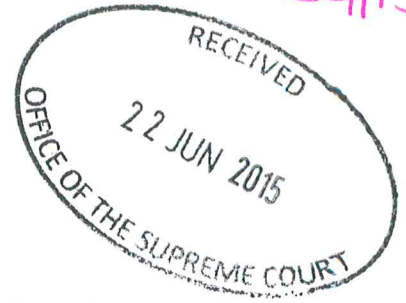


34115



Order 58, rule 15

SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

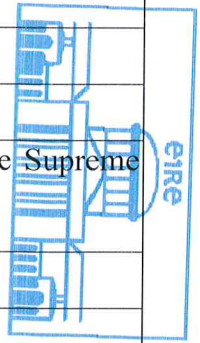
Supreme Court record number of this appeal	
Subject matter for indexing	

Leave is sought to appeal from

<input type="checkbox"/> The Court of Appeal	<input checked="" type="checkbox"/> The High Court
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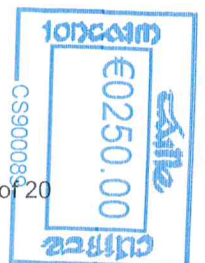
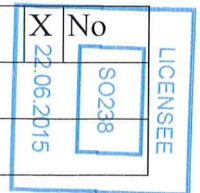
[Title and record number as per the High Court proceedings]

Dunnes Stores	V	An Bord Pleanála
2014 685 JR (179) COM		
Date of filing	17 November 2014	
Name(s) of Applicant(s)/Appellant(s)	Dunnes Stores	
Solicitors for Applicant(s)/Appellant(s)	DAC Beachcroft Dublin	
Name of Respondent(s)	An Bord Pleanála	
Respondent's solicitors	Barry Doyle & Company	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/>	No
If yes, give [Supreme Court] record number(s)		



6235715
14285

Are you applying for an extension of time to apply for leave to appeal?	Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		



1. Decision that it is sought to appeal

Name(s) of Judge(s)	Mr. Justice McGovern
Date of order/ Judgment	Judgments dated 21 May 2015 and 18 June 2015 resulting in Order dated 18 June 2015 (perfected 19 June 2015)

2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	Dunnes Stores
-----------------------	---------------

Original status

<input type="checkbox"/>	Plaintiff
<input checked="" type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

Solicitor	Lisa Broderick		
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	Fleming Place	Document	109012
	Dublin 4	Exchange no.	Fitzwilliam
Postcode	Dublin 4	Ref.	BDD020-1

How would you prefer us to communicate with you?

Document Exchange

E-mail

Post

Other (please specify)

Counsel	
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Postcode			

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	An Bord Pleanála
------------------------	------------------

Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant

<input type="checkbox"/>	Defendant
X	Respondent

	Prosecutor
	Petitioner

	Notice Party

Solicitor	Alan Doyle		
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		Exchange no.	
		Ref.	
Postcode			

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

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		Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Notice Party : Indego

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		Ref.	
Postcode			

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Postcode			

Notice Party: South Dublin County Council

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	Tallaght	Document	
	Dublin 24	Exchange no.	
		Ref.	
Postcode			

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	145/151 Church Street	Document	816316b
	Dublin 7	Exchange no.	
Postcode			

4. Information about the decision that it is sought to appeal

A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)

The High Court (McGovern J.) by Order made on the 21st May 2015, refused the Appellant's application for leave to apply by way of judicial review to challenge the decision of South Dublin County Council to grant planning permission to Indego, the first named Notice Party and also to join South Dublin County Council as a respondent to the judicial review proceedings and amend those proceedings to add additional relief and grounds against both the Council and An Bord Pleanala, the Respondent. The Court also refused an extension of time for bringing the application for leave against South Dublin County Council and also to join South Dublin County Council as a Respondent. The judicial review application concerned a determination of the meaning of section 37(1)(b) of the Planning and Development Act 2000 (the "PDA") and the High Court (McGovern J.) determined that the meaning of the section was clear and unambiguous.

The Appellant sought a certificate for leave to appeal, pursuant to section 50A(7) of the PDA which provides:

(7) The determination of the Court of an application for section 50 leave or of an

application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the Supreme Court in either case 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 to the Supreme Court.

The said certificate was sought in respect of the following point of law:

“Whether section 37(1)(b) of the Planning and Development Act 2000, which provides that the decision of An Bord Pleanala on appeal shall operate to annul the decision of the planning authority as from the time when it was given, precludes challenging the decision of the planning authority after the Board has made its decision when the grounds of challenge against the planning authority raise grounds of pre-determination bias and or a reasonable apprehension that the planning application had been pre-judged which only came to light after the Board had made its decision.”

The relevant orders made in the High Court

1. Judgment of the 21st May 2015 (Order dated 18th June 2015)

- A. Refusal of the Appellant’s application for leave to apply by way of judicial review to challenge the decision of South Dublin County Council to grant planning permission to Indego, the first named Notice party.
- B. Refusal of the Appellant’s application to join South Dublin County Council as a respondent to the extant judicial review proceedings and to amend those proceedings to add additional relief and grounds against both South Dublin County Council and An Bord Pleanala.
- C. Refusal of an extension of time for bringing the application for leave to challenge the decision of South Dublin County Council and also to join South Dublin County Council as a Respondent.

2. Judgment of the 18th June 2015 (Order dated 18th June 2015)

- A. Refusal of the Appellant’s application for a certificate for leave to appeal the decision of the High Court (McGovern J.) made on the 21st May 2015 refusing the reliefs as set out at paragraphs A and B above.

The Appellant seeks to appeal the decision of McGovern J made on the 21st May 2015 refusing the extension of time and the decision of the 18th June 2015 refusing the application for a certificate for leave to appeal.

The relevant findings made in the High Court in its judgment of the 21st May 2015

1. The Appellant has not shown that the circumstances that resulted in the failure to make the application to join South Dublin County Council as a Respondent and within the eight week period provided for in the planning legislation was outside its control.
2. The Appellant is out of time for bringing the application to join South Dublin County Council as a respondent and has not adduced sufficient evidence to the court to extend the time pursuant to s. 50(8) of the Act.
3. There was no good and sufficient reason for the Court to extend the time on the basis that the Appellant had not explained why it took from 24th March, 2014, to 24th February, 2015, to make its first valid request to South Dublin County Council pursuant to the Freedom of Information Act 2014, or in the case of the National Transport Agency, 17th April, 2015.
4. By virtue of section 37(1)(b) of the PDA 2000 there is no decision of South Dublin County Council to quash and, therefore, no basis upon which the court can accede to the application to join the planning authority as a respondent in the proceedings.
5. The decision of South Dublin County Council could not be challenged because of the provisions of section 37(1)(b) of the PDA 2000 and/or that there was no good and sufficient reason for the Court to extend the time for that reason.

The relevant findings made in the High Court in its judgment of the 18th June 2015

1. The terms of section 37(1)(b) of the PDA 2000 are clear and unambiguous and there is no uncertainty in the law. As a consequence, a decision of An Bord Pleanala, even

where it has been tainted by the bias of the planning authority, annuls the planning authority's decision.

2. As the Court has held that section 37(1)(b) of the PDA 2000 is clear and unambiguous there is no difficult point of law in which the views of the Court of Appeal or the Supreme Court are required to determine in the public interest
3. Section 50A(7) of the PDA 2000 is designed to meet the public interest in having any issues dealt with expeditiously and with certainty to ensure that major public infrastructural projects are not unnecessarily delayed
4. The High Court held that the Applicant did not meet the test set out in *Glancree Teoranta v An Bord Pleanála* [2006] IEHC 250 or *Arklow Holidays Limited v An Bord Pleanála* [2008] IEHC 2 in respect of the granting of a certificate for leave to appeal
5. The High Court held that there was no uncertainty as to the law in relation to the interpretation to be given to section 37(1)(b), given that the Trial Judge had held in his judgment delivered *ex tempore* on the 21st May 2015 that the section was clear and unambiguous.
6. The High Court relied on the fact that the Trial Judge had already held in his judgment delivered *ex tempore* on the 21st May 2015 that the decision of McKechnie J in *Beades v. Dublin Corporation and An Bord Pleanála* [2005] IEHC 406 at paragraph 70-72, was distinguishable from the case herein on its facts.
7. The High Court held that the decision in *Beades* was made long before the enactment of Section 37(1)(b) of the Planning and Development Act 2000 (notwithstanding the fact that the said provision was in force at the date of the decision in *Beades* and a similar provision, section 26(5) of the Local Government (Planning and Development) Act 1963 was considered in *Beades*).
8. The High Court held that it was entitled to take into account the nature of the development and the issues involved in the case and the potential consequences of a significant further delay in the matter being resolved by the Court. However, the Court did not indicate what effect this had on its decision.

5. Reasons why the Supreme Court should grant leave to appeal

In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—

Please list concisely the reasons in law:

why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

1. Matter of General Public Importance

Section 37(1)(b) of the PDA 2000 provides, inter alia, that “*where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time it was given.*” At the hearing of the application for a certificate for leave to appeal, the Appellant contended that section 37(1)(b) of the PDA 2000 should not prevent an interested party from questioning the manner in which the planning authority considered, dealt with and determined the planning application, on the basis that its decision has been annulled by the Board, where the grounds of challenge related to breaches of the principles of constitutional justice, such as where the Planning authority’s decision was actuated by fraud or bias or where there was a reasonable apprehension of bias. In the present case, the grounds relied upon relate to pre-judgment bias and interference by the effective decision maker, the Director of Services of South Dublin County Council, Mr Frank Nevin, in the submissions to be made by a prescribed body, the National Transport Authority (“NTA”), which has its own statutory remit. The NTA shared with the planning officers in the Council a draft copy of its proposed submission on the planning application and invited them to give feedback on the proposed submission before the submission was actually lodged. The Council did have concerns relating to the NTA’s proposed submission and Mr. Frank Nevin, Director of Services in the Council, directly contacted Mr. Hugh Cregan, Deputy Chief Executive of the NTA in respect of the proposed submission. As a result of this engagement, the NTA edited their submission to adopt a “more conciliatory tone”. The decision of the NTA to adopt a “more conciliatory tone” was as a direct result of the contact from Mr. Nevin. This is set out at paragraph 21 onwards of the Affidavit of Thomas Sheridan sworn on 18 May 2015.

Furthermore, and as set out at paragraph 2 of the ex tempore judgment of McGovern J., delivered on the 21st May 2015, an internal email dated 23rd October 2013 sent from David

Clements of the NTA to Michael MacAree, Michael Aherne and Muireann O’Keefe (all of the NTA) which refers to the submission which the NTA proposed to make in respect of the planning application and states “*I’ve spoken to Colin Ryan, Senior Planner in SDCC and they are definitely going to grant*”.

- a. Where a decision of the planning authority has been actuated by bias this taints the decision of the Board, for the reasons referred to above. Any challenge to the Board’s decision for this reason necessarily involves questioning the validity of the planning authority’s decision. If the Court were correct in holding that section 37(1)(b) of the PDA 2000 precluded a challenge of a decision of the planning authority after the Board has made its decision, notwithstanding the fact that there are clear grounds for bias, or a reasonable apprehension of bias, the integrity of the planning process could not be given effective protection. It would effectively mean that planning authorities could exercise their powers to grant or refuse permission in a biased manner with impunity, safe in the knowledge that if no party finds out about their decision being actuated by bias (or possibly fraud or corruption) until after the Board makes its decision, their decision making process will be immune from judicial scrutiny. Furthermore, a planning authority could obtain a pecuniary advantage where its decision is not permitted to be challenged. It is a matter of exceptional public importance that the manner in which decisions of the planning authority are made are not immune from judicial scrutiny and that individual applicants for permission should not obtain a benefit in terms of a favourable decision from An Bord Pleanala as a consequence of such immunity from scrutiny.
- b. The proposed point of law relates to the ability to challenge a decision of a planning authority that has been appealed to the Board, and which said appeal has been determined, in circumstances where the grounds of challenge only become known after the Board has made its decision. The proposed point of law is intended to clarify in what circumstances the public might still be able to challenge the decision of the planning authority which has not been made in accordance with the principles of fair procedures and natural and constitutional justice. Accordingly, the proposed point of law is fundamentally public in nature.
- c. The Appellant submitted during the course of the hearing of the applications herein that section 37(1)(b) of the PDA 2000 ought to be construed in a manner that is

consistent with the principles of fair procedures and natural and constitutional justice. It is of critical importance to the public interest that there should be clarity on the issue as to whether a constitutional interpretation of section 37(1)(b) allows, for or rules out, the possibility of a decision of the Council that is tainted by bias, or a reasonable apprehension of bias, being challenged after the date that the decision of the Board on the same application has been made. If it does rule out such a possibility, then there is an urgent and clear need for clarification of the law so that appropriate amending legislation can be introduced as it is in the public interest that issues of potential bias or corruption of planning authorities should not be immune from judicial scrutiny.

2. Interests of Justice

It would also be in the interests of justice for the case to be heard by the Supreme Court in circumstances where an appeal before the Court of Appeal is unlikely to fully dispose of the matter, for the reasons set out below.

3. Exceptional circumstances warranting a direct appeal to the Supreme Court

- a) The Court's interpretation of section 37(1)(b) of the PDA 2000 precludes challenging a decision of a planning authority after the Board has made its decision which effectively means that if a planning authority's decision is tainted by bias or fraud, or there is a reasonable apprehension of bias, but this is not discovered until after the Board's decision is made, the decision of the planning authority will be immune from judicial scrutiny. This is a matter of such exceptional public importance that a direct appeal to the Supreme Court is appropriate.

An appeal before the Court of Appeal is unlikely to fully dispose of the matters at issue. The Appellant is seeking to appeal the decision of the High Court to refuse to grant a certificate for leave to appeal. The Supreme Court has held in the cases of *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 I.R. 179 and *Irish Hardware Association .v. An Bord Pleanála* (Unreported, Supreme Court, 23rd January 2001) that there is no appeal from a refusal of a certificate for leave to appeal. The Appellant contends that these decisions were wrongly decided and should be set aside by the Supreme Court. The Appellant has a right to appeal the decision of McGovern J made on the 18th June 2015 refusing an application for a certificate for leave to appeal. The decision on an application for a certificate for leave to

appeal is a stand alone decision which is not caught by the provisions of section 50A(7) of the PDA 2000. There is no express provision of section 50A(7) that clearly evinces an intention on the part of the Oireachtas to preclude an appeal against a decision refusing an application for a certificate for leave to appeal, nor can any such provision be implied having regard to the provisions of the Constitution of Ireland and, in particular, Article 34.4.5 thereof. This provision requires any restriction on the right of appeal to the Supreme Court to be clear and unambiguous. In this regard, the cases of *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 I.R. 179 and *Irish Hardware Association .v. An Bord Pleanála* (Unreported, Supreme Court, 23rd January 2001) were wrongly decided. The Appellant will adopt the reasoning/ analysis set out at paras. 6.3.68 and 6.3.69 of *Kelly, The Irish Constitution* (4th edition, Hogan G and Whyte G) in this regard. In *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 I.R. 179 and *Irish Hardware Association .v. An Bord Pleanála* (Unreported, Supreme Court, 23rd January 2001) the Supreme Court in holding that there was no appeal from a refusal of a certificate for leave to appeal erred in law in taking into account perceived legislative policy considerations that there should be certainty and expedition with regard to the planning process. Furthermore, if section 50A(7) were to be interpreted as providing that no appeal lies against a refusal of a certificate of leave to appeal this would not be consistent with the principles of constitutional justice. Such an outcome would offend against principles of fair procedures and, in particular, the principle of *nemo iudex in sua causa*, as it would prevent an unsuccessful applicant from appealing without an application for a certificate to the trial judge who would be subject to institutional bias and/or would be a judge in his own cause in so far as he would already have determined that the grounds related to the point of law to be certified were not substantial.

- b) The Court of Appeal does not have the ability to reverse the Supreme Court decisions in *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 I.R. 179 and *Irish Hardware Association .v. An Bord Pleanála* (Unreported, Supreme Court, 23rd January 2001). The Appellant notes the guidance set out in *In The Matter of RPD (a Minor)[2015] IESCDET 21*, in which the Supreme Court did take into account the fact that it was going to be asked to "reverse itself" in respect of previous decisions.
- c) The Appellant does not require a certificate of leave to appeal to appeal the refusal by the Trial Judge to extend the time within which to bring an application for leave to apply by way of Judicial Review or to amend the grounds of challenge. It would appear convenient that the appeal against the orders refusing an extension of time

would be heard together with the appeal against the refusal of the certificate of leave to appeal referred to herein. The appeal against the orders refusing an extension of time necessarily involves a consideration of the same issue of law in respect of which certification is sought and/or the effect of section 37(1)(b) of the Planning and Development Act 2000.

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

Grounds of appeal

Decision of the High Court (McGovern J) of the 21st May 2015 refusing the application to extend time to challenge the decision of South Dublin County Council and to join South Dublin County Council as a Respondent

The Appellant was required, pursuant to section 50(8) of the PDA 2000, to seek an order extending time to seek to challenge the decision of South Dublin Council and to join South Dublin County Council as a Respondent to the extant proceedings.

The Court (McGovern J.) refused to extend the time on the basis that the Appellant had not shown that the circumstances that resulted in its failure to make the application to join the Council as a respondent and to seek to challenge the decision of the Council were outside its control.

The decision on the application to extend time to make an application for leave to apply for judicial review is a stand alone decision which is not subject to the provisions of section 50A(7) and accordingly no certificate for leave to appeal against a decision refusing to extend time is required (see *A.B v. Minister for Justice [2002] 1 I.R. 296*).

The grounds of appeal in respect of the decision to refuse an extension of time are as follows:

1. The Trial Judge erred in law in finding that the circumstances that resulted in the failure to make the application for leave within the relevant time limit of eight weeks beginning on the date of the said decision of South Dublin

County Council (“*the relevant period*”) were not outside the control of the Appellant in circumstances where the evidence on the basis of which bias is alleged was not on the public planning file and only came to light as a result of a request made pursuant to the Freedom of Information Act 2014.

2. The Trial Judge erred in law in finding that the circumstances that resulted in the failure to make the application for leave within the relevant period were not outside the control of the Appellant in circumstances where the Appellant had no actual or constructive knowledge of the said evidence supporting its claim of bias, nor was it put upon inquiry in relation to the existence of such evidence within the relevant period.
3. The Trial Judge erred in law in failing to take into account a relevant consideration in determining the question as to whether there was a “good reason” to extend time, namely that the grounds of challenge related to bias.
4. The Trial Judge erred in law in finding that South Dublin County Council’s decision could not be challenged because of the provisions of section 37(1)(b) of the PDA 2000 and/or that there was no good and sufficient reason for the Court to extend the time for that reason and the grounds of appeal in this regard as set out above at paragraphs 1 to 6 in respect of the challenge to the decision of the High Court (McGovern J) to refuse a certificate for leave to appeal are repeated *mutatis mutandis*.
5. The Trial Judge erred in law in finding that there was no good and sufficient reason for the Court to extend the time on the basis that the Appellant had not explained why it took from 24th March, 2014, to 24th February, 2015, to make its first valid request to South Dublin County Council pursuant to the Freedom of Information Act 2014, or in the case of the National Transport Agency, 17th April, 2015. There was no onus on the Appellant to explain any lapse of time prior to the Appellant pursuing a request pursuant to the Freedom of Information Act 2014 or for failing to make such a request within the relevant period or subsequently, in circumstances where the grounds on the basis of which leave were obtained did not include bias. Furthermore, the Appellant did not have any actual or constructive knowledge of evidence capable of supporting a claim of bias prior to the said requests being made. The Trial Judge’s requirement for such an explanation was in the circumstances unreasonable and/or was an irrelevant consideration in the context of the application to extend time.

Decision of the High Court (McGovern J) of the 18th June 2015 to refuse application for a certificate for leave to appeal

1. The Trial Judge erred in law in concluding that the point in respect of which a certificate was sought was not a point of law of exceptional public importance and/or that it was desirable in the public interest that an appeal should be taken to the

Supreme Court.

2. The Trial Judge erred in law in concluding, on the basis that he had held in his judgment delivered on 21st May 2015 on the substantive applications that section 37(1)(b) of the PDA 2000 was clear and unambiguous, that in those circumstances it was difficult to see how any substantial grounds could exist that might involve a point of law of exceptional public importance.
3. The Trial Judge erred in law in concluding, notwithstanding the fact that the Appellant was seeking to prove in the proceedings herein that the decision of An Bord Pleanála was *ultra vires*, void, and of no legal effect by reason of being tainted by the bias and pre-judgment of South Dublin County Council, that the said decision should nonetheless be deemed to be legally effective to annul the decision of the Council. In so concluding, the Trial Judge pre-empted an inquiry by the Court into the lawfulness and legal effect of the said decision of the Board, and erred in law in so doing. Further, or in the alternative, the Trial Judge erred in law in concluding that the said decision of the Board was capable of having legal effect for the purposes of section 37(1)(b) in circumstances where it was tainted by fraud or by the bias of the Council
4. The Trial Judge erred in law in not accepting the Appellant's contention that if section 37(1)(b) was to be given a constitutional interpretation, a decision of the Board that was tainted by the bias of the Council (who had submitted technical reports on the application to the Board that it was obliged to consider), could not have the legal effect of annulling the decision of the Council, thereby preventing the validity of the Council's decision being questioned on the basis that it was biased. Any such interpretation would be inconsistent with the right of the citizen or any person to litigate and/or to have access to the Courts pursuant to the provisions of Article 40.3 of the Constitution of Ireland.
5. The Trial Judge erred in law in concluding that there was no uncertainty in the law in circumstances where the observations of McKechnie J. in *Beades v. Dublin Corporation and An Bord Pleanála* [2005] IEHC 406 at paragraphs 70-72, support the view that a decision of planning authority cannot be rendered immune from judicial scrutiny by reason of a statutory enactment that provides that the decision of An Bord Pleanála annuls the decision of the Council. Although it has at all material times been accepted by the Applicant that the said observations of McKechnie J were *obiter*, they were made by him following a careful consideration and detailed discussion of the decisions in *State (Abenglen Properties Ltd) v Dublin Corporation* [1984] I.R. 381 and *O'Keefe v An Bord Pleanála* [1993] 1 I.R. 39 interpreting a statutory provision equivalent to section 37(1)(b) of the PDA 2000, i.e. section 26(5)(b) of the Local Government (Planning and Development) Act 1963 Accordingly, the conclusion of the Trial judge as to the correct interpretation of section 37(1)(b) and/or that section 37(1)(b) is clear and unambiguous that the

Board's decision has the legal effect of annulling the decision of the Council in every case, including cases where the Board's decision was tainted by the bias or fraud of the Council, is put in doubt by the said carefully considered observations of McKechnie J, as a consequence of which there is uncertainty in the law.

6. The Trial Judge erred in distinguishing the *Beades* case. In particular -
- (a) the Trial Judge erred in law in concluding that the decision in *Beades* was made long before the enactment of Section 37(1)(b) of the Planning and Development Act 2010 in circumstances where the said provision was in force at the date of the decision in *Beades* and a similar provision, section 26(5) of the Local Government (Planning and Development) Act 1963, was considered in *Beades*.
 - (b) The Trial Judge erred in law in relying on his earlier judgment where he had concluded that the *Beades* case was distinguishable on its facts as the said observations of McKechnie J. were made at the level of principle, and were not merely referable to the facts of the *Beades* case.
 - (c) The Trial Judge erred in law in relying on his earlier judgment where he had concluded that the *Beades* case was distinguishable by reason of the fact that the applicant in those proceedings had sought to have the decision of An Bord Pleanala quashed (and not the decision of the planning authority), as in the proceedings herein and in the context of the application to amend the Statement of Grounds herein, the Applicant was seeking to have the Board's decision quashed, *inter alia*, on the basis of bias and /or pre-judgment. Furthermore, the applicant in *Beades*, was necessarily questioning the validity of the decision of the planning authority in alleging bias against the Council in that case.

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

Eamon Galligan SC

7. Other relevant information

Neutral citation of the judgment appealed against *e.g.* Court of Appeal [2015] IECA 1
or High Court [2009] IEHC 608

High Court 2014 No.685 J.R (178) COM

References to Law Report in which any relevant judgment is reported

8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

<ol style="list-style-type: none">1. An order directing the Trial Judge to reconsider the application for a certificate of leave to appeal in accordance with law.2. In the alternative, an Order directing the Trial Judge to grant the Appellant a certificate of leave to appeal.3. In the alternative, an Order granting the Appellant a certificate of leave to appeal4. An Order granting the Appellant an extension of time to challenge the decision of South Dublin County Council and to join South Dublin County Council as a Respondent to the extant proceedings.5. In the alternative, an Order directing the Trial Judge to grant the Appellant an extension of time to challenge the decision of South Dublin County Council and to join South Dublin County Council as a Respondent to the extant proceedings.6. In the alternative, an Order directing the Trial Judge to reconsider, in accordance with law, the application for an extension of time to challenge the decision of South Dublin County Council and to join South Dublin County Council as a Respondent to the extant proceedings.

What order are you seeking if successful?

Order being appealed: set aside vary/substitute

Original order: set aside restore vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

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If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

Irish Asphalt Limited v An Bord Pleanála [1996] 2 I.R. 179

Irish Hardware Association .v. An Bord Pleanála (Unreported, Supreme Court, 23rd January 2001)

make a reference to the Court of Justice of the European Union?

Yes

No

If Yes, please give details below:

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

An adjournment was sought to the substantive hearing which was refused by Mr. Justice McGovern. Accordingly at the date of filing the matter will proceed on 23 June 2015.. If the appeal succeeds this will have a significant impact on any decision made in the substantive action and as such it would benefit all parties to have the appeal heard expeditiously.

Signed: Luci Broderick

(Solicitor for) the applicant/appellant

Please submit your completed form to:

The Office of the Registrar of the Supreme Court

The Four Courts

Inns Quay

Dublin

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.