

Henchy J.  
Griffin J.  
Hederman J.

THE SUPREME COURT

1983 No. 366 S.S.  
1984 No 72

STATE (CORAS IOMPAIR EIREANN)

v.

AN BORD PLEANÁLA

Judgment of Henchy J.  
delivered the 12th December 1984

*New. diss.*

This case is concerned with the validity of a planning permission. It was granted to the Hibernian Shirt Co. Ltd. and R.E. Flanagan and Sons Ltd. ('the developers') for shop/office development at 39/41 Great Strand St. and 26 Lower Liffey St., Dublin. The application for planning permission was refused at first instance by Dublin Corporation, the planning authority. The developers appealed to An Bord Pleanála ('the Board'), who allowed the appeal and granted outline permission.

There was no oral hearing of the appeal and Dublin Corporation seems to have been the only party to

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make direct representations to the Board in connection with the appeal.

Coras Iompair Eireann ('C.I.E.') was an interested party because the site in question is situate within an area that has been earmarked by C.I.E. for development as part of a projected Dublin Transportation Centre.

Before the Board disposed of the appeal in favour of the developers, C.I.E. had made some indirect representations to the Board through the planning department of Dublin Corporation. But C.I.E. was not a party to the appeal. In the light of the order that was made on the appeal, it is to be regretted that C.I.E. did not actively and directly contest the developers' appeal.

Once the Board's allowance of the appeal was announced, C.I.E. felt aggrieved. This was because the Board gave the following as part of its reasons for allowing the appeal:

"While the site is within an area which may be affected by C.I.E. proposals for Dublin Transportation Centre, the Board is not satisfied that it is an essential part

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of the land required for such a centre and having regard to the status of the relevant C.I.E. proposal, it is not considered that a refusal of outline permission for the proposed development would be warranted by reference to those proposals."

Three findings are made in that sentence: (1) that the site is within an area which may be affected by C.I.E. proposals for<sup>a</sup> Dublin Transportation Centre - when the fact was that the site is affected by those proposals; (2) that the Board was not satisfied that the site is an essential part of the land required for the Centre - when there was no evidence to support such a conclusion and when such a conclusion was reached without hearing C.I.E.; and (3) that refusal of permission would not be warranted by reference to those proposals -thereby implying that the C.I.E. proposals were not a relevant factor in deciding a planning application in respect of this or any other site within the area of the C.I.E. proposals.

Considering the sweeping implications of those findings,

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it is not surprising that C.I.E. moved to set aside the order of the Board. It got a conditional order of certiorari to quash it, but on the hearing of the application to have the conditional order made absolute, the cause shown by the Board was allowed and the conditional order was discharged. It is against that order that C.I.E. now appeals.

While I think that C.I.E. might have been better advised to take part in the appeal as an objector, it is perhaps understandable that it did not expect that such adverse findings would be made without hearing C.I.E. Because such adverse findings were made, without giving C.I.E. a proper opportunity of presenting its side of the matter, I consider that natural justice was not observed and that the Board's order should be quashed.

In consequence of advice given by different experts over the past twenty-five years, C.I.E. in 1976 adopted a proposal for a Dublin Transportation Centre which would be sited on each side of the Liffey between O'Connell Street

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and Capel Street and connected by a tunnel under the Liffey. Dublin Corporation were notified of the proposal. C.I.E. proceeded to acquire many properties in the areas that had been designated for the proposed Centre. Dublin Corporation, as planning authority, gave recognition to the C.I.E. proposal. For example, in the 1980 Dublin Development Plan, the following is to be found:

"The Planning Authority notes that Coras Iompair Eireann is considering a proposal to establish central city transportation termini adjoining Ormond Quay Lower and Wellington Quay and generally over the stations in the proposed Rapid Rail Transit System and will co-operate in the provision by C.I.E. of any such termini required for more efficient transport services."

In fact, no application for development within the designated areas which would materially interfere with the implementation of C.I.E.'s proposal for the Dublin Transportation Centre has been granted by Dublin Corporation as planning authority. It was in conformity with that

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policy that Dublin Corporation twice turned down the developers application for planning permission in this case. They had no reason to expect that in the developers' appeal against the second of those refusals the policy of Dublin Corporation in seeking to give effect to the C.I.E. proposals would be overturned without hearing C.I.E. But that is what happened. It was a classical example of departure from the rule of audi alteram partem.

This failure to observe natural justice was particularly serious because the party affected was C.I.E. C.I.E. is the national transport undertaking to which are committed under the Transport Acts the primary control and operation of transport services in the State and the provision of transport facilities such as a Dublin Transportation Centre. Not alone has C.I.E. wide powers vested in it for the purpose of effectuating its statutory remit under the Transport Acts, but because Art. 65 of the Local Government (Planning and Development) Regulations, 1977, designates it as a 'public authority' for the purposes of

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s. 5 of the Local Government (Planning and Development) Act, 1976, there is a duty on the Board, "so far as may in the opinion of the Board be necessary for the performance of its functions", to keep itself informed of "the policies and objections for the time being" of C.I.E. It is not necessary in this case to construe the extent of the duty that was thus cast on the Board. It is sufficient to point out that the statutory provisions postulate in a case such as this an informed liaison between the Board and C.I.E.

In dismissing, without getting reliable information on the matter, the status of the C.I.E. proposals for a Dublin Transportation Centre as a relevant consideration in this planning appeal, and in finding, without having any evidence on the point, that it was not satisfied that the site in question is an essential part of the land required for such a centre, the Board not only breached a rule of natural justice but also disregarded the spirit, if not the letter, of the liaison which the statute envisages as

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operating between the Board and C.I.E. in a case such as this.

The exclusion of the C.I.E. proposals for a Dublin Transportation Centre, without getting any direct evidence as to the present status of those proposals, as a relevant consideration in this planning appeal, has implications that go far beyond this case. If this exclusion is adhered to in other planning applications, the C.I.E. proposals will be stultified. The information before us in this case does not show whether or not those proposals should be a decisive factor in this planning application. What is clear is that those proposals cannot be dismissed from consideration without giving C.I.E. an opportunity of presenting the case for giving effect to those proposals.

The matter should be looked at not only in terms of the rights of C.I.E. As the main national transport undertaking, C.I.E. also has its duties. Amongst these is the duty to take all reasonable steps for the implementation of its transport policy. With the benefit of hindsight



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it is probably realized by now in C.I.E. circles that it was less than adequate to delegate to Dublin Corporation the making of representations to the Board in this case. The provision or non-provision of a Dublin Transportation Centre is a matter of national concern and the functions of C.I.E. in the matter are so impressed with public interest that its obligations are in the nature of a public trust. If there is to be a fresh hearing before the Board of this appeal, it is to be expected that C.I.E. will request an oral hearing at which it will fully present its case. Only in that way can the relevance of the plan or proposal for a Dublin Transportation Centre in a planning application of this nature be properly assessed.

I would allow this appeal and grant an absolute order of certiorari to quash the order of the Board.

*Approved*  
*S. H.*  
*14-12-84*