

THE HIGH COURT

JUDICIAL REVIEW

2022 No 93 JR

**IN THE MATTER OF SECTION 50 50A AND 50B OF THE PLANNING
AND DEVELOPMENT ACT 2000 AND IN THE MATTER OF THE
PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL
TENANCIES ACT 2016**

MONDAY THE 30th DAY OF JANUARY 2023

BEFORE MR JUSTICE HUMPHREYS

BETWEEN/

FRIENDS OF THE IRISH ENVIRONMENT CLG

APPLICANT

AND

**AN BORD PLEANÁLA IRELAND
AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

GALWAY COUNTY COUNCIL

NOTICE PARTY

Upon motion of Counsel for the Applicant pursuant to the Notice of Motion of Counsel filed on the 17th day of February 2022 and coming before the Court this day for mention by way of remote hearing seeking the following reliefs

1. An Order of Certiorari quashing the decision dated 6 December 2021 of the Respondent granting planning permission to the Notice Party for the construction of a proposed road development (PRD) including all ancillary and consequential works located in the electoral divisions of Barna Barna (in the Civil Parish of Ragoon) Ragoon and passing through the townlands of Newvillage Forramoyle West Forramoyle East Trusky West Trusky East Cloghscolita Ballard East Ballard West Aille Cappagh Ballynahown East Keeraun Ballyburke Mincloon Ragoon and Letteragh each in County Galway (ABP Refs 302848 and 302885) (the Decision)

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2. A Declaration that the ~~Second~~ Third Named Respondent has failed to comply with its obligations under Articles 4(4) 4(5) 6(1) and/or 6(2) of the Habitats Directive (and/or Article 4(1) the Birds Directive) by failing to specify site specific objectives measures and priorities for the Lough Corrib SPA (004042) Connemara Bog Complex SPA (004181) ~~Creganna~~ Cregganna Marsh SPA (004142) and the Rahasane Turlough SAC (004089)

- 3A A Declaration that the Third Named Respondent has failed to properly transpose the obligation under the Habitats Directive to specify particular conservation objectives for Natura 2000 sites insofar as Regulation 26 of the European Communities (Birds and Natural Habitats) Regulations 2011 obliges the Minister to establish particular conservation objectives from “time to time” but does not specify that such objectives should be established when the site is designated and/or at any particular time and where SI No 455/2012 - European Communities (Conservation of Wild Birds (Lough Corrib Special Protection Area 004042)) Regulations 2012 SI No 390/2021 - European Union Conservation of Wild Birds (Connemara Bog Complex Special Protection Area 004181) Regulations 2021 SI No 514/2019 - European Union Conservation of Wild Birds (Cregganna Marsh Special Protection Area 004142) Regulations 2019 and SI No 503/2017 - European Union Habitats (Rahasane Turlough Special Area of Conservation 000322) Regulations 2017 do not specify particular site specific conservation objectives

3. Such declaration(s) of the legal rights and/or legal position of the applicant and (if and insofar as legally permissible and appropriate) persons similarly

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situated and/or of the legal duties and/or legal position of the respondent as the court considers appropriate

4. If necessary a stay on works being carried out pursuant to the Decision pending the resolution of these proceedings
5. An order that section 50B of the Planning and Development Act 2000 (the “2000 Act”) and/or sections 3 and 4 of the Environment (Miscellaneous Provisions) Act 2011 and/or that the interpretative obligation set out in Case C-470/16 *North East Pylon Pressure Campaign Limited v An Bord Pleanála* whereby in proceedings where the application of national environmental law is at issue it is for the national court to give an interpretation of national procedural law which to the fullest extent possible is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention apply to these proceedings
6. Further or other orders
7. Costs”

Whereupon and on reading the said motion and the amended Statement of Grounds filed on the 8th day of February 2022 and the Affidavit of Ian Lumley filed on the 4th day of February 2022 and the documents and exhibits therein referred to

In the presence of Counsel of the Applicant Counsel for the Respondents and Counsel for the Notice Party

And on hearing said Counsel

The Court **DOTH GRANT** the following orders

1. An Order of *certiorari* quashing the decision of the First Named Respondent dated 6th December 2021 bearing reference ABP-302848-18 granting approval

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under section 51 of the Roads Act 1993 as amended to the Notice Party for a proposed road development together with all ancillary and consequential works associated therewith all located in the electoral divisions of Barna Barna (in the Civil Parish of Ragoon) Ragoon and passing through the townlands of Newvillage Forramoyle West Forramoyle East Trusky West Trusky East Cloghscolita Ballard East Ballard West Aille Cappagh Ballynahown East Keeraun Ballyburke Mincloon Ragoon and Letteragh County Galway on the ground that the First Named Respondent failed to consider the Climate Action Plan 2021 in accordance with section 15 of the Climate Action and Low Carbon Development Act 2015 as amended

2. An Order of *certiorari* quashing the related decision of the First Named Respondent dated 6th December 2021 bearing reference ABP-302885-18 granting approval to the Notice Party under section 49 of the Roads Act 1993 as amended for a motorway scheme and protected road scheme entitled “*N6 Galway City Ring Road Motorway Scheme 2018 and Protected Road Scheme 2018*”
3. An Order remitting the said application for approval for a proposed road development under section 51 of the Roads Act 1993 as amended and the said applications for approval under section 49 of the Roads Act 1993 as amended for a motorway scheme and protected road scheme entitled “*N6 Galway City Ring Road Motorway Scheme 2018 and Protected Road Scheme 2018*” to the First Named Respondent to be considered in accordance with law such remittal to take effect from the point in time immediately after the submission of the Inspector’s Report (bearing the reference “ABP-302885-18 & ABP-302848-18” and dated 22nd June 2021) to the Board

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4. An Order for the Applicant's costs including reserved costs as against the First Named Respondent to be adjudicated upon in default of agreement

STEPHEN WALSH
REGISTRAR
Perfected: 09/02/2023

FP Logue

Solicitor for the Applicant

Philip Lee

Solicitor for An Bord Pleanála

Chief State Solicitors Office

Solicitor for the State Respondents

Galway County Council

Notice Party