

### No planning, no party



A planning authority considering an application for retention permission is entitled to have regard to its past decisions on the development. A decision of a planning authority may not be challenged simply because third party submissions, which disclosed no new issues, were not shared with the applicant. There is no obligation on a planning authority to provide guidance as to what future applications it may find acceptable.

If one builds in breach of planning permission one can apply for retention permission. In *Westwood Club Ltd v. An Bord Plenála and Dublin City Council* [2010] IEHC 16 the applicants operated a sports and leisure facility in North Dublin. In 1998 planning permission was granted for a restaurant.

An intoxicating liquor licence was subsequently granted and, in 2002, the nightclub known as “Bar Code” was opened. In 2003 the Club unsuccessfully sought a declaration that the existing planning permission allowed the premises to be used as a nightclub. In 2007, the Club unsuccessfully applied for retention planning permission.

The Club challenged this refusal due to a number of procedural irregularities, but the High Court rejected each argument.

First, the Club argued that An Bord Plenála (the Irish planning appeals body) had incorrectly fettered its discretion by relying on its 2003 finding that the use of the premises as a nightclub was prohibited under the existing permission. Hedigan J rejected this argument holding that it was proper for An Bord Plenála to have regard to its past decisions “in the interests of consistency”, particularly since such decisions formed part of “the planning history of the site”.

Second, the Club claimed that An Bord Plenála had breached fair procedures by failing to provide it with copies of third party submissions opposing its application, thus depriving it of the opportunity to respond to the issues raised. This argument was also rejected by the Court because the submissions raised no new issues.

Finally, the Club argued that An Bord Plenála had failed to provide adequate reasons for its decision insofar as it had not set out what future developments it might find acceptable. Hedigan J noted that there was no obligation on a planning authority to give such information. Sufficient reasons are given if the applicant has enough information to appeal a decision or to seek judicial review. There is no requirement on the planning authorities to give guidance on what future applications might be successful.

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