THE HIGH COURT

[2021] IEHC 315

[Record No. 2014/286/JR]

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

BETWEEN

ANGELA PEARSE

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

WESTMEATH COUNTY COUNCIL, ANGELA BOYHAN, AN TAISCE AND THE MINISTER FOR ARTS, HERITAGE AND THE GAELTACHT

NOTICE PARTIES

JUDGMENT of Ms. Justice Miriam O'Regan delivered on the 6th day of May, 2021.

1. This judgment is for the purposes of determining the appropriate costs order to be made in respect of the within proceedings following the delivery of judgment by me on 18 December 2019. In that judgment I found against the applicant who sought to quash the decision of the respondent of 23 March 2014 on the various grounds set forth in the statement of grounds.

2. Under s.50(4)(b) of the Planning and Development Act 2000 as amended (the PDA Act) leave can only be granted if the High Court is satisfied that there are substantial grounds for contending that the decision of An Bord Pleanála is valid or ought to be quashed. Leave was afforded to the applicant on 19 May 2014.

3. The respondent and the second named notice party are seeking their respective costs in respect of the portion of the hearing where the applicant sought to advance the argument that there was no quarrying on site prior to 1964.

4. As identified in para. 37 of the judgment of 18 December 2019, the within applicant had previously maintained judicial review proceedings before the High Court which were determined by Hanna J. in a judgment perfected on 2 March 2009. The applicant had asserted that the direction of 19 April 2006, of Westmeath County Council was unlawful because it was premised on an acceptance of pre-1964 user, however, the Court accepted that there was sufficient information before the County Council to make such a determination. The High Court Order of 2 March 2009 was subsequently appealed but later that appeal was withdrawn.

5. As was noted at para. 3 of the main judgment the oral submissions on behalf of the applicant also incorporated an argument to the effect that the decision of the respondent was irrational in failing to determine that there was no quarrying on site prior to 1964. This argument was also incorporated in the statement of grounds of the applicant wherein it sought a declaration that in failing to determine that there was no quarrying on site pre-1964 the respondent acted irrationally.

6. Under s.50B of the PDA it is provided that, notwithstanding anything contained in O.99 of the Rules of the Superior Courts, in proceedings to which s.50 applies (including the within proceedings) each party to the proceedings shall bear its own costs. The section goes on to provide that costs of the proceedings or a portion thereof may be awarded to the applicant to the extent that the applicant succeeds in obtaining relief.

7. Section 50B(3) provides:

> "(3) The Court may award costs against a party in proceedings to which this section applies if the Court considers it appropriate to do so –
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> (a) because the Court considers that a claim or counterclaim by the party is frivolous or vexatious,
> (b) because of the manner in which the party had conducted the proceedings, or
> (c) where the party is in contempt of the Court."

8. In *Heather Hill Management Company CLG v. An Bord Pleanála* [2019] IEHC 186 Simons J. noted that there was no reference whatsoever in s.50B to the "grounds" of challenge and accordingly reached the conclusion that the special costs rules within s.50B of the PDA apply to the entirety of the proceedings.

9. Both the respondent and the second named notice party seek partial costs on the basis of an assertion that costs arise under s.50B(3) because of the manner in which the applicant conducted the proceedings, namely in relation to pursing the claim in respect of an asserted lack of pre-1964 development, and thereby a considerable amount of time was wasted as this aspect of the matter was subsequently abandoned.

10. The submissions on behalf of the applicant are somewhat difficult to understand, in particular in relation to paras. 4 to 7 of such submissions where it is suggested that the judgment of this Court was to the effect that a purposive interpretation of s.261A(3)(1) of the PDA could not be forced (para. 39 of the judgment in fact is to the effect that it should not be read into the provisions of s.261A, in a review by the respondent, that the respondent should not only review the prior decision of Westmeath County Council but also the validity of a previous EIA undertaken by An Bord Pleanála in July 2009).

11. The matter was listed for four days, however, was concluded in three days.

12. The applications for costs are based on a reliance on *Indaver Ireland v. An Bord Pleanála* [2013] IEHC 11 where Kearns P. applied s.50B(3)(b) in circumstances where it was accepted by the Court that the applicant had acted in such a way as to allow the legal costs on behalf of the Board and a third party to escalate by prolonging the case without intending to continue it, and withdrawing the proceedings at the last moment.

13. Reliance is also placed on the decision of Hedigan J. in *Hunter v. The Environmental Protection Agency* [2013] IEHC 591 involving a delay of one year before the applicant made a concession.

14. I do not accept that the conduct of the applicant is commiserate with the conduct referred to in either *Indaver* or *Hunter* aforesaid. The applicant secured leave on the basis of substantial grounds, and pursued the issues in the statement of grounds at hearing, although did concede during the course of the hearing the irrationality argument based on an alleged failure to determine that there was no pre-1964 quarrying. This concession arose in circumstances where the court raised the clear difficulty with such an argument having regard to the findings of Hanna J. in the prior judicial review proceedings and subsequent withdrawal of the appeal in respect thereof. It does not appear to me that this pragmatic approach on behalf of the applicant comes within the ambit of conduct identified in s.50B(3)(b) of the PDA. The applicant had been arguing one of the grounds for which leave was granted which was proper in the circumstances. I accept the applicant's argument that because of the pragmatic approach of the applicant the case was concluded sooner than anticipated.

15. In the event therefore I am satisfied that the appropriate order as to costs is that each of the parties bear their own costs.