

APPROVED

[2026] IEHC 437



**THE HIGH COURT
JUDICIAL REVIEW
PLANNING AND ENVIRONMENT**

2025/1277JR

**IN THE MATTER OF SECTIONS 50, 50A AND 50B OF THE
PLANNING AND DEVELOPMENT ACT 2000
AND IN THE MATTER OF A DETERMINATION PURSUANT TO
SECTION 51 OF THE ROADS ACT, 1993
AND IN THE MATTER OF PART 9 OF THE PLANNING AND
DEVELOPMENT ACT, 2024**

BETWEEN

JOHN ROGERS

APPLICANT

AND

AN COIMISIÚN PLEANÁLA

DEFENDANT

AND

MEATH COUNTY COUNCIL

NOTICE PARTY

JUDGMENT of Mr. Justice Nolan delivered on the 3rd day of July 2026

Introduction

1. The Applicant brought a challenge to the Decision of the Respondent, An Coimisiún Pleanála (“*the Commission*”), dated 27 June 2025, to grant approval to the Notice Party, Meath County Council, (“*the Council*”) for the N2 Slane Bypass and Public Realm Enhancement Scheme pursuant to section 51 of the Roads Act, 1993.
2. The Applicant’s central argument was that the Commission had failed to ensure that it had, or had access as necessary to, sufficient expertise to examine the Environmental Impact Assessment Report, (“*EIAR*”) contrary to Article (5)(3)(b) of Directive 2011/92/EU, as implemented by section 51(2A) of the Roads Act 1993.
3. I delivered judgment on 28 April 2026, dismissing the application for judicial review, but with some reservations.
4. This is the Applicant’s application seeking a certificate for leave to appeal to the Court of Appeal from the decision of the High Court to dismiss the application for judicial review, pursuant to section 50A(7) of the Planning and Development Act (“2000 Act”).

APPROPRIATE TEST

5. Subsection 50A(7) of the 2000 Act provides as follows:

“The determination of the Court of an application for section 50 leave or of an application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the Supreme Court in either case save with leave of the Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.”

6. By virtue of section 75 of the Court of Appeal Act 2014, references to the Supreme Court in section 50A(7) of the 2000 Act are to be construed as a reference to the Court of Appeal.

7. For a party to obtain leave to appeal to the Court of Appeal, the High Court must be satisfied and certify that its decision involves both: a point of law of exceptional public importance; and that it is desirable in the public interest that an appeal should be taken.

8. The principles applicable to an application for leave to appeal have been elaborated on numerous occasions in caselaw and recently stated by Humphreys J. in *Rural Residents Wind Aware & Environmental Group & Ors -v- ACP* [2026] IEHC 301. He noted that the statutory criteria for leave to appeal are familiar, with some of the major elements required for the grant of leave to appeal being as follows:

- (i) the point must properly arise (*Concerned Residents of Treascon and Clondoolusk v An Bord Pleanála & Ors* [2024] IESC 28),
- (ii) the point must be one of law (*Leech v An Bord Pleanála* (also referred to herein as “ABP”) [2025] IEHC 157),
- (iii) the point of law must be of public importance (*Patrick McCaffrey & Sons Ltd v ABP* [2024] IESCDET 145),
- (iv) the public importance must be exceptional, and
- (v) an appeal must be in the public interest (*Dunnes Stores v ABP* [2015] IEHC 387).

9. As noted by Holland J. in *Monkstown Road Residents Association v An Bord Pleanála* [2023] IEHC 9, para. 5, the starting point of the application of the well-established principles of law applicable in an application for a certificate of leave to appeal has been identified by Barniville J. in *Cork Harbour Alliance for a Safe Environment v An Bord Pleanála* [2022] IEHC 231, at para. 32(1) as follows:-

“The clear intention of the Oireachtas in enacting s.50A(7) (and its statutory predecessors) was that, in most cases, the decision of the High Court on an application for leave to seek Judicial Review in respect of a planning decision or on an application for judicial review of such a decision should be final and should not be the subject of an appeal”

10. It is important to note that the Court is not concerned with the strength of the point raised, only that it arises from the judgment, is a point of exceptional public importance, that it is desirable in the public interest that an appeal should be taken and that it could be determinative of the case. (emphasis added)

The Judgment

11. Bearing in mind that test, the starting point for consideration is my judgment. At the outset, I noted that the bridge across the River Boyne at Slane Village has for years been very dangerous and that there had been many attempts to remediate the problem but without success. At para. 56, I found that the obligations arising under the Directive are autonomous obligations, deriving from the Directive and on that basis, there was no obligation on the Applicant to have raised them during the planning process. That mandatory obligation on the part of the Commission was to ensure that it has, or has access as necessary to, sufficient expertise to examine the EIAR (Art. 5(3)b).

12. At para. 59, I said that the issue was how that autonomous obligation interacts with the duty of candour, in circumstances where the question of the Commission’s expertise was raised by correspondence from the Applicant’s solicitor, shortly before the hearing, and where that correspondence was not responded to.

13. I then dealt at some length with the issue of the duty of candour and posed the question as to how far that duty should go. I identified the present law as stated by Costello J. (as she

then was) in *Friends of the Irish Environment CLG v. The Government of Ireland & others* [2021] IECA 317 and her observations on the judgment of Barrett J. in *Murtagh v. Judge Kilrane* [2017] IEHC 384, I said that the present state of Irish law was that in judicial review proceedings, a respondent is required to disclose to the court all material in its possession which is relevant to the decision sought to be impugned, but that duty does not require the disclosure of material in respect of which the respondent would be entitled to claim privilege in a discovery process, nor does it amount to a duty of general disclosure.

14. At para. 66, having set out the remaining seven principles in *Murtagh*, I said as follows: *“If the remaining principles, as outlined by Barrett J. in Murtagh, formed part of Irish law, the case advanced by the Applicant would be quite different and could, in the circumstances of this case, potentially shift the onus of proof, to the extent that the Commission’s failure to respond to the query regarding the expertise of its members and the inspector, could be determinative”*. It is that observation which is the corner stone of the application.

The Questions for Certification

15. The Applicant now seeks a certificate for leave to appeal in respect of the following points:

- a) Does a public body owe a duty of candour as a respondent in judicial review proceedings concerning compliance with an autonomous EU law obligation to disclose the expertise it has or has access to when that point is a properly pleaded issue in dispute in the proceedings?
- b) Does the presumption of validity of the decision of the Commission apply when the issue in dispute in the proceedings is a jurisdictional requirement imposed by Article 5(3)(b) of Directive 2011/92/EU, as amended?

- c) Where the Court has judicial doubt as to compliance with an express EU law requirement which forms a jurisdictional condition, can it allow the decision to stand?
- d) Can adverse inferences be drawn where information uniquely within the possession of a public body respondent is refused or withheld in judicial review proceedings.

The Applicant's Submissions

16. Mr. Cush SC for the Applicant says, that since I accepted that the obligation under Article 5(3)(b) was an “*autonomous obligation*” imposed on the Respondent was properly pleaded, the sufficiency of the Commission’s expertise was an issue to be determined.

17. He identified the passage in the judgment where I said that the question was whether the Respondent could remain silent and rely solely upon presumptions, where the existence of the requisite expertise lies peculiarly within its knowledge, where the EU obligation is imposed directly upon it.

18. He said that I had noted that the parameters of the duty of candour remain unsettled in Irish law and brought me to para. 66 of the judgment, where I said that if the principles outlined by Barrett J. applied, that could potentially shift the onus of proof and therefore could be determinative. He says that, if the duty of candour is extended in that way — a possibility contemplated, but not decided, by the Court of Appeal — that would be a highly important proposition of law. He submits that it is of exceptional public importance due to its breadth and potential impact in judicial review applications. He relies on the statement in *Monkstown* that “[t]he requirements of exceptional public importance and that an appeal be desirable in the public interest are cumulative.”

19. He says that it is clearly in the public interest, given its importance particularly where the development is located adjacent to two areas of special conservation interest, which would

be irreversible against the background where I expressed doubt as to whether the Commission had the requisite expertise.

The Commission and the Council's Submissions

20. Mr. Valentine SC, for the Commission, argues that the High Court's decision turned on the particular facts of the case. He accepts that such a duty exists, but there was no breach because the Applicant only raised concerns about the Commission's expertise two days before the hearing and had not used the available procedures earlier to obtain the necessary evidence. He submits that the Applicant still bears the burden of proving its judicial review and cannot simply make allegations in its pleadings and expect the Commission to provide the evidence.

21. Mr. Keane SC, for the Council, similarly submits that the proposed appeal raises no issue of exceptional public importance and is inconsistent with the purpose of section 50A(7), which promotes certainty, finality, and speedy resolution in planning judicial reviews. He argues that the expertise issue was raised too late, was not properly supported by evidence, and did not alter the normal burden of proof on the Applicant. He also submits that granting an appeal would not serve the public interest, as it would further delay the Slane Bypass project, with all its obvious public safety and transport benefits, something which I observed in the judgment.

Discussion

22. As noted above, the starting point is my judgment. There is no doubt that I was troubled about the issue of the duty of candour, which was raised very late in the day and was not part of the pleadings or the written submissions. Nonetheless, it has become the focus of much debate in the case.

23. I decided the case on established legal principles, as the law now stands. As I said in the judgment at para. 66, if the remaining parts of the principles, as outlined by Barrett J. in *Murtagh*, formed part of Irish law, the case advanced by the Applicant would be quite different and could – and I emphasise could – in the circumstances of this case, potentially shift the onus of proof, to the extent that the Commission’s failure to respond to the query regarding the expertise of its members and the inspector be determinative.

24. However, as the caselaw makes clear, it is not for me to determine the strength of that argument, only to see if it arises from the judgment and is a point of law of exceptional public importance; and that it is desirable in the public interest that an appeal should be taken. In *Monkstown*, Holland J. noted that “...the Court should not concern itself with the merits, strength or weakness of the parties’ arguments on the point or prospects of success on any appeal.”

25. If the law was as set out in *Murtagh*, there is little doubt that it would be a matter of exceptional public importance, transcending the facts of the case, affecting a whole range of judicial review proceedings. Indeed, it would be groundbreaking, as I observed at para 76.

26. There is no doubt that the jurisdiction to grant leave is to be exercised sparingly, nonetheless, I accepted that the obligation under Article 5(3)(b), is an “*autonomous obligation*” on the Respondent, was properly pleaded and that the question of the sufficiency of the expertise on the part of the Commission was an issue to be determined.

27. I am satisfied that taking the judgment as a whole and reflecting a correct understanding of it, that at least one if not two of the points or questions raised, clearly arise from it.

28. It is clear from the caselaw particularly *Friends of the Irish Environment CLG; Murtagh and Elsharkawy v The Minister for Transport* [2024] IEAC 258, that the parameters of the duty of candour are not yet settled in Irish law.

29. On one view, the issue may well be determinative of the case. That is another factor in favour of certification, based on the guidance provided in *Monkstown*, particularly where the issue concerns compliance with an autonomous EU law obligation imposed directly on the Respondent itself and where the relevant information concerning compliance lies within the Respondent's the possession and knowledge of.

30. I note the submissions of both the Commission and the Council that I ultimately decided that the information was not sought in time. However, no doubt that will be a matter which will be raised in the Court of Appeal and goes to the merits of the case. That is not a consideration for me at this point.

31. I reached the decision I did, by reference to the principles governing judicial review and the presumptions which must guide the Court in its determination, rather than on any finding as to whether the Commission possessed the requisite expertise required by Article 5(3)(b).

32. It is the interplay between the presumption of validity attaching to administrative decisions, the allocation of evidential burdens in judicial review proceedings, the duty of candour in public law proceedings and the requirements of effective judicial protection under EU environmental law, that leads me to the view that the matter should be considered by the Court of Appeal.

33. As noted by Clarke J. (as he then was) in *Arklow Holidays v An Bord Pleanala & others* [2006] IEHC 15, there is a public interest in the construction of major infrastructure of the nature of this project and the importance of bringing finality to the questions concerning its validity. These are factors to be properly considered and weighed against. However, once this project is up and running, the work done and any effects from it, will be irreversible in an area of particular world heritage importance.

34. As in all these matters, it is a case of balancing interests. On the one hand public safety while on the other a potential breach of European law. In my view the delay will not be, in the overall context, excessive, given the efficiency of the Court of Appeal list management. It should be noted that at the time of Clarke J's. observations, the Court of Appeal had not yet been established.

35. Therefore, taking all matters into consideration, I am satisfied, that the judgment raises a point of law of exceptional public importance; and that it is desirable in the public interest that an appeal should be taken.

36. The next issue are the questions posed.

The Questions

37. The first question reads as follows: - *Does a public body owe a duty of candour as a respondent in judicial review proceedings concerning compliance with an autonomous EU law obligation to disclose the expertise it has or has access to when that point is a properly pleaded issue in dispute in the proceedings?*

38. Mr. Cush said that the first and fourth questions could be linked. I agree with his suggestion.

39. The second question reads as follows: - *Does the presumption of validity of the decision of the Commission apply when the issue in dispute in the proceedings is a jurisdictional requirement imposed by Article 5(3)(b) of Directive 2011/92/EU, as amended?*

40. Mr. Valentine submits that the answer to the question is plainly yes. He further submits that the Applicant has failed to engage with the relevant case law or to demonstrate that the issue raises a point of law of exceptional public importance. Accordingly, the application of settled law does not provide a proper basis for seeking leave to appeal.

41. Mr. Keane submits that the Applicant has mischaracterised the judgment, in that the Court accepted that the Commission's expertise could be a jurisdictional fact, but did not hold that such facts are exempt from ordinary evidential rules or that the presumption of validity automatically defeats any challenge. The Court found that presumptions in judicial review can only be rebutted by evidence, and where the alleged error depends on expert opinion, it must be supported by expert evidence, which the Applicant failed to provide.

42. He says the Applicant did not challenge the methodology, substance, or expertise behind the EIAR assessments, but merely complained that the Commission did not appear to have used external experts in certain areas and that the Applicant is seeking to reframe his failure to meet the evidential burden as an abstract legal issue about jurisdictional facts and presumptions.

43. But it seems to me that having decided the matter in principle, it will be for the Court of Appeal to determine this issue. On that basis I will certify the second question.

44. As regards the third question it seems to me that a court will always have some doubt in nearly every case it decides, unless the matter is clearcut, which it seldom is. Therefore, I shall not certify the third question.

45. The fourth question has already been merged with the first question and therefore falls away as a standalone question.

Conclusion

46. Having considered the detailed written and oral submissions I shall certify the following two questions: -

Does a public body owe a duty of candour as a respondent in judicial review proceedings concerning compliance with an autonomous EU law obligation to disclose

the expertise it has or has access to when that point is a properly pleaded issue in dispute and/or the information was requested in the proceedings?

and

Does the presumption of validity of the decision of the Commission apply when the issue in dispute in the proceedings is a jurisdictional requirement imposed by Article 5(3)(b) of Directive 2011/92/EU, as amended?

47. I shall put the matter in for making final orders at 15 of July 2026 at 10:30.