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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 APPLICATION BY FERGAL WOODS AND SAFE ELECTRICITY A&T LTD FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY THE DEPARTMENT FOR INFRASTRUCTURE

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Philip Henry KC and Robert McCausland (instructed by McIldowies Solicitors) for the Applicants
David Elvin KC and Philip McAteer (instructed by the Departmental Solicitor's Office) for the Department for Infrastructure, proposed Respondent
Dr Tony McGleenan KC and Nicholas Compton (instructed by the Departmental Solicitor's Office) for the Department for the Economy, proposed Notice Party
William Orbinson KC (instructed by Carson McDowell Solicitors) for SONI Ltd and NIE Networks Ltd, proposed Notice Parties

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McALINDEN J

Introduction

[1] As appears from the Order 53 statement dated 30 October 2025, the applicants seek leave to challenge the Department for Infrastructure's ("DfI") decision of 31 July 2025 (planning references SPD/2025/0015/DC and SPD/2025/0016/DC) to discharge planning condition 3 of planning permission O/2009/0792/F and planning condition 2 of planning permission O/2013/0214/F for the North South Interconnector ("NSI").

[2] This is not a challenge to the grants of planning permissions for the NSI development which were made on 14 September 2020. These grants of planning permission were the subject of a previous judicial review challenge by the same

applicants which was heard and dismissed by Scoffield J and reported at [2021] NIQB 93. His decision was affirmed by the Court of Appeal and this decision is reported at [2022] NICA 61. The general background to the NSI development and the applicants' objections to the same are dealt with in those judgments and I do not intend to repeat the detailed narrative histories contained in those decisions. In this present application, the applicants challenge only the subsidiary approvals relating to planting and woodland management of what are now unchallengeable decisions to grant permission for the NSI to proceed.

[3] In brief, the applicants are resolutely opposed to the building of the NSI, which the proposed respondent and proposed notice parties claim is a key energy infrastructure project designed to facilitate energy security and the achievement of the 2050 Net Zero target in Northern Ireland. All the applicants' arguments against the construction and operation of an overhead high voltage powerline supported by pylons were carefully considered by the Planning Appeal Commission ("PAC") in the course of a public local inquiry ("PLI"). These arguments did not prevail. The focus of the applicants' efforts to derail the construction and operation of the NSI is now directed at a decision taken by the proposed respondent on 31 July 2025 in which the DfI discharged two pre-commencement conditions, one each contained within the two grants of planning permission for the NSI.

[4] These pre-commencement conditions relate to the development and implementation of robust planting and woodland management and maintenance plans to reinstate the areas of land worked on during the course of the construction of the NSI. During the course of 2024, NIE Networks produced a landscaping plan and made an application for the discharge of the two pre-commencement planning conditions. This resulted in the DfI discharging the said conditions and this, in turn, resulted in the present judicial review applicants bringing a judicial review application primarily based on perceived inadequacies in the landscaping plan which had been submitted by NIE Networks. That judicial review application was issued in December 2024 and was heard by me on various dates between April and August 2025.

[5] During these hearings, it became apparent that the landscaping plan was, indeed, less than satisfactory and before that application for judicial review was concluded, NIE Networks submitted a revised and enhanced landscaping plan which dealt with the issues that had been explored during the course of the hearings and requested the DfI to make a fresh decision discharging the pre-commencement conditions on the basis of the revised and enhanced landscaping plan. The DfI did make a fresh decision on 31 July 2025 and this rendered redundant the judicial review challenge against the original decisions which said challenge remained extant at that time. That application was dismissed by consent in August 2025, with the proposed respondent paying the applicants' costs.

[6] The applicants then brought a fresh judicial review application in respect of the decision taken by the DfI on 31 July 2025. This fresh challenge is grounded on the alleged inadequacy of the environmental information considered by the DfI in making its decision. In essence, it is alleged that the environmental information is well out of

date and that it should have been updated before the DfI made its decision at the end of July 2025. It is important to note that during the course of the previous judicial review proceedings in 2024/2025 which were ultimately dismissed by consent, the applicants made no complaint about the adequacy of the environmental information either on the basis of passage of time or on any other basis, even though the exact same environmental information was relied on by DfI when making the previous decisions and even though the present decision now under challenge was made while the previous proceedings were still live.

[7] In summary, the thrust of the applicants' challenge relates to the adequacy of the Environmental Statement ("ES") considered by the DfI when making its decision in July 2025. It is argued that the DfI was wrong to conclude that the existing environmental information/statement was adequate for the purposes of assessing the significant effects of the NSI on the environment. It is argued that the environmental information available to DfI was not adequate as a result of the passage of time and the cumulative material changes which have occurred since the environmental information was provided. It is argued that given the scale of the NSI, the DfI was right to conclude that an Environmental Impact Assessment ("EIA") was required but was wrong to determine that there was no need for any updated or further environmental information when making its decision at the end of July 2025.

[8] It is argued that the DfI was wrong to rely on regulation 13(2) of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 ("the 2017 Regulations") when it concluded that the existing environmental information/statements were adequate to assess the significant effects of the NSI on the environment. Instead, it is argued that the DfI should have applied regulation 13(3) of the 2017 Regulations and it should have served a notice seeking further information in accordance with regulation 21(1). It is argued that the last environmental information was provided in 2019 and a striking feature of the lengthy planning process in this case has been the production of many updates of the original 2009 ES in 2011, 2013, 2015, 2017 and finally in 2019. At the very least, a further updated ES should have been sought before making the decision in July 2025.

[9] It is argued that the earlier ES submitted in support of the application for substantive planning permission accepted that the impacts on the environment were significant and, in such circumstances, even minor changes to such a significant project "are capable of causing significant changes to the environmental impact."

[10] It is argued that the new contemporaneous baseline along the proposed NSI corridor is different from the baseline which existed when the earlier ESs were prepared. There are new buildings. There are different access routes, with greater utilisation of a smaller number of routes, thereby increasing damage on those used. There are changes in the use of various lands, including but not limited to land which was previously grassland now being agricultural seed mix. Hedgerows are to be removed and others are to be reduced in height. Arable land is to be de-compacted. The views of landowners regarding changes to their lands have not been sought since 2019. The relevant areas of land have naturally developed and evolved during the

six-year period since the last ES and none of these issues have been addressed or considered.

[11] It is argued that the cumulative impact of all these changes, the scale of the NSI project, the acceptance that a new contemporaneous baseline exists and the six years that have passed since the provision of the last ES means that the existing information is not adequate and that further updated environmental information ought to have been sought prior to making the impugned decision in July 2025.

[12] The Order 53 statement goes on to assert that the information provided by the Northern Ireland Environment Agency ("NIEA") was limited as it focused on hedgerows with other relevant matters such as the possible impact on wildlife, hydrology and traffic being overlooked. It is alleged that a project review of the NSI has been conducted and this has identified "changes in accesses and easements" and this information was not provided to DfI prior to its decision being made and was not brought to the attention of the court during the course of the previous judicial review proceedings. It is further alleged that the existing ES "does not adequately take into account the undergrounding work required."

[13] The applicants allege that the DfI has failed to follow its own Development Management Practice Note 98 which it is alleged strongly encourages decision makers to consider "re-screening the proposal" where "changes to the development or the receiving environment may constitute a material change."

[14] The proposed respondent and proposed notice parties put forward the case that the application is unarguable with no realistic prospect of success. They argue that the issue of the adequacy of an ES can only get off the ground if the very high hurdle identified in the authorities is met and that is that the ES cannot in law be regarded as an ES. They note that when this application was commenced, the applicants did not have the benefit or support of any expert ecological or environmental evidence whatsoever. During the course of the leave hearing, the court acceded to the applicants' application to adjourn the application to enable the applicants to obtain such expert evidence. The proposed respondent and proposed notice parties now argue that the expert evidence that has now been obtained simply goes to confirm that there is absolutely no merit in the applicants' challenge.

[15] In relation to the issue of the impact of the NSI upon the environment, the PAC concluded at the end of the PLI into the original planning applications that the main likely significant effects of the development on the environment were: (a) residential amenity by virtue of the proposed development's visual impact; (b) visual amenity and landscape character from eight vantage points; and (c) the settings of four raths and views to and from them.

[16] Proposed mitigation measures which were proposed for the substation site consisted of landscaping proposals including earth moundings, special lighting to minimise lighting spillage and building design to compliment the appearance and character of the local area. Proposed mitigation measures for the tower working areas included tower access tracks and low voltage crossings; the full reinstatement of any

areas worked upon by either planting them out to replace any vegetation lost as a result of the works including hedging or sowing them out as pasture. The replacement of any fencing which was disturbed was also stipulated as was the requirement to ensure that there would be no remaining areas of compacted land once the work had finished.

[17] Subsequently, developed and refined Planting Plans and a Woodland Management and Maintenance Plan were prepared and these set out how the mitigation proposed within the ES would be carried out on the ground. The NIEA were consulted about the most recent iteration of these plans and were content with the details contained therein. In supporting the application for the discharge of the conditions, the DfI wrote on 25 July 2025 that:

> "It is evident, in particular from the areal imagery provided by the applicant that there have been alterations to the baseline environment in recent years but these changes, which include changes in land use and the vegetation present, are not considered significant and would not alter the conclusions previously reached.
>
> Having regard to the above, the likely significant environmental effects arising as a consequence of the proposed development have been satisfactorily identified, described and assessed. The environmental impacts remain as set out and described as above. The details contained with these applications for subsequent consent have not altered that assessment or the conclusions of the original ES.
>
> It is therefore, considered that the environmental information previously submitted in relation to the parent applications remains adequate to assess the main likely significant effects of the development on the environment in respect of the impacts on landscape and visual amenity and must be taken into consideration in the decision for subsequent consent. It is not considered that any further environmental information is required."

[18] In granting the discharge of the two conditions on 31 July 2025, the DfI stated that:

> "In accordance with the conditions, the Planting and Woodland Management and Maintenance Plan dated 28 May 2025 must be implemented in accordance with the approved details and accompanying drawings listed below. Should any changes or amendments of the Planting Plans be required in the future, e.g. as a result of changes on the ground, amended Planting Plans should be

submitted to and agreed in writing with the Department.

…

It is acknowledged that no vehicular movements are proposed in the oversail area to the south of Crossbane Road and the construction accesses associated with the oversail area are not required, and therefore no reinstatement will be necessary at these locations. Whilst this may be the current agreed position, should this situation change at any stage up to the end of the construction process, and it is proposed to disturb any vegetation in this area or utilise any of the two access tracks from Crossbane Road, a detailed Planting Plan for this area must be submitted to the Department for agreement in writing and no works should commence un this area until n approved plan is in place."

[19] In its decision, the DfI noted that it had received correspondence from third parties including the judicial review applicants in this case raising a number of issues including the asserted need for an EIA screening determination. There was also a request for an updated EIA, given the material and cumulative changes to construction access routes which meant that the Construction Traffic Management Plan and Construction Environmental Management Plan were outdated. It was contended that new developments such as dwellings, additional electric and communication lines, fencing and other land use changes had been constructed within, under or directly adjacent to proposed access routes. The DfI stated that all these issues had been considered when coming to its decision and, indeed, it is clear from the decision that meaningful consideration was given to the issues raised.

[20] The DfI noted that in Chapter 13 of the Consolidated Environmental Statement ("CES") dated June 2013, it was clearly stated that the landscape assessment indicated that there would be significant adverse impacts upon the landscape of some parts of the study area. There would also be significant adverse effects on the visual amenity afforded from many locations from within the immediate area adjacent to the line route. These matters were raised in and received considerable attention during the PLI and the PAC clearly referred to such impacts in its report following the PLI.

[21] In its decision dated 31 July 2025, the DfI referred to the plans received on 30 June 2025 (Rev A), the eight Rev B plans received on 11 July 2025 and the Rev B and Rev C drawings received on 30 July 2025 and stated that these reflected all the mitigation and avoidance measures outlined in the CES, CES Addendum and the Further Environmental Information 2019. The DfI stated that it had concluded that the environmental information (CES, CES Addendum and Further Environmental Information 2019) previously submitted in relation to the parent applications, which had been the subject of consultation with the public and with other relevant bodies, was adequate to assess the significant effects of the NSI development on the

environment. The DfI went on to state that under regulation 13 of the 2017 Regulations, this environmental information had to be taken into consideration when making any decision on the subsequent discharge of conditions (a "subsequent application") but that it was not necessary to request further environmental information when dealing with the issue of subsequent consent because the environmental impacts on the landscape, visual amenity and on ecology remain as set out in the CES and the details contained with these present discharge applications had not altered that assessment or the conclusions of the original ES in relation to the issue of reinstatement of landscaping.

[22] The DfI concluded that the likely significant environmental effects of the proposed development have been satisfactorily identified, described and assessed and that the EIA process was compliant with regulation 24 of the 2017 Regulations.

[23] Regulation 13(2) and (3) of the 2017 Regulations are clearly important in the context of this judicial review application. The relevant provisions are set out below:

> "(2) Where it appears to the … Department that the environmental information previously submitted in relation to the original application is adequate to assess the significant effects of the development on the environment, it shall take that information into consideration in its decision for subsequent consent.
>
> (3) Where it appears to the … Department that the environmental information already before it is not adequate to assess the significant effects of the development on the environment, it shall serve a notice seeking further information in accordance with regulation 21(1)."

[24] The case being made out by the applicants in this judicial review leave application is a simple and straightforward one and it boils down to this. Given the types of information and level of detail that were incorporated in the CES, the ES Addendum and the Further Environmental Information 2019, with field assessments involving numerous viewpoints and the assessments of impact on individual properties 500m to either side of the proposed powerline, with regular updates on additional visual receptors up to 2019, the environmental information which was considered in 2025 when deciding whether to discharge these two conditions was clearly out of date and inadequate for the purpose of assessing the significant environmental impacts of the NSI development. It is argued that in order to pass the test of adequacy set out in regulation 13(2) of the 2017 Regulations, the DfI was duty bound to consider all the changes on the ground that had taken place since 2019 and if they had done so they ought to have concluded that the passage of time and the nature and extent of those changes in the environment required the provision of updated environmental information under regulation 21 of the 2017 Regulations. In short, there was absolutely no assessment of the impact on multiple new properties built since

2019. The impact on new and additional visual receptors constructed after 2019 had not been assessed.

[25] During the hearing of this leave application, the court was reminded of the relatively low threshold test for granting leave in that all the applicants have to demonstrate at this stage is an arguable case with reasonable prospects of success. There was some discussion about the absence of an expert report supporting the applicants' arguments and as a result of that discussion the leave hearing was adjourned to enable to applicants to, if possible, obtain a supportive independent expert report.

[26] Following a relatively lengthy adjournment, the applicants produced and sought to rely on a report prepared by Mr Simon Neeson, a director of "The Landscape Partnership Ltd" which is dated 7 May 2026. This company is a practice of chartered landscape architects, chartered ecologists and chartered environmentalists registered with the Landscape Institute and a member of the Institute of Environmental Management and Assessment and the Arboricultural Association.

[27] It is clear from 1.8.1 of the report that Mr Neeson conducted what he described as a proportionate, high-level desktop exercise within a limited timeframe based on a targeted selection of documents considered most relevant to landscape and visual matters. This included the judicial review pleadings and "associated affidavit material." He specifically stated that the report did not represent a comprehensive review of all environmental information associated with the NSI project. No site inspections or fieldwork were undertaken and, therefore, no independent verification of site conditions, visibility or receptor experience were carried out. The report does not constitute a full Landscape and Visual Impact Assessment ("LVIA") nor does it seek to re-assess landscape and visual effects in detail. Tellingly, Mr Neeson stated that his report was "focused principally on the potential landscape and visual implications that changes of the nature identified may have for the continued adequacy of the environmental information previously relied upon."

[28] Bearing in mind these stated limitations, Mr Neeson was still able to conclude at 6.1.2 that the approach adopted in 2019 "demonstrated an acceptance by the project team and the competent authority that environmental baseline conditions for a project of this scale and duration are not static, and that the adequacy of environmental information depends upon the continuing relevance and currency of the baseline conditions against which effects were originally assessed." He went on to state at 6.1.3 that the material he had reviewed indicated that "Conditions on the ground may have continued to evolve since 2019 in relation to receptors, access arrangements, land use and implementation assumptions." He stated at 6.1.5 that where baseline conditions materially change, "the validity of previous assessment conclusions may be affected."

[29] In the remaining sections of Chapter 6 of his report, Mr Neeson considers such matters as new receptors and their environmental context, vegetation and mitigation context, access route changes, construction methodology and implementation changes, undergrounding implications receptor identification and sensitivity,

mitigation and deliverability and he concludes at 6.4.6 that there is a "reasonable professional basis for questioning whether the environmental information presently relied upon by the DfI fully reflects the current baseline conditions, current construction methodology, current receptor relationships and the present effectiveness and adequacy of mitigation measures."

[30] In section 7.1.5 of his report Mr Neeson expressly recognises that not every identified post 2019 change would necessarily alter the overall conclusions of the earlier assessment or result in materially different significant effects. In section 7.1.6 he goes on to state that in his professional opinion the material reviewed identifies a sufficient degree of potential change and uncertainty to "reasonably raise questions" regarding the continuing reliability of aspects of the 2019 landscape and visual baseline; the continued applicability of some of the earlier assessment assumptions; and whether the environmental information now relied upon fully reflects conditions likely to presently exist. He went on to state at section 7.1.8 that the "changes identified would ordinarily justify further targeted review of landscape and visual environmental information in order to confirm whether previously assessed effects and mitigation assumptions remained representative of current conditions."

[31] In section 8.1.7 of the report Mr Neeson opines that "the passage of approximately six years between the 2019 FEI Addendum and the 2025 discharge decisions increases the likelihood that environmental baseline conditions, receptor relationships and construction assumptions may no longer correspond fully with those previously assessed." In section 8.1.8 he stated that "the material reviewed identifies sufficient change and uncertainty to reasonably raise questions regarding the continued reliability and currency of aspects of the earlier landscape and visual assessment." In section 8.1.9 he reasserts his professional opinion that "there was sufficient evidence of changed baseline circumstances and altered implementation assumptions to reasonably justify further targeted review and updated environmental information in relation to landscape and visual matters prior to the discharge decisions being made."

[32] This report and the qualified manner in which Mr Neeson's opinions are expressed therein for all intents and purposes dispose of this leave application. In essence what he is saying is that the changes that are alleged to have occurred between 2019 and 2025 may be such as to raise questions about the reliability of the available environmental information and would justify a further targeted review in relation to landscape and visual matters. The statutory test considers the adequacy of the environmental information relied upon. It is for the decision-maker to evaluate whether the environmental information is adequate. An appropriate margin of appreciation is afforded to the decision-maker and the decision-maker's judgement in relation to adequacy can only be challenged on the basis that it is *Wednesbury* irrational.

[33] The Supreme Court in the *Friends of the Earth* case, [2020] UKSC 52 at para [142] to [144], endorsed the approach set out by Sullivan J in *Blewett* [2004] Env.L.R. 29. It was recognised that there will be cases "where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an

environmental statement as defined by the Regulations … but they are likely to be few and far between." The UKSC endorsed the approach of leaving "the authority with a wide range of autonomous judgment on the adequacy of the information provided. It is not for the court to fix this range of judgment more tightly than is necessary. The authority must be free to form a reasonable view of its own on the nature and amount of the information required …"

[34] Mr Neeson's report based as it is on the matters raised in the affidavit evidence lodged in support of this application for leave to apply for judicial review does not support or provide the foundation for the claim that there is an arguable case with reasonable prospects of success that the environmental information judged to be adequate by the decision-maker in this case is so deficient that it cannot reasonably be described as an environmental statement as defined by the 2017 Regulations.

[35] The conclusion that this case does not get off the ground is copper fastened in my view when one considers the judgment of Sullivan J in the *Milne* case [2001] Env.L.R. at para [110]:

> "The question whether such information does provide a sufficient description of the development proposed for the purposes of the Assessment Regulations is, in any event, not a question of primary fact, which the court would be well equipped to answer. It is pre-eminently a question of planning judgment, highly dependent on a detailed knowledge of the locality, of local planning."

This paragraph was specifically approved in this jurisdiction by Colton J in the case of *Gibson* [2016] NIQB 82.

[36] When the last update of the environmental assessment was conducted in 2019 it was clearly recognised that there had been changes in the baseline since the previous update. These are described in paras [12] and [13] of Chapter 9 of the assessment set out at page 1009 of the bundle. However, the key paragraphs in the concluding section of Chapter 9 are paras [30] and [31]. It is worthwhile setting these out in full.

> "30. It has been assessed that there are no significant changes in the landscape resource of the study area. In terms of visual effects, there are proposed or built individual residential receptors that will experience a significant visual effect.
>
> 31. It has been concluded there are no changes that would significantly alter the findings and conclusions of the previous landscape and visual assessment. As stated in the 2013 Consolidated ES:
>
> > 'The landscape assessment indicates that there would be significant adverse impacts upon the landscape of some parts of the study area. There

> would also be significant adverse effects on the visual amenity afforded from many locations from within the immediate area following the line route. However, it is considered that the landscape and visual resource of the wider study area would not deteriorate to a significant degree and the overall impact on landscape and visual amenity in general is therefore restricted to those receptors/areas within close proximity to the towers and overhead line.'"

[37] In the context of this leave application, it cannot cogently be argued that the construction of a further limited number of new properties within 500m of the proposed power line in the period between 2019 and 2025 has altered the conclusion that "there would be significant adverse impacts upon the landscape of some parts of the study area. There would also be significant adverse effects on the visual amenity afforded from many locations from within the immediate area following the line route." Further it cannot cogently be argued that the environmental information considered by the DfI in 2025 was inadequate.

[38] Finally, as part of a belt and braces approach following the earlier judicial review in which the previous iteration of the landscaping plan was the subject of intense scrutiny, the latest iteration of the Planting and Woodland Management and Maintenance Plan prepared in May 2025 which formed the basis for the present application for discharge of the conditions demonstrates that every effort has been made to ensure that the proposals set out in the submitted planting plans take account of and reflect the current condition of the landscape within the boundaries of the planning applications. The most recent large scale vector mapping produced by OSNI in April 2025 has been utilised in the creation of the planting plans. In addition to this, NIE Networks took the decision to commission an aerial drone survey of the application sites in order to ensure that changes within the planning application site boundaries which had occurred subsequent to the production of the OSNI large scale vector maps were identified and annotated clearly on the planting plans.

[39] It is clear from the exhibited materials that this high-resolution imagery drone survey which was carried out over six days in April 2025 captured the full extent of all lands within the planning boundaries including lands subject to the overhead line, towers, construction access roads, guarding locations and low voltage underground works. The drone imagery was used to establish the current extent of vegetation growth, particularly along field boundaries (hedgerows) and the nature of vegetation within the application sites. It also assisted in the identification of changes in the landscape and build features including residential properties which had not been reflected in the OSNI data obtained in April 2025. These changes were annotated on the planting plans with landscape proposals designed to reflect the most accurate baseline. Site visits were then carried out in May 2025 to a number of areas in order to "ground-truth" the situation captured by drone imagery in a number of instances where this imagery suggested that the situation on the ground was or may be evolving.

[40] The Planting and Woodland Management and Maintenance Plan also reveals that OSNI Enhanced Digital Terrain Model ("EDTM") data was obtained from OSNI in April 2025 in order to create 5m interval contour data which has been added to the planting plans in order to provide additional context to the proposals.

[41] All this goes to demonstrate that changes in the baseline between 2019 and 2025 have not been ignored and that there is a clear evidential base for the conclusion that the environmental information which was considered during the decision-making process in July 2025 was adequate.

[42] In determining to reject this application for leave, although I have had regard to the fact that this challenge to the adequacy of the environmental information could have been made during the previous judicial review which challenged the adequacy of the landscaping plan, the failure to do so would not be fatal to the present application, if there was any merit in the present application.

[43] The Order 53 statement in this application made reference to the fact that a project review of the NSI had been conducted and this has identified "changes in accesses and easements" and this information was not provided to DfI prior to its decision being made and was not brought to the attention of the court during the course of the previous judicial review proceedings. It was further alleged that the existing ES "does not adequately take into account the undergrounding work required." Neither of these matters were pursued during oral submissions and it would appear from the documentation that no project wide review was conducted and that there has been no changes to the extent of the undergrounding work for which planning approval was granted.

[44] The application for leave is therefore dismissed with no order as to costs.