

PLANNING LAW IN IRELAND

Retention Permission, Appeals and Judicial Review

Regularising unauthorised development and challenging planning decisions as the 2024 Act takes effect

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An extension built without permission, an attic converted into a bedroom, a shed that became a home office and then a home, a shop that became a takeaway. Unauthorised development is common in Ireland, and it usually comes to light at the worst moment, when the property is being sold or remortgaged or when a neighbour complains. Retention permission is the means of putting it right. This briefing explains how retention works under the Planning and Development Act 2000 and under the Planning and Development Act 2024, which replaces it in stages, how decisions are appealed to An Coimisiún Pleanála, and how they can be challenged in the High Court.

Two Acts at once

Planning law is in transition. An Coimisiún Pleanála replaced An Bord Pleanála on 18 June 2025, the new rules for judicial review of decisions under the 2024 Act came into force on 1 August 2025, and the remaining provisions of the 2024 Act, including Part 4, which governs applications for permission, retention and appeals, come into operation on 26 November 2026.[1] The date on which an application is lodged decides which Act applies to

it. An application made before Part 4 comes into operation continues to be decided under the 2000 Act, through to the end of any appeal, and one made afterwards is decided under the 2024 Act. Permissions granted under the 2000 Act continue to have effect.[2] For some time yet, owners, buyers and their advisers will need to know both codes.

What retention permission is

Development that needs planning permission and is carried out without it, or not in accordance with the permission granted, is unauthorised, and carrying it out is an offence. Retention permission is permission for development that has already been carried out. It is sought from the planning authority by an ordinary application, with the same public notices, drawings and opportunity for third parties to make submissions, and the authority assesses the development on its planning merits as it would a proposal. That the work has been done is neither a reason to grant permission nor, in itself, a reason to refuse it. Permission may be granted subject to conditions, which often require alterations to bring the development into line with what would have been permitted at the outset.

Retention is not available for everything. In 2008 the Court of Justice held that Irish law, by allowing retention permission to

be granted as a matter of course for projects that required environmental impact assessment, breached the Directive, and the 2000 Act was amended to require a planning authority to refuse to consider an application for retention where an environmental impact assessment, a screening for such an assessment or an appropriate assessment under the Habitats Directive would have been required.[3] Development of that kind can be regularised only by substitute consent, granted by the Commission under Part XA of the 2000 Act, and only in exceptional circumstances.

The 2024 Act keeps the same division with a new vocabulary. Ordinary retention permission continues for standard development, but an application must be declared invalid where appropriate assessment cannot be excluded or environmental impact assessment is required.[4] That development requires retrospective consent, which replaces substitute consent and is sought directly from the Commission. It may be granted only in exceptional circumstances, judged against a statutory list of considerations that includes whether a grant would circumvent the objectives of the Directives, whether the applicant had or could reasonably have had a belief that the development was not unauthorised, whether the ability to assess its environmental effects has been substantially impaired, the effects of allowing it to continue, the extent to which they can be remedied, and the applicant's record of compliance with planning control. The

Commission may direct that the activity cease while the application is decided. If consent is refused, the development is unauthorised, an enforcement notice must follow, and no further application may be made on the land until any remedial direction has been complied with.[5] In rural areas and close to protected sites, the question whether a project needed screening is therefore the first question to ask, before any application is drafted.

Was permission needed at all

Before applying to retain anything, it is worth asking whether permission was needed. Many works are exempted development, within limits of size, height and position set by regulations, and the exemptions are subject to restrictions, including a rule that works to an unauthorised structure, or to one whose use is unauthorised, are not exempt.[6] Where the position is uncertain, the planning authority may be asked to declare whether a particular matter is development and whether it is exempted development, with a right of review or referral to the Commission. Under the 2024 Act that request may be made only by the owner or occupier of the land, or with their consent, or by an environmental organisation meeting the statutory conditions, and a declaration does not bind those who were not party to it.[7] A declaration that no permission was needed is a better

answer to a buyer's solicitor than a grant of retention, because it confirms that nothing was wrong in the first place.

Why it matters, even after seven years

A planning authority that learns of unauthorised development will ordinarily send a warning letter, to which the owner may respond within four weeks, and may then serve an enforcement notice requiring the development to be removed or altered or the use to cease. It may also apply to the court for an injunction, and it may prosecute.[8] Anyone may apply for an injunction, not only the authority, and a neighbour who believes development is unauthorised can bring the matter before the Circuit Court or the High Court directly. The 2024 Act re-enacts these powers with changes. It confers jurisdiction on the Circuit Court where the market value of the land does not exceed €3,000,000, places on the respondent the onus of proving any permission or exemption on which it relies, and raises the maximum fine on conviction on indictment to €15,000,000.[9]

There is a time limit. Enforcement action may not ordinarily be taken more than seven years after the unauthorised development was commenced, or, where permission was granted, more than seven years after the permission expired, although conditions concerning the use of land may be enforced at any time.[10]

The seven year rule is often misunderstood. It protects the owner from enforcement. It does not make the development authorised. A buyer's solicitor will still raise it, a lender may still require it to be regularised, and because works to an unauthorised structure are not exempted development, the owner who wants to extend or alter the structure later may find that even modest works need permission. That is why retention applications are so often made in the months before a sale.

The decision and the appeal

A planning authority must ordinarily decide an application within eight weeks of receiving it. Under the 2000 Act a failure to decide in time could in some circumstances result in a default permission. Under the 2024 Act there is no deemed grant, a late decision remains valid, and the applicant may instead treat the failure as a refusal and appeal it.[11]

An appeal lies to An Coimisiún Pleanála and must be lodged within four weeks of the date of the decision. The period is strict, and an appeal received a day late is invalid. The applicant may appeal, and so may any person who made a written submission or observation on the application, which is why a neighbour who may later wish to appeal should make a submission at the planning authority stage. Under the 2024 Act certain prescribed

bodies and environmental organisations also have a right of appeal.[12] The grounds must be complete when the appeal is lodged, because an appellant may not afterwards elaborate on them, and an appeal may be dismissed if it is vexatious or made only to delay development. An appeal against conditions alone may be dealt with by directions to the planning authority rather than by a new decision on the whole application.[13]

The Commission decides the application afresh, as if it had been made to it in the first instance, and it may refuse permission even where the appeal concerned only a condition. Under the 2024 Act it must decide most appeals within eighteen weeks, or twenty six weeks where an environmental impact assessment report is involved, with a further short period and a refund of part of the appeal fee if it fails to do so.[14]

Judicial review

A decision of the Commission, or of a planning authority, can be challenged only by judicial review in the High Court. Judicial review is not a second appeal. The court does not ask whether the decision was right on its planning merits. It asks whether the decision maker acted within its powers, followed fair procedures, gave adequate reasons, and complied with the law, including European environmental law, which is the source of many of

the challenges that succeed. In July 2026, for example, the Court of Justice held that site specific conservation objectives are a necessary prerequisite to a valid appropriate assessment.[15]

The time limit is eight weeks from the date of the decision, and it is extended only in limited circumstances. For decisions under the 2000 Act the procedure remains that of sections 50 and 50A of that Act, under which the applicant must first obtain the leave of the court by showing substantial grounds and a sufficient interest. For decisions under the 2024 Act a new procedure has applied since 1 August 2025. There is no leave stage, and proceedings begin with a notice of motion. The applicant is confined to the grounds pleaded in the statement of grounds and must show a sufficient interest in each of them, although standing is deemed for environmental organisations that meet the statutory criteria, for applicants who made material submissions in the process, and for residents' associations whose members have voted by a two thirds majority to bring the challenge. A respondent may apply to strike out a case that is out of time, brought without standing or without exhausting an available appeal, or that discloses no arguable case.[16]

The remedies have also changed. Instead of quashing a decision in its entirety, the court may quash part of it, remit the matter to the decision maker with directions, or direct that the

decision be amended where that is a sufficient remedy. There is no appeal to the Court of Appeal, only an application for leave to appeal to the Supreme Court, and the court must decide the case as expeditiously as the administration of justice allows. The life of a permission is suspended while a judicial review of it is pending.[17] The Planning and Development (Amendment) Act 2026, signed on 20 July 2026, will apply the new procedure to challenges to decisions under the 2000 Act begun after it comes into operation.[18]

Costs are a particular concern in planning litigation. In proceedings to which the environmental Directives apply, applicants are protected from the ordinary rule that costs follow the event, by section 50B of the 2000 Act and by Chapter 2 of Part 9 of the 2024 Act, which provides that each party bears its own costs, subject to exceptions, and establishes a publicly funded mechanism to contribute to the costs of applicants. Since 18 May 2026 the costs that a successful applicant may recover in an environmental judicial review have been fixed by a statutory scale, subject to the discretion of the court.[19] Outside those cases, the ordinary rules on costs apply, and a challenge that fails can be expensive.

Practical points

For an owner, the time to deal with unauthorised development is before it becomes urgent. Have an architect or engineer review the planning history of the property against what is on the ground, and identify anything that was not covered by a permission or an exemption. Consider whether a declaration would resolve the matter more simply than an application. Where retention is needed, ask first whether the development needed screening for environmental impact assessment or appropriate assessment, because the answer decides whether the application goes to the planning authority or to the Commission and what test applies. And allow time, because an application, a possible appeal and the period for judicial review together take many months.

For a buyer or a lender, remember that the passing of seven years does not make a development authorised, and that an opinion on compliance is only as good as the history on which it is based. For a neighbour or an objector, make a submission at the planning authority stage, because it preserves the right of appeal, lodge any appeal within four weeks, and bring any judicial review within eight weeks of the decision, on grounds that are fully pleaded from the outset. For anyone who receives a

warning letter, respond within the time allowed, take advice on whether the development was in fact unauthorised, and remember that an application for retention does not of itself halt enforcement, although in injunction proceedings the court may take account of a genuine application that is pending.

The 2024 Act has changed the vocabulary, shortened some procedures and removed others, but the essentials are the same. Unauthorised development is best regularised early, before a sale, a complaint or an enforcement notice forces the issue, and every stage that follows, from the submission to the appeal to the judicial review, is governed by time limits that the courts apply strictly.

Notes

1. Planning and Development Act 2024, Part 17 (from 18 June 2025) and Part 9, Chapter 1 (S.I. No. 379 of 2025, from 1 August 2025); South Dublin County Council, notice of 24 November 2026.
2. Planning and Development Act 2024, sections 188 and 626.
3. Commission v Ireland (Case C-215/06, 3 July 2008); Planning and Development Act 2000, section 34(12), and Part XA.
4. Planning and Development Act 2024, section 95(8).
5. Planning and Development Act 2024, sections 129 to 135.
6. Planning and Development Regulations 2001, article 9(1)(a)(viii); Planning and Development Act 2024, section 9.
7. Planning and Development Act 2000, section 5; Planning and Development Act 2024, sections 10 to 12.
8. Planning and Development Act 2000, sections 151, 152, 154 and 160; Planning and Development Act 2024, sections 347 to 351.

9. Planning and Development Act 2024, sections 351 and 354.
10. Planning and Development Act 2000, sections 157(4) and 160(6); Planning and Development Act 2024, section 353.
11. Planning and Development Act 2000, section 34(8); Planning and Development Act 2024, section 101.
12. Planning and Development Act 2000, section 37; Planning and Development Act 2024, section 102.
13. Planning and Development Act 2024, sections 103, 108 and 112; Planning and Development Act 2000, sections 138 and 139.
14. Planning and Development Act 2024, section 113.
15. Knocknamona (Case C-27/25) and Massey (Case C-356/25), Court of Justice, 16 July 2026.
16. Planning and Development Act 2000, sections 50 and 50A; Planning and Development Act 2024, sections 278 to 286.
17. Planning and Development Act 2024, sections 180 and 287 to 290.
18. Planning and Development (Amendment) Act 2026, signed on 20 July 2026.
19. Planning and Development Act 2000, section 50B; Planning and Development Act 2024, sections 293 to 296, and regulations under section 294 in effect from 18 May 2026.



PLANNING

Regularise early, and act within the time limits

The firm advises owners, buyers and lenders on unauthorised development and retention, represents parties in planning enforcement proceedings, and advises on appeals and judicial review, working with planning consultants, engineers and counsel.

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