COFFEY - HEBRON

THE HIGH COURT

IN THE MATTER OF THE LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1976

IN THE MATTER OF SECTION 27 OF THE LOCAL GOVERNMENT ACT, 1976

BETWEEN:-

CHRISTOPHER COFFEY

APPLICANT

and

HEBRON HOMES LIMITED, NORE PROPERTIES LIMITED JOHN S. McGINTY and MARY DOLORES McGINTY

RESPONDENTS

Judgment delivered by O'Hanlon J., the 27th day of July, 1984.

In these proceedings the Applicant claims that he is suing not merely on his own behalf but also on behalf of numerous other residents of a housing development known as Glendine Heights, Kilkenny. I am satisfied that he has been duly authorised to do so, and I commence by making an Order declaring that the Applicant for the purpose of the present proceedings is to be regarded as representing his own interest and also the interests of all the

persons whose names and addresses are given on two lists which have been placed on the file of the Court, and which lists are dated respectively, October, 1982, and February, 1984.

I am satisfied, from a review of all the evidence given in the case, including some admissions very frankly made by Mr. John McGinty, the third-named Respondent, that Hebron Homes Limited, the first-named Defendant, failed to carry out the housing development at Glendine, County Kilkenny, in accordance with the plans and particulars lodged with Kilkenny County Council, and subject to th condition imposed when planning permission was granted for the said development on the 30th November, 1971, on appeal to the Minister for Local Government from the decision of Kilkenny County Council to refuse planning permission.

I am also satisfied that the matters relied on by the Applicant, and substantiated by the evidence in the case, disclose quite serious breaches by the developers of their obligations under the Planning Permission when they elected to proceed with the development. Roads were inadequately surfaced; kerbs were left incomplete; the cross-falls on the roads were unsatisfactory in many places; gullies were omitted or were located in unsuitable

locations; no evidence could be found by the Applicant's engineer of the existence of two of the soakways which should have been provided; the plans lodged with the planning application showed provision made for a shiplap and post and wire fence dividing the estate from the pump house and marshy ground which adjoined it - this appears to have been erected but in such a fashion that it was rapidly demolished by the elements, and therefore can hardly be regarded as sufficient compliance by the developer with its obligations. I am of opinion that where the documents lodged in support of an application for planning permission include plans and specifications, and permission is granted by reference to these documents, then the developer must be regarded as being in breach of the planning permission if he fails to build in accordance with those plans and specifications. I am further of opinion that there is an implication of law that he will use reasonable care and skill and provide proper and adequate materials for the purpose of the building works unless the specifications lodged by him qualify this obligation in some way and are accepted in such qualified form by the planning authority.

The applicant is, accordingly, entitled <u>prima facie</u> to relief, as claimed by him under the provisions of Section 27 of the Act of

1976 - the main problem being to determine the nature of that relief so that it may offer some hope to him and to the other residents on the estate that the present unsatisfactory conditions may be ameliorated.

Unfortunately for the Applicant, and those who have joined with him in bringing these proceedings, they face the all-too-familiar situation where the development has been carried out by a building company, with limited liability; the application for planning permission was made by Hebron Homes Limited, and that company was responsible for most of the house-building and for the provision of roads and other services; the company has virtually ceased to trade for some years past, and the evidence suggested that it had no assets.

Nore Properties Limited, the second-named Respondents, are a limited company in which was vested the ownership of the lands on which the houses were erected by Hebron Homes Limited (under building licence from the second-named Respondents), and the general practice was that leases were made to the house-purchasers by Nore Properties Limited and that company is entitled to recover ground rents from such of the house-owners on the estate as have not bought out the fee simple interest in their respective properties

The evidence in the present proceedings appeared to me to establish that there are still substantial sums due and owing by More Properties Limited to Hebron Homes Limited in respect of work carried out by Hebron Homes Limited for the second-named Respondents, but did not support the contention that any legal liability could now be imposed on the second-named Respondent in respect of the failure to carry out the works of development in accordance with the planning permission granted on the application of the first-named Respondent. Similarly, while the third and fourth-named Respondents, who hold the controlling interest in both companies - the first and second-named Respondents - were joined in these proceedings by the Applicant, in the hope of imposing some personal liability on them for the defaults of the first-named Respondent, the evidence which has hitherto been tendered in the proceedings fails to satisfy me that any case has been made out for the imposition of such personal liability on the said Respondents. The applicant for planning permission was Hebron Homes Limited, and the party which carried out the development works and purported to provide the roads and service for the estate was Hebron Homes Limited, and no evidence has hitherto been put forward of such character as would entitle the

Court to impose personal liability on the directors or shareholders of that company in respect of the defaults which have been so clearly established against it. I refrain from dismissing the proceedings as against the said Respondents, as they may be regarded as having been fairly joined in the action to ensure that any order made against the company which they control will be carried into effect, but that is the limit of the liability which at this stage of the proceedings, can be imposed upon them.

It appears to me that the best outcome the Applicant and the other residents on the estate can hope for is that such remedial works will be carried out on the roads and services as will satisfy the requirements of the local authority so that the said roads and services will be taken in charge by the local authority, and their requirements in this connection have already been fully indicated in a letter dated the 21st May, 1982, addressed by Kilkenny County Council, Planning Section, to the Applicant. In many respects, these requirements appear to me to fall short of what the Applicant could establish against the first-named Respondent as its obligations under the planning permission granted to it; in other respects they go outside the planning permission requirements and include matters which perhaps

should have been made the subject of special conditions but through oversight or for some other reason not at present clear to me, were omitted when planning permission was being granted.

The second, third and fourth-named Respondents have already indicated informally to the Applicant that they would concur in an arrangement whereby ground rents payable to the second-named Respondent could be accumulated to provide a fund out of which the necessary works to have the estate taken in charge could be financed, and in the present legal impasse I am of opinion that the Applicant and his fellow house-owners would be well-advised to accede to this arrangement if it is still open to them to do so.

I propose to make the following orders on foot of the applicatio which has been brought by the Applicant.

(1) An order, pursuant to Section 27 of the Local Government Act, 1976, declaring that the first-named Respondent has failed to comply with the provisions of the planning permission granted to it for the development of the lands at Glendine Heights, Kilkenny, and directing it to carry out all remedial works that are necessary to bring the roads and services on the estate up to the level and standard required by the terms of the said planning permission within six months from the date of this judgment and awarding the

costs of these proceedings as against the said Respondent.

(2) An order attaching all sums due by the second-named Respondent to the first-named Respondent, not exceeding £50,000 in all, the same to be retained by the second-named Respondent until further order in these proceedings, for the purpose of discharging the financial liabilities of the first-named Respondent to the Applicant on foot of orders made in these proceedings.

(3) An order to be made, subject to the consent of the second, third and fourth-named Respondents in these proceedings being forthcoming, staying execution on foot of the order referred to at No. (1) above conditional upon all ground rents due or to become due to the second-named Respondent under leases granted to residents in Glendine Heights being accumulated in a fund in the joint names of the Applicant and the third-named Respondent for the purpose of financing the carrying out of such remedial and development works on the estate as are needed to satisfy the requirements of Kilkenny County Council for the purpose of having the roads and services on the said estate taken in charge by the said local authority, on the basis that disbursements out of the said fund will take place only with the consent of each of the said parties, or by order of this Court and will be applied for the

purpose of the said works and thereafter the discharge of costs payable by the said Respondent to the Applicant on foot of this order, and when these liabilities have been discharged the obligation to accumulate the ground rents in the said joint fund will come to an end.

(4) An order adjourning the further consideration of the Applicant's claim in these proceedings, against all the Respondents, generally, with liberty to any party to apply to have the same re-entered.

R. J. O'Hanlon

R.J. O'Hanlon.
27th July, 1984