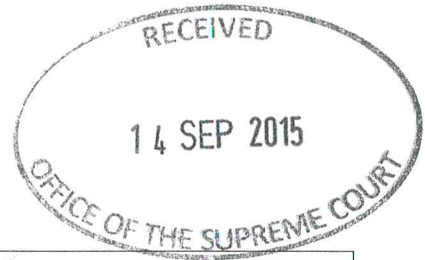


51/15

SUPREME COURT
Respondent's Notice



Supreme Court record number	S:AP:IE:2015:000051
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[Title and record number as per the High Court proceedings]

Mayo County Council	V	Peter McNicholas
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Date of filing	
Name of respondent	<i>Mayo County Council</i>
Respondent's solicitors	<i>King & McEllin Solicitors, The Mall, Castelbar, Co. Mayo</i>
Name of appellant	Peter McNicholas
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	<i>Mayo Co. Co.</i>
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The respondent was served with the application for leave to appeal and notice of appeal on date
2nd September, 2015.

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			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<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
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input 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

Not applicable

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:

The respondent does not contest the accuracy of information recorded in the notice of appeal.

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:

Reasons why appeal does not involve matter of general public importance, or does not require to be adjudicated upon in the interests of justice, pursuant to article 34.5.3 of the Constitution:

- 1. The appellant in this matter demolished a portion of a public road, i.e. a wall bounding a roadway, so as to facilitate direct access from his property onto a nearby carriageway, the N5 Charlestown By Pass. The appellant's actions constituted an unlawful interference with a public right of way/public road as well as unauthorized development.**
- 2. The plaintiff as road and planning authority for the administrative area in question instituted plenary proceedings seeking, *inter alia*, orders restraining the defendant's conduct;**
- 3. By order of the High Court the appellant was restrained from any further interference with the public road/right of way and restrained from using the access he had created.**
- 4. The Court of Appeal affirmed the decision finding that there was an arguable case that there had been unlawful interference with a public right of way/public road and that in circumstances where the evidence before the Court indicated that the access represented a danger, damages were not an adequate remedy and the balance of convenience favored the continuation of the injunction to trial. The Court advised that the trial in the High Court should proceed as soon as possible.**
- 5. The appellant contends that as the interference with a public right of way/public road is a criminal offence the only mechanism available for challenging his conduct was either by criminal prosecution in the District Court, or to effect repairs and sue the defendant for the price of reconstruction in a court of competent jurisdiction pursuant to s.13 of the Roads Act 1993.**
- 6. The respondent states that the point raised by the appellant does not involve a point of law of general public importance or require to be decided in the interests of justice in that:-**

- (a) There is clear authority that a party can institute civil proceedings to restrain unlawful activity which constitutes a criminal offence, where criminal proceedings will not be sufficient to restrain the unlawful activity, particularly in the case of an emergency. It is clear that injunctive relief is warranted in this case to prevent the defendant from continuing to create a hazard and endangering both himself and members of the public. At a minimum, the point is arguable and it is for the High Court at trial and not this Court on appeal from an interlocutory hearing, to determine whether instituting civil proceedings was appropriate in the circumstances.
- (b) Even if this Court was willing to adjudicate on this point at this juncture, which the respondent contends is not appropriate, and resolved the matter in favour of the appellant, it would not dispose of the injunction, as the injunction has been continued by the Court of Appeal, not only on the grounds that the appellant arguably interfered with a public right of way/public road without lawful excuse, but also that he has engaged in unauthorized development in breach of the Planning and Development Act 2000, which provides a distinct ground for the continuation of the injunction.
- (c) The Court of Appeal has indicated that a trial in the near future is appropriate, assuming the High Court accedes to an application for priority, it would be an unnecessary waste of resources for this Court to deal with this appeal in relation to the interlocutory matter and therefore not in the interests of justice.

**delete where mapplicable*

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):

In the event that this Honorable Court grants the appellant leave to appeal the respondent opposes the appeal on the grounds:-

- (1) The Court of Appeal was not precluded from continuing the injunction because other civil remedies were available to the plaintiff/respondent or because there is a right vested in appropriate authorities to institute criminal proceedings in relation to what occurred;
- (2) The institution of civil proceedings to restrain the defendant's unlawful interference with a public right of way/public road was the most appropriate avenue for the plaintiff to pursue in the circumstances, at a minimum there is an arguable case to that effect;
- (3) Quite apart from the unlawful interference with a public right of way/public road, the defendant's conduct constituted unauthorised development within the meaning of the Planning and Development Act 2000, which provided a distinct basis upon which the Court of Appeal was justified in granting relief;

(4) Damages are not an adequate remedy in the circumstances and the balance of convenience favours the granting of an injunction;

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

**Cormac Macnamara B.L.
Patrick A. Butler S.C.**

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:

Not applicable.

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

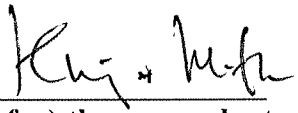
If Yes, please give details below:

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

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.