THE HIGH COURT

[RECORD NO. 2016/691 JR]

BETWEEN

BRENDAN DOWLING

APPLICANT

AND

GALWAY COUNTY COUNCIL

RESPONDENT

AND

COSHLA QUARRIES LIMITED

NOTICE PARTY

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 11th day of January , 2018

Nature of the case

1. This is a case in which there are motions by each of the respondent County Council and the applicant respectively in the context of judicial review proceedings concerning the operation of a quarry in Galway. The motion of the respondent Council is to strike out an affidavit sworn by the applicant, his third affidavit, on the basis that it contains scandalous and vexatious material and that its contents are irrelevant to the subject-matter of the judicial review in respect of which leave was granted. The motion of the applicant is to amend his pleadings to as to encompass further matters within his judicial review, which in turn is relevant to whether some of the issues canvassed in the third affidavit dated the 28th February, 2017 should be struck out. By way of background it should be said that the applicant represented himself with the assistance of a McKenzie friend.

Relevant background

2. The background to the case is that a quarry known as Coshla Quarries operates adjacent to the L7109 road in Co. Galway. One of a number of planning decisions in respect of the quarry was made on the 10th March, 2011, giving a grant of permission subject to 25 conditions. Condition 22 (a) provided that, on an annual basis, and for the lifetime of the facility, the developer must submit to the planning authority three copies of an environmental audit; to include a written record of all traffic using the site, a topographical survey, and a written record of all complaints and actions taken in response to complaints. This environmental audit was to be submitted before the end of February each year. There was provision for the audit to be carried out by an independent environmental auditor approved in writing by the planning authority.

3. The applicant and his family live on the approach road to Coshla Quarries and there is a long history of complaints by the applicant in respect of the operation of the quarry, in particular but not exclusively relating to traffic matters. Leave to commence these particular judicial review proceedings was granted on the 1st September, 2016. The leave granted was in respect of reliefs 2 and 3 which had been sought. Relief 2 as sought is an order of *certiorari* quashing the decision of the Council made on or about the 3rd June, 2016 "whereby the respondent purported to accept that a submission of an environmental audit by Coshla Quarries Ltd. complied with conditions attaching to planning permission 09/1958 (An Bord Pleanala no. PL 07.235821)". Relief 3 as sought is a declaration that the said decision of the respondent made on or about the 3rd June, 2016 is null and void and ultra vires and has been made contrary to the applicant's constitutional and legal rights.

4. The statement of grounds set out by the applicant explain that he lives on the L7109 approach road, Coshla Quarries Ltd, and refer to the environmental audit submitted by Coshla Quarries to Galway County Council dated the 29th February, 2016 together with a covering letter dated the 26th April, 2016. It asserts that the audit being posted on the website of Galway County Council on or about the 3rd June, 2016. It says that the audit purporting to comply with the planning permission condition 22 does not in fact comply with it. It refers to correspondence from the applicant to Galway County Council on the 27th June, 2016, asserting non-compliance with condition 22(a) of the planning permission and asking the respondent to acknowledge this or to provide reasons for its decision. It refers to a response received, on the 4th July 2016, in which he was informed that the matter had been referred on to another party, Ms. Catherine McConnell, but states that no further reply or response was received thereafter. The grounds go on to say that the traffic movements exceeding the allowed amount and at the allowed times not only cause a disturbance but also a traffic hazard and place those using the road in danger, including family members. It says that four complaints regarding planning permission breaches made to the quarry during 2015 were not included in the purported audit as required by the attached planning permission condition. It says that the respondent in deciding to accept and not enforce the condition on the quarry is acting in breach of the applicant's constitutional and legal rights. It says that the decision of the respondent is not based on logic and is unreasonable and that the respondent has been given an opportunity to reply with any reasons for a decision and chose not to avail of the opportunity. The decision, it is asserted, was not made in due course of law and is null and void and of no effect.

5. As can be seen from the above, the scope of the judicial review in respect of which leave was given was limited to two matters connected with the environmental audit of June 2016. The two matters consisted of the volume of traffic and the issue of complaints made. The first affidavit of the applicant sworn on the 21st August, 2016 was similarly narrow in scope and supported the matters set out in the statement of grounds, and then exhibited Mr. Dowling's own letter of the 27th June, 2016 and the environmental audit dated 29th February, 2016. The audit is a document authored by a William Smyth, Chartered Engineer, who appears to be with the Irish Concrete Federation based in Dublin. The audit is addressed to the quarry manager at Coshla Quarries. Among the matters referred to are traffic records, in respect of which he says as follows: -

> "I wish to confirm that I have examined the electronic management accounts system and weighbridge reports held by Coshla Quarries for five periods during 2015. As before, the product breakdown and volume of tonnage is highly confidential but has been made available for this audit function only; the records are available for inspection by Galway County Council upon request. I confirm that the maximum traffic threshold, per Condition 3 (a) does not appear to have been exceeded in any instance during the periods inspected with average movements comfortably less than the permitted movements."

6. Under the heading "Complaints", the document said as follows:- "It is noted that there were no complaints directly to Coshla Quarries in 2015" . The affidavit of the applicant goes on to exhibit various complaints made by the applicant in 2015, obviously with a

view to showing that the audit is incorrect in suggesting that there were no complaints in 2015.

7. A second affidavit was sworn by the applicant on the 7th November, 2016 in which he complained of delays on the part of the respondent and notice party in responding to his motion, and said that each day passing increased the risk of death or injury to the public and that there was an urgency to the progression of the proceedings. He also asserted that on a particular date, Sunday 2nd October 2016, the director of the quarries, Mr. John Flaherty, parked and occasionally drove slowly up and down the applicant's family home for about two hours in an apparent attempt to intimidate the applicant and eventually departed after shouting abuse at him.

8. A statement of opposition dated the 17th November, 2016 was filed on behalf of the respondent County Council. It is pleaded that the applicant did not bring the application within the 8-week period as specified by the relevant provisions of the planning legislation, namely s.50 of the Planning and Development Act 2000, as amended by s.13 of the Planning and Development (Strategic Infrastructure) Act, 2006. It is also pleaded that no decision amenable to judicial review was made by the Council on the 3rd June, 2016. It refers to the precise terms of Condition 22 of the relevant planning permission in respect of the quarry, and says that the condition was "complete and prescriptive regarding the content of the environmental audit and the respondent did not, at any material time, have any discussion or function in agreeing the terms of the annual audit". It pleads that the respondent's sole function under Condition 22 was to make the audit available for public inspection at the offices of the planning authority and in other locations agreed in writing with the authority.

9. The notice of opposition also pleads that written complaints by the applicant dated the 4th July, 2015 and 25th July, 2015 were copied to the Council and were then acknowledged and investigated by the planning enforcement section as representations made in writing under Part VIII of the 2000 Act. It says that the planning authority wrote to the Council and received responses, in July and September 2015 respectively, which were deemed by the respondent to have dealt satisfactorily with the complaints received.

10. An affidavit of the same date, 17th November, 2016, was sworn by a Ms. Valerie Loughnane-Moran, senior planner with the Planning and Sustainable Development unit of Galway County Council in which she verified the matters set out in the statement of opposition. She swore a further affidavit on the 2nd December, 2016. She referred to the allegation of the applicant in his second affidavit that there was a risk of death or injury in the area. She said that the planning authority did not have any evidence that this was the case and that the completion of works in the relevant junction had been carried out in accordance with the reportage on file. She also rejected suggestions in his affidavit that the Council had discharged its functions for the purpose of benefitting the quarry and not in the public interest.

11. In response to the allegations made by the applicant concerning the 2nd October 2016, Mr. Flaherty, the director of Coshla Quarries, swore an affidavit dated the 16th November, 2016, stating that after dropping his family back home after an outing, he drove to the security office for a coffee and observed the applicant flying low over the factory and quarry in his gyrocopter, a form of light helicopter in which the operator sits on an open seat attached to a steel framed structure with a rotor on top and a propeller at the rear. He said that the quarry is crisscrossed in all directions by high tension wires on pylons and his observation was that the applicant was flying dangerously close to the power lines. He says he collected another man and they drove past the applicant's house. He denies the description by the applicant of what happened on the day and gives further details of his version of events. An affidavit was also sworn on the 15th November, 2016 by the other man referred to by Mr. O'Flaherty, Mr. William Fitzgerald, who is a neighbour of the applicant but also an employee at the quarry and then fiancé of the daughter of Mr. John Flaherty. He also gave a version of events on the 2nd October, 2016 which contradicts the description given by the applicant. Nothing in the present application concerns these matters and it is not necessary to resolve the conflict of fact or to comment upon it for present purposes. I mention it merely for completeness to show where matters stood prior to the service of the third affidavit of the applicant.

12. The case took on a fresh dimension with the swearing of a third affidavit by the applicant on the 28th February, 2017. This is a lengthy affidavit of 28 pages and 111 paragraphs which set out the whole history of planning applications in respect of Coshla Quarries, and goes back as far back as 2006 in this regard. In the course of the applicant's narrative of events, he makes broad and serious allegations against a number of parties. For example, at para. 7, he describes the Council's behaviour as "irregular and incorrect efforts to accommodate the illegal and unauthorised conduct in which Coshla Quarries Ltd, its directors and others have engaged in breach of planning conditions". At para. 14, he refers to Mr. Flaherty calling to his home and having "deceived us by giving us assurances regarding the manner in which the quarry would be operated, but once he had planning he blatantly contravened its conditions". At para. 52, he refers to certain legal proceedings instituted by the Council as being "nothing more than a public relations exercise to alleviate my fears and create the false impression that the Council intended to take legal action to address the said illegal and unauthorised constructions and halt the illegal operation thereof." At para. 54, he alleges there was an illegal construction of an unauthorised cement plant in the quarry, and at para. 64, he alleges that an unauthorised asphalt plant was erected. At para. 99 he refers to "gross negligence" on the part of Galway County Council and makes allegations such as that there was a "wanton waste of public funds to cover the cost of proceedings" instead of the Council adhering to its statutory duties and responsibilities. He also sought a number of additional reliefs, including: an order for the appointment of an independent party to oversee the respondent's compliance with its statutory duties and responsibilities, an order requiring the developer to cease all works at the quarry, and an order requiring the respondent and notice party to come before the court to demonstrate compliance with all of the conditions imposed by multiple grants of planning permission prior to the recommencement of operations at the quarry.

13. The Council responded to this third affidavit by issuing a motion dated 8th May, 2017, seeking the striking out of the entirety of the third affidavit pursuant to O. 84, r. 26, para. 1 and/or O. 40, r. 12 and/or O. 40, rule 4 of the Rules of the Superior Courts. It was also sought to strike out the affidavit pursuant to the inherent jurisdiction of the court on the grounds that it contains matters which were inadmissible and irrelevant to the matters in issue in the judicial review proceedings, and as being unduly burdensome and/or prejudicial to the respondent in its opposition to the proceedings. In the alternative, it was sought that so much of the affidavit as fell within those categories should be struck out and confirmation was sought from the court that the respondent need not file any affidavit in response without any adverse inferences arising from not doing so. This motion was grounded on an affidavit of Robert Meehan, law agent for Galway County Council dated 6th April, 2017.

14. Mr. Dowling responded by issuing a cross motion dated 2nd May, 2017, seeking an order pursuant to O. 28, Rules of the Superior Courts and pursuant to the inherent jurisdiction of the court, granting him the right to seek the following:

> • "Such Orders and Directions ordering the respondent to comply with and to ensure compliance with the condition imposed by An Bord Pleanála in the grant of Planning Permission No. PL07.235821",
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> • "Such Orders and Directions ordering the respondent to ensure compliance by the notice party herein, Cushla Quarries Limited, and its agents and servants, with the conditions imposed by An Bord Pleanála in the grant of Planning Permission No. PL07.235821",

• "Such Orders and Directions as this Honourable Court deems fit to address the respondent herein, Galway County Council, nonfeasance in its failure to ensure compliance with the conditions imposed by An Bord Pleanála in the grant of Planning Permission No. PL07.235821".

This motion was grounded on a further supplemental affidavit of the applicant sworn on 2nd May, 2017, which amounted to some 26 pages. In essence, the applicant in this affidavit seeks to persuade the court that the amendment of the pleadings is required to address matters of significant public importance which concern matters of public safety and the failure of Galway County Council to adhere to its statutory duties and responsibilities. While the proceedings were ongoing, the applicant also swore a further supplemental affidavit dated 16th June, 2017, which was subsequently filed on the 20th of June in which, *inter alia*, he made serious allegations against the author of the environmental audit report and the deponent on behalf of the respondent Council.

Relevant legal parameters concerning striking out affidavits
15. Order 40, rule 4 of the Rules of the Superior Courts provides:

"Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of any affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall not be allowed."

16. Order 40, rule 12 provides that "[t]he Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client."

17. Order 19, rule 27 provides "[t]he Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client."

18. These provisions have been considered in a number of cases, and a consistent approach is not altogether discernible. In *Bula Ltd. v. Tara Mines Ltd.,* (unreported, Murphy J., 17th of September, 1990), 1990 WJSC-HC 1450, Murphy J. commented on O. 40, r. 12 in the context of an interlocutory application to strike out the defence of the first named defendant by reason of the alleged failure of the said defendant to fully and properly to comply with an order for discovery:-

> "Whilst it is clear, therefore, that the Irish rule does not go as far as its UK equivalent it is clear that the Irish rule must likewise have imported some concept of "irrelevancy" as it is inconceivable that an affidavit or any part thereof could be struck out on the grounds that the material therein contained was scandalous if that material was in fact relevant to the matters in issue. Even allowing, however, that the particular rule itself would not justify the striking out of an affidavit solely on the grounds of irrelevancy I have no doubt but that the defendants are correct in contending that the court does have an inherent jurisdiction to strike out an affidavit which would constitute an abuse of the process of the court and in that context the prolixity of a document, the extent to which the material therein contained was irrelevant or inadmissible, the intention of the deponent in filing the affidavit and the consequences for the other party in dealing with the irrelevant matters would be material considerations but perhaps the primary and decisive consideration will be the relevance of the document however voluminous and however embarrassing."

19. In *Goode Concrete v. CRH plc*. [2011] IEHC 310, Cooke J. dealt with applications to strike out as scandalous or to rule inadmissible the evidence contained in four affidavits sworn in response to the defendant's application for security for costs. It was argued that the contents were wholly irrelevant to the issue that fell to be decided on the motion for security of costs and related instead to facts, events and allegations which, for the most part, predated by many years the facts and events upon which the claims presented in the statement of claim were based. The plaintiff argued that the evidence was both admissible and relevant and could not be characterised as scandalous; it was said that it testified to a historical pattern of serious and anticompetitive conduct and cartel arrangements in the cement and concrete markets over many years. It was argued that the plaintiff was required to present this evidence in order to resist the order for security for costs because of the defendant's claim that the statement of claim was devoid of any evidential basis for the claims contained in it. Cooke J. said that there was clear distinction between the issues on the motion for security for costs, on the one hand, and the diverse issues which it would be required to consider at the trial of the substantive claims, on the other. It followed that evidence which was irrelevant or inadmissible with respect to the motions might still be relevant and admissible at the trial. He took the view that the material to which objection has been taken in these affidavits was inadmissible and irrelevant to the immediate issue arising on the motions for security for costs and that the court would disregard that evidence in hearing the motions; therefore, no necessity arose for the defendants to reply to those affidavits in that regard. However, the court said that it would also make clear that the proposed evidence could not be characterised as scandalous in the sense of O. 40, r. 12 such that it was necessary that the material be struck from the record of the court. He said, at para. 12 as follows:-

> "For the purpose of O. 40, r. 12 of the Rules of the Superior Courts, allegations made on affidavit may be 'scandalous' when they are not only irrelevant in relation to the issue to be determined by the court but so gratuitous and vexatious in relation to the subject matter of the cause as to amount to an abuse by a party of the privilege that attaches to evidence given in the course of litigation. That is not the case here. It is accordingly sufficient in these circumstances to rule the objected averments inadmissible at this point as irrelevant to the issue arising on the motions for security for costs and to proceed to hear those applications accordingly."

20. In *Re Bovale Developments: Director of Corporate Enforcement v. Bailey* [2011] 3 I.R. 278, the Supreme Court considered the issue of striking out portions of an affidavit on an interlocutory application. This arose in the context of an application by the Director of Corporate Enforcement to disqualify directors of a company pursuant to s. 160 of the Companies Act 1990. The affidavits filed on behalf of the Director of Corporate Enforcement contained, *inter alia*, excerpts from a report of a Tribunal of Enquiry. In the High Court, Irvine J. held, *inter alia*, that the excerpt from the report of the Tribunal on Enquiry was clearly inadmissible and that the relevant portions of the affidavit should therefore be struck out. This conclusion was upheld by the Supreme Court on appeal on the basis that an excerpt from a Tribunal Report is sterile and of no legal effect and cannot be used as evidence in court proceedings. However, different opinions were expressed as to the precise procedures for striking out portions of affidavits in such circumstances and whether it was appropriate to strike out portions of affidavits at interlocutory stage at all. Fennelly J. engaged in a discussion of the precise wording of O.40, r. 12, O.40, r. 4, and O.19, r. 27. He was of the view that O. 19, r. 27 did not apply to affidavits at all because it referred to "pleadings". He also thought that Order 40, r. 4 did not contain any power to strike out portions of an affidavit and that in reality the only rule permitting this was Order 40, r. 12, which was confined to the striking out of "scandalous" material. He pointed out that this limited basis for striking out material from affidavits could be contrasted with the position in England, where

the relevant phrase was "scandalous, irrelevant or oppressive".

21. Hardiman J. was emphatic in his view that inadmissible evidence such as an extract from a report of a Tribunal of Enquiry should not be included in an affidavit and that a party the subject of any disqualification proceedings should not be put to the hazard of waiting until the proceedings came to hearing before these portions of the affidavits could be struck out. He took the view that Order 40, r. 4 was sufficiently broad in relation to the striking out of this inadmissible material. Denham J. did not express a view on these specific Rules but appeared to envisage that the court had a jurisdiction to strike out portions of affidavits as part of case management in appropriate cases.

22. Delaney and McGrath in their book *Civil Procedure in the Superior Courts*, 3rd Ed., (Dublin, 2012) at p. 664, para. 20-85 state as follows:-

> "While Order 40, rule 12 is clearly confined to scandalous material and Order 40, rule 4 does not confer any power to strike material out of an affidavit, it is submitted that, as held by Murphy J in *Bula Ltd v Tara Mines Ltd*, the inherent jurisdiction of the court to control its own process provides a more than satisfactory basis for such an order."

Legal parameters concerning extending the grounds for judicial review

23. Although the applicant sought to rely on O. 28, it seems to me that the matter falls to be dealt with in the context of the specific provisions of the Rules concerning proceedings by way of judicial review and the authorities in the area. The provisions of O. 84, r.23 are relevant in this regard and provide as follows:-

> "23. (1) A copy of the statement in support of an application for leave under rule 20, together with a copy of the verifying affidavit must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.
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> (2) The Court may, on the hearing of the motion or summons, allow the applicant or the respondent to amend his statement, whether by specifying different or additional grounds of relief or opposition or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.
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> (3) Where the applicant or respondent intends to apply for leave to amend his statement, or to use further affidavits he shall give notice of his intention and of any proposed amendment to every other party."

24. In *Keegan v. An Garda Síochána Ombudsman Commission* [2012] 2 I.R. 570, the Supreme Court considered the question of when it was appropriate to grant an amendment of grounds in a judicial review case. The context was a judicial review that had been initiated by the applicant, a Garda sergeant, against GSOC (the Garda Síochána Ombudsman Commission) in respect of its investigation into the applicant's own earlier investigation into a fatal road traffic accident involving a garda patrol car. The accident had taken place in 2005 and the DPP had directed, following the submission of the investigation file by the sergeant, that there should be no prosecution. The Commission received a complaint from the member of the public in 2007 and gave notice to the sergeant that it would investigate the adequacy of his investigation. He was subsequently informed by the Commission that there was no admissible complaint in respect of his investigation because it was out of time, but that the Commission had nonetheless decided to initiate an investigation under s. 102(4) of the Garda Síochána Act 2005 having regard to matters raised in the inadmissible complaint. The applicant sergeant was granted leave on two grounds, namely (1) that the Act of 2005 did not come into force until after the occurrence of the matters complained of and that the Act made no provision for retrospective effect, and (2) bias by prejudgment on the part of the officer conducting the investigation. Subsequently, the sergeant applied for leave to amend the grounds to add a further ground to the effect that the Commission, having determined pursuant to s. 87 of the Act of 2005 that the complaint of the member of the public was inadmissible, had no jurisdiction by virtue of s. 88 of the Act to take any further action against the sergeant. The application did not seek to amend the relief sought but rather to add a particular ground to the relief already sought. The failure to include the additional proposed ground in the original statement of grounds was explained as being due to an oversight on the part of the applicant's legal advisor.

25. In the course of his judgment, Fennelly J. examined a number of authorities in which the issue of extending the grounds for a judicial review were addressed, and then went on to make the following comments:

> "[30] It is not surprising that there is no comprehensive and exhaustive judicial statement of the circumstances in which a court may permit an applicant for judicial review to amend the grounds for the relief sought. It is equally unsurprising that the courts, using varying language, have expressed themselves reluctant to grant such amendment without good reason.
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> [31] Persons are permitted to seek review of administrative decisions which affect them within prescribed times and on grounds in law which they propose and which the courts grant them leave to argue. The object of the system is to strike a fair balance between the certainty and security of administrative decisions and the rights of persons affected by them who wish to contest them.
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> [32] The strict imposition of time limits is mitigated by the power of the court to permit an application outside the permitted time, provided the court is persuaded that there is good reason for the delay and that no other party is adversely or unfairly prejudiced.
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> [33] Once an applicant has obtained an order granting leave to apply for judicial review, he is confined to the grounds permitted. He may not argue any additional grounds without leave of the court.
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> [34] If he applies for an amendment of his grounds within the judicial review time limit, he should, obviously, at least in normal circumstances, have no difficulty obtaining the amendment. If he applies for an amendment outside the time, he will have to justify the application. He will have to explain his delay, just as in the case of a late applicant. The court will expect him to give reasons to explain his failure to include the new proposed ground in his original application.
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> [35] On the other hand, it is difficult to see why an applicant for an amendment of grounds should have to satisfy a more exacting standard in explaining delay than is imposed on an ordinary late application. He may say that the additional ground is based on material of which he was unaware when he was making his original application. On occasion, the respondent reveals a new ground of argument in its answer to the application, as appears to have occurred in *McCormack v. Garda Síochána Complaints Board* [1997] 2 I.R. 489 and *Dooner v. Garda Síochána Complaints Board*

(Unreported, High Court, Finnegan J., 2nd June, 2000). The applicant may offer a different explanation. There is no reason, in logic, to impose on an applicant a criterion of newly discovered fact to justify an application to amend, when an application for an extension of time is not subject to any equivalent condition. This is not to say that the applicant's knowledge of the facts is irrelevant. In some cases, as in *McCormack v. Garda Síochána Complaints Board,* discovery of new facts may be an explanation for the omission to include a ground. In other cases, the applicant may have been aware at all relevant times of the facts relevant to the new ground and this will weigh in the balance against him, without being necessarily conclusive.

[36] None of this is to take away from the fact that an application for an amendment of his grounds for judicial review must explain his failure to include the proposed new ground in his original application. The cases show that the courts are reluctant to admit new grounds which amount to advancing an entirely new cause of action, as in *Ní Eilí v. Environmental Protection Agency* [1997] 2 I.L.R.M. 458, or a challenge to a different decision, as in M*uresan v. Minister for Justice, Equality and Law Reform* [2004] 2 I.L.R.M. 364. The nature of the decision under attack may also be relevant. If it is one which benefits the public at large or a large section of the public, a challenge may have corresponding disadvantages for a large number of people. This may explain why special and stricter statutory rules have been introduced in cases of public procurement, planning and development, and asylum and immigration. The courts will have regard to the public policy considerations which have prompted the adoption of such rules.

[37] Amendment may be more likely to be permitted where, as in *O'Síodhacháin v. Ireland* (Unreported, Supreme Court, 12th February, 2002), it does not involve a significant enlargement of the applicant's case. To the extent that leave has already been granted, the public interest in the certainty of a decision is already under question. An additional ground may not make any significant difference, particularly if it is based, as in the present case, on a pure matter of law. A court might take a different view, if the new ground were likely to give rise to further exchange of affidavits relating to the facts."

26. It is clear from the above that the court must exercise its discretion as to whether to permit the amendment of grounds in a judicial review by taking into account a number of factors, including in particular the reason offered for the lateness of the application, and the degree to which the amendment would enlarge the scope of the case. Judicial review is a specialised type of public law proceeding, which, unlike other actions, requires leave of the court even at the outset, and the amendment of which imports considerations, as described by Fennelly J., wholly different from those in private proceedings between individuals.

27. It may also be observed that, strictly speaking, O. 84 r. 23 permits amendment only of the "grounds" for relief, and not the reliefs themselves.

Decision

28. The judicial review in respect of which leave was granted in the present case is concerned with a single event which took place in 2016, namely the publication by the respondent Council of an environmental audit submitted to it in that year, which was alleged by the applicant to be non-compliant with Condition 22 of the relevant planning permission. The nub of his complaint at the time of the leave application concerned (a) what he alleged to be inaccurate and false information in the audit concerning the volume of traffic in and out of the quarry site; and (b) the absence from the environmental audit of any reference to his own complaints. However, by the time these motions had been heard by the Court, it was clear that the matters which the applicant wished to complain of in these proceedings were far broader in scope. They included such additional issues as the visibility at the junction, the question of a continuous white line on the road, the question of an anti-skid surface on the road, the adequacy of signage, and the functioning of a wheel wash at the quarry site. Further, he wished to expand his complaints greatly beyond the original complaint about the Council's publication of the environmental audit to argue that the Council had engaged in a long-term form of non-feasance and had neglected its statutory duties in enforcing compliance with planning permission over many years. Not only are the grounds sought to be amended but also the reliefs sought. The applicant's submissions and affidavits from February 2017 onwards involved increasing cascades of allegations of serious misconduct against several individuals and bodies until he reached a point where his final submission became, bluntly, that the Council had engaged in criminal fraud over a significant period of time.

29. In support of his application to expand the scope of his judicial review, the applicant relies essentially upon the argument that the matters of which he complains are matters are of considerable public interest and that they raise issues of public safety. However, issues of public safety do not in themselves amount to a reason for circumventing the time limits for judicial review set out in legislation. For example, in *Duffy v. Clare County Council* [2013] IEHC 51, the applicant applied for leave to seek judicial review on the basis that the first named respondent had failed to make adequate attempts to investigate and deal with certain water treatment problems within its area. The High Court (Peart J.) held, *inter alia*, that in relation to the relief sought to disconnect the housing development in Liscannor from the municipal waste water works, the application was clearly out of time considering that it was initially authorised in August 2009; while the relief sought to prevent the waste water to be discharged from Liscannor to Liscannor Bay was also rejected on the basis that the application was out of time with the original licence having been issued in October 2011. That case involved much shorter periods of time, and yet public safety was not considered sufficient reason to grant leave outside the time limit. Many planning issues involve issues of public safety; however, the Oireachtas has seen fit to strike a balance between competing policy by establishing a time-limit of 8 weeks within which to bring judicial review proceedings, which may only be extended for good reason.

30. The applicant has in reality not offered any reason for the various matters of which he now complains not having been included within the scope of the original application for leave, nor why proceedings were not brought earlier in time with respect to events long past the statutory time-limit, except perhaps by pointing to his own limited knowledge of legal matters by reason of the fact that he is a lay litigant. There is only so much lee-way that a court can give to a lay litigant but the period of time that has elapsed since some of the events complained of, together with the magnitude of the new case sought to be litigated, goes far beyond what could be allowed for. Further, it emerged in the course of the applicant's oral submissions that he had in fact previously brought an unsuccessful application pursuant to s.160 of the Planning and Development Act, 2000, although it is unclear what the scope of that application was. To this extent, there may even be elements of *res judicata* in play.

31. In my view, the Court could not possibly grant the amendment of the judicial review sought. The effect of doing so would be to expand a judicial review in respect of which leave was given concerning an environmental audit submitted in June 2016 into a wholly new set of proceedings involving a full 10-year history of planning decisions, concerning the interactions between the applicant, the Council, the notice party and others over that entire 10-year period, in which allegations up to and including criminal fraud are made, and in which a different set of reliefs are sought. Taking into account the matters which the decision of the Supreme Court in the *Keegan* case mandates I must take into account, in particular (a) the degree of enlargement of the scope of the judicial review that is sought, which in this case encompasses not only the grounds but also the reliefs sought, and concerns not only content of the proceedings but also the time-frame of events, and would constitute a radical change in the case, together with (b) the absence of

any real explanation for this not having been raised until now, I refuse the application to amend the leave granted in these proceedings.

32. It follows that the vast majority of the third affidavit sworn by the applicant (dated the 28th February) is irrelevant to the judicial review in respect of which leave was granted. As regards that affidavit, in the interests of clarity, I propose not merely to indicate that the respondent is not required to respond to the matters therein falling outside the scope of the original leave, as was done in *Goode Concrete*, but to grant an order striking out all of the applicant's third affidavit with the exception of paras. 79 to 87 inclusive, and also with the exception of para. 88.12 of the same affidavit. Insofar as there is any doubt that this can be done pursuant to O. 40 r. 12, I propose to do so pursuant to the inherent jurisdiction of the Court. In those circumstances, I do not think it is necessary to disentangle within the affidavit the "irrelevant" from what might be described as "scandalous", but the Court can only deplore in general the manner in which accusations of misconduct and criminality were freely made against individuals and bodies under cover of privilege. Unfortunately, it is frequently a feature of litigation conducted by lay litigants that they consider themselves completely free to make such allegations, as they are unconstrained by the professional and ethical boundaries to which barristers and solicitors are subject, a breach of which could lead a professional to incur disciplinary consequences. I can understand that lay litigants frequently become obsessed with their particular grievances to the point of its blurring their judgment, and that they sometimes fail to appreciate the distinction between a difference of opinion and a deliberate falsehood, but there comes a point beyond which a certain amount of self-restraint should be exercised, particularly when it comes to the making of allegations of criminal conduct.