

APPROVED

[2021] IEHC 583



THE HIGH COURT

2018 No. 308 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT
2000 (AS AMENDED)

BETWEEN

ELAINE KELLY DUNNE
NOEL MOORE
ANN FLYNN
DAVID KELLY
ANNETTE McGRATH
LOUISE O’SULLIVAN
CLAIRE MOORE
MATT KELLY
MICHAEL KELLY

APPLICANTS

AND

GUESSFORD LIMITED
(TRADING AS OXIGEN ENVIRONMENTAL)

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 21 September 2021

INTRODUCTION

1. These proceedings are enforcement proceedings taken pursuant to the planning legislation and concern the planning status of a waste facility. The proceedings have been brought by a number of individuals who live in the vicinity of the waste facility (“*the applicants*”). The respondent to the application is the operator of the waste facility, Guessford Ltd (“*the respondent*”).

NO REDACTION REQUIRED

2. The applicants allege that the activities being carried out at the waste facility are in breach of the terms of its planning permission. In particular, it is said that the authorised use is confined to the recycling of construction and demolition waste, and does not permit the acceptance and treatment of non-inert, commercial or municipal waste. The respondent, conversely, insists that the authorised use encompasses a much broader range of activities. In particular, it is said that commercial waste and timber may be received and treated at the facility.
3. The resolution of these proceedings requires the court to address two issues, in sequence, as follows. First, the extent of the authorised use under the planning permission must be determined. It will be necessary to consider whether the nature of the permitted development, as described in the body of the planning permission, has been enlarged upon by reference to the documentation submitted as part of the planning application. Secondly, the evidence before the court must be assessed in order to determine whether any of the activities carried out at the waste facility fall outside that authorised use. As discussed presently, the parties have agreed that the exhibited documents are to be treated as admissible evidence of the truth of the contents thereof. This agreement has greatly reduced the compass of the factual dispute between the parties.
4. Before turning to address these two issues, it is necessary first to consider the planning history of the lands.

PLANNING HISTORY

5. The lands the subject-matter of these proceedings are located at Barnan, Daingean, County Offaly. The lands are currently being operated as a waste facility by the respondent (“*the waste facility*” or “*the Barnan facility*”).

6. There is only one planning permission relevant to these proceedings. This is a retention planning permission granted on 18 June 2010 (“*the planning permission*”). The planning permission bears the reference “PL2/09/439” on the planning authority’s statutory register.
7. Given the dispute between the parties as to the meaning and effect of the planning permission, it is necessary to rehearse the events leading up to the grant of planning permission in some detail.
8. The lands had previously been used for agriculture. Thereafter, development consisting of, *inter alia*, the making of a material change in use of the lands, and the erection of certain structures, was carried out from February 2006 onwards. The change of use and the development works constituted “unauthorised development” in that no planning permission had been obtained prior to the commencement of the development.
9. Some years later, the then owners of the lands took steps to regularise the planning position by seeking *retention* planning permission. The application for retention planning permission had been submitted to Offaly County Council (“*the local authority*”) on 20 October 2009.
10. The application had been made in the name of the then owners of the lands, Kevin Daly and Michelle Daly. The documentation submitted as part of the planning application refers to the operators of the facility as a company, described variously as “Concrete Recycling Specialists Ltd” or “CRS Ltd”. This company held a waste facility permit from the local authority. (See further paragraph 37 *et seq.* below).
11. As required under the Planning and Development Regulations 2001, public notice of the retention application had been published in advance. The public notice described the “nature and extent” of the development as follows:

“OFFALY COUNTY COUNCIL

Kevin & Michelle Daly are applying to the above authority for retention permission for recycling facility for construction and demolition materials, incorporating storage buildings, bunker, offices, weighbridge, plant & machinery, storage yard, effluent treatment system and all ancillary services and permission to construct 1st (*sic*) aid fire fighting water tank at Barnan, Daingean.”

12. The same description of the nature and extent of the development appears in the *pro forma* planning application form. The use which it had been sought to retain (and the nature and extent of that use) are described as follows at item 15 of the form: recycling facility for construction and demolition materials and all ancillary services.
13. A second application form had also been completed. This is headed up “Supplementary Application Form No. 2 – Industrial/Commercial”. The first item on this form required the applicant for permission to specify precisely the nature of the proposed development. This is answered as follows: “Recycling of construction & demolition of building materials”. The second item required the applicant for permission to specify details of raw material involved in the process. This is answered as follows: “Construction & Demolition waste”.
14. The planning application had been accompanied, *inter alia*, by an environmental report in support of the application (“*the environmental report*”). This report is dated 19 October 2009 and had been compiled by RME Environmental. It should be explained that this document does not constitute an environmental impact statement (“EIS”) for the purpose of the Environmental Impact Assessment Directive.
15. (There had been a page missing from the version of the environmental report exhibited in the proceedings, but the solicitors acting for the applicants have, at the request of the court, since furnished a full copy of the report under cover of letter dated 2 September 2021).
16. The proposed development is described at §1.2 of the environmental report as follows:

“The development proposed here is for the retention of structures as described in the planning permission application form. It is designed to ensure that the planned (*sic*) status for the site is regulated. The site history is commercial where a pig farm enterprise was planned on the site prior to the current activity being established.”

17. The general activities of the company, the waste facility permit, and the current on-site activities are described at §1.3 of the environmental report as follows:

“Concrete Recycling Specialists Ltd operating under Waste Facility Permit WP138-06 is operated as a transfer station for waste materials specifically derived from the construction industry and commercial and industrial sectors. The facility does not accept household waste of any kind. The proposed volume of waste to be brought onto the site is targeted at 23,000 T per annum. Based on a proposed 6-day working week this equates to 73.71 Tonnes per day. Over a 10-hour day this represents 7.37 t per hour this may equate to 1-3 loads per hour based on receptacle size. Waste is estimated to be on site for a period of no longer than three days in normal operation.

The waste type is solely mixed commercial and Construction and demolition waste.

The significance of the site is that it employs 12 people onsite and 4 additional drivers and services specific waste customers in the Midland Region predominantly. The site aims to service the C&D market specifically and the residential market for C&D which is currently on the increase. The site is also significant in that it will provide access to third party waste collection operators who do not have access to economical transfer routes at present thus enabling sustainable waste collection on a region wide basis.”

18. As appears, the environmental report quantifies the volume of waste to be received at the facility at 23,000 tonnes per annum. This figure is just short of the 25,000 tonnes per annum threshold for a mandatory environmental impact assessment (as prescribed under Schedule 5 of the Planning and Development Regulations 2001). This shortfall had the consequence that an environmental impact assessment was not automatically triggered. Instead, the local authority was obliged—as a matter of EU law and domestic law—to carry out a screening exercise to determine whether the development was likely to have significant effects on the environment. There is no evidence that the local authority complied with its legal obligation in this regard. Certainly, the outcome of such a screening exercise, if carried out, has not been formally recorded. Moreover, for the

reasons explained at paragraph 157 *et seq.* below, it is very doubtful that the local authority had jurisdiction to entertain the planning application at all.

19. The environmental report describes in detail the process of sorting and segregating the received waste. In brief, it is explained that once the waste has been weighed, it is manually and mechanically sorted to remove bulky materials and so-called “quarantine material”. The bulky materials are said to be predominantly timbers and metal, and are to be removed outside to dedicated holdings skips for onward transfer. The quarantine material is said to consist mainly of household rubbish bags, batteries, waste electrical and electronic equipment (“WEEE”), and paint/solvent tins. As discussed below, the reference to household rubbish bags was subsequently clarified in the response to a request for further information.
20. The remaining waste is then sifted through a trommel. Material which is greater than 30 mm in diameter is transferred to a picking line where paper/cardboard, timber, rubbish/waste for landfill, plastics, stone and non-ferrous metals are separated out.
21. The nature of the waste being received at the facility is described further at §5.6 of the environmental report. It is stated there that no organic waste is accepted at the facility and that all wastes are inert.
22. It is apparent from §4.0 of the environmental report that the making of the planning application had been prompted by the company’s perceived need to review the 2007 waste facility permit.
23. The local authority served a request for further information (“RFI”) in respect of the planning application on 10 December 2009, pursuant to article 33 of the Planning and Development Regulations 2001. This request was responded to by the developer on 1 April 2010.

24. Relevantly, item 14 of the request for further information had sought the following information in respect of the waste sources:

“It is noted on page four of the supporting environmental report that household waste is not accepted at the facility however page five of the report indicated that household rubbish bags are segregated to landfill. The applicant is requested to explain this discrepancy.”

25. This request was replied to as follows by letter dated 1 April 2010:

“The discrepancy in the original report by Raphael McEvoy has been rectified and is included in the new report submitted herewith. Household waste is not accepted at this facility.”

26. This is elaborated upon in an appended report/letter dated 31 March 2010 from RME Environmental as follows:

“One of the primary activities of the facility is the collection of construction and demolition waste in skips placed around the companys (*sic*) operational area. Invariably in the provision of this service despite notice to the contrary customers or third parties will place black bags of household rubbish into the skips. Whilst CRS Ltd drivers have been instructed to inform the clients of this and remove the bags there are occasions where the drivers do not see the material in the skips.

When tipped, the inspection process by the yard operational team will identify the household waste and put it into a quarantine area/skip. When the skip is full this material will be removed with other material for appropriate disposal.”

27. In response to item 16 of the request for further information, the source point for refuse entering the site is stated to be “building demolition”.
28. Following receipt of the response to the request for further information, a planning report was completed within the local authority. Thereafter, the local authority notified a decision to grant planning permission on 28 April 2010.
29. No appeal was taken to An Bord Pleanála against the local authority’s decision. A grant of planning permission should, accordingly, have issued four weeks later. The final grant of planning permission has not been exhibited in these proceedings. A copy of the grant has, however, since been provided by the applicants’ solicitors at the request of the court.

30. The planning permission is dated 18 June 2010, and records that the local authority has granted retention:

“[...] for the development of land, in accordance with the documents lodged, namely:-

RECYCLING FACILITY FOR CONSTRUCTION AND DEMOLITION MATERIALS INCORPORATING STORAGE BUILDINGS, BUNKERS, OFFICES AND WEIGH BRIDGE, AND PLANT & MACHINERY STORAGE YARD, EFFLUENT TREATMENT SYSTEM AND ALL ANCILLARY SERVICES AND ALSO PERMISSION TO CONSTRUCT 1ST (S/C) AID FIRE FIGHTING WATER TANK AT BARNAN, DAINGEAN.”

31. The main reasons and considerations on which the decision to grant planning permission is based are set out, at schedule one of the grant of planning permission, as follows:

“Having regard to the nature and scale and intended use of the development, the issues raised in the planning assessment, referral reports, site inspection, existing pattern of development in the vicinity, and the current Development Plan, it is considered that, subject to the conditions in schedule two, that the development would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would otherwise accord with the proper planning and sustainable development of the area.”

32. There are then five conditions set out in schedule two of the grant. Relevantly, the first of those conditions reads as follows:

“The development shall be in accordance with plans and particulars submitted on 20/10/2009 and amended by revised particulars submitted on 1/4/2010 except where conditions hereunder specify otherwise.”

33. The second condition imposes the following requirement (at subparagraphs (d) and (f)):

“All waste arising from/at the proposed development shall be managed in accordance with the Waste Management Acts 1996 – 2008. While awaiting removal, all waste materials shall be stored in designated areas protected against spillage or leachate run-off.

[...]

The development shall comply with all environmental conditions set out under current waste permit WP 138–06 or any renewed permits issued for the site in the future.”

34. The next significant event in the planning history of the lands was the making of a subsequent application for planning permission on 10 February 2011 (“*the second planning application*”). The proposed development in respect of which permission was sought had been described as follows in the covering letter accompanying the application:

“(1) The above named Development was granted permission on the 18th June 2010 by Offaly County Council Reg. Ref. No. 09/439 for retention of a Recycling Facility for construction and demolition materials, incorporating storage buildings, bunkers, offices and weighbridge and machinery storage yard, effluent treatment system and all ancillary services. And also permission to construct a First Aid firefighting water tank. The applicant for the original planning submitted was Mr. Kevin & Michelle Daly.

(2) Our clients, Guessford Ltd propose to include within the current recycling facility, the handling and transfer of municipal solid waste (household waste) and the operation of associated static and mobile plant & machinery to sort out this waste prior to transporting the residue waste to a landfill site. Discussions have taken place between our client and the environmental department of Offaly County Council with Mr. David Hogan to the agreement of this facility.”

35. The second planning application was, ultimately, refused on traffic safety grounds. The stated reason for refusal is as follows:

“Having regard to existing and permitted development in the vicinity of the site it is considered that the road network serving the proposed site by reason of its width, alignment and surface conditions is unable to cater for the additional traffic movements likely to be generated by the proposed development and the proposed development would therefore endanger public safety by reason of traffic hazard.”

36. The applicants in the present proceedings seek to rely on the making of the second planning application as indicative of an intention on the part of the respondent to intensify the extent of the waste management activities being carried out on the lands. The court is, in effect, invited to infer that the respondent proceeded to carry out the development

proposed in the second planning application notwithstanding that planning permission had been refused.

WASTE FACILITY PERMITS

37. In addition to being subject to regulation under the Planning and Development Act 2000 (*"PDA 2000"*), the carrying on of waste management activities is subject to control under the waste management legislation, i.e. the Waste Management Act 1996 (as amended). Certain waste management activities are excepted from the requirement to obtain a waste management licence, and are subject instead to a permitting requirement.
38. The previous owners and operators of the site had been granted a waste permit in February 2007. Surprisingly, the local authority had elected to grant a waste facility permit notwithstanding that the development obviously constituted unauthorised development under the planning legislation. Such an indulgent approach has since been outlawed by the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007). The Regulations provide that a local authority shall not grant a waste facility permit unless it is satisfied that the facility is compliant with planning or is exempt from planning permission. It seems that the application for the 2007 waste permit fell to be determined under the previous regulations, namely the Waste Management (Permit) Regulations 1998.
39. The local authority granted a waste facility permit pursuant to the Waste Management (Facility Permit and Registration) Regulations 2007 on 15 December 2010 (*"the 2010 permit"*). This waste facility permit had an expiry date of 14 December 2015. The volume of waste to be accepted at the site had been limited to a maximum of 24,900 tonnes per annum. Again, this is just shy of the threshold for mandatory environmental impact assessment.

40. Following the sale of the lands, the 2010 waste facility permit had been transferred into the name of the respondent on 28 March 2011.
41. Prior to the expiry date, on 18 September 2015, the respondent made an application to the local authority to review the 2010 permit. The Waste Management (Facility Permit and Registration) Regulations 2007 provide that where an application for a review is made no later than 60 working days before the date of expiry of an existing waste facility permit, then that permit will remain in force until such time as, *inter alia*, a reviewed waste facility permit is granted or refused.
42. The local authority issued a reviewed waste facility permit on 20 December 2016 (“*the 2016 permit*”). The 2016 permit was subsequently challenged by way of judicial review proceedings instituted on 16 March 2017 (High Court 2017 No. 244 JR). These judicial review proceedings ultimately resulted in an order quashing the 2016 permit and remitting the matter to the local authority: *Kelly Dunne v. Offaly County Council* [2019] IEHC 328.
43. Thereafter, the local authority declined to deal with the matter by way of an application to review. Instead, the local authority made a decision, on 28 November 2019, to the effect that an application for a new waste facility permit was warranted. It should be explained that the Waste Management (Facility Permit and Registration) Regulations 2007 allow a local authority to direct that an application be made for an entirely new permit, i.e. as opposed to a reviewed permit. This may be done where a significant change is proposed in respect of either (i) the nature, focus or extent of the waste-related activities or (ii) the emissions concerned. In the present case, the local authority concluded that the application “discloses significant uncertainty as to the nature, focus and extent of the waste activities and the extent of emissions arising from the reviewed

permit”. It also concluded that the (proposed) waste activities are significantly changed from the existing permit.

44. The respondent has made an appeal to the District Court against the local authority’s decision. The notice of appeal is dated 6 January 2020. For reasons which have not been properly explained, this appeal remains undetermined notwithstanding that almost two years have elapsed since the date of the local authority’s decision of first instance.
45. Both parties made submissions to the court as to the current status of the facility under the waste management legislation. The respondent submits that, in circumstances where it had applied for a review of the 2010 waste facility permit prior to its expiration on 14 December 2015, the respondent is entitled to rely on this permit until such time as all judicial review proceedings and appeal proceedings have been determined. The respondent relies in this regard on article 32(4) and article 35(7) of the Waste Management (Facility Permit and Registration) Regulations 2007.
46. Article 32(4) confers a right of appeal against a decision requiring that an application for a (new) waste facility permit be made. This is the article pursuant to which the appeal to the District Court has been taken.
47. Article 35(7) provides as follows:
 - “(7) Where an application is made under these Regulations for the review of an existing waste facility permit at least 60 working days before the expiry date of the permit, the waste facility permit shall remain in force until—
 - (a) a reviewed waste facility permit is granted or refused under sub-article (1), or
 - (b) an application for a waste facility permit is required under articles 7, 8, 9 and 10 and is granted or refused under article 18, or
 - (c) the existing permit is revoked under article 36.”

48. Article 35(8) (as inserted by S.I. No. 86 of 2008) provides that—unless the relevant application is made within 60 working days—an existing waste facility permit shall cease to have effect after the expiry date; and the person shall not engage in waste-related activities at the facility until such time as a waste permit is granted or, as the case may be, a reviewed waste facility permit is granted.
49. The thrust of the respondent’s submission is that the 2010 waste facility permit continues in force until such time as the respondent’s appeal to the District Court is heard and determined, and will continue to remain in force thereafter until a decision is made on either its application for a reviewed waste facility permit or its application for a new waste facility permit (depending on the outcome of the District Court appeal).
50. With respect, this submission is incorrect for the following reasons. The Waste Management (Facility Permit and Registration) Regulations 2007 must be interpreted, insofar as possible, in a manner which is consistent with EU environmental law. The Waste Framework Directive (Directive 2008/98/EC) envisages that waste management permits will be subject to review. The Habitats Directive (Directive 92/43/EC) envisages that any projects which are likely to have a significant effect on a European Site will be subject to appropriate assessment. The High Court has previously ruled in *Kelly Dunne v. Offaly County Council* [2019] IEHC 328 that the local authority erred in law in purporting to rely on mitigation measures in determining that the current and proposed activities at the Barnan facility are not likely to have a significant effect on the Raheenmore Bog Special Area of Conservation (“SAC”).
51. The Waste Management (Facility Permit and Registration) Regulations 2007 (“*the Permit Regulations*”) expressly provide for waste facility permits to be time-limited and subject to an obligation for review. Whereas the Permit Regulations do provide that an otherwise expiring waste facility permit will remain in force during the interregnum

between (i) the prompt submission of an application for review, and (ii) the making of a decision on that application, this has to be seen against the timeframes prescribed for decision-making. A local authority is obliged to make its decision “as expeditiously as possible”, and, in any event, within a period of 40 working days from the date of the receipt of an application for the review of a waste facility permit. In the event that submissions have been received, the period is 25 working days from the date of receipt of submissions. Where it appears to a local authority that it would not be possible or appropriate, because of the particular circumstances of an application for the review of a waste facility permit or because of the number of applications which have been submitted to the authority, to decide on an application within these timeframes, the local authority must notify the parties and specify the date before which the authority intends that the application shall be determined.

52. These timeframes have to be seen in the context of the requirement that an application for the review of a waste facility permit must have been submitted no later than 60 working days before the date of expiry of an existing waste facility permit if it is to remain in force until such time as a reviewed waste facility permit is granted or refused. The timeframe mirrors the time allowed for decision-making. The Permit Regulations thus envisage that the length of time, if any, for which an expired waste facility permit will be deemed to continue in force will be very short. In those cases where the local authority has met the 60 working day timeframe allowed for decision-making, the decision will have already been made before the existing permit expires.
53. On their proper interpretation, the interim arrangements provided for under the Permit Regulations come to an end once a decision has been made on the application for a revised waste facility permit. The ordinary and natural meaning of article 35(7) is that

the deemed continuation of the earlier waste facility permit comes to an end once the local authority has made its decision.

54. The interim arrangements do not extend to circumstances where such a decision is subsequently challenged in judicial review proceedings. The legislative intent is merely to allow for the possibility of an expired waste facility permit being deemed to continue in force for a very short time. It was never intended that an expired waste facility permit would be revived a number of years later, following the conclusion of judicial review proceedings in respect of the reviewed waste facility permit.
55. On the facts of the present case, the local authority issued a reviewed waste facility permit on 20 December 2016. The earlier 2010 permit ceased to have effect for all purposes on this date in accordance with article 35(7).
56. The respondent's reliance on the judgment of the High Court (Barrett J.) in *Harrington v. Environmental Protection Agency* [2014] IEHC 307; [2014] 2 I.R. 277 ("**Harrington**") is misplaced. The legislative context and factual background are distinguishable. On the facts of the present case, the 2010 permit had expired on 14 December 2015. It had only remained in force, on a deemed basis, until 20 December 2016 because of the interim arrangements provided for under the Permit Regulations. By contrast, the earlier development consent at issue in *Harrington* had not expired and was held to be capable of being implemented. Moreover, the outcome of the proceedings in *Harrington* turned on the legislative intent of the specific legislative provisions in issue. Barrett J. expressly found that the Oireachtas cannot have intended that in the event of a reviewed licence being quashed a "legal vacuum" should pertain and "chaos" should ensue. The learned judge stated that it "beggared belief" that the intention of the Oireachtas was that a person who had the benefit of a valid licence, and who applied to review that licence, could be

deprived of the benefit of the first licence in circumstances where the decision on the second licence was invalid.

57. In the present case, I have concluded that it would be contrary to the legislative intent underlying the Waste Management (Facility Permit and Registration) Regulations 2007 were a waste facility permit, which had been conditioned to expire on 14 December 2015, to continue to remain in force almost six years later. An interpretation which purported to allow waste management activities of the type and scale carried on at the Barnan facility to continue to be carried out under a permit which had *expired* more than five years earlier would clearly be inconsistent with EU law. This is especially so given the breaches of the Habitats Directive identified by the High Court in *Kelly Dunne v. Offaly County Council* [2019] IEHC 328.
58. In the alternative, even if, contrary to my findings above, the 2010 waste facility permit was revived, its effect certainly came to an end once 60 working days had elapsed from the local authority's decision of 28 November 2019. Article 35(8) of the Permit Regulations (as inserted by S.I. No. 86 of 2008) requires that the relevant application have been made within 60 working days of notification by the local authority under article 32(3) that an application for a waste facility permit is required. There is no provision made for this period to be extended automatically in the event of an appeal to the District Court. The respondent neither made the requisite application for a new waste facility permit within 60 working days nor sought a stay from the District Court. Accordingly, at the very latest, the respondent was precluded from engaging in waste-related activities at the facility from the end of February 2020.

FIRST ISSUE

POSITIONS OF THE PARTIES ON EXTENT OF AUTHORISED USE

59. The rival positions of the parties in respect of the authorised use under the planning permission can be summarised thus.
60. The applicants submit that the categories of waste which may be received at the waste facility are as follows. Inert wastes from the demolition of buildings, where the demolition activity arises in the construction and commercial and industrial sectors. It is said that inert waste from the demolition of houses falls within the definition of construction waste, rather than municipal waste, and so may be accepted. Inert waste from the demolition of buildings in commerce and industry, such as offices and factories, is also said to fall within the definition of construction waste and may be accepted too.
61. The applicants further submit that the acceptance of household waste or other waste defined as municipal waste (being similar in nature to household waste) is not allowed. The acceptance of process industrial waste from manufacturing is not allowed under the planning permission. Garden waste, such as hedge clippings and grass cuttings, are said to be household and municipal wastes and therefore are not acceptable. Such garden wastes are also not inert.
62. Attention is drawn to the fact that there was no provision in the planning permission for the acceptance of non-inert wastes from municipal waste sources. The treatment from the leachate, runoff or wash residues from such wastes had not been assumed in the septic tank design.
63. It is further submitted by reference to the Environmental Impact Assessment Directive that the development being carried out on the lands is in breach of EU law. Reliance is placed on the judgments of the Court of Justice of the European Union in Case C-215/06, *Commission v. Ireland* and Case C-486/04, *Commission v. Italy*. It is said that there is a

“remedial obligation” to carry out an environmental impact assessment now. Counsel for the applicants cites the judgments in Case C-201/02, *Wells*; Case C-348/15, *Stadt Wiener*; and Case C-399/14, *Grune Liga*. I will return to this issue at paragraph 157 *et seq.* below.

64. The respondents’ position has been set out, in detail, in a series of affidavits sworn by Mr. Brian Moylan. Mr. Moylan has averred that no organic waste is accepted and/or disposed of from the facility. Mr. Moylan further avers that no household waste or waste of a like kind is accepted within the facility. In response to the allegation that the respondent’s own annual environmental reports identify large quantities of waste by reference to municipal waste codes, Mr. Moylan avers that the waste types as recorded in the annual environmental reports by reference to the European Waste Catalogue codes are all commercially collected waste streams. It is then said that these specific details are applicable to an entirely different statutory code or regulatory scheme, namely the controls under the Waste Management Acts.
65. Mr. Moylan draws a distinction between the kerbside collection of (i) household waste, i.e. black residual bin, green recycling bin or brown food waste bin; and (ii) the collection of waste in skips, whether from a house or a commercial property. It is said that the previous operators of the waste facility had run a skip and commercial collection business when applying for the retention planning permission.
66. Mr. Moylan has exhibited a report from Stephen Ward Town Planning and Development Consultants Ltd. The author of the report offers the view that there is nothing in the planning permission and associated documentation that prohibits municipal waste being brought to the facility.
67. In response to the complaint that timber waste is being accepted, stored and shredded on the site, Mr. Moylan suggests that the timber is construction material in circumstances

where, or so it is said, the timber will almost inevitably arise from a construction operation where a householder brings the material to the skip in a civic amenity area. The timber is then brought to the Barnan waste facility. It is also said that timber has always been accepted at the facility, and thus falls within the type of material authorised to be brought on to the site by the planning permission. Similarly, it is said that the mobile timber shredder was always part of the waste activity operations that occurred on-site from 2006, before and during the planning permission process.

68. The explanation offered for the presence of “quarantined” waste at the site is as follows at paragraph 26 of Mr. Moylan’s affidavit of 7 December 2020.

“[...] the materials that are listed there are those which are contained in the skips and from time to time there will be material left into the skip that is not appropriate, that is why there is a specific segregation area where any material that is not appropriate is segregated and removed but occasionally people will put into skips material that only can only (*sic*) be discovered once it arrives at the site. The list that Mr O’Donnell refers to, refers to the type of materials that are brought on to the site but where there is any material which is not appropriate or not within the terms of the permission, which will always be a very small fraction and which nearly always arises opportunistically from a third party putting something in a skip that they knew should not be in that skip it is immediately removed and this is a major source of annoyance and cost to the operator who does not want under circumstances to have any material other than that for which plant has been designated coming on to the site. It is also notified to the Local Authority but the quantity of materials in this regard is extremely small and while each and every item is identified and recorded, and notified to the Local Authority, it has to be emphasised that these would be very unusual occurrences and would certainly not occur as a matter of routine, and every effort is made in collecting the skips to ensure that this does not occur. This was clearly documented in the planning application submission [...].”

69. Mr. Moylan returns to this issue at paragraph 36 of the same affidavit. There, it is said that the presence of “extraneous material” in skips entails a “huge cost” to the operator, requires particular time and effort in terms of the hours spent sorting, storing and transporting this material from the site. It also requires space and appropriate facilities

in which to separate and store the materials, so that it is segregated, and arrangements made for its transportation from the site.

70. Insofar as waste such as fridges, waste electrical and electronic equipment, beds, mattresses, sofas and tyres are concerned, it is said that such “bulky waste type loads” formed part of the waste activities carried out on site since 2006.

PRINCIPLES GOVERNING INTERPRETATION OF PLANNING PERMISSIONS

71. The question of whether it is legitimate to have regard to the content of the planning application as an aid to the interpretation of a planning permission had been addressed, for the first time, by the Supreme Court in *Readymix (Eire) Ltd v. Dublin County Council*, unreported, Supreme Court, 30 July 1974. The procedural history of those proceedings was complex, and the dispute between the parties centred on whether the Minister for Local Government had jurisdiction to make a ruling as to the interpretation of the relevant planning permission under section 5 of the Local Government (Planning & Development) Act 1963. The resolution of this dispute required the Supreme Court to consider whether there was any “question” capable of referral to the Minister under section 5. The majority of the Supreme Court held, on the facts, that there was a question to be decided by the Minister as to whether or not the proposed structures, as depicted in the plans submitted as part of the planning application, constituted “development” for the purpose of the Local Government (Planning & Development) Act 1963.
72. Henchy J. dissented on the outcome of the case. In the course of his dissenting judgment, Henchy J. addressed the principles governing the interpretation of a planning permission as follows:

“When a permission issues in a case such as this, it enures for the benefit not alone of the person to whom it issues but also for the benefit of anyone who acquires an interest in the property: s. 28(5) [of the Local Government (Planning & Development) Act 1963]. A

proper record of the permission is therefore necessary. This is provided for by s. 8, which prescribes that a planning authority shall keep a register of all land in their area affected by the Act. This register is the statutorily designated source of authoritative information as to what is covered by a permission. The Act does not in terms make the register the conclusive or exclusive record of the nature and extent of a permission, but the scheme of the Act indicates that anybody who acts on the basis of the correctness of the particulars in the register is entitled to do so. Where the permission recorded in the register is self-contained, it will not be permissible to go outside it in construing it. But where the permission incorporates other documents, it is the combined effect of the permission and such documents that must be looked at in determining the proper scope of the permission. Thus, because in the present case the permission incorporated by reference the application for permission together with the plans lodged with it, it is agreed that the decision so notified must be construed by reference not only to its direct contents but also to the application and the plans lodged.

Since the permission notified to an applicant and entered in the register is a public document, it must be construed objectively as such, and not in the light of subjective considerations special to the applicant or those responsible for the grant of the permission. Because the permission is an appendage to the title to the property, it may possibly not arise for interpretation until the property has passed into the hands of those who have no knowledge of any special circumstances in which it was granted. Since s. 24(4) of the Act allows the production by a defendant of the permission to be a good defence in a prosecution for carrying out without permission development for which permission is required, it would be contrary to the fundamentals of justice as well as the canons of statutory interpretation to hold that a permission could have variable meanings, depending on whether special circumstances known only to certain persons are brought to light or not. [...]”.

73. Notwithstanding that Henchy J. had been in the minority on the outcome of the factual issue before the Supreme Court in *Readymix (Eire) Ltd v. Dublin County Council*, the principles stated above were not in controversy, and have since been expressly approved of by the Supreme Court in other judgments. See, for example, *Dublin County Council v. Jack Barret (Builders) Ltd*, unreported, Supreme Court, 28 July 1983; and, more recently, *An Taisce v. McTigue Quarries Ltd* [2018] IESC 54; [2019] 1 I.L.R.M. 118 (at paragraph 57).

74. The most comprehensive statement on the interpretation of planning permissions is to be found in the judgment of the Supreme Court in *Lanigan v. Barry* [2016] IESC 46; [2016] 1 I.R. 656. Clarke J., writing for the court, described as “well settled” the principle that it is possible to look at the development for which permission has been granted together with any documents submitted in the context of the relevant planning application. A court is required to construe planning documents not as complex legal documents drafted by lawyers, but rather in the way in which ordinary and reasonably informed persons might understand them.
75. The dispute in *Lanigan v. Barry* centred on whether the enforcement proceedings had been brought within time. The resolution of this dispute turned, in part, on whether or not the permitted user of the lands had been prescribed by way of planning condition. There is no time-limit on enforcement proceedings which seek to enforce “any condition to which the development is subject concerning the ongoing use of the land” (section 160(6)(b) of the PDA 2000).
76. The planning permission had contained what is now a standard type of condition incorporating the planning application documentation. On the facts, the formula of words employed required that the development be carried out in accordance with the applicant’s submitted drawings and outline specifications, unless modified by other conditions.
77. The Supreme Court had to consider whether this condition represented one “concerning the ongoing use of the land”. If so, then the condition would have had the legal effect of translating *proposals* for the times of operation of the development (on the facts, a motor track) contained within the planning application into binding requirements which could be enforced outside the seven-year limitation period on enforcement proceedings.
78. The alternative analysis would have been to say that the proposals in the planning application documentation should only be relied upon for the purposes of assessing the

broad level of operation for which permission was granted, and thus for assessing the baseline by reference to which the materiality of any intensification of use could be judged.

79. Clarke J. drew the following distinction (at paragraphs 26 to 29 of the reported judgment):

“In the context of that issue it is important, in my view, to distinguish between a general description of the scale of operation of a facility which might be anticipated, on the one hand, and a specific condition limiting the maximum scale of the operation concerned, on the other. The distinction may be easy to define in some cases but there may well be grey areas in other cases. For example, a retail unit might be described as being likely to attract a certain level of footfall. That description might, indeed, be relevant for planning purposes for it would undoubtedly affect traffic and potentially the amenity of other property occupiers in the vicinity. But such a description would be unlikely to be taken as imposing an absolute limit on the amount of customers which the retail unit would be permitted to entertain on any given day. Likewise, the documents filed in respect of a planning application might suggest that a retail unit was designed for daytime use. That might indicate the sort of use which might implicitly be approved by the granting of planning permission for the unit concerned. It is well settled that, in considering the use which may be regarded as being permitted, it is possible to look at the development for which permission has been granted together with any documents submitted in the context of the relevant planning application.

In such a case the planning authority might choose to impose a specific condition concerning hours of opening. If it did so choose then the matter would be clear and it would be a breach of the relevant condition for the retail unit to open outside the hours as specified. However, even if no such specified opening hours were included as conditions attached to the planning permission, it would always be open to a court to consider whether opening significantly outside the parameters which were contemplated by the planning application itself might amount, in all the circumstances, to a sufficient intensification of use (over the use impliedly authorised by the permission) so as to justify a finding of a material change. However, in that latter case it would be necessary to take into account a range of factors, including the degree of difference from the use which it might be inferred had been permitted by the planning permission, so as to assess whether any variation from that contemplated use could be said to involve a material change of use.

Thus, at the other end of the spectrum, descriptions of the likely scale and timing of operations may simply be matters which go to the information on which a planning authority must make its decision and may inform the broad level of use for which it might be inferred that permission has been granted. In such a case a deviation would not, in and of itself, be a breach but rather the relevant information might provide the benchmark against which a decision as to the permitted type and scale of use might be made thus in turn informing any decision as to whether current use might be said to be materially different to a sufficient extent and thus involve an unauthorised development.

The distinction is between a specific requirement which must be obeyed more or less to the letter, on the one hand, and a general indication which may inform the baseline use by reference to which the materiality of an intensification of use may be judged. An assessment as to which of those two categories any particular description may fall into is one involving the proper construction of the planning permission as a whole including how that planning permission should be construed in the light of the documents filed by the applicant insofar as it can be said that those documents have been incorporated by reference into the permission itself.”

80. A practical example of the scope of a planning permission being interpreted by reference to the planning application is provided by the judgment in *Derrybrien Co-operative Society Ltd v. Saorgus Energy Ltd* [2005] IEHC 485. The High Court (Dunne J.) held that the environmental impact statement furnished as part of the planning application must be considered in determining the proper scope of the permission. The court further held that, viewed objectively, the documents as a whole made it clear that the proposed development involved the removal of all the forestry at the application site and the change of use on the lands from forestry to use as a wind farm.

DISCUSSION ON NATURE OF PERMITTED USE

81. The precise issue which falls for determination in these proceedings is whether the scope of the permitted development, as described in the planning permission, can be expanded by reference to the documentation submitted as part of the planning application. This issue does not appear to have been addressed directly in the case law to date. Rather,

much of the case law is concerned with the reverse position, i.e. where the permitted development had been stated in broad terms and the content of the planning application is called in aid *to narrow* the interpretation of the authorised use.

82. Before turning to examine the detail of the planning permission in the present case, it is necessary first to consider the legislative context as follows. The content of the notification of a decision on a planning application is prescribed by the Planning and Development Regulations 2001 (“**PDR 2001**”). (The references which follow are all to the version of the PDR 2001 in force as of the date of grant of the planning permission in June 2010).
83. Article 31(b) of the PDR 2001 provides that the notification of decision shall specify the “development to which the decision relates”. In practice, the description of the development is usually set out towards the start of the decision, followed by a formal statement to the effect that the planning authority or An Bord Pleanála, as the case may be, has decided to grant planning permission for the development “above” subject to the conditions set out “below” as a schedule. A similar format had been employed by the local authority in the present case, albeit that the description of the development appears below the operative words. See paragraph 30 above.
84. Each planning authority is obliged, under section 7 of the PDA 2000, to maintain a statutory register. Relevantly, the complete decision of the planning authority in respect of a planning application, including any conditions imposed, must be entered in the register.
85. The content of the underlying planning application itself is not entered in the register. The planning application documentation must, however, be available separately for public inspection. As of the date of grant of planning permission in the present case, the statutory obligation had been to make the documentation available for inspection and

purchase at the planning authority's office for a period of not less than seven years post-decision (section 38 of the PDA 2000). For more modern planning permissions, there is now an obligation to make the planning application documentation available for inspection on the planning authority's website and to maintain it there in perpetuity.

86. In principle, therefore, a planning permission is capable of being interpreted on a standalone basis, i.e. without recourse to the underlying planning application save in cases of ambiguity. In practice, however, it is now standard procedure for planning authorities to include a condition to the effect that the permitted development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the conditions imposed on the permission. Where such a standard condition has been imposed, then it is the *combined effect* of the permission and planning application documentation that must be looked at in determining the proper scope of the permission.
87. If and insofar as there is any inconsistency between the planning permission and the planning application documentation, then the former must prevail. The actual wording of the planning permission must carry greater weight than the planning application documentation where the two are in conflict. This is because of the public status of a planning permission. The permission is not personal to the individual or company who made the planning application. Rather, the grant of permission enures for the benefit of the land and of all persons for the time being interested therein (section 39 of the PDA 2000). It is essential, therefore, that a planning permission is capable of a precise and objective interpretation. It would be inconsistent with the regulatory requirement to specify the "development to which the decision relates" were the description in the grant of planning permission to be *contradicted* by something in the planning application documentation. It would undermine the integrity of a planning permission and the

statutory register if members of the public could not safely rely on same as providing an accurate description of the fundamental nature of the development.

88. None of this is to say that the detail of the permitted development cannot be restricted by reference to the planning application documentation. Provided that the content of the planning permission and the planning application complement each other, it is entirely proper to rely on the latter in interpreting the extent of the permitted development. The planning application might, as in the present proceedings, restrict the permitted use by specifying a threshold for the volume of waste which may be received annually. It is only in the case of a *conflict* between the planning permission and the planning application that legal certainty dictates that priority is given to the actual wording of the planning permission.
89. Put shortly, the content of the planning application documentation cannot be relied upon to *override* the fundamental nature of the permitted development as stated in the planning permission. Were it otherwise, this would create legal uncertainty. Any person reading a planning permission is entitled to assume that the description of the permitted development accurately records the fundamental nature of the development.
90. This principle is especially important in circumstances where, as in the present case, the planning permission is a *retention* permission. By definition, an application for retention planning permission will only ever be required where unauthorised development has already been carried out. It is essential that the retention planning permission specify which aspects of the unauthorised development *in situ* may lawfully be retained. To this end, a developer seeking to retain a material change of use of land is required to state particulars of the nature and extent of the use which it is proposed to retain (PDR 2001, article 22).

THE 2010 PLANNING PERMISSION

91. I turn next to apply the principles discussed above to the circumstances of the present case. The planning permission granted in June 2010 is in standard format. It is stated that the planning authority has granted retention permission for the development, subject to the conditions set out in schedule two. The development to which the decision relates is described as the retention of a recycling facility for construction and demolition materials.
92. The term “construction and demolition” is self-explanatory. The term would be understood, by the hypothetical “ordinary and reasonably informed” reader, as referring to waste material generated by activities involving the construction and demolition of buildings. Such waste material would be understood as including, for example, stone and soil from excavations, brick, rubble and concrete. The waste material would be sourced from the site at which the construction or demolition activity was being carried out.
93. The respondent, in its submissions, has sought to make something of the fact that the permission refers to construction and demolition “material”, as opposed to “waste”. In truth, nothing turns on this wording. The reference to “material” in the context of a recycling facility can only be understood as meaning waste material. This is especially so given that the second condition of the planning permission expressly references the waste facility permit and the Waste Management Acts. Tellingly, the words “material” and “waste” are used interchangeably in the planning application documentation. For example, in response to a request to specify details of raw material involved in the process, the applicant for planning permission stated as follows: “Construction & Demolition waste”. (See paragraph 13 above).

94. At all events, it is the qualifying words “construction and demolition” which introduce the restriction on the use. It is these words that preclude the acceptance of other categories of waste, such as commercial, industrial, municipal or household waste. This restriction is unaffected by any supposed distinction, in this context, between the terms “material” and “waste”.
95. It is next necessary to consider whether the “headline” development, as specified in the planning permission, is modified by the conditions imposed. The first condition provides that the “development” shall be in accordance with the plans and particulars submitted, as amended by the revised particulars submitted. The effect of this condition is to incorporate by reference the plans and particulars contained in the planning application and the subsequent response to the request for further information. The reference to “development” can only be understood as referring to the development identified earlier in the planning permission, namely a recycling facility for construction and demolition materials.
96. It should be explained that certain, minimum information must be furnished as part of a planning application. The type of information to be furnished is prescribed under Part 4 of the PDR 2001 and in the standard planning application form set out in Schedule 3 of those Regulations. Relevantly, an application for the *retention* of a material change of use should be accompanied by a statement of the use proposed to be retained, together with particulars of the nature and extent of the use (PDR 2001, article 22).
97. The detail of the planning application and the response to the request for further information have been summarised earlier (at paragraph 5 *et seq.*). As appears, the use to be retained is clearly and consistently identified throughout the planning application as involving the recycling of construction and demolition waste.

98. There is nothing in the planning application documentation which purports to expand the use to be retained beyond the recycling of construction and demolition waste. On its proper interpretation, therefore, the planning permission is confined to that use.
99. The significance of the first condition of the planning permission is that it gives legal effect to (i) the restrictions on the use, and (ii) the mitigation measures, which had been specified in the plans and particulars submitted as part of the planning application documentation. The planning application documentation indicated that the volume of waste received would not exceed an annual threshold of 23,000 tonnes. This threshold is given legal effect to, and is enforceable, as a result of the first condition of the planning permission. Similarly, the mitigation measures identified in the planning application documentation have been given effect to by their incorporation into the planning permission by way of condition. The permitted use must, for example, comply with the operation hours specified in the environmental report.
100. The respondent's contention that the planning permission authorises the reception of categories of waste *other than* construction and demolition waste is incorrect. The permission does not extend to commercial or industrial waste, nor to skips collected from households. The four or five sentences from the environmental report which are relied upon by the respondent do not bear out its contention. These sentences refer primarily to the range of activities carried on by the *company* in general, rather than to the use sought to be retained on the application site. These sentences are found in that part of the report which describes the waste facility permit. One of the curiosities of this case is that the local authority had been prepared to grant a waste facility permit in 2007 notwithstanding the absence of any planning permission for the use of the site as a waste facility. There continues to be a disconnect between the activities supposedly authorised

by the last iteration of the waste facility permit (December 2016) and the planning permission.

101. At the risk of belabouring the point, the use to be retained is clearly and consistently identified throughout the planning application as involving the recycling of construction and demolition waste. It is expressly stated that the facility does not accept “household waste of any kind”. Planning permission, especially retention planning permission, cannot be obtained by stealth. An applicant for planning permission is obliged to identify the use sought to be retained. The making of vague reference to additional uses, even ones which are said to be carried out currently, does not bring those uses within the envelope of the planning permission.
102. If and insofar as it is now suggested that the vague reference to commercial or industrial waste in the environmental report should be understood as intended to change the fundamental nature of the permitted use, this would mean that the planning application had been self-contradictory. Any such contradiction between the content of the environmental report and the description of the use specified throughout the planning application forms—and, ultimately, that specified in the grant of planning permission—must be resolved in favour of giving effect to the latter documents. It would be contrary to legal certainty, and undermine the regulatory requirement that an applicant for planning permission must specify the nature and extent of the use proposed to be retained, to expand the permitted use by such a sidewind.
103. For completeness, it should be emphasised that the effect of the first condition of the planning permission is to incorporate the planning application by reference. It does not allow for any *other* documentation to be relied upon in interpreting the planning permission. The respondent is not, therefore, entitled to call in aid extraneous documents such as documents submitted to the local authority in the context of the waste facility

permit. This documentation does not form part of the planning application. Thus, for example, neither the letter of 10 January 2007 from Kelly Environmental Consulting and Advisory Services nor photographs taken by an auctioneer in 2009 or 2010 can be relied upon.

104. In summary, there is no reference in the description of the development in the planning permission to any use other than the recycling of waste material from construction and demolition. This is consistent with the planning application. The planning permission does not, therefore, authorise the reception and treatment of waste from other sources. It does not, for example, extend to mixed dry recyclables, household or commercial skips, nor segregated materials transferred from civic amenity sites.

PUBLIC PARTICIPATION

105. More generally, an interpretive approach which gives weight to the description of the permitted development as stated in the body of the planning permission is consistent with public participation in the planning process. Both domestic and EU law attach much importance to public participation. There is a requirement to provide public notice of the making of a planning application. Relevantly, the public notice must state a brief description of the nature and extent of the proposed development. Where an application relates to the retention of a structure, the nature of the proposed use of the structure must be stated in the public notice. In most instances, the description of the development in any planning permission ultimately granted will reflect that stated in the public notice.
106. The objective of these public notice requirements is to ensure that adequate notice is given to members of the public, who may be interested in the environment or who may be affected by the proposed development, that permission is sought in respect of that development, so as to enable them to make such representations or objections as they

may consider proper (*Monaghan U.D.C. v. Alf-A-Bet Promotions Ltd.* [1980] I.L.R.M. 64 (at page 73)).

107. Of course, the public notices are not required to recite the detail of the planning application; rather, the obligation is to provide a “brief description” of the nature and extent of the development. This description must be sufficient, however, to alert members of the public to the fundamental nature of the development. A member of the public can then make an informed decision as to whether it is necessary for them to inspect the planning application wherein the detail of the development will be found.
108. On the facts of the present case, the description of the permitted development coincides with that set out in the public notices. An interpretation of the planning permission which restricts the permitted use to that stated, i.e. a recycling facility for construction and demolition waste, is consistent with effective public participation.
109. It should be emphasised that had there been an irreconcilable difference between the public notice and the form of development ultimately permitted, then the terms of the planning permission would prevail. Any discrepancy in the public notice is something which could only then be addressed by way of an application for judicial review, assuming that the requisite extension of time were to be granted by the court.
110. Put otherwise, this judgment should not be understood as saying that a shortcoming in public notices could be relied upon years later in the context of enforcement proceedings (as opposed to statutory judicial review proceedings taken pursuant to section 50 and 50A of the PDA 2000). The only point being made is that on the facts of the present case, the correct interpretation of the planning permission, happily, coincides with the public notices.

SECOND ISSUE

EVIDENTIAL STATUS OF THE DOCUMENTS EXHIBITED

111. One of the unusual features of the present case is that the applicants have adduced very little direct evidence as to the use being made of the lands. The applicants have not sought, for example, to carry out a site inspection as allowed for under Order 103, rule 7 of the Rules of the Superior Courts. Instead, the applicants rely almost exclusively on the documentation which they have obtained from the local authority, as follows.
112. The first category of documents consists of annual environmental reports. Each of the waste facility permits granted in respect of the facility had imposed an obligation on the permit holder to submit an annual environmental report or “AER” to the local authority. Relevantly, an annual environmental report must include details of the quantity and type of all wastes accepted at the site, and the tonnages and European Waste Catalogue code for the waste materials imported for disposal or recovery. The applicants rely, in particular, on the annual environmental reports submitted for the years 2016 and 2017.
113. The second category of documents consists of material prepared by officials of the local authority and the EPA in respect of site inspections carried out at the facility at various dates between 2012 and 2019. These documents include reports of the site inspections and photographs taken by the officials at the time.
114. Both categories of documents have been exhibited in affidavits filed by the first named applicant and by an engineer retained on behalf of the applicants, respectively. Neither deponent has direct knowledge of the events referred to in the exhibited documents.
115. The Supreme Court has recently reiterated that merely exhibiting a document as part of an affidavit does not, in and of itself, turn that document into admissible evidence. Documents are not evidence of anything unless properly placed before the court and proved in the ordinary way. See *RAS Medical Ltd v. Royal College of Surgeons in*

Ireland [2019] IESC 4; [2019] 1 I.R. 63; [2019] 2 I.L.R.M. 273 (“*RAS Medical*”) (at paragraphs 76 to 80).

116. The Supreme Court emphasised that the starting point for clarity in any case in which documents are presented to a trial judge is that the judge is informed as to the basis on which the documents are being made available. Clarke C.J. stated as follows at paragraph 76 of his judgment:

“[...] It is, quite frankly, inappropriate for either party to place documents before a judge without either the documents being proved in the normal way or a clear agreement being reached as to the basis on which the documents are being presented. It may, at one end of the spectrum, be the case that the documents are merely being presented on the basis that they will be properly proved in evidence but will have to be disregarded entirely if not so proved. If the agreement between the parties goes beyond that, then there should be absolute clarity as to the precise basis on which the documents are being presented to the judge.”

117. The judgment in *RAS Medical* also reiterates the requirement for cross-examination where there is potentially conflicting evidence to be found in affidavits or documentation in respect of facts which are material to the final determination of the proceedings. It is incumbent on the party, who bears the onus of proof in establishing the contested facts in its favour, to use appropriate procedural measures (including cross-examination) to ensure that the potentially conflicting evidence is challenged.
118. In the present case, an enormous volume of documentation, running to in excess of one thousand pages, has been exhibited by the parties. A number of documents, such as the planning application and the accompanying environmental report, have been exhibited more than once.
119. Having regard to the principles reiterated by the Supreme Court in *RAS Medical*, I asked the parties, at the conclusion of the hearing, to confirm whether the evidential status of this documentation had been agreed between them. The proceedings were put back for mention until 26 July 2021 to allow the parties to consider the matter. The parties sent a

joint letter to the registrar in advance of that date. The status of the exhibited documents was summarised as follows: the parties confirmed that it was agreed between them that all of the exhibits in the various affidavits filed in these proceedings can be considered as admissible evidence. This was reconfirmed in court when the matter was mentioned on 26 July 2021. It follows, therefore, that this court is being invited to treat the documentation as evidence of the truth of the contents thereof.

120. Given that the parties have adopted this agreed approach to the documents exhibited, the range of factual issues in controversy is very narrow. The disputed factual issues are confined, in the main, to the extent of the daily traffic movements generated by the facility and the number of employees attending at the facility. I return to address these issues at paragraph 146 *et seq.* below. I will first address the evidence as to the nature and extent of the waste being received at the facility.

EVIDENCE AS TO WASTE RECEIVED

121. There is no factual dispute as to the nature and extent of the waste being received at the facility. Rather, the disagreement between the parties centres on whether the acceptance of waste of these types is authorised under the planning permission.
122. The parties are agreed that the nature and extent of the waste received is correctly identified in the annual environmental reports submitted by the respondent to the local authority pursuant to the waste facility permit. The respondent has accepted that, subject to the correction of one minor typographical error, the figures as set out in the annual environmental reports are correct. (The total quantity of waste accepted to the site in 2016 was 10,135 tonnes, not 8,943 tonnes as stated at one point). The respondent has also conceded, on affidavit, that the waste types are all commercially collected waste streams as classified under each European Waste Catalogue code.

123. The purpose of the European Waste Catalogue has been described as follows by the (Irish) Environmental Protection Agency (“*EPA*”). See the EPA publication exhibited in Mr. O’Donnell’s affidavit of 1 February 2019.

“The European Waste Catalogue and hazardous waste list are used for the classification of all wastes and hazardous wastes and are designed to form a consistent waste classification system across the EU. They form the basis for all national and international waste reporting obligations, such as those associated with waste licences and permits, the National Waste Database and the transport of waste.”

124. The European Waste Catalogue consists of twenty chapters. In most instances, these chapters refer to the source generating the waste. The two chapters of most immediate relevance to the present case are Chapter 17 and Chapter 20. Chapter 17 applies to “Construction and demolition wastes (including excavated soil from contaminated sites)”. Chapter 20 applies to “Municipal wastes (household waste and similar commercial, industrial and institutional wastes) including separately collected fractions”.

125. Each chapter is broken down into subcategories, each with its own code. For example, construction and demolition waste has individual codes for, *inter alia*, concrete, bricks, tile, ceramics, wood, glass, plastic, metals, soil and stone, and dredging spoil.

126. The applicants have exhibited the annual environmental reports for the Barnan waste facility for the years 2016 and 2017. The content of these reports has been analysed and summarised in an affidavit sworn by the chartered/structural engineer retained by the applicants, Mr. O’Donnell. In brief, it is explained that the vast majority of the waste received at the facility is identified as falling within Chapter 20 of the European Waste Catalogue.

127. The categories of waste accepted at the facility during the year 2016 are summarised as follows at §3.1 of the annual environmental report:

MATERIAL	EWC Code	
CARDBOARD PACKAGING	150101	4,700
CLEAN CONCRETE	170101	129,240
CND WASTE	170914	770,346
CNI BULKY WASTE	200307	3,062,336
CRUSHED RUBBLE	191209	28,840
DMR	200301	104,540
END OF LIFE TYRES	160103	9,460
GLASS PACKAGING	150107	13,520
GREEN BIODEGRADABLE WASTE	200201	1,059,740
GYP SUM	170802	7,520
METAL	200140	505,220
METALIC PACKAGING	150104	520
MIXED PAPER	200101	2,020
PLASTIC PACKAGING	150102	1,220
PLASTICS - MIXED	170203	420
SOIL & STONES	170504	81,520
STREET SWEEPINGS	200303	8,040
TETRAPAK	150105	60
WEEE MIXED	200136	1,960
WOOD - NON PACKAGING	200138	4,328,810
WOOD - PACKAGING	150103	15,400
Grand Total		10,135,432

128. As appears from the foregoing, only a very small part of the waste received is identified as construction and demolition waste within Chapter 17. The vast majority of the waste is identified as municipal waste, i.e. Commercial and Industrial (CNI) Bulky Waste (20 03 07); Dry Mixed Recyclables (DMR) (20 03 01); Green Biodegradable Waste (20 02 01); Metal (20 01 40); Street Sweepings (20 03 03); Waste Electrical and Electronic Equipment (WEEE) (20 01 36) and Wood Non-packaging (20 01 38).
129. The only substantive reply offered by the respondent is to assert that “these specific details are applicable to an entirely different statutory code namely the controls under the Waste Management Act, which is a different regulatory scheme”. With respect, the *source* of waste is principally a factual matter, not a legal matter. The respondent itself has identified that most of the waste received at the Barnan facility comes from sources *other than* construction and demolition. This fact is indisputable given the agreement between the parties that the exhibited annual environmental reports are admissible as evidence of the truth of their contents.

130. It is irrelevant that the obligation to identify and report the source of the waste is one which derives from the conditions of the waste facility permit. This does not affect the veracity of the figures set out in the annual environmental reports. What is relevant for the purpose of the planning permission is the source of the waste, and, in particular, whether it represents construction and demolition waste. This question has been answered in the negative for the vast majority of the waste received at the Barnan facility. The veracity of the figures set out in the annual environmental reports is not affected because the detail of the source of waste is presented at a more granular level than required by the planning permission. At the risk of belabouring the point, the respondent has agreed to the admission of these reports as evidence.
131. For completeness, it is incorrect for the respondent to imply that the waste management legislation is an “entirely different statutory code” which is irrelevant to the planning permission. It is an express condition of the planning permission that all waste arising from/at the site be managed in accordance with the Waste Management Acts. It is also an express condition that the development shall comply with all environmental conditions set out under the then current waste permit or any renewed permits issued for the site in the future. The reporting obligation and the requirement to record the quantities and composition of waste, including the European Waste Catalogue code, received, derive from the waste facility permit. It is legitimate, therefore, to have regard to the definitions under the Waste Management Act 1996 (as amended) and to the European Waste Catalogue codes in assessing whether there has been a breach of the planning permission. As it happens, the concept of “construction and demolition waste” is self-explanatory, and does not require further elaboration under the Act. It is defined under section 5 as meaning waste generated by construction and demolition activities.

The European Waste Catalogue simply separates out the constituent parts of construction and demolition waste into individual codes.

132. The concept of “municipal waste” is defined, under the Waste Management Act 1996 (as amended), as excluding, *inter alia*, “construction and demolition waste”. The respondent has identified the vast bulk of its waste as “municipal waste”. It cannot now turn around and say that this waste should be regarded as construction and demolition waste.

133. The 2017 annual environmental report describes the operation of the waste facility as follows:

“The Barnan facility operates as a waste transfer station with minor mechanical waste processing (e.g. wood shredding) for recovery purposes. The facility accepts construction & demolition wastes, mixed dry recyclables, household & commercial skips and segregated materials transferred from civic amenity sites. These materials are bulked and transferred onwards for recovery, disposal or further processing.”

134. This description is borne out by the figures set out in the annual environmental reports for the years 2016 and 2017. It is immediately apparent that the range of waste types accepted at the Barnan facility greatly exceed that for which planning permission has been granted. For the reasons set out earlier, the authorised use under the planning permission is confined to the recycling of construction and demolition waste.

135. The respondent itself has consistently—and correctly—distinguished between waste sourced from construction and demolition and waste sourced elsewhere. It has never been suggested that the words “construction and demolition” as used under the planning permission should be given other than their ordinary and natural meaning, nor that the words mean something different when used in the European Waste Catalogue.

136. The respondent’s principal answer to these enforcement proceedings had been to say that the planning permission allowed for other types of waste. Now that this issue of the interpretation of the planning permission has been resolved against the respondent, it has

no *factual answer* to the complaint that the vast bulk of the waste received is from sources other than construction and demolition.

Timber / Wood

137. It is apparent from the figures in the annual environmental reports that a significant amount of timber is received at the waste facility and subject to shredding. This is borne out by a consideration of the various site inspection reports and other documents exhibited as follows.

138. In a site inspection carried out by Offaly County Council on 30 May 2012, it was reported that there was a 750 tonne timber stockpile on site. The local authority issued an enforcement notice under the Waste Management Act 1996 on 6 November 2014 directing that the acceptance of timber at the site cease. It appears that this may have been intended as a temporary measure. In November 2016, the local authority requested that the timber stockpile be reduced to 100 tonnes. In May 2018, another site inspection revealed a large volume of unprocessed timber stockpiled on the site. Similarly, a stockpile was noted in the report of a site inspection carried out on 30 January 2019 as follows:

“Large volume of unprocessed timber stock piled, to be shredded, largely for landfill as not segregated (includes painted timber, timber with nails etc. Mattresses onsite being processed with the springs etc being recycled and cloth being sent to landfill. Stockpiles of clean cardboard, steel, green waste, C+D rubble/mixed C+D and Bulky waste. Yard in general well maintained, small area to tidy up after machine onsite being repaired.”

139. The planning permission does not authorise the reception of timber at the facility. This is because the respondent itself has categorised the source of this timber as municipal waste, not construction and demolition waste.

140. Moreover, the source of the timber is confirmed by other documentation which has been admitted into evidence with the agreement of the parties. The agreed evidence

establishes that, certainly as of 2013, very little, if any, of the timber being received at the waste facility represented construction and demolition waste. The agreed evidence includes a letter from the respondent to the local authority dated 7 May 2013 which states as follows:

“Due to the source of unprocessed timber material that is delivered to site, it is very unlikely that metals are contained within the timber stockpiles areas. The majority of timber material is delivered from public civic amenity site where the general public can dispose of timber into designated storage roll-on skips. Other sources may be delivered direct from skips that individual households or commercial premises. [...]”.

141. Given its concession that the documents are admissible evidence of the truth of their contents, the respondent is bound by this statement.
142. The only answer offered to the complaint that the timber does not constitute demolition and construction waste is to suggest that timber which is deposited in a skip at a civic amenity area “will almost inevitably arise from a construction operation”. No rationale is offered for this bald assertion. More importantly, it is entirely inconsistent with the respondent’s own characterisation of the waste as falling within Chapter 20 of the European Waste Catalogue, i.e. as municipal waste. As explained earlier, the concepts of “construction and demolition waste” and “municipal waste” are mutually exclusive.
143. The planning permission does not allow for timber from civic amenity areas to be accepted and treated at the facility. Nor does the planning permission authorise the treatment, by shredding, of any timber on the lands. Accordingly, an order will be made prohibiting the respondent from carrying on such activities.

Mattresses and bulky items

144. The agreed evidence establishes that a significant number of mattresses are received at the waste facility. A mattress does not represent construction and demolition waste, and thus the planning permission does not allow for mattresses to be accepted and treated at

the lands. An order will be made prohibiting the respondent from accepting any mattresses.

Volume of waste

145. Insofar as the volume of the waste received at the lands is concerned, the agreed evidence indicates that the threshold of 23,000 tonnes per annum identified in the planning application has not been exceeded. The annual environmental reports which have been admitted as evidence indicate the figures for the two most recent years reported, 2016 and 2017, were 10,135 tonnes and 11,692 tonnes, respectively.

Employees and traffic

146. On the separate issue of the number of employees engaged at the facility, Mr. Moylan has averred, in his first affidavit at paragraph 24, that there are currently 8 staff working on the site, comprising 5 office staff and 3 yard staff. The applicants have not sought to cross-examine Mr. Moylan. The applicants have, therefore, failed to establish that the number of employees engaged exceeds the indicative figures in the environmental report, i.e. 12 people would be employed on the site, along with 4 drivers.
147. Similarly, the applicants have failed to establish that the traffic movements exceed those indicated in the environmental report which had accompanied the planning application. Mr. Moylan has averred, in his second affidavit at paragraph 12, that there was an annual overall number of 2,732 vehicles delivering waste to the site in 2016; and 3,102 vehicles delivering waste in 2017. These figures are both below the indicative figures in the environmental report which equate to 9,360 annual vehicle waste deliveries. Again, the applicants have not sought to cross-examine Mr. Moylan.

DISCRETIONARY FACTORS

148. As a fall back to its principal submission that there has been no unauthorised development, the respondent invites the court to exercise its discretion under section 160 of the PDA 2000 to refuse relief. The respondent cites the judgments of the Supreme Court in *Meath County Council v. Murray* [2017] IESC 25; [2018] 1 I.R. 189; [2017] 2 I.L.R.M. 297; *An Taisce v. McTigue Quarries Ltd* [2018] IESC 54; [2019] 1 I.L.R.M. 118; and *Krikke v. Barranafaddock Sustainability Electricity Ltd* [2020] IESC 42.

149. I address each of the factors relied upon in turn as follows.

(i) *Attitude of the planning authority*

150. The respondent seeks to rely on the views of the local authority. In particular, reference is made to the report of the local authority's executive planner of 6 June 2017. The reliance on this report is misplaced. A planning permission must be interpreted objectively by the court. The *subjective* views of the officials of the local authority do not attract any deference.

151. More generally, the fact that a local planning authority has failed to take enforcement action will rarely be a decisive consideration for the reasons explained by the Court of Appeal in *Bailey v. Kilvinane Windfarm Ltd* [2016] IECA 92. Hogan J. stated as follows (at paragraphs 66 to 68):

“[The High Court] attached some weight to the fact that the Council had not, qua planning authority, decided to take any enforcement action. For my part, I should have thought that this was largely a neutral factor, since the whole object of s. 160 (and its statutory predecessor, s. 27 of the Local Government (Planning and Development Act 1976) is to provide that, in the words of Henchy J. in *Morris v. Garvey* [1983] I.R. 319, 323:

‘We are all, as users or enjoyers of the environment in which we live, given a standing to go to court and to seek an order compelling those who have been given a development

permission to carry out the development in accordance with the terms of that permission.’

If, therefore, the fact that a planning authority elected not to take action in respect of development which was otherwise unlawful was to be a major factor in any assessment of the entitlement of a local resident to seek relief under s. 160 of the 2000 Act, this would tend to undermine the effectiveness of the s. 160 procedure itself.

That is not to say that the inaction of the planning authority could never be relevant to any assessment of the relevant discretionary factors. In some other circumstances, the inaction of the planning authority might help to show that the breach complained of was indeed simply trifling or transitory: see, e.g., the judgment of Herbert J. to this effect in *Grimes v. Punchestown Developments Ltd.* [2002] 1 I.L.R.M. 419. Nevertheless, in the generality of cases, the inaction of the planning authority is largely a neutral factor and it is certainly not one which could deprive an otherwise meritorious applicant of his or her entitlement to obtain s. 160 relief where the unauthorised status of a particular development had been clearly established.”

152. These principles were most recently applied in *Lagan Asphalt Ltd v. Hanly Quarries Ltd* [2021] IEHC 450.

153. On the facts of the present case, it would be inappropriate to attach any weight to the views of the local authority. The local authority’s approach to the regulation of the waste facility has already been found by the High Court in *Kelly Dunne v. Offaly County Council* [2019] IEHC 328 to have been in breach of domestic and EU law.

(ii). Previous High Court proceedings

154. The respondent has sought to rely on the judgment in *Kelly Dunne v. Offaly County Council* [2019] IEHC 328 as a discretionary factor: see §38 and §39 of its written legal submissions. If and insofar as it is sought to suggest that the earlier proceedings had implicitly determined the planning status of the lands, such a suggestion is mistaken. The planning status of the lands only arose tangentially in those proceedings.

155. The only planning related issue before the court in *Kelly Dunne v. Offaly County Council* concerned article 18(4)(d) of the Waste Management (Facility Permit and Registration)

Regulations 2007. This article provides that a local authority shall not grant a waste facility permit unless it is satisfied that the facility is compliant with planning or is exempt from planning permission. O'Regan J. held that there was insufficient evidence before the court, *in the judicial review proceedings*, to discharge the onus upon the applicant to demonstrate that the local authority had breached this requirement of the Permit Regulations. It is readily apparent, from paragraphs 47 to 49 of the judgment, that O'Regan J. had been fully aware of the existence of the within enforcement proceedings and did not wish to pre-empt the outcome of same.

(iii). Public interest in private sector waste management

156. It is submitted that the respondent is carrying out an important public service activity which the State has asked the private sector to provide on a commercial basis. This submission has not been elaborated upon by affidavit evidence. At all events, there is a countervailing public interest in ensuring that waste management is carried out in compliance with the requirements of domestic and EU legislation.

(iv). Non-Compliance with EU environmental legislation

157. The High Court (Baker J.) held in *McCoy v. Shillelagh Quarries Ltd* [2015] IEHC 838 (at paragraphs 84 and 85) that the exercise of the court's discretion under section 160 of the PDA 2000 should be informed by reference to EU environmental law.

“I consider myself constrained further by the requirements of European Community law, and especially the EIA Directive and the Habitats Directive as each of these mandates that an Environmental Impact Statement is required in respect of the operation of this quarry.

Accordingly, were I to refuse injunctive relief or grant injunctive relief with respect to some of only of the operation, I consider that my decision would be one which could be characterised as a failure to respect the integrity of the environmental legislation, and allow the development to continue when it is unauthorised under Irish [law] and when Irish law arises as a result of the obligations of Ireland and Community law.”

158. The fact that the unauthorised development being carried out at the Barnan waste facility is of a category or class subject to the Environmental Impact Assessment Directive is a relevant consideration in this regard. Article 10A of the EIA Directive (as most recently amended by Directive 2014/52/EU) provides as follows:

“Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.”

159. One of the troubling features of the planning history of the lands is that the regulatory requirements of EU environmental legislation do not appear to have been complied with by the local authority. First, it must be doubtful whether the local authority had jurisdiction to grant *retention* planning permission for a waste facility of this scale. The volume of waste which it was proposed to bring onto the site had been stated in the environmental report as 23,000 tonnes per annum. Under the Planning and Development Regulations 2001, the carrying out of an environmental impact assessment had been mandatory for installations for the disposal of waste with an annual intake greater than 25,000 tonnes. For projects falling below that threshold, it would be necessary for the planning authority to carry out a screening exercise to determine whether the development was likely to have significant effects on the environment.

160. The concept of “waste disposal”, for the purpose of the Environmental Impact Assessment Directive, is wider than that under the Waste Framework Directive, and extends to all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery (Case C-486/04, *Commission v. Italy*).

161. The failure of the then owners and operators of the lands to apply for planning permission prior to the commencement of development represented a breach of the requirements of the version of the Environmental Impact Assessment Directive then in force (Directive 85/337/EEC) as interpreted by the Court of Justice of the European Union in Case

C-215/06, *Commission v. Ireland*. The Court of Justice condemned the blanket provision then made under domestic law for retention planning permission.

162. As a result of the amendments introduced under the Planning and Development (Amendment) Act 2010, a local planning authority is now precluded from considering an application to retain unauthorised development in circumstances, *inter alia*, where the development concerned would have triggered a screening determination as to whether an environmental impact assessment is required. Instead, it would have been necessary to make an application for leave to apply for “substitute consent” pursuant to Part XA of the PDA 2000 (as inserted by the 2010 Act).
163. As of the date of the retention application in the present case, these amendments had not yet been brought into effect. The retention application was submitted in the interregnum between the delivery of the judgment in Case C-215/06 (3 July 2008) and the commencement of the amending legislation (21 September 2011). Notwithstanding this delay by the Irish State in introducing the necessary amending legislation, there are strong grounds for saying that the local authority was precluded, as an emanation of the State, from granting *retention* planning permission to retain such a significant waste facility. The provisions of the EIA Directive have direct effect and the terms of the judgment in Case C-215/06 are obvious. No judicial review proceedings were taken at the time and thus the validity of the planning permission cannot now be questioned. Nevertheless, this seeming breach of EU law is a factor which can be taken into account in the exercise of the court’s discretion under section 160 of the PDA 2000. The fact that the time-limit for challenging a development consent has expired does not deem the project to have been lawfully authorised as regards the obligation to assess its effects on the environment (Case C-348/15, *Stadt Wiener*).

164. Secondly, the High Court has held that the local authority erred in law in purporting to grant a reviewed waste facility permit to the respondent. More specifically, the High Court held in *Kelly Dunne v. Offaly County Council* [2019] IEHC 328 that the local authority had erred in law in purporting to screen out an appropriate assessment for the purposes of the Habitats Directive. As explained earlier, the respondent continues to operate the waste facility in purported reliance on a waste facility permit which expired on 14 December 2015. (See paragraphs 41 to 58 above). It is inconsistent with the requirements of EU environmental law that a large scale waste facility continues to operate on such an *ad hoc* basis, especially given its close proximity to the Raheenmore Bog Special Area of Conservation (“SAC”).
165. At all events, this court having found that the development is being carried out in breach of the planning permission, and having regard to the EU law issues identified above, it would not be a proper exercise of the court’s discretion to refuse relief.

CONCLUSION AND PROPOSED FORM OF ORDER

166. It is now standard procedure for planning authorities to include a condition to the effect that the permitted development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the conditions imposed on the permission. Where such a standard condition has been imposed, then it is the combined effect of the permission and planning application documentation that must be looked at in determining the proper scope of the permission.
167. The development in respect of which retention planning permission had been granted in the present case is described as the retention of a recycling facility for construction and demolition materials. There is nothing in the planning application documentation which

purports to expand the use to be retained beyond the recycling of construction and demolition waste. Rather, the use to be retained is clearly and consistently identified throughout the planning application as involving the recycling of construction and demolition waste. On its proper interpretation, therefore, the planning permission is confined to that use.

168. The term “construction and demolition” is self-explanatory. The term would be understood, by the hypothetical “ordinary and reasonably informed” reader, as referring to waste material generated by activities involving the construction and demolition of buildings. Such waste material would be understood as including, for example, stone and soil from excavations, brick, rubble and concrete.
169. The respondent itself has consistently—and correctly—distinguished between waste sourced from construction and demolition and waste sourced elsewhere. It has never been suggested that the words “construction and demolition” as used under the planning permission should be given other than their ordinary and natural meaning, nor that the words mean something different when used in the European Waste Catalogue.
170. The respondent’s principal answer to these enforcement proceedings had been to say that the planning permission allowed for other types of waste. Now that this issue of the interpretation of the planning permission has been resolved against the respondent, it has no *factual answer* to the complaint that the vast bulk of the waste received is from sources other than construction and demolition.
171. For the reasons summarised at paragraphs 148 to 165 above, it would not be a proper exercise of the court’s discretion to refuse relief.
172. Accordingly, an order will be made prohibiting the respondent, its servants and agents, from accepting any waste at the Barnan waste facility other than construction and demolition waste. For the avoidance of any doubt, the order will expressly prohibit the

acceptance of mixed dry recyclables, waste from household or commercial skips, or waste from civic amenity sites. The planning permission does not authorise the treatment, by shredding, of any timber at the facility. Accordingly, an order will be made prohibiting the respondent from carrying on such activities. An order will also be made prohibiting the respondent from accepting any fridges, waste electrical and electronic equipment, beds, mattresses, sofas or tyres.

173. I will discuss the precise form of order with counsel. The proceedings will be listed before me on 4 October 2021 at 11 a.m. for final orders. The parties should be prepared to address the question of costs and of a stay, pending any appeal, on that date.

Appearances

Oisín Collins and Margaret Heavey for the applicants instructed by O'Connell Clarke Solicitors
Conleth Bradley, SC and Michael O'Donnell for the respondents instructed by John C. Kieran
& Son Solicitors

Approved
Gemma S. Mans