

THE HIGH COURT
JUDICIAL REVIEW

[No. 2014 No. 240JR]

BETWEEN:

STAN O'REILLY

APPLICANT

AND

THE COUNTY COUNCIL OF THE COUNTY OF WICKLOW

RESPONDENT

JUDGMENT of Kearns P. delivered on 14th day of November, 2014

The applicant is the owner and operator of a business known as C&D Recycling which was established in 2004 and which was operating at Merrymeeting, Rathnew, County Wicklow from May 2006 until the 7th March, 2014. The applicant seeks an order of *certiorari* quashing the decision of Wicklow County Council ('the respondent') made on the 7th March, 2014 to revoke his waste facility permit as contained within a notice issued under Article 18(5) of the Waste Management (Facility, Permits and Registration) Regulations 2007 and the Waste Management (Facility, Permit and Registration) Amendment Regulations 2008 ('the Regulations').

THE REGULATIONS

The Regulations are made pursuant to the Waste Management Acts 1996 to 2007. Article 18 of the Regulations relates to the notice of a decision of grant or refusal in relation to a waste facility permit. Article 18(5) states that:-

"a local authority shall, as soon as may be after making a decision under article 16(3) of these Regulations in relation to an application, give notice in writing of the decision to the applicant, to any person who made a submission in relation to the application in accordance with article 15, and to the Agency in accordance with the requirements of article 24(1), and, where appropriate, to the Minister for Agriculture and Food in accordance with article 24(2)."

Article 29 of the Regulations relates to the surrender of a waste facility permit:-

29. (1) A waste facility permit may, subject to the agreement of the local authority, be surrendered at any time by notice in writing to the local authority of an application for the surrender for a waste facility permit.

(2) A waste facility permit shall, subject to the agreement of the local authority, be surrendered by notice in writing by the permit holder to the local authority when the—

(a) waste related activity ceases,

(b) waste facility permit expires,

(c) waste facility permit is reviewed under article 36, or

(d) waste facility permit is refused under articles 18 or 36.

(3) A local authority shall not agree to the surrender of a waste facility permit unless it is satisfied that the condition of the facility is not causing or likely to cause environmental pollution and may carry out or cause to carry out such investigations as, are necessary, in the reasonable opinion of the local authority, to verify the condition of the facility.

(4) A local authority may, in agreeing to the surrender of a waste facility permit, attach conditions by way of a notice in writing to the permit holder, which shall be complied with by the person surrendering the permit.

(5) On surrender of the waste facility permit notwithstanding the provisions of this article, the local authority may decide that any bond or financial security required under article 19(2)—

(a) shall be maintained in place for such period as the authority may require, or

(b) may be released to the permit holder.

(6) The making of an application for the surrender of a waste facility permit under this article, the revocation of the waste facility permit or the cessation of the activity to which a waste facility permit relates, shall in no way affect or diminish such conditions, requirements or obligations applying to or falling on the permit holder as are specified in or arise under the waste facility permit.

Article 30 of the Regulations is of particular relevance in these proceedings and relates to a notice from the local authority requiring a review of a waste facility permit:

30. (1) Where—

(a) the local authority has reason to believe that a material change in the nature, focus or extent of the waste-related activity or in the nature or extent of any emission concerned has taken place to an extent which renders the conditions attached to the existing waste facility permit inappropriate, or

(b) an amendment to the waste management plan for the region concerned requires a review of the waste facility permit, the local authority shall initiate a review of a waste facility permit granted by it at any time after the date on which the said permit was granted.

(2) Where a local authority proposes to review a waste facility permit under sub-article (1), it shall give notice in writing of such intention to the permit holder and to the Agency and the waste facility permit shall remain in force until such time as a reviewed waste facility permit is granted or refused pursuant to article 35 or the existing permit is revoked under article 36.

(3) A notice given under sub-article (2)—

(a) shall inform the permit holder of the intent of the local authority to review the existing waste facility permit,

(b) shall advise the permit holder that the local authority is available for pre-application consultations and that such course of action is recommended in order to assess the application for the review of a waste facility permit in terms of the procedures which are likely to apply to the review process under article 32.

(c) shall require the permit holder to make an application to the local authority for a review of the waste facility permit,

(d) may specify such submissions, plans, documents, other information and particulars to be furnished with the application by the permit holder as the local authority considers necessary for the purposes of the proposed review,

(e) shall require the permit holder to pay the appropriate fee for the review of the waste facility permit in accordance with the fifth schedule as set out in article 42,

(f) may, in accordance with article 44(2), require the holder of a permit to defray or contribute towards any costs reasonably incurred by the local authority in respect of the proposed review and such costs shall not exceed the actual costs incurred,

(g) shall indicate that—

(i) a submission relating to the proposed review, including requirements specified by the local authority under sub-article 3(d), may be made by the waste facility permit holder in writing to the local authority within 25 working days of the date of the giving of the notice, and that the local authority shall not decide to amend conditions attached to, a waste facility permit which it has granted, before the expiry of the said period, and

(ii) where the permit holder does not make a submission in accordance with paragraph (i), the local authority shall revoke the existing waste facility permit it has granted and give notice in writing of the decision with the reasons for the decision to the waste permit holder and notify the applicant under article 18 of that decision.

(4) Where a waste facility permit has been revoked by a local authority, in accordance with this article, the former permit holder shall make an application to the local authority for the surrender of the waste facility permit in accordance with article 29.

(5) The former holder of a waste facility permit which has been revoked may, within a period of 30 working days, appeal to a court of competent jurisdiction against the revocation of the waste facility permit and, on hearing the appeal, the court may confirm or annul the revocation.

Article 35 relates to the determination and notice of grant or refusal of a reviewed waste facility permit while Article 36 sets out the provisions in relation to the revocation of a waste facility permit.

NOTICES ISSUED TO THE APPLICANT

The Article 30 Notice

On the 2nd January, 2014 the applicant received a formal notice pursuant to Article 30 of the Regulations, as outlined above, inviting him to apply for a review of his waste facility permit. The cover letter accompanying the notice from Mr. Andrew Lawless, Senior Executive Engineer with the respondent, advised that the notice was issued as *"there has been a material change in the nature focus and extent of the waste-related activities at the Stan O'Reilly T/A C&D Recycling facility at Merrymount, Rathnew (facility permit reference WFP-WW-09-0009-02) to an extent which renders the conditions attached to the existing waste facility permit inappropriate"*. An application form to apply for a review of the permit was attached and Mr. O'Reilly was advised that the respondent was available to meet to discuss the completion of the form. The cover letter stated *"Please do not ignore the attached notice. Should you fail to follow the procedures laid down in the notice then your waste facility permit WILL be revoked."* [Emphasis in original] The applicant was also advised that *"this letter and attached notice do not constitute definitive legal opinion. The relevant legislation should be consulted, and in case of doubt, legal opinion should be sought."*

The notice itself reiterated that the respondent had reason to believe there had been *"a material change in the nature focus and extent of the waste-related activity"* at the site *"to an extent which renders the conditions attached to the existing waste facility permit"* inappropriate. The applicant was advised that his existing permit would remain in force until such a time as a reviewed permit was granted or refused pursuant to Article 35 of the Regulations or the existing permit was revoked under Article 36. The notice informed the applicant that he was required to apply for a review of the waste facility permit and, pursuant to Article 30(3)(d) of the Regulations as set out above, the respondent required the applicant to submit the following information with the application:

- "A completed application form.
- A map at a scale of 1:500 showing the location of all equipment on the site both internally and externally.
- A map at a scale of 1:500 showing the location of all waste streams on the site.

- An independent calculation of the quantity of wastes on site.
- An independent report from a Chartered Fire Officer as to the suitability of measures on site to minimise the risk of a major fire.
- Waste characterisation studies on all wastes on site for more than 6 months. The methodology shall be as per the Environmental Protection Agency document "Municipal Waste Characterisation" published in 1996.
- Copy of the current lease between Stan O'Reilly and the Stafford Group.
- Copy of the current public liability insurance showing the extension to the policy to indemnify Wicklow County Council.
- A valid Tax Clearance certificate from the Revenue Commissioners."

*The notice went on to state that under Article 30(3)(g) "(i) a submission relating to the proposed review, including the requirements specified by the local authority under sub-article 3(d), may be made by the waste facility permit holder in writing to the local authority within 25 working days of the date of the giving of the notice, and that the local authority shall not decide to amend conditions attached to, a waste facility permit which it has granted, before the expiry of the said period". This 25 day period within which the applicant was required to make a submission would expire on 6th February 2014. The same section of the notice warned that "(ii) where the permit holder does not make a submission in accordance with paragraph (i), **the local authority shall revoke** the existing waste facility permit it has granted and give notice in writing of the decision with the reasons for the decision to the waste permit holder and notify the applicant under article 18 of that decision."* [Emphasis in original]

THE APPLICANT'S REPLY

By letter dated the 15th January, 2014, within the time required for a submission to be made by the permit holder, the applicant wrote to Mr. Lawless requesting that he "please advise as to the material change in nature, focus and extent of the was related activities at the Stan O'Reilly T/A C&D Recycling facility at Merrymeeing, Rathnew to the extent which renders the conditions attached to the existing waste facility permit as inappropriate." None of the information required to be submitted as outlined above was forwarded by the applicant.

Mr. Lawless responded to this brief letter on the 20th January, 2014 and enclosed two drawings, the first of which had accompanied the applicant's application for a review of the waste facility permit at the site in 2009. Mr. Lawless stated that "the conditions in the permit granted would have taken into account the proposed layout of the facility." The second drawing was a survey of the facility carried out in November 2013. Mr. Lawless wrote that "It is the view of Wicklow County Council that the current situation on site when compared to the proposed layout back in 2009 shows that there has been material change in the nature, focus and extent of waste-related activities at the facility to an extent which renders the conditions attached to the existing waste facility permit inappropriate." There was no further correspondence between the applicant and the local authority until the 7th March, 2014.

THE REVOCATION NOTICE

On the 7th March, 2014 a notice pursuant to Article 18(5) of the Regulations was issued to the applicant "revoking waste facility permit WFP-WW-09-0009-02". The cover later from Mr. Lawless indicated that the notice was issued as the applicant "failed to make a submission in relation to the review" of the permit initiated by the notice issued on 2nd January 2014. The applicant was also notified of his obligation to make an application to the respondent for the surrender of the waste facility permit pursuant to Article 29 of the Regulations as set out above.

APPLICANT'S SUBMISSIONS

Counsel for the applicant contends that Mr. O'Reilly's letter dated the 15th January, 2014 constitutes a valid submission or 'engagement' for the purposes of adequately responding to the initial notice issued by the respondent on the 2nd January, 2014. It is submitted that this submission, and the query raised therein, was submitted well within time and the respondent was not entitled to revoke the licence on the 7th March, 2014. The applicant asserts that he was entitled to enquire as to what precisely was meant by a "material change in the nature focus and extent of the waste-related activity". It is submitted that the only indication as to what the respondent meant by this came after the decision to revoke the permit and is now set out in the statement of opposition where it seems to be suggested that in the respondent's view the site is being used as a dump. The applicant denies that there has been any change in his activities or modus operandi on the site and denies that there has been any intensification of those activities. A number of arguments for the granting of an order of *certiorari* are advanced on behalf the applicant, which I will now consider in turn.

LEGITIMATE EXPECTATIONS

The notice issued on the 2nd January, 2014 states that pursuant to Article 30(3)(g) –

"(i) a submission relating to the proposed review, including requirements specified by the local authority under sub-article 3(d), may be made by the waste facility permit holder in writing to the local authority within 25 working days of the date of the giving of the notice, and that the local authority shall not decide to amend the conditions attached to, a waste facility permit which it has granted, before the expiry of the said period, and

(ii) where the permit holder does not make a submission in accordance with paragraph (i), **the local authority shall revoke** the existing waste facility permit it has granted and give notice in writing of the decision..." [emphasis in original]

Counsel for the applicant contends that a submission relating to a "proposed" review at paragraph (i) must be distinguished from the submission of an actual application for a review and the requirements of Article 30(3)(d), which relates to information which is required to be submitted alongside the actual application for a review. It is submitted that the use of the words "including" and "may" in paragraph (ii) above means that it is not a mandatory requirement, as opposed to the compulsory requirement of submitting the actual review application. Nor must it take any particular form. Counsel contends that the applicant therefore had a legitimate expectation that the Council would exercise its decision making function in the manner represented to the applicant by the 2nd January letter and accompanying notice.

Counsel referred the court to the decision of Fennelly J. in *Glencar Exploration v. Mayo County Council* [2002] 1 I.R. 84 which set out the matters required to be established in order to succeed in a claim based on a failure of a public authority to respect legitimate expectations –

"...it seems to me to be necessary to establish three matters. Because of the essentially provisional nature of these remarks, I would emphasise that these propositions cannot be regarded as definitive. Firstly, the public authority must have made a statement or adopted a position amounting to a promise or representation, express or implied as to how it will act in respect of an identifiable area of its activity. I will call this the representation. Secondly, the representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, affected actually or potentially, in such a way that it forms part of a transaction definitively entered into or a relationship between that person or group and the public authority or that the person or group has acted on the faith of the representation. Thirdly, it must be such as to create an expectation reasonably entertained by the person or group that the public authority will abide by the representation to the extent that it would be unjust to permit the public authority to renege from it. Refinements or extensions of these propositions are obviously possible. Equally they are qualified by considerations of the public interest including the principle that freedom to exercise properly a statutory power is to be respected. However, the propositions I have endeavoured to formulate seem to me to be preconditions for the right to invoke the doctrine."

In *Lett & Co. v Wexford Borough* [2012] 2 IR 198 the Supreme Court did not demur from the following remarks of Clarke J. in the High Court in relation to legitimate expectation –

*"In the light of those authorities it seems to me that, on the current state of the development of the doctrine of legitimate expectation, it is reasonable to state that there are both positive and negative factors which must be found to be present or absent, as the case may be, in order that a party can rely upon the doctrine. The positive elements are to be found in the three tests set out by Fennelly J. in the passage from *Glencar Exploration* to which I have referred. The negative factors are issues which may either prevent those three tests from being met (for example the fact that, as in *Wiley*, it may not be legitimate to entertain an expectation that a past error will be continued in the future) or may exclude the existence of a legitimate expectation by virtue of the need to preserve the entitlement of a decision maker to exercise a statutory discretion within the parameters provided for in the statute concerned or, alternatively, may be necessary to enable, as in *Hempenstall*, legitimate changes in executive policy to take place."*

It is contended on behalf of the applicant that his letter of 15th January, 2014 was submitted in response "by the waste facility holder in writing to the local authority within 25 working days of the date of the giving of the notice" and that he raised a legitimate query as part of the process and within time. Furthermore, the respondent's letter of 20th January did not suggest in any way that the submission was not in response to and in accordance with the notice of 2nd January. It is submitted that the respondent's letter of 20th January failed to elaborate or explain what the issues required to be addressed by the applicant were. The applicant contends that the respondent local authority failed to comply with its own procedures and that the evidence suggests that they were intent on closing the applicant's business down from the outset.

BREACH OF FAIR PROCEDURES

The right to fair procedures was considered by the Supreme Court in *The State (Irish Pharmaceutical Union) v. Employment Appeals Tribunal* [1987] I.L.R.M. 36 in the following terms –

"Whether it be identified as a principle of natural justice derived from the common law and known as audi alteram partem or, preferably, as the right to fair procedures under the Constitution in all judicial or quasi-judicial proceedings, it is a fundamental requirement of justice that person or property should not be at risk without the party charged being given an adequate opportunity of meeting the claim, as identified and pursued. If the proceedings derive from statute, then, in the absence of any set of fixed procedures, the relevant authority must create and carry out the necessary procedures; if the set or fixed procedure is not comprehensive, the authority must supplement it in such a fashion as to ensure compliance with constitutional justice..."

Counsel for the applicant submits that in *Dellway Investments Ltd. v. National Asset Management Agency* [2011] 4 I.R. 1 the Supreme Court, applying the principles in *East Donegal Co-Operative Ltd. v. Attorney General* [1970] I.R. 317, rejected a construction of the National Asset Management Agency Act 2009 which would have excluded the right to fair procedures in cases where loans were transferred from commercial banks to the agency. Murray C.J. stated at pp.208-209 –

"...Moreover I find it difficult to envisage circumstances where the principles of constitutional justice ensuring that decisions are fair for the individual could be overridden. To do so would be to abrogate a constitutional protection which every citizen enjoys when the State decides to exercise a power which encroaches on individual rights.

The State, in exercising its powers through the organs of government designated by the Constitution, has extensive powers to regulate and limit the exercise of individual rights in the interest of the common good and this may be relevant where the State is faced with a national crisis, such as one of a fiscal nature. The State has the power to act in the interests of the common good because the Constitution, in its provisions, expressly envisages that. It also envisages that in exercising such powers the State must act within the ambit of the Constitution as a whole. In a democratic State founded on the rule of law there are definite limits to the extent to which the State can interfere with or restrict constitutional rights or rights vested in or acquired by individuals - freedom of expression, assembly, freedom of religion, right to education, right to earn a livelihood, property rights (including contractual rights), right to strike - to name but some, even when it is acting or purporting to act in the interest of the common good in a national crisis. In common with international instruments, such as Covenants of the United Nations and the European Convention on Human Rights, the Constitution envisages that rights may be regulated and limited but not to an extent that it is disproportionate or in a manner which is arbitrary or discriminatory in an invidious sense. In particular, the State cannot act in a manner which would abrogate a right or deprive it of its very essence.

If the State were to succeed in its argument, namely that the Act prohibits NAMA from giving any consideration to representations from persons in the position of the applicants, it would be denying the very essence of a right to a hearing, a concept at the core of the principle of constitutional justice and due process."

The applicant submits that the absence of fair procedures has invalidated decisions in the context of a refusal to grant planning permission where the planning authority failed to allow the applicant make a submission on a key point (*Frenchchurch Properties Ltd. v. Wexford County Council* [1992] I.R. 268), and the withdrawal of the national television franchise for failing to give clear warning that the franchise would be withdrawn if information required was not furnished on the promised day (*TV3 v. Independent Radio and Television Commission* [1994] 2 I.R. 439). The applicant also refers to *Eircell v. Leitrim County Council* [2000] 1 I.R. 479, a case concerning the revocation of planning permission, where, after considering a number of previous decisions, O'Donovan J. held –

*"...as I interpret those decisions, it is a fundamental requirement of justice that the applicant should have been given prior notification of the intention of the elected members of the respondent to consider the revocation of the said grant of planning permission and should have been afforded the opportunity to make submissions or representations with regard to the question as to whether or not the said grant of permission should be revoked. Moreover, I am not persuaded that the absence of any provision in s. 30 of the Act of 1963, as amended, whereby a person might be affected by a revocation should be notified of the intention of the planning authority to consider making such an order absolved the respondent from giving such notification to the applicant. In my view, it is clear from the judgment of the Supreme Court given in *The State (Irish Pharmaceutical Union) v. Employment Appeals Tribunal* [1987] I.L.R.M. 36, that where a body is making a decision arising from a statutory power and, when making that decision, that body is obliged to act judicially, then, in the absence of a procedure laid down by the statute from which the power derives, the body making that decision must supplement that lacuna in such a fashion as to ensure compliance with constitutional justice. In this case, I am satisfied that, before deciding whether or not they should revoke the grant of planning permission aforesaid, the elected members of the respondent, in accordance with principles of constitutional justice and fair procedures, were obliged to give the applicant prior notification of their intention to consider the revocation of the said grant of planning permission and to afford the applicant the opportunity to make submissions or representations in that regard but that they failed to do so and, furthermore, failed to adopt a procedure whereby compliance with constitutional justice was ensured. Accordingly, I am satisfied that their decision to revoke the said grant of planning permission was invalid on that account also."*

In the present case, the applicant contends that the respondent failed to notify the applicant that he had not made a submission in accordance with the notice of 2nd January, failed to notify what it considered was required for a submission to be made in accordance with the notice, and that if the applicant failed to make such a submission the Council would revoke the applicant's permit. The unavoidable consequence of the respondent's failure to notify the applicant of these matters was that the applicant had no opportunity to make representations to them. Counsel refers the Court to the decisions in *McDonald v. Bord na gCon* [1965] IR 217 and *State (Crothers) v. Kelly* [1978] I.L.R.M in relation to the importance of the principle of *audi alteram partem*.

UNCLEAR NOTICE

Counsel for the applicant submits that the notice issued on the 2nd January simply repeats statutory provisions in a formulaic manner without actually explaining how there has been an alleged material change in the nature, focus and extent of the waste-related activities. In *Lawlor v. Dundalk Town Council* [2005] IEHC 73 O'Neill J. referred to the need for clarity in the wording of an enforcement notice served under the Planning and Development Act 2000 –

"It is not sufficient, however, for the purposes of the notice merely to recite the phrases used in subs.(5)(b), such as demolition or alteration of any structure or as in this case, "return site to its previous condition" where the use of that kind of phraseology borrowed from the subsection, fails to clearly and precisely indicate to the person served with the notice what exactly has to be done in order to comply with the notice."

It is submitted that the consequences of failing to comply with the notice in the present proceedings are very serious and directly impact on the applicant's constitutional rights. For that reason, there is an obligation on the local authority to ensure that its notices are sufficiently clear and where clarification is sought, as in the applicant's letter of the 15th January, there is a further obligation to take reasonable steps to provide the clarification sought. In this regard counsel refers to the decision of Quirke J. in *Dublin City Council v. Liffey Beat Ltd.* [2005] 1 IR 478 where it was held that there was an onus on planning authorities *"to take reasonable steps to ensure that, insofar as is practicable, the terms of documents granting or refusing planning permission will be comprehensible to members of the public"* and that *"where clarification is sought from the planning authority...reasonable steps should be taken by the planning authority to provide the clarification sought."*

FAILURE TO GIVE ADEQUATE REASONS

It is submitted that the duty to give adequate reasons is particularly significant where the only reason for the respondent's action was its allegedly erroneous view that the applicant did not make a submission in response to the 2nd January notice. The applicant contends that it is clear that such a submission was made. Particular emphasis is placed on the Supreme Court decision in *EMI Records (Ireland) Limited v. Data Protection Commissioner* [2013] IESC 34 which considered the duty to give reasons in detail.

ERROR ON THE FACE OF THE RECORD

It is submitted that there is an error of law on the face of the record insofar as the notice recites that the only reason for closing down the applicant's business was an alleged failure to make a submission within 25 days when he clearly did make a submission as required.

RESPONDENT'S SUBMISSIONS

Counsel for the respondent submits that the issue in this case is a very simple one - there is a statutory scheme in place and the respondent has fully complied with it. Having come to the view that there had been a material change in the "nature, focus and extent of the waste related activities" at the applicant's site the respondent was obliged to initiate a review of the waste facility permit. The applicant was duly advised in accordance with the Regulations as to his obligation to submit an application for a review along with other specified information. He was also warned of the possibility that his permit would be revoked if he failed to comply with the notice. Nevertheless, it is submitted that the applicant did not adequately engage in the process and did not submit the completed application form or any of the other specified information.

According to the statutory scheme, any proposed review of a waste facility permit takes place on the basis of the information submitted by the applicant and the applicant in this case failed to submit any information and did not comply with the notice of 2nd January. It is submitted that the notice of the 2nd January is perfectly clear in relation to the applicant's obligations and that the letter of the 20th January and two accompanying drawings provides even more information as to what changes the respondent was referring to. The respondent contends that the two drawings clearly demonstrate the difference between the current operations on site compared with when the original permit was granted. Furthermore, the applicant did not challenge the respondent in relation to this letter of the 20th January and simply did nothing within the 25 day period to comply with the 2nd January notice. Consequently, the permit was revoked in accordance with the Regulations.

According to the replying affidavit of Mr. Andrew Lawless, inspections at the site in 2011, 2012 and 2013 revealed a steady deterioration of the site whereby mounds of unprocessed waste was being accumulated, much of which was incapable of being recycled. The statement of opposition states that most of the waste recovery operations at the site ceased in December 2013 and the only activity on site thereafter was the deposit of approximately 5,000 metric tonnes of construction and demolition waste and household waste which was not processed. It is submitted that it was clear from the notice that the original proposals for which the permit had been granted were no longer being complied with. It is further submitted that there is no requirement under the

Regulations to set out the material which the respondent relied on in arriving at its view that there was reason to believe there had been a change to the applicant's on site operations. In any event, the respondent contends that even before the notice was issued the applicant was well aware from a substantial history of interaction in relation to the issue by way of numerous meetings with officials of the respondent, inspection reports and two previous notices under section 55 of the 1996 Act as to the change in nature, focus and extent of waste related activity on the site.

The respondent submits that the applicant's letter dated the 15th January was not a submission within the meaning of Article 30(3)(g) and that the Regulations make clear that the term "submission" means the submission of an application by a permit holder to review a waste management permit. In its letter of 2nd January the respondent set out further information which should be submitted in accordance with Article 30(3)(d) but the applicant failed to comply with his obligation to submit an application for a review within 25 working days. Had such an application for a review been received as required it would have been dealt with in accordance with Articles 32 and 35.

It is submitted that the statutory scheme has been fully complied with and that notices issued were perfectly clear, that the reasons for the revocation are clear, and that there is no error on the face of the record.

DISCUSSION

I have carefully considered the notice issued to the applicant on 2nd January and am satisfied that the statutory scheme has been complied with by the respondent in that it was made clear to the applicant what he was required to do in order to comply with the notice in order to avoid having his waste facility permit revoked.

Article 30(1) of the Regulations sets out the situations where the respondent authority is obliged to initiate a review of a permit. Article 30(2) requires the local authority to notify permit holder in writing of its intention to conduct a review and Article 30(3)(a)-(g) sets out the information which must be included in this notice. It is clear that the covering letter and notice issued to the applicant on the 2nd January contained all of the requisite information as set out in the Regulations and the applicant was further advised to consult the Regulations and seek independent legal advice. In my view, it is clear from the notice that the submission of an application for a review is a mandatory requirement and that additional information as set out in the notice was also required to be submitted under Article 30(3)(d).

The Court does not accept the applicant's contention that the submission invited under 'Article 30(3)(g)' of the notice in relation to the proposed review is distinguishable from the actual review application. The relevant section of the notice, namely that section under the heading 'Article 30(3)(g)', refers to the mandatory requirements of sub-article 3(d), which in my view supports the respondent's contention that the submission required of the applicant is the compulsory application for a review rather than some other optional submission. Furthermore, while it is accepted that the word "may" in paragraph (i) would ordinarily suggest that this section of the notice might refer to some other optional submission, as contended by counsel for the applicant, this must be read in conjunction with paragraph (ii) of the relevant section which makes it absolutely clear that the notice referred to in paragraph (i) is mandatory and that a failure to comply within 25 working days will result in the waste facility permit being revoked. Clearly, the applicant's letter of the 15th January did not adhere to the requirements of the notice and none of the relevant information was provided.

I am satisfied that the notice is clear and that the applicant could have been in no doubt as to what the change in activities was which was causing the respondent concern. The applicant sought greater clarity on the 15th January and the respondent's reply of the 20th January provided even greater detail by way of two drawings showing a clear change in the amount of waste on the site. Five areas where waste has accumulated are identified in the November 2013 drawing and the overall layout of the site is fundamentally different to that shown in the 2009 drawing. The terminology used by the respondent in these proceedings which the applicant contends was simply 'recited' from the Regulations is not ambiguous and, unlike in *Lawlor*, can not be said to have left the applicant in any doubt as to what was required of him in order to comply with the notice. The applicant was given adequate time within which to make a submission in the same manner required of every waste facility permit holder subject to the Regulations. However, rather than engaging with the process and submitting the required information as clearly set out in the notice, the applicant simply allowed the clock to tick until time ran out and his permit was revoked in accordance with the Regulations on the 7th March, 2014. By failing to submit the application and additional information in accordance with the Regulations the applicant effectively deprived himself of a review which would have been conducted according to the statutory scheme.

The Court therefore does not accept the applicant's submission that he had a legitimate expectation that the respondent would perform its functions in the manner contended for. For the reasons outlined above, the Court also rejects the submissions that the notice issued on the 2nd January was unclear, that there has been a breach of fair procedures or that the respondent has failed to provide adequate reasons for its decision.

DECISION

In light of the foregoing the applicant's claim is dismissed.