[2020] IEHC 423

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 49 J.R.]

BETWEEN

OLIVIA REIDY

APPLICANT

AND
AN BORD PLEANALA

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered electronically on the 31st day of July, 2020

Introduction

1. The background to these proceedings can be summarised in the following way: on 25th August, 2017, the applicant, who is representing herself in these proceedings, lodged an application with Wexford County Council for permission to build a dwelling house for herself, her husband and her son at Camolin Park, Kilcomb, County Wexford. That application for planning permission was refused by Wexford County Council on 11th October, 2017.

2. The applicant lodged an appeal against that decision with the respondent on 24th October, 2017. An inspector appointed by the respondent carried out a site investigation and furnished a report on 25th January, 2018. On 14th February, 2018, the respondent refused to grant planning permission for the development.

3. In its decision dated 14th February, 2018, the respondent noted that the site where the proposed works were to be carried out, was located in a "*strong rural area*" as designated in the Wexford County Development Plan, 2013 – 2019. It was also within an "*area under strong urban influence*" as set out in the "*Sustainable Rural Housing Guidelines for Planning Authorities*" issued by the Department of the Environment, Heritage and Local Government in April, 2005. In refusing the applicants application for planning permission, the respondent stated as follows:

> *"It is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally-based social and economic need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the Development Plan Provisions relating to sustainable rural housing and to the "Sustainable Rural Housing Guidelines for Planning Authorities" and would be contrary to the proper planning and sustainable development of the area."*

4. The eight-week period provided for under s. 50 of the Planning and Development Act, 2000 (as amended) within which an application could be made seeking judicial review of that planning decision, expired on 10th April, 2018.

5. An initial statement of grounds and the first affidavit sworn by the applicant seeking leave to judicially review the decision of the respondent was filed on 24th January, 2019. However, the *ex parte* application seeking leave to proceed by way of judicial review was not moved by the applicant until 8th May, 2019.

6. A notice of motion seeking an extension of time and a second affidavit was filed on behalf of the applicant on 14th May, 2019. The notice of motion was served on the respondent on 24th May, 2019.

7. A stamped second statement of grounds and two affidavits were served on the respondents on 7th November, 2019. The second statement of grounds and the third and fourth affidavits sworn by the applicant were filed on 26th November, 2019. An affidavit on behalf of the respondent was sworn by Mr. Pierce Dillon and was filed on 6th February, 2020. A further affidavit was sworn by the applicant on 17th February, 2020.

8. The High Court directed that the application for leave to seek judicial review should include an application for an extension of time within which to seek judicial review and should be made on notice to the respondent.

The issues for consideration by the Court

9. On this application, the court has to determine the following issues:

   (a) Whether to extend the time to enable the applicant to challenge the decision of the respondent refusing her permission for the development, which decision was made on 14th February, 2018;

   (b) Whether, having regard to the provisions of s. 50A (3) (a) there are substantial grounds for contending that the decision concerned is invalid or ought to be quashed and, if so, whether the court should grant the applicant leave to proceed by way of judicial review.

Submissions on behalf of the applicant

10. While the applicant represented herself in this application, she is an articulate and intelligent woman and was able to put her case in a coherent and forceful manner both in person and on the papers that were submitted to the court. In relation to the first issue, as to whether the court should grant her an extension of time within which to bring the present judicial review proceedings, she stated that there were two primary reasons why she had not brought the present proceedings within the eight-week time limit provided for under s. 50 (6) of the Planning and Development Act, 2000 (as amended).

11. Firstly, by way of background, she stated that her father owned a plot of land at Camolin in County Wexford. He had obtained planning permission to build a house on his land on 14th October, 2013. In order to assist the applicant, he had made a gift to her of a portion of the lands that he owned in that area. The applicant stated that she was a married woman, who had one son, who was born on 13th August, 2017, which was very shortly prior to the time that she had submitted the initial planning application to Wexford County Council.

12. The applicant stated that she had not been in a position to institute the judicial review proceedings within the eight-week period after the decision had been made by An Bord Pleanála refusing her permission on 14th February, 2018, due to the fact that her infant son had considerable health difficulties.

13. In this regard, she referred to a letter which had been furnished by Professor Muhammed Azan, a consultant paediatrician at Wexford General Hospital, dated 10th January, 2018, which he had written in support of her application for Domiciliary Care Allowance. In the letter he stated that the applicant's son was a patient of his and was under investigation because of delayed developmental milestones. At that time, he was approximately five months old. Professor Azan noted that the baby was exclusively breastfed and was having great difficulty with solids in any texture or form. He might drink two sips of water from a Sippy cup per day. He was on iron supplement for his anaemia and it was a struggle to get him to take that supplement.

14. The doctor went on to note that the child had poor social interaction and became very distressed very easily, especially with loud sounds, bright lights and people/children activity around him. He also had speech delay and was diagnosed with Sensory Processing Disorder and features of Autistic Spectrum Disorder. As the child's paediatrician, he strongly supported the application made by his parents for Domiciliary Care Allowance as the boy would require ongoing care.

15. The applicant submitted that due to these considerable health needs on the part of her son, she had not been able to make the necessary application for leave to seek judicial review within the required time period. In this regard, she stated that her husband was an engineer employed by an alarm company and his work required him to travel extensively throughout Ireland. She was employed in the sales and marketing department of the "*Wicklow People*" newspaper, which was based in Bray, County Wicklow.

16. The applicant stated that her son's health continued to be a source of considerable concern to her and this was one of the reasons why she wished to have permission to build a house on her father's land, so that she would be close to her parents, who assist her with his care and maintenance. At the present time, she was residing with her husband and son in a mobile home on her parents' land.

17. The second reason why she had not managed to institute the proceedings within time, was due to the fact that it was not until November, 2018, that she became aware that the respondent should have sent her information concerning the availability of seeking judicial review in respect of its decision. In a letter dated 5th November, 2018, she informed the respondent that she had been made aware that they should have sent her information on the option of applying for judicial review of her decision. She went on to state that no such information had been provided to her and stated that that was clearly in breach of her rights. She requested that they provide her with full details regarding applying for judicial review.

18. She also referred to a previous letter that she had sent to the respondent on 30th July, 2018, seeking further details of the conclusions that had been arrived at in the inspector's report. The Board had replied on 6th September, 2018, noting that it did not have jurisdiction to revisit the planning appeal. The applicant repeated her request for such information in her letter dated 5th November, 2018.

19. By letter dated 18th December, 2018, the respondent sent information to the applicant in relation to challenges by way of judicial review. This was in the form of a printed notice concerning the making of judicial review applications generally in respect of decisions of the respondent. It also referred the reader to a fact that general information on judicial review procedures was contained on a citizen's information website and its web address was given.

20. The applicant stated that when she got this information she lodged her first statement of grounds and affidavit in the central office on 24th January, 2019. She moved the *ex parte* application seeking leave to seek judicial review on 8th May, 2019 and subsequent to that, issued the notice of motion seeking an extension of time within which to bring judicial review proceedings on 14th May, 2019. The notice of motion was served on the respondent on 24th May, 2019.

21. The applicant submitted that where she had not been informed of her right to challenge the decision of the respondent by way of judicial review proceedings until she received their letter and information document on or just after 18th December, 2018, it was appropriate that the court should extend the time for her to bring these proceedings, as she had moved promptly on receipt of such documentation by lodging the statement of grounds and first affidavit on 24th January, 2019.

22. In relation to the second issue before the court, as to whether she had substantial grounds for contending that the respondent's decision was invalid or ought to be quashed, the applicant submitted that the essence of the inspector's report, which had been effectively endorsed by the decision of the respondent, was to the effect that she should be refused permission because, given the location of the proposed site, she had not demonstrated a social and economic local need for a house in that area, within the provisions of the development plan. The applicant submitted that the respondent had ignored the very real need that she had to live in the area, primarily due to the poor health of her son, where she would have the support of her parents.

23. In this regard, she referred again to the letter provided by Professor Azan on 10th January, 2018. She also referred to a letter from her father dated 17th January, 2019, wherein he stated that he owned a forestry plantation on lands in Camolin Park, Camolin, County Wexford and that the applicant helped him to monitor tree growth and in particular, monitored the trees for signs of disease. The letter also noted that the applicant had a small child, who has a medical condition and due to this, he needed her constant care and attention. As a result of this, his daughter needed to live a short distance from her parents, who could help her as and when required.

24. The plaintiff also referred to a letter dated 3rd July, 2019, furnished by a Mr. Pat Noonan, who was the forester engaged in the planting of part of Camolin Woods purchased by the applicant's parents. He stated that the applicant had had a great interest in the forest operations and the wider aspects of forestry. He stated that her enthusiasm would be an asset to the area if she was living there.

25. The applicant stated that her husband was required by his work to travel extensively throughout the country. This meant that he was not at home to help look after their son. In her appeal to the respondent, she had stated that she hoped to establish a home based business in Camolin, which would enable her to work from home and look after her young son.

26. The applicant further stated that having regard to the decision of the Court of Justice of the European Union in *Libert & Ors v. Gouvernement Flamand,* in joined cases C-1974/11 and C-203/11 (the Flemish Decree case) where the court held that provisions restricting the ability of landowners to sell land to persons who were not from the local area, was contrary to the fundamental freedoms of the European Union and in particular the free movement of persons therein. The applicant stated that in the circumstances of this case, there was a strong argument to be made that the approach adopted by both the inspector and the respondent in relation to the requirement that persons seeking planning permission show a local housing need, was similarly contrary to European law. It was submitted therefore that she had established substantial grounds for arguing that the respondent's decision was invalid.

The respondent's submissions.

27. In relation to the first issue, Mr. Browne B.L. on behalf of the respondent submitted that the Oireachtas had set down a strict time limit of eight weeks, beginning from the date of the decision, within which a person could challenge the decision by way of judicial review. That was provided for in s. 50 (6) of the 2000 Act. Section 50 (8) provided that the court may extend the period provided for in subs. (6) or (7) within which an application for leave referred to in that subsection may be made, but shall only do so if it is satisfied that (a) there is good and sufficient reason for doing so and (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

28. Counsel submitted that the test provided for in s. 50 (8) was both cumulative and mandatory: see dicta of Baker J. in *Irish Sky Diving Club Ltd v. An Bord Pleanála* [2016] IEHC 448.

29. It was submitted that in this case the eight-week period within which the applicant could have challenged the decision of An Bord Pleanála dated 14th February, 2018, expired on 10th April, 2018. The applicant had filed a statement of grounds and the first affidavit in the central office on 24th January, 2019. Allowing for the nine-day period over Christmas, as provided for by s. 251 of the 2000 Act, that was still eleven months after the date of the impugned decision.

30. While there was some debate on the matter, in some of the cases in particular, *McDonald v. An Bord Pleanála* [2017] IEHC 366 and *Kelly v. Leitrim County Council* [2005] 2 I.R. 404, it had been held that the clock did not stop until the matter had been "*moved*" in court. In this case, *the ex parte* application was not moved until 8th May, 2019, some fifteen months from the date of the respondent's order and thirteen months from the date on which the eight-week time limit had expired.

31. It was submitted that in these circumstances, where strict time limits had been provided for in the statute, there was no basis in the absence of a compelling explanation, which was lacking in this case, which would justify the extension of time sought by the applicant.

32. It was submitted that the case law made it clear that time ran from the date of the decision which it was sought to challenge in the judicial review proceedings and not from any date on which the person seeking to challenge the order may have acquired knowledge of the making of the decision, or obtained advice in relation to it; see *Corbett v. Louth County Council* [2018] IEHC 291; *Kelly v. Leitrim County Council*, supra.

33. It was submitted that it was not enough for the applicant to seek to excuse her inactivity during the initial eight week period, but it was clear from the case law that she had to show that there was "*good and sufficient reason*" for extending the time to when the application for judicial review was made, which meant that she had to provide a credible explanation why she had not acted before the time when she had actually commenced the proceedings, either by way of lodgement of papers in the central office, or by moving the ex parte application before the High Court; see *Sweetman v. An Bord Pleanála* [2017] IEHC 46. It was submitted that in this case the applicant had not provided any credible excuse to justify the inordinate delay that there had been between the date of the impugned decision on 14th February, 2018 and the lodgement of papers in the central office on 24th January, 2019, or the moving of the ex parte application on 8th May, 2019.

34. In relation to the second aspect relied upon by the applicant, which was to the effect that she had not been given the requisite information by the respondent in relation to the existence of the judicial review remedy, counsel pointed out that in the affidavit sworn by Mr. Pierce Dillon on behalf of the respondent, he had averred that it was standard practice to include the pro forma documentation on judicial review with all of the decisions issued by the respondent. In addition, there was information on the respondent's website which was freely available concerning the existence of the judicial review remedy. In these circumstances, it was submitted that this excuse raised by the applicant to excuse her delay in proceeding, was without substance.

35. In relation to the applicant's arguments concerning the merits of her application, counsel pointed out that the letters from the applicant's father dated 17th January, 2019 and from the forestry worker, Mr. Noonan, dated 3rd July, 2019, both post-dated by a substantial period, the decision of the respondent which was sought to be impugned in these proceedings, which had been furnished on 14th February, 2018. Accordingly, they were no documents which the court could take into account when considering whether or not to

grant *certiorari* of the respondent's decision, because those documents were not made available to the respondent when it was making the impugned decision.

36. Counsel stated that while in her notice of appeal, the applicant had stated that she had an intention to establish a home based business if she was granted planning permission to build a house in Camolin, there was no evidence that she had ever attempted to set up any business in the village of Camolin, or in the surrounding area. In fact, the evidence which was contained in the inspector's report and which was not contradicted by the applicant, was that she was employed by the owners of the "*Wicklow People*" newspaper and was based at their offices in Bray. In such circumstances, it was submitted that it was hard to see how she could establish that she had a local housing need in the Camolin area.

37. Finally, in relation to the applicant's reliance on the decision of the CJEU known as the Flemish Decree case, it was submitted that such reliance was misplaced. In that case, the CJEU had had to consider a law in the Flemish region of Belgium that limited the transfer of property to persons with a sufficient connection to the locality. The applicants contended that that was contrary to the fundamental principles and freedoms of EU law and the CJEU had held that it did, but was subject to a proportionality assessment of a legitimate objective. The European Court had held that such a restriction on the sale of property to people who were not connected to the area, could in circumstances be lawful, if it was shown that the restriction was proportionate and legitimate and necessary. In this regard the respondent would argue that the "*local needs connection*" which applied under the County Wexford Development Plan, complied with the requirements set down by the European Court in the Flemish Decree case. Accordingly, it was submitted that there was no basis on which the applicant could satisfy a court that there were substantial grounds for contending that the respondent's decision was invalid or ought to be quashed. It was submitted therefore, that even if the applicant was given an extension of time within which to bring the judicial review proceedings, she had not cleared the hurdle which was provided for in s. 50A (3) (a) of the 2000 Act.

38. It was submitted that having regard to all of the relevant circumstances in this case, the court should refuse to extend the time for the bringing of the within judicial review proceedings, or in the alternative, should hold that the applicant had failed to establish that there were substantial grounds for contending that the respondent's decision was invalid or ought to be quashed and accordingly should refuse the applicant leave to proceed by way of judicial review herein.

Conclusions

39. The rationale behind the imposition by the Oireachtas of strict time limits in planning matters, as provided for in s. 50 of the 2000 Act, has been comprehensively set out in a number of well-known decisions of the Superior Courts. It is not necessary to repeat the dicta in those judgments. In essence, strict time limits were imposed so as to give certainty to those who had obtained lawful permissions under the relevant statutory code to embark on development or other activity, safe in the knowledge that once the relatively short time period expired, they were free to proceed on the basis of the lawful

permission that they had obtained: see *KSK Enterprises Ltd v. An Bord Pleanála* [1994] 2 I.R. 128, at p. 135; *Kelly v. Leitrim County Council* [2005] IEHC 11 and *Irish Sky Diving Club Ltd v. An Bord Pleanála* [2016] IEHC 448.

40. However, while strict time limits have been imposed on challenges by way of judicial review to planning decisions by s. 50 (6) of the 2000 Act, the legislation also provides a mechanism whereby the time period can be extended so as to enable an applicant in appropriate circumstances to bring a challenge by way of judicial review, notwithstanding that they are outside the eight-week time period when they seek to commence their proceedings. Section 50 (8) of the 2000 Act provides that the High Court may extend the period within which a challenge may be brought, but shall only do so if it is satisfied that (a) there is good and sufficient reason for doing so and (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

41. In the *Irish Sky Diving Club Ltd* case, Baker J. explained the rationale and operation of this subsection in the following way:

> *"9. Section 50(8) (a) is a reflection of the inherent jurisdiction of the court to extend time when it considers that good and sufficient reason exists to so do, but sub paragraph (b) of the subsection contains a restriction on the power such that in addition to being satisfied that good and sufficient reasons exists, the court must be satisfied as a matter of fact that the circumstances which resulted in the delay were outside the control of the applicant.*
>
> *10. Thus, while the court has a discretion it is required by the cumulative provisions of subs. 8 to consider not merely the interests of justice, or the interests of all of the parties, but whether the applicant for the extension can show on the facts that the delay and the reason why he or she is out of time arose from matters outside his or her control. When a delay arises from circumstances which were within the control of the applicant, the court may not extend.*
>
> *11. The time limit is strict, and one in respect of which the power to grant an extension is also to be strictly construed. That this is justifiably so has been considered in a number of cases. In Noonan Services Limited & Ors v. the Labour Court (Unreported, High Court, 25th February, 2004) Kearns J. explained the policy for a strict approach:*
>
> > *'This approach does no more than reflect a growing awareness of an overriding necessity to provide for some reasonable cut-off point for legal challenges to decisions and orders which have significant consequences for the public, or significant sections thereof.'"*

42. In considering whether the court should exercise its discretion in favour of granting an extension of time, the court can have regard to a large number of factors. In *Kelly v. Leitrim County Council*, Clarke J. (as he then was) set out a non-exhaustive list of such

factors, which included the following: the length of time specified in the relevant statute; the question of whether third party rights may be affected; the clear legislative policy that determinations of the kind provided for in the legislation, should be rendered certain within a short period of time, thereby conferring certainty on certain categories of administrative or quasi-judicial decisions; blameworthiness (if any) on the part of the applicant; the nature of the issues involved and the merits of the case: see pages 9 – 12 of the judgment.

43. There are two further points which are relevant to the exercise of the Court's discretion under s. 50 (8) of the 2000 Act. Firstly, the concept of there having to be "*good and sufficient reason*" for the extension of time, implies that the applicant must not only provide a credible excuse for not bringing his or her application within the statutory eight-week period provided for under the Act, but must also provide an adequate explanation as to why they did not move until the time that they did to either institute the proceedings, or seek the extension of time within which they could do so. In other words, they must establish that there is good and sufficient reason why the court should extend the time down to the date on which the applicant first sought to institute the judicial review proceedings. This is clear from the decision in *Sweetman v. An Bord Pleanála* [2017] IEHC 46, where Haughton J. stated as follows at paras. 6.5 and 6.8:

> *"… As Baker J. stated in Skydiving, subclauses (a) and (b) in s. 50(8) are cumulative and mandatory requirements. The requirement 'of good and sufficient reason' relates to the reasoning that the court finds satisfactory for extending time over the entire period for which an extension of time is required. It is not limited by the wording of the subsection to any particular period of time, and in particular is not limited to the period of eight weeks immediately following the impugned decision. To give it such a limited interpretation would be to ask the court to rewrite section 50(8). It is quite clear from a reading of the subsection as a whole that the requirement at (b) is additional, and restricts the generality of the application of the requirement at (a).*
>
> *[…]*
>
> *6.8 The applicant seeking an extensive [sic]of time must therefore firstly satisfy the court that the circumstances that resulted in the failure to make the application for leave within the period of eight weeks were outside of his or her control. Thereafter the applicant for extension must satisfy the court that there is good and sufficient reason for an extension. This phrase requires that the reason be both 'good' and 'sufficient'. Moreover, it is incumbent on the applicant to satisfy the court that such good and sufficient reason encompasses the entirety of the period from the expiry of the eight weeks up to the date upon which the leave application was made in the High Court, or at any rate the date upon which the leave papers were lodged in the Central Office."*

44. Secondly, the fact that the applicant may have been unaware of the making of the particular decision, or of aspects contained in that decision, or may have for various

reasons had difficulty in obtaining legal advice in relation to whether or not he or she should institute judicial review proceedings, are not matters that can be relied upon as grounds to justify an extension of time; see *Corbett v. Louth County Council* [2018] IEHC 291; *Irish Skydiving Club Ltd. v. An Bord Pleanala, supra*, at paras. 50 – 51; *Kelly v. Leitrim County Council, supra*. These decisions make it clear that time runs from the date on which the decision which is sought to be impugned, was made. Time did not run from the time when the applicant first learned of the decision, or took legal advice in relation to it. Indeed, in the *Kelly* case, where the delay was only of a period of nineteen days outside the statutory period, the applicant had sought to excuse the delay, inter alia, on the ground that a member of his family had been diagnosed with a serious illness and that had prevented him from attending a consultation with junior counsel. However, he did not like the advice that he received from the first junior counsel and so he instructed his solicitor to obtain the advices of another counsel, who advised that he did have grounds for bringing a judicial review application, which advice was received on the last day of the applicable period. Notwithstanding all of that, the court refused to extend time.

45. Finally, it is well settled at Irish law, that while the courts will allow some leeway due to the fact that an applicant, or a respondent, may be acting in the proceedings as a lay litigant, the fact that they are so doing, does not mean that they are not bound by the same rules and procedures as other litigants who come before the courts, albeit with legal representation; see *Burke v. O'Halloran* [2009] 3 I.R. 809; *ACC Bank v. Kelly* [2011] IEHC 7; *Knowles v. Governor of Limerick Prison* [2016] IEHC 33 and *O'Neill v. Celtic Residential Irish Securitisation plc, No. 9 & Ors* [2020] IEHC 334.

46. I turn now to apply these general principles of law to the facts of this case. The court has paid particular regard to the content of the letter dated 10th January 2018 from Prof. Azan outlining the health difficulties which were being encountered by the applicant's son at that time. He was then approximately five months old and it was clear that he was displaying signs which were indicative of possibly serious ongoing health issues. He had speech delay and had been diagnosed with sensory processing disorder. He also displayed features of autistic spectrum disorder. He had difficulty taking water and became distressed very easily, especially with loud sounds, bright lights and when there was activity around him. The court is satisfied that this was obviously a very difficult and challenging time for the applicant, who had to look after her baby, who had serious health issues.

47. Having regard to the circumstances with which the applicant was presented in relation to the health of her son, the court is satisfied that she has demonstrated that there was good and sufficient reason why she did not institute the judicial review proceedings within the eight-week period following the making of the decision by the respondent on 14th February 2018. The court is satisfied that due to her son's health difficulties, these were reasons that were outside of her control at that time.

48. The eight week period for challenging the refusal by the respondent, expired on 10th April 2018. Based on the letter issued by Prof. Azan, the court would be inclined to extend the

period within which it was reasonable for the applicant to claim that she was unable to act due to the health of her son, down to the end of June 2018. However, it is not satisfied that the applicant has provided any adequate reason why she was unable to institute the proceedings until at the very earliest 24th January 2019, being the date on which she lodged her first statement of grounds and affidavit. In order for the court to be satisfied that the health of her son, or some other valid reason, justified the extension of the period down to that date, the court would have to be provided with cogent evidence showing how on a practical day to day basis, she was unable, due to circumstances beyond her control, to institute the proceedings prior to 24th January 2019. Unfortunately, the applicant has not done so.

49. While there is considerable debate in the case law as to exactly when judicial review proceedings are commenced so as to stop the clock running, as it were, the earliest possible date that could be taken in this case is 24th January 2019. Some of the decisions state that the clock only stops running when the application is moved before the High Court seeking leave to bring the judicial review proceedings: see *McDonnell v. An Bord Pleanala* [2017] IEHC 366, wherein Haughton J. disagreed with the earlier judgment of Humphreys J. in *McCreesh v. An Bord Pleanala* [2016] 1 I.R. 535, where he had held that the lodgement of papers in the Central Office represented the commencement of the judicial review proceedings and sufficed to stop the clock running.

50. If the court were to adopt the view that it is only on the occasion on which the application for leave to seek judicial review is moved before the court, that the clock stops running, this would mean that the period would have to be extended down to 8th May 2019. Again, there is no evidence before the court as to why the applicant was unable to institute the proceedings prior to that date. Indeed, there are dicta in some of the judgments which suggest that it is only on the service of the notice of motion that time stops running and if that were taken to be the appropriate date, that did not occur until 24th May 2019. However, without deciding the matter, the Court in this case will take the date most advantageous to the applicant, being 24th January, 2019, as the relevant date.

51. The applicant proffered as a second excuse for her failure to institute the judicial review proceedings prior to the lodgement of papers in January 2019, as being due to the fact that she was not informed by the respondent of the availability of judicial review as a mechanism to challenge their decision. The applicant maintained that it was only in response to her letter dated 5th November 2018, that she was informed by the Board on 18th December 2018 that she could make a judicial review application if she was dissatisfied with their decision. It was on that date that she was furnished with a two page document concerning the availability of the remedy of judicial review.

52. That assertion was contradicted in the replying affidavit sworn by Mr. Pierce Dillon, senior executive officer of An Bord Pleanala, sworn on 4th February 2020. Mr. Dillon averred that where decisions had been made by the Board, the parties concerned would receive notification of the making of the decision, which would include the standard document in

relation to the availability of the remedy of judicial review. He stated that in this case the pro forma document about judicial review issued to the applicant on 15th February 2018, when she was notified of the Board's decision made on the previous day. While it was not possible to definitively prove that she had received such notification, he stated that it was standard practice to include that document with notice of the decision, which was communicated by the Board to the parties in all cases. In addition, he stated that there was information on the respondent's website concerning the availability of the remedy of judicial review.

53. On the second aspect, the court is satisfied that the applicant cannot rely on her ignorance of the law and in particular her ignorance of the availability of the remedy of judicial review or the time limits applicable thereto, as a means to seek an extension of time within which to bring judicial review proceedings. It is well settled that ignorance of the law is not a valid excuse. If it were the case that affected parties could plead that they were unaware of the existence of the remedy of judicial review as a means of challenging a decision and could thereby get over the strict statutory time limit and obtain an extension of time until some date when they did become aware of the existence of such remedy, that would render the time limit imposed by statute almost meaningless. It would also put a premium on ignorance on the part of applicants. I should emphasise that by using the word "ignorance", I simply use that word to mean lack of knowledge, rather than to contain any pejorative overtones in relation to the applicant.

54. Furthermore, I am not satisfied that there is a duty, either under statute or at law, on the respondent to inform affected parties that they have the right to bring judicial review against its decisions. The fact that they may give such information on a voluntary basis when issuing their decision, does not mean that they are obliged to do so. However, even if I am wrong in that, I am satisfied having regard to the averments made by Mr. Dillon, that on the balance of probabilities, the applicant was informed of the availability of this remedy when notified of the decision of the respondent made on 14th February 2018. In addition, I am satisfied that the requisite information was available to her on the respondent's website.

55. Taking all of these matters into account, I am not satisfied that the applicant has established that there is good and sufficient reason to extend the time for the bringing of the judicial review proceedings in this case. Accordingly, I refuse to grant an extension of time to the applicant within which to institute judicial review proceedings in respect of the decision of the respondent made on 14th February 2018. I refuse her leave to seek relief by way of judicial review against that decision.

56. Having regard to the findings made by the court on that aspect, it is not necessary to consider whether the applicant has established substantial grounds for contending that the decision concerned was invalid or ought to be quashed, of which the court would have to be satisfied pursuant to the provisions of s. 50A (3) (a) of the 2000 Act.

57. The fact that the court has refused the reliefs sought by the applicant on this application, does not mean that she will be without a remedy in the long run. The fact that she may

not be able to challenge the refusal of planning permission by Wexford County Council and the decision on appeal of the respondent made on 14th February 2018, does not mean that she cannot now submit a fresh application to Wexford County Council seeking planning permission for a dwelling on the land. Indeed, her position may be considerably stronger now than it was at the time when she lodged her initial application. This is due to the fact that the letters which she has exhibited from her father and from Mr. Noonan, both post-dated the decisions made by Wexford County Council and the respondent. While the letter from Prof. Azan was issued some days prior to the inspector's report and just under a month in advance of the respondent's decision refusing permission, it is not at all clear whether that document was in fact put before the respondent for consideration. It may well be, that as the applicant's son is now almost three years of age, the medical picture will have been clarified to a far greater degree. She should now be in a position to get medical evidence which will establish a clear diagnosis of the health issues that confront him at this time. Armed with that information, the applicant may well be in a much stronger position to persuade the County Council and, if necessary, the respondent on appeal, that she does in fact have a genuine and pressing need for housing in the area. Particularly, as this would enable her parents to be actively involved in the ongoing care of her son.

58. If the applicant does lodge such an application and if is refused by the County Council and by the respondent on appeal, she will then be in a position to bring a judicial review application within the appropriate time based on the European case law to which she referred in the course of the hearing. Thus, while the applicant has been unsuccessful in this application, all is not lost.