

# Are our planning laws failing us just when we need them most?



Housing a key challenge for Minister Eoghan Murphy and Taoiseach Leo Varadkar, pictured at the Project Ireland 2040 launch. Photo: Colin O'Riordan

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Last week, the third strategic housing decision to be challenged in the courts was quashed. Cairn Homes had its planning permission for 217 homes in Blackrock revoked because the online copy of its application did not include the latest version of a report on bat activity. The High Court expressed surprise at an attempt to dismiss the omission as "trivial, technical or insubstantial".

The two previous strategic housing decisions to find their way to court fared no better. Last summer, Marlet lost its permission for 536 homes in Raheny in Dublin and, just last month, Burkeway Homes lost its permission for 197 homes in Bearna, Galway.

The 100pc failure rate for strategic housing decisions that have come before the High Court might give developers cause for alarm, particularly where decisions on more than 8,000 homes will be made by An Bord Pleanála in the coming three months. The reality is, however, that the reasons for the three revocations so far had nothing to do with the accelerated planning process, and were very specific to the facts of each case.

The Minister for Housing, Eoghan Murphy, will soon decide whether to preserve this accelerated process for housing, and he should not hesitate.

It is a necessary pillar for Rebuilding Ireland, the Government's €6bn action plan to increase the overall supply of new homes to 25,000 a year by 2020.

The strategic housing process remains the most effective way to secure a swift planning decision. More than 100 applications have been made to An Bord Pleanála, and about 10,000 homes have been granted permission. Every one of those permissions was granted quickly, before the 16-week deadline.

And the expedited court procedure for strategic housing ensures any issue is surfaced quickly. Marlet lost its permission within three months, Cairn Homes within five and Burkeway within seven. But you cannot expect the same speed in other planning cases.

Apple's proposed data centre in Athenry is often used as an example of Ireland's supposedly sluggish planning process. Too often. The county council completed its work in four months. An Bord Pleanála was done within three months of a complex oral hearing.

Some might prefer a short cut, but that hearing and the related 120-page report were central to the defence of the legal challenges that followed.

It is harder to explain the nearly three years between An Bord Pleanála's decision and the judgment of the Supreme Court upholding it in April 2019.

Questions were raised in the wake of the Apple decision about whether it is too easy to bring a legal challenge. It is true that the number of challenges has increased 10-fold in recent years.

The main reason is that European law requires wide access to justice for interested members of the public. In response, the State has removed economic risk from the weighing scales for an objector deciding whether to bring any kind of planning challenge. We didn't have to do that. Truth is, however, changing that rule will not stem the flow. Do we have a problem with 'professional' objectors? There's nothing wrong with getting paid for your work or taking your work seriously. We do have some high-profile and repeat litigants. Can we really complain when the Court of Justice agrees with them more often than with our State?

There are undoubtedly some who abuse the process. One of the cases against Apple's data centre was dismissed because the objector tried to persuade the firm to spend its money on a data centre elsewhere. That must be discouraged, and the award of substantial costs made against him sends a clear message. But let's expose the shakedown, rather than tar all complaints with that brush.

We must also be careful what we wish for. It would be knee-jerk to shorten the time limits for challenges, as eight weeks is already brief. Wholesale revision of the planning code would spawn fresh grounds for challenge.

Can we help our decision-makers to navigate the fast-paced, changing legal landscape? Can we give them better access to sufficient expertise? Of course.

Would it help for them to publish draft decisions, so any wrinkles can be ironed out? If they did, Cairn Homes and Marlet would not have lost their permissions. Could our legal system move faster? Greenfield Ventures lost its permission for a composting plant in May. It took three years to get the bad news.

Apple had to wait almost three years for good news, by which time it had already decided not to proceed with the project. That's not fair to developers or concerned residents.

We have the tools to do better. Strategic housing shows how the system can deliver swift justice. With fewer judges per 100,000 population than every other European country, we cannot demand that level of service in every case.

We have a choice. Invest in that system or provide an alternative review procedure outside the courts.

If we are serious about Rebuilding Ireland and the Government's long-term strategy to make us a better country in Project Ireland 2040, doing nothing is not an option.

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