APPROVED **[2023] IEHC 626**

THE HIGH COURT
JUDICIAL REVIEW

2023 1165 JR

BETWEEN

JOHN TOBIN

APPLICANT

AND

LIMERICK CITY AND COUNTY COUNCIL
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 16 November 2023

INTRODUCTION

1. These judicial review proceedings seek to challenge the compulsory acquisition of two parcels of land. The compulsory acquisition has been carried out pursuant to the Derelict Sites Act 1990. The Applicant in these proceedings had previously been the owner of the lands. He did not, however, have a proprietary interest in the lands at the time of the compulsory acquisition. This is because the Applicant is an undischarged bankrupt and all of his property, including relevantly the two parcels of land, vested in the Official Assignee upon his

adjudication as a bankrupt. The principal issue for determination in this judgment is whether the Applicant nonetheless has a sufficient interest to maintain these judicial review proceedings. This entails consideration, in particular, of Section 44 and Section 61 of the Bankruptcy Act 1988 and Order 84, rule 20(5) of the Rules of the Superior Courts.

THRESHOLD FOR THE GRANT OF LEAVE TO APPLY

2. This judgment is delivered in respect of a contested *inter partes* leave application. The legal test governing an application for leave to apply for judicial review has recently been considered by the Supreme Court in *O'Doherty v. Minister for Health* [2022] IESC 32, [2022] 1 I.L.R.M. 421. The Chief Justice, O'Donnell C.J., explained at paragraph 39 of his judgment that the threshold to be met is that of arguability:

> "The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges may differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability: it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a likelihood of success. Any such language obscures the nature of the test and may on occasion lead to misunderstanding, appeal and consequent delay."

3. The Chief Justice also confirmed that the same threshold test applies irrespective of whether the application for leave is made *ex parte*, or, as in the present case, is made on notice to the other parties.

4. It follows, therefore, that in assessing the merits of the grounds of judicial review pleaded, the High Court must do so by reference to the (low) threshold of arguability.

5. The approach to be taken in respect of standing and time-limits is somewhat different. Order 84 of the Rules of the Superior Court indicates that the question of whether an applicant has a "*sufficient interest*" and whether the leave application has been made within the time-limit prescribed are matters which should normally be decided at the leave stage. If it is obvious that an applicant does not have standing or that the leave application is out of time, then the judge hearing the leave application may properly refuse leave on this basis. This is so notwithstanding that the grant of leave does not necessarily preclude these issues being revisited at the full hearing. In a complex case, the judge subsequently hearing the substantive application for judicial review may be prepared to revisit the question of standing or time-limits, having had the benefit of argument from the respondents.

6. In the present case, the court has had the benefit of detailed submissions from all parties and is in a position to reach a definitive view in relation to standing and time-limits.

COMPULSORY PURCHASE PROCEDURE

7. To assist the reader in understanding the discussion which follows, it is necessary to describe briefly the procedure prescribed for the compulsory acquisition of land under the Derelict Sites Act 1990. The first step in the procedure requires the local authority to give notice of its intention to acquire the particular derelict site compulsorily. Two forms of notice are prescribed: (i) public notice by way

of publication in one or more newspapers circulating in the local authority's functional area, and (ii) individual notice by way of the service of a written notice on every owner, lessee and occupier of the land (except tenants for a month or a period less than a month).

8. The term "*owner*" is defined, under Section 15 of the Derelict Sites Act 1990, as follows:

> "'owner' means in relation to land, a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion and includes also a person who holds or is entitled to the rents and profits of the land under a lease or agreement, the unexpired term whereof exceeds three years."

9. The term "*occupier*" is defined, under Section 2 of the Derelict Sites Act 1990, as follows:

> "'occupier', in relation to land, includes any person in or entitled to immediate use and enjoyment of the land, any person entitled to occupy the land and any other person having, for the time being, control of the land;"

10. The next procedural step depends on whether or not an "*objection*" to the proposed compulsory acquisition is submitted. If no objection is submitted, then the local authority may itself confirm the proposed compulsory acquisition by making a vesting order. If, conversely, an objection is submitted, then the proposed compulsory acquisition may only be confirmed by An Bord Pleanála. Put otherwise, the making of an objection triggers a requirement for the local authority to apply to An Bord Pleanála for consent pursuant to Section 16 of the Derelict Sites Act 1990. This ensures that, in the case of objection, the decision on whether to allow the compulsory acquisition is made by a tribunal independent of the acquiring authority. (The confirming authority had, originally, been the Minister for the Environment, but this function has since

been transferred to An Bord Pleanála by virtue of Section 214 of the Planning and Development Act 2000).

11. The right to submit an objection is created under Section 16(1) of the Derelict Sites Act 1990. The wording of the section is somewhat curious:

> "Any of the persons upon whom notices of the proposed compulsory acquisition of a derelict site have been served may, within the time and in the manner specified in the notices, submit to the local authority an objection to the proposed compulsory acquisition referred to in the notice."

12. As appears, the class of person entitled to object is defined by reference to service rather than ownership or occupation. The sense of the legislation appears to be that the only persons entitled to object are those identified in the preceding section, i.e. every owner, lessee and occupier of the land (except tenants for a month or a period less than a month). Yet on a narrow reading, the mere fact that someone had been served with a notice, even if erroneously served, might be sufficient to trigger an entitlement to object. As we shall see, the Applicant in the present case seeks to rely on the happenstance of his having been served notice in respect of the first of the two parcels of land to ground a right to object.

13. The final step of the procedure prescribed under the Derelict Sites Act 1990 is the making of a vesting order. Section 18 provides that a vesting order shall operate to vest the derelict site to which it relates in the local authority in fee simple, free from encumbrances and all estates, rights, titles and interests of whatsoever kind on the vesting date. The vesting date cannot be earlier than twenty-one days after the making of the order. The statutory intent of staying the effect of a vesting order for a period of at least twenty-one days is not entirely clear. The length of time coincides with the time-limit previously prescribed for challenges to compulsory acquisitions under Section 78 of the Housing Act

1966. This ensured that a vesting order under that legislation would not become effective until after the time-limit for legal challenge had expired. The twenty-one day time-limit under the Derelict Sites Act 1990 does not achieve a similar purpose: a legal challenge to a vesting order is subject to the three month time-limit prescribed under Order 84, rule 21 of the Rules of the Superior Courts.

PROCEDURAL HISTORY

14. The Applicant seeks to challenge the making of two vesting orders by Limerick City and County Council ("*the Local Authority*"). The vesting orders were made pursuant to Section 17 of the Derelict Sites Act 1990. The first vesting order is dated 24 February 2023 and relates to two disused dwelling houses at Daly's Cross, Collreiry, Co. Limerick ("*the disused dwelling houses*"). The second vesting order is dated 29 September 2023 and relates to a former public house at Daly's Cross, Collreiry, Co. Limerick ("*the former public house*").

15. The Applicant had, at one stage, been the owner of the overall lands upon which the disused dwelling houses and the former public house are situate. However, the Applicant was adjudicated bankrupt on 13 November 2017. The legal effect of the adjudication order is that all of the Applicant's property, including, relevantly, the two parcels of land, vested in the Official Assignee.

16. The procedure for the compulsory acquisition of the two parcels of land did not commence until several years after the adjudication date. At all material times, therefore, the owner of the lands was the Official Assignee. The Local Authority duly served the Official Assignee with notice of its intention to acquire the lands compulsorily. The notices were sent under cover of letters dated 16 November

2022 and 3 May 2023, respectively. The Official Assignee did not exercise his statutory right to object to the proposed compulsory acquisition.

17. The Local Authority had initially served the Applicant with notice of its intention to acquire compulsorily the first parcel of lands. (No notice has been served on the Applicant in respect of the second parcel). The Local Authority also served notice on the Official Assignee. Thereafter, the Applicant had purported to submit an objection notwithstanding that he was neither owner nor occupier of the lands. The Local Authority do not regard the objection as having been validly made. Accordingly, the Local Authority did not make an application to An Bord Pleanála for consent to the compulsory acquisition and instead proceeded to make a vesting order on 24 February 2023.

18. The Applicant instituted these judicial review proceedings by way of an *ex parte* application for leave on 16 October 2023. The High Court (Hyland J.) directed that the leave application be heard on notice to the respondents. The *inter partes* leave application came on for hearing before me on 2 November 2023.

19. At the outset of the hearing, counsel for the Applicant applied for an adjournment. It is asserted that the Applicant intends to apply to the Bankruptcy List of the High Court in the next number of weeks to be discharged from bankruptcy. It is further asserted that the "*residual interest*" in the land will then "*revert*" to the Applicant. The adjournment application was refused in an *ex tempore* ruling, by reference to the principles in *Minogue v. Clare County Council* [2021] IECA 98. The reasons, in brief, were as follows. First, an applicant for judicial review must already have the requisite "*sufficient interest*" to pursue judicial review proceedings as of the date upon which the leave application is first moved. This is the date upon which time stops running for

the purposes of Order 84, rule 21. Here, the leave application was first made on 16 October 2023 and adjourned to an *inter partes* hearing. An applicant cannot rely on standing which has been obtained *retrospectively*. Secondly, these proceedings have been subject to careful case management; had been afforded a priority hearing date; and a full day had been set aside for the hearing. An intention to apply for an adjournment was never flagged to the List Judge and the adjournment application was only advanced at the outset of the hearing. It would be disruptive to the proper administration of justice and the efficient running of the Judicial Review List to allow such belated adjournment applications. Thirdly, the Applicant will not suffer any material prejudice by the refusal of the adjournment. If the Applicant does obtain title to the property within the next number of weeks, he will still be within time to institute *fresh* proceedings which will, on his argument, be properly constituted by virtue of his having title to the lands.

GROUNDS OF CHALLENGE

20. The principal grounds upon which the Applicant seeks to challenge the validity of the compulsory acquisition are as follows. First, the Applicant contends that he was entitled to object to the proposed compulsory acquisition and to have that objection determined by An Bord Pleanála. This entitlement to object is said to arise by virtue of the Applicant being the "*occupier*" of the lands. More specifically, it is submitted that the Applicant has an implied licence from the Official Assignee to occupy the lands. This licence was described as a bare licence to occupy the lands which was revocable at will. The licence was characterised by counsel as being in the nature of a personal right rather than a

property right. The Applicant has not set out any evidential basis for these assertions in his verifying affidavit. There is no evidence before the court of any supposed actions on the part of the Applicant which might be sufficient to constitute occupation of the lands.

21. The Applicant is not pursuing the plea, in the amended statement of grounds, to the effect that he is the "*owner*" of the lands. This concession is wisely made having regard to the statutory definition of "*owner*" (set out earlier). In circumstances where ownership of the land has vested in the Official Assignee, the Applicant cannot sensibly be said to be entitled to dispose of the fee simple of the land nor to be entitled to the rents and profits.

22. Secondly, the Applicant seeks to make much of the fact that he had been served with notice of the intended compulsory acquisition of the first parcel of land. The Applicant's case is that once a person has been served with notice of an intended compulsory acquisition, that person enjoys a statutory right to object and is not required to establish separately that they are the "*owner*" or "*occupier*" of the lands. The Respondents dispute this interpretation of the legislation, saying that it would be "*entirely illogical*" if a person who had been erroneously served with notice would be entitled to object notwithstanding that they had no connection to the relevant property.

23. It is not necessary for the purpose of resolving this leave application to assess whether the Applicant's interpretation of Section 16 of the Derelict Sites Act 1990 has reached the threshold of arguability. This is because these grounds of challenge are inadmissible by reason of delay: as explained at paragraphs 38 to 46 below, the Applicant is out of time to challenge the first vesting order. It follows that these grounds of challenge, which are peculiar to the first vesting

order, fall away. This disposes of the grounds pleaded at paragraphs (e) 16, (e) 17, (e) 18 and (e) 21(a) of the amended statement of grounds.

24. The Applicant also seeks to challenge the validity of the Derelict Sites Act 1990 by reference to the Constitution of Ireland and the European Convention on Human Rights. These grounds of challenge are all predicated upon alleged breaches of the Applicant's property rights. In circumstances where the only interest asserted by the Applicant is a bare licence revocable at will, and where the Applicant has failed to put forward any evidence on affidavit to substantiate this asserted interest, he has failed to establish even an arguable case that any property right of his has been "*engaged*" under either the Constitution of Ireland or the European Convention.

25. Finally, it should be recorded that the Applicant has not brought any challenge to the legislative provisions under the Bankruptcy Act 1988 which resulted in the vesting of his property in the Official Assignee.

SUFFICIENT INTEREST / LOCUS STANDI

26. Order 84, rule 20(5) provides that the High Court shall not grant leave to apply for judicial review unless it considers that the applicant has a "*sufficient interest*" in the matter to which the application relates. This standing requirement has been considered by the Supreme Court in *Grace v. An Bord Pleanála* [2017] IESC 10, [2020] 3 I.R. 286. The general principle is summarised as follows (at paragraph 31 of the reported judgment):

> "Therefore, the starting point is that the decision or measure under challenge must be said to give rise to an actual or imminent 'injury or prejudice' to the challenger or that the challenger has been or is in danger of being 'adversely affected'. That can be described as the broad general principle. In order for a person to have standing to bring a

> judicial review challenge, ordinarily the person concerned will need to be in a position to demonstrate that the decision or measure which they wish to challenge either has or is imminently in danger of having adversely affecting their interests so as to cause or potentially cause injury or prejudice."

27. The Supreme Court stated (at paragraph 34) that the application of that broad rule in respect of many types of challenge may not give rise to any great difficulty. The range of persons affected by a decision or measure to a sufficient extent that they can be described as having been adversely affected by injury or prejudice may be clear, obvious and limited. The judgment goes on then to consider the special position of environmental cases. The position under domestic law is summarised as follows (at paragraph 45):

> "[…] standing in environmental cases involves a broad assessment of whether the legitimate and established amenity or other interests of the challenger can be said to be subject to potential interference or prejudice having regard to the scale and nature of the proposed development and the proximity or contact of the challenger to or with the area potentially impacted by the development in question. Furthermore, that broad assessment should have regard, in an appropriate case, to the legitimate interest of persons in seeking to ensure appropriate protection of important aspects of the environment or amenity generally."

28. Turning to apply these principles to the circumstances of the present case, these proceedings do not give rise to the type of broader issues which can occur in environmental litigation. The legal effect of a decision to acquire land compulsorily is confined to the ownership of the land. It does not, for example, authorise the carrying out of development on the land. The range of persons who might legitimately be said to be adversely affected by a decision to acquire land compulsorily is limited to those with a proprietary interest in the relevant land. The range of persons with a "*sufficient interest*" will, normally, be confined to the owner, lessee and occupier of the land to be acquired. This is the class of

person identified under the Derelict Sites Act 1990 and for whose benefit the statutory procedure has been provided. The statutory right to object is confined to this class and there would have to be some unusual feature present before a person outside that class could demonstrate a sufficient interest to maintain judicial review proceedings.

29. For the reasons explained under the next heading, the only party who would have a sufficient interest to pursue a challenge to the vesting orders in the present case is the Official Assignee. The Official Assignee is the only person with a proprietary interest in the lands. The bare licence asserted by the Applicant—even if it had been substantiated by evidence which it has not—is not sufficient. The right to pursue proceedings relating to the lands has vested in the Official Assignee pursuant to Section 61(3)(d) of the Bankruptcy Act 1988.

30. The Applicant cannot obtain any practical benefit from these proceedings. Even if the vesting orders were to be set aside, this would not result in the lands being transferred to his ownership. Rather, the lands would revert to the ownership of the Official Assignee.

EFFECT OF BANKRUPTCY

31. Section 44 of the Bankruptcy Act 1988 provides that where a person is adjudicated bankrupt all property belonging to that person shall, on the date of adjudication, vest in the Official Assignee for the benefit of the creditors of the bankrupt. The term "*property*" is defined under Section 2 as including money, goods, things in action, land and every description of property, whether real or personal. On the facts of the present case, ownership of the two parcels of land vested in the Official Assignee on 13 November 2017. The Applicant was

obliged to deliver up possession of any part of his property in his possession or control to the Official Assignee.

32. The term "*things in action*" has consistently been interpreted as including causes of action. Consequently, any decision as to property rights is vested in the Official Assignee, including the decision to litigate, i.e. whether to commence litigation or continue litigation (*Bank of Ireland v. O'Donnell* [2015] IESC 89). This is subject to an exception in respect of certain personal actions. These include actions for personal injuries, assault and defamation.

33. The present case is concerned with a supposed cause of action by the Applicant against the Local Authority in respect of the two parcels of land. The general rule is that where a cause of action had accrued in favour of a bankrupt *prior* to the adjudication order, then same vests in the Official Assignee as an item of "*property*" forming part of the bankrupt's estate. Thereafter, the bankrupt no longer has any interest in the cause of action. The bankrupt cannot commence any proceedings based upon such a cause of action, and if proceedings have already been commenced, the bankrupt ceases to have sufficient interest to continue them. The defendants to any such proceedings would be entitled to apply to have the proceedings struck out as an abuse of process in circumstances where the proceedings could have no reasonable prospect of success (unless the Official Assignee were substituted as claimant).

34. The sequence of events in the present case is unusual in that the supposed cause of action arose *subsequent* to the adjudication order. More specifically, the Local Authority first commenced the acquisition process under the Derelict Sites Act 1990 in relation to the two parcels in November 2022 and January 2023, respectively. It will be recalled that the Applicant had been adjudicated a

bankrupt on 13 November 2017. The statutory right to object to the proposed compulsory acquisition of the lands and the right to challenge by judicial review any decision made by the Local Authority only arose subsequent to the adjudication order.

35. In circumstances where the supposed cause of action relates to property, which is already vested in the Official Assignee, the cause of action is properly regarded as derivative from that property. Such a cause of action does not fall to be treated as "*after-acquired property*", i.e. an item of property which is acquired after the adjudication order. This is because the bundle of property rights enjoyed by a landowner includes an intrinsic entitlement to undisturbed enjoyment of one's property and, if necessary, the right to rebuff all unwelcome interferences with it including by way of compulsory acquisition (*Reid v. Industrial Development Agency* [2015] IESC 82, [2015] 4 I.R. 494). The Official Assignee thus enjoyed the right to object to any proposed compulsory acquisition as part of the rights vested in him on the date of the adjudication order. The statutory rights conferred upon the Official Assignee expressly include the power to institute, continue or defend any proceedings relating to the property which has vested in him (Section 61(3)(d) of the Bankruptcy Act 1988).

36. It follows that the Applicant has no *locus standi* to pursue proceedings relating to the two parcels of land. Rather, it was a matter for the Official Assignee alone to decide, first, whether to object to the proposed compulsory acquisition and, thereafter, whether to pursue legal proceedings. There are any number of reasons for which the Official Assignee might decide not to object to a compulsory acquisition. The Official Assignee might, for example, consider that the statutory compensation recoverable in respect of such a compulsory

acquisition might realise as much value for the bankruptcy as a market sale would have. In other circumstances, the lands might be in negative equity, with no prospect of any surplus for the bankruptcy. In such a scenario, the compulsory acquisition of the property would make no practical difference to the bankruptcy.

37. If and insofar as a bankrupt seeks to pursue litigation (other than excepted personal actions), the appropriate route is to request the Official Assignee to commence or continue litigation. If the Official Assignee refuses, then the bankrupt may apply to the Bankruptcy List of the High Court. (See *Bank of Ireland v. O'Donnell* [2015] IESC 89 (at paragraph 40) and *A.A. v. B.A.* [2015] IESC 102, [2017] 3 I.R. 498 (at paragraphs 74 and 103)).

THREE MONTH TIME-LIMIT

38. For the reasons explained above, the Applicant does not have "*sufficient interest*" to pursue these proceedings, and leave to apply for judicial review must be refused for that reason. For completeness, it should be recorded that the proceedings are, in any event, out of time insofar as they seek to challenge the first vesting order. It will be recalled that the first vesting order is dated 24 February 2023. These proceedings were not instituted until 16 October 2023.

39. Order 84, rule 21 provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose. Time runs from the point at which there is a formal consequence adverse to the interests of an applicant (*Arthropharm (Europe) Ltd v. Health Products Regulatory Authority* [2022] IECA 109 (at paragraph 68)).

40. Order 84, rule 21(3) and (4) confers discretion on the High Court to extend time as follows:

> "(3) Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that:
>
> (a) there is good and sufficient reason for doing so, and
>
> (b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either:
>
> (i) were outside the control of, or
>
> (ii) could not reasonably have been anticipated by the applicant for such extension.
>
> (4) In considering whether good and sufficient reason exists for the purposes of sub-rule (3), the court may have regard to the effect which an extension of the period referred to in that sub-rule might have on a respondent or third party."

41. The obligations to be complied with by an applicant who seeks an extension of time are prescribed under Order 84, rule 21(5). This rule provides that an application for an extension of time shall be grounded upon an affidavit sworn by or on behalf of the applicant which shall set out the reasons for the applicant's failure to make the application for leave within the period prescribed, and shall verify any facts relied on in support of those reasons.

42. The Supreme Court in *M. O'S. v. Residential Institutions Redress Board* [2018] IESC 61, [2019] 1 I.L.R.M. 149 has confirmed that an applicant, who does not apply for leave to issue judicial review within the time specified, is required to furnish good reasons which explain and objectively justify the failure to make the application within the time-limit and which would justify an extension of time up to the date of institution of the proceedings.

43. The principles governing an extension of time have been reiterated by the Court of Appeal in *Arthropharm (Europe) Ltd v. Health Products Regulatory Authority* [2022] IECA 109 (at paragraph 87). The judgment emphasises that the court, in addition to being satisfied that "*good and sufficient*" reasons exist for an extension of time, must also be satisfied as a matter of fact that the circumstances which resulted in the delay were outside the control of the applicant. Where a delay arises from circumstances which were within the control of the applicant, the court may not extend time.

44. Notwithstanding that the proceedings are out of time in respect of the first vesting order, the Applicant has failed to put forward any evidence to explain, still less to attempt to justify, the delay. It is apparent from the correspondence which has been exhibited that the Applicant was aware at all material times that the Local Authority intended to acquire the disused dwelling houses. Indeed, the Applicant has sought to make much of the fact that he had been served with notice of the intended compulsory acquisition on 16 November 2022 and had engaged with the Local Authority by purporting to make an objection. The Applicant was also on notice of the making of the vesting order, and the following week had instructed his solicitor to call for the withdrawal of same by letter dated 3 March 2023. The letter goes on to state that the Applicant's solicitor holds instructions to issue High Court proceedings if certain steps are not taken by the Local Authority within seven days. The threat of proceedings is repeated in a subsequent letter of 27 March 2023. In the event, more than six months elapsed before the Applicant followed through on that threat by instituting these judicial review proceedings. This is not a case, therefore, where the time-limit has expired without the putative applicant being aware of the

relevant decision-making. Nor is it a case where an applicant might have been unaware of his right to seek judicial review. Some weight must also be attached to the fact that the Applicant is a former solicitor and thus more familiar with the procedural requirements than, for example, the applicant in *M. O'S. v. Residential Institutions Redress Board*.

45. If and insofar as brief mention is made of the Applicant having requested the Local Authority to engage in mediation, this does not represent a good and sufficient reason for an extension of time. A putative applicant for judicial review is not entitled to delay instituting proceedings in the forlorn hope that the relevant public body might be prepared to enter into mediation. Here, there is no suggestion that the Local Authority indicated any intention to enter into mediation. It cannot be said, therefore, that time was lost to the Applicant by virtue of his being misled into thinking that the dispute might be resolved amicably between the parties without court intervention. The Local Authority had made a vesting order and same could only be set aside by a court order. The Local Authority does not have statutory power to withdraw or cancel a vesting order.

46. In the absence of any explanation for the delay, there is no basis for granting an extension of time. It follows, therefore, that the challenge to the first of the two vesting orders is inadmissible by reason of delay.

CONCLUSION AND PROPOSED FORM OF ORDER

47. The Applicant does not have a "*sufficient interest*" to pursue a challenge to either vesting order. Furthermore, the Applicant is, in any event, out of time to challenge the first of the two vesting orders. As to the challenge to the validity

of the Derelict Sites Act 1990, the Applicant has failed to establish even an arguable case that any property right of his has been "*engaged*" under either the Constitution of Ireland or the European Convention. Accordingly, the application for leave to apply for judicial review must be refused.

48. As to costs, my *provisional* view is that the Respondents, having been entirely successful in resisting the application for leave, are entitled to recover their legal costs as against the Applicant. This would represent the default position under Section 169 of the Legal Services Regulation Act 2015. If the Applicant wishes to contend for a different form of costs order, then his solicitor should notify the Registrar within seven days and arrange to have the matter listed for argument on Monday, 27 November 2023 at 10.45 AM.

Appearances

Conor Power SC and Cian P. Kelly for the applicant instructed by Edmond J. Dillon Solicitors (Listowel)
Carol O'Farrell for the first respondent instructed by Leahy Reidy (Limerick)
Bernard Dunleavy SC and Ross Gorman for the second and third respondents instructed by the Chief State Solicitor

Approved Garrett Simons