APPROVED

AN ARD-CHÚIRT
THE HIGH COURT

[2025] IEHC 36

Record No. 2021/1119JR

BETWEEN/

PAUL FREENEY

APPLICANT

-AND-

AN BORD PLEANÁLA

RESPONDENT

-AND-

CWC FAIRGREEN LIMITED

FIRST NAMED NOTICE PARTY

-AND-

GALWAY CITY COUNCIL

SECOND NAMED NOTICE PARTY

(No. 2)

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 24th day of January 2025

INTRODUCTION

1. Section 50A(7) of the Planning and Development Act 2000 (as amended) ("the 2000 Act") (construed together with section 75 of the Court of Appeal Act 2014) *inter alia* provides that the determination of the High Court of an application for judicial review shall be final and no appeal shall lie from the decision of that Court to the Court of Appeal save with leave of the Court, which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken (referred to in this judgment as a "certificate application").

2. In this application, Mr. Freeney ("the Applicant") seeks a certificate pursuant to section 50A(7) of the 2000 Act to appeal the judgment delivered in *Freeney v An Bord Pleanála & Ors* [2024] IEHC 427 ("the principal judgment" or "*Freeney (No. 1)*") where I refused his challenge to the decision of An Bord Pleanála dated 1st November 2021 to grant planning permission to CWC Fairgreen Ltd., for a change of use and related works to a premises located at Fairgreen House, Fairgreen Road (Bothar Pairc An Aonaigh), in Galway city.

3. On his behalf, it is submitted that the following matters comprise points of law of exceptional public importance in respect of which it is desirable in the public interest that an appeal should be taken:

> "*(i) Whether the propositions from Nee v An Bord Pleanála (No.1) [2012] IEHC 532 and South West Regional Shopping Centre v An*

Bord Pleanála [2016] 2 IR 481 as applied in the principal judgment with regard to section 37(2) of the Planning and Development Act 2000 are correct ?

(ii) Whether the test for the validity of a public notice is objective (whether it is inadequate or misleading from the perspective of the persons who may be potentially interested) or subjective (whether the Applicant in the proceedings and/or the planning authority is misled)?

(iii) What is required for a screening assessment under the Habitats Directive ?

(iv) Whether the Board is entitled to abdicate its consideration of the planning regulation of a proposed use to the different statutory code of the Gaming and Lotteries Act, 1956 ?"

4. Peter Bland SC and Evan O'Donnell BL appeared for the Applicant. Aoife Carroll SC appeared for An Bord Pleanála. Christopher Hughes BL appeared for Galway City Council. Fred Logue Solicitor, of FP Logue LLP, appeared for CWC Fairgreen Ltd. Ms. Carroll SC and Mr. Logue Solicitor opposed the application for a certificate made by Mr. Bland SC.

POLICY OBJECTIVES & APPLICABLE PRINCIPLES

5. The policy imperatives and legal principles which govern a certificate application in a judgment addressing a decision of An Bord Pleanála, in the exercise of its planning appeal functions, are well-settled, with much of the jurisprudence involving a re-statement of the principles set out in the seminal judgment of the High Court (MacMenamin J.) in *Glancré Teoranta v An Bord Pleanála* [2006] IEHC 250.

6. The statutory language used in section 50A(7) of the 2000 Act confirms the exceptionality of this appellate jurisdiction (*i.e.*, to be invoked sparingly) and the objective of the Oireachtas in seeking finality, certainty and expedition in challenges brought by way of judicial review in planning cases (*CHASE v An Bord Pleanála* [2022] IEHC 231 per Barniville J. (as he then was)) at paragraph 32.

7. At the same time, in dealing with a certificate application, whilst the process of considering suggested points of law will inevitably require the High Court to summarise (or quote) relevant portions from the principal judgment, it should be cautious to avoid revisiting findings made in the principal judgment so that a reformulation of those matters does not arise (see the decision of the Supreme Court (Woulfe J.) in *Sherwin v An Bord Pleanála* [2024] IESC 13 at paragraph 21).

8. In addition, the following principles arise from the established jurisprudence[1] and are applicable when determining a certificate application:

[1] *Glancré Teoranta v An Bord Pleanála* [2006] IEHC 250 (MacMenamin J.); *Rushe & Anor v An Bord Pleanála & Ors (No.2)* [2020] IEHC 429 (Barniville J. (as he then was)); Humphreys J. in *Nagle View*

(i) a consideration of the possible outcome (on appeal) of a certificate application is irrelevant, as the point of law of exceptional public importance in respect of which it is desirable in the public interest that an appeal should be taken, must (a) emanate from the *decision* in the principal judgment (rather than the merits of the parties' arguments made during the course of the hearing which led to that decision) and (b) transcend the facts that arise in the fact-specific context of a particular case. Furthermore, a point which was not decided cannot amount to a such a point of law and, generally, it is not appropriate to grant leave to appeal in respect of a point of law which has not been properly pleaded;

(ii) the requirements under s. 50A(7) of the 2000 Act – that (a) the point of law sought to be certified must be of exceptional public importance and (b) it must be in the public interest that an appeal be brought – are cumulative. In this regard, the point of law must be one which is dispositive of the proceedings (and not one which, if answered differently, would leave the result of the case unchanged). The closer a point of law is to the application of clear and well-established legal principles, the more difficult it is to satisfy the requirement that the point of law is one of exceptional public importance and that it is desirable in the public interest that there be an appeal on the point;

Turbine Aware v An Bord Pleanála (No.2) [2025] IEHC 3 per Humphreys J. at paragraph 9; High Court (Holland J.) in *Monkstown Road Residents' Association v An Bord Pleanála* [2023] IEHC 9 per Holland J. at paragraph 8; *McCaffrey & Sons Ltd v An Bord Pleanála* [2024] IEHC 476, per Gearty J. at paragraph 2.2.

(iii) whilst there may often be a degree of overlap in relation to these two matters, amongst the factors which arise when considering the second requirement (*i.e*. whether it is desirable in the public interest that an appeal be brought) include, whether there is some uncertainty or lack of clarity in the law, whether the law in the area is still evolving (and novelty does not necessarily equate with uncertainty or evolvement), the nature of the particular development and the potential consequences of any delay in the final determination of the case before the courts (which invariably affects the recipient of a planning permission who is usually a notice party in the judicial review application).[2] In this regard, the raising of an argument on a proposed point of law which the Court has rejected does not mean that the law is uncertain and it is not necessary to point to other decisions which conflict with the decision of the High Court on the point from which it is sought to appeal. The uncertainty must arise over and above the mere fact that an argument can be made on the point, for example, where there is uncertainty in the daily operation of the law in question which is required to be clarified. The corollary is also true, so where a point is a novel one *and* the law is in a state of evolution, it is more likely that it is desirable in the public interest that an appeal be brought.

[2] In this regard Mr. Logue Solicitor referred to the fact that CWC Fairgreen Limited (the first named notice party) had been granted planning permission by the Board on *1st November 2021* for a change of use of the ground floor unit from retail to gaming use at Fairgreen House, Fairgreen Road, Galway and the fact of these proceedings had further delayed the planning consent process.

PROPOSED POINTS OF LAW

9. The judgment of Barniville J. (as he then was) in *Rushe & Anor v An Bord Pleanála & Ors (No.2)* [2020] IEHC 429 also addressed a certificate application in a challenge, by way of judicial review, to a decision of An Bord Pleanála where, in its principal judgment, the court refused to quash the Board's decision to grant permission for the development of a windfarm in County Galway. In addition to setting out the applicable legal principles, the structure of the judgment included a summary of those parts of the principal judgment which were relevant to the proposed points of law upon which the prospective appellants relied in support of their application for leave to appeal. I adopt a similar approach in the remainder of this judgment.

(i) Alleged material contravention

10. The Applicant's first argument in this certificate application seeks, for the first time, to submit that the propositions applied in *Freeney (No.1),* arising from the decisions in *Nee v An Bord Pleanála (No.1)* [2012] IEHC 532, *South West Regional Shopping Centre v An Bord Pleanála* [2016] IEHC 84; [2016] 2 I.R. 481 and *Balz and Heubach v An Bord Pleanála & Ors* [2016] IEHC 134 "*are erroneous and require to be corrected by the Court of Appeal*" and that these "*propositions are of considerable importance and the construction of section 37 and the meaning of material contraventions require to definitively addressed by the Court of Appeal*".

11. In relation to this first proposed point of law, in the principal judgment I found that section 37(2)(b) of the 2000 Act ("the material contravention process") had not been

engaged in the decision-making process of An Bord Pleanála and that Galway City Council had not refused planning permission on 2nd June 2021 on the basis of there being a material contravention of the Galway City Development Plan.

12. In doing so, I had regard *inter alia* to, and applied, the judgments in *Nee v An Bord Pleanála (No.1)* [2012] IEHC 532, *Nee v An Bord Pleanála (No.2)* [2013] IEHC 584 and *South West Regional Shopping Centre v An Bord Pleanála* [2016] IEHC 84; [2016] 2 I.R. 481, in addition to holding that the position in *Balz and Heubach v An Bord Pleanála & Ors* [2016] IEHC 134 was not analogous to the proceedings in *Freeney (No.1)* and where Barton J., in that case, had referred to the judgments of O'Malley J. in *Nee (No.1)* and Haughton J. in *People Over Wind & Anor v An Bord Pleanála & Ors* [2015] IEHC 271.

13. In my view, in considering, for example, whether it is desirable in the public interest that an appeal be brought, there is no uncertainty, lack of clarity or evolvement in the law, arising from the propositions in *Nee v An Bord Pleanála (No.1)* [2012] IEHC 532, *Nee v An Bord Pleanála (No.2)* [2013] IEHC 584, *South West Regional Shopping Centre v An Bord Pleanála* [2016] IEHC 84; [2016] 2 I.R. 481 and *Balz and Heubach v An Bord Pleanála & Ors* [2016] IEHC 134, as applied in the principal judgment.

14. Further, and separate from that finding, in the initial hearing before, the Applicant sought to *distinguish* the decision in *Nee (No.1)* from the facts in *Freeney (No.1)*. I also noted that the decision of the High Court in *Redmond v An Bord Pleanála* [2020] IEHC 151 concerned a challenge to the validity of the Board's decision to grant

planning permission for a residential development of 134 units under the Planning and Development (Housing) Act 2016. Arguments made which seek to *distinguish* a judgment (or judgments) from the matters at issue in an extant legal challenge (at hearing) are of a different order to those which seek to argue that a judgment (or judgments) were *incorrectly* decided.

15. In addition to the fact that the proposed first question – whether the propositions from *Nee v An Bord Pleanála (No.1)* [2012] IEHC 532 and *South West Regional Shopping Centre v An Bord Pleanála* [2016] 2 I.R. 481 as applied in the principal judgment with regard to section 37(2) of the Planning and Development Act 2000 are correct – was not argued and was therefore not addressed in the judgment and consequently is not a point which arises from the judgment ("*a point the court did not decide cannot amount to a point of law of exceptional public importance*" per Holland J. in *Monkstown Road Residents' Association*), in *Sherwin v An Bord Pleanála* [2024] IESC 13, the Supreme Court, in the judgment of Woulfe J., *inter alia* held that the initial question to be considered – "*the crucial starting point*" – was in relation to the nature of the determination actually made by the decision-maker "*as to whether or not the proposed application as a matter of law and fact would materially contravene the development plan*" and referred to the decision of Costello J. (as she then was) in *South-West Regional Shopping Centre Promotion Association Limited v. An Bord Pleanála* [2016] IEHC 84 in circumstances where there had been the required focus by the decision-maker on the specific provision of the plan allegedly materially contravened.

16. I do not consider, therefore, that the point of law proposed on behalf of the Applicant in relation to the alleged material contravention point satisfies the cumulative requirements of comprising (i) a point of exceptional public importance and (ii) being in the public interest that an appeal be brought.

(ii) Public Notices

17. The point of law argued on behalf of the Applicant in relation to public notices contends that the principal judgment applied the subjective views of the applicant rather than the objective views of those people in the surrounding area: "*Whether the test for the validity of a public notice is objective (whether it is inadequate or misleading from the perspective of the persons who may be potentially interested) or subjective (whether the Applicant in the proceedings and/or the planning authority is misled)?*"

18. Specifically, the submission made on the Applicant's behalf states that "*the court then held that [121] and [123] that the notices were adequate in the detail and description of the proposed change of use because (1) the Applicant himself was not misled and (2) the Council's planners addressed the nature of the intended gaming and (3) the site notice directed the Applicant to the City Council's planner's report.*"

19. The principal judgment, at paragraphs 112 to 115 set out the provisions of the Planning and Development Regulations 2001 (as amended). Paragraphs 116 and 117 set out the details of the application form completed by the Notice Party and paragraph 118 referred to the planning application drawings.

20. Paragraph 119 of the principal judgment commenced the reference to the judgment of the High Court in *Byrnes v Dublin City Council* [2017] IEHC 19, and stated that Baker J. had rejected an argument in that case that the public notices published and posted by Dublin City Council had failed to comply with section 179(2)(a) of the 2000 Act and Article 81 of the Planning and Development Regulations 2001 by being allegedly too broad and general in their description or had failed to identify the full extent of the change of use intended at Longfield House at Fitzwilliam Street Lower, Dublin 2 from a former hotel to a supported temporary accommodation for single persons and couples comprising a total of 30 bedspaces and common living and support rooms to be operated by the Dublin Simon Community.

21. Paragraph 120 referred to the fact that Baker J. in *Byrnes v Dublin City Council* had reviewed the leading authorities, including *Monaghan Urban District Council v Alf-a-BET Promotions Ltd* [1980] I.L.R.M. 64, *Crodaun Homes v Kildare County Council* [1983] I.L.R.M. 1, *Blessington & District Community Council Ltd v Wicklow County Council* [1997] 1 I.R. 273, *Ratheniska Timahoe and Spink Substation Action Group & Anor v An Bord Pleanála* [2015] IEHC 18 and had regard to the guidelines for planning authorities published by the Department of the Environment Heritage & Local Government in June 2007, which at paragraph 3.4 dealt with the purpose of site notices. The judgment then quotes Baker J.'s reference at paragraphs 80 and 81 of her judgment in *Byrnes v Dublin City Council* which sets out the purpose of the public notices.

22. The principal judgment then refers to the following matters at paragraphs 121, 122 and 123:

> "*(121) In my view, and paraphrasing the observations of the High Court (Baker J.) in Byrnes v Dublin City Council [2017] IEHC 19, the notices in the case before me were adequate in the detail and description of the proposed change of use and this was evidenced by the submissions made in the planning process. Notwithstanding the argument which is now made on behalf of the Applicant that the notices did not contain an express reference to the 1956 Act, in his submissions to both the City Council and to the Board, the Applicant expressed his objections in relation to gaming and was in no sense misled or prejudiced by the notices and made no complaint in relation to the notices.*
>
> *(122) In Dunne and MacKenzie v An Bord Pleanála [2006] IEHC 400 (referred to earlier) which concerned the omission of a balcony from a proposed development which included demolition on the site of the former Chester Beatty Library on Shrewsbury Road, Dublin 4, this court (McGovern J.) rejected two arguments in relation to the site notice in that case, namely that the site notice was not erected in sufficient time and should have been on a yellow background and stated that he was inter alia satisfied that there was no prejudice to the applicants because they knew in sufficient time of the development*

and were able to make objections before the planning authority and, on the facts of that case, subsequently appeal the matter to the Board.

(123) As mentioned, in the application before me, the Applicant raised no issues in relation to the site notice or the newspaper notice and clearly, he has knowledge of the issues involved in gaming. The City Council's planners report also addressed the nature of the intended gaming and the site notice directed the Applicant to the City Council's planner's report."

23. At the initial hearing, the Applicant had argued that there was insufficient detail of the 'use' (the change of use was from retail to 'gaming' use) of the proposed development in the public notices which amounted to non-compliance with the Planning and Development Regulations 2001 (as amended). It was contended, for example, that the Notice Party intended other uses such as, for example, 'entertainment' and the televising of sporting events, which, it was argued, were not captured by the definition of gaming and that there was an inadequate description of these intended uses in the public notices, *i.e.*, the Applicant argued that the reference to 'gaming' was amorphous and did not explain what the activity was, and, for example, the Planning Authority was required to look for Further Information.

24. The gravamen of the Applicant's complaint in this certificate application in relation to the public notices remains the reference in the public notice to a change of use from retail to "gaming".

25. As just set out, the principal judgment at paragraph 120 first quoted the following extracts from paragraphs 80 and 81 of Baker J.'s judgment in *Byrnes v Dublin City Council* [2017] IEHC 19 which referred to *the purpose of public of public* notices as follows:

> "*(80) In the light of the authorities, what is envisaged by the legislation is that a notice should alert a vigilant or potentially interested party to the general nature of what is proposed. While the guidelines issued by the Department of the Environment do not have statutory force, albeit they are issued under a statutory power, they correctly identify the various objectives that need to be achieved, and the importance of having a sufficiently clear but not over detailed notice, which is likely to inform but not confuse, a potentially interested person. A notice must be site and development specific, it must alert the persons who are likely to be interested in that particular development as to the general nature of the development proposed, be sufficiently concrete to raise an interest or concern as to the development, and invite further queries and inspection of the detailed documents. The intention is to give sufficient information to lead a person to make enquiries and thereafter to consider whether to make objection to the proposed development. The notice is not intended to be or comprise all of the information on foot of which an objection would be framed, or to inform a person who is wholly ignorant of the character of an area.*"

26. Immediately after this quotation, the principal judgment at paragraph 120 then quoted the following extract from paragraphs 81 of Baker J.'s judgment in *Byrnes v Dublin City Council* [2017] IEHC 19 which addressed her conclusion on the adequacy of the public notice in that case as follows:

> "*(81) I consider it relevant that the applicant has not said on affidavit that he personally was misled by the notices. I have read the submissions made by other interested parties and each of them contains arguments of the class made by Mr. Byrnes with regard to the suitability of the area and/or buildings for the class of supported accommodation intended. These parties appear to have had sufficient knowledge of the type of accommodation proposed to make submissions with regard to its suitability having regard to the particular character of the area*".

27. The principal judgment then at paragraph 121, in paraphrasing the observations of Baker J. in *Byrnes v Dublin City Council* [2017] IEHC 19, *inter alia* stated that the public notices at issue in these proceedings "*were adequate in the detail and description of the proposed change of use and that this was evidenced by the submissions made in the planning process*", in addition to finding that the Applicant had "*expressed his objections in relation to gaming*" and was not "*misled or prejudiced by the notices and made no complaint in relation to the notices*."

28. Therefore, and notwithstanding the submissions on behalf of the Applicant in this certificate application, the principal judgment addressed the purpose of public notices

by reference to the decision of Baker J. in *Byrnes v Dublin City Council* [2017] IEHC 19 in setting out the legal principles involved and their application and determined that the notices were objectively and subjectively adequate.

29. Further, the fact that it was also argued on behalf of the Applicant in this certificate application that the public notices have "a very broad application" in the planning code does not, in and of itself, satisfy the requirement that the point of law in relation to the public notices suggested by the Applicant is one of exceptional public importance and that it is in the public interest that an appeal be brought.

30. In the seminal judgment of the High Court in *Glancré Teoranta v An Bord Pleanála* [2006] IEHC 250 at paragraph 9, MacMenamin J. stated that "*'uncertainty' cannot be 'imputed' to the law by an applicant simply by raising a question as to the point of law. Rather, the authorities appear to indicate that the uncertainty must arise over and above this, for example in the daily operation of the law in question.*" No uncertainty in fact arises in the consideration and disposition of the question of public notices in the principal judgment.

31. I do not consider, therefore, that the point of law proposed on behalf of the Applicant in relation to public notices satisfies the cumulative requirements of comprising (i) a point of exceptional public importance and (ii) being in the public interest that an appeal be brought.

(iii) Screening for Appropriate Assessment

32. Under this sub-heading the Applicant poses the question "*What is required for a screening assessment under the Habitats Directive ?*". The written submissions of the Applicant on this proposed point repeat those made at the hearing. This is not the correct approach to be followed in a certificate application. It was further submitted on the Applicant's behalf that the Board could not have endorsed and adopted the reasoning of the Inspector because the use in her report of the following syntax at paragraph 7.1.7 was so unclear: "[h]*aving regard to and to the nature of the proposed development and the serviced inner urban site location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.*"

33. The submissions on behalf of the Applicant in this certificate application repeat the submissions made during the hearing and argue again that this paragraph is '*incoherent*' and '*semantically void*'.

34. At paragraph 127 of the principal judgment I stated that "[o]*n behalf of the Applicant, criticism is made of the syntax used in this paragraph by the Inspector. Whether or not the word 'arise', or the coordinating conjunction 'and the' or indeed a comma, were omitted so that the sentence should read "no Appropriate Assessment issues arise, and the", adopting and paraphrasing the observations of Barniville J. (as he then was) in Eoin Kelly v An Bord Pleanála & Anor [2019] IEHC 84 at paragraph 100 of the court's judgment, consideration should be given to "the substance of the screening report and the inspector's report rather than to focus on the particular use*

or rather non-use of certain words." Further authorities to similar effect were set out in subsequent paragraphs of the principal judgment.

35. In addition, after setting out the main authorities, paragraph 132 of the principal judgment states *inter alia* that the Applicant's challenge to this part of An Bord Pleanála's decision must be seen through the prism of the Statement of Grounds and the pleading requirements in judicial review applications. The judgment finds, for example, that the Applicant was not entitled to argue that the screening for AA was inadequate because of what was contended, at the hearing of this matter, to be an alleged absence of intelligible reasons. Generally – as per Holland J. in *Monkstown Road Residents' Association* – it is not appropriate to grant leave to appeal in respect of a point of law which has not been properly pleaded. Further, in *Ross & Ross v An Bord Pleanála* [2015] IEHC 484, the High Court (Noonan J.) observed, *inter alia* at paragraph 9 of that judgment (which also addressed certificate application made pursuant to section 50A(7) of the 2000 Act) that "*it would appear that the applicants now seek to appeal on a ground in respect of which no leave to apply for judicial review was granted. I cannot conceive how an appeal could lie in such circumstances. It would be an unusual state of affairs, to say the least, if an appellate court were asked to determine an appeal on the basis of a point that was never even pleaded, less still the subject matter of a grant of leave.*"

36. The proposed question – "*What is required for a screening assessment under the Habitats Directive ?*" – is couched in the most general of terms. A point of law is required to be formulated with precision so that indicates how it is determinative of the proceedings and should not invite a discursive, roving, response from the Court of

Appeal (see *Monkstown Road Residents' Association v An Bord Pleanála* [2023] IEHC 9 per Holland J. at paragraph 8). Furthermore, the judgment, beginning at paragraph 133, identifies the grounds in the Statement of Grounds upon which the Applicant was granted leave in relation to screening for AA and addresses these matters by reference to well-settled authorities, including the judgment of Barniville J. (as he then was) in *Eoin Kelly v An Bord Pleanála & Anor* [2019] IEHC 84 at paragraph 98. As Humphreys J. observed in *Nagle View Turbine Aware v An Bord Pleanála (No.2)* [2025] IEHC 3, at paragraph 9(iii):

> "*Questions about the application of established principles to particular facts are unsuitable for appeal in such a context: Reid v. An Bord Pleanála (No. 3) [2021] IEHC 593 (Unreported, High Court, 6th October 2021) at §7: "the issue of whether principles were correctly applied in a specific case is not normally a question of law of exceptional public importance and indeed is not a pure question of law at all." See also analogously and non-precedentially Eco Advocacy CLG v. An Bord Pleanála, Keegan Land Holdings Limited, An Taisce - The National Trust for Ireland and Earth AISBL [2024] IESCDET 62 (Charleton, Woulfe and Collins JJ., 27th May 2024)*".

37. I do not consider, therefore, that the point of law proposed on behalf of the Applicant in relation to screening for appropriate assessment satisfies the cumulative requirements of comprising (i) a point of exceptional public importance and (ii) that it is in the public interest that an appeal be brought.

(iv) Alleged abdication of function

38. Again, the Applicant's arguments on this proposed point largely repeat those made at the hearing in relation to the interaction of the planning code (under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended)) and the licensing code (under the Gaming and Lotteries Act 1956) and the argument that the Board allegedly abdicated its consideration of the planning regulation of a proposed use to the separate licensing code.

39. The Gaming and Lotteries Act 1956 is addressed, for example, beginning at paragraph 70 of the principal judgment. At paragraph 91, the principal judgment further records that "[t]*he Board considered, having regard to the overall planning assessment of the Inspector, including, for example, the impact on amenities as set out above in paragraph 7.1.4 that in deciding to omit the temporary condition proposed by the Inspector, the proposed development would be effectively regulated through the function of the necessary licensing provisions for the development. The application of section 34(13) of the PDA 2000, in these circumstances, means that the operation of the development as proposed is conditional upon the necessary resolutions, certificates and licences being issued under the 1956 Act. Whether or not the requisite components under the 1956 Act are in place for that to happen does not detract from the Board's assessment of the proposed development qua planning but may, of course, have implications for the operation and use of the building in the manner envisaged. The 1956 Act, for example, is layered in the sense of requiring a number of consequential and conditional actions for gaming to be deemed lawful including inter alia: (i) a*

necessary resolution of the elected members of the City Council under Part III of the 1956Act to permit the operation of gaming at a particular location in its functional area; (ii) consequent upon that resolution, the District Court has jurisdiction to grant a certificate authorising the issuing of a gaming licence and the imposition of conditions; and (iii) the Revenue Commissioners are then required to grant a gaming licence, which is considered on an annual basis, on payment of the appropriate excise duty".

40. Consequently, at paragraph 95 the principal judgment stated that "*I have already addressed the legal consequences of the 1956 Act earlier in this judgment. Further, I consider that the Inspector and also the Board addressed the planning merits of this application for a change of use and related works. I do not consider that the Inspector or the Board abdicated their respective functions qua planning to the licensing process envisaged under the 1956 Act.*"

41. A point of law proposed by an intended appellant must arise out of the judgment and not from the discussion, argumentation or consideration of the point during the course of the hearing (or a reiteration of the initial arguments) in addition to the cumulative requirement that it must be a point of exceptional public importance and that it is in the public interest that an appeal be brought. Accordingly, the suggested point of law in relation to the alleged abdication by An Bord Pleanála of its consideration of the planning regulation of a proposed use to the different statutory code of the Gaming and Lotteries Act 1956 does not meet the requirements of section 50A(7) of the 2000 Act.

CONCLUSION

42. For the reasons set out above, I refuse the application made on behalf of the Applicant for a certificate pursuant to section 50A(7) of the 2000 Act in relation to the four matters proposed.

PROPOSED ORDER

43. I shall make an order refusing the application made on behalf of the Applicant for a certificate pursuant to section 50A(7) of the 2000 Act.

44. I shall put the matter in before me on Thursday 6th February 2025 at 10:30 to deal with the question of costs.

CONLETH BRADLEY