

Chris Murphy, [redacted] Killough, Co Down, N Ireland, UK

Judicial Review: Chris Murphy v Department for Infrastructure

My name is Chris Murphy. I live in Killough, Co Down, c.60 miles south-east of an internationally important wetland, the Lough Neagh-Lough Beg SPA and Ramsar site. I am a freelance wildlife tour leader and the principal provider for a family of four. On 16 August 2016 the Minister for Infrastructure announced his decision to proceed with a scheme to upgrade a section of the A6 between Belfast and Londonderry to dual carriageway standard. His announcement also included his decision to accept the Article 6 (3) Appropriate Assessment conclusion of 'no adverse effect' and to vest land.

As an ornithologist with a long association with this wetland I believe it is not possible to route this road through the middle of what is accepted as the most important and best studied wintering site for Whooper Swans in Ireland, the third most in the UK, without causing an adverse effect on the integrity of the SPA and Ramsar site. In the absence of objections from ornithological NGOs - three of which I have since discovered have been working for the Department for Infrastructure on this scheme for 10 years or more, I sought a wide-ranging judicial review. I knew little about the detail of the scheme or the content of the numerous assessments and other ecological and environmental reports, much less about the legal procedures. Such are the prohibitive costs of professional legal representation in Northern Ireland, however, it was not possible for me to engage a solicitor to provide guidance or a barrister to refine and present my argument in court.

Leave was granted on 28 November 2016 on one of my seven original grounds, that the Minister had breached Article 6 of the Habitats Directive. I believe I have found compelling evidence that the NI government has circumvented the Habitats Directive in pursuit of a pre-determined outcome. Proving this in court as a litigant in person and in a jurisdiction distinctly opposed to strong, environmental governance has to date proved to be beyond me. I do not think the judicial review system for litigants in person with little or no funds is a fair way to achieve justice for the environment. While I remain hopeful that with professional pro-bono representation now secured I will have more success in the UK Supreme Court, the costs to litigants in person, not only financial, puts judicial reviews beyond

reach of all but the very few whose particular circumstances and experience drives them. In my case the biggest factor has been my wife, Doris, without whose super-human efforts this challenge would not still be live.

To date I have spent £6000 on legal opinion, £1100 on court fees, £500 on audio recordings of court proceedings (which our daughter, Kate, has transcribed) plus approximately £500 on miscellaneous expenses including £200 to purchase ornithological data, travel, photocopying, etc. Costs of £5850 incl. vat awarded against me in the High Court hang over me while I have so far had to pay £1350 to make an application to the Supreme Court. The lawyer referred to above has informed me that had I engaged professionals, up to the initial appeal hearing in June my costs would have been in the order of £70-80,000. That figure is probably now in the region of £100,000. I should say that without the Aarhus Convention's cost capping, which I heard about through Friends of the Earth, and the support of friends and family there could be no challenge. While it is by no means true, it has been claimed in court that my action has cost the public purse over £10m.

The greatest cost to my family has been the disruption to our work and home life. Some days there are as many as six communications from the government's solicitor, all of which need to be responded to promptly. It is relentless: first the Order 53 submitted in September 2016; then preparing for the leave hearing over two days in October and November 2016; then the High Court hearing over two days in February 2017; followed by the Appeal Hearing in June 2017, which was adjourned to August 2017; then the process of applying to the Supreme Court during October and November 2017. Plus numerous mentions in court. Luckily I have a bus pass; my family often attend court with me and are not so fortunate. There has hardly been a day when we have not been doing something related to this case. Rarely have we a night's sleep without thinking about it or worrying about the consequences of not being able to prevent something so damaging that we believe is unlawful.

There must be a better, fairer way to protect the environment.

Chris Murphy
25 November 2017