

## **Introduction**

### ***Objective***

This booklet is intended primarily as a manual for use by local authority officers enforcing the law relating to unauthorised development.

The idea came from a somewhat unlikely source, a book by the late Eamon Mongey, BL, called *Probate Practice in a Nutshell*, which answered practically every question which might arise when taking out a grant of probate for a deceased person's estate. Some years later, as a solicitor dealing with planning prosecutions and injunctions, I found myself pondering the need for a book which set out all the steps involved in enforcing planning law. I felt that a booklet, about the right size to be carried in a back pocket, handbag or car glovebox, which answered the questions which might arise out on the road, and did the same back in the office, would make it easier to carry out investigations more thoroughly and more quickly, so that more enforcement could be carried out at lower cost and with less delay.

This is my attempt to write that book. There are, of course, many excellent texts on planning law already published – Professor Scannell's *Environmental and Land Use Law*, Garrett Simon's *Planning and Development Law*, and Eamon Galligan's *Irish Planning Law and Procedure*, as well as *O'Sullivan and Shepherd's Irish Planning Law and Practice*, which was for many years, under the editorship of Michael O'Donnell, my bible. They analyse the law in detail and set out arguments and opinions which are of great use to those providing advice and pleading cases. I have not

attempted to tread in their footsteps but instead have tried to write a practical manual for those who gather the evidence and take the steps that lead to those cases. I have aimed for a text which is legally accurate but which does not revolve around analysis of sections, articles and cases. People seeking to understand the complexities of planning law will find a wealth of comment in those tomes. My own objective has been different – to simplify the law and to provide a practical ‘how to’ guide for those who have to.

This is not a neutral book. I believe an enforcement authority should be brave. An excess of caution can leave the authority looking much worse than the occasional setback before the courts, and will certainly leave the environment in a worse state. So I have tried not to be timid in the views I express. If I think something is arguable, I have taken the bullheaded view and argued for it. It is my view that we have, in this State, been too tolerant for too long of people who believe the law is something that applies to others, not to them. When challenged over their disregard, they rely on lame and implausible excuses to try to slide out of responsibility. They get a last chance before an enforcement notice is issued, a last chance before a prosecution is brought, and another last chance in court before they are convicted and fined. Partly as a result of our extended tolerance, we have created a countryside littered with one-off houses, leaking septic tanks and sprawling quarries. If this book helps to redress the balance slightly in favour of compliance and the rule of law, I for one shall be glad.

I hope, this book will turn out to be something to be consulted last thing before going through the gate at the start of a site inspection, and last thing before finalising a file

for a prosecution or injunction. If it does, and if, as a result, more unauthorised development is successfully stopped, I will regard it as a success.

### ***Format, Warnings and Thanks***

There are some formalities to be addressed here before beginning.

First, the law is stated as it stood on 1 January 2013.

Second, this book does not constitute, and should not be considered equivalent to, legal advice. As I state elsewhere, there is simply no substitute for reading – and re-reading – the legislation. If reading the legislation does not make the answer clear, seek legal advice.

Third, I should like to thank Áilín for proof reading and pointing out countless minor errors. Any which remain are all my own work.

Fourth, I should like to thank all those who have helped to form my views on planning and environmental law and make this book possible, from my father, Barry, and Professor Scannell in Trinity, who both got me interested in the subject, to my own students in UCG (now NUI Galway) in the late 90s who challenged my views, to the people I have worked with who gave me an insight into the problems they face in carrying out enforcement work, to the many colleagues whose theories and arguments have kept me

inspired and on my toes for the past twenty years and over several hundred cases.

Alan Doyle, LL.M., Solicitor

14 February 2013

Barry Doyle and Company  
23 Merchants Quay  
Dublin 8