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THE HIGH COURT
JUDICIAL REVIEW
IN THE MATTER OF SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT, 2000

[2004 No. 309 JR]

BETWEEN

SEAN DUNNE AND STEPHEN MacKENZIE

APPLICANTS

AND
An Bord Pleanála AND
O'MALLEY CONSTRUCTION COMPANY LIMITED

RESPONDENTS

AND
DUBLIN CITY COUNCIL

NOTICE PARTY

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[2005 No. 1165 J.R.]

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APPLICANTS

AND
AN BORD PLEANÁLA AND
O'MALLEY HOMES AND DEVELOPMENTS LIMITED

RESPONDENTS

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Judgment of Mr. Justice McGovern delivered on the 14th day of December, 2006

1. This is an application for judicial review arising out of two sets of proceedings which both concern the same plot of land at Shrewsbury Road, Dublin 4. In the first set of proceedings the applicants seek an order of *certiorari*, by way of application for judicial review, quashing a decision of An Bord Pleanála dated 11th February, 2004 to grant planning permission for seven apartments and associated development (reference PL29S.204501) and for ancillary relief. In the second proceedings the applicants seek an order of *certiorari*, by way of application for judicial review, quashing a decision of An Bord Pleanála dated 8th September, 2005 to grant planning permission for a development consisting of seven apartments and associated development (reference PL29S.212098, Planning Authority Register reference 1555/05) and for ancillary relief.

2. In fact both proposed developments consist of the demolition of the buildings on the site of the former Chester Beatty Library and the erection of seven apartments. The second application involved the demolition of what was then a remaining building on the site, the other buildings having already been demolished. Furthermore the layout of the apartments in the second application was somewhat different to the first application.

3. On the 12th October, 2004 the applicants were granted leave to apply by way of application for judicial review for the relief set forth at paragraph D(1-9) in the statement of grounds set forth at paragraphs E (3),(4) and (6) therein.

4. On the 23rd January, 2006 the applicants were granted leave to apply by way of judicial review for the reliefs set out in paragraph E grounds 1 and 3.

5. Effectively the complaint of the applicants is that in each of the cases An Bord Pleanála failed to give the main reasons and considerations upon which its decision was based and in particular on the question of the alleged incompatibility of the proposed development on the unique character of Shrewsbury Road having regard to the fact that it has been designated a Residential Conservation Area. The applicants also complain that the first respondent failed to give proper reasons for departing from the recommendation of the Inspector on the issue of the problems that might be created due to its proximity with the RDS and the issue in relation to the existence of a balcony door facing towards the second named applicant's premises.

6. The applicants also complain of various failures to comply with the Planning and Developments Regulations, 2001. The complaints are as follows:-

> 1. No site notice in accordance with Part 4 of the Planning and Development Regulations, 2001 was erected prior to the making of the application for planning permission.
>
> 2. No site notice in accordance with Article 19(4) of the Planning and Development Regulations, 2001 was erected at any time.
>
> 3. The newspaper notice failed to indicate that the proposed development involved the demolition of two habitable houses. Thus the nature and extent of the development were not properly described.
>
> 4. The requirements of Article 23 of the Planning and Development Regulations, 2001 were not complied with. The elevation drawings of the proposed structure did not show the main features of the buildings in the vicinity including the second named applicant's dwellinghouse which would be contiguous to the proposed structure if erected.
>
> 5. The requirement of Article 22 of the Planning and Development Regulations, 2001 were not complied with. In particular proposals in respect of social and affordable housing under Part V of the Planning and Development Act, 2000 were not included in the application.
>
> 6. The proper fee as required under the Planning and Development Regulations, 2001 was not submitted.

7. Extensive submissions have been made by the parties save for the notice party who maintained a watching brief.

The Facts.
8. For the purposes of this judgment I will refer to the planning application which is the subject matter of proceedings bearing Record No. [2004 No. 309 J.R.] as "the first application" and the planning application which is the subject matter of proceedings bearing Record No. [2005 No. 1165 J.R.] as "the second application".

9. There is a dispute between the parties in the first application as to whether or not a site notice was erected in accordance with the provisions of Part 4 of the Planning and Development Regulations, 2001. Article 17 (1)(b) provides that an applicant shall within the period of two weeks before the making of a planning application "*give notice of the intention to make the application by the erection or fixing of a site notice in accordance with Article 19*". Article 19 deals with the nature of the notice to be erected or fixed on the land or structure. There is a dispute between the parties as to whether or not the notice was erected in accordance with the Regulations. There is a second issue with regard to the notice in the first application which concerns the colour of the notice. It is contended on behalf of the applicants that the site notice should have been on a yellow background because the first application was made within six months from the making of a previous application in respect of land substantially consisting of the site or part of the site to which the previous application related. It is quite clear on the facts that the site notice which was erected was on a white background. I will deal with the legal implications of that later in the judgment. With regard to the dispute as to the erection of the site notice, the first named applicant says that the first time he saw the site notice was on or about Friday the 29th November, 2002. Mr. Myles O'Malley on behalf of the second named respondent says that on the evening of Friday the 15th November, 2002, he caused the site notice to be erected at the entrance from the public road to the lands which are the subject matter of the proceedings and he says that the site notice was placed in exactly the same position as the site notice in respect of which planning permission was granted by An Bord Pleanála under a previous reference. The site notice is dated the 15th November, 2002. I do not think it is possible to resolve this issue on the affidavits. It is quite clear from the affidavits and exhibits and the submissions which have been made that both the first and second named applicants were aware that an application to develop the site was made by the second named respondent and they were aware of this within sufficient time to enable them to object to the proposed development.

10. The applicants claim that the newspaper notice in the first application failed to indicate that the proposed development involved the demolition of two habitable houses and they claim that the nature and extent of the development was not therefore properly described. Article 18 of the Regulations sets out the material which should be in a notice published in the newspaper in accordance with the Regulations. There is nothing in Article 18 which suggests that it is necessary to indicate that habitable houses are to be demolished. The newspaper notice refers to the "*…demolition of existing buildings and erection of 7 no. apartments in 2/3 storey building over basement car parking, at former Chester Beatty Library, 20 Shrewsbury Road, Dublin 4…*". A planning application form was completed by the second named respondent. In a brief description of the nature and extent of the proposed development the second named respondent referred to "the demolition of existing buildings and erection of 7 no. apartments in 2/3 storey building over basement car parking". Thus in that form and the newspaper notice reference was made to the demolition of buildings and not a building. But the planning application form also asked "*does the proposal involve demolition, partial demolition or change of use of any habitable house* - or part thereof*:". This was answered "*no*". Habitable house is defined as a building which (a) is used as a dwelling or (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling, or (c) was provided for use as a dwelling but has not been occupied.

11. It is clear from the evidence that for some years before the Chester Beatty Library moved to Dublin Castle the two premises concerned were not occupied as houses but were being used as offices. It is, I think, relevant to point out that the site notice referred to the "*…demolition of existing buildings…*".

12. In the first application it appears that there may have been a failure to complete the planning application form correctly. But if it was done incorrectly it appears that the error was of a somewhat technical nature since it was clear from the other notices that not just one building but "the existing buildings" on this site were to be demolished.

13. In the second application the newspaper notice stated inter alia that permission was sought to "*demolish the remaining building on site previously used as part of the Chester Beatty Library complex initially as residential accommodation by caretakers and subsequently as offices….*" The planning application form provided the question "*does the proposal involve demolition, partial demolition or change of use of any habitable house or part thereof"* and this was answered "*yes* (originally dwelling subsequently offices, currently vacant)." *The site notice also clearly identified the remaining building as one* "… previously used as party of the Chester Beatty Library complex initially as residential accommodation by caretakers and subsequently as offices."

14. It was therefore perfectly plain that the development for which permission was sought involved the demolition of all the buildings formerly on the Chester Beatty Library site and I am quite satisfied on the evidence that the applicants knew that this was the case.

15. It is alleged that Article 23 of the Planning and Development Regulations, 2001 were not complied with and that the elevation drawings of the proposed structure did not show the main features of the buildings in the vicinity (including the first named applicants' respective dwellinghouses) which would be contiguous to the proposed structure if it were erected. There are other related allegations about the failure to show levels and contours of the land but these were not canvassed in the course of the hearing.

16. Article 23 (1)(a) of the Regulations provides that elevational drawings show the main features of any buildings "*which would be contiguous to the proposed structure if erected whether on the application site or in the vicinity*." It is clear that in the elevational drawings the second named applicant's house was not shown although it was clearly shown in a site plan which was furnished to the Planning Authorities. The first named respondent argues that the regulation did not impose a general obligation to show the main features of all buildings in the vicinity, in the elevational drawings furnished, but only those buildings which are contiguous to the proposed development. They argue that where the adjacent properties comprise large sites on which single dwellings are situated and some removed from the proposed development these buildings are not in any sense "contiguous" to the proposed development." The word "contiguous" is not defined. It can mean in contact with, or physically adjacent to, or neighbouring. I will deal, at a later stage, with the legal consequences (if any) which flow from the failure to show the second named applicant's house in the elevation drawing supplied with the planning application. What does emerge from the evidence on the documents which I have seen is that the issue of the development and its affect on the adjoining properties which are owned by the applicants was fully considered so it would be unreal to suggest that the first named respondent was not aware of the position of the second named applicant's house and the manner in which it might have been affected by the proposed development. It is also quite clear that the second named applicant emphasised on numerous occasions how his property would be affected by the proposed development in a way which could have left no one in any doubt as to where his house was in relation to the proposed development. I am satisfied therefore that no prejudice arises as a result of the failure to show the second named applicant's house on the elevation drawings submitted.

17. Section 96 of the Planning and Development Act, 2000 deals with the issue of provision of social and affordable housing. It is contained in Part V of the Act. Article 22 of the Planning and Development Regulations require that a planning application shall, *inter alia,* "(h) *in the case of an application for permission for the development of houses or of houses and other development, to which s. 96 of the Act applies, specify how the applicant proposes to comply with a condition referred to in sub-s. (2) of that section to which the permission, if granted, would be subject*."

18. Section 96 (2) of the Act provides "*a planning authority, or the Board, on appeal, may require as a condition of a grant of permission that the applicant…enter into an agreement with the planning authority, concerning the development for housing of land to which a specific objective applies in accordance with s*. 95(1)(b)."

19. The appellants claim that the requirements of article 22 of the Regulations were not complied with in that no proposals in respect of social and affordable housing under Part V of the Act were included with the application.

20. The first named respondent says that article 33 (2) of the Regulations provides that a request made for further information "… *may not require the submission of any further information in respect of the matter specified in articles 18, 19(a) or 22, save the proposals referred to in article 22 (1)(h)."* They say that the Regulations therefore specifically contemplate the planning authority requiring the submission of further information in relation to the proposals referred to in article 22 (1)(h) which is the question of social housing. They point out that the planning authority did request further information in this case and the developer responded by letter dated 8th August, 2003 stating that an agreement had since been reached with the Council. Correspondence was exhibited in the affidavit of Mr. Fergal Kenny, sworn in the first application on the 5th April, 2004, from which it is clear that agreement was reached between the planning authority and the second named respondent on the issue of their obligations under Part V of the Planning and Development Act, 2000. The recommendation of the planning authority to accept the payment of €500,000.00 in discharge of these obligations in respect of an earlier planning permission extended to the application which is the subject matter of the first application for judicial review. On the 11th February, 2005 a representative of the second named respondent wrote to the planning officer of the local authority with regard to the matter which is comprised in the second application and stated "*finally, an agreement was previously reached with the Housing Department in terms of complying with the provisions of Part V of the Planning Act in respect of the proposed development of seven apartments on this site. It is our client's proposal in respect of this application that the agreement previously reached should apply also to this application."* The planning permission subsequently granted was subject to the payment of the sum of €500,000.00 to comply with these obligations. Nowhere in the affidavits or in the documents produced to the court have the applicants been able to show that they are in any way prejudiced by the nature of the agreement reached with regard to the obligations of the developer under Part V of the Act nor do they state that they have any objection to the amount which was fixed. Their objection on this basis is purely technical. By the time the second named appellant instructed Roisin Hanley, Architects to appeal to An Bord Pleanála on the 25th September, 2003 the proposal from the second named respondent was already before the Board and the second named applicant knew that this proposal involved the payment of monies in lieu of building social housing on the site in question. In those circumstances it is difficult to see how the issue could have affected either the first or second named appellant.

21. The appellants' objection to the grant of permission based on the fact that the incorrect fee was lodged with the planning application arises out of the fact that a sum of €540.00 was lodged instead of the correct sum of €545.00. Again this is a technical objection and there is no prejudice pleaded on the part of either of the applicants with regard to that issue. In applications of this sort where a discretionary remedy is sought the courts should not be troubled by such minimal discrepancies and I make no finding with regard to that technical point on the basis of the principle of *de minimis non curat lex*.

22. The applicants claim that the first named respondent should not have dealt with an application or appeal in relation to the development which is the subject matter of ongoing High Court proceedings. They say this is a breach of s. 37 (5)(a) of the Act. This sub-section reads:

> *"No application for permission for the same development or for development of the same description has an application for permission for development which is the subject of an appeal to the Board under this section shall be made before –*
>
> *(i) the Board has made its decision on the appeal,*
>
> *(ii) the appeal is withdrawn, or*
>
> *(iii) the appeal is dismissed by the Board pursuant to s. 133 or 138."*

23. The first named respondent argues that this section precludes the making of an application for permission for the same development in circumstances where the Board has not yet dealt with the appeal of a previous application pertaining to such development or a development of the same description. It does not include final decisions made by the Board on appeal solely because they are subject to judicial review. Until such time as they are judicially reviewed the decision of the Board stands. Since this objection is solely a legal one I propose to deal with it here and dispose of it. I accept the construction urged on me by the first named respondent and accordingly I reject this ground of objection by the applicants.

24. The principal ground of objection is that the first named respondent did not give sufficient reasons for its decision and failed to have regard to the development plan and in particular the status of Shrewsbury Road as a residential conservation area.

25. The decision of An Bord Pleanála in the first application was given on the 11th February, 2004. The decision set out reasons and considerations. It is stated that the first named respondent had regard to the planning history relating to the site and the provisions of the current development planned for the area and the fact that the site was located in a Residential Conservation Area. The first named respondent also had regard to the pattern new and existing development in the vicinity. In this context it is worth remembering that the first named applicant had in the recent past built two dwellinghouses on the adjoining site. The site of the proposed development consists of the former Chester Beatty Library and ancillary buildings and is in close proximity to the College of Pharmacology. Therefore, although the road is predominately a residential road, there is a history of some non-residential use on the road on the site which is proposed to be developed and also in close proximity to it. The reasons and considerations in the decision of the 11th February, 2004 state that having regard to the matters recited above the proposed development would not seriously injure the amenities of the area or of the property in the vicinity and will be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area. The first named respondent sets out the reasons for declining to accept the inspector's recommendation to refuse permission namely that it considered that the proposed development would not jeopardise the continuation of activities at the grounds of the Royal Dublin Society. The conditions imposed by the first named respondent are eleven in number. Eight of the first nine conditions are imposed in the interests of visual amenity and residential amenity and provide for such matters as landscaping and the protection of trees and shrubs and the materials, colours and

textures of all external finishes to the proposed development.

26. The decision of An Bord Pleanála in the second application was made on the 8th September, 2005. Again the first named respondent states in its decision that it had regard to the provisions of the current development plan for the area, the location of the site within a Residential Conservation Area, the pattern of existing development in the vicinity of the site and the scale of the proposed development. Twelve conditions were imposed. Eight of those conditions were imposed in the interests of visual and/or residential amenity for similar reasons as in the previous application.

27. The applicants complain that the first named respondent did not give any reasons for departing from the Inspector's recommendation that a condition be attached requiring the omission of a balcony from the proposed development. This is a recommended condition to the grant of permission rather than a reason for the recommendation or refusal for permission. It is argued that s. 34 (10)(b) of the Planning and Development Act, 2000 does not require the Board to give reasons for departing from the Inspector's recommendations regarding the imposition of conditions. That sub-section reads:

> *"Wherein a decision by a Planning Authority under this section or by the Board under s. 37 to grant or refuse permission is different, in relation to the granting or refusal of permission, from the recommendation in –*
>
> > *(i) the reports on a planning application to the manager (or such other person delegated to make the decision) in the case of a planning authority, or*
> >
> > *(ii) the report of a person assigned to report on an appeal on behalf of the Board, a statement under paragraph (a) shall indicate the main reasons for not accepting the recommendation in the report or reports to grant or refuse permission."*

28. It seems to me that the submission of the first named respondent is correct and that there is no obligation on the first named respondent to give reasons why it disagreed with its Planning Inspector on a particular condition which was recommended by the Inspector to be imposed. The balcony in question was at some considerable distance from the second named applicant's premises and faced towards the rear end of a large garden secluded from the proposed development by trees and shrubs. The first named applicant's premises was not effected by this balcony as it was on the other side of the proposed development.

The Law
29. A substantial number of legal authorities were opened to me in the course of the hearing. I was also referred to the Planning and Development Act, 2000 and to the Planning and Development Regulations 2001 (S.I. 600 of 2001).

30. Section 34 (10) of the 2000 Act provides

> *"(a) a decision given under this section … and the notification of the decision shall state the main reasons and consideration on which the decision is based, and where conditions are imposed in relation to the grant of any permission the decision shall state the main reasons for the imposition of such conditions.*
>
> *(b) Where a decision by a planning authority under this section or by the Board under section 37 to grant or refuse permission is different, in relation to the grant or refusal of permission from the recommendation in –*
>
> *…*
>
> > *ii. a report of a person assigned to report on an appeal on behalf of the Board. A statement under paragraph (a) shall indicate the main reasons for not accepting the recommendation in the report or reports to grant or refuse permission."*

31. In *Mulholland v. An Bord Pleanála* [2006] I.L.R.M 287 Kelly J. stated at pp. 293 and 294 that the provisions of s. 34 (10) of the Act of 2000 brought about a number of changes to the pre-existing statutory regime.

> *"Prior to the 2000 Act a planning authority did not have to give reasons for the decision to grant planning permission although the Board did have such an obligation. An obligation is now imposed on both the planning authority and the Board regardless of whether the decision is to grant or refuse permission. … Finally a new obligation was imposed by s. 34(10)(b). It, inter alia, deals with the situation of which applies in the present case namely, where the Board does not accept the recommendation of its Inspector. In such circumstances the Board is obliged to indicate the main reasons for not accepting the recommendation in the report or reports to grant of refuse permission."*

32. In *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 Murphy J. said at p. 757:

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

33. In *The State (Sweeney) v. Minister for the Environment* [1979] I.L.R.M. 35 Finlay P. at p. 37 that the purpose of the requirement for reasons was :

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

34. Kelly J. in the Mulholland case stated that *"nobody suggests that these decisions do not apply with equal force to the statutory obligations imposed under the Act of 2000."*

35. In *Lancefort v. An Bord Pleanála* (2) [1999] 2 I.R. 270 Keane J. stated:

> *"In requiring, as they do, an applicant who institutes such proceedings within a strict time limit of two months, and to establish "substantial grounds" for contending that the decision in question is invalid before leave is granted and in*

severely restricting the right of appeal from the decision of the High Court to this Court, the Oireachtas has made plain its concern that, given the existence of an elaborate appeals procedure which can be invoked by an member of the public and the determination of the issues by in independent board of qualified persons, the judicial review procedure should not be availed of as a form of further appeal by persons who may well be dissatisfied with the ultimate decision, but whose rights to be heard have been fully protected by the legislation. The courts are bound in their decisions to have serious regard to that concern."

36. In this case I have to decide whether or not the breaches of Regulations and the breaches of the obligation to state reasons were of such a nature as to prejudice the applicants or impede them in challenging the decisions made, or were essential to give validity to the planning process which obtained in relation to the proposed development. In *O'Keeffe v. An Bord Pleanála* [1993] I.R. 39 at p. 76 Finlay C.J. stated:

"What must be looked at is what an intelligent person who has taken part in the appeal or has been appraised of the broad issues which had arisen in it would understand from this document, these conditions and these reasons…"

37. Having considered the submissions and the Act, the Regulations and the legal authorities, I am satisfied that the first respondent did address adequately, in its statement of reasons, the substantive issues in the appeal and in particular the suitability of the proposed development. It took into account all the relevant criteria such as the current development plan, the planning history in relation to the site, the fact that it was in a Residential Conservation Area and the pattern of new and existing development in the vicinity. It considered the impact of the proposed development on the adjoining properties and the immediate area and this is clear from the conditions which attach to the grant of permission. In considering the planning history of the area it is impossible to ignore the fact that several earlier applications had been made and these had been scaled down by the first respondent to the point where the only permitted development would be seven apartments. The second named respondent had originally applied for thirteen apartments and at one point had been granted permission for ten by the local authority. I reject the applicants' claim that insufficient reasons and considerations were given for the decision which is the subject matter of either the first application or the second application.

38. I will now deal with the various technical objections. Two issues arise with regard to the site notice. It is alleged that the site notice was not erected in good time and it is also alleged that the site notice should have been on a yellow background.

39. I have already indicated that it is not possible to resolve the dispute as to the date on which the notice went up. However, I note that the date of the notice in respect of the first application is the 15th November, 2002 which is the same date that Mr. O'Malley says it went up. In any event I am satisfied that there was no prejudice to the applicants because they knew in sufficient time of the development and they were able to make objections before the planning authority and subsequently appeal the matter to An Bord Pleanála. As the remedy of certiorari is a discretionary remedy I accordingly exercise my discretion against making any order on that issue.

40. So far the colour of the notice is concerned I have already ruled in the case of *Kelly v. Roscommon County Council* (Unreported Judgment delivered 20th June, 2006) that in the circumstances that arise in this case the site notice should be on a white background. Accordingly, I reject the applicants' argument on this issue.

41. So far as the newspaper notice failed to indicate that the development involved the demolition of two habitable houses, I am satisfied that there is no requirement in the Regulations or the Act for such a matter to be contained in the notice. The applicants claim that if there had been a change of user in the houses on the Chester Beatty site then it was an unauthorised development and that this is something which should have been regularised and they say that the decision to permit the demolition of these houses was not lawful as no application had been made specifically with regard to the demolition of habitable houses for which permission would be required.

42. It was at all times clear that all the buildings on this site were to be demolished and permission was given for that purpose which, in my view, disposes of any issue as to whether or not an application for permission to demolish them as habitable houses should have been made. If the application had been made in the matter contended for by the applicants it is clear that it would have been granted as both the local authority and the first named respondent knew that the development to the site included the demolition of these buildings. In any event it is difficult to see any prejudice to the applicants or either of them on this issue. Accordingly, in the exercise of my discretion I refuse the relief sought on this ground.

43. It is true that the elevation drawings did not show the dwellinghouse of the second named applicant. Whether it should have done so or not depends on whether this house was "contiguous" to the development site. Unfortunately the word "contiguous" is not defined in the Act or in the Regulations. It could well be said that, having regard to the distances between the adjoining properties on Shrewsbury Road that the second named applicant's dwellinghouse is not contiguous to the proposed structure. It is separated from the proposed structure by some distance and the boundary between the two sites contains trees and shrubs. It seems to me that there is an element of uncertainty as to whether or not the dwelling of the second named applicant is contiguous to the proposed structures. It is the dwelling or "building" we are concerned with and not the second named applicant's boundary or site. The burden of proving that it is contiguous is on the second named applicant and I am not satisfied that he had discharged this burden. In any event the site map which was furnished clearly showed the second named applicant's house and it is perfectly clear that at all material times both the local authority and the first named respondent were aware of the position of the second named applicant's house, as one of the main issues arising in the original objection and the appeal was the way in which this house and the surrounding grounds would have been affected by the proposed development. Accordingly the second named applicant was not prejudiced if there was any technical breach in the drawings that were furnished with the planning application and accordingly I exercise my discretion to refuse the relief sought on this ground by the applicants. The first named applicant was not prejudiced on this issue as his house was at all material times shown on the plans and, in any event, it was on the other side of the proposed development.

44. The applicants' objections on the affordable housing issue are not, in my view, well founded and are spurious. They were never affected by these arrangements. It seems to me that this was a matter between the respondents as to how the second named respondent's obligations under Part V of the Act would be complied with. Since the only option which was ever proposed and considered was the payment of a sum of money in lieu of providing social housing on the site the applicants were not prejudiced by this. The suggestion that they should have had some input into how much was paid seems to me to be quite spurious as a ground for objecting and I reject this ground of their application.

45. In *Fynes v. An Bord Pleanála* (Unreported, McGuinness J., 30th July, 1998) the judge referred at paragraph 33 of her judgment to *O'Keeffe v. An Bord Pleanála*. In that case she held – following *O'Keeffe v. An Bord Pleanála* – that the Board should determine the application as if it had been made to it in the first place and that it should not have any regard to what had happened before the

Planning Authority. She therefore held that any infirmities which affected the Corporation's planning procedure were irrelevant to the validity or otherwise of the Board's decision. At paragraph 40 of her judgment she states that "… *minor infringements of the regulations will not be fatal to the validity of the application provided the error does not deliberately mislead the public or work to the disadvantage of the Planning Authority or the public.*"

46. The Court is entitled to use its discretion in deciding whether or not to grant the relief of *certiorari*. It seems to me when looking at this case in its entirety, the applicants were at all times aware of the general nature of the application, they made their objections to the planning application both before the Local Authority and the Board. All their objections which were based on the general suitability of such a development on Shrewsbury Road were considered and heard and the first named respondent made its decision on the matter and gave reasons which were quite intelligible. I am satisfied that insofar as there have been any technical breaches of the regulations that the applicants have not been prejudiced on account of these breaches and in some cases they are so minimal as not to warrant any action being taken by this court. Finally, it is quite clear that after several applications for the development of the site which is the subject matter of these applications, that the first named respondent has resolved that 7 apartments should be permitted on the site subject to the stringent terms and conditions imposed. They have now given permission for 7 apartments at this site on two occasions so it is difficult to see what can be achieved by the applicants if I was to exercise my discretion in their favour. The second named respondent would renew the application and the entire procedure would be gone through again with the same final result.

47. Having regard to my findings in relation to the points raised by the applicants in the first and second application I refuse the applicants the relief sought.