Neutral Citation [2015] IEHC 757

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 636 J.R.]

O'MAHONY DEVELOPMENTS LIMITED

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 27th day of November, 2015

1. One of the underlying consequences of our common citizenship in the democratic society postulated by the Constitution is a shared duty to promote a high level of environmental protection, both in the natural and built environment. In the planning context, the commitment to proper planning and sustainable development is not simply a statutory threshold to be overcome in the context of individual planning decisions, but a reflection of fundamental objectives of any democratic community, not simply for the benefit of the present generation but because the environment in all its dimensions is held in trust for those yet to come. These considerations now find expression in a number of legal instruments, not least Article 37 of the Charter on Fundamental Rights of the European Union which emphasises that a high level of environmental protection must be ensured in accordance with the principle of sustainable development. This provision is binding in contexts where the State is implementing EU law, but, even outside that sphere, can be considered as reflective of a basic democratic commitment to proper stewardship of the natural and built environment.

2. Given those wider environmental considerations, there can be no general inherent legal right to carry out any particular development. In principle it is the entitlement and duty of the State and its appropriate organs to provide for strong and effective planning control measures in order to further the principles of environmental protection, proper planning and sustainable development.

The facts

3. The applicant company is the owner of a large parcel of land of 6.9 hectares at Glounthaune, a village in the Blarney electoral area in Co. Cork. While located within the formal boundary of Glounthaune, the lands were, in the view of the board, at a remove from the village itself. The lands in question are zoned for residential development.

4. In 2008, the applicant sought and obtained planning permission for a significant housing development on this site consisting of 248 units.

5. In 2009, the Minister for the Environment, Heritage and Local Government adopted Guidelines on Sustainable Residential Development in Urban Areas. This included provision, at para. 2.3, in terms that *"zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities …"*.

6. In 2011, Cork County Council adopted the Blarney Local Area Plan (LAP) which set out, among other provisions, certain objectives for the Glounthaune area. Included in these was Objective DB-01(b), which was to the effect that no one proposal for residential development should be greater than 40 units.

7. On 12th December, 2014, the applicant applied for planning permission for a development consisting of 40 units which related only to a smaller subsection, an area of 2.37 hectares, of its wider landholding. The application was accompanied by *"an indicative plan of future development on the landholding"* (affidavit of Tom Halley, para. 23) which showed an intention to develop 148 units (para. 26) on that wider overall landholding.

8. The County Council granted the permission sought. The second to fifth named proposed notice parties then brought third-party appeals to An Bord Pleanála.

9. Mr. Stephen Dodd, B.L., who appeared for the applicant, emphasised that the County Council's executive planner and senior planner were both of the view that the application came within the "*cap*" of 40 units. The board's inspector appears to have taken a similar view to the Council. However, when the matter came before the board proper, it decided to allow the appeals and refuse permission. This refusal was embodied in a decision dated 15th September, 2015.

10. The refusal is based on five main reasons which I can summarise as follows:

> (i) The site is at a significant remove from and in an isolated location relative to Glounthaune village. The development would therefore be contrary to the ministerial guidelines and to proper planning.
>
> (ii) Access to the site from a road with an 80 km/h speed limit would endanger public safety.
>
> (iii) The development was part of a wider scheme of more than 40 units and therefore was out of scale with the character and pattern of the village, and not in accordance with the LAP and ministerial guidelines.
>
> (iv) The application failed to meet the criteria of the Minister's Urban Design Manual, and involves *"a poor design concept that is unimaginative in its form, scale and layout"* and would not positively contribute to the village.
>
> (v) Boundary treatments proposed would seriously compromise the stated intention to retain the mature trees, fail to given meaningful consideration to historic boundary features, and fail to appropriately respect the existing character of the site.

11. Following this refusal, the applicant sought leave *ex parte* to apply for an order of certiorari to remove the board's decision for the purpose of being quashed, and related relief by way of judicial review, and that is the application which I now consider.

12. In accordance with the Planning and Development Act, 2000 s. 50A(3)(a) (as amended by s. 13 of the Planning and Development (Strategic Infrastructure) Act 2006), the appropriate standard is that there be "*substantial grounds*" for the application before leave can be granted. I have regard to the decision of Laffoy J. in *McNamara v. An Bord Pleanala* [1995] 2 I.L.R.M. 125 at p. 130 as to the meaning of this expression.

13. Mr. Dodd challenged the decision under four broad headings and I will deal with each of these below.

Misinterpretation of Blarney Local Area Plan
14. It is submitted on behalf of the applicant that the board has clearly misinterpreted the Blarney Local Area Plan 2011, Objective DB-01(b), which proposes a cap of 40 units for any one proposed residential development. The board took the view that the present application was in reality only phase 1 of an overall scheme involving a larger number of units. The board was therefore of the view that the present application, while on its face confined to 40 units, was not in accordance with the relevant objective of the local area plan.

15. It is important in this context to recall that the proposed development, the subject matter of this application, only relates to a part of the site owned by the applicant. The planning history alone, let alone the indicative plan for the remainder of the site, make it abundantly clear that the longer-term intention is to carry out a larger development overall.

16. In the circumstances, it seems to me that not only was the conclusion that the present application was part of an overall scheme for a larger number of units reasonably open to the board, but that conclusion was overwhelming obvious. It would completely undermine the spirit and purpose of a limitation on residential development such as that contained in the relevant objective for a developer to be allowed to split up a large scheme into smaller elements, any one of which could potentially pass muster when measured, in isolation, against a cap of this kind. The suggestion that the board erred in their interpretation of the plan is unmeritorious and misconceived.

17. Reliance was placed on a comment of Barr J's in *Tennyson v. Corporation of Dun Laoghaire* [1991] 2 I.R. 527 at p. 534 that the High Court has "*exclusive jurisdiction*" to interpret the development plan. This cannot, of course, be read literally, because in many planning contexts, a planning authority or the board must, to some degree, interpret the development plan. I think the reference to the role of the court must be read as an expression of the view that the court has "*ultimate*" rather than "*exclusive*" jurisdiction to decide what a development plan means.

18. Reliance was placed on the decisions in *Wicklow Heritage Trust Limited v. Wicklow County Council* (Unreported McGuinness J., 5th February 1998) pp. 6-7 and *Cicol Limited v. An Bord Pleanála* [2008] IEHC 146, which was said to be supportive of the proposition that the court, itself, must take a view on what the development plan means. To my mind, it is abundantly clear that insofar as the board was interpreting the local area plan, their interpretation was manifestly correct. Also, in any event, to some extent they were determining a question of fact. In other words, the question before them was whether, on the facts, this particular application was, in effect, part of a larger scheme. Their determination on that fact was clearly within jurisdiction and indeed, as I have said, not only reasonable but overwhelmingly obvious, and there are not substantial grounds for contending otherwise.

19. Reliance was also placed on *Usk and District Residence Association v. An Bord Pleanála* [2009] IEHC 346, where reference was made to the duty of the board to have regard to all relevant considerations including the development plan. It was suggested that they failed to do so in this respect. However it follows from what I have said that there was no failure to have regard to the local area plan; quite the reverse.

Failure to have regard to the presence of the site within the village boundary
20. Mr. Dodd complains that the Blarney LAP defines Glounthaune village by reference to a boundary, within which the site in question lies, but reference to this fact is not stated in the decision. On the contrary, the board states that the site is at a significant remove from, and is in isolation relative to, the village. Mr. Dodd submits that "*in fact it is within the village, within the boundary*". He also relies on the fact that the previous application granted in 2008 involved a recognition in the decision that the site was within the village boundary.

21. Again reliance is placed on the *Tenneyson* case on the basis that the board has, in effect, misconstrued the local area plan, or alternatively, has failed to properly take it into account (Usk).

22. This argument is completely without merit. One must go back to the first principles that apply to any proposed development unless it is exempted development. For a development to be proceed, the fundamental considerations I have referred to earlier require there must be a substantive decision on the merits that the development is in accordance with proper planning and sustainable development. One of the primary factors relevant to this is the state of the natural and built environment at the site in question and how the proposed development would affect and fit into that environment. In many cases, the "*facts on the ground*" will legitimately be of considerably greater importance to a planning authority or the board than what may be more abstract definitions of areas by means of a boundary line on a map.

23. The determination that the proposed development was at a significant remove from, and in isolation relative to Glounthaune village, is a finding of fact which is entirely within the jurisdiction of the board and is entirely reasonable. There are no arguable, let alone substantial grounds for questioning the legality of this finding. The fact that the local area plan may have adopted a wider definition of Glounthaune village does not nullify the facts on the ground as they are found by the board.

24. Furthermore, the board is not under any legal obligation to expressly set out in narrative form points of this nature which might on one interpretation be construed as favourable to the applicant. The board was obviously fully aware of the Blarney Local Area Plan 2011, given that it is mentioned in the decision. There is no legal obligation on the decision-maker to refer narratively to aspects of that plan that might conceivably be construed as points to be made in favour of the applicant. In my decision in *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686 I made the point to go down this road would be to shift the dynamic of shaping the decision from the statutory decision-maker to an applicant.

25. The fact that the development plan includes as an objective (Z-U 2-2) the location of "new development within the development boundary" does not affect this conclusion. That is in essence a negative objective – that new development should not be generally favoured outside the development boundary. It is not a free-for-all as far as any and all lands within the boundary are concerned. Considerations of where exactly within that boundary it is appropriate to locate a particular development or type of development are still highly pertinent and the board having had regard to such considerations does not give rise to substantial grounds for contending that it has disregarded the plan.

26. The board found that the development would *"result in an isolated living environment and a car-dependent residential development that would fail to provide for the orderly expansion of the village, having regard also to the undeveloped nature of residentially zoned lands considerably closer to the village core"*. Mr. Halley in his affidavit contends that in so finding, the board *"is effectively making a strategic or policy decision that the land ought not to have been zoned residential"* (para. 43). This argument falls flat. A zoning, either in a development plan or LAP, is merely an indication of the kinds of development that could in principle be considered in the lands so zoned. A residential zoning does not mean that any particular part of the lands can be subject to any particular residential development, or that a large multi-unit development is necessarily acceptable in any part of an area of land zoned residential. There is no contradiction between a residential zoning attached to lands and the refusal of a permission for residential development on such lands having regard to the particular characteristics of the proposed development and its precise site, and to all the circumstances of the case.

27. There is no "*re-writing and/or overriding the residential zoning objectives"* as alleged (affidavit of Mr. Halley para. 53). This argument assumes that a residential designation creates a free-fire zone for development which requires substantial if not practically insurmountable grounds to displace. This is incorrect. The onus is on the applicant at all times before the planning authority, the board and the court, to show why the application, or relief, should be granted.

Placing of "undue weight" on guidelines for planning authorities
28. Mr. Dodd submitted that the board placed "*undue weight*" on the 2009 guidelines issued by the Minister for Environment, Heritage and Local Government to planning authorities. It is submitted that the board took the view that the key message of the guidelines is that *"there should be compact towns and villages"* (affidavit of Mr. Halley at para. 42). Mr. Dodd submits that while the guidelines do refer to the need for compactness, they do so in terms of the guidance of local authorities regarding the drawing up of local area plans and development plans, not by way of guidance to An Bord Pleanála in terms of granting individual permissions.

29. Reliance is placed on *McEvoy v. Meath County Council* [2003] 1 I.R. 208, in which it was held that a Council was not obliged to "*rigidly*" comply with strategic planning guidelines. The guidelines in the present case were issued under s. 28 of the Planning and Development Act 2000, which provides that "*where applicable*" the board shall have regard to such guidelines. Mr. Dodd submits that the guidelines are not "*applicable*" for the reason referred to above.

30. The first ground of the decision of the board as set out above reflects what is referred to as the "*sequential approach*", which Mr. Dodd describes as an approach whereby development should "*start in the centre and move out*". His submission was that development must be "*plan–led*", and that the sequential approach applies in terms of the framing of the plan and not individual decisions once a zoning has been put in place. Such individual decisions must be determined by reference to the plan at that point, and the guidelines effectively fall away, in his submission.

31. First of all, this entire submission is hobbled at the outset by the acknowledgment by Mr. Halley in his affidavit that the guidelines are "*primarily*" directed towards the formation of development plans and LAPs, which implies they are not so confined.

32. But when one turns to the text of the guidelines themselves, the submission is simply blown out of the water by the express statement, on the first substantive page of the guidelines (themselves set out as the second-last of 23 exhibits to Mr. Halley's affidavit), that not only should they be reflected in development plans and LAPs, but they "*should guide the preparation and assessment of planning applications for residential development in urban areas*" (para. 1.1, emphasis added). Even the already-cited passage at para. 2.3 relating to working outwards from the urban core refers in its terms to matters that are appropriate to the planning application stage. The references to undeveloped lands and infill opportunities clearly reinforce the conclusion that the guidelines were intended not simply to influence zoning decisions but also to guide individual planning applications. Not only does the material exhibited fail to demonstrate substantial grounds for contending that the decision ought to be quashed, but rather it strongly supports the logic, rationale and validity of that decision.

33. In any event, the notion that a principle of good planning can only be relevant to high-level decisions and that a decision maker commits a profound legal error rendering a decision liable to be quashed on *certiorari* if it takes into account that principle at the level of the individual implementation of planning control, is entirely without merit. A particular zoning does not give a developer an entitlement to carry out any particular development. The fact that a particular type of development might be permitted in principle within a particular zoning does not mean that it must be permitted in practice throughout the land so zoned.

34. If the idea of compact towns and villages is a desirable principle in terms of good planning as the Minister has clearly stated, then it would be bordering on the absurd for planning authorities and the board not to have regard to this when making individual decisions. It was, therefore, perfectly reasonable of the board to have regard to the 2009 guidelines, and to take the view that the fact that the site was at a remove from the core village was a reason militating in favour of refusal of permission.

35. The complaint made by Mr. Halley in para. 43 of his affidavit is that the board *"gave priority to its interpretation of these Guidelines over other matters such as the zoning of the lands as set out in the 2011 Blarney Electoral Area Local Area Plan 2011 (sic) and the planning history of the lands"* (see also para. 49). This is a complaint as to the weight being attached to various factors by the decision-maker, which it is well-established in administrative law is a matter for that decision-maker.

36. The complaint that the board has *"taken selective extracts or elements of the guidelines without considering them as a whole"* is also a complaint as to the narrative form of the decision. There is no evidence that the board did not consider the guidelines as a whole. It is not obliged to recite parts of the guidelines (or of any document) in a narrative fashion that the applicant thinks would have been of benefit to it (see *R.A.*). The position might be otherwise if there was some really important or essential principle being departed from which called out for comment and recognition by the board, but I can detect no substantial grounds for contending that the board has overlooked such a principle in these guidelines. Guidance that development should be plan-led is not such a principle because the decision of the board is not in contradiction to that guidance. Nor are the other points identified by the applicant. Again, the position might be otherwise if there was some document setting out pertinent government guidelines which appeared contradictory to the decision, but which had not been referenced narratively by the board, but no grounds let alone substantial grounds for such a contention have been advanced.

The failure to follow a previous decision
37. Mr. Dodd complains that board failed to follow the 2008 decision granting permission for a larger development on the site, and failed to give reasons for differing from that earlier decision.

38. He says that the decision purports to explain why the previous decision was departed from by reference to new policies published since then, the most of important of which appears to be the Minister's 2009 guidelines. However, he complains that the decision does not specify which particular parts of those policies were crucial in terms of bringing about a change.

39. Reference was made to the *Athlone Woollen Mills Co. Ltd. v. Athlone Urban District Council* [1950] I.R. 1 line of authority where planning decisions are described as quasi-judicial which may give rise to some form of *res judicata*. However, Mr. Dodd accepts that a change of mind by a planning authority or An Bord Pleanála is permissible as long as reasons for that change of stance are given; see *Grealish v. An Bord Pleanála* [2007] 2 I.R. 536 and *Mone v. An Bord Pleanála* (Unreported, McKechnie J., 18th May, 2010) at para. 86. In *Grealish*, cited on this point in *Cicol,* the general obligation of the board to give reasons was described as "*very light … almost minimal*" (at p. 553).

40. Society's recognition of the importance of environmental protection has been transformed beyond all recognition in the 65 years since the *Athlone Woollen Mills* case was decided, and not simply by the superimposition of EU law upon much of the planning and environmental code. If it is to be accepted that environmental protection including proper planning and development reflects a core element of a civilised community, this would appear as a matter of principle, and leaving aside the decided cases for a moment, to be absolutely incompatible with planning decisions being made on the basis of *res judicata* or indeed, on any basis otherwise than an informed and objective assessment of the environmental and planning merits of any given proposal. The carrying out of a development affects not just the whole community both in the present and for generations to come, and thus involves considerations going far beyond those such as *res judicata* that may be relevant to *inter partes* matters, and indeed considerations going far beyond the impact of a particular development, or its removal, on the legal, constitutional or ECHR rights of the owner or occupier, which rights are in this context firmly subordinate to the common good and to the overarching democratic requirement for the effective implementation of a robust legal framework for planning control (see the judgment of Kearns P. in *Wicklow County Council v. Kinsella* [2015] IEHC 229 with which I would respectfully agree on this point).

41. In general, where a planning authority or the board changes its mind, it should ideally give a reason for doing so, if only that it has taken a more in-depth, rigorous or exacting view of the need for environmental protection, proper planning and sustainable development, bearing in mind that standards in this area are rising generally as time goes by. A decision to take a more exacting view of the same matter is for this purpose a material change in circumstances. However given that it has been decided that the obligation to state reasons is "*very light*" and "*almost minimal*", it must not be construed in such a way as to prevent the board from taking a more rigorous view of an application if this is required by clear public policy considerations. An applicant must take the decision in the round and cannot be entitled to have a decision quashed merely because of some technical failure to spell out the precise change of circumstances that triggered the change of mind, as long as it is clear from the decision overall what the considerations were that brought the board to its new view.

42. In the present case, the board did give a reason why it took an ostensibly different view to that taken in 2008, namely the adoption of specific guidelines. These reasons are perfectly clear and intelligible. Mr. Dodd complains that the guidelines are hundreds of pages long and the board has not identified which particular parts of them it is relying on. In my view, there are no substantial grounds for arguing that the board is obliged to give reasons to this level of detail. The board is required to give general reasons, and has done so.

43. In any event, the applicant is aware of one of the most important elements of the guidelines which influenced the board, namely the principle that urban settlements should be compact. There is no substance to the complaint that the applicant has not been made aware of the reason of the board's decision.

44. The complaint regarding the Urban Design Manual is particularly unimpressive. If, as the board found, the scheme involves "*a poor design concept that is unimaginative in its form, scale and layout"*, the applicant and its planning advisers cannot claim to be unaware that such practices are not approved of in the Department's manual. They do not need to be directed to particular pages of the manual to be told that, if they follow such practices, they cannot complain about refusal of planning permission.

45. A subsidiary point was made to the effect that the first planning application was deemed acceptable in terms of traffic safety, whereas the second application was rejected on the grounds that the access point to the development was onto a former national road that had a speed limit of 80 km/h and that the Board "*had serious concerns about the safety of the proposed access for future residents and for users of the public road.*" The applicant complains that there was no material change of circumstances in this regard entitling the board to change its mind.

46. In other words, it is being seriously suggested in this application that a development which, by reason of "*serious concerns*" in the mind of the expert body concerned, poses a threat to the lives and bodily integrity of members of the public, must proceed regardless, because on some previous occasion the decision-maker, inferentially, did not appreciate the level of danger involved. This absurd proposition needs only to be stated in order to be rejected. A decision-maker that forms a view that there is a risk to public health and safety is not to be hamstrung from acting on that view merely because it failed to appreciate the level of risk involved on a previous occasion. I do not see anything in the caselaw relied on by the applicant to compel such a result. No substantial grounds have been made out for this alarming proposition. It might be otherwise if the matter were to be reversed, and a threat previously identified was now to be deemed to be inconsequential, as in those circumstances the precautionary approach might well suggest a duty to give a more detailed reason as to why there was a change of circumstances.

47. In any event, the present case, it is obvious from the face of the decision that the board found it appropriate to consider in detail the traffic implications of the development as they now appear, where these were not considered to the same level of detail in the previous application. This fact is itself a material change in circumstances or alternatively a valid justification for the board having taken a different view. Furthermore even if the matter had previously been fully considered, the board is entitled to take a more rigorous view on a further application in the light of the requirements of traffic safety as they now appear to it. Insofar as the applicant is entitled to a "reason" for the change of mind, the reason is implied on the face of the decision when compared with the previous decision, namely that the board has now considered the matter in more detail than previously. But even if, which I do not accept, the matter had been given full and express consideration previously, and if, which I do not accept, no reason can be inferred for a change of mind, and if, which again I do not accept, the board is obliged to give such a reason for a change of mind in relation to a consideration of this kind, I would have exercised the discretion that applies to judicial review matters not to grant leave on such a ground as it would tend to imperil public safety on the basis of a purely technical and meritless consideration. And even if I would be wrong to do so, this head of complaint can only affect one of four freestanding reasons for rejection of the application and, because the decision is valid on the basis of the other four grounds, there are no substantial grounds for contending that the decision is invalid or ought to be quashed overall on the basis of any infirmity in relation to any one of these grounds (such as the change of mind), a point to which I will return.

Concluding considerations

48. No substantial grounds have been shown for any of the contentions made by the applicant. In a case where one or more points out of a set of grounds is held to pass the substantial grounds threshold, a court might be minded to look again at any points which might be deemed, in isolation, not to meet the threshold, to see if, by putting them in the context of the point or points on which

leave is to be granted, they might acquire such force or colour as to elevate the basis for advancing them into a substantial one. No such considerations arise where the applicant has failed to satisfy the court that any of the grounds advanced are substantial in the sense that term is used in s. 50A of the 2000 Act. Even taking the points made collectively, I see nothing that gives them such force as to meet this threshold.

49. Much was made by Mr. Dodd, under all of the above headings, of what he says is a virtual unanimity as between the council's executive planner and its senior planner, the ultimate corporate decision of the council, and the board's inspector, which consensus was overturned by the final decision of the board itself. However, a unanimity leading up to the board's decision can have no legal effect on that decision and is not, in any way, a ground for challenge, still less a substantial ground. The board is entitled to take its own view, and in this case, has done so and has given adequate reasons for doing so. There are no substantial grounds which have been identified to me by Mr. Dodd as to why these reasons are inadequate or unlawful.

50. Finally, I might observe that I have previously rejected the notion that merely because a proposition requires a degree of debate does not make it arguable such as to warrant the grant of leave (*Gallagher v .D.P.P.* [2015] IEHC 644), still less does it make the grounds for such argument substantial. An in-depth examination of every application is not possible at the leave stage, at least as the system is currently constructed. As in many matters, a balance needs to be arrived at between efficiency of a decision and its quality. But where a court at the leave stage considers that the application is not such as to warrant the grant of leave on its face and requires further thought and consideration, the fact that an analysis of the matter may involve considering quite an amount of documentation and a large number of grounds, that it may be thought necessary to put a particular respondent, or even all other parties, on notice of the leave application, that written legal submissions or replying affidavits may be directed on such an application, or that a reserved judgment, even a lengthy one, may be required, does not of itself in any way establish that the applicant has demonstrated arguable, still less substantial, grounds for the particular complaint presented.

51. The foregoing disposes of the essence of the matters advanced in oral argument. Without in any way criticising the applicant's legal advisers for a practice that extends well beyond this case, the statement grounding the application set out a by no means unusual mishmash of factual matters and legal grounds, running to a total of 40 grounds. Given that many cases turn on just one point, and relatively few on more than a handful, a set of grounds running into the dozens seems excessive and on one view almost invites further and more detailed scrutiny by the court at the leave stage. The alternative approach, of succumbing to an overwhelm of grounds and simply granting leave, thereby passing the problem on unsolved to the court determining the substantive matter, does not seem attractive from a systemic point of view, even if it were permissible. MacMenamin J. has already commented on the undesirability of "*over-lengthy*" statements of grounds in *Babington v. Minister for Justice* [2012] IESC 65, although in that case there were a mere 34 grounds in comparison to the 40 I have been asked to consider in this case. It seems to me that the High Court on hearing a leave application must take these strictures seriously and cannot allow the threshold for leave to be overcome simply by sheer volume of material, as opposed to its inherent weight and substance, or by the sheer number of grounds involved. In my view, on the basis of *Babington*, an applicant should clearly separate any factual matters, however relevant they may be to the legal propositions, from the strictly legal grounds, and the latter should be separately headed and separately numbered in the Statement of Grounds. The test for whether a matter is a legal ground could perhaps be conceived of as asking whether, if it stood alone, it could represent the *ratio* of a hypothetical decision in favour of the applicant, or whether it is simply an evidential matter going to that decision. The number of these legal grounds should be kept to manageable proportions and multiple reformulations of the same point should be avoided.

52. Given that the number of grounds advanced on the papers exceeded that which can conveniently be addressed in a judgment of any reasonable length, and indeed perhaps exceeded that which it might be thought should ideally be advanced in the light of *Babington*, it is probably prudent to observe that there were a number of subsidiary points made by the applicant. However, given that I find that the four broad headings are lacking in substance and certainly come nowhere near substantial grounds, I should for completeness say that the same applies to any subsidiary points or arguments. I note that in *McNamara*, Laffoy J. commented that the court was not obliged to consider every argument advanced by an applicant if it considered that the relevant ground was of substance. But clearly, if the main points are found wanting, no great purpose can be served by a laborious recital of minor and subsidiary points which of themselves could not take the applicant over the threshold for leave.

53. Finally, while there are some relatively minor complaints made on the papers, no serious oral argument was advanced against the fourth and fifth reasons (set out above) for the board's decision. While in some situations, the striking down of one or more reasons will vitiate the decision overall, in the present case the last two reasons would in my view stand alone in defeating the application, even if there were substantial grounds for contending that the decision could be challenged in respect of the first three reasons on the basis of the matters advanced in oral argument, which I do not accept. Admittedly the applicant may be more handicapped in future as the recipient of a decision based on multiple reasons than if it was based on the last two reasons alone, but that is a consequence of its own actions in putting forward what the board considered to be a poor quality scheme.

Order

54. For the foregoing reasons, I will order:-

(i) that the application for leave be dismissed;

(ii) I will hear the applicant further if there are any consequential matters arising.