

**THE HIGH COURT
JUDICIAL REVIEW**

[2005 No. 1112 JR]

BETWEEN

**MICHAEL CUMMINS
AND
LIMERICK COUNTY COUNCIL
AND
DAN CROWLEY**

APPLICANT

RESPONDENT

NOTICE PARTY

Judgment of Mr. Justice de Valera delivered on the 20th day of July, 2007

1. This is an application for leave to seek judicial review.
2. The applicant, Michael Cummins, seeks to challenge the decision of the respondent, Limerick County Council to grant planning permission to the notice party, Dan Crowley, which permission, granted on 20th August, 2005 did not contain any condition, or conditions, which would prevent the notice party building upon a portion of the now disused Limerick to Charleville railway line.
3. In his application for leave, initiated by notice of motion dated 14th November, 2005, the applicant sought in subparagraph:
 1. An order of *certiorari* quashing the decision of the respondent made on or about 22nd August, 2005 to grant planning permission to the notice party in planning reference No. 04/2608
 2. A declaration that in the granted permission to the notice party herein for *inter alia* development at Bruree Lodge and lands, at Bruree. The respondent County Council acted contrary to law, and in particular, did not conform with the mandatory requirements of the Planning and Development Regulations 2001, and s. 28(1) thereof.
 3. A declaration that the aforesaid decision of the respondent was *ultra vires* and was null and void.
 4. A declaration that the respondent failed to properly publish or implement a county development plan reflective of the regional planning guidelines and in particular failed to safeguard the route of the old Cork-Limerick rail line between Limerick and Patrickswell.
 5. An injunction restraining any development of the site pursuant to the purported granted permission 04/2608 pending the determination of the within proceedings.
4. The grounds on which these reliefs were sought were:
 - (a) The planning permission impugned herein permits the notice party to impinge upon the site of the former Cork-Limerick rail line at Bruree, the preservation and reinstatement of which are specific objectives of the regional development plans of the Mid Western and South Western Regional Authority.
 - (b) The aforesaid permission per planning reference No. 04/2608 involves a fundamental and material encroachment of the former line and absolves the notice party of the need to protect same and thereby affects the prospect the future reinstatement of the line and the development of the region.
 - (c) The grant of planning permission as aforesaid renders it impossible to protect and reinstate the disused Cork-Limerick railway line between Charleville and Patrickswell and particularly at Bruree contrary to national and regional policy and the county development plan.
 - (d) The development materially affects a site and route as well as buildings of historical and architectural interest.
 - (e) A measure that hinders the preservation of the old railway line is such that it affects all persons, agencies and authorities on the route of that railway and on any interconnecting route.
 - (f) The respondent granted permission reference No. 04/2608 in circumstances where it appears that the development would not be consistent with or would materially contravene the regional planning guidelines including objectives of the Mid West and South Western Regional Authorities. The respondent did so without giving notice in writing to those Regional Authorities so that they would have an opportunity to respond.
 - (d 1) The respondent granted permission reference No. 04/2608 in circumstances where it was readily apparent that the area of another local authority might be affected without giving notice in writing to such local authorities so that they would have an opportunity to respond.
 - (e 1) The respondent breached the provisions of Planning and Development Acts and Regulations made thereunder.
 - (f 1) In particular the respondent breached s. 28(1) of the Planning and Development Regulations 2001.
 - (g 1) The respondent breached the terms of the Limerick County Development Plan in the granting of the said permission.
 - (h) The respondent deprived the applicant of his right to appeal in breach of his legitimate expectation by guaranteeing him that his concerns with regard to the regional planning guidelines would be safeguarded by the respondent. The respondent resiled from that position without informing the applicant.
 - (i) The respondent failed to respect the regional planning guidelines in the preparation of the County Development Plan.
 - (j) Such further or other grounds as this honourable court may deem meet.

5. The main thrust of the respondent's (and notice party) resistance to this application was based upon the assertions of delay and the absence of *locus standi* by the applicant together with the applicant's failure to comply with article 28 of the Planning and Development Regulations 2001, in that he did not make any, or any relevant observations on the planning application.

6. As this is an application for leave to judicially review the decision of the Limerick County Council to grant a planning permission, s. 50 of the Planning and Development Act 2000, subs (4)(b) requires that the applicant must establish that he has

(a) substantial grounds for contending that the decision of the planning authority is invalid

and/or

(b) That he has a substantial interest in the matter.

7. In *MacNamara v. An Bórd Pleanála* [1995] 2 I.L.R.M. Carroll J. held:-

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

8. In applying this test to the grounds set out above, I am satisfied that the applicant has, in respect of grounds (a) (b) (c) (f) (d 1) (e 1) (g) (h) and (i), established by way of substantial argument that there are substantial grounds on which I should grant him leave to seek judicial review.

9. I am not satisfied that the grounds at (d) and (e) are substantial or sustainable.

10. I accept the applicants arguments at this, leave, stage that he is motivated by genuine concerns in relation to the preservation of the route of the now disused Cork-Limerick railway and also that the decision is capable of affecting him personally. I also accept that he has the required "substantial interest". There is some conflict as to the assurances that may or may not have been given to the applicant by members of the staff of the respondent and I am satisfied that the failure by the applicant to lodge any submission in relation to the planning application, was as a result of his understanding of the assurances given to him by the respondents employees.

11. As the absence of any objection, submission or observation was the result of these assurances I am satisfied that the applicant has established the "substantial interest" required by s. 50(4)(b) of the Planning and Development Act 2000.

12. It is also contended by the respondent that the applicant is in breach of O. 84, r. 21(1) of the Rules of the Superior Courts which provides:-

"An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when the grounds for the application first arose, or six months where the relief sought is *certiorari*, unless the Court considers that there is good reason for extending the period within which the application shall be made."

13. The applicant in respect of paras. 1, 2, 3 and 5 of the notice of motion already referred to seeks to impugn the permission granted on 22nd August, 2005 and is therefore within the three month time limit set out in O. 84, r. 21 as aforesaid. In respect of the reliefs sought at para. 4 of the notice of motion the applicant is out of time and for this reason cannot continue with this particular part of the application.

14. I will grant leave to seek the reliefs sought at paragraphs 1, 2 and 3 of the applicant's notice of motion and accept the undertaking by the respondent and notice party to take no further steps in respect of planning reference No. 04/2608 until the determination of the hearing for judicial review.