

THE HIGH COURT

[2005 No. 79 MCA]

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT, 2000

BETWEEN

BERNADINE MCCABE

APPLICANT

AND

CORAS IOMPAIR ÉIREANN AND IARNRÓD ÉIREANN – IRISH RAIL

RESPONDENT

Judgment of Mr. Justice Herbert delivered of 10th day of November, 2006

1. The Applicant seeks an Order of this court, pursuant to the provisions of s. 160 of the Planning and Development Act, 2000, directing the Respondent to restore a 161 years old railway under-bridge at Gingerstown, Caragh, Naas, Co. Kildare, to its condition prior to what is claimed to have been unauthorised development carried out by the Respondent at the bridge on the 16th, 17th and 18th days of March 2002.

2. On the 13th February, 2002, the Applicant wrote to the Respondent asserting that in her belief the intended works of which she had just become aware required a grant of planning permission and, advising the Respondents that unless they could demonstrate that they did not require planning permission for the intended works, she would seek injunctive relief from the courts if the works were to proceed. The letter was copied to 26 other parties: the Planning Section and the Roads Section of Kildare County Council, the Garda Authorities at Naas, the Secretary of the Department of the Environment and Local Government, the Secretary of An Taisce, Members of Dáil Éireann, Local Government Councillors and the Editor of the Leinster Leader Newspaper.

3. The Applicant was not being merely officious or acting from some disinterested sense of concern for the observance of the Planning Laws. As she explained in this letter, she and her family, since about 1995 have been inconvenienced and affected by the increased use of the regional public road straddled by this bridge on the main railway lines between Dublin and Cork, and also serving Waterford, Limerick, Galway, Kilkenny, Killarney, Tralee and other towns. In particular, she instanced the increasing use of this road by heavy goods vehicles, especially very large refuse trucks of abnormal height. The Applicant stated that she resided approximately 2.5 miles from this railway bridge, which she accepted was being repeatedly struck by these vehicles.

4. Receipt of this letter was acknowledged by the Planning Section of Kildare County Council by a letter dated 19th February, 2002. By letter dated 1st March, 2002 the Respondent replied that what Iarnród Éireann proposed to do was to reconstruct the bridge in materials similar to those of which it was constructed but eliminating the arch and, providing an orthogonal section through the bridge to allow high vehicles to pass in safety, without materially affecting the character, design and external appearance of the bridge. The writer informed the Applicant that following receipt of her letter the Respondent had sought and obtained the opinion of Senior Counsel who had advised that the proposed works were "exempted development" by reason of the provisions of s. 4(1)(h) of the Planning Development Act, 2000 and, additionally or alternatively, Class 23 of Part I of the Second Schedule of Planning and Development Regulations, 2001. The writer stated that the works were urgently required to ensure the safety of the public travelling both in trains and on the road and he enclosed in the letter a plan and elevation of the proposed works.

5. On 27th February, 2003 a Notice pursuant to the provisions of s. 75 of the Roads Act, 1993 was published by the Roads Section of Kildare County Council in the Irish Independent newspaper informing the public of the temporary closure of the R 409 road between Halverstown Cross Roads and Capagh, from 00.01 hours on Saturday 16th March, 2002 to 16.00 hours on Tuesday 19th March, 2002, for the purpose of renewing under-bridge number 409 at Gingerstown, Co. Kildare. By letter dated 4th March, 2002 the Applicant lodged her objection to the closure and to these works. The Applicant stated that it should be the duty of the Planning Authority to, "endeavour to preserve our heritage items not destroy them": that the bridge could be reinforced without defacing it, and could be protected from future damage by a traffic calming system which would permit only one heavy goods vehicle at a time to pass under the bridge. By letter dated 7th March, 2002 Mr. Michael O'Neill, Solicitor, acting on behalf of the Applicant, wrote to the Solicitor for the Respondents stating that the Applicant did not accept that the proposed development was "exempted development" within the meaning of s. 4(1)(h) of the Act of 2000 or Class 23 of Part I of the 2001 Regulations.

6. Further letters dated 7th March, 2002, 8th March, 2002 and 12th March, 2002 were exchanged between Mr. O'Neill and the Respondent. By letter dated 8th March, 2002 Kildare County Council advised the Applicant that notice of a decision by Kildare County Council to grant permission for the temporary closure of the relevant section of the R 409 road would be published on Saturday 9th March, 2002 in the Irish Independent Newspaper. This letter stated:-

"Please note that the appearance of this Notice gives permission for the temporary closing of the road only. It does not imply that Iarnród Éireann have been given permission by the Council to carry out the works until such time as it has been established, beyond doubt, that these works are exempt from permission under the Planning and Development Acts."

7. On 11th March, 2002, s. 5 of the Planning and Development Act, 2000 became operational. By letter dated 11th March, 2002, the Applicant sought a declaration from Kildare County Council, as the relevant Planning Authority, as to whether or not the development proposed by the Respondent was "exempted development" within the meaning of that Act. By Order made on the 13th March, 2002 it was declared that the proposed works were not "exempted development". This Declaration was forwarded by Mr. O'Neill to the Solicitor for the Respondent by letter dated 15th March 2002, with a request that the Respondent confirm that they would not proceed with the proposed development without first obtaining a review of the Declaration by An Bord Pleanála or applying for planning permission. By letter dated 15th March, 2002 the Solicitor for the Respondent protested to the Planning Section of Kildare County Council, complaining of what was described as the unfair, unconstitutional, high-handed and unlawful manner in which it had issued the Declaration:-

"In a manner that affects Iarnród Éireann without giving us an opportunity of making our views known".

9. It was accepted by both parties to this application to this court, that the works were carried out by the Respondent on the 16th, 17th and 18th of March, 2002, without obtaining a grant of planning permission or without seeking a review by An Bord Pleanála of the Declaration. It was also accepted that the railway bridge in question is not a "protected structure" as defined by s. 2(1) of the Planning and Development Act, 2000. In judicial review proceedings entitled, "Córas Iompair Éireann and Iarnród Éireann (Irish Rail), Applicants, the County Council of the County of Kildare, Respondent and Bernadine McCabe Notice Party," this court (Mr. Justice Murphy), by Order made on the 21st October, 2004, granted the Respondent an Order of *Certiorari* quashing the Declaration notified to the Applicant on the 15th March, 2002, on the grounds that the decision was a quasi-judicial decision and not an administrative

decision and, the Respondent should have been given time to make submissions before the Declaration was made.

10. By Order of this court (Mr. Justice Abbott) made 28th November, 2005, in proceedings entitled Judicial Review No. 2005/1288 J.R., C  ras Iompair   ireann and Iarnr  d   ireann – Irish Rail, Applicants the County Council of the County of Kildare Respondent and Bernadine McCabe, Notice Party, the Applicant was granted leave to apply by way of Judicial Review for, inter alia an Order of Prohibition restraining Kildare County Council from taking any steps, including the serving of an Enforcement Notice, on foot of the Declaration, an Order of *Certiorari* quashing a statutory Warning Letter purportedly issued by Kildare County Council on the 15th March, 2002 and, an Order of Prohibition, in effect prohibiting Kildare County Council from further considering an application for a s. 5 Declaration in relation to this development. This application for judicial review has not yet been heard by this court.

11. The Applicant seeks relief pursuant to the provisions of s. 160(1)(b) and s. 160(2) of the Planning and Development Act, 2002. These subsections provide as follows:-

“160(1)(b) Where an unauthorised development has been, is being or is likely to be carried out or continued, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure as appropriate the following: insofar as is practicable, that any land is restored to its condition prior to the commencement of any unauthorised development.

106(2) In making an order under subs. (1), where appropriate, the Court may order the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature.”

12. “Unauthorised Development” is defined by s. 2(1) of the Act of 2000 as meaning:-

“In relation to land, the carrying out of any unauthorised works (including the construction, erecting or making of any unauthorised structure) or the making of any unauthorised use”.

13. “Unauthorised Works” is defined in the same subsection as meaning:-

“Any works on, in, over or under land commenced on or after the 1st October, 1964, being development other than:

(a) Exempted development (within the meaning of s. 4 of the Act of 1963 or s. 4 of this Act), or,

(b) Development which is the subject of a permission granted... being permission which has not been revoked...”

14. “Works” is defined in s. 2(1) of the Act of 2000, as including:-

“Any Act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

15. In the same subsection, “Land” is defined as including:-

“Any structure and any land covered with water (whether inland or coastal).”

16. It was not disputed by the parties at the hearing of this application before the court that what was done by the Respondent at Caragh Bridge on the 16th, 17th and 18th March, 2002, fell within this definition of “works” and, that the general obligation to obtain planning permission contained in s. 32 of the Act of 2000, applied to such works unless the development was exempted development.

17. The Respondent did not have a grant of planning permission to carry out the development. The Respondent argues that the development is “exempted development” within the provisions of s. 4(1)(h) of the Planning and Development Act, 2000. At the hearing of this application before the court the Respondent abandoned all reliance upon the provisions of Class 23 of Part I of the Second Schedule of the Planning and Development Regulations, 2001. Whether or not the instant development is or is not “exempted development” within the provisions of s. 4(1)(h) of the Act of 2000 Regulations is a matter which a Planning Authority and An Bord Plean  la, on review, are uniquely well qualified to determine, as acknowledged by the legislature by the enactment of s. 5 of the Act of 2000. However, the provisions of s. 5 are not mandatory in nature and in the special circumstances of this application, particularly, in view of the Order of this court made the 28th November, 2005, in my judgment it would not be just or appropriate to adjourn this application to enable the Applicant or the Respondent to obtain a declaration pursuant to the provisions of s. 5 of the Act of 2000.

18. The primary issue, which therefore becomes necessary for this court to consider, is whether or not the development at railway under-bridge No. 409, Gingerstown, Caragh, Naas, County Kildare, is or is not “exempted development” within the provisions of s. 4(1)(h) of the Planning and Development Act, 2000.

19. The following description of the bridge, prior to the carrying out of the works by the Respondent is taken from paragraph 6 of the affidavit of Mr. Tom Ruane, Engineer and Production Manager of Infrastructure, Tracks and Structures of Iarnr  d   ireann – Irish Rail, a subsidiary of C  ras Iompair   ireann, sworn on 16th December, 2005. No dispute arose between the parties at the hearing of this application before the court in this regard. Mr. Ruane states as follows:-

“The bridge as constructed comprised an arch barrel consisting of brick units, placed in uniform courses to form a semicircular profile. The arch face also consisted of limestone units or voussoirs. The thrust induced by the arch self weight and applied load was resisted by abutments consisting of vertically constructed masonry, interfacing with the arch barrel at the springing points. The fill material laid on top of the arch back is contained by the spandrel walls, which are of masonry construction. Parapets, consisting of concrete block work, are supported by the spandrel walls and at the crown, by the arch barrel. Above the block work there was also a railing present, although this is of no structural significance.”

20. At paragraphs 17 to 20 inclusive of his said affidavit, Mr. Ruane gives details of the works carried out by the Respondent on the 16th, 17th and 18th March, 2002. He avers that the works were carried out on these days in accordance with the normal practice of the Respondent in order to minimise the level of disruption to both road and rail users. There was no controversy between the parties at the hearing of this application with regard to this description of the works which is as follows:-

“17. The nature of the works carried out consisted of the brick/stone arch bridge structure being replaced with a flat span pre-cast concrete deck structure. The new deck beams were placed on new pre-cast concrete bed stones which in turn sit on the original stone abutment walls. The new bridge deck was placed at a higher level than the original arch

bridge in order to allow the safe passing of high sided vehicles underneath, thus mitigating the risks associated with bridge bashing. Replacing an arch structure with a flat structure also provides benefits in relation to clearance restriction from road level...

18. Pre-cast concrete elements were used to enable fast reconstruction of the bridge and thus minimise the closure of the Dublin-Cork line. In order to enhance the appearance of the bridge reconstituted stone facing was used on the new parapet walls and abutment. As much of the existing stone structure as possible was maintained, for example, wing walls and lower section of the abutment walls. More specifically, elements of the existing bridge which were maintained include four stone wing walls to each corner of the bridge... and section of two abutment walls...

19. The concrete bed stones which formed the upper sections of the bridge abutments were faced with stone in order to help it blend in with the original stonework. Further, although the road clearance height of the bridge was increased to a limited extent for safety reasons, the dimensions of the bridge have not otherwise been significantly altered. A plan area of the bridge bash footprint area which is 23 degrees offset to the public road, was not altered from the original. The removal of the arch and rising of the bridge deck has caused a minor increase in the dimensions of the vertical walls which support the bridge...

20. The stability of the railway embankments were also enhanced by extending the parapet walls on each side of the bridge thus preventing ballast falling down onto the road..."

21. At paragraphs 20 – 23 inclusive of his said affidavit, Mr. Ruane explains why the arch structure was not repeated. The Respondent accepted the submission of Senior Counsel for the Applicant that such reasons are entirely irrelevant to the issue of whether or not the works were "exempted development" within the provisions of s. 4(1)(h) of the Planning and Development Act, 2000.

22. However, in my judgment it is relevant to consider the reasons offered by Mr. Ruane as to why it was necessary to carry out these works. At paragraphs 7 – 11 inclusive of his affidavit sworn on the 16th December, 2005, he sets out the results of an assessment of the bridge carried out by the Respondent in July, 2000. At paragraph 12 of his affidavit he refers to ongoing routine inspections thereafter of the bridge. At paragraph 13 he describes the carrying out of emergency repairs to the bridge following a reported bridge strike on the 23rd December, 2001, when it was found that one of the large stones which formed the ring arch had been dislodged and had fallen onto the road. At paragraph 14 he sets out the results of a close visual survey of the bridge, undertaken by the Respondent's Divisional Engineer Office in conjunction with the Structural Design Office. At paragraph 14 he avers that the following primary defects were noticed:-

"(i) Lamination of the brick coursing in the bridge soffit, that is the section of the external layer of the brick had become detached from the remaining layers.

(ii) Sections of the brick arch barrel had become soft and brittle. Some minor section of the brick could be removed by hand. This was primarily due to constant bashing and scraping by high sided vehicles on the bridge soffit.

(iii) A crack/gap of approximately 20 – 25 mm had appeared along the interface between the stone ring arch and adjacent brick soffit. This crack had occurred since May 2000 when the bridge had been repaired after a strike which resulted in similar serious damage to the stone ring arch on the Naas side of the bridge. This indicated that the stone arches were tending to spread away from the main body of the bridge structure.

(iv) The cores taken from the brick soffit again indicated lamination of the brick layers and poor condition of the brick work, which had deteriorated over time due to a combination of factors such as age, poor drainage, etc."

23. At paragraph 15 of his said Affidavit, Mr. Ruane states that due to the severe nature of these defects a temporary 40 miles per hour running restriction was imposed on all trains crossing this bridge, with a view to having the bridge renewed at the earliest available opportunity. Senior Counsel for the Applicant attached very great importance to the use by Mr. Ruane of the phrase, "having the bridge renewed". Ms. Butler also pointed to the use of the phrase, "what Iamr d  ireann proposes to do is to reconstruct the bridge...", in the letter dated 1st March, 2002 from Mr. Michael Carroll, Solicitor for the Respondent to the Applicant and copied to the other persons and bodies, (other than the Members of D il  ireann, the various Local Government Councillors, and the Newspaper Editor), to whom the Applicant had copied her letter of 13th February, 2002.

24. Ms. Butler submitted that works of renewal or reconstruction, which she said had taken place in this instance, were outside the provisions of s. 4(1)(h) of Planning and Development Act, 2000, which, she said, only applied to works for the maintenance, improvement or other alteration of the existing structure. She submitted that the reconstruction or replacement of a structure with something that was essentially a different structure (even of the same type), is fundamentally different to and of a greater order than the maintenance, improvement or alteration of the original structure.

25. Mr. Macken, Senior Counsel for the Respondent submitted that the works carried out were solely for the maintenance and improvement of this bridge so that the subsection applied to them. Section 4(1)(h) of the Planning and Development Act, 2000, provides as follows:-

"The following shall be exempted developments for the purposes of this Act – Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures."

26. It was conceded on behalf of the Respondent that the works carried out were not only to the interior of the structure but that they had also affected its external appearance. Ms. Butler submitted that the external appearance of the bridge had been materially affected, while Mr. Macken submitted that the changes wrought by the Respondent did affect but did not materially affect the external appearance of the structure, because the overall dimensions remained the same. He referred to the case of *Dublin County Council v. Arnold Lowe and Signways Limited* [2004] 4 I.R. 259.

27. In my judgment, by reference to the photographic record, the external appearance of the bridge has indeed been changed by the elimination of the arch and its replacement with a flat deck and that this necessarily connotes that its external appearance has been materially affected. This is not dependent upon any aesthetic considerations but just on the physical form of the bridge viewed externally. Serious issue was joined between the parties as to whether or not these works had rendered the post works appearance

of the bridge inconsistent with the character of the structure. A considerable number of very helpful photographs of the bridge and of various features of the bridge, both before and after the works had been carried out were exhibited in the Affidavits of the Applicant and of Mr. Ruane and were referred to in the course of argument.

28. In my judgment the renewal or reconstruction of a part or of parts of the bridge would be covered by the provisions of s. 4(1)(h) of the Act of 2000, provided that the extent of that renewal or reconstruction was not such as to amount to the total or substantial replacement or rebuilding of the original structure. The question is one of fact and degree whether in the instant case the original railway under-bridge has been so changed by the works that one could not reasonably conclude that it remains the same bridge even though with some alternations, improvements or indications of maintenance work.

29. I find, on the affidavit evidence that the replacement of the brick and stone arch and fill material with a new flat span pre-cast concrete deck structure is undoubtedly an improvement of the structure. I find that the other works described at paragraphs 17 to 20 inclusive of the affidavit sworn by Mr. Ruane on 16th December, 2005, which I have already quoted, are works of necessary maintenance and also improvements. I find that the original bridge has not been so totally altered that it has become a new bridge even though maintaining some parts of the former bridge. I therefore find that the works carried out by the Respondent were works for the maintenance, improvement or other alteration of the bridge and are to that extent within the provisions of s. 4(1)(h) of the Act of 2000.

30. Ms. Butler, Senior Counsel for the Applicant submitted that the result of the works carried out by the Respondent was to render the appearance inconsistent with the character of the structure. She submitted that an objective bystander looking at the pre-reconstruction and post reconstruction photographs could not fail to notice the significant differences between the shape, form, materials and construction of the two structures. Both Counsel referred to the decision of the Supreme Court in *Cairnduff v. O'Connell* [1986] I.R. 73, where Finlay C.J., (Walsh and Griffin J.J. concurring), held, with reference to s. 4(1)(g) of the Local Government (Planning and Development) Act, 1963, (which also employed the phrase, "which do not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of the structure"), that the insertion of a window in a side wall of a three storey terrace house, the replacement of a window by a door and, the construction of a balcony and staircase for the purpose of converting it into a residence with two flats, had not so materially affected the external appearance of the structure, as to render it inconsistent with the character of the house itself or of adjoining houses. In the course of his judgment, Finlay C.J., (at page 77) held as follows:-

"Secondly, I am satisfied that the character of the structure provided for in the sub-section must relate, having regard to the provisions of the Act in general, to the shape, colour, design, ornamental features and lay-out of the structure concerned. I do not consider that the character of the structure within the meaning of this sub-section will depend on its particular use at any time...."

31. I accept as correct the argument of Ms. Butler that the mere fact that a pre-development structure and the post-development structure is used for the same purpose, as a railway under-bridge, does not mean that the character of the structure has not been materially affected. The Court was also referred to a number of other cases such as: *Westport Urban District Council v. Golden* [2002] 1 I.L.R.M. 439, (High Court); *Boroughs Day v. Bristol City Council*, (January 18th 1996, - Q.B.D.); *Dublin Corporation v. Benthall* [1993] 2 I.R. 58 (High Court); *Esat Digifone Limited v. South Dublin County Council* [2002] 3 I.R. 585, (High Court). However, these cases do not appear to me to expound any new principles with regard to the interpretation of s. 4(1)(h) of Act of 2000, or its predecessor s. 4(1)(g) of the Act of 1963, relevant to this particular issue, or to vary in any way the principles as stated by Finlay C.J.

32. I find that prior to the carrying out of the works by the Respondent this particular bridge presented as a simple, plain and very common type of minor railway under-bridge erected in hundreds from 1839 onwards throughout the island of Ireland. It was a narrow single span structure carrying main line double railway tracks over a minor regional road. It consisted of a brick built barrel vault springing from abutments of five courses of rusticated ashlar limestone blocks. At each end of the vault it had a semicircular voussoir arch of similarly dressed limestone blocks and spandrels of horizontally laid courses of similarly dressed limestone blocks surmounted by a plain concrete parapet. It had heavy steeply angled masonry wing walls or buttresses up to crown top level on either side of the arch. There was no evidence offered at the hearing of this application before the Court that it possessed any features of particular interest from an engineering, architectural, artistic or historical view point. I find that in every respect it conformed to the standard of architectural character stated by Sganzi (Boston Translation from original French, 1827) and cited by O'Keefe and Simington in "Irish Stone Bridges – History and Heritage" (Irish Academic Press, 1991) pages 198 – 199 as follows:-

"Bridges should correspond with the locality – simple and plain upon roads: bold, rich and varied in cities."

33. Following the works carried out by the Respondent I find that the overall dimensions of the bridge remain the same. So also, I find, does its essential and immediate visual impact as a minor masonry railway under-bridge on a minor road leading through a railway embankment. Substantial sections of the original limestone abutments remain as do the masonry wing walls or buttresses. The limestone voussoir arches and spandrels have been replaced by a horizontal lintel of pre-cast pre-stressed grey coloured concrete supported by vertical bed stones in similar material resting upon the original limestone abutments, but entirely faced with reconstituted stone blocks. The original horizontally laid rusticated ashlar limestone and concrete block parapet has been replaced by a similarly laid parapet of reconstituted stone blocks. I find that the visible replacement stone work was designed to blend, and does effectively blend the new single span flat deck of pre-cast pre-stressed concrete with the existing stone structure. I find that the new concrete deck is not of such a thickness, colour or design as to contrast discordantly with the overall darker coloured masonry of the bridge. I find that the post-development visible surface treatment of the bridge is such, that in form, proportion, harmony with its environment, gradation, rhythm of composition, details, colour and reaction to light and shade, it retains its original character [see Steinman and Watson, "Bridges and their Builders" (Dover Publications Incorporated, New York 1957) page 393].

34. The Applicant claims that the removal of what she describes as the "distinctive" Victorian semicircular arch and intricate stone work on the approach faces of the archway has caused this bridge to lose its character. I find that the only really noticeably difference in this bridge from the point of view of an ordinary observant person travelling along the R 409 regional road, is the replacement of the semicircular arch with an opening of rectangular appearance. Undoubtedly the semicircular arch was a distinctive feature of the unaltered bridge. However, as was pointed out by Finlay C.J., in *Cairnduff v. O'Connell*, (above cited), shape is only one of the features which contribute to the character of a structure. I find that vertical masonry walls supporting a horizontal deck of cast or wrought iron beams or girders was not at all uncommon in this type of mid-Victorian railway bridge in Ireland, (see for example Cox and Gould, "Ireland's Bridges", Wolfhound Press 2003). Other railway bridges of this period in Ireland had elliptical arches. I find therefore that there was nothing unique from a historical engineering perspective in this bridge.

35. In my judgment the court must assess the character of this structure by looking objectively at the entity as a whole, taking all of

the matters identified by Finlay C.J., into account. From a purely subjective point of view, one observer might consider that the character of the bridge lay in its environmental context and overall dimensions, its locus, height, width, length and the dimensions of the road opening; another might see its character in the type, cut, colour, size and placement of its structural materials and ornamental work; while yet another might see the semicircular voussoir arches and spandrels as entirely determining its character. I find that it is all these features taken together and other features to which I have adverted and their interaction with each other which gives a structure such as this its character.

36. There are undoubtedly exceptional cases in which a single feature of a structure is so outstandingly remarkable or so important from an aesthetic, architectural or engineering perspective, that it could properly and rationally be said to derive its entire character from that single feature. In my judgment the existence of a semicircular voussoir arch in this instance was not such a case. Undoubtedly some persons, from long familiarity, from social conditioning or from individual preference in the matter of line and form, or for some other reasons, might prefer a semicircular arch to a rectangular opening in this sort of bridge. However, I find for the reasons I have stated that there is no objective basis for considering that one particular type of opening rather than another should be regarded in itself as establishing the character of this sort of bridge.

37. I find that the works carried out by the Respondent to this bridge do not render its present appearance inconsistent with the character of the bridge. In these circumstances, I find that the development carried out by the Respondent in the instant case was "exempted development". As no unauthorised development has therefore been carried out by the Respondent, the Applicant cannot establish a case for relief pursuant to the provisions of s. 160(1)(b) of the Planning and Development Act, 2000. The court will therefore dismiss this application.