Neutral Citation Number [2006] IEHC 310

THE HIGH COURT
JUDICIAL REVIEW

[2003 No. 695 JR]

BETWEEN

THOMAS GREALISH

APPLICANT

AND
AN BORD PLEANÁLA

RESPONDENT

AND
DUBLIN CITY COUNCIL

NOTICE PARTY

Judgment of O'Neill J. delivered on the 24th day of October, 2006

1. The applicant in this case was on 2nd February, 2005, given leave by this court (Laffoy J.) to seek by way of judicial review an order of certiorari quashing the decision of the respondent made the 7th August, 2003, refusing permission on the appeal of the applicant for planning permission under Planning Register Reference 211/03 Appeal Ref. 29 S.202449, on the grounds that the respondent was in breach of the rules of natural and constitutional justice in failing to give any, or any adequate reasons for its said decision and that the said decision was unreasonable and irrational.

2. Leave was granted by Laffoy J. in a reserved judgment delivered on the 2nd February, 2005, in which she set out fully the factual background and planning history relevant to this matter and there is no need to repeat the same here. The following passage from the learned judge's judgment sets the scene and poses the issues which have to be resolved on this application:

> *"In my view standing alone the ground advanced by the applicant as to the inadequacy of the reason expressed for departing from the inspector's recommendation which was contended was a mere tautology of the refusal and did not advance in any way the explanation for the refusal is not sustainable. It is clear on the face of the record of the 2003 decision that the respondent considered two of the options open to it: to refuse in line with the decision of the planning authority; or, alternatively, to grant permission subject to conditions as recommended by the inspector. It decided to refuse permission, but it explained why it opted for this course: it considers that the proposed reduction in scale as recommended by the inspector, would not overcome its concerns, which it had outlined earlier – the scale and non-integration of the structure. That pithily tells the applicant and the world at large in terms which any intelligent person should be capable of understanding why the respondent departed from the recommendations of the inspector. In support of the submission that it was incumbent on the respondent, in giving reasons for its decision, to explain why it departed from the approach it adopted in its 1990 decision and its 1997 decision, the applicant referred to the following passage from Wade on Administrative Law, 8th Edition at p. 517:*
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> > *'There is no closed list of circumstances in which fairness require reasons to be given but the more important examples may be given here. First, decisions that appear aberrant without reasons have to be explained, so that it may be judged whether the aberration is real or apparent. Thus an award of abnormally low compensation to an unfairly dismissed prison officer by the Civil Service Appeal Board, which made it a rule not to give reasons, was quashed by the Court of Appeal, holding that natural justice demanded the giving of reasons both in deciding whether the dismissal was unfair and in assessing compensation, since other employers are entitled to appeal to industrial tribunals which are obliged by law to give reasons. Similarly, where the decision maker departs from a previously adopted policy (even if not published) fairness will require that departure to be explained. Thus a health authorities refusal, without giving reasons, to follow the policy of the National Health Service Executive to introduce a new (and expensive drug) was quashed.'*
>
> *When one puts the three decisions of the respondents side by side, a very stark departure from the conclusions reached in 1990 and 1997 is revealed in the 2003 decision. In 1990 and in 1997 the respondent concluded that the advertising structure would not seriously injure the visual amenities of the area and would not be contrary to proper planning and development of the area. In 2003 it concluded that the very same advertising structure would seriously injure the visual amenities of the area and would be contrary to proper planning and sustainable development of the area. Although it rationalised its conclusion in 2003 as to the impact of the structure on visual amenities on the basis that it would 'contribute to visual clutter' and of its scale and non-integration, in my view, this does not explain the apparent aberration. It is not apparent that these factors did not exist in 1990 or in 1997 and the evidence before a court suggests that they did. Against this background and the fact that in 1990 and in 1997 the respondent expressly overruled the findings of the planning authority as to the obtrusiveness and detrimental impact of the structure on the visual amenities of the area, how can the validity of the 2003 decision be assessed in accordance with the applicable judicial review norms without knowing the reasons for the volte-face?*
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> *While it is undoubtedly open to the respondent to come to a different conclusion in 2003 to that reached in 1990 and 1997, in the unusual circumstances of this case, in my view, the ground as advanced by the applicant that the respondent should have given an explanation for departing from the stance it had adopted previously and set out the considerations which led to such departure and that the failure to do so is a breach of his rights, is a substantial ground."*

3. Thus, as is clear from the above and the statement of opposition and the submissions made, the issue which arises for determination is whether the respondents failed to give any, or any adequate reasons for the impugned decision of 2003 and specifically whether there was a failure to give reasons for its departure from the earlier decisions in 1990 and 1997 whereby planning approval was granted for the same development and whether any such alleged failure was a failure to give reasons for its decision as required by law, and finally, whether any such reasons as were given were tainted by irrationality in law.

4. As the main issue in the case concerns the adequacy or otherwise of the reasons given, the relevant legal principles should be set out at this stage.

5. In the case of Mulholland and *Kinsella v. An Bord Pleanála and Others* [2005] I.E.H.C. 306, Kelly J. reviewed the relevant English and Irish cases, i.e. *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750*, The State (Sweeney) v. The Minister for the Environment* [1975] I.L.R.M. 35, *R. (Ermakov) v. Westminster City Council* [1996] 2 All E.R. 302, *The London Residuary Body v. Secretary of State*

for the Environment, 58 J.P.L. 657, and *Fairyhouse Club Limited v. An Bord Pleanála* (Unreported, July 18th, 2001), and *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 at p. 76.

6. The following passages from these cases are applicable to this case.

7. From *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 (Murphy J.);

> *"It is clear that the reasons furnished by the board (or by any other Tribunal) must be sufficient first to enable the courts to review it and secondly to satisfy the persons having recourse to the Tribunal that it directed its mind adequately to the issues before it. It has never been suggested that an administrative body is bound to provide a discursive judgment as a result of its deliberations."*

8. From *The State (Sweeney) v. The Minister for the Environment* [1979] I.L.R.M. 135 (Finlay P.);

> *"To give to an applicant such information as may be necessary and appropriate for him, firstly, to consider whether he has got a reasonable chance of succeeding in appealing against the decision of the planning authority and, secondly, to enable him to arm himself for the hearing of such an appeal."*

9. From *R. (Ermakov) v. Westminster City Council* [1996] 2 All E.R at 302, (Hutchinson L.J.):

> *"It is well established that an obligation, whether statutory or otherwise, to give reasons for a decision is imposed so that the persons affected by the decisions may know why they have won or lost and in particular, may be able to judge whether the decision is valid and therefore unchallengeable or invalid, and therefore open to challenge. There are numerous authoritative statements to this effect...*
>
> *It is possible to state two propositions which the judgments in ex parte Graham support.*
>
> > *1. If the reasons given are insufficient to enable the court to consider the lawfulness of the decision, the decision itself would be unlawful; and*
> >
> > *2. The court should, at the very least, be circumspect about allowing material gaps to be filled by affidavit evidence or otherwise"*

10. From *The London Residuary Body v. The Secretary of State for the Environment* 58 J.P.L 67 (Simon Brown J. as he then was):

> *"The duty of the Secretary of State to give reasons arises under Rule 30(1) of the 1974 Enquiry Procedure Rules'. As to the nature of the obligation the authorities are clear: see particularly Re Poiser and Mills Arbitration [1964] 2 QB 467 and Westminster Council v. Great Portland Estates Plc [1985] 1AC 661 at p. 673. In all cases the reasons had to be intelligible, proper and adequate. They could be briefly stated, but they had to deal with the substantial points that had been raised….*
>
> *Here, where the Secretary of State had disagreed with his inspector's recommendation, the obligation to give clear and cogent reasons assumed particular importance. This was both a matter of common sense and supported by authority: see, for instance, Rogeland Building Group Limited v. Secretary of State for the Environment [1981] JPL 506, where Glidewell J. said:-*
>
> > *'But where, as here, the Secretary of State on advice decided to disagree with the recommendation of his inspector, it was particularly important that he should make his reasons for such disagreement clear'."*

11. From *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 at 76 (Finlay C.J.) said:

> *"Firstly, I am satisfied that there is no substance in the contention made on behalf of the plaintiff that the Board should be prohibited from relying on a combination of the reason given for the decision and the reasons given for the conditions, together with the terms of the conditions. There is nothing in the statute which would justify such a rigid approach and it would be contrary to common sense and to fairness. What must be looked at is what an intelligent person who had taken part in the appeal or had been appraised of the broad issues which had arisen in it would understand from this document, these conditions and these reasons."*

12. In *Mulholland and Kinsella v. An Bord Pleanála and ors.* Kelly J. as part of his conclusions stated the following:

> *"I accept, and indeed it is not seriously argued otherwise, that s. 34(10)(a)(b) brought about changes to the previous statutory position which I have already identified. These changes were by way of expansion to that position. That expansion involved insofar as was relevant;*
>
> > *(a) an obligation on both to give reasons irrespective of the decision to grant or refuse permission*
> >
> > *(b) an obligation to state the main reasons and considerations on which a decision is based and*
> >
> > *(c) an obligation to state the main reasons for not accepting the recommendations of the Board"s inspector.*
>
> *It is noteworthy that the legislation made no attempt in the 2000 Act to alter the existing jurisprudence in what is required for reasons to be considered as adequate in law. Thus the pre-existing case law on adequate reasons (O'Donoghue v. An Bord Pleanála [1991] I.L.R.M. 750 and The State (Sweeney) v. The Minister for the Environment [1979] I.L.R.M). 35 continue to apply. That is so whether the reasons are those mentioned in (a), (b) or (c) supra.*
>
> *Thus, there is no obligation to provide a discursive judgment but the reasons given must, if they are to be considered adequate, comply with the requirements set forth in the two Irish cases cited in the previous paragraph.*

Insofar as the reasons at (c) supra are concerned the test remains the same.

I do not accept that the English authorities which I have quoted from create a more onerous obligation than what is required in this jurisdiction. Both Ermakov's and The London Residuary Body case, in my view, do no more than apply pre-existing, well established principles to their particular facts. These pre-existing principles are no different to those that were identified in the Irish cases of O'Donoghue and Sweeney. It is no more than common sense that if reasons of the type specified in (c) above are to pass the O'Donoghue and Sweeney case test they must be clear and cogent. I do not read the English cases as saying more than that. This is no different to what is required in Irish law.

The obligation at (B) above to state the considerations on which a decision is based is of course new. I am of opinion that in order for this statement of considerations to pass muster it must satisfy a similar test to that applicable to the giving of reasons. The statement of considerations must therefore be sufficient to:

(1) Give to an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision,

(2) Arm himself for such hearing or review,

(3) Know if the decision maker has directed its mind adequately to the issues which it has considered or is obliged to consider,

(4) Enable the courts to review the decision.

Thus the criteria which must be met for the statement of considerations are precisely the same as those which apply in respect of the statement of main reasons."

13. I would respectively agree with the above conclusion of Kelly J.

14. For the applicant it was submitted, in summary, that as between the 1990 and 1997 decisions and the 2003 decision there was no change whatever in the physical circumstances on the ground, that the development in respect of which permission was sought in 2003 was identical to that in respect of which permission was granted by the respondents in 1997 and there was no evidence of any changes in the surrounding physical environment between 1997 and 2003. The 1999 Development Plan was identical in its relevant provisions to the 1990 Development Plan which was in force when permission was granted in 1997. It was submitted that those averments in the affidavit of Gerard Egan sworn on 6th May, 2005, for the respondents which purport to furnish reasons for the decisions are inadmissible in evidence as the deponent did not have the requisite means of knowledge to depose to reasons for the decision. It was submitted that there was a complete absence of any reasons for the *volte-face*, as between the decisions of 1990 and 1997 and the decision of 2003 and hence the decision of 2003 was fatally flawed because it failed to disclose at all the reasons and considerations upon which a different decision was reached in 2003 and it similarly failed to disclose reasons and considerations upon which the respondents rejected the recommendation of the inspector in her report of 21st July, 2003, all contrary to the provisions of s. 34(10) of the Planning and Development Act, 2000. It was further submitted that the respondents having come to a different conclusion in 2003 to its previous decisions in 1990 and 1997 upon precisely the same facts, and there being no material changes in the development plan, there was no material before the respondents to support the decision of 2003 and hence that decision was irrational on the basis of the test set out in *O'Keeffe v. An Bord Pleanála*.

15. For the respondents it was submitted that the respondents were not in fact departing from a previous decision, that the two previous decision were for limited periods only and had expired, and that when the matter came before the respondents in 2003 it was obliged to consider the new application on its own merits *de novo* not constrained by previous decisions. It was the duty of the respondent to determine the appeal in this case in accordance with the proper planning and sustainable development of the area in the light of circumstances prevailing or existing at the time of the appeal. It was entitled to do this, *inter alia* in the light of the planning history of the development and in particular the terms and conditions upon which permission had previously been granted and the reasons and considerations for same. It was submitted that the respondents are not obliged to give an explanation for departing from the stance it had adopted previously or to set out the considerations which led to such departure. It was submitted that the previous permissions had been temporary permissions and that it was implicit, that the respondent could adopt a different stance in an application occurring after the expiry of a temporary permission. It was further submitted that in any event there were material changes in the 1999 Development Plan which warranted and supported the conclusion reached in the 2003 decision and the applicant was to be presumed to have knowledge of these relevant changes in the 1999 Development Plan, and hence it was unnecessary for the respondents in the materials constituting its decision and in the reasons and considerations set out therein, to refer explicitly to the relevant provisions of the 1999 Development Plan. It was submitted that the decisions and the reasons and considerations stated, when read in conjunction with the Development Plan make perfectly clear the reasons and considerations upon which the respondents reached a different decision to that of 1990 or 1997. It was further submitted that the respondents had before it ample material to support its decision that the advertisement proposed was excessive in scale, not sufficiently integrated with the design and scale of the building and would contribute to visual clutter and would seriously injure the visual amenities of the area and hence there was ample material before the respondents to support its decision and therefore it could not be said on any view of the Law to be tainted by irrationality.

Decision

16. I am satisfied on the evidence adduced on affidavit in this case that the development in respect of which permission was sought is essentially the same as the one in respect of which permission was granted by the respondents in 1990 and 1997. I am also satisfied that there is no evidence that the physical environment in which this development is located has in any material respects changed since 1997. Thus I have come to the conclusion that there was no material change whatsoever in the physical environment, of the development between 1997 and 2003.

17. It was common case and indeed there could be no argument about this, that the respondents were entitled to reach a different decision in 2003. I do not agree however that the decision in 2003 can be approached on the basis that it is wholly disconnected from the 1990 and 1997 decisions or that it can be treated on a stand alone basis. Such an approach in general would leave appellants with an unavoidable sense that the respondents were entitled to and did conduct appeals in an arbitrary fashion and an unexplained inconsistency between one decision and the other would leave an applicant under the impression that his appeal had not been determined in a just manner and such apparent arbitrariness and inconsistency would tend to bring this important statutory tribunal into public disrepute.

18. Hence in my view whilst the respondents are clearly entitled to reach a different decision on a later application in respect of the same development, where a previous permission has expired, the reasons and considerations upon which that change of stance has been adopted must be made clear, so that an appellant can see that his appeal has been determined in a fair and rational manner, and the public interest in the integrity of An Bord Pleanála, is upheld.

19. The crucial issue then in this case, in my opinion, is whether it can be demonstrated that there was some change of circumstance which explained or rendered explicable the change of stance adopted by the respondents in the 2003 decision.

20. In ascertaining whether or not this has occurred, in my view the applicant is to be presumed to have had knowledge of the relevant provisions of the 1999 Development Plan. I do not accept however that such a presumption rendered it unnecessary for there to be any reference in the statement of reasons and considerations, to the Development Plan. If changes in the Development Plan were the main reasons or consideration upon which the permission was refused in 2003, in my view a short and simple statement to that effect was necessary or else some explicit reference to a provision of the development was necessary; otherwise this applicant and indeed the world at large is left in the position that they must make the assumption, or guess or speculate, that this was the main reason and consideration for the *volte-face*.

21. It therefore becomes necessary to examine the relevant provisions of the two Development Plans i.e. the 1990 and the 1999 Development Plans to see whether there has been any material change, and then to consider the materials from which the decision, reasons and considerations are to be ascertained i.e. the report of the inspector of 21st July, 2003, the decision with its statement of reasons and considerations, of 8th August, 2003, and the Board Direction of 7th August, 2003, which states in the same terms the reasons and considerations, to see whether any such material change in the Development Plan is discernable as a main reason and or consideration.

22. The affidavit of Gerard Egan sworn on behalf of the respondents does not, in my opinion, contain any admissible evidence which is capable of explaining the decision beyond the foregoing materials. Mr. Egan, I am satisfied does not disclose on affidavit, that he had the requisite means of knowledge, to be able to explain or add anything to the decisions as represented in the decision itself, with its statement of reasons and considerations, and the report of the Inspector.

23. It is necessary also to set out the relevant provisions of the two development plans, the relevant parts of the inspector's report and the statement of reasons and considerations in the decision of 8th of August, 2003.

24. Paragraph 15.15 under the heading of "Advertisements" is where the relevant provisions of the 1991 Dublin City Development Plan are to be found as follows:

> *"Advertisements*
>
> *15.15.1 The character and attractiveness of Dublin is adversely affected by many insensitive advertisements. They have damaged the character of individual buildings and streets and have had a detrimental effect upon historic and conservation areas of the city.*
>
> *15.15.2 The corporation will seek the removal of such advertisement and permit only advertisements which are used sensitively and sympathetically and which enhance the appearance and vitality of an area.*
>
> *15.15.3 Poster Boards*
>
> *Poster boards constitute one of the most obtrusive elements of all forms of outdoor advertisements. They rely for their impact on size, scale and location and thus are usually detrimental to the character of the area in which they are situated.*
>
> *15.15.4 To ensure the environment is protected from the possible adverse effects of these displays they will be subject to the following guidelines:*
>
> *(i) The scale of the display panel should normally relate to pedestrians and the local environment, not vehicles.*
>
> *(ii) Vertical proportions are preferred and the 4 sheet approximately (1.5 metres by 1.1 metres) 12 sheet (3.3 metres by 1.6 metres) and 16 sheet (3.2 metres by 2.2 metres) sizes are considered to be most appropriate.*
>
> *(iii) the larger advertising hoardings do not fit into the scale of the Dublin street…*
>
> *15.15.8 A poster panel on a building should be in scale with the particular building and should not cut across any of its architectural features. Panels should normally not be placed on buildings above ground level. They should not be positioned forward of the face of adjoining buildings and the rear view should not be unsightly…*
>
> *15.15.10 Signs on Shop Fronts and Other Business Premises.*
>
> *Advertisements on shop fronts and business premises are amongst the most prominent forms of advertising on buildings. If unsympathetic with the design of the buildings on which they are displayed, this type of advertisement can have a wholly detrimental affect on the local environment, particularly in principal shopping streets, in conservation areas or on listed buildings. The following guidelines for shop fronts and business premises will apply.*
>
> *15.15.11 The number of signs attached to a building should be limited to prevent an impression of clutter and no sign should be excessively obtrusive are out of scale with the building façade…..*
>
> *15.15.15 All advertising above ground level will be severely restricted in order to avoid clutter and preserve the amenity of the street scape. On any building fronting on the Upper and Lower O'Connell St., Westmoreland St., College Green or any conservation area, projecting signs affixed to a building at any point above the ground floor façade shall not normally be permitted…*

15.15.24 Freestanding advertisement displays

Public information panels are permissible in situations such as the pedestrian precincts of shopping centres and other areas of commercial activity. They can be effective when grouped in a unified composition which avoids an impression of clutter. The amount of advertising permitted on public information panels will be restricted and shall constitute not more than 20% of the total area…".

25. Paragraph 14.41 of the 1999 Dublin City Development Plan contains the relevant provision as follows:

"14.41.0 Advertisements/Signage

Well designed advertising signs in selected locations, and on an appropriate scale, can contribute to the character and vitality of commercial areas of the city, particularly at night. However, the character and attractiveness of Dublin is adversely affected by many insensitive advertisements. They have damaged the character of individual buildings and streets and have had a detrimental affect upon the historic and conservation areas of the city.

The corporation will seek the removal of such advertisements and permit only advertisements which are used sensitively and sympathetically and which enhance the appearance and vitality of an area. In the interests of amenity and public safety, the corporation will not permit without a licence, the display of any advertising boards or other advertising devices on the public footpath.

14.42.0 Advertising hoardings

Advertising hoardings, including tri-vision and three-dimensional signs, inappropriately located can constitute one of the most obtrusive elements of all forms of outdoor advertisements. They rely for their impact on size, scale and location and thus are usually detrimental to a character of the area in which they are situated. However they can help to screen building sites and sites awaiting redevelopment.

There is scope for the temporary screening of derelict sites and buildings sites through the use of outdoor advertising, landscaping, suitable boundary treatment, such as railings and the provision of public seating in liaison with the outdoor media industry. The industry will be expected to cooperate with the guidelines which are set out below and as may be amended from time to time.

(A) As a general principle, outdoor advertising shall only be permitted within commercial zones; it shall not be permitted within residential zones, historical or conservation areas, or amenity areas.

(B) Outdoor advertising shall not be permitted either on listed buildings and structures or within the vicinity of such buildings and structures, in such a way as to detract from the visual quality of their setting.

(C) The scale of display panels must be related to the scale of the buildings and streets in which they are located. 48 sheet panels, despite being the size most favoured by the industry in terms of impact, will only be acceptable in exceptional circumstances and twin panels of this size on a single site will not be permitted. As a general principle, the planning authority have a clear preference for the smaller sized panel such as the Euro panel (3m by 4m) or smaller. Vertical proportions are preferred.

(D) Where illuminated hoardings are proposed the effect on the streetscape including during the hours of darkness and on the amenities of the area will be considered.

(E) Display panels may form part of the visual screening around building sites or sites awaiting redevelopment. In such cases temporary permissions will be considered where appropriately sized panels form an integral part of an overall boundary treatment and do not compromise more than half of the total surface area of such a treatment.

(F) As a general rule, permissions for outdoor advertising will be limited to a maximum of three years in the first instance, to enable the position to be reviewed by the Corporation in the light of changing circumstances at the end of that period.

(G) The number and scale of hoardings in the vicinity of the site."

26. The respondent's inspector in a report of the 21st July, 2003, noted in relation to the site that:

"There are two other advertising hoardings in the vicinity – on the Halfway House Pub and on a warehouse to the rear of the Bank of Ireland".

27. She noted that the proposed development was to retain an advertising structure measuring 6.5 metres wide by 3.5 metres which rotates three advertisements and was roughly 4 metres above ground level and was illuminated by an overhead light roughly 6 metres in length.

28. In the assessment part of a report he says the following:

"Assessment

There are three planning issues in this appeal in my opinion;

1. Development plan issues;

2. Size and scale of the advertisement structure;

3. Planning history;

1. Development Plan Issues

The site is located in a commercially zoned area which is in accordance with the policy of the development plan. It is not on or near a protected structure. It is illuminated by means of an overhead light, stepped forward from the hoarding, running most of the width of the sign, I do not consider that the illumination would give rise to distraction constituting traffic hazard. The structure is larger than the size of the scale normally preferred by the planning authority, but I will return to this point under the next heading. It is the third of three advertising structures around this road confluence. I will consider this under the planning history of the site.

2. Size and Scale of the Advertisement Structure

The size of the structure is larger than the preferred size of the planning authority. In addition in this instance, the structure continues past the roof ridge, as does the overhead light. This is excessive in scale in my view and seriously detracts from the visual amenities of the area.

The structure should be reduced in width to the maximum permitted in the development plan i.e. 4 metres in width and 3 metres in height.

3. Planning History

There has been an advertisement hoarding on site since before 1990. Given this presence for such a length of time, it is my opinion that while three advertisements structures in such close proximity is not visually desirable, it would be inappropriate to refuse permission for this particular hoarding on the grounds of visual clutter.

Conclusion

The advertising structure is excessive in size and scale and one in three in close proximity. However, given the planning history of the site, I would recommend that the structure be retained albeit at a much reduced size.

Recommendation

I recommend that permission be granted."

29. In its decision to refuse permission of the 8th August, 2003, the respondent set out the following as its reasons and considerations:

"It is considered that the prismatic sign, proposed to be retained, is of excessive scale and does not satisfactorily integrate with the design and scale of the building at 171 Drimnagh Road. The prismatic sign proposed to be retained on the gable elevation would contribute to visual clutter, would seriously injure the visual amenities of the area and therefore would be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the inspector's recommendation to grant permission, the Board concurred with the decision of the planning authority and considered that the proposed reduction in scale, as recommended by the inspector would not overcome its concerns."

30. The first paragraph of the above reasons and considerations is in almost exactly the same terms as the reason given by the planning authority in its decision to refuse of the 12th March, 2003.

31. As is apparent from the above, both the planning authority on the respondents identified three factors which led them to refuse planning permission. These were:

1. Excessive scale;

2. Failure to satisfactorily integrate with the design and scale of 171 Drimnagh Road the building to which it is attached; and

3. It would contribute to visual clutter and hence would injure the visual amenities of the area and would be contrary to proper planning and of sustainable development of the area.

32. The first issue of concern therefore for the respondents was the question of the scale of the development. Paragraph 15.15.4 of the 1991 Dublin City Development Plan deals with scale. Paragraph 14.42.0 (C) of the 1999 Dublin City Development Plan also deals with scale. The 1999 provision expresses a "*clear preference*" for the smaller sized panels such as Euro panel (3m by 4m) or smaller. The inspector in her report recommended a reduction in the scale and proportion to 4 metres in width and 3 metres in height as being the maximum permitted in the development plan. Paragraph 15.15.4 (II) of the 1991 Plan appears to express a preference for smaller panels than the 4 metre by 3 metre panels mentioned in the 1999 Plan. Both Plans express a preference for vertical proportions. Whilst both Plans appear to exclude larger type panels e.g. 48 sheet panels as in the 1999 Plan the "larger advertising hoardings", in the 1991 Plan, where preferred size of panels are expressly given, the 1991 Plan appears to express a preference for smaller sizes display panels in comparison to the 1999 Plan.

33. In spite of that however permission for retention was granted in 1997 in respect of a structure which was 6.5 metres wide and 3.5 metres in height, apparently way in excess of what was expressed to be the preferred size in the 1991 Plan.

34. Is there something in the language used in the 1999 Plan which expresses or conveys a preference for smaller size or which expresses or conveys a much more definite restriction on permissible sizes? In my view there is nothing in the language of paragraph 14.42.0 (C) in the 1999 Plan which does that. On the contrary the expressed preference for the 3 metre by 4 metre size would

rationally convey a less restrictive approach to the scale issue.

35. I am satisfied that on the scale issue there is nothing in the 1999 Development Plan which would convey to any reasonable intelligent person, any material change in regard to the scale issue other than perhaps as mentioned a less restrictive approach on size.

36. The next issue which was of concern to the respondent was the question of the integration of the proposed structure with the design and scale of the building at 171 Drimnagh Road.

37. Paragraph 15.15.4 (I) of the 1991 Plan says:

> *"The scale of the display panels should normally relate to pedestrians and the local environment not to vehicles."*

38. Further on at paragraph 15.15.8 it says:

> *"A poster panel on a building should be in scale with the particular building and should not cut across any of its architectural features…"*

39. Paragraph 14.42.0 (C) of the 1999 Plan says:

> *"The scale of display panels must be related to the scale of the buildings and streets in which they are located…"*

40. In my view there is no material difference between these provisions, relevant to the facts of this case.

41. The final matter which was of concern to the respondents was that if the permission for retention of a development was to be given that it would contribute to "*visual clutter*" and in the result would seriously injure the visual amenities of the area. It would appear from the report of the inspector that what is meant by "*clutter*" in this regard is the number of other similar advertising boards in the immediate area.

42. The only mention of "*clutter*" in the 1991 Development Plan is in paragraph 15.15.11 and also in paragraph 15.15.24. The former deals with signs on shop fronts and other business premises and appears to be confined to signs attached to the same building. The latter deals with Free Standing Advertisement Displays. Neither of these situations appears to be relevant to the issue of concern expressed by the inspector.

43. Paragraph 14.42.0 (G) of the 1999 Plan says:

> *"The number and scale of hoardings in the vicinity of the site."*

44. This would appear to me to be an entirely new provision thereby creating a separate and distinct issue for concern in relation to these advertising structures.

45. It is off course right as was submitted for the respondent that the applicant be taken as having knowledge of the relevant parts of the applicable development plans, and that the decision and the reasons and considerations expressed in it, are to be read in conjunction with the development plans.

46. Even doing that however, insofar as the issues of scale and non integration are concerned, the reasons and considerations stated in the decision when read in conjunction with the inspector's report and the development plan, wholly fail to explain or to render explicable the reversal of decision from that of 1990 and 1997, where the physical circumstances were identical in both instances.

47. Insofar as the "clutter" issue is concerned it could be said that recourse to the 1999 Development Plan renders the conclusion in this regard explicable. But if that be so, it is only by way of assuming or perhaps even speculating that the respondents did in fact have the change in the Development Plan in mind and this was the reason for their conclusion in that regard.

48. As set out above the legal obligation resting on the respondents to explain their decisions is a very light one, one could even say almost minimal. It is well settled that they do not have to give a discursive judgment. They do however as set out in the judgment of Kelly J., have to provide sufficient information to enable somebody in the position of the applicant in this case to consider whether he has a reasonable chance of succeeding in judicially reviewing the decision, can arm himself for such a review; can know if the respondent has directed its mind adequately to the issues it has to consider; and finally give sufficient information to enable the court to review the decision. Insofar as two of the main elements of the decision in this case are concerned i.e. reasons and considerations based on scale and non-integration, the decision fails on every aspect of the foregoing test. There is literally nothing there to explain why a different conclusion is reached on these issues to that in 1990 or 1997.

49. If one were to assume that the decision somehow explained itself this court would inexorably have to reach the conclusion that the decision was vitiated by irrationality on the basis that there was no material supporting the reversal of the conclusion reached in 1990 and 1997, as per *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39.

50. As these two issues make up a very large part of the substance of the decision, in my view the decision is fatally flawed on this ground, and must for this reason alone be quashed.

51. Insofar and the remaining third element of the decision is concerned, relating to the "*clutter*" issue, as said earlier this court is left in a position whereby it must assume or guess that the reason for the conclusion is a material change in the Development Plan not because of anything explicitly said either in the decision or the reasons and considerations for it or in the inspector's report but simply because there was a relevant material change in the 1999 Development Plan as discussed above.

52. Whilst, it could be concluded, on the balance of probabilities, that the change in the Development Plan was the main reason and consideration for the conclusion of the respondents on the "clutter" issue, it is very unsatisfactory for this Court, to be put in position of reaching that conclusion, in that way, when a short and simple statement, indicating reliance on the change in the 1999 Development Plan, would, put beyond any doubt, that this was the reason for that conclusion and indeed for any purported reliance on the 1999 Development Plan in regard to the "scale" and "integration" concerns. Neither this Court, nor the applicant, nor the world at large should have to, make assumptions, as to what the main reasons or considerations were, when that would be wholly unnecessary, if the minimal statement required to make these things clear, was included in the statement of reasons and

considerations in the decision.

53. In an age of near universal literacy one can but observe, that such ommission represents a standard of literary communication which is very low and in my opinion fails to satisfy the legal requirement, of stating the main reasons and considerations, for its change of stance, in deciding to refuse permission in 2003.

54. Accordingly, I have come to the conclusion, that the applicant is entitled to an order of *certiorari* quashing the impugned decision.