

THE HIGH COURT  
STATE SIDE

1983 No. 712 SS

BETWEEN:

SILVERHILL DEVELOPMENT COMPANY LIMITED

Applicant

-and-

AN BORD PLEANALA

Respondent



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Judgment delivered by O'Hanlon J., the 16th day of March, 1984.

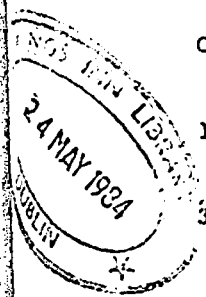
On the 12th December, 1983, Mr. Justice McMahon granted conditional orders of certiorari and mandamus on the application of the Applicant in these proceedings, for the purpose of quashing a decision made by An Bord Pleanala on the 13th October, 1983, refusing approval for the erection of a hotel at Creggroduff and Silverhill, Co. Galway, and directing the Board to issue an approval or permission in accordance with the terms of the application made by the Applicant, unless cause were shown to the contrary within the time specified in the said Order.

The Applicant is the registered owner of the lands comprised in Folio No. 56836 of the Register of Freeholds, County Galway. Up to the year 1973 the area of the lands referred to in the said Folio was

approximately 34 acres, but in that year a substantial part of the holding, comprising several acres, was transferred by the Applicant to Connemara Golf Club Limited. The following are the circumstances which led up to the said transfer.

An application had been made by or on behalf of the Applicant to Galway County Council for outline planning permission to develop the lands comprised in the said Folio by the erection of a 40-bedroom hotel, 34 chalets, and a recreation building. On the 5th February, 1973, outline permission was granted for the erection of the hotel, but subject to a number of conditions, one of which required that the 34 chalets and recreational building should be omitted from the proposed development.

The Applicant thereupon disposed of that part of the lands on which it had proposed to erect the chalets and recreational building, retaining the remainder of the said lands. Subsequently, an application was made to Galway County Council for approval of the erection of the hotel premises on the retained land, in reliance upon the outline planning permission which had been granted in 1973. A decision to grant such approval issued on the 26th January, 1983, subject to certain conditions. From this decision an appeal was taken to An Bord Pleanála by An Taisce, and this appeal was successful - the Board refusing approval on the 13th



October, 1983, for the reason set out in the Schedule to its Order, which read as follows:-

"The site shown in the application for approval does not correspond with that which was granted outline permission in 1973 by Galway County Council (reference 4273) and the application for approval is therefore invalid."

The Applicant contends that An Bord Pleanala were mistaken in law in concluding that the application for approval had to relate to the same lands to which the outline permission related, and was invalid, having regard to the fact that it was made in respect of a smaller site than that comprised in the original application.

In support of this contention particular reliance was placed on the provisions of the Permission Regulations contained in S.I. No. 65 of 1977, Regulation 19(3) of which provides as follows:-

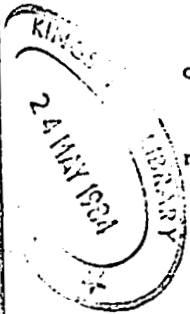
"(3) An application for an approval consequent on an outline permission may be related to a specified part only of the development for which an outline permission was granted and separate applications may be made in respect of other parts of the said development from time to time."

I have considered the effect of this Regulation, and the various authorities to which I have been referred by Counsel for the parties, but I have not found any decided case which appears to me to have a direct bearing on the problem which has to be resolved in the present case.

In Hamilton v. West Sussex County Council, (1958) 2 QB 286, outline

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planning permission was granted for the erection of a cottage on a farm which comprised approximately forty acres, and the plan accompanying the application appears to have shown the whole farm as the planning unit with the proposed site of the new cottage indicated thereon. Outline planning permission was granted at the same time for the conversion of two old cottages (also shown on the plan) into one sound one. At a later stage the applicants applied for approval of plans for the building of the new cottage on a site which was not that shown on the original plan. It was held that they were entitled to such approval and were not obliged to submit a new application for permission, on the basis that the original application related to the entire farm as the planning unit, and not merely to that part upon which it was proposed to erect the cottage.



This lends some support to the belief that the application for planning approval should relate to the same planning unit as that to which the original application for outline planning permission related. I have come to the conclusion that this is the correct approach to a planning application and that An Bord Pleanála were correct in the decision they reached in the present case that the application for approval was invalidated because it was made in respect of a different planning unit from that which was the subject of the application for outline planning

permission.

With regard to Regulation 19(3) of the 1977 Regulations, I am of opinion that this is designed to enable an applicant who has obtained outline planning permission for the development of certain lands to proceed piecemeal with such development if he thinks fit to do so, by applying for approval in respect of different parts of the contemplated development at different times. To avail of this provision, however, the application for planning approval must on each successive occasion be made in respect of the same original planning unit as shown on the site plan lodged in support of the application for outline planning permission.

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It appears to me that the area of the planning unit - the lands on which the development is to take place - must always be a material consideration for the planning authority in reaching a decision whether to grant or refuse permission. If an applicant, having obtained outline planning permission to develop land of a certain area, comes forward at a later stage with a proposal to develop land of a different area this may radically alter the attitude a planning authority should take to the application in the interests of the proper planning and development of the area over which they exercise jurisdiction. It seems to me to be

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contrary to the spirit and intention of the Acts that they should, in such circumstances, find their hands tied by an outline permission previously granted by them when an application was made for permission to develop a larger area of land. If the applicant is no longer in a position to make an application for development approval in respect of the original planning unit, he should, in my opinion, be obliged to submit a fresh application for permission in respect of such part of the original lands as he now wishes to develop.

In these circumstances it is unnecessary for me to deal with other interesting legal issues which were raised in argument during the hearing of this case, concerning the impact of Sec. 2 of the Local Government (Planning and Development) Act, 1982, on the outline permission granted in 1973, and I propose to refuse to make absolute the conditional orders of certiorari and mandamus already referred to and the said conditional orders will stand discharged.

*R. J. O'Hanlon*  
 R. J. O'Hanlon

16th March, 1984.

Note

Counsel for the Applicant:- Nial Fennelly, SC; Conor Maguire, BL  
(instructed by John M. Ford & Son, Solicitors).

Counsel for the Respondent:- Brian McSwiney, BL, (instructed by T.T.L.  
Overend, McCarron & Gibbons, Solicitors).

Cases and Materials cited:-

E. M. Walsh - Planning and Development Law, p.40.

Burdle v. Sec. of State for the Environment, (1972) 3 AER 240.

Slough Estates v. Slough Borough Council (No.2), (1971) AC 958.

Readymix Concrete Ltd. v. Dublin Co. Council, (Supreme Court, 3/7/1974).

Hamilton v. West Sussex Co. Council, (1958) 2 QB 286.

Dublin Co. Council v. Jack Harris.

Dublin Co. Council v. Brennan & McGowan. (Supreme Ct., March 1984)

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