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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**07/09/2023**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF BELFAST

Between:

ROBERTA YOUNG

Appellant:

-and-

ARDS AND NORTH DOWN BOROUGH COUNCIL

Respondent:

Before: McCloskey LJ and Huddleston J

The Appellant appeared as a Litigant in Person
Mr Jonathan Dunlop (instructed by Carson McDowell Solicitors) for the Respondent

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McCLOSKEY LJ (*delivering the judgment of the court*)

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Preamble

[1] This is the unanimous decision of the court.

Paper Adjudication

[2] It is the considered view of both members of the judicial panel that this case is a paradigm candidate for adjudication on the basis of all of the written materials assembled, without further listing. The Council accedes to this course. The appellant's consistent stance throughout this appeal has been a mixture of obstructive and delaying tactics, as later passages in this judgment will make clear. This is illustrated by her objection to paper adjudication, which was an unparticularised assertion of lack of judicial integrity (see [20] *infra*). As both parties are being treated in precisely the same and as the appellant has chosen to reject the court's grant of legal aid to her (*infra*), no question of unfairness arises.

Litigation History

[3] The advent of this case before the Court of Appeal comes about in the following way. By a summons, dated 28 January 2016, issued by Ards and North Down Borough Council ("the Council") Roberta Anne Young ("the Appellant") was prosecuted for the following offence:

> "Following prior convictions for the same offence on 22nd February 2005 and 5th October 2010 at Newtownards Court House you did, contrary to Article 147(2) of the Planning Act (NI) 2011, which supersedes section 72(2) of the Planning (NI) Order 1991, in that you failed to comply with all of the requirements of an Enforcement Notice dated 9th January 2004, a copy of which is tendered with the summons relating to land to the west of 39 Carrowdore Road, Greyabbey, County Down."

We shall describe the latter location as "the lands." Sadly, over seven years later, the proceedings thus commenced have not yet been finally determined. The present case is but one element of a protracted saga which has involved courts at various tiers of this jurisdiction, including this court.

[4] Before continuing the narrative it is convenient to reproduce certain passages from the judgment of this court in *Ards Borough Council v William Young* [2021] NICA 63, at paras [3]–[5]:

> "The appellant's application to this court materialises in the context of a veritable litigation saga of unprecedented dimensions reflecting credit on no-one. The appellant

and the Council have been in dispute for almost 20 years in relation to the construction by the appellant of a dwelling house in the area of 39 Carrowdore Road, Greyabbey (the "*impugned development*"). This was the impetus for an enforcement notice (the "EN") on the part of the Council's statutory predecessor, dated 9 January 2004. It is not the function of this court to attempt to trace either the preceding history or the protracted course of events following upon the Notice.

…

While this court's concern is confined to the most recent phase of events, it is a matter of obvious concern to learn from the limited papers available that on 23rd February 2005 the appellant was convicted of the offence of failing to take the steps required by the Notice, the appellant's ensuing appeal to the County Court was dismissed, an appeal by case stated to the Court of Appeal followed and a different constitution of this court, in substance, affirmed the correctness of the decision of the County Court Judge: see *Planning Service of Northern Ireland v Young and Young* [2013] NICA 29.

…

Some eight years later the saga rumbles on. In its more recent phase, which is the sole focus of this court, the following material events are identifiable:

(a) The Council initiated a fresh prosecution of the appellants for an offence contrary to section 147(2) of the Planning Act (NI) 2011 (the "*2011 Act*").

(b) On 13 November 2018 the District Judge made a ruling determining a preliminary issue.

(c) By his reserved judgment dated 25 January 2019 District Judge King convicted the appellant and his spouse.

(d) These convictions were appealed to the County Court. In that forum the appellant raised a preliminary issue which Judge McGurgan, on 28 June 2021, resolved in favour of the Council (see *infra*).

(e) The appellants responded by applying to the County Court Judge to state a case for the opinion of the Court of Appeal.

(f) By its formal certificate dated 30 July 2021 the judge refused this application.

(g) By their Notice dated 2 August 2021 the appellants applied to this court for an order directing Judge McGurgan to state a case.

By the foregoing route this court has become involved in this elderly dispute once again."

[5] It is also convenient to refer to the decision of District Judge White in 2010. This decision recites the history in admirable detail, concluding at para [30]:

> "I am satisfied that the Enforcement Notice is a formally valid document which has not been quashed on appeal or by judicial review. I am further satisfied that the Defendants were convicted of a failure to comply with it on 23 February 2005. Finally, I am satisfied that, following that conviction, they continued to fail to comply with the Notice. I therefore convict them of the offence."

By this decision the appellant and her husband, William Young, were convicted of the offence of failing to take the steps required of them by an Enforcement Notice dated 9 January 2004 relating to the lands.

[6] Unsuccessful appeals to the County Court challenging the aforementioned convictions were pursued. An appeal by case stated to this court ensued. This court, differently constituted, ruled that any disputed issues relating to the nature of breaches of planning control did not affect the formal validity of the enforcement notice, with the result that any challenge to the legality of the notice would have to be pursued by appeal to the Planning Appeals Commission or by judicial review challenge. This court further ruled that (a) the notice had been lawfully authorised by a resolution of the planning authority and (b) a necessary statutory consent had been received. The appeal was dismissed in consequence: see *Planning Service of Northern Ireland v Young and Young* [2013] NICA 29.

[7] Further phases of this tale materialised thereafter. On 25 January 2019 District Judge King convicted the appellant and her husband of an offence contrary to section 147(2) of the 2011 Act. The ensuing challenges to these convictions are outlined in the passages reproduced in para [3] above. The last involvement of this court consisted of its decision dismissing Mr Young's application for an order

compelling County Court Judge McGurgan to state a case at a stage when the appeals against the convictions made by District Judge King had not been determined.

[8] A further milestone was reached on 3 October 2022 when Judge McGurgan determined the aforementioned appeals. Mr Young's appeal was allowed on the ground that he was bankrupt at the material time and the Trustee in Bankruptcy had issued a formal disclaimer in respect of the lands which had not been the subject of any application by Mr Young for re-vesting of the lands in him. In consequence the lands had become *bona vacantai*: see *Young and Others v Hamilton and Others* [2010] NICH 11.

[9] The appeal of this appellant, in contrast, was dismissed. Specifically, the judge found that the appellant had not relinquished her share of the ownership of the lands. In passing, it would appear that this was not contested. This decision was promulgated on 3 October 2022.

The Impugned Decision

[10] By Notice dated 19 October 2022 the appellant applied to the County Court Judge to state a case for the opinion of this court. In the Notice 14 "points of law" were formulated. By his decision in writing dated 15 November 2022 Judge McGurgan refused this application. He considered most of the questions to be frivolous and unreasonable. Other questions he characterised repetitive and others he considered to raise issues of fact rather than law. The appellant seeks to challenge this decision before this court.

Appeal Criminal Aid

[11] The appellant requested this court to grant legal aid. In its formal written response the court suggested that she should first apply to the Legal Services Commission. Subsequent correspondence makes clear that the appellant has declined to do so. While she has provided this court with a completed "Statement of Means Form" in support of an application for criminal legal aid she has not identified any relevant power of this court. While in one of her letters the appellant has stated "… this case was supported by a Legal Aid Certificate in both the Magistrates and County Courts …", she has failed to provide this court with this document. Furthermore, she has refused to attend an earlier listing before this court. In addition we note the unchallenged statement in the Council's written submissions that the appellant did not attend County Court listings on certain occasions. Assuming that criminal legal aid was granted, it would appear that the appellant did not avail fully of it.

[12] While we are mindful in particular of Article 30(9)(c) of the Legal Aid, Advice and Assistance (NI) Order 1981 this provision confers no relevant power on this court. We note, furthermore, that it is applicable only if the person concerned was

previously the beneficiary of a criminal aid certificate at earlier stages of the proceedings. This court has also given consideration to Article 25 of the Access to Justice (NI) Order 2003, the Criminal Defence Services (General) Regulations (NI) 2016 and section 38 of the Judicature (NI) Act 1978.

[13] By its order dated 15 May 2023 this court granted appeal aid to the appellant. The certificate authorised the engagement of a solicitor to provide a written submission addressing the issues raised by the application to this court. A solicitor then contacted the court office regarding the order. The judicial panel observes that this is a respected and highly experienced criminal practitioner. No request was made to amend the certificate or issue a new one. There was no suggestion of any unfairness to the appellant.

[14] In the event, further correspondence from the appellant indicated that she had declined to take advantage of the certificate. No acceptable reason was provided. Had she acted upon the certificate this court would, if considered appropriate, have reviewed the issue of legal representation afresh. Ultimately, this discrete chapter simply gave rise to several months pre-eminently avoidable delay. This judgment was prepared and the arrangements for handing down were then notified to the parties. The appellant's refusal to participate actively in the proceedings continued and the content and tone of her correspondence to the court became increasingly belligerent and unbalanced.

Determining the application to this court

[15] The appellant has applied to this court for an order pursuant to Article 61(6) of the County Courts (NI) Order 1980 directing Judge McGurgan to state a case on the following "points of appeal":

> "(a) The County Court having determined that the Enforcement Notice served by the Complainant on 9th January 2004 consists of one page only and that an accompanying map does not form part of the Notice, the court erred in determining the one page textual notice complies with the requirements of section 140 of the Planning Act 2011 when it is in fact a nullity.
>
> (b) That the court erred in determining that the validity of an Enforcement Notice cannot be used as a defence in criminal proceedings, whereas the rule is that the validity of a **formally valid** Enforcement Notice cannot be used as a defence in criminal proceedings. In this current case the one page notice cannot be valid on its face.

(c) That the County Court erred in stating [in] its determination [that] points 1 and 2 above had been affirmed on appeal to the COA.

(d) The various breaches of the appellant's rights under Article 6, Article 8, Article 14 and Article 1 of The First Protocol have occurred, as are laid out in the application to the County Court to state a case for the COA."

Question (A)

[16] Section 140 of the 2011 Act prescribes the obligatory requirements of an Enforcement Notice. This court considers that the impugned Enforcement Notice of 9 January 2004 is compliant with these requirements. Furthermore the successive decisions of District Judge White and the County Court Judge on appeal therefrom that the impugned Enforcement Notice is formally valid were specifically upheld by this court in *Planning Service v Young* (*supra*). This question raises no material issue of law of substance in consequence.

Question (B)

[17] This question does not arise given our assessment in the immediately preceding paragraph. It raises no material point of law of substance in any event.

Question (C)

[18] We repeat paras [11] and [12].

Question (D)

[19] As formulated this question has no particularity or specificity. We have, however, considered its more detailed predecessor, found in questions 6–14 of the application to the County Court Judge. Each of these questions is manifestly devoid of substance and merit. They fail to formulate any coherent material breach of any of the Convention Rights invoked. The judge's assessment that they were frivolous, vexatious and unreasonable is in our view unassailable.

Impartiality of the Court

[20] Finally, this court has taken note of the following statement in a recent letter from the appellant:

> "I am concerned with the integrity of Mr McCloskey, especially considering his previous conduct in this matter.

> In light of this I will not be consenting to the matter being determined on the papers."

This is plainly a reference to the author of this judgment, who is also the author of the most recent decision of this court (see para [3] *supra*). The appropriate response is the following.

[21] First, the fact that a judge has previously made a decision adverse to a litigant does not, without more, provide a basis for recusal. In one of the leading authorities on this subject, *Locabail Properties v Bayfield* [2000] QB 451, Lord Bingham CJ stated at para [25]:

> "The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection."

While this passage would provide a complete answer to any recusal application, this court is confident in any event that the hypothetical observer, having considered the earlier judgment, would harbour no reservations about the impartiality or fairness of either member of the judicial panel.

[22] Second, no particulars of lack of "integrity" or "previous conduct" have been provided. Third, there is no recusal application. Fundamentally, there is no properly formulated challenge to the integrity, impartiality, or independence of the court. We consider the issued raised to be frivolous.

Conclusion

[23] For the reasons given the application is refused.