



SCOTLAND'S EIA CONFERENCE 2019

Legal Update - Neil Collar, Head of Planning Law, Brodies LLP

Fitzpatrick v An Bord Pleanala, The Supreme Court of Ireland 11 April 2019

- Judicial review of grant of planning permission to Apple for construction of a data centre near Athenry, Co. Galway
- Masterplan showed 8 data halls would potentially be constructed on the site in future
- Issue – whether the masterplan was the “project” for the purposes of the EIA Directive
- The first data centre is stand-alone – not functionally dependent on future phases of the masterplan
- No obligation to conduct an EIA of the masterplan in the course of the planning application for phase one

Holohan v An Bord Pleanala, European Court of Justice Ireland 7 Nov 2018

- Request for preliminary ruling
- Grant of development consent for Kilkenny Northern Ring Road Extension
- Issue – alternative rejected at an early stage - whether information to be supplied
- Alternative of bridge over floodplain had been rejected on cost grounds
- Stage at which a solution was rejected is irrelevant
- Reasons only required in so far as these relate to environmental effects
- Choice made on purely financial considerations – no reasons have to be given

R. (on the application Kenyon) v Secretary of State 18 Dec 2018

- Judicial review of screening direction
- Development of 150 houses at disused Hemsworth Sports Complex, West Yorkshire
- Alleged failure to properly consider pollution and air quality
- Rejected – unduly forensic and nit-picking reading of the assessments
- Entitled to take into account that this was an urban development proposal on an existing developed site