



[2025] IEHC 41

THE HIGH COURT  
PLANNING & ENVIRONMENT

[H.JR.2023.0000975]

IN THE MATTER OF SECTIONS 50 AND 50A OF THE PLANNING AND DEVELOPMENT ACT  
2000 (AS AMENDED)

BETWEEN

ALEX THOMPSON AND SHAHLA THOMPSON

APPLICANTS

AND

AN BORD PLEANÁLA, IRELAND AND THE ATTORNEY GENERAL (BY ORDER)

RESPONDENTS

AND

KATHY O'DONNELL AND BARRY O'DONNELL

NOTICE PARTIES

AND

FRIENDS OF THE IRISH ENVIRONMENT

AMICUS CURIAE

(No. 3)

**JUDGMENT of Humphreys J. delivered on Friday the 31st day of January 2025**

1. This everyday dispute about a domestic development consent has raised significant procedural questions of EU law. The question now is to make a decision on whether to refer those issues to Luxembourg and, if so, to provide for procedural directions to facilitate a separate formal judgment for reference.

**Judgment history**

2. In *Thompson v. An Bord Pleanála (No. 1)* [2024] IEHC 101 (Unreported, High Court, 26th February 2024), I held that, leaving aside arguments based on EU law, the proceedings were one day late and that the statutory provision for extension of time was not satisfied. I directed the applicants to put the State on notice of their claim that the legal framework as to time within which to apply for judicial review was contrary to EU law.

3. In *Thompson v. An Bord Pleanála (No. 2)* [2024] IEHC 639 (Unreported, High Court, 8th November 2024), I invited further submissions on identified questions of EU law.

4. For present purposes the issue is the giving of procedural directions to enable the matter to be progressed. As will be seen, I am deciding to do that by way of preliminary reference.

**Procedural history**

5. The procedural history is set out in the No. 2 judgment. As that judgment makes clear, the applicants accepted the general principle of time running from the date of the decision, with qualifications in limited circumstances.

6. Following that, the parties were invited to make further submissions. A submission from the applicants was received on 15th November 2024. Paragraph 3 of that submission is rather vaguely worded and the State interprets that as potentially attempting to revisit the arguments made at the hearing. That would be impermissible and inappropriate. It's one thing for a party to make concessions and narrow its case as matters proceed, or to seek a formal amendment of pleadings, as long as that is arguable, duly explained and doesn't cause irreparable prejudice. But to allow a party to simply change its mind and try to expand its case mid-stream, after other parties have relied on that and after complex forensic steps have been put in place, would unleash procedural chaos and would be totally unacceptable. The critical point here is that core grounds 7 and 8 of the third amended statement of grounds only argue for the limited qualifications, not for an invalidity in the general principle of time running from a decision. So I prefer to interpret the applicants' submissions in a sense compatible with the pleadings and not as a wholly impermissible attempt to muddy the waters and improperly extend their case by stealth.

7. On 25th November 2024, I allowed a drafting amendment to the applicants' statement of grounds. I also directed that if any party wished to propose an *amicus curiae* they were at liberty to do so.

8. On 2nd December 2024, Protect East Meath appeared with the applicants' support to seek to be added as an *amicus*. Unfortunately I had to refuse that application, primarily because such an application would need to have been made with sight of the papers, which it wasn't. Had the papers been studied, the proposed *amicus* would have realised that the argument they wanted to make, namely that time should run from notification of the decision, was never made by the applicants and so could not be made by an *amicus*. The precise argument set out in the proposed *amicus*' letter of 28th November 2024 was:

“Our client would be of the view that time limits ought to run from the date of notice and not from the date of the decision, in particular where the competent authority has discretion over when to issue notices.”

**9.** It is the words “in particular” that are the problem. That implies that time running from notification is not confined to cases where notification periods are discretionary. That is an argument that was simply never made by the applicants. They accepted the general rule of time running from the date of the decision, but proposed a much narrower nuance in certain limited circumstances. The argument implied here by the *amicus* is inconsistent with and contrary to the submissions actually made.

**10.** To permit the scope of the case to be expanded by an *amicus* would be unfair to opposing parties, apart from creating procedural mayhem. Indeed even to permit an *amicus* to get involved on a limited basis when they had already expressed a preference to make more unbounded arguments could be a potentially perilous exercise. The moral of the story for future reference is that any would-be *amicus* should obtain the papers (from the party proposing that they be added), study those papers, and ensure that their proposed contributions don’t go beyond what the parties actually argued.

**11.** A submission from the State was uploaded on 6th December 2024.

**12.** The matter was then listed on 9th December 2024, at which stage a second application by a proposed *amicus* was made on behalf of Friends of the Irish Environment. The matter was then adjourned to 13th January 2025 for this to be considered.

**13.** Following further adjournment, on 27th January 2025, Friends were added as an *amicus* without objection and judgment was reserved.

**14.** One final procedural point is that the applicants were not named in the statement of grounds with a first name and surname each as would be required, so I am going to amend the title to reflect the correct format (Alex Thompson and Shalala Thompson rather than Alex and Shalala Thompson).

#### **Reference to the CJEU**

**15.** The identified questions are ones of interpretation of EU law rather than merely application of such law, and the answers are not *acte clair*. The answers are necessary to enable the court to give judgment. Therefore the questions meet the criteria for reference. As a matter of discretion I consider it appropriate to refer these questions in all of the circumstances.

#### **Procedural directions**

**16.** Certain procedural directions are appropriate having regard *inter alia* to the standard terms in *Eco Advocacy CLG v. An Bord Pleanála* [2021] IEHC 265, [2021] 5 JIC 2704 (Unreported, High Court, 27th May 2021) format with some modifications set out in the order below. I also propose to set a mention date to confirm that all is in order with the reference. The parties having made submissions in the context of a proposed reference, there is no particular need for another round of that before we finalise the judgment for reference, which will be delivered separately. A deadline for the *amicus*’ submissions has already been set when that party was joined.

#### **Order**

**17.** For the foregoing reasons, it is ordered that:

- (i) **amendment of title:** the title of the proceedings be amended to reflect the individual first and surnames of both applicants;
- (ii) **reference in principle:** the questions already identified be in principle referred to the CJEU under art. 267 TFEU in accordance with a judgment for reference to be issued separately;
- (iii) **amicus to bear own costs:** in line with *Eco Advocacy*, the *amicus* bear their own costs throughout, in the Irish courts and in Luxembourg, and not have any liability for the costs of any other participant in the proceedings, and be involved on a written-submissions-only basis unless otherwise ordered;
- (iv) **CJEU contact sheet:** within seven days, the parties be required to complete the CJEU contact sheet set out in guidance notes to Practice Direction HC126 specifying whether any natural persons referred to wish their names to be anonymised for the purposes of the CJEU proceedings and judgment, and submit that sheet to the List Registrar copying the relevant judicial assistant;
- (v) **other redactions:** within seven days from the formal judgment for reference, each party be required to advise the List Registrar as to whether any natural persons mentioned in the judgment other than the parties in the title (whose positions should be specified in the contact sheet) wish their names to be anonymised for the purposes of the CJEU proceedings and judgment;
- (vi) **papers for CJEU:** the document management party be required to prepare a draft contents page of documents for the CJEU and to agree this with the other parties or apply to the court in default of agreement; this should include:
  - (a) all relevant pleadings/ affidavits/ exhibits/ other documents; and

- (b) all relevant judgments/ orders in the case including the formal order for reference when perfected and the final judgment for reference when delivered;
- (c) this should not include cases or other authorities, especially where these are already cited in the judgment for reference;
- (d) once the contents page is agreed, it is then the function of the document management party to prepare electronic versions for the CJEU as follows:
  - 1. all files should be in PDF format not exceeding 30 MB;
  - 2. the judgment for reference should be a single standalone PDF clearly identified as such; that PDF should be sent in a form (which should be final but may be unsigned) that preserves the hyperlinks and not as a scanned picture of the signed version;
  - 3. all other documents should be bundled together in a single PDF (or more than one if required to comply with the 30MB file size limit); and
  - 4. the completed form of the contact details of the parties in the form attached to guidance notes to Practice Direction HC126;
- (e) once prepared, the PDFs should be sent to the List Registrar by email or file sharing link, and for this purpose parties should not use password protected file transfers, this process to be completed within 28 days from the date of the judgment for reference;
- (vii) **information for the referring court:** once the matter is formally referred, the parties should liaise to ensure that the referring court is copied with all submissions including those of member states and EU institutions, and the Advocate General's opinion, when permitted to do so by the rules of procedure of the CJEU, and to copy the referring court with relevant notifications such as regarding the date of any oral hearing, any opinion of the Advocate General, the date of delivery of the judgment and the judgment itself;
- (viii) **costs:** all costs to date be reserved; and
- (ix) **review of arrangements for reference:** The matter be listed for mention on 10th March 2025.