



Appendix FF

No. 2

O. 58, r. 18(1)

SUPREME COURT

Respondent's Notice

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| Supreme Court record number | 12016/99 |
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[Title and record number as per the High Court proceedings]

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| PETER SWEETMAN AND THE SWANS AND SNAILS LIMITED HIGH COURT RECORD NUMBER 2013/356JR | V | AN BORD PLEANALA, IRELAND AND THE ATTORNEY GENERAL [RESPONDENTS] and CLARE COUNTY COUNCIL AND NORTH TIPPERARY COUNTY COUNCIL [NOTICE PARTIES] |
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| Date of filing | Appeal filed 29 July 2016 |
| Name of Notice Parties | CLARE COUNTY COUNCIL AND NORTH TIPPERARY COUNTY COUNCIL |
| Notice Parties solicitors | Michael Houlihan & Partners, Ennis, Co. Clare |
| Name of appellant | Peter Sweetman and the Swans and the Snails |
| Appellant's solicitors | Harrington & Co. |

1. Notice Parties Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

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| Notice Parties full name | CLARE COUNTY COUNCIL AND NORTH TIPPERARY COUNTY COUNCIL |
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| The Notice Parties were served with the application for leave to appeal and notice of appeal on date |
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The Notice Parties intend :

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|--------------------------|---|
| <input type="checkbox"/> | to oppose the application for an extension of time to apply for leave to appeal |
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| | |
|--------------------------|---|
| <input type="checkbox"/> | not to oppose the application for an extension of time to apply for leave to appeal |
|--------------------------|---|

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | to oppose the application for leave to appeal |
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| | |
|--------------------------|---|
| <input type="checkbox"/> | not to oppose the application for leave to appeal |
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| <input checked="" type="checkbox"/> | to ask the Supreme Court to dismiss the appeal |
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| <input type="checkbox"/> | to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court |
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| <input type="checkbox"/> | Other (please specify) |
| | |

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

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|--|--------------------------|
| Details of respondent's representation are correct and complete on notice of appeal: | <input type="checkbox"/> |
|--|--------------------------|

Notice Partless Representation

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|--|---------------------------------------|------------------------|-------------|
| Solicitor: Sinead Nunan | | | |
| Name of firm | Michael Houlihan & Partners | | |
| Email | snunan@mhp.ie | | |
| Address | Bindon Street, Ennis, Co. Clare | Telephone no. | 0656846000 |
| | | Document Exchange no. | 25012 Ennis |
| Postcode | V95 K2DT | Ref. | |
| 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) | |

| | | | |
|----------------|--|-----------------------|-----------|
| Counsel | | | |
| Name | Dermot Flanagan SC | | |
| Email | dermot@flano.ie | | |
| Address | 1 Arran Square Arran Quay Dublin 7 | Telephone no. | 018723847 |
| | | Document Exchange no. | 8100093 |
| Postcode | | | |

| | | | |
|----------------|-------------------------|---------------|-------------|
| Counsel | | | |
| Name | Alan Flanagan BL | | |
| Email | aflanagan@lawlibrary.ie | | |
| Address | Law Library | Telephone no. | 086 8714765 |

| | | | |
|----------|-------------------------|--------------------------|--------|
| | Four Courts Dublin 7 | Document Exchange no. | 816634 |
| Postcode | | | |

If the Respondent is not legally represented please complete the following

| |
|------------------------|
| Current postal address |
| Telephone no. |
| e-mail address |

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

2. Respondent's reasons for opposing extension of time

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| <p>If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused</p> <p>N/A</p> |
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3. Information about the decision that it is sought to appeal

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| <p>Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:</p> |
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4. Notice Parties reasons for opposing leave to appeal

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| <p>If leave to appeal is being contested, set out concisely here the respondent's reasons why:</p> <p><i>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)-</i></p> <p>* the decision in respect of which leave to appeal is sought does not involve a matter of</p> |
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general public importance

- * it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court
there are no exceptional circumstances warranting a direct appeal to the Supreme Court.

1. The Notice Parties Clare County Council/North Tipperary County Council adopts the submissions of An Bord Pleanala and the State in opposing Leave to Appeal.
2. It is submitted that the Appellants have misconstrued the established case law which do not apply to the facts and circumstances in question, as elaborated in the Response of An Bord Pleanala and the State.
3. It is submitted that no point of law '*emerges*' from the case. There is no uncertainty in the law.
4. There is no uncertainty on the facts in relation to any requirement to designate the lands in question [no such requirement arises or is contemplated]. There is no disagreement between Ireland and the EU Commisisions in relation to the non-designation of the area in question – see **Case C-67/99 Commission v Ireland**.
5. As found by the High Court, there is no evidence of any irrevocable or permanent destruction of the area in question or any evidence that its conservation status is in any way affected permanently or irrevocably.
6. The Appellants appear to make the assumption that there is a risk of lasting harm to the ecological characteristics of the site in question. This is comprehensively dealt with in the Judgment of the High Court and, on the facts, there was no evidence of same. There was no evidence of any undermining of the integrity of the area in question or that the area in question is central to the protection or maintenance of a priority species/habitats. On the facts, the evidence is to the contrary.
7. No uncertainty arises nor is there any conflict between the decision of the High Court, in the particular circumstances of the instant case, and the principles established in the case law at national and European levels. In summary, established case law does not support the Appellants where the lands in question are neither proposed or required to be designated – See **Sandymount & Merrion Residents Association v An Bord Pleanala [2013] IEHC 542; Case C-117/03 Dragaggi; Case C-244/05 Bund Naturschutz in Bayern;**
8. There is no public interest in an appeal arising from fact specific challenge which was rejected by the High Court applying established caselaw.

9. There is no unresolved matter of importance or generality that can avail the Appellants in relation to this 'leapfrog' appeal.

**delete where inapplicable*

5. Notice Parties reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. The grounds at paragraphs 2-9 of Section 4 are repeated.
2. At Paragraph 58 of the Judgment of the High Court, the Court noted that Ireland is compliant with its obligations in respect of alluvial woodland sites under Annex 1.
3. The High Court found that areas of sensitive ecological value beyond the designated cSAC and along the route corridor would not suffer adverse effects by way of long term substantial loss or disturbance to habitats including the area of wet alluvial woodland located in question [about 0.15ha] outside the designated cSAC.
4. As found by the High Court, there is no evidence of any irrevocable or permanent destruction of the area in question or any evidence that its conservation status is in any way affected permanently or irrevocably. On the contrary, the High Court found that the developer and the State were in entire agreement as to the proposals for maintenance and improvement of the area in question.
5. There was no evidence of any undermining of the integrity of the area in question or that the area in question is central to the protection or maintenance of a priority species/habitats. On the facts, the evidence is to the contrary.
6. The question of 'designation' or shadow protection cannot apply to the facts on which an Appeal is sought and the established caselaw cannot apply to the facts and circumstances herein – see **Case C-521/12 Briels and Case C-388/15 Orleans**.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Dermot Flanagan S.C.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? Yes No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union? Yes No

If Yes, please give details below:

The Notice Parties oppose the Appellant's application for a preliminary reference to the CJEU. It is unnecessary.

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

The Application for Leave to Appeal is causing further delay to an important strategic road project that has priority status for funding and construction.

Signed: Michael Montahan + Partners

Solicitor for the Notice Parties
Michael Houlihan & Partners
Bindon Street
Ennis
Co. Clare

Please submit your completed form to:

The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.