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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **20/6/2014**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Doyle's (Ellen) Application [2014] NIQB 82

IN THE MATTER OF AN APPLICATION BY ELLEN DOYLE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF A DECISION BY THE PLANNING APPEALS COMMISSION MADE ON 6 FEBRUARY 2014

TREACY J

Introduction

[1] The applicant seeks leave to apply for judicial review of the Planning Appeal Commission's ("the PAC") decision dated 6 February 2014 to allow the University of Ulster's appeal against the refusal by the Department of Environment ("the Department") to grant it planning permission for development at Frederick Street, Belfast, described as a "mixed use regeneration scheme comprising 355 no. space multi-storey car park, 707 m^2 retail unit, landscaping and development of loading bay and signalised pedestrian crossing" ("the Development").

[2] The applicant is represented by Barry Macdonald QC SC and Alyson Kilpatrick; the PAC (proposed respondent) by Charles Banner; the University of Ulster (Notice Party) by Stephen Shaw QC and the Department for Social Development (Notice Party) by Donal Lunny. Each of the parties furnished the court with very helpful skeleton arguments and oral submissions. I am indebted to Counsel for the very considerable assistance the court has received.

[3] As is apparent from para[1] of the impugned decision the Development will facilitate a larger scheme for a new campus in Belfast city centre. At para[18] the PAC observed that this scheme "will be the most important regeneration project in

Belfast over the next 5-10 years".

[4] In opposing leave the PAC and the Notice Parties submitted that leave should be refused on the following grounds:

(i) lack of standing to apply for judicial review;

(ii) lack of promptitude in commencing the challenge, no good reason to extend time, prejudice; and/or

(iii) unarguability and impermissible attempt to re-open the planning merits of the decision.

Standing

[5] An applicant must have "a **sufficient interest** in the matter to which the application relates". Both section 18(4) of the Judicature (Northern Ireland) Act 1978 and Order 53, rule 3(5) of the Rules of the Court of Judicature (NI) 1980 require that an applicant in judicial review proceedings have "a **sufficient interest** in *the matter to which the application relates*." This is frequently referred to as the requirement of standing. In *Judicial Review in Northern Ireland* by Gordon Anthony (2nd ed, 2014) at paras 3.66–3.68 the author notes the development of a liberal approach to this requirement citing the judgment in Re D's Application [2003] NICA 14 of Carswell LCJ in particular at para[15] where he said:

> "... would tentatively suggest that the following propositions may now be generally valid:
>
> (a) Standing is a relative concept, to be deployed according to the potency of the public interest content of the case.
>
> (b) Accordingly, the greater the amount of public importance that is involved in the issue brought before the court, the more ready it may be to hold that the applicant has the necessary standing.
>
> (c) The modern cases show that the focus of the courts is more upon the existence of a default or abuse on the part of a public authority than the involvement of a personal right or interest on the part of the applicant.
>
> (d) The absence of another responsible challenger is frequently a significant factor, so that a matter of public interest or concern is not left unexamined."

See also Re McBride's Application (No.2) [2003] NI 319.

[6] The requirement that an applicant have a "sufficient interest" goes to the court's jurisdiction to hear a claim.

[7] The application for planning permission was subject to ***public advertisement*** in accordance with the requirements of Art21 of the Planning (Northern Ireland) Order 1991 ("the 1991 Order"). Members of the public responded to express their comments to the Department. This did **not** include the applicant.

[8] The University's appeal to the PAC against the refusal of the application for planning permission was also subject to ***public advertisement*** in accordance with Art32(6) of the 1991 Order. Any person who responded either to the original advertisement for the application or to the further advertisement following the commencement of the appeal is invited by the PAC to participate in the appeal either in writing or orally. This is clear from para [17] of the PAC's guidance. A number of parties did in fact participate in the appeal in opposition to the Development. This did **not** include this applicant.

[9] Thus the applicant did not participate at **any** stage of the process. Of that there is no doubt. Notwithstanding these public advertisements and the considerable publicity prior to and following the PAC decision, the applicant avers that she did not find out about the impugned decision until on or around 17 April 2014 – the impugned decision having been made on 6 February 2014.

[10] The clear legislative purpose underpinning Art21 and Art32(6) of the 1991 Order is that following the prescribed public advertisement any member of the public with an interest in the application/appeal has been given a reasonable opportunity to become aware of it and make representations if they so wish.

[11] I accept the submission of the PAC that where, as here, members of the public are provided with a reasonable opportunity to participate in a quasi-judicial process, a person who does not so participate cannot ordinarily be said to have a sufficient interest in the outcome of that process. In Axa [2011] UKSC 46 Lord Reed at para 170 said:

> "…a requirement that the Applicant demonstrate an interest in the matter complained of will not however work satisfactorily if it is applied in the same way in all contexts…..What is to be regarded as sufficient interest to justify a particular applicant bringing a particular application before the court, and thus as conferring standing, depends therefore on the context, and in particular what will best serve the purpose of judicial review in that context."

In Walton v Scottish Ministers [2013] PTSR 51 the Supreme Court (in the context of a statutory challenge in relation to which standing was confined to *"persons aggrieved"*), held that whilst:

> "[87]… there are circumstances in which a person who has not participated in the process may none the less be "aggrieved": where for example an inadequate description of the development in the application and advertisement could have misled him so that he did not object or take part in the inquiry …. it will "ordinarily … be relevant to consider whether the applicant stated his objection at the appropriate stage of the procedure, since that decision is designed to allow objections to be made and a decision then to be reached within a reasonable time, as intended by Parliament".

At para [96] Lord Reed went on to say:

> "…I have listed the various factors which support Mr W's entitlement to bring the present application as a 'person aggrieved'. Mutatis mutandis, those factors would also have given him standing to bring an application for judicial review…"

[12] It is noteworthy that the example given by Lord Reed is of someone who was misled so that he did not object or take part in the statutory process. Mere ignorance is not given as an example. There is a clear distinction between a misleading advertisement depriving interested persons of a reasonable opportunity to participate and an accurate advertisement which gives interested persons such an opportunity. Being unaware of the advertisements cannot be a sufficient basis to confer standing. It would undermine the clear statutory purpose underpinning Art21 and Art32(6) that the advertisements pursuant to those sections are intended to be sufficient to provide interested parties with a reasonable opportunity of participating in the statutory planning process. Further, it would introduce uncertainty since a person not involved in the process could, as here, emerge late in the day to mount a challenge including seeking to rely on points not taken by any of the participants in the appeal and even though better placed challengers who actually participated in the process have not sought judicial review.

[13] For the above reasons I conclude that the applicant does not have sufficient interest to bring this application.

Delay

[14] Order 53 rule 4(1) requires that applications for judicial review must be brought:

> "promptly and in any event within three months from the date when the grounds for the application first arise unless the Court considers that there is good reason for extending the period within which

the application shall be made".

[15] The time limit runs from the date when grounds for the application first arose and not from the date when the applicant first learned of the decision under challenge nor from the date when the applicant considered that he or she had sufficient information or evidence to bring a claim: R v Secretary of State for Transport, ex p Presvac Engineering Ltd (1991) 4 Admin LR 121, at pp133-4.

[16] The requirement for "promptness" is free-standing from the three-month longstop. The Courts have long emphasised the primacy of the promptness requirement which has added force when applications are made to challenge decisions which have already been taken, implemented and relied upon. The requirement to act promptly is particularly important in cases such as the present where the absence of a prompt challenge will almost certainly cause hardship or prejudice and affect the interests of third parties. When assessing promptness the courts have repeatedly stressed the need for "great expedition" in the presentation of applications for leave to apply for judicial review in planning cases as in Re Hills Application [2007] NICA 1, per Kerr LCJ at para 33 and, more recently, in Re Musgrave's Application [2012] NIQB 109 at paras [14]–[15]. The rationale for this requirement is not difficult to discern since challenges to planning permissions will affect third parties including those who benefit from the permission.

[17] The PAC and the Notice Parties accepted that there is some doubt as to whether the requirement for "promptness" can be relied upon as against grounds founded on EU law: see eg R (Berky) v Newport City Council [2012] 2 CMLR 44. However, as they pointed out Carnwath and More-Bick LJJ in that case reiterated the relevance of this requirement to grounds founded on domestic law: see [34]-[35] and [53].

[18] The present application was brought precisely three months after the challenged decision was issued. The application has not been brought *"promptly"* and I do not consider that there is "good reason" for extending the time. It is clear from the affidavit of Professor Adair, Pro-Vice Chancellor (Development) and Provost of the University of Ulster that the grant of leave would cause manifest prejudice and endanger the entire Greater Belfast Development project. A project acknowledged to be the most important regeneration scheme for Belfast City Centre for the next 5 – 10 years. On this basis leave is also refused on all the grounds save those on EU law [b(ii) and b(iv)]. The ruling of the court on the applicant's lack of standing of course embraces all the grounds of challenge.

Conclusion

[19] Having regard to the conclusions that the court has come to that leave must be refused on the grounds of lack of standing and delay in bringing the challenge I do not consider it necessary to embark upon a consideration of why, in agreement with the submissions of the proposed respondent and the Notice Parties, I accept

that none of the grounds advanced has arguably any realistic prospect of success. For these reasons leave is refused on all grounds and the application is dismissed.