

The New Commercial Planning and Environmental division of Ireland's High Court that becomes effective from today

Insights - 17/04/2023

The new Commercial Planning and Environmental List is aimed at creating a more efficient system for dealing with planning and environmental cases in Ireland.

Whilst there is currently a Commercial Planning and Strategic Infrastructure Development ("SID") List within the High Court, only certain cases are eligible for admission. Accordingly, ordinary planning and/or environmental cases are generally dealt with in the regular judicial review or plenary lists, which typically face significant delays. If of sufficient commercial value (€1m+) a plenary matter can be admitted to the Commercial List of the High Court but this may result in significant additional cost, including €5,000 stamp duty payable on the application for admission.

This new list will hopefully alleviate delays and will enable more efficient management by the Courts of the broad range of planning and environmental cases, which is likely to have a direct impact on the delivery of housing and infrastructure, and the management of environmental matters/challenges in Ireland.

To implement the introduction of the list, Practice Directions HC107 and HC114 are to be revoked and replaced by Practice Direction HC119 with effect from **Monday 17 April, 2023**.

Pursuant to the new court procedures, it will now be possible to have certain cases administratively entered into the new list without the need to issue a separate motion seeking admission.

Scope of the Commercial Planning and Environmental List

Cases which can now be administratively entered in the List without the need for an admission application by any party include:

- Judicial reviews relating to decisions made by An Bord Pleanála as the first-instance decision-maker, including Strategic Infrastructure Development (SID), Strategic Housing Development (SHD), Large-scale Residential Development (LRD) or local authority developments that require environmental impact assessment (EIA)/appropriate assessment (AA);
- Judicial reviews relating to decisions regarding national or public infrastructure;
- Proceedings relating to requests for access to environmental information;

The following matters will also be admitted automatically on being notified to the Court, without the necessity for an application:

- satellite litigation (being proceedings arising between parties to substantive litigation (irrespective of whether the same parties are named in the satellite litigation) which relate to or arise from the legal or factual matters of the substantive litigation); and
- the determination of questions as to whether any given proceedings constitute satellite litigation.

The following cases may also be admitted to the List by order of the Court by application in the usual manner (i.e. by motion to admit):

- planning cases
- environmental cases; or
- any dispute linked to or consequential on a decision to which proceedings in the list relate i.e. compulsory acquisition orders or wayleave notices.

Notably the stamp duty payable on a motion seeking admission to the new list will be the amount payable for an ordinary notice of motion and not for a Commercial Court motion, which is a substantial cost saving.

Key takeaways

1. The creation of the new list is designed to streamline the handling of major environmental cases and to ensure that they are heard by a specialist court. This is intended to provide greater consistency in the handling of such cases and to ensure that the courts have the necessary expertise to deal with complex environmental issues.

2. The new list will also aim to provide a more efficient and cost-effective way of handling environmental cases, by reducing the need for parties to make applications for admission to the list and by providing a more structured framework for the handling of satellite litigation.
3. The inclusion of strategic infrastructure development cases within the remit of the new list is a significant change, as such cases were previously heard by the Commercial Planning and Strategic Infrastructure Development List. This is likely to have implications for the way in which such cases are handled and may result in changes to the legal process for strategic infrastructure development projects.
4. The introduction of satellite litigation rules is also likely to have significant implications for the handling of environmental cases, particularly those relating to large-scale development projects. The new rules are intended to provide greater clarity and structure for the handling of satellite litigation, which can often be complex, time-consuming and cause delay to the underlying substantive proceedings.

Overall, the creation of the new Commercial Planning and Environmental List represents an important development in the handling of environmental and planning cases in Ireland. It represents an ongoing movement to further improve the efficiency of the Irish Court system, and also recognises the need to create a legal infrastructure for increasing environmental litigation.

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