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| **Neutral Citation No: [2020] NIQB 25**<br><br>***Judgment: approved by the Court for handing down (subject to editorial corrections)****| ***Ref:*** **McC11208**<br><br>***Delivered:*** **06/03/20** |

**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 32 APPLICATIONS BY RURAL INTEGRITY (LISBURN 01) LIMITED AND RELATED LIMITED COMPANIES FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

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**McCLOSKEY LJ**

***Preface***

[1] There are 32 judicial review cases belonging to a readily identifiable cohort. In every case the Applicant is a registered limited company. The companies concerned are:

- Rural Integrity (Lisburn 01) Limited.
- Rural Integrity (Lisburn 02) Limited.
- Rural Integrity (Lisburn 03) Limited.
- Rural Integrity (Lisburn 05) Limited.
- Rural Integrity (Lisburn 06) Limited
- Rural Integrity (Lisburn 07) Limited.
- Clogher Environmental Limited ("Clogher").
- Portinode Environmental Limited ("Portinode").

The common denominator shared by all of the Applicant companies is Mr Gordon Duff who is a director (not necessarily the sole director) of each of them.

[2] These 32 judicial review challenges are brought against the following planning authorities:

(i) Lisburn and Castlereagh City Council ("LCCC"): 26 cases.

(ii) The Planning Appeals Commission ("PAC"): two cases.

(iii) Fermanagh and Omagh District Council ("FODC" – the Portinode case): one case.

(iv) Mid and East Antrim Borough Council ("MEABC"): two cases.

(v) Antrim and Newtownabbey Borough Council ("ANBC"): one case.

[3] In the great majority of the cases the Applicant company is challenging decisions of the planning authorities identified above whereby development permission authorising the construction of one or more dwelling houses in the countryside was granted. In the remaining (minority) of cases the PAC is the agency under challenge because it made decisions allowing appeals against planning permission refusals of the planning authority concerned.

[4] The court has been alert to the interests of the successful planning applicants throughout. From an early stage strenuous efforts have been made to ensure that the proceedings were brought to the attention of these persons. Subsequently the court developed the mechanism of general "Judicial Review Court Notices", addressed to everyone with an interest in any of these cases. The court also arranged specially convened hearings on notice to every interested party, stimulating the attendance of many of those concerned. This provided a forum for oral representations to the court in a context where most of the interested parties were unrepresented. The interested parties have also been at liberty to make written representations to the court at all stages. The most recent phase of these proceedings, culminating in the rulings contained in this judgment, had ingredients of both written and oral representations from these parties.

[5] The 32 applications for leave to apply for judicial review were lodged on sundry dates spanning the period March 2018 to September 2019. These cases have been the subject of a succession of case management orders and listings during the period in question. Leave to apply for judicial review was granted by a deputy judge of the High Court in one of these cases only, namely *Rural Integrity (Lisburn 01) – v – PAC* [No 2018/26370/01 – "*the first PAC case*"] by an order dated 07 June 2018. In a context wherein the court has been engaged in a continuous struggle to identify reasonable, sensible and cost effective case management mechanisms for the whole of the cohort, the first PAC case progressed ahead of all of the others, in which no leave ruling or any other definitive ruling has been made to date.

[6] In order to appreciate panoramically the *status quo* relating to the entire cohort of cases it is necessary to focus particularly on the first PAC case.

***The First PAC Case***

[7] As noted above, this is the only member of the cohort of 32 cases in which leave to apply for judicial review was granted, on 07 June 2018. This was followed by an application by the PAC for an order compelling the Applicant company to make security for costs. This court was also required to determine the Applicant's application for a protective costs order. Both applications gave rise to an *inter-partes* hearing on 09 March 2019. This hearing was preceded by an *ex tempore* ruling of this court dated 18 December 2018 and ensuing order, filed on 21 January 2019 (see **Appendix 1**). This ruling and ensuing order illustrate the unremitting case management challenge posed by this cohort of cases.

[8] By its orders dated 09 March 2019 this court ruled:

(i) In the event of the Applicant company having to pay costs, the amount recoverable would not exceed £10,000.

(ii) The Applicant was to make security for the PAC's legal costs and outlays in the same amount, ie £10,000 plus VAT, in accordance with the applicable procedural requirements and mechanisms, by 19 March 2019.

[9] In its reasoned written decision this court stated the following:

> *"[2] The Applicant is a registered limited company with a share capital of £100 and a single director, one Gordon Duff, who represents this litigant, together with other comparable and related limited companies, in a total of 33 judicial review challenges filed with the court during a six month period beginning on 05 March 2018 and ending on 17 September 2018. There has been a multiplicity of challenges, listings and orders in the court's unrelenting attempts to devise fair, proportionate, practical and efficient case management mechanisms and arrangements for this unprecedented group of cases.*
>
> *[3] The Respondent in these proceedings is the Planning Appeals Commission for Northern Ireland (the "PAC"). The Applicant challenges the decision of the PAC dated 11 December 2017 allowing an appeal against a refusal of planning permission and, thereby, authorising the development of two dwellings and detached garages at an "infill site" at 50/52 Ballee Road West, Ballymena. The successful planning applicant has been represented by solicitor and counsel in these proceedings. .*

*[4] The application for leave to apply for judicial review proceeded inter-partes on 07 June 2018, before Sir Ronald Weatherup. The judge reserved his decision and, the following day, promulgated an oral ruling whereby leave to apply for judicial review was granted.*

*[5] The available evidence includes a full transcript of the judge's leave decision. It is abundantly clear from this that leave was granted subject to no restrictions or conditions applicable to either the Applicant or the PAC. The court rejects any argument to the contrary.*

*[6] By a summons, with supporting affidavit, issued on 15 October 2018, the PAC applied to the court for an order compelling the Applicant to make security for the costs of the PAC under Order 23 Rule 1 and Order 53 Rule 8 of the Rules of the Court of Judicature. Attached to the summons was a schedule indicating that the PAC's estimated costs of defending these proceedings total £36,000 plus VAT. The accompanying affidavit contains particulars of the heavy case management which these proceedings have entailed to date. This affidavit posits the substantially smaller sum of £20,000 plus VAT in respect of legal costs.*

*[7] All of the registered companies in question are, in non-technical legal terms, established, owned, managed and operated by Mr Duff. The only expenditure which they have incurred is the court fees involved in initiating each of the judicial review applications and any subsequent ancillary or incidental fees. Mr Duff asserts that this is effected by the mechanism of directors' loans to the companies, of which there is no supporting evidence. He estimates that each judicial review case generates fees of this genre of some £260/£270. In two of the 33 cases Mr Duff instructed solicitors to act on behalf of the relevant applicant company. The court's understanding of the evidence is that this retainer has been terminated."*

The ruling of the court continued at [18]:

*"This unprecedented cohort of interrelated judicial review cases has generated a multiplicity of case management and interim hearings and associated Orders. I have made clear, on more than one occasion, that it would be of enormous benefit if Mr Duff were to identify either a single case or a small number of cases the determination whereof <u>could</u> (not would) resolve other cases in the group. I also made clear*

*that a positive response to this invitation would be a factor to which the court would probably attribute considerable weight in determining the Respondent's security for costs application. I stated that the court would view this as a factor of substance weighing against an order requiring the Applicant to make security for costs. Initially Mr Duff appeared to respond positively to this suggestion. However, this quickly faded, leaving an ocean of uncertainty for multiple respondents and successful planning applicants in consequence. In determining the present applications I consider it legitimate to take this consideration into account."*

[10] The ruling continued:

"*[19] Since the determination of these applications involves the exercise of powers enshrined in the Rules of the Court of Judicature, the court is duty bound to seek to give effect to the overriding objective, per Order 1, Rule 1A(3). Thus I must seek inter alia to manage both the present case and all of the others belonging to the cohort, in excess of 30, in a manner proportionate to the importance of the case and the financial position of each party, to deal with these cases expeditiously and fairly and to allocate to them an appropriate share of the court's finite resources, while taking into account the demands of other cases in the court system. It has long been recognised that the exercise of case management powers entails a significant measure of discretion on the part of the court: see Prince Abdulaziz v Apex Global Management [2014] UKSC 64, at [13] per Lord Neuberger, approving the statement of Lewison LJ in Broughton v Kop Football [2012] EWCA Civ 1743 at [51]:*

> *'Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside*

> *the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained'."*

At [22] and [23] the court acknowledged that leave to apply for judicial review had been granted and highlighted the public law nature of the proceedings. Consideration was then given to the Aarhus rules and principles. The court then referred to *Edwards v Environmental Agency (No 2)* [2013] UKSC 78, at [27] – [28]:

> *"[27] In Edwards v Environment Agency (No 2) [2013] UKSC 78, the claimant, via judicial review proceedings, challenged the Agency's decision permitting a cement works to alter its authorised fuel from coal and petroleum coke to shredded tyres. The case was dismissed. An appeal ensued and another claimant was joined, giving rise to a "costs capping" order of £2,000 which, following dismissal of the appeal, was awarded. The second claimant appealed, unsuccessfully, to the Supreme Court which made cost orders in favour of the two respondents, whose bills of costs totalled some £90,000.*
>
> *[28] The Supreme Court made a reference to the CJEU seeking guidance on the Aarhus Convention phraseology of 'not prohibitively expensive'. The CJEU decided: the test is not purely subjective; the cost of proceedings must not exceed the financial resources of the person concerned nor appear to be objectively unreasonable; the court could take into account the merits of the case, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure and the potentially frivolous nature of the claim at its various stages; where the claimant has not been actually deterred from carrying on the proceedings, this is not determinative per se; and, finally, the same criteria are to be applied both at first instance and on appeal."*

The judgment continues at [29]–[30]:

> *"[29] The Supreme Court, in its final disposal of the case following the CJEU's preliminary ruling, noted that the Luxembourg Court had not given exhaustive guidance as to how to assess what is objectively unreasonable. By this stage the two respondents had agreed to limit their claim for costs to £25,000, which equated to the amount of*

*security paid by the second claimant as a condition for bringing the appeal. The Supreme Court was satisfied that a costs order in this amount would be subjectively reasonable. It considered the more difficult question to be that of whether there should be some objectively determined lower limit. Giving effect to the various factors identified by the CJEU (supra), the court considered it impossible to characterise the sum of £25,000, viewed objectively, as unreasonably high, either on its own or in conjunction with the £2,000 awarded in the Court of Appeal.*

*[30] Notably the CJEU, in its judgment, reiterated what it had previously held in Case C-427/07 (Commission v Ireland) that the "prohibitively expensive [provision of the Aarhus Convention] does not prevent the national courts from making an order for costs": see [25]. The court added at [35]:*

> *'Where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute or, more generally, where it is required – as courts in the United Kingdom may be – to state its views, at an earlier stage of the proceedings, on a possible capping of the costs for which the unsuccessful party may be liable, it must be satisfy itself that that requirement has been complied with, taking into account both the interests of the person wishing to defend his rights and the public interest in the protection of the environment.'*

*In the following passages, the CJEU acknowledged, in substance, the latitude available to national legislatures and the significance of "all the relevant provisions of national law": see [38]. At [40] the court made clear that factors other than "the financial situation of the person concerned" can properly be reckoned, repeating this at [46]."*

[11] The court then reasoned as follows at [31] – [35]:

*"[31] The acutely one sided and unbalanced nature of the accommodation which the Applicant/Mr Duff is seeking from the court is unmistakable. It has three central components: his contention that the court should not order*

*security for costs in any amount against the Applicant, his quest to secure a protective costs order for the Applicant restricting its potential costs exposure to £100 maximum and his intention to seek to recover some £6,000 from the PAC in the event of the judicial review succeeding. This arrangement, if sanctioned by the court, would result in the PAC being unable to recover any costs if the challenge fails, in a context where its estimated costs are at least £20,000 plus VAT or, alternatively, having to pay some £6,000 costs in the event of the Applicant's challenge succeeding.*

*[32] It falls to the court to strike a balance which is harmonious with the applicable legal rules and principles and the principle of proportionality. In so doing the court takes into account all of the facts and factors noted at paragraphs 2 – 4, 6 – 7, 9, 18 – 19 21 – 23 and 31 above.*

*[33] The importance of environmental protection is acknowledged by the court, unreservedly so. However it is clear from Edwards that the court can properly consider the nature and extent of any possible environmental detriment arising out of the authorised development. In this case, the impugned grant of planning permission authorises the construction of a dwelling house and garage on a site which is bounded on each side by existing dwellings, in a rural area. The site consists of 0.308 hectares. If the development proceeds there will of course be resulting environmental damage and disturbance. However, this development contrasts starkly with the list of "activities" in Annex 1 to the Aarhus Convention (mineral, oil and gas refineries, the production and processing of metals, waste management, waste water treatment plants, industrial plants et al). I consider that the imperative of environmental protection must be evaluated according to the specific context. The public interest, which belongs to a notional spectrum of some breadth, is to be calibrated accordingly.*

*[34] The public interest is, moreover, multi-faceted. It is not confined to protection of the environment and the prohibition of inappropriate land use. Rather it extends to encompass inter alia the factor of taxpayers' contributions and the associated funding of public authorities such as the PAC. It further encompasses the consideration that in any form of litigation one party should not have an unfair and/or unreasonable advantage at the expense – financial or otherwise – of another. The court recognises that one effect of the policy underlying the Aarhus Convention*

*Regulations is that, in pursuit of the public interest of environmental protection, the notional "playing field" may be uneven. It is considered, however, that the kind of acute distortion, or skewing, which the Applicant's stance demands is not necessarily dictated by this legislative measure and must be balanced by other reasonable access to court mechanisms, which include in appropriate cases a requirement that a limited, but proportionate, payment of security for costs be made.*

*[35] Furthermore, it seems undeniable that Mr Duff has established certain registered companies, including the Applicant in these proceedings, with a view to engaging in extensive litigation activities, which I have described as of unprecedented volume and, simultaneously, has by this mechanism effectively protected the promoters and operators of the companies from personal costs liability. The assets and resources of every limited company are confined to what its promoters, owners and investors are prepared to provide. Mr Duff has made a series of conscious decisions in this regard. The court must be alert to any possible manipulation of its process in every case. This clearly exposed costs avoidance mechanism is not harmonious with the proper invocation of the court's process and is a factor of significance which the court must reckon."*

[12] The Applicant company failed to make security for costs as required by the order of this court dated 09 March 2019. This gave rise to the following further order of the court dated 27 June 2019:

*"1. the application for Judicial Review be dismissed.*

*2. in accordance with the Order of the Court dated 9 March 2019, the Applicant shall pay the Respondent's costs of the proceedings in a sum not to exceed £10,000 plus** VAT, such costs to be taxed in default of agreement.*

*3. the Applicant shall file any application on or before the close of business on Thursday 11 July 2019 in writing if he wishes to appeal this decision.*

*4. the Respondent shall file their written response on or before the close of business on Monday 5 August 2019.*

*5. the proposed Respondents from the other related Judicial Review cases shall file any interlocutory*

*application(s) on or before the close of business on Monday 5 August 2019."*

[** should have been "inclusive of"]

***Appeal to the Court of Appeal***

[13] The Applicant company appealed to the Court of Appeal by Notice dated 22 July 2019. This court requested that the appeal be expedited. By its decision promulgated on 22 January 2020 – see [2020] NICA 12 the Court of Appeal dismissed the appeal and, subsequently, refused the Applicant's application for leave to appeal to the United Kingdom Supreme Court ("UKSC"). The Applicant's application to the UKSC for leave remains unresolved.

***The Most Recent Phase***

[14] The Court of Appeal's recent decisions provided the impetus for this court's most recent proactive revived management of the remaining cases. This gave rise to this court's Judicial Review Court Notice (No 4), dated 17 February 2020 [see **Appendix 2**]. This generated a hearing attended by all interested parties on 26 February 2020 which was preceded by the following:

(i) A mix of formal and informal applications to the court for orders striking out the cases.

(ii) Written submissions and representations from certain interested parties.

(iii) Mr Duff's formal applications that he be conjoined with, or substituted as the judicial review litigant for, the Applicant companies in all cases.

(iv) The provision by Mr Duff of draft amended Order 53 Statements in all cases. In this way the court was able to identify those issues requiring its consideration and identification, as noted in [6] above.

(v) A proposal by Mr Duff that all 32 cases be adjourned indefinitely (in effect stayed) pending determination of the relevant Applicant company's application to the UKSC for leave to appeal representations relating to the application of Order 5, Rule 6 of the Rules of the Court of Judicature (RCJ) to every member of the cohort of cases.

(vi) ..

This list constitutes the menu of issues to be addressed as determined by the court at this stage.

*The Adjournment Issue*

[15] The court considered Mr Duff's application for a general adjournment of unspecified dimensions of all 32 cases at two stages. First, in advance of the hearing scheduled for 26 February 2020, giving rise to the ruling contained in Judicial Review Court Notice Number 5 [**Appendix 3** hereto], refusing the application. Second, the court proactively reactivated the issue at the hearing on 26 February 2020. My fuller reasons for (again) refusing the adjournment application are set forth in [16]ff. The court notes the letter of 21 February 2020 from Gordon Duff, who continues to describe himself as a director of all of the Applicant companies. By this letter an adjournment of the hearing scheduled for 26 February 2020 for an unspecified period and for the reasons proffered was requested.

[16] There are multiple judicial discretions exercisable in civil proceedings. Many of these are of the procedural variety. The exercise of the discretion to stay proceedings probably belongs to the outer limits of the notional spectrum of discretion. This has been recognised by the UKSC in *Prince Abdulaziz Bin* [2014] UKSC 64 at [13]:

> *"… Accordingly, at least as at present advised, I consider that the view taken by Vos J and the Court of Appeal, namely that a direction requiring personal signing of disclosure statements reflected the normal practice, was correct. However, that is not, in my view, the essential question when it comes to challenging paras 14 and 15 of the Order. The essential question is whether it was a direction which Vos J could properly have given. Given that it was a case management decision, it would be inappropriate for an appellate court to reverse or otherwise interfere with it, unless it was "plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree" as Lewison LJ expressed it in Broughton v Kop Football (Cayman) Ltd* [2012] EWCA Civ 1743*, para 51."*

The UKSC approved the approach of Lewison LJ in *Broughton v Kop Football (Cayman) Limited* [2012] EWCA Civ 1743 at [51]:

> *"Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the*

> *sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained."*

[17] It is instructive to formulate certain guiding principles of a general nature:

(a) Every litigant has a right to adjudication of his claim within a reasonable period. Moreover, judicial review proceedings and remedies have traditionally been regarded as requiring expedition.

(b) Legitimately interested parties enjoy a similar right.

(c) The right of access to a court is not absolute. It is subject to considerations of reasonableness, fairness to all concerned, legal certainty, the proper invocation of the court's process, proportionality and the overriding objective generally.

(d) Devices with the clear aim and/or effect of avoiding personal costs for any litigant liability (such as the limited company without assets mechanism in all of these cases) are *prima facie* incompatible with the legitimate invocation of the process of the court.

(e) It falls to the court to allocate to every case an appropriate share of the court's resources, while taking into account that resources must be invested in every case in the system.

(f) It is incumbent on the court to conduct its business both in individual cases and generally with a view to saving expense.

[18] The cases belonging to this cohort number 32 altogether. This figure represents about 20% of the cases in the Judicial Review Court at any given moment. Most of them have been in the court system for between 18 and 24 months. The vast majority were initiated on or close to the final day permitted by RCJ Order 53, rule 4. With a couple of limited exceptions, they are all frozen at the leave stage, stagnant and displaying no real signs of progressing. Strenuous judicial efforts to advance these cases in a realistic and expeditious manner have been to no avail. The court considers that it has invested a disproportionate amount of its resources in dealing with them. The prejudice to legitimately interested parties have become acute. The court has considered and balanced the Aarhus Convention ethos and principles. It has previously ruled that these cannot be applied in a mechanistic and absolute fashion. Rather they must be balanced with the principles rehearsed in [5] above.

[19] In determining this adjournment application the court is enjoined particularly to give effect to the overriding objective and the common law and Art 6 ECHR right

(insofar as engaged) of access to a court, as regulated by procedural rules and well settled legal principles.

[20] A balancing exercise is required, weighing and evaluating an amalgam of facts and considerations. The matters to be balanced include in particular these: the vintage and number of these cases; the issues raised; their apparent merits; the rules of court engaged; the various orders made by this court in Rural Integrity (Lisburn 01) Ltd v Planning Appeals Commission; the ensuing unsuccessful appeal to the Court of Appeal ("COA"); the date of that court's decision; that court's refusal to grant leave to appeal to UKSC; possible future events; predictable further delays of unpredictable and unquantifiable dimensions; the inevitability of further delay associated with Mr Duff's declared intention to petition UKSC directly; irrespective of the outcome of such application, the consideration that the attempted appeal is on a procedural issue only, with judicial determination of the legal merits of every case in the cohort being frozen indefinitely in the interim; this court's assessment that the grant of leave to appeal to UKSC is unlikely given that the COA's decision simply involved the routine application of a rule of court of uncontroversial meaning and import to a factually and litigation sensitive context; Mr Duff's unwillingness to act upon or accept the courses offered to him by the COA; the distinctive characteristics of every case belonging to this group; this court's frustrated previous attempts to identify a lead case (or cases) and to devise mechanisms for expeditious handling of the group of cases, an exercise marked by no, or no adequate, cooperation from the Applicant companies; the prejudice and uncertainty which numerous third parties have had to endure for a lengthy period; the inevitability of the perpetuation thereof in the event of this court acceding to the Applicants' application; the strong probability that the audience with a legitimate interest in these multiple judicial review cases extends beyond the successful planning applicants – to family members and others; and equality of arms – none of the multiple interested parties, in common with Mr Duff, is legally represented i.e. Mr Duff suffers no prejudice in this respect.

[21] A fair, balanced and evaluative judgement is required of the court. My conclusion is that the balance swings clearly and decisively in favour of refusing Mr Duff's adjournment application.

[22] Following the hearing on 26 February 2020, the court reserved its rulings and decision pending compliance with a series of further case management directions. Appropriate responses, in particular from Mr Duff, materialised.

[23] The court, as scheduled, conducted a further hearing on 06 March 2020. Once again Mr Duff represented all of the Applicant companies, the various proposed Respondents were legally represented and a number of interested parties attended. While the court had been preparing its decision it determined that this could not be finalised pending further probing of Mr Duff's letter of 05 March 2020 to the court and affording him an opportunity to make further representations. This hearing was conducted in two stages, separated by a lengthy adjournment to provide Mr Duff

with an opportunity to consult further with a solicitor whom he had first contacted the previous day.

[24] The court ascertained from Mr Duff that the broad position of the 32 Applicant companies was, in summary, this:

(i) None of the Applicant companies, nor Mr Duff, had concluded the retainer of any solicitor.

(ii) Mr Duff was hopeful that the retainer of the solicitor concerned could, in time, be effected in case number 2018/25375, a judicial review leave application initiated on 07 March 2018 in which the Applicant company is Rural Integrity (03) Limited and the proposed Respondent is LCCC.

(iii) Mr Duff was less hopeful that a retainer could be effected with the same solicitor in order to prosecute cases numbers 19/59411/01 and 19/89196/01, which were initiated on 19 June and 23 September 2019 respectively. In the first of these cases the Applicant company is Portinode (see [1] above) and the proposed Respondent is FODC; in the second case the Applicant company is Clogher (see [1] above) and the proposed Respondent is the PAC.

(iv) Mr Duff intimated a high probability that the UKSC leave application in the first PAC case will be withdrawn; the court, emphatically, did not require him to commit himself or the Applicant company to a final position on this issue.

(v) Mr Duff stated that securing legal representation for the Applicant companies in the other 29 cases would not be feasible, as it was "*unaffordable*".

(vi) Mr Duff volunteered that it would be "*unreasonable*" to stay the other 29 cases in the cohort pending determination in the three in which he is attempting to secure legal representation for the Applicant companies.

(vii) Mr Duff made no application to adjourn the hearing of 06 March 2020.

[25] Mr Duff's applications to this court at this stage are contained in an amalgam of formal summonses (with one affidavit, in the first PAC case), 32 draft amended Order 53 Statements and, finally, his application for leave to appeal to the UKSC in the first PAC case. From these sources it emerges that in each of the 32 cases this court was initially invited to make the following order:

(i) To conjoin Mr Duff as a further Applicant in the 32 cases. While this application was <u>formally</u> made in three of the cases only, the court's

interpretation of the entirety of the material available was that it should be addressed in all 32 cases. However on the occasion of the most recent listing Mr Duff made abundantly clear that these applications are confined to the three cases belonging to the newly formed sub-group noted in [25] above.

(ii) To make an order under Order 5, Rule 6(3) RCJ.

(iii) To stay the court's resolution of the various respondents' strike out application pending the determination of the application for leave to appeal to the UKSC in the first PAC case: the evolution of this discrete application has been highlighted in [24] – [25] above.

(iv) To permit amendment of the Order 53 Statement in every case. The amendments proposed entail (a) seeking an "Aarhus" protected costs order whereby any costs recoverable from the Applicant company in any of the 32 cases shall not exceed £100 including VAT (previously £10,000 plus VAT), (b) authorising Mr Duff to represent the Applicant companies in all 32 cases and (c) permitting the addition of one substantive ground of challenge.

***The Order 5, Rule 6 Issue***

[26] Order 5, Rule 6 RCJ provides:

> *"6. – (1) Subject to paragraph (2) and to Order 80 rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.*
>
> *(2) Except as provided by paragraph (3), or under any other statutory provision, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.*
>
> *(3) A body corporate may begin and carry on any such proceedings by an employee if—*
>
> *(a) the employee has been authorised by the body corporate to begin and carry on proceedings on its behalf; and*
>
> *(b) the Court grants leave for the employee to do so."*

As regards Rule 6(2), namely the requirement that a body corporate "*may not begin or carry on (proceedings in the High Court) otherwise than by a solicitor*", none of the cases belonging to this cohort of 32 is compliant. As regards Rule 6(3), one of the issues probed at some length by the court on 26 February 2020 was whether Mr Duff has been "***authorised***" by any of the Applicant companies to carry on any of the cases on its behalf. There is no such evidence within any of the multiple applications under Rule 6(3)(b) before the court and Mr Duff was unable to provide any such evidence either in response to the promptings of the court or during the interval which followed. This remained unchanged at the stage of the most recent hearing of the court, on 06 March 2020.

[27] In its recent judgment in the first PAC case the Court of Appeal noted the provisions of this Rule at [11]. The court reasoned and concluded at [12] – [14] as follows:

> *"[12] Mr Duff has accepted that there is no contract of employment between him and the company. One needs to look at the background to this Rule. The Rule has chosen to limit the persons who can act on behalf of the company to employees. A director or shareholder could of course be an employee of the company but did not necessarily have to be. If it had been the intent of the rule makers that the right to begin and carry on proceedings was to be given to directors or shareholders as well as employees the rule would have said so. The distinction is, of course, that employees are required to act in accordance with the wishes of the company as a whole. As I have said a Director or shareholder could of course be an employee and if such a position was contended for the court would have to satisfy itself that the employment contract was intended to effect legal relations. That does not arise in this case. Prima facie therefore the rules indicate that Mr Duff has no entitlement to pursue this matter on behalf of the company.*
>
> *[13] We are conscious of the fact, however, that it is necessary for us to take into account that the Aarhus Convention and the European Convention on Human Rights indicate that there should be access to justice in relation to the determination of disputes in relation to matters such as this. Section 3 of the Human Rights Act 1998 indicates that where an interpretation would lead to a breach of the Convention the court should exercise the interpretative obligation to ensure where it can that the Convention is not breached. We have therefore examined the Rule to see whether or not in the circumstances a wider interpretation should be applied to the interpretation of employee. We are satisfied however that on the facts of this*

*case Mr Duff determined and resolved that he would pursue this matter in a particular way through a particular vehicle. We see no impediment and nor has any impediment been brought forward by Mr Duff to him pursuing this litigation on his own behalf taking advantage of the Aarhus Convention. That would ensure that at worst a Security for Costs liability would arise but only insofar as it was both £5,000 or under and not prohibitively expensive. Despite our encouragement he has indicated that he does not wish to do that. This is not, therefore, a case where it can be said that there is no other option open to Mr Duff as to how this matter can be litigated. We have borne in mind that there is a serious issue to be tried in respect of which leave has been granted but it seems to us that in order to pursue it Mr Duff could have done so with the protection of the Aarhus Convention. He chose to use the vehicle of an impecunious company but cannot establish that he falls within Order 5 Rule 6. The acceptance of the invitation to Mr Duff to substitute himself for the company on the appeal would have provided a proportionate way of recognising the balance between the interests of environmental protection and the interests of developers and the public being protected from oppressive litigation. He declined to take up the offer. In those circumstances there is no reason to seek a strained interpretation of the Rule. Accordingly there is no one here to pursue this appeal on behalf of the company.*

*[14] Accordingly we are obliged to dismiss the appeal because it has not been pursued by anyone entitled to do so on behalf of the company."*

[28] In every case where this rule applies there are three requirements which must be fulfilled for the purpose of validly beginning and carrying on proceedings, namely the proposed litigant –

(i) must be an employee of the body corporate concerned;

(ii) must have been authorised to begin and carry on proceedings on behalf of the body corporate; and

(iii) must secure the leave of the court to do so.

[29] In all 32 cases the judicial review Applicant is a body corporate, or registered limited company. Is Mr Duff an employee of any of these bodies corporate? In [2] of its decision dated 10 April 2019 in the first PAC case - [2019] NIQB 40 - this court stated:

> "*The Applicant is a registered limited company with a share capital of £100 and a single director, one Gordon Duff, who represents this litigant, together with other comparable and related limited companies, in a total of 33 judicial review challenges …*"

The court added at [7] and [9]:

> "*All of the registered companies in question are, in non-technical legal terms, established, owned, managed and operated by Mr Duff. The only expenditure which they have incurred is the court fees involved in initiating each of the judicial review applications and any subsequent ancillary or incidental fees. Mr Duff asserts that this is effected by the mechanism of director's loans to the companies, of which there is no supporting evidence. He estimates that each judicial review case generates fees of this genre of some £260/270. In two of the 35 cases Mr Duff instructed solicitors to act on behalf of the relevant Applicant company. The court's understanding of the evidence is that this retainer has been terminated ….*
>
> *[9] The evidence/submissions emanating from Mr Duff include assertions that (a) he is owed some £5000 by the companies, representing court costs incurred in the various judicial reviews and (b) he estimates that his total costs in these proceedings will be of the order of £5000/6000 …*
>
> *There is no evidence whatsoever of Mr Duff's personal means or resources. Nor is there any evidence of the Applicant, the other companies or the collective legal proceedings being financed, partly or otherwise, by sources other than Mr Duff.*"

[30] The totality of the evidence in all 32 cases points inexorably to a negative answer to the question posed in [29] above. Mr Duff is consistently described as the sole shareholder, or a shareholder, and director of the bodies corporate pursuing these 32 cases. He has repeated this description most recently in his letter to the court noted in [15] above. There is no evidence whatsoever that Mr Duff is an employee of any of the Applicant companies. Nor has Mr Duff advanced any argument or assertion to this effect. In *Neufeld v Secretary of State for Business, Enterprise and Regulatory Reform* [2009] EWCA Civ 280 the English Court of Appeal stated at [88]:

> "*In particular, a director of a company is the holder of an office and will not, merely by virtue of such office, be an employee: the putative employee will have to prove more than his appointment as a director.*"

The proof envisaged in the *Neufeld* decision could include evidence of a contract of employment, wages, holiday entitlement, holiday and sick pay entitlement, notice of termination provisions and like matters. There is no evidence of any of these matters or anything kindred before the court.

[31] The prohibition enshrined in Order 5 Rule 6(2) is rooted in public policy and traceable to the common law. The leading cases include *Saloman v Saloman* [1897] AC 22, *Tritonia Limited v Equity and Law Assurance Society* [1943] 1 AC 584 and *Radford v Freeway Classics Limited* [1994] 1 BCLC 445. The Supreme Court in Ireland recently reviewed the governing principles and authorities in *Allied Irish Bank Plc v Aqua Fresh Fish* [2018] IESC 49, in particular at [9] – [11], [14] – [19] and [30] – [37].

[32] As these cases make clear a corporation is an artificial person, or entity, having a legal personality separate from those of its shareholders and directors. Sir Thomas Bingham MR elaborated on the rationale of the principle in *Radford* in these terms, at page 448:

> *"A limited company, by virtue of the limitation of the liabilities of those who own it, is in a very privileged position because those who are owed money by it, or obtain orders against it, must go empty away if the corporate cupboard is bare. The assets of the directors and shareholders are not at risk. That is an enormous benefit to a limited company but it is a benefit bought at a price. Part of the price is that in certain circumstances security for costs can be obtained against a limited company in cases where it could not be obtained against an individual, and another part of the price is the rule that I have already referred to that a corporation cannot act without legal advisors. The sense of these rules plainly is that limited companies, which may not be able to compensate parties who litigate with them, should be subject to certain constraints in the interests of their potential creditors."*

[33] In both this jurisdiction and that of England and Wales, the rules of court devised initially provided that a body corporate could not begin or carry on proceedings except through a solicitor. Order 5 Rule 6(3) is an extension of this facility, creating the possibility that an employee of the company could do so. The discretionary power thereby conferred on the court is plainly of broad scope and is not limited by any expressed criteria such as exceptional circumstances.

[34] Thus the first of the three requirements enshrined in Order 5 Rule 6(3) is not satisfied. In these circumstances the second requirement, which stipulates that the body corporate authorise the employee to begin and carry on proceedings, does not arise. At the hearing the court proactively explored this issue with Mr Duff at a little

length. Mr Duff was unable to provide any evidence of the requisite authorisation in any of the 32 cases.

[35] Subsequently in one of the cases, namely *Clogher Environmental Group Limited v FCDC* Mr Duff, without leave of the court, filed an affidavit exhibiting a document purporting to be a record of a meeting of the Applicant company concerned on 21 February 2020 attended by two persons described as "*Director*" (Mr Duff and another) and three persons who are described in his affidavit as shareholders of the company. The record contains the following passage:

> "*It was unanimously decided from the various options that Mr Duff should seek to apply to co-join the judicial review application, as was offered at the recent hearing in the Court of Appeal, which would allow him to act in court.*"

The court grants belated leave to file this affidavit and, in the absence of any evidence to the contrary, will assume that the exhibited record and its contents are genuine. The upshot of this is that in one of the 32 cases there is evidence of the authorisation required by Order 5 Rule 6(3)(a). This, of course, does not cure the fundamental infirmity, diagnosed above, that Mr Duff is not an employee of any of the Applicant companies.

[36] The central argument formulated by Mr Duff, both in writing and orally, is that the act of making an application for leave to apply for judicial review is not embraced by the phraseology "*begin and carry on proceedings in the High Court*" in Order 5 Rule 6(1). This argument was based on the provisions of Order 53, Rule 3(1) and Rule 5(1) and, in particular, the words "*application for judicial review*". A threefold riposte appears to me appropriate. First, the language of Order 5, Rule 1 ("*may be*") is permissive and not exhaustive or exclusive. Second, the terminology of Rule 6(1) – "*begin and carry on proceedings in the High Court*" and Rule 6(2) – "*begin or carry on any such proceedings*" is not qualified by reference to either Rule 1 or any other mechanism of commencement of proceedings in the High Court.

[37] Third, the effect of the procedural regime established by Order 53 is that judicial review proceedings consist of two stages. At the first stage an application for leave to make an application for judicial review is required. At the second stage the latter application is determined, but only if the prior leave of the court has been granted. Thus there are two separate applications. It seems to me impossible to contend that the first of these applications, namely a leave application, does not constitute the *beginning of proceedings in the High Court* within the meaning of Order 5 Rule 6. The word "*proceedings*" in its ordinary and natural sense, has an extensive, flexible and elastic connotation, widely recognised and of long standing. It is doubtless for this reason (amongst others) that no attempt was made to define this word in either section 120(1) of the Judicature (NI) Act 1978 or Order 1, Rule 3 RCJ.

[38] Finally, the requirement that the grant of leave to apply for judicial review must be sought and obtained "*in accordance with*" a provision of the Rules, namely Order 53, Rule 3(1) through the mechanism of "*an application for leave*" – rule 3(3) – and the requirement of standing namely "*a sufficient interest*" – per rule 3(5) – in tandem point irresistibly to the correctness of the foregoing conclusion. For this combination of reasons Mr Duff's argument must be rejected.

[39] I fully accept that in judicial review proceedings the court is empowered to add a further applicant or to substitute a new applicant for an existing one. However I consider that the exercise of this power must be compatible with the requirements of Order 5 Rule 6(2) and (3) in all save exceptional cases. The policy and rationale underpinning these regulatory provisions apply as fully to judicial review cases as to any other form of litigation.

[40] The final procedural matter to be highlighted is that the court has not insisted on the formality of formal applications being made at this stage by the putative judicial review respondents or any of the interested parties, albeit such formal applications have materialised in a small number of cases. The reason for this is threefold. First, this step would entail the expenditure of costs which, realistically, would be irrecoverable. Second, the court, as guardian of the proper invocation of its process, is at liberty to act of its own motion and, in doing so, is empowered to strike out any proceedings which are non-compliant with Order 5 Rule 6 whether by resort to its inherent jurisdiction or otherwise. Third, the court, being mindful of the principle of equality of arms, was careful not to require any of the Applicant companies to incur the expenditure of any formal applications at this stage, albeit such applications materialised in the three cases highlighted at [23] – [24] above.

[41] Given that each of these 32 cases is manifestly non-compliant with the requirements of Order 5 Rule 6 RCJ the consequences of this failing must be considered. It does not follow inexorably that the cases must be struck out, as this draconian consequence, though doubtless envisaged as appropriate in the ordinary run of every non-compliant case, is not explicitly spelled out in the terms of the rule. Furthermore the court must be alert to its inherent jurisdiction, as to which see ***Ewing v Times Newspapers*** [2010] NIQB 65 at [10] – [14]. Thus I consider that there is a judicial discretion to be exercised.

[42] On the Applicant's side two factors are highlighted, namely the alleged unlawful infliction of environmental damage which each of the cases asserts and the protections of the Aarhus Convention. I consider that these factors must be balanced with everything that is rehearsed extensively in [16] – [19] above, together with the policy enshrined in Order 5, Rule 6 RCJ. As regards the Aarhus factor I refer to, without repeating, [24] - [30] and [33] – [35] of this court's decision in the first PAC case: see [2019] NIQB 40. As in that case, the facilities and accommodation which Mr Duff is at this juncture seeking on behalf of all of the Applicant companies in all 32 cases can only be described as "*acutely one sided and unbalanced*": see [31]. It falls to

the court to strike a balance taking into account the broad amalgam of facts, considerations, rules of court and legal principles highlighted.

[43] The factor of alleged unlawful environmental damage is, in reality, the only consideration to be weighed in favour of the Applicant companies. The considerations belonging to the other side of the notional scales are highlighted in the judgment of this court in the first PAC case and herein. I conclude that the balance swings decisively in favour of refusing leave to apply for judicial review in 29 of the 32 cases on the grounds of non-compliance with Order 5, Rule 6 RCJ, misuse of the process of the court and want of prosecution. I am excluding the newly formed sub-group of three cases – see [23]/[24] above – as I consider that in light of the most recent developments the Applicant companies in those three cases (only) should have one further and final opportunity to demonstrate compliance with Order 5 Rule 6. As stated in the *ex tempore* ruling of the court on 06 March 2020 this opportunity will endure for the finite period of two weeks, ending on 20 March 2020.

[44] Mr Duff's applications to amend the Order 53 Statements in 29 of the 32 cases are rendered moot by the foregoing ruling.

[45] It is necessary to emphasise that the court has given no consideration to the new factors of procedure and substance which may materialise in the event of any of the Applicant companies demonstrating an ability to comply with Order 5, Rule 6 or, indeed, in any other event. Any retained solicitor will have to give serious thought to the procedural steps to be taken, with particular reference to the RCJ and the Judicial Review Practice Direction. Furthermore, the factor of want of prosecution may arise. In addition, given the factor of serious prejudice to third parties, there will doubtless be careful reflection on the relief pursued. In short, belated compliance with Order 5 Rule 6 RCJ does not necessarily betoken in any of the three surviving cases a bed of roses for the Applicant companies thereafter.

***Conclusion***

[46] I summarise the court's Order thus:

(i) The application to stay any of the cases indefinitely or otherwise is refused.

(ii) The 28 cases identified above are struck out on the grounds of non-compliance with Order 5, Rule 6(2) and (3) RCJ, misuse of the court's process and want of prosecution. Leave to apply for judicial review in each of these cases is refused.

(iii) Given the foregoing, the applications to amend the Order 53 Statement in 29 of the 32 cases are moot. I formally order that they be dismissed.

(iv) In the three surviving cases, the Applicant companies are afforded a period of 14 days, to 20 March 2020, to demonstrate compliance with Order 5, Rule 6 RCJ.

(v) The amendment applications in the sub-group of three cases are adjourned to the same date.

(vi) Costs and ancillary matters will be resolved separately.


**APPENDIX 1**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION (JUDICIAL REVIEW)

BEFORE THE HONOURABLE MR JUSTICE MCCLOSKEY

on Tuesday the 18th day of December 2018

IN THE MATTER OF AN APPLICATION BY RURAL INTEGRITY (LISBURN 01) LTD FOR JUDICIAL REVIEW

UPON THE MATTER having been in the list this day for Review,

AND UPON READING the documents recorded on the Court file as having been read,

AND UPON HEARING the Applicant, a litigant in person, and Counsel for the Respondent and Notice Party,

IT IS ORDERED that:

1. The Applicant shall provide its illustrative graphics document by email on or before 21 December 2018.

2. The Applicant shall provide a list of all cases in which he has lodged draft protected costs orders by 28 December 2018.

3. In relation to cases 18/56857/01 and 18/56858/01 [Cases 10 & 11], which the court has identified as lead cases, the proposed Respondent will comply with paragraph 5 of the Court order dated 19 June 2018 by 7 January 2019.

4. The court has received, and partially approves, the timetable proposed in the O'Reilly Stewart email of 7 January 2019, as modified below:

   (a) All costs related submissions shall be completed by 28 January 2019.

   (b) The protective costs applications and any security for costs applications in the two lead cases and 18/26370 will be listed on 1 February 2019.

   (c) The Respondent's solicitors shall provide the necessary interlocutory hearing bundles by 29 January 2019.

   (d) The two lead cases are provisionally listed for substantive hearing on 20 & 21 March 2019.

   (e) Further directions will be informed by the outcome of the listings on 1 February 2019 and will follow same.

5. The other 30 related cases shall be stayed until further order.

6. Costs reserved.

7. Liberty to apply.

Martyn Corbett
Proper Officer

Time Occupied: 18 December 2018 55 mins

**Filed Date 21 January 2019**

## APPENDIX 2

| | |
|---|---|
| **Neutral Citation No: [2018] NIQB …**<br><br>***Judgment: approved by the Court for handing down (subject to editorial corrections)****| ***Ref:*** **McC10936 [6]**<br><br>***Delivered:*** **02/07/19** |

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

_____

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

_____

**IN THE MATTER OF 33 APPLICATIONS BY RURAL INTEGRITY (LISBURN 01) LIMITED AND RELATED LIMITED COMPANIES**

**JUDICIAL REVIEW COURT NOTICE [No 4]**

The text of this court's general Notice [No 3] dated 03 July 2019 is as follows:

[1] Rural Integrity (Lisburn 01 Ltd) is a registered limited company with a share capital of £100 and a single director, one Gordon Duff, who represents this litigant, together with other comparable and related limited companies, in a total of 33 judicial review challenges filed with the Court during a six month period beginning on 05 March 2018 and ending on 17 September 2018. There has been a multiplicity of challenges, listings and orders in the Court's unrelenting attempts to devise fair, proportionate, practical and efficient case management mechanisms and arrangements for this unprecedented group of cases.

[2] The Respondent in JR 2018/26370 is the Planning Appeals Commission for Northern Ireland (the "PAC"). The Applicant challenges the decision of the PAC dated 11 December 2017 allowing an appeal against a refusal of planning permission and, thereby, authorising the development of two dwellings and detached garages at an "infill site" at 50/52 Ballee Road West, Ballymena.

[3] Leave to apply for judicial review was granted by order of this Court date 7th June 2018.

[4] The available evidence includes a full transcript of the judge's leave decision. It is abundantly clear from this that leave was granted subject to no restrictions or conditions applicable to either the Applicant or the PAC. The court rejects any argument to the contrary.

[5] All of the registered companies bringing the proceedings in the 33 cases are, in non-technical legal terms, established, owned, managed and operated by Mr Duff. The only expenditure which they have incurred is the court fees involved in initiating each of the judicial review applications and any subsequent ancillary or incidental fees. Mr Duff asserts that this is effected by the mechanism of directors' loans to the companies, of which there is no supporting evidence. He estimates that each judicial review case generates fees of this *genre* of some £260/£270. In two of the 33 cases Mr Duff instructed solicitors to act on behalf of the relevant applicant company. The court's understanding of the evidence is that this retainer has been terminated.

[6] The evidence/submissions emanating from Mr Duff include assertions that (a) he is owed some £5,000 by the companies, representing court costs incurred in the various judicial reviews and (b) he estimates that his total costs in these proceedings will be of the order of £5,000/£6,000, a sum which he will seek to recover from the PAC in the event of the legal challenge succeeding. There is no evidence whatsoever of Mr Duff's personal means or resources. Nor is there any evidence of the Applicant, the other companies or the collective legal proceedings being financed, partly or otherwise, by sources other than Mr Duff.

[7] The importance of environmental protection is acknowledged by the court, unreservedly so. However it is clear that the court can properly consider the nature and extent of any possible environmental detriment arising out of the authorised development. In this case, the impugned grant of planning permission authorises the construction of a dwelling house and garage on a site which is bounded on each side by existing dwellings, in a rural area. The site consists of 0.308 hectares. If the development proceeds there will of course be resulting environmental damage and disturbance. However, this development contrasts starkly with the list of "*activities*" in Annex 1 to the Aarhus Convention (mineral, oil and gas refineries, the production and processing of metals, waste management, waste water treatment plants, industrial plants *et al*). I consider that the imperative of environmental protection must be evaluated according to the specific context. The public interest, which belongs to a notional spectrum of some breadth, is to be calibrated accordingly.

[8] The public interest is, moreover, multi-faceted. It is not confined to protection of the environment and the prohibition of inappropriate land use. Rather it extends to encompass *inter alia* the factor of taxpayers' contributions and the associated funding of public authorities such as the PAC. It further encompasses the consideration that in any form of litigation one party should not have an unfair and/or unreasonable advantage at the expense – financial or otherwise – of another. The court recognises that one effect of the policy underlying the Aarhus Convention Regulations is that, in pursuit of the public interest of environmental protection, the notional "playing field" may be uneven. It is considered, however, that the kind of acute distortion, or skewing, which the Applicant's stance demands is not necessarily dictated by this legislative measure and must be balanced by other reasonable access to court mechanisms, which include in appropriate cases a

requirement that a limited, but proportionate, payment of security for costs be made. Furthermore, the interests of successful planning applicants must be reckoned.

[9] It seems undeniable that Mr Duff has established certain registered companies, including the Applicant in these proceedings, with a view to engaging in extensive litigation activities, which I have described as of unprecedented volume and, simultaneously, has by this mechanism effectively protected the promoters and operators of the companies from personal costs liability. The assets and resources of every limited company are confined to what its promoters, owners and investors are prepared to provide. Mr Duff has made a series of conscious decisions in this regard. The court must be alert to any possible manipulation of its process in every case. This clearly exposed costs avoidance mechanism is not harmonious with the proper invocation of the court's process and is a factor of significance which the court must reckon.

[10] In JR 2018/26370 the court has recently made the following Order:

(a) In the event of the Applicant having to pay costs, the amount recoverable will not exceed £10,000 including VAT.

(b) The Applicant will make security for the Respondent's legal costs and outlays in the same amount, ie £10,000 including VAT, and shall do so in accordance with the applicable procedural requirements and mechanisms by 19 March 2019.

Mr Duff has stated to the court that an appeal against this Order may be attempted. There is no such appeal at present. The Order of this Court will be finalised not later than 17/04/19. A time limit for seeking to appeal will then be triggered and no appeal can be brought unless this court or the Court of Appeal grants leave (permission) for this purpose.

[11] This court has previously stated and repeats the following. There is no legal restraint on implementing any of the grants of planning permission challenged in these 33 cases. All such grants are subject to a legal principle known as the presumption of regularity (the *omnia praesumuntur* principle). The development permitted is not prohibited by any legal rule or court order. This is how the rule of law operates in this sphere. Decisions will be made by the successful planning applicants, with the benefit of advice where appropriate.

[12] Re [10] above: The Applicant has not applied to this Court or the Court of Appeal for leave to appeal, nor has Notice of Appeal been served. The time limit for appealing has expired.

[13] On 27 June 2019 the court made the following Order in Rural Integrity (Lisburn 01) Ltd v Planning Appeals Commission [18/026370]:

1. *the application for Judicial Review is dismissed,*

2. *in accordance with the Order of the Court dated 09 March 2019, the Applicant shall pay the Respondent's costs of the proceedings in a sum not to exceed £10,000 plus VAT, such costs to be taxed in default of agreement,*
3. *the Applicant shall file any necessary application in writing within by 11 June 2019 if he wishes to appeal this decision,*
4. *the Respondent shall file their written response to any such application on or before the close of business on Monday 5 August 2019,*
5. *the proposed Respondents in the other related Judicial Review cases shall file any interlocutory application(s) on or before the close of business on Monday 5 August 2019.*

……

**NEW ORDER [No 4]**

[14] An appeal to the Court of Appeal followed, by Notice dated 22/07/19. This court requested that the appeal be expedited. By its decision dated 22/01/20 the Court of Appeal dismissed the appeal. The judgment is appended to this Order.

[15] All principal parties and interested parties have been notified of the listing of all cases belonging to this group at 09.45 on 26 February 2020. The following directions apply. Every party shall, by 21 February 2020 at latest:

1) Notify in writing, by E-mail, such order/s as is/are sought and the grounds thereof, by completing the RI FORM 1 which has been sent to everyone.[RESPONSES ONE PAGE MAXIMUM, FONT SIZE 12 MINIMUM].

2) Send by E-mail their completed RI Form 1 to the other parties in their individual case and the Judicial Review Office.

[16] On 26 February 2020 an attendance register will be available in the courtroom to be completed by everyone between 09.30 and 09.45.

THE HON MR JUSTICE MCCLOSKEY

17 February 2020

**APPENDIX 3**

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

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

**IN THE MATTER OF 33 APPLICATIONS BY RURAL INTEGRITY (LISBURN 01) LIMITED AND RELATED LIMITED COMPANIES**

**JUDICIAL REVIEW COURT NOTICE [No 5]**

1. The court notes the letter of 21 February 2020 from Gordon Duff, who continues to describe himself as a director of all of the Applicant companies. By this letter an adjournment of the hearing scheduled for 26 February 2020 for an unspecified period and for the reasons proffered is requested.

2. A balancing exercise is required, weighing and evaluating an amalgam of facts and considerations. The matters to be balanced include in particular these: the vintage and number of these cases; the issues raised; their apparent merits; the rules of court engaged; the various orders made by this court in Rural Integrity (Lisburn 01) Ltd v Planning Appeals Commission; the ensuing unsuccessful appeal to the Court of Appeal ("COA"); the date of that court's decision; that court's refusal to grant leave to appeal to UKSC; possible future events; predictable further delays of unpredictable and unquantifiable dimensions; the inevitability of further delay associated with Mr Duff's declared intention to petition UKSC directly; irrespective of the outcome of such application, the consideration that the attempted appeal is on a procedural issue only, with judicial determination of the legal merits of every case in the cohort being frozen indefinitely in the interim; this court's assessment that the grant of leave to appeal to UKSC is unlikely given that the COA's decision simply involved the routine application of a rule of court of uncontroversial meaning and import to a factually and litigation sensitive context; Mr Duff's unwillingness to act upon or accept the courses offered to him by the COA; the distinctive characteristics of every case belonging to this group; this court's frustrated previous attempts to identify a lead case (or cases) and to devise mechanisms for expeditious handling of the group of cases, an exercise marked by no, or no adequate, cooperation from the Applicant companies; the prejudice and uncertainty which numerous third parties have had to endure for a lengthy period; the inevitability of the perpetuation thereof in the event of this court acceding to the Applicants'

application; the strong probability that the audience with a legitimate interest in these multiple judicial review cases extends beyond the successful planning applicants – to family members and others; and equality of arms – none of the multiple interested parties, in common with Mr Duff, is legally represented ie Mr Duff suffers no prejudice in this respect

3. A fair, balanced and evaluative judgement is required of the court. My conclusion is that the balance swings clearly and decisively in favour of refusing Mr Duff's adjournment application.

The listing on 26 February 2020 shall proceed accordingly.

**The Rt Hon Lord Justice McCloskey**

**22 February 2020**