



AN CHÚIRT UACHTARACH
THE SUPREME COURT

S: AP:IE: 2023:00092

O'Donnell C.J.
Dunne J.
Hogan J.
Collins J.
Donnelly J.

Between/

JOHN CONWAY

Appellant

AND

AN BORD PLEANÁLA

First Respondent

-AND-

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

Second, Third and Fourth
Respondents

AND

SILVERMOUNT LTD.

NOTICE PARTY

RULING of the Court on costs delivered electronically on the 17th December 2024

1. In these judicial review proceedings, the appellant, an environmental activist based in Co. Louth, challenged the constitutionality of s. 28(1C) of the Planning and Development Act 2000 (“the 2000 Act”). This is the provision by which the Minister for Housing (“the Minister”) can give binding directions (described as “guidelines”) to planning authorities and An Bord Pleanála in relation to specific aspects of the planning process such as building heights. Critically, however, the contents of these guidelines enable the planning authorities and the Board to depart from the terms of local development plans.
2. The appellant’s challenge was, however, rejected by a decision of this Court in judgments delivered on 23rd July 2024: see *Conway v. An Bord Pleanála* [2024] IESC 34. This ruling now addresses the question of costs. Although the relevant parties had previously made written submissions on this question in the wake of the delivery of this judgment, this Court invited them to make further submissions should they so wish following the judgment of Murray J. for this Court in *Little v. Chief Appeals Officer (No.2)* [2024] IESC 53. Both the appellant and the State parties have done so.
3. These judicial review proceedings had originally involved a challenge to the validity of a decision made by An Bord Pleanála (“the Board”) to grant planning permission for a Strategic Housing Development comprising 545 build to rent apartments, commercial, retail and office units, a childcare unit and sundry associated site works at Concord

Industrial Estate, Naas Road, Walkinstown, Dublin 12 in favour of the notice party, Silvermount Ltd. By reason, however, of developments which took place in the High Court during the course of the hearing the case was essentially converted into a case solely concerning the constitutionality of s. 28(1C) of the 2000 Act. The appellant in essence agreed not to pursue his challenge to the grant of planning permissions with the consequence that the Board and Silvermount were released from the proceedings. In return the State parties agreed not to dispute the appellant's locus standi to maintain the constitutional challenge. This agreement was the subject of discussion in the principal judgments of this Court.

4. At all events, neither the Board nor Silvermount seek costs as against the appellant. The State parties are not seeking costs as against the appellant. They submit that the appropriate order should be no order as to costs. The only remaining question, therefore, is whether the Court should make an award of costs – in whole or in part – in favour of the appellant.
5. In addressing this question, the Court does not consider it necessary for present purposes to examine either the specific costs regime for planning cases set out in s. 50B of the 2000 Act or, for that matter, the general costs provisions to be found in ss. 168 and 169 of the Legal Services Regulatory Authority Act 2015. In disposing of this application, it is sufficient to say that the present case does not fall within any of the four categories of special constitutional cases meriting either the full or partial award of costs to the unsuccessful challenger identified by the Divisional Court in *Collins v. Minister for Finance (No.2)* [2014] IEHC 79 and approved (while adding a fifth category) by this Court in *Little (No.2)*. The appellant contends that he falls into at least some of the *Collins* categories.

6. While it is true that the issues raised were important and the judgments delivered in this appeal served to clarify in particular aspects of Article 28A, it nevertheless cannot be said that the present appeal raised issues of “conspicuous novelty” (the second category of *Collins*) or that it presented questions of far-reaching importance in an area of the law with general application (the third category of *Collins*). Nor can it be said to come within the fifth category of *Collins* (which was added by the judgment of Murray J. in *Little (No.2)*), namely, a case where a claimant succeeded on a significant issue in the appeal, even if he or she lost the ultimate appeal.
7. As Murray J. noted at para. 63 of *Little (No.2)*, an award of costs (whether full or partial) could only be awarded to an unsuccessful claimant in a constitutional challenge where he did not come within any of the five *Collins* categories if there were extraordinary circumstances. The Court does not consider that the present appeal involves such extraordinary circumstances.
8. In these circumstances the Court proposes to make no order as to costs in respect of this appeal.