

AILG

Association of Irish Local Government
Aontas Rialtas Áitiúil na hÉireann

AILG Elected Members' Information Leaflets Material Contravention of the Development Plan

Leaflet **3**





Purpose of this leaflet

The purpose of this leaflet is to give guidance on the function which elected members perform when a planning application is made which would require the county or city development plan to be breached in a specific instance.

What is a material contravention?

A material contravention of the development plan arises where a planning application is made to a planning authority which in a material way would breach the objectives of the development plan. The decision to grant or refuse the permission lies with the elected members and is therefore a reserved function.

Context to material contraventions

Given the detailed preparation and consideration that goes into preparing a development plan including the extensive public consultation, it follows that a material contravention should be a relatively rare occurrence.

That said, it is also reasonable to point out that as the development plan has a duration of six years, circumstances can change over such a period so that it becomes necessary that some development not considered at the time the plan was made might be considered in the best interests of the area.

The process of change does not halt when the development plan is made initially and it is necessary to have a procedure – however qualified – to allow for such changes on an exceptional basis.

Process in relation to a material contravention

In the event of an application being made which would materially contravene the development plan all of the normal requirements in the planning process are necessary. In addition, the Chief Executive's report is supplemented by additional procedures, namely:

- The planning authority must publish a notice in at least one daily newspaper circulating in the area and the notice should specifically state which objective of the development plan is being contravened;
- Copies of the notice should be given to the applicant and to any person who has submitted a submission or observation in writing in relation to the development;
- Any submission or observation received within four weeks after the publication of the notice must be considered by the elected members;
- It is necessary that at least three-quarters (or the next lowest whole number) of the elected members of the planning authority must vote in favour of the resolution to grant permission for the permission to be granted.

Appeals against a Council's material contravention decision

As with a standard planning application, it is possible for an appeal to be made to An Bord Pleanála against the decision of the local authority. The Board can adjudicate on such an appeal and, if it considers appropriate, give a decision contrary to the decision of the planning authority.

Example of an appeal against a material contravention by the planning authority

A local authority received an application from a sports club to build apartments on land which it owned. The development would breach the zoning of the land as open space. The elected members of the planning authority voted 26 votes to one against the development.

The applicant took an appeal to An Bord Pleanála which gave permission for the development citing the National Planning Framework and the Regional Spatial and Economic Strategy which supported residential development within the context of a built-up area.

Elected members, An Bord Pleanála, and material contraventions arising from Strategic Developments.

The Board may grant permission which materially contravenes a development plan for projects which are generally so large in scale, and which are of strategic importance, on a national or regional basis, that they qualify for a special procedure in relation to applications.

“Such applications are not decided by the planning authority but can go directly to the board albeit with extensive requirements for consultation with the planning authority, specifically, the elected members.”



Strategic Infrastructure Developments (SIDs)

In the case of very large non-residential developments – generally relating to transport and energy projects - An Bord Pleanála may grant a permission which would contravene the city or county development plan but only when the development is;

- a) of strategic or national importance AND one or more of the following criteria are present:
- b) there are conflicting or ambiguous objectives in the development plan or;
- c) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan or;
- d) the development is consistent with Regional Planning Guidelines, or Ministerial directives and guidelines, or Government policy.

It is the latter condition which is the one likely to be relevant in the context of An Bord Pleanála granting a material contravention. For instance, there may be a local objective as expressed through a County Development Plan such as the preservation of views which would conflict with a national policy such as the promotion of renewable energy involving large wind-generation facilities.

The national objective could be regarded as sufficient reason by the Board to contravene the local objective of preserving views.

Examples of Strategic Infrastructure Development

Examples of Strategic Infrastructure Development include:

- a wind farm with more than 25 turbines;
- a coastal erosion defence of more than a kilometre;
- a health care facility with more than 100 beds;
- developments by State bodies including local authorities which meet the threshold for an Environmental Impact Assessment;
- motorways, railways, pipelines and high voltage transmission lines
- compulsory purchase of land associated with such developments.

Examples of material contraventions

Example A – health centre building on land zoned amenity

The playing fields of a sports club adjacent to a town were zoned as “Open Space” in the development plan.

The Health Services Executive and the Sports Club came to an arrangement whereby the club would sell a portion of its land for the development of a HSE health centre. The centre would be two-stories in profile with doctor’s suites on the ground floor and a day hospital on the first floor. There would be 94 parking spaces for the HSE facility.

The Sports Club planned to upgrade its facilities by way of a new clubhouse together with new flood lighting and 47 parking spaces.

The local authority noted that the playing fields were zoned as being “Open Space” and therefore building would not normally be permitted on the fields in question.

The consideration for the members was whether the facility provided by having a modern HSE health centre in the town – and the provision of better facilities for the sports club – justified setting aside the prohibition on building on open spaces stated in the original development plan.

Example B – school in location zoned industrial

A local authority received a planning application from the Dept. of Education and Skills for permission to build a two-storey eight classroom primary school with a full suite of play areas and ancillary buildings.

The proposed site was in a business park zoned for “General Enterprise and Employment.” Having assessed the application the authority judged that it would involve a contravention of the development plan.

It published a notice giving details of the proposed school building and pointing out how this would breach the zoning of the site which was intended to facilitate opportunities for industrial and warehousing employment.

The consideration for the council members was principally whether the amenity of having a new school building justified breaching the zoning which related to industrial and employment use.



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Disclaimer: Issued July 2021. While every care has been taken in the preparation of this information leaflet, the Association of Irish Local Government assumes no responsibility for and gives no guarantees concerning the accuracy, completeness or up to date nature of the information provided and accepts no liability arising from any errors or omissions. This commentary is intended to be a helpful summary of the process for introductory purposes. The legal texts should be consulted – with appropriate advice- before forming a definitive opinion on any question.



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