

THE HIGH COURT

Record Number: 2004 No. 350 JR

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

BETWEEN

JAMES TALBOT AND MARGARET TALBOT

APPELLANTS

**AND
AN BORD PLEANÁLA,
KILDARE COUNTY COUNCIL,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered on the 16th day of November 2005

1. I have decided that in the unusual circumstances of this case I should grant leave to appeal to the Supreme Court pursuant to the provisions of s. 50(4)(f)(i) of the Planning and Development Act, 2000, as I believe, having heard the submissions of Counsel for the parties, that a point of exceptional public importance arises, given the basis in my judgment delivered on the 21st June, 2005 for the exercise of the Court's discretion to refuse leave to seek judicial review herein.

2. I am of the view that an important point of exceptional importance arises because of the potential in future applications for the court's discretion to be exercised in a similar way, and it is important that some clarification be given on the issue by the Supreme Court.

3. I am of the view that the following are points of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court in relation thereto, and I so certify.

4. Is the Court, when hearing the application for leave on notice pursuant to the provisions of s. 50 of the Planning and Development Act, 2000 as amended, entitled to exercise its discretion to refuse leave to seek judicial review on the ground that no benefit would in any event accrue to the applicant?

5. If the court is so entitled to refuse leave on that basis, is it permissible to reach a conclusion that leave should be so refused by drawing an inference from the material put before the Court on the application for leave that any future application for planning permission would be refused in any event on a ground or grounds which was/were not sought to be impugned in the proceedings for judicial review?