

**THE HIGH COURT
JUDICIAL REVIEW**

BETWEEN

MARTIN STAPLETON

APPLICANT

AND

**AN BORD PLEANÁLA, THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND
HERITAGE, IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

SAVONA LIMITED AND DUBLIN CITY COUNCIL

NOTICE PARTIES

(No. 2)

JUDGMENT of Humphreys J. delivered on Tuesday the 26th day of July, 2022

1. In *Stapleton v. An Bord Pleanála* (No. 1) [2022] IEHC 372, [2022] 6 JIC 2201 (Unreported, High Court, 22nd June, 2022), I refused declarations under s. 50B of the Planning and Development Act 2000, s. 3 of the Environment (Miscellaneous Provisions) Act 2011 and (in respect of statutory invalidity) the Aarhus Convention, and decided in principle to refer a question identified in the judgment to the CJEU.
2. In the No. 1 judgment I gave the parties the option of proposing the addition of any *amici curiae* that might assist the formulation of the formal order for reference and that might assist the CJEU. No such *amici* were proposed.
3. In order to assist the CJEU, a full list of the relevant EU, international and domestic legal material is set out in the appendix to the judgment together with web links.
4. It is now necessary to give directions for the purpose of ensuring the timely submission of the reference to the CJEU.
5. With those matters addressed, the order for reference will be dealt with in a separate judgment.
6. Accordingly, the order will be as follows:
 - (a). I will direct that the applicants lodge the following documents with the List Registrar in an electronic form having agreed the contents with the other parties, as soon as practicable and in any event not later than 9th September, 2022, for transmission to the CJEU by the Principal Registrar:
 - (i). a contents page in electronic form of the documents submitted; and

- (ii). a PDF containing all pleadings. If this PDF exceeds 30MB, it is to be split into separate PDFs each of which should not individually exceed 30MB. The PDF(s) should include among other pleadings and papers:
 - 1. a scanned copy of the signed approved version of all judgments; however, the version to be included of the present judgment should be a scan of the signed copy of the substantive part of the judgment together with an electronic version of the appendix which preserves the clickable links); and
 - 2. a scanned version of the order for reference;
- (b). I will adjourn the hearing of the balance of the matter pending the decision of the CJEU; and
- (c). the matter will be listed for mention only on Monday 3rd October, 2022 at 2 p.m.

APPENDIX – RELEVANT LEGAL MATERIALS

European law

- (i). Article 4 Consolidated version of the Treaty on European Union.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M004&from=EN>
- (ii). Article 19 Consolidated version of the Treaty on European Union.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016M019&from=EN>
- (iii). Article 47 of the Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>
- (iv). Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment. OJ L 175, 5.7.1985, p. 40–48.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31985L0337>
- (v). Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0043>
- (vi). Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. OJ L 327, 22.12.2000, p. 1–73.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0060>
- (vii). Directive 2001/42/EC of the European Parliament and of the Council of 27th June, 2001 on the assessment of the effects of certain plans and programmes on the environment.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0042&from=EN>
- (viii). Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters. OJ L 124, 17.5.2005, p. 1–3.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005D0370>
- (ix). Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. OJ L 264 25.9.2006.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1367>

- (x). Directive 2011/92/EU of the European Parliament and of the Council of 13th December, 2011 on the assessment of the effects of certain public and private projects on the environment (as amended by council directive 2014/52/EU) OJ L 26, 28.1.2012.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0092&from=EN>

- (xi). Directive 2014/52/EU of the European Parliament and of the Council of 16th April, 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p. 1–18).

<https://eur-lex.europa.eu/eli/dir/2014/52/oj>

European Caselaw

- (i). Case C-239/03 *Commission of the European Communities v. French Republic* (European Court of Justice, 7th October, 2004, ECLI:EU:C:2004:598).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=49170&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550347>

- (ii). Case C-212/04 *Konstantinos Adeneler v. Ellinikos Organismos Galaktos* (European Court of Justice, 4th July, 2006, ECLI:EU:C:2006:443).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=56282&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550347>

- (iii). Case C-427/07 *Commission of the European Communities v. Ireland* (European Court of Justice, 16th July, 2009, ECLI:EU:C:2009:457).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=72488&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=376792>

- (iv). Joined Cases C-128/09 – C-131/09 *Boxus & Ors v. Région wallonne* (Court of Justice of the European Union, 18th October, 2011, ECLI:EU:C:2011:667).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=111403&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1876838>

- (v). C-204/09 *Flachglas Torgau GmbH v. Bundesrepublik Deutschland* (Court of Justice of the European Union, 14th February, 2012, ECLI:EU:C:2012:71).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=119426&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1876838>

- (vi). Case C-240/09 *Lesoochránárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky* (Court of Justice of the European Union, 8th March, 2011, ECLI:EU:C:2011:125).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=80235&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=376792>
- (vii). Case C-260/11 *Edwards v. Environment Agency* (Court of Justice of the European Union, 11th April, 2013, ECLI:EU:C:2013:221).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=136149&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1879059>
- (viii). Case C-530/11 *European Commission v. United Kingdom* (Court of Justice of the European Union, 13th February, 2014, ECLI:EU:C:2014:67).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=140962&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=376792>
- (ix). Case C-470/16 *North East Pylon Pressure Campaign Limited v. An Bord Pleanála* (Court of Justice of the European Union, 15th March, 2018, ECLI:EU:C:2018:185).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=200265&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=376792>
- (x). Case C-470/19 *Friends of the Irish Environment Ltd. v. Commissioner for Environmental Information* (Court of Justice of the European Union, 15th April, 2021, ECLI:EU:C:2021:271).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=239890&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1876838>
- (xi). Case T-33/16 *TestBioTech eV v. European Commission* (General Court of the European Union, 14th March, 2018, ECLI:EU:T:2018:135).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=200243&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550347>
- (xii). Case C-167/17 *Klohn v. An Bord Pleanála* (Court of Justice of the European Union, 17th October, 2021, ECLI:EU:C:2018:833).
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=206856&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=774048>
- (xiii). Case C-826/18 *Stichting Varkens in Nood v. College van burgemeester en wethouders van de gemeente Echt-Susteren* (Court of Justice of the European Union, 14th January, 2021, ECLI:EU:C:2021:7).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=236421&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550347>

- (xiv). Case T-9/19 ClientEarth v. European Investment Bank (General Court of the European Union, 27th January, 2021, ECLI:EU:T:2021:42).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=237047&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=376792>

International law

- (i). Vienna Convention on the Law of Treaties done at Vienna on 23rd May, 1969.

https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

- (ii). UNEP Environmental Law Guidelines and Principles, Stockholm Declaration on the Human Environment, done at Stockholm on 16th June, 1972.

<https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf?sequence=1&isAllowed=y>

- (iii). UNEP Report of the United Nations Conference on Environment and Development, done at Rio de Janeiro on 14th June, 1992.

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

- (iv). UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus (Denmark) on 25th June, 1998 ('the Aarhus Convention').

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27

- (v). UNECE Aarhus Convention Compliance Committee Report: Economic and Social Council Distr. GENERAL ECE/MP.PP/C.1/2006/4/Add.2 28 July 2006 Original: ENGLISH. ECONOMIC COMMISSION FOR EUROPE Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Compliance Committee Twelfth meeting Geneva, 14–16 June 2006 REPORT OF THE MEETING Addendum FINDINGS AND RECOMMENDATIONS with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11 by Bond Beter Leefmilieu Vlaanderen VZW (Belgium)) Adopted by the Compliance Committee on 16 June 2006.

https://unece.org/env/pp/cc/accc.c.2005.11_belgium

- (vi). UNECE Aarhus Convention Compliance Committee Report: United Nations ECE/MP.PP/C.1/2010/6/Add.2 Economic and Social Council Distr.: General 24 August 2011 Original: English: Economic Commission for Europe: Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: Compliance Committee: Twenty-ninth meeting Geneva, 21–24 September 2010: Report of the Compliance Committee on its Twenty-Ninth meeting: Addendum Findings and recommendations with regard to communication ACCC/C/2008/27 concerning compliance by the United Kingdom of Great Britain and Northern Ireland: Adopted by the Compliance Committee on 24 September 2010.

https://unece.org/fileadmin/DAM/env/pp/compliance/C2008-27/DFR/ece_mp.pp_c.1_2010_6_add.2_eng.pdf

- (vii). UNECE Aarhus Convention Compliance Committee Report: United Nations ECE/MP.PP/C.1/2010/6/Add.3 Economic and Social Council Distr.: General 24 August 2011 Original: English: Economic Commission for Europe Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: Compliance Committee: Twenty-ninth meeting: Geneva, 21–24 September 2010: Report of the Compliance Committee on its Twenty-Ninth meeting: Addendum Findings and recommendations with regard to communication ACCC/C/2008/33 concerning compliance by the United Kingdom of Great Britain and Northern Ireland Adopted by the Compliance Committee on 24 September 2010).

https://unece.org/fileadmin/DAM/env/pp/compliance/C2008-33/Findings/ece_mp.pp_c.1_2010_6_add.3_eng.pdf

- (viii). UNECE Aarhus Convention Compliance Committee Report: United Nations ECE/MP.PP/C.1/2012/11 Economic and Social Council Distr.: General 2 October 2012 Original: English Communication ACCC/C/2010/50 concerning compliance by the Czech Republic, prepared by the Compliance Committee and adopted on 29 June 2012: Economic Commission for Europe Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Compliance Committee Thirty-ninth meeting Geneva, 11–14 December 2012 Item 7 (a) of the provisional agenda Communications from members of the public Findings and recommendations with regard to communication ACCC/C/2010/50 concerning compliance by the Czech Republic Prepared by the Compliance Committee and adopted on 29 June 2012.

https://unece.org/fileadmin/DAM/env/pp/compliance/C2010-50/Findings/ece_mp.pp_c.1_2012_11_eng.pdf

- (ix). UNECE Aarhus Convention Compliance Committee Report: United Nations ECE/MP.PP/C.1/2016/10 Economic and Social Council Distr.: General 29 November 2016 Original: English Economic Commission for Europe Meeting of the Parties to the Convention

on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Compliance Committee Fifty-fifth meeting Geneva, 6–9 December 2016 Item 9 of the provisional agenda Communications from members of the public Findings and recommendations with regard to communications ACCC/C/2013/85 and ACCC/C/2013/86 concerning compliance by the United Kingdom of Great Britain and Northern Ireland* Adopted by the Compliance Committee on 17 June 2015.

https://unece.org/fileadmin/DAM/env/pp/compliance/CC-55/ece.mp.pp.c.1.2016.10_eng.pdf

- (x). UNECE The Aarhus Convention: An Implementation Guide 2nd ed. (2014).

https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

Domestic legislation

- (i). Article 15.2 of the Constitution of Ireland.

<https://www.irishstatutebook.ie/eli/cons/en/html#part4>

- (ii). Order 84 of the Rules of the Superior Courts 1986, as amended.

<https://www.courts.ie/rules/judicial-review-and-orders-affecting-personal-liberty>

- (iii). Order 99 of the Rules of the Superior Courts 1986, as amended.

<https://www.courts.ie/rules/costs>

- (iv). Planning and Development Act 2000, as amended.

<https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/pdf?annotations=true>

- (v). Interpretation Act 2005.

<https://www.irishstatutebook.ie/eli/2005/act/23/enacted/en/html>

- (vi). European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No. 272 of 2009).

<https://www.irishstatutebook.ie/eli/2009/si/272/made/en/print>

- (vii). Environment (Miscellaneous Provisions) Act 2011, as amended.

<https://revisedacts.lawreform.ie/eli/2011/act/20/front/revised/en/html>

- (viii). Planning and Development (Housing) and Residential Tenancies Act 2016.

<http://revisedacts.lawreform.ie/eli/2016/act/17/revised/en/html>

Domestic caselaw

- (i). *Crodaun Homes Ltd. v. Kildare County Council* [1983] I.L.R.M. 1.
<https://app.justis.com/case/crodaun-homes-ltd-v-kildare-county-council/overview/c4Gtm1Gdn2Wca>
- (ii). *AG (McGarry) v. Sligo County Council* [1991] 1 I.R. 99.
<https://app.justis.com/case/attorney-general-mcgarry-v-sligo-county-council/overview/c4CJnXutoYWca>
- (iii). *O’Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39.
<https://app.justis.com/case/okeeffe-v-an-bord-pleanla/overview/c5aJm4CZnWWca>
- (iv). *Maher v. Minister for Agriculture* [2001] IESC 32, [2001] 2 I.R. 139.
https://www.courts.ie/search/judgments/%22%20type%3AJudgment%22%20AND%20%22filter%3Aalfresco_radio.title%22%20AND%20%22filter%3Aalfresco_NeutralCitation.%5B2001%5D%20IESC%2032%22
- (v). *McCoy v. Shillelagh Quarries Limited* [2015] IECA 28, [2015] 1 I.R. 627.
https://www.courts.ie/acc/alfresco/b526a879-2bfe-45ff-82ea-badc6ea6d285/2015_IECA_28_1.pdf/pdf#view=fitH
- (vi). *Conway v. Ireland* [2017] IESC 13, [2017] 1 I.R. 53.
https://www.courts.ie/acc/alfresco/027345d1-98b6-4bcf-ac25-c0c84cdfb196/2017_IESC_13_1.pdf/pdf#view=fitH
- (vii). *Heather Hill Management Company CLG v. An Bord Pleanála* [2019] IEHC 186, [2019] 3 JIC 2901 (Unreported, High Court, Simons J., 29th March, 2019).
https://www.courts.ie/acc/alfresco/aba5000e-b621-4346-b0eb-45709ea2c223/2019_IEHC_186_1.pdf/pdf#view=fitH
- (viii). *O’Connor v. Offaly County Council* [2020] IECA 72, [2020] 3 JIC 2001 (Unreported, Court of Appeal, Murray J. (Whelan and Noonan JJ. concurring), 20th March, 2020).
https://www.courts.ie/acc/alfresco/b983209c-51f3-4867-9d6e-eea72238db65/2020_IECA_72.pdf/pdf#view=fitH
- (ix). *Eco Advocacy CLG v. An Bord Pleanála (No. 1)* [2021] IEHC 265, [2021] 5 JIC 2704 (Unreported, High Court, 27th May, 2021).

https://www.courts.ie/acc/alfresco/54138cf5-791e-4ed0-ad84-315eb9ec8caf/2021_IEHC_265.pdf/pdf#view=fitH

- (x). *Heather Hill Management Company CLG v. An Bord Pleanála* [2021] IECA 259 (Unreported, Court of Appeal, Costello J. (Ní Raifeartaigh and Pilkington JJ. concurring), 14th October, 2021).

[https://www.courts.ie/acc/alfresco/bf01f165-fd13-45b7-9518-09f95c6f5a4d/2021_IECA_259%20\(Unapproved\).pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/bf01f165-fd13-45b7-9518-09f95c6f5a4d/2021_IECA_259%20(Unapproved).pdf/pdf#view=fitH)

- (xi). *Enniskerry Alliance and Enniskerry Demesne Management Company CLG v. An Bord Pleanála (No. 1)* [2022] IEHC 6 (Unreported, High Court, 14th January, 2022).

https://www.courts.ie/acc/alfresco/5aeed83d-034b-4cc1-989c-bf65d9475198/2022_IEHC_6.pdf/pdf#view=fitH

- (xii). *An Taisce v. The Minister for Agriculture Food and Marine* [2022] IEHC 96, [2022] 2 JIC 2801 (Unreported, High Court, Simons J., 28th February, 2022).

https://www.courts.ie/acc/alfresco/8cc37425-459b-43cc-9edc-51424235e6da/2022_IEHC_96.pdf/pdf#view=fitH

- (xiii). *Save Roscam Peninsula CLG v. An Bord Pleanála (No. 2)* [2022] IEHC 328, [2022] 6 JIC 0903 (Unreported, High Court, 9th June, 2022).

- (xiv). https://www.courts.ie/acc/alfresco/304a73a3-64d5-4372-b584-75e824faa3d7/2022_IEHC_328.pdf/pdf#view=fitH *Stapleton v. An Bord Pleanála (No. 1)* [2022] IEHC 372, [2022] 6 JIC 2201 (Unreported, High Court, 22nd June, 2022).

https://www.courts.ie/acc/alfresco/bb0520d5-f189-49fc-aa1c-deb2b6be074a/2022_IEHC_372.pdf/pdf#view=fitH

- (xv). *Enniskerry Alliance v. An Bord Pleanála (No. 2)* [2022] IEHC 337, [2022] 6 JIC 1002 (Unreported, High Court, 10th June, 2022).

https://www.courts.ie/acc/alfresco/dfd02c32-4666-439a-8ea9-2741ee1388f9/2022_IEHC_337.pdf/pdf#view=fitH

Other materials

- (i). *Venn v. Secretary of State for Communities and Local Government* [2014] EWCA Civ 1539.

<http://www.bailii.org/ew/cases/EWCA/Civ/2014/1539.html>

- (ii). Dublin City Development Plan 2016-2022

<https://www.dublincity.ie/dublin-city-development-plan-2016-2022>

(iii). Urban Development and Building Heights Guidelines 2018.

<https://www.gov.ie/en/publication/93d22-urban-development-and-building-height-guidelines-ud-bhg-2018/>

(iv). *R (Lewis) v. Welsh Ministers* [2022] EWHC 450 (Admin).

<https://www.bailii.org/ew/cases/EWHC/Admin/2022/450.html>