Neutral Citation Number: [2007] IEHC 425

THE HIGH COURT
JUDICIAL REVIEW

[2006 No. 399 J.R.]

BETWEEN

ANTHONY HUSSEY, MALCOLM FRASER, AND BRENDAN BURGESS

APPLICANTS

AND
DUBLIN CITY COUNCIL

RESPONDENT

Judgment of O'Higgins J. dated the 14th day of December, 2007.

1. The applicants are owners of properties Nos. 17 and 21 Northumberland Road, Dublin, which adjoin 19 Northumberland Road, the property which is the subject of these proceedings.

2. The applicants seek an order of mandamus directing the respondent to take all steps necessary to comply with its statutory duty pursuant to s. 10 of the Derelict Sites Act 1990.

3. Section 10 of the Derelict Sites Act states as follows:

> "It shall be the duty of a local authority to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any land situate in their functional area does not become or continue to be a derelict site."

4. The phrase "derelict site" is defined by s. 3 of the 1990 Act as meaning any land –

> "which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of -
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> (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or
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> (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or
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> (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results in the exercise of a right conferred by statute or by common law."

5. Leave to apply by way of an application for judicial review was granted by order of the High Court (Peart J.) on 22nd May, 2006 to seek relief on grounds set forth in paragraph E, sub-paragraph (1-5) in the Statement of the applicants of 31st March, 2007.

6. Those grounds are as follows:

> 1. The respondent is Dublin City Council and responsible in that capacity as a local authority within the meaning of the Derelict Sites Act 1990.
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> 2. It is the duty of the respondent as such local authority to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any land situate in their functional area does not become or continue to be a derelict site.
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> 3. The premises known as 19 Northumberland Road are within the functional area of the respondent and further are a protected structure within the meaning of the Planning and Development Act 2000. The property adjoining, No. 17 Northumberland Road, is also a listed property and is owned as to one moiety by the first named applicant and the first and second named applicants are lessees under 35-year full repairing and insuring lease. The other adjoining property, namely No. 21 Northumberland Road, is also a listed property and is owned one-third by the third named applicant herein.
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> 4. The premises known as No. 19 Northumberland Road, Dublin 4 is a derelict site within the meaning of s. 3 of the Derelict Sites Act 1990 and is in a ruinous, derelict and/or dangerous condition and further detracts from the amenity, character and appearance of neighbouring land and is injurious to the security of the applicants' properties.
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> 5. The respondent is aware (and has been for some time) of the condition of the premises at No. 19 Northumberland Road and has failed to adequately react or address same. The applicants accordingly seek to compel the respondent to discharge its statutory obligation to take all reasonable steps (including the exercise of appropriate statutory powers) to ensure that No. 19 Northumberland Road, Dublin 4, being land situate in the respondent's functional area, does not become or continue to be a derelict site.
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> (The order of the High Court mistakenly states that leave was given in respect of No. 29 rather than No. 19.)

7. The statement of opposition dated 12th October, 2006 reads as follows:

> **Preliminary Objections**
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> 1. The Applicant has, without good reason, failed to bring these proceedings in accordance with the time-limits of Order 84, Rule 21 and the proceedings ought to be dismissed accordingly.
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> 2. It is denied that section 10 of the Derelict Sites Act 1990 ("the 1990 Act") imposes any obligation on the Council that is enforceable at the suit of the Applicants and/or justiciable in these proceedings.
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> Without prejudice to the foregoing, the Council pleads as follows:

3. It is admitted that the Council is a local authority within the meaning of section 2 of the 1990 Act and it is further admitted that the premises at 19 Northumberland Road ("the Premises") is within the functional area of the Council.

4. It is admitted that section 10 of the 1990 Act imposes a duty on the Council in the terms set out in paragraph (E)(2) of the Applicants' Statement of Grounds but the Council re-iterates its denial that section 10 imposes any obligation on the Council that is enforceable at the suit of the Applicants and/or justiciable in these proceedings.

5. Strictly without prejudice to the foregoing, the Council pleads that it has at all material times complied with the duty imposed on it by section 10 in respect of the Premises.

6. Save that the Council is a stranger to the ownership of the premises adjoining the Premises, paragraph (E)(3) of the Statement of Grounds is admitted. However, the Council pleads that the fact that the Premises are a Protected Structure is not material to any issue in these proceedings.

7. The Council denies that the Premises is a derelict site within the meaning of section 3 of the 1990 Act.

8. The Council further denies that it has failed to adequately react to or address the condition of the Premises, as alleged in paragraph (E)(5) of the Applicants' Statement of Grounds or at all. To the contrary, the Council has at all times complied with its obligation under section 10 of the 1990 Act to take all reasonable steps (including the exercise of all appropriate statutory powers) to ensure that the Premises did not become and/or did not continue to be a derelict site. In particular, the Council has exercised its powers under section 8(2) of the 1990 Act and Section 3 of the Local Government (Sanitary Services) Act 1964 to that effect. Full particulars of the steps taken by the Council will be adduced in evidence.

9. The Council further pleads that, having taken all such steps as were, in its opinion, reasonable to take for the purpose of securing the statutory objective set out in section 10 of the 1990 Act, it cannot properly be compelled to take any further or additional steps unless its opinion aforesaid is demonstrated to be manifestly unreasonable. No evidence to that effect is before the Court.

10. The Applicants are not entitled to the reliefs claimed or to any relief against the Council.

The facts

8. The dispute in this case is long standing and arises out of the failure of the owners to maintain the premises at 19 Northumberland Road in proper condition both as to its physical condition and also to its general security. The premises is the subject of an unresolved legal dispute between the members of the King family. The applicants originally tried to address the matter by correspondence with Mr. Cecil King who was the occupier. Mr. Cecil King died in 2003 and the property became vacant. In October of that year substantial damage occurred to the premises by a fire which was caused by trespassers to the building. The condition of the premises continued to deteriorate and in 2004 there were a number of attempts to break into the premises. The first letter written to the applicants expressing concern was in 2001. It was directed to the Planning and Development Department complaining of the deplorable state of the premises and asking the respondent to intervene. The letter was expressed to have "specific reference to the protection of architectural heritage. (Numbers 17, 19 and 21 Northumberland Road are all protected structures.) Further correspondence took place in 2005 and by letter dated the 31st March the applicant indicated that in default of the matter being resolved proceedings would be instituted. On the 12th April a letter was sent to the City Manager enclosing the correspondence to date. Further correspondence ensued which indicated that the respondent intended to have action taken under the Derelict Sites Act. Paragraph 14 of the grounding affidavit of Malcolm Fraser sworn 30th March, 2006, reads as follows:

> "I say that the Applicants were initially satisfied to note that some progress was been made by the Respondent in dealing with the matter although over this minimal progress was only achieved after the passage of almost five years of communication with the Respondent and only after the Applicants threatened legal proceedings against the Respondent. Other than the developments as set out above and the visit from the Dangerous Building Department of the respondent to view the building and the replacement by the King family of four windows destroyed in the fire referred to above, no further progress appears to have been made by the Respondent to resolve this serious situation. It seems clear from the responses that the Applicants have received from the Respondent that the Respondent does not appreciate the urgency or seriousness of the situation."

9. It is not in dispute that the premises is dilapidated, run down, neglected and in very poor condition internally and is in urgent need of refurbishment. It was conceded that the premises are in a "derelict condition" as within the meaning of s. 3 (a) of the Derelict Sites Act. It is not accepted, however, that the site is a derelict site as within the meaning of s. 3 of the Act, because although admittedly "in a derelict condition", it is disputed that the premises "detract or is likely to detract to a material degree from the amenity character and appearance of land in the neighbourhood of the land in question". The position is set out in a response by the applicant to an affidavit sworn on 4th September, 2007, by Mr. Noel Carroll, consulting engineer on behalf of the applicants

> "In conclusion generally the building is in very poor condition as a result of a lack of maintenance. Wet and dry rot are extremely active throughout the building in conjunction with insect attacks such as weevil and woodworm. … It is vitally important for the well being of not only No. 19 Northumberland road but also the adjacent building, No. 17 Northumberland Road that urgent primary control measures be put in place to stop the ingress of water."

10. That affidavit also refers to a report by Dr. Thomas Brennan of TKB Southgate and Associates conservation engineer. At paragraph 24 of the second affidavit of Vincent Barrett dated 12th of September, 2007, he states:

> "Significantly, the TKB Southgate report concludes that the building is in very poor condition as a result of lack of maintenance, and I would certainly agree with that particular statement. It is undoubtedly the case that wet and dry rot are extremely active throughout the building and Barrett Mahoney Structural Engineers would concur with the conclusion that it is important for the wellbeing of not only of 19 Northumberland Road but also adjacent buildings that urgent primary control measures are put in place."

11. It is quite clear from the above that the premises are in urgent need of refurbishment and the issue in this case is whether the responsibility is on the respondent to prevent the ingress of water and the spread of rot to the premises of the applicants.

The legal issues

Delay
12. Although in the notice of opposition the respondent contended that the applicant should be precluded from relief because of delay and non-compliance with O. 84, r. 21(1) of the Rules of the Superior Courts, this argument was not pursued during the hearing. In any event I am quite satisfied that the applicant in the circumstances of the case, as outlined in the correspondence, could not be faulted for delay in circumstances where it was clear they had reason to believe that the respondent would deal with the matters complained of and because of that belief they refrained from issuing proceedings. It would be quite unjust to penalise the applicants for showing a degree of forbearance in order to give the respondent an opportunity to deal with the matter.

Justiciable by applicants
13. The respondent submits that the obligation imposed on it by virtue of s.10 of the Derelict Sites Act is not enforceable at the suit of the applicants and is not justiciable in these proceedings. It is also submitted that, even where the court can establish that a duty to act is owed, the appropriate remedy may be to order the public body to consider what steps it should take to fulfil the duty rather than ordering it to perform a specific act. It is submitted that Dublin City Council considered and re-considered the steps which, in its opinion, were reasonable to fulfil its statutory duty in respect of the premises.

14. The respondent referred to a passage in Lewis, *Judicial Remedies in Public Law*, 3rd Ed., (London, 2004), p. 232, (para. 6-057) where the following observation occurs:

> "It is here that the courts need to be acutely conscious that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. In practical terms, the situations in which the courts will be able and willing to order a public body to perform its duty, by ordering it to do a specific act, will be infrequent.
>
> Many modern statutory provisions do not lend themselves to enforcement by way of a mandatory order. Provisions which appear to cast duties on public authorities may in fact leave a discretion to the authority as how it should fulfil its duties."

15. In *R. v. Bristol Corporation (ex parte Hendy)* [1974] 1 W.L.R. 498 the Court of Appeal considered firstly whether there was a failure by the local authority in its duty to re-house an applicant pursuant to a statutory obligation, and secondly, whether it was a proper case to make an order of *mandamus*. Although it was accepted that in that case – unlike the present case - the statutory provisions not only imposed a duty on the local authority but conferred a legal right on the displaced person nevertheless the Court declined to grant an order of *mandamus*. Scarman L.J., at p. 503, stated as follows:

> "If there is evidence that the local authority is doing all that it honestly and honourably can do to meet the statutory obligation, and that its failure, if there be failure, to meet that obligation arises really out of circumstances over which it has no control, then I would think that it would be improper for the court to make an order of *mandamus* compelling it to do that which either it cannot do or which it can only do at the expense of other persons not before the court who may have equal rights with the applicant and some of whom would certainly have equal moral claims. For that reason I would think that in its discretion the court ought not to make an order of *mandamus*."

16. In this case, there is no question of the courts usurping the function of the administration in deciding the allocation of resources between compelling claims and nowhere in these proceedings has it been claimed that the respondent refrained from meeting the demands of the applicants because of competing demands on its resources.

17. There is, moreover, no evidence that the failure to meet the demands of the applicants arises out of circumstances beyond the control of the respondent or that it can only meet those demands at the expense of other powers who may have equal rights with applicants.

18. In *Hoey v. Minister for Justice* [1994] 3 I.R. 329 an order of mandamus was granted requiring a Minister to direct a County Council to provide courthouse accommodation in Drogheda. Under s. 3(1) of the Courthouses (Provision and Maintenance) Act 1935, a County Council was required to provide courthouse accommodation for the sittings of any court held in its functional area "as the Minister shall direct either generally or in any particular case". In purported exercise of his powers under this provision the Minister informed the County Council that he did not require a plan to provide courthouse accommodation in Drogheda for sittings of the Circuit Court. It was stated on his behalf that he did so because sufficient funding had not been provided by the exchequer for the necessary repairs to the courthouse. Lynch J. held that the Minister was not entitled to give such a direction and accordingly granted an order of *mandamus* requiring the Minister to direct the County Council to provide courthouse accommodation in Drogheda.

19. In *Brady v. Cavan County Council* [1999] 4 I.R. 99 Keane J. observed, at p. 109, in relation to the *Hoey* case:

> "The Minister was seeking to do what in law it was held he could not do, i.e. exonerate the County Council from its statutory duty of providing and maintaining in repair suitable courthouse accommodation in the venue lawfully designated for sitting of the Circuit Court."

20. That was in contrast to the Brady case where the respondent made no claim to be relieved from its statutory obligation but merely maintained that the granting of an order of *mandamus* in the form sought by the applicants would be ineffectual to secure compliance with the statutory duty. The Council lacked resources to comply with an order. Counsel for the respondent pointed out that in the instant case (as in the Brady case where an order was refused) there was no attempt by the respondent to avoid its statutory duty. This was in contrast with the position in the *Hoey* case. I accept that point, but in my view the decision in the Brady case offers little guidance in the present case. In the *Brady* case the decision was essential based on the futility of granting an order of *mandamus* in circumstances where Cavan County Council had not the resources to comply with an order if such were made. That is not the position in the present case where no argument has been based on the futility of making the order either on financial or other grounds. (Argument as to the appropriateness of making the order was however, made in the context of the duty imposed on the act to serve notice under s.11 of the Act, prior to taking more direct action). The respondent relied on a passage from the judgment of Henchy J. in the *State (Sheehan) v. Government of Ireland* [1987] I.R. 550, 562 where he observed that the court had not been referred "to any decided case in which mandamus has issued to a person or body to perform a statutorily imposed duty of implementing a statutory provision save where the duty has been clearly and unambiguously expressed in the statute". In *Minister for Labour v. Grace* [1993] 2 I.R. 53 it was held that "the person or body against whom the order is sought must be shown to have neglected to perform some public duty imposed on him or them". At p. 55, O'Hanlon J. stated:

> "In order however for an order of mandamus to issue for the enforcement of a statutory right it must appear that the statute in question imposes a duty, the performance or non-performance of which is not a matter of discretion, and if a

power or discretion only, as distinct from a duty, exists, an order of mandamus will not be granted by the court."

21. I consider that the duties imposed by s. 10 of the Derelict Sites Act are expressed in clear and unambiguous terms and the question for determination by the court is whether the respondent has been shown to have neglected to perform that duty, and whether the court should compel it to do so by an order of *mandamus*.

22. The respondent also argues that because the Act does not confer any rights on individuals, and in particular on the applicants, that they have no right to bring this application and that the issue is not justiciable at their behest. It is pointed out where mandatory injunctions were granted directed at local authorities in relating to housing persons (under the relevant UK legislation as in *R. v. Bristol Corporation ex parte Handy*) [1974] 1 W.L.R. 498, or under Irish legislation. For example, the cases involving members of the travelling community were all cases where the relevant legislation conferred rights on the applicants. It is pointed out that the Derelict Sites Act does not impose the duty on the respondent by reference to any group of people and in particular does not confer any rights on the applicants. Indeed, the respondent argues that the fact that the Minister for Environment is given specific powers under ss. 12 and 13 of the Act to direct the local authority to carry out certain functions, supports its contention that the matter is not justiciable at the behest of the applicants.

23. Although I accept that, unlike the *Handy* case, or the cases involving the housing of members of the travelling community, the legislation under consideration confers no rights on the applicants' present one, in my view that distinction is not determinative of the issue. It is not a requirement that in every case where a mandatory injunction is sought against a local authority it can be brought only at the behest of somebody given rights under the relevant legislation. Nor do I accept that in the case of *Hoey v. the Minister for Justice* [1994] 3 I.R. 329 the applicants themselves were not given any specific rights under the relevant legislation at issue in that case but they had a legitimate interest in, and connection with, the matter. In the present case it is quite clear that the applicants have a very real practical interest in the matter. Their premises adjoin to the premises which is the subject matter of these proceedings and it is clear that the condition of the building and the outcome of the case could have serious repercussions for them in the future. Moreover, it is not in issue that the local authority has the means to comply with the order and that an order for *mandamus* could be an effective remedy to secure compliance by the Council with its statutory duty if warranted.

24. The respondent contends that the structure of the Act itself demonstrates an intention that it not be justiciable by the public generally. Ms Butler S.C. pointed out that the Minister is given powers under the Act to direct a council to issue notices and contends that that provision is indicative of an intention to exclude persons such as the applicants. I am not convinced that the conferring of statutory powers under the Act to the Minister was intended to preclude other persons such as the applicants for taking legal proceedings under the Act such as those taken in this case.

25. In those circumstances it seems to me that the matter is justiciable at the behest of the applicants.

26. Having determined that the applicants are entitled to bring these proceedings it remains to be determined whether the respondent failed to "take all reasonable steps including the exercise of any statutory powers to ensure that the premises do not become or continue to be a derelict site" as contended for by them or whether the respondent is correct in its contention that it has taken all those steps. The steps taken by the respondents may be summarized as follows:

> (a) inspections were carried out by officials of the respondent's derelict site s. on 16th May, 2005, 25th August, 2005, 5th September, 2005, 26th September, 2005, 18th November, 2005, 7th December, 2005, 17th January, 2006, 7th February, 2006, 14th June, 2006 and 10th August, 2006.
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> (b) By order of the acting City Manager dated 21st September, 2005, approval was given for the service of notice under s. 8(2) of the Derelict Sites Act 1990 and s. 8(2) notices were issued dated 26th September, 2005, 4th November, 2005, 13th October, 2005 and 16th November, 2005.
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> (These notices were of an intention to enter the affected property on the register of derelict sites and giving a person aggrieved by such notice an opportunity to make representation in writing within one month.)
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> (c) as a result of the issue and service of the said notices two broken windows had been replaced by Mr. Coleman King by the 7th December, 2005, with the remaining two broken windows being replaced by 7th February, 2006. Following that work being done the respondent considered that the land at 19 Northumberland Road, Dublin 4 had been rendered non-derelict and the respondent determined that no further action would be taken under the Derelict Sites Act 1990.
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> (d) Separately, inspections were also carried out by officials of the respondent's Dangerous Building Section on 1st July, 2005, 26th May, 2006 and 1st June, 2006.
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> (e) As a result of the inspections carried out the respondent engaged consulting engineers to advise it how to render the building safe and contractors to carry out propping works in July 2006. The purpose of this action was to alleviate loading on the building which could have caused elements of the structure to collapse and to provide support pending the refurbishment of the building by its owner.

27. There is a conflict in evidence on the affidavits as to whether the building is dangerous at the moment. The applicants' engineers state that the propping works are inadequate to safeguard the building and the respondent's consulting engineers taking a different view (at least for the short term). No oral evidence was called and no cross-examination took place so I am unable to resolve that matter and in particular to hold that the building is dangerous or to prefer the evidence of the applicants to that the respondent. Arguments concerning the duties of the respondent arising out of the allegedly dangerous state of the premises cannot therefore succeed.

28. Section 10 of the Derelict Sites Act 1990 imposes a duty on the respondent to take all reasonable steps to ensure that the premises does not become, or continue to be, a derelict site. Whether or not that duty has been discharged depends on around the central issue in the case, that is, whether the premises at 19 Northumberland Road is a "derelict site" within the meaning of the Act. In order to be a "derelict site" it is not sufficient for a structure on the land to be "derelict" within the meaning of s. 3(b) of the Act. It is necessary in addition that such condition detract to a material degree from the appearance, character or appearance of land in the neighbourhood. The meaning of those words in the Act is the central issue in this case. The applicants contend that the likelihood of damage to their property from the ingress of water and the spread of rot is likely to detract from the amenity, character or appearance of land in the neighbourhood, to wit their respective properties. They maintain that the Act imposes a duty to prevent damage to their premises that is co-extensive to that of the owner of the premises next door, and that it is the act gives them an option whether to call upon the respondent or the owner of the adjoining premises to carry out repairs necessary to prevent the

damage to their premises which is or will be caused by the ingress of water into their premises. The respondent's position is that having ensured that the windows in the front of the premises in question were replaced, and that having secured under the Local Government (Sanitary Services) Act 1964 the structure was no longer dangerous, that it has complied with its obligation and that the premises is not a "derelict site" within the meaning of the Act. It contends that the premises in its present condition does not detract from the amenity, character or appearance of land in the neighbourhood, and points out that visually the premises in question is not unsightly although in a neglected condition.

29. The respondent contends that the word "amenity" means the enjoyment of the house in the context of its environment, as opposed to the enjoyment of the house itself. It argues that the words 'amenity character and appearance of land in the neighbourhood' were not intended to, and do not encompass the interior of the applicants' premises. The applicants, however, contend that to construe the definition of a derelict site as being concerned only with the visual aspect of the building is a misconception and that other factors must be taken into account. They point out that the definition in s. 3 (b) of the Act the visual aspect is covered by the word "unsightly" but that other words such as "ruinous", "derelict", "neglected" and "objectionable" are also used. They contend that the respondent is incorrect in construing the words "amenity, character and appearance of land" in the context of their effect on the neighbourhood, as not including the affect of the building on the condition of the interior of their premises. They maintain that the fact that the partly wall had become damp is an interference with the amenities of their premises, which is land in the neighbourhood of the land in question.

30. The applicants relied on a definition in the case of In *re Ellis v Ruislip Northwood Urban Council* [1920] 1 K.B. 343, at p. 370, where the word amenity in a section of the Housing and Town Planning Act 1909 was construed per Scrutton L.J. as follows:

> "Amenity is obviously used very loosely; it is, I think novel, in an Act of Parliament, and appears to mean 'pleasant circumstances or features, advantages'."

31. That definition, however, is of little assistance in deciding the issue in the present case as in the context of that judgment, the word 'amenity' was clearly directed to an amenity of the area. I agree with the interpretation contended for by the respondent. In my view the words "amenity, character and appearance" are directed towards the neighbourhood in general and surroundings and not the internal condition of the property next door. In my view it would be unduly strained and artificial to describe the presence of damp and ingress of water and future danger of spread of rot as matters detracting or likely to detract from the amenity character or appearance of land in the neighbourhood. In that context those powers involve firstly serving a notice of the necessary contents of which are set out in s. 11 of the Act. Only on the failure of the person on whom a notice has been served to comply with the requirements of the notice within the requisite time may the local authority take more direct action. The reference in subs. (3)(c) to "the presence, deposit or collection of any litter, rubbish, debris or waste", is a further indication of the fact that the Act is directed towards the external amenities of the neighbourhood rather than directed towards the internal condition of any given house. Moreover the definition of "derelict site" in s. 3 of the Act refers to "any land… which detracts or is likely to detract to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question". It is of some significance that that part of the definition does not include "structures" in the neighbourhood of the land in question. This is in marked contrast with other parts of the definition. Section 3(a) refers to the existence on the land of *structures* which are in ruinous, derelict or dangerous condition and s. 3(b) refers to the neglected unsightly or objectionable condition of the land or any *structures* on the land. If it had been intended to include the interior of premises next door in the definition, the definition could have referred to land which "detracts or is likely to detract to a material degree from the amenity, character or appearance of land in the neighbourhood" and specifically referred to structures thereon.

32. Furthermore, in my view had the legislation been intended to impose such novel and far-reaching obligations on the local authority as contended for by the applicants, in my view, these obligations would have been set out clearly and unambiguously. In that regard it is worth noting the long title of the Act which reads as follows:

> "An Act to make provision with respect to land to prevent it from being or becoming a derelict site, to enable local authorities to require the taking of measures on derelict sites by the owners or occupiers and in certain circumstances to acquire derelict sites compulsorily, to establish registers of derelict sites, to enable the Minister to give directions in relation to derelict sites to provide for a derelict sites levy and to provide for other matters connected with the aforesaid and to replace the Derelict Sites Act 1961."

33. There is nothing in the long title of the Act to suggest that it was intended to impose the duties contended for by the applicants. In particular, there is nothing to suggest that the Act intends to impose a duty on the Council to exercise the duties of the owners of premises.

34. It is clear from the photographs that the exterior of No. 19 Northumberland Road after the repair of the windows which was brought about after the service of notice under s. 8 of the Act by the respondent, is unexceptional and could not be deemed to detract or be likely to detract to a material degree from the amenity, character or appearance of land in its neighbourhood.

35. I wish to add that the powers of the City Council under the Act are circumscribed by s. 11. of the Derelict Sites Act. If the local authority were of the opinion that the premises were a derelict site within the meaning of s. 3 of the Act it would be obliged in conformity with s. 11 of the Act to serve notice on the person appearing to them to be the owner or occupier of the premises calling on that person to take the necessary action to remedy the situation. Only on the failure of that person to carry out the appropriate works with the requisite time could the local authority take action itself under the Act. This is in contrast with the powers contained in the Local Government (Sanitary Services) Act 1964 in which were exercised in this case under that Act. The local authority has specific powers in relation to dangerous buildings other than in the context of detracting from the amenity, character or appearance of land in the neighbourhood.

36. In those circumstances the appropriate remedy if such were to be ordered would be to direct the Council to serve a notice on the owner or occupier. It would be wrong of the court to act on the presumption that there would be a non compliance with that notice. I do not think it would be appropriate to carry out certain works and a contingent order to come into effect in default of such works being carried out (even on the assumption that the word 'may' in s. 11(5) of the Act does not give any discretion to the local authority a matter which it is not necessary to decide here).

37. There is no doubt that the property is in a bad condition and deteriorating. There is a possibility that in the future it will become dangerous. There is no evidence of any significant damage to the applicants premises at present, but the continual ingress of water and the spread of rot may in the future cause significant problems for the applicant. There is a probability that if totally neglected it will at some future date become dangerous. It would be inappropriate however to grant a mandatory injunction on a *quia timet* basis on the assumption that the respondent who is already monitoring the situation and who has taken action already under the Local

Government (Sanitary Services) Act 1964 will not take appropriate action in the future.

38. In view of the reasons set out above, the building although in a rundown and seriously neglected condition is not a 'derelict site' within the meaning of s. 3 of the Derelict Sites Act. It is not open to me to find that it is a dangerous building. It follows that the respondents are not in default of any of their obligations imposed under s. 10 of the Act. This application must, therefore, fail.