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# Environmental Law Conference: Litigation and Environmental Challenges

Friday 27th January  
The Imperial Hotel, Cork  
1.30pm - 5.30pm



CLIMATE BAR  
COMHSHAOL



## Southern Law Association



## **Clíona Kimber SC - *Introduction & Welcome***

Clíona Kimber SC is a Senior Counsel at the Bar of Ireland. She is also chair of Comhshaol, the Climate Bar Association, and is a leading barrister in employment and equality law in Ireland. She also has an expertise in international environmental law. Before coming to the Bar, Clíona Kimber taught environmental law at the University of Aberdeen and established a centre for environmental law and policy there. She has also written internationally on environmental regulation and conducted research into the codification of environmental law.





## **The Hon. Mr. Justice Maurice Collins, Judge of the Supreme Court - *Introduction & Welcome***

Mr Justice Collins was appointed to the Supreme Court in December 2022. A native of County Cork, Mr Justice Collins was educated at University College Cork and the Honorable Society of the King's Inns. He was called to the Bar of Ireland in 1989 and admitted to the Inner Bar in 2003. In 2019 Mr Justice Collins was appointed as a judge of the Court of Appeal and served on that court until his appointment to the Supreme Court. Since October 2020 he has been a part-time Commissioner of the Law Reform Commission.





## **Lorna Madden BL** - *Challenging Water Pollution*

Lorna Madden BL is a committee member of Comhshaol, the Climate Bar Association. She was called to the bar in 2015 and practices on the Cork Circuit. She has a broad civil practice with a particular interest in employment law and data protection law. She has an Advanced Diploma in both Applied Employment Law and Data Protection Law from Kings Inns, has published articles in the Irish Employment Law Journal and is a member of the Employment Bar Association.





# Challenging Water Pollution

Lorna Madden BL

## John the Farmer – A Story



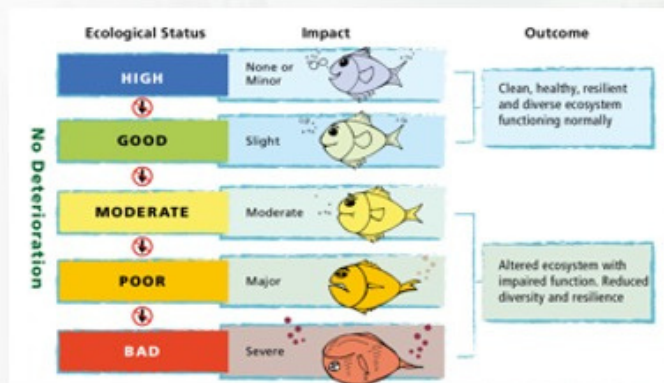
## EPA Water Quality Report 2016-2021 and the WFD

- Nearly half of Ireland's waters (46%) are not as healthy as they should.
- Water *is* being damaged by activities that release pollutants into the water environment.
- Two of the main causes are:
  - Run-off of nutrients, sediment and pesticides from agricultural lands and farmyards;
  - Discharges of poorly treated sewage;



## EPA Water Quality Report 2016-2021 and the WFD

- **Estuaries:** Only 36% of transitional water bodies (i.e. estuaries) are in high or good ecological status. There has been a marked decline of **15.7% decline** - excessive nutrient losses to water are damaging the ecology of these waters.
- **Coastal water:** 81% of coastal water bodies are in high or good ecological status. There has been a **9.5% decline** in the number of coastal water bodies in satisfactory condition.
- **Rivers:** 43% of rivers sites have high nitrate concentrations.



## Coastal and Transitional Waterbody WFD Status 2016-2021

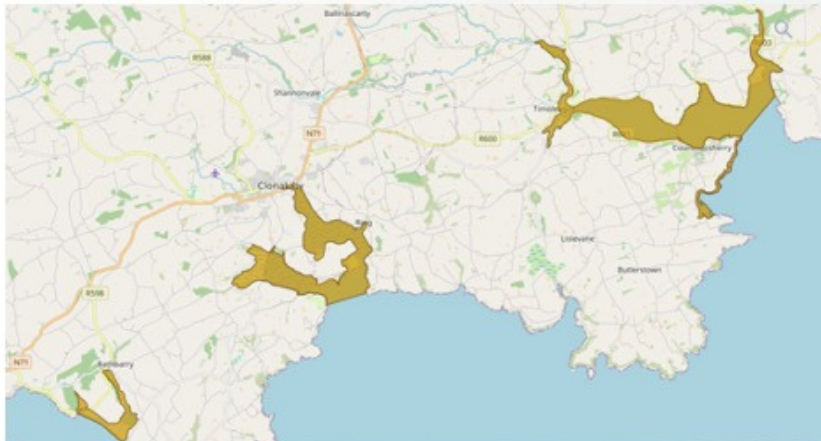


## Coastal and Transitional Waterbodies at Risk of failing to meet WFD Objectives 2027





## Special Areas of Conservation - prime wildlife conservation



## Beaches: The Warren, Garretstown, Coolmaine

### The Warren:

- 04/09/2022 - Agricultural Diffuse Pollution
- 14/08/2022 - Urban Waste Water Agglomeration
- 19/08/2020 - Agricultural Diffuse Pollution
- 14/08/2020 - Agricultural Diffuse Pollution
- 13/08/2020 - Urban Waste Water Agglomeration

### Garretstown:

- 04/09/2022 - Agricultural Diffuse Pollution
- 19/08/2020 - Agricultural Diffuse Pollution

### Coolmaine:

- 04/09/2022 - Agricultural Diffuse Pollution
- 18/06/2021 - Urban Waste Water Agglomeration
- 19/08/2020 - Agricultural Diffuse Pollution
- 06/08/2020 - Agricultural Diffuse Pollution



# Raw Sewage Discharges

- 32 towns and villages released raw sewage into the environment every day in mid-2022.
  - Castletownsend, Whitegate and Ballycotton
- 12 large towns and cities that did not treat sewage to the EU standards set to protect the environment.
  - Clonakilty, Kinsale, Ringaskiddy and Cobh



# Raw Sewage Discharges



## Benefits

When the projects are complete it will bring many benefits to the local communities and tourists, with improved water quality in the rivers, lakes or sea. It will safeguard our health, benefit the local environment and protect marine life. It will also ensure compliance with European regulatory standards.



## The Players

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## What can be done?

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- Make a Complaint
- Action in Nuisance for an adjoining land owner
- The Local Government (Water Pollution) Act 1977



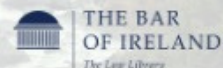
## Local Government (Water Pollution) Act 1977

- *polluting matter*” includes any poisonous or noxious matter, and any substance the entry or discharge of which into any waters is liable to render those or any other waters:
  - poisonous or injurious to fish, spawning grounds or the food of any fish,
  - or to injure fish in their value as human food,
  - or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish
  - or to render such waters harmful or detrimental to public health or to domestic, commercial, industrial, agricultural or recreational uses.



## Local Government (Water Pollution) Act 1977

- 10.—(1) (a)** Where, on application by any person to the appropriate court, whether or not the person has an interest in the waters concerned, that court is satisfied that another person—
- (i) is causing or permitting, or has caused or permitted, polluting matter to enter waters and the entry is or was not in accordance with a licence
  - (ii) is discharging or causing or permitting to be discharged, or has discharged or caused or permitted to be discharged, trade effluent or sewage effluent to waters and the discharge is or was not one in accordance with a licence,
- that court may make an order directing that other person to do one or more of the following, that is to say:
- (I) to terminate the entry or discharge within such period as may be specified in the order, or
  - (II) to mitigate or remedy any effects of the entry or discharge concerned in such manner and within such period as may be specified in the order, or
  - (III) to pay to the applicant or such other person as may be specified in the order a specified amount to defray all or part of any costs incurred by the applicant or that other person in investigating, mitigating or remedying the effects of the entry or discharge concerned.



# Local Government (Water Pollution) Act 1977

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- Standing?
- Actions against Irish Water?



## Challenging Water Pollution

Lorna Madden BL





### **Donnchadh Woulfe BL** - *Practical Capacity Issues in a Private Client Setting*

Donnchadh Woulfe is a barrister and member of the Bar of Ireland. After qualifying, he spent a number of years in London, working in financial services, with a focus on structured financial derivative products and was the primary derivative negotiator for General Electric's worldwide treasury function. Now in private practice, Donnchadh maintains a broad civil practice with cases involving commercial and administrative law.

He has worked on a number of significant environmental cases, including acting for Patrick Costello TD in his successful challenge to the ratification of the CETA investment treaty (*Costello v Ireland*) and acting for Friends of The Irish Environment in their successful challenge to the granting of permission for the Galway Ring Road. Donnchadh teaches on the Bar of Ireland's advanced advocacy course and is a founding member of the Climate Bar Association.



# Using Environmental Information Requests

## AIE Regulations

Donnchadh Woulfe BL

## Aarhus Convention

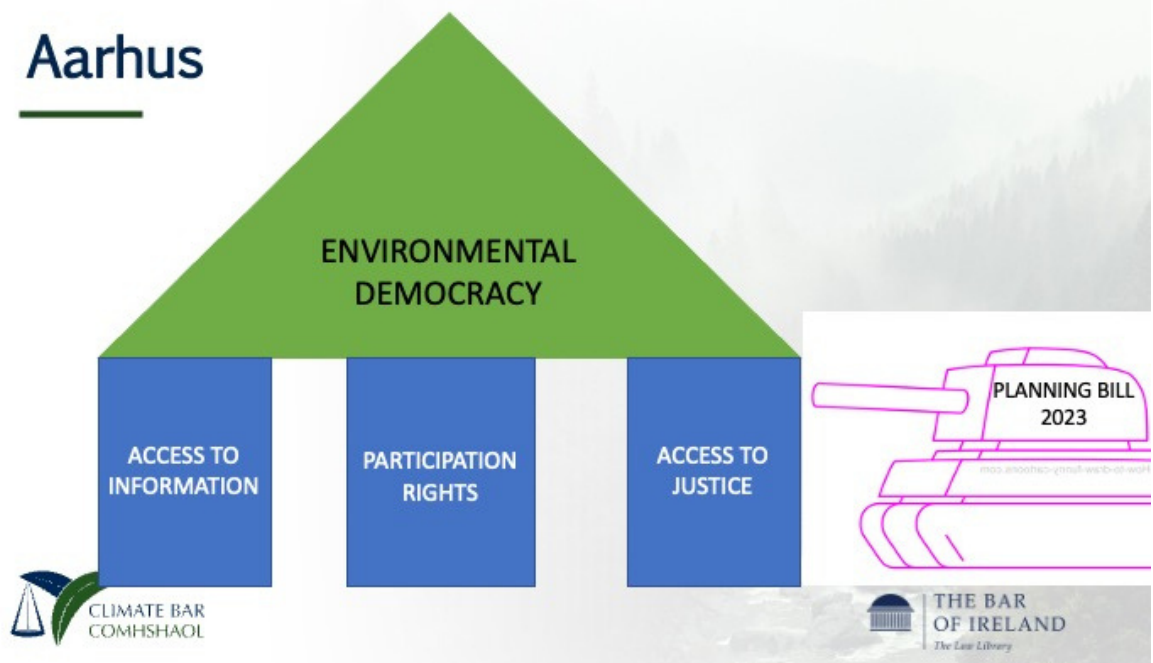
- “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention”
- Forms part of EU Law
- Irish Law - AIE Regulations - S.I. No. 133 of 2007



# Aarhus



# Aarhus



# CLIMATE ACT 2021, S 17

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- Amended Section 15 of the 2016 Climate Act so that:

(1) A relevant body shall, in so far as practicable, **perform its functions in a manner consistent with—**

- (a) the most recent approved climate action plan,
- (b) the most recent approved national long term climate action strategy,
- (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,
- (d) the furtherance of the national climate objective, and
- (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.



# CLIMATE ACT 2021, S 17

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- One of the most onerous set of obligations ever imposed on State bodies
- Effect on FOIE v Galway County Council (Galway Ring Road)
- AIE is likely to ground numerous challenges under the Climate Act in the future
- Whether to make an AIE request should become an almost automatic part of any litigation with a public authority





## AIE – 3 Duties

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- Access to environmental information on request – including offering assistance to requestors, or would be requestors.
- Obligation to disseminate information voluntarily – progressively through electronic means
- Obligation to make information available where there is an imminent threat to human health or the environment.



## Environmental Information - Article 3(1)

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- Information in written, visual, aural, electronic or any other material form on:
  - a) The state of the elements of the environment (e.g. air, water, soil, land, biological diversity)
  - b) Factors affecting or likely to affect the elements of the environment (substances, energy, noise, emissions, etc)
  - c) Measures affecting or likely to affect a or b
  - d) Reports on the implementation of environmental legislation
  - e) Economic analyses relating to measures
  - f) The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures, affected by a, b or c



## Environmental Information - Article 3(1)(f)

- *“(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);”*

## Environmental Information – *Minch v OCEI* [2017] IECA 223

49. On any view, therefore, the [National Broadband] plan discussed a variety of options each of which would have significant environmental impacts, whether it be the road openings for fibre or the installation of 2,000 new installations to facilitate the delivery of wireless technology. The plan further envisaged specific measures with regard to the planning process and the development of telecommunications infrastructure. None of these proposed actions can, with respect, be dismissed as remote or incidental.

50. It follows, therefore, that is clear that the N.B.P. constituted a plan (and, hence, a measure) for the purposes of Article 3(1)(c) of the 2007 Regulations which was likely to affect the environment in the sense I have already explained. On the assumption that the Broadband Report provided an economic analysis used in the preparation of the N.B.P., it follows, therefore, that the latter Report constitutes “environmental information” for the purposes of Article 3(1)(e) of the 2007 Regulations. I find myself obliged to conclude that the Commissioner’s conclusions to the contrary are in error, since the inferences he drew from the contents of the plan as to whether the N.B.P. was likely to affect the environment are simply not legally sustainable for the reasons I have just mentioned.

## Environmental Information – *Redmond v OCEI* [2020] IECA 83

49. *The essential question, therefore, is not whether the sale of the Coillte Lands was or was capable of being a “measure” but rather whether it was a “measure affecting or likely to affect” the environment. If it was, then “any information ..on” the sale is prima facie required to be provided under the Regulations. That is how this part of this part of the definition of “environmental information” operates. In my opinion, it is not correct to look at the information sought to see whether, in itself, it is information that can be described as “affecting or likely to affect” the elements and factors set out in Article 3(1), paragraphs (a) and/or (b). It is the “measure”, not the information “on” that measure, that is subject to that threshold test.*



## Public Authority

- (a) government or other public administration, including public advisory bodies, at national, regional or local level,
- (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment, and
- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b),





## Public Authority

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- Right to Know CLG v Commissioner for Environmental Information [2022] IECA 210 (Costello J) (SC has accepted appeal)
- Right to Know CLG v Commissioner for Environmental Information [2022] IESC 19 (Baker J)
- Bord na Mona PLC -V- Commissioner For Environmental Information 2021/299 MCA - Hyland
- Commissioner For Environmental Information -V- Coillte Teoranta and People Over Wind - 2021/242 MCA



## Exemptions

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- Mandatory Exemptions
- Discretionary Exemptions
- Exemptions to the Exemptions





## Mandatory Exemptions – Article 8

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Where disclosure would adversely affect:

- Confidentiality of personal information otherwise protected by law
- The interests of a third party not subject to AIE
- The protection of the environment to which that information relates
- The confidentiality of the proceedings of public authorities, where such confidentiality is otherwise protected by law
- Cabinet confidentiality



## Discretionary Exemptions – Article 9

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9(1) Where disclosure would adversely affect:

- (a) international relations, national defence or public security,
- (b) the course of justice (including criminal inquiries and disciplinary inquiries),
- (c) commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest, or
- (d) intellectual property rights.



## Discretionary Exemptions – Article 9

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9(2) A public authority may refuse where the request:

- (a) is manifestly unreasonable having regard to the volume or range of information sought
- (b) is formulated in too general a manner, taking into account article 7(8)
- (c) concerns material in the course of completion, or unfinished documents or data
- (d) concerns internal communications of public authorities, taking into account the public interest served by the disclosure.



## Exemptions to the Exemptions – Article 10

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- Exemptions do not apply where the request relates to information on **emissions** into the environment
- Must weigh the public interest served by disclosure against the interest served by refusal
- Grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis
- Must limit refusal to specific information to allow for partial release
- For refusal where information is course of completion – PA must estimate time for completion



# Interpretation

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- Teleological / Purposive interpretation
- Revert back to the Aarhus objectives
- Public interest in disclosure must always be considered
- Faherty J – *Right to Know v An Taoiseach* [2018] IEHC 372

*“Any decision on a request for environmental information must reflect the fact that the process of engagement with the request (whatever the ultimate outcome) was conducted in accordance with the letter and spirit of the Directive.”*



# OCEI – Appeals of AIE decisions

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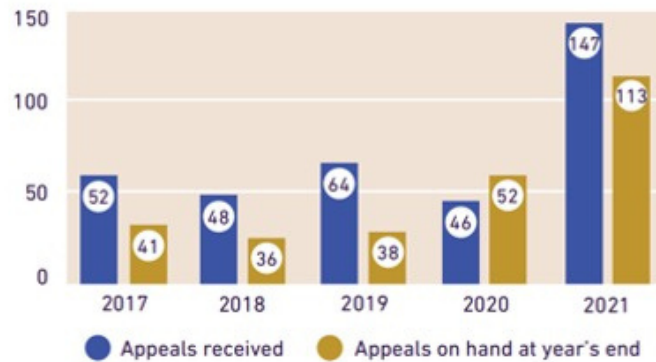
- Appeals against refusal and deemed refusals can be appealed to the Commissioner for Environmental Information
- Deemed refusal occurs where there is no response to an AIE request within 1 month
- First step is to request an internal review of any refusal



## OCEI – Appeals of AIE decisions

Number of appeals received and on hand from 2017 to 2021

Chart 1



## AIE in practice - Lough Funshinagh





# Lough Funshinagh

- Lough Funshinagh, a turlough, is an SPA and SAC
- The turlough stopped draining and was causing flooding
- The Roscommon County Council engaged in flood alleviation works



# Lough Funshinagh



# Lough Funshinagh

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- Multiple AIE Requests
  - Roscommon County Council - Refused
  - Office of Public Works - Refused
  - National Parks and Wildlife Service - Disclosed
  - Geological Survey Ireland - Disclosed



## Lough Funshinagh – First injunction

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- Granted on consent where RCC conceded they had done none of the required environmental studies
- 25 August 2021 – around 11am



# October 2021

Ireland

## Roscommon Council to restart controversial flood relief at Funshinagh

Council chief says anybody who stops scheme should 'go and face the people'

DC Expose



Roscommon County Council is to restart efforts to reduce water levels at Lough Funshinagh, a naturally occurring lake which is flooding farmlands and poses a threat to a number of homes. Photograph: Lough Funshinagh Flood Crisis

### LATEST STORIES >

Keating tells Conservatives it has been a 'tough day' after U-turn on tax cut for high earners

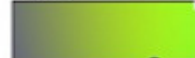
Tray Studios sale puts 'positive final seal' on Limerick Twenty Thirty project, says developer

Barkins Fao reeds from country's second coup this year

Airlines criticize Dublin Airport charges plan

UK energy regulator warning on gas could have knock on effects on Ireland

Advertisement



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## Lough Funshinagh – 2<sup>nd</sup> injunction

- Further injunction sought
- Material received under AIE was critical to the success of that application.



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## Lough Funshinagh – 2<sup>nd</sup> injunction

- 1 hour after the first injunction was granted:

From: [REDACTED]  
To: [REDACTED]  
Subject: Lough Funshinagh discussion

Meeting to discuss path for moving forward with works at Lough Funshinagh.



## Lough Funshinagh – 2<sup>nd</sup> injunction

- 6 months **before** the first injunction was granted:
- Meeting between RCC and NPWS



- CC outlined the need for screening for AA, NIS and full AA and that they should be cognisant of the fact that if at the end of stage 2 the project it is established that it is likely to significantly affect the Conservation Objectives then it may need to go to stage 3 and then back to stage 1 or 2 and may also go to stage 4 AA if no alternative solutions. Need to include the do nothing scenario in stage 3 AA.
- JM outlined that they wish to find out what input we can give to the tender brief about the



# Lough Funshinagh – 2<sup>nd</sup> injunction

- Turlough, or not Turlough?

- RCC affidavit:

- (61) Malachy Walsh and Partners have been consistent about this from their first report. The Flood Report (at page 6) makes clear that Lough Funshinagh is a disappearing lake, rather than a turlough. This statement is supported by the analysis at sections 3, 4 and 5.1 and 5.2 of the report. In particular, section 5.3.4 highlights the fact that Lough Funshinagh is effectively a perched water table with limited permeability to the subsurface and that investigations by GSI indicated that private wells in the area had water levels 2.70m below the Lough level, which confirms this.
- (62) Lough Funshinagh is not fed by groundwater, is not a turlough and does not interact with any groundwater encountered along the dry pipe corridor. Lough Funshinagh is not, in fact, a Ground Water Dependent Terrestrial Ecosystem, as alleged.
- (63) Two of the three highest flood levels in the last 100 years were recorded in the last two years, HY 2019 and HY 2020. This suggests that Lough Funshinagh is, in fact, no longer functioning as a disappearing lake.




# Lough Funshinagh – 2<sup>nd</sup> injunction

- Turlough, or not Turlough?

- RCC emails:

I assume there is a hydraulic gradient across the lake Ted. Towards the sensor??

Many thanks,

  
A/SENIOR ENGINEER  
Roscommon County Council  
Áras an Chontae



# Lough Funshinagh – 2<sup>nd</sup> injunction

- Turlough, or not Turlough?
- RCC emails:

In general, yes, but turloughs are a bit messier. Most of the water entering Funshinagh comes from streams on the West and North of the turlough and drains via the swallow hole at the South East. We produced a little report for RCC back in 2017 (attached) where we found that up to 40% of the water entering Funshinagh can, at times, be originating from just one of those streams.

However it is likely to be more complex than that. In very high water conditions the swallow hole may be acting in reverse and actually discharging groundwater into the turlough. In this way the turlough is more akin to a surcharge tank than a flowing system with a hydraulic gradient. Many turloughs in South Galway operate like this. I'm not sure if Funshinagh does but it's possible. A water balance would need to be carried out to figure it out. This reverse flow dynamic is something we often cite when people suggest unblocking a swallow hole. In some cases it's actually the swallow hole that's causing the flooding, not relieving it. See figure 6 in



# Lough Funshinagh – 2<sup>nd</sup> injunction

- Turlough, or not Turlough?
- Simons J:

*"Even overlooking these evidential defects, I am satisfied that the most that can be said in favour of the local authority is that there is a conflict of expert evidence."*

- Interlocutory injunction granted





## Environmental damage – visible from space

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## Environmental damage – visible from space

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# Environmental damage – Known through AIE

## NOTEWORTHY

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Peat was cut at 280 plots in protected bogs last year without State consent

Noteworthy analysis reveals cutting has frequently taken place at 30 protected sites over the past decade despite clear prohibitions since 2011.

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# Environmental damage – Known through AIE

## **N** Cutting in Ireland's Active Raised Bog Network

Peat extraction is still active at various sites



Source: NPWS via FOI, Parliamentary Oversight, 8 December 2020 • Map: Wall, Sargent, Noteworthy

# Summary

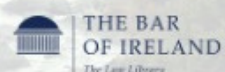
- AIE requests are a powerful tool – Use them
- Their use can prevent and expose illegal environmental damage
- Attitude of the OCEI
- Spirit of the regulations and directive is open disclosure of this information:  
*“Any decision on a request for environmental information must reflect the fact that the process of engagement with the request (whatever the ultimate outcome) was conducted in accordance with the letter and spirit of the Directive.”*



# Using Environmental Information Requests

## AIE Regulations

Donnchadh Woulfe BL







**Joe Noonan, Solicitor, Noonan Linehan  
Carrol Coffey** - *Panel Discussion: Derelict  
Buildings: the Legal Framework & Proposals  
for Change*

Joe Noonan is a Partner in Noonan Linehan Carroll Coffey Solicitors, based in North Main Street in Cork. He has a particular focus on planning and environmental law. He has extensive experience in advising and representing clients before An Bord Pleanála, the Environmental Protection Agency, and in the Courts. His Court practice includes taking actions for compensation for environmental harm as well as challenging decisions of public bodies by way of judicial review. He was a founding member of the Irish Environmental Law Association.





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## Case Study: North Main Street

Joe Noonan

## The Oldest Street in Cork – 1545 & 1595

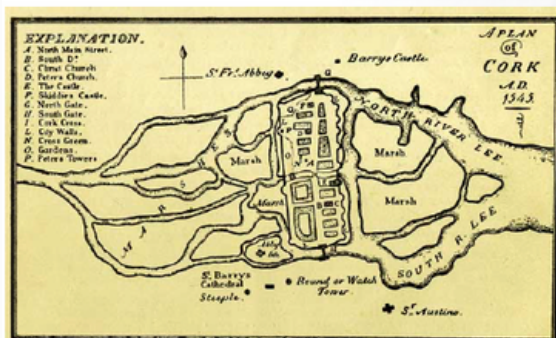
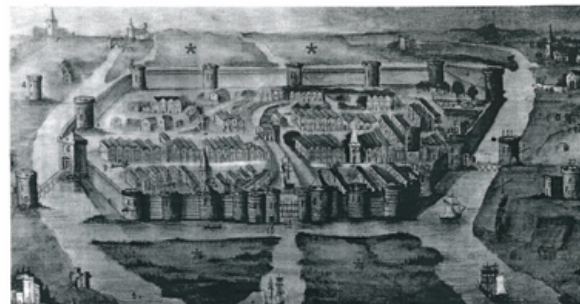


Fig. 1. Plan of Cork, A.D. 1545.



- |  |                                    |                                 |                             |
|--|------------------------------------|---------------------------------|-----------------------------|
| 1. Ye Church of St. Peter (St. Peter's)    | 8. Ye castle tower                 | 16. Ye Queen's Castle           | 24. Ye North Gate           |
| 2. St. Peter's of St. Peter                | 9. Ye South Main Street            | 17. Ye North Main Street        | 25. Sander Abbey            |
| 3. Ye Church of St. Peter                  | 10. Ye Ball tower (Kiln Fire Bell) | 18. Ye Towne Chesse             | 26. St. Peter's & Day House |
| 4. Ye church (a North tower)               | 11. Ye North Pointe (Office)       | 19. Ye Square                   | 27. Land Barre Castle       |
| 5. Ye Church (St. Peter's house)           | 12. Owen Church                    | 20. Peter's Church              | * Marsh is in N & S channel |
| 6. Ye Southgate (The tower drawbridge)     | 13. Ye Custom House                | 21. Sander Castle               |                             |
| 7. Ye Church of St. Austin (The Red Abbey) | 14. Ye Watergate                   | 22. Ye Barrow                   |                             |
|  | 15. Ye Kings Castle                | 23. Sovereigns house and garden |                             |

Map of Cork in 1595



# The Oldest Street in Cork

1585 – 1600 Map of Cork



1690 Map of Cork



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62: Built c. 1820, 63: Built c. 1760, 64: Built c. 1760

Source: National Inventory of Architectural Heritage

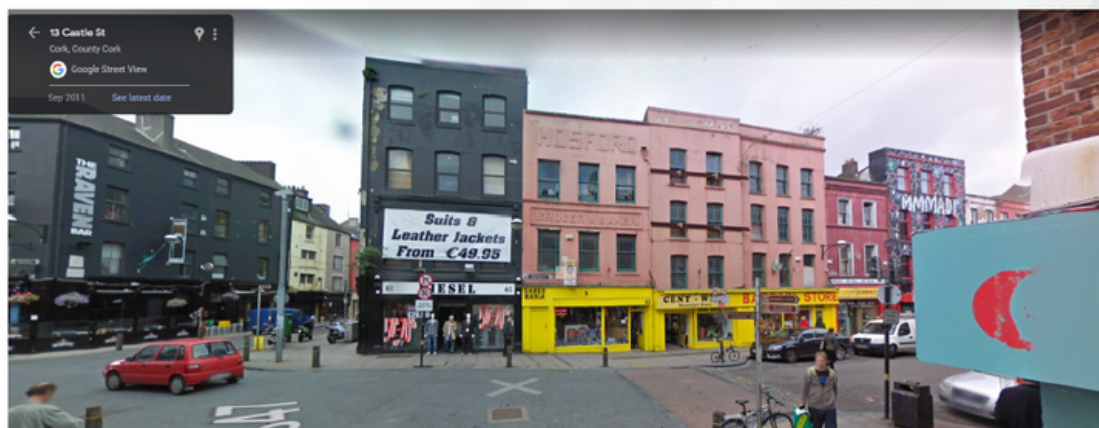


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# June 2009

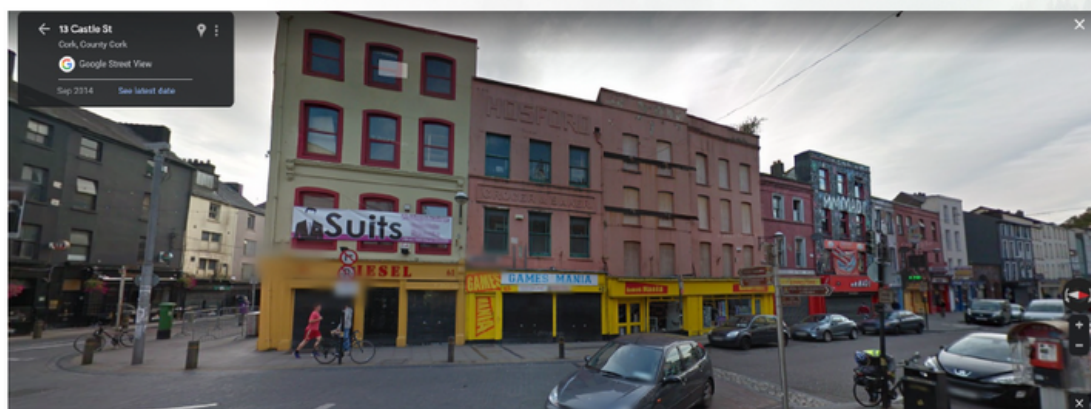


# Sept 2011





# Sept 2014



# June 2017





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## July 2019







# June 2022





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62: Built c. 1820, 63: Built c. 1760, 64: Built c. 1760

Source: National Inventory of Architectural Heritage



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**Daniel Cronin SC** - *Panel Discussion: Derelict Buildings: the Legal Framework & Proposals for Change*

Daniel Cronin SC was called to the Bar in 2006 and admitted to the Inner Bar in 2022 and practices primarily on the Cork Circuit. He specialises in property and conveyancing, probate, and equity matters and has extensive experience in these areas. He is a member of the Probate Bar Association of Ireland. He is an accredited mediator and a member of the Bar of England and Wales.

## DERELICT SITES AND DANGEROUS STRUCTURES: THE LEGAL FRAMEWORK

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### **Introduction:**

This paper attempts to provide a guide in relation to the legal framework surrounding Derelict Sites and Dangerous Structures and their acquisition by local authorities/sanitary authorities.

### **Contents of Paper:**

#### **(A) Derelict Sites**

Definition of a Derelict Site	2
The Local Authority: Powers and Duties	3
Derelict Site Notice	4
Derelict Sites Register	4
Derelict Site Levy	5
Ministerial Directions	5
Valuation	5
Acquisition of derelict site	6
Vesting Order	6
Compensation	7
Offences and Penalties	8

#### **(B) Dangerous Structures**

Definition of a Dangerous Structure or Place	9
Sanitary Authority: Duties and Powers:	9
Dangerous Site and Dangerous Place Notices	10
Compliance with a Dangerous Site Notice	11
Acquisition of dangerous place	11
Vesting Order	12
Offences and penalties	12



## DERELICT SITES

Patrick Butler S C Keane *on Local Government* Second Edition 2006<sup>1</sup> commenting on the Derelict Sites Act 1990 and powers of local authorities at page 130 observes: *Part of the armoury of local authorities to prevent urban blight is the Derelict Sites Act 1990. This Act repealed the Derelict Sites Act 1961, which in turn had replaced the Acquisition of Derelict Sites Act 1940. There has been steady progression since 1940 regarding the powers granted to local authorities in this area. The increase of and a broadening of the powers and scope of actions which a local authority may take, was regarded as necessary to prevent dereliction occurring. It should be noted, however, that the powers apply throughout a local authority's functional area and are not confined to urban areas. It should also be noted that the powers are granted to a local authority and not as a sanitary authority as in the case of the powers in relation to dangerous structures.*

The Derelict Sites Act 1990 places a general obligation on the owner or occupier of land, including where a local authority or State authority is landowner or occupier, to take all reasonable steps to prevent it from becoming or continuing to be a derelict site.<sup>1</sup>

### **Definition of a Derelict Site**

A “**derelict site**” is defined broadly as any land which detracts, or is likely to detract, to a material degree, from the amenity, character or appearance of land in the neighbourhood of the land in question because of:

- a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition;
- b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question; or
- c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results in the exercise of a right conferred by or under statute or by common law.<sup>2</sup>

The land in question (as it is referred to in the Act) applies to land and structures as well as cases of actual dereliction and potential or threatening dereliction. There is a separate regime under the Local Government (Sanitary Services) Act 1964 for “dangerous places” or “dangerous structures”.

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<sup>2</sup> Section 3 of the Derelict Sites Act, 1990 and Browne *The Law of Local Government* Second Edition 2020 at par 11.215.

## Local Authority: Duties and Powers

### I. Duties, in this area:

There is a general duty on local authorities to “take all reasonable steps” to ensure that properties in their functional area do not become or continue to be derelict sites.

In the case of *Hussey v Dublin City Council* [2010] 1 I.R. 81 the applicants owned properties adjacent to premises which were in a very dilapidated condition and sought an order of mandamus directing the respondent to take all steps necessary to comply with its duty under s.10 of the Derelict Sites Act 1990. It was held by O'Higgins J., in dismissing the application, that, having regard to the definition of “derelict site” in s.3 as well as s.10(3)(c), the words “amenity, character and appearance of the land in the neighbourhood” had to be given their ordinary meaning and were directed towards the neighbourhood in general, rather than the internal condition of an adjoining property.

O'Higgins J. suggested that if the local authority was of the opinion that the premises constituted a derelict site within the meaning of s.3 of the Act, it would be obliged to serve notice on the owner or occupier of the premises to take the necessary action to remedy the situation. It was held that the local authority could only take action if the person on whom the notice was served failed to carry out the appropriate works within the requisite time period.

Local authorities also have a duty to serve notices on the owners and occupiers of derelict sites where they feel necessary to do so to prevent the land becoming or continuing to be a derelict site.

In general terms, the duty of a local authority when dealing with derelict sites includes:

- A duty to serve Derelict Site notices;
- A duty to maintain a derelict sites register; and
- Make the register available for public inspection - It can remove an entry from the Register when it is satisfied that improvement works have been carried out on the derelict site.

### II. Powers

Under the 1990 Act, the local authority has the following powers in relation to derelict sites and buildings:

- Prosecute owners who do not comply with notices served
- Make compulsory land purchases
- Carry out necessary work themselves and charge the owners for the cost

## **Derelict Site Notice**

A local authority must serve a notice on the owner and/or occupier of land requiring specific steps to be taken to prevent or remedy a site from becoming derelict if it is of the opinion that it is necessary to do so in order to prevent lands situated in its functional area from becoming or continuing to be derelict.<sup>3</sup>

The derelict sites notice must specify:

- the measures necessary to prevent the land or structure from becoming or continuing to be a derelict site;
- direct the person on whom it is served to carry out the specified measures; and
- specify a time frame for the carrying out of the works.

The notice may direct the measures to be taken as well as the period within which they should be taken which should be no less than one month. The notice does not take effect for 14 days following service and the owner or occupier is entitled to make representations during that period.

There is a requirement on the owner to comply with the notice and the local authority is authorised to enter the lands where the owner or occupier fails to comply with the terms of the notice and carry out the necessary works to comply with the notice and recover any expenses from the owner or occupier as a simple contract debt.

Where works are carried out pursuant to a derelict site notice, those works are deemed to be exempted development.<sup>4</sup>

## **Derelict Sites Register**

Part II of the Derelict Sites Act 1990 sets out measures in relation to prevention and control of derelict sites. Under the Act, local authorities are obliged to keep a register of derelict sites in their functional area, including:

- details of the location of the property;
- the name and address of the owner; and
- details of any action the local authority may have taken about these sites.

If the property is owned or occupied by the local authority, the register must contain details of what it is being used for and what the local authority intends to do with it.

The register must give details of the current market value of every site it contains.

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<sup>3</sup> Derelict Sites Act 1990 s.11(1).

<sup>4</sup> Derelict Sites Act 1990 s.11(6).



### Removal from the Register

The local authority may also remove an entry from the register where it considers that its inclusion is no longer appropriate. This is obligatory where there has been compliance with a derelict site notice or where the land has otherwise ceased to be a derelict site.

### **Derelict Site Levy**

Part III of the Derelict Sites Act 1990 provides for the imposition of a levy on derelict sites.<sup>5</sup> The owners of all urban land that has been entered into the derelict sites register must pay an annual levy (the derelict sites levy) to the local authority.

This amounts to 3 per cent of the market value of the land concerned or in respect of any subsequent year, an amount not exceeding 10 per cent as may stand prescribed for each urban area or if there is no such amount prescribed, 3 per cent of the said market value.

Local authorities are required to determine the market value of derelict sites on urban land for the purposes of a derelict sites levy payable by the owners of such land.

### **Ministerial Directions<sup>6</sup>**

The Minister may give directions to local authorities in relation to the service of notices. The local authority is then required to take steps to effect the terms of the notice and take steps to prevent land which is owned or occupied by it from becoming derelict.<sup>7</sup>

A statutory body may be required at the direction of the Minister to dispose of land in which it has an interest, and which is included in the register of derelict sites.<sup>8</sup>

Where a ministerial direction is issued, it is the duty of the local authority to comply with the direction within such period as may be specified by the Minister.

### **Valuation**

Valuation of sites on the register is done by the local authority which can authorise any qualified person to act on its behalf. The valuation approved by the local authority must reflect the value of the land if it were sold in the open market. Details of the valuation are entered into the register and a notice is served on the owner of the derelict site in question.<sup>9</sup> Owners have a right to appeal the valuation and appeals must be made to the Valuation Tribunal within 28 days of the owner receiving the notice.

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<sup>5</sup> Derelict Sites Act 1990 ss.21-26.

<sup>6</sup> Browne at pars 11.232 – 11.236.

<sup>7</sup> Derelict Sites Act 1990 s 12.

<sup>8</sup> Derelict Sites Act 1990 s 13.

<sup>9</sup> Derelict Sites Act 1990 s 22 and Browne at par 11.235.



There is also a right of appeal on a question of law from the determination of the Tribunal. Local authorities can remove entries from the derelict sites register and the dangerous structures register when they are satisfied that the recommended work has been carried out on the properties.

### **Acquisition of derelict site**

Section 14 of the Derelict Sites Act, 1990 provides that a local authority may acquire any derelict site which is situated within its functional area, either by agreement or compulsory acquisition.<sup>10</sup>

Where a local authority intends to acquire a derelict site compulsorily, it must first publish and serve notice of intention in the prescribed form to do so. The notice must be served on every owner, lessee and occupier (except for a tenant who has been in occupation for less than a month) and published in a local newspaper.

Where a person receives a notice, he or she may submit objection; s. 16 Derelict Sites Act 1990 and see also s.214 of the Planning and Development Act 2000. Where an objection is made and the local authority intends to proceed, the site cannot be acquired compulsorily without the consent of An Bord Pleanála; s. 16 (3) Derelict Sites Act 1990 .

In *Egan v An Bord Pleanála and Athlone Town Council [2011] IEHC 44* it was held by Hedigan J. that Section 14 of the Derelict Sites Act 1990 is a stand-alone provision and the power of the local authority is not dependent on the local authority having exhausted other lesser measures first. The local authority must apply for consent within a month of receiving the objection and furnish all documentation and maps in relation to the proposed acquisition to the Board.<sup>11</sup>

In the case of a dangerous place, a notice must be posted either on or near the land, giving details of the local authority's intentions. The Board may grant or refuse consent to the compulsory acquisition of all or part of the derelict site; s. 16 (3) Derelict Sites Act 1990.

### **Vesting Order**

If An Bord Pleanála approves the compulsory acquisition and the local authority has addressed any objections, the land can be acquired by the local authority using a "vesting order". Within two weeks of the making of the vesting order, the local authority must publish a notice in one or more local newspapers circulating in the functional area, stating that a vesting order has been made, describing the site and giving details of the land in question and specifying a place where

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<sup>10</sup> Browne at pars 11.237 – 11.265.

<sup>11</sup> Browne at pars 11.240.

a copy of the order and the attached map may be inspected. It must also serve a notice on the owner or anyone who has an interest in the land stating that a vesting order has been made.<sup>12</sup>

The vesting order must be made in the prescribed form and have a map attached showing the land to which it relates. The vesting order operates to vest the site in the local authority in fee simple free from encumbrances and comes into effect no earlier than 21 days after the making of the order.<sup>13</sup>

The vesting order must be lodged with the Property Registration Authority which is obliged to register the local authority as owner of the lands in accordance with the order. Where a local authority becomes aware of an error or mistake in the vesting order, it has power to amend the order and the register must be amended upon notification.<sup>14</sup>

In *Larkin v Joosub and Dublin City Council* [2007] 1 I.R. 521 the Council was held to be negligent because it did not secure a building vested in it under the Derelict Sites Act 1990 even though it had been aware of the precipitous state of dereliction of the building for about three years.

### **Applications for Compensation**

An application for compensation for any right to or estate or interest in land that has been compulsorily acquired by a local authority must be made within 12 months of the vesting order.<sup>15</sup> The compensation payable shall be an amount equal to the value (if any) of the estate, interest or right of the applicant in the site. Where compensation cannot be agreed, it will be determined by an arbitrator.<sup>16</sup>

If there is any money due to the local authority on the property (in the form of a derelict sites levy or a court order for payment), the local authority can subtract this from the compensation. If the amount owed on the property is more than the compensation that has been agreed, no compensation will be paid.<sup>17</sup> Local authorities can use land they acquire through compulsory acquisition orders for any purpose connected with their powers and duties.<sup>18</sup> If they no longer need the land or any part of it, they can sell, let, transfer or exchange it.

In *The State (Redmond) v Wexford Corporation* [1946] I.R. 409 Wexford Corporation had made a preliminary order pursuant to s.3 of the Acquisition of Derelict Sites Act 1940 declaring that it proposed to acquire certain plots of land which were set out in the schedule to the order.

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<sup>12</sup> Browne at par 11.243 and s. 17 Derelict Sites Act 1990.

<sup>13</sup> Browne at par 11.244 and s. 18 Derelict Sites Act 1990

<sup>14</sup> Browne at par 11.245 and s. 18 s.s (4) and s.s. (5) Derelict Sites Act 1990

<sup>15</sup> S. 19 Derelict Sites Act 1990.

<sup>16</sup> Browne at par 11.247 and the Lands Clauses Consolidation Act 1845 and the Acquisition of Land (Assessment of Compensation) Act 1919.

<sup>17</sup> S. 19 Derelict Sites Act 1990.

<sup>18</sup> S. 20 Derelict Sites Act 1990.



The Corporation then issued a vesting order for all the plots proposed to be acquired which were included in the schedule. The prosecutor applied to the Corporation for an offer of compensation in respect of his land, but the Corporation applied to have an arbitrator appointed. At the arbitration, the prosecutor objected to the appointment of the arbitrator on the ground that there was no default of agreement between him and the Corporation and that default of agreement was a condition precedent to arbitration. The arbitrator overruled this objection, proceeded with the arbitration and later published his award.

It was held that the preliminary and vesting orders were invalid by reason of the fact that they purported to deal with more than one site but since the prosecutor had acquiesced in the procedure adopted, the court did not exercise its discretion in his favour and accordingly the conditional order was discharged. It was further held that since default of agreement was a condition precedent to the appointment of an arbitrator, the arbitrator was invalidly appointed, and the court should exercise its discretion and quash the arbitrator's award.

### **Offences and Penalties:**

Part IV of the Derelict Sites Act 1990 deals with prosecutions and offences.<sup>19</sup> The prosecuting authority is the local authority in whose functional area the offence is committed. It is an offence to:

- a) remove, damage or deface a notice posted by the local authority regarding a derelict site;
- b) fail to carry out the measures required by the local authority to prevent a property from being classed as derelict within an allotted time;
- c) fail to notify the local authority of the transfer of land or interest in land (other than by will or on an intestacy); and
- d) prevent an authorised person from entering or carrying out authorised business on the derelict site

The relevant penalty on summary conviction is a fine not exceeding €1,269.74 and/or a term of imprisonment not exceeding six months.

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<sup>19</sup> Derelict Sites Act 1990 ss.27-28.



## **DANGEROUS STRUCTURES**

The Local Government (Sanitary Services) Act 1964 (“the 1964 Act”) granted powers to sanitary authorities to control dangerous places and structures. These powers may be exercised in conjunction with the powers available to a local authority under the Derelict Sites Act 1990 to prevent sites from continuing to be derelict and/or dangerous to the public.

### **Definition of a dangerous structure or place**

Section 1 of the 1964 Act defines a “dangerous structure” as:

- a) Any building, wall or other structure of any kind or*
- b) Any part of, or anything attached to a building, wall or other structures of any kind that, in the opinion of the sanitary authority in whose sanitary district it is situate, is or is likely to be dangerous to any person or property.*

Section 1 of the 1964 Act defines the term “dangerous place” as:

*“an excavation, quarry, pit, well, reservoir, pond, stream, dam, bank, dump, shaft or land that, in the opinion of the sanitary authority in whose sanitary district it is situate, is or is likely to be dangerous to any person*

### **Sanitary Authority: Duties and Powers**

#### **I. Duties**

The 1964 Act imposes a number of duties on the sanitary authority in respect of Dangerous Structures. This includes a duty to:

- Maintain a Dangerous Structures Register.
- Make the Register available for public inspection.
- Serve a Notice on the owner/occupier specifying works to be carried out within a specified timescale.

#### **II. Powers**

The local authority can direct that work (including the demolition of the structure and the clearing of the site) be carried out immediately if it considers it necessary. It may also require that all use of the dangerous structure be stopped. In certain cases, the local authority can direct the occupier of a dangerous structure to leave and remove all his or her property. This is done in the interests of the occupier's safety.

## **Dangerous Site and Dangerous Place Notices**

Under Sections 2 and 3 of the 1964 Act the Council is entitled to serve Notice on property owners, where it is of the opinion that a property is “dangerous”. The Council may request property owners to carry out remedial action to make the property safe. Failure to comply with the Notice can result in the matter being referred to the Courts.

### **I. Dangerous Place Notice**

If a place is deemed as “dangerous” under the act, before proceeding, the sanitary authority must give a notice (a “dangerous place notice”) to the owner of the place stating that the place is a dangerous place and notifying the property owners of the authority’s intention to proceed. The notice should specify the works which are required to be carried out in relation to the place to prevent it from being a dangerous place and giving an estimate of the cost of such works.

Any person who is aggrieved by such a notice may apply to the District Court to have the notice annulled within 21 days of receipt of same.

Section 5(3) of the 1964 Act provides that “[a] decision of the District Court under this section shall be final and unappealable”. Therefore there is no right to a de novo appeal at Circuit Court level, however, the decision may be subject to judicial review.

### **II. Dangerous Structure Notice**

Section 3 of the 1964 Act provides that a sanitary authority may issue a notice to the owner who occupies dangerous structure situate in its functional area or to the occupier of the structure.

The dangerous structure notice may require the owner:

- a) to carry out such works (including the demolition of the structure or any part of it and the clearing and levelling of the site thereof) specified in the notice as will, in the opinion of the authority, prevent the structure from being a dangerous structure, to remove any debris and to erect a wall or barrier between any open area created by the works and any road, street or public place; and
- b) to terminate or modify any use of the structure or any part thereof

The works should be carried out within such period specified in the notice. Section 3(4) provides that it is an offence not to comply with such a notice.

In contrast to section 2 of the 1964 Act, section 3 does not allow for a similar annulment procedure in the District Court and is very much a summary procedure.



## **Compliance with a Dangerous Structure Notice**

In the case of non-compliance with a Dangerous Structure notice, the sanitary authority can make an application to the District Court for the following orders:

- a) An order directing the person to carry out, within such time as the court may consider reasonable and may specify in the order and in accordance with the terms of the notice, the works specified in the notice and authorise the local authority to carry out the works aforesaid if the person does not comply with the provisions of the order; or
- b) An order authorising the local authority to carry out the works specified in the notice.

The court has limited jurisdiction when considering prosecutions for non-compliance with the 1964 Act. This was confirmed by the Supreme Court in *The State (McGuinness) v Maguire* [1967] 1 I.R. 348 where it was held by O'Keeffe P. in the High Court that:

*“the powers of the court seem to be limited to those specifically mentioned in paras. (a) and (b) of sub-s. 5 of s. 3 of the Act. In view of this it would seem that the hearing of evidence by the District Court, or the Circuit Court on appeal, as to the necessity for lateral support for adjoining buildings was not authorised by the statute, and that there has been no judicial determination, within jurisdiction, as to the necessity for the works.”*

The decision in *Maguire* is authority for the proposition that the function of the District Court is very limited in a summary prosecution under the 1964 Act, and it does not have jurisdiction to enquire whether the local authority was correct in its conclusion that the relevant structure was “dangerous” within the meaning of s.1 of the Act.

## **Power of sanitary authority to acquire a dangerous place or former dangerous place**

Section 6 of the 1964 Act provides that a sanitary authority may acquire by agreement or compulsorily any land situate in their sanitary district that is a dangerous place or that has ceased, by reason of the carrying out of works under this Act by the authority, to be a dangerous place.

Section 7 of the 1964 Act sets out the procedure to be observed by a sanitary authority when seeking to compulsorily acquire land. Section 7 provides for the publication by the sanitary authority of a notice in the prescribed form of intention to acquire land compulsorily under section 6 in a newspaper circulating in the area and requires the authority to post the notice stating their intention to acquire the land compulsorily on or near the land and to serve the notice on any occupier and owner of the land whose name and the address at which he ordinarily resides can be ascertained by the sanitary authority by reasonable inquiries.

Section 8 of the 1964 Act provides that the occupier or any owner of land in respect of which a notice under section 7 of the 1964 Act has been published by a sanitary authority may, within one month after the date of the publication of the notice, submit to the authority an objection to the proposed compulsory acquisition referred to in the notice.



Section 217 (2) of the Planning and Development Act 2000 provides that where an objection is made to a sanitary authority in accordance with section 8 of the 1964 Act, and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to An Bord Pleanála for its consent to the compulsory acquisition of the land in accordance with that section.

### **Vesting Order**

Section 9 (1) of the 1964 Act provides, where, in relation to any land in respect of which the provisions of section 7 have been complied with by a sanitary authority and, (a) no objection is submitted to the authority in accordance with section 8 of the 1964 Act, (b) any objection submitted is subsequently withdrawn, or, (c) An Bord Pleanála approves the compulsory acquisition by the sanitary authority, or (d) at any time, not being less than three months after (i) the making of any order by any court for the payment of a sum due to the authority under section 2 of the 1964 Act, or (ii) in the case of an appeal against the order aforesaid, the final determination of the appeal, any sum (including any sum in respect of costs) remains due to the authority on foot of the said order, the authority may by vesting order acquire the land.

Section 9 (1) of the 1964 Act provides that on the making of a vesting order in the prescribed form the authority shall, (a) post a notice containing a copy of the order on or near the land, and, (b) give a copy of the vesting order to every (if any) occupier of the land and to every (if any) owner of the land whose name and the address at which he ordinarily resides can be ascertained by the sanitary authority by reasonable inquiries.

Section 10 (1) of the 1964 Act provides that the vesting order operates to vest the land in the sanitary authority in fee simple free from encumbrances and all estates, rights, titles and interests of whatsoever kind on a specified date not earlier than 7 days after the making of the order.

Section 10 (3) of the 1964 Act provides that the vesting order together with a map of the land must be lodged with the Property Registration Authority which is obliged to register the sanitary authority as owner of the lands in accordance with the order.

### **Offences and Penalties**

Under the 1964 Act, it is an offence to:

- a) obstruct a sanitary authority that is carrying out its duty and/or obstruct anyone that is attempting to comply with the Act;
- b) fail to carry out the measures required by the sanitary authority to prevent a structure or place from being classed as dangerous within the specified period;
- c) fail to comply with an order of the District Court which is made pursuant to the Act;
- d) fail to give information or knowingly give false or misleading information to the sanitary authority about the ownership of a **dangerous** structure; and/or

- e) obstruct an authorised officer of the sanitary authority while he or she is exercising a power conferred by the Local Government (Sanitary Services) Act 1964

A person who obstructs or interferes with—

- (a) the exercise by a sanitary authority of power vested in them under or by virtue of this Act, or
- (b) the compliance by any person with the provisions of this Act or of any notice thereunder,

shall be guilty of an offence under this section and shall be liable on summary conviction to a class C fine (fine not exceeding €2,500).<sup>20</sup>

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<sup>20</sup>Local Government (Sanitary Services) Act 1964, Section 17.



**Jude Sherry, Director of Anois Agency, Cork -**  
*Panel Discussion: Derelict Buildings: the Legal Framework & Proposals for Change*

Designer, maker, repairer, researcher, critic, activist and speaker, Jude co-founded the global multi-award winning agency, anois, to co-design sustainable, responsible, equal and just product and urban systems. With sustainability embedded in everything she does, Jude has consulted governments, intra-government, educational institutes and industry on policy, business practice and curriculum. Anois latest immersion in Cork City has led to a national movement called #DerelictIreland focused on turning dereliction into an opportunity to co-create liveable, healthy & productive urban environments where everyone can RestPlayWork. In 2021 Jude was awarded Art & Design Woman of the Year for her international work and thought leadership.







**#DerelictIreland**

Jude Sherry

Director [anois.org](http://anois.org)



Imagine ...



Imagine ...  
A city that invites  
Everyone to  
**Rest Play Work.**

Transforming, reusing and repurposing unused sites  
& buildings to create a better place for all of us  
to live, learn, share, create and contribute.



If not  
now,  
then  
**when?**









## 10 Deadly Myths of Dereliction

1

There's no profit in dereliction

2

Owners have no incentives

3

Planning system is holding progress back

4

Building regs. are stopping renovations

5

The Constitution protects private property rights

6

Nothing can be done until the owner is identified

7

Taxing dereliction is all that's possible

8

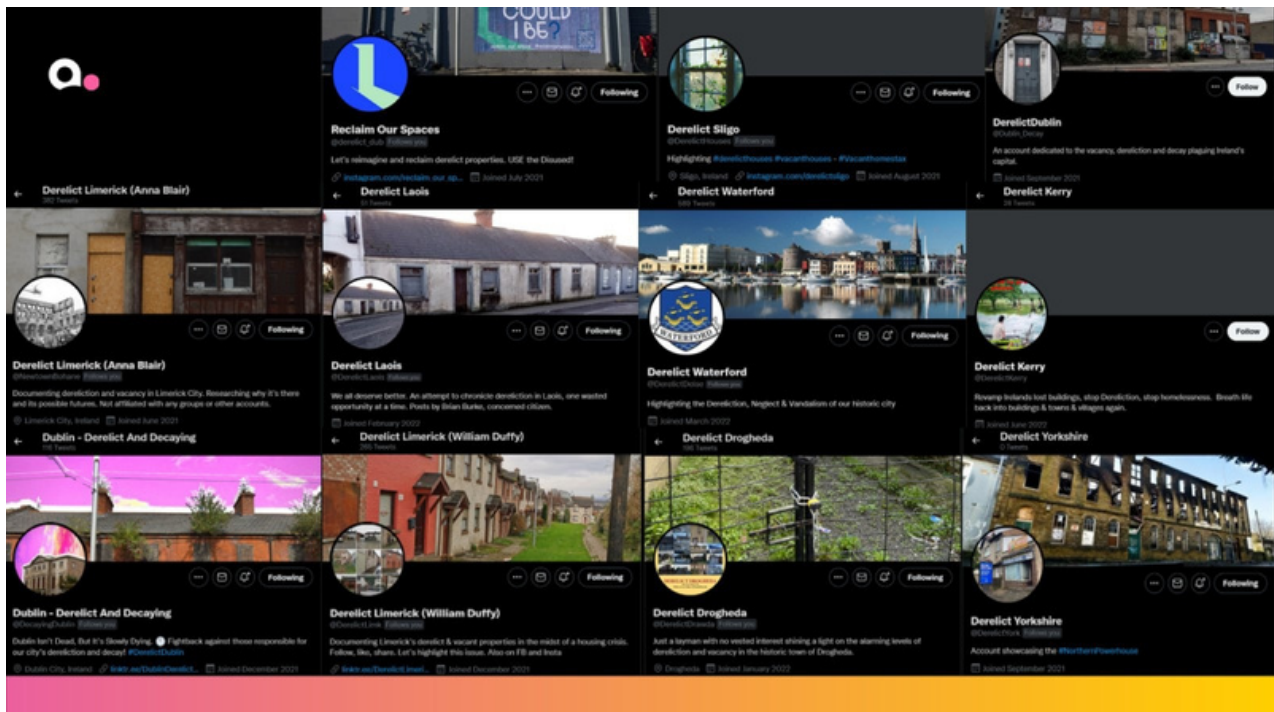
There is no way to ensure the dereliction levy is paid

9

CPDs are not a realistic solution

10

Progress will not happen without new legislation







#DerelictCork



#DerelictDublin



#DerelictDrogheda



#DerelictLimerick







## Linear Economy



<https://www.epa.ie/services/monitoring-assessment/waste/national-waste-statistics/construction-demolition/>

<https://www.iebc.ie/wp-content/uploads/2021/11/21-IGBC-COP-report-v0.93-1.pdf>



53–75%

Reduction in environmental impacts across 6 categories when renovation compared to a new construction

10 – 80 years

before the embodied carbon of a building is offset when demolishing & replacing with an energy efficient building



Preservation Green Lab, The Greenest Building: Quantifying the Environmental Value of Building Reuse, National Trust for Historic Preservation, 2011, 4.



*"A city's conserved historic core can differentiate that city from competing locations, branding it nationally and internationally, thus helping to attract investment and talented people."*

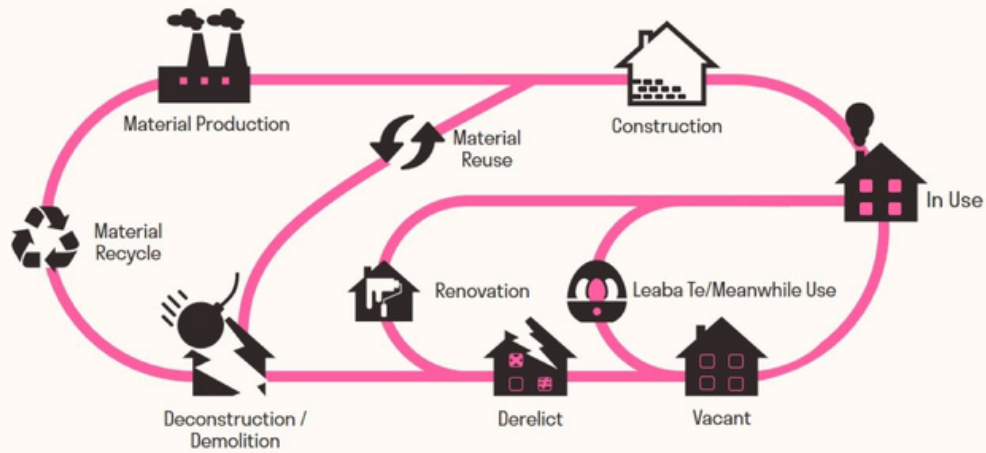
The World Bank



<https://www.circularity-gap.world/2023>



## Circular Economy



**Tithe an Oireachtais  
Houses of the Oireachtas**

Microsoft Teams

02:06

Rebecca Morgan...

Paul Mulh...

Cem O'Call...

Patricia Fitz...

Bernadette...

Thomas Co...

Tom Malone...

Sean Gorman...

Richard Shap...

Eoin O'Fla...

Chlo Murphy (Guest)

Eileen O'Donnell (Guest)

Paul Johnson...

**An Comhchoiste um Thithíocht,  
Riailtas Áitiúil agus Oidhreacht**  
Athbheochan Ulirbeach  
Bealtaine 2022

**Joint Committee on Housing, Local  
Government and Heritage**  
Urban Regeneration  
May 2022

33/1654/12





## #DerelictIreland & #VacantIreland Policy Toolkit

vacancy tax  
meanwhile use  
compulsory use order

use

custodian

abolish demolish  
building control  
dereliction tax  
design rules

ownership

compulsory purchase order  
compulsory sales order



# Leaba Te

## Hotbed of Meanwhile Use

Meanwhile Use of Vacant Buildings as a positive  
disruption for regeneration of Irish Town Centres

Jude Sherry & Dr Frank O'Connor  
anois.org

October 2021

anois.



An Chomhairle Oidhreachta  
The Heritage Council





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now...  
Then  
when?

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