THE HIGH COURT

[2001 No. 359 J.R.]

BETWEEN

TONY McEVOY AND MICHAEL SMITH

APPLICANTS

AND

MEATH COUNTY COUNCIL

RESPONDENTS

JUDGMENT of Quirke J. delivered the 24th day of January, 2003.

Having delivered judgment in this case on the 2nd September, 2002, I heard applications from the parties relative to costs on the 8th November, 2002, which, in summary, comprised an application by the applicants for an order for costs against the respondent and a corresponding application by the respondent for an order for costs against the applicants. In *O'Shiel (a minor) & Ors. v. Minister for Education and Science, Ireland and Attorney General* (Unreported, High Court, Laffoy J., 10th May, 1999) the exercise of this Court's discretion pursuant to Order 99 of the Rules of the Superior Courts to award costs was considered and in particular the *"special category of case in which the Court will award costs to an unsuccessful plaintiff."*

Six different cases in which costs were awarded to unsuccessful litigants were reviewed by the court which noted *inter alia* that at the time of judgment there appeared *".. to be no statement or record from which the principle which should govern an application for costs by an unsuccessful Plaintiff in a constitutional action can be deduced."*

In that case the unsuccessful plaintiffs were awarded the full costs of the action on grounds *inter alia* that the proceedings had significance which extended beyond the sectional interests of the plaintiffs, that it was in the broader public interests that the extent of various obligations and rights created by Article 42 of the Constitution should be clarified and that

the primary beneficiaries of the proceedings would have been children who relied upon their parents to invoke the courts jurisdiction to vindicate their constitutional rights.

In *O'Connor v. Nenagh Urban District Council and Anor.* (Unreported, Supreme Court, 16th May, 2002) the discretion of this Court in the matter of costs was again considered with particular reference to Order 99 Rules 1 (1) and (4) where an applicant was refused relief by way of judicial review of a decision of a planning authority. The Court refused to interfere with the exercise by the trial judge of his discretion to make no order as to costs in respect of the respondent and to award to a notice party its costs against the applicant. The Court found that whilst *"there is an element of public interest in this case... it does not involve issues of considerable public importance."*

In *Regina v. Lord Chancellor,* ex P; CPAG [1999] 1 W.L.R. 347 Dyson J., dealing with the jurisdiction to make a pre-emptive costs order acknowledged that there was a distinction to be made between ordinary private law litigation, on the one hand, and what he called *"public interest challenges"* on the other hand. He explained his understanding of the concept of a public interest challenge in the following terms at p. 353

> *"The essential characteristics of a public law challenge are that it raises public law issues which are of general importance, where the applicant has no private interest in the outcome of the case. It is obvious that many, indeed most judicial review challenges, do not fall into the category of public interest challenges so defined. This is because, even if they do raise issues of general importance, they are cases in which the applicant is seeking to protect some private interest of his or her own."*

In *Lancefort Ltd v. An Bord Pleanala (No. 2)* [1999] 2 I.R. 270 Denham J., considering the *locus standi* of a plaintiff observed at p. 296 that:-

> *"...I am satisfied that the applicant is acting bona fide. That alone does not give it standing. However, other facts in addition establish that fact. These include the*

participation by members of the applicant in the prior planning and development procedures. This establishes a connection. I agree with the trial judges that these are

sincere and serious people who have been involved with the development. Also, there is no doubt that they have evinced a public interest. While not every person who declares a public interest may be considered to be acting in and for the public interest such aspiration must be analysed also in the circumstances of each case. I am satisfied in this case on the facts the applicant has expressed a valid public interest in the environment. The issue of the environment presents unique problems, not only in the courts. In much litigation on e.g. personal injuries or as to individual constitutional rights, the party is obvious. In litigation on the environment, however, there are unique considerations in that often the issues affect a whole community as a community rather than an individual per se."

The instant proceedings comprise a challenge by way of judicial review to the making and adopting of a development plan for County Meath.

The first named applicant is an elected member of Kildare County Council and the second named applicant is chairman of An Taisce (The National Trust for Ireland). Neither of the applicants is seeking, in these proceedings, to protect some private interest of his own.

As Denham J. declared in the *Lancefort* case an aspiration by an applicant in proceedings such as these to act in the public interest "*... must be analysed also in the circumstances of each case."* I am satisfied in the circumstances of the instant case that the applicants have acted solely by way of furtherance of a valid public interest in the environment and in particular in the interests of those communities who are affected by the planning considerations applicable to the greater Dublin area.

I am conscious of the provisions of Order 99 Rule 1 (4) which provides:

> *"The costs of every issue of fact or law raised upon a claim or counterclaim shall, unless otherwise ordered, follow the event."*

I am however also satisfied that the proceedings herein have raised public law issues which are of general importance where the applicants have no private interest in the outcome

of the proceedings and that they therefore comprise a "p*ublic interest challenge*" of the kind described by Dyson J. in the context of the jurisdiction as to pre-emptive costs orders.

I am also satisfied that in exercising my discretion as to costs in this case I am entitled to take into account some findings of fact which I have made and I believe that it is appropriate that I should do so having regard to the fact that I have concluded that these proceedings comprise a *bona fide* public interest challenge.

These proceedings were vigorously contested throughout on all issues and were correspondingly lengthy in terms of court time. Having heard and considered all of the evidence I concluded on 2nd September, 2002 at p.2, that

> "*... in a number of respects the Meath Plan does not comply with the Guidelines and indeed ... in some of its provisions it has substantially departed from the Guidelines' policies and objectives. Navan is the only "development centre" identified in the Guidelines for which any growth other than that for "local needs" is recommended. Nonetheless elected members at electoral area meetings have decided to zone large amounts of land for residential purposes in dozens of small towns in a manner which appears to be quite inconsistent with the recommendations of the Guidelines. As I have already indicated none of these decisions appear to have been made in the context or against the background of any consideration of the Guidelines. In many instances, "local interests" appear to have overcome the concept of "local needs ". Overall the Meath Plan recommends*

that land sufficient to accommodate an enormous population increase should be zoned for residential purposes in the period up to 2011 notwithstanding the fact that the Guidelines (and indeed the plan itself) envisage a much more modest population increase during that period."

During the course of the trial it became necessary to identify and examine the minutes of more than 70 meetings attended by elected representatives and officials of Meath County Council between the 20th October, 1999 and the 5th March, 2001.

An analysis of the minutes of the meetings disclosed that no land zoning application, amongst a very large number considered at more than 50 meetings, was determined (or even considered) in the context or against the background of the Guidelines.

I am satisfied that the trial of these proceedings was unnecessarily prolonged by reason of the fact that a vast amount of documentation had to be analysed and considered in order to determine questions of fact which could have been readily determined by agreement between the parties. The overwhelming majority of those issues of fact were determined in favour of the applicants and more particularly it was established on behalf of the applicants that

" *... the nature and the extent of the consideration given by the elected members of the respondent to the Guidelines in the zoning of land for residential purposes gives rise to concern (and indeed unease) ... "*

Furthermore the contention on behalf of the respondent that zoning decisions which were inconsistent with the Guidelines could be explained by the fact that the Guidelines contained *"long term"* objectives was not supported by any credible evidence and required a complete examination of the minutes of the various meetings at which decisions were made. This examination disclosed no record which would support the contention.

In all of the circumstances I am satisfied that the appropriate exercise of my discretion

requires that the respondent should pay 100% of the costs of and associated with the daily transcript of the proceedings and 50% of the applicants' costs of and incidental to the proceedings.