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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

IN THE MATTER OF AN APPLICATION BY UK WASTE MANAGEMENT LIMITED FOR JUDICIAL REVIEW

CARSWELL LCJ

Introduction

This appeal represents yet another instalment of a long running battle between the appellant company UK Waste Management Limited and the Department of the Environment for Northern Ireland (the Department), the planning authority for Northern Ireland, over the appellant's attempts to obtain planning permission to extend its landfill site at Cottonmount Quarry, Mallusk, Co Antrim. The subject of the present appeal is an order of Higgins J dated 6 July 2001 whereby he dismissed the appellant's application for judicial review of a notice issued on 27 March 2001 under the terms of Article 31(3) of the Planning (Northern Ireland) Order 1991 (the 1991 Order), indicating that the Department intended to refuse planning permission for development of the landfill site on the ground that the proposal was premature. The application for judicial review also sought to challenge decisions of the Department granting planning permission and allowing continued waste disposal operations at a site at Dargan Road, Belfast

operated by Belfast City Council. Higgins J on 6 July 2001 also dismissed this application, and the appellant's appeal included a challenge to this decision. At the outset of the hearing before us on 18 December 2001 the appellant's counsel informed the court that he did not propose to proceed with that part of the appeal which related to the Dargan Road site, as both parties recognised that its determination would involve issues which could not readily be decided by this court. It was agreed by the parties that the judge's order in relation to the Dargan Road site should be affirmed by the court without any order as to costs.

The Statutory Background

Control of the development of land is regulated by the 1991 Order, which by Article 3(1) imposes upon the Department the duty of formulating and co-ordinating policy for securing the orderly development of land and the planning of that development. Planning applications have to be made in the manner specified by a development order, which order was provided for in the Planning (General Development) Order (Northern Ireland) 1993. Article 25(1) of the 1991 Order provides:

> "25.-(1) Subject to this Part, where an application is made to the Department for planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as material to the application, and to any other material considerations, and –
>
> (a) subject to Articles 34 and 35, may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or

(b) may refuse planning permission."

A special procedure is provided for major planning applications by Article 31:

> "31.-(1) Where, in relation to an application for planning permission, or an application for any approval required under a development order, the Department considers that the development for which the permission or approval is sought would, if permitted –
>
> (a) involve a substantial departure from the development plan for the area to which it relates; or
>
> (b) be of significance to the whole or a substantial part of Northern Ireland; or
>
> (c) affect the whole of a neighbourhood; or
>
> (d) consist of or include the construction, formation, laying out or alteration of a means of access to a trunk road or of any other development of land within 67 metres of the middle of such a road, or of the nearest part of a special road;
>
> the Department may within two months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this Article to the application.
>
> (2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.
>
> (3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the decision which is proposes to make on the application; and if within such period as may be specified in that behalf in

> the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.
>
> (4) In determining an application to which this Article applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.
>
> (5) The decision of the Department on an application to which this Article applies shall be final.
>
> (6) In this Article "road" includes a proposed road and "special road", "trunk road" and "proposed road" have the same meaning as in the Roads (Northern Ireland) Order 1980."

There is no counterpart of this procedure in the English planning legislation, and it appears to be unique to Northern Ireland.

The Course of the Proceedings

The planning history of the Cottonmount site is regrettably long and complex. In our judgment given on 30 April 1999, to which we shall refer later in more detail, we stated that the long delay in reaching a decision reflected no credit on the operation of the system of planning control in Northern Ireland and we have to say that the handling of the matter since that date has shown little improvement.

The appellant has operated a landfill waste disposal site at Cottonmount Quarry since 1994, in pursuance of a planning permission granted in 1989 after a public inquiry. The void which it was permitted to fill with waste has now reached or is reaching capacity and the appellant has

since 1995 been seeking permission to extend the area in which landfill is permitted. On 3 February 1995 it lodged with the Department an application for planning permission. On 21 March 1995 the Department served a notice applying the special procedure provided for by Article 31, but did not cause a public local inquiry to be held. It then commenced a process of advertising and consultation, interspersed with meetings and requests for information, which consumed a period of two and a half years. Eventually, after the appellant had urged a resolution of the matter, the Department on 10 October 1997 issued a notice under Article 31(3) stating that in its opinion planning permission should be granted, subject to a large number of conditions. (This notice, like the subsequent notices issued under Article 31(3), was described by the Department as a "notice of opinion", and we shall for convenience adopt that terminology in this judgment).

The appellant was reluctant to accept some of the conditions and sought clarification of others, and there followed a series of meetings and discussions and an exchange of letters. By the summer of 1998 the frustration of the appellant's officers was mounting and they were applying pressure on the Department to reach a decision. They were so anxious to proceed that they notified the Department that the appellant would be prepared, notwithstanding its concern over the content of some of the conditions, to accept them if it would facilitate the grant of planning permission. On 21 August 1998 the Department wrote to the appellant stating that it was proposing to defer determination of the planning application pending

finalisation of the Waste Management Strategy for Northern Ireland, then going through a process of consultation. The letter stated :

> "The Minister apprehends that information and representations of relevance to your application will emerge during that consultation period. He is further concerned that to make a decision on your application at this stage might be premature since it could pre-determine the balance, nature and number of the waste disposable [sic] methods and facilities which will be determined by the Waste Management Strategy once finalised. That strategy, once finalised, shall determine, on a uniform regional basis, integrated waste management methods and facilities which will be in the long-term environmental and economic interests of the community in Northern Ireland."

The factors governing the decision to defer the application were set out in paragraph 6 of an affidavit sworn on 23 October 1998 by Mr PJ McBride on behalf of the Department:

> "The significance of the draft Waste Management Strategy as a material consideration to be taken into account by Planning Service in its consideration of the Applicant's planning application did not develop fully until some considerable time after the issue of the article 31(3) Notice on the 10th October 1997. The draft strategy did not feature in the briefing of the Minister on the Applicant's planning application during events prior to October 1997."

We share the surprise expressed by Coghlin J that such a fundamental matter as this strategy should not have appeared significant enough ten months earlier to figure in the Department's consideration of the appellant's application to extend its landfill operation.

The response of the appellant to this proposal was to commence on 11 September 1998 an application for judicial review of the decision to defer consideration of the planning application. It came on for hearing on 7 December 1998 before Coghlin J, who gave a written judgment on 22 January 1999 in favour of the appellant. He held that the Department did have a general power to defer determination of a planning application, but that once it had issued a notice under Article 31(3) it was bound to proceed to confirm it when any conditions attached had been accepted by the applicant. He said at page 12 of his judgment:

> "In this case the Department notified the applicant that it proposed to grant planning permission subject to a number of conditions, a decision which the applicant was prepared to accept in full, without seeking his right of recourse to the PAC. In such circumstances, it seems to me that the applicant was entitled to expect that, provided it complied with the relevant conditions, the Department would confirm a favourable final decision in accordance with the notice. In my opinion, article 31(3) of the 1991 Order reflects the intention of Parliament to provide for those planning applications, in respect of which, despite their importance, the Department is able to reach a determination without incurring the expense, uncertainty and delay of a public local inquiry, subject to the right of the applicant to seek a hearing before the PAC. The second paragraph of the Notes for Guidance attached to the respondent's Notice of Opinion dated the 10th October 1997 specifically states that:-
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> > `If the applicant does not wish to have a hearing, he should inform the Department as soon as possible so that a final decision may be issued without delay.'

> In my view, on the true construction of article 31(3) of the 1991 Order, in the absence of any request on the part of an applicant for a hearing before the PAC the respondent is subject to a duty to issue a final decision in accordance with the Notice of Opinion without delay."

He made an order of mandamus commanding the Department forthwith to issue the planning permission sought by the appellant as notified in the notice dated 10 October 1997.

The appellant appealed to this court, and we gave a reserved judgment on 30 April 1999 allowing the appeal (reported at [1999] NI 183). We held that the Department did not have power to defer a planning application, whether or not it is made subject to the Article 31 process. We considered that it may take such time as it reasonably needs to complete its investigation, consultation, discussions etc, but once it has completed this process it must make a decision one way or the other. We therefore confirmed the order of certiorari quashing the Department's decision to defer determination of the planning application and made an order of mandamus --

> "directing the (respondent) appellant to issue within 28 days either a final decision or an amended notice of proposal and if the (applicant) respondent makes no request under Article 31(4) [an error for 31(3)] of the Planning (NI) Order 1991 within the time specified therefore to issue a final decision immediately after the expiry of that time."

We held, however, that the Department did not necessarily have to give the final decision in the same terms as the notice of opinion issued under Article 31(3). We stated at page 192:

> "An applicant for planning permission who has received a notice under art 31(3) indicating the department's proposed decision is no doubt entitled to expect that this will be implemented in the absence of some good reason to the contrary. We consider, however, that it must still be open to the department to change its mind for sufficient reasons and give a different final decision on the application. There must always be room, within certain limits, for a public authority to change tack in its administration of matters with which it has to deal: cf the observation of Lord Russell of Killowen in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1073. If the department were debarred from changing its view and giving a different final decision, there would be no room for amendment of its proposal if supervening events – such as, for example, the issue of a European directive – were to make it desirable in the public interest that the original proposal should not be adopted. It may well be that reconsideration of the wisdom of the proposed decision would be sufficient to allow amendment of the proposal, but we do not find it necessary to decide that. In the present case the draft Waste Management Strategy for Northern Ireland was published in June 1998, and it was quite appropriate that permission for a major landfill development should be considered in the light of the strategy when it was finalised."

On 27 May 1999 the Department issued a fresh notice of opinion under Article 31(3), indicating that it proposed to refuse the planning application on the ground therein stated:

> "The proposal is premature in that it would, if approved, predetermine the balance, nature, number and location of waste disposal and management facilities throughout Northern Ireland which if not assessed on a uniform basis as part of an integrated network of facilities within the context of an overall strategy would have the

> potential to be prejudicial to the protection of the environment."

The appellant sought a hearing before the Planning Appeals Commission (the PAC), as provided for in Article 31(3). It also commenced proceedings for judicial review of the validity of the notice of 27 May 1999. The application for leave to apply came before Kerr J on 6 July 1999, but was adjourned until completion of the hearing before the PAC on the ground that that procedure afforded the appellant an effective alternative remedy. In November 1999 it was agreed between the parties that the judicial review application be adjourned until 8 December 1999, and that by that time the Department would have used its best endeavours to be in a position to give clear undertakings in relation to the publication of the Waste Management Strategy and the timetable for decisions on the outstanding applications for planning permission. The Waste Management Strategy was published in April 2000 (the judicial proceedings having been adjourned several times in between), but no timetable was furnished. Successive adjournments of the proceedings did nevertheless take place, until they were dismissed by consent on 15 September 2000.

According to the affidavit sworn by Mr Noel Scott on 14 March 2001 on behalf of the Department the appellant's solicitors were notified that a revised notice would be issued when the Strategy was published. It is alleged by the appellant that an officer of the Department informed the appellant's solicitors that if the reference to the PAC were withdrawn the Department would issue a notice of proposal to allow the planning application. This is denied by the

Department, but it appears that the appellant withdrew its reference before the notice of proposal was issued, and it is difficult to see why it should have done so unless some assurance or indication had been given to it that the notice would be favourable.

Be that as it may, on 7 April 2000 the Department issued a new notice of opinion and withdrew the previous extant notice dated 27 May 1999. The new notice is headed "Notice of Opinion", but its form is in all other respects that of a grant of planning permission, subject to a large number of conditions similar to those contained in the notice of 10 October 1997. Notwithstanding the terms of our judgment given on 30 April 1999 the Department did not proceed to give a final decision. The reason appears clearly enough from paragraph 9 of Mr Scott's affidavit of 14 March 2001 and the chronology prepared on behalf of the Department: the Department was quickly subjected to a barrage of objections from local objectors and elected representatives, and meetings took place over the succeeding weeks with them. At the same time consultation was proceeding with district councils on essential interim capacity needs for waste disposal.

The appellant issued a notice of motion seeking to compel the Department to comply with this court's order of mandamus made on 30 April 1999 requiring it to determine the appellant's planning application. The matter came before us on 15 March, when it was adjourned until 2 April 2001. In between these hearings the Department issued yet another notice of opinion on 27 March 2001, which is the subject of challenge in the present

proceedings. The notice stated that the development should in the Department's opinion be refused on grounds very similar in effect to those of the notice of 27 May 1999:

> "1. The proposal is premature in that it would, if approved, predetermine the balance, nature and number of waste disposal and management facilities in the Eastern Region of Northern Ireland which if not assessed on a uniform basis as part of an integrated network of facilities within the context of an overall strategy for Northern Ireland and a Waste Management Plan prepared by the Eastern Region Waste Management Group (ARC 21) would have the potential to be prejudicial to the protection of the environment."

The Application for Leave

The appellant's statement grounding its application for judicial review has been amended a number of times, but in its final form it sought the following relief:

> "(a) An Order of Certiorari quashing the Notice of Opinion dated 27th March 2001 to refuse permission of the planning application lodged on 3rd February 1995;
>
> (b) An Order of Mandamus to compel the Department to adjudicate on the matter in a fair and lawful manner;
>
> (b1) An Order of Mandamus directing the Respondent to issue a final decision on the application of 3rd February 1995 within days in accordance with its last valid Notice of Opinion, dated 7th April 2000;
>
> (c) Such further and other relief as the Court may deem just and equitable;

(d) Costs."

We should mention that some of the arguments presented by the appellant's counsel to us went outside the reasons contained in the statement. Since the respondent's counsel did not raise strong objections, we decided to hear the arguments without requiring a formal amendment. When the application for leave to apply came before Higgins J he dealt with the application in some detail, receiving argument from counsel for the Department as well as the appellant and giving a reserved judgment in writing. He refused to give leave on the ground that the appellant had a statutory remedy which had not been exhausted, viz to seek to appear before and be heard by the PAC, as provided for by Article 31(3) of the 1991 Order. He also refused leave to apply in respect of the Dargan Road site on the ground of the appellant's delay.

Not only did he decline to grant leave, but he went on to treat the application for leave as a substantive application for judicial review, which he thereupon dismissed. This is not generally an advisable course, since if the applicant successfully appeals to the Court of Appeal on the ground that leave should have been granted it may not be able to deal with the substantive application without receiving further evidence. This proved to be the case in the present appeal, and we allowed both parties to adduce substantial further evidence, adjourning consideration of the appeal until it was filed. We would only add that if an application for leave to apply for judicial review is sufficiently difficult to require argument from both the

applicant and the respondent, unless the matter is very clearly resolved against the applicant, generally on an issue of law, it is ordinarily appropriate for leave to be given, permitting evidence to be filed and full submissions to be presented at the substantive hearing.

A court considering an application for leave to apply for judicial review will regularly refuse leave where other remedies are available to the applicant and have not been used: cf *R v Epping and Harlow General Commissioners, ex parte Goldstraw* [1983] 2 All ER 257 at 262, per Lord Donaldson MR; *R v Inland Revenue Commissioners, ex parte Preston* [1985] AC 385 at 382, per Lord Scarman. The challenge to the notice of opinion of 27 March 2001 is, however, based not on the substance of the proposal to refuse planning permission but upon the legality of the notice. This point was taken before Higgins J, who held at page 6 of his judgment:

> "It was submitted by Mr Beattie that the challenge to the legality of the decision making process was not a matter which could be dealt with by a hearing before the Planning Appeals Commission. There is no reason why the legality of the decision making process could not be challenged before the Planning Appeals Commission. However, even if that were not so, the Commission would hear the substance of the applicant's argument on planning permission and report accordingly to the Department which would then be required to make a decision in the light of that report.
>
> The applicants have a statutory remedy provided by Parliament which has not been exhausted. Whilst the circumstances may be described as unusual they are not exceptional or so exceptional as to justify judicial review prior to the exhaustion of those remedies. I decline to grant leave on the

application for leave relating to the Cottonmount decision."

We do not find it possible to agree with the judge's conclusion. The function of the PAC is to hear appeals against planning decisions, not to adjudicate upon their validity, and it seems us doubtful whether it has jurisdiction to do so. Nor is the PAC an appropriate body to hear and determine this issue. The issue does not depend upon the type of planning factors which the PAC was constituted to consider, and which fall within its area of expertise. It turns rather on the validity in law of the notice of opinion of 27 March 2001, and this issue will be governed by matters of statutory construction and administrative decisions which relate much more closely to public law. We do not think that the judge has taken sufficient account of this and we accordingly must reverse the exercise of his discretion and grant leave to apply.

The Substantive Application

Having so decided, we must now consider the substantive application for judicial review. The grounds set out in the appellant's amended statement are somewhat voluminous, but as presented by Mr Deeny QC in the course of argument before us they resolved into three propositions:

1. The procedure adopted by the Department was so unfair that it amounted to abuse of power.
2. The appellant had a legitimate expectation that the Department would proceed to a final decision granting planning permission soon after the issue of the notice of opinion dated 7 April 2000.

3. The Department acted in breach of Article 6(1) of the European Convention on Human Rights and Article 1 of the First Protocol.

Abuse of Power

The Department acted correctly in accordance with the order of this court when it issued the notice of opinion dated 27 May 1999. It could not then proceed to a final decision, because the appellant made a request to go before the PAC. Then on 7 April 2000, when the matter was due to come before the PAC, the Department withdrew the notice of 27 May 1999 and issued a fresh notice in favour of the development, while the appellant withdrew its request to go before the PAC. As we indicated in our judgment of 30 April 1999, the Department does not have power to defer planning decisions and should in the absence of special circumstances have proceeded to a final decision promptly after 7 April 2000. It has put forward the need to allow the district councils to carry out extensive consultation in putting together their waste management plans and to refine the details of the Department's waste strategy, which undoubtedly has to be done in the public interest and will be very time-consuming. The Department was aware of the necessity to carry out these steps when it issued the notice of 7 April 2000, and it nevertheless issued a favourable notice of opinion, where it might have been more appropriate to issue an unfavourable one based on prematurity. This comes very close to deliberate flouting of the order made by this court on 30 April 1999. It certainly operated in effect as a deferment of the final planning decision, which the Department did not have power to do.

It might be suggested that on the terms of Article 31(3) the Department did not have power to issue more than one notice of opinion in respect of a planning application, with the consequence that all notices after the first were void. Neither party advanced this argument before us, no doubt because it was not in their interest to do. We do not, however, think that such a suggestion would be soundly based. If the Department is entitled to reconsider its final decision after issuing a notice of opinion in favour of the development, as we previously held, then as a matter of natural justice it must give the applicant an opportunity to go to the PAC. That can only be done by issuing a second notice of opinion indicating an intention to refuse permission for the development.

We shall therefore proceed on the basis that the Department had in law power to issue successive notices of opinion, though when it issued the favourable notice of 7 April 2000 it must have been aware that it was not in a position to proceed to a favourable final decision, with much consultation to be carried out and the shaping and refinement of the waste strategy to be put into effect. It was contended that the issue of this notice was invalid, either because the Department was knowingly doing so in order to defer making an unfavourable final decision or because the degree of unfairness amounted to an abuse of power. A degree of support for the proposition that inconsistency and unfairness of decision may amount to an abuse of discretion is to be found in, amongst other sources, Wade & Forsyth, *Administrative Law,* 8th ed, pp 370-1 and an emphatic statement of Lord Scarman in *R v Inland Revenue*

Commissioners, ex parte Preston [1985] AC 835 at 852 (cf Lord Templeman at pp 866-7). The extent of this jurisdiction is not at all clear and we do not propose to attempt to define it in this judgment.

It would be of no benefit to the appellant for us to quash the notice of opinion of 7 April 2000, the only one which has been favourable to its proposed development. What the appellant seeks is that we should quash the notice of 27 March 2001 on the ground that it was unfair and an abuse of power to string matters out for almost a year and then reverse the favourable decision. If we were to conclude that we should take this course, so leaving the favourable notice of 7 April 2000 as the extant one, the Department would still in our view be entitled to issue an unfavourable final decision on the ground of prematurity. We are not fully persuaded that the law is sufficiently clearly established or that the degree of unfairness is sufficiently acute for us to take such a course, but we should in any event decline in the exercise of our discretion to do so when it would accomplish nothing effective.

Legitimate Expectation

The appellant no doubt had an expectation when the Department issued its notice of opinion on 7 April 2000 that it would be followed in short order by a final decision granting planning permission for the development. There has been a long-running controversy whether the doctrine of legitimate expectation extends to the upholding of substantive rights or whether it is limited to procedural rights: see, eg, the discussion in *Re Croft's Application* [1997] NI 1 at 17-19. The English Court of Appeal has held in *R v North and*

East Devon Health Authority, ex parte Coughlan [2001] QB 213 that in certain circumstances the court will compel an administrative authority to abide by its promises and fulfil the promisees' legitimate expectations. It made it clear in paragraph 59 of its judgment that such cases will generally be confined to instances where the authority's promise or representation bears the character of a contract. It also indicated in paragraph 86 that enforcing the promise would not in that case entail the authority acting inconsistently with its statutory or other public law duties, with the implication that it would not have taken this course if it had led to such inconsistency.

We do not consider that the necessary conditions are fulfilled in the present case. The issue of the notice of opinion of 7 April 2000 may have not unreasonably given rise to an expectation of a favourable final decision, but any representation involved fell short of bearing the character of a contract. Moreover, the Department is under a statutory duty under Article 19 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (enacted in order to implement the requirements of the EU Waste Directive of 1975) to prepare a strategy containing its policies in relation to the recovery and disposal of waste in Northern Ireland. The several district councils have then, by virtue of Article 23, to prepare waste management plans under the aegis of the Department, which has proved to be a time-consuming business. It could be contrary to the proper implementation of this policy if one waste disposal company were given planning permission to develop a disposal site in a place where landfill may not be permitted under the plan as eventually put in

place, the reason why other such applications for planning permission have been put on hold.

Breach of Convention Rights

The case under this head has to be based on section 6(1) of the Human Rights Act 1998, whereby a public authority must not act (after 2 October 2000) in a way which is incompatible with a Convention right. The appellant has based its claim on Article 6(1) of the Convention and Article 1 of the First Protocol.

The material part of Article 6(1) provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law."

It is not in dispute that planning proceedings involve a determination of civil rights: see paragraph 31 of the judgment of the Court in *Bryan v United Kingdom* (1995) 21 EHRR 527. We have already expressed the view that the history of this matter has been unfortunate, but we do not consider that unfairness in respect of any delay after 2 October 2000 has been established. By that time it was clear that the district councils' process of consultation and preparation of waste management plans had to run its course before planning decisions on waste disposal could be given. In our opinion the deferment of final decisions after that date cannot be said to have been unfair, nor has the subsequent delay extended beyond a reasonable time in the circumstances of this case. If there was any unfairness, it consisted in leaving the appellant

without a firm decision, but it appears fairly clear that by 2 October 2000 any final decision was going to be unfavourable on account of prematurity.

We note that the appellant's Order 53 statement does not rely on Article 1 of the First Protocol to the Convention and no amendment has been sought to include it. We do not consider that it assists the appellant and we shall state our views briefly. Article 1 provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The appellant's peaceful enjoyment of its property has not been disturbed in any ordinary sense of the word. It has not been enabled to use it as it would wish, but that it is not in our view an interference with *peaceful* enjoyment, which connotes some kind of invasion of the property. Still less is it a deprivation of the appellant's possessions, which involves permanent extinction of ownership rights. Moreover, even if it were to be held that the Department's acts or omissions constituted an interference with the appellant's peaceful enjoyment of its property, we would take the view that it was in the public interest and proportionate. It would in our opinion come within the margin of appreciation afforded to States or its domestic

equivalent, the discretionary area of judgment referred to by Lord Hope in *R v Director of Public Prosecutions, ex parte Kebeline* [2000] 2 AC 326 at 380-1.

Conclusion

For the reasons which we have given we do not consider that the appellant is entitled to the remedy which it seeks and we shall accordingly dismiss the appeal.

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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IN THE MATTER OF AN APPLICATION BY UK WASTE MANAGEMENT LIMITED FOR JUDICIAL REVIEW

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J U D G M E N T O F

CARSWELL LCJ

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