

C-721/21-1

THE HIGH COURT

JUDICIAL REVIEW

2020 No 1030 JR

CURIA GREFFE
Luxembourg
Entrée 26. 11. 2021

MONDAY THE 4TH DAY OF OCTOBER 2021
BEFORE MR JUSTICE HUMPHRIES
BETWEEN

ECO ADVOCACY CLG

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

KEEGAN LAND HOLDINGS

NOTICE PARTY

AND BY ORDER OF THE COURT on the 26th day of July 2021

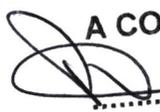
AN TAISCE – THE NATIONAL TRUST FOR IRELAND

AND CLIENTEARTH AISBL

AMICI CURIAE

Upon Motion of Counsel for the Applicant issued on the 14th day of January 2021 coming before the Court by way of remote hearing on the 21st day of December 2020 (ex- parte) the 14th day of January 2021 the 21st day of January 2021 the 8th day of February 2021 the 17th day of February 2021 the 22nd day of February 2021 the 23rd day of February 2021 the 24th day of February 2021 and the 25th day of February 2021 and in the presence of said Counsel and Counsel for the Respondent and Counsel for the Notice party seeking the following reliefs:

1. An Order of Certiorari quashing the decision of the Respondent of the 27th day of October 2020 to grant permission to the Notice Party for a development comprising 320 no. new residential units and associate developments at Charterschool Land Manorland 2nd Divisions and Commons Trim Co Meath which

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THE HIGH COURT

said determination was made pursuant to Section 9 of the Planning and Development [Housing and Residential Tenancies] Act 2016

(ABP Ref 307507-20)

2. Such declaration(s) of the legal rights and or legal position of the applicant and or persons similarly situated and or of the legal duties and or legal position of the Respondents(s) as the Court considers appropriate
3. Further or other Orders
4. Liberty to apply
5. The costs of the within proceedings
6. An Order that Section 50B of the PDA 2000 applies to the within proceedings

Whereupon and on reading the said Notice of Motion the Statement of Grounds filed on the 21st day of December 2020 the Affidavits set forth in the Schedule hereto and the exhibits referred to in said Affidavits, the Legal Submissions of Counsel for the Applicant and Counsel for the Respondents and the Statement of Opposition filed on the 5th day of February 2021

And on hearing from said Counsel and Counsel for the Respondent and Counsel for the Notice party

IT IS ORDERED that the Applicant do have liberty to file and issue a supplemental Affidavit by close of Business on Friday the 26th day of February 2021

AND IT IS ORDERED that the Respondent and the Notice Party be a liberty to file within seven days thereafter further submissions to be the Court

THE COURT WAS PLEASED to reserve judgment

AND the matter coming before the Court on the 22nd day of March 2021 in the presence of Counsel

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THE COURT DIRECTED that the Applicant do furnish legal submissions by Friday the 26th day of April 2021 and that the Respondent and Notice Party do furnish their submissions in reply by the 2nd day of April 2021 and that the matter be adjourned for mention to Monday the 12th day of April 2021

AND the matter coming before the Court on the 12th day of April 2021 in the presence of Counsel

THE COURT DIRECTED that the Applicant do furnish legal submissions immediately and that the Respondent and Notice Party do furnish their submissions in reply by close of Business on the 15th day of April 2021

AND the matter coming before the Court on the 26th day of April 2021 in the presence of Counsel

THE COURT DOTH vacate the forthcoming date for the delivery of the Reserved Judgment in this matter and adjourn this matter to this Court for Monday the 17th day of May 2021

AND the matter having been removed from the Court listing on Monday the 17th day of May 2021

And written judgment having been delivered electronically on the 27th day of May 2021

THE COURT DOTH make reference to the Court of Justice of the European Union in relation to referable questions

AND THE COURT granted liberty to the respective parties to provide submissions to assist the Court in that regard and to propose the addition of any relevant Amici Curiae in addition to the Applicant placing the Attorney General on notice of the intention to refer the matter

AND THE COURT doth adjourn this matter for a period of six weeks from the day Judgment was delivered [8th day of July 2021]

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AND the matter coming before the Court on the 12th day of July 2021 in the presence of Counsel

AND upon application from the Solicitor for An Taisce and ClientEarth

IT IS ORDERED that An Taisce and ClientEarth be granted one week to furnish legal submissions as to why either or both entities should be joined as Amici Curiae and one week thereafter to furnish replies to questions in the said Judgment of the 27th day of May 2021

AND the matter coming before the Court on the 26th day of July 2021 in the presence of Counsel and the solicitor acting for the proposed amici curiae

IT IS ORDERED that AN TAISCE – THE NATIONAL TRUST FOR IRELAND AND CLIENTEARTH AISBL be joined in the within proceedings as amici curiae

AND IT IS ORDERED that the amici curiae do have two weeks to furnish submissions

AND IT ALSO ORDERED that the Solicitor for the Applicant do circulate to the other parties of these within proceedings copies of the correspondence with the Attorney General

AND the matter coming before the Court on the 9th day of August 2021 in the presence of Counsel the Court was pleased to reserve Judgment in this matter

And written judgment having been delivered electronically on the 4th day of October 2021

IT IS ORDERED that the Applicant do within 28 days of the delivery of the judgment dated the 4th day of October 2021 directly lodge with the Principal Registrar of this Court hard copy books of all pleadings for transmission to the Court of Justice of the European Court [CJEU]

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AND THEREUPON THE COURT adjourning the proceedings to facilitate the consideration of the making of a reference to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union the following questions :

1. Does the general principle of the primacy of EU law and or of co-operation in good faith have the effect that either generally or in the specific context of environmental law where a party brings proceedings challenging the validity of an administrative measure by reference expressly or impliedly to a particular instrument of EU law but does not specify which provisions of the instrument have been infringed or by reference to which precise interpretation the domestic court before which proceedings are brought must or may examine the complaint notwithstanding any rule of domestic procedure requiring the specific breaches concerned to be set out in the party's written pleadings.
2. If the answer to the first question is "Yes", whether art. 4(2), (3), (4) and or (5) and or Annex III of the EIA directive 2011/92 and or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment there should be an express discrete and or specific statement as to what documents exactly set out the reasons of the competent authority
3. If the answer to the first question is "Yes" whether art. 4(2) (3) (4) and or (5) and or Annex III of the EIA directive 2011/92 and or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union have the consequence that where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment there is an obligation to expressly set out consideration of all specific headings and sub-headings in annex III of the EIA directive, insofar as those headings and sub-headings are potentially relevant to the development.

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4. Whether art. 6(3) of directive 92/43/EEC is to be interpreted as meaning that in the application of the principle that in order to determine whether it is necessary to carry out, subsequently an appropriate assessment of the implications for a site concerned of a plan or project it is not appropriate at the screening stage to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site the competent authority of a member state is entitled to take account of features of the plan or project involving the removal of contaminants that may have the effect of reducing harmful effects on the European site solely on the grounds that those features are not intended as mitigation measures even if they have that effect, and that they would have been incorporated in the design as standard features irrespective of any effect on the European site concerned.

5. Whether art. 6(3) of directive 92/43/EEC is to be interpreted as meaning that where the competent authority of a member state is satisfied notwithstanding the questions or concerns expressed by expert bodies in holding at the screening stage that no appropriate assessment is required, the authority must give an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned and that expressly and individually removes each of the doubts raised in that regard during the public participation process

AND

6. If the answer to the first question is “Yes”, whether art. 6 (3) of the habitats directive 92/43 and or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union has the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of appropriate assessment, there should be an express discrete and or specific statement as to what documents exactly set out the reason of the competent authority.

PAT FITZGIBBON
REGISTRAR
Perfected 28.10.2021

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Schedule herein before referred to

Affidavit of	Date filed
Kieran Cummins	21/12/2020
Mark Heslin	5/2/2021
Noreen McLoughlin	5/2/2021
John Keegan	5/2/2021
Trevor Sadler	5/2/2021
Chris Clarke	5/2/2021

O'Connell & Clarke Solicitors
Solicitors for the Applicant

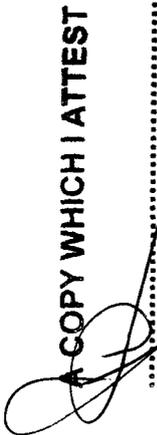
Fieldfisher LLP
Solicitors for the Respondent

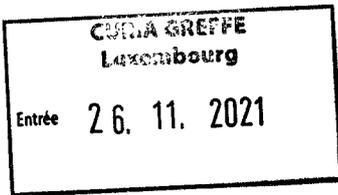
Malone and Martin Solicitors
Solicitors for the Notice Party

FP Logue
Solicitors for the *amici curiae*

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**THE HIGH COURT
JUDICIAL REVIEW**

**[2021] IEHC 610
[2020 No. 1030 JR]**

**IN THE MATTER OF SECTION 50 OF THE
PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED**

BETWEEN

ECO ADVOCACY CLG

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

KEEGAN LAND HOLDINGS LIMITED

NOTICE PARTY

AND BY ORDER

AN TAISCE – THE NATIONAL TRUST FOR IRELAND

AND

CLIENTEARTH AISBL

AMICI CURIAE

(No. 2)

JUDGMENT of Humphreys J. delivered on Monday the 4th day of October, 2021

Subject matter of the dispute

1. The action is a challenge by way of judicial review of the validity of a permission, granted by the respondent An Board Pleanála (“the board”) to the notice party developer, for a housing development in Trim, Co. Meath. The proposal is for the construction of 320 dwellings at Charterschool Land, Manorlands, in the vicinity of the River Boyne and River Blackwater Special Area of Conservation (SAC) and Special Protection Area (SPA).

Facts

2. There were a number of previous refusals of development on the site. In 2008 a development was refused due to the lack of a sustainable drainage (SUDS) system.
3. In 2009 a development was rejected due to poor quality design having regard to the site being a prominent area in the historic town of Trim, a heritage town close to a zone of archaeological potential and an architectural conservation area.
4. A further proposed development was rejected in 2011 due to design issues and the conclusion that it would represent a low standard of residential development.
5. The lands were originally zoned for commercial or industrial use in the Trim Town Development Area Plan 2014 to 2020, but since changed to residential use.

6. A pre-planning meeting took place between the notice party and the local authority, Meath County Council ("the council"), on 3rd September, 2019.
7. A first appropriate assessment ("AA") screening report was prepared in November 2019.
8. On 20th December, 2019, the notice party lodged an application for a pre-planning opinion as to whether the development would constitute strategic housing development.
9. On 13th February, 2020, the developer held a pre-planning meeting with the board and on 2nd March, 2020 the board decided that the application needed further consideration or amendment.
10. On 7th April, 2020, conservation objectives for the River Boyne and River Blackwater SAC were adopted by the National Parks and Wildlife Service.
11. A second AA screening report was prepared in June 2020.
12. The formal planning application in the present case was submitted on 8th July, 2020.
13. The design provides that during the operational phase of the site, surface water run-off will be collected below ground in attenuation storage tanks. They will operate in conjunction with suitable flow control devices which will be fitted to the outlet manhole of each attenuation tank. A class 1 bypass separator will be installed on the inlet pipe to all tanks in order to treat the surface water and remove any potential contaminants prior to entering the tank and ultimately prior to discharge. The water will outfall to a stream around 100 metres south of the development, a tributary of the Boyne.
14. The Boyne itself is approximately 640 metres to the north of the development. It is part of the River Boyne and River Blackwater SPA (reference number 004232) for which a qualifying interest is the Kingfisher (*Alcedo atthis*) [A229].
15. The River Boyne and River Blackwater SAC (reference number 002299) is approximately 700 metres north of the site. The qualifying interests are Alkaline fens [7230], Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0], *Lampetra fluviatilis* (River Lamprey) [1099], *Salmo salar* (Salmon) [1106] and *Lutra lutra* (Otter) [1355].
16. An environmental impact assessment ("EIA") screening report was prepared dated July 2020 as well as an ecological impact assessment which included a number of proposed mitigation measures. A habitats directive screening report was also submitted which concluded that there would be no impact on Natura 2000 sites.
17. The applicant and other bodies made submissions on the application.

18. On 11th August, 2020, a submission was made on behalf of An Taisce (the National Trust for Ireland, a statutory planning consultee and the first *amicus curiae* added by order of the court) noting the potential for impact on the European sites.
19. On 31st August, 2020, the CEO of the council reported on the application.
20. Both submissions are included in exhibit KC1 at tab 5. As regards the council, a memorandum from its heritage officer was prepared entitled "Comments Screening Statement for Appropriate Assessment and EcIA for residential development Charterschool Land, Manorlands, Trim, Co. Meath" and dated 30th August, 2020.
21. It begins by dealing with terrestrial habitats and bats. Among the key points made were as follows:
 - (a). habitats on the site are not used by qualifying interests in the associated European site;
 - (b). no assessment of the extent and cumulative impact of hedgerow removal was undertaken;
 - (c). the bat survey period was late in the active season for bats and does not provide information on bat usage during the spring when maternity roosts are active;
 - (d). the bat presence was dominated by common pipistrelles followed by soprano pipistrelles, with a limited level of other species including Leisler's bat and Myotis species;
 - (e). the bat assemblage was a feature of local higher importance;
 - (f). a number of mitigation measures were outlined in the ecology impact assessment at para. 6.1;
 - (g). these mitigation measures should be implemented under the supervision of a suitably qualified ecologist and bat specialist;
 - (h). hedges and trees should not be removed during the nesting season; and
 - (i). preventative measures should be detailed within the construction environment management plan to ensure that non-native invasive species are not introduced into the site. These measures should follow the national roads authority document (The Management of Noxious Weeds and Non-Native Invasive Plant Species on National Roads, 2010) and take cognisance of the Best Practice Management Guidelines produced by Invasive Species Ireland (Maguire et al 2009).
22. As regards water treatment, the author of the report noted the water being piped from an attenuation tank on the site to a stream 100 metres south of the site, being a tributary of the River Boyne. She went on to say: "in relation to the Appropriate Assessment the Board should satisfy themselves of the efficacy of the SUDS Strategy and surface water management on the site to ensure that there will be no significant effects (direct or indirect) on the qualifying interest of any Natura 2000 sites (European sites), either individually or in combination with any other plans or projects".

23. The CEO's report is dated 31st August, 2020 and is issued under s. 8(5)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016. Section 7.13 of the report, as one might normally expect, repeats the heritage officer's concerns *verbatim*.
24. Turning to the submission of An Taisce, a submission dated 11th August, 2020 prepared by Ms. Phoebe Duvall, Planning and Environmental Policy Officer, noted the potential for impact on the spawning habitat for trout and potential impact on European sites.
25. The submission stated as follows: "A stream runs approximately 100m from the site boundary and flows into the River Boyne. The Boyne is not only an SAC- and SPA-designated site as mentioned previously, but also supplies the drinking water for Trim. An Taisce has concerns that the water quality in this stream could be degraded as a result [of] the proposed works – the intention as per the plans is to have storm drains sending surface water to the stream that would be partially filtered in attenuation tanks. We note that this stream is likely to be a spawning ground for trout and submit that the potential ecological deterioration of the stream was not adequately considered in the Ecological Impact Assessment". It is also worth specifically noting that An Taisce's comment that the filtration was only "partial" does not seem to have been specifically resolved subsequently.
26. On 6th October, 2020, the board's inspector reported recommending that permission be granted and concluding, following the EIA and AA screening, that a full assessment was not required.
27. The template used by the inspector in annex A of her report uses a format for EIA screening that differs in material respects from annex III of the EIA directive. The board suggested (rather at the eleventh hour, in submissions after the main hearing) that the headings in annex III could be found if one combs through the inspector's report, but I don't accept that. The correspondence between annex III and the inspector's report seems far too opaque.
28. Turning then to the way in which the submissions from An Taisce and the council were addressed by the inspector, section 12 of her report deals with appropriate assessment. Paragraph 12.1 notes the screening submission. Paragraph 12.2 describes the development and para. 12.3 notes the proximity of European sites and qualifying interests. Paragraphs 12.4 and 12.5 describe the conservation objectives of the European sites. Paragraph 12.6 notes the location of the Kingfisher along the Boyne and Blackwater system and says that no habitats associated with this species are identified on the site. It contends that the design of the surface water treatment takes account of the scale and nature of the proposed development and says that a road be constructed operated "in accordance with standard environmental features associated with a residential development". It asserts that it would not have the potential to have a significant impact on the water quality and hence qualifying interests of the SAC and SPA.

29. Reference is made to the An Taisce submission, following which the inspector comments:
"[t]rout is not listed as a qualifying interest for the River Boyne and River Blackwater SAC. I do not consider there is potential for any impact on the River Boyne through any hydrological connections via surface, ground and waste water pathway and therefore no potential for any significant adverse impact from the proposed development, on the qualifying criteria of River Boyne and River Blackwater SAC."
30. The conclusion of no impact is repeated at para. 12.7 in relation to both European sites and it is concluded at para. 12.8 that appropriate assessment is not required following the screening exercise.
31. In the report, there are a variety of conditions proposed, for example ultimately condition 14 which requires the SUDS system to be agreed with the council; and one can see perhaps some relationship between some of the conditions and some of the points made, but the board or its inspector does not address those points in an explicit and detailed mode of reasoning. Even the requirement that the SUDS system be agreed with the council does not specifically answer the point made by the council that *the board* (that is, the competent authority granting development consent) should satisfy itself as to the adequacy of the system.
32. Thus the submissions were not individually addressed, raising the question as to whether the competent authority must give an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, and that expressly and individually removes each of the doubts raised in that regard during the public participation process.
33. On 22nd October, 2020, the board gave a direction to grant permission generally in accordance with the inspector's recommendation and on 27th October, 2020 permission was formally granted by decision of the board under the strategic housing development procedure.
34. The board didn't spell out in what documents exactly contained the reasoning for the purposes of EIA and AA. It seems to have been the intention that the reasoning is contained in the inspector's report, appendix A of that document, and the reports submitted by the developer where referred to by the inspector, which presumably was intended to be a form of adoption of that material.
35. On 14th January, 2021, I granted leave in the present proceedings, the primary relief sought being an order of *certiorari* directed to the decision of 27th October, 2020.
36. The matter was heard on 23rd to 25th February, 2021, and at the conclusion of the hearing I permitted the applicant to put in a further formal affidavit exhibiting an additional document

(the statement of grounds in a separate but relevant set of proceedings) subject to further follow-up written submissions and replies.

37. Following further submissions I reserved judgment and in *Eco Advocacy CLG v. An Bord Pleanála (No. 1)* [2021] IEHC 265 (Unreported, High Court, 27th May, 2021), I rejected certain preliminary objections to the challenge and then rejected the challenge insofar as it was based on domestic law. I also rejected certain EU law points. I decided in principle to refer the remaining EU law questions to the CJEU under art. 267 TFEU.
38. When the matter was listed for mention on 12th July, 2021 the solicitor for An Taisce and ClientEarth indicated a willingness to be heard as *amici curiae*. On the applicant's application, I joined those parties as *amici* on 27th July, 2021. As well as the parties proper, the *amici* were also given the opportunity to make submissions, which, without taking in any way whatsoever from the excellent submissions made by everyone else, I found to be particularly helpful in crystallising the issues and clarifying my own thinking. I think this case demonstrates that the applicant was very well advised to apply to apply for the joinder the *amici* here, which was a genuinely helpful exercise, as far as I am concerned.

Relevant legal materials

39. A list of the relevant EU, international and domestic legal material is set out in the appendix to the judgment together with web links.

The relevant grounds of challenge

40. Leaving aside points already rejected in the No. 1 judgment, the remaining grounds of challenge as sought to be supplemented in oral submissions can be summarised as follows:
- (a). the board and inspector gave inadequate consideration to matters required to be considered under the EIA directive;
 - (b). there is not an express statement of what documents exactly set out the reasoning of the competent authority;
 - (c). the board failed to expressly address all specific headings and sub headings in annex III of the EIA directive;
 - (d). the board improperly took account of mitigation measures at the screening stage contrary to the habitats directive; and
 - (e). the board failed to remove all scientific doubt about the impact on the integrity of European sites by failing to deal with the submissions and matters raised in the submissions by An Taisce and the council.

Questions of European law arising

41. As discussed in the No. 1 judgment, it seems to me that six questions of European law that relate to the interpretation of EU law and that are necessary for the decision arise from the substantive grounds identified above, and I consider it appropriate in all circumstances to make a reference to the Court of Justice under art. 267 of the TFEU.

42. The notice party and the State did not make specific submissions in response to the proposed questions so I am recording only the views of the other parties below.

The first question

43. The first question is:

Does the general principle of the primacy of EU law and/or of co-operation in good faith have the effect that, either generally, or in the specific context of environmental law, where a party brings proceedings challenging the validity of an administrative measure by reference, expressly or impliedly, to a particular instrument of EU law, but does not specify which provisions of the instrument have been infringed, or by reference to which precise interpretation, the domestic court before which proceedings are brought must, or may, examine the complaint, notwithstanding any rule of domestic procedure requiring the specific breaches concerned to be set out in the party's written pleadings.

44. The applicant's position is that this question is simply answered in the affirmative. In this case, the applicant raised a complaint in respect of the assessments conduct under the EIA and habitats directives. In particular, the applicant raised a complaint respect of a failure to make those assessments available. The applicant raised a specific complaint that the reasons and considerations and the matters considered were not set out in the EIA screening determination. Leave was granted on these grounds without greater particularity being sought. No particulars were raised by the respondent or notice party. No objections to the pleadings were raised by the respondent. It is submitted that the applicant cannot be shut out from its rights under art. 11 of the EIA directive by nothing more than a failure to mention art. 4 of the EIA directive or art. 6 of the habitats directive. These obligations only arise under these provisions.
45. The board's position is that as a matter of European law, national courts are *entitled* to raise points of European law of their own motion *or ex officio* in certain circumstances, but they are not *obliged* to do so. In deciding whether or not to exercise their discretion to raise such a point *ex officio*, a national court may validly take into account rules of domestic procedural law requiring the specific breaches concerned to be set out in the party's written pleadings, and may refuse to consider the point at issue on this basis.
46. The *amici's* joint position is that national courts are *entitled* to raise points of European law of their own motion *or ex officio* in certain circumstances, and they are *obliged* to do so where not to do so could lead to a breach of EU law going unremedied. In deciding whether or not to raise such a point *ex officio*, a national court must take into account all of the pleadings exchanged between the parties. It is also for the national court to protect the rights of the parties by using national procedural rules to ensure, for example, that the parties have the opportunity to be heard on any points raised *ex officio*. Where a national

court is required by national procedural law to raise a point *ex officio* in relation to national law it must also do so in relation to EU law issues.

47. My proposed answer to the question is in the affirmative; EU law in general obliges a domestic court to apply Union law that has been raised by a party even if the particular provision or interpretation has not been specifically pleaded. The effective implementation of Union law requires the national court to take an expansive and purposive approach to remedies envisaged by Union law. Where an effective remedy is sought for any alleged breach of Union law, and the applicant makes reference to the particular Union legislation concerned, whether expressly or impliedly, the domestic court should be required to consider the complaint even if domestic requirements of pleadings would ordinarily require the particular provisions of the law or particular interpretation relied on to be set out. The adoption of such an approach by domestic courts would significantly enhance the accessibility of Union law and the effectiveness of remedies thereunder, would eliminate technical obstacles to access to Union legal remedies that might arise from domestic procedural rules, and would ensure that breaches of Union law would not go unremedied in such circumstances. An affirmative answer to this question would significantly enhance the extent in practice to which Union law became embedded in the legal order of member states.
48. The reason for the reference of this question is that if the answer is "Yes" then the applicant can pursue a wider range of grounds of challenge to the impugned permission.

The second question

49. The second question is:
- If the answer to the first question is "Yes", whether art. 4(2), (3), (4) and/or (5) and/or Annex III of the EIA directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reasons of the competent authority.**
50. The applicant's position is that the answer to this question is in the affirmative. In the alternative, the reasons and considerations along with the matters considered must be clearly and expressly made available to the public. Failure to do so gives rise to uncertainty and confusion.
51. The board's position is that as a matter of both domestic and European law there is no requirement for an express statement as to what documents exactly set out the reasons of the competent authority, provided that the reasons can be readily ascertained from the

documentation as a whole. The board will rely *inter alia* on the CJEU decision in *Mellor* (C-75/08).

52. The *amici's* joint position is that where a competent authority decides that an environmental impact assessment is not required, art. 4(5)(b) of the EIA directive requires a discrete express statement of the main reasons for not requiring such assessment. Where the express statement refers to sections of other documents these references should be referred to explicitly provided always that the reasons and references to sections of other documents which set out the reasons can be manifestly identified by an average member of the public participating in the procedure who does not have any particular expertise in law or environmental assessment. The statement of reasons must be sufficient to enable a member of the public and a national court to review the lawfulness of the decision without further explanation or elaboration from the competent authority.
53. My proposed answer to the question is in the affirmative; any screening decision should be accompanied by express, discrete and specific reasons. While domestic substantive law can provide considerable latitude to decision-makers in a purely domestic context as to the form of the decision, a lack of transparency as to reasoning in the Union context significantly dilutes the objectives of public participation and good administration that apply to relevant Union legislation. The minimum content required to ensure transparency is that the reasoning of the competent authority be set out in express, specific and discrete terms by reference to identified documents setting out such reasoning. A process where it might be inferentially assumed without being stated expressly that a competent authority has accepted a document prepared by a developer, or a document prepared by another official, or both, which latter document or documents therefore impliedly set out the official reasoning (assuming that can even be clearly identified), creates room for disagreement as to interpretation, introduces uncertainty, and lacks adequate transparency and procedural safeguards. This impairs the effective implementation of Union law, particularly in the context where an applicant may seek to invoke judicial remedies against the decision of the competent authority. An obligation to give such reasons is in no way onerous on the competent authority.
54. The reason for the reference of this question is that the decision here did not expressly state what documents set out the reasoning of the competent authority regarding EIA. If there was an implied EU law obligation to do so then the applicant would succeed under that heading.

The third question

55. The third question is:

If the answer to the first question is "Yes", whether art. 4(2), (3), (4) and/or (5) and/or Annex III of the EIA directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the

Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there is an obligation to expressly set out consideration of all specific headings and sub-headings in annex III of the EIA directive, insofar as those headings and sub-headings are potentially relevant to the development.

56. The applicant's position is that again, the answer is in the affirmative. Article 4(5)(b) of the directive is express in its terms. It states: "where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment." This obligation is clear and unequivocal and it has not been met.
57. The board's position is that art. 4(3) of the EIA directive provides that where a case-by-case examination is carried out or thresholds or criteria are set, the *relevant* selection criteria set out in annex III shall *be taken into account*. This does not necessarily require that all the criteria in annex III are expressly identified or listed in the administrative decision. Rather, it requires the competent authority to take account of the relevant criteria, the determination of which must be assessed on a case-by-case basis, depending upon the proposed development at issue. Where this has occurred, there is no requirement for a certain form to be employed, or for a formulaic or mechanical recitation of the individual annex III criteria.
58. The *amici's* joint position is that art. 4(3) of the EIA directive provides that where a case-by-case examination is carried out or thresholds or criteria are set, the relevant selection criteria set out in annex III shall be taken into account. This requires that the statement of the main reasons under art. 4(5)(b) must identify all of the relevant selection criteria set out in annex III and state how they have been taken into account. Where public submissions have identified selection criteria which the competent authority does not consider to be relevant, the competent authority must give reasons why it does not consider those selection criteria to be relevant, such reasons to be sufficient to enable members of the public and a national court to review the lawfulness of the screening determination without further explanation or elaboration from the competent authority.
59. My proposed answer to the question is in the affirmative. Transparency, effective public participation and principles of good administration require that all relevant headings regarding EIA should be expressly addressed. If the competent authority considers that a heading is not relevant, but a participant in the public participation process has argued otherwise, then the competent authority should expressly explain with reasons why the heading is not relevant. A decision that fails to expressly address the annex III headings in

this manner does not comport with principles of good administration, creates an obstacle to meaningful and accessible public participation and obscures the necessary transparency of Union law. A requirement to address each relevant heading, and to give a reason why any heading contended to be relevant is not relevant in the view of the competent authority, is a very light obligation and in no way onerous on the competent authority.

60. The reason for the reference of this question is that the format of the inspector's report which the board argues can permissibly, under EU law, be read together with the decision, does not expressly address each specific heading and sub-heading in annex III of the EIA directive. If there is an obligation to do so then the applicant would succeed under this heading.

The fourth question

61. The fourth question is:

Whether art. 6(3) of directive 92/43/EEC is to be interpreted as meaning that, in the application of the principle that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site, the competent authority of a member state is entitled to take account of features of the plan or project involving the removal of contaminants that may have the effect of reducing harmful effects on the European site solely on the grounds that those features are not intended as mitigation measures even if they have that effect, and that they would have been incorporated in the design as standard features irrespective of any effect on the European site concerned.

62. The applicant's position is that the applicant contends the answer is yes. Mitigation measures either have the effect of mitigating the effects or they do not. Whether they are specifically designed or intended to mitigate a specific impact on a site cannot be determinative. The measures are either protective or they are not, and they will either be effective or they will not. Accordingly, they cannot be excluded on the basis that they are not unique, or uniquely developed or designed or applied. As was pointed out in submissions, the measures at issue in Case C-323/17 *People Over Wind v. Coillte Teoranta* were largely standard SUDS measures, yet, they were considered by the Court of Justice to be mitigatory.
63. The board's position is that the competent authority of a member state should be entitled to take account of features of the plan or project involving the removal of contaminants that may have the effect of reducing harmful effects on the European site on the grounds that those features:

- (a). are not intended as mitigation measures, or aimed in any way at avoiding harmful effects on a European site, even if they might be said to have that effect incidentally; and
- (b). would have been incorporated in the design as standard features irrespective of any proximity to, or effect on, a European site, i.e., they constitute so-called "best practice measures" that are applied irrespective of location as standard design features of all such projects.

64. The *amici's* joint position is that when the competent authority of a member state is determining whether it is necessary to carry out an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate to take account of such features. The concept of what is or isn't a "*measure intended to avoid or reduce the harmful effects of the plan or project on [a] site*" (as defined on Case C-323/17 *People over Wind*) must be examined objectively rather being based on subjective intent and does not depend on the measure being designed specifically for the plan or project, but even "best practice" or "standard" measures which nonetheless have the effect of avoiding or reducing effects of the plan or project on a European site are measures which cannot be taken into account for the purpose of appropriate assessment screening. The CJEU has consistently taken a precautionary approach to the question of whether a plan or project will have a likely significant effect, and therefore a precautionary bar is set for the screening at that stage. Similar precaution and objectivity ought to be applied to the question of what constitute "mitigation measures" at the same stage.

65. My proposed answer to the question is in the affirmative. The standard of whether measures are "intended" as mitigation or not is hopelessly subjective. The protection of the environment must be advanced by objective criteria, and the only objective criterion here is whether the measures have the effect of mitigation, not whether they are intended to do so. Whether the measures are standard or not is also not relevant to this question. The foregoing approach is reinforced by the precautionary principle.

66. The reason for the reference of this question is that the competent authority here did not consider the SUDS system to be a mitigation measure because it was not intended as such and because it was a standard feature of such housing developments. If a measure constitutes a mitigation measure notwithstanding those factors then the applicant would succeed under this heading in the contention that mitigation measures were impermissibly considered at the AA screening stage.

The fifth question

67. The fifth question is:

Whether art. 6(3) of directive 92/43/EEC is to be interpreted as meaning that, where the competent authority of a member state is satisfied notwithstanding the questions or concerns expressed by expert bodies in holding at the screening stage

that no appropriate assessment is required, the authority must give an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, and that expressly and individually removes each of the doubts raised in that regard during the public participation process.

68. The applicant's position is that this should be answered in the affirmative (as outlined in oral submissions, although inadvertently the applicant's written submissions did not answer this question specifically although they did address the corresponding question as regards EIA).
69. The board's position is that a competent authority may be required to give specific reasons dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, and that removes reasonable doubts raised in that regard during the public participation process at the appropriate assessment screening stage. However, the appropriate manner in which such doubts are removed will depend on all the circumstances, including the nature of the submission that is made, the degree of scientific uncertainty raised in the submission and the nature and scientific expertise of the stakeholder. Submissions may be responded to thematically, and there is no requirement to list each submission separately and respond to it individually.
70. The *amici's* joint position is that a competent authority is required to give precise and definitive findings and conclusions capable of removing all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, including removing reasonable doubts raised in that regard during the public participation process at the appropriate assessment screening stage. The precise and definitive findings must clearly identify and describe:
- (a). the best scientific knowledge in the field relevant to the decision;
 - (b). the examination and analysis of all aspects of the project which can, by itself, or in combination with other plans or projects affect the European site in light of its conservation objectives; and
 - (c). findings and conclusions following an evaluation of all of the relevant information, including information gathered during the public participation procedure, in light of the best scientific knowledge.
71. The duty to state reasons in environmental decision making arises not only as a matter of good administration, but is also a duty held by Ireland under art. 6(9) of the Aarhus Convention.
72. My proposed answer to the question is in the affirmative. Such a rule insofar as it applies to the screening stage would provide coherence with the jurisprudence of the CJEU on the requirement for removal of scientific doubt and use of best scientific knowledge in the

context of appropriate assessment generally. In addition, the requirement to individually address potential doubts raised (in particular raised by *bona fide* participants in the consultation process such as the first named *amicus curiae*) ensures transparency as to the removal of scientific doubt and promotes good administration by requiring the competent authority to expressly consider and address such points of potential impact on European sites. As the present case demonstrates, where only two submissions really raised questions that needed addressing (one from a statutory consultee, the other from a local authority), these are points made by entities of some substance, and it would not have been in any way onerous for the competent authority to expressly address these, and doing so would have ensured both that the habitats directive was upheld but also was seen to be upheld, thereby ensuring transparency in the removal of scientific doubt as to the impact on European sites.

73. The reason for the reference of this question is that the competent authority did not expressly address the doubts that arose from the submissions by the council and An Taisce. If there was an obligation to do so then the applicant would succeed under this heading.

The sixth question

74. The sixth question is:

If the answer to the first question is "Yes", whether art. 6 (3) of the habitats directive 92/43 and/or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union has the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of appropriate assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reason of the competent authority.

75. The applicant's position is that this should be answered in the affirmative (as set out in oral submissions, although again inadvertently the applicant's written submissions did not answer this question specifically although they did address the corresponding question as regards EIA).
76. The board's position is that as a matter of both domestic and European law there is no requirement for an express statement as to what documents exactly set out the reasons of the competent authority, provided that the reasons for the outcome of the appropriate assessment screening can be readily ascertained from the documentation as a whole.
77. The *amici's* joint position is that where the competent authority decides not to subject a proposal for development consent to the process of appropriate assessment, there should be a discrete express statement as to what documents (and which precise sections of those documents) exactly set out the reason of the competent authority provided always that the reasons and references to sections of other documents which set out the reasons can be

manifestly identified by an average member of the public participating in the procedure who does not have any particular expertise in law or environmental assessment. The statement of reasons must be sufficient to enable a member of the public and a national court to review the lawfulness of the decision without further explanation or elaboration from the competent authority.

78. My proposed answer to the question is in the affirmative, for analogous reasons to those applying to the second question in relation to the need for an express, discrete and specific statement of the documents containing the reasons for the decision in the EIA context.
79. The reason for the reference of this question is that the board's decision did not set out expressly which documents set out the reasoning in relation to AA screening. If there was an obligation to do so then the applicant would succeed under this heading.

Order

80. Accordingly, the order will be:

- (a). I will direct that the applicant do lodge hard copy books of all pleadings directly with the Principal Registrar within 28 days of the date of delivery of this judgment for transmission to the CJEU; and I will adjourn the balance of the proceedings pending the decision of the CJEU.
- (b). I will refer the following questions to the CJEU pursuant to art. 267 of the TFEU:
- (i). **Does the general principle of the primacy of EU law and/or of co-operation in good faith have the effect that, either generally or in the specific context of environmental law, where a party brings proceedings challenging the validity of an administrative measure by reference, expressly or impliedly, to a particular instrument of EU law, but does not specify which provisions of the instrument have been infringed, or by reference to which precise interpretation, the domestic court before which proceedings are brought must, or may, examine the complaint, notwithstanding any rule of domestic procedure requiring the specific breaches concerned to be set out in the party's written pleadings.**
 - (ii). **If the answer to the first question is "Yes", whether art. 4(2), (3), (4) and/or (5) and/or Annex III of the EIA directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reasons of the competent authority.**

- (iii). If the answer to the first question is "Yes", whether art. 4(2), (3), (4) and/or (5) and/or Annex III of the EIA directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there is an obligation to expressly set out consideration of all specific headings and sub-headings in annex III of the EIA directive, insofar as those headings and sub-headings are potentially relevant to the development.**
- (iv). Whether art. 6(3) of directive 92/43/EEC is to be interpreted as meaning that, in the application of the principle that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site, the competent authority of a member state is entitled to take account of features of the plan or project involving the removal of contaminants that may have the effect of reducing harmful effects on the European site solely on the grounds that those features are not intended as mitigation measures even if they have that effect, and that they would have been incorporated in the design as standard features irrespective of any effect on the European site concerned.**
- (v). Whether art. 6(3) of directive 92/43/EEC is to be interpreted as meaning that, where the competent authority of a member state is satisfied notwithstanding the questions or concerns expressed by expert bodies in holding at the screening stage that no appropriate assessment is required, the authority must give an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, and that expressly and individually removes each of the doubts raised in that regard during the public participation process.**
- (vi). If the answer to the first question is "Yes", whether art. 6 (3) of the habitats directive 92/43 and/or the directive read in the light of the principle of legal certainty and good administration under art. 41 of the Charter of Fundamental Rights of the European Union has the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of appropriate assessment, there should be an express, discrete and/or**

specific statement as to what documents exactly set out the reason of the competent authority.

APPENDIX – RELEVANT LEGAL MATERIALS

European law

- (i). Consolidated version of the Treaty on European Union, OJ C 326 , 26.10.2012 p. 0001 – 0390
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=en>
- (ii). Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391 - 407, in particular art. 41.
https://www.europarl.europa.eu/charter/pdf/text_en.pdf
- (iii). Council directive 92/43/EEC of 21st May, 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, P. 7-50), in particular art. 6.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31992L0043&from=EN>
- (c). Directive 2011/92/EU of the European Parliament and of the Council of 13th December, 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (OJ L 26, 28.1.2012, pp. 1-21).
<https://eur-lex.europa.eu/eli/dir/2011/92/oj>
- (d). Directive 2014/52/EU of the European Parliament and of the Council of 16th April, 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p. 1-18).
<https://eur-lex.europa.eu/eli/dir/2014/52/oj>

European caselaw

- (i). Case C-312/93 *Peterbroeck, Van Campenhout & Cie SCS v. Belgian State* (Court of Justice of the European Union, 14th December, 1995, ECLI:EU:C:1995:437, [1995] E.C.R. I-45990.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0312&qid=1626358150066&from=EN>
- (ii). Joined Cases C-430/93 and C-431/93 *van Schijndel and van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten* (Court of Justice of the European Union, 14th December, 1995, ECLI:EU:C:1995:441, [1995] ECR I-04705).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0430&qid=1626358224464&from=EN>
- (iii). Case C-72/95 *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v. Gedeputeerde Staten van Zuid-Holland* (Court of Justice of the European Union, 24th October, 1996, ECLI:EU:C:1996:404).
<https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-72/95&td=ALL>
- (iv). Case C-392/96 *Commission of the European Communities v. Ireland* (Court of Justice of the European Union, 21st September, 1999, ECLI:EU:C:1999:431).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-392/96>

- (v). Case C-435/97 *World Wildlife Fund (WWF) v. Autonome Provinz Bozen* (Court of Justice of the European Union, 16th September 1999, (Court of Justice of the European Union, 16th September, 1999, ECLI:EU:C:1999:418).
<https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-435/97&td=ALL>
- (vi). Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij* (Court of Justice of the European Union, 7th September, 2004, ECLI:EU:C:2004:482).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-127/02>
- (vii). Case C-222/05 to C-225/05, *Van der Weerd v. Minister van Landbouw, Natuur en Voedselkwaliteit* (Court of Justice of the European Union, 7th June, 2007, ECLI:EU:C:2007:318, [2007] E.C.R. I-4233).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62005CJ0222&qid=1626358349300&from=EN>
- (viii). Case C-66/06 *Commission of the European Communities v. Ireland* (Court of Justice of the European Union, 20th November, 2008, ECLI:EU:C:2008:637).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-66/06>
- (ix). Case C-215/06 *Commission of the European Communities v. Ireland* (Court of Justice of the European Union, 3rd July, 2008, ECLI:EU:C:2008:380).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0215>
- (x). Case C-2/07 *Abraham v. Région wallonne* (Court of Justice of the European Union, 28th February, 2008, ECLI:EU:C:2008:133).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=c-2/07>
- (xi). Case C-127/02 *Waddenzee v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij* (Court of Justice of the European Union, 7th September, 2004, ECLI:EU:C:2004:482).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CJ0127>
- (xii). Case C-142/07 *Ecologistas en Acción-CODA v. Ayuntamiento de Madrid* (Court of Justice of the European Union, 25th July, 2008, ECLI:EU:C:2008:445).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=c-142/07>
- (xiii). Case C-427/07 *Commission of the European Communities v. Ireland* (Court of Justice of the European Union, 16th July, 2009, ECLI:EU:C:2009:457).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0427>
- (xiv). Case C-75/08 *The Queen, on the application of Christopher Mellor v. Secretary of State for Communities and Local Government* (Court of Justice of the European Union, 30th April 2009, ECLI:EU:C:2009:279).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0075>
- (xv). Case C-205/08 *Umweltanwalt von Kärnten v. Kärntner Landesregierung* (Court of Justice of the European Union, 10th December, 2009, ECLI:EU:C:2009:767).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-205/08>
- (xvi). Case C-50/09 *European Commission v. Ireland* (Court of Justice of the European Union, 3rd March, 2011, ECLI:EU:C:2011:109).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0050>

- (xvii). Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09 *Boxus and Roua* (C-128/09), *Durlet* (C-129/09), *Fastrez and Fastrez* (C-130/09), *Daras* (C-131/09), *Association des riverains et habitants des communes proches de l'aéroport BSCA (Brussels South Charleroi Airport) (ARACH)* (C-134/09 and C-135/09), *Page* (C-134/09) and *L'Hoir and Dartois* (C-135/09) v. *Région wallonne* (Court of Justice of the European Union, 18th October, 2011, ECLI:EU:C:2011:667).
<https://curia.europa.eu/juris/document/document.jsf?jsessionid=66B0F40BCD490129BF345CF142DA1216?text=&docid=111403&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7091252>
- (xviii). Case C-275/09 *Brussels Hoofdstedelijk Gewest v. Vlaamse Gewest* (Court of Justice of the European Union, 17th March, 2011, ECLI:EU:C:2011:154).
<https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-275/09&td=ALL>
- (xix). Case C-435/09 *European Commission v. Kingdom of Belgium* (Court of Justice of the European Union, 24th March, 2011, ECLI:EU:C:2011:176).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=435/09>
- (xx). Case C-538/09 *European Commission v. Kingdom of Belgium* (Court of Justice of the European Union, 26th May, 2011, ECLI:EU:C:2011:349).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0538&>
- (xxi). Case C-416/10 *Križan v. Slovenská inšpekcia životného prostredia* (Court of Justice of the European Union, 15th January, 2013, ECLI:EU:C:2013:8).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62010CJ0416&from=en>
- (xxii). Case C-258/11 *Sweetman v. An Bord Pleanála* (Court of Justice of the European Union, 11th April, 2013, ECLI:EU:C:2013:220).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62011CJ0258&qid=1626359629421&from=EN>
- (xxiii). Case C-244/12 *Salzburger Flughafen GmbH v. Umweltssenat* (Court of Justice of the European Union, 21st March, 2013, ECLI:EU:C:2013:203).
<https://curia.europa.eu/juris/liste.jsf?num=C-244/12&language=EN>
- (xxiv). Case C-531/13 *Marktgemeinde Straßwalchen v. Bundesminister für Wirtschaft, Familie und Jugend* (Court of Justice of the European Union, 11th February, 2015, ECLI:EU:C:2015:79).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-531/13>
- (xxv). Case C-141/14 *European Commission v. Republic of Bulgaria* (Court of Justice of the European Union, 14th January, 2016, ECLI:EU:C:2016:8).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-141/14>
- (xxvi). Case C-243/15 *Lesoochranské zoskupenie VLK v. Obvodný úrad Trenčín* (Court of Justice of the European Union, 8th November, 2016, ECLI:EU:C:2016:838).
<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-243/15>
- (xxvii). Case C-117/17 *Comune di Castelbellino v. Regione Marche* (Court of Justice of the European Union, 28th February, 2018, ECLI:EU:C:2018:129).
<https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-117/17>

- (xxviii). Case C-323/17 *People Over Wind v. Coillte Teoranta* (Court of Justice of the European Union, 12th April, 2018, ECLI:EU:C:2018:244).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62017CJ0323&qid=1626359708558&from=EN>
- (xxix). Case C-378/17 *Minister for Justice and Equality v. Workplace Relations Commission* (Court of Justice of the European Union, 4th December, 2018, ECLI:EU:C:2018:979).
<https://curia.europa.eu/juris/documents.jsf?language=EN&critereEcli=ECLI:EU:C:2018:979>
- (xxx). C-461/17 *Holohan v. An Bord Pleanála* (Court of Justice of the European Union, 7th November, 2018, ECLI:EU:C:2018:883).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62017CJ0461&qid=1626359756795&from=EN>
- (xxxi). Case C-261/18 *European Commission v. Ireland* (Court of Justice of the European Union, 12th November, 2019, ECLI:EU:C:2019:955).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0261>
- (xxxii). Case 752/18 *Deutsche Umwelthilfe eV v. Freistaat Bayern* (Court of Justice of the European Union, 19th December, 2019, ECLI:EU:C:2019:1114).
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0752>
- (xxxiii). Case C-254/19 *Friends of the Irish Environment Limited v. An Bord Pleanála, Opinion of Advocate General Kokott* (Court of Justice of the European Union, 30th April 2020, ECLI:EU:C:2020:320).
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=226000&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=298959>
- (xxxiv). Case C-254/19 *Friends of the Irish Environment Ltd v. An Bord Pleanála* (Court of Justice of the European Union, 9th September, 2020, ECLI:EU:C:2020:680).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CJ0254&qid=1626355921187&from=EN>

International law

- (i). Convention on Environmental Impact Assessment in a Transboundary Context, signed in Espoo (Finland) on 25th February, 1991 ('the Espoo Convention').
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&clang=en
- (ii). UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus (Denmark) on 25th June, 1998 ('the Aarhus Convention'), in particular arts. 6 and 9.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27

Domestic legislation

- (i). Planning and Development Act 2000, in particular:

- (a). sections 50, 50A and 50B of the PDA 2000 - these contain the provisions governing the review procedures that give effect to art. 11 EIA;
- (b). Parts X and XAB - these contain the implementing provisions for the assessments required under the EIA and habitats directives.
<https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/pdf?annotations=true>
- (ii). Planning and Development Regulations 2001 (S.I. No. 600 of 2001) as amended which give further effect to the EIA and habitats directives.
http://www.irishstatutebook.ie/eli/2001/si/600/made/en/print?q=Planning+and+Development+Regulations+&years=2001&search_type=si
- (iii). Planning and Development (Housing) and Residential Tenancies Act 2016.
<https://revisedacts.lawreform.ie/eli/2016/act/17/revised/en/html>
- (iv). Planning and Development (Amendment) Regulations 2018 (S.I. No. 29 of 2018) as amended.
http://www.irishstatutebook.ie/eli/2018/si/29/made/en/print?num=29&years=2018&search_type=si
- (v). High Court Practice Direction HC96 in force when the case was initiated (now HC107).
<https://www.courts.ie/content/commercial-planning-sid-list-1>

Domestic caselaw

- (i). *Arklow Holidays Ltd v. Bord Pleanála* [2011] IESC 29, [2012] 2 I.R. 99.
https://www.courts.ie/acc/alfresco/130e3493-2549-43b9-9326-01517ca6e8cd/2011_IESC_29_1.pdf/pdf#view=fitH
- (ii). *Kelly v. ABP* [2014] IEHC 400, [2014] 7 JIC 2503 (Unreported, High Court, Finlay Geoghegan J., 25th July, 2014).
https://www.courts.ie/acc/alfresco/837c306b-fa79-4a11-ba66-74a3cc5b9e63/2014_IEHC_400_1.pdf/pdf#view=fitH
- (iii). *Callaghan v. An Bord Pleanála* [2017] IESC 60, [2017] 7 JIC 2706 (Unreported, Supreme Court, Clarke J., (MacMenamin and Dunne JJ. concurring), 27th July, 2017).
https://www.courts.ie/acc/alfresco/cefd1393-683a-423a-917c-2ef74e9fbdf6/2017_IESC_60_1.pdf/pdf#view=fitH
- (iv). *Holohan v. An Bord Pleanála* [2017] IEHC 268, [2017] 5 JIC 0403 (Unreported, High Court, 4th May, 2017).
https://www.courts.ie/acc/alfresco/6f79ed84-b27c-4249-8592-814686f783bc/2017_IEHC_268_1.pdf/pdf#view=fitH
- (v). *Connelly v. An Bord Pleanála* [2018] IESC 31, [2018] 2 I.L.R.M. 453.
https://www.courts.ie/acc/alfresco/b5fc7d8a-a799-4446-95e3-37a2a7f5bdd8/2018_IESC_31_1.pdf/pdf#view=fitH
- (vi). *B.D. (Bhutan and Nepal) v. Minister for Justice and Equality* [2018] IEHC 461, [2018] 7 JIC 1709 (Unreported, High Court, 17th July, 2018).
https://www.courts.ie/acc/alfresco/463c03db-c145-48cd-96a3-4d4fdcac2f5/2018_IEHC_461_1.pdf/pdf#view=fitH

- (vii). *Kelly v. An Bord Pleanála* [2019] IEHC 84, [2019] 2 JIC 0804 (Unreported, High Court, Barniville J., 8th February, 2019).
[https://www.courts.ie/acc/alfresco/248e1258-8490-4f02-9db1-2f5482103a57/2019 IEHC 84.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/248e1258-8490-4f02-9db1-2f5482103a57/2019%20IEHC%2084.pdf/pdf#view=fitH)
- (viii). *Balz v. An Bord Pleanála* [2019] IESC 90, [2020] 1 I.L.R.M. 637.
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- (ix). *Heather Hill Management Company CLG v. An Bord Pleanála* [2019] IEHC 450, [2019] 6 JIC 2103 (Unreported, High Court, Simons J., 21st June, 2019).
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- (x). *Uí Mhuirín v. Minister for Housing, Planning and Local Government* [2019] IEHC 824, [2019] 12 JIC 0503 (Unreported, High Court, Quinn J., 5th December, 2019).
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- (xi). *Sweetman v. An Bord Pleanála* [2020] IEHC 39, [2020] 1 JIC 3104 (Unreported, High Court, McDonald J., 31st January, 2020).
[https://www.courts.ie/acc/alfresco/53a163a0-ce58-4435-bfed-2561e3ea9b86/2020 IEHC 39.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/53a163a0-ce58-4435-bfed-2561e3ea9b86/2020%20IEHC%2039.pdf/pdf#view=fitH)
- (xii). *Dempsey v. An Bord Pleanála (No. 1)* [2020] IEHC 188, [2020] 4 JIC 2401 (Unreported, High Court, Simons J., 24th April, 2020).
[https://www.courts.ie/acc/alfresco/465318f9-2540-403d-9db8-10e8b48c91e3/2020 IEHC 188.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/465318f9-2540-403d-9db8-10e8b48c91e3/2020%20IEHC%20188.pdf/pdf#view=fitH)
- (xiii). *Rushe v. An Bord Pleanála (No. 2)* [2020] IEHC 429, [2020] 8 JIC 3101 (Unreported, High Court, Barniville J., 31st August, 2020).
[https://www.courts.ie/acc/alfresco/dd32fd16-7dff-4740-a3ee-368eeac12ddc/2020 IEHC 429.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/dd32fd16-7dff-4740-a3ee-368eeac12ddc/2020%20IEHC%20429.pdf/pdf#view=fitH)
- (xiv). *Balscadden Road SAA Residents Association Ltd. v. An Bord Pleanála (No. 1)* [2020] IEHC 586, [2020] 11 JIC 2501 (Unreported, High Court, 25th November, 2020).
[https://www.courts.ie/acc/alfresco/5cd3cccf-f0e8-4066-9b5e-7cbdbc535146/2020 IEHC 586.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/5cd3cccf-f0e8-4066-9b5e-7cbdbc535146/2020%20IEHC%20586.pdf/pdf#view=fitH)
- (xv). *Highlands Residents Association v. An Bord Pleanála* [2020] IEHC 622, [2020] 12 JIC 0201 (Unreported, High Court, McDonald J., 2nd December, 2020).
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- (xvi). *Rostas v. D.P.P.* [2021] IEHC 60, [2021] 2 JIC 0904 (Unreported, High Court, 9th February, 2021).
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- (xvii). *Balscadden Road SAA Residents Association Ltd. v. An Bord Pleanála (No. 2)* [2021] IEHC 143 (Unreported, High Court, 12th March, 2021).

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- (xviii). *An Taisce v. An Bord Pleanála* [2021] IEHC 254, [2021] 4 JIC 2003 (Unreported, High Court, 20th April, 2021).

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- (xix). *Atlantic Diamond Ltd. v. An Bord Pleanála* [2021] IEHC 322, [2021] 5 JIC 1403 (Unreported, High Court, 14th May, 2021).

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