

**Neutral Citation No: [2017] NIQB 133**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**Ref: KEE10464**

**Delivered: 23/11/2017**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**IN THE MATTER OF AN APPLICATION BY RURAL INTEGRITY (LISBURN 01)  
LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF AN APPLICATION BY DR THERESA  
DONALDSON FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION BY LISBURN AND CASTLEREAGH  
CITY COUNCIL TO ISSUE PLANNING PERMISSION  
REFERENCE S/2014/0908F**

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**KEEGAN J**

**Introduction**

[1] This case comes before the Court by way of two applications for judicial review in relation to an impugned decision which was taken on 28 April 2017 by Lisburn and Castlereagh City Council whereby the Council granted full planning permission to Wilmar Leisure Limited for the removal of a planning condition (application under section 54 of the Planning Act (Northern Ireland) 2011 to remove holiday occupancy (Condition 2) of approval S/2008/0878/F for holiday home development comprising 58 apartments at land at Annacloy House, 14 Trench Road, Hillsborough).

[2] It is important to note that the first application in time is that of Rural Integrity Lisburn 01 Limited. That application is dated 7 June 2017. The second application is that of Dr Theresa Donaldson who is the Chief Executive of Lisburn and Castlereagh City Council and that application is dated 25 October 2017. I should say that the beneficiary of the impugned decision Wilmar Leisure Limited was a notice party to these proceedings.

[3] The case came before me for directions on 17 October 2017. On that date Mr Gordon Duff appeared on behalf of the applicant Rural Integrity Limited. In the

papers Mr Duff describes himself as a director of the company. It is also apparent from the papers that Mr Duff is a developer and he avers that he owns land which he hopes will produce 10 or more windfall housing sites in the Belfast area. The proposed respondent, Lisburn and Castlereagh City Council, was represented by Mr Beattie QC.

[4] At the directions hearing Mr Beattie raised an issue about the standing of Mr Duff to take proceedings in this case. As a result I directed skeleton arguments on the issue of standing and I adjourned the case for hearing of leave and the preliminary issue on 6 November 2017. As is apparent prior to that hearing the application was lodged by Dr Donaldson and I will come to the substance of that in due course. On 6 November 2017 Mr Beattie appeared on behalf of Dr Donaldson and on behalf of Lisburn and Castlereagh City Council. I pause to observe the unusual circumstances of that. Mr McBurney, solicitor, appeared on behalf of the notice party and Mr Duff appeared as litigant in person on behalf of the applicant Rural integrity Limited.

### **The challenge by Dr Donaldson**

[5] It is important to note that the application brought by Dr Donaldson was on the basis that the impugned decision should now be quashed. She filed an affidavit setting out the grounds for this which she conceded were that the permission had breached the protocol for operation of the Lisburn and Castlereagh City Planning Committee as members of the Planning Committee failed to declare an interest in the planning application in breach of the protocol. In particular, paragraphs 6 and 7 of the affidavit state as follows:

“6. ...I have carried out my own review and assessment of the matter in light of the letters of complaint received. I am concerned with Council governance and regulation. The Council seeks to ensure adherence to its Protocol.

7. Two Members of the Planning Committee who attended the meeting on 9<sup>th</sup> January 2017, who participated in the discussion and voted to approve the planning application had previously submitted letters of support for the wider development comprising a hotel and golf course which is related to the planning application. These two Members failed to declare an interest at the 9<sup>th</sup> January 2017 planning committee meeting. They proceeded to take part in the discussion, and, thereafter to vote on the planning application.”

[6] Mr McBurney, solicitor, indicated that the beneficiary of the decision had no objection to the decision being quashed. Mr Beattie considered that I should simply quash the decision on that basis and not hear any further from Mr Duff.

[7] I declined that application on Mr Duff's well-made point that in fact his judicial review was first in time and that this case raised some issues of public interest in relation to planning matters and adjudications. I therefore heard from Mr Duff in relation to the challenge that he put before the Court. I should say that Mr Beattie also accepted that he had to apply for leave to extend time in relation to Dr Donaldson's application but he argued that as she had identified a flaw in good public administration, the Court should extend time. I heard the case over one full day.

[8] After that hearing I convened a further short directions hearing as Mr Duff had applied to present further written argument. I allowed him to do that and Mr Beattie presented a written reply. I have considered all of these documents. Unfortunately, Mr Duff has continued to present documents in an unsolicited manner. I will give him the benefit of the doubt as he is a litigant in person however he has some experience of the Courts and he should know that this is not an appropriate way to conduct a case. I note that Mr Duff makes some complaints about counsel and other persons in his most recent document submitted to the Court. These are matters which I will not engage with. I consider that Mr Duff has also had ample time to present his case in writing and orally and he has capably made all of the points to me. I do not need to deal with Mr Duff's joinder application given the course I have decided to take.

### **The Challenge by Rural Integrity**

[9] Mr Duff's challenge has taken various forms in that he has filed numerous amended Order 53 statements. The clearest statement of the applicant's case supported by his skeleton arguments is that the impugned decision is unlawful on the following broad grounds:

- (a) Economic
- (b) Environmental
- (c) Traffic
- (d) Contrary to development plans
- (e) Breach of Code of Conduct
- (f) Policy
- (g) Legal.

[10] The application further points out that the respondent has conceded that it has breached the Code of Conduct for Councillors. In his oral argument Mr Duff took me in some detail through his prepared papers which included comprehensive documentation. He essentially made the case that he should be allowed to advance

his points about the grounds for the quashing of a decision on the various bases he set out. I have listened to those points and I have considered the case made on paper. Mr Duff accepted that the decision would inevitably be quashed given the consensus about that but he wanted the Court to hear the very important public issues that he had to raise about how this had all come about. I note that in his most recent material Mr Duff raises new points about an alleged NAMA connection and political issues. I pause at this point to state that the Court is dealing with a judicial review of a particular planning application and it will not become embroiled in some rolling challenge or consideration of satellite issues.

[11] Mr Duff also said that he had spent considerable time preparing the case. He said that if it were not for him the case would not be before the Court and the flawed decision would not be quashed. Mr Duff was on firmer ground in making these points to me. He argued that the actions of Dr Donaldson in bringing an application were designed to stymie him making his case and to try and draw a blanket over the flawed decision-making. He argued that Dr Donaldson's affidavit does not present a full picture for various reasons including his case that 3 councillors rather than 2 had a conflict of interest. Mr Duff also submitted that he should clearly be awarded his costs in any application.

[12] During his submissions Mr Beattie confirmed that the proposed respondent in the Rural Integrity case was no longer taking any point about Mr Duff's standing in the judicial review. He stated that was why a skeleton argument was not filed. In his argument Mr Beattie stated that the decision if quashed would have to be properly reconsidered in accordance with law and that the Council would have to take on board that the decision would have to be made lawfully and also that the decision would have to take into account the issues raised by Mr Duff, and in particular the issue of environmental screening. Mr Beattie was keen to stress that there was no actual concession as to the grounds relied on by Mr Duff save the issue of the breach of Code of Conduct. However, Mr Beattie quite clearly stated that any fresh decision-making process would have to be conducted in accordance with law and would have to take into account the issues raised by Mr Duff.

[13] I do not intend to recite the facts in any greater detail given the way the case developed. Suffice to say that this application falls within a wider context of a significant development in this area. This planning application is in relation to a discrete part of a 200 acre site. This is a multi-million development which includes a golf course, hotel and housing. It is an application to remove a holiday occupancy condition and it also resulted in a section 76 agreement. The impugned decision was taken against the recommendation of the Planning Officer after a pre determination consideration by the Department of Infrastructure.

## Issues

[14] In light of the above there are a number of issues in this case which I define as follows:

- (i) Which judicial review should be determined first?
- (ii) Should I extend time for Dr Donaldson's judicial review?
- (iii) Should I grant leave to Mr Duff?
- (iv) As there is agreement that an order of certiorari should be made should the case be disposed of on that basis?

[15] In determining these issues I must bear in mind the overriding objective in any case as contained in Order 1A the Rules of the Court of Judicature (NI) 1980 to avoid unnecessary public expenditure. I also bear in mind that cases of this nature engage the public interest.

## Consideration

[16] The shape of this case is extremely unusual. I have an application by an interested person to quash a planning decision and a subsequent application by the Chief Executive of the relevant Council to quash its own decision. I reach the following conclusions on the basis of all of the material I have had put before me and on the basis of a full and comprehensive argument over one day.

[17] I have considerable sympathy with Mr Duff's point that the application by Dr Donaldson is second in time and indeed out of time. It does not require a massive leap on my part to think that the timing of this application is more than coincidental. It is also in my view extremely significant that the concession as to non-declaration of interests only came to light on the basis of letters sent by Mr Duff between 13 to 16 September 2017. So it follows that were it not for Mr Duff's diligence this matter may very well not have come to light and as such a flawed administrative decision would not have been exposed. Dr Donaldson in her affidavit admits a breach of protocol. This is a highly significant and serious matter in terms of good public administration. It is something that the public is entitled to know about and that is the purpose of this written judgment.

[18] It is clear to me that Dr Donaldson did not act immediately upon receipt of the information but waited until after court on 17 October and I see no explanation as to that in the affidavit. This lends weight to Mr Duff's arguments that there was an element of damage limitation in the bringing of the second application. As such I decline to exercise my discretion to extend time pursuant to Order 53 Rule 4 of the Rules of the Court of Judicature - See *Re Zhanje's Application* [2007] NIQB 14. It is

clear to me that the Council had another choice which was to effectively concede the case being made by Mr Duff on the Code of Conduct ground. As such I am satisfied that Dr Donaldson's concern that a flawed administrative decision would remain in place can be dealt with on foot of Mr Duff's application.

[19] By virtue of the concession, Mr Duff has standing to bring his own judicial review and the application made by Dr Donaldson means that he clearly has an arguable case to make. There is no valid argument against leave being granted in these circumstances.

[20] The real issue of substance concerns the utility of having a further hearing to determine every part of the wide ranging case raised by Mr Duff. I explained this issue to Mr Duff during the hearing. I have to carefully consider the particular position in this case given that there is a consensus that the impugned decision should be quashed. The impugned decision would therefore have no force or effect. In other words the substantial relief sought by Mr Duff has been achieved and any new decision must now be reconsidered and taken in accordance with law. I note that there is a considerable factual dispute about some of the matters raised by Mr Duff even though he was clearly right about the breach of the Code of Conduct which is highly significant in itself. I am fortified in my view given the nature of the recent material he has lodged. In view of the concession made by Dr Donaldson, the substantive case is now conceded.

[21] In such circumstances the Court must consider whether any further hearing is necessary. I apply the principles set out in *R v Secretary of State for Home Department ex p Salem* [1999] 1AC 450 and the words of Lord Slynn:

“The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.”

[22] I dealt with this area of law in *Re Wright's Application* [2017] NIQB 29. The Court is bound to conduct an evaluative exercise on the facts of each case. In this case I take particular account of the following:

- (i) Notwithstanding the fact that there is a consensus that the decision should be quashed there is a high degree of dispute on the facts about the other issues raised by Mr Duff.

- (ii) I am guided by the overriding obligation and the need to correct unlawful decisions in a timely manner. This is particularly so in the sphere of planning where many interests are engaged and prejudice may be occasioned by delay.
- (iii) Mr Beattie has confirmed that the decision will be reconsidered and he has given an undertaking that all relevant points will be considered.
- (iv) Any further hearing which would undoubtedly be long and complex and costly.
- (v) When the impugned decision is quashed by order of certiorari it has no force or effect.
- (vi) Mr Duff may bring a further challenge if he considers that the decision taken after a re consideration is unlawful in some way.
- (vii) It is open to Dr Donaldson or Mr Duff (and indeed it is a course which may commend itself ) to refer any matters to the NI Public Services Ombudsman given the case made in relation to breaches of good public administration.

[23] Accordingly, I am prepared to grant relief at this stage in favour of Mr Duff and on foot of his application. I consider that this course satisfies the justice of this case and the public interest. In my view there is a strong imperative to quash an unlawful decision in a timely manner. It is highly significant that the Chief Executive of a Council has accepted that a planning decision such as this should be quashed on the basis of a breach of the Code of Conduct whereby Councillors did not declare an interest. I am quashing the decision on the basis of Mr Duff's intervention which highlighted this issue without any further conclusion on the merits of the additional grounds. That does not mean that the additional grounds are ignored because in exercising my supervisory function I will also direct that the decision is retaken and that it specifically takes into account all relevant matters raised by Mr Duff including the issue of environmental impact. It is highly important that decisions of this nature are taken in a lawful and transparent way. Mr Beattie was quite clear that this will be done but I restate the fact that the new decision must take into account all of the relevant matters raised by Mr Duff. Mr Duff may challenge any new decision if he considers that it is unlawful and so he is not prejudiced in any way.

### **Conclusion**

[24] Accordingly, I quash the impugned decision and direct that the planning application be reconsidered in light of this judgment. I will hear the parties as to any other matters and the costs of this application.