Neutral Citation: [2016] IEHC 322

THE HIGH COURT

Record No. 2014/488JR

IN THE MATTER OF SECTION 50 OF THE

PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

BETWEEN

KATHLEEN CONNOLLY

APPLICANT

-AND-

AN BORD PLEANÁLA

RESPONDENT

-AND-

CLARE COUNTY COUNCIL, McMAHON FINN WIND ACQUISITIONS LTD

NOTICE PARTIES

JUDGMENT of Mr Justice Max Barrett delivered on 14th June, 2016.

Part 1: Introduction

1. Ms Connolly does not want a wind-farm built by her house. She comes seeking an order quashing a decision of An Bord Pleanála that would allow such a development. She maintains that this decision is unlawful and ought to be set aside.An BordPleanála maintains that it has done everything required of it by law and that its decision should stand.

Part 2: KeyFacts

A. Planning Authority Refusal.

2. The developer's original planning application was for a wind-farm consisting of six turbines and associated works. Clare County Council refused planning permission for this development on 12th July, 2011. There were three main threads to the County Council's refusal. First,visual and noise impact; the Council considered that the appraisal of the proposed development in these respects was not acceptable. Second, location; Clare County Council believed an application for six turbines was not suited to the intended location and brought consequent water pollution risks. Third, an information deficit, e.g., as regards the threat that the development posed to a bird called the 'hen harrier', to bats, and as regards intended haulage routes.

B. Appeal and Inspector's Report.

3. The Council's decision was appealed to An Bord Pleanála by the developer on 8th August, 2011. During the appeal process, An Bord Pleanála appointed an inspector to prepare a report. This report issued on 30th November, 2011. On 25th January, 2013, a meeting of An Bord Pleanála was held at which the appeal was considered. A consideration of the decision that issued from An Bord Pleanála suggests that it had concerns regarding habitat protection, the risk of water pollution, as well as issues concerning the assessment of noise and environmental effect. Accordingly, An Bord Pleanála required the developer to provide specific information and revisions. A statutory notice to this effect (issued under s.132 of the Planning and Development Act 2000, as amended (the 'Act of 2000')) was served on the developer. Copies of same were also served on those who had made submissions or observations to An BordPleanála. In short, An Bord Pleanála engaged with such deficiencies as the planning authority and its own planning inspector had raised and sought further information to deal with such difficulties as appeared to present.

C. Additional Information.

4. On 9th August, 2013, the developer submitted its response to the s.132 notice. This was detailed, included a requested 'Natura Impact Statement', and dealt specifically with such matters as An BordPleanála had asked to be considered. AnBordPleanála ultimately accepted that this additional information was sufficient to plug such gaps as it had identified when it issued the s.132 notice.

D. Decision of AnBordPleanála.

5. The decision of An Bord Pleanála issued on 6th June, 2014. It records, inter alia,that An Bord Pleanála: (a) is satisfied that the information before it was adequate to undertake an appropriate assessment and an environmental impact assessment in respect of

the proposed development; (b) in terms of appropriate assessment, has completed an appropriate assessment in relation to the potential impacts of the proposed development on certain conservation and other sites and (subject to the implementation of identified mitigation measures)is satisfied that the proposed development, by itself, or in combination with other plans or projects, will not adversely affect the integrity of same; (c) has completed an environmental impact statement; and (d)notes and generally adopts the inspector's assessment of environmental impacts, with the exception of the matters set out in the decision, and concludes that the proposed development will not have unacceptable effects on the environment. The Board then proceeds to deal with such issues as residential amenity, visual impact, perceived risks to the hen harrier, water pollution, and ground instability.

Part 3: Ms Connolly's Objections

6. Ms Connolly raises four key objections to the decision of An Bord Pleanála. These are that An Bord Pleanála failed:(1) to carry out and/or record any screening assessment for appropriate assessment, contrary to national and European law, (2) to carry out and/or record any proper appropriate assessment under national and European law, (3) to carry out and/or record any proper environmental impact assessment under national/European law, and (4) to consider or have regard to its obligations under s.37(2) of the Planning and Development Act 2000. Each of Ms Connolly's objections is considered below.

(1) Failure to carry out and/or record any screening assessment for appropriate assessment.

7. Ms Connolly's complaint in this regard arises pursuant to s.177U of the Planning and Development Act 2000. So far as relevant to the within proceedings, this provision can perhaps be summarised as follows.Section 177U(1) requires that a screening for an appropriate assessment of, inter alia, an application for consent for a proposed development be carried out by a competent authority to assess, in light of best scientific knowledge, whether the proposed development, individually or in combination with another plan or project is likely to have a significant effect on a European site. Section 177U(2) requires that a screening for an appropriate assessment be done, inter alia, before consent for a proposed development is given. Section 177U(3) makes provision as regards the information that may be requested and the consultation that may be done when a competent authority is carrying out such a screening, and makes certain associated provision. Section 177U(4) and (5) between them make provision as to when a competent authority shall determine that an appropriate assessment of, inter alia, a proposed development, is or is not required. Section 177U(6) is worth quoting in full:

> *"(a) Where, in relation to a proposed development, a competent authority makes a determination that an appropriate assessment is required, the competent authority shall give notice of the determination, including reasons for the determination of the competent authority, to the following –*
>
> *(i) the applicant,*
>
> *(ii) if appropriate, any person who made submissions or observations in relation to the application to the competent authority, or*
>
> *(iii) if appropriate, any party to an appeal or referral.*
>
> *(b) Where a competent authority has determined that an appropriate assessment is required in respect of a proposed development it may direct in the notice issued under paragraph (a) that a Natura impact statement is required.*
>
> *(c) Paragraph (a) shall not apply in a case where the application for consent for the proposed development was accompanied by a Natura impact statement."*

8. Section 177U(7) makes provision as regards making a decision available to the public. Section 177U(8) defines what is meant by the term *"consent for proposed development".* Section 177U(9) has no relevance to the within proceedings.

9. An Bord Pleanála contends that the s.132 notice of 13th February, 2013, sufficed to comply with s.177U(6a) of the Act of 2000. This notice indicated that An Bord Pleanála required a Natura Impact Statement so that it could carry out a 'Stage 2' assessment, i.e. a full appropriate assessment. An Bord Pleanála must also have determined, in accordance with s.177U(6a)(ii) of the Act of 2000, that it was appropriate to circulate this s.132 notice to all persons who made submissions or observations in relation to the application. That it did so is apparent from the fact that An Bord Pleanála did so circulate the notice.

10. The kernel of Ms Connolly's complaint is that in circulating the s.132 notice to her, An Bord Pleanála did not satisfy the requirements of s.177U(6a). Those requirements, insofar as relevant, are that *"the competent authority shall give notice of the determination [that an appropriate assessment is required], including reasons for the determination of the competent authority".* In this regard, she points to the fact that the s.132 notice indicates that a Natura Impact Statement is required so that an appropriate assessment can be undertaken but gives no indication as to the reason/s that An Bord Pleanála has for undertaking that appropriate assessment. Try as it might (and it has tried), An Bord Pleanála cannot escape the fact that (i) a statement which indicates that An Bord Pleanála requires a Natura Impact Statement so that an appropriate assessment may be done, (ii) offers no reasonas to why An Bord Pleanála has determined that the appropriate assessment falls to be done. AnBord Pleanálahas, disappointingly, sought to belittle in this regard *"the opportunistic nature of the Applicant's case which has little or nothing to do with a bona fide concern for ecology."*But all the court sees is an applicant –Ms Connolly – who is rightly insistent that there be full compliance with the law before a wind farm is planted by her homestead. In a system of government based on the rule of law there is nothing "*opportunistic*" in seeking to have a statutory body comply with the requirements imposed on it by law. An Bord Pleanála is required to comply with the law, it has come to court claiming that it has complied with the law, and – unfortunately for it –when it comes, inter alia, to s.177U(6a) of the Act of 2000, it has not.

(2) Failure to carry out and/or record any proper appropriate assessment.

i. Complaint Made.

11. Ms Connolly's complaint in this regard arises pursuant to s.177V of the Planning and Development Act 2000, it seems s.177V(1) in particular. This provides as follows:

> *"An appropriate assessment carried out under this Part shall include a determination by the competent authority under Article 6.3 of the Habitats Directive as to whether or not a draft land use plan or proposed development would adversely*

affect the integrity of a European site and an appropriate assessment shall be carried out by the competent authority, in each case where it has made a determination under section 177U(4) that an appropriate assessment is required, before— (a) the draft Land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made, or (b) consent is given for the proposed development."

12. An Bord Pleanála in its decision has the following to say about the appropriate assessment that it has carried out and its related determination:

> *"Having regard to the nature, scale and design of the proposed development, the Natura impact statement, the environmental impact statement submitted with the application, the documentation and submissions on file generally, and the significant further information submitted to An Bord Pleanála on the 9th day of August, 2013, and notwithstanding the Inspector's assessment of impacts on European Sites, which is noted, the Board completed an Appropriate Assessment in relation to the potential impacts of the proposed development on the Carrowmore Point to Spanish Point and Islands Special Area of Conservation (Site Code number 001021) and on the Mid-Clare Coast Special Protection Area (Site Code number 004182). Subject to the implementation of the identified mitigation measures, the Board concluded that the proposed development, by itself, or in combination with other plans or projects, would not adversely affect the integrity of these European sites, in view of the conservation objectives for the sites."*

13. Despite the eloquent wording, the just-quoted text amounts in effect to nothing more than an assertion that 'Having considered all the material put in front of it, the Board has reached the following conclusion…'. If this Court was to say in judgment 'Having considered all the material put in front of it, the court has reached the following conclusion…' and then give a ruling, its judgment would undoubtedly be criticised on appeal, and rightly so. But of course, An Bord Pleanála, is not writing a judgment. It is merely seeking to comply with, inter alia, s.177V of the Act of 2000. When it comes to the obligations imposed on An Bord Pleanála pursuant to s.177V(1), does the above-quoted text suffice by way of compliance? The short answer to this question is 'no'. To understand why, it is necessary briefly to consider the decision in Kelly v. AnBord Pleanála [2014] IEHC 400.

ii. The Decision in Kelly.

14. The facts of Kelly are not so very dissimilar to those presenting in the within application. Mr Kelly asked the High Court to quash decisions of An Bord Pleanála granting planning permission for certain wind turbine developments in County Roscommon. He was supported by the Department of Arts, Heritage and the Gaelteacht. The primary objection of Mr Kelly and the Department was that the decisions of An Bord Pleanála to grant planning permission were made in breach of Art.6(3) of the Habitats Directive, as transposed. The main contention in this regard of Mr Kelly and the Department was that An Bord Pleanála, as a competent authority, failed (a) to carry out any appropriate assessment in accordance with Art.6(3) and relevant decisions of the Court of Justice, or (b) to give reasons for the negative determination made in the course of its purported appropriate assessments.

15. When it came to (b), Mr Kelly and the Department submitted that the requirement as to reasons arises so that the High Court may, in an application for judicial review, be able to ascertain whether or not an appropriate assessment has been conducted in accordance with the requirements of Art.6(3), as explained in the case-law of the Court of Justice. They referred in this regard to the observations of (1) the Court of Justice in *Mellor* [2009] ECR I-3799, in relation to an implied duty to give reasons for a negative screening decision under the Environmental Impact Assessment Directive; and (2) Clarke J. in *Christian v. Dublin City Council* [2012] IEHC 163, as to the extent of the obligation to give reasons in Irish law.The most pertinent observations of the Court of Justice in *Mellor* appear at paras. 57–59 of its judgment:

> *"57. It is apparent…that third parties, as well as the administrative authorities concerned, must be able to satisfy themselves that the competent authority has actually determined, in accordance with the rules laid down by national law, that an EIA was or was not necessary.*
>
> *58. Furthermore, interested parties, as well as other national authorities concerned, must be able to ensure, if necessary through legal action, compliance with the competent authority's screening obligation….*
>
> *59. …[E]ffective judicial review…presupposes in general, that the court to which the matter is referred may require the competent authority to notify its reasons. However where it is more particularly a question of securing the effective protection of a right conferred by Community law, interested parties must also be able to defend that right under the best possible conditions and have the possibility of deciding, with a full knowledge of the relevant facts, whether there is any point in applying to the courts. Consequently, in such circumstances, the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request…".*

16. Writing in a similar vein in Christian, Clarke J. states, at para. 78:

> *"The underlying rationale of cases such as Meadows v. Minister for Justice [2010] IESC 3 (in that respect) and Mulholland v.AnBordPleanála (No 2) [2005] IEHC 306 is that decisions which affect a person's rights and obligations must be lawfully made. In order to assess whether a relevant decision is lawful, a party considering a challenge, and the court in the event of a challenge being brought, must have access to a sufficient amount of information to enable an assessment as to lawfulness to be made. What that information may be, may vary enormously depending on the facts under consideration or the nature of the decision under challenge. However, the broad and underlying principle is that the court must have access to sufficient information to enable the lawfulness of the relevant measure to be assessed."*

17. An Bord Pleanála, in Kelly, did not dispute the applicability of, e.g., Mellor and Christian. But it pointed to a line of Irish case-law the thrust of which was that discursive reasoning is not required of An Bord Pleanála in its decisions and that it sufficed that such decisions (a) make sense from the perspective of an intelligent person who participated in the relevant proceedings, and (b) give sufficient information to enable an appeal of the decision, while (c) demonstrating that the decision-maker adequately turned its mind to the matters in issue. In her judgment in Kelly, Finlay Geoghegan J. favoured what might be styled the Mellor-Christian approach over the line of cases relied upon by An Bord Pleanála. At paras. 48–50 of her judgment, Finlay Geoghegan J. offered two reasons for concluding as she did:

> *"[1] [T]he essential principle is that the reasons must [a] be such as to enable an interested party assess the lawfulness of the decision and [b] in the event of a challenge being brought the court must have access to sufficient information to enable an assessment as to lawfulness to be made….In accordance with the CJEU decision in Sweetman, it is for the national court to determine whether the appropriate assessment (including the determination) was lawfully carried out or reached, and to do so, it appears to me that the reasons given for the Board's determination in an appropriate*

assessment must include the complete, precise and definitive findings and conclusions relied upon by the Board as the basis for its determination. They must also include the main rationale or reason for which the Board considered those findings and conclusions capable of removing all scientific doubt as to the effects of the proposed development on the European site concerned in the light of…its conservation objectives. In the absence of such reasons, it would not be possible for a court to decide whether the appropriate assessment was lawfully concluded or whether the determination meets the legal test required by the judgments of the CJEU….

[2] [I]t appears to me that whilst the requirement for an appropriate assessment has been implemented in Ireland by amendment of the Planning Acts and requires to be carried out inter alia as part of the planning process, the determination which must be made by the Board as a competent authority…is not a 'planning decision' in the sense used in the judgments relating to reasons relied upon by the Board. In such a planning decision, the Board is exercising a jurisdiction with a very wide discretion. By contrast, the determination it must make as part of an appropriate assessment is significantly narrower and legally constrained as explained in the CJEU cases cited. It also determines the Board's continuing jurisdiction to grant planning consent, and therefore a decision which goes to its jurisdiction."

18. By way of supplementary observation, and somewhat in ease of An Bord Pleanála, Finlay Geoghegan J. proceeds, at para. 50, to note – albeit with striking caution – that in reaching the just-quoted conclusion:

"I am not deciding that the findings and conclusions always have to be ones made by the Board itself. Where the Board appoints an inspector to prepare a report, and the inspector carries out an appropriate assessment as part of his or her report, it may be that if the Board, on consideration, accepts the relevant findings made and conclusions reached by its Inspector in his or her report, that the production of the report may satisfy some or all of the obligation of the Board to give reasons for its determination. This would depend upon the relevant facts." [Emphasis added].

19. If the court might respectfully expand upon this last-quoted text, it does not understand *Kelly* to be authority for the suggestion that,when it comes to a determination in an appropriate assessment,An Bord Pleanála can generically incorporate into that determination separate materials, such as an inspector's report,that it has considered. Rather, viewed in light of, inter alia, Mellor and Christian,what is required of An Bord Pleanála are complete, precise and definitive findings and conclusions of a degree of specificity sufficient that a party minded to seek judicial review of such determination can turn readily to the particular observations, reasoning or conclusions in, say, a particular report or text to which reference is made, rather than simply being told that somewhere in an ocean of documentation is some stream of logic that An Bord Pleanála favours. And if it is all of a particular report or text that is being relied upon by An Bord Pleanála, so be it, but let it be identified properly, so that, the findings and conclusions reached in its determination are sufficiently complete, precise and definitive as to enable (i) an interested party meaningfully to assess the lawfulness of that determination and (ii) a court to undertake a ready and comprehensive judicial review of same.

iii. Some Conclusions.

20. In the course of the hearings of this application, counsel for An Bord Pleanála brought the court in great detail through the seminal aspects of what An Bord Pleanála had done before it arrived at the determination referred to above. However, it seemed to the court, with respect, that in taking the court with such abundant detail through what An Bord Pleanála had done, counsel rather overlooked the requirement that when it comes to, inter alia, s.177V(1) what is required is not just that An Bord Pleanála has done right but that a party who comes to the decision of An Bord Pleanála, and who wants to know whether or not to challenge same is able readily to gauge in an informed manner whether An Bord Pleanála has done right…or gone wrong. Thus it seemed to the court that inadequate regard was had by counsel for An Bord Pleanála to the fact that, as per:

- the Court of Justice in Mellor, para. 59, *"[I]nterested parties must…have the possibility of deciding, with a full knowledge of the relevant facts, whether there is any point in applying to the courts",*

- Clarke J. in Christian, para. 78, *"In order to assess whether a relevant decision is lawful, a party considering a challenge…must have access to a sufficient amount of information to enable an assessment as to lawfulness to be made*", and

- Finlay Geoghegan J. in Kelly, para.48, *"[T]he essential principle is that the reasons must be such as to enable an interested party assess the lawfulness of the decision…".*

21. These obligations appear heightened in importance when one has regard to the tight time constraints that apply to seeking judicial review.

22. In the circumstances presenting here, there is no way that Ms Connolly, having had regard to the above-quoted text from An Bord Pleanála's decision, could readily satisfy herself as to whether or not to bring a challenge – certainly not without going through page upon page of related documentation and trying to decipher what had been done and whether it was done in accordance with law. She could of course engage a lawyer to assist her in this last task. However, a lawyer with no little knowledge of planning law would likely be required to undertake such work. And in this respect, the court would note the obvious: proper planning was never intended to be, nor can it be allowed to become, a perk reserved for the few who can afford expert lawyers, with something less than best being the lot of the many who cannot; required adherence to the above-quoted principles from *Mellor, Christian and Kelly* (and adherence is required) should better ensure the avoidance of such an unenticing eventuality. Every public body and servant, this Court included,is paid by the public to meet a public need, and – to borrow from Mellor – what the public need when it comes to decisions of An Bord Pleanála in the context arising is to have *"the possibility of deciding, with a full knowledge of the relevant facts, whether there is any point in applying to the courts".* No such possibility readily presents for an affected person when she is told, as Ms Connolly was effectively told, that *'Having considered all the material put in front of it, the Board has reached the following conclusion…'.*

23. For the reasons stated, the court considers that the impugned decision of An Bord Pleanála failed to comply with s.177V(1) of the Act of 2000.As a cumulative failure, this deficiency buttresses the court's sense that it should exercise its discretion in favour of granting the order of *certiorari* now sought. However, in the circumstances of this case, were this the sole deficiency that the court considered to present as regards An Bord Pleanála's decision, the court would perhaps have hesitated before granting that relief. This is because despite thes.177V(1) deficiency presenting, Ms Connolly did some how manage to arrive at some level of understanding as to the complete rationale for An Bord Pleanála's decision – as evidenced by the fact that she commenced these proceedings on time. That said,the 'lock, stock and barrel' approach adopted by Ms Connolly in her pleadings, and of which An Bord Pleanála has sought in its submissions to make much a-do, suggests most strongly that this judicial review application had to be commenced at a time when

the objections raised were more sensed in outline than known in detail. If that is so – and it does seem so– that buttresses the court in its sense as to the substantive deficiency of An Bord Pleanála's decision…and rather undermines such criticisms as were made by An Bord Pleanála at hearing as to the form of Ms Connolly's pleadings. It is, after all, a little rich for a decision-maker to issue a decision that is so generic in nature as to leave an affected person searching for the exact rationale for what has been decided, but for that decision-maker then to come to court on review (as here)complaining that the affected person's pleadings are so generic in nature as to leave the decision-maker grasping to identify the exact criticisms that it must meet. But be all that as it may, the identified deficiency arising by reference to s.177V(1) is not in any event the sole legal deficiency that the court considers to present. It suffices then for present circumstances to conclude that as a cumulative factor, that deficiency further inclines the court in favour of granting the order now sought by Ms Connolly.

(3) Failure to carry out and/or record any proper EIA under national/European law.

24. An environmental impact assessment (EIA) is a process whereby a decision-maker (here An Bord Pleanála) gathers information, most notably through the submission by a developer of an environmental impact statement (EIS) enabling An Bord Pleanála to identify, describe and assess the likely significant effects, direct and indirect, that a proposed development will have, per s.171A of the Act of 2000,on*"(a)human beings, flora and fauna, (b)soil, water, air, climate and the landscape, (c)material assets and the cultural heritage, and (d)the interaction between the factors mentioned in paragraphs (a), (b) and (c)".* The object of the EIA process is to ensure that the potential environmental effects of a project will have been fully considered before the decision to grant or refuse development consent is made and, if development consent is granted, it can be subject to such conditions as are appropriate to avoid or reduce any adverse effects. This information is primarily contained in an EIS; however, it may come from other sources, including submissions from the public and designated bodies, public participation being a key element of the process.

25. When it comes to the EIA in these proceedings, the impugned decision of An Bord Pleanála states as follows:

> *"Having regard to the nature, scale and design of the proposed development, the environmental impact statement and supporting documentation submitted at the application and appeal stages, the submissions and documents on file generally, the Inspector's assessment of environmental impacts and, in particular, to the significant further information submitted to An BordPleanála on the 9th day of August, 2013, the Board completed an environmental impact assessment. The Board noted and generally adopted the Inspector's assessment of environmental impacts, with the exception of the matters set out below, and concluded that the proposed development would not have unacceptable effects on the environment."*

26. There is something of an oddity when it comes to the foregoing in that the inspector's report that is "generally adopted" by An Bord Pleanála is not unfailingly positive as regards the proposed development to which it relates. Moreover, and more importantly, the development that the inspector reported upon was a six-turbine development. But during the further information process, the development was re-designed so that it became a four-turbine development. The locations of some or all of the turbines changed. The access route was changed. The internal roads were re-designed. The location of burrow pits was altered. Hundreds of pages of new documentation were presented. Yet there is no description, analysis, or evaluation of this information in the decision of An Bord Pleanála. Instead one meets with some generically-worded text which states in effect that 'Having considered everything and having noted and generally adopted a report [referable to a different set of facts],An Bord Pleanála is satisfied with matters from an environmental perspective, subject to certain caveats…'.Does such an approach conform with the obligations incumbent on An Bord Pleanála pursuant tos.172(1J) of the Act of 2000? That provision states as follows:

> *"When the planning authority or the Board, as the case may be, has decided whether to grant or to refuse consent for the proposed development, it shall inform the applicant for consent and the public of the decision and shall make the following information available to the applicant for consent and the public: (a) the content of the decision and any conditions attached thereto; (b) an evaluation of the direct and indirect effects of the proposed development on the matters set out in section 171A; (c) having examined any submission or observation validly made, (i) the main reasons and considerations on which the decision is based, and (ii) the main reasons and considerations for the attachment of any conditions, including reasons and considerations arising from or related to submissions or observations made by a member of the public; (d) where relevant, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects; (e) any report referred to in subsection (1H); (f) information for the public on the procedures available to review the substantive and procedural legality of the decision, and (g) the views, if any, furnished by other Member States of the European Union pursuant to section 174."*

27. The difficulty that the court considers to present for An Bord Pleanála in this regard is that in relying upon quite generic reasoning and a rather contrary report that relates to a different development, it is difficult to see that An Bord Pleanála has complied (in fact this Court concludes that it has not complied) with the requirement in s.172(1J) to give a proper *"evaluation of the direct and indirect effects of the proposed development".* Moreover and separately, when it comes to providing, again pursuant to s.172(1J) *"the main reasons and considerations on which the decision is based"*, the court considers that the summary form of the text of An Bord Pleanála's decision in this regard imparts next to no information to an affected party – here Ms Connolly. She is not given a proper understanding of why the decision has been reached– and if she wants to seek a judicial review of the decision within the tight time constraints applicable, the generic form of the reasoning employed by An Bord Pleanála has the effect that she cannot properly assess matters without a detailed consideration of the underlying documentation and/or costly expert assistance.It is worth recalling again in this context the above-mentioned observation of Clarke J. in Christian, para. 78, that *"In order to assess whether a relevant decision is lawful, a party considering a challenge…must have access to a sufficient amount of information to enable an assessment as to lawfulness to be made*". That means meaningful access in the form of a decision which is either sufficiently reasoned in itself, or refers with adequate particularity to other documentation, that an interested person can readily read herself into what has been decided and why. And it is in this context that one must construe the various decisions to which An BordPleanála has referred in its submissions when it comes to its being possible (and it is possible) that a decision and a related inspector's report may lawfully fall to be read in tandem, viz.*Maxol Limited v. An Bord Pleanála* (Unreported, High Court, Clarke J., 21st December, 2011), *Ógalas Limited (t/a Homestore and More) v. An Bord Pleanála* [2015] IEHC 205 and *Buckley v. An Pleanála* [2015] IEHC 572. It never suffices, and it has never sufficed, for a public decision-making body to issue a decision that refers in a largely uninformative manner to an ocean of material consulted or relied upon, and to leave an affected party thereafter to fish in that ocean for what she might catch there of relevance within the ever-diminishing timeframe for bringing a related judicial review application – and one will search long and hard in the law reports to find a judge of the High Court, or of any court, who has suggested the contrary.

(4) Failure to consider or have regard to s.37(2) of the amended Act of 2000.

28. Under s.37(2)(a) of the Act of 2000, An Bord Pleanála may, in determining an appeal under that section, decide to grant

permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. Under s.37(2)(b), where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development, An Bord Pleanála may only grant the permission aforesaid where it considers that one or more factors is satisfied. Here AnBord Pleanála simply disagreed with the planning authority's decision to refuse permission and has proceeded to grant the permission consistent with its usual powers upon appeal. The restrictions in s.37 therefore do not arise. So any attempt by Ms Connolly to invoke s.37 falls at this most basic hurdle. As s.37 is an irrelevance on the facts presenting, it is not necessary for the court to consider whether An Bord Pleanála has complied with same.

Part 4: The Decisions inBalz and Dunnes

29. Since the court reserved its judgment in this matter, two High Court judgments of relevance have issued which the parties have asked the court to read and consider,viz. *Balz v. Another v. AnBord Pleanála* [2016] IEHC 134 and *Dunnes Stores v. AnBord Pleanála* [2016] IEHC 226. The court has done as asked and sees nothing in either judgment that would cause it to depart from or vary the reasoning applied, or conclusions reached,in this judgment.

Part 5: Conclusion

30. The principal relief sought by Ms Connolly in the within proceedings is an order of *certiorari* quashing the decision of An Bord Pleanála for a development comprising of four wind turbines each with a hub height of up to 85m and a rotor diameter of up to 82m, together with associated development, at Coor West, Shanavogh, County Clare, which decision to grant permission was made by An Bord Pleanála on 6th June, 2014.Given the breaches of ss.172(1J),177U(6a), and 177(V)1 of the Act of 2000 that the court identifies in Part 3 above, the court is satisfied to grant the order of *certiorari* sought.