

PLANNING IN IRELAND

Teresa Clyne | Issue 1 | Date: January 12, 2021

TYPES OF PLANNING

1. Permission

This is known as "full Planning Permission". If you are sure of your designs, site, and required legal requirements you can go ahead and apply for full planning permission.

2. Outline Planning Permission OPP

If you have a site you would like planning on but no specific ideas on designs or specs you can apply for OPP.

3. "Permission Consequent On Outline Permission"

This is where the OPP has been favourable and you have to ensure to abide by the conditions of the OPP and submit them to the Planning Dept before starting to build

PRE PLANNING MEETING

Pre-Planning meetings (**NEVER EVER SKIP THIS STAGE**)

Once you know the design and specs of what you want to build, you can make an application to your local planning dept to speak with the local planner and discuss your ideas and intentions.

Take along detailed sketches and details of the project and ask whether the planning officer can foresee potential problems. If you're able to spot potential issues now, you can save on the time and expense of sorting them out later.



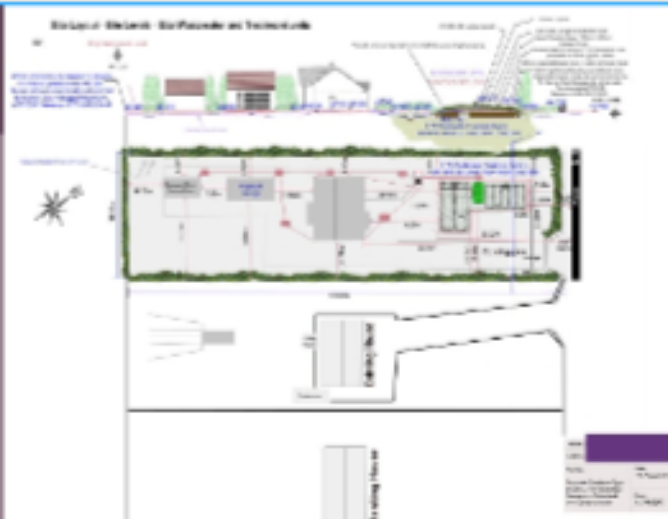
STEP 1: GETTING YOUR SHIT TOGETHER

Firstly, unless you have knowledge of planning or the plethora of planning rules and regulations I would suggest.

1. Hire a specialised architect
2. Undertake research on all the planning and local conditions for planning.

Then, you can start.

Have you decided on a house design, you should know from your pre planning meeting with your area planner what type of dwelling they will be expecting you to apply with, this is specific to local councils and I would not suggest this is ignored, as if your house design does not fit local area you will need to start again.



DO I EVEN NEED PLANNING PERMISSION?

Planning in Ireland which (is already under stress time wise) has a number of buildings that do NOT need planning. These conditional buildings get blanket consent for all the projects they cover.

The guidelines enable things like certain types of extensions to houses, (up to 40m²) garden outbuildings, (40m², NOT for living in) (porches up to 2m²) (front boundary walls (up to 1.2m high) and an increasing array of changes of use.

Projects that fall under the permitted development (PD) umbrella can be undertaken without planning permission.

(Please note, no person can build ANY property (even 2m²) to LIVE in without planning, even in your own garden, (I would suggest in this case to build the cabin etc to the rear of the existing house.



STEP 2: WHAT DO I NEED NEXT?

So here is a list of the essential and no matter how much they cost do not skimp on these..

1. "Site Suitability Assessment"

PERCOLATION TESTS. (Permeability test) I have this in capitals as its the least of most peoples worries and the **NO1** cause for failed or refused planning applications, this must be the first thing you do before making any applications, plans, designs etc, as if this site does not pass these tests it means you will have to decide on a course of action as should the site not reach the EPA code of Practice Wastewater Treatment and Disposal systems serving single houses 2009 planning will not be possible.

2) Fill out your Site Characteristics Form. This is usually done by the engineer who conducted the tests, but ensure that you do your research and double check the recommendations (2nd opinion) on the site characterisation forms.

3. Site layout plans, these are plans that show the lay of the land per se , and all of the above systems on it.

4. Site location map, speaks for itself,

5. Traffic Projection forms, this will discuss the traffic coming in and out on site while construction and also when the house is finished, it is a requirement and don't leave this out, be as close to approx as possible on this as its important impact on the area.



SITE SUITABILITY

There are five key stages in the site suitability assessment:

1. A desk study to provide information on soils, geology and groundwater vulnerability
2. A field visit to look at site drainage, vegetation, levels, housing density, water uses in the area.
3. Trial hole to check the depth and type of sub-soils and depth to water table. If the trial hole indicates poor subsoil permeability- Unfortunately should it fail all of these, you are more than likely wasting your time proceeding any further with the application.
4. Percolation testing (P/T tests). These tests determine the soil's ability to filter and move the wastewater. A "T" test is normally done at 600mm below ground level, which is about the level where the pipe from the wastewater system enters the ground. A "P" test is undertaken on sites with shallow soils, at 400mm below ground level.
5. Recommendations on which wastewater treatment option is right for your site, (I would advise on you doing your own extended research on this, some engineers ive come across did not put 1)the right system, 2) failed to elaborate on the treatments percolation/raised bed options etc). A good assessor will include a full wastewater treatment design with a cross section showing where the pipework enters the soil polishing filter/raised bed etc.

This is the single most important step in your planning application

TO ENSURE YOU HAVE A VALID APPLICATION BE SURE TO HAVE YOUR APPLICATION IN A FOLDER AND EACH ITEM HAS A SEPARATE APPENDIX

Appendix EVERYTHING

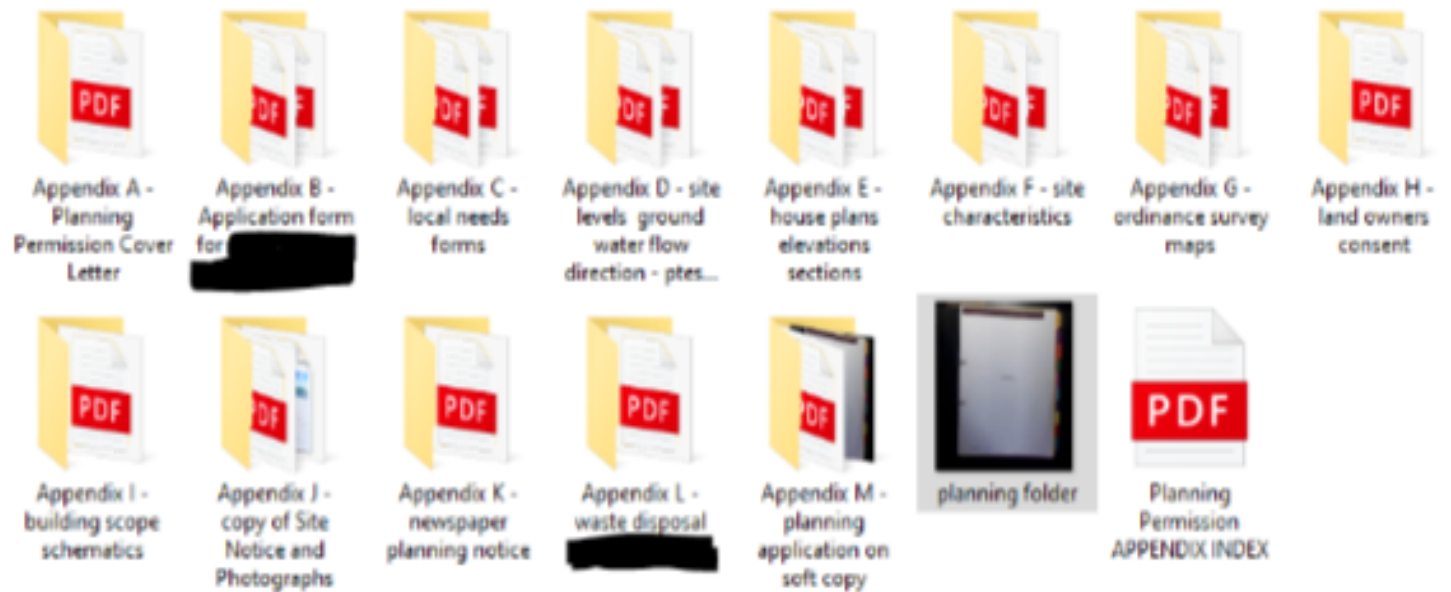
And appendix the appendix, every single form should have its own folder pocket and 6 copies of each



WHAT DOCUMENTS SHOULD YOUR PLANNING APPENDIX HAVE ?

APPENDIX A	Cover Letter & Pre Planning Meeting 6 th June [REDACTED]
APPENDIX B	Application form for [REDACTED] [REDACTED]
APPENDIX C	Local Needs + supplementary correspondence C1 & C2
APPENDIX D	Site Levels, (SL1 Site Levels). D1(SL3 Site Layout), D2 (SL4 Ground Water Flow directions) & D3 (SL2 P-test and T-Test Hole locations)
APPENDIX E	House plans, Elevations, Construction Schematics and AA Sections
APPENDIX F	Site Characteristics Form, F1, Oakstown BAF 6PE Tank) (F2, Engineers Indemnity) (F3, Engineers Qualifications)
APPENDIX G	Ordinance Survey Planning Maps
APPENDIX H	Land Owners Consent Letter
APPENDIX I	Building Materials and Construction Schematics
APPENDIX J	Copy of Site Notice plus Photograph of Site Notice
APPENDIX K	Newspaper Planning Notice
APPENDIX L	Waste Disposal Permit Licence
APPENDIX M	Soft Copy of Planning Permission for [REDACTED] [REDACTED] on USB

WHAT APPENDIX SHOULD BE INCLUDED IN YOUR APPLICATION



If you have local needs and your happy to enclose it, pop it in if not please refer to the bottom of this leaflet for your legal rights in relation to local needs.

You will need the following:

1. Ordinance Survey maps (ONLY BUY the planning packs otherwise they will be rejected, the cheaper ones are not valid so don't even go there.
2. site ground levels and waterflow directions
3. house-plans and elevations
4. site characteristics
5. copy of site notice and photos
6. the newspaper clipping from your application (everyone is entitled to know what your building (yawn, but hey)
7. waste disposal schematics

Optional (but do try to adhere to these)

Landowners consent (if you don't own the land but intending to buy or family etc)

Application Cover Letter (why, how be very specific here, contact me for information on this, its vital to get it right)

Appendix(s)

Building Schematics (this is a list of every material you intend using and where on your project)

ALSO, BE AWARE YOU MUST HAVE A HOUSING NEED, If you already own a house, or your current home is adequate you may not have a housing need (you can contact me directly in this as its a minefield.

THE ABOVE IS TAKEN FROM A SUBSEQUENT SUCCESSFUL 2019 PLANNING APPLICATION AFTER A FAILED FIRST ATTEMPT WHERE THE INCORRECT ENGINEERS REPORT (HENCE ALWAYS GET 2ND OPINION WHERE THE IS ANY ISSUES WITH THE TESTS) DID SERIOUS DAMAGE PLUS A LOCAL NEEDS ISSUE WHICH WAS TAKEN TAKE OF WITH THE INFORMATION LISTED ON THE LAST PAGE OF THIS ARTICLE. THE EXTRA WORK WITH THE APPENDIX AND SITE CHARACTERISTICS PAID OFF

APPLICATION FORMS

ALL Planning Applications must contain the following: (single dwelling)

1. The relevant page of newspaper that contains notice of your application
2. A copy of the site notice (If 2nd application it must be on yellow card)
3. 6 copies of site location map
4. 6 copies of site or layout plan
5. 6 copies of plans and other particulars required to describe the works to which the development relates (include detailed drawings of floor plans, elevations and sections — except in the case of outline permission)
6. The appropriate Planning Fee
7. Where the applicant is not the legal owner of the land or structure in question: The written consent of the owner to make the application.
8. Where the disposal of wastewater for the proposed development is other than to a public sewer: Information on the on-site treatment system proposed and evidence as to the suitability of the site for the system proposed.
9. Where the application refers to a protected structure/ proposed protected structure/ or the exterior of a structure which is located within an architectural conservation area (ACA): Photographs, plans and other particulars necessary to show how the development would affect the character of the structure.
10. Applications that refer to a material change of use or retention of such a material change of use: Plans (including a site or layout plan and drawings of floor plans, elevations and sections which comply with the requirements of article 23) and other particulars required describing the works proposed.
11. Where an application requires an Environmental Impact Statement: An Environmental Impact Statement

SUBMIT YOUR APPLICATION MAKING SURE ALL OF THE REQUIRE DOCUMENTS ARE ENCLOSED, DON'T FORGET YOUR X6 DOCUMENTS TO BE SUBMITTED,

The planning department will go through your application within 2 weeks, here they might find issues and get onto you by phone, so make sure you give them your contact number on applications, there could be an issue with the site notice, or application or even the plans, they will contact you immediately they find it and you have up to 2 weeks from application to fix any issues without the application being deemed invalid (incomplete application)

NOW WAIT.....

TAKES APPROX 8 WEEKS UNLESS THERE IS A REQUEST FOR FURTHER INFORMATION, IF YOUVE DONE AS SPECIFIED ABOVE YOU SHOULDN'T HAVE ANY EXCEPT FOR THE DREADED LOCAL NEEDS AND THAT I'LL EXPLAIN BELOW

WHATS NEXT..!

So, you have either an approved or refused reply which will be sent to your registered address by registered letter by the local planning authority. If its an approved congratulations, then well done BUT, don't get too excited just yet.

Your approved application then goes to An Bord Pleanala, this takes approx 4 weeks, and its been seen that despite a council approval An Bord Pleanala application may still be refused, if this is the case this is not the scope of this article, (you can contact me personally and ill go through this process with you, as its a legal challenge after this).

If not an approval, its a refusal, and im sorry to hear this, we've been through this ourselves and its heart-wrenching, but not all is lost.



APPEAL OR REAPPLY?

Oh, this is a very personal decision. Personally now, no I wouldn't dream of appealing unless there was ultra virus(someone makes a decision they have no power to make) decisions made (including refusal on local needs as it in itself is illegal (see next page)) or if there was an inappropriate decisions made.

Saying that, if the decision was based on any of these grounds, I wouldn't even bother appealing.

- housing need
- site characteristics
- site layout
- waste disposal
- house design
- site notice irregularities
- newspaper notice

In these cases, get a good planning adviser to help you, and REAPPLY.

Don't waste your valuable time making an Appeal application as this goes to An Bord Pleanala and can take months to even be heard, and unless your refusal is based on a very narrow margin of criteria its unlikely to win AND once An Bord Pleanala decide and if its not in your favour its unlikely any planning ever will be successful on this site. **thread carefully.**

Go back to your local planning officer and get another pre planning, and based on that you proceed with your reapplication. IF your planning was based on any of above, most can be re-assessed and a successful application often follows with amendments to the first application.

REFUSAL AND THE LOCAL NEEDS CONDITION

The EU Commission has stated that the 'locals only' and 'must speak Irish' planning rules are illegal and discriminatory. The Commission states that rules break articles **43 and 56 of the EC Treaty** which guarantee freedom of establishment and the free movement of capital. (The "local needs" criteria which are demanded by many councils and require familial or occupational ties to the area in question here, and are the conditions you can fight your application on, however, other conditions such as "Irish speaking" the Gaeltacht are deemed appropriate).

This article provides a brief overview of issues decided by the Court of Justice of the European Union in the case in **Libert and Others v. Flemish Government and Others**, referred to as **'the Flemish Decree case'**.

It also looks at the discriminatory measures used by County Councils all over Ireland under Irish planning law, it examines how these may be affected by aspects of EU law that were considered in the Flemish Decree case. The Flemish Decree case The judgment of the Court of Justice of the European Union in **Libert and Others v. Flemish Government and Others** relates to provisions of the Treaty on the Functioning of the European Union (TFEU) and to Directives that have general application in all Member States.

The decision in **'the Flemish Decree case'** is therefore relevant to all local councils in Ireland. The cases arose from measures introduced by the Flemish government dealing with acquisition and development of lands in certain areas of Flanders. A local resident and 1 Joined cases C-197/11 and C-203/11, judgment (8 May 2013) several property development companies objected to provisions in the Flemish law and brought cases before Belgium's Constitutional Court. (L&RS)

The Constitutional Court asked the Court of Justice to give preliminary rulings on questions concerning the application and effect of EU laws on two aspects of the Flemish law: • a provision that required persons seeking to buy or enter into long-term leases of property in certain communities in Flanders to have a "sufficient connection" with that community, and • a requirement that developers ensure that a particular percentage of housing developments in certain areas be devoted to the provision of social housing.

The 'Sufficient Connection' Requirement The Flemish law required a person who proposed to buy or enter into a long-term lease of a home in certain communities in Flanders to have a "sufficient connection" to the community concerned. This could be demonstrated by having been resident in the community for six years, by conducting economic activity in the community for at least half of every working week or by having a long-term link with the community based on a "professional, family, social or economic connection".

The Flemish Government maintained that this was a social support that was intended to help ensure housing for economically disadvantaged persons.

The Court of Justice considered the requirement in light of the 'four freedoms' provided for in the EU Treaties – that is, the free movement of labour, capital and goods and the freedom to provide services throughout the Member States. It also examined the provision's effect in the light of Directive 2004/38/EC, which deals with the movement and residence of EU citizens within the EU. It concluded that the requirement restricted each of these fundamental freedoms.

The Court noted its own case law demonstrating that Member States could restrict those freedoms on grounds of the **public interest**, but only if the restrictions were appropriate and went no further than necessary. (L&RS)

Therefore, unless you are going to build a bomb factory or your home or lifestyle could in somehow affect the general public then they have to legal basis to refuse based on "local needs". **Therefore, local needs based on family and occupation etc are deemed illegal and not in the interest of free movement of persons who can contribute significantly to a local job market and economy.** (that's the only time id appeal to an Bord Pleanála)

THE LAW SOCIETY OF IRELAND RECOMMENDATIONS

Recommendations

This final part of the report is the most significant, drawing together a broad analysis of legislation. While considering the proper planning and sustainable development of an area An Bord Pleanála (and planning authorities should):

- Never impose bloodline conditions;
- Never impose a local residency condition independently of a local employment condition;
- In restricting dwelling use to a class or description of people a condition restricting occupation to local residents and local employees should be used;
- Impose language conditions but avoid doing so uniformly over large areas;
- Impose agricultural worker conditions but avoid doing so uniformly over large areas;
- Use returning emigrant conditions in such a way as to require the applicant to have been resident, in the past, for a considerable length of time in the local area;
- Consider the personal circumstances of the applicant.

In the formulation of planning conditions the Board (and planning authorities) should:

- State in local residency and local employment conditions that the required period of residency is one year;
- Construct local employee conditions so as to include those actively seeking employment and those that are self-employed;
- Specify that an agreement under section 49 of the Planning and Development Act must be entered into prior to occupancy or development.

A recommendation made under the heading of “..Persons Dealing with Planning Authorities” states that:

- Solicitors should not accede to a request from a planning authority to certify that a client satisfies or would satisfy a particular discriminatory planning condition as they do not have the relevant expertise or knowledge to do so.

Conclusion

The Law Society’s Reform Committee document on planning conditions is a systematic analysis of the legislative strength of imposing planning conditions. It may be best interpreted as highlighting the potential legal courses of action an applicant may take where they consider that a discriminatory planning condition has been applied by a planning authority. Finally it demonstrates the dangers of using conditions that poorly worded or vaguely phrased.

There is currently engagement between the European Commission and the Department of Housing, Planning and Local Government – regarding the 2013 European Court of Justice (ECJ) ruling in the “Flemish decree” case – a working group was established to review and, where necessary, recommend changes to the 2005 planning guidelines on Sustainable Rural Housing, issued under section 28 of the Planning and Development Act 2000, as amended.

Therefore, should you be refused on the basis of ***familial or occupation*** reasons you are entitled to bring proceedings against the local authority, under articles **43 and 56 of the EC Treaty** which are attempting to remove your EU rights to free movement of persons and capital.(your money).

I can be contacted by email on lecturer@dublin.com should you have any further queries on your planning application or should you need help with your local needs appeals, An Bord Pleanála appeal decisions etc.

From the frying pan into the fire...!!

Locals councils wont give up their powers that easily..

There are many local councils now who are removing the locals only rules as they are aware of the legalities of these conditions and the resulting lawsuits should anyone bring these conditions to court "for want of clarity and their complete ambiguity". Many have said there are "new rules" which govern the building of one off single dwellings, but right now the new rules are **NOT** in force and when they are brought into effect they like any other legal rule. they cannot be retrospective.

the Department of housing has stated that it is very aware of how the "locals only" rule is in breach of EU law, in their statement which read:

This 'locals only' approach was subsequent identified by the European Commission to be in conflict with articles 43 and 56 of the EU Treaty regarding the freedom of establishment and the movement of capital. Infringement proceedings were initiated by the EU and the Department has been engaging with the Commission to agree proposals that meet public policy objectives such as reducing unsustainable development but that are also compatible with EU law." "The National Planning Framework, was published in 2018 and provides for the revitalisation of rural areas including rural towns and villages, recognising the importance of strong rural areas. Similar to the previous National Spatial Strategy, the NPF seeks to protect rural areas from excessive urban based demand for housing in the open countryside by identifying that a social or economic need be demonstrated by applicants for housing provision in certain rural areas. Importantly, the NPF provides an updated framework within which to clarify planning policy with regard to rural areas, including defining appropriate social need criteria. Particular language, i.e. Gaeltacht communities, that are in need of support and protection will be considered under the social need framework indicated."

"Further to this, the Department is undertaking a review of the 2005 guidelines to update them in line with the NPF policy framework and policy objectives. This review will examine and further detail future social need criteria that may be included in revised Rural Housing Guidelines – that will be prepared and subsequently issued to inform local authority development plan provisions. "<https://selfbuild.ie/news/revision-to-locals-only-rule-a-priority-minister/>

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Table 2.1: Rural Housing Need and Policy Area Types *

Categories of Rural Housing Need	Greenbelt	Rural Areas under SUI and Town GB	Tourism and Rural Diversification Area	Stronger Rural Area	Transitional Rural Area	Structurally Weaker Rural Area
Farmers, including sons and daughters – build first home for PO	✓	✓	✓	✓	✓	✓
Persons taking over the ownership and running of a Farm on a full time basis – build first home for PO	✓	✓	✓	✓	✓	✓
Persons working full time in farming, forestry, inland waterway – period > 7 years – build first home for PO	✓	✓				
Persons working full time in farming, forestry, inland waterway – period > 3 years – build first home for PO			✓	✓	✓	✓
Landowners including sons and - build a first home for PO – landholding associated with principal family residence for min 7 years – consideration given to nearby landholding	✓					
Persons who have spent a substantial period of their lives – > 7 years – living in the local rural area in which they propose to build first home for PO		✓	✓	✓	✓	✓
Persons whose predominant occupation is farming/natural resource related for > 3 years – in the local rural area where they work - propose to build first home for PO			✓	✓	✓	✓
Persons whose permanent employment is essential to the delivery of social and community services – linked to rural area for > 3 consecutive years – build first home for PO			✓	✓	✓	✓
Returning Emigrants – lived > 7 years – in local rural area – wish to reside near other immediate family members, to care for elderly, work locally or retire.		✓	✓	✓	✓	✓

No
Restrictions**

* Full objectives included in Chapter 4, Volume 1 of CDP.

** It is an objective to accommodate permanent residential development as it arises subject to good planning practice.

Appendix A – Rural Housing Objectives- Chapter 4: CDP 2014

RCI 1-1: Rural Communities

Strengthen rural communities and counteract declining trends within the settlement policy framework provided for by the Regional Planning Guidelines and Core Strategy, while ensuring that key assets in rural areas are protected to support quality of life and rural economic vitality.

CDP RCI 2-1: Urban Generated Housing

Discourage urban-generated housing in rural areas, which should normally take place in the larger urban centres or the towns, villages and other settlements identified in the Settlement Network.

CDP RCI 2-2: Rural Generated Housing

Sustain and renew established rural communities, by facilitating those with a rural generated housing need to live within their rural community.

CDP RCI 4-7 Full time home based business in a rural area

Facilitate the housing needs of persons who can satisfy the Planning Authority of their long term commitment to operate a "bona fide" full time business from their proposed home in a rural area.

CDP 2014 - RCI 4-8 Exceptional Health Circumstances

Facilitate the housing needs of persons who are considered to have exceptional health circumstances.

CDP 2014 – RCI 6-4: Occupancy Conditions

In order to take a positive approach to facilitating the housing needs of the rural community; where permission has been granted for a rural housing proposal, an occupancy condition shall normally be imposed under Section 47 of the Planning and Development Act 2000.

CDP 2014 – RCI 8-1 Refurbishment of a Derelict Dwelling

Encourage proposals for the sensitive renovation and conservation of existing disused or derelict dwellings subject to normal proper planning and sustainable development considerations as well as the requirements of other objectives in this plan and provided that it satisfies the following criteria:

- The original walls must be substantially intact.
- The structure must have previously been in use as a dwelling.
- The dwelling must be physically capable of undergoing renovation/conversion without demolition.
- Where the building is derelict, a structural survey by a qualified engineer must be submitted as part of any planning application to include measures to protect the building from collapse prior to, and during, the construction works.
- The design, scale and materials used in any renovation/and or extension should be sympathetic to the character and setting of the existing dwelling.

CONTINUED..!

- Mature landscape features are retained and enhanced, as appropriate.
- No damage shall be caused to sites used by strictly protected wildlife.

In the interests of clarity, the provisions of Objective RCI 2-2 (i.e. the 'Rural Generated Housing Need' requirement) and Objective RCI 6-4 (i.e. Occupancy Clause) will not apply except where the total or substantial demolition of the existing structure and a new dwelling is proposed.

The Department of Housing Guidelines identify four rural area types in respect of which planning authorities may formulate policies for 'urban generated' and 'rural generated' rural housing.

Section 3.2.3 of the Guidelines suggests that in areas "under major urban influence", planning authorities may define "rural generated" housing need for "Persons who are an intrinsic part of the rural community" and for "Persons working full-time or part-time in rural areas".

So this is where everyone needs to get their research hats on, and those that are considering planning application get yer butts in gear, the new framework guidelines are close to publication and once the new rules come in we will have to start all over again with research and our right to love where we choose to not forced int urban jungles.

Issues NOT dealt with in this article

NOT Covered in this article

- Where the application is for residential development that is subject to Part V of the 2000 Act: Specification of the manner in which it is proposed to comply with section 96 of Part V or A certificate of exemption from the requirements of Part V or A copy of the application submitted for a certificate of exemption.
- Where the application is for residential development that is not subject to Part V of the 2000 Act by virtue of section 96(13) of the Act: Information setting out the basis on which section 96(13) is considered to apply to the development.
- Where the application refers to a protected structure/ proposed protected structure/ or the exterior of a structure which is located within an architectural conservation area (ACA): Photographs, plans and other particulars necessary to show how the development would affect the character of the structure.
- Applications that refer to a material change of use or retention of such a material change of use: Plans (including a site or layout plan and drawings of floor plans, elevations and sections which comply with the requirements of article 23) and other particulars required describing the works proposed.
- Where an application requires an Environmental Impact Statement: An Environmental Impact Statement
- Applications that are exempt from planning fees: Proof of eligibility for exemption

- ▣ **Natural Heritage Areas (NHA)**
- ▣ **Special Areas of Conservation (SAC)**
- ▣ **Special Protection Areas (SPA)**
- ▣ **Wildfowl Sanctuaries**
- ▣ **OSPAR Sites**

Applying for planning permission (and actually getting it) is one of the most frustrating, nerve-wrecking elements of creating a new home for you and your family. It is right up there on top of the most stressful tasks a person can undertake.

Ensuring that your project matches up to your expectations, whilst also fitting in with local and national policy, takes a lot of time and experience. The formal application itself is pretty straightforward, however, it's vital that you tackle the task with care and attention.

Mistakes and omissions at the planning stage can cause frustrating delays or even destroy your chances of success.

Another frustrating aspect of planning in Ireland is the dreaded "local needs" conditions, which I will go into great detail about, i.e. the legalities of such conditions and how you can assert your knowledge of these (illegal) rules at your pre-planning stage, WITHOUT jeopardising your application.

Whether you'll be making your own application, or have a planning consultant or architect on board to do it for you, it's worth knowing what's involved and how you can get the best from it.

I have a booklet which explains all of the above and more information on the local needs conditions etc.

**disclaimer, nothing in the enclosed article is any kind of legal advice, it is opinion based on experience and should not be taken as any form of advice, just opinion. Please seek independent planning and legal advice on any aspect of planning process in Ireland before proceeding as you can not use this article as means for retribution should you fail. T. Clyne*

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