

How to apply for judicial review to challenge the decision of a planning authority in Ireland

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Judicial review of planning decisions

Section 32 of the Planning and Development (Amendment) Act 2010 (amending section 50A(2) of the Planning and Development Act 2000), sets out the procedure for applying for judicial review of an administrative decision of a planning authority.

Most importantly, any application for leave to apply for judicial has to be moved within 8 weeks of the date upon which the planning authority made its decision. However, recent government orders made under 251A(4) of the Emergency Measures in the Public Interest (Covid-19) Act 2020, have the effect of disregarding the period from 29 March 2020 to 23 May 2020 when calculating the deadline for making an application. This period could be extended further. Accordingly, if 8 weeks have passed from the making of the decision, there is still time to challenge due to the emergency legislation passed to deal with the effects of Covid-19.

Application process

The application for judicial review is a two-step process.

Granting leave

The applicant must seek leave from the High Court to apply for judicial review of a decision of a planning authority. To grant leave the High Court must be satisfied that:

- there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed; and

- the applicant has a sufficient interest in the matter which is the subject of the application.

The application for leave is essentially a filtering process to ensure that only genuine cases can be

progressed. It is made on an ex parte basis, i.e., without notice to the planning authority.

Typically, at the hearing of the application for leave, the applicant will also seek a 'stay' on the implementation of the impugned decision of the planning authority pending the outcome of the judicial review proceedings. In order to be granted a stay you must be able to show that the greater risk of injustice would lie in permitting the decision to be implemented, in that the applicant would suffer a greater prejudice than other parties if the decision was allowed to be applied. If a stay can be narrowed in its terms and the parties it will affect, it will generally have a greater chance of being granted by the Court as the risk of causing a prejudice to another party will be lessened.

Notice of motion, statement and affidavits

Where leave is granted, an originating notice of motion will issue with a return date directed by the Court and will be served on the authority together with the Order granting leave and the pleadings issued, namely the applicant's statement required to ground an application for judicial review and verifying affidavits. Affidavits will typically be sworn by (a) a representative of the Applicant explaining the basis for seeking judicial review, and (b) expert witnesses, such as planning consultants, architects and/or engineers, analysing the impugned decision and its effects.

The authority will review the statement and the affidavits, and on occasion will recognise at an early stage that it has acted in excess of its powers and erred in law and will choose not to defend the proceedings, as occurred in this instance. In this case, in compromising the proceedings, the authority also agreed to pay the applicant's legal costs.

Insight

This case demonstrates that judicial review can be a swift and efficient tool to challenge the legality of an authority's decision which has significant commercial ramifications for the applicant.

Also, importantly, the Irish government's emergency COVID-19 legislation means that you may still have time to apply for judicial review even if eight weeks has passed since the making of the decision.

If you would like to discuss the process of judicial review further, please contact Maria Edgeworth at maria.edgeworth@ogier.com

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