Neutral Citation Number: [2006] IEHC 177

THE HIGH COURT
JUDICIAL REVIEW

[2004 No. 138 JR]

IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT 2000 AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT 2000

BETWEEN

SHIRLEY O'BRIEN

APPLICANT

AND
DUN LAOGHAIRE RATHDOWN COUNTY COUNCIL

RESPONDENT

AND
FRANCIS SEARSON, GERALDINE SEARSON AND AN BORD PLEANÁLA

NOTICE PARTIES

Judgment of O'Neill J. delivered the 1st day of June, 2006.

1. In these proceedings the applicant by a notice of motion seeks leave to apply, pursuant to s. 50 of the Planning and Development Act, 2000, for judicial review of a decision of the respondent as Planning Application under Register Reference No. D03A/1038, whereby the respondent granted permission for:

> *"…demolition of existing buildings and the reinstatement of the original mews/coach house buildings and construct the following; the basement for use as wine storage vaults, extensions to the front and rear of the original mews buildings to contain two retailing units at ground floor level and two-bedroom apartments at first floor level with parking for two no. cars. Part of this development is within the curtilage of No. 6 Longford Terrace, a protected structure."*

2. The applicant is by occupation an engineer and resides in a top floor flat at 15 Longford Terrace Monkstown in the County of Dublin. At paragraph 4 of her grounding affidavit she avers that she is a member of An Taisce and has been so for about three years and that she is a member of the Dun Laoghaire Association of An Taisce and an active member of the Planning Committee of the Dun Laoghaire Rathdown (East) Branch of An Taisce.

3. The respondents are the planning authority which granted the permission sought to be challenged in these proceedings. The first and second named notice parties were the applicants for the planning permission and the owners of the two mews premises at 6A and 7A Monkstown Crescent, the site of the proposed development. These premises consist of two mews buildings which in recent times have been used commercially, one as a retail wine shop and the other, though vacant for some time, as an outlet for supplying kitchens. The first named notice party has conducted for many years a now well established business in the wine retail trade from this premises and the primary objective of the development now proposed is to provide a basement or underground level wine cellar to service the demands of his business. This cellar would extend under what is now the two mews buildings. Ancillary to that purpose but nonetheless an important and indeed integral part of the development is the re-construction of the retail units and also two, 2 bed roomed residential apartments.

4. Whilst An Taisce were objectors to the grant of the planning permission, the applicant in this case did not in her personal capacity object to or make observations in relation to the planning application because her objections were expressed by the An Taisce objection.

5. Before the applicant can be given leave to apply for judicial review as sought, she must comply with the provisions of s. 50 of the Planning and Development Act, 2000 and as a number of the provisions in this section are relevant to the issues that arise on this application it is well to set out the relevant parts of this section which are as follows:

> *"50(2) A person shall not question the validity of -*
>
> *(a) a decision of a planning authority -*
>
> *(i) on an application for a permission under this Part, or*
>
> *…*
>
> *(b) a decision of the Board -*
>
> *(i) on any appeal or referral*
>
> *…*
>
> *otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) ("the Order")…*
>
> *4) (a) (i) Subject to subparagraph (iii), application for leave to apply for judicial review under the Order in respect of a decision referred to in paragraph (a) (i) or (b) (i) of subsection (2), shall be made within the period of 8 weeks commencing on the date of the decision of the planning authority or the Board, as the case may be.*
>
> *…..*
>
> *(iii) The High Court shall not extend the period referred to in subparagraph (i) or (ii) unless it considers that there is good and sufficient reason for doing so.*
>
> *(b) An application for leave to apply for judicial review shall be made by motion, on notice (grounded in the manner specified in the Order in respect of an ex parte motion for leave) –*
>
> *(i) If the application relates to a decision referred to in paragraph (a) of subsection (2), to the planning authority concerned and, with regard to a decision on an application for permission under this Part, to*

the applicant for the permission where he or she is not the applicant for leave

…..

and leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed, and that the applicant has a substantial interest in the matter which is the subject of the application.

(c) Without prejudice to the generality of paragraph (b), leave shall not be granted to an applicant unless the applicant shows to the satisfaction of the High Court that –

(i) the applicant-

(I) in the case of a decision of a planning authority on an application for permission under this Part, was an applicant for permission or is a prescribed body or other person who made submissions or observations in relation to the proposed development,

….

or

(ii) in the case of a person (other than a person to whom clause (I), (II), (III), (IV) or (V) applies), there were good and sufficient reasons for his or her not making objections, submissions or observations, as the case may be.

(d) A substantial interest for the purposes of paragraph (b) is not limited to an interest in land or other financial interest…".

6. Thus the applicant in order to get leave must demonstrate firstly that there are substantial grounds for contending that the planning permission challenged is invalid; secondly that the applicant has a substantial interest in the matter which is the subject of that application, and thirdly that there are demonstrated good and sufficient reasons for the applicant not having made objections, submissions or observations in relation to the planning application. Finally, even if the applicant fails to demonstrate a substantial interest or good and sufficient reason for not having made objections submissions or observations in the planning application, it remains residually to consider whether the grounds for contending that the decision is invalid establish a clear breach of the law or abuse in the discharge of its responsibilities as a planning authority, on the part of the respondent, such that the matter so revealed should not be sheltered from judicial scrutiny, as was envisaged by Keane J. as he then was in the case of *Lanceford Ltd. v. An Bord Pleanála* (No. 2) [1999] 2 I.R. at 270, and likewise as discussed in the judgment of Macken J. in the case of *Harrington v. An Bord Pleanála,* Unreported, High Court 26th July, 2005.

7. I propose to deal with the issues that arise in this application in the order set out above.

Are there Substancial Grounds for Contending that the Decision is Invalid.

8. The test to establish that the threshold of "substantial" is reached in regard to the grounds put forward has been discussed in a number of cases. In *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. Carroll J. held that "*substantial grounds*" meant:

"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 in trying to ascertain what the eventual result would be. I believe I should go no further than satisfying myself that the grounds are "substantial". A ground that does not stand any chance of being sustained (for example where the point for being decided in another case could not be said to be substantial). I draw a distinction between the grounds and the arguments put forward in support of these grounds. I do not think I should evaluate each argument and say whether I consider it 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 to this argument, at the next stage, to those which I believe may have some merit."

9. Geoghegan J. in the case of *Jackson Way Properties Ltd. v. The Minister for the Environment*, (Unreported, July 2nd 1999 said the following:

"I am satisfied that it was clearly intended by the Oireachtas that stricter criteria be applied to the granting of leave than would be applied on an ex parte application in an ordinary judicial review. Once a court has established that the point at issue in the proposed judicial review are not trivial or tenuous, the court must assess whether there is real substance in the argument and not merely that it is just open to argument."

10. McKechnie J. in *Kenny v. An Bord Pleanála* (No. 1) 2001 1 I.R. 565 said the following:

"Indeed, in a consideration of these words, one can think of grounds which could be both reasonable and arguable and yet fall significantly short of meeting the threshold of being "substantial". The words "trivial or tenuous" are undoubtedly helpful but probably more so as words of elimination rather than qualification. The description of being "weighty" and of "real substance" are in my view of considerable importance in the interpretation of this threshold phrase. However, it must also be remembered that, from a base say, opposite substantial, namely insubstantial, an applicant must navigate the considerable distance in between, and in addition, must arrive at and meet the threshold whilst still afloat and on course. In truth I feel, whilst many attempts have been made to explain or convey "the equivalent of its meaning" I am not certain that one can better the original phrase itself."

11. Macken J. in the case of *Harrington v. An Bord Pleanála*, supra, said the following on this topic.

"It can only be on the basis of the particular and peculiar facts of each individual case that a court can determine whether or not one has reached the area of "weighty" which is constituted by an accumulation of argument on the law and/or the establishment of facts which taken together make it abundantly clear that the matter is sufficiently strong to be considered weighty. In that regard I do not consider that the standard which is to be reached is different depending on the facts of any particular case. Rather that the standard of weightiness remains the same, that the achievements

of that standard may be more difficult in some cases than in others."

12. I would agree with all of the foregoing judicial statements as discerning the characteristics of what constitute "*substantial*" grounds.

13. I would venture to add the following.

14. As has been said frequently, the purpose of the leave application, be it ex parte or on notice is to act as a filtration process. The filter is either the arguable grounds test or the substantial grounds test. The objective of the arguable grounds test in reality is to separate out those cases which "*could*" succeed from those that fall below that threshold.

15. It is clear from s. 50 and also from similar legislative provisions that the Oireachtas envisaged a significantly higher threshold, in providing for the "*substantial*" grounds test.

16. Necessarily in my view this means that one must move to the next discernable step upwards. That can only in my opinion, lead to the equation of "*substantial*" with a reasonable chance of success.

17. In this case the applicant has set out an extensive range of grounds in her statement of grounds but I think these can be fairly summarised to the following:

> 1. The grant of planning permission for the demolition of 6A and 7A Monsktown Crescent, they being protected structures, was in breach of s. 57(10)(b) of the Planning and Development Act, 2000, which prohibits a planning authority or the board on appeal from granting permission for the demolition of a protected structure save in exceptional circumstances. Here the respondents gave no consideration to what might have been exceptional circumstances and hence the grant of the planning permission sought to be challenged was *ultra vires* the powers of the respondents.
>
> 2. The grant of the impugned planning permission was a material contravention of the 1998 Development Plan in several respects as follows:
>
> > (a) There was a breach of the Architectural Conservation Guidelines for Planning Authorities [2004] in which at paragraph 3.4.2 there is a presumption in favour of the preservation of protected structures and their demolition may only be permitted in exceptional circumstances. These guidelines are imported into and were part and parcel of the Development Plan 1998, by virtue of Variation No. 3 of the Development Plan as made by the respondents on 10th September, 2001.
> >
> > (b) The respondents materially contravened paragraphs 2.7.1, 2.7.2, 2.7.3, 2.7.5, 3.1.4, 3.3.1, 3.3.5, and 3.3.6., of the Development Plan.
> >
> > (c) Having regard to the breaches of the foregoing provisions of the Development Plan and the failure of the respondents to avail of the procedure set out in s. 34(6) of the Planning and Development Act, 2000, the grant of the permission, impugned, was ultra vires the powers of the respondents and void.
>
> 3. By reason of the refusal by the respondent to grant planning permission in respect of an identical or very similar development of the same premises in respect of which, permission was sought on application reference D03A/0545, in respect of which, permission was refused on the basis that the demolition of the buildings in question would materially contravene the development policy as set out in ss. 2.7.2 and 2.7.5 of the Development Plan, the permission now granted is irrational and should be quashed.

18. The first ground set out above raises the issue of whether or not there was a breach of s. 57(10) of the Act of 2000. This section reads as follows;

> *"57(10)(b) A planning authority, or the Board on appeal, shall not grant permission for the demolition of a protected structure or proposed protected structure, save in exceptional circumstances."*

19. Necessarily the first issue to be confronted in this regard is whether or not No.'s 6A and 7A Monsktown Crescent were "*protected structures*".

20. In s. 2 of the Act of 2000, "*protected structure*" is defined as follows:

> *"(a) a structure, or*
>
> *(b) a specified part of a structure, which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is in the attendant grounds of the structure and which would not otherwise be included in this definition."*

21. The term "*structure*" is defined in s. 2 as:

> *"'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-*
>
> > *(a) where the context so admits, includes the land on, in or under which the structure is situated, and*
> >
> > *(b in relation to a protected structure or proposed protected structure, includes-*
> >
> > > *(i) the interior of the structure,*
> > >
> > > *(ii) the land lying within the curtilage of the structure,*
> > >
> > > *(iii) any other structures lying within that curtilage and their interiors, and*

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).”

22. The application for planning permission in this case proceeded upon the basis that the structure at 6A Monkstown Crescent was part of the curtilage of No. 6 Longford Terrace. I take it to be the case therefore that there is no dispute but that 6A Monsktown Terrace forms part of the curtilage of 6 Longford Terrace. Equally it was not in dispute that 6 Longford Terrance is a “*protected structure*” as so defined in s. 2 of the Act of 2000.

23. As the development proposed is a unitary cohesive development affecting both and indeed including the demolition of 6A and 7A Monkstown Crescent, it would appear to me to be immaterial that 7A Monsktown Crescent may not be part of the curtilage of 7 Longford Terrace, having regard to the fact that the overall development necessarily involves the demolition and redevelopment of 6A Monkstown Crescent which is part of the curtilage of a protected structure.

24. In my view it is clear or at the very least it can be said that there are substantial grounds for contending that 6A Monkstown Crescent is a structure which attracts the status of being a “*protected structure*” by virtue of the aforementioned definition of structure or protected “*structure*” as set out in s. 2 of the Act of 2000.

25. What all of this means is that s. 57(10)(b) has application to the impugned permission.

26. The planning permission challenge in this case is dated 19th December, 2003, and it is supported by a report dated 18th December, 2003, signed by the senior planner and endorsed by the senior executive officer of the respondents. Nowhere in this detailed report is there any reference whatsoever to a consideration of exceptional circumstances in the context of the prohibition of demolition contained in s. 57(10)(b) of the Act of 2000. There is simply no evidence at all of any consideration of that topic.

27. The provisions of s. 57(10)(b) are clear and they are expressed in mandatory terms and are to the effect that where a planning authority is considering the demolition of a protected structure it can only do so if it considers that there are exceptional circumstances which justify demolition.

28. As the evidence stands in this case at the moment, it appears that this simply was not done before permission was granted to demolish the structures in question and that being so in my opinion the applicant has established that on this ground there are substantial grounds for contending that the decision to grant planning permission should be quashed.

29. The next ground that the applicant advances is that the proposed development is a material contravention of the development plan on the basis that there was a breach of the Architectural Guidelines imported into the development plan by virtue of paragraph 3.1.1 of the Development Plan as introduced into the Development Plan by variation No. 3 made on 10th September, 2001.

30. The relevant portion of these architectural guidelines is at paragraph 3.4.2 which is as follows:

“3.4.2 CONSIDERATION OF PROPOSALS FOR FULL OR PARTIAL DEMOLITION OF A PROTECTED STRUCTURE OR A STRUCTURE WITHIN AN ACA.

There is a presumption in favour of the preservation of protected structures and their demolition may only be permitted in exceptional circumstances. Proposals to demolish all or part of a protected structure requires the strongest justification and should generally be refused. The onus should be on the applicant to make a case for demolition.

- *Where the demolition is proposed, the planning authority should consider:*
- *How important is the structure?*
- *What contribution does it make to its surroundings?*
- *Has every effort been made to sustain the existing use of the structure?*
- *Has every effort been made to find a suitable new use for the structure?*
- *Could the structure be incorporated into a new development on the site?*
- *Is the condition of the structure being used to justify demolition?*
- *If so has the structure been deliberately endangered in order to justify its removal?*
- *In the case of an accidental damage, such as fire, of what interest is there surviving fabric? Is demolition or partial demolition justifiable in the interests of health and safety?*
- *Could the structure be made safe by carrying out repairs or providing temporary support or shelter to the fabric?*
- *What effect would removal of the structure have on the setting of any adjacent protected structures? For example, what would be the implications of allowing the demolition of a building which forms part of an architectural composition such as a terrace?*
- *Where partial demolition is proposed, is the removal of significant elements proposed? These would include features which would help to constitute the character and special interest of the structure.*
- *If significant elements were removed, how would the special interest of the structure be affected?*
- *Is the partial demolition required in the interests of preservation of the remainder of the structure Is this justifiable?*
- *Would partial demolition affect the balance of asymmetrical or balanced composition?*

- *Does the special interest of the structure lie in its largely unaltered state?*

- *If so, could permission be given to demolish any part of it without damaging that special interest?*

- *Proposals to demolish any structure within an ACA should be given careful consideration (would demolition affect the character of an ACA?."*

31. Is it clear from the report of the 18th December, 2003, aforementioned, that the specific terms of the above architectural guidelines were not expressly addressed in that report. However, having regard to the fact that the essential feature of the proposed development namely the construction of a basement level wine cellar extending beneath both structures, couldn't in all probability be accomplished without the demolition of the existing structures at 6A and 7A, necessarily the respondents had to have considered demolition and it is implicit in my view that the questions which are posed in the draft guidelines or those of them that could have had a relevance, were of necessity considered. This conclusion is reinforced by the fact that the report sets out a history of previous planning applications and the reasons for their refusal and then goes on to deal with the proposed changes in the planning permission now challenged which address the reasons for refusal in previous planning applications.

32. I am not satisfied therefore that the applicant has shown that there was a failure on the part of the respondents to have regard to the architectural guidelines such as to amount to a material contravention of the Development Plan and hence in my view the applicant has not demonstrated, on this ground that there are substantial grounds for contending that the permission should be quashed.

33. The next ground advanced by the applicant is that there were material contraventions of the aforementioned paragraphs of the Development Plan itself.

34. It would appear to me that several of these paragraphs in the Development Plan are irrelevant to this dispute.

35. Paragraph 2.7.1 of the development plan is in very general terms and concerns the policy of the Council to protect the urban and rural environment and heritage of the county. There is clearly no breach here.

36. Paragraph 2.7.2 is relevant and is in the following term under the heading "*Conservation Areas*."

> *"It is the policy of the Council that areas which are of particular environmental qualities which derive from their overall layout design and unity of character be designated as conservation areas."*

37. "In conservation areas, the Counsel will have particular regard to:

> *"(i) the impact proposed development on the immediate environs of the streetscape in terms of compatibility of character, design, colour and finish, massing of built form and intensity of site used,*
>
> *(ii) the impact of proposed development on the existing amenities, character, and heritage of these areas and*
>
> *(iii) the likely impact of the proposed use on the character of the site and its environs.*
>
> *The counsel will carry out additional baseline surveys of existing conservation areas and will examine the need for the designation of further areas as conservation areas over the period of the plan. Conservation areas are shown on the development plan."*

38. It is common case that the Monkstown Crescent in its entirety is part of the conservation area and hence paragraph 2.7.2 of the Development Plan applies to the impugned permission. In my view the report of the 18th December, 2003, together with the planning permission itself demonstrates an ample consideration of the provisions of paragraph 2.7.2, and indeed the report makes plain that through the various permissions that were sought and rejected and culminating in the one now impugned, that there was a continuous regard to paragraph 2.7.2 arriving ultimately in the permission granted, at a point where the requirements of paragraph 2.7.2 were complied with.

39. In my view paragraph 2.7.3 has little or no bearing on the issues under consideration in these proceedings.

40. Paragraph 2.7.5 which is under the heading "*Retention of Older Buildings*" and is in the following terms:

> *"It is the policy of the counsel to encourage the rehabilitation renovation and reuse of existing older buildings where appropriate, in preference to their demolition and re-development."*
>
> *"This policy will be implemented into the development control process and is consistent with the achievement of sustainability."*
>
> *"To facilitate retention of older buildings the Council will give consideration to the relaxation of car parking and other relevant control requirements in appropriate circumstances."*

41. In my view the applicant has failed to demonstrate any breach of this paragraph. As said earlier a consideration of the essential features of the proposed development namely the creation of a basement level wine cellar brought with it necessarily a consideration of the necessity of the demolition of existing structures.

42. Paragraph 2.7.5 is not a prohibition on demolition of older buildings and in my view a consideration by the respondents of the advantages of the proposed development and its essential features necessarily involved a consideration of whether or not it was appropriate to require the retention of the existing structures or not. In the circumstances therefore I am satisfied that the applicant has failed to demonstrate on this ground that there are substantial grounds for contending that the permission should be quashed.

43. Paragraph 3.1.4 in my view is of no relevance to the issues raised in the proposed development or to these proceedings. Similarly in my view paragraphs 3.3.1, 3.3.5 and 3.3.6 have little or no relevance to the current dispute and do not furnish grounds for contending that the permission should be quashed.

44. It necessarily follows of course that there being no substantial grounds for contending that there were any material contraventions of the Development Plan, that there was no need for the respondents to have recourse to the procedures set out in s. 34(6) of the Act of 2000.

45. In summary therefore insofar as the obligation rests on the applicant to demonstrate that there are substantial grounds for contending that the planning permission impugned should be quashed, in my view the applicant has shown only one substantial ground and that is in respect of his complaint that there was a breach of s. 57(10)(b) of the Act of 2000.

Has the Applicant a Substancial Interest in the matter which is the subject of the Application
46. The applicant claims to have had a substantial interest in the subject matter of this planning permission for the following reasons:

> 1. She has resided for ten years in the top floor flat at No. 15 Longford terrace.
>
> 2. The proposed development is within sight of the rear windows of her apartment and therefore its visual impact affects her.
>
> 3. She lives in the Monkstown community and is entitled to enjoy the amenities of that community and specifically to enjoy and share in its architectural heritage which necessarily involves the retention of its original architectural heritage such that the demolition of any part of it and specifically the structures in issue in this case, injures her enjoyment or sharing in the antiquity of these buildings which is an essential feature of the amenity of this conservation area.
>
> 4. She is a member of An Taisce and of its planning committee for the area in question and is also a member of the Monkstown Salthill Resident Association and has an avid and active interest in the proper planning of the area where this development is proposed.

47. The proposed development is some 77 mtrs away from the No. 15 Longford terrace. Thus its location as seen from the back windows of the plaintiff's apartment would be quite peripheral to the view from there. In my view having regard to the fact that the development will adhere to the original building line and that the roof profile will be reinstated and that the original gable walls will be retained and that original materials such as stone and natural slate are to be salvaged and reused, and where new materials have to be used that they must be in the style of the original, it cannot be said that the proposed development would have any significant detrimental effect on the visual amenity which the applicant enjoys, looking out from the back windows of her apartment, and hence in my view in this regard she has failed to establish that she has a substantial interest.

48. The applicant expressed a deep concern for the preservation of the original structures as necessary in order to preserve the architectural and historical amenity of the area. She expressed this in the context a question posed as to what her position would be if the structures which are the subject matter of the impugned permission were simply demolished and reconstructed exactly as they were. Her submission was that that would be wholly unsatisfactory because an exact reconstruction of the present structures would incur the loss of the antiquity of the original structures with all of the heritage and architectural history that went with them and as a consequence because of that loss, the amenity of the area in which she lives would be degraded.

49. If the applicants were right in that context, namely that this gave her a substantial interest, in effect, her interest is the preservation of a total prohibition on demolition of structures in this conservation area, such as 6A and 7A, and it is this interest which constitutes, the nature of the interest she asserts as now being a substantial interest.

50. In my view it is quite clear from paragraph 2.7.2 and 2.7.5 of the development plan that whilst a great deal of emphasis and stress and importance is attached to the preservation of older buildings, it is nonetheless contemplated that there can be a demolition of older structures such as the ones the subject matter of the impugned permission. In my opinion, it cannot be said, that someone can have a substantial interest solely by virtue of the assertion of a point of view which is clearly at odds with the aforesaid provisions of the development plan. The pursuit of an objective such as the preservation from demolition in all circumstances of these older structures, is inconsistent with the development plan and in my view could not be said to, alone, form the basis of a substantial interest.

51. The next basis upon which the applicant contends that she has a substantial interest is by virtue of her membership of An Taisce and the Monkstown Salthiill Resident Association and the interest which she has in the proper planning of the Monkstown area.

52. Being interested in planning matters is wholly different to having an interest in the subject matter of a particular application.

53. An interest even if it is a passionate interest in planning matters will not suffice to establish a substantial interest in the subject matter of a particular application.

54. In this regard I would respectfully agree with the following dictum from the judgment of Macken J. in the case of *Harrington v. An Bord Pleanála* Unreported (July 26th 2005) where she says:

> *"I consider that the substantial interest which the applicant must have is one which he has already expressed as being peculiar or personal to him."*

55. Clearly a mere interest in planning matters falls far short of the kind of personal interest or interests peculiar to a person, so as to amount to a substantial interest.

56. The fact that the applicant is a member of An Taisce and indeed of a residents association indicates she has an interest in planning matters, but her membership of An Taisce does not give her any kind of special status which would amount to a substantial interest for the purposes of s. 50.

57. An Taisce has itself by virtue of the Act of 2000, a special status in relation to planning matters, being a prescribed body, and in my view, it would be nonsensical if persons who are members of An Taisce could assert a separate special status simply because they are members of An Taisce.

58. I am quite satisfied that the applicant has failed to demonstrate that her membership with An Taisce gives her a substantial interest in the subject matter of this application.

59. This brings me to the question of whether or not the applicant has for the purposes of s. 50(4)(c)(ii) demonstrated that there are

good and sufficient reasons for her not having made objection, submissions or observations in the planning process.

60. In this regard the applicant submits that the reason she did not make objection submissions or observations was because of her membership of An Taisce and that her objections at the time were expressed by the An Taisce objection.

61. It is clear that the underlying policy of s. 50(4)(i) and (ii) is to restrict or confine the range of persons who may apply for judicial review of a planning decision. Thus those who may apply to this court for judicial review are confined to the categories of persons that are set out in subs-s. 50(4)(c)(i). Insofar as this application is concerned that right is confined to the notice parties or a prescribed body or a person who made submissions objections or observations in relation to the proposed development.

62. Clearly the applicant is not one of these, and can only become a potential applicant for judicial review if she complies with sub-s. 50(4)(c)(ii) by showing that there were good and sufficient reasons for not having made objections, submissions or observations.

63. If mere membership of An Taisce was to be considered a sufficient or a good excuse for not having made objections, submissions or observations, that would clearly undo the intended effect of the restriction in the subsection. In my view, for that reason alone, her membership of An Taisce cannot be considered a good or sufficiently good reason for not having made objections. Additionally of course it can be said that because of her membership of An Taisce and her keen interest in planning matters, that she was more than unusually aware of the issues involved and in a better position than most, to have, in her personal capacity, had she so wished, to have put in an objection. Knowing all of that, she consciously decided not to object in her personal capacity and to pursue her interest through An Taisce. Having taken that course she cannot now, as it were, step outside it, and continue a struggle which manifestly An Taisce don't wish to pursue.

64. I am quite satisfied that the applicant has failed to show good and sufficient reasons for not having made objections, submissions or observations, and as a consequence therefore, and for the reasons already discussed above she has failed to demonstrate in my view that she has a substantial interest in the subject matter of this application.

65. This brings me finally to the residual question of whether or not the ground in respect of which I have found, above, that there are substantial grounds for contending that the permission should be quashed is such as to demonstrate a clear breach of the law or abuse in the discharge of its responsibilities as a planning authority, on the part of the respondent, such that the matter so revealed should not be sheltered from judicial scrutiny. I am satisfied that the planning permission itself and the report of 18th December, 2003, discloses a careful and reflective consideration of the planning history of the structures which are the subject matter of the current application and a consideration of the development in the latest planning application in the context of compliance with the relevant portions of the development plan.

66. I am quite satisfied that the absence of any express consideration of whether there were exceptional circumstances justifying demolition for the purposes of s. 57(10)(b) of the Act of 2000, or of the aforesaid Architectural Guidelines was in the circumstances an oversight and not anything in the way of a conscious disregard by the respondents of the relevant law or any abuse on its part in the discharge of its responsibilities as a planning authority.

67. That being so I remain satisfied that there are no exceptional circumstances present which would warrant on this residual ground giving leave notwithstanding that the applicant has failed to demonstrate a substantial interest in the subject matter of the application.

68. For the sake of completeness I should say in regard to the submission by the respondent and Notice Party that the applicant had the alternative remedy of an appeal, that I do not agree with that submission because in my view the applicant having failed to participate in the planning process is barred from an appeal by virtue of s. 37(1)(a) of the Act of 2000 and not being a person who has an interest in land adjoining the land in respect of this permission has been given, in my view, cannot avail of the exception whereby leave to appeal may be obtained from An Bord Pleanála under subs. (6) of s. 37.

69. For all of the reasons set out above I must refuse the leave to apply for judicial review sought in these proceedings.