Neutral Citation Number: [2011] IEHC 44

THE HIGH COURT

JUDICIAL REVIEW

[2008 No. 882 J.R.]

BETWEEN

MICHAEL EGAN

APPLICANT

v.

AN BORD PLEANÁLA

RESPONDENT

AND

ATHLONE TOWN COUNCIL

NOTICE PARTY

Judgment of Mr. Justice Hedigan delivered the 10th day of February, 2011.

1. The applicant seeks to quash by *certiorari*, the decision of An Bord Pleanála of 20th May, 2008, consenting to the notice party's compulsory acquisition of the property 63 Connaught Street, Athlone, Co Westmeath. The compulsory acquisition was made pursuant to s.16 of the Derelict Sites Act, 1990. The applicant also seeks various declarations including a declaration to the effect that the applicant is and was entitled to an oral hearing before the Board in relation to this decision. Finally the applicant seeks reliefs directed at the notice party restraining it from proceeding with the acquisition. The applicant and respondent have both agreed to a telescoped hearing of the application for leave to apply for judicial review and if the Court is minded to grant leave, of the substantive application for the orders which are set out in the statement of grounds.

2. The applicant resides at Auteevan, Battery Road, Athlone, Co. Westmeath. The respondent is an independent appellate authority, established pursuant to the Local Government (Planning and Development) Act 1976, charged with the determination of certain matters arising under the Planning and Development Acts 2000 to 2006. The notice party is the Town Council with responsibility for the administrative area of Athlone, Co Westmeath.

3. The applicant in this case is seeking to challenge the decision of An Bord Pleanála to consent to the compulsory acquisition of 63 Connaught Street, Athlone, Co. Westmeath. The applicant grew up in this house which had however been vacant for many years. The Town Council first expressed concern with the condition of the property on 4th December, 1991, and a notice of intention to register the site as derelict was sent to the applicant. One month later the applicant's brother, Brendan Egan, wrote back objecting to the Town Council's intentions. On the 26th January, 1994, the Council wrote to Brendan Egan's solicitor outlining the works required to render the property non derelict. On 7th April, 1994, 17th October, 1995 and 22nd October, 1998, the property was inspected by the Council, no works had been carried out to render the property non derelict. On the latter date the notice sent to the applicant required him to replace doors, windows, missing downpipes and to redecorate the facade. On 17th July, 2000, a notice was sent to the applicant stating that the property was to be entered on the register of derelict sites. On 28th August, 2002, a s.11 notice was sent to Connaught Street requiring the above mentioned works to be carried out. This notice was returned 'not called for'. On 25th October, 2002, the Council again wrote to the applicant and his solicitor Ms Caroline Egan (the applicant's daughter) seeking details about the ownership of the property. On the 10th March, 2003, the Council wrote to the applicant and his solicitor advising that unless a response was received within seven days court proceedings would issue. Details of ownership were again sought on the 28th of March 2007. A notification of the Council's intention to compulsorily purchase the property was sent to the applicant on 24th October, 2007. The applicant's solicitor wrote to the Council on 7th December, 2007 objecting to the compulsory purchase order, on the basis that no attempt had been made to draw the owner's attention to any perceived neglect of the site, and stating that they intended to fully contest the matter at oral hearing before An Bord Pleanála.

The applicant lodged an objection against the proposed compulsory purchase as provided for under s.16 (3) of the Derelict Sites Act 1990. The matter then went to An Bord Pleanála to decide whether to uphold the compulsory purchase order. As required under s.16 (4) of the Act the Council sent the relevant documentation to An Bord Pleanála including the comments of the Town Council, the applicant's objection and other documents including notices that had been sent to the applicant. On 3rd January, 2008, the Board wrote to the applicant's solicitor enclosing the Town Council's comments regarding the applicant's objections and inviting observations in relation to same. The applicant's solicitor wrote to An Bord Pleanála on 22nd January, 2008, stating that notices from the Town Council were incorrectly addressed and not received by the applicant and further stating that a contractor had now been engaged to carry out the works requested by the Town Council. The Board wrote back to the applicants solicitor on 29th January, 2008 acknowledging receipt of the applicants correspondence and advising that it is not mandatory for An Bord Pleanála to hold an oral hearing in relation to a case lodged under the Derelict Sites Act 1990, but that it would notify the applicant should it decide to hold an oral hearing. On the same date the Board invited the Council to make submissions in relation to the applicant's comments. These submissions were made on 5th February, 2008. The Council disputed the applicant's contentions and stated that the applicant's solicitor "had numerous conversations with this office in relation to the derelict site and was aware of the Council's ongoing concerns in relation to its dereliction."

An Bord Pleanála requested one of its inspectors to prepare a report on the property for the Board. The Inspector stated in his report dated the 1st April, 2008, that from the correspondence on file, he considered it highly unlikely that the objector, Michael Egan, was not aware of the Council's concerns about the site for several years and no effort appeared to have been made to render the site non-derelict in that time. The inspector also noted that when he inspected the property on 5th March, 2008, there was no evidence of work having been carried out. The inspector recommended that the property be compulsorily purchased. On 20th May, 2008, An Bord Pleanála consented to the compulsory purchase of the property. It is this decision that the applicant now seeks to review.

4. Submissions of the Applicant

4.1 The applicant claims that he is highly distressed by the compulsory purchase of 63 Connaught Street, Athlone, Co. Westmeath. This is the house in which he grew up and he has a strong emotional attachment to it. The applicant says he was shocked when he got the Compulsory Purchase Order on 1st November, 2007. He has sworn in his affidavit that he received no notices about the property prior to November 2007; he maintains that unless correspondence was sent to his full and correct address of "Auteevan" Battery Road, Athlone, Co. Westmeath, he did not receive it. The applicant avers that he experienced considerable problems in relation to the delivery of post for more than 20 years. The difficulty in this regard is that there are other Egan's on Battery Road and other Egan's residing in the area of Athlone known as the Batteries. The Egan's at Battery Road are the family of his late Brother Sean and he has very little contact with them.

The applicant says he did not receive the notice sent in 1991 to Battery Road. He notes that the council rely on the fact that his brother Brendan Egan responded to this notice. The applicant maintains that he was estranged from his brother Brendan and that Brendan did not learn about the proposal to enter the property on the register of derelict properties from him. It is submitted that the Council were wrong to assume that the applicant had consulted with his brother about the property and was aware of their concerns in relation to the condition of the property. He notes that the Council relies on a letter from 1994 sent by Brendan's solicitor. He says he was not aware of this letter.

The applicant maintains he did not receive the notice sent on July 17th 2000 to Battery Road as this is not his full address. The s. 11 notice sent in August 2002 was sent to Connaught Street and not to the applicants address. A notice was also sent to the office of the applicant's solicitor, Caroline Egan on 25th October, 2002, however at this time Ms Egan has averred that she was out of her office as she was receiving treatment for cancer. A further notice was sent to Ms Egan in March 2003 however she did not return to her office until October 2003, the notice sent to the applicant at this time was not sent to his home address but to Connaught Street.

The first notice which the applicant received was the compulsory purchase order sent by registered post on 1st November, 2007, to Auteevan, The Batteries, Athlone. The applicant says he discussed the CPO with his daughter and instructed her to lodge an objection. The applicant argues there was a clear factual dispute in relation to whether he had notice of the Council's concerns prior to the making of the Compulsory Purchase Order. An oral hearing could have resolved this dispute.

Caroline Egan wrote to the Board on 22nd January, 2008, and stated "Mr Egan is now aware of what repairs have been requested and has engaged a contractor to carry out these repairs. I trust that this will allay the Town Council's concerns in relation to the appearance of the site. If it does not, then we are prepared to contest the proposed compulsory purchase at an oral hearing." The applicant argues that this line can only be interpreted as a request for an oral hearing. The Boards response of 29th January, 2008, implies that the Board intended to proceed to decide on the request for an oral hearing. However it appears the request for an oral hearing was ignored.

The applicant submits that he understood that there would be an oral hearing and this is why he did not set out his case in more detail in written submissions.

The applicant argues that the Town Councils letter of the 5th of February should have been notified to the applicant. In that letter it's stated 'the applicant's solicitor had numerous conversations with the Council and was aware of the Councils concerns'. The applicant strongly contests this assertion and asserts that he could have explained his position in this regard had he been given the opportunity. The inspectors report noted that when he visited the property on 5th March, 2000, no works had been carried out on the property. The applicant again argues that had he been granted an oral hearing he could have explained that he had engaged contractors to carry out work on the property but they had been delayed.

4.2 The applicant argues that he required an oral hearing to contest the Council's assertion that he knew of their concerns. The Board appears not to have considered this request. Ms. Caroline Egan has averred in her affidavit of 23rd July, 2010, that an official of the Board, Mr Luke Ryan reviewed the file and informed her that there was no indication on the file that the question of whether to hold an oral hearing had been considered. The Board appears to have proceeded on the assumption that the Council's assertions were accurate and confirmed the acquisition. The respondents argue that the factual disputes were not matters which were necessary to resolve for the purposes of making the determination and that neither the Board, nor the inspector, purported to resolve those factual disputes either for or against the applicant. Yet, in his report of 1st April, 2008, the Inspector expressly stated, "from the correspondence on file I consider it highly unlikely the objector, Michael Egan, was not aware of the Council's concerns about the site for several years and no effort appears to have been made to make the site non-derelict in that time". It is clear that this was a material factor in the Boards decision. The Statement of Opposition at paragraph 17, states that "the Board had before it adequate material upon which it could conclude that it was highly unlikely that the applicant was not aware of the Notice Party's concerns." The applicant argues that it should have been given an opportunity by way of oral hearing to rebut this material.

4.3 The applicant further argues that the compulsory purchase of a person's property against his will ranks as one of the most severe interferences with constitutionally protected property rights. It is well established that the greater the interference, the greater the level of fair procedures required and the greater the scrutiny to be applied. In *Clinton v. An Bord Pleanála* [2007] 4 I.R. 701, Geoghegan J. held:-

> "The power conferred on a body such as a local authority or An Bord Pleanála to compulsorily acquire land must be exercised in accordance with the requirements of the constitution, including respecting the property rights of the affected landowner… Any decisions of such bodies are subject to judicial review. It would insufficiently protect constitutional rights if the court, hearing the judicial review application, merely had to be satisfied that the decision was not irrational or was not contrary to fundamental reason and common sense…The acquiring authority must be satisfied that the acquisition of the property is clearly justified by the exigencies of the common good."

The applicant submits that these principles should guide this Honourable Court in reviewing the exercise by the Board of its discretion to confirm the Compulsory Purchase Order.

4.4 The Derelict Sites Act 1990, prescribes certain measures that Local Authorities may take to prevent a site from becoming or remaining derelict. These measures include the service of a notice of intention to enter a site on the register of derelict properties (section 8), a notice requiring the landowner to take specified measures (section 11) and the power to acquire the site compulsorily (section 14). The latter power is a measure of last resort. In seeking confirmation of its compulsory acquisition of 63 Connaught Street, the notice party purported to rely on the fact that it had previously adopted some of the less restrictive measures provided

for in the 1990 Act, but alleged, in effect, that these had been ignored. The applicant disputed having been aware of these alleged measures or having ever received the corresponding notices. In this regard it is worth noting that prior to invoking its powers of compulsory acquisition, on each occasion that it purportedly sent a notice to the applicant; it did so either to the address of the allegedly derelict building, or to an incomplete and inaccurate home address.

4.5 Under s. 134 A of the Planning and Development Act 2006, where the Board considers it necessary for the purposes of making a determination in respect of any of its functions under this Act, it may at its absolute discretion hold an oral hearing. The Board is not obliged to hold an oral hearing in relation to a proposed compulsory acquisition however the applicant submits that the Board should have at least considered whether to grant an oral hearing.

The Boards discretion as to whether to hold an oral hearing must be exercised in accordance with constitutional justice. The question of whether an oral hearing is required will depend on the individual circumstances of each case. In cases where there is a factual dispute to be resolved, an oral hearing will often be the only fair and adequate means of resolving same. In *Galvin v Minister for Social Welfare* [1997] 3 I.R. 340, a decision by a Chief Appeals Officer to refuse to exercise his discretion to grant the applicant an oral hearing in relation to his appeal against a refusal of a pension was quashed by Costello P. who held:-

> "In this case there is no doubt that an important right was in issue. The statute gives an express power to hold an oral hearing and to examine witnesses under oath; a request for an oral hearing was made. What I have to decide is whether the dispute between the parties …made it imperative that the witnesses be examined (and if necessary cross- examined) under oath before the appeals officer. I have come to the conclusion that without an oral hearing it would be extremely difficult if not impossible to arrive as a true judgment on the issues which arose in this case."

Similarly in the instant case there was an important right in issue. The statute gave an express power to hold an oral hearing and there was a factual dispute to be resolved. In these circumstances, it is submitted that an oral hearing was required and the fact that the applicant's request appears not to have been given any consideration by the Board comprises a clear breach of constitutional justice.

4.6 The respondent as an organ of the state was obliged to carry out its functions in a manner compatible with the European Convention of Human Rights. Article 6 (1) of the Convention provides:-

> "In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

In the instant case, central to the exercise conducted by the Board and its Inspector was the resolution of primary fact: had the applicant received notices purportedly served by the Local Authority and declined to act upon them? Only if this were found to be the factual position, was reliance on the power of compulsory acquisition "necessary" to render the site non-derelict. The applicant never had a full and fair hearing on disputed issues as required by Article 6(1). The only appropriate means to vindicate his right to fair procedures therefore is to quash the decision of the Board.

The applicant also contends that the Board's decision comprises a disproportionate interference with his property rights. The property at Connaught Street was by no means falling down. Relatively small sums of money and small steps would have rendered the property non-derelict. It was therefore disproportionate to choose the "nuclear option" of compulsory purchase.

5. Submissions of the Respondent

5.1 The applicant claims that in seeking confirmation of its compulsory purchase order the Council purported to rely on the fact that it had previously adopted some of the less restrictive measures provided for in the 1990 Act. The applicant complains that he did not receive notices concerning these less restrictive measures. The respondent submits that even if this was the case nothing turns on this point. Section 14 is a stand-alone provision; there is no requirement on the Local Authority to exhaust other procedures first.

5.2 The entire history of this case was put before the Board including all the notices that were sent to the applicant over the years. This documentation was sent to the applicant and his solicitor Ms Caroline Egan. The Board informed the applicant that it was not mandatory to hold an oral hearing and they would inform the applicant if they chose to hold one. It is impossible to understand why the applicant did not put points he wished to raise in writing. The applicant however decided not to put his arguments in writing; he cannot now say he was denied a right to put forward his arguments.

Ms Caroline Egan has stated that a member of the respondent's administrative staff Mr Luke Ryan, informed her during a telephone conversation that there was no record on the file of the Board having considered granting an oral hearing. The respondent points out that the statement of grounds does not include an argument that no consideration was given as to whether to hold an oral hearing. The applicant is in effect seeking to reverse the onus of proof by trying to claim that it is for the Board to prove that it considered whether to hold an oral hearing, in reality there is no formal requirement to record such a decision.

5.3 Under Section 134 (A) of the Planning and Development (Strategic Infrastructure) Act, 2006, the Board may at its absolute discretion hold an oral hearing where it considers it necessary for the making of a determination in respect of any of its functions. The applicant appears to contend that a landowner is entitled to an oral hearing having regard to the extreme nature of the infringement of the applicant's property rights. The respondent submits that it is for the Oireachtas to decide how best to balance the rights of the individual against the exigencies of the common good. The Oireachtas has decided that this balance is best achieved by giving the Board discretion whether or not to hold an oral hearing.

5.4 The applicant appears to ask this Court to presume that the Board has determined matters, which there is no evidence to show it has in fact determined. The Board was concerned with *inter alia* the objective condition of the property and the need for acquisition. It is not the function of the Board to resolve the issues concerning service of notices or refurbishment proposals. It is respectfully submitted that the applicant attempts to create a material dispute where none existed.

5.5 The applicant was invited to make submissions to the Board on 3rd January, 2008. The Board received the submissions on the 22nd January, 2008. The notice party was then invited to make observations in relation to these submissions, which it did on 5th February, 2008. The applicant appears to contend that the Board acted unlawfully in that it did not put the applicant on notice of the contents of the notice party's observations. It is submitted that the simple fact of the receipt of additional information does not carry an automatic right to make additional submissions thereon.

5.6 The applicant alleges that the Board failed to apply any test of proportionality in this case and failed to consider whether the objective could have been achieved by less restrictive means. The respondent submits that the Board had ample evidence before it to determine that other means were not appropriate methods to secure the objectives of the Derelict Sites Act 1990. Irish Courts have positively stated that when applying the proportionality test a measure of judicial restraint is called for. In *Meadows v. Minister for Justice* [2010] IESC 3, Denham J stated "the legislature has placed decisions requiring special knowledge, skill, or competence with a skilled decision maker and the Courts should be slow to intervene in the technical area." It ought to follow therefore, where a Court is asked to hold that an expert decision maker has failed to choose a methodology that impairs rights as little as possible, the Court ought to be slow to determine *ex post facto* whether alternative methods should have been adopted.

6. Decision of the Court

6.1 The applicant seeks to quash the decision of the An Bord Pleanála dated the 20th May, 2008, in which the Board consented to the notice party's compulsory acquisition of 63 Connaught Street, Athlone, Co Westmeath. The applicant argues *inter alia* that the Board failed to follow fair procedures in not allowing the applicant an opportunity to make his case before the Board.

6.2 I can readily accept that the compulsory purchase of a person's property against his will amounts to a severe interference with constitutionally protected property rights. In *Prest v. Secretary of State for Wales* [1982] 81 L.G.R at 211 Watkins L.J said:-

> "The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused"

The Supreme Court has addressed the power of compulsory purchase in the case of *Clinton v. An Bord Pleanála* [2007] 4 I.R. 701, Geoghegan J. held:-

> "Extensive submissions have been made, both written and oral, on behalf of the applicant as to the relationship between compulsory purchase powers on the one hand and the constitutional rights of owners in relation to private property on the other. It is sufficient to state that I accept the analysis of the case law put forward by the applicant and, of course, I particularly accept that compensation as such is no substitute for the property itself. But in my view, the compulsory purchase order made in this case was lawful as coming within the powers of compulsory purchase in the first instance and was proportionate in the second instance. I think it is appropriate to make the following further observation. It is axiomatic that the making and confirming of a compulsory purchase order to acquire a person's land entails an invasion of his constitutionally protected property right. The power conferred on an administrative body such as a local authority or An Bord Pleanála to compulsorily acquire land must be exercised in accordance with the requirements of the constitution, including respecting the property rights of the affected landowner… Any decisions of such bodies are subject to judicial review. It would insufficiently protect constitutional rights if the court, hearing the judicial review application, merely had to be satisfied that the decision was not irrational or was not contrary to fundamental reason and common sense…The acquiring authority must be satisfied that the acquisition of the property is clearly justified by the exigencies of the common good. "

It seems to me that it is in the interests of the common good that sites, which contain neglected or unsightly structures, are acquired. Under s. 3 of the Derelict Sites Act, 1990 "derelict site" means any land "which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question." The façade of the 63 Connaught Street was not decorated, doors, windows and down pipes required replacement, indeed the windows themselves were boarded up. A property in this condition would be likely to detract from the appearance of other properties in the neighbourhood.

6.3 The applicant complains that he understood that there would be an oral hearing and this is why he did not set out his case in more detail in written submissions. The decision as to whether to hold an Oral Hearing is clearly at the absolute discretion of the Board as provided for by s.134 A of the Planning and Development Act 2006. Furthermore the applicant was expressly advised by the Board that it was not mandatory for An Bord Pleanála to hold an oral hearing and that the Board would notify the applicant should it decide to hold such a hearing. There was therefore no basis for the applicant's assumption.

6.4 The applicant complains that he was shocked to receive the Compulsory Purchase Order. The Council however had sent notices to either Battery Road or to Connaught Street in 1991, 1998, 2000, 2002, 2003. In these circumstances it is difficult to understand how the applicant could have remained unaware of the Councils concerns until the notice that arrived in 2007. It stretches credulity to believe that none of these notices came to the attention of the applicant. Indeed it is apparently the case that a previous compulsory purchase order was made in relation to this property but was withdrawn after representations made by the applicant's solicitor. The property had been derelict for a long time. I do not accept that the applicant was surprised when the Compulsory Purchase Order was made.

6.5 A great deal of emphasis is placed by the applicant on his not having received notices from the local authority. The power of the Local Authority under s. 14 of the Derelict Sites Act 1990 to acquire by agreement or compulsorily any derelict site situated within their functional area is not dependent on the Local Authority having exhausted other lesser measures first, therefore the applicant's complaint that he did not receive notices in relation to such measures does not of itself mean that the option of compulsory purchase was not open to the Local Authority. While the applicant complains he did not receive notices, no explanation has been given for apparent conflict between the affidavits of the applicant and his solicitor concerning the first notice sent to the applicant in 1991. At paragraph 10 of his affidavit of the 26th day of November, 2009, the applicant avers:-

> "The first Notice allegedly sent to me was a notice …dated 4 December, 1991. It is addressed to 'Michael Egan, Battery Road, Athlone.' This is not my proper address and I do not recall receiving this notice"

At paragraph 16 of her affidavit of the 23rd day of July, 2008, the applicant's solicitor avers:-

> "Notices were sent to the applicant at Battery Road, Athlone, the correct address, on 4th December, 1991 and the 17th July, 2009. The first of these was a notice of intention to register the site as derelict."

6.6 The applicant claims that fair procedures were not followed in this case as he was not given an opportunity to make submissions in relation to a letter sent by the Council to An Bord Pleanála on 5th February, 2008. To understand this complaint it is necessary to put it in the context of the communications between the parties at this time. The Council notified the applicant of its intention to compulsorily purchase the property on the 24th October, 2007. On the 7th December, 2007, the applicant objected to the Council's

intention to compulsorily purchase the property. The Council sent this objection together with its views and all relevant documentation to An Bord Pleanála. On the 3rd of January 2008, An Bord Pleanála sent this documentation to the applicant. The applicant made his submissions to the Board on 22nd January 2008, and his submissions were sent to the Local Authority for their observations. The Local Authority made their observations on 5th February, 2008. The applicant argues that this letter of 5th February, 2008, should have been notified to the applicant. The receipt of additional information however does not give rise to an automatic right to make additional submissions thereon. The right to be notified of additional information depends on the significance of this additional information. The information received on 5th February, 2008, was not of such a significant nature as required additional submissions from the applicant. What was stated was that the applicant's solicitor "had numerous conversations with this office in relation to this derelict site and was aware of the Council's ongoing concerns in relation to its dereliction." The contested question as to whether the applicant knew of the Councils concerns was not a new issue. If submissions do not raise new issues there is no obligation to circulate them. In *Westwood Club Ltd v. An Bord Pleanála* [2010] IEHC 16 it was held at 44:-

> "I am satisfied that the submissions in question raised no new issues requiring the respondent to circulate them for comment. There is no obligation on the respondent to repeatedly circulate submissions treating of the same matter…"

There must be some end to the sequence of exchanges between the parties. The observations made by Kearns P. in Evans v. An Board Pleanála, 7 November 2003 are in point:-

> "I accept the respondent's contention that s. 7 of the Local Government (Planning and Development) Act, 1992 was designed to streamline the appeals process and to reduce the volume of repetitive submissions. The introduction of the measures contained in s. 7 was to bring an end to an endless ping-pong sequence of exchanges between the parties which delayed and frustrated the planning process…"

There was no point to an endless ping pong of submissions back and forth in this case, therefore the applicants claim that there was a lack of fair procedures in failing to pass on the council's observations of 5th February, 2008, is unsustainable. The applicant clearly had an adequate opportunity to make his arguments.

6.7 The applicant points out that the property at Connaught Street was by no means falling down. Relatively small sums of money and small steps would have rendered the property non-derelict. The applicant therefore argues that the Local Authorities decision to choose the "nuclear option" of compulsory purchase was disproportionate and that other less invasive measures should have been taken. This argument has no basis in reality. The Local Authority did seek to use less invasive measures. On 22nd October, 1998 a notice was sent to the applicant requiring him to replace doors, windows, and missing down pipes. On the 17th July 2000 a notice was sent to the applicant to inform him the property was to be entered on the register of derelict sites. On 28th August, 2002, a s.11 notice was sent to Connaught Street requiring the above mentioned works to be carried out. A previous compulsory purchase order was apparently made in relation to this property but was withdrawn after representations made by the applicant's solicitor, yet when the inspector viewed the site on 5th March, 2008, the applicant still had not taken what he describes as the 'relatively small steps required to render the property non derelict.

6.8 The role of the Court in Judicial Review proceedings has recently been addressed by Denham J. in *Meadows v. Minister for Justice Equality and Law Reform*, [2010] IESC 3 where it was held at 25:-

> (i) In judicial review the decision-making process is reviewed.
>
> (ii) It is not an appeal on the merits.
>
> (iii) The onus of proof rests upon the applicant at all times.
>
> (iv) In considering the test for reasonableness, the basic issue to determine is whether the decision is fundamentally at variance with reason and common sense.
>
> (v) The nature of the decision and the decision maker being reviewed is relevant to the application of the test.
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> (vi) Where the legislature has placed decisions requiring special knowledge, skill, or competence, for example as under the Planning Acts, with a skilled decision maker, the Court should be slow to intervene in the technical area.
>
> (vii) The Court should have regard to what Henchy J. in *The State (Keegan) v. Stardust Victims Compensation Tribunal*, referred to as the "implied constitutional limitation of jurisdiction" in all decision-making which affects rights. Any effect on rights should be within constitutional limitations and should be proportionate to the objective to be achieved. If the effect is disproportionate it would justify the court setting aside the decision."

Applying these principles to the facts of this case it seems to me that the Board had ample evidence before it on which it could reach a decision that the lands in question came within the definition of a "derelict site". The property had been derelict for at least 16 years and the applicant was well aware of the local authority's concern in this regard. The indication that the work would be done was not enough to render the acquisition impermissible. Such expressions of good intent had been made long before and had not been honoured. It is in the interests of the common good that derelict sites be acquired and I am satisfied that the acquisition of this property was clearly justified by the exigencies of the common good.

Nothing is more damaging to the image and dignity of our towns and cities than derelict sites. They appear as monuments to failure and decrepitude and it is an important function of any local authority to deal with them. In this case much effort has been expended by the local authority over the last almost 20 years to have the applicant remedy the derelict state of his site. It is in a prominent part of the town of Athlone and from photographs was once a fine building and could be again. The power of the local authority to compulsorily purchase this site has not been questioned in these proceedings. What has been challenged is the service of the notices that were served, the failure to hold an oral hearing and the failure to circulate the final letter of the local authority of 5th February, 2008. I do not accept the applicants claim he was unaware of the local authorities concern. I think there is some evidence to show he was aware since December 1991, of the local authorities concern. In any event it appears to me that the applicant on his own case has been fully aware of the impending compulsory purchase since at the very least 24th October, 2007. Since that time no meaningful effort has been made to remedy the dilapidated state of the premises. I do not think any new issues that might require circulation of the local authorities' letter of 5th February, 2008 were contained therein and therefore hold it was not necessary to serve it on the applicant for further comment. Finally there is absolute discretion in the Board as to whether to hold an oral hearing. I cannot see what point such a hearing would have. Whether notices had been served or not, the real issue was the derelict state of the property and the unwillingness of the applicant to remedy that state. It was in the hands of the applicant to bring the CPO

proceedings to a halt by doing so. He had many opportunities over the years to do so but has not. Photographs of the premises show it as a dilapidated eyesore that cries out for renovation. The decision made by the Board in this case was one well within its jurisdiction and the challenge brought against its action herein is in my view unsustained. I refuse leave to seek judicial review.