AN CHÚIRT UACHTARACH

THE SUPREME COURT

S:AP:IE:2023:000157

[2024] IESC 55

Dunne J.

O'Malley J.

Murray J.

Collins J.

Donnelly J.

BETWEEN

SAVE THE SOUTH LEINSTER WAY AND TARA HEAVEY

Applicants/Appellants

AND

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

Respondents

AND

SPRINGFIELD RENEWABLES LTD

Notice Party/Respondent

JUDGMENT of Mr. Justice Maurice Collins delivered on 5 December 2024

1. I agree with Murray J and Donnelly J that this appeal should be allowed. As they have reached that common conclusion by rather different analytical pathways, I wish to explain my position briefly.

2. For that purpose, I gratefully adopt the detailed account of the facts and the arguments of the parties in the judgment of Donnelly J.

3. For well over a century, the Rules of the Superior Courts have included a rule expressly addressing the position where "*the time for doing any act or taking <u>any proceedings</u> expires*" on a day the Central Office is closed, and, as a result, "*such act or <u>proceeding</u> cannot be done or taken on that day*" (my emphasis). In that event, "*such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.*" A Rule in those terms was contained in the 1905 Rules and, as Donnelly J observes, it is clear from *M'Kibbin v M'Clelland* [1894] 2 IR 654, that a similar such rule was in the earlier Rules. The 1905 Rule was reproduced in the 1962 Rules. The rule is now contained in Order 122, Rule 3 RSC. The only difference between Order 122, Rule 3 and its 1962 and 1905 predecessors is that the current rule reflects the fact that the Central Office no longer opens on Saturdays. Order 122, Rule 3 therefore prescribes Saturdays as *dies non*, along with Sundays and other days when the Central Office is closed.

4. Like Davies LJ in *Hodgson v Armstrong* [1967] 2 QB 299, at 320-321, there does not appear to me to be "*any possible ground upon which such a rule should be excluded or ignored.*" Properly understood, the effect of the rule is not to amend any statutory

limitation period (which would clearly be impermissible) "*but to provide that in the special circumstances the act shall be in time if done on the next day*" (*ibid*). The "*special circumstances*" are that the prescribed mode of initiating proceedings require the intervention of the Central Office, which is closed on certain days.

5. Here, the Oireachtas has prescribed that challenges to planning decisions must proceed "*by way of an application for judicial review under Order 84 of the Rules of the Superior Courts*": section 50(2) of the Planning and Development Act 2000 (as amended) ("*the PDA*"). The Oireachtas has further prescribed that such applications are to be made by motion *ex parte*, grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave. Current practice requires such a motion to issue out of the Central Office and accordingly in the event that the last day of the statutory 8-week period for bringing such an application (clearly a "*proceeding*" for the purposes of the Rule) falls on a day on which the Central Office is closed, Order 122, Rule 3 applies.

6. The Oireachtas could, of course, legislate to exclude the application of Order 122, Rule 3 to any given category of proceedings but, in my view, there is nothing in sections 50 and 50A PDA that can plausibly be said to have that effect here. The Court heard a good deal of rather over-heated rhetoric about the need for expedition, finality and certainty in this area. In my view, the application of Order 122, Rule 3 (or any equivalent common law interpretive presumption) would not undermine any of those salutary and important objectives and I agree fully with what is said by Donnelly J in that regard. It seems clear that the Oireachtas takes the same view, given that it has recently legislated to effectively incorporate the substance of Rule 3 into section 281 of the Planning and Development Act 2024. The arguments made by reference to section

251 PDA and the other statutory provisions invoked by the Respondents, are equally unconvincing, as Donnelly J's judgment demonstrates.

7. For these reasons, and the further reasons set out in the judgment of Murray J with which I agree, it appears to me that Order 122, Rule 3 is a complete answer to the time point taken by the Respondents here. I agree with Murray J's analysis of the relationship between Order 122, Rule 3 and Order 118, Rule 4 RSC and the relationship between those Rules and statutorily prescribed limitation periods, including section 50(6) PDA, where the commencement of proceedings necessitates having access to the Central Office.

8. That being so, it is not necessary to consider whether there is a presumptive rule of construction of the kind identified by Donnelly J in her judgment or the precise status or effect of any such presumption. While I see the force in what Murray J says at paragraphs 15 and 16 of his judgment, and much as I recognise the value of doctrinal consistency and coherence in the exercise of statutory construction, it does not follow that presumptive rules of construction must in all circumstances be excluded. Donnelly J's judgment sets out a persuasive case for such a presumptive rule here but, as I have said, it is not necessary to reach that issue given the view I have taken as to the effect of Order 122, Rule 3 RSC.

9. I therefore agree that the appeal should be allowed. I reach that conclusion without any sense of regret. The 8-week period for bringing an application for judicial review challenging a planning decision is short. I readily understand why that should be so and in any event, there is the possibility of extension in certain (limited) circumstances. The

issue of whether that time-limit is properly characterised as "*jurisdictional*" or not does not require determination in this appeal and I express no view on it. But, in reality, applicants do not have the benefit of that full 8-week period, as that period begins from *the date of the decision* rather than the date of its *notification* or *publication*. Here, the decision was made by An Bord Pleanála ("*ABP*") on 26 September 2022. The evidence was that a copy of the decision was posted to the Applicants the following day, 27 September 2022. It follows that the earliest that the decision would have been received by them was 28 September 2022. Section 146 PDA requires ABP to make decisions and all related documents available for inspection "*within 3 days*" (section 146(5)) and, where an EIA is carried out (as it was here), ABP is required to make those documents available for inspection on its website for a 5-year period, commencing on "*the third day following the making by the Board of the decision*" (section 146(6)). There was no evidence as to the date on which the decision was made available for inspection here, whether in hard copy or electronically, but it seems reasonable to assume that some number of days passed before the Applicants became aware of the decision and had an opportunity to review its text.

10. Had the Applicants been required to commence their proceedings not later than Friday 18 November 2022, that would have materially reduced still further the actual period available to them to consider ABP's decision, take advice and draft proceedings in what appears to be a quite complex matter. In such a scenario, close consideration would have had to have been given to the CJEU judgment in Case C-406/08 *Uniplex (UK) Ltd v NHS Business Services Authority* ECLI: EU:C:2010:45, which was discussed by the Court of Appeal in *Arthropharm (Europe) Limited v The Health Products Regulatory*

Authority [2022] IECA 109. In the event, that is not necessary. Happily, the law is as the Oireachtas has recently decided that the law should be in this regard: the Applicants had until Monday 21 November 2022 to bring an application for judicial review and, having brought their application within the prescribed statutory period, are now entitled to have that application adjudicated on its merits.