

Neutral Citation No: [2018] NIQB 84

Ref: McC10770

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

*Delivered ex tempore  
23/10/2018*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY ANDREA KELLS, CHIEF  
COMMISSIONER OF THE PLANNING APPEALS COMMISSION, FOR LEAVE  
TO APPLY FOR JUDICIAL REVIEW

McCLOSKEY J

[1] This is a somewhat unusual application for judicial review. By my initial Order of 28 June 2018 I did not grant leave, rather made various case management directions. The case is unusual because it is an application by the Planning Appeals Commission ("PAC") to challenge and quash one of its own decisions. The court is helpfully reminded in the grounding affidavit of the Chief Commissioner, Ms Kells, that what may have been the first such challenge in this court was brought in January 2011 in a case with which I dealt, being an application by the previous Chief Commissioner. There I ruled that the issue was one of sufficient interest and that Ms Campbell had sufficient interest to bring the application.

[2] In the present case the underlying application for planning permission related to a single wind turbine development at Beltonanean Mountain in Cookstown County Tyrone. It was refused by the appropriate planning authority which is the Mid-Ulster District Council. The planning applicant, Mr Bell, appealed and his appeal was dismissed by a single Commissioner in a decision dated 5 March 2018.

[3] The evidence grounding the application to this court challenging that decision reveals the following. Following her return to work the Commissioner went back to the subject site, on 18 May 2018. As a result, the Commissioner formed the belief that her written decision did not correctly identify the site. She acknowledges that there were several material errors in her written decision regarding *inter alia* orientation size. It is further disclosed that she was somewhat confused by out of date photographic evidence which was submitted in support of the appeal and that she may also have erred in respect of her description of a number of the viewpoints which were relevant to visual assessment.

[4] The foregoing gave rise to an evaluative assessment by the Chief Commissioner that the single Commissioner's decision was unsustainable, culminating in the application for judicial review in this court. The court, firstly, commends the PAC for this welcome acknowledgement of its own errors that could only have been exposed via a private process and an unseen assessment. The PAC has commendably acknowledged to the public that it has committed an error which would otherwise in all probability have been concealed.

[5] Secondly, there is a very clear basis for the court intervening. Thirdly, the court's main concern was to ensure that the objectors to the planning application were put on notice of these proceedings. I am thus satisfied first of all by a discrete exchange of correspondence that I have seen and secondly by the representations made to the court through counsel that the other objectors were similarly notified of these proceedings.

[6] The court in these circumstances makes the following order:

- (i) I grant leave to apply for judicial review.
- (ii) I make an Order quashing the impugned decision, as set forth in paragraph 2 of the Order 53 Statement.
- (iii) I defer the operation of this Order. While the Order will issue in the ordinary course, this clause will simply recite that the operation of this Order is deferred until 05 November on condition that the applicant's solicitors serve the Order on all interested parties by 29 October 2018 at latest.

[6] The court will make no order as to costs and I grant liberty to apply.