The Holohan Judgement – EIA case law relating to the Habitats Directive


Case C-461/17 Holohan and others v. An Bord Pleanála was brought to the CJEU by four local residents who objected to the grant of consent in July 2014 to extend the Kilkenny northern ring road. The proposed scheme would cross two designated European sites (referred to as Natura 2000 sites): The River Nore Special Protection Area (SPA), designated under the Birds Directive; and The River Barrow and River Nore Site of Community Importance, designated under the Habitats Directive.

Following the grant of planning consent, the High Court (Ireland) requested a preliminary ruling from the CJEU on the interpretation of the Habitats and EIA Directives. This included rulings in relation to ‘appropriate assessments’ undertaken to assess the effects on European designated sites under the Habitats Directive.

Specific outcomes of the ruling relating to the Habitats Directive included the following:

1. An appropriate assessment undertaken under the Habitats Directive must catalogue all habitats and species for which a European protected site is designated. The appropriate assessment must identify and examine the implications of the project for the species present on the site, including those which do not relate to a site’s designation. Implications for habitat types and species found outside the boundaries of the designated site should also be included, provided the implications are liable to affect the conservation objectives of the site.

2. The Habitats Directive must be interpreted as meaning that a competent authority is permitted to grant consent that leaves certain parameters relating to construction (such as the location of construction compound/haul routes) to be determined later, only where the authority is certain that the consent establishes conditions strict enough to guarantee that those parameters will not adversely affect the integrity of the site.

3. Where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the appropriate assessment must include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

With respect to ‘the conservation objectives of the site’, Natura 2000 sites are designated by the EU for specific reasons depending on the habitats/species of concern. Specifically, SPAs are designated to protect the habitats of migrating or threatened birds while Special Areas of Conservation (SACs) are designated for the protection of certain species or habitats. The ruling reinforces the importance of a site-specific approach to the design of developments and mitigation, based on the affected species and habitats.

In this respect, the ruling acknowledges what is scientifically known about ecosystems and how this affects the conservation objectives of Natura 2000 sites. Although set within a geographical boundary, protected sites form part of wider ecosystem of interconnecting habitats and species.
The ruling confirms that the boundary for appropriate assessment may need to be extended beyond the boundary of the Natura 2000 site to include wider surrounding habitats and species that may also be impacted by development, where this would have implications for a site’s conservation objectives. Within the ruling, clarification was also provided in relation to the following aspects of the EIA Directive:

1. Under Article 5(1) and (3) of the EIA Directive, information that expressly addresses the significant effects of the proposed scheme on all species identified in the Environmental Statement must be provided.
2. Under Article 5(3)(d) of the EIA Directive (in relation to alternative options), the developer must supply information in relation to the environmental impact of both the chosen option and all of the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage. This ruling related to consideration of whether the assessment of alternatives was sufficiently carried in relation to the proposed ring road extension (where an alternative option was rejected early on in the development of the scheme). The ruling confirms the wording introduced by the 2014 amendment to the EIA Directive in relation to alternatives.

The first point should be well understood in EIA practice but highlights the need for consistency between the findings of the EIA and appropriate assessment processes, including reporting of all significant effects on species within the Environmental Statement.

The second point relates to the strengthening of the wording in the 2014 amendment to the EIA Directive and identifies that further detail may be needed in the description and assessment of alternatives, including alternative route and design options. This may require greater input from all relevant technical disciplines, including ecology, into the alternatives chapter.

It is clear from the ruling that a tailored site-specific approach to assessment is essential to fully understand all potential effects from an ecology perspective. As with many topics in EIA, involving a technical specialist early on in the design process should result in an understanding of any relevant Habitats Directive issues, including the conservation objectives of designated European sites, allowing these to feed into the design process. This is likely to reduce costs associated with liaison with the competent authority and design changes in the long-term.

With this being the third CJEU in 2018 concerning the Habitats Directive and, with the UK government’s recent adoption of Biodiversity Net Gain (as set out in the Chancellor’s Spring Statement), there appears to be an increasing concern in EIA case law and planning policy for the protection of habitats and species.

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