

# Written Ministerial Statement

*The content of this written ministerial statement is as received at the time from the Minister. It has not been subject to the official reporting (Hansard) process.*

## Department of Agriculture, Environment and Rural Affairs

### DECISION TO APPEAL THE JUDGMENT HANDED DOWN BY THE COURT OF APPEAL IN AN APPLICATION BY NO GAS CAVERNS AND FRIENDS OF THE EARTH AGAINST DAERA ON 17 JUNE 2022

*Published at 1pm on Tuesday 9 July 2024*

**Mr Muir (Minister of Agriculture, Environment and Rural Affairs):** I wish to draw to the Assembly's attention my decision to make an application to the Court of Appeal for leave to appeal to the Supreme Court in relation to the judgment given by the Court of Appeal in the matter of an application by No Gas Caverns Ltd and Friends of the Earth for Judicial Review.

My decision has been taken in light of the constitutional issues that arise from that judgment, including with regard to the potentially very significant implications for decision-making by individual ministers and the threshold for referral of matters to the Executive.

By way of background, on 3 February 2022, the campaign group No Gas Caverns Ltd and Friends of the Earth Ltd filed an Order 53 application for a Judicial Review of the decisions my department took to grant three licences to Islandmagee Energy Ltd. The grounds for judicial review were based on both environmental and constitutional matters.

The case was heard by Justice Humphreys between 2-5 May 2023. He considered over 8000 pages of evidence over the four days. Justice Humphreys made his judgment on 31 August 2023, when he dismissed the case on all grounds.

On 18 October 2023, No Gas Caverns Ltd and Friends of the Earth Ltd submitted a Notice of Appeal. Two grounds of appeal were pursued: first, that the matter was significant, controversial, and cross cutting and therefore should have been referred to the Executive Committee for consideration; and second, that the first instance judge had erred in his factual conclusion that the Community Fund was not considered by the Minister.

The appeal was heard at the Court of Appeal (NI) on 6-7 February 2024 and Lady Chief Justice Keegan delivered the judgement of the court on 17 June 2024, the appeal succeeded on both grounds.

I must stress, that the matters before the Court of Appeal did not relate to the environmental merits of the decision or the substantive issues which were before the lower court.

Having considered the wider and potentially very significant implications of the judgment for all departments, and having also sought the views of Executive colleagues. I have taken the decision that we should seek the Court of Appeal's agreement to appeal the judgment.

My decision reflects my concern about the constitutional problems the judgment potentially poses for ministerial decision-making in the context of the definition of matters which are cross-cutting, significant and controversial and therefore requiring referral to the Executive Committee. I also consider that an appeal, if agreed, will bring further clarity for all Ministers, including on how the Executive approaches decisions that sit outside an agreed Programme for Government.

The Appeal application has now been lodged with the Court of Appeal (Northern Ireland), requesting leave to appeal to the Supreme Court.

