

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Planning and Development Bill

Tuesday, 14 March 2023 | 8.30 am to 9.30 am



Planning and Development Bill

14 March 2023

Brendan Slattery | Partner, Head of Environment and Planning





Figure 10: Outcome of Legal Cases concluded in the relevant calendar year

Year	Cases Won	Cases Lost Court Judgement	Cases Conceded	Cases Withdrawn
2021*	8	15	3	5
2020	11	19	13	8
2019	9	8	7	11
2018	13	2	10	16
2017	19	2	10	19
Total	60	46	43	59

Published on Monday 9th December 2019

Public consultation on reforms to judicial review provisions in Planning Act

Eoghan Murphy T.D. Minister for Housing, Planning and Local Government has today (9 December 2019) announced a public consultation on proposed reforms to the Judicial Review (JR) provisions in the Planning and Development Act 2000 (as amended), as outlined in the new General Scheme of the Housing and Planning and Development Bill 2019. This will run for 5 weeks until the 13 January 2020.

The General Scheme is now published on the Department's website <http://www.housing.gov.ie> and includes proposed legislative reforms to the Judicial Review provisions as follows:

- to provide that JR challenges shall be restricted to decisions made by An Bord Pleanála,
- to revert to the previous "motion on notice" approach instead of the current "motion ex parte" approach for the purposes of JR leave applications to the courts,
- to revise the "substantial grounds" and "sufficient interest" criteria for the purposes of granting JR leave applications,
- to revise the criteria of environmental NGOs to take JR proceedings and to avail of the special costs rules applicable to JRs,
- to revise the special legal costs rules in relation to JR proceedings (i.e. introduction of new cost capping arrangements).

Burke says 'too many frivolous challenges' being made to planning decisions

The minister said that a government review of the planning process could result in the setting-up of a dedicated planning court, as well as changes to how the costs of these cases are arrived at

LORCAN ALLEN and KILLIAN WOODS | JUNE 27, 2021



The working group will produce proposals next year to reduce the expense of going to litigation, according the minister for justice, Helen McEntee
BRAIN LAWLESS/PA

New law to raise barriers for judicial review 'industry'

Planning process set for major review by Attorney General

Review aimed at streamlining process and speeding up delivery of key projects

✕ Expand



Attorney General Paul Gallagher is undertaking the review with input from Minister for Housing Darragh O'Brien and his department. Photograph: Dara Mac Dónaill



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Government of Ireland

Outline of the proposed Planning and Development Bill

Prepared by the Department of Housing, Local Government and Heritage
December 2022
gov.ie/housingforall

‘Logjam’ of housing applications means swift resourcing of planning body essential, committee told

More than 70,000 units awaiting planning decision through An Bord Pleanála or the courts, equating to nearly two years’ supply

Expand



News Opinion Business Sport Life Style Entertainment Trav

Just six board members to sign off on up to 800 planning decisions in An Bórd Pleanála



Ongoing delays in determining cases

An Bord Pleanála is currently managing a large volume of cases in all case type categories and is not meeting the statutory objective timeframes for decisions for a large number of these cases. An Bord Pleanála wishes to apologise for these delays.

Furthermore, capacity at Board level, which takes decisions on appeals or applications, has significantly reduced over recent months. At present there are currently 5 functioning board members out of the standard complement of 10. The Minister for Housing, Local Government and Heritage has recently announced that he intends to appoint at least three new temporary board members in the near future in order to restore capacity at board level. It is anticipated that these upcoming appointments will enable the speedier processing of cases in the first half of 2023.

Over 2023, staff and board members will continue to seek to improve compliance levels with the statutory objective decision timelines as much as possible.

Thank you for your on-going patience in respect of these matters.

Ends 21/12/2022

Meet the Board

Ms. Oonagh Buckley has been appointed by the Government as chairperson of An Bord Pleanála, on an interim basis, effective from 11th January, 2023. The Minister for Housing, Local Government and Heritage has appointed existing board member Mr. Chris McGarry as deputy chairperson of the Board. The Minister has also appointed Mr. Mick Long, Mr. Peter Mullan and Mr. Stephen Brophy as temporary board members. Further details in relation to these appointees will be posted in the near future.



Stephen Bohan
Board Member

[Read more](#) →



Chris McGarry
Deputy Chairperson

[Read more](#) →



Patricia Calleary
Board Member

[Read more](#) →

Meet the Board

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Oonagh Buckley
Chairperson

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Chris McGarry
Deputy Chairperson

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Stephen Bohan
Board Member

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Patricia Calleary
Board Member

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Mick Long
Board Member

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Peter Mullan
Board Member

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Stephen Brophy
Board Member

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Una Crosse
Board Member

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Tom Rabbette
Board Member

[Read more](#) →



Annual CONFERENCE 2023

Next steps re Bill

- Draft Bill published 25 January 2023
- Pre-legislative scrutiny by Joint Oireachtas Committee (JOC) – initial hearing with Dept and other stakeholders held on 8-9 February 2023; further hearing early March
- Final Bill to be published circa Easter after JOC process
- Proceed with Oireachtas legislative process with objective of enactment before Oireachtas Summer Recess
- Planning Regulations also being revised, presently underway with a view to finalisation by Autumn
- Simultaneously, LA and ABP resourcing requirements being reviewed



Strengthened legal status for Ministerial guidelines: Ministerial guidelines and policy directives will be upgraded to 'National Planning Policy Statements' and 'National Planning Policy Guidance'. These will be approved by Government. Alignment of other planning documents with these will be mandatory.

Amended focus and lifespan of Local Development Plans: these will be extended from six years to ten years, with a review after Year 5. Plans will be more strategic in nature. They will give a strong sense of what is being planned for particularly areas before any planning applications emerge. This will help ensure that public engagement and major local debate is focused on the plan-making rather than planning application stage. Local Area Plans will be replaced by specific types of area-based plans to meet particular needs (Urban Area Plans; Priority Area Plans; Joint Area Plans; Strategic Development Zones/Urban Development Zones).

The Planning Hierarchy

An Overview



Obligations to make and review development plan

41. (1) Subject to *section 40* and *subsection (5)(b)*, a planning authority shall make a development plan every 10 years.

Review of National Planning Framework

19. (1) The Government shall review the National Planning Framework in accordance with this section.

(2) The first review shall be completed by 3 April 2024 or such other date as may be prescribed.

(3) Each subsequent review shall be completed before the expiry of the period of 2 years beginning on the second occurrence of a **census** of population of the State that occurs after the completion of the previous review under this section.

Business

Wicklow development plan will mean shortage of new homes, say builders

Cairn Homes and Glenveagh Properties challenging proposals which they say are based on out-of-date population data

Expand



Housebuilders Cairn and Glenveagh are challenging the Wicklow county development plan in the High Court

Barry O'Halloran
Thu Oct 27 2022 - 11:28



Two of the Republic's biggest housebuilders are challenging the Wicklow county development plan in a case many other local authorities could watch carefully.

Dublin-listed Cairn Homes and Glenveagh Properties confirmed on Thursday that they had begun judicial review proceedings – where a High Court judge scrutinises a public body's decision – against Wicklow County Council over its development plan.

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'How can I help my teenage daughter accept that having a chronic illness is part of her life?'

The Banksy of the Mater has struck. I hope the drawing doesn't get erased

Businesses are forced into greenwashing by our outdated, badly designed energy market



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Glenveagh, Cairn seek judicial review of Kildare development plan

Proposals would limit new homes in the county to just over 9,100

Expand



Building companies are challenging plans to limit development in Co Kildare. File photograph: Bloomberg

Ciara O'Brien
Thu Feb 9 2023 - 13:20



Two of Ireland's largest home builders are seeking a judicial review of Kildare County Council's new development plan that would mean the number of homes built in the county cut to just over 9,000 in the next six years.

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Has the time come for me to replace my old boiler?

Eoghan Desmond: 'I struggle to write in a vacuum - I draw inspiration from what I'm working on as a singer'



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National Planning Statement


23. (1) The Minister may, at any time, with the approval of the Government, issue a statement (in this Act referred to as a “National Planning Statement”) which shall comprise two parts as follows:

- (a) national policies and measures on planning matters to support proper planning and sustainable development (in this Act referred to as “National Planning Policies and Measures”), and
- (b) guidance as to the implementation of the policies and measures referred to in *paragraph (a)* (in this Act referred to as “National Planning Policy Guidance”).

Issuance of a National Planning Statement

24. (1) In deciding to issue and in formulating a National Planning Statement under this section, the Minister shall have regard to the desirability of setting out policy and providing guidance in relation to planning matters to support proper planning and sustainable development, including, but not limited to, the following:

- (a) preparation of regional spatial and economic strategies, development plans, urban area plans, priority area plans, joint area plans and urban development zone planning schemes;
- (b) the pattern, layout and form of development or of a particular type or types of development;
- (c) the pattern, layout and form of amenity space;
- (d) the promotion, regulation or restriction of development or of a particular type or types of development or a particular use or uses of land including housing and housing supply;
- (e) the objective of achieving consolidation of urban centres, including consideration of appropriate density of residential and other development in cities and towns;
- (f) protection of the amenities, character and vitality of rural areas;
- (g) prevention, reduction, amelioration and mitigation of risks of environmental damage and risks to human health and safety from natural and manmade causes, including from flooding, and the factoring of such risks in the location of development;
- (h) the promotion and regulation of renewable energy development in appropriate locations;
- (i) protection of landscapes, and features of natural, archaeological, architectural and cultural heritage of value;
- (j) creation of conditions conducive to commercial and industrial development and the creation of employment at appropriate locations;
- (k) promotion of sustainable settlement patterns and transportation strategies in urban and rural areas including measures to reduce anthropogenic greenhouse gas emissions, adaptation to and mitigation of climate change and measures necessary to achieve the national climate objective;
- (l) integration of appropriate architectural urban design and quality standards into development plans, urban area plans, priority area plans and joint area plans applicable to the assessment of any application for consent under this Act;
- (m) the performance by planning authorities and the Commission of any of their functions under this Act.



The ability of local authorities or An Bord Pleanála to make decisions that materially contravene a development plan will be limited.

Decision on an application for planning permission for a development in material contravention

120. (1) (a) Where an application for permission under this Chapter for land-based development or proposed land-based development that materially contravenes, or would materially contravene, the development plan for the functional area of the planning authority, the planning authority shall, subject to *subsection (2)*, refuse permission under *section 93*.

(b) Where an application for permission under this Chapter for maritime development or proposed maritime development that materially contravenes, or would materially contravene, the National Marine Planning Framework, the planning authority shall, subject to *subsection (3)*, refuse permission under *section 93*.

(2) The Commission may grant permission for development referred to in *paragraph (a)* of *subsection (1)*, where it considers that—

- (a) the development or proposed development is of strategic or national importance arising from policy of the Government,
- (b) the development plan contains objectives that conflict with one another or that are ambiguous with regard to their application to the development or proposed development concerned, or
- (c) reflects provisions of the National Planning Framework, National Planning Statement or the relevant regional spatial and economic strategy that are not articulated in the development plan.



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Government of Ireland

Outline of the proposed Planning and Development Bill

- (a) the development or proposed development is of strategic or national importance arising from policy of the Government,
- (b) the development plan contains objectives that conflict with one another or that are ambiguous with regard to their application to the development or proposed development concerned, or
- (c) reflects provisions of the National Planning Framework, National Planning Statement or the relevant regional spatial and economic strategy that are not articulated in the development plan.



Number 30 of 2000

PLANNING AND DEVELOPMENT ACT 2000
REVISED

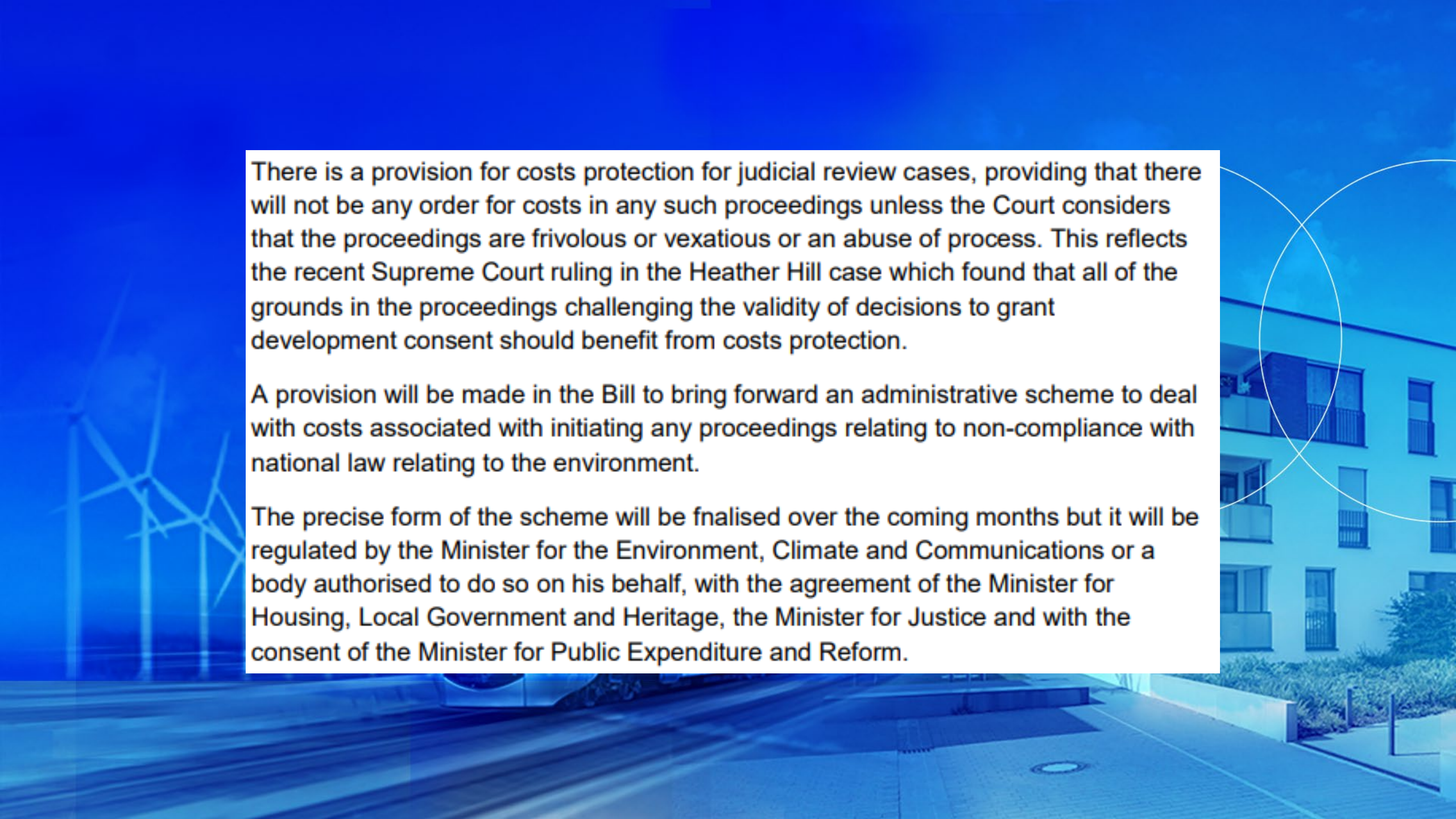
- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to F362 [regional spatial and economic strategy] for the area, guidelines under **section 28**, policy directives under **section 29**, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

Matters to which planning authority and Commission shall have regard

82. (1) When performing any function under this Part, the planning authority or the Commission, as the case may be, shall -

- (a) where the performance of the function is in respect of land-based development or proposed land-based development, have regard to principles of proper planning and sustainable development, and in particular -
 - (i) to a development plan, urban area plan, priority area plan or joint area plan applicable to the lands on which the development is situated or proposed to be situated,
 - (ii) to such provisions of a National Planning Statement as are not the subject of any provision in a plan referred to in *paragraph (i)*,
 - (iii) to National Planning Policy Guidance,
 - (iv) to any other information available to it relating to -
 - (I) the consequences or likely consequences of the development or proposed development for proper planning and sustainable development in the area in which the development is situated or proposed to be

(2) An obligation under *subsection (1)* to have regard to any plan, guideline or national planning statement shall be construed as an obligation to have regard to the plan, guideline or statement as it has effect on the date the decision concerned is made, or the function concerned is performed, by a planning authority or the Commission.

The background of the slide features a blue-tinted image of a modern, multi-story building with balconies on the right side. On the left side, there are several wind turbines. The overall scene is set against a clear blue sky. A white rectangular box is overlaid on the center of the image, containing text.

There is a provision for costs protection for judicial review cases, providing that there will not be any order for costs in any such proceedings unless the Court considers that the proceedings are frivolous or vexatious or an abuse of process. This reflects the recent Supreme Court ruling in the Heather Hill case which found that all of the grounds in the proceedings challenging the validity of decisions to grant development consent should benefit from costs protection.

A provision will be made in the Bill to bring forward an administrative scheme to deal with costs associated with initiating any proceedings relating to non-compliance with national law relating to the environment.

The precise form of the scheme will be finalised over the coming months but it will be regulated by the Minister for the Environment, Climate and Communications or a body authorised to do so on his behalf, with the agreement of the Minister for Housing, Local Government and Heritage, the Minister for Justice and with the consent of the Minister for Public Expenditure and Reform.

Costs in relation to certain proceedings

250.

Draft Head

(1) The Court shall make no order as to costs in any proceedings relating to non-compliance with national law, or the law of the European Union, relating to the environment unless the Court considers, for stated reasons, that the proceedings are frivolous or vexatious or constitute an abuse of process.

(2) An administrative scheme to deal with costs in Judicial Review proceedings under this Part is to be established by the Minister for the Environment, Climate and Communications, or a body authorised to do so on his behalf, having consulted the Minister for Housing, Local Government and Heritage, the Minister for Justice, and with the consent of the Minister for Public Expenditure and Reform.

Changes to Judicial Reviews (JRs) of planning decisions: there will be timelines for various steps in the Judicial Review process. ABP will be able to correct an error of fact or law in a planning decision and will be able to apply for a stay on the determination of JR proceedings whilst making such corrections. The Bill will bring clarity to the role of different parties in accessing justice. In the case of applications for JRs by an organisation, these will have to be taken by an individual or individuals.

Taking account of the Aarhus provisions, clarity is brought to the role of different parties in accessing justice, and the provisions regarding standing will be updated.

Judicial review of applications, appeals, referrals and other matters

249. (1) A person shall not question the validity of any decision made or act done in the performance or purported performance of any function under this Act, other than an approval or consent referred to in *Chapters 2 and 5 of Part 17*, or allege any failure to perform such a function, by—

- (a) a planning or local authority,
- (b) the Commission,

Judicial review of applications, appeals, referrals and other matters

(6) Where judicial review proceedings are issued outside the period of 8 weeks specified in *subsection (2)*, an applicant must seek from the court an extension of time for the issuing of the proceedings at the return date of the motion, which may only be granted where the court is satisfied that-

- (a) there is good and sufficient reason for doing so, and
- (b) the circumstances that resulted in the failure to issue or to serve the proceedings within the period were outside the control of the applicant and the applicant's advisers (including legal advisers), and
- (c) there has been no delay in making the application to extend time.

Judicial review of applications, appeals, referrals and other matters

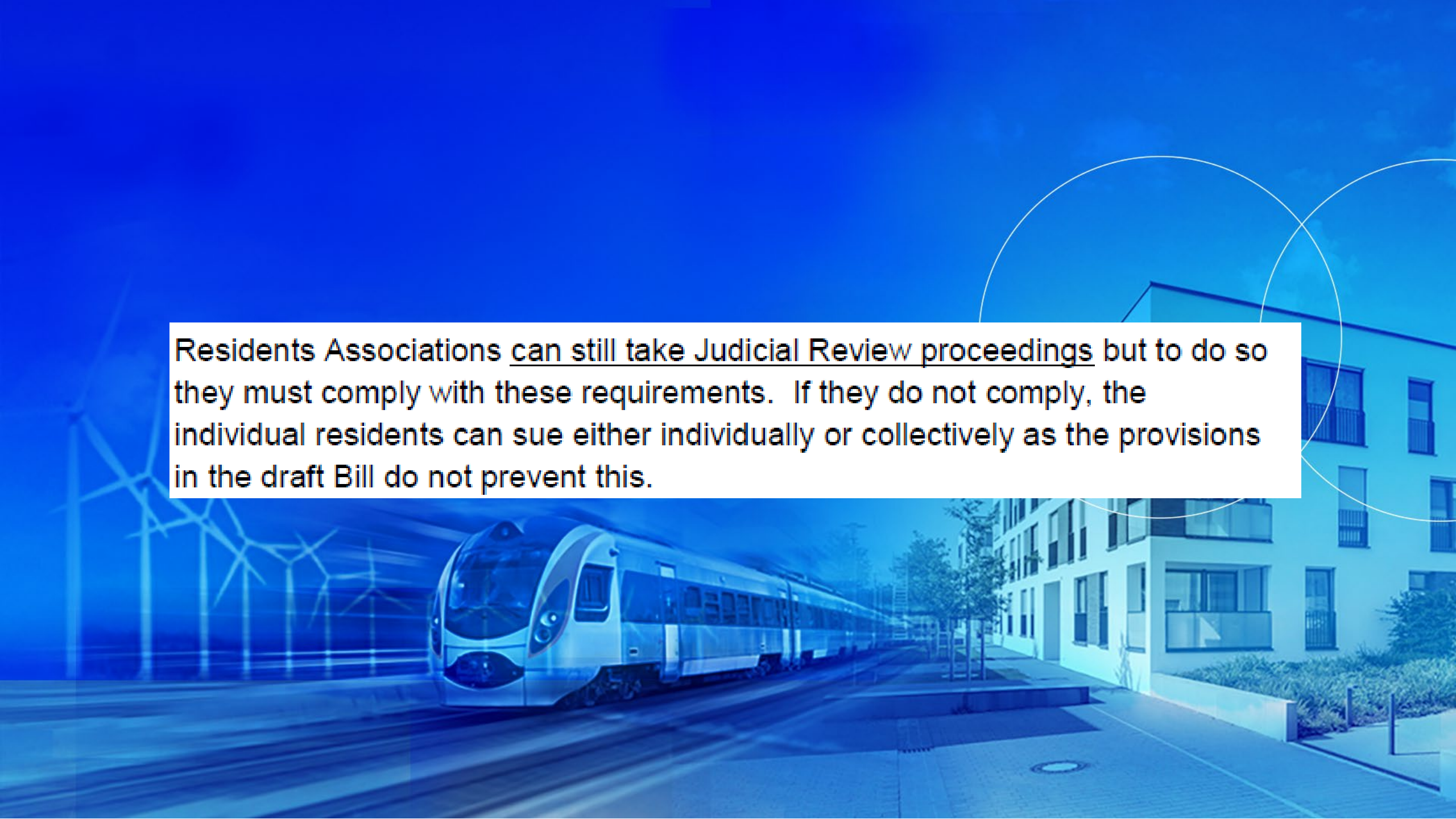
(7) An applicant shall only be entitled to amend the statement required to ground the application for judicial review outside the 8 week period specified in *subsection (2)*, where the court is satisfied that—

- (a) there is good and sufficient reason for doing so, and
- (b) the circumstances that resulted in the failure to include the amendment within the said period were outside the control of the applicant and the applicant's advisers (including legal advisers).

Judicial review of applications, appeals, referrals and other matters

(10) Where leave is opposed under *paragraph (b) of subsection (9)*, the court shall not grant an application for leave on any grounds pleaded in the statement required to ground an application for judicial review, unless it is satisfied that—

- (a) the ground pleaded discloses a substantial basis for contending that the decision or act impugned is invalid or ought to be quashed, or that there has been a failure to perform a function, and for these purposes a ground will be regarded as substantial where there is a reasonable prospect of relief being granted on that ground following the hearing of the application for judicial review,
- (b) there are no appeal procedures or other administrative remedies available to the applicant in respect of the decision or act concerned, and



Residents Associations can still take Judicial Review proceedings but to do so they must comply with these requirements. If they do not comply, the individual residents can sue either individually or collectively as the provisions in the draft Bill do not prevent this.

Judicial review of applications, appeals, referrals and other matters

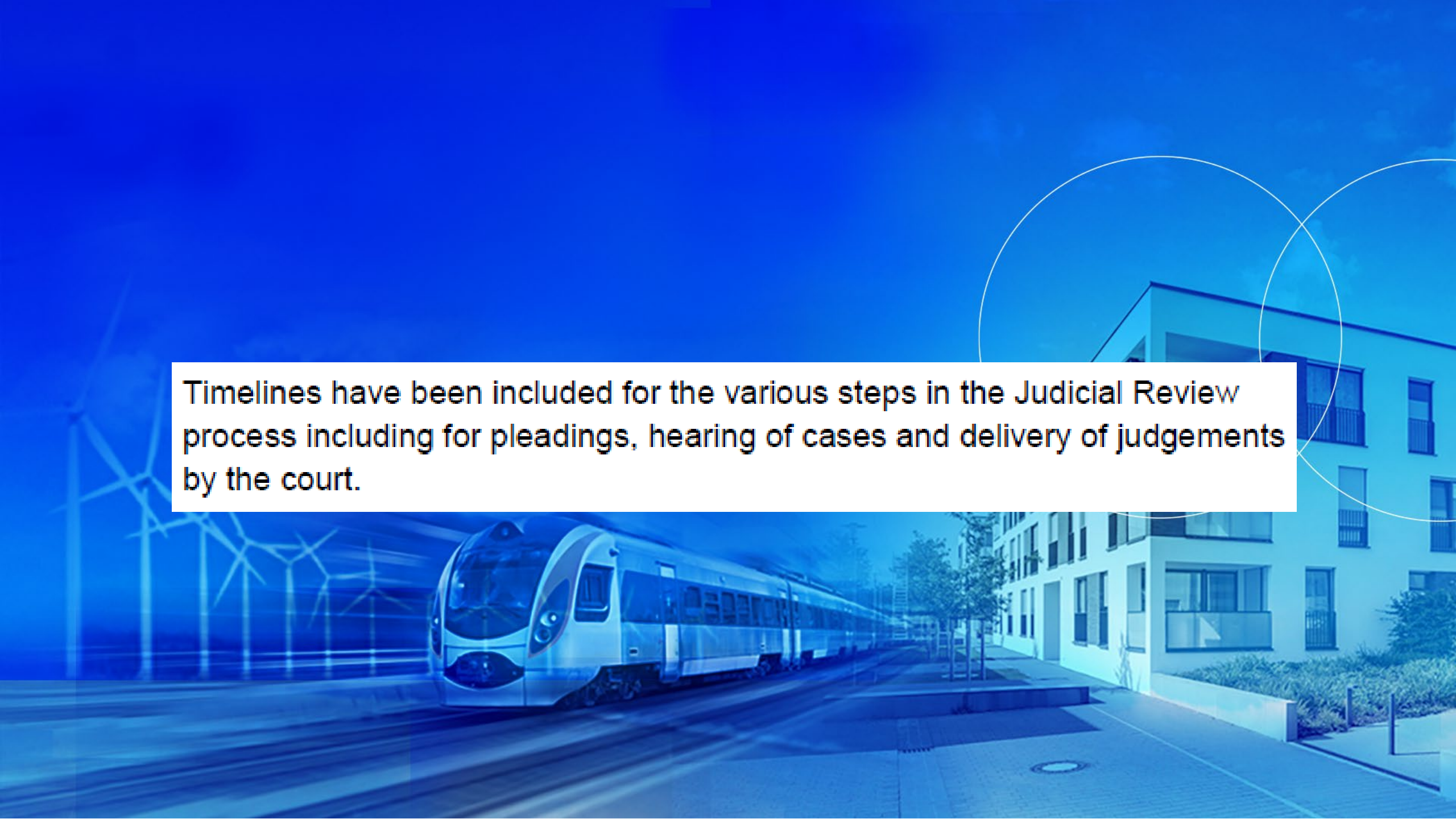
- (c) the applicant has a sufficient interest in the ground and for these purposes—
 - (iv) without prejudice to sub-paragraphs (i) to (iii), an applicant shall be regarded as having a sufficient interest in any ground that relates to matters raised by the applicant in submissions before the relevant decision-maker provided that the applicant has legal capacity to bring proceedings.

Judicial review of applications, appeals, referrals and other matters

- (c) the applicant has a sufficient interest in the ground and for these purposes—
 - (iii) where an application for judicial review relates to a development identified in or under regulations made under *section 194* as being development that may have significant effects on the environment or that is likely to have a significant effect on a European site, an applicant shall be regarded as having a sufficient interest for the purpose of this section where -
 - (I) it is a company (within the meaning of the Companies Act 2014) that has existed for a period of not less than one year prior to the bringing of the application for judicial review,
 - (II) the constitution of the company includes objects related to the promotion of environmental protection which are relevant to the matters to which the decision, act or failure to which the proceedings relate and it has pursued those objects for a period of not less than one year prior to the bringing of the application for judicial review,
 - (III) the company has no fewer than 10 members at the time of bringing the application for judicial review, and
 - (IV) the company has passed a resolution in accordance with its constitution prior to the bringing of the application for judicial review authorising the bringing of the proceedings,

Judicial review of applications, appeals, referrals and other matters

- (c) the applicant has a sufficient interest in the ground and for these purposes—
 - (i) an applicant shall not be regarded as having a sufficient interest for the purpose of this section unless that applicant is or may be directly or indirectly materially affected by the matters to which the application relates,
 - (ii) a sufficient interest shall not be limited to an interest in land or a financial interest,



Timelines have been included for the various steps in the Judicial Review process including for pleadings, hearing of cases and delivery of judgements by the court.

Judicial review of applications, appeals, referrals and other matters

(b) Subject to *paragraphs (c) and (d)* and any regulations made under paragraph (e), the court shall direct that the parties shall be allowed the following periods of time:

- (i) for the delivery of opposition papers and affidavits, a period of no longer than 3 weeks from the date of the direction to a respondent and up to one additional week thereafter to a notice party, and where in the particular circumstances of the case the court considers that further affidavits from any party are necessary, a further period of up to 3 weeks from the date of the direction for the delivery of such affidavits;
- (ii) for written legal submissions, a period of no longer than 3 weeks after the delivery of the final affidavits to the applicant and, for the delivery of replying submissions, a period of up to 2 weeks thereafter to any respondent and one additional week thereafter to any notice party,

and, where applicable, a date shall be fixed for the hearing of any motion and other consequential directions relating thereto shall be made.

Judicial review of applications, appeals, referrals and other matters

(13) The court shall-

(a) deliver judgment on the hearing of an application for judicial review or, where applicable, make a reference to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union, as soon as practicable and **no later than 8 weeks from the conclusion of the hearing of the matter, save where this is not consistent with the due administration of justice,**

(b) determine any consequential orders as soon as practicable and no later than 3 weeks after the delivering judgment under *paragraph (a)*, and

Judicial review of applications, appeals, referrals and other matters

- (b) Where an order is made quashing all or part of a decision or other act done, there shall be a presumption that the court, in addition to quashing it-
 - (i) shall, unless it is unlawful to do so, remit the matter to the decision-maker concerned with a direction to recommence or resume the process leading to the decision or act quashed, at such point as the court may specify,
 - (ii) shall give consequential directions as to the performance of any steps in the process (including the service of notices or public notification) in such manner as the court considers necessary to remedy in substance any error or other deficiency found by the court, and avoid unnecessary duplication of steps, and
 - (iii) shall, unless it considers that there are good reasons to direct otherwise, direct that the decision-maker concerned shall make any new decision by reference to a plan or policy in force at the date of the new decision.

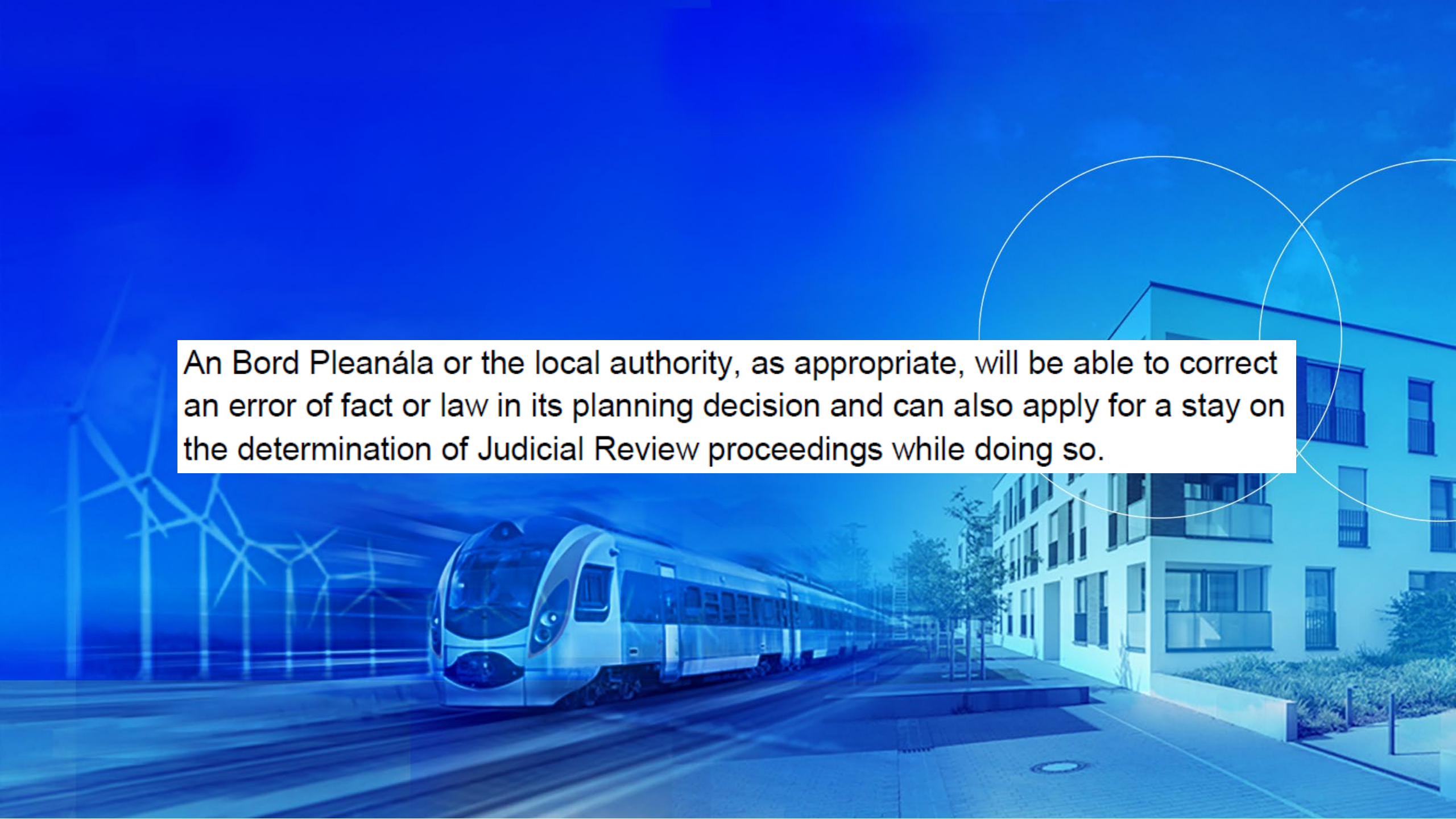
Judicial review of applications, appeals, referrals and other matters

- (15) (a) The determination of the court of—
- (i) an application for leave for judicial review,
 - (ii) any application for judicial review on foot of such leave, or
 - (iii) any other application or motion whatsoever relating to *subparagraph (i)* or *(ii)*,

shall be final and no appeal shall lie from the decision of the court to the Court of Appeal.

- (b) No appeal shall lie from the decision of the court to the Supreme Court save on the basis of an application for leave to appeal under Article 34.5.4^o of the Constitution.

(16) *Subsection (15)* shall not apply to a determination of the court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.



An Bord Pleanála or the local authority, as appropriate, will be able to correct an error of fact or law in its planning decision and can also apply for a stay on the determination of Judicial Review proceedings while doing so.

Amendment of permission

- (5) (a) At any time within 8 weeks from the date of the decision, the date of the act done or the date of the failure to perform a function, as the case may be, or at any time after the issuing of proceedings to which *subsection (1)* applies, any of the bodies concerned may make an amended decision, correcting any error of law or fact contained in that decision (and the text of the amended decision shall be taken to be the decision), or may carry out any act or may perform the function concerned.
- (b) For the purpose of *paragraph (a)*, the body concerned may –
- (i) take any steps remedying –
 - (I) any alleged failure to perform the function, or
 - (II) remedying an act done,
 - (ii) do an act,
 - (iii) make an amended decision,
 - (iv) apply to the court for a stay on the determination of the judicial review proceedings pending the taking of any steps to amend the decision, do an act perform the function or otherwise correct the error, as the case may be,
- and
- (v) apply to the court for such directions as to the performance of any steps in the process (including the service of notices or public notification) as may be considered necessary to amend the decision, do an act, perform the function or otherwise correct the error.



Outline of the proposed Planning and Development Bill

PLANNING AND DEVELOPMENT ACT 2000

REVISED

Amendment of permission of clerical or technical nature

131. (1) A deciding authority may amend a permission for the purposes of—

- (a) correcting a clerical error in the permission,
- (b) facilitating the doing of a thing pursuant to the permission where the doing of that thing may reasonably be regarded as having been contemplated by a particular term of the permission or the terms of the permission as a whole but which was not expressly provided for in the permission,
- (c) clarifying the terms of the permission, or
- (d) otherwise facilitating the implementation or operation of the permission.

(3) A deciding authority shall not amend a permission under *subsection (2)(d)*, if to do so would, in its opinion, result in a material alteration of the permission.

for the purposes of—

- (i) correcting any clerical error therein,
- (ii) facilitating the doing of any thing pursuant to the permission or decision where the doing of that thing may reasonably be regarded as having been contemplated by a particular provision of the permission or decision or the terms of the permission or decision taken as a whole but which was not expressly provided for in the permission or decision, or
- (iii) otherwise facilitating the operation of the permission or decision.

(2) A planning authority or the Board shall not exercise the powers under *subsection (1)* if to do so would, in its opinion, result in a material alteration of the terms of the development, the subject of the permission or decision concerned.

Request for alteration or extension of permission

133. (1) Subject to *subsection (2)*, a person may request the deciding authority to alter a permission or extend the duration of a permission.

(2) *Section 81* shall apply to a request under *subsection (1)* subject to—

- (a) the modification that the references in *subsections (1) and (3) of section 81* to “an application for permission for land-based development under Chapter 3 or 4” shall be considered to be references to “a request under *section 133(1)* to alter or extend the duration of a permission for land-based development”,
- (b) the modification that the references in *subsections (2) and (3) of section 81* to “an application for permission for maritime development under Chapter 3 or 4” shall be considered to be references to “a request under *section 133(1)* to alter or extend the duration of a permission for maritime development”, and
- (c) all other necessary modifications.

Request for alteration or extension of permission

- (4) (a) Subject to *subsection (5)*, as soon as practicable after the making of a request under *subsection (1)*, the deciding authority shall make a determination as to whether the alteration or extension is a material alteration.
- (b) Before making a determination under *paragraph (a)*, the deciding authority may invite submissions on the alteration or extension, to be made to it by such person or class of person, including the public, as the deciding authority considers appropriate.
- (c) In making a determination under *paragraph (a)*, the deciding authority shall have regard to any submissions made to it under *paragraph (b)*.

Request for alteration or extension of permission

134. (1) Subject to Part 5, where an alteration or extension requested under *section 133(1)* is not a material alteration, the deciding authority shall alter the permission or extend the duration of the permission, accordingly.

(2) The deciding authority shall, as soon as practicable after making the alteration or extension, notify the person who made the request under *section 133(1)* of the alteration or extension.

(3) Where the deciding authority is the Commission, it shall notify the planning authority within whose functional area any part of the development to which the permission altered or extended relates is situated of the alteration or extension.

Request for alteration or extension of permission

(5) An alteration or extension shall be considered to be a material alteration—

- (a) where the request under *subsection (1)* is accompanied by an environmental impact assessment report or a natura impact statement or both, or

- (b) where the alteration or extension is the same as an amendment requested under *section 131*, and the deciding authority was of the opinion under *section 131(3)* that that amendment was a material alteration.

Request for alteration or extension of permission

135. (1) Subject to this Part, Part 5, and Part 6, the deciding authority may, having regard to any submissions made under *section 133(4)* or *subsection (4)*:

- (a) in relation to an alteration of a permission requested under *section 133* that is a material alteration, decide to—
 - (i) make the alteration, subject to such conditions (if any) as may be imposed under *section 83*,
 - (ii) make the alteration, subject to such modifications as the deciding authority considers appropriate and such conditions (if any) as may be imposed under *section 83*, or
 - (iii) refuse to make the alteration;
- (b) in relation to an extension of the duration of a permission requested under *section 133* that is a material alteration, decide to—
 - (i) grant the extension, subject to such conditions (if any) as may be imposed under *section 83*,
 - (ii) grant the extension, subject to such modification of duration as the deciding authority considers appropriate and such conditions (if any) as may be imposed under *section 83*, or
 - (iii) refuse to grant the extension.

(4) The deciding authority shall, prior to making a decision under *subsection (1)* or *(2)*, direct the person who made the request under *section 133* to give public notice of the alteration or extension requested and invite submissions to be made to it in relation to the request.

Request for alteration or extension of permission

(6) In making a decision under *subsection (1)* in relation to a request to alter or extend a permission for maritime development, the deciding authority shall, in addition to the matters set out in *section 82*, have regard to:

- (a) any social or economic benefit that would likely accrue to the State or a part of the State by virtue of the making of the requested alteration or extension,
- (b) contractual commitments entered into by the person who made the request in relation to the development concerned, and
- (c) the extent to which the development has already been advanced in accordance with the permission.

Request for alteration or extension of permission

- (d) where the request was accompanied by an environmental impact assessment report—
 - (i) where a decision is made to alter or extend the permission, state that the deciding authority is satisfied that the reasoned conclusion was up to date on the day that the decision was made, and
 - (ii) include a summary of—
 - (I) the outcome of any consultations that took place for the purposes of the environmental impact assessment,
 - (II) the information collected for the purposes of the environmental impact assessment,
 - (III) submissions (if any) received from a Transboundary Convention state, and
 - (IV) the manner in which the outcome, the information and such submissions were taken account of in the making of the decision, and
- (e) where the decision does not follow a recommendation in a report prepared by a person assigned to report on the request on behalf of the deciding authority, specify the main reasons for not following the recommendation.

Request for alteration or extension of permission

Material contraventions

136. (1) Where a request for an amendment of a permission under *section 131* or for the alteration or extension of a permission under *section 133* is made, and the permission relates to development, or proposed development situated or proposed to be situated wholly or partly on land, the deciding authority shall refuse to make the amendment or alteration, or refuse to grant the extension (as the case may be), where the development the subject of the amended, altered or extended permission would materially contravene the development plan for the functional area of the planning authority in which the development is or would be situate.

(2) Where a request for an amendment under *section 131*, or an alteration or extension under *section 133*, is made of a permission that relates to development, or proposed development, situated or proposed to be situated wholly or partly in the maritime area, the deciding authority shall refuse to make the amendment, or alteration, or refuse to grant the extension (as the case may be) where the development the subject of the amended, altered or extended permission, would materially contravene the National Marine Planning Framework.

(3) A planning authority may make an alteration or grant an extension to a permission to which *subsection (1)* or *(2)* applies where it complies with the requirements of *section 94*.

(4) The Commission may make an alteration or grant an extension to which *subsection (1)* or *(2)* applies where, in the case of a request to alter or extend a Chapter 3 development, the alteration or extension complies with the requirements of *section 105*, or, in the case of a request to alter or extend a Chapter 4 development, it complies with the requirements of *section 120*.

Request for alteration or extension of permission

Material contraventions

- (3) The Commission may grant permission under *section 104* for development or proposed development to which *subsection (1)* applies if it is satisfied that –
- (a) the development or proposed development is of strategic or national importance having regard to the policy of the Government,
 - (b) the development plan contains objectives that conflict with one another or are ambiguous with regard to their application to the development or proposed development concerned, or
 - (c) the development or proposed development is consistent with such provisions of the National Planning Framework, National Planning Policies and Measures or regional spatial and economic strategy as deal with the matters dealt with by provisions of the development plan to which the material contravention concerned applies.

Request for alteration or extension of permission

(12) Where the deciding authority is a planning authority, an appeal may be made against the decision of the planning authority under *subsection (1)* as if the decision to make or refuse the alteration or grant or refuse the extension was a decision to grant or refuse planning permission in accordance with *Chapter 3*, save that any appeal shall be confined to an appeal regarding the terms of the alteration or extension.

Planning and Development (Amendment) Act 2018 (Commencement) Order 2021 (SI 714 of 2021)

This commencement order brings section 23(4) of the Planning and Development (Amendment) Act 2018 into operation on 17 December 2021.

Section 23(4) of the Planning and Development (Amendment) Act 2018 amends section 34 of the Planning and Development Act 2000 by substituting the following for subsection (5):

“(5) The conditions under subsection (1) may provide that points of detail relating to a grant of permission be agreed between the planning authority and the person carrying out the development and, accordingly—

(a) where for that purpose that person has submitted to the planning authority concerned such points of detail, then that authority shall, within 8 weeks of those points being so submitted, or such longer period as may be agreed between them in writing, either—

(b) where none of the events referred to in subparagraph (i) or in clause (I) or (II) of subparagraph (ii) occur within those 8 weeks or such longer period as may have been so agreed, then that authority shall be deemed to have agreed to the points of detail as so submitted.”.

Conditions that may be attached to permission granted under Part

83. (1) When granting, altering or extending the duration of a permission under this Part, a planning authority or the Commission may attach such conditions as it considers appropriate.

(8) Where the person carrying out the development has submitted to the planning authority points of detail to be agreed with the planning authority under *subparagraph (i)* or *(ii)* of *paragraph (a)* of *subsection (7)*, the planning authority shall, not later than 8 weeks (or such longer period as may be agreed in writing by the planning authority with that person) from the submission of those points of detail, either -

- (a) reach agreement with that person on those points, or
- (b) where the planning authority and that person cannot reach such agreement, either -
 - (i) inform that person in writing that it considers that such agreement cannot be reached, or
 - (ii) refer the matter to the Commission for its determination,

and, where *subparagraph (i)* applies, that person may, not later than 4 weeks from his or her being so informed, refer the matter to the Commission for its determination and the Commission shall determine the matter.

(9) Where no agreement is reached under *subsection (8)* or the matter is not referred to the Commission within the period specified in *subsection (8)*, or such longer period as may have been agreed, the authority shall be deemed to have not agreed to the points of detail as submitted.

Conditions that may be attached to permission granted under Part

(10) Where the person carrying out the development has submitted to the Commission points of detail to be agreed with the Commission under *subparagraph (iii) of paragraph (a) of subsection (7)*, the Commission shall, not later than 8 weeks (or such longer period as may be agreed in writing by the Commission with that person) from the submission of those points of detail, either -

- (a) reach agreement with that person on those points, or
- (b) where the Commission and that person cannot reach such agreement, determine the matter.

(11) Where no agreement is reached and the Commission has not determined the matter within the period of 4 weeks from the expiration of the period referred to in *subsection (10)*, the Commission shall be deemed to have agreed the points of detail as submitted by the person carrying out the development.



THE COURT OF APPEAL

2015 No. 214

**Peart J.
Hogan J.
Cregan J.**

BETWEEN/

KILLROSS PROPERTIES LTD.

- AND -

ELECTRICITY SUPPLY BOARD

PLAINTIFFS/RESPONDENTS

DEFENDANT/APPELLANT

Conclusions

31. In many ways while these arguments run into each other, the ultimate conclusion is clear: the High Court cannot go behind an otherwise valid s. 5 determination to the effect that the development in question represent exempted development in the course of a s.160 application. The effect of such a determination is that planning permission is not required, so that by definition the development cannot be unauthorised. It follows that the High Court cannot grant the relief claimed in the s. 160 proceedings.

Declaration on development, exempted development, etc.

- (2) (a) Upon the payment of the prescribed fee, a relevant person may –
- (i) in relation to relevant works (wholly outside the outer maritime area), make a request in writing to the planning authority within whose functional area the relevant works are, or are proposed to be, carried out, or
 - (ii) in relation to relevant works wholly or partly in the outer maritime area, make a request in writing to the Commission,
- for a declaration on the question of whether or not those works constitute or would constitute development and, if they do or would constitute development, whether or not they constitute or would constitute exempted development.

Declaration on development, exempted development, etc.

- (b) Upon the payment of the prescribed fee, a relevant person may –
 - (i) in relation to a relevant change in use (wholly outside the outer maritime area), make a request in writing to the planning authority within whose functional area the relevant change in use is, or is proposed to be, made, or
 - (ii) in relation to a relevant change in use wholly or partly in the outer maritime area, make a request in writing to the Commission,

for a declaration on the question of whether or not that change in use constitutes or would constitute development and, if it does or would constitute development, whether or not it constitutes or would constitute exempted development.

Declaration on development, exempted development, etc.

- (c) Upon the payment of the prescribed fee, a person who carries out or proposes to carry out development in accordance with a permission for such development granted under this Act or the Planning and Development Act 2000 may –
- (i) in relation to development (wholly outside the outer maritime area), make a request in writing to the planning authority within whose functional area the development is, or is proposed to be, situated, or
 - (ii) in relation to development wholly or partly in the outer maritime area, make a request in writing to the Commission, for a declaration on any question relating to the meaning or scope of the permission or any condition to which the permission is subject.

Declaration on development, exempted development, etc.

(11) A person is not entitled to make a request under *subsection (2)* for a declaration in relation to a question that is, in substance, the same as a question in respect of which the planning authority or the Commission has already made a declaration (“first declaration”), unless there has been a material change in circumstances since the making of the first declaration.

Declaration on development, exempted development, etc.

9. (1) Where a planning authority makes a relevant declaration, that declaration shall be conclusive evidence of the matters stated in the declaration in –

- (a) proceedings for an offence under *section 290* or *293*, or
- (b) proceedings under *section 294*,

brought against the applicant for the declaration by an enforcement authority, unless –

- (i) it is proved that –
 - (I) the applicant knowingly provided false or misleading information to the planning authority or the Commission, as the case may be, for the purposes of the making of the declaration, and
 - (II) the planning authority or the Commission, as the case may be, would not have made the declaration had it been aware at the time of its making that the information was false or misleading, or
- (ii) it is proved that –
 - (I) the applicant withheld information from the planning authority or the Commission, as the case may be, that he or she knew to be material to the question as to whether or not the change in use or works, as the case may be, was or were development or exempted development, and
 - (II) the planning authority or the Commission, as the case may be, would not have made the declaration had the information not been so withheld.

(2) A relevant declaration shall not be admissible in evidence in any proceedings brought by a person, other than an enforcement authority, relating to the change in use or works in respect of which the declaration was made.

Exempted development

7. (1) Subject to *subsections (3), (4), (5) and (6)* the Minister may by regulations provide for any class of development (including development that would, but for the repeal of subsection (1) of section 4 of the Planning and Development Act 2000, be exempted development within the meaning of that Act) to be exempted development for the purposes of this Act where -



Court of Justice of the European Union, Luxembourg

- 27 May 2021, Eco Advocacy CLG v. An Bord Pleanála [2021] IEHC 265
- *31 May 2021, Kerins & anor. v. An Bord Pleanála [2021] IEHC 369*
- 2 July 2021, Hellfire Massy Residents Association v. An Bord Pleanála [2021] IEHC 424
- 6 December 2021, Sweetman v. An Bord Pleanála [2021] IEHC 777
- 14 January 2022, Enniskerry Alliance &c. v. An Bord Pleanála [2022] IEHC 6 (and Save Roscam Peninsula CLG & Ors v. An Bord Pleanála & Ors [2022] IEHC 426, and Stapleton v. An Bord Pleanála & Ors [2022] IEHC 456)
- 11 March 2022, Dublin 8 Residents v. An Bord Pleanála [2022] IEHC 116
- 9 November 2022, Friends of the Irish Environment v. Government of Ireland (NPF) [2022] IESC 42

Questions?



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