Neutral Citation No. [2010] NIQB 71 | *Ref:* **TRE7852**

Judgment: approved by the Court for handing down | *Delivered:* **17/05/2010**
(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Blackburn's (Louisa) Application (Leave Stage) [2010] NIQB 71

AN APPLICATION BY LOUISA BLACKBURN
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION
BY THE MINISTER FOR SOCIAL DEVELOPMENT

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TREACY J

Introduction

[1] The applicant initially sought leave to apply for judicial review of a decision of the Minister for Social Development "made on or about 30 December 2009 whereby she approved a redevelopment scheme for the village area of Belfast".

[2] This application was based on a misapprehension since no such decision was made. The Minister did however decide on 22 December 2009 (following a Public Inquiry) to accept the Inspector's Report into the *vesting* of properties in the Village area. In accordance with that decision she made a vesting order on 9 February 2010.

[3] In October 2009 a public inquiry was held to consider objections to the proposed vesting order under para 3(1)(b) of Schedule 6 to the Local Government Act (NI) 1972. The Schedule 6 procedure is the applicable procedure for a vesting order under Art 87 of the Housing (NI) Order 1981. Following the public inquiry the Minister decided to accept the Inspector's report and by decision made on or about 22 December 2009 and publicised on 30 December 2009 she approved the making of the vesting order for the village area of Belfast including the applicant's home.

[4] This vesting was a component of a general plan for works to be carried out in the village area which was approved by the Minister, after consideration of options put forward in an economic assessment on 21 April 2008.

[5] The application for judicial review was not introduced until 30 March 2009. An amended Order 53 Statement accompanied the applicant's skeleton argument dated 22 April 2010 as a result of which it is clear that the applicant still wishes to challenge the decision taken as a result of the public inquiry although it is common case now that the decision under challenge is a decision to proceed to make a vesting order rather than a decision to approve a redevelopment scheme. I do not propose to rehearse the detailed grounds of complaint set out in the amended Order 53 Statement since the applicant in a helpful skeleton argument has said that the central concerns about the conduct of the public inquiry remain that:

(i) It was not independent or impartial and was biased;
(ii) It was predetermined; and
(iii) It failed properly to address the issues and arguments which it was required to.

[6] It is apparent that most, if not all, of the matters of which complaint is now made first arose during the inquiry itself. On any showing all of the matters of which the applicant complains had crystallised well before the publication of the Minister's decision on 30 December 2009.

Delay

[7] I previously dismissed this application for leave to apply since I was satisfied that the application had not been brought promptly as required by Order 53 Rule 4(1) RSC and I did not consider there was any good reason for extending the time. I indicated that I would give further reasons in writing which I now do.

[8] RSC Order 53 Rule 4(1) requires that applications for leave are "made *promptly* and in any event within three months from the date when the *grounds for the application first arose* unless the Court considers that there is good reason for extending the period within which the application shall be made".

[9] Leaving aside the consideration that time may have already begun to run against the applicant from the date of the public inquiry itself Courts in Northern Ireland have long emphasised that an application should be made promptly and that applications made within the three month period may still be deemed out of time for lack of promptitude e.g. ***Re McHenry's Application*** **[2007] NIQB 22,** para 3(iii); see also para 3.27 of Judicial Review in Northern Ireland – Gordon Anthony.

[10] I am satisfied that this application for judicial review has not been brought promptly as required by Order 53 Rule 4(1) RSC. Nor do I consider that there is any good reason for extending time. The requirement to act promptly is particularly important in cases such as the present where the absence of a prompt challenge will almost certainly be detrimental to good administration, may cause and is likely to cause hardship or prejudice and to affect the interests of third parties.

[11] As the proposed respondent pointed out in its skeleton argument the only reason advanced by the applicant for the delay in this case was the initial refusal of legal aid. I agree that this is not an adequate excuse in such an important field which affects so many other people – I am told the owners of another 1,309 houses.

[12] The proposed respondent also has indicated that the Minister is of the view that any significant delay in moving this project forward will imperil its entire future. The finance for the same has been approved for use in this financial year in a phased manner.

[13] The Court has been informed in very general terms that if the project is delayed the funds will be allocated to other projects that can proceed this year and that this project will, in effect, have to bid for funding in future years. If, for example, the project was delayed by proceedings until the end of June 2010 some £4.3m would be unused from the budget and allocated to other projects. It is asserted that this is not simply a case of obtaining fresh funding automatically from future government spending. This project would have to rebid for these funds.

[14] Further, for each subsequent months delay a further £1.4m will be unspent from the planned budget. Much work has already been done on the basis of the decision which was made back in April 2008. In substance it appears that the applicant is seeking to undermine this earlier decision in respect of which much work has already been done by attempting to reopen the housing scheme by reference inter alia to the decision of Girvan J in ***Cowan v DED*** **[2000] NI 122**[1].As the

[1] At para.8 of their leave Skeleton the applicant submitted as follows:
In an important judgment in the field of compulsory land acquisition, Girvan J emphasised the need for an independent inquiry to satisfy the requirements of fairness and the protection of Convention rights; and the need for such an inquiry to have a wide purview (including the viability of the scheme as a whole for which vesting is sought). For instance, at 139-140 he said:
"When a local inquiry is directed under the 1972 Act following the submission of non-frivolous representations of objection the inquiry is in practice an inquiry into the question whether a vesting order should be made. Such inquiries do in practice consider the question in the round rather than focusing simply on the limited objections of individuals. Such a limited inquiry would not in any event be a meaningful inquiry since the inquiry could not address individual objections without looking at the case in a broader way. The party charged with the inquiry is inquiring into the question whether a vesting order should be made in the first place. If Mr Hanna were right the inquiry would be asked to presume that apart from the objections made by individuals the vesting order should be made but there is no such presumption written into the 1972 Act. There is nothing in the 1972 Act to suggest that the inquiry is a limited one nor is there any reason to suggest that an inquiry under the 1982 Order should be any more limited than an inquiry under the 1972 Act.
I can see no reason in principle why an objector having made representations objecting to a vesting order could not at the inquiry pursue lines in cross-examination or adduce evidence going beyond the representations made. Procedural fairness would demand such rights bearing in mind that frequently it is only as the result of seeing and hearing evidence at the public inquiry that an objector appreciates the strengths and weakness of the case for vesting and may discover or see in sharper focus additional or stronger grounds of objection or grounds upon which to challenge the application for the vesting order..."

respondent pointed out the expectations of the community have been raised and indeed I am told some £17m has already been spent on the basis of same.

Conclusion

[15] For the above reasons the application for leave for judicial review is dismissed.