Neutral Citation No. [2006] NIQB 67

Ref: **GIRC5653**

Judgment: approved by the Court for handing down

Delivered: **29/09/2006**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY LIAM WARD FOR LEAVE TO APPLY FOR A JUDICIAL REVIEW

and

IN THE MATTER OF DECISIONS OF THE DEPARTMENT FOR RURAL DEVELOPMENT DATED 16 MARCH 2006

GIRVAN J

[1] In this application the applicant seeks to challenge the decision of the Department of Rural Development dated 16 March 2006 whereby they published Draft Planning Policy Statement 14 relating to the development in the countryside and issued a Ministerial Statement purporting to govern the status and weight of the policies of Draft PPS 14. The relief sought in the present application is relief which is currently also being sought in a separate application brought by Omagh District Council against the Department.

[2] The respondent has raised a question as to the standing of the applicant to bring this application and further raises the question whether the court should stay the application in any event because the issue is already before the court.

[3] The applicant summarises his interests as follows:

(a) The impact of the impugned policy on his business, short and long term.

(b) Its potential impact on the people he employees.

(c) The impact on the planning applications which he had submitted on behalf of his family which he asserts is directly affected by Draft PPS 14 and in respect of which he has a family interest.

[4] So far as the last mentioned matter is concerned, reference is made to two applications H-2005-0114-0 and H-2006-0152-0. The applications were made by the applicant's uncle. These applications were unsuccessful on grounds unrelated to Draft PPS 14. An appeal has been lodged in relation to those planning applications. So far as Draft PPS 14 is concerned, the Ministerial Statement of 16 March 2006 made clear that the Draft PPS 14 would only take precedence over the existing policies listed in the Draft and should be accorded substantial weight in the determination of the planning applications received after 16 March 2006. Mr Larkin QC on behalf of the applicant argued that if the Draft PPS 14 becomes established policy based on that Draft, it may well be applicable in relation to the applications which are the subject of the, as yet, unheard appeals. The applicant's interest in the planning application is merely what Mr Larkin QC represented was a spes successionis. The land belongs to his uncle and who is still alive. The applicant claims that he is likely to succeed to the land although this is by no means clear or certain. The applicant's case on paragraph (c) is contingent, indirect and speculative. I do not consider that it has been established that he has on this ground a sufficient interest.

[5] Turning to the remaining grounds, there is a distinction to be drawn between a claimant asserting a personal standing and one asserting a representative standing. The applicant does not claim to be bringing the claim on a representative basis. In Supperstone on Judicial Review 3rd Edition, it is suggested that to qualify as an applicant entitled to bring a judicial review in representative capacity, the body must be regarded as reputable and responsible and as having significant expertise in the area with which the claim is concerned; the issue is accepted as being of real importance and there is no potential claimant better placed to bring the claim. In this instance a district council is already asserting the claim. Where, as here, the claimant is bringing the claim in as personal capacity, the House of Lords in Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses [1982] AC 617 ("IRC") has held that at the leave stage the court should take a preliminary view of standing as the question of standing can be reconsidered at the full hearing in the light of all the evidence. At the leave stage the court is only concerned to exclude those with no legitimate interest in the proceedings, that is those who can properly be described as cranks, busybodies or mischief makers (per Lord Wilberforce, Lord Diplock and Lord Scarman in IRC). At this stage I conclude that the applicant has a sufficient interest to bring the application. It could not be said that he is a mere busybody. As an architect with a rural practice he has an interest in the proper administration of planning law and the proper administration of the planning law which directly impacts on his clients and on his business.

[6] On the question whether the court should order a stay of the proceedings or adjourn them, this may well be in the financial interests of the applicant himself. If he presses on and if he loses on the issue raised in the application he will be liable in costs. The Department should not incur much in the way of additional cost by the fact that this applicant is bringing in the proceedings which could be listed at the same time as the Omagh District Council case for argument. The court cannot preclude an applicant pursuing his remedy and a stay would inappropriate. If the

applicant fails the respondent has its remedy in cost. Mr McCloskey QC contended that the affidavit of Mr Gilder was objectionable on the grounds that it was in the nature of sworn argument. Insofar as it purports to draw conclusions of law, Mr Gilder is trespassing on the realm of the court and the trial judge will be entirely aware of that and uninfluenced by Mr Gilder's purported conclusions of law. However, I do not consider that it is necessary to require further costs to be incurred in the preparation of a corrective affidavit since the applicant's case is clearly spelt out.