

A planning difficulty



Where a developer fails to comply with an order under Section 160 of the Planning and Development Act 2000 he may be committed for contempt. When deciding whether to make such an order the Court will focus on whether the developer had taken effective steps to remedy the unlawful development.

Section 160 of the Planning and Development Act, 2000 empowers the High Court and the Circuit Court to make any order necessary to restrain an unlawful development and to restore the land to its original condition.

The decision of Budd J in *Dublin City Council v. Grant* [2008] IEHC 464 illustrates the difficulties that may be encountered by a developer who is subject to a Section 160 order. The financial costs of undoing a development can be considerable and if a developer is unable to meet these expenses his or her personal liberty may be at risk.

Mr Grant was the owner of a number of historic premises in central Dublin. He had begun to renovate these properties when Dublin City Council objected due to the lack of planning permission. In 2005, a Section 160 order was made directing Mr Grant to restore the properties to their original condition. The Council formed the view that Mr Grant was failing to comply with this order and brought proceedings seeking his committal for contempt of court. Mr Grant accepted that he had not complied with the order, but argued that this was due to a lack of funds. He pointed out that he had attempted to sell a number of properties but had encountered difficulties.

To determine whether Mr Grant's failure to comply with the previous order justified his imprisonment, Budd J reviewed his conduct since the Section 160 order had been granted. The Court accepted that Mr Grant was encountering difficulties in selling his properties and looked kindly on the fact that he had not attempted to rely on any technical defences.

However, the Court also felt that Mr Grant was procrastinating. He was failing to take all possible steps to sell his portfolio. In addition, Budd J noted that Mr Grant's failure to inform the Court that he had purchased a hotel in London and was encountering tax difficulties were factors that weighted against him.

Budd J ordered the committal of Mr Grant to prison for 6 months. However, enforcement of this order was suspended on condition that he comply with the Section 160 order within 12 months.

This case both illustrates the considerable personal difficulties that can arise from a breach of planning permission and the broad practical approach that the courts will take to the enforcement of Section 160 orders.

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