Neutral Citation Number [2006] IEHC 438

THE HIGH COURT

Record No. 2005/347SP

BETWEEN

JOHN V. LENNON

PLAINTIFF

AND
CORK CITY COUNCIL

DEFENDANT

Judgment of Mr. Justice Smyth delivered on Tuesday 19th December, 2006

1. The plaintiff's claim is for a declaration that Maria Lennon made a valid application on 10th August 1998 to the defendant, as Planning Authority, for outline permission for a bridge with a commercial centre and residential development across the Lee in the City of Cork between St. Patrick's Quay and Anderson's Quay.

2. This bold and imaginative scheme of development had as its inspiration the Ponte Vechio in Florence. The plaintiff who appeared in person on this hearing (and conducted the case with great skill and courtesy) is a Consultant Civil Engineer by profession with a professional reputation built up over 40 years or thereabouts.

3. In the course of the presentation of his case he described the meticulous pains he had taken in matters of measurement in formulating a design to give effect to the concept that would do credit to Benvenuto Cellini. The plaintiff, like the great 16th century goldsmith and sculptor, has lived in Florence and thence moved to Rome.

4. The factual history to these proceedings, which is of importance because of the range of arguments and submissions, stretches over a decade and a half.

5. The dates relevant to this application are as follows:

Facts

6. 27th July 1998: Maria Lennon publishes notice of a forthcoming application for planning permission in the Evening Echo newspaper.

7. 10th August 1998: Maria Lennon applies for outline planning permission to construct 48 apartments and a commercial arcade on a new bridge over the River Lee between Anderson's Quay and St. Patrick's Quay.

8. It is noteworthy that neither Ms. Lennon nor the plaintiff appears to have any consent or legal interest in the lands of the north and south banks of the river.

9. Although it is true that the Department of the Marine and Natural Resources has no objection to an application being made, acquiescence is passive, consent is positive, it is not so expressed in the letter of the Department of the Marine and Natural Resources of 8th September 1997. Furthermore, the application does not deal at all with the construction of the bridge.

10. 17th August 1998: The defendant wrote to Ms. Lennon pursuant to Article 17(2) of the Local Government (Planning and Development) Regulations 1994 (hereinafter referred to as the 1994 regulations) stating that the application was incomplete on the basis that the defendant understood that Article 14(1) of the 1994 regulations, which requires a notice to be given "...within the period of two weeks before the making of a planning application" had not complied with, as the defendant understood that the notice of 27th July 1998 was not made within that time period.

11. 24th August 1998: Ms. Lennon publishes a newspaper notice in The Examiner newspaper.

12. 4th September 1998: The defendant registers Ms. Lennon's application for outline planning permission.

13. 29th October 1998: The defendant decides to refuse the application for outline planning permission.

14. 19th November 1998: Ms. Lennon appeals this decision to An Bord Pleanala.

15. 11th February 1999: An Bord Pleanala advises that it has decided to determine the appeal without an oral hearing on the basis that it could be dealt with adequately through written procedures. This letter is of some significance and is referred to in Exhibit JO'D 8. As well as indicating that the Board had decided to determine the appeal without an oral hearing, the letter goes on to set out certain provisional views of the Board as to the merits of the application (see paragraphs numbered 1 to 5) having regard to which it appears inevitable that the appeal would fail. Though that of course is a matter of speculation. It was that, presumably, that prompted the withdrawal of the appeal.

16. 9th March 1999: John Paul Lennon & Company, Consulting Engineers, of which the plaintiff is the Principal, representing Ms. Lennon, advises An Bord Pleanala that Ms. Lennon was withdrawing her appeal, contending that outline planning permission had been granted by default on 10th October 1998. This letter is at Exhibit JO'D9.

17. 11th November 1999: The plaintiff institutes proceedings against the defendant in relation to another planning permission (one made by the plaintiff himself) seeking a declaration for the period of two weeks referred to in Article 14(1)(a) of the 1994 regulations did not include the day upon which the application was made. Those proceedings are Record No. 1999/475SP.

18. 6th October 2000: Those proceedings are heard and determined by the High Court and the Plaintiff was granted a declaration that the period of two weeks does not include the day upon which the application was made.

19. 6th October 2000 to 2nd November 2004: The defendant receives no contact from either the plaintiff or Ms. Lennon in relation to the application of the instant case.

20. 2nd November 2004: John Paul Lennon & Company, Consulting Engineers, write on behalf of Ms. Lennon, 9 asserting that, on the basis of the decision of Barr J. of 6th October 2000 (in the earlier proceedings). The application of 10th August 1999 was a valid application and that a decision to grant outline planning permission should be regarded as having been given on 19th October 1998, i.e. two months thereafter.

21. 10th June 2005: Ms. Lennon purports to apply to the defendant for "permission consequent on the grant of Outline permission" on the basis of a default outline permission of 19th October 1998. That application was rejected by the defendant on the basis that no outline permission existed on 16th June 2004.

22. 1st July 2005: Following the exchange of correspondence between the plaintiff and the defendant, these proceedings were instituted.

23. The plaintiff's case simply put is that the sole ground upon which the completeness and therefore the validity of Ms. Lennon's application of 10th August 1998 was queried by the defendant was because the notice in the newspaper was out of date. That the decision of Barr J. of 6th October 2000 in proceedings Record No. 1999/475SP, which concerned the proper construction of Article 1(a) of the 1994 regulations and no other relief, effectively translates as meaning that the two-week life of the newspaper notice did not and does not include the day upon which a planning application is made.

24. The plaintiff's submission is that the effect of the order of Barr J. renders the defendants' purported invalidity of the planning application null and void and accordingly that the requirements of the planning regulations for a valid application had been satisfied.

25. The plaintiff contested the issue as to whether he had *locus standi*, submitting that his contingent professional fees on a successful valid application were a sufficient interest to sustain his entitlement to litigate the issue in these proceedings and to benefit from the consequences of such planning application.

26. The plaintiff submitted that he was not statute barred from litigating the issues herein and that he was not disentitled to a relief by reasons of delay which he denied.

Standing
27. An applicant for Judicial Review under Order 84 of the Rules of the Superior Courts is required under Order 84, Rule 20(4) to show "sufficient interest in the matter to which the application relates". Even if the provisions of Order 84 are not applicable to the instant case, it is submitted that under general principles of standing the plaintiff must show that he personally has some legal right or interest which is affected or threatened which he seeks to protect in the proceedings.

28. In the instant case, the plaintiff was not the applicant for planning permission. Furthermore, neither he nor his daughter had any legal interest in the lands on either the north or south bank of the river on which it was intended to carry out the development (apparently on the basis that a bridge would be built in the meantime).

29. In *Frascati Estates -v- Walker* [1977] I.R. 177 the Supreme Court held that an application for planning permission to be valid must be made by or with the approval of a person who is able to assert sufficiently an estate or interest to enable him to carry out the proposed development. Ms. Lennon has no such interest and, a fortiori, the plaintiff has no such interest.

30. A very similar issue has recently been considered in distinct proceedings in which the plaintiff in these proceedings was also the plaintiff, *Lennon -v- Limerick County Council* [2006] IEHC 112 (the High Court, unreported, Laffoy J., 3rd April 2006). There the plaintiff sought, by way of special summons, a declaration that the property owner had made a valid application for permission. The plaintiff was not the applicant for permission and had no interest in the lands in question. However, he argued - as he submitted in the instant proceedings - that he had an interest in that he had entered into a contingency fee arrangement with the applicant, an interest which he characterised as "res incorporales". Rejecting that argument, the Court held that he had no standing, stating as follows:

> *"The applicant has no estate or interest in [the property in question] and, accordingly, he could not make a valid planning application in relation to that property. In any event, the application to which the proceedings relate was not made by him, it was made by [the property owner] as the applicant could not make a valid property and in fact did not make the application, the subject of these proceedings, it follows that he has no standing to bring these proceedings in this court seeking a declaration as to the validity of the application."*

31. In her judgment Laffoy J. also referred to the application brought by the plaintiff in 2000 in relation to the instant development. Having examined the file in relation to those proceedings she stated:

> *"The Order made by Barr J. on 6th October 2000 was an Order declaring that the period of two weeks referred to in Article 14(1)(a) does not include the day upon which the application was made. In other words, the plaintiff succeeded on the issue of the proper construction of a provision in a Statutory Instrument. In that case the applicant did not seek, and the Court did not grant, a declaration concerning the validity or otherwise of a planning application made by a third party in respect of property owned by the third party."*

32. The facts and circumstances of the instant case are almost identical with those at issue in *Lennon -v- Limerick City Council* and it was submitted by the defendant that the Court should similarly hold that the plaintiff has no standing to bring these proceedings.

33. In my judgment a contingent professional pecuniary interest in the outcome of a planning application by an advisor to an applicant is not what was envisaged by the statute as an interest in the property.

Waiver by Ms. Lennon
34. The Council submitted through Mr. Maurice Collins SC that Ms. Lennon by publishing a second notice and proceeding with her planning application on foot of that notice, which was unsuccessful, and by initially prosecuting an appeal had clearly waived any entitlement on her part to any relief arising from any default by the defendant in relation to the manner in which it dealt with the initial notice. The defendant submitted that if Ms. Lennon had any objection to the approach taken by the defendant, she should have voiced this objection at the time the defendant notified her that her initial application was incomplete. By participating in the planning process thereafter she effectively, if not expressly, waived any right to make the case which apparently the plaintiff now seeks to make on her behalf.

35. In *Corrigan -v- the Irish Land Commission* [1977] Irish Reports 317, a case where it was held that the plaintiff could not subsequently object to the composition of a tribunal in circumstances where he had accepted its composition at the date of the hearing, Henchy J. pointed out that it would be inconsistent with the due administration of justice if a plaintiff "...were allowed to reserve unto himself the right to argue later a point touching on the validity of a decision" (see page 325 of the report), in the event that the decision were to prove adverse to his interests. That appears to be what has occurred in this case. As earlier noted in this judgment, it was only when An Bord Pleanala declined to grant an oral hearing on the appeal and gave a strong indication that the

appeal was unlikely to be successful that the appeal was withdrawn.

36. Likewise in Re *Tynan* [1969] I.R. 1, the Supreme Court held that the applicant was not entitled to an Order restraining the District Court from dealing with an irregular summons in circumstances where the applicant had appeared in court, given evidence and failed to raise any prompt objection.

Timely delay
37. While no relief is sought to be effect that Ms. Lennon is entitled to default planning permission, it is clear from the correspondence to which reference has been made that the purpose of the proceedings so far as the plaintiff is concerned is to establish such entitlement. Mr. Lennon who relied on Roman law in his subtle submissions did not expressly make this point and through adroitness or inadvertence overlooked *Justinian: Judicium non debet esse illusorium; suum effectum habere debet.* (2 Inst. 341) A judgment ought not to be illusory, it ought to have consequences.

38. Mr. Collins for the defendant submitted that the proceedings are, in substance and in fact, a challenge to the validity of the Council's decision of 29th October 1998 to refuse Ms. Lennon's application for planning permission. Section 82 of the Local Government (Planning and Development) Act 1963 (as amended) was in force at the time of the said decision of the defendant. The defendant submitted that this provision continues to apply to the planning application under consideration in these proceedings having regard to Article 207(1) of the Planning and Development Regulations 2001. It provided, in material part:

> *"(3A) A person shall not question the validity of- (a) A decision of a planning authority on an application for a permission or approval under Part IV of this Act....otherwise than by way of an application for Judicial Review under Order 84 of the Rules of the Superior Courts (SI No. 15 of 1986) (hereinafter in this section referred to as "the Order") (3B) (a) An application for leave to apply for Judicial Review under the Order in respect of a decision referred to in subsection (3A) of this subsection shall- (i) be made within a period of two months commencing on the date on which the decision was given, and (ii) be made by motion on notice (grounded in the manner specified in the Order in respect of the ex parte motion for leave)...."*

39. It is well established that in considering whether proceedings "question the validity of a decision of a planning authority on an application for grant of permission", one must look at the substance of the relief sought in the proceedings. The fact that a formal order of certiorari is not sought does not necessarily indicate that the validity of the decision is not being questioned.

40. In *Goonery -v- Meath County Council* (unreported, Kelly J., 15th July 1999) proceedings were brought (which did not comply with Section 82(3A) and (3B)) in which various declaratory reliefs were sought in relation to a planning permission granted by the Respondent relating to the split function of the planning authority and An Bord Pleanala in engaging in an Environmental Impact Assessment. The applicant claimed that the proceedings did not have to comply with Section 82(3A) and (3B) on the basis that nowhere in the relief sought was the validity of the planning permission questioned. This assertion was not accepted by Kelly J., who stated at page 21 of his judgment as follows:

> *"Whatever about the way in which the relief sought by the applicant is worded, they plainly seek to impugn the validity of the decision to grant permission. If these reliefs were granted they would undoubtedly mean in practical terms that the decision of Meath County Council was invalid. This is particularly so in the case of relief no. 11. The mere fact that an order was not sought quashing the permission in question does not mean that the validity of the permission was not being questioned. It was, and so the provisions of the section applied and were not so complied with since the application was moved before Budd J. ex parte and not on notice as the section requires."*

41. It was submitted that in the instant case similar considerations apply. The substance of the relief sought by the plaintiff appears clearly to be founded on the contention that a valid application for planning permission, more particularly outline planning permission, was initially made by Ms. Lennon; that same should be dealt with by the Council or the defendant and that the defendant's decision to deal with the application as subsequently made was wrong, with the apparent effect that the decision to refuse permission was somehow invalid and a default permission arises. Indeed, that is the very case made by the plaintiff in correspondence.

42. It was submitted that even if the plaintiff's claim is perceived as involving only a challenge to the decision of the defendant to refuse to accept the initial application of Ms. Lennon prior to the publication of a second newspaper notice, such a challenge is nonetheless a challenge to a decision of a planning authority "on an application for permission", with the effect that it is also governed by Section 82. This submission finds support in the recent decision of the court (Laffoy J.) in an action in which the plaintiff was involved *Lennon -v- Limerick County Council* earlier referred to in which the relief sought was materially identical to the relief sought by the plaintiff in the instant proceedings.

43. In my judgment the decision in *Fyans (Fienes) -v- County Council High Court* (High Court, unreported, McKechnie J., 10th July 2006) in which an application for permission was rejected as being invalid is clearly distinguishable from the instant case. In Fyans case no decision was made on the merits of the application. The application in the instant case was not rejected as invalid but the applicant was required to submit a fresh newspaper notice, which when done lead to a determination on its merits.

44. While in *White -v- Dublin City Council* the Supreme Court held that an absolute eight-week time period provided for by Section 83(3B) was unconstitutional, it does not follow that the time limit was retrospectively "disapplied" or that any right of action barred by the operation of that provision was revived. See in particular the recent decision of the Supreme Court in *A -v- The Governor of Arbor Prison* [2006] IESC 45. That time limit had of course long since expired in relation to the decision of the defendant at issue in these proceedings and it was submitted that remains the position notwithstanding the decision in White.

45. In my judgment the provisions of Order 84 of the Rules of the Superior Courts are applicable, but in any event they must be applied because there is an obligation in all matters of this kind to apply "promptly" and, in event any within three months from the date on which grounds arose or six months from where certiorari is sought, unless the Court is satisfied that there is good reason for extending the period. The courts have emphasised this on many occasions and the overriding obligation under Order 84 to move promptly within the time periods it has been understood in a number of cases: *The State (Cussen) -v- Brennan* [1981] I.R. 181, *de Roiste -v- Minister for Defence* [2001] 1 Irish Reports 190, *Dekra Eireann Teo -v- Minister for Environment* [2003] 2 I.R. 270 and more recently by decisions in the planning law *KSK Enterprises Ltd -v- An Bord Pleanala* [1994] 2 I.R. 128, and more particularly in Re Article 26 -v- Illegal Immigrants (Trafficking) Bill, 1999 [2002] 2 I.R. 360 where Keane C.J. in the course of his judgment observes:

> *"There is a well established public policy objective that administrative decisions, particularly those taken pursuant to detailed procedures laid down by law, should be capable of being applied or implemented with certainty any issue as to the validity should accordingly be determined as soon as possible."*

46. It is settled law that for an extension of time to be granted, an applicant must explain and excuse the delay involved. No attempt has been made to do so by the plaintiff in this case and the delay involved is most significant, having regard in particular to the time limits which generally apply in planning matters and frequently recognised public interest in the enforcement of such time limits. In this context I refer to the timetable events earlier set out in the judgment, from which it is apparent that these proceedings were commenced almost seven years after the decision of the defendant to direct a further public notice to be published by the applicant for permission and more than six years after the plaintiff seems first to have asserted in correspondence to An Bord Pleanala that the defendant had been incorrect to do so and that a default permission had issued and almost five years after the judgment of Barr J. (in proceedings 1999/475SP) on which the plaintiff sought to rely. In the circumstances, it was submitted by the defendant in this case that the proceedings should be struck out.

47. Even if I did not consider that the proceedings are governed by Section 82, it is clear that the substance of the plaintiff's claim is a challenge to a decision of a public authority. Such a claim, even if not brought by way of application for Judicial Review, is governed by the time periods imposed by Order 84. See the decision of the court (Costello J.) in *O'Donnell -v- Dun Laoghaire Corporation* [1991] ILRM 301. That being the case, the considerations identified above apply with equal force. I am satisfied that it was properly conceded by the defendant when the matter went before Laffoy J. at an interim stage that the form of the proceedings and special summons ought not to be held against the plaintiff, and no issue arises there from. In the course of his judgment in *The State (Abenglen Properties Ltd) -v- Right Honourable Lord Mayor Alderman and Burgesses of Dublin* [1982] 1 ILRM 590, at page 600 Walsh J. stated:

> *"However, they [Dublin Corporation] which remains to be decided is whether or not that decision, if it is ultra vires, is equivalent in effect to no 8 decision having been made. In my view the decision was ultra vires in that the changes made or the alleged conditions attached went far outside what was permitted by the Act either under the head of modifications or of conditions. However, I do not think that the resultant position is one in which no decision has been made.*
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> *The default provisions were, in my view, enacted for the purpose of compelling the authority to direct its mind to the application. They do not amount to a statutory decree that every decision must be one which is sustainable in law. In my view a decision which, when questioned, is found to be ultra vires or unsustainable in law for any reason is nonetheless a decision for the purposes of the default provision. It is not possible to attribute to the Oireachtas 20 the intention that every decision which had afterwards been proved to be understandable in law for one reason or another should have the effect of giving the applicant permission for his proposed development however outrageous it might be and however contrary to both the spirit of the letter of the planning laws. It would require quite clear affirmative language in the statute to evidence any such legislative intention. No such language appears in the present legislation. I am therefore of opinion that a decision for the purposes of the Act was given within the meaning of that term in the default provisions of the statute and that therefore the default procedure will not apply. I am correct in this, an Order quashing the decision made by the planning authority would be of no benefit to the prosecutors. While the Court could make such an Order in the present case, the Court in its discretion could refuse to do so where it would not confer any benefit upon the prosecutors. In the present case, for the reasons I have already given, the quashing of the Order would not give the prosecutors the advantage of the default procedure which is what the prosecutors sought to achieve in the proceedings. In the result, in my view the correct procedure is that the applicants should apply anew to the planning authority as they have allowed the time for appeal to the appeals tribunal to expire."*

48. From this judgment, a decision of the Supreme Court in the context where there was no substantive change in this structure to the planning Acts, the following considerations arise:

> 1. What is sought in these proceedings is a declaration. In *Clarke -v- Chadburn* [1985] 1 All England Reports 211 at 214 Megarry J. summarised the purpose and effect of declarations thus:
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> > *"(i) The purpose of a declaration is to determine the right or legal position of the parties to an action. (ii) A declaration is enforceable per se, and whilst it is unlikely that a public body would not recognise or obey a legally binding declaration, consequential relief of a coercive nature may issue where it is apprehended that it might be the case."*

49. To sustain a claim of entitlement for declaratory relief it is necessary that there be some necessary present interest (*Transport Salaried Staff Association -v- CIE* [1965] IR 180 at 202/3 per Walsh J.

50. Thus, even if the plaintiff's detailed submissions on Section 34(8)(f) and Section 11(ii)(a) of the Act of 2000 were correct, upon which I am not satisfied, a declaration could possibly ensue which would not only be at variance with, but in contra-distinction to the authorities from Abenglen to *Lennon -v- Limerick County Council* and such could not harmoniously exist in law except as a source of confusion and contradiction. Therefore I would with the other weariness of Simeon, son of Gamaliel (who graphically evoked the feverish atmosphere of incessant debate) observed:

> *"All my days I have grown up amongst the sages and I have found nothing better for a person than silence. The expounding of the law is not the chief thing but the doing of it and he that multiplies words occasions sin." (Tratate Aboth 1:17 in the Mishrach). In short, to make the declaration sought (even if warranted) without an order of certiorari (which is deliberately eschewed by the applicant) would be to sew the seeds of dissension and confusion and beget (as a matter of probability at the least) further unnecessary litigation.*

Is there an Entitlement to default permission in any Event

51. The instant proceedings appear to be a steppingstone to a subsequent set of proceedings in which Ms. Lennon, or the plaintiff, will argue that Ms. Lennon is entitled to a default planning permission on the basis of the defendant's apparent failure to deal with her initial application for outline permission. Such was the perception of Mr. Collins in his submission. And I think he is correct in his submission, although Mr. Lennon with great skill avoided that head on collision. While the defendant submitted that it was not required to meet this argument in the instant case having regard to the manner in which the plaintiff's case was advanced, it was submitted that no such entitlement would arise in any event.

52. In the first place it was submitted that notwithstanding the fact that the initial application of 10th August 1998 was in fact made within the requisite time period after publication of the notice, a matter which the defendant, acting in good faith, I am satisfied and find as a fact, did genuinely not consider to be the case, it remains the case that Ms. Lennon was required to comply with the obligation imposed on her by the defendant, acting pursuant to Article 17(2) of the 1994 regulations, to publish a second notice, in

circumstances where the defendant's decision had not been impugned. Having done so, she cannot in my opinion argue that the same was defective and that she is thereby entitled to default permission. In *Ardoyne House Management Company Ltd -v- Dublin Corporation* [1998] 2 IR 147 Morris P. held that where a notice is served under Article 17(2), the planning authority has no power to make a decision either to grant or to refuse a permission sought until 14 days after the requirements of the notice have been complied with. Morris P. stated at page 151 of his judgment as follows:

> *"Unlike some of the notices in the planning code, there is no provision in the code for the withdrawal of an Article 17(2) notice. It remains effective until it is either quashed by the Court or is complied with. Clearly significant consequences flow from the service of such a notice and great care should be taken prior to the service of such a notice. The provisions of Article 39 are, in my view, clear beyond any possible doubt that the service of this notice removes from the planning authority the power to make a decision to grant or refuse the permission until 14 days after the requirements of the notice have been complied with. I am satisfied that there has been no effort made by the notice party to comply with the notice."*

53. That of course, it is quite clear, is different from the instant case.

> *"Counsel for the notice party has argued that since it would appear that the original advertisement and site notice accurately set out the location of the property in respect of which the application was made and since these notices were validly advertised and displayed on site, there was "effective compliance". In my view, this submission cannot be correct since while such advertising and display of the site notice may have been complied with the requirements of the regulation, it was not in compliance with the Article 17(2) notice and it did not advertise the property as being situated in Pembroke Park as required."*

54. Some of that quotation is clearly referable to the facts of the particular case but otherwise the principle seems to be settled. It is indeed settled law that a default planning permission cannot arise in circumstances where the proposed development would involve a material contravention of the development plan, on the basis that a planning authority cannot be compelled to grant permission which it would otherwise have no power so to grant. In this regard reference is made in the course of the arguments to *The State (Pine Valley Development Ltd) -v- Dublin County Council* [1984] IR 407 and again by Walsh J. in the passages at 421 and 422.

55. In the instant case one of the grounds given by the defendant for the rejection of Ms. Lennon's application for permission was that the proposed development would be contrary to the proper planning and development of the area set out in the 1998 Cork City Development Plan Review. The reasons set out in that decision, and the affidavit of James O'Donovan filed on behalf of the defendant, was that the proposed development would materially contravene the 1998 Cork City Development Plan Review and would have a serious detrimental impact on the natural landscape of the city due to the impact it would have on the visual amenity of the River Lee. Similarly, the proposed development, as permitted, would materially contravene the Cork City Development Plan 2000, in my judgment, for the reasons set out at paragraph 22 and following in the affidavit of Mr. O'Donovan. In the circumstances Ms. Lennon was obliged to comply with the notice issued by the Council pursuant to Article 17(2), even if the original advertisement published by her complied with the relevant provisions of the planning code, unless and until the Council's notice was quashed. Accordingly, in my judgment no question can arise that she has any entitlement to default permission. In circumstances where the only practical purpose of seeking the declaration could be as a basis for asserting an entitlement for a default permission, and where it is clear that no such entitlement arises, it follows that no useful purpose would be served in granting such a declaration and that, of itself, is a ground for refusing it. See *The State (Abenglen) -v- Dublin Corporation* [1984] IR 381, earlier cited in this judgment, which is clear authority (involving somewhat similar considerations) to the effect that the Court has a discretion to refuse certiorari where no useful purpose would be served by its grant. The discretion of the Court to grant or refuse declaratory relief, particularly where such relief is sought in relation to public issues, is at least as ample.

56. In that regard the modern text book of Zamir and Woolf in "The Declaratory Judgment" (3rd edition; 2002) was referred to by Mr. Collins in his submissions from the passage at 4.093 to the effect: "*If it can be shown that a declaration would not serve any practical purpose it will weigh heavily in the scales against declaratory relief.*"

57. While that is not a definitive statement of the law, it is indicative of the approach of the courts and in consonant with earlier settled law decisions to which I have referred in the course of this judgment. In conclusion, for the reasons set out above, I am satisfied that:

> A. The plaintiff lacks standing to bring the proceedings, as indeed would Ms. Lennon.
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> B. The proceedings should be struck out on the grounds of delay.
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> C. Ms. Lennon had waived an entitlement which she might otherwise have had to claim relief by Participating fully in the planning process.
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> D. In any event, Ms. Lennon would not be entitled to default planning permission and so no useful purpose would be served by granting the declaratory relief sought.

58. Cellini's Life brings his adventures down to 1562 where the manuscript ends abruptly with the words "And then I set off to Pisa" written at the top of an otherwise blank page. I apprehended the applicant's case unlike the famous tower there, rests on less sustainable foundations.