

**THE HIGH COURT**

**Record Number: 2014 No. 193 JR**

**Between:**

**Marine Terminals Limited**

**Applicant**

**And**

**Dublin City Council**

**Respondents**

**And**

**Anthony Downes**

**First named Notice Party**

**And**

**Dublin Port Company**

**Second named Notice Party**

**Judgment of Mr Judgment Michael Peart delivered on the 29th day of May 2014:**

1. On the 31st March 2014 the applicant in these proceedings applied *ex parte* under the provisions of Order 84 RSC for leave to seek certain reliefs by way of judicial review, and principally for an order of certiorari to quash a decision of the respondent, Dublin City Council dated the 14th February 2014 which it had made following a request made to it by the first named notice party under the provisions of section 5 of the Planning and Development Act, 2000 (the Act of 2000).

2. The decision under section 5 was that the vertical extension upwards of circa 5 metres of the rail mounted gantry known as T4 at the applicant's port facility at Pigeon House Road, Ringsend constitutes a development and does not constitute exempted development. There was no authorization obtained prior to that development.

3. The applicant complains that this decision was arrived without it being in any way consulted, put on notice of the request for a declaration by the First named Notice Party, or otherwise being given an opportunity of being heard in relation to the matter before the decision was made. They say accordingly that the decision was arrived at in breach of the principles of fair procedures and natural justice and that it should be quashed. The applicant also sought a stay on the decision pending the determination of these proceedings.

4. That application for leave to seek the reliefs was granted by this Court on Monday 31st March 2014. The order as drawn provides also:

*"that the decision of the Respondent dated 14th February 2014 be stayed pending the determination of these proceedings herein until further order in the meantime or until such time as this stay shall have lapsed by virtue of the applicants failure to issue and serve the necessary papers within the time provided".*

5. The respondent Council has now applied by way of Notice of Motion to have the Court either speak to the minute of the order for the purpose of clarifying the nature and extent of the stay intended by the order, or else to discharge the stay completely, because of the serious prejudice which the respondent Council may suffer if the extent of the stay is what the applicant contends for, since it would act as a prohibition on the Council taking any enforcement steps against the applicant under part VIII of the Act of 2000 within the statutory time limit applicable.

6. The applicant contends that the stay granted on the decision made under section 5 of the Act of 2000 is also a stay on any such enforcement steps being taken under Part VIII of the Act.

7. I have considered all the submissions made by the parties on Tuesday last. I was referred to the judgment of Clarke J. in *Okunade v. Minister for Justice, Equality and Law Reform and others*, and the passage at page 193 which was specifically referred to, where very helpful general principles to be applied in matters of this kind are set forth.

8. Having considered all the submissions made, I have concluded first of all that the stay which was granted and which appears in the order should remain. That is a stay on the decision itself under section 5. But I now take the opportunity to clarify, and if necessary by way of amendment to the stay part of the order already made, should the parties so require, that the stay which was granted does not prevent Dublin City Council from taking any steps which it considers ought to be taken under sections 153 to 160 of the Act of 2000, as amended.

9. Those sections provide a discrete and self-contained procedure for enforcement which is not in any way reliant upon any decision made under section 5 of the Act of 2000. In that regard I refer to section 153 (7) of the Act which provides that where a planning authority establishes, following an investigation under this section, that unauthorised development has been or is being carried out, and the person concerned has not proceeded to remedy the position, the authority may issue an enforcement notice, and take further steps thereafter as may be necessary.

10. It seems quite clear that the section requires 'an investigation under that section' to be carried out, and, ergo, that the authority cannot place reliance upon a decision already made under section 5 that the extension upwards of the T4 rail mounted gantry constitutes development and is not exempted development in connection with any enforcement procedure it may initiate under Part

VIII of the Act. There must be a separate investigation under section 152.

11. It is clear also that the Part VIII procedure for enforcement contains within section 152(4) an opportunity for the person to whom any warning letter has issued to make submissions or observations in writing should he or she wish to do so. This is something not provided for in relation to the section 5 declaration procedure.

12. I should add that the stay on the section 5 decision which has already been granted in my order dated 31st March 2014 would be sufficient to protect the applicant from any potential consequences which might flow from the provisions of section 151 of the Act of 2000, in so far as the section 5 decision implies at least that the applicant is guilty of an offence as provided in section 151, and in circumstances where it has had no opportunity to be heard in relation to the matter.

13. The position has now I hope been clarified, and in the event that it is thought desirable that the stay as now clarified should be included in an order, then I will suggest that the parties draft an agreed amended stay order for the assistance of the Registrar which reflects what I have just said.

14. Costs to be costs in the cause - given that it was right to have the extent of the stay clarified, and no fault should at this stage be attached to the applicant in relation to the manner in which the stay appeared in the order dated 31st March 2014.