

Neutral Citation No: [2023] NICA 47

Ref: KEE12238

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

ICOS No: 22/98915/01/A01

Delivered: 14/08/2023

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING’S BENCH DIVISION
(JUDICIAL REVIEW)**

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

**IN THE MATTER OF A DECISION BY LISBURN AND CASTLEREAGH CITY
COUNCIL TO APPROVE PLANNING APPLICATION LA05/2018/0862/F ON
16 AUGUST 2022**

**Mr Duff, the Appellant, appeared as a litigant in person
Mr Stewart Beattie KC with Mr McEvoy (instructed by Cleaver Fulton Rankin Solicitors)
for the Respondent
Mr Graeme Watt (instructed by Nelson-Singleton Solicitors) for the Notice Party**

Before: Keegan LCJ and Horner LJ

KEEGAN LCJ (delivering the judgment of the court)

Introduction

[1] This is an appeal from an order of Mr Justice Scoffield (“the judge”) of 16 May 2023. The case relates to a planning application approval for two dwellings on an infill site between 26 and 30 Magheraconluce Road, Hillsborough. The impugned planning consent was quashed with consent of the respondent and notice party.

[2] The material terms of the Order are as follows:

- (i) Leave is granted for the amendment of the Order 53 statement in the terms of the proposed draft amended Order 53 statement provided by the appellant dated 23 March 2023 and, pursuant to Order 53, rule 3(4), the Order 53 statement is directed to be amended in those terms.
- (ii) Pursuant to Order 53, rule 3(9), the impugned decision (whereby planning permission was granted on 16 August 2022 under planning reference LA05/2018/0862/F in respect of lands between 26 & 30 Magheraconluce Road, Hillsborough) is removed into this Honourable Court for the purpose of being quashed and is thereupon quashed without further order on the ground that, in making the said decision, there was a failure to comply with section 43 of the Local Government Act (Northern Ireland) 2014 (now set out at ground 5(v)(c) of appellant's Order 53 statement).
- (iii) Planning application reference LA05/2018/0862/F is accordingly remitted to the proposed respondent for reconsideration and further determination.
- (iv) There shall be no order as to costs.

[3] At the outset we record that all parties agreed that we deal with this appeal on paper to save costs and time. This is a commendable approach given the net issue raised on appeal and the fact that the planning permission is to be reconsidered in any event.

The issue

[4] It is proposed to have this planning application brought for consideration by the Planning Committee on 4 September 2023. The respondent has notified the appellant and agreed that he will receive relevant information and is at liberty to make any representations he wishes to the committee.

[5] The appellant has submitted comprehensive written submissions which boil down to a request that the court examine this case notwithstanding the respondent's consent to a quashing order. The appellant argues for this course in order to expose flawed decision making, to correct previous legal decisions and to influence many other cases he has pending in relation to this type of development.

[6] In light of the above we ask the simple question - what is the purpose of this appeal? Having considered all the submissions made we do not consider that there is any purpose in these proceedings and that the appeal should be dismissed for the following reasons.

Our reasons

[7] First, we consider that the process undertaken at first instance is unimpeachable and are summarised in the papers as follows:

- (i) Following receipt of the letter dated 3 March 2023 from the respondent's solicitors, the court sought the views of the appellant and the notice party to the course proposed by the respondent.
- (ii) On the 23 March 2023 the appellant provided a paper outlining what he felt were the pros and cons of the possible approaches. He indicated a preference that the permission would not be quashed on the proposed grounds but concluded by stating:

"12. If the Court should decide that the proposed course is the proper course, the Applicant requests an Order to expedite the new planning decision and offers to amend his Order 53 Statement to enable the Court's Order to be pursuant to the Applicant's application."
- (iii) With the position paper the appellant enclosed a draft amended Order 53 statement pleading a breach of section 43 of the Local Government Act (Northern Ireland) 2014.
- (iv) By letter dated 24 March 2023 the notice party indicated its consent to the course suggested by the respondent.
- (v) The matter came before Scoffield J on 27 March 2023. On that date the judge heard from the appellant, and counsel on behalf of the respondent and notice party. Thereafter the judge considered the papers and issued a decision by email from the Judicial Review office later on the same date, quashing the subject planning permission, remitting the application, and making no order as to costs.
- (vi) A further email was then sent on the 27 March 2023 from the appellant to the court office. The email commenced by saying:

"I admit that I stated that I was prepared to submit to the Court's discretion in this matter, but I should have stated that was subject to nothing controversial arising and that the Court's decision would be fair particularly in relation to costs."
- (vii) An email dated 16 May 2023 from the court office stated that Scoffield J had considered the further correspondence from the appellant but had not been persuaded that there was any basis to depart from the original determination. The order quashing the planning permission was therefore issued on 16 May 2023.

[8] Second, the judge cannot be faulted considering the above for dismissing the case for the reasons he did and in doing so he acted well within his discretion. Whilst the appellant raises various technical arguments and queries the accuracy of some other submissions, this is all beside the point because the planning application is to be reconsidered in any event.

[9] The appellant's additional submissions of 7 August 2023 which we gave permission for have been specifically considered. The points raised do not sway this court in any respect. To be clear, we are entirely satisfied that the judge considered the grounds upon which the decision was to be quashed and reached a decision within remit. In any event, the matter is to be reconsidered when all issues are again up for adjudication. We reject the speculative additional arguments based upon potential bias, duty of candour and improper motive, conflict of interest and the motivation of the notice party. These matters will no doubt be in the minds of the respondent and notice party going forward. However, this court, in the circumstances that pertain, is not going to conduct some overreaching propriety enquiry.

[10] Third, there is now absolutely no utility in an appeal with the aim of reopening the basis upon which the quashing order was made. Such a course would offend legal certainty and the overriding objective.

[11] Fourth, we do not find any issue which requires determination on some free-standing basis as the appellant suggests. The appellant's complaints regarding infill development are well known and have been canvassed in other cases. The appellant also has the benefit of a first instance decision in *Duff (Gordon) Application (re Glassdrumman Road, Ballynahinch)* and in *the Matter of a Decision by Newry, Mourne and Down District Council* [2022] NIQB 37 which has also been heard by the Court of Appeal.

[12] Overall, we consider that the pursuit of an appeal in this case is unmeritorious and can be viewed as an abuse of the process of court and a waste of time and money.

Conclusion

[13] We therefore refuse leave and dismiss the appeal. Our provisional view is that we should make an order for costs in favour of the respondent against the appellant given the approach he has taken, and the warnings given in correspondence as to costs of the appeal. We will however allow the appellant to make any additional submissions in relation to costs on paper by Friday, the respondent may then reply if necessary and we will provide our decision administratively. The notice party will bear its own costs on appeal. The order of no costs at first instance will stand.