

THE HIGH COURT

2012 184 JR

BETWEEN

CATHERINE TAAFFE

APPLICANT

AND

LOUTH COUNTY COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice Birmingham delivered the 25th day of June 2013

1. The matter before the court is an application pursuant to O. 84, r.20 by the applicant seeking to amend a statement of grounds by including additional grounds.

2. The background to the application is that on 2nd March, 2012, the applicant obtained leave to seek an order by way of *certiorari* quashing an enforcement notice that had been issued by the respondent dated 9th January, 2012 and also at the same time an order granting leave to seek an order by way of *certiorari* quashing an invoice raised in relation to enforcement costs incurred by the respondent.

3. Leave to seek the reliefs sought was granted on six grounds. The broad outline of the case made by the applicant was that the respondent had no jurisdiction to issue the enforcement notice in question as the applicant did not own or control the premises in question, had ceased to use the structure at a point in time three months prior to the issue of the enforcement notice and that an established use existed in relation to the structure.

4. The notice at issue related to the alleged use by the applicant of a portacabin type structure as a solicitors office at Rathnestin, Tallanstown, Dundalk, County Louth and the carrying out of a professional practice from there.

5. The applicant now seeks to add thirteen additional grounds to the original six. The applicant has stressed that there is no request to expand on the reliefs that are being sought or to enlarge or amend the reliefs being sought in any way.

6. It is convenient to attempt to group the proposed additional grounds. On that basis, the proposed new reliefs 7, 8, 9, 10, 11 and 12 could be seen as raising issues in relation to the adequacy of the investigation carried out by the respondent and the nature of the enquiries conducted by the respondent prior to the issue of the warning letter and subsequent enforcement notice. Section 13 is a stand alone ground and relates to an alleged failure to issue the enforcement notice within what is described as the statutory twelve week time limit. Grounds 14, 15, 16, 17 and 18 raise points in relation to the fact that the complaint that triggered the respondent's interest was an anonymous note. Section 19 alleges that the respondent acted with *mala fides* against the applicant because she had acted as solicitor for a named client in what was described as "highly contested" criminal proceedings brought by Louth County Council.

7. The approach to be taken to applications to extend upon the terms on which leave to seek judicial review has been obtained has been considered in a number of cases in recent times. In particular, by reference to the Supreme Court decision in *Keegan v. Garda Síochána Ombudsman Commission* [2012] IESC 29 (Unreported, Supreme Court, 1st May, 2012), Hedigan J. in *Fleury v. Minister for Agriculture and Rural Development* [2012] IEHC 543 (Unreported, High Court, Hedigan J., 12th December, 2012) distilled and summarized the applicable principles. He did so in these terms:-

- (i) The court should have regard to the interests of justice.
- (ii) The arguability of the points sought to be raised should be considered.
- (iii) There should be good reason for allowing the late amendment, e.g. the circumstances should be exceptional.
- (iv) The court should consider whether the new facts are new facts that arose since leave was granted.
- (v) The court should consider whether the proposed amendment would be a significant enlargement of the proceedings already in being.
- (vi) The court should consider whether the proposed amendment would prejudice the respondent.
- (vii) The court should bear in mind the true nature of judicial review noting that the leave stage of judicial review is a filtering mechanism, The court should consider the over arching requirement of promptness.
- (viii) The relevance of the ground should be considered.
- (ix) Every case depends on its own facts.

I propose to address the proposed new grounds having regard to these principles and do so having regard to the decision of the Supreme Court in *Keegan* and in particular to the judgment of Fennelly J.

8. So far as the adequacy of investigation grounds are concerned, it may be said that there is an amount of overlap with the grounds on which leave has already been granted. In addition the applicant offers four reasons for needing to amend grounds 7 to 12. These are:

- (1) The respondent's refusal to accept her invitation to inspect her offices in Ardee town.
- (2) The respondent is alleged to have misled her by its letter of 15th November, 2011.
- (3) The respondent failed and refused to engage with her.
- (4) The applicant was refused access to the enforcement file.

It seems to me that a number of these points are without substance and are quite misconceived. That the respondent would have no interest in inspecting the applicant's Ardee town office when the controversy related to an entirely different location at Rathnestin seems to be entirely understandable. In that regard I am bound to say that the applicant has done herself no favours by failing to ever inform the respondent in clear, unambiguous and unequivocal terms that she was responding to the warning notice by ceasing her solicitors practice at Rathnestin. Had that obvious step been taken these proceedings might have been avoided.

9. So far as the point in relation to the letter of 15th November, 2011 is concerned, the point being made here is that the letter in question comments that the complaint in writing that had been received was found to be factual, with foundation and substance because the primary concern expressed in the complaint was about public safety and safety of road users arising from additional traffic and inadequacy of vehicular visibility at the entrance to the property in question. It is true that the letter of 15th November does not quote directly from the written complaint but rather as it has been put in the course of written submissions paraphrases the complaint in a situation where the written complaint had referred to "no planning permission to run business at this location", "located on dangerous bend", "excess traffic in area by clients", and "structure that has no planning". It seems to me that the paraphrase was a reasonable one. In any event the applicant had the letter of complaint in redacted form prior to bringing her application for leave so I cannot see how the letter of the 15th November, 2011, can now provide a basis for extending the grounds.

10. So far as the complaint about a refusal on the part of the respondent to engage is concerned, again the applicant was fully aware about the extent and nature of the engagement there and had been when she brought her application for leave. I cannot see that any alleged failure to engage could now provide a basis for extending the grounds. In any event if the correspondence passing between the applicant and respondent is examined in detail it does not lend support to the suggestion that there was a lack of engagement. As to the complaint that is made about access to the enforcement file, again, the first point to be made is that the applicant was aware as to what she had access to and what she did not have access to and I cannot see how this could provide a basis for extending the grounds. In any event it would not appear that the applicant had any right to access the enforcement file but whether she had or had not is not an issue that relates to the suggested need to expand upon the grounds. In these circumstances I propose to refuse the application to add draft grounds 7, 8, 9, 10, 11 and 12.

Ground 13

11. The complaint has been made that the enforcement notice was issued outside a statutory time limit of twelve weeks. The applicant says that she was unaware of the time limit and only became aware when she read the Act.

12. While there have been frequent references by and on behalf of the applicant to a statutory time limit the position is that s. 153(2) of the Planning and Development Act, 2000 states that it shall be the objective of the planning authority to ensure that the decision on whether to issue an enforcement notice should be taken within twelve weeks of the issue of the warning letter. An objective is a goal or target or aspiration. However, even if the twelve week time limit is not an absolute one but merely an objective it is possible that the failure to meet the objective may provide the basis of an argument for the applicant. In a situation where this was not a ground that was originally canvassed at the leave stage because the applicant was unfamiliar with the section and in a situation where admitting the ground to be argued now would not substantially extend the scope of the proceedings and would not prejudice the respondent I propose to permit the addition of Ground 13.

13. Grounds 14, 15, 16, 17 and 18 in various guises raise points in relation to the fact that the complaint that triggered the respondent's interest in the structure was an anonymous one. There is no statutory basis that prevents a planning authority from acting on foot of anonymous complaints. Indeed, the statutory obligation is to investigate written complaints as distinct from an obligation to investigate signed written complaints. Accordingly I do not propose to permit these grounds to be added. However, during the course of argument it emerged that at least part of the applicant's complaint is that she was misled when furnished with a copy of the complaint bearing what appeared to be redactions in the sense that the details of the complainant appeared to be blanked out so as to protect the identity of the complainant when in fact these sections had been left blank when the complaint was submitted. It does seem to me that the applicant's sense of grievance in this regard is an understandable one and I find the actions of the planning authority in redacting blank spaces hard to understand. The redacting of blank spaces was designed to mislead or certainly was capable of having that effect. The applicant may be able to argue that she was misled or disadvantaged by the manner and style in which the complaint was furnished. As I think this is really the nub of proposed Grounds 14 to 18, what I propose to do is to permit a single additional ground to be added as follows:-

"The actions of the respondent in furnishing on request a copy of the complaint which gave the impression and was designed to give the impression that the complaint that had been received by the respondent was a signed form with the name and personal details of the complainant provided when that was not in fact the case and the complaint received was an anonymous one materially disadvantaged the applicant and rendered the procedures followed unfair".

14. So far as Ground 19 with its reference to *mala fides* is concerned, it appears that this was always an issue that the applicant had in mind and would have been anxious to raise. However, I am told, it was felt that there was an insufficient basis for making such a grave plea and so restraint was exercised in that regard. It is said that restraint was called for just as there should be restraint before alleging fraud in a pleading. In her grounding affidavit the applicant says that she only became aware of the extent of the respondent's *mala fides* when she received the respondent's affidavits, statement of opposition and booklet of documents. There is a lack of specificity in terms of what information is now available that has led to an re-evaluation of the appropriateness of making this case. Notwithstanding that I propose to permit the addition of this ground. I am doing so notwithstanding my scepticism as to whether this complaint could ever be substantiated. I do so because I believe that if this is the real kernel of the applicant's case that the applicant would feel a sense of grievance if prohibited or prevented from putting forward her case.

15. In summary then I propose to permit the additions of Grounds 13 and 19 and an amended ground in relation to the provision of a redacted complaint.