

THE HIGH COURT

[2018 No. 5703 P.]

IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS, 2000 AND IN THE
MATTER OF AN APPLICATION PURSUANT TO
SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT, 2000

BETWEEN

URBAN ENTERTAINMENT LIMITED T/A BAGOTS HUTTON

APPLICANT

AND

MONTECO HOLDINGS LIMITED

RESPONDENT

Judgment of Mr. Justice Meenan delivered on the 9th day of August, 2019

Introduction

1. In these proceedings the applicant seeks an order pursuant to s. 160 of the Planning and Development Act 2000 (as amended) ("the Act of 2000"). The applicant holds a 25-year lease on a property situated at 5 B/6 Upper Ormond Quay and 6 Little Strand Street, Dublin 7 at Upper Ormond Quay, Dublin 7 and has been operating a restaurant called Bagots Hutton from the said property since June, 2016.
2. The respondent is the owner of property situated at 7 – 13 Upper Ormond Quay, Dublin 7 which abuts onto and is immediately adjacent to the applicant's property. In March, 2016 the respondent applied for planning permission to demolish the existing hotel at 7 – 11 Upper Ormond Quay and the construction of a new part five storey and part four storey hotel on the site. Planning permission was granted, following an appeal, by An Bord Pleanála. This planning permission was subject to a number of conditions, the alleged breach of which are the subject of this application.
3. The respondent commenced demolition works on the site on or about 5th June, 2018. This involved use of heavy machinery to demolish the existing hotel. The applicant claims that the noise, dust and vibrations arising from this work were at such a level that it was forced to cease trading. These events are the subject of other proceedings in which the applicant is claiming damages for, *inter alia*, nuisance.
4. The owner and occupier of no. 6 Ormond Quay Upper, Dublin 7, Mr. Michael Smith, which adjoins the development site, also sought orders under s. 160 of the Act of 2000 seeking to, *inter alia*, restrain the development works by reason of alleged breaches of the conditions attaching to the planning permission. These proceedings were heard at the same time as the applicant's proceedings and, in order to make best use of court time, the applicant relied upon certain submissions made in the *Smith* application. However, since the hearing of both applications, the *Smith* application (together with an action for damages in nuisance) has been settled and thus are not the subject of this judgment. In considering the issues involved in this application the court will consider various submissions made in the *Smith* application upon which the applicant in these proceedings relies.

5. At the outset two matters should be clearly stated. Firstly, the Court has been informed, through affidavits of damage done by the construction works in the course of the development to no. 6 Ormond Quay Upper being damage to the party wall and an ingress of water. Further, in an affidavit filed on behalf of the applicant Mr. Brian Deery, director of the applicant company, he set out in detail the extent of the noise, dust and vibrations which led to the closure of his business. In reply numerous affidavits were filed on behalf of the respondent contesting these matters. It is well established that, in the absence of cross-examination, a court cannot resolve such disputes (see Hardiman J. in *Boliden Tara Mines v. Cosgrove and Others* [2010] IESC 62). Secondly, it does not follow that where there is a complaint of an act of nuisance that there is a corresponding breach of a condition of the planning permission. In these s. 160 proceedings the Court is solely concerned with two issues. Firstly, was there a breach of the conditions that attached to the respondent's planning permission and, secondly, if there was such a breach is the applicant entitled to the orders which it seeks under s. 160 of the Act of 2000?
6. Work on the development at the site ceased in September, 2018.

Reliefs sought by the applicant

7. In its notice of motion, the applicant seeks the following reliefs:-
 1. An order prohibiting the respondent, its servants or agents from carrying out a development at 7 – 13 Ormond Quay Upper, Dublin 7 consisting of the demolishing of the existing hotel and the construction of a new part five storey and part 4 storey to other than in accordance with planning permission register reference 2555/16 An Bord Pleanála PL29L.247365.
 2. An order prohibiting any further development unless and until condition 1, condition 4, condition 6, condition 11 and condition 12 of the said planning permission have been complied with.
 3. An order requiring the respondent to prepare a construction management plan and traffic management plan in accordance with its obligations under the said planning permission and the plan approved in writing by Dublin City Council prior to any further works being carried out and to comply with the conditions therein.
 4. An order requiring the development to be carried out in accordance with the plans and particulars lodged and in particular in a manner that does not impact on the applicant by the emission of dust, noise, hazardous materials and disturbance such as to render continued operation of the adjoining restaurant use impossible.
8. At the hearing of the application counsel on behalf of the applicant, Mr. Peter Bland S.C., did not rely on any alleged breach of condition 12. Further, as had been stated before, the plaintiff has initiated other proceedings against the respondent claiming damages for *inter alia*, nuisance.

Section 160 of the Act of 2000

9. Section 160 of the Act of 2000, provides:-

“160.—(1) Where an unauthorised development has been, is being or is likely to be carried out or continued, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure, as appropriate, the following:

- (a) that the unauthorised development is not carried out or continued;
- (b) in so far as is practicable, that any land is restored to its condition prior to the commencement of any unauthorised development;
- (c) that any development is carried out in conformity—
 - (i) in the case of a permission granted under this Act, the permission pertaining to that development or any condition to which the permission in subject ...”.

10. Section 160 of the Act of 2000 (and the earlier s. 27 of the Local Government (Planning and Development) Act 1976) have been considered in numerous decisions of the Superior Courts. These authorities clearly set out the nature and extent of the discretion which a court has in either granting or refusing relief under s. 160 where a breach of condition has been established.

Relevant Authorities

11. In reviewing the various authorities, the starting point is the judgment of Henchy J. in *Morris v. Garvey* [1983] I.R. 319 at p. 323: -

“Section 27, sub-s. 2 is one of the most important and least understood or used provisions of the planning code. The section expressly recognized for the first time that a member of the public (as well as the planning authority), regardless of his not satisfying any of the qualifications based on property or propinquity or the like (which are usually required to justify bringing proceedings), once he discovers that a permitted developer is not complying with, or has not complied with, the conditions of the relevant development permission, may apply in the High Court for an order compelling the developer to do or not to do, or to cease to do, as the case may be, anything which the Court considers necessary to ensure that the development is carried out in conformity with the permission and specifies in the order’.”

The jurisdiction thus vested in the High Court is extremely wide. It recognises the fact, which has been stressed in other decisions of this Court, that in all planning matters there are three parties: the developer, the planning authority (or, in the case of an appeal, the Planning Board) and members of the public.”

12. This application concerns an alleged failure on the part of the respondent to comply with certain conditions attaching to the planning permission. Thus, the Court will have to consider the wording of these conditions. In doing so I refer the following passage from

McCarthy J. in the Supreme Court decision *In re X.J.S. Investments Ltd* [1986] I.R. 750 where he stated at p. 756: -

“Certain principles may be stated in respect of the true construction of planning documents:-

1. (a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.
 2. (b) They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning.”
13. Even where a court is satisfied that there has been a breach of a condition attaching to planning permission the court has a discretion as to whether or not to grant an order under s. 160. In exercising its discretion, a number of factors have to be considered. I refer to the judgment of McKechnie J. in the Supreme Court decision in *County Council of Meath v. Murray* [2017] IESC 25: -

“Factors to be Considered:

90. What, then, are the factors which play into the exercise of the Court’s discretion?

From a consideration of the case law, one can readily identify, *inter alia*, the following considerations:

- (i) The nature of the breach: ranging from minor, technical, and inconsequential up to material, significant and gross;
- (ii) The conduct of the infringer: his attitude to planning control and his engagement or lack thereof with that process:
 - Acting in good faith, whilst important, will not necessarily excuse him from a s. 160 order,
 - Acting *mala fides* may presumptively subject him to such an order;
- (iii) The reason for the infringement: this may range from general mistake, through to indifference, and up to culpable disregard;
- (iv) The attitude of planning authority: whilst important, this factor will not necessarily be decisive;
- (v) The public interest in upholding the integrity of the planning and development system;
- (vi) The public interest, such as:
 - Employment for those beyond the individual transgressors, or
 - The importance of the underlying structure/activity, for example, infrastructural facilities or services.

- (vii) The conduct and, if appropriate, personal circumstances of the applicant;
- (viii) The issue of delay, even within the statutory period, and of acquiescence;
- (ix) The personal circumstances of the respondent; and
- (x) The consequences of any such order, including the hardship and financial impact on the respondent and third parties."

14. It will become clear, when I come to consider the alleged breaches of condition, that a number of these factors are present in the circumstances of this application.
15. There are a number of authorities which illustrate the point that, though there may be an established breach of a condition attaching to planning permission, this does not inevitably lead to an order being made under s. 160. In *Sweetman v. Shell E. & P. Ireland Ltd* [2007] 3 I.R. 13 the applicant maintained that the respondent was in breach of a condition of the planning permission whereby it was required to provide security to Mayo County Council for the cost of ensuring satisfactory reinstatement of the site involved. The respondent proposed furnishing a guarantee to the County Council to cover the cost but the applicant argued that such a guarantee was not "security" as provided for in the said condition. In the High Court Smyth J. refused to make an order under s. 160 stating at para. 52: -

"I find as a fact and as a matter of law that there has been substantial compliance with condition 37. Undoubtedly there remains outstanding, ... certain formalities to be fulfilled. In the course of the submissions no authority was advanced to the court substantiating the right of a third party to challenge an agreement actually made between a planning authority and a "developer" and to invoke the discretion of the Court to set aside such agreement."

16. On appeal (*Sweetman v. Shell E&P Ireland Limited* [2016] IESC 2) Dunne J. in the Supreme Court stated: -

"I am satisfied having regard to decisions such as *Mountbrook Homes Limited v. Oldcourt Developments Limited* and *Conroy v. Craddock* 2007 IEHC 336 that notwithstanding the fact that a pre-commencement condition requiring agreement between the developer and the planning authority on a particular issue has not been concluded but where there is subsequent agreement, a court will not generally grant relief pursuant to s. 160 of the Act."

17. In *Conroy v. Craddock & Ors* [2007] IEHC 336 it was alleged that the respondent was in breach of the following condition:

"Before commencement of development the applicant shall submit, for the written consent of the planning authority, a revised site layout plan providing for a reduction in the finished floor level of unit 5, 6 and 7."

There was no dispute that condition 5 was not complied with. Further, as the development had commenced it was established that the condition could never be complied with. In giving judgment Dunne J. stated: -

“It goes without saying that there has been a breach of condition 5 in the sense that no plans were submitted before the commencement of the development. It is clear that there can be belated compliance with a pre-commencement condition as was acknowledged in the case of *Mountbrook Homes Limited v. Old Court Developments Limited* High Court, unreported April 22nd, 2005. In this case it is not contested that revised floor level plans were submitted for approval of the Council and, as pointed out previously by letter dated 1st March, 2006, the same were approved. I accept that those plans show not a reduction but an increase in the floor level for the relevant units.”

18. In refusing an order under s. 160 Dunne J. further stated: -

“In consideration of the issue as to whether there has been a prima facie breach of condition 5, I am satisfied that it is necessary to look at the purpose of condition 5. Its purpose was to achieve the reduction of the visual impact of the units on the M9 motorway in the interests of visual amenity. I do not think that this condition can be considered without reference to conditions 6 and 7. The approach of the Council was also to consider condition 5 in conjunction with conditions 6 and 7 as set out in the letter of the 1st March, 2006. The Council is satisfied as to the effect of the finished floor levels having regard to the visual impact on the motorway. In all the circumstances, I have come to the conclusion that there has been substantial compliance with condition 5 of the planning permission. Therefore, I would answer the question raised at this point - No.”

19. In considering the various authorities, I am grateful for the helpful analysis by Barrett J. in *St. Margaret's Concerned Residents Group & ors v. Dublin Airport Authority Plc* [2017] IEHC 694. In that case the Court refused an order under s. 160 notwithstanding that there had been a breach of one of the conditions attaching the planning permission.

20. In submissions to the Court the applicant put considerable emphasis on the recent decision of the High Court in *Luxor Investments Ltd v. Wave Point Ltd* [2018] IEHC 775. The applicant and the respondent were owners of two separate plots of land situate at Great Ship Street, Dublin 2. The respondent's plot of land was bounded on three sides by the Applicant's land. Both the applicant and the respondent intended to develop their respective sites, the applicant's proposed development being far more extensive than that of the Respondent. A condition of the planning permission required that a construction management plan be submitted to, and agreed in writing, with the planning authority prior to the commencement of the development. The plan was required to provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste. Burns J. did not accept the submission of the respondent that, though it had not submitted the required construction management plan, it was, nonetheless, not in breach of the condition. In

making this submission the respondent relied upon the absence of a commencement notice, a practice in the industry that developments of the type involved were conducted in a phased manner and that, from a practical prospective, a construction management plan would not be concluded until certain archaeological investigations had been carried out. Burns J. rejected these submissions and found the work carried out by the respondent was an unauthorised development as this term of the planning permission had not been complied with. The Court made an order that a construction management plan be filed by the respondent by a particular date so as to ensure that the development was carried out in conformity with the planning permission. I believe that it is important to note in this particular case exactly what relief the applicant was seeking. Burns J. stated at para. 17:-

“The relief sought by the Applicant at the hearing of the motion, no longer was that the works be injuncted pursuant to s. 160 of the Act of 2000, but rather that an order be made directing the Respondent to file a construction management plan as required pursuant ... the planning permission. ...”

21. In the action before this Court the applicant is seeking an order directing the respondent not to recommence or carry out any further development pursuant to the planning permission granted.
22. It is now necessary to examine the various conditions which the applicant contends the respondent is in breach of.

Condition 1

23. Following an appeal, An Bord Pleanála granted to the respondent planning permission for the demolition of the existing hotel, construction of a new part five storey and part four storey hotel and all associated works at 7-13 Ormond Quay Upper, Dublin 7. This permission was subject to a number of conditions. Condition 1 provided:-
 - “1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 15th day of August, 2016 and by the further plans and particulars received by An Bord Pleanála on 7th day of November, 2016 and the 21st day of February, 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.”
24. It can be seen that condition 1 is expressed in general terms. It requires that the development be carried out and completed in accordance with the plans and particulars lodged and the conditions attaching to the planning permission. These conditions require that where details are to be agreed with the planning authority, such shall be agreed in writing prior to the commencement of the development. It seems to me that the applicant

is alleging breach of condition 1 in the context of the alleged breach of conditions 4, 6, and 11. Therefore, in order to reach a conclusion as to whether or not condition 1 has been breached, the Court has to examine the alleged breaches of these other conditions. At this stage it should be noted that the planning authority, Dublin City Council, has not taken any steps as might indicate that it believes that there has been a breach of the conditions attaching to the planning permission. This is a factor, though not necessarily decisive, which was referred to by McKechnie J. in *County Council of Meath v. Murray* (see para. 14 above).

Condition 4

25. Condition 4 provides: -

“ all works to nos. 12 and 13 Ormond Quay Upper shall be carried out in accordance with the best conservation practice as detailed in the architectural heritage protection guidelines for planning authorities published by the Department of the Environment, Heritage and Local Government in December, 2004. In that regard, prior to the commencement of development the applicant shall submit to, and agree in writing with, the planning authority the following:

- (i) Detailed design proposals of the glazed link to the rear of nos. 12 and 13 Ormond Quay Upper.
- (ii) Details of the proposed landscaping and alterations to the rear of nos. 12 and 13 Ormond Quay Upper.
- (iii) Detailed design proposals of the interface between existing structures to be retained and the new build elements of the proposed development.
- (iv) Detailed design proposals for the outline of the former no. 8 and 9 Ormond Quay Upper at ground floor level referencing the sites connection with James Joyce Ulysses.
- (v) A detailed survey/preservation by record of all structures to be demolished to the rear of nos. 12 and 13 Ormond Quay Upper, a copy shall be made available to the Irish Architectural Archive.
- (vi) An inventory of all fixtures, fittings and finishes in the structures to be demolished to the rear of nos. 12 and 13 Ormond Quay Upper and proposals for the salvaging of materials were feasible.
- (vii) A schedule of works to nos. 12 and 13 Ormond Quay Upper which shall address, *inter alia*, the following: a schedule of remedial works to stabilise structures; a schedule of works to the front and rear elevations; a schedule of structural works which shall avoid adverse impact and loss of fabric where possible; a schedule of internal finishes including all joinery, plain and decorative plasterwork, fireplaces and staircases; a schedule and layout of all services to nos. 12 and 13 Ormond Quay Upper.
- (viii) Details of signage, lighting and materials to be used on the facades of nos. 12 and 13 Ormond Quay Upper, including works proposed to the ground floor sections of the facades of both buildings.

The works to these buildings shall be carried out under the supervision and guidance of personnel suitably qualified in conservation during the progress of the works.

Reason: in the interests of architectural heritage protection.”

26. In considering whether the terms of condition 4 have been complied with, I refer to the “conservation officer’s report – compliance review” written by Ms. Mary McDonald who was acting conservation officer of Dublin City Council at the time. This report establishes that as of 11th May, 2018 condition 4 (i) (vii) and (viii) had not been complied with. A revised plan dealing with (i) the glazed link, was submitted on 11th July, 2018. The conservation officer’s concern with (vii) was that, though a schedule of works had been submitted for 12 and 13 Ormond Quay Upper, this schedule was not sufficiently clear in a number of respects. The respondent made a further submission and a further report from the conservation officer confirmed that (vii) had now been complied with. In respect of (viii), the conservation officer acknowledged that the architects instructed by the respondent had indicated the scope of works on the ground floor facade in their schedule, but no lighting or signage details were provided. This appears to be still the case.
27. Applying the authorities which I have referred to above, it seems that the only outstanding matters in respect of condition 4 (i) to (viii) are lighting and signage details. I am satisfied that there has been substantial compliance with this condition. The outstanding issues can and will be addressed at a later stage. Insofar as this is a breach of condition 4 (viii), I would characterise such breach as being minor and not of an order as would justify the court restraining the recommencement of works.
28. Condition 4 also refers to the works being carried out “under the supervision and guidance of personnel suitably qualified in conservation ...”. The respondent has retained a specialised conservation architect to ensure all works at the site are carried out in accordance with best conservation practice. It was stated that Mr. James Slattery of David Slattery Conservation Architects has been instructed for this purpose. In construing this aspect of condition 4, I refer to the passage cited from the judgment of McCarthy J. In *re X.J.S. Investments Ltd* that the wording of the condition be construed in its ordinary meaning and should not be construed as if it was an Act of the Oireachtas or subordinate legislation. Further, as per Dunne J. in *Conroy v. Craddock* the Court may consider the stated reason for condition 4, being “in the interests of architectural heritage protection” I am satisfied that there has been substantial compliance with this.

Condition 6

29. Condition 6 provides: -

- “6. Detailed proposals for the protection of structures and property adjacent to the application site shall be submitted to, and agreed in writing with, the planning authority and shall include *inter alia* proposals regarding pre and post construction condition surveys and structural surveys; detailed survey works, and comprehensive monitoring proposals as referred to in the letter from MMOS

Consulting Civil and Structural Engineers, dated 14th day of February, 2017 and received by An Bord Pleanála on the 21st day of February, 2017.

Reason: in the interests of clarity, architectural heritage protection, and the proper planning and sustainable development of the area.”

The wording of this condition refers to “proposals” for the protection of structures and “proposals” for pre and post construction condition surveys and structural surveys. It is also stated that these “proposals” are to be “agreed in writing with the planning authority”. To make the obvious point, it does not provide that these “proposals” have to be agreed with the applicant. Therefore, in order to reach a conclusion as to whether or not this condition has been complied with it is necessary to look, in some detail, at the correspondence and emails that passed between the respondent and Dublin City Council, the Planning Authority. I will commence with an email dated 14th May, 2018 from KPH Construction, on behalf of the respondent to Dublin City Council seeking an update “on the status of compliance with condition 6”. On 15th May, 2018 the respondent was furnished with a copy of the conservation officer’s report, 11th May, 2018, indicating non-compliance with condition 6. The respondent gave its response enclosing a report from MMOS Consulting Civil and Structural Engineers concerning the outstanding issues on condition 6. Also enclosed was a report from Niall Fitzsimons Consulting Engineer and a “method statement” from Doherty Finnegan Kelly, also engineers. The response from Dublin City Council was set out in an email dated 31st May, 2018 which stated, inter alia, the following:

“I am satisfied for the contractor to proceed with these works in principle, on the understanding that the works shall be carried out to cause minimum interference to the retained building and facades structure and/or fabric ...”.

30. Further information was provided by James Slattery, Architect, on behalf of the respondent by email on 1st June, 2018. In response by an email of the same date Dublin City Council stated: -

“I am satisfied that this addresses the items we discussed today, and it is permissible for the contractor to proceed on the basis in relation to condition 6 of the extant planning permission, I understand that revised documents will be resubmitted to reflect the particular items noted below so that a formal compliance document can be issued.”

31. In response to the documentation furnished by the respondent on 22nd May, 2018 and 1st June, 2018, by letter dated 20th June, 2018 Dublin City Council stated that the details submitted were satisfactory and “are in partial compliance with condition no. 6”. Revised drawings and other documentation including a revised “method statement” and “method statement and risk assessment” were submitted. By letter dated 23rd July, 2018 Dublin City Council informed the respondent that the details submitted on 22nd June, 2018 “are satisfactory and are in compliance with condition no. 6”.

32. In light of the correspondence and emails which I have referred to, I conclude that the respondent is in compliance with condition 6. It is clear that the detailed proposals required by condition 6 have been agreed in writing with the planning authority.
33. Reliance was placed on the absence of surveys referred to in condition 6. Whereas condition surveys can be carried out by photographs, structural surveys require a more extensive investigation. The pre-structural survey required the consent of Mr. Smith. The respondent sought this consent in the course of extensive correspondence which was opened to the court. Whereas the respondent was solely concerned with the provisions of condition 6 it is clear that the Mr. Smith took a different view in that he was dealing with the matter in the context of being a neighbour to a major construction development project and damage to his property that had already occurred. In terms of the s. 160 application I am satisfied that the respondent took what steps it could and carry out the preconstruction structural survey. The respondent, through its counsel Mr. Michael O'Connell S.C., informed the court that a post construction condition and structural survey would be carried out. Returning, again, to the judgment of McKechnie J. in *County Council of Meath v. Murray*, I am satisfied that the respondent fully engaged with the planning authority and acted in good faith. The applicants sought to rely on *Luxor Investments Ltd v. Wave Point Ltd*. It is clear the facts of this application are entirely different in that the respondent has, at all stages, fully engaged with the planning authority. Further, as I have already referred to, unlike this application, the Court in *Luxor Investments Ltd* was not being asked to halt the development but rather to direct the respondent to file a construction management plan. Clearly where an order of court is being sought to halt development works rather than to direct the filing of a construction management plan, different criteria would apply to the use of the court's discretion.
34. In September, 2018 the party wall of no. 6 was damaged. Mr. Smith maintains that this was as a result of the use of a mulcher to break up concrete and vibrations. The respondent denies that there were vibrations and, on the use of the mulcher, points to the method statement furnished by the respondent in June, 2018 which refers to an excavator being used to "sheer and pulverise" concrete and masonry structures.
35. By reason of the foregoing I find that the respondent is in substantial compliance with condition 6. Further, the Court notes the undertaking given by counsel for the respondent as regards post construction condition and structural surveys.

Condition 11

36. Condition 11 provides: -

"11. The construction of the development shall be managed in accordance with a construction management plan and a construction traffic management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These plans shall provide details of intended construction practice for the development, including hours of working, noise management measures, off-site disposal of construction/demolition waste and the road network to be used by construction traffic.

Reason: in the interests of public safety, amenity and traffic safety".

37. The applicant referred to the requirements imposed on the respondent by this condition. Again, it is necessary to look at the communications and emails that passed between the respondent and Dublin City Council.
38. On 30th March, 2018 the respondent submitted to Dublin City Council a noise, vibration and dust monitoring and management plan drawn up by Byrne Environmental Consulting Limited. On 4th April, 2018 the respondent submitted a construction management plan and a waste management plan. On 1st May, 2018 Dublin City Council, by letter, informed the respondent that the details submitted on 30th March, 2018 were satisfactory and in compliance with condition 11. Attached to this letter were various departmental reports. These reports were from the Environmental Health Officer, Road Traffic and Planning Division, Environment and Transportation Department, and Waste Management Services. All these reports confirmed compliance with condition 11. Subsequently, a revised noise vibration and dust monitoring and management plan was submitted dated 11th June, 2018. On 26th June and 11th July, 2018 officials of Dublin City Council attended at the development site. A short report concerning the inspection on 11th July concluded "all best practices are seen to be in place on site".
39. In light of the foregoing I cannot identify any breach of condition 11.
40. Counsel for the applicant, Mr. Peter Bland S.C., submitted that where conditions provided for an agreement in writing such required a degree of formality. He submitted that the appropriate mechanism for recording such an agreement was by what was formally called a manager's order, now the Chief Executive's order. Reliance was placed on s. 151 of the Local Government Act 2001:-
- "151.—(1) The manager shall in carrying out the executive functions for each local authority for which he or she is manager act by a written order signed and dated by him or her in respect of the functions to which this section applies.
- (2) This section applies to every executive function which—
- (a) ...
- (b) is mentioned in Schedule 15, ..."
41. Schedule 15 refers to, *inter alia*:-
- "A decision on an application under any enactment where the grant of a permission, approval, permit, consent, certificate, licence or other form of statutory authorisation."
42. I do not accept this submission. No authority was opened to the Court to the effect that a written order of a manager or Chief Executive Officer was required in order to comply with a planning permission condition that requires an agreement in writing. Compliance with a planning permission condition does not require such formality. Indeed, if such was

necessary, one would have expected it to have featured in the judgment of McKechnie J. in *County Council v. Murray* where he set out “factors to be considered” in dealing with a court’s discretion on an application under s. 160. Further, I am satisfied that an agreement in writing under a condition attaching to a planning permission does not fall within the ambit of schedule 15 referred to above.

Conclusion

43. By reason of the foregoing, I am satisfied that the applicant has failed to identify any breach of the conditions attaching to the planning permission as would permit the Court to make the orders sought under s. 160 of the Act of 2000. I therefore dismiss the application.