[2018] IEHC 315

THE HIGH COURT

2014 No. 342JR

Between:

AN TAISCE

Applicant

– and –

AN BORD PLEANÁLA, IRELAND and the ATTORNEY GENERAL

Respondents

– and –

J MCQUAID QUARRIES LIMITED, MONAGHAN COUNTY COUNCIL,

PETER SWEETMAN

Notice Parties

JUDGMENT of Mr Justice Max Barrett delivered on 17th May, 2018.

1. The first-named notice party owns a quarry at Lemgare, Co Monaghan, that on 25th April, 2014, was granted a substitute consent by An Bord Pleanála pursuant to s.177C(2)(a) and D(1)(a) of the Planning and Development Act 2000, which provide as follows:

> *"177C. –*
>
> *…(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which*
>
> *(a) the applicant considers that a permission granted for the development by a planning authority or the Board may be in breach of law, invalid or otherwise defective in a material respect, whether pursuant to a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise by reason of -*
>
> *(i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or*
>
> *(ii) any error of fact or law or a procedural error,*
>
> **or** [emphasis added]
>
> *(b)* the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.
>
> …
>
> *177D. – (1) The Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied –*
>
> *(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of -*
>
> *(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact statement or a Natura impact statement or both of those statements as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or*
>
> *(ii) any error of fact or law or procedural error,*
>
> **or** [emphasis added]
>
> *(b)* that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent."

2. Previous to the granting of the said substitute consent, the quarry had been registered pursuant to s.261 of the Act of 2000. Section 261(7) of that Act provided as follows:

> *"(a) Where the continued operation of a quarry –*
>
> *(i) (I) the extracted area of which is greater than 5 hectares, or*
>
> *(II) that is situated on a European site or any other area prescribed for the purpose of section (10)(2)(c), or land*

to which an order under section 15, 16 or 17 of the Wildlife Act, 1976, applies,

and

(ii) that commenced operation before 1 October 1964,

would be likely to have significant effects on the environment (having regard to any selection criteria prescribed by the Minister under section 176(2)(e)), a planning authority shall not impose conditions on the operation of a quarry under subsection (6), but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of service of the notice, or such other period as may be agreed with the planning authority.

…

(c) A planning authority, or the Board on appeal, shall, in considering an application for planning permission made pursuant to a requirement under paragraph (a), have regard to the existing use of the land as a quarry."

3. Pursuant to s.261(7) of the Act of 2000, Monaghan County Council directed that an application for planning permission, together with an environmental impact statement, be submitted to it. Thereafter, on 2nd March, 2004, an application for planning permission was made by the first-named notice party. Following on this application, Monaghan County Council granted planning permission for the quarry.

4. An Taisce appealed this decision to An Bord Pleanála. In its appeal, An Taisce contended that the application for permission was a retention application in respect of a development that required an environmental impact assessment and, accordingly, that permission could not be granted, having regard to the EIA Directive and the decision of the Court of Justice in Case C-215/06 *Commission v. Ireland* (of which more anon). Notwithstanding the grounds set out in the appeal, on 20th July, 2009, An Bord Pleanála granted permission for the quarry. An Taisce then commenced judicial review proceedings challenging the lawfulness of the decision of An Bord Pleanála.

5. On 25th November, 2010, Charleton J. made an order of *certiorari* quashing the decision of An Bord Pleanála. In his decision, Charleton J. held, *inter alia*, that An Bord Pleanála was required to consider whether or not the development that was the subject of the application was unauthorised development. As An Bord Pleanála had not considered same, its decision was quashed.

6. Subsequent to the said decision of Charleton J., the first-named notice party applied to An Bord Pleanála for leave to apply for substituted consent pursuant to s.177C of the Act of 2000. An Bord Pleanála granted the said leave. It is as well to take a detour at this point and consider what was afoot in the making of this application under s.177C. That provision came about as a result of the previously mentioned decision of the Court of Justice in *Commission v. Ireland*. That was a case in which the CJEU found Ireland to be in breach of European Union law because, prior to the Planning and Development (Amendment) Act 2010, there was no restriction under Irish law as to the circumstances in which retention planning permission could be sought, thus effectively offering a means to circumvent the requirements of the EIA Directive, the CJEU observing, *inter alia*, as follows:

"54 As the Irish legislation stands, it is undisputed that environmental impact assessments and planning permissions must, as a general rule, be respectively carried out and obtained, when required, prior to the execution of works. Failure to comply with those obligations constitutes under Irish law a contravention of the planning rules.

55 However, it is also undisputed that the Irish legislation establishes retention permission and equates its effects to those of the ordinary planning permission which precedes the carrying out of works and development. The former can be granted even though the project to which it relates and for which an environmental impact assessment is required pursuant to Articles 2 and 4 of Directive 85/337 as amended has been executed.

56 In addition, the grant of such a retention permission, use of which Ireland recognises to be common in planning matters lacking any exceptional circumstances, has the result, under Irish law, that the obligations imposed by Directive 85/337 as amended are considered to have in fact been satisfied.

57 While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

58 A system of regularisation, such as that in force in Ireland, may have the effect of encouraging developers to forgo ascertaining whether intended projects satisfy the criteria of Article 2(1) of Directive 85/337 as amended, and consequently, not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment. The first recital of the preamble to Directive 85/337 however states that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects.

59 Lastly, Ireland cannot usefully rely on Wells. Paragraphs 64 and 65 of that judgment point out that, under the principle of cooperation in good faith laid down in Article 10 EC, Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States.

60 This cannot be taken to mean that a remedial environmental impact assessment, undertaken to remedy the failure to carry out an assessment as provided for and arranged by Directive 85/337 as amended, since the project has already been carried out, is equivalent to an environmental impact assessment preceding issue of the development consent, as required by and governed by that directive.

61 It follows from the foregoing that, by giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to Articles 2(1) and 4(1) and (2) of Directive 85/337 as amended, projects for which an environmental impact assessment is required must be identified and then – before the grant of development consent and, therefore, necessarily before they are carried out – must be subject to an application for development consent and to such an assessment, Ireland has failed to comply with the requirements of that directive."

7. Subsequent to the judgment of the CJEU in Case C-215/06 Commission v. Ireland, the following provision was made in s.34(12) of the Planning and Development Act 2000 (as amended by s.23 of the Planning and Development) Amendment Act 2010:

"A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out –

(a) an environmental impact assessment,

(b) a determination as to whether an environmental impact assessment is required, or

(c) an appropriate assessment."

8. Part XA of the Act of 2000, as inserted by s.57 of the Planning and Development Act 2010, makes related provision allowing for the possibility of applying for a retrospective development consent, known generally as a 'substitute consent'. There are three routes (gateways) whereby a developer can seek a substitute consent. The within application, as mentioned, is focused on the gateway offered by s.177C(2)(a) and D(1)(a) whereby leave to apply for substitute consent may be sought on the basis that an existing permission may be in breach of law, invalid or otherwise defective in a material respect.

9. Part XA was commenced on 21st September 2011. The first-named notice party made its application for leave to apply for substitute consent in January 2012. An Bord Pleanála made a decision to grant leave to apply on 28th May, 2012. So far as An Taisce had any complaint as to the validity of that decision, it had, pursuant to ss.50 and 50A of the Act of 2000, as amended, eight weeks to bring such challenge. It did not bring any such challenge. This raises an insurmountable difficulty for An Taisce when it comes to the within proceedings. Its complaint, in essence, is that the first-named notice party should not have been allowed to apply for development consent retrospectively; however, the decision which allowed the first-named notice party to apply for development consent was the decision on 28th May, 2012, to grant leave to apply for substitute consent.

10. An Taisce seeks to get around the timing difficulty which presents by challenging the decision of An Bord Pleanála of 25th April, 2014 to grant the substitute consent. But of course that later decision could never have been granted were it not for the decision of 28th May 2012. What presents, in truth, is an out-of-time attack and an impermissible collateral attack, on the decision of 28th May, 2012, under the guise of an attack on the decision of 25th April, 2014. It is not a million miles from relying on a referee's decision on a penalty-kick to challenge the decision to hold a football match in the first place. Such a collateral attack runs contrary to a line of jurisprudence that includes *Goonery v. Meath County Council* [1999] IEHC 15 and *Lennon v. Cork City Council* [2006] IEHC 438, with the judgments in those cases emphasising that the courts will look to the substance of the relief sought in proceedings, rather than its mere form, so that a failure to seek *e.g.*, an order of *certiorari* in respect of an order which comes first in time not being fatal to a conclusion by a court that, as here, it is that decision and not one later in time which is truly under attack.

11. The clear purpose and effect of statutory time-limits such as the eight-week time limit referenced above is to empower persons affected by such decisions to rely on them after a brief period, safe in the knowledge that the decisions are then beyond challenge, or, to use a colloquialism, to allow them to 'get on with their lives' without fear that the legal basis on which their lives are being constructed will be cut from underneath them. As Clarke C.J., for the Supreme Court, recently put matters in *Sweetman v. An Bord Pleanála* [2018] IESC 1, echoing the much earlier judgment of Finlay CJ in *KSK Enterprises Ltd v. An Bord Pleanála* [1994] 2 IR 128, 135:

"7.1 The rationale behind the collateral attack jurisprudence is clear. A party who has the benefit of an administrative decision which is not challenged within any legally mandated timeframe should not be exposed to the risk of having the validity of that decision subsequently challenged in later proceeding which seek to quash the validity of a subsequent decision on the basis that the earlier decision was invalid….

7.2 The requirements of legal certainty make clear that a person who has the benefit of a decision which is not challenged within whatever time limit may be appropriate is entitled to act on the assurance that the decision concerned is now immune from challenge subject to very limited exceptions such as fraud and the like."

12. Clarke C.J. immediately moves on to make helpful comment concerning the position where, as in the case at hand, there is a two-stage process, observing, *inter alia*, as follows:

"7.3 However, the application of that general principle can become complex in circumstances where there is a two or more stage process leading to the substantive administrative decision concerned. In such a case is it permissible to leave a decision made at an earlier stage in the process go unchallenged and then raise a point which could have been made in respect of that initial decision at a later stage in the process? In such a case it seems to me that it is necessary to analyse the process concerned for the purposes of determining whether it is the overall intent of the scheme in question that the relevant issue or question be definitively and finally decided at the first stage with no capacity to revisit the issue at any subsequent stage in the process.

7.4 In some circumstances, for example, an initial decision may simply be to the effect that there is an arguable case or a case to answer or the like so that all of the issues remain open for full debate as the process continues. In other cases it may be clear that the initial decision is designed to definitively determine some relevant matter such as whether jurisdiction exists or qualifying factors are present. In such a case the scheme does not envisage those issues as being capable of being revisited once established at the initial stage.

7.5 While the distinction which I have just identified may be relatively easy to express in general terms, the analysis which may be required to decide on the proper characterisation of any particular scheme may not always be quite so easy. This may particularly be so where the scheme is not express in its terms as to whether particular issues are capable of being raised at various stages in the process or alternatively are to be taken to be definitively determined at

a particular point. But in an overall sense I am satisfied that the proper approach for the court to take is to consider whether, taking the scheme as a whole and having regard to its express terms and any additional matters which can properly be implied, it can be said that it is clear that a particular question or issue is to be definitively determined at an earlier stage so that there is no possibility to have that issue or question re-opened at a later stage. In such a case it is appropriate to require anyone who wishes to challenge that initial decision to do so within any relevant statutory time limit or time provided for in Rules of Court. Any failure to do so within such time limit, including any extended time limit which the court may, in accordance with its jurisdiction, permit, will render the initial decision incapable of challenge and will further preclude any challenge to any subsequent decision made in the process which is based on a contention that the initial decision was not lawfully made."

13. Here, it seems to the court to be entirely clear from the scheme of the Act of 2000 that once the first-named notice party was through the s.177D(1)(a) gateway, it would not have to satisfy any additional criteria, in particular exceptional circumstances under s.177D(2) of the Act of 2000. Thus, if An Taisce wished to argue that the quarry operator was not entitled to obtain substitute consent on the s.177D(1)(a) basis, it fell to it to do so within eight weeks of the decision of 28th May, 2012. To the extent that there is suggestion that An Taisce could not raise at the 'leave to apply stage' the points that it now seeks to raise, that contention is not accepted by the court: once the decision of May 2012 was made it was open to An Taisce to come to court and challenge it (and it is notable in this regard that the fact of the decision is greatly publicised; thus under s.177D(8) of the Act of 2000 the decision of An Bord Pleanála is notified to the local planning authority and entered in the statutory register; the decision is also included in the weekly list of An Bord Pleanála pursuant to reg.72(1)(f) of the Planning and Development Regulations 2001). To allow An Taisce to challenge a decision where it was somewhere over 90 weeks beyond the permitted eight-week period in coming to court, in circumstances where there were not (and An Taisce has not even pleaded that there were) exceptional circumstances outside its control which prevented its bringing its application in a timely fashion, would be fundamentally and improperly to undermine the certainty which that eight-week period seeks for entirely legitimate reasons to bring to the planning regime.

14. As to any notion that no breach of the EIA Directive can arise until a substitute consent issues and thus that the within application is within time, such an argument cannot succeed in the face of the procedural autonomy of member states acknowledged, *inter alia*, in Art.11 of the codified EIA Directive (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 (O.J. L26 28.01.12, 1) and e.g., Case C-201/02 *R. (Wells) v. Secretary of State for Transport, Local Government and the Regions*, para 70, with Art. 11(2) expressly providing that "*Member States shall determine at what stage the decisions, acts or omissions may be challenged".*

15. Leaving aside for one moment the insurmountable difficulty that confronts An Taisce time-wise, what are its concerns within the context of the first-named notice party's successful application for substitute consent? First, it is concerned that in its determination An Bord Pleanála makes no reference to its obligations under European Union law or as to the presence of exceptional circumstances, with there likewise being no mention in the planning inspector's report of exceptional circumstances. Second, An Taisce claims that Ireland has failed properly to transpose European Union law by failing to ensure that substitute consent is only available where exceptional circumstances are proved. Third, it contends that the substitute consent is retrospective and makes no or no proper assessment of the impacts of the proposed development, that it prescribes no or no proper remedial steps to be taken, with the remedial environmental impact statement (rEIS) failing properly to outline and describe the restoration to be carried out on-site, leaving over the issue of restoration.

16. The first and second points can conveniently be taken together. There is nothing in the judgment in *Commission v. Ireland* which suggests that it is not open to individual member states to identify, by way of legislation, particular circumstances in which it will be permissible to apply for development consent retrospectively. And in Part XA of the Act of 2000, one finds Ireland doing precisely that, seeking properly to address the particular mischief that the CJEU considered to present in *Commission v. Ireland*, being that prior to the Planning and Development (Amendment) Act 2010, there was in effect no restriction under Irish law as to the circumstances in which retention planning permission could be sought, thus offering a means to circumvent the requirements of the EIA Directive. Moreover exceptionality, when sought, is in any event readily to be found: the exceptional circumstance that presents in respect of the quarry at Lemgare is that it has been able to squeeze itself through the gateway offered by s.177C(2)(a) and D(1)(a). That is no easy achievement and not all quarries will find themselves so placed. Moreover, any notion that the circumvention which was the focus of the decision in *Commission v. Ireland* remains available through the gateway offered by s.177C(2)(a) and D(1)(a) of the Act of 2000 is entirely unfounded: once through the gateway afforded by s.177C(2)(a) and section 177D(1)(a) there is no presumption that a substitute consent will be granted; any application done via that route is subject to assessment and consent must be refused if the development is contrary to proper planning and sustainable development; moreover, An Bord Pleanála is required to have regard, *inter alia*, to the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out.

17. As to any notion that because s.177C(2)(b)/s.177D(1)(b) allows, by way of alternative, for other exceptional circumstances it follows that what is referred to in s.177C(2)(a)/s.177D(1)(a) must be less than exceptional, that is not accepted by the court. Providing for one exceptional route and allowing for other exceptional cases does not rob either of their essential and respective exceptionality.

18. It follows from all of the foregoing, *inter alia*, that the court does not consider there to have been any failure of transposition as claimed.

19. As for the further specific points raised by An Taisce, there does not need to be express mention of European Union law by An Bord Pleanála for An Bord Pleanála to be compliant with same (which it is). There is no need to identify individual exceptional circumstances under s.177D(1)(a). As to the contention (if there be contention) that An Bord Pleanála should dis-apply national law to apply its interpretation (or, more exactly, An Taisce's mistaken interpretation) of European Union law, the notion that national law which has not been found by the courts to be infirm should be dis-applied by administrative or quasi-judicial bodies exercising statutory functions has been rejected, *inter alia*, in *An Taoiseach v. Commissioner for Environmental Information* [2010] IEHC 241, albeit that the law in this area may or may not fall to be re-interpreted following the awaited ruling of the CJEU on the reference made by the Supreme Court in *Minister for Justice, Equality and Law Reform & ors v. The Workplace Relations Commission & ors* [2017] IESC 43.

20. As to the third of An Taisce's three points, first of all there is nothing in *Commission v. Ireland* which suggests that there cannot be retrospective substitute consent. Paragraph 57 of that judgment expressly contemplates that there can be regularisation of operations or measures which are unlawful in the light of Community law and, as Sullivan LJ. observes in *R (on the application of Ardagh Glass Ltd) v. Chester City Council* [2010] EWCA Civ 172, para.15, in a series of comments which accurately reflect the nature of the discretion as to forms and methods allowed to individual member states, it would be an "*affront to common sense*" if retrospective planning permission (here, a retrospective substitute consent) was forever and in all instances impermissible. Indeed, as

Sullivan LJ. goes on to note, at para. 16, while it is (and it is) for "*member states*…[to] *take all appropriate measures to ensure compliance with the [EIA] Directive and to nullify the effects of any breach*", member states do not enjoy a free-for-all in this regard: "[I]*t is a fundamental principle of community law that such measures must themselves be proportionate*….[A] *prohibition upon the grant of retrospective planning permission for EIA development, regardless of the circumstances surrounding, and the environmental consequences of, the breach of the Directive, would be wholly disproportionate*." Turning, at para.17 of his judgment, to the *Commission v. Ireland* case, Sullivan LJ. then makes the following comments which (as with the just-mentioned comments) the court would respectfully associate itself, *viz*:

> *"The ECJ would no doubt have had such considerations well in mind when it said, in paragraph 57 of its judgment in the Ireland case:*
>
> > *'While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the condition that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.'*
>
> *In paragraph 61 the ECJ said that Ireland had failed to comply with the requirements of the directive,*
>
> > *'by giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development …'*
>
> *Those passages seem to me to be an express recognition by the ECJ that, subject to certain conditions, there may be exceptional circumstances in which a retention permission may be granted for EIA development."*

21. If there were any doubt as to the proper reading of the import of *Commission v. Ireland* that doubt is surely obviated by last year's decision of the Court of Justice in Joined Cases C-196/16 and C-197/16 *Comune di Corridonia* and *Alessandrini*. Those cases involved two preliminary references from the courts of Italy on the issue of whether an environmental impact assessment pursuant to the codified EIA Directive can be carried out after the project concerned has already been realised. In its judgment, the CJEU arrives at the following answer, at para.43:

> "[I]*n the event of failure to carry out an environmental impact assessment required under Directive 85/337, EU law, on the one hand, requires Member States to nullify the unlawful consequences of that failure and, on the other hand, does not preclude regularisation through the conducting of an impact assessment, after the plant concerned has been constructed and has entered into operation, on condition that*:
>
> > *– national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them, and*
> >
> > *– an assessment carried out for regularisation purposes is not conducted solely in respect of the plant's future environmental impact, but must also take into account its environmental impact from the time of its completion."*

22. This is precisely what Part XA of the Act of 2000 achieves.

23. Moving on, as regards the contention that, in effect, the entire assessment conducted by An Bord Pleanála is flawed, that is so general an assertion that it just cannot be a proper ground of attack in a judicial review proceeding. As regards the related contention that the remedial environmental impact statement (rEIS) failed properly to outline and describe the restoration to be carried out at the site of the quarry at Lemgare, An Taisce was invited to comment on the rEIS, failed to do so beyond making an 'exceptional circumstances' point (akin to that rejected by the court above) and, pursuant to (i) *Lancefort v. An Bord Pleanála* [1999] 2 IR 270, 315, cannot now raise any arguments regarding the contents of same, and/or (ii) *M&F Quirke v. An Bord Pleanála* [2009] IEHC 426, para.11.3 is estopped from so doing.

24. In its statement of grounds, An Taisce seeks: (a) an order of *certiorari* by way of application for judicial review quashing the decision of An Bord Pleanála, of 25th April, 2014, granting a substitute consent to the first-named notice party in respect of the quarry at Lemgare; (b) if necessary, a declaration that Part XA of the Act of 2000 is incompatible with Ireland's obligations under European Union law, in particular the EIA Directive; (c) if necessary, a reference to the CJEU as to whether the substitute consent has been granted in accordance with European Union law; and (d) certain ancillary reliefs. It follows from all that the court has stated above that the court considers the within proceedings, which ostensibly challenge a decision of 25th April, 2014 but in truth seek to assail a decision of 28th May 2012, have been commenced hopelessly out of time and represent an impermissible collateral attack on the earlier decision. In an abundance of prudence, the court has in any event considered the substance of An Taisce's complaints and respectfully finds no merit in them. The court does not consider that, to borrow from the terminology of Art. 267 TFEU, it is presented in the within proceedings with one or more questions of European Union law in respect of which a decision of the CJEU is necessary to enable this Court to give judgment. The court therefore declines to grant all the reliefs sought.

25. The court cannot but note in passing that there appears to be something of a disconnect between (i) applicable statute-law curtailing the time available for the commencement of judicial review proceedings in the planning and environmental law context and (ii) the process whereby judicial review proceedings can be commenced when, as here, (a) statute-law seeks to establish legal certainty by giving an eight-week period for the bringing of court proceedings challenging a decision, but (b) court proceedings regarding that decision are nonetheless commenced long outside that eight-week period, with the result that (c) there is a delay of several years before that certainty which the Oireachtas contemplated that the first-named notice party would have enjoyed sometime in 2012 only now arises or, at the least, draws closer.