

**THE HIGH COURT****2001 396 JR****BETWEEN****DESMOND MURPHY****APPLICANT****AND****AN BORD PLEANÁLA****RESPONDENT****MARTIN HAYES,****THE COUNTY COUNCIL OF THE COUNTY OF CORK****NOTICE PARTIES****Judgment of Mr. Justice Feeney delivered on the 30th day of January, 2009.**

1.1 In these proceedings, the applicant seeks an order of certiorari quashing the decision of the respondent dated 18th April, 2001. It was a decision made pursuant to the Local Government (Planning and Development) Acts 1963 to 1999, to grant permission to the first named notice party under planning reference number W/00/1996. The appeal before An Bord Pleanála related to a development of a premises comprising partial change of use of house and conversion and first floor extension of domestic store to ground and first floor café at Cloan, Allihies, Beara, County Cork in accordance with plans of particulars lodged with Cork County Council. The premises is part of a group of buildings on the Main Street and the applicant in this case who was the appellant in the appeal before An Bord Pleanála is a neighbour.

1.2 The first named notice party, Martin Hayes, first made an application for planning permission in respect of the said premises in October of 1998, and that application was withdrawn in December of 1998. It was withdrawn at a time when Circuit Court proceedings had been brought by Desmond Murphy against Martin and Jackie Hayes. It was stated in writing, on behalf of Martin and Jackie Hayes, that they would be making a new application to the planning authority for "retention of the revised elevations and road frontage, so far as permission is required for the change in the road's frontage". A second application for permission for retention of extension to store and conversion of same to residential accommodation and retention of paving to road frontage was made by application dated the 21st January, 1999. By order dated the 30th July, 1999, Cork County Council refused to grant permission for the development for three stated reasons set out in the schedule attached to the order.

1.3 A third application for planning permission was made by Martin Hayes to Cork County Council for partial change of use of dwelling and conversion and first floor extension of domestic store to ground and first floor café in respect of the said premises by application dated the 30th March, 2000. That application was successful and Cork County Council granted permission for the development by notice dated the 24th August, 2000 subject to seventeen conditions set out in the schedule. Desmond Murphy appealed that decision to An Bord Pleanála.

1.4 In support of his appeal against the decision to grant planning permission the applicant submitted, in part, that the original development was illegal and the proposed development incorporated that development as the ground floor support for the second storey. The allegation that the original development was illegal was the subject matter of ongoing Circuit Court proceedings brought by Desmond Murphy against Martin and Jackie Hayes in Cork Circuit Court proceedings, Record Number E334/1998. Desmond Murphy in his appeal to An Bord Pleanála relied, in part, on a claim that the proposed development physically incorporated a ground floor extension which, it was claimed, was an illegal development. Martin Hayes contended that the earlier works incorporating the store into his premises was an exempted development rather than an unauthorised development as its area was below the threshold required in respect of which planning permission would be required. An Bord Pleanála concluded that the appeal could be dealt with without an oral hearing and duly informed all parties to the appeal of that fact by letters dated the 6th December, 2000.

1.5 The planning inspector of An Bord Pleanála inspected the site on the 30th January, 2001 and prepared a nineteen page report dated the 6th April, 2001. The inspector recommended that permission be refused. The grounds were that the proposed development would be contrary to the proper planning and development of the area and that the residential amenity of the adjoining properties would be injured by the proposed development of a commercial café by virtue of the additional noise, activity, disturbance and odours generated by such use and would therefore be contrary to proper planning and development. The inspector noted that there was a dispute in relation to earlier works carried out consisting of a single storey extension to the dwelling house, and that the appellants, including the applicant herein, had referred to "the unauthorised nature of these works". The inspector went on to point out that the party applying for permission appeared to be arguing that those works constituted an exempted development notwithstanding that previous applications for permission had been lodged and determined by the planning authority. The inspector pointed out that the retention of the earlier works to the existing single storey, consisting of an extension at the front and side of the dwelling house, were not included within the description of the overall development under consideration. That development referred to a first floor extension. The recommendation to refuse planning permission was based upon the inspector's considered opinion in relation to the proper planning and development of the area and no concluded view was expressed in relation to the dispute concerning the earlier works.

1.6 By the date of the inspector's report the Circuit Court proceedings brought by Desmond Murphy against Martin and Jackie Hayes pursuant to s. 27 of the Local Government (Planning and Development) Act 1976, as amended by s. 19 of the Local Government (Planning and Development) Act 1992, had been withdrawn by Desmond Murphy. On the 4th October, 2000 the proceedings were struck out with no order as to costs, the Court having been informed that the matter had been settled between the parties.

1.7 Notwithstanding the recommendation of the inspector, An Bord Pleanála determined to grant permission for the development and did so by decision dated the 18th April, 2001.

2.1 The applicant sought leave to apply for judicial review before this Court and on the 2nd April, 2004, the Court granted the applicant leave to apply for judicial review for an order of *certiorari* quashing the decision of the respondent dated the 18th April, 2001 and for further and other relief and costs. The grounds upon which the applicant was permitted to seek such relief were:-

(a) that the respondent erred in law in that it failed to have regard to matters which they ought to have taken into account, and had regard to matters which they ought to have disregarded, and in the premises, that the determination of the respondent of the 18th April, 2001 is fundamentally void, and;

(b) the decision and the determination of the respondent of the 18th April, 2001, is unreasonable in that the direction of the Board which overruled the inspector's report was founded on a fundamental misunderstanding of the legal position *vis-à-vis* the status of the proposed development and specifically failed to recognise that the development was unauthorised for the purpose of the Local Government (Planning and Development) Acts 1963 to 1999.

2.2 The essence of the applicant's claim centres upon the legal and planning consequences arising from the alleged unauthorised status of part of the existing premises. The applicant contends that An Bord Pleanála erred in law in granting planning permission in circumstances where the development for which permission was sought would incorporate an extant unauthorised use. This was identified by the applicant in his submissions in the following manner:-

"The applicant pleads that the decision of the respondent is in error in that it failed to adequately address itself to and understand the legal position *vis-à-vis* the status of this extension and the unauthorised status of the structure upon which it was proposed to be built."

2.3 In considering the limited grounds upon which leave was granted, the Court must address a number of matters, namely:-

(a) Is An Bord Pleanála prohibited from granting planning permission in circumstances where the development in respect of which planning permission is sought incorporates an extant development which it is alleged amounts to an unauthorised use and/or development?

(b) In circumstances such as are outlined in the previous paragraph, must an application for permission include an application for retention of the alleged unauthorised use/development?

(c) Is An Bord Pleanála obliged to expressly determine whether a particular existing element of an overall proposal is unauthorised in a case such as this?

(d) Was the decision of An Bord Pleanála irrational in that it failed to consider and determine a necessary question in respect of an alleged unauthorised structure?

(e) Did An Bord Pleanála fail to have regard to matters which they ought to have taken into account or alternatively had regard to matters which they ought to have disregarded in arriving at their determination of the 18th April, 2001.

There is a clear overlap between these matters.

2.4 From the affidavits and documents exhibited, it is clear that An Bord Pleanála made no determination in relation to whether or not the earlier works which had been carried out to the existing single storey extension to the premises amounted to an unauthorised use or development. The development in respect of which permission was sought was a first floor extension over the earlier development. There was a dispute as to whether or not planning permission was required for the earlier extension. The applicant in this case made a claim that a Circuit Court Judge had found that the works carried out on the earlier development were an unauthorised development and that an order had been made directing works to be carried to reinstate the property. There is no Circuit Court Order to support the suggested finding of the Circuit Court Judge. It is the case that no such works were carried out and that by the time that the decision came to be made by An Bord Pleanála, the Circuit Court proceedings had been withdrawn and struck out.

2.5 A number of the arguments made on behalf of the applicant are based upon a contention that the structure upon which the extension was to be built never had the benefit of permission and was an unauthorised development and therefore required an application for the retention. However, the affidavits available to this Court and the documents exhibited do not establish that the earlier works to the existing single storey extension were unauthorised. What is clearly established is that it is contended on behalf of the applicant that such earlier extension amounted to an unauthorised development and/or use but it is also the case that the first named respondent contends that such works and such development was an exempted development rather than an unauthorised development. At the time that An Bord Pleanála considered this matter there was a claim made on behalf of the applicant that the Circuit Court had arrived at a determination that there was an unauthorised development but there was no order to support such contention and by the date when the decision was made the Circuit Court proceedings had been struck out with no order and An Bord Pleanála so informed. The order of the Circuit Court of the 4th October, 2000, records that the Court was informed that the matter had been settled as between Desmond Murphy and Martin and Jackie Hayes and that the proceedings were thereby

struck out with no order. Insofar as it is alleged by the applicant that the Circuit Court made a finding in relation to the removal of an unauthorised structure, it has not been established or shown to this Court what structure or use was the subject of such finding. What is clear is that there was a dispute as to whether or not such earlier extension amounted to an unauthorised development or whether such development was an exempted development and that An Bord Pleanála, whilst aware of such dispute, made no determination in relation to same nor was there any Circuit Court Order in relation to such works. All parties to the planning process were fully aware of the nature and extent of the proposed development and made submissions to An Bord Pleanála in a manner which confirmed such knowledge.

3.1 In considering whether or not An Bord Pleanála is prohibited from granting planning permission in circumstances where the proposed development would incorporate an extant development which was unauthorised, the Court must consider the legislation under which An Bord Pleanála operates. Section 26 of the Local Government (Planning and Development) Act 1963, as amended, deals with permission for development. Section 26(3)(a) provides that:-

"a planning authority shall not, in a case in which the development concerned would contravene materially the development plan or any special amenity area order relating to the area, decide to grant permission under this section save with the consent of the Minister."

That section places a limit on the discretion of the planning authority and s. 26(5)(b) in dealing with the Minister's decision-making function on appeal requires that the appeal be determined on the same basis, that is by reference to consideration of the proper planning and development of the relevant area as set out in s. 26(1) of the Act and in relation to the conditions as identified in s. 26(2). Consideration of those provisions demonstrate that there is no express prohibition within s. 26 on the grant of planning permission, either by the planning authority or on appeal where the development, the subject matter of the planning application, has within its area an extant unauthorised development. The Court must consider whether or not it can be correct in law for An Bord Pleanála to permit of such development where it would involve the Board allegedly condoning or facilitating an unlawful development notwithstanding that there is no statutory prohibition.

3.2 Inherent within the argument made on behalf of the applicant is that in granting the permission herein, An Bord Pleanála was permitting a development which incorporated an illegal unauthorised extant development and that it followed that the grant implicitly approved such unauthorised development. That argument fails to have regard to the provisions of s. 26(11) of the Local Government (Planning and Development) Act 1963. That sub-section states:-

"a person shall not be entitled solely by reason of a permission or approval under this section to carry out any development".

That section establishes that a grant of permission does not entitle a person to carry out a development. It is a necessary pre-requisite to the carrying out of a development to have planning permission but the grant of planning permission does not entitle a person to carry out a development if such development would for some reason be contrary to law.

3.3 The provisions of s. 26(11) were considered by the Supreme Court in the case of *Convery v. Dublin County Council* [1996] 3 I.R. 153 in the judgment of Keane J. (at p. 173) in the following terms:-

"It is clear from this provision (section 26(11)) that a planning authority (or An Bord Pleanála on appeal) which is confined in reaching its decision to considering the matters referred to in the preceding sub-sections of s. 26, cannot be said to have authorised the developer by the grant of a permission to commit an act which would be otherwise unlawful, whether because it interfered, for example, with the right to light of other property owners or created an unacceptable hazard for persons ...."

On the facts of this case there was no determination by An Bord Pleanála as to whether or not the earlier extension was an unauthorised development or not and the grant made by An Bord Pleanála cannot be said to have authorised the developer to commit an act which would be unlawful given the provisions of s. 26(11). This is all the more so on the facts of this case where there was a dispute as to whether or not the earlier extension was an unauthorised development or an exempted development.

Keane J. returned to consideration of s. 26(11) of the Local Government (Planning and Development) Act 1963 in a later case of *Keane v. An Bord Pleanála* [1998] 2 I.L.R.M. 241 where he stated (at p. 246/247):-

"In many cases, including the present, a person who has been granted planning permission will be unable to proceed with the development until he has obtained a relevant permission. This may arise either as a matter of public law or private law. For example, a company may apply for permission for the erection of a hotel including a bar and restaurant facilities. In terms of planning law, the grant of permission will authorise, not merely the construction of the building but also its use as a hotel, restaurant and bar. As a matter of public law, however, that use cannot lawfully commence until such time as the necessary licences are obtained under the codes dealing with the licensing of bars and restaurants. .... Where the land is leasehold, there may be covenants affecting the proposed development which may require the consent of the lessor to be obtained.

The fact that such permission or consents may be required before the development may lawfully commence does not preclude the planning authority or An Bord Pleanála, from granting the permission, provided all the relevant requirements of the planning legislation are met. Section 26(11) of the Local Government (Planning and Development) Act 1963 acknowledges at least by implication that such further permissions under public or private law may be required by providing that: a person shall not be entitled solely by reason for permission or approval under this section to carry out any development.

The scheme of the legislation is clear. A planning permission does no more than assure the applicant that *quoad* the planning legislation, his development will be lawful. The policy of the legislation is to ensure, not merely that harmful

development is prevented, but that beneficial development takes place.”

In this case the planning permission did no more than assure the applicant that as regards the planning legislation, the particular development sought would be lawful. That development was in respect of a first floor extension and did not extend to the ground floor. If an earlier development by the developer was unauthorised and/or unlawful, the planning permission granted did not, either by law or by implication, authorise or permit such earlier development. It cannot be said on the basis of the law as identified by Keane J. that the decision of An Bord Pleanála implicitly approved the earlier development as the development which was approved did not deal with the earlier development.

3.4 Carroll J. applied the Supreme Court’s decision in *Keane v. An Bord Pleanála* in the case of *Cablelink Limited v. An Bord Pleanála* [1999] 1 I.R. 596, where having considered the judgment in *Keane v. An Bord Pleanála* and the terms of s. 26(11) of the Local Government (Planning and Development) Act 1963, she stated (at p. 600):-

“The addition of a condition providing that no development should take place until a licence had been acquired would have added nothing to the planning permission. Such a condition is already there by virtue of s. 26(11). It is not the case that planning permission can only be granted when all other requirements are met. The respondent cannot assume that the grantee will act illegally on foot of planning permission.”

An Bord Pleanála is prohibited by law from assuming that a person who is in receipt of a grant of planning permission will act illegally. It cannot proceed on the basis that if permission is granted that anything illegal will be done on foot of that grant. The issue as to whether or not there has been an unauthorised development or use is a matter for the planning authority and An Bord Pleanála can proceed on the basis that any outstanding matter in relation to enforcement is an issue which will be addressed by the relevant planning authority.

The Court is satisfied that in granting planning permission in this case the respondent cannot be said to have facilitated or condoned an unlawful activity or to have implicitly approved of same. Nor can it be said that the Board granted planning permission in circumstances where the development for which the planning permission was granted was unauthorised for the purpose of the Local Government (Planning and Development) Acts 1963 to 1999. Whether or not there has been an unauthorised use/development was a matter for the relevant planning authority. The applicant has failed to prove that any earlier development was necessarily unlawful.

3.5 The applicant seeks to rely on a planning decision of An Bord Pleanála (Ref. Number PL 19.222320) where the Board refused the grant of planning permission for an extension of an unauthorised development in relation to quarrying activities. Cases such as that are fundamentally different from the facts of this case. What was under consideration in the quarrying case was the extension of quarrying activities into a new field or area from the original quarry area. The decision was that the proposed development of itself, would be an unauthorised development. That is not what has occurred in this case where the Board has determined that planning permission should be granted for the development in respect of which planning permission was sought and no other development.

4.1 The facts of this case establish that the first named notice party did apply for planning permission in respect of earlier works carried out at the premises. Those works which are claimed to constitute an unauthorised development were carried out in the spring of 1998. Those works included works identified as an extension to the existing single storey side/front of the premises, and it is those works which are central to the issues raised in this case. The facts are that the second application for planning permission which was pursued to a determination and resulted in a refusal, included, but was not limited, to those works. That application for permission was refused by order dated 30th July, 1999, for three stated reasons, one of which related to the extension in question which was identified as a reconstructed store. No determination was made as to whether or not those particular works were an exempted development or not. The order refusing permission was not determinative as to whether or not that extension was an exempted development or not.

4.2 Not only is the order of 30th July, 1999, from Cork County Council refusing the grant for permission, not determinative of the issue as to whether or not the extension to the so-called store was or was not an exempted development, but the fact that an application for retention was made by the first named notice party does not, and cannot, be taken as implying that the first named notice party, as the developer, accepted that the development was unauthorised. The position which existed at the time of An Bord Pleanála’s consideration is as recorded by the inspector, which was that there was a dispute in relation to whether or not such works constituted exempted development or not. That is stated in paragraph 12.5 of the inspector’s report of 6th April, 2001. The issue as to whether a developer is estopped from claiming that development is exempted by pursuing a lawful application for planning permission was considered by the Supreme Court in the case of *Fingal County Council v. William P. Keeling & Sons Ltd.* [2005] 2 I.R. 108. Fennelly J. in giving the judgment of the Court, dealt with the issue of estoppel in relation to an application for planning permission but did so in a limited way. That arose in circumstances which he outlined (at p. 113) of his judgment:

“The court must, nonetheless, determine the current appeal. In the absence of considered argument and reference to authority in the High Court, it is undesirable that this court should play the effective role of a court of first instance by determining generally on this appeal, whether and to what extent a doctrine of estoppel has a role to play in the field of the relations in public law between an individual and a planning authority. That will have to be determined, on full consideration of the law, by the High Court in this or another case.

Nonetheless, in the very narrow terms in which the supposed principle of estoppel was expressed in the terms of the preliminary issue directed and determined by the High Court, it seems clear and was virtually conceded by counsel for the applicant, that it cannot be sustained. If a proposed development is, in fact, and in law, an exempted development, no principle has been identified whereby the owner of land should be estopped from asserting the exemption merely by reason of the fact, and by nothing more, that he or she has made a perfectly proper and lawful application for planning permission. That would be to deprive them of a right at law by reason of his exercise of a different right which would require cogent justification. There could be many perfectly good and even laudable reasons for taking the course of applying for planning permission, where there is an arguable case for exemption. It might be done through oversight or mistake or merely through an abundance of caution or to ensure that the planning situation was very clear on the sale of a property. It is, perhaps, better, at this stage to say

nothing more, as counsel for the applicant reserves the right to assert the right of a planning authority to rely on the doctrine of estoppel based on a more extensive factual basis."

The applicant has identified no argument in support of any claim of estoppel nor has any authority been opened to the Court in relation to such claim. This Court is left in the position that no cogent basis has been identified to suggest that the developer's earlier application for permission, which was refused, would in any way deprive the developer from contending that part of the development which failed to get planning permission was an exempted development.

The facts in this case establish that there has been no determination as to whether or not the extension to the existing single storey dwelling at the side/front of the building is, or is not, an exempted development. The applicant has identified no determination to that effect. What has been shown is that such works were part of an application which was refused. Insofar as the side/front extension was addressed in the order refusing permission of 30th July, 1999, it was addressed in the following terms:-

"The layout of the reconstructed store for which retention is sought, does not match the proposed use. Specifically, it is not appropriate for a dining room forming part of a private residence to have two doors opening directly on to the public street."

The issue as to whether or not that particular development was exempt or not, was not considered. This Court is satisfied that the notice party did not, as a result of making the second application for planning permission, herein before referred to, thereby deprive himself of the right which he had at law of asserting that such works were an exempted development. The Court is satisfied that the first named notice party did not deprive himself of the right at law that he had to make such an assertion.

4.3 What has been established is that there was a dispute as to whether or not there was an unauthorised development or an exempted development. On that basis alone, it cannot be said that the applicant has established that the planning permission granted gives implicit approval to an unauthorised structure. The first named notice party, the developer, has a planning permission and he, as the developer, is obliged to act legally on foot of such planning permission. An Bord Pleanála cannot assume that if or when permission is granted on appeal, that anything illegal will be done on foot of that permission. An Bord Pleanála can proceed on the basis that any outstanding issue involving enforcement is an issue that will be taken up by the relevant planning authority as part of its enforcement powers. It is also the case that the applicant has failed to establish a factual basis to support the claim that the development permitted by the planning permission is necessarily incapable of being implemented at law. This is not a case in which it has been shown that there is no reasonable prospect of the permission being implemented lawfully or that the development has no reasonable prospect of being implemented. This is not a case in which the party seeking planning permission is a person who is unable to assert sufficient legal estate or interest to enable him to carry out the proposed development as was the case in *Frescati Estates v. Walker* [1975] I.R. 177. The facts of this case can be distinguished from the facts in the *Frescati Estates* case, as that was a case in which the applicant was incapable of carrying out the development which is not the case herein. *Frescati* cannot be read as being an authority for the proposition, as contended by the applicant, that applications for planning permission should only be granted in circumstances where the proposed development is capable of being carried out. It is clear that the statutory position is that a person is not entitled, solely by reason of permission or approval under s. 26 of the Local Government (Planning and Development) Act 1963, to carry out any development. If further or other permissions and/or licences are required, then it is for the developer to ensure that the same are obtained and An Bord Pleanála can proceed on the basis that a developer will act within the law.

4.4 The applicant's argument in relation to an irrational decision is predicated upon a claim that the proposed development is to be carried out on top of an illegal structure. That has not been established. Even if it were the case that it had been proved that the development permitted by the planning permission was to be carried out on top of an illegal structure, that, of itself, does not disentitle An Bord Pleanála from granting permission. The grant of permission in the words of Keane J. in *Convery v. Dublin Corporation* cannot be said to have authorised a developer to commit an act which would otherwise be unlawful.

4.5 In the light of the above, the Court is satisfied that An Bord Pleanála is not prohibited from granting planning permission in circumstances where the development in respect of which planning permission is sought incorporates an extant development which it is alleged amounts to an unauthorised use and/or development. Nor is it the case that an application for permission, in circumstances such have been established in this case, must include an application for retention of the alleged unauthorised development. Therefore, it cannot be said that An Bord Pleanála was obliged to determine whether or not the disputed works were an unauthorised development or an exempted development. It also follows that the applicant has failed to establish that An Bord Pleanála acted in an irrational manner when it failed to determine whether or not the earlier extension works carried out to the side/front of the dwelling were, or were not, an exempted development.

5.1 The final matter for consideration by the Court is did An Bord Pleanála fail to have regard to matters which they ought to have taken into account, or alternatively, have regard to matters which they ought to have disregarded in arriving at their determination of 18th April, 2001. The basis of the applicant's argument in relation to this matter is that An Bord Pleanála was required to make a decision and determination on the status of the alleged unauthorised extension, and that in failing to do so, An Bord Pleanála therefore failed to take into account a relevant consideration in reaching its decision.

5.2 The applicant's claim that An Bord Pleanála were obliged to make a decision and determination on the status of any extant development, must be considered in light of the statute law and the facts of this case. Firstly, the applicant did commence s. 27 proceedings in the Circuit Court and prior to any decision or Court Order, settled those proceedings and consented to having the proceedings struck out with no order. Those proceedings, which commenced prior to any consideration by An Bord Pleanála, had the capacity to determine and conclude whether or not the disputed works were an unauthorised development or an exempted development. Therefore, the position as of the date upon which An Bord Pleanála's decision was as set out in the inspector's report which was that there was a dispute as to whether or not the earlier works to the side/front of the premises amounted to an unauthorised development or not.

5.3 The planning legislation identifies the obligation placed on a planning authority, or, on appeal, An Bord Pleanála in s. 26(1) of the Local Government (Planning and Development) Act 1963 (as amended), which is consideration of the proper

planning and development of the relevant area. On the facts of this case, that is what occurred and the decision as made by An Bord Pleanála, identifies on the face of it, a decision made based upon the proper planning and development of the relevant area. A proper reading of the grant of permission date of 18th day of April, 2001, makes it clear that An Bord Pleanála fulfilled its statutory obligation because it identifies the basis upon which An Bord Pleanála decided to grant permission subject to conditions, and confirms that the proposed development, subject to the conditions imposed, would be in accordance with the proper planning and development of the area. It also follows from the matters previously determined in this judgment that the Court is satisfied there was no requirement on An Bord Pleanála to determine whether a particular existing element which was to be incorporated into the development was or was not authorised.

5.4 The applicant claims that An Bord Pleanála failed to have regard to matters which they ought to have taken into account. That claim is made on the basis that it is asserted that An Bord Pleanála failed to consider or to take account the alleged unauthorised status of part of the existing structure. It is clear from the face of the inspector's report, and from the submissions lodged, that An Bord Pleanála was fully aware that there was a dispute as to the planning status of an earlier extension. An Bord Pleanála was aware of such dispute, and knowing of same, proceeded, as it was entitled to do, to determine that the proposed development in respect of which permission was sought, was in accordance with the proper planning and development of the area. An Bord Pleanála was obliged to make a decision pursuant to s. 26(1) of the Local Government (Planning and Development) Act 1963 and this is what it did.

5.5 The applicant also alleges that the respondent failed to consider or take into account matters which they ought to have taken into account. That claim is based upon the contention that the applicant failed to consider the alleged unauthorised status of the existing structures. It is clear from the inspector's report that the dispute in relation to the planning status of an earlier development was identified. The inspector identified the dispute and concluded that he did not recommend that the existence of such dispute as being a reason for refusal, having regard to the other concerns that he had identified in relation to planning and development. The Court is satisfied that the nature of the dispute in relation to the planning status of part of the existing structure was before the Board. The existence of that dispute had not been the basis for the inspector's recommendation and in those circumstances there was no requirement on the Board to refer to that matter in its decision. Further, since the Court has already determined that there was no obligation on An Bord Pleanála to determine the dispute in relation to the planning status of part of the existing structure, the Court is satisfied that An Bord Pleanála did not fail to consider or take account of a matter which they ought to have taken into account.

6.1 In the light of the above findings, the Court is satisfied that the applicant has failed to establish any grounds for the relief sought in the statement to ground his application for judicial review dated 12th day of May 2005, and the applicant's application will be dismissed.