Neutral Citation Number: [2010] IEHC 68

**THE HIGH COURT**

**2008 623 JR**

**Wexele**

**Applicant**

**And**

**An Bord Pleanála**

**Respondent**

**And**

**Stillorgan Heath Residents' Association, Brian Meade, Lakelands Residents' Association, John McVeigh, Dermot Swanton, Mary Swanton, Brendan De Hora, Elizabeth De Hora, Doctor Jennifer Pollock, Hugh M. Pollock, Michael Carolan, Ann Ronan, Siobhan Meade and Angela Molloy, Kieran Bristoe and Carolyn McMahon, Noel Kelly, Marie Nolan, Maureen Junka Kelly, Gerard Coakley, Jim Behan, Gillian Taylor and Brian O'Toole, Sandra McGarry, David Nolan, Gerard Gillian, David Nolan, Ronan O'Byrne, Siobhan Harman, Peter Bolger, Micheal Neary, Fiona Neary, Eamon Murphy, Mary Murphy and Tom Dwyer, Dun Laoghaire-Rathdown County Council**

**Notice Parties**

**Judgment of O'Neill J. delivered the 19th day of March 2010.**

**1. Reliefs Sought**

1.1 This case came before this Court by way of a "telescoped hearing", that is, when the application for leave is heard together with the substantive arguments in the case. The applicant wishes to obtain the following reliefs:-

1. An order of *certiorari* setting aside the decision of the respondent dated the 8th April, 2008, refusing planning permission for a mixed use scheme of development at Blackthorn Avenue, Sandyford Industrial Estate, Dublin 18.

2. A declaration that the respondent erred in its interpretation of the provisions of the Dún Laoghaire Rathdown County Council Development Plan 2004-2010. In particular, that the respondent erred in deciding that high density apartment development would militate against the land zoning objective for the area.

3. A declaration that the respondent is not entitled to refuse planning permission for the proposed mixed use scheme of development on the grounds of prematurity in circumstances where the alleged constraints on development are to be resolved by the planning authority within a reasonable period of time.

4. An order remitting the planning appeal to the respondent for reconsideration in light of the findings of the High Court.

5. In the alternative, damages for the loss and inconvenience suffered by the applicant as a result of the unreasonable delay on the part of the respondent in determining the appeal.

**2. Leave Requirement**

2.1 These proceedings were instituted by the applicant pursuant to ss. 50 and 50A of the Planning and Development Act of 2000, as amended by the Planning and Development (Strategic Infrastructure) Act 2006 ("the Act of 2000"). Section 50A of the Act of 2000 provides that leave shall not be granted to an applicant unless this Court is satisfied that there are "*substantial grounds*" for contending that the decision of the respondent is invalid or ought to be quashed and that the applicant has a "*substantial interest*" in the matter.

2.2 Carroll J. considered the meaning of the term "*substantial grounds*" in *McNamara v. An Bord Pleanála & Others* [1995] 2 I.L.R.M. 125 at p.130:-

*"What I have to consider is whether any of the grounds advanced by the appellant are substantial grounds for contending that the board's decision was invalid. In order for a ground to be substantial it must be reasonable, it must be arguable, it must be weighty. It must not be trivial or tenuous. However, I am not concerned with trying to ascertain what the eventual result would be. I believe I should go no further than satisfy myself that the grounds are 'substantial'. A ground that does not stand any chance of being sustained (for example, where the point has already been decided in another case) could not be said to be substantial. I draw a distinction between the grounds and the various arguments put forward in support of those grounds. I do not think I should evaluate each argument and say whether I consider it is sound or not. If I consider a ground, as such, to be substantial, I do not also have to say that the applicant is confined in his arguments at the next stage to those which I believe may have some merit."*

**3. The Facts**

3.1 The applicant is an unlimited liability company engaged in property development. On the 3rd December, 2004, it

applied for planning permission to Dún Laoghaire Rathdown County Council ("the planning authority") for a mixed-use development on a site of approximately 0.67 hectares at Sandyford Business Estate. The proposed development comprised of 259 residential apartments, 15 "live-work" units, a gym, a crèche, a club cinema for the use of residents, a car park with 338 spaces and commercial floor space.

3.2 On the 27th July, 2005, the planning authority made a decision to grant the proposed scheme planning permission, subject to thirty nine conditions. The applicant, on the 23rd August, 2005, lodged a first party appeal with the respondent in respect of three of the conditions (conditions nos. 8, 37 and 39). Condition 8 concerned proposed road widening/improvement works. The applicant sought that this condition would reflect the agreement it said had been reached with the planning authority's roads department that the cost of the road works would be offset against the cost of development levies. Condition 37 required the applicant to complete all infrastructural works to the current standard of the planning authority of "*not less*" than two years from the date of the commencement of the works. The applicant was of the view that the planning authority must have intended to state "*not more*" than two years. In any event it submitted to the respondent that it would not be viable to demand that all infrastructural works would be completed within two years from the commencement of the works, given that construction of the development may take longer than two years. Condition 39 stipulated that all submissions on compliance required by the conditions were to be submitted at the same time for consideration by the planning authority. The applicant contended that this would be impossible in circumstances where a number of the conditions stated that they were to be agreed prior to the commencement of the development and others stated that they were to be agreed prior to the occupation of units.

3.3 In addition, on the same day, twelve third party appeals were submitted against the decision of the planning authority to grant planning permission. The appellants were concerned about the height of the proposed development and the predominant residential use which they said was contrary to the use envisaged in the Dún Laoghaire Rathdown County Council Development Plan 2004-2010 ("the development plan"), that is, employment generation. The planning authority made submissions on the third party appeals in a letter dated the 28th September, 2005. The following day, the applicant's agents, RPS Planning and Environmental Consultants ("RPS"), lodged their submissions on those appeals.

3.4 On the 3rd February, 2006, the respondent issued notification of the appeals before it to the Dublin Transport Authority ("DTO"), the National Roads Authority ("NRA") and the Railway Procurement Agency ("RPA"), pursuant to s.28 of the Planning and Development Regulations 2001, inviting their comments. It received substantive responses from the DTO and the NRA. The RPA replied to say that it had nothing further to add to the comments made by the other two agencies.

3.5 The NRA, in its reply of the 14th February, 2006, expressed its concerns in relation to the proposed development as follows:-

> *"The Authority has concerns in relation to the capacity and operational effects on the M50/N31/N11 route. The Route from M50 along Leopardstown Road to Brewery Road to N11 is now a national road. The data received does not address the specific junctions nor the proposed new road/junction with the Leopardstown Road …*
>
> *The Authority considers that the application appears, inter alia, to be based on a significant reduction in traffic resultant from the completion of the M50 (section 7.2.5 Nov 2004 Muir and Associates Traffic Impact Statement). No evidence of this substantial assumption has been offered although the M50 has now been opened for c. 8 months."*

3.6 The DTO, in its response of the 15th March, 2006, was of the view that it must "*be demonstrated that the development is sustainable in transport terms, with a clear indication being given of the assumed mode split between car and non-car modes and the basis for this assumption"* and that over-development along the Luas corridor was undesirable. In this regard it stated it was concerned as to the scale of the proposed development. It further stated that a proposed development should demonstrate that it would not interfere with the upgrading of the Luas/metro line and that pedestrian movement should be provided for.

3.7 The respondent appointed one of its planning inspectors to prepare a report on the appeals. A report was prepared dated the 3rd August, 2006. It recommended that planning permission be granted, subject to twenty nine conditions. At p.11 of his report the inspector dealt with the development plan policy. He noted that under the development plan the site was zoned "objective E" (i.e. to provide for economic development and employment). He continued that within an area so zoned, that residential, restaurant and shop uses would, however, be open to consideration and that they "*may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects and would otherwise be consistent with the proper planning and sustainable development of the area".* He found that in "objective E" areas, residential uses may be acceptable where the primary use, employment creation, was not jeopardised. At p. 23, in the section of the report headed "*Assessment and Recommendation*" he concluded as follows:-

> *"12.3 …Notwithstanding the Appellants concerns on this issue I consider that the general zoning of the site, the specific objectives for the Estate and other relevant employment policies would not presume in principle against a development of this nature subject to compliance with the further criteria set out."*

3.8 As to the density, mix and form of the development, the inspector noted that the preference of the applicant for the ground floor of the development was for retail and restaurant or office use. This, he further noted, was dependent upon traffic management which involved *inter alia* opening up Arkle Road to Blackthorn Avenue. He found that subject to an acceptable traffic regime that the applicant's preferred use would be acceptable.

3.9 The inspector made a finding that the issue of the cumulative effect of developments proposed along the LUAS line was not answered in the submissions made to the respondent. He remarked on p.35:-

*"12.38 I have carefully considered all the submissions on this traffic issue. I consider that the merits of this development on this issue to be very finely balanced. I would accept that the estate is suffering from significant congestion and that there appears to be an absence of a properly integrated land use transportation strategy to address this issue … It would, in my opinion, be open to the Board to refuse planning permission on the apparent absence of such in this case. However this must be balanced against the traffic management measures shown in association with this application and planned in the future, the proximity to public transport and other policies and objectives of the Council for the Estate and the Council's conditional support for the development. Overall and on balance I recommend that permission could be granted subject to implementation of the traffic management measures indicated with the exception that the proposed new junction at Arkle Road/Blackthorn Avenue be omitted."*

3.10 In the section of the report headed "*Conclusion"* he stated as follows at p. 36:-

*"12.40 The Board will note that I have expressed a number of significant reservations in regard to both the principle and detail of this development. The development is proposed in the apparent absence of a strategic land use/transportation document guiding the development of the overall Estate. There is also currently no strategic overview or policy in regard to tall buildings in the Dun Laoghaire-Rathdown County Council area, although this is presently being prepared. The Estate also presently suffers from considerable traffic congestion. …"*

Despite the above comments the inspector went on to recommend to the respondent that planning permission in respect of the proposed development be granted.

3.11 On the 23rd November, 2006, the respondent held a meeting in which the submissions on the file and the inspector's report were considered. It decided to issue notices under s.132 of the Act of 2000 to the applicant and to the planning authority seeking further information. It wrote, on the 7th December, 2006, to the applicant's agents, RPS, seeking *inter alia* further information concerning the issue of traffic. The letter stated:-

*"1. It is an objective of the Dublin Transportation Office strategy that the existing Luas line be upgraded to a metro type system in the future. The Board notes that the proposed development subject of the instant appeal entails certain road works in the wider area, including to the section of public road crossing the Luas line (Kilmacud Road Upper). The Board has concerns that such proposal may conflict with ensuring priority to the public transport system and with future upgrading proposals for the rail line, thereby inhibiting its development as a metro. The applicant is requested to examine the possibility of forming a grade separated crossing of the rail line at this location and indicate how this might be achieved.*

*2. The Board has concerns that the proposed new junction at Arkle Road with Blackthorn Avenue may increase congestion, as stated by the Transportation Department of the planning authority. The applicant is requested to submit revised proposals to omit this junction."*

On the same date it wrote to the planning authority. It sought information in identical terms to para. 1 of the letter to the applicant as quoted from above together with clarification of the following:-

*"The planning authority is requested to clarify the extent of potential and envisaged future residential and other development in Sandyford Industrial Estate, the favoured physical form of such development, the cumulative infrastructure requirements of such development and any proposals to meet the requirements of such future population, especially in terms of transportation, provision of open space and water supply. The planning authority is also requested to clarify if there is an intention to draw up a local area plan or action area plan to guide such future development."*

3.12 The respondent had also written to the NRA by letter dated the 11th December, 2006. The position of the NRA was outlined as follows in a letter of the 11th January, 2007:-

*"Dun Laoghaire Rathdown County Council has engaged consultants to prepare a Land Use and Transportation Study for Sandyford and Stillorgan Area. This study is at an advanced stage and outlines a transportation strategy for the area. It is the view of the Authority that the granting of permission to this development is premature pending the finalisation of the above study and the incorporation of its recommendation into any new developments."*

3.13 Responses were made to the requests for information by the applicant and the planning authority on the 25th January, 2007. The applicant indicated that it had corresponded with the RPA which had confirmed that the proposed scheme proposed no threat to public transport priority at the Blackthorn Avenue/Kilmacud junction as it operated at present and how it might operate into the future. It noted that the decision of the planning authority provided for the safe and proper implementation of a series of road works including at the proposed new junction of Arkle Road/Blackthorn Avenue, and it submitted that this should address the respondent's concerns as to potential congestion. In its submission of the same date the planning authority defended its decision to grant planning permission. It also informed the respondent that it had appointed consultants to prepare an Urban Framework Plan for the redevelopment of Sandyford Business Estate and adjoining areas, which included a Land Use and Transportation Study ("LUTS") of Stillorgan and Sandyford. It enclosed a copy of the LUTS, prepared by Faber Maunsell, with its submission.

3.14 The respondent then invited comments from the various parties as to the submissions received. The NRA's response of the 26th March, 2007, stated inter alia:-

> *"In relation to the planning application under consideration, it appears the scale of the development proposed is in excess of what was assumed in the LUTS [Land Use and Transportation Study] … Pending clarification of the issues raised by the Authority with respect to the LUTS and the finalisation of the Urban Framework Plan for the redevelopment of Sandyford Business Estate by Dun Laoghaire-Rathdown County Council, the Authority does not favour the granting of planning permission for this development. The comments of the Authority in its letter of the 14th February 2006 still apply."*

3.15 On the 12th October, 2007, the respondent sought further information from the planning authority, which was sent by it on the 30th and 31st October, 2007. The applicant, the planning authority, the DTO and the RPA were then invited to comment on the submissions of the NRA of the 12th January, 2007, and of the 27th March, 2007, by letter dated the 21st January, 2008.

3.16 On the 11th February, 2008, the Local Authority council met to consider the Sandyford Urban Framework Plan. The Manager, Mr. Owen Keegan, addressed the meeting and referred to four working papers that had been commissioned by the planning authority. In his note of the meeting, exhibited in the affidavit of Michael Donlon, Senior Administrative Officer of the respondent, sworn on the 26th November, 2008, Mr. Keegan described the findings in respect of the transport paper as follows:-

> *"In summary, the assessment suggests that with a series of new transport investment measures there is potential for total development in the Sandyford Business Estates Area of about 846,000m² of commercial development and 7,600 residential units. A comparison between the previous LUTS quantum and revised quantum of development is set out in the table below … The Council is currently assessing the feasibility of delivering these measures and the likely costs involved. It is also examining the potential to reduce the peak period traffic associated with different types of development."*

Mr. Keegan drew the following conclusions from the content of the working papers:-

> *"It is clear from the Working Papers that the Council is not and will not be in a position to determine the appropriate quantum of development to be permitted in the Sandyford Business Estates area until significant additional work is done in relation to foul drainage infrastructure, water supply and transportation infrastructure. Establishing the quantum of development to be permitted is critical to the preparation of an Urban Framework Plan for Sandyford. Work is continuing in relation to these infrastructure services and on other aspects of the Plan."*

The note also considered the quantum of development in the Sandyford Business Estates area. The number of developments included permitted developments and developments under appeal.

3.17 The applicant, in a letter of the 15th February, 2008, replied to respondent's request to comment on the submissions of the NRA, as follows:-

> *"1. NRA Letter of January 11th, 2007*
>
> *This letter effectively postulates that the granting of permission for the above development should await the completion of the Land Use and Transportation Study.*
>
> *Land Use and Transportation Study has subsequently been completed by Faber Maunsell and updated by them very recently. The Manager of Dun Laoghaire Rathdown County Council (Mr. Owen Keegan) presented this updated Report to Council members at the meeting of February 11th, 2008 and presented it to stakeholders at a meeting in the Royal Marine Hotel on February 12th, 2008.*
>
> *Mr. Keegan explained to both meetings that the Study outcome was that the planned transportation strategy would accommodate all developments permitted by the County Council. The separate ongoing strategy for processing future applications will take cognizance of any relevant transport constraints.*
>
> *…*
>
> *2. NRA Letter of March 26th, 2007*
>
> *… The only direct reference to the scheme is at the end of the letter wherein it is alleged, 'it appears the scale of the development proposed is in excess of what was assumed in the LUTS …' In fact, it appears to us – from examining the updated LUTS Study that all of the stated NRA concerns have now been considered by Faber Maunsell.*
>
> *We would also respectfully suggest that it is quite disproportionate for the NRA to argue that all transportation concerns in Sandyford should be resolved prior to granting permission for this development (on a site of about 0.6 hectares in a LUTS Study Area of 155 hectares –excluding roads). Should such an attitude consistently prevail then it is difficult to envisage that much development could be permitted."*

3.18 At para. 18 of his affidavit Mr. Smyth sought to explain the significance, in his view, of the statement said to have been made by Mr. Keegan at the meetings of the 11th and 12th February:-

> *"By letter dated 15 February 2008, the applicant's agents responded to An Bord Pleanála's letter of 21 January 2008 enclosing the NRA submissions … In the said response, the applicant's agents highlighted to An Bord Pleanála that the planning authority's county manager Mr. Keegan, had explained to both the Council, at its meeting of 11 February 2008, and to a meeting of stakeholders in respect of the Sandyford Estate which took place on 12 February 2008 that the 'planned transportation strategy would accommodate all developments permitted by the County Council. The separate ongoing strategy for processing future applications will take cognisance of any relevant transportation constraints'. I say that it is clear from the foregoing that a distinction was to be made between proposed developments for which planning permission had been granted by the Council, which included the development the subject matter of these proceedings, and future proposed development in respect of which the Council had not yet made a decision. The former would be accommodated by the existing planned transportation strategy, and transport constraints identified in the up to date report would therefore only impact upon the latter category of development, namely future development in respect of which no decision had been taken by the planning authority."*

3.19 Also on the 21st January, 2008, the respondent wrote letters to applicant and other parties to the appeals indicating that it intended to take into account certain matters and inviting submissions in respect of those matters to be received on or before the 18th February, 2008. Those matters were as follows:-

> *"1. The site of the proposed development is located in Sandyford Industrial Estate, where it is the land use zoning objective, as set out in the current Dun Laoghaire-Rathdown County Development Plan, 2004-2010, to provide for economic development and employment, with a related objective to support the area as a major employment centre, and for which area the planning authority has a vision for a high quality environment, accessible to sustainable modes of transport with a range of facilities.*
>
> *Having regard to the amount and type of development already existing or permitted in the Estate, to existing and significant constraints in the provision of adequate transport infrastructure to serve the area (in terms of road access and of public transport capacity), of water and drainage services, of social infrastructure (including educational facilities) and of recreation/amenity facilities, and to the absence of specific measures to address these constraints, it is considered that further development of the quantum proposed – notwithstanding the specific objective in the Development Plan to encourage high density apartment development in Sandyford Business Estate – might militate against the land use zoning objective for the area and conflict with the vision of the planning authority for a high quality and accessible environment. The proposed development might, therefore, be contrary to the proper planning and sustainable development of the area.*
>
> *2. Development of the kind proposed on the land might be premature by reference to*
>
> *(a) the existing deficiency in the road network serving the area, including considerations of capacity, and the prospective deficiency in the road network serving the area, which might arise because of the increased road traffic likely to result from the development and other prospective development and which might render that road network unsuitable to carry the increased road traffic likely to result from the development,*
>
> *(b) the existing deficiency in the provision of public transport facilities,*
>
> *(c) the existing deficiency in the provision of recreation/amenity facilities, and*
>
> *the period within which the constraints involved might reasonably be expected to cease. The proposed development might, therefore, be contrary to the proper planning and sustainable development of the area."*

3.20 In its response to the above matters the applicant noted that policy E8 of the development plan actually provided for residential development within an employment zoned area. It contended that the site was suitable for a high density development and it referred to a report prepared by HKR Architects lodged previously on the 3rd December, 2004, in this regard. It again noted the comments of Mr. Keegan at the meetings of the 11th and 12th February, 2008:-

> *" …*
>
> *Mr. Keegan explained (both at the council meeting and in a subsequent stakeholder presentation on February 12th)* ***that the four capacity studies provided a justification for all development, including the proposed development, already permitted or subject to a decision to grant permission, (including those on appeal), by Dun Laoghaire Rathdown County Council*** *[our emphasis] as any current deficiencies identified could readily be resolved using County Council resources.*
>
> *Mr. Keegan noted that future applications will be considered against the background of a Framework Plan which is under preparation and also noted that this Plan will take all due cognisance of perceived infrastructural constrains [sic] and potential capacity enhancement measures.*
>
> *This seems to us to clearly indicate that the Boards [sic] concern that the proposed development might undermine the proper planning and sustainable development of the area is not well founded. This is because the evidence based research which has now been compiled by Dun Laoghaire Rathdown County Council, confirms that the judgements of the planning authority to date on all major applications including the current scheme before The*

*Board, has been shown to fit, both within the strong development policy context for Sandyford, but also within current capacity capabilities. In this regard, we would argue that the proposed scheme is therefore consistent with the statutory development plan policy, is deliverable in this area within the range of services and infrastructural capability, will provide important new residential and related commercial accommodation for this growing urban district, and therefore is in full accordance with the proper planning and sustainable development of the area including the preservation and improvement of amenities thereof."*

3.21 As to the respondent's concern that the proposed development might be premature the applicant stated as follows:-

*"Again we note for the Board that at the two abovementioned meetings, Mr. Keegan also stated that he was confident that any current infrastructure deficiencies could be resolved in an appropriate timescale using the County Council's own resources. He also expressed confidence that any amenity/facilities deficiencies could similarly be resolved in a timely manner.*

*In this context we submit that the Boards related concern is not well founded and is readily resolveable within the current policy context and infrastructure programme of Dun Laoghaire Rathdown County Council. This scheme will of course attract a substantial range of financial contributions as part of any final permission.*

*In the context of current infrastructural deficiencies, we would note that the proposed development makes two key contributions to resolving problems namely:*

- *It allows the widening of Kilmacud Road Upper where it crosses Luas Line B (which is currently a key constraint)*
- *It implements the improvement of Blackthorn Avenue and Blackthorn Road*

*Also, in the context of current facility/amenity deficiencies the proposed development delivers three significant elements, namely:*

- *Gym*
- *Club Cinema*
- *Winter Garden/Panoramic Viewing Point*

*Thus, in summary, while we fully accept that some of the contextual Studies have taken a long period of time to prepare, it is evident that Dun Laoghaire Rathdown County Council now has a clear planning and development strategy for this area. It is equally clear that the proposed development is consistent with the current permitted component of this strategy. In addition, the positioning of this scheme within Sandyford is fully in accordance with the stated principles for supporting higher density residential use in this district. The scheme is at the right location and as confirmed by Dun Laoghaire Rathdown County Council, it can be implemented at this time in conjunction with the provision of services and related facilities."*

3.22 The planning authority wrote two letters to the respondent in February, 2008. The first letter stated that it would not have recommended that planning permission be granted if it considered that the proposed development did not accord with the development plan. In the second letter it indicated that the proposed development did not prevent the implementation of proposals for the improvement of the road network serving the estate. It enclosed the Sandyford LUTS, as updated in February, 2008 "*to have regard to the level of development permitted by Dun Laoghaire Rathdown County Council and the decisions by DLRCoCo to grant that are currently on appeal*". It is to be noted that Working Paper No. 3 concerning water supply found that water capacity in the area was currently beyond normal design parameters which had a resulting reduction in security of supply. It stated that steps could be taken to ameliorate that risk but that security of supply would have to await a new scheme. Also, in Working Paper No. 5 concerning foul drainage three hydraulic deficiencies were identified in Sandyford Village, on the Old Dublin Road and on the Lower Kilmacud Road. Upgrading work was deemed necessary to facilitate development and further studies were recommended.

3.23 By letter dated the 18th February, 2008, the NRA recommended to the respondent that the appeal be refused. It reiterated its observations of the 14th February, 2007. Also on the 18th February, the DTO, in its letter to the respondent restated its comments contained in its letter of the 15th March, 2006. It stated:-

*"The DTO reiterates the above issues and would emphasise that the deficiencies, outlined by An Bord Pleanála in relation to the road network and the provision of public transport facilities, should be appropriately addressed through the statutory planning process, for example, by the preparation of a Local Area Plan within.*

*This approach would allow for the evaluation of a range of development scenarios determined by the requirement to integrate land use and transport planning policy at the local and strategic level. It would also allow for the orderly development of individual sites within Sandyford Industrial Estate and guide the scaling and phasing of development, appropriately linked to improvements in transport and other supporting infrastructure. It is also important that this evaluation process be undertaken within the wider development context of the Luas line B/B1/B2 corridor."*

3.24 The respondent made a decision to refuse planning permission on the 8th April, 2008. It gave two reasons in its decision. They read as follows:-

*"1. The site of the proposed development is located in Sandyford Business Estate, where it is the land use zoning*

*objective, as set out in the current Dun Laoghaire – Rathdown County Development Plan, to provide economic development and employment, with a related objective to support the area as a major employment centre, and for which area the planning authority has a vision for a high quality environment, accessible to sustainable modes of transport with a range of facilities. Having regard to the amount and type of development already existing or permitted in the Estate, to existing and significant constraints in the provision of adequate transport infrastructure to serve the area (in terms of road access and of public transport capacity), of water and drainage services, of social infrastructure (including educational facilities) and of recreation/amenity facilities, and to the absence of specific measures to address these constraints, it is considered that further development of the quantum proposed, notwithstanding the specific objective in the development plan to encourage high density apartment development in Sandyford Business Estate, would militate against the land use zoning objective for the area and conflict with the vision of the planning authority for a high quality and accessible environment. The proposed development would, therefore, by itself and by the precedent it would set for other, similar high density development in the area, be contrary to the proper planning and sustainable development of the area.*

*2. Development of the kind proposed on the land would be premature by reference to:*

*(a) the existing deficiency in the road network servicing the area, including considerations of capacity, and the prospective deficiency in the road network serving the area, which would arise because of the increased road traffic likely to result from the development and other prospective development and which would render that road network unsuitable to carry the increased road traffic likely to result from the development,*

*(b) the existing deficiency in the provision of public transport facilities,*

*(c) the existing deficiency in the provision of foul sewerage facilities,*

*(d) the existing deficiency in the provision of recreation/amenity facilities*

*and the period within which the constraints involved might reasonably be expected to cease. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area."*

It continued:-

*"The Board noted that the Inspector, notwithstanding his final recommendation to grant permission, had expressed particular concern in his report regarding the absence of an overall planning framework for the Sandyford area, which would guide its redevelopment, including the extent of residential accommodation and the provision of public open space. The Inspector had also drawn attention to the significant traffic congestion affecting the Sandyford area and to the possible adverse cumulative impact of individual developments on the capacity of the Luas light rail line. He had considered that it would be open to the Board to refuse planning permission, particularly having regard to the absence of a properly integrated land use transportation strategy for the area.*

*In the notices issued under Section 132 and 137 of the Planning and Development Act, 2000, the Board referred to these and related matters, as well as the new issue of the adequacy of the sewerage system to serve the development. The Board carefully considered the submissions received in response to the said notices, including from the applicant and from the planning authority. In ultimately deciding not to accept the Inspector's recommendation to grant permission, the Board considered that these critical issues had not been resolved and that permission should be refused for the reasons set out."*

3.25 In addition to the decision of the respondent, an additional document entitled the "*Board's Direction"* is attached to the public file. It precedes the decision as it is a direction to the respondent's administrative staff to draw up an order. Additional information is contained in it. The applicant disputes that this document can be relied on for the purposes of the respondent's statutory duty to give reasons under s. 34(10) of the Act of 2000. The relevant part states:-

*"The submissions on this file, including those in relation to the notices issued under Sections 131, 132 and 137 of the Planning and Development Act 2000 and the Inspector's report were further considered at a meeting of the Board on the 1st April 2008. In particular, the Board considered the submissions from the planning authority and from RPS Planning Consultants (on behalf of the applicant) received on 14th February 2008 and 18th February 2008, respectively, on foot of the notices issued under Section 131 and 137. The applicant's planning consultant had asserted that adequate capacity (in terms of transport, water supply and drainage) could be made available to serve the proposed development and others, which are currently on appeal, but originally subject of a decision to grant permission by the planning authority. The applicant's consultant also indicated that the planning authority was satisfied that this is the case and cited the most recent statement of the Dun Laoghaire-Rathdown Manager and the related reports on drainage, water supply and transportation.*

*However, the Board was confirmed in its view, from examination of the reports on foul drainage, water supply and the road network in particular (compiled on behalf of Dun Laoghaire-Rathdown County Council and dated February 2008), that there are existing and significant deficiencies in the services available for new developments in the Sandyford Business Estate and adjoining lands and that, notwithstanding identification by the Council of a number of remedial actions, to date such measures have not been decided upon, approved or funded by the relevant authorities (with the partial exception of improvements to the water supply) so as to give certainty in respect of provision within a time-scale. Other issues, including the adequacy of a public transport system, the provision of public open space to serve the area and the availability of schools to serve the new population, have not been addressed in any material way, as would be necessary for high density residential development of the type proposed. The County Manager's report to the Council, of February 2008, wherein the main constraints on the development of the area were discussed, does not provide the necessary assurance of a material change in this position. It appears to the Board, therefore, that progress in the formulation and adoption of a planning strategy,*

*within which these issues can be addressed in a coordinated way, has not sufficiently advanced.*

*…"*

**4. The Issues**
4.1 The first issue involves a consideration of the circumstances in which a planning permission may be refused because of prematurity. The second issue is whether the respondent misconstrued the development plan, constituting an error of law, resulting in an *ultra vires* decision. Thirdly, the issue of delay arises. Finally, the adequacy of the reasons for its decision of the 8th April, 2008, must be considered.

**5. Prematurity**
5.1 Section 190 of the Act of 2000 entitles a person whose interest in land has been devalued as a result of a decision to refuse planning permission to claim statutory compensation. However, this entitlement is not absolute. Section 191 of the Act of 2000 goes on to provide that compensation is not payable, *inter alia*, where the reason or one of the reasons for refusal is a reason set out in the Fourth Schedule of the Act of 2000. The relevant portion of paragraph 1 of the Fourth Schedule provides:-

*"1. Development of the kind proposed on the land would be premature by reference to any one or combination of the following constraints and the period within which the constraints involved may reasonably be expected to cease-*

*(a) an existing deficiency in the provision of water supplies or sewerage facilities,*

*…*

*(d) the capacity of existing or prospective water supplies or sewerage facilities being required for any other prospective development or for any development objective, as indicated in the development plan,*

*(e) any existing deficiency in the road network serving the area of the proposed development, including considerations of capacity, width, alignment, or the surface or structural condition of the pavement, which would render that network, or any part of it, unsuitable to carry the increased road traffic likely to result from the development.*

*(f) any prospective deficiency (including considerations specified in subparagraph (e)) in the road network serving the area of the proposed development which-*

*(i) would arise because of the increased road traffic likely to result from that development and from prospective development as regards which a grant of permission under Part III, an undertaking under Part VI of the Act of 1963 or a notice under section 13 of the Act of 1990 or section 192 exists, or*

*(ii) would arise because of the increased road traffic likely to result from that development and from any other prospective development or from any development objective, as indicated in the development plan, and*

*would render that road network, or any part of it, unsuitable to carry the increased road traffic likely to result from the proposed development."*

**Counsels' Submissions**
5.2 Mr. Simons S.C., for the applicant, submitted that where a development is refused permission due to prematurity, thus having the effect of denying an applicant compensation, that there are certain criteria the respondent has an obligation to fulfill, that is, identifying the constraints that apply to the proposed development and identifying the period within which those constraints may reasonably be expected to be resolved. He added that if another prospective development was being relied upon by the respondent as a reason for deciding that a development was premature then such prospective development must also be identified by reference to an existing grant of permission, a statutory notice under s.192 of the Act of 2000 or the development plan. The respondent, he argued, could not have regard to possible prospective developments at large.

5.3 The interpretation of paragraph 1 of the Fourth Schedule of the Act of 2000 advanced by Mr. Simons was consistent, in his submission, with the judgment of Denham J. in *Hoburn Homes Ltd. & Anor. v. An Bord Pleanála* [1993] I.L.R.M. 368 where she held, in respect of the statutory predecessor of that provision, that compensation is a statutory right that should only be removed in clear and precise cases. His interpretation, he argued, was also in accordance with the judgment of the European Court of Human Rights in *Skibinscy v. Poland* (Judgment of the European Court of Human Rights 14th November, 2006) where a breach of the applicant's property rights was found in circumstances where they were not entitled to compensation under national law for their lands being made subject to a compulsory purchase order.

5.4 Mr. Simons characterised prematurity as an ephemeral concept. In a planning context he submitted that it meant that something was acceptable in principle, but not just at the moment. If a development was said to be premature, in his submission, this did not mean that a development was being refused for all time. Rather, he submitted, there must be some indication as to when the constraint was going to resolve itself in order to rely on it. If the constraint could resolve itself in a short time, however, that fell outside the realm of prematurity. This would also be the case, he contended, if the constraint could only resolve itself after a long time.

5.5 Ms. Butler S.C., for the respondent, submitted that the respondent had no role in identifying the period within which constraints may reasonably be expected to cease as, she submitted, the respondent is not responsible for the development of infrastructure and would never be in a position to remedy any constraints or in a position to direct the planning authority as to when such constraints should be remedied. She contended the respondent required a level of certainty that the constraints would be addressed in a reasonable timeframe and that it could not estimate when an existing constraint was going to cease without a concrete plan in place. She denied that there was a practical obligation on the respondent itself to positively engage with the constraints.

5.6 In this case, she submitted that at the time the planning authority granted planning permission in respect of the proposed development the necessary infrastructure was not in place and although the planning authority expressed itself willing, there were no plans for that infrastructure to be put in place. She submitted that the respondent was entitled to have regard to all the relevant material submitted in the appeals, which amply supported the position that there were very significant constraints affecting the roads, foul sewerage, water supply, public transport and amenities and, that in the absence of a plan to resolve these deficiencies, it was entitled to reach the conclusion that it did.

5.7 Ms. Butler sought to distinguish the case of *Hoburn Homes Ltd. & Anor. v. An Bord Pleanála* [1993] I.L.R.M. 368 on the basis that the land in that case was not actually zoned for residential development. She submitted that in that case Denham J. held that a development could not be said to be premature if the development was framed in such a way, as to suggest that the development would never happen and that something is only premature if there is a temporal constraint.

**Decision**
5.8 I am satisfied that the applicant's case on prematurity raises "*substantial grounds*". Accordingly, I would grant leave on this ground.

5.9 The applicant in *Hoburn Homes Ltd. & Anor. v. An Bord Pleanála* [1993] I.L.R.M. 368 was refused planning permission by reason inter alia that development on the site in question would be premature having regard to the order of priority for development in the Cork County Development Plan. The decision stated that the order of priority sought to minimize population expansion in excess of targets in the area in which the proposed development was located. An order of certiorari quashing the decision of the respondent was sought by the applicant on the basis that the Cork County Development Plan did not establish priority in respect of the lands in question and that, as a result, there was no basis in law for the decision. Denham J. interpreted para. 3 of the Third Schedule of the Local Government (Planning and Development) Act 1990, the predecessor of para. 1 of the Fourth Schedule of the Act of 2000, as follows at pp. 370-371:-

> *"Paragraph 3 of the Third Schedule of the Local Government (Planning and Development) Act 1990 is thus critical to the issues here. The paragraph must be construed carefully. The first words of the said paragraph are 'development of the kind proposed'. In this case it is the proposed residential development of 171 dwelling-houses at Maryborough Hill, Douglas, County Cork. The next phrase in paragraph 3 and in the reason given herein is 'would be premature'. The word 'premature' is in its general meaning indicates that something is done too early. The word 'premature' is defined in the Concise Oxford Dictionary, new edition, as:*
>
> *1 (a) occurring or done before the usual or proper time; too early (a premature decision);*
>
> *(b) too hasty (must not be premature).*
>
> *This meaning indicates that the action it refers to can be done at a later date but that as yet it is too early to take this action.*
>
> *The next phrase is paragraph 3 of the Third Schedule reads:*
>
> *by reference to the order of priority, if any.*
> *This indicates that there may be an order of priority indicated, or there may not be. The fact that no priority is indicated is not a reason for not using this paragraph. Thus the order of priority, if any, is not a decisive factor, the decisive factor must be found elsewhere.*
>
> *The balance of paragraph 3 of the Third Schedule states:*
>
> *for development indicated in the development plan*
> *This clearly ties the matter to the development plan. The development plan in issue here is the Cork County Development Plan 1986."*

5.10 The meaning attributed to "development" by Denham J. was development proposed in the specific area in the plan, that is, development proposed for the area in question. She stated that, in reaching this view, she was influenced by the definition of 'development' under the Act of 1963 and the fact that compensation is a statutory right that should only be removed in clear, precise cases. She held that for the purpose of reliance on the third schedule, there must be development indicated in the development plan and as the Cork County Development Plan did not provide for development for the area in question but, rather, the plan envisaged that the area would be maintained as scenic, prematurity could not arise and hence paragraph 3 of the third schedule of the 1990 Act could not be relied on.

5.11 In this case there is no doubt but that the proposed development is contemplated in the development plan. Thus *Holburn Homes Ltd*. must be distinguished from this case. The applicant relies on the stated willingness of the planning authority to resolve the infrastructural deficiencies identified by it. The constraints inhibiting development are clearly identified. The problem is not that the applicant's development is premature because of another prospective development. The problem is that that the infrastructural constraints are such that the respondent concluded that further development of the scale of the applicant's, including those developments for which permission was granted but which were subject to appeal, could not be permitted until the constraints identified were removed or until it was a clear that they would be dealt with, within a time scale that could accommodate development on this scale. As of February 2008 none of the necessary infrastructural works had taken place and the planning authority was still at the stage of considering the working papers which had outlined those deficiencies further. Moreover, the evidence demonstrates that no plans had

been formulated to resolve the constraints; no funding had been allocated by the planning authority in this regard and no timetable had been set out for the completion of the necessary works. Therefore, it is clear that there was no clear picture of when or how the constraints would cease. In these circumstances I am satisfied that the respondent was entitled to conclude that the proposed development, being one which would otherwise be permissible, was premature. Accordingly this ground fails.

**6. Development Plan**

**Counsels' Submissions**
6.1 Mr. Simons submitted that the respondent had misconstrued the development plan and in doing so had committed an error of law, amenable to judicial review. It was clear that the provisions of the development plan, he submitted, supported the development. Mr. Simons invited this Court to look at the issue *de novo* and he noted that the interpretation of a development plan had been held to be a matter of law by Barr J. in *Tennyson v Corporation of Dun Laoghaire* [1991] 2 I.R. 527, whose judgment was endorsed by McGuinness J. in *Wicklow Heritage Trust Ltd. v. Wicklow County Council* (Unreported, High Court, 5th February, 1998), whose judgment was, in turn, approved of by Kelly J. in *Cork County Council v. An Bord Pleanála* [2007] 1 I.R. 761. That this Court must not be confined to reviewing the reasonableness of the respondent's interpretation of a development plan was confirmed by Irvine J. in *Cicol Ltd v. An Bord Pleanála* [2008] I.E.H.C. 146, he submitted.

6.2 Mr. Simons noted that the relevant zoning objective for the site was "E8", namely, "*to provide for economic development and employment*". This, in his submission, encompassed and encouraged the construction of mixed use developments incorporating high density apartments. He further noted that the inspector, in his report, viewed the proposed developed as being consistent with the objectives set out in the development plan and that he found that, in principle, the development plan did not presume against the development. The respondent, in its stated reasons, he submitted, acknowledged that this development was consistent with the objectives of the development plan but that it then reversed itself by saying that the proposed development would militate against the land zoning objective for the area. He argued that in concluding as it did the respondent misdirected itself as to the construction of the development plan.

6.3 Ms. Butler submitted that no issue of interpretation of the development plan arises, but rather an assessment issue or in other words, how should the development plan be applied. The meaning of the relevant provisions of the development plan was clear, in her submission. She contended that the respondent had found that planning permission should not be granted given the infrastructural constraints and that it was these constraints that would militate against the local objectives in the development plan.

**Decision**
6.4 I would respectfully agree that questions as to the correct interpretation of a development plan are issues of legal interpretation and cannot be determined on reasonableness grounds. The reasonableness or otherwise of the particular interpretation applied by a planning authority or the respondent is irrelevant. The Court, asked to construe a development plan, must itself ascertain the true meaning of it applying the appropriate canons of construction.

The evidence in this case demonstrates that the respondent did not decide that the proposed development *per se* was inconsistent with the development plan. It did decide that the absence of adequate transport, drainage and social infrastructure and of an adequate plan to address those deficiencies warranted a refusal of permission and it found that it would militate against the land use zoning objective for the site in the context of the foregoing. It is apparent that the decision of the respondent was that the applicant's proposed development, if carried out without addressing the variety of infrastructural deficits mentioned, would militate against the land use zoning objective for the site, and not that the development was, *per se*, inconsistent with the development plan. No issue arose as to the interpretation of the development plan, far less a conclusion that the applicant's development was inconsistent with it. Therefore, the applicant has failed to show substantial grounds for contending that the respondent misconstrued the development plan rendering its decision *ultra vires*. I am satisfied that leave should not be granted on this ground.

**7. Material Error**

**Counsels' Submissions**
7.1 Mr. Simons submitted that the respondent committed a material error of fact, in that, the planning authority was imposing an informal moratorium on planning permissions in the area as of October 2007 but that the moratorium did not apply to the applicant's development, as planning permission had been granted but was under appeal. He noted that the planning authority in the Sandyford Urban Framework Plan and the working papers included developments under appeal.

7.2 In essence, the applicant complained that there was a misunderstanding or failure by the respondent to understand that the planning authority had included the applicant's development in the categories of permitted developments in respect of which the planning authority had concluded that there was adequate infrastructural provision. In misunderstanding this, it was argued, that it was as though the respondent was looking at the wrong development and that an error of that kind could be classified as having regard to irrelevant material or failing to consider essential relevant material.

7.3 Ms Butler submitted that there was no evidence at all that it did make this mistake but, that even if it did, it was of no consequence. She contended that the respondent was entitled to have regard to the material before it, which illustrated that there were serious deficits in the infrastructure with no plans to resolve those deficits. On this basis, the respondent, it was argued, was entitled to disagree with the planning authority.

**Decision**
7.4 I am satisfied that there is no evidence that the respondent made a material error of the kind alleged and it would appear that the applicant's case in this regard is no more than surmise or supposition on its part. That aside, even if there was such an error, the respondent was entitled to conclude, based on the available evidence, that there were infrastructural deficits which warranted a conclusion that the development was premature in the circumstances. I must conclude that the applicant has not raised substantial grounds on this point and, consequently, I refuse leave on this ground.

**8. The duty to give reasons**

**Counsels' Submissions**
8.1 Mr. Simons noted the respondent's statutory obligation to state the "*main reasons and considerations"* for its decision on an application for planning permission, pursuant to s. 34(10) of the Act of 2000. He submitted that the reasons given by the respondent were lacking as they did not adequately explain why it concluded that the proposed development would "*militate against*" the land use zoning objective for the site. Furthermore, he submitted that they did not specify the infrastructural deficiencies or constraints or the other prospective development, by which it is said that it would be premature to grant planning permission or when such constraints may reasonably be expected to cease. Thirdly, they did not reveal, in his submission, why the respondent rejected the planning authority's view that there would be sufficient infrastructural capacity to facilitate the proposed development and fourthly, they did not deal with the measures proposed to be taken by the applicant and the planning authority. There was also failure on the part of the respondent, in his submission, to outline why it was departing from the inspector's recommendations. He sought to distinguish *Dunne v. An Bord Pleanála* (Unreported, High Court, McGovern J., 14th December, 2006), upon which the respondent relied, on the basis that *Dunne* concerned the imposition of conditions in a planning permission whereas the instant case concerned a finding of prematurity, a non-compensatable reason.

8.2 The reasons given, Mr. Simons stated, borrowed extensively from the statutory language of paragraph 1 of the Fourth Schedule of the Act of 2000. That was not sufficient, he argued, to meet the statutory requirement contained in s. 34(10) of the Act of 2000. It was incumbent upon the respondent to give meaningful reasons and not merely replicate the statutory language. He relied on the judgment of Murphy J. in *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 in this regard.

8.3 It was also argued by Mr. Simons that it was not open to the respondent to rely on another document (i.e. the direction) as a source from which the respondent's reasons and consideration could be seen, in discharge its duties under s.34(10) of the Act of 2000. *Deerland v. Construction Ltd. v. The Aquaculture Licences Appeal Board* [2009] 1 I.R. 673 was cited in this regard. It was argued that *Sweetman v. An Bord Pleanála* (Unreported, High Court, Birmingham J., 9th October, 2009) was distinguishable as the comments of Birmingham J. concerning the adequacy of An Bord Pleanála's reasons were obiter and because the relevant provisions of the Roads Act under consideration in Sweetman did not impose an express duty to give any reasons or an equivalent duty to state the reasons in the notification of the decision, as contained in s. 34(10) of the Act of 2000.

8.4 Ms. Butler submitted that it has long been accepted that the obligation to give reasons for a planning decision does not require the decision maker to give a discursive judgment on the issues in the application or appeal. She referred to the dicta of Murphy J. in *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750, of Kelly J. in *Mulholland v. An Bord Pleanála (No. 2)* [2006] 1 I.R. 453, of Birmingham J. in *Sweetman v. An Bord Pleanála* (Unreported, High Court, 9th October, 2009) of McGovern J. in *Dunne v. An Bord Pleanála* (Unreported, High Court, 14th December, 2006) and of this Court in *Grealish v. An Bord Pleanála* [2006] I.E.H.C. 310.

8.5 Ms. Butler rejected the applicant's contention that the reasons given by the respondent were perfunctory and formulaic. As to the applicant's argument that regard should not be had by this Court to the respondent's direction, she submitted that the decision of *Deerland Construction Limited v. The Aquaculture Licences Appeals Board* [2009] 1 I.R. 673, upon which the applicant relied, was inconsistent with the earlier decision of the Supreme Court in *Ní Éilí v. Environmental Protection Agency* (Unreported, Supreme Court, 30th July, 1999) and that the latter authority should be followed.

**Decision**
8.6 It is well settled that the respondent may depart from the recommendations of its inspector. The duty on the respondent to give reasons when so departing was described recently by Hedigan J. in *O'Neill v. An Bord Pleanála* [2009] I.E.H.C. 202 at para. 28 as follows:-

> *"…section 34(10)(b) only requires that the respondent should explain its decision differ from the overall recommendation of an inspector, as opposed to the specific conditions suggested by him of her."*

Hedigan J. noted the following conclusion reached by McGovern J. in *Dunne v. An Bord Pleanála* [2006] I.E.H.C. 400:-

> *"It seems to me that the submission of the first respondent is correct and that there is no obligation on the first named respondent to give reasons why it disagreed with its planning inspector on a particular condition which was recommended by the inspector to be imposed."*

The decision on its face reveals clearly why the respondent did not follow the recommendation of the inspector. The respondent recognised the variety of infrastructural deficits as set out in the decision, but, crucially expressly concluded, as set out in the decision, that there were not in place plans of sufficient clarity, or certainty as to their implementation, to satisfy the respondent that the deficits in question would be overcome so as to accommodate the development, if

permission were granted. As the law on this point is well settled and as, in my opinion, the decision clearly on its face reveals the reason why the respondent did not accept the recommendation of the inspector, I am satisfied that the applicant has failed to demonstrate substantial grounds on this aspect of its challenge to the adequacy of the reasons.

8.7 As a matter of law I am satisfied, that regard may be had by this Court in discerning the reasons and considerations for the decision, to the "*Direction*" of the respondent. Its contents reflect the action the respondent would take and what the reasons for that action were. However, I am satisfied that, on their own, the reasons given by the respondent in its decision of the 8th April, 2008 were more than sufficient to discharge its statutory duty under s. 34(10) of the Act of 2000. The decision taken in its entirety as quoted above at para. 3.24 demonstrates that the respondent concluded that there were a variety of infrastructural deficits, that even though the planning authority may have been of the view that there could be sufficient capacity to accommodate the proposed development, they disagreed because of the absence of plans of sufficient maturity to render a clear concrete and timely solution to the various deficits so as to accommodate the applicant's development. It is in this context that the reason fastened on by the applicant namely "*would militate against the land use objective for the site*" is clearly couched. In the overall scheme of the reasons given, it is clear in my view, that what was seen by the respondent as militating against the land use objective was the development taking place without the necessary infrastructures and not the development *per se*. Having regard to the clarity and fullness of the reasons and consideration set out in the decision itself, I have come to the conclusion that the applicant has failed to show substantial grounds on the challenge to the adequacy of the reasons and considerations given in the decision of the 8th April, 2008, and therefore I would not grant leave in respect of this latter aspect of the reasons ground.

**9. Delay**

**Counsels' Submissions**
9.1 Mr. Simons argued that it took two and a half years to determine these appeals which was in breach of the respondent's duty under s. 126 of the Act of 2000 to ensure that appeals are disposed of as expeditiously as may be. He further argued that the delay was in contravention of the applicant's rights under Article 6 of the European Convention on Human Rights. The applicant could not, he submitted, be held culpable for any delay. He contended that the applicant was entitled to damages.

9.2 Ms. Butler submitted that the respondent had at all times exercised its powers *bona fide* and had been active in dealing with the appeal. She submitted that there was clearly a requirement that a planning decision would be made on the basis of full information where the community at large would be affected and that it was entirely appropriate that the statutory bodies and the parties be consulted and their views obtained in circumstances where one of the principal concerns with the development was infrastructural constraints. This case, she added, did not meet the criteria as set out by the Supreme Court for an award of damages against a statutory body in *Beatty v. The Rent Tribunal* [2006] 2 I.R. 191.

**Delay**
9.3 I am satisfied that the applicant has not raised substantial grounds in respect of the argument it makes on delay. Because of the lengthy time the appeal took an arguable ground may exist but not a substantial ground. All of the steps taken by the respondent which added to the overall time it took to dispose of the appeal, having regard to the size of the proposed development, the infrastructural constraints, the interests of various statutory agencies, the interests of the local residential and business communities, the interests of the wider community in the area of the planning authority, were necessary for the fair disposal of the appeal. I am satisfied that there was no culpable loss of time incurred during this process and the time taken was unavoidable if the appeal was to be heard and determined in a manner that was fair to all concerned and to enable the respondent deal with the very difficult and complex problem which was at the heart of the matter as discussed above. I am satisfied that the applicant has not raised substantial grounds in respect of the argument it makes on delay.

**10. Conclusion**
10.1 For the reasons set above I have come to the conclusion that apart from the "*prematurity*" ground the applicant has failed to demonstrate substantial grounds for contending that the decision impugned should be quashed. As indicated above, I concluded, having granted leave on the "*prematurity*" ground, that in the substantive hearing of the matter, the applicant failed on this ground. In respect of the other grounds on which I refused leave, although it may be so obvious as to be unnecessary to say it, if I am wrong in refusing leave, having heard the matter also as a full hearing of the judicial review application, I have also concluded that in respect of each of these grounds, I would reject the applicant's case.

Accordingly, I must refuse the reliefs sought in these proceedings.