

Appendix FF

No. 2



O 58, r 18(1)

SUPREME COURT
Respondent's Notice

Supreme Court record number	S:AP:2017:000136
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[Title and record number as per the High Court proceedings]

GERARD FULHAM	V	AN BORD PLEANALA, M & N O'GRADY LIMITED
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Date of filing	26 th of September 2017
Name of respondent	M & N O'Grady Limited.
Respondent's solicitors	O'Keeffe & Moore
Name of appellant	Gerard Fulham
Appellant's solicitors	N/A

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	M & N O'Grady Limited
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The respondent was served with the application for leave to appeal and notice of appeal on date 13 th September 2017

The respondent intends :

to oppose the application for an extension of time to apply for leave to appeal

not to oppose the application for an extension of time to apply for leave to appeal

to oppose the application for leave to appeal

not to oppose the application for leave to appeal

to ask the Supreme Court to dismiss the appeal

to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	<input checked="" type="checkbox"/>
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Respondent's Representation

Solicitor			
Name of firm	O'Keeffe Moore Solicitors		
Email	edwin.allen@okandm.com		
Address	6 Merrion Square Dublin 2	Telephone no.	(01)6766060
		Document Exchange no.	44
Postcode	2	Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Oisin Collins		
Email	oisinrcollins@gmail.com		
Address	338A Capel Building Dublin 7	Telephone no.	(087)8189868
		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
Telephone no.
e-mail address

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)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused
N/A

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

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

N/A

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

1. The notice party/respondent raises a preliminary objection to the fact that the appellant has raised completely new matters in the appeal before this Honourable Court that have not been raised in either Court below and/or go beyond the grounds pleaded in the proceedings thus far. The appellant largely relies on a new argument to the effect that the notice party/respondent ought to have instituted judicial review proceedings of an earlier decision of An Bord Pleanála granting permission for a development of houses at Nutgrove, Rathfarnham County Dublin, and should not have applied for permission for a variation of same. This argument is new and is entirely misconceived.
2. The appellant has not made out any or any sustainable grounds of appeal that might meet the threshold for this Honourable Court to grant leave to appeal. The appellant has not established any valid grounds of appeal, much less that the appeal raises matters of general public importance. Similarly, it cannot be contended that it is in the interests of justice that the appeal be allowed to progress.
3. The within proceedings were struck out in the High Court on account of the appellant's failure to apply for or obtain leave of the High Court to bring the proceedings as required by section 50 of the Planning and Development Act 2000. The proceedings were also struck out on the grounds that the proceedings had been commenced outside the 8 week period prescribed under the said Act. No application for an extension of time was made by the appellant. The appellant raises no complaint in respect of the determination of the High Court in this regard in section 5 of the application for leave to appeal.
4. Instead, the appellant raises a new complaint to the effect that the notice party/respondent wrongfully conspired with the planning authority and the first respondent to amend the planning permission for a housing development in Nutgrove, Rathfarnham. It is contended that the application made for such amendment (which application was granted by the planning authority, appealed by the appellant to the respondent and granted again on appeal by An Bord Pleanála) was unlawful and improper on the grounds that the notice party/respondent ought to have instituted proceedings by way of judicial review to the High Court in respect of the original decision. This ground of complaint is a new ground not previously raised in these proceedings, this ground is also fails to understand the nature of judicial review and the limited nature of the scope of judicial review of a planning decision. The notice party/respondent herein was satisfied with the initial decision on its planning application and commenced development of same. The notice party/respondent considered that the development could be improved by the making of minor amendments to the said

permission. The appropriate means of achieving such modification was by way of fresh application for permission and not through the commencement of judicial review proceedings. This was done, and the normal public consultation occurred wherein the appellant had a full right to make submissions and a full right of appeal. The application was processed in the normal fashion and granted both in the first instance and on appeal. There was no conspiracy as is now alleged.

5. The appellant sought to appeal the decision of the High Court to the Court of Appeal, the appeal was brought outside of time and an extension of time was applied for. The Court of Appeal (Irvine J) refused the application for the extension of time having regard to the nature of the appeal, its prospects of success, and the prejudice to third parties, including the notice party/respondent. As appears from the affidavits filed on behalf of the notice party/respondents in the Courts below, the respondent has completed a number of houses that are now sale agreed with a number of purchasers. These sales cannot proceed while there are proceedings pending against the planning permission or any live appeal therefrom. It is submitted that it is in fact in the interests of justice that this appeal not be allowed to proceed in circumstances where the sales of these properties have been frustrated since the commencement of the within proceedings.

6. It is submitted that the proceedings did not disclose any reasonable grounds for challenging the decision of the respondent and were bound to fail. Leave of the High Court was not sought to bring the proceedings, and the grounds were never considered by any Court. The proceedings were also commenced outside the period for the commencement of same and no extension of time was applied for. The High Court was correct to strike out the proceedings and, no criticism of this decision is made by the appellant in this appeal. No points of general public importance arise, and no injustice has occurred. Accordingly, the within appeal raises no grounds of importance and is bound to fail.

7. Similarly, the Court of Appeal refused to extend the time for the appellant to bring his appeal to that Court. Again, no points of law or injustice arise from this decision and no reasonable criticism of that decision or the basis upon which it was decided is made by the appellant herein. Accordingly, the appeal raises no grounds of importance and is bound to fail.

**delete where inapplicable*

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. The notice party/respondent submits that the matters set out at paragraph 1 of the grounds of appeal, namely the alleged failure of the Court of Appeal to consider the appellant's circumstances and the location of the appellant's property, are not matters to which the Court of Appeal was required to have regard in an application for an extension of time to bring an appeal. In any event, full submissions on these matters were made and heard by the Court and it is denied that the learned Court of Appeal did not have regard to these matters. The Court of Appeal correctly determined that having regard to the all of circumstances of the appeal, an extension of time ought not be granted.
2. The matters set out at ground 2 are not understood. The appellant gave a full account to the Court of his and his family's circumstances, the Court considered same and, applied the correct legal test to the application before it and refused to extend the time for the bringing of the appeal.
3. The matters set out at ground 3 are not understood. The Court of Appeal applied the correct legal test to the application before it and refused the extension of time.
4. The allegations in respect of the notice party's architect are not understood and, in any event, were not properly raised before the Court of Appeal and would have been irrelevant to the Court's consideration of the application before it.
5. The Constitutional matters raised at paragraph 5 are not understood, these matters were not raised before the Court of Appeal and any allegations of discrimination or inequality are unfounded.
6. The matters set out at paragraph 6 are not understood and are new, were not properly raised in the Court below, and are irrelevant to the matters with which the Court was concerned.
7. The matters raised in paragraph 7 of the appeal are not understood. The appellant was given a full hearing in the Court of Appeal.
8. The appellant was granted an adjournment on account of his health, and it is simply incorrect to contend no regard to the appellant's health was had by the Court of Appeal.
9. The notice party, as the applicant for planning permission, is entitled to be put on notice of the within proceedings, and the Court of Appeal was correct in its determination.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Oisín Collins

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

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:

1. What are the obligations on a competent authority to record and make available an environmental impact assessment?
2. What are the obligations on a competent authority to record and make available an appropriate assessment?
3. Were these obligations met in the instant grant of development consent?

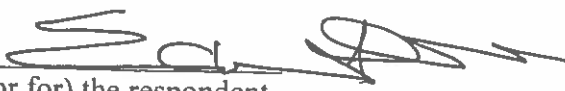
Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

The notice party/respondent is in the course of carrying out its development in Nutgrove. The notice party has completed five number of units in the development and has purchasers agreed in respect of the five units. These sales cannot complete while the within proceedings are extant. A further four units are substantially complete. The within appeal has again frustrated the notice party's ability to close the said sales and continue with its development. The remainder of the development cannot proceed until these sales complete. Accordingly, the within appeal is jeopardising a much needed housing development.

Signed: 
(Solicitor for) the respondent

Please submit your completed form to:

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

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.