

THE HIGH COURT

JUDICIAL REVIEW

[2020 No. 813 JR]

WALTHAM ABBEY RESIDENTS ASSOCIATION

APPLICANT

AND

AN BORD PLEANÁLA, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

O'FLYNN CONSTRUCTION CO. UNLIMITED COMPANY

NOTICE PARTY

(No. 3)

JUDGMENT of Humphreys J. delivered on the 24th day of March, 2023.

- 1.** The developer in the present case submitted an application to the board under the strategic housing development (SHD) procedure on 11th June, 2020 for 123 apartments and associated works at Ballincollig, County Cork. A tree survey was conducted, and screening reports prepared for the purposes of environmental impact assessment (EIA) and appropriate assessment (AA).
- 2.** The EIA screening report does not include any particular analysis of flora and fauna or refer to the impact on bats, and the screening table does not refer to biodiversity.
- 3.** In the AA screening report, there is no particular consideration of the actual impact on bats, above and beyond a general reference that “[d]isturbance to fauna can arise directly through the loss of habitat (e.g. bat roosts) or indirectly through noise, vibration and increased activity associated with construction and operation”. The only reference to biodiversity is in the AA screening report which in turn only refers to Natura 2000 sites rather than the ecology of the development site itself.
- 4.** The arboricultural assessment was carried out on a single day on 16th November, 2019 and identified thirteen trees for removal. The assessment did not include the potential or actual use of the trees by bats or whether the site was used for foraging or commuting. The EIA screening report proposes the retention of existing vegetation on site “where possible” and states that its enhancement through new landscaping will result in a positive biodiversity impact. The Statement of Consistency asserts that “the existing hedgerows and trees along the site boundary are to be

retained and protected where appropriate. All trees to be maintained will be protected appropriately during construction and operation ... As above, the existing trees on site are to be retained and protected ...". Contrary to the impression thereby created, a number of trees are in fact being removed, including a number of cypress trees and two of the six oak trees on site. One of the oak trees has a cavity which could raise questions regarding potential use by bats.

5. The applicant made a submission to the board on 7th July, 2020 to which we will return. The inspector recommended a grant of permission on 11th September, 2020 and the board decided accordingly on 16th September, 2020. While the board adopted the AA screening exercise of the inspector, it did not do so in relation to the issue of EIA, because the inspector rejected the necessity for EIA screening at the preliminary examination stage. Instead, the board itself carried out the EIA screening. The section of the decision on EIA screening does not refer to annex III, or any other provision, of the EIA directive 2011/92, or indeed to EU law at all. It only refers to art. 109(3) of the Planning and Development Regulations 2001.

Procedural history

6. The proceedings were issued on 3rd November, 2020. The primary relief sought was *certiorari* of the grant of permission by the board. By order of 26th November, 2020, liberty was given to amend the Statement of Grounds. The applicant also sought constitutional relief but that was modularised (technically, when *certiorari* was originally granted, the constitutional relief was struck out with liberty to the applicant to re-enter, but that comes to the same thing).

7. I found for the applicant on the domestic law issues which essentially became a module 1: see *Waltham Abbey Residents Association v. An Bord Pleanála* (No. 1) [2021] IEHC 312, [2021] 5 JIC 1002 (Unreported, High Court, 10th May, 2021). On 7th October, 2021 I granted leave to appeal: *Waltham Abbey Residents Association v. An Bord Pleanála* (No. 2) [2021] IEHC 597, [2021] 10 JIC 0702 (Unreported, High Court, 7th October, 2021). The proposed appeal to the Court of Appeal was overtaken by a leapfrog application to the Supreme Court which gave rise to a determination allowing that application: *Waltham Abbey Residents Association v. An Bord Pleanála* [2022] IESCDET 31. The Supreme Court then allowed the appeal on the domestic law issue: *Waltham Abbey v. An Board Pleanála and ors; Pembroke Road Association v. An Bord Pleanála and ors* [2022] IESC 30, [2022] 2 I.L.R.M. 417, [2022] 7 JIC 0401.

8. Following written submissions by the parties related to the question of whether any module 1 issues should be remitted back to the High Court the Supreme Court made an order on 14th November, 2022, perfected on 13th September, 2022, which did not include provision remitting

anything in that module. No reasons were given for the order, so I think it cannot be interpreted as deciding any legal issues, but only as an implicit recognition of the limited scope of the appeal (and the issues argued in it) which was set out in para. 5 of the determination as being “the proper interpretation of Article 299B(1)(b)(ii)(II)(C)” of the 2001 regulations.

9. The Supreme Court decided that issue, so on that logic there wasn’t anything to remit, but in another case presumably an applicant could make the domestic law point that the contents of the developer’s material did not comply with art. 299B, even bearing in mind the lack of a need in domestic law for a unified statement as a stand-alone document. More obviously, nor did the Supreme Court determine the meaning of EU law requirements underlying the 2001 regulations, which would have been a matter for module 2 (EU law) if the applicant had pursued that, because module 1 was only about domestic law. Not only can one reasonably assume that the Supreme Court didn’t intend to break open a fresh module that hadn’t even begun in the High Court, but their judgment doesn’t purport to do such a thing. The only reference to art. 4(4) of the 2011 directive is contextual, not interpretative or curial. Thus, the question of whether EU law requires some form of consolidated statement of the assessments of impacts under non-EIA related directives remains to be determined.

10. In her opinion in Case C-721/21 *Eco-Advocacy CLG v. An Bord Pleanála* (Opinion of the Advocate General, 19th January, 2023, ECLI:EU:C:2023:39), Advocate General Kokott said at para. 73 regarding EIA-related reasons that “[t]he statement of reasons must, rather, be recognisable as such and indicate in a manner that is comprehensible from the point of view of its content the information forming the basis of the decision in question.” Depending on the views of the court, a similar logic suggests the possibility that the statement of the results of the assessments under non-EIA related directives must be recognisable as such (and not scattered through various documents as seems to be the case here, a procedure that the Supreme Court has held to be compatible with domestic law). Indeed, the applicant here specifically pleaded reliance on art. 4(4) of the EIA directive, so it isn’t altogether clear to me why it hasn’t referred to this pleaded argument in its written or oral submissions in module 2, especially given the distinct possibility of recourse to Luxembourg as noted in the No. 1 judgment (albeit that the point wasn’t expressly withdrawn like a number of grounds as noted further below). Applicants are occasionally (and at times legitimately, I’m afraid) criticised for launching totally unviable points or raising totally unpleaded matters. Here we have the reverse phenomenon of an applicant that has a potentially viable and clearly pleaded

point but hasn't said anything about it. However – mine not to reason why. The point will remain for future argument or possible reference should it be raised in another case.

Grounds of challenge

11. Core ground 1 provides as follows: "The Decision is invalid as the statutory pre-consultation procedures provided for by the Second and Third Named Respondents (collectively, the "State") in section 5 of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (the "2016 Act") are incompatible with Article 6(4) of Directive 2011/92/EU (as amended) (the "EIA Directive") and/or the Applicant's rights to fair procedures and natural and constitutional justice."

As noted above, this was modularised.

12. Core ground 2 provides as follows: "The Decision is invalid because An Bord Pleanála (the "Board") erred in law in its assessment of the potential impacts from the proposed development on Natura 2000 sites in Cork Harbour for the purposes of Article 6(3) of Directive 92/43/EEC (the "Habitats Directive") and section 177U of the 2000 Act." This was not pursued by the applicant.

13. Core ground 3 provides as follows: "The Decision is invalid because the Board's grant of planning permission is inconsistent with the requirements of Directive 2000/60/EC (the "Water Framework Directive") and/or the European Communities Environmental Objectives (Surface Waters) Regulations, 2009 (S.I. No. 272/2009) (the "Surface Water Regulations"). This was also not pursued by the applicant.

14. Core ground 4 provides as follows: "The Decision is invalid because the Board erred in failing to have any, or any adequate regard to potential disturbance of bats or to deterioration or destruction of resting places for bats, and in particular erred in screening out an environmental impact assessment ("EIA") despite the lack of evidence in relation to these matters." That is the issue that will be dealt with in the present judgment.

15. Core ground 5 provides as follows: "The Decision is invalid because the Board failed to comply with Article 299 of the Planning and Development Regulations, 2001 (the "2001 Regulations") and/or Article 4(4) of the EIA Directive." Insofar as concerns domestic law, this ground was disposed of in module 1. Insofar as concerns the words "and/or Article 4(4) of the EIA Directive", that would have been a matter for the present module, but as noted above the applicant has not advanced any argument under that heading.

16. Core ground 6 provides as follows: "The Decision is invalid because the Developer failed to comply with Article 292(1) of the 2001 Regulations." This was not pursued.

17. Core ground 6 provides as follows: "The Decision is invalid because the proposed development is acknowledged not to satisfy Development Plan standards in relation to parking provision." This was also not pursued by the applicant.

EIA screening regarding bats

18. Having regard to the foregoing, the issue that arises for present purposes is the adequacy of the board's EIA screening, particularly regarding bats. It would be helpful to note here sub-grounds 9 to 11 which provide as follows:

9. There was no or no adequate assessment of potential disturbance to bats, or of potential deterioration or destruction of resting places, within the meaning of Article 12 of the Habitats Directive and the European Communities (Birds and Natural Habitats) Regulations 2011 (SI:477/2011).

(a) Potential disturbance of bats, or deterioration or destruction of resting places, was not addressed in the reports submitted by the Developer, namely: the EIAR Screening Report; the Tree Survey Report; and the Appropriate Assessment Screening Report.

(b) No surveying in respect of bats appears to have been carried out, notwithstanding that the proposed development will result in the loss of a significant number of trees.

(c) In particular, no tree roost survey was conducted.

(d) The Inspector (§11.7) acknowledged the potential for impact on bats from tree-felling and recommended that this should be undertaken in accordance with the advice of a suitably qualified ecologist. This is reflected in Condition 21 of the Decision.

10. The Board erred in screening out the need for EIA and in not refusing to deal with the application under section 8(3)(a) and/or section 9(5) of the 2016 Act and/or Article 299B of the 2001 Regulations.

(a) Having regard to the strictly protected status of bats under the Habitats Directive, potential disturbance of bats, or deterioration or destruction of resting sites, constitute significant effects on the environment, within the meaning of the EIA Directive.

(b) The Board did not have before it sufficient information to allow it to conclude that significant effects on the environment were unlikely.

11. Further, the Decision is unlawful, having regard to section 23(5)(d) of the Wildlife Act, 1976 (as amended). The Board has no legal authority to grant permission that will result in the potential destruction of breeding or resting places.

19. The applicant's submissions to the board include the following:

"The site of the proposed development is less than 400 m. from the River Lee at its closest point. It is situated in an area of natural beauty and a significant wildlife habitat and natural corridor. The Lee, particularly in and around the former Powder Mills of Ballincollig, is recognised as being a habitat for rare and endangered species of bats. [n41] Residents have noticed bats and other fauna flying over the site yet no commuting/flight path analysis for bats or other fauna over the plot has been conducted. [n42] None of the trees within the development plot have been surveyed for bat presence or as potential for bat roosts and this, along with mitigation strategies, needs to be undertaken prior to any grant of permission, given that most of the trees in the area are identified for removal. If necessary, Ministerial notification and authorisation is required as an Annex IV species. Further, the Flora and Fauna Report prepared for the Lower Lee Drainage Scheme has identified the Little Egret, another Annex I EU Birds Directive species in the vicinity of the project. [n43] Similarly, the same report identifies that "The area of the River Lee north of the old Barracks area in Ballincollig is considered the most important area [for otter habitat] between Inniscarra Bridge and Poulavone (i.e. the upper section of the Lower River Lee), given abundant fish for otter, good riparian cover and limited development. [n44] The otter is protected pursuant to the Wildlife Act and as both an Annex II and IV species under the EU Habitats Directive.

Paragraph 10.46 of the City Development Plan states that '*Under the EU Freshwater Fish Directive the River Lee is designated as a Salmonoid river from its source to Cork City Waterworks. This imposes an obligation to maintain specific water quality standards and to control pollution. Species of fish found along its length include Brook, Sea Lamprey and Salmon. In addition the River Lee and its banks provide habitats, feeding and resting grounds for a variety of protected species of birds, bats and other mammals such as the otter.*' Given that the Lee is a corridor for aquatic and other life which ultimately goes to a Natura 2000 site at the Gearagh, the statement in the Stage 1 AA Screening Report at p. 11 that '[t]here are no other

Natura 2000 sites within 10 Km of the site boundary which are likely to be affected by the proposed development' is somewhat misleading. A fuller analysis in this respect should be submitted by the developer to ABP.

Objective 10.9 of the City Plan provides that '*development proposals in river corridors shall...preserve the biodiversity value of the site subject to Ecological Assessment by a suitably qualified Ecologist and... shall not have a negative effect on the distinctive character and appearance of the waterway corridor and the specific characteristics and landscape elements of the individual site and its context.*' This does not appear to have been done, at least as far as can be ascertained from the documents released by the developer to the public."

20. The footnotes are numbers 41 to 44 which read as follows:

"[n41] 'The lesser horseshoe bat is restricted to the west of Ireland and it is only known from Counties Mayo, Galway, Clare, Limerick, Kerry and Cork (Kelleher 2004). However, single specimens have recently been discovered in Lough Key, near Boyle, Co. Roscommon in 2004 (B. Keeley, pers. comm.) and in Tubbercurry, Co. Sligo in 2008 (pers. obs.), two counties where their low numbers may have caused their presence to be overlooked until now. The population of this species in Co. Cork is small and most roosts are in West Cork however small numbers are known to be present in the Ovens, Ballincollig and Blarney areas to the immediate west and northwest of Cork city.

...

The River Lee is an important habitat for bats and other wildlife. The watercourse acts as a vegetated corridor along which bats and other animals can commute from the wider countryside into the urban environment. The riparian habitat also provides a sheltered foraging area, a breeding site for invertebrate prey and, at night, screening from the surrounding artificial lighting of the urban area.

...

Extant records of bats in the immediate area indicate that a diverse range of bat species use the river corridor and the key impacts on these animals arise through potential roost loss, loss of feeding areas and disruption of commuting routes': Bat Fauna Study conducted by Ryan Hanley engineers in 2016:

https://s3-eu-west-1.amazonaws.com/arup-s3-lower-lee-frs-ie-wpstatic/wpcontent/uploads/lee_valley/Individual_Appendices/Appendix5D.pdf

[n42] This is also required under the Urban Development and Building Heights Guidelines 2018, p. 14.

[n43] "According to local residents in the Ballincollig Little Egret is also known to occur occasionally on the River Lee in the area.", https://s3-eu-west-1.amazonaws.com/arup-s3-lower-lee-frs-ie-wp-static/wpcontent/uploads/lee_valley/Individual_Chapters/Chapter-5_Flora-and-Fauna.pdf, p. 5-14.

[n44] https://s3-eu-west-1.amazonaws.com/arup-s3-lower-lee-frs-ie-wp-static/wpcontent/uploads/lee_valley/Individual_Chapters/Chapter-5_Flora-and-Fauna.pdf, p. 5-39."

21. The operative bat guidelines at the time were Kelleher C. and Marnell F., *Bat Mitigation Guidelines for Ireland*, Irish Wildlife Manuals No. 25 (2006, National Parks and Wildlife Service, Department of Environment, Heritage and Local Government, Dublin). Section 5.1 is headed "The importance of a good survey" and states as follows:

"The importance of a thorough site survey prior to considering development cannot be overemphasised. The following descriptions of survey techniques and their correct application are aimed at assisting consultants (to appreciate the type of survey that is expected), the developer (to be assured that their consultant is recommending a survey to help them meet legal and policy requirements), and planning officers and National Parks and Wildlife Service staff (to be sure that an accurate assessment of the site and the extent of its bat interest has been made). Without a sound survey that includes an assessment of all available evidence, it is difficult to predict the likely impact of development.

From the developer's perspective, the primary objective of a survey for protected species is to ensure that any development can proceed without breaking the law. The consequences of not carrying out a survey on sites which subsequently prove to have a significant protected species interest can be severe and may include delays, additional costs and, in exceptional cases, the cancellation or curtailment of projects."

22. This theme is also repeated in the current guidelines, Marnell F., Kelleher C. and Mullen E., *Bat Mitigation Guidelines for Ireland - v2*, Irish Wildlife Manuals No. 134 (2022, National Parks and Wildlife Service, Department of Housing, Local Government and Heritage, Dublin). Section 5.1 in version 2 states as follows:

“The importance of a thorough site survey prior to considering development cannot be over-emphasised. The following descriptions of survey techniques and their correct application are aimed at assisting consultants (to appreciate the type of survey that is expected), the developer (to be assured that their consultant is recommending a survey to help them meet legal and policy requirements), and planning authorities and National Parks and Wildlife Service (to be sure that an accurate assessment of the site and the extent of its bat interest has been made). Without a sound survey that includes an assessment of all available evidence, it is difficult to predict the likely impact of development.

From the developer’s perspective, the primary objective of a survey for protected species is to ensure that any development can proceed without breaking the law. The consequences of not carrying out a survey on sites which subsequently prove to have a significant protected species interest can be severe and may include delays, additional costs and, in exceptional cases, the cancellation or curtailment of projects. The UK *Bat Conservation Trust* published the 3rd edition of *Bat Surveys: Best Practice Guidelines* in 2016 (Collins, 2016) and the recommendations contained therein should be referred to, bearing in mind, in particular, the different bat faunas of the two jurisdictions.”

23. Section 5.2 in version 1 is headed “Some general points on surveys” and begins: “A survey for bats may be indicated when background information on distribution and occurrence suggests that they may be present”.

24. The inspector was of the view the site did not generally provide suitable habitats for wildlife or species of conservation interest, but said that tree-felling should be undertaken in accordance with the advice of a suitably qualified ecologist to obviate potential impact on bats. This was reflected in condition 21 in the board’s decision.

25. In the light of the foregoing the evidence of the possibility of bat use on the site is:

- (i). the location of the site within 400 metres of the River Lee;
- (ii). the fact that bats have been observed flying over the site; and

- (iii). the presence of the oak tree with a cavity which could raise issues under the bat mitigation guidelines, albeit that those criteria require an overall look at the site rather than taking any one feature in isolation.

26. The No. 1 judgment identified two possible questions of European law regarding these issues, although that was indicative at that stage, and I have now had the benefit of further argument and submission. Insofar as public participation was referred to, that is not an issue in itself because that does not arise as a matter of EU law in the screening context.

27. The board sought to characterise the issue as one of whether it was entitled to form a view on the information before it. As a bland principle, that cannot be in dispute. The question is more the procedural threshold around when the information must be regarded as inadequate, and the impact of the obligation to exclude doubt having regard to the precautionary principle. So I do not find the board's formulation particularly helpful.

Questions that arise

28. The questions of European law that appear properly to arise are as follows:

- (i). **Whether Article 4(4) of and/or paragraph 3 of Annex IIA to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, interpreted in the light of the precautionary principle, have the effect that in a case where information under Annex IIA should be furnished, the developer concerned is required either to obtain all relevant information on species that may be affected by the development by conducting or obtaining adequate scientific surveys, or alternatively to inform the competent authority of the absence of sufficient information to exclude doubt as to whether the project will have significant effects on the environment.**
- (ii). **If the answer to the first question in general is no, whether such consequences arise insofar as relates to species that may be affected by the development where such species are entitled to strict protection under Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, having regard**

inter alia to the importance of such species as recognised in art. 3(1)(b) of Directive 2011/92/EU and Recital 11 to Directive 2014/52/EU.

- (iii). Whether Article 4(4) of and/or paragraph 3 of Annex IIA to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, interpreted in the light of the precautionary principle, have the effect that, if, following the provision of information by the developer pursuant to Annex IIA of the directive, further information is provided to the competent authority capable of creating a doubt as to the effect of the development on the environment, either (a) the developer is required either to provide further information to the competent authority which would exclude such doubt or alternatively to inform the competent authority of the absence of sufficient information to exclude doubt as to whether the project will have significant effects on the environment, or (b) the competent authority itself is required either to obtain further information which would exclude such doubt or alternatively to determine that assessment under Articles 5 to 10 of the directive is required due to the absence of sufficient information to exclude doubt as to whether the project will have significant effects on the environment.
- (iv). If the answer to the third question in general is no, whether such consequences arise insofar as relates to species that may be affected by the development where such species are entitled to strict protection under Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, having regard *inter alia* to the importance of such species as recognised in art. 3(1)(b) of Directive 2011/92/EU and Recital 11 to Directive 2014/52/EU.

29. It seems to me appropriate in all the circumstances to refer these questions to the CJEU for the purpose of enabling a decision in this case, and in fairness to the board they didn't strongly argue that I shouldn't do so. In framing these questions, I have drawn on the opinion of Advocate General Kokott, in Case C-721/21 *Eco-Advocacy CLG v. An Bord Pleanála*, referred to above. She says at para. 61:

“The Court has held in this regard that an environmental impact assessment must be carried out where there is a probability or a risk that the project in question will have significant effects on the environment. In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by EU policy on the environment, in accordance with Article 191(2) TFEU, and by reference to which the EIA Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective circumstances that the project in question will have significant effects on the environment. (n25) This is consistent with the decision-making practice (n26) of the Implementation Committee of the Espoo Convention, (n27) which is transposed into EU law by the EIA Directive. (n28)”

30. Footnote 25 cites *inter alia* the judgment of 31st May, 2018, in case C-526/16 *Commission v. Poland* (Not published, EU:C:2018:356, paragraphs 66 and 67):

“66 Il résulte également de la jurisprudence de la Cour relative à l’article 2, paragraphe 1, de la directive 2011/92, qui prévoit que les « États membres prennent les dispositions nécessaires pour que, avant l’octroi de l’autorisation, les projets susceptibles d’avoir des incidences notables sur l’environnement [...] soient soumis à une évaluation en ce qui concerne leurs incidences », qu’une telle évaluation doit être réalisée dès qu’il existe une probabilité ou un risque que le projet ait de tels effets (voir, en ce sens, arrêts du 29 avril 2004, *Commission/Portugal*, C-117/02, EU:C:2004:266, point 85, ainsi que du 7 septembre 2004, *Waddenvereniging et Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, points 42 et 43).

67 Compte tenu du principe de précaution, qui est l’un des fondements de la politique de protection d’un niveau élevé poursuivie par l’Union dans le domaine de l’environnement, à la lumière duquel doit être interprétée la directive 2011/92, il est considéré qu’un tel risque existe dès lors qu’il ne peut être exclu, sur la base d’éléments objectifs, que le projet est susceptible d’avoir des incidences notables sur l’environnement (voir, en ce sens, arrêts du 24 mars 2011, *Commission/Belgique*, C-435/09, non publié, EU:C:2011:176, point 64, ainsi que du 7 septembre 2004, *Waddenvereniging et Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, point 44).”

31. The key proposition advanced there is that “ ... un tel risque existe dès lors qu’il ne peut être exclu, sur la base d’éléments objectifs, que le projet est susceptible d’avoir des incidences notables sur l’environnement ... ”. That has a clear potential relevance here. Albeit that we await the pending

judgment of the CJEU in *Eco Advocacy*, I propose to proceed with the order for reference but with the possibility of the wording of the questions being refined if the judgment becomes available before the reference is transmitted.

Order

32. Accordingly, the order will be as follows:

- (i). I will in principle refer the questions identified in the judgment to the CJEU pursuant to art. 267 TFEU;
- (ii). in that regard, I will require the parties to make submissions in the *Eco Advocacy* format (*Eco Advocacy CLG v. An Bord Pleanála (No. 1)* [2021] IEHC 265, [2021] 5 JIC 2704 (Unreported, High Court, 27th May, 2021)) within the two weeks following the date of this judgment (excluding vacations);
- (iii). I will direct that the submissions be simultaneous rather than sequential and any of the parties that wish to get involved should deliver such submissions within that two-week period;
- (iv). the matter will be listed for mention thereafter on a date to be notified by the List Registrar;
- (v). the order containing the foregoing directions can be perfected at this point with costs reserved and liberty to apply in that regard, and subject to the making of the formal order for reference in due course following submissions.