THE HIGH COURT

H/JR/2024/919
[2024] IEHC 480

BETWEEN

ANGELA HEAVEY

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

Ex Tempore Judgment of Mr Justice David Holland, delivered electronically on 2 August 2024.

Contents

Introduction

1. This is an application for leave to seek judicial review of a decision by the Respondent ("the Board") made on 28 May 2024 to confirm a Compulsory Purchase Order ("CPO") of lands and premises owned by the Applicant ("Ms Heavey") at 17 and 17a North St, Swords, County Dublin.

2. I had intended to give an ex tempore judgment on 31 July 2024 but, as explained to Ms Heavey on that date, an urgent injunction matter in another case intervened such that I was unable

to give judgment in this matter. In those circumstances, I informed Ms Heavey in open court on 31 July 2024,

- of my decision to refuse her leave to seek judicial review.
- that I would give my reasons later and convey them to her electronically at an e-mail address provided by her.

I now give my reasons accordingly.

3. As is usual in the Planning and Environment list, the papers came to hand electronically - but in an unsearchable, unpaginated, un-tabbed and unindexed 250-odd pages, non-compliant with the applicable Practice Direction. They were difficult to reliably negotiate. Ms Heavey had also lodged hard copies in the office. They did not come to hand to me before the trial as, in the ordinary way in this list, the electronic copies suffice. At hearing, I sent for the hard copies and I rely on them in delivering this judgment. However, they are likewise unpaginated, un-tabbed and unindexed and difficult to reliably negotiate – albeit less so than the electronic version. They contain repeated copies of particular pages[1] and it also became apparent at hearing that there was at least one difference between the hard copy set from which Ms Heavey was working and that before me. As will be seen, it may be that an exhibit was missing from both the hard and electronic copies. For this reason, I have identified the hard copy papers on which I rely by signing and dating them and I will retain them pro tem. Despite some vague suggestion to the contrary by Ms Heavey on a factual basis not apparent to me, I have no reason to consider that the papers conveyed to me by the office were other, in any way, than those lodged there by Ms Heavey. It is the responsibility of applicants for judicial review to take care to avoid discrepancies between sets of documents and, ceteris paribus, any resulting disadvantage to Ms Heavey must lie where it falls.

4. All that said, I have attempted in the interests of justice and as best I can reliably to understand the documents before me and the submissions made orally to me by Ms Heavey.

5. I should add that at hearing, Ms Heavey also submitted to me hard copies of certain unexhibited computer visualisations and maps. I have had regard to them on the basis that, were leave granted, it would have been a simple matter to direct their exhibition.

Litigants in Person

6. Ms Heavey represents herself in these proceedings. I do not know whether her self-representation is voluntary or involuntary. However, she self-describes as, inter alia, an academic lawyer, a barrister of the Kings Inns and an associate of the Chartered Institute of Arbitrators. So, while the designations “lay litigant” and “litigant in person” are in most circumstances synonyms, in

[1] For example, 3 copies of the signed exhibitions sheet for exhibit 10 and there is no Exhibit 6.

the case of Ms Heavey they are not. She is a litigant in person but it does not seem correct to describe her, on her own account, as a lay litigant. So, in considering what may reasonably be expected of her in the formulation, pleading and presentation of her application, I have taken the principles as they relate to lay litigants as my general starting point. But, in some degree and consistent with fairness to her, I have taken her self-description as a barrister into account in applying those principles to her.

7. As to lay litigants, the first principle appears to me to that, while it may often be wise of a litigant (perhaps especially so in the case of a lawyer-litigant) to obtain professional representation if they can, and with exceptions irrelevant here, any person is entitled to litigate in person in the exercise of the constitutional right to access to justice and the courts.

8. However, the fact that the law and litigation are often complex and often difficult for non-lawyers to negotiate is recognised in many decisions of the Superior Courts to some of which I now refer, briefly summarising principles flowing from them.

- **Hall v Stepstone Mortgage Funding Ltd [2016] IEHC 110**
- **FG v Child and Family Agency [2016] IEHC 156**
- **Talbot v Hermitage Golf Club [2014] IESC 57**
    - The court will usually go to considerable lengths to assist lay litigants and will allow considerable latitude to them in stating their case.
    - Papers drafted by lay litigants should be held to "*less stringent standards than formal pleadings drafted by lawyers*".
    - "*[w]here a lay litigant is involved, pleadings may be confused. Traditionally, in every court, judges have done all that they can constitutionally do to assist*".
    - The court must be open to whatever approach to the pleadings serves the interests of justice, including giving what could be extensive liberty for a re-phrasing of a lay litigant's pleadings so that the real matters in dispute and the legal issues arising therefrom are identified.

    - However, I observe that even these allowances have limits – circumscribed by considerations of practicality, devotion of scarce court resources to work properly that of the litigant and, perhaps most of all, the imperative that the judge may not enter the lists as a partisan.

- **Donlon v Burns [2022] IECA 159**
    - The primary and overriding principle is fairness to both sides.
    - It is not unfair to hold a self-represented litigant to his choice to represent himself. A litigant who undertakes to do so in matters of complexity must assume the responsibility of being ready to proceed. If he embarks on the hearing of his case, he is representing to the Court that he understands the subject matter sufficiently to be able to proceed.

- While the Court will take into account the litigant's lack of experience and training, implicit in the decision to represent himself is the willingness to accept the consequences that may flow from that lack.
- It is the Court's duty to minimise the self-represented litigant's disadvantage as far as possible, so as to fulfil its task to do justice between the parties. However, the Court should not thereby confer upon a personal litigant a positive advantage.
  - I add: the Court should not confer upon a positive advantage either absolute or relative to other interested parties.
- These principles also apply to the involuntarily self-representing party.

- I observe that these principles are in essence the same but take particular form in ex parte applications for leave to seek judicial review. Administrative and quasi-judicial decisions should not be impugned in case of failure to surmount the threshold for granting leave to seek judicial review.

- **Munnelly v Hassett [2023] IESC 29**
  - The court will try to assist lay litigants, but essentially the same rules apply as to represented litigants.
  - Any litigant, represented or unrepresented, must obey the same fundamental rules, and a self-representing litigant must adhere to the same principles as are applicable to proceedings in which the parties are represented by lawyers.
  - The Court is entitled to seek precision and clarity from all parties, as that is essential if the Court is to be in a position to best perform its function and administer justice between them.

  - In my view, the court's expectation of precision and clarity is of particular significance in this case not least as it bears on the documents proffered by Ms Heavey to ground her application and at least somewhat the more so as she is a barrister.

<u>The Nature of Judicial Review & Pleadings in Judicial Review</u>

9. Again, I refer below to some decisions of the Superior Courts, briefly summarising principles flowing from them.

- **Jones v South Dublin County Council [2024] IEHC 301**
- **Concerned Residents of Treascon and Clondoolusk v An Bord Pleanála [2024] IESC 28**

  - Judicial review is not an appeal on the merits – it rectifies only identified legal error in the impugned decision.
  - The pleadings must identify that legal error.
  - The rules of pleading in judicial review are clear and unambiguous. They are well-established, clear and mandatory. They are "*stringent*", allowing "*little room for manoeuvre*".

- Both the importance of the manner in which a claim is pleaded, and the strictness with which that requirement will be enforced, have been consistently stated and restated.
- The Rules of the Superior Courts are emphatic in stipulating that "*no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement"* (O. 84 R. 23(1) RSC).
- A court decides only grounds of challenge properly pleaded.
- Applicants are confined to their pleadings.

- In pleading in judicial review, "*It shall not be sufficient for an applicant to give as any of his grounds … an assertion in general terms … the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground*": O. 84 r. 20(3) RSC;
- "*if on the Grounds pleaded there is genuine 'doubt, ambiguity or confusion' an Applicant in Judicial Review cannot have the benefit of it*",
- While exact specification of every jot and tittle of a case is an impossible standard, an applicant can only be permitted to advance at a hearing a point that is acceptably clear from the express terms of the statement of grounds, subject to the grant of any order allowing an amendment.

- **Environmental Trust Ireland v An Bord Pleanála [2022] IEHC 540**

  - The pleadings rules in judicial review are strict – for example, see **Martin**,[2] **St Audoen's**,[3] **People Over Wind**,[4] **AP**,[5] **Clifford**[6] and **Rushe**.[7] Pleadings are "*absolutely vital*"[8] in judicial review and it is "*essential*"[9] that an applicant for judicial review sets out "*clearly and precisely each and every*"[10] relief sought and the ground upon it is sought. There is an "*absolute necessity for a precise defining of the grounds*"[11] – and it is clear that these are to be set out in the Grounds themselves and not in such as a replying affidavit.[12]

  - "*The statement of grounds is a crucial document in judicial review proceedings. It defines the scope of the claim made and fixes the parameters of the review to be carried out by the court of the legality of the decision under challenge*." – citing **Perrigo**.[13]

  - Baker J in **Casey**[14] had held that:

[2] Martin v An Bord Pleanála [2022] IEHC 256 (High Court (Judicial Review), Ferriter J, 27 April 2022) §19.
[3] The Board of Management of St. Audoen's National School v An Bord Pleanála [2021] IEHC 453.
[4] People Over Wind v An Bord Pleanála (No. 1) [2015] IEHC 271.
[5] AP v Director of Public Prosecutions [2011] 1 I.R. 729.
[6] Clifford & Sweetman v An Bord Pleanála & Ors [2021] IEHC 459 §59.
[7] Rushe & Anor v An Bord Pleanála [2020] IEHC 122.
[8] Clifford & Sweetman v An Bord Pleanála & Ors [2021] IEHC 459 §59.
[9] AP v Director of Public Prosecutions [2011] 1 I.R. 729 – Murray CJ §5.
[10] AP v Director of Public Prosecutions [2011] 1 I.R. 729 – Murray CJ §5.
[11] AP v Director of Public Prosecutions [2011] 1 I.R. 729 – Hardiman J §43.
[12] AP v Director of Public Prosecutions [2011] 1 I.R. 729 – Hardiman J §43.
[13] Perrigo Pharma International DAC v McNamara [2020] IEHC 552.
[14] Casey v Minister for Housing [2021] IESC 42.

- The pleadings in judicial review set the parameters and fix the issues in dispute between the parties and those to be determined by the court. They define the issues and confine the evidence of the trial to the matters relevant to those issues.
- The pleadings also define and limit the jurisdiction of a court - they set the parameters for the jurisdiction of a court, more precisely, the jurisdiction to decide the issues so identified.
- The definition of issues by pleadings and limiting the evidence only to those issues "*is particularly important in judicial review, which is a powerful weapon of review of administrative action"*.
- Having regard to the requirement to obtain leave to bring judicial review on the grounds pleaded, the requirement for clarity and specificity in pleadings and the extent to which the statement of grounds defines and confines the issues to be determined at trial could be regarded as stricter than in other types of proceeding.

o In **Rushe**,[15] Barniville J reviewed the caselaw and made clear that: "*the order giving leave to seek the various reliefs on the grounds set out in the statement of grounds is what determines the jurisdiction of the court to conduct the review.*"

o Of course, a case coming within a "*fair and reasonable reading*" of the pleadings should not be excluded - **St Audoen's**.[16]

- **Concerned Residents of Treascon and Clondoolusk v An Bord Pleanála [2024] IESC 28**

10. I return to this case as it states an important principle which, I consider, Ms Heavey has failed to grasp inasmuch as she declined to bring me to pleas in her statement of grounds to support allegations made orally – notably, that the Council official who signed the CPO lacked authority to do so. She appeared to envisage pleading and giving particulars allegations on which she seeks to rely after leave has been granted. She also appeared, mistakenly, to regard leave as opening a prospect of wide-ranging and general inquiry into the legality of the Impugned Decision. The Supreme Court in this case says:

> "*The purpose of proceedings by way of judicial review is thus to enable a party who has identified a legal error in a decision of, or process undertaken by, a public body to challenge the legality of that decision on the basis thus identified. The grant of leave is the extension of a permission to pursue that ground of challenge, not the opening of an investigation into whether the decision or process is unlawful on any grounds that might subsequently present themselves in the course of the ultimate hearing of the matter.*"[17]

[15] Rushe & Anor v An Bord Pleanála [2020] IEHC 122 §108.
[16] The Board of Management of St. Audoen's National School v An Bord Pleanála [2021] IEHC 453.
[17] Emphases added.

Leave To Seek Judicial Review – Criteria

11. The Board, in confirming the CPO, acted pursuant to powers transferred to it by Part XIV PDA 2000.[18] S.50(2) PDA 2000 provides that a person shall not question the validity of any decision made or other act done by the Board in the performance or purported performance of a function transferred to it under *Part XIV* PDA 2000 otherwise than by way of an application for judicial review. S.50(A)(3) PDA 2000 provides that the Court,

> "*shall not grant section 50 leave unless it is satisfied that—*
> - *(a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed,*
> - *(b) (i) the applicant has a sufficient interest in the matter which is the subject of the application*".

12. I am satisfied that, as owner of the lands subject to the impugned decision, Ms Heavey has a sufficient interest in the matter to support a grant of leave to seek judicial review. As the papers were filed and a record number was assigned on 16 July 2024, I am also satisfied that the application for leave was made within the 8-week time limit imposed by s.50(7) PDA 2000 as calculated in accordance with O. 84 r. 21(1A) RSC.[19]

13. Inter alia, **McNamara v An Bord Pleanála [1995] 2 ILRM 125** and **Morris v An Bord Pleanála [2020] IEHC 276** establish that the statutory imperative that the court "*shall not grant leave*" unless satisfied of "*substantial grounds*" imposes a more demanding threshold criterion for the grant of leave to seek judicial review than that of "*arguable grounds*" applicable in many other judicial reviews. It means that the grounds must be "*weighty*". Or, as it was more extensively put by Carroll J in **McNamara**, and repeated recently in **Eco Advocacy CLG v An Bord Pleanála [2023] IEHC 19**, if a ground is to be substantial "*it must be a reasonable, it must be arguable, it must be weighty. It must not be trivial or tenuous*."

14. It is important to add that an applicant for leave to seek judicial review bears the onus of proving, at the point of seeking leave, substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed. Contrary to Ms Heavey's apparent impression, it does not suffice to prove at this point merely that she may be in a position, after leave has been granted, to prove such substantial grounds. To paraphrase, specifically as to the proofs required in an application for leave to seek judicial review, Clarke CJ in **Fitzpatrick v An Bord Pleanála [2018] IESC 60**: the application for leave is not a dress rehearsal.

15. By way of example of the relevance of this principle in this case, I instance Ms Heavey's mere assertions:

[18] Planning and Development Act 2000, as amended.
[19] Inserted by the Rules of the Superior Courts (Order 84) 2024, S.I. No. 163 of 2024.

- that the oral hearing and inspector's report thereon in the present matter were unsatisfactory.
- that she doubts the authority of the Council official who signed the CPO.

The Time Afforded the Application

16. Ex Parte Leave applications in even complex matters are typically relatively brief. In the present case, I heard Ms Heavey for two discrete periods of about 30 minutes and then advised her that after the lunch adjournment I would hear her for a further 45 minutes. Despite her stated expectation of a further 3 hours hearing, and objection of unfairness in my assigning a further 45 minutes, I consider that the court resources allocated to her application were adequate to the proper presentation of her case and to the interests of justice. In the event, she was afforded 1 hour and 25 minutes after the lunch adjournment. I should add that on occasion I encouraged her, I have to say to little avail, to best use her time by minimising repetition. In addition, I read the papers in part before (the electronic version) and also after the hearing. I am satisfied that the requirements of fair procedures were satisfied and the interests of justice were properly served as to the assignment of judicial resources to hearing Ms Heavey's application and I reject her complaint of unfairness in that regard.

The Impugned Decision, the CPO and the Property

17. In any judicial review, it is vital to identify precisely the impugned decision which it is sought to quash. The only intended respondent in these proceedings is An Bord Pleanála. Ms Heavey's Ex Parte Docket seeking leave to seek judicial review, identifies the Impugned Decision as "*the Affirmation of compulsory purchase order of FCC – as so affirmed by An Bord Pleanála on 28 May 2024"*. Relief in judicial review - more specifically certiorari – of no other administrative decision is sought in these proceedings.

18. Though the Statement of Grounds was not simply precise on the issue – as it should be – it is nonetheless also reasonably apparent from those Grounds that the decision impugned in these proceedings is that of An Bord Pleanála made on 28 May 2024[20] to confirm, following an oral hearing, the Fingal County Council Compulsory Purchase (17 & 17A North Street, Swords, Co. Dublin) Order 2022 ("The CPO"[21]).

19. The CPO is in the usual form made under the procedures provided by the Housing Act 1966 as applied and extended by various other Acts listed in the title to the CPO, including Part XIV PDA 2000. The CPO is expressed as made for purposes including -

[20] Exhibit B.
[21] Exhibit A.

a. protecting, conserving and enhancing the historic site and views of Swords Castle, a national monument, and its environs.
b. the development of Swords Castle as a major amenity, tourist attraction and cultural hub for Swords.
c. the development of Swords Castle as a central feature of an enhanced and improved public realm and urban space of Swords Town Centre, improving connectivity and accessibility between and around Swords Castle, Swords Town Centre and Swords Town Park.
d. the development of the Swords Cultural Centre, including a new County Library, Theatre, Arts Centre, civic spaces, and public realm improvements as the key development within the Swords Cultural Quarter.

20. By its terms, the CPO encompasses the lands "*shown on a map marked "Fingal County Council Compulsory Purchase (17 & 17A North Street, Swords, Co. Dublin) Order 2022" (Drawing No. LA-265-22) and sealed with the seal of the local authority and deposited at the offices of the local authority (hereinafter referred to as "the deposited map")*". The CPO as exhibited does not include the attached map. However, Ms Heavey handed in to me what is clearly a copy of the attached map[22] ("the CPO Map") – though I am unsure whether she realised in handing it in that that is what it is. In any event, it clearly depicts what she identified by reference to other maps as her property at 17 & 17a North Street, Swords. Broadly, that property is depicted on the CPO map and other maps as consisting of:

- A main building fronting onto North St.
- A vehicular entrance, to the south of the main building, leading from it to a rear yard.
- A substantial outbuilding in the south-western corner of the rear yard.
- A western boundary wall which is, as a matter of physical layout, shared with the boundary of Swords Castle. Ms Heavey says she has full title to that wall and that it is not in law a party wall – but I do not consider that anything turns for present purposes on that or that I need determine that issue of title.

21. Ms Heavey asserts that the CPO does not encompass her outbuilding. I am satisfied from the markings on the CPO map which she submitted that she is wrong in that regard but, again, I do not consider that, for present purposes, I need to decide or take any firm view that issue.

22. Ms Heavey describes the lands as her home and her office and as having been in her family for up to 100 years. Her mother ran a business from it in times long past. It was apparent in the hearing before me, and I have no reason to doubt, that she is very emotionally attached to the property.

[22] Deposit Map LA-265-22, sealed by Fingal County Council on 3 November 2022.

Ms Heavey's Allegations

Various

23. Ms Heavey spent much of her oral presentation setting what she considered to be the relevant historical context for her challenge to the Impugned Decision. She relied on what she considered to be evidence of long-standing and varied malfeasance (my word, not hers, but it accurately encompasses her allegations) against her by Fingal County Council and specific named officials thereof. She alleged dishonesty and oppression of various kinds. Primarily, these allegations consisted of:

- In 2016, the levying of rates in the sum of €12,463.20 despite what she alleges was the Council's prior agreement not to levy them. She says that her solicitor paid these rates in error in the context of a dispute between her and a bank and/or a receiver appointed by it. I confess that I have found it difficult to discern precisely the basis of complaint against the Council and I have seen no supportive documentary evidence. Ms Heavey, mistakenly in my view, appears to consider the record of the payment of these rates ipso facto evidence of wrongdoing by the Council.

- The levying of rates excessive given her comparison of the rateable valuation of her property with that of what she considered a better and more valuable property occupied by a local estate agent. He complaint was that the rateable valuation of her property was excessive. She discounted the fact, which I regard as significant, that the Council merely applies the rate, as struck by it for general application to rateable properties in its functional area, to the rateable valuation set by the Valuation Office independently of the Council.

- More generally, she stresses her status as a ratepayer and complains of levying of rates while she was cocooning elsewhere during the pandemic. But I cannot see to what legal significance she makes those complaints.

- In 2019, damage allegedly done by the Council to her outbuildings, causing the roof to collapse, when she had permitted the Council access to her property to remove a (presumably) dangerous chimney pot from her western boundary wall.

- In 2022, the Council's resiling from an agreement in 2019, in the context of the removal of the chimney pot, to grant her a car parking permit for North Street. This complaint she placed also in the context that, she alleged, the Council had, decades earlier and by painting double yellow lines near the kerb, wrongfully and predatorily deprived her mother of five on-street car parking spaces of benefit to the property. Later, and again wrongfully as far as Ms Heavey is concerned, the Council erased the yellow lines and substituted parking spaces from which the Council has since derived revenue. All this, Ms Heavey says, is in unlawful derogation of her presumed ownership of the public road abutting her premises to the mid-line of the road. I respectfully observe that this complaint is revelatory of the applicability of the observation, as applied to law, that a little knowledge is a dangerous thing.

- Ms Leavey also exhibits certain documents relating to an appeal of a conviction from the District to the Circuit Court in 2023 which, she says but the documents do not disclose, relates to her successful appeal of her conviction for parking offences at the prosecution of the Council.

24. I do not read the papers exhibited in support of these allegations of malfeasance against the Council as in any way supportive, beyond mere assertion, of those allegations. Nor do I see them as evidence of any general and wrongful animus by the Council towards her. And the particulars thereof fall, in my view, far short both of the particulars required of such allegations in judicial review and of any legal basis upon which a challenge could be maintained here to the decision of a different statutory body – An Bord Pleanála – made many years after many of the events in question.

2003/2004 CPO Decision

25. Ms Heavey also alleged that in 2004, An Bord Pleanála had, in reliance on an Inspector's report which she extolled but did not exhibit, refused to confirm a 2003 CPO by the Council of the same property. Nor did she exhibit the Board's decision of 2004. She considered herself unique, which I confess to doubting, in having been, as to the same property, the recipient of two CPOs. Her essential points seemed to be that

- the Board was bound in the Impugned Decision by the precedent of its 2004 decision.
- the second CPO was oppressive.
- the second CPO was of a piece with – perhaps the underlying purpose of - the alleged animus and oppressive conduct described above.

In effect, though she did not put it quite that way, Ms Heavey argued but did not cite authority for the proposition that the Board's 2004 decision immunised her property – indefinitely "*protected it*" from further CPO 18 years later. In her correspondence with the Council,[23] she described the 2004 decision as "*res judicata*". While Simons on Planning Law[24] confirms that that doctrine can apply to administrative decisions, the text also emphasises the weakness of its application in practice given, not least, the potential for changed circumstances as between such decisions.

26. However, in the absence of an exhibited copy of the Board's 2004 decision refusing to confirm a CPO and the Inspector's report which allegedly informed it, and indeed a copy of the Inspector's Report in the Impugned Decision which would shed appreciable light on the context of the Impugned Decision, it is impossible to see that Ms Heavey has discharged her onus of satisfying me that there is any substantial ground for the assertion that a decision by the Board to confirm a

[23] See generally Exhibit 8.
[24] Browne, 3rd edition 2021, §4.44.

CPO approximately 20 years after its refusal to confirm a CPO as to the same land, is legally unsound. To this proposition there is a caveat to which I will come - but which does not assist her.

27. Though Ms Heavey's objection to the recent CPO does not cite the 2004 decision or object that the present CPO is oppressive in that light, she exhibits with that objection a statement dated 14 December 2022 by an estate agent,[25] which I presume, in her favour, was before the Board when it made its Impugned Decision. It records his presence at the oral hearing in 2004 and asserts that the inspector in that matter "*ruled*" in favour of Ms Heavey to the effect that the CPO was not necessary to the development of the towards castle walls and grounds. Of course, this must be incorrect as an Inspector has no power to rule anything and an experienced estate agent should be well aware of that. Nonetheless, I read the document as asserting that the Board in refusing to confirm the CPO accepted the Inspector's recommendation to that effect.

28. In any event, it is clear that, in the process with which we are concerned, Ms Heavey relied before the Board on the alleged precedential effect of its 2004 Decision. That is clear because she has exhibited[26] submissions dated 2 April 2024 of senior counsel for the Council to the Oral Hearing, which submissions cite her reliance on the 2004 decision and the doctrines of estoppel and res judicata. Those submissions recite both the 2004 decision and part of the Inspector's report which informed it – that recitation is the caveat to which I earlier referred, inasmuch as it reveals part of the content of the Inspector's report of 2004. Notably, however, counsel for the Council, in those submissions of 2 April 2024, contrasts what he submits is the limited express purpose of the 2003/2004 CPO with the broader purposes express in the 2022 CPO and what he submits are relevant changes in the applicable County Development Plan since the earlier 2004 decision. I note also that the papers disclose[27] the inception of the Swords Quarter Cultural Quarter Project in 2014, a Masterplan prepared in 2015[28] and receipt, inter alia, of EU Regional Development funding for the project – though I allow that the 2004 CPO may have been grounded in something of a predecessor to that project. Counsel's submissions conclude,

> *"For all these reasons, and because of the very significant differences in the main issues and facts between the 2003 CPO and the 2022 CPO, Ms Heavey's reliance on res judicata or issue estoppel is misconceived*."

29. For the avoidance of doubt, I should note that while Ms Heavey's affidavit refers to an Exhibit 13 – of her engineer's "last Appeal". That appears to be a reference to the 2003 CPO as she refers to the "last CPO" having been annulled by the Board, which the 2003 CPO was in 2004. It may possibly be a reference to her engineer's 2005 planning appeal to the Board though that may be ess likely as those appeal documents are already exhibited in Exhibit 7. In any event there is no Exhibit 13 in the hard copy documents to hand. That being so I checked the electronic copy – it was not

[25] Exhibit 9.
[26] Exhibit 10.
[27] Exhibit 11.
[28] Letter 1 April 2022 from the Council to Ms Heavey – see Exhibit 8.

there either, so the omission does not arise from any misplacing of the exhibit in the possession of the Court. Ms Heavey did not open the document in oral submissions – had she done so its absence would have become apparent to all. It would also have been apparent had she, as practice requires and as was her responsibility, provided a properly paginated, indexed and tabbed book of exhibits. I bear in mind the ample authority that exhibition of a document is no substitute for the obligation of setting out in the narrative of the affidavit the facts to which it relates insofar as relevant to any relief sought: **Murphy v Greene**.[29] Accordingly, I have considered the narrative content of Ms Heavey's affidavit as it relates to the content of what she describes as Exhibit 13. I have done so with a view to considering whether the interests of justice required that I revert to Ms Heavey in this regard before deciding her application. In light of that narrative content, I consider that the interests of justice do not so require.

30. Bearing in mind the presumption of validity of administrative decisions and the resultant onus of proof on Ms Heavey in seeking leave, on the limited evidence before me it is impossible to conclude other than that the Board:

- was aware in the impugned process of Ms Heavey's reliance on the allegedly precedential effect of the 2004 decision.
- accepted the Council's submissions on that issue as summarised above – not least that the Board's decision made (by that time) 20 years earlier was made in materially different circumstances to those pertaining at the time of the Impugned Decision.
- was in law entitled to do so.

I cannot conclude that in this respect, Ms Heavey has shown a substantial ground for contending that the decision or act concerned is invalid or ought to be quashed,

2005 Planning Decision

31. Ms Heavey also relies on the fact that in 2005, she says at the Council's instigation, she applied to the Council for outline planning permission for a 5-storey commercial development – a "*Feature Landmark Building*" - on the site.[30] She is deeply critical of the undoubtedly negative attitude to the application of the Council's named then Parks Superintendent, Senior Architect, Senior Executive Planner and Senior Executive Officer – Planning, and is accordingly and equally critical of the Council's refusal of that application. In substance she says she was led by the Council up the garden path, as it were, to a refusal of planning permission blighting her site.

32. However, by a professional agent – an engineer - she appealed that refusal to the Board. The engineer's appeal document is dated 18 May 2005 and enclosed what I am satisfied was her

[29] Murphy v Greene [1990] 2 I.R. 566, Finlay CJ: "with regard to any matter which in the absence of special procedures involves the submitting of affidavit evidence to the court for the purpose of it exercising a jurisdiction, the facts relied upon must be actually and clearly deposed to in an affidavit and not by reference to any other written document."
[30] See generally Exhibit 7.

personal statement dated 16 May 2005. I should say that Ms Heavey's Exhibit 7 in this regard was characterised by confusion and repetition of pages and she seemed to have a somewhat different copy to mine. Her engineer's appeal to the Board is a properly robust and professional critique of the Council's refusal of outline permission but, as best I can tell, is incompletely exhibited – likely as pages 1, 2 and 4 and missing page 3. Even then, page 4 is found 7 pages ahead of page 1. But I am satisfied on the basis of the documents which she has exhibited that her characterisation as a complaint made by her engineer of the complaint of an "*orchestrated*" refusal of outline permission by the Council based on "*sour grapes*" at the failure of the 2004 CPO is incorrect. That was her personal complaint made in her personal statement – not her engineer's.

33. Significantly, before the Board and by decision dated 29 November 2005, Ms Heavey's appeal failed and outline permission was refused for reasons essentially of overdevelopment of the site, injury to visual amenity, interference with views of a national monument (i.e. Swords Castle) and non-provision of parking.

34. Ms Heavey alleges her planning application was "*unjustly refused*" by the Council and by the Board. But the Board's refusal is valid unless quashed and is long since immune from challenge in judicial review. In any event, I do not read the papers exhibited in support of these allegations of malfeasance against the Council as supportive of those allegations and the particulars thereof fall, in my view, far short both of the particulars required of such allegations in judicial review and of any legal basis upon which a challenge could be maintained to the decision, almost 19 years, later of a different statutory body – An Bord Pleanála.

Conspiracy

35. In her Statement of Grounds, of the Council and the Board, Ms Heavey alleges *"Oppressive and Dishonest collaborative behaviour – as between there 2 State – side VV TOXIC – not at all SELF AWARE -Public Administrative Bodies."* Presumably this is an attempt to get over her not inconsiderable difficulty of burdening the Board with her allegations of wrongdoing by the Council. I have seen no evidence of such wrongful collaboration – or which is the same, of conspiracy - whereby the malfeasance alleged against the Council infects the Impugned Decision of the Board to wrongfully disadvantage Ms Heavey. I reject this allegation.

The Impugned CPO Process

36. Ms Heavey clearly found the oral hearing in the process held on 2 April 2024 and the resultant inspector's report to the Board which resulted in the Impugned Decision, unsatisfactory. But she gives no particulars of any substance in that regard.

37. Ms Heavey describes the Oral Hearing as quick and informal. She exhibits the Board's Agenda which discloses that 3 hours were assigned and cross-examination was provided for. While that is relatively short for an oral hearing, notably, the only property at issue was Ms Heavey's and the Inspector had had the benefit of written submissions. Notably she has exhibited[31] the reasoned submission, dated 21 December 2021 of her expert surveyor to the Board objecting to the CPO. Essentially, it disputes the necessity of the acquisition to the purposes identified in the CPO and as not required by any objectively proven pressing social need. The Board is entitled to limit the duration of an oral hearing and is obliged to hold oral hearings without undue formality – s. 135 PDA 2000. In any event, Ms Heavey does not plead or give particular of or otherwise elaborate any alleged prejudice to her, due to the brevity and informality of the hearing.

38. While she complains that the Inspector did not ask enough questions at the Oral Hearing, she does not elaborate any specific prejudice resulting. Rather she instances it as justifying her view that the issue had already been prejudged. I do not see evidence to that effect beyond assertion The Impugned Decision records regard to, inter alia, the submissions and observations made at the oral hearing and the report and recommendation of the Inspector. Ms Heavey has – she says consciously - chosen not to exhibit the Inspector's report to the Board.

39. She has exhibited the written statements to the oral hearing of the Council's Director of Services[32] and County Architect.[33] Prima facie, the content of these documents is what one would expect. Inter alia, they

- describe the scheme underlying the CPO – the Swords Cultural Quarter Project of which Swords Castle is a very significant element.
- identify Ms Heavey's property as *"the only element of the curtilage of the eastern curtain wall of Swords castle, which is not in the ownership of the council."*
- identify what, in their view, is the negative impact of Ms Heavey's property on the setting of the Castle.
- explain what, in their view, are the benefits to the Swords Cultural Quarter Project of acquisition of Ms Heavey's property.
- Identify the demolition of Ms Heavey's property as envisaged in a Part XI[34] public consultation process and Council resolution of September 2022.

40. It is convenient to mention at this point that Ms Heavey complains in particular of a letter written to her by the County Architect[35] on 1 April 2022 the day before the oral hearing. Inter alia, it refers to a 2015 Masterplan for the Swords Cultural Quarter. It invites discussions. I cannot see it as contributing to any legal challenge to the Impugned Decision.

[31] Exhibit 9.
[32] Exhibit 12.
[33] Exhibit 11. – which contains 3 copies of the statement in question.
[34] Part XI PDA 2000- Development By Local And State Authorities.
[35] It is in Exhibit 8.

41. Ms Heavey's complaint to this court that she had no "*access to the decision-makers*" – in which she includes the allegedly "*incompetent*" deciding Board members - is misconceived in law. The system of oral hearing before an Inspector who reports to the Board, combined with the Board's consideration of the written submissions of an objector to a CPO, amply meets the requirements of fair procedures. Whatever may be any possibility of exceptions to that general proposition, on the evidence before me I see no basis, much less substantial grounds, for an assertion that, in this respect, Ms Heavey was denied fair procedures.

42. In all those circumstances, it is impossible to lend any appreciable weight to her criticisms of the oral hearing or the Inspector's report. On the evidence before me, there is no basis for a conclusion that she was materially disadvantaged in her presentation to the Board of her objection to the CPO.

Ms Heavey's Essential Complaint

43. Having cleared away, as it were, the various matters addressed above, and as best I can discern, Ms Heavey's case is essentially,

- that she and her family are entitled to develop and themselves realise the development potential of their lands to which they have absolute and unassailable title and with which she and her family have been associated for up to 100 years. She asserts her "*prior prerogative and absolute entitlement*" to develop her lands as superior to the interest of the Council in acquiring the lands for its own development purposes and, allegedly, on behalf of the "*favoured developers*" of named council officials. She asserts that she, not the Council, is entitled to decide the manner of development of the lands in the public interest and in synergy with any intended "*Cultural Quarter*".

- she is the victim of a dishonest, corrupt, draconian, arbitrary, oppressive, predatory, kleptocratic, asset-stripping, fraudulent, lawless, disproportionate, perverse, socially-violent, wolf-like and so, wrongful, decision to acquire her lands as part of a fascist, elitist, "*Rachmanist*" and "*mafia-like*" process[36] in which, the Council, inter alia,

    - progressively, over many decades and by way of site assembly (which Ms Heavey appeared to regard as a pejorative term) acquired and let fall into disuse properties in the vicinity, thereby causing dereliction of the area.

    - made the impugned CPO.

[36] The adjectives are all Ms Heavey's.

44. On my inquiry, I discerned that Ms Heavey, in invoking her absolute and unassailable title, does not challenge the constitutionality of the compulsory purchase legislation. Rather she challenged its application in the circumstances of her case.

45. The complaint of Rachmanism is a misnomer - as it is defined by Oxford as the exploitation and intimidation of tenants by unscrupulous landlords (deriving from the alleged activities of such a landlord named Peter Rachman in London in the late '50s and early '60s). As she emphasises, Ms Heavey is not a tenant but a freeholder. However, I do understand that she accuses the Council of unscrupulous, fraudulent, bullying and wrongful exploitation of her interests in pursuit of what she calls the "*deceitful concept of "cultural quarter""* – for which accusations I find no evidential basis. In this context, Ms Heavey names specific Council staff as alleged wrongdoers. I do not propose to do so, though I have considered her allegations – for which, again, I find no evidential basis.

46. Ms Heavey says her case is clearly demonstrated by relevant maps – in particular by a bound booklet of A3 computer visualisations, architectural plans and photographs of the property bound with a cover page and entitled "*Swords Cultural Quarter*". It is one of the unexhibited documents to which I have had regard at her request. On its face, the booklet appears to have been assembled by or for the Council and for the oral hearing of April 2024 in the impugned process – though much of the content is dated as generated earlier. Notably:

- Existing site layout plans show 17 & 17A North St, Swords, Co. Dublin. Ms Heavey's buildings front onto North St and a side entrance from North St leads to the rear yard & outbuildings. Her rear boundary wall abuts the grounds of Swords Castle, a national monument. She says that the boundary wall is hers and not a party wall. I so assume for present purposes.

- Demolitions Site Plans show the intended demolition of all buildings on the subject site - including demolition of the outbuildings.

- A Proposed Site Layout Plan shows the subject site as what Applicant calls "*grass and trees*". Computer visualisations generally confirm this description and the area is to form part of an continuous open space/public park surrounding the boundary walls of Swords Castle for much of their circumference.

47. Ms Heavey says that, whereas in the 2003/2004 CPO process the Council acknowledged her lands to be development lands, in the present process they are, as she would have it, "*reduced*" to grass and trees. I am unclear what exactly her point is here as concerns the validity of the Impugned Decision. It can have been no secret in either process but that Ms Heavey considered her lands to be development lands and that the Council wanted them for use as public open space. Of course the two propositions are not contradictory – the land could be used as either. Compulsory purchase of what might otherwise be development lands for use as public open space is, generally at least, in no way legally controversial. Whether and to what extent the lands will be considered development lands for the purpose of the "*no-scheme world*" in the CPO compensation process which must

inevitably succeed any entry on the lands by the Council on foot of the CPO, is well beyond the scope of this judgment. It is irrelevant to any question of the validity of the Impugned Decision – though it may yet prove controversial in the compensation process. Suffice it to record that CPO compensation, a complex area of law, is broadly based on market value in the "*no-scheme world*" and is designed to fairly compensate the owner for the loss of his or her lands. Such fair compensation is essential to the constitutionality of the compulsory purchase system as it relates to the property rights of the citizen - the validity of which system has been upheld on that account. Whatever it precisely may or may not amount to as a legal proposition, I cannot see Ms Heavey's "*reduction to grass and trees*" complaint as a substantial ground of challenge to the Impugned Decision.

48. However, it is notable that some of the computer visualisations also depict the Cultural Quarter with Ms Heavey's property remaining in situ - splitting the northern open amenity area outside and around the castle walls from the southern and western such areas.[37] In this regard and inter alia, images 2.A, 3.A and 5.A may be readily contrasted with images 2.B, 3.B. and 5.B. As with all such matters of amenity, different reasonable views are possible as to whether this splitting implies sufficient necessity to justify compulsory acquisition of Ms Heavey's property in the cause of the continuity and coherence of the open amenity area outside and around the castle walls. However, that is a judgment on merit for the Board which could be struck down, as to merit, only for irrationality. These images make it perfectly clear that it is quite impossible to characterise the Board's decision in this regard – as to the merit of its deeming the acquisition necessary and proportional to its purpose in the common good - as irrational. That is so if even one could regard (which one cannot) Ms Heavey's statement of grounds as pleading irrationality as opposed to mere disagreement with the merits of the Impugned Decision.

49. I may also say that while Ms Heavey characterises her experts' respective submissions in the various CPO and planning processes (Including the impugned decision) as "*mathematical*", "*measured*" and objective in contrast to her view of the Council's position in those processes, it is not at all apparent on the papers before me that, whatever the merits of those submissions made on her behalf, disagreement with them was necessarily irrational. I see no substantive grounds to that effect. In reality, this argument was an attempt to evade or meet the prohibition in judicial review of challenge to the merits of a decision other than on grounds of irrationality

<u>Statement of Grounds</u>

50. I have left consideration of the statement of grounds as a pleading until last as I was concerned to address what I understood, as best I could, to be the substantive gravamen of Ms Heavey's complaints. In substance much of what I have described above is taken from the Statement of Grounds. At this point I reiterate the importance of pleadings in judicial review and observe that,

[37] Contrast.

far from being clear and precise as the rules and the cases require, the statement of grounds is organisationally, thematically, grammatically and linguistically deficient and is very difficult to understand save in the most general terms. It largely defies analysis, save that is neither unfair nor complimentary to describe it as something of a highly repetitive and disorganised stream of consciousness rather than structured, rational and coherent as is required of statements of grounds in judicial review. Further, the papers are characterised by mere assertion lent very little support by the exhibits.

51. As I have earlier observed, it is open to a judge as a matter of discretion and in the interests of justice to assist a lay litigant, in a modest way and without descending into the lists, in amending a statement of grounds the better to elucidate the real issues between the parties. That said, the responsibility for the content of a statement of grounds is always the applicant's – not the judge's. In any event and as to the present case, it is clear to me

- that the Statement of Grounds in this case is simply not amenable to such assistance as it would require, in effect, the wholesale rewriting of the document.
- from my interactions with her, that Ms Heavey is not in a position to benefit from the relatively modest assistance which would be proper.
- that it is not apparent that the interests of justice require any such intervention on my part.
- that, as it stands, the statement of grounds provides no clear or precise basis on which leave to seek judicial review on identified grounds of complaint in law might properly be granted.

The last observation alone requires refusal of leave to seek judicial review.

Scandalous Allegations

52. Finally, I should observe that while Ms Heavey no doubt is, as she says herself, a person of cultural discernment, intelligence, academic achievement and professional status, she has had no apparent hesitation in levying many scandalous allegations against numerous public officials on no apparent evidential basis. As a barrister, she must have appreciated – or at very least must be expected to have appreciated - the strictures against pleadings and accusations of this kind absent reasonable evidence to support them.

Conclusion

53. For the reasons set out above, I refuse leave to seek judicial review. I see no substantial grounds on which the Impugned Decision might be quashed. The Statement of Grounds is in any

event incapable, as a matter of pleading, of supporting the grant of leave. I do not see that it could be rehabilitated to that end by amendment.

David Holland[38]
2/8/24

[38] Signed electronically.