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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY PATRICK HAUGHEY FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY THE PLANNING APPEALS COMMISSION

The Applicant appeared as a litigant in person
Mr John Larkin KC (instructed by Mills Selig, Solicitors) for the Proposed Respondent
Ms Anyadike Danes KC with Acland Bryant (instructed by Laura Neal, Solicitor) for Friends of the Earth
Mr Nicholas Compton (instructed by Brolly Jamieson, Solicitors) for Save our Sperrins
Mr Stewart Beattie KC and Scott Lyness KC (instructed by Cleaver Fulton Rankin, Solicitors) for Dalradian Gold Ltd

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Ex-Tempore

McLAUGHLIN J

Introduction

[1] This is an application for leave to apply for judicial review and interim relief in relation to a decision of the Planning Appeals Commission ("PAC" or "the Commission") which was published on 15 June 2026 setting a timetable for the resumption and conclusion of a public local inquiry being conducted at the request of the Department for Infrastructure ("the Department") into planning applications and associated environmental licensing applications relating to the proposal by Dalradian Gold Ltd. to develop a gold mine in the Sperrin mountains.

[2] The applications are amongst the most, if not the most, complex and extensive planning applications which have been made in Northern Ireland. They are certainly amongst the most contentious applications in Northern Ireland, insofar as

they have aroused very significant public interest and controversy, both for and against the proposed mining operations.

[3] The ultimate decision maker on the planning application is the Department and the inquiry process is both a vital and legally essential part of the Department's consideration of those applications. The PAC will provide independent expert advice to the Department on the environmental information and other planning considerations and its report must be taken into consideration by the Department prior to determining the planning application.

[4] Mr Haughey has been involved in the application process and has raised objections to the proposed development for approximately 10 years. This period coincides with my own personal familiarity with the duration of the proposal. He has been an active and passionate advocate against the development and he has expressed those views and concerns through the inquiry process. Importantly, for present purposes, he has elected to attend and has been accepted as a participant in the inquiry for both written and oral submissions. Mr Haughey is currently employed and in order to attend the inquiry hearings to date, he has exhausted all of his permitted annual leave for this calendar year, with the exception of one and a half days. He has now been informed by his employer that no further accommodation or additional leave will be available in order to attend the inquiry. He maintains that he has now been left with a "Hobson's choice" of leaving his employment to continue attending future inquiry sessions in person or maintaining his employment but not attending in person, with the risk that he will be unable to participate in the inquiry to the extent he wishes. He has emphasised the importance of physical attendance in order to respond to evidence, representations or questions which can develop on the day. He does not consider that written representations are adequate and has highlighted previous difficulties in having his representations presented through other objectors on days when he was unable to attend in person. He does not have confidence that the PAC will facilitate his continued participation in this manner. He feels that this is an impossible position and that it has arisen as a result of unfair decision-making on the part of the Commission.

[5] The inquiry commenced public hearings approximately 18 months ago but they were paused upon the discovery of a defect in the EIA transboundary consultation process. The inquiry hearings resumed earlier this year and a timetable was set for public hearings which Mr Haughey was able to accommodate within his annual leave allowance for 2026. Progress transpired to be much slower than expected and it did not prove possible to complete hearings for all of the topics within the scheduled timetable. The need for further public hearing dates became apparent reasonably early in the resumed proceedings. A further timetable was set by the Commission on 15 June 2026. It was made after the Commission received oral representations from the participants on one of the scheduled sitting days. The Commission also made inquiries about the availability of the venue and consideration of its own operational requirements. The revised timetable was set

with the approval of the Chief Commissioner. The additional dates run through the Autumn of 2026 with specific days set aside for each of the outstanding inquiry topics. The next proposed session will deal with the topic of "Residential Amenity, Lighting" and is scheduled to take place on 4, 5 & 6 August 2026. The applicant's evidence is that he will be unable to attend these hearings in person in light of his inability to take further annual leave from his employment. Consequently, this proceedings has been heard on an expedited timetable, with a view to providing clarity to all parties at the earliest possible date.

[6] There are two further important matters which should be made clear at the outset. The first is the procedural history of the PAC decision-making and of this application. Although the revised inquiry timetable was published by the Commission on 15 June 2026, the August dates for the lighting topic were confirmed to the parties in writing on 19 May 2026 (following oral confirmation on 14 May 2026). These proceedings were commenced on Monday 27 July 2026, following an exchange of pre-action correspondence on 26 June and 1 July 2026. A remote case management review hearing was convened on Wednesday 29 July 2026, which was attended by all of the parties. Mr Haughey explained that he had attempted to find legal representation but was advised that he should conduct the case in person. He then needed time to prepare. At the review hearing all parties confirmed that, if the court listed the case for an urgent leave hearing on Friday 31 July, they would be in a position to proceed, despite the accelerated timetable. No party indicated that the short timeframe would impact on the fairness of the hearing. At the outset of the hearing, the proposed respondent made an application to adjourn on the ground that a "matter" had arisen which the PAC required to consider and which might affect the issues in the case. The court was advised that it was necessary to consider a legislative provision, that the PAC wished to do so carefully and to "get it right." However, no further information was provided about either the issue or legislation. While some discussions took place outside court between the represented parties, Mr Haughey confirmed that no further information was provided to him. The court was not provided with any further information to support the adjournment application. In the circumstances, I decided that there had been no material change in position since the review hearing and that it would be unjust to adjourn the hearing.

[7] Second, Mr Haughey has made clear that his challenge relates to the fairness of the decision-making process which led to the revised timetable. While he seeks an order for interim relief which would result in the inquiry hearings not resuming until 2027, he did not go so far as to contend that the PAC was under a legal duty to accommodate his physical attendance or that of any other party. With the exception of the proposed human rights challenge, the focus of the challenge was therefore upon the fairness of the decision-making process, rather than the substance of the ultimate timetabling decision.

[8] Mr Haughey seeks leave to challenge the timetabling decision on four separate grounds, albeit they have inevitable overlap.

[9] The first proposed ground of challenge is procedural unfairness. In substance, the challenge involves a combination of alleged procedural unfairness and breach of an alleged obligation to consult before setting a new timetable. The second ground is an alleged failure to take account of material considerations, namely the submissions which the applicant made to the Commission regarding his availability during 2026. The third is a contention that the Commission unduly fettered its discretion by announcing that no further changes to the timetable would be accepted. The fourth ground is a proposed human rights challenge. The applicant argues that the timetable will give rise to breaches of his article 6, 8 and 10 ECHR rights.

[10] Common to all of the proposed grounds of challenge is the applicant's contention that the unfairness of the timetabling decision must be assessed in the context of several matters which have been emphasised by him and by others who support his position. First he pointed out that the original timetable for the resumed inquiry involved approximately 22 days of hearing, which was later increased to 25 days. This more or less accorded with his annual leave entitlement. The revised timetable involves an additional 33 days of hearing, involving many of the most important topics. He had prepared for the inquiry on the basis of an expectation that he could participate in person and he characterises the timetabling decision as a completely new programme, rather than an extension or amendment of the existing programme. Secondly, he relies upon the fact that the inquiry does not have live streaming, nor does it have a facility for recording evidence and making it available to the public. Parties are therefore restricted in their ability to learn what happens in the course of the inquiry if they are not physically present. Hence, the new proposed timetable would result in a significant change in his ability to participate. He would be entirely dependent upon second-hand communications from those with whom he has been co-operating and who hold a similar or common position on many of the remaining topics. He considers that if he is not there in person he would be significantly restricted in his ability to participate. Hence, he maintains that the decision to set a timetable without more detailed consultation was unfair.

[11] By his first ground of challenge, the applicant contends that there has been a breach of a duty to consult prior to setting the new timetable. There has been debate on both the facts and the law on this ground. On the facts, there is no dispute that the Commission did not circulate a draft timetable followed by an invitation to the parties to submit representations. However, it is accepted by the applicant that on 21 April 2026 (and possibly on other informal occasions), the Commission scheduled a session for the purpose of receiving representations about future timetabling decisions once it became clear that further days would be required. Nor is it disputed that all of the parties were afforded an opportunity to make oral representations. The applicant accepts that he was aware of the session on 21 April, that he was present in person and that he made representations to the effect that he would not be available for any further hearings in 2026 on account of the lack of any

further leave entitlement from his employment. He also accepts that he requested that the inquiry should not resume until 2027.

[12] The applicant characterises the session on 21 April as an informal process in which parties were simply canvassed for their views and that it did not amount to a consultation. In addition to the oral representations made on 21 April, the applicant also has directed the court to three separate written documents in which his position was repeated. Two of the documents were generated as part of pre-action correspondence arising out of a proposed judicial review by Dalradian about facilitating the attendance of an expert witness for one of the topics under consideration at that time. The third document was correspondence dated 21 May 2026 which he sent directly to the PAC. It was a formal written submission which he emailed to the PAC in the early hours of the morning on 15 June 2026, shortly before the written timetabling decision was circulated. I have been told from the Bar that those latter representations were not taken into account separately from the previous representations. However, it is clear that the applicant was able to communicate his position by means of the oral and written opportunities which were available. Accordingly, the issue is not whether an opportunity for representations was afforded, but whether it was sufficient and whether it was fair.

[13] As confirmed by the Supreme Court, in *R(Moseley) v Haringay* LBC [2014] UKSC 56; [2014] 1 WLR 3947, public authorities are not subject to a generally applicable common law duty to consult in every case with those likely to be affected by a proposed decision. However, such a duty can arise in some cases. Broadly speaking, there four sets of circumstances in which an obligation to consult can arise. First, if it is imposed by statute. Second, if there has been a promise of consultation by the relevant public authority. Third, if there is a practice of consultation. Fourth, it can arise if the decision would be procedurally unfair in the absence of consultation. As Lord Reed explained in *Moseley*:

> "[35] The common law imposes a general duty of procedural fairness upon public authorities exercising a wide range of functions which affect the interests of individuals, but the content of that duty varies almost infinitely depending upon the circumstances. There is however no general common law duty to consult persons who may be affected by a measure before it is adopted. The reasons for the absence of such a duty were explained by Sedley LJ in *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1139; [2008] AC 20, paras 43–47. A duty of consultation will however exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation. The general approach of the common law is illustrated by the

> cases of *R v Devon County Council, Ex p Baker* [1995] 1 All ER 73 and *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213, cited by Lord Wilson JSC, with which the BAPIO case might be contrasted."

[14] In the *BAPIO* case referred to by Lord Reed, the limitations of any common law duty of consultation were explained by reference to the constitutional restrictions upon a court becoming involved in prescribing a matter such as the manner, scope, timing and procedures for consultation, where they have not been prescribed by the legislature.

[15] Where a duty to consult arises at common law, the process will generally be considered to be unfair unless it satisfies the "Sedley principles", namely consultation taking place at a formative stage of the process; providing sufficient information about the decision to allow informed representations; allowing adequate time for a response and conscientious consideration of the responses (*Moseley*, at [25], per Lord Wilson).

[16] It is accepted that none of the first three possible sources of a duty of consultation arise in this case. The question is therefore whether procedural fairness required a consultation process which meets the Sedley criteria or alternatively, whether the process which took place was itself unfair. So, both aspects of this ground of challenge ultimately telescope back to the principles of procedural fairness.

[17] It is well established that public authorities which are charged with conducting statutory inquiries and investigations will enjoy very wide procedural discretion and autonomy. The authorities in this area were recently reviewed by Humphreys J in *Re Decisions of the Chair of the Muckamore Abbey Hospital Inquiry* [2024] NIKB 107. He concluded:

> "[41] All these cases, and others to which the court was referred, emphasise the nature of the court's supervisory role over statutory public inquiries. In light of the expertise of those who are appointed to carry out the work of inquiries and the broad discretion vested in the chair in relation to the inquiry's procedure and conduct, the court will only exercise a light touch review."

[18] I am satisfied that this statement reflects the governing principle in this case and that the Commission has an extremely broad discretion to determine its own procedures for conducting the inquiry. In the exercise of this court's supervisory jurisdiction, it should afford those conducting a statutory inquiry very substantial latitude to make procedural decisions and should only interfere in rare cases in which there have been clear breaches of legal obligations governing the conduct of the inquiry or the rights of participants. In this case, the exercise which the

Commission was undertaking involved the consideration and accommodation of multiple interests, not all of which will inevitably align. They included not only the availability of the individual participants and their representatives, but also wider practical considerations such as the availability of the venue, the broader work of the Commission including other the commitments of the designated Commissioners. It also included the public interest in progressing the inquiry within a reasonable time period. In my view, the context is one in which the Commission is entitled to very broad procedural discretion to balance all of these interests and in determining an appropriate process by which to secure the information necessary to make that decision. The primary constraint upon the Commission is to ensure that the process affords all of the parties a fair and equal opportunity to make representations and to ensure that it is sufficient to be able to gather the necessary information in order to understand and evaluate the competing interests. As previously explained, it is accepted by all parties that the discharge of that obligation in a fair manner did not require the Commission to accommodate every interested party for every topic or to ensure they could attend every day of hearings in which they had an interest. In exchanges with the court, Mr Haughey also fairly accepted that formal consultation would not be required for small departures in the timetable if it was necessary to accommodate slippages or other unforeseen circumstances. However, he maintained that the timetable decision in this case was of a different order. He submitted that the more significant the decision, the more extensive the requirements of procedural fairness and that in this case some level of formal consultation was required.

[19] Having reflected carefully on these submissions, it is very clear to me that no obligation of formal consultation arguably arose in this case which required the circulation of a draft timetable followed by representations. While such a process could have been undertaken, I consider that it represents a gold standard, but which goes beyond the essential requirements of fairness in the circumstances. If the Commission had made a commitment to undertake such a detailed process or if there had been any suggestion that such a process would have been the only available means by which to gather all of the necessary information, the position might have been different. Such a thorough process may have been welcomed by participants and it may even have been desirable. However, that is not the test. The issue for the court is whether or not such a process was essential to ensure a fair decision on timetabling and hence was legally necessary. It seems very clear to me that Mr Haughey not only had a sufficient opportunity to make representations about his availability, but that he did so, through the processes which the Commission devised. It was the same opportunity which was available to all of the other parties and there is no suggestion that the Commission was unable to obtain the information which it required. Indeed, the applicant arguably had a greater opportunity than others insofar as he made written representations in addition to his oral submissions on 21 April.

[20] In assessing fairness, it is also necessary to consider the nature of the opportunity which the applicant required in order make known his availability. In

this case, his position was straightforward and easily communicated. He was not available for any dates in 2026 but would be available in 2027. That was quite an extreme position but it was also uncomplicated to explain. In my view, bearing in mind the broad procedural discretion available to the Commission and the particular circumstances of this case, the opportunities for consultation about timetabling which were available to the applicant were plainly both adequate and fair. In the absence of a statutory obligation or the promise of formal consultation, I do not consider it to be arguable that anything more would have been required to ensure that the applicant had a fair opportunity to make his position clear. I am satisfied that he was afforded a fair opportunity to do so. I am satisfied that he availed of the opportunity and I am satisfied that no evidential basis has been put forward to support the contention that his representations were not taken into account by the Commission before they reached their decision on timetabling. The pre-action correspondence on behalf of the Commission makes clear that the applicant's submissions were taken into account along with those of all other parties and there is no evidence to undermine or question the accuracy of this statement.

[21] In the absence of a legal obligation to accommodate Mr Haughey's attendance in person, I therefore consider that the process which was adopted meets the minimum requirements of procedural fairness, notwithstanding that it may have been possible for the Commission to devise a more extensive procedure. I have given anxious consideration to whether or not the issue of the ongoing transboundary consultation process changes that conclusion. I am ultimately of the view that it does not, as I consider that it is not materially different from the other extant issues which the inquiry will consider in the future public hearings. For all other outstanding issues, the parties were permitted to submit a written statement of case, with a facility for making further oral submissions during the inquiry hearings. In that respect, I do not consider that the transboundary consultation is any different. Following the re-advertisement, the commission has the written responses of all parties. If a person is not available to attend a future session in person, the Commission will still be obliged to take the written representations into account and will have evidence from the other participants who support a similar position. That is precisely the same as any other of the extant issues to be considered. It does not therefore change my conclusion on the requirements of procedural fairness.

[22] The fact that Mr Haughey may not be able to attend in person if the inquiry proceeds on the scheduled dates is, of course, devastating for him. However, the Commission has to balance the interests of all parties and the public interest and I consider that the opportunity, which was given to him and to everybody else, in the same way at the same time, ultimately satisfied what fairness required in this case. The alternative would amount, in substance, to an obligation of accommodation. I am not satisfied that it is arguable that any such obligation arises and no submission to that effect was made. I am therefore satisfied that Ground 1 does not raise an arguable point which has reasonable prospects of success.

[23] As regards Ground 2, the applicant contends that his representations were not, as a matter of fact, taken into account. I have already concluded that there is not a sufficient evidential basis to support that contention. It is not arguable and does not have reasonable prospects of success.

[24] By Ground 3, the applicant contends that the decision is flawed by reason of excessive rigidity. I am not satisfied that this ground arises on the facts. Any timetabling decision is ultimately an exercise of procedural discretion by the Commission. It has announced a policy approach not to make changes to that timetable. That policy approach is not, in substance, any different to the previous position. While the policy is rigid on its face, it has been announced with prospective effect and isolated from any future unknown circumstances. Fairly understood, I consider it to be a statement of policy, rather than the pre-determination of any decision on further potential adjustments. Accordingly, I consider that it must be understood as containing an implicit facility for some local flexibility on specific issues if or when such a circumstance arises in the future. Insofar as that policy statement might be relied upon by the Commission to determine any future request for flexibility, I consider that it is premature to consider the issue at this time. The time for consider any potential illegality associated with the policy will be if, or when, it is relied upon.

[25] Ground 4 is a claim that the decision gave rise to a breach of the applicant's rights under articles 6, 8 & 10 ECHR and section 6 of the Human Rights Act 1998. I am satisfied that article 6 is not engaged in this case as the Commission is not concerned with adjudicating upon or determining civil rights and obligations. Its role is purely advisory. Its obligations to act fairly derive from the common law obligation to exercise statutory functions consistently with the requirements of procedural fairness. I have already determined that the Commission's timetabling decision achieved that standard.

[26] As regards article 8, the applicant's claim is that the timetabling decision represented an unlawful interference with the aspect of private life which extends into his professional or employment activities. This argument is based upon the fact that he considers he will be required to choose between his job and his attendance at the inquiry. I am satisfied that this ground of challenge is not arguable. The authorities in this area were considered recently by me the case of *Re Gallagher* [2026] NIKB 46. They include the leading decision of the Grand Chamber in *Denisov v Ukraine* [2018] ECHR 76639/11. Two key issues emerge from those authorities which are relevant for present purposes. First, there must be a sufficient causative connection between the impugned measure and its consequences for the individual. Second, any interference with professional life must achieve a minimum level of severity before the consequences could be regarded as an article 8(1) interference. The relevant threshold is a high one. In *Denisov*, the Grand Chamber stated:

> "[116] … The court will only accept that Article 8 is applicable where these consequences are very serious and

affect his or her private life to a very significant degree …"

[27] It is also necessary to distinguish between the individual's subjective perceptions of the effects of the measure from the objective circumstances (*Denisov*, at [117]). In this case, I am satisfied that the requisite causal connection cannot been established. While the inflexibility which has been expressed by the applicant's employer has resulted in him believing that he has a choice between his job and the inquiry, the reality is that this is a personal decision for the applicant, involving his own personal priorities. The timetabling decision cannot objectively be interpreted as a restriction on employment or an interference in his professional life. The timetabling decision is a generally applicable measure which affects equally all participants in the inquiry and is not a restriction on the employment of any person. Insofar as the applicant may subjectively perceive it as a restriction, when viewed objectively, there is not a sufficient causal connection, as any decision to cease his employment would be a voluntary one, with no element of coercion by the Commission. Even if the requisite causal connection could be established, I am satisfied that the level of interference does not arguably reach the requisite level of severity. Article 8 does not confer a right to any particular employment and the timetabling decision does not prevent the applicant from securing alternative employment in the same or other fields. He has certainly adduced no evidence to support such a far-reaching consequence. Accordingly, I am satisfied that the timetabling decision does not come close to reaching the requisite threshold of severity, even if it amounts to a restriction at all. This proposed ground of challenge is therefore not arguable.

[28] As regards article 10, the applicant did not develop these submissions with any vigour or clarity during the hearing or in his skeleton argument. It is far from clear how article 10 is engaged at all as the timetabling decision imposes no restriction on the applicant's ability to communicate with the inquiry or to make submissions. It does not impose any restriction on his ability to attend in person, to make submissions or otherwise to participate in the same manner as he did previously. Insofar as his participation may be restricted at all, it derives from his employment position and not from any communication constraint imposed by the Commission. In any event, even if the applicant chooses not to attend in the future, he can still communicate with the inquiry by means of his existing written submissions and through other participants who are present on the day. In the circumstances, I am satisfied that there is no arguable 10 interference which would require examination or justification. Accordingly, leave is refused on this proposed ground.

[29] For all of those reasons, I consider that the proposed grounds for judicial review are not arguable with reasonable prospects of success. The application for leave is therefore refused. The question of interim relief does not arise, nor does the application for Aarhus Convention costs protection.

[30] The proposed respondent made no application for costs. I will therefore order that there should be no order as to costs between the applicant and proposed respondent and that all other parties who participated shall be responsible for their own costs.