THE HIGH COURT

[2024] IEHC 362

[Record No. 2023/1139JR]

BETWEEN

O'FLYNN CONSTRUCTION COMPANY UNLIMITED COMPANY

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

DUBLIN CITY COUNCIL

NOTICE PARTY

JUDGMENT of Mr Justice Barr delivered electronically on the 14th day of June 2024.

Introduction.

1. This is an application by An Bord Pleanála to strike out the applicant's challenge to its decision dated 17 August 2023, on grounds that the proceedings have become moot.

2. While the respondent is the moving party in this application, it will be more convenient to refer to the landowner as the applicant, as that company is the applicant in the substantive proceedings. Accordingly, An Bord Pleanála will be referred to in this judgment as the respondent, even though it is the moving party in the present application.

Background.

3. A tax known as Residential Zoned Land Tax (hereinafter "RZLT") was introduced by the Finance Act 2021, which inserted part 22A into the Taxes Consolidation Act 1997, as amended. The purpose of RZLT was to provide a new tax to incentivise development of housing on land which was suitably zoned and serviced, as indicated on maps to be provided by local authorities covering their functional areas. The tax was set at 3% of the site value, to be self-assessed by the landowner where such lands were deemed to meet the criteria for payment of the tax, which lands were referred to as being "in scope"; with liability and enforcement arrangements for collection of the tax to be managed through the Revenue system.

4. All land that was zoned for residential development, or residential development and a mix of other uses, in a development plan or local area plan, before 01 January 2022, and which remained subject to the relevant zoning on that date, was liable for consideration within the initial scope of the RZLT. The imposition of the tax was intended to encourage activation of existing planning permissions on lands, which were identified as being in scope,

and to incentivise owners of suitable lands without planning permission, to commence the process of engagement with planning authorities on proposals for development.

5. The Act provided that for the purpose of identifying which landowners would be liable to pay the tax, the local authority had to prepare a draft map showing which land in their area they deemed to satisfy the criteria as set out in the statute. There was provision for affected landowners to make submissions on the draft map prepared by the local authority. Having considered these submissions, the local authority would then issue its determination. If adverse to the interests of the landowner, the determination could be appealed by the landowner to An Bord Pleanála, following which the final map would be prepared.

6. The legislation, as originally introduced, set out a timeline leading to the publication by local authorities of the final RZLT maps by 01 December 2023. The relevant dates under that process were as follows: 01 November 2022 – publication by the relevant local authorities of draft maps showing lands that were deemed in scope; 01 January 2023 – final date for submissions to relevant local authorities by landowners and members of the public on inclusions or exclusions in the draft map; 01 April 2023 – determination by relevant local authorities on the submissions received; 01 May 2023 – publication by the local authority of supplemental maps, including any changes arising from the first consultation process; and 01 May 2023 was also the deadline for appeal to the Board against the initial determination by the local authority on the submissions as above. The Board had sixteen weeks to determine appeals; 01 June 2023 – deadline for submissions on the supplemental maps, after which, there was a right of appeal to the Board. The Board had eight weeks to determine these appeals. This was a parallel process to the right of appeal from the local authority determinations. 01 December 2023 was the designated date for publication of the final map by the local authority. 01 February 2024 was the date on which a liability to RZLT would arise on the basis of the final maps. The tax had to be paid by May 2024.

7. The applicant's lands are located on the former Nissan site on the Naas Road, Dublin 12. In the Dublin City Development Plan 2022-2028, the lands are zoned Z14, as strategic development and regeneration areas. This is a mixed-use zoning, which allows for residential development.

8. The applicant made a submission to the local authority on 22 December 2022, seeking to have its lands removed from the draft RZLT map. On 29 March 2023, the local authority determined that part of the applicant's lands were in scope and should remain on

the map. On 28 April 2023, the applicant appealed that determination to the respondent. By order dated 17 August 2023, the respondent refused the appeal and confirmed the determination of the local authority.

9. On 11 October 2023, the applicant instituted the substantive proceedings herein, seeking leave to proceed by way of judicial review to challenge the decision of the respondent of 17 August 2023. The leave application was opened on that date. It was adjourned to 06 November 2023, when leave was granted to the applicant. On the return date, the respondent was given leave to bring the present application seeking to strike out the application as having become moot, prior to filing its statement of opposition.

10. The respondent submits that the present proceedings have become moot due to the provisions of the Finance (No. 2) Act 2023, which amended s.653 of the TCA 1997, as amended; providing *inter alia* that the date of first liability to RZLT would be 01 February 2025, instead of 01 February 2024. More importantly, the effect of the amendment was to provide that the liability to tax would not arise on foot of the 2023 map, but would be on the basis of the final RZLT maps, that will be published by the local authorities by 31 January 2025.

11. The amending legislation provided that the process leading to the creation of the 2024/2025 final RZLT map effectively has to start again, with landowners having the right to make fresh submissions to the local authority as to whether their land should be included in the draft map and, if dissatisfied with the determination of the local authority, they have a fresh right of appeal to the respondent.

12. The revised timeline is as follows: the draft map had to be prepared by the local authority by 01 February 2024; submissions from landowners thereon had to be made by 01 April 2024; the local authority has to issue its determination on the submissions by 01 July 2024; the landowner has a right of appeal against that determination to An Bord Pleanála, which has to be submitted by 01 August 2024; An Bord Pleanála will have until 20 November 2024 to issue their decision on any appeal lodged with them.

The Respondent's Submissions.

13. The respondent's application is that the applicant's challenge to the decision of the respondent on the appeal from the determination of the local authority made in 2023, which decision was given by the respondent on 17 August 2023, is now redundant and is a legal

nullity, due to the fact that the applicant can make fresh submissions to the local authority, which it has done.

14. The determination on those submissions must be given by the local authority by 01 July 2024. If the applicant is dissatisfied with that determination, it has a right of appeal to the respondent. The respondent will have to give its decision on any appeal so lodged, by 20 November 2024. If the applicant is advised that that decision is erroneous, or unlawful in any way, it can challenge it by way of fresh judicial review proceedings.

15. The respondent submits that any controversy in existence about the inclusion of the applicant's lands in the 2023 map, is not part of any tangible or concrete dispute, because that map has no legal consequence, or effect. Such liability to RZLT, if any, as may arise for the applicant, will only arise on foot of the final 2024/2025 map, on which he has the right to make submissions to the local authority, which right he has exercised, and in the event that their determination is adverse to its interests, the applicant can appeal that determination to the respondent. It is submitted that in these circumstances the present proceedings have become moot by virtue of the amending legislation in 2023.

The Applicant's Submissions.

16. On behalf of the applicant, it was submitted that as the core issue in dispute between the parties was the state of the applicant's lands as of 01 January 2022, that state of affairs was fixed in time and could not change. It was submitted that in these circumstances, where the submissions that had been lodged on behalf of the applicant, are in almost identical terms to those originally submitted to the local authority, it is more than likely that the same decision will be given by the local authority in their determination, which will be handed down on or before 01 July 2024.

17. The applicant submits that this is all the more likely given the provisions of s.653K of the Act, which provides that in considering any submissions made on the draft map, the local authority shall reflect the determinations that have already been made under that section of the Act, when making such revisions to the draft map as it considers appropriate. Thus, it is submitted that the local authority is, in effect, bound by its own previous determination on the content of the 2023 map, which included the applicant's lands.

18. The applicant further submitted that in the event of there being an appeal from any determination that would be handed down by the local authority, that appeal would be in identical terms to that previously brought before the respondent; in which case, it was

submitted that it was likely that the same decision would be reached by the respondent on any such appeal.

19. The applicant further submitted that its contention in this regard was supported by the fact that the respondent had not conceded any of the points raised by the applicant in its substantive judicial review proceedings. Thus, it was logical to assume that the respondent was standing over its previous decision. In such circumstances, it was also logical to assume that the respondent would reach the same decision on the inclusion of the same lands in the 2024/2025 map. It was submitted that in these circumstances, the dispute between the parties was not moot, but remained live.

20. The applicant submitted that it would be a waste of time and money to oblige the applicant to await the outcome of the determination of the local authority and any appeal thereon to the respondent, before it could raise the very issues that were already raised in the substantive judicial review proceedings that are before the court. It was submitted that all that would be achieved by adopting that course, would be to push the resolution of the dispute down the road by a further period of approximately one year.

21. The applicant disputed that the 2023 map had fallen out of the equation, because s.653M of the Act, which dealt with revision of final maps, provided that that had to be carried out on an annual basis, but was based on the provisions of the preceding map. Thus, it was clear that the content of the 2024/2025 map, would be influenced and, indeed, based upon the content of the 2023 map. It was submitted that in these circumstances, it could not be contended that the 2023 map had ceased to be of any relevance.

22. It was submitted that even if the court held that the proceedings had become moot, that did not *ipso facto* mean that the proceedings had to be struck out. It was established on the case law, that the court had a discretion to allow proceedings to continue if they would serve some useful purpose in so doing. In this regard, it was pointed out that there were a number of other sets of proceedings which were dealing with the same broad issues of interpretation of the relevant provisions of the Act.

23. While the applicant conceded that some of its grounds of challenge were site specific, such as the arguments raised in relation to the lack of provision of adequate water infrastructure to the lands; there were other grounds raised in the substantive judicial review proceedings which were of general application and which would be of great benefit, both to the Board and to other landowners, both now and in the future; such as the correct

interpretation of the words "vacant and idle" as used in the Act. It was submitted that it was recognised in the case law that where there was an issue of general public importance, it was appropriate to allow proceedings to continue, notwithstanding that they may strictly speaking have become moot between the parties: *O'Brien v Personal Injuries Assessment Board (No. 2)* [2007] 1 IR 328; *Irwin v Deasy* [2010] IESC 35; *Lofinmakin v Minister for Justice Equality and Law Reform* [2013] 4 IR 274.

24. It was submitted that where an issue was likely to be repeated, but may be time limited, whereby it would be revised periodically, thereby effectively rendering it immune from review; it would be appropriate to permit the challenge to the measure to proceed: see *Whelan v Governor of Mountjoy Prison* [2015] IEHC 273; *Friends of the Irish Environment v Minister for Agriculture Food and the Marine* [2022] IEHC 64; *Goold v Collins* [2004] IESC 38.

25. Finally, the applicant submitted that the inclusion of its lands in the 2023 map and its likely inclusion in the 2024/2025 map, had had an adverse effect on its financial standing, and in particular, on the value of its lands. The value of the lands was diminished due to the fact that they were lands which had been indicated would attract a liability to RZLT, notwithstanding that actual payment of the tax had been deferred by virtue of the provisions of the 2023 Act.

26. The applicant submitted that once the 2024 map became final on 31 January 2025, and assuming that the applicant's lands would be included thereon, its liability to the tax would arise at that point, with payment of the tax being due in May 2025. While it was accepted that there was provision in s.653AE for a deferral of the tax, where an application for judicial review had been made in respect of a decision of An Bord Pleanála; the application had to have been made in that regard at least one month prior to 31 January 2025. This meant that if the respondent had until 20 November 2024 to issue its decision on any appeal that may be lodged with it in respect of the 2024 map, the applicant would only have one month within which to obtain leave and proceed with its judicial review proceedings, if it were to obtain a deferral of payment of the tax. It was submitted that that tight timeline placed the applicant in a position of some jeopardy. In these circumstances, it was submitted that it was preferable that the applicant be permitted to proceed with the present proceedings. In summary, the applicant submitted that the proceedings were not moot; or

if they were held to be moot, they came within the recognised exceptions to the general rule.

The Law.

27. The law in relation to mootness has been canvassed in a significant number of cases in recent years. The generally accepted statement of the relevant principles, was that set down by McKechnie J in the *Lofinmakin* case as follows at para. 82:

"*[82] From the relevant authorities thus reviewed and leaving aside the issue of costs which is dealt with separately (para. 102, infra et seq.), the legal position can be summarised as follows:-*

(i) a case, or an issue within a case can be described as moot when a decision thereon can have no practical impact or effect on the resolution of some live controversy between the parties and such controversy arises out of or is part of some tangible and concrete dispute then existing;

(ii) therefore, where a legal dispute has ceased to exist, or where the issue has materially lost its character as a lis, or where the essential foundation of the action has disappeared, there will no longer be in existence any discord or conflict capable of being justiciably determined;

(iii) the rationale for the rule stems from our prevailing system of law which requires an adversarial framework, involving real and definite issues in which the parties retain a legal interest in their outcome. There are other underlying reasons as well, including the issue of resources and the position of the court in the constitutional model;

(iv) it follows as a direct consequence of this rationale, that the court will not – save pursuant to some special jurisdiction – offer purely advisory opinions or opinions based on hypothetical or abstract questions;

(v) that rule is not absolute, with the court retaining a discretion to hear and determine a point, even if otherwise moot. The process therefore has a two step analysis, with the second step involving the exercise of a discretion in deciding whether or not to intervene, even where the primary finding should be one of mootness;

(vi) in conducting this exercise, the court will be mindful that in the first instance it is involved in potentially disapplying the general practice of supporting the rule, and therefore should only do so reluctantly, even where there is an important point of law

involved. It will be guided in this regard by both the rationale for the rule and by the overriding requirements of justice;

(vii) matters of a more particular nature which will influence this decision include:-

(a) the continuing existence of any aspect of an adversarial relationship, which if found to exist may be sufficient, depending on its significance, for the case to retain its essential characteristic of a legal dispute;

(b) the form of the proceedings, the nature of the dispute, the importance of the point and frequency of its occurrence and the particular jurisdiction invoked;

(c) the type of relief claimed and the discretionary nature (if any) of its granting, for example, certiorari;

(d) the opportunity for further review of the issue(s) in actual cases;

(e) the character or status of the parties to the litigation and in particular whether such be public or private: if the former, or if exercising powers typically of the former, how and in what way any decision might impact on their functions or responsibilities;

(f) the potential benefit and utility of such decision and the application and scope of its remit, in both public and private law;

(g) the impact on judicial policy and on the future direction of such policy;

(h) the general importance to justice and the administration of justice of any such decision, including its value to legal certainty as measured against the social cost of the status quo;

(i) the resource costs involved in determining such issue, as judged against the likely return on that expenditure if applied elsewhere; and

(j) the overall appropriateness of a court decision given its role in the legal and, specifically, in the constitutional framework."

28. In *Right to Know CLG v Commissioner for Environmental Information* [2020] IEHC 392, Hyland J gave the following succinct summary of the relevant principles:

"*38. The decision of the Chief Justice, Denham C.J. in Lofinmakin makes clear that the following dicta of the Supreme Court in the Canadian case Borowski v. Canada (Attorney General) [1989] 1 SCR 342 represents the law in this jurisdiction as to when a case will be treated as being moot - "an appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting*

the rights of the parties". Or as identified as McKechnie J. in the same case, "there must exist some issue(s), embedded within a factual or evidential framework, the determination of which is/are necessary so as to resolve the conflict or dispute which necessitated the proceedings in the first instance (paragraph 59)" and later, "when the action has lost its utility by reference to the issues and the parties, the case is classified as moot". Explaining the reasons for this approach, he observes that (a) the mootness rule is firmly based on the deep rooted policy of not giving advisory opinions, or opinions which are purely abstract or hypothetical, in a system that is fully adversarial; (b) judicial economy or efficiency/effectiveness requires that the courts scrutinise and calculate how best they can fulfil their functions and where necessity of resolution is not required, the courts will correctly be most reluctant to get involved; and (c) the discharge of the judicial function is best performed where the reference point is focussed on resolving defined issues in a concrete legal setting, with a consequent reduced danger of overstepping the reach of the judicial role as envisaged in Article 34 of the Constitution (paragraph 61).

39. Of course, even where an issue is moot, the courts have always maintained a discretion to hear and determine the point. McKechnie J. in Lofinmakin observes that where overriding interests of justice require a decision on the moot, same should be given (paragraph 67). In the same judgment, Denham C.J. refers to exceptionality as a test for the exercise of that discretion. During the hearing of this matter, all parties agreed that a moot should only be heard in exceptional circumstances. It is clear from the case law that an issue of exceptional public importance alone does not warrant the hearing of an appeal (Lofinmakin, as followed by Finlay Geoghegan J. in Kovacs v. Governor of Mountjoy Women's Prison [2016] IECA 108 (paragraph 13))."

29. The principles of law relating to mootness generally and in particular, the exception relating to time limited measures evading review, were considered by this Court in *Friends of the Irish Environment v Minister for Agriculture Food and the Marine* [2022] IEHC 64: see paras. 67-71.

30. Therein, at para. 68 this court quoted from *Goold v Collins*, wherein Hardiman J stated as follows:

> "*In the United States an issue is not deemed moot if it is "capable of repetition, yet evading review" a phrase devised in 1911 and constantly used thereafter e.g. in Honig v. Doe 484 US 305 [1988]. This is said to be the case where:"*
>
> *"(1) The challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) There is a reasonable expectation that the same complaining party would be subjected to the same action again*."""

31. It is clear that the doctrine of mootness is well established in Irish law, however, the caselaw also recognises that there can be exceptions to the application of the rule. These were summarised by Denham CJ giving the majority judgment in the *Lofinmakin* case, at paras. 17-20. In summary, the court recognised that it would be appropriate to allow a moot action, or a moot appeal, to proceed in three broad circumstances: first, where the issue, while no longer live for the particular applicant, remained a very live issue for the respondent in the exercise of their statutory functions in future cases. It was on that basis that the appeal was allowed to continue in *O'Brien v. Personal Injuries Assessment Board (No. 2)* [2007] 1 IR 328, where the appeal court proceeded to deal with the appeal notwithstanding that the applicant in the interim had obtained an authorisation from PIAB to continue with his action and, therefore, did not need to further litigate the issue of whether PIAB was obliged to deal with his solicitor in connection with his application. However, given that there was in existence at that stage a High Court judgment to the effect that the statutory body had to deal with the applicant's solicitor, and as that would have ramifications for the statutory body in the exercise of its core statutory functions in all future cases, the court permitted the appeal to continue.

32. Secondly, where the case involves a point of law of exceptional public importance, the trial court, or the appeal court, may decide that it is appropriate to continue with the proceedings, notwithstanding that they have become moot in the interim. Thirdly, if the case is a test case and there are many other cases which have been adjourned pending the decision in the test case, then it may be appropriate to allow the proceedings to continue, notwithstanding that they have become moot.

33. However, it has also been made clear in the cases decided to date, that the court should be very slow to allow a case to proceed notwithstanding that it has become moot. In his judgment in the *Lofinmakin* case, McKechnie J stated that the court would not lightly embark upon such a course and normally would be most reluctant to do so. He stated that

"*strong, compelling and persuasive reasons*" would need to exist before the court would make an exception to the mootness rule: see para. 91 of the judgment.

34. Finally, it has been made clear in a number of decisions that the fact that the issue of the costs of the proceedings which have become moot, remains a live issue between the parties, will not of itself mean that the proceedings are not moot. Denham CJ stated as follows at para. 25 in her judgment in the *Lofinmakin* case:-

> "*It is not the jurisprudence of this Court that a moot appeal should be heard to determine an issue of costs. If such were the case, it would render at nought the discretion of the Court on a moot appeal. In moot cases on appeal there may be an issue of costs in both this Court and the High Court. However, that is not a factor in determining whether such exceptional circumstances exist, that a moot appeal should be heard by the Court*."

35. Similar views were expressed by McKechnie J. in his judgment in the same case at paras. 103-105.

Conclusions.

36. Having considered the papers in this case, together with the succinct and helpful submissions of counsel, the court is satisfied that the substantive proceedings herein are moot, because they are challenging a decision of the respondent which has been overtaken by subsequent events. The amending legislation of 2023, did not just push back the timeline for drawing up the first map and for the imposition of liability to RZLT for people whose lands were found to be in scope; it permitted landowners to make fresh submissions to the local authority on the new draft map. In so doing, the legislation was effectively setting aside the 2023 map and any submissions that had been made thereon, and was allowing landowners to commence the process all over again in relation to the 2024 draft map.

37. The applicant has availed of the opportunity to make fresh submissions to the local authority on the 2024 map.

38. I do not accept the applicant's submission that those submissions are identical to the submissions lodged in relation to the 2023 map, and on which the local authority will inevitably reach the same determination. While the submissions made by the applicant to the local authority on the 2024 map, will undoubtedly be very similar to those made by it in respect of the 2023 map, based as they are on the state of the land at 01 January 2022, the submissions on the 2024 draft map will have been made by the applicant with the benefit of

knowledge of the decision that was reached by the local authority on their previous submissions.

39. Accordingly, it is reasonable to assume that they have addressed the alleged infirmities in the reasoning, or application of the law, made by the local authority on the previous occasion, when they considered the matter in relation to the 2023 map. In these circumstances, it cannot be presumed that the determination of the local authority on the inclusion of the applicant's lands in the 2024 map, will be the same as that reached by it when it considered the 2023 map.

40. I do not accept the submission made on behalf of the applicant that having regard to the provisions of s.653K of the Act, that the local authority is bound to reflect its previous determination when considering its determination on the 2024 map. This is due to the fact that I am satisfied that the present process is not a "revision" of the 2023 map, as would happen on an annual basis under the Act. This is due to the fact that the amending legislation specifically allows for landowners to make submissions on whether their lands should be zoned as residential at all. That was something that was only allowed in relation to the drawing up of the first map, but was not allowed on subsequent annual revisions. The fact that such submissions can be made in respect of the 2024 map, shows that the process that is currently underway, is effectively the process in relation to production of the first map starting completely afresh. Accordingly, I hold that the local authority is not bound by any determination that was made by it in respect of the 2023 map.

41. Even if the local authority does come to the same conclusion on the inclusion of the applicant's lands in the 2024 map, the applicant has a fresh right of appeal to the respondent, where it can repeat the submissions made by it previously. In addition, it can address the alleged errors in the respondent's previous decision. In other words, the applicant can make the arguments that it seeks to make in these judicial review proceedings, in an effort to persuade the respondent that it might reach a different conclusion on the inclusion of the applicant's lands in the 2024 map.

42. The court is not prepared to hold that it is a foregone conclusion that the local authority, and if necessary, the respondent on appeal, will reach identical decisions to that reached by them previously in relation to the 2023 map; which decisions were made in light of less extensive submissions made by the applicant on the 2023 draft map.

43. While acknowledging that the value of the applicant's lands may have diminished due to the fact that it was deemed to be in scope in the 2023 map, that, of itself, is not a good basis on which to permit the applicant to continue with his challenge to the decision of the respondent of 17 August 2023, when that decision has been completely superseded by subsequent events.

44. The court is not satisfied that the applicant will not be able to obtain a deferral of payment of the tax, even if his lands are found to be in scope by the local authority and on appeal, by the respondent in their consideration of the 2024 map. If the applicant receives an adverse decision from the local authority by 01 July 2024, he has a right of appeal to the respondent. He will get a decision on the appeal by 20 November 2024. Under s.653AE, the applicant only has to obtain leave to proceed by way of judicial review and to get its application on for hearing, but not have it determined, in order to be able to avail of the deferral of payment of the tax. That means that its application only has to be opened, but not determined by the court, to enable the applicant to avail of the deferral provisions.

45. I am satisfied that the applicant will be able to bring itself within the deferral provisions, such that it will not suffer a liability to tax of the sum mentioned of €1m while its judicial review proceedings are proceeding, in the event that such proceedings are brought against any decision that may be given by the respondent in respect of the inclusion of the applicant's lands in the 2024 map.

46. Insofar as it was submitted by the applicant that the action should be allowed to proceed because there are other cases which raise a similar point in relation to the correct interpretation of the phrase "vacant and idle" in the Act, I am not satisfied that the resolution of that issue is of such "exceptional public importance", as would warrant the court exercising its discretion to allow an action that has become moot, to proceed to a hearing. While it is undoubtedly true that a decision given in respect of the interpretation of a particular provision in a statute, will be of benefit to other people who may be affected by the statutory provision, either now or in the future, that does not mean that such actions can be permitted to continue, once the underlying substantive dispute between the parties has disappeared.

47. I am satisfied that it is preferable that a decision of the court on the correct interpretation of this statutory provision, should await a case where the issue arises in the context of a concrete dispute between interested parties. This case does not have the hallmarks of general applicability, similar to those that arose in the *O'Brien v PIAB* case. It

is well settled that the court cannot be called upon to give advisory opinions in relation to the meaning of statutory provisions, or on the validity of other measures, in the absence of the issue arising in the context of a live dispute between parties.

48. The present case is different to the circumstances that arose in *O'Brien v PIAB* and *Deasy v Irwin*. In both those cases the issues raised concerned a very wide section of the general public. More importantly, in each case the action only became moot after decisions had been handed down in the High Court. The actions became moot because the affected parties in each case reached a settlement of their substantive matter prior to the hearing of the appeals. If the appeals had been struck out, that would have meant that the High Court judgments would have stood as authorities on the issues concerned. It was in these circumstances, that the court permitted the appeals to proceed, notwithstanding that they were technically moot in each case.

49. The central fact in this case is that the decision of the respondent of 17 August 2023, has effectively been made redundant by the revised procedure put in place by the 2023 Act. The 2023 map is no longer of relevance. The liability of the applicant to RZLT, if any, will only arise on foot of the 2024/2025 map, when that is finalised.

50. While the 2024/2025 map may be in identical terms to the 2023 map, as far as the applicant's lands are concerned, its opportunity to make submissions thereon has been enhanced by its knowledge of how the local authority and the Board took its previous submissions into consideration.

51. The applicant has the opportunity to make enhanced submissions to the local authority, which it has availed of; and, if necessary, it has the opportunity to make further submissions to the respondent, addressing not only the matters raised in its previous submissions, but addressing the alleged legal errors committed by each of these bodies in their previous decisions.

52. The local authority and/or the respondent on appeal, may accept the applicant's submissions in relation to the correct interpretation of the Act and its application to the applicant's lands. If either of these bodies accept the applicant's submissions, the lands will not be found to be in scope and the applicant will have no complaint in the matter. Even if both of those decisions are adverse to the interests of the applicant, and if it is advised that such decisions are vitiated by legal error, the applicant has the right to challenge such decision as may be handed down by the respondent, by way of judicial review proceedings.

Accordingly, I find that the applicant's rights have not been adversely affected in any meaningful way.

53. I am satisfied that the application does not come within the category of cases which might be termed "immune from review". This is not a case in which any challenge to a map created by a local authority would not last for a sufficient period as to allow an applicant to challenge its contents. On the contrary, there are specific measures provided for in the Act to allow applicants to challenge the publication of the map by the respondent, including a deferral on the payment of the tax pending the outcome of a judicial review application. Accordingly, I hold that any decision which may be handed down by the respondent, will not be immune from review on a time limited basis. Therefore, this case does not come within this exception to the mootness rule.

54. In conclusion therefore, I am satisfied that the decision of the respondent of 17 August 2023, has effectively been made redundant and accordingly, the proceedings herein have become moot. For the reasons set out above, I am satisfied that the case does not come within any of the exceptions to the rule against allowing moot proceedings to continue.

55. The applicant's rights are maintained, because it will be able to appeal the decision of the local authority to the respondent and if necessary, can challenge that decision, by way of judicial review proceedings. I am satisfied that the applicant will be able to bring itself within the deferral provisions provided for in the Act. Accordingly, it will not suffer any financial prejudice in having the present proceedings struck out.

56. For the reasons set out herein, the court will grant the relief sought at para. 1 of the respondent's notice of motion dated 16 April 2024 and will dismiss the applicant's application for judicial review on grounds that the proceedings have become moot.

57. As the proceedings became moot by virtue of amending legislation and did not become moot by virtue of any act on the part of the respondent; and having regard to the fact that the substantive proceedings are at a very early stage, and subject to any submissions being made to the contrary, the court would propose to make no order as to costs on the substantive proceedings.

58. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the issue of the costs of this application and on any other matters that may arise.

59. The matter will be listed for mention at 10.30 hours on 9th July 2024 for the purpose of making final orders.