Neutral Citation Number: [2007] IEHC 336

THE HIGH COURT

COMMERCIAL

2006 No. 85 MCA

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 160

OF THE PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

BETWEEN

PASCAL CONROY

APPLICANT

AND

JOHN CRADDOCK, KILDARE COUNTY COUNCIL,
MARY CRADDOCK AND JOHN CRADDOCK LIMITED

RESPONDENTS

Judgment of Ms. Justice Dunne delivered on the 31st day of July, 2007

This is an application pursuant to s. 160 of the Planning and Development Act, 2000 as amended. The proceedings relate to a development on lands known as Kilcullen Business Campus, Kilcullen, County Kildare, ("the site"). The site is owned by the second named respondent, Kildare County Council ("the Council"). The development of the site arose out of a policy by the Economic Section of the Council to promote the establishment of enterprise and business within County Kildare. The site is a development of eight business units of varying sizes in a single development with common infrastructure and architecture. The construction of the business park is provided for by means of a lease and agreement for lease issued by the Council and a co-owners' property and infrastructure agreement.

On 13th November, 2002 the Council in its capacity as planning authority granted permission (ref. 02/1195) to Amey Irish Facility Managers Limited ("Amey") for development on the site of the business campus. Amey was appointed by the Council on 31st August, 2001 as project managers for the development of the site. Planning permission was granted subject to 41 conditions.

The applicant herein holds an agreement for a lease in respect of unit 4 in the site, the first and third named respondents hold an agreement in respect of unit 5 and the fourth named respondent holds an agreement in respect of unit 6. A co-owners' agreement was entered into on 19th April, 2004 by each of the prospective leaseholders whereby they agreed to engage a builder to carry out certain infrastructural works on the site. Amey, the applicant for the planning permission, was appointed to manage the project of construction on the site and Amey engaged the fourth named respondent to carry out certain infrastructural works on the site. It was a term of the co-owners' agreement that "the works shall be constructed in full accord with the planning permission and to the satisfaction of the Council".

The applicant has now brought proceedings pursuant to s. 160 of the Planning and Development Act, 2000, seeking to restrain the respondents, their servants or agents from carrying out development on the site otherwise than in accordance with planning permission 02/1195 and the conditions attached thereto and an order pursuant to s. 160 directing the respondents, their servants or agents, to carry out development on the site only in accordance with conditions 1 and 5 of the planning permission and further directing the respondents, their servants or agents, to comply with conditions 3, 4, 6, 7, 10, 11, 12, 13, 16, 25, 26, 27 and 40 of the planning permission. Following the commencement of the proceedings and the exchange of affidavits between the parties an agreed issue paper was prepared in accordance with the directions of the High Court (Mr. Justice Kelly) dated 5th February, 2005. I now propose to deal with the issues raised as identified in the issue paper referred to.

1. Has there been a breach of condition 5 of the parent permission, or e.g. ref. 02/1195, concerning the reduction of finished floor levels on units 5, 6 and 7 on the site?

The first point to note is that although condition 5 deals with units 5, 6 and 7, no issue was raised by the applicant in respect of unit 7. Complaint was made only in respect of units 5 and 6. In this context it should be noted that the owners of unit 7, David and Louise Magee, were not joined as parties to the proceedings. For reasons which I will return to briefly at the conclusion of this application, it should be noted that the applicant at the outset indicated that it was not pursuing any complaint in respect of unit 7 but was only pursuing the complaint in respect of units 5 and 6.

It is necessary to refer to condition 5 at this stage. It provides as follows:

> "Before commencement of development the applicant shall submit, for the written consent of the planning authority, a revised site layout plan providing for a reduction in the finished floor level of unit 5, 6 and 7.
>
> Reason: To reduce the visual impact of those units on the M9 motorway in the interests of visual amenity and proper planning and development of the area and to allow the planning authority assess the proposed changes."

There is no dispute that Amey, the applicant for planning permission, did not in a literal sense comply with condition 5 in that a revised site layout plan providing for a reduction in the finished floor level of units 5, 6 and 7 was never submitted to the Council before the commencement of development. It is also self evident that, as the development has commenced, that condition cannot ever be complied with.

1(a) Has there been a prima facie breach of condition 5?

In the application originally submitted seeking planning permission, the finished floor levels for units 5, 6 and 7 were 121 metres, 119.5 metres and 119 metres respectively. Subsequently revised floor levels were submitted for the approval of the Council and ultimately by letter 1st March, 2006, the Council stated that it was satisfied with the details submitted in respect of the floor levels being 122 metres, 120.5 metres and 119 metres respectively. It was submitted on behalf of the applicant that the floor levels now approved clearly demonstrate not a reduction in the floor levels but rather an increase. Accordingly, it was submitted that a prima facie breach of condition 5 has been established.

It was submitted on behalf of the first, third and fourth named respondents that there was not a *prima facie* breach of condition 5 of the original planning permission. He referred to a letter dated the 6th November 2002 from Aidan Butler of Lorcan Greene, Associates,

on behalf of Amey in which it was stated "The revised finished floor levels on Units 5, 6 and 7 shall be agreed with the Planning Authority. Engineer's drawing 887-2-23 shows three cross-sections through the units an the motorway demonstrating that the height of the units do not adversely impact on the line of sight of traffic on the motorway. Drawings will be submitted as necessary." Although that drawing showed the units with a finished floor level as in the original plans, the point made is that it shows that the buildings did not interfere with or impact on traffic on the motorway. Emphasis was placed on the purpose of Condition 5. The object was not to remove any visual impact but to reduce it. He submitted that this had been achieved. These respondents also relied upon the decision of the planning authority to approve compliance with condition 5 as referred to in the letter of 1st March, 2006.

The second named respondent in dealing with this issue also submitted that there had been no *prima facie* breach of condition 5. In its submission the Council placed significant reliance on the reason given for condition 5. It was submitted that the drawings submitted by Amey on 24th January, 2006 for the approval of the Council demonstrated that the increased heights would not materially impact on the environment or result in a visual impact that would be in breach of condition 5. Emphasis was also placed on compliance with conditions 6 and 7 in this regard. Condition 6 provides:

> "6. Before commencement of development the applicant shall submit, for the written consent of the planning authority, a revised landscaping and planting scheme providing for the provision of an increased level of landscaping along the boundaries abutting the M9 motorway and the regional road R488. This plan shall include, if necessary, the provision of berming to screen the development and the reduction in size of all affected units to accommodate this berm. This landscaping plan shall be prepared by a suitably qualified landscape architect/horticulturalist acceptable to the planning authority. Before commencement of development the applicant shall submit, for the written consent of the planning authority, a programme for the implementation of the landscaping scheme.
>
> Reason: In order to ensure that the existing visual amenities of the area are maintained and enhanced, and that the proposed development is adequately screened so as to integrate it into its surroundings.
>
> 7. Before commencement of development the applicant shall submit, for the written consent of the planning authority, revised plans and elevations to comply with the requirements of condition No. 6 above.
>
> Reason: To allow the planning authority to assess the development and in the interests of proper planning and development."

Accordingly, having regard to all of those conditions, it was submitted on behalf of the Council that the purpose of conditions 5, 6 and 7 had been complied with, namely the reduction in the visual impact of the units from the M9 motorway.

Mr. Aylmer S. C. on behalf of the Council agreed with Mr. Galligan S. C. for the 1st, 3rd and 4th Respondents that Condition 5 only sought the submission of a plan showing a reduction. It did not follow that a reduction would be required. The purpose of seeking the plan was to allow the Council to assess the visual impact of the development. He said that a proposal had been made to the effect that a reduction in the finished floor levels was unnecessary. This view was ultimately accepted by the Council by letter of the 1st March 2006. He added that the decision of the Council contained in the letter of the 1st March 2006 had never been challenged. He also made the point that the requirement in Condition 5 was one which required details to be worked out between Amey and the Council to achieve its purpose. In that context, it was necessary to have regard to Conditions 6 and 7 and the planning permission as a whole. He submitted that the Applicant was taking an unduly literal interpretation of Condition 5.

In support of its submissions in this regard, counsel on behalf of the Council referred to the decisions in the case of *Sweetman v. Shell E&P Ireland Limited*, High Court, Unreported, 14th March, 2006; *O'Connor v. Dublin Corporation*, High Court, Unreported, 3rd October 2000; and *O'Connell v. Dungarvan Energy Limited*, High Court, Unreported, 27th February, 2001. Reliance was also placed on the decision in the case of *Mountbrook Homes Limited v. Oldcourt Developments Limited*, High Court, Unreported, 22nd April, 2005. In the latter case, it was noted by the court (Peart J.) "The court, under the section, can require belated compliance with a pre-commencement condition". In *O'Connor v. Dublin Corporation*, the court (O'Neill J.) adopted the approach relied upon in the judgment of the Supreme Court in the case of *Boland v. An Bord Pleanála*, [1996] 3 I.R. 435. In that case certain criteria were set out as to the matters An Bord Pleanála was entitled to have regard to in deciding whether to impose a condition or not. In order to understand the submissions made in this regard it would be helpful to refer to the head note from that decision in which it was held by the Supreme Court as follows:

> "1. The type of matter which may properly be inserted into a planning condition for later agreement between the planning authority and a developer depends upon the nature of the proposed development and its related planning application. …
>
> 2. The criteria to which the Board was entitled to have regard in deciding whether to impose a condition leaving a matter to be agreed between the developer and the planning authority are:
>
> (a) the desirability of leaving to a developer who is hoping to engage in a complex enterprise a certain limited degree of flexibility having regard to the nature of the enterprise;
>
> (b) the desirability of leaving technical matters or matters of detail to be agreed between the developer and the planning authority, particularly when such matters or such details are within the responsibility of the planning authority and may require redesign in the light of practical experience;
>
> (c) the impracticability of imposing detailed conditions having regard to the nature of the development;
>
> (d) the functions and responsibilities of the planning authority;
>
> (e) whether the matters essentially are concerned with off-site problems and do not affect the subject lands;
>
> (f) whether any member of the public could have reasonable grounds for objecting to the work to be carried out pursuant to the condition, having regard to the precise nature of the instructions in regard to it laid down by the Board and having regard to the fact that the details of the work had to be agreed by the planning authority. …
>
> 3. In imposing a condition requiring matters to be agreed between the developer and the planning authority, the Board was obliged to set forth the purpose of such details, the overall objective to be achieved by the matters to be agreed, to

state clearly the reasons therefor and to lay down criteria by which the developer and the planning authority could reach agreement.

4. The matters stipulated in the conditions in the instant case were essentially technical matters or matters of detail, and contained sufficient detail to enable the developer and the planning authority to comply with the requirements of the Board. Accordingly, the respondent had not improperly abdicated its statutory duties to the planning authority."

In the case of *O'Connor v. Dublin Corporation* referred to above, O'Neill J. accepted that regard must be had to the above criteria when approaching the task of determining what was the "true and correct meaning of the conditions attached to the planning permission and to confine themselves and the notice party to such proposals as are in compliance with those conditions". In the case of *Sweetman v. Shell E&P Ireland Limited*, Smyth J. considered the dictum of O'Neill J. referred to above and looked at the purpose of the relevant condition in determining whether compliance had occurred. In that case it was held that there had been substantial compliance with the condition in question.

In the course of submissions in relation to whether or not there was a *prima facie* breach of condition 5, one of the points made on behalf of the applicant related to a notation on a drawing submitted in relation to alterations to unit 5 of approved development Ref. Ref. 02/1195 which carried a notation saying "levels as agreed with Kildare County Council". That notation was made by Aidan Butler. In one of the affidavits furnished by Mr. Butler on behalf of the applicant herein he has deposed to the fact that there was no such agreement made between the Council and Amey at that stage. So far as that point is concerned I accept that averment of Mr. Butler.

A point was made on behalf of the first, third and fourth respondent to the effect that a subsequent application for planning permission altered condition 5 of the parent permission. In an affidavit sworn herein, Fraser Tinsley, a planning consultant employed by Brian Meehan Associates, sworn herein on behalf of the applicant, deposed that two subsequent planning permissions Reg. Ref. 05/443 and Reg. Ref. 05/516 did not have any relevance in relation to the finished floor levels of units 5 and 6. He concluded that neither of those two planning permissions obviated the need to comply with the requirements of the parent permission with regard to the finished floor levels on units 5 and 6. The proposal in respect of 05/516 as set out in the report exhibited by Mr. Tinsley was as follows:

"Alterations to previously approved development (02/1195) consisting of

1. change of use of 145 square metres of ground floor area from light industrial to office use,

2. addition of 117 square metres of first floor office space,

3. elevational changes associated with above and

4. provision of seven additional car parking spaces at site 5, Kilcullen Business Campus …"

Planning permission Reg. Ref. 05/443 related to unit 7 only and accordingly does not have any bearing on the floor levels of units 5 and 6. So far as this issue is concerned, I am satisfied that the subsequent planning permissions did not alter the parent permission 02/1195. Whilst it had been contended in the affidavit of Vincent Barry sworn herein on 27th September, 2006 on behalf of the first named respondent as follows:

"Two planning permissions exist in respect of unit 5 and it would be incorrect to conclude as Mr. Butler appears to have done that unit 5 is being developed pursuant to the parent permission only. The revisions comprised in 05/516 must be taken into account in considering the legality of the existing development."

Whilst I accept that Mr. Barry's assertion in para. 34 of his affidavit referred to above is correct insofar as it goes, Mr. Tinsley is correct also in indicating that the subsequent planning permissions did not alter the requirements of condition 5. I am satisfied from all of the affidavits in connection with this issue that the subsequent planning permissions did not alter condition 5 of the parent permission.

It goes without saying that there has been a breach of condition 5 in the sense that no plans were submitted before the commencement of the development. It is clear that there can be belated compliance with a pre-commencement condition as was acknowledged in the case of *Mountbrook Homes Limited v. Oldcourt Developments Limited*, High Court, Unreported, April 22nd, 2005. In this case it is not contested that revised floor level plans were submitted for approval of the Council and, as pointed out previously by letter dated 1st March, 2006, the same were approved. I accept that those plans show not a reduction but an increase in the floor level for the relevant units.

Whilst condition 5 spoke of the submission of revised plans showing a reduction of the finished floor level, it is clear that the detail of any such reduction was not specified and, accordingly, it seems to me that this was a detail which would have had to be considered by Amey and the Council in accordance with the provisions of s. 34(5) of the Planning and Development Act, 2000 as referred to in the letter of the 6th November 2002 from Amey to the Council. It is interesting to note that condition 5 did not specify in any way the extent of any possible reduction.

In consideration of the issue as to whether there has been a prima facie breach of condition 5, I am satisfied that it is necessary to look at the purpose of condition 5. It's purpose was to achieve the reduction of the visual impact of the units on the M9 motorway in the interests of visual amenity. I do not think that this condition can be considered without reference to conditions 6 and 7. The approach of the Council was also to consider condition 5 in conjunction with conditions 6 and 7 as set out in the letter of the 1st March 2006. The Council is satisfied as to the effect of the finished floor levels having regard to the visual impact on the motorway. In all the circumstances, I have come to the conclusion that there has been substantial compliance with condition 5 of the planning permission. Therefore, I would answer the question raised at this point – No.

1(b) If the answer to 1(a) is yes, is it still relevant to the issue of compliance with the parent permission whether the development attains the overall objective of condition 5, and does the development in fact do so?

Given the answer to the issue raised at 1 (a), it is not necessary to consider the issue raised at 1(b). However, if I am wrong in my consideration of issue raised at 1(a), I am satisfied as I have indicated above that there has been substantial compliance with condition 5. Clearly therefore, I am satisfied that the development attains the overall objective of condition 5.

1(c) Has compliance with condition 5 of the parent permission been affected by subsequent grants of planning permission in respect of the site?

I have already dealt with this issue.

2. Has there been a breach of other conditions of the parent permission?

In this regard counsel for the applicant relied on a report of Aidan Butler dated 18th July, 2006 which was exhibited in an affidavit sworn herein on 19th July, 2006. I do not propose to deal with these alleged breaches in detail. Condition 3 relates to the use of Unit 1. Complaint is made that it is shown on plans as an office building notwithstanding that Condition 3 provides that the Units under the planning permission shall be used solely for light industrial or warehousing units. It was pointed out on behalf of the first, third and fourth respondents that they have no connection with Unit 1 and it was accepted that this was so by counsel for the applicant, but he argued that responsibility for breach of this condition rested with the second named respondent.

Complaint was also made in respect of Conditions 6, 7, 10, 11, 12, 13, 16, 25, 26, 27 and 40.

It is the case that a number of those conditions relate to matters which were meant to be submitted to the planning authority prior to the commencement of development .As has already been noted a developer may deal with some matters by way of belated compliance. In respect of a number of those conditions namely 7, 11, 12, 13, 16, 25 and 27 it is submitted on behalf of the first, third and fourth named respondents that details in respect of these Conditions have been agreed with the planning authority. In respect of Conditions 4 and 6 it was submitted that consideration of those conditions at this point in time is premature and in respect of Conditions 7 and 10 complaint was made that there was no evidence as to how a breach is alleged to have occurred. Counsel on behalf of the applicant had made the point that as far as the second named respondent is concerned it is a joint developer of the site and he complained that the second named respondent having permitted development to proceed on its own lands in the absence of compliance with all the terms of the planning permission imposed by the Council in its capacity as a planning authority is setting a bad example in respect of the enforcement of planning control in Co. Kildare.

Counsel on behalf of the second named respondent accepted that there were some issues of compliance with certain conditions, for example, the details to be submitted in respect of the management company for the site. It was argued that such issues are minor and trivial by nature and that in those circumstances it was reasonable to expect that agreement on those issues would be reached with the planning authority during the course of the construction of the development. Reliance was also placed on the decision in the case of *Eircell Limited v. Bernstoff* (Unreported, High Court, 18th February, 2000) in which it was stated by Barr J. as follows:-

> "It was agreed on behalf of the applicants as the requirements in question were conditions precedent to the commencement of development, they should be strictly interpreted and subsequent compliance does not render legal what was already an unlawful development. I am satisfied that in all the circumstances I should follow the decision of McCracken J. in holding that the conditions in question have been complied with. Even if he had no such ground, it is abundantly clear on the facts that the reliefs sought under s. 27 should not be granted. No court should make an order which is potentially futile. If the mast were declared to be an unlawful development, no doubt application would be made to the planning authority for a retention order and in the circumstances that would be granted for the asking."

I am satisfied that there is little to be concerned about in relation to a number of the conditions referred to. In fairness to the applicant a number of the conditions do relate to plans to be submitted for such matters as bus, pedestrian and bicycle use in the site, the details of the management company to be formed to manage the site, the disposal of materials excavated on the site and so on. They were pre-commencement conditions but they are eminently suitable to be dealt with in the course of construction. The delay in compliance in the overall context of the development as a whole is not, in my view, of major significance and I accept that these are all matters which will be dealt with as a matter of course as the construction of the development progresses. For example, in relation to Condition 25 which referred to a proposed pumping station and rising main on the site, it appears that a different sewer system has been agreed with the Council which has avoided the need for a pumping station.

It appears that although agreement has been reached there are no details on the planning file in relation to such an agreement. This should be attended to as a matter of urgency. I have no doubt that whilst the applicant may have a complaint in respect of a number of alleged breaches of the other conditions in the parent permission, a lot of the complaints relate to matters which have in fact been dealt with and in essence the real problem is that the planning file does not reflect that fact. It is undoubtedly a legitimate matter of complaint that the planning file does not reflect such agreements. Nonetheless the fact that such agreements have been reached in relation to a number of conditions indicates that there is no breach or insofar as there may be a technical breach where agreement on details was not complete before the commencement of the development I am satisfied that such breaches where they exist are of a technical or trivial nature only and are not such as to give rise to any relief under s. 160. In fairness, I think that the applicant accepts that his main complaint is not in respect of the other conditions of the parent permission but has always been focused in the main on Condition No. 5.

3. Assuming that there has been a breach of conditions of the planning permission, should the court exercise its discretion to withhold relief?

It should be clear from the foregoing that I am satisfied that in respect of a number of instances there has been what could be described as technical breaches of a number of the conditions. In particular conditions requiring certain plans, detailed information or drawings to be submitted pre commencement, have in many instances not been complied with. However, as I have made clear, I am satisfied that there has been substantial compliance with the planning permission. Even if I were wrong in coming to that conclusion, there are issues of significance in relation to this case as to the discretion of the court in relation to the granting of relief. I have a significant concern as to the motivation for these proceedings. There are certain issues in relation to the conduct of the applicant which cause me concern. In the first instance I should refer to the e-mail which appears in an affidavit of the first named respondent herein sworn on 26th September, 2006 in which he exhibits an e-mail from John Hensey to the applicant. Mr. Hensey is a representative of Amey. The e-mail contained a note of a conversation between Mr. Hensey and the applicant herein. He quoted the applicant as saying that in the absence of an agreement to his plans:

> "He would declare that the development was illegal and demand that KCC take action on foot of this.
>
> He would take the issue to the courts in the event that he was not satisfied with the outcome. He was (sic) initiate injunction proceedings to prevent further works taking place on the site.
>
> He would seek to have the construction works removed and the site re-instated. He would contest the contractors H/C

proceedings on the basis that the development was legal and therefore he was not liable to pay anything to the contractor.

He stated that Amey would be a specific target of his actions."

The applicant herein has not sought to resile from the contents of that e-mail. It will be noted from the contents of that e-mail, that the applicant herein had sought the agreement of other members of the joint venture to his plans for developing his part of the site and that in default of agreement he would then commence litigation in relation to the compliance with planning permission of the site as a whole. Further it will be clear that a company of the applicant Isis Developments Limited was being sued by the fourth named respondent herein in relation to costs due for infra structure works on the site. Proceedings were issued in respect of those costs and in the course of those proceedings a defence relied on was non-compliance of the development with planning permission. Since these proceedings commenced, the full amount due by Isis Developments Limited has been paid to the fourth named respondent herein. Nonetheless these facts do, it seems to me, call into question the basis upon which these proceedings have been commenced. The fact that relief was sought against the first, third and fourth named respondents although they were involved in respect of Unit 5 and 6 only and that no proceedings were brought against the parties interested in Unit 7 confirms me in my view. If there was a significant breach of Condition 5 as contended for by the applicant then the parties concerned in Unit 7 were just as responsible for the breach and one would have expected them to be joined in the proceedings. Equally it could be said that all of the other parties to the venture should have been joined in relation to the other alleged breaches of the parent permission. That this was not done, leads me to a view that the motivation of the applicant in bringing the proceedings is questionable.

3(a) Is the applicant guilty of delay such that the court should exercise its discretion to withhold relief?

It was submitted on behalf of the applicant that delay was not a prohibiting factor in seeking relief under s. 160 of the 2000 Act. Reliance was placed on the statutory time period provided for in the Act for the initiation of proceedings. It is undoubtedly the case that the applicant raised issues in respect of compliance as early as 3rd November, 2004. A complaint was made to the second named respondent on 20th May, 2005 and the applicant's solicitor had been in correspondence with the second named respondent solicitor since February 2005 in respect of the matters now complained of in these proceedings. The proceedings herein were not issued until July 2006. The applicant submits that the delay in bringing these proceedings was because it was hoped that the issues raised would be dealt in the proceedings brought by John Craddock Limited against the applicant company Isis Developments Limited. In those circumstances it is submitted on behalf of the applicant that its conduct in this regard has been reasonable.

Counsel on behalf of the first, third and fourth named respondents pointed out that the applicant has been aware of the matters complained of since November 2004. It is accepted that the delay does not exceed the limitation period set down in the Planning and Development Act, 2000 but, notwithstanding that delay is a matter that can influence the exercise of the courts discretion as to whether or not to grant relief.

Counsel on behalf of the second named respondent complained that no adequate explanation was given by the applicant in relation to the delay in commencing these proceedings. It was noted that the work commenced on the development around 27th May, 2004 and that construction on the site had continued throughout the period until the applicant brought these proceedings on 20th July, 2006.

I am satisfied that even if I am wrong in my conclusion that there has been substantial compliance with the planning permission in this case and that any breaches, such as they are, are of a trivial and insignificant nature, this is a case in which I would not be prepared to exercise my discretion to grant relief under s. 160. I am satisfied that it would be unfair to the respondents and to the other parties who are involved in the development and who have not been brought before the court to halt the development at this stage in circumstances where the applicant, if genuinely and seriously concerned as to the possible non-compliance of the development with the planning permission could have brought this application at a much earlier stage. Great hardship would be suffered by all concerned were such relief to be granted at this stage. I am satisfied that this court can take into account the principles referred to in a number of the authorities opened to me including the decision in the case of *Sweetman v. Shell* referred to above in which reference was made to the judgment of Finlay J. in the case of Dublin *Corporation v. Mulligan* (Unreported, High Court, 6th May, 1980) and to *Avenue Properties v. Farrell*,1982 ILRM 21, *Leen v. Aer Rianta* 2003 4 IR 394, *O'Connell v. Dungarvan Energy* (referred to above) and *Morris v. Garvey* 1983 IR 31..

3(b) Is the applicant's conduct such that the court should exercise its discretion to withhold relief?

In essence I have already dealt with this issue above and I do not propose to deal with the matter any further.

3(c) Was the breach a conscious or deliberate one and, if not, should the court exercise its discretion to withhold relief?

I have dealt with this issue above and therefore I do not propose to make any further comment on this issue.

4. If the answer to the previous question is no then what relief, if any, should be granted by the court pursuant to s. 160 of the Planning and Development Act, 2000?

It will be clear from everything I have said above that this is a case in which I do not consider it appropriate to exercise the court's discretion in relation to the matters at issue in these proceedings. I have accepted that there are some trivial or technical breaches of the planning permission at issue in these proceedings. Nonetheless I am also satisfied that there has been substantial compliance with the parent permission. Even if I were not of the view that there was substantial compliance, this is a case in which I would have no hesitation in refusing to grant relief having regard to the conduct of the applicant both in terms of the motivation for bringing the proceedings and the delay in bringing the application.

Accordingly, I am refusing the relief sought herein.