



THE HIGH COURT

[2024] IEHC 580

[Record No. 2020/780 JR]

BETWEEN

MILLBOURNE RESIDENTS ASSOCIATION

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

RYBO PARTNERSHIP

NOTICE PARTY

**JUDGMENT of Ms. Justice Marguerite Bolger delivered on the 9th day of October
2024**

1. This is the applicant's application for leave to appeal. For the reasons set out below, I am refusing this application.

Substantive decision

2. The applicant had challenged a decision of An Bord Pleanála (hereinafter referred to as "the Board") granting planning permission to the notice party. The Board did not oppose the application for *certiorari* of that decision. The issue in my decision in *Millbourne Residents Association v. An Bord Pleanála* [2024] IEHC 31 was, where a new County Development Plan (hereinafter referred to as "CDP") had been introduced since the planning authority's decision to refuse planning permission, whether s. 50A(9A) of the Planning and Development Act 2000 (hereinafter referred to as "the Act") required the matter to be remitted to the Board or to the planning authority. I found the applicant had failed to rebut the s. 50A(9A)

presumption that remittal should be to Board, and the introduction of a new CDP was not sufficient to require remittal to the planning authority.

3. The applicant contends that the following points meet the test of s. 50A(7) of the Act as a point of law of exceptional public importance, and that an appeal is desirable in the public interest:-

(a) Where a decision of the Board on appeal is quashed, should s. 50A(9A) of the Act be interpreted as permitting the matter to be remitted to the local authority?

(b) If the answer to (a) is yes, should the matter be remitted to the local authority where the County Development Plan has changed, so that the local authority may decide whether permission should be refused on the grounds that the proposed development materially contravenes the new Plan?

4. The Board and the notice party dispute that the applicant has met the threshold for certification pursuant to s. 50A(7) of the Act.

An application for leave to appeal

5. The legal principles applicable to an application for leave to appeal were succinctly summarised by Holland J. recently in *Monkstown Road Residents' Association v. An Bord Pleanála* [2023] IEHC 9: it is a jurisdiction to be exercised sparingly, exceptional public importance is a high hurdle, the point of law must transcend well beyond the individual facts and parties in a case, affirmative public benefits must be identified, a novel issue of law does not necessarily equate to uncertainty and an application for leave is not an opportunity to reargue the merits of the substantive decision.

6. An application for leave to appeal requires clear and specific identification of the point(s) of exceptional public importance and the public interest that renders an appeal desirable and appropriate. The application should not be grounded on a repetition of issues already determined in the substantive judgment or on generalised, non-specific and uncorroborated assertions of what is claimed to be important and in the public interest.

Remittal of a decision on planning permission

7. Subsequent to the substantive decision of this court, the Supreme Court gave judgment in *Crofton Buildings Management CLG v. An Bord Pleanála* [2024] IESC 12 which addressed the remittal of a decision on planning permission, but not the identity of the body to which the remittal should be made. The Supreme Court held that there is a "statutory

imperative to remit unless it would not be lawful to do so" (at para. 36) and that *"the court must remit unless there is a positive finding that it would not be lawful to remit"* (at para. 47). At para. 64, Donnelly J. stated:-

"Remittal is now the default position in planning cases; refusal to remit is now limited to the situation where the Court is satisfied that it would not be lawful to do so. That threshold – in effect, unlawfulness – is a high threshold to reach. It is only reached where the Board/planning authority cannot reach a lawful decision to grant or not to grant the permission/approval. The circumstances in which the High Court may refuse to remit will therefore be rare and exceptional."

The Supreme Court has given a strong endorsement to the presumption of remittal. That must be taken into account by this court in determining whether the question of which body must make a decision on remittal where a new CPD has been introduced, satisfies the high bar test of s. 50A(7) of the Act.

8. The applicant referred to the planning authority not having had the views of the public on the new CPD and to the public not having had an opportunity to make submissions and observations to the planning authority that could be taken into account in assessing the application for planning permission. However, those points were addressed in my substantive decision where I referred to s. 131 of the Act which allows the Board to seek the views of *"any other person or body"*. The applicant's counsel said this issue of the body to which a matter should be remitted will arise again regularly, although he accepted that they had no statistical or other evidence to support that contention, which he said was because of the applicant's status as a local residents' association. The applicant's counsel also asserted that the issue gave rise to a need to clarify the practical operation of the planning system. A similar public interest point was only *"just about"* established to the satisfaction of Humphreys J. in *Sweetman XVII (No. 2)* [2021] IEHC 662 on the facts of that case. However I do not consider that a similar public interest point has been established here, particularly in the absence of any evidence of the same issue arising in practice in the practical operation of the planning system.

9. The applicant's application does not satisfy the statutory requirements of s. 50A(7) of the Act and so I refuse this application.

10. I will put the matter in for mention before me at 10.30am on 15 October 2024 for final orders.

Counsel for the applicant: James Devlin SC, John Kenny BL

Counsel for the respondent: Aoife Carroll BL

Counsel for the notice party: Damien Keane BL