

Number of court case: 2014 No 487 JR

Name of court case: People Over Wind, Environmental Action Alliance* (applicants) and An Bórd Pleanála (ABP) (respondent) and Laois County Council, Coillte Teoranta and the Department of Arts Heritage and the Gaeltacht (notice parties)

*EAA did not proceed from here

Brief Subject matter - to show that it was environmental (e.g. EIA / AA)

The Applicant, is described in the judgment of the Court of Appeal as “an environmental non-governmental organisation”, instituted judicial review proceedings in the High Court (Record No. 2014 No. 487 JR/2014 No. 127 COM)

POW were granted leave to appeal the judgement of the court regarding its decision on ‘appropriate assessment’ of the following points of law, which the judge certified to be of exceptional public importance:

1. Restoration – is there an obligation on ABP when conducting an AA to ensure that the proposed development would not adversely affect a National Parks and Wildlife Service objective of restoration, from unfavourable to favourable conservation status, of a protected habitat and species (Nore Fresh Water Pearl Mussel (NFWPM)), in a candidate SAC situated outside the proposed development site.
2. Best scientific evidence – what obligation, if any, if on ABP to seek or procure the best scientific evidence in carrying out an AA? Was ABP entitled to consider the scientific evidence it had as ‘best scientific evidence’? Was the court entitled or obliged to consider new and additional evidence in the affidavit of Dr Evelyn Moorkens, regarding the NFWPM? Does this evidence demonstrate a lacuna in the best scientific evidence put before ABP such that its decision should be quashed or remitted for further consideration?
3. Mitigation measures – where a proposed development is likely to adversely affect the integrity of a European Site but such affect may be avoided by mitigation measures to what extent, if at all, is it lawful for the details of such consent to be left over by ABP for post-consent agreement between developer and named authorities?

Statement of how costs were used to try and get your case dropped.

At this point in time the Court of Appeal was new and it was not clear if the cost protection we had been guaranteed in the lower court would apply in the higher (i.e. protection from costs in cases of environmental importance). POW noticed that NPWS had not been listed as a notice party and were to point this out in the appeal. The legal team of ABP, several days before the appeal, told our legal team that they would pursue POW for costs in the Court of Appeal. However, they said that they would not do this if we dropped and did not inform the court of the omission of NPWS from the notices parties. It is important to point out here that the NPWS are the national body responsible for the protection of Ireland’s national heritage ([See here](#)) and that the POW case concerned the potential extinction of the NFWPM due to construction of a large wind farm upstream.

Which agency threatened you with costs

The legal team of ABP

Signed / Dated:

8/1/2021

Paula By