Neutral Citation [2013] IEHC 37

THE HIGH COURT

[2012 No. 4438P]

BETWEEN

ARKLOW TOWN COUNCIL

PLAINTIFF

AND

ARKLOW HOLIDAYS LIMITED AND SEABANK PROPERTY COMPANY LIMITED

DEFENDANTS

JUDGMENT of Kearns P. delivered the 1st day of February, 2013

1. These proceedings require the determination of a preliminary issue arising from an application by the plaintiff for, *inter alia*, an order for an injunction restraining the defendants from interfering with the plaintiff's development of lands near Arklow in Co. Wicklow and a mandatory order requiring the defendants to remove the obstruction to access the lands. The first named defendant is in occupation of lands pursuant to a long lease from the second named defendant. The preliminary issue to be determined is whether planning permission (registration reference 23/99) granted by An Bord Pleanála on the 21st January, 2005, upon which the plaintiff relies to carry out works on the defendants' lands, has expired and ceased to have effect because it is a five year permission only, or whether it is a ten year permission.

BACKGROUND

2. The plaintiff obtained planning permission for a development comprising the provision of sewage treatment works, sewers and associated ancillary works (the "development") of the lands at Seabank, Arklow, Co. Wicklow (the "lands") from Wicklow County Council on 3rd September, 1993. There was an appeal to An Bord Pleanála (the "Board") and on 28th February, 1994 the Board made a decision granting permission for the development and imposed certain conditions.

3. The first named defendant, Arklow Holidays Ltd., operates a mobile home/caravan park from lands belonging to the second named defendant, Seabank Property Company Ltd. Arklow Holidays hold the entire property from the Seabank Property Company Ltd. under a lease. In order to facilitate the development a parcel of land was required to be purchased. On 1st June, 1994 the Assistant County Manager made an order that a Compulsory Purchase Order (C.P.O.) be made to effect the acquisition of the lands.

4. Arising out of requirements of the European Commission, a further application for permission for the development was made by the plaintiff to Wicklow County Council on 15th January, 1999. On 13th July, 1999 Wicklow County Council granted a ten year permission for the development. Arising therefrom the first named defendant initiated judicial review proceedings which have resulted in decisions of Murphy J. dated 15th May, 2003, 15th October, 2003 and 3rd February, 2004, essentially refusing relief by way of judicial review and refusing to certify leave to appeal. Thereafter an appeal was brought by the first named defendant and other parties to the Board which granted planning permission (Ref 23/99) for the development on 15th January, 2005. The first named defendant instituted a number of judicial review proceedings against that decision which resulted in decisions of Clarke J. in the High Court. The defendants were given a certificate of leave to apply to the Supreme Court. This was disposed of on 21st July, 2011 in favour of the plaintiff when the Supreme Court dismissed the appeal.

5. After these legal challenges the plaintiff wrote to the defendants on 23rd January, 2012 seeking to finalise the purchase of the lands. A notice to enter issued on 11th April, 2012 and it was proposed on or after 2nd May, 2012 to enter on, take possession and use the lands. Following this there was correspondence between the parties where the defendant asserted that the plaintiff abandoned the C.P.O. On 30th April, 2012 the plaintiff's contractors, RSS, commenced fencing the site. On 2nd May, 2012 when the surveyors and contractor began to move to the next field they were stopped from entering the land by Jeremy Hynes of Arklow Holidays Ltd. who had a JCB parked across the gated entrance to the field.

6. By plenary summons dated 4th May, 2012 the plaintiff claimed*, inter alia*, an order granting an injunction restraining the defendants from interfering in any manner with the plaintiff's development of the lands. The second named defendant confirms that it does not object to the development. The first named defendant opposes the injunction sought by the plaintiff and raises the issue as to the duration of the permission.

7. On the 20th June, 2012 the plaintiff pursuant to s.146A of the Planning and Development Act, 2000 (as amended) wrote to the Board to amend the terms of the planning permission. This was objected to by the defendant. By letter dated 12th September, 2012 the Board refused the plaintiff's request stating:

> "… the Board does not consider that any amendment to its decision would facilitate the doing of anything that is not expressly provided for ….It is the Board's view that the grant of planning permission as set out in the Board's Order dated 21st January, 2005 is a 10 year permission as condition number 1 of the said order stipulated, inter alia, that the development shall be carried out in accordance with plans and particulars lodged with the application (which indicated 10 year permission sought)…It is noted that the matter is the subject of injunctive proceedings and the proper interpretation of the permission raises a question of law which is open to the Courts to determine in the context of such proceedings currently in being."

8. As part of the foregoing proceedings the Court has been asked to rule on the preliminary issue of whether the planning permission granted in 2005 was for a five or ten year period.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

9. In the plaintiff's affidavit sworn on 3rd May, 2012 Mr. Michael McNamara states that the waste water treatment plant is vital for the town of Arklow given its population growth and the fact that raw sewage is ending up in the Avoca River. He avers that the project has been delayed for thirteen years as a result of legal challenges brought by the first named defendant and this has

increased the cost of development.

10. The plaintiff's submissions are that the planning permission ref 23/99 granted by the Board is for a ten year duration and that the permission of the Board was given for the reasons set out in the Schedule to grant the permission. The fundamental issue is whether this permission incorporated the application as a condition. It expressly states in the Board's grant of planning permission ref 23/99 on 25th January, 2005 that it had decided:

> "… for the reason set out in the First Schedule hereto, to grant permission for the said development in accordance with the said plans, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the Second Schedule and the said permissions hereby subject to the said conditions."

Condition 1 of the Second Schedule states as follows:

> "The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the drawings and documents received by the planning authority on the 14th day of May, 1999 and the 8th day of July 1999, except as may otherwise be required in order to comply with the following conditions"

It is clear that the plans and particulars refer to an application for a ten year duration and that the planning permission, as granted, specifies a ten year permission.

11. Section 3 of the Local Government (Planning and Development) Act, 1982 (the "1982 Act") requires the period of permission to be specified. The default permission, if none is specified, is five years. This is agreed by the parties. The plaintiff submits that the duration is specified in the decision of An Board Pleanála because the said permission is to be completed with the plans and documents lodged with the application. Therefore it incorporates the plans, particulars and application lodged as per Condition 1. On the proper interpretation of the planning permission it is a ten year permission. The plaintiff also submits that once the application is made for a duration of ten years then permission is granted on those terms on foot of that application. Therefore it is a ten year permission.

12. Furthermore, the plaintiff draws the Court's attention to Condition 19 of the Second Schedule which relates to the payments of monies. It provides:

> "…In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order."

It stipulates a time period of seven years from the date of the order as the specified period for financial contributions and the plaintiff submits that a seven year period would not be stipulated in a five year planning permission.

13. The permission granted by the Board followed an oral appeal by the first named defendant and others against a decision of Wicklow County Council to grant a ten year permission on 13th July, 1999. The application and newspaper notice were for ten years. In the affidavit of Maria Byrne, solicitor for the plaintiff, sworn on 21st November, 2012 Ms. Byrne avers that at no stage during the oral hearing was any case made that the permission should be restricted to five years.

14. In this regard Ms. Byrne refers to the Inspector's Report, dated 10th November, 2004, regarding the appeal against the permission granted in January 1999. At paragraph 4.2 of the Inspector's report the duration of ten years is referred to on both page 12 and 14. This clearly demonstrates that the Board considered the duration of the permission. When an appeal was brought against the grant of permission, the grounds of appeal did not refer to the duration of the permission. Pages 35 - 41 contain extensive evidence produced by the defendants at a fully debated oral hearing with expert witnesses from England and Germany. Nowhere in the report is there a request to limit the planning permission to five years. The plaintiff submits that the application before the Board was for ten years and that it is clearly stated. The Board issued its own permission in 2005 based on the original application of 1999. The hearing before the Board is *de novo* but it is the original application that is before the Board which considers the same documentation as the original documentation.

15. The plaintiff made an application to the Board on 20th June, 2012 to amend the terms of the planning permission pursuant to s.146A of the Planning and Development Act, 2000 (as amended). Ms. Byrne, in her affidavit sworn on 21st November, 2012, avers that this was done in the interests of clarity and not, as the defendant submits, to extend the permission. By letter dated 12th September, 2012 (referred to above in paragraph 7) the Board refused the request stating in its view the permission was valid for ten years.

16. There has been a failure on the part of the defendant to make the case before now that the permission was granted for only five years. At no stage during the previous challenges did the first named defendant make any case for a reduction of the period of permission. The appeal arising out of the challenge to the permission dated 21st January, 2005 was heard in the Supreme Court on 5th December, 2009. The Court gave its judgment on 21st July, 2011. There was no submission by the first named defendant to the Supreme Court that the planning permission had expired and that the appeal was or would be moot. The plaintiff submits that in the defendants' own minds they did not regard the permission as being for a duration of five years as they never made mention of this issue between the supposed lapse of the permission in 2010 and the finalisation of the appeal in the Supreme Court. If the permission had lapsed then the decision of the Supreme Court would have been moot.

17. The plaintiff also states that five years of the permission have been lost due to litigation. The plaintiff has been forced to bring injunctive proceedings by reasons of the actions of the defendants and is most anxious that there be no additional delays as a result of the additional legal challenges brought by the first named defendant. The first time that the first named defendant raised any issue about the duration of the planning permission was when the plaintiff sought to bring proceedings seeking an injunction. This was two years after the Supreme Court dismissed all of the claims made by the defendants on 21st July, 2011.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

18. The defendant submits that the planning permission on which the plaintiff seeks to rely has lapsed, being a five year permission and that it expired in January 2010 almost two and a half years before the within proceedings commenced. Therefore, the plaintiff has no valid planning permission to develop the lands. Primarily, the issue is one of statutory interpretation. It involves the interpretation of sections 2 and 3 of the 1982 Act.

19. The defendant submits that the background facts are not strictly relevant but notes that the appeal against the permission granted on 21st January, 2005 was heard in the Supreme Court in December 2009 and that the five year permission did not expire until January 2010. The matter was disposed of on 21st July, 2011 but it was a valid and live permission at the time of the appeal. The defendant also submits that the plaintiff already attempted to have the duration of the planning permission extended by application to the Board pursuant to s.146A of the Planning and Development Act, 2000 (as amended by the Planning and Development (Strategic Infrastructure) Act, 2006). In the defendant's affidavit sworn on 8th November, 2012 Mr. Fraser avers that the plaintiff made an application to An Bord Pleanála on 25th June, 2012 which was objected to by the defendant who made submissions to the Board in respect of the said application. The Board made a decision on the said application on the 11th September, 2012 wherein it refused the application to amend. On 2nd October, 2012 the defendant sought all documentation from the Board in relation to this decision but the defendant claims that the documentation was incomplete and that the Board had sought and received legal advice on the application but had failed to disclose that legal advice. The defendant formerly sought voluntary non-party discovery on 11th October, 2012. By correspondence dated 12th October, 2012 the Board confirmed that it had sought legal advice in respect of the plaintiff's application and indicated that it regarded the advice as privileged. The defendant sought confirmation of the grounds on which the non party claims privilege; however, no reply has been received. It is also submitted that Condition 19 is about the payment of monies and is not related to duration.

20. The primary issue before the Court is one of statutory construction. Section 2(1) states that after expiration of the "appropriate period" a planning permission ceases to have effect. The "appropriate period" is the period specified pursuant to s.3 of the 1982 Act or (if no period is specified), the period of five years beginning on the date of the grant of permission. It is submitted that no period is specified in the planning permission granted by the Board on the 21st January, 2005. The duration of the planning permission therefore is five years as per s.3 of the 1982 Act. The issue of whether the planning permission has expired is a question of law. The application was for a ten year permission but that is not the issue; the question of relevance is to ask if An Bord Pleanála has specified the period. If not then by default it is a five year permission.

21. The main provision to be considered is s. 3 of the 1982 Act which requires the decision maker to specify the period for which the permission is to have effect unless it is the five year default period. The planning permission originally applied for was a ten year permission. As is required by s. 3 of the 1982 Act, Wicklow County Council's notification of the decision to grant planning permission by the planning authority, dated 13th July, 1999 expressly specifies that it is a ten year permission. Unlike that decision there is no period specified anywhere with respect to the permission granted by the Board. An extended duration cannot be granted obtusely or inferred from the fact that the Board granted planning permission by reference to the plans and particulars furnished. The period must be specified and the plaintiff's proposition that Condition 1 in the Second Schedule specifies the duration raises three issues.

22. Firstly, the plaintiff's reliance on Condition 1 essentially reverses the statutory provision. If this standard condition is the specification envisaged by the statute then every application for planning permission greater than five years is granted by the condition and can be avoided only by specifying that the duration was in fact five years. The statutory scheme envisages the opposite.

23. Secondly, nothing in the language of Condition 1 can be said to be consistent with specifying. It is just a standard condition. Virtually every planning permission uses this or similar formula. It is almost of universal application. Planning is an area of interest to the public generally and so the word specify should be given its ordinary meaning. Wicklow County Council specified a permission for a duration of ten years but the Board was silent, consequently the statutory presumption applies.

24. Thirdly, the proposition ignores the correct meaning of plans and particulars which have a statutory meaning and it is submitted that there is a distinction between the plans and particulars on the one hand and the application on the other. It is accepted that Arklow Town Council applied for a ten year permission in the application form but what they got was a permission to be carried out in accordance with the plans and particulars. The plans and particulars are separate to the application form and they describe the nature and extent of the particular plans and not the duration. Article 19 of the Local Government (Planning and Development) Regulations 1994 provides:

"19. Subject to article 20—

> (*a*) a planning application in respect of any development consisting of or mainly consisting of the carrying out of works on, in or under land or for the retention of a structure shall, in addition to the requirements of article 18, be accompanied by four copies of such plans (including a site or layout plan and drawings of floor plans, elevations and sections which comply with the requirements of article 23), and such other particulars, as are necessary to describe the works or structure to which the application relates."

25. It is precisely to avoid confusion that the 1982 Act requires, not just the duration to be specified by the Board but also that the decision to exercise or not to exercise the power conferred on them by s. 3 of the Act to extend the duration of the permission be detailed and the reason why the Board exercised its power to extend are all expressly specified in the notification of the decision. The only reference to the fact that this application was for a period of ten years is contained in the application form and its covering letter (dated 15th January, 1999). Duration is only mentioned in the application, it is not mentioned in the plans and particulars. The statutory regime makes a clear distinction between an application and the plans and particulars which are submitted with that application. If a ten year permission is being sought this will be contained within the application. The plans and particulars describe in detail the nature and extent of the development, they do not define the duration of the planning permission. A decision to grant which specifies that the development be carried out in accordance with the "plans and particulars" cannot be interpreted as making a specification with respect to duration. The reference defines the nature and extent of the development not its duration.

26. It cannot be the case that a person has to conduct a search of the planning file in order to determine the duration of the planning permission. That is inconsistent with the plain meaning of the words used in legislation. It is further inconsistent with the purpose of the legislation which is to ensure clarity and certainty in respect of the duration for which the permission is granted. There must be evidence on the face of the order to the effect that planning permission has been granted for a period in excess of five years. This is what is required by ss. 2 and 3 of the 1982 Act. The legislative requirement that duration be specified on the face of the order granting permission is absolutely necessary to avoid uncertainty. Were it otherwise, an application which contained any reference to the fact that a ten year permission was sought, anywhere in the plans and particulars lodged with the permission would result in the grant of a ten year permission, unless the planning authority expressly specified a different period. This would have the absurd effect of directly reversing the statutory provisions contained in the 1982 Act and the 1994 Regulations.

DECISION

27. The planning permission ref 23/99 granted by An Bord Pleanála was granted pursuant to the Local Government (Planning and Development) Acts, 1963-99 and it is governed by that statutory regime and not the Planning and Development Act 2000.

28. Sections 2 and 3 of the Local Government (Planning and Development) Act, 1982 deal with the duration of a planning permission granted pursuant to the Local Government (Planning and Development) Acts 1963-99. Section 2(1) of the 1982 Act states that on expiration of the "appropriate period" a planning permission ceases to have effect. It provides that:

> "2.—(1) Subject to *subsection (2)* of this section, a permission granted under Part IV of the Principal Act, whether before or after the passing of this Act, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—
>
> (a) in case the development to which the permission relates is not commenced during that period, the entire development, and
>
> (b) in case such development is commenced during that period, so much thereof as is not completed within that period."

29. The "appropriate period" is defined in s. 2(5) of the 1982 Act and the legislation requires the period to be specified. This section provides:

> "(5) In this section and in section 4 of this Act, "*the appropriate period*" means—
>
> (*a*) in relation to any permission which was granted before the 1st day of November, 1976, the period beginning on the date of such grant and ending on the 31st day of October, 1983,
>
> *(b*) in relation to any permission which was or is granted not earlier than the 1st day of November, 1976, nor later than the 31st day of October, 1982—
>
> (i) in case in relation to the permission a period is specified pursuant to *section 3* of this Act, that period, and
>
> (ii) in any other case, the period ending either on the day which is seven years after the date of such grant or the 31st day of October, 1987, whichever is the earlier,
>
> (*c*) in relation to any permission which was or is granted on or after the 1st day of November, 1982—
> (i) in case in relation to the permission a period is specified pursuant to *section 3* of this Act, that period, and
>
> (ii) in any other case, the period of five years beginning on the date of such grant."

30. The appropriate period is the period specified pursuant to s. 3 of the 1982 Act which provides:

> "… having regard to the nature and extent of the relevant development and any other material consideration, specify the period, being a period of more than five years, during which the permission is to have effect, and in case the planning authority exercise, or refuse to exercise, the power conferred on them by this section, such exercise or refusal shall be regarded as forming part of the relevant decision of such authority under the said section 26."

The ordinary period is one of five years but s. 3 gives the planning authority or the Board the power to specify a longer period. Unless specified otherwise it is a five permission.

31. The basis on which planning permissions are to be interpreted has been clearly set out in case law. The authorities show that permissions may be interpreted by reference to the plans and documents lodged with the application, and the courts have made findings so stating. In *Readymix (Eire) Ltd. v. Dublin County Council* (unreported, Supreme Court, 30th July, 1974) Henchy J. stated at p.5 that:

> "The Act does not in terms make the register the conclusive or exclusive record of the nature and extent of a permission, but the scheme of the Act indicates that anybody who acts on the basis of the correctness of the particulars in the register is entitled to do so. Where the permission recorded in the register is self-contained, it will not be permissible to go outside it in construing it. But where the permission incorporates other documents, it is the combined effect of the permission and such documents that must be looked at in determining the proper scope of the permission. Thus because in the present case the permission incorporated by reference the application for permission together with the plans lodged with it, it is agreed that the decision so notified must be construed by reference not only to its direct contents but also the application and the plans lodged."

32. In *XJS Investments Ltd. v. Dun Laoghaire Corporation* [1986] I.R. 750 McCarthy J. stated at 756 that:

> "Certain principles may be stated in respect of the true construction of planning documents:—
>
> (a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.
>
> (b) They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning."

33. The decisions in *Readymix and XJS* were approved by the Supreme Court in *Kenny v. Dublin City Council* [2009] IESC 19 where Fennelly J. stated at paras. 24 – 25 and 28 – 34 that:

> "24. There may also be questions of interpretation. The planning permission is a formal and public document. The applicant, the planning authority and the public have participated in a formal statutory procedure, leading to its grant. The permission enures to the benefit of the land on which the permitted development is to be carried out.
>
> 25. Consequently, the planning permission is to be interpreted according to objective criteria. The subjective beliefs either of the applicant or the planning authority are not relevant or admissible as aids to interpretation. (See *Readymix (Eire) v.*

Dublin County Council, Supreme Court, unreported, 30th June, 1974) The matter is well expressed in the following passage from Simons on *Planning and Development Law* (2nd Ed., 2007, paras. 5.06-5.07):

'A planning permission is a public document; it is not personal to the applicant, but rather enures for the benefit of the land. It follows as a consequence that a planning permission is to be interpreted objectively, and not in light of subjective considerations peculiar to the applicant or those responsible for the grant of planning permission.

A planning permission is to be given its ordinary meaning as it would be understood by members of the public without legal training, as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning.'

…

28. A court, in interpreting a planning permission, may need to go no further than the planning document itself, or even than the words of a condition in issue within the context of the permission. The words may be clear enough. However, it will very often need to interpret according to context.

29. On this point, the case of *Gregory v. Dun Laoghaire Rathdown County* Council is also helpful.

30. The interpretation of the condition in that case undoubtedly presented a difficulty. An application was made for retention of what was called a garage/loft. Permission was granted. An Bord Pleanála, on appeal, imposed a condition as follows:

> 'The proposed loft shall be omitted. The proposed garage shall be of a single storey construction. Revised details shall be agreed with the planning authority…….'

31. The reason given was: 'in the interest of residential amenity.'

32. The planning authority agreed revised details, purportedly in compliance with the condition: the loft was to be omitted but the approved change led to no alteration in the height of the garage. The compliance order was challenged. Geoghegan J. upheld by the Supreme Court, considered that the agreement was not in compliance with the condition. He believed that the height of the structure, though not specified, was the main concern.

33. The Council argued, in defence of its decision, that the condition had been complied with: the loft was omitted; the garage was single storey. That was a literal approach. The Council argued that if the Board had intended that the height was to be reduced, *'it would have expressly so provided'*. It had not done so. This Court, on appeal, relied heavily on the reason for the complaint which had been made by the objector, which had led to the imposition of condition. His only concern was with the height of the structure. He was not in any way concerned with the internal layout. Murphy J. said:

> *'By imposing the condition in question they clearly required the reduction of the height of the structure by the removal of the loft area as shown on the plans before them and the second storey which constituted that loft. The omission or deletion of the loft was the means by which the reduction in height of the structure was to be achieved.'*

34. Thus, the principle of objective interpretation excludes purely subjective considerations, such as the understanding of the developer or the planning authority, but it does not provide a result where a provision is unclear, ambiguous or contradictory."

34. In the case of *Lanigan v. Barry* [2008] IEHC 29, Charleton J. made the following statement regarding the principles applicable to the construction of a grant of planning permission, (at paras. 36 and 37):

> "36. A planning permission is not a legal statute and nor is it to be construed as such. Rather, it is a document addressed to the world at large and one of particular interest to those who feel, by reason of proximity to the development authorised, or for good reasons like the preservation of what remains of the traditional Irish countryside, that they maybe affected by it. It is the view of a reasonable person looking at the permission and the conditions attached thereto, which should determine how a court construes the documents…
>
> 37. Instead, the entire character of this neighbourhood has been altered in a manner which has not been subject to democratic scrutiny under the planning code. It has been unlawfully altered by the refusal of the defendants to have any regard to their obligations under law. What has occurred at the raceway has been a completely new development in respect of which no planning permission exists. In interpreting the planning permission, which stands independently as a public document, I have regard to those other documents which it incorporates, namely the form of the application which the condition attached to the permission acquires to be abided by: *Readymix (Éire) Limited v. Dublin County Council*, (Unreported, Supreme Court, 30th July, 1974)."

35. From the facts it is evident that at every conceivable stage it was clear to the defendants that the plaintiffs were seeking and subsequently held a ten year permission. The initial permission granted in 1999 by Wicklow County Council was for ten years and at no stage during the oral appeal against that decision was the case made by the defendants to reduce this period. In addition, the Inspector's Report contains two clear references to a permission lasting ten years. There have been numerous applications to the High Court against the permission granted by An Bord Pleanála but at no stage during these previous challenges was a case put forward to reduce the duration of the permission. Finally, there was no attempt to challenge the duration of the permission in the Supreme Court appeal in December 2009. The issue regarding duration was only raised when the plaintiff sought to bring proceedings recently seeking an injunction against the defendant. From the foregoing the Court is quite satisfied that the defendants never doubted but that the permission was always one granted for ten years.

36. However unmeritorious the raising of this point by the defendant at this stage may appear to be, and in my view it is quite without merit, a party is not for that reason alone to be deprived of it. However, I believe the authorities outlined above demonstrate that a planning permission may be interpreted by the courts and the Court is satisfied that the duration was specified by the Board

due to Condition 1 in Schedule 2 of the permission. Condition 1 incorporates the application with the plans and permission. It refers to the application and the Court considers that it is thereby incorporated into the permission. Section 3 of the 1982 Act regarding specification is not made redundant by reliance on this condition as the duration is specified through the condition. The Court therefore finds that the planning permission was granted for the period of ten years and consequently the permission has not expired and continues to have effect.