[2017] IEHC 353

THE HIGH COURT

[2016 No. 102 JR]

BETWEEN

MURPHY'S IRISH SEAFOOD LIMITED

APPLICANT

AND

MINISTER FOR AGRICULTURE, FOOD AND THE MARINE

RESPONDENT

JUDGMENT of Ms. Justice Baker delivered on the 1st day of June, 2017.

1. The applicant is a limited liability company incorporated within the State whose principal activity is the operation of fish farms and fish hatcheries. This application for judicial review relates to the purported termination of the aquaculture licence held by the applicant in relation to the cultivation of salmon at two sites, both located at Gearhies, Bantry Bay, Co. Cork, one site an adult salmon site and the other a smolt site.

2. The applicant took an assignment of a licence granted to Cuan Baoi Seafarms Limited and the assignment was approved by the respondent with effect from 9th July, 2009. That licence expired on 22nd April, 2011. The applicant applied under the statutory scheme to renew the licence, and by virtue of s. 19A(4) of the Fisheries (Amendment) Act 1997 ("the Act of 1997"), inserted by s. 101(c) of the Sea-Fisheries and Maritime Jurisdiction Act 2006, an operator is entitled to continue the aquaculture process or operations pending the determination of an application to renew. Section 13(1)(a) of the Act of 1997 provides that the Minister shall endeavour to determine an application for a licence within four months from the date on which all requirements have been complied with.

3. To date, the application for renewal has not been determined.

4. In order to lawfully operate the aquaculture enterprise, the applicant has the benefit of a foreshore licence under the provisions of the Foreshore Act 1933. That licence is subject to strict conditions concerning, *inter alia* the placement of cages and the maintenance and upkeep of relevant equipment in a condition of repair "to the satisfaction of the Minister", and so that its condition would not cause a hazard to navigation, the adjacent lands or the public interest.

The effect of a storm in 2014

5. The matters giving rise to the present application arose following a catastrophic storm of hurricane force on 1st February, 2014, as a result of which most of the fish stock amounting in total to 235,000 fish, and almost all of the aquaculture equipment on the site was destroyed. Since that time, the damaged cages and equipment have been removed and one cage remaining has been upgraded. There are at present no fish on site.

6. The damage caused by the storm was such that the applicant was de facto in breach of the conditions of its licence.

7. After the storm, on 3rd July, 2014 the applicant reached an agreement to facilitate the ongoing operation of the aquaculture process. The agreement provided for submission, on or before 31st July, 2014, of a maintenance and recording programme in accordance with a Norwegian standard, furnishing of a report confirming the adequacy of the design of mooring ropes, collar and ground chain connections and/or confirming the adequacy of the design of net to collar conditions. The agreement also required upgrading works on polysteel ropes and mooring anchors to be completed and verified by 29th August, 2014, and 1st October, 2014 respectively.

8. The agreement also confirmed a broad provision by which the Minister "emphasised" that he required confirmation:

> "that the entire farm comprising sites T5/122 and T5/122A has been designed with skill, care, diligence and professional conduct reasonably to be expected from a designer with the qualifications and experience suitable for the design work involved."

9. The confirmation was to be provided in writing by 1st October, 2014.

10. Following the making of this agreement, correspondence was entered into between the applicant and the respondent and has continued up to the events giving rise to the decision impugned in this application for judicial review. I will consider the relevant correspondence in the course of my judgment.

The application for judicial review

11. The applicant seeks an order by way of *certiorari* quashing the decision contained in a letter dated 21st January, 2016, by which the Minister purported to revoke the licence.

12. The applicant claims that the decision communicated by that letter is void and *ultra vires* the Minister and/or is not effective to terminate the licence in that it was not made in accordance with the mandatory statutory provision for the termination of an aquaculture licence, was made without notice and proper procedure, failed to identify the reasons for which the licence was purported to be revoked, and was not done with the requisite 28-day notice provided under statute.

13. Leave was granted by Noonan J. on 18th February, 2016.

The revocation of a licence

14. The Minister has power under s. 68 of the Act of 1997 to revoke an aquaculture licence. The broad statutory power is one to revoke without compensation, or amend, a licence if the Minister is satisfied "that there has been a breach of any condition specified in the licence" or under s. 68(1)(b):

> "is satisfied that the aquaculture operation to which the licence relates is not being properly maintained."

15. The statutory provisions in s. 68(3) contain mandatory procedures by which a licence may be revoked and I set these out in full:

> "The following shall apply in relation to the revocation or amendment of an aquaculture licence:
>
> (a) the Minister shall not revoke or amend the licence unless and until he or she has given by post to the licensee not less than 28 days notice in writing stating that the Minister has under consideration the revocation or amendment, as the case may be, of the licence;
>
> (b) the notice shall also state—
>
> (i) where it states that the Minister has under consideration the amendment of the licence, the specified amendment under consideration and the grounds on which it is so under consideration, or
>
> (ii) where it states that the Minister has under consideration the revocation of the licence, the grounds on which the revocation is under consideration;
>
> (c) the Minister shall consider any representations in relation to a proposed revocation or amendment made to the Minister by the licensee before the expiration of the notice."

16. The process of revoking a licence for which provision is made in s. 68(3) requires 28 days notice by post to the licensee stating that the Minister has "under consideration" the revocation of the licence. The procedure, therefore, envisages a process of two stages, at least: a notification that revocation is in contemplation or under consideration, followed by the actual revocation. The actual revocation is linked to the requirement that the notice state the grounds on which the revocation is under consideration. Thus, the letter must give a 28-day warning and state the reasons why the warning is considered appropriate, and invite submissions.

17. Section 68(3)(c) requires the Minister to consider any representations or arguments relating to the alleged grounds on which revocation is proposed, and this consideration is be done within the 28-day period.

18. The Minister therefore is required to give reasons, the person receiving the notice is entitled to engage with those reasons, and the Minister must, as a matter of statute, and not by way of implication, consider those representations before making a final decision that the licence be revoked. It is only when these preconditions are met can actual revocation be effective.

19. By letter of 21st January, 2016, sent on behalf of the Minister by the Assistant Principal in the department, the applicant was informed that the Minister had approved the withdrawal of the consent to operate under s. 19A(4) of the Act of 1997 for two reasons therein identified:

> "(i) The failure of the licence holder to properly maintain the operation in accordance with 68(1)(b) of the Fisheries (amendment) Act 1997.
>
> (ii) The failure of the licence holder to comply with conditions 2 & 4 of the foreshore licence"

The applicant was also directed:

> "to remove all structures including anchor points and ancillary equipment from the site within four weeks of the date of the notice and to restore the licensed area to its original condition."

20. The applicant argues that the letter is not effective to terminate its licence for a number of reasons as follows:

> (a) The statutory power invoked, s. 19A(4) of the Act of 1997, does not enable the Minister to revoke a licence.
>
> (b) The letter is not effective to revoke the licence as no prior notice in accordance with s. 68(3), of the Act of 1997, was sent.

Is the letter of 12th January, 2015 a sufficient statutory notice?

21. The respondent says that the letter of 12th January, 2015 is a valid letter for the purposes of s. 68, and that the legislation does not expressly mandate that the grounds on which revocation is under consideration should be set out with the degree of specificity or concrete reference to a complaint, for which the applicant contends.

22. The letter of 12th January, 2015 taken alone cannot be a sufficient letter for the purposes of complying with the statutory requirements contained in s. 68 as it does not set out the reasons then in the mind of the Minister.

23. While a later email of 28th January, 2015 did contain details of alleged breaches, it was sent sixteen days after the initial notice, at which time only twelve days remained under which the Minister's statutory considerations were to be completed. For reasons I will explore more fully below, this in my view means that the combined correspondence of 12th January, 2015 and 28th January, 2015 do not comprise a sufficient statutory notice.

24. The respondent does not identify a letter which of itself contains reasons for which revocation was under consideration. It argues that the course of correspondence between the parties before the Minister sent the letter on 21st January, 2016 amounts to a sufficiently coherent statement of reasons and sufficient engagement with the arguments and representations made by or on behalf of the applicant, such that the process engaged by the Minister is not substantively, or materially, deficient, and that no possible operative confusion could have existed in the mind of the applicant as to the reasons for the revocation. The respondent argues that no material or essential omission has been identified, and that the prior process of notice is sufficient and correct in substance to enable a proper exercise by the Minister of the statutory power to revoke.

25. The application for judicial review first engages the question whether correspondence prior to the date of the letter on 21st January, 2016 amounts to a sufficient compliance by the Minister with the mandatory statutory requirements.

26. I turn, therefore, to examine the engagement between the parties in the period from the making of the agreement in July, 2014, and the service of the revocation notice on 21st January, 2016.

The prior correspondence
27. In the eighteen-month period between the making of the agreement in July, 2014 and the service of the revocation letter in January, 2016, an amount of correspondence had been engaged between the applicant and the department and their respective technical advisers. A number of inspections of the site were carried out in the course of that process. The respondent relies on this engagement as showing that the applicant well knew the reasons for which the Minister revoked the licence, and as sufficient to satisfy the mandatory statutory engagement and the giving of reasons.

28. The first relevant letter was sent a year before the revocation letter.

29. By letter of 12th January, 2015, sent on behalf of the Minister it was asserted that the applicant had not complied with the terms of the agreement of 3rd July, 2014, the terms of which were described as "signed undertakings". That letter expressly invoked s. 68(1)(c) of the Act of 1997, and the relevant parts are as follows:

> "As it appears that you have not complied with the terms of this agreement, which relates directly to the proper maintenance of the site, I am to advise you that under the provisions of Section 68(1)(c) of the Fisheries (Amendment) Act, 1997, consideration must now be given to the possible revocation of the licence.
>
> In accordance with the provisions of Section 68 of the legislation the Minister shall consider any representations in relation to the proposed revocation within 28 days of the date of this notification."

30. That letter at least *prima facie* complies with the mandatory tests relating to time and the invitation to make representations contained in s. 68(3), but does not state the grounds on which revocation is under consideration required by s. 68(3)(b)(ii).

31. On 23rd January, 2015 the applicant's engineering advisers, Messrs. Cronin Millar, wrote asking that the Minister explain the alleged breaches and also asked the Minister to address matters previously raised in an email of 25th November, 2014 regarding anti-predation nets and the mooring of empty cages, in regard to which the Minister had not indicated whether he was satisfied with the proposed manner of dealing with those specific concerns.

32. Mr. John Murphy, the managing director of the applicant also engaged, and in an email of 28th January, 2015 he asked that the Minister identify "where" it had been determined that he was not in compliance with the agreement.

33. That email was replied to by the department on 28th January, 2015, and Mr. Cronin of Cronin Millar was copied. The reply set out that "reports available to the department have indicated that MIS was not in compliance with the timeline specified in respect of the following undertaking signed by you at this office on 3rd July, 2014". Three specific matters were identified as outstanding, relating to mooring ropes, anchors and confirmation of design adequacy, all of which were to be dealt with at the latest by 1st October, 2014, by virtue of the express terms of the agreement of 3rd July, 2014.

34. Correspondence continued. A letter of 24th February, 2015 made reference to emails of 25th November, 2014, and 3rd December, 2014 in which complaints were made with regard to cages placed on the foreshore without foreshore consent. This complaint related to the foreshore consent or licence and not the aquaculture licence. The basis of revocation does not have to be confined to an alleged breach of the conditions of an aquaculture licence, as I will discuss below.

35. The correspondence proceeded at a relatively leisurely pace and Messrs. Cronin Millar replied to that letter regarding the empty cages on 13th March, 2015, saying that the Harbour Master and the mooring owners had given permission to moor the empty aquaculture cages on existing swing moorings. Mr. Cronin acknowledged that having regard to the relevant legislation relating to aquaculture operation, it was proposed to relocate the empty cages back into the licensed area and noted that the cages had no nets or other equipment attached to them. Mr. Cronin, a chartered marine civil engineer, expressed his opinion that the moorings were suitable and asked for eight weeks to fully relocate all such cages.

36. No direct reply was sent to this letter and it would seem from the chain of correspondence that while the same Assistant Principal in the department was engaging with the questions relating to the licence, two separate or different threads of correspondence were in train. The next letter in time is a letter of 22nd April, 2015, from the department directly to the applicant, which referred to the letter of 12th January, 2015, and which corrected the reference and substituted s. 68(1)(b) of the Act of 1997 for the incorrect reference to s. 68(1)(c). The operative part of this letter reads:

> "As previously advised, it appears that you have not complied with the terms of the agreement entered into by you on 3rd July 2014 (copy attached), which relates directly to the proper maintenance of the site and I am to advise you that under the provisions of s. 68(1)(b) of the Fisheries (Amendment) Act 1997, consideration must now be given to the revocation of the licence."

37. There was an implicit invitation to make representations, but the letter did not contain reasons, nor did it appear to take into account the engagement between the parties in the intervening three and a half months. It did no more than make a formal correction.

38. The parties took a practical approach to the differences between them at that stage and an inspection was carried out by the marine engineering division of the department on 30th October, 2015, the results of which were sent to the applicant by letter of 12th November, 2015. The letter points to "issues of very serious concern" identified in the reports at each of the two sites comprised in the aquaculture licence and said the following:

> "Please ensure that all remedial measures identified in each of the reports are immediately implemented."

39. The cages were described as being in very poor structural condition and inside the licensed area, while the anchor blocks were outside. Concerns were raised with regard to the navigation markers and the presence of cages or sections of cages on the foreshore. The two reports recommended a total of six remedial measures

40. It is clear from the contents of the report that Mr. Murphy and his expert advisers were present at the inspections and engaged with the inspectors.

41. By letter of 15th December, 2015, Cronin Millar replied and made comment on the reports as follows:

> (i) The location of moorings was accepted as being outside the licensed area and were agreed to be removed within six

days, weather permitting;

(ii) The view was that the navigation markers were satisfactory and agreed with the Harbour Master;

(iii) An agreement was offered that before the cages were restocked that the floating and anchoring infrastructure would be fit for purpose. There was no express agreement that the structures would be removed, but remedial measure were proposed to put the structures into a good and proper state of repair; and

(iv) The cages on the foreshore were said to have already been removed.

42. Messrs. Cronin Millar therefore identified two areas of dispute, the navigation markers or buoys which in their expert opinion were satisfactory and in conformity with Harbour Master requirements, and the condition of the cages which it was confirmed would be brought up to a suitable standard before restocking occurred.

43. Mr. Cronin's view was that the requirements in the agreement of 3rd July, 2014 were to be met before any fish was introduced but not unless and until that was contemplated. The agreement permitted the proposed restocking of the above site subject to the conditions therein identified. All of the conditions were to be met at the latest by 1st October, 2014, but this was in the context of what was thought likely to be an immediate restocking plan. Mr. Cronin's observations were at least arguable as no proposal was in place, even at the end of 2015, to restock.

44. No further correspondence occurred thereafter until the impugned letter of revocation of 21st January, 2016.

Discussion on prior correspondence

45. It is clear from the express words of the notice of 21st January, 2016, that the Minister relies on correspondence and communication that had occurred since 4th August, 2015, and not before.

46. The respondent accepts that the letter sent on 4th August, 2015 does not comprise a warning or notice for the purpose of s. 68, but argues that the correspondence taken as a whole amounts to the identification of the reason or reasons which operated in the mind of the Minister, and which led to him arriving at a consideration that the licence was to be revoked.

47. The respondent argues that the reference to a failure of "proper maintenance" of the equipment is a sufficient identifying ground, and is neither technical, vague nor unclear. The context was already well identified in correspondence, and the ground identified was a failure to perform the relevant clauses in the agreement, which it is pointed out, is a short agreement containing only eight operative clauses.

48. The difficulty with that argument is that there was a level of compliance with the agreement following warning letters in April, 2015 and August, 2015, and an express undertaking to deal with other matters having been given by the end of 2015, and the outstanding matters not resolved related to the cages and anchors, and in particular whether there was need to bring these up to a suitable standard in the absence of a concrete and imminent proposal to restock.

49. Insofar as it could be said that the letter of 12th January, 2015 was a sufficiently compliant statutory notice, the Minister did not engage with representations made by the applicant within the 28-day period, or at all, and the licence was therefore, in my view, not capable of being revoked in accordance with the statutory scheme in reliance on that letter as a statutory starting point.

50. Further, engagement had occurred and had trailed off without the Minister replying to the last substantive and concessionary proposals of the applicant.

Authorities on the exercise of statutory power

51. No authority directly on point regarding the operation of s. 68 has been opened but the respondent cites a number of authorities all by way of analogy.

52. In *Doupe v. Limerick County Council & Anor.* [1981] I.L.R.M. 456 Costello J. refused to grant an order of certiorari on the grounds that there was no want of fair procedure because of the relative informality of the process by which the plaintiff was refused a licence to operate an abattoir. He accepted that the plaintiff knew the reasons why it was proposed to refuse his application and that fairness of process or natural justice "maybe fully satisfied by the adoption of quite informal procedures" Costello J. held that as a matter of fact the applicant was told "the substance of the case against his application", and that ample opportunity had been afforded to make representations before the final decision was made.

53. This dicta was approved by Kearns P. in *Fatus v. Murphy & Anor.* [2013] IEHC 320 where the refusal was to renew a public service vehicle licence and Kearns P. took the view that the applicant had been afforded natural justice in a meeting at which he had every opportunity to make representations.

54. Counsel for the respondent argues that these judgments are authority for the proposition that the sufficiency of notice is a matter to be dealt with subjectively and to be measured according to the actual knowledge of the person to whom notice is given. He also argues that they are authority for a broad proposition that relatively informal procedures may on the facts of an individual case be sufficient to meet the requirements of fairness and natural justice, and that those requirements do not import an obligation that every administrative process be dealt with as if it were a trial process. It is argued therefore that the requirement of natural justice may be met over a series of engagements or dealings between an administrative body and a person impacted by its decision.

55. I do not regard these authorities as a useful guide as they did not deal with a mandatory statutory obligation to give reasons.

56. The decision of Kearns J. in *Fatus v. Murphy & Anor*. may be distinguished on the ground that Kearns P. considered that the applicant's real case was that the first respondent had reached "the wrong decision on the evidence and materials before him", and no argument was made that the chief superintendant of An Garda Síochána had failed to comply with a procedure mandated by statute.

57. *Doupe v. Limerick County Council & Anor*. also did not concern a failure to engage a process mandated by statute, but rather the question whether an implied requirement of fairness was achieved in the manner in which the respondent had refused the licence.

The notice of 21st January, 2016: reliance on incorrect statutory basis

58. The letter purports to withdraw the consent of the Minister for the applicant to operate under s. 19A(4). No statutory power

exists in the Minister neither to withdraw such consent, nor to deny the right to overhold pending the determination of an application for an extension of a licence.

59. I do not accept that on account of the fact that the letter incorrectly identified the source of the statutory power engaged by the Minister that the notice is defective, but I do consider that a notice must be of a sufficient degree of particularity to identify the power engaged and the reason for such. There is no statutory power of revocation in s. 19A and therefore the reference to that section is superfluous. The Minister is not required to identify in a notice the precise statutory basis for the exercise of the power under consideration, but what is required is that the nature of the matter under consideration, revocation or alteration, and the grounds for such, be identified. I am satisfied that the letter sufficiently identified the nature of the order the Minister had made albeit the grounds were not set out, and this approach is supported by the authorities.

60. In *State (D. and D.) v. Groarke & Anor.* [1990] 1 I.R. 305 the Supreme Court was considering the fairness of a process engaged by a District Court under the then relevant provisions of the Children Act 1908 by which a child could be removed from the custody of its parents. The order of the District Court contained an erroneous reference to an irrelevant section of the Act and Finlay C.J., giving the judgment of the Supreme Court, considered that error of itself did not invalidate the order:

> "Once the order of this summary court contains the essential recitals necessary for the exercise of its jurisdiction directly under s. 24, in my view, the inclusion into the order by a drafting error of recitals appropriate only if the courts power to make an order pursuant to Part II of the Act 1908 and to s. 24 had arisen under s. 58 do not invalidate the order". (p. 316)

61. The Supreme Court was satisfied that there had been a drafting error and its focus was on whether the essential elements of the order were correct.

62. A similar conclusion was arrived at by the Supreme Court in *People (DPP) v. Kelly (No. 2)* [1983] 1 I.R. 1 where a mistaken recital of a place of detention was not destructive of the validity of the detention of the defendant. Finlay P., giving the judgment in the Court of Criminal Appeal, and having considered the provisions of s. 30(3) of the Offences Against The State Act 1939 which permitted the removal and detention of a person arrested under the section, said the following:

> "The section does not require a direction in writing nor does the form which constitutes exhibit No. 15 in this case emanate from any statutory provision or statutory regulation. It is an administrative form apparently originating within the Garda Síochána as a matter of convenience and (as is frequently, if not universally, the case) the practice whereby the chief superintendent concerned makes his direction in writing is similarly, for obvious reasons, an administrative practice." (p. 16 -17)

63. In those circumstances Finlay P. held that the essential terms of s. 30(3) were fully complied with. Section 30(3) of the Act of 1939 there under consideration was permissive, and enabled the removal and detention in custody of an arrested person in a garda station or some other convenient place. No obligation therefore could be said to have been imposed by the legislation as to where and in what place detention was to occur.

64. In *R. v. The Local Government Board for Ireland (Webster's Case)* [1902] 2 I.R. 349 the court was considering the validity of a wage settling order, and held that the Board had exceeded its jurisdiction in matters of substance and the order was therefore bad and made in excess of jurisdiction. However Fitz Gibbon L.J. considered, albeit *obiter*, that the orders were not bad on their face and that the reference to the statute sufficiently showed jurisdiction.

65. The present case does not concern a question of whether the notice of the 21st of January, 2016 was bad on its face, but whether it complied with the mandatory statutory requirements. I consider that it was not bad on account of the reference to the incorrect statutory provision.

Statutory obligation to give reasons

66. In *Deerland Construction Limited v. The Acqaculture Licences Appeals Board & Ors.* [2008] IEHC 289, [2009] 1 I.R. 673 Kelly J. considered a decision to grant an aquaculture licence pursuant to the power in the Act of 1997 and noted the obvious fact that such a licence had a considerable commercial value. He was considering the question of whether the first respondent had failed to comply with its statutory obligation to give reasons for its determination on appeal in accordance with s. 40(8) of the Act of 1997, as inserted by s.10 of the Fisheries (Amendment) Act 2001, and at paragraph 59 of his judgment he stated:

> "I do not accept that a pro forma recitation of the matters which are contained in the first respondent's decision amounts to a compliance with its statutory obligation to state its reasons for such decision. The reference to it being satisfied that it was in the public interest to make the determination is a conclusion reached by it but no clue is given as to how such a conclusion was reached."

67. Kelly J. went on to outline some examples from the "abundance of case law" as to what must be done by a statutory body to satisfy the obligation to set forth the reasons for its conclusion.

68. Kelly J. had previously dealt with the statutory obligation to give reasons in *Mulholland & Anor. v. An Bord Pleanála & Ors. (No. 2)* [2005] IEHC 306, [2006] 1 I.R. 453 where he said the following at page 464 – 465:

> "The obligation at (b) above to state the considerations on which a decision is based is, of course, new. I am of opinion that, in order for the statement of considerations to pass muster at law, it must satisfy a similar test to that applicable to the giving of reasons. The statement of considerations must therefore be sufficient to:-
>
> (1) give to an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision;
>
> (2) arm himself for such hearing or review;
>
> (3) know if the decision maker has directed its mind adequately to the issues which it has considered or is obliged to consider; and
>
> (4) enable the courts to review the decision.

Thus, the criteria which must be met for the statement of considerations are precisely the same as those which apply in respect of the statement of main reasons."

69. The dicta of Kelly J. in *Mulholland & Anor. v. An Bord Pleanála & Ors*. was noted in the judgment of O'Neill J. in *Grealish v. An Bord Pleanála & Anor.* [2006] IEHC 311, [2007] 2 I.R. 536, where O'Neill J. said that an explanation for a decision "does not have to give a discursive judgment", but had to "give sufficient information to enable somebody in the position of the applicant in this case to consider whether he has a reasonable chance of succeeding in judicially reviewing the decision;"

70. Having regard to the fact that an appeal lies against a decision of the Minister to revoke a licence under the Act of 1997, the reasons given must be specific, not *pro forma* and, in accordance with this jurisprudence, sufficient to allow engagement by a person receiving the notice.

71. As Kelly J. said in *Deerland Construction Limited v. The Acqaculture Licences Appeals Board & Ors*., noting the judgment of Lord Brown in *South Bucks D.C. v. Porter (No. 2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953, reasons must be intelligible, adequate and sufficient to enable a person to make a determination whether to take the matter further, whether by way of appeal, judicial review or by making further representations.

72. This case law identified by Kelly J. is central to my decision in the present case. Under the statutory scheme established by s. 68 a recipient of a letter is entitled to make representations. Unless he or she knows the complaints or concerns on which the Minister is giving consideration to the revocation of a licence, he or she may not engage sufficiently with those reasons or with the considerations of the Minister. It is not appropriate that reasons are to be gleaned from a series of correspondence over months and where there were concessions by both sides, and attempts made to achieve a working arrangement between them.

73. The legislation positively requires that before revocation a licensee is to be served with a notice stating the grounds on which the Minister was considering revocation, and a positive requirement that the Minister consider any representations made. It is clear from those positive requirements that the grounds on which the Minister is considering revocation must be sufficiently identified to give positive effect to the entitlement of a person receiving such a notice to make representations.

74. The legality of an order to revoke is conditional upon the notice containing the matters identified in this statute.

75. While the judgment of Kelly J. in *Deerland Construction Limited v. The Acqaculture Licences Appeals Board & Ors.* concerned the question of whether the determination of an appeal and the notification of that determination adequately stated the main reasons and considerations on which the determination was based, the judgment is persuasive on the manner in which compliance with a requirement to state reasons or considerations is to be met when such a requirement is found in a statutory provision.

76. I do not consider that any difference of substance exists between the requirement in s. 68(3) that the Minister state the grounds on which consideration is being given to the revocation of a licence and the requirement in s. 40(1)(8)(a) of the Act of 1997 (as inserted by s. 10 of the Fisheries (Amendment) Act 2001) which requires the notification of a determination on appeal to state the main reasons and considerations on which a determination is based.

77. The reasons must be sufficiently clear to enable a person to engage with the statutory mechanism for appeal, review, or, as in the present case, the making of representations which as a matter of statute the Minister was obliged to consider.

78. The Minister has a broad power under s.68 to revoke an aquaculture licence, including when he is satisfied that the operation to which the licence relates is not being properly maintained. The reasons for termination therefore do not have to be confined to the matters which might in themselves amount to a breach of the aquaculture licence, and may include a breach of another form of authorisation including a foreshore licence or other matters which the Minister may regard as material. The reasons may be manifold and arise from a number of different approaches to an operation. However, they must be identified with sufficient clarity to enable the process of engagement to occur.

79. I consider also that there exists a requirement to identify precisely the concrete and specific reasons, having regard to the short timeframe within which representations may be made. It is not sufficient for the Minister to identify in broad terms that consideration was being given to the revocation of the licence by reason of a failure to maintain an operation, i.e. by reason of a broadly stated repetition of the statutory criteria. Because the period in which representations have to be made is short and because the Minister has the power to revoke after the expiration of the 28-day period, and because the Minister is required to consider those representations within the 28-day statutory time limit, the legislation requires, in my view, that the Minister identify with sufficient specificity the basis of his considerations to enable meaningful and case specific representations to be made by a recipient. An extension of time seems permissible but is not mandated. The letter of 12th January, 2015 expresses an undertaking to consider the representations within 28 days, and it would appear the Minister took the view that the whole process was to conclude in the period.

80. I consider that the correspondence, even when joined together, did not satisfy the mandatory statutory requirements as to the contents of the notice that consideration was being given to revocation.

Conclusion

81. I consider that the applicant was not served with sufficient notice of the fact that the Minster had under consideration the revocation of its licence. The primary reason for this is that as matter of statute the Minster is mandated to serve notice containing a sufficient statement of the grounds on which the Minister is considering revocation of the licence, and to do so within the context of the limited 28-day period within which representations are to be made and considered. This means that the notice has to be sufficiently robust and clear to enable representations within a 28-day period.

82. Because of the particular evolution of the engagement between the parties in the present case, it could not be said that matters remained as they had been in January, 2015 when the first warning letter was sent, or even in August, 2015 when a form of notice, accepted as not being a compliant notice for the purpose of s. 68, was sent in which certain complaints were made. Some of the matters complained of had been dealt with, but the Minister had not engaged with all of the matters in a sufficiently clear way to enable the applicant to know whether the Minister was or was not satisfied with the measures taken.

83. It is not sufficiently clear from the correspondence why the Minister had come to the conclusion in January, 2016 that the applicant was not compliant, given that a number of engagements of substance and inspections occurred on the site to which the applicant responded. At no point had the complaints crystallised or the responses been dealt with.

84. For these reasons, and because I consider that the notice sent on 21st January, 2016, was not served following a warning notice in compliance with the statutory form, I propose making an order of *certiorari* quashing the decision of the respondent dated 21st January, 2016.