

THE HIGH COURT

[Record No.2005/101CA]

BETWEEN

ADRIAN DOYLE

APPLICANT

AND
OLIVER CANTY

RESPONDENT

Judgment of Mr.Justice Herbert delivered on the 24th June, 2005

1. On 23rd January, 2002, Mr.Seamus Dooley, County Manager of the County of Wexford wrote to the Secretary of An Bord Pleanála asking it to treat an appeal to the Bord by Odette Canty, wife of the defendant, in relation to a proposed development at Trinity Street, Wexford, as vexatious pursuant to the provisions of s.14 of the Planning Act, 1992.Mr.Dooley contended that the appeal was "simply part of a general campaign against commercial developments in Wexford".On the same day, 23rd January, 2002, an article appeared in a local newspaper which stated that "in a letter sent to the Bord the Council is seeking that the 11th hour appeal against the development by Odette Canty be disregarded".It quoted the County Manager, Mr.Seamus Dooley, as stating "there is provision in the legislation for the Bord to do this and we're asking them to do that".On 6th February, 2002, a local newspaper, referring to what it described as a "last minute objection by Odette Canty", stated that "Director of Services Adrian Doyle said that the County Manager sent a letter last week to An Bord Pleanála urging the Bord to disregard the objection".On 17th April, 2002, Odette Canty wrote to Mr.Dooley stating that she had read that day in the Wexford People Newspaper that he had described what she insisted was "a legitimate and well researched appeal... as frivolous..." On 2nd May, 2002, Odette Canty further wrote to Mr.Dooley referring to a Spill-Clean Site Assessment Report dated 7th and 8th January, 2002, and citing the following passage from that report:-

"The main concern is for the very high levels of Gasoline Range Organics (G.R.O.) and Benzene, Toluene, Ethyl-Benzene and Xylene which exceed the Dutch Intervention Value..."

and referring to the potential health hazard to current and future occupants of [the development].On 3rd May, 2002, Mr.P.Collins, Town Clerk of Wexford Borough Council wrote to Duchas stating that it had come to the attention of the Council that there were possibly unauthorised works being carried out at No.79 South Main St., Wexford, which was a protected structure under the Local Importance List, and enclosing a report by Mr.T.Miller, a planning inspector, dated 13th February, 2002.In that report Mr.Miller stated that he had inspected the premises of Oliver Canty with Mr.Dick Conway on Friday, 9th February, 2002.He concludes his report as follows:-

"It is impossible to be sure of the actual situation without inspecting Canty's premises but given Andy Doyle's comments and Mrs.Canty's reaction I think it is unlikely that Cantys are carrying out renovation with the intention of opening a pub at South Main St."By a letter dated 11th July, 2002, Louise O'Rourke, Acting Town Clerk of Wexford Borough Council, wrote to Oliver Canty informing him that in making a proposed Reference pursuant to s.5(4) of the Planning and Development Act, 2000 to An Bord Pleanála, the Council proposed to bring to the attention of An Bord Pleanála in deciding the matter, the following:-

"(i) Change of use.

(ii) Protected status of the frontage of the premises and its subsequent alteration without planning permission.

(iii) Possible recent alterations to the boundary of the site".

2. By letter dated 15th July, 2002, Oliver Canty wrote to Mr.P.Collins, Town Clerk of Wexford Borough Council stating, *inter alia*, as follows:-

"[As] already stated repeatedly and with supporting documentation...[this]...was a licensed premises and shop since before 1919...and no planning application has ever been made...to change the use of licensed premises and shop...even though the 7 day Publican's Licence was extinguished in 1964.

The upper façade and shopfront of our property, 79 South Main Street, Wexford are listed for protection and no alterations have ever taken place during our 12 year ownership or indeed since the 19th century and accordingly this statement is false.

The premises, has been vandalised as a result of spurious claims by the County Manager – leaked to and published in the Wexford People Newspaper....in relation to a legitimate appeal by my wife Odette...."

3. In that letter, Mr.Canty also refers to the newspaper article of 23rd January, 2002, the newspaper article of 6th February, 2002, and the letter of 17th April, 2002, which I have already cited in this judgment.

4. It is noticeable that despite the alleged concern regarding unauthorised alterations to No.79 South Main St., Wexford, which probably resulted in the inspection of the premises by Planning Inspector T.Miller on 9th February, 2002, Wexford Borough Council took no action for three months.Then despite the conclusion reached by Mr.Miller, Mr.P.Collins, the Town Clerk, sent the letter of 3rd May, 2002, to Duchas.No evidence was given to the Court of any further investigation on behalf of Wexford Borough Council or Wexford County Council after Mr.Miller's report of 13th February, 2002.On the balance of probabilities I conclude that it was not mere coincidence, as was claimed in evidence by Mr.P.Collins, that the letter was sent to Duchas on 3rd May, 2002, the same date as the letter of 2nd May, 2002, from Odette Canty was accepted as having reached Mr.Seamus Dooley, Wexford County Manager.Despite the conclusion reached by Planning Inspector T.Miller in his report of 13th February, 2002, and regardless of the letter from Oliver Canty to Mr.P.Collins dated 15th July, 2002, the Council still sent the letter of 11th July, 2002, with the allegations of unauthorised development at No.79 South Main St., Wexford, to the Secretary of An Bord Pleanála on 17th July, 2002.In my judgment considered in the light of the matters to which I have already adverted, this letter of 17th July, 2002, to An Bord Pleanála and the letter of 3rd May, 2002, to Duchas can only be regarded as a deliberate attempt on the part of someone in Wexford Borough Council or in Wexford County Council to discredit the defendant, Oliver Canty, and his wife, Odette Canty, in the eyes of An Bord Pleanála and Duchas.

5. During the course of the case, Mr.Canty stated that he was not alleging that the plaintiff was involved in any way with the letter to Duchas dated 3rd May, 2002, but only with the letter of 11th July, 2002, (sent to An Bord Pleanála on 17th July, 2002).The letter

to An Bord Pleanála was signed by Mr.P.Collins, Town Clerk of Wexford Borough Council, and enclosed a photograph of a bar interior which Mr.Canty told the Court, and in respect of which there was no evidence to the contrary, was not a protected structure and had been sold by him in October, 1992, after extensive advertising in the news media, including in the local newspapers.Mr.P.Collins, having endeavoured to suggest that the alleged unauthorised alterations, referred to in the letters to Duchas and An Bord Pleanála were the removal of a brass rail inside the window No.79 South Main St., Wexford and the removal of railings across the outside of the window, was obliged by the weight of the evidence to accept that the accusation of unauthorised planning development by the defendant, Oliver Canty, was inaccurate and should not have been made to Duchas or to An Bord Pleanála.Mr.P.Collins told the court that he could not recall who had told him that the railings had been removed and he accepted that there was no evidence that they had in fact been removed.On 22nd November, 2002, he recalled that he had written to An Bord Pleanála stating that the railings had been "reinstated".

6. In the letter of 2nd September, 2002, which the plaintiff, Mr.Adrian Doyle, alleges was defamatory of him and which was addressed by Mr.Oliver Canty to Mr.Martin Cullen, T.D., then Minister for the Environment and Local Government, and a copy sent to Mr.Seamus Dooley, County Manager Wexford County Council, Mr.Oliver Canty asserted that "there is no doubt that the architect of this false and unfounded allegation is Mr.Adrian Doyle, Director of Planning, Wexford County Council and Manager Wexford Borough Council".Mr.Patrick Collins and Mr.Adrian Doyle both accepted in evidence that Mr.P.Collins had mentioned to Mr.Doyle, "in passing", that he had sent the Reference pursuant to 7.s.5(4) of the Planning and Development Act, 2000, to An Bord Pleanála rising out of Mr.Canty's application to Wexford Borough Council.Mr.P.Collins gave evidence that he had been appointed Town Clerk of Wexford County-Borough in June, 2002, having held the post of Acting Town Clerk since November, 2001.He recalled that in November, 2001, Mr.Don Curtin, who had held the post of Town Clerk, had been seconded to other important Local Government work.Mr.P.Collins told the court that all the ground work in relation to what the Planning Department of Wexford Borough Council perceived as an application by Oliver Canty for a Declaration under s.5(1) of the Planning and Development Act, 2000, and the Council's consequent reference to An Bord Pleanála under s.5(4) of that Act of 2000, was done by Mr.Tony Nolan, a Senior Staff Officer in the Housing, Planning and Environment Department and Anne Shannon, an Acting Assistant Staff Officer.In evidence, Mr.Doyle told the Court that he had nothing to do with either of these applications under s.5 of the Planning and Development Act, 2000.He told the court that he had no input at all into them and had no input at all into the allegations in the letter of 3rd May, 2002, to Duchas and 17th July, 2002, to An Bord Pleanála.

7. In the letter of 2nd September, 2002, Mr.Canty stated that Mr.Adrian Doyle believed that he, Mr.Canty, was solely responsible for the refusal by An Bord Pleanála in January, 2002, of a planning permission for a three story apartment development from which Mr.Adrian Doyle stood to make a substantial financial gain.He claimed that the application was fronted by Mr.Raymond Doyle who described himself on the application form as the overall landowner in order to conceal the interest of Mr.Adrian Doyle who held a quarter shareholding in the lands in question.Mr.Canty in the letter submitted to the Minister for the Environment and Local Government submitted that Mr.Adrian Doyle should not be allowed to abuse his office in order to settle a score in such a manner.Mr.Canty told this court that, on the facts of what had occurred, he honestly believed that what he had written in this letter was true and that it was reasonable for him to have held this belief, particularly in the light of the article in the newspaper on 6th February, 2002.

8. Mr.Adrian Doyle told the court that he and his brothers, Fergus, Raymond and Bernard, had purchased their father's residence at 103 Corish Park, Wexford by public auction on 3rd November, 1999.He gave evidence that their father was then elderly and the proceeds of sale were necessary to provide him with residential nursing care.Mr.Adrian Doyle told the court that his brother Raymond had persuaded him and his other brothers that they should purchase the property themselves in equal shares.By a Declaration dated 30th November, 2000, made pursuant to the requirements of s.32 of the Local Government (Planning and Development) Act, 1976, and stamped received by the Office of the Secretary of Wexford County Council on 5th December, 2000, he, Adrian Doyle, declared that he had an estate or interest in land situated in the area of the Planning Authority, namely, "one quarter share in site at Newtown Road, Wexford, (formerly owned by my father Patrick Doyle)".Mr.Doyle gave evidence, which I accept, that he also furnished a memorandum to the County Manager of the County of Wexford dated 7th December, 2000, enclosing a copy of this Declaration.For whatever reason, a copy of this Declaration, or even a note to indicate that such a Declaration had been made, was not placed on the Planning File when Mr.Raymond Doyle applied for Planning Permission in respect of the Newtown Road property, which application was stamped "received" by Wexford County Council Planning Section on 22nd June, 2001.

9. In answer to question No.9 on the Planning Application Form, "applicant's interest in land/structure", Mr.Raymond Doyle entered "owner".In answer to question No.13(a), "if applicant is not the owner, state name and address of owner", Mr.Raymond Doyle answered "the applicant is owner".In answer to question No.13(b), "name and address of overall landowner", Mr.Raymond Doyle answered "applicant is owner".In my judgment, these answers were seriously misleading and, in the context of Mr.Adrian Doyle's then position as Manager of Wexford Borough Council and Director of Planning, Wexford County Council, disturbingly so.I note that, in a letter dated 12th November, 2001, the Secretary of Wexford County Council, Mr.J.Pierce, wrote to Mr.Oliver Canty stating that a matter had been referred to Mr.Adrian Doyle, "Director of Services, Planning and Development", for his attention.These answers on the Planning Application form were further seriously misleading having regard to the fact that Part (ii), "Ownership of Land, Registry Folio 14096 County of Wexford", was not altered to show any change in ownership from Patrick Doyle until 5th October, 2001, even though on the evidence of Mr.Adrian Doyle that auction had taken place on 3rd November, 1999.Mr.Adrian Doyle told the court that he did not see this application before it was lodged.He said that the application was made by his brother, Raymond Doyle.He told the court that, having purchased his quarter interest in the lands, he left all development matters to his brother Raymond who is a businessman and his brother Bernard who is an accountant and had no involvement at all in seeking or obtaining the grant of planning permission for the development of the lands at Newtown Road, Wexford.

10. I accept the evidence of Mr.Canty, as corroborated by his letter dated 11th September, 2002, to the Secretary of An Bord Pleanála, that he became interested in this proposed development as a result of requests for help from local residents, including Mr.John Campbell and Ms.Anne Gallagher.Mr.Canty told the court that he had carried out a search in the Land Registry and the relevant Folio indicated that the land was not owned by Mr.Raymond Doyle as stated in the planning application but by Mr.Patrick Doyle.I do not accept that Mr.Canty was or ought reasonably to have been aware of the public auction on 3rd November, 1999, or of the results of that auction.Mr.Canty considered that the normal average period taken by Wexford County Council in processing a planning application of the type of commercial development sought by Mr.Raymond Doyle was 28 weeks and not 4 weeks.This appears in his letter dated 11th September, 2002, to the Secretary of An Bord Pleanála.

11. By letter dated 12th August, 2004, admitted into evidence, Mr.Canty informed the Chairman of the Tribunal of Inquiry into Planning Matters and Payments, that he had examined the planning records of Wexford County Council from July, 1996 to June, 2001, and, that out of 15,000 planning applications, had, "failed to find one other similar commercial development that had been decided at such speed, four weeks, indeed the norm for a single house development is 7 weeks according to the records...".Mr.Adrian Doyle gave evidence that in the year 2001, 3,591 planning applications were decided of which 85 were decided in four weeks or less, 113 in 5 weeks and 2,098 in 2 months.He said that he considered that the reasons the application by his brother Mr.Raymond Doyle had been

determined so promptly was because his brother and his agents, Reid Associates, Planning and Development Consultants, had extensive discussions with officers of the Planning Department of Wexford County Council on at least two occasions prior to the submission of the application for a grant of planning permission. He did not state when or how he learned of these discussions.

12. I am satisfied on the evidence that the majority of objectors to the proposed development at Newtown Road, Wexford were, as alleged by Mr. Canty, taken unawares by the rapid determination of this application for a grant of planning permission so that four important objections were submitted after the 20th July, 2001, the application having been stamped "received" on 21st June, 2001. Mr. Adrian Doyle told the court that the planning authority was lawfully entitled to determine the application after the expiry of two weeks.

13. Mr. Canty told the court that, when he wrote to Mr. Dooley, County Manager for the County of Wexford on 13th August, 2001, stating, what he believed was the truth, that "Mr. Adrian Doyle has quite clearly tried to conceal the true owner of the lands for the proposed development when this planning application was rushed through the planning process...", the County Manager did not reply advising him that Mr. Adrian Doyle had formally completed, and had additionally sent to him, a copy of a Declaration of Interest on the 7th December, 2000.

14. The Submission of Reid Associates, Planning and Development Consultants for Mr. Raymond Doyle, dated 18th September, 2001, responding to third party appeals from Oliver Canty, Newtown Court Residents Association, Slaney View Residents Association and Fernogue Heights Residents, under the title "Procedural Issues", states as follows:-

"Applicants have questioned the applicant's interest in the property. The applicant Ray Doyle has sufficient legal interest in the property and as indicated on the planning application form is the owner of the said property.

Adrian Doyle made the relevant declaration, in respect of his position in the public service and this application was decided at arms length and the planning decision reflected the planning officer's report and recommendations in respect of the development".

15. The first paragraph of this submission is clearly incorrect and misleading: Ray Doyle was only a part and, as against his three brothers, a minority owner. Taken together these paragraphs are capable of being seriously misleading and do not fully and properly set out the true picture. However, be that as it may, Mr. Adrian Doyle gave evidence that An Bord Pleanála was obliged to send a copy of this Submission to Mr. Canty and to the other Third Party Objectors and that Mr. Canty must thereafter have been alerted to the interest of Mr. Adrian Doyle in the land. Nonetheless, the Plaintiff claims that in this letter of 2nd September, 2002, the second letter claimed to be defamatory of Mr. Adrian Doyle, Mr. Canty persisted in wrongfully alleging that "Mr. Raymond Doyle described himself in the application form and publicity [sic] as the overall landowner in order to conceal the interest of Mr. Adrian Doyle, a quarter shareholder in the lands". In my judgment, an honest and fair member of the public could not take these words, either in their natural and ordinary meaning or by way of innuendo, as repeating and republishing the statement in the letter of 13th August, 2001, that Mr. Adrian Doyle was fully aware of the misdescription by Mr. Ray Doyle at the time he completed the form, and quite clearly tried to conceal the true owner of the lands. In the previous sentence of the letter of 2nd September, 2002, the defendant, referring to Mr. Adrian Doyle, alludes to "the site....which he and his three brothers own equally on Newtown Road, Wexford."

16. On 14th January, 2002, An Bord Pleanála refused permission for the development proposed by Mr. Raymond Doyle. Whether Mr. Oliver Canty learned of the interest of Mr. Adrian Doyle in the lands in the manner suggested by Mr. Adrian Doyle or, solely or partly by reference to the Land Registry Folio which was revised on 5th October, 2001, to show the change in ownership, appears to me to be irrelevant. I accept his evidence that there was no statutory declaration of interest by Mr. Adrian Doyle on any of the planning files inspected by him. It was admitted on behalf of the plaintiff that the Declaration of Interest had been kept on a different file in the office of the County Secretary and was not available to the public.

17. I find that the altercation which took place on 3rd November, 2000, and which resulted in the defendant being asked by members of An Garda Síochána to leave the office of the then accountant to Wexford Borough Council was a direct result of there being no proper facilities available to members of the public where they could, properly and with some degree of comfort, examine the public planning files. In my judgment, this situation was altogether contrary to the intentions of the legislature in framing the Planning Code which demands a high degree of transparency in all matters to do with the granting or refusal of planning permission. It undoubtedly imposed a totally unacceptable strain on Mr. Patrick Collins, in whose office and on whose already heavily encumbered desk, Mr. Canty would have been obliged to examine the planning files unless he chose to do so sitting on the floor. I find that as a direct result of tensions generated by this grossly unacceptable situation, one word had borrowed another and Mr. P. Collins felt constrained to seek the assistance of An Garda Síochána. I accept the evidence of Mr. P. Collins, having had a full opportunity of carefully observing Mr. Canty's demeanour in Court, that Mr. Canty became very forceful and voluble so that his behaviour appeared threatening and intimidating. I am satisfied, on the evidence, that Mr. Canty's obsessive pursuit of answers and his very confrontational manner of address had caused members of the Planning Office staff to feel threatened and had resulted in Mr. P. Collins being designated to handle all further queries of any sort coming from Mr. Canty or his wife.

18. Mr. Canty did not deny that he accused Mr. P. Collins of having lied to him in some letter which was neither identified nor produced before the court. Mr. P. Collins accepted that he did not ask for any details of this alleged letter but told a member of An Garda Síochána that Mr. Canty had accused him of lying. I accept Mr. Canty's response to this was to say "then sue me". Despite the existence of a contemporaneous note signed by Mr. P. Collins on 9th November, 2000, I am satisfied that Mr. Canty has a much more detailed and accurate recollection of what transpired at this stormy meeting. I find that a compulsive attention to minute detail is a feature of Mr. Canty's personality and I accept that the summoning of An Garda Síochána helped to imprint those details further on his mind. The court can only deprecate a situation where a member of the public, exercising a lawful and most important right to consult a planning file, is left with the choice of spreading it over the papers and the computer terminal on the desk of a very busy senior local government officer while that officer is trying to work, or of using the office floor. I find that this was the only alternative which Mr. P. Collins could offer to Mr. Canty, with scarcely surprising expressions of outrage on Mr. Canty's part. In my judgment, even though probably unintentional, this lack of proper facilities in fact amounted to a constructive denial of the right of a member of the public to inspect the planning records of Wexford Borough Council.

19. I accept Mr. Canty's explanation for serving a Witness Summons on Mr. P. Collins at his private residence at 8.30pm on Monday 15th January, 2002. I am satisfied on the evidence that the case to which it referred was listed for hearing before Wexford District Court on 22nd January, 2002. Mr. Canty told me, and I accept his evidence, that he had to serve the Witness Summons on Mr. P. Collins personally and at the earliest possible opportunity. I accept his evidence that he and his wife, Odette, waited near Mr. P. Collins's house for several hours until they saw his car turning into the driveway. I totally understand Mr. P. Collins's feelings of exasperation at what he, I accept, considered to be a gross invasion of the privacy of his home and total harassment on the part of Mr. Canty and, in the circumstances, his use of forthright and somewhat undiplomatic language was hardly surprising. Mr. Canty told me, and I accept, that

his only purpose was to ensure that Mr.P.Collins would attend the court bringing with him the indicated Rate Books for the year 2000.This sort of blinkered and insensitive approach is entirely in keeping with Mr.Canty's obsessional attitude to matters which I have had ample opportunity of observing during the course of this hearing.I am quite satisfied on the evidence that Mr.Canty was not in any way watching or besetting Mr.P.Collins, his family or his residence.

20. I find on the evidence that Oliver and Odette Canty sold the rear portion of No.79 South Main St., Wexford to Andrew Doyle and Patrick Doyle, who are unrelated to the plaintiff, and, by Indenture made 29th day of February, 2000, assigned the same to the purchasers.It was not disputed between the parties that the premises had been licensed for the sale of intoxicating liquor at least as far back as 1919.I accept Mr.Canty's evidence that they had sold the intoxicating liquor licence in 1994, or thereabouts, and having extensively advertised it for sale, had sold in October, 1992, the very fine interior bar set up, - which is shown in a photograph of circa.1970, produced in evidence.Thereafter, the retail area of the premises appears to have been used as a grocery and newsagent business with the business name, "A.M.-P.M.".I accept the evidence of Mr.Canty that, on or about 17th June, 2002, he decided that he would purchase an appropriate intoxicating liquor licence and set up an off-licence business with a small public bar in the premises which had lain vacant and unused since December, 2000.

21. With this in mind he sought from the Wexford Borough Council, the appropriate Planning Authority, confirmation of his opinion that a grant of planning permission was not required.The Planning Authority, correctly in my judgment, regarded this communication as a request for a Declaration pursuant to the provisions of s.5(1) of the Planning and Development Act, 2002, and requested payment of the prescribed fee of €80.Mr.Canty insisted that a Declaration under the section was unnecessary and declined to pay the prescribed fee.By a letter, admitted into evidence and dated 8th July, 2002, Wexford Borough Council informed Mr.Canty that they continued to regard his request as an application for a Declaration under s.5(1) of the Act of 2002, and were not in a position to consider the same until such time as the prescribed fee was received by them.An inter-office Memorandum of 5th July, 2002, admitted into evidence, establishes that Wexford Borough Council had decided not to make the decision themselves but to refer the matter to An Bord Pleanála pursuant to the provisions of s.5(4) of the Act of 2002, and to pay the prescribed fee of €150, while continuing to insist that Mr.Canty pay the fee of €80 prescribed by the Act for a s.5(1) Declaration.In my judgment, having regard to the extremely strained relations between the Planning Authority and Mr.Oliver Canty and the consequent likelihood that he would not accept a ruling by the Planning Authority that planning permission was required for the indicated work, this was a lawful and wholly understandable procedure for Wexford Borough Council have adopted.I reject the suggestion contained in the letter dated 15th July, 2002, from Mr.Canty to Mr.P.Collins, then Town Clerk of Wexford Borough Council that this reference to An Bord Pleanála was "purely a vexatious and stalling tactic by Wexford Borough Council to prevent us from earning a livelihood from our premises, 79 South Main St.Wexford".It was accepted in cross-examination by Mr.P.Collins and Mr.Adrian Doyle that this was a very unusual course for Wexford Borough Council to have adopted but I accept the *bona fides* of the Planning Authority in so doing in the special circumstances to which I have just adverted.

22. I am not satisfied that a fair and reasonable member of the public would consider the words complained of in the letters dated 13th August, 2001, and 2nd September, 2002, as identified at the hearing of this action, in their natural and ordinary meaning, or by way of real innuendo, as having the meanings pleaded at para.4 sub paras.(a), (c), (d), (e) and (f) and at para.5 sub paras.(a), (c), (d), (e), (f), and (g) of the Indorsement of Claim.

23. I am quite satisfied that the words are not, in their natural and ordinary meaning or considered in the particular context of the letters of 13th August, 2001, and 2nd September, 2002, and the enclosures in the latter, capable of bearing the meaning that Mr.Adrian Doyle falsely, corruptly and in breach of his duty of public office, involved himself in the application for a grant of planning permission for the development of the lands at Newtown Road, Wexford; attempted to pervert the normal planning process in relation to these lands for personal financial gain; had the planning application rushed through the planning process, and was therefore dishonest and corrupt as a public official.

24. There is no suggestion on the face of either letter that Mr.Adrian Doyle actually participated in any way whatsoever in processing this particular planning application, or was in anyway instrumental in having the decision to grant planning permission "rushed through the planning process".In my judgment, the only meaning which a fair and reasonable member of the public could attribute to the words as written and in their particular context, was that Mr.Adrian Doyle knowingly went along with a misstatement which he knew was being made by his brother as to the ownership of the lands, in order to conceal from the public the very important information that he, the Director of Services, Planning and Economic Development, for the relevant planning area was personally involved in the application which was then submitted and granted with great expedition despite a recent refusal by An Bord Pleanála of a grant of planning permission for a similar type of development in the immediate locality.This is the "abuse of office" clearly referred to and, in my judgment, no reasonable and fair member of the public could consider the words, used either in their natural and ordinary meaning or by way of innuendo, as having any other meaning.

25. The letter dated 13th August, 2001, written by Oliver Canty was addressed to Mr.Seamus Dooley, County Manager, Wexford County Council, County Hall, Wexford and was copied to the following persons:- Mr.James J.O'Connor, Mr.J.O'Connor and Company Solicitors

26. Mr.Noel Dempsey, T.D.Minister for the Environment and Local Government, and, Mr.Adrian Doyle, Director of Services, Planning and Economic Development.At the hearing of this action the parts of the particular letter alleged to be defamatory of the plaintiff were identified as follows:- "Mr.Adrian Doyle was fully aware when his brother Mr.Ray Doyle completed his application form for a proposed development on their father's lands that his claim to own the lands concerned was false.

27. Mr.Adrian Doyle quite clearly tried to conceal the true owner of the lands for the proposed development when this planning application was rushed through the planning process and no account has been taken of the fact that An Bord Pleanála refused permission in March, 2001 for a three-storey apartment development on a site on Newtown Road, close to this proposed development.

28. As Wexford County Manager I am calling on you to suspend Mr.Adrian Doyle from his duty forthwith and to carry out an immediate investigation into this clear abuse of office by Mr.Adrian Doyle, Director of Services, Planning and Economic Development, Wexford County Council." I find that the words in the first paragraph above referred to are a statement of fact and not a comment.Mr.Adrian Doyle told the court that he did not see this application before it was lodged, or at all, as he had left all development matters to his brothers, Raymond and Bernard.In the absence of any contrary evidence, as distinct from mere supposition, it would not be open to a jury to find that his evidence in this regard was untrue, even if it was open to them to conclude on the balance of probability, in the light of the totality of the evidence, that it was altogether unlikely that Mr.Adrian Doyle never saw the application prior to 13th August, 2001.The defence of fair comment does not extend to cover misstatements of fact, however bona fide made and therefore in my judgment could not apply to these words.

29. I find that a reasonable member of the public in the light of all the circumstances of this case would understand the words,

"Mr. Adrian Doyle has quite clearly tried to conceal the true owner of the lands for the proposed development when this planning application was rushed through the planning process..." to be a comment, a statement of opinion, but not of fact. On the facts stated in the letter, that Mr. Adrian Doyle was Director of Services, Planning and Economic Development of Wexford County Council and that, "The applicant on the completed application form is Mr. Ray Doyle, Glenview, Punchestown Road, Punchestown, Co. Kildare" and the applicant is stated as the owner of the lands for the proposed development. I have examined the records in the Land Registry and the Registered Owner of the lands for the proposed development is Mr. Patrick Doyle, father of Mr. Adrian Doyle. I am satisfied that the comment is logically connected with these stated facts, which are sufficient to warrant it, and were true as of 13th August, 2001. I find that an honest and fair member of the public could, in all the circumstances of this case, have bona fide held such a view. I find that the comment was a criticism of Mr. Adrian Doyle, not mere invective and, expressed the real and genuine opinion of the defendant.

30. I am quite satisfied that Mr. Oliver Canty did not and could not reasonably have known of the Statutory Declaration of Interest made by Mr. Adrian Doyle on 30th November, 2000, which was held on a private file in the office of the County Secretary, without anything appearing on the public planning files, which I am satisfied on the evidence were minutely scrutinised by Mr. Canty, to give any indication of its existence. I find that Mr. Seamus Dooley, the County Manager of the County of Wexford, could readily have informed Mr. Canty of its existence or of the existence of the communication to him by Mr. Adrian Doyle notifying him of the interest of Mr. Adrian Doyle in the lands, but chose instead not to respond to the defendant's letter of 13th August, 2001.

31. Insofar as the comment imputes a dishonourable motive to Mr. Adrian Doyle in doing what it alleges, I find that the comment was reasonable as well as fair. In my judgment, it is an inference which a fair minded person might draw from the stated facts. It has been long since decided that the administration of local affairs by local authorities is a matter of "public interest". In my judgment this must clearly include the processing of an application for a grant of planning permission "which might be of the greatest importance to the particular district and so may concern the public in general."

32. I am not satisfied that the final paragraph of this letter, categorising the alleged conduct of Mr. Adrian Doyle as a "clear abuse of public office" and calling upon the County Manager for the County of Wexford to suspend him from duty forthwith and to carry out an immediate investigation into this alleged abuse of office by him, renders the comment malicious. I find that the sanctions sought against Mr. Adrian Doyle were relevant and proportionate to the alleged offence and are not indicative of any ill will, spite or other improper motive on the part of Mr. Canty in making the comment. In my judgment this comment is entitled to the protection of the defence of fair comment.

33. I find that the defendant has established that both the statement of fact and the statement of opinion were made "on an occasion where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it" - (See: *Adam v. Ward* [1917] A.C. 309 at 334). I find that Mr. Canty in volunteering this communication had a legitimate duty in fact to make the communication and had an honest belief that what he stated was true. In *Gatley*, on Libel and Slander (8th Edition), it is stated as follows:-

"...it is the duty of everyone in the interests of public efficiency and good order to bring any misconduct or neglect of duty on the part of a public officer or employee or any public abuse to the notice of the proper authority for investigation.

It must be made in good faith to the person or body who has the power to remove, punish or reprimand the offender or merely to inquire into the subject matter of the complaint without a power to discipline or give redress.

Any citizen who *bona fide* believes that a wrong has been done has the right and duty to bring the alleged fact to the attention of the proper authority for investigation. The question is whether the party to whom the complaint is made has an interest, social or moral in the complaint."

34. I find on the evidence that Mr. Canty honestly believed that Mr. Noel Dempsey, Mr. Seamus Dooley and Mr. James J. O'Connor had such an interest. However, this is not sufficient to ground the defence of qualified privilege; Mr. Canty has to establish that each of these persons actually had such a legitimate interest in receiving the letter of 13th August, 2001. It was accepted by counsel for the plaintiff and, in my judgment correctly so, that Mr. Dempsey and Mr. Dooley had the vital reciprocal interest in receiving this letter. However, it was strongly contended that Mr. James J. O'Connor, Solicitor, had no such interest, regardless of what Mr. Canty might have honestly believed, and the publication to him was therefore an excessive communication so that no occasion of qualified privilege arose at all. (See: *Hynes-O'Sullivan v. O'Driscoll* [1988] I.R. 436) Alternatively, counsel for the plaintiff argued that the sending of the copy of the letter of 13th August, 2001, to Mr. James J. O'Connor, who it was alleged had no interest or duty in receiving it, was proof of actual malice, - an indirect purpose or motive misusing the occasion, - on the part of Mr. Canty which defeats his defence of qualified privilege.

35. It is clear from the evidence that the plaintiff assumed that the letter of 13th August, 2001, was copied to Mr. James J. O'Connor as principal of the firm of M.J. O'Connor and Company, Solicitors, Wexford, because that firm acted on behalf of Wexford County Council, a fact well known to Mr. Canty. However, Mr. Canty gave evidence, and I fully accept his evidence, that he copied the letter to Mr. O'Connor solely because, in conducting his search in the Land Registry, he noted on Part II of Folio 14096, opposite the entry at No: 2., "4th March, 1966 no., 1942-11-65 Patrick Doyle of 103 Corish Park, Wexford is full owner" an entry in the margin which recorded that the Land Certificate had been issued to M.J. O'Connor and Company Solicitors, Wexford. Mr. Canty told the Court that he therefore copied the letter to Mr. James J. O'Connor as principal of the firm of Solicitors for the Registered Full Owner of the lands.

36. This raises the issue of whether Mr. James J. O'Connor had a legitimate interest or duty in receiving the letter of complaint. He definitely did not have power to punish or to reprimand Mr. Adrian Doyle or, in any proper use of that word, to give "redress" from his alleged activities. However, in my judgment, Mr. O'Connor, as solicitor and agent for Mr. Patrick Doyle, whether acting under a general retainer or acting in relation to this particular property only, was entitled to receive the letter as the representative of Mr. Patrick Doyle who certainly had a legitimate personal interest and power to inquire into what was being done as regards what was still his registered property. In the circumstances, I am satisfied that the occasion on which Mr. Canty wrote the letter of 13th August, 2001, was a privileged occasion and I am not satisfied that the plaintiff has established that the letter was written with any indirect or improper purpose or motive thereby misusing the occasion and losing the privilege.

37. The letter of 2nd September, 2002, was addressed to Mr. Martin Cullen, T.D., Minister for the Environment and Local Government and was copied to Mr. Seamus Dooley, County Manager, Wexford County Council.

38. I find on the evidence that the following events referred to in the second paragraph of this letter are true and are therefore facts:-

"On 11th July, 2002, Wexford Borough Council, by letter, falsely accused us of carrying out an unauthorised development at 79 South Main Street, Wexford and I quote:-

'Among the issues we will bring to the notice of An Bord Pleanála in deciding this matter are:

(I)

(II) Protected status of the frontage of the premises and its subsequent alteration without planning permission.

(III)"

39. It is claimed on the part of the plaintiff that the following words in this letter are defamatory of him:-

"There is no doubt that the architect of this false and unfounded allegation is Mr. Adrian Doyle, Director of Planning Wexford County Council and Manager Wexford Borough Council. Mr. Doyle believes that I am solely responsible for the refusal by An Bord Pleanála in January, 2002, of a planning permission for a proposed three story 12 two-bedroomed apartment development on a small site, that presently has thereon a bungalow, which he and his three brothers own equally on the Newtown Road, Wexford... Mr. Adrian Doyle, Director of Planning Wexford County Council stood to make a substantial personal financial gain if the planning application had been successful."

40. In my judgment, a fair and reasonable member of the public would not understand these words as expressing an opinion on the facts stated in the previous paragraph or even on an inference drawn fairly and honestly from those facts. Mr. Adrian Doyle in giving evidence at the hearing of this action denied that he had any involvement in this matter. In my judgment there is no primary or circumstantial evidence which would entitle this court on the balance of probabilities to reach a different conclusion. The fact that Mr. P. Collins for whatever reason decided to advise Mr. Adrian Doyle, that the s.5(4) Reference regarding Mr. Canty's application to Wexford Borough Council had been sent to An Bord Pleanála, is in my judgment nothing approaching sufficient evidence of an involvement by Mr. Adrian Doyle in the matter.

41. In the 6th February, 2002, edition of what appears to be the Wexford People Newspaper, Mr. Adrian Doyle is quoted as saying that:-

"The County Manager sent a letter last week to An Bord Pleanála urging the Bord to disregard the objections", [of Mrs. Odette Canty to a major proposed development at Trinity Street, Wexford]

42. Mr. Adrian Doyle in his evidence accepted that this is a correct attribution. While one may wonder why Mr. Adrian Doyle, after his secondment in November, 2001, was involving himself in this local planning matter and no explanation was offered by him in giving evidence, this is surmised rather than evidence and falls far short of establishing that he had any connection with the sending of the letter of 11th July, 2002, to An Bord Pleanála, and certainly nowhere near approaches establishing that he was the "architect" of that letter or of anything contained in it.

43. In cross-examination, Mr. Canty put to Mr. P. Collins, Mr. Thomas (Tony) Nolan and Mr. Adrian Doyle that initials on various documents and letters relating to this s.4 reference were those of Mr. Adrian Doyle. Each of these witnesses told the court, and I accept their evidence, that the initials, though admitted to vary considerably, are all those of Mr. Tony Nolan. Some documents produced in evidence carry the full signature of Mr. Adrian Doyle as well as the initials in controversy which Mr. Canty contends are those of Mr. Doyle. I accept Mr. Doyle's evidence that he would not sign a document with his full signature and also initial it. I accept his explanation that the purpose of the initials was to indicate that it had been considered and passed by Mr. Tony Nolan as Senior Staff Officer in the Planning Department. I also accept the evidence of Mr. Tony Nolan that the date of the instruction referred to in his Memorandum of 11th July, 2002, to Anne Shannon, given as 8th April, 2002, is an error. I find this to be an understandable misinterpretation of the almost indecipherable date on the instruction by Louise O'Rourke, Acting Town Clerk of Wexford Borough Council, to Anne Shannon.

44. Mr. Adrian Doyle denied in evidence that he believed that Mr. Oliver Canty was solely responsible for the refusal by An Bord Pleanála of the application for a grant of planning permission in respect of the proposed development at Newtown Road, Wexford. I have no doubt whatever that Mr. Canty *bona fide* believed that what he stated in the letter was true. However, he was not able to produce a single piece of evidence to support his beliefs. I find, using the words of Lord Diplock in the well known case of *Horrocks v. Lowe* [1975] A.C.135, at 150, that he was swayed by prejudice, relied on intuition rather than reasoning and leaped to conclusions on inadequate evidence in asserting the facts stated in the passage complained of in the third paragraph of the letter of 2nd September, 2002.

45. The defence of fair comment does not extend to excuse misstatements of fact however *bona fide* made.

46. As stated in McDonald on the Irish Law of Defamation [Round Hall Press 2nd Edition 1989] at p.226:-

"The predominant difference between the two defences, [of Fair Comment and Qualified Privilege], is, of course, that the facts supporting a fair comment must be true while a comment made on a privileged occasion may be based on true or untrue facts."

47. I am satisfied that the words complained of in the letter of 2nd September, 2002, which I have already considered, together with the following words also complained of appearing in the final two paragraphs of the same letter, though not based on any proven facts or reasonable inferences from facts and written rather because Mr. Canty, borrowing the words of Gatley on Libel and Slander, (Edition referred to) at p.771 was, "hasty, prejudiced or foolish in jumping to a conclusion", were still uttered on a privileged occasion. These other words complained of are as follows:-

"I am sure you will agree, as Minister, that An Bord Pleanála's valuable time should not be wasted by allowing Mr. Adrian Doyle to abuse his office in order to settle a score in such a manner, on what was a legitimate *bona fide* appeal to An Bord Pleanála which I only became involved in as a result of being contacted by an extremely distraught resident of the area, who could not believe that Mr. Adrian Doyle, Director of Planning Wexford County Council could conduct local authority business in that way,...

Would you please advise whether I should also forward the Doyle file to the Flood Tribunal or would it be more appropriate to forward it to the Director of Public Prosecutions for his consideration."

48. I am quite satisfied that Mr.Oliver Canty had a legitimate personal interest in making this communication to the Minister for the Environment and Local Government and Mr.Seamus Dooley, Wexford County Manager, and that these gentlemen had an actual legitimate reciprocal interest and duty to receive it for the reasons I have stated in dealing with the letter of 13th August, 2001.In my judgment, Mr.Oliver Canty was *bona fide* acting to protect his reputation and that of his wife from an express accusation of law breaking and in the context of the timing of the letter of 11th July, 2002, of an implied accusation of being disruptive, anti-social hypocrites.

49. I am quite satisfied on the evidence that Mr.Oliver Canty honestly, in good faith and without recklessness or indifference to the truth or falsity of what he was writing, believed that what he was stating was true.As was pointed out by Lord Diplock in the judgment to which I have already referred in *Horrocks v.Lowe*, at p.150 of that judgment:-

"In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them.In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value... But despite the imperfections of the mental process by which the belief is arrived at it may still be 'honest', i.e., a positive belief that the conclusions they have reached are true.The law demands no more."

50. The defence of qualified privilege can only be defeated by proof of actual malice on the part of the defendant in making the statement of which complaint is made.The onus of proving such malice is on the plaintiff and I am not convinced that in the instant case the plaintiff has discharged that onus.The fact that Mr.Canty must have known that his letter of 2nd September, 2002, was likely to cause some injury at least to Mr.Adrian Doyle is not sufficient to establish malice on his part.In my judgment it is quite clear from the face of the letter itself, further strengthened by the evidence of Mr.Canty given at the hearing of this action, that his dominant motive in writing this letter was to secure a withdrawal of, and an apology for, what he saw as false, unfounded, damaging and extremely hurtful allegations made against him and his wife.I find that the defendant did not extend the publication of this letter beyond the two persons undoubtedly having the primary actual legitimate interest in receiving it.I find that it was no misuse of the occasion by the defendant, nor did the defendant have any indirect motive or purpose in inquiring of the Minister for the Environment and Local Government whether he, Oliver Canty, should forward the "Doyle file", (by which he obviously meant his own file in relation to Mr.Adrian Doyle), to the Flood Tribunal or to the Director of Public Prosecutions.

51. This query to the Minister could not, in my judgment, be properly construed as raising a new criticism of Mr.Adrian Doyle separable from and extraneous to the remainder of the letter and further defamation of the plaintiff.Neither can I accede to the argument that a reasonable and fair minded member of the public would understand this query as, by necessary inference, accusing Mr.Adrian Doyle of serious crime or of significant dishonesty and corruption in public office.I am satisfied that the query must be seen as logically connected with and inseparable from the remainder of the letter and, though capable of being construed as harsh, hasty, irrational or foolish, is not sufficiently extreme to be evidence of malice on the part of Oliver Canty.

52. In the result, even though I find that the statements complained of in the letter of 2nd September, 2002, are untrue and defamatory of Mr.Adrian Doyle, I am driven to the conclusion that the defendant is nonetheless entitled to rely on the defence of Qualified Privilege.

53. The conclusions reached in this judgment are a clear vindication of the character, reputation and good name of Mr.Adrian Doyle.It should be clearly understood that if he is not successful in taking this action against Mr.Oliver Canty, it is only because as a matter of social, utility and policy the law for almost 200 years has considered that the right of the individual to vindicate his or her good name, character and reputation by way of a legal action should not be permitted in the case of "...communications which the interests of society requires to be unfettered... made by persons acting honestly and without actual malice...no matter how harsh, hasty untrue or libellous...".

Other cases referred to in the argument

Stanley Bell v.Winifried Pederson and Sandoz Ringaskiddy Limited (Unreported, 14th May, 1996: High Court: Morris, J.)

Kearns v.General Council of the Bar [2002] 4 A.E.R., 1075.