Neutral Citation Number: [2009] IEHC 550

THE HIGH COURT

2008 20 MCA

IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS 2000 TO 2006 AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED.

BETWEEN

JONATHON PIERSON, JOHN A. WOODS, GLENN WHITE, DESMOND WOODS, KEVIN GREENE AND JOAN COYLE

APPLICANTS

AND

KEEGAN QUARRIES LIMITED

RESPONDENT

Judgment of Ms. Justice Mary Irvine, dated the 8th day of December, 2009

1. The applicants, in these proceedings, reside in the vicinity of a quarry owned and presently operated by the respondent at Hilltown Little, Bellewstown, Co. Meath.

2. The applicants seek (*inter alia*) an order pursuant to s. 160 of the Planning and Development Act 2000, as amended, ("the 2000 Act") restraining the respondent from continuing to use its lands which are contained in Folio 24022F of the County of Meath as a quarry, which use they maintain constitutes unauthorised development.

3. The present proceedings were commenced by way of notice of motion dated 11th February, 2008 and were remitted to plenary hearing by order of the High Court dated 1st May, 2008. Points of claim were delivered on behalf of the applicants on 12th May, 2008 and thereafter points of objection and defence delivered by the respondent.

4. It was agreed between the parties that following the opening of the applicants' claim that the court would determine a preliminary issue raised by the respondent as to the validity of the present claim. That issue is set out by way of preliminary objection in the respondent's points of objection and defence.

5. Following the opening of the substantive proceedings by Mr. Comyn, S.C. on the applicants' behalf, the court heard the submissions of the parties regarding the respondent's preliminary objection. The parties also delivered helpful written submissions in support of their respective positions which will be rehearsed, albeit briefly in the course of this judgment.

6. The principal objection raised by the respondent to the validity of the applicants' proceedings is a contention that the relief sought under s. 160 of the 2000 Act, which seeks to restrain the respondent's quarrying activities as unauthorised development, amounts to an impermissible collateral attack on a decision of the planning authority to register the respondent's lands as a quarry and to impose conditions on its continued operation under the provisions of s. 216 of the Act of 2000. In this regard the respondent maintains that the planning authority was only entitled to impose conditions upon the operation of the respondent's quarry if it was satisfied that it had been operated as a quarry prior to the 1st October 1964 and that its use did not therefore constitute unauthorised development. That being so, the respondent submits that the applicants, if they wished to maintain a claim that the development was unauthorised was mandated by reason of the provisions of s. 50 of the 2000 Act to do so by way of judicial review proceedings commenced within eight weeks of the date upon which the relevant decision was made. Having failed to do so, the respondent maintains that the present proceedings under s. 160 of the 2000 Act are misconceived.

7. The second preliminary objection pleaded contends that the proceedings are misconceived insofar as the applicants seek to invoke s. 160 of the 2000 Act to restrain what they contend are quarrying activities being carried out by the respondent in breach of the conditions imposed by the planning authority in its order dated of 23rd April, 2007. However, as counsel of behalf of the applicants has conceded that the procedure provided for in s. 160 of the 2000 Act is not available to the applicants as a mechanism to enforce compliance with any conditions imposed by the planning authority on the operation of a quarry registered pursuant to s. 261 of the Act of 2000, it is not necessary for the court to consider this issue further.

Factual background

8. Whilst it is not necessary for the court for the purposes of the present preliminary application to resolve any of the facts which are disputed between the parties, it is perhaps nonetheless helpful to set out very briefly the facts relied upon by the respective parties. The principal factual dispute is as to whether the lands of the respondent were ever operated as a quarry prior to 1st October, 1964. Of somewhat less importance is the extent of any quarrying carried out on the lands thereafter.

9. The lands, the subject matter of this dispute, were initially part of the Boylan Estate. The applicants maintain that the lands, now being operated by the respondent as a quarry, were purchased by a Mr. Raymond Coyle in 1975 and subsequently sold to a Mr. Lawlor in 1982. They were then purchased by the McGuinness family in 1985 and registered in the sole name of Mr. Michael McGuinness in 2002.

10. In June 2003, Michael McGuinness, according to the applicants, obtained planning permission for a land recovery operation permitting him to spread top soil on the lands so that they could be used for agricultural purposes. Mr. McGuinness, it appears from the applicants' affidavits, sought to commence quarrying activities in 2003 but received a

warning letter from the local authority on 26th April, 2004, as a result of which such activities stopped. Since the completion by the respondent of its purchase of the lands from Mr. McGuinness in February 2007 quarrying works have allegedly been recommenced on the lands and are now are being carried out at a hitherto unprecedented level.

11. The applicants are adamant that the lands were never operated as a quarry before 1st October 1964. They assert that prior to February 2007 the only quarrying works to have taken place on the relevant lands were those carried out by Mr. McGuinness in late 2003. A substantial number of maps and photographs were opened to the court in support of the applicants' assertions in this regard. To a like end numerous affidavits have been filed by individuals having knowledge of the lands over the relevant time frame.

12. The respondent, in its affidavits maintains that quarrying had commenced on its land prior to 1st October, 1964. Mr. McGuinness on the respondent's behalf, deposed in his affidavit to the fact that Mr. Lawlor who sold the property to him had pointed out the existence of quarrying pits on the land and that Mr. Edward Boylan, a previous owner of the farm had also informed him that quarry pits had been excavated periodically from 1958. The respondent also maintains that over a nine year period from 1986 until 1995, that Mr. McGuinness and his brother quarried many thousands of tonnes of rock from the quarry and also that a Mr. Gallagher quarried large amounts of materials from the lands between 1995 and 1997.

Application under Section 261 of the Planning and Development Act 2000
13. On 27th April, 2005, the respondent's predecessor in title, Mr. Michael McGuinness applied, as he was legally obliged to do, to have his quarry registered with the planning authority under S 261 of the 2000 Act. He maintained that the quarry had a pre 1964 use. He provided to the planning authority the information prescribed under s. 261(2) and thereafter no further information was sought from him by the planning authority notwithstanding their entitlement in this regard under s. 261(3) .

14. On 13th October, 2005, Meath County Council gave notice that it had registered a number of quarries including that of the respondent bearing reference QY/57 and this fact was notified to Mr. McGuinness on 14th October, 2005. Notice of the registration of Mr. McGuinness's quarry was advertised in the Meath Chronicle on 22nd October, 2005 as required by s. 261(4)(a) of the 2000 Act. That notice advised that no planning permission had been granted for the quarry and that the planning authority proposed imposing conditions on its operation. The notice invited submissions or observations regarding the continued operation of the quarry within four weeks from the date of the publication of the notice.

15. The court has not been advised as to whether any members of the public replied to the notice published in the Meath Chronicle. On 15th December, 2006, the planning authority notified Mr. McGuinness that it had decided to impose certain specified conditions on the operation of the quarry in accordance with s. 261(5)(a)(i) of the 2000 Act. A draft schedule of some 23 conditions and the reasons for their imposition was forwarded to Mr. McGuinness. In response, Mr. McGuinness exercised his right under s. 261(5)(c) and made submissions and observations regarding the draft conditions. These are contained in a detailed letter dated 30th January, 2007 from William Shields on his behalf.

16. The documentation exhibited demonstrates that the first named applicant, Mr. Pierson and his wife engaged to some degree with the planning authority regarding Mr. McGuinness's quarry. The parties in their submissions referred to a report of a Mr Barry Hanley, Executive Engineer which deals firstly with complaints made by Mr. and Mrs. Pierson in relation to another quarry at Bellewstown which is referred to as the Killsaran quarry. His report at s. 3 refers to concerns apparently expressed by Mr. and Mrs. Pierson regarding Mr. McGuinness's quarry and its potential impact on their lives. The report notes that any breach of the conditions governing the use of the quarry would be investigated by Meath County Council and the necessary action taken. That report at s. 6 also refers to the fact that any information regarding the implementation of s. 261 of the 2000 Act was available for inspection. It also confirmed that any submissions made by an interested party in relation to any development would be considered by a planning authority before a final decision would be taken. The report concludes with a statement that the issues raised by Mr. and Mrs. Pierson were under investigation, that Meath County Council would enforce all planning conditions associated with quarrying activities and could assure the Piersons that action would be taken if the quarry operator failed to meet any of the conditions associated with its operation.

17. By order of the County Manager, dated 23rd April, 2007, a decision was made under s. 261 of the 2000 Act to impose conditions on the operation of the quarry formerly owned by Mr. McGuinness. The respondent, as already stated, completed the purchase of the quarry in February 2007. The respondent, as it was entitled to do, appealed that decision to An Bord Pleanála by letter dated 18th May, 2007. By further letter dated 22nd June, 2007, the respondent unconditionally withdrew that appeal.

Section 261 of the 2000 Act
18. I will now set out the provisions of s. 261 of the 2000 Act in full for ease of reference.

> "(1) The owner or operator of a quarry to which this section applies shall, not later than one year from the coming into operation of this section, provide to the planning authority, in whose functional area the quarry is situated, information relating to the operation of the quarry at the commencement of this section, and on receipt of such information the planning authority shall, in accordance with section 7, enter it in the register.
>
> (2) Without prejudice to the generality of subsection (1), information provided under that subsection shall specify the following –
>
> (a) the area of the quarry, including the extracted area delineated on a map,
>
> (b) the material being extracted and processed (if at all),
>
> (c) the date when quarrying operations commenced on the land (where known),
>
> (d) the hours of the day during which the quarry is in operation,
>
> (e) the traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry,

(f) the levels of noise and dust generated by the operations in the quarry,

(g) any material changes in the particulars referred to in paragraphs (a) to (f) during the period commencing on the commencement of this section and the date on which the information is provided,

(h) whether –

(i) planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject, or

(ii) the operation of the quarry commenced before 1 October 1964,

and

(i) such other matters in relation to the operations of the quarry as may be prescribed.

(3) A planning authority may require a person who has submitted information in accordance with this section to submit such further information as it may specify, within such period as it may specify, relating to the operation of the quarry concerned and, on receipt thereof, the planning authority shall enter the information in the register.

(4) (a) A planning authority shall, not later than 6 months from the registration of a quarry in accordance with this section, publish notice of the registration in one or more newspapers circulating in the area within which the quarry is situated.

(b) A notice under paragraph (a) shall state –

(i) that the quarry has been registered in accordance with this section,

(ii) where planning permission has been granted in respect of the quarry, that it has been so granted and whether the planning authority is considering restating, modifying or adding to conditions attached to the planning permission in accordance with subsection (6)(a)(ii), or

(iii) where planning permission has not been granted in respect of the quarry, that it has not been so granted and whether the planning authority is considering –

(I) imposing conditions on the operation of the quarry in accordance with subsection (6)(a)(i), or

(II) requiring the making of a planning application and the preparation of an environmental impact statement in respect of the quarry in accordance with subsection (7),

(iv) the place or places and times at which the register may be inspected,

(v) that submissions or observations regarding the operation of the quarry may be made to the planning authority within 4 weeks from the date of publication of the notice.

(c) A notice under this subsection may relate to one or more quarries registered in accordance with this section.

(5) (a) Where a planning authority proposes to –

(i) impose, restate, modify or add to conditions on the operation of the quarry under this section, or

(ii) require, under subsection (7), a planning application to be made and an environmental impact statement to be submitted in respect of the quarry in accordance with this section,

it shall, as soon as may be after the expiration of the period for making observations or submissions pursuant to a notice under subsection (4)(b), serve notice of its proposals on the owner or operator of the quarry.

(b) A notice referred to in paragraph (a), shall state –

(i) the reasons for the proposals, and

(ii) that submissions or observations regarding the proposals may be made by the owner or operator of the quarry to the planning authority within such period as may be specified in the notice, being not less than 6 weeks from the service of the notice.

(c) Submissions or observations made pursuant to a notice under paragraph (b) shall be taken into consideration by a planning authority when performing its functions under subsection (6) or (7).

(6) (a) Not later than 2 years from the registration of a quarry under this section, a planning authority may, in the interests of proper planning and sustainable development, and having regard to the development plan and submissions or observations (if any) made pursuant to a notice under subsection (4) or (5) –

(i) in relation to a quarry which commenced operation before 1 October 1964, impose conditions on the operation of that quarry, or

(ii) in relation to a quarry in respect of which planning permission was granted under Part IV of the Act of 1963 restate, modify or add to conditions imposed on the operation of that quarry,

and the owner and operator of the quarry concerned shall as soon as may be thereafter be notified in writing thereof.

(b) Where, in relation to a grant of planning permission conditions have been restated, modified or

added in accordance with paragraph (a), the planning permission shall be deemed, for the purposes of this Act, to have been granted under section 34 , and any condition so restated, modified or added shall have effect as if imposed under section 34 .

(c) Notwithstanding paragraph (a), where an integrated pollution control licence has been granted in relation to a quarry, a planning authority or the Board on appeal shall not restate, modify, add to or impose conditions under this subsection relating to –

(i) the control (including the prevention, limitation, elimination, abatement or reduction) of emissions from the quarry, or

(ii) the control of emissions related to or following the cessation of the operation of the quarry.

(7) (a) Where the continued operation of a quarry –

(i) (I) the extracted area of which is greater than 5 hectares, or

(II) that is situated on a European site or any other area prescribed for the purpose of section 10 (2) (c), or land to which an order under section 15, 16 or 17 of the Wildlife Act, 1976 , applies,

and

(ii) that commenced operation before 1 October 1964,would be likely to have significant effects on the environment (having regard to any selection criteria prescribed by the Minister under section 176 (2) (e)), a planning authority shall not impose conditions on the operation of a quarry under subsection (6), but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of service of the notice, or such other period as may be agreed with the planning authority.

(b) Section 172 (1) shall not apply to development to which an application made pursuant to a requirement under paragraph (a) applies.

(c) A planning authority, or the Board on appeal, shall, in considering an application for planning permission made pursuant to a requirement under paragraph (a), have regard to the existing use of the land as a quarry.

(8) (a) Where, in relation to a quarry for which permission was granted under Part IV of the Act of 1963, a planning authority adds or modifies conditions under this section that are more restrictive than existing conditions imposed in relation to that permission, the owner or operator of the quarry may claim compensation under section 197 and references in that section to compliance with conditions on the continuance of any use of land consequent upon a notice under section 46 shall be construed as including references to compliance with conditions so added or modified, save that no such claim may be made in respect of any condition relating to a matter specified in paragraph (a), (b) or (c) of section 34 (4), or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.

(b) Where, in relation to a quarry to which subsection (7) applies, a planning authority, or the Board on appeal, refuses permission for development under section 34 or grants permission thereunder subject to conditions on the operation of the quarry, the owner or operator of the quarry shall be entitled to claim compensation under section 197 and for that purpose the reference in subsection (1) of that section to a notice under section 46 shall be construed as a reference to a decision under section 34 and the reference in section 197 (2) to section 46 shall be construed as a reference to section 34 save that no such claim may be made in respect of any condition relating to a matter specified in paragraph (a), (b) or (c) of section 34 (4), or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.

(9) (a) A person who provides information to a planning authority in accordance with subsection (1) or in compliance with a requirement under subsection (3) may appeal a decision of the planning authority to impose, restate, add to or modify conditions in accordance with subsection (6) to the Board within 4 weeks from the date of receipt of notification by the authority of those conditions.

(b) The Board may at the determination of an appeal under paragraph (a) confirm with or without modifications the decision of the planning authority or annul that decision.

(10) (a) A quarry to which this section applies in respect of which the owner or operator fails to provide information in relation to the operations of the quarry in accordance with subsection (1) or in accordance with a requirement under subsection (3) shall be unauthorised development.

(b) Any quarry in respect of which a notification under subsection (7) applies shall, unless a planning application in respect of the quarry is submitted to the planning authority within the period referred to in that subsection, be unauthorised development.

(11) This section shall apply to –

(a) a quarry in respect of which planning permission under Part IV of the Act of 1963 was granted more than 5 years before the coming into operation of this section, and

(b) any other quarry in operation on or after the coming into operation of this section, being a quarry in respect of which planning permission was not granted under that Part.

(12) The Minister may issue guidelines to planning authorities regarding the performance of their functions under this section and a planning authority shall have regard to any such guidelines.

(13) In this section –

'emission' means –

(a) an emission into the atmosphere of a pollutant within the meaning of the Air Pollution Act, 1987,

(b) a discharge of polluting matter, sewage effluent or trade effluent within the meaning of the Local Government (Water Pollution) Act, 1977 , to waters or sewers within the meaning of that Act,

(c) the disposal of waste, or

(d) noise;

'operator' means a person who at all material times is in charge of the carrying on of quarrying activities at a quarry or under whose direction such activities are carried out;

'quarry' has the meaning assigned to it by section 3 of the Mines and Quarries Act, 1965 ."

The respondent's submissions:

19. It is as against the background of the aforementioned facts that the respondent makes its preliminary objection to the validity of the present proceedings. I will now briefly refer in a skeletal fashion to the submissions made by the respondent.

20. The respondent submits that the plaintiff's claim is misconceived and/or amounts to an abuse of process. It contends that the applicants are now impermissibly seeking to use the provisions of s. 160 of the 2000 Act to challenge a previous decision of the planning authority that the respondent's quarry was not an unauthorised development by reason of its use as a quarry prior to 1st October, 1964. That decision was made in the course of the s. 261 application to have the quarry registered. Absent such a determination the respondent submits that the planning authority could not have imposed conditions on the operation of the quarry under s. 261(6)(a)(i). The applicants did not challenge that decision in judicial review proceedings in accordance with s. 50 of the Act of 2000, as substituted by s. 13 of the Planning and Development Strategic Infrastructure Act 2006, within eight weeks from the date of the decision. Hence they are precluded from maintaining these proceedings.

21. Mr. Murphy, S.C. on behalf of the respondent relied upon a number of dates in relation to this submission. He firstly relied upon 13th October 2006, the date of the notice of the Planning Department of its intention to register a number of Quarries including that of Mr. McGuinness, subject to the imposition of conditions. Those conditions could only be imposed, he submitted, if the planning authority was satisfied that the quarry had been operated prior to 1st October, 1964 and did not constitute unauthorised development. That decision, counsel submitted ought to have been challenged by the applicants given that it was a decision governed by s. 50 of the 2000 Act.

22. The second date relied upon by the respondent is that of 15th December, 2006 being the date upon which the conditions to be imposed upon the continued operation of the quarry were notified to Mr. McGuinness. That date followed the period of four weeks given to the public to make their submissions following notification to them in the newspaper of the decision of the Planning authority to register the quarry subject to conditions. Those conditions were then available to the public on the planning file. Once again, the respondent submitted that the imposition of those conditions was only consistent with a prior determination by the planning authority that the quarry was not unauthorised development by reason of its pre 1964 use. Accordingly the applicants, if they wished to challenge that decision, had to do so by way of judicial review proceedings within 8 weeks of the 15th December 2006.

23. The final date relied upon by the respondent was that of 23rd April, 2007, being the date upon which the County Manager, having considered the submissions made on behalf of Mr. McGuinness regarding the proposed conditions, made his order directing that 23 conditions be imposed upon the continued operation of the quarry. Again Mr Murphy submitted that it was a pre condition to that decision that the planning authority had decided that the quarry was not an unauthorised development by reason of its operation prior to 1st October, 1964. Accordingly, that decision ought to have been challenged by the applicants within 8 weeks by way of judicial review.

24. The respondent submitted that the planning authority was entitled, in the course of the s. 261 registration process to reach a binding conclusion that any quarry in respect of which an application had been made for registration had the status of an authorised development. This was a reasonable interpretation of the section giving the public consultation process provided for therein. The fact that interested parties have no right to appeal a decision made by a planning authority to register a quarry subject to conditions, even if the consequences of that decision is that the lawfulness of the use of those lands as a quarry cannot thereafter be challenged in proceedings under s. 160 of the Act, is a matter for the Oireachtas. There is no obligation on the Oireachtas to provide for an appeals mechanism.

25. Section 261 created, according to the respondent, a stand alone regime for the regulation of quarries and the fact that the planning authority has not been provided with any mechanism to enforce compliance with any conditions as may be imposed on the continued operation of the quarry, is irrelevant. Any such lacuna in the legislation is a matter for the Oireachtas rather than for this Court.

26. Significant reliance was placed on the language of s. 50 of the 2000 Act (as amended) which provides :-

"50(2) A person shall not question the validity of any decision made or other act done by –

(a) a planning authority, a local authority or the Board in the performance or purported performance of a function under this Act…

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the 'Order')."

(6) Subject to subsection (8), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (2)(a) applies shall be made within the period of

> 8 weeks beginning on the date of the decision or, as the case may be, the date of the doing of the act by the planning authority, the local authority or the Board, as appropriate."

27. The respondent submits that the applicants should have challenged the decision of the planning authority by way of judicial review within eight weeks of the decision to register the quarry on 13th October, 2003 or alternatively, at latest within eight weeks of the decision of the County Manager of 22nd April, 2003 whereby conditions were imposed.

28. The respondent submits that it would be unjust to permit the applicants to maintain proceedings under s. 160 of the 2000 Act, at this late stage, having regard to the fact that the strict time limits provided for under s. 50 of the 2000 Act derive from the Oireachtas' considered view that as a matter of public policy those affected by planning decisions should be free to rely upon such decisions safe in the knowledge that they are beyond challenge. The applicants were parties to the respondent's application for registration under s. 261 of the Act. The decision of the planning authority could only have been based upon a finding that the quarry had a pre 1964 use and was therefore considered by it to be exempt from the requirement of planning permission. Consequently, any challenge to that decision could not be postponed to be dealt with at the present time under s. 160 of the 2000 Act.

29. The failure of the applicants to challenge the aforementioned decisions of the planning authority are accordingly fatal to their right to maintain the present proceedings. Counsel in this regard relied upon judgment of Finlay C.J. in *K.S.K. Enterprises Ltd. v. An Bord Pleanála* [1994] 2 I.R. 128. The respondent relied upon the words "a person shall not question the validity of any decision made or other act done" and "otherwise than by way of an application for judicial review" to support his contention that s. 50 imposed a strict procedural exclusivity on any party wishing to challenge a decision of the planning authority.

30. Section 50, it was submitted precludes not just direct challenges to the validity of a decision of a planning authority such as its decision to impose conditions on the respondent's quarry in the present case but also any challenge or argument that amounts to a collateral attack upon that decision such as the underlying decision of the planning authority in the present case which was to the effect that the respondent's quarry, by reason of its use prior to 1964 did not amount to unauthorised development.

31. It was established law that decisions made by a planning authority in the course of its operation of s. 261 were amenable to judicial review. In this regard reliance was placed on the Hanna J. in *Pearce v. Westmeath County Council* [2008] IEHC 449.

32. The respondent further submitted that to permit the applicant to maintain the present proceedings by way of a s. 160 application, offended the doctrine of *audi alteram partem*. The planning authority is not a party to this claim and it is its decision that is that is at the root of the current proceedings particularly insofar as the applicants contend in their points of claim that its decision to register the respondent's quarry is invalid and of no effect. In this regard, the respondent relied upon the decision of Finlay C.J. in *Comhaltas Ceoltoiri Éireann* (Unreported, 1977) wherein it was stated that the planning authority would normally be seen to be in a central party to proceedings seeking such a declaration.

The applicants' submissions

33. The applicants contend that the respondent, to succeed on the present application, must convince the court that the legislature intended that s. 261 would provide a procedural method whereby a quarry, which constituted unauthorised development at the commencement of the registration process, might have its operations in some way authorised so as to absolve it of any need to apply for planning permission at the end of that process. Thus any interested party would be precluded thereafter from seeking to challenge the development as unauthorised and its only legal remedy would be the invocation of judicial review proceeding brought within eight weeks of the final order made by the planning authority under that section. In other words that s. 261 can be used by the owner or operator of a quarry to obtain a type of backdoor planning permission or authorisation for the quarry which might otherwise be considered to be an unauthorised development.

34. The applicants submit that there is nothing in the wording of s. 261 which would entitle the court to infer that the furnishing of information by a quarry owner or operator followed by its registration and/or the imposition of conditions on its continued use entitle the planning authority to confer any change of status or authorisation upon an otherwise unauthorised development. If that had been the intention of the legislature the same would have been explicitly stated in the section, which it is not. The registration of a quarry under s. 261 even if subject to the imposition of conditions, according to the applicants, does nothing to alter the status of an otherwise unauthorised quarry. Reliance was placed upon the maxim *expressio unius est exclusio alterious* and the decision of Murnaghan J. in *McCarthy v. Walsh* [1965] I.R. 246 where he stated:-

> "If the latter was the Legislature's intention, I would have expected that such intention would have been translated into explicit statutory provisions. The fact that this was not done is one reason for thinking that this was not the intention of the Legislature."

35. In support of the submission that the legislature never intended that the registration of or the imposition of conditions upon a quarry could confer upon it a change of status analogous to that of a quarry with planning permission, counsel emphasised the substantial procedural differences between an application for planning permission and the process for the mandatory registration of quarries under Section 261. He referred to the involvement of the public in the s. 261 procedure which is limited to the right to make observations on the registration of quarry in comparison to the position of a member of the public in relation to a planning application. He referred to the formal requirements pertaining to an application for planning permission including the erection of a site notice, notification in a newspaper and the right of appeal to An Bord Pleanála. He contrasted these rights with those of an interested party in an application made under Section 261. A member of the public had no right to be involved in the s. 261 process after the point at which the planning authority decided in principle upon any conditions to be imposed of a quarry owner. This was in stark contrast to the right of the quarry owner to make submissions on the conditions proposed and to further appeal the final decision of the planning authority in respect of the imposition of conditions to An Bord Pleanála.

36. The applicants contend that there is nothing in the language of s. 261 to indicate that that section does anything other than supplement the normal controls available under the 2000 Act including the right of an interested party to challenge a development as being unauthorised under Section 160 and that had the legislature intended to grant to

quarry owners a derogation or protection from the enforcement provisions of s. 160 of the Act that it would have framed the section appropriately. There is nothing in s. 261 to make a registered quarry subject to conditions immune from the enforcement provisions provided for in s. 160 of the Act.

37. The applicants submit that there is nothing in the provisions of s. 261 from which it can be inferred that the legislature intended that an interested party wishing to challenge the alleged unauthorised use of a quarry was to have their right to a factual hearing under s. 160 of the Act reduced to a right to judicially review the decision of the planning authority made in the course of the s. 261 process. They relied upon the limitations of the judicial review process which they described as being wholly incapable of providing a remedy where factual matters were at issue between the parties. Counsel relied upon the decision of the Supreme Court in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 wherein a very high threshold was set for any claim to be successful by way of judicial review on the grounds of irrationality. He further relied upon the decision of O'Sullivan J. in *Aer Lingus Ltd. v. Ryanair Ltd*. (Unreported, 16th January, 2003).

38. In support of their submission as to the true interpretation of s. 261, the applicants relied upon the ministerial guidelines entitled "Quarries and Ancillary Activities" issued pursuant to s. 28 of the Planning and Development Act 2000. According to the applicants, the purpose of s. 261 was to add controls to quarries which had an authorised status, particularly quarries which had never received planning permission; had older planning permissions and might therefore not have been operating to the standards of modern quarries or had perhaps been expanding their activities. The applicants relied upon *Planning and Development Law* (2nd Ed.) by Simons wherein it was stated that any belief that registration of a quarry in some way conferred the benefit of exempted development upon unauthorised development was mistaken as was any belief that enforcement proceedings could not be taken once a quarry had been registered.

Decision

39. I agree with many of the broad legal principles advanced by the respondent in the course of this preliminary issue. There is no doubting the reasoning which underlies the provisions of s. 50 of the 2000 Act, namely, the desire to give certainty to those who are affected by decisions of the planning authorities as was stated by Finlay C.J. in *KSK Enterprises Ltd. v. An Bord Pleanála* [1994] 2 I.R. 128. Also, there is no disputing the fact that a planning permission is on its face valid until such time as it is challenged, as was made clear by Walsh J. in the *State (Abenglen Properties) v. Dublin Corporation* [1984] I.R. 381. Further, I accept that it is established law that a decision of the planning authority under s. 261 of the Act may be challenged by a member of the public who has the appropriate locus standi so to do, as was held by Hanna J. in *Pearce v. Westmeath County Council* [2008] IEHC 449. However, the questions that need to be resolved in determining the present issue include whether the principles which underlie the provisions of s. 50 apply to the present case and whether or not any of the three decisions made by the planning authority when invoking their powers under s. 261 in relation to the respondent's quarry could, if that quarry was an unauthorised development at the commencement of the registration process have had its status changed such that at the conclusion of the process it can be considered exempt from a need to apply for planning permission. I am satisfied that both questions should be answered in the negative.

40. I do not accept that a decision made by a planning authority to register a quarry subject to the imposition of conditions under s. 261 of the 2000 Act has the legal effect contended for by the respondent. If the quarry constituted unauthorised development at the start of the s. 261 process, its registration subject to conditions does not, in my view, alter its status. Neither does that decision have any legal effect on the right of a party with the appropriate *locus standi*, such as the applicants in the present case, to challenge that development as being unauthorised under s. 160 of the 2000 Act.

41. Whether I am right or wrong on this issue, I cannot find anything in either s. 50 or s. 261 of the 2000 Act that creates the type of procedural exclusivity contended for by the respondent. In my view, it cannot be the case that the only remedy available to a party who wishes to contend that the use of certain lands as a quarry is unauthorised, notwithstanding a decision by the planning authority to register that quarry, subject to conditions, is the right to challenge that decision by way of judicial review. It is a wholly inadequate remedy for such purpose as I will seek to demonstrate later in this judgment.

42. In coming to these conclusions, I have considered the submissions of the parties, not all of which have been referred to in the earlier part of this judgment, and also the case law and materials made available. In particular, I have had regard to the provisions of s. 261 of the Act which are at the core of the present issue. However, in seeking to interpret that section, I have, of course, had regard to the entirety of the provisions of the 2000 Act, as amended.

Purpose of Section 261

43. In seeking to establish the power of the local authority under s. 261 when dealing with a quarry that may be regarded as unauthorised development, it is helpful to consider the purpose of that section.

44. Simon's in his 2nd Ed. of *Planning Law and Development*, refers to the purpose of s. 261 in the following manner at para. 8 – 128:-

> "What appears to have been intended is that two distinct categories of quarry development be subject to renewed control. The first category consists of quarries the excavation of which had commenced prior to 1st October, 1964. Such quarries had been regarded as having an established use, and did not require planning permission under the Local Government (Planning and Development) Act 1963. The second category consists of quarries with the benefit of what might be described as 'old planning permissions' i.e. planning permissions granted more than five years before the coming into operation of s. 261 on 28th April, 2004."

45. Nowhere in this learned text, is there any support for the proposition that the legislature intended that s. 261 was to be used as some substitute method whereby planning permission or authorisation could be obtained for the use of a quarry that constituted unauthorised development at the date of the application for registration. In fact, the contrary view is expressed by the author at para. 8 – 136 where he states:-

> "The effect of registration is simply to insure that the planning authority and members of the public, have sufficient information to allow the question of what renewed controls, if any, should be imposed to be addressed."

46. In this last quotation, the author was clearly referring to the two categories of quarry referred to at para. 8-128 above. Indeed, the author goes somewhat further, on this issue, when he advises as follows at para. 8 – 137:-

> "Some developers are of the mistaken belief that the registration of a quarry, in some way, confers the benefit of exempted development, or that enforcement proceedings cannot be taken once an existing quarry has been registered. Neither of these assumptions is correct, and s. 261 simply supplements the normal controls. The controls under s. 261 are in addition to – as opposed to in substitution for – the normal controls under the planning legislation. Thus, for example, the creation of new quarry or the extension of an existing quarry is unaffected by s. 261, and will require planning permission in the ordinary way."

47. The applicants submit, and I agree with them, that the respondent's quarry, if it was unauthorised development because it had not been operated as such prior to 1st October, 1964, is not immune from the need to apply for planning permission merely because it has been registered as a quarry subject to conditions by the planning authority in the course of the s. 261 procedure.

48. At para. 8 – 169, Simons continues:-

> "Section 261 merely supplements the normal range of enforcement mechanisms, and, accordingly there is nothing in s. 261 which prevents enforcement action being taken against an unauthorised quarry under Part VIII of the PDA 2000. This is so even if the quarry has been purportedly registered under Section 261."

Ministerial Guidelines issued by the Department of Environment, Heritage and Local Government dated April 2004

49. I accept, as a matter of law, the respondent's submissions based upon the decision of Edwards J. in *Sherwin v. An Bord Pleanála* [2007] IEHC 227 which is to the effect that the court must be careful as to the weight to be attached to guidelines that may be issued by the relevant Minister in relation to any given piece of legislation. I view as an entirely correct statement of law, the following brief passage from the *Sherwin* decision where at p. 580, the trial judge stated:-

> "Finally, I should say something about the guidance material relied upon by the respondent. Nobody is suggesting for a second that the respondent was not entitled to have regard to the guidance material in question. However, they ought to have borne in mind that guidance cannot alter or displace substantive and established law. Legislation cannot be altered by guidance. The guidance must be with respect to how to proceed in a particular legal context. The guidance cannot itself alter or seek to alter that particular legal context. In other words a Minister cannot amend or add to existing legislation in the course of issuing guidance. If purported guidance mis-states the law, as it appears to have done in this particular case, with the result that the persons who are entitled, or even obliged, to have regard to that guidance are, or may be, misled then that is most unfortunate and unsatisfactory."

50. I do not, however, accept that any such error has been made in the published guidelines in the present case. Accordingly, in coming to my decision, I have given considerable weight to the purpose of the legislation as outlined in the guidelines and also the advice given therein as to the effect of section s.261 on any quarry that might be unauthorised at the date of application for registration.

51. As to the purpose of s. 261, the guidelines issued by the Department of the Environment, Heritage and Local Government at para. 1.2 states that the registration system has two purposes:-

> "• to give a 'snapshot' of the current use of land for quarrying. This will ensure that local authorities have basic information about a quarry's operations. Planning permission may then be required for any proposed expansion or intensification of its operations;
>
> • where necessary, to permit the introduction of new or modified controls on the operation of certain quarries. These controls may be imposed in two ways. Quarries may have to comply with certain new or modified conditions on their operation. Certain quarries operating since before 1 October 1964 which may have significant effects on the environment, may have to seek planning permission for their continued operation and submit an Environmental Impact Statement. The same sort of considerations will apply to these applications for permission, as apply to all applications for permission for quarries. (see Chapters 3 and 4 of these Guidelines)."

52. As to unauthorised development that comes to the attention of the planning authority in the course of the s. 261 process, the following guidance is given at para. 5.10:-

> "It should be noted that the registration of quarries under section 261 does not confer planning consent for a quarry that is an unauthorised development. Therefore, an unauthorised development remains unauthorised even after registering with the planning authority. In the event of a planning authority becoming aware of an operating quarry which is unauthorised development, through the registration process or otherwise, or which has failed to comply with a request for further information or a requirement to apply for planning permission, the planning authority must consider taking enforcement action in accordance with Part VIII of the Planning and Development Act, 2000. It is not necessary to defer the enforcement proceedings until after the registration process is completed. The enforcement action could lead to an end to quarrying activities at the site as well as penalties for persons who carried out the unauthorised development."

53. There is nothing in the guidelines to suggest that if a quarry is unauthorised at the date of its registration that the planning authority can proceed to permit the quarry to operate subject to conditions in lieu of taking enforcement action and/or requiring the owner to apply for planning permission. The guidance just quoted lends strong support to the applicant's contention that this section cannot be used by a quarry owner to obtain planning permissions, so to speak by the backdoor. It is clear that if it comes to the notice of a planning authority in the course of the s. 261 process that any quarry is unauthorised then its obligation is to use the full rigors of the planning code to restrain such use. Accordingly, it

must follow that the applicants in the present proceedings retain their right to seek relief under s. 160 of the Act in equivalent circumstances where they maintain that the use by the respondent of its lands amounts to unauthorised development.

Section 261 wording
54. Neither the reasoning stated to underlie the introduction of s. 261 or the departmental guidelines, lend any support to the respondent's arguments as to the effect of the section at the conclusion of the registration process, either as to the status of an otherwise unauthorised quarry or the right of an interested party to invoke the provisions of s. 160 of the 2000 Act. Further, in my view, the plain reading of the section itself makes the respondents arguments untenable.

55. This lengthy and detailed section does not state and neither can it be inferred from its wording, that the planning authority has the power when operating the s. 261 process to make a binding determination that a quarry in respect of which registration is sought, if registered subject to conditions, is thereafter exempt from the need to apply for planning permission, if at the time it applied for registration it was an unauthorised development. If that had been the intention of the legislature, it would have been so stated in the section. Neither does s. 261 provide that any decision made to register a quarry subject to conditions renders that quarry immune from a challenge to its status as an allegedly unauthorised development under s.160 of the 2000 Act. If the decision of a planning authority to impose conditions was intended to have such fundamental and significant legal implications, I believe that the same would have been clearly set out in the section.

56. It would have been a straightforward task for the legislature to have added to s. 261(6)(a), a provision to the effect that a quarry, which did not enjoy the benefit of pre October 1964 use or a grant of planning permission under Part IV of the 1963 Act, might in the course of registration have conditions attached to its continued use whereupon its use would thereafter be deemed to be authorised to the extent that it did not require planning permission and that any such decision was final subject only to the possibility of challenge pursuant to the provisions of Section 50. There is no such provision.

57. The idea that the legislature intended to make such a fundamental change to planning law through the introduction of a section which is deafeningly silent as to the implications contended for by the respondents is simply to my mind unbelievable having regard to the implications for quarry owners and members of the public should this section be construed in the manner contended for by the respondent. In this regard, the departmental guidelines sit comfortably with the plain wording of the section.

Inferences to be drawn from the provisions of Section 261
58. In support of its submission as to the binding nature and legal significance to be attached to a decision of the planning authority to impose conditions upon the continued operation of a quarry, the respondents place great weight upon the public consultative process which leads to that decision. This consultative process is one meant to give comfort to the court in joining with the respondent on its interpretation of the section.

59. I regret to say that, in my view, the statutory right of interested parties to engage in the consultative process as provided for in s. 261 is extraordinarily limited and lends little support to a contention that the section was intended on the one hand to provide a method whereby the owner of an unauthorised quarry might obtain an authorised status for that quarry without being subjected to the normal rigours of the planning process whilst on the other hand simultaneously eradicating the possibility of any challenge to that status otherwise than in proceedings under s. 50 of the Act

60. Consultation with the public under s. 261 only commences after a quarry has actually been registered and after it has advised, by newspaper advertisement, how it proposes to deal with the application for registration. In this case, the indication given was that conditions would be imposed by the counsel on the continued operation of the quarry.

61. Under s. 261 there is no obligation on the planning authority to furnish to the public any details as to the conditions that it may be considering imposing at the time their observations are sought. After the four weeks provided for the submissions and observations under s. 261(4)(b)(v), the planning authority is entitled to fix those conditions and notify them to the owner. Thereafter, all subsequent dealings between the owner and the planning authority are hermetically sealed from public participation. Only the owner may make submissions as to the conditions to be imposed. The public have no equivalent right. Thereafter, upon the formal imposition of the conditions, once again, the public have no right of appeal to An Bord Pleanála, a right solely vested in the owner.

62. Whilst, the file regarding an application for the registration of a quarry may be available for inspection to members of the public and the planning authority may choose to engage with the public on matters outside their statutory entitlement, it is only their statutory entitlement that matters in circumstances where the respondent contends that the only challenge open to a decision of the planning authority in such circumstances is an application by way of judicial review. It cannot be inferred from the public's right to make the limited contribution to the s. 261 process just referred to that that the legislature intended that quarries operating as unauthorised developments could have their status legitimised in a binding way in the course of that process. There is simply no comparison between the public's right to make observations under s. 261 and the statutory rights which they enjoy as interested parties participating in the normal planning process.

63. I further accept the applicants' submission that the respondent's contention as to the legal significance to be attached to the imposition of conditions on what might otherwise be considered to be an unauthorised development is significantly undermined by the fact that compliance with any such conditions cannot be enforced under the s. 160 procedure. The implications which flow from the interpretation contended for by the respondent are stark. On the respondent's submission the owner of an unauthorised quarry by applying for registration will, if the quarry is registered subject to conditions, avoid the necessity of applying for planning permission. That quarry owner may appeal the decision imposing conditions to An Bord Pleanála and even if the conditions are upheld, he can operate his quarry in disregard of those conditions in the knowledge that there is no enforcement procedure available to secure his compliance therewith. According to the respondent no member of the public can thereafter challenge the development as unauthorised. Neither can they challenge the nature of the conditions imposed or appeal any part of the decision making process under Section 261. Finally, a member of the public has no mechanism available to enforce compliance by a quarry owner with any such condition as imposed by a planning authority.

Judicial Review: Procedural Exclusivity

64. The final issue to which I wish to refer is a submission made by the respondent that the legislature, when it enacted s. 261, intended not only to permit a planning authority to put beyond challenge the lawfulness of the status of a quarry development by the imposition of conditions on its continued operation but that it also intended that any party aggrieved by that decision would have as their only remedy a right to challenge that decision by way of judicial review in lieu of their right to challenge the nature of the development as being unauthorised under Section 160.

65. Once again, I cannot accept that this was the intention of the legislature. One of the core issues in the present proceedings under s. 160 is a dispute as to fact as to whether or not the respondent's quarry was used as such prior to 1964. This type of factual dispute is simply not amenable to be resolved in any judicial review proceedings.

66. It is valuable to test the reality of the remedy which the respondent contends the legislature has left open to the applicant against the facts of the present case. Take the first decision made by the planning authority in respect of the registration process. That decision was made on 13th October, 2005 by the planning authority. On that date, the quarry was registered and the planning authority resolved to notify the public that the respondent's quarry had been registered and that it was considering the imposition of conditions on its continued operation. At that point in time the planning authority had made the decision to register the respondent's quarry subject to the imposition of some type of conditions. On the respondent's submissions, the decision to impose conditions could only have been made if the planning authority had also decided that the quarry was exempted development by reason of its use as a quarry prior to 1st October, 1964. Accordingly, the applicants, if the procedural exclusivity contended for by the respondent is correct, had eight weeks to judicially review that decision.

67. I ask myself what part of that decision could the applicant challenge and to what useful purpose? At that point in the s. 261 process, the applicants had no statutory right to contribute by way of observation, submission, objection or otherwise. Hence, given that the planning authority had some evidence furnished by the owner to support a decision that its land had been used prior to 1st October, 1964 as a quarry, any judicial review proceedings would have to fail. There could be no claim in respect of illegality or irrationality.

68. Similar problems arise in respect of any efforts that might have been made to challenge the decision of 15th December, 2005 or for that matter the final decision regarding the conditions to be imposed, which was made on 13th April, 2006. By the 15th December 2005, the applicant's opportunity to engage in s. 261 process was at an end and at the time the applicants were entitled to make their submissions, they had no knowledge as to the nature or the extent of the conditions which the planning authority were considering imposing. These were only notified to them following the expiry of the four week period in which they were permitted to make observations. However, even if during that period they had provided substantial evidence to the planning authority in the hope of demonstrating that the lands had never been used as a quarry prior to the 1st October 1964, once there was any evidence at all submitted to the contrary, the planning authorities' decision in favour of the respondent's evidence would have been unassailable on a judicial review application. Any such proceedings as might have been mounted would have been destined to failure for the want of proof of either illegality or irrationality.

69. The limitations of judicial review as a remedy where there is any dispute as to fact are well described by O'Sullivan J. in his decision in *Aer Rianta Cpt. v. Commissioner for Aviation* (Unreported, 16th January, 2003). In dealing with the threshold for proof of irrationality, O'Sullivan J. put the standard of proof as follows at p. 69 of his judgment, namely:-

> "It is not necessary in this part of my judgment to cite against the lapidary statements of principle from Lord Chief Justice O'Brien and Chief Justices O'Higgins, Finlay and Hamilton.
>
> At the heart of jurisprudence on irrationality review lies the distinction between error and invalidity. A decision is not invalid because it is wrong. It is not invalid because it is very wrong, fundamentally wrong or even absolutely wrong. These epithets are intended to criticise a decision in much the same way as the corrector of an examination paper might condemn the feeble efforts of a weak student or even the weakest student but they do not attempt the castigation reserved by the courts for the chancer who turns up for the exam and writes down absurdities which display no attempt at a meaningful relationship between what is written and the questions asked or, it may be, the obtuse blockhead whose attempt at achieving such a relationship is whimsical, fanciful or hopelessly idiosyncratic. His answers are indeed an insult to the intelligence: both the examiners and his own - but the feeble efforts of the poorest students are in a different category: blameworthy it may be, but not an outrage or an affront to the intelligence."

70. O'Sullivan J. continued as follows:-

> "The type of grievous error so reviewable is of a completely different order. It is not reached by the extension of the line on which are to be found mere errors, serious errors, multiple errors and fundamental errors because that is a line of rational attempt no matter how misguided the outcome. But the kind of error that produces invalidity is one which no rational or sane decision maker, no matter how misguided, could essay. To be reviewably irrational. It is not sufficient that a decision maker goes wrong or even hopelessly and fundamentally wrong: he must have gone completely and in inexplicably mad; taken leave of his senses and come to an absurd conclusion. It is only when this last situation arises or something akin to it that a court will review the decision for irrationality."

71. That quotation from the judgment of O'Sullivan J. ably and graphically depicts the limitations of judicial review as a remedy where a party wishes to dispute a decision made in the face of disputed facts rather than the fairness and lawfulness of the process leading to that decision It is difficult to believe that the legislature, having afforded to members of the public a right to challenge a use of land as unauthorised in the manner provided for in s. 160 of the Act could have intended, as submitted by the respondent, to obliterate such fundamental protections in such a silent and stealthful way by the introduction into the planning code of the provisions of s. 261 of the 2000 Act.

72. Whilst counsel for the respondent relied strongly on the decision of Hanna J. in *Pearce v. Westmeath County Council*, I do not believe that that decision goes any distance to support the respondent's objection to the continuance of these proceedings under s. 160 of the 2000 Act. In that case, the applicant in judicial review proceedings was a lady who lived in close proximity to a quarry owned by the notice party. She brought judicial review proceedings seeking to challenge the decision of the planning authority made under s. 261 of the 2000 Act. The quarry owner had applied for registration of his

quarry. The planning authority decided that his quarry fell within the provisions of s. 261(7) of the 2000 Act insofar as it determined that the quarry concerned had a pre 1964 use and had an excavation area of more than 5 hectares. It inserted the statutory notice in the newspaper on 13th October, 2005 indicating its intention to require the quarry owner to apply for planning permission and lodge with that application an environmental impact statement. Observations were made by the public including the applicant following the insertion of this notice. Those observations strongly disputed the use of the lands as a quarry prior to 1964.

73. The planning authority proceeded to make its final order on 19th April, 2006. It required the quarry owner to seek planning permission and to furnish an environmental impact statement. He duly applied for planning permission and obtained it. The applicant appealed that grant of planning permission and the same was under appeal to An Bord Pleanála at the time the judicial review proceedings were heard.

74. A number of reliefs were sought in the judicial review proceedings including orders seeking to quash the decision of the planning authority on the basis that it had failed to require the quarry owner to submit adequate objective evidence as to the pre 1964 status of the quarry; that it had failed to properly investigate and evaluate the evidence available as to the pre 1964 use of the quarry in reaching its decision and that its decision was irrational and perverse on the evidence.

75. It is common case that the remedy sought by the applicant in that case was by way of judicial review under s. 50 of the 2000 Act. The trial judge determined in the course of his judgment that the applicant, as a lady residing close to the quarry had the *locus standi* to maintain proceedings by way of judicial review. Consequently, the respondent is correct in its submission that a decision of the planning authority under s. 261 is amenable to challenge by judicial review to litigants such as the applicants in the present claim. However, the plaintiff in the *Pearce* decision opted to seek relief by way of judicial review. She did not seek to institute proceedings challenging the quarry owner's development as one which was unauthorised. Indeed, the applicant found herself in precisely the type difficulty to which I have just referred in this judgment, namely, she was not in a position on the facts to demonstrate that the decision made by the planning authority to the effect that the quarry had a pre 1964 use was irrational. The court referred to the fact that in judicial review proceedings, even though the applicant had put forward formidable evidence to the planning authority to demonstrate that the quarry was not used, as contended for by the owner, prior to 1964, that the decision of the planning authority was irrational to the point that it should be quashed.

76. Accordingly, I take the view that the decision of Hanna J. in *Pearce v. Westmeath County Council* does not support the submissions of the respondent in the present case. I also find it interesting to note that in the course of that judgment, the learned trial judge described the planning authority as having taken the view that in coming to its decision that the quarry concerned fell within the scope of s. 261 of the Act, it was doing no more than performing an administrative function.

77. For all of the aforementioned reasons I will dismiss the respondent's preliminary objection to the validity of these proceedings which in my view, are properly maintainable notwithstanding any decision made by the planning authority in respect of the respondent's lands under s. 261 of the 2000 Act. That section simply supplements the controls provided for in the normal planning process. It does nothing to alter the status of a quarry that may constitute unauthorised development at the commencement of the s.261 process. Neither does registration by the planning authority of a quarry, albeit subject to the imposition of conditions, interfere with the right of a party having the appropriate locus standi to challenge a development so registered as one which is unauthorised by use of the mechanism specifically designed for that precise purpose, namely s. 160 of the 2000 Act.