



Joint Committee on Housing, Local Government & Heritage  
Leinster House  
Dublin 2  
D02 XR20

14<sup>th</sup> February 2022

Sent by email to: [jchlgh@oireachtas.ie](mailto:jchlgh@oireachtas.ie)  
Attention of Tom Malone

#### **General Scheme of the Housing and Planning and Development Bill**

Dear Mr Malone,

Thank you for inviting the Dublin Democratic Planning Alliance for our views on the General Scheme. We shall try to focus on the Environmental issues presenting; Aarhus Convention rights and (residential) planning aspects.

We had hoped that, after two years of hibernation, this bill would never see the light of day again.

Its intention is to reduce the number of Judicial Reviews against the decisions of An Bord Pleanála by restricting the citizens' right to Access to Justice.

We fear that this is an attack on the rule of law, the judiciary, citizen's rights to access to justice, and the separation of powers.

If this legislation were to be passed, the Dublin Democratic Planning Alliance will be bringing this proposed legislation to the attention of the Aarhus Convention Compliance Committee. We are certain that many other groups, who will also recognise its dangers to citizens' rights, will do likewise.

The fact that this bill was announced by the then Taoiseach at the annual conference of the Construction Industry Federation on 2<sup>nd</sup> October 2019 speaks volumes as to the origins of this entirely unnecessary bill. It is clearly in contravention of Ireland's obligations under the Aarhus Convention. We will deal with that issue later in this submission.

#### **INTRODUCTION**

The perception that there is a rash of judicial reviews to the Bord's decisions is partly true in so far as the decisions made by the Board through the Strategic Housing Development process were so unpalatable to the citizenry that their only option was to seek leave to appeal for judicial review. An analysis of the data shows that the trigger for the increase of JRs was the extraordinary number of SHD applications which were material contraventions of their area development plans – they were never envisaged by the inhabitants of the locations into which they were to be imposed. These material contraventions were granted by the Board on their interpretation of national policy and ministerial directives (SPPRs) under Section 28 of the Act.

Add to this the lack of any appeal mechanism against the planning authority's decision for the citizen, as is the case in the SHD process, and the scene was obviously set for an increase in judicial review.

## **PLANNING ASPECTS OF THE LEGISLATION**

The reality of the cause of the rise in judicial reviews and the impact on the supply of housing is five-fold :

The first is that up until the applicants under SHD saw how easy it was to obtain material contraventions from An Bord Pleanála, there were only a few JRs.

- Of the first 120 SHD applications, there were 11 JRs, of which 9 decisions of ABP were quashed and two were withdrawn. ABP refused 23 applications and one was withdrawn. There were no Material Contraventions.
- Of the second 120, there were 26 JRs of which 14 decisions of ABP were quashed and 12 are pending. ABP refused 24 applications and 3 were withdraw. There were 25 Material Contraventions.
- Of the third 120 applications, there were 44 JRs, of which 3 decisions of ABP have been quashed, with the remaining 41 pending. ABP refused 25 applications and one was withdrawn. There were 117 Material Contraventions to the Local Development Plans out of that 120.
- Of the remaining 45 applications to date 44 are Material Contraventions.
- The reality is that the increase in judicial review is due to the decisions made by the Board. Even with the current protections on cost, the application for leave is a serious undertaking and there are few, if any, that are vexatious.

The second is that judicial review of SHD grants has led to an extraordinarily high proportion of them being quashed. The narrative that An Bord Pleanála is pushing is that, by not including those that they have conceded, they lose very few. That is not correct. A quashed decision means that the citizen was correct in taking the review.

- Of the 79 Judicial Reviews, 43 are pending. That means that, of the 36 JRs that have been finalised, 26 were quashed. That shows how flawed those decisions were. This proposed legislation seeks to ensure that those judicial reviews could not have been taken.

The third is that the numbers of housing units in judicial review is holding up the delivery of housing. This may be partly true in a small number of cases. But the numbers speak for themselves:

- Excluding those applications either withdrawn or quashed through the Judicial Review process, and excluding student and shared accommodation, there are currently (February 2022) 67,996 apartments and houses that have SHD permissions. Commencement notices have been submitted for 12,993 of these units, a rate of 19%.
- The number of units currently under review is 15,240, nearly all of which materially contravene the development plans for their areas; the numbers granted are 67,996; The number of 'ready-to-go' permitted units (i.e. those not subject to judicial review) is therefore 52,756. With the commencement notices that have been submitted of 12,993, this gives a rate of 24.5% - less than a quarter of those permitted. What is holding up the delivery is the industry's lack of commitment to building units.

The fourth is that speedier planning decisions lead to speedier delivery. While this seems logical it is not true. For example we could cite two of the many current Section 34 and SHD planning applications which already have "ready to go" grants, but which the developer is having another go at increasing the value of the site by doubling the numbers of units!

- There has never been a connection between the speed of planning grants and the speed of the delivery of housing.

The fifth is that there is a shortage of granted planning permissions available to the industry. In addition to the numbers granted under SHD (of which so few are proceeding) there are approximately 100,000 units for which planning permission has been granted under the 'normal' two-stage system.

- Rather than restrict the rights of the citizen for access to justice in environmental matters, revoking the changes made to Section 50 of the Act that made it compliant with the Aarhus Convention, the planning system should not allow An Bord Pleanála to permit material contraventions to development plans, without any access for the public to the making of those decisions.

The better way to reduce judicial reviews of their decisions would be to ensure that An Bord Pleanála made decisions that did not stimulate the need of citizens to seek justice in the courts.

In February 2019, the United Nations rapporteurs on Human Rights and Adequate Housing wrote to the government. Their chief concern was the laws and policies which have allowed unprecedented amounts of global capital to be invested in housing as security for financial instruments that are traded on global markets.

- *"This expanding role and unprecedented dominance of unregulated financial markets and corporations in the housing sector is now generally referred to as the "financialization of housing" and it is having devastating consequences for tenants.*
- *Contrary to international human rights obligations, investment in housing in the Republic of Ireland has disconnected housing from its core social purpose of providing people with a place to live in with security and dignity.*

The IHRC/ESRI 2021 research on Adequate Housing also expresses concern about policies that have led to the failure to provide affordable accommodation. It analyses many factors including capital spending and subsidising housing costs for rent in the private sector. We mention this report as the shift from state ownership and construction of housing (from 18% to 10% in 2016) to private sector subsidy is one of the drivers for the pressure to change the Judicial Review provisions.

These supplements – HAP, RS and RAS – constitute a large financial commitment by the state to the private sector. This is driving a large market for private investors.

We mention this report to illustrate that supply itself will not reduce costs, so the argument that judicial review impacts on the production of affordable housing is without foundation.

This heads of bill is an extension of the financialisation of housing as a commodity, driven as it is by the market forces that have undermined proper planning in the state.

## CONTEXT AND ENVIRONMENTAL ISSUES PRESENTING

We referred above to whence this flawed proposed legislation originated. Owen Keegan's (Chief Executive Officer of Dublin City Council) comments quoted in The Irish Times of 9<sup>th</sup> February 2022 illustrate just how damaging this proposed legislation would be. He noted the need to tackle the proliferation of Build To Rent apartments in Dublin City, facilitated by Section 28 SPPRs and the willingness of An Bord Pleanála to permit material contraventions to the Development Plan.

- Referring to the Draft Dublin City Development Plan 2022-2028, the report states: Mr Keegan said the extent to which the plan would be realised depends on a number of factors, including the role of An Bord Pleanála, which he said has "*shown an increasing disregard*" for the provisions of the city development plan. It has done this, he said, "*in exercising its very considerable planning functions generally, and especially in assessing strategic housing development applications*". He added: "*Thankfully however, the board's approach appears to have come at least partially unstuck, as indeed has the whole SHD process, as a consequence of the very significant increase in recourse to judicial review of the board's decision.*"

This heads of bill proposes to exacerbate this problem, by making it virtually impossible for a citizen to question a decision of the Board.

Kevin O'Sullivan (Irish Times, 21<sup>st</sup> January, 2022) quoted the European Commission's Aurel Ciobanu-Dordea, who stated that the European Commission would not ignore continuing issues on public access to justice in Ireland. Amongst the statements that Aurel made were:

- *"Ireland continues to be the most expensive member state in which to make an environmental claim before the courts. The case law of the national courts has meandered through different interpretations of the costs rules, and has left many environmental litigants unable to predict with any certainty their cost exposure."*

*"A particular concern for us is the increasingly aggressive stance being taken against environmental campaigners in Ireland. There is evidence not only of increased use of Slapp [Strategic lawsuit against public participation] suits, but also negative reporting in mainstream media, and even from politicians – like threatening to cut off funding to certain NGOs."*

*"It was a surprise for us to hear this is happening in Ireland . . . It's disappointing, and even worrying. The rule of law and its protection, especially when it comes to the environment, is one of the biggest priorities of this commission. We believe radical change of behaviour is necessary, because it is highly unusual for an advanced society like Ireland to witness such conducts."*

This heads of bill will facilitate the aggressive approach to the citizens' rights relating to access to justice by threatening excessive costs and will attack the rule of law, so eloquently stated by Aurel Ciobanu-Dordea.

In the 4<sup>th</sup> December 2019 Briefing Paper on the then General Scheme, authored by Hari Gupta, many concerns were expressed. Amongst those were references to the then Minister's (Eoghan Murphy) view of the Scheme:

- *"The Minister appears to imply that the General Scheme is a means of establishing the balance to which Dr Áine Ryall was referring; amending the provisions related to standing and costs with a view to restricting the capacity of individuals and groups to cause vexatious delay in the determination of planning and development applications while maintaining access to justice for individuals and established NGOs to challenge decisions that may fall foul of the domestic and EU environmental law. However, whether the provisions of the General Scheme achieve this balance has been questioned reportedly by environmental groups, citizens' groups and legal professionals, including the heads of the Free Legal Advice Centres and the Irish Council for Civil Liberties.<sup>22</sup> Environment Pillar (a coalition of environmental organisations) has argued: if the provisions of the General Scheme were to be enacted, it 'would make it near impossible to challenge planning decisions in the courts and to hold public authorities and the government to account.'"*

None of the concerns in the Briefing Paper have been addressed in this heads of Bill. Following a low-key public consultation process, the heads of bills that we see in front of us today are identical to those that were analysed in the briefing paper. That there have no changes is illustrative of the inadequacy of the process. The intention seems to be to just railroad this flawed agenda through, in the hope that few understand its implications.

## AARHUS CONVENTION RIGHTS AS REFLECTED IN THE LEGISLATION

The Draft for Consultation for the Aarhus Convention implementation prepared by the DECC in 2021. In relation to access to justice in Article 9 notes how Ireland complies with the Convention.

The author, Aoife Joyce notes that:

- *(b) The following legislation ensures that members of the public concerned, having a sufficient interest, have access to a review procedure before a court of law and/or other independent and impartial review bodies established by statute, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6.*
- *"Ireland's system of judicial review is the independent procedure by which the substantive and procedural legality of decisions of public bodies can be challenged.*
  - *Order 84 of the Rules of the Superior Courts sets out the rules governing judicial review and requires, in rule 20(4), that applicants have a sufficient interest in the matter.*
  - *Section 50A3(b)(i) of the Planning and Development Act 2000, as amended by section 20 of the Environment (Miscellaneous Provisions) Act 2011, requires that in planning judicial review cases, applicants have a sufficient interest in the matter. Subsection 4 further states that a sufficient interest is not limited to an interest in land or other financial interest.*
  - *Section 37 of the Planning and Development Act 2000 provides for an appeal of planning authority decisions to An Bord Pleanála.*
  - *Under Section 50A(3) of the Planning and Development Act 2000, as amended, eNGOs whose aims and objectives relate to the promotion of the protection of the environment and who have pursued those aims and*

*objectives for twelve months, are not required to demonstrate a sufficient interest in judicial review cases pursuant to planning matters. Special standing rules are provided for eNGOs in certain litigation relating to the IPPC and EIA Directives S.I. No. 352/2014 - European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014.*

*In Irish law, it is not necessary to demonstrate an impairment of a right in order to seek leave for judicial review.”*

She further notes that:

- *“Judicial review is a two-stage process. An application for leave to bring judicial review proceedings must first be made. If leave is granted, the applicant may proceed to bring judicial review proceedings. The leave stage acts as a filtering process to identify, at an early stage, frivolous and unmeritorious claims.*
  - *Members of the public may also institute separate legal proceedings seeking to enforce provisions of national law, including e.g., pleading breaches of statutory duties and provisions, and seeking declarations and injunctions in order to ensure compliance with national law.*
  - *The cost rules introduced in the Environment (Miscellaneous Provisions) Act 2011 are applied to the enforcement of environmental consents, permissions, leases, permits and licences as outlined in Section 4 of this Act. These relate solely to general environmental rights as these special cost rules are not applicable to proceedings seeking to redress personal harm (which can be pursued under traditional legal routes).*
  - *Section 37 of the Planning and Development Act 2000 (as amended) allows members of the public to appeal the decision to an administrative board – An Bord Pleanála – in the first instance, including on the basis of any alleged breaches of national environmental law in respect of such decisions.*
  - *Section 50 and 50A of the Planning and Development Act 2000 (as amended) provides that a member of the public with sufficient interest may seek leave to apply for judicial review to challenge a decision or act relating to a decision by a planning authority or An Bord Pleanála. Special standing rules are provided for certain eNGOs (see above).*
  - *The availability of complaints procedures in respect of planning authorities, An Bord Pleanála, the EPA and other regulatory bodies also enable the public to challenge breaches of environmental law.”*

In the section demonstrating compliance with the “Not Prohibitively Expensive” section of Article 9, she states:

- *“Special costs rules were introduced in section 3 of the Environment (Miscellaneous Provisions) Act 2011 for environmental civil proceedings. Section 6 of this Act applies these cost rules for judicial review for proceedings relating to environmental licences (section 4) and AIE Regulations (section 5) and for interim or interlocutory relief in said proceedings. Section 7 of the Environment (Miscellaneous Provisions) Act 2011 provides that a party to such environmental proceedings can apply to the Court at any time before or during the proceedings for a determination that the cost rules apply to those proceedings.*
  - *Section 50B of the Planning and Development Act 2000 (as amended) in proceedings concerning decisions, actions or inaction pursuant to the EIA Directive, SEA Directive, IPC Directive or Habitats Directive, provides each party shall bear its own costs or the court may award costs in favour of the applicant to be borne by the respondent and/or the notice party where their actions contributed to the applicant obtaining relief.*
  - *The cost rules introduced in the Environment (Miscellaneous Provisions) Act 2011 and Planning and Development (Amendment) Act 2010 mean that an applicant will very rarely be obliged to pay the costs of a respondent, even if they are unsuccessful (except in cases where the litigation is, for example, vexatious) and that they may still be awarded costs if their case is a matter of exceptional public importance (section 3(4)).”*

This heads of bill will revoke the legislation that is referred to in the compliance report, meaning that Ireland will no longer comply with the Aarhus Convention.

The Department of the Environment, Climate and Communications updated their publication of 15<sup>th</sup> June 2020 on the 8<sup>th</sup> February 2021. This explicitly refers to the legislation which is in the heads of bill.

- ***“Access to Justice***

*Article 9 of the Aarhus Convention requires that adequate review procedures are in place to safeguard the rights granted by the other pillars of the Convention and under national law. A number of pieces of legislation*

were introduced to assist Ireland in meeting its obligations under this pillar including the Environment (Miscellaneous Provisions) Act 2011, (<http://www.irishstatutebook.ie/eli/2011/act/20/enacted/en/html>) which requires that a judge must take notice of the Convention in relevant cases and also introduced new costs rules which apply in certain cases.

The Aarhus Convention, and associated EU Directives, require that certain groups of people have access to a review procedure to challenge the substantive and procedural legality of certain decisions, acts or omissions relating to the environment. A review of the substantive and procedural legality of a decision is a review of how the public authority applied the law – it is not a review on the merits of a decision. In Ireland, such challenges are taken under the mechanism to challenge the substantive and procedural legality of a decision by a public body is through Judicial Review. ([https://www.citizensinformation.ie/en/environment/planning\\_and\\_development\\_in\\_irland/judicial\\_review\\_in\\_planning\\_and\\_enviro](https://www.citizensinformation.ie/en/environment/planning_and_development_in_irland/judicial_review_in_planning_and_enviro) “

This will no longer be the case if this proposed legislation is passed.

We have appended the documents referred to above in appendices to this submission. The analyses of SHD numbers was carried out by the DDPA and is copyright.

## SUMMARY

The DDPA believe that this bill is based on false premises that the citizen is the cause of delays in the delivery of projects approved by An Bord Pleanála.

- Its intention is to reduce public participation in the planning system.
- Its intention is also to make any legal challenges to decisions by An Bord Pleanála prohibitively expensive.
- It rolls back the legislation that was passed to comply with our obligations under the Aarhus Convention it will therefore be in contravention of it and its provisions for access to justice.
- It attempts to treat the symptoms, not the causes of challenges to planning decisions.
- As witnessed by the numbers of JRs that lead to the decisions being quashed, it will reduce the level of scrutiny, oversight and accountability of the decisions of An Bord Pleanála.
- In this era of climate and biodiversity crisis any reduction in access to justice could be catastrophic.

We plead with you, the members of the Oireachtas, to ensure that this retrograde bill is withdrawn as a matter of urgency, given its threat to the rights of the citizen, access to justice, participation in the planning system, to the rule of law and to the existential threat of environmental damage.

We thank you for your attention and hope that we have made our case against this totally unnecessary piece of proposed legislation.

Robin Mandal  
Marion Cashman  
Ray Kenny  
Sebastian Venckens

Executive Committee of the Dublin Democratic Planning Alliance

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## APPENDIX 1: COMMENTARY ON THE HEADS OF THE BILL

### ARRANGEMENT OF HEADS PART 1 PRELIMINARY AND GENERAL

#### HEAD 1: Short title, construction, collective citation and commencement

No comment.

#### HEAD 2: Interpretation

No comment.

### PART 2 REFORM OF THE JUDICIAL REVIEW PROVISIONS OF THE ACT OF 2000

#### HEAD 3: Specific points in time for initiating judicial review challenges and alleged deficiencies

The proposed revisions to Section 50 restrict access to justice.

Under (i), by forcing a challenger to take an appeal to An Bord Pleanala would exclude those who simply were unaware of an application until it was granted by the local authority. The likelihood of a challenger not having appealed to ABP is low in any case, so this is not necessary and is exclusionary.

Under (ii), the exclusion of a challenge due to errors reduces scrutiny and the provision that the applicant had to have known and sought rectification of such deficiencies before they are made is farcical and well as inimical to due process.

#### **This should not be accepted.**

The explanatory note does not explain this rowing back on the changes made to S.50, in order to comply with Aarhus. We cannot find the quoted text in our copy of the Aarhus Convention. The note on the errors is Jesuitical.

#### HEAD 4: Bringing of judicial review proceedings including standing rights

The proposed wording in this totally undermines the legislative changes made to Section 50, made to ensure compliance with Aarhus in 2000.

Forcing an appellant to seek leave on motion, rather than *ex parte*, makes the process far more difficult and expensive for an appellant. *Ex parte* is a normal process in constitutional law. This provision undermines that principle.

The undermining of S.50(3)(a) by replacing “sufficient” by “substantial” is a further attack on the rule of law. Its purpose is to reduce access to justice and reduce scrutiny. This is an extremely serious threat to citizens’ rights.

The proposed restrictions on NGOs, contrary to the changes made in 2000 to comply with Aarhus are solely designed to exclude them from access to justice.

Paragraph (2) intends to undermine the power of the court to decide on granting leave to apply for a judicial review. By adding that “...*The Court must also be satisfied that the application has a reasonable chance of success.*” This literally requires the Court to pre-judge the decisions of the Court and is a travesty of the legal system. It is also a shocking attack on the separation of powers, where the Minister is forcing the Court to evaluate a case prior to a hearing or due process.

Not only is this odious but, combined with the proposed removal of the *ex parte* rights, it is guaranteed to increase the cost of this part of the review process as the motion parties argue over the decisions of a future court hearing. It is a travesty.

**These should not be accepted.**

The explanatory note summary that “*These are fairly standard minimum requirements in most other jurisdictions.*” Is written without any evidence whatsoever and takes no account of different legal systems or planning systems, which are generally far less open to interpretation by the developer. The fact that the existing provisions , which this head seeks to remove, were inserted in 2000 in order to ensure compliance with Aarhus are proposed to be removed is unsettling. If they were unnecessary then, why were they inserted? This sweeping generalisation in the note summary is unacceptable, particularly in such a damaging proposal.

**HEAD 5: Consequential amendments to Section 37 of the Act**

Again, this proposed wording seeks to undo the work on Section 37 to do with the environment protection requirements of Aarhus. As with the other heads, its purpose is to restrict the access to justice of appellants seeking judicial review. These are effectively restrictions on *locus standii* that are not in accordance with either Aarhus or any other conventions on participation, oversight or access to justice.

By proposing changes from 12 months to three years, if passed, this would deny anyone who could not predict the future from getting access to justice. It would be an enormous restriction and would exclude virtually all local organisations from participation in the planning process, contrary to Aarhus.

**These proposed changes should not be accepted.**

The explanatory note glosses over the assault on citizens’ rights that this head proposes.

**HEAD 6: Special legal costs rules**

The proposed amendment to Section 50(B) (2) to (4) undoes the changes made in the 2000 Act to ensure compliance with Aarhus. It is contrary to the key provision of Aarhus that access to justice is not prohibitively expensive. This head, along with the notice on motion under head 4, will ensure that access to justice will become prohibitively expensive. It would be most likely that that the European Commission would, as they did before, take a case against Ireland for its failure to ensure that access to justice is not prohibitively expensive.

The clear intention of this head is to make it prohibitively expensive to undertake judicial review. This would, as well as unwinding the 2010 legislation forced by the EU, be against the rule of law. As with the SHD system, the trust in the planning process would be undermined.

**These should not be accepted.**

The explanatory note explains how Ireland transposed the “not prohibitively expensive” requirement of Aarhus in the 2000 Act and how this legislation intends to make the access to justice “prohibitively expensive”. We cannot understand how the drafters of this proposed legislation can believe that the intentions are anything other than that.

**SUMMARY**

This bill seeks to reduce the numbers of judicial reviews against planning decision by restricting the rights of the citizen to apply for leave to appeal and by ensuring that the process becomes prohibitively expensive. It also threatens the citizen with severe financial loss; all the while not addressing the root cause of the current increase in JR numbers. It also seeks to reduce the scrutiny by the citizen of decisions made by An Bord Pleanála, through making any challenges exceptionally difficult and financially risky.

It would also undermine the independence of the courts by insisting that the Court take prejudicial views as to the likely decision of another court at hearing. This is very dangerous territory for the state to venture into.

There is not a whit of evidence offered as to what the putative benefits of this bill might be – other than that it would make it harder and more expensive to challenge decisions of An Bord Pleanála.

APPENDIX 2: SHD TO SEPTEMBER 2021 AND FROM SEPTEMBER 2021 TO FEBRUARY 2022 – SOURCE: FRED LOGUE & CO



Overall refusals, grants, withdrawals, judicial reviews- quashed and pending and material contraventions to Sep 2021

Case No.	Description of Development	Date Received	Last Day for Submission	Application Website	Decide By Date	78.21% 10658 8336	48.20% 205 1376	62.89% 0 53793	Total R 63 Q 22 W 5	G 200 R 63 B 8 G 192 G 102	68.97% 21.72% 7.59% 11.00% 1.72%	JRs Total 31 Finalised 29 Pending 23	Co			
										Stud	Shared houses	Amend	G/R/Q/W NIS	EIS	JR	ABP Link
309312	152 no. apartments and associated site works.	29/1/2021	14/3/2021	<a href="http://www.pleasala.ie/shd-tracker/">http://www.pleasala.ie/shd-tracker/</a>	20/5/2021					152	G	Y				<a href="http://www.pleasala.ie/casenum/309312.htm">http://www.pleasala.ie/casenum/309312.htm</a>
309316	1,005 no. apartments, creche and associated site works.	29/1/2021	20/3/2021	<a href="http://www.watersfrontsouthcentralshd.ie">http://www.watersfrontsouthcentralshd.ie</a>	20/5/2023					1005	B	Y Y				<a href="http://www.pleasala.ie/casenum/309316.htm">http://www.pleasala.ie/casenum/309316.htm</a>
309253	104 no. houses and associated site works.	25/1/2021	13/3/2021	<a href="http://www.cosmopolitanhousehd.com">http://www.cosmopolitanhousehd.com</a>	17/5/2023					104						<a href="http://www.pleasala.ie/casenum/309253.htm">http://www.pleasala.ie/casenum/309253.htm</a>
309126	192 no. apartments, creche and all associated site works. (remial)	6/1/2021	29/3/2021	<a href="http://www.carpenterstownshd.ie">http://www.carpenterstownshd.ie</a>	16/3/2023					192	G	Y				<a href="http://www.pleasala.ie/casenum/309126.htm">http://www.pleasala.ie/casenum/309126.htm</a>
309098	102 no. build to rent apartments. Lands at St Michael's Hospital Car Park, Crofton Road, Dun Laoghaire, Co. Dublin.	7/1/2021	10/2/2021	<a href="http://www.smthshd.ie">http://www.smthshd.ie</a>	29/4/2021					102	G	Y				<a href="http://www.pleasala.ie/casenum/309098.htm">http://www.pleasala.ie/casenum/309098.htm</a>
309059	The Former Food Distribution Site, Fronting on to Centre Park Road, Maranville, and Lord Mahon's Road.	23/12/2020	4/2/2021	<a href="http://www.thepumphouse.ie">http://www.thepumphouse.ie</a>	22/4/2021					1002	G	Y Y				<a href="http://www.pleasala.ie/casenum/309059.htm">http://www.pleasala.ie/casenum/309059.htm</a>
309087	Demolition of existing 299 sq.m. GAA Club ball court, construction of 192 no. residential units (comprising of 114 no. houses and 78 no. apartments), childcare facility and all other associated site works.	6/1/2021	9/2/2021	<a href="http://www.millcentroadSHD.ie">http://www.millcentroadSHD.ie</a>	27/4/2021					192	G					<a href="http://www.pleasala.ie/casenum/309087.htm">http://www.pleasala.ie/casenum/309087.htm</a>
309026	482 no. apartments, creche and associated site works. Golf Lane, Carrickmines, Dublin 18.	22/12/2020	3/2/2021	<a href="http://www.golfianeshd2020.ie">http://www.golfianeshd2020.ie</a>	21/4/2021					482	G	Y Y				<a href="http://www.pleasala.ie/casenum/309026.htm">http://www.pleasala.ie/casenum/309026.htm</a>
308985	429 no. apartments and associated site works.	21/12/2020	2/2/2021	<a href="http://www.colddowncommonshd2.com">http://www.colddowncommonshd2.com</a>	20/4/2021					429	W	Y				<a href="http://www.pleasala.ie/casenum/308985.htm">http://www.pleasala.ie/casenum/308985.htm</a>
308946	Demolition of existing site shed and the construction of 140 no. apartments, creche and all associated site works.	18/12/2020	1/2/2021	<a href="http://www.newtownparkavenueSHD.ie">http://www.newtownparkavenueSHD.ie</a>	19/4/2021					140	G	Y				<a href="http://www.pleasala.ie/casenum/308946.htm">http://www.pleasala.ie/casenum/308946.htm</a>
309343	333 no. residential units (121 no. houses, 212 no. apartments), creche and associated site works.	18/12/2020	1/2/2021	<a href="http://www.kids1clane.com">http://www.kids1clane.com</a>	19/4/2021					333	G	Y Y				<a href="http://www.pleasala.ie/casenum/308943.htm">http://www.pleasala.ie/casenum/308943.htm</a>
308923	Demolition of former hospital building and associated outbuildings, construction of 266 no. residential units (46 no. houses, 220 no. apartments), creche and associated site works.	17/12/2020	29/1/2021	<a href="http://www.stevenshnd.com">http://www.stevenshnd.com</a>	16/4/2021					266	G					<a href="http://www.pleasala.ie/casenum/308923.htm">http://www.pleasala.ie/casenum/308923.htm</a>
309317	Demolition of all buildings excluding the original fabric of the former Player Wharf Factory, construction of 492 no. Build to Rent apartments, 240 no. Build to Rent shared accommodation along, creche and associated site works.	16/12/2020	28/1/2021	<a href="http://www.PWSCHD2SHD.ie">http://www.PWSCHD2SHD.ie</a>	15/4/2021					240	492	G	Y			<a href="http://www.pleasala.ie/casenum/308917.htm">http://www.pleasala.ie/casenum/308917.htm</a>
308905	Demolition of existing vacant motor vehicle showroom and no. 38 children's hill, construction of 101 no. apartments and associated site works.	15/12/2020	27/1/2021	<a href="http://www.BeechviewSHD.com">http://www.BeechviewSHD.com</a>	14/4/2021					101	G					<a href="http://www.pleasala.ie/casenum/308905.htm">http://www.pleasala.ie/casenum/308905.htm</a>
308877	101 no. apartments and associated site works.	11/12/2020	25/1/2021	<a href="http://www.europashd.ie">http://www.europashd.ie</a>	12/4/2021					101	G					<a href="http://www.pleasala.ie/casenum/308877.htm">http://www.pleasala.ie/casenum/308877.htm</a>
308875	Alterations to previously permitted Reg. Ref.: 262817 and ABP-300241-18 to now provide 321 no. Build to Rent shared accommodation bed spaces and associated site works. ( <a href="http://www.phibboroughshoppingcentreshd.ie">www.phibboroughshoppingcentreshd.ie</a> )	11/12/2020	25/1/2021	<a href="http://www.phibboroughshoppingcentreshd.ie">http://www.phibboroughshoppingcentreshd.ie</a>	12/4/2021					321	G	Y				<a href="http://www.pleasala.ie/casenum/308875.htm">http://www.pleasala.ie/casenum/308875.htm</a>
308871	Demolition of existing warehouse, boundary wall and dwelling, retention of Hendons Building and construction of 280 no. build to rent apartments and associated site works.	11/12/2020	25/1/2021	<a href="http://www.lamesshdsd.com">http://www.lamesshdsd.com</a>	12/4/2021					189	G	Y				<a href="http://www.pleasala.ie/casenum/308871.htm">http://www.pleasala.ie/casenum/308871.htm</a>
308841	Demolition of existing warehouse, boundary wall and dwelling, retention of Hendons Building and construction of 280 no. build to rent apartments and associated site works.	7/12/2020	19/1/2021	<a href="http://www.westernwayshd.ie">http://www.westernwayshd.ie</a>	6/4/2021					280						<a href="http://www.pleasala.ie/casenum/308841.htm">http://www.pleasala.ie/casenum/308841.htm</a>

TOTALS: 343 applications; 70 refusals; 30 pending; 5 withdrawn; 22 quashed; 29 JRs pending, effecting 7,535 apartments or houses

126 Material Contraventions (September 2021)

Case No.	Description of Development	Date Received for Submission	Last Day for Submission	Application Website	Decide By Date	Case No. Originator of Development	Received	Last Day for	Application Website	Decide By Date	Stud	Shared	Houses	Amend	G/R/Q/W NIS	EIS	JR	Co	
309312	219 no. residential units (135 no. houses, 84 no. apartments), childcare facilities and associated site works.	4/2/2022	10/6/2022	<a href="http://www.packwashshd.ie">http://www.packwashshd.ie</a>	24/6/2022	219													
6	125 no. residential units (84 no. houses, 41 no. apartments), creche and associated site works.	4/2/2022	10/6/2022	<a href="http://www.moskowshd.ie">http://www.moskowshd.ie</a>	24/6/2022	271													
7	Construction of 299 no. residential units (183 no. houses, 116 no. apartments), creche and associated site works.	31/1/2022	4/3/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	23/5/2022	299													
8	196 no. residential units (117 no. houses, 81 no. apartments), creche and associated site works.	1/5/2022	7/7/2022	<a href="http://www.ChaglinSHD.ie">http://www.ChaglinSHD.ie</a>	21/5/2022	198													
9	122 no. residential units (61 no. houses, 60 no. apartments) and 28 no. student accommodation, creche and all associated site works.	25/1/2022	28/2/2022	<a href="http://www.hedgeshdparkshd.ie">http://www.hedgeshdparkshd.ie</a>	16/7/2022	283	122												
10	Demolition of existing single storey shed, ESB substation and associated site works.	23/1/2022	24/2/2022	<a href="http://www.hedgeshdparkshd.ie">http://www.hedgeshdparkshd.ie</a>	12/7/2022	130													
11	Demolition of existing single storey shed, ESB substation and change of use of land, construction of 130 no. apartments, creche and associated site works.	21/1/2022	24/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	13/7/2022	131													
12	Demolition of existing ESB substation and boundary treatments, construction of 21 no. houses, 10 no. flats and 10 no. student accommodation, creche and all associated site works.	20/7/2022	23/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	11/5/2022	358													
13	Demolition of existing dwelling, construction of 4 no. student accommodation, creche and associated site works.	18/7/2022	20/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	9/5/2022	274													
14	Demolition of existing dwelling, construction of 130 no. student accommodation, creche and associated site works.	14/7/2022	17/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	5/5/2022	308													
15	102 no. build to Rent apartments and associated site works.	12/7/2022	15/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	3/5/2022	102													
16	Demolition of existing building, construction of 144 no. student accommodation, creche and associated site works.	13/7/2022	14/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	3/5/2022	144													
17	Demolition of existing dwelling, construction of 108 no. student accommodation, creche and associated site works.	22/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	21/4/2022	349													
18	Demolition of buildings, construction of 274 no. residential units (91 no. houses, 98 no. duplexes, 185 no. apartments) and 10 no. student accommodation, creche and associated site works.	22/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	21/4/2022	274													
19	Demolition of all existing buildings, construction of 137 no. houses, 136 no. flats and 135 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	337													
20	Build to Rent apartments and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	316													
21	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	349													
22	Demolition of buildings, construction of 274 no. residential units (91 no. houses, 98 no. duplexes, 185 no. apartments) and 10 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	349													
23	Demolition of all existing buildings, construction of 137 no. houses, 136 no. flats and 135 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	337													
24	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	316													
25	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	20/4/2022	349													
26	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	20/12/2020	4/1/2021	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	18/4/2022	300													
27	Amendments to the previously permitted 30887-21 to include 10 no. student accommodation, 232 no. flats and 113 no. apartments and associated site works.	20/12/2020	4/1/2021	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	18/4/2022	313													
28	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	18/4/2022	348													
29	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	18/4/2022	349													
30	Demolition of existing building, construction of 136 no. student accommodation, creche and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www.apableshd.ie</a>	18/4/2022	301													
31	Amendments to the previously permitted 30887-21 to include 10 no. student accommodation, 232 no. flats and 113 no. apartments and associated site works.	23/12/2021	2/2/2022	<a href="http://www.apableshd.ie">http://www</a>															

## **Permissions granted and Commencements update 31.01.2022**

### **Pre-Covid (up to March 2020)**

<b>No. of units granted permission*</b>			<b>No. of units commenced</b>		
Houses	Aparts	Student	Houses	Aparts	Student
8,366	20,138	10,437	3,141	5,174	3,668 (up to Sept 21)
			<u>428</u>	<u>301</u>	<u>0 (Sept 21 to Jan 22)</u>
			3,569	5,475	3,668

### **Post-Covid (Mar 2020 to 31.01.2022)**

<b>No. of units granted permission*</b>			<b>No. of units commenced</b>		
Houses	Aparts	Student	Houses	Aparts	Student
6,563	32,929	5,717	491	1,905	834 ( up to Sept 21)
			<u>595</u>	<u>898</u>	<u>0 (Sept 21 to Jan 22)</u>
			1,086	2,803	834

### **Totals**

<b>No. of units granted permission*</b>			<b>No. of units commenced</b>		
Houses	Aparts	Student	Houses	Aparts	Student
14,929	53,067	16,154	4,655	8,278	4,502
			(31%)	(15.6%)	(28%)

Permission\* : includes schemes granted but still subject to Judicial Review. Excludes those quashed or withdrawn.

## Judicial Reviews outstanding 31.01.2022

Case No.	Student	Shared	House/Apt			
311095			101	309087		Conceded
311028			201	309026		482
311016			1221	308946		Withdrawn
310944			413	308943		333
310892			192	308917	240	492
310860			1614	308877		101
310797			102	308875	321	
310782			218	308533		28 Note this is only for an addit 21
310578			329	308467		232
310418			882	308431		121
310413			162	308366		278
310398			114	308353	239	
310327			1047	308227		249
310299			112	308157		628
310138			231	307976	210	
310112			328	307698		204
310103	326		30	307507		320
310078			165	307441	216	
309836			241	307221		416
309828			445	307222		496
309807			255	307197		105
309668			275	307100		467
309430	698			306949		298
309345			205			
309317		Quashed				
309316			1005	TOTALS	1,479	771
309126			Withdrown			15,240
309098			102			
						Case No. 308803 is current but not included because it is a first party J
						Case No. 307507 is included but seems to have been referred to CJEU

Analysis by DDPA

## APPENDIX 4: UNITED NATIONS RAPPORTEURS LETTER TO IRELAND OF 22<sup>ND</sup> MARCH 2019

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

### **Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

REFERENCE:  
OL IRL 2/2019

22 March 2019

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolutions 35/7 and 34/9.

We are writing to express our concern with respect to your Government's practice of adopting laws and policies which treat housing as a commodity and undermine the enjoyment of housing as a human right. We invite you to reflect on the following concerns with a view to developing a human rights based response.

Our chief concern lies with those laws and policies which have allowed unprecedented amounts of global capital to be invested in housing as security for financial instruments that are traded on global markets, and as a means of accumulating wealth. This expanding role and unprecedented dominance of unregulated financial markets and corporations in the housing sector is now generally referred to as the "financialization of housing" and it is having devastating consequences for tenants.

Contrary to international human rights obligations, investment in housing in the Republic of Ireland has disconnected housing from its core social purpose of providing people with a place to live in with security and dignity.

In Ireland, in late 2007 to early 2008, the housing bubble - which started in the early 1990s - burst and the construction sector collapsed. Given the very close financial connection to developers and construction firms, so did Ireland's banks.

Central to the Government's recovery strategy was the introduction of austerity measures, a programme of ridding domestic banks of non-performing debt assets, and increasing levels of foreign financial investment in the domestic housing and mortgage market. Sweeping cuts were introduced notably to the public housing capital construction budget - from €1.46bn in 2008 to €167m in 2014 - which was disproportionately higher and more severe than other public sectors. As a result, newly built social housing stock fell from 5,300 units in 2009 to 1,000 in 2012 and then an effective ceasing of the social house-building programme with just 476 units built in 2015. Between 2005 and 2017, the number of families on the social housing waiting list increased by 100% from 43,000 to 86,000.

Foreign investment and finance was brought into the country by the Irish State in the post-crisis period through a number of measures including: the establishment of the National Asset Management Agency (NAMA) charged with selling assets to global investors; the introduction of the 2013 Real Estate Investment Trusts (REIT) tax, which enabled and encouraged the establishment of REITs to benefit investors; and the sale by the state controlled Irish banks of non-performing loans to investment funds. The loans NAMA has purchased have a combined real value of €74.2bn, but were purchased by NAMA for less than half of that, €31.8bn. Owing to the heavy deregulation of foreign investors, and the legislative changes introduced to make Irish property markets more attractive to these investors, the sale of non-performing loans and securitised assets to foreign private financial institutions has increased exponentially. Of all assets sold by NAMA, 93% have gone to foreign investors, with 90% being sold to US private equity funds. By 2016, one third of all properties sold in Ireland were being purchased by investors.

At the same time the housing need has been increasing in Ireland. In 2015 only 8,000 new dwellings were added to Ireland's total housing stock, despite the underlying demand of 23,000 units. In 2018 output had increased to 18,072, but estimates of annual housing need are in the range of 30,000 to 50,000. Whilst the Government has indicated a willingness to provide an additional 137,563 units of social housing by 2021, in reality 87,560 (63.7%) of these will be provided through private rental subsidies. This shift has been enabled by legislative change under the Housing (Miscellaneous Provisions) Act 2009 (as amended), which means the provision of rental subsidies is now deemed legally akin to the direct provision of social housing. Where a family is provided with rental supplements, they are removed from the social housing waiting list and no support is given to them to find housing in the private rental sector (aside from some homeless services support in certain cases).

Heavy private housing investment combined with the cuts in public housing budget has been making housing in Ireland significantly unaffordable. This is made worse by land hoarding: investors sit on vacant land to restrict supply and thus increase demand and value. In Dublin rents have increased by 42% in the past six years, and a person with an average salary renting the average property now has to allocate 86.3% of their earnings on rent. Owner-occupation is also becoming more expensive, with house prices now approaching levels last seen at the height of the property bubble, and Ireland's Housing Agency defining housing in Ireland as 'moderately unaffordable', with Dublin being described as 'seriously unaffordable'. Private equity landlords, such as Ireland's largest landlord, I-RES REIT, have openly discussed policies of introducing the highest rents possible in order to increase returns for shareholders. The recent report by the Department of Finance notes that these large REIT investor landlords are playing a key role in setting inflated market rents in certain areas.

Private housing investment, and the related increased unaffordability and availability it has generated, has also impacted security of tenure. Property investors (and investor landlords) are known to push tenants and owners out of their homes by taking possession, evicting, or creating conditions to compel tenants to leave – such as vastly

increased rents or using loopholes in rent legislation. Those living in private rental accommodation are particularly at risk of experiencing insecurity of tenure, with 491 complaints regarding illegal evictions made to the Residential Tenancies Board in 2017, up from 351 in 2016, and 320 in 2015.

For example, in October 2017, private equity fund Lugus Capital purchased the 78 unit Leeside Apartment Complex at auction, where it was advertised as having the potential for greatly increased rental yields through refurbishment. Whilst Cork City is a Rent Pressure Zone (RPZ), where rent increases are limited to 4% annually, a loophole in the law allows for increases of more than 4% where substantial refurbishment takes place. Refurbishment to increase fire safety in one building began in spring 2018 and has led to serious health and safety concerns, with residents, a mix of international students and low-income students, still living in the building reporting flooding, cold and damp. Residents have led protests and have taken their case to the Residential Tenancies Board, in an attempt to stop the evictions, however to date no decision has been reached.

Homelessness has increased exponentially in recent years, with the number of homeless adults rising by nearly 95.9% between 2015 and 2018, whilst levels of child homelessness grew by 227.7% over the same period. The central causes of homelessness are issues related to the private rental sector. The lack of tenant protections in the private rental sector – such as the ease with which a landlord can evict for sale or to move family members in and the lack of life-time leases means that tenants are extremely vulnerable to exploitation, housing insecurity and homelessness from the actions of investor landlords. Homelessness is one of the most egregious and damaging violations of the right to adequate housing. The impact of homelessness on children in particular, is known to be devastating on their development both physically and mentally.

The financialization of residential real estate undermines the enjoyment of the right to non-discrimination and to housing. Because the business model associated with financialization demands short-term profits, there is heightened pressure placed on purchasing affordable housing - often where the most vulnerable communities are located - and then securing the highest possible return on investment through the persistent extraction of profits through monthly rents. The result of this is the constant escalation of housing costs for tenants. Turning housing into an investment leads to decision-making that is investor centric, rather than tenant centered. When the focus is on maximising profits, housing becomes less affordable, less available, less secure, and less habitable.

We would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which the Republic of Ireland has been a party since 8 December 1989, and more specifically article 11.1 which states that “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In addition, we would like to bring to your Government attention the UN Guiding Principles on Business and Human Rights (UNGPs), which remind States that they must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of

their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). In addition, business entities also have an independent responsibility to respect human rights, including the right to adequate housing, according the UNGPs.

As you may know, according to international human rights law, your Government is required to take progressive measures, to the maximum of available resources, to ensure access to adequate housing for all without discrimination. To address the issue of financialization and its impact on the enjoyment of the right to housing, your Government must develop policies and laws that include a full range of taxation, regulatory and planning measures in order to re-establish housing as a human right, promote an inclusive housing system, prevent speculation and limit the extraction of profits at the expense of tenants. This will require a transformation of the relationship between your Government and the financial sector, whereby human rights implementation becomes the overriding goal. In this regard, we would also like to draw your attention to the report of the Special Rapporteur on the financialization of housing (A/HRC/34/51).

Please note that a letter with a similar content has been sent to several countries concerned, and to the company Blackstone Group highlighting its human rights obligation as private actor to avoid any harm and to take positive steps to realize the right to housing.

We use this opportunity to encourage the Republic of Ireland to recognize the impact of the financialization of housing on the enjoyment of the right to adequate housing particularly for minority and vulnerable groups, and to take concerted steps towards returning housing to its core function as a social good. Failure to do so can only be regarded as a retrogressive step, and accordingly puts the State at odds with its obligations under international human rights law.

We intend to publicly express our concerns in the near future, as we believe that the wider public should be alerted to the potential implications of the above-mentioned policies. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

This letter and any response received from your Excellency’s Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Surya Deva  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

RESEARCH SERIES

# Monitoring Adequate Housing in Ireland

Helen Russell,  
Ivan Privalko,  
Frances McGinnity &  
Shannen Enright



Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas  
Irish Human Rights and Equality Commission



## EU official castigates Government over environmental court costs

European Commission says it will not ignore issues of public access to justice in Ireland

© Fri, Jan 21, 2022, 19:20

Kevin O'Sullivan Environment & Science Editor

 The penal and uncertain costs associated with bringing environment court cases in Ireland, and targeting of environmental NGOs who raise concerns, has been strongly criticised by a senior EU official.



 Aurel Ciobanu-Dordea, who oversees governance, enforcement action and compliance on EU environmental legislation, said the European Commission would not ignore continuing issues on public access to justice in Ireland.

In an address to the Environment Ireland conference this week, the directorate-general for environment official also highlighted continuing problems with water quality and failures to protect nature.

On access to justice, he noted: "Ireland continues to be the most expensive member state in which to make an environmental claim before the courts. The case law of the national courts has meandered through different interpretations of the costs rules, and has left many environmental litigants unable to predict with any certainty their cost exposure."

Many faced significant costs simply by litigating for clarity on costs, he said. "This needs to be addressed. And we are not saying this for the first time . . . It has important consequences and the commission will act on this."

Mr Ciobanu-Dordea underlined that, "A particular concern for us is the increasingly aggressive stance being taken against environmental campaigners in Ireland. There is evidence not only of increased use of Slapp [Strategic lawsuit against public participation] suits, but also negative reporting in mainstream media, and even from politicians – like threatening to cut off funding to certain NGOs."

### 'Rule of law'

In that regard, he cited "negative reporting of actions by Friends of the Irish Environment".

"It was a surprise for us to hear this is happening in Ireland . . . It's disappointing, and even worrying. The rule of law and its protection, especially when it comes to the environment, is one of the biggest priorities of this commission. We believe radical change of behaviour is necessary, because it is highly unusual for an advanced society like Ireland to witness such conducts."

*Report by Kevin O'Sullivan of the Irish Times, January 21<sup>st</sup> 2022*



# Briefing Paper

General Scheme of the  
Housing and Planning  
and Development Bill

Hari Gupta, Senior Parliamentary Researcher, Law

## Abstract

The General Scheme of the Housing and Planning and Development Bill 2019 has been received with scepticism by environmental groups. The proposed legislation looks to fundamentally change access to judicial review proceedings for planning decisions in Irish courts. The General Scheme opens up a number of issues relating to access to justice which this paper looks to address.



**Format for the Aarhus Convention implementation report in accordance with Decision IV/4  
(ECE/MR/PP/2011/2/Add.1)**

**The following report is submitted on behalf of Ireland in accordance with decisions I/8, II/10 and IV/4.**

---

Name of officer responsible for submitting the national report:

Signature: Aoife Joyce

Date: xx xx 2021

---

### **Implementation report**

**Please provide the following details on the origin of this report**

---

**Party: Ireland**

**National Focal Point: Aoife Joyce**

Full name of the institution: Department of the Environment, Climate and Communications

(b) The following legislation ensures that members of the public concerned, having a sufficient interest, have access to a review procedure before a court of law and/or other independent and impartial review bodies established by statute, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6.

Ireland's system of judicial review is the independent procedure by which the substantive and procedural legality of decisions of public bodies can be challenged.

- [Order 84 of the Rules of the Superior Courts](#) sets out the rules governing judicial review and requires, in rule 20(4), that applicants have a sufficient interest in the matter.

 [Section 50A3\(b\)\(i\) of the Planning and Development Act 2000](#), as amended by section 20 of the Environment (Miscellaneous Provisions) Act 2011, requires that in planning judicial review cases, applicants have a sufficient interest in the matter. Subsection 4 further states that a sufficient interest is not limited to an interest in land or other financial interest.

- [Section 37 of the Planning and Development Act 2000](#) provides for an appeal of planning authority decisions to An Bord Pleanála.

 Under [Section 50A\(3\) of the Planning and Development Act 2000](#), as amended, eNGOs whose aims and objectives relate to the promotion of the protection of the environment and who have pursued those aims and objectives for twelve months, are not required to demonstrate a sufficient interest in judicial review cases pursuant to planning matters. Special [standing rules](#) are provided for eNGOs in certain litigation relating to the

- Judicial review is the principal method available to members of the public demonstrating a sufficient interest to challenge acts and omissions which contravene provisions of national law relating to the environment. The judicial review procedure is governed by [Order 84 of the Rules of the Superior Courts](#) as supplemented by specific procedural rules provided for in certain statutory codes, e.g. [section 50 of the Planning and Development Act 2000 \(as amended\)](#).

Judicial review is a two-stage process. An application for leave to bring judicial review proceedings must first be made. If leave is granted, the applicant may proceed to bring judicial review proceedings. The leave stage acts as a filtering process to identify, at an early stage, frivolous and unmeritorious claims.

- Members of the public may also institute separate legal proceedings seeking to enforce provisions of national law, including e.g., pleading breaches of statutory duties and provisions, and seeking declarations and injunctions in order to ensure compliance with national law.
- The cost rules introduced in the [Environment \(Miscellaneous Provisions\) Act 2011](#) are applied to the enforcement of environmental consents, permissions, leases, permits and licences as outlined in Section 4 of this Act. These relate solely to general environmental rights as these special cost rules are not applicable to proceedings seeking to redress personal harm (which can be pursued under traditional legal routes).
- [Section 37 of the Planning and Development Act 2000](#) (as amended) allows members of the public to appeal the decision to an administrative

board – An Bord Pleanála – in the first instance, including on the basis of any alleged breaches of national environmental law in respect of such decisions.

- [Section 50 and 50A of the Planning and Development Act 2000](#) (as amended) provides that a member of the public with sufficient interest may seek leave to apply for judicial review to challenge a decision or act relating to a decision by a planning authority or An Bord Pleanála. Special [standing rules](#) are provided for certain eNGOs (see above).

*Extracts from the report*

## Public Participation in Decision Making

Under the Convention, the public has a right to participate effectively in decision-making in environmental matters. Public authorities should enable the public to comment on, for example proposals for projects affecting the environment, or plans and programmes relating to the environment. The outcome of the public participation process should be taken into consideration in the decision-making process. To facilitate this, information should be made available to help members of the public participate in on the decision-making process and understand the reasons for it.

In the European Union, this part of the Aarhus Convention has been implemented by Directive 2003/35/EC (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0035>) on public participation, also known as 'the Public Participation Directive'. Several pieces of legislation have been used to transpose the Public Participation Directive into Irish law, including the integration of its requirements into Irish planning law and into legislation governing other environmental licenses and consents. For example, in the planning system, members of the public may submit observations on planning applications and may appeal planning decisions to An Bord Pleanála. (<http://www.pleanala.ie/>)

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## Access to Justice

Article 9 of the Aarhus Convention requires that adequate review procedures are in place to safeguard the rights granted by the other pillars of the Convention and under national law. A number of pieces of legislation were introduced to assist Ireland in meeting its obligations under this pillar including the Environment (Miscellaneous Provisions) Act 2011 (<http://www.irishstatutebook.ie/eli/2011/act/20/enacted/en/html>) which requires that a judge must take notice of the Convention in relevant cases and also introduced new costs rules which apply in certain cases.

The Aarhus Convention, and associated EU Directives, require that certain groups of people have access to a review procedure to challenge the substantive and procedural legality of certain decisions, acts or omissions relating to the environment. A review of the substantive and procedural legality of a decision is a review of how the public authority applied the law – it is not a review on the merits of a decision. In Ireland, such challenges are taken under the mechanism to challenge the substantive and procedural legality of a decision by a public body is through Judicial Review. ([https://www.citizensinformation.ie/en/environment/planning\\_and\\_development\\_in\\_ireland/judicial\\_review\\_in\\_planning\\_and\\_environment/](https://www.citizensinformation.ie/en/environment/planning_and_development_in_ireland/judicial_review_in_planning_and_environment/))

*Extracts from the DECC Report*

<https://www.gov.ie/en/publication/b3b1a-aarhus-convention/>

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