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SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	2017 : 136
Subject matter for indexing	

Leave is sought to appeal from	
<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court

[Title and record number as per the High Court proceedings]

Gerard Fulham	V	An Bord Pleanála/ M & N O'Grady Developments Limited as a Notice Party
High Court Record Nr 2017-248 JR		Court of Appeal Record Nr 2017-312
Date of filing 18 March 2017	30 June 2017	
Name(s) of Applicant(s)/Appellant(s)	Gerard Fulham	
Solicitors for Applicant(s)/Appellant(s)	Acting in Person	
Name of Respondent(s)	An Bord Pleanála/ M & N O'Grady Developments Limited as a Notice Party	
Respondent's solicitors	Philip Lee Solicitors/	
Notice Party Solicitors	O'Keefe & Moore Solicitors	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		

1. Decision that it is sought to appeal

Name(s) of Judge(s)	The President The Honourable Justice Irvine The Honourable Justice Whelan
Date of order/ Judgment	10 August 2017 perfected on the 11 August 2017

2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	Gerard Fulham
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

Solicitor			
Name of firm	Applicant in Person		
Email	Gerry.fulham68@gmail.com		
Address	84 Nutgrove Avenue Rathfarnham Dublin 14	Telephone no.	086 1295536
		Document Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

Document Exchange

Yes E-mail

Yes Post

Other (please specify)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel

Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	84 Nutgrove Avenue Rathfarnham Dublin 14
e-mail address	Gerry.fulham68@gmail.com
Telephone no.	086 1295536

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	An Bord Pleanála/ M & N O'Grady Developments Limited Notice Party
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Original status	<input type="checkbox"/>	Plaintiff	<input type="checkbox"/>	Defendant	Is this party being served with this Notice of Application for leave?		
	<input type="checkbox"/>	Applicant	<input checked="" type="checkbox"/>	Respondent			
	<input type="checkbox"/>	Prosecutor	<input checked="" type="checkbox"/>	Notice Party			
	<input type="checkbox"/>	Petitioner	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Solicitor			
Name of firm	Philip Lee Solicitors for the Respondent O'Keefe & Moore Solicitors for the Notice Party		
Email	toconnor@philiplee.ie for the Respondents edwin.allen@okandm.com for the Notice Party		
Address	7/8 Wilton Terrace, Dublin 2 for the Respondents	Telephone no.	01-2373700 for the Respondents
	6 Merrion Square Dublin 2 for the Notice Party		01-6767853 for the Notice Party
		Document Exchange no.	
		Ref.	

Postcode	
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Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/>	Document Exchange
<input type="checkbox"/>	Post

<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Other (please specify)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/>	Document Exchange
<input type="checkbox"/>	Post

<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Other (please specify)

4. Information about the decision that it is sought to appeal

Please set out below:

Whether it is sought to appeal from (a) the entire decision or (b) ~~a part or parts of the decision and if (b) the specific part or parts of the decision concerned~~

(a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)

(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute

In reply to (A) above The order of the Court of Appeal delivered on the 10th day of August 2017 by the presiding President and The Honourable Justice Irvine and the Honourable Justice in the Court of Appeal to refuse the Appellants application for an extension of time to appeal the said orders of the High Court made by the Honourable Justice Faherty against the Appellant on the 17th of May 2017 to strike out the Appellants Judicial review proceedings as they were improperly instituted before the Courts.

In reply to (B) above not applicable to the Appellant

The relevant orders and findings made in the High Court and/or in the Court of Appeal

High Court

In reply the relevant orders are an order for striking out the Appellants proceedings as the were improperly instituted before the Court and an order for costs against the Appellants for the notice party and the respondents

Court of Appeal

Order of the court of Appeal, It is ordered that the said motion to extend time to appeal be refused and that the Applicant do pay to the Notice Party the costs of this motion to be taxed in default of agreement

And the findings were in the Court of Appeal that the application of the applicant be refused and the Applicant do pay the costs

5. Reasons why the Supreme Court should grant leave to appeal

1. *In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—*

2. Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

3. *In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—*

4. Please list (as 1, 2, 3, etc) concisely the reasons in law:
a. why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court and

why there are exceptional circumstances warranting a direct appeal to the Supreme Court

1. This case is of the utmost public importance and in the interests of Justice as there is an existing legal and lawful determination in respect to this particular site, a determination which was decided by the Respondents on the 14th/February/2014 on foot of an objection to the local Authority Planning Authority Reg. Ref: D13A/0370 and subsequently appealed by the Appellant and his neighbours on to the Respondents, permission was granted by the Respondent, within this said granted planning permission under the Respondents Planning Reference No. PL06.242557 containing 20 No.Conditions. Which included the Appellants and his neighbours various guaranteed easements, Rights in common law, Natural law and Constitutional law.

2. The Notice party had every opportunity to them if not satisfied with this determination made by the Respondent on the 14th February 2014 including the said 20 no. Conditions attached to it, in fact could have in law sought a further determination by way of Judicial Review proceedings in the High Court within the stated statutory 8 week time limit of the said determination and possibly longer depending on the circumstances but they decided not to take the lawful and legal route to make any of these alterations

3. The Notice Party to these proceedings did not exercise their lawful and legal entitlement in having the said 2014 legal determination Judicially reviewed by the High Court within the statutory 8 week time limit, that this time has now well and truly passed to have this decision altered in any manner or mode, instead they chose an alternative route by waiting for a long period of time, in July 2015 the Notice Party instructed their unauthorized Architects to place a new planning permission with the Local Authority in respect to this site, same was granted despite a serious objection from the appellant and his neighbours, this was the Notice Party's first attempt to breach the Respondents lawful determination of the 14th day of February 2014 and did so without informing the Respondents

4. The Notice party commenced developing this site in constructing 47 units in January 2016, (2 years after the grant of permission) and ceased at only constructing 8 No units, the Notice Party were unable to sell these units as they were not entitled to due to condition No 18 of February 2014 of

the Respondents legal determination which is still in place now and is to remain in place as it is law.

5. The Local Authority on having several “on site planning meetings with the Notice Party” in early 2015 and with absolutely no invitation to the appellant or his neighbours, planned amongst themselves how to overcome this condition 18 as set down by the Respondent in the February 2014 determination, In June/July 2016 the Notice Party again instructed their unauthorized Architect to make 4 new planning applications under the guise of slight modifications to the existing 2014 Respondents determination, contained within these new planning applications was an application to phase and stage the development, and if allowed would be a direct interference and conflict rather than a modification to this condition 18
6. The Local Authority granted permission in August/2016 for this phased and staged development and to enlarge the new units under construction to the Notice party, again without any consultation with the Respondents nor the appellant or his neighbours, in fact they completely ignored the appellant and his neighbours, the Local Authority breached the said condition 18 contained within February 2014 determination by granting this permission again without any consultation with the Respondents
7. The Applicant appealed this Local Authority’s decision on to the Respondents in the hope that the Respondents would not interfere or meddle with any of their own legal determination of February 2014, unfortunately they did interfere and meddle with their own legal decision, this is a decision that they cannot make as this planning permission has already been set down in 2014 contained within 20 No. conditions are still in law and remain in place as no party sought to change or alter same within the statutory 8 week time limit in February 2014 as set down by the statutory authority in this case the Respondent nor did any party seek an extension of time.
8. It is quite clear that both the Respondents and the Notice party are simply joining forces in this matter to diminish the appellant and his neighbours of both their rights under statute, common law and Constitution law in taking the actions they have to date in the Courts against the Appellant
9. The Local Authorities planning inspector is guilty of criminal behavior, gross negligence and collusion and such as his behavior will have to be investigated by the Director of Public Prosecutions for placing false and deliberately misleading information contained within the Notice party’s response to the Appellants Appeal, solely to encourage a favorable outcome against the appellants recent appeal to the Respondents, as he should of followed proper procedure which was open to him through his own authority.
10. The applicant is further advised that the Respondent and the Notice Party and the Local Authority are guilty of conspiracy and collusion in trying to obtain these said planning permissions as the granting of such permissions would severely diminish the appellant and his neighbours their common laws and the rights to various easements which were granted already by the Respondents on the 14th day of February/2014

11. The Appellant states that Since Court proceedings commenced there has been no let up with this development despite that the planning permissions are currently before the Courts but this is normal behavior from the notice party as there is a 35 year history on public record relating to the construction of the 2 adjoining estates Longwood Park and Stonepark Abbey

Condition 18 of the Respondents 2014 order and direction for clarification purposes for the Court reads as follows:-

18. The proposed scheme shall not be occupied until such time as all development is completed to the satisfaction of the planning authority.

Reason: In the interest of proper planning and sustainable development.

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

1. The learned President and Judges in the Court of Appeal erred in law and fact in failing to take into consideration the circumstances of the appellants judicial review proceedings and they further failed to take notice of the appellants circumstances as to a determination already in place since 14/Feb/2014 and 20 No. Conditions attached to it and further failed in not taking into account the location of the Appellants property and facts presented to them as to the location and description of the immediate family home area and the development adjacent to the appellants property and the appellants area

2. The Learned President and Judges in the Court of Appeal erred in law and equity in taking recognizance that the appellants home is a family home and the residence of five people and on a perusal of this development adjacent to the appellants property it would appear on a reasonable inspection the Respondents and the Notice Party has discriminated against the appellant, his family and his neighbours, the Respondents together with their actions and the Local Authorities actions did not apply the rules of equality and fair procedures in their attempt to breach an existing planning permission

3. The learned President and Judges in the Court of Appeal failed to apply the doctrine of

equality and fair procedure to the appellants Application and in refusing same failed to treat the appellant and his neighbours in an equal and constitutional manner with the results the applicant were denied fair procedure and equality as outlined in the 1937 constitution of Ireland

4. The Learned President and Judges of the Court of Appeal failed to take into account the notice party's relationship with the unregulated architects making these unlawful applications on top of an existing legal determination of 2014 and who will be witnesses to the judicial review proceedings
5. The Learned President and Judges of the Court of Appeal failed to apply the doctrine of equality as guaranteed in the Irish Constitution of 1937 and therefore he has failed to apply the said doctrine of equality to the appellant and his family and neighbours who are residents in his property for over 25 years and some neighbours over 60 years now.
6. The Learned President and Judges of the Court of Appeal also failed to take into account the role played by the said ALLEGED ARCHITECTS for this proposed development moreover the said Architects are unregulated and the Royal Institute of Architects of Ireland maybe cited in the Judicial proceedings and future High Court proceedings owing to their failure in allowing them to act on behalf of the notice party
7. The Learned Judges of the Court of Appeal have not applied the doctrine of fair principle or fair procedure or the audience of the right to be heard in full to the appellant and therefore is in breach of the terms of namely the Irish Constitution 1937 and the planning acts 1968
8. The Learned Judges of the Court of Appeal failed to take into account the appellants medical condition and certainly did not take into account the seriousness of his health and condition so have therefore erred in law and fact in not allowing fair procedure in not allowing time to the appellant to a full appeal hearing and to open all the relevant affidavits before the Court from all parties
9. The Learned Judges of the Court of Appeal erred in law and in fact for failing to recognise the fact that the Notice party was improperly joined to the proceedings and failed further in allowing them costs

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

Gerard Martin Fulham

7. Other relevant information

Neutral citation of the judgment appealed against *e.g.* Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

High Court 2017/ 248 JR

Court of Appeal 2017/312

References to Law Report in which any relevant judgment is reported

Frescati Estates –v- Walker (1975 I.R., 177 at 187-188 cites legal interest in property which is subject to development

In the High Court at Chancery 41 ER 1143 TULK –V- MOXHAY 22ND December 1848 a house of lords decision, has not been adhered to and such a decision is binding in Irish Law.

8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

An order of certiorari quashing the High Court Orders made on the 17th/May/2017
and or
An order setting aside the High Court Orders made on the 17th/May/2017
An Order for certiorari quashing the Court of Appeal Order made on the 10th/August/2017
and or
An order setting aside the Court of Appeal order made on the 10th/August/2017

What order are you seeking if successful?

Order being appealed: set aside vary/substitute

Original order: set aside Restore vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

Article 40 section 1. were all citizens should be treated equally before the law and as outlined above the Appellant certainly was not treated equally before both the High Court nor the Court of Appeal in seeking a judicial review of the Respondents decision, an absolute right guaranteed to him

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

The convention of human rights as laid down by the European Courts of Justice has been severely breached and in those circumstances the Appellant reserves his rights to an audience and a full hearing in the European Courts of Justice

Are you asking the Supreme Court to:
depart from (or distinguish) one of its own decisions? Yes No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union? Yes No

If Yes, please give details below:

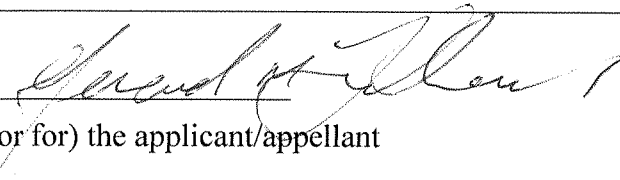
If the Appellant is unsuccessful in his plight for justice in the Supreme Court then the Appellant requires that the Courts make reference to the European Courts of Justice as in the Appellant is being refused access to the Courts

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

The Notice party will be seeking a priority hearing of this matter and that request should be denied on the grounds that when the rules of equity clash with Justice then justice should prevail and a priority hearing is not essential nor necessary, it will only be used to yet again to force an unnecessary conclusion to the appellants hearing and in order to breach the 2014 Respondents decision a lawful determination which cannot be undone as it is a legal condition contained within the Respondents ultimate determination and the Notice Parties planning permission 2014

Signed:


(Solicitor for) the applicant/appellant

Please submit your completed form to:

The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.