

THE HIGH COURT

[2022] IEHC 628
[2011 No. 11095 P]

BETWEEN

MICHEAL HOEY

PLAINTIFF

AND

WATERWAYS IRELAND

DEFENDANT

JUDGMENT of Ms. Justice Emily Egan delivered on the 11th day of November, 2022

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Introduction and procedural history

1. The plaintiff, Mr. Michael Hoey, together with his former wife, previously ran a business through a corporate entity, Canalways Ireland Limited, which provided tours of Ireland's canals and linked rivers, including the Barrow Navigation (which links Athy, County Kildare to St Mullins, County Carlow). The defendant, Waterways Ireland, has statutory responsibility for the management, maintenance, development, and restoration of inland navigable waterways, principally for recreational purposes.
2. Mr. Hoey appears to have been motivated to bring these proceedings by events occurring on 19th October, 2011. On that date, Waterways Ireland removed a barge (barge 43M) which Mr. Hoey claims to own, from the Barrow line of the Grand Canal, on the basis that it had sunk and was causing an obstruction south of the 23rd lock at Rathangan, County Kildare. Waterways Ireland removed the vessel for storage to the New Ross Boatyard and requested payment of the costs of removal and storage which Mr. Hoey has failed to pay. Since that time, Waterways Ireland has stored the vessel at a cost of approximately €3,000 per annum. It is likely that the accrued removal and storage costs are now considerably in excess of the value of the barge.
3. Mr. Hoey issued these plenary proceedings on 5th December, 2011, pursuant to which he seeks a wide range of reliefs. Approximately one quarter of the reliefs sought comprise pleas for prohibitory and mandatory injunctions, declaratory relief, and damages in relation to the removal and storage of barge 43M. Mr. Hoey thus sought injunctive relief restraining Waterways Ireland from damaging, selling or disposing of barge 43M; declaratory orders to the effect that barge 43M was unnecessarily removed in bad faith and in an unlawful, excessive, and unreasonable manner; and damages for harm caused to the barge itself and to Mr. Hoey's business as a result of the removal of the barge.

4. In addition to the above reliefs concerning barge 43M, Mr. Hoey sought a declaration that interference notices (the meaning of which is explained at paragraph 32 *et seq.* below) issued by him to Kildare County Council on 17th January, 2002 and 4th March, 2002 respectively in relation to a proposed abstraction from the River Barrow were valid and in compliance with s. 21 of the Water Supplies Act, 1942. Mr. Hoey also sought associated orders such as a declaration that Waterways Ireland had breached its statutory duties to maintain the Grand Canal and the Barrow Navigation in failing to act on foot of these interference notices.

5. Mr. Hoey further sought a wide range of declaratory and mandatory orders such as a declaration that Waterways Ireland had caused environmental pollution of the Barrow Navigation; a declaration that Waterways Ireland be precluded from entering into agreements regarding water supply; and various mandatory orders requiring Waterways Ireland to carry out works on the Barrow Navigation such as constructing new quay walls, reopening certain lines, and replacing gates.

6. Mr. Hoey also sought declaratory orders in relation to the navigation status of the River Barrow together with its linked canals, such as a declaration that the depth of the Barrow Navigation must be maintained at a particular minimum depth or draft.

7. Finally, on foot of all of the above, Mr. Hoey sought damages for temporary and permanent loss of water caused by Waterways Ireland's alleged breach of duty in permitting water abstractions from within the catchment of the River Barrow.

8. On the same day as his proceedings issued, Mr. Hoey issued a motion seeking interlocutory reliefs restraining Waterways Ireland from selling or disposing of barge 43M and other more general reliefs in relation to the maintenance of the Grand Canal and the Barrow Navigation.

9. On 27th April, 2012, the High Court, per Murphy J., refused this application for interlocutory relief. Mr. Hoey then lodged an appeal to the Supreme Court but, as this coincided

with the establishment of the Court of Appeal, it was initially intended that the appeal would be heard by that court. Some years later, Waterways Ireland applied for an order that the appeal be brought before the Supreme Court, which order was granted in January 2018.

10. In its judgment of 28th May, 2021, the Supreme Court, per Charleton J. observed that by that time the case had languished for nine years in breach of Mr. Hoey's obligation, having sought an interlocutory injunction, to consistently pursue the path of urgency by seeking to bring forward both the application and the full trial. Ultimately, the Supreme Court dismissed Mr. Hoey's appeal.

11. Thereafter, Mr. Hoey delivered a lengthy statement of claim in July of 2021 which traversed an even wider range of issues than the plenary summons and motion for interlocutory relief. The statement of claim thus alleged wrongdoing on the part of Waterways Ireland in connection with a range of specific projects such as: the adoption and implementation of a Memorandum of Understanding agreed between the European Commission and Ireland in 1995 concerning the funding of a new peat fired electricity generation station situated in the midlands of Ireland (the Edenderry Power Station); the decision made by the Minister for Environment on 22nd January, 1996 to grant development consent for the Kildare town bypass; the adoption by Kildare County Council of the Kildare Water Strategy in March 1999; and actions of Kildare County Council in connection with a proposal to abstract water from the River Barrow at Srowland, Athy, County Kildare in 2002. Mr. Hoey pleaded breach of duty on the part of Waterways Ireland in failing to prevent (*inter alia* by issuing interference notices) these projects and loss of water and/or reduction in water levels generally on the Barrow Navigation. Once again, Mr. Hoey claims damages as a consequence of the aforesaid breaches.

12. In addition to seeking these reliefs against Waterways Ireland, Mr. Hoey's statement of claim also advanced allegations of wrongdoing, including undue influence and negligent misrepresentation as against Waterways Ireland's solicitor and counsel personally.

13. Waterways Ireland delivered a full defence on 28th September, 2021 and the case ultimately came on for hearing before this court. In the days prior to the hearing, Mr. Hoey issued and stamped, but did not file, a further motion seeking a large number of additional reliefs including applications to join Irish Water and Bord Na Móna, the legal representatives of Waterways Ireland and of Kildare County Council and indeed Mr. Hoey's own former legal representatives as defendants to the proceedings. Mr. Hoey also sought orders quashing s. 213 (2) of the Planning and Development Act, 2000 (concerning land acquisition by local authorities). Further mandatory injunctions were sought directing Waterways Ireland to carry out specific works on the Barrow Navigation.

14. Although this motion was brought very late in the day, Waterways Ireland did not object to Mr. Hoey moving the motion but contended that all of the reliefs sought were without merit. Insofar as necessary therefore, this judgment will treat of the additional reliefs sought by Mr. Hoey in that notice of motion.

15. As may be apparent from what is set out above, Mr. Hoey has represented himself throughout these proceedings. This has unfortunately resulted in a very wide scatter of assertions, legal argument often characterised by reliance upon long repealed legislative provisions and repeated departure from the essential parameters of the case.

16. In summary, this judgment will attempt to deal with the 50 reliefs sought in Mr. Hoey's plenary summons, the reliefs sought in Mr. Hoey's 22-page statement of claim and the additional 23 reliefs sought in Mr. Hoey's notice of motion issued in the days prior to the hearing. In order to do so, I will divide the issues raised by Mr. Hoey into three broad categories which I will consider *seriatim*; first, the removal and storage of barge 43M; second, the validity of the interference notices issued by Mr. Hoey in 2002; and third, the asserted negligence and breach of duty against Waterways Ireland (a) in connection with the specific projects referenced at paragraph 11 above, (b) in failing generally to prevent reduction in water levels

on the Barrow Navigation and (c) in failing to maintain the contended for minimum draft of the navigation. Before doing so, however it is necessary to refer to certain statutory provisions concerning the functions, duties, and powers of Waterways Ireland.

Statutory provisions

The Canals Act, 1986

17. Waterways Ireland is one of six north-south implementation bodies established under the British-Irish Agreement Act, 1999. This vests in Waterways Ireland statutory responsibility for the management, maintenance, development, and restoration of specified inland navigable waterways, including the Grand Canal and the Barrow Navigation.

18. Prior to the establishment of Waterways Ireland, these functions were performed by the Grand Canal Company, Coras Iompair Eireann (“CIE”) and the Commissioners of Public Works in Ireland (“the Commissioners”). Pursuant to s. 7 of the Canals Act, 1986 (“the 1986 Act”), the Commissioners, were empowered to make Bye-laws for the care, management, maintenance, control and regulation of the canals and other canal property and for the regulation of the conditions (including conditions as to safety) under which boats may use the canal, the alteration of water levels of the canal and the charging and fixing of fees, tolls and charges in respect of the use by boats of the canals (including the use of locks and mooring on the canals). Section 7 (1)(h) of the 1986 Act is of particular relevance and empowers the Commissioners, to make Bye-laws in relation to *inter alia* “the removal from the canals or other canal property of any boat or thing which is or may become a danger to life, navigation or fish stocks or would otherwise interfere with the proper use of the canals or other canal property.”

19. In due course, I will set out the relevant provisions of the Canals Act, 1986 (Bye-laws), 1988 (S.I. 247 1988) (“the Bye-laws”). I will first briefly examine how these powers and functions came to be vested in Waterways Ireland.

20. Under Order 3 (1) of the Heritage (Transfer of Functions of Commissioners of Public Works in Ireland) Order, 1996 (S.I. No. 332 of 1996), the functions vested in the Commissioners under the 1986 Act were transferred to the Minister for Arts, Culture, and the Gaeltacht. Pursuant to s. 11 of the British-Irish Agreement Act, 1999 the relevant functions of the Minister, by then renamed the Minister for Arts, Heritage, Gaeltacht, and the Islands in relation to the relevant inland waterways were transferred to Waterways Ireland.

21. The above is of some relevance because Mr. Hoey erroneously maintains that Waterways Ireland currently derives its powers and duties from a range of now repealed enactments which for the sake of (comparative) brevity I will not detail here. I am quite satisfied that the 1986 Act and the Bye-laws governed the powers, functions, and duties of Waterways Ireland at the time of the events, the subject matter of these proceedings. Although the 1986 Act has since been updated by the Heritage Act, 2018, this post-dates material events and is not therefore of immediate relevance.

The Bye-Laws

22. As the powers of the Commissioners have now been transferred to Waterways Ireland, I will refer to the latter rather than the former body in my examination of the Bye-laws.

23. Article 6 of the Bye-laws empowers Waterways Ireland to issue permits to authorise and regulate the use of boats on the canal. Permits may be issued for stated periods or journeys and may be withdrawn by Waterways Ireland. Further, Waterways Ireland may at their discretion decline to issue any permit.

24. Article 7 of the Bye-laws provides that no person shall navigate or moor any boat on the canals unless such boat and the equipment thereon is maintained in good and efficient working order and is such that no danger is liable to be caused thereby to any person or property.

25. Article 14 of the Bye-laws provides that no person shall navigate or moor any boat on the canals if such boat exceeds 1.2 metres in draft, other than with the consent of Waterways Ireland.

26. Article 25 of the Bye-laws provides that no person shall moor a boat – at any lock, sluice, barrage, weir or bridge in such a way as to cause damage to or cause an obstruction to safe use of the said lock, sluice, barrage, weir or bridge; so as to cause danger or obstruct the passage of any boat in any part of the canals; or at the same place on the canals, or within 500 metres of the same place, for more than 5 days without the appropriate permit from the Commissioners.

27. Article 27 (1) of the Bye-laws provides that the owner, master or person in charge of any boat which has gone aground or sunk on any part of the canal property shall notify Waterways Ireland and take all such steps as may be necessary to refloat the boat or remove it from the canal. Article 27 (3) then provides: *“Where a boat has gone aground or has sunk in any part of the canal property, the boat may be removed and stored by, or on the authority of, the Commissioners.”*

28. Pursuant to Article 31 of the Bye-laws, any boat, vehicle or object may be removed by or on the authority of Waterways Ireland where same interferes with the use of the canals or canal property.

29. Pursuant to Article 33 (1) of the Bye-laws, where Waterways Ireland proposes to remove any boat in accordance with the provisions of the Bye-laws it shall serve notice of its intention on the owner. No specific notice period appears to be provided for.

30. Separately, Article 33 (3) provides that where an article in the opinion of Waterways Ireland is likely to become or create an obstruction or danger to canal property, it may be removed without prior notification to the owner.

31. Article 34 of the Bye-laws provides that where any article has been removed and stored in accordance with the Bye-laws there shall be payable to Waterways Ireland by the owner, compensation equal to the cost incurred in the removal and storage. Article 34 (2) empowers Waterways Ireland to dispose of any article which has been removed and stored in any manner they think fit where the owner has not claimed it and paid compensation within one month. Article 34 (6) of the Bye-laws provides: “*The Commissioners shall not be liable for any loss or damage arising from the removal, storage or disposal in accordance with these Bye-laws of any article.*”

The Water Supplies Act, 1942

32. In addition to the above legislative scheme, certain provisions of the Water Supplies Act, 1942 (“the 1942 Act”) are also of relevance as it establishes the legal basis for the issue by a navigation authority of an interference notice.

33. Section 2 of the 1942 Act governs the procedure whenever a sanitary authority “*desire to take from a source of water a supply of water for the purpose of increasing, extending or providing a supply of water...*”. In such circumstances, the authority may make a proposal stating the source of water from which the supply is proposed to be taken, the place or places at which it is proposed to be taken, whether the whole or part only of the water at such place is proposed to be taken, the maximum rate at which it is proposed to be taken and the estimated minimum quantity of water flowing past a particular point in summer during a continuous period not exceeding a day. In addition, where the proposal involves the carrying out of ancillary operations, particulars of such operations must be specified.

34. Pursuant to s. 21 (3) of the 1942 Act, where a sanitary authority makes such a proposal, it may, before or after such proposal comes into force, give to the navigation authority of any navigable water written notice of such proposal.

35. Section 21 of the 1942 Act empowers a navigation authority which receives such proposal to take certain measures to protect navigable rivers and canals. The definition of “*navigation authority*” in s. 21 is key. It defines a “*navigation authority*” as meaning in relation to any navigable water, the person entitled to navigate thereon or to receive tolls or dues in respect of navigation thereon. Mr. Hoey claims to be a navigation authority because Canalways Ireland Limited held various permits entitling it to navigate on the relevant rivers and canals.

36. Section 21 (4) of the 1942 Act provides that where the navigation authority is given notice of a proposal it may give written notice to the sanitary authority of its opinion that the taking of the water in accordance with the proposal will make the navigation of navigable water impossible or unreasonably difficult and shall include in the interference notice a statement of their reasons for being of that opinion. Section 21 (6) also provides that a sanitary authority in receipt of an interference notice relating to any proposal shall consider the objections of the navigation authority and shall negotiate for the withdrawal of the interference notice. Section 21 (5) provides that the sanitary authority may then alter such proposal by reducing the amount of water to be taken. Thereafter, s. 21 (7) and s. 21 (8) provide that the navigation authority may choose to withdraw the interference notice and if it does not, the sanitary authority may apply to the High Court for the annulment of the notice.

37. If the High Court on such application is of the opinion that the taking of water in accordance with the proposal does not make the navigation of the relevant navigable waters impossible or unreasonably difficult, it shall annul the interference notice. Where notice of the proposal has been duly given and either an interference notice has not been issued by the navigation authority or any such notice has been annulled or withdrawn, then it shall not be open to the navigation authority to contend in any court that the taking of water in accordance with the proposal will make the navigation of the relevant water impossible or unreasonably

difficult. It is common case that Waterways Ireland has not issued an interference notice in relation to any of the abstractions or projects complained of by Mr. Hoey.

Removal of Barge 43M

38. Mr. Hoey maintains that Waterways Ireland unlawfully removed barge 43M. As indicated above, the Supreme Court dismissed Mr. Hoey's application for an interlocutory injunction restraining Waterways Ireland from selling or disposing of the barge pending the substantive hearing. In his judgment refusing the interlocutory application, Charleton J. found that the legal basis for the relief sought was not reasonably arguable. Charleton J. referred to the judgment of Clarke J. (as he then was) in *Okunade v Minister for Justice* [2012] 3 IR 152 which counselled against rushed decisions on complex questions of law at the interlocutory stage. In this regard Charleton J. observed that there are questions of law which are genuinely uncertain, there are cases where a recent case is authority for a specific proposition and there are black letter law cases where there is a clear statutory authority passed by the Oireachtas in exercise of its exclusive law making power under Article 15.2 of the Constitution, or where an instrument is passed within the limits of delegated legislation, that completely undermines the contentions of a plaintiff. Charleton J. held that in the present case there was a black letter law pursuant to the Bye-laws entitling Waterways Ireland not merely to remove but also to dispose of the barge. In this respect Charleton J. stated that:

“There is nothing to be found that is reasonably arguable here. There is black letter law enabling the removal of an obstruction. There is clear law allowing the storage of a vessel in such circumstances. Waterways Ireland are empowered to dispose of the vessel... This is a barge. It may be sold since there is statutory authority to do so... Hence there is no reasonably arguable case made by the plaintiff that Waterways Ireland acted illegally, damages are an adequate remedy, and it is consequently

unnecessary to proceed to consider the balance of convenience or maintaining any status quo.”

39. These observations were of course made in the context of an interlocutory hearing in which findings of fact had not yet been made and at which full argument on the law had not yet taken place.

40. However, this court has now heard such evidence and argument and is entirely convinced of the correctness of Charleton J.’s observations. The evidence in this case is as follows: on 18th May, 2011 Waterways Ireland notified Mr. Hoey that barge 43M was sunk south of the 23rd Lock at Rathangan on the Barrow line and was causing an obstruction. The letter stated that Mr. Hoey had failed to comply with the Bye-laws and that there was no valid permit for the mooring of the vessel. The letter notified Mr. Hoey of the requirement to remove the vessel within five days following which Waterways Ireland would remove the barge after which the costs of removal and storage would be billed to Mr. Hoey.

41. Evidence was given by Mr. Shane Anderson, assistant inspector of navigation with Waterways Ireland, that the vessel was sitting on the canal bed, full of water and had been in this condition for a number of months. Mr. Anderson also gave evidence that it was necessary to pump out the vessel prior to removing it from the canal. Mr. Hoey conceded that photographs taken of the boat immediately prior to its removal demonstrated that it was resting on the bottom of the canal. However, he did not concede that this meant that it had sunk. His position appeared to be that he had deliberately filled the barge with water, rather than that it had taken in water and spontaneously sunk. I fail to see how it can be said that a boat which is full of water and resting on the canal bed could not be characterised as a boat which has sunk. I therefore find that barge 43M had sunk.

42. Mr. Hoey did not accept that the boat was necessarily interfering with navigation on the canal. The photographs shown to the court demonstrated that the boat was taking up at least

a third of the available channel of the canal. Mr. Hoey maintained that any narrowing of the canal was caused by a wooden jetty built by Waterways Ireland on the other side of the canal. I do not accept this. Waterways Ireland are entitled to build a jetty if same is considered appropriate and convenient and it is clear from the photographs that the overwhelming cause of the narrowing of the canal is not the jetty but the presence of barge 43M.

43. I also accept Mr. Anderson's evidence that, because the vessel was lying on the canal bed and was very heavy (being half full of water), it was in danger of sliding out into the main channel of navigation. In this regard Mr. Anderson stated that at the time of his inspection, the boat was leaning to port out into the middle of the canal and that there was quite a lot of strain on the line which was evident from the fact that the mooring post had been pulled partly out of the earth. From my own observations, the photographs of the barge would suggest that there was a significant amount of tension on the line holding the boat to the shore. As a result, it was reasonable for Waterways Ireland to conclude that the line could give way at any time and quite suddenly result in the boat moving into the middle of the channel.

44. In the course of cross examination, Mr. Hoey also accepted that barge 43M did not have a mooring permit. Mr. Hoey indicated that he had not applied for a permit because he was annoyed with Waterways Ireland for not having defended the navigation and because he did not wish to complete the permit application form which he took the view (not unreasonably) would provide Waterways Ireland with an indemnity against any claims which he may have against it. Mr. Hoey also accepted that there was evidence of deterioration of the boat's structure and rusting and several holes in the boat (albeit, he contended not below the water line). Mr. Hoey fully accepted that the boat did not comply with Article 7 of the Bye-laws in that it was not maintained in good and efficient working order.

45. Mr. Hoey cross examined Mr. Anderson as to why, rather than removing the boat and transporting it to the New Ross boatyard, Waterways Ireland had not instead lifted it into his

own boatyard of which was in close proximity to the barge. Mr. Anderson's response was that the Bye-laws did not provide for the removal of a barge to an adjacent boatyard but to a storage facility. Mr. Anderson also confirmed that the removal of vessels for breach of the regulations, Bye-laws or because they have sunk or have been abandoned is a regular occurrence. His view was that Mr. Hoey had not been victimised in any way. Rather the vessel in question was removed because it had sunk and furthermore because it did not have a permit.

46. As stated above, s. 7 of the 1986 Act permits the making of regulations in relation to the conditions upon which boats may be used on the canals, and the removal of boats which are likely to become a danger to life or interfere with the proper use of the canal. The Bye-laws give expression to these principles and policies by providing for *inter alia* (a) the issuing of permits for the navigation and mooring of boats, (b) the removal of boats which are without permits, (c) the removal of boats which have sunk and gone aground and (d) the removal of boats either with or without warning when they have gone aground or pose a danger.

47. The correspondence to Mr. Hoey from Waterways Ireland invoked Articles 27 and 25 of the Bye-laws. Article 27 (3) of the Bye-laws provides that where a boat has gone aground or sunk in any part of the canal property it may be removed and stored. This I find to have been the position here. Article 27 (3) does not require that the boat in question comprise an obstruction or danger in order for same to be removed. It is necessary only that the boat has gone aground or sunk.

48. The concept of obstruction is separately addressed in Article 33 which provides for the removal of articles without notification to the owner if they are or are likely to become an obstruction or danger. This particular Article was not invoked by Waterways Ireland in this case. Strictly speaking, therefore the lawfulness of removal would not depend upon the court being satisfied that the boat was or was likely to become an obstruction or danger to the canal

property or to other users. However, in light of the evidence of Mr. Anderson, I am satisfied that it was.

49. I am also fully satisfied that Article 25 (1)(d) of the Bye-laws authorised the removal of the barge. It will be recalled that this provides that no boat shall be moored at the same place or within 500 metres of the same place for more than five days without the appropriate permit. The evidence was that this vessel had been at this particular spot for a lengthy period without a permit. Therefore, pursuant to Article 25 (1)(4) of the Bye-laws, Waterways Ireland was entitled to remove and store the boat. Notably, this Article does not require that the boat has sunk in order to justify its removal. Rather it may simply be removed if moored without a permit.

50. Mr. Hoey argues that he had a right to moor the boat because the area where he moored the boat was “*common interest property*”. This submission is entirely misplaced. Section 1 of the 1986 Act defines “*common interest property*” as meaning any property which immediately before the vesting day was occupied by the Board (in other words, by CIE), and which had been used by the Board for the purposes of the operation of both railways of the Board and canals. Clearly, common interest property is not a concept which can be invoked for Mr. Hoey’s benefit.

51. Mr. Hoey also sought to argue that the area of land on which the barge was moored was a designated area within the meaning of s. 5 (1) of the 1986 Act. This effectively gives the Commissioners and subsequently Waterways Ireland the power to designate particular canals for particular purposes. There is no evidence whatsoever that Waterways Ireland or its statutory predecessor designated the relevant area pursuant to any enactment for use by Mr. Hoey or by Canalways Ireland Limited. Therefore, reliance on this section is misplaced.

52. In addition, Mr. Hoey relied heavily upon the fact that Waterways Ireland was aware that he was operating the business of Canalways Ireland Limited from this dock and indeed

points to letters from Waterways Ireland wishing him luck on his new business venture. This knowledge however, does not dispose of the requirement to apply for a mooring permit.

53. Mr. Hoey also emphasises that he had applied for and obtained planning permission for carrying out the works necessary to moor a vessel at the relevant dock. The difficulty of course is that a grant of planning permission does not entitle the applicant to carry out any works or any development in and of itself. Insofar as further permits are required, the granting of planning permission does not obviate a necessity to apply for them. Therefore, it seems to me that Mr. Hoey's arguments that he was not required to apply for a permit are simply unstateable.

54. I am further satisfied that the boat did not comply with Article 7 of the Bye-laws and was not maintained in good and efficient working order. This provides yet another reason why it was not open to Mr. Hoey to navigate or moor such boat on the canal.

55. Mr. Hoey's case appears to be that it was unreasonable for Waterways Ireland to remove the boat to the New Ross facility rather than to simply lift it into his own boatyard. However, the Bye-laws do not provide for the lifting of boats into boat owner's boatyards, whether adjacent or not. Therefore, merely because it would have been easier and more convenient for Mr. Hoey had this occurred does not imply that there was any unlawfulness on the part of Waterways Ireland in acting as it did.

56. It is also notable that although correspondences between Waterways Ireland and Mr. Hoey commenced on 18th May, 2011, the boat was not removed until 19th October, 2011. Mr. Hoey was in my view afforded more than reasonable notice of the potential removal of the boat and refused to remove same himself. In all the above circumstances, I can see no unlawfulness in Waterways Ireland's actions. Rather, having heard full oral evidence on the matter it is clear that Waterways Ireland were acting in the scope of their statutory authority in removing the boat and storing it at New Ross Boatyard.

57. There is no conceivable basis upon which Mr. Hoey could be entitled to damages against Waterways Ireland for the removal of the barge. Article 34 (6) of the Bye-laws specifically provides that Waterways Ireland shall not be liable for any loss or damage arising from the removal, storage, or disposal in accordance with the Bye-laws of any article. As I find that there is no evidence to suggest either as a matter of law or fact that the boat was either removed or stored otherwise than in accordance with the Bye-laws, no claim to damages can lie.

58. A further difficulty affecting this aspect of the claim and indeed the claim in general, is that Mr. Hoey does not have standing to pursue any cause of action or losses alleged to have been suffered by entities other than himself. Although it is somewhat difficult to make sense of Mr. Hoey's special damages claim, it appears that the primary loss which he claims is that of Canalways Ireland Limited. Mr. Hoey does not have standing to represent the company under the rule in *Battle & Anor v Irish Art Promotion Centre Limited* [1968] IR 252. Even if Mr. Hoey were to bring himself within the residual discretion of the court to permit such an application to be brought in exceptional circumstances, any damages which could be recovered would be that of the company and not of Mr. Hoey personally. Canalways Ireland Limited was dissolved in 2016 and no application to restore the company to the register has been made to date. Further, as observed at paragraph 62 below, there is significant doubt as to Mr. Hoey's authority to act on behalf of the business or the company.

Mr. Hoey's Interference notices

59. On 19th February, 2003 Kildare County Council gave notice pursuant to the provisions of the 1942 Act, as amended, to navigation authorities of its proposal, as part of the water strategy for County Kildare to abstract water from the River Barrow at Srowland approximately three kilometres north of Athy, County Kildare for the purposes of augmenting and improving public water supplies in the region of south, west, and mid Kildare. The quantity of water,

40,000 cubic metres a day, was said to represent approximately 2.2% of the average flow in the river at the proposed abstraction point or 1.1% of the average flow in the river at Graignamanagh (which is the furthest flow gauging station downstream).

60. Mr. Hoey was extremely concerned about the proposal and invoked two separate methods of challenge. He personally issued to Kildare County Council two interference notices pursuant to the 1942 Act, dated 17th January, 2002 and 4th March, 2002 respectively. In addition, he caused Canalways Ireland Limited to petition the Circuit Court pursuant to the 1942 Act to inquire into the matter. As only the interference notices are of immediate reliance, I will consider the petition at paragraph 89 below.

61. For reasons which are not entirely clear, although these interference notices were directed to Kildare County Council and not to Waterways Ireland, Mr. Hoey alleges Waterways Ireland acted negligently and in breach of duty in failing to take action on foot thereof for which he claims damages.

62. Leaving this peculiarity aside, there is dispute as between the parties as to whether or not these interference notices were legally valid. If they are not, then there was no obligation on any party to act on foot thereof. The dispute is as to whether Mr. Hoey is a navigation authority within the meaning of s. 21 of the 1942 Act as only a navigation authority can issue a valid interference notice. It will be recalled that a navigation authority is defined, in relation to any navigable water as the person entitled to navigate thereon or to receive tolls or dues in respect of navigation thereon. It is clear that Mr. Hoey was not entitled to receive tolls or dues in respect of navigation on the River Barrow.

63. Mr. Hoey argues that Canalways Ireland Limited held navigation permits for parts of the Barrow Navigation in respect of certain of its barges at the time that the interference notice issued, he so qualifies. The difficulty is that Mr. Hoey did not, in his personal capacity hold any such permit at the relevant time. How therefore could he personally qualify as a person

entitled to navigate on the River Barrow? Even if a permit confers an entitlement to navigate within the meaning of the section, then the relevant entitlement was that of Canalways Ireland Limited, a corporate entity dissolved in 2016.

64. In response to this difficulty, Mr. Hoey argues that the interference notices were issued on behalf of Canalways Ireland Limited rather than on his own behalf. This is not apparent from the face of either of the interference notices issued by Mr. Hoey both of which are signed by him personally and are not signed on behalf of either the business Canalways Ireland or the corporate entity, Canalways Ireland Limited. Nor are the interference notices on the headed notepaper of Canalways Ireland or Canalways Ireland Limited. It may well be that Mr. Hoey had intended to issue these interference notices in his capacity as director of Canalways Ireland Limited or proprietor of the business. However, he did not do so. Indeed, on other occasions Mr. Hoey has issued substantial invoices to Canalways Ireland Limited for services rendered, making it clear that he regards it as a separate entity. Furthermore, there is significant doubt, at least in more recent times, as to Mr. Hoey's authority to act on behalf of Canalways Ireland Limited and it is clear from legal correspondence put before the court that this was a matter in dispute as between Mr. Hoey and his former wife. The said correspondence purportedly emanates from the company's solicitor and asserts that Mr. Hoey has no authority to act on its behalf. Overall, therefore, I am not prepared to hold that the interference notice was issued on behalf of a body or person holding a permit, namely Canalways Ireland Limited.

65. Even if the interference notices had been issued on behalf of or in the name of Canalways Ireland Limited, I would nonetheless entertain significant doubt as to whether Canalways Ireland Limited is a navigation authority merely by reason of the fact that it might have been granted one or more vessel specific time limited permits to navigate upon parts of the canal. I doubt that such permits, which are necessarily temporary and conditional in nature, may be equated with "an entitlement to navigate pursuant to statute". Further, s. 21 of the 1942

Act goes on to provide a procedure under which a navigation authority and sanitary authority can, essentially through negotiation, resolve their differences in relation to the proposed abstraction. Such a statutory negotiation implies that the phrase “navigation authority” is used to refer to a public authority acting in the common interest and not to a private body acting in its own commercial interests. However, as I find that the interference notices in this case were not in any event issued by a person even holding a valid permit in respect of the navigation, it is not necessary to consider this particular legal issue further. To be clear, I find that the interference notices issued by Mr. Hoey were not issued by a navigation authority and were not legally valid.

66. It further seems to me that even if Mr. Hoey’s interference notices were legally valid, then the primary obligation to respond or “to act on foot” of same would rest with Kildare County Council and not with the relevant navigation authority, Waterways Ireland. It is therefore extremely difficult to conceive of how any act or omission on the part of Waterways Ireland in relation to these interference notices could give rise to a liability on its part and I hold that no such liability is established.

67. Finally, although his interference notices do not appear to have been treated as legally valid by Kildare County Council, it may be relevant to note that Mr. Hoey’s objections to the Srowland abstraction were in any event adjudicated upon on foot of the petition brought by Canalways Ireland Limited pursuant to the 1942 Act and that both the Circuit Court and High Court upheld the provisional order of An Bord Pleanála.

Allegations of negligence and breach of statutory duty

68. Mr. Hoey seeks declaratory relief, mandatory injunctions and claims damages in negligence and breach of statutory duty as against Waterways Ireland in a number of different

respects. These claims appear to fall into the three broad categories referred to at paragraph 16 above, each of which will be examined below.

(A) Specified Projects and activities

69. Mr. Hoey contends that Waterways Ireland acted negligently and in breach of statutory duty in causing loss of water and/or pollution to the Barrow Navigation in connection with the projects and activities set out at paragraph 11 above.

70. The various activities complained of by Mr. Hoey were conducted, not by this defendant but rather by Bord na Móna (insofar as concerns, the Edenderry power station) and by the Minister for Environment or Kildare County Council (insofar as concerns the Kildare Water Strategy, the Kildare Bypass and the Srowland abstraction). There is no question whatsoever of Waterways Ireland having directly caused loss of water or water pollution. It did not.

71. Mr. Hoey has entirely failed to identify the manner in which these water abstractions carried out by third parties are *ultra vires* the powers of Waterways Ireland. Waterways Ireland does not purport and has never purported to exercise a power to grant authority for these water abstractions. In all of these respects, Mr. Hoey has brought proceedings as against the incorrect defendant.

72. I further reject Mr. Hoey's applications made by motion on the day of trial and indeed during the course of trial to join Irish Water, Bord Na Móna or Kildare County Council as defendants to the proceedings. There is no conceivable basis upon which this court would, at the trial of the action, grant orders joining these parties. Suffice it to say that by the time of trial, these proceedings were not only 11 years old but, in so far as concerns these proposed new defendants, relate to activities and projects long since completed.

73. These points are sufficient to dispose of the substance of Mr. Hoey's allegations as against Waterways Ireland in relation to these specified projects. However, in deference to the large amount of research carried out by Mr. Hoey, I will briefly comment on each of these projects and explain why it is that I do not consider that the cause of action asserted is well founded.

Edenderry power station

74. Pursuant to a Memorandum of Understanding agreed in 1995 between the European Commission and Ireland, in connection with the Edenderry power station, the State was to ensure that a development plan would be implemented for the bogs supplying the power station after the peat was extracted pursuant to which 7,000 hectares would be retained as wetlands. The Memorandum of Understanding provides that the Minister will ensure that Bord na Móna achieves this target.

75. Mr. Hoey asserts that if the wetlands had been maintained in accordance with this Memorandum of Understanding they would have provided a collateral water supply for the Barrow Navigation which would have assisted in maintaining water levels. This was not accepted to be the case by Waterways Ireland. It is apparent from the papers grounding Mr. Hoey's application for an interlocutory injunction that he had received an expert report to this effect. However, this expert was not called by Mr. Hoey to give evidence. This court carefully explained to Mr. Hoey that, unless the content of this report was accepted by Waterways Ireland (which it was not), he could not rely upon it without producing the relevant expert witness for cross examination. Mr. Hoey understood the position and decided not to call the relevant witness.

76. This court therefore heard no cogent evidence of any link between the works carried out on the bogs and the water level reduction on the Barrow Navigation of which Mr. Hoey complains.

77. In any event, Mr. Hoey has provided no basis whatsoever for asserting that Waterways Ireland was guilty of any act or default in connection with the implementation of the Memorandum of Understanding agreed in 1995 between the European Commission and Ireland. This Memorandum of Understanding could only bind the parties thereto and could not bind Waterways Ireland, a body that was not even in existence at the time. Any failure to achieve the aims specified in the Memorandum of Understanding could not possibly be actionable as against Waterways Ireland.

Kildare Town Bypass

78. Mr. Hoey alleges wrongdoing on the part of Waterways Ireland in connection with a decision to grant consent for the Kildare Town Bypass in January 1996. It is very difficult to understand Mr. Hoey's criticism of Waterways Ireland in this regard. Waterways Ireland did not grant this consent. To the contrary, Waterways Ireland's statutory predecessor, the Commissioners, made a submission to the statutory inquiry in relation to the bypass observing that the Barrow Navigation could not afford any diminution in the water quality and that the quantity of water available at that time was only just sufficient to maintain the navigation. Thereafter, it appears that a working group was set up by Waterways Ireland to analyse and monitor the issue. In a letter to Mr. Hoey of October 2006, the head of civil engineering with Waterways Ireland acknowledged that while water levels in the Milltown feeder were low that year it was unclear whether or not this was a permanent condition or a natural variation due to lack of historical data. It also appeared that the aquifer had not recovered from the works associated with the road construction in the area (presumably the bypass) and there was an

expectation that the aquifer would recover. The letter confirmed that despite the very dry summer and reduced water supply, Waterways Ireland had not been aware of any particular problems resulting from low navigation depths. Waterways Ireland informed Mr. Hoey that it had advised Kildare County Council that if the drop in water levels was permanent and could be attributed to the roadworks that Kildare County Council had carried out, then the Council would be asked to supply an alternative water supply for the Grand Canal. No evidence has been put before the court that the drop in navigation levels was permanent.

79. At present, there is insufficient evidence of any link between the works carried out to facilitate the Kildare Town Bypass and the water level reduction on the Barrow Navigation of which Mr. Hoey now complains. In the absence of any credible evidence to the contrary, I accept the evidence of Mr. Anderson of Waterways Ireland that the Kildare Bypass did not result in any permanent discernible loss of water from the canal or the Barrow Navigation. I also accept his evidence that, save for one period of time in 2021 during which water escaped from the canal due to an initially undiscovered leak, navigation levels on the Barrow Navigation have always been at an acceptable level such that the Barrow Navigation is and remains capable of being navigated. In the circumstances, Mr. Hoey's claim has clearly not been made out.

Kildare Water Strategy

80. Mr. Hoey had significant difficulty with the Kildare Water Strategy adopted by Kildare County Council in March, 1999 which it Mr. Hoey maintains involved the abstraction of unacceptable levels of both service water and ground water from various points along the Barrow Navigation. Mr. Hoey maintains that the water strategy was not, as it should have been, appropriately publicised by Kildare County Council and furthermore that no barge hire company, boat owner or user of the navigation was consulted. He also maintains that either no

or no adequate Environmental Impact Assessment of the Kildare Water Strategy was carried out.

81. The difficulty with all of the above is that these arguments lie, if at all against Kildare County Council and not as against the existing defendant.

82. Mr. Hoey also argues that, in implementing its water strategy, Kildare County Council misinterpreted the scope of the duty to notify Waterways Ireland pursuant to the 1942 Act of certain abstractions from the River Barrow. It appears to be common case that only surface water abstractions and not groundwater abstractions were notified by Kildare County Council. Mr. Hoey maintains that the 1942 Act procedure applied to any proposal to abstract groundwater as well as surface water.

83. The 1942 Act applies to a proposal “*to take from a source of water a supply of water.*” Section 1 of the 1942 Act defines a “*source of water*” as any lake, river, stream, well or spring. The view taken by Kildare County Council, perhaps not unreasonably, appears to have been that the limited definition of a “*source of water*” has the effect that proposals to abstract water from groundwater resources are not subject to the 1942 Act procedures. This issue does not require adjudication in these proceedings as any default in notification is not that of Waterways Ireland but of Kildare County Council. For this reason, no submissions were made on this issue to the court by the existing defendant, Waterways Ireland; and of course, Kildare County Council was not before the court. I will therefore comment no further on this issue.

84. Again, there is nothing which is capable of amounting to a stateable case here. Aside entirely from the fact that the wrong defendant has been sued and that no breach of duty has been made out against Waterways Ireland in connection with the Kildare Water Strategy, it is

further evident that proceedings seeking to challenge any aspect of the 1999 Kildare Water Strategy are out of time and statute barred.¹

2002 Abstraction proposal re River Barrow at Srowland, Athy, County Kildare

85. As will be apparent from paragraph 59 *et seq* above, Mr. Hoey is particularly critical of one aspect of the Kildare Water Strategy being the Barrow water abstraction proposal at Srowland, Athy. In addition to issuing two (legally invalid) interference notices in respect of this proposal, Mr. Hoey also exercised his right to object to the proposal and ultimately to petition the court in relation thereto.

86. The relevant procedure set out in the 1942 Act in respect of such abstraction proposals is that, following the making of a proposal by the relevant sanitary authority (in this instance Kildare County Council), to take a supply of water, it prepares a book of reference listing those persons who may be caused damage by the proposal who must then be notified in the prescribed form. Public notice is also required. In accordance with this procedure, the Barrow water abstraction proposal at Srowland was specifically notified by Kildare County Council to Mr. Hoey's company, Canalways Ireland Limited.

87. Where objections are made to the proposal, the sanitary authority must apply to An Bord Pleanála for a provisional order declaring that the proposal may come into force. Waterways Ireland made a submission to An Bord Pleanála in which it observed that low levels of water caused problems for navigation and that the removal of any supply from the upper regions of the navigation would have a detrimental effect locally and on the lower regions of the navigation. Waterways Ireland observed that if navigable depth was reduced below a certain critical figure then navigation might have to be closed in the interests of safety; that the

¹ The same is of course true of Mr. Hoey's other complaints in relation to the projects specified under this head and indeed in relation to the interference notices issued in 2002.

Environmental Impact Assessment associated with the proposal was remiss in that it had not identified any mitigation measures; and that it was very concerned that the proposal would have a detrimental effect on the Barrow Navigation.

88. By way of response, Kildare County Council accepted that the Barrow Navigation then experienced difficulty during low flow conditions. It observed that there were isolated problems along the navigation that needed to be identified and mitigation measures put in place. A meeting was evidently held between Kildare County Council and Waterways Ireland in which it was agreed that an implementation plan would be drawn up to address these problems. This implementation plan evidently was not acceptable to Mr. Hoey who served a second interference notice.

89. Ultimately An Bord Pleanála granted a provisional order in favour of the proposal. Thereafter, further public notice was given, and objectors were entitled to petition the Circuit Court to require further inquiry into the matter. Canalways Ireland Limited made such a petition and the provisional order was confirmed by the Circuit Court. On appeal to the High Court Abbott J., in addition to making the provisional order absolute, ordered that in the event that Kildare County Council proposed to bore a well or wells within its functional area for the supply of water downstream of the abstraction point at Srowland, it would submit all such proposals to be accompanied by an Environmental Impact Statement to An Bord Pleanála prior to approval.

90. It is apparent therefore that the water abstraction at Srowland has been the subject of submissions by Waterways Ireland and of negotiations as to proposed solutions as between Waterways Ireland and Kildare County Council. It has also been the subject of consideration by An Bord Pleanála who granted a provisional order in favour of the abstraction. This provisional order was challenged by Canalways Ireland Limited and confirmed by both the Circuit Court and the High Court. None of the above discloses any basis upon which Mr. Hoey

can maintain that Waterways Ireland acted in breach of its duty of care or in breach of statutory duty in relation to the said abstraction.

91. Further, insofar as Mr. Hoey pleads that Waterways Ireland failed to issue an interference notice pursuant to s. 21 of the 1942 Act in respect of these abstractions, there is no obligation on Waterways Ireland to issue such a notice. Section 21 (4) is permissive rather than mandatory and Waterways Ireland evidently decided to deal with its concerns in relation to this abstraction by instead devising an implementation plan to mitigate and manage water loss. Accordingly, this court has no absolute evidence upon which it could conclude that Waterways Ireland is guilty of any breach of duty of care or breach of statutory duty in the manner in which it has discharged its duties in relation to the Srowland abstraction.

(B) Breach of duty in failing to prevent abstractions generally or to restore the water level

92. As an alternative to his complaints that Waterways Ireland itself carried out or authorised the specified projects and activities (which it did not), Mr. Hoey contends that Waterways Ireland acted negligently and in breach of statutory duty in a number of respects in failing to prevent abstractions generally and in failing to restore the water levels thereafter. Mr. Hoey alleges that all of this damaged the business of Canalways Ireland Limited for which he claims damages.

93. There are multiple problems with the claim as advanced.

94. First, the observations at paragraph 58 above apply here with equal force. Mr. Hoey cannot recover personally for the losses of Canalways Ireland Limited.

95. Second, the claim for damages would also appear to be time barred. Many of the activities and operations complained of by Mr. Hoey occurred several decades ago. These proceedings were issued on 5th December, 2011 and Mr. Hoey asserts negligence and breach of statutory duty as against Waterways Ireland and its statutory predecessor in connection with

its response to specified projects and activities dating back to 1995. As Mr. Hoey's claim is in negligence and breach of statutory duty, the applicable limitation period is six years pursuant to s. 11 (2)(a) of the Statute of Limitations Act, 1957. In the case of a single tort, the cause of action accrues on the plaintiff suffering damage; in the case of a continuing tort, any right of action is restricted to that part of the wrong committed in the past six years. The difficulty Mr. Hoey faces is that, whilst he asserts in general terms that the projects which he criticises have reduced water levels in an unacceptable manner, he has placed before the court no credible evidence that these projects continued to impact upon water levels in the Barrow Navigation within the limitation period, still less that this has caused him, or even Canalways Ireland Limited, to suffer any specific and identifiable loss within that period.

96. Third, there is no evidence whatsoever that Waterways Ireland has been guilty of any negligence or breach of statutory duty in any of these respects. Save in relation to the removal of barge 43M, no specific act on the defendant's part is alleged to constitute a breach of its duty of care to Mr. Hoey. Nor is any specific omission or failure to act identified. This court cannot respond to vague allegations of this nature.

97. Mr. Hoey's case is broad and impressionistic. He takes the view that, merely because the impact of various developments and activities on the part of Kildare County Council and other bodies has been, he believes, to reduce water levels on the Barrow Navigation, Waterways Ireland must therefore have acted in breach of duty of care in failing to prevent same. This does not follow however. The management of the waterways and in particular the management of water quantities and water level is a matter within the purview of Waterways Ireland. The decisions of relevant local authorities and navigation authorities in relation to water abstraction are policy choices. It is not a function of the courts to direct local authorities and navigation authorities as to how they should deploy or manage their resources.

98. Fourth, no case has been made out that Waterways Ireland has acted in in an *ultra vires* or otherwise unlawful manner in the carrying out of any of its statutory functions.

99. Fifth, even if such unlawfulness were made out, it is not established that Waterways Ireland owes any specific duty of care to Mr. Hoey or to Canalways Ireland Limited such as could give rise to a right to damages. It seems to me that the statutory duties imposed upon Waterways Ireland are for the benefit of the public at large. In *Glencar Explorations Ltd v. Mayo County Council (No. 2)* [2002] 1 IR 84, the Supreme Court per Fennelly J. stated at 150: “*A duty imposed by statute on a public body will not be held to create a right to damages for its breach unless it can be shown to have within the scope of its intendment a reasonably identifiable protective purpose and identifiable class intended to benefit.*”

100. I entertain significant doubt as to whether Mr. Hoey or Canalways Ireland Limited could be said to belong to a category of persons for whose benefit the powers and duties of Waterways Ireland could be said to be exercised. I cannot see how either the plaintiff personally or Canalways Ireland Limited ought to be distinguished from all other persons or businesses that use the inland waterways, such as to permit him to mount a claim in damages. How therefore can he establish the requisite proximity of relationship in order for a direct duty of care to him or to Canalways Ireland Limited to be imposed?

101. Sixth, a successful claim in damages requires that the damage suffered by the plaintiff is caused by the negligent acts complained of and is both foreseeable and not unduly remote from those acts. Mr. Hoey merely addressed the court in terms of his own personal beliefs. Mr. Hoey is no doubt extremely knowledgeable about this entire issue, but this cannot take the place of cogent evidence. This court does not have sufficient evidence to conclude that these abstractions complained of resulted in permanent reductions in water levels that have interfered unacceptably or unreasonably with navigation on the Barrow Navigation.

102. It is clear that several water abstractions have been made from the area of the Barrow Navigation over the years. These abstractions may well have affected water levels either temporarily or potentially permanently. It is also fair to say that the papers reflect dropping water levels on the Barrow Navigation. However, this court does not have any evidence on foot of which it could conclude that any of the impugned abstractions have resulted in reductions in water levels that have interfered unacceptably or unreasonably with navigation on the Barrow Navigation to the extent that Waterways Ireland have acted in breach of statutory duty in failing to take steps available to it to prevent or remediate same. Further, aside from objecting in principle to every proposed abstraction (which would not have been open to it), no evidence whatsoever has been put before the court as to what steps Waterways Ireland could have taken and failed to take. Nor does this court have sufficient information to make any causative link as between any such abstractions and any specific loss to Mr. Hoey.

103. Quite simply, the case for negligence and breach of statutory duty does not get off the ground.

(C) The alleged 1.2 metre draught

104. Mr. Hoey relies upon Article 14 of the Bye-laws which provides that no person shall navigate or moor any boats on the canals if such boat exceeds 1.2 metres in draft other than with the consent of Waterways Ireland. Mr. Hoey argues that this provision must be interpreted as requiring Waterways Ireland to maintain the depth of the canal at 1.2 metres plus 300 millimetres for clearance, in other words, 1.5 metres, at all times.

105. This is to misunderstand the statutory provision in issue. This provision is directed to those who use the canal and indicates the maximum depth of vessels. It cannot be interpreted as a minimum depth that must be maintained by Waterways Ireland at all times throughout the entire canal system. Bearing in mind the specific method of operation of canals, in other words

by the adjustment of water levels by the opening and closing of canal locks, this is a demonstrably unsustainable proposition. In addition, the level of water in canals as in other bodies of water will vary by season and in accordance with other factors. It is notable that s. 6 (e) of the 1986 Act expressly empowers Waterways Ireland to “*alter the water levels of the canals without prejudice to the right of the Board or any other person to receive water from the canals.*”

106. Furthermore, Article 41 (1) of the Bye-laws provides: “*These Bye-laws make no representation or give any warranty as to the condition of the canals...*”. As a result, Article 14 clearly cannot be read as implying any particular duty on Waterways Ireland to maintain a particular water level.

107. Mr. Hoey has therefore failed to identify any statutory duty or other obligation on the part of Waterways Ireland to maintain the water in the canal to a particular level.

108. In the absence of any cogent evidence to the contrary, I further accept the evidence of Mr. Anderson, that, save for during one event in 2021 when there was a leak from the canal, the general level of the canal is maintained between one and two metres. He further confirmed that the canal is navigable and that the water level in the canal is reasonable to support navigation. As Mr. Hoey has furnished no convincing evidence to the contrary, I accept this evidence.

Miscellaneous

109. As will be apparent from what is stated above, there is no basis in law for the various allegations of wrongdoing on the part of Waterways Ireland contended for by Mr. Hoey. Nor has any remotely stateable basis been established - either in law or in fact - for either precluding the defendant from entering into agreements regarding water supply or for mandatory orders requiring Waterways Ireland to carry out specified works on the Barrow Navigation. In

addition, I can see no valid grounds whatsoever for the regrettable allegations of wrongdoing, including undue influence and negligent misrepresentation as against Waterways Ireland's solicitor and counsel personally. Nor has any case even been advanced, still less made out, upon which the court could conceivably quash s. 213(2) of the Planning and Development Act, 2000.

110. In all of the circumstances, I must strike out the action in its entirety.