

APPROVED

THE HIGH COURT
JUDICIAL REVIEW

2019 No. 825 J.R.

BETWEEN

MICHAEL DEMPSEY
EVA DEMPSEY
EAMONN COURTNEY
JACINTA COURTNEY

APPLICANTS

AND

AN BORD PLEANÁLA

RESPONDENT

ARDSTONE HOMES LTD

NOTICE PARTY

RULING of Mr. Justice Garrett Simons delivered on 15 May 2020

INTRODUCTION

1. A judgment was delivered in these proceedings electronically on 24 April 2020 (“*the initial judgment*”). The judgment bears the neutral citation [2020] IEHC 188. As appears from the initial judgment, this court had decided to seek the guidance of the Court of Justice, by way of a reference for a preliminary ruling under Article 267 of the TFEU, as to this court’s obligations under the Environmental Impact Assessment Directive (“*the EIA Directive*”). In particular, guidance was to be sought as to whether the High Court might be obliged to rule upon the validity of the impugned planning permission notwithstanding that the Applicants now wish to withdraw their proceedings.
2. A draft of the intended reference to the Court of Justice had been included as an appendix to the initial judgment. It was explained that the formal order for a reference would not

NO REDACTION REQUIRED

be drawn up for twenty-one days. The parties were invited, in the interim, to bring to the attention of the court any error in the draft reference by emailing the Registrar assigned to this case. This approach is in accordance with the protocol of 24 March 2020 on the delivery of judgments electronically, which indicates that issues arising from a judgment should generally be dealt with remotely.

“The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate.”

3. To date, only one of the parties, namely the Developer, has sought to avail of this invitation. A detailed submission has been received by the Registrar from Mr Brendan Slattery of McCann Fitzgerald, and will be taken into account by the court in settling the final terms of the reference.
4. There has been another, more significant, development in the proceedings, as follows. The Attorney General, by way of a letter from the Chief State Solicitor’s Office of yesterday’s date, has written to the Registrar and requested that the drawing up of the order for reference be adjourned for a *further* twenty-one days, i.e. until 5 June 2020. The reason for this request is that the Attorney General wishes to consider the advice of counsel, and, if appropriate, to issue an application to the court to be joined to the proceedings as a notice party.

“The Attorney General is therefore considering the Judgment carefully, and, in particular, is considering whether to apply for the permission of the Court to be joined to the proceedings as a Notice Party. The Attorney General has also now instructed counsel to advise him on such a possible application.

The Attorney General is also considering whether the Judgment may be subject to an appeal, in particular, given the recent rulings of the Supreme Court in *Data Protection Commission v Facebook and Schrems* [2018] IESC 38 and [2019] IESC 46 and earlier rulings of the Court of Justice of the European Union ('the CJEU') in Case C-470/12 *Pohotovost* EU:C:2014:101 and Case C-210/06 *Cartesio* EU:C:2008:723."

5. The Attorney General has a well-established role in defending the public interest, and, on a number of occasions, has intervened in planning and environmental law proceedings to ensure compliance with EU law. A recent example of such an intervention is provided by the proceedings challenging the grant of planning permission for the Apple data centre in Galway, *Fitzpatrick v. An Bord Pleanála* [2018] IESC 60. On the facts of that case, the Attorney General and the Minister for Housing, Planning and Local Government, who had not participated in the proceedings before the High Court, successfully applied to be heard on the appeal to the Supreme Court.
6. Subject always to hearing the views of the other parties to the proceedings, this court's *tentative* view is that the Attorney General should be permitted to intervene in the proceedings if he wishes to do so. At the moment, however, the only thing which the court is being asked to do is to defer having the formal order for a reference drawn up for a further twenty-one days to allow the Attorney General time to consider his position. This is an entirely reasonable request. Accordingly, I will make the following directions.
7. The formal order for a reference will not be drawn up until the issue of the Attorney General's participation in the proceedings before the High Court has been resolved, one way or another. (The question of a *further* stay on the reference, pending an appeal, will be addressed *separately* if and when it arises).
8. The Attorney General has liberty to issue a motion seeking to be joined in the proceedings (if he so wishes). Any such motion should be issued on or before 5 June 2020, with a

return date of 19 June 2020. The other parties will have liberty to file their response to the motion, if any, by close of business on Monday 15 June 2020.

9. The proceedings will be listed before me for further directions on Friday 19 June 2020 at 10 am. This will be a remote hearing. The Office of the Chief State Solicitor is to arrange to have an electronic booklet of motion papers, if any, sent to the Registrar by 12 noon on Wednesday 17 June 2020.
10. Finally, in accordance with the protocol of 24 March 2020 (above), I direct that this ruling be published on the Courts Service website in its original approved format.

Approved
SARAH SIMONS