



Appendix FF

No. 2

O. 58, r. 18(1)

**SUPREME COURT**

**Respondent's Notice**

Supreme Court record number	84 / 2017 .
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[Title and record number as per the High Court proceedings] 2014/43JR		
Friends of the Irish Environment Limited	V	An Bord Pleanála and Ireland and the Attorney General

Date of filing	
Name of respondent	An Bord Pleanála and Ireland and the Attorney General
Respondent's solicitors	Barry Doyle & Company Solicitors (An Bord Pleanála) and Maria Browne, Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8 (Ireland and the Attorney General)
Name of appellant	Friends of the Irish Environment Limited
Appellant's solicitors	O'Connell & Clarke Solicitors

1. Respondent 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)

Respondent's full name	An Bord Pleanála and Ireland and the Attorney General
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The respondent was served with the application for leave to appeal and notice of appeal on date	6th June 2017 during the Vacation
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The respondent intends :	
<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<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
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<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

Other (please specify)
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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:	<input type="checkbox"/>
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Respondent's Representation

Solicitor Julienne Dockery			
Name of firm	Maria Browne Chief State Solicitor		
Email	Julienne_dockery@csso.gov.ie		
Address	Osmond House, Little Ship Street, Dublin 8 D08V8C5	Telephone no.	01-4176278
		Document Exchange no.	186-001
Postcode		Ref.	JND/2014/00423
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Garrett Simons SC		
Email	GSimons@lawlibrary.ie		
Address	The Distillery Building 145/151 Church Street Dublin 7	Telephone no.	01-8172983
		Document Exchange no.	DX816320
Postcode			

Counsel			
Name	Michael Wall BL		
Email	mwall@lawlibrary.ie		
Address	Law Library Four Courts Dublin 7	Telephone no.	086 2987966
		Document Exchange no.	DX 813241
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
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Telephone no.
e-mail address

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

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:

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

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)-

- \* the decision in respect of which leave to appeal is sought does not involve a matter of 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.

**4. Respondent's reasons for opposing leave to appeal**

1. As explained at paragraph 4 below, the State respondents have had only a very limited role in these proceedings. Indeed, it is unclear as to what relief, if any, is being sought against the State as part of the intended appeal. If and insofar as any relief is being sought against the State respondents now, they oppose the grant of leave to appeal. It is respectfully submitted that leave to appeal should be refused in circumstances where the proceedings are moot. The planning permission, the subject-matter of the proceedings has been quashed in other proceedings, *An Taisce v. An Bord Pleanála* [2015] IEHC 633. The developer subsequently secured a fresh grant of planning permission, and same has not been challenged. In the circumstances, there is no public interest in the appeal, and it is not in the interests of justice that leave to appeal be granted.
2. Further, the grounds of appeal raised by the Appellant are fact-specific, and the Appellant has failed to identify any point of law of general importance. In effect, the Appellant's appeal is directed to a ruling of the trial judge of a factual matter, namely whether the Appellant had discharged the onus of proof on it. This, in turn, centres on the content of the affidavit grounding the application for judicial review.
3. Further or in the alternative, if and insofar as the Appellant seeks to appeal the refusal of an order for costs, the application for leave to make a "leap frog" appeal should be refused in circumstances where it appears that, to date, the Appellant has not sought leave from the High Court to appeal the refusal of costs to the Court of Appeal. The judgment in *Grace v. An Bord Pleanála* [2017] IESC 10 indicates that that it would be appropriate for any party who wishes to apply to Supreme Court for leave to bring a leapfrog appeal in a planning matter to first seek a certificate of the High Court so as to enable an appeal to be brought to the Court of Appeal; and that this should be done in all cases unless there truly are grounds for suggesting that there should be a direct appeal to the Supreme Court in any event.
4. The State respondents had initially been joined to the judicial review proceedings as *legitimus contradictor* to a claim that there had been a failure in the transposition of the Habitats Directive. However, no proper particulars were provided in respect of this claim; and the claim was not substantiated at the hearing before the High Court in July 2015. The claim against the State was ultimately dismissed by the High Court in October 2015. ([2015] IEHC 633). Thereafter, it was confirmed by the Appellant's legal team that no relief was being sought against the State respondents, and same were released from the subsequent applications (i) to set aside the judgment, and (ii) to seek leave to appeal to the Court of Appeal. A belated attempt to rejoin the State to the proceedings was made in March 2017 in the context of application for costs. This application was refused by the High Court.

*\*delete where inapplicable*

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 Appellant's notice of appeal (Section 6 of the notice of appeal):

**5. Respondent's reasons for opposing appeal if leave to appeal is granted**

1. An Bord Pleanala is the principal respondent to the claim that the decision to grant planning permission is invalid, and to avoid unnecessary duplication the State respondents propose to leave the defence of the appeal primarily to An Bord Pleanala. Without prejudice to this, the State respondents deny that the High Court judge erred in ruling that the Appellant had failed to discharge the onus of proof.
2. The Appellant is not entitled to an order for legal costs. The Appellant was unsuccessful in its application for judicial review. None of the other parties sought an order as against the Appellant. In the circumstances, the Appellant cannot maintain that the proceedings are "prohibitively expensive". Further or in the alternative, the Appellant is disentitled to any order for costs by its conduct: the Appellant has continued to pursue these proceedings notwithstanding the fact that the planning permission, the subject-matter of the proceedings, has been set aside, and that there is accordingly no public interest in the proceedings.

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

Mr. Garrett Simons SC and Mr. Michael Wall BL

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:

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:

Signed: Julienne Dockery  
Julienne Dockery on behalf of  
Maria Browne  
Chief State Solicitor  
(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.