

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION (JUDICIAL REVIEW)**

**In the matter of an application by William Donnelly
to apply for judicial review**

**In the matter of a decision of the Department of the Environment to approve
underground mine application K/2012/0373/F**

**STATEMENT FILED PURSUANT TO ORDER 53, RULE 3 (2)(A)
OF THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND) 1980
(AMENDED VERSION)**

(1) The applicant is William Donnelly of 18b Laurel Road Omagh Co Tyrone Northern Ireland BT78 5DH

(2) The relief sought is:

(a) An order of certiorari to require the Department of the Environment for Northern Ireland (“the Department”) to quash the decision at issue.

(b) This being an application for judicial review of a decision, act or omission all or part of which is subject to the provisions of the Aarhus Convention, and therefore an Aarhus convention case within the meaning of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (the 2013 Regulations) an order that any costs recoverable from the applicant shall not exceed £5,000 plus any VAT.

(Granted by the Honourable Mr Justice Deeney on the 1st day of February 2016)

(3) The grounds on which the said relief is sought are:

Failure to comply with the precautionary requirements of the EIA Directive, and also the Habitats Directive, The Departments failure to retain its discretion as national competent authority during processing of this application, failure to comply with the Mining Waste Regulations.

(a) The decision to grant approval for application K/2012/0373/F, as the approval effectively regularises and condones extensive unauthorised EIA development which took place at the site. This is in contravention of the precautionary requirements of the (EIA Directive 2011/92/EU) and the (Habitats Directive 92/43/EEC). It was not lawful for the Department to approve this application since the assessments, as required by the above Directives, were not and could not have been carried out lawfully given the extent of unauthorised activity on the site.

The Department is specifically in breach of Articles 2, 4, 5 and 10 of the EIA Directive (transposed by the Planning Environmental Impact Assessment Regulations (Northern Ireland) 2015) and Article 6(3) of the Habitats Directive (as transposed by Regulation 43 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995.

The latter imposes a strict precautionary doctrine to sites, in this case the river Foyle SAC. Although the Cavanacaw mine does not lie within the River Foyle SAC, it is drained by the Creevan burn which is connected to the SAC and itself contains a population of Atlantic salmon. Furthermore the Department failed to consider the relevant constraints of both EU and national case law.

(b) The Department illegally failed to retain its discretion in relation to its duties as a competent authority under Article 6 of Council Directive 92/43 EEC (1) of 21 May 1992 and EIA Directive 2011/92/EU during the processing of this application in that it allowed private contractors, commissioned by Omagh Minerals, to analyse and determine the classification of the waste rock with regard to its potential to harm the environment, and that the Department, in acceptance of this information at face value, failed in its duty under inter alia

Article 43 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. A competent authority is a legally delegated or invested authority with capacity, or power to perform designated functions, these are functions it failed to carry out.

(c) The Department also illegally failed to retain its discretion in relation to its duties as a competent authority under the Management of Waste from Extractive Industries Regulations (Northern Ireland) 2010 which transposes EC Directive 2006/21/EC (management of waste from extractive industries), by approving an Annex J Waste Management Plan for inert waste for the site. The Department also failed to comply with the actual regulations.

Further grounds on which the said relief is to be sought, (included with the permission of the Honourable Mr Justice Deeney) are:

- d. The Department approved inaccurate drawings numbered 02 and 19 which show the application boundary encompassing an area of approximately 81 hectares, not 60 as applied for and assessed. This represents a failure to comply with EIA Directive 2011/92/EU Article 5(3), as well the precautionary requirements of the (EIA Directive 2011/92/EU) and the (Habitats Directive 92/43/EEC).
- e. The Department accepted a requirement for acidic rock testing every 25 vertical meters as part of a monitoring plan post approval. This entirely new proposal for acidic generation testing at various depths first appeared on the public planning portal on 7 December 2015, four months after approval. This is a subversion of the appropriate assessment process. It represents a failure to comply with the precautionary requirements of the (EIA Directive 2011/92/EU) and the (Habitats Directive 92/43/EEC), it also breaches the (Management of Waste from Extractive Industries Directive 2006/21/EC).

In respect of all of the above points the Department has failed to comply with the precautionary approach referred to in article 191 of the Treaty on the Functioning of the European Union (“TFEU”).

Failure to consult the public regarding this matter was in breach of EIA Directive 2011/92/EU Article 6(2) and 6(4) and also Articles 1 and 3(2) of the Aarhus Convention.

Dated this 14th day of March 2016

Signed _____

William Donnelly (Applicant)

18B Laurel Road

Omagh

BT78 5DH