THE HIGH COURT

[2004 No. 27 M.C.A.]

BETWEEN

WILLIAM RYAN

APPLICANT

AND
ROADSTONE DUBLIN LIMITED

RESPONDENTS

Judgment of Mr. Justice Diarmuid B. O'Donovan delivered on the 6th day of March, 2006

Background
1. The respondents, Roadstone Dublin Limited, are the registered full owners of certain lands comprising 200 hectares located at Huntstown Quarry in the townlands of Huntstown, Grange, Cappogh, Coldwinters, Johnstown and Kilshane, Finglas in the Co. Dublin (hereinafter referred to as "the Huntstown Quarry") being the lands comprised in folios 2889, 3291, 6793, 8115, 18240, 18734, 8999, 30351F, 8118 and 19138 of the register of freeholders for the county of Dublin.

2. At the time of the events which gave rise to these proceedings, the main entrance to the Huntstown Quarry was located off the N2 national primary road at North Road, Coldwinters, Finglas, Dublin 11; a location which was then frequented by a very high volume of traffic, so much so that it was asserted by the respondents to be among the busiest roads in the State, an assertion which was not disputed, or challenged, by the applicant. Neither did the applicant challenge the further assertion on behalf of the respondents that, at the material time, there was, in the immediate vicinity of the main entrance to the Huntstown Quarry a number of sites upon which construction was being carried on and a quarrying facility belonging to another operator.

3. The Huntstown Quarry, at which the respondents carry on a quarrying facility, has been operational for in excess of 30 years and supplies to a significant portion of building sites located in the north area of Dublin city and surrounding counties.

4. The applicant is a member of the Garda Siochána and resides at Coldwinters, North Road, Finglas in the city of Dublin; a dwelling which is located some 15 meters from the main entrance to the Huntstown Quarry. The applicant came to reside at the said dwelling in or about the year 1997.

5. The new N2 national primary road, the construction of which was completed after the events which gave rise to these proceedings, now runs directly behind the applicant's dwelling.

6. By order dated the 19th day of May, 1994, following an appeal, An Bord Pleanála granted permission to the respondents under planning register reference number 93 A/1134 to retain indefinitely the plants, buildings, services and ancillary developments and to quarry the northern, western and central limestone deposit at their 200 hectare Huntstown Quarry aforesaid subject (*inter alia*) to a condition (condition 6) that "*effective measures shall be taken by the developer to prevent the deposition of mud, dust and other materials on the adjoining public highways caused by vehicles leaving the site*". (The emphasis is mine). In that regard, the said permission was also subject to the condition that "*detailed proposals for wheel washing facilities in the site and for the spraying of water on to road surfaces shall be submitted to the planning authority for agreement and shall be implemented by the developer, as required by the planning authority*". The expressed reason for that condition was "in the interest of the proper planning and development of the area". (This permission is hereinafter referred to as "the principal permission").

7. There was a further condition of the grant of the principal permission that "*no development shall take place in the area outlined in the submitted drawings as the western quarry area without a grant of approval by the planning authority or by An Bord Pleanála*".

8. By order dated the 7th day of March, 2003, following an appeal by the applicant, An Bord Pleanála granted permission to the respondents under planning register reference number FO1A/0231 for development comprising extraction and processing of the limestone of the western deposit (two No. 18 meters benches by circa 9.7 hectares plan area within circa *19.5* hectares area of western deposit) pursuant to condition number 1 of planning register reference number 93A/1134 subject (inter alia) to the condition (condition 13) that "*all vehicles carrying quarried or other dust producing materials to or from the site shall be securely sheeted";* the expressed reason for the said condition being "*to protect amenities of the area*". (This permission is hereinafter referred to as "the western quarry permission").

9. By order made on the 16th day of April, 2003, under planning register reference number F02A/0602, following an appeal by the respondents, An Bord Pleanála granted permission to the respondents for the recovery of pre-sorted construction and demolition waste (namely concrete, bricks, tiles and ceramics and asphalt) on a 1.5 hectare site within the existing land holding at Huntstown Quarry aforesaid. The said permission was granted subject to the conditions (*inter alia*) (conditions 6 and 8) that "a*ll vehicles carrying materials to or from the subject site shall be securely sheeted*" the expressed reason being "*in the interest of road safety*" and "*effective steps shall be taken by the operator to prevent the deposition of mud, dust and other materials on the adjoining public highways caused by vehicles visiting and leaving the site*" the expressed reason being "*in the interest of road safety and the general amenity of the area*". (The emphasis is mine). (The said permission is hereinafter referred to as the "recovery facility permission").

The Complaint
The applicant's complaint against the respondents is that, at all material times, they have failed to comply with the conditions to which the planning permissions aforesaid were subject with the result that there has been a deposition and accumulation of dust, mud and other materials on the public highway adjoining the main entrance to the Huntstown Quarry and on the public road and foot path adjacent to the applicant's house and garden.

The Relief Sought
1. An order pursuant to s. 160 of the Planning and Development Act, 2000, directing the respondents, its servants or agents, to carry out development at or near its premises at Huntstown Quarry in conformity with the several permissions pertaining to that development and all conditions to which the said permissions are subject.

2. In particular, an order requiring the respondents, its servants or agents, to carry out the said development in conformity with;

(a) Condition 6 to which the principal permission was subject,

(b) Condition 13 to which the western quarry permission was subject, and

(c) Conditions 6 and 8 to which the recovery facility permission was subject.

3. (If necessary) an order pursuant to s. 160 (3) of the Planning and Development Act, 2000, restraining the respondents, its servants or agents, and any person having notice of the order, pending the determination of these proceedings, from taking any further steps or carrying out any further operation of the quarry development at the said premises in contravention of the said conditions.

Comment

1. It is, I think, relevant to note that the applicant was not joined or supported in his application herein by any neighbour or other "officious bystander" and neither does it appear that the applicant interacted with or made any complaint to the planning authority with regard to the alleged failure of the respondents to comply with the conditions attached to the planning permissions aforesaid. Neither, indeed, does it appear that the planning authority, itself, has any complaint in that behalf. One would have thought that, if there was any reality to the applicant's complaints, then, given that he maintains that he has received no satisfaction from the respondents arising from those complaints, he would have sought the assistance of the planning authority to police and/or enforce compliance with the conditions pertaining to those planning permissions.

2. While the respondents purport to have conducted an analysis of the photographic and video film to which the applicant has referred in support of his complaint herein, it is relevant to note that I was advised by counsel that that analysis was limited to viewing 170 hours of video tape whereas 2000 hours of the video film was discovered by the applicant. However, I had no evidence to suggest that the 170 hours analysed was chosen for any particular reason so that it must be said that that analysis was not, in my view, representative of the totality of the video film discovered by the applicant and, therefore, I am not persuaded that I should have any great regard for its findings.

The Law

1. In the circumstance that no one of the planning permissions aforesaid was challenged by way of judicial review, by virtue of the provisions of s. 19 (3) of the Local Government (Planning and Development) Act, 1992, there is a presumption at law that those permissions are valid. C/F, by analogy, the unreported decision of Mr. Justice Morris delivered on the 13th day of May, 1997, in a case of *Lanceford Limited v. An Bord Pleanála and Others*.

2. A planning permission must be interpreted objectively and not in the light of subjective considerations special to the applicant or those responsible for the grant of the permission. So stated Henchy J. in an unreported judgment of the Supreme Court delivered on the 30th day of July, 1974, in the case of *Readymix (Eire) Limited v. Dublin County Council and the Minister for Local Government.*

3. When interpreting a planning permission, the court should ask itself what would a reasonably intelligent person, having no particular expertise in law or town planning, make of the relevant permission. In that regard, in the course of a judgment of the Supreme Court in the case of In the Matter of the Acquisition of Land (Assessment of Compensation) Act, 1919, the Property Values (Arbitration and Appeals) Act, 1960 and the Local Government (Planning and Development) Acts, 1963 – 1983 and In the matter of the claim by *X.J.S Investment Limited* [1986] I.R. at pg. 750, McCarthy J. stated:-

> "Certain principles may be stated in respect of the true construction of planning documents;
>
> (a) To state the obvious, they are not acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material and
>
> (b) They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning."

When referring to those principles in the course of an unreported judgment delivered on the 10th day of March, 2005, in a case of *Dublin City Council v. Liffey Beat Limited*, Quirke J. stated:-

> "Although these observations referred to the terms of a draft development plan, they apply with equal force to documents granting or refusing planning permission for the development of property. Such documents are of considerable importance, not just to persons having an interest in the property to be developed, but also to the community as a whole since they affect the proper planning and development of the areas within the remit of particular planning authorities. Accordingly, there is a requirement that such documents should be couched in terms which are comprehensible and capable of construction 'in their ordinary meaning as it would be understood by members of the public without legal training as well as by developers and their agents'." I would adopt that statement of Quirke J. as a true statement of the law.

4. The onus of proof in an application brought under s. 160 of the Planning and Development Act, 2000, rests on the applicant. In that regard, in an unreported judgment delivered on the 21st day of December, 1984, in a case of *Dublin Corporation v. Sullivan*, which was an application pursuant to s. 27 of the Local Government (Planning and Development) Act, 1976; the provisions of which are analogous to those of s. 160 of the 2000 Act, the then President of the High Court, Mr. Justice Finlay, held that the onus of proof at the hearing of such an application rested with the applicant and that the applicant must establish facts from which the court can raise the probable inference that what the applicant asserts is true.

5. The remedies provided for by s. 160 of the Planning and Development Act, 2000, are discretionary. In a case of *Morris v. Garvey* ([1983] I.R. at p.156) which, again, was concerned with an application under s. 27 of the Local Government (Planning and Development) Act, 1976, in the course of judgment of the Supreme Court, Henchy J. stated:-

> *"When subs. 2 of s. 27 is invoked, the High Court becomes the guardian and supervisor of the carrying out of the permitted development according to its limitations. In carrying out that function, the court must balance the duty and benefit of the developer under the permission, as granted, against the environmental and ecological rights and amenities of the public, present and future, particularly those closely or immediately affected by the contravention of the permission. It would require exceptional circumstances (such as genuine mistake, acquiescence over a long period, the triviality or mere technicality of the infraction, growth or disproportionate hardship or such like extenuating or excusing factors) before the court should refrain from making whatever order (including an order of attachment for contempt in default of compliance) as is 'necessary to ensure that the development is carried out in conformity with the*

permission'."

That statement was quoted with approval by McKechnie J. in the course of a judgment which he delivered in the case *Leen v. Aer Rianta c.p.t.* [2003] 4 I.R. at p.394, adding:-

> *"It is quite clear that the Supreme Court was endorsing the existence of a discretion under s. 27, or as of now, s. 160, as it illustrated certain examples which, if existing, would justify the court in refusing relief even though it was satisfied that an unauthorised development or use was in being."*

6. When deciding whether or not to exercise its discretion to grant or refuse an order under the provisions of s. 160 of the Planning and Development Act, 2000, the court shall have regard to the effect (if any) which the permissions aforesaid are having on the applicant; allowing that he is a resident in the area. In this regard, in the circumstance that the only evidence available to the court at the hearing of these proceedings was the testimony contained in the several affidavits sworn by a number of deponents and the exhibits therein referred which, in the case of the four affidavits sworn by the applicant, largely comprised photographs, and that neither party sought to cross examine any one of the deponents in relation to the contents of their affidavits, it is my judgment that any assertion in those affidavits which is not contradicted shall be deemed to have been established on the balance of probability and that where an assertion is contradicted, the onus of proof in respect thereof shall be deemed not to have been satisfied.

7. In its judgment in a case of *Waterford County Council v. John A. Wood Limited* (1999 1 I.R. at pg. 556) the Supreme Court confirmed that s. 27 of the Local Government (Planning and Development) Act, 1976, was intended as a fire brigade section to deal with an urgent situation requiring immediate action to prevent clear breaches of the Act; a view which, in my opinion, is equally applicable to s. 160 of the Planning and Development Act, 2000. Nevertheless, I do not consider, as was submitted on behalf of the respondents, that s. 160 of the 2000 Act was inappropriately invoked by the applicant in this case. In that regard, while it is specifically provided for in s. 160 that application for an order under the section *shall* (the emphasis is mine) be by motion to the court, it does not, in my view, follow, as was suggested on behalf of the applicant, that the only way to seek relief of the type contemplated by s. 160 is by way of an application to the court pursuant to that section. It is, in my view, equally open to a person aggrieved by activities similar to those of which the applicant complains to seek injunctive relief from the courts. However, while, as I have indicated, the Supreme Court has recognised s. 160 as one providing for "fire brigade" relief it seems to me that, in the light of the judgment delivered by Murphy J. (with whom the rest of the court agreed) in the case of *Waterford County Council v. John A. Wood Limited* (pg. 564), if issues can readily be dealt with in a summary procedure, it is not inappropriate to invoke the provisions of s. 160. As this case does not involve complex issues of law or fact, it is my view that it is one that can readily be dealt with summarily.

The Evidence

1. The applicant's complaints relate to the movement of the vehicles in and out of the Huntstown Quarry. Essentially, in several affidavits sworn herein, he maintains that the contents of those vehicles, which comprise construction and demolition waste, is deposited on the public highway adjoining his dwelling and the main entrance to the Huntstown Quarry; either because those vehicles are overloaded, or not properly sheeted, and he maintains that that fact can only be attributable to a failure on the part of the respondents to comply with all or some of the conditions to which the planning permissions aforesaid were subject. In support of his claim, the applicant has exhibited photographs and video film of vehicles entering and leaving the Huntstown Quarry between the end of March, 2004 and 10th July, 2004 and photographs of the condition of the roadway and footpath outside of his dwelling and outside the main entrance to the Huntstown Quarry which were taken on the 21st day of March, 2004. Furthermore, the applicant referred to events which he maintained had occurred on 10th July, 2004, when he observed and followed a truck (registration no. 93 D 11714) leaving a site on Fitzwilliam Quay in the city of Dublin loaded with construction and demolition waste; a truck which left the Fitzwilliam Quay site without any sheeting or covering and proceeded to the respondents' quarry at Huntstown which it entered without any difficulty via the North Road entrance. Photographs of those events taken on the 10th day of July, 2004, were exhibited by the applicant.

2. In correspondence exchanged by the applicant's solicitors, Messrs. Gartlan Winters, and the respondents solicitors, Messrs. Authur Cox, between the 22nd day of April, 2004 and the 4th day of May, 2004, the respondents' said solicitors, in response to complaints on behalf of the applicant with regard to alleged non-compliance with conditions attached to the planning permissions aforesaid stated *(inter alia)* "*we confirm that no truck will be accepted at the site unless sheeted*" and furthermore stated that the respondents' security personnel and weighbridge personnel had been instructed not to permit any un-sheeted truck to enter the Huntstown Quarry. In that regard, the respondents' said solicitors stated "*your client will doubtless be aware that our client's security offices are located some distance inside the entrance gates thus it is possible that a truck could enter the premises un-sheeted. However, instructions have been given to the security personnel not to allow any un-sheeted trucks to proceed beyond the security offices and the driver of any such truck will be instructed to turn his vehicle and to leave the premises*". Notwithstanding those assurances on behalf of the respondents, the applicant maintained that un-sheeted trucks continued to be admitted to the Huntstown Quarry.

3. In response to the allegations aforesaid by the applicant, Patrick Martin, the Pits and Quarry's Director of the respondent company with responsibility for all the respondents' quarries in the Dublin area, in several affidavits which he, also, swore, herein, pointed (*inter alia*) to the fact, about which there can be no doubt, that the conditions to which the principal permission aforesaid was subject did not impose any obligation on the respondents to either use or to require the use of sheeting on vehicles entering and leaving the site of the said development. In that regard, Mr. Martin maintained that the obligation in relation to sheeting of vehicles related only to the western quarry permission, which he asserted was not operational at any material time hereto; an assertion which has not been contradicted by the applicant, and condition 6 of the recovery facility permission, in respect of which Mr. Martin asserted that none of the vehicles shown in the photographs referred to by the applicant were vehicles which entered the site (1.5 hectare) of that permission. In those circumstances, Mr. Martin asserted that there was no evidence of a breach by the respondents of the conditions to which the said planning permissions were subject. Mr. Martin further asserted that the N2 North Road in the vicinity of the applicant's dwelling house carried an enormously high volume of traffic; he suggested that a recent traffic survey put the quantity of traffic at 20,342 units per day and that, in the immediate vicinity, there were a number of sites on which construction was being carried on and a quarrying facility belonging to another operator so that it was inevitable that dust and grit would accumulate on the roadway. Accordingly, Mr. Martin maintained that the photographs of the condition of the roadway and footpath outside the applicant's dwelling house which were taken on the 21st day of March, 2004, were a distortion of the facts and do not support the assertion that the respondents failed in its obligations under the planning permissions aforesaid. In this regard, it is significant that the applicant did not challenge Mr. Martin's assertion that, in the immediate vicinity of the entrance to the Huntstown Quarry there were a number of sites on which construction was being carried on and a quarrying facility other than that belonging to the respondents. Furthermore, Mr. Martin asserted that, for the purpose of preventing dust and other materials being carried from the Huntstown Quarry to the public roadway, the respondents had installed a wheel wash facility and truck washing equipment, had provided a paved road some 800 meters long from the Huntstown Quarry to the public road, had continually used a mechanical road sweeper on all internal paved roads and on the N2 national primary road, itself, including the footpath outside the applicant's dwelling and the area

adjacent to the applicant's property, had provided full time dust suppression by a water tanker and had removed all spillages, if they occur, as soon as they came to the respondents' attention. Insofar as the events of 10th July, 2004, of which the applicant complained, were concerned, Mr. Martin deposed to the fact that, following the applicant's complaint in that behalf, the respondent's solicitors, on two occasions, sought details of the registration number of the vehicle alleged to have been involved: requests which were not only ignored by the applicant but to which the only response was the notice of motion seeking the relief sought by the applicant herein and the grounding affidavit sworn by the applicant on the 14th day of July, 2004. Nevertheless, Mr. Martin asserted that, as a result of inquiries made by him, he identified the vehicle, whose activities on 10th July, 2004, the applicant had described, as belonging to one Jim Fennell, who was under contract to a firm named Hegarty Demolition Limited and Mr. Martin asserted that Hegarty Demolition Limited had been requested to ensure that all of their vehicles were sheeted when either delivering to or collecting material from the Huntstown Quarry, that that request had been passed on by Hegarty Demolition Limited to their contractors, including Mr. Fennell, and, indeed, that Mr. Fennell had confirmed to him (Patrick Martin) that he had been so informed. In that regard, Mr. Martin maintained that he had been advised by Mr. Fennell that he (Mr. Fennell) considered that he was not legally required to have his vehicle sheeted while in use on the public highway but only at the respondents' premises and, accordingly, that it was his practice to stop his truck on the respondent's avenue and, there, to sheet the truck prior to entering the quarry. In an affidavit sworn herein on the 9th day of August, 2004, the said Jim Fennell confirmed that that was his practice and that, at no time, had he been permitted to enter the respondent's facility with an un-sheeted truck. The applicant never challenged that assertion.

4. In his affidavit sworn herein on the 9th day of August, 2004, Patrick Martin also deposed to the fact that it was not viable to maintain a security barrier at the entrance gates to the Huntstown Quarry; an entrance which was shared between the respondents and the Huntstown Power Generating Station which is a company which engages in construction, maintenance and landscaping work; work which attracts loaded vehicles used by contractors in the course thereof. Accordingly, that barrier was located some 800 meters from the entrance gate; 800 metres which comprised the paved road hereinbefore referred to and, on which, vehicles intending to enter the quarry were queued or marshalled before doing so. In that way, Mr. Martin maintained that congestion on the N2 North Road at the entrance gates was avoided. He also maintained that the security barrier was not visible from the road.

5. In an affidavit sworn on the 9th day of August, 2004, Mr. John McNamee, an employee of Jaebrade Security Services Limited, deposed to the fact that his company was contracted by the respondents to provide security services at the Huntstown Quarry and that he was the security supervisor for the site. In that regard, Mr. McNamee deposed to the fact that he had been instructed not to permit any trucks to enter what he describes as the "recycling facility" but which is otherwise known as the recovery facility permission unless all such trucks are sheeted. In that regard, Mr. McNamee rejected the applicant's allegation that, on 10th July, 2004, a truck owned and driven by James Fennell had entered the quarry un-sheeted and had been permitted to unload at the quarry and to leave the premises. On the contrary, Mr. McNamee asserted that that truck was sheeted as it passed the security barrier.

6. While, in response to the several affidavits sworn on behalf of the respondents, the applicant indicated that he did not accept the correctness of the matters therein averred to, it is my view that, in reality, he was not in a position to contradict, or challenge what was stated by James McNamee and Jim Fennell and neither did he, nor could he, challenge the assertion of Patrick Martin that the Western Quarry permission was not operational, or that un-sheeted trucks had used the recovery facility permission, which Mr. Martin referred as the "recycling facility". In that regard, while it may well be, as the applicant maintained, that some un-sheeted trucks passed through the entrance gate to the Huntstown Quarry from the N2 national primary road, Guard Ryan did not say that such vehicles ever passed the security barrier leading to the respondent's quarry and could not have known whether or not they ever did so because he did not have access to the respondent's premises. In this regard, it seems to me that, had he sought the assistance of the planning authority, he might have been able to challenge Mr. Martin's evidence in that behalf.

7. Apart from refusing to accept the correctness of the averments in the several affidavits submitted on behalf of the respondents, the applicant protested that the company engaged by the respondents to clean the N2 national primary road actually deposited a pile of surplus tar and other construction material on the footpath at the entrance to the Huntstown Quarry and, although most of that debris was removed shortly after it had been put there, a small amount was allowed to remain for approximately three months. For that reason, the applicant asserted that the systems employed by the respondents and described by Patrick Martin for the purpose of preventing dust and other material being carried from Huntstown Quarry onto the public road are wholly inadequate to protect the amenities of the area in the vicinity of the entrance to the Huntstown Quarry.

8. The applicant also challenged Mr. Patrick Martin's assertion that it is not viable to maintain a security barrier at the entrance gates to the Huntstown Quarry; suggesting that it was unwarranted on the grounds of traffic management to locate that barrier some 800 meters from the entrance. In any event, the applicant maintained that the location of that security barrier contravened condition 5 of the recovery facility permission. Moreover, he maintained that there were many alternative means whereby the respondents could comply with the conditions to which the said planning permissions were subject.

9. In response to the applicants further complaints, the said Patrick Martin; relying on the hearsay evidence of Mr. Peter Meade, the owner and general manager of a company known as Irish Sweeping Services Limited; a company which undertook the work of cleaning the N2 North Road on behalf of the respondent, emphatically rejected the applicant's suggestion that that cleaning company had deposited a pile of tar and other construction material on the footpath at the entrance to the Huntstown Quarry. He conceded that, on the night of Friday 28th May, 2004, there had been an unlawful dumping or as he described it "fly tipping" against the wall of the respondents' premises which was discovered on Saturday 29th May, 2004 and immediately removed with a quarry loading shovel. Mr. Martin also conceded that a very small portion of that debris which was not gathered by the shovel was allowed to remain but that it was a very small portion and Mr. Martin rejected the applicant's suggestion that the systems operated by the respondents for cleaning the roadway were wholly inadequate and he referred to photographic evidence in support of that proposition. He also reiterated that all trucks entering the recycling facility, or recovery facility permission, are sheeted and he rejected the applicant's suggestion that many trucks containing construction and demolition waste are arriving daily at the respondent's quarry; the fact of the matter being that the number arriving at the recovery facility permission only averages about three truck loads a day out of a total of 470 truck movements. Mr. Martin also pointed out that the respondents can only indirectly control the actions of truck drivers serving the respondents' site while they are on the public highway by insuring, insofar as it is possible to do so, that no vehicle carrying materials destined for the recycling plant and observed to be un-sheeted either at, or on route, to the security barrier is admitted to the respondents' site. With regard to the applicant's criticism of the location of the security barrier at the entrance to the respondents' premises, Mr. Martin maintained that it is located at the earliest point on the property from where the respondents enjoys exclusive use and control of the roadway. In this regard, it is significant that the applicant did not challenge Mr. Martin's assertion that the entrance gates to the Huntstown Quarry were shared with the Huntstown Power Generating Station.

10. In addition to the complaints hereinbefore referred to, the applicant also accused the cleaning contractors employed by the respondents of excluding the path and roadway in front of his house from a major clean up which they carried out in the area although that clean up included the area in the vicinity of the entrance to the Huntstown Quarry and the area in the vicinity of a house belonging to a neighbour of the applicant. For that reason, the applicant maintained that he, himself, had to clean up the area

outside his own house and he referred to photographs which purported to support that accusation. He added, however, that four days before these proceedings were due to be heard, he saw a man, who he believed to be the owner of the cleaning company; a man named Murphy, pointing in the direction of his house and, thereafter, a comprehensive cleaning operation of the path and roadway in front of his house was undertaken. In response to those accusations, affidavits were sworn herein on the 20th day of October, 2004, by Oliver Lynch, the manager director of Clean Sweep Environmental Services Limited, a company employed by the respondents to provide cleaning services on the N2 roadway outside the Huntstown Quarry on Saturdays only and from Peter Meade, managing director of Irish Sweeping Services Limited, a company also employed by the respondents to carry out similar cleaning services on other days. I think that it is a fair summary of the contents of the affidavits sworn by those two gentlemen that they categorically deny that their companies were instructed to, or of their own volition, took steps to avoid or exclude the applicant's premises from their cleaning programme and that the applicant's accusations in that behalf were utterly rejected. In that regard, the import of what Messrs. Meade and Lynch had to say was that the cleaning process undertaken by their companies included sweeping the roadway and footpath for a considerable distance on either side of the entrance to the Huntstown Quarry and that the area in the vicinity of the applicant's house was not excluded from their operations. In this regard, the respondents pits and quarries director, Mr. Patrick Martin, also specifically rejected the suggestion that the respondents ever instructed the cleaning companies employed by them to avoid or exclude cleaning the areas in the vicinity of the applicant's dwelling. Given that the applicant's accusations in that regard are clearly contradicted by Messrs. Martin, Lynch and Meade, that the applicant did not choose to cross examine either one of them with regard to their assertions in that behalf and that I had no evidence that the applicant ever made direct complaint to either cleaning company that, in the course of their cleaning programme, they excluded the area in the vicinity of the applicant's dwelling, I am not persuaded that there is reality in that accusation.

11. With regard to the location of the security barrier in the respondents' premises, the applicant maintained that, on 21st September, 2004, one day before these proceedings were scheduled to be heard, the respondents installed a security hut at the North Road entrance to the Huntstown Quarry which the applicant maintained had an immediate effect of reducing incidents of un-sheeted and uncovered trucks arriving at the quarry and he exhibited photographs which purported to support that contention. In that regard, the applicant maintained that, in the years 2002 and 2003 there had been a security hut in place inside the North Road entrance to the Huntstown Quarry but that, as personnel manning that hut at night would often permit people to congregate at the gates making loud noise and, on one occasion, lighting a bonfire, he, the applicant, objected to the location of that hut in September, 2002. In response to that assertion, Mr. Martin disputed the suggestion that the installation of that hut had the effect of reducing the number of instances of un-sheeted and uncovered trucks arriving at the Huntstown Quarry; maintaining that, in support of that proposition, the applicant relied on a disingenuous comparison between a situation that existed under pre-existing planning conditions and that which currently prevails under different conditions. In any event, Mr. Martin asserted that the installation of the security hut to which Mr. Martin referred was a temporary arrangement to enable personnel to undertake a survey of trucks entering the respondents' premises and for no other purpose. In that regard, Mr. Martin conceded that that survey established that the number of un-sheeted trucks entering the quarry was insignificant and ever dwindling but that that fact had absolutely nothing to do with the installation of the temporary security hut but rather was attributable to the fact that a new main quarrying permission with an express vehicle sheeting condition came into effect on 31st August, 2004, as the applicant well knew. Mr. Martin also pointed to the fact that the positioning of a permanent security barrier at any location between the entrance gates and the entrance to the Huntstown power plant could restrict free access for personnel going to the plant or for emergency services endeavouring to access the plant which is fired by gas. In that regard, Mr. Martin asserted that management at the plant had expressed concern at any proposal which could potentially effect the safety of the plant by impeding access to it by emergency services and, in that regard, Mr. Martin referred to a letter in that behalf from Brian Kinsella, plant manager of the Huntstown power station. In an affidavit sworn herein on the 14th day of August, 2004, Mr. Kinsella confirmed those concerns. Again, although Mr. Martin's assertions in that behalf contradict those allegations made by the applicant, he did not choose to cross examine Mr. Martin with regard to them and, accordingly, the applicant has not established those allegations to my satisfaction. Moreover, in the light of a report dated the 21st day of October, 2004, submitted by one Julian Keenan, a specialist in traffic management, to which I was referred by the respondents, it seems clear that the installation of a permanent security barrier at the entrance to the Huntstown Quarry would have adverse implications for the safety of traffic on the public road and would interfere with the safe operation of the Huntstown power plant. The applicant rubbishes that report for a variety of reasons but never, as he might have, sought to have Mr. Keenan examined on oath with regard to its contents.

12. The applicant challenged Mr. Martin's views with regard to the proper location of a security barrier at the entrance to the respondents' quarry, suggesting that Mr. Martin misunderstood various planning permissions granted to the respondents in that regard and he rejected Mr. Martin's suggestion that a security barrier at the N2 road entrance to the Huntstown Quarry would serve no useful purpose. In this regard, Mr. Martin conceded that the respondents had obtained planning permission for a security hut at the N2 road entrance despite the fact that the applicant had objected to it. However, he maintained that that permission had been obtained by mistake and he reiterated that a security barrier at the N2 road entrance to the quarry would serve no useful purpose. Despite this, as I have indicated, the applicant did not follow up that challenge by seeking to have Mr. Martin cross examined with regard to his several affidavits.

13. Arising from the foregoing, in an affidavit sworn herein on the 15th day of November, 2004, Mr. Damien Deaton, a security officer employed by Jaybrade Security Services, who are a company employed by the respondents to provided security services at the Huntstown Quarry, deposed to the fact that, during the period commencing on 7th October, 2004 and ending on 21st October, 2004, he was rostered to undertake a survey of vehicles entering the premises and, for that purpose, a security hut was erected at the N2 road entrance to the Huntstown Quarry. However, Mr. Deaton asserted that he was specifically instructed not to stop vehicles passing through that entrance for any reason because, to do so, would have safety implications for traffic on the N2 roadway. Moreover, Mr. Deaton asserted that he never, in fact, stopped any vehicles at the N2 road entrance to the Huntstown Quarry although he conceded that, from time to time vehicles would stop at that gate seeking directions.

Conclusions

1. While, in the circumstance that the grant of the principal permission was subject to the condition (*inter alia*) that "*no development shall take place in the area outlined in the submitted drawings as the Western Quarry areawithout a grant of approval by planning authority or by An Bord Pleanála*", counsel on behalf of the applicant submitted that there was an organic link between the principal permission and the Western Quarry permission so that they must be construed together and, in particular, must be construed on the basis that condition 13 of the Western Quarry permission, namely that "*all vehicles carrying quarried or other dust producing materials to or from the site shall be securely sheeted*" equally applied to the principal permission. I can see no justification whatsoever for that argument. If, when granting the principal permission on the 19th May, 1994, An Bord Pleanála thought it prudent to make that permission subject to what subsequently became condition 13 of the Western Quarry permission, I can see no reason in the world why it would not have done so; particularly, as the principal permission was subject to the condition that no development of the Western Quarry would take place without a further grant of approval. Accordingly, it seems to me that the principal permission and the Western Quarry permission must be construed separately; each being interpreted according to its individual terms. That being so, I am satisfied that the respondents were under no obligation to require vehicles entering or leaving the site of the principal

permission to be sheeted. However, that permission did require that they take effective measures to prevent the deposition of mud, dust and other material on the adjoining public highway caused by vehicles leaving the site of that permission. In this regard, it is, in my view, significant that that prohibition only applies to vehicles *leaving* the site of the permission i.e. the respondents' 200 hectare holding at Huntstown Quarry, but does not apply to vehicles entering the quarry. I say this because it seems to me that many of the overloaded and un-sheeted vehicles shown in the photographs exhibited by the applicant in support of his complaint herein are of vehicles entering the Huntstown Quarry, rather than leaving it. That being so, in the light of the unchallenged evidence of Patrick Martin that, at the material time, the N2 North Road carried a very high volume of traffic, that, in the vicinity of the main entrance to the Huntstown Quarry there were a number of sites on which construction was carried on, a quarrying facility belonging to another operator and that the respondents employed a variety of systems for preventing dust and other material being carried from the Huntstown Quarry on to the public road and in the light of the affidavits respectively sworn by Oliver Lynch and Peter Meade with regard to the cleaning work carried out by the two cleaning companies of which they are respectively the managing director, I am not persuaded that the respondents are or were responsible for depositing mud, dust and other materials on the public highway adjoining the entrance to the Huntstown Quarry and in the vicinity of the applicant's dwelling house in contravention of condition 6 of the principal permission.

2. In the light of the uncontroverted assertion by Patrick Martin that the Western Quarry permission was not operational at any material time hereto, I am not persuaded that the respondent contravened condition 13 of that permission whereby all vehicles carrying quarried or other dust producing materials to or from the site of the permission were required to be sheeted.

3. While there is no doubt but that the conditions to which the recovery facility permission were subject required (*inter alia*) that "*all vehicles carrying materials to or from the subject site shall be securely sheeted*" (the emphasis is mine), the subject site in that context was 1.5 hectare, being portion of the respondents 200 hectare quarry. In this regard, while the applicant deposed to the fact that he witnessed un-sheeted vehicles passing through the main entrance to the Huntstown Quarry and produced photographs and, apparently, video film in support of that assertion, he did not and, indeed, could not say that un-sheeted vehicles ever passed the security barrier leading to the quarry and, more particularly, he did not and could not say that he saw un-sheeted vehicles carrying materials to or from the subject site of the recovery facility permission i.e. the 1.5 hectare site. He could not give evidence in that behalf because, as I have already indicated, he did not have access to the respondents' quarry and did not seek the assistance of the planning authority to investigate his suspicion that the respondents were not complying with the relevant provisions of the recovery facility permission. On the other hand, Mr. Patrick Martin has given sworn testimony that, at the material time, no un-sheeted vehicle carried materials to or from the subject site of the recovery facility permission and, in those circumstances, once again, I am not persuaded that the applicant has established that the respondents have contravened the conditions to which the recovery facility permission was subject.

4. In the forgoing circumstances, it is my judgment that the applicant is not entitled to any of the reliefs sought herein.