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THE HIGH COURT

No. 54 M.C.A. 1983

IN THE MATTER OF THE LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT)
ACTS, 1963-1982

AND IN THE MATTER OF PREMISES AT BEECHDALE, DUNBOYNE IN THE
COUNTY OF MEATH

BETWEEN/

JOHN MARRY AND KATHLEEN O'DONOHUE

Applicants

-and-

JOHN CONNAUGHTON AND JOHN CONNAUGHTON
LIMITED

Respondents

Judgment delivered by O'Hanlon J., the 25th day of January, 1984

The first-named Applicant is and was at all material times
the owner of No. 37 Beechdale, Dunboyne, in the County of Meath,
and the second-named Applicant is and was at all material times
a joint tenant of the adjoining property, No. 38 Beechdale.

These proceedings were brought by the Applicants against the
Respondents under the provisions of Section 27 of the Local
Government (Planning and Development) Act, 1976, because the
Applicants were concerned about the manner in which the second-

named Respondent (of which the first-named Respondent is and was at all material times a Director) was carrying out building development works on other sites on the Beechdale Estate, some of which were in very close proximity to the premises owned and occupied by the Applicants.

The principal complaint related to the premises known as Nos. 45 to 50 Beechdale, a block of houses which back onto the rear gardens of the Applicants' premises, and was based on the allegation that Nos. 45 to 50 (inclusive) had been built with substantially smaller rear gardens than was shown on the plans on which planning permission had been obtained for the development, and that in consequence the buildings had been brought closer to the Applicants' premises than was permissible.

Further complaints were made concerning the houses on Sites 41 and 42, which were said to have been built in accordance with design plans in respect of which planning permission had been refused by the planning authority, and at a later stage of the proceedings further complaints were made concerning the activities of the Respondents in relation to Sites 90 to 129 which are also the property of the second-named Respondent and

which are located at a distance of some hundreds of yards from the Applicants' premises. These additional claims are referred to in an amended form of the original Notice of Motion, dated the 25th July, 1983, which I am prepared to accept as the Notice of Motion for the purposes of the present proceedings.

When the matter came before the Court in July, 1983, and again in October of that year, it was conceded on behalf of the Respondents that there had been certain failures on their part to comply with the requirements of the Planning Laws, and, as frequently happens in this kind of case, they applied for and were granted an adjournment of the proceedings to give them an opportunity of remedying this situation.

Applications were made to the planning authority, Meath County Council, for permission to retain unauthorised structures on sites Nos. 41 and 42; 45 to 50 (inclusive); 90 to 97 (inclusive) and 106 to 129 (inclusive), and these applications (save in respect of Nos. 41 and 42) were ultimately dealt with on appeal by An Bord Pleanála. The Board, by Order dated 22nd December, 1983, granted retention permission in respect of the houses on sites 45 to 50 (inclusive) and by Order dated 23rd

December, 1983, granted retention permission in respect of the houses on sites Nos. 106 to 129 (inclusive) - in each case, subject to conditions as laid down by the Board. Permission was refused in respect of sites 90 to 97 (inclusive) as no dwellings had in fact been erected on these sites, and the application for retention permission must have been made through inadvertence. Retention permission had been obtained from the planning authority (Meath County Council) to retain the houses built on sites 41 and 42.

By this means, the developers would seem to have mended their hand successfully, save for a further objection which was raised on behalf of the Applicants. They contended that the plans submitted to An Bord Pleanála in respect of the houses on sites 45 to 50 (inclusive) and in respect of which retention permission was granted, were inaccurate in their representation of the exact location of the sites of the houses in question and that therefore the retention permission must be regarded as having no efficacy in relation to the houses which have actually been built on the sites.

The Respondents appear to concede that there is a

discrepancy, but they say that it is slight. They further claim that the actual houses and their location were examined in situ by an Inspector of An Bord Pleanala, prior to the Board reaching its decision, and that the Board also had the benefit of a very forceful submission by the Respondents' Architect, accompanied by overlay plans, to bring to their attention issues raised about the location of the houses on the building sites.

Having considered all this evidence and the documents and plans which have been exhibited in the Affidavits, I have come to the conclusion that the present location of the houses on sites Nos. 45 to 50 (inclusive) is substantially in accordance with that shown on the plans which were considered by An Bord Pleanala, and that the retention permission granted by the Board was intended to relate to the houses as they have been erected and is effective to remove the taint of illegality from the development as it has actually been carried out.

It appears to me that a valid and effective retention permission has also been obtained in respect of the houses on sites 41 and 42, and on sites 106 to 129 (inclusive) subject to the conditions which have been imposed, and which the

Respondents have undertaken to comply with. A failure on their part to comply with any of the conditions imposed could give rise to further proceedings under the Planning Acts, but at the present time it appears to me that they have done what is necessary to remedy their previous default, and accordingly I propose to dismiss the application of the Applicants, while awarding them their costs of the proceedings as they were justified in bringing them to enforce compliance by the Respondents with the requirements of the Planning Acts.

R. J. O'Hanlon

25/11/84.