

Judicial Communications Office

30 June 2022

COURT DISMISSES APPEAL TO REFUSAL OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal by Mr Jamie Bryson (“the appellant”) of a decision by Mr Justice Scoffield² of 20 January 2022 dismissing Mr Bryson’s application for leave to apply for judicial review of decisions taken by the Minister for Infrastructure and the Minister for Communities.

The Department of Infrastructure (“DfI”) and the Department of Communities (“DfC”), sought to judicially review a decision by the Police Service of Northern Ireland, not to support a specialist contractor, engaged by the DfI, the DfC and Belfast City Council, to take down and remove a bonfire that was constructed at Adam Street in July 2021, as part of annual Twelfth of July celebrations.

Mr Justice Horner heard that application, refused any relief but provided detailed advice as to how the bonfire problem at this location could be prevented in the future: see *Re JR169's Application* [2021] NIQB 90.

The appellant, who had been notice party to those proceedings, had made representations to the DfI Minister, urging her not to judicially review the decision of the police. He then issued an application seeking to challenge decisions on the part of the DfI Minister and the DfC Minister to issue those proceedings. He relied on two grounds of challenge, namely:

- (a) Illegality – in the form of failure to obtain Executive agreement to the issue of the judicial review proceedings, which was cross-cutting, significant and/or controversial, in breach of relevant requirements of the Ministerial Code, contrary to section 28A of the Northern Ireland Act 1998; and
- (b) Failure to take into account material considerations (namely submissions made by the applicant on behalf of the bonfire organisers relating to the requirements of the Ministerial Code).

At first instance, Mr Justice Scoffield dismissed the appellant’s application, concluding that the case is properly to be viewed as academic and that there was insufficient reason for the court to exercise its discretion to proceed to hear it.

¹ The panel was comprised of Lord Justice Treacy, Mr Justice Horner and Mr Justice Humphreys. Mr Justice Horner delivered the judgment of the Court.

² [2022] NIQB 4

Judicial Communications Office

In challenging his decision the appellant submitted that, while the bonfire itself was past history, the issue of whether the Ministers had acted legally was not and that the declaratory and prohibitory relief sought on the basis of the Ministers' refusal to consider the legality was both of considerable utility and not academic.

The respondents argued that the central issue was not whether the Ministers' decision to issue proceedings was "unlawful" but whether there should be a full judicial review when the matter was now of academic relevance only and that there was no public interest in having a further judicial review.

Having considered the parties' submissions, the Court agreed with the conclusions of Mr Justice Scoffield, that the application was academic and that this was not an exceptional case justifying the grant of leave to appeal.

In refusing the appeal the Court concluded that it is not in the public interest to have a judicial review that will have to be based on facts which are now of historic significance only. The Court also noted that the recurring bonfire litigation has resulted in very substantial costs being incurred, which will be visited directly or indirectly on the UK taxpayer. There should now be adequate advice from the court to provide sufficient guidance to prevent future disputes about bonfires at this location.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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