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# Legal Digest

## Learning from Litigation

### Issue 12 - June 2026

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# Introduction

The Office of the Planning Regulator (OPR) is pleased to present the twelfth edition of the 'Learning from Litigation' bulletin. This bulletin has been prepared to highlight and disseminate key learnings from the continually evolving planning and environmental case law. It provides information on important precedents, court decisions and emerging trends with an overview of noteworthy planning cases.

The case selection for this edition of the bulletin was made following recommendations received from the Planning Law Bulletin Steering Group. This Group consists of nominees from the Law Society of Ireland's Environmental and Planning Law Committee, An Coimisiún Pleanála, the OPR legal services provider Fieldfisher LLP, the County and City Management Association and the OPR.

***\*Disclaimer: This document is for general guidance only. It cannot be relied upon as containing, or as a substitute for legal advice. Legal or other professional advice on specific issues may be required in any particular case and should always be sought before acting on any of the issues identified.***



**Case: Protect Kenilworth Square and Martin Joyce** (the Applicants) **v Dublin City Council** (the Respondent) **and The Congregation of the Holy Spirit and The Board of Management of Saint Mary's College** (Notice Parties)

**Date Delivered: 18 February 2026**

**Citation: [2026] IEHC 93**

**Judge: Nolan J.**

This judgment of the High Court (the Court) concerned a challenge to a declaration of Dublin City Council (the Council) made under Section 5 of the Planning and Development Act 2000 (as amended) (the 2000 Act) that certain works intended to be carried out in Kenilworth Square, Rathmines are exempted development and do not require planning permission.

Section 5 of the 2000 Act permits any person to request a declaration from the relevant planning authority on what is or is not development or is or is not exempted development.

Here, the Board of Management of St. Mary's College (St. Mary's) was undertaking a project which involved the replacement of three existing grass pitches and a small pavilion with two full size pitches (including one 4G synthetic/artificial pitch with floodlights), a new pavilion, new vehicular and pedestrian entrances and a new car park.

St. Mary's sought a Section 5 declaration in respect of an element of the project, being the reconfiguration of two of the smaller pitches into one full-size pitch with a 4G artificial surface, together with the installation of 1.2 metre perimeter fencing around the proposed pitch (the works).



## Background

Kenilworth Square has been used by St. Mary's as a sports facility since 1948. There are 88 houses on Kenilworth Square, 86 of which are protected structures listed in Dublin City Council's Record of Protected Structures. The surrounding area is designated as a Residential Conservation Area in the Dublin City Development Plan 2022-2028.

In applying to the Council for a Section 5 declaration, St. Mary's submitted, inter alia, an Appropriate Assessment Screening Report.

The Council concluded that:

- an Environmental Impact Assessment (EIA) was not required in respect of the works as the works were not of a class or did not exceed any relevant threshold for the 2000 Act or the Planning and Development Regulations 2001 (as amended) (the 2001 Regulations) and there were no likely significant direct, indirect and/or cumulative effects likely to arise so there was no real likelihood of significant effects on the environment; and
- the works would not have a significant effect on a European Site, so an Appropriate Assessment was not required.

The Council then determined that while the replacement of the surface of the pitch and the reconfiguration involved "*works*" and "*development*" as defined by the 2000 Act, the works are exempted development pursuant to Class 33(c), Schedule 2, Part 1 of the 2001 Regulations. Class 33(c) states as follows:

*"Development consisting of the laying out and use of land-*

*[...]*

*(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land."*

The Council's Planner's Report (the Report) stated that:

- the pitch was ancillary to the school at St. Mary's and that the application made by St. Mary's outlined that no charge will be made for the public being admitted to watch games on the pitch but the use of the facilities would be "*restricted to club members and invited visitors on payment of a fee only and there is no charge made for admission by the public to the land*";
- the erection of the perimeter fence involved the loss of eight trees and the removal of approximately 430mm of the top layer of the existing pitch; and
- Class 33(c) of the 2001 Regulations does not specify any limitations in respect of alterations to ground levels and the alteration of ground levels would not be "*material*" in planning terms and was a necessary measure to facilitate the implementation of the class of exempted development to be granted.

## Ground 1 - Class 33(c) of the 2001 Regulations

### The Applicants' Case

The Applicants contended that:

- the sheer size and scale of the works meant they were of such a character that they could not be regarded as exempt;
- the 2001 regulations relate to minor or insignificant works and that any works must be strictly construed and fall "*clearly and unambiguously*" within the claimed exemption;
- the works involved a brand-new structure which included excavating down nearly half a metre while the exemption in Class 33(c) is limited to two-dimensional surface works based on the words "*laying out of lands*" which do not envisage "*digging a big hole*"; and
- the Council was incorrect to conclude that the public would not be charged for use of the facility as it was clear that the public will be charged, and the fact that only a sub-set of the public would be "*invited*" to use the facility is irrelevant since a charge would still be levied on whatever public use was permitted by St. Mary's.

### The Council's Case

The Council argued that:

- the Applicants' interpretation was unworkable and that while a strict interpretation should generally be taken to exemptions, this should not be so strict as to result in a situation where the exemptions no longer have any meaningful effect. The Council referred to the definitions of "*development*", "*works*" and "*exempted development*" under the 2000 Act to show that excavating down half a metre could be covered by Class 33(c) of the 2001 Regulations given that these definitions envisage excavations or works "*on, in, over or under land.*" This meant that limiting Class 33(c) to effectively two-dimensional surface works would amount to a limitation on Class 33(c) which does not form part of the 2001 Regulations; and
- Class 33(c) states that there should be "*no charge*" for the "*admission of the public to the land*" and this relates to access to the land rather than use. The public were to be permitted to access the land to watch games on the pitch and a charge would only apply for the use of the pitch if members of the public were invited to use it.

### St. Mary's Case

St. Mary's contended that:

- "*development*" means more than simply laying out, and that if the intention of the Oireachtas was to restrict Class 33(c) in this manner it would have included restrictions in Class 33(c). Class 33(c) refers to "*[d]evelopment consisting of the laying out and use of land*"; and
- the renting out of facilities for use by other sports clubs does not amount to charging members of the public for entry to the lands in circumstances where members of the public would not be charged for admission to watch matches taking place.

## **The Court's Conclusion**

The Court found that the key issues in respect of Class 33(c) were the meaning of "*the laying out and use of land*" and whether a charge will be made "*for admission of the public to the land*" in circumstances where the school says it will apply a payment fee to invited guests only.

The Court accepted that the 2001 Regulations must be strictly construed in order to ascertain whether the exemption applied to the works and noted that "*development*" is defined in the 2000 Act as "*the carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land*" and also that "*works*" is defined as including "*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*". The Court therefore found that development consisting of the laying out and use of land includes subterranean works. The Court stated that it could not read into the legislation words which are not there and therefore rejected the Applicants' interpretation that the works must be "*minor or insignificant*".

The Court then considered "*the one restriction*" which appears in Class 33(c), namely "*where no charge is made for admission of the public to the land*" and found that it is clear that this only requires that admission to the lands, as opposed to use of the lands, does not incur a charge. The Court was satisfied that the fact there was proposed to be no charge for admission of the public to watch matches taking place satisfied this requirement. This conclusion was reached in circumstances where the only way to use the pitch (and presumably to access the pitch itself as opposed to the area for spectating) was to pay a fee upon invitation of St. Mary's, but when matches were taking place spectators would be permitted to attend without any requirement to pay a fee.

## **Ground 2 – Environmental Impact Assessment (EIA)**

### **The Applicants' Case**

The Applicants argued that the Council failed to consider adequately or at all the likely significant effects on the environment of the proposed works and had no objective information before it to allow it to exclude the requirement to carry out or screen for an EIA. The Council prepared an EIA screening report but only on the basis that the works did not constitute an EIA project. The Applicants contended that the information required for the Council to decide that an EIA screening was not necessary was absent from the application. For example, there was no description of the project or an assessment of the impacts on the surrounding protected structures. The Applicants contended that the works constituted "*urban development*" under the EIA Directive.

### **The Council's Case**

The Council stated that the works do not constitute "*urban development*" under the EIA Directive and are not a category of project under that Directive. The Council argued that the EIA discussion in the Report was carried out on a purely precautionary basis and that if the works did not fall within a project category under the EIA Directive, then any issues with the substantive EIA screening that was carried out are irrelevant.

## St. Mary's Case

St. Mary's contended that the works do not constitute a category or project for the purposes of the EIA Directive and there was therefore no obligation to include the information which would ordinarily be required to conclude that EIA screening was not necessary. St. Mary's also argued that it was not realistic to compare these works to projects which normally fall within the category of "*urban development*" under the EIA Directive.

### The Court's Conclusion

The Court agreed that the works did not resemble anything close to the category of "*urban development*" (which includes projects like shopping centres and car parks) in the EIA Directive and that it would be stretching the meaning of words to include the laying of a 4G rugby pitch into this category. The Court stated that the EIA Directive is clearly aimed at major projects and found that the works are not an infrastructural project, while also noting that the precautionary approach of the Report is not a ground for criticising the Council.

### Key Takeaways

- Insofar as they list classes of exempted development, the 2001 Regulations must be strictly construed in order to ascertain whether an exemption applies.
- Development consisting of the laying out and use of land as described in Class 33(c) of the 2001 Regulations includes subterranean works based on the definitions of "*development*" and "*works*" in the 2000 Act.
- The requirement in Class 33(c) of the 2001 Regulations for no charge to be made "*for admission of the public to the land*" is satisfied where spectators are permitted to access the land to watch a match even though the public may not use a significant portion of the land (in this case, the pitch) in question (save for where they pay a fee upon invite).
- The EIA Directive and particularly the category of "*urban development*" projects is aimed at major projects and the laying of a 4G pitch clearly does not fall within this category.

[Read the full judgment online](#)



**Case: Garryduff Properties Limited** (the Applicant) **v An Coimisiún Pleanála** (the Respondent) **and Laois County Council** (Notice Party)

**Date delivered: 16 February 2026**

**Citation: [2026] IEHC 78**

**Judge: Holland J.**

This judgment of the High Court (the Court) concerned the decision of An Coimisiún Pleanála (the Commission) to refuse planning permission (the Decision) for a residential development consisting of 85 units at Kilminchy in Portlaoise, Co. Laois (the Proposed Development).

The Commission refused permission for the Proposed Development on the basis that the mix of housing types was not consistent with Development Objective HPO1 (HPO1) of the Laois County Development Plan 2021-2027 (the 2021 CDP). The application for planning permission was lodged on 30 July 2021 and at that stage the operative development plan was the Laois County Development Plan 2017-2023 (the 2017 CDP). However, while the application was being considered by Laois County Council (the Council), the 2021 CDP took effect. The 2021 CDP contained the new Housing Policy Objective HPO1 and this objective imposed a new requirement that 35% of all units, in applications for residential developments for ten or more units, should cater for single and two person households.

The Court observed that HPO1 was both strong and quantified. The Court also restated the relevant principles for an applicant for permission whose application is pending when a new development plan comes into effect. This includes that while an application is being considered by a planning authority, the applicant takes the risk that a new development plan may come into effect which may affect the planning authority's assessment of their application. It is the responsibility of the applicant to manage this risk themselves.

While the Court noted that there was considerable continuity between successive development plans, the introduction of HPO1, in this instance, was not minor and the risk which it created for the application for permission should have been obvious to the Applicant and their planning advisors. However, the Court also noted that this change does not seem to have been apparent to the Council or the Commission's Inspector (the Inspector). Nevertheless, the Applicant had been provided with an opportunity to make a submission (both to the Council and to the Commission on appeal) on the new development plan i.e. the 2021 CDP and specifically HPO1 but failed to do so.

The Applicant challenged the Decision on the following grounds:

## **Ground 1 – Contravention of Section 137 of the 2000 Act.**

Here, the Applicant asserted that the Commission's decision contravened Section 137 of the Planning and Development Act 2000 (as amended) (the 2000 Act). Section 137 of the 2000 Act protects parties to an appeal from the appeal being determined, based on matters not raised in the appeal, without the parties being first afforded an opportunity to make submissions on those matters. The Applicant's complaint, in this case, was that it had no opportunity to address the matters upon which the appeal was determined (i.e. HPO1). Therefore, the Applicant claimed that it was deprived of fair procedures.

The Court acknowledged that the fundamental reason for Section 137 was to ensure fair procedures. Furthermore, the Court noted that when the circumstances arise where Section 137 applies then the Commission must comply with the requirements of this section. Ultimately, the Court concluded that it was satisfied that the Commission, when deciding on an appeal, is not confined to consideration of only the issues raised in the appeal. Similarly, a person making submissions on an appeal is not confined to the issues raised in the appeal. Instead, they may address any issues relevant to the Commission's consideration of the appeal. As a result, the Court found that the Applicant had sufficient opportunity to make any submissions it wished to make as to the provisions of the 2021 CDP (and specifically HPO1) and therefore was not deprived of any fair procedures.

While the Court had assumed a breach of Section 137, for the purposes of the arguments being made, (given that it was not required to reach a finding on the specific interpretation of Section 137 and whether the scope of the word "may" in that provision includes or excludes "must"), the Court ultimately found that no relevant prejudice had been suffered by the Applicant and therefore exercised its discretion to refuse to overturn the Decision on this ground.

## **Grounds 2 and 3 – Reasons**

Grounds 2 and 3 both related to reasons, and before considering the specific grounds in detail the Court outlined the relevant principles on reasons and the level of reasons the Commission is required to give when it decides not to accept the recommendation of its Inspector.

While there is an enhanced duty to provide reasons where the Commission differs from its Inspector, the Court noted that even terse reasons may be acceptable depending on the circumstances. The Court observed that the use of the word "enhanced" in this context could well be "usefully retired in favour of the word "particular" or "specific"." However, the Court was not required to decide this issue in this case.

The Court also encouraged "a common-sense and practical approach to the question whether the decision discloses its essential rationale" when considering merely "conclusionary" reasons. Reasons that only state a conclusion are generally considered to be inadequate, but the Court considered that they may be acceptable when they are considered in context and from the point of view of an informed reader.

The detail and arguments surrounding Grounds 3 and 2 are set out hereunder.

### **Ground 3 – Reasons why the Proposed Development did not satisfy HPO1**

The Applicant contended that:

- the Inspector did not record how the HPO1 criteria were met,
- the Commission did not provide any reasoning or mathematical methodology for finding that only 11% of units met the criteria for single and two person households, and
- the methodology of the application of HPO1 could not be challenged due to the deficiency in the reasons provided.

However, the Court agreed with the Commission that the reasons for refusal were obvious. The Court found that the contention that the Commission's finding that the requirements of HPO1 were not satisfied did not require a specific analysis of how the figure of 11% was reached in circumstances where the Applicant was the one who provided this figure for the number of one and two bedroom units in the first place.

### **Ground 2 – Failure to give reasons for not accepting the Inspector's Recommendation**

The Applicant contended that the Commission failed to provide reasons for not accepting the recommendation of its Inspector that permission be granted. While the Court agreed with the Applicant that the element of the Commission's decision which set out why the Commission declined to accept the Inspector's recommendation essentially repeated the Commission's general reason for refusing permission which had already been provided, the Court noted that a given reason can satisfy both the general duty to give reasons and the duty to give reasons for not accepting the recommendation of the Inspector.

In considering this ground, the Court detailed the process which led to a second Inspector's report and stated that the direction which requested a second report "*must be read as an assertion of the inadequacy of the first report – including by reason of its failure to address HPO1*".

The Court operated on the assumption that the Inspector remained conscious of their statutory duty to include a recommendation in their report and noted the desirability of the Inspector explicitly identifying and expressing their recommendation in their report (which had not been included in their second report here). The Court concluded that the Inspector, by not including a recommendation in their second report, had let the recommendation of the first report stand albeit the Court found it would have been helpful had the second report explicitly addressed the issue of this recommendation.

Ultimately, the Court concluded that the Inspector's second report did not recommend, explicitly or implicitly, the inclusion of a condition which would require the replacement of houses with duplexes in order to meet the requirements of HPO1 (noting that this conclusion was expressed as having been reached "*not without hesitation*"). The Court also stated that had the Inspector intended to alter their recommendation from the first report they would have explicitly done so in their second report. Accordingly, the reasons requirement, which the Commission had to discharge, was to be viewed in light of the rejection of the Inspector's recommendation in their first report. The Court found that this requirement was discharged in this case.

The Court dismissed the proceedings.

## Key Takeaways

- Where a new development plan comes into effect while an application for permission is being considered by a planning authority, the applicant must manage this change in circumstances in their own interest. Any substantive changes to the development plan, which are relevant to the application in question, should be identified by the applicant so they can address them.
- Where an applicant has an opportunity to provide further information on a matter relevant to their application but fails to do so, they are not denied fair procedures in circumstances where they suffer no relevant prejudice.
- Where a planning authority disagrees with the recommendation of their planner/inspector, there is a requirement to give reasons for why they reached a different conclusion. This does not mean that lengthy reasons are required with substantial levels of detail. Short, specific reasons may be acceptable depending on the circumstances of the case.
- Reasons which are alleged to be conclusions should be considered in context i.e. from the point of view of the informed reader who is familiar with the relevant documentation. This approach will often result in alleged conclusions amounting to adequate reasons.
- Where a planner/inspector is required to prepare a second report, as a matter of best practice they should explicitly state whether the recommendation from their first report is unchanged or not. However, a failure to do so does not mean that their initial recommendation should automatically be considered to be unchanged.

[Read the full judgment online.](#)



**Case: Colin Doyle, Friends of the Irish Environment CLG, Futureproof Clare, Martin Knox and Christine Sharp** (the Applicants) **v An Coimisiún Pleanála, the Government of Ireland, Ireland and the Attorney General** (the Respondents) **and Art Data Centres Limited** (Notice Party)

**Date delivered: 13 March 2026**

**Citation: [2026] IEHC 156**

**Judge: Humphreys J.**

## **Overview**

This judgment of the High Court (the Court) concerned the decision of An Coimisiún Pleanála (the Commission) to grant planning permission for a data centre involving the construction of six two-storey data centre buildings and associated structures (the Data Centre) and a further decision of the Commission to grant permission for a 110kV Gas-Insulated Switchgear (GIS) substation and associated underground cables (the Substation).

## **Background**

On 16 July 2021, Art Data Centres Limited (the Developer) applied for planning permission to Clare County Council (the Council) for the Data Centre on a c.60-hectare site near Ennis in Co. Clare. As part of the application, the Developer submitted an Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS). An updated EIAR was subsequently submitted to the Council as part of a response to the Council's request for further information. The Council decided to grant permission on 8 August 2022, and a number of third-party appeals were subsequently lodged with the Commission.

On 23 June 2022 the Developer applied for planning permission for the Substation by submitting a strategic infrastructure development (SID) application to the Commission.

The Developer submitted a significant amount of documentation, in response to the third-party appeals regarding the Council's decision on the Data Centre, addressing several issues, including greenhouse gas (GHG) emissions.

The Commission's Inspector recommended a grant of permission subject to 17 conditions in respect of the Data Centre. The same Inspector also recommended a grant of permission subject to 14 conditions in respect of the Substation.

Commission Directions issued in respect of the Data Centre and the Substation respectively, with both indicating that the Commission decided to grant permission generally in accordance with the Inspector's recommendations and indicated that the Commission had carried out Appropriate Assessment (AA) and Environmental Impact Assessment (EIA) in respect of the Data Centre and the Substation. On 5 April 2024, the Commission granted permission for the Data Centre subject to 17 conditions and for the Substation subject to 14

conditions (together the Decision). On 30 May 2024, the Applicants initiated judicial review proceedings against the Decision.

## **Module 1**

On 7 October 2024, the Commission wrote to the other parties advising that the Commission would not be opposing the Applicants' proceedings seeking that the Decision be quashed on the basis of part of one of the grounds of challenge raised by the Applicants, namely, Ground 6, which claimed that the Commission "*erred in law in failing to consider adequately the environmental effects of the proposed developments on the environment, specifically in terms of impacts on bat fauna for the purposes of the Environmental Impact Assessment carried out by the Board.*"

However, the Developer elected to continue to defend the case and a hearing took place on the distinct issue upon which the Commission had conceded the case (Module 1). The Court delivered a judgment on Module 1 which dismissed the argument raised by the Applicants which the Commission had conceded. This then meant that the remainder of the case (including the balance of Ground 6) could be heard and decided in a second module (Module 2).

## **Module 2**

The Court delivered its judgment in Module 2 on 13 March 2026. At the outset, the Court made a number of points which are relevant to both this case and to how it may be distinguished from other cases in the future.

First, the Developer had submitted documentation, in response to the appeals to the Commission, that set out that the project was going to be powered from renewable energy by means of a Corporate Power Purchase Agreement (CPPA). Therefore, whilst the Decision ostensibly concerned an emissions causing project, the Court took the view that it was in fact a project that the Commission was able to regard as not being one that in itself caused major net emissions. Second, the climate challenge was pleaded as a matter of domestic law (i.e. through the lens of Section 15 of the Climate Action and Low Development Act 2015 (the 2015 Act), not EU law. The Court also set out at para. 69 a summary of the operational implications of the Supreme Court judgment in *Coolglass v. An Coimisiún Pleanála [2026] IESC 5*.

## **Grounds of Challenge**

The Court identified that the Applicants were pursuing Grounds 1 to 3, which could be grouped together under the heading of "*climate*" with a number of sub-grounds contained within this category, and the balance of Ground 6. The remaining grounds were no longer pursued.

## **Grounds 1-3: Climate**

The arguments made in Grounds 1 to 3 are dealt with under the following subheadings:

### **1. Alleged Wrong Question**

The Applicants argued that the Commission had carried out the wrong test under Section 15 of the 2015 Act by stating that the Commission "*had regard to*" the Climate Action Plan 2023, whereas the statutory language of "*in so far as practicable...in a manner consistent with*" clearly required a higher standard of consistency than "*have regard to*".

The Court found that it could not be said the Commission had only considered their duty to be one to "*have regard to*" as, taking the Decision as a whole, the Commission said a lot more on climate documents. The Court was satisfied the Commission had applied the correct test and observed that to act consistently with something the first step is to have regard to that matter.

### **2. Sectoral Emissions Ceilings and Carbon Budgets**

The Applicants contended that the Commission only referred to the Carbon Budgets and Sectoral Emissions Ceilings (SECs) in summarising the issues raised by the Applicants and that there was no evidence that the Commission actually considered the Carbon Budgets and SECs. The Applicants also claimed that the information provided by the Developer showed that the emissions from the energy plant for the Data Centre were inconsistent with the electricity sectoral emissions ceiling.

While the Court expressed sympathy for the Applicants' point, that carbon budgeting was mathematical, the Court said that ultimately its role was limited to considering whether there was consistency with Section 15 of the 2015 Act, which does not include Carbon Budgets and SECs, and any indirect duty had to be demonstrated by the Applicants. The Court also found that in this case the Applicants had not taken account of the fact that the development was subject to a CPPA with renewable energy, which meant there would be no net GHG emissions.

### **3. Extra-Large Energy Users**

The Applicants said that the Data Centre did not match energy consumption with renewable energy generation (i.e. use the same amount of energy as is being generated by renewable sources) at all, let alone on an hourly basis, contrary to the Climate Action Plan 2023 (CAP 23) which the Applicants contended required large-energy users to match energy consumption with renewable energy generation on an hourly basis. The Applicants also noted that CAP 23 identifies potential policies that '*may*' be required in the third carbon budget including future dispatchable generation to be zero carbon gas (i.e. hydrogen) ready, but the Data Centre would not comply with this.

The Court found that the Applicants were not reading CAP 23 correctly as these measures in CAP 23 were inherently flexible and did not mandate a refusal of this application. Furthermore, the Court noted that the Commission did not have an obligation to apply any particular formula when approaching the question of consistency with climate policies.

### **4. Inconsistency with CAP 23: Hydrogen**

The Applicants claimed that the use of renewable gas was excluded by CAP 23 and the National Hydrogen Strategy 2023 sought to preclude it. The Applicants further contended that there was no evidence before the Commission to support the proposition that the Data Centre would be fuelled by biomethane to the amount provided for by the Developer as the then in force Climate Action Plan 21 (CAP 21) provided for only 3% of biomethane in the gas network in 2030 while the Developer had provided a figure of 18%. The Applicants argued that there was therefore no evidence that biomethane would, in fact, lead to the quantity of GHG emissions reductions identified by the Commission.

The Court found that the Applicants had mis-read the policy documents as giving rise to a mandatory requirement to refuse permission, whereas CAP 23 was actually permissive and allowed flexibility. The Court noted that the Commission did not grant permission on the basis that there was certainty about the future use of biomethane, rather that it was a possibility. The Court found that the Applicants had failed to show that the Commission's decision was not within the range of lawful approaches open to it as recognised by the Supreme Court in *Coolglass*, and that overall the Applicants had read the Decision as being erroneous in circumstances where a valid reading of the Decision was available to it.

#### **5. The 2015 Act Overall Emissions and EU Emissions Trading System (EU ETS)**

The Applicants contended that the Data Centre emissions would be almost 10% of the indicative projected emissions ceiling for the electricity sector in 2030. Despite this, the initial EIAR submitted by the Developer concluded the effect of the emissions as '*slight*', and later responses from the Developer clarified it would be '*Moderate Adverse*' (before mitigation) and '*Minor Adverse*' (after mitigation). These conclusions were based on the EU ETS and the Applicants said that this did not imply that the Data Centre was consistent with national climate policy.

The Court referred to the summary of the EU ETS that was set out in *Coyne v An Bord Pleanála [2023] IEHC 412*, and also referenced the Environmental Protection Agency's (EPA's) web page on the EU ETS. The Court found that the EU ETS was obviously relevant to some aspects of climate assessment under the 2015 Act, as a cornerstone of EU and national policy in the area. The EU ETS is a system whereby an EU-wide limit is set for GHG emissions and companies can trade emission rights known as carbon allowances. For example, where a company produces less carbon than the carbon allowances held and therefore has surplus carbon allowances, it can sell these to other companies.

The Commission contended that any under assessment of emissions arising from power generation at the Data Centre was dealt with by the operation of the EU ETS. The Court disagreed with this and found that if the EU ETS was the only thing the Commission was relying on then it wasn't enough to overcome the Applicant's arguments under this heading. However, the Court found that the Commission was also relying on the Developer's material that quantified the emissions and the Developer's CPPA for renewable energy. The Court held that for the purposes of the 2015 Act, it is net emissions which are crucial, not gross emissions, and the Applicants' argument failed to recognise that mitigation was conditioned as part of the Decision.

#### **6. Finding of "Positive Environmental Impacts" was Irrational**

The Applicants argued that at full capacity, GHG emissions from the Data Centre amounted to 1.1% of the national ceiling for GHG emissions for 2030, from all sectors, or 12.3% of the ceiling for GHG emissions for 2030 in the electricity sector. The Applicants claimed that the Commission's finding that the Data Centre could have potentially positive environmental impacts was irrational and contrary to CAP 23.

The Court found that the Applicants were again relying on a reading of the Decision as saying that future use of sustainable/renewable gas supplies was a certainty as opposed to a possibility (and therefore potential positive environmental impacts), and the Commission did not grant permission on the basis that there was certainty on this point.

## **7. Reliance on the British Standard - Publicly Available Specification (PAS) 2050 was Irrational**

The Applicants said that PAS 2050 – a British Standard which allows businesses to disregard a source of GHG in one of their products, if it accounts for less than 1% of emissions of that product, as long as various other conditions are met – did not apply to national emissions, but rather it was a specification for the assessment of life cycle emissions of goods and services.

The Developer clarified that the reference to PAS 2050 in the EIAR arose as one of the Applicants had referred to the approach taken in the EIAR in the Shannon Technology and Energy Park (which used PAS 2050 by analogy) and there was no evidence that the Commission determined any sub 1% aspect in terms of national targets (PAS 2050 wasn't referred to by the Inspector).

The Court found that there was nothing inherently wrong with referring to an industry standard, and the Applicants hadn't shown that the Commission's approach fell outside the range of permissible options as outlined by the Supreme Court in *Coolglass*. Furthermore, reliance on PAS 2050 didn't have the effect that relevant information was ignored or overlooked. The information was before the Commission even if it was not presented as the Applicants would have preferred.

## **8. Lack of Mitigation Measures and CPPAs**

Section 15(1)(e) of the 2015 Act requires a relevant body to perform its functions, insofar as practicable, in a manner consistent with the objective of mitigating GHG emissions. The Applicants argued that the Commission did not comply with this as the Commission failed to ensure that an express condition requiring a CPPA was imposed and there was no requirement that there would be additional renewables brought onto the grid in order to service the Data Centre.

The Court found that the 2015 Act does not require refusal of developments that have gross GHG emissions. The Court noted that the Developer had accepted that the project would be powered by renewables by agreeing to enter a CPPA. Whilst the Commission had not included an express condition requiring the Developer to enter a CPPA, there were general conditions 1 (that the development should be carried out in accordance with the plans and particulars submitted by the Developer) and 3 (that the mitigation measures proposed should be implemented), which the Court found clearly had the effect of conditioning in the CPPA. To be sure of this issue, the Court also included a recital in the Order following the Judgment to ensure that the CPPA formed part of the conditions to the grant of permission.

## **9. Failure to Provide Reasons and Take Account of Submissions**

The Applicants argued that one of the Applicants had put in a further and very detailed submission on the climate issues during the course of the appeal, in response to further information supplied by the Developer, but the Commission's Inspector said there were “*no new issues of substance*” raised.

The Court was satisfied that the Commission's Inspector had set out a detailed 16-page summary of the issues raised and that when the Inspector said there were no new issues raised, it was in the context of the detailed issues that had already been raised and summarised.

## 10. Irrationality Regarding Government Statement

The Applicants contended that:

- planning permission for a significant emissions-causing project cannot be consistent with CAP 23,
- the Commission did not quantify the actual amount of emissions from the Data Centre,
- the Commission did not show how the proposed development was consistent with the Government Statement on the Role of Data Centres in Ireland which said that such developments "*should provide clear additionality in renewable energy delivery in Ireland*", and
- the Commission did not address how growth from large energy users, such as data centres, would be moderated to protect security of supply as per the Government Statement on the Role of Data Centres in Ireland (the Government Statement).

The Court dismissed these grounds finding that:

- granting permission for a development that causes emissions is not automatically precluded by Section 15 of the 2015 Act,
- the decision-maker is not obliged to quantify the amount of emissions in every case, and in this case the Developer did in fact quantify the emissions,
- whilst CAP23 wasn't as prescriptive as the Applicants were saying, in fact, it required energy matching rather than additionality of renewables, which the Applicants had failed to show was not within the possible range of options open to the Commission, and
- in any event there was a plan-led approach to the Data Centre (it was a feature of the zoning of the area in the Clare County Development Plan 2023-2029) which meant that there was some moderation as to the amount of data centres that could be developed in this area.

### Ground 6 – EIA and the Potential Derogation Licence

This ground concerned an alleged failure of the Commission to consider the effects of the Data Centre on bat fauna for the purposes of EIA. To support their argument, the Applicants had filed an affidavit of an ecologist.

The Court found that the ecologist's affidavit should have been filed as part of Module 1 of these proceedings, but that even if the affidavit had been filed earlier the Applicant's argument was unfounded. The Court relied on evidence provided by the Developer in Module 1 of these proceedings to state that bats are highly mobile and the evidence had only established a possible need for a derogation licence as opposed to a probable need. The Court found that the Applicants had failed to discharge the onus on them to show that a derogation licence is probable rather than possible.

The Court dismissed this case on all grounds.

## Key Takeaways

- The first requirement to fulfil an obligation to act consistently with a certain matter is to have regard to that matter. Therefore, an express statement that a decision-maker had regard to something does not of itself mean that the decision-maker did not act consistently with that matter if it can otherwise be shown that the decision-maker acted consistently with the matter, as required.
- Reading specific extracts of policy or guidance documents in isolation is the incorrect approach to take. Such documents should be read as a whole to ascertain whether they set mandatory requirements or allow for flexibility.
- Where a decision may be read in a manner which means it is valid and complies with all legal requirements then that is the reading of the decision which should be preferred. In such circumstances it is incorrect to assert that the decision was not lawful because an alternative reading of the decision which is invalid is available.
- A public body is entitled to consider an industry standard in making its decision and such consideration cannot be relied upon to challenge a decision in the absence of any substantive unlawfulness e.g. if reliance on an industry standard had the effect that relevant information was ignored and overlooked.
- General conditions attached to a permission can have the effect of implementing specific measures which were clearly envisaged as part of the application. However, it is preferable to have specific conditions where there is a risk of any confusion as to whether certain matters fall within the general conditions.
- Granting permission for a development that causes emissions is not automatically precluded by Section 15 of the 2015 Act.

[Read the full judgment online.](#)



**Case: Oliver Joyce** (the Applicant) **v An Coimisiún Pleanála** (the Respondent) **and Galway County Council** (Notice Party)

**Date delivered: 16 February 2026**

**Citation: [2026] IEHC 85**

**Judge: Farrell J.**

This judgment of the High Court (the Court) concerned the question of whether the special rules on environmental costs protection applied to a case challenging a Compulsory Purchase Order (the CPO). These special rules on environmental costs protection arise from EU law and the Aarhus Convention. The default position in Ireland since the judgment of the Supreme Court in *Heather Hill v An Bord Pleanála [2022] IESC 43* is that there will be "no order" as to costs in such cases where the Applicant loses their case. The underlying premise of costs protection in environmental proceedings is that members of the public should not be deterred from taking cases in respect of the environment by facing the prospect of prohibitively expensive legal costs orders being made against them where they lose their case.

Section 50B of the Planning and Development Act 2000 (as amended) (the 2000 Act) has been interpreted to mean that costs protection applies where a legal challenge is taken to a decision made pursuant to a statutory provision which gives effect to one of the listed Directives, namely:

- The Environmental Impact Assessment (EIA) Directive
- The Strategic Environmental Assessment (SEA) Directive
- The Industrial Emissions (IE) Directive
- The Habitats Directive

This includes decisions made under Sections 34 and 37 of the 2000 Act, which deal with permission for development and appeals to An Coimisiún Pleanála (the Commission) respectively.

The relevance of this, in the context of a challenge to a CPO and costs protection, is that a CPO can take place at different stages of the planning permission process. For example, where a CPO takes place prior to a planning permission being granted or an application even being made then the CPO may have an impact on the planning application and the planning authority's consideration of the application and therefore can be said to form part of a multi-stage development consent procedure (see *King v An Bord Pleanála [2024] IEHC 6*, outlined further below). Alternatively, should a CPO take place after a decision is made on an application for planning permission then the Courts have determined (*in Clancy v An Bord Pleanála No. 1 [2023] IEHC 233; No. 2 [2023] IEHC 464; and No. 3 [2025] IEHC 528*) that where a CPO follows and gives effect to an already granted planning permission then the CPO is not a

development consent or part of a multi-stage development consent procedure and therefore does not benefit from costs protection.

## **Background**

The CPO was made by Galway County Council (the Council) on 9 July 2024 in respect of a 6.75km strip of land (the CPO Lands) which was required for the Connemara Greenway Project connecting Oughterard to Clifden (the Greenway Project). On 16 May 2025 the Commission affirmed the CPO. The CPO Lands included a strip of land which ran through lands owned by Oliver Joyce (the Applicant), who participated in the CPO process. The Greenway Project had previously been granted planning consent in 2013 by the Commission (then An Bord Pleanála) under Section 175 of the Planning and Development Act 2000 (as amended) (the 2000 Act). Section 175 of the 2000 Act concerns local authority development requiring Environmental Impact Assessment (EIA) and requires the Commission to approve the proposed development to which the EIA Report (EIAR) prepared under that section relates.

## **The Applicant's Case**

The Applicant argued that the CPO was materially different to the Greenway Project which had been granted planning consent and therefore a fresh EIAR and Natura Impact Statement (NIS) were required. The Applicant contended that this meant that the Greenway Project fell within the parameters of the previous decision of the High Court in *King v An Bord Pleanála [2024] IEHC 6* where it was found that a CPO which was made, before the application for or grant of planning permission for a waste water treatment plant, meant that a crucial part of the proposed development, namely "*its optimal location*", had been decided upon without public participation or a formal EIA (the King Proceedings). Both the Commission and the Council contended that the CPO merely gave effect to the development consent that had already been granted and was not part of a multi-stage development consent procedure.

The Court found that there were two possible arguments as to how to approach the question of costs protection in a scenario like this:

- 1) By asking whether the Commission's decision on the Section 175 proposal in 2013 amounted to a development consent, or was part of a multi-stage development consent, and if so, whether that gives rise to a right to costs protection.
- 2) If not, by asking whether the Commission's decision was made under a statutory provision which gives effect to one of the four EU Directives identified in Section 50B of the 2000 Act and therefore gave rise to costs protection applying.

## **Approach 1 - whether the CPO was a development consent or part of a multi-stage consent**

The Court was satisfied that the Greenway Project, as authorised in 2013, contemplated the use of CPO if landowners did not consent to the works and, even if this was incorrect, the change in ownership of the land from the Applicant to the Council is not a matter to which EIA or Appropriate Assessment (AA) applies.

While the Applicant had asserted that the type of fencing to be used was different from that authorised in the 2013 development consent, the Court found that this was not evident from the materials before it and that it was clear that there was to be flexibility in respect of the type of fencing that would be erected.

The Court distinguished this case from the King Proceedings. In these proceedings, it had always been anticipated that a CPO would be required whereas in the King Proceedings, Uisce Éireann proceeded with the CPO process to facilitate the proposed development project as there was a concern that Uisce Éireann might lack the requisite interest to seek planning permission without the CPO. The applicant in the King Proceedings had also established a strong case that EIA was required for the CPO as the CPO would limit any alternative options for the location of the proposed development.

The Court, in this case, stated that in the King Proceedings "*[t]he parameters for the application for permission were set by the CPO, unlike the CPO in Clancy, where the nature and location of the development was described as a 'done deal'.*" Here, the Commission did not have the power to modify the Greenway Project when it confirmed the CPO or to reconsider the environmental issues arising from the Greenway Project.

Ultimately, the Court concluded, under this approach, that the CPO:

- was not a development consent,
- was not a part of a multi-stage development consent process,
- did not materially modify the project, and
- did not require EU law assessments.

## **Approach 2 – whether CPO legislation inherently gives effect to relevant EU Directives for costs protection**

While the Applicant did not make a case that costs protection applies to any decision to confirm a CPO made by the Commission under the 2000 Act, the Court considered it for completeness. The Court found that even though the 2000 Act may be construed as enabling the Commission to comply with the EIA Directive or the Habitats Directive if they are required to be applied in a CPO context (as the King Proceedings show may be the case in circumstances where a CPO is confirmed prior to the grant of planning permission), this does not mean that the provision under which the Commission confirms a CPO is one which gives effect to those Directives.

The Court noted that if a situation arises whereby a particular CPO would require assessments under EU law, it may be done in a manner compliant with the obligations of the State under the EIA and Habitats Directives by invoking the power to seek further information or otherwise but this interpretation does not result in the conclusion that those provisions are enacted to give effect to the obligations of the State under those Directives. Costs protection would arise in that situation under the obligation to interpret domestic law in a way which gives effect to the Aarhus Convention and not under Section 50B of the 2000 Act but the Court declined to reach a final conclusion on that situation in this case.

The Applicant's case was ultimately refused.

## Key Takeaways

- Where a CPO is made in respect of a project which has already been granted planning permission, the special rules on costs protection in environmental proceedings do not apply as that CPO is not a development consent or part of a multi-stage development consent and CPO legislation does not inherently give effect to the relevant EU Directives.
- Where a CPO is made in order to enable a proposed development which has not yet been granted planning permission and that CPO has the effect of deciding a crucial element of the subsequent planning application, the location, without public participation or formal EU law environmental assessments, the special rules on costs protection in environmental proceedings will generally apply.
- A change in ownership of land in itself does not require EIA or AA.
- If a CPO modifies a project, in a way that is not material, then that does not give rise to a requirement to carry out EIA or AA.

[Read the full judgment online](#)



**These case summaries were prepared by members of the Planning and Environmental Department of Fieldfisher Ireland LLP (Craig Farrar, Rory Ferguson and Jonathan Moore).**

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