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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICTION BY DEBORAH LYNCH AND JOHN LYNCH FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

and

IN THE MATTER OF DECISIONS AND/OR FAILURES OF NEWRY, MOURNE AND DOWN DISTRICT COUNCIL

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The applicants appeared as Litigants in Person
Ms Kiley KC with Mr Anthony (instructed by Legal Services Department) for the Proposed Respondent
Mr Conor Fegan (instructed by the TLT Solicitors) for the Notice Party, Mr Elliott

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McLAUGHLIN J (*Ex Tempore)*

Introduction

[1] This is an application for leave to apply for judicial review by Deborah and John Lynch of conduct which is variously described in the Order 53 statement as "ongoing failures and omissions" by Newry and Mourne District Council ("the Council") in relation to its handling of a current planning application which has a complex and prolonged planning history.

[2] Without reciting the entire planning history, the key events may be summarised as follows. In 2022 a planning application was submitted by the notice party ("the 2022 application"), Mr Elliott, in relation to a dwelling house in proximity to the applicants' home. The application was submitted following the service of an application notice by the Council pursuant to section 43 of the Planning Act (NI) 2011 ("the 2011 Act"), requiring the notice party to submit a retrospective planning application for work which had already been carried out. Planning

permission had previously been granted for a dwelling on the site which did not authorise the works which the notice party had carried out. The 2022 application was originally determined in February 2023. It was the subject of a judicial review challenge by Mr and Mrs Lynch and was ultimately quashed by this court with the consent of the Council on 16 June 2023.

[3] The 2022 application was therefore remitted to the Council for reconsideration which resulted in a second grant of planning permission in January 2025. The permission was again the subject of a judicial review challenge by Mr and Mrs Lynch. Once again, the Council consented to an order quashing the permission, which was entered on 16 September 2025. Paragraph 2 of the order stated that "…the decision of 9 January shall be quashed" and paragraph 3 states that "the application for planning permission shall be redetermined by the council." Ancillary orders were also made by the court in relation to the costs of that application which are not relevant for present purposes. The key point is that, in the ordinary way, the court ordered that the 2022 application should once again be remitted to the Council for reconsideration.

[4] On 17 September 2025, one day after the court issued the order quashing the planning permission and ordering redetermination, these proceedings were issued in the High Court. I will deal separately with all of the proposed grounds of challenge, however the centrepiece of the current challenge was that the 2022 application, as remitted, was an invalid planning application and hence the Council was legally prohibited from determining it. This was a new point which had not previously been raised by the applicants either during the two previous planning processes (in which they had participated fully and had made detailed representations) or during either of their two judicial review challenges.

[5] There are six grounds of challenge, however two were not pursued with any vigour. I will therefore focus upon the applicants' four primary grounds. Unusually, the applicants seek interim relief against the notice party. They seek an order prohibiting the notice party from occupying the premises, which are now substantially constructed. At an initial case management hearing on 25 September 2025, both the notice party and the Council were represented and indicated a desire to submit evidence and written submissions in response to the interim relief application. The proceedings were therefore timetabled for a hearing of the interim relief application and the leave hearing at the same time, which took place on 9 December 2025.

Ground 1 – Validity of 2022 Planning Application

[6] The first ground of challenge relates to the validity of the 2022 application. The applicants contend that the land ownership certificate which was signed by the notice party as part of the application was invalid. Section 42 of the 2011 Act provides that a council "must not entertain an application for planning permission … unless it is accompanied by one or other of the following certificates…" Articles 3

and 9 of the Planning (General Development Procedure) Order (NI) 2015 ("the 2015 Order") provide, inter alia, that a planning application must be accompanied by the relevant certificate required by section 42.

[7] In this case, the 2022 application was accompanied by a certificate under section 42(c). It provides that the developer must certify that all persons with an ownership interest, in actual possession or entitled to possession of the land have been provided with notice of the application. There is no dispute that the applicants were both properly notified but the certificate did not name a Mr Nicholson who, at that time, was the owner of a portion of the development site. The applicants therefore rely upon a failure to notify some other party, not a failure to notify them. They have been aware of the planning application from the outset and have participated fully in the process throughout. The notice party's evidence also demonstrates that within five months of the date of the planning application, Mr Nicholson sold the relevant portion of land to the notice party. Hence, it is not disputed that throughout most of the first and all of the second planning processes and throughout both judicial review processes, the notice party has been the owner of and in possession of all of the land which is the subject of the planning application.

[8] The applicants rely upon three separate points in support of the alleged invalidity of the application. The first point is that Mr Nicholson's name was omitted from the certificate and he was not formally notified of the application, at that time. Since a certificate of ownership was submitted with the application which named the applicants, it is not a case of total non-compliance. The applicants rely upon the fact that the certificate was inaccurate at the time of the application. The second point overlaps with the second substantive ground of challenge, namely, that the notice party has indicated that he proposes to make revisions to the development proposal which are likely to require the submission of further design drawings etc. It is argued by the applicants that this is now a "materially different proposal" to that which was the subject of the original application. The third point is that Mr and Mrs Lynch purchased a portion of land which they say will preclude the notice party from being able to deliver the sight lines which will be required to implement any future planning permission.

[9] In my view, none of these points have any merit and this entire proposed ground of challenge does not meet the test of arguability with a reasonable prospect of success.

[10] Even if the applicants are correct that the land ownership certificate was not accurate at the time of the application and even if they are also correct that this remained the position during a period of time when some development took place on the site, it is well established by the authorities that the mere fact of initial non-compliance with the requirements for a planning application does not necessarily invalidate the entire application or even any permission granted on foot of the application.

[11] The question of the validity of a planning application is a matter which must be determined in the first instance by the planning authority. While there are certain minimum statutory requirements set out in Article 3 of the 2015 Order, the council must ultimately form a judgment about validity once the application has been received. In some instances, the question of compliance will not be entirely clear cut. There may be dispute about compliance or there may be a need for further information or explanation. All of these are matters for the council to assess. If the application is not considered to be valid, the council may simply return the application and repay the fee. An objector to an application is entitled to make representations to the planning authority on an issue of validity, which the authority must then determine, in accordance with the Order. It is also clear from Article 3 of the 2015 Order, that there is no prescribed time limit by which a council must satisfy itself of validity. Nor does the Order prescribe any consequences for any non-compliance with any particular requirement, either at the time of the application or in the course of the determination process.

[12] In the recent case of *Re Duffy* [2022] NICA 34 the Court of Appeal has confirmed the general principle of statutory construction that the consequences of non-compliance with a statutory requirement must always be determined by first considering the purpose of the relevant provision and then by considering whether the legislature intended non-compliance to result in total invalidity or some alternative lesser consequence. In *Re Bray* [1997] NIJB 262, Kerr J considered the consequences of a failure to submit an accurate land ownership certificate with a planning application. The case concerned Article 22(1) of the Planning (Northern Ireland) Order 1999 which was the statutory predecessor to section 42 of the 2011 Act. Kerr J held that a failure to submit an accurate land ownership certificate does <u>not</u> result in the automatic invalidity of a planning application. He also made clear that if the planning authority becomes aware of an inaccuracy in the land ownership certificate in the course of the planning application the council should act to remedy it at that point. If it emerges that an affected owner has not been notified of the application, the planning authority should ensure this takes place, prior to determining the application. Kerr J stated:

> "… The purpose of art 22(1) is to ensure that accurate certificates are submitted and that owners are timeously notified of planning applications which involve their property. As the guardian of the planning process the department has an obvious policing role in ensuring that certificates are accurate. I accept the argument of counsel for the respondent that the department is not obliged to satisfy itself of the accuracy of every certificate but where it becomes aware of inaccuracy it must act if an owner would thereby be unable to make representations on the planning application. In my opinion, it matters not

> whether the department becomes aware of the inaccuracy by the admission of the applicant for planning permission or by some other means…
>
> …I have been invited to express my opinion on whether the submission of an inaccurate certificate has the inevitable effect of invalidating the planning application. In my view it does not… the important question is 'what is the particular provision designed to achieve?' If the object of the provision is likely to be defeated by non-compliance, this will invalidate the decision. If the purpose of the provision remains unimpaired, a technical failure to comply may be overlooked…" (at p269)

[13] These principles have recently been followed by Scoffield J in *Re McMullan* [2024] NIKB 43 (at paras [27]-[31]), where an issue arose about an alleged incorrect legal boundary on the certificate. Scoffield J held that the obligation under section 42 did not impose an obligation upon a planning authority to resolve boundary or land ownership disputes. Like Kerr J in *Bray*, he confirmed that the purpose was to ensure that affected land-owners are on notice of the application and in a position to participate in the process.

[14] In my view, these authorities make clear that the requirement to submit a certificate of land ownership and to notify the affected land-owners about the application, has two related objectives. First, it is to ensure that any person who owns part of the land is aware of the planning application and is in a position to participate in the decision-making process. Second, it is to inform the planning authority of any potential land ownership disputes which may inhibit the developer's ability to construct the development. While the planning authority is not obliged to resolve ownership disputes, the inability of a developer to implement a permission on account of a lack of ownership, may be regarded as a material consideration in the determination of the application. The submission of a certificate which contains errors or omissions, will not necessarily undermine either of these objectives. On the contrary, the decision in *Bray* and common sense make clear that any errors of notification are capable of being cured in the course of the planning application itself and should not result in the automatic invalidity of the entire application. In this case, whatever may have been the position at the time of the 2022 application, there has now been a material change in circumstances. The notice party has purchased the relevant portion of land and the possibility of either an interested land-owner being unaware of the application or of a mismatch in ownership simply no longer arise.

[15] The consequence of all of the above is two-fold. First, it is entirely in accordance with the statutory scheme and the authorities for the Council to review the regularity of the land ownership certificate and the validity of the application in the course of its redetermination. The Council has not yet had an opportunity to do

so but has made clear in its evidence that it will consider this issue, now that it has been brought to its attention. Second, the applicants are at liberty to make all of the points which they have made to this court in their representations to the Council. Any points about this issue which the applicants wish to make, should be directed to the Council. It can therefore determine on a fully informed basis whether there was and whether there remains a valid planning application. It is therefore inappropriate for this court to determine a question of validity of this nature while the application remains extant and before the Council has actually made a decision on validity. While the key legal principles have been summarised above, it is for the Council and not this court to determine validity at this time.

[16] The second limb of the first ground of challenge arises from the fact that the notice party has indicated that he proposes to make amendments to the design of the house. The applicants contend that the planning application will therefore be materially different to the development which was originally proposed and that this in turn undermines the validity of the application.

[17] In my view, this contention is unarguable for two reasons. First, it is wholly premature because unless and until the notice party does make any proposed design changes it is impossible to determine whether the development will be materially different to the original design. Second, even if the revised designs are materially different, it is in principle permissible for a planning applicant to submit revised designs in the course of a planning application. Indeed, this is the normal means by which a developer will be expected to respond to any objections raised by third parties or to concerns expressed by the planning authority, following its initial consideration. In an extreme case, the changes might be such as to take the proposed development beyond the scope of its original advertised description, in which case the appropriate remedy may be re-advertisement, with a revised description and further statutory consultation may be required. The change might also have the effect of changing the category of development, for which remedy may be the payment of a different application fee.

[18] For present purposes, the relevant point is that the submission of revised designs does not necessarily result in the invalidity of the application. The appropriate response to the changes will be for the council to determine. There is no statutory provision, nor principle of planning law which precludes the submission of revisions to a development proposal in the course of the application. Where any changes remain within the scope of the original advertised application, the overriding obligation upon the council will simply be to ensure a fair decision-making process. This will normally be discharged by making the new designs available for further public consultation or perhaps by obtaining updated expert statutory consultation advice. The important point is that the mere fact that a developer submits revised designs in the course of a planning application does not have the automatic effect of invalidating the application. In this case, the fact, nature and extent of any potential changes are not known and it is not therefore arguable that they will result in the invalidity of the application.

[19] The third point related to the alleged invalidity of the application is that the applicants claim to have purchased a portion of land which will preclude the notice party from constructing and maintaining the sight lines which are necessary for safe access to the development site. This is ultimately a question of land ownership. As set out above and confirmed by Scoffield J in *Re McMullan* [2024] NIKB 43, land ownership is not normally an issue which will sound upon the validity of the planning application. There is no requirement that a person submitting a planning application must be the owner of all of the land within the proposed development site. However, in some cases, ownership issues may be a material consideration, which the council will take into account. In this case, the applicants are at liberty to make all of these points during the course of the planning application, both in relation to validity and also on the merits of the application, if the Council consider it to be valid.

[20] For all of these reasons, I am entirely clear that the first ground of challenge is wholly without merit. It is unarguable and does not enjoy reasonable prospects of success. Leave on this ground is therefore refused.

Ground 2 – Material Change and Section 67 Planning (NI) Act 2011

[21] The second proposed ground of challenge overlaps with the first insofar as the applicants make an additional argument that the entire application is invalid on account of the design changes which the notice party is expected to make. On this ground the applicants again contend that the notice party is not entitled to make changes to the original designs if they are material changes. For this purpose, they rely upon section 67 of the 2011 Act and the guidelines issued by Newry and Mourne Council relating to when a change is likely to be regarded as "material" and which would require a new planning application rather than a redetermination of an existing application.

[22] Section 67(1) of the 2011 Act provides as follows:

> "67—(1) A council may make a change to any planning permission relating to land within its district if it is satisfied that the change is not material."

[23] As appears clear from the express language of section 67, the power applies, where planning permission has been granted and powers the council to make non-material changes to the permission. It has no application whatsoever, where the application remains under consideration and does not regulate the ability of a planning application to submit revised designs in the course of the planning application. The purpose of the provision is to enable a council to make minor amendments to a permission without the necessity of going through the entire planning process again.

[24] In the course of the hearing, the applicants provided no justification for the attempt to rely upon this provision which is clearly of no application in the present circumstances. Their argument was based upon the guidelines issued by the council to explain the circumstances in which it is likely to consider any amendment of a permission to be material. However, all of this is entirely irrelevant to the current circumstances because no planning permission has been granted for the development. The applicants are fully aware of that position since the most recent permission was quashed as a result of their recent judicial review application.

Ground 3 – Environmental Impact Assessment

[25] The third proposed ground of challenge relates to the Council's obligations under the Planning (Environmental Impact Assessment) Regulations (NI) 2017 ("the 2017 Regulations"). The background to this ground of challenge is that during the previous determinations of the planning application, the Council made an EIA screening decision pursuant to Regulation 6(2) of the 2017 Regulations and concluded that the development was not EIA development. In other words, the development was screened out for likely significant environmental effects within the meaning of the 2017 Regulations. The applicants disagree with that conclusion for several reasons including the nature of the development proposed (in particular arrangements for drainage) and the sensitivities of the surrounding environment. However, the applicants' views are not determinative of whether the development is EIA development. That is a matter for the council to assess and to determine as part of a statutory screening decision. In its evidence, the Council has made expressly clear that it will reconsider the likely environmental effects of the development and that it will comply with any EIA obligations, including conducting a fresh EIA screening exercise to determine whether the development is EIA development.

[26] The applicants contend that it should be clear that the development is EIA development and that this court should confirm its status. This argument is misconceived for two reasons. First, this court has no power or competence to make an EIA screening decision. That is a matter for the Council to determine in the first instance in accordance with the 2017 Regulations. The court is invited to determine the matter at this time, on the basis of nothing more than the applicants' assertion and belief that the proposals, when submitted, will make clear that they comprise EIA development. The applicants also assert that the development will once again be screened out by the Council and that the wrong application procedure will be followed by the Council and hence the entire application should be quashed at this time. This is an entirely hopeless argument. It is for the Council and not the court to make an EIA screening decision. There is no reason for this court to assume either that the Council will fail to do so or that it will reach an unlawful conclusion. Second, before any screening exercise can be undertaken, it is necessary to understand the development proposal in sufficient detail. As set out above, the notice party has indicated an intention to submit revised proposals. It is therefore entirely premature to even consider the issue of EIA screening until the revised proposals have been submitted and can be fully considered. This proposed ground

of challenge is therefore entirely premature and is hopeless on the merits. It is not arguable and does not enjoy any reasonable prospects of success. Leave is therefore refused on the third ground.

Ground 4 – Enforcement

[27] The fourth ground of challenge embraces all of the above grounds and arises out of an alleged failure by the Council to take enforcement action against the structure which has been constructed on foot of the previous planning permissions. It is not quite clear precisely what enforcement action it is alleged that the Council should have taken during the one day period between the order of this court quashing the previous planning permission and the commencement of these proceedings. Notwithstanding this patently obvious deficiency, the applicants proceeded with this ground of challenge, seemingly undaunted.

[28] In the course of the leave hearing, the applicants accepted that, as a matter of principle, the relevant body for deciding whether or not to take planning enforcement action is the Council, not this court. The applicants also accepted that in deciding whether to take enforcement action and, if so, what measures to take a council must satisfy itself that enforcement action is expedient in the particular circumstances, which confers a very broad discretion upon councils. The result is taking enforcement action is a matter of discretion. In enacting the 2011 Act, the Assembly has conferred that discretion upon the council not upon courts. It is well established in both this jurisdiction and beyond that courts invariably do not have the information or institutional competence to decide whether enforcement action of any nature is expedient, that is a matter for the council to take. For this reason, the courts have made clear that it is only in the rarest cases that they will compel a planning authority to take enforcement action. Not only do courts not have the institutional competence, but an assessment of expediency involves a consideration of a range of public interests. It will invariably run contrary to the purpose of the legislation for a court to mandate such action instead of the democratically accountable public authority upon which the power of enforcement was conferred (See eg *Re Donnelly* [2020] NIKB 35 and *Re Duff* [2022] NIKB 8 (per Humphreys J). The clearest examples of cases in which the courts have ordered mandatory enforcement action have involved development over which there was no dispute that it was EIA development and where a failure to take enforcement action may result in the development becoming immune from enforcement. Such an outcome could have given rise to a breach of EU law obligations insofar as it may amount to the grant of consent for the unauthorised development, without first conducting EIA (see eg *Re Friends of the Earth* [2017] NICA 41; *R (Ardagh Glass) v Chester City Council* [2010] EWCA Civ 172).

[29] In this case, the applicants appear to be of the view that the Council is obliged to take action on account of their view that the dwelling house <u>is</u> "unauthorised EIA development." As pointed out above, all of the previous screening decisions by the Council resulted in the development being screened out and no new screening

decision has been taken, pending consideration of any revised design proposals. It is therefore impossible for the court at this time to say whether or not this is unauthorised EIA development.

[30] While the applicants accept that the Council has a broad enforcement discretion they contend that in this case, the failure to take action is irrational. They contend that the irrationality is based upon the five factors which were identified in submissions. The first is the history of past breaches between 2021 and 2025. The second, is the alleged EIA status of the development. The third is the environmental sensitivity of the site with concerns about controlled waste being deposited on it or the possibility that there could be hazardous substances which are currently unknown. The fourth is failing to take account of certain relevant factors about the proposed development. The fifth factor is the validity of the planning application, which I have already found to be unarguable. In my mind, none of those factors come remotely close to establishing an arguable threshold of irrationality. However, it simply cannot be ignored that what is currently before the Council is a live planning application which has just been remitted to it, following the decision to quash planning permission. Even if any of the five points summarised above had any merit, the Council would be entitled to take all of them into account in assessing whether or not it was expedient to take enforcement action. The ink on the court order quashing the permission was barely dry when these proceedings were commenced. By this application, the applicants seek, in substance to by-pass the Council's decision-making powers entirely without allowing it any time to consider the matter afresh.

[31] It appears to be clear that structures are currently present on the site which do not have the benefit of planning permission, on account of the quashing order. However, that development has taken place under the auspices of previous planning permissions which were granted at various points in time. Those permissions were valid at the time granted and authorised development to take place until quashed. The Council is perfectly aware of those circumstances. It has indicated in its evidence that it is keeping the need for enforcement action under review. Indeed, it has taken enforcement action in the sense of sending a warning letter to the notice party in July 2025. It has also made clear to the court that one of the factors which will be very important in deciding whether or not to initiate any formal enforcement action is the outcome of the future EIA screening exercise, in light of any amended plans. The Council is perfectly entitled to take this approach to the exercise of its enforcement powers. The argument that it had a legal obligation to issue an enforcement notice in the one day window prior to commencing these proceedings is entirely without merit and is hopeless. The circumstances of this case do not come close to the type of exceptional circumstance in which a court might consider ordering enforcement action. This proposed ground of challenge is unarguable and does not enjoy reasonable prospects of success.

[32] The final two grounds of challenge were not pursued with any vigour. The fifth proposed ground of challenge was alleged procedural unfairness. There is

nothing to suggest that the Council is going to follow an unfair redetermination process or that anything which has happened to date has unfairly denied the applicants a fair opportunity to participate in this planning process. On the contrary, one only needs to look at the planning history to see that the opposite is actually the case. The applicants have participated fully in the process and availed of almost every procedural opportunity which was available to them to make clear their views to the Council and to oppose this development. There is nothing that I can see in the planning history which in any way suggests that there is a real risk of procedural unfairness. On the contrary, the Council has informed the court that it proposes to re-determine the application in the ordinary way and in accordance with its obligations.

[33] The final proposed ground of challenge was a *Henderson v Henderson* point by which the applicants sought to pre-empt any argument that they should have raised their invalidity points previously. It was accepted during the hearing that this issue is not being raised by anybody and therefore does not arise on the challenge. So for all of those reasons, all grounds of challenge are refused. Leave to apply for judicial review is refused on all grounds.

Interim relief

[34] In light of the decision to refuse leave, the question of interim relief against the notice party does not arise. However, in light of that very unusual application, the notice party was fully entitled, if not required to participate in these proceedings. His interests are separate from those of the Council and he could not reasonably be expected to rely upon the Council to defend his interests, particularly in light of the enforcement ground of challenge. The evidence and submissions which were filed in response to the proceedings were extremely helpful and presented a distinct position from that of the Council.

Costs

[35] The Council made no application for the costs of the leave hearing. However, the notice party did seek costs. He relied upon the necessity of his participation in light of his separate interest in the outcome and the application for interim relief, which was directed at him, rather than the Council. As set out above, I considered that the notice party did have a separate interest and that his participation in the proceedings was fully justified.

[36] The court is mindful that this was an application for leave and it will be rare for a court to award costs against an unsuccessful applicant. In this case, that is mitigated by the fact that the Council has not sought costs from the applicants. Accordingly, the court will normally look for something exceptional about the proceedings before considering an award of costs against an unsuccessful applicant.

[37] The application for leave to apply for judicial review has been refused on all grounds and there are several aspects of the practice and principles governing costs in judicial review, particularly in planning judicial reviews which are relevant.

[38] The general approach to the award of costs in planning challenges which are unsuccessful is set out in *Bolton Metropolitan DC v Secretary of State & Ors* [1995] 1 WLR 1176. The planning authority will normally recover their costs in the normal way. However, a notice party will normally only recover a second set of costs if they can demonstrate a separate interest in the proceedings which is not covered by the planning authority. There is also a greater likelihood of an award of costs at first instance than on appeal. These principles have been recognised in this jurisdiction in several cases, such as *Belfast City Council v Planning Appeals Commission* [2018] NIQB 17 at paras [111]–[114], per McCloskey J.

[39] In this jurisdiction, it is rare that a court will make a costs order in favour of either party at a leave hearing and normally it would require something exceptional before considering doing so. Even where a proposed respondent concedes the case at the leave stage it will not be condemned in costs for doing so because the court recognises broader public interests in allowing public authorities time to reflect. Where an applicant is unsuccessful, the court will rarely award costs in favour of a public authority which has attended and participated in a leave hearing on a voluntary basis. When leave is granted the costs of the leave hearing are usually absorbed into the costs of the full hearing.

[40] Accordingly, it is a rare occasion when the costs of a leave hearing are in dispute. While the court does have power to award costs against an unsuccessful party at the leave stage, it will look for something exceptional.

[41] In my view, the facts of this case do meet that threshold for two primary reasons. Firstly, the application was hopelessly lacking in merit. This was not a case in which any of the proposed grounds of challenge came even close to reaching the low threshold of arguability. The applicants are no strangers to the judicial review court and clearly have substantial understanding of legal procedures and principles. Despite being hopeless, they marshalled their points well. They also had every opportunity of reflecting on both the wisdom and of merits of the application but decided to proceed, fully informed by the strength and clarity of the evidence and submissions of the Council and notice party. That was a free choice on their part. Secondly, the applicants did not simply challenge the actions of the Council but also made an application for interim relief which was directed at the notice party. The fact that he was therefore required to become involved when a notice party should normally be able to rely upon the public authority to defend the proceedings means that there is something unusual about this case. Interim relief in a planning challenge is an unusual enough event, never mind one which was so intensely targeted at the notice party and one which was made without any legal merit whatsoever. Once again, the applicants were fully aware of the consequences in terms of costs of pursuing the interim relief application. Counsel for the notice party

made clear at the first review hearing on 25 September 2025 that costs would be in issue if the application continued.

[42] In light of all of these features of this case, I consider that they provide the type of exceptional circumstances that a court would normally expect to see before awarding costs in favour of a notice party at the leave stage. The question, therefore, is not whether I make a costs order in the notice party's favour but the nature of the costs order that I make.

[43] There has been a debate about whether or not the Costs Protection (Aarhus Convention) Regulations (NI) 2017 apply to these proceedings. The submissions did not provide a clear answer and there is not a clear body of authority. Frequently when the issue of whether the 2017 Regulations apply comes before the court agreement on a protective costs order or some other accommodation is reached between the parties. The caselaw which has been referred to is of some assistance but I do not consider it to be decisive and the court was not furnished with a copy of either the Regulations or the Convention itself. In the circumstances, I am satisfied that even if Aarhus does not apply, the appropriate order is for the applicants to pay the costs of the notice party associated with the judicial review application, that those costs should be taxed in default of agreement but that recovery shall be subject to a limit of £5,000. That is the order that I will make.