Neutral Citation Number: [2009] IEHC 535

THE HIGH COURT

2007 636 JR

BETWEEN

TALBOTGRANGE HOMES LIMITED

APPLICANT

AND

LAOIS COUNTY COUNCIL,

THE MINISTER FOR ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice McCarthy delivered on the 2nd day of December, 2009

Relief sought

1. These proceedings concern an application for leave to apply for judicial review pursuant to O. 84, r. 20 of the Rules of the Superior Courts 1986 and under ss. 50 and 50A of the Planning and Development Act 2000, as amended, for the following principal reliefs as set forth in the applicant's amended notice of motion, made returnable for the 18th June, 2007:-

1. An order of certiorari *quashing the decision of the second named respondent of the 24th October, 2006, to issue the Planning and Development (Laois County Development Plan) Direction 2006 pursuant to s. 31 of the Planning and Development Act 2000 directing the first named respondent to vary the Development Plan for the County of Laois for the period 2006-2012 and/or such part or provisions thereof ("the said part thereof") as affects the lands owned by the applicant more particularly described in the affidavit of Michael Raggett herein.*

2. An order of certiorari *quashing the decision of the first named respondent by way of order of the County Manager dated the 31st January, 2007, to vary the Development Plan for the County of Laois for the period 2006-2012.*

3. A declaration that the Planning and Development (Laois County Development Plan) Direction 2006 made pursuant to s. 31 of the Planning and Development Act 2000 and/or the said part thereof was and is ultra vires, invalid and of no legal effect.

4. A declaration that the order of the County Manager dated the 31st January, 2007, to vary the Development Plan for the County of Laois and/or such part thereof that affects the applicant's lands was and is ultra vires, void and of no legal effect.

5. If necessary, a declaration that the Planning and Development (Laois County Development Plan) Direction 2006 and/or such part thereof as affects the applicant's lands is invalid having regard to Article 40.3.2 of the Constitution of Ireland.

6. If necessary, a declaration that s. 31 of the Planning and Development Act 2000 and/or sub-sections (2), (3) and/or (4) thereof is invalid having regard to Article 40.3.2 of the Constitution of Ireland.

7. If necessary, a declaration that s. 31 and/or s. 50(6) of the Planning and Development Act 2000 infringes the applicant's constitutional right to access to the courts under Article 40.3.4 of the Constitution of Ireland.

8. If necessary, a declaration that s. 50(6) of the Planning and Development Act 2000 is unconstitutional and/or in breach of the provisions of ss. 2 and 3 of the European Convention on Human Rights Act 2003 insofar as it purports to impose a time limit in relation to a challenge to the validity of the said decision of the first named respondent in circumstances where no notification of the relevant decision was provided in sufficient time to comply with the time limit or at all.

9. Damages pursuant to O. 84, r. 24 of the Rules of the Superior Courts 1986 for breach of statutory duty and negligence.

10. An order extending the time within which to institute judicial review proceedings pursuant to s. 50 of the Planning and Development Acts 2000-2006, as amended, and/or pursuant to O. 84, r. 21 of the Rules of the Superior Courts 1986 as may be appropriate.

The Facts

2. The applicant is a company of limited liability, incorporated in Ireland and engaged in construction and related activities. In April 2006 it purchased lands at Townspark in Durrow, County Laois. Those lands had been zoned for residential development in the Development Plan for the County of Laois for the period 2006-2012 ("the development plan"), which was adopted on the 4th January, 2006. The adoption of the development plan had been preceded by the adoption by the first named respondent of a draft development plan and then an amended draft development plan, which were the subject of public consultation. Following the acquisition of the lands, the applicant retained the services of Mr. Liam McGree, Planning Consultant of Liam McGree and Associates Limited, Planning and Development Consultants of 12

Parliament Street, Kilkenny.

3. On the 24th October, 2006, the second named respondent issued a Ministerial direction pursuant to s. 31 of the Planning and Development Act 2000 ("the Act of 2000") directing the first named respondent to take certain steps to vary the development plan, including, *inter alia*, the deletion of certain zonings, permitting residential developments and described as a zoning for "primary development", for the towns of Durrow and Castletown in the development plan, which included the applicant's lands. The direction was made available for inspection at the Department of the second named respondent from the date of its issue. The relevant portion of the direction states as follows:-

> *"Whereas it appears to the Minister for the Environment, Heritage and Local Government, that the development plan for the County of Laois for the period 2006 to 2012 (as adopted on 4 January 2006) is unsatisfactory in*
>
> (a) failing to set out an overall strategy for the proper planning and sustainable development for the County of Laois and/or,
>
> (b) failing to have proper regard for the relevant Regional Planning Guidelines (RPGs) in force for its area and/or,
>
> (c) failing to ensure its compatibility with the National Spatial Strategy Guidelines for the relevant Midland area,
>
> by reason of the following matters:
>
> • the total quantity of land zoned as residential is unwarranted and well in excess of the projected population growth envisaged under the Midlands RPGs for the county over the period of the plan, and this scale of land zoning is likely to create a scattered spatial distribution of future population growth throughout the county that will be very difficult and expensive to service.
>
> • the substantial new zonings at Durrow and Castletown are not warranted as they accentuate the existing over-provision of housing lands; and
>
> • the amendment to the draft development plan, designating a new employment zone at New Inn, a rural and unserviced area located at a new interchange on the M7 motorway, appears, given its scale, to be inconsistent with the aims of the Council to develop a major new employment zone adjacent to the motorway on the edge of Portlaoise and to the south of New Inn.
>
> …
>
> NOW, THEREFORE in exercise of the powers conferred on him by section 31(2) of the Act, the Minister for the Environment, Heritage and Local Government hereby directs as follows:
>
> …
>
> (2) The County Council of Laois is hereby directed to take the following steps by way of variation to the development plan for the County of Laois for the period 2006 to 2012:
>
> • Amend the village zonings (listed in the appendix to this Direction) by deleting the areas in the adopted development plan zoned secondary development;
>
> • Delete the zonings to the plans for Durrow and Castletown outlined in blue on the attached maps;
>
> • Delete the amendment designating the commercial zoning for the motorway interchange industrial development at New Inn."

4. The provision under which the second named respondent acted in issuing his Ministerial direction to vary the development plan is s. 31(2) of the Act of 2000. It states as follows:-

> " (2) Where the Minister considers that any development plan fails to set out an overall strategy for the proper planning and sustainable development of the area of the authority or otherwise significantly fails to comply with this Act, the Minister may, for stated reasons, direct the authority to take such specified measures, as he or she may require to review or vary the development plan to ensure compliance with this Act and the authority shall comply with any such direction."

5. If the Minister embarks on such a course the following provisions in s. 31 of the Act of 2000 apply:-

> *"(3) Where the Minister directs a planning authority to take specified measures under subsection (2), he or she may specify any of those provisions of Chapter I which are to apply in respect of such specified measures and any other provisions of that Chapter shall be disregarded.*
>
> *(4) In exercising any power conferred on them by this Act, neither the manager nor the elected members of any planning authority shall exercise the power in conflict with any direction which the Minister may give under subsection (1) or (2).*
>
> *(5) The Minister shall cause a copy of any direction issued under this section to be laid before each House of the Oireachtas.*
>
> *(6) A planning authority shall make available for inspection by members of the public any direction issued to it under this section."*

6. Also on the 24th October, 2006, the Ministerial direction was sent to Mr. Peter Carey, the County Manager for Laois, accompanied by a covering letter. The Minister set out the basis for his decision to vary the development plan both in the order and the letter. He alluded in the latter to the objections he made prior to the adoption of the development plan and stated as follows:-

> *"You will be aware of the concerns I outlined previously about both the draft development plan and the draft amended development plan with regard to its consistency with national and regional policies. A number of serious issues remain in relation to the development plan, as adopted, in particular its failure to adhere to sound planning principles and its lack of compatibility with the NSS and the Midlands Regional Planning Guidelines (RPGs). These difficulties arise primarily from the scale of planned growth under the plan, and the spatial distribution of that growth.*
>
> *I accept that an attempt was made to establish some safeguards within the development plan to avoid excessive development of the many villages and small towns identified as development centres for example by including the identification of primary and secondary development areas. However, I consider that these safeguards do not offer the level of protection necessary to ensure the proper planning and sustainable development of Laois over the period of the plan and the implementation of the NSS and RPGs. Indeed, the phased development approach as outlined in the plan can easily be overcome and undone by bringing forward variations to the plan.*
>
> *It is imperative for the sustainable development for Laois over the coming years that a more prioritised approach to planning is taken to address the population growth outlined in the Midlands Regional Planning Guidelines (RPGs). It is also vital that growth is focussed at an appropriate scale, at locations that can be serviced ….*
>
> *As I have outlined in my previous submissions on the draft and amended draft development plans, I am greatly concerned by the potential for stark increases in the populations of villages that have limited physical and social infrastructure and that will exacerbate long-distance commuting. The land use zoning objectives for many of the villages in the development plan already contain enough land within the existing central areas shaded yellow on the maps in Volume 2 to significantly increase the scale and population of these villages and development of the additional primary and secondary development areas would increase population even further still. The development plan contains ambitious proposals for key urban centres such as Portlaoise, Mountmellick etc. and these are the locations that are suitable as a focus for growth because of their stock of physical and social infrastructure. Smaller urban centres such as the various villages in Laois need to focus on accommodating opportunities for more locally driven growth."*

7. The letter further stated that Ministerial direction should be followed up in the following manner:-

> *"…by the preparation of a variation to the county development plan, including public and local community consultation to include revised development objectives for the villages and towns mentioned in the direction the first named respondent was to inform the Minister at the earliest possible date of the proposed timetable it would take for compliance with the direction that will ensure that:*
>
> *a) development meets the needs of the locally driven growth potential;*
>
> *b) adequate provision is made for the development of essential local services and amenities such as schools, community facilities and amenities as well as local employment; and*
>
> *c) the design and quality of new development will integrate successfully with the character and setting of existing villages"*

The letter also requested the first named respondent to inform the second named respondent of the proposed timetable it planned to adopt in order to comply with the direction.

8. On the 1st November, 2006, a meeting was held between officials from the Department of the second named respondent and officials of the first named respondent. Mr. Gerry Gibson, Director of Services, Planning and Transportation of the first named respondent, in para. 7 his affidavit sworn on the 6th July, 2007, gave evidence as to what took place at that meeting and thereafter as follows:-

> *"At the meeting on 1st November 2006 and during the subsequent telephone conversations, the nature and substance of the Ministerial direction and accompanying letter were discussed, as was the manner in which the planning authority should proceed to implement the Ministerial direction in light of the provisions and implications of Section 31(3) of the Planning and Development Act 2000. The officials of the Department of the Environment Heritage and Local Government agreed with the understanding of the officials in the planning authority that, where the Minister had not specified any specific provision regarding how to proceed to implement the directed variation, the planning authority was to proceed to make the variation without any public consultation, save any that might be necessary to comply with the provisions of EC Directive 2003/35/EC in respect of strategic environmental assessment. Further, it was agreed that pursuing a process of public consultation in relation to the directed variation would be meaningless in circumstances where the planning authority did not have any discretion in relation to compliance with the Ministerial direction."*

9. The Ministerial direction was laid before the Houses of the Oireachtas on the 2nd November, 2006, in accordance with the provisions of s. 31(5) of the Act of 2000. It was also the subject of a parliamentary question on that date. On the 20th November, 2006, the first named respondent posted a copy of the Ministerial direction to its website. There was extensive media coverage of the matter too, but that does not appear to be relevant in my view.

10. The first named respondent took certain steps to follow in part the procedure set out in the Planning and

Development Regulations 2001, as amended by the Planning and Development (Strategic Environmental Assessment) Regulations 2004 regarding the notification requirements of proposed variations. It sent a notice to the second named respondent and to the Minister for Communications, Marine and Natural Resources stating that it proposed to make a variation to the development plan and inviting submissions or observations on the question of whether the proposed variation would be likely to have significant effects on the environment. The first named respondent concluded in a report dated the 19th January, 2007, that as the variation involved the deletion of zonings for development with the consequence of restoring the areas to how they once were before the plan that the direction could not impact negatively or significantly on the environment. It notified the Environmental Protection Agency, the second named respondent and the Minister for Communications, Marine and Natural Resources of this determination. Its report of the 19th January, 2007, was made available for inspection at the Planning Office of the first named respondent on the same date. It was also sent to all County Libraries with a request that it be displayed in a public area.

11. On the 31st January, 2007, Mr. Carey issued an order setting out in identical terms to the Ministerial direction the variation. Notification of the variation was published in the Irish Independent on the 15th February, 2007, in the Leinster Express on the 21st February, 2007, and in the Nationalist on the 23rd February, 2007. It was also made available for inspection at the Planning Office of the first named respondent.

12. On the 16th March, 2007, approximately five months after the Ministerial direction was made, the applicant lodged an application for planning permission to erect fifty five two storey dwelling units and other associated works on the lands. This was refused by the first named respondent in a decision dated the 9th May, 2007. Seven reasons were given for the refusal, one of which was the designation of the area as a special area of development control in the development plan, as varied.

13. The applicant was not actually notified, consulted or invited to make submissions or observations in respect of the Ministerial direction, in advance of, or subsequent to, its issue. Mr. McGree, at para. 10 of his affidavit sworn on the 29th May, 2007, swore that he became aware of the Ministerial direction on the 21st March, 2007, during a conversation with a planning official of the first named respondent. It was confirmed to him the following day that the Ministerial direction had been made by the first and second named respondents and he relayed this to the applicant's directors. A written request was made to the second named respondent by Mr. McGree for all correspondence between it and the first named respondent on the 2nd April, 2007. He received the same in early May 2007. He then made a further request for correspondence through the Freedom of Information Act. In his affidavit sworn on the 7th November, 2007, Mr. Raggett, a director of the applicant company, stated that he became aware in late October/early November 2006 that some lands had been de-zoned in County Laois but he that he was unaware that its lands were affected.

14. These proceedings were instituted by the applicant on the 1st June, 2007.

Judicial Review

15. With respect to the applications to challenge the issue of the Ministerial direction the relevant procedural provision is Order 84, r. 20 of the Rules of the Superior Courts 1986, which provides, *inter alia*:-

> *"1. No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.*
>
> *2. An application for leave shall be made by motion ex parte . . .*
>
> *4. The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."*

16. An outer time limit of six months for the relief of *certiorari* applies unless the Court considers there is good reason for the extension of that period. Order 84, rule 21 of the Rules of the Superior Courts 1986 states:-

> *"21. (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is certiorari, unless the Court considers that there is good reason for extending the period within which the application shall be made."*

17. Finlay C.J. in *G. v. Director of Public Prosecutions* [1994] 1 I.R. 374 at pp. 377-378 described the matters of which an applicant must ordinarily satisfy a Court when seeking leave to apply for judicial review, though he stated that they were not exhaustive and were subject to the general discretion of the Court, as follows:-

> *"An applicant must satisfy the court in a prima facie manner by the facts set out in his affidavit and submissions made in support of his application of the following matters:—*
>
> *(a) That he has a sufficient interest in the matter to which the application relates to comply with rule 20 (4).*
>
> *(b) That the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review.*
>
> *(c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.*
>
> *(d) That the application has been made promptly and in any event within the three months or six months time limits provided for in O. 84, r. 21 (1), or that the Court is satisfied that there is a good reason for extending the time limit. The Court, in my view, in considering this particular aspect of an application for liberty to institute proceedings by way of judicial review should, if possible, on the ex parte application, satisfy itself as to whether the requirement of promptness and of the time limit have been complied with, and if they have not been complied with, unless it is satisfied that it should extend the time, should refuse the application. If, however, an order refusing the application would not be appropriate unless the facts relied on to prove compliance with r. 21 (1)*

were subsequently not established, the Court should grant liberty to institute the proceedings if all other conditions are complied with, but should leave as a specific issue to the hearing, upon notice to the respondent, the question of compliance with the requirements of promptness and of the time limits.

(e) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure."

18. With respect to the manager's order, s. 50A(2)(a) the Act of 2000, as inserted by s. 13 of the Planning and Development (Strategic Infrastructure) Act 2006 is different (in part) provides that if an application for judicial review relates to a decision made or act done by a planning authority or local authority in the performance of a function under that Act that it must be made on notice to the planning authority. This Court, according to s. 50A(3), shall not grant leave unless there are "*substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed" and "the applicant has a substantial interest in the matter which is the subject of the application*".

19. Section 50(6) provides that "*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* [including a decision made by a planning authority or local authority] *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*." Section 50(8) allows this Court to extend the period provided for in subsection (6) but only if it is satisfied "(a) there is good and sufficient reason for doing so" and "(b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension."

Issues – General

20. The substantive issue that arises is whether the applicant has made out an arguable case for contending that the Ministerial direction is invalid or ought to be quashed, and second, with respect to the order of the first named respondent, whether or not substantial grounds have been demonstrated by the applicant to grant *certiorari* of that order. The main grounds the applicant advances to contest the validity of the Ministerial direction and the order of the County Manager, are the absence of any prior notice and hence consultation with it as to the making of those decisions, the lack of adequate reasons in the Ministerial direction and the irrationality of the Ministerial direction.

21. Secondly, an issue has been raised as to whether or not the applicants have a sufficient interest to take these proceedings.

22. Thirdly, it is accepted that the applicant has delayed in instituting these proceedings and did not institute these proceedings within the appropriate time periods specified in O. 84, r. 21(1) of the Rules of the Superior Courts, for the Ministerial direction, and s. 50(6) of the Act of 2000, in respect of the order of the first named respondent. Therefore, it must be determined whether the applicant has, in the case of the ministerial direction, demonstrated good reason for the extension of the time periods under the Rules and, whether or not, in the case of the Managers order the period prescribed by s. 50A(2)(a) may be extended.

Arguable Case / Substantial grounds

23. Turning to the main issues of arguability and substantial grounds, Mr. Galligan submitted that the requirements for an arguable case and substantial grounds had been satisfied by the applicant. He contended that the relevant jurisprudence, including *Scott v. An Bord Pleanála* [1995] 2 I.L.R.M. 424, *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. 125 and *Jackson Way Properties Limited v. The Minister for the Environment* (Unreported, High Court, 2nd July, 1999) established that the grounds advanced by an applicant in judicial review proceedings ought to be reasonably arguable and weighty but that it was not necessary for a Court to evaluate each argument to determine whether the grounds are substantial.

24. In the first place he argued that the failure by the second named respondent to engage in consultation (and, of course, by definition afford notice), either individually or publicly, prior to the making of his direction, the effect of which would adversely affect his lands, deprived him of an opportunity to make submissions to him. He noted that there had been a failure by the first named respondent to follow the public consultation procedures contained in s. 13 of the Act of 2000 prior to issuing its order and that this also resulted in it not being able to make observations in respect of it before it reached its decision.

25. Secondly, he argued that the Ministerial direction did not contain "*stated reasons*" why a variation of the development plan was necessary, in breach of s. 31 of the Act of 2000. The reasons given in the direction, he submitted, were general, unsubstantiated and without basis and did not explain why the applicant's lands were chosen to be de-zoned. He submitted that the requirement to give stated reasons should be tested in accordance with the principles of constitutional justice and he cited extracts from the cases of *Orange Communications Limited v. Director of Telecommunications Regulation* [2004] 4 I.R. 159; *McDonald v. Bord na gCon* [1965] I.R. 217; *McCormack v. Garda Síochána Complaints Board* [1997] 2 I.R. 489 and *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 in this regard. As to what precisely the reasons should apprise one of having read them he cited the *dicta* of Keane J. in *Golding v. Labour Court* [1994] E.L.R. 153 and the judgment of Kelly J. in *Deerland Construction Limited v. Agriculture Licences Appeal Board* [2008] I.E.H.C. 289.

26. Thirdly, Mr. Galligan submitted that the decision reached by the second named respondent was irrational in that the assertions contained in his direction were unreasoned and unsupported.

27. Mr. Galligan also submitted that the second named respondent, in issuing the Ministerial direction, had failed to respect the applicant's property rights and had breached Article 40.3.2 of the Constitution. He submitted further, or in the alternative, that s. 31 (2) of the Act of 2000 was unconstitutional in that it did not provide for the notification of landowners whose lands were affected by a Ministerial direction.

28. Mr. Connolly, in response to the argument based on the lack of consultation, submitted that s. 31 of the Act of 2000 expressly permitted a deviation from the normal procedure for variation of a development plan as set out in s. 13 of the Act of 2000. He contended that there was no statutory duty on the second named respondent to provide the applicant with individual notice of the direction, but rather a duty to lay the direction before both Houses of the Oireachtas, which had occurred, thereby making the direction a matter of public record. He submitted that the reasons given by his client in

his direction satisfied the four limbs of the test set out by Kelly J. in *Mulholland & Kinsella v. An Bord Pleanála* [2005] I.E.H.C. 306 in his consideration of the meaning of s. 34(b) of the Act of 2000 which required the main reasons and the considerations on which a decision is based be set forth in a decision by a planning authority or An Bord Pleanála. As to the alleged unreasonableness of making the direction, Mr. Connolly submitted that the applicant did not meet the threshold of *State (Keegan) v. Stardust Victims Tribunal* [1986] I.R. 642 or *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 and could not be said to have an arguable case on that ground. In such circumstances Mr. Connolly submitted that the applicant had not set forth an arguable case.

29. Mr. Simons disputed that the applicant had shown substantial grounds for the granting of leave to challenge the order of his client. He submitted that his client enjoyed no residual discretion once served with a Ministerial direction and was compelled to comply with it. In this case, he observed, the Minister directed that the development plan be varied without specifying that any particular provisions of Chapter I of the Act of 2000, which encompass public consultation procedures, be followed. In such circumstances, he submitted that there was no requirement on the first named respondent to follow the public consultation procedures under s. 13 of the Act and that it would have been meaningless to have done so.

Lack of Prior Notice or Prior Consultation

30. The appropriate standard to apply when considering whether the lack of prior notice or prior consultation on the part of the Minister breached the applicant's rights is arguability. It is accepted by all parties that there was no prior actual notice of or consultation with the applicant. I am not satisfied that it is arguable that there should have been actual advance notification of the proposed making of the Ministerial direction in order to ensure adherence to fair procedures. However, s. 31 of the Act of 2000, whilst not providing expressly for prior actual notice or consultation, must be interpreted in conformity with the principles of natural and constitutional justice, which may require advance public notice or consultation. The scheme of the Act of 2000 is such that it provides for public participation in respect of the adoption of development plans and their variation. This might shortly be termed constructive notice.

31. Generally public notice suffices in the realm of planning law. Neither s. 12 of the Act of 2000, which deals with the procedure for adopting a development plan, nor s. 13 of the Act of 2000, which deals with the procedure for varying a development plan, provide for personal notification. The only instance where personal notification to a landowner is envisaged under the Act of 2000 is where there is a proposed designation or deletion of a protected structure on his or her lands in a draft development plan (ss. 12(3)) or at any time other than in the course of a development plan (s. 55 of the Act of 2000). I do not think that a Minister's order mandating variation (or a County Manager's order giving effect thereto) requires anything beyond the normal or general rule applicable in the planning code, even though the section is silent; variation always remains a possibility.

32. The applicable standard in terms of the decision of the first named respondent is that of substantial grounds, which would imply a higher prospect of success at hearing is required to mere arguability. The County Manager was compelled under s. 31 of the Act of 2000 to act in accordance with the Ministerial direction, as is clear from the terms of s. 31(4). Manifestly, he enjoyed no discretion to depart from its terms. His order was brought about by the Ministerial direction and the validity of his order is founded upon the validity of the direction. In essence, if the former fell then so too would his order. Since I have concluded that the arguability threshold has been satisfied in respect of the prior constructive notification point as regards the Ministerial direction and given the mandatory nature of the County Manager's order and its dependence on the Ministerial direction, I am satisfied that substantial grounds would be constituted in themselves by the existence of arguable grounds that the "founding" order was bad. In arriving at this conclusion I am mindful of the principle that an applicant must raise all relevant matters before the Court so that all matters in dispute can be determined by the Court, as enunciated in *Henderson v. Henderson* (1843) 3 Hare 100 and applied by the Supreme Court in *A.A. v. The Medical Council* [2003] 4 I.R. 302.

Reasons

33. The essence of the applicant's complaint as to the lack of reasons given in the Ministerial direction, is captured by Mr. McGree at para. 27 of his affidavit sworn on the 29th May, 2007, as follows:-

> *"… only some of the lands in Durrow zoned in the Development Plan have been de-zoned by virtue of the Ministerial Direction. The only area of lands that is impacted by the Ministerial Direction is an area to the south of the proposed Relief Road and fronting onto the Durrow – Kilkenny National Secondary Road. The Ministerial Direction does not indicate why these particular lands were selected for 'down-zoning', as distinct from the other lands in Durrow which were zoned under the new Development Plan, other than a general statement to the effect that the zoning of these lands would 'accentuate the existing over-provision of housing lands'. This is notwithstanding the fact that the Minister is required by law to provide adequate reasons for the Ministerial Direction."*

34. From the above it is apparent that the applicant's principal complaint is that there was a lack of specificity in the reasons given and no reason was given for the selection of its lands, in particular, for de-zoning. The point was made by the applicant that the lands in Durrow which were zoned residential in the original development plan were not all de-zoned in the Ministerial direction. The applicant's lands only were selected and the applicant wishes to know the objective basis upon which its lands were so selected, as opposed to other lands.

35. The reason given in the direction for the deletion of certain zonings in Durrow and in Castletown is that *"the substantial new zonings at Durrow and Castletown are not warranted as they accentuate the existing over-provision of housing lands".*

36. The degree of specificity or detail in reasons was addressed by the Supreme Court in *O'Keeffe v. An Bord Pleanála*. In that case the board granted planning permission for a mast at Clarkstown, County Meath. Permission had initially been granted by the County Manager, despite a direction given to him by the county council to refuse it. The permission granted by the board was, despite its own inspector and an independent expert commissioned by it recommending otherwise. The reason given by the board for the grant of permission was that the proposed development would not be contrary to proper planning and development, provided it was undertaken in accordance with conditions set out in a schedule for which reasons were given. The Supreme Court held that the statement together with the conditions for which reasons were given was a sufficient statement of reasons, though it noted that the statement alone may not be sufficient in circumstances where the board's own inspector had advised against granting permission.

37. In *Ní Éilí v. Environmental Protection Agency* (Unreported, Supreme Court, 30th July, 1999) the reasons given by the

respondent for the grant of an integrated pollution control licence were deemed to be sufficient by Murphy J., with whose judgment the other members of the Supreme Court agreed. In that case, the rational basis for the reasons could be traced back to a report prepared by an officer who had carried out an oral hearing in respect of the objections to the licence which itself contained reasons.

38. In the earlier case of *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 at p. 757 Murphy J. described the obligation on administrative tribunals in the following terms:-

> *"It seems to me that in the nature of the problems as defined by the Chief Justice it would be necessary for the administrative tribunal to indicate in its decision that it had addressed its mind to the substantive issue which had led the planning authority to believe that the permission would have an adverse effect on the planning and development of the area."*

39. This Court (Kelly J.) considered the adequacy of a statement of reasons in *Mulholland v. An Bord Pleanála (No. 2)* [2006] 1 I.R. 453. It was held that a statement of reasons would be considered to be sufficient if they:-

> *"(1) Give to an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision.*
>
> *(2) Arm himself for such hearing or review.*
>
> *(3) Know if the decision maker has directed his mind adequately to the issues which it has considered or is obliged to consider; and,*
>
> *(4) Enable the courts to review the decision."*

40. The test set forth by Kelly J. in *Mulholland* has been satisfied as the applicant had such information before it was necessary and appropriate for it to consider whether it had a reasonable chance of succeeding in judicially reviewing the decision of the second named respondent, the information armed it for such a review and there is evidence that the second named respondent directed his mind adequately to the issues he was obliged to consider when making the direction and the courts are equipped to review this decision.

Irrationality

41. The reliance on the ground of irrationality by the applicant appears to fundamentally conflict with the ground based on a lack of stated reasons, as if the applicant succeeded in demonstrating that there was a lack of adequate reasons given for taking the measures set out in the Ministerial direction, one must ask how could it be that the same material before the Minister also demonstrated an irrational decision on the Minister's part, flying in the face of common sense? The question arises as to whether or not the applicant has received enough material upon which to make a coherent argument to satisfy the duty. I think that he has.

42. The relevant test for challenging a decision on the grounds of irrationality is that set out by the in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39. Finlay C.J. stated as follows:-

> *"It is clear … that the circumstances under which the court can interfere on the basis of irrationality with the decision-maker involved in an administrative function are limited and rare … I am satisfied that in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."*

43. The relevant zoning history of the lands is set out by Mr. David Walsh, Principal Officer at the Department of the second named respondent in his affidavit sworn on the 20th July, 2007. He averred that the applicant's lands were not re-zoned residential in the original draft development plan furnished by the first named respondent to the second named respondent. That draft was published on the 18th February, 2005. He averred that it was only in the amended draft development plan (put on display on the 29th September, 2005) that the applicant's lands were re-zoned for residential purposes and that was the reason there was no mention of the re-zoning of lands at Durrow in the Minister's initial objections to that re-zoning in his first submission to the first named respondent in respect of the draft development plan. By letter dated the 27th October, 2005, the second named respondent made submissions to the first named respondent regarding the amended draft development plan and objected in particular, to the re-zoning of lands in Durrow. Mr. Walsh says that the Minister was referring to the lands at Townparks, though this is not expressly stated. This, however, cannot be the case as the draft development plan of February 2005 clearly zoned the applicant's lands residential, as is apparent from the map.

44. The objections of the Minister in the letter of the 27th October, 2005, read as follows:-

> *"…Zoning in a number of villages was in particular singled out as being excessive in scale and the Planning Authority was asked to reconsider is approach and reduce the level of residential and other zoning in these named villages. In fact, in a number of cases the Council has taken precisely the opposite approach. Two examples of particular concern are the proposals for Durrow and New Inn.*
>
> *If the plans for Durrow were to reach fruition an attractive village of considerable character would be transformed into a large and amorphous commuter-based dormitory town, where it would be difficult to maintain a sense of community and place.*
>
> *…*

My Department is concerned that the Council's overall approach will not provide a strategy for the proper planning and sustainable development of Laois because … (2) the additional zonings at Durrow and Cullahill (on the N8) accentuate an existing over provision of housing lands and, in the case of New Inn, represent undesirable development in an unserviced area.

I share my Department's concerns on all of these issues."

45. Mr. McGree referred to this letter in his first affidavit, having received a copy of it following his request for information. The reasons given in the Ministerial direction do provide a rational basis for de-zoning of lands generally in Durrow, to exclude any additional housing development contemplated by the plan. They do not, however, provide a rational basis for the particular selection of the applicant's lands as opposed to others. Stated reasons were given, as is required, for the view of the Minister that the development plan failed to set out an overall strategy for the proper planning and sustainable development of the area and otherwise seeking to justify variation. It was considered, *inter alia*, that the "*substantial new zonings at Durrow and Castletown are not warranted as they accentuate the existing over-provision of housing lands".* This provides evidence that the Minister directed his mind to the issue he was not required to consider and gave an adequate reason but these did extend so far as to justify the choice of the applicant's particular lands chosen or to single them out.

46. The applicant submitted a request for all copies of correspondence between the first and the second named respondents on the 2nd April, 2007. Mr. McGree, the applicant's planning consultant, averred on the 29th May, 2007, that he received these documents in or about the first week of May, 2007. He stated that he had made another request pursuant to the Freedom of Information legislation and this had only "*recently*" come to hand. The documentation received is exhibited at exhibit "LMC" and it includes copies of the submissions received in respect of the draft development plan and the amended draft development plan, a report of the Department of the second named respondent as to the difficulties with the development plan as adopted and the corrective steps that could be taken, drafts of the Ministerial direction, the Ministerial Direction and the covering letter to the first named respondent of the 24th October, 2006. This must be read with the order itself.

47. This test of irrationality is clearly a high one. The Court stated in that case that it would be reluctant to interfere with such a decision. The threshold for the applicant is mere arguability regarding the irrationality of Ministerial direction; the applicant, has, in my view, made out an arguable case that the second named respondent had no material before it which would support its decision in circumstances where it has received material which demonstrates the information relied on by the second named respondent in reaching its decision. The reason for this is that there is no explanation of any kind as to why the applicant's lands are singled out, when lands apart from those of the applicant were rezoned in the original plan such that residential development might be permitted thereon. One can see the rationale generally of changing zoning in respect of Durrow, but the reasons do not explain why the applicant's lands were singled out rationally justify or point to any or any rational basis for selecting them.

Locus Standi

48. As to the constitutional arguments advanced by the applicant I am satisfied that the applicant does not enjoy *locus standi* to raise these points. Sections 31 and 50A(6) enjoy the presumption of constitutionality. In *East Donegal Co-operative v. Attorney General* [1970] I.R. 317 the Supreme Court determined that where it is possible to construe a provision of a statute in accordance with the Constitution that it will not be invalid and that in cases of doubt an interpretation favouring the validity of the section should be adopted. I am not satisfied that the applicant has established an arguable case that either s. 31 or s. 50(6) of the Act of 2000 is unconstitutional. As to s. 31 of the Act of 2000, it is clear that if the applicant established that it should have been consulted prior to the issue of the Ministerial direction, this finding would not be incompatible with that section and the applicant did not submit otherwise. In addition, it is well established that time limits in respect of the institution of judicial review proceedings are constitutional, as held by the Supreme Court in *Re Article 26 and the Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360. There, the Court noted the discretion of this Court to extend the relevant time period for "*good and sufficient reason*" held that such an extension power was sufficiently wide to avoid injustice and to provide persons who had shown reasonable diligence with access to the courts.

49. As to the question of sufficient interest in respect of the non-constitutional matter, the case was made by the applicant that it had a sufficient interest in these proceedings, within the meaning of O. 84, r. 20(4) and s. 50(4)(b)(iv) of the Act of 2000, given that it owns the lands which are materially and adversely affected by the actions of the respondents. Mr. Connolly, on behalf of the second named respondent, disagreed on the basis that the applicant could never have held any presumption that the lands would have continued to be zoned "*residential*" because s. 10(8) of the Act of 2000 expressly stated that there could be no presumption that any land zoned in a particular way in a development plan would remain so zoned in any subsequent development plan. In addition, he submitted that there was no statutory obligation to notify the applicant of the proposed variation and that any representation to the first named respondent would not have made any difference to his position. He relied on the *State (Abenglen) v. An Bord Pleanála* [1984] I.R. which, he submitted, highlighted that relief in judicial review, owing to its discretionary nature, will not be granted where it does not avail an applicant's position.

50. In my view the applicant, as a landowner significantly affected by the variation to the plan, has a sufficient interest in bringing these proceedings. The fact that there is no guarantee that the zoning of his lands will remain the same, as provided for under s. 10(8) of the Act of 2000, cannot preclude him from instituting judicial review proceedings. Though there was no express statutory obligation on the first named respondent to notify the applicant of the proposed variation it is arguable that there was a requirement based on the duty to afford constitutional and natural justice to do so. The position of the applicant could, conceivably, be improved if successful in these proceedings. Therefore, I am satisfied that he has established a sufficient interest in these proceedings.

51. It must now be examined whether the applicant has shown good reason for the extension of the applicable time limits.

Delay

52. Mr. Galligan S.C., for the applicant, applied for an extension of time for leave to seek judicial review. He submitted that the circumstances which led to the delay that arose in issuing these judicial review proceedings were outside the control of the applicant, in that, the applicant was not made aware of the Ministerial direction and the variation until the 22nd March, 2007. The delay, he further submitted, flowed from the failure on the part of the respondent to directly

notify the applicant both prior to and subsequent to the making of the two impugned orders. He contended that the fact the applicant did not move to issue proceedings immediately upon becoming aware of the orders was due to the need of the applicant to acquire all the relevant documentation upon which the decisions were based in order to make an informed decision whether to challenge them or not, in circumstances where the applicant had not been involved in a pre-consultation procedure, Mr. Galligan argued that it was reasonable for the applicant to seek copies of the correspondence between the first and second named respondents.

53. Mr. Galligan noted that the existence of prior consultation was a relevant factor in the refusal by Clarke J. to extend time in *Kelly v. Leitrim County Council* [2005] 2 I.R. 404. He further noted that the courts, in exercising their discretion to extend time, have had regard to the public interest aspect of the proceedings, which, he submitted was an aspect in existence in this case.

54. Mr. Connolly S.C., for the second named respondent, submitted that the decision which materially affected the applicant's rights was actually that of the first named respondent, to which the statutory eight week time limit applied, which the applicant missed. However, he contended even if the Court formed the view that his client's direction affected the applicant's position that the applicant had clearly failed to move promptly in his challenge to it as was required by O. 84, r. 21(1). There was, he submitted, a failure on the part of the applicant to act "*promptly*" together with a failure to come within the appropriate time period. He relied on the *dicta* of Denham J. in *De Roiste v. Minister for Defence* regarding the meaning of acting promptly and the test enunciated for extending the time allowed for judicial review. He also relied on the interpretation by Kearns J. in *O'Brien v. Moriarty* [2006] 2 I.R. 221 at 224 of the term "promptly".

55. He further submitted that the applicant had not established any "*good reason*", as defined by Costello J. in *O'Donnell v. Dun Laoghaire Corporation* [1991] I.L.R.M. 301, as to why this Court should exercise its discretion to extend time. He noted that inadequate explanations for delay had been found in the cases of *Noonan Services Ltd v. The Labour Court* (Unreported, High Court, Kearns J., February, 2004), *Power v. Minister for Social and Family Affairs* (Unreported, High Court, 1st October, 1990) and *Solan v. Director of Public Prosecutions* [2007] 1 I.R. 543. There were, he argued, public policy concerns that the decisions of planning authorities would not be unnecessarily obstructed or delayed and cited the observations of Kearns J. in *Harding v. Cork County Council* [2008] I.E.S.C. 87 in this regard. Mr. Connolly highlighted the likely wide reaching implications of the instant proceedings and their effect on third party rights. He further noted that short delays on the part of the applicant could disentitle him to an extension of time as occurred in Kelly v. *Leitrim County Council* [2005] I.E.H.C. 11.

56. Mr. Simons for the first named respondent, submitted that the applicant had failed to satisfy the criteria prescribed for an extension of time under s. 50(8) of the Act of 2000, given that there was no requirement that an affected landowner be given direct or personal notice of the making of a variation to a development plan and that even if the applicant did not have actual notice of the variation that this was irrelevant for the purposes of the eight week time limit. He pointed to the affidavit of Mr. Raggett, sworn on the 7th November, 2007, where he averred that he was aware in a general sense of the making of the Ministerial direction in November, 2006, and contended that this represented constructive notice. Furthermore, he noted that judicial review proceedings were not even issued within eight weeks of the alleged date of knowledge, being the 22nd March, 2007. He submitted that an applicant is not entitled to postpone issuing proceedings while it assembles and examines all possible materials and relied on *Veolia Water U.K. plc. v. Fingal County Council* [2006] I.E.H.C. 137 in this regard.

57. It is a requirement of O. 84, r. 21 that an applicant is bound to act "*promptly*". Where an applicant has not done so, he must explain why he delayed. Denham J. in *De Roiste v. Minister for Defence* identified factors which may be taken into account when determining whether there is good reason to extend the time to allow judicial review:-

> *"(i) The nature of the order or action the subject matter of the application;*
>
> *(ii) The conduct of the Applicant;*
>
> *(iii) The conduct of the Respondent;*
>
> *(iv) The effect of the Order under review on the parties subsequent to the order being made and any steps taken by the parties subsequent to the order to be reviewed.*
>
> *(v) Any effect which it may have taken place on third parties by the order to be reviewed.*
>
> *(vi) Public policy that proceedings related to public law domain take place promptly except when good reason is furnished."*

58. Costello J. described the test of whether there were good reasons for the extension of time as being an objective one in *O'Donnell v. Dun Laoghaire Corporation* [1991] I.L.R.M. 301 at p. 315:-

> *"The phrase 'good reasons' is one of wide import which it would be futile to attempt to define precisely. However, in considering whether or not there are good reasons for extending the time I think it is clear that the test must be an objective one and the court should not extend the time merely because an aggrieved plaintiff believed that he or she was justified in delaying the institution of proceedings. What the plaintiff has to show (and I think the onus under O. 84, r. 21 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for the delay. There may be cases, for example where third parties had acquired rights under an administrative decision which is later challenged in a delayed action. Although the aggrieved plaintiff may be able to establish a reasonable explanation for the delay the court might well conclude that this explanation did not afford a good reason for extending the time because to do so would interfere with the acquired rights The State (Cussen) v. Brennan [1981] I.R. 181."*

59. There is no doubt that the applicant failed to move promptly in his challenge to the Ministerial direction. There was a sizeable period of inactivity on its part from the time the Ministerial order was made until the institution of these proceedings and from the time the applicant became actually aware of the Ministerial order until proceedings were

brought. One of the reasons put forward by the applicant to explain the delay is that it was unaware of the existence of the Ministerial direction. In circumstances where the direction was made a matter of public record on the 2nd November, 2006, I am satisfied that the applicant cannot be entitled to rely on its own ignorance of the making of the direction. In addition, when the applicant first became actually aware of the Ministerial direction on the 22nd March, 2007, it was still within time to issue proceedings. Notwithstanding this, it waited until the 1st June, 2007, to do so, a period in excess of two months from the time it first found out about the direction. It claims that it was forced to wait pending the arrival of the information from the Department of the second named respondent. I am unconvinced that it was necessary to wait until the receipt of this information given that the applicant knew that it was not notified or consulted prior to the making of either of the impugned orders, or at least to wait an entire month when so much time had elapsed apart altogether from the reasons issue: they could not afford to wait, whatever the benefits of the documents.

60. Putting the matter at its highest from the applicant's point of view, and undoubtedly favouring an extension of time of the period for impugning the Minister's Order is the arguability of the irrationality point. However, even if actual (and not merely constructive) notice was required (and this is the applicant's proposition), which I reject, as soon as the applicants actually became aware of the orders they had no need of additional information to move the court. Similarly, since the applicant's case is also advanced on the basis that the reasons in the Minister's order itself were insufficient or inadequate (and counsel for the applicant, it must be remembered, wishes the respondents to be confined to the four corners of the order) the applicants knew enough to move the court on that ground also. Thus, partial explanation for delay after the date of actual knowledge in March is not relevant to two of the three grounds advanced (whether they be well founded or not). Of course, in distinction to *Kelly v. Leitrim County Council* there was no prior notice of the order: Undoubtedly this is a factor which must be weighed in the equation, but it seems to me that, in the totality of circumstances, it is not such as to tip the balance in favour of the applicant, either alone or taken in conjunction with the arguability point.

61. The actual elapsed time from the 2nd November to, say, the 22nd March, 2007, is very significant by any yardstick, in the context of obligations to move within relatively short periods. All questions pertaining to delay or extension of time (including any explanations or excuses for delay after that date) must be considered in this context. I think that it is of the first importance that some form of premium is not be placed upon ignorance – as would be the case if one were not to weigh this factor heavily.

62. There is no satisfactory explanation as to why nothing was done between the end of the first week in May and the beginning of June. At that stage it could not but have been have manifest that there was great urgency about the matter, because of the pre-existing lapse of time.

63. I think it right to have regard to the policy of the planning code which is to achieve early certainty with respect to planning decisions, though I know that no special time limit exists with respect to attempts to impugn Ministerial orders under s. 31 and accordingly, this factor cannot be decisive. Again, it is one of a number of matters which one must weigh in the balance and I think that it must be weighed against the applicants. Closely related to this proposition is that it is well established that as a matter of public policy, in administrative decisions generally, early certainty is at a premium. These policies exist, *inter alia*, for the protection of third party rights.

64. It seems to me, that the relevant date from which time must run is the date of the Minister's order. However, it seems to me that it would be unconscionable for the purpose of determining whether or not to extend the time for these applications, to ignore the fact that no one could realistically have known about the order prior to the 2nd November, 2006, when it was placed before Dáil Éireann: all documents laid before the Houses of the Oireachtas are public documents, pursuant Standing Orders of Dáil Éireann and Seanad Éireann. This complied with the provisions of s. 31(5) of the Act of 2000. The last substantive step by the Council, (the manager having made the order on 31st January, 2007) was the publication of notifications in the Irish Independent, the Leinster Express and the Nationalist, as aforesaid.

65. Mr. Raggett deposes to the fact that he became aware in late October/early November, 2006 as to the fact that some lands in Co. Laois had been "rezoned". It appears to me that it would be wrong to have any regard to this or any media debate or other what one might term "unofficial" references to the proposals.

66. It appears to me that taking the 2nd November, 2006 as the practical first date from which time was to run (there being no reality to any earlier date by any yardstick) the six months period contemplated in respect of the Ministerial order expired at the end of April subject to the obligation generally to move "promptly", the period of six months being the outer limit for application, subject to any extension of time. The proceedings were one month out of time (taking the outer limit): what is or is not prompt commencement of proceedings must be regarded as a movable feast but it seems to me, having regard to the nature of notification contemplated by the planning code generally, the application should have been made within some weeks of the last date upon which notification of variation was given by newspaper, namely, the 23rd February, 2007. Obviously, the period within which the County Manager's order might have been impugned, being 8 weeks approximately (in or about the end of March as a matter of strictness). Accordingly, the applicant was approximately two months out of time in terms of moving to quash that order. If the application to the Minister was justified for the purpose of ascertaining fully the position before suing) (i.e. by letter of the 2nd April, 2007, in the first instance) a further three weeks or thereabouts elapsed before the applicants issued their originating notice of motion. All else being equal it seems to me that it might not have been unreasonable for the applicant to seek all relevant information from either the Minister or the Council and, indeed, ultimately, that approach was vindicated when the Minister's letter to the Council dated the 24th October, 2006 was unearthed. This is because one can only read the reasons set out in the Ministerial order in conjunction with those in that letter in order to ascertain the extent to such reasons and their nature. However, the entire of April had elapsed without response and given the elapsed time, the information should have been done without or the Minister pressed. There is little doubt but that it would be a counsel of perfection for a party to obtain all relevant information from, say, a Government department before proceeding with an application to quash a Ministerial order. If reasons emerged during the course of proceedings undermined or set at nought the contention that inadequate reasons were given or there was no question of irrationality (by reason of new information) this could be addressed in terms of costs.

67. The thresholds are different between an attempt to impugn the Minister's order and that of the County Manager. It seems to me, however, that the crux of the case is the Minister's order. The manager had no discretion in respect of the order. His action was merely ministerial or administrative. It seems to me that if a party had, say, an arguable case, or, indeed, an unambiguous case in favour of the proposition that the Minister's order was bad, one could not shut out an applicant from relief in terms of the manager's order, ignoring any question of the time within which it might have taken to

commence proceedings. Otherwise, a bad Ministerial order (which was, in truth, the source of any wrong) would be cured by the subsequent administrative or Ministerial order of a County Manager. It appears to me, accordingly, that if the order of the Minister was, say, condemned outside the eight week period contemplated in respect of the manager's order, an applicant would have what might be described as watertight ground of challenge on the merits but would be shut out by the time point and the rights of a party could thereby be set at nought. In this connection I think that one must be mindful of the fact that all matters in dispute must be brought before the court, in virtue of the decisions of *Henderson v. Henderson* (1843) 3 HARE 100, applied in *AA v. Medical Council* [2003] 4 I.R. 302. Hence I am of the view not merely that if an arguable case is made out against the Minister, *upso facto*, that must be a substantial ground in terms of that of the manager but also that a failure to act within the 56 days contemplated by the 2000 Act would not be fatal, either if within time for a challenge to the Ministers order or that time was extended – the crucial limits are the times prescribed in respect of judicial review generally.

68. I have approached the question of the extension of time in respect of the Managers order (eight weeks being the statutory period) primarily on the basis of the more liberal time limit prescribed by the Rules of the Superior Courts: it should be borne in mind in this context that not merely is it necessary to show good and sufficient reason before an extension of time for impugning the Managers order can be granted, but also it must be shown that the failure to act within time was due to circumstances beyond an applicant's control. I have to confess that I have the gravest doubts as to whether any of the period was beyond the applicant's control.

69. I, therefore, refuse this application.