THE HIGH COURT
JUDICIAL REVIEW

[2021] IEHC 718

[2020 No. 761 JR]

BETWEEN:

PEMBROKE ROAD ASSOCIATION

APPLICANT

-AND-

AN BORD PLEANÁLA, THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE

RESPONDENTS

-AND-

DERRYROE LIMITED AND DUBLIN CITY COUNCIL

NOTICE PARTIES

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 19th day of November, 2021.

1. This ruling is supplemental to my judgment of 16 June 2021 and my first supplemental judgment on 29 July 2021.

2. I have now considered the oral and written submissions of the parties as to whether I should grant a certificate under s.50A(7) of the 2000 Act giving leave to appeal aspects of these judgments on grounds that my decisions involve points of law of exceptional public importance and that it is desirable in the public interest that an appeal relating to these points should be taken to the Court of Appeal.

3. My colleague, Humphreys J. has already has granted a certificate covering the issue raised by Pembroke Road Association concerning interpretation of Article 299B(1)(b)(ii)(II)(C) of the Regulations of 2001.

4. I refer to the judgment of my colleague in *Waltham Abbey Residents Association v. An Bord Pleanála and others* [2021] IEHC 597. I take a different view from my colleague. In my view the Board in deciding whether to assume jurisdiction must examine whether the content provided by an applicant in the application meets the requirement in Article 299B(1)(b)(ii)(II)(c) of the Regulations of 2001.

5. The public interest in clarifying whether the requirement set out in this regulation must be met by the provision of a separately identified chapter or section in an environmental screening report will be met when these issues are decided by the Court of Appeal.

6. I am told by the Board that a number of applications for permission have been accepted in reliance on guidelines issued by the Board which did not contain the requirement stipulated by Humphries J. If Humphries J. had not granted leave to appeal on this ground, I would have concluded that resolution of the issue is of exceptional public importance and that I should grant a certificate.

7. My view has not changed because of the fact that my colleague gave a certificate. The public interest in resolution of the point remains. It would be unfair on Pembroke Road

Association to deprive it of an opportunity to appeal on grounds that some other judge had already given certificate on that point.

8. The issue which I am certifying is whether I was correct in refusing to quash the decision of the Board to accept the planning application for the reasons set out in paragraphs 62 to 90 of my judgment dated 16 June 2021.

9. I now turn my decision to refuse to uphold the claim of Pembroke Road Association that the application to the Board should be treated as invalid because the applicant for permission did not engage in the statutory pre-application consultation process. Pembroke Road Association claims that this decision involves a point of law of exceptional public importance.

10. The importance of identity of a prospective applicant or an applicant for planning permission is tied to legislative policy and a decision of the Supreme Court. These impose or read into the legislation requirements that applicants for permission demonstrate sufficient interest in the site on which proposed development is to take place.

11. An applicant may demonstrate sufficient interest in a site in a number of ways. Various rules in subordinate legislation are designed to give effect to this statutory requirement of sufficient interest in the site.

12. These rules exist to protect property rights of landholders and to ensure that planning bodies are not troubled by vexatious applications from those who have no interest in a site.

13. The identity of a person pursuing a planning application may change during the currency of the process. There is nothing in the legislation which requires the bizarre result that a change in the identity of the person pursuing an application must always lead to a fresh process.

14. Were I free to decide this issue without reference to precedent, I would conclude that the Board acted within its competence in concluding that Derryroe could apply for permission and that refusal of judicial review in exercise of discretion did not arise. This is because Derryroe showed in its planning application that it had sufficient interest in the site and Pembroke Road Association had no interest in the site.

15. I am not persuaded that the matters raised by Pembroke road Association demonstrate that my decision on this aspect of the application for judicial review involves a point of law of exceptional public importance. Any differences between my judgment and that of and Barniville J. in *Cork Harbour Alliance for a Safe Environment v. An Bord Pleanála and Others* [2021] IEHC 203 are largely differences of emphasis. These sorts of differences are inevitable as the two cases involved different legislation and factual backgrounds.

16. The request for an order setting aside the application to the Board for permission on the basis that it ought to have been rejected as invalid was refused by me on discretionary

grounds. Derryroe demonstrated sufficient interest in the site at the time of the planning application. The two companies involved were controlled by the same shareholders and under the same management. Pembroke Road Association had no interest in the site. The technical point raised by Pembroke Road Association lacked any substantive merit and was not such as should invalidate the process.

17. I have already indicated that I do not consider that the matters raised by Pembroke Road Association relating to the height of buildings point demonstrate that my decision to refuse a judicial review remedy on this ground involves a point of law of exceptional public importance.

18. The final points on which a certificate is sought under s.50A(7) of the 2000 Act relate to my decisions to adjourn the proceedings to give the Board an opportunity to amend condition 26 of the permission in exercise of powers conferred by s.146A(1)(iii) of the 2000 Act, and to dismiss the application for judicial review following the Board order dated 18 October 2021. This substituted an amended condition 26 in lieu of the condition which I found to be ineffective.

19. I am not persuaded that my decisions on these matters involve any point of law of exceptional public importance or that there could be any serious debate on the issue of whether a planning authority could use the power given by s.146A(1)(iii) of the 2000 Act to amend the ineffective planning condition in this case. I agree with the submissions of Derryroe on this point.

20. This application for judicial review will be dismissed. Pembroke Road Association will be awarded half the costs of the judicial review application against the Board. These costs will include any reserved costs relating to the application for leave and other matters. The costs awarded will be assessed by adjudication in default of agreement. Derryroe will bear its own costs.