

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1347 J.R.]

IN THE MATTER OF SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS INSERTED BY SECTION 13 OF THE PLANNING AND DEVELOPMENT (STRATEGIC INFRASTRUCTURE) ACT 2006, AND AS AMENDED BY SECTION 32 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010

BETWEEN

KEVIN HOARE, KEVIN DONNELLY AND BARRY DONNELLY

APPLICANTS

AND

LIMERICK CITY COUNCIL

RESPONDENT

JUDGMENT of Kearns P. delivered the 26th day of January, 2011

By order of the High Court (Hedigan J.) dated 27th October, 2010 the applicants were granted leave to apply for judicial review for the following reliefs:-

- (i) An order of *certiorari* by way of judicial review quashing the decision of the respondent to proceed with the construction of a quality bus corridor/green route at Ballinacurra Road, Limerick.
- (ii) A declaration that the respondent cannot carry out the development of a quality bus corridor/green route at Ballinacurra Road, Limerick, unless and until it has complied with the provisions of Part VIII of the Planning and Development Regulations 2001 to 2010 as required under Section 179 of the Planning and Development Act 2000 as amended.
- (iii) An order of *mandamus* by way of application for judicial review compelling the respondent to carry out the procedure as set out in Part VIII of the Planning and Development Regulations 2001 to 2010 in advance of the commencement of any work or the award of any contracts in respect of such works in respect of the development of a quality bus corridor at Ballinacurra Road, Limerick.
- (iv) An order of prohibition by way of application for judicial review restraining the respondent from carrying out any development or taking any steps in pursuance of the development of a quality bus corridor/green route at Ballinacurra Road, Limerick.
- (v) Interim and/or interlocutory relief restraining the respondent from carrying out any works or other steps in respect of the development of a quality bus corridor at the Ballinacurra Road, Limerick.
- (vi) Further or other order.
- (vii) Costs.

FACTUAL BACKGROUND

These proceedings arise in respect of a proposed development at Ballinacurra Road, Limerick (hereinafter referred to as the "development"). The applicants live and/or own property in the vicinity of Ballinacurra Road, Limerick. The respondents are the local authority in whose jurisdictional area the applicants reside. It was the applicants' argument that the proposed development is one to which s. 179 of the Planning and Development Act 2000 as amended (hereinafter referred to as "the Act of 2000") applies and that in consequence the respondent is obliged to undertake a public consultation procedure in respect of same. The applicants claim that the proposed development will create significant disruption to their lives by creating a severe traffic hazard and that it will adversely affect the parking and access arrangements to their homes. It was claimed by the applicants that this development was unnecessary and faced strong local opposition.

On 13th September, 2010 a special meeting of the respondent was held in which the proposed development was discussed. The motion "[t]o further adjourn this meeting to enable the City Manager to give effect to the resolution that Limerick City Council comply with the procedural requirements of section 179 of the Planning and Development Act 2000 and Part VIII of the Planning and Development Regulations 2001 before it carries out any development in respect of green routes in any area of Limerick City being a resolution that was approved and passed by the said Council on 26th day of May 2008" was defeated.

A second motion proposing "[t]hat Limerick City Council continue the bus lane from Ballinacurra Creek to Punches Cross" was passed.

On 16th September, 2010 the respondent appointed SIAC Construction Limited as the main contractors on the Ballinacurra Road/ Mount O'Connell Avenue, Phase 1 Quality Bus Corridor Project. The fixed price of this contract was €869,055.87, excluding VAT.

It was the applicants' contention that such a development falls within the ambit of s. 179 of the Act of 2000 and the regulations made thereunder in that it involves the widening and realignment of an existing road which exceeds 100 metres within an urban area,

or, alternatively, is a development the estimated cost of which exceeds €126,000.

Section 179 (1) of the Act of 2000 allows the Minister to prescribe certain developments where he is of the opinion that, by reason of the size, nature and effect on the surroundings of such a development, it should be subject to the requirements of the section. Section 179 (2) and (3) of the Act set out the procedures which must be followed by a local authority in respect of its own development when that development is a prescribed development. At this juncture it is suffice to paraphrase those requirements as follows:- (i) a planning authority must notify and consult with the public in respect of those developments prescribed by article 80 (1) of the Planning and Development Regulations 2001 to 2010 (hereinafter referred to as "the Regulations"); (ii) the plans and particulars of the scheme must be available for inspection in order to facilitate such submissions; and (iii) the manager of the local authority, subsequent to the expiration of the period during which submissions may be made, must prepare and submit a written report in respect of the proposed development to the members of the authority.

The respondent did not undertake the procedure set out in s.179 of the Act of 2000 and articles 79, 80, 81, 82, 83, 84 and 85 of the Planning and Development Regulations 2001 to 2010 (hereinafter referred to as "the Part VIII procedure") and it was the respondent's contention that it was not necessary for it to do so in this instance.

RELEVANT LAW

Section 4 (1) (e) of the Planning and Development Act 2000 as amended provides:-

"The following shall be exempted developments for the purposes of this Act:

(e) development consisting of the carrying out by the corporation of a county or other borough or the council of a county or an urban district of any works required for the construction of a new road or the maintenance or improvement of a road"

Section 179 of the Planning and Development Act 2000 as amended provides that:-

"(1) (a) The Minister may prescribe a development or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.

(b) Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under paragraph (a) (hereafter in this section referred to as "proposed development") it shall in relation to the proposed development comply with this section and any regulations under this section.

(c) [...]

(d) This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority."

Section 179 (2) and (3) set out the procedure to be followed in respect of a local authority's own development and provides that:-

"(2) The Minister shall make regulations providing for any or all of the following matters:

(a) the publication by a local authority of any specified notice with respect to proposed development;

(b) requiring local authorities to—

(i) (I) notify prescribed authorities of such proposed development or classes of proposed development as may be prescribed, or

(II) consult with them in respect thereof,

and

(ii) give to them such documents, particulars, plans or other information in respect thereof as may be prescribed;

(c) the making available for inspection, by members of the public, of any specified documents, particulars, plans or other information with respect to proposed development;

(d) the making of submissions or observations to a local authority with respect to proposed development.

(3) (a) The manager of a local authority shall, after the expiration of the period during which submissions or observations with respect to the proposed development may be made, in accordance with regulations under subsection (2), prepare a written report in relation to the proposed development and submit the report to the members of the authority.

(b) A report prepared in accordance with paragraph (a) shall—

(i) describe the nature and extent of the proposed development and the principal features thereof, and shall include an appropriate plan of the development and appropriate map of the relevant area,

(ii) evaluate whether or not the proposed development would be consistent with the proper planning and sustainable development of the area to which the development relates, having regard to the provisions of the development plan and giving the reasons and the considerations for the evaluation,

(iii) list the persons or bodies who made submissions or observations with respect to the proposed development in accordance with the regulations under subsection (2),

(iv) summarise the issues, with respect to the proper planning and sustainable development of the area in which the proposed development would be situated, raised in any such submissions or observations, and give the response of the manager thereto, and

(v) recommend whether or not the proposed development should be proceeded with as proposed, or as varied or modified as recommended in the report, or should not be proceeded with, as the case may be."

Section 179 (6) (a) of the Act of 2000 provides for certain exemptions from the public consultation procedure set out in s. 179 (2) and (3) as follows:-

"(6) This section shall not apply to proposed development which—

(a) consists of works of maintenance or repair, other than works which would materially affect the character of a protected structure or proposed protected structure."

Part VIII of the Planning and Development Regulations 2001 to 2010 prescribes certain classes of development to which s.179 of the Act of 2000 applies. Article 80 provides in relevant part as follows:-

"(1) Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as "proposed development", are hereby prescribed for the purposes of section 179 of the Act -

(b) the construction of a new road or the widening or realignment of an existing road where the length of the new road or of the widened or realigned portion of the existing road, as the case may be, would be (i) in the case of a road in an urban area, 100 metres or more...

(k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus."

Reliance was placed by both counsel for both sides upon statutory definitions of key words and terms which require consideration in this case. Section 2 (1) of the Planning and Development Act 2000 as amended provides:-

"In this Act, except where the context otherwise requires- 'road' has the same meaning as in the Roads Act 1993,

'public road' has the same meaning as in the Roads Act 1993."

Section 2(1) of the Roads Act 1993 provides that:-

"In this Act, except where the context otherwise requires-

'public road' means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority,

'maintenance' in relation to public roads includes improvement and management,

'road' includes -

(a) any street, lane, footpath, square, court, alley or passage, (d) any other structure or thing forming part of the road and (i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment.

'roadway' means that portion of a road which is provided primarily for the use of vehicles.

'local road' means a public road other than a national road or a regional road."

Section 13 (2) of the Roads Act 1993 provides:

"It is the function of a local authority to maintain and construct all local roads-

(a) in the case of a county council - in its administrative area...,

(b) in the case of any other local authority - in its administrative area."

Section 38 of the Road Traffic Act 1994 provides:-

"(1) A road authority may, in the interest of the safety and convenience of road users, provide such traffic calming measures as they consider desirable in respect of public roads in their charge.

'traffic calming measures' means measures which restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists) and includes the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works."

SUBMISSIONS OF THE APPLICANT

The applicants argued that this development falls within the ambit of the Part VIII procedure, in particular article 80 (1) (b) of the Regulations, for the purposes of s.179 of the Act of 2000. Counsel submitted that the respondent was thus under an obligation to carry out a proper public consultation procedure. By failing to do so, the respondent had acted *ultra vires* and had interfered with the applicants' rights under the legislation, the Constitution and the European Convention on Human Rights.

Counsel noted that on a prior occasion, in or about September 2005, the respondent advertised its intention to carry out a Part VIII procedure in respect of the Ballinacurra Road bus corridor. That proposal was objected to by the first named applicant and the respondent later withdrew the proposal. Counsel queried the approach of the respondent which failed to undertake the same procedure in respect of the current proposed development at the Ballinacurra Road. The applicants believed that the respondent had decided not to engage with the Part VIII procedure as it would have taken a number of months to conclude and there was a fear that if the funds then available from the Department of Transport were not drawn down immediately they might not be available to the respondent in the future.

Counsel for the applicants addressed arguments based on criteria relevant to s. 179(6) of the Act of 2000 and Part VIII of the Regulations which require consideration under the headings of (i) maintenance, (ii) widening and realignment, and (iii) cost.

(i) Maintenance

In response to the respondent's argument that this development was one of maintenance and there was in consequence an entitlement to carry out such maintenance works pursuant to s. 13 of the Roads Act 1993, it was argued that, if this was accepted, the Part VIII procedure would be bypassed as the works described in article 80(1)(b) would always necessarily involve 'improvement' works and all works of improvement could be defined in this way as 'maintenance' for the purposes of the Roads Act 1993. The applicants argued that it could not have been the intention of the legislature to *sub silencio* exclude road development from the ambit of the Part VIII procedure, given that such developments constitute one of any local authority's principal types of development. It was argued that the redevelopment of a quality bus corridor/green route at the cost of approximately €4.9 million could not be termed as simply "maintenance and repair" as it involved a complete redesign and reconstruction of the road. This is a new development and is not maintenance or repair of an existing road. Conversely, if this project is to be seen as no more than maintenance and repair, it would follow that all similar road proposals nationwide would be similarly exempt from the obligation to pursue the procedures in Part VIII.

(ii) Widening and realignment

The respondent argued that 'road' and 'roadway' have separate and distinct meanings. The roadway is the area given over to vehicular traffic whereas a road has a much wider meaning and could be taken as including areas adjacent to the roadway as per the definition contained in the Act of 1993. Nothing in the proposed development pushed through the boundaries of the road as such. In other words, the respondent contended that, unless there was an encroachment on lands beyond the boundary of the road, the development was not caught by article 80(1) (b).

However, the applicants contended that if this argument was correct it would mean that, in effect, some form of compulsory purchase of lands outside of the road would need to occur (i.e. an encroachment on lands beyond the boundary of the road so defined), before article 80(1) (b) of the Regulations could have any application. This could not be correct. It was quite clear that article 80 was intended to apply where there is a widening of an existing roadway of greater than 100 metres and it was inconceivable that the article could only apply in circumstances where some form of compulsory purchase of lands outside the road would first need to occur. Compulsory purchase powers have a quite separate procedure and it could not have been the case that the Minister intended limiting article 80(1) (b) to cases requiring the exercise of such powers without specifically so providing.

Article 80 (1) (b) of the Regulations specifically refers to 'realignment'. It was argued that the said development involved the realignment of the Ballinacurra Road - both in a vertical and horizontal manner. The applicant relied upon the British Standard Building and Civil Engineering Vocabulary definitions which defined 'horizontal alignment' as "the direction and course of the central line of a road or carriageway in plan" and vertical realignment as "the direction and course of the central line of a road or carriageway in profile". The applicant contended that on the basis of the plans and particulars submitted with the scheme, and the Road Traffic Safety Audit conducted in respect of the scheme, that vertical realignment was also occurring on the development. Engineering evidence from Mr. Richard Leonard was led to the effect that the proposed development involved both horizontal and vertical realignment.

(iii) Cost

Even if the assertion that the development came within the ambit of article 80 (1) (b) was incorrect, the applicant asserted that the development nonetheless fell within the parameters of article 80 (1) (k) in that the cost of the works far exceeded the monetary limit of €126,000. The respondent argued that the monetary threshold consideration did not apply to road developments at all unless they were caught by article 80(1) (b). However, it was clear on a reading of article 80 as a whole that if the proposed development is not caught by article 80(1)(b) it must, by definition, be caught by "other development" for the purposes of article 80(1)(k).

Insofar as it might be argued that the terms of article 80 were in any sense ambiguous or obscure, the applicants placed reliance upon s. 5(2) of the Interpretation Act 2005 which provides:-

"In construing a provision of a statutory instrument (other than a provision that relates to the imposition of a penal or other sanction)-

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of the instrument as a whole in the context of the enactment (including the Act) under which it was made,

the provision shall be given a construction that reflects the plain intention of the maker of the instrument where that intention can be ascertained from the instrument as a whole in the context of that enactment."

It was submitted that insofar as there was any ambiguity in respect of the meaning of article 80, the provision must be given a construction that reflects the plain intention of the maker of the instrument as a whole i.e. the article must be interpreted as applying article 80 (1) (k) to any development not caught by one of the other scheduled developments.

SUBMISSIONS OF THE RESPONDENT

The respondents argued that this development fell within the ambit of the statutory exemption from the public consultation process

by virtue of s. 179 (6) (a) of the Act of 2000, *i.e.* this development amounted to maintenance works being carried out by the respondent and no public consultation was required. In the alternative, the respondent argued that the road would not be widened or realigned in the context of this development based on the definition of 'road' in s. 2 of the Roads Act 1993. Lastly the respondent argued that article 80 (1) (k) was not applicable when considered in light of the specific legislative scheme relating to road traffic calming measures, in particular those contained in s.38 of the Road Traffic Act 1994.

The respondent denied it had breached its statutory obligations or that it had acted *ultra vires* its statutory powers and/or contrary to the constitutional rights of the applicants and /or the rights of the applicants pursuant to the European Convention on Human Rights in failing to engage in a public consultation process pursuant to s. 179 of the Act of 2000 and Part VIII of the Regulations. The respondent stressed that the development would not create a traffic hazard, nor would it adversely affect the area in general, and noted that the development was designed by a firm of professional engineers and satisfied all relevant design and safety standards.

In response to the applicants' argument that the Part VIII procedure was previously engaged in respect of this development in 2005, the respondent asserted that having subsequently taken advice and having regard to the nature of the works that were to be carried out, the respondent was satisfied that it was not necessary for it to engage in the public consultation process set out in s. 179 of the Act of 2000. The respondent had nonetheless carried out an extensive non-statutory consultation on this occasion including a public workshop, a public meeting and numerous individual meetings.

Counsel for the respondent addressed the following arguments based on criteria relevant to the terms (i) maintenance, (ii) widening and realignment and (iii) cost.

(i) Maintenance

The respondent argued that the proposed development did not fall within the parameters of s. 179 (1) (b) but rather fell within the exemption contained at s. 179 (6) (a) which provides that:-

"This section shall not apply to proposed development which— (a) consists of works of maintenance or repair, other than works which would materially affect the character of a protected structure or proposed protected structure."

The respondent argued that this development was one of maintenance. In support of this argument, the respondent asserted that it was entitled to carry out such maintenance without public consultation pursuant to s. 13 of the Roads Act 1993. Counsel for the respondent also sought to rely upon similar provisions contained in s. 95 of the Road Traffic Act 1961 (as amended) and also s. 38 of the Road Traffic Act 1994 which regulated the introduction of traffic calming measures by a Road Authority in respect of a road.

In support of this argument, evidence was led on affidavit and oral testimony from Mr. Oliver O'Loughlin, Engineer and Director of Services with the respondent. Mr. O'Loughlin noted that a corridor route selection study was carried out by ARUP Consulting Engineers in 2008 which involved public consultation. That study concluded that the Ballinacurra Road was the most suitable road on the southern corridor for the construction of a bus corridor.

It was submitted that the respondent was carrying out this development pursuant to its statutory functions as Roads Authority as provided for by s. 13 of the Roads Act 1993 and s. 38 of the Road Traffic Act 1994.

Section 2 (1) of the Act of 1993 clarified that 'maintenance' includes "improvement and management" of a public road. Counsel submitted that it must follow that when considering whether works carried out on a public road within the meaning of s. 179(6) constituted 'maintenance', it was necessary to query whether such works could also be viewed as an 'improvement' or 'management'. If so they must enjoy the exemption set out in section 179 (6). It was the respondent's submission that by virtue of the incorporation of the definition of 'public roads' into the Act of 2000, the definition of 'maintenance' in relation to public roads as set out in the Act of 1993 was also adopted into the Act of 2000 and must be viewed accordingly. The respondent requested the Court (in addition or alternatively) to give the word 'maintenance' an interpretation which accorded with the rule of statutory interpretation *in para material*. This rule permits a Court to examine related statutory provisions and to transpose as between them the meaning of certain words. By applying this approach it could be seen that this development was 'management' and/or 'improvement' of the relevant road and therefore constituted 'maintenance' so that the development fell within the exemption set out in s. 179(6) of the Act of 2000.

(ii) Widening and realignment

It was also argued that the works in question were not works of road widening or road realignment such as would trigger the obligations that arose under article 80 (1) (b) of the Regulations. The respondent placed reliance on the definition of 'road' set out in s. 2(1) of the Roads Act 1993 which included anything forming part of the public road including footpaths, barriers, verges, etc. On that basis the respondent argued that this expansive definition of the word 'road' had resulted in a distinction between *road* and *roadway*. It was argued that the street architecture caught by the definition of *road* comprised the road for the purposes of article 80 (1) (b) of the Regulations as distinct from the *roadway* which was the area primarily given over to vehicular traffic. It was the contention of the respondent that the proposed works involved the widening of the 'roadway' within the confines of the 'road' already in existence. Only minor widening or narrowing of the roadway (the part of the road used primarily by vehicles) would be carried out by reducing and increasing the area of footpath available along different stretches and erecting new signage. It was argued that these works would take place within the road as it currently exists and as is defined by statute.

It was the respondent's argument that this development did not involve the realignment of the road as defined in the Roads Act at any point along the route. The vertical and horizontal alignment of the road would remain the same.

(iii) Cost

It was the respondent's argument that whilst the cost of the development exceeded €126,000, this did not cause the development to fall within the ambit of article 80 (1) (k) of the Regulations. Article 80 (1) (k), it was argued, was not applicable when considered in light of the specific legislative scheme relating to road traffic measures, in particular s. 38 of the Road Traffic Act 1994. Section 38 of the Act of 1994 regulated the introduction of traffic calming measures by a road authority in respect of a road.

It was argued that should the development be regarded by this Court as 'traffic calming measures', it should then be regulated by s. 38 of the Road Traffic Act 1994 and not article 80 (1) (k) of the Regulations. The fact that the *roadway* would be broadened and the direction of traffic for particular types of vehicles altered could, in addition with changes in signage and markings, be regarded as 'traffic calming measures'. In support of this contention, the respondent relied upon s. 46 of the Public Transport Regulation Act 2009. While this section had not yet been commenced, it was pertinent to note that s. 46 expressly includes the construction of a bus corridor in the definition of traffic calming measures and excluded such works from the public consultation procedure set out in s. 179 of the Act of 2000 and Part VIII of the Regulations. It was the respondent's argument that s. 46 clarified and made explicit the terms of the current legislation.

DECISION

It is clear that in respect of developments being carried out pursuant to s. 179 (1) of the Act of 2000, and not falling within the exceptions provided for by s. 179 (6) and article 80 (2) of Part VIII of the Regulations, there is an obligation upon local authorities to undertake a public consultation procedure. This public consultation procedure is elaborated upon in Part VIII of the Regulations. The Part VIII procedure is a vital part of the process in that it safeguards the means through which the public may engage with, or participate in, significant schemes of public works which may impact on the rights of the public. Moreover, and perhaps more importantly given current financial circumstances, the Part VIII procedure ensures transparency of the process whereby funds are expended on such projects. This in turn ensures that such projects are the subject of public debate and scrutiny.

Article 80 of the Regulations prescribes certain classes of local authority development for which the public consultation procedure as set out in s.179 of the Act of 2000 must be followed. This public consultation procedure is mandatory in respect of the classes of development as set out in article 80. The exemptions to this mandatory requirement for a public consultation procedure are set out in s. 179(6) of the Act of 2000 and article 80 (2) of the Regulations.

The proposed development will involve the redevelopment of a quality bus corridor. The respondent placed reliance upon the definition of 'maintenance' in the Roads Act 1993 which included "improvement and management". Counsel for the applicant argued that this development far exceeds anything which could be legitimately termed 'maintenance'. I agree. It is my view that the arguments of the respondent rely to an unacceptable degree upon a strained interpretation of key words and terms relevant to s. 179 of the Act of 2000. I find nothing in the exemptions provided by s. 179 (6) of the Act of 2000, or indeed within article 80 (2) of the Regulations, which would provide a clear basis for including this major development within any exempting terms. This project involves a reconfiguration of the roadway which will extend at some points into areas where it never ran previously. It involves turning a two lane roadway into a three lane roadway. It seems to me to involve both vertical and horizontal re-alignment and the distance or length of roadway affected by the proposed development is far greater than 100 metres.

In my view article 80 (1) (b) of the Regulations applies in respect of this development. The argument that, unless there is an encroachment on lands beyond the boundary of the road, article 80 (1) (b) is not engaged is, to my way of thinking, artificial and irrational.

Furthermore, the stated intent and purpose of article 80 (1) (k) is clear in its terms. It applies to any development other than those specified in paragraphs (a) to (j) of article 80 (1) which has an estimated cost exceeding €126,000. This is such a development. The only exemption from this position is that it does not apply to a development consisting of the laying of underground sewers, mains pipes or other apparatus. That exemption has no relevance in the present case and in my view this development is also caught by article 80 (1) (k).

I am of the view that the proposed development falls within the terms set out in article 80 (1) (b) and (k) of the Regulations and thus the respondent was under a duty to fulfill the mandatory public consultation procedure pursuant to s. 179 of the Act of 2000.

Nor do I believe that the development may be described as being in the nature of "traffic calming measures" having regard to the statutory definition set out above which applies to such measures. The fact that a specific statutory provision to incorporate bus corridors as "traffic calming measures" is contained in s.46 of the Public Transport Regulations Act 2009 has a particular significance in circumstances where, at least at the time of the hearing herein, that section was not yet operational. It suggests that there was an awareness that, absent such a provision, bus corridors might well be seen as developments which require a public consultation process under s. 179 also.

I therefore propose to grant to the applicants the declaratory relief sought and will hear the parties further in relation to the proposed order.