



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

[2024] IESC 55

**Record No: S:AP:IE:2023:000157
High Court Record No: 2022 1006 JR**

**Dunne J.
O'Malley J.
Murray J.
Collins J.
Donnelly J.**

IN THE MATTER OF s. 50 OF THE PLANNING AND DEVELOPMENT ACT, 2000,

AS AMENDED

Between/

SAVE THE SOUTH LEINSTER WAY and TARA HEAVEY

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

Judgment of Ms. Justice Donnelly, delivered on this 5th day of December 2024.

1. Where the statutory time limit for bringing an application for leave to apply for judicial review of a planning decision would ordinarily expire on a non-working day for the court offices, is there a common law presumption that the time limit will be construed as ending at the expiration of the next day upon which the court offices are open? This is the primary issue to be determined on this appeal.
2. The law as identified in this judgment concerning statutory judicial review time limits for planning decisions will no longer have relevance when s. 281 of the Planning and Development Act, 2024 is commenced. Subsection 4 of s. 281 provides: “Without prejudice to applicable Rules of the Superior Courts, where the period within which Part 9 judicial review proceedings must be taken expires on a day that is a Saturday, a Sunday or a public holiday, the period shall be deemed to expire on the next day, following that day, that is not a Saturday, a Sunday or a public holiday”. That provision is similar, but not identical, to the existing provision of the Rules of the Superior Court (“RSC”) which applies, *inter alia*, to other judicial review applications to which the time limit provided in Order 84 applies. Order 122, r. 3 of the RSC provides: “Where the time for doing any act or taking any proceeding expires on a Saturday, Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, 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”.

Introduction

3. This appeal arises from a decision of the High Court ([2023] IEHC 577) refusing an extension of time to apply for judicial review and dismissing the leave application as out of time. The underlying judicial review proceedings concern a challenge to the granting

of planning permission by An Bord Pleanála (“the Board”) for 21 wind turbines in Co. Kilkenny on grounds arising from both domestic and EU law. The ‘Save the South Leinster Way’ group, of which the second appellant is the Chairperson (“the appellants”), was established in October 2020 for the purpose of promoting the protection of the local environment around a section of ‘European long distance path E8’ (a.k.a. The South Leinster Way), on which the windfarm the subject of the impugned permission will impact.

4. An eight-week time limit within which judicial review proceedings of planning decisions may be brought in relation to any decision of the Board is set down by s. 50(6) of the Planning and Development Act, 2000, as amended (“the 2000 Act”). This deadline can be extended, pursuant to s. 50(8), where an application is made to and granted by the High Court.
5. The Board made its decision to grant permission for the construction of the windfarm to Springfield Renewables Ltd (“the notice party”) on Monday, 26 September 2022. The appellants filed a grounding affidavit and accompanying statement of grounds on Monday, 21 November 2022 and applied to the High Court on that day for leave to apply for judicial review. The eight-week deadline provided for in s. 50(6) of the 2000 Act, on which the Board’s decision of 26 September 2022 could be challenged by way of judicial review (without an application to extend time) ordinarily expired on Sunday, 20 November 2022, unless the period could be construed as ending on the next day that the Central Office was open, that being Monday, 21 November 2022. The argument that s. 50(6) granted the appellants an extra day to apply for leave because the final day fell on a Sunday was rejected by the High Court. The High Court also refused to extend the time to apply for judicial review.

Legislative Overview

6. Section 50 of the 2000 Act, is titled “Judicial review of applications, appeals, referrals and other matters”. Insofar as relevant it provides as follows:

“(2) A person shall not question the validity of any decision made or other act done by—

(a) a planning authority, a local authority or the Board in the performance or purported performance of a function under this Act,

(b) ...

(c) ...

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the "Order").

...

(6) Subject to *subsection (8)*, an application for leave to apply for judicial review under the Order in respect of a decision or other act to which *subsection (2)(a)* applies shall be made within the period of 8 weeks beginning on the date of the decision or, as the case may be, the date of the doing of the act by the planning authority, the local authority or the Board, as appropriate.

...

(8) The High Court may extend the period provided for in *subsection (6) or (7)* within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that—

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

(9) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court.”

Judgment of the High Court

7. Having moved their application for leave before the High Court on the 21 November 2022, leave to apply for judicial review was granted to the appellants on 23 January 2023. Following objection on the grounds of time from opposing parties, the appellants filed a motion seeking: a) liberty to amend the statement grounding the application for judicial review to seek an extension of time insofar as it was necessary, and b) an order extending the period for seeking judicial review pursuant to s. 50 where necessary. This motion was the subject matter of the decision in the High Court.
8. In the High Court, the appellants argued that because their deadline for initiating judicial review fell on a Sunday, a day when the Central Office of the High Court is closed, there is (or should be) a presumptive extension to the next business day that the Central Office is open and capable of processing documents to be filed with the courts by analogy with expiry of formal limitation periods on days when the court offices are closed.
9. The High Court examined the existing jurisprudence on time limits and the underlying policies, as well as the express terms of the 2000 Act. The High Court noted that the 2000 Act expressly provides for extensions of time in other sections of the Act, such as the Christmas period where the court offices close for a set period of time every year (see s. 251 of the 2000 Act). Further, s. 141 of the 2000 Act provides expressly for the extension of time where limitation periods expire on non-working days for the Board, but this is specifically in the context of direct dealings with the planning authority, e.g. where submissions or other documentation must be filed with the Board, or the Board must publish a decision.

10. In preferring the submissions of the Board, the High Court accepted the following as a correct statement of the law:

- “a. There should be no prospective ability to expect that time expiring on a weekend should expire on a Monday – time should run for the 8 weeks.
- b. If this poses no difficulty for the Applicant, the Applicant can move within time.
- c. If, however, the Applicant actually has an evidenced based issue with this, then the appropriate approach is to accept the time period being as it is, but then apply for an extension of time. However, that extension of time application has to be evidenced based”.

11. Having found that there was no express or implied presumption in the text of the 2000 Act of a grace period in the time limit expiring on a non-working day, the High Court concluded that the appellants were indeed out of time for the bringing of judicial review.

12. The High Court then considered whether the appellants might be entitled to an extension of time as sought in their amended statement of grounds. In assessing same, the High Court applied the two-criteria test in s. 50(8), set out above. To meet the criteria, the appellants would need to demonstrate: (a) a good and sufficient reason for extending time, and that (b) the circumstances that were outside the control of the applicant resulted in the failure to make the application for leave within the period. The High Court found at para 31: “Do they satisfy the test? Obviously not” and gave its reasons in the ensuing paragraphs. There was a massive lacuna in the evidential basis for the extension. There had been nothing stopping the appellants from moving quicker and organising themselves to make it to Court on the Friday. The High Court rejected the argument that because the appellants were making an EU law point this was decisive.

13. Given the above findings, the High Court concluded that the applicants were out of time to apply for leave to bring judicial review of the decision published by the Board on 26 September 2022, and ordered that the proceedings be dismissed on that basis.

The Appeal

14. Leave to appeal directly to this Court was granted by determination published on 9 February 2024 ([2024] IESCDET 16). As agreed at case-management, the issue for determination was as follows:

“Is it within the contemplation of s 50 of the Planning and Development Act 2000, as amended, and cognate sections, that where an appeal is to be taken within a particular timeframe, but same expires on a Sunday, or non-working day for the Central Office of the High Court, including a bank holiday, that the time limit extends to the next working day, such as a Monday after a Sunday or Saturday or Tuesday after a bank holiday?”

15. There are four parties to the appeal: The appellants, the Board, the Minister for Housing, Local Government & Heritage, Ireland, and the Attorney General (collectively the “State respondents”), and the notice party developer.
16. Before the oral hearing, the Court drew the attention of parties to Case C-406/08 *Uniplex (UK) Ltd v NHS Business Services Authority* ECLI:EU:C:2010:45 (“*Uniplex*”) and the iteration in that judgment of a general provision of EU law that a national court “is bound, in exercise of the discretion conferred on it, to extend the period for bringing proceedings in such a manner as to ensure that the claimant has a period equivalent to that which it would have had if the period provided for by the applicable national legislation had run from the date on which the claimant knew, or ought to have known, of the infringement of [EU law]”.

Submissions of the Appellants

17. The appellants' primary submission was that the proceedings are not out of time. Alternatively, in the event that the proceedings were found to be out of time, the appellants submitted that an extension of time is justified in all the circumstances of the case and particularly where their case raises a point of EU law.
18. In support of their submission that the proceedings were not out of time, the appellants relied on *Poole v O'Sullivan* [1993] 1 IR 484 in which Morris J. (as he then was) adopted the *dicta* of the Megarry J. (Court of Appeal of England and Wales) in *Pritam Kaur v S. Russell & Sons Ltd* [1973] 1 QB 336 ("*Pritam Kaur*"). The appellants submitted that the trial judge was incorrect to distinguish *Poole v O'Sullivan* as limited to personal injuries, and that Morris J. in his judgment did not confine his comments to the sphere of personal injuries.
19. The appellants referred to the Court of Criminal Appeal in *The People (DPP) v McCabe* [2005] IECCA 79, [2005] 2 IR 568 ("*McCabe*") in which that court adopted *Pritam Kaur*, this time citing Lord Denning MR rather than Megarry J.. The Court quoted Denning MR:
- "The important thing is to lay down a rule for the future so that people can know how they stand. In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the rules of court for doing any act. The rule prescribed both in the county court and the High Court is this: if the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself, and we avoid confusion to practitioners".

In *McCabe*, the Court pointed to *DPP v McKenna* (Unreported, Court of Criminal Appeal, Geoghegan J., 6 February, 2002) in which the action required to ‘stop the clock’ was filing a notice of appeal with the Office of the Court of Appeal. This was not possible within the time limit, and so was done out of time. However, the respondent to the appeal had been served with notice of appeal in advance of the successful filing, which was found to be sufficient.

20. The appellants also relied on *Max Developments v An Bord Pleanála* [1994] 2 IR 121 (“*Max Developments*”) in which Flood J. also accepted that the principle applied in that case, a judicial review of a planning decision. In oral submissions, counsel emphasised that *Max Developments* is the most relevant and persuasive precedent regarding time-limits in the field of planning law.
21. The appellants said that the High Court erred in distinguishing *Max Developments* because it concerned “a leave on notice case” rather than an *ex parte* application and submitted that the type of application being made to the Court is immaterial to whether it is being made in or out of time. Further, the appellants rely on *KSK Enterprises Ltd v An Bord Pleanála* [1994] 2 IR 128 (“*KSK Enterprises*”) in which Flood J. in the High Court (following judgment delivered on 25 February 1994) asked the Supreme Court to clarify when time stopped under what was then a new statutory regime. This Court found in *KSK Enterprises* that the clock was stopped by serving all the relevant parties with the notice rather than moving the application before the Court. The appellants submitted that the High Court in *KSK Enterprises* had clearly proceeded on the basis that because the application could not be moved on the Sunday it could be moved on the Monday. The appellants submitted that in all the circumstances *Max Developments* remains an important precedent.

22. The appellants cited jurisprudence of England and Wales which has since affirmed the principle in *Pritam Kaur*, including *Nottingham City Council v Calverton Parish Council* [2015] PTSR 1130 (“*Calverton*”) which acknowledged the underlying policy reasons for imposing time limits on planning objections while also stressing that the making of an application required co-operation.
23. Responding to the discussion of ‘commercial context’ in the High Court, the appellants submitted that there is a weighing exercise to be considered, as set out in *White v Dublin City Council* [2004] IESC 35, [2004] 1 IR 545:

“The imperative of certainty in administrative decisions, both in the general sense explained in the *Illegal Immigrants* case, and in the particular context of planning decisions must be weighed against the equally important principle laid down in that case, that, in a state based on the rule of law, any person affected by an administrative decision, has a constitutionally protected right of access to courts to contest its legality”.

At the appeal, counsel highlighted that this case considered the balance to be struck between the rights of the applicants, the public body making the impugned decision, and the developer’s right to benefit from the decision, but did not address weekend closures. Counsel stressed that there was no case law stating that *Poole v O’Sullivan* does not or cannot apply in cases of judicial review. Counsel also raised the case of *McGuinness v Armstrong Patents* [1980] IR 289 (“*McGuinness v Armstrong*”).

24. The appellants said the trial judge did not identify any prejudice suffered by the notice party developer as a result of the application to bring judicial review being filed on the Monday rather than the previous Friday. Counsel highlighted in oral submissions that there is always a possibility that a challenge by way of judicial review could be brought on foot of an extension of time, and thus the developer would not have been able to

wholly rely on the fact that the deadline for bringing judicial review had passed. There was no evidence, according to counsel, that the notice party developer took or would have taken any steps to act on their granted permission over the weekend at issue in these proceedings.

25. The appellants submitted that the fact that this proposed development required an Environmental Impact Assessment, under Council Directive 2011/92/EU of 13 December 2011 (“the EIA Directive”), means that it falls within the remit of the Aarhus Convention, “an instrument which forms an integral part of the EU legal order” per the Court of Justice of the European Union in Case C-243/15 *Lesoochránárske zoskupenie VLK* ECLI:EU:C:2016:838 (para 45). Article 9 of the Aarhus Convention requires that proceedings are fair and equitable. The Recitals to the Aarhus Convention record that the Parties are “[c]oncerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced...” and the amendments to the 2000 Act reflect those principles. Citing *Heather Hill v An Bord Pleanála* [2022] IESC 43, [2022] 2 ILRM 313 (“*Heather Hill*”), the appellants submitted that the Court should strive to ensure that legislation purporting to give effect to the Aarhus Convention, including the 2000 Act, has done so.

26. The appellants did not dispute that time limits are permissible. They submitted that the issue here is the interpretation of the relevant time limit. If the action required by the time limit cannot be carried out on the final day (or as here, last two days) of the time limit, the appellants submitted that that has the effect of shortening even further an already short time limit. In *KSK Enterprises*, Finlay CJ. described the then applicable time period of two months as “a very short time limit”, and it is now even shorter. The appellants say that where the statutory time period is already “very short”, to interpret it as being shortened even further, just because the Board’s decision was made on a

Monday, is not fair and equitable, especially where the opening hours of the court office are beyond the control of the parties to litigation. The access to justice provisions of the EIA Directive and the Aarhus Convention, and the changes made to the 2000 Act to reflect their requirements now provide a significant counterbalance to the frequently quoted conclusion of Finlay CJ. in *KSK Enterprises* that the intention of the legislature was to confine the opportunity of persons to impugn by way of judicial review decisions made by the planning authorities.

27. The appellants rejected the notice party's characterisation of their reliance on the *Poole v O'Sullivan* jurisprudence as "a novel proposition". They submitted the contrary, as is evidenced by Ireland's submission to the E-Justice Portal (an official website of the European Union) on time in civil cases. Question 10 on the E-Justice Portal asks: "If the deadline expires on a Saturday, Sunday or a public holiday or non-working day, is it extended until the first following working day?". Ireland provided the following reply:

"Yes, where the time for doing any act or taking any proceedings expires on a Saturday, Sunday or other day on which the court offices are closed, and where the act cannot therefore be done on that day, that period will expire on the next day on which the court offices are open. This rule applies whenever there is an expiration period".

It was clarified at the oral hearing that the E-Justice Portal and Ireland's entries thereupon are managed by the Courts Service of Ireland.

28. The High Court dismissed the E-Justice Portal submission as "really ... neither here nor there", as the appellants had not relied on it in their decision to wait until Monday to move their application. However, the appellants submitted that it very strongly supports the presumption that the time does not expire on a day when the court offices are closed. In oral submissions, counsel submitted that this presumptive interpretation may only be

rebutted where there is an express provision in the statute providing for the time limits that this presumptive extension does not apply. Counsel emphasised that the Oireachtas is presumed to know the practice of the courts and submitted that the general rule that a time limit could not expire on a *dies non juridicus* applies in all cases before the High Court, regardless of area of law.

29. The appellants cited O'Donnell J. (as he then was) in *MAK v The Minister for Justice and Equality* [2019] 1 IR 217 in support of their submission that the Oireachtas is presumed to have known the law when enacting the eight-week period in s. 50(4)(a) of the 2000 Act in its original form and re-enacting it in s. 50(6) in 2006. The appellants submitted that the law which the Oireachtas ought to have known was the rule in *Poole v O'Sullivan* regarding time. As for the other provisions of the 2000 Act relating to time referred to by the High Court, the appellants submitted that to construe these other legislative provisions as not only governing the situations they expressly address, but as also implicitly displacing a presumption applicable to a different situation, is incorrect.
30. The appellants further relied on *DPP (Varley) v Davitt* [2023] IESC 17, [2023] 2 ILRM 117 in which Dunne J. cited Dodd, *Statutory Interpretation in Ireland* (Bloomsbury Professional 2008) para 4-110: "It is presumed that the legislature does not intend to make any radical amendment to the law beyond what it declares, either in express terms or by clear implication...".

If so, is an extension of time justified?

31. The appellants cited Donnelly J. in *Heaney v An Bord Pleanála* [2022] IECA 123 ("*Heaney*") where the Court of Appeal examined the same two-step test for an extension applied by the High Court.
32. The appellants submitted that an extension of time is justified where the fact that the Central Office is closed on the weekends and that their deadline fell on a Sunday is

outside of their control. They further highlighted that they did not delay after the time limit expired in this case. This was emphasised in oral submissions. Counsel agreed at hearing that an unstateable substantive case is less likely to meet the test for an extension of time.

33. In response to the High Court reliance on *Heaney* and *Krikke v Barranafaddock* [2022] IESC 41, [2023] 1 ILRM 81 (“*Krikke*”) (which said that strict time limits like this are not contrary to EU law), the appellants submitted that *Arthroparm (Europe) Ltd v The Health Products Regulatory Authority* [2022] IECA 109 (“*Arthroparm (Europe) Ltd*”) (paras 66 et seq) identifies that where an EU law right is engaged the court must exercise its discretion so as to allow the applicant the relevant period from the point at which they knew or ought to have known of the decision in question.

34. The appellants drew the Court’s attention to the alleged absence of site-specific conservation objectives in the area impacted by the granted planning permission as engaging EU rights and also pointed to the number of specific core grounds which engage EU law. At oral submissions, counsel emphasised that where the time limits in national legislation at issue are so short, extensions of time can be granted in order to avoid interfering with the principles of equivalence and effectiveness as per *Uniplex*.

Submissions of An Bord Pleanála

35. The Board submitted that the appeal should be dismissed, that the application was out of time and that no extension of time is warranted. The Board cited *Kelly v Leitrim County Council* [2005] IEHC 11, [2005] 2 IR 404. The High Court outlined that part of the underlying policy reasons for the imposition of an eight-week time limit is to protect the integrity of the planning process irrespective of the involvement of the rights of third parties and stated: “Therefore while it may well be legitimate to take into account the fact that no third party rights are involved that should not be regarded as conferring a

wide or extensive jurisdiction to extend time in cases where no such rights may be affected. The overall integrity of the processes concerned is, in itself, a factor to be taken into account”. In that case, no extension of time was granted as the 19-day delay was deemed ‘significant’ and the Court noted the absence of any significant third-party rights being engaged.

36. The Board submitted that the courts have consistently and on numerous occasions recognised that the eight-week time limit in s. 50 of the 2000 Act is one which is to be strictly applied and which in this regard is justified by reference to an underlying public policy rationale concerning the entitlement of those who are relying on decisions taken under the 2000 Act to have certainty within a short period after a decision is taken. The respondent cited a myriad of case law from this jurisdiction, including *Shell E&P Ireland Ltd v McGrath* [2013] IESC 1, [2013] 1 IR 247 (“*Shell E&P (Ireland) Ltd*”):

“The underlying reason why the rules of court impose a relatively short timeframe in which challenges to public law measures should be brought is because of the desirability of bringing finality to questions concerning the validity of such measures within a relatively short timeframe. At least at the level of broad generality there is a significant public interest advantage in early certainty as to the validity or otherwise of such public law measures. People are entitled to order their affairs on the basis that a measure, apparently valid on its face, can be relied on. That entitlement applies just as much to public authorities. The underlying rationale for short timeframes within which judicial review proceedings can be brought is, therefore, clear and of significant weight. By permitting time to be extended the rules do, of course, recognise that there may be circumstances where, on the facts of an individual case, a departure from the strict application on whatever timescale might be provided is warranted...”

37. The most recent relevant decision in the Board’s submission was *An Taisce v Aquaculture Licence Appeals Board* [2024] IEHC 60 (Simons J.) (“*An Taisce v Aquaculture*”) where the High Court relying on *KSK Enterprises* said that “[t]he precise purpose of the statutory time-limits governing judicial review proceedings in planning and environmental matters is to ensure that the beneficiary of a development knows at an early stage that there is a legal challenge to consent”.
38. The Board adopted the High Court’s observation that the appellants here ‘put themselves in the way of harm’ in the sense referred to in *Marshall v Kildare County Council* [2023] IEHC 73 because, as characterised in the determination, “... for whatever reason, this precipitous engagement with the time limits was regarded as lawful”. The Board relies upon the High Court summary of the appellant’s case set out at paras 16-17 of the High Court’s judgment and the Court’s conclusion that:
- “Ultimately the context here is that at best the applicants’ point is an interpretative presumption only. There are two reasons why any such presumption shouldn’t be read into the legislation - the commercial context and other express provisions of the 2000 Act. Statutory interpretation involves looking at text, context and purpose, and here all push in the same direction”.
39. The Board submitted that there is no textual or contextual basis in the 2000 Act for the interpretation contended for by the appellants. They agreed with the High Court that the provisions of the Rules of the Superior Courts are not relevant to this case. Counsel in oral submissions emphasised that there is no suggestion of interpreting ‘8 weeks’ in s. 50 of the 2000 Act in any way other than the plain meaning of the words.
40. Regarding the other provisions of the 2000 Act which expressly provide for extensions of the time limit in certain circumstances, the Board submitted that it is apparent from the 2000 Act that the Oireachtas was live to the issue of computation of time limits under

the Act, and has made express provision regarding same, including in respect of the closure of the public offices of the planning authority and the Board on certain days, and could have made similar provision in respect of the computation of the time limits under s. 50(6) and (7), but did not do so. Specific reference was made to s. 251 of the 2000 Act and to the disregard of certain time periods introduced by legislation during the Covid-19 emergency. It was clearly open to the Oireachtas to have provided for extension where the period expired on a day the office was closed but it did not do so. Further, counsel submitted at oral hearing that the eight-week period is not a right or entitlement of parties seeking to challenge a decision of the Board but is primarily concerned with bringing certainty to those decisions.

41. As regards statutory construction, and applying the approach recommended by this Court (Murray J.) in *Heather Hill* and *A, B & C (A Minor Suing by His Next Friend A) v The Minister for Foreign Affairs and Trade* [2023] IESC 10, [2023] 1 ILRM 335 (“*A, B & C*”), the words used in the 2000 Act in terms of the time limits should be given their plain and ordinary meaning, which does not support the interpretation proposed by the appellants. The Board highlighted that the onus to prove otherwise is on the appellants and they have not discharged that onus.
42. In oral submissions, counsel engaged with the Court on the High Court practice in time-sensitive matters of submitting an unstamped statement of grounds to that Court and other parties with an undertaking that the statement of grounds will be stamped and filed with the Central Office of the High Court at the next available opportunity. This practice, while not encouraged, is availed of occasionally and is considered sufficient to stop time running where a time limit applies. This, in counsel’s submission, was an alternative course of action which the appellants could have taken in this case in circumstances where the Office was closed and could not process their application.

43. The Board submitted that the High Court was correct to distinguish *Poole v O'Sullivan* as a personal injuries case. Counsel highlighted the exceptional circumstances contained in the facts of that case. The Board further submitted that the appellants' reliance on *White v Dublin City Council* is misplaced as well as not being a point relied upon before the High Court. In any event, they pointed out that the legislation at issue in that case did not allow for an extension of time in any form.
44. The Board submitted that the High Court was correct to find that the appellants' reliance on *Max Developments* was misplaced as being a case concerning the previous regime of planning and development law as well as having a different factual matrix which was significant (missing the deadline to file by a day was due to a typographical error in the return date provided by the Central Office). Similarly, the Board agreed with the High Court's finding that the appellant's reliance on *McCabe* was misplaced where that case, an undue leniency appeal brought pursuant to s. 2 of the Criminal Justice Act, 1993, "was also in a very different context".
45. The Board agreed with the High Court that the appellants put misplaced reliance on the E-Justice Portal website where the entry cited by the appellants refers generally to time periods within the Rules of Court and not to time periods provided for in statute.
46. The Board submitted that the fact that these proceedings concern a point of EU law is not, of itself, a factor that requires an extension of time to be given.

The extension of time

47. The Board also opposed the granting of an application to extend time. It reiterated that the appellants were one day out of time and cited a number of cases where the courts have refused extensions of time for delays of one day up to five days.
48. In response to the appellants' submission that the engagement of an EU law right in this case justifies an extension of time per *Arthroparm (Europe) Ltd*, the Board said that

this was not a point argued before the High Court. In any event, the Board submitted that such contention is misplaced given that that case dealt with an entirely different regulatory process. The Board highlighted the Court of Appeal judgment in *Arthroparm (Europe) Ltd* which emphasised the two step test.

49. The Board relied on *Krikke* where this Court held that the statutory eight-week period under s. 50 of the 2000 Act was compatible with EU law, submitting that there has been no interference with EU rights in this regard. In relation to *Uniplex*, counsel highlighted the Opinion of the Advocate General and his distinction between primary and secondary legal protections when discussing national procedural authority and the principle of effectiveness. Counsel submitted that in this case, where the appellants ultimately seek an order of *certiorari*, a primary protection is concerned and therefore time-limits should be more strictly enforced than if it were a secondary protection at issue.
50. The Board submitted that the appellants cannot escape the fact that they wrongly believed they were entitled to wait until Monday 21 November 2022 to file and move the application. Citing *O’Riordan v An Bord Pleanála* [2021] IEHC 1, the Board submitted “ignorance of the law is not a basis for an extension”, as was held in *Reidy v An Bord Pleanála* [2020] IEHC 423, a case concerning an unsuccessful application to extend time in circumstances similar to those in the present case. The Board submitted that the onus is on the appellants to demonstrate that their case comes within the two-limb s. 50(8) criteria where further time to apply is needed and that “nothing here was outside the control of the Appellants and there is no good and sufficient reason to extend time”.

Submissions of the State Respondents

51. The State respondents submitted that the High Court correctly concluded that a) the appellants were out of time to seek leave to judicially review the grant of development permission and b) there were no good and sufficient reasons to extend time in the

circumstances nor had the appellants demonstrated that the reasons for their failure to comply with the time limit were outside their control.

52. The State respondents submitted on the basis of well-established case law interpreting ss. 50(6) and (8) of the 2000 Act, in particular, *Heaney*, and general principles in the case-law interpreting analogous provisions in Order 84, r 21(1) and (3) to (6) RSC that:

- a. Under s. 50(6) of the 2000 Act, it is clear that time runs from the date the decision was made. Here, the decision was made on 26 September 2022;
- b. No principle of domestic or EU law requires that time ought to run from a different date, and accordingly, the eight-week period expired on Sunday 20 November 2022;
- c. Section 50(6) of the 2000 Act does not admit an interpretation that permits an application for judicial review to be deemed to comply with s. 50(6) in the circumstances of this case where:
 - i. The clear framework of the 2000 Act as a whole is to provide for a strictly applied time-limit for challenges to development consent and related decisions and for legal certainty for decision makers and third parties;
 - ii. By express contrast, and outside of applications made under s. 50(6) of the 2000 Act, other provisions, namely ss. 141, 251 and 251A of the 2000 Act, all provide for extensions of time from a Sunday or bank holiday in certain circumstances;
 - iii. Judicial review generally and applications particularly made under s. 50(6) of the 2000 Act are distinct from general civil litigation. Accordingly, principles and case law applying generally to the Statute of Limitations have no application here;

iv. Section 50(8) affords the Court a discretion to extend time in any event, provided that the necessary conditions are met, and sufficient evidence is adduced as to why an application could not have been brought within the eight-week period.

53. The State respondents submitted that the appellants have adduced no evidence that it would have been practically “impossible or excessively difficult” for them to make their application within the eight-week period from the date that the decision was made, using the phraseology adopted in the *Uniplex* judgment. There is no reason for this case to be determined differently from that in, for example, *Heaney* or *Krikke*.

54. The State respondents submitted that the appellants’ reliance on *Arthroparm (Europe) Ltd* is inapt in circumstances where *Heaney* is the authority to be applied and that *Heaney* is not a controversial authority in this context.

55. Rejecting the appellants’ submission that the 2000 Act ought to be interpreted as enabling an extension of time to be granted where the deadline falls on a non-working day, the State respondents relied on the doctrine of *expressio unius est exclusion alterius* along with well-settled authorities on statutory interpretation such as *Heather Hill* and *A, B & C*. The State respondents therefore submitted that there was no error in the approach of the High Court regarding the adoption of *Heaney* and the rejection of the appellants’ submissions on *Poole v O’Sullivan*. Counsel for the State agreed with the Board’s submission that an appellant has no right to the full eight-week period, but if the Court found that was such right, extending that time limit would still require an evidence-based explanation as to why the normal time limit was insufficient, which was lacking in this case. This case is, in counsel’s submission, one of inaction and not one of impossibility.

- 56.** As to the appellants' submissions regarding the engagement of EU Law, the State respondents again submitted that the High Court found correctly that the time limit is permissible under EU law. Having not advanced any arguments as to why the conclusions of this Court in *Krikke* should be disturbed, the State respondents submitted that the appellants have failed to demonstrate any error in the conclusion of this Court that the time limits of the 2000 Act comply with the principles of effectiveness and equivalence. The State respondents submitted that the appellants wrongly contend that an interpretation of the time limits by the High Court runs contrary to the requirements of the EIA Directive and the Aarhus Convention. Further, counsel submitted that *Uniplex* implies that national procedural autonomy around time-limits can only be displaced by an impossibility or excessive difficulty on the part of the applicant, or if the strict adherence to national procedure would result in exclusion of an applicant who otherwise had a valid claim. This, counsel submitted, is supported by the findings in Case C-280/18 *Flausch & Ors v Ypourgos Perivallontos kai Energeias & Ors* ECLI:EU:C:2019:928, which concerned national procedure for public participation in planning matters in the context of the EIA Directive.
- 57.** The State respondents characterised the appellants' case as asking the Court, in the words of Simons J. in *Recorded Artists Actors Performers Ltd v Phonographic Performance (Ireland) Limited* [2019] IEHC 2, to “do violence to the words of the legislation” in the interpretation which they propose.
- 58.** The clear meaning of s. 50(6) demonstrates, in the submission of the State respondents that the time limit is not extended simply by virtue of the eight-weeks finishing on a weekend or a bank holiday. As for the E-Justice portal, the State respondents contended that the only appropriate source for the interpretation of a statute, subject to certain limited exceptions which do not arise in the present case, are the words of the Act itself.

Submissions of the Notice Party

59. The notice party adopted many of the submissions made by the other respondents. They characterised the appellants' position as effectively seeking to re-write the relevant legislative provision and submitted that the appellants' case receives no support from the Interpretation Act, 2005 or the case law on statutory interpretation. They also relied upon the strict approach by the courts to the time limit in order to promote the policy of certainty, relying on the same cases referred to previously, saying it is a clear legislative policy to give certainty to those affected by, or reliant upon, decisions of planning authorities.
60. The notice party submitted that there is no injustice or prejudice to an applicant if s. 50(6) is interpreted as not permitting the extension of time to the next day following the expiry of the eight-week time limit; insofar as once a decision is made under the 2000 Act an applicant clearly knows or can calculate whether the last day falls on a weekend and arrange their affairs accordingly once a decision has been issued. Moreover, assuming a five-day week and an even distribution of planning decisions across any week when decisions or acts are made, one in five (or 20%) of all decisions, namely any decision issued on a Monday, will have its deadline on Sunday. There is no evidence that this has caused any practical issue for the courts. Counsel highlighted that there was equally no evidence as to the impact of an alleged EU law point on the ability of the appellants to meet the deadline.
61. Relying on the approach to statutory construction in *Heather Hill*, the notice party submitted that it is apparent from the 2000 Act that the Oireachtas did not make provision in respect of the computation of the time limits under s. 50(6) and (7) as they had done so for other situations. The notice party submitted that the principle *expressio unius est exclusio alterius* would appear to be applicable.

62. *Poole v O'Sullivan* was distinguished because the issue there was the applicability of the Statute of Limitations. The notice party submitted that it is clear from *An Taisce v An Bord Pleanála* [2015] IEHC 604 that time limits in s. 50(6) go to the very jurisdiction of the Court to deal with the application. The High Court acceded to an argument of counsel for the notice party that an earlier stage of the process should have been challenged, meaning that the applicant was out of time under s. 50(6) of the 2000 Act.
63. Further, the notice party characterised the appellants' reliance on *Pritam Kaur* and other associated jurisprudence of England and Wales as being of no assistance to this Court where the planning law framework in that jurisdiction is different and does not provide for any 'disregarded days' (such as the Christmas period). Counsel emphasised the policy discussion by Lewis J. in the *Calverton* decision.
64. The notice party agreed that the High Court was correct to distinguish *Max Developments* where the issue in that case arose from the requirement that the Central Office of the High Court provide a return date to applicants, which is a matter over which no applicant has control. Counsel went as far as to say that *Max Developments* could be considered an unsatisfactory decision and that it was unlikely that the same decision would be made today. Finally, the notice party developer observes that insofar as the appellants state that it was 'impossible' for them to make an application on Saturday or Sunday, even that is open to question; a duty judge is available and there is provision to file matters in court. Counsel agreed with the submission of the Board that the appellants had the option of taking an unfiled, unstamped statement of grounds to the High Court and the parties with an undertaking that it would be filed with the Central Office as soon as practicable.
65. The notice party submitted that an extension of time should be refused as there was nothing in the statement of grounds or verifying affidavit to meet the criteria of s. 50(8),

and no information as to why it was not possible to issue proceedings on time. The test in s. 50(8) was not met by the appellants because it was irreconcilable with their primary position that time did not expire until Monday 21 November 2022, considering the following:

(1) The appellants never sought an extension of time, because they were clearly of the erroneous view that time did not expire until then.

(2) The delay was not because it was impossible to make any application on a Saturday or Sunday, but because they made a mistake.

(3) The grounding affidavit was not sworn until Monday, 21 November 2022 (there was no obstacle to having it sworn earlier because the Office was closed), which again points to the fact they believed they had until Monday or alternatively they were never in a position to make the application within eight-weeks irrespective of the Central Office being closed.

(4) The affidavit evidence does not provide an adequate or proper explanation or evidence of why they could not have made the application earlier, it merely states what is self-evidently known, that the Central Office was closed on a Saturday or Sunday.

66. The notice party further submitted that the fact that the underlying proceedings concern EU law (or matters of EU environmental law specifically) is not, of itself, a factor that requires an extension of time to be given, per *Heaney* at para 96. If the appellants were correct in that asserting European law is, by itself, a factor in allowing an extension of time, this, the notice party developer submits, would lead to a two-speed system depending on the ground raised which is not consistent with the principle of equivalence and effectiveness, and could lead to abuse whereby European law grounds are inserted in order to enhance the chances of obtaining an extension of time.

Discussion

Statutory Interpretation

67. The issue here is one of statutory interpretation. Section 50(6) of the 2000 Act provides that leave to apply for judicial review shall be made within the period of eight-weeks beginning on the date of the decision. Any interpretation by this Court of the subsection must follow the approach to statutory interpretation that this Court has identified and applied in recent cases. As this Court (Murray J.) said in *A, B and C* at para 73 with respect to questions of interpretation:

“...it is to be remembered that the cases – considered most recently in the decision of this court in *Heather Hill Management Company CLG and anor. v. An Bord Pleanála* [2022] IESC 43, [2022] 2 ILRM 313 – have put beyond doubt that language, context and purpose are potentially in play in every exercise in statutory interpretation, none ever operating to the complete exclusion of the other. The starting point in the construction of a statute is the language used in the provision under consideration, but the words used in that section must still be construed having regard to the relationship of the provision in question to the statute as a whole, the location of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute. The court must thus ascertain the meaning of the section by reference to its language, place, function and context, the plain and ordinary meaning of the language being the predominant factor in identifying the effect of the provision but the others always being potentially relevant to elucidating, expanding, contracting or contextualising the apparent meaning of those words.

68. Murray J. also stated that “what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose”. Murray J. also cited Charleton J. in *People (DPP) v AC* [2021] IESC 74, [2022] 2 IR 49 where Charleton J. said that as well as the ordinary meaning of legislation the instruments of construction are the state of the law prior to enactment and the purpose of the enactment. The Oireachtas, and of course those who draft legislation for the legislators, must be taken to know those rules and presumptions and how they operate on interpretation of the words that are used in the statutory provisions.
69. Part of the context of s. 50(6) of the 2000 Act is the law as it stood prior to its enactment. That law included the decision in *Max Developments* which applied the same law to the statutory planning rules as that which applied to the interpretation of limitation periods (as found in *Poole v O’Sullivan*). I will address how those limitation periods are worded in due course but, in this appeal, where the trial judge rejected an analogy with limitation periods on the basis that the commercial context was different and that there was also a need for certainty, it is important to examine how limitation periods have been interpreted by the courts when the apparent expiry date falls on a day the court offices are closed. I will address whether there is a relevant distinction between a limitation period and a time limit for taking judicial review. I will then address legal certainty and the commercial context before returning to the interpretation of this time limit in the context of judicial review proceedings.

Limitation Periods

70. Canny, *Limitations of Actions* (3rd edn., Round Hall Press, 2022) describes a ‘limitation period’ as a time limit for instituting proceedings which applies to an existing cause of action. He distinguishes this from a time limit which forms part of a new statutory cause

of action, which provides that the making of a claim within the time limit is a requirement of a claim being validly made, which he calls a ‘jurisdictional time limit’. Examples of the latter are applications under s. 117 of the Succession Act, 1965 (see *MPD v MD* [1981] ILRM 179) and the time limits for bringing a claim under the employment legislation. Cases where only the remedy is barred are treated as being ‘procedural’ only, because it is only the procedure of bringing an action through the courts that is no longer available (see Collins J. in *Cawley v Dun Laoghaire Rathdown County Council* [2021] IECA 266).

71. As Canny asserts, in cases where the expiry of a limitation period bars the plaintiff’s remedy, but not his right, a defendant must specifically plead a limitation defence in order to raise this issue at trial. In cases where the expiry of the limitation period extinguishes the plaintiff’s right (as well as his remedy), there is no need to plead the expiry of the limitation period (see Ó Dálaigh CJ. in *O’Reilly v Granville* [1971] IR 90 at 94-95). Thus, limitation periods, properly so called, may either bar a remedy or bar a right and the necessity to plead the statute arises in the former but not the latter.
72. The dicta of Haughton J. in *An Taisce v An Bord Pleanála* follows naturally from that distinction as to limitation periods, when he held that as the eight-week limit in judicial reviews of planning decision went to jurisdiction, the time bar did not have to be pleaded. It would also appear that the dicta of Fennelly J. in *De Róiste v Minister for Defence* [2001] IESC 4, [2001] 1 IR 190 does no more than indicate that *for certain situations* “[t]he rule does not, it is clear, operate in the same way as a period of limitation. It is not expressed to bar a remedy and a party may, in an appropriate case, proceeding by plenary proceedings. It does, nonetheless, impose a preliminary obligation to proceed with dispatch.” I return to those cases again below, but it is to be noted that those cases

do not address how the period of time, whether it be a limitation period or a time period going to jurisdiction, ought to be *defined* as distinct from how it ought to be *pleaded*.

73. For the sake of clarity, I note also that a judicial review action is not “a new statutory cause of action” and in that sense time limits for taking judicial review may be viewed as lying close to “a limitation period” which is defined by Canny as applying to “an existing cause of action”. Of course, it must also be said that Canny is not addressing time limits in public law matters which may, as in the planning context, have an impact on third parties or the public in general. Nonetheless, judicial review as the exercise of judicial power over the other branches of government (or lower courts/tribunals) under the Constitution or at common law was historically, at least, a jurisdiction, which was directed and controlled by the judiciary. This is another factor which may point towards the interpretation of a time period for judicial review which has been laid down by the Oireachtas as subject to a *prima facie* presumption as to construction which has been laid down in the common law and indeed, in the Rules of Court.

74. As to limitation periods, in general, in civil actions, the limitation periods for the bringing of proceedings seeking relief are set out in the Statute of Limitations Act, 1957, as amended (“the 1957 Act”). In Canny, *Limitations of Actions* at para 2-04, under the heading “Limitation period ending on a day when court officers are closed or close early”, the author states: “If the last day that a summons could be issued which would not be statute-barred is a day when the court offices are closed, the plaintiff has until the end of the next day when the court offices are open within which to issue proceedings”. The author cites as authority for that proposition the decision given over forty years earlier in *McGuinness v Armstrong* (where it was stated *obiter*) and the decision thirty years earlier in *Poole v O’Sullivan* (where it formed the *ratio* of the decision).

75. It is also significant that from as early as 1984, when Brady and Kerr, *The Limitations of Actions in the Republic of Ireland* (The Incorporated Law Society of Ireland, 1984) was published, there was academic acknowledgement that although *obiter dicta*, McMahon J. had stated in *McGuinness v Armstrong* that he approved of the approach taken in *Pritam Kaur* to the construction of the day on which limitation periods will end. There was no suggestion by the authors that this was an unusual or unwelcome approach to statutory time limits or that it could only be taken as applying to time limits in personal injuries claims. By the time of their second edition in 1994, Brady and Kerr included the decision in *Poole v O'Sullivan* in their discussion, in general terms, of the computation of the relevant period of limitation.
76. From the manner in which this *prima facie* approach to construction of the period is dealt with in Canny, *Limitations of Actions*, it is apparent that the author understands that the same interpretation applies to all the limitations periods under the 1957 Act. As the author noted at para 2-03: “[t]he limitation periods for all causes of action that are governed by the 1957 Act are framed in similar terms”. The authors, Brady and Kerr, in both editions of their book, are also clear that the common law presumption identified in *Pritam Kaur* applied generally to limitation periods. The state of the law was therefore understood by the High Court and by these learned academic authors to include such a presumption.
77. I pause here to remark that of itself, the ‘understanding’ of textbook authors, is not authoritative as to what the view of ‘settled law’ was at any given time. Even a solitary, if longstanding, decision of the High Court may not amount to such settled status. Certainly, this Court must analyse a provision when called upon to do so in a matter consistent with the accepted approach to statutory interpretation. The existence of those views and decision, are factors that, amongst other factors such as the existence of Rules

of Court, must be taken into account in ascertaining if it was the intention of the Oireachtas to change that understanding of the law in enacting the subsequent provision.

Poole v O'Sullivan

78. The respondents collectively make the point that judicial review proceedings are separate and distinct from the general civil proceedings to which the 1957 Act applies. The Board and notice party go further and say that the decision in *Poole v O'Sullivan* is restricted to personal injuries cases. They make this submission notwithstanding the view taken by Brady and Kerr, as early as 1984, and later by Canny when addressing limitation periods generally. It is therefore important to look at what *Poole v O'Sullivan* decided.

79. Morris J. in *Poole v O'Sullivan* adopted the reasoning of Megarry J. in *Pritam Kaur* as follows:

“There are a number of cases which support the general rule that a statutory period of time whether general or special, will, in the absence of any contrary provision, normally be construed as ending at the expiration on the last day of the period. That rule remains; but there is a limited but important exception or qualification to it which may be derived from a line of authorities (...). If the act to be done by the person concerned is one for which some action by the Court is required, such as issuing a writ, and it is impossible to do that act on the last day of the period because the offices of the Court are closed for the whole of that day, the period will *prima facie* be construed as ending not on that day but at the expiration of the next day upon which the offices of the Courts are open and it becomes possible to do the act”.

80. One of the authorities cited by Megarry J. and specifically referred to approvingly by Morris J., was *Hughes v Griffiths* (1862) 13 CBNS 324. Morris J. approved that passage from Erle CJ. at p 333 which stated as follows:

“Where the act is to be done by the court, and the court refuses to act on that day, the intendment of the law is that the party shall have until the earliest day on which the court will act”.

81. Undoubtedly therefore, *Poole v O’Sullivan* is a longstanding authority which has been accepted in the textbooks as applying generally to limitation periods and there has been no subsequent decision challenging its authority. I find no support in the decision of *Poole v O’Sullivan* or elsewhere for the Board’s contention that the ‘intendment of the law’ or ‘presumption’ is restricted to s. 11(2)(b) of the 1957 Act (personal injuries actions founded on tort or contract). On the contrary, although the decision concerned a personal injuries matter, Morris J. addressed the issue of statutory time limits from a broad perspective. That is apparent from his reference to the decision in *Hughes v Griffiths*, which concerned the validity of a creditor’s warrant for the arrest of the debtor where there is reason to believe they are about to abscond in circumstances where, because the court offices were closed, the necessary writ of *capias* was filed on the day after the seven day time limit for issuing and serving the writ would ordinarily expire.

82. Not only is the general applicability of the common law presumption clear from the reliance by Morris J. on *Hughes v Griffiths* as authority for the application of such a principle to the case before him which concerned s. 11(2)(b) of the 1957 Act, it is also significant that Megarry J. stated that *Hughes v Griffiths* was “not an authority that stood in isolation”. Megarry J. quoted from Erle CJ. in the case of *Mumford v Hitchcocks* (1863) 14 CBNS 361 where the eight days for appearing to a specially indorsed writ under the Common Law Procedure Act, 1852, expired on Good Friday. Erle CJ.

accepted that a valid appearance could be entered on the next opening day which was the following Wednesday on the basis that the appearance to the writ of summons “is the combined act of the court and of the party; it cannot be done by the party unless the office is open and the officer ready to receive it” and Erle CJ. equated the days of the holidays to Sundays, on which no juridical act can be done. Megarry J. also referred to a similar line of authority in Scotland.

- 83.** As referred to above, the relevant textbooks are clear in their view that this *prima facie* construction applies to all limitation periods. From the analysis of the relevant authorities, there is therefore no basis for the supposition that the presumption as stated by Megarry J. and approved by Morris J. does not apply to all limitation periods under the 1957 Act. On the contrary, the law is clear that it does so apply.
- 84.** The Board was the only respondent to go so far as to query the rule of construction *even as it applied to personal injuries action*. In other words, they questioned the authority of *Poole v O’Sullivan*. In doing so they relied upon Byrne and Binchy’s *Annual Review of Irish Law* (Round Hall Press, 1992) which said that questions arise about the justice of a universal extension of time based on the closure of the court offices. The 1992 *Annual Review* said that the decision in *Poole v O’Sullivan* was grounded in the circumstances of the case, in which the plaintiff had been frustrated in his attempts to issue the writ in time. That criticism by the authors of the *Annual Review* does not take into account that the interpretation given to the section was based upon a longstanding rule of interpretation of statutes with time limits that required some action by the courts (or the offices of the courts) to take the act required. In my view, a so-called ‘universal extension’ does not give rise to questions of justice or indeed of injustice. Instead, the extension arises from a rule of statutory interpretation which gives a particular construction to a statutory time-limit and is one which is apparent to all

plaintiffs/applicants and defendants/respondents when they seek to order their legal affairs. In that sense if the provision is applied there is knowledge on the part of all concerned as to the expiry time; from the outset it will be apparent if the court offices will be closed on the last day of the stated time period because it falls on a weekend or holiday period. Moreover, the rule as applied in *Poole v O'Sullivan* is of such a longstanding nature and accepted in the relevant textbooks dealing with this specific area of law, that it would take more than an observation in the *Annual Review* from over 30 years ago to set at nought that authority.

Legal Certainty and Commercial Context

85. The issue of legal certainty concerning expiry of time limits which was highly relevant to the High Court findings was also relied upon in the submissions of all respondents. The respondents argued, in their various submissions, that legal certainty was at the heart of the requirement for a strictly applied time-limit for challenges to developmental consent and related decisions. The Board stressed that adherence to the eight-week period meant that from the date of the decision, all parties and stakeholders clearly know when the period for judicial review ends. A prospective judicial review applicant and other parties can readily calculate when the last day of the eight-week period falls on a Saturday or Sunday and can arrange their affairs accordingly. The logical consequence, they submitted, was that the appellants are asking the Court to exclude the days where moving an application is not possible which is inherently susceptible to inconsistent application. The Board provided several examples of circumstances which may prevent the Central Office from opening or accepting papers to be filed which are unpredictable, such as extreme weather events. They submitted that weekends, however, are predictable and parties can thus prepare for the possible eventuality of needing to apply for an extension of time. In oral submissions, counsel for the Board emphasised that

there is no right to the eight-week period as reflected in the fact that time can start running before the parties may become aware of the fact. This is because time starts running the moment the decision is made but the Board is only obliged to publish the decision within three days of making it and it is therefore foreseeable that parties will only become aware of time starting to run after the fact. Therefore, in counsel's submission, the fact that the appellants lost the last two days of their eight-week period is analogous to the insignificant loss of time at the start of the period.

86. I do not accept that the application of the common law presumption would lead to uncertainty. Whatever construction is given to the period of time, there will be legal certainty as to the time period that applies by law. If *Poole v O'Sullivan* is applied, the period is defined. That is what Morris J. was referring to when he stated: "The basis for the court's reasoning in *Pritam Kaur v S. Russell*... was the proposition that there is no power vested in the court to enlarge a period of time laid down by statute, however, the court can and should define the period". The legal position is therefore if the presumption is applied, it defines the period. To provide that, where it is impossible to do some action which requires an act of the court on the last day of the period because the court offices are closed all day that the period expires at the end of the next day that the court offices are open, is to provide for a clear legal rule which is known to all. It is of no greater or no lesser certainty than if the construction was that *prima facie*, a time period is to end on the expiry of the last day of the time period regardless of whether court offices are closed. What is of importance is that no matter which construction is imposed, the law is clear.

87. Moreover, the presumption of construction addresses the position as it applies to times when the court offices are closed. Order 118, r. 4 provides for the days when the offices are 'open for public business' and names the days when they are not. Similar provision

was made in the 1962 rules (Order 104, r. 4) and the 1905 rules (Order LXIII, r. 4) save that the offices were then open on Saturdays. It is only when the offices are not open, as provided for in the rules, that the presumption of extension of time occurs. Thus the possibility of an event intervening such as extreme weather which would cause the office to close does not jeopardise legal certainty as that is a risk taken by the person who does not move even earlier. As an extension of time is permissible, such an unusual occurrence would appear however to come within the concept of ‘outside the control of the applicant’. Therefore, the construction imposed by the application of *Poole v O’Sullivan* is carefully tailored and the last day is known in advance if, ordinarily, the day would fall on a day when the court offices were closed as provided for by the rules. As the rules provide for closure on public holidays, if an extra public holiday were to be provided for on the very day of the ordinary expiry of the time period, then the period will end on the next day following that holiday. A recent example of this is the decision to make 1 February (St. Brigid’s Day or Imbolg) or the Monday closest to it a public holiday. Although the holiday may not have been anticipated at the day the time period began to run, if the time ordinarily expired on that day, the plaintiff/applicant would have until the next working day to ask the court to do the act required and the defendant would be aware of that because of the existence of the presumptive rule. To reiterate, such a situation does not create any legal uncertainty.

- 88.** An example of where a presumption of construction regarding time periods was changed by statute is to be found in s. 18(h) of the Interpretation Act, 2005, which reenacted s. 11(5) of the Interpretation Act, 1937. That subsection provides that when a period of time is expressed to begin or be reckoned from a particular day, that day shall be included in the period (and *mutatis mutandis* for the end day). The 1937 provision represented a departure from the traditional common law rule relating to commencement and end dates

with regard to time periods. The inclusion or exclusion of those days was a choice, but neither gave more legal certainty than another. Similarly, the presumption as to the ending of time periods as set out in *Poole v O'Sullivan* does not in any way imperil or negate the principle of legal certainty. It merely applies a prima facie rule to the construction of statutory time periods which can be set aside by the words of the statute.

89. In support of the argument that the commercial context was vital to a construction which disavowed the application of any such presumption, the High Court and each respondent relied on a series of cases in which it was held that time limits for judicial review were to be strictly construed and this in turn fed into the construction of the 2000 Act. Perhaps the most important of those cases is *KSK Enterprises* where this Court (Finlay CJ.) held that the general scheme of the forerunner to s. 50(6), the amendment of the Local Government (Planning and Development) Act, 1963 by s. 19(3) of the Local Government (Planning and Development) Act, 1992 (“the 1992 Act”), which provided for a non-extendable period for taking judicial review of two months, was very firmly and strictly to confine the possibility of judicial review in challenging or impugning a planning decision. Even though the period for challenging planning decisions may now be extended by the court in certain circumstances, there is no doubt that there is a need to bring certainty to questions as to the validity or otherwise of planning matters. This has been repeatedly stated in subsequent decisions as referred to in the various submissions as set out above, such as *KSK Enterprises*, *Shell E&P (Ireland) Ltd*, and *An Taisce v Aquaculture*. Those cases mainly address the issue of the extension of time rather than the present issue which is how to define the period of time laid down in s. 50(6) of the 2000 Act. As I have already pointed out, the application of one rule of construction instead of another does not provide any uncertainty; the expiry day will be

apparent from the outset because the days on which the court offices are closed will be obvious.

90. It is appropriate to refer again to s. 281 of the Planning and Development Act, 2024 which, when commenced, will also allow for this type of extension when court offices are closed at a weekend. That Act, which has as one of its purposes to provide for proper planning and sustainable development in the interests of the common good, must be understood as having, at least, similar objectives of expedition, finality and certainty as those of the 2000 Act. The Oireachtas in 2024 did not consider this type of extension as undermining those objectives and it is difficult to understand how the argument that to construe the 2000 Act as providing for such an extension would itself be inconsistent with those statutory objectives.

91. I would also observe that since the 2000 Act provides for an extension of the time limit in certain limited circumstances, there can therefore be no absolute certainty for any developer that the planning permission is legally unassailable. In 2004, in the case of *White v Dublin City Council*, this Court held that the absolute and non-extendable time-limit was an unconstitutional interference with the constitutional right of access to justice. Extensions of time may be granted where the statutory conditions are met; that is consistent with both justice to those who wish to challenge and those who wish to pursue planning developments with legal certainty. I am not however of the view that the decision in *White v Dublin City Council* assists in *defining* the period of time laid by statute, it was specifically addressed to the situation where the defined period could not be met by an applicant for judicial review. Whether the rule of construction applied in *Poole v O'Sullivan* applies to the *definition* of the time period as distinct from its *extension* in judicial reviews of planning decisions is what is at issue in this appeal.

Does the presumption apply to section 50(6)?

92. Returning then to the principles of statutory interpretation, the plain and ordinary meaning of the words are to be ascertained “in their context and having regard to the subject matter of the legislation, and the objective to be discerned” (per O’Donnell J. in *People (DPP) v AC*. The context here is that this is a time period which limits the taking of judicial review proceedings to a period of eight-weeks. Further context is the common law and legislative background in which the provision was enacted. Central to the interpretation of s. 50(6) is whether the common law presumption that *prima facie* extends the time period to the day when court offices are open applies to statutory time periods for taking judicial review proceedings. As I have already pointed out, the case law upon which Megarry J. in the Court of Appeal of England and Wales and subsequently Morris J. in the High Court relied, went beyond general limitation periods for civil actions. The judgment of Erle CJ. in *Hughes v Griffiths*, itself a case about absconding debtors, referred *inter alia*, to analogous cases for putting in bail. The notice party respondents strongly urge upon the court that a judicial review time limit is not a limitation period (per Fennelly J. in *De Róiste v Minister for Defence*), that it is one that goes to jurisdiction (per Haughton J. in *An Taisce v An Bord Pleanála*) and that this is a significant distinction. I have already pointed out that those cases were not directed towards construction of the time period but to pleading issues. Furthermore, limitation periods may bar the right and not the remedy and it would appear, from the authors of the textbooks at least, that the same manner of construing the period would also apply. It is not necessary to decide if it does so apply however and any decision on other limitation periods must await an appropriate case where full consideration can be given to the proper interpretation.
93. As to the argument that because this goes to jurisdiction no such presumption may apply, in my view the decision in *Hughes v Griffiths* rebuts this. In that case, the Absconding

Debtors Act (14 & 15 Vict. C. 52) provided that every creditor who caused a warrant to issue “shall forthwith cause to be issued a writ of *capias*”. The writ of *capias* had to be issued and served within seven days and the Act stated that the warrant “shall be wholly void and of none effect whatsoever ... unless such writ of *capias* shall be issued and served in manner aforesaid”. That was a matter which went to the validity of the warrant (and ultimately to the jurisdiction of the court to deal with all subsequent proceedings on the writ). As a common law presumption as to construction which applied to a variety of time periods applied by statute, there appears to be no legal authority for the proposition that judicial review statutory time limits ought to be held exempt, as a matter of principle, from this approach to statutory interpretation of those time periods. As a presumption, such an interpretation could be rebutted by considerations of purpose and context. I have addressed, and found unpersuasive, the main reasons the High Court held that no such presumption applied. A further submission at the appeal was that unlike the limitation periods in the cases such as *Pritam Kaur* and *Poole v O’Sullivan*, the judicial review time limit was not absolute but could be extended. Significantly however, the decision in *Max Developments* applying such a construction to the Local Government (Planning & Development) Act, 1964 (as amended by the Local Government (Planning and Development) Act, 1992) was delivered at a time when there was an absolute bar on taking judicial review proceedings outside the statutory time limit. As I will develop further below, an important aspect of that decision is that it was a statement of the law by the High Court on how this time period was to be defined before the 2000 Act was enacted. It is therefore relevant to delve more deeply into the applicable rules as to time periods for taking judicial review proceedings before the enactment of the 2000 Act.

94. Prior to the 1992 Act, Order 84 RSC provided for the procedure through which judicial review applications could be brought. The time limits set out therein (three months or six months) were subject to Order 122, r 3, set out above, regarding the doing of an act or taking proceedings on the next day following the expiry of a period on a day the court offices were closed. The 1985 Rules of the Superior Courts were an almost identical reproduction of Order 108 Rule 3 of the 1962 Rules which itself was a reproduction of Order LXIV Rule 3 of the 1905 Rules. Indeed, such a rule was to be found in earlier Rules of Court (see for example the discussion of Palles C.B. in *M’Kibbin v M’Clelland* [1894] 2 IR 654). It was against that backdrop that the Oireachtas legislated in 1992 for the application of the strict limitation period of two months. Thus, if the 1992 Act and the subsequent 2000 Act are to be interpreted as not providing *prima facie* for the time period to end on a day the court offices were open, then that would have represented a *further* quite significant change in the law as it had stood for well over 100 years concerning the reduction of the time limit and, in the case of the 1992 Act, in making those time limits mandatory.

95. Naturally at both common law and under the Constitution, a statutory provision will prevail where it is in clear dispute over secondary legislation such as the rules of court. An example of a clear dispute is that of the time for taking judicial review proceedings as provided in s. 50(6). The eight-week time limit prevails over the more general (and non-statutory) time limit for other judicial review applications. The Oireachtas legislates however in the knowledge that rules of court exist and that the rules operate to provide for the manner in which a person may exercise their right to apply for the court. With even greater specificity, s. 50 of the 2000 Act expressly refers to Order 84 and provides that a person may not challenge the validity of a planning decision otherwise than by application made under Article 84 of the Rules; ordinarily those rules

provide to the situation where the court offices are closed. All these factors point to the existence of the rules of court as part of the context in which, and the purpose for which, section 50(6) was enacted.

96. By the time the Oireachtas came to legislate for judicial review time limits concerning planning decisions in the 1992 Act, not only were the Rules of the Superior Courts an entrenched and longstanding provision with regard to the day on which a time limit will end but there was also an indication of judicial understanding as to the legal position in *McGuinness v Armstrong*. The reference in that judgment to the concession by the defendants as to the end date had raised the alert that practitioners were of the view that the common law rule of construction as to acts to be performed by the courts on days when the court offices are closed, applied in *Pritam Kaur*, represented the law in Ireland. It was not only Brady and Kerr who were aware of the decision in their 1984 book dedicated to limitation periods, but so too were the authors (McMahon and Binchy) of *Irish Law of Torts* (Professional Books, 1981), although they gave it a different title in the book at footnote seven at page 595. It is true that the *ratio decidendi* of *McGuinness v Armstrong* was the rejection by McMahon J. of the common law rule about excluding the day of the accident within the three-year period as applied in *Pritam Kaur* based upon the relevant provisions of the Interpretation Act, 1937. Thus, while the case cannot be cited as an earlier authority than *Poole v O'Sullivan* of the acceptance of the rule of construction both because of the concession to that effect given by the defendants and the fact that the finding did not turn on that issue, it was nevertheless an early indication that the rule of construction applied in Ireland, and as the *Pritam Kaur* decision itself records, that it had been applied generally to periods of time laid down by statute.
97. That was the state of the law prior to the enactment of the 1992 Act. Immediately thereafter came the *Poole v O'Sullivan* decision which decisively held that in so far as

limitation periods were at issue, the period did not expire until the day that proceedings could issue. As I have referred to above, in so finding Morris J. was relying on a principle that was of far wider application. It was in that context that Flood J. came to give his decision in the judicial review of a planning decision in *Max Developments*. In that case, the decision of the Board was given on 25 May 1993 and the motion was returnable for Monday, 26 July. Flood J. had no hesitation in saying that as the matter required an application to court, that time was extended from the Sunday when the courts were closed, to the Monday. The respondents submitted that the fact that the view of Flood J. as to whether appearance before the court was necessary to stop time running did not find favour with this Court in *KSK Enterprises* renders the finding devoid of relevance. I do not accept that this is so. The principle that was applied by Flood J. was separate to the issue of *the nature of the act* that would stop the running of the time. In the passage relevant to this issue, he was dealing with *whether the period was extended* to the next open day for the court offices if an act (in the sense of any act) that was required to stop the time running could not be carried out on the otherwise final day of the period if the court offices were closed. It is to be noted that although An Bord Pleanála were a party to the proceedings, they did not appeal, but in fairness to the Board there can be no criticism of their failure to appeal where a) they won the case and b) although it is not clear from the report if the respondents had been served before the 26 July, the decision in *KSK Enterprises* may well have applied.

98. Perhaps a legitimate criticism of the decision in *Max Developments* is that Flood J. was terse in stating that the application was not time barred. He gave no explanation as to why the principle applied but merely stated that as the application could not have been made on 25 July that time was extended until the following day being the first opportunity at which such application could have come before the courts. Given that

his decision came not long after the decision in *Poole v O'Sullivan* (where the rule had been stated to apply in this State) and six years before the Oireachtas revisited time limits in judicial review applications in relation to planning decisions, a highly significant part of the decision lies in the very fact that it was made rather than how it was reasoned. It represented judicial confirmation that *prima facie* this rule of construction was applicable to judicial review time limits. In my view, that is of importance because in legislating for the 2000 Act, the Oireachtas had every opportunity to ensure, if it so desired, that the common law presumption applied so that days on which the court offices are closed are not the last day of a time limit. The Oireachtas could have legislated to change that law as it had been judicially interpreted but they chose not to do so. On the contrary, they reenacted precisely the same provisions regarding the time period as in the 1992 amendment, subject only to providing for the possibility of extending the time.

99. The respondents point out that the Oireachtas was live to the issue of computation of time limits under the 2000 Act and that clear evidence of the intention of the Oireachtas may be gathered from the fact that it has addressed its mind in other provisions of the 2000 Act to the reckoning of time when offices may be closed and has otherwise excluded certain periods from reckoning time. The Oireachtas, the notice party submits, could have made similar provision in respect of the computation of the time limits under s. 50(6) and (7) but did not do so. The respondents rely upon the maxim *expressio unius est exclusio alterius* to say that by dealing with time extensions in other areas the Oireachtas decided not to provide for extensions outside these specific circumstances.

100. I cannot accept that submission. In the first place what is at issue here is the very specific time limit related to the *High Court's jurisdiction* to hear challenges to administrative decisions by way of applications for judicial review. The common law

presumption as to construction of when the last day expires specifically relates to acts *that must be done by a court*. It was not a general rule of application to all time limits as they applied to administrative bodies. Therefore, if a period of time for action by a planning authority/the Board or for an application or appeal to the Board was specified in the legislation, it was necessary for the legislation to specify that where the offices were closed on the expiry of the period that action taken on the following day on which the offices were next open was valid. Indeed, such a proposition was also clear from the decision in *Freeney v Bray Urban District Council* [1982] ILRM 29. To provide for such a situation is precisely what the Oireachtas did in enacting s. 141 of the 2000 Act. Far from confirming that the Oireachtas chose not to extend such time for judicial review applications, it can equally be viewed as confirmation that the Oireachtas did not do so because it knew, given the state of the law, that it was not required to do so. For the same reasons, the 2001 planning regulations referred to by the notice party do not support the argument that the Oireachtas, even though it was aware of time limits, chose not to extend the period if it expired on a day the court offices were closed.

101. The Board also referred to s. 4 of the Companies Act, 1990 and s.3 of the Companies Act, 2014 where the Oireachtas provided that where those Acts limited the time for the doing of anything ended on a Saturday, Sunday or public holiday the time was to be extended to the next day that was none of those days. Those provisions, however, refer to *all* actions with those Acts and not just to applications to court. Those other types of actions could not be affected by the Rules of Court and as there were a large variety of situations, circumstances and applications to which this could apply, it was logical to make a single general provision covering all eventualities.

102. Section 72 of the Planning and Development (Amendment) Act, 2010 amended s. 251 to provide that when calculating any appropriate period or other time limit referred to in

the Act or regulations, that the period between 24 December and 1 January shall be disregarded. In my view, this also cannot assist the respondents in their submissions on construction. This was a decision to exclude from calculation in their entirety certain days around the Christmas holiday period even though that would *include days when the court offices are open*. This represents a very specific choice by the Oireachtas that the strictness of time limits ought not to require urgent action to be taken over this particular period. The same is true of the amendments made by the Emergency Measures in the Public Interest (Covid-19) Act, 2020. These are very specific amendments in light of the emergency brought about by the global Covid-19 pandemic. They have no bearing on whether the specific time limit in s. 50(6) must be interpreted in light of the common law presumption.

103. In their attempted reliance on the maxim *expressio unius est exclusion alterius*, the respondents fail to take into account that the common law presumption applies, in the words of Megarry J. and adopted by Morris J., *prima facie* to the construction of the statute. This is a construction that may be set aside by either the specific wording of the Act pointing to a contrary intention or through an interpretation of the words having regard to the context and purpose of the Act. For the reason I have set out above those specific references did not address the precise issue here which concerns the construction of a time period where an act of the court is required to stop time running.

104. Arguments were also made about the language used in s. 50(6) as indicating an intention as to the length of the time limit. Counsel for the State respondents submitted that the wording “shall *be made* within the period of 8 weeks” demonstrated that the requirement was a strict one. In my view however, that language is less strict than (see in a different context the contrasting provisions referred to in *Kirwan v O’Leary* [2023] IESC 27 and in particular the reference at para 71) those contained in the 1957 Act, which states that

actions “shall *not be brought* after the expiry of...”. The common law presumption is to give a *prima facie* construction as to the date on which that period ends when court offices are closed, and it is impossible to do the act on the last day of the period. In so far as the respondents refer to my judgment in the Court of Appeal in *Heaney* to a strict time period ending on the expiration of the eight-week period, those references were not addressing the specific issue that arises here and are irrelevant to whether the common law presumption as to construction applies to s. 50(6) of the 2000 Act.

Was Moving the Application ‘Impossible’?

105. At the hearing, counsel for the State respondents pressed a more substantial argument focussed on the concept of *impossibility* as used in *Poole v O’Sullivan* (and taken from *Pritam Kaur*). Counsel premised her argument by referring, correctly, to the fact that what is at issue here is an exception to the general rule that a statutory period of time would, in the absence of any contrary provision, normally be construed as ending at the expiration of the last day of a period. In her submission, the trigger for the impossibility does not apply here because there is no impossibility.

106. It is important to point out that the State’s argument was not that it had to be shown to have been impossible to take the case at any time during the relevant time period but that it had to be shown that it was impossible for the court to act. In that regard, the State submitted it was possible to make the application for leave to apply for judicial review to a court without having the court office involved. This was argued to be distinct from a situation where a court had to issue a writ for example. Counsel for the notice party pointed out that there was no rule of court which required a party to file papers prior to moving the application for leave. It is not provided for in the Act or in Order 84 RSC. It was also pointed out that the appellant had not sought to engage the duty judge.

- 107.** There is a long-standing Practice Direction HC02 of the High Court in relation to *ex parte* applications for judicial review which requires the original statement of grounds and the grounding affidavit to be filed in the Central Office beforehand and certified copies to be provided to the Court on moving the application. While this Practice Direction does not have the same status as a Rule of Court, it is clearly intended that all papers for *ex parte* applications for leave will have been lodged in the office beforehand. It is also standard practice that where a party seeks to move a court outside of normal sitting days and more particularly, normal office hours, that the legal representatives must contact the duty registrar who must take into account the urgency of the situation. It cannot be said, save in the case of an application under Article 40.4.2° of the Constitution, that there is a right to require a court to sit at a place and time which is not within the usual sitting days of the court. All of that must be considered when seeking to understand what is meant by ‘impossible’ in the judgment of *Poole v O’Sullivan*.
- 108.** Once again it is apposite to turn back to the decision in *Hughes v Griffiths*. At various points in his judgment, Erle CJ. used phrases such as “unless the court is in a position to act”, “the court cannot act”, and “the court will act”. In doing so he is referring to either the days when the court is sitting or to those when it is not (*dies non juridicum*). It is significant that Williams J. in concurring with Erle CJ. agreed it was important to put a liberal interpretation upon the statute “and to hold that the legislature meant that where the last day was one on which *it was not practicable* to issue the *capias*, the party should have another day” (*emphasis added*). Moreover, the head note of the reported decision states: “Held, that a *capias* issued on the following Wednesday was in time - that being the earliest day on which it was *practicable* to issue the writ” (*emphasis added*).
- 109.** The word “impossible” was used in a *dicta* from the Scottish case of *Henderson v Henderson* (1888) 16 R 5, which Megarry J. quoted in his judgment. He also referred

to another Scottish case namely *M'Vean v Jameson* (1896) 23 R (J) 25 where Lord M'Laren applied the rule to the completion of a step on the Monday "where the step is one which requires the co-operation of the Clerk of Court or other official, as the giving in of a report or document of any kind...". In light of a consideration of the full judgments of Megarry J. in *Pritam Kaur* and of Morris J. in *Poole v O'Sullivan*, I do not accept that they understood 'impossible' to mean literally beyond the bounds of all possibility. Instead, it was to be understood in the more general sense of practicality. It is important also that the rule is a common law one and not a statutory provision and therefore the word 'impossible' should not be analysed as if it was a word in a statute. It is significant that both Megarry J. and Morris J. highlighted that while the legislature provided for the period of time, it was for the courts to determine the day on which the period expires and how that day is to be ascertained.

110. I find the reasoning of Lewis J. from the High Court of England and Wales in *Calverton* to be persuasive. He accepted that strict adherence to time limits is particularly important in public law "where challenges may affect not only the parties to the claim but also other third parties who may need to know whether or not a particular measure is valid". Lewis J. examined in detail the body of case law in which the general approach set out in *Pritam Kaur* to the interpretation of statutory provisions prescribing periods within which proceedings must be brought had been confirmed. He said at paras 34-35 in a passage relied upon by the appellants that:

"the making of an application for an order to quash a development document cannot be made unilaterally by the claimant and requires the co-operation of the court office. If the last day of the six-week period prescribed by section 113(4) of the 2004 Act falls on a day when the court office is closed, then the claim may validly be brought on the next day when the court office is open.

There is nothing in the specific wording of section 113(4) of the 2004 Act which justifies reaching a different conclusion from that reached in *Kaur...*”.

111. There is nothing necessarily inherent in the decision in *Calverton* that the rule of construction only applied because the legal provisions at issue in the case did not provide for an extension of time. I have addressed the fact of the decision in *Max Developments* above and how it is significant that the decision was in existence prior to the re-enactment of the same provisions in the 2000 Act but also included the possibility of an extension of time mechanism. I have also addressed how the existence of a time limit is to provide legal certainty and the operation of the statutory presumption provides such certainty as to the time limit. The existence of the possibility of an extension is a separate matter that must be addressed by reference to the specific matters set out in the statute.

112. On days when the court’s offices are closed, an intended applicant cannot comply with the Practice Direction that proceedings are to issue in the Central Office. In that sense it is impossible to comply with the Practice Direction. The closure of the court offices also creates a huge impracticality for the commencement of proceedings that must be moved in court. In my view therefore, the common law exception to the general rule that the period expires at the end of the last day of the period applies where that day falls on a day which is not ordinarily a day on which the court offices are open. It is practicable to have a judge sit on a day when the court offices are open, even if it is in vacation, because the request for a sitting can be made in person in the office and at the same time the papers may be lodged. It is not practicable however that such an application would have to be made on a day when the court offices are closed. At such time only a single duty registrar is on call with usually only a single judge being on call. The availability of the judge is for urgent cases. It would not be practicable to require that all these judicial review applications (and by extension immigration judicial

reviews) must be made at a weekend or on a public holiday in order to comply with the time limit period. That is not what the common law exception provides.

Conclusion

113.I have considered the interpretation of s. 50(6) by reference to the plain and ordinary language used therein viewed in its context having regard to the subject of the 2000 Act and the objective to be achieved. The overall subject matter of the Act was planning and development and the specific subject matter is the time limit for taking judicial review proceedings. An important aspect of the context in which the provision was enacted is that of a previous High Court decision which held that the statutory time limit for taking judicial review was to be extended to the next day when the court offices were open if the expiration of the time period would otherwise fall on a day when the court could not act. The importance of the commercial context as repeated in *dicta* in the case law was specifically directed towards extensions of time and not towards the definition of the period. Undoubtedly, there is a need for certainty as to the statutory time limit but the common law presumption as to construction is consistent with the purpose of the Act as it provides certainty. The operation of the presumption does not of itself provide any greater or lesser certainty as to when a planning decision can be said to be immune from further challenge as there is still a possibility of time being extended by the court provided the statutory criteria are met.

114.The presumptive rule of construction could have been negated either expressly or by necessary implication having regard to the context and purpose of the 2000 Act. The 2000 Act, having regard to similar or even more strongly worded limitation periods or statutory time limits where this construction applies and the relevant context in which the provision was enacted, did not do so. The remaining references to time limits in the 2000 Act address time limits as to decisions of, or appeals to, administrative bodies

involved in the planning sphere or, with respect to the time limit for judicial review, specifically address when whole periods are taken out of the calculation. Those provisions do not address the specific presumption which defines when this time period for taking judicial review proceedings will end. The common law presumption provides that, where an act required by a party to stop time running is one which requires some action by the court but it is impracticable to do such act because the court offices are closed, the period will expire on the next day upon which the offices of the court are open. I am satisfied that the common law presumption that applies generally to statutory limitation periods also applies to the construction of the statutory time limits in s. 50(6) of the 2000 Act.

115.In light of that conclusion, it is not necessary to address any of the issues of EU law that were raised by the parties. Furthermore, as these proceedings were commenced within the period laid down by s. 50(6) of the 2000 Act, there is no necessity for an extension of time.

116.In all the circumstances, I would allow this appeal.