Appendix FF

No. 2

O. 58, r. 18(1)

SUPREME COURT

Respondent's Notice

Supreme Court record number		2015 / 88

[Title and record number as per the High Court proceedings]

John Callaghan	V	An Bord Pleanála, Ireland and the Attorney General (Respondents) and Element Power Ireland Limited, Element Power Ireland and North Meath Wind Farm Limited (Notice Parties) 2014 647 JR 2014 170 COM [Court of Appeal Record No. 2015:000500]

Date of filing	21st December, 2015
Name of Notice Parties/Respondents	Element Power Ireland Limited and North Meath Wind Farm Limited (First & Third Named Notice Parties/Respondents)
Notice Parties/Respondent's solicitors	Matheson
Name of Appellant	John Callaghan
Appellant's solicitors	O'Connell & Clarke

1. Respondent/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)

Notice Parties/Respondents' full names	Element Power Ireland Limited (First Named Notice Party) North Meath Wind Farm Limited (Third Named Notice Party)

The Respondent/Notice Parties were served with the Application for Leave to Appeal and Notice of Appeal on 15th December 2015

The Notice Parties/Respondents intend :

	to oppose the application for an extension of time to apply for leave to appeal
	not to oppose the application for an extension of time to apply for leave to appeal
✓	to oppose the application for leave to appeal
	not to oppose the application for leave to appeal

☑	to ask the Supreme Court to dismiss the appeal

☑	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

☐	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.

Details of respondent's representation are correct and complete on notice of appeal:	No. Please see the below change in the Notice Parties' / Respondents' solicitors' details

Respondent's Representation

Solicitor			
Name of firm	Matheson		
Email	nicola.dunleavy@matheson.com and eimear.ohanrahan@matheson.com		
Address	70 Sir John Rogerson's Quay	Telephone no.	01 2322000
		Document Exchange no.	2 Dublin
Postcode	Dublin 2	Ref.	NDU/EIMO/663976/6

How would you prefer us to communicate with you?

☑	Document Exchange	☑	E-mail
☐	Post	☐	Other (please specify)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel	
Name	
Email	

Address		Telephone no.	
		Document Exchange no.	
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?			
	Document Exchange		E-mail
	Post		Other (please specify)

2. Respondent's reasons for opposing extension of time

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 NOT APPLICABLE.

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

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:

The Applicant/Appellant (hereinafter referred to as the "**Applicant**") has not provided a statement of the facts as found by the Court of Appeal in chronological sequence relevant to the issues identified in Section 5 of the Notice of Appeal. Moreover, the Applicant has referred to, and purports to rely upon facts which were neither before nor found by the Court of Appeal. Accordingly, a chronological statement of facts is set out below:

1. The First Named Notice Party commenced pre-application consultations with An Bord Pleanála (the Board) in relation to proposed development on 30 May 2014.

2. In circumstances where (i) proposed development falls within a category of development prescribed by the Seventh Schedule to the Planning and Development Act 2000, as amended, and (ii) following consultations under section 37B, the Board serves a notice in writing under that section stating that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more of the paragraphs of subsection 37A(2), an application for permission for any such development must be made to the Board and not to a planning authority.

3. On 11 September 2014, the Board made an order pursuant to Section 37A(2)(b) of the

Planning and Development Act 2000, as amended, to the effect that the proposed development came within the strategic infrastructure provisions of that Act.

4. On the following day, 12 September 2014, the Board served a notice to that effect pursuant to section 37B(4)(a) of the same Act, the effect of that notice is to trigger the provisions of Section 37E(1), which requires that an application for permission for development in respect of which a notice has been served under section 37(4)(b)(a) shall be made to the Board in respect of the proposed development.

5. The Third Named Notice Party made an application on 6 October 2014 directly to An Bord Pleanála for the permission concerned.

6. On 10 November 2014, the Applicant commenced an application for leave to issue judicial review in the High Court seeking, as the primary relief, the quashing of the decision of the Board to the effect that the proposed development came within the scope of Section 37A of the 2000 Act (as amended).

7. It was determined (by Order made on 8 December 2014) that the High Court proceedings should proceed by way of telescoped hearing, ie, the application for leave and the substantive application was determined together.

8. In the course of the High Court proceedings, there was no application for a stay on the then pending proceedings before An Bord Pleanála. However, in June 2015, there was correspondence and an intention to apply for the stay was indicated. Ultimately, it was agreed that An Bord Pleanála would give 14 days' notice to the Applicant of its intention to issue a decision on the planning application and no application for a stay was proceeded with on behalf of the Applicant.

9. The application for leave and the substantive application was refused by Judgment of the High Court (Costello J.) delivered on 11 June 2015. An application for leave to appeal was brought by the Applicant and was determined by Judgment of the High Court (Costello J.) delivered on 24 July 2015, wherein it was ordered that a single point of law was certified for appeal. The Order of the High Court was perfected on 30 July 2015.

10. The Applicant issued (i) an Application for Leave and Notice of Appeal to the Supreme Court and (ii) a Notice of Appeal to the Court of Appeal, simultaneously on 25 August 2015.

11. On 20 November 2015, the Board wrote to the parties to the proceedings indicating that it may now make a decision at the expiry of 14 days from that date.

12. It is in those circumstances that, by way of motion on notice dated 27 November 2015, the Applicant sought a stay from the Court of Appeal on the proceedings before An Bord Pleanála, effectively seeking to preclude the making of a decision by An Bord Pleanála on the application for permission made by the Third Named Notice Party on 6 October 2014.

13. The Court of Appeal (Finlay Geoghegan J.) heard the application for a stay on 4 December 2015 and by way of ex tempore Judgment delivered on 9 December 2015, dismissed that application, and ordered that the costs of the application would be costs in the appeal (i.e., would follow the outcome of the appeal).

Whilst post-dating the decision of the Court of Appeal, it is important to note that:

14. By way of determination made on 15 December 2015 ([2015] IESCDET 60; Supreme Court record no: S:AP:IE:2015:000055), the Supreme Court refused the Applicant's application for leave to appeal directly from the High Court to the Supreme Court.

15. On the same date, ie, 15 December 2015, the Applicant issued and served the within application for leave and notice of appeal in respect of the Judgment of 9 December 2015.

16. On 18 December 2015, the Court of Appeal Office circulated the approved *Ex Tempore* Judgment of Ms. Justice Finlay Geoghegan delivered on the 9th day of December 2015.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the Notice Parties/Respondent's reasons why:

1. Article 34.5.3° of the Constitution provides:

   The Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the Court of Appeal, if the Supreme Court is satisfied that:

   (i) the decision involves a matter of general public importance, or
   (ii) in the interests of justice it is necessary that there be an appeal to the Supreme Court."

2. The within application by the Applicant for leave to appeal is brought against the decision made by the Court of Appeal to refuse to grant the interlocutory relief sought at paragraph 1 of the Applicant's notice of motion dated 27 November 2015, namely:

   "A stay on all proceedings before An Bord Pleanála relating to or connected with the application for planning permission (An Bord Pleanála Case Reference: PL17.PA0038) for the wind farm development at Emlagh, Kells in the County of Meath the subject of the proceedings herein, until the determination of the appeal or such time as this Honourable Court doth deem appropriate and in particular for a stay on An Bord Pleanála making a determination on the said application for planning permission which the Board has given notice may be made after the 4th December, 2015."

3. For the reasons set out below, the Notice Parties/Respondents contend that there is no basis advanced in the Application for Leave and Notice of Appeal which could entitle the Applicant to an order granting leave to appeal.

(a) <u>The decision in respect of which leave to appeal is sought does not involve a matter of general public importance</u>

4. The within application for leave to appeal ("the Article 34.5.3 application") is brought against an interlocutory order made by the Court of Appeal, in circumstances where the Supreme Court in these same proceedings refused the Applicant's earlier

application for leave to appeal directly to the Supreme Court (a "leapfrog" appeal), by Determination dated 15 December 2015 [2015] IESCDET 60 (the "Article 34.5.4 Determination").

5. Article 34.5.4° of the Constitution states:

> *Notwithstanding section 4.1 hereof, the Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the High Court, if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:*
>
> *(i) the decision involves a matter of general public importance, or*
> *(ii) the interests of justice."*

6. Accordingly, a factor common to applications for leave to appeal both under Articles 34.5.3° and 34.5.4° is expressed in identical terms, i.e., "*the decision involves a matter of general public importance*".

7. In the Article 34.5.4° Determination in these proceedings, the Supreme Court considered the question arising on the substantive appeal (namely, the point of law certified by the High Court) and concluded, firstly, that the basic constitutional threshold of public importance or public interest, which must be met in respect of an application to bring an "ordinary" appeal from the Court of Appeal to this Court, must also be met in the context of a "leapfrog" appeal. In circumstances where the Applicant's application for a "leapfrog" appeal was refused by the Supreme Court, the Notice Parties/Respondents plead that the Applicant cannot satisfy that basic constitutional threshold of public importance in the context of the instant application for leave to appeal under Articles 34.5.3°.

8. Secondly, the Supreme Court concluded that certification by the High Court under section 50A(7) of the Planning and Development Act 2000, as amended, is not the of the equivalent of the constitutional threshold upon which leave to appeal is granted by the Supreme Court (in the context of Article 34.5.4°). The Notice Parties/Respondents plead that, *mutatis mutandi*, the decision by the High Court that a point of law was within section 50A(7) does not of itself meet the constitutional threshold for leave to appeal to the Supreme Court in the context of Article 34.5.3°.

9. It is pleaded by the Notice Parties/Respondents that the decision on the motion seeking a stay involved the application by the Court of Appeal of well-established legal principles, including the principles established by the jurisprudence of the Supreme Court, to an undisputed set of facts.

10. In this respect, the principal ground advanced by the Applicant in Section 5 of his Application for Leave and Notice of Appeal is that the decision of the Court of Appeal "vitiates the certification of a point of law raised in the case". There is nothing in the *Ex Tempore* Judgment of the Court of Appeal which can substantiate the proposition now advanced by the Applicant that the refusal of the Court of Appeal to order a stay invalidates or makes ineffectual the appeal brought on the single issue certified by the High Court under section 50(7).

11. As appears from the Judgment of the Court of Appeal, insofar as the Applicant is concerned that the appeal before the Court of Appeal would be rendered moot by a

decision made by the Board on the application for permission, Finlay Geoghegan J. expressly noted and stressed that the First Named Respondent (the Board) and the Notice Parties have agreed that they will not take any point that the appeal is rendered moot by reason of a decision granted by the Board.

12. In any event, the single point of law certified for appeal by the High Court is the subject-matter of the substantive appeal brought in the Court of Appeal by Notice of Appeal dated 25 August 2015. Moreover, certain provisional directions were made as to the progression of the appeal, including fixing dates for filing of submissions.

13. Accordingly, the appeal currently before the Court of Appeal is not rendered nugatory by the decision of that court to refuse the Applicant's application for a stay.

14. Finally, no grounds have been advanced by the Applicant which could give rise to a matter of general public importance such that an appeal against the Order of the Court of Appeal requires to be determined.

(b) It is not necessary in the interests of justice that there be an appeal to the Supreme Court

15. It is clear that it is not necessary in the interests of justice that there be an appeal to the Supreme Court. Indeed, it appears from the Application for Leave and Notice of Appeal that the Applicant does not advance grounds addressing the contention that an appeal from the decision of the Court of Appeal is necessary in the interests of justice.

16. For the avoidance of doubt, the mere fact that the instant application for leave to appeal is a "first appeal" from the Court of Appeal does not mean that it is necessary in the interests of justice that there be an appeal to the Supreme Court. Indeed, on previous applications for leave in respect of such "first appeals", the Supreme Court has refused to grant leave to appeal.

17. It is pleaded by the Notice Parties/Respondents that no issues have been raised to bring the application within the category where it is in the interests of justice necessary that there should be an appeal to the Supreme Court.

5. Respondent's 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 Applicant's notice of appeal (Section 6 of the notice of appeal):

The following grounds of opposition are advanced by the Notice Parties/Respondents without prejudice to their principal contention that there is no basis upon which the Applicant should be granted leave to appeal under Article 34.5.3°. The grounds of opposition respond to the purported grounds of appeal pleaded in Section 6 of the Application for Leave and Notice of Appeal:-

(a) Response to specific grounds of appeal/purported errors of law and fact

The ground advanced at paragraph 1 of Section 6 is not understood. In any event, the Notice Parties/Respondents have accepted that that they will not take any point that the substantive appeal is rendered moot by reason of any decision made by the Board. The Court of Appeal did not err in the manner suggested by the Applicant, or at all.

The Court of Appeal considered those matters which it was required to consider in determining the application for a stay. Whilst the Notice Parties/Respondents have filed a Respondents' Notice opposing the substantive appeal on its merits, the decision of the Court of Appeal on the application for a stay does not affect the "viability" or prosecution of that appeal. In such circumstances, the learned Judge did not make any error of law and/or fact.

In the circumstances, the Court of Appeal did not make any error of law or fact in finding that, if the Board makes a decision on the application for permission, the Applicant's substantive appeal will not be rendered moot or nugatory if successful.

The Court of Appeal was correct in its findings in relation to the potential prejudice occasioned to the Notice Parties/Respondents if, by reason of the stay, the Board was not permitted to make a decision on the application for permission submitted on 6 October 2014. Of course, in deciding to refuse the application for a stay, the Court of Appeal considered the potential prejudice occasioned to the Applicant in the event that the stay was granted. Without prejudice to the generality of the foregoing plea, the Notice Parties/Respondents reply to the matters referred to by the Applicant in sub-paragraphs 6(4)(i) to (vi) of Section 6 as follows:

i. The Board may, in respect of the application made under section 37E for permission, decide to

- grant the permission,
- make modifications to the proposed development and grant permission in respect of the proposed development as so modified,
- grant the permission in respect of part of the proposed development (with or without specified modifications), or
- refuse to grant the permission.

The stay sought by the Applicant would prevent the Board from making any decision on the application for permission pending the determination of the substantive appeal by the Court of Appeal. In circumstances where a provisional hearing date for the Court of Appeal has been fixed for 4 October 2016 (although with an indication that the hearing of the appeal may be given an earlier hearing date), the Board might be precluded from making any decision on the application for permission until late 2016/early 2017. If the decision of the Board is, ultimately, to grant permission, then the issue of such decision in late 2016/early 2017 will materially prejudice the ability of the Notice Parties/Respondents to comply with the various deadlines of the REFIT 2 (Renewable Energy Feed in Target) scheme operated under the aegis of the Department of Communications, Energy and Natural Resources (which provides a feed-in tariff support scheme that operates by guaranteeing new renewable generators a minimum price for electricity delivered to the grid over a 15-year period) and, in particular, the requirement to have the development connected to the national electricity transmission grid by 31 December 2017. In this latter respect, the Applicant purports to contest the fact that connection to the grid is not required by 31 December 2017, however, no substantiation for that proposition is provided.

ii. Whilst the Third Named Notice Party/Respondent is the applicant for permission, the statutory scheme provides that the objective for the Board is to determine applications for permission made under section 37E within 18 weeks of the last date upon which parties may make submissions or observations on the application. In these circumstances, the original date by which the application was to be decided was 30 July 2015. By letter dated 20 November 2015, the Board's solicitors indicated that "the file had been passed to the Board members for determination". Accordingly, it appears that

the Board is in a position to give its decision on the application in early course.

iii. It is self-evident that, absent a grant of planning permission, there is no basis in law for the development of the lands which are the subject of the application made on 6 October 2014. Without permission to erect turbines and other energy infrastructure on those lands, the Notice Parties/Respondents cannot fulfil the requirements of REFIT 2 scheme. However, in order to avail of the REFIT 2 scheme, the project must have been connected to the grid by end of 2017. Notwithstanding the fact that one of the REFIT 2 criteria has been recently been clarified by the Department of Energy, Communications and Natural Resources (so that it is no longer a condition precedent to avail of the REFIT 2 scheme that planning permission must be obtained by 31 December 2015), the Notice Parties will suffer irreparable prejudice if the Supreme Court was to grant a stay on the decision of the Board at this very late stage in the Board's decision-making process. The overarching commercial imperative remains to ensure that the entire project is operational before the end of 2017, in order to enable the project to benefit from the REFIT 2

iv. The grant of planning permission is a condition precedent to the ability of the Notice Parties/Respondents to avail of the REFIT 2 scheme. Accordingly, the ability of the Board to make an expeditious decision on the application submitted on 6 October 2014 is crucial to the ability of the Notice Parties/Respondents to avail of that scheme.

v. In circumstances where the overarching deadline for the connection of any renewable energy source to the national grid by 31 December 2017 remains unchanged by the recent clarification issued by the Department of Energy, Communications and Natural Resources, the potential prejudice which would be occasioned by the grant of a stay has been neither reduced nor minimised in any material way. Rather, for a project of this scale to be completed on time to meet overarching deadline for the REFIT 2 scheme, obtaining planning permission is an urgent requirement, due to the long lead times for the turbine equipment (up to between 12 to 18 months) and a similar period for the electrical transformers required for the wind farm to connect to the electricity transmission grid. Accordingly, notwithstanding the extension of the time-frame of the planning permission criterion for the REFIT 2 scheme by twelve months, there has been no change to any of the other criteria that the Notice Parties are required to meet before availing of the REFIT 2 scheme. Indeed, the component manufacturing lead times, construction times and the ultimate grid connection deadline are unchanged.

vi. The actual prejudice contended for by the Applicant, namely, that his substantive appeal would be rendered moot and/or nugatory, does not arise from the decision of the Court of Appeal, or at all.

The Court of Appeal considered those matters which it was required to consider in determining the application for a stay. The Court of Appeal did not err in either fact or law in its determination of the application for a stay.

The Court of Appeal considered and applied the correct legal principles, as set out below.

In all the circumstances, the Court of Appeal did not err in either fact or law in refusing to make an order granting a stay. However, even if an error had occurred (which it did not), the Supreme Court is not a court of error correction. At all events, the decision made by the Court of Appeal does not have the effect of rendering the Applicant's substantive appeal nugatory.

(b) Response to the legal principles asserted

1. In circumstances where the Notice Parties/Respondents are opposing the substantive appeal brought by the Applicant arising from the single point of law certified under section 50A(7) of the Planning and Development Act 2000, as amended, the Notice Parties/Respondents do not accept that the decision impugned in these proceedings is void.

2. For the reasons set out above, in the event that the Board determines the application for permission made on 6 October 2014, then the Respondent and the Notice Parties have made clear that they will not take any point that the substantive appeal is rendered moot by reason of a decision granted by the Board.

3. Again, the Notice Parties/Respondents plead that the Applicant's substantive appeal will not be rendered moot and/or nugatory by any decision made by the Board on the application for permission.

4&5. In all the circumstances, the principles for granting or refusing a stay in judicial review proceedings are those set out by the Supreme Court in *Okunade v. Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 152, which decision was opened to, and considered by, the learned judge of the Court of Appeal on the application for a stay. Accordingly, in considering whether to grant a stay or an interlocutory injunction in the context of judicial review proceedings the court should apply the following considerations:

(a) the court should first determine whether the applicant has established an arguable case; if not the application must be refused, but if so then;

(b) the court should consider where the greatest risk of injustice would lie. But in doing so the court should:-

(i) give all appropriate weight to the orderly implementation of measures which are prima facie valid;

(ii) give such weight as may be appropriate (if any) to any public interest in the orderly operation of the particular scheme in which the measure under challenge was made; and,

(iii) give appropriate weight (if any) to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending resolution of the proceedings; but also,

(iv) give all due weight to the consequences for the applicant of being required to comply with the measure under challenge in circumstances where that measure may be found to be unlawful.

(c) in addition the court should, in those limited cases where it may be relevant, have regard to whether damages are available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and,

(d) in addition, and subject to the issues arising on the judicial review not involving detailed investigation of fact or complex questions of law, the court can place

all due weight on the strength or weakness of the applicant's case.

The contention advanced by the Applicant that the decision in *Harding v. Cork County Council* [2007] I.E.H.C. 31 provides the relevant principles is misconceived.

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

Niall Handy B.L.

Jarlath Fitzsimons 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:

The Applicant originally sought a stay as a relief in the Statement of Grounds filed on 10 November 2014. However, notwithstanding the fact that the Applicant issued a composite notice of motion dated 16 January 2015 seeking a number of interlocutory reliefs in the High Court, the Applicant did not pursue an application for a stay at that time. Indeed, the issue of a stay was not pursued when the Applicant issued a further motion on notice seeking interlocutory relief in the High Court on 1 April 2015. The telescoped hearing of the applications for leave and substantive judicial review was heard between 14 and 18 April 2015, and on 23 April 2015, when an application for a preliminary reference to the Court of Justice of the European Union was made by the Applicant. On 12 June 2015, the Applicant issued a notice of motion seeking a stay in identical terms to that sought in the Statement of Grounds, however, this application was not pursued in circumstances where the Board's solicitors undertook to provide the Applicant with 14 days' notice of the Board's intention to issue its decision. The High Court delivered its judgments on the telescoped applications and leave to appeal on 11 June 2015 and 24 June 2015, respectively. The Applicant issued a Notice of Appeal in the Court of Appeal on 25 August 2015. The Board's solicitors provided notice of the Board's intention to make a decision on the application for permission by letter dated 20 November 2015 and the Applicant issued a notice of motion seeking a stay from the Court of Appeal on 27 November 2015. In all the circumstances, the delay of the Applicant in prosecuting the application for a stay between 10 November 2014 and 27 November 2015 was inordinate and, in the event that leave to appeal is granted by the Supreme Court, the subsequent appeal should be refused and the Order of the Court of Appeal should be affirmed on grounds, inter alia, of inordinate and inexcusable delay on the part of the Applicant.

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:

Will you request a priority hearing?	✓	Yes		No

If Yes, please give reasons below:

The Applicant has issued two appeals to the Court of Appeal (one interlocutory appeal [2014:147] and one substantive appeal [2015:500]). In addition, the Applicant has issued two applications for leave to appeal to the Supreme Court (the first pursuant to Article 34.5.4° [2015/55] and this instant application pursuant to Article 34.5.3° [2015/88]). The Notice Parties/Respondents are concerned that the Applicant is seeking to use the process of the Superior Courts to frustrate the Notice Parties/Respondents commercial concerns by seeking to have the Board restrained from making a decision on the application for permission, in circumstances where the High Court held that the Applicant could not make out any substantial grounds of challenge so as to be entitled even to leave to apply for judicial review. The Notice Parties/Respondents plead that the application for leave to appeal against the decision of the Court of Appeal is without merit and should be dismissed by the Supreme Court. However, the continued existence of that application (and the contingent appeal seeking to set aside the Order of the Court of Appeal and grant a stay on all proceedings before An Bord Pleanála relating to or connected with the application for permission made by the Third Named Notice Party) is prejudicial to the commercial interests of the Notice Parties/Respondents.

Signed: [signature]
(Solicitor for) the respondent

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.