Neutral Citation Number: [2006] IEHC 324

THE HIGH COURT

[2005 No. 309 J.R.]

BETWEEN

MARGARET MURPHY

APPLICANT

AND
COBH TOWN COUNCIL AND AN BORD PLEANÁLA

RESPONDENTS

AND
COBH MARINA DEVELOPMENTS LIMITED AND CHRISTOPHER GRIFFIN

NOTICE PARTIES

Judgment of Mr. Justice John MacMenamin dated the 26th day of October, 2006.

1. On 10th October, 2005 having heard an application for leave on notice, O'Sullivan J. granted the applicants liberty to seek judicial review inter alia for an order of certiorari to quash the decision of the second named respondents ("the Board") to reject an appeal submitted on behalf of the members of the Holy Ground and Environs Action Group (hereinafter the "Action Group") upon the basis that it had not been accompanied by an appropriate acknowledgement in accordance with s. 127(1)(e) of the Planning and Development Act, 2000.

2. The appeal rejected by the Board, was submitted by the Action Group's committee on behalf of its members. It concerned a second application for a planning permission for mixed use residential and commercial development at Connolly Street Cobh Co. Cork. This development, in the area well known as 'The Holy Ground'; was an extensive one. It consisted of a marina, 150 apartments in blocks of two and three storeys, a six storey apartment building, commercial units, and a car park. The members of the Action Group who reside in Cobh, object on the basis of the impact of this development on the environment of the area, a risk of landslides, ecological aspects and alleged destruction of views of Cobh Harbour from a number of different vantage points.

3. The applicant in these proceedings lives with her parents in close proximity to the location of the intended development. She has been a member of the Action Group since 2001 when the first application for planning permission for a similar development was submitted. That application for was refused on appeal by the Board. The reasons therefor closely to correspond with a number of the present objections.

4. The Action Group Committee, on behalf of its members, lodged an objection to the second application for planning permission for the proposed development with the first respondent (the 'Town Council'). This was dated 29th November, 2004. The Town Council wrote to the Action Group by letter dated 30th November, 2004.

5. The first lines of the letter state:

> "A Chara,
>
> > I acknowledge receipt of *your communication* regarding the following application for Permission under the Planning and Development Act, 2000: …"

6. The date of receipt of the communication was recorded by date stamp. The letter recites details of the applicant for permission, the nature of the proposal, and the site. The words in italics refer to the objection aforesaid.

7. The letter *inter alia* states:

> "Your communication was received in this office on 29/11/2004. Receipt No. 31033 in respect of €20 fee paid as attached."

8. The letter was signed (in large typeface) by Mr. Padraig Lynch. Beneath this in ordinary script, is Mr. Lynch's description as Town Clerk of Cobh Town Council. Below, in what can only be described as minuscule print, is the date of the letter, '30/11/2004'. No date was placed at the head of the letter, nor elsewhere in ordinary sized font. Accompanying that letter was the receipt.

9. The Town Council subsequently decided to grant planning permission for this development. By a further letter (using similar unusual dating procedure and font size) the Town Clerk informed the Action Group that the Town Council had by order dated 16th of December, 2004 decided to grant permission. That letter contained an identical description of the nature of the proposal, and also enclosed a copy of the notification of the decision of the Town Council which had been sent to the applicant for planning permission. The Action Group were advised to note the requirement of any appeal to An Bord Pleanála. This letter of 17th December, 2004, was written in fulfilment of a requirement upon the Town Council of Article 31 of the Planning and Development Regulations 2001 to notify those who made a submission or observation upon the application. This time the letter commenced with the words:

> "I refer to previous correspondence regarding the application for Permission …"

10. A third party appeal was lodged with the Board it is required to inform the Town Council, who were in turn required by Article 69 of the Planning and Development Regulations 2001, to inform those who made submissions or observations. This was done by further letter from the Town Council on 11th January, 2005 and received by the Action Group. This time it commenced:

> "I acknowledge receipt of your communication regarding the following application for Permission …",

11. described the development the subject matter of the planning application (04/52053) and on the following pages indicated that the third party Appeal had been lodged.

12. The Action Group Committee instructed their solicitor also to appeal the decision of the Town Council to the Board. An appeal dated 19th January, 2005 was, on these instructions, lodged, but accompanied by the letter from the Town Council to the Action Group dated 11th January, 2005 and not the letter in such singular manner dated of the 30th November, 2004.

13. By letter dated 26th January, 2005 the Board indicated its decision to reject the appeal, as s. 127(1)(e) of the Act of 2000 had not been complied with. The Board's position was that the first letter acknowledging the observation or submission dated 30/11/04

was the acknowledgement which should have accompanied the appeal brought by the Action Group, and not that of the 11th of January, 2005.

14. The curious procedure adopted by the Town Council in using miniscule font size or typeface, but only for the purposes of dating is letters can only be seen as a trap for the unwary, although not, I am sure, an intentional one.

15. While there are small divergences between the contents of the three letters there is no divergence in the reference number used by the Town Council; nor is there any discrepancy in the date of the application. In the first letter, it is true the Town Clerk refers to the date of receipt of the letter. But this is set out in normal size print in the text of the letter itself. The unusual date-procedure has not been explained.

16. In response to the order of c*ertiorari* sought quashing the decision of the Board whereby it rejected the appeal, the Board for its part denies that it erred in law or acted *ultra vires* its powers in deciding that the appeal was invalid. It submits that the appeal was invalid by reason of its failure to comply with the relevant statutory provisions. It denies that the letter dated 11th January, 2005 constitutes an acknowledgment of receipt of a submission or observation on the relevant planning application and contends that only the letter dated 30th November, 2006 would constitute such lawful acknowledgment. This is the sole basis of opposition raised by the Board

17. The notice parties alone, who are the applicants for planning permission, raise a question of *locus standi* of the applicant in the proceedings Margaret Murphy. This issue will be dealt with later in the judgment.

The Appeal Framework
18. The appeal procedure to the Board herein is pursuant to s. 37 of the Planning and Development Act, 2000 ('the Act'). Section 37(1) (a) of the Act permits the following persons, within the appropriate period and on payment of the appropriate fee, to appeal the decision by the planning authority on a planning application:-

(i) The applicant for planning permission;

(ii) Those who have made submissions or observations in writing in relation to the planning application.

19. In order for such appeal to be valid and lawful it must comply with s. 127 of the Act. Insofar as relevant, this section provides:

"(1) an appeal or referral shall –

(a) be made in writing,

(b) state the name and address of the appellant or person making the referral and of the person, if any, acting on his or her behalf,

(c) state the subject matter of the appeal or referral,

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,

(e) in the case of an appeal under s. 37 by a person who made submissions or observations in accordance with the permission regulations, be accompanied by the acknowledgement by the planning authority of the receipt of the submissions or observations,

(f) be accompanied by such fee (if any) as may be payable in respect of such appeal or referral in accordance with s. 144, and

(g) be made within the period specified for making the appeal or referral.

(2) (a) An appeal or referral which does not comply with the requirements of subs. (1) shall be invalid…."

20. Paragraph (e) is of obvious significance, in particular the use of the definite article in reference to "the acknowledgement". While s. 127(4) states that such appeal or referral shall be accompanied by such documentation pertains or information as to an appellant shall seem appropriate, this subsection is not governed by subsection 2(a) recited above.

Historical background: to The 1963 Act
21. Under the Local Government (Planning and Development) Act 1963 issues arose as to whether the statutory requirements for a valid appeal were mandatory or directory. In The State (Elm Developments Limited) v. An Bord Pleanála [1981] ILRM 108 Henchy J. found that the specific requirement in the Act of 1963 to include the grounds of appeal with the appeal was directory as opposed to mandatory. That judge stated that if:

"What is apparently a requirement is in essence merely a direction which is not of the substance of the aim and scheme of the statute, non compliance may be excused".

By Contrast the Act of 2000?
19. But do these observations apply to s. 127(1) and (2) at all? Or is the position now made clear by the very terms of the section in question?

20. Here it is not contested by the applicant that an appeal would be invalid if it had not been accompanied by an acknowledgment. What constitutes such "acknowledgement by the planning authority of receipt of the submissions or observations" (See s. 127(1)(e))? What is the effect of non-compliance with the section? In the event of non compliance, may the *de minimis* rule apply?

21. On behalf of the applicant it is first urged by Dr. Ford S.C. and Ms. Dowling B.L. that the relevant subsections of s. 127 of the Act of 2000 should be read in conjunction with s. 32(2)(d) of the Act, and Article 29(2) of the Planning and Development Regulations 2001 ("the 2001 Regulations"). They submit the requirement is satisfied by lodging any document from the planning authority which

acknowledges that the appellant is a person who made a submission or observation with the appeal. It is contended that this document does not have to take a specific form, be sent at a particular time, and may be sent before, or after, any other statutory notification.

22. It is therefore necessary to consider the interplay between relevant provision of the Act of 2000 and the relevant articles of the Regulations of 2001.

23. Section 32(2)(d) of the Act of 2000 permits the Minister for the Environment Heritage and Local Government to make regulations:

> "Requiring planning authorities to acknowledge in writing the receipt of submission or observations".

24. This statutory objective was effected by Article 29(2) of the Regulations which provides:

> "1. (a) any person or body on payment of the prescribed fee, may make a submission or observation in writing to a planning authority in relation to a planning application within the period of five weeks beginning on the date of receipt by the authority of the application.
>
> (b) any submission or observation received shall
>
> (i) state the name and address, and telephone number and email address, if any of the person or body making the submission or observation and
>
> (ii) indicate the address to which any correspondence relating to the application should be sent
>
> 2. Subject to Article 26, the planning authority shall acknowledge in writing the receipt of any submission or observation referred to in sub article (1) as soon as may be following receipt of the submission or observation …"

25. In addition to the submissions outlined earlier the applicants say the phrase "as soon as may be" is non specific as to time of such a requirement. A planning authority might comply with Article 29(2) by acknowledging receipt of the submissions or observations in a letter containing other information, which it must communicate to those who made submissions or observations.

The Board's Case
26. Ms. Nuala Butler S.C., on behalf of the Board submitted that the only document which constitutes "the acknowledgment" is that dated 30th November, 2004; no other document comes within that category. Only this letter was issued by the planning authority in compliance with Article 29 of the Planning and Development Regulations 2001 recited earlier.

27. The Board denies that the letter of 17th December, 2004 is a letter which acknowledges receipt of submissions or observations. Instead it says that this letter informs the Action Group of the planning authority's decision on the planning application. Whilst the letter opens by referring to previous correspondence, it proceeds to indicate that the planning authority have, by order dated 16th December, 2004, decided to grant permission for the development of the property. Therefore this letter together with the enclosed notification, the planning authority's decision, and an enclosed document entitled "Making a Planning Appeal under the Planning Development Act 2000" were issued pursuant to Article 31 of the Planning and Development Regulations 2001 which provides:

> "Notification of a decision by a planning authority in respect of a planning application shall be given to the applicant and to any other person or body who made a submission or observation in accordance with Articles 28 or 29 within 3 working days of the date of the decision".

28. As to the third letter dated 11th January, 2005, the Board contends it was in fact a letter informing the Action Group of the receipt of a third party appeal in respect of the planning authority decision. This, it is stated, was issued pursuant to Article 69 of the Planning and Development Regulations 2001 which provides:

> "69(1) subject to sub article (2), where a copy of an appeal under s. 37 of the Act is sent to a planning authority by the Board in accordance with s. 128 of the Act the planning authority as soon as may be after receipt of the copy of the appeal, shall notify in writing any person who made a submission or observation in accordance with these regulations in relation to the planning application in respect of which an appeal has been made."

29. Counsel adds that even if the wrong piece of correspondence was submitted in error (not actually admitted in the course of the proceedings) such error, because of the mandatory nature of the section, cannot constitute a basis for the court disregarding the clear provisions of s. 127(1) (e), any more than an inadvertent omission of an appeal fee under s. 127(1)(f) or an inadvertent failure to make the appeal within the appropriate period under s. 127(1)(g) could justify the court in disregarding those provisions.

Is Section 127 Mandatory?
30. In *Elm Developments* referred to earlier Henchy J. identified some of the criteria necessary in order to establish whether the provisions of a statute were mandatory or directory in nature. He observed:

> "If the requirement which has not been observed may fairly be said to be an integral and indispensable part of the statutory intendment, the courts will hold to be truly mandatory, and will not excuse a departure from it. But if, on the other hand what is apparently a requirement is in essence merely a direction which is not of the substance of the aim and scheme of the statute, non compliance may be excused. If the requirement which has not been observed may fairly be said to be an integral and indispensable statutory intendment, the courts will hold it to be truly mandatory, and will not excuse a departure from it. But if on the other hand, what is apparently a requirement is in essence merely a direction which is not of the substance of the aim and scheme of the statue, non compliance may be excused." (p. 11 of the judgment).

31. In *McAnenley v. An Bord Pleanál*a [2002] 2 I.R. 763 Kelly J. concluded that s. 6 of the Local Government Planning and Development Act 1992 (which dealt with an appeals procedure to the Board) was mandatory, and that non compliance with an express statutory requirement on the facts in that case could not be disregarded on a *'de minimis'* basis. Having been refused planning permission by the notice party, Monaghan County Council, the applicant appealed such refusal to the respondent, An Bord Pleanála. This upheld the decision of the County Council. The applicant applied by way of judicial review for an order of certiorari quashing the decision of the Board on the grounds that there had been a failure on the part of the notice party to comply with statutory obligations imposed on it in respect of the transmission of documents to the respondent namely, the notification of the

decision, the report of the Fisheries Board and a section plan.

32. Kelly J. considered that the intent of the legislature was that the respondent should have before it certain specified documentary material which was on the planning authority file when it made its decision, together with relevant documents which related to the decision itself. But in *McAnenley* the actual decision of the County Council was omitted, although the Board did have a copy of the notification to grant permission which contained all of the material contained in the decision itself. However the relevant decision was constituted only by order of the County Manager. This essential order was not before the respondent; and such requirement was necessary in order to comply with the mandatory requirements in relation to an appeal. Moreover that judge went on to point out that this was not the only lacuna involved, and that other documentation of importance to the decision making process had also not been forwarded to the Board. Thus, seen in context, Kelly J.'s disinclination to apply a *de minimus* interpretation of the section is to be seen having regard to the essential and solemn nature of the order of the County Manager which should have been before the Board at the time when it was making its decision, but was not, additionally and in circumstances where such omission was but one of a number of procedural irregularities.

33. Section 127(1)(e) of the Act of 2000 can only be read in the light of the accepted principles of statutory interpretation, one of the basic premises of which is that, prima facie, the meaning of an enactment which was intended by the legislature should be taken to be that which corresponds to its literal meaning (see *Howard v. Commissioner for Public Works* [1993] ILRM 665 and *Telecom Eireann v. O'Grady* [1998] 3 I.R. 432).

34. In *Graves v. An Bord Pleanála* [1997] 2 I.R. 205 the same judge had to consider the provisions of s. 4(5) of the Local Government Planning and Development Act 1992 which provided *inter alia* that "an appeal shall be made:

> (a) by sending the appeal by prepaid post to the Board or;
>
> (b) by leaving the appeal with an employee of the Board at the offices of the Board during office hours".

35. *Graves*, the applicant, instructed his solicitors to appeal to the Board a decision made on 19th December, 1996. The period for making such an appeal expired on 18th January, a Saturday, on which day the offices of the Board were closed. Therefore, by virtue of s. 17(1)(b) of the Act of 1992 the time limit was automatically extended to Monday 20th January 1997 when the offices next were open. On 18th January, 1997 (when the offices were closed) the appeal was hand delivered to a security guard (not an employee) at the offices of the Board. However on 20th January, 1997 before the offices opened, a Board employee found the envelope containing the appeal which appeared to have been placed under the door of the Board's offices. This employee left it at the Board's reception desk where it was accepted by the Board and a different employee took possession of the envelope and applied the date stamp to the contents at the offices of the Board during office hours on 20th January, 1997. Kelly J. refused relief on the specific grounds that if the applicant had observed the method of service prescribed by s. 4(5)(b) of the Act of 1992, an employee of the Board must have had the appeal document left with him or her personally in order for the appeal to be valid. He considered that the mere fact that an employee fortuitously came into possession of the appeal documents did not discharge the onus placed upon the applicant to comply with the mandatory provisions of s. 4(5)(b). He stated:

> "… To permit of a departure from that procedure would not merely run counter to the statutory provisions but would, in my view, introduce an element of uncertainty into a procedure which must be strictly construed and rigidly so as to ensure certainty and the protection of third party rights."

36. In *Graves*, the appeal had not been sent by prepaid post to the Board. Nor had it been left with an employee of the Board at its offices during office hours. The mere fact that the appeal came into the hands of a Board employee within the time limit did not avail the applicant.

37. There was thus failure in strict compliance on a number of fronts.

38. The essential criteria identified in *McAnenley* and *Graves* were the necessity to ensure certainty, the protection of third party rights and compliance with formal and solemn requirements.

39. What is the position here? I consider the very provision of the Section, its relationship to the Statutory Instrument of 2000, the interpretation of analogous statutory provisions in the *McAnenley* and *Graves*, and the principles of statutory provision all lead ineluctably to the conclusion that s. 127(1) of the Act of 2000 is mandatory in effect and that, absent the *de minimis* rule, non-compliance with its provisions render an appeal invalid. Furthermore I accept that the statutory reference to "the acknowledgment" in subsection (e) must necessarily refer only to the acknowledgment to the applicant's letter of 29th November 2004, that is the acknowledgment issued by the Town Council on 30th November, 2004. To permit or allow the interpretation urged on behalf of the applicant would of necessity render uncertain that which must be certain, and create doubt as to compliance when the objective of the section is to remove such doubt. This particularly in the light of the stark terms of s. 127(2) of the Act recited above

The *de minimis* Rule

40. In order for the Board properly to conduct its affairs there must be strict compliance with statutory procedure provisions. The Board is not entitled, as a creature of statue, to operate outside the four corners of the legislation which governs its powers. It has not actually or explicitly been contended that the document dated 11th January, 2005 was furnished to the Board in error. However there is no other explanation for what occurred.

41. But to any reader, professional or lay, the dating procedure on the three letters emanating from Cobh Town Council is unwittingly, a trap to the unwary, especially so in view of the general similarity in layout and in substance albeit with some distinctions. It has not been contended that the Board has been detrimentally affected in its procedures nor in any decision. The letter and enclosure is preliminary to any decision. It was furnished within time. No issue arises here as to the circumstance in which it was delivered to the Board. Does the *de minimis* Rule apply?

42. In *Ní Chonghaile and Others v. Galway County Council* [2004] 4 I.R. 138, Ó Caoimh J. had to consider somewhat similar circumstances in which the rule should be applied. That judge declined to grant certiorari against the respondent county council in circumstances where it had before it, in the making of a decision, a site map which was not accurate but where the error contained therein was minor, and where another map was available to the County Council.

43. In so holding he relied on the judgment in *Monaghan UDC v. Alf-a-Bet Promotions Limited* [1986] ILRM 64 where at p. 69 Henchy J. said:

> "I do however feel it pertinent to express the opinion that when the 1963 Act prescribes certain procedures as necessary to be observed for the purposes of getting a development permission which may affect radically the rights or amenities of others and may substantially benefit or enrich the grantee of permission, compliance with the prescribed procedures should be treated as a condition precedent to the issue of permission. In such circumstances, what the legislature has, either mediately in the Act or immediately in the regulations, nominated as being obligatory, may not be depreciated to the level of mere discretion except on the application of the *de minimis* rule".

44. In *Ní Chonghaile* it was held that the *de minimis* rule should be applied, in that the public had not been misled, and that the spirit of the regulation was more important than its letter. While this decision arose in the circumstance where the court, on discretionary grounds, declined to grant certiorari, should a distinction in principle should be made between the circumstances of that case and those which arise here even accepting that there must be strict interpretation and compliance?

45. What occurred here, was that the third, rather than the first, in a series of three almost identical letters was furnished to the Board. The letter of 11th January 2005, as much as that of 30th November 2004, included the relevant information necessary for the Board to proceed. One cannot ignore either the fact that, at one stage, the Board fairly took it on itself to point out to the applicant herein that she might make submissions or observations on foot of the third party appeal. This was actually done. What the Board suggested was entirely reasonable whether done in exercise of a statutory power or not. However that appeal was subsequently withdrawn, and with such withdrawal, the applicants' objections were placed at naught.

46. Here there is no absence of certainty. No "prejudice" is identified as to a detriment to or diminution of third party rights save as to the existence of a valid appeal. No "prejudice has occurred to the procedures of the Board save in the most technical and, perhaps trivial way. The objection raised by the Board was essentially itself "technical". Does the deviation from the mandatory requirement come within the description of being "trivial", "technical" or "peripheral" identified by Henchy J. in *Alf-a-Bet Promotions*.? If not complete, the compliance here was substantial.

47. The facts of this case are distinguishable from those identified by Lavan J. in *McCann v. An Bord Pleanála* [1997] 264 at p. 271, and Feeney J. in *Rowan v. An Bord Pleanála and Anor* (the High Court Unreported 26 May 2006), where failure of compliance with a mandatory time requirement arose. In both judgments such absence of compliance necessarily entailed a substantive or fundamental non-fulfilment of a statutory procedural requirement, more analogous to a failure to issue a summons within a statutory limitation period.

48. Here no such considerations arise. There was in fact substantive compliance with statutory (and mandatory) time requisites. Should the enclosing of this incorrect letter, with objection, in circumstances earlier outlined, render this appeal invalid? I am not persuaded that it should. The situation is one where the *de minimis* rule should apply.

Locus Standi

49. A second point raised herein is that advanced by the notice parties although studiously not by counsel on behalf of the Board: that is a question of *locus standi*. Though their counsel Mr. James Macken S.C. the notice parties say that the applicant refers to being a member of the Action Group since 2001, and also refers to the Action Group having lodged an objection "on behalf of the members" to the planning application in respect of these proceedings on 29th November, 2004.

50. In the applicant's affidavit of 22nd March, 2005 she exhibited an earlier letter of objection from her solicitors, which refers to that firm's clients as being four individuals (supplying their names and addresses) "collectively known as the Holy Ground and Environs Action Group". It is now stated that the applicant is not named as being one of the clients, although Mary Murphy (the applicant's mother with the same address) is so named. It is said that the name of the objectors set out in a letter from the Action Group's solicitors of 29th November, 2004 identified the 53. objectors by name and address and that the applicant was not among them.

51. The order of O'Sullivan J. was dated 10th October, 2005. Before the court on that leave application was an affidavit sworn by Mr. David Pearson Solicitor on 18th July, 2005 wherein the issues of the sufficiency of the applicant's interest, and her *locus standi* were canvassed. In response, the applicant set out in an affidavit sworn on 22nd July, 2005, reasons why she was not named in the objection or submission and the appeal, namely that the members of the Action Group had decided to lodge an objection, but that instead of each member doing so, or being named in the said objection, the it was decided that the committee on behalf of the Group would lodge the objection, submission, and subsequently the appeal. All three of these affidavits, and supporting exhibits, were before O'Sullivan J. at the leave application where leave was granted pursuant to s. 50 of the Act.

52. Further affidavits were filed thereafter the notice parties again raising the distinction between the applicant and her mother (also a committee member of the Action Group) who resides at the same address. The position thus closely resembled that which occurred in *Chambers v. An Bord Pleanála* [1992] 1 I.R. 134 where the Supreme Court (McCarthy J.) held that an applicant in a very similar position "clearly had *locus standi*" in the action.

53. The general issue of "substantial grounds" and sufficiency of interest has already been well traversed as, in *Lancefort v. An Bord Pleanála* (No. 2) [1999] 2 I.R. 311 Keane J. considered the issue as to the point in proceedings in which the issue of *locus standi* should be raised. Having considered English authority to the effect that the issue should not be determined until a substantive application is heard, and Irish authority that standing should be determined as a threshold issue on the application for leave, that judge stated:

> "Those considerations do not apply however to applications seeking judicial review of decisions by planning authorities or the first respondent, An Bord Pleanála since in such cases the application must be made on notice to the authority concerned *and the applicant must at that stage show that there are substantial grounds for contending that the decision in question was invalid. As a general rule there should be sufficient evidence before the court at that stage to enable the judge to determine the question of standing: to require the court in every case to reserve the question until the hearing of the substantive application would be inconsistent with the general statutory scheme.*"

54. While Keane J. adds that the mere fact that an applicant has established "substantial grounds" does not *per se* give rise to an implication that *locus standi* has been established, such determination was grounded upon the very specific subsequent findings made in *Lancefor*t as to an absence of sufficiency of interest, which followed a rigorous analysis of the legal and factual merits of the case establishing that the applicant should not then be recognised as having *locus standi* to mount such a challenge.

55. The approach adopted by Morris J. at first instance in *Lancefort*, and approved by Keane J. thereafter, which related to procedure under s. 82 of the Local Government (Planning and Development) Act 1963 has now been embodied in the Act of 2000 which placed matters on a statutory footing. Section 54(b) of the Act of 2000 now provides that

" … leave shall not be granted to bring judicial review proceedings pursuant to s. 50 unless the High Court is satisfied that there are *substantial grounds* for contending that the decision is invalid or ought to be quashed, and that the applicant *has a substantial interest in the matter which is the subject of the Application*". Thus sufficiency of interest and substantial grounds are now both pre-requisites for leave to seek judicial review.

56. Furthermore, s.50(4)(c) of the Act provides that:

> "Without prejudice to the generality of paragraph (b) leave shall not be granted to an applicant unless the applicant shows to the satisfaction of the court that
>
> > "(i) the applicant …
> >
> > (ii) in the case of a decision of the board on any appeal or referral, was a party to the appeal or referral or a prescribed body or other person who made submissions or observations in relation to that appeal or referral, … or
> >
> > (iii) in the case of a person (other than a person to whom clause (1) (2) (3) (4) or (5) applies, *there were good and sufficient reason for his or her not making objections or submissions or observations as the case may be*".

57. As a matter of law and fact these issues fell for determination at the leave application. This decision was not appealed. No application was made to set aside the grant of leave. No facts have been adduced which might demonstrate that the factual basis which subtended the leave application (and order of O'Sullivan J.) has "fallen away" as occurred in *Lancefort*.

58. Where leave to seek judicial review is refused because an applicant has failed to meet or cross the *locus standi* threshold such determination is final. If leave to apply for judicial review is granted, then absent exceptional circumstances, to re-address the issue of *locus standi* at the substantive hearing would effectively, be to run counter to the intendment of the provisions of s. 50(4)(b) of the Act of 2000, the expeditious determination of planning applications provided under s. 50(5) of the Act; the effective use of court time, and consistency in decision making.

59. The issue of *locus standi* was raised prior to and at the determination to grant leave. It was the same substantive issue as raised herein. That judge determined nonetheless that substantial grounds, and sufficiency of interest had been established. In such circumstances I do not consider that it would here be appropriate to "re-visit" the issue of *locus standi*.

60. I consider that the approach adopted by the Board in refraining from raising this issue in this matter was the proper one. I am fortified in this view by a consideration of a number of judgments of relevance and value on this point:

> In *Ballintubber Heights Ltd v. Cork Corporation* (The High Court, Unreported, 21st June, 2002) Ó Caoimh J. observed that the planning code clearly envisaged that the issue of standing should be determined at the leave stage. In *Harrington v. An Bord Pleanála* (The High Court, Unreported, 26 July, 2005) Macken J. observed that a "substantial interest" may be a wider than a financial interest, or an interest in land
>
> > "and therefore in theory it can cover a wide variety of circumstances".

61. She added

> "I consider that the substantial interest which the applicant must have is one which he has also expressed as being peculiar or personal to him".

62. In *O'Shea v. Kerry County Council* [2003] 4 I.R. 143 Ó Caoimh J. determined that a general interest that the law should be upheld was not, of itself a substantial interest. The issue was considered again by that judge in *Ryanair v. Aer Rianta* [2004] 2 I.R. 344 to similar effect.

63. O'Neill J. I had to deal with the issue in *O'Brien v. Dun Laoghaire Rathdown County Council.* (The High Court O'Neill J. 1st June, 2006.). Latterly Clarke J. dealt with the question in *Harding v. Cork County Council and Anor* (The High Court, Unreported 12th October, 2006) which touched on circumstances, where on a *reconsideration* of the grounds on which leave was granted, it might fall to the court to look again on the issue of locus standi, in the event that grounds upon which leave was granted, were at full hearing found to "fall away" thereby leaving the applicant with an insufficient interest, or no *locus standi*.

64. While helpful on the point of *locus standi*, (although like *Chambers* they were not cited). they do not alter my conclusions. No new evidential basis has been established either in fact or law to review the determination made at the leave stage on *locus standi*. It has not been shown that the evidential basis which grounded the decision of O'Sullivan J. has been substantially altered.

65. In the circumstances having regard to the determinations reached on the issues I consider the applicant is entitled to judicial review by way of *certiorari* quashing the decision of the respondent dated 26th January, 2005, refusing to accept that the applicant has made valid appeal in respect of the development register number TP0452053.