Neutral Citation no. [2004] NICh 3 | *Ref:* **WEAC4096**

Judgment: approved by the Court for handing down | *Delivered:* **09/02/2004**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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BETWEEN:

57 DEVELOPMENTS LIMITED

Plaintiff;

and

THE DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND

Defendant.

_____

WEATHERUP J

The claim and counterclaim.

[1] By this originating summons the plaintiff, as the owner of Ballyhalbert Caravan Park, Ballyhalbert, County Down seeks a declaration that -

(i) the provisions of the Caravans Act (Northern Ireland) 1963 permit twin unit caravans to be purchased, erected and maintained in Northern Ireland; and

(ii) the twin unit caravans erected and stationed by the plaintiff at Ballyhalbert Caravan Park are caravans within the meaning of Section 25(1) of the Caravan Act (Northern Ireland) 1963.

[2] By counterclaim the defendant claims -

(i) Declarations that (a) the site works around individual twin units (described by the defendant as "park homes") and (b) the general site works at Ballyhalbert Caravan Park, constitute development and require planning permission under the Planning (Northern Ireland) Order 1991.

(ii) A declaration that the placing of caravans and roads must be in accordance with any planning permission.

(iii) An injunction restraining the plaintiff from commencing or continuing (a) individual site works; (b) general site works; (c) placement of caravans.

(iv) An order requiring the plaintiff to remove (a) individual site works; (b) general site works; (c) caravans not placed in accordance with planning permission.

Planning permission

[3] The plaintiff claims to have been granted planning permission for the works at Ballyhalbert Caravan Park by Down County Council dated 10 May 1966 and by the Department of Housing, Local Government and Planning dated 5 August 1976. In addition, on 21 October 2002, the plaintiff obtained from Ards Borough Council a caravan site licence under the Caravans Act (Northern Ireland) 1963 in respect of Ballyhalbert Caravan Park. The caravan site licence contains numerous conditions, which include a limit of 209 caravans and specifications in relation to site boundaries, the site plan and the density and spacing between caravans.

[4] The defendant presents a more complicated planning history but also commences with the 1966 permission from Down County Council. Further permissions were granted in 1967 and in 1969. A stage II permission was granted in 1971, the erection of a shop and office block approved in 1972 and a mutrator house approved in 1973. Approval for a stage III development was given in 1976. A hearing took place before the Planning Appeals Commission in 1983. The precise areas to which each of the planning permissions related and the plans approved on each occasion are not clear. However it is apparent that there have been caravans on parts of the lands for over 30 years. On 21 August 2002 the Senior Planning Officer of the defendant's divisional planning office at Downpatrick wrote to a representative of the plaintiff to confirm that "no further planning consent would be required to allow all year round occupancy of caravans on these sites". However at the hearing of this application the defendant did not accept that the plaintiff had planning permission for the development at Ballyhalbert Caravan Park.

Twin unit caravans.

[5] The plaintiff has introduced to Ballyhalbert Caravan Park "twin unit caravans," otherwise described as "park homes". The plaintiff has made this application to secure a declaration that these twin units are "caravans" for the

purposes of the Caravans Act (Northern Ireland) 1963. They are described as follows in the applicant's affidavit -

> "**Composition of `Twin Unit' Caravans**
>
> 11. In common with more traditionally designed caravans, twin-unit caravans rest upon a steel chassis which has wheels attached to it. The floors of the twin-unit caravans comprise timber joists sandwiched between two layers of plywood as with all other caravans. The walls are made of timber, studwork and plywood as with other caravans, however, twin-unit caravans have their external timber boards coated with a waterproofing material, whereas more traditionally designed caravans now have an external skin of aluminium (although earlier versions of more traditionally designed caravans also have plywood external walls). Both twin-unit caravans and more traditionally designed caravans are insulated in an identical manner.
>
> 12. In terms of the structure of the roof, more traditionally designed caravans typically have a roof composed of aluminium sheets which have a textured finish, and twin-unit caravans have comparable steel tiles with a textured finish. The windows and doors (UPVC double glazed), heating systems, water systems, electricity and gas supplies incorporated in twin-unit caravans are common to all other types of caravan.
>
> **Service connections**
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> 13. The water, gas and electricity connections provided in twin-unit caravans are common to all caravans, whilst all foul sewage outlets are designed to connect into a 110mm foul sewer pipe in a manner common to all types of caravan.
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> **Decoration**
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> 14. Internally, twin-unit caravans are sold to purchasers fully decorated inclusive of fitted carpets with cooking, washing and all other facilities reasonably necessary `for human

habitation' (per Section 25(1) of the Caravans Act (Northern Ireland 1963). The standard of accommodation and facilities provided is comparable to that found in other types of modern caravan.

15. For decorative purposes, small brick walls have been erected on three sides of each twin-unit caravan sited on the Subject Lands. The provision of these brick skirts is at the request and the expense of purchasers of twin-unit caravans and serves not only to improve the appearance of the caravan (by hiding its sub-frame and wheels from view) but also helps prevent vermin nesting below the unit. The fourth side of each unit has a polycarbonate skirt which is designed to look like a brick wall. The polycarbonate sheet can be removed in seconds to enable the unit to be wheeled out of its site and moved to another place. The provision of decorative skirts around the base of caravans is common on quality caravan parks for the purposes stated above. Materials typically used include wood, UPVC and brick.

None of the twin-unit caravans rests upon or even touches the aforementioned brick skirts. Indeed, an air gap is purposely left between the unit and the said bricks. A photograph demonstrating this is attached hereto and marked `CG7'.

16. Steps and disabled ramps are also provided around the twin-unit caravans at Ballyhalbert in order to facilitate access to the units in accordance with the site licence. Again, these features are commonly found in association with more traditionally designed caravans. In some cases, these are essential and in all cases of advantage to the owners. (No ruling is sought from the Court on these walls, or ramps or steps).

Mobility

17. The units arrive on site upon a transporter directly from the manufacturer. Upon arrival, the units roll off the transporter using the wheels attached to their sub-frame. Two units are then

pushed together and bolted together on the spot into twin-unit form before being towed into position in the same way as any other caravan using a landrover or a tractor.

18. Each twin-unit caravan is positioned upon a concrete base in a manner common to all caravans, jacked up to a level where the wheels of the caravan are not bearing any weight and then supported by axle stands and support jacks in precisely the same manner as any other type of caravan. Connection to essential services such as electricity, water, gas and sewers then takes place in the same way as more traditionally designed caravans are connected to such services. For safety reasons, the towbar attached to the caravan is often removed and stored under the caravan to facilitate easy re-attachment to the caravan.

19. As purchasers of twin-unit caravans purchase their caravan outright, but merely rent their particular site or `pitch', it is a normal occurrence for a purchaser, from time to time, to exercise his or her right to relocate their caravan to another, more preferable part of the caravan park, or alternatively to an entirely different caravan site. This is, of course, the purchaser's prerogative and the relocation of the twin-built caravan can be carried out without difficulty or expense, and in the same manner in which a more traditionally designed caravan is relocated. The first step in doing this is to replace the aforementioned towbar and disconnect services in a manner identical to any other caravan. The entire twin-unit caravan is then lowered onto its wheels once more, support jacks and the decorative polycarbonate skirt are removed before being towed to its new location. The entire process of disconnecting the caravan and relocating it to another pitch within the caravan park can be completed in a matter of hours. I emphasise that each twin-unit caravan can be towed from location to location as one entity, without having to be separated into its constituent parts. A video of one such twin-unit caravan being moved within the Subject Lands is attached hereto and marked `CG8'.

The legislation.

[6] Section 25(1) of the Caravans Act (Northern Ireland) 1963 defines "caravan" as follows –

> "`Caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place or another (whether by being towed, or being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted but does not include –
>
> (a) Any railway rolling stock which is for the time being on rails forming part of a railway system for the time being in use as such; or
>
> (b) Any tent."

[7] There are three parts to the statutory definition of "caravan". First it is "any structure". The twin unit is manufactured in two parts which are bolted together on site. The item being referred to must be the single completed item and not the component parts. The single completed item is clearly a "structure". Secondly, the structure must be designed or adapted for human habitation. The twin units are made and fitted out as temporary or permanent residences and this part of the statutory definition is also satisfied. Thirdly the structure must be capable of being moved from one place to another. It is the single completed item that is the "structure" that must be capable of being moved from one place to another, rather than a part of the structure. This mobility of the structure can be achieved by the structure being towed or being transported on a motor vehicle or trailer. This contemplates the structure being capable of being moved to and from the site on the public highway as a single completed item. It is implicit that the movement by road must be undertaken lawfully. The twin unit caravan is a structure that is capable of being moved on its wheels by another vehicle and on a transporter as a single completed item. But can it be moved lawfully on the public highway?

[8] The movement of vehicles on roads is governed by regulations made by what is now the Department of Regional Development under the Road Traffic (Northern Ireland) Order 1995. Article 55 of the 1995 Order provides that the Department may make regulations generally as to the use of motor vehicles and trailers on roads, their construction and equipment and the

conditions under which they may be so used. Apart from such general regulations, Article 60 of the 1995 Order provides that the Department may, by order, authorise the use on roads of special vehicles not complying with regulations under Article 55. The Department made the Motor Vehicles (Authorisation of Special Types) Order 1997 under Article 60 of the 1995 Order. Reliance was placed on article 19 which authorises the use on roads of heavy motor vehicles and trailers specially designed and constructed for the carriage of abnormal indivisible loads and of locomotives and tractors specially designed and constructed to draw trailers specially so designed and constructed. The twin unit caravan is not an "indivisible load" and Article 19 does not apply.

[9] By article 23 the Department authorises the use on roads of motor vehicles and trailers carrying loads where the overall width exceeds 4.3 metres but does not exceed 6.1 metres. Article 27 applies to motor vehicles and trailers authorised under article 23 and provides for the approval by the Department of the time, date and route of a journey by a vehicle exceeding 5 metres in width. The principal engineer of the Road Service of the Department of Regional Development has responsibility for the issue of permits for abnormal loads under the 1997 Order. He states on affidavit that any abnormal load exceeding 6.1 metres in width requires a special permit and if any such load is divisible it is the Department's policy that the load should be divided for the purposes of transportation. Accordingly a twin unit caravan that exceeded 6.1 metres in width would not obtain a special permit under the 1997 Order and could not lawfully be moved by road.

[10] A twin unit caravan that does not exceed 6.1 metres in width is capable of being moved lawfully from one place to another on the public highway and accordingly is a "caravan" for the purposes of the 1963 Act. It is only necessary that the structure is "capable" of being moved lawfully on the highway and the structure does not cease to be a statutory caravan if actual mobility would be achieved by the division of the structure.

[11] Some of the twin unit caravans/ park homes have dimensions that comply with the regulations governing lawful mobility by road and others do not. The regulations provide that projections are taken into account in measuring width. A Chartered Structural Engineer with the Construction Service at the Department of Finance and Personnel has measured some of the twin unit caravans with an exterior wall to wall width of 6.05 metres, but with projections at side windows and roof eaves the width exceeds 6.1 metres.

<u>The legislation in England and Wales.</u>

[12] The Caravan Sites and Control of Development Act 1960 Act in England and Wales applies the same definition of caravan as the 1963 Act in Northern Ireland. However the 1960 Act was amended by the Caravan Sites

Act 1968 to deal with "twin unit caravans". Section 13(1) of the 1968 Act provides that –

> "(1) A structure designed or adapted for human habitation which –
>
> (a) is composed of not more than two sections separately constructed and designed to be assembled a site by means of bolts, clamps or other devises; and
>
> (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),
>
> shall not be treated as not being (or as not having been) a caravan within the meaning of Part 1 of the Caravans Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.
>
> (2) For the purposes of Part 1 of the Caravan Sites and Control of Development Act 1960 the expression `caravan' shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing sub-section if its dimensions when assembled exceed any of the following limits, namely –
>
> (a) length (exclusive of any draw bar) 60 ft (18.288 metres);
>
> (b) width 20 ft (6.096 metres);
>
> (c) overall height of living accommodation measured internally from the floor of the lowest level to the ceiling of the highest level 10 ft (3.048 metres)."

[13] It may be the case that section 13(1) of the 1968 amendment was introduced because the definition of caravan in the 1960 Act was being

interpreted as requiring mobility on a highway "lawfully" and that twin unit caravans that could not be lawfully transported on a highway were falling outside the definition of a caravan. Accordingly section 13(1) provided that a twin unit caravan would not cease to be a caravan for the purposes of the 1960 Act because its movement on the highway was unlawful. However this was made subject to certain maximum dimensions of the twin unit caravan and in relation to width section 13(2) provided for a maximum of 6.096 metres. This amendment was not introduced in Northern Ireland.

The rule in Pepper v Hart.

[14] Mr Deeney QC on behalf of the applicant sought to introduce in evidence the Hansard record of the House of Commons debates on the 1968 Act under the rule in *Pepper v Hart* [1993] 1 All ER 42. Mr McCloskey QC on behalf of the defendant objected to the use of Hansard on the basis that *Pepper v Hart* was concerned with resolving ambiguity in the meaning of the words used in the legislation and not with seeking to ascertain the background to legislation or the intentions of the promoter of a Bill. In *Pepper v Hart* Lord Browne-Wilkinson delivered the majority judgment and at page 69e it is stated -

> " I therefore reach the conclusion, subject to any question of parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to parliamentary materials where: (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied on consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied on are clear."

Lord McKay dissented.

[15] In the House of Lords in *Robinson v Secretary of State for Northern Ireland* [2002] NI 390 Lord Hoffman at page 405b considered how the rule had developed since 1993 –

> "Lord McKay of Clashfern thought that it would increase the expense of litigation without contributing very much value to the quality of decision making. The majority thought that it would occasionally assist in deciding what Parliament intended and, if strictly confined by conditions, would not add greatly to the expense.

> Speaking for myself, I think that Lord McKay has turned out to be the better prophet. References to Hansard are now fairly frequently included in argument and beneath those references there must be by and large spoil heap of material which has been mined in the course of research without using anything worthy even of a submission. In *Ex parte Spath Holme Limited* [2001] 1 All ER 195 and *R v A* [2001] 3 All ER 1 attempts were made by several of Your Lordships to reduce the flow by insisting that the conditions for admissibility must be strictly complied with. I am not sure that it is sufficiently understood that it will be very rare indeed for an act of Parliament to be construed by the courts as meaning something different from what it would be understood to mean by a member of the public who is aware of all the material forming the background to its enactment but who was not privy to what was said by individual members (including ministers) during the debates in one or other House of Parliament. And if such a situation should arise, the House may have to consider the conceptual and constitutional difficulties which are discussed by my noble and learned friend Lord Steyn in his Hart Lecture (2001) 21 Oxford Journal of Legal Studies 59 and were not in my view fully answered in *Pepper v Hart*."

[16] I rejected the application that reference should be made to the Hansard debates of the 1968 amendment to illustrate the background and purpose of the amendment. That legislation is not ambiguous or obscure or leading to absurdity.

Consideration of the definition in England and Wales

[17] The definition of caravan was considered by the Court of Appeal in England and Wales in *Carter v The Secretary of State for the Environment and the Carrick District Council* [1994] 1 WLR 1212. The District Council issued an established user certificate for a caravan on the appellants' lands. The appellants then replaced the caravan with a "park home" for which planning permission was refused and enforcement notices were issued by the council. This "park home" had been delivered to the site in four prefabricated sections and then bolted together and placed on concrete blocks. It had no wheels or sub-frame but otherwise appears to have been very similar in character to the

twin unit caravans/park homes introduced by the applicant at Ballyhalbert Caravan Park. The Court of Appeal held that the structure was not a caravan because it failed to satisfy the requirement that the structure should be capable of being moved as a single unit. Sir Stephen Brown P (at page 1218 G) stated that it was straining the language of the section to an unacceptable degree to seek to embrace in the definition, a structure which was prefabricated in as many as four separate sections. Russell LJ (at page 1219 D) stated that the section required a "structure" with two qualities, first, designed or adapted for human habitation and second, mobility. Both qualities applied to the whole single structure and not to component parts.

[18] Accordingly a "caravan" for the purposes of the statutory definition is a single structure that is designed or adapted for human habitation and which is capable of being moved lawfully on the public highway by towing or transportation as a single structure. Some twin unit caravans/park homes are capable of such mobility as they are capable of satisfying the relevant regulations, being less than 6.1 meters in width. Although there has been no statutory amendment in Northern Ireland as occurred in England and Wales in 1968, the overall effect would be that a broadly similar result applies in Northern Ireland.

Caravans and planning permission.

[19] In *Wyre Forest District Council v Secretary of State for the Environment* [1990] 1 All ER 780 the House of Lords considered the statutory definition of a caravan under the Caravan Sites and Control of Development Act 1960 for the purposes of a grant of planning permission for a caravan. Section 29(1) of the 1960 Act is in the same terms as Article 25(1) of the 1963 Act in Northern Ireland. The case concerned a chalet structure which fell within the statutory definition of a caravan but not within the ordinary meaning of a caravan. The issue was whether the grant of planning permission for a caravan extended to a unit that was only a caravan by reason of the statutory definition. It was held that the statutory definition applied to the meaning of caravan within the planning permission. If the plaintiff has planning permission for "caravans" at the site then a structure that satisfies the statutory definition of caravan under the 1960 Act is a caravan for the purposes of the planning permission.

The counterclaim.

[20] The plaintiff and the defendant have been in dispute for some time in relation to the development of Ballyhalbert Caravan Park. The plaintiff contends that this dispute has become public knowledge and was having adverse impact on the plaintiff's business. Accordingly the plaintiff decided to issue this originating summons to obtain a declaration as to the legal character of a caravan. The defendant's response was to issue the counterclaim to obtain orders in relation to other works on the site. The

plaintiff objects to the defendant being granted any of the relief sought on the basis that there is a statutory scheme applicable to any breach of planning control and that is the appropriate process that ought to be adopted by the defendant in relation to any alleged breach of planning control by the plaintiff.

Breach of planning control.

[21] Part VI of the Planning (Northern Ireland) Order 1991 deals with enforcement. The provisions were amended by the Planning (Amendment) Order (Northern Ireland) 2003. Article 67C provides that the defendant may issue a Planning Contravention Notice where it appears that there may have been a breach of planning control. This notice requires the person on whom it is served to give information of operations, use and activities on land and any matter relating to the conditions or limitations in any planning permission. Article 68 provides that the defendant may issue an Enforcement Notice for a breach of planning control and Article 69 provides for appeal to the Planning Appeals Commission against an Enforcement Notice. The PAC may grant planning permission or discharge any condition or limitation in planning permission or determine whether activities on the land were lawful and issue a Certificate of lawful use or development. Article 73 gives the defendant power to issue a Stop Notice so as to prevent further development pending proceedings under the Enforcement Notice. Article 76A provides that the defendant may issue a Breach of Condition Notice where planning permission is subject to conditions and the notice will specify the steps which ought to be taken to secure compliance with the conditions. Article 76B provides that where the defendant considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction it may apply to the Court for an injunction. Accordingly there are a number of measures that might be taken by the defendant under the statutory scheme for enforcement of planning control and the defendant has taken none of those steps, save to seek an injunction in these proceedings in response to the plaintiff's application. The plaintiff contends that particular regard should be had to the role allocated by the legislation to the PAC, as a specialist planning body, with authority to examine disputed use and development and to make specific orders in relation to the use and development.

[22] The defendant has issued Planning Policy Statement 9 on the Enforcement of Planning Control, which sets out the general policy approach that the defendant will follow in taking enforcement action against unauthorised development. Paragraph 6 applies where unauthorised development is unacceptable and provides that a formal warning letter will be issued which will indicate the measures considered necessary to remedy the breach and will normally include a timescale for their implementation. As a follow-up the defendant will normally initiate formal action through the

service of an Enforcement Notice. Paragraph 7 deals with unacceptable unauthorised development where urgent remedial action is required. If the defendant considers that the unauthorised development is causing serious harm to public amenity and there is little likelihood of resolution the defendant will normally take vigorous enforcement action which may include a Stop Notice or, where circumstances permit, an injunction to remedy the breach urgently in order to prevent further serious harm to public amenity.

[23] In *South Bucks District Council v Porter* [2003] 3 All ER 1 the House of Lords considered the enforcement of planning control against those occupying land without planning permission, where the local authority had sought an injunction under the Town and Country Planning Act 1990. It was held that the Court considering such an application had to decide whether in all the circumstances it was just and proportionate to grant the injunction. Further the Court should not exercise functions allocated elsewhere, such as to hold that planning permission should not have been refused or that an appeal against an Enforcement Notice should have succeeded or that a local authority should have had different spending priorities. However the Court is not precluded from considering issues not related to planning policy or judgment, including the personal circumstances of the defendant.

[24] The character of the dispute that has developed between the plaintiff and the defendant involves consideration of planning and enforcement issues that might appropriately be dealt with under the enforcement provisions of the 1991 Order. If any such enforcement action by the defendant were to be contested by the plaintiff the matter could appropriately be considered by the Planning Appeals Commission on an appeal from an Enforcement Notice. If immediate action is required to prevent development then a Stop Notice might be issued. While it is desirable that the issues between the parties should be resolved, there is no immediacy or other factor arising in the present proceedings that necessitates the grant of an injunction in the present circumstances. The defendant has not considered it necessary to take immediate enforcement action through the course of this dispute.

[25] Apart from the claim for an injunction the defendant counterclaims for declarations that various works on site constitute development that requires planning permission. The defendant has identified nine categories of development for which it is said there is no extant planning permission –

(1) garages at individual sites,
(2) water, electricity, sewage and telephone services,
(3) vehicular access footpaths and street lighting,
(4) perimeter entrance gates and winged walls,
(5) barbeque area,
(6) tennis court,
(7) clubhouse,

(8) site office,
(9) communal parking area.

[26] The plaintiff applied to the defendant for planning permission on 19 September 2003 and 4 December 2003 and according to the plaintiff the applications include the matters specified at (1), (3), (4), (6), (7) and (9) above. The applications await the decision of the defendant. The plaintiff contends that item (2) does not require planning permission by reason of long-established use, item (5) does not constitute development and item (8) refers to a caravan unit for which further planning permission is not required. In respect of the six items for which planning permission has been sought by the plaintiff the defendant may now determine if planning permission should be granted. In respect of the three items for which the plaintiff has not applied for planning permission the defendant has enforcement powers that it may exercise in respect of any item that constitutes a breach of planning control. The same applies to any of the items for which application has been made for planning permission, in the event that the defendant refuses planning permission for development and the plaintiff proceeds with development. Ultimately the matter may be determined by the Planning Appeals Commission. On this issue of planning control the appropriate forum for determination of the issues is the statutory enforcement scheme provided under the 1991 Order as amended. Accordingly I decline to make any order on the defendant's counterclaim.