[2020] IEHC 27

THE HIGH COURT
COMMERCIAL
JUDICIAL REVIEW

[2019 No. 269 J.R.]

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 50, 50A AND 50B OF THE PLANNING AND DEVELOPMENT ACT, 2000

BETWEEN

BRENDAN DALTON

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENTS

AND

DUBLIN CITY COUNCIL AND CAIRN HOMES PROPERTIES LIMITED

NOTICE PARTIES

JUDGMENT of Mr. Justice Denis McDonald delivered on 28 January, 2020

1. In these proceedings, the applicant seeks an order quashing a decision of the respondent made on 14th March, 2019 to reject, as invalid, an appeal filed by the applicant with the respondent against a decision of Dublin City Council (the first named notice party) to grant permission for a residential development at Parkside, Balgriffin Park, Dublin 17. Receipt of the appeal in question had initially been accepted by the respondent without objection. However, subsequently, the respondent wrote to the applicant to inform him that, on further examination of the appeal, it was noted that the names and addresses of the appellants were not stated and informing him that, as a consequence, the appeal was invalid. In support of its position, the respondent invoked the provisions of ss. 127 (1) (b) and 127 (2) of the Planning and Development Act, 2000 *("the 2000 Act").* The respondent maintained that the only name and address given on the appeal was that of the applicant but that it was clear that he was acting on behalf of others in making the appeal and their names and addresses were not given anywhere in the appeal document.

2. The applicant maintains that the decision to reject the appeal is invalid on a number of grounds:-

   (a) In the first place, the applicant contends that the appeal complies with the requirements of s. 127 of the 2000 Act;

   (b) Without prejudice to his primary contention that the appeal complied with the requirements of s. 127, the applicant maintains in the alternative that, at worst from his perspective, there was substantial compliance with the requirements of s. 127 and that any non-compliance was of a technical or trivial nature and cannot render the appeal invalid;

   (c) Thirdly, the applicant contends that the decision of the respondent to reject the appeal was taken in breach of his right to fair procedures and is contrary to natural or constitutional justice. In making this case, the applicant argues that he should have been given an opportunity to make submissions to the respondent before the decision to reject the appeal. In addition, the applicant sought to argue that the

initial acceptance by the respondent of the appeal is relevant to the issue of fairness. Although not pleaded precisely in these terms, the applicant, in the course of the hearing appeared to make a case that, in some way, the respondent was estopped from rejecting the appeal.

Section 127 of the 2000 Act

3. Before I attempt to set out the underlying facts, it may be helpful, at this point, to refer to the relevant provisions of s. 127 of the 2000 Act. Section 127 sets out certain requirements which must be complied with for the purposes of an appeal to the respondent. Insofar as relevant, s. 127 provides as follows:-

"(1) An appeal … shall—

(a) be made in writing,

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

(c) state the subject matter of the appeal …,

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

(e) in the case of an appeal under section 37 by a person who made submissions or observations in accordance with the permission regulations, being accompanied by the acknowledgment by the planning authority of the submissions or observations,

(f) …

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

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

…

(3) Without prejudice to section 131 or 134, an appellant … shall not be entitled to elaborate in writing upon, or make further submissions in writing in relation to the grounds of appeal … stated in the appeal … or to submit further grounds of appeal … and any such elaboration, submissions or further grounds of appeal … that is or are received by the Board shall not be considered by it.

(4) …

(5) An appeal … shall be made—

(a) by sending the appeal … by prepaid post to the Board,

(b) by leaving the appeal … with an employee of the Board at the offices of the Board during office hours (as determined by the Board), or

(c) by such other means as may be prescribed."

4. It will be necessary, in due course, to consider the relevant case law in relation to s. 127 and its predecessor provision namely s. 4 of the Local Government (Planning and Development) Act, 1992 *("the 1992 Act").* It should be noted, at this point, that s. 127 (1) (b) is in somewhat different terms to s. 4 (1) (b) of the 1992 Act. Under the latter provision, the name and address of the appellant was required to be given. There was no reference to any requirement to provide the name of the person (if any) acting on the appellant's behalf. As will be clear from the provisions of s. 127 (1) (b) quoted above, s. 127 (1) (b) now requires that both the name and address of the appellant be given and also the name of any person (if any) acting on the appellant's behalf.

5. Before considering the proper interpretation of s. 127 and the relevant authorities, it is necessary to set out the relevant facts.

Relevant facts

6. In August 2018 the second named notice party Cairn Homes Properties Ltd ("*Cairn*") submitted an application for planning permission to Dublin City Council ("*the Council")* for a residential development at Parkside, Balgriffin, Park Lane, Dublin 17. The relevant development site was described in the planning application as:-

> *"…located south-west of Parkside Phase 2C (currently under construction) west of St. Michael's Cottages, south-east of Parkside Square, the neighbourhood park and the green link pedestrian/cyclist route between Belmayne Avenue and the Hole in the Wall Road".*

7. On 24th September, 2018 the applicant made a submission to the Council in which he expressed concern that the development appeared to involve an encroachment into a number of properties at St. Michael's Cottages. In the submission, concern was also expressed in relation to a proposed entrance road which he said would be seriously detrimental to the development potential of some of the cottages. The submission also raised a concern in relation to the proposed height of the scheme along the western boundary of the site the subject of the application.

8. There are a number of features of the submission which should be kept in mind:-

(a) In the first place, the applicant describes himself as a "*broker advocate";*

(b) Secondly, the submission commences by referring to the applicant's clients. The opening words of the submission are in the following terms:-

> *"On behalf of my clients who are all of the owners/residents of the St. Michael's Cottages… as per the attached … map…. I also wish to inform you that I am also their exclusively appointed development broker … and I*

advocate for them on development issues and specifically with interested parties in the development of their property. To that end each owner has signed a consent letter to Dublin City Council (as per attached sample letter 'B') with a view to getting a developer to undertake a SHD development strategy for St. Michael's Cottages area. As such I wish to make the following submission and observations…. These concerns have been expressed to me by some owners …";

(c) It is clear from the substance of the concerns expressed in the submission that the principal focus of the submission is the impact of the development on St. Michael's Cottages.

(d) In para. 4, the submission refers again to "*my clients".* In para. 5 the applicant informed the Council that:

"As a representative for all the residents/owners of all St. Michael's Cottages I have been engaging with large developers in discussing development strategies for the entire St. Michael's area."

In the same paragraph he referred to an abortive approach that was made to Cairn and the paragraph concludes by stating that:

"That of course is their prerogative and we respect that, however, we remain open to working with adjoining developers on interconnectivity planning of both schemes and particularly in the future development of St. Michael's Cottages as there is now a unified approach to its development".

9. On 1st October, 2018 the Council wrote to the applicant to acknowledge receipt of the submission. This is an acknowledgment of the kind mentioned in s. 127 (1) (e) of the 2000 Act which must, in the event of an appeal, be furnished to the respondent with the appeal. The letter was addressed as follows:

"Brendan Dalton for residents St. Michael's Cottages".

10. On 4th January, 2019 the Council decided to grant permission for the development by Cairn. Thereafter, on 31st January, 2019 the applicant submitted an appeal to the respondent against the decision to grant permission. There are a number of features of the appeal which are relevant in the context of the submissions by the parties in relation to compliance with s. 127. These include:-

(a) The opening paragraph of the appeal states that the appeal has been "prepared and submitted by Brendan Dalton, Dalton Brokers… on behalf of the owners/residents of St. Michael's Cottages …. For ease of reference, a copy of our objection lodged at planning application stage is enclosed… and should be read in conjunction with this … appeal";

(b) In the second paragraph of the letter, the applicant informed the respondent that:

"I am also their exclusively appointed development broker for the residents and landowners, and I advocate for them on development issues and specifically with interested parties in the development of their properties. To that end each owner has signed a consent letter to Dublin City Council.. with a view to getting a developer to undertake a SHD development strategy for St. Michael's Cottages area";

(c) In the introduction to the appeal, Mr. Dalton states that:-

"I wish to make the following grounds of appeal to the above application … by Cairns… on behalf of the owners/residents of S. Michael's Cottages. Their concerns were expressed at planning application stage by the applicant and have been left with no option but to object and appeal as they are strongly of the view that the development does not consider the concerns of the St. Michael's Cottages residents";

(d) In s. 3.1 of the appeal, the applicant addressed the question of encroachment of the development onto certain of the properties within St. Michael's Cottages. This section of the appeal commences with the words:

"There is confusion regarding the inclusion of our client's properties within the submitted documentation … ";

(e) Section 3.3 of the appeal suggests that a more integrated development approach is required. In this section of the appeal, the applicant stated:-

"This is a continuing debacle for the future development of the area even though our clients have continually reiterated their interest in adopting a joined-up approach in redeveloping the area…. It is suggested that the applicant should have committed details to our clients subject to written approval prior to the lodgement of the application in order to encompass our client's lands as part of a wider development strategy. Our clients are agreeable to viewing an integrated approach in the development of the area which encompasses their lands in the interest of the sustainable future development of the wider community".

11. It is clear from the opening paragraph of the appeal (quoted in para. 10 (a) above) that the applicant intended that it should be read with the earlier submission made to the Council. It is also clear that both documents make frequent references to "*clients*" of the applicant namely the unnamed owners and residents of St. Michael's Cottages. Furthermore, as noted previously above, it is equally clear both from the appeal to the respondent and from the original submission to the Council, that the thrust of the objection to the proposed development was based on concerns which were specifically referable to St. Michael's Cottages and, more particularly, to the development potential of St. Michael's Cottages.

12. On 1st February, 2019 an officer of the respondent completed a "*Validation Checklist*" which suggested that the appeal was valid and that the relevant name and address was available together with the name and address of the "*Agent… if engaged*". This was placed within a file cover where the appellant was named as: "*Brendan Dalton for Residents St. Michael's Cottages".*

13. On 5th February, 2019 the respondent sent an acknowledgment of the appeal to the applicant. This was addressed to him as "*Brendan Dalton for Esidents' (sic) St. Michael's Cottages".* The letter stated that the respondent had received the appeal and would consider it under the Planning and Development Acts, 2000 to 2018. On the same day, copies of the appeal were also sent to Cairn and the Council.

14. On 28th February, 2019 McGill Planning, on behalf of Cairn, responded to the applicant's appeal. Although it is clear from the response submitted by McGill Planning that Cairn understood that the appeal had been lodged by the applicant on behalf of the owners and residents of St. Michael's Cottages, no issue was raised by McGill Planning in relation to compliance with s. 127 (1) (b) of the 2000 Act.

15. On 8th March, 2019 an executive officer of the respondent furnished a memorandum to a senior executive officer in which she stated:-

> *"The Board received a third party appeal in relation to the above-mentioned proposed development on 31st January, 2019 from Brendan Dalton acting on behalf of the owners/residents of St. Michael's Cottages.*
>
> *Having further examined the appeal it is considered that the appeal is invalid. The names and addresses of the appellants have not been provided in accordance with s. 127 (1) (b)….*
>
> *In this regard a letter to issue to the agent acting on behalf of the appellants advising of the invalid appeal. A letter to issue to the planning authority and the applicant. A fee refund to be prepared."*

16. There is a handwritten response from the senior executive officer noted on the same memorandum. This handwritten response is dated 11th March, 2019 and is in the following terms:-

> *"Further to the above memo …, please issue letter and refund to Dalton Brokers informing them that the appeal is invalid, also informing P.A. & the applicant".*

17. On 11th March, 2019, a second "*Validation Checklist*" was created by an officer of the respondent. This is in similar terms to the previous checklist described in para. 12 above save that there is now a "*No*" entered in respect of the name and address of the appellants.

18. On 14th March, 2019 the respondent wrote to the applicant (again addressed to "*Brendan Dalton for Residents' St. Michael's Cottages*"). The letter stated:-

"I have been asked by An Bord Pleanála to refer further to the above-mentioned appeal lodged by you on behalf of the owners/residents of St. Michael's Cottages.

Section 127 (1) (b) of the 2000 Act… provides that an appeal shall state the name and address of the appellant and of the person, if any, acting on his or her behalf. On further examination of your appeal it was noted that the names and addresses of the appellants were not stated and, it is regretted, must be regarded as invalid in accordance with s. 127 (2) (b) (sic) of the Act. To lodge a valid appeal, you must comply with ALL of the requirements of s. 127.

The documents lodged by you and a cheque for the amount lodged is enclosed".

19. Letters were also sent on 14th March, 2019 by the respondent to the Council and to Cairn informing them that, following further examination of the appeal, it had been noted that the names and addresses of the appellants were not included and the appeal had *"therefore, been declared invalid as the criteria set out under section 127 (1) (b) … was not met".*

20. On 20th March, 2019 the applicant wrote to the respondent in response to the letter of 14th March, 2019. In that letter he contested the suggestion that the appeal did not comply with s. 127. In that letter he stated:-

"…I would strongly advise that I lodged the third-party objection to Dublin City Council, a copy of which was submitted as part of the appeal, and that I was entitled to then lodge the third-party appeal to An Bord Pleanála, which I duly did. The opening line of the appeal confirmed by (sic) name and address in accordance with section 127 of the Act.

The confusion may have arisen as the Board was of the opinion that all of the details for the residents of the St. Michael's Cottages should also have been included. However, this is not the case. As stated in the appeal documentation, I act essentially as their Management Company for development purposes and as such have the authority to lodge objections and appeals to developments that may affect the area. This would be the same situation as would arise with a registered management company.

While I submitted a third-party objection to Dublin City Council against the proposed development, it is important to note that residents of St. Michael's Cottages also submitted third party objections on an individual basis. I then followed through on my objection with a third party objection to the Board which highlighted my serious concerns with the proposed development.

It is likely that some confusion may have arisen with An Bord Pleanála on the wording of the appeal, which may have resulted in the appeal being invalidated. I am of the considered opinion that while I do represent the views of residents of St. Michael's Cottages, the provision of my own contact details within the appeal

documentation was sufficient to ensure that the appeal was in accordance with Section 127 (1) … and that the appeal should not have been invalidated.

I trust that you will take the above into consideration and come to the reasonable decision that my appeal was invalidated in error that you will see fit to rectify this decision by accepting the appeal as valid. …"

21. The submission on the part of the applicant was rejected by the respondent. On 11th April, 2019, the respondent emailed the applicant to inform him that the respondent had re-examined the appeal documentation and was satisfied that the appeal must be deemed invalid as it did not comply with the requirements of s. 127. That was the end of the correspondence between the applicant and the respondent. The present application was subsequently launched on 8th May, 2019 and on 20th May, 2019, Noonan J. made an order giving the applicant leave to apply for the relief now claimed by way of judicial review on the grounds pleaded in the applicant's statement of grounds.

The grounds of challenge

22. The grounds of challenge are summarised in para. 2 above. The principal issue which arises relates to the question of compliance with s. 127 of the 2000 Act. For that reason, I address that issue first. To the extent necessary, I will then consider, in turn, the remaining issues outlined in para. 2 above.

Compliance with s. 127 (1) (b)

23. The first argument made by the applicant is that there was full compliance with s. 127 (1) (b). It was submitted by counsel for the applicant that, although both the submission to the Council and the appeal to the respondent used phrases such as "*on behalf of*", the applicant was himself the sole appellant in the appeal to the respondent. He was not merely acting as an agent but had full powers to essentially stand in the shoes of the owners of St. Michael's Cottages to take any appropriate steps in the interests of maximising the value of those properties. Counsel compared the position of the applicant to the position of the plenipotentiaries negotiating the Anglo-Irish Treaty of 1921. As is well known, the Irish representatives at the treaty negotiations (who included Michael Collins and Arthur Griffith) had full powers to sign a treaty without reference back to Eamon de Valera, the President of the Irish Republic under the Dáil Constitution of 1919-1922.

24. It was therefore submitted on behalf of the applicant that the only appellant was the applicant himself. In this context, reliance was placed on the acknowledgment of 1st October, 2018 sent by the Council to the applicant. It was suggested that, because the applicant was the only recipient of this acknowledgment, the applicant was the only party who could make an appeal. In support of this proposition, reliance was placed on s. 127 (1) (e) which provides that, in the case of an appeal under s. 37 by a person who made submissions to the planning authority, the appeal must be accompanied by an acknowledgment by the planning authority of receipt of the submission. It was urged that the acknowledgment here referred solely to the applicant and it was submitted that he was accordingly the only person who could appeal.

25. In addition, the applicant placed reliance on a copy of a document setting out the terms of his engagement by the owners and residents of St. Michael's Cottages. Under the terms of engagement, the applicant was irrevocably appointed as "*our exclusive advocate and broker in the development and sale of our property…together with neighbouring property*. …". It is important to note that the copy of this document exhibited by the applicant does not set out the names and addresses of the relevant owners and residents for whom he claims to act.

26. The applicant, in his second affidavit, also drew attention to the fact that, in addition to the submissions made by him to the Council, a substantial number of the occupants of St. Michael's Cottages had made their own submissions to the Council in their own name. The applicant suggests that the existence of these separate submissions by a substantial number of occupants of St. Michael's Cottages bolsters his position that his submission to the Council and, more particularly, his appeal to the respondent was made by him in his own capacity and not on behalf of others.

27. Notwithstanding the able submissions of counsel for the applicant, I do not believe that there is any plausible basis on which to form the view that the applicant in this case was himself the appellant in the appeal such that it was only necessary to give his name and address for the purposes of s. 127 (1) (b). In my view, the language of s. 127 (1) (b) is very clear. There is a straightforward requirement to state the name and address of the appellant and also the name and address of any person (if any) acting on behalf of an appellant. It is clear from the documents described in paras. 8 and 10 above that the applicant was acting on behalf of others in pursuing the appeal.

28. Section 127(1)(b) very clearly requires that, where a person acts on behalf of an appellant, the name and address of the appellant and of the person acting on the appellant's behalf must be given. The words "*acting on his or her behalf*" are very broad. I do not believe that any distinction can be made between a plenipotentiary acting on behalf of an appellant and an agent with lesser powers acting on the appellant's behalf. Once there is a person who acts on behalf of another, it seems to me that the relevant requirement is triggered – namely the requirement to give the names and addresses of both the appellant and the person acting on the appellant's behalf. Whether the person acting on the appellant's behalf is a plenipotentiary or some lesser form of agent seems to me to be irrelevant. When one considers the material summarised in paras. 8 and 9 above (namely the submission to the Council and the subsequent appeal to the respondent both of which are clearly intended to be read together, as the terms of the appeal make plain), it is clear that the applicant was acting on behalf of others who he described as his clients. He was not acting on his own behalf. In accordance with the principles laid down in the judgment of McCarthy J. in the Supreme Court in *Re. X. J.S. Investments Ltd* [1986] I.R. 750 at p. 756, those documents must be construed in accordance with 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. In my view, when the documents are read in that way, it is manifestly clear that the applicant was acting on

behalf of his clients namely the owners and residents of St. Michael's Cottages. While I have not quoted the entirety of the documents in paras. 8 and 9 above, I cannot see anything in the remaining passages of the documents which would alter the impression which the quoted passages undoubtedly give that the applicant was acting on behalf of the owners/residents. This seems to me to follow from (a) the references to the owners of St. Michael's Cottages as the applicant's (b) "*clients*"; the use of the phrase in the submission to the Council "*as a representative for all the residents/owners…*"; (c) the express use of the words "*on behalf of the owners/residents of St. Michael's Cottages*" (emphasis added) quoted more fully in para. 10 (a) above; (d) the explanation in the second paragraph of the appeal that the applicant advocates for the owners/residents; and (e) the further reference in the appeal document to the applicant's "*clients*". Taken together, all of these references create an overwhelming impression that the applicant was, in truth, acting not on his own behalf but on behalf of the residents or owners of St. Michael's Cottages.

29. I cannot see anything in the terms of engagement which would cause me to take a different view. While the terms of engagement appear to envisage that the applicant will be given a significant measure of autonomy in how he seeks to maximise value for the owners/residents, the document in question nevertheless demonstrates in very clear terms that the appointment of the applicant is to act on behalf of the owner/residents. The opening words of the terms of engagement expressly state that the owner in question appoints the applicant to be "*our exclusive advocate and broker in the development and sale of our property …"*. While the words "*on behalf of*" are not used, the sense is precisely the same.

30. While counsel for the applicant ingeniously sought to suggest that, in some way, the reference in some of the communications to "*Brendan Dalton for the residents of St. Michael's Cottages*" should be construed quite differently to "*on behalf of*", I cannot accept that this is so. The meaning of the word "*for*" used in that way seems to me to equate to the meaning of the term of "*on behalf of".* The use of the word "*for*" in that way is frequently used to designate that a person is a representative or is acting in a representative capacity; in other words, that a person is acting on behalf of another.

31. Nor can I see anything in the acknowledgment from the Council that would cause me to take a different view. As counsel for the respondent observed in the course of the hearing, the acknowledgment in question says very explicitly: *"Brendan Dalton for residents …*" (emphasis added). Moreover, the acknowledgment must be read in conjunction with the document which is acknowledged therein – namely the submission itself. As the passage quoted in para. 8 above illustrates, that submission makes very clear that the applicant was acting on behalf of the owners/residents. Thus, if there were any doubt about the meaning of the word "*for*" in the acknowledgment, that doubt is resolved by reference to the submission, the subject of the acknowledgment. For that reason, it seems to me to be clear that the acknowledgment must itself be interpreted as an acknowledgment to Mr. Dalton on behalf of the owners' concerned. The fact that some or a great deal of the owners may have lodged their own submissions with the Council

and received their own acknowledgments does not seem to me to make any difference. At the end of the day, if a decision was made to appeal, a decision would have to be made as to which of the acknowledgments should be relied on for this purpose. If I am correct in my view that the submission was made to the Council by the applicant in a representative capacity, then I can see no reason why the owners represented by the applicant could not rely on that acknowledgment for the purposes of s. 127(1)(e) whether or not some or all of them had also received acknowledgments directly in response to their own individual submissions. In either case, the owners/resident concerned would, in my view, be the person who made the submission. It is trite law that the act of an agent is the act of his or her principal.

32. In these circumstances, I have come to the conclusion that the provisions of s. 127(1)(b) were not complied with in the appeal furnished to the respondent by the applicant. In my view, s. 127(1)(b) required that both the name and address of the applicant and of the owners/residents of St. Michael's Cottages on whose behalf he acted were required to be given. Since the names and addresses of none of the owners/residents appear on the appeal or in any of the other documents submitted to the respondent, there was a failure to comply with the statutory requirement.

The consequences which flow from the failure to comply with s. 127(1)(b)

33. Section 127(2)(a) provides that an appeal which does not comply with the requirements of s. 127(1) "*shall be invalid".* The subsection uses the word "*shall*". Importantly, s. 127 (1) (b) (which contains the relevant requirement) also uses the word "*shall*". There is often a debate as to whether such a provision should be treated as truly mandatory or merely directory. As Henchy J. observed in the Supreme Court in the *State (Elm Developments Limited) v. An Bord Pleanála* [1981] ILRM 108 at p. 110:

> *"Whether a provision in a statute … which on the face it is obligatory (for example, by the use of the word "shall"), should be treated by the courts as truly mandatory or merely directory depends on the statutory scheme as a whole and the part played in that scheme by the provision in question. 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 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 statute, non-compliance may be excused."*

34. In *O'Connor v. An Bord Pleanála* [2008] IEHC 13, Finlay Geoghegan J. had to consider whether the use of the word "*shall*" in s. 127(1)(b) should be regarded as mandatory or merely directory. She came to the conclusion that the requirement to furnish the address of the appellant was a mandatory obligation. Ultimately, her observations on this issue are *obiter*. This is because the relevant address was shown on the acknowledgment of the planning authority in that case and, in accordance with the decision of Quirke J. in *O'Reilly Brothers (Wicklow) Limited v. An Bord Pleanála* [2006] IEHC 363, Finlay Geoghegan J. was able to conclude on that basis that the requirement of s. 127(1)(b) had, in fact been complied with. The acknowledgment in question formed part of the

appeal. Nonetheless, although her observations are obiter, the views of Finlay Geoghegan J. are of great assistance in the present case given the very careful consideration which she gave to the issue. At p. 4 of the judgment she referred to the Supreme Court decision in *Elm Developments Limited,* and continued at p. 5 in the following terms:

> *"I am satisfied that, having regard to the words used by the Oireachtas in s. 127 and the purpose of the requirement in s. 127(1)(b), the Court should treat the requirement to state the address of the applicant as truly mandatory. It follows from this conclusion that neither the Court nor the respondent may excuse non-compliance with the requirement in s. 127(1)(b) that the appeal state the address of the appellant on a de minimis basis. I agree with a similar view expressed by Kelly J. in McAnenley v. An Bord Pleanála [2002] 2 I.R. 763 at p. 776.*
>
> *It also follows from this conclusion that the Court has no discretion to excuse non-compliance with the requirement to state the address in s. 127(1)(b) of the Act of 2000 on the basis of an alleged absence of prejudice to the applicant or any other person. The position is similar to that stated by the Supreme Court in the judgment of Finlay C.J. in Electricity Supply Board v. Gormley [1985] I.R. 129, at pp. 156, 157:*
>
> > *"I am satisfied on the principles laid down in Crodaun Homes Ltd. v. Kildare County Council [1983] I.L.R.M. 1, and on the true interpretation of s. 26 sub-s. 1, of the Act of 1963, that a challenge to the validity of a planning permission granted by a planning authority, which is based on non-compliance with the permission regulations, does not depend upon the person making such challenge being able to demonstrate that the non-compliance directly affected him or her. Such a challenge can properly be made by any person who is affected by the permission granted and, if made and if non-compliance is established, the permission is invalid not by reason of prejudice or disadvantage to the person challenging it but by reason of a want of power and jurisdiction in the planning authority to exercise their right of granting or refusing permission pursuant to s. 26. …""*

35. The decision of Finlay Geoghegan J. is consistent with earlier decisions of Kelly J. (as he then was) in relation to other provisions of the Planning Acts dealing with the requirements for appeals. In *Graves v. An Bord Pleanála* [1997] 2 I.R. 205 Kelly J. upheld a decision of the respondent that an appeal was out of time even though it had been handed to a security guard at the offices of the respondent (who, in turn, passed the appeal to an officer of the respondent) within the relevant time period prescribed by s. 26(5) of the Local Government (Planning and Development) Act, 1963 ("*the 1963 Act").* He did so on the basis that under s. 4(5)(b) of the 1992 Act, there were mandatory provisions relating to the lodgement and service of appeals which required that the appeal be left with an employee of the respondent at its offices and which Kelly J. held had to be complied with strictly. At pp. 214-215 Kelly J. said:

"Counsel for the Board … says that the appeal procedure which is prescribed under s. 4 must be complied with strictly. This is so, inter alia because of the rights of third parties which may be affected by the bringing of an appeal and a necessity to have certainty in relation to the matter. In the present case Mr. Graves accepts that he cannot prove that the appeal in question was left with an employee of the Board at the offices of the Board [as required by s. 4 of the 1992 Act]. *In fact, the contrary is the case. The appeal was left with somebody who was not an employee. Such being so, the appeal was not validly made.*

I have come to the conclusion that the submissions of the Board in this regard are correct. The wording of s. 4, sub-s. 5 of the Act … is in mandatory terms. It requires that an appeal be left with an employee of the Board at the offices of the Board. It appears to me that an appellant who wishes to argue that he has made a valid appeal must have to be able to demonstrate compliance with the statutory provision. … Mr. Graves … cannot prove that the appeal was left with an employee of the Board at the offices of the Board on the day in question. The fact that an employee of the Board came into possession of the documents on 20th January, 1997 does not appear to me to discharge the obligation of the appellant to demonstrate compliance with the mandatory requirements of [the subsection]. *It seems to me that the legislature in enacting* [the subsection] *prescribed very carefully the procedure which has to be followed in order to make a valid appeal. The legislature did not content itself with permitting an appeal to be simply left at the offices of the Board. Rather it required that the appeal be left with an employee of the Board. An employee of the Board must have the appeal document left with him or her personally in order for the appeal to be valid. The mere fact that such an employee fortuitously comes into possession of appeal documents does not, in my view, discharge the onus cast upon an appellant who wishes to make a valid appeal if such appellant choses the method of service prescribed under* [the subsection]. *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 construed strictly and rigidly so as to ensure certainty and the protection of the third party rights. …"*

36. Subsequently, in *McAnenley v. An Bord Pleanála* [2002] 2 I.R. 763, an issue arose as to whether the requirements of s. 6 of the 1992 Act were mandatory or merely directory. Under s. 6 of the 1992 Act, a planning authority was required, where its decision was appealed to the respondent, to furnish certain documents to the respondent within a period of fourteen days from the date on which a copy of the relevant appeal was forwarded to them by the respondent. In that case, there had been a failure on the part of the planning authority to furnish to the respondent a copy of its own decision to grant permission together with a submission made to it by the Fisheries Board and a number of other documents furnished to the planning authority in the course of the application for permission. Kelly J. made an order quashing the decision of the respondent to refuse the applicant's appeal against the planning authority's decision to refuse him planning permission for a development. Kelly J. did so on the basis that the failure of the planning

authority to furnish the documents to the respondent went to the jurisdiction of the respondent. His reasons for taking this approach are set out at p.p. 765-766 as follows:-

> *"It is suggested that [s. 6 of the 1992 Act] is to be interpreted as not creating a mandatory obligation on a planning authority. Rather it is said to be permissive.*
>
> *I cannot agree with this proposition. ….*
>
> *I am of the view that the legislature in setting up the statutory scheme of appeals to the Board had in mind that certain documents would be placed before it when it is called upon to exercise its de novo jurisdiction involving an appeal to it from a decision of a planning authority.*
>
> *The obligation to submit these documents is placed on the planning authority. The section uses the word 'shall'. The intent of the legislature is that there should be placed before the respondent the documentary material as specified which was on the planning authority file and was before it when it made its decision ….*
>
> *… It is common case that the decision of the [planning authority] was not forwarded to the respondent The respondent did not therefore have the decision of the* [planning authority] *before it when it made its decision on the appeal.*
>
> *It did have a copy of the notification to grant permission. It is said that this document contained all of the material which was contained in the decision itself. … It is argued that this failure to comply with the provisions of … the Act should be treated and excused on a de minimis basis.*
>
> *It is difficult to treat non-compliance with an express statutory requirement on a de minimis basis. The notification of a decision of a planning authority will in all cases contain the essence of the decision itself. Notwithstanding that, parliament has ordained that both should be provided to the respondent. I cannot disregard this statutory requirement…".*

37. The decision in *McAnenley* was applied very recently by my colleague Simons J. in *Southwood Park Residents Assocation v. An Bord Pleanála* [2019] IEHC 504. As that case has not been the subject of any discussion at the hearing, I do not propose to consider it in detail. It is nonetheless important to note that it is entirely consistent with the case law which was discussed at the hearing and is a further example of a consistent approach taken by the courts to the interpretation of the 2000 Act and the underlying Planning and Development Regulations, 2001. Citing the observations of Henchy J. in *Alf-a-Bet,* Simons J. observed that the jurisdiction of the courts to excuse or waive a breach of a procedural requirement of planning law prescribed by legislation is "*severely limited".*

38. The decisions in *O'Connor, Graves* and *McAnenley* and also the judgment of Simons J. in *Southwood* provide strong support for the positon of the respondent and Cairn that s. 127 (1) (b) must be construed as a mandatory obligation. While the observations of Finlay Geoghegann J. in *O'Connor* are strictly speaking *obiter*, and while neither of the decisions

of Kelly J. in either *Graves or McAnenley* directly address the provisions of s. 127 (1) (b), of these cases nonetheless constitute a formidable body of authority which strongly supports the positon taken by the respondent and by Cairn that s. 127 (1) (b) should be construed as a mandatory obligation such that any failure to comply with it will render an appeal invalid. However, the applicant has sought to rely on a decision of McMenamin J. in *Murphy v. Cobh Town Council* [2006] IEHC 324. In that case, An Bord Pleanála (which was the second named respondent in the proceedings) rejected an appeal submitted on behalf of the members of a local action group to a proposed development of a marina in the port of Cobh. The first respondent (the local Council) acknowledged the objection of the action group by a letter which was dated in a very unusual way. The relevant date of the letter (30th November, 2004) appeared in what was described in a judgment of McMenamin J. as "*miniscule print*". No date was placed at the head of the letter or anywhere else in ordinary sized font. Subsequently, the Council granted permission for the development. The action group was informed of the decision to grant the permission by a further letter from the Council which again was dated in the same unusual way with the relevant date appearing in miniscule print. Thereafter, the action group instructed their solicitors to appeal to the respondent. The appeal was furnished in time but was accompanied by the letter from the Council notifying the grant of permission rather than (as required by s. 127 (1) (e) of the 2000 Act) the acknowledgment of the objection. The appeal was rejected by the respondent on the grounds that the requirements of s. 127 (1) (e) of the 2000 Act had not been complied with. That decision was overturned by McMenamin J. who held that the failure to comply with s. 127 (1) (e) could be excused on a *de minimis* basis. The underlying rationale for the decision is set out as follows at p.p. 14-16 of the judgment:-

> *"…to any reader, professional or lay, the dating procedure on the … 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…. Does the de minimis Rule apply?*
>
> *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 … 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.*
>
> *… 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 … be made between the circumstances of that case and those which arise here even accepting that there must be strict interpretation and compliance?

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.

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 [Monaghan UDC v. Alf-a-Bet Promotions [1986] ILRM 64 at p. 69]? If not complete, the compliance here was substantial.

The facts of this case are distinguishable from those identified by Lavan J. in McCann v. An Bord Pleanála … and Feeney J. in Rowan v. An Bord Pleanála …, 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.

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."

39. The applicant places significant reliance on this judgment and suggests that, in the present case, a similar approach should be taken. In my view, however, the decision of McMenamin J. in *Murphy* is a decision on very particular facts. It is clear that the court in that case was concerned that the correspondence from the Council was very confusing and in fact described it as a trap for the unwary. More importantly, it is clear from the judgment of McMenamin J. that he concluded that there was substantial compliance with the statutory requirement. He expressly finds in his judgment that the information contained in the letter that was included in the appeal included the relevant information necessary for the respondent to proceed. Moreover, the document that was included (notification of the decision to grant permission) necessarily demonstrated that at some

earlier stage the action group must have lodged a submission or objection to the planning permission. Otherwise, the notification would never have issued to them.

40. In contrast, in the present case, there is, as counsel for the respondent has observed, no document in existence which identifies the names and addresses of the owners or residents for whom the applicant acts. The submission to the Council does not do so. Nor does the appeal document. Nor do the terms of engagement exhibited by the applicant. Thus, even if the *de minimis* principle is available in respect of the s. 127 (1) requirements, I cannot identify any factual basis in the present case on which the principle could be applied. In order for the *de minimis* principle to be applied, it must be clear that the failure to comply with the relevant statutory obligation is of a trivial or insubstantial nature. If, however, there has been a complete failure to comply, I cannot see how there is any scope for the application of the *de minimis* principle. The relevant principle was explained as follows by Henchy J. in *Monaghan UDC v. Alf-a-Bet Promotions Ltd* [1980] ILRM 64 at p. 69 as follows:-

> *"I …feel it pertinent to express the opinion that when the 1963 Act prescribed certain procedures as necessary to be observed for the purpose of getting a development permission, which may affect radically the rights or amenities of others and may substantially benefit or enrich the grantee of the permission, compliance with the prescribed procedures should be treated as a condition precedent to the issue of the permission. In such circumstances, what the legislature has, either immediately in the Act or mediately in the Regulations, nominated as being obligatory may not be depreciated to the level of a mere direction except on the application of the de minimis rule. In other words, what the legislature has prescribed, or allowed to be prescribed, in such circumstances as necessary should be treated by the courts as nothing short of necessary, and any deviation from the requirements must, before it can be overlooked, be shown, by the person seeking to have it excused, to be so trivial, or so technical, or so peripheral, or otherwise so insubstantial that, on the principle that it is the spirit rather than the letter of the law that matters, the prescribed obligation has been substantially and therefore adequately, complied with."* (Emphasis added).

41. Accordingly, having regard to the approach taken by the Supreme Court in the *Monaghan UDC* case, if the *de minimis* principle is to be capable of application in the present case, it must be shown that the appeal made by the applicants to the respondent substantially complied with the obligation contained in s. 127 (1) (b). The observations of Henchy J. in the opening sentences of the passage quoted in para. 39 above closely chime with the observations of Finlay Geoghegan J. in *O'Connor* and with the observations of Kelly J. in *Graves* and *McAneneley*. Applying those observations to the provisions of s. 127 (1) (b) of the 2000 Act, It will be seen that the Oireachtas, in enacting the provisions of s. 127, has laid down specific requirements that must be followed in order to submit a valid appeal to the respondent. There is nothing in the language of s. 127 (1) to suggest that the Oireachtas intended that these requirements should be directory only. On the contrary, the fact that these requirements are laid down in the context of an appeal for which there

is a statutory time limit reinforces the conclusion that the requirements were intended to be mandatory rather than directory. This conclusion is also supported by the provisions of s. 127 (3) (quoted in para. 3 above) which prescribes that the appeal documents cannot be supplemented or expanded upon at a later stage.

42. In the specific context of s. 127 (1) (b), it is also noteworthy that the Oireachtas decided, when enacting the 2000 Act, to impose more extensive obligations than had previously been imposed by s. 4 (1) (b) of the 1992 Act. As outlined in para. 4 above, all that was required under s. 4 (1) (b) of the 1992 Act was that both the name and address of the appellant be given. In contrast, under s. 127 (1) (b), the name and address of the appellant must be given in addition to the name of any person (who might be acting on behalf of an appellant. This strongly suggests that the Oireachtas was concerned to ensure that all appropriate details would be included in the appeal so that those parties affected by the outcome of the appeal would be able to identify precisely the relevant persons involved in the appeal. The intention of the Oireachtas appears to have been to achieve a greater level of certainty and precision than had previously existed under the 1992 Act.

43. The importance of complying with the obligations imposed by s. 127 (1) is strongly reinforced by the provisions of s. 127 (2) (a) which provide in simple and straightforward terms that an appeal which does not comply with the requirements of s. 127 (1) shall be invalid. In my view, it is impossible, in those circumstances to construe s. 127 as anything other than obligatory. It must follow that any failure to comply to the letter with the requirements of s. 127 (1) can only be excused where the non-compliance is plainly insubstantial.

44. In circumstances where, in the present case, the obligation to state the names and addresses of the owners and residents of St. Michael's Cottages for whom the applicant acts have not been stated anywhere in the appeal or in the documents attached to the appeal I can see no basis on which one could take the view that the obligation has been substantially complied with. In light of the approach taken by the Supreme Court in the *Monaghan UDC* case, it is clear that, absent substantial compliance, the *de minimis* principle is not capable of application.

45. In the circumstances, subject to consideration of the remaining issues argued in the case, it seems to me to follow that, in accordance with s. 127 (2) (a), the appeal brought by the applicant in this case must be treated as invalid.

Fair procedures

46. As noted above, the applicant argues that he should have been given an opportunity to make submissions to the respondent before the decision to reject the appeal was made. Obviously, in many cases, a public body in the position of the respondent is not entitled to take a decision adverse to an interested party without first giving that party an opportunity to be heard before a final decision is made. However, I do not see any scope for the application of that basic principle in this case. Section 127 of the 2000 Act does not allow any discretion to the respondent, the exercise of which might be swayed by

submissions made to it. The section is a straightforward provision which sets out the requirements for a valid appeal. Either an appeal complies with those requirements or it does not. By its terms, s. 127, does not envisage any form of hearing or opportunity to make submissions before a determination is reached by the respondent as to whether an appeal does or does not comply with requirements laid down in s. 127 (1). Of course, in accordance with *East Donegal* principles, s. 127, like any other statutory provision, must be read, to the extent possible, in accordance with the Constitution. This requires that any procedures or adjudications which are permitted, provided for, or prescribed by an Act of the Oireachtas are to be conducted in accordance with the principles of constitutional justice. This follows from what was said by Walsh J. in the Supreme Court in *East Donegal Co. v. Operative v. Attorney General* [1970] I.R. 317 at p. 341. Thus, the fact that s. 127 does not expressly provide for notice to be given to an appellant prior to an adverse decision in relation to the validity of an appeal, does not exclude the possibility that, in a particular case, such notice might be required. For example, it is possible to envisage circumstances where there could well be a nuanced factual issue relevant to the fulfilment of one or more of the requirements of s. 127 (1) which would require, as a matter of basic constitutional fairness of procedures, that advance notice be given and an opportunity afforded to make submissions. That said, I cannot see any basis for the giving of advance notice in the present case. In my view, the appeal in this case plainly did not comply with the requirements of s. 127 (1) (b). In those circumstances, by virtue of s. 127 (2) (a), the appeal was invalid and there was nothing the applicant could have said or which the respondent could have done to alter that conclusion.

47. In support of his submissions in relation to this aspect of the applicant's case, counsel for the applicant sought to place reliance on the decision of Barron J. in *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497. However, that case was concerned with an entirely different situation. In that case, an issue arose as to whether certain refurbishment works constituted development. The matter was the subject of a reference under s. 5 of the 1963 Act. The issue turned on whether an annexe to the property had been constructed many years previously. The respondent determined that the annexe was not only of recent construction but that it had been erected by the applicant himself. The issue was decided against the applicant on that basis. However, the applicant had made the case that the annexe was an historic construction and it was never suggested to him in advance of the decision by the respondent that his case to that effect was to be rejected notwithstanding that he had indicated that he was willing to provide any further information or evidence that the respondent might require. Furthermore, it was not made clear to the applicant that the principal basis of opposition by a local residents' association to his application was that he had himself constructed the annexe. It is obvious why, in those particular circumstances, it was essential, as a matter of basic fairness of procedures, that the applicant should have been put on notice of the respondent's intention to reach an adverse decision based on an issue of fact of that kind. The applicant may well have been in a position to place additional evidence before the respondent which could have altered the ultimate determination reached by it. That is an

entirely different situation from the present case. I therefore do not believe that the decision in Armstrong provides any support for the case made by the applicant here.

48. I have also considered whether the recent decision of the Supreme Court in *Balz v. An Bord Pleanála* [2019] IESC 90 (decided after the hearing of these proceedings) has any impact. I have come to the conclusion that it does not. Although the Supreme Court in that case emphasised the importance that the respondent should address any submissions made to it by an interested party, I do not see anything in the judgment which would affect my conclusion that, in the particular circumstances of this case, there was no breach of fair procedures by the respondent.

49. Moreover, in this case, subsequent to the respondent's letter of 14th March, 2019, it is clear that the applicant had an opportunity to make submissions. He did so in his email of 20th March, 2019 (described above). Following that submission, it is clear from the respondent's email of 11th April, 2019, that the respondent re-examined the appeal documentation and nonetheless came to the conclusion that the appeal must be deemed invalid in circumstances where the requirements of s. 127 had not been complied with. Thus, even if there was a right to make submissions by the applicant in relation to the issue of compliance with s. 127 (and I do not accept that such a right arose here) the applicant had an opportunity to exercise that right and a re-examination of the circumstances took place thereafter by the respondent. This seems to me to be a further basis on which to conclude that there was no breach by the respondent of any obligation of fairness.

Estoppel

50. I do not believe that this element of the case made at the hearing has in fact been pleaded in the statement of grounds. In those circumstances, this is not an issue which falls for determination. Nonetheless, since there was some argument on the issue at the hearing, I will set out my views in relation to it purely for completeness.

51. In circumstances where the appeal was invalid, I cannot see how any estoppel can arise as against the respondent which would require it, notwithstanding the invalidity of the appeal, to hear and determine the appeal. In this context, counsel for the respondent referred to the observations of Hogan & Morgan "*Administrative Law*" (4th ed.) 2010 at para. 19.06 to the following effect:-

> "[A] Public Authority cannot give itself a jurisdiction it does not possess. It cannot do this by a mistaken conclusion as to the extent of its own powers and neither can it do so by creating an estoppel or a legitimate expectation. There can thus be no legitimate expectation which is contrary to law".

52. Counsel for the respondent also referred, in this context, to the decision of the Supreme Court in *Re Green Dale Building Company Ltd* [1977] I.R. 256. In that case, a housing authority made a compulsory purchase order under the Housing Act, 1966 ("*the 1966 Act*") affecting the lands of the claimant company. It served a notice to treat prior to the compulsory purchase order ("*CPO*") becoming operative. The notice was served in 1972.

However, the notice did not become operative at that time because a third party had, in the meantime, applied to the court for a declaration that the CPO was invalid. That application was ultimately dismissed on 7th April, 1975. The CPO only became operative at that point. Thereafter on 14th April, 1975, the housing authority served on the claimant a second notice to treat. However, by that time, the value of the claimant's lands had fallen from their value as of 1972 when the first notice was served. The claimant sought to rely upon the validity of the first notice and, in particular, argued that the housing authority was estopped from claiming otherwise. In seeking to make that case, the claimant relied upon the fact that, subsequent to the service of the notice to treat in 1972, a property arbitrator had been appointed to assess the compensation payable to the claimant. In those circumstances the claimant contended that by waiver or estoppel, the housing authority had lost the right to rely on the invalidity of the first notice to treat. This case was rejected by Henchy J. in the Supreme Court in the following terms (at p. 266):-

> *"We are not concerned …with whether a validly-served notice to treat constitutes the exercise of a power of compulsory acquisition for the purpose of a particular statutory provision, which is the issue which arose in the cases on which reliance was placed. That point cannot arise, because the first notice to treat was not validly served, so that service was nugatory for every statutory purpose. However, it was a purported exercise of a statutory power, to wit, the power to serve a notice to treat and thereby to put in train the statutory consequences of a valid notice to treat. It is true that the acquiring authority did set up the invalid notice to treat and did lead the claimants to join with them in arbitration proceedings as if the notice had been validly served but, as the decided cases make clear, parties who are to be affected by the exercise of a statutory power cannot compel the donee of the power to convert, into a valid exercise of the power, conduct which the statute expressly or by implication says cannot be an exercise of the power. That is the position here.*
>
> *Compulsory acquisition under the Act of 1966 requires the acquiring authority to serve a notice to treat. They may do so only if they comply with the provisions of s. 79, sub-s. 1, of the Act. The acquiring authority here failed to comply with that sub-section in regard to the first notice to treat which, in breach of s. 79, sub-s. 1, was served before the compulsory purchase order had become operative. Therefore, that service was bad; and no subsequent conduct on the part of the acquiring authority could make it good for the statutory prerequisites for the exercise of the power to serve such a notice were not observed. If the courts were to allow subsequent conduct to outweigh the requirements of the sub-section, they would (in effect) be amending the sub-section, which is something beyond the constitutional competence of the Courts".* (Emphasis added).

53. It seems to me that this principle is equally applicable here. The respondent is a statutory body. Its powers and jurisdiction are derived solely from statute. It cannot act in a manner not authorised expressly or impliedly by statute. It cannot therefore

overlook or forgive a failure to comply with a statutory provision unless the statute in question permits it to do so. In this case, the provisions of s. 127 are very clear. Section 127 (1) sets out the requirements which must be complied with if a valid appeal is to be made to the respondent. Moreover, s. 127 (2) (a) expressly declares any non-compliant appeal to be invalid. Against that backdrop, I can see no basis on which the doctrine of estoppel could confer a jurisdiction upon the respondent which it does not have by statute. Thus, even if the statement of grounds had included a claim based on estoppel or legitimate expectation, I would have been required to reject it.

Conclusion

54. In light of the views which I have set out above, I must conclude that the applicant has failed to establish any valid ground to challenge the decision of the respondent to reject his appeal. In those circumstances, the only order which I can make in these proceedings is to dismiss the proceedings.