

DUBLIN CORP v LANGAN

THE HIGH COURT

1982 No.36 MCA

IN THE MATTER OF SECTION 27 OF THE LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT 1976

BETWEEN:-

DUBLIN CORPORATION

Applicant

-v-

ANTHONY LANGAN

Respondent

Judgment of Gannon J. delivered the 14th May 1982.

This Application by the Planning Authority for the City of Dublin for an order pursuant to section 27 of the Local Government (Planning and Development) Act 1976 relates to the premises at 29 Bachelors Walk in the City of Dublin of which the respondent Anthony Langan is the owner in possession. Some time prior to the 9th of February 1982 the respondent took an assignment of the lessee's interest in the property granted by lease dated the 29th of April 1978 from Dublin Corporation to J. H. Cox Limited.

The relief claimed by the Planning Authority is for an order under section 27 of the following nature:-

- "1. Restraining the respondent his servants, agents or licensees from carrying out any unauthorised development at 29



Bachelors Walk in the City of Dublin.

2. Restraining the respondent his servants agents or licensees from carrying out any development or building works of every description at 29 Bachelors Walk.
3. Restraining the respondent his servants agents or licensees from carrying out any further work to or at the premises 29 Bachelors Walk in the City of Dublin unless and until planning permission therefor shall have been obtained.
4. Restraining the respondent his servants agents and licensees from making any use of the said premises unless and until planning permission therefor shall have been obtained.
5. Further and other relief including if necessary an order directing the removal of the building erected without planning permission at 29 Bachelors Walk, Dublin.
6. An order for the applicant's costs."

In addition to the evidence on Affidavits filed on behalf of the parties oral evidence was given by a Mr. Rory O'Byrne the Planning Inspector by whom two Affidavits were sworn and by the respondent and by his architect, Arthur Hughes. The uncontroverted facts as disclosed by the evidence are that at the time the property was

purchased by the respondent it consisted of a single storey premises to a depth of 35 feet to the rear from its frontage in line with adjoining buildings beyond which line the front protruded a further 9 feet. To the rear of the 35 foot area there was a continuous floor area on ground level covered by regular roofing for one storey. The portion to a depth of 35 feet appears to have comprised formerly more than one storey, but at the time the respondent took possession there was building rubble lying on the portion above the ground floor ceiling thus providing effectively roofing for this portion of ground floor area. The lease imposed an obligation on the lessees to carry out within twelve months repair works set out in a schedule and to keep the premises in good and tenantable repair and condition. There are limited restrictions on user, alteration and assignment in the lease. At the beginning of January 1982 the respondent's then Solicitors wrote to the Dublin Corporation as lessors giving notice of proposed alterations the nature of which has not been stated and in reply, dated 20th January 1982, the Dublin Corporation "as landlords" gave consent with the qualification "providing your client obtains planning permission". On the 12th of February 1982 the respondent obtained from the Dublin Corporation pursuant to section 89 of the Local

Government (Planning and Development) Act 1963 a licence to erect a hoarding on the public road at 29 Bachelors Walk for the period 11.2.82 to 10.3.82. On the 23rd of February 1982 the Planning Inspector Mr. Rory O'Byrne discovered that demolition work had taken place behind the hoarding and that no application for planning permission had been made and no permission given. He so informed the builder on the site, namely, Pat Donohoe on the 24th of February 1982 and told him to cease work until planning permission had been obtained. The builder informed Mr. O'Byrne that he would continue the work unless told by the respondent to stop or a written notice to stop was received from the Dublin Corporation. A formal warning notice under the Planning Acts to cease "demolition and reconstruction" was sent by registered post on the 25th of February 1982 to the respondent who that day had informed the Planning Inspector that an application for planning permission would be lodged within a week. A letter dated the 26th of February 1982 was received on the 3rd of March by the planning authority from the respondent's Solicitor saying

"Re 29 Bachelors Walk

Dear Sir

We have been instructed by Anthony Langan to write to you

confirming that the above mentioned building is in a dangerous state requiring immediate remedial work which is presently being carried out. The specifications from the architect will be furnished as soon as is practically possible.

Yours faithfully."

No application for planning permission was submitted. A further inspection by the Planning Inspector on the 25th of March 1982 revealed that work had continued and a new shop front had been constructed and completed, but in the meantime no application for planning permission had been received by the planning authority. A verbal warning was given to the respondent by the Planning Inspector that day and a formal warning notice pursuant to section 26 of the Local Government (Planning and Development) Act 1976 dated the 29th of March 1982 was served on the respondent. The Planning Inspector visited the premises on the 30th March 1982 and found work still in progress and was informed by the respondent when in conversation that day by telephone that he had received the warning notice. The applicant applied for and obtained from the President of the High Court on the 1st of April 1982 upon ex parte application a restraining order pursuant to section 27 of the 1976 Act. On the 13th of April

1982 the planning authority received an application under the Local Government (Planning and Development) Act 1963 on behalf of the respondent for retention permission in respect of development described as "replacement of shop front" at 29 Bachelors Walk. This application was accompanied by a letter dated 8th of April 1982 from the respondent's architect which is as follows:-

"Dear Sir

I am instructed by my clients Messrs Navan Furniture Sales, of 74 Thomas Street, Dublin 8, to make planning application for permission to retain a replacement, which they have recently erected, of the previous shop front of their premises, which they have recently acquired, at No. 29 Bachelors Walk, Dublin 1, and for which they were unaware that planning permission should have been obtained.

Other than the removal of the former shop front and the flat roof immediately thereover, no demolition works have taken place in any part of the premises, neither have any structural or layout alterations been made therein, all other works which they

have been engaged in having been of a purely normal repairing and re-decorating nature.

The dimensions of the new front are identical with those of that which is replaced and it rests on the original foundations thereof. The height of the new structure exactly matches that of the front which it replaces. My clients activities in these premises will be a continuation of its former usage, i.e. furniture sales.

I enclose herewith a completed application form for this retention together with four copies of plans and a newspaper advertisement. If there is any further information which you may require possibly you will get in touch with me as necessary.

Yours faithfully

Arthur Hughes."

That letter contains statements of fact which, following the oral evidence, I do not accept as accurate.

The architect Mr. Arthur Hughes described the premises as it is now when the work so far carried out has been completed, but he was not in a position to describe the premises as it had been when the respondent was first warned to desist from work believed to require

planning permission. The front projection beyond the line of frontage of adjoining buildings is of new construction with flat roof and is as illustrated by photographs produced in the course of the evidence. It is for the retention of this the present application to the planning authority was submitted on the 8th of April last. In relation to the further area to a depth of 35 feet from the front line of the buildings a new floor has been laid, dry lining has been applied to the side walls against adjoining buildings, six new piers have been constructed for which foundations were dug out, and a suspended ceiling has been constructed over the entire of that area at the same level as the former ceiling in the old building. He says that all this which is new is basically of the same dimensions as what had been in existence there before the work commenced, and being internal work consistent with compliance with the covenants in the lease, did not in his opinion require planning permission. For the work of demolition and replacing the projecting front portion Mr. Hughes considered planning permission would be required. It is for the retention of this development carried out without planning permission that the pending application for a retention has been made. Mr. Langan the respondent said in evidence that he had not been told by the

Planning Inspector that planning permission was required, but he admitted that none of the work was stopped after the notice to cease had been received. He said that the piers were constructed on foundations already there replacing old wooden beams along the walls and that there was no excavation done. The evidence of Mr. O'Byrne the Planning Inspector was that when he first saw the premises the workmen were demolishing a side wall and that he had warned them about getting planning permission which he discovered had not been obtained. He said that he had told the respondent to apply for planning permission and to stop the work but that the work continued and no application was made until after the court order granted on ex parte application by the President. He said that not only was the projecting front portion an entirely new construction but so also was the entire inner portion extending back 35 feet of which the floor, walls, supporting piers in new foundations, roof and ceiling were all entirely new even though within the area dimensions of the old buildings.

I do not believe that the respondent did not know that planning permission should have been applied for before he commenced the work on the premises, and I accept the evidence of the Planning Inspector in relation to his conversations with the respondent. The statement

in the second paragraph in the architect's letter of the 8th of April 1982 does not accord with the true facts as given in oral evidence and is misleading.

The position which has now been reached is that the respondent now has a completely new ground floor area with new shop front facade and display area ready for use of the entire area for the retail sale of furniture which he claims is not a change of user from the business of auctioneering sales formerly carried on in the building which was purchased at the beginning of the year. The applicant planning authority seek orders which will prevent any part of the premises being used or being further developed. They do not ask to have the front portion removed on the grounds that the application to retain it is the subject of a pending application requiring a decision in accordance with proper planning principles and policies. The respondent submits that no planning permission is necessary, and no order can be made, in relation to any portion other than the front portion which is the subject of the retention application. This submission is founded on the contention that the only work done in the part of 35 feet depth is exempted development within the terms of section 4 (1) (g) of the Local Government (Planning and Development) Act 1963. It is further submitted

that the new frontage of 9 foot depth and the inner portion of 35 feet depth are both different structures, the first being one to which the retention application relates and for which planning permission is required, and the second being one upon which works of maintenance, repair and improvement have been carried out internally without affecting its external appearance.

In my opinion there are not two structures, and Mr. Gallagher for the applicant is correct in his submission that there is but one structure comprising the entire premises. But in relation to the one structure the work which may be carried out on it within the meaning of the expression "development" as defined in the 1963 Act may consist partly of exempted development and partly of development for which planning permission must previously have been obtained. The respondent admits that the work done on the portion of the premises extending 9 feet forward of the frontage line of adjoining buildings is development for which planning permission is required. That work involved the entire replacement of a similarly extended frontage of the premises purchased. The interior area of the premises purchased to the depth of 35 feet has also been completely replaced, and in my opinion the work done is not simply repair and maintenance to conform to the requirements

of covenants in the lease. The filling of the basement area, the excavations, and the erection of six supporting piers indicate an adaptation capable of supporting an entirely different construction from that at present on the site. The work done on this internal area extending 35 feet back from the frontage of the building line is of the same character relative to what had been there before as that done in the forward projecting portion extending 9 feet beyond the frontage of the building line in relation to what preceded it .

Among the factors which must be taken into account in the making of decisions for granting or withholding planning permission are the design, character and appearance of the structure relative to its environment and adjoining buildings. The policy of the Planning Acts clearly is to prevent the erection and maintenance of unauthorised structures. The definition of unauthorised structures appears to indicate that permitted structures are those only which would have been permitted under the repealed 1934 Act and those which existed at the time of the appointed day pursuant to the 1963 Act or approved since then pursuant to the provisions of that Act. The premises of which the respondent is the occupier and owner of a leasehold interest prima facie appear to be an unauthorised structure and in respect

thereof a development purporting to be no more than the maintenance thereof as such would not be exempted development. But in the view I take of the evidence the work done by the respondent on the entire constitutes development and exceeds the limits for exempted development within section 4 (1)(g) of the 1963 Act upon which the respondent seeks to rely.

In the result the respondent must refrain from doing any further work on the premises and from putting it to use unless and until the appropriate permissions under the provisions of the planning Acts have been regularly applied for and obtained. The orders as sought in paragraphs 2, 3, and 4, of the applicant's notice of motion will therefore issue. *With costs.*

SGJ.
14/5/82