Neutral Citation No: [2019] NIQB 12	***Ref:*** **McC10895**
Judgment: approved by the Court for handing down (subject to editorial corrections)*	***Delivered:*** ***22/02/19***

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY GREENCASTLE ROUSKEY GORTIN CONCERNED COMMUNITY LIMITED FOR JUDICIAL REVIEW

-v-

DEPARTMENT FOR INFRASTRUCTURE

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JUDGMENT SUMMARY

McCloskey J

The 131 paragraphs [71 pages] judgment of the court are summarised in the following terms

[1] The three protagonists in these proceedings are Greencastle Rouskey Gortin Concerned Community Limited ("the Applicant"), the Department for Infrastructure ("the Department") and Dalradian Gold Limited, the planning applicant/developer (hereinafter "Dalradian"). The Applicant company has been granted leave to apply for judicial review challenging a decision of the Department made under section 50 of the Planning Act (NI) 2011 (the "Planning Act") that Dalradian had complied with the requirements of section 27 of the same statute. These are two novel statutory provisions which have not previously been judicially considered in this jurisdiction.

[2] The genesis of these proceedings lies in Dalradian's proposal to undertake a development of major regional significance in the vicinity of Greencastle and Rouskey, County Tyrone on a site comprising (below surface) 997 hectares (hereinafter "*the site*"). These are predominantly undeveloped agricultural lands, whose features include a tunnel and some surface development. The site and its surrounds benefit from certain protective designations. According to the terms of its planning application, Dalradian is proposing the following development:

> "*Underground valuable minerals mining and exploration, including new portal (tunnel entrance), decline (ramp), waste backfill plant, secure explosives store, fuelling and small service maintenance facilities, refuge stations and ancillary infrastructure, mine workings and waste backfill and waste rock placed in the workings ….*
>
> *Two additional ventilation raises (main ventilation fans located underground) and retention of the existing ventilation raise …*
>
> *Associated surface level development ….*"

There follows a lengthy list of proposed surface infrastructure covering an area of 144 hectares.

[3] The so-called "Curraghinalt gold deposit", which is located beneath the site, has been the subject of exploration by several different undertakings from 1983. Since 2010 all exploration and associated works have been carried out by Dalradian. In a nutshell, the outcome of the most recent authorised works has stimulated the assessment that an economically viable gold mine exists.

[4] The foregoing exploration activities have resulted in Dalradian taking further steps to achieve its ambition of extracting all available gold within the site. This has given rise to three legal steps of particular significance:

(a) During the period August to November 2016 particularly Dalradian purported to comply with the "*pre-application community consultation*" ("PACC") requirements enshrined in section 27 of the Planning Act.

(b) On 27 November 2017 Dalradian submitted its application for permission to undertake the development outlined in [2] above.

(c) On 08 February 2018 the Department, in purported discharge of its duty under section 50 of the Planning Act, determined that Dalradian had complied with its obligations under section 27, with the legal consequence that the Department would not decline to determine the planning application.

The latter is the decision under challenge in this litigation. These proceedings were initiated promptly on 26 February 2018.

[5] The Applicant company was incorporated on 09 June 2016. By its articles of association, its *raison d'etre* is to oppose Dalradian's development ambitions. There is an uncontested assertion that in substance the company consists of some 40 residents who will be directly affected by the proposed development. It is further asserted that public meetings in the locality have attracted attendances of 300/400 persons. There is a lack of consensus within the local community.

[6] There are differences between the PAN and the later Form P1 (planning application). These formed a major plank of the Applicant's case.

[7] In the context of this legal challenge, the three crucial words in section 27 of the Planning Act are "*in general terms*". This phrase is not susceptible to precise definition. It does not pose a hard edged question. It eschews bright luminous lines. There is no "*one size fits all*". The proposed development must be described "*in general terms*" and not in the terms of a fully worked up planning application. The two are qualitatively and quantitatively distinct. What is required by the "*in general terms*" standard in any given case will be unavoidably fact and context sensitive.

[8] In a judicial review challenge to a determination under section 50(1), the question for the court is not whether, as a matter of fact **or** in the opinion of the court, the putative developer's PAN was in accordance with the relevant statutory requirements. Rather the question for the court, whose jurisdiction is one of supervisory superintendence, is whether the evaluative judgment required of the relevant planning authority (DFI in this instance) in forming its "*opinion*" under section 50(1) is sustainable in law by reference to the principle of Wednesbury irrationality. The court will be mindful at all times that the impugned decision, one way or the other, was one of evaluative judgment and balance striking on the part of the authority concerned. The decision maker must be accorded appropriate latitude.

[9] The court rejects the argument that the opinion forming exercise required of the relevant authority under section 50(1) of the Planning Act is "*jurisdictional*" and not one of evaluative assessment. The word "*opinion*" has a readily recognisable meaning in the world of public law. The language of section 50(1) makes abundantly clear that a duty to reject a planning application may arise. But this duty crystallises only where the relevant authority forms an opinion that there was non-compliance with section 27 by the planning applicant. By well -established principle the role of this court, one of supervisory superintendence, will normally – though not exclusively - be to determine whether this assessment is vitiated by irrationality.

[10] The central submission advanced on behalf of the Applicant was that at the PAN stage the project proposals upon which Dalradian consulted were not sufficiently advanced. They were, it was contended, too embryonic in nature. Thus

the PAN process was undertaken too soon. The court rejects each of the components of this argument.

[11] In so doing the court bears in mind that the Applicant is challenging a single, indivisible decision. The task of the court is to weigh any of the specific defects canvassed in carrying out the wider, holistic exercise of determining whether the Applicant's primary ground of challenge has been established to the public law standard identified, namely irrationality. The court has identified no material, operative legal defect.

[12] The new statutory arrangements do not require attainment of the theoretically perfect. Rather, their effect is to notionally stop the clock at a particular moment in time and to require the putative planning applicant to conduct a public engagement exercise which gives the community a fair and reasonable opportunity to express its views relating to the "*general terms*" of the project then in contemplation. Neither a completed project concept nor a highly advanced one is required by the statute or the associated common law principles.

[13] The new statutory regime accommodates the possibility of what some might, subjectively, later consider to be imperfections or inadequacies or unacceptable omissions in the development proposal published at the PAN consultation stage. The section 27 stage is, by definition, a preliminary, or intermediate, one. It does not require the developer to publish and consult upon a completed project concept. At all stages the familiar public law juridical phenomena of balancing, margins, latitude and evaluative judgment shine brightly.

[14] Furthermore, it is the very essence of the new statutory regime that alterations, ranging from the minimal to the more significant, may legitimately be made to a planning project in the wake of a section 27 PAN consultation exercise

Omnibus Conclusion

[15] The court concludes that the Applicant's challenge falls manifestly short of overcoming the legal threshold necessary for success. It is appropriate to add the following observations.

[16] This judicial review challenge may, foreseeably, ultimately prove to be the first major staging post in a lengthy legal struggle on the part of all opposed to Dalradian's proposed gold mining at Curraghinalt. The evidence shows that a former Minister of the Northern Ireland Executive has promised a public inquiry and, irrespective, all objectors have a statutory right to make representations

opposing the proposed development and, in certain eventualities, to bring further legal challenges. On one view, the real battle has just begun in earnest.

[17] The legal challenge brought by certain residents of Greencastle and Rouskey has raised important and interesting questions relating to the construction and effect of the new regime constituted by sections 27, 28 and 50 of the Planning Act in the Northern Ireland legal system. It was properly brought before the court. For the reasons given the challenge must fail. Accordingly the application for judicial review is dismissed.