1983 No. 655 S.S.

KILNAMANAGH ESTATES LIMITED

-v-

DUBLIN COUNTY COUNCIL

Judgment of Mr. Justice McWilliam delivered the 31st day of January, 1984.

In this proceeding, Mr. John B. Shackleton, the arbitrator duly nominated by the Land Values Reference Committee on 29th November, 1982, to determine the amount of compensation (if any) which should be paid by Dublin County Council to Kilnamanagh Estates Limited (Kilnamanagh) pursuant to the provisions of section 55 of the Local Government (Planning and Development) Act, 1963, has, at the request of Kilnamanagh stated a case for determination by the High Court whether he is precluded from proceeding with the arbitration because the County Council issued proceedings in the High Court against An Bord Pleanala and Kilnamanagh claiming declarations that An Bord Pleanala, in refusing planning permission should have

substituted or added, as grounds for such refusal, certain grounds which would exclude Kilnamanagh from having any right to compensation.

The decisions of An Bord Pleanala to refuse planning permission were made on 13th October, 1982. The arbitrator was nominated on 29th November, 1982. It is agreed that the arbitrator was validly appointed. The plenary summons was issued on 6th December, 1982. It is agreed that the Court has jurisdiction in its discretion to stay the arbitration proceedings. No such application has been made.

I have been referred to a number of decisions but none of them refers to the unusual point raised here. There is no claim made in the High Court proceedings for an Order restraining the arbitrator from proceeding with the arbitration and one of the claims is that An Bord Pleanala should indemnify the County Council against any purchase money or expense which the County Council may have to pay or incur by reason of the form of the refusal of planning permission.

The principal ground advanced on behalf of the County

Council is that the claim in the High Court proceedings impeaches the ground on which the arbitration is proceeding. No other principle has been advanced from which it follows that the mere issue and existence of proceedings such as these is sufficient, without more, to preclude the arbitrator from proceeding with the arbitration although, if an application were brought to the Court on sufficient grounds, the Court might, after due consideration and in its discretion, stay the arbitration proceedings.

The answer to the question submitted is that the arbitrator is not precluded from proceeding with the arbitration.

Herbert H McWilliam