

THE HIGH COURT

Record Number: 2004 No.1052 JR

BETWEEN

KATHLEEN COLL

APPLICANT

AND
DONEGAL COUNTY COUNCIL

RESPONDENT

AND
LIAM GILLESPIE

NOTICE PARTY

Judgment of Mr Justice Michael Peart delivered on the 7th day of July 2005

1. The Notice Party applied for planning permission for the erection of a shopping centre, and filling station with sewerage treatment plant at Bunbeg, Co. Donegal in or about December 1998 (Planning Ref: 98/3392). This application was refused by the Respondent on the 29th April 1999. However, the Notice Party appealed that refusal, and by Order of An Bord Pleanála dated 23rd November 1999, permission was granted subject to certain conditions, three of which were required to be complied with before development was commenced, and in particular, as far as relevance to these proceedings is concerned, the following condition:

"3.(1) The proposed road realignment and works shall be carried out by the developer and shall comply in all respects with the requirements of the planning authority. The road works shall be completed to the satisfaction of the planning authority before commencement of use of the development.

(2) Details of the works shall be agreed with the planning authority before development commences."

2. This road realignment involved the extinguishment of the public right of way over a small portion of the existing Strand Road, leading up to where it meets the main R257, thereby incorporating that area of roadway into the development site, and its replacement by a new section of road on land up to that main road, owned by the notice party, but which would be duly vested in the respondent on completion, thereby providing a new junction with the R257.

3. It is necessary to say at this point that the applicant contends that the fact that the road might be closed and replaced by an alternative stretch of road adjacent to it, was not something which was obvious from the site notice erected at that time, or the notice published in the newspaper.

4. While some objections were lodged to the application, neither the applicant in these proceedings, Kathleen Coll, nor the many others now forming the Strand Residents Association made any objection to the plans as originally submitted since in their view there was nothing in the published notice or site notice erected, to indicate that there was to be any alteration in the road itself, and accordingly they did not participate in the planning application and appeal process. That is a matter of some controversy, as an officer of the respondent, John McLoughlin has stated in his affidavit that in fact some of the persons who lodged objections to the application for planning permission mention the proposed realignment of the road, and he exhibits these letters of objection. However Counsel for the applicant herein refers to the fact that this information was not apparent from the published notice or the site notice.

5. It was quite some time later, in 2001 as a matter of fact, that she and other residents in the area discovered that a condition of the permission granted involved the closure of the existing road at the site of the development and its replacement with a road leading to the main road by an alternative route.

6. While Kathleen Coll is the only named applicant in these proceedings, she is clearly acting also on behalf of the Strand Road Residents Association ("the association"). They have objections, including on safety grounds, to the closure of the existing road and its replacement by the proposed new road, and it is clear that if it had been proposed as part of the original application they would have exercised their right to object to the application, and thereby become entitled also to participate in any appeal process as well.

7. On the 30th July 2001 a firm of planning and design consultants wrote on their behalf to the respondent pointing out that the development appeared to have commenced before the three pre-commencement conditions had been complied with, and requested an Enforcement Notice to be served on the notice party to cease development until all these conditions were complied with. Such a notice was served as required dated the 10th August 2001. There was contact between the notice party and the respondent thereafter including a meeting on the 28th August 2001, which was followed up by a letter dated 4th September 2001 from the respondent which refers, inter alia, to Condition 3 in the following terms:

"Condition No.3: Road Requirements

The Planning Authority notes that agreement was reached between yourself and Eunan O'Donnell (Executive Engineer) regarding the required technical standards and so on. The Executive Engineer's record of the meeting has been placed on file and is considered to be a more than adequate equivalent of the submission of a plan by yourselves.

However, the Planning Authority wishes to advise that it requires to give further consideration to two associated fundamental legalistic/procedural matters before it will be in a position to conclude its findings on Condition No.3. The matters in question are the possible requirements for the adoption of Orders/Resolutions by Members of DCC for:

- 1. the extinguishment of the existing public right of way on the condition that a suitable alternative can be delivered; and*
- 2. the vesting of the alternative in the DCC."*

8. The respondent concluded this letter by stating that the advice was being taken from the County Solicitor as to the most appropriate course of action to be taken, and that upon receipt of this advice, it would be in touch with the notice party further; but it emphasised that in the meantime resumption of work on site could not be authorised.

9. Steps were not taken by the respondent to put in motion the procedure to extinguish the public right of way until such time as the notice party had put the alternative road in place. This method of proceeding was objected to by solicitors acting for the association on the ground that it would prejudice the position of the objectors since, if the notice party had expended large sums of money in putting the new road in place, he could argue that it would not be fair and reasonable to ask him to close that new road, in the event of the Council deciding that the existing public right of way should not be extinguished. However the respondent replied by letter dated 13th December 2001 that it had made it clear to the notice party that the extinguishment procedure was a self-contained procedure with no pre-determined outcome and that as such the notice party could have no expectation that the public right of way would definitely be extinguished.

10. Indeed in this regard, there was an Agreement dated 25th February 2002 entered into between the respondent and the notice party dealing with arrangements arising from the construction of the new road, and among the clauses in that Agreement is the following:

"5.In relation to the existing public right of way on the section of the public road to be replaced the Council proposes on the completion of the said new road works and the handing over of same by the Applicant to commence the procedure for extinguishment thereof under Section 73 of the Roads Act, 1993. That procedure is a self-contained one with no predetermined outcome and the Council can give no warranty or assurance and the Applicant can have no expectation that the public right of way will definitely be extinguished. In the event that the public right of way is not for any reason extinguished and the Applicant is unable for that reason to proceed with this development no action will lie against the Council in such situation."

11. The procedure under s.73 of the Roads Act, 1993 requires that a notice be published in one or more newspapers; a notice be affixed at each end of the right of way proposed to be extinguished; that objectors are therein notified to lodge objections before a specified date; and that the Council may, if it considers it appropriate hold an oral hearing at which objections can be made.

12. In the present case the notice published and affixed at the site is dated 3rd October 2002 and objections were to be made in writing on or before 29th November 2002. Objectors sought an oral hearing of their objections but the respondent did not consider that an oral hearing was appropriate. Written objections were lodged. Objections to the extinguishment of this section of road were made mainly on safety grounds related to the design of the new road and junction, given the alteration of sight lines at the new junction, as well as what they regarded as the unnecessary steepness of the new road caused by an increase of one metre in the site which they also maintained was in breach of the planning permission granted. They were also concerned about adverse effects of the new road on the visual amenity of the area. Their objections were supported by an Engineer's Report.

13. On the 26th September 2003 the question of the extinguishment of this road was debated in the Council Chamber of the respondent. The applicant's grounding affidavit states that the debate was heated and that no final resolution was reached on that occasion, but that the matter was again debated by the elected representatives in the Council Chamber on the 20th October 2003 on which occasion the motion to extinguish this public right of way was lost by fifteen votes to eight votes.

14. The applicant in these proceedings avers in her grounding affidavit that she believed that to be an end of the matter and regarded the decision as a vindication of her concerns about the safety of the new proposed road. The notice party did not seek to challenge this decision of the elected members in any way by way of judicial review or otherwise.

15. However, the fact of the matter is that about one year later she learned that the respondent intended to recommence the procedure under s.73 of the Roads Act, 1993 so that another vote could be taken on the proposal to extinguish the public right of way. Her solicitors wrote to the respondent on the 1st October 2004 seeking clarification of its intentions in this regard, and received a letter in reply dated 7th October 2004 from the respondent's solicitors, which stated as follows:

".....Arising from questions raised about the decision made by our clients on the 20th October 2003, Senior Counsel's opinion was sought. He concluded that the decision was not validly made. In the circumstances our clients now propose to recommence the procedure under Section 73 of the Roads Act and the required notice in that regard will be given shortly. We will as a courtesy let you know the date and publication concerned."

16. Solicitors acting for the applicant in these proceedings responded by letter dated 11th October 2004 saying that after a full debate the Counsellors had voted against extinguishment on the basis that it was primarily for the benefit one developer, with little if any public benefit. The letter also makes the point that the extinguishment of this stretch of public road was necessary for the placing of an underground petrol tank which will be used by the developer and that this idea was mooted first of all by the respondent and had not formed part of the original planning application. The letter also expressed the view that the Council was simply deferring to the views of one developer due to a threat of legal proceedings by him. The solicitors stated that as far as their clients were concerned the decision on extinguishment had already been made by the Council, and they requested detailed reasons for the decision to recommence the process, as well as a copy of the Senior Counsel's Opinion. They also alleged that in attempting to reopen the procedure leading to extinguishment, the Council was acting outside its statutory powers. A somewhat formal reply to that letter was received but not a copy of Counsel's Opinion.

17. By letter dated 6th October 2004, the County Manager wrote to all councillors for the area, referring to the decision to refuse extinguishment, and stated that following receipt of correspondence from legal representatives of the Strand Road Residents Association as well as the notice party, advice had been obtained from Senior Counsel on the legal issues arising from the correspondence. This letter goes on to state as follows:

"...The opinion of our Senior Counsel, James O'Reilly when he considered the minutes of the meetings of September 26, 2003 and October 20th 2003 (at which this matter was considered and decided) is that various of the members opposed to the extinguishment voiced objections referable to planning considerations or other aspects which had no relevance to the jurisdiction which the Council has as the Roads Authority under the Roads Acts. In law the Council is statutorily obliged to deal only with matters relating to its functions as a Roads Authority when considering extinguishments of public rights of way under Section 73 of the Roads Act 1993 (such as design, safety, implications for road users and so forth).

In the final paragraph, Mr O'Reilly advises that in the circumstances the County Manager is entitled to re-commence the procedure for the extinguishment of the right of way..."

18. The applicant in these proceedings makes the point in connection with the advice received by the respondent that, apparently, irrelevant matters were taken into account in the debate on extinguishment to the extent that the decision made is an invalid one,

that prior to the debate on the motion for extinguishment, the Director of Roads and Transportation within the respondent had prepared and circulated among all Councillors a Report in which the detailed history of this planning application was set forth, as well as certain advice as to how the question should be dealt with at the debate. For example this Report contains the following:

"The issue before the Council here is not to revisit the planning decision reached by An Bord Pleanála but instead to solely consider the matter of the proposed extinguishment of the public right of way and associated realignment of the Strand Road. Objections on planning grounds to the proposal would have been matters for consideration in the planning application and the subsequent appeal before An Bord Pleanála and would not be relevant to the consideration now of the proposed extinguishment of the public right of way over the section of existing road to be replaced. The fact that it was the Council's role alone to be satisfied on the nature, safety etc. of the road realignment required was recognised by An Bord Pleanála in the condition No. 3 of the permission which required the Applicant to consult with and agree the road realignment works with the Council alone."

19. The applicant herein submits that the councillors had been clearly advised in advance of the debate of the need to confine the debate to matters relevant to extinguishment, and that if they strayed into such irrelevant areas that should not vitiate or invalidate the decision eventually reached since they had been properly advised of the matters to be taken into consideration.

20. In these proceedings, the applicant seeks to challenge two decisions made by the respondent. The first decision is that dated 7th October 2004 to recommence the procedure for the extinguishment of the public right of way in circumstances where the decision not to extinguish same has already been made, and where the statutory provisions do not provide for a recommencement of that procedure.

21. The second decision which the applicant seeks to have quashed is one to which I have not yet referred, and it is one made on the 29th October 2004 pursuant to the provisions of s.42 of the Planning and Development Act, 2000 by which the duration of the notice party's planning permission dated 23rd November 1999 was extended for one year, so that it will cease to have effect on 28th October 2005. I will deal with the applicant's objection to that decision in due course.

Submissions on recommencement of extinguishment procedure:

22. Niall Hill BL on behalf of the applicant has pointed to the fact that the Opinion of Counsel which the respondent obtained and on which reliance is placed has not been produced to the applicant or the Court. But he submits that whatever decision was reached by the councillors having voted as they did on the 20th October 2003 is a valid decision until such time as it is quashed by way of judicial review. In so far as the respondent might seek to rely upon decisions of the Courts in cases such as *P & F Sharpe Limited v. Dublin County Council* [1989] IR 701, and *Flanagan v. Galway City and County Manager* [1995] 2 IR 447, he submits that all these cases related to decisions on what are often referred to as "section 4 motions" and are not apposite to the present case, where there is no suggestion that the Council by a vote of the elected members was being directed to perform an ultra vires act.

23. Mr Hill submits that in so far as the respondent maintains that there is an inherent power within the respondent to review its own decisions, he submits that there is no basis in law for such a proposition. Mr Hill also points to the fact that the notice party himself never sought to challenge the decision of the respondent to refuse to extinguish the public right of way. In addition, it is submitted that s.73 of the Roads Act makes no provision for any re-commencement of the extinguishment procedure, the more so where there has been no changed circumstances between the 20th October 2003 and the present time. In effect, he suggests that at any reconvened meeting for the purpose of voting on the extinguishment, the Council members would be voting a second time on the same proposal and on the same grounds.

24. In relation to the contention of the County Manager that extraneous matters were taken into account during the debate thereby rendering the decision invalid, Mr Hill on behalf of the applicant submits that the information which was available to the Councillors before and at that meeting contain ample information to justify the decision taken at the meeting to refuse extinguishment, such as the applicant's engineer's report setting out concerns for public safety in relation to the proposed new stretch of road, as well as the respondent's own design report in relation to the new road which expressed some concern about the realignment.

25. The point is also made that if this Court were to interfere with the decision arrived at on the basis that some irrelevant considerations entered into the debate, then this Court would be in effect stifling debate by elected members in a way that it ought not do. In this case it is submitted that even if some extraneous matters entered into the debate they were not so serious as to take the debate outside the powers granted by s.73 of the Roads Act. 1993.

26. The applicant also submits that she had a legitimate expectation that the decision would not be re-visited, and that expected procedures would be followed. It is also submitted that the notice party can have had no legitimate expectation that the extinguishment would be granted or that an effort to revisit the issue would be made, given that the contents of the Agreement between him and the respondent dated 25th February 2002 made it very clear that no action would lie against the respondent in the event that the right of way was not extinguished. The applicant herself claims a legitimate expectation as a result of this Agreement (to which she was not a party) that the respondent would adhere to the refusal by the elected members to extinguish the right of way.

27. Mr James O'Reilly SC on behalf of the respondent has submitted that however this application is dressed up as an objection to the extinguishment of the public road, it is in reality a planning objection given that the closure of the stretch of road in question is a necessary condition for the construction of the development by the notice party in compliance with his planning permission. He submits that since the applicant did not participate in the planning process, having not lodged any objection, she ought not now be permitted to seek reliefs, the object of which is to launch a collateral challenge to the planning application itself, as this would be an abuse of process. Mr O'Reilly submits that the applicant lacks standing to challenge the decision of the respondent to recommence the extinguishment procedure since she failed to participate in or make representations in the planning process, and neither did she seek to challenge the grant of permission by An Bord Pleanála.

28. In his submissions Mr O'Reilly has referred to the fact that it is evident from the minutes of the meetings of the Council at which the extinguishment motion was debated that members who were opposed to the motion voiced objections which were based on planning considerations which had no relevance to the jurisdiction of the roads authority under the Roads Acts. Neither, he submits, is there evidence from the minutes that the report of Mr O'Loughlin, to which I have already referred, was considered. He also refers to the fact that the majority of elected members who voted on the motion voted as a political grouping.

29. In support of his submission that the elected members incorrectly strayed into the area of planning when debating this motion, and that the decision arrived at was therefore an invalid decision, he refers to the judgment of Keane J. (as he then was) in *Carthy v. Fingal County Council* [1999] 3 IR 577.

30. Mr O'Reilly submits that for these reasons the County Manager was perfectly entitled to regard the decision reached as invalid, and to decide that the matter should be considered again, and in fact had a duty to make sure that the matter was correctly dealt with and the error corrected, rather than simply let matters lie uncorrected thereby permitting a situation to exist where a valid planning permission granted by An Bord Pleanála would lapse as a result of an invalid decision that resulted in the inability of the notice party to fulfil a condition of his planning permission.

31. Furthermore, it is his submission that even in a situation where there is no invalidity in a decision of elected members of the respondent, that decision can be revisited if so desired. Specifically, he submits that there is nothing in s.73 of the Roads Act, 1993 which prohibits a second motion being brought for the extinguishment of a right of way, and that as a matter of public policy the elected members ought not to be prevented from reconsidering matters falling within their reserved functions, and that neither should such a restriction be implied. In this regard, Mr O'Reilly has referred to s.44 of the Local Government Act, 2001, and Schedule 10 of the said Act which provides in relevant part as follows:

"16.-- (1) (a) A local authority shall, subject to this Act and by resolution for which at least one half of the total number of members of the authority vote in favour, make standing orders for the regulation of its meetings and proceedings.

(b) A local authority may include in standing orders all such incidental, consequential or supplementary provisions as may appear to the local authority to be appropriate for that purpose.

... ..

(4) the revocation of resolutions subject to a requirement that such number of members as is specified in standing orders, which shall be at least one half of the total number of members of the authority, vote in favour and subject to such other requirements as may be so specified."

32. In relation to the respondent in this case, Donegal County Council, Mr O'Reilly has stated that standing orders provide for motions to amend or revoke resolutions and provide, inter alia, for the expiration of a period of six months before a matter can be reconsidered, a requirement that six members subscribe to the fresh motion, and for a weighted majority of two thirds of a quota of at least half the members in the case of a rescinded motion.

33. As far as legitimate expectation is concerned, Mr O'Reilly submits that the most that the applicant could have expected is that in any decision regarding the extinguishment of this public right of way, she would be consulted in accordance with the requirement of public consultation as provided by s.73 of the Roads Act, 1993, and that she could have no such expectation arising from an ultra vires act, such as, according to the respondent's characterisation of same, is the decision of the 20th October 2002.

34. In my view there is no need for this Court to reach the conclusion that there was some invalidity in the manner in which the decision represented by the vote of fifteen against and eight for the motion was arrived at.

35. It seems to me from a reading of s.73 of the Roads Act, 1993, that a local authority is not prevented from considering as often as it chooses a proposal that a public right of way should be closed. One could envisage reasons why a Council might wish to vote again on such a motion. It is possible for example that some years later, perhaps even following the election of a new Council, made up of different councillors from the out-going Council, there would be a majority in favour of extinguishment. It seems perfectly reasonable that such a new Council should be able to have another debate on the matter and take another vote. There could be other reasons why another attempt to extinguish the right of way might be considered. To take another example, which comes to mind, I could envisage a situation where because over a number of years traffic volumes might have increased over a road to such an extent that for safety reasons the road should be closed and perhaps put to a different use. The fact that a couple of years previously the Council, even composed of the same personnel, voted against extinguishment, could not prevent for all time that matter being voted on again.

36. In the present case, the reason for debating and taking a vote again on a motion to extinguish this public right of way is because in the opinion of the County Manager, apparently confirmed by the advice of Senior Counsel, that the manner in which the decision was taken at the meeting on the 20th October 2003 has rendered the decision invalid.

37. Frankly, that opinion of Counsel may or may not be correct, and in my view no definite conclusion needs to be arrived at by this Court in that regard. The crucial point is that according to the normal and ordinary meaning of the words used in s.73 of the Roads Act, 1993, there is no restriction on the matter being revisited.

38. Where the proposal to extinguish the public right of way was rejected, as in this case, the status quo ante was maintained. That does not, and could not, mean that the situation could not at any future date be revisited for whatever reason. The present case is complicated by the fact that the need to close that portion of road arose only because it is necessary as a condition of the completion of the notice party's development in accordance with his planning permission. To some extent that clouds the position, because there is an understandable suspicion in the mind of the applicant that the notice party has somehow engineered a situation whereby the decision which went against his interest in the Council Chamber on the 20th October 2003 is now going to be reconsidered, debated and voted upon on another occasion when perhaps a greater number of councillors will attend, and so that with the correct numbers present there will be a vote in favour of extinguishment. The Court understands that fear, even though it must be borne in mind that there is no evidence adduced to support it. The other side of that coin of course is that the notice party in this case, the developer, may feel that on the 20th October 2003 there was not a complete attendance of elected members, and that the vote taken, while representing a majority of those present, may not have represented the view of the majority of all councillors entitled to vote.

39. This vista represents one of the less satisfactory and less savoury aspects of local government it must be said. But it is of no concern to the Court in deciding the issues which arise in this case. What the Court is concerned with is whether the respondent is exceeding its powers in proposing to reconvene a meeting of the Council for the purpose of considering and voting again upon a motion which has already been the subject of a vote by the elected members. In my view it is not. There is nothing in the act which serves to prevent such a thing happening, and frankly it would not be reasonable that it should. For any number of reasons a decision may need to be reconsidered, as I have already stated. It is inconceivable that by legislation the hands of the elected members would be tied in such a situation. The Oireachtas has not considered that such a situation should exist.

40. The Court appreciates that the applicant, and those who support her, are concerned that the junction at which Strand Road meets the R257 should be safe. They are also rightly concerned to ensure that the new road should be constructed so as to be safe, and strictly in accordance with the requirements laid down by the roads authority. But in my view the fact that they may be even

correct when they say that the developer has not met the requirements of the roads authority as regards the level and gradient of the new road, does not mean that they have an entitlement as a result, to interfere with the procedure to revisit the extinguishment of the public right of way.

41. The roads authority has statutory obligations to ensure that roads are safe in their area of jurisdiction. They are entitled to require that a road meets certain standards and specifications, and they are duty bound to make sure that those requirements are met and adhered to. But while the legislature has seen fit to require that the public of the area affected must be consulted in the matter of the closure of a public right of way, and therefore must have regard to those concerns, it does not mean that in relation to road safety considerations arising on any new road to replace the old road, members of the public have any right of objection which they would not have in the absence of any context of extinguishment of a right of way. In other words, in a situation in which the roads authority decides to modify or make a realignment of any existing road, it does so within its powers to do so, and which do not require public consultation.

42. In the present case, the statutory public consultation process, which includes the right of members of the public to make submissions, and sometimes to be heard orally in appropriate cases, does not give members of the public, such as the applicant and her supporters, any right to object to, much less to prevent, the construction of a new road which might be in substitution for the old road. Their right is to be consulted and to voice their concerns as to the extinguishment of the right of way over the old road. One could envisage for example that if a right over a particular road was proposed to be extinguished, it could result in persons living adjacent to that way being forced by the closure to reach a village or town by a very much longer route than if the way was maintained. That is not the concern in the present case. Taken at face value, their concern is expressed in terms that when constructed, even if in accordance with the requirements of the respondent, the junction of the Strand Road with the R2367 will be more dangerous than the present junction. That concern is a matter which the roads authority must themselves address, and it is evident that they have done so, even if the applicant feels that they have not done so adequately.

43. It is irrelevant to the question as to whether the respondent is entitled to revisit the question of closure of the existing right of way. The applicant can certainly voice her concerns but at the end of the day the roads authority is entitled to decide this issue of safety, and in the present case it certainly has done so, even if the applicant and her engineering adviser take a view which does not conform with the views of the respondent's expert.

44. The applicant claims to have a legitimate expectation that the vote to refuse extinguishment would not be revisited and would be final. I have already found that the Council are not prevented by statute from revisiting the matter. I am also satisfied that any expectation the applicant might enjoy is confined to an expectation that the statutory procedures would be followed and that she would therefore be consulted in the way provided for, whenever there is a proposal by the local authority to extinguish any public right of way.

45. I do not find it necessary to deal with the issue raised by the respondent as to the standing in law to raise the issues raised in this application. If I were to be required to decide that issue, I would be inclined to consider that since the question of extinguishment must be regarded as a separate issue to the planning application, the fact that she did not lodge any objection, for whatever reason, to the planning application by the notice party, cannot deprive her of standing to raise issues in relation to the procedures adopted in relation to the extinguishment of the public right of way. The two matters are separate, and as a member of the public in the area of the proposed extinguishment, her right to participate in that process is undiminished by any lack of participation in the planning process itself.

46. Neither is it necessary for me to reach final conclusions as to whether the elected members of the respondent present on the 20th October 2003 took extraneous matters into account when they debated and voted upon the motion for extinguishment of the public right of way. That seems irrelevant to the question as to whether the Council can consider again the same proposal, for the reasons which I have already outlined.

47. The second decision which the applicant seeks to have quashed is that by which the respondent extended the duration of the notice party's planning permission until the 28th October 2005. The applicant has submitted that the requirements of s.42 of the Planning and Development Act, 2000 have not been complied with in as much as the respondent could not have been able to form the view as required by s.42(1)(c)(iii) that "the development will be completed within a reasonable time."

48. In my view, firstly, the applicant enjoys no locus standi to seek the relief she seeks under this heading. Firstly, she did not participate in the planning process at all, but secondly and critically, the power of the planning authority to exercise a discretion to extend the duration of a planning permission is one which may be exercised appropriately without consultation with the public. It is not necessary under the statutory scheme to publish any notice of intention to apply for an extension, and neither is it necessary to erect any notice at the site of the development indicating an intention to apply for an extension. Under that scheme, as provided by s.42 of the 2000 Act, a planning authority shall on application being made to it, extend the appropriate period for such additional period as it considers requisite to enable the development to be completed provided certain requirements are complied with, one of which is that referred to already, namely that the planning authority is satisfied that the development will be completed within a reasonable time. The applicant has no entitlement to be consulted in the making of that decision and therefore in my view cannot be heard to raise objections to the decision made. It is a matter within the discretion of the planning authority, and provided that the discretion is exercised in a judicial manner it is a decision which then planning authority may make in its discretion. However I will in any event address the applicant's submissions in this regard also.

49. The applicant has highlighted the words "will be completed" and has submitted that in the present case, given the rejection of the motion to extinguish the right of way in October 2002, the respondent could not possibly have been in a position to consider that the development would definitely be completed within a reasonable time, since an essential condition of the planning permission was incapable of being met.

50. However, in my view, the respondent at the date on which it decided that it would extend the duration of the permission, namely the 29th October 2004, was entitled to consider that its view of the power to revisit the motion to extinguish the right of way was the correct view, and that in those circumstances it could reasonably have formed the view that the development would be completed in a reasonable time. The concept of a reasonable time is a concept to which a fair measure of latitude must be permitted so as to take account of the peculiar circumstances of the case under consideration, and particularly where not to extend the duration would render moot the outstanding issue of extinguishment which the County Manager wishes to again address.

51. For the reasons outlined I refuse the reliefs sought in this application.

