Neutral Citation Number: [2009] IEHC 115

THE HIGH COURT

2007 1474 JR

BETWEEN

MARTIN RYAN AND MICHAEL RYAN

APPLICANTS

AND

CLARE COUNTY COUNCIL

RESPONDENT

AND

EITHNE O'BRIEN, PATRICIA CRONIN, DÓNAL STEWART

AND MARIE STEWART

NOTICE PARTIES

JUDGMENT of Mr. Justice Hedigan, delivered on the 11th day of March, 2009

1. The applicants are brothers and building developers, based in Limerick City.

2. The respondent is a local authority with responsibility for the administrative area of County Clare. Its functions include the management of building developments in the county, in particular by means of the grant or refusal of planning permission.

3. The notice parties are individuals who reside immediately adjacent to the proposed development which forms the subject matter of this application. Two of the notice parties are recently deceased and were represented at the hearing of the matter by their executors.

4. The applicants seek a declaration that the respondent is deemed, pursuant to s. 34(8)(f) of the Planning and Development Act 2000 ('the 2000 Act') to have made a decision to grant planning permission to the applicants in respect of a development proposal made on 2nd May, 2007, relating to certain works at a property on Liscannor Road, Lahinch in the County of Clare. Section 34(8)(a) of the 2000 Act, prescribes a time limit of eight weeks within which an initial decision on any planning application must be made, failing which s. 34(8)(f) comes into operation and default planning permission may arise.

5. The applicants further seek an order of *mandamus* directing the respondents to grant planning permission to the applicants in respect of the proposed development, pursuant to s. 38(11) of the 2000 Act.

I. Factual and procedural background

6. On 1st May 2007, the applicants applied in writing to the respondent for planning permission in respect of proposed development works at Dough, Liscannor Road, Lahinch in the County of Clare. This application was received by the respondent on 2nd May, 2007. The proposal entailed the demolition of an existing single-storey house on the site and the construction of two new two-storey houses. There were also associated site development works, such as the creation of car parking spaces.

7. The applicants' planning consultant, Mr. Gary Rowan, wrote to the respondent's planning department on 27th June, 2007, seeking clarification of the position. Mr. Rowan was initially advised, in error, that the respondent had decided to refuse the application for planning permission. This error was corrected in a matter of days and it is clear that by 3rd July, 2007, at the latest, the applicants were aware that no formal decision had been made within the statutory period. Mr. Rowan also contacted the respondent's legal representatives on 4th July, 2007, seeking clarification of the position.

8. As it transpires, the relevant planning officers and other technical experts had, in fact, recommended the refusal of the application and a draft order was prepared to this effect. However, due to an oversight, this draft order was not signed by the relevant person to whom the responsibility for making appropriate managerial orders was delegated. This failure to sign the draft order within the relevant time period had occurred despite there being a specific arrangement that the order was to be formally endorsed on 27th June, 2007, which perhaps explains to some extent the conflicting pieces of information which were received by Mr. Rowan.

9. In the ensuing weeks, the parties exchanged correspondence in which the applicants sought to establish that default planning permission would in fact issue. The respondent refused to make any commitment in this regard and on 25th September, 2007, the applicants were informed of the respondent's refusal to allow them to avail of the default permission mechanism.

10. Having failed to obtain confirmation of default permission, the applicants served a notice of motion seeking judicial review on the respondent on 9th November, 2007. Leave to apply by way of judicial review was granted by Peart J. on 19th November, 2007.

II. The submissions of the parties

(a) Delay

11. The respondent submits, by way of preliminary objection, that the applicants are disentitled to relief by virtue of their delay in bringing this application before the court. In this regard, they suggest that s. 50 of the 2000 Act, applies. It provides as follows:

> "(1) Where a question of law arises on any matter with which the Board is concerned, the Board may refer the question to the High Court for decision.
>
> (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,
>
> (b) the Board in the performance or purported performance of a function transferred under Part XIV , or
>
> (c) a local authority in the performance or purported performance of a function conferred by an enactment specified in section 214 relating to the compulsory acquisition of land, 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").
>
> (3) Subsection (2)(a) does not apply to an approval or consent referred to in Chapter I or II of Part VI .
>
> (4) A planning authority, a local authority or the Board may, at any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection (2) applies and which relates to a matter for the time being before the authority or the Board, as the case may be, apply to the High Court to stay the proceedings pending the making of a decision by the authority or the Board in relation to the matter concerned.
>
> (5) On the making of such an application, the High Court may, where it considers that the matter before the authority or the Board is within the jurisdiction of the authority or the Board, make an order staying the proceedings concerned on such terms as it thinks fit.
>
> (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.
>
> (7) 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)(b) or (c) applies shall be made within the period of 8 weeks beginning on the date on which notice of the decision or act was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred under Part XIV or which is specified in section 214 , was first published).
>
> (8) The High Court may extend the period provided for in subsection (6) or (7) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that:-
>
> (a) there is good and sufficient reason for doing so, and
>
> (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.
>
> (9) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court."

Section 50 is now supplemented by s. 50A of the 2000 Act, which was inserted by s. 13 of the Planning and Development (Strategic Infrastructure) Act 2006. Section 50A provides *inter alia* as follows:

> "(1) In this section:-
> "Court", where used without qualification, means the High Court (but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made);
> "Order" shall be construed in accordance with section 50;
>
> "section 50 leave" means leave to apply for judicial review under the Order in respect of a decision or other act to which section 50(2) applies.
>
> (2) An application for section 50 leave shall be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave):-
>
> (a) if the application relates to a decision made or other act done by a planning authority or local authority in the performance or purported performance of a function under this Act, to the authority concerned and, in the case of a decision made or other act done by a planning authority on an application for permission, to the applicant for the permission where he or she is not the applicant for leave,
>
> (b) if the application relates to a decision made or other act done by the Board on an appeal or referral, to the Board and each party or each other party, as the case may be, to the appeal or referral,

(c) if the application relates to a decision made or other act done by the Board on an application for permission or approval, to the Board and to the applicant for the permission or approval where he or she is not the applicant for leave,

(d) if the application relates to a decision made or other act done by the Board or a local authority in the performance or purported performance of a function referred to in section 50(2)(b) or (c) , to the Board or the local authority concerned, and

(e) to any other person specified for that purpose by order of the High Court.

(3) The Court shall not grant section 50 leave unless it is satisfied that:-

*(*a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and

(b) (i) the applicant has a substantial interest in the matter which is the subject of the application, or

(ii) where the decision or act concerned relates to a development identified in or under regulations made under section 176 , for the time being in force, as being development which may have significant effects on the environment, the applicant:-

(I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection,

(II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives, and

(III) satisfies such requirements (if any) as a body or organisation, if it were to make an appeal under section 37(4)(c) , would have to satisfy by virtue of section 37(4)(d)(iii) (and, for this purpose, any requirement prescribed under section 37(4)(e)(iv) shall apply as if the reference in it to the class of matter into which the decision, the subject of the appeal, falls were a reference to the class of matter into which the decision or act, the subject of the application for section 50 leave, falls).

(4) A substantial interest for the purposes of subsection (3)(b) (i) is not limited to an interest in land or other financial interest.

(5) If the court grants section 50 leave, no grounds shall be relied upon in the application for judicial review under the Order other than those determined by the Court to be substantial under subsection (3)(a) .

(6) The Court may, as a condition for granting section 50 leave, require the applicant for such leave to give an undertaking as to damages…"

12. In the alternative, the respondent submits that O. 84, r. 21 of the Rules of the Superior Courts ('the Rules') require that the present application ought to have been brought promptly, and in any event, within three months of the date on which the default permission ought to have issued, namely, 27th June, 2007. Order 84, rule 21 provides:

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

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made."

13. The respondent therefore submits that, irrespective of which time limit is deemed to be appropriate in the present case, the applicants are out of time and should be prevented from seeking relief on grounds of delay. The respondent contends that once the eight week period for the making of its determination on the application had passed, the applicant should either have applied to this court for relief or commenced the development in earnest.

14. The applicants respond firstly by contending that O. 84, r. 21 is the correct provision to be applied. They submit that s. 50A of the 2000 Act, is directed towards circumstances in which a party is seeking to challenge a decision made in relation to planning permission, rather than seeking to compel the making of a decision itself as in the present case.

15. The applicants submit, however, that the respondent has incorrectly identified the operative date for the purposes of calculating any delay on their part. They argue that time cannot be deemed to start running for the purposes of judicial review until 25th September, 2007, when they first received confirmation that default planning permission was not going to issue in their favour. They submit that had they come to court in advance of the respondent's decision on this point, their application would have been struck out as premature since the respondent's position on the issue had not been finalised. They further argue that the respondent's submission that they could have proceeded with the development, in the absence of formal confirmation of the respondent's position, is untenable.

(b) The failure to make a decision

16. The applicants' case is, of course, wholly predicated on the contention that no decision was actually made in relation to their application for planning permission, and that default permission is therefore capable of issuing. The respondent,

however, contends that, in fact, a decision was made, albeit one which was never formally signed. It further submits that the fact that a formal managerial order has not been signed does not mean that a decision was not effectively made by a planning authority within the relevant period of time. In this regard, the respondent relies upon the decision in *State (Abenglen) v. Dublin Corporation* [1984] I.R. 381. In that case, Walsh J. stated at page 397:-

> "In my view, the default provisions were enacted for the purpose of compelling a planning authority to direct its mind to an application. They do not amount to a statutory decree that every decision must be one which is sustainable in law. In my view, a decision which, when questioned, is found to be *ultra vires* or unsustainable in law for any reason is nonetheless a 'decision' for the purposes of the default provisions. It is not possible to attribute to the Oireachtas the intention that every decision which has been proved to be unsustainable in law for one reason or another shall have the effect of giving the applicant permission for his proposed development— however outrageous it might be and however contrary to both the spirit and letter of the planning laws. It would require quite clear affirmative language in the statute to evidence any such legislative intention. No such language appears in the present legislation. Therefore, I am of opinion that a decision (within the meaning of that term in the default provisions of the statute) was given and that, therefore, the default procedure does not apply."

17. The respondent submits on this basis that it would be wrong to characterise its conduct in the present case as having failed to adequately consider the planning application of the applicants. Instead, in its submission, a legitimate and reasoned decision was prevented from gaining formal confirmation owing to an administrative oversight.

18. The applicants argue that the respondent's submissions on this point are untenable, in that they suggest that an unsigned and uncommunicated draft order is equivalent to the kind of legal decision authorised and mandated by the provisions of the 2000 Act. The applicants further contend that an unauthenticated piece of paper can never suffice as a formal decision, capable of conferring legal rights and obligations in relation to real property.

(c) Material contravention of the County Development Plan

19. Section 34(6) of the 2000 Act, forbids a planning authority from granting permission in respect of a development which materially contravenes a county development plan without first going through a specific and rigorous procedure involving, *inter alia,* public consultation and a vote of the authority's elected members. This court has held in cases such as *Dublin County Council v. Marren* [1985] I.L.R.M. 593 and *Calor Teoranta v. Sligo County Council* [1991] 2 I.R. 267, that default planning permission cannot therefore arise where a proposed development would involve a material contravention of the relevant development plan. This conclusion was also upheld by the Supreme Court in *State (Pine Valley) v. Dublin County Council* [1984] 1 I.R. 407. The applicants therefore accept that if their proposed development would have amounted to a material contravention of the Clare County Development Plan 2005 ('the Development Plan'), this Court would not have jurisdiction to grant relief.

20. The respondent contends that although the applicants' proposed development does not directly contravene any specific provision of the Development Plan, it is contrary to the general objectives of the Plan. The respondent, in particular, submits that the applicants' proposal runs contrary to the objective of conserving and enhancing the quality and character of the area as well as the objective of protecting residential amenity. It further submits that the materiality of this deviation from the Plan is amplified by the significant opposition held by the notice parties to the development.

21. In support of its submissions on this point, the respondent emphasises the fact that the proposed development would have a proposed density of *circa* 32 units per hectare which is double the general density of the surrounding area, that being 16 units per hectare. The respondent further points to the fact that the immediate surrounding area of the applicants' site is dominated by single storey and dormer style bungalows, which are considerably more discreet than the two-storey dwellings being proposed by the applicants.

22. The applicants reject the argument that their proposal involves any material contravention of the Development Plan. They submit, in the alternative, that if a conflict does in fact exist between their proposal and certain sections of the Development Plan, those sections are not sufficiently specific to be regarded as objectives and are purely aspirational in nature.

(d) The need to have regard to the Local Area Plan

23. Section 18(3) of the 2000 Act, specifies that any relevant local area plan shall be a mandatory consideration on an application for planning permission. It provides *inter alia* as follows:-

> "(a) When considering an application for permission under section 34, a planning authority, or the Board on appeal, shall have regard to the provisions of any local area plan prepared for the area to which the application relates, and the authority or the Board may also consider any relevant draft local plan which has been prepared but not yet made in accordance with *section 2*0…"

24. The respondent submits that, even if the court is not satisfied that the applicants' proposed development amounts to a material contravention of the Development Plan, it would, nonetheless, be prohibited by the North Clare Local Area Plan 2005 ('the Local Area Plan'). The respondent therefore argues that the applicants are incapable of obtaining default planning permission in the present case, since the permission would not be in accordance with the requirements of the Local Area Plan. Specifically, the respondent submits that the proposal contravenes provisions within the Local Area Plan relating to housing density, traffic management and the protection of residential amenity of adjacent properties.

25. The respondent contends that any default permission granted in direct contravention of the Local Area Plan would be equally unlawful to that granted in contravention of the Development Plan, since it would amount to permission which would be *ultra vires* the respondent. In this regard, it is submitted that the Court is only empowered to direct that permission be given by the respondent which the respondent was capable of giving in the first place.

26. The applicants submit that different principles ought to apply in respect of the different statutory obligations i.e. that of adhering to the Development Plan and that of having regard to the Local Area Plan, respectively. They argue that ss.

15 and 34 of the 2000 Act have the cumulative effect of imposing a *vires* test in respect of the Development Plan, while no such criterion is expressly imposed in respect of the Local Area Plan. It is therefore their submission that this court is entitled to order that default permission be granted which, in effect, is contrary to the provisions of the Local Area Plan.

(e) Other discretionary factors

27. Judicial review is by its nature a discretionary remedy. The respondent in the present case argues that the court ought to exercise its discretion against the grant of default planning permission where there has been no appropriate input from third parties whose interests are likely to be adversely affected by the grant of such permission. The respondent points to the fact that the first named notice party had an application for planning permission refused for a development with some similarities to that of the applicants, on the basis that it would have overlooked the applicants' site and thereby reduced the privacy of same.

28. In support of this argument, the notice parties seek to invoke their rights under Article 1 of Protocol Number 1 of the European Convention on Human Rights ('The Convention') which provides for the peaceful enjoyment of one's property. They submit that the applicants' proposed development may also be in violation of their rights under Article 8 of the Convention. In this respect, they place emphasis on the *dicta* of Keene L.J. in the Court of Appeal decision of *Lough v. First Secretary of State* [2004] E.W.C.A. 905, to the effect that the overshadowing of a person's home could conceivably constitute an interference under Article 8. They further submit that an application for planning permission involves a determination of civil rights within the meaning of Article 6(1) of the Convention, and that, as such, the court is required to engage in a balancing exercise of the rights involved.

29. The applicants argue that although the court is obliged to interpret the provisions of the 2000 Act in line with the Convention, by virtue of s. 3 of the European Convention on Human Rights Act 2003, the objections are not a relevant consideration in the present case. They submit that the legislature must have envisaged the position of objectors when drafting s. 34(8)(f) of the 2000 Act, and also that there is no reason in principle or fact why the objectors in the present case could not have appealed the deemed decision to grant default permission.

II. The decision of the court

(a) Delay

30. In the present case, I am inclined to agree with the applicants' submission that the appropriate time limit is that contained within Order 84 rule 21 of the Rules, since the application does not rest comfortably within any of the categories listed within section 50A of the 2000 Act. However, even if my finding in this regard is incorrect, it does not seem to me that this would have any bearing on the Court's determination on the issue of delay, since the operative date in the present case is quite clearly the 27th of September 2007. I am convinced that before that date, a state of uncertainty prevailed in relation to the lands in question.

31. I do not find merit in the suggestion of the respondent that the applicants could have brought a justiciable application to court before the position of the respondents had been clarified. Had they sought the declaration and/or order of *mandamus*, for which they now apply to this court, before 27th September, it would have been open to the respondent to simply argue that no impugnable determination had been reached by it and as such, the applicant's case should be struck out with an order for costs against them. I am equally unconvinced by the argument that the applicants could simply have proceeded with their proposed development upon the expiry of eight weeks from the date of their initial application for planning permission. This court cannot and should not encourage the undertaking of large-scale redevelopments in residential areas in situations of patent uncertainty as to the planning status of the particular site.

32. The applicant sought and obtained leave some seven weeks and four days after the grounds for the application first arose and, as such, clearly acted within either of the time limits suggested by the respondent. Assuming that O. 84 r. 21 applies, it must further be considered whether the applicants acted 'promptly' in the circumstances of the particular case. In the Supreme Court decision of *Dekra Éireann Teoranta v. Minister for Environment and Local Government* [2003] 2 IR 270, Fennelly J. considered the promptness requirement and stated at page 302:-

> "[A] claim cannot normally be defeated for delay if it is commenced within the relevant period. There would need to be some special factor such as prejudice to third parties…"

Fennelly J. reiterated this approach while speaking for the majority of the Supreme Court in *O'Brien v. Moriarty* [2006] 2 I.R. 221, where he stated at page 237 that:-

> "[M]atters have not reached the stage where an application made within time can be defeated in the absence of some special factor."

33. Applying this principle to the present case, no suggestion has been made on behalf of the respondent that it has been unduly prejudiced in any way. Therefore, taking into account the conduct of the applicants, the position of the other parties and the general circumstances of this case, it seems clear to me that the applicants should not be prevented from bringing their application for judicial review on this basis.

(b) The failure to make a decision

34. It is clear as a matter of law that circumstances may arise in which a purported decision by a planning authority which lacks full legal effect may, nonetheless, be deemed to inhibit the operation of the default permission provisions of the 2000 Act. This proposition is evident from the decision of the Supreme Court in *Abenglen*. However, I cannot accept that the present case falls within that category.

35. The respondent in the present case was required, by virtue of s. 34(8)(a) of the 2000 Act, to make a formal decision on the application in question within eight weeks of receiving it. It was further required, by virtue of Article 31 of the

Planning and Development Regulations 2001 (as substituted by Regulation 8 of the Planning and Development Regulations 2006), to notify the applicants of its decision within five working days of its being made. It seems clear to me that neither of these express statutory requirements was complied with.

36. Many distinctions are therefore capable of being drawn between the facts of the present case and the facts which prevailed in *Abenglen*. Firstly, in that case, the purported decision had in fact been communicated to the appplicant in the manner prescribed by the legislation. Secondly, the basis on which it lacked legal effect was the fact that the respondent planning authority had exceeded jurisdiction; no deficiencies were alleged in the formal process of confirmation and certification of the decision.

37. Furthermore, certain documents which were prepared by the respondent subsequent to 27th June, 2007, make express reference to the fact that no decision actually issued within the relevant period. I cannot therefore accept that the draft order which was prepared internally by the respondent and withheld from the applicants was ever intended to have the effect of a formal planning decision, nor should it be allowed to do so.

(c) Material contravention of the County Development Plan

38. The concept of material contravention of a county development plan has received considerable judicial treatment in recent years. In *Roughan v. Clare County Council* (High Court, Unreported, 18th December 1996), Barron J. discussed the concept as follows:-

> "What is material depends upon the grounds upon which the proposed development is being, or might reasonably be expected to be, opposed by local interests. If there are no real or substantial grounds in the context of planning law for opposing the development, then it is unlikely to be a material contravention. In the present case, it seems clear that no development involving more than two units would be permitted by the Local Authority. It is also clear from previous applications for permission in special development zones that the Local Authority regards the exceptions laid down in the plan as being the only grounds upon which development may be permitted. I am satisfied that in the present case, the proposed development is one which would be a material contravention of the development plan. There is a statutory procedure for the making of development plans which involves consultation and advertisement with and to the local population. They are entitled to their rights of such consultation and it seems to me that to allow any alteration of the plan which would not have been anticipated by those reading the plan would be in breach of the rights of the local population to such consultation."

39. In *Maye v. Sligo Borough Council* [2007] 4 I.R. 678, Clarke J. expressed approval for the above statement of Barron J. and went on to explain the kind of circumstances in which a deviation might be deemed material. He stated at page 695:

> "[I]f the extent of a deviation from what is specified in the development plan is such as might give rise to a reasonable expectation of opposition based on that deviation, then the deviation will be regarded as material."

40. Clarke J. continued by holding that material contravention of a development plan could arise based on the general objectives of the plan, in addition to the more specific provisions. He stated at pages 696 to 698:-

> "The way in which development plans are set out vary. Certain aspects of the plan may have a high level of specificity. For example, the zoning attached to certain lands may preclude development of a particular type in express terms. Where development of a particular type is permitted, specific parameters, such as plot ratios, building heights or the like may be specified. In those cases, it may not be at all difficult to determine whether what is proposed is in contravention of the plan. In those circumstances, it would only remain to exercise a judgment as to the materiality of any such contravention. However, at the other end of the spectrum, it is not uncommon to find in a development plan objectives which may, to a greater or lesser extent, be properly described as aspirational. Such objectives may be expressed in general terms. In such cases, a much greater degree of judgment may need to be exercised as to whether the development proposed amounts to a material contravention of the development plan… The fact that an objective may not be capable of being completely achieved does not take away from the fact that developments, in order to conform with the development plan, should at least move in the right direction. Where, to a material extent, the development not only fails to move in the right direction but actually goes against the objectives of the development plan, then it seems to me that has a potential to amount to a material contravention of that plan. The second judgment that must, of course, be exercised, is as to its materiality."

41. I am satisfied in the present case that the proposed development of the applicants does not directly contravene any specific provision of the Development Plan. It therefore falls for consideration whether it runs against, to a material extent, the overarching objectives of the Plan. It is common case that there is considerable variety of land use and building styles in the general area of the applicants' site. A two-storey development such as that proposed, would be similar to many in the surrounding area and not entirely out of character. I cannot accept, therefore, that in the circumstances of the present case, the applicants' proposal can be deemed to contravene the extremely general and aspirational terminology contained within the objectives of the Development Plan, in particular, Objectives 5, 9 and 23 of that Plan. In this regard, the case is readily distinguishable from *Maye,* in which a proposal being considered was set to encroach into land reserved for a public park which had specifically been mentioned in the Sligo County Development Plan.

42. The respondent placed considerable emphasis on the volume of objections to the applicants' proposed development, however, it seems to me to be clear from the decision of Clarke J. in *Maye* that such objections are only relevant when considering the materiality of a contravention as opposed to assessing whether one exists. For the reasons outlined above, I am of the opinion that the proposal does not contravene the Development Plan and, as such, the question of materiality of any putative contravention does not arise.

(d) The need to have regard to the Local Area Plan

43. Chapter 6 of the Local Area Plan contains a number of quite specific policies which pertain to the proposed development. Housing Policy H1, for example, deals with housing development and requires *inter alia* that proposed developments should provide "satisfactory vehicular access to the site" and "adequate space between proposed and existing buildings to maintain the amenity of neighbouring properties". In the present case, there are good reasons for suspecting that these criteria would not be complied with by the proposal. Firstly, it seems that vehicles leaving the site might be forced to reverse out onto a regional road, which is close to a complex junction and which encounters high volumes of traffic for certain periods during the year. Secondly, the overlooking of the first named notice party's property raises questions as to whether the amenity of neighbouring properties would not be contravened.

44. Furthermore, Housing Policy H8 of the Local Area Plan deals with housing density in the locality. It provides that "proposals for housing development must demonstrate that they will maximise the use of land, in an appropriate manner, in order to encourage a more sustainable pattern of development" and goes on to adopt densities of up to 25 units per hectare in residential lands. As already noted, the proposed development would have a density of 32 units per hectare.

45. In considering this issue, it is paramount that the court should remain mindful of precisely what the applicants are seeking in the present case. It is clear from the legislation that regard to the Local Area Plan is an essential prerequisite for any decision to be made by the respondent. In essence, therefore, the applicants are asking the court to deem the respondent to have made a decision which, if made in the absence of the court's assistance, would amount to an unlawful act because *ipso facto* no regard could be had to the Local Area Plan in a default permission. Had the respondent in the present case made a formal decision in respect of the application within the relevant time period without having regard to the Local Area Plan, that decision could readily be impugned on judicial review.

46. It seems to me that there is an overriding need to maintain a coherent logic while interpreting the provisions of the 2000 Act, in particular, while dealing with the complex area of default planning permission. The court must remain mindful at all times of the potential consequences of a grant of default permission. In view of this, I cannot accept the submission of the applicants that this court has power to order the the respondent to issue planning permission in respect of a proposal which would contravene the Local Area Plan.

(e) Other discretionary factors

47. In the present case, it is clear that the notice parties possessed very clear and defined objections to the proposed development of the applicants at the time when their application was first made. It seems to me that in light of the court's obligation to interpret the 2000 Act, in accordance with the Convention so far as is possible, the rights of such individuals cannot simply be ignored. Were the court in the present case to simply grant default permission in favour of the applicants without first considering whether the rights of the objectors had been infringed, it would fail in its obligations. As I have already noted, the first named notice party had an application for a comparable development refused on the basis that it would overshadow the applicants' land. I cannot see how it would be just to ignore the same considerations in relation to her property when assessing an application for default permission.

48. I do not accept the argument of the applicants that the objectors rights were vindicated by the availability of the appeals process, in circumstances where the existence or otherwise of a grant of default permission was not communicated to them. Such a suggestion while theoretically coherent, is utterly impractical in effect in that it would require the notice parties to make legal assessments as to the planning status of the applicants' land without any formal confirmation of same from the respondents. I have already noted, when considering the position of the applicants, the impossibility of action in such a situation of legal uncertainty. This consideration applies with equal force in respect of the notice parties. I am therefore of the opinion that the position of the notice parties serves only to further weigh against the exercise of the court's discretion to grant the relief sought.

IV. Conclusion

49. The integrity of the planning process is a vital national interest. Bad planning decisions sentence generations to live with the consequences thereof. The courts, in interpreting the legislation should, in my view, never lose sight of this overarching national interest. ,Not only must a development be in accordance with the County Development Plan, regard must also be had to the Local Area Plan. The court cannot itself act as a planning authority and therefore, unless it is incontrovertibly shown that a default permission would be fully in accordance with the Local Area Plan it cannot be allowed. In this case, as I have already noted, there is good reason to suspect that the proposal would contravene the housing policies set down in that Plan.

50. In light of the foregoing, I am satisfied that default planning permission should not isssue in this case. Even a bare default decision must avoid contravening the County Development Plan while also remaining in keeping with the Local Area Plan. The importance of the rights of neighbouring residents whose properties may be adversely affected by a particular development cannot be ignored. In those circumstances, I refuse the applications for both declaratory relief and for an order of *mandamus.*