

Neutral Citation No: [2026] NICA 30	Ref: TRE12737
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 24/5337/01/A01
	Delivered: 22/04/2026

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

IN THE MATTER OF AN APPLICATION BY GORDON DUFF
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF
LISBURN AND CASTLEREAGH CITY COUNCIL

The applicant appeared in person
Stewart Beattie KC and Philip McEvoy (instructed by Cleaver Fulton Rankin) appeared
for the Respondent
The notice party also appeared in person

Before: Treacy LJ and Horner LJ

TREACY LJ (*delivering the judgment of the court*)

Introduction

[1] Mr Duff, the applicant, is a prolific personal litigant who has launched multiple applications in the planning context. He seeks in effect to act in a representative capacity on behalf of the public. He is certainly no stranger to the judicial review court or to the Court of Appeal.

[2] The applicant, was granted leave on the papers by Scoffield J in relation to some of his judicial review grounds. The grounds on which leave was granted on the papers are set out at paras [12]-[14] of his extensive judgment. As he explains at para [22] he considered, based on the authorities, that the applicant had standing notwithstanding his lack of direct, personal interest. That was one of the reasons why leave was granted by the judge on the papers in relation to some grounds.

[3] In respect of those grounds on which leave was refused, a lengthy inter partes hearing was conducted by the judge with Mr Duff, as usual, appearing in person. After that hearing, the judge delivered a characteristically thorough judgment addressing each of the grounds in respect of which he refused leave. The procedural and factual background underpinning this appeal are set out at paras [1]-[11] of the

judgment reported at [2024] NIKB 119. In this appeal, Mr Duff renews his application for leave, relying on the same grounds as he relied upon in the court below.

[4] The essence of the applicant's case as described by the judge at para [7] was that the grant of outline planning permission, which he did not challenge, was so flawed that it is not now possible to grant a lawful reserved matters approval consistent with planning policy. The purpose of the notice party's applications is to provide a home for her family, including her children. The notice party appeared in person. She emphasised in the lower court that there were no objectors when the reserved matters application was made and that all statutory consultees agreed to the approval.

[5] The judgment recites at para [16] the circumstances which led to the notice party not being legally represented:

"[16] The notice party in the case, Ms Simpson, is the beneficiary of the reserved matters approval which has been granted. She is representing herself and her husband. She has explained that she cannot afford legal representation since that would leave her with no money left to build the house which is the subject of the impugned decision in this case. Her development plans, and the construction of the new family home she had hoped to be occupying by now, have been delayed and put in jeopardy by the range of proceedings which have arisen as a result of Mr Duff's objections. In her submissions to the court she has emphasised, as other interested parties have in similar cases, a feeling of unfairness that someone who lives so far away from her proposed property has (in her words) "targeted" her. She feels that it is unnecessary and malicious. She also complains that Mr Duff has not complied with his duty of candour because he has presented factual evidence, or commentary within his affidavit evidence, which is "speculative and untrue." She is most aggrieved that Mr Duff has raised the prospect of dishonesty or bad faith on the part of a variety of persons (including her father, herself or planning officials) in the course of obtaining planning permission or reserved matters approval for the site."

[6] In support of the appeal in respect of the grounds on which leave had been refused Mr Duff lodged a lengthy skeleton argument which rehearses the same arguments that were made in the court below. He also provided a detailed speaking

note to which he made some amendments during the hearing. As requested by the court he lodged an amended copy of the note to reflect those changes.

[7] Recognising the breadth of the material available to this court in deciding the issues in this appeal, Mr Duff largely confined himself, in oral submissions, to adopting what he had said in writing, and resting his case on those written materials, as well as his detailed notice of appeal.

[8] In essence, Mr Duff contends that, on the evidence and argument advanced in the court below and maintained in this appeal, the judge was wrong to have refused leave. This submission was advanced on the basis that he had established, in respect of each of the grounds on which leave was refused, an arguable case with a realistic prospect of success. We consider that the judge was correct to have refused leave and we adopted his detailed reasoning in respect of each ground upon which leave was refused. At the conclusion of the hearing, we gave these reasons for dismissing the appeal on the merits. For reasons of brevity we do not propose to rehearse those reasons here as they are clearly set out in the judgment of Scoffield J.

Standing

[9] Given our concerns about whether Mr Duff had standing we directed further affidavits from Mr Duff addressing various points that were canvassed in argument relating to this issue.

[10] We were of course conscious that no cross appeal was lodged in respect of Scoffield J's decision regarding standing. Nonetheless, as the issue of standing goes to jurisdiction it is one which falls to the court to determine. Accordingly, even in the absence of a cross appeal, we have considered the issue of his standing. This is the same approach that the Court of Appeal took in *Duff v Causeway Coast and Glens Borough Council and F P McCann LTD* [2023] NICA 56.

[11] The court at para [7] in that case stated:

“[Mr Duff] acted as a litigant in person. He describes himself as being ‘passionate about the countryside’ and is part of ‘a large environmental activist network.’ Over recent years he has become a prolific litigant launching numerous applications for leave to apply for judicial review both in his own name and by using a variety of corporate vehicles.”

Principles governing standing

[12] The Court of Appeal in *Duff* [2023] NICA 56 further stated as follows:

“[16] The principles governing standing have been the subject of much jurisprudence. The leading authority is now the Supreme Court ruling in *Walton v The Scottish Ministers* [2012] UKSC 44 which was recently considered in this jurisdiction in *Duff v Causeway Coast and Glens Borough Council and McDonald* [2023] NICA 22.

[17] We consider that the following principles can be distilled from the jurisprudence and legislative framework:

- (i) The test to be applied is whether the applicant has “sufficient interest” in the matter to which the application relates.
- (ii) What constitutes sufficient interest is context specific, differing from case to case and requiring consideration of the issues raised including merits and of what will best serve the purposes of judicial review in that context.
- (iii) Normally, participation in the planning process which led to the decision sought to be challenged is required. What is sufficient participation will depend on the opportunities available and the steps taken.
- (iv) There may be situations in which failure to participate is not a bar where, for example, an inadequate description of the development in the application and advertisement could have misled the applicant so that he did not object or take part in the process.
- (v) An interest in the matter for the purpose of standing in a common law challenge may be shown either by:
 - (a) A personal interest – eg noise, disturbance to the visual amenity of the property or some other private law right interference; or
 - (b) A legitimate or reasonable concern in the matter to which the application relates.

- (vi) The nature and weight of the person's substantive interests and the extent to which they are prejudiced are factors which will be assessed objectively. The sufficiency of the interest must also be considered.
- (vii) What might otherwise be a sufficient interest may not be sufficient if acquired for the purpose of establishing a standing.
- (viii) There are environmental issues which can be raised by an individual which do not personally affect his private interests as "the quality of the natural environment is of legitimate concern to everyone."
- (ix) The courts must be careful not to encourage the proliferation of litigation by the busy body to avoid unnecessary cost and administration. Accordingly, individuals who wish to do this on environmental grounds will have to demonstrate that:
 - (a) They have a genuine interest in the aspects of the environment that they seek to protect; and
 - (b) They have sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity.

It is for the court to judge in each case whether these requirements are satisfied.

- (x) In making this assessment the court can take into account whether there are or would be better placed challengers such as environmental organisations and NGOs. It is recognised that these bodies act both as a filter and contribute specialised knowledge thereby putting the courts in a better position to decide the case. Notwithstanding this there is still some room for individuals to carry out this role, but the court will determine in each case whether that individual meets the requirements necessary for him to act in a representative capacity and, in particular, will

take into account the applicant's knowledge, ability and the resources open to him.

- (xi) The absence of another responsible challenger can be a significant factor especially where a matter of public interest or concern might otherwise be left unexamined.
- (xii) Whilst recognising the need for wide access to the courts, weight may be given, when assessing the prior participation required and the interest relied on, to the public interest in the implementation of projects and the delay involved in judicial proceedings.
- (xiii) Ultimately, each case must be adjudged on its own facts considering the context, the interests in play and the purpose of judicial review to correct public law wrongs.
- (xiv) The issue of standing is not merely a threshold issue but may also bear upon the court's exercise of its discretion as to the remedy, if any, which it should grant in the event that the challenge is well-founded."

[13] Whilst accepting that the appellant, Mr Duff, had a genuine concern for the environment, the Court of Appeal held at [19] that he did not have standing for a number of reasons set out at paras [20]-[26]:

"[20] None of the appellant's private law rights are affected as he does not live nearby and has no property in the vicinity. He did not participate in the planning process which led to the decision he now seeks to challenge. In particular, he did not participate in the process which led to the grant of permission in 1964 and whilst we accept it would have been unrealistic to expect that he would do so as he was probably very young when this decision was made, importantly, he did not participate in the investigation which led to the decision by the DoE in 2014 that the quarry had the benefit of planning permission to the extent of the red/pink lines shown on the site map. An important consequence of his failure to participate in the investigation process during

2012-2014 is that the notice party has in good faith relied on the existence of planning permission and the fact that this was accepted by the DoE in 2014. The quarry owners have also obtained, over the years, 10 planning approvals for operations which are all ancillary to the quarrying operations. In all these applications the principle of an established lawful quarry has always been accepted. In these circumstances there was no reason for the notice party to fear its permission would later be under attack by the appellant. Further, the notice party was deprived of grappling with the appellant's concerns during the DoE's investigation. This application not only causes them distress and inconvenience but also considerable expenditure as normally a notice party participates on a costs neutral basis, and therefore it will have to bear its own costs with no prospect of receiving these costs from the appellant regardless of the ultimate outcome.

[21] Although the appellant has engaged in correspondence with the council since 2021, complaining about the quarrying activities, we consider that he cannot acquire standing by simply writing letters which merely repeated complaints that had already been the subject of investigation and a decision in 2014.

[22] We also consider that there are more suitable challengers ...

[23] *When an individual like the appellant seeks in effect to act in a representative capacity on behalf of the public, the court must consider his suitability having regard to his knowledge, ability and resources. For a number of reasons, we do not consider that the appellant is a suitable representative of the public interest in this case. First, he is a litigant in person and although he is part of a loose environmental activist network, he is not an incorporated action group or an NGO. We agree with the observations made by Scofield J in Re Duff's Application [2022] NIQB 11 at para [55]:*

'I must take into account that he is not an environmental representative in the sense that a specialist NGO would be; and that he acts as a litigant in person who therefore, notwithstanding his diligence and enthusiasm, is less likely to assist

the court than a well-resourced organisation with access to environmental and legal expertise.'

[24] Although we accept the appellant is well meaning and enthusiastic, *he lacks specialist knowledge of the environmental matters in play and has few resources available to him to source environmental and legal expertise.*

[25] It is also worthy of note that *no responsible environmental group has sought to bring a challenge in this case."*

[14] It is noteworthy that the court also held, in agreement with the trial judge, that the "central plank" of his application (an allegation that a site map had been fraudulently altered) was "without merit", that there was no other matter of concern left unexamined by refusing standing and that the trial judge had not erred in determining that the application was out of time and that there was no basis to grant an extension of time.

[15] This issue of Mr Duff's standing was also considered in *Duff v Causeway Coast and Glens Borough Council and Alex McDonald* [2023] NICA 22. We refer to the discussion of the relevant principles on standing set out at paras [21]-[29]. His standing was accepted in that case because of the singular and wholly exceptional circumstance that Mr Duff was *invited* by the respondent Council to apply to quash the planning decision at issue once he raised a challenge. At para [34], Keegan LCJ described this fact as being of "critical importance." Without that striking feature it is clear that standing would not have been established in that case.

[16] We note the following concessions made by Mr Duff during his answers to questions raised by the court:

- He does not live nearby.
- Mr Duff's amenity will not be affected, (except to the extent, he argued, of urban sprawl).
- He has no property interest of his own which will be affected, save for property that he owns in Belfast that had been or may be the subject of planning applications in respect of potentially four apartments.
- That none of Mr Duff's private law rights are engaged.

[17] Mr Duff acknowledged that he is not an active member of any organisation concerned with the environment. He referred to two residents' groups but his evidence about this was rather vague. He also mentioned the possibility of him setting up his own organisation.

[18] When considering the issue of standing the authorities make it clear that weight may be given to the public interest in the implementation of projects and the delay involved in judicial proceedings [see principle (xii) above]. That includes the interests of the planning applicant in this case, the inevitable delay resulting from Mr Duff's instigation of judicial review challenges, pursuing wholly unmeritorious appeals and the associated stress and uncertainty thereby caused.

[19] Importantly, as *Duff* [2023] NICA 23, makes clear the courts must be careful not to encourage the proliferation of litigation by a "busy body" to avoid unnecessary cost and administration. Mr Duff has been singlehandedly responsible for the proliferation of a wholly disproportionate body of litigation largely in the planning context often causing feelings of unfairness and heartache to the individuals concerned. We refer again to para [16] of Scoffield J's judgment in this case which we have set out at para [5] above. A similar point is made in the judgment of McBride J at para [20] which we have set out at para [13] above where she refers to notice parties in good faith relying on the existence of planning permission and these judicial reviews by Mr Duff causing distress, inconvenience and considerable expenditure. This also must be seen in the context of Mr Duff's lack of direct, personal interest, the unchallenged grant of outline planning permission, the fact that there were no objectors when the reserved matters application was made and that all statutory consultees agreed to the approval.

[20] In line with the principles governing standing we observe that as in *Duff* [2023] NICA 56, Mr Duff is seeking to act in a representative capacity on behalf of the public. Para [23] of that judgment makes clear that the court must then consider his suitability having regard to his knowledge, ability and resources. As in that case so in the present we do not consider that the applicant is a suitable representative of the public interest in this case. He is a personal litigant who is not an active member of a recognized organisation concerned with the environment. No such organization or NGO has raised any challenge. As noted at para [17] (x) such bodies act as a filter and contribute their specialised knowledge thereby putting the courts in a better decision to decide the case. Such bodies will use their specialised knowledge when evaluating the merits of a particular environmental challenge and identify with precision the grounds of challenge and the underlying public interest. They will also have ready access to and ordinarily will instruct specialist lawyers in the field to argue the case. This specialist knowledge and expertise help to ensure that only meritorious grounds of challenge are brought and that the court has the benefit of properly instructed public lawyers' expert in the field. These safeguards are obviously in the public interest in developing environmental jurisprudence in an orderly, informed and expert manner. They ensure that only genuine cases of important public interest are brought and that the relevant issues, policies, legal provisions (domestic and European) and the factual context are fully and fairly placed before the court. It will also best ensure that only the relevant documents and arguments are advanced so that the time of the court and the parties is not wasted and the focus of all the parties remains on the relevant issues. A feature present in

this case is the lack of discernment, the pursuit of grounds that are unarguable and the pursuit of an unmeritorious appeal exacerbating the distress, inconvenience and cost to the notice party.

[21] We dismissed the appeal on the merits with reasons at the conclusion of the oral hearing and gave further directions connected with our concern about whether Mr Duff had standing. This included directions as to the filing and timing of affidavits to the lower court.

[22] In respect of the grounds upon which leave was refused and unsuccessfully appealed before us we consider that the applicant does not have standing for the reasons given above.

[23] As to the grounds upon which leave was granted and not appealed we consider that the determination of whether the applicant has standing in respect of those grounds should be addressed by the judge allocated to hear that case.