THE HIGH COURT

[2024] IEHC 543

[Record No. 2022/1074JR]

BETWEEN

CHRISTIAN MORRIS

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

FINGAL COUNTY COUNCIL AND TRAFALGAR CAPITAL LIMITED

NOTICE PARTIES

JUDGMENT of Mr Justice Barr delivered electronically on the 13th day of September 2024.

1. The court delivered its substantive judgment in this matter on 31 May 2024, reported with neutral citation [2024] IEHC 328.

2. This judgment deals with an application by the applicant for leave to appeal, which application is made pursuant to s.50A(7) of the Planning and Development Act 2000 as amended ("the PDA 2000").

The law.

3. The law to be applied to an application for leave to appeal pursuant to s.50A(7) of PDA 2000, as amended, is well settled. Section 50A(7) of the PDA 2000, as amended, provides as follows: -

> "(7) The determination of the Court of an application for section 50 leave or of an application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the [Court of Appeal] in either case save with leave of the Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the [Court of Appeal]."

4. In *Glancré Teoranta v ABP* [2006] IEHC 250, McMenamin J set out the principles to be applied to such applications at para. 7 of his judgment:

> **"1.** The requirement goes substantially further than that *a* point of law emerges in or from the case. It must be one of *exceptional importance* being a clear and significant additional requirement.
>
> 2. The jurisdiction to certify such a case must be exercised sparingly.
>
> 3. The law in question stands in a state of uncertainty. It is for the common good that such law be clarified so as to enable the courts to administer that law not only in the instant, but in future such cases.
>
> 4. Where leave is refused in an application for judicial review i.e. in circumstances where substantial grounds have not been established a question may arise as to whether, logically, the same material can constitute a point of

law of exceptional public importance such as to justify certification for an appeal to the Supreme Court (*Kenny*).

5. The point of law must arise out of the decision of the High Court and not from discussion or consideration of a point of law during the hearing.

6. The requirements regarding "exceptional public importance" and "desirable in the public interest" are cumulative requirements which although they may overlap, to some extent require separate consideration by the court (*Raiu*).

7. The appropriate test is not simply whether the point of law transcends the individual facts of the case since such an interpretation would not take into account the use of the word "exceptional".

8. Normal statutory rules of construction apply which mean inter alia that "exceptional" must be given its normal meaning.

9. "Uncertainty" cannot be "imputed" to the law by an applicant simply by raising a question as to the point of law. Rather the authorities appear to indicate that the uncertainty must arise over and above this, for example in the daily operation of the law in question.

10. Some affirmative public benefit from an appeal must be identified. This would suggest a requirement that a point to be certified be such that it is likely to resolve other cases.

5. These principles have been endorsed and applied on a number of occasions since that judgment: see *Arklow Holidays v ABP* [2008] IEHC 2; *O'Brien v ABP* [2018] IEHC 389; *Northeast Pylon Pressure Campaign Limited v An Bord Pleanála* [2018] IEHC 3; *Dublin Cycling Campaign v ABP* [2021] IEHC 146; and *An Taisce v ABP* [2021] IEHC 422.

6. These principles were discussed and expanded upon by Holland J in *Monkstown Road Residents Association v ABP* [2023] IEHC 9. In particular, it was noted that the threshold to obtain a grant of leave is very high and that most applications will fail. In reaching its determination herein, the court has had regard to the principles set out in the caselaw cited above.

Discussion.

7. In his submissions relating to the application for leave to appeal the substantive judgment, the applicant has relied upon the grounds of appeal put forward on behalf of *Graymount House Action Group & Ors.* in related proceedings bearing record number 2022/1107JR. Insofar as the applicant relies on those submissions, the court gives the same response thereon as it gave in the judgment handed down by the court in the *Graymount* case in relation to the application for leave to appeal. It is not necessary to repeat those grounds again in this judgment.

8. The applicant also raised a number of grounds which were specific to the judgment handed down in his case.

9. The first of these, which was termed "Reason no. 1" concerned the finding of the court in its substantive judgment that the ground of challenge dealt with at para. 5 of that judgment, had not been pleaded in sufficiently specific terms, as to give rise to a viable ground of challenge to the decision of ABP.

10. In his submission seeking leave to appeal, the applicant stated that he disagreed with that finding in the substantive judgment. He stated that he was satisfied that the matter had been pleaded in sufficiently specific terms, to enable the court not to be misled, or for it to be found to be unduly vague. Furthermore, he asserted that the court had been at liberty to ask him to clarify any issues if required. The fact that

the applicant may disagree with the conclusion of the court, as given in its substantive judgment, is not sufficient to meet the test set down in s.50A(7) of the PDA 2000. The court is satisfied that the applicant has not raised a point of law of exceptional public importance, nor that it is in the public interest that any appeal be allowed in relation to this ground.

11. While the court had found in its substantive judgment that that ground of challenge had not been pleaded with sufficient clarity, it had nevertheless, gone on to deal with the merits of the ground of challenge. As such, the applicant's complaint appears to be that an unwarranted criticism was made of the ground of challenge, notwithstanding that it was in fact considered by the court in its substantive judgment.

12. The court is satisfied that this ground of appeal does not meet the test set out in s.50A(7) of the PDA 2000.

13. Under the heading "Reason no. 2", the applicant appears to complain about the reference in the substantive judgment to the fact that he appeared to have adopted certain submissions that had been made to the Board by other, people, who had objected to the original grant of planning permission, being the objections raised by Mr & Mrs Dillon. The applicant appears to suggest that in the substantive judgment the court had "disqualified" this evidence on the basis that it appeared to be a paraphrasing of the objections that had been raised by Mr & Mrs Dillon.

14. This ground of appeal appears to be misconceived, as the court did not "disqualify", any evidence or submissions that had been sought to be made by the applicant. No evidence had been ruled out by the court. The court had considered the merits of the relevant ground of challenge at para. 6 of its substantive judgment.

15. The court finds that there is no point of law of exceptional public importance raised under this ground of appeal.

16. The ground raised under the heading "Reason no. 3", appears to relate to the applicant's disagreement with the finding in the substantive judgment that the opinion on the part of the applicant that there had been lack of curiosity and lack of diligence on the part of the decisionmaker, did not constitute legal errors, which would constitute a basis on which their decision could be struck down. In his submission seeking leave to appeal that aspect of the judgment, the applicant stated that he entirely disagreed with it at every level. The fact that he may disagree with a finding of the court in its substantive judgment, does not convert it into a point of law of exceptional public importance, in respect of which it is in the public interest that an appeal be taken.

17. Insofar as the applicant further asserted that under the principles of equity a want of curiosity and a want of diligence could be grounds to strike down a decision, no legal basis for that assertion has been put forward. It does not constitute a basis on which leave could be granted pursuant to s.50A(7) of the PDA 2000.

18. Under the heading "Reason no. 4", the applicant takes issue with the statement in the substantive judgment that some of his challenges to the decision of ABP had been made in "such generalised terms that they cannot be characterised as legal error". The applicant states that that characterisation of his submissions was "somewhat harsh". He stated that, as a lay litigant, he had done his best to formulate his submissions in the best way that he could. He stated that while the court had always treated him with courtesy, in requiring him to plead his challenge to the decision in more specific terms, the court "might have been putting an excessive imperative upon me".

19. While the court had made reference at para. 18 of its judgment to the generalised nature of the applicant's ground of challenge, it had nevertheless gone on

to deal with the merits of the challenge in the rest of para. 18 and in the following paragraph. The court had ultimately rejected his challenge in that regard.

20. The applicant has not demonstrated that any point of law of exceptional public importance arises out of the judgment of the court on this aspect of its substantive judgment.

Determination.

21. The court is not satisfied that the applicant has raised any grounds of appeal that give rise to any point of law of exceptional public importance, nor to any matter that could be regarded as being in the public interest, that it be resolved by way of an appeal. Accordingly, the court refuses the applicant's application for leave to appeal in this case.

22. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs.

23. The matter will be listed for mention in a hybrid hearing at 10.30 hours on 22 October 2024 for the purpose of making final orders.