Neutral Citation Number: [2008] IEHC 394

THE HIGH COURT
COMMERCIAL COURT
JUDICIAL REVIEW

2008 884 JR

IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT 2000-2007
AND
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT 2000
AND IN THE MATTER OF AN APPLICATION

BETWEEN

THOMAS GRIFFIN

APPLICANT

AND
AN BORD PLEANÁLA

RESPONDENT

AND
PRIMARK T/A PENNEYS, WATERFORD CITY COUNCIL AND BRENDAN McCANN

NOTICE PARTIES

Judgment of Mr. Justice John MacMenamin dated the 5th day of December 2008.

1. In these proceedings, brought by notice of motion dated 28th May, 2008, the applicant, who represents himself, seeks to challenge a decision of the respondent (the Board) granting permission for a retail development in Waterford, to Primark/Penneys, the first notice party. This decision was made by the Board on 8th April, 2008. It has been agreed between the parties that the leave and substantive applications be heard at the same time.

Background

2. On 8th April, 2008, the respondent decided to grant permission for the demolition of front portions of an existing Penneys store in Waterford and to construct a new three storey building including sales area, stock rooms, office, and staff areas. The planning authority, Waterford City Council, had previously granted a conditional permission. The applicant appealed that decision to the Board. The Board decided to conduct an oral hearing. An inspector nominated by the Board conducted this hearing on 13th February, 2007. The focus in these proceedings is on what occurred at this hearing. The Board in granting permission on 8th April, 2008, imposed sixteen conditions.

3. The applicant lives at 2 Blackfriars, Waterford, in close proximity to the development. He challenges the decision of the Board on a number of grounds. He seeks not only an order of *certiorari* quashing the Boards decision but additionally, an order directing the Board to actually amend the conditions. One issue which the Court must decide is whether there is jurisdiction to grant such relief by way of judicial review.

What the applicant is seeking in this judicial review

4. Among the conditions which the applicant seeks to have imposed by the Court are the following:-

(a) a reduction in the building height in the vicinity of his place of residence;

(b) an increase in the separation distance between the first floor of the proposed development on the upper floors;

(c) a requirement that the side walls of the proposed "open roof area" be finished in white coloured render and that the floor plan be finished in light coloured slabs so as to ensure that it reflects light into the rear of the adjoining properties;

(d) a specification that the noise levels from the site measured at noise sensitive locations in the vicinity should not exceed certain specified amounts;

(e) a further specification that no construction or excavation shall take place on specified dates on the site and that there should be a noise attenuation scheme in specified fashion.

5. As a matter of fact, the decision of the Board already includes a number of conditions similar but not identical to those sought by the applicant. These include conditions 12 and 13 which relate to construction, excavation and demolition plans; condition 4, treatment of an open roof area, as well as condition 8, treatment of windows overlooking the applicant's property.

6. The Boards substantive response to the applicant's case is that:-

(i) the conditions now sought to be imposed are planning matters within the specialised expertise of the Board;

(ii) judicial review proceedings are not designed as a substantive appeal in respect of planning matters; and

(iii) the applicant is not entitled to agitate the desirability or otherwise of conditions chosen by the Board on planning grounds in these proceedings.

(iv) The matters on which relief is now sought were not raised at the Board hearing.

(v) There is, additionally, an issue with regard to the service of the parties dealt with at para. 11 of this judgment.

7. The applicant describes himself as being an agent or as being retired. I infer from his submissions in Court that while a lay litigant, he is experienced in litigation over a long number of years.

8. I had the advantage of having been provided with the papers prior to this case being heard in the Commercial Court. I specifically brought to Mr. Griffin's attention a range of consequences that might arise were his application to be unsuccessful. Nonetheless, he decided, even after a period given for reflection, to proceed with this application. It is in many ways misconceived.

9. It will be helpful to set out a chronology of events.

Chronology of events
3rd June, 2005: Planning application lodged with Waterford County Council.

26th July, 2006: Application granted subject to conditions by the County Council.

21st August, 2006: The applicant lodged an appeal to the Board against such decision and seeks an oral hearing.

13th February, 2007: Oral hearing. It is undisputed that the applicant left the oral hearing before its conclusion. It is clear some of the issues raised at the hearing and in these proceedings were dealt with in significantly greater detail after he had left.

21st January, 2008: Inspector's Report submitted.

25th January, 2008: Report considered by the Board. The Board decided to defer consideration to a further meeting.

29th January, 2008: Board issued direction seeking revised plans pursuant to s. 132 of the Act of 2000, emphasising redesign of front elevation.

31st January, 2008: Board issued a notice to the developer under s. 132 regarding design including, *inter alia* consideration of altered floor levels.

26th February, 2008: Developer responded to the Board's request. The Board noted that floor level of the building had been raised to the level of 4.9 ordnance datum with corresponding increase in the height of the building of 400 millimetres.

28th February, 2008: Response circulated by the Board stipulating that the last day for reply was 26th March, 2008. On 25th March, 2008, the Board received the applicant's only reply, briefly stating that he had sought advice as to the further implications that this would have and seeking a deferment to 26th March, 2008. The Board had made clear to all parties to whom it had circulated this response, that the absolute deadline was 26th March, 2008, and that it could not extend this deadline in respect of one party. An Taisce, a Mr. Brendan McCann (referred to in para. 11 hereof) and Waterford City Council all made their submissions within the time specified. The applicant Mr. Griffin never made a substantive submission to the Board thereafter.

2nd April, 2008: The Board proceeded to a decision. It granted permission subject to amendments recorded in manuscript in the Board direction of 3rd April, 2008. The Board had information before it in relation to the effect of light on the applicant's premises, including the report of a Mr. Aidan Cosgrave of Watts Consultancy; and a response to the oral hearing from William Hogan of William Hogan Associates, who also addressed the light issue and the impact on the applicant's view from his premises.

The issue of service on Mr. McCann, the third notice party
10. A preliminary issue has been raised in these proceedings, that of service.

In addition to Mr. Griffin the applicant, there was a further appellant before the Board. This was Mr. Brendan McCann of 169, Viewmount, Waterford. Mr. McCann had been an active participant in the oral hearing which was conducted by the Board's Inspector. His written appeal (although not exhibited to this Court), was described by the Inspector as being lengthy, and including a number of photographs of the site and its surroundings. The grounds of objection raised by Mr. McCann had included:-

> ☐ the impact of the project on streetscape in the area;
>
> ☐ negative impact of the demolition of part of the buildings known as ôEgan's buildingö and its replacement by a larger structure;
>
> ☐ the consequent effect on the archaeological heritage of the area;
>
> ☐ the precedential effect of the demolition of Egan's building (an 18th/19th century edifice);
>
> ☐ the insufficiency of planning gains to justify the potential impact on archaeological remains to the site; and, finally,
>
> ☐ the unacceptably negative impact of the development on views of Blackfriars Church.

11. In the Inspector's Report it was stated that Mr. McCann also submitted observations on Mr. Griffin's appeal which were supportive of the points he raised in terms of loss of light, impact on residential amenity, and loss of views. Mr. McCann, it seems was supportive of the applicant at the oral hearing. He was clearly actively engaged therein. He was ultimately served with notice of these proceedings on the 25th July, 2008. The Court has no information from Mr. McCann that he is in any way aware of this application. There has been no reference to any waiver or consent by him. There is not even an indication that he has no objection to the matter proceeding in his absence, or as to how, if at all he is affected by the proceedings.

The service of these judicial review proceedings
12. By virtue of s. 13 of the Planning and Development (Strategic Infrastructure) Act 2006, strict time limits are fixed in relation to the initiation of judicial review proceedings. Section 13 of the Act of 2006, amends s. 50 of the principal act of 2000, so that it now provides (so far as material):-

> "50…
>
> (6) Subject to subsection (8), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (2)(a) applies shall be made within the period of 8 weeks beginning on the date of the decision or, as the case may be, the date of the doing of the act by the planning authority, the local authority or the Board, as appropriate."

However subsection 8 provides:-

> "(8) The High Court may extend the period provided for in subsection (6) or (7) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that –
>
> (a) there is good and sufficient reason for doing so, and

(b) the circumstances that result in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension."

13. Section 50A(2)B of the Act of 2006, provides that an application for s. 50 leave shall be made by motion on notice and that:-

> "…(B) If the application relates to a decision made or other act done by the Board on an appeal or referral, to the Board *and each party or each other party as the case may be, to the appeal or referral.*"

As indicated earlier the decision of the Board was dated 8th April, 2008.

14. The notice of motion Statement of Grounds of Application brought by the applicant in these proceedings were dated 28th May, 2008. The proceedings were brought to Kelly J. on 31st July, 2008, for the matter to be brought before the Commercial Court. Mr. McCann had not been served within the time limit. The applicant appeared in person. Kelly J.'s order of 31st July, which specifically recites the question of service on Mr. McCann, was raised then. That order says:-

> "…And it appearing that there is an issue with regard to service by the applicant of Brendan McCann *a relevant notice party*.
>
> And said counsel for the second named respondent seeking to clarify when the applicant served Brendan McCann with the aforementioned notice of motion for judicial review dated 28th May, 2008.
>
> And the Court noting that the applicant's aforementioned affidavit of service averring as to service of the said notice of motion dated 28th day of May, 2008, on Brendan McCann was sworn on the 25th day of July, 2008.
>
> And the applicant confirming to the Court that Brendan McCann was served by registered post with the said notice of motion dated the 28th day of May, 2008, *service having been effected on Friday last, the 25th day of July, 2008*, at the general post office and the Court so noting…" (emphasis added.)

15. Kelly J. then ordered that the second named respondent's notice of motion dated 23rd July, 2008, seeking to enter the proceedings in the Commercial Court list be adjourned for hearing to 9th October, so as to allow the moving party to effect service of that notice of motion on Brendan McCann. This was done. But since that time Mr. McCann has not participated in the proceedings.

16. When this issue was raised at the hearing the applicant indicated that he would not wish to discommode Mr. McCann in any way. However, no application has been brought to the Court to extend the time for service. Nor has any affidavit evidence been adduced before the Court as to why Mr. McCann had not been served within time or as to why no application was brought to extend the time. I bear in mind that the applicant was fully on notice of this issue from at least the 31st July, 2008. The matter of service was again raised in an affidavit of Patrick Prior, Director of Penneys, filed herein on 17th September, 2008. The applicant was therefore on fair notice of the issue. It will be recollected that the order of Kelly J. aforesaid, referred to Mr. McCann as a relevant notice party.

17. I have been referred to relevant case law by counsel for the respondent, Miss Hyland. She submits first, that the application brought by Mr. Griffin is fundamentally flawed by reason of this failure of service on Mr. McCann within time.

The first relevant authority which I must consider is *KSK Enterprises Ltd. Applicant v. An Bord Pleanála and Others* (Supreme Court) [1994] 2 I.R. 128.

18. In KSK one respondent had not been served within the time limit applicable.

19. The Supreme Court held that the requirements of this section as to the making of an application for judicial review were satisfied by the filing in the Central Office of the High Court, and the service on all necessary parties of the notice of motion within two months of the date of the impugned decision. Consequently, since the applicant had served only the first respondent within the time limited but had not served the other respondents, the application was time barred and could not be maintained. In the course of his judgment Finlay C.J. at p. 137 observed:-

> "I must reject however, any contention to the effect that the service of one party only would be a sufficient compliance with the time provision. There is neither logic nor reason in such an interpretation and it would be clearly in my view, legislating rather than interpreting the section so to decide. The very facts of this case where it would appear possible that the party served within the time was the first respondent and where it is contended at least, that the party not served within the time was the person who had obtained the decision would indicate not only the lack of logic but lack of justice in such an interpretation."

He added:-

> "I therefore conclude that the true interpretation of the section is that it may be complied with by an application which has been made within the time limited in the sense that a notice of motion grounded as is provided in O. 84 has been filed in the High Court and it has been served on all the mandatory parties provided for in the subsection. *If, however, it is not served on all the parties provided for mandatorily within the subsection, as distinct from the power of the Court at a later stage to order the service of additional parties, then it has not been completed within the time limited by the section.*" (emphasis added).

20. In *McCarthy & Others v. An Bord Pleanála* [2000] I.R. p. 42, Geoghegan J. in the High Court had to deal with a somewhat different situation. There the respondent and the notice parties argued that the application for judicial review was out of time and could not be heard, because the two co-objectors on the original appeal to the respondent had not been served within the application for leave to bring judicial review proceedings within the prescribed statutory time. In reply the applicant contended that the relevant section should be interpreted as requiring that only relevant parties needed to be served the application. In *McCarthy* the facts were distinct from the former authority. There, Geoghegan J. was apprised of the fact that the proposed additional parties had no desire to participate. He concluded that the failure to serve within time was not fatal to the application, in the light of evidence before the court as to the attitude of the party not served.

21. In *Murray v. An Bord Pleanála* (High Court) [2000] I.R. at p. 58, Quirke J. held, in refusing an application for leave to apply for judicial review where there had been no service on the County Council, that it could not be argued that the planning authority were in no way relevant to the proceedings, since they were the authority responsible for the proper planning and development of the county

in which the lands in question in the proceedings actually lay. His view was unaffected by the fact that there was a letter from the County Council adduced before him stating that the issue appeared to be between the named parties and they, (the County Council) saw no reason to become involved in the proceedings. He distinguished the facts before him from *McCarthy* on the basis that there had been sworn evidence before Geoghegan J. in the latter case, to the effect that the applicant's co-objectors could not be regarded as parties whose interests were in any way relevant to the matters which he was required to determine.

22. But this Court has no such evidence. Apart from a brief submission from the applicant, no information has been vouchsafed to the Court as to the extent of Mr. McCann's interest or relevance. The Court is left with the situation where it has before it the Inspector's Report which shows that Mr. McCann was an active participant in the appeal. He may have been supportive of the respondent's position then, but in the absence of any relevant evidence whatever, a court cannot infer as to how his interests might be affected or the extent to which he is a relevant party. The Court has not even been given a letter from Mr. McCann indicating his view on the matter. The order of 31st July recites that Mr. McCann is a relevant party.

23. Any court must, and should, be protective of the position of a lay person presenting their own case. But such protection must be limited by the overarching duty to do justice to all parties in a case. The proceedings in this Court are designed to be fast-tracked and to work to strict time limits. No application to extend the time for service on Mr. McCann has been brought, although he was in fact served on 25th July, 2008. It cannot be said that the applicant was unaware of this problem. It was raised as long ago as 31st July, 2008. It was raised again at the outset of this hearing, in questions which I put to the applicant. In these circumstances the Court cannot draw any inferences as to Mr. McCann's attitude or any further conclusions on his relevance. A relevant party has not been served within time and no other application has been brought by the applicant to extend time.

24. Even though the period outside time is not large, in such circumstance I consider that the application has not been properly brought within the stipulated time limit and I would dismiss on those grounds alone. In doing so, I have particular regard to the fact that the issue, having been brought to the applicant's attention, went unaddressed.

Substantial grounds test
25. Section 50A(3)(a) of the Act of 2000, as amended, provides that the court shall not grant s. 50 leave unless it is satisfied that there are substantial grounds for contending that the decision or Act concerned is invalid or ought to be quashed.

26. The meaning of substantial grounds has been the subject of considerable judicial attention. The authorities have been considered and applied by Clarke J. in *Arklow Holidays Ltd. v. an Bord Pleanála* 18th January, 2006, [2006] I.E.H.C. 15. In *Arklow*, the judge referred to the fact that the test in McNamara is well established as the appropriate basis for consideration as to whether or not there are substantial grounds. He observed that there could be little doubt that the threshold was intended to result in a different and higher test than that normally applicable to an application for judicial review.

The grounds raised by the applicant
27. I have considered the grounds upon which relief is sought in these proceedings. The legal tests which arise in judicial review has been emphasised on more than one occasion to Mr. Griffin in the course of this hearing. He wants the Court to impose conditions identified by him on the Board.

28. What Mr. Griffin is seeking from the Court is that, by imposing conditions, it effectively puts itself into the shoes of the Board. That is not the function of a Court in judicial review. It is contended in the statement of the grounds for judicial review that the Board acted unfairly and contrary to natural justice. But no legal basis for this point has been made in the course of the submissions or on the affidavits or exhibits. The position in this case is inescapable. I am satisfied that the Court has no jurisdiction to impose conditions in this situation.

Section 50A(9) of the 2006 Act provides:-

> "50A(9) If an application is made for judicial review under the order in respect of part only of a decision or other Act to which section 50(2) applies, the Court may, if it thinks fit declare to be invalid or quash the powers concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other Act or part of the decision or other Act and *if the Court does so, it may make any consequential amendments to the remainder of the decision or other Act or the part thereof that it considers appropriate.*"

But only in such circumstances may consequential amendments be made.

29. But in the application in suit no evidential basis has been put before the Court as to why *any* part of the application is invalid, or why any part of it should be quashed. Thus the issue of making "any consequential amendments" to the remainder of the decision simply does not arise. Such amendments must be consequential upon an order quashing part of the decision. As has been indicated earlier there are no substantial grounds advanced for such an order. There is no evidence before the Court that there has been any want of fair procedures or that that Board acted in contravention of Mr. Griffin's rights.

30. In reaching its conclusion the Court is entitled also, to take into account other factors relating to the question of substantial interest. There is in this case an overlap between the two tests of *locus standi.*

Substantial Interest
31. The applicant is only entitled to advance grounds in judicial review proceedings where he has advanced those grounds in the course of submissions to the Board where it was open to him. (*Harrington v. An Bord Pleanála* [2006] 1 I.R. 388*; Friends of the Curragh Environment Ltd. v. An Bord Pleanála (No. 2)* [2006] I.E.H.C. 390 [2007] 1 I.L.R.M. 386). In this regard the Inspector's Report exhibited in these proceedings demonstrates that while the applicant was present for part of the hearing he decided not to remain on for the entirety of the evidence which included further material as to the effect of the development on light into his property. He was present for part only of a discussion on the issue. However, he chose to leave the hearing prior to further consideration of the light issue taking place. He was absent also at the time a discussion took place in relation to alteration of the floor height.

32. The applicant having absented himself, it is necessary then to consider whether any *oral or written* submissions made by him prior to leaving the hearing were sufficient to satisfy the test. This must be seen in the context of another issue raised.

The floor height
33. On 28th February, 2008, after the Inspector's hearing, the Board issued what is called a Section 131 Notice. This invited submissions on the developer's design which had been revised in the light of the hearing. This was submitted at the Board's request following the direction of 29th January, 2008. That revised design was consistent with the floor level of 4.9 metres o.d. within the

development. This would have a corresponding increase in the height of the development of 400 millimetres. The applicant was offered an opportunity by the Board to comment on the revised drawings. He wrote a letter seeking deferral. He made no substantive submission.

34. He now seeks to raise this issue in the proceedings, having failed to make submissions to the Board on this precise issue when requested to do so. I have read the letter which the applicant sent to the Board in response to its letter of 3rd March, 2008. It does not in any way constitute a substantive submission; it merely looks for further time. It has not been indicated to the Court that even after that time the applicant had a real substantive submission although he says he had contacted some unnamed experts.

35. Applying the *Harrington* test I am satisfied that the applicant is debarred from raising any issue with regard to floor height. He did not raise the issue when he had the opportunity. He may not do so now.

The lighting question
36. The full extent of the evidence on Mr. Griffin's involvement at the hearing before the Inspector is recorded as follows:-

> "Submission by Mr. Griffin
>
> Mr. Griffin stated that he had looked at the proposal and felt he had been 'kept in the dark' about the proposed development when it was being designed. He considered that this was a pity and that he felt that he might have to move from his house if the development went ahead as he could not accept the impact of the scheme on him.
>
> In reply to a question from the Inspector he stated he had nothing further to add and trusted the Board to make the right decision.
>
> There were no questions for Mr. Griffin from any of the parties."

37. While evidence in relation to the "light issue" was adduced during which Mr. Griffin was apparently still present at the hearing, he does not appear to have played any substantial role therein. In a written submission to this Court he says that when his turn had come to speak in the hearing that he could "barely stutter a few words and had to leave in confusion straight away afterwards". He said this occurred because he was so overwrought. I mention in passing that Mr. Griffin did not appear in any way overwrought in presenting his case before this Court. He did so with considerable panache and courtesy. But he was in no way abashed by the occasion. The explanation he gave to this Court for not remaining on at the hearing was that he had simply had another appointment on that evening and therefore left the hearing. This is at variance from the written submission as to his alleged overwrought condition.

38. In fact the substantive discussion in relation to the lighting effect of the development on Mr. Griffin's house, took place in the Inspector's hearing after he left. Unfortunately, as a result of his own choice, Mr. Griffin was not present. One would have thought that if the matter was of real substance he would have remained on for the totality or have raised any matter that truly concerned him at the hearing. The correct place to ventilate the issues was before the Inspector, or before the Board. Mr. Griffin by his own choice did not avail of these opportunities.

39. Similar observations apply in relation to any point Mr. Griffin now would wish to make in these proceedings regarding the separation distance between the floors in the project. They were not raised then. They may not be raised now.

Differences between the Inspector's Report and the Board's conditions
40. The applicant also relies on the fact that in certain respects the Inspector's Report differs from conditions which were ultimately attached by the Board. The Inspector recommended the inclusion of certain conditions not ultimately included. However the Board is not bound by the Inspector's Report either in relation to the substantive decision or in relation to the conditions attaching to the decision. It must determine the appeal pursuant to s. 37(1)(b) of the Act of 2000. That subsection, insofar as applicable, determines that "the Board shall determine the application as if it had been made to the Board in the first instance".

41. However, it is apposite to revert to s. 146 of the Act of 2000. This provides:-

> "146 – (1) The Board or an employee of the Board duly authorised by the Board may, in connection with the performance of any of the Board's functions under this Act, assign a person to report on any matter on behalf of the Board.
>
> (2) A person assigned in accordance with *subsection (1)* shall make a written report on the matter to the Board which shall include a recommendation and the Board shall consider the report and recommendation before determining the matter…"

I have read the Minutes of the Board. It is clear that it did indeed consider the Inspector's Report and recommendation and largely followed that recommendation to the effect that there ought to be a grant of permission. In relation to decisions attaching to the permission it included the majority but not all of the conditions suggested by the Inspector. This the Board was entitled to do.

Matters within the Board's competence
42. I am satisfied that the issues which have been raised by the applicant are not appropriate for judicial review. They are ones which lay uniquely in the competence of the Board. None of the issues which have been raised go to the decision making process of the Board but rather its substantive decision to exclude certain conditions. Issues of visual intrusion and noise arising from the development were matters particularly within the competence of the Board as an expert body to which the Court should pay due curial deference. In the words of Finlay C.J. in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39:-

> "under the provisions of the Planning Acts the legislature has unequivocally and firmly placed questions of planning, questions of the bounds between development and the environment and the proper convenience and amenities of an area within the jurisdiction of the planning authorities and the Board which are expected to have special skill, competence, and experience in planning questions. The Court is not vested with that jurisdiction. Nor is it expected to, nor can it, exercise discretion with regard to planning matters."

43. As a matter of fact there is ample evidence that the Board itself assessed the impact of the increase in building height. It imposed a number of conditions designed to mitigate any visual intrusion and, to protect the residual amenity of housing including the applicant's housing.

44. In the course of the oral hearing the Board heard the submission of a Mr. Cosgrave, whose brief was to assess the impact of the proposed development on the daylight and sunlight to the applicant's house. He concluded it would not be materially affected by the development and had assumed in his tests that the walls of the light well would not be reflective.

45. There was further discussion at the hearing about the change in floor level being raised from 4.5m to 4.9m. The applicant had left the oral hearing at this stage. The Board adopted the recommended conditions requiring the provision of access for the maintenance of the light well, the position of opaque windows and a construction management plan. The construction work hours designated by the Inspector were the same save for a five and a half hour increase on Sundays.

46. In its direction of 29th January, 2008, Penneys were directed to submit revised drawings significantly modifying the design to accommodate and address:-

> (a) a redesigned front elevation for the proposed building more compatible in terms of plot with and solid to void ratio within the historic urban green of the city centre,
>
> (b) a redesign of the interface between the site and the Blackfriar Priory to enhance the setting of an access to the church.

The developer's response to the s. 131 Notice confirmed that this would result in an increase to the building height of 400 millimetres which information was circulated to the applicant by the section 131 Notice.

47. Insofar as visual intrusion was concerned the Board dealt with this matter in its reasons and consideration. It concluded that the development would not significantly impact on the architectural or archaeological heritage of Waterford city. This was a view shared by the Inspector.

48. Finally, it will be noted that the Board's decision contains several conditions to protect the visual and residential amenity of the area. These included a condition to provide for access to the light well to the rear of the applicant's property; a further condition requiring that windows overlooking the property should be in opaque glazing in order to prevent overlooking and further conditions prescribing construction hours and requiring the submission of a construction and demolition plan to be submitted to the planning authority for agreement.

49. While the applicant failed to raise these issues at the appropriate time, it cannot be said his concerns have been ignored, either by the Inspector or the Board. They dealt with these questions even in the absence of submissions from the applicant.

50. In the light of the foregoing I consider that the application for leave fails on all grounds.