same mistakes and to encourage both parties to work together to achieve the same goal of reducing the number of invalidations.

¹⁴ Please see footnote 2.

¹⁵ Firstly, for a complaint to be considered valid, it must relate to the organisation of the relevant local authority and to the systems and procedures used in performing its functions under the Act. Where a complaint is considered appropriate to our statutory remit, having satisfied ourselves that all existing avenues of complaint have been exhausted or where other avenues may be appropriate, for example the Office of the Ombudsman, we will conduct a preliminary examination of the matters raised.

¹⁶ Phillips, T. (2021) Zero Tolerance for Invalidations: Binning and rubber mallet – Review of Irish Planning Statistics 2009-2020. Edition 2 p.11.

3.6 Risk of challenge to decision-making

The legal significance of the procedural requirements of the legislation are noted by Keeling (2006) in that:

“...the strict time-limits and the stringent demands of the legislation in relation to the making of a planning application make the procedure the perfect target for an aggrieved objector. Given the reliefs available to such an individual in the High Court a failure to ensure statutory compliance can be of devastating effect: the permission can be struck down. Added to this draconian outcome is the elapsed time between planning decision and Court sanction” (p.2).

Ensuring consistency and quality of decisions is challenging and planning authorities are working within an increasingly litigious environment. As Browne (2021) notes *“...the planning authority enjoys very little discretion”* on whether or not the application is in compliance with the various requirements of the regulations. The risk of making a mistake can be costly both financially and in terms of time.

Using case law to further examine the common invalidation issues, as challenged in the courts and to illustrate the legal significance of the procedural requirements of the legislation Appendix D contains a selection of cases in which the validation was challenged (either solely or jointly with other grounds).

3.7 Conclusions

The varying quality of planning application documentation and differing management approaches adopted by planning authorities in tackling patterns of poor submission documentation are some of the main reasons for varying levels of invalidations.

In our engagement with the eight selected planning authorities and key stakeholders it was stressed that improvements in the quality of application documentation must be carried forward into all planning applications submitted to planning authorities. A *‘raising of the bar’* for documentation submitted with planning applications will help planning authorities to work to a position whereby the majority of applications lodged are valid on receipt.

At the same time, it is also clear that effective staff management and day-to-day training and learning supports, such as dedicated validations staff/teams, constant training and learning, play key roles in reducing higher rates of invalidations to the average rate or lower.

The learnings and good practice in Section 4.0 of this case study paper contain a simple list of practical steps that planning authorities could adopt to enhance and/or improve their current systems and procedures in order to work with agents/applicants to raise the bar.



4.0 Learnings and Good Practice

Planning authorities can use their discretion to ensure that the best system for validating planning applications is put in place, having regard to the local situation.¹⁷ As a result, and as can be seen from the engagement with the eight selected planning authorities, there is variation in the systems and procedures used to validate planning applications.

As highlighted in the OPR Annual Report 2020, ensuring that planning authorities get a consistently good standard of planning applications across the country continues to be an issue, as signalled by the increasing number of applications declared invalid each year.

The conclusions below summarise the key observations for seeking to bring about more conformity in the standard of applications, as well as opportunities for shared learnings and good practice (See also Appendix C: Planning Authority Checklists and Guides).

4.1 Roles and responsibilities

Observations and implications

Planning authorities and agents acknowledge that a good and consistent standard of planning application documentation is a key building block for ensuring efficiency in the development management process.

Nonetheless the issue of invalidations is also recognised as a point of contention.

Much can be done by planning authorities that experience below-average quality of applications that end up leading to higher-than-average invalidation rates, but this demands proactivity and reaching out to agents that may not fully or properly understand regulatory requirements.

Informal over-the-counter advisory services, checklists etc. should also become the norm rather than the exception.

Ensuring stability and capability in the validation teams within planning authorities is a key element to achieving consistency in the validation process. This of course depends on a significant level of training input, especially to upskill staff new to the intricacies of the planning code.



¹⁷ Department of the Environment, Heritage and Local Government (2007) Development Management Guidelines for Planning Authorities (p.33).

Notwithstanding the challenges faced by planning authorities in retaining and training dedicated staff for their validation team, vigilance is called for to avoid or minimise invalidation in error, because there is no appeal provision for re-instatement or '*de-invalidatio*n'.

There needs to be a clear understanding in planning authorities of both their and the applicants '*transaction cost*' (i.e. time, duplicating staff resources, financial and reputational damage)¹⁸ where such errors happen.

The move from an almost totally paper-based planning application process to the forthcoming ePlanning project is a major opportunity for re-calibration and re-shaping of planning services.

The online system should reduce the incidence of very significant gaps in documentation. As with many online systems, failure to complete various application fields and/or lodge certain particulars will prevent the online transaction being completed.

At the same time, subject to further development and the introduction of artificial intelligence data checking systems, the ePlanning service may not completely eradicate the possibility of applications being invalidated once they are examined closely by the dedicated validation team in each planning authority.

That said, the online planning project may also open up opportunities to develop and deliver parallel planning authority based advisory and/or checking services, that allied to a major encouragement to make applications online, would ensure such applications stand a very good chance of being validated when eventually received and examined in detail by the relevant planning authority staff.

There will be many other advantages with online planning applications. Applicants/agents will be able to interact with the planning portal from anywhere at any time reducing printing costs, delivery costs and time spent delivering the larger applications to the planning counter. Furthermore, the system will keep agents/applicants up to date on the progress of their planning application.

However, our research indicates that transitional customer information arrangements and promotion will be required across the local authority sector with the rollout of the ePlanning project. This should avoid increases in planning applications being invalidated due to public/agent unfamiliarity.

The challenges of managing dual paper based and online systems need to be recognised. Every effort should be made to encourage the take-up of the online application option. Appropriate training/information sessions will help to ensure that applicants/agents avail of the online system and that appropriate incentives (including potential graduated fee structures) to use the online system are put in place.

¹⁸ Feedback received from IPI's private practice committee (VC meeting 15th September 2021), RIAI representatives (VC meeting 5th October 2021) and see also Phillips, T. (2021) Zero Tolerance for Invalidations: Binning and rubber mallet – Review of Irish Planning Statistics 2009-2020. Edition 2.

Learnings and good practice

The learnings and good practice identified here aim to stimulate thinking on how to achieve a situation where the majority of applications lodged are valid on receipt. The list of good practice is not exhaustive but we hope it will serve to generate new thinking about how to better manage the validation process.

There are two core stakeholders to the validation process, namely the planning authority and the agent/applicant. Each with a different role and responsibility but with a common goal to ensure that the planning application is validated on receipt and also with a common responsibility to ensure that the public are sufficiently informed of the proposed development and alerted to its nature and extent.

What planning authorities can do to minimise invalidations

The planning authority can minimise invalidations by positively, proactively and expertly supporting and interacting with agents/applicants to ensure compliance with the regulations through:

- Proactively providing information, providing over-the-counter checking services and online checklists so customers are clear about the required application documentation;
- Ensuring that planning sections have dedicated validation staff that have received and continue to receive appropriate training, including liaising with planning authorities with lower rates of invalidation;
- Prompt attention to any complaints about where errors may have been made, as well as systems to avoid the recurrence of same; and
- Ongoing monitoring of validation performance to ensure a consistent and proportionate approach to validations.



What agents/applicants can do to minimise invalidations

The planning system is complex because of the significance of the development consent process and the importance of public participation in that process. Accordingly, many applicants rely on agents to assist with the process.

Most agents, particularly those with professional qualifications and who are members of professional bodies with mandatory continuous professional development standards, will be very familiar with the regulatory requirements and will tend to offer a high standard of service.

It may be the case that for agents, with a lower throughput of planning work or a varied portfolio of work that may only occasionally involve making planning applications, there may be a risk of unfamiliarity with precise permission requirements.

Each planning authority will tend to have a good sense of the agents operating in their areas or various parts of their areas. Where planning authorities begin to see a pattern whereby particular agents appear to be failing to get applications over the initial validation thresholds, they should proactively engage with those agents and consider the organisation of validation workshops to appraise the relevant agents of mandatory requirements. More widely, agents/applicants should:

- > Make themselves aware of the specific information that must be lodged with planning applications. Planning authorities provide guidance on their websites, at their public counters and many offer training webinar/seminars for agents.

Some planning authorities provide checklists and these are an excellent guide for agents/applicants; and

- > Ensure that the information submitted with a planning application is correct and complete. Every effort should be made to ensure that the submitted documentation complies with the regulations.

4.2 Systems and procedures

Observations and implications

The research identified various measures in different planning authorities to better manage the validation process. One example of such an initiative is Limerick City and County Council's (LCCC) same day validation service, which has significantly reduced the number of invalid planning applications. The advantages of the over the counter validation system are as follows:

- > Much faster validation system than by post (takes approximately 15 to 20 minutes);
- > Same day validation allows the agent to deal with minor issues arising in the application immediately saving time and expense for the agent. Frustration with the planning process is avoided; and
- > Avoids repeat handling and reduces the 'transaction cost' (i.e. time, duplication of staff resources, financial and reputational damage).

More recently, public health restrictions that were necessary due to the COVID-19 pandemic, have temporarily impacted on such initiatives.

However, where there are well-defined systems and procedures in place for both the administrative and technical aspects of validation, including when checklists are made available to the public, planning authorities will achieve average or lower than average invalidation rates leading to benefits including:

- > Reducing the number of invalid applications with consequent reduction in administrative overheads and staff time absorbed;
- > More timely and efficient application processing; and
- > Benefits to the applicant in terms of cost and timelines in securing planning decisions leading to good customer service feedback and enhancing the reputation of the planning authority.

Learnings and good practice:

Taking all of the above together, the following is a summary list of practical steps that planning authorities could and should adopt to secure more consistent outcomes in initial planning application processing and minimising invalidations:

- > Prepare guides, checklists, fact sheets and templates for agents/applicants. Update the checklists regularly to take account of changes in legislation and ensure that any revisions are swiftly communicated to agents (see Appendix C: Planning Authority Checklists and Guides);

- > Deliver regular training events for agents. Consider the possibility of developing explainer videos as a means of providing clear guidance on the information that is required to make a valid planning application (the OPR will examine the potential for a coordinated approach to this);
- > Streamline systems and procedures and ensure that comprehensive checklists are put in place for the dedicated validation team. Ensure that the checklists are updated regularly to take account of changes in legislation. Ideally use a validation template report;
- > Include validation as a regular item at the planning files meeting;
- > Proactively communicate and engage with agents/applicants on minor defects;
- > Set realistic performance time-bound targets to reduce the level of invalidations. Commit to monitoring these targets and set more challenging targets once new systems and procedures have become established; and
- > Anticipating the roll out of ePlanning, consider ramping up advisory services for customers, where this is feasible, to facilitate the smooth passage of applications through the validation system.

Appendix A

Questionnaire

Validation of a planning application

Please complete each section.

YOUR PLANNING AUTHORITY'S VALIDATION		
(1) Your validation system		
	YES	NO
(a) Do you offer a pre-validation check? <i>If yes, please provide details and please clarify if this service is available for all types of planning applications.</i>		
(b) Do you offer a 'same day validation' service or similar type service?		
(c) Is there a threshold of scale or type of application that your authority applies to the 'same day validation' or similar service? <i>If yes, what is the threshold?</i>		
(d) Please explain the process, the time/location that the 'same day validation service' (or similar) is available and what, if any, specific requirements apply for the applicant /agent?		
(e) Do you have a checklist for the validation team? <i>If yes, please provide a copy.</i>		
(f) Does the checklist include information required for different types of planning applications, for example outline planning applications, rural homes and wind energy developments?		
(g) Is a validation checklist made available to the members of the public/agents? <i>If yes, please provide a copy and/or a link to the checklist if it is available on your website.</i>		

	YES	NO
<p>(h) Does your validation officer/team liaise with the applicant/agent during the validation process if a minor defect is detected in the application documentation?</p> <p><i>If yes, please detail, how this engagement is managed and identify those matters that are deemed 'minor' by your planning authority.</i></p> <p><i>In your reply, please comment on the timeframes within which such minor defects can be rectified.</i></p>		
<p>(i) Are agents/members of the public made aware of these internal protocols?</p>		
<p>(2) The validation team</p>		
<p>(a) Who carries out the 'pre-validation check', if this service is provided i.e. are they administrative, technical or professional planning staff or any combination of the above?</p>		
<p>(b) Who carries out the 'same day validation' service (or similar), if this service is provided i.e. are they administrative, technical or professional planning staff or any combination of the above?</p>		
	YES	NO
<p>(c) Is there one core validation team and/or officer responsible for all planning applications?</p> <p><i>If no, please provide details of different teams or officers and how the system is structured.</i></p>		
<p>(d) Who makes the recommendation to validate/ invalidate an application?</p>		
<p>(e) Who is ultimately responsible for making an application invalid?</p>		
<p>(f) Are any staff from outside the planning section ever utilised to perform validation checks?</p>		
<p>(g) Please provide any details of induction, on the job or ongoing training provided in relation to the validation area for relevant staff and an estimate of the days spent on such training over the past three years.</p>		

(3) Site notice inspection		
(a) Please indicate the type of staff that normally inspect the site notice.		
(b) Please identify at what stage in the life of the application that the site notice is normally inspected. <i>(E.g. the stage following receipt date.)</i>		
(c) Please describe the procedure applied if an application is invalid due to an issue with the site notice. <i>(If there is a staff protocol/inspection sheet or similar please provide a copy).</i>		
(d) Please indicate if site notices are routinely inspected more than once?		
(e) Does ICT have a role in the site notice inspection process?		
(4) Local data		
As central data does not give a breakdown as to why applications are being invalidated (e.g. inadequate application documentation, planning fee, site notice) we would greatly appreciate it if you can share any local data that is available.		
	YES	NO
(a) Do you have local data records monitoring the level of invalidations, looking at trends and comparing figures with other planning authorities available to share with the OPR? <i>If yes, please provide details.</i> <i>If no, based on your experience do you have any observations you would like to share or trends you have observed from your own experience?</i>		
b) Do you have a breakdown of invalidations based on the site notice inspection? <i>If yes, please provide details.</i> <i>If no, please provide a general comment on your experience on the frequency of this type of invalidation.</i>		

	YES	NO
<p>(c) From local data monitoring is there evidence to demonstrate that the requirements of European directives; EIA and AA are contributing factors to invalidation rates?</p> <p><i>If yes, please provide examples.</i></p> <p><i>If no, please provide a general comment on your experience on the frequency of this type of invalidation.</i></p>		
<p>(5) Your experience</p>		
<p>(a) Please tell us about any initiatives that you have undertaken that you believe have improved the validation rates and/or enhanced consistency in the delivery of the validation service.</p> <p><i>For example; an advisory service, specialist/ focused staff, checklists, governance and/ or protocols, linkages with S247 consultation, agent training, use of technology and/or internal protocols/manuals.</i></p>		
<p>(a) Please tell us about any areas of difficulty you encounter when validating a planning application and your suggestions on what may address those difficulties.</p> <p><i>For example, interpreting legislation, staffing and expertise, caliber of documentation provided by agents?</i></p>		
<p>Contact Details:</p>		
<p>Please provide a point of contact for your planning authority should we wish to follow up on any of your replies directly.</p>		

Appendix B

Statistics

Part 1

Relevant statistics for case study planning authorities are set out below.

Cork County Council

The invalidation rates in Cork County Council are higher than the national average rate, and while a decrease was recorded over 2017-2018, rates increased between 2019 and 2020.

Cork County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	4,077	989	24.26%	14.3%
2017	4,284	1,079	25.19%	15.3%
2018	4,282	968	22.61%	15.5%
2019	3,928	865	22.02%	16.4%
2020	3,790	907	23.93%	17.1%

Table B1

Dublin City Council

Invalidation rates in Dublin City Council are slightly above national average rates.

Dublin City Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	2,949	509	17.26%	14.3%
2017	3,265	550	16.85%	15.3%
2018	3,395	575	16.94%	15.5%
2019	3,739	797	21.32%	16.4%
2020	3,159	680	21.53%	17.1%

Table B2

Leitrim County Council

The invalidation rates in Leitrim County Council have been notably higher than national averages, although a significant reduction was recently recorded from 28.2% in 2019 to just under 18% in 2020, bringing the rate in Leitrim broadly in line with the national average.

Leitrim County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	230	63	27.39%	14.3%
2017	227	63	27.75%	15.3%
2018	276	95	34.42%	15.5%
2019	284	80	28.17%	16.4%
2020	278	50	17.99%	17.1%

Table B3

Limerick City and County Council

Invalidation rates in Limerick City and County Council are lower than the national average rate.

Limerick City and County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	1,209	101	8.35%	14.3%
2017	1,279	143	11.18%	15.3%
2018	1,309	111	8.48%	15.5%
2019	1,478	133	9.99%	16.4%
2020	1,450	215	14.83%	17.1%

Table B4

Monaghan County Council

Invalidation rates in Monaghan County Council are significantly and consistently lower than the national average rate.

Monaghan County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	570	31	5.44%	14.3%
2017	641	15	2.34%	15.3%
2018	656	28	4.27%	15.5%
2019	609	25	4.11%	16.4%
2020	593	13	2.19%	17.1%

Table B5

Offaly County Council

Invalidation rates in Offaly County Council are consistent with national averages with 2020 being an exception. The rate of invalidation increased significantly from 16.7% to 24.9% and exceeded the national average rate for that year.

Offaly County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	503	62	12.33%	14.3%
2017	619	100	16.16%	15.3%
2018	703	96	13.66%	15.5%
2019	755	126	16.69%	16.4%
2020	675	168	24.89%	17.1%

Table B6

Sligo County Council

Invalidation rates in Sligo County Council are broadly consistent with national averages.

Sligo County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	519	103	19.85%	14.3%
2017	496	75	15.12%	15.3%
2018	514	81	15.76%	15.5%
2019	524	106	20.23%	16.4%
2020	390	64	16.41%	17.1%

Table B7

South Dublin County Council

Invalidation rates in South Dublin County Council are generally lower than national averages.

South Dublin County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	905	75	8.29%	14.3%
2017	893	88	9.85%	15.3%
2018	1,098	87	7.92%	15.5%
2019	983	71	7.22%	16.4%
2020	906	44	4.86%	17.1%

Table B8

Part 2

Planning authorities subject to OPR review under S31AS of the Planning and Development Act.

Kildare County Council

Kildare County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	1,325	177	13.36%	14.3%
2017	1,458	221	15.16%	15.3%
2018	1,567	219	13.98%	15.5%
2019	1,418	181	12.76%	16.4%
2020	1,603	393	24.52%	17.1%

Table B9

Louth County Council

Louth County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	901	120	13.32%	14.3%
2017	945	109	11.53%	15.3%
2018	1,050	164	15.62%	15.5%
2019	1,084	190	17.53%	16.4%
2020	1,159	212	18.29%	17.1%

Table B10

Galway City Council

Galway County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	357	19	5.32%	14.3%
2017	368	28	7.61%	15.3%
2018	430	29	6.74%	15.5%
2019	373	16	4.29%	16.4%
2020	363	27	7.44%	17.1%

Table B11

Tipperary County Council

Tipperary County Council	Total applications received	Invalidated applications	Invalidation percentage	National invalidation rate
2016	1,168	218	18.66%	14.3%
2017	1,417	409	28.86%	15.3%
2018	1,528	386	25.26%	15.5%
2019	1,463	427	29.19%	16.4%
2020	1,572	491	31.23%	17.1%

Table B12

Appendix C

Planning Authority Checklists and Guides

Many planning authorities have good checklists and guides available on their websites to inform and assist prospective applicants and/or their agents in how to meet planning application requirements.

A sample of these is provided below. Other planning authorities may find this information useful for updating or expanding upon the information they make available to prospective applicants and/or their agents.

Northern and Western Region

Donegal County Council

A checklist guide to submitting a valid planning application including a list of the most common reasons for an invalid application is available at Donegal County Council's website at: www.donegalcoco.ie/media/donegalcountyc/planning/pdfs/applicationforms/Guide%20to%20Valid%20App.pdf

Mayo County Council

A guide to making a planning application is available at: www.mayo.ie/getmedia/eededd4a-7499-40f2-8369-17b45875cafc/Guide-to-Making-a-Planning-Application.pdf

A planning application checklist is available at: www.mayo.ie/getmedia/53623676-3c60-4ca8-9eef-ea75bb96fef7/Planning-Application-Check-List.pdf

Monaghan County Council

Examples of agents' workshops are available at: <https://monaghan.ie/planning/presentations-to-planning-agents/>

Eastern and Midlands Region

Dublin City Council

Guidance on how to make an online application is available at: www.dublincity.ie/residential/planning/planning-applications/make-planning-application/planning-process-application/about-online-planning-application-process

Dún Laoghaire-Rathdown County Council

Same day validation details are available at: www.dlrcoco.ie/en/planning/planning-applications/same-day-validation

Fingal County Council

Planning application checklist is available at: www.fingal.ie/sites/default/files/2019-03/Checklist%20to%20determine%20valid%20planning%20applications%20Rev%201%20Eng%20%282%29.pdf

Offaly County Council

A guide to reducing invalid planning applications is available on Offaly County Council's website at: www.offaly.ie/eng/Services/Planning/Planning-Applications/Forms-Documents/PLANNING-PACK-A-Guide-to-Reduce-Invalid-Planning-Applications.pdf

South Dublin County Council

Same day validation service details are available at: www.sdcc.ie/en/services/planning/planning-applications/same-day-validation/

Southern Region

Clare County Council

In the 'What to submit' webpage there are hyperlinks to planning application forms, checklists, and a list of common errors/omissions made when lodging planning applications. There are also details of the counter validation service available at: www.clarecoco.ie/services/planning/applications/apply/what-to-submit/

Kilkenny County Council

A comprehensive FAQ section relating to applying for planning permission is available at: <https://kilkennycoco.ie/eng/services/planning/planning-applications/applying-for-planning-permission/faqs/>

Limerick City and County Council

A planning application validation checklist is available at Limerick City and County Council's website at: www.limerick.ie/sites/default/files/media/documents/2018-07/Planning%20application%20validation%20checklist%202018.pdf

Wexford County Council

A guide and checklist to applying for planning permission is available at: www.wexfordcoco.ie/planning/planning-applications/apply-for-planning-permission

Appendix D

Judicial Review: Case Law

This appendix contains some recent legal cases relevant to interpretation of the legislative and regulatory requirements for making planning applications.

The table is not intended to be a definitive list but serves merely as a reference to help to ensure robust procedures in the initial processing of planning applications.

In addition in order to signpost the legislative progression, Table D2 provides the main historical cases (pre-2000 Act and 2001 Regulations) that turned on the validation issue.

In reading the tables and examining cases, it is important to take into account the prevailing regulatory and legislative context.

Table D1 - Recent Judicial Review Cases Concerning Application Documentation.

NAME OF CASE AND CITATION	<p>Southwood Park Residents Association v. An Bord Pleanála, Minister for Culture Heritage and The Gaeltacht Ireland and The Attorney General (Respondents) Cairn Homes Properties Ltd. Dún Laoghaire Rathdown County Council (Notice Parties) [2019] IEHC 504</p> <p>10 July 2019</p>
OTHER CASES REFERRED TO IN THE JUDGEMENT	<p>Monaghan County Council v. Alf-a-Bet Promotions Ltd. [1980] I.L.R.M 64</p> <p>Marshall v. Arklow Town Council (No.2) [2004] IEHC 313; [2004] 4 I.R 92</p> <p>McAnenley v. An Bord Pleanála [2002] IEHC 60 [2002] 2 I.R. 763</p> <p>State (Haverty) v. An Bord Pleanála [1987] I.R. 485</p> <p>West Wood Club Ltd. v. An Bord Pleanála [2010] IEHC 16</p> <p>Kinsella v. Dundalk Town Council [2004] IEHC 373</p>
NAME OF CASE AND CITATION	<p>Balscadden Road SAA Residents Association Limited v An Bord Pleanála (Respondent) and Crekav Trading G.P. Limited (Notice Party) Christian Morris v An Bord Pleanála (Respondent) and Crekav Trading G.P. Limited (Notice Party) [2020 No. 375 JR], Unreported [2020] IEHC 586</p> <p>25 November 2020</p>
OTHER CASES REFERRED TO IN THE JUDGEMENT	<p>Monaghan U.D.C. v. Alf-a-Bet Promotions Ltd. [1980] I.L.R.M. 64</p> <p>Dalton v. An Bord Pleanála [2020] IEHC 27</p> <p>Clonres CLG v. An Bord Pleanála [2018] IEHC 473</p> <p>White v. Dublin City Council [2002] IEHC 68 and White v. Dublin City Council [2004] IESC 35, [2004] 1 I.R 545</p>

<p>NAME OF THE CASE AND CITATION</p>	<p>Atlantic Diamond Limited v. An Bord Pleanála and EWR Innovation Park Limited [2020 No. 712 JR], [2021] IEHC 322</p> <p>14 May 2021</p>
<p>OTHER CASES REFERRED TO IN THE JUDGEMENT</p>	<p>V.K. v. Minister for Justice and Equality [2019] IECA 232</p>
<p>NAME OF THE CASE AND CITATION</p>	<p>Walsh v An Bord Pleanála (Respondent) and Ray Sinnott (Notice Party) and Waterford City and County Council (Notice Party) [2020] 417]</p> <p>22nd July 2021</p>
<p>OTHER CASES REFERRED TO IN THE JUDGEMENT</p>	<p>Heather Hill Management Co CLG v An Bord Pleanála [2019] IEHC 450</p> <p>McCallig v. An Bord Pleanála [2013] IEHC 60</p> <p>South-West Regional Shopping Centre v. An Bord Pleanála [2016] IEHC 84</p> <p>Hynes v. An Bord Pleanála [1998] IEHC 127</p> <p>North East Pylon Pressure Campaign Ltd v. The Minister for Communications, Energy, and Natural Resources [2017] IEHC 338</p> <p>Mulcreevy v. Minister for the Environment, Heritage and Local Government [2004] 1 I.R. 72</p> <p>State (Finglas Industrial Estates) v. Dublin County Council [1983] 2 JIC 170</p> <p>Frescati Estates Limited v. Walker[1975] I.R. 177</p> <p>Sweetman v. An Bord Pleanála [2021] IEHC 16</p>

Table D2 - Historic Judicial Review Cases (Pre-2001 Regulations).¹⁹

Invalidation issue – Site notice (visible /legible)
<i>Springview Management Ltd v. Cavan Developments Ltd. [2000] I.L.R.M. 437</i>
Invalidation issue – Newspaper notice
<i>Brady v. Donegal County Council [1989] I.L.R.M. 282</i>
Invalidation issue – Description of nature and extent of development
<i>Springview Management Ltd. v. Cavan Developments Ltd. [2000] I I.L.R.M. 437</i>
<i>Blessington & District Community Council Ltd. v. Wicklow County Council [1997] I I.R. 273</i>
<i>McNamara v. An Bord Pleanála (No. 2) [1996] 2.I.L.R.M, 339</i>
<i>Calor Teoranta v. Sligo County Council [1991] 2.I.R.M.267</i>
<i>O' Donoghue v. An Bord Pleanála [1991] I.L.R.M 750</i>
<i>Cunningham v. An Bord Pleanála Unreported, High Court, Lavan J., May 3, 1990</i>
<i>Molloy v. Dublin City Council [1990] I I.R.90 [1990] I I.L.R.M. 663</i>
<i>Cf. Burke v. Drogheda Corporation, Unreported, High Court, McWilliam J., June 11, 1982</i>
<i>Monaghan UDC v. Alf-a-bet Promotions Ltd. [1980] I.L.R.M 64</i>
<i>Keleghan v. Corby (1977) III I.L.T.R 144</i>
<i>Readymix (Eire) Ltd v. Dublin County Council, Unreported, Supreme Court, July 30, 1974</i>
Invalidation issue – Description of the applicant company
<i>Blessington & District Community Council Ltd. v. Wicklow County Council [1997] I I.R. 273 at 282</i>
<i>Thomas McDonagh & Sons Ltd. v. Galway Corporation [1995] I I.R. 191</i>
<i>State (Toft) v. Galway Corporation [1981] I I.L.R.M 439</i>
<i>State (NCE Ltd) v. Dublin County Council, Unreported, Supreme Court, 14 May 1980</i>
<i>State (Alf-a-bet) Promotions Ltd. v. Bundoran UDC (1978) 112 I.L.T.R. 9 at 15</i>
Invalidation issue – Location, townland or postal address
<i>Dooley v. Galway County Council [1992] 2 I.R. 136</i>
<i>Crodaun Homes Ltd. v. Kildare County Council [1983] I.L.R.M 1</i>

¹⁹ Taken from Browne, D. (2021) *Simons on Planning Law*, 3rd Edn. Ireland, Round Hall and Simons, G. (2004) *Planning and Development Law*, 2nd Ed. Ireland, Round Hall.

Invalidation issue – Issues of legal interest

Keane v. An Bord Pleanála [1998] 2. I.L.R.M. 241

Molloy v. Dublin City Council [1990] 1 I.R.90 [1990] 1 I.L.R.M. 663

Invalidation issue – Documents, particulars, plans, drawings and map which should accompany the application

Seery v. An Bord Pleanála, Unreported, High Court, Quirke J., 26 November 2003

Invalidation issue – Requirement to state that submissions and observations may be made

Village Residents Association Ltd. v. An Bord Pleanála (No. 1) [2000] 1 I.R. 65; [2000] 2 I.L.R.M. 59

Crodaun Homes Ltd. v. Kildare County Council [1983] I.L.R.M. 1

State (Standaford) v. Dun Laoghaire Corporation, Unreported, Supreme Court, February 20, 1981

Appendix E

References

Browne, D. (2021) *Simons on Planning Law*, 3rd Edn. Ireland, Round Hall.

Callanan, H. and Keogan, J. (2003) *Local Government in Ireland: Inside Out*. Dublin, Institute of Public Administration.

Department of the Environment and Local Government. (2001) *Planning and Development Regulations, 2001*. Available from: www.irishstatutebook.ie/eli/2001/si/600/made/en/print

Department of Environment, Heritage and Local Government. (2006) *Planning and Development Regulations, 2006*. Available from: www.irishstatutebook.ie/eli/2006/si/685/made/en/print

Department of the Environment, Heritage and Local Government. (2007) *Development Management Guidelines for Planning Authorities*. Available from: www.opr.ie/wp-content/uploads/2019/08/2007-Development-Management-1.pdf

Department of Housing, Planning and Local Government. (2018) *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*. Available from: www.gov.ie/en/publication/53aee9-guidelines-for-planning-authorities-and-an-bord-pleanala-on-carrying/

Department of Housing, Planning and Local Government. (2020) *Planning and Development Act, 2000 (Section 38) Regulations 2020*. Available from: www.irishstatutebook.ie/eli/2020/si/180/made/en/print

Department of Housing, Local Government and Heritage. (2021) *Planning and Development (Amendment) (Large-scale Residential Development) Act 2021*. Available from: www.irishstatutebook.ie/eli/2021/act/40/enacted/en/html

Department of Housing, Local Government and Heritage. (2021) *Planning and Development (Large-scale Residential Development) Regulations, 2021*. Available from: www.irishstatutebook.ie/eli/2021/si/716/made/en/print

Keeling, N. (2006) *The Planning Application*. [Lecture] Trinity College Dublin, 7th-8th December 2006.

MacCabe Durney Barnes (2015) *Independent Planning Review of The Performance of Planning Functions having regard to Specific Issues raised in respect of Six Planning Authorities. Final Report*. Available from: <http://mdb.ie/portfolio-item/planning-review/>

Office of the Ombudsman (2007) *Complaint concerning Clare County Council and its handling of planning applications at Doonbeg Golf Course*. Available from:

www.ombudsman.ie/publications/reports/clare-county-council-and/

Office of the Planning Regulator (2020) *Pilot Methodology for Conducting Reviews of Local Authorities Systems and Procedures in relation to the Performance of Planning Functions*. Available from: **www.opr.ie/opr-publishes-pilot-methodology-for-conducting-reviews-of-local-authorities-systems-and-procedures-in-relation-to-the-performance-of-planning-functions/**

Office of the Planning Regulator (2021) *Annual Report 2020*. Available from: **<https://publications.opr.ie/view-file/57>**

Phillips, T. (2021) *Zero Tolerance for Invalidations: Binning and rubber mallet – Review of Irish Planning Statistics 2009-2020*. Edition 2. Available from: **<https://tpa.ie/resources/>**

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