Neutral Citation: [2015] IEHC 248

THE HIGH COURT

JUDICIAL REVIEW

Record Number: 2014 No.19 JR

IN THE MATTER OF AN APPLICATION UNDER SECTION 50 AND SOA OF THE PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

BETWEEN:

POL O GRIANNA, GERALDINE UI DHUINNIN, AOIFE NI DHUINNIN, CLIODHNA NI DHUINNIN, BERNADETTE COTTER, TIM O'CONNELL, CAOIMHGHIN O BUACHALLA, PADRAIG D. KELLEHER, ALAN KING, XAKAROO

APPLICANTS

AND

AN BORD PLEANALA

RESPONDENT

AND

CORK COUNTY COUNCIL

FIRST NAMED NOTICE PARTY

AND

FRAMORE LIMITED

SECOND NAMED NOTICE PARTY

Decision of Mr Justice Michael Peart given on Remittal Application: 16th April 2015:

1. In this case the Court has determined that the construction of the wind turbines themselves and the connection to the national grid is a single project, and not two separate projects, and that before granting planning consent for the former, it was necessary that the cumulative effects of the combined or single project ought to have been carried out. In circumstances where that has not happened, I concluded that the decision should be quashed. I will come to the terms in which that order should be made.

2. Having determined that the decision should be quashed, the question of whether the matter should be remitted to the Board has arisen. The Board has submitted that it is an appropriate case for the Court, in the exercise of its discretion, to remit the matter so that it can carry out an EIA in a way that reflects the findings and conclusions of this Court in its judgment. That application is opposed by the applicants, but is supported by the Second Notice Party, Framore Limited.

3. The reason why the EIA did not include an assessment of the cumulative effects of stage two of the development, namely the connection to the national grid, is that the EIA submitted by the developer as part of its application for planning consent did not include a statement of the environmental effects associated with the second stage. The reason for that was submitted to have been beyond its control since it was a matter for ESB Networks to specify the route and specifications in that regard.

4. However, the Board is satisfied that if the matter is now remitted to the Board, an EIA can be carried out by the Board which will meet the requirements for a cumulative assessment in line with the findings of this Court, and that it is unnecessary for the entire process to be recommenced before the planning authority.

5. The Board has stated also that in so far as the EIS already submitted did not contain the necessary information for an EIA in respect of the works necessary for a connection to the national grid, the Board upon remittal can exercise its power under the Regulations to request a further EIS in that regard, and that in that event a notice will have to be published which will give the appropriate notice and opportunity for submissions to any interested third party who may wish to object.

6. The Board has submitted, as has Framore, that it would be wasteful both in terns of cost and time if the matter was not simply remitted for a further EIA to be carried out in the light of the Court's conclusions, and particularly as in this case where so many of the grounds of objection made by the applicants in these proceedings were rejected by the Court.

7. The applicants on the other hand submit that the illegality which was found by the Court to exist in the decision cannot be cured by remittal to the Board. They submit that what is required now for the Court's findings to be complied with is an entirely new EIA which addresses the cumulative effects on the environment of both stages of this proposed development, and that the EIS as lodged already cannot now simply be revisited by the Board so that a fresh assessment can be carried out by reference to that EIS in order to comply with the Court's decision- the reason being that the EIS does not address for the reasons stated the likely effects of the works necessary for a connection to the national grid.

8. It is submitted that in circumstances where clearly a new EIS must be prepared and submitted which takes account of the cumulative effects of both stages of the development, a remittal is inappropriate. The applicants do not agree that the powers available to the Board under the PDA 2000 and the Regulations enable the Board to comply with the requirements for an EIA in accordance with the Court's judgment.

9. This Court must regard the Board as a disinterested party. It has no stake in the commercial venture being pursued by Framore. If the Board as a statutory body charged with making decisions in these matters has taken the view that in the light of the findings of

this Court it can carry out an EIA which accords with the Court's findings if the matter is remitted to it for a fresh decision, this Court should not lightly reject such an application to remit in favour of simply quashing the decision simpliciter with the result that the application goes back to square one. That has the potential to be wasteful in terns of delay and cost, and this Court ought not to adopt a course which is unnecessarily onerous upon the developer. There could be no question of this Court penalising the developer for not having proceeded correctly in the first instance, or because the decision made by the Board has turned out to be flawed because the EIA, based upon the EIS submitted by the developer, has been found to be flawed for all the reasons which have been given.

10. The Court should decide whether or not to remit on the basis of fairness and justice. If the situation can be reasonably expected to be remedied if remitted, and particularly where the Board is of opinion that this is the case, then this Court ought to remit the matter. That does not mean that this Court has in advance given some sort of 'imprimatur' to whatever new EIA is carried out for the purpose of any new decision the Board may make. If the applicants are not satisfied that the new EIA has been carried out in accordance with law, no doubt they will be entitled to again seek leave to challenge it, as they did before. For that very reason, it stands to reason that this Court should take very seriously a submission by the Board itself that it will be in a position to carry out a fresh EIA in the light of the Court's judgment. If the Board was not of that view, it would make no sense for it to seek such a remittal, even if the developer was keen to take a chance that it would achieve the desired result from its point of view.

11. In all the circumstances, I am satisfied that the justice of the case requires that the decision be remitted to the Board.