

State of the Nation:

A Review of Ireland's Planning System

2000 – 2011



An Taisce – The National Trust for Ireland
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An Taisce, the National Trust for Ireland, is a membership-based charity committed to enhancing our quality of life, heritage and environment

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President's Foreword

A system governing land use and planning is intended to play a major role in ensuring development is guided in a manner that is sustainable in environmental, social and economic terms.

This report is an independent review of planning policy implementation in Ireland from An Taisce's perspective and daily experience of working in the system. It is now clear from the recent publication of the final report of the Mahon Tribunal that, together with a failure of regulation in the financial sector during the 'Celtic Tiger' property bubble, there was a catastrophic and systemic failure of the planning system, which was characterised by endemic corruption, lack of transparency and the marginalisation of voices that sought to draw attention to inherent weaknesses.

Though few listened, An Taisce raised repeated concerns during the boom including in respect of over-zoning by councils, development on floodplains, the failure to properly protect water resources and the dominant development pattern which was taking hold – urban sprawl excessively reliant on private cars. As this development pattern was handed dominance, Ireland has been forced into high fossil fuel use, raising costs for families.

An Taisce was also consistent in highlighting concerns regarding Ireland's lax or non-implementation of EU Environmental Directives to protect our fragile environment – laws which are of fundamental importance to our society and economy - and to guard against the possibility of multi-million euro fines from the European courts.

State of the National: Ireland's Planning System 2000 - 2011 is intended as the first in a series of reports which will monitor Ireland's success in improving the implementation of planning and environmental policy.

While the planning system had a major role in creating the economic crisis, it can – if reformed – point us to prosperity. However, too often in Ireland, planning policy and legislation is not carried through in practice and it is here reform must first focus.

In this report An Taisce draws attention to relative performance in local planning governance. The report also outlines the actions which we believe are vital to improve planning policy implementation. **A greater emphasis on forward looking evidence-based planning and consolidation at regional level emerge as key requirements.**

An Taisce has often been criticised regarding our role in the planning system over the past decade. Yet the findings of the Mahon Tribunal substantiate the position that An Taisce has taken. **The call in the Mahon Report for an independent planning regulator to veto reckless re-zoning and investigate allegations of impropriety must now be implemented without delay.** And, as we detail here, no additional cost burden need fall on the State – the implementation of further planning reforms, including those set out in Mahon, will save a great deal of money over the long term.

In carrying out our work in the planning system An Taisce's purpose is not blinkered opposition to development, but opposition to blinkered development. The lesson which must be learnt from the 'Celtic Tiger' era is that the persistent marginalisation of questioning voices weakens our democracy, our economy and our society. Without greater perspective and even-handedness to ensure we tread more lightly on this earth, we become more and more vulnerable to systems failures – any of which could dwarf the current economic crisis, such as an international energy shortage, ecological collapse or runaway climate change.

Prof. John Sweeney
President,
An Taisce

16 April 2012



Executive Summary

State of the Nation: Ireland's Planning System 2000 - 2011 is part of An Taisce's ongoing work as an independent watchdog for the planning system and as a defender of our natural and built heritage. The report seeks to document An Taisce's experience of working within the Irish planning system over the past decade or so and, for the first time, rate the relative performance of councils using a number of publicly available data sources.

An Taisce, the National Trust for Ireland, is the only environmental charity with a prescribed role in the Irish planning system. Through its work on leading programmes, including Blue Flag, Green Schools, National Spring Clean and Irish Business Against Litter, An Taisce works in almost every community in Ireland. In addition to this work, and caring for heritage properties, An Taisce reviews planning applications and frequently appeals inappropriate decisions by councils to the national appeals board, An Bord Pleanála. Some 80% of all appeals made by An Taisce are upheld by An Bord Pleanála.

Throughout the 'Celtic Tiger' era, An Taisce was very often a lone voice railing against a short-sighted development culture which gripped most of the country, one in which costs were all too often underestimated and benefits overstated. While often criticised by vested interests for our stance on planning matters, **An Taisce estimates that appeals taken against inappropriate speculative development has reduced the value of impaired loans by at least €505m. These are loans which the National Assets Management Agency (NAMA) would have had to purchase, or if falling outside the scope of NAMA, would remain with financial institutions as non-performing burdens – liabilities which Irish taxpayers are currently underwriting.**

Bad or absent planning is not victimless. There is no doubt a systemic failure of planning in Ireland helped inflate the property bubble, leaving in its wake a great deal of poor quality development, reckless overzoning, chaotic sprawl, a legacy of 'ghost' development and widespread environmental degradation. **Of particular concern are the 'locked in' long-term costs of high fossil fuel dependency and greenhouse gas emissions.** Despite the lack of good planning throughout this period **not many planning professionals spoke out and this failure to warn was shared by the representative bodies of Irish professional planners with few exceptions.**

The Mahon Report exposed the systemic corruption in Irish planning. This corruption takes many forms including low level patronage, cronyism and clientelism. **While the findings are no surprise, they are stark and troubling, and there is now a unified body of opinion that the planning laws must be strengthened to ensure what was recorded by Mahon cannot occur again.**



The report by Mr. Justice Mahon exposed the endemic and systemic corruption and cronyism at the heart of the Irish planning system and which reached the highest levels of government.

As recommended by the Mahon Tribunal, there must be an **independent planning regulator free from political pressure**. Recent changes to the planning laws in 2010 and the establishment of the National Transport Authority (NTA) are welcome advancements, but councils continue to routinely ignore national and regional planning policy and priorities at the local level. **Instead of undertaking independent planning investigations of significant allegations of planning malpractice in seven councils (as previously planned by Government), the current Minister for the Environment, Phil Hogan TD, only proposes an ‘internal review’.**

Following the findings of the Mahon Tribunal, there is an onus on Minister Hogan to immediately recommence independent inquiries before a new planning regulator with strong legal powers is in place to undertake this function. **Any ‘internal review’ is scarcely credible given that it perpetuates the hopelessly discredited model of self-regulation in which the relevant supervising Government department – here the Department of the Environment, which also pays money to, and carries responsibility for local councils - holds itself out as an impartial bystander in investigating prime facie evidence of malpractice. This is patent nonsense: the Department of the Environment has a vested interest in concluding that ‘all is fine’ in councils.** It is to get away from the discredited model of self-regulation that the Mahon Report recommends an independent regulator.

The data analysis presented in this report supports the overall assessment that there has been systemic failure in Irish planning. **Ireland’s 34 city and county councils were assessed: 17 received a ‘C’ or ‘D’ grade, 8 received an ‘E’ grade, five received an F grade (Mayo, Galway County, Cavan, Carlow, and Waterford County), while four councils received an ‘F - ’ grade: Donegal, Roscommon, Leitrim, and Kerry.**

Donegal came last. By way of illustration of its poor performance, Donegal had approximately 2,250



While corrupt former politicians such as Pádraig Flynn (pictured) have brought the planning system into disrepute, unseen low-level local cronyism and patronage has had an even greater adverse effect on planning policy implementation.

hectares of residential zoned land in 2010, sufficient for an additional population of 180,000 people. Despite this, approximately 50% of all residential planning permissions in Donegal over the past decade were granted on unzoned land. These trends are symptomatic of a wider systems failure in which counties Donegal, Roscommon Leitrim and Kerry perform worst.

No council achieved an ‘A’ or ‘B’ grade. Just four councils achieved a ‘C’ grade – South Dublin, Dun Laoghaire-Rathdown, Galway City and Fingal. The indicators are urban-rural neutral. Generally, however, councils with higher populations and, as a consequence, a greater number and range of professional and technical staff, scored higher, an exception being county Limerick which ranked within the top 10 councils, albeit with a ‘D’ grade.



Councils which scored poorly in this study generally had a higher level of unfinished 'Ghost Estates', lower residential property prices, higher rates of out-migration and significant instances of ground and surface water pollution.

The analysis shows that there is a very strong correlation between councils that have scored poorly and a range of negative socio-economic and environmental outcomes. For example, councils which scored poorly generally had the highest rate of residential vacancy, the highest rate of population decline and out-migration, the highest levels of unfinished 'Ghost Estates', lower residential property prices and significant instances of ground and surface water pollution.

These legacy costs of bad planning will affect people living in these areas, and Irish society as a whole, for generations.

An Taisce strongly supports the recommendations of the Mahon Report to place the National Spatial Strategy (NSS) on a statutory footing, with the same recommendation also applying to future National Development Plans (NDPs). **The original NSS from 2002 has been allowed to completely fail and must be reviewed with clear forward-looking evidence-**

based policy choices. However, of even greater importance, is the reform of Ireland's obsolete local governance structures. Currently we have 34 city and county councils together with a further 54 town or borough councils undertaking some manner of a planning function. In the absence of local taxation, these 88 councils compete fiercely for new development, with their eyes firmly on the capital contribution levies and commercial rates that result from development, leading to extremely bad planning outcomes.

Smaller councils generally cannot justify the necessary staff to carry out complex functions, including planners, architects, conservation specialists, ecology experts, hydrology engineers, and senior personnel with a good knowledge of European and Irish law. At the same time, certain councils simply have too many councillors per capita of population, resulting in patronage, clientelism and cronyism. It is imperative that we

move to a regional governance structure for planning and development with each region having a minimum population of 200,000.

Otherwise the existing councils, clearly ineffective in achieving national policies and too numerous to resource, will be stripped of ever more functions. **A well-intended but weak-minded defence of the current dysfunctional system has led inexorably to ever-greater power concentration in Dublin, undermining progressive localism and eroding our democracy.**

In line with the findings of the Mahon Report, the windfall re-zoning tax, first set out in the legislation providing for NAMA, must be further elaborated in strengthening the planning legislation. It is also vital to update planning legislation in line with the introduction of a Site Value Tax on all zoned land, as proposed under the 2011 Programme for Government. As well as replacing the current €100 household charge, Site Value Tax will provide a real incentive for the development of land that becomes zoned, and it will deter over-zoning, inappropriate zoning and the hoarding of development sites.

To undertake the groundwork for these reforms, there must be properly resourced spatial planning and governance units in the Department of Environment, Community and Local Government. For example, the Spatial Planning Unit in the Department has recently been reduced to just 4 people. Coherent joined-up planning and development minimises costs and enables society to flourish. But such prosperity is impossible without proper resourcing.

Finally, enforcement continues to be the weakest link in Ireland’s weak planning system.

Enforcement of any regulatory code is crucial to the integrity of the system. It is essential that the new planning regulator proposed in the Mahon Report is given strong statutory powers to oversee enforcement.

Table 4: Ranking Performance of Councils (Maximum Score: 272)				
Council	Score	%	Rank	Grade
South Dublin	200	74%	1	C
Dun Laoghaire RD	199	73%	2	C
Galway City	190	70%	3	C
Fingal	185	68%	4	C
Meath	167	61%	5	D
Wicklow	167	61%	6	D
Kildare	163	60%	7	D
Cork City	157	58%	8	D
Dublin City	153	56%	9	D
Limerick County	152	56%	10	D
Offaly	150	55%	11	D
Limerick City	144	53%	12	D
South Tipperary	139	51%	13	D
Westmeath	134	49%	14	D
Laois	131	48%	15	D
Louth	123	45%	16	D
North Tipperary	122	45%	17	D
Waterford City	120	44%	18	E
Cork County	118	43%	19	E
Kilkenny	115	42%	20	E
Longford	106	39%	21	E
Sligo	102	38%	22	E
Clare	100	37%	23	E
Monaghan	94	35%	24	E
Wexford	94	35%	24	E
Waterford County	88	32%	26	F
Carlow	85	31%	27	F
Cavan	83	31%	28	F
Galway County	83	31%	28	F
Mayo	82	30%	30	F
Kerry	70	26%	31	F-
Leitrim	60	22%	32	F-
Roscommon	44	16%	33	F-
Donegal	32	12%	34	F-

Overview

Ireland is a society still reeling after the sudden bursting of one of the most over-inflated property bubbles in history.

The failure of economic policy and fiscal regulation over this period is well covered in three major reports – Regling & Watson, Honohan and Nyberg.

Yet, until the recent publication of the Mahon Tribunal report, comparatively little attention focused on the role of the Irish planning system in creating the property bubble. However, the Tribunal found as a matter of fact that systemic corruption corroded Irish planning and Ireland's political life, reaching the highest levels of Government.

And, as noted in a report by the National University of Ireland, Maynooth,¹ alongside dysfunctional regulation in Irish banking and finance, **there was a catastrophic failure of the planning system** which drowned out and side-lined questioning voices.

Throughout the 'Celtic Tiger' bubble, An Taisce, together with other environmental organisations, were marginalised for highlighting the far-reaching economic, social and environmental consequences of promoting development-at-all-costs, which came with an unthinking culture and misplaced ethos to dominate Government, developers and councils.

The consensus groupthink of the era was that environmental groups were standing 'in the way of development'. For drawing attention to the true long-term cost of unregulated development patterns, these organisations were castigated. **The reality is that Ireland is now reaping the devastating consequences of those that promoted development-at-all-costs, and their seismic miscalculations.**

¹ Kitchin, R; Gleeson, J; Keaveney, K & O'Callaghan, C (2010) Haunted Landscape: Housing and Ghost Estates in Post Celtic Tiger Ireland.

As those responsible for inflating the property bubble drowned out questioning voices in pursuit of ever-greater personal gain, deep-seated costs which were avoidable at the outset became entrenched – costs that sadly remain embedded. Flood plain development, the absence of building control standards, car dependency, the mismatch between classroom space and the demand for school places, the public transport deficit, unregulated septic tanks and non-performing municipal wastewater treatment plants are just part of the financial burden that has been 'locked – in' by reckless development and dysfunctional planning.



Development was allowed almost everywhere with little regard to environmental conditions, such as known flood plains, scenic attractiveness, groundwater protection, nature conservation, or access to public services such as public transport, education or healthcare, resulting in massive 'locked in' costs to society.

The profligacy of the 'Celtic Tiger' era has also handed on an insidious legacy of very high per capita greenhouse gas emissions, significant water quality deterioration, a crisis in biodiversity and nature conservation, consistent breaches of EU law and a chronic over-dependence on imported fossil fuels, particularly oil, storing up major costs for the future. **This is a prominent part of the inheritance which will be passed on to the next generation by those who wielded power at both local and national level in the decade from 2000.**

The planning system had a major role in creating the economic crisis. But the planning system can also have a major role in shaping Ireland's long-term prosperity. Good planning is a public good with its benefits distributed evenly across society which in some cases will only be felt by future

generations. In this context the major reforms of strategic planning introduced by the Government in 2010 are long overdue and welcome. Despite these reforms, however, national and regional planning priorities continue to be ignored at local level.

As recommended by the Mahon Report, the introduction of an independent planning regulator is fundamental to combating corruption and cronyism in the planning system. Bad and corrupt planning has victims and can disproportionately affect specific groups, our young and coming generations for example, burdened with financial and resource deficits, and the ageing, where they are marooned in isolated areas with few services, and for whom dedicated transport will become ever more expensive as the price of energy rises.

But, even today, as environmental organisations point to the case to conserve energy, and preserve our climate, these goals are regularly dismissed by many opinion-formers and politicians who demand ‘business as usual’ in the same unquestioning approach that helped inflate the property bubble. Vigilance and tolerance of dissenting voices is required to ensure that we do not once again slip back into the myopic ‘*all development is good development*’ mindset, and approve planning applications without regard to long-term and embedded costs.

Far-sighted planning is now more essential than ever to address the challenges facing Ireland. An Taisce plans to continue to work as an advocate for good planning and as an active voice working for the common good and our environment – the bedrock to capture prosperity and a better quality of life.

The Role of An Taisce

An Taisce is the only environmental charity with a formal role in the planning process in Ireland. Since the first comprehensive planning legislation in 1963, **An Taisce has used its unique role as a prescribed body to act as a national independent watchdog for the Irish planning system and to champion proper planning, environmental protection and responsible development, in addition to its roles in education and heritage conservation.**

An Taisce is a voluntary membership-based organisation. By pursuing its public interest mandate, An Taisce works to protect Irish taxpayers from the long-term economic, social and environmental costs of bad planning – and to defend the public interest by promoting good planning. While its role in the planning system is conferred under legislation, An Taisce operates on a largely voluntarily basis and with very limited funding.

Certain planning applications which may have the potential to adversely impact on the environment and natural or built heritage are referred to An Taisce by councils. Only a small proportion of planning applications made nationally each year are seen by An Taisce. Table 1 below summarises An Taisce’s work in the period 2000 – 2009.

In addition to the planning applications referred directly by councils, An Taisce also endeavours to monitor planning applications often assisting local residents and community groups in this work.

Table 1: An Taisce & The Planning System - Key Statistics 2000 – 2009

(all figures rounded and relate to 2000 - 2009)

Total number of planning applications submitted nationally	450,000
Number of planning applications referred to An Taisce for comment	30,000 (6.6%)
Number of submissions made by An Taisce to Councils	15,000 (3.3%)
Number of appeals made by An Taisce to An Bord Pleanála	2,000
Proportion of total planning applications appealed by An Taisce	0.4%
Number of appeals made by An Taisce upheld by An Bord Pleanála	1,600
Proportion of appeals made An Taisce upheld by An Bord Pleanála	80%

Between 2000 and 2009 an average of 45,000 planning applications were lodged each year in Ireland (with a peak of 92,000 in 2006) giving a total of 450,000. Approximately 30,000 applications were referred to An Taisce for comment over the decade. Of the total number of planning applications lodged in the ten years from 2000, An Taisce made submissions at local level on around 3%.

In many cases the planning applications referred to An Taisce involve large and complex development proposals (including, for example, large road schemes, quarries, wind farms etc) with the potential to impact on sensitive environments including amenity areas, national monuments, protected structures, heritage and nature conservation areas. Impact on wildlife is a common characteristic of new development, and other impacts, including flooding, architectural and archaeological heritage and landscape must also be taken into account, all in the context of Irish and European law.

Again, taking the decade from 2000, An Taisce brought appeals to national level (i.e. to An Bord Pleanála) in regard to less than half of one per cent (0.4%) of cases. **And, of the approximately 2,000 appeals lodged by An Taisce over the ten-year period, 80% were upheld by An Bord Pleanála,**

with the planning appeals board overturning or significantly amending the original decision of the council to grant planning permission.

While the total number of appeals made by An Taisce is small they are very often of important precedential value in reversing or altering inappropriate decisions by councils, and in highlighting significant points of planning and environmental law.

In addition to our role in the development management system, An Taisce also has a prescribed role in forward planning. Draft development plans and proposed variations to development plans prepared by councils are required to be referred to An Taisce for comment. An Taisce planning staff and volunteers endeavour to make as many submissions as possible on draft development plans and proposed variations.

However, between 2002 and 2009 the overwhelming majority of new development zoning was provided for in Local Area Plans (LAPs) which are not required under law to be referred to An Taisce for comment. This remains the case.

An Taisce's key objectives in undertaking its statutory role in the planning system include:

- Ensuring national, regional and local planning policy and guidelines are implemented by councils;
- Reducing Ireland's greenhouse gas emissions in accordance with EU law;
- Protecting town centres and advising against unserviced development and sprawl;
- Promoting development served by public transport in accordance with national Smarter Travel policy;
- Reducing unsustainable fossil fuel use in heating buildings (e.g. coal and peat) and in transport (e.g. private car dependency);
- Ensuring the implementation of EU environmental law and protecting habitats and biodiversity, particularly Natura 2000 sites;
- Protecting water quality and wetlands, and preventing inappropriate development on floodplains;

Table 2: Unsustainable Developments Successfully Appealed by An Taisce, the loans for which would now likely be impaired and purchased by NAMA or remained with financial institutions	Estimated Loan Value in terms of the range of borrowings (€ millions)
Business parks proposed in remote and unserved locations (e.g. in County Meath, M3 - Rennicks site, Royal Gateway Site, and 'SMART' park at Carton House, in Wicklow between Newtown-mount-Kennedy and Kilcoole, and in South Tipperary, west of Carrick-on-Suir)	€140 - €190m
Hotel and holiday home development proposed in unserved locations, or otherwise unsustainable (e.g. three hotels proposed along the M7 at Kill, Palmerston Demesne and Monasterevin, in County Wexford at Curraclloe, in County Louth at Omeath, at Skibbereen in County Cork, Lough Key in County Roscommon, at Killaloe in County Clare, and Whitfield in County Waterford)	€85 - €142m
Housing development in ecologically and/or visually sensitive areas (e.g. beside the rivers and lakes of the Shannon catchment, in Connemara in County Galway, Lough Oughter in County Cavan, and in West Cork and West Kerry)	€45 – €55m
Remotely-located nursing homes refused permission for being too distant from services (e.g. in counties Cork, Donegal, Galway, Kildare, Offaly, Mayo and Waterford)	€35 - €45m
Over-scaled urban development principally in Dublin (e.g. Chancery Street motor taxation office, the wide range of development proposed at Ballsbridge, at the Carlton site on O'Connell St, at Arnotts behind the GPO, the former ESB offices on Fleet St and skyscraper proposals for Bridgefoot St.)	€200 - €320m
*For a great many Dublin proposals, there were other planning appellants, the outlay by developers to purchase land was chronically high, and the decision by An Bord Pleanála was often a reduction in height, scale, bulk and/or mass: hence, the estimates here are reduced in recognition of these factors.	
Likely impaired loans - total reduction (estimated range):	€505 - €752m

- Conserving the quality of the Irish landscape, archaeological monuments and built heritage, particularly protected structures;
- Promoting efficient taxpayer investment in public infrastructure and services, and
- Promoting local self-reliance, public health and quality of life.

Much of the work carried out by An Taisce has not been easy or fashionable. Undertaken almost exclusively on voluntary basis, An Taisce's independent role in the planning system is largely unseen, and where it is highlighted, often criticised by elected members of councils under pressure from vested interests – but vested interests that tend to put individual concerns ahead of our collective welfare as citizens and taxpayers.

There are many applications An Taisce supports. However, as a largely voluntary organisation with very limited resources, An Taisce must - out of necessity - focus on limited categories of proposals and, where appropriate, highlight poor practice by councils. **The tremendously high success rate of An Taisce's appeals to An Bord Pleanála (80%), and recent history as evidenced by the Mahon Tribunal, indicates that An Taisce's position on planning matters has been entirely justified and its role in the planning system has yielded significant financial savings.**

While it is not easy to measure, Table 2 offers a broad outline of part of An Taisce's contribution. The estimate is framed in terms of the value of loans that would have been taken out but for An Taisce pointing to the unsustainability of the

proposed development within the planning process. The assessment period is 2000 - 2009 and it is assumed that the speculative property borrowing referenced would have gone on to become impaired. Representative bodies in the respective sectors, the Irish Hotels Federation for example, have long attested to high levels of oversupply and loan impairment, and the same is true in the other sectors covered. In short, working to prevent unsustainable development has helped save a significant amount of good money from going bad.

Table 2 illustrates just a small fraction of the work undertaken by An Taisce but some of the most high profile and unsustainable development proposals successfully challenged. Behind these figures rests enormous dedication, sustained over a decade and more, mostly by volunteers. With greater support at this time of change, An Taisce can and will do more to point the way for Ireland to transition to a more prosperous future.

Measuring the Performance of Councils

The objective of this part of the report is to offer an independent analysis of implementation of planning policies by Ireland's 34 city and county councils.² Measuring the relative performance of councils in undertaking their planning functions is critical to ensuring improvement.

At present there is no independent regulatory body which oversees the planning functions of councils. While this role ostensibly falls to the Department of

² There are 88 administrative bodies which undertake some manner of planning function. However, for the most part, the planning function of smaller Town/Borough Councils is undertaken by the parent county council.

³ Most councils have a mix of urban and rural populations. However, a small number of councils have almost all one or the other, i.e. almost all rural or all urban, and where this occurs, weightings are applied.

Table 3: Ranking Indicators

1	Over-zoning: Amount of Zoned Land as a Percentage of Population in 2011.
2	Decisions Reversed by An Bord Pleanála 2005 – 2010.
3	Decisions Confirmed by An Bord Pleanála 2005 – 2010.
4	Percentage of Vacant Housing Stock in 2011.
5	Change in Vacant Housing Stock 2006 – 2011.
6	Water quality: Urban Areas with Secondary Treatment Failing to Meet EPA Standards 2011.
7	Percentage of One-Off Houses Permitted as a Percentage of all Residential Planning Permissions 2001 – 2011. ³
8	Legal Proceedings Commenced Following Non-Compliance with Enforcement Notice 2005 – 2010.

the Environment, Community and Local Government, it is, as a direct arm of Government, generally restricted in publicly critiquing the performance of councils. **Following the revelations of the Mahon Report – and its key recommendations – an independent planning regulator to undertake this task free from political tensions is urgently required.**

It is acknowledged that planning is a complex and nuanced field and many outcomes cannot be measured with ease. It is further acknowledged that many councils work in difficult economic, social and political circumstances which shape planning outcomes. Accordingly there is no perfect data source available for measuring the performance of councils. Nevertheless, there are sources of independent data which can usefully paint a general picture of relative performance in the planning arena.

The aim here to assemble information to assess planning in Ireland, to stimulate debate, and to facilitate interaction between councils leading to the spread of best practice - all three aims are in the public interest and can aid Ireland's future prosperity.

Eight indicators are used to rank Ireland’s 34 city and county councils. In all cases data is sourced from the most recent publicly available independent sources (see Appendix 1). The indicators were selected to measure the appropriateness of primary decisions by councils, over-zoning and oversupply of new development, protection of water quality, development sprawl and enforcement. It is intended that in future years additional indicators will be added to provide a wider picture of relative performance of councils.

Where possible data has been averaged over a series of years to give a more general picture and to compensate for any anomalous years. Each of the indicators has been chosen to avoid any urban / rural bias, and where this would otherwise occur, the indicator is weighted accordingly.

Finally, the ranking provides an overall score for each council based on the aggregates of the eight indicators used. Some councils perform better in certain indicators than in others. However, the overall rank is based on a combined score across all of the indicators. The complete result for each council broken down over the eight indicators is provided in Appendix 2.

Results

The overall results for each council are provided in Table 4. **Based on an analysis of these indicators, the picture indicates systemic failure on a nationwide basis on the back of a generally very poor performance by councils in discharging their planning functions.**

No council scored an ‘A’ or ‘B’ grade with just four councils scoring a ‘C’ grade (South Dublin, Dun Laoghaire Rathdown, Galway City and Fingal). There are still many specific examples of very poor planning practice present within higher ranked councils. For example, An Taisce submitted a detailed dossier to Government in 2009 detailing a series of major planning applications in which Dublin City Council (ranked 9th) disregarded its own development plan, including multiple high-rise developments. A series of inappropriate decisions by Meath County Council (ranked 5th) on major

planning applications is also highlighted in this report.

Limerick County was the only rural county outside the Greater Dublin Area to score within the top 10, albeit receiving a ‘D’ grade.

Council	Score	%	Rank	Grade
South Dublin	200	74%	1	C
Dun Laoghaire RD	199	73%	2	C
Galway City	190	70%	3	C
Fingal	185	68%	4	C
Meath	167	61%	5	D
Wicklow	167	61%	6	D
Kildare	163	60%	7	D
Cork City	157	58%	8	D
Dublin City	153	56%	9	D
Limerick County	152	56%	10	D
Offaly	150	55%	11	D
Limerick City	144	53%	12	D
South Tipperary	139	51%	13	D
Westmeath	134	49%	14	D
Laois	131	48%	15	D
Louth	123	45%	16	D
North Tipperary	122	45%	17	D
Waterford City	120	44%	18	E
Cork County	118	43%	19	E
Kilkenny	115	42%	20	E
Longford	106	39%	21	E
Sligo	102	38%	22	E
Clare	100	37%	23	E
Monaghan	94	35%	24	E
Wexford	94	35%	24	E
Waterford County	88	32%	26	F
Carlow	85	31%	27	F
Cavan	83	31%	28	F
Galway County	83	31%	28	F
Mayo	82	30%	30	F
Kerry	70	26%	31	F-
Leitrim	60	22%	32	F-
Roscommon	44	16%	33	F-
Donegal	32	12%	34	F-

Unfortunately, the overwhelming majority of councils (30) scored a D grade or worse. Nine councils failed. The performance of four councils - Donegal, Roscommon, Leitrim and Kerry - left them with the worst grade (F -), while five other counties were only marginally better with an 'F' grade: Mayo, Galway County, Cavan, Carlow, and Waterford County.

The performance of each of the 34 councils is illustrated in Figure 1 (overleaf). It is clear that there is a very strong correlation between poor performing councils and a range of negative socio-economic indicators. For example, Figure 1 clearly shows a cluster of poor performance in the northwest. Figures 2-7 show that this region also has a high number of 'Ghost Estates', lower house prices, a high concentration of septic tanks, and falling population.



Unco-ordinated development and a short-term culture of 'development-at-all-costs' meant that new building was consistently allowed to outpace infrastructure investment, leading to significant deficits in water, waste, health, transport, education and ICT infrastructure, together with greatly increased costs for new infrastructure provision.

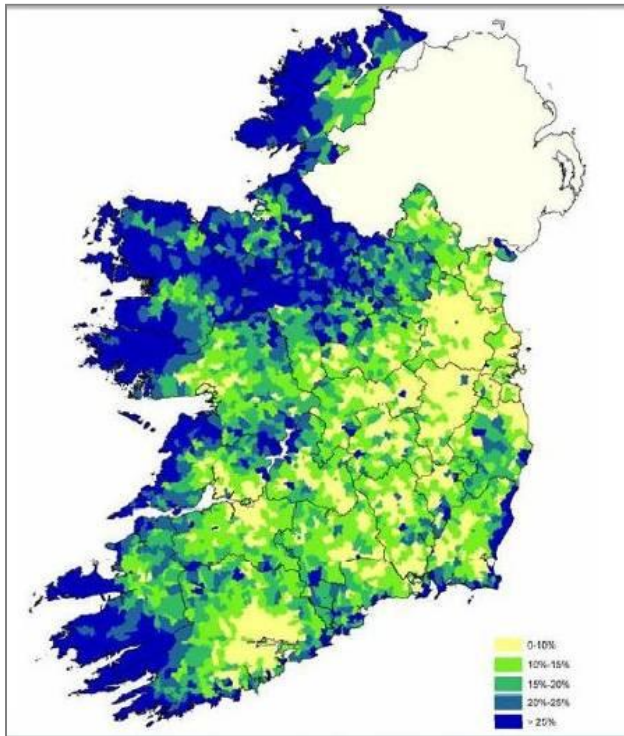


Figure 2 – Average Housing Vacancy in Ireland 2011 (Source: CSO)

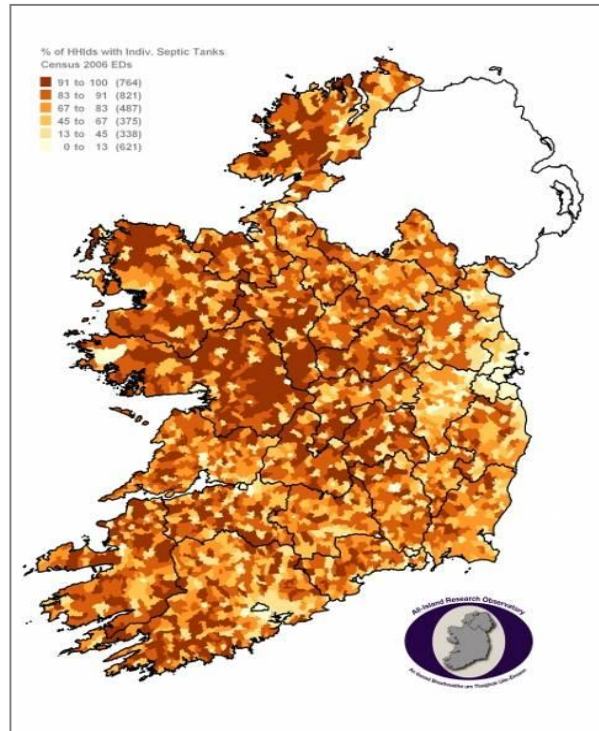


Figure 3 – Percentage of Households Served by Septic Tank (Source: AIRO)

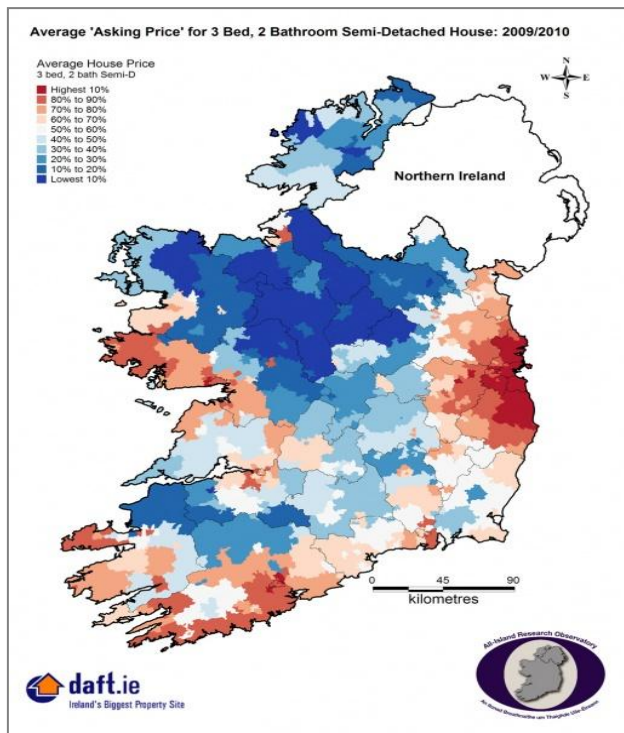


Figure 4 – Asking Price for 3 Bed Semi-Detached Home (Source: daft.ie)

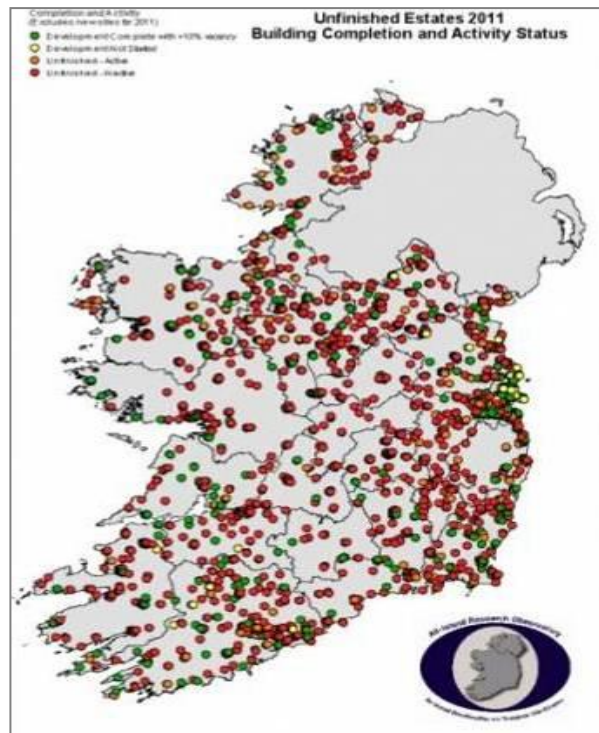


Figure 5 – Ghost Estates (Source: AIRO)

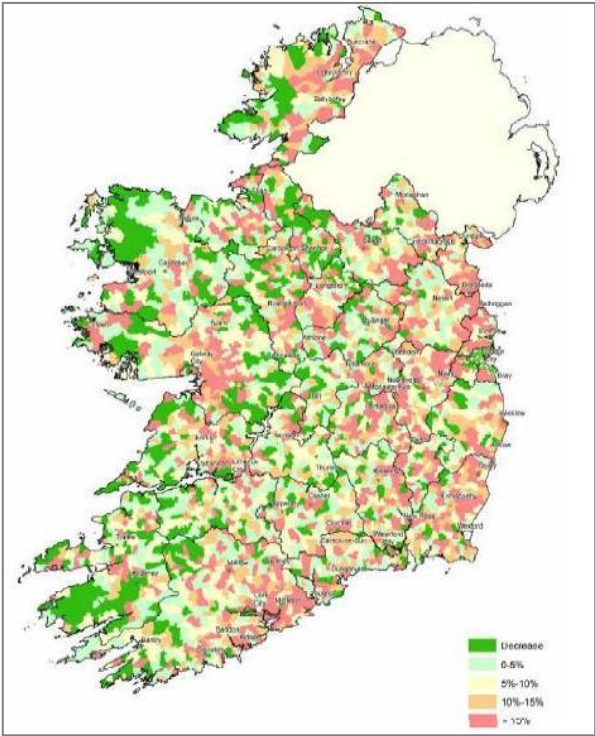


Figure 6 – Population Change 2006 – 2011 (Source: CSO)

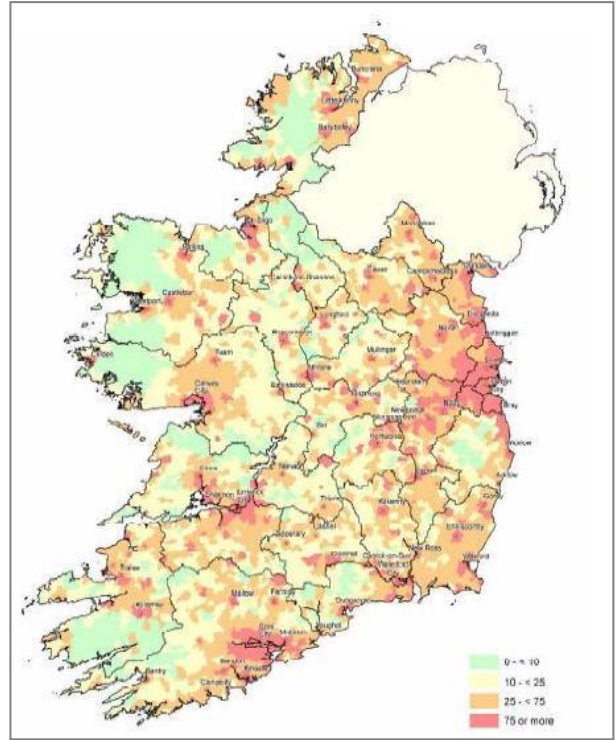


Figure 7 – Population Density 2011 (Source: CSO)

Forward Planning & Zoning

It is clear that the unfettered zoning of land for new development by councils was a critical component of the toxic mix that created Ireland's property bubble and financial crisis. **Accordingly, there is a clear and direct link between bad planning practice and the austerity resulting from Ireland's financial difficulties.**

In 2008, at the onset of the economic collapse, Ireland had enough zoned land to almost double the national population to 8 million, with some 42,000 hectares having residential zoning, almost all of it greenfield land. This does not take account of the thousands of hectares of land zoned for mixed-use, industrial, retail, commercial and other uses. Zoning vastly inflated the value of land turning green fields into 'fields of gold', providing an easy

conduit to cheap credit and facilitating property speculation. This fed the financial crisis and the creation of NAMA. **The simple act of a local council changing the colours on a development plan map could result in a multi-million euro land deal overnight.**

The reality is that much of the land zoned by councils would never have been, could never have been, and will never be built on. But this did not deter councils across the country from completely abandoning their fiduciary responsibilities and acting wholly contrary to national planning policy.

Approximately, 40% of the €75 billion property portfolio transferred to NAMA is categorised as 'development land'. **Much of what was hastily rezoned to 'development' is in truth pasture and tillage land for farming, and as it is officially reclassified to agriculture over the coming years, the value of NAMA's development land portfolio will plummet from a paper figure of €30 billion to**

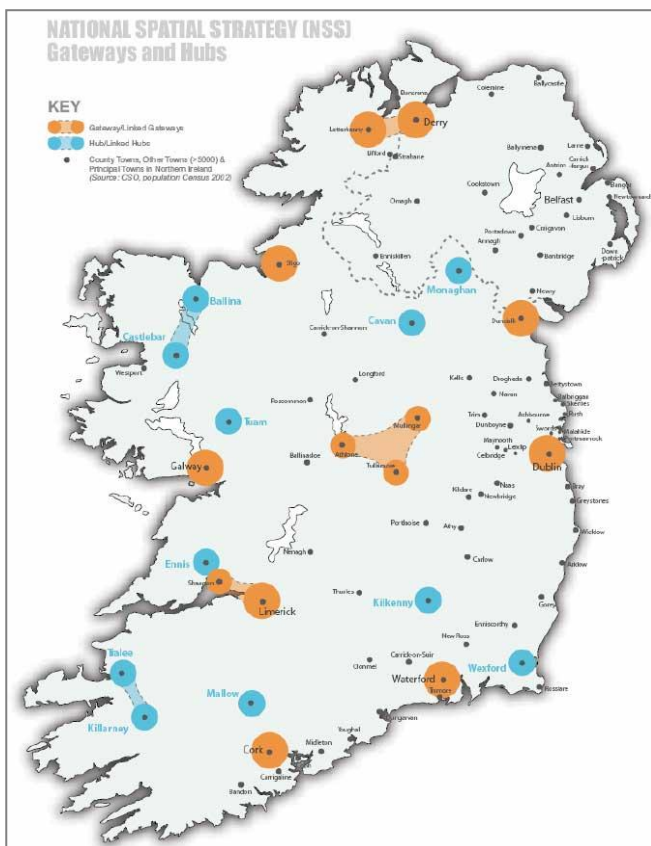


Figure 8 – The way things were supposed to be: the National Spatial Strategy set out a plan-led approach to the development of the State

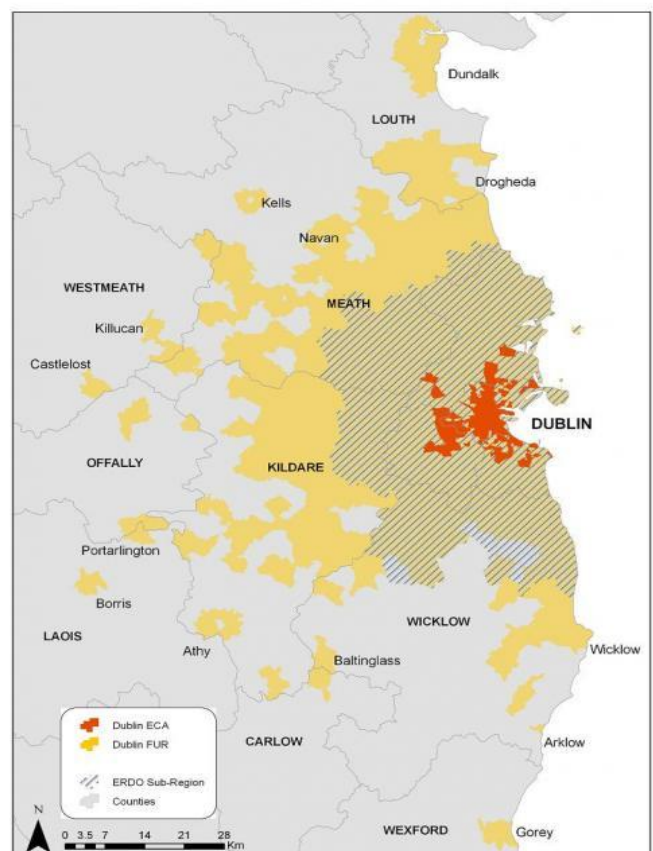


Figure 9 – What actually happened: chaotic developer-led sprawl

a single digit figure, crystallising tens of billions in losses for taxpayers. This direct NAMA loss does not take account of the additional billions to be written down on non-NAMA development loans which remain with financial institutions as non-performing liabilities, indirectly underwritten by the State.

Council members (county, city & town councillors) are responsible for the zoning of land on the advice of management and professional planners. In theory Ireland has had a National Spatial Strategy (NSS) since 2002 which was designed to be a strategic spatial planning framework for the country as a whole. The NSS points to where new homes and workplaces should be located, in line with national policy on major investment in infrastructure, including transport and water infrastructure.

The Bacon Report recognised the capacity of the NSS to play an important role in ensuring that long-term housing needs are met in an economically and environmentally sustainable way. Bacon also recommended that the Strategic Development Zone (SDZ) mechanism (e.g. Adamstown, South Dublin) should be used in all new major housing developments, in a manner similar to that envisaged in the 1974 Kenny Report, with the aim to ensure an integrated and joined-up approach to land use, transport, social infrastructure and civic design.

However, Bacon's recommendations were entirely abandoned in the endemic parochialism, clientelism, cronyism and low-level corruption of the 'Celtic Tiger' era. Councils zoned thousands of hectares of land with impunity regardless of the underlying demographic demand, location, infrastructure or compliance with national policy.

Figure 10 illustrates the extent of over-zoning which has taken place nationally. Clare was the most over-zoned county in the State with 3,208 hectares



The way things were supposed to be: The Bacon Report recommended the use of the SDZ approach to ensure high quality housing development



What Actually Happened – Poor quality car dependent housing development and sprawl

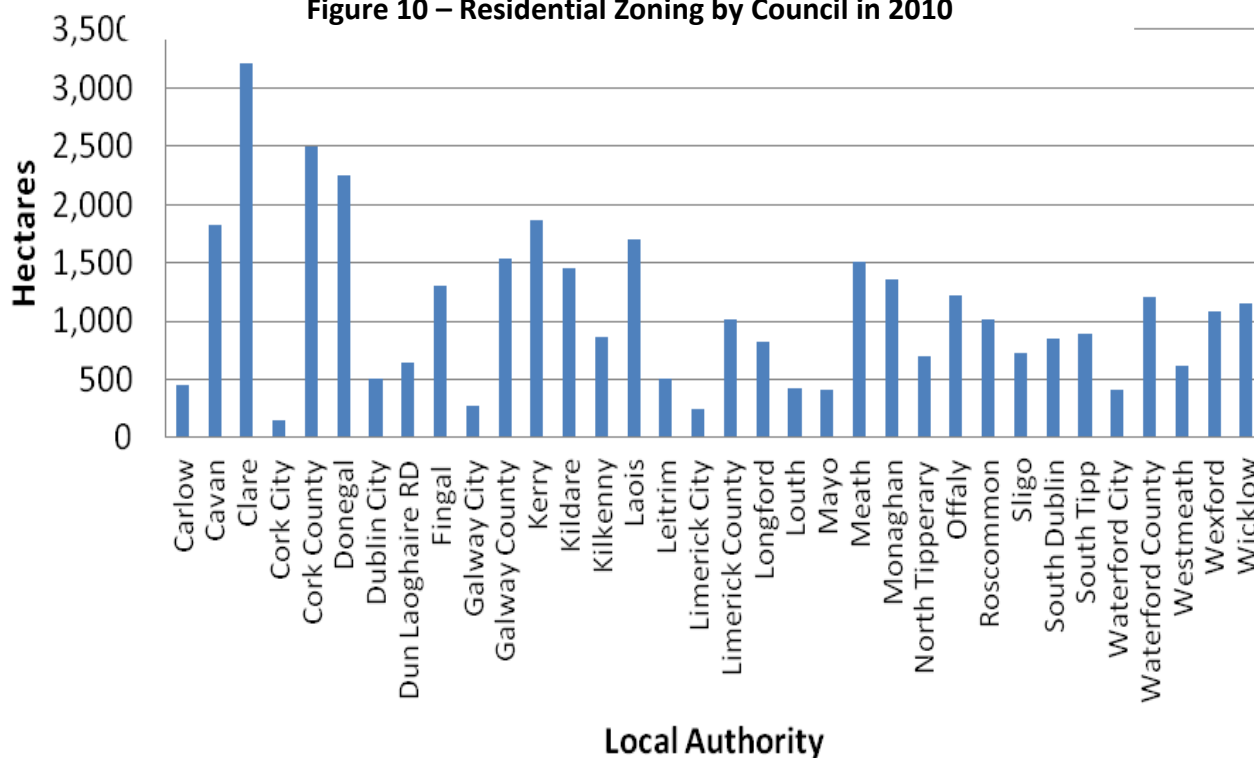
allowing for an overall additional population of 273,000.⁴

The worst three counties in terms of residential over-zoning were Clare, County Cork (2,500 hectares) and Donegal (2,250 hectares), which between them accounted for 20% of the entire national stock of residentially zoned land in 2010. It is remarkable to note that, despite the extent of zoned land within these counties, between 2001 and 2011 some 30% to 50% of all planning permissions in each of

⁴ Based on 30 dwellings per hectare (12 per acre) and an average household size of 2.73 in 2011.

Total Hectares of Residential Zoned Land by Local Authority 2010

Figure 10 – Residential Zoning by Council in 2010



these three councils was for one-off housing on *unzoned* land.

The loopholes in planning law which allowed for this chronic over-zoning were well known throughout the 'Celtic Tiger' era but were not closed until the enactment of the Planning & Development (Amendment) Act 2010. A significant High Court case in 2000⁵ taken by former chair of An Taisce, Michael Smith, revealed the complete absence of any legal obligations on the part of councils to act in the national interest.

This loophole was compounded by the introduction of the Planning & Development (Amendment) Act 2002 which essentially amounted to a developer's charter. As a result of the 2002 Act, the zoning of land could for the first time be included in Local Area Plans (LAPs), and the Minister of the day had no power to intervene to stop over-zoning or bad planning practice. The deregulation was complete with LAPs essentially becoming mass re-zoning

vehicles. Many councils deliberately used LAPs as the preferred mechanism to deliver dubious re-zonings in the full knowledge that there was no possibility of anyone intervening to stop them.

With some exceptions, planners failed to vocalise their concerns and to exercise sufficient judgment throughout this period. While it is true that the advice of planners was regularly overruled by councillors, overall the profession was slow to find its voice at both the national and local level – particularly the representative bodies of Irish planners, the Irish Planning Institute (IPI) and the Royal Town Planning Institute (RTPI). It was not until 2009 in the picturesque village of Adare, County Limerick, that council management and planners finally decided, to their credit, to stand up to the reckless cronyism of councillors to stop inappropriate zoning – proving that the legal tools were available all along to prevent the chaos if there had been the will to do so.⁶

⁵ Smith & McEvoy -v- Meath County Council [2003] IEHC 31.

⁶ P.J. Farrell & Anor -v- Limerick County Council [2009] IEHC 274.

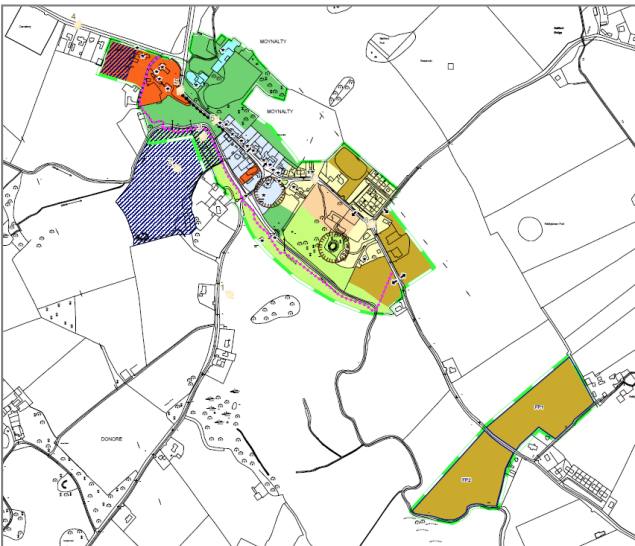


Figure 11 – An example from Moynalty, County Meath, of how LAPs effectively became a developer’s charter. The zoning on the bottom right is for residential development with no logical relationship to the village.

Apart from the financial consequences of over-zoning, of equal, if not greater long-term consequence is the location of the zoning which took place and the patterns of physical development it created. As confirmed in the *National Spatial Strategy – Outlook & Review 2010*, published by the Department of the Environment, development has become more dispersed and fragmented, with greater distances between where people live and work. Population in many of our major towns and cities has declined, while many rural areas within a 50 - 80 km commuting range of major cities and towns have experienced significant population growth.

These spatial and population trends are also confirmed in the results of Census 2011 which found that County Laois had by far the highest population growth rate nationally between 2006 and 2011 (+20%) – more than twice the State average. Other council areas showing strong population growth were Fingal (13.8%), Longford (13.3%), Meath (13.0%) and Kildare (12.7%). All of these counties are now part of the wider Dublin commuting belt and the consistent trends are illustrative of the widespread unplanned developer-led suburbanisation which continues to remain completely unchecked.

The consequences of these trends are now 'locked in' to our society, storing up major problems and costs for the future and are, for all practical intents and purposes, irreversible. Much of the fallout, such as town centres decimated by out-of-town retail development, universally higher home insurance bills due to major flooding events, and families shackled with rising fuel costs due to far-flung suburbanisation, are already starting to become apparent and will become increasingly so in the coming years. Some of the headline outcomes of a dysfunctional planning system run amok over the past decade are as follows:

- Development sprawl has created a dangerously fossil fuel dependent society, with a particularly high reliance on oil for transport. Ireland is the second most oil dependent country in the EU for transport per capita. Many Irish families now spend more on fuel than food. Further, demand for fossil fuels is increasing, not decreasing.
- Ireland is now one of the most private car dependent societies anywhere in the world. In 2008, 73% of all journeys in Ireland were made by private car with just 4% by bus, 1% by rail and

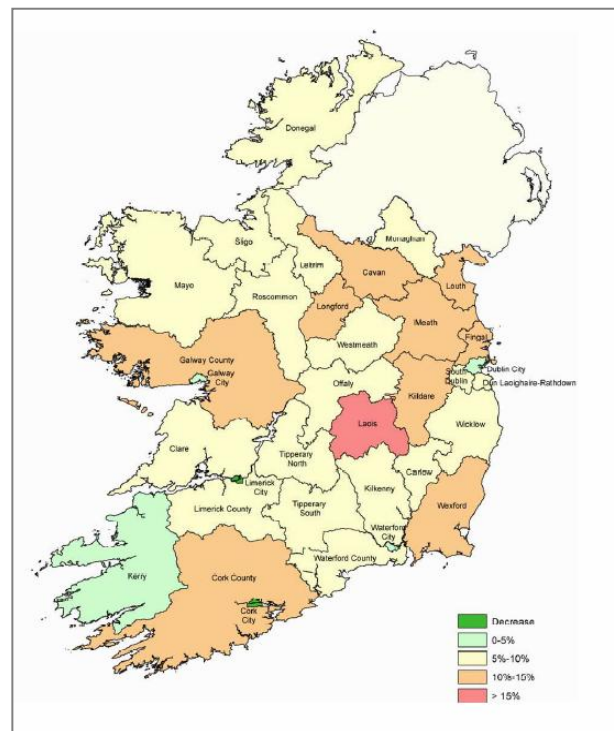


Figure 12 – Census 2011 illustrates where population growth occurred and confirms that the NSS was not implemented by councils. In failing to undertake reform, national Government lets this situation persist.

1% by bicycle. A powerful example of Ireland's chronic over-dependence on private transport was during the period of the 'big freeze' in late 2009 when much of the country came to a standstill due to the inability of large sections of the population to travel as a result of the icy conditions.

- The proliferation of new development has greatly outpaced investment in supporting infrastructure, particularly water services. Many councils granted planning permission for major new developments in the absence of adequate wastewater infrastructure. There has been a dramatic high deterioration in Irish watercourses in the last 20 years with at least 50% requiring restoration. Municipal wastewater discharge accounts for 38% of the number of polluted rivers and the majority of the most severely polluted sites, raising the spectre of significant EU fines.
- Development sprawl is a major contributor to an 'obesogenic' environment with increasing obesity levels due to increased car dependency, few opportunities for spontaneous exercise, longer commuting times and less time for physical exercise becoming a feature of life for many people. Ireland's adult obesity rate (24%) is now higher than in 18 states in the USA with childhood obesity also a particular concern.
- Greenhouse gas emissions from the transport sector have risen 170% over 1990 levels primarily due to development sprawl. Ireland has signed up to the EU 20-20-20 agreement whereby we have a legally binding pledge to reduce greenhouse gas emissions by 20% below 1990 levels and increase energy efficiency by 20% by 2020. The scale of change needed to meet Ireland's commitments is enormous. The almost complete failure by the Irish planning system to rationally control development and plan a society around public transport is directly responsible for making this task extraordinarily formidable.

These are just some of the headline consequences of a failed planning system. Others include the

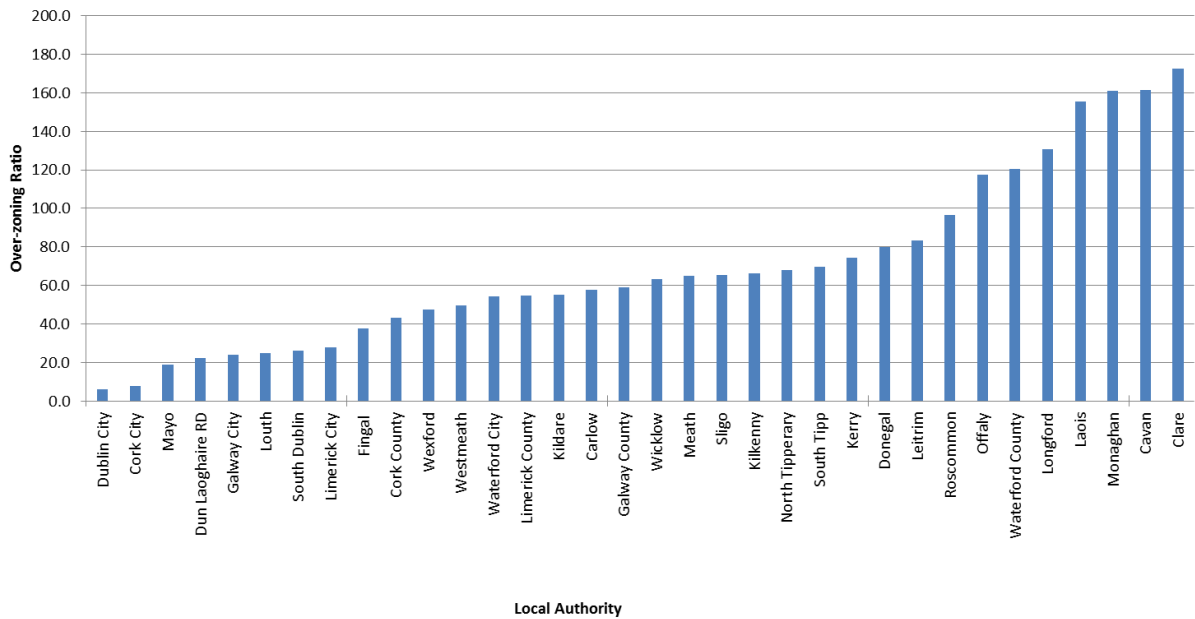
Ennis, Co. Clare is an example of some of the most senseless zoning excesses of the 'Celtic Tiger' era. Almost 4,500 acres of land was zoned for development, sufficient to increase the population of the town from 26,000 people to over 100,000.

In one high profile example, zoned land which was sold by a local farmer for €18.8 million was subsequently refused planning permission because it was located on a flood plain. Despite the fact that Ennis was one of the worst affected areas by flooding in 2009, and that the town only needed a maximum of 175 acres, the Department of the Environment encountered significant difficulties from local councillors in seeking to get this land de-zoned.

social and family costs of long-distance commuting; the hollowing out of our traditional town centres due to out-of-town retail development and the associated increase in dereliction, social inequality and crime, the hugely inefficient and prohibitive cost of public infrastructure provision and maintenance due to low population densities (such as broadband, water services, public transport, postal services), the social costs of inadequate healthcare provision (such as the absence of a specialist cancer centre in the north-west and hospital closures due to lack of population density), traffic congestion, air and noise pollution in town and city centres, and the unviability of new public transport initiatives and of maintaining existing services.

It is not a case of the benefit of hindsight being twenty-twenty. The upshot of the property bubble was both predicted and predictable. In fact, An Taisce consistently relied on Government policy in overturning four-fifths of planning decisions on appeal to An Bord Pleanála. A plethora of official Government policies stretching back to *Sustainable Development – A strategy for Ireland*, a key publication in 1997, which emphasised the critical importance of plan-led strategic planning and the

Indicator 1: Capacity of Undeveloped Zoned Land as a Proportion of Existing Housing Stock 2011



prevention of sprawl. For example, the 1997 Strategy had an explicit policy objective that 'no State funding will be provided for infrastructure in the event of over-zoning'.

Other examples include the *National Spatial Strategy (2002)*, the *Regional Planning Guidelines (2004)*, the *Development Plan Guidelines for Councils (2002)* and the *Smarter Travel Policy (2009)*. Each of these official policy documents called on councils to create closely knit communities orientated around public transport. However, national policies were systematically ignored by councils in framing settlement plans and in discharging their development management functions.

Central Government also failed to ensure national policies were implemented and this failure largely continues to be the case today. Had this divergence between policy and practice not occurred, Ireland would not have experienced the speculative mania of the 'Celtic Tiger' property bubble. **Sadly, rather than providing the necessary checks and balances,**

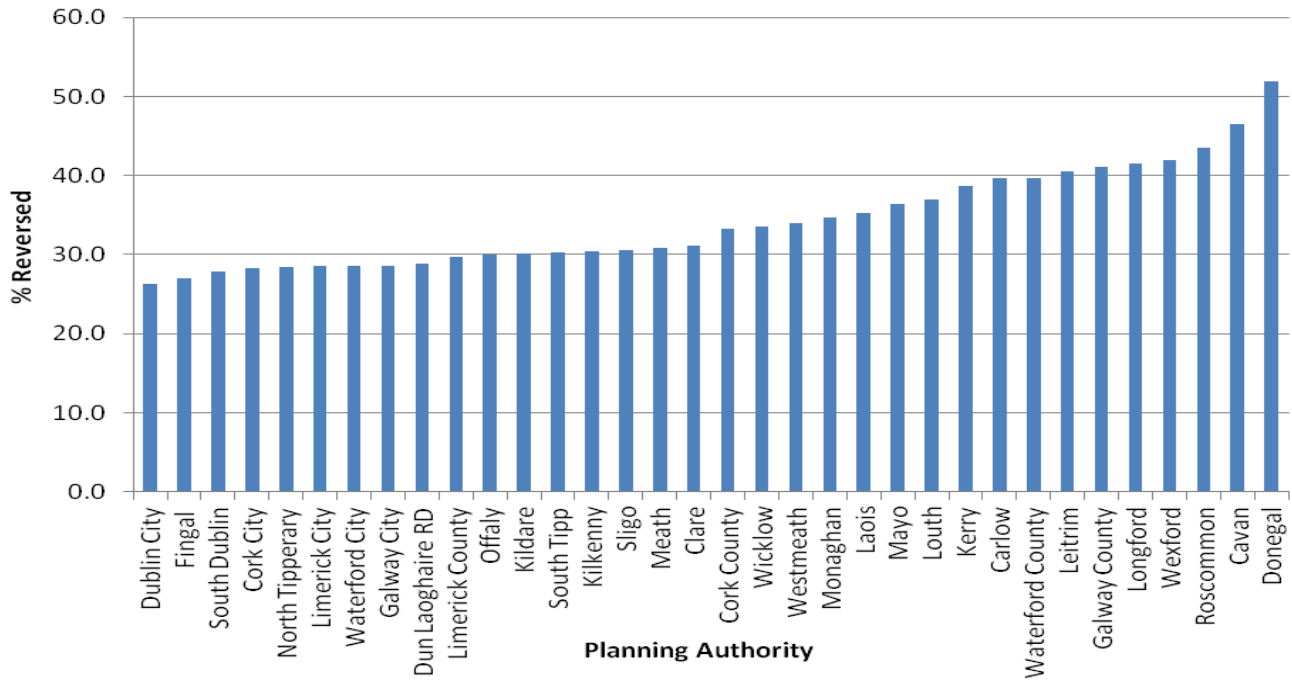
the planning system accelerated and facilitated a hyper-inflated property bubble.

Development Control

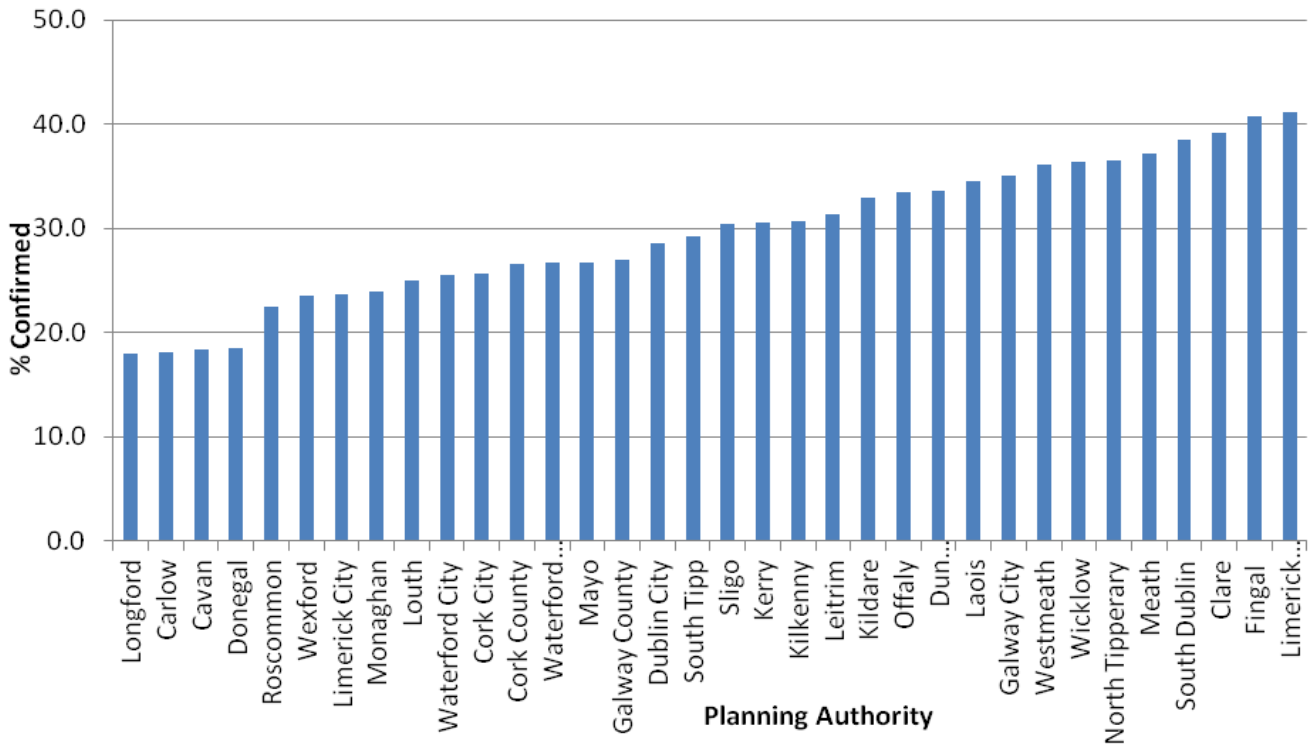
As an independent watchdog reviewing planning applications throughout Ireland, An Taisce is in a unique position to evaluate the effectiveness of the development control system and to monitor the general implementation of national, regional and local planning policy by councils.

While An Taisce's limited prescribed status and resources means that just a small fraction of all planning applications made annually are seen, its appeals to An Bord Pleanála have succeeded in securing some very important precedent decisions in high-profile cases. **In many instances these cases involved councils disregarding their own**

Indicator 2: Percentage of Local Authority Decisions Reversed By An Bord Pleanála 2005 - 2010



Indicator 3: Percentage of Local Authority Decisions Confirmed on Appeal to An Bord Pleanála 2005 - 2010



development plan, contravening regional planning guidelines or flouting EU law. The frequency with which councils continue to ignore An Bord Pleanála precedents and repeatedly grant permission for inappropriate development remains a serious concern.

An Taisce estimates that appeals taken by it against inappropriate speculative development has reduced the value of impaired loans by at least €505m. These are loans which the National Assets Management Agency (NAMA) would have had to purchase, or if falling outside the scope of NAMA, would remain with financial institutions as non-performing burdens – liabilities which Irish taxpayers are currently underwriting.

The rate of overturn of planning authority decisions represents an important yardstick for the performance of councils in undertaking their development management functions. Between 2005 and 2010 34% of all planning decisions made by councils were reversed by An Bord Pleanála on appeal. However, this masks some important local variations. Some 52% of all decisions made by Donegal County Council were reversed on appeal during this period - and 60% in 2009 alone. The corresponding figure for Sligo was 30.6% and for Dublin City, 26.3%.

Turning to the percentage of decisions upheld by the An Bord Pleanála on appeal (i.e. confirmation of the local decision by the appeals board), a somewhat similar pattern emerges. In the case of Donegal, Cavan, Carlow, Longford, just 18% of all planning decisions were upheld on appeal. The corresponding figure for Limerick County and South Dublin County was over 40%.

It is clear that there is a marked difference between how planning applications are assessed by councils and how they assessed by An Bord Pleanála. **This is partly due to low-level cronyism but also due the fact that councils are not impartial arbitrators in the assessment of planning applications. Councils stand to benefit from capital contribution levies**

arising from new development, and where offices, shops or other places of work are proposed, there is the added benefit of ongoing commercial rates. In contrast, An Bord Pleanála is neutral and has no such vested interest.

Only 9% of all council decisions are appealed to An Bord Pleanála each year. Even allowing for the fact that the available data includes first party appeals by applicants for development against decisions to refuse planning permission by councils (30 -35%), it is clear that a very significant amount of development permitted by councils in the past decade should never have been allowed if national and regional policies were adhered to.

Ignoring Regional Planning Guidelines

The Regional Planning Guidelines (RPGs) for each of the eight regions of Ireland were first introduced in 2004. They were intended to provide a sensible '*big picture*' strategy for joined-up development between councils at a regional level. **However, the RPGs were not legally binding and were, as a consequence, widely flouted by councils in pursuing their individual interests, particularly in granting of planning permission for large-scale commercial developments. Further, the Regional Authorities did not intervene at any stage to ensure the Guidelines were implemented despite widespread flouting by councils.**

A series of planning applications in County Meath between 2007 and 2009 epitomises the general attitude by councils to the RPGs. In 2007 An Taisce took a third party appeal to the Board against a decision by Meath County Council to grant planning permission for a major 35,000 square metre speculative industrial/warehouse development on unzoned agricultural land near Dunboyne, County Meath.⁷ The Meath planner, in a lengthy report,

⁷ Reference: PL17.224341

Table 5: Significant Refusals by An Bord Pleanála in Appeals Taken by An Taisce for Contravention of the Regional Planning Guidelines for the Greater Dublin Area

Reference	Local Authority	Decision Date	Location	Proposed Development
PL06.215210	South Dublin	26.05.06	Citywest, Rathcoole, County Dublin	Retention of Convention Centre (23,000 sq.m)
PL09.213458	Kildare	20.03.06	Palmerstown Demesne, County Kildare	195 bed hotel and 65 residential units
PL 09.204563	Kildare	11.06.04	Palmerstown Demesne, County Kildare	Business Park, hotel, 59 detached houses, 65 tourist accommodation units (160,000+ sq.m)
PL09.126635	Kildare	24.09.08	Castletown Demesne, Kilcock, County Kildare	Business and Technology Park (100,000 sq.m)
PL 09.126394	Kildare	09.01.02	Rathangan, Demesne, Rathangan, County Kildare	126 houses outside developed area of town
PL17.233160	Meath	10.08.09	Rathregan, Batterstown, County Meath	Product show area (2,500 sq.m)
PL17.229781	Meath	13.01.09	Belgree, Kilbride, County Meath,	Business Park (22,000 sq.m)
PL17.228936	Meath	12.12.08	Barstown, Dunboyne, County Meath	Business Park (7,000 sq.m)
PL16.233330	Meath	30.11.09	Carton Demesne, Maynooth, County Meath	'SMART Park' (38,000 sq.m)
PL17.224341	Meath	17.01.08	Piercetown, Dunboyne, County Meath	Light-Industrial/Warehouse (35,000 sq.m)
PL 27.21060	Wicklow	16.08.05	Mount Kennedy Demense, Co. Wicklow	Office, Business & Science and Technology park (78,000 sq.m.)

recommended refusal but this was overturned by the County Manager under pressure from developers - despite the fact that the development contravened the council's own development plan. On appeal to the Board by An Taisce, the application was rejected on a number of grounds including unsustainable car-dependent development and contravention of the RPGs.

Notwithstanding this clear precedent, Meath County Council proceeded to grant planning permission for four almost identical major developments on unzoned land in southeast Meath

in quick succession between 2008 and 2009.⁸ Each was appealed by An Taisce to the Board and planning permission was duly refused in each case due to contravention of the RPGs. **At no time did the combined Dublin and Mid-East Regional Authority comment on these applications despite the fact that they each clearly breached the RPGs for the Greater Dublin Area. Regional governance remains a dog that does not bark, and without reform, will remain so.**

⁸ References: PL17228936, PL17229781, PL17.233160 & PL17.233330



Carton Demesne, County Kildare: Meath County Council thought it was appropriate to grant planning permission for a 38,000 square metre office park in the woodland on the left of the picture.

An Taisce's experience in taking appeals such as those described above is that the practice of 'rate chasing' and the lure of lucrative capital contribution levies together with low level cronyism and the promise of 'hundreds of jobs' - with no thought to employment displacement - are powerful corrupting factors in determining planning applications which in many instances override proper planning considerations.

A clear example of this is practice of 'rate chasing' is the further decision by Meath County Council in 2009 to grant planning permission for a 'SMART Park' within an 18th Century woodland on the grounds of Carton Demesne, Maynooth immediately adjacent to the Kildare county boundary.⁹ Again the site was unzoned, remote from the town of Maynooth, and within a few hundred metres of Carton House, one of Ireland's most important demesne houses. **During the planning application process the council facilitated the developer by hastily publishing and adopting a statutory local area plan which retrospectively zoned the land for the precise use the applicant envisaged.**

On appeal by An Taisce, An Bord Pleanála was unimpressed by Meath County Council's approach and unconditionally refused planning permission

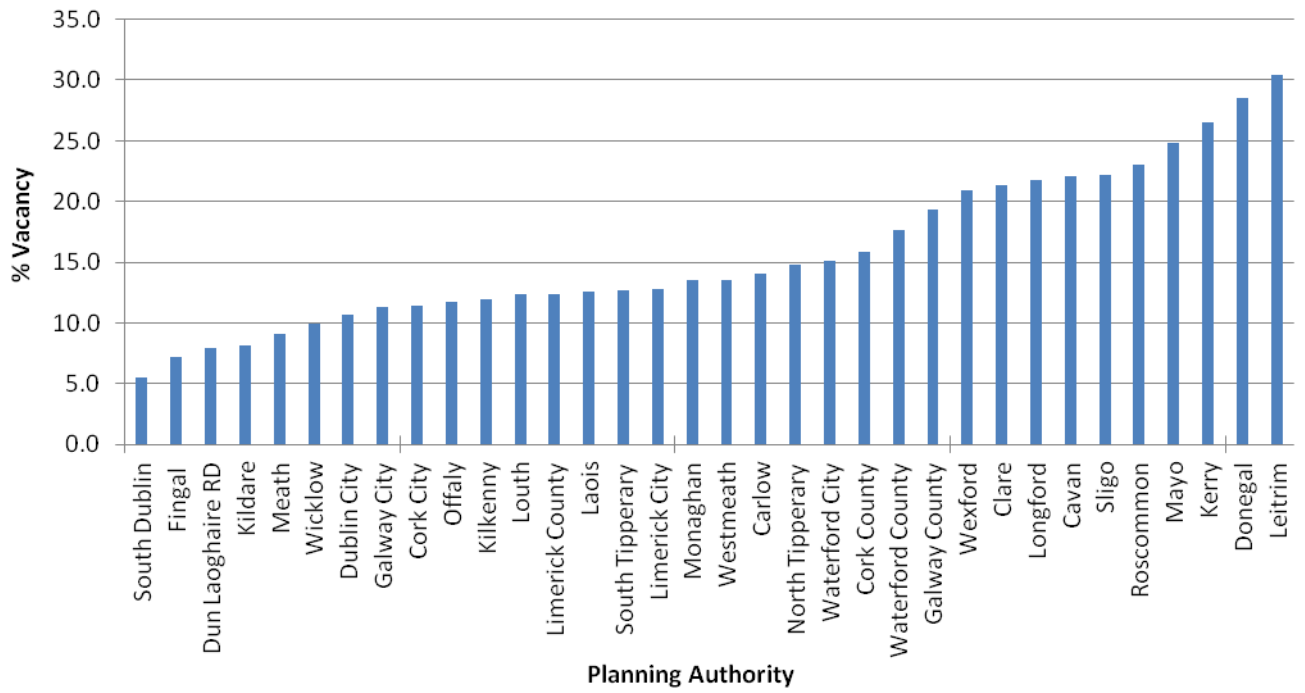
and, in a significant first, pointed out that the council's local area plan, hurriedly put together to facilitate the proposed development, contravened national and regional planning policy.

The combined floor space of these proposed developments successfully challenged by An Taisce for breaching the regional guidelines for the Greater Dublin Area is in excess of 500,000 sq.m.

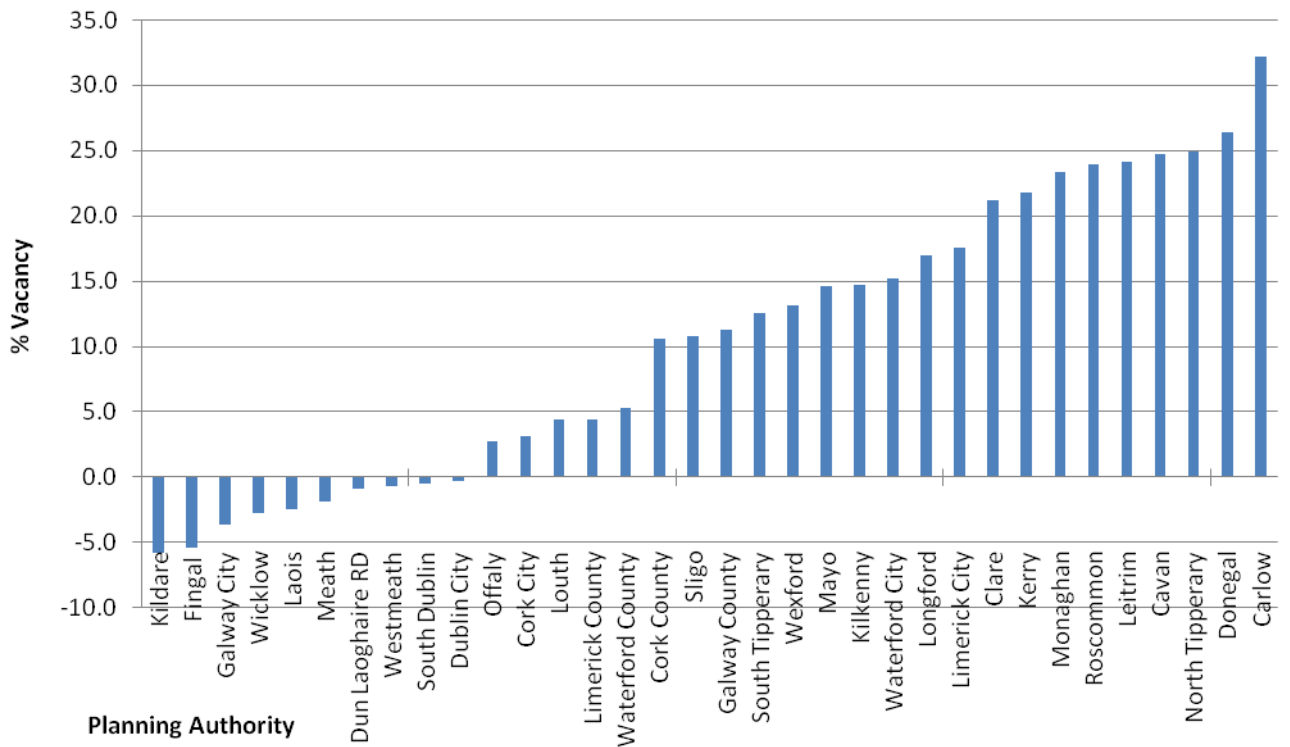
For a parallel in terms of size think of 70 playing fields, and if these 70 pitches were built upon, most of it would now be 'ghost' development, to be bailed out on the back of taxpayers. **There is no doubt that if An Taisce had not successfully overturned these improper decisions, taxpayers would currently be footing the multi-million euro bill. Improper planning practices such as these examples not only undermine public confidence in the planning system but also damage long-term national policy objectives to better society as a whole.**

⁹ Reference: PL. 233330

Indicator 4: Percentage Housing Stock Vacant 2011



Indicator 5: Percentage Increase/Decrease in Housing Stock Vacancy 2006 - 2011



Flood Plain Development

The introduction of the *Flood Risk Assessment and Management Guidelines* in late 2009, following some of Ireland’s worst recorded flooding, provide a welcome step change in how development on flood plains is assessed by councils. **The Irish Insurance Federation put the cost of the major flood events in recent years at more than €370 million – a cost which is passed on to all homeowners through higher insurance premiums. Many other dwellings are uninsurable.**

However, long before the issue became to public prominence, An Taisce consistently opposed inappropriate developments on flood plains and repeatedly highlighted the urgent need to redress the wayward approach of many councils. In a detailed submission to *the Review of Government Policy on Flood Relief* in July 2003, An Taisce noted that inland and coastal flooding is increasing due to climate change, with the potential for 15% additional rainfall in the autumn/winter, as well as the increased incidence of extreme events, such as torrential all-day rain.

Notwithstanding the scientific evidence, councils across the country have continued to zone land and



Across the country thousands of hectares of land on known flood plains was senselessly zoned by councils

grant planning permission for new development on known flood plains. **An Taisce has successfully taken numerous appeals in the public interest to highlight hopelessly delinquent practice by councils in granting planning permission for development on flood plains.**

In one example, An Taisce successfully overturned a decision by Galway County Council to grant planning permission for a mixed-use development on an extensive low-lying area of land on the flood plain of the Gort River prone to regular flooding.¹⁰

Table 6: Significant Refusals by An Bord Pleanála in Appeals Taken by An Taisce Against Development Proposals on Flood Plains

Reference	Local Authority	Decision Date	Location	Proposed Development
07.231906	Galway	24.06.09	Kincha Rd, Gort, County Galway	Mixed use development including 39 apartments
07.233013	Galway	16.11.09	Furbo, County Galway	15 houses
07.230908	Galway	17.02.09	Castlegar, Mountbellow, County Galway	48 houses
07.233379	Galway	24.07.09	Oranmore, County Galway	56 houses & 7 apartments with areas for a school & soccer pitch
12.227965	Leitrim	15.12.08	Carrick on Shannon, County Leitrim	Retail development scheme
19.217314	Offaly	21.03.07	Portarlinton, County Offaly	235 Bed Hotel
19.229504	Offaly	05.12.08	Bracknagh, County Offaly	Sewage treatment works

Later that same year, 2009, the site had turned into a '17 acre lake' and the applicant was quoted in the media¹¹ as saying:

"The water here is higher than the house across the road. This is the lowest part of Gort. My business is gone. I can't see myself operating here again. My livelihood is gone. I'm in hell for the last two weeks. Now I know what hell is."

Despite the experience of the past few years and the evidence that severe weather events are likely to continue, **councils continue to resist de-zoning flood-prone lands.** Undoubtedly, part of the pressure to grant permission and maintain zoning has arisen out of the huge sums that developers have paid for the lands irresponsibly zoned for development during the property bubble. However, as the Office of Public Works (OPW) progresses the Catchment Flood Risk Assessment and Management Plans (CFRAMS), it is essential that local councils move to urgently de-zone flood-prone lands. Failure to do so will mean that the ultimate costs will be transferred to society at large.

Retail

Many Irish towns and cities have been decimated by the phenomenon of out-of-town 'big box' retailing. Despite the introduction of the Retail Planning Guidelines in 2004, throughout the 'Celtic Tiger' property bubble, **councils routinely flouted the rules which require retail development to be located in town centres in the first instance.**

With the investment in new road infrastructure, national and international retailers are increasingly attracted to out-of-centre locations to take advantage of large greenfield sites, to dispense with architecture or design and instead provide 'big box' store formats, with acres of free surface car parking. As the economic crisis took hold from 2008, small independent retailers in traditional town centres have found it increasingly difficult to



Out-of-town retailing with free car parking has decimated many of Ireland's traditional town centres and destroyed thousands of jobs.

compete with these out-of-town stores resulting in job losses, vacancy and dereliction.

Research shows that 1.4 jobs are lost in town centres for every new job created out-of-town. According to one US study, a general failure on the part of 'megastores' to trade with local suppliers and re-circulate money back into the local economy sees a net loss of at least 150 jobs for each new out-of-town 'megastore' constructed.¹²

An Taisce has consistently opposed major out-of-town retail development which has wrought so much devastation on traditional town centres. However, councils continue to grant planning permission for such developments in contravention of national policy, and in spite of the evidence of

¹¹ Irish Examiner (25th November 2009)

¹² Neumark, D. Zhang, J. & Ciccarella, S. (2007) The Effects of Wal-Mart on Local Labor Markets, IZA Discussion Paper; see <http://www.ilsr.org/key-studies-walmart-and-bigbox-retail/>

Table 7: Significant 'Out of Town' Retail Development Proposals Overturned on Appeal by An Taisce to An Bord Pleanála

Reference	Local Authority	Decision Date	Location	Proposed Development
88.224109	Cork	09.07.10	Newtown Bantry, County Cork	7,200 sq.m retail including Tesco, 500 parking spaces
07.235225	Galway	29.06.10	Townspark Tuam, County Galway	16,518 sq.m retail including Tesco, 568 parking spaces
13.233629	Limerick	09.11.09	Walkers Rd Annacotty, County Limerick	Mixed use development with 7 retail units
18.231131	Monaghan	18.05.09	Ardee Rd Carrickmacross, County Monaghan	Tesco - 5,5477sqm, 318 car park spaces
24.229113	Waterford	28.11.08	Crowbally Waterford Rd Tramore, County Waterford	Aldi - 1,560 sq.m, 107 car park spaces

net jobs loss, something which remains a serious concern.

Far-Flung Suburbanisation & Road Safety

Development patterns created by councils throughout the State display a marked increase in suburbanisation. Ireland is now among the most private car dependent countries in the world and our per capita greenhouse gas emissions and fossil fuel consumption has risen dramatically over recent decades.

Councils were required to implement national policy to create compact settlement patterns. In reality, this policy objective was widely ignored. A typical example was the decision by Waterford County Council to grant planning permission for 360 residential units, 72 holiday homes and a hotel on the outskirts of Dunmore East, County Waterford in 2010. On appeal by An Taisce, the Board refused planning permission, noting that such development would be likely to encourage car-borne commuter travel from Waterford city contrary to the objectives of national policy set out in the *National*

Spatial Strategy for Ireland, 2002-2020, and Smarter Travel – A Sustainable Transport Future, 2009-2020, which encourage the greater use of public transport, walking and cycling for travel, and for travel to work in particular. In effect, the proposed development would be a completely car-dependent far-flung suburb, unsustainable in the longer term and contrary to national policy. **It is regrettable that the Board only gradually came to this point of view in 2010 after the worst excesses of the property bubble were over.**

Another Government agency which failed to adequately discharge its statutory duties during the property bubble was the National Roads Authority (NRA). At the time the NRA was largely preoccupied with constructing over-scaled motorways across the country which, in themselves, promote car-based sprawl. **Because of wholly ill-advised 'traffic level guarantees' the NRA gave to toll road operators on the Limerick Tunnel and the M3, Irish taxpayers are now footing the bill for penalty payments, a financial burden that will run far in excess of €100m.**

Table 8: Significant Development Proposals Affecting Traffic Safety on National Roads Overturned on Appeal by An Taisce to An Bord Pleanála

Reference	Local Authority	Decision Date	Location	Proposed Development
02.225932	Cavan	30.05.08	New Inns, County Cavan	Replacement of piggery with 25 logistics/storage units
04.234643	Cork	23.09.10	New Twopothouse, County Cork	Mixed use development including 39 apartments on the N20
04.236356	Cork	26.08.10	Bandon Road, Garranedarragh, Bishopstown, County Cork	'Drive thru' restaurant
07.233809	Galway	06.10.09	Carrowmoneagh, County Galway	2 commercial buildings near the N6
07.23361	Galway	23.08.09	Carrowkeel, County Galway	6 warehouse storage units near the N6
07.233042	Galway	14.09.09	Bushfield, County Galway	Retention of use of lands for commercial storage of building materials and ancillary machinery including parking & offices and including demolition of structures, construction of new offices and other works near the N6
08.225622	Kerry	28.03.08	Cork Road, Killarney, Co Kerry	Two houses on the N22
15.236542	Louth	16.09.10	Dromin Road, Castlebellingham, County Louth	Service station building on the N33

The NRA has a statutory remit to ensure that development does not adversely affect the safety and integrity of national primary and secondary road network. However, inaction on the part of the NRA to discharge its statutory duty left An Taisce with little option but to take a series of appeals against development fronting on to national roads.

In each case planning permission was refused by An Bord Pleanála on the grounds that the proposed development would constitute a traffic hazard endangering public safety. Eventually, the NRA was embarrassed into making submissions on entirely inappropriate development proposals, and the authority has taken a more pro-active role in discharging its prescribed mandate since the late 2000s.

Water Infrastructure

The massive explosion of new development in cities, towns and villages throughout the country was not matched with corresponding supporting infrastructure for wastewater or drinking water. Since 2001, Ireland has invested billions in wastewater treatment facilities to ensure water quality is protected in line with EU law. Over the period 2000 to 2006, €2.3 billion was invested in wastewater treatment and a further estimated €2.5 billion will be invested during the period 2007 to 2013. **However, our permissive planning regime, with its self-interested councils greedy for development levies and commercial rates, has very often ensured that locations where significant new development was permitted were not those locations Government has earmarked for wastewater facilities.**

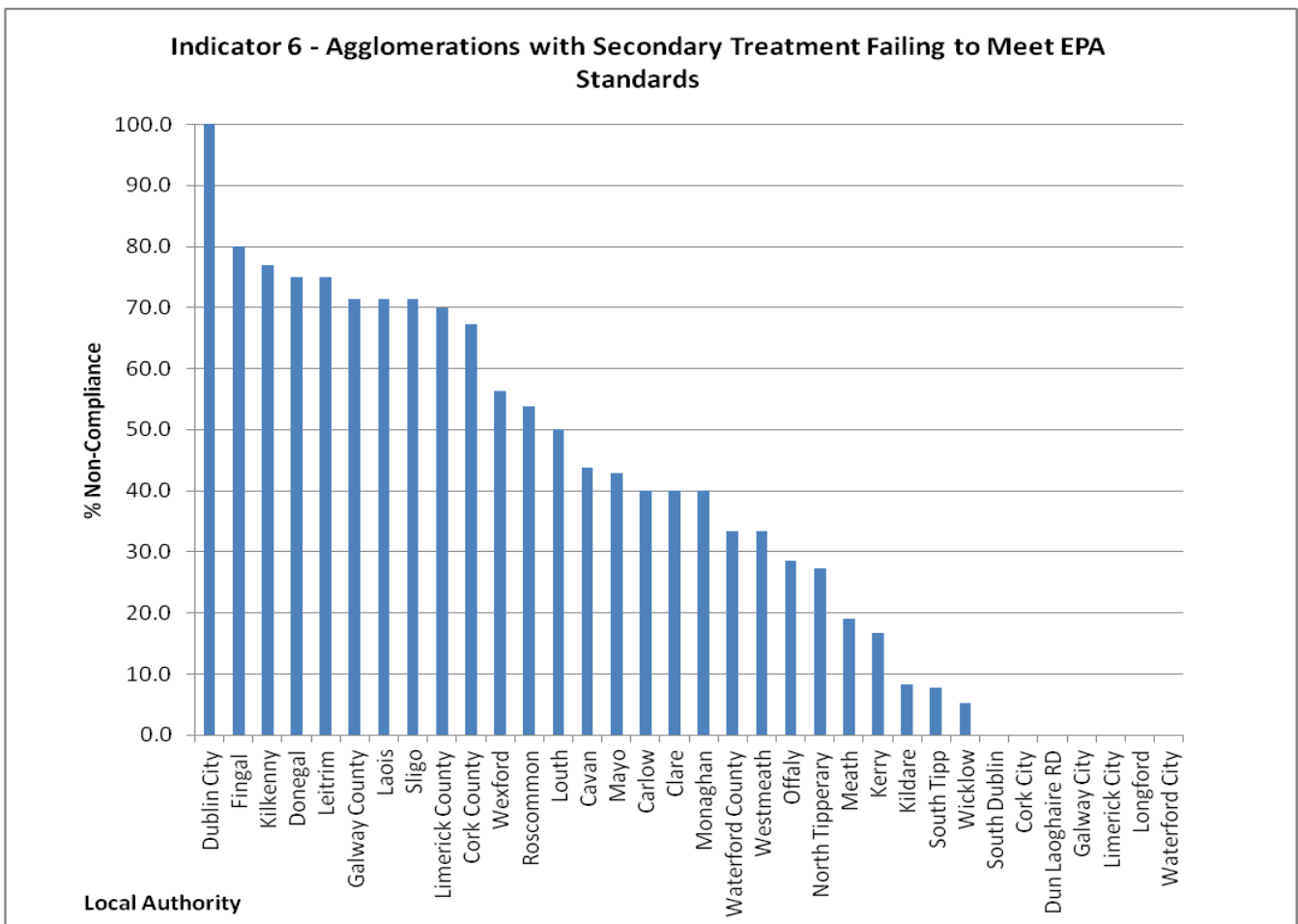
It was commonplace for councils to grant planning permission for major developments despite the fact that there was no existing or planned wastewater treatment capacity to service the development – a practice which was not outlawed until 2007 with the belated introduction of a licensing regime overseen by the EPA.

A major report by the EPA in 2012¹³ found that Ireland had just 26% compliance with the Urban Waste Water Treatment Directive and nearly half of Ireland’s wastewater treatment plants serving urban centres are failing to achieve national and EU standards. These include plants at Bray in County Wicklow and Ringaskiddy in County Cork, where the provision of treatment is now ten years overdue, Clifden, where the old plant is impacting on bathing water, and at Moville in Donegal where discharges are causing serious pollution to the River Bredagh.



Councils throughout Ireland regularly granted planning permission for development where there was no adequate waste-water or water infrastructure.

Municipal wastewater discharge is one of the two most important sources of pollution in Irish rivers, accounting for 38% of polluted watercourses. Clean water is a pre-requisite for our agriculture, food, tourism, and manufacturing sectors. And yet 42 coastal towns currently without secondary sewage treatment are tourist centres linked to water-based leisure activities.



¹³ Focus on Urban Waste Water Discharge, EPA, 2012

Apart from the complete waste of public investment in the lack of alignment between new homes and water services investment, Ireland faces a massive challenge in meeting its legal obligations under the EU Water Framework Directive by 2015. The ad hoc approach to zoning and development has caused water quality deterioration. And while investment in facilitates in a great many town and city centres lies under-utilised, the costs of retrofitting specialised wastewater treatment systems in areas never intended for housing are massive.

Habitats & Environment

Ireland has a dismal performance in implementing EU Environmental Law, one of the worst, if not the worst, in Europe. Of particular concern to An Taisce has been the implementation of the Environmental Impact Assessment (EIA) Directive, the Habitats



Poorly sited wind farms permitted by councils are threatening Ireland's endangered upland birds – including the Hen Harrier – raising the spectre of more fines from the European Court of Justice.

Directive and the Birds Directive. There has been a catalogue of failures by councils to properly implement these important directives. A typical example was the decision by Waterford County Council to grant planning permission for a major hotel development in a designated Special Protection Area (SPA) in Tramore, County Waterford (PL24.232989). On appeal, An Bord Pleanála refused planning permission as it was located on a site which Ireland selected as being of conservation importance for a number of bird species listed under the first annex of the Birds Directive.

Waterford County Council's behaviour is characteristic of what is occurring across Ireland for both large-scale and small-scale developments. Councils grant planning permission for development proposals within or adjacent to designated sites patently against national policy. If a party appeals, then these misguided decisions are typically overturned or significantly down-scaled. However, if there is no appeal then these decisions slip through, with serious potential for environmental damage. The fallout can extend beyond Ireland's wildlife resources, as seen after ill-advised wind-farm construction caused a serious peat slide near Derrybrien, County Galway in 2003. Yet Derrybrien has been repeated twice since, first affecting the river Feale in County Kerry and resulting in fish kills, with water cut off from 4,000 people, and second in County Leitrim, where pollution seeped into Lough Allen, again killing fish and harming the tourist sector. The cause was the same in all three instances: attempting to build roads or foundations for wind turbines in inherently unsuitable upland locations.

Table 9: Significant Development Proposals Affecting Designated Conservation Sites Overturned on Appeal by An Taisce to An Bord Pleanála

Reference	Local Authority	Decision Date	Location	Proposed Development
88.229697	Cork	20.01.09	Bantry, County Cork	54 residential units in urban fringe area
04.235523	Cork	04.06.10	Kilavullen, County Cork	Grass car racing track on River Blackwater SAC
07.233249	Galway	03.08.09	Lemonfield, Oughterard, County Galway	18 houses on urban fringe
12.225116	Leitrim	22.04.08	Annagh Upper, Dowra, County Leitrim	Extend navigable channel from Lough Allen to Annagh Upper. Construct 16 berth public marina combining floating walkways, finger jetties, car parks, assess and associated works
14.255414	Longford	03.03.08	Annagh, Ballymahon, County Longford	6 houses in proximity to Lough Ree SAC
15.236944	Louth	18.10.10	Drumullagh House, County Louth	122 bed hotel in area of high scenic quality with views across to Co. Down
15.236655	Louth	20.09.10	Whitestown, Greenore, County Louth	'Eco spa' with 18 suites, treatment rooms, gym, pool, restaurant & bar, and associated site works near to the coast
04.235930	Cork	17.18.10	Newmarket, County Cork	8 wind turbine proposals reduced to 5 within the SPA
04.235949	Cork	17.18.10	Rockchapel, County Cork	5 wind turbines in SPA
04.235947	Cork	17.08.10	Rockchapel, County Cork	5 wind turbines in SPA
07.231437	Galway	03.06.09	Lettercraffroe, Oughterard, County Galway	8 wind turbines affecting peat soil drainage feeding into the Corrib cSAC

Assessing environmental impacts – as required under EU law – would avoid further repeats of these situations. Indeed, An Bord Pleanála itself has more to do to meet EU environmental law as shown in its decision to grant planning permission for a route for an outer bypass of Galway which would adversely affect protected habitats, a case since referred to the European Court of Justice.

Equally, the EIA Directive is routinely flouted by councils. Ireland lost a significant European case regarding the use of retention planning permission in EIA cases and which contravened the EIA Directive (C-215/06). Despite this, councils continue to grant retention planning permission for developments requiring an EIA, particularly for major quarry developments.

Ireland's consistent breaches of EU law flies in the face of our so called 'clean green' image. Every year the European Commission commences new cases in an attempt to enforce laws to which Ireland is ostensibly committed. The State's awful historical legacy of very poor performance results, in part, from Ireland's jumble of 88 councils. Due to their small average size knowledge of, and interest in, European law can only be low, and there are very few exceptions. **An Taisce has initiated the establishment of the Environmental Law Implementation Group in partnership with the Government and it is hoped that this initiative will help protect vital assets in our environment (such as water supplies), assist in the full implementation of EU law, and shield Irish**

taxpayers from the fines that would result from remaining in legal default.

Rural Housing

No analysis of planning in Ireland can be complete without assessment of rural planning issues, particularly urban-generated housing located in a dispersed manner in rural areas. Currently, 'one-off' rural dwellings account for 410,000 (25%) of the national housing stock. Between 2001 and 2011, 170,000 'one-off' dwellings have been permitted by councils nationwide. Since 2010, 50% of all dwelling units granted planning permission in the State have been 'one-off' dwellings.

An Taisce has been persistently criticised for opposing the proliferation of dispersed rural housing across the country. The reality is that An Taisce makes submissions on less than 1% of planning applications annually. An Taisce only appeals rural dwellings to An Bord Pleanála where the council is flouting its own development plan, or where there are clear risks to water quality or protected wildlife.

At a general level new rural housing is a key source of informal patronage for many local and national politicians – but a source of patronage which would best be removed. This can be done by implementing the 1974 Kenny Report under which sites can be provided at fair value in serviced areas. It will also entail having councils which are, on average, larger and with greater checks and balances regarding the purchase and sale of land for serviced sites under the Kenny model.

In 2002 there were 358,000 one-off dwellings in the State. In 2011 there are 410,000, 52,000 more. In reality all An Taisce can do is help protect some of



Ireland's network of historic small towns and villages are dying due to our widely dispersed settlement patterns.



The average size of a 'one off' dwelling permitted in Ireland is over twice that of an urban dwelling and consuming an average of one acre of land each.

Ireland's most treasured beauty spots, water quality and certain wildlife conserved under European law – and only in areas where there are active local communities interested in defending these shared assets. This is no substitute for the system overhaul that is actually needed, described above.

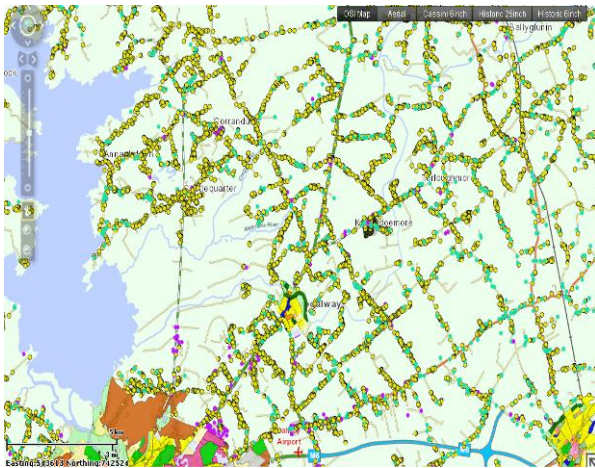


Figure 13 - A 'screen grab' from the Government's new MyPlan.ie system showing the extent of one-off housing in County Galway. This development pattern makes it increasingly difficult to deliver new infrastructure projects, such as grid connections to renewable energy projects.

The Sustainable Rural Housing Guidelines introduced in 2005 were intended to permit only those with a genuine 'local need' obtaining planning permission for new 'one off' dwellings, subject to proper planning considerations. This is widely flouted. The truth is that the vast bulk of 'one off' applications do not come from people actually working on the land. However, for young couples with access to free or ultra low-cost land, one-off housing appears the cheapest option in capital expenditure terms, even if, as parents, they end up spending a great deal of time and money commuting to and from services. Implementing the Kenny Report together with the provision of fair-value serviced sites will help redress the imbalance here – and address the long-term 'lock-in' to high fuel costs.

Preventing rural depopulation is the main justification put forward for the permissive approach to rural housing. It's accepted that those who do often advance the argument of do so earnestly. But the contention turns out to be a falsehood: one-off housing does not halt population decline in rural areas. This is contrary to popular belief but is proven by the data. As Census 2011 shows, those areas with the highest proportion of one-off dwellings very often have the lowest population density, the fastest rates of population

decline and the highest proportion of vacant dwellings. Ireland needs stronger villages and towns to sustain the economy of rural regions: if social and economic sustenance is the objective, then one-off fails. The question now is: will government undertake the necessary reforms?

The An Foras Forbartha 1976 report, *Urban Generated Housing in Rural Areas*, presciently sets out the long-term economic, social and environmental issues associated with a permissive policy towards one-off housing. The 1976 report has a strong focus on how the expense of serving widely separately housing (post, bin collection, education, electricity, etc) raises costs for society as a whole. While the breadth of these issues is too great to address here, a number of them do merit mention.¹⁴

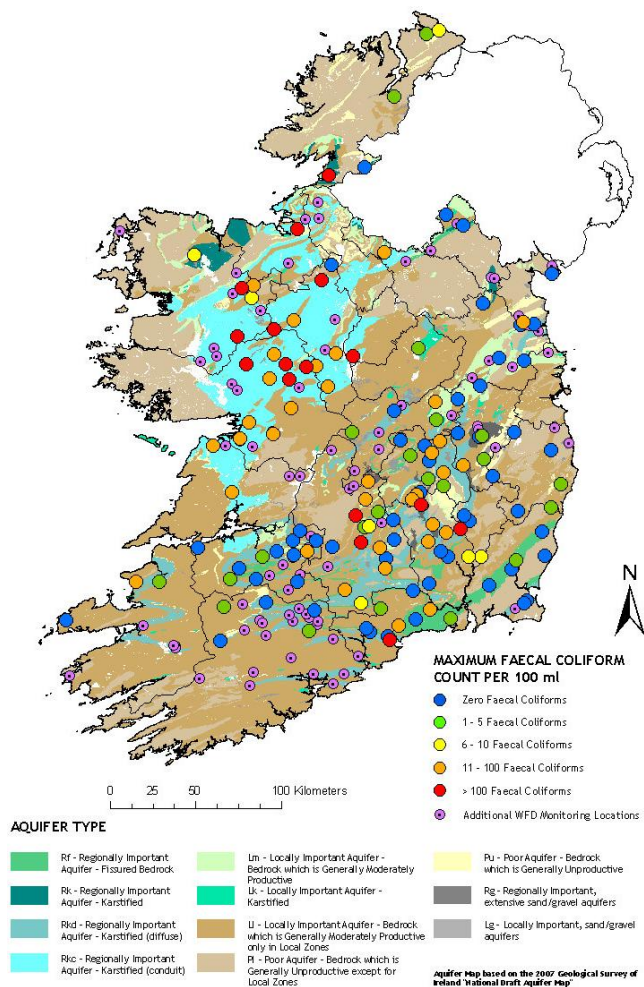
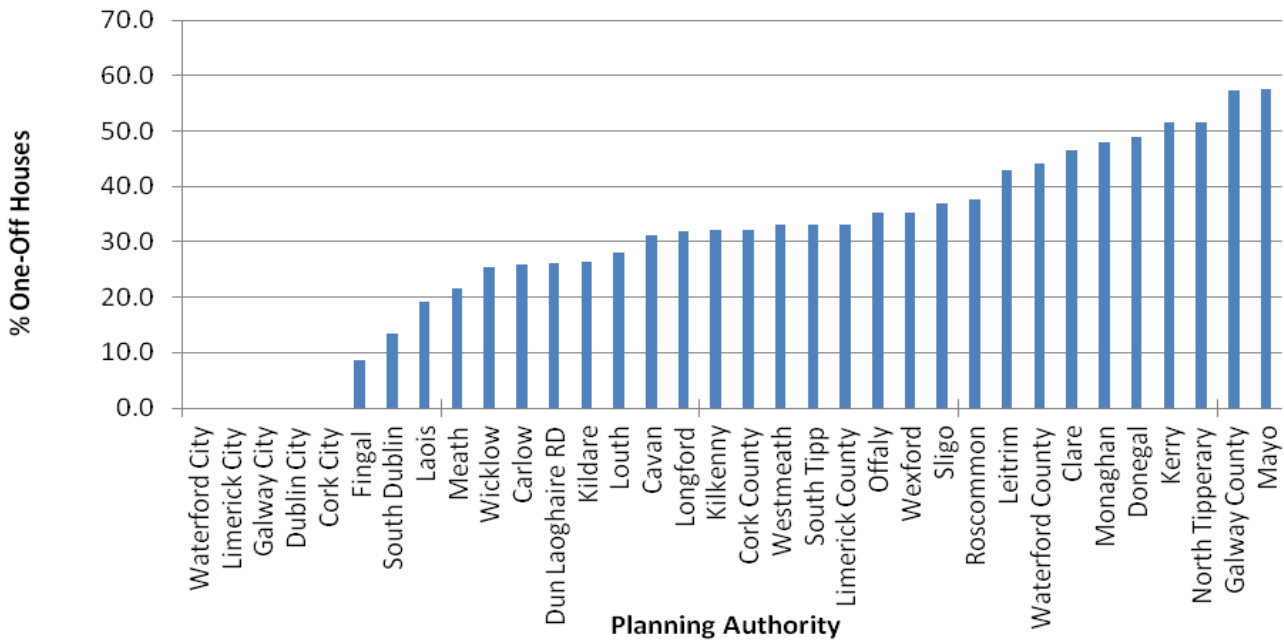


Figure 14 – The red dots show significant instances of faecal contamination, a key source of E.Coli.

¹⁴ See www.oneoffireland.wordpress.com/resources/ for further reading.

Indicator 7: Percentage of One-Off Dwellings Granted as a Proportion of Total Housing Units Permitted 2001 - 2011



There has been much debate recently about the introduction of the proposed ‘septic tank’ registration system. Single houses in the countryside have, for the most part, septic tank treatment systems (or similar) for wastewater and this poses an increasing risk to groundwater and surface water quality. There are over 470,000 unsewered houses in the state discharging almost 250 million litres of effluent into the countryside every day. **Investigations have shown that over 85% of Ireland’s ground area is not suitable for the safe disposal of sewage as it is made up of soil that is too heavy, wet or thin. Yet over the last decade alone councils have permitted a widely dispersed settlement pattern amounting to 170,000 planning permissions granted. In County Galway, for example, 60% of all households are one-off dwellings. Even allowing for a very modest €5,000 to upgrade a single septic tank, and assuming just 100,000 such systems need this level of work, the total cost will be €500 million. These are costs which will be borne by individual**

householders or society at large through a State subsidy. The provision of waste collection and other services are also much more expensive in dispersed communities – as much as five times more expensive.

At least 20 homes per acre are needed for a bus service to be viable.¹⁵ At 2 homes per acre, and less, one-off housing is a very far cry from this. The result is that a high level of car travel is an expensive but unavoidable expense for rural households. **A recent study by the Vincentian Partnership for Social Justice found that rural dwellers pay between 50% and 70% more for transport with many rural dwellers paying out more for transport fuel than food. This situation will only exacerbate as oil becomes progressively more expensive, resulting in greater hardship for rural dwellers and storing up major costs for the future.**

While building a spacious home in the countryside may make rural areas attractive for families wanting to escape city life, it also leads to irreversible

¹⁵ <http://www.futurecommunities.net/socialdesign/188/good-transport-connections-matter>

pressure on land usage, fragmentation of our scenic landscape – a vital tourism asset for Ireland – and the loss of biodiversity.

An Taisce argues again here for a more sensible, sustainable, cost-efficient rural development policy that provides a prosperous direction to achieve a thriving rural Ireland. It involves the implementation of the Kenny Report, the use of fair-value sites in served villages and towns and the protection of our principal natural asset – the land – for this generation and future generations. To a large extent the horse has already bolted and successive generations of Irish people have to foot the bill for a dispersed settlement pattern. The question for Government is whether it acts to prevent a costly situation becoming even more expensive.

Nursing Home & Hotel Development

Government property incentive schemes played a major role in inflating the property bubble, including in the hotel and nursing home sectors.

The Irish Hoteliers Federation has recently stated that the hotel sector is insolvent, with over half the hotel rooms in the State – some 15,000 beds, including those in so-called ‘Zombie Hotels’, needing to be shut down.

The incentive schemes also gave rise to a plethora of reckless nursing home proposals in remote locations, often 5 to 10 km from the nearest shops, churches and community services. An Taisce has taken multiple appeals against such developments, all of which were granted planning permission by councils but refused by An Bord Pleanála.

Table 10: Significant Nursing Home Development Proposals in Unserviced Remote Locations Overturned on Appeal by An Taisce to An Bord Pleanála

Reference	Local Authority	Decision Date	Location	Proposed Development
02.226437	Cavan	13.06.08	Killoughter Redhills, County Cavan	Nursing home & 20 residential units
04.219613	Cork	20.04.07	Templevalley Curraglass, County Cork	64 bed nursing home
09.236657	Kildare	30.08.10	Rathangan, County Kildare	Nursing home & 10 houses
09.212554	Kildare	31.03.06	Ballyhagen Carbury, County Kildare	52 bed nursing home
16.205765	Mayo	20.05.04	Carrowgalda Bohola, County Mayo	Nursing home
19.232677	Offaly	08.06.10	Crinkill, Birr, County Offaly	50 bed nursing home & 10 detached houses
24.236022	Waterford	11.06.08	Kill, County Waterford	Nursing home & 13 retirement homes
04.237719	Cork	22.02.11	Castlemartyr, County Cork	90 bed nursing home in Coillte woodland
07.237517	Galway	21.01.11	Carrowbawn, County Galway	90 bed nursing home in Coillte woodland
20.234081	Roscommon	16.05.11	Copse Boyle, County Roscommon	Mixed development including retirement housing
24.237730	Waterford	17.02.11	Killotteran Butlerstown, County Waterford	Nursing home & retirement houses

Built Heritage

Ireland's built heritage came under sustained attack throughout the 'Celtic Tiger', with important country houses and demesnes earmarked for new hotel-and-housing developments in particular.

An Taisce has been to the fore in conserving Ireland's important stock of built heritage for future generations. Some significant cases where An Taisce has managed to overturn inappropriate council decisions on appeal include:

- Farnham Demesne, County Cavan: 52 houses in 18th Century Deerpark (PL02.230833)
- Kilshanig Demesne, County Cork: Plant hire depot and warehouse (PL04.227069)
- Lisavaird, County Cork: Demolition of the 19th National school attended by Michael Collins (PL88.236757)
- Drishane, Millstreet, County Cork: Steel fabrication facility adjoining Drishane ACA (PL04.231768)
- Bridge Street, Carrick-on-Suir: Demolition of four storey building in ACA (PL44.226820)
- Donaghcumper Demesne, Celbridge: Impact of internationally renowned Castletown House (PL09.236613)
- Queen Street and Bridge Street, Gort: Demolition of House (PL07.238182)

Enforcement

Enforcement is the weakest link in the weak Irish planning system. Effective enforcement is vital for the credibility of the planning system. However, councils have consistently failed to enforce planning laws and conditions of planning permission. In a parallel with other areas of regulation, a mix of institutional apathy and lack of resources within councils play a major role in Ireland's very lax enforcement regime. The overall approach can only be described as negligent, particularly in the case of EU environmental law, and it has persistently been the cause of serious concern to the European Commission which has cited lack of enforcement in a number of recent cases before the European Court of Justice. The point has now been reached where there is no confidence or expectation by the public that councils will in fact enforce basic planning rules.

Thousands of hectares of peatland, a critical ecological resource, as well as an important carbon sink, has been mechanically extracted without planning permission for commercial horticulture use, mainly for export, as well as domestic fuel burning. An outdated 'seven year rule' prevented councils from taking enforcement action. This law has only recently been repealed but the damage has been largely done.



The boom-time building frenzy resulted in the proliferation of illegal quarries, many of them supplying State infrastructure projects.

Lemgare Quarry, Monaghan

In November 2010 the High Court quashed a decision by An Bord Pleanála to grant permission for a quarry application at Lemgare, County Monaghan following a Judicial Review taken by An Taisce.

At issue in the case was the legal status of existing quarrying for which a continuation application had been sought. An Taisce had appealed the initial decision by Monaghan County Council to grant permission but An Bord Pleanála endorsed the council's decision to allow quarrying continue.

An Taisce took a judicial review of An Bord Pleanála's decision, noting that any quarrying which had occurred before current planning legislation came into place (in 1964) was small-scale, and that no legal basis had been established for the large-scale quarrying underway on the site - which was in excess of the 5 hectare threshold requiring Environmental Impact Assessment under EU law. An Taisce further submitted that the mere registration of the quarry under new planning legislation introduced in 2000 did not confer legal status on the site.

In the High Court Mr Justice Charleton found that before 1964 there was some blasting and the removal of stones by horse and cart. But the current level of operation involved more than 40 lorry loads and 10 tractor-and-trailer loads being removed every working day. There had been no analysis by An Bord Pleanála - leaving aside the inspector's report (which the Board rejected) - of An Taisce's evidence of change-of-use through intensification. Holding for An Taisce, and quashing the decision of the appeals board, Mr Justice Charleton said "regrettably, it is apparent on the face of the order that a number of significant errors were made in the decision of the Board". **At the time of writing Monaghan County Council has not enforced the High Court's decision.**

A similar situation was allowed to persist in respect of the boom-time proliferation of illegal quarries, many servicing road-building projects. A half-hearted attempt to regulate quarries was introduced in 2003 but this amounted to a fraudster's charter. Many operators made bogus declarations, claiming - falsely - that quarries with no planning permission were 'legitimately' in existence before 1964 when this was completely untrue. Eventually, under threat of fines from the European Court of Justice, the State was forced to bring in the cumbersome 'Substitute Consent' process in 2010 for quarry and peat extraction operations.

The 2005 Rural Housing Guidelines are regularly flouted with the so-called '*local need*' criteria for applicants subverted through the submission of fraudulent information. A survey by the An Taisce Kerry Association found that 90% of permitted rural houses were non-compliant in respect of planning conditions which required landscaping treatment to protect tourism in Kerry. Above all, lax or non-existent planning enforcement is having a real and tangible impact on the lives of many residents in newly built housing estates through the failure to enforce completion. Further, special pleadings are made in the case of many unauthorised developments in an attempt to secure inaction on legal enforcement by councils. Often these special pleadings are framed in terms of potential employment loss but **the reality is that unauthorised development costs jobs.**

Unauthorised development usually goes hand-in-hand with environmental non-compliance and tax evasion, and puts legitimate operators out of business. Quarrying is a case in point. **Legitimate quarries face unfair competition from, and are often put out of business by, illegal operators.**

The recent reforms of enforcement laws in the Planning & Development (Amendment) Act 2010

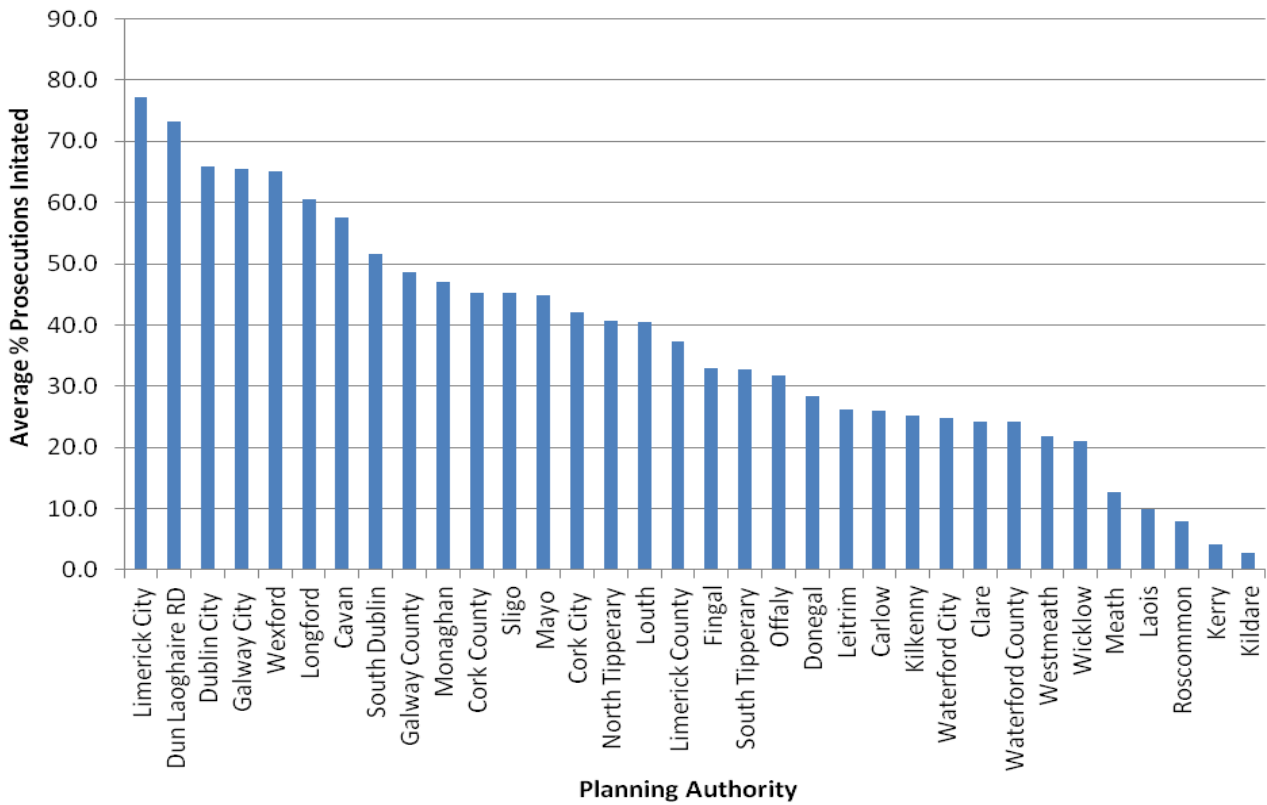


Ireland's unique bogs continue to be plundered without planning permission or environmental regulation.

are welcome. However, the current situation is that a breach of many planning laws is currently a criminal offence, creating a very onerous burden of proof with councils having to prove cases beyond a reasonable doubt, rather than the lower threshold of balance of probabilities. The courts have sometimes proven inconsistent in planning matters, often giving the defendant the benefit of any doubt, and allowing significant delays in proceedings and repeated adjournments. The high costs and long delays associated with court proceedings are also a major difficulty for councils in taking enforcement cases, pointing to the need for a least-cost environmental court offering greater ease of access, similar to the dedicated Commercial Court created in January 2004. More immediately, a change in the burden of proof of planning offences carrying fiscal penalties (and not imprisonment) would be a welcome reform.

The recent events in Priory Hall in north Dublin and new developments plagued by pyrite defects illustrate the problems which can emerge as a result of Ireland's outdated planning and building control enforcement laws. This situation is likely to get worse over the coming decades as the flaws in the buildings thrown up during the 'Celtic Tiger' become apparent.

Indicator 8: Average Percentage of Prosecutions Initiated Following Failure to Comply with Enforcement Notice 2005 - 2009



As part of the reform required, greater sophistication is needed in terms of graduated and fixed penalties, with fines issued by councils in accordance with the scale and length of time of the breach (as is the case in Scotland). Furthermore, reformed legislation should, in certain cases, allow for a civil remedy through the District Court rather than through the Circuit or High Court as is currently the case.

The Regulator should also prosecute councils where they fail to comply with a request for information, or a direction. Most importantly, the Regulator must be required to expediently follow up complaints made by the public and NGOs within defined time periods in relation to breaches of planning law.

The oversight role for the proposed new independent Planning Regulator is crucial. The Regulator must be mandated under new legislation to set the standards of planning enforcement that local authorities are required to follow. Moreover, the Regulator must be empowered to issue a binding direction to a council to take specific enforcement action within a specified timescale.

Appendix 1

Ranking Indicator	Data Source
1 Over-zoning: Amount of Zoned Land as a Percentage of Population in 2011.	www.myplan.ie/en/documents
2 Decisions Reversed by An Bord Pleanála 2005 – 2010.	http://www.pleanala.ie/publications/index.htm
3 Decisions Confirmed by An Bord Pleanála 2005 – 2010.	http://www.pleanala.ie/publications/index.htm
4 Percentage of Vacant Housing Stock in 2011.	http://www.cso.ie/en/census/census2011preliminaryreport/
5 Change in Vacant Housing Stock 2006 – 2011.	http://www.cso.ie/en/census/census2011preliminaryreport/
6 Water quality: Urban Areas with Secondary Treatment meeting EPA Standards 2011.	http://www.epa.ie/downloads/pubs/water/wastewater/uww/#d.en.31927
7 Percentage of One-Off Houses Permitted as a Percentage of all Residential Planning Permissions 2001 – 2011 ¹ .	http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=BHQ01
8 Legal Proceedings Commenced Following Non-Compliance with Enforcement Notice 2005 – 2010.	http://www.environ.ie/en/Publications/StatisticsandRegularPublications/PlanningStatistics/

Appendix 2

	Overzone	Reversed	Upheld	Vacant	Change Vacant	Water Quality	One Off	Legal Enforcee		
Indicator	1	2	3	4	5	6	7	8	Score	%
County										
Carlow	19	9	2	16	1	16	29	12	85	31%
Cavan	2	2	3	7	4	14	25	28	83	31%
Clare	1	18	32	9	9	16	7	9	100	37%
Cork City	33	31	11	26	23	28	17	21	157	58%
Cork County	25	17	12	13	19	10	23	24	118	43%
Donegal	10	1	4	2	2	4	5	14	32	12%
Dublin City	34	34	16	28	25	1	17	32	153	56%
Dun Laoghaire RD	31	26	24	32	28	28	28	33	199	73%
Fingal	26	33	33	33	33	2	34	17	185	68%
Galway City	30	29	26	27	32	28	17	31	190	70%
Galway County	18	6	15	11	17	6	2	26	83	31%
Kerry	11	10	19	3	8	24	4	2	70	26%
Kildare	20	23	22	31	34	25	27	1	163	60%
Kilkenny	14	21	20	24	13	3	23	11	115	42%
Laois	4	13	25	21	30	6	32	4	131	48%
Leitrim	9	7	21	1	5	4	9	13	60	22%
Limerick City	27	29	7	19	10	28	17	34	144	53%
Limerick County	21	25	34	23	22	9	21	18	152	56%
Longford	5	5	1	8	11	28	24	29	106	39%
Louth	29	11	9	23	22	13	26	19	123	45%
Mayo	32	12	14	4	14	15	1	22	82	30%
Meath	16	19	30	30	29	23	31	5	167	61%
Monaghan	3	14	8	18	7	16	6	25	94	35%
North Tipperary	13	30	29	15	3	22	3	20	122	45%
Offaly	7	24	23	25	24	21	18	15	150	55%
Roscommon	8	3	5	5	6	12	10	3	44	16%
Sligo	15	20	18	6	18	6	11	23	102	38%
South Dublin	28	32	31	34	26	17	33	27	200	74%
South Tipperary	12	23	17	20	16	26	21	16	139	51%
Waterford City	22	29	10	14	12	28	17	10	120	44%
Waterford County	6	8	13	12	20	19	8	8	88	32%
Westmeath	23	15	27	18	27	19	21	7	134	49%
Wexford	24	4	6	10	15	11	18	30	94	35%
Wicklow	17	16	28	29	31	27	30	6	167	61%

Appendix 3

Note: While every effort has been made to ensure data and information included in this report is accurate no liability is accepted in the case of any inaccuracies or errors.

A > 90%	B > 80%	C > 61%	D > 44%	E > 33%
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