

THE HIGH COURT
JUDICIAL REVIEW

[2023 No. 218 JR]

IN THE MATTER OF SECTION 50, 50A AND 50B OF THE PLANNING AND DEVELOPMENT
ACT 2000

BETWEEN

PIERCE BUTLER

APPLICANT

AND
AN BORD PLEANÁLA

RESPONDENT

AND
VODAFONE IRELAND LIMITED, EIRCOM LIMITED AND TOWERCOM LIMITED
NOTICE PARTIES

JUDGMENT of Humphreys J. delivered on the 24th day of July, 2023

1. This matter raises similar issues to those in *Thomson & Thomson v. An Bord Pleanála* [2023] IEHC 431 and the legal discussion there should be read as being also relevant here.

Facts

2. The applicant challenges a decision of the board of 16th August, 2021, file reference ABP-309754-21, to grant permission for works described as the removal of an existing 15-metre telecommunications support structure (overall height 19 metres) together with telecommunications equipment on it and replacement with a new 24-metre telecommunications support structure (overall height of 25.5 metres) carrying antennas, dishes and associated equipment, together with ground equipment cabinets and new fencing for wireless data and broadband services at Eir Exchange, Main Street, Oranmore, County Galway.

3. The developer applied for permission on 22nd December, 2020. The applicant made a submission opposing the development, and Galway County Council's planner recommended refusal. The council refused the application on 22nd February, 2021.

4. The developer appealed on 19th March, 2021. The applicant made a submission on 1st September, 2021. The board granted permission on 16th August, 2021, as noted above.

5. The applicant pleads that he considered challenging the decision but decided not to because of costs risks. He sets out and relies on the various deepening problems that emerged within the board since the date of the contested decision.

6. The applicant pleads that "[i]n January 2023, the Applicant learned of another set of proceedings relating to Board approval of telecommunications masts, Peter Thomson and Doreen Thomson v Bord Pleanala, 2022 No. 1039 JR, and learned for the first time that an extension of time to seek relief might be possible. He approached his current solicitors for legal advice on obtaining an extension of time and leave to apply". I am told that instructions to draft proceedings were given on 24th January, 2023. It can be noted that the applicant seems to have been in touch with his solicitors from an earlier date, seemingly August 2022.

Procedural history

7. Proceedings were filed and the case was opened to the court on 8th March, 2023. As in *Frawley & Frawley v. An Bord Pleanála* [2023] IEHC 432, the case was admitted to the List, Towercom Ltd was joined as a notice party, and leave was directed to be on notice. The leave application was heard on 5th July, 2023 when judgment was reserved.

Pleadings

8. The reliefs and grounds are similar to those in *Frawley & Frawley v. An Bord Pleanála* [2023] IEHC 432, *mutatis mutandis*, although there is no amendment of pleadings sought here.

The law in relation to grant of leave and extension of time

9. The law in relation to grant of leave is set out in *Duffy v. An Bord Pleanála* [2023] IEHC 430, and that in relation to extension of time in *Thompson & Thompson v. An Bord Pleanála* [2023] IEHC 431.

Should time be extended here?

10. The problem for the applicant is that there is not good and sufficient reason for the extension of time. While I appreciate that not all information was available as of the date of the decision, there was enough information in the public domain by mid-2022 to enable a reasonably diligent applicant to make the points now sought to be made here. The applicant didn't move within 8 weeks of that point. At that stage there were multiple media articles setting out the key issues and giving plenty of material with which one could work for forensic purposes, if so minded. The idea that a putative litigant could sit back and await the result of official inquiries was a fundamentally mistaken legal strategy. That isn't just with the benefit of hindsight – it would have been obvious at the time if one considers the central role of the strict time limits in planning judicial review. A holistic overview

of all of the circumstances doesn't change the conclusion that the case for an extension of time has not been made out, particularly having regard to the commercial context and the prejudice to the developer.

Order

11. For the foregoing reasons, it is ordered that:

- (i) the application for an extension of time and for leave to apply for judicial review be refused; and
- (ii) unless the parties apply otherwise by written submission within 7 days, the foregoing order be perfected forthwith thereafter on the basis of no order as to costs.