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JUDICIAL REVIEW AND COMMERCIAL DEVELOPMENT IN IRELAND AND THE UK: TRENDS & LEGAL CHANGES

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Abstract:

This article examines the evolving doctrine of legality in Irish planning law, with particular emphasis on commercial development, environmental assessment, and the increasing centrality of remittal in judicial review. Recent case law - including *Crofton Buildings, Barford Holdings, Fitzpatrick & Daly* and *Malone & McEvoy* - reveals a coherent judicial trend: courts are reinforcing strict compliance with statutory and EU-derived environmental obligations while simultaneously affirming the limits of judicial review through the statutory presumption of remittal. The analysis situates these developments within the broader context of the Planning and Development Act 2024 and the Planning and Development (Amendment) Act 2025, which together signal a significant reconfiguration of Ireland's consent architecture while retaining core environmental responsibilities. The article also considers the persuasive influence of contemporary UK authorities such as *Finch, Swire, Warley, Gerber* and *Fawcett Properties*, highlighting points of convergence and divergence in approaches to environmental assessment, procedural fairness, and the certainty of planning conditions. Across these strands, a modernised doctrinal framework emerges - one grounded in legality, transparency, environmental integrity, and structured judicial oversight. This re-evaluation provides both a conceptual map and a practical guide for practitioners, policymakers and scholars navigating Ireland's increasingly complex planning landscape.

Keywords: EU, Ireland, UK, Commercial Development, Case Law

1. Introduction

Irish planning law has undergone accelerated doctrinal and legislative change in the past decade. Judicial review has become the primary vehicle for resolving disputes over complex commercial and infrastructural development, and the courts have increasingly framed their role as supervisory rather than interventionist. The result is a body of case law that is both technically demanding and highly responsive to statutory detail. This commentary analyses the most recent and significant Irish authorities on commercial planning - *Crofton Buildings Management, Barford Holdings, Fitzpatrick & Daly* (Apple data centre), *Malone & McEvoy,* and *North East Pylon Pressure Campaign* - situating them within the architecture of the Planning and Development Act 2000 ("PDA 2000") and its amending Acts, and examining their wider administrative-law and environmental-law implications.

Given the historical interconnection between Irish and UK public law, and the enduring persuasive influence of English jurisprudence,[795] later sections of this commentary introduce key UK authorities pertaining to environmental assessment, procedural fairness, and certainty in conditions for comparative purposes.

[795] John Freeman and Practical Law Corporate Ireland, 'The Relationship between Irish and English Law | Practical Law '(Thomsonreuters.com2024) <https://ca.practicallaw.thomsonreuters.com/w-026-2226?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 4 December 2025.

It ought to be noted that this commentary has its origins in a provisional collection of notes, extracts and case summaries compiled at different stages, several of which were anonymised, incomplete or drawn from still-ongoing litigation. These fragments were subsequently re-checked, supplemented with full citations and shaped into a coherent analytical structure by their user (the author). By including this short research trail in the introduction, it is hoped to reflect the developmental path of the work and the method by which this final text was produced.

2. Statutory Structure: The Planning and Development Acts

2.1 The PDA 2000 and Its Centrality

For almost twenty-five years, the Planning and Development Act 2000[796] has provided the foundation for Irish planning regulation. It governs every stage of the development-control process: plan-making, applications, appeals to An Bord Pleanála ("the Board" / "ABP"), environmental assessment, judicial review, and enforcement. Its importance has only grown as large-scale commercial schemes - markets, wind farms, energy infrastructure, data centres, quarries, industrial sites - have become more enmeshed with EU environmental obligations.

Revised and consolidated versions of the Act reflect extensive amendment, including multiple insertions to ss. 50–50B (judicial review) and the expansion of EIA and Appropriate Assessment ("AA") duties under EU law (notably following the CJEU decisions in *Sweetman*[797] and *People Over Wind*).[798]

2.2 The Planning and Development (Amendment) Act 2025

The 2025 Amendment Act[799] introduced a consequential reform: where a planning permission becomes embroiled in judicial review proceedings, the duration of the permission is paused until the conclusion of litigation. This directly responds to controversies in which developers lost years of permission lifespan while defending litigation, resulting in permissions expiring before development could commence or before remittal could occur.[800]

Although the policy impetus was directed primarily at the delivery of housing, the provision is agnostic as to development type and applies equally to commercial permissions.

3. Case Law Analysis: Ireland

The following analysis covers the six principal cases: *Crofton Buildings, Barford Holdings, Fitzpatrick & Daly, Malone & McEvoy,* and *North East Pylon Pressure Campaign*. Each illustrates a different interaction between statutory duties, environmental assessment requirements, and the judicial-review jurisdiction.

3.1 Crofton Buildings Management CLG & Anor v An Bord Pleanála [2024] IESC 12[801]

Facts and Context

This Supreme Court decision concerned a challenge to ABP's grant of permission under the now-defunct Strategic Housing Development (SHD) system for a 102-unit build-to-rent scheme in Dún Laoghaire. The Board accepted the development materially contravened the relevant building-height policy, but nonetheless granted permission under the SHD provisions.

The High Court quashed the permission for legal error. The central issue on appeal concerned remittal: following a quashing order, was the High Court obliged to remit the matter to the Board for fresh determination?

Statutory Question: s. 50A(9A) PDA 2000

Section 50A(9A), inserted in 2021, provides that where a court quashes a planning decision, it must remit the matter to the decision-maker unless remittal would be unlawful. The High

[796] Planning and Development Act 2000 (as amended). Irish Statute Book.
[797] Sweetman v An Bord Pleanála (C-258/11) EU:C:2013:220
[798] People Over Wind v An Bord Pleanála (C-323/17) EU:C:2018:244
[799] Planning and Development (Amendment) Act 2025. Irish Statute Book.
[800] Mason Hayes & Curran, 'Pause on Permission Time Limits During Judicial Review '(2025) https://www.mhc.ie/latest/insights/pause-on-permission-time-limits-during-judicial-review accessed 3 December 2025.
[801] Crofton Buildings Management CLG v An Bord Pleanála [2024] IESC 12

Court interpreted the provision as permissive rather than mandatory; remittal was merely one option.

The Supreme Court's Holding

The Supreme Court reversed that interpretation. Remittal is the statutory default. Concluding that remittal "is now the default position in planning cases; refusal to remit is now limited to the situation where the Court is satisfied that it would not be lawful to do so", the Supreme Court rejected the appeal but amended the High Court's order so as to delete the directions underpinning the remittal, and returned the matter to the respondent for reconsideration *simpliciter*.[802] [803]

Significance

1. Mandatory remittal can limit judicial discretion to decline remittal - even where delay, legislative uncertainty, or futility concerns are raised, unless remittal would be unlawful or impossible.
2. It clarifies a line of uncertainty that had emerged in the wake of *Christian v Dublin City Council*[804] and other authorities.
3. For developers and objectors alike, it creates predictability: quashing does not end the matter; it sends it back for lawful re-determination.
4. With the introduction of the 2025 "pause" provision, remittal now occurs without risk of the underlying permission expiring mid-litigation.

In commercial-planning terms, the decision reinforces the primacy of administrative reconsideration rather than judicial finalisation of disputes.

3.2 Barford Holdings Ltd v Fingal County Council [2022] IEHC 329 and [2023] IEHC 161[805]

Background

Barford Holdings sought an extension of duration under s. 42 PDA 2000 for a 2015 permission involving a retirement village, hotel, and car-park. Fingal County Council refused the extension, leading to judicial review.

Legal Issues

Two primary questions arose:

1. Whether the Council had erred in interpreting the planning framework, particularly a continuing Local Area Plan ("LAP") that contained a Specific Local Objective (SLO 469) supportive of the proposal.
2. What law applied upon remittal, given that s. 42 was repealed in the interim between the original decision and the High Court judgment?

High Court Findings

1. The Council had acted unlawfully by failing to consider a still-operative LAP objective. Development-plan compliance remains central even in extension applications.
2. When a decision is quashed and remitted, the authority must reconsider the matter, but under the law as amended at the time of reconsideration, *subject to EU obligations*.
3. The applicant must comply with current EIA/AA screening obligations on remittal, even where they did not apply at the time of the original extension application.

Implications

Barford Holdings provides a crucial clarification of transitional planning law:

[802] ibid.
[803] Gillian O'Hanlon, 'Supreme Court: Appeal against Remittal of Planning Matter to an Bord Pleanála Dismissed '(Irish Legal News11 April 2024) <https://www.irishlegal.com/articles/supreme-court-appeal-against-remittal-of-planning-matter-to-an-bord-pleanala-dismissed> accessed 4 December 2025.
[804] Sister Mary Christian and Others v Dublin City Council [2012] IEHC 309.
[805] Barford Holdings Ltd v Fingal County Council [2022] IEHC 329; [2023] IEHC 161

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- Remittal requires the re-determination under the law current at the time of reconsideration, subject to non-derogable EU obligations.
- EU environmental duties remain non-derogable, overriding domestic transition difficulties.
- Local Area Plans (and SLOs) carry real legal weight; ignoring them amounts to jurisdictional error.

This case complements *Crofton Buildings* by elaborating what remittal practically entails.

3.3 Fitzpatrick & Daly v An Bord Pleanála & Galway County Council & Apple Distribution International [2019] IESC 23[806]

Context

This was the prominent litigation concerning the Apple data centre in Athenry. The applicants argued that environmental assessment had been unlawfully confined to one data hall, whereas the broader data-centre masterplan (involving multiple future halls) required a full EIA.

Holding

The Supreme Court upheld the Board's decision.

The Court held that the Board had been entitled to assess environmental effects "as far as practically possible" at the first-phase stage. It was not legally obliged to assess the entire masterplan where the subsequent elements remained uncertain or lacked sufficient detail.

Importance

1. It provides the leading Irish authority on EIA scoping in phased commercial development.
2. It endorses a pragmatic, staged approach - provided that cumulative impacts are acknowledged and assessed to the extent feasible.
3. It aligns generally with UK and CJEU jurisprudence, which accepts phased EIAs provided the developer does not "salami-slice" a project to avoid scrutiny.

The case remains highly relevant for major ICT, data-centre, and infrastructural developments.

3.4 Malone & McEvoy v Laois County Council & Ors [2025] IEHC 345[807]

Nature of the Case

This case concerned a s. 160 enforcement injunction sought in respect of alleged unlawful quarry and concrete-production operations. The applicants attempted to challenge historic planning permissions on environmental grounds.

Key Question

Can s. 160 be used to **c**ollaterally attack long-final planning permissions, effectively circumventing the 8-week judicial-review window in s. 50 PDA 2000?

Holding

The High Court emphatically held no:

- Section 160 is not an alternative vehicle for revisiting old permissions.
- The exclusive route for challenging permissions is via judicial review within eight weeks of the decision.
- Allowing s. 160 collateral attacks would undermine the finality and certainty essential to the planning system.

Importance

Malone & McEvoy is now the leading Irish authority confirming the exclusive nature of s. 50:

- It blocks attempts to use enforcement proceedings to reopen planning permissions many years later.
- It safeguards commercial certainty for operators of long-established industrial sites.

[806] Fitzpatrick & Daly v An Bord Pleanála [2019] IESC 23

[807] Malone & McEvoy v Laois County Council [2025] IEHC 345

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- It also protects planning authorities and the Board from ongoing litigation risk.

The case aligns with longstanding UK authority requiring strict adherence to statutory time-limits in planning challenges.

3.5 North East Pylon Pressure Campaign Ltd v An Bord Pleanála [2016] IEHC 300[808]

Although older, this case remains doctrinally relevant for modern commercial infrastructure.

Context

The challenge related to ABP's grant of permission for high-voltage electricity-transmission infrastructure (pylon lines). The case was one of a series of early post-2011 Act decisions grappling with the newly expanded EIA and AA powers.

Issues

- Procedural requirements under ss. 50/50B PDA
- Whether environmental-assessment duties had been lawfully discharged
- Interaction with the Environmental (Miscellaneous Provisions) Act 2011[809]

Significance

The judgment highlights:

1. The high level of judicial scrutiny applicable to EIA-heavy infrastructure.
2. The evolving nature of Irish environmental-assessment law in the decade after the implementation of the 2011 Act.
3. Principles that continue to inform judicial treatment of newer wind-energy, grid-renewal and strategic-infrastructure schemes.

North East Pylon therefore provides the background context for understanding the administrative-law and environmental-law expectations now applied in cases such as *Crofton Buildings*.

4. Environmental Impact Assessment: The UK's Expanding Duty of Scope

Although Irish courts do not apply English planning statutes, UK case law remains highly persuasive in the areas of environmental assessment, proportionality, procedural fairness, legitimate expectation, and planning-conditions doctrine. Many of these issues arise with particular frequency in commercial development, where the scale and environmental sensitivity of projects tend to push the boundaries of administrative-law principles.

Because the Irish system is premised on a model drafted initially in close dialogue with the English planning framework of the mid-20th century, the intellectual genealogy remains visible. Courts in Ireland continue to cite English decisions where the statutory or conceptual parallels justify it.

Accordingly, a rigorous commercial-planning commentary cannot be complete without evaluating the key UK authorities. Those authorities - *Finch*, *Swire*, *Warley*, *Gerber*, and *Fawcett Properties* - cover five major recurring legal questions:

1. What must be assessed under EIA?
2. How strictly must screening be conducted?
3. What is the threshold for requiring EIA of relatively small-scale but environmentally sensitive developments?
4. To what extent must planning authorities follow their own published procedures?
5. How certain must planning conditions be in order to be lawful?

Each of these questions has been the subject of litigation in Ireland, and each has generated Irish judicial reasoning that resonates with, or occasionally departs from, the English position.

[808] North East Pylon Pressure Campaign Ltd v An Bord Pleanála [2016] IEHC 300
[809] Environmental (Miscellaneous Provisions) Act 2011

This Part sets out the UK holdings first and then analyses their Irish significance.

4.1 Finch (Weald Action Group) v Surrey County Council [2024] UKSC 20[810]

Background

The *Finch* case concerned Surrey County Council's permission for expansion of onshore oil-extraction wells near Gatwick Airport. At issue was whether the authority's Environmental Impact Assessment ("EIA") was legally deficient because it failed to consider the downstream greenhouse-gas emissions - namely, the emissions produced by combustion of the extracted oil following refining and distribution.

The local authority had confined the EIA to impacts associated with the extraction phase itself. The developer argued that downstream combustion was outside the scope of the project and was not within its control or within the "development" for EIA purposes.

The Supreme Court's Holding

The UK Supreme Court (by a 3–2 majority) held that the downstream emissions were indirect effects of the proposed development and therefore required assessment:

- The "effects of the project" under the EIA Directive and the UK EIA Regulations include indirect environmental effects reasonably foreseeable as a consequence of granting consent.
- For fossil-fuel extraction, the combustion of the product is a natural, intended, and inevitable downstream consequence, falling squarely within EIA assessment.

The Court emphasised the necessity of a purpose-oriented interpretation of EIA law: environmental protection requires assessment of all foreseeable consequences, not merely those confined to the physical boundary of the development site.

Persuasive Value in Ireland

Irish courts have already exhibited sympathy for the reasoning underlying *Finch*. The Supreme Court's environmental-assessment approach in *Fitzpatrick & Daly (Apple Athenry)* - which emphasised "taking account, as far as practicably possible" of the broader impacts of phased development - suggests readiness to consider cumulative and indirect effects where they are real and ascertainable.

However:

- Unlike *Finch*, Irish jurisprudence has not yet expressly required the assessment of downstream end-use emissions.
- Nevertheless, with Ireland's accelerating climate-governance framework, it is highly plausible that *Finch* will be relied upon in future Irish litigation concerning LNG terminals, strategic energy storage, gas inter-connectors, or large-scale industrial processes with emissions externalities.

Moreover, Irish courts consistently interpret EIA obligations in light of EU jurisprudence. While *Finch* is not an EU decision, it is potentially harmonious with EU principles in cases such as *Inter-Environnement Wallonie & Bond Beter Leefmilieu Vlaanderen v Conseil des ministres*, C-411/17,[811] which stresses the need for full assessment of all significant effects, in the context of changes or extensions of long-lived infrastructure and with the specific remedial constraints the CJEU described.

In short, *Finch,* as a persuasive authority, represents a logical extension of already-embedded Irish/EU principles, and may influence the Irish courts 'treatment of indirect climate impacts in forthcoming commercial-planning disputes.

[810] R (Finch) v Surrey County Council [2024] UKSC 20

[811] Inter-Environnement Wallonie & Bond Beter Leefmilieu Vlaanderen v Conseil des ministres, C-411/17

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4.2 R (Swire) v Secretary of State for Housing, Communities and Local Government [2020] EWHC 1298 (Admin)[812]

Summary of the Case

The *Swire* litigation involved a challenge to the Secretary of State's screening decision that no EIA was required for redevelopment of a former infected-cattle disposal site. The High Court held the screening direction unlawful because:

- The authority had failed properly to assess the likelihood of significant effects on soil contamination and public health.
- The reasoning lacked sufficient clarity and had not engaged with material scientific evidence.
- A lawful screening decision requires reasoned analysis, not a mere assertion that impacts are unlikely.

Relevance to Irish Law

Irish courts have repeatedly stressed that screening must be a legal, reasoned, and evidence-based exercise. This is most evident in decisions such as:

- *Kelly v An Bord Pleanála* [2024] IEHC 468 (quarry case)[813] - requiring clear engagement with environmental baselines;
- *O'Sullivan v An Bord Pleanála* [2022] IEHC 117[814] - setting out the threshold of analysis necessary for screening in Special Protection Areas.

While Irish courts have not cited *Swire*, the logic is effectively the same: a screening determination must show that the authority actually grappled with the risk of significant effects. Mere recitals are insufficient.

In commercial projects - especially brownfield redevelopment, quarries, industrial sites, and infrastructure corridors - *Swire*'s insistence on reasoned analysis strengthens the already-stringent Irish approach.

5. The Threshold Question: Sensitive Sites and Small-Scale Development

5.1 Warley v Wealden District Council (2012) Env LR 4 (High Court, 2011)[815]

Facts

Warley concerned planning permission for floodlit tennis-club lighting columns within an Area of Outstanding Natural Beauty (AONB). The local authority had concluded that the development did not require EIA. The High Court held that the authority had:

- Misinterpreted the EIA Regulations by treating the project as outside Schedule 2;
- Applied an unlawfully narrow view of the potential for significant effects;
- Imposed planning conditions that were vague and unenforceable.

The permission was quashed.

Irish Significance

This case is particularly persuasive for Ireland because EIA requirements for small-to-medium-scale developments in environmentally sensitive locations have been a persistent litigation hotspot. Comparable controversies arise regularly in:

- wind-farm turbine extensions;
- flood-lighting and stadium upgrades;
- telecommunications masts;
- quarry deepening and lateral extensions in ecologically sensitive landscapes.

The Irish High Court has demonstrated similar vigilance in screening decisions involving sensitive sites. The principle that EIA may be required by reason of environmental sensitivity alone, even where scale is relatively modest, is deeply embedded in Irish law following cases

[812] R (Swire) v Secretary of State for Housing, Communities and Local Government [2020] EWHC 1298 (Admin)
[813] Kelly v An Bord Pleanála [2024] IEHC 468
[814] O'Sullivan v An Bord Pleanála [2022] IEHC 117
[815] Warley v Wealden District Council (2012) Env LR 4

like *O'Sullivan* and *North East Pylon*. *Warley* therefore supports the predictable inference that Irish courts will continue to err on the side of full assessment where environmental sensitivity is high. The case also contributes to the discussion on planning-condition certainty, discussed below with *Fawcett Properties*.

6. Procedural Fairness and Legitimate Expectation

6.1 Gerber v Wiltshire Council [2016] EWCA Civ 84[816]

Facts and Issues

In *Gerber*, the owner of a listed building challenged permission granted for a solar farm nearby. The core issue was whether the Council had breached a legitimate expectation created by its own Statement of Community Involvement ("SCI"), which promised certain public-notification procedures. The Council deviated from its SCI without explanation. The High Court held that:

- Local authorities are bound by their own published procedural policies;
- Departure requires clear justification, failing which the decision is unlawful;
- Legitimate expectation applies robustly in planning law where procedural commitments are clear and intended to be relied upon.

Persuasive Value in Ireland

Irish planning law contains no direct analogue to the English SCI regime. Yet the principle of legitimate expectation is well-established in Irish administrative law and has particular resonance in the planning context.

Irish cases have repeatedly held that:

- Authorities must adhere to published development-plan procedures,
- Must follow statutorily prescribed consultation processes, and
- Must avoid departing from self-imposed procedural standards without clear legal basis.

In *Kelly v ABP* [2024] IEHC 468, for example, McDonald J drew attention to the need for clear adherence to regulatory procedures when conducting EIA and AA tasks, though the decision did not involve an SCI-type text.

The broader principle reinforced by *Gerber* - that procedural fairness is heightened in planning law due to its public nature - harmonises fully with Irish jurisprudence, particularly in disputes involving industrial or infrastructural development where public participation rights under the EIA and Aarhus regimes are paramount.

7. Certainty in Planning Conditions

7.1 Fawcett Properties Ltd v Buckinghamshire County Council [1961] AC 636; [1960] 3 WLR 831 (HL)[817]

Doctrinal Importance

Fawcett Properties is one of the classic modern authorities in English planning law. It addressed the validity of a planning condition that restricted land use but did so in ambiguous and subjective terms. The House of Lords held that:

- Planning conditions must be precise, intelligible, and enforceable;
- Ambiguous conditions are void for uncertainty;
- A defective condition may invalidate the entire permission if the condition is essential to lawfulness.

Influence in Ireland

Irish courts have embraced this principle for decades. The certainty requirement has been applied in cases involving:

- noise-mitigation conditions for energy projects;
- traffic-management conditions;

[816] Gerber v Wiltshire Council [2016] EWCA Civ 84

[817] Fawcett Properties Ltd v Buckinghamshire County Council [1961] AC 636

- post-construction monitoring obligations;
- operational restrictions on quarries and industrial plants.

Irish courts frequently refer to "void for uncertainty" doctrine, tracing its lineage (though not always explicitly) to *Fawcett Properties*. The issue arises most acutely in commercial and infrastructural schemes because the conditions typically govern:

- complex technical mitigation;
- seasonal or hourly operational limits;
- environmental-monitoring duties;
- phased-construction triggers.

Increasingly, conditions must be drafted with scientific precision to satisfy both EIA requirements and enforceability needs. The influence of *Fawcett* supports the modern Irish judicial tendency to invalidate conditions that merely incorporate generalised obligations ("appropriate noise mitigation to be agreed"), without specifying higher-order parameters.

The implications extend to cases like *Warley*, *Apple* and *Athenry* where the clarity of environmental statements and mitigation proposals is central to lawful permission.

8. Composite Influence: UK Doctrine as a Persuasive Framework for Irish Courts

The five UK cases collectively advance a jurisprudential perspective that is highly relevant to Irish courts:

UK Case	Core Principle	Irish Application
Finch	EIA must include indirect and downstream impacts	Strong persuasive value for climate-related, often large-scale development challenges
Swire	Screening must be evidence-based and reasoned	Matches Irish strictness in screening jurisprudence (*Kelly*)
Warley	EIA may be required even for modest projects in sensitive areas; conditions must be enforceable	Highly aligned with Irish High Court practice
Gerber	Authorities must follow their own procedural commitments	Reflects Irish legitimate-expectation doctrine in administrative law
Fawcett Properties	Planning conditions must be certain and enforceable	This mirrors Irish requirements for clarity, especially in environmental mitigation

These doctrines resonate with the Irish cases in Part I, implying clear conceptual parallelism between the systems. While the statutory frameworks differ, each jurisdiction exhibits the same core administrative-law concerns:

1. Reasoned, legally adequate decision-making
2. Respect for public participation and environmental transparency
3. Enforceability and clarity in mitigation measures
4. Judicial oversight focused on legality, not merits

Irish courts are increasingly attentive to sophisticated environmental-law arguments, particularly within commercial development. This evolution makes the UK decisions not only

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relevant but strategically influential in Irish litigation, especially where:

- climate impacts arise (*Finch*),
- brownfield re-development occurs (*Swire*),
- sensitive ecological landscapes are involved (*Warley*),
- procedural fairness claims are invoked (*Gerber*), or
- complex mitigation conditions are drafted (*Fawcett*).

9. Doctrinal Convergence Between Irish and UK Commercial-Planning Law

The preceding Parts demonstrate that Irish and UK courts share a deep structural affinity in planning jurisprudence. Though based on distinct statutory schemes - the PDA 2000 (greatly complemented by the Planning and Development Act 2024)[818] and the Town and Country Planning Act 1990[819] - their case law converges on several foundational principles that shape commercial planning decision-making. This section synthesises these principles and explains how they are driving modern judicial review in Ireland.

9.1 Principle One: Judicial Review as Supervision, Not Merits Appeal

Both jurisdictions emphasise that the court's role is supervisory. In Ireland, this has been articulated repeatedly in *Crofton Buildings*, and *Barford Holdings*. The Irish courts do not substitute their own assessment of planning merits for that of the planning authority or An Bord Pleanála. Instead, they focus on:

- legality of the procedure;
- adequacy of reasoning;
- compliance with statutory and EU duties;
- preservation of the integrity of environmental-assessment processes.

This mirrors the UK's longstanding distinction between legality review and planning judgment, evident in cases such as *Tesco Stores v Secretary of State* [1995][820] and carried forward in *Finch*, *Swire*, and *Gerber*.

For commercial developers and objectors, this means that judicial-review litigation succeeds only where a clear breach of legality is shown. Courts on both sides of the Irish Sea display increasing reluctance to intervene where technical planning judgments - height, urban design, traffic flows, operational details - are concerned. But where a procedural, environmental, or reasoning deficiency is present, intervention remains robust.

9.2 Principle Two: Mandatory Environmental Scrutiny in Commercial Development

Environmental Impact Assessment ("EIA") is the fulcrum of modern commercial-planning judicial review. The Irish cases - especially *North East Pylon*, and *Fitzpatrick & Daly (Apple Athenry)* - show that:

- EIA is not a "box-ticking" exercise;
- Cumulative, indirect, and future-phase impacts must be addressed;
- Screening must be reasoned and evidence-based;
- Alternatives, mitigation, and residual impacts require real analysis.

The UK's *Finch* decision pushes these principles further by insisting that downstream emissions must be evaluated where they are an inevitable consequence of the activity authorised. This doctrinal evolution may soon influence Irish law in areas such as LNG terminals, strategic energy storage, and industrial gas-processing operations.

While Irish courts have not yet required downstream emissions assessment as strongly as *Finch*, they have already embraced the EU-driven requirement for holistic environmental analysis. The foundations are therefore in place

[818] Planning and Development Act 2024. Irish Statute Book.
[819] Town and Country Planning Act 1990
[820] Tesco Stores v Secretary of State [1995] UKHL J1019-1

for future cases to adopt *Finch*'s logic where appropriate.

9.3 Principle Three: Sensitivity Overrides Scale

Warley illustrates a vital principle: small developments can trigger EIA obligations where located in sensitive environments. Irish case law takes the same view:

- A modest quarry extension can require full EIA if hydrological or ecological effects are significant;
- Telecommunications masts near Special Protection Areas can attract AA and possible EIA requirements;
- Lighting installations in dark-sky or protected landscapes demand thorough screening.

Thus, commercial developers cannot rely upon the scale of a project to avoid EIA: context is legally determinative. Irish courts have consistently followed this approach and treat environmentally sensitive locations as requiring heightened scrutiny irrespective of development footprint.

9.4 Principle Four: Procedural Fairness and Legitimate Expectation

The legitimacy of planning decisions depends not simply on environmental thoroughness but also procedural transparency. *Gerber* confirms that UK local authorities must follow their own Statements of Community Involvement. Irish planning authorities, although not subject to an identical statutory regime, face equivalent legal expectations under:

- the consultation requirements of the PDA 2000 and 2024 Act;
- the Aarhus Convention (and associated EU law);[821]
- the doctrine of fair procedures under Article 40.3 of the Constitution;[822]
- the duty of consistency in public-law decision-making.

The Irish courts have shown increasing sensitivity to the procedural rights of objectors, particularly in large commercial projects where public participation is central. If Irish authorities were to adopt local consultation charters analogous to SCIs, *Gerber*'s reasoning would be directly applicable.

9.5 Principle Five: Planning Conditions Must Be Enforceable

Fawcett Properties remains the seminal UK authority on conditions 'validity, and its influence is unmistakable in Ireland. Irish courts regularly invalidate:

- conditions dependent on unspecified future agreements ("to be agreed with the planning authority");
- vague or unenforceable environmental obligations;
- imprecise noise or traffic mitigation requirements;
- ambiguous operational conditions for industrial installations.

This insistence on clarity is more than a drafting formality - conditions form the legal limits of development and define enforceability. As commercial development grows in complexity, especially in energy infrastructure and data-centre construction, precision in conditions becomes indispensable. Environmental conditions must be technically detailed, measurable, and time-specific.

10. Legislative Evolution and Anticipated Future Directions

10.1 The Planning and Development Act 2024: A New System with Old Obligations

The commencement of the 2024 Act is phased and transitional provisions mean the PDA 2000 remains operative for many processes. Key implications for commercial-planning case law include:

[821] European Commission, 'Aarhus '(environment.ec.europa.eu2021) https://environment.ec.europa.eu/law-and-governance/aarhus_en .
[822] Bunreacht na hÉireann (Constitution of Ireland) Article 40.3.

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(a) New Plan-Making Architecture

The PDA 2024 introduces more integrated national, regional, and local planning tiers. The courts will inevitably need to interpret:

- the weight to be given to new National Planning Framework instruments;
- the binding nature of national policies;
- the status of Urban Development Zones (UDZs).

These frameworks will shape judicial treatment of plan-consistency issues, replacing the current reliance on Section 28 Guidelines and the older development-plan hierarchy.

(b) Streamlined Consenting and Potential Litigation Reduction

New statutory timelines, pre-application consultations, and systemic procedural reforms may reduce, but cannot eliminate, litigation risk. Judicial review remains constitutionally protected, and the commercial stakes of large developments ensure continued recourse to the courts.

(c) Environmental Duties Unchanged

Despite structural reorganisation, the fundamental EU-derived environmental duties remain untouched:

- EIA
- Strategic Environmental Assessment (SEA)
- Appropriate Assessment (AA)
- Water Framework Directive compliance
- Climate obligations under the Governance Regulation

The result is a planning system with new procedural architecture but the same environmental core, meaning that the jurisprudence discussed in Parts I and II remains fully relevant under the Acts.

10.2 The 2025 Amendment: The "Pause" on Permission Duration

The Planning and Development (Amendment) Act 2025 introduces a statutory "pause" to the running of the duration of certain planning permissions. Under the Amendment, the period during which a permission is capable of being lawfully implemented does not run for the defined pause-period prescribed by the Act, and that paused period is excluded when calculating the life of the permission. The provision operates automatically for the classes of permissions specified in the Amendment and applies irrespective of the original duration attached to the permission. In effect, the Amendment extends the expiry date of affected permissions by the length of the statutory pause, by treating the pause-period as time that "does not count" towards the permission's duration. The statutory mechanism does not retrospectively revive permissions that had already expired before commencement, and it does not permit development to continue where a condition precedent has not been met; it simply alters the method of calculating the running of time for permissions that remained extant when the pause came into effect. The legal effect is therefore one of temporal suspension, not substantive modification of the underlying permission.

This reform integrates seamlessly with the Irish case law emphasising remittal as the proper remedy for unlawfulness. It also aligns with the UK system, where permission longevity is rarely threatened by litigation timelines.

10.3 Expectation of Increased Climate-Oriented Litigation

Given the *Finch* ruling and expanding climate obligations under EU law, Ireland is likely to see:

1. Challenges to fossil-fuel storage, LNG terminals, and industrial-process developments based on downstream emissions;

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2. Scrutiny of climate mitigation in data-centre developments, particularly energy-use profiling and grid impacts;
3. Judicial demands for greater specificity in climate-related planning conditions.

Ireland's climate legislation (Climate Action and Low Carbon Development Acts 2015–2021)[823] will become increasingly relevant in planning judicial review.

11. Synthesis: A Unified Framework for Commercial-Planning Legality

Drawing together the Irish and UK authorities, several doctrinal threads emerge as the guiding principles for lawful commercial planning in Ireland:

1. **Legality and Reason-Giving** Decisions must demonstrate clear legal reasoning and show that relevant considerations were addressed.
2. **Environmental Completeness** EIA, AA, and climate impacts must be thoroughly assessed. Failure to conduct a reasoned screening or omit foreseeable impacts (as in *Finch*) is unlawful.
3. **Procedural Regularity** Authorities must follow adopted procedures and cannot deviate from statutory requirements or self-imposed consultation duties without justification.
4. **Planning-Condition Clarity** Conditions must be enforceable, specific, and internally coherent.
5. **Respect for Finality and Remittal** Judicial review is not a mechanism for re-running planning appeals; even unlawfulness results in remittal (*Crofton Buildings*). Attempts to circumvent the judicial-review procedure (e.g., through s. 160 proceedings, as in *Malone & McEvoy*) will be rejected.
6. **Environmental Sensitivity as a Trigger** Even small commercial developments can require EIA where located in sensitive environmental landscapes.

Together, these principles form a coherent, stable, and predictable judicial-review doctrine that applies equally to housing, commercial, and infrastructural development.

12. Conclusion

The modern landscape of Irish commercial-planning law is characterised by a tight-knit cluster of administrative-law principles that emphasise legality, environmental integrity, procedural fairness, and enforceability. While the statutory framework is undergoing transformative reform with the phased commencement of the Planning and Development Act 2024, the core judicial doctrines remain steady. The Irish courts 'recent decisions - *Crofton Buildings*, *Barford Holdings*, *Fitzpatrick & Daly*, *Malone & McEvoy*, *North East Pylon* - collectively reinforce strict compliance with statutory obligations and a strong preference for remittal over finality. They also underscore Ireland's increasing integration of EU environmental principles into domestic planning law, shaping the parameters of both commercial certainty and environmental governance. The UK cases - *Finch*, *Swire*, *Warley*, *Gerber*, *Fawcett Properties* - continue to exert a powerful persuasive influence, especially where Irish law presents doctrinal gaps or evolving concepts (downstream emissions, legitimacy of procedures, certainty of conditions). Although the Irish statutory scheme differs, the judicial philosophies remain distinctly parallel.

As Ireland accelerates towards a more streamlined, centralised planning system under the PDA 2024 (accompanied by the Amendment Act of 2025), the importance of judicial review in ensuring legality and environmental compliance will only increase. For practitioners, scholars, and policymakers, understanding the interplay between Irish and UK jurisprudence is essential to navigating the

[823] Climate Action and Low Carbon Development Acts 2015–2021

complexities of commercial planning decisions in the years ahead.

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