

Irish Supreme Court confirms that developers can continue to defend planning judicial review proceedings

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The Irish Supreme Court has significantly treated concessions by An Bord Pleanála to orders of certiorari on grants of planning permission as opinion only, thus enabling developers to continue to defend judicial review challenges, in certain circumstances.

| Background to the case

Ballyboden Tidy Towns Group, issued judicial review proceedings seeking to quash a decision of An Bord Pleanála ('the Board') dated July 2021 granting planning permission to Ardstone Homes ('Ardstone') for a Strategic Housing Development ('SHD') of 241 apartments, between four and six stories high, at Stocking Avenue, Woodstown, Dublin 16.

The Board subsequently indicated in May 2022 that it was conceding the judicial review challenge on the basis that it accepted it had failed to assess whether there was adequate public transport capacity for the proposed development, in material contravention of the Urban Development and Building Height Guidelines.

Despite this concession by the Board, Ardstone issued a motion in the High Court seeking liberty to continue to defend the proceedings. The Notice Party submitted that it did not accept that there was a material contravention and contested the view that such material contravention was accepted.

Mr Justice Humphreys granted Ardstone liberty to defend the proceedings on the basis that it met the appropriate threshold, that it had established substantial grounds for leave to defend the Board's decision.

Appeal to the Supreme Court

Ballyboden Tidy Towns Group appealed the decision of Mr Justice Humphreys to the Supreme Court, arguing that the decision was in direct conflict with another ruling of the High Court in **Protect East Meath**.^[1]

The Supreme Court refused the appeal, and affirmed that a Notice Party is entitled to defend judicial review proceedings even where a decision-maker concedes.

The Supreme Court highlighted that the established case law points to the entitlement of a person directly affected by judicial review proceedings to be served with a copy of those proceedings. Such persons will include a party who has the benefit of the impugned administrative decision. Once joined, an interested party has a right to protect its interests and to advance arguments that might not be made by the decision-maker. ^[2]

For more information please feel free to contact a member of our Dispute Resolution team in Ireland via their contact details below.

^[1] Protect East Meath Limited v An Bord Pleanála [2021] 2 IR 796

^[2] Ballyboden Tidy Towns Group v An Bord Pleanála [2024] IESC 4

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