

THE HIGH COURT

2018 No. 478 JR

IN THE MATTER OF SECTIONS 50 AND 50A OF

THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

Between:

SEAN ROONEY

Applicant

– and –

DONEGAL COUNTY COUNCIL

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 3rd April, 2019.

1. Mr Rooney seeks leave to apply for judicial review in respect of a decision of Donegal County Council to add Sminver Bridge, Carrickboy, Ballyshannon, a disused railway bridge in Mr Rooney's ownership to the Record of Protected Structures (RPS) of County Donegal. The bridge was added to Donegal County Council's RPS in 2006. There was, it is true, a proposal to add the said structure to the RPS in 2017, at which point the Council's error in this regard was drawn to its attention by the solicitors for Mr Rooney in the following terms in a letter of 11.04.2017:

"The Council has represented to our client and others that the bridge was on [the] Record of Protected Structures....Please confirm what is the purpose of the new listing of the property is already listed. If it is not listed please confirm why representations were made to our Client of its listing?"

2. In a letter of 18.04.2017, the Council responded in the following terms:

"Thank you for your letter of 11th April, 2017...and for identifying the inclusion in error of the structure known as Sminver Bridge in this current project for the addition of some 145 structures to the Council's Record of Protected Structures. I can confirm that the error will be rectified, that the structure will be removed from the current additions exercise, and that the original decision of the County Council to add this structure to its Record of Protected Structures on 27th November, 2006 remains in place...I apologise for any inconvenience caused..."

3. So the Council sought to do in 2017 what it had done in 2006, this error was drawn to its attention, the Council accepted it was in error, withdrew its proposal and that is the end of matters. At all material times everyone understood the bridge had been added to the RPS; indeed post-2006 Mr Rooney lobbied to have it deleted therefrom. Even if, in or around the exchange of letters of April 2017, some judicially reviewable step was taken by the County Council, the within proceedings were not commenced until June 2018. So either way, however one views the facts, Mr Rooney, for no reason other than that he is, is hopelessly out of time in terms of challenging the addition of the bridge to the RPS in 2006 and in terms of bringing judicial review proceedings by reference to what occurred in 2017. Thus the requisite leave cannot be granted.

4. Even if the above-considered time-issue did not present (and it does), the court could not in any event have concluded that the requisite "substantial grounds" for leave, referred to in s.50A of the Act of 2000, arise. (In this regard the court brings to bear the classic definition of substantial grounds identified in *McNamara v. An Bord Pleanála (No 1)* [1995] 2 ILRM 125, 130, and relied upon extensively since). It is clear from the evidence before the court that Mr Rooney's contention that he was denied the opportunity to address the Council before the addition of the bridge to the RPS is untrue: representations were made by/for him before the addition was effected in 2006. No further addition of the bridge to the RPS was required, or has been effected, since then. As to the notion that a failure by the Council to mention in a development plan a property that is listed on the RPS impacts on the inclusion in the RPS of such property, this, with respect, comes nowhere close to being a substantial ground: it is clear from s.55 of the Act of 2000 that it is the decision to add a property to the RPS that effects an addition; and it is clear from s.51(3) of that Act that the RPS has a life independent of the development plan. But, regardless of anything that the court states in this paragraph, Mr Rooney's application in any event stumbles on grounds of time, and from that stumble it cannot recover; indeed that this is so suffices to render *obiter* the observations made in this paragraph.

5. For the reasons aforesaid, leave to seek judicial review is respectfully refused.

6. In closing, the court notes its disappointment that Mr Rooney did not in his statement of grounds properly and fully apprise the court of the true facts presenting as regards his application. It is thanks to his application having eventually been heard on notice that the full truth as to the background facts has emerged. Parties should note that, consistent with *Geaney v. Elan Corporation plc* [2005] IEHC 111 and *Dunnes Stores v. An Bord Pleanála* [2016] IEHC 697, it is open to the court to depart from the normal measure of costs and to order costs on a solicitor and client basis when it wishes to mark its especial disapproval and/or displeasure at how proceedings have been conducted and/or the basis on which proceedings have been brought. The court will hear the parties as to costs.