

Judgment of the Court (Seventh Chamber) of 9 March 2023 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — NJ, OZ v An Bord Pleanála, Ireland, Attorney General

(Case C-9/22, ⁽¹⁾ An Bord Pleanála and Others (Site of St Teresa’s Gardens))

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Article 2(a) — Concept of ‘plans and programmes’ — Article 3(2)(a) — Environmental assessment — Non-statutory act prepared by a municipal council and a developer — Directive 2011/92/EU — Assessment of the effects of certain public and private projects on the environment — Article 3(1) — Obligation to identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project — Binding ministerial guidelines on building height)

(2023/C 164/18)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: NJ, OZ

Respondents: An Bord Pleanála, Ireland, Attorney General

Notice party: DBTR-SCR1 Fund, a Sub Fund of TWTC Multi-Family ICAV

Operative part of the judgment

1. Article 2(a) and Article 3(2) and (3) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,

must be interpreted as meaning that a plan comes within the scope of that directive where (i) it has been prepared by an authority at local level in collaboration with a developer of the project concerned by that plan and has been adopted by that authority, (ii) it has been adopted on the basis of a provision in another plan or programme and (iii) it envisages developments distinct from those envisaged in another plan or programme, provided, however, that it is at least binding on the authorities with competence to grant development consent.

2. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014,

must be interpreted as not precluding national legislation which requires the competent authorities of a Member State, when deciding whether or not to grant development consent for a project, to act in accordance with guidelines which require the height of buildings to be increased, where possible, and which have been subject to an environmental assessment under Directive 2001/42.

⁽¹⁾ OJ C 158, 11.4.2022.